

	<p><b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, NS-I</b></p> <p>सीमाशुल्क प्रधानआयुक्त का कार्यालय, एनएस-1  <b>CENTRALIZED ADJUDICATION CELL (NS-V), JAWAHARLAL NEHRU CUSTOM HOUSE,</b>  केंद्रीकृतअधिनिर्णयनप्रकोष्ठ (एनएस-व), जवाहरलालनेहरूसीमाशुल्कभवन,  <b>NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA 400707</b>  न्हावाशेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र -<b>400707</b></p>
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**Date of Order: 04.02.2026**  
आदेश की तिथि: 04.02.2026

**Date of Issue: 04.02.2026**  
जारी किए जाने की तिथि: 04.02.2026

**DIN: 20260278NW000000EC4D**

**F.No. S/10-135/2024-25/CC/GR I & IA/NS-I/CAC/JNCH**  
**SCN No. 1378/2024-25/COMMR/GR I & IA/NS-I/CAC/JNCH dated 14.11.2024**  
**Passed by: Shri Yashodhan Wanage**  
पारितकर्ता: श्री यशोधन वनगे

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

**Order No.: 377/2025-26 /Pr. Commr./NS-I/CAC/JNCH**  
आदेशसं. : 377/2025-26 /प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच

**Name of Party/Noticee: M/s Whiton Chem Pvt Ltd (IEC- 0307020274)**

पक्षकार (पार्टी)/ नोटिसीकानाम: मेसर्स व्हिटन केम प्राइवेट लिमिटेड (आईसीसी- 0307020274)

**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 मूलप्रति 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 व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम 1962 की धारा 129 (ए) के तहत इस आदेश के विरुद्ध सीईएसटीएटी, पश्चिमी प्रादेशिक न्यायापीठ (वेस्टरीजनलबेंच), 34, पी. डी. मेलोरोड, मस्जिद (पूर्व), मुंबई- 400009 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 - फार्म नं. सीए३, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कम से कम एक प्रति प्रमाणित होनी चाहिए)।

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

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

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

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

(b) Rs. Five Thousand - Where amount of duty & Page 2 of 56 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 बैंक ड्राफ्ट, 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 - विधि के 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 सीमाशुल्क अधिनियम, १९६२ की धारा १२८ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

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**1. BRIEF FACTS OF THE CASE**

**1.1** M/s Whiton Chem Private Limited (IEC- 0307020274) has filed Bill of Entry No. 7210313 dated 24.01.2022 [RUD-1] through Customs Broker, M/s Unique International (AGYPK2290GCH001) for the clearance of goods declared as mentioned in the table below. The declaration made by the Importer is as follows: -

**Table- I**

1	Bill of Entry No. and date	7210313 dated 24.01.2022
2	Name of the Importer	M/s Whiton Chem Private Limited
3	IEC Number	0307020274
4	Name of the CHA	M/s Unique International
5	Goods Description	Casting Plasters- Cobra Casting Plasters- Tiger Casting Plasters- Eagle
6	Quantity	2350 Bags of 22.5 Kg each
7	Declared CTH	25202090
8	Assessable Value	26,78,910/-
9	Duty Declared	1,33,946/-
10	Supplier Name	Chang Jewellery Powder Co Ltd
11	Bill of Lading No.	CRR2021001145BM
12	Country of Origin Declared	Thailand
13	Gross Weight Declared	54140 Kgs
14	Container Nos.	CLHU3789281 (20') XINU1073189 (20')

**1.2.** The consignment covered under the said Bill of Entry was earlier examined by a Docks officer. The docks officer has informed that the importer has claimed the duty benefit of BCD @ 0% vide Sr. No. 192 (I) of the Notification No. 46/2011- Cus (as amended time to time) and declared the IGST @ 5% under Sr. No. 129 of Schedule-I of Notification No. 1/2017 (as amended time to time) by declaring the goods, i.e. Casting Plaster under CTH 25202090. The supplier of the goods is M/s Chang Jewellery Powder Co. Ltd.

**1.3.** The said Bill of Entry was routed to faceless assessment by the EDI System. The Bill of Entry has the following Targeter's/Intervenor's Instructions.

*“Check COO Certificate for genuineness/applicability. Confirm imported goods are (i) covered under the specific Sr. No. of the FTA/PTA Notfn. Claimed by importer and (ii) satisfy the origin criterion under this PTA/FTA. If not wholly produced, call for supporting documents to confirm the claim of the Regional Value Criteria or any other criteria as*

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*applicable. In case of doubt, refer COO certificate to CBIC for verification from the exporting country as per the rules.*

*Investment powder, used exclusively in jewellery casting, is being imported in the guise of gypsum powder (CTH 2520) on which BCD is payable @5% or @2.5 % vide notification no. 50/2017 and IGST @7.5%. The subject item is correctly classifiable under CTH 38160000. In terms of notes of the HSN attracting BCD @7.5% and IGST @18%. Ensure that the goods imported are not investment powder. Ensure Correct classification and valuation of the imported goods.”*

**1.4.** The following query was raised by the assessing officer: -

*“Please provide COO Certificate with overleaf side and also provide Form-I in respect COO cert. Please upload previous Bill of Entry of identical goods in e-sanchit if any(min 3) or more than 3 to cover all declared items.”*

In response to the query, the importer replied that *“FTA declaration and PBE uploaded. Please assess the BOE provisionally as per regular practice.”*

**1.5.** Accordingly, the assessing officer assessed the said Bill of Entry provisionally against Test Bond without BG/Security deposit with the following examination order.

*“Inspect lot check marks and nos, open and examine 10% also check description, qty, marked as per invoice, packing list and Bill of Entry. Follow RMS instruction. Verify grade as declared. Forward RSS to DYCC government approved Lab”*

**1.6.** As per instructions of the assessing officer, the docks officer examined the goods and the examination report is stated below: -

*“Inspected lot. Check Marks and Nos. Open and examined 10% also checked quantity, marked weight as per invoice, packing list and Bill of Enty”.*

Accordingly, it appears that even though **the item is having clear and specific description as “Jewellery Powder”**, the importer has mentioned a generic description of the item as “Casting Plaster”. Since they had imported investment powder in 2010-11, they are also aware that the proper and correct description of the items is ‘Investment powder for Jewellery’.

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changpowder.co.th/?cid=1993425

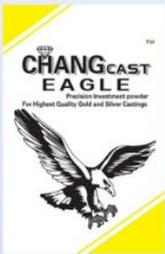
**Chang Jewelry Powder Co., Ltd.**

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**EAGLE™**



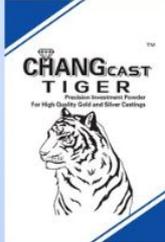
EAGLE is produced from only the purist raw materials carefully selected and unique to CHANG to ensure minimal metal mould reaction and is excellent for casting High K Gold, White Gold, and Silver where the ultimate surface finish is demanded. Specially developed to be flexible and user friendly with easy quench with minimum of finishing.



**TIGER™**



TIGER is produced from CHANG high purity raw materials and with high purity comes exceptional surface finish setting an unsurpassed standard for the professional caster. With minimal metal mould reaction Tiger is excellent for casting both Gold, Silver and Brass castings and is both a high strength investment and which also benefits from the unique Chang easy quench technology.



**COBRA™**



COBRA is the clear choice for the professional caster who demands a reliable easy to use powder which gives the highest quality castings time after time. Cobra is a pure white economic powder developed especially for the casting of Brass, Bronze and even Silver. Cobra benefits from Chang easy quench formula technology.



**1.7.** In view of the description of Chang Jewellery Powder found on the bags, it appears that the imported item is investment powder, used exclusively in jewellery casting. It is seen from the website of the manufacturer <http://www.changpowder.co.th/?cid=1993425>, that the items are investment powder and meant for casting of gold and silver metals only, and the items are traded as 'precision investment powder' for particular types of metals. E.g.: -

- i. Cobra- for Brass and Silver casting
- ii. Tiger- for high-quality gold and silver casting
- iii. Eagle- for the highest quality gold and silver casting

**1.8.** A technical data sheet is also available on the website <http://www.changpowder.co.th/?cid=2008894> of the manufacturer. As per the technical data sheet, the items are investment powder. The items shown on the sheet with some informational data for which investment powder is/are meant for are "Jewellery Items".

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RESINCAST™

**RESINCAST**- The ultimate high performance gypsum bonded investment powder for casting resin and high temperature alloys. This powder can be rapidly heated up to 800C and is very strong and resistant to the surface breakdown often seen with casting resin models.





MACHINE VACUUM MIXING		HAND MIX THEN VACUUM	
0 min	Weigh out water & powder Add powder to water	0 min	Weigh out water & powder Add powder to water
1 min	Mix under vacuum	1 min	Mix by hand
0.5 min	Stop mixer and scrape blades	3 min	Mix with machine
3.5 min	Mix under vacuum	1 min	Vacuum mixer bowl
2 min	Pour flasks	1 min	Pour flasks
1 min	Vacuum flasks	2 min	Vacuum flasks
8 min	Total time taken	8 min	Total time taken

**Leave the flasks to dry OVERNIGHT then put in the furnace**

**Recommended Burnout Cycles**



**Water to Powder Ratio**

Ratio	Water	Powder
<b>Machine Mixing</b>	38	100
<b>Hand Mixing</b>	38 – 40	100

**1.9.** The sample for testing was forwarded by the docks officer for testing, and in response to the same, a test report dated 21.03.2022 [RUD-2] was received wherein it is informed that the sample as received is in the form of off-white powder. It is a preparation mainly composed of silica together with calcium sulphate and a small amount of oxides of aluminium and iron. Actual use may be ascertained with respect to a query regarding investment powder.

**1.10.** The docks officer examined the goods and noticed that the impugned goods are investment powder classifiable under 38160000. However, the importer had declared the said item as casting plasters under CTH 25202090. Furthermore, it was also found that the importer had previously imported investment powder. Due to suspicion of mis-classification of the impugned goods, the matter was transferred to SIIB(I), JNCH for further investigation.

**1.11.** The permission to shift the goods under section 49 was granted by the competent authority.

**1.12.** The officers of SIIB(I), JNCH examined the goods covered under Bill of Entry No. 7210313 dated 24.01.2022 under Panchanama dated 21.04.2022 [RUD-3] and drawn the sample from the impugned goods and forwarded it to DYCC, JNCH on 29.04.2022 for testing, with following query: -

1. Nature
2. Composition
3. Whether Investment Powder or Gypsum Powder

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4. Whether presence of NDPS substance.

**1.13.** The test report dated 06.05.2022 [**RUD-4**] of the same was received from DYCC, wherein it was informed that-

*“The sample as received is in the form of off-white powder. It is a preparation mainly composed of silica together with calcium Sulphate and trace of oxide of Aluminium and Iron. Actual use may be ascertained with respect to query regarding investment powder. Regarding query no 4, a sample was forwarded to NCH laboratory, wherein it is informed that the sample does not answer positive test for Heroine, Morphine, Cocaine, Amphetamine, Methamphetamine, Methaqualone, Tramadol and Diazepam, etc.”*

**1.14.** Thereafter, another sample was forwarded to DYCC for confirmation whether it is Jewellery Casting Powder or not. In response of same, the test report dated 22.07.2022 [**RUD-5**] was received from DYCC, wherein it was informed that *the sample as received is in the form of off-white powder. It is a preparation mainly composed of silica together with calcium Sulphate and trace of oxide of Aluminium and Iron.*

**1.14.1.** The test report dated 19.09.2022 [**RUD-5A**] was received from DYCC, wherein it was informed that *the sample as received is in the form of off-white powder. It is a preparation mainly composed of silica together with calcium Sulphate and traces of oxide of Aluminium and Iron. Note: As per Standard literature available here, such type of composition may find use in Jewellery casting.” However, standard use may be ascertained at your end.*

**1.15.** The goods covered under Bill of Entry No. 7210313 dated 24.01.2022 was assessed provisionally as the investigation was pending, and accordingly, an Out of Charge order was issued on 21.05.2022.

**1.16.** Summons dated 06.07.2022 was issued to the importer. In response of the same, a letter dated 13.07.2024 was received wherein they requested for another date. Another summons dated 30.09.2022 was issued to the importer. However, they again did not turn up for the statement.

**1.17.1** Statement of Shri Manohar Balkrishna, Director of M/s Whiton Chem Private Limited was recorded on 02.11.2022 [**RUD-6**] wherein he ‘inter alia’ stated that: -

- i. On being asked what is his role in this Company i.e. M/s Whiton Chem Private Ltd (IEC NO. 0307020274), he stated that he is a Director of M/s Whiton Chem Private Ltd and looks after all the establishment and other works related to this company.
- ii. On being asked when M/s Whiton Chem Private Ltd. was established and how many consignments of the subject item have been imported in the past, he stated that this Company was established in 1988. To date, 24 Bills of Entry have been filed by the company for the item Chang Jewellery Powder.
- iii. On being asked what type of business M/s Whiton Chem Private Ltd. is, he stated that the main business of M/s Whiton Chem Private is the trading of Industrial products.
- iv. On being asked for what purposes the present consignment has been imported, he stated that Import for said item is the part of the business activity of the company. This item is primarily used in the manufacture-by-casting of various products such as-door knobs, kitchenware, hand tools, etc.

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- v. On being asked to submit details of the purchase order, packing list and other details of the imported goods, he stated that he will submit the purchase order, packing list and other relevant documents of the goods within two days.
- vi. On being asked how the order is given to the supplier for the import of goods, he stated that the order is placed by way of a purchase order on the supplier.
- vii. On being asked, can you provide the details of previous Bills of Entry in which similar goods, i.e. Chang Cast Tiger, Chang Cast Cobra and Chang Cast Eagle, have been imported by you, he stated that a list of all the imports for the above items is being submitted herewith.
- viii. On being asked how many consignments have been assessed finally and provisionally as yet and the details thereof, he stated that out of 24 BOEs, five BOEs have been assessed finally. Details of the same are given hereunder: -
1. BOE NO. 3204533 dated 19.03.2021;
  2. BOE NO. 3563741 dated 14.04.2021;
  3. BOE NO. 5135707 dated 21.08.2021;
  4. BOE NO. 5718650 dated 05.10.2021 &
  5. BOE NO. 9725673 dated 26.07.2022.
- ix. On being asked what about other Bills of Entry which have not been finally assessed, he stated that he is given to understand by their CHA that the assessment is pending finalisation due to non-receipt of the report from DYCC. He has advised his CHA to follow up for expediting the reports and submit copies to this office if provided by the DYCC.
- x. On being asked (as per the CBIC circular no 38/2016-Cus dated 22.08.2016, provisional assessment is to be done against bond and BG/Security) whether he can provide any document regarding approval of amount of BG/Security Deposit, he stated that he will submit the above details/documents within two days.
- xi. On being shown the Test Report received from DYCC/JNCH dated 19.09.2022 wherein it is stated that "As per standard literature available here, such type of composition may find use in Jewellery Casting", and being asked if he agrees with this report, he stated that the statement/opinion in the report refers to standard literature available with them (DYCC) and as such he is unable to comment on the same in absence of the literature with the Report.
- xii. As per Target Instructions, the goods Investment Powder meant for Jewellery Industries are classifiable under CTH 38160000. On being asked whether he agrees on this, he stated that, according to the composition and the import documents, the goods are classified under Chapter 25. He added that he believes that the composition falling under CTH 3816 is distinctly different than the composition of the goods in question. Moreover, in the instant case, since the goods are imported under FTA, the incidence of duty is nil under both the CTH's.
- xiii. On being asked under which CTH the goods were cleared in the 05 Bills of Entry in which Final Assessment was done, he stated that the Goods were cleared under CTH 252020290.
- xiv. On being asked to provide the remittance details for the final assessed Bills of Entry, he submitted sample remittance copies.

