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

Date of Order : 01.01.2026 **Date of Issue: 01.01.2026**

आदेश की तिथि **: 01.01.2026** जारी किए जाने की तिथि**:** **01.01.2026**

DIN: 20260178NW0000318993

F. No. S/10-163/2024-25/Commr/Gr II G /CAC/JNCH

SHOW CAUSE NOTICE No. 1581/2024-25/Commr/Gr. II G/ NS-I/CAC/JNCH dated 08.01.2025

Passed by: Shri Yashodhan Wanage

पारितकर्ता**:** श्री यशोधन वनगे

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

प्रधान आयुक्त**,** सीमा शुल्क **(**एनएस**-1),** जेएनसीएच**,** न्हावाशेवा

Order No.: 330/2025-26 /Pr. Commr./NS-I /CAC /JNCH

आदेशसं. : **330/2025-26**/प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच

Name of Party/Noticees: M/s S A Enterprise (P) Limited

पक्षकार **(**पार्टी**)/** नोटिसीकानाम**:** मेसर्स एस ए एंटरप्राइज (पी) लिमिटेड

ORDER-IN-ORIGINAL

मूलआदेश

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

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

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

2.इस आदेश से व्यथित कोई भी व्यक्ति सीमा-शुल्क अधिनियम१९६२की धारा १२९(ए) के तहत इस आदेश के विरुद्ध सी ई एस टी ए टी, पश्चिमी प्रादेशिक न्याय पीठ (वेस्टरीज़नलबेंच), ३४, पी. डी. मेलो रोड, मस्जिद (पूर्व), मुंबई– ४००००९ को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

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

3. अपील दाखिल करने संबंधी मुख्य मुद्दे: -

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

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

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

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

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

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

(b) Rs. Five Thousand - Where amount of duty &Page 2 of 33
interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 lakhs.

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

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

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

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

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

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

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

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

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

1. BRIEF FACTS OF THE CASE

1.1. M/s S A Enterprise (P) Limited (IEC No. ADXFS0514M)), having its registered office at Plot No - G-1934/3, Lodhika Industrial Estate, Rajkot, Gujarat, 360021 is engaged in the business of trading PET and CPP (Cast Polypropylene) plastic film and sell to their clients in flexible packaging industry.

1.2. Whereas, specific intelligence gathered by the officers of Directorate of Revenue Intelligence (DRI), indicated that the Noticee M/s S A Enterprise (P) Limited had imported Polyethylene Terephthalate (PET) films by misclassifying them under CTI 3920 6290 while these goods appear to be classifiable under CTI 3920 6220. The Noticee M/s S A Enterprise (P) Limited availed the benefit of Sl. No. I4040/I4038 (after amendment vide Notification No. 20/2023 dated 31.03.2023) of Notification No. 22/2022 - Customs dated 30.04.2022 which gave effect to first tranche of INDIA-UAE CEPA and had not paid BCD. The Basic Customs duty (BCD) on goods covered under CTI 3920 6220 is 10% for which the reduced duty benefit under the said notification is not available. Further, before the introduction of Notification No. 22/2022-Customs, the Importer imported same item from same supplier by classifying under the CTH 39206220 vide Bills of Entry No. 7462402 dated 12.02.2022, 8183750 dated 07.04.2022 etc.

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

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

1.4. The certificates of Analysis submitted by the Noticee M/s S A Enterprise (P) Limited at the time of import of PET films showed the films to be plain and the Packing List showed that the said item is in rolls which are an indicator of their flexible nature. The supplier for these films to the Noticee M/s S A Enterprise (P) Limited is M/s. JBF Bahrain WLL / JBF RAK LLC. The Noticee M/s S A Enterprise (P) Limited was asked vide letter dated 02.06.2023 to submit their

reply to the observation of the department that why the imported product should not be classified under CTH 3920 6220 covering Flexible, plain PET films.

1.5. The Noticee M/s S A Enterprise (P) Limited vide its letter dated 12.07.2023, replied that they have rightly classified the goods under CTI 39206290. The summary of the explanation given by the Noticee M/s S A Enterprise (P) Limited is provided below-

a) The goods were classified under CTH 39206290 on the basis of technical literature provided by the overseas supplier that tensile property of the imported goods in all their consignments was more than 1800 kg per square centimetre whereas only the PET films having tensile property of less than 700 Kilograms per square centimetre are considered "Flexible" and classifiable under CTH 39206220. Hence, they have considered the imported item to beother than flexible and classified them under CTH 39206290.

b) As per the test report 6628 dated 26.06.2023 issued by CIPET, the imported goods were metallized film of Poly Ethylene Terephthalate.

c) The data in Zauba is also in line with Classification adopted by them.

1.6. As part of the investigation, the Statement of Shri Shri Jayesh Prakash Achhnani, Partner of M/s S A Enterprise (P) Limited was recorded on 07.09.2023. From the statement, following aspects were revealed:

a) The Company is involved in trading of PET and CPP plastic film and sell it to their clients in Flexible packaging Industry who provide flexible packaging for FMCG Companies. They import both plain and Metallized PET and the Plain Films are only around 10% of the total Import of Films.

b) They have adopted the classification 39206290 as suggested by their supplier JBF who claimed that the imported goods are neither rigid nor flexible. The Importer is unaware whether the goods are rigid or flexible.

c) The Classification under 39206220 before introduction of India UAE CEPA and classification under 39206290 after the introduction of India UAE CEPA are both suggested by the Supplier.

1.7. The condition for categorising PET films as "Flexible" only when the tensile property of the film is less than 700 Kilograms per square centimetre is drawn from the Central Excise Tariff. However, the same does not hold relevance for the current period (2022) i.e. during the period Post GST particularly when the same definition was not provided for in the Customs Tariff. On

verification of the documents uploaded in e-Sanchit by the Importer, it is found that they have imported 3 different types of Films namely A202, A400 and AZ420 of which A202 and A400 are plain on both sides, whereas AZ420 is metallized on one side and plain on the other side as per the Certificate of Analysis issued by the Manufacturer. Since, M/s. S A Enterprise has stopped import of plain PET Films after October, 2022, a sample of type A600 manufactured by the same manufacturer imported by a different importer was sent for testing to the Central Institute of Petrochemicals Engineering & Technology (CIPET), Aurangabad, who in their test reports concluded the PET films to be flexible and plain. Further, it is worth noting that the films of thickness upto 325 Micron are also reported to be flexible by the CIPET whereas the thickness of the films imported by the M/s. S A Enterprise are less than 120 Micron. Hence, the subject goods being of lesser thickness also should be flexible as thickness reduces the flexibility of the films.

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

a) During the statement of Shri Jayesh Prakash Achhnani, Partner of M/s. S A Enterprise on 07.09.2023, it was admitted that the same films were imported under CTH 39206220 before introduction of India UAE CEPA and that they changed the classification only to avail the benefit of the Notification. Further, the Importer claimed to be unaware whether the imported goods are rigid or flexible. It was also stated that the Clients of the Importer, manufacture flexible packaging material for FMCG Companies.

b) The certificates of Analysis submitted by the importer at the time of import of PET films showed the films to be plain.

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

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

1.9. In view of the above facts and based on the test report from CIPET, Aurangabad it appeared that the goods of type A202 and A400 are appropriately classifiable under CTI 3920 6220.

OBLIGATION UNDER SELF-ASSESSMENT:

1.10. The importer had subscribed to a declaration as to the truthfulness of the contents of the Bills of Entry in terms of Section 46(4) of the Customs Act, 1962 in all their import declarations. Further, consequent upon the amendment to Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-Assessment' had been introduced in Customs. Section 17 of the Customs Act, 1962, effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry in electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2018 (Issued under Section 157 read with Section 46 of the Customs Act, 1962), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which was defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number was generated by the Indian Customs Electronic Data Interchange System for the said declaration. The Importers statement that they relied only on the supplier's recommendation for classification does not absolve the Importer from their mistake in mis-declaring the goods under wrong classification, since the Importer ought to have confirmed the classification even if the Supplier has recommended the wrong Classification.

REASONS FOR RAISING DUTY DEMAND BY INVOKING EXTENDED PERIOD UNDER SECTION 28(4) OF THE CUSTOMS ACT, 1962.

1.11. The impugned goods at the time of import were largely in the form of rolls which indicates the flexible nature of the goods. The test certificate submitted at the time of imports does not certify the flexibility or rigidity of the goods. Moreover, it was only after the testing of the impugned goods by CIPET, it was revealed that the impugned goods were flexible in nature. Further, the Importer has changed the classification of the imported goods after the introduction of India UAE CEPA to an entry where the benefit is available. Thus, it appeared that the Noticee M/s S A Enterprise (P) Limited intentionally suppressed the facts of exact nature of goods.

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

declare the correct description, value, applicability of Notification benefit etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

1.13. Further, the Importer during statement has wilfully misstated that the Percentage of Plain Films imported by them are only around 10%. However, on verification, it was found that about 30% of their imports are plain films, which proves their intent to misclassify the goods.

1.14. Based on the discussions supra, it appeared that the subject goods are classifiable under CTI 3920 6220 which is not covered under the said Notification i.e. 22/2022 – Customs dated 30.04.2022 and accordingly liable to BCD @10%. The total duty worked out to Rs. 90,12,373 /- for the period from 31.05.2022 till 20.11.2024. Thus, it appeared that the Noticee M/s S A Enterprise (P) Limited is liable to pay differential liability of Rs. 90,12,373/-. However, the Noticee M/s S A Enterprise (P) Limited has not made payment of differential duty as result of which the same is recoverable under the provisions of Section 28(4) of the Customs Act, 1962.

PORT	ASSESSABLE VALUE	DIFFERENTIAL DUTY
MUNDRA	2,65,73,114	34,49,190
NHAVA SHEVA-I	4,28,59,653	55,63,183
TOTAL	**6,94,32,767**	**90,12,373**

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

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

provisions of Section 17 of the Customs Act, 1962.

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

1.18. Thus, from paragraphs above, it appeared that the Noticee M/s S A Enterprise (P) Limited has contravened the provisions of Section 17, Section 46(4) and 46(4A) of the Customs Act, 1962 in respect of goods covered under Bills of Entry detailed in Annexure - B to the Show Cause Notice by not furnishing true and correct particulars of imported goods during assessment. Further, it appeared that the Noticee M/s S A Enterprise (P) Limited had not adopted the appropriate classification, resulting in short payment of Customs duty on the subject goods. Hence, it appeared that the Noticee M/s S A Enterprise (P) Limited is liable for penalty under 117 of the Customs Act, 1962.

SUMMARY:

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

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

b) M/s S A Enterprise (P) Limited is liable to pay the customs duty (BCD@10% and consequential SWS @10% and IGST @18%) of Rs. 90,12,373 /- as detailed in Annexure-B to the Show Cause Notice under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA of the Act ibid;

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

d) M/s S A Enterprise (P) Limited is liable for penalties under the provisions of Sections 112 and /or 114A and/ or 114AA and/or 117 of the Customs Act, 1962 for various omissions and commissions.

e) M/s S A Enterprise (P) Limited is liable to pay fine under Section 125 of Customs Act, 1962.

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

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

b) Duty amounting to Rs. 90,12,373/- (Rupees Ninety Lakh Twelve thousand Three hundred Seventy-three only) as detailed in Annexure-B to the Show Cause Notice, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962;

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

d) The goods valued at Rs. 6,94,32,767/- (Rupees Six crore Ninety-four lakh Thirty-two thousand Seven Hundred Sixty-seven only) imported as detailed in Annexure-B to the Show Cause Notice should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;

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

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

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

2. WRITTEN SUBMISSION OF THE NOTICEE & RECORD OF PERSONAL HEARING

2.1. Despite personal hearing opportunities provided to M/s S. A. Enterprise (P) Limited on 16.10.2025, 14.11.2025, and 12.12.2025, the Noticee neither submitted any written submissions nor did any representative appear before the Adjudicating Authority for personal hearing.

2.2. I note that M/s S. A. Enterprise (P) Limited had made certain submissions before the Investigating Agency vide their letter dated 12.07.2023. In the absence of any submissions made directly before me, and in order to understand the perspective of the Noticee, I take those submissions into consideration. The submissions made by the Noticee vide letter dated 12.07.2023 are summarized as follows:

2.3. We have imported polyester (PET) films from overseas supplier M/s. JB1 Bahrain WLL... Bahrain at Mundra and Nhava Sheva.

2.4. The goods were classified under CTI 3920 6290 on the basis of technical literature provided to us by the overseas supplier that PET films having tensile property of less than 700 kilograms per square centimeter are considered "flexible" to be classified under CTH 3920 6220. The analysis reports received by us from the overseas supplier along with each and every consignment certified that tensile strength of goods was above 1800 kg per square centimeter. Accordingly, the supplier had mentioned the classification in their invoice etc. as CTH 3920 6290 i.e. other than flexible. Hence, we have classified all such PET films under CTH 3920 6290, that was duly assessed and permitted clearance.

2.5. Further, CIPET Ahmedabad had tested representative sample sent to them by Customs, Mundra from goods covered by Bill of Entry No. 4632564 dated 14.02.2021. As per the Test Report No. 6628 dated 26.06.2023 issued by CIPET, goods were metalized film of Poly-Ethylene Terephthalate. Copy of Test Report issued by CIPET is enclosed herewith as Annexure-C. The details of Bills of Entry covering metalized film of PET are separately earmarked in Annexure-A and Annexure-B. The data available on website like Zauba is also in line with the classification declared by us. Hence, it is prayed to appreciate the above facts and close the issue.

3. DISCUSSION AND FINDINGS

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

3.2. Before going into the merits of the case, I observe that in the instant case, in compliance of the provisions of Section 28(8) of the Customs Act, 1962 and in terms of the principle of natural justice, total three Personal Hearing opportunities on 16.10.2025, 14.11.2025, 12.12.2025 were granted to the Noticee to appear before the Adjudicating Authority for personal hearing. However, the Noticee neither filed any written reply to the Show Cause Notice nor appeared before the adjudicating authority for personal hearing on the scheduled dates. These acts on the part of the Noticee amounts to non-cooperation and tactic to delay adjudication proceedings. However, adjudication being a time bound proceeding, same cannot be kept pending indefinitely. Therefore, I am constrained to proceed with the adjudication proceedings ex-parte on the basis of available facts and evidence on record.

3.3. I find that the principle of natural justice has been followed and I can proceed ahead with the adjudication process. I also refer to the following case laws on this aspect-

- Sumit Wool Processors Vs. CC, Nhava Sheva [2014 (312) E.L.T. 401 (Tri. - Mumbai)]
- Modipon Ltd. Vs. CCE, Meerut [reported in 2002 (144) ELT 267 (All.)]

3.4. I observe that the Importer did not participate in the adjudication proceedings in spite of the servicing of letters for Personal Hearings in terms of Section 153 of Customs Act, 1962. Section 153 of the Customs Act, 1962 reads as under:

•*Section 153.Modes for service of notice, order, etc. (1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely: -*

(*a) by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;*

(b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;

(c) by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;

(e) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.

3.5. Therefore, in terms of Section 153 of the Customs Act, 1962, it is observed that Personal Hearing letters were duly sent to the Noticee at their known addresses (as mentioned in the Show Cause Notice and import documents) through Speed Post, but the Noticee's did not honour the same. It is observed that sufficient opportunities have been given to the Noticee to file written reply to the SCN and to appear for Personal Hearing before the adjudicating authority, but they choose not to join the adjudication proceedings. As the matter pertains to recovery of Government dues and the adjudication being a time-bound proceedings, so even in absence of the Noticee from adjudication proceedings, I am compelled to decide the matter in time.

3.6. In view of the above, I observe that sufficient opportunities have been given to the Noticee's but they chose not to join the adjudication proceedings. Having complied with the requirement of the Principle of Natural Justice and having granted Personal Hearings, the adjudication proceeding is a time bound matter and cannot be kept pending indefinitely. I, therefore, proceed with the adjudication of the case ex-parte, on the basis of available evidence on record.

3.7. The present proceedings emanate from Show Cause Notice No. 1581/2024-25/Commr./Gr. IIG/NS-I/CAC/JNCH dated 08.01.2025 issued to M/s. S A Enterprises (P) Limited alleging wrongful classification of PET films imported by the Noticee M/s S A Enterprise (P) Limited. The impugned Show Cause Notice alleges that the Noticee M/s S A Enterprise (P) Limited inappropriately classified the imported goods viz. Polyethylene Terephthalate (PET) films under CTH 3920 6290 while importing the goods from M/s. JBF Bahrain WLL / JBF RAK LLC and took undue benefit of Sl. No. I4040/I4038 of Notification No. 22/2022 - Customs dated 30.04.2022 by not paying BCD. As per the Show Cause Notice, the correct classification of the impugned goods is 3920 6220 where BCD is liable to be paid @ 10% and accordingly, differential duty amounting to Rs. 90,12,373/- was held to be recoverable from the Noticee M/s S A Enterprise (P) Limited under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA. The Show Cause Notice further proposes holding the goods liable for confiscation under Section 111(m) of the Customs Act, 1962, and seeks imposition of penalties upon M/s. S A Enterprises (P) Limited under Sections 112(a) and/or 114A and/or 114AA and 117 of the Customs Act, 1962.

3.8. I find that the Noticee M/s S A Enterprise (P) Limited, in their written submissions made before the investigating agency vide letter dated 12.07.2023, had contended that the goods were classified under CTH 3920 6290 on the basis of technical literature provided to them by the overseas supplier; that PET films having tensile property of less than 700 kilograms per square centimeter are considered "flexible" to be classified under CTH 3920 6220; that the analysis reports received by them from the overseas supplier along with each and every consignment certified that tensile strength of goods was above 1800 kg per square centimeter. Accordingly, the supplier had mentioned the classification in their invoice etc. as CTH 3920 6290 i.e. other than flexible; that CIPET, Ahmedabad had tested representative sample sent to them by Customs, Mundra from goods covered by Bill of Entry No. 4632564 dated 14.02.2021; that as per the Test Report No. 6628 dated 26.06.2023 issued by CIPET, goods were metalize film of Poly-Ethylene Terephthalate; that the data available on website like Zauba is also in line

with the classification declared by them.

3.9. I have carefully gone through the records of the case, the allegations made in the Show Cause Notice, and submissions made by the Noticee M/s S A Enterprise (P) Limited before the investigating agency. I find that the following main issues arise for determination in this case:

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

ii. Whether or not, duty amounting to Rs. 90,12,373/- (Rupees Ninety Lakh Twelve Thousand Three Hundred Seventy-three only) should be demanded from Noticee M/s S A Enterprise (P) Limited under Section 28(4) of the Customs Act, 1962 alongwith applicable interest under Section 28AA of the Customs Act, 1962.

iii. Whether or not, the goods valued at Rs. 6,94,32,767/- (Rupees Six Crore Ninety-four Lakh Thirty-two Thousand Seven Hundred Sixty-seven only) imported by Noticee M/s S A Enterprise (P) Limited under CTH 3920 6290 should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

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

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

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

3.11. I find that the contending classifications of imported goods in the Show Cause Notice are either under 32906220 or 32906290. Thus, it is clear that at the Chapter, Heading and Sub-heading level i.e. Chapter 39, Heading 3920 and Sub-heading 329062 level, there is no

difference of opinion between the Noticee M/s S A Enterprise (P) Limited and the SCN. The dispute lies in the narrow compass of classification at the 8-digit Tariff Item level. Now, I shall closely examine the scope of the contending 8-digit Tariff Items thereof for determining correct classification of the imported goods. The relevant tariff entries are extracted as below:

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

On perusal of the above, I find that that the Noticee M/s S A Enterprise (P) Limited has classified the impugned goods i.e. PET films under CTH 39206290 which is a residual entry whereas the SCN wants the impugned goods to be classified under CTH 39206220 which is for flexible and plain. From the submission of the Noticee M/s S A Enterprise (P) Limited before the investigating agency and the contents of the Show Cause Notice, I find that there is no dispute to the fact that the goods are plain. The only dispute which exists is regarding the flexibility of the impugned goods which has decisive effect on the classification of the impugned goods at 8-digit level.

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

3.13. I find that there is no dispute that the goods have been imported in roll form. Importation in rolls necessarily implies that the plastic films are capable of being curved and wound without damage or loss of integrity; otherwise, the importer would not have chosen this form of importation. This clearly demonstrates that the impugned goods possess the inherent property of flexibility, enabling them to be rolled without cracking or breaking. Accordingly, considering the physical characteristics of the goods as imported, as well as the dictionary meaning of the term "flexible," there remains no doubt that the goods in question are flexible in nature.

3.14. Furthermore, I find that during the course of investigation in the present case, the investigating agency, in order to ascertain the commercial parlance—namely, how PET films are regarded and understood within the industry—identified sample product information relating to Mylar polyester films of DuPont Teijin Films, a well-known manufacturer in the PET film industry, which are similar to the impugned goods. The said product information, sourced from the internet, describes the films as flexible, thereby reinforcing the understanding of such PET films in commercial practice. Therefore, I find that the impugned goods, namely the PET films imported by the Noticee, are flexible in nature both as per the dictionary meaning of the term and as understood in commercial parlance.

3.15. I find that Shri Jayesh Prakash Achhnani, Partner of M/s S A Enterprise (P) Limited, in his statement recorded on 07.09.2023 under Section 108 of the Customs Act, 1962, has stated that his company is engaged in the trading of PET and CPP plastic films and supplies the same to clients in the flexible packaging industry, who in turn provide flexible packaging to FMCG companies. I further find that flexible PET films are predominantly used in the food packaging sector for products such as biscuits, chips, protein bars, etc. Such films are also widely used for packaging consumer goods, including detergents and personal care products. In this context, the statement of the Partner of M/s S A Enterprise (P) Limited that the PET films supplied by them are meant for flexible packaging for FMCG companies clearly establishes that the PET films imported in the present case are flexible in nature. It is evident that flexible packaging for FMCG products necessarily requires flexible films and not rigid film.

3.16. After having found out the impugned goods viz. plastic films imported by the Noticee are flexible as per dictionary meaning, end-use application and commercial parlance, I now turn to the contention of the Noticee M/s S A Enterprise (P) Limited made before the investigating authority that the impugned goods merit classification under CTH 3920 62 90 on the ground that their tensile strength exceeds 1800 kilograms per square centimeter. The Noticee has

argued that PET films possessing tensile strength of less than 700 kilograms per square centimeter are to be considered "flexible". I find that the Noticee appears to be placing reliance on the definition of "flexible plastic film" as contained in Notification No. 68/71-C.E. dated 29.05.1971 as amended by Notification No. 198/78-CE dated 25.11.1978 which provided exemption for articles made of plastic falling under Item No. 15A of the Central Excise Tariff of India. Notification No. 68/71-C.E., dated 29.05.1971 as amended by Notification No. 198/78-CE is extracted below for ready reference:

> "*Exemption to articles made of plastic. -- In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts articles made of plastics, all sorts, falling under sub-item (2) of Item 15A of the First Schedule to the Central Excises and Salt Act. 1944 (1 of 1944) except –*
>
> *i. rigid plastic boards, sheetings, sheets and films, whether or not; and*
>
> *ii. flexible polyvinyl chloride sheetings, sheets, films and lay-flat tubings not containing and textile material, from the whole of the duty of excise leviable thereon;*
>
> *from the whole of the duty of excise leviable thereon :*
>
> *Provided that –*
>
> *(a)such articles are produced out of the artificial resins and plastic materials or cellulose esters and others in any form falling under sub-item (1) of the said item, on which the duty of excise of the additional duty under Section 2A of the Indian Tariff Act, 1934 (32 of 1934) as the case may be, has already been paid; or*
>
> *(b)such articles are produced out of scrap of plastics.*
>
> *Explanation :-*
>
> *For the purpose of this notification -*
>
> *i. the expression "flexible" in relation to an article made of plastic, means the article which has a modulus of elasticity either in flexure or in tension of not over 700 kilograms per square centimetre at 23 degree centigrade and 50 percent relative humidity when tested in accordance with the method of test for stiffness of plastics (ASTMO Designation D-474-63), for flexural properties of*

plastics (ASTM Designation D-790-63), for Tensile properties of plastics (ASTM Designation D-638-63-T) or for Tensile Properties of Thin Plastic Sheeting (ASTM Designation D-882-64-T).

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

3.17. Without entering into the merits of the contention raised by the Noticee, M/s S A Enterprise (P) Limited before the investigating agency, I find that the Hon’ble Bombay High Court, in its judgment dated 21.08.1987 in the case of M/s *Mechanical Packing Industries Pvt. Ltd. v. Union of India & Others*, held that the Government notification which sought to define “rigid” and “flexible” plastics for the purpose of granting excise exemption was invalid, as it exceeded the delegated powers under the Central Excise Rules and usurped legislative classification authority.

3.18. Furthermore, I find that the similar definition of *flexible* has also been incorporated in Note 12 of Chapter 39 in the Central Excise Tariff, 1985. Relevant portion of the Note to Chapter 39 is extracted below for ready reference:

“CHAPTER 39

Plastics and articles thereof

Notes:

***

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

3.19. I find that this contention that the goods are not flexible as the condition for categorizing PET films as *flexible* is only when the tensile property of the film is less than 700 Kilograms per square centimetre, was raised by the Noticee before the investigating agency. However, the same was not accepted on the ground that the Central Excise Tariff does not have relevance for

the period under dispute, i.e. 2022 to 2024, being a post-GST period, particularly when no corresponding definition exists in the Customs Tariff. Even assuming, for the sake of argument, that the definition contained in the said Central Excise Notification as well as Note 12 of Chapter 39 of the Central Excise Tariff, 1985, is applied, the impugned goods still do not qualify as "rigid". **This is because, as per the said definition, an article would be regarded as "flexible" if the modulus of elasticity, either in flexure or in tension, does not exceed 700 kilograms per square centimetre at 23°C and 50 per cent relative humidity.** Consequently, for an article to be classified as "rigid", the modulus of elasticity must exceed 700 kilograms per square centimetre in both flexure as well as in tension mode. If, even in one of these modes, the modulus of elasticity is below the prescribed limit of 700 kilograms per square centimetre, the article would fall within the definition of "flexible" under the said Central Excise Notification as well as Note 12 of Chapter 39 of the Central Excise Tariff, 1985.

3.20. I find that in the tensile mode, a material is subjected to forces acting axially along its length, causing it to be pulled apart, whereas in the flexure mode, the force is applied perpendicular to the length of the specimen, resulting in bending. I find that the Noticee M/s S A Enterprise (P) Limited in its contention has referred to physical characteristics of only one mode i.e. tensile mode and not of the flexure mode. Further, since the impugned goods were imported in roll form, as specifically brought out in the Show Cause Notice, the modulus of elasticity in the flexural mode—where the force is applied perpendicular to the length of the specimen—assumes greater relevance for determining the nature of the goods. In the absence of specific values of modulus of elasticity in both tensile and flexural modes, the claim of the Noticee regarding the flexibility of the impugned goods remains unsubstantiated. Accordingly, I find that the said argument is devoid of merit and is liable to be rejected.

3.21. Furthermore, it is seen that a sample of PET film of type A600, manufactured by the same manufacturer but imported by another importer, was tested by the Central Institute of Petrochemicals Engineering & Technology (CIPET), Aurangabad. As per the test reports issued by CIPET, the said PET films were found to be *plain and flexible*. It is further observed that CIPET has reported PET films with thickness up to 325 microns as flexible. In the present case, the films imported by M/s S. A. Enterprise are of a thickness below 120 microns. In view of the foregoing findings and the settled material principle that reduced thickness enhances flexibility, I find that the impugned goods are appropriately classifiable as flexible PET films.

3.22. Furthermore, since the issue involved is technical in nature, therefore as a precautionary measure, an email was sent to CIPET, Aurangabad to confirm whether the impugned goods viz.

PET Films in context of Test Report of PET film of type A600, issued by them, were flexible in nature in view of the technical points being raised. CIPET, Aurangabad in their reply vide email dated 16.12.2025 have categorically replied **"Yes, goods fall under the flexible category according to the definition provided by Central Excise Tariff Notification No. 198/78 dated 25.11.78."**

3.23. I further find that, prior to the introduction of the India–UAE Comprehensive Economic Partnership Agreement (CEPA), M/s S. A. Enterprise (P) Limited had classified the impugned goods, namely PET films, under CTH 3920 6220. However, subsequent to the coming into force of the India–UAE CEPA, whereby concessional rate of duty became available to goods falling under CTH 3920 62 90, the Noticee changed the classification of the very same goods to CTH 3920 62 90. During the course of investigation, Shri Jayesh Prakash Achhnani, Partner of M/s S. A. Enterprise (P) Limited, was confronted with this change in classification while his statement was recorded under Section 108 of the Customs Act, 1962. He was unable to provide any cogent or satisfactory explanation for the said change and merely attributed it to the advice of the foreign supplier. Such explanation, in the absence of any supporting technical or documentary evidence, is not acceptable.

On careful consideration of the facts on record, I find that there is no evidence to indicate that the imported goods had undergone any change in their composition, physical characteristics, technical specifications, or end-use so as to justify a change in tariff classification. Accordingly, the change in classification adopted by the Noticee does not appear to be based on any material difference in the nature of the goods, but appears to have been motivated solely by the availability of concessional duty benefits under the India–UAE CEPA. Therefore, I find that the correct and appropriate classification of the impugned goods remains CTH 3920 6220, which was adopted by the Noticee itself during the period when no duty benefit was available under CTH 3920 6290.

3.24. I further find that the Hon'ble Bombay High Court, in *Mechanical Packing Industries Pvt. Limited v. C. L. Nangia and Others* reported in 1981 (8) E.L.T. 144 (Bom.) [07-02-1979*]*, examined a similar issue. In the said case, the petitioner was proposed to be charged to excise duty under Item No. 15-A(2) on the ground that the goods manufactured by them were rigid plastic sheets, excluded from the benefit of the exemption notification. The petitioner contended that the goods were flexible and not rigid. The Hon'ble High Court, after considering the dictionary meanings of the terms *"flexible"* and *"rigid"* and noting that the goods were capable of bending, held the goods to be flexible in nature. The

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

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

> *7. Mr. Dalal fairly agreed that, as the law stands, the Exemption Notification must be construed liberally but without doing violence to the language thereof. He contended that the word "rigid" in the Exemption Notification should be construed in the same manner as the word "rigid" in Entry No. 15-A(2), that is, meaning "not flexible". For the purposes of this judgment, I shall assume that the ASTM classification should not be applied and that plastic sheets should only be classified as "rigid" or "flexible". In the absence of statutory definitions, the authorities were obliged to ascertain whether the petitioners' articles were "rigid" or "flexible" according to the ordinary or dictionary meanings of these words. The Oxford Dictionary (Compact Edition) 1971 defines "rigid" to mean stiff, unyielding, not pliant or flexible, firm, hard. It defines "flexible" to mean capable of being bent, admitting of change in figure without breaking and yielding to pressure, pliable, pliant. Applying these definitions, as article which is not capable of being bent is rigid; an article which is capable of being bent is flexible. The concept of the word "flexible" does. A pencil is rigid because if it is sought to be bent it breaks. Paper is capable of being bent; it is flexible. A rubber eraser is capable of being bent slightly; it is flexible.*
>
> 6. *It is admitted position that the Petitioners' articles are capable of being bent. That being so, they are flexible not rigid. The 1st Respondent must, therefore, be held to have been in error when he held that, because the petitioners admitted that their articles were "semi-rigid", the articles had to be classified as "rigid" and falling outside the purview of the Exemption Notification.*

3.25. Applying the ratio of the aforesaid judgment to the facts of the present case, I find that

the impugned goods are capable of being bent and wound into rolls without sustaining any damage. They thus clearly exhibit the essential characteristic of flexibility and, by virtue thereof, are to be classified as flexible.

3.26. In view of the foregoing discussions, I find that the impugned goods, namely PET plastic films imported by the Noticee, possess inherent flexibility, as evidenced by their physical characteristics, their importation in roll form, their end use in flexible packaging for FMCG products, and their understanding in commercial parlance. This finding is further supported by test report of similar product manufactured by the same manufacturer and by the ratio laid down by the Hon'ble Bombay High Court in Mechanical Packing Industries Pvt. Limited v. C. L. Nangia and Others. Since the impugned goods satisfy the description and characteristics of flexible PET films, they are squarely classifiable under CTI 3920 6220 and not under the residual category of CTI 3920 6290. Accordingly, the classification declared by the Noticee under CTI 3920 6290 is incorrect and is liable to be rejected.

Whether or not, duty amounting to Rs. 90,12,373/- (Rupees Ninety Lakh Twelve Thousand Three Hundred Seventy-three only) under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 should be demanded from Noticee M/s S A Enterprise (P) Limited;

3.27. It has been established that the imported goods, namely Polyethylene Terephthalate (PET) films, were mis-classified under CTI 3920 6290 instead of the correct classification under CTI 3920 6220. This mis-classification resulted in a short-payment of customs duty amounting to ₹90,12,373/-. I find that, pursuant to the amendment of Section 17 of the Customs Act, 1962 by the Finance Act, 2011, the system of self-assessment was introduced in Customs. Furthermore, I find that Section 17 effective from 08.04.2011 mandates that the importer shall self-assess the duty leviable on imported goods while filing the Bill of Entry in electronic form. Thus, with the introduction of self- assessment by amendment to Section 17, w.e.f. 08.04.2011, it was the added and enhanced responsibility of the importer to declare the correct description, value, applicability of Notification benefit etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. Further, Section 46 of the Customs Act, 1962 casts a statutory obligation on the importer to make an entry of the imported goods by presenting a Bill of Entry electronically to the proper officer. I further note that in terms of Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, issued under Section 157 read with Section 46 of the Customs Act, 1962, a

Bill of Entry is deemed to have been filed and the self-assessment of duty completed when, upon submission of the electronic declaration—being the particulars relating to the imported goods entered in the Indian Customs Electronic Data Interchange system either through ICEGATE or by way of data entry through the service centre—a Bill of Entry number is generated by Indian Customs Electronic Data Interchange system for such declaration.

3.28. Despite the enhanced responsibility cast upon the Noticee, M/s S. A. Enterprise (P) Limited, under the self-assessment regime, they deliberately resorted to mis-classification of the impugned goods with the intent to evade payment of customs duty. I also find that although the Noticee subscribed to a declaration regarding the truthfulness of the particulars furnished in the Bills of Entry, as required under Section 46(4) of the Customs Act, 1962, they failed to make a true and correct declaration in respect of the classification of the impugned goods in the Bills of Entry and the associated import documents.

3.29. I find that the impugned goods, namely PET films, were predominantly imported in the form of rolls, which is indicative of their flexible nature. Further, I observe that the test certificate submitted at the time of import did not certify whether the goods were flexible or rigid, even though flexibility/rigidity is a crucial parameter for determining eligibility for exemption under Notification No. 22/2022–Customs dated 30.04.2022. I find this to be a deliberate act on the part of the Noticee aimed at availing undue benefit of duty exemption. I further find that the true nature of the impugned goods came to light only after the goods were subjected to testing by CIPET.

3.30. I find that, prior to the introduction of the India–UAE CEPA Agreement, M/s S A Enterprise (P) Limited had been classifying the impugned goods, namely PET films, under CTH 39206220. However, subsequent to the coming into force of the India–UAE CEPA Agreement, under which concessional duty benefits were extended to goods falling under CTH 39206290, M/s S A Enterprise (P) Limited altered the classification of the impugned goods to CTH 39206290. Shri Jayesh Prakash Achhnani, Partner of M/s S. A. Enterprise, was confronted with the said fact during the course of his statement recorded under Section 108 of the Customs Act, 1962. However, he was unable to furnish any cogent or satisfactory explanation in this regard and merely sought to attribute the change in classification to the foreign supplier, stating that the classification was adopted on the supplier's advice. On careful consideration of the above, I find that there is no evidence on record to suggest that the imported goods had undergone any change in composition, characteristics, or end-use so as to warrant a change in

their tariff classification. Accordingly, the change in classification adopted by M/s S A Enterprise (P) Limited does not appear to be based on any material difference in the goods but appears to have been undertaken solely to avail the concessional rate of duty under the India–UAE CEPA Agreement. This highlights the malafide intent of the Noticee M/s S A Enterprise (P) Limited wherein true classification of the impugned goods was suppressed and an alternate classification was adopted in the Bill of Entry filed for importation of impugned goods in order to avail duty benefit under Notification No. 22/2022 - Customs dated 30.04.2022.

3.31. In view of the foregoing, I hold that the misclassification of the impugned goods was deliberate, resulting in evasion of customs duty. Accordingly, the duty demand has been correctly proposed under Section 28(4) of the Customs Act, 1962, by invoking the extended period of limitation. In support of invoking the extended period, reliance is placed on the following judicial 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;

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

"....It is thus to be seen that unlike penalty that, is attracted to the category of cases in which the non-payment or short payment etc. of duty is "by reason of fraud, collusion or any wilfull mis-statement or suppression of facts, or contravention of any of the provisions of the Act or of Rules made thereunder with intent to evade payment of duty", under the scheme of the four Sections (11A, 11AA, 11AB & 11AC) interest is leviable on delayed or deferred payment of duty for whatever reasons."

3.33. Thus, interest leviable on delayed or deferred payment of duty for whatever reasons, is aptly applicable in the instant case. In view of the facts and findings in above paras, I hold that total differential duty of Rs. 90,12,373 /- should be demanded under Section 28 (4) of the Customs Act, 1962 and the same should be recovered from the Noticee M/s S A Enterprise (P) Limited along with applicable interest in terms of section 28AA of the Customs Act, 1962 as proposed in the Show Cause Notice.

Whether or not, the goods valued at Rs. 6,94,32,767/- (Rupees Six Crore Ninety-four Lakh Thirty-two Thousand Seven Hundred Sixty-seven only) imported by Noticee M/s S A Enterprise (P) Limited under CTH 3920 6290 should be held liable for confiscation under Section 111(m) of the Customs Act, 1962;

3.34. In the present case, the impugned Bills of Entry, having been self-assessed, were found

to be substantially mis-declared by the importer with respect to the classification of the goods. I note that the Show Cause Notice has proposed confiscation of the goods under Section 111(m) of the Customs Act, 1962. The relevant provisions of Section 111(m) of the Customs Act, 1962 are reproduced below for ready reference:

"*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];*

3.35. I find that the Noticee, M/s S. A. Enterprise (P) Limited, imported the impugned goods by mis-classifying them with the intent to wrongly avail the benefit under Notification No. 22/2022-Customs dated 30.04.2022, to which they were not entitled. I further find that, in the instant case, the correct classification of the impugned goods is CTI 3920 6220, whereas the classification declared in the Bills of Entry filed for their import was CTI 3920 6290. Consequently, the impugned goods did not correspond to the classification declared in the Bills of Entry, amounting to mis-declaration within the meaning of the Customs Act. Accordingly, I hold that the provisions of Section 111(m) of the Customs Act, 1962 have been rightly invoked for confiscation of the impugned good.

3.36. In view of the intentional misclassification of the imported goods, I find that the goods detailed in Annexure-B to the Show Cause Notice, having an assessable value of ₹6,94,32,767/- (Rupees Six Crore Ninety-four Lakh Thirty-two Thousand Seven Hundred Sixty-seven only), are liable for confiscation under Section 111(m) of the Customs Act, 1962, as they have been mis-classified in the corresponding Bills of Entry. I further note that the goods imported vide the said Bills of Entry are no longer available for confiscation. However, reliance is placed on the decision of the Hon'ble Madras High Court in M/s Visteon Automotive Systems India Limited, reported in 2018 (9) G.S.T.L. 142 (Mad.), wherein the Hon'ble Court held at paragraph 23 of the judgment that:

> *"23. The penalty directed against the importer under Section 112 and the*

fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

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

3.38. In view of the above, I find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010 (255) ELT A. 120 (SC), is squarely applicable in the present case. Accordingly, I

observe that the present case also merits imposition of Redemption Fine, regardless of physical availability, once the goods are held liable for confiscation.

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

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

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

32. "Fraud" and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. Principle Bench of Tribunal at New Delhi extensively dealt with the issue of Fraud while delivering judgment in Samsung Electronics India Ltd. Vs commissioner of Customs, New Delhi reported in 2014(307) ELT 160(Tri. Del). In Samsung case, Hon'ble Tribunal held as under.

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

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

*Suppression of a material fact would also amount to a fraud on the court [(Ref: Gowrishankarv. Joshi Amha Shankar Family Trust, (1996) 3 SCC 310 and S.P. Chengalvaraya Naidu's case (AIR 1994 S.C. 853)]. No judgment of a Court can be allowed to stand if it has been obtained by fraud. Fraud unravels everything and fraud vitiates all transactions known to the law of however high a degree of solemnity. When fraud is established that unravels all. [Ref: UOI v. Jain Shudh Vanaspati Ltd. - 1996 (86)*E.L.T. *460 (S.C.) and in Delhi Development Authority v. Skipper Construction Company (P) Ltd. - AIR 1996 SC 2005]. Any undue gain made at the cost of Revenue is to be restored back to the treasury since fraud committed against Revenue voids all judicial acts, ecclesiastical or temporal and DEPB scrip obtained playing fraud*

against the public authorities are non est. So also no Court in this country can allow any benefit of fraud to be enjoyed by anybody as is held by Apex Court in the case of Chengalvaraya Naidu reported in (1994) 1 SCC I : AIR 1994 SC 853. Ram Preeti Yadav v. U.P. Board High School and Inter Mediate Education (2003) 8 SCC 311.

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

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

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

3.40. I find that, in the present case, the impugned imports covered under the subject Show Cause Notice were effected in the name of M/s S. A. Enterprise (P) Limited. The importer mis-classified the goods in the Bills of Entry, as listed in Annexure-B to the Show Cause Notice, with the intention of evading the customs duty on the imported goods. In view of the provisions discussed above, I find that the correct applicable duty was not levied due to collusion, willful misstatement, and suppression of material facts. Accordingly, I hold that M/s S. A. Enterprise (P) Limited is liable to penalty under Section 114A of the Customs Act, 1962, in respect of the Bills of Entry mentioned in Annexure-B to the Show Cause Notice. However, in view of the

fifth proviso to Section 114A, no separate penalty is imposable on M/s S. A. Enterprise (P) Limited under Section 112 of the Customs Act, 1962, for the same act.

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

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

3.42. 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)

3.43. I find that it has already been established that M/s S. A. Enterprise (P) Limited willfully engaged in misclassification of the imported goods to evade the higher rate of customs duty. The Noticee knowingly and deliberately made a false declaration regarding the classification of the goods in the Bills of Entry, with the intent to evade duty. Such conduct amounts to knowingly or intentionally making, signing, or using, or causing to be used, a false declaration, statement, or document in the transaction of any business relating to Customs. Accordingly, the provisions of Section 114AA of the Customs Act, 1962 are fully applicable to the Noticee M/s S A Enterprise (P) Limited, warranting the imposition of penalty commensurate with the gravity of the offence.

3.44. I note that a penalty under Section 117 of the Customs Act, 1962 has also been proposed

against the Noticee, M/s S. A. Enterprise (P) Limited. For ready reference, the relevant provisions of Section 117 of the Customs Act, 1962 are reproduced below:

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

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

3.46. I note that in para 18 of the Show Cause Notice, the reasons for invoking Section 117 of the Customs Act, 1962 against the Noticee, M/s S. A. Enterprise (P) Limited, have been enumerated. These include misclassification and contraventions of Sections 17, 46(4), and 46(4A) of the Customs Act, 1962, by allegedly not furnishing true and correct particulars of the imported goods during assessment. I find that these facts have already been fully examined and relied upon for establishing wilful misstatement and suppression of facts, for the purpose of imposing penalty under Section 114A and 114AA of the Customs Act, 1962. Consequently, the same set of actions cannot be invoked again for imposing penalty under Section 117, as penalty has already been imposed under Section 114A and 114AA for the same misconduct. No other argument or evidence has been provided in the Show Cause Notice to support the invocation of Section 117. In view of the above, I refrain from imposing penalty under Section 117 of the Customs Act, 1962 in the instant case. I place my reliance on the following judicial decisions in support of not imposing a separate penalty under Section 117 of the Customs Act, 1962:

(a) Commissioner of Customs & Central Excise, Ghaziabad v. M/s Ruby Impex, 2017 (1) TMI 869, Hon'ble CESTAT, Allahabad; and

(b) Sai Sea Logistics (I) P. Ltd. v. Commissioner of Customs (Import), Nhava Sheva, 2009 (246) ELT 543.

3.47. These decisions establish that when penalty has already been imposed under specific provisions for the same act of misstatement, misclassification, or suppression of facts, Section 117 cannot be invoked separately for the same misconduct.

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

ORDER

i. I reject the classification of the impugned goods imported by the Noticee under Customs Tariff Item (CTI) 3920 6290. I order to reclassify and reassess of the subject imported goods to Customs Tariff Item (CTI) 3920 6220;

ii. I confirm demand and order recovery of differential duty amounting to Rs. 90,12,373/- (Rupees Ninety Lakhs Twelve Thousand Three Hundred Seventy-three only) as detailed in Annexure-B to the Show Cause Notice, from the Noticee M/s S A Enterprise (P) Limited under Section 28(4) of the Customs Act, 1962 alongwith applicable interest under Section 28AA of the Customs Act, 1962.

iii. I order confiscation of the goods valued at Rs. 6,94,32,767/- (Rupees Six crore Ninety-four lakhs Thirty-two Thousand Seven Hundred Sixty-seven only) as detailed in Annexure-B to the Show Cause Notice, under Section 111(m) of the Customs Act, 1962 even though the goods are not physically available. However, in lieu of confiscation, I impose a redemption fine of Rs. 35,00,000/- (Rupees Thirty-five Lakhs only) on M/s. S A Enterprise (P) Limited under Section 125 (1) of the Customs Act, 1962.

iv. I order imposition of penalty of Rs. 90,12,373/- (Rupees Ninety Lakh Twelve Thousand Three Hundred Seventy-three only) equal to the differential duty along with applicable interest, on the Noticee M/s S A Enterprise (P) Limited under Section 114A of the Customs Act, 1962;

v. I order imposition of penalty of Rs. 9,00,000/- (Rupees Nine Lakhs only) on the Noticee M/s S A Enterprise (P) Limited under Section 114AA of the Customs Act, 1962;

vi. I refrain from imposing any penalty under Section 117 of the Customs Act, 1962 on the Noticee M/s S A Enterprise (P) Limited.

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

Digitally signed by
Yashodhan Arvind Wanage
Date: 01-01-2026
10:23:53

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

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

एनएस**-I,** जेएनसीएच **/ NS-I, JNCH**

To,

M/s S A Enterprise (P) Limited (IEC No. 0388090774),
Plot No, C2, MIDC,
Taloja, Raigad District,
Maharashtra- 410208.

Copy to:

(1) The Addl. Commissioner of Customs, Group II G, JNCH
(2) AC/DC, Chief Commissioner's Office, JNCH
(3) AC/DC, Centralized Revenue Recovery Cell, JNCH
(4) Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
(5) Additional Director General, DRI, Hyderabad Zonal Unit
(6) Deputy Director, DRI, Vijaywada Regional Unit
(7) Office Copy.