



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/10-106/2024-25/Commr./Gr.III/NS-III/CAC/JNCH Date 18.08.2025
SCN No. 1073/2024-25/Commr./NS-III/Gr.III/CAC/JNCH dated 10.09.2024

DIN	: 20250878NX000000E697
आदेश की तिथि Date of Order	: 14.08.2025
जारी किए जाने की तिथि Date of Issue	: 18.08.2025
आदेश सं. Order No.	: 168 /2025-26/आयुक्त/एनएस-III/ सीएसी/जेएनसीएच 168 /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 ओसियान ट्रेडिंग एंटरप्राइजेज प्राइवेट लिमिटेड : M/s. Osyan Trading Enterprises Pvt 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 Time Limit	: इस आदेश की सूचना की तारीख से ३ महीने के भीतर
	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.

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BRIEF FACTS

Based on the Intelligence developed by the Directorate of Revenue Intelligence, Chennai Zonal Unit (hereinafter referred to as “the DRI”) a **Show Cause no. 1073/2024-25/Commr./NS-III/Gr.III/CAC/JNCH dated 10.09.2024** was issued to **M/s. Osyan Trading Enterprise Pvt. Ltd**, holder of IEC: AABCO2445B has registered office at No. 67, Narayana Mudali Street, 2nd Floor Sowcarpet, Chennai, Tamil Nadu- 600001. They were traders of plain strips of narrow woven fabrics of different shapes or size used in the garment industry, engaged in imports of plain strips of narrow woven fabrics declaring them as “**White Strips Label Tape**” under **CTH 58071020/58071090/580719090** and were paying BCD @10%, by availing benefit of Serial No.147 of Notification No.82/2017 dated 27.10.2017.

2. The intelligence indicated that these goods were misclassified under CTH 58.07 instead of correct classification under CTH 58.06, as the said textile strips/material imported does not contain any printing/inscription. Therefore, investigation was initiated against M/s. Osyan Trading Enterprise Pvt. Ltd, Chennai.

Search and Seizure

3. On 03.10.2022, the premises of M/s. Osyan Trading Enterprise Pvt. Ltd, at Rajendra Complex, No. 67, Narayana Mudali Street, 2nd Floor Sowcarpet, Chennai, Tamil Nadu- 600001 was searched and the proceedings were recorded vide mahazar dated 03.10.2022. During the search proceedings certain import documents and two computers were resumed for further investigation. During the said Mahazar proceedings, on being questioned whether the imported textile strips which were classified under CTH 5807 by M/s. Osyan Trading Enterprise Private Limited contains any printing or inscriptions on them, the authorized person of M/s. Osyan Trading Enterprise Private Limited stated that the said textile strips do not contain any printing or inscriptions. On preliminary observation of the import documents, it appeared that the subject imported goods were wrongly classified under CTH 5807 instead of CTH 5806.

4. During the course of the search, it was ascertained that the importer had stored some of the imported goods at Warehouse No.10, Massey’s Enterprises Pvt Ltd, No.17, North Railway Terminus Road, Royapuram, Chennai-13. The said warehouse was searched under Mahazar proceedings dated 03.10.2022. On physical verification of the stock of goods available at the warehouse, it appeared that they were Plain Rolls of textile strips of various sizes and that these Plain Rolls did not contain any inscription/print or markings. As the said plain Rolls were neither imprinted/embossed nor had any indication of Markings, Trade Name, Brand Name etc., the same could not be considered as ‘labels’. Hence, these goods which were valued at approximately Rs.4.91 Cr, were seized under provisions of Section 110 of the Customs Act, 1962 on the reasonable belief that the same would be used as material evidence in the course of investigation. Three representative samples (in duplicate) of these seized goods were drawn from the said warehouse vide mahazar proceedings dated 03.10.2022 for the purpose of testing the same.

5. On being pointed out about the misclassification, the authorized person voluntarily furnished Demand Draft No. 517306 dated 31.03.2022 for Rs. 1,75,00,000/- towards the differential duty payable for the past period.