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- xv. On being asked whether they availed COO Benefit, in this case, he stated that they had sought to avail the benefits provided under the FTA. However, they have paid the duty applicable under CTH 3816, under protest.
- xvi. The Importer has uploaded Section-II & III of Form -1 of CAROTAR 2020. In Para 2d of Part-B of Section -III, you have mentioned that local value contents are 100%, whereas as per the COO certificate RVC are 76.98 or 76.9. Accordingly, the submission appears to be wrong. On being asked what you want to say, he stated that he will check with his CHA and revert on this question.
- xvii. On being asked to provide item-wise Form-I, as required under CAROTAR, he said he will submit the item wise details Form-I details within two days.
- xviii. On being asked whether he wants to say anything else, he stated that he would like to humbly submit that the transaction is revenue-neutral as customs duty is NIL irrespective of the CTH 25 or CTH 3816 being applied for the imported goods in question.

**1.17.2** Statement of Shri Manohar Balkrishna, Director of M/s Whiton Chem Private Limited, was recorded again on 20.03.2023 [RUD-7] wherein he inter alia stated that: -

- i. As per Section II and Section III of the form submitted along with COO, it is seen that RVC content is mentioned as 76.98% + CTSH, whereas, in the table 2d, it is mentioned as 70% raw materials, 10% labour, 10% profit, ad 10 % overhead cost. On being asked to explain this discrepancy, he stated that the above figures constitute a breakup of the 100%.
- ii. Impugned items appear rightly classifiable under Chapter 38. On being asked to justify the claim of COO benefit, he stated that, as per his knowledge and understanding, the goods are rightly classifiable under Chapter 25. Moreover, the exporter sells this product worldwide under the same classification. Copies of documents in support of the above have already been submitted during his earlier statement. The item classifiable under CTH 38 is distinctly different.
- iii. On being asked how many past imports of the same item have been done by his firm, he stated that he cannot confirm offhand and that he will have to check and get back.

**1.18.** Further, in the case of **M/s JANATA SALES CORPORATION VERSUS COMMISSIONER OF CUS. (IMPORT), MUMBAI (2008 (9) TMI 680 - CESTAT, MUMBAI)**, wherein, as per literature submitted by the importer, the subject powder is made of silica 73%, calcium sulphate 26% and organic content 1%. Chapter Heading 2520.20 of HSN is broadly divided into two sub-heading, viz

2520.10	-	Gypsum; anhydrite
2520.20	-	Plasters

As per the explanatory notes to the HSN: -

- A. Gypsum is a natural hydrated calcium sulphate, generally white and friable.
- B. Anhydrite is a natural anhydrous calcium sulphate used in the manufacture of sulphuric acid or of certain types of plaster.
- C. Plaster consists of gypsum partly or completely dehydrated by calcination.

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However, vide para 7 and 8 of the said judgment, it is mentioned that: -

7. *It was also submitted that the subject item is an investment powder used in the manufacture of jewel cast. It is having a base of silica 73%, which is a refractory substance, and therefore it may be classified under 38.16. The explanatory notes to 38.16 clearly say that the heading also covers refractory composition with a base of silica for the manufacture of dental or jewel moulds. Therefore, use-wise and chemical composition-wise, the product under question merits classification under 38.16.*

8. *We have considered the submissions. We find that it is an undisputed fact that the product in question is an investment powder which is used in investment casting, namely jewel castings. It is used in the moulds for giving a better finishing to the jewels. As per the literature on investment powder, the investment powder is composed of crystobalite, gypsum, silica and a modifying agent. Crystobalite is an expanding and contracting form of silica, which permits the mould to expand without cracking when it is heated and very hot molten metal is poured into it. Gypsum, chemically, is hydrated calcium sulphate. When gypsum is heated gently, it becomes plaster of Paris. It acts as a binder, i.e. it rigidly holds all ingredients together. Silica is a refractory material. It is infusible, i.e., it is not melted or changed by the hot metals cast into it. Silicon dioxide, one form of which is finely crushed, is used as silica. Since the subject goods are meant for investment casting, the above makes it very clear that gypsum acts as a binder and it is silica only which is used for casting and therefore once the product comprise of 73% silica, it is to be considered as providing the essential character. Silica is in the nature of a refractory material and is therefore classifiable more aptly under CH 3816 rather than CH 2520.*

During the investigation, and in view of the said judgment, it appears that the impugned goods are used in Jewellery casting as per the test report dated 22.07.2022. Thus, the impugned goods are investment powder and are rightly classifiable under CTH 38160000. However, the importer had declared the said item as casting plasters under CTH 25202090. Thus, it appears that the importer mis-declared the goods in terms of description and classification, and the same is liable for confiscation under section 111(m) of the Customs Act, 1962.

**1.19.** The importer submitted the Country-of-Origin Certificate vide Reference No. AI2022-0002065 dated 14.01.2022 wherein the goods are declared as "Casting Plaster" under CTI 25202090 and claiming the duty benefit. However, during the investigation, it was found that the impugned goods are mis-declared in terms of description and classification. Thus, the importer is not eligible to take the duty benefit as per the COO. Accordingly, the duty is applicable at BCD -7.5%, SWS-10%, IGST-18%. The details are tabulated below: -

**TABLE-II**

S r. N o.	BE No	BE Date	CTH	Re-determined CTH	Item Desc	Qty (In Kgs)	Asses s Val	Duty	Re-determined BCD @7.5%	Re-determined SWS	Redetermined IGST @18%	Total Duty	Differ ntial Duty
1	7210313	24/01/2022	25202090	38160000	CASTING PLASTERS - COBRA	26437.5	1126413	56320.7	84481.01	8448.10	21948.17	312410.8	256090.1

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					22.5 KG./ BAG, (COO. NO. AI2022- 000206 5 DT. 14.01.2 022), 1175 BAG								
2	72103 13	24/01/2 022	252020 90	381600 00	CASTI NG PLAST ERS - TIGER 22.5 KG./ BAG, (COO. NO. AI2022- 000206 5 DT. 14.01.2 022), 575 BAG	12937 .5	69126 5	34563. 3	518 44. 87	5184. 487	13469 3	191722 .3	157159
3	72103 13	24/01/2 022	252020 90	381600 00	CASTI NG PLAST ERS - EAGLE 22.5 KG./ BAG, (COO. NO. AI2022- 000206 5 DT. 14.01.2 022), 600 BAG	13500	86123 1.1	43061. 6	645 92. 33	6459. 233	16781 0.9	238862 .4	195800 .8
<b>TOTAL</b>						<b>26789 10</b>	<b>133945 .6</b>					<b>742995 .5</b>	<b>609049 .9</b>

**1.20.** During the investigation, it was also found that some consignments were assessed provisionally by the assessing officer and their samples were drawn and forwarded to DYCC, JNCH. Accordingly, a clarification letter was forwarded to DYCC, JNCH for confirmation of the nature and composition and for confirmation whether the goods are investment powder used for Jewellery Casting. The test results vide F.No. S/16-16/2024/LAB/JNCH dated 17.05.2024 **[RUD-8]** confirmed that the goods are 'investment powder', including the goods covered under Bill of Entry No. 7210313 dated 24.01.2022. Thus, the impugned goods are investment powder and are rightly classifiable under 38160000. However, the importer had declared the said item under CTH 25202090 and declared it as casting plasters. Thus, it appears that the importer mis-declared the goods in terms of description and classification, and the same are liable for confiscation under section 111(m) of the Customs Act, 1962.

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**1.21.** During the investigation, it was found that the importer had imported 32 more consignments having the same description (Casting Plasters) and were supplied by the same supplier M/s Chang Jewellery Powder Co. Ltd., Thailand. The B/E wise detail is as follows: -

**TABLE-III**

S r. N o.	BE No	BE Date	Sup Name	CTH	Item Desc	Qty (In Kgs)	Unit price (In USD)	Assess Val	Duty
1	5615770	09/11/2019	CHAN G JEWEL RY POW DER CO.,LT D	252020 90	CASTING PLASTERS - EAGLE IN 22.5 KG (360 BAG) (APTA NO.AI2019-0050513 DTD.07.11.2019)	8100	0.655555	382617. 6	19130. 9
	5615770	09/11/2019	CHAN G JEWEL RY POW DER CO.,LT D	252020 90	CASTING PLASTERS - CLARITY IN 22.5 KG (224 BAG) (APTA NO.AI2019- 0050513 DTD.07.11.2019)	5040	0.677777	246143. 4	12307. 2
	5615770	09/11/2019	CHAN G JEWEL RY POW DER CO.,LT D	252020 90	CASTING PLASTERS - TIGER IN 22.5 KG (340 BAG) (APTA NO.AI2019-0050513 DTD.07.11.2019)	7650	0.555555	306238. 2	15311. 9
	5615770	09/11/2019	CHAN G JEWEL RY POW DER CO.,LT D	252020 90	CASTING PLASTERS - RESINCAST 22.5 KG (120 BAG) (APTA NO.AI2019-0050513 DTD.07.11.2019)	2700	0.888888	172934. 5	8646.7
	5615770	09/11/2019	CHAN G JEWEL RY POW DER CO.,LT D	252020 90	CASTING PLASTERS FOR PLATINUM CASTING -HIPT BINDER IN 23 KG(80 DRUM) (APTA NO.AI2019-0050513 DTD.07.11.2019)	1840	2.065217	273813. 2	13690. 7
	2	7174270	09/03/2020	CHAN G JEWEL RY POW DER CO.,LT D	252020 90	CASTING PLASTERS - TIGER IN 22.5 KG (696 BAG) (APTA NO.AI2020-0008816 DTD.20.02.2020)	15660	0.555556	646461. 2
7174270		09/03/2020	CHAN G JEWEL	252020 90	CASTING PLASTERS - EAGLE IN 22.5 KG (696 BAG) (APTA NO.AI2020-0008816	15660	0.655556	762824. 1	38141. 2

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			RY POW DER CO.,LT D		DTD.20.02.2020)				
	7174270	09/03/2020	CHAN G JEWEL RY POW DER CO.,LT D	252020 90	CASTING PLASTERS - CLARITY IN 22.5 KG (580 BAG) (APTA NO.AI2020- 0008816 DTD.20.02.2020)	13050	0.677778	657235. 2	32861. 8
	7174270	09/03/2020	CHAN G JEWEL RY POW DER CO.,LT D	252020 90	CASTING PLASTERS - RESINCAST IN 22.5 KG (348 BAG) (APTA NO.AI2020- 0008816 DTD.20.02.2020)	7830	0.888889	517168. 6	25858. 4
3	7394101	04/04/2020	CHAN G JEWEL RY POW DER CO.,LT D	252020 90	CASTING PLASTERS - TIGER IN 22.5 KG (580 BAG) (APTA NO.AI2020-0015185 DTD.24.03.2020)	13050	0.555556	553969. 4	27698. 5
	7394101	04/04/2020	CHAN G JEWEL RY POW DER CO.,LT D	252020 90	CASTING PLASTERS - EAGLE IN 22.5 KG (580 BAG) (APTA NO.AI2020-0015185 DTD.24.03.2020)	13050	0.655556	653683. 8	32684. 2
	7394101	04/04/2020	CHAN G JEWEL RY POW DER CO.,LT D	252020 90	CASTING PLASTERS - RESINCAST IN 22.5 KG (232 BAG) (APTA NO.AI2020- 0015185 DTD.24.03.2020)	5220	0.888889	354540. 1	17727
	7394101	04/04/2020	CHAN G JEWEL RY POW DER CO.,LT D	252020 90	CASTING PLASTERS -COBRA IN 22.5 KG (348 BAG) (APTA NO.AI2020-0015185 DTD.24.03.2020)	7830	0.466667	279200. 5	13960
	7394101	04/04/2020	CHAN G JEWEL RY POW DER CO.,LT D	252020 90	CASTING PLASTERS CLARITY IN 22.5 KG (348 BAG) (APTA NO.AI2020- 0015185 DTD.24.03.2020)	7830	0.677778	405505. 4	20275. 3
	7394101	04/04/2020	CHAN G	252020 90	CASTING PLASTERS FOR PLATINUM CASTING -HIPT +	3680	2.065217	580712. 1	29035. 6

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			JEWELRY POWDER CO.,LTD		BINDER 23 KG /DRUM				
4	7475956	18/04/2020	CHANG JEWELRY POWDER CO.,LTD	25202090	CASTING PLASTERS -BRASS WHITE BAG 22.5 KG IN EACH BAG (580BAGS / USD 8.80PER BAG) APTA NO. AI2020-0017047 DT.08.04.2020	13050	0.391111	396627.4	19831.4
	7475956	18/04/2020	CHANG JEWELRY POWDER CO.,LTD	25202090	CASTING PLASTERS -BRASS BLUE BAG 22.5 KG IN EACH BAG (580BAGS / USD 7.80PER BAG) APTA NO. AI2020-0017047 DT.08.04.2020	13050	0.366667	371838.7	18591.9
5	7475959	18/04/2020	CHANG JEWELRY POWDER CO.,LTD	25202090	CASTING PLASTERS -EAGLE BAG 22.5 KG IN EACH BAG (580 BAGS /USD 14.75 PER BAG) APTA NO. AI2020-0017960 DT. 16.04.2020	13050	0.655556	664814.1	33240.7
	7475959	18/04/2020	CHANG JEWELRY POWDER CO.,LTD	25202090	CASTING PLASTERS - CLARITY BAG 22.5 KG IN EACH BAG (232 BAGS/ USD 15.25 PER BAG) APTA NO. AI2020-0017960 DT. 16.04.2020	5220	0.677778	274940	13747
	7475959	18/04/2020	CHANG JEWELRY POWDER CO.,LTD	25202090	CASTING PLASTERS - RENICAST BAG 22.5 KG IN EACH BAG (232 BAGS/ USD 20.00 PER BAG) APTA NO. AI2020-0017960 DT. 16.04.2020	5220	0.888889	360576.9	18028.9
	7475959	18/04/2020	CHANG JEWELRY POWDER CO.,LTD	25202090	CASTING PLASTERS FOR PLATINUM CASTING -HIPT + BINDER 23 KG /DRUM (80 DRUMS USD 47.50 PER BAG) APTA NO. AI2020-0017960	1840	2.065217	295300	14765
6	9691912	24/11/2020	CHANG JEWELRY POWDER CO.,LTD	25202090	CASTING PLASTERS - TIGER 22.5KG./BAG (CO.NO: AI2020-0041052DATED 10.11.2020), 600 BAGS	13500	0.56	568955.2	28447.8
	9691912	24/11/2020	CHANG	252020	CASTING PLASTERS - COBRA	13500	0.471111	478644.	23932.

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			G JEWEL RY POWD ER CO.,LT D	90	22.5KG./BAG (CO.NO: AI2020-0041052DATED 10.11.2020), 600 BAGS			7	2
7	2351365	14/01/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS - TIGER (22.5KG/BAG) (CO.NO: AI2021-0000982DATED 08.01.2021), 600 BAGS	13500	0.56	559878. 5	27993. 9
	2351365	14/01/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS - EAGLE (22.5KG/BAG) (CO.NO: AI2021-0000982DATED 08.01.2021), 600 BAGS	13500	0.66	659856. 8	32992. 8
	2351365	14/01/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS - COBRA (22.5KG/BAG) (CO.NO: AI2021-0000982DATED 08.01.2021), 1080 BAGS	24300	0.455556	819822. 9	40991. 1
	2351365	14/01/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS - COBRA WHITE BAG (22.5KG/BAG) (CO.NO: AI2021-0000982 DATED 08.01.2021), 120 BAGS	2700	0.444444	88869.5 1	4443.5
8	3204533	19/03/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS - WHITE BAG 22.5KG/BAG (CO.NO: AI2021-0012557 DATED 02.03.2021), 1200 BAGS	27000	0.346667	834663. 4	41733. 2
	3204533	19/03/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS - COBRA 22.5KG./BAG (CO.NO: AI2021-0012557DATED 02.03.2021), 960 BAGS	21600	0.411111	791859. 2	39593
	3204533	19/03/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS - EAGLE 22.5KG./BAG (CO.NO: AI2021-0012557DATED 02.03.2021), 240 BAGS	5400	0.615556	296412. 4	14820. 6

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	3204533	19/03/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS - TIGER 22.5KG./BAG (CO.NO: AI2021- 0012557DATED 02.03.2021), 480 BAGS	10800	0.515556	496517. 7	24825. 9
	3204533	19/03/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS - CLARITY 22.5KG./BAG (CO.NO: AI2021-0012557 DATED 02.03.2021), 360 BAGS	8100	0.633333	457459. 1	22873
	3204533	19/03/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS FOR PLATINUM CASTING - HIPT + BINDER 23KG./DRUM (CO.NO: AI2021-0012557 DATED 02.03.2021), 240 DRUM	5520	2	984473. 8	49223. 7
9	3563741	14/04/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS - COBRA 22.5KG./BAG (CO.NO: AI2021- 0017802DATED 07.04.2021), 1500 BAGS	33750	0.411111	126865 7	63432. 8
	3563741	14/04/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS - EAGLE 22.5KG./BAG (CO.NO: AI2021- 0017802DATED 07.04.2021), 300 BAGS	6750	0.615556	379911. 6	18995. 6
	3563741	14/04/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS - TIGER 22.5 KG./BAG (CO.NO: AI2021- 0017802DATED 07.04.2021), 480 BAGS	10800	0.515556	509109	25455. 5
	3563741	14/04/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS FOR PLATINUM CASTING - HIPT+BINDER 23KG./DRUM (CO.NO: AI2021-0017802 DATED 07.04.2021), 80 DRUMS	1840	2	336479. 8	16824
1 0	3714453	26/04/2021	CHAN G JEWEL RY POWD ER CO.,LT	252020 90	CASTING PLASTERS - EAGLE 22.5 KG./BAG (CO.NO: AI2021- 0019754DATED 20.04.2021), 600 BAGS	13500	0.615556	744831. 2	37241. 6

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			D						
	3714453	26/04/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS - CLARITY 22.5 KG./BAG (CO.NO: AI2021-0019754 DATED 20.04.2021), 360 BAGS	8100	0.633333	459804. 9	22990. 3
	3714453	26/04/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS - RESINCAST 22.5 KG./BAG (CO.NO: AI2021-0019754 DATED 20.04.2021), 240 BAGS	5400	0.844444	408715. 5	20435. 8
1 1	3997879	19/05/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS - CLARITY 22.5 KG./BAG (CO.NO: AI2021-0024533 DATED 18.05.2021), 520 BAGS	11700	0.633333	622105. 9	31105. 3
	3997879	19/05/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS - RESINCAST 22.5 KG./BAG (CO.NO: AI2021-0024533 DATED 18.05.2021), 200 BAGS	4500	0.844444	319028. 7	15951. 4
	3997879	19/05/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS FOR PLATINUM CASTING - HIPT + BINDER 23 KG./BAG (CO.NO: AI2021-0024533 DATED 18.05.2021), 320 DRUMS	7360	2	123581 7	61790. 9
1 2	5135707	21/08/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS - EAGLE 22.5 KG./BAG (CO.NO: AI2021- 0037076DATED 17.08.2021) (TR NO: 193/2021-22 GRPI DATED 03.05.202	27000	0.615556	148598 1	74299. 1
1 3	5528352	21/09/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS - CLARITY 22.5 KG./BAG (CO.NO: AI2021-0041440 DATED 10.09.2021), 900 BAGS	20250	0.633333	113793 8	56896. 9
	5528352	21/09/2021	CHAN G JEWEL RY POWD ER	252020 90	CASTING PLASTERS - TIGER 22.5 KG./BAG (CO.NO: AI2021- 0041440DATED 10.09.2021), 300 BAGS	6750	0.515556	308774. 1	15438. 7

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			CO.,LT D						
1 4	5718650	05/10/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS - EAGLE 22.5 KG./BAG (CO.NO: AI2021- 0043766DATED 27.09.2021), 670 BAGS (TR NO: 193/2021-2022 GRP-1 DT.	15075	0.615556	858100	42905
	5718650	05/10/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS - CLARITY 22.5 KG./BAG (CO.NO: AI2021-0043766 DATED 27.09.2021), 480 BAGS (TR NO: TR-002/NS-V (DOCKS) D	10800	0.633333	632512. 1	31625. 6
1 5	5965790	23/10/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS - COBRA 22.5 KG./BAG (CO.NO: AI2021- 0047155DATED 12.10.2021), 1200 BAGS	27000	0.411111	106482 0	53241
	5965790	23/10/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS - TIGER 22.5 KG./BAG (CO.NO: AI2021- 0047155DATED 12.10.2021) (TR NO: 1080213 DATED 18.01.2021), 300 BA	6750	0.515556	333835. 7	16691. 8
	5965790	23/10/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS - EAGLE 22.5 KG./BAG (CO.NO: AI2021- 0047155DATED 12.10.2021), 480 BAGS (TR NO: 193/2021-2022 GRP-1 DT.	10800	0.615556	637741. 2	31887. 1
	5965790	23/10/2021	CHAN G JEWEL RY POWD ER CO.,LT D	252020 90	CASTING PLASTERS - CLARITY 22.5 KG./BAG (CO.NO: AI2021-0047155 DATED 12.10.2021), 420 BAGS (TR NO: TR-002/NS-V (DOCKS) D	9450	0.633333	574139. 1	28707
1 6	6685183	15/12/2021	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - TIGER 22.5 KG./ BAG, (CO. NO. AI2021-0056050 DT. 03.12.2021), 600 BAG	13500	0.515556	755034. 3	37751. 7
	6685183	15/12/2021	CHAN G JEWEL RY POWD ER CO.	252020 90	CASTING PLASTERS - CLARITY 22.5 KG./ BAG, (CO. NO. AI2021-0056050 DT. 03.12.2021), 600 BAG	13500	0.615556	901484. 8	45074. 2

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			LTD						
	6685183	15/12/2021	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - COBRA 22.5 KG./ BAG, (CO. NO. AI2021-0056050 DT. 03.12.2021), 840 BAG	18900	0.411111	842903. 7	42145. 2
	6685183	15/12/2021	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - EAGLE 22.5 KG./ BAG, (CO. NO. AI2021-0056050 DT. 03.12.2021), 360 BAG	8100	0.615556	540890. 9	27044. 5
1 7	6881766	29/12/2021	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - EAGLE 22.5 KG./ BAG, (CO. NO. AI2021-0058876 DT. 20.12.2021), 280 BAG	6300	0.615556	366082. 4	18304. 1
	6881766	29/12/2021	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - CLARITY 22.5 KG./ BAG, (CO. NO. AI2021-0058876 DT. 20.12.2021), 250 BAG	5625	0.633333	336298. 8	16814. 9
	6881766	29/12/2021	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - RESINCAST 22.5 KG./ BAG, (CO. NO. AI2021-0058876 DT. 20.12.2021), 250 BAG	5625	0.844444	448398. 4	22419. 9
	6881766	29/12/2021	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS FOR PLATINUM CASTING - HIPT + BINDER 23 KG./ DRUM, (CO. NO. AI2021-0058876 DT. 20.12.2021), 272 DRUMS	6256	2	118112 9	59056. 5
1 8	7793673	09/03/2022	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - TIGER 22.5 KG./ BAG, (COO. NO. AI2022-0010108 DT. 28.02.2022), 425 BAG	9562. 5	0.515556	459654. 1	22982. 7
	7793673	09/03/2022	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - EAGLE 22.5 KG./ BAG, (COO. NO. AI2022-0010108 DT. 28.02.2022), 750 BAG	16875	0.615556	968490. 2	48424. 5
1 9	9412502	07/05/2022	CHAN G JEWEL RY POWD	252020 90	CASTING PLASTERS - EAGLE 22.5 KG./ BAG, (COO. NO. AI2022-0030702 DT. 22.06.2022), 480 BAG	10800	0.615556	594328. 7	29716. 4

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			ER CO. LTD						
	9412502	05/07/2022	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - CLARITY 22.5 KG./ BAG, (COO. NO. AI2022-0030702 DT. 22.06.2022), 360 BAG	8100	0.633333	458619.5	22931
	9412502	05/07/2022	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS FOR PLATINUM CASTING - HIPT + BINDER 23KG./ DRUM, (COO. NO. AI2022-0030702 DT. 22.06.2022), 240 DRUM	5520	2	986971.1	49348.6
20	9527503	13/07/2022	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - COBRA 22.5 KG./ BAG, (COO. NO. AI2022-0033852 DT. 07.07.2022), 465 BAG	10463	0.411111	426513.5	21325.7
	9527503	13/07/2022	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - TIGER 22.5 KG./ BAG, (COO. NO. AI2022-0033852 DT. 07.07.2022) ,575 BAG	12938	0.515556	661400.4	33070
	9527503	13/07/2022	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - EAGLE 22.5 KG / BAG, (COO. NO. AI2022-0033852 DT. 07.07.2022) ,110 BAG	2475	0.615556	151071	7553.6
21	9725673	26/07/2022	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - COBRA 22.5 KG./ BAG, (COO. NO. AI2022-0036348 DT. 21.07.2022), 240 BAG	5400	0.411111	203849.7	10192.5
	9725673	26/07/2022	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - CLARITY 22.5 KG./ BAG, (COO. NO. AI2022-0036348 DT. 21.07.2022) ,480 BAG	10800	0.633333	628077.3	31403.9
	9725673	26/07/2022	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - RESINCAST 22.5 KG / BAG, (COO. NO. AI2022-0036348 DT. 21.07.2022) ,240 BAG	5400	0.844444	418718.2	20935.9
	9725673	26/07/2022	CHAN G JEWEL RY	252020 90	CASTING PLASTERS FOR PLATINUN CASTING HIPT + BINDER 23 KG /DRUM (COO.NO. AI2022-0036348	3680	2	675826.3	33791.3

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			POW ER CO. LTD		DT.21.07.2022) 160 DRUM				
2 2	2085617	20/08/2022	CHAN G JEWEL RY POW ER CO. LTD	252020 90	CASTING PLASTERS - COBRA 22.5 KG./ BAG, (COO NO.AI2022-0039344 DT. 08.08.2022), 960 BAG	21600	0.411111	838739. 3	41937
	2085617	20/08/2022	CHAN G JEWEL RY POW ER CO. LTD	252020 90	CASTING PLASTERS FOR PLATINUM CASTING - HIPT + BINDER 23 KG/ DRUM, (COO NO. AI2022-0039344 DT. 08.08.2022), 160 DRUM	3680	2	695171. 5	34758. 6
2 3	2317125	06/09/2022	CHAN G JEWEL RY POW ER CO. LTD	252020 90	CASTING PLASTERS - TIGER 22.5 KG./ BAG, 385 BAG (COO NO.AI2022-0042381 DT. 24.08.2022)	8662. 5	0.551111	479275	23963. 8
	2317125	06/09/2022	CHAN G JEWEL RY POW ER CO. LTD	252020 90	CASTING PLASTERS - EAGLE 22.5 KG / BAG, 765 BAG, (COO NO.AI2022-0042381 DT. 24.08.2022)	17213	0.655556	113280 8	56640. 4
2 4	2960674	20/10/2022	CHAN G JEWEL RY POW ER CO. LTD	252020 90	CASTING PLASTERS - COBRA 22.5 KG./ BAG, (COO NO. AI2022-0051294 DT. 12.10.2022), 1150 BAG	25875	0.44	120859 8	60429. 9
	2960674	20/10/2022	CHAN G JEWEL RY POW ER CO. LTD	252020 90	CASTING PLASTERS - TIGER 22.5 KG / BAG, (COO NO. AI2022-0051294 DT. 12.10.2022),170 BAG,	3825	0.551111	223779. 1	11189
	2960674	20/10/2022	CHAN G JEWEL RY POW ER CO. LTD	252020 90	CASTING PLASTERS - EAGLE 22.5 KG / BAG, (COO NO. AI2022-0051294 DT. 12.10.2022), 770 BAG,	17325	0.655556	120568 0	60284
2 5	4166196	13/01/2023	CHAN G JEWEL RY POW ER CO. LTD	252020 90	CASTING PLASTERS - TIGER 22.5 KG./ BAG, (COO NO. AI2023-0001540 DT. 10.01.2023), 240 BAG	5400	0.551111	280640. 9	14032
	4166196	13/01/2023	CHAN G JEWEL	252020 90	CASTING PLASTERS - EAGLE 22.5 KG / BAG, (COO NO. AI2023-0001540 DT. 10.01.2023),	9450	0.655556	584197. 5	29209. 9

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			RY POWD ER CO. LTD		420 BAG,				
	4166196	13/01/2023	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - DRAGON 22.5 KG / BAG, (COO NO. AI2023-0001540 DT. 10.01.2023), 180 BAG,	4050	0.711111	271587. 9	13579. 4
	4166196	13/01/2023	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS FOR PLATINUM CASTING - HIPT + BINDER 23 KG/ DRUM, (COO NO. AI2023-0001540 DT. 10.01.2023), 240 DRUM	5520	2.130435	110898 4	55449. 2
2 6	4535861	07/02/2023	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - COBRA 22.5 KG./ BAG, (COO NO. AI2023-0004443 DT. 26.01.2023), 1150 BAG	25875	0.44	119086 8	59543. 4
2 7	5112822	18/03/2023	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - COBRA 22.5 KG./ BAG, (COO NO. AI2023-0012233 DT. 10.03.2023), 1150 BAG	25875	0.44	115889 2	57944. 6
2 8	6182113	30/05/2023	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - TIGER 22.5 KG./ BAG, (COO. NO. AI2023-0024854 DT. 23.05.2023), 100 BAG	2250	0.551111	115971	5798.6
	6182113	30/05/2023	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - EAGLE 22.5 KG./ BAG, (COO. NO. AI2023-0024854 DT. 23.05.2023), 150 BAG	3375	0.655556	206924. 3	10346. 2
	6182113	30/05/2023	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - DRAGON 22.5 KG./ BAG, (COO. NO. AI2023-0024854 DT. 23.05.2023), 300 BAG	6750	0.733333	462948. 8	23147. 4
	6182113	30/05/2023	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - DRAGON 22.5 KG./ DRUM, (COO. NO. AI2023-0024854 DT. 23.05.2023), 100 DRUM	2250	0.844444	177697. 5	8884.9
	6182113	30/05/2023	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS FOR PLATINUM CASTING - HIPT +	4600	2.130435	916545. 6	45827. 3

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			JEWELRY POWDER CO. LTD		BINDER 23 KG/ DRUM, (COO. NO. AI2023-0024854 DT. 23.05.2023), 200 DRUM				
29	7184010	03/08/2023	CHANG JEWELRY POWDER CO. LTD	25202090	CASTING PLASTERS - TIGER 22.5 KG./ BAG, (COO. NO. AI2023-0036375 DT. 21.07.2023), 200 BAG	4500	0.551111	220581.3	11029.1
	7184010	03/08/2023	CHANG JEWELRY POWDER CO. LTD	25202090	CASTING PLASTERS - EAGLE 22.5 KG./ BAG, (COO. NO. AI2023-0036375 DT. 21.07.2023), 400 BAG	9000	0.655556	524770.5	26238.5
	7184010	03/08/2023	CHANG JEWELRY POWDER CO. LTD	25202090	CASTING PLASTERS FOR PLATINUM CASTING - HIPT + BINDER 23 KG/ DRUM, (COO. NO. AI2023-0036375 DT. 21.07.2023), 320 DRUM	7360	2.130435	139464.4	69732.2
30	9223912	14/12/2023	CHANG JEWELRY POWDER CO. LTD	25202090	CASTING PLASTERS - COBRA 22.5 KG /BAG (COO NO. AI2023-0062741 DT. 01.12.2023) 300 BAGS	6750	0.452889	275144.9	13757.2
	9223912	14/12/2023	CHANG JEWELRY POWDER CO. LTD	25202090	CASTING PLASTERS - TIGER 22.5 KG /BAG (COO NO. AI2023-0062741 DT. 01.12.2023) 150 BAGS	3375	0.568	172539.3	8627
	9223912	14/12/2023	CHANG JEWELRY POWDER CO. LTD	25202090	CASTING PLASTERS - EAGLE 22.5 KG/BAG (COO NO. AI2023-0062741DT. 01.12.2023) 410 BAGS	9225	0.675111	560541	28027.1
	9223912	14/12/2023	CHANG JEWELRY POWDER CO. LTD	25202090	CASTING PLASTERS - FOR PLATINUM CASTING - HIPT + BINDER 23 KG/ DRUM (COO NO. AI2023-0062741 DT. 01.12.2023) 160 DRUMS	3680	2.194783	726951.2	36347.6
31	2693458	22/03/2024	CHANG JEWELRY POWDER CO. LTD	25202090	CASTING PLASTERS - TIGER 22.5 KG /BAG (COO NO. AI2024-0014165 DT. 14.03.2024) 300 BAGS	6750	0.568	357542.2	17877.1
	2693458	22/03/2024	CHAN	252020	CASTING PLASTERS - EAGLE	8100	0.675111	509959.	25498

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			G JEWEL RY POWD ER CO. LTD	90	22.5 KG/BAG (COO NO. AI2024-0014165 DT. 14.03.2024) 360 BAGS			1	
	2693458	22/03/2024	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - FOR PLATINUM CASTING - HIPT + BINDER 23 KG/ DRUM (COO NO. AI2024-0014165 DT. 14.03.2024) 320 DRUMS	7360	2.194348	150611 6	75305. 8
3 2	3353299	06/05/2024	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - TIGER 22.5 KG / BAG , (COO NO. AI2024-0023061 DT. 02.05.2024) 300 BAGS	6750	0.568	339887. 3	16994. 4
	3353299	06/05/2024	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS - EAGLE 22.5 KG / BAG, (COO NO. AI2024-0023061 DT. 02.05.2024) 420 BAGS	9450	0.675111	565574. 4	28278. 7
	3353299	06/05/2024	CHAN G JEWEL RY POWD ER CO. LTD	252020 90	CASTING PLASTERS FOR PLATINUM CASTING - HIPT + BINDER 23 KG/ DRUM, (COO NO. AI2024-0023061 DT. 02.05.2024) 272 DRUM	6256	2.194348	121698 4	60849. 2
<b>TOTAL (In Rs)</b>								<b>621491 44</b>	<b>31074 58</b>

**1.22.** Further, the importer was also claiming the duty benefit using the Country-of-Origin certificate vide Notification No. 46/2011 (Sr. No. 192). In the submitted Country-of-Origin Certificates, the goods were declared as “Casting Plaster” under CTI 25202090. However, during the investigation, it was found that the impugned goods are mis-declared in terms of description and classification, as the impugned goods are investment powder, rightly classifiable under 38160000. Thus, the importer is not eligible to take the duty benefit using the given COO. Accordingly, the duty is calculated at **BCD -7.5%, SWS-10%, IGST-18%** in **Annexure-I**. Differential duty of past consignments is calculated as below: --

**Table-IV**

<b>Goods Declared</b>	<b>Goods Found</b>	<b>Declared CTI</b>	<b>Re-determined CTI</b>	<b>Declared Assessable Value (In Rs)</b>	<b>Declared Duty (In Rs)</b>	<b>Re-determined Duty (In Rs)</b>	<b>Differential Duty (In Rs)</b>
Casting Plasters	Investment Powder	25202090	38160000	6,21,49,144	31,07,458	1,72,37,065	1,41,29,607

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**1.23.** From above, it appears that the imported goods have been mis declared in terms of description and classification, and the importer was also claiming an undue duty benefit. In terms of Section 46(4) of the Customs Act, 1962, the importer is required to make a correct declaration in the Bills of Entry submitted for assessment of Customs duty. It appears that the Importer by the aforesaid act of mis-declaration in respect of the goods imported vide Bill of Entry No. 7210313 dated 24.01.2022, have contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they have not made the correct declarations of description and classification of the goods in the Bill of Entry filed and self-assessed by them. The onus of making a true and correct declaration in all aspects relating to the imported goods after the introduction of self-assessment lies with the importer. From the investigation, it appears that the importer has mis-declared the goods to evade the applicable customs duty. Therefore, on account of improper import, the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962, and the importer has rendered himself liable for penal action under Section 112(a) of the Customs Act, 1962.

**1.24.** Further, the goods tabulated in Table-III above also appear to be mis-declared in terms of classification and description, and hence the same are liable for confiscation under section 111(m) of the Customs Act, 1962 and consequently render themselves liable for penal action under Section 114A of the Customs Act, 1962. The differential duty determined as per **Annexure-I** arrives at Rs 1,41,29,607/- (One Crore Forty-One Lakh Twenty-Nine Thousand Six Hundred Seven). Since such differential duty appears to have arisen due to suppression and wilful mis-statement by the importer, the demand for differential duty is invocable under the extended period as per the provisions of Section 28 (4) of the Customs Act, 1962. M/s Whiton Chem Private Limited has committed these infirmities with a view to resort to evasion of duty with malafide intention to defraud the exchequer of its rightful duty, thereby clearly attracting the penal provisions of Section 114A of the Customs Act, 1962 as well.

**1.25.** Further, it also appears that the importer had knowingly and intentionally mis-declared the goods and taken undue duty benefits, as discussed in detail in the preceding paras w.r.t Bills of Entry which were presented to the Customs authorities. Hence, the said act on the part of all the directors of M/s Whiton Chem Private Limited has rendered them liable for a penalty under Section 114AA of the Customs Act, 1962.

**1.26.** From the above, it appears that:

- a. M/s Whiton Chem Private Limited attempted to import the goods covered under Bill of Entry No. 7210313 dated 24.01.2022 by way of misdeclaration in terms of description and classification, and the same are liable for confiscation under Section 111(m) of the Customs Act, 1962. Consequently, the importer rendered itself liable for a penalty under Section 112(a) of the Customs Act, 1962. The importer has declared the total assessable value of goods as Rs 26,78,910/- and total duty as Rs 1,33,945.6. Based on the investigation findings, the total re-determined duty of the goods came out to be Rs 7,42,995.5/-. Thus, **differential duty, with respect to consignments mentioned above in Table II, works out to be Rs 6,09,049.9/-.**
- b. M/s Whiton Chem Private Limited attempted to import the goods covered under the consignments tabulated above in Table-III by way of misdeclaration in terms of description and classification, and the same are liable for

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confiscation under section 111(m) of the Customs Act, 1962. The importer has declared the total assessable value of goods as Rs 6,21,49,144/- and the total duty as Rs 31,07,458. Based on the investigation findings, the total re-determined duty of the goods came out to be Rs 1,72,37,065/-. Thus, **differential duty, with respect to consignments mentioned in Table III, works out to be Rs 1,41,29,607/-**, which appears to have arisen due to suppression and wilful misstatement by the importer, and consequently they rendered themselves liable for penal action under Section 112(a)&(b)/ 114A of the Customs Act, 1962.

- c. All the directors of M/s Whiton Chem Private Limited knowingly or intentionally mis-declared the impugned goods in terms of description and classification, and took undue benefit of customs duty and have rendered themselves liable for penal action under Section 114 AA of the Customs Act, 1962.

**1.27.** Accordingly, Show Cause Notice bearing No. 1378/2024-25/Commr/Gr 1&1A/NS-I/CAC/JNCH dated 14.11.2024 was issued to M/s Whiton Chem Pvt Ltd seeking as to why:

(i) The declared classification of imported goods covered under Bill of Entry 7210313 dated 24.01.2022 under Customs Tariff Heading 25202090 having declared assessable value of **Rs. 26,78,910/- (Rupees Twenty-Six Lakhs Seventy-Eight Thousand Nine Hundred and Ten only)** as detailed in Table-II above should not be rejected and why should not be reclassified as "Investment Powder" under customs tariff heading 38160000 of the Customs Tariff Act, 1975.

(ii) The declared classification of imported goods "Casting Plasters" under Customs Tariff Heading 25202090 having declared assessable value of **Rs. 6,21,49,144/- (Rupees six crore twenty-one lakhs forty-nine thousand one hundred and forty-four only)** covered under Bills of Entries as detailed in Table-III above should not be rejected and why they should not be reclassified as "Investment Powder" under customs tariff heading 38160000 of the Customs Tariff Act, 1975.

(iii) The benefit of duty exemption claimed vide Notification No. 46/2011-Customs (Sr. No. 192) in respect of the goods imported vide Bills of Entry as mentioned in Table-II & III should not be rejected.

(iv) The Imported goods as mentioned in Table-II & III, valued at **Rs. 26,78,910/- (Rupees twenty-six lakhs seventy-eight thousand nine hundred and ten only)** and **Rs. 6,21,49,144/- (Rupees six crore twenty-one lakhs forty-nine thousand one hundred and forty-four only)** respectively, should not be held liable for confiscation in terms of provisions of Section 111(m) of the Customs Act, 1962.

(v) The differential duty amounting to **Rs. 6,09,050/- (Rs. six lakhs nine thousand and fifty only)** and **Rs. 1,41,29,607/- (Rupees One crore forty-one lakhs twenty-nine thousand six hundred and seven only)** should not be demanded and recovered from the importer for the said imported goods as mentioned in **Table-II & Table-IV** respectively under the provisions of Section 28(4) of the Customs Act, 1962 along with the interest thereon as per Section 28AA of the Customs Act, 1962, as applicable.

(vi) Penalty should not be imposed on them under Section 112(a)&(b)/ 114A of the Customs Act, 1962.

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(vii) Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962.

## **2. WRITTEN SUBMISSIONS OF NOTICEES**

The Noticee, M/s Whiton Chem Private Limited (IEC-0307020274), vide their written submissions dated 25.03.2025, submitted their detailed reply to the Show Cause Notice and, inter alia, stated as under:

**2.1** The Noticee denied each and every allegation, statement, contention and submission made in the Show Cause Notice, which is contrary to or inconsistent with their reply. It was submitted that although the Show Cause Notice purports to propose penal action against “**all Directors**” of the company under Section 114AA of the Customs Act, 1962, no specific name of any Director has been mentioned, nor has any overt or covert act, role or involvement been attributed to any individual Director. It was contended that in the absence of specific allegations, the proposal to invoke Section 114AA against the Directors is violative of the principles of natural justice and is unsustainable in law to that extent.

**2.2** The Noticee submitted that the Show Cause Notice alleges that the goods imported vide Bill of Entry No. 7210313 dated 24.01.2022 (Table-II) and other Bills of Entry listed in Table-III were mis-declared in description and classification, rendering the goods liable to confiscation under Section 111(a) and 111(m) of the Customs Act, 1962, and further alleges that the classification under CTH 25202090 as “Casting Plasters” is incorrect and that the goods merit classification under CTH 38160000 as “Investment Powder”, resulting in denial of exemption under Notification No. 46/2011-Cus. and demand of differential duty under Section 28(4) along with proposal for penalties. The Noticee submitted that each of these allegations is erroneous, misconceived and unsustainable in law.

**2.3** The Noticee submitted that the Department seeks to rely upon the following documents for reclassification of the goods: **(i)** the description “change jewellery powder” found on the bags as against the generic description “casting plaster” mentioned by the importer; **(ii)** the website of the manufacturer stating that the items are investment powder meant for casting of gold and silver metals only and that the items are traded as “precision investment powder for particular types of metals such as brass, silver casting, gold and silver casting etc.”; **(iii)** the Technical Data Sheet (TDS) of the manufacturer showing the product as investment powder for jewellery items; **(iv)** the test reports dated 08.05.2022, 22.07.2022 and 19.09.2022 stating that “*the sample as received is in the form of white powder and is a preparation mainly composed of silicon together with calcium sulphate and traces of oxide of aluminium and iron*”, with the further note that “*as per standard literature available here, such type of composition may find use in jewellery casting, however, standard use may be ascertained at your end*”; and **(v)** reliance placed on the decision of the Hon’ble CESTAT in *Janata Sales Corporation* [2009 (236) E.L.T. 262 (Tri.-Mumbai)].

**2.4** It was submitted that each of the contentions, either individually or cumulatively, relied upon for reclassification of the imported goods is unsustainable in law. The noticee submitted that, based on past practice, wherein the Customs Department accepted five Bills of Entry classifying the imported goods under Chapter 25 and the goods were cleared for home consumption, and considering the true nature and characteristics of the imported goods, the said goods were rightly and appropriately classified under CTH 25202090 as “casting

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plasters” as against classification under Chapter 38 (CTH 38160000) as contended by the Department. It was further submitted that each of the ingredients of the imported goods falls under Chapter 25 and that the imported goods derive their essential character from gypsum, i.e., calcium sulphate hemihydrate, popularly known as plaster. It was also submitted that the said goods obtain their essential characteristics from plaster of Paris (calcium sulphate hemihydrate), while silica, though predominant in percentage terms, merely acts as an inert material and is used primarily as a thermal enhancement compound. It was further submitted that the goods merit classification under Chapter 25 (CTH 25202090), which specifically deals with “plasters”, and that Chapter 25, falling under Chapter V covering mineral products, with the heading description “Salt; sulphur; earths and stone; plastering materials, lime and cement”, is more specific than Chapter 38, which falls under “Miscellaneous Chemical Products” and is a residuary entry. It was also submitted that since the goods specifically fall under Chapter 25, they are not excluded by Note 1 to Chapter 25 in view of the prefatory expression “Except where the context or Note 4 to this Chapter otherwise requires”, and since Heading 2520 specifically covers plasters, whether or not calcined, the said Chapter Note cannot be applied to exclude the imported goods. The noticee further submitted that the description found on the manufacturer’s bags, references to the website, or technical data sheet are not sufficient or conclusive to reclassify the goods from Chapter 25 to Chapter 38, particularly in view of the preponderance of documentary, technical, and factual evidence available on record.

**2.5** It was submitted that it is a cardinal principle of classification that goods are required to be classified under the Customs Tariff based on the true nature and characteristics of the goods in question and not based on “use”, unless the tariff entry specifically prescribes use as the basis of classification. It was submitted that neither Chapter 25 nor Chapter 38 refers to the use of the goods as a criterion for classification. It was further submitted that the test reports merely mention the constituents of the goods, stating that *the preparation is composed of silica together with calcium sulphate and traces of oxide and aluminium, and further state that as per standard literature such type of composition may find use in jewellery casting*, while also recording that the standard use may be ascertained at the Department’s end. It was submitted that, as already stated, reliance on the end-use of the goods is impermissible and without jurisdiction. It was further submitted that, in any event, the test reports are not conclusive and cannot be relied upon for reclassification, and that reference to website material and technical data sheets is also not sufficient to reclassify the goods. It was further submitted that reliance placed on the decision of the CESTAT in Janata Sales Corporation for reclassification is not tenable in law, as the facts of the said case are totally dissimilar and different from the present case. It was specifically submitted that, in the present case, the imported goods derive their essential character by virtue of gypsum.

**2.6** It was submitted that gypsum is Calcium Sulphate Hemihydrate ( $\text{CaSO}_4 \cdot \frac{1}{2}\text{H}_2\text{O}$ ) and is popularly known as plaster. It was submitted that gypsum is the most essential component of the imported goods and plays a critical and indispensable role in the imported material. It was submitted that gypsum is required for mould preparation, as it is an essential ingredient for the preparation of a mould and is responsible for obtaining and retaining the shape of the wax, i.e., it functions as the mould material. It was submitted that if gypsum were not used, no mould would be formed and, by extension, no metals could be cast. It was further

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submitted that fillers such as silica and quartz are used merely to provide structural support to gypsum and are not of essential importance, in support of which reliance was placed on extracts from the book “Lost Wax Casting: Old, New, And Inexpensive Methods” by Dr Fred J. Sias Jr. (Woodsmere Press, 2005 Edition). It was further submitted that gypsum is essential for ensuring a smooth surface of jewellery, as the usage of gypsum alone ensures the highest degree of smoothness in cast jewellery, and that if products other than gypsum are used, the smooth surface, which is one of the most essential requirements of jewellery, will not be obtained, thereby adversely affecting marketability. It was also submitted that gypsum ensures casting of intricate designs, as gypsum has the property of expanding slightly on setting, which enables intricate designs in jewellery to be captured, and therefore gypsum-bonded investments are used for gold jewellery castings, reliance being placed on Kirk-Othmer Encyclopaedia of Chemical Technology, Fourth Edition, Volume 4. It was further submitted that the thermal expansion of gypsum helps counter the contraction of metals during cooling, which would otherwise result in a smaller cast, and that the expansion of gypsum offsets such contraction, thereby ensuring a cast of the required size. It was therefore submitted that it is evident that gypsum is the most essential component in the investment composition, and that this critical aspect has not been considered in the decision of the Tribunal in the case of Janata Sales.

**2.7** It was submitted that even as per the HSN Explanatory Notes, the imported product is not covered under Heading 38.16 of the Customs Tariff. It was submitted that Heading 38.16 covers “*refractory cements, mortars, concretes, and similar compositions*” and that the imported goods are not refractory cements, mortars or concretes, nor has this been contended by the Department. It was submitted that although the impugned Order alleges that the imported goods are compositions similar to refractory cements, mortars and concretes, such a conclusion is erroneous. It was submitted that the imported goods are essentially plasters and cannot be regarded as refractory or similar products, and that gypsum is certainly not a refractory product, nor has the Department alleged gypsum to be refractory. Reliance was placed on Hawley’s Condensed Chemical Dictionary (15th Edition, 2007), which defines “refractory” as an earthy or ceramic material capable of withstanding extremely high temperatures of about 1650°C to 2200°C without essential change. It was submitted that gypsum cannot withstand high temperatures and disintegrates at around 1200°C, as evidenced by the research paper “Behaviour of Calcium Sulfate at High Temperatures” by Edwin S. Newman published in the Journal of Research of the National Bureau of Standards, Volume 27, August 1941. It was therefore submitted that since gypsum itself cannot withstand temperatures of around 1200°C, there is no question of its withstanding temperatures between 1650°C and 2200°C, which conclusively establishes that gypsum is not a refractory. It was further submitted that since gypsum is not a refractory, the imported product containing gypsum cannot be considered as compositions similar to refractory cements, mortars or concretes. It was also submitted that the imported product is not even similar to refractory compositions, as the burnout cycle mentioned in the brochures for the imported products is much below 1600°C, and the products are designed only for casting gold and silver articles. It was submitted that pure gold and silver have melting points below 1100°C, and their alloys used for jewellery casting have even lower melting points, and

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therefore the suggested burnout temperatures and restricted usage for gold and silver clearly establish that the products are not refractories designed for use at temperatures of 1650°C to 2200°C. It was further submitted that platinum has a melting point of 1786°C, and the fact that the imported products are not meant for platinum casting further proves that they cannot withstand such high temperatures and are therefore not refractory cements, mortars, concretes or similar compositions. Accordingly, it was submitted that the imported product is not covered under Heading 38.16 of the Customs Tariff.

**2.8** It was further submitted that the imported product does not contain a hydraulic binder and therefore the imported composition is not what is contemplated in the HSN Explanatory Notes to Heading 38.16. It was submitted that although the HSN Explanatory Notes state that many products of Heading 38.16 contain non-refractory binders such as hydraulic binding agents, the imported investment casting powder contains gypsum as the binder. It was submitted that binders are of two kinds, namely hydraulic and air-hardening binders, and that hydraulic binders maintain strength even when surrounded by water, whereas gypsum is an air-hardening binder and is not capable of maintaining its shape and strength underwater. It was therefore submitted that gypsum is not one of the binders referred to in the HSN Explanatory Notes to Heading 38.16, and that this crucial aspect has not been appreciated in the impugned Order. Accordingly, it was submitted that since gypsum is neither a refractory material nor a hydraulic binding agent, the composition containing gypsum cannot be regarded as “refractory cements, mortars, concretes and similar compositions”.

**2.9** It was submitted that the investment casting compositions referred to in the HSN Explanatory Notes to Heading 38.16 of the Customs Tariff are not compositions that contain gypsum. It was submitted that the HSN Explanatory Notes to Heading 38.16 state that the heading covers “*refractory compositions with a basis of silica for the manufacture of dental or jewellery moulds by the lost wax process*”, and that the reference in the said extract is to investment casting materials made completely of refractory materials. It was submitted that the investment casting material used for casting platinum products is made entirely of refractory materials, comprising approximately 99% refractory materials and about 1% additives, and that such compositions do not contain gypsum. Technical documents in support of this position were exhibited as EXHIBIT “Z”. It was further submitted that, as established in the previous grounds, the imported product itself cannot withstand temperatures expected of refractories. Accordingly, it was submitted that when the HSN Explanatory Notes refer to “*refractory compositions with a basis of silica for the manufacture of dental or jewellery moulds by the lost wax process*”, the same refers only to investment casting materials composed entirely of refractory materials, such as those used for platinum casting, and not to compositions which are not based on silica but merely contain silica as one of the components. It was further submitted that the imported goods contain a substantial percentage of gypsum/plaster, which is a non-refractory composition, and even if gypsum is not considered the most essential component of the mixture, the mere presence of gypsum in such a high proportion renders the composition non-refractory in nature. It was therefore submitted that the imported goods are not refractory compositions with a basis of silica and consequently are not covered under Heading 38.16 of the Customs Tariff.

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**2.10** It was submitted that the issue involved is one of classification and is highly technical in nature, and that the Department has not substantiated its case with any technical material. It was further submitted that, on the contrary, the appellants have placed reliance on several technical authorities to justify their claim regarding classification. It was submitted that it is a settled position of law that the onus of establishing the correct classification lies on the Revenue and that, in the present case, the Revenue has failed to discharge its burden of proof on classification.

**2.11** It was submitted that, as each and every constituent of the imported gold jewellery investment casting powder is independently classifiable under Chapter 25, even the combination of such constituents is required to be classified under Chapter 25. It was further submitted that (i) the exporter sells the said product worldwide under CTH 2520.20.90 and accordingly issues Preferential Certificates of Origin, (ii) in respect of the impugned consignments, the Preferential Certificate of Origin, which is the most relevant document for clearance under the FTA, was issued by the Department of Foreign Trade, Government of Thailand, mentioning CTH 2520.20.90 and not by any Chamber of Commerce, (iii) the consignments were cleared under Notification No. 046/2011-Cus under the ASEAN-India Free Trade Area Preferential Tariff Certificate of Origin under CTH 2520.20.90, and (iv) even assuming without admitting that the consignments fall under CTH 38.16, the basic customs duty under both the headings is nil under the FTA except for the difference in IGST rate, which is higher under CTH 38.16. It was therefore submitted that the noticee, based on the above information and documents, bona fide classified the goods under Chapter 25 as “casting plasters” and that such bona fide action on the part of the noticee cannot be considered as a violation of the provisions of the Customs Act, 1962.

**2.12** The noticee submitted that, in view of the facts and contentions stated hereinabove and based on relevant documents, past practice and bona fide belief, the imported goods were rightly and appropriately classified under Chapter 25 and that there has been no overt or covert act on the part of the noticee which can be attributed as intentional or knowing misclassification of the goods. It was further submitted that the actions of the noticee do not justify invocation of Sections 111, 112(a) and (b), 114A or 114AA of the Customs Act, 1962, and that the benefit of duty exemption claimed under Notification No. 46/2011-Cus is just and legally valid; therefore, the recovery of duty under Section 28 and imposition of penalties under Sections 112, 114A and 114AA are unjustified in law and liable to be set aside. The noticee also reiterated that the Department seeks to reclassify the goods as “investment powder” under Chapter 38 based on the use of the goods, which is not permissible in law and is contrary to the settled principle that classification must be based on the true nature and characteristics of the goods, and that the Customs Rules governing classification support the noticee’s contentions. Accordingly, the noticee submitted that the Show Cause Notice is liable to be set aside.

**2.13** The Noticee thereafter reiterated and elaborated the aforesaid submissions in their written submissions dated 10.11.2025 filed pursuant to the personal hearing, which are reproduced hereinbelow.

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**2.14** The noticee submitted that the present written submissions are being filed pursuant to the personal hearing held on 6.11.2025, wherein Mr. R.G. Sheth, Solicitor & Advocate, Mr. Dinesh Shah, and Mr. Manohar Pai appeared virtually before the adjudicating authority in the matter. It was submitted that the noticee had already filed a detailed reply bearing reference no. RGS/N/57G/Whiton-2025 dated 25th March 2025, which was duly acknowledged by the Department on 27.03.2025. The noticee submitted that the issue involved in the present case pertains to the classification of “Casting Plasters”, which were classified by the noticee under CTH 25202090, as against the Department’s contention that the said goods are classifiable under CTH 38160000 as “investment powder”. It was further submitted that before the issuance of the present Show Cause Notice, the Department had accepted and cleared five consignments of the said goods under Chapter 25 as “Casting Plasters”.

**2.15** On classification, the noticee submitted that the imported goods, also referred to as investment casting powder, are composed of gypsum, quartz and cristobalite. It was submitted that all three ingredients are minerals naturally found in nature and are independently classifiable under Chapter 25 of the Customs Tariff under Headings 25.20 (gypsum), 25.06 (quartz) and 25.30 (cristobalite), as Chapter 25 covers minerals occurring naturally. It was submitted that, as per the MSDS of the manufacturer, the chemical composition of the imported “casting plasters” consists of gypsum (20–30%), cristobalite (25–55%) and quartz (30–60%), and a copy of the MSDS was enclosed as Annexure-A. The noticee submitted that gypsum is the most essential constituent of the imported goods and is not merely a binder. It was further submitted that when all three principal ingredients of the imported goods are individually classifiable under Chapter 25 of the Customs Tariff, it is axiomatic that the imported goods, whose composition consists of these three minerals, would continue to be classified under Chapter 25 and would not move out of Chapter 25. Reliance was placed on the decisions in Deepak Fertilisers & Petrochemicals Corp. Ltd. v. CC, Nhava Sheva and Deepak Fertilisers & Petrochemicals Corporation Ltd. v. Commissioner of Customs, Nhava Sheva. It was further submitted that gypsum is calcium sulphate hemihydrate ( $\text{CaSO}_4 \cdot \frac{1}{2}\text{H}_2\text{O}$ ), popularly known as plaster.

**2.16** The noticee further submitted that gypsum is the most essential component of the imported goods and is an indispensable ingredient for the preparation of a mould. It was submitted that gypsum is the material responsible for obtaining and retaining the shape of the wax, i.e., it is the mould material, while fillers such as silica and quartz are used merely to provide structural support to gypsum. Reliance in this regard was placed on extracts from the book “Lost Wax Casting: Old, New, and Inexpensive Methods” by Dr. Fred J. Sias Jr. (Woodsmere Press, 2005 Edition), enclosed as Annexure-B.

The noticee further submitted that apart from acting as a binder, gypsum is essential for the following technical reasons:

- (a) Smooth Surface – Gypsum is essential to ensure that cast jewellery has a smooth surface, and if materials other than gypsum are used, such a smooth surface, which is one of the most essential requirements of jewellery, will not be obtained. Supporting reference material in this regard was enclosed as Annexure-C.
- (b) Intricate Designs – Gypsum has the property of expanding slightly on setting, which enables intricate designs in jewellery to be accurately captured. Hence, gypsum-bonded investments are used for jewellery castings. Reliance was placed on Kirk-Othmer Encyclopaedia of Chemical Technology, Fourth Edition, Volume 4, with relevant extracts enclosed as Annexure-D.
- (c) Thermal Expansion – Metals contract on cooling, which would result in the cast being

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smaller than the original. This contraction is offset by the expansion of gypsum in the investment powder, thereby enabling casting of the required size. Supporting technical material was enclosed as Annexure-E.

The noticee submitted that it is evident from the above technical and scientific material that gypsum is the most essential component of the investment composition, an aspect which has not been considered in the Tribunal decision in Janata Sales.

**2.17** The noticee submitted that gypsum is not a hydraulic binder and, therefore, the imported goods are not covered under Heading 38.16 of the Customs Tariff. It was submitted that Heading 38.16 covers “*refractory cements, mortars, concretes and similar compositions*” and that the imported goods are not refractory cement, mortar or concrete or any similar composition. The imported goods are essentially plasters and cannot be regarded as refractory products. It was further submitted that gypsum is certainly not a refractory product, nor has the Department alleged gypsum to be a refractory product. It was submitted that the HSN Explanatory Notes to Heading 38.16 state that many products of this heading contain non-refractory binders such as hydraulic binding agents, whereas the imported investment casting powder contains gypsum as the binder. It was submitted that binders are of two kinds, namely hydraulic and air-hardening, and that hydraulic binders maintain strength even underwater, whereas gypsum is an air-hardening binder and is not capable of maintaining shape and strength underwater. Therefore, gypsum is not one of the binders referred to in the HSN Explanatory Notes to Heading 38.16, and the investment casting compositions referred to in the HSN Explanatory Notes to Heading 38.16 are not compositions containing gypsum.

**2.18** The noticee submitted that the HSN Explanatory Notes to Heading 38.16 mention *refractory compositions with a basis of silica for the manufacture of dental or jewellery moulds by the lost wax process*, and that the said reference is only to investment casting materials made completely of refractory materials. It was submitted that gypsum cannot withstand heat beyond a certain limit and, therefore, is not used for casting jewellery metals like platinum, which have higher melting points, and that investment casting materials used for platinum are composed almost entirely of refractory materials, in support of which technical material from the Kirk-Othmer Chemical Encyclopedia was enclosed as Annexure-F. It was submitted that when the HSN Explanatory Notes refer to “*refractory compositions with a basis of silica for the manufacture of dental or jewellery moulds by the lost wax process*”, the same refers only to investment casting materials composed entirely of refractory materials, such as in the case of platinum, and not to compositions which are not based on silica but merely contain silica as one of the components. It was further submitted that the imported goods contain a substantial percentage of gypsum/plaster, which is a non-refractory composition, and even if gypsum is not treated as the most essential component, the mere presence of gypsum in such high quantity renders the composition non-refractory in nature, and therefore the imported goods are not refractory compositions with a basis of silica and are not covered under Heading 38.16. The noticee submitted that the issue involved is highly technical in nature and that the Department has not substantiated its case with any technical material, and that the onus of classification lies on the Revenue, which has failed to discharge this burden. It was further submitted that under the Free Trade Agreement, Annex 3 (Rules of Origin), Rule 18 provides a mechanism for settlement of disputes relating to origin determination and classification, which mandates consultation between the importing and exporting country authorities, however no such exercise was undertaken in the present case, and instead the noticee has been penalized by issuance of the Show Cause Notice and subjected to inconvenience and financial burden even though customs duty under both the competing CTHs is NIL for the classification adopted by the exporting member country, a

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signatory to the FTA, a copy of which Annex 3 was enclosed as Annexure-G. The noticee further submitted that the exporter sells the product worldwide under CTH 25202090 and issues Preferential Certificates of Origin accordingly, sample Bills of Lading of which were enclosed as Annexure-H, that the Preferential Certificate of Origin, being the single most relevant document for clearance under the FTA, was issued by the Department of Foreign Trade, Government of Thailand, listing CTH 2520.20.90 and not by any Chamber of Commerce, that the consignment was cleared under Notification No. 46/2011-Cus under the ASEAN-India Free Trade Area Preferential Tariff Certificate of Origin under CTH 2520.20.90, and that even assuming without admitting that the goods fall under CTH 3816, the basic customs duty under both headings is NIL under the FTA except for the difference in IGST rate, which is higher under CTH 3816, thereby making the transaction revenue-neutral and offering no incentive for evasion by way of mis-declaration, suppression or mis-classification. Therefore, the noticee submitted that its actions were bona fide, based on the information and documents placed on record, and that classification of the goods under Chapter 25 as “casting plasters” cannot be treated as a violation of the provisions of the Customs Act, 1962.

### **3. RECORDS OF PERSONAL HEARING**

**3.1** Opportunity for personal hearing in the matter was granted to the noticee, M/s. Whiton Chem Pvt. Ltd. (IEC No. 0307020274), and accordingly, a personal hearing was held on 06.11.2025 at 11:30 AM. Shri Manohar Pai, Director of M/s. Whiton Chem Pvt. Ltd., Shri Dinesh Shah, Consultant to the noticee, and Shri R.G. Sheth, Solicitor & Advocate, appeared on behalf of the noticee and represented the case through virtual mode before the undersigned. During the course of the personal hearing, Shri R.G. Sheth, learned Solicitor & Advocate, reiterated the submissions contained in the written reply dated 25.03.2025 filed in response to the Show Cause Notice. It was submitted that the Show Cause Notice purports to issue notice to “all Directors of the company” for alleged misdeclaration and proposes a penalty under Section 114AA of the Customs Act, 1962, which is not tenable as no specific allegation, name of any Director, or any overt or covert act or involvement on their part has been alleged or established. It was further submitted that the Department’s proposed classification of the imported goods under CTH 38.16 is based on the use or end-use of the goods, which is impermissible as per well-settled principles of tariff interpretation. It was submitted that all constituent ingredients of the imported goods are classifiable under Chapter 25 of the Customs Tariff; that past imports of the same goods were classified and cleared by Customs under Chapter 25; that the supplier sells the said goods worldwide under Chapter 25; and that the Preferential Certificate of Origin under the Free Trade Agreement has been issued by the Department of Foreign Trade, Government of Thailand, classifying the goods under Chapter 25. It was also submitted that since the customs duty is NIL under both Chapter 25 and Chapter 38 under the FTA, the issue is revenue neutral and there is no evasion or loss of revenue, and therefore the classification adopted by the noticee under Chapter 25 is bona fide. The learned Advocate further submitted that a brief written submission would be furnished. The personal hearing was concluded accordingly.

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**4. 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** I find that, in compliance with the principles of natural justice, opportunity for personal hearing was granted to the Noticee, i.e. M/s Whiton Chem Private Limited (IEC No. 0307020274) on 06.11.2025. The said personal hearing was attended by Shri Manohar Pai, Director, Shri Dinesh Shahi, Consultant, and Shri R.G. Sheth, Solicitor & Advocate, on behalf of the Noticee, M/s Whiton Chem Private Limited (IEC No. 0307020274) in virtual mode and reiterated the submissions made in their detailed reply dated 25.03.2025 and the post-hearing written submissions dated 10.11.2025. I note that the adjudicating authority has to take the views/objections of the noticee(s) on board and consider them before passing the order. In the instant case, as per Section 28(9) of the Customs Act, 1962, the last date to adjudicate the matter was 13.11.2025, which was extended three months by the Chief Commissioner of Customs in terms of first proviso to Section 28(9) of the Act ibid up to 13.02.2026 vide his order dated 07.11.2025, after the Personal Hearing proceedings having been concluded on 06.11.2025, so that the noticee would get ample time for submission of their defence reply (i.e. their views/objections) against the SCN.

**4.3** I find that in compliance with the provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunity for Personal Hearing (PH) was granted to the noticee. Thus, the principles of natural justice have been followed during the adjudication proceedings. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on the merits, bearing in mind the allegations made in the SCN.

**4.4** It is alleged in the Show Cause Notice that M/s Whiton Chem Private Limited (IEC No. 0307020274) imported consignments declared as "Casting Plasters" through Nhava Sheva under Bill of Entry No. 7210313 dated 24.01.2022 (Table-II) and other Bills of Entry as detailed in Table-III of the Show Cause Notice, by classifying the goods under Customs Tariff Heading 25202090 and availing the benefit of Serial No. 192(I) of Notification No. 46/2011-Cus dated 01.06.2011 (as amended) along with concessional IGST. It is alleged that on scrutiny of the Bills of Entry, examination reports, panchnama dated 21.04.2022, manufacturer's technical literature, MSDS, statements of the Director recorded during investigation and the DYCC test reports dated 21.03.2022, 06.05.2022, 22.02.22, 19.09.2022 and 17.05.24, the impugned goods were found to be "Investment Powder" used for jewellery investment casting, consisting mainly of silica together with calcium sulphate and traces of aluminium and iron oxides, and possessing refractory characteristics suitable for mould-making applications. It is further alleged that such refractory investment compositions are classifiable under Customs Tariff Heading 38160000 in terms of the HSN Explanatory Notes. Reliance has also been placed on the decision of the Hon'ble CESTAT, Mumbai in M/s Janata Sales Corporation v. Commissioner of Customs (Import), Mumbai [2008 (9) TMI 680 – CESTAT, Mumbai]. Accordingly, the Show Cause Notice proposes rejection of the classification adopted under CTH 25202090 and re-classification under CTH 38160000, denial of exemption availed under Notification No. 46/2011-Cus including benefit claimed on the basis of Country-of-Origin Certificates, recovery of differential duty amounting to

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Rs.1,47,38,657/- under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA, confiscation of the goods under Section 111(m) and imposition of penalties under Sections 112(a), 114A and 114AA of the Customs Act, 1962.

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

**(A) Whether or not the goods declared and imported as “Casting Plasters” by M/s Whiton Chem Private Limited, under Customs Tariff Heading 25202090, are refractory investment compositions falling within the scope of “refractory compositions” of Heading 3816, and are therefore liable to be reclassified under CTH 38160000, as alleged in the Show Cause Notice; and consequently whether the importer has wrongly availed the benefit of exemption under Serial No. 192(I) of Notification No. 46/2011-Cus dated 01.06.2011 (as amended), resulting in short-payment of customs duty.**

**(B) Whether or not the differential customs duty amounting to Rs.1,47,38,657/- (Rs. 6,09,050/- + Rs. 1,41,29,607/-), as quantified and detailed in Table-II and Table-III of the Show Cause Notice, is liable to be demanded and recovered from M/s Whiton Chem Private Limited under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.**

**(C) Whether or not the imported goods, having a total assessable value of Rs. 26,78,910/- and Rs. 6,21,49,144/-, as detailed in Table-II and Table-III of the Show Cause Notice, are liable to confiscation under Section 111(m) of the Customs Act, 1962, even though the goods are no longer available physically for confiscation.**

**(D) Whether or not penalties are liable to be imposed on M/s Whiton Chem Private Limited and its Directors under Sections 112(a), 112(b), 114A and/or Section 114AA of the Customs Act, 1962, for the alleged acts of mis-declaration, mis-classification, suppression of facts and wrongful availment of exemption benefits, as proposed in the Show Cause Notice.**

**4.6** 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, provisions 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 or not the goods declared and imported as “Casting Plasters” by M/s Whiton Chem Private Limited, under Customs Tariff Heading 25202090, are refractory investment compositions falling within the scope of “refractory compositions” of Heading 3816, and are therefore liable to be reclassified under CTH 38160000, as alleged in the Show Cause Notice; and consequently whether the importer has wrongly availed the benefit of exemption under Serial No. 192(I) of Notification No. 46/2011-Cus dated 01.06.2011 (as amended), resulting in short-payment of customs duty.**

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**4.7** I find that the importer, M/s Whiton Chem Private Limited, had classified the goods declared as “Casting Plasters” under Customs Tariff Heading 25202090 in the Bills of Entry as detailed in Table-II and Table-III of the subject Show Cause Notice. However, the Show Cause Notice proposes reclassification of the said goods as “Investment Powder” under Customs Tariff Heading 38160000. Accordingly, the primary issue that arises for determination in the present case is whether the impugned goods imported under the said Bills of Entry are correctly classifiable as “plasters” under CTH 25202090, as declared by the importer, or whether they are refractory investment compositions possessing the essential character of mould-making preparations used in jewellery casting, and therefore merit classification under Heading 3816, as alleged in the Show Cause Notice.

**4.8** I note that the goods should be classified under respective chapter headings, duly following the General Rules of Interpretation, keeping in mind the material condition and basic details of the goods. Relevant extract of General Rules of Interpretation (GRI) provides as follows:

*“General Rules for the interpretation of this schedule*

*Classification of goods in this Schedule shall be governed by the following principles:*

*1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:*

*2. (a) Any reference in a heading to an article shall be taken to include a reference to that article, incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article, complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.*

*(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.*

*3. When, by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be affected as follows:*

*(a) The heading that provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.*

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*(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.*

*(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.”*

**4.8.1** I find that the classification of goods under the Customs Tariff is governed by the principles as set out in the General Rules for the Interpretation of Import Tariff. As per General Rules for the Interpretation of the Harmonised System, classification of the goods in the nomenclature shall be governed by Rule 1 to Rule 6 of General Rules for Interpretation of Harmonised System. **Rule 1** of General Rules for Interpretation is very important Rule of Interpretation for classification of goods under the Customs Tariff, which provides that classification shall be determined according to the terms of headings and any relative Section or Chapter Notes. It stresses that relevant Section/Chapter Notes have to be considered along with the terms of headings while deciding classification. **It is not possible to classify an item only in terms of the heading description itself without examining the applicable Section Notes and Chapter Notes.**

**4.8.2** In this connection, I rely upon the judgment passed by the Hon’ble Supreme Court in case of OK Play (India) Ltd. Vs. CCE, Delhi-III, Gurgaon [2005 (180) ELT-300 (SC)] wherein it was held that for determination of classification of goods, three main parameters are to be taken into account; first HSN along with Explanatory notes, second equal importance to be given to Rules of Interpretation of the tariff and third Functional utility, design, shape and predominant usage. These aids and assistance are more important than names used in trade or in common parlance.

**4.8.3** I also put reliance upon the judgment of the Hon’ble Tribunal in the case of Pandi Devi Oil Industry Vs. Commissioner of Customs, Trichy [2016 (334) ELT-566 (Tri-Chennai)] wherein it was held that it is settled law that for classification of any imported goods, the principles and guidelines laid out in General Interpretative Rules for classification should be followed and the description given in the chapter sub-heading and chapter notes, section notes should be the criteria.

**4.8.4** In view of the above legal position, I proceed to examine and decide the classification of the impugned goods imported by M/s Whiton Chem Private Limited by carefully referring to the Customs Tariff Act, 1975, the relevant Section Notes, Chapter Notes, Heading Notes, and the HSN Explanatory Notes, keeping in view the composition, nature, essential character and intended use of the goods as imported.

**4.9** I find it necessary to examine the scope of Chapter 25 of the Customs Tariff Act, 1975, vis-à-vis Heading 3816, in light of the HSN Explanatory Notes and the statutory scheme of classification.

**4.9.1 Chapter 25** *“Salt; sulphur; earths and stone; plastering materials, lime and cement.” Notes: Except where the context or Note 4 to this Chapter otherwise requires, the*

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*headings of this Chapter cover only products which are in the crude state or which have been washed, crushed, ground, powdered, levigated, sifted, screened, concentrated by flotation, magnetic separation or other mechanical or physical processes (except crystallisation), but not products that have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading.*

Thus, Chapter 25 clearly restricts its coverage to mineral products in crude or processed form, retaining the essential mineral character.

For Heading 2520, the relevant tariff entry under the Customs Tariff Act, 1975, is reproduced below:

<i>Tariff Item</i>	<i>Description of Goods</i>
<b>2520</b>	<b><i>Gypsum; anhydrite; plasters (consisting of calcined gypsum or calcium sulphate), whether or not coloured, with or without small quantities of accelerators or retarders</i></b>

*The HSN Explanatory Notes further clarify that Gypsum refers to natural hydrated calcium sulphate. Anhydrite refers to natural anhydrous calcium sulphate. Plasters consist of gypsum partly or completely dehydrated by calcination, and may contain only small quantities of accelerators or retarders.*

From a conjoint reading of Chapter Note 1 to Chapter 25 and the HSN Explanatory Notes to Heading 2520, it is evident that the scope of Chapter 25 is restricted to mineral products in their natural state or subjected only to simple physical or thermal processes such as crushing, grinding or calcination. Products obtained through deliberate mixing of multiple constituents or through controlled formulation processes resulting in engineered compositions do not fall within the ambit of Chapter 25. Heading 2520 specifically contemplates simple calcined gypsum products and plasters which retain the essential character of gypsum, and does not extend to composite, purpose-designed formulations manufactured for specialised industrial applications.

#### **4.9.2 Heading 3816:**

***“3816 – Refractory cements, mortars, concretes and similar compositions”***

This heading covers Refractory cements, mortars and concretes and Similar refractory compositions used for industrial moulding and lining applications. Refractory compositions with a basis of silica for the manufacture of dental or jewellery moulds by the lost-wax process, and Products consisting of mixtures of refractory materials with suitable binders and additives.

Thus, the HSN Explanatory Notes expressly recognise that **investment mould compositions used for jewellery casting by the lost-wax process** are covered within the scope of Heading 3816.

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For **CTH 3816**, the relevant tariff entry under the Customs Tariff Act, 1975, is reproduced below for ready reference:

Tariff Item	Description of Goods
<b>3816</b>	<b><i>Refractory cements, mortars, concretes and similar compositions</i></b>

The tariff description is broad in nature and covers not only traditional refractory concretes but also **similar engineered refractory compositions designed for specialised mould-making applications**, including jewellery casting.

From a combined reading of Chapter 38 Notes and the HSN Explanatory Notes to Heading 3816, it is clear that this heading is intended to cover **prepared composite formulations manufactured through controlled blending of refractory minerals, binders and additives**, supplied as finished industrial products with specific functional characteristics.

**4.9.3** I find that the chemical composition and material characteristics of the impugned goods, as established by the DYCC test reports on record, clearly demonstrate that the goods possess refractory characteristics. The test reports consistently identify the samples as composite preparations *mainly composed of silica, together with calcium sulphate and trace quantities of aluminium and iron oxides*. From the technical evidence on record and the recognised characteristics of silica-based moulding formulations used in industrial casting applications, it is evident that composite preparations predominantly based on silica, when formulated with suitable binders and stabilising oxide additives, are capable of withstanding elevated thermal conditions, resisting thermal stress and maintaining structural stability during high-temperature processing operations. The predominance of silica in the formulation imparts the primary heat-resistant character to the composite, while minor oxide constituents further contribute to thermal stability and structural integrity under heat exposure. I further find that the presence of calcium sulphate (gypsum) in the formulation does not negate the refractory character of the composite product. In mould-making compositions, gypsum performs the functional role of a binder and setting agent, whereas the silica-based matrix and the composite formulation as a whole govern the refractory performance of the product. The refractory behaviour of engineered preparations is required to be assessed on the basis of their overall thermal performance and functional behaviour, and not on the isolated melting characteristics of any single constituent. In the present case, the combined presence of silica phases, controlled binder content and stabilising oxides results in a formulation capable of maintaining mould integrity and dimensional stability under molten metal casting conditions. Accordingly, I hold that the impugned goods, by virtue of their composition, formulation and functional thermal characteristics as established on record, are refractory compositions in substance and material character.

**4.9.4** From a conjoint reading of Chapter Note 1 to Chapter 25, the HSN Explanatory Notes to Heading 2520 and the scope of Heading 3816, along with its Explanatory Notes, I find that the Customs Tariff draws a clear statutory distinction between simple mineral products and engineered refractory compositions. Heading 2520 permits only calcined gypsum plasters retaining the essential mineral character of gypsum and allows only small quantities of

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accelerators or retarders. It does not contemplate multi-component engineered formulations containing substantial proportions of silica, cristobalite and other functional additives deliberately blended to achieve specialised mould-forming and high-temperature performance characteristics. Chapter 25 is restricted to mineral products in crude form or subjected only to simple physical or thermal processes such as crushing, grinding or calcination, and expressly excludes composite preparations manufactured through controlled formulation processes. On the other hand, the HSN Explanatory Notes to Heading 3816 specifically recognise refractory compositions with a basis of silica used for the manufacture of dental or jewellery moulds by the lost-wax process, and products consisting of mixtures of refractory materials combined with suitable binders and additives. The impugned goods, as established by DYCC test reports and technical documentation, are composite preparations mainly composed of silica together with calcium sulphate and trace quantities of aluminium and iron oxides, formulated to perform specialised mould-making and thermal resistance functions in jewellery casting operations. Such products clearly answer the description of prepared refractory compositions contemplated under Heading 3816 and cannot be equated with simple calcined gypsum plasters envisaged under Chapter 25.

**4.9.5** I further find that the scheme of the Customs Tariff, read with the relevant Chapter Notes and the HSN Explanatory Notes, clearly distinguishes between mineral products classifiable under Chapter 25 and engineered refractory compositions falling under Heading 3816. Chapter 25 is confined to minerals presented in their natural state or subjected only to simple physical or thermal processes, where the products retain their essential mineral identity. However, where such mineral substances are deliberately blended in predetermined proportions through controlled manufacturing processes to achieve a specific industrial and functional performance, the resultant product ceases to be a mere mineral and acquires the character of a prepared composition. In the present case, the impugned goods are not imported as discrete gypsum or mineral powders, but as a homogeneous, pre-formulated and ready-to-use investment composition specifically designed for jewellery mould-making applications. The presence of gypsum as a binder does not detract from the essential refractory character of the product, which is derived from its silica-based composite formulation and its functional performance during mould preparation and metal casting operations. This conclusion is further supported by the DYCC test reports on record, which clearly establish that the impugned goods are composite preparations predominantly based on silica together with calcium sulphate and trace oxides of aluminium and iron, a formulation which, as recognised in industrial practice, exhibits refractory characteristics by enabling mould stability and thermal resistance during molten metal casting operations.

**4.10** I find that the cumulative submissions of the Noticee, including reliance on gypsum content, exporter classification practice, Preferential Certificate of Origin under the ASEAN-India FTA, past clearances, plea of revenue neutrality and claim of bona fide belief, are not sustainable in law or on facts. The Noticee has not produced any independent technical evidence to establish that the impugned goods lack refractory mould-forming characteristics or function merely as ordinary plasters. On the contrary, the DYCC test reports and manufacturer's technical literature on record consistently establish the impugned goods as silica-based composite investment formulations used for jewellery casting. Tariff

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classification under the Customs Tariff Act, 1975, is required to be determined independently on the basis of statutory tariff entries, technical characteristics and essential functional identity of the goods, and cannot be concluded based on exporter practice, origin documents or past assessments. Further, the plea of revenue neutrality and bona fide belief cannot override statutory classification requirements, particularly where differential IGST liability arises. Accordingly, I find that the submissions of the Noticee fail to dislodge the evidentiary foundation relied upon in the Show Cause Notice and are rejected as unsustainable. Accordingly, I hold that the impugned goods are correctly classifiable under Customs Tariff Heading 38160000 and not under Heading 25202090.

**4.11** I further find that the above conclusion is fully corroborated by the contemporaneous technical and scientific evidence on record. The DYCC test reports dated 21.03.2022, 06.05.2022, 22.07.2022, 19.09.2022 and 17.05.2024 uniformly identify the impugned goods as composite preparations predominantly based on silica, together with calcium sulphate and minor oxide constituents, and specifically indicate their suitability for jewellery investment casting applications. This scientific characterisation stands independently reinforced by the supplier's technical literature and product specifications, which consistently describe the goods as investment casting powders designed for mould preparation by the lost-wax process. Thus, both departmental laboratory analysis and manufacturer disclosures converge on the same functional and compositional identity of the goods. I, therefore, find that the technical and scientific evidence on record conclusively establishes that the impugned goods, though declared as "Casting Plasters" under Customs Tariff Heading 25202090, are in fact specialised refractory investment compositions used for jewellery mould-making by the lost-wax casting process, and are accordingly correctly classifiable as "Investment Powder" under Customs Tariff Heading 38160000 of Chapter 38. I therefore hold that the impugned goods imported by M/s Whiton Chem Private Limited are correctly classifiable under Customs Tariff Heading 38160000, as proposed in the Show Cause Notice.

**4.12** I further find that the classification issue involved in the present case is no longer res integra and stands squarely covered by the decision of the Hon'ble CESTAT, Mumbai, in M/s Janata Sales Corporation v. Commissioner of Customs (Import), Mumbai [2008 (9) TMI 680 – CESTAT, Mumbai]. In the said case, the Hon'ble Tribunal examined an identical product described as investment powder used for jewellery casting, composed predominantly of silica along with calcium sulphate (gypsum) and minor additives. After analysing the competing tariff entries and the HSN Explanatory Notes, the Tribunal held that such goods merit classification under Heading 3816 as refractory investment compositions and not under Chapter 25 as plasters.

**4.12.1** The Hon'ble Tribunal specifically observed that although gypsum functions as a binder imparting mould cohesion, it is silica which imparts the essential refractory character required for investment casting, and that Heading 3816 expressly covers refractory compositions with a basis of silica used for the manufacture of dental or jewellery moulds by the lost-wax process. It was further held that the presence of gypsum does not alter the

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essential refractory nature of the composite formulation, since silica remains the dominant functional constituent responsible for heat resistance and casting performance.

**4.12.2** I find that the factual matrix of the present case stands on an even stronger footing. The DYCC test reports dated 21.03.2022, 06.05.2022, 19.09.2022 and 17.05.2024, read with the manufacturer's technical literature, conclusively establish that the impugned goods are silica-based composite preparations containing calcium sulphate binders and minor oxides, and are specifically intended and suitable for jewellery investment casting by the lost-wax process. Therefore, applying the ratio laid down by the Hon'ble Tribunal in Janata Sales Corporation, the impugned goods clearly merit classification under Customs Tariff Heading 38160000 as refractory investment compositions and not under Heading 25202090 as plasters.

**4.13** In view of the binding judicial precedent of the Hon'ble Tribunal, the consistent technical evidence on record and the clear guidance contained in the HSN Explanatory Notes, I find that the impugned goods imported by M/s Whiton Chem Private Limited are not mere gypsum plasters of Chapter 25, but are engineered refractory investment powders whose essential character is derived from their silica-based refractory nature. Accordingly, classification of the goods under Customs Tariff Heading 38160000 is not only appropriate but is the only classification consistent with the Customs Tariff, the HSN Explanatory Notes and settled judicial interpretation. The declaration of the goods as "casting plasters" under CTH 25202090 is therefore incorrect and amounts to mis-declaration in terms of description and classification, rendering the goods liable to confiscation under Section 111(m) of the Customs Act, 1962, as proposed in the Show Cause Notice.

**(B) Whether or not the differential customs duty amounting to Rs. 1,47,38,657/- (Rs. 6,09,050/- + Rs. 1,41,29,607/-), as quantified and detailed in Table-II and Table-III of the Show Cause Notice, is liable to be demanded and recovered from M/s Whiton Chem Private Limited under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.**

**4.14** After having determined the correct classification of the subject goods, it is imperative to determine whether the demand for 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 follows:

***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,*

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*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.*

**4.15** I find that the importer, M/s Whiton Chem Private Limited, had intentionally suppressed the correct nature and classification of the imported goods at the time of filing the Bills of Entry. Despite being aware that the impugned goods were investment casting powders used for jewellery casting, correctly classifiable under CTH 38160000, the importer declared the goods as “Casting Plasters” under CTH 25202090 and claimed the benefit of Notification No. 46/2011-Cus. dated 01.06.2011 (as amended) based on the Preferential Certificate of Origin. The investigation has established that the importer owned the manufacturer’s technical literature, MSDS and product specifications clearly describing the goods as investment powders for lost-wax casting, yet such material facts were not disclosed to the Department at the time of assessment.

I further note that while the Basic Customs Duty under the ASEAN-India FTA may be NIL under both the competing tariff headings, classification under the Customs Tariff Act is not dependent solely on revenue impact, but is a statutory obligation required to be discharged correctly under the self-assessment regime. The mis-declaration of description and classification directly impacted the applicable rate of IGST and also resulted in the wrong availment of exemption benefits based on an incorrect tariff heading, thereby vitiating the assessment process. Such conduct amounts to suppression of material facts and wilful mis-statement, irrespective of whether the Basic Customs Duty is NIL or otherwise.

Accordingly, I hold that the importer’s actions cannot be treated as a mere interpretational difference or a bona fide error, but constitute a deliberate mis-declaration of classification. By resorting to this deliberate suppression of facts and wilful misclassification, the importer has not paid the correctly leviable duty on the imported goods, resulting in a loss to the government exchequer. Thus, this wilful and deliberate act was done with the fraudulent intention to claim an ineligible nil duty and notification benefit.

**4.16** Consequent upon the amendment to 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.*** 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 mis-classified the impugned goods and claimed an 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 mis-classified and suppressed the facts with an intention to evade applicable duty, provisions of Section 28(4) are invocable in this case, and the duty, so evaded, is recoverable under Section 28(4) of the Customs Act, 1962.

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**4.17** In view of the foregoing, I find that, due to deliberate/wilful misclassification 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 on invoking an extended period, I rely upon the following court decisions:

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

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

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

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

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

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

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

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

**4.18** In view of the foregoing paras above, I hold that the differential customs duty arising on account of re-classification of the impugned goods as "Investment Powder" from the declared CTH 25202090 to the correct CTH 38160000, and the consequent denial of exemption claimed under Notification No. 46/2011-Cus. dated 01.06.2011 (as amended), as proposed in the Show Cause Notice, is liable to be demanded and recovered from M/s Whiton Chem Private Limited under the provisions of Section 28(4) of the Customs Act, 1962, by invoking the extended period of limitation. Accordingly, the differential customs duty amounting to Rs. 1,47,38,657/- (Rs. 6,09,050/- in respect of Bill of Entry No. 7210313 dated 24.01.2022 and Rs. 1,41,29,607/- in respect of the Bills of Entry detailed in Table-III of the Show Cause Notice) is recoverable from the importer, M/s Whiton Chem Private Limited.

**4.19** As per Section 28AA of the Customs Act, 1962, the person, who is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2) of Section 28AA, whether such payment is made voluntarily or after determination of the duty under that section. From the

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above provisions, it is evident that regarding the demand of interest, Section 28AA of the Customs Act, 1962 is unambiguous and mandates that where there is a short payment of duty, the same, along with interest, shall be recovered from the person who is liable to pay duty. The interest under the Customs Act, 1962, is payable once the demand of duty is upheld and such liability arises automatically by operation of law. In an umpteen number of judicial pronouncements, it has been held that payment of interest is a civil liability and interest liability is automatically attracted under Section 28AA of the Customs Act, 1962. Interest is always accessory to the demand of duty, as held in the case of Pratibha Processors Vs UOI [1996 (88) ELT 12 (SC)].

**4.20** I have already held in the above paras that the differential customs duty amounting to **Rs. 1,47,38,657/- (Rupees One Crore Forty-Seven Lakh Thirty-Eight Thousand Six Hundred and Fifty-Seven Only)** should be demanded and recovered from the importer, M/s Whiton Chem Private Limited under the provisions of Section 28(4) of the Customs Act, 1962 by invoking the extended period. Therefore, in terms of the provisions of Section 28AA of the Customs Act, 1962 interest on the aforesaid amount of the differential customs duty is also liable to be recovered from M/s Whiton Chem Private Limited.

**4.21** In view of the above, I find that the importer had imported the impugned goods vide Bills of Entry, as listed in Table-II and Table-III of the Show Cause Notice as mentioned above, by misclassification under Customs Tariff Heading 25202090 (Casting Plasters), while these goods were appropriately classifiable under Customs Tariff Heading 38160000 (Investment Powder) and the importer has availed duty exemption by claiming ineligible benefit under Serial No. 192(I) of Notification No. 46/2011-Cus dated 01.06.2011 (as amended). Therefore, the importer, M/s Whiton Chem Private Limited is liable to pay the differential duty amount of **Rs. 1,47,38,657/- (Rupees One Crore Forty-Seven Lakh Thirty-Eight Thousand Six Hundred Fifty-Seven Only)**, under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period along with the applicable interest under Section 28AA of the Customs Act, 1962.

**(C) Whether or not the imported goods, having a total assessable value of ₹ 26,78,910/- and ₹ 6,21,49,144/-, as detailed in Table-II and Table-III of the Show Cause Notice, are liable to confiscation under Section 111(m) of the Customs Act, 1962, even though the goods are no longer available for physical confiscation.**

**4.22** I find that the importer, M/s Whiton Chem Private 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. 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, their 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. 8th April, 2011, there is an 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.

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**4.23** I also find that 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 has been 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 the importer, M/s Whiton Chem Private Limited, has deliberately failed to discharge this statutory responsibility cast upon them.

**4.24** Besides, as indicated hereinabove, in terms of the provisions of Section 46(4) of the Customs Act, 1962 read with the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, the importer, while presenting a Bill of Entry, is required to make and subscribe to a declaration as to the truth and correctness of the particulars furnished therein. Further, in terms of the provisions of Section 47 of the Customs Act, 1962, it is incumbent upon the importer to correctly assess and pay the appropriate customs duty payable on the imported goods before seeking clearance for home consumption. However, in the present case, I find that the importer, M/s Whiton Chem Private Limited, while filing the Bills of Entry, deliberately suppressed material facts and wilfully mis-declared the description and classification of the imported goods by declaring the same as “Casting Plasters” under CTH 25202090, whereas the imported goods were in fact investment casting powders correctly classifiable under CTH 38160000. I further find that the misclassification adopted by the importer was not inadvertent but was a deliberate act resulting in wrongful availment of exemption benefits under Notification No. 46/2011-Cus. dated 01.06.2011 (as amended), by mis-declaring the tariff classification and consequential Country-of-Origin claim, thereby leading to short-payment of duty. Thus, the importer failed to discharge its statutory obligation to correctly classify the goods, to make a true and complete declaration, and to pay the appropriate duty legally leviable on the imported goods before their clearance for home consumption.

**4.25** I find that the importer, M/s Whiton Chem Private Limited, had mis-declared and misclassified the imported goods by declaring them as “Casting Plasters” under CTH 25202090 and by claiming exemption under Notification No. 46/2011-Cus. dated 01.06.2011(as amended) based on such incorrect classification. As already elucidated in the foregoing paragraphs, the impugned goods were in fact investment casting powders used for jewellery casting by the lost-wax process and were correctly classifiable under CTH 38160000. Therefore, it is apparent that the importer has not made the true and correct disclosure with regard to the actual classification of the imported goods in the respective Bills of Entry, leading to suppression of facts. From the above discussion and findings, I find that the importer has done deliberate suppression of facts and wilfully misclassified the goods, and has submitted a misleading declaration under Section 46(4) of the Customs Act, 1962, despite owning the manufacturer’s technical literature, MSDS and product specifications clearly indicating the correct nature and use of the goods. Due to this deliberate suppression of facts and wilful misclassification, the importer has not paid the correctly leviable duty on the imported goods, resulting in a loss to the government exchequer.

**4.26** I find that the SCN proposes confiscation of goods under the provisions of Section 111(m) of the Customs Act, 1962. Provisions of these Sections of the Act are reproduced below:

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*“SECTION 111. Confiscation of improperly imported goods, etc. — The following goods brought from a place outside India shall be liable to confiscation:*

*(m) [any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 3 [in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54];*

*[(q) any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder.]*

**4.26.1** I find that Section 111(m) provides for confiscation of goods in cases where any goods do not correspond in respect of value or any other particular with the entry made under the Customs Act, 1962. I have already held in the foregoing paragraphs that the impugned goods imported by M/s Whiton Chem Private Limited were correctly classifiable under Customs Tariff Heading 38160000. The importer was very well aware of the correct nature, composition and functional use of the imported goods. However, they deliberately suppressed the correct tariff classification and instead misclassified the impugned goods under CTH 25202090 in the Bills of Entry. Further, the importer wrongly availed the benefit under Serial No. 192(I) of Notification No. 46/2011-Cus. dated 01.06.2011 (as amended). As discussed in the foregoing paragraphs, it is evident that the importer deliberately suppressed the correct classification and wilfully misclassified the imported goods and claimed ineligible notification benefit, resulting in short levy of duty, including differential IGST. **This wilful misclassification and claim of ineligible notification benefit resorted to by the importer, therefore, renders the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962.**

**4.27** As the importer, through wilful misclassification and suppression of facts, had wrongly classified the goods under CTH 25202090 and claimed ineligible notification benefit while filing the Bills of Entry with an intent to evade the applicable Customs duty, resulting in short levy and short payment of duty, including differential IGST. I find that the confiscation of the imported goods under Section 111(m) of the Customs Act, 1962, is justified and sustainable in law. ***However, I find that the goods imported vide the Bills of Entry as detailed in Table-II and Table-III of the impugned Show Cause Notice are no longer available for physical confiscation.*** In this regard, it is well settled that the liability of goods to confiscation and the imposition of redemption fine are governed by the provisions of Sections 111 and 125 of the Customs Act, 1962, respectively, and are not contingent upon the physical availability of the goods at the time of detection of the offence. I place reliance on the judgment of the Hon'ble Madras High Court in the case of M/s Visteon Automotive Systems India Limited [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 a fine under sub-section (1) of Section 125, the goods are saved from*

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*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 the 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 the redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of a redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."*

**4.27.1** I further find that the above view of Hon'ble Madras High Court in the 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 the case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.).

**4.27.2** 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.

**4.27.3** 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.) 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.

**4.27.4** 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 SacchaSaudhaPedhi 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 the Customs Act, 1962, then the mere fact that the goods

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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.”*

**4.27.5** In view of the above, I find that any goods improperly imported as provided in any sub-section of Section 111 of the Customs Act, 1962, the goods become liable for confiscation.

**4.28** Once the imported goods are held liable for confiscation under Section 111(m) of the Customs Act, 1962, they cannot have differential treatment in regard to the 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) of the Customs Act, 1962.*

**(D) Whether or not penalties are liable to be imposed on M/s Whiton Chem Private Limited and its Directors under Sections 112(a), 112(b), 114A and/or Section 114AA of the Customs Act, 1962, for the alleged acts of mis-declaration, mis-classification, suppression of facts and wrongful availment of exemption benefits, as proposed in the Show Cause Notice.**

**4.29** The Show Cause Notice has proposed imposition of penalties on the importer, M/s Whiton Chem Pvt. Ltd., under the provisions of Section 112(a)&(b) and/or Section 114A and Section 114AA 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,*
- (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;*

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(ii) *in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher.'*

**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.*

**SECTION 114AA. Penalty for the use of false and incorrect material. –**

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

**4.30** In the instant case, I find that the importer had misclassified the imported goods with malicious intent, despite being fully aware of their correct classification. I have already elaborated in the foregoing paragraphs that the importer has wilfully suppressed the facts with regard to the correct classification of the goods and deliberately misclassified the goods and claimed ineligible notification benefit, with an intent to evade the applicable BCD. 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 misclassification and suppression of correct CTH of the imported goods by the importer tantamount to suppression of material facts and wilful mis-statement. Thus, wilfully misclassifying 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 bring 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.

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**4.31** It is a settled law that fraud and justice never dwell together (*Frauset Jus nunquam cohabitant*). Lord Denning had observed that “no judgment 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 that was obtained by fraud. The Hon’ble Supreme Court in the 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 a 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 the court is always viewed seriously. A collusion or conspiracy with a view to depriving the rights of 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 civilised system of jurisprudence. The Principal 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*, the 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

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*(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 1 : 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 the Customs Act, 1962, and the 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 the Limitation Act that fraud nullifies everything for which plea of time bar is untenable, following the ratio laid down by Apex Court in the case of CC. v. Candid Enterprises - 2001 (130) E.L.T. 404 (S.C.). Non est instruments at all times are void and void instrument in the eyes of law are no instruments. Unlawful gain is thus debarred.”*

**4.32** I find that the instant case is not a simple case of wrong classification on bonafide belief, as claimed by the importer. From the facts of the case, it is very much evident that the importer 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 misclassify the impugned imported goods to claim an ineligible notification benefit and pay a lower rate of duty. This wilful and deliberate suppression of facts and misclassification clearly establishes their ‘mens rea’ in this case. Due to the establishment of ‘mens rea’ on the part of the

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importer, the case merits a demand of short levied duty, invoking an extended period of limitation as well as confiscation of offending goods.

**4.33** 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 the importer, M/s Whiton Chem Private 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.

**4.34** Furthermore, I find that ingredients for Penal Action under Section 114AA of the Customs Act on M/s Whiton Chem Pvt Ltd has been explained in the SCN. It is stated in the SCN that the importer had knowingly and intentionally misdeclared the goods and taken undue duty benefits and hence the said act on the part of all the directors of M/s Whiton Chem Pvt Ltd has rendered them liable for penalty under Section 114AA of the Customs Act, 1962. I note that, The Hon'ble CESTAT, New Delhi in the case of M/s S.D. Overseas vs The Joint Commissioner of Customs in Customs Appeal No. 50712 OF 2019 had dismissed the appeal of the petitioner while upholding the imposition of penalty under Section 114 AA of the Customs Act, wherein it had held as under:

*28. As far as the penalty under Section 114AA is concerned, it is imposable if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act. We find that the appellant has misdeclared the value of the imported goods which were only a fraction of a price the goods as per the manufacturer's price lists and, therefore, we find no reason to interfere with the penalty imposed under Section 114AA.*

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

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

**4.34.2** As discussed in foregoing paras, the importer, M/s Whiton Chem Pvt Ltd as brought out in the investigation, at the time of import, furnished documents such as the Bill of Entry, import invoices, packing lists with incorrect details of description with an intention to evade the applicable duty. Therefore, M/s Whiton Chem Pvt Ltd have rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962 for having knowingly made, signed and declared in the import documents with wrong and incorrect classification and description of imported goods. M/s Whiton Chem Pvt Ltd was aware of correct classification and description of the goods and had knowingly misclassified and misdeclared the goods. From the evidences brought on record during investigation, it is evident that M/s Whiton Chem Pvt Ltd has suppressed the facts and wilfully misclassified and misdeclared the goods. Thus, I

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find that the importer had knowingly used and caused to be used such particulars as mentioned above that were false for the transactions under the Customs Act, 1962. The importer caused wrong declarations made in respective bills of entry. In the instant case, there is clear evidence of conspiracy, fraud and suppression of facts. Accordingly, on examination of the role of the importer vis-à-vis the legal provisions and ratio of judgement relied above, I hold that M/s Whiton Chem Pvt Ltd is liable to penalty under Section 114AA of the Customs Act, 1962.

**4.35** In view of the aforesaid misdeclaration of description and misclassification, I find that the importer, M/s Whiton Chem Private Limited, has evaded payment of customs duty aggregating to **Rs. 1,47,38,657/- (as quantified in Table-II and Table-III of the Show Cause Notice)**, and the same is to be recovered from the importer under the provisions of Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962 *ibid*.

**4.36** 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) of the Customs Act, 1962, making them liable for penalties under Section 112(a) & (b) and/or Section 114A and Section 114AA of Customs Act, 1962. However, in view of the fifth proviso to Section 114A, penalty cannot be imposed simultaneously on the importer under Section 112(a) & (b) and Section 114A of Customs Act, 1962, *ibid*.

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

**ORDER**

**5.1** I reject the classification of the goods declared as “Casting Plasters” imported vide Bills of Entry as detailed in Table-II and Table-III of the Show Cause Notice under CTH 25202090. I order to reclassify and reassess the imported goods under CTH 38160000, denying the benefits of duty exemption claimed under Sr. No. 192(I) of the Notification No. 46/2011-Cus. dated 01.06.2011 (as amended).

**5.2** I confirm the demand of **differential customs duty aggregating to Rs. 1,47,38,657/- (Rupees One Crore Forty-Seven Lakh Thirty-Eight Thousand Six Hundred and Fifty-Seven Only)** in respect of Bills of Entry as detailed in Table-II and Table-III of the Show Cause Notice, under Section 28(4) of the Customs Act, 1962, and I order that the same shall be recovered from the importer, M/s Whiton Chem Private Limited, along with applicable interest thereon under Section 28AA of the Customs Act, 1962.

**5.3** Even though the impugned goods are not available for physical confiscation, I hold that the goods imported vide the Bills of Entry as detailed in Table-II and Table-III of the Show Cause Notice, having total declared **assessable value of Rs. 6,48,28,054/- (Rs. 26,78,910/- + Rs. 6,21,49,144/-) (Rupees Six Crore Forty-Eight Lakh Twenty-Eight Thousand and Fifty-Four Only)** liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I impose a redemption fine of **Rs. 30,00,000/- (Rupees Thirty**

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**Lakhs only)** on M/s Whiton Chem Private Limited under the provisions of Section 125(1) of the Customs Act, 1962.

**5.4** I impose a penalty equal to the differential duty of **Rs. 1,47,38,657/- (Rupees One Crore Forty-Seven Lakhs Thirty-Eight Thousand Six Hundred and Fifty-Seven only)** along with the applicable interest thereon, on the importer, M/s Whiton Chem Private Limited, under Section 114A of the Customs Act, 1962.

If duty and interest are paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be twenty-five per cent of the duty and interest, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order. As a penalty is imposed under Section 114A of the Customs Act, 1962, in respect of past imports, no penalty is imposed under Section 112(a)& (b) in terms of the fifth proviso to Section 114A ibid.

**5.5** I impose a penalty of **Rs. 30,00,000/- (Rupees Thirty Lakhs only)** on the importer, M/s Whiton Chem Pvt Ltd under Section 114AA of the Customs Act, 1962.

**5.6** I refrain from imposing any penalty on the importer, M/s Whiton Chem Private Limited under Section 112(a) and 112(b) of the Customs Act, 1962.

**6.** 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 the Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

(यशोधन वनगे /Yashodhan Wanage)

प्रधान आयुक्त, सीमा शुल्क/ **Pr. Commissioner of Customs**

एनएस-1, जेएनसीएच / **NS-I, JNCH**

To,  
M/s Whiton Chem Private Limited (IEC- 0307020274),  
Shed No. W/28, TTC Industrial Area, Thane-Belapur Road,  
MIDC Rabale, Co, Navi Mumbai, Maharashtra-400701.

**Copy to:**

1. The AC/DC, Appraising Group I & IA, JNCH
2. The AC/DC, Chief Commissioner's Office, JNCH
3. The AC/DC, Centralized Revenue Recovery Cell, JNCH
4. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
5. EDI, JNCH through email for uploading the same in JNCH website
6. Office Copy