



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

File No: S/10-185/2023-24/Commr/NS-I/CAC/JNCH Date : 16.09.2025
SCN No: DRI/MZUB/INV-06/2007-08/9758 dated 21.10.2008

DIN	: 20250978NX000000F42A
आदेश की तिथि Date of Order	: 15.09.2025
जारी किए जाने की तिथि Date of Issue	: 16.09.2025
आदेश सं. Order No.	: 195/2025-26/आयुक्त/एनएस-III/ सीएसी/जेएनसीएच 195/2025-26 /Commr./NS-III /CAC/JNCH
पारितकर्ता Passed by	श्री विजय रिशी SH. VIJAY RISI : आयुक्त, सीमाशुल्क (एनएस-3), जेएनसीएच, न्हावा शेवा Commissioner of Customs (NS-III), JNCH, Nhava Sheva
पक्षकार (पार्टी)/ नोटिसी का नाम Name of Party/ Noticee	: मेसर्स बल्लारपुर इंडस्ट्रीज लिमिटेड. M/s Ballarpur Industries Ltd.

मूलआदेश

ORDER-IN-ORIGINAL

- इस आदेश की मूल प्रति की प्रतिलिपि जिस व्यक्तिको जारी की जाती है, उसके उपयोग के लिए नि:शुल्क दी जाती है।
The copy of this order in original is granted free of charge for the use of the person to whom it is issued.
- इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम १९६२ की धारा १२९(ए) (के तहत इस आदेश के विरुद्ध सी ई एस टी ए टी, पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीज़नल बेंच), ३४, पी .डी .मेलोरोड, मस्जिद (पूर्व), मुंबई- ४०० ००९ को अपील कर सकता है, जो उक्तअधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।
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.
- अपील दाखिल करने संबंधी मुख्य मुद्दे:-
Main points in relation to filing an appeal:-

फार्म Form	:	फार्म न.सीए ३, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कमसे कम एक प्रति प्रमाणित होनी चाहिए)
		Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy)
समय सीमा	:	इस आदेश की सूचना की तारीख से ३ महीने के भीतर
Time Limit		Within 3 months from the date of communication of this order.
फीस Fee	:	(क) एक हजार रुपये-जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५ लाख रुपये या उस से कम है। (a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less. (ख) पाँच हजार रुपये- जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५ लाख रुपये से अधिक परंतु ५० लाख रुपये से कम है। (b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 lakh (ग) दस हजार रुपये-जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५० लाख रुपये से अधिक है। (c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.
भुगतान की रीति Mode of Payment	:	क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीयकृत बैंक द्वारा सहायक रजिस्ट्रार, सी ई एस टी ए टी, मुंबई के पक्षमें जारी किया गया हो तथा मुंबई में देय हो। A crossed Bank draft, in favour of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.
सामान्य General	:	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 सेवा कर अपील अधिकरण (प्रक्रिया) नियम, १९८२ का संदर्भ लिया जाए। 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.

4. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उस में 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।

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.

Brief for De Novo Proceedings

A Show Cause Notice was issued vide F.No. DRI/MZUB/INV-06/07-08 dated 21.10.2008 was issued to M/s Ballarpur Industries Ltd. (BIL) and Order-in-Original No. 139/2009 C.C.(I) J.N.CH, dated 09.09.2009 passed by the Commissioner of Customs (Import), Jawaharlal Nehru Customs House, Nhava Sheva.

A. Background:

2. The case pertains to the import of "Styrene Butadiene Co-polymer" by M/s Ballarpur Industries Ltd. (BIL), which was used in their paperboard manufacturing process. The Directorate of Revenue Intelligence (DRI), Mumbai, carried out an investigation into the classification of the goods imported by BIL between April 2005 and August 2006. The goods were declared under Customs Tariff Heading (CTH) 39039090, attracting a basic customs duty of 5%. However, the department alleged that the goods were actually Styrene Butadiene Lattices (SBL) conforming to carboxylated styrene butadiene rubber, which are classifiable under CTH 40021100, attracting a higher duty rate of 12.5%. The total value of the imports was approximately Rs. 11.25 crores, and the duty evasion alleged due to misclassification was Rs. 89,83,155/-. During the investigation, BIL voluntarily deposited Rs. 85,00,000/- towards the differential duty liability.

Allegations in SCN:

3. The Show Cause Notice issued to BIL alleged that the importer had willfully misclassified the goods to evade customs duty. The SCN proposed reclassification of the imported goods under CTH 40021100, demand and recovery of differential duty of Rs. 89,83,155/- under Section 28 of the Customs Act, 1962 (invoking the extended period), and appropriation of the Rs. 85 lakh voluntarily paid. Interest on the differential duty was proposed under Section 28AB. Additionally, a penalty equal to the duty evaded was proposed on BIL under Section 114A, and penalty under Section 112(a)/(b) was proposed on Shri Haveli Ram Bhatia, former General Manager (Commercial) of BIL. Confiscation of the imported goods under Sections 111(d) and 111(m) was also proposed, although the goods had already been cleared.

3.1 The legal provisions available with the erstwhile adjudicating authority.

SECTION 28. Notice for payment of duties, interest etc. When any duty has not been levied or has been short-levied or -

(1) erroneously refunded, or when any interest payable has not been paid, part paid or erroneously refunded, the proper officer may, -

(a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, within one year;

(b) in any other case, within six months,

from the relevant date, serve notice on the person chargeable with the duty or interest which has not been levied or charged or which has been so short-levied or part 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:

Provided that where any duty has not been levied or has been short-levied or the interest has not been charged or has been part para or the duty or interest has been

erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter; the provisions of this sub-section shall have effect as if for the words "one year" and "six months", the words "five years" were substituted.

Section 28AB. [Interest on delayed payment of duty in special cases. [Inserted by Act 33 of 1996, Section 62 (w.e.f. 28.9.1996).]

- [(1) Where any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-section (2), or has paid the duty under sub-section (2-B), of section 28, shall, in addition to the duty, be liable to pay interest at such rate not below [ten per cent.] [Inserted by Act 22 of 1995, Section 51 (w.e.f. 26.5.1995).][and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-section (2), or sub-section (2-B) of section 28, till the date of payment of such duty:

Provided that in such cases where the duty becomes payable consequent to issue of an order, instruction or direction by the Board under section 151-A, and such amount of duty payable is voluntarily paid in full, without reserving any right to appeal against such payment at any subsequent stage, within forty-five days from the date of issue of such order, instruction or direction, as the case may be, no interest shall be payable and in other cases the interest shall be payable on the whole of the amount, including the amount already paid.

(2)[The provisions of sub-section (1) shall not apply to cases where the duty or interest had become payable or ought to have been paid before the date on which the Finance Bill, 2001 receives the assent of the President.] [Substituted by Act 14 of 2001, Section 105, for sub-Section (1) (w.e.f. 11.5.2001).]

[Explanation 1.-Where the duty determined to be payable is reduced by the Commissioner (Appeals), the Appellate Tribunal [, National Tax Tribunal] [Inserted by Act 33 of 1996, Section 62 (w.e.f. 28.9.1996).] [or, as the case may be, the Court, the interest shall be payable on such reduced amount of duty.

Explanation 2.-Where the duty determined to be payable is increased or further increased by the Commissioner (Appeals), the Appellate Tribunal [, National Tax Tribunal] [Inserted by Act 33 of 1996, Section 62 (w.e.f. 28.9.1996).] [or, as the case may be, the Court, the interest shall be payable on such increased or further increased amount of duty.] [Inserted by Act 33 of 1996, Section 62 (w.e.f. 28.9.1996).]

The provisions of Section 111(d) and 111(m) of the Customs Act, 1962 (relevant to the facts of the instant case) provide for confiscation of improperly imported goods, as under:-

(i) The provisions of Section 111 (d) stipulate that "Any goods which are imported or attempted to be imported or are brought within the Indian Customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this act or any other law for the time being in force" shall be liable to confiscation.

(ii) The provisions of Section 111(m) stipulate that "Any goods which do not correspond in

respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-Section (1) of Section 54" shall be liable to confiscation.

Section 112 of the Customs Act, 1962 interalia provides for penalty for improper importation of goods, which reads as under:-

"(a) Any person, who in relation to any goods, does or omits to do an act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such act," or

"(b) Any person who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111."

The provisions of Section 11(1) of the Foreign Trade (Development & Regulations) Act 1992. provide that "No export or import shall be made by any person except in accordance with the provisions of this Act the rules and orders made there under and the export and import policy for the time being in force."

The provisions of Rule 14(1) and Rule 14(2) of Foreign Trade (Regulation) Rules, 1993 provide that:-

(1) No person shall make, sign or use or cause to be made, signed or used any declaration, statement or document for the purposes of obtaining a licence or importing any goods knowing or having reason believe that such declaration, statement or document is false in any material particular.

(2) No person shall employ any corrupt or fraudulent practice for the purposes of obtaining any licence or importing or exporting any goods.

3.2 Charging para of the of the Show cause notice no. F.No. DRI/MZUB/INV-06/07-08 dated 21.10.2008 is reproduced below:-

3.3 THEREFORE, the M/s. Ballarpur Industries Ltd. Bhigwan and Shri Haveli Rain Bhatia, former General Manager (Commercial), Mis Ballarpur Industries Ltd. were called upon to show cause and explain in writing, to the Commissioner of Customs (Import) having his office at 2nd floor, Jawaharlal Nehru Custom House, Nhava Sheva, Dist. Raigad, as to why:-

(i) The classification of the products described by them Styrene Butadiene Co- polymer, covered under Bills of Entry (details of which are enumerated in Annexure A of the show cause notice) and claimed under Customs Tariff Item no 39039090 of the Customs Tariff should not be rejected and the same should not be classified under Customs Tariff Item no. 40021100 of the Customs Tariff, in terms of the provisions of Section 12 of the Customs Act, 1962

(ii) the differential duty (duty short paid) amounting to Rs. 89,83,155/- (Rupees Eighty nine lakhs eighty three thousand one hundred fifty five only), arising due to the aforesaid misclassification of the foresaid products listed in annexure 'A' to this notice should not be demanded and recovered in terms of proviso to Section 28(1) of the Customs Act 1962.

(iii) the said goods of a value of Rs. 11,25,81,587/- (as detailed in Annexure 'A' of the show cause notice) should not be held liable to confiscation in terms of the provisions of Section 111(m) and 111(d) of the Customs Act, 1962, read with the aforementioned provisions of Foreign Trade (Development & Regulation) Act, 1992 and Foreign Trade (Regulations) Rules 1993.

(iv) the amount of Rs. 85,00,000/- (Rupees Eighty five lakhs only) voluntarily deposited by M/s Ballarpur Industries Ltd. should not be appropriated against the aforesaid duty demand

(v) Interest on the above differential duty amount should not be recovered under Section 28 AB of the Customs Act 1962

(vi) Penalty equivalent to Rs. 89,83,155/- (Rupees Eighty nine lakhs eighty three thousand one hundred fifty five only) should not be imposed on M/s Ballarpur Industries Ltd. under the provisions of Section 114A of Customs Act 1962, with regard to the evasion of Customs duty on account of misdeclaration of imports by resorting to mis-representation and wilful suppression of facts.

(vii) Penalty should not be imposed on Shri Haveli Ram Bhatia under the provisions of Section 112(a) and 112(b) of the Customs Act. 1962.

Submission by BIL & Shri Haveli Ram Bhatia, former General Manager (Commercial), M/s BIL:

4. BIL denied any misdeclaration and stated that the description of the goods in the Bills of Entry matched the documents such as invoice, packing list, and certificate of origin. They argued that classification is the responsibility of the Customs Department, and as the description was accurate, they could be held liable for misclassification. It was also pointed out that no chemical test or sampling was conducted to establish the technical nature of the goods and their conformity to Note 4 of Chapter 40. Hence, the reclassification lacked scientific basis. BIL also contended that similar products can fall under either Chapter 39 or Chapter 40, depending on their technical composition, and without testing, it is not possible to decide under which CTH the product will be classified. They further argued that there was no suppression of facts or intent to evade duty, and thus the extended period and penalty provisions were not applicable.

4.1 Shri Haveli Ram Bhatia, former General Manager (Commercial M/s BIL) in his defense, stated that he was merely acting in his official capacity and had no personal involvement or gain in the matter. He contested that penalty under Section 112(b) requires mens rea or abetment, which was not proven. Since the company had taken responsibility for the classification and voluntarily agreed to pay duty, no personal penalty was warranted against him.

Findings of Original in Order no. 139/2009 C.C.(I) J.N.C.H dated 09.09.2009 which was remanded by hon'ble CESTAT order dated:

5. The case was first adjudicated by then Commissioner of Customs (Import), JNCH, Nhava Sheva vide Order-in-Original No. 139/2009 C.C.(I) J.N.CH, dated 09.09.2009. In the earlier said order, the adjudicating authority held that the goods in question are

consistently used in the paper coating process by BIL, and therefore, despite the absence of chemical testing, their essential character could be identified to be identical to previous consignments that had been classified under chapter 40. The company had earlier classified the same goods under CTH 40021100, and the sudden change to chapter 39 was the way to enrich themselves by evading applicable duty. The adjudicating authority concluded that BIL has acted with mala fide intent by misclassifying identical goods for financial benefits. It was held that the extended period under section 28 was invocable and differential duty was recoverable. Interest under section 28 AB was also held to be payable. However, considering that Shri Haveli Ram Bhatia, former General Manager (Commercial) BIL acted in his official capacity with no evidence of personal benefit or mala fide intent, no penalty was imposed on him. With regards to confiscation, it was noted that the goods were not physically available for seizure, and therefore, no order for confiscation or redemption fine was passed.

The findings of the above mentioned order in original are reproduced below:-

"9 (1) The main point for decision before me in this case is the classification of 'Styrene Butadiene Lattices (SBL, for short) or Synthetic Rubber' imported by BIL, in the face of the factual position that a consignment of SBL may merit classification u/Ch 39 or u/Ch 40 depending upon whether it conforms to the parameters of Note 4 of Chapter 40. HSN Explanatory Notes to Heading 40.02 and that no samples of the impugned consignments have been drawn.

(2) True, assessee's duty is to describe the imported goods and its classification is the function of Customs Department, as has been contended by BIL at Para 6(2) of above. It is equally true that drawal of sample and its chemical analysis exact chemical nature of the goods. But the samples of the impugned consignments have been drawn. Let us see if in spite of that, whether there is any way to find out the chemical nature of the goods sufficient enough to classify under appropriate CTH.

(3) BIL is a manufacturer importer and imports the impugned good for use in specified purpose in course of the manufacture of its final product; the manufacturing process and the final product remaining the same, SBL imported by them have to have the same chemical composition/nature. Import of SBR by BIL is not a trading item so that they may be of different chemical composition/nature depending upon the market requirement. The earlier consignments of SBR imported by BIL were classified by them u/Ch: 40.02, thereby implying that they themselves had confirmed that the goods did conform to the parameters of Note 4 of Chapter 40. HSN Explanatory Notes to Heading 40:02. That being the position, there is no reason to infer that the impugned consignments brought for the same use/purpose, would have a different chemical composition/nature meriting their classification u/Ch 39, notwithstanding the fact that no sample of these consignments was drawn. BIL cannot seek classification of the same product differently at different time to suit their interest/advantage, nor can they be allowed to have the benefit of such a design. Accordingly, I hold that the impugned consignments of SBR are classifiable u/Ch 40021100, as had been claimed by BIL in earlier cases; the differential duty under demand is sustainable and is upheld. The amount of Rs. 85,000/- deposited by BIL at the time of investigation shall be adjusted/appropriated against the same

(4) As the demand has been upheld, BIL will also be required to pay appropriate interest u/s 28AB.

(5) Having held so, it follows that BIL had mala-fide in declaring the goods classifiable u/Ch 39 by suppressing the fact that identical goods imported by them earlier conformed to the classification u/Ch 40.02 and they had cleared them under that CTH. Such an action on the part of BIL had resulted in the short-levy in question and so the provisions of Proviso to Sec. 28(1) and Sec. 114A are attracted; both the extended period limitation for five years and 100% penalty are applicable in this.

6) *Shri Haveli Ram Bhatia was the General Manager of the company at the material time and it was during his tenure that the practice of changing the classification and description of the imported goods was initiated and adopted. It is seen from the records that there were other persons also in the company who were fully aware of the change in practice. Investigation did not reveal any direct or indirect gain by Shri Bhatia by resorting to evasion of duty, it was the company who had gained by this duty evasion. Shri Haveli Ram has only acted as an employee of the company and hence, I do not find any reason for imposition of personal penalty on this employee. Judgements in the case of Ispat Udyog Ltd. vs. CCE [2007 (211)E.L.T.-460(Tri- Delhi)] and Associated Plastics and Rayons vs. CCE [2007(2100 E.L.T. - 524(Tri- Ahmedabad)] refers.*

(7) *There is a proposal in the SCN to confiscate the impugned goods imported by BIL and already cleared. The legal position is: when the goods are seized, the possession /custodian of the goods is with the department though the ownership continues to be with the party and when they are confiscated, both the ownership and the custody vest with the Govt. These goods have already been cleared and are not available, may be even with the importer himself, nor is there any bond or security against the same; they are neither available for confiscation, nor can any fine in lieu of confiscation be imposed in respect of these consignments. Judgments in the cases of Sun Exports Vs CC[2008(228)ELT 545(T-M)] and CC Vs. Kiran Jewels [2008 (230)ELT 627 (T- M); refer.*

10. Accordingly, I pass the following order:

(1) *The imported goods shall be classified/u/Ch. 40021100 and charged to duty accordingly.*

(2) *Differential duty of Rs. 89,83,155/- under demand is confirmed u/s 28 of C A 62. The amount of Rs. 85,00,000/- deposited by BIL at the time of investigation shall be adjusted appropriated against the same.*

(3) *BIL will also be required to pay appropriate interest u/s 28AB.*

(4) *There shall be no order for confiscation in respect of the consignments already cleared earlier.*

(5) *There shall be a penalty of Rs 89,83,155/- on BIL under Section 114A of the Customs Act, 1962. However, if BIL pays the entire amount of demand now confirmed and the interest leviable thereon within 30 days from the receipt of this order, the penalty amount shall stand reduced to Rs. 22,45,788/-(being 25% of the above penalty amount) in terms of first and second provisos to Section 114 A of Customs Act, 1962 provided that the reduced amount of penalty is also paid within the said time limit. There shall be no penalty on BIL u/s 112(a); in terms of the fifth proviso to Section 114 A.*

(6) *There shall be no penalty on Shri Haveli Ram Bhatia.*

Order no. A/85236/2019 dated 24.01.2019 passed by Hon'ble CESTAT

7. The Noticee BIL filed an appeal no. C/1103/2009 in the CESTAT, West Zonal Bench, and vide order no. A/85236/2019 dated 24.01.2019, the matter remanded back to the adjudicating authority to be decided afresh after the question of jurisdiction of Officers of DRI to issue notice for recovery of duty is settled. The relevant is reproduced below:-

"7. Considering the criticality of competence to issue show cause notice, the ends of justice will be appropriately met if the impugned order is set aside and the matter remanded back to the adjudicating authority to be decided afresh after the question of jurisdiction of Officers of DRI to issue notice for recovery of duty is settled."

B. Present DeNovo proceedings in pursuance of Order no. A/85236/2019 dated 24.01.2019 passed by Hon'ble CESTAT.

Written Submission

8. BIL through legal representative submitted a written submission dated 24.03.2023, reproduced as follows:-

8.1 BIL has paid the differential duty, ineptest and penalty under section 114A of the Customs Act, 1962 within 23 days of the receipt of the Order in Original and requested to conclude the proceedings against BIL. The copy of the same is enclosed below:-

November 24, 2023

Principal Commissioner of Customs, NS-I
CH, Tal - Uran, Raigad,
Maharashtra - 400707

Dear Sir,

Sub: Request for adjudication (de-novo) of Show Cause Notice dated October 21, 2008

M/s. Ballarpur Industries Limited engaged in import of styrene butadiene copolymer (classifiable under Chapter 39 or Chapter 40). We received Show Cause Notice No. DRI/MZU/B/Inv-06/2007-08/9758 dated October 21, 2008^(SCN), proposing to raise demand of customs duty (Rs. 89 lakhs), interest and penalty. The SCN was adjudicated and Order-in-Original dated September 9, 2009 (Impugned Order) was passed. We paid entire customs duty, interest and 15% penalty within 30 days of issuance of Impugned Order. We however also preferred an appeal before CESTAT Mumbai in 2009. The CESTAT vide its Order dated January 24, 2019 remanded back the matter for de-novo adjudication. In this context, we wish to highlight that ~~since~~ customs duty, interest and penalty has already been paid and we no longer desire to contest the issue. We request the office of your good-self to accordingly pass an order. Swift action will help in closure of matter for finality and we will be much obliged for the same.

Thanking you.
Yours faithfully,

For Ballarpur Industries Limited
Gulani
Authorised Signatory

(Lalitendra Gulani)
Adv.

9. Vide letter dated 19.01.2024 BIL submitted that, BIL has paid the differential duty, ineptest and penalty under section 114A of the Customs Act, 1962 within 23 days of the receipt of the Order in Original and requested to conclude the proceedings against BIL.

Personal Hearing

10. Shri Lalitendra Gulani, legal representative of both the noticee appeared before me and reiterated the written submission dated 24.03.2023 and 19.01.2024.

Discussions and Findings

11. I have carefully gone through the Show Cause Notice, Order in Original by the erstwhile Adjudicating Authority, CESTAT Order and a thorough review of the case records, as well as written submission made by the noticees. Accordingly, I proceed to decide the case on merit.

Principle of natural justice

11.1 Before going into the merits of the case, I find that in the instant case, in compliance of the provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, personal hearing in this matter had been granted to both the Noticees 10.09.2025. Shri Lalitendra Gulani, legal representative of both the noticee appeared before me and reiterated the written submission dated 24.03.2023 and 19.01.2024.

I thus 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.)]

Framing of Issues

Pursuant to a meticulous examination of the Show Cause Notice, Order in Original by the erstwhile Adjudicating Authority, CESTAT Order and a thorough review of the case records, the following pivotal issues have been identified as requisite for determination and adjudication.

- A. What is the background and implication of **C/1103/2009** in the CESTAT, West Zonal Bench, and vide order no. **A/85236/2019 dated 24.01.2019**.
- B. As to whether on ordering a Denovo adjudication, the denovo adjudicating authority has limited jurisdiction or the said Denovo authority has to look the entire issue afresh?
- C. As to whether the classification of the products described by them Styrene Butadiene Co- polymer, covered under Bills of Entry (details of which are enumerated in Annexure A) and claimed under Customs Tariff Item no 39039090 of the Customs Tariff should not be rejected and the same should not classified under Customs Tariff Item no. 40021100 of the Customs Tariff, in terms of the provisions of Section 12 of the Customs Act, 1962.
- D. As to whether the differential duty (duty short paid) amounting to Rs.89,83,155/- (Rupees Eighty nine lakhs eighty three thousand one hundred fifty five only), arising due to the aforesaid misclassification of the foresaid products listed in annexure 'A' to this notice should be demanded and recovered in terms of proviso to Section 28(4) of the Customs Act 1962 along with applicable interest under Section 28 AA of the Customs Act 1962.
- E. As to whether the said goods of a value of Rs. 11,25,81,587/- (as detailed in Annexure 'A' of the show cause notice) should be held liable to confiscation in terms of the provisions of Section 111(m) and 111(d) of the Customs Act, 1962.
- F. As to whether Penalty equivalent to Rs. 89,83,155/- (Rupees Eighty nine lakhs eighty three thousand one hundred fifty five only) should be imposed on M/s Ballarpur

Industries Ltd. under the provisions of Section 114A of Customs Act 1962, with regard to the evasion of Customs duty on account of misdeclaration of imports by resorting to mis-representation and wilful suppression of facts.

- G. As to whether amount of Rs.89,83,155/- (Rupees Eighty nine lakhs eighty three thousand one hundred fifty five only) paid towards the differential duty, Penalty of Rs. 22,45,788/-(Rupees Twenty Two lakhs forty five thousand seven hundred and eighty eight only) paid towards penalty under section 114A and Rs.21,34,500/- (Rupees Twenty One Lakh thirty four thousand five hundred only) paid towards interest under section 28 AA by M/s Ballarpur Industries Ltd. should be appropriated against the aforesaid duty demand.
- H. As to whether penalty should be imposed on Shri Haveli Ram Bhatia under the provisions of Section 112(a) and 112(b) of the Customs Act. 1962.
- I. **Now I take up the first question what is the background and implication of C/1103/2009 in the CESTAT, West Zonal Bench, and vide order no. A/85236/2019 dated 24.01.2019.**

-

12. I observe that Show Cause Notice was issued under F.No. DRI/MZUB/INV-06/07-08 dated 21.10.2008 was issued to M/s Ballarpur Industries Ltd. (BIL) wherein BIL and Shri Haveli Ram Bhatia, former General Manager (Commercial) were called upon to show cause and explain in writing the following: -

(i) The classification of the products described by them Styrene Butadiene Co- polymer, covered under Bills of Entry (details of which are enumerated in Annexure A of the show cause notice) and claimed under Customs Tariff Item no 39039090 of the Customs Tariff should not be rejected and the same should not be classified under Customs Tariff Item no. 40021100 of the Customs Tariff, in terms of the provisions of Section 12 of the Customs Act, 1962

(ii) the differential duty (duty short paid) amounting to Rs. 89,83,155/- (Rupees Eighty-nine lakhs eighty-three thousand one hundred fifty-five only), arising due to the aforesaid misclassification of the foresaid products listed in annexure 'A' to this notice should not be demanded and recovered in terms of proviso to Section 28(1) of the Customs Act 1962.

(iii) the said goods of a value of Rs. 11,25,81,587/- (as detailed in Annexure 'A' of the show cause notice) should not be held liable to confiscation in terms of the provisions of Section 111(m) and 111(d) of the Customs Act, 1962, read with the aforementioned provisions of Foreign Trade (Development & Regulation) Act, 1992 and Foreign Trade (Regulations) Rules 1993.

(iv) the amount of Rs. 85,00,000/- (Rupees Eighty-five lakhs only) voluntarily deposited by M/s Ballarpur Industries Ltd. should not be appropriated against the aforesaid duty demand

(v) Interest on the above differential duty amount should not be recovered under Section 28 AB of the Customs Act 1962

(vi) Penalty equivalent to Rs. 89,83,155/- (Rupees Eighty nine lakhs eighty three thousand one hundred fifty five only) should not be imposed on M/s Ballarpur Industries Ltd. under the provisions of Section 114A of Customs Act 1962, with regard to the evasion of Customs duty on account of misdeclaration of imports by resorting to mis-representation and wilful suppression of facts.

(vii) Penalty should not be imposed on Shri Haveli Ram Bhatia under the provisions of

Section 112(a) and 112(b) of the Customs Act, 1962

12.1 I further observe that accordingly an Order-in-Original No.139/2009 C.C.(I) J.N.CH, dated 09.09.2009 passed by then Commissioner of Customs (Import), Jawaharlal Nehru Customs House, Nhava Sheva wherein the following order was passed.

- The imported goods shall be classified/u/Ch. 40021100 and charged to duty accordingly.
- Differential duty of Rs. 89,83,155/ under demand is confirmed u/s 28 of C A 62. The amount of Rs. 85,00,000/- deposited by BIL at the time of investigation shall be adjusted appropriated against the same.
- BIL will also be required to pay appropriate interest u/s 28AB.
- There shall be no order for confiscation in respect of the consignments already cleared earlier.
- There shall be a penalty of Rs 89,83,155/- on BIL under Section 114A of the Customs Act, 1962. However, if BIL pays the entire amount of demand now confirmed and the interest leviable thereon within 30 days from the receipt of this order, the penalty amount shall stand reduced to Rs. 22,45,788/-(being 25% of the above penalty amount) in terms of first and second provisos to Section 114 A of Customs Act, 1962 provided that the reduced amount of penalty is also paid within the said time limit. There shall be no penalty on BIL u/s 112(a); in terms of the fifth proviso to Section 114 A.
- There shall be no penalty on Shri Haveli Ram Bhatia.

12.2 I further observe that M/s BIL filed an appeal vide appeal no. C/1103/2009 in CESTAT and CESTAT vide their order no. A/85236/2019 dated 24.01.2019 passed the following order:-

*“7. Considering the criticality of competence to issue show cause notice, the ends of justice will be appropriately met if the **impugned order is set aside and the matter remanded back to the adjudicating authority to be decided afresh after the question of jurisdiction of Officers of DRI to issue notice for recovery of duty is settled.**”*

12.3 I find that in view of the above CESTAT order, the order in original issued by the erstwhile adjudicating authority was set aside and the matter was remanded back to the adjudicating authority to decide the question of jurisdiction of DRI officers to issue notice for recovery of duty is settled.

12.4 I find that the DRI officers were competent to issue the Show Cause Notice, and the findings in the original order regarding misclassification and duty evasion stand reaffirmed. On consideration of the facts of the case, the submissions of the noticee, and the legal position clarified by the Hon'ble Supreme Court in the recent review decision in **Commissioner of Customs v. Canon India Pvt. Ltd. [2024 INSC 854]**, it is now settled that officers of the Directorate of Revenue Intelligence (DRI), duly empowered by Notification No. 44/2011-Cus (NT) dated 06.07.2011 and Circular No. 4/99-Cus dated 15.02.1999, are "proper officers" under Section 2(34) read with Sections 5 and 28 of the Customs Act, 1962. The Hon'ble Supreme Court has overruled its earlier decision in Canon India (2021) and upheld the jurisdiction of DRI officers to issue show-cause notices under Section 28 of the Customs Act. I further find that section 97 of the Finance Act, 2022, has validated all notices issued by DRI retrospectively. The relevant part of the judgement Hon'ble Supreme Court in the recent review decision in Commissioner of Customs v. Canon India Pvt. Ltd. [2024 INSC 854], is reproduced below:-

“168. In view of the aforesaid discussion, we conclude that:

(i) DRI officers came to be appointed as the officers of customs vide Notification No. 19/90-Cus (N.T.) dated 26.04.1990 issued by the Department of Revenue, Ministry of Finance, Government of India. This notification later came to be superseded by Notification No. 17/2002 dated 07.03.2002 issued by the Department of Revenue, Ministry of Finance, Government of India, to account for administrative changes.

(ii) The petition seeking review of the decision in Canon India (supra) is allowed for the following reasons:

a. Circular No. 4/99-Cus dated 15.02.1999 issued by the Central Board of Excise & Customs, New Delhi which empowered the officers of DRI to issue show cause notices under Section 28 Page 2 of 8 Sayyed 1-WP.1204.2018.docx of the Act, 1962 as well as Notification No.44/2011 dated 06.07.2011 which assigned the functions of the proper officer for the purposes of Sections 17 and 28 of the Act, 1962 respectively to the officers of DRI were not brought to the notice of this Court during the proceedings in Canon India (supra). In other words, the judgment in Canon India (supra) was rendered without looking into the circular and the notification referred to above thereby seriously affecting the correctness of the same.

b. The decision in Canon India (supra) failed to consider the statutory scheme of Sections 2(34) and 5 of the Act, 1962 respectively. As a result, the decision erroneously recorded the finding that since DRI officers were not entrusted with the functions of a proper officer for the purposes of Section 28 in accordance with Section 6, they did not possess the jurisdiction to issue show cause notices for the recovery of duty under Section 28 of the Act, 1962.

c. The reliance placed in Canon India (supra) on the decision in Sayed Ali (supra) is misplaced for two reasons – first, Sayed Ali (supra) dealt with the case of officers of customs (Preventive), who, on the date of the decision in Sayed Ali (supra) were not empowered to issue show cause notices under Section 28 of the Act, 1962 unlike the officers of DRI; and secondly, the decision in Sayed Ali (supra) took into consideration Section 17 of the Act, 1962 as it stood prior to its amendment by the Finance Act, 2011. However, the assessment orders, in respect of which the show cause notices under challenge in Canon India (supra) were issued, were passed under Section 17 of the Act, 1962 as amended by the Finance Act, 2011. Page 3 of 8 Sayyed 1-WP.1204.2018.docx

(iii) This Court in Canon India (supra) based its judgment on two grounds: (1) the show cause notices issued by the DRI officers were invalid for want of jurisdiction; and (2) the show cause notices were issued after the expiry of the prescribed limitation period. In the present judgment, we have only considered and reviewed the decision in Canon India (supra) to the extent that it pertains to the first ground, that is, the jurisdiction of the DRI officers to issue show cause notices under Section 28. We clarify that the observations made by this Court in Canon India (supra) on the aspect of limitation have neither been considered nor reviewed by way of this decision. Thus, this decision will not disturb the findings of this Court in Canon India (supra) insofar as the issue of limitation is concerned.

(iv) The Delhi High Court in Mangali Impex (supra) observed that Section 28(11) could not be said to have cured the defect pointed out in Sayed Ali (supra) as the possibility of chaos and confusion would continue to subsist despite the introduction of the said section with retrospective effect. In view of this, the High Court declined to give retrospective operation to Section 28(11) for the period prior to 08.04.2011 by harmoniously construing it with Explanation 2 to Section 28 of the Act, 1962. We are of the considered view that the decision in Mangali Impex (supra) failed to take into account the policy being followed by the Customs department since 1999 which provides for the exclusion of jurisdiction of all other proper officers once a show cause notice by a particular proper officer is issued. It could be said that this policy provides a sufficient safeguard against the apprehension of the issuance of multiple show cause notices to the same assessee under Section 28 of the

Act, 1962. Further, the High Court could not have applied the doctrine of harmonious construction to harmonise Section 28(11) with Explanation 2 because Section 28(11) and Explanation 2 operate in two distinct fields and no inherent Page 4 of 8 Sayyed 1-WP.1204.2018.docx contradiction can be said to exist between the two. Therefore, we set aside the decision in Mangali Impex (supra) and approve the view taken by the High Court of Bombay in the case of Sunil Gupta (supra).

(v) Section 97 of the Finance Act, 2022 which, inter-alia, retrospectively validated all show cause notices issued under Section 28 of the Act, 1962 cannot be said to be unconstitutional. It cannot be said that Section 97 fails to cure the defect pointed out in Canon India (supra) nor is it manifestly arbitrary, disproportionate and overbroad, for the reasons recorded in the foregoing parts of this judgment. We clarify that the findings in respect of the vires of the Finance Act, 2022 is confined only to the questions raised in the petition seeking review of the judgment in Canon India (supra). The challenge to the Finance Act, 2022 on grounds other than those dealt with herein, if any, are kept open.

(vi) Subject to the observations made in this judgment, the officers of Directorate of Revenue Intelligence, Commissionerate's of Customs (Preventive), Directorate General of Central Excise Intelligence and Commissionerate's of Central Excise and other similarly situated officers are proper officers for the purposes of Section 28 and are competent to issue show cause notice thereunder. Therefore, any challenge made to the maintainability of such show cause notices issued by this particular class of officers, on the ground of want of jurisdiction for not being the proper officer, which remain pending before various forums, shall now be dealt with in the following manner:

a. Where the show cause notices issued under Section 28 of the Act, 1962 have been challenged before the High Courts directly by way of a writ petition, the respective High Court shall dispose of such writ petitions in accordance with the Page 5 of 8 Sayyed 1-WP.1204.2018.docx observations made in this judgment and restore such notices for adjudication by the proper officer under Section 28.

b. Where the writ petitions have been disposed of by the respective High Court and appeals have been preferred against such orders which are pending before this Court, they shall be disposed of in accordance with this decision and the show cause notices impugned therein shall be restored for adjudication by the proper officer under Section 28.

c. Where the orders-in-original passed by the adjudicating authority under Section 28 have been challenged before the High Courts on the ground of maintainability due to lack of jurisdiction of the proper officer to issue show cause notices, the respective High Court shall grant eight weeks' time to the respective assessee to prefer appropriate appeal before the Customs Excise and Service Tax Appellate Tribunal (CESTAT).

d. Where the writ petitions have been disposed of by the High Court and appeals have been preferred against them which are pending before this Court, they shall be disposed of in accordance with this decision and this Court shall grant eight weeks' time to the respective assessee to prefer appropriate appeals before the CESTAT.

e. Where the orders of CESTAT have been challenged before this Court or the respective High Court on the ground of maintainability due to lack of jurisdiction of the proper officer to issue show cause notices, this Court or the respective High Court shall dispose of such appeals or writ petitions in accordance with the ruling in this judgment and restore such notices to the CESTAT for hearing the matter on merits.

f. Where appeals against the orders-in-original involving issues pertaining to the jurisdiction of the proper officer to issue show cause notices under Section 28 are pending before the Page 6 of 8 Sayyed 1-WP.1204.2018.docx CESTAT, they shall now be decided in accordance with the observations made in this decision."

12.5 In view of the above, I find that DRI Officers are Proper Officers to issue Show Cause Notice for recovery of duty short paid under section 28 of the Customs Act, 1962.

B. As to whether on ordering a Denovo adjudication, the Denovo adjudicating authority has limited jurisdiction or the said Denovo authority has to look the entire issue afresh??

13. I observe that when an appellate court reverses and remands a case for a de novo (fresh) adjudication, the original order is effectively nullified and both parties are generally allowed to make new submissions. The specific effect on the original order and the scope of new submissions, however, depends on the nature of the remand order itself.

The general rule is as follows:-

- **Original order is nullified:** In a de novo remand, the appellate court's decision to send the case back sets aside, or "effaces," the judgment of the lower court. The case is revived as if it were pending from the beginning, restoring the original proceedings.
- **Fresh adjudication:** The lower authority must conduct the proceeding afresh. It cannot simply reconsider the matter based on the original record but must re-examine the case in its entirety.
- **New submissions:** As the case is reopened, both parties have the right to submit new evidence, recall witnesses, and make new arguments, unless the appellate court's order imposes specific restrictions. The purpose is to correct the errors that led to the remand and ensure a fair and just hearing.

13.1 I further observe that the factors that define the scope of the remand are as follows:-

- The extent to which the original order is voided and new submissions are allowed depends heavily on the instructions from the appellate court.
- **Broad remand (de novo):** If the appellate court's order is broad and without specific restrictions, it signifies a complete re-adjudication, and the lower court is free to reconsider all matters of fact and law.
- **Limited remand:** An appellate court can remand a case with specific directions that limit the scope of the new proceedings. For example, the court may require the lower court to:-
 - Address an issue that was previously omitted.
 - Take additional evidence on a particular point.
 - Clarify its findings on a specific question of fact - In such cases, the lower court is bound by these directions and cannot go beyond the mandate of the remand order.
 - Limitations on the power to remand

When the original order remains intact, it's important to distinguish a remand order from a situation where a higher court upholds or modifies the original decision without sending it back. The original order or parts of it may stand if:-

- The appellate court finds that the lower court's decision was correct or does not find a serious legal or procedural error.
- The appellate court modifies the decision but does not deem a new trial necessary.

I further observe that the remand order itself only applies to a specific part of the case, leaving the rest of the original decision intact.

13.2 I observe that M/s BIL filed an appeal vide appeal no. C/1103/2009 in CESTAT challenging Order-in-Original No. 139/2009 C.C.(I) J.N.CH, dated 09.09.2009 passed by the Commissioner of Customs (Import), Jawaharlal Nehru Customs House, Nhava Sheva and CESTAT vide their order no. A/85236/2019 dated 24.01.2019 passed the following

order:-

*“7. Considering the criticality of competence to issue show cause notice, the ends of justice will be appropriately met if the **impugned order is set aside and the matter remanded back to the adjudicating authority to be decided afresh after the question of jurisdiction of Officers of DRI to issue notice for recovery of duty is settled.**”*

13.3 In view of the above findings, I observe that Hon'ble CESTAT in the Denovo Order no. A/85236/2019 dated 24.01.2019 has not placed any limitation on this authority except the DRI Officer being a proper officer. Since the issue of DRI being the Proper officer has already been settled as discussed in detail in para 12 above, all remaining issues raised in the Show cause notice as detailed at para 3.3 above are open before this adjudicating authority.

C. Now I take up the next question as to whether the classification of the products described by them Styrene Butadiene Co- polymer, covered under Bills of Entry (details of which are enumerated in Annexure A) and claimed under Customs Tariff Item no 39039090 of the Customs Tariff should not be rejected and the same should not classified under Customs Tariff Item no. 40021100 of the Customs Tariff, in terms of the provisions of Section 12 of the Customs Act, 1962.

14.1 I observe that BIL has imported Styrene Butadiene Co-Polymer ad claimed the classification under CTH 39039090 vide past 45 Bills of entry as enumerated in annexure A. I observe that the classification of the subject imported goods is the penultimate question in the entire case of the department. I observe that the Noticee has imported the goods under CTH 39039090. The classification of the product under consideration discussed below: -

CHAPTER 3903 of the First Schedule to the Customs Tariff Act deals with “Polymers of Styrene, in Primary Forms” and CHAPTER 4002 of the First Schedule to the Customs Tariff Act deals with “Synthetic rubber and factice derived from oils in primary forms or in plates, sheets or strips; mixtures of any product of heading 4001 with any product of this heading, in primary form or in plates, sheets or strips

Styrene-Butadiene rubber (SBR); carboxylated strene-butadiene rubber (XSBR)”

(A) Description of relevant Chapter Heading as per Customs Tariff -

Chapter Heading No.	Description of Goods
3903	POLYMERS OF STYRENE, IN PRIMARY FORMS <i>Polystyrene:</i>
3903 11 00	Expansible
3903 19	<i>Other</i>

3903 19 10	---	Moulding Powder
3903 19 90	---	Other
3903 20 00	-	Styrene-acrylonitrile (SAN) copolymers
3903 30 00	-	Acrylonitrile-butadiene-styrene (ABS) copolymers
	-	Other
3903 90 10	---	Copolymers, solely of styrene with allyl alcohol, of any acetyl value of 175 or more
3903 90 20	---	Brominated polystyrene, containing weight 58% or more but not more than 71% of bromine, in one of the forms mentioned in Note 6(b) to this Chapter
3903 90 90	---	Other
4002		SYNTHETIC RUBBER AND FACTICE DERIVED FROM OILS, IN PRIMARY FORMS OR IN PLATES, SHEETS OR STRIP; MIXTURES OF ANY PRODUCT OF HEADING 4001 WITH ANY PRODUCTS OF THIS HEADING, IN PRIMARY FORMS OR IN PLATES, SHEETS OR STRIP
	-	<i>Styrene-butadiene rubber (SBR); carboxylated styrene-butadiene rubber (XSBR):</i>
4002 11 00	---	Latex
4002 19	---	Other:
4002 19 10	---	Oil extended styrene butadiene rubber
4002 19 20	---	Styrene butadiene rubber with styrene content exceeding 50%
4002 19 30	---	Styrene butadiene styrene oil bound copolymer
4002 19 90	---	Other
4002 20 00	-	Butadiene Rubber (BR)
	-	<i>Isobutene-isoprene (butyl) rubber (IIR); halo-isobutene-isoprene rubber (CIIR or BIIR):</i>
4002 31 00	---	Isobutene-isoprene (butyl) rubber (IIR)
4002 39 00	---	Other
	-	<i>Chloroprene (Chlorobutadiene) rubber (CR):</i>
4002 41 00	---	Latex
4002 49 00	---	Other
	-	<i>Acrylonitrile-butadiene rubber (NBR):</i>
4002 51 00	---	Latex
4002 59 00	---	Other
4002 60 00	-	Isoprene Rubber (IR)
4002 70 00	-	Ethylene-propylene-non-conjugated diene rubber (EPDM)
4002 80	-	Mixtures of any product of heading 40 01 with any product of this heading:
4002 80 10	---	Latex
4002 80 20	---	Chemically modified form of natural rubber including graft rubber
4002 80 90	---	Other

14.2 In order to come to a conclusion with respect to the classification of the impugned goods, first we have to understand the use and composition of products under CTH 3903 and 4002.

- *Styrene Butadiene Copolymer* is a solid elastomeric material obtained by polymerizing styrene and butadiene, generally by solution or emulsion polymerization. It is supplied in solid forms like granules, bales, or blocks.
- *Styrene Butadiene Latex* is a milky-white aqueous dispersion of **styrene butadiene copolymer** particles in water. It is obtained through emulsion polymerization and is used in coating, adhesives, and construction applications.

14.3 The plain reading of the CTH 3903: "Polymers of styrene, in primary forms" is as follows:-

- Chapter 39 includes copolymers of styrene (e.g. styrene-acrylonitrile, ABS, styrene-butadiene copolymers) *unless* they fall under exceptions in other chapters (for example, Chapter 40 for synthetic rubber) or fail certain tests. The Explanatory Notes for HS / HSN make this clear.

- Also, note in Chapter 39, there are rules (under “Notes” to the Chapter, and sub-heading notes) about copolymers:
 - The expression “copolymers” covers all polymers in which **no single monomer unit** contributes 95 % or more by weight to the total polymer content.
 - Copolymers are generally classified under the heading covering the monomer which **predominates by weight**. If none predominates, then the copolymer is classified under the heading which occurs *last in numerical order* among those equally meritorious.

14.4 The plain reading of the CTH 4002: “Synthetic rubber and factice derived from oils, in primary forms or in plates, sheets or strip; mixtures of any product of heading 4001 with any product of this heading, in primary forms or in plates, sheets or strip.”

- As per Chapter note 4 (to Chapter 40, Note 1, and heading 4002) defining “synthetic rubber.” Defines what substances count as synthetic rubber, based on properties like capacity for **vulcanization**, elongation / recovery, not being thermoplastic, etc.
- Also in Chapter 40, “primary forms” includes *liquids and pastes (including latex, whether or not pre-vulcanised, and other dispersions and solutions)*.

Therefore, it can be inferred that latex is explicitly included in the primary forms under Chapter 40.

The issue for determination is the correct classification of two distinct products, namely **Styrene Butadiene Copolymer (SBC)** and **Styrene Butadiene Latex/Rubber (SBL)**, both derived from similar monomers—styrene and butadiene. Despite chemical similarity, the two products differ significantly in form, usage, and tariff classification and the same can be determined through sampling/testing.

14.5 In the present case, I observe that no testing/samples have been drawn of the impugned goods.

14.6 I further observe that as per the data available on the internet, Styrene-Butadiene Binder for coated paper is normally supplied as a **water-based emulsion (latex)** — a milky white liquid. The polymer (copolymer of styrene and butadiene, sometimes carboxylated) is dispersed in water with stabilizers. Solid content is typically ~50% by weight, with balancing water, emulsifying agents, etc. Physical properties may include pH ~5.5-8, viscosity depending on grade, particle size (often in the nanometre range), etc.

So it can be inferred that Styrene Butadiene binder is an emulsion/latex form (liquid dispersion) rather than a dry powder (for the binder used in coating).

14.7 I further observe that as per CTH, for styrene-butadiene binder / latex, the relevant classification is under synthetic rubber, because it is a styrene-butadiene polymer latex. The proper classification is as follows:-

Under **HS Chapter 40** (“Rubber and articles thereof”), the heading **4002** covers *synthetic rubber and factice derived from oils ... in primary forms or in plates, sheets or strip; mixtures ...*

- Specifically, **400211** is for “Rubber; synthetic, styrene-butadiene rubber (SBR) and carboxylated styrene-butadiene rubber (XSBR) latex, in primary forms or in plates, sheets or strip.”

Therefore it can be inferred that binder in emulsion/latex form (which is what is used in

coating) would typically fall under **CTH 4002.11** (synthetic, styrene-butadiene rubber latex).

14.8 I further observe that BIL has filed an appeal in Hon'ble CESTAT on 23.07.2007 (attached as RUD -5 of the SCN), on scrutiny of the Appeal application it was observed that in ground of appeals, BIL has claimed classification of Latex/Styrene Butadiene Copolymer used for coating paper under chapter of the Customs Tariff. The relevant is of the appeal is reproduced below:-

"We have been importing the product under Customs Tariff Sub heading 4002.1100 and have appropriately classified the same. At the time of provisional assessment, we had declared the chemical name of the imported product as 'Styrene Butadiene Co-polymer'".

14.9 In view of the above, it is undisputed fact that BIL has been importing **Styrene Butadiene Co-polymer** under **CTH 4002.1100** and in the present case they have failed to establish that by what reasons BIL has changed the classification of the goods from CTH 40002 to CTH 3903.

14.10 I further observe that as per statement of Shri. Ajay Gokhale, Deputy Manager Commercial, BIL dated 12.03.2007 under section 108 of the Customs Act, 1962.

- *Their factory at Bhigwan, they had three large storage tanks of 100 kilolitres and three small tanks with the capacity of 20 kilo litre, which to the best of his knowledge, were utilised solely for storage of Latex, Styrene Butadiene Co-polymer, that Shri. V. Patharkar, head of Quality Control Section at their Bhigwan unit would be in a position to inform the nature and usage of Latex, Styrene Butadiene Co-polymer; that his predecessor used to handle all negotiations with the foreign suppliers on behalf of their company for supplies made to Bhigwan and assured to provide this current address and contact number within a short time; that as regards to the in classification of products imported in their company, it was clarified that in case of already existing items, the classification used to be done on the basis of existing data and further added that there had been no instance of any new product being imported since he had joined the company.*
- *During the course of the above statement, Shri. Ajay Gokhale was shown a copy of Appeal dated 17.01.2007 filed by them before the Customs, Excise and Service Tax Appellate Tribunal (West Zone) on the issue of Anti dumping duty on product 'Latex'. Attention of Shri. Ajay Gokhale was drawn to para 7.1 of the 'Grounds of Appeal forming part of the said Appeal, which read as follows;*

"We submit that we have been importing the product under Customs Tariff sub heading 4002.11.00 and have appropriately classified the same. At the time of provisional assessment we had declared the chemical name of the imported products as 'Styrene Butadiene Co-polymer'"

- *Shri. Ajay Gokhale was also shown copy of the Bill of Entry no. 879762 dated 25.08.2006 filed in the name of M/s BIL relating to import of '**Co-polymer of Styrene Butadiene**' which had been classified under Customs Tariff Item No. 39039090. He was asked to give explanation for the divergent classification as appearing in two documents for the same product. In response Shri Ajay Gokhale stated that on the basis of these documents the **product prima facie appeared to be classifiable under Chapter 40 of the Customs Tariff** and further stated that he would ascertain the reasons leading to the said contradiction from their records and would report back to the department.*

14.11 I find that the Legal position about the importance and validity of statements rendered under Section 108 of the Customs Act, 1962 is well settled. It has been held by various judicial fora that Section 108 is an enabling act and an effective tool in the hands of Customs to collect evidences in the form of voluntary statements. The Hon'ble Courts in various judicial pronouncements, have further strengthened the validity of this enabling provision. It has been affirmed that the statement given before the Customs officers is a material piece of evidence and certainly can be used as substantive evidence, among others, as held in the following cases:

- i. *Asst. Collector of Central Excise, Rajamundry v. M/s. Duncan Agro India Ltd.* reported in 2000 (120) E.L.T. 280 (S.C.) : Statement recorded by a Customs Officer under Section 108 is a valid evidence
- ii. In 1996 (83) E.L.T. 258 (S.C.) in the case of *Shri Naresh J. Sukawani v. Union of India* : “ 4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act.”
- iii. It was held that statement recorded by the Customs officials can certainly be used against a co-noticee when a person giving a statement is also tarnishing his image by making admission of guilt. Similar view was taken in the case of *In Gulam Hussain Shaikh Chougule v. S. Reynolds* (2002) 1 SCC 155 = 2001 (134) E.L.T. 3 (S.C.)
- iv. *State (NCT) Delhi Vs Navjot Sandhu @ Afsan Guru*, 2005 (122) DLT 194 (SC): Confessions are considered highly reliable because no rational person would make admission against his interest unless prompted by his conscience to tell the truth. “Deliberate and voluntary confessions of guilt, if clearly proved are among the most effectual proofs in law.” (Vide Taylors’s Treatise on the Law of Evidence, VI. I).
- v. There is no law which forbids acceptance of voluntary and true admissional statement if the same is later retracted on bald assertion of threat and coercion as held by Hon’ble Supreme Court in the case of *K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin*, (1997) 3 SCC 721.
- vi. Hon’ble Supreme Court in the case of *Kanhailal Vs. UOI*, 2008 (1) Scale 165 observed: “ *The law involved in deciding this appeal has been considered by this court from as far back as in 1963 in Pyare Lal Bhargava’s case (1963) Supp. 1 SCR 689. The consistent view which has been taken with regard to confessions made under provisions of section 67 of the NDPS Act and other criminal enactments, such as the Customs Act, 1962, has been that such statements may be treated as confessions for the purpose of Section 27 of the Indian Evidence Act.*
- vii. **Hon’ble High Court of Mumbai in FERA Appeal No 44 OF 2007 in the case of KANTILAL M JHALA Vs UNION OF INDIA vide judgment dated: October 5, 2007 (reported in 2007-TIOL-613-HC-MUM-FEMA) held that “Confessional statement corroborated by the seized documents, admissible even if retracted”.**
- viii. The Apex Court in the case *Hazari Singh V/s. Union of India* reported in 110 E.L.T. 406, and case of *Surjeet Singh Chhabra V/s. Union of India & Others* reported in 1997 (1) S.C.C. 508 has held that the confessional statement made before the Customs Officer even though retracted, is an admission and binding on the person.-”
- ix. The Hon’ble Supreme Court in the case of *Badaku Joti Savant Vs. State of Mysore* [1966 AIR 1746 = 1978 (2) ELT J 323 (SC 5 member bench)] laid down that statement to a Customs officer is not hit by section 25 of Indian Evidence Act, 1872 and would be admissible in evidence and in conviction based on it is correct.

- x. In the case of Bhana Khalpa Bhai Patel Vs. Asstt. Collr. of Customs, Bulsar [1997 (96) E.L.T. 211 (SC)], the Hon'ble Apex Court at Para 7 of the judgment held that :-*" It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence vide Romesh Chandra v. State of West Bengal, AIR 1970 S.C. 940 and K.I. Pavunny v. Assistant Collector (H.Q.), Central Excise Collectorate, Cochin, 1997 (90) E.L.T. 241 (S.C.) = (1997) 3 S.C.C. 721."*
- xi. In the case of Raj Kumar Karwal Vs. UOI & Others (1990) 2 SCC 409, the Court held that *officers of the Department of Revenue Intelligence who have been vested with the powers of an Officer-in-Charge of a police station under Section 53 of the NDPS Act, 1985, are not police officers within the meaning of Section 25 of the Evidence Act. Therefore, a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible in evidence against him.*
- xii. Hon. Supreme Court's decisions in the case of Romesh Chandra Mehta Vs. the State of West Bengal (1969) 2 S.C.R. 461, A.I.R. 1970 S.C. 940. The provisions of Section 108 are judicial provisions within statement has been read, correctly recorded and has been made without force or coercion. In these circumstances there is not an iota of doubt that the statement is voluntary and truthful. The provisions of Section 108 also enjoin that the statement has to be recorded by a Gazetted Officer of Customs and this has been done in the present case. The statement is thus made before a responsible officer and it has to be accepted as a piece of valid evidence
- xiii. Jagjit Singh vs State Of Punjab And Another, Hon'ble Punjab and Haryana High Court in CrI. Appeal No.S-2482-SB of 2009 Date of Decision: October 03, 2013 held that : *The statements under Section 108 of the Customs Act were admissible in evidence as has been held by the Hon'ble Supreme Court in Ram Singh vs. Central Bureau of Narcotics, 2011 (2) RCR (Criminal) 850.*

14.12 In view of the above referred consistent judicial pronouncements, the importance of statements rendered under Section 108 of the Customs Act, 1962 during the case is quite imperative. **I find that the statements made in the case were voluntary and are very much valid in Law and can be relied upon as having full evidentiary value.**

14.13 I further observe that BIL vide their letter dated 10.04.2007 referred to the dispute in classification of their imported goods described in the respective Bills of Entry as "Styrene Butadiene Co-polymer" and willingly reclassified the same under Chapter 40 of the Customs Tariff (instead of Chapter 39 of the Customs Tariff) and paid differential Customs duty payable. I further observe that they had 45 past Bills of Entry pertaining to import of Styrene Butadiene Copolymer cleared under Chapter 39 of the Customs Tariff from Nhava Sheva port during 20.04.2005 to 25.08.2006 and the differential duty worked out to Rs. 89,71,336/- (approx.). Accordingly, BIL has voluntarily submitted Demand draft nos. 368622 and 368623, both dated 11.04.2007 for Rs. 60,00,000/- and Rs. 25,00,000/-.

14.15 There is no dispute about the fact that Importer has been classifying the same goods under CTH 40021100 prior to April 2005. I further observe that there is no justification to infer that the present consignments, imported for the same purpose and under the same manufacturing process, would possess a different chemical composition so as to merit classification under Chapter 39. I further observe the duty structure under CTH 39 and 40 and the same is reproduced below:-

Year	Rate of Duty under CTH 39	Rate of Duty under CTH 40
2004-05	3903 @ 20%	40.02. @ 20%

2005-06	3903 @ 10%	40.02. @ 15%
2006-07	3903 @ 05%	40.02. @ 12.5%

14.16 From the above table, it has been established that post March 2005, BIL started classifying the goods under CTH 3903 since April 2005, as the Customs Duty levied on CTH 3903 was less in comparison to CTH 4002. The importer cannot be permitted to alter classification of the same product at different times merely to secure a lower incidence of duty. Accordingly, I hold that the impugned consignments of Styrene Butadiene Rubber are classifiable under CTH 40021100, as consistently accepted by the importer in earlier cases.

14.17 The importer has not provided any evidence, bases or defence as to why they have changed the classification.

14.18 I further observe that the claim of classification under CTH 390390, resulting in levy of duty at the reduced rate of 5%, was not admissible for the subject product, which is more appropriately classifiable under CTH 400211. The adoption of CTH 390390 had the effect of securing a lower incidence of duty i.e. 5% as against the correct rate of 12.5% applicable under CTH 400211, thereby conferring an unintended and undue benefit to the importer.

14.19 In view of the above, I classify the Styrene Butadiene Lattices under CTH 4002, as declared by BIL prior to March 2005.

D. As to whether the differential duty (duty short paid) amounting to Rs.89,83,155/- (Rupees Eighty nine lakhs eighty three thousand one hundred fifty five only), arising due to the aforesaid misclassification of the foresaid products listed in annexure 'A' to this notice should be demanded and recovered in terms of proviso to Section 28(4) of the Customs Act 1962 along with applicable interest under Section 28 AA of the Customs Act 1962.

15. I reiterate my findings at paragraph 14 above, wherein it has been clearly established that the imported goods, namely 'Styrene Butadiene Lattices,' covered under the Bills of Entry listed in Annexure-A, merit classification under CTH 4002.

Annexure A

ANNEXURE A

M/s. Ballarpur Industries Ltd.

Import of Styrene Butadiene Co-polymer during 2005-06 and 2006-07

Sr. No.	B/E No.	B/E Date	Commodity	Quantity (MT)	AV (Rs.)	Rate of duty(%) [as per CTH 39039090]	Duty paid(Rs.)	Rate of duty(%) [as per CTH 40021100]	Duty payable (Rs.)	Differential duty payable (J-G)
A	B	C	D	E	F	G	H	I	J	K
1	849268	20-Apr-05	Styrene Butadiene Copolymer Grade XQ 83294.01	20.13	806034.39	10+16+2+2	229809	15+16+2+2	277625	47816
2	866450	12-May-05	Styrene Butadiene Copolymer Grade Styronal DD-708	100.66	4016847.37	10+16+2+2	1145245	15+16+2+2	1383537	236292
3	876756	26-May-05	Styrene Butadiene Copolymer Grade Styronal DD-708	98.72	3939431.47	10+16+2+2	1123173	15+16+2+2	1356873	233700
4	896535	21-Jun-05	Styrene Butadiene Copolymer Grade Styronal DD-708	97.87	3758128.73	10+16+2+2	1071482	15+16+2+2	1294426	222944
5	901070	27-Jun-05	Styrene Butadiene Copolymer Grade Styronal DD-708	97.96	3761584.65	10+16+2+2	1072467	15+16+2+2	1295616	223149
6	904053	29-Jun-05	Styrene Butadiene Copolymer Grade XQ 83294.01	39.63	1521759.9	10+16+2+2	433870	15+16+2+2	524145	90275

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7	918992	19-Jul-05	Styrene Butadiene Copolymer Grade Styronal DD-708	58.75	2281114.77	10+16+2+2	644687	15+16+2+2	778804	134137
8	974248	22-Sep-05	Styrene Butadiene Copolymer Grade XQ 83294.01	39.66	1450749.91	10+16+2+2	413624	15+16+2+2	499687	86063
9	612825	7-Nov-05	Styrene Butadiene Copolymer Grade XQ 83294.01	40.04	1511358.85	10+16+2+2	430904	15+16+2+2	520563	89659
0	617393	10-Nov-05	Styrene Butadiene Copolymer Grade XQ 83294.01	20.05	756811.81	10+16+2+2	215775	15+16+2+2	260671	44896
1	623803	18-Nov-05	Styrene Butadiene Copolymer Grade XQ 83294.01	40.11	1514001.08	10+16+2+2	431658	15+16+2+2	521473	89815
2	640872	7-Dec-05	Styrene Butadiene Copolymer Grade Styronal DD-708	59.36	2245217.35	10+16+2+2	640135	15+16+2+2	773328	133193
3	647958	15-Dec-05	Styrene Butadiene Copolymer Grade Styronal DD-708	78.28	2960842.57	10+16+2+2	844167	15+16+2+2	1019814	175847
4	652667	21-Dec-05	Styrene Butadiene Copolymer Grade XQ 83294	60.29	2308373.72	10+16+2+2	658141	15+16+2+2	795082	136941
5	656921	27-Dec-05	Styrene Butadiene Copolymer Grade Styronal DD-708	78.31	2961977.28	10+16+2+2	844491	15+16+2+2	1020205	175714
6	665684	6-Jan-06	Styrene Butadiene Copolymer Grade Styronal DD-708	78.84	2935619.6	10+16+2+2	836976	15+16+2+2	1011126	174150
7	711885	8-Mar-06	Copolymer of Styrene Butadiene Grade PE 316	60.76	2222191.37	5+16+2+2+4	610700	12.5+16+2+2+4	816351	205651
8	715968	13-Mar-06	Copolymer of Styrene Butadiene Grade PE 316	79.61	2911597.35	5+16+2+2+4	800162	12.5+16+2+2+4	1069613	289451

19	716355	13-Mar-06	Styrene Butadiene Copolymer Grade Styronal DD-708	77.95	2882523.19	5+16+2+2+4	792171	12.5+16+2+2+4	1058932	296761
20	722436	20-Mar-06	Styrene Butadiene Copolymer Grade Styronal DD-708	58.95	2179919.72	5+16+2+2+4	599083	12.5+16+2+2+4	800822	201739
21	728318	24-Mar-06	Styrene Butadiene Copolymer Grade Styronal DD-708	58.68	2169935.34	5+16+2+2+4	596339	12.5+16+2+2+4	797154	200815
22	735431	1-Apr-06	Copolymer of Styrene Butadiene Grade PE 316	79.35	2915087.58	5+16+2+2+4	801121	12.5+16+2+2+4	1070895	289774
23	736366	3-Apr-06	Copolymer of Styrene Butadiene Grade PE 316	77.36	2841980.78	5+16+2+2+4	781029	12.5+16+2+2+4	1044038	263009
24	743702	12-Apr-06	Styrene Butadiene Copolymer Grade Styronal DD-708	20.14	748095.67	5+16+2+2+4	205591	12.5+16+2+2+4	274823	69232
25	746552	15-Apr-06	Styrene Butadiene Copolymer Grade Styronal DD-708	83.02	3083758.81	5+16+2+2+4	847475	12.5+16+2+2+4	1132859	285384
26	747742	17-Apr-06	Styrene Butadiene Copolymer Grade XQ 83294	100.29	3747963.92	5+16+2+2+4	1030011	12.5+16+2+2+4	1376863	346852
27	754833	24-Apr-06	Styrene Butadiene Copolymer Grade XQ 83294	100.21	3744974.21	5+16+2+2+4	1028189	12.5+16+2+2+4	1375785	346576
28	757508	25-Apr-06	Styrene Butadiene Copolymer Grade Styronal DD-708	55.53	2062648.68	5+16+2+2+4	566855	12.5+16+2+2+4	757741	190888
29	757870	26-Apr-06	Styrene Butadiene Copolymer Grade Styronal DD-708	55.85	2074535.4	5+16+2+2+4	570121	12.5+16+2+2+4	762107	191988
30	759633	27-Apr-06	Styrene Butadiene Copolymer Grade Styronal DD-718	58.72	2106851.34	5+16+2+2+4	579002	12.5+16+2+2+4	773979	194977

31	762975	1-May-06	Styrene Butadiene Copolymer Grade XQ 83294	95.73	3617434.47	5+16+2+2+4	994139	12.5+16+2+2+4	1328911	334772
32	764971	3-May-06	Styrene Butadiene Copolymer Grade XQ 83294	97.73	3693010.25	5+16+2+2+4	1014908	12.5+16+2+2+4	1356675	341767
33	768909	8-May-06	Styrene Butadiene Copolymer Grade XQ 83294	98.13	3708125.4	5+16+2+2+4	1019062	12.5+16+2+2+4	1362228	343166
34	772759	11-May-06	Styrene Butadiene Copolymer Grade Styronal DD-708	75.41	2823314.39	5+16+2+2+4	778373	12.5+16+2+2+4	1040487	262114
35	772755	11-May-06	Styrene Butadiene Copolymer Grade Styronal DD-708	55.88	2098789.66	5+16+2+2+4	576787	12.5+16+2+2+4	771017	194230
36	783305	23-May-06	Styrene Butadiene Copolymer Grade XQ 83294	91.36	3452301.4	5+16+2+2+4	948757	12.5+16+2+2+4	1268247	319490
37	806836	14-Jun-06	Styrene Butadiene Copolymer Grade XQ 83294	92.77	3571287.83	5+16+2+2+4	981457	12.5+16+2+2+4	1311959	330502
38	809704	17-Jun-06	Styrene Butadiene Copolymer Styronal D 719	62.02	2373081.33	5+16+2+2+4	652162	12.5+16+2+2+4	871775	219613
39	818684	27-Jun-06	Styrene Butadiene Copolymer Styronal D 719	64.56	2470248.96	5+16+2+2+4	678871	12.5+16+2+2+4	907478	228607
40	904052	29-Jun-06	Styrene Butadiene Copolymer Grade XQ 83294.01	20.14	773359.69	10+16+2+2	220493	15+16+2+2	266371	45878
41	827256	6-Jul-06	Styrene Butadiene Copolymer Styronal D 719	21.7	836593.81	5+16+2+2+4	229912	12.5+16+2+2+4	307334	77422
42	834153	12-Jul-06	Styrene Butadiene Copolymer Styronal D 719	68.58	2643944.85	5+16+2+2+4	726605	12.5+16+2+2+4	971287	244682

43	940394	16-Aug-06	Copolymer of Styrene Butadiene Grade PE 1605.2	98.95	3755926.29	10+16+2+2	1070854	15+16+2+2	1293667	222613
44	879762	25-Aug-06	Copolymer of Styrene Butadiene Grade PE 316	20.07	784557.17	5+16+2+2+4	215611	12.5+16+2+2+4	288217	72606
45	879278	25-Aug-06	Copolymer of Styrene Butadiene Grade PE 316	40.36	1577714.37	5+16+2+2+4	433585	12.5+16+2+2+4	579594	146009

31387009

40370164

8983155

15.2 I further observe that the SCN has proposed demand of differential duty under section 28(1) of the Customs Act, 1962. As discussed above pursuant to changes in Finance Act

over the period of time and amendments in Customs Act. In the present the duty short paid will be demanded under section 28(4) of the Customs Act, the same is reproduced below:-

“Section 28(4) Where any duty has not been ¹⁰[levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been ¹¹[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.

15.3 I find that prior to March 2005, BIL classified the impugned goods i.e. Styrene Butadiene Lattices under CTH 4002 and post March 2005 BIL started classifying the goods under CTH 3903. I further observe that Post March 2005 the duty rate has decreased substantially. I further observe that investigation has brought out the fact that BIL has just changed the Classification of the goods, however the description of the goods was same, which clearly indicates that BIL has misclassified the goods in order to enrich by themselves by evading applicable Customs Duty.

15.4 Further, the noticee is also liable to pay applicable interest under the provisions of Section 28AA of the Customs Act, 1962. The relevant provision as under:

Section 28AA.

Interest on delayed payment of duty—

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, 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), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

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 wilful 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.”

Thus, interest leviable on delayed or deferred payment of duty for whatever reasons, is aptly applicable in the instant case.

15.5 In view of the above, I find that the noticee had wilfully misstated the correct classification of the good to evade the legitimate customs duty on account of collusion, wilful mis-statement and suppression of facts. Therefore, I confirm the demand of differential duty of **Rs.89,83,155/- (Rupees Eighty nine lakhs eighty three thousand one hundred fifty five only)**, in respect of 45 bills of entry from 20.04.2005 to 25.08.2006 along with the applicable interest.

E. As to whether the said goods of a value of Rs. 11,25,81,587/- (as detailed in Annexure 'A' of the show cause notice) should be held liable to confiscation in terms of the provisions of Section 111(m) and 111(d) of the Customs Act, 1962.

16. I observe that from the discussions above in para 15, it is an undisputed fact that the importer has misclassified the imported goods under CTH 3903 instead of right classification under 4002 as declared by then prior to March 2005.

16.1 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 re-produced herein below:

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

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

16.2 I have already held in foregoing paras that the importer had wilfully misrepresented the facts and had evaded correct Customs duty by intentionally misclassification. By resorting to this deliberate suppression of facts and wilful mis-declaration, the importer has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. Thus, this wilful and deliberate act was done with the fraudulent intention to claim ineligible rate of duty. Therefore, on account of the aforesaid mis-declaration / mis-statement in the aforementioned Bills of Entry in Annexure A, the impugned goods having a total Assessable Value of Rs. 11,25,81,587/- (Rs. Eleven crore twenty five lakh eighty one thousand five hundred eighty seven) are liable for confiscation under Section 111(m), of the Customs Act, 1962. Accordingly, I find that acts of omission and commission on part of the importer has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

16.3 I also find that the case is established on documentary evidences in respect of past imports, though the department is not required to prove the case with mathematical

precision but what is required is the establishment of such a degree of probability that a prudent man may on its basis believe in the existence of the facts in issue [as observed by the Hon'ble Supreme Court in CC Madras V/s D Bhuramal – [1983 (13) ELT 1546 (SC)]. Further in the case of K.I. International Vs Commissioner of Customs, Chennai reported in 2012 (282) E.L.T. 67 (Tri. - Chennai) the Hon'ble CESTAT, South Zonal Bench, Chennai has held as under: -

“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. Evidence Act not being applicable to quasi-judicial proceeding, preponderance of probability came to rescue of Revenue and Revenue was not required to prove its case by mathematical precision. Exposing entire modus operandi through allegations made in the show cause notice on the basis of evidence gathered by Revenue against the appellants was sufficient opportunity granted for rebuttal. Revenue discharged its onus of proof and burden of proof remained un-discharged by appellants. They failed to lead their evidence to rule out their role in the offence committed and prove their case with clean hands. No evidence gathered by Revenue were demolished by appellants by any means. ‘

16.4 I therefore hold that the said imported goods are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962, as proposed in the Show Cause Notice. The subject goods imported are not available for confiscation, but I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

“23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, “Whenever confiscation of any goods is authorised by this Act”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).”

16.4.1 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.).

16.4.2 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.

16.4.3 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.

16.4.4 In view of above facts, findings and legal provisions, I find that it is an admitted fact that the noticee has misclassified the goods. Therefore, I hold that the acts and omissions of the importer, by way of collusion and willful mis-statement of the imported goods, have rendered the goods liable to confiscation under section 111(m) of the Customs Act, 1962. **Accordingly, I observe that the present case also merits imposition of Redemption Fine, regardless of the physical availability, once the goods are held liable for confiscation.**

F. As to whether Penalty equivalent to Rs. 89,83,155/- (Rupees Eighty nine lakhs eighty three thousand one hundred fifty five only) should be imposed on M/s Ballarpur Industries Ltd. under the provisions of Section 114A of Customs Act 1962, with regard to the evasion of Customs duty on account of misdeclaration of imports by resorting to mis-representation and wilful suppression of facts.

17. I reiterate my findings from paras 14 above for the question of penalty also as the same are mutatis mutandis applicable to this issue also. The provisions of Section 114 A of the Customs Act, 1962 are reproduced as under: -

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 (8) 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 order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the 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 the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section [28AA], and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

Explanation . - For the removal of doubts, it is hereby declared that -

(i) *the provisions of this section shall also apply to cases in which the order determining the duty or interest 3 [sub-section (8) of section 28] relates to notices issued prior to the date* on which the Finance Act, 2000 receives the assent of the President;*

(ii) *any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.]*

17.1 It is a settled law that fraud and justice never dwell together (Fraus et 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. Chengalvaraya 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 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 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."

17.3 As explained above, it is conclusively established that BIL has misclassified the goods under CTH 3903 to evade appropriate Customs Duty. Thus, the importing firm has deliberately misclassified the goods and evaded the duty of Rs. 89,83,155/- (Eighty nine lakh eighty three thousand one hundred fifty five) in respect of 45 bill of entry as mentioned in Annexure A which should be demanded and recovered from the BIL under Section 28 (4) of the Customs Act, 1962. Consequently, BIL is liable for penalty under Section 114A of the Customs Act, 1962.

F. As to whether amount of Rs.89,83,155/- (Rupees Eighty nine lakhs eighty three thousand one hundred fifty five only) paid towards the differential duty, Penalty of Rs. 22,45,788/-(Rupees Twenty Two lakhs forty five thousand seven hundred and eighty eight only) paid towards penalty under section 114A and Rs.21,34,500/-(Rupees Twenty One Lakh thirty four thousand five hundred only) paid towards interest under section 28 AA of the Customs Act by M/s Ballarpur Industries Ltd. should be appropriated against the aforesaid duty demand.

18. I observe that as per written submission dated 30.03.2023 and 24.11.2023 BIL has informed the payments made by them as follows:-

Sr.No	Amount	Remarks
1	85,00,000/-	Voluntary amount paid during the course of investigation.
2	4,83,155/-	Differential Customs Duty
3	22,45,788/- (25% of the Differential Duty)	Paid Towards penalty under section 114A
4	21,24,500/-	Paid Towards Interested under Section 28AA

18.2 I further observe that BIL has paid the total amount of Differential Customs Duty of Rs. 89,83,155/- (Rupees Eighty nine lakh eighty three thousand one hundred fifty five only). I further observe that BIL has paid amount Rs.21,34,500/-(Rupees Twenty One Lakh thirty four thousand five hundred only) paid towards interest under section 28 AA of the Customs Act 1962.

18.3 For the sake brevity I will reproduce provision of Section 114A of the Customs Act, 1962

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 ² [****]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 ³ [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:*

⁴ [Provided that where such duty or interest, as the case may be, as determined under ³ [sub-section (8) of section 28], and the interest payable thereon under section ⁵ [28AA], is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the 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 the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section ⁵ [28AA], and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :

18.4 From the above, it is evident that if BIL pays the penalty imposed under Section 114A of the Customs Act, 1962 within a period of thirty (30) days from the date of receipt of this order, the quantum of penalty shall stand reduced to twenty-five percent (25%) of the differential duty determined, together with the applicable interest thereon, in terms of the proviso to Section 114A.

18.5 In view of the above, I find that M/s BIL has paid an amount of ₹22,45,788/- (Rupees Twenty Two Lakh Forty Five Thousand Seven Hundred and Eighty Eight only), which is equivalent to twenty-five percent (25%) of the differential duty determined. I further observe that, in terms of the proviso to Section 114A of the Customs Act, 1962, BIL was required to pay twenty-five percent (25%) of the duty amount **along with the applicable interest** within thirty days of receipt of the order, in order to avail the benefit of reduced penalty.

18.6 In view of the above, it is evident that BIL has not paid the entire penalty as per the

provisions of section 114 A of the Customs Act, 1962. They have not paid any penalty on the interest amount.

18.7 In view of the above, the amount paid by the noticee is liable for appropriation.

G. As to whether penalty should be imposed on Shri Haveli Ram Bhatia under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962.

19.I reiterate my findings from paras 14 above for the question of penalty also as the same are mutatis mutandis applicable to this issue also.

19.1 I further observe that shri Haveli Ram Bhatia, former General Manager BIL in his statement recorded under section 108 of the Customs Act, 1962 dated 26.02.2008 has accepted he met a foreign supplier who suggested that able to supply latex to them if in their purchase orders they mentioned "Styrene Butadiene Co-Polymers" in place of "Latex". It was also admitted by Shri H.R. Bhatia that accordingly for a few products of Latex, they started placing orders with the overseas suppliers by mentioning the term "Styrene Butadiene Co-Polymer" on the purchase Orders and consequently the invoices received from the Overseas Suppliers, the product was described as "Styrene Butadiene Co-Polymer" instead of Latex and this approach and method enabled them to assess the consignments through Customs by classifying the same under Customs Tariff Item no.390390.90 of the Customs Tariff and thus paying a lower rate of duty. It was also admitted by Shri H.R. Bhatia, in the said statement, that in this manner, they had initiated clearance of Latex Consignments by describing the same as styrene Butadiene Co-Polymer and classifying the same under Chapter 39 of the Customs Tariff. It was also revealed by him that the first consignment of Latex described as Styrene Butadiene Co-Polymer was imported somewhere around April 2005.

19.2 I find that the aforesaid mode and method of manipulation led to mis-statement in respect of description / declaration and consequent classification by the importers in the purchase orders and consequently in the import invoices and as well as in the respective Bills of Entry.

19.3 I find that the Legal position about the importance and validity of statements rendered under Section 108 of the Customs Act, 1962 is well settled. It has been held by various judicial fora that Section 108 is an enabling act and an effective tool in the hands of Customs to collect evidences in the form of voluntary statements. The Hon'ble Courts in various judicial pronouncements, have further strengthened the validity of this enabling provision. It has been affirmed that the statement given before the Customs officers is a material piece of evidence and certainly can be used as substantive evidence, among others, as held in the following cases:

- xiv. *Asst. Collector of Central Excise, Rajamundry v. M/s. Duncan Agro India Ltd.* reported in 2000 (120) E.L.T. 280 (S.C.) : Statement recorded by a Customs Officer under Section 108 is a valid evidence
- xv. In 1996 (83) E.L.T. 258 (S.C.) in the case of *Shri Naresh J. Sukawani v. Union of India* : " 4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act. "
- xvi. It was held that statement recorded by the Customs officials can certainly be used

- against a co-noticee when a person giving a statement is also tarnishing his image by making admission of guilt. Similar view was taken in the case of *In Gulam Hussain Shaikh Chougule v. S. Reynolds* (2002) 1 SCC 155 = 2001 (134) E.L.T. 3 (S.C.)
- xvii. *State (NCT) Delhi Vs Navjot Sandhu @ Afsan Guru*, 2005 (122) DLT 194 (SC): Confessions are considered highly reliable because no rational person would make admission against his interest unless prompted by his conscience to tell the truth. "Deliberate and voluntary confessions of guilt, if clearly proved are among the most effectual proofs in law." (Vide Taylors's Treatise on the Law of Evidence, VI. I).
- xviii. There is no law which forbids acceptance of voluntary and true admissional statement if the same is later retracted on bald assertion of threat and coercion as held by Hon'ble Supreme Court in the case of *K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin*, (1997) 3 SCC 721.
- xix. Hon'ble Supreme Court in the case of *Kanhailal Vs. UOI*, 2008 (1) Scale 165 observed: "*The law involved in deciding this appeal has been considered by this court from as far back as in 1963 in Pyare Lal Bhargava's case (1963) Supp. 1 SCR 689. The consistent view which has been taken with regard to confessions made under provisions of section 67 of the NDPS Act and other criminal enactments, such as the Customs Act, 1962, has been that such statements may be treated as confessions for the purpose of Section 27 of the Indian Evidence Act.*
- xx. **Hon'ble High Court of Mumbai in FERA Appeal No 44 OF 2007 in the case of KANTILAL M JHALA Vs UNION OF INDIA vide judgment dated: October 5, 2007 (reported in 2007-TIOL-613-HC-MUM-FEMA) held that "Confessional statement corroborated by the seized documents, admissible even if retracted".**
- xxi. The Apex Court in the case *Hazari Singh V/s. Union of India* reported in 110 E.L.T. 406, and case of *Surjeet Singh Chhabra V/s. Union of India & Others* reported in 1997 (1) S.C.C. 508 has held that the confessional statement made before the Customs Officer even though retracted, is an admission and binding on the person.-"
- xxii. The Hon'ble Supreme Court in the case of *Badaku Joti Savant Vs. State of Mysore* [1966 AIR 1746 = 1978 (2) ELT J 323 (SC 5 member bench)] laid down that statement to a Customs officer is not hit by section 25 of Indian Evidence Act, 1872 and would be admissible in evidence and in conviction based on it is correct.
- xxiii. In the case of *Bhana Khalpa Bhai Patel Vs. Asstt. Collr. of Customs, Bulsar* [1997 (96) E.L.T. 211 (SC)], the Hon'ble Apex Court at Para 7 of the judgment held that :- "*It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence vide Romesh Chandra v. State of West Bengal, AIR 1970 S.C. 940 and K.I. Pavunny v. Assistant Collector (H.Q.), Central Excise Collectorate, Cochin, 1997 (90) E.L.T. 241 (S.C.) = (1997) 3 S.C.C. 721.*"
- xxiv. In the case of *Raj Kumar Karwal Vs. UOI & Others* (1990) 2 SCC 409, the Court held that *officers of the Department of Revenue Intelligence who have been vested with the powers of an Officer-in-Charge of a police station under Section 53 of the NDPS Act, 1985, are not police officers within the meaning of Section 25 of the Evidence Act. Therefore, a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible in evidence against him.*
- xxv. Hon. Supreme Court's decisions in the case of *Romesh Chandra Mehta Vs. the State of West Bengal* (1969) 2 S.C.R. 461, A.I.R. 1970 S.C. 940. The provisions of Section 108 are judicial provisions within statement has been read, correctly recorded and has been made without force or coercion. In these circumstances there is not an iota of doubt that the statement is voluntary and truthful. The provisions of Section 108 also enjoin that the statement has to be recorded by a Gazetted Officer of Customs and this has been done in the present case. The statement is thus

made before a responsible officer and it has to be accepted as a piece of valid evidence

xxvi. *Jagjit Singh vs State Of Punjab And Another*, Hon'ble Punjab and Haryana High Court in Crl. Appeal No.S-2482-SB of 2009 Date of Decision: October 03, 2013 held that: *The statements under Section 108 of the Customs Act were admissible in evidence as has been held by the Hon'ble Supreme Court in Ram Singh vs. Central Bureau of Narcotics, 2011 (2) RCR (Criminal) 850.*

19.4 In view of the above referred consistent judicial pronouncements, the importance of statements rendered under Section 108 of the Customs Act, 1962 during the case is quite imperative. **I find that the statements made in the case were voluntary and are very much valid in Law and can be relied upon as having full evidentiary value.**

19.5 I find that Shri Haveli Ram Bhatia has played the pivotal role in misclassifying the goods under CTH 3903 in order to save the applicable Customs Duty. Further, with the acts of omission and commission on part of **Shri Haveli Ram Bhatia, former General Manager, BIL** has rendered himself liable to penal action in terms of Section 112 (a) of the Customs Act, 1962.

Since I am imposing penalty under section 112(a), therefore I refrain from imposing penalty under section 112(b) of the act.

20. In view of the above I pass the following Order.

Order

(i). I reject the declared classification of goods imported vide 45 past Bills of Entry filed 20.04.2005 to 25.06.2006 classified under CTH 39039090 and order to re-classify the same under CTH 40021100.

(ii). I confirm the demand of differential Customs duty of Rs.89,83,155/- (Rupees Eighty nine lakhs eighty three thousand one hundred fifty five only) in respect of 45 past Bills of Entry from 20.04.2005 to 25.06.2006 cleared by **M/s BIL**, under the provision of Section 28(4) of the Customs Act, 1962 along with applicable interest leviable under Section 28AA read with section 28(10) of the Customs Act, 1962.

(iii) I order confiscation of the imported goods vide past Bills of Entry listed in 'Annexure-A' above, valued at Rs. 11,25,81,587/- (Rs. Eleven crore twenty five lakh eighty one thousand five hundred eighty seven only) under Section 111(m) of the Customs Act, 1962 and impose redemption fine of **Rs. 2,80,00,000/- (Rs. Two Crores Eighty Lakhs only) on M/s BIL** in respect of the goods cleared by past 45 Bills of Entry for their redemption u/s 125 of the Customs Act, 1962;

(iv). I impose a penalty equivalent to differential duty of Rs.89,83,155/- (Rupees Eighty nine lakhs eighty three thousand one hundred fifty five only) and interest accrued there upon on the importing firm **M/s BIL** under section 114A of the Customs Act, 1962.

In terms of the first and second proviso to Section 114A *ibid*, if the entire **duty and interest** is paid within thirty days from the date of the communication of this order, **the entire 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.

(v). I order to appropriate the amount deposited on account of differential duty of Rs.89,83,155/- (Rupees Eighty nine lakhs eighty three thousand one hundred fifty five only) paid towards the differential duty, Penalty of Rs. 22,45,788/- (Rupees Twenty Two

lakhs forty five thousand seven hundred and eighty eight only) paid towards penalty under section 114A and Rs.21,34,500/-(Rupees Twenty One Lakh thirty four thousand five hundred only) paid towards interest under section 28 AA furnished by M/s.BIL discussed in para 18 above, against the aforesaid demand of duty, fine, penalty and interest.

(vi). I impose a penalty of **Rs. 1,00,000/- (Rupees One lakhs Only)** on Shri Haveli Ram Bhatia, former General Manager M/s BIL under Section 112(a) of the Customs Act, 1962.

**Digitally signed by
Vijay Risi
Date: 15-09-2025
20:31:46
(VIJAY RISI)
COMMISSIONER OF CUSTOMS
NS-III, JNCH**

To,

1. M/s. Ballarpur Industries Ltd.
105, Mile Stone, Bhadalwadi-Paundhwadi,
Pune-Sholapur Highway, Bhigwan, Taluka-Indapur,
Dist- Pune, Maharashtra-413105

2. Shri Haveli Ram Bhatia,
6-C, Lakshya Regency, Old Palasia,
Indore, Madhya Pradesh-411040
Copy to:-

1. Pr. Commissioner of Customs, NS-I, JNCH
2. The Assistant Director, DRI, Mumbai Zonal Unit, 13 VT Marg, Marine Lines, Mumbai – 400 020.
3. AC/DC, Group – 2H-K, JNCH.
4. The Asstt / Dy. Commissioner of Customs, SIIB (Import), JNCH, Nhava Sheva - to upload the OIO in DIGIT.
5. AC/DC, Chief Commissioner's Office, JNCH
6. AC/DC, Centralized Revenue Recovery Cell, JNCH
7. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
8. Office Copy.