Statement of Director of the Company M/s. Osyan Trading Enterprise Private Limited:

6. Statement of Shri Vinod Ranka, one of the Directors of M/s. Osyan Trading Enterprise Private Limited, Chennai was recorded under Section 108 of Customs Act, 1962, on 03.10.2022, wherein inter-alia he stated that:-

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- The Bill of Entry No. 2623872 dated 27.09.2022 was filed by CHA M/s. Ascent Logistics, Mumbai at Nhava Sheva Mumbai; The goods declared were “White Strips Label Tape (Assorted sizes)- Man Made Fibers”; The supplier of the said goods was M/s. Five Element Industry Limited, China.
- His uncle Shri Pannalal Ranka handled the said consignment.
- He does not have any knowledge of labels/textiles/fabrics; that his uncle Shri Pannalal Ranka took care of labels business as he is into the field for very long time.
- The payment to Chinese Suppliers was made through the bank account of M/s. Osyan Trading Enterprises Pvt. Ltd; that his uncle Shri Pannalal Ranka coordinated with the Chinese suppliers for the said consignments of labels.
- On being asked about the overseas supplier details, mode of communication, payment mode and person responsible for the classification of imported goods, he stated that such details would be known to Shri Pannalal Ranka.
- On being asked to comment about the right classification of subject textile strips under CTH 5806, he stated that he do not have technical knowledge to ascertain the nature and composition of imported material; that they were doing trading business and not given importance to the classification of goods at the time of Import.

Statement of Shri Pannalal Ranka, Authorised Person of M/s. Osyan Trading Enterprise Private Limited:

6.1. A statement of Shri Pannalal Ranka, Authorised Person of M/s. Osyan Trading Enterprise Private Limited, Chennai was recorded under Section 108 of Customs Act, 1962, on 03.10.2022. Some of the questions inter-alia asked and reply furnished are reproduced below:-

Q.1 Tell us about yourself and about work profile of your company.

A.1 After completing my education I joined my family business with elder brother. After that, I joined my family business with elder brother M/s. Sha Maggaji Manormal and worked there for 5 years. After that I started my own financing business and continued it till 2017. In 2017, we started a firm M/s. Osyan Trading Enterprise Private Limited (IEC. AABCO2445B), a Private Limited company with directors as family members Shri/S Vinod Kumar Ranka, Nitesh Kumar Ranka, Manoharmal Vishal ranka. We are the traders and importers of Labels/Fabrics/Textile Materials from China. I am taking care of all the activities of the company M/s. Osyan Trading Enterprise Private Limited.

Q.2 Please inform about your CHA for the bills of entry filed by you?

A.2 Majority of our bills are filed by M/s. Ascent Logistics, Mumbai.

Q.3 Please see the mahazar dated 03.10.2022 drawn in your presence at 67, Narayana Mudali Street, Sowcarpet, Chennai-600001, and offer your comments.

A.3 I have gone through the mahazar dated 03.10.2022 drawn at 67, Narayana Mudali Street, Sowcarpet, Chennai-600001 and appended my dated signature as a token of having seen the same. In this regard, I wish to state that I was available during the mahazar proceedings dated 03.10.2022 drawn at 67, Narayana Mudali Street, Sowcarpet, Chennai- 600001 and I accept the contents of the said mahazar to be true and correct.

Q.4 Please inform about the different types of goods imported by M/s. Osyan

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Trading Enterprise Private Limited.

A.4. We mostly import Labels/Fabrics/Textile Materials from China and trade such goods in domestic market. Different types of materials imported by us are “Tape-Ribbon Strips for labels- Cotton”, “Tape-Ribbon Strips of Polyester” & “White Strips Label Tape -Man Made Fibers”.

Q.5. What is the CTH & duty structure followed for such “Tape Ribbon Strips for labels- Cotton”, “Tape-Ribbon Strips of Polyester” & “White Strips Label Tape -Man Made Fibers” imported by you?

A.5. Tape Ribbon Strips for labels- Cotton are cleared in CTH 58063190 (BCD 10%, IGST 5%), Tape-Ribbon Strips of Polyester are cleared in CTH 58063200 (BCD 20%, 10% SWS, IGST 5%) & White Strips Label Tape -Man Made Fibers are cleared in 58071020 (BCD 10%, 10% SWS, IGST 12%).

Q.6. Please see the Bill of Entry No. 2623872 dated 27.09.2022 arrived in one container FCIU5240107 and offer your comments.

A.6. The said Bill of Entry No. 2623872 dated 27.09.2022 was filed by CHA M/s. Ascent Logistics, Mumbai at Nhava Sheva Mumbai. The goods declared are “White Strips Label Tape (Assorted sizes)- Man Made Fibers”. The supplier of the said goods is M/s. Five Element Industry Limited, China. The said goods were under CTH 58071020. We have followed the duty structure of 10% BCD, 10% SWS & 12% IGST.

Q.7. Please see the heading of CTH Sub Heading 5807 i.e., “LABELS, BADGES AND SIMILAR ARTICLES OF TEXTILE MATERIALS, IN THE PIECE, IN STRIPS OR CUT TO SHAPE OR SIZE, NOT EMBROIDERED” and CTH 58071020 “Woven: -- of man-made fibre”. Whether the imported goods under Bill of Entry No. 2623872 dated 27.09.2022 are labels of made of woven man-made fibres?

A.7. The said imported goods under Bill of Entry No. 2623872 dated 27.09.2022 are made of woven man-made fibres. The said goods are plain textile materials cut into strips of different shapes and sizes, made of polyesters (man-made fibres). They do not have any embroidery. Hence, they are declared as “White Strips Label Tape – Man Made Fibers”. They are meant to be sold to different traders in domestic market.

Q.8. Please see the heading of CTH Sub Heading 5806 i.e., “NARROW WOVEN FABRICS OTHER THAN GOODS OF HEADING 5807; NARROW FABRICS CONSISTING OF WARP WITHOUT WEFT ASSEMBLED BY MEANS OF AN ADHESIVE (BOLDUCS)” and CTH 58063200 “Woven: -- of man-made fibre”. Whether the imported goods under Bill of Entry No. 2623872 dated 27.09.2022 will fall under this category?

A.8. They may fall under CTH 58063200 also since the said CTH 58063200 also deals woven fabrics of man-made fibres. I do not have much technical knowledge about this. We are only traders of such imported goods. We do not deal with any manufacturing activity after importation. Based on the demand from our domestic customers, we import the same from various Chinese suppliers.

Q.9. Please see the HS explanatory notes mentioned in Chapter Heading 5807

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*("XI-5807-1") wherein it is mentioned that "(A) **Labels of any textile material (including knitted):** These include labels of a kind used for marking wearing apparel, household linen, mattresses, tents, soft toys, or other goods. They are utilitarian labels bearing individual inscriptions or motifs. The above articles are classified in this heading only if they fulfil the following conditions: (1) They must not be embroidery. The inscriptions or motifs on the articles classified here are generally produced by weaving (usually broche work) or by printing. (2) They must be in the piece, in strips (as is usually the case) or in separate units obtained by cutting to size or shape but must not be otherwise made up:". Offer your comments.*

A.9. I am not aware of such explanatory notes. The said goods viz., 'Label' has been classified under 58071090 based on our understanding of the Customs Tariff. I do not have enough technical knowledge of the imported products. However, as stated earlier, our products do not have any embroidery. They are pieces of fabrics cut into different shapes. To your specific query, I state that the goods imported in Bill of Entry No. 2623872 dated 27.09.2022 does not have any inscriptions or motifs, no impressions of Trade Mark or Trade Name or any logo on the said rolls. They are plain rolls without labels made of made of woven man-made fibres. They are not pre-printed. They are used for manufacture of final products, i.e., Labels. I also state that, the suppliers also quote the same tariff headings in the invoices.

Q.10. Whether the imported labels/textile strips under Bill of Entry No. 2623872 dated 27.09.2022 are narrow woven fabric of man-made fibres?

A.10. I do not have enough technical knowledge of the imported products. They are made of man-made fibres i.e., Polyester. They could be narrow woven fabrics of man-made fibres.

Q.11. Whether the previous consignments which were declared as "White Strips Label Tape -Man Made Fibers" under CTH 5807 are same as the goods imported under Bill of Entry No. 2623872 dated 27.09.2022?

A.11. As stated earlier, we are only traders of such imported goods. We do not deal with any manufacturing activity after importation. Based on the demand from our domestic customers, we import the same from various Chinese suppliers. Sometimes, we also get orders with pre-print request. Accordingly, we place orders with the requirement of our customers. Since the goods are used in Label industry, we always followed the description "White Strips Label Tape -Man Made Fibers".

Q.12. Do you have any test certificate to prove the nature and composition of imported labels/textile strips? At any point of time during the time of assessment whether Customs have drawn sample for testing purpose?

A.12. We don't have any test certificate to prove the nature and composition of imported labels/textile strips. I also add that till date Customs has not drawn any sample at the time of assessment. The Customs have satisfied themselves after examination of the cargo and cleared the said consignments under CTH 5807. We have never mis-declared our import cargo. The description is always given as "White Strips Label Tape -Man Made Fibers". The same is followed in our domestic sale also.

Q.13. Do you have any proof to justify that the goods imported under description "White Strips Label Tape -Man Made Fibers" are labels containing inscriptions or

motifs, but not plain textile strips?

A.13. As stated earlier, I also placed orders with our suppliers with pre- print request. The same may be verified with our GST data. I wish to reiterate that the Customs have satisfied themselves after examination of the cargo and cleared the said consignments under CTH 5807.

Q.14. Please inform about your overseas supplier details, mode of communication, payment mode and who has suggested the suggested the classification of imported goods.

A.14. We mainly purchase labels/textile strips from Five Element Industry Limited, Xinxi wuxing silk Co. Ltd, Huzhou Xingyi Label Manufacture Co. Ltd, Zhejiang King Label Technology Co., Ltd of China. We always import standard materials, hence formal communication through email was never required. We send and receive import documents through air-courier and payments are made through Banks. The classification of the imported goods is arrived based on the classification given in the import Invoice by our supplier.

Q.15. From your import data, can you identify the goods which have pre- printed labels but are declared as “White Strips Label Tape -Man Made Fibers” at the time of filing the bill of entry?

A.15. Majority of our pre-printed labels are imported from M/s. Five Element Industry Limited, China, Zhejiang King Label Technology Co., Ltd & M/s. Xingyi label manufacture Co. Ltd. It takes time to reconcile the data as we do not maintain separate records for pre-printed and plain labels. We are doing the trading business and not given importance to the classification of goods at the time of Import. We do not have any intention to misclassify the imported goods. As we do not have enough technical knowledge & lack of awareness about the clarification given in the HS explanatory notes, we have classified both pre-printed labels & plain labels in one CTH i.e., 5807. I am submitting sample labels available with us for your reference.

Q.16. Upon importation, to whom were the pre-printed labels sold to in India?

A.16. The pre-printed labels were sold to M/s. J. G. Impex Pvt. Ltd., New Delhi (GST- 07AAACJ2058E1ZX), M/s. Pragati Sales, New Delhi (GST- 07ACPPN5072N1ZW), M/s. H. V. Enterprises, Mumbai (GST- 27AAEPS0956M1Z7).

Q.17. At present whether the stock in your godown has any “White Strips Label Tape -Man Made Fibers” to show that you have imported pre- printed labels?

A.17. The pre-printed labels are imported on the bulk orders of our domestic customers. Our suppliers in China manufacture the said labels with instructions given by our domestic customers. The said manufactured labels are then imported and immediately supplied to our customers. Based on production demands of the customer & in order to avoid payment delays, we deliver the goods at the earliest. However, the plain textile strips are for trading purpose only. Based on the day-to-day orders, we dispatch the same to our domestic customers. Hence, the stock in our godown contains only Plain label strips of Man-Made Fibers.

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Q.18. How much worth goods of the said “White Strips Label Tape -Man Made Fibers” are stored in warehouse?

Q.18. The goods viz. “White Strips Label Tape -Man Made Fibers” of worth nearly Rs. 4.5 Crores is stored in our warehouse at present. As stated earlier, none of the said stock contains pre-printed labels as they were dispatched to the customs upon arrival to reduce our warehousing expenses.

Q.19. It appears from the nature, material composition and end use that the imported labels/textile strips & goods stored in your godown are rightly classifiable under CTH 5806 3200. Offer your comments.

A.19. I admit that I don’t have enough technical knowledge to ascertain the nature and composition of imported material. As informed earlier, we are doing the trading business and not given importance to the classification of goods at the time of Import. We would like to get technical advice in this matter. We don’t have any intention to evade payment of duty, to show our voluntary compliance and our intention; today we have deposited Rs.1,75,00,000/- towards our duty liability. However, the payment may be considered as duty under protest and we request you to follow principles of natural justice while finalizing the issue.

6.2. From the above statement dated 03.10.2022, it appeared that Shri Pannalal Ranka takes care of all the activities of the company M/s. Osyan Trading Enterprise Private Limited; that the imported goods under Bill of Entry No. 2623872 dated 27.09.2022 are made of woven man-made fibres; that the said goods are plain textile materials cut into strips of different shapes and sizes, made of polyesters (man-made fibres); that they do not have any embroidery/printing; that the subject goods may fall under CTH 58063200 also since the said CTH 58063200 also deals woven fabrics of man-made fibres; that they do not have much technical knowledge about the classification; that based on the demand from their domestic customers, they import the subject imported goods from various Chinese suppliers; that sometimes, they also get orders with pre-print request; that since the goods are used in Label industry, they always followed the description “White Strips Label Tape -Man Made Fibers”; that they do not maintain separate records for pre-printed and plain labels; that they don’t have any test certificate to prove the nature and composition of imported labels/textile strips and that they do not maintain separate records for pre- printed or plain labels.

Examination of Live Consignment:

7. On perusal of the import data, it was noticed that M/s. Osyan Trading Enterprise Pvt. Ltd, Chennai had filed a Bill of Entry No. 2623872 dated 27/09/2022 [RUD A5] for the goods imported in a container no. FCIU5240107, at Nhava Sheva Sea Port (INNSA1), declaring the goods as detailed below:

Table-I

Sr. No.	Item Description	Qty in kgs	HS Code	Value in INR
1	WHITE STRIPS LABEL TAPE 13 MM X 183 M 13824 ROLLS MAN MADE FIBERS	4134	58071020	996970.6
2	WHITE STRIPS LABEL TAPE 15 MM X 183 M 1200 ROLLS MAN	324.9	58071020	78341.77

	MADEFIBERS			
3	WHITE STRIPS LABEL TAPE 20 MM X 183 M 300 ROLLS MAN MADE FIBERS	113.8	58071020	27448.56
4	WHITE STRIPS LABEL TAPE 25.4 MM X 183 M 6816 ROLLS MAN MADE FIBERS	3780.84	58071020	911882.4
5	WHITE STRIPS LABEL TAPE 30 MM X 183 M 2200 ROLLS MAN MADE FIBERS	1498.85	58071020	361365.8
6	WHITE STRIPS LABEL TAPE 32 MM X 183 M 400 ROLLS MAN MADE FIBERS	243	58071020	58595.52
7	WHITE STRIPS LABEL TAPE 35 MM X 200 M 1600 ROLLS MAN MADE FIBERS	2414	58071020	582224.6
8	WHITE STRIPS LABEL TAPE 40 MM X 183 M 2400 ROLLS MAN MADE FIBERS	2261.25	58071020	545305
9	WHITE STRIPS LABEL TAPE 44 MM X 183 M 420 ROLLS MAN MADE FIBERS	333.75	58071020	80469.13
10	WHITE STRIPS LABEL TAPE 15 MM X 200 M 680 ROLLS MAN MADE FIBERS	438.8	58071020	105790.3
11	WHITE STRIPS LABEL TAPE 20 MM X 200 M 1200 ROLLS MAN MADE FIBERS	1046	58071020	252295.2
	Total			40,00,689/-

8. The consignment pertaining to Bill of Entry No. 2623872 dtd 27/09/2022 was examined at M/s. Gateway Distripark Ltd (GDL) CFS, Navi Mumbai vide Panchanama dated 11.10.2022. During the course of examination, it was found that the items which were declared in the Bill of Entry as ‘labels’ appeared to be a plain textile strips, as none of the items carry any printing/embossing or any other insignia to indicate that the said items were ‘labels’. During the open examination proceedings, 11 representative samples (in duplicate) of the imported goods, were drawn for the purpose of testing. As the goods appeared to have mis-declared in the Bill of Entry, the said goods valued at Rs. 40,00,689/- were seized under the provisions of Section 110 of the Customs Act, 1962. Accordingly, seizure memorandum dated 11.10.2022 was issued to the importer.

Test report of the Samples drawn:

9. Eleven representative samples of the goods pertaining to Bill of Entry No. 2623872 dated 27/09/2022 were drawn from the live import consignment during the course of

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examination vide Panchanama dated 11.10.2022 & three representative samples drawn from the stock of goods which were seized at warehouse vide Mahazar dated 03.10.2022 were sent for testing to the Textiles Committee, North Wing, 1st Floor, NSC Board Complex, R.K. Mutt Road, Mylapore, Chennai-04 vide letter F.No.DRI/CZU/VIII/48/ENQ-01/INT- 46/2022 dated 21.10.2022 with Test Memos 1 to 2. The test report in respect of all the 14 samples have been received vide reports dated 26.10.2022 from the Quality Assurance Officer, Textiles Committee, Chennai.

10. Analysis of the Test Report:

10.1. The results of the Test report in respect of the 11 samples sent for testing are as below:

Table-II

Sl. No.	Test Memo No.	Sample Name	Test Result						
			Inscription /Printing	Embroidered	Whether woven	Composition	Warp & Weft	Selvedges	Width
1	Test Memo-1	A1	No	No	yes	Nylon & Polyester	Yes	Yes	25mm
2	Test Memo-1	B1	No	No	yes	Polyester	Yes	Yes	44mm
3	Test Memo-1	C1	No	No	yes	Polyester	Yes	Yes	20mm
4	Test Memo-2	13MM X20 0Y	No	No	yes	Polyester	Yes	Yes	14mm
5	Test Memo-2	15MM X20 0Y	No	No	yes	Polyester	Yes	Yes	15mm
6	Test Memo-2	20MM X18 3M	No	No	yes	Polyester	Yes	Yes	20mm
7	Test Memo-2	25MM X20 0Y	No	No	yes	Polyester	Yes	Yes	25mm
8	Test Memo-2	30MM X20 0Y	No	No	yes	Polyester	Yes	Yes	30mm
9	Test Memo-2	32MM X18 3M	No	No	yes	Polyester	Yes	Yes	32mm
10	Test Memo-2	35MM X20 0M	No	No	yes	Polyester	Yes	Yes	35mm
11	Test Memo-2	40MM X20 0Y	No	No	yes	Polyester	Yes	Yes	40mm
12	Test Memo-2	44MM X20 0Y	No	No	yes	Polyester	Yes	Yes	44mm
13	Test Memo-2	15MM X20 0M	No	No	yes	Polyester	Yes	Yes	15mm
14	Test Memo-2	20MM X20 0M	No	No	yes	Polyester	Yes	Yes	20mm

10.2. From the above, it appeared that none of the 14 samples have any inscription or painting or embroidery. All these samples are Narrow woven fabric, contains warp & weft and

has selvages. All these samples are made of man-made fibres and are not exceeding the width of 30 cm.

11. Provisional Release of the Seized goods:

11.1 The importer vide letter dated 26.10.2022 had sought provisional release of all the seized goods, in terms of Section 110A of the Customs Act, 1962. Further, M/s. Osyan Trading Enterprise Private Limited had paid an amount of Rs.1,75,00,000/- voluntarily, in respect of bills of entry filed between the period from 04.10.2020 to 03.10.2022 including live consignment under Bill of Entry No. 2623872 dtd 27/09/2022.

11.2 On the request of the importer, the goods valued at Rs. 40,00,689/- seized vide Panchanama dated 11.10.2022 in respect of the Bill of Entry No. 2623872 dtd 27/09/2022 & goods valued at Rs.4.91 Cr approximately seized from warehouse vide Mahazar dated 03.10.2022 were ordered for provisional release by the Assistant Commissioner of Customs, Appraising Group-III, NS-III, JNCH vide Provisional Release order CBIC DIN – 20221178NV00000DD8D dated 22.11.2022, on execution of Bond for an amount of Rs.5,31,00,689/- and Bank Guarantee for an amount of Rs.1,20,00,000/- as the conditions stipulated by adjudicating authority as per CBIC Circular No. 35/2017-Customs dated 16.08.2017 have been met.

12. Statement of Authorised Person of M/s. JG Impex Private Limited, Domestic Customer of M/s. Osyan Trading Enterprise Private Limited:

12.1. Statement of Shri Kamallesh Kumar, Authorised Person of M/s. JG Impex Private Limited, New Delhi (one of the domestic buyers of **M/s. Osyan Trading Enterprise Private Limited**) was recorded under Section 108 of Customs Act, 1962, on 27.02.2024 wherein he inter-alia stated that:

- They have purchased White Strips Label tape & Narrow Woven Fabric Rolls from M/s. Osyan Trading Enterprise Private Limited.
- Tape Ribbon Strips are termed as Narrow Woven Fabrics, which are classified under CTH 58063200 and attract 5% GST.
- Tape Ribbon Strips would be sold to Garment Label Manufacturers for printing of wash care instructions, composition of fabric material, country of origin etc.
- Labels of white colour are termed as White Strips Label Tape in trade parlance, which are classified under CTH 58071020 and attract 12% GST
- White Strips Label Tape contains pre-printed information, and they would be sold to Garment Manufacturers for stitching the same on garments directly.
- On being asked to produce the email communication of the purchase order (of White Strips Label Tape) sent to M/s. Osyan Trading Enterprise Private Limited, he stated that the communication is usually made by whatsapp calls and they don't send any emails.
- They deal with standard print instructions which would be communicated on whataspp calls; that if any specific print instructions are required to be printed, they send the instructions to M/s. Osyan Trading Enterprise Private Limited by courier
- On being asked whether the word "Printed Labels" is mentioned anywhere in the description of purchase invoice, tax invoice, eway bill, proforma invoice, purchase order or any other purchase documents for the goods purchased from M/s. Osyan Trading Enterprise Private Limited, he replied in negative.
- On being asked to provide courier details of the print instructions sent to M/s. Osyan Trading Enterprise Private Limited, he stated that he do not have such details with

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him.

12.2. It appeared from the above statement of Shri Kamalesh Kumar, Authorised Person of M/s. JG Impex Private Limited, New Delhi that they had purchased White Strips Label tape & Narrow Woven Fabric Rolls from M/s. Osyan Trading Enterprise Private Limited; that they sent purchase order with pre- printed information through courier. However, Shri Kamalesh Kumar failed to provide any courier/email details with respect to the purchase order sent to M/s. Osyan Trading Enterprise Private Limited.

13. Statement of Authorised Person of M/s. Pragathi Sales, New Delhi, Domestic Customer of M/s. Osyan Trading Enterprise Private Limited:

13.1. Statement of Shri Suresh Kumar Jain, Authorised Person of M/s. Pragathi Sales, New Delhi (one of the domestic buyers of **M/s. Osyan Trading Enterprise Private Limited**) under Section 108 of Customs Act, 1962, on 08.03.2024 wherein he inter-alia stated that:

- They have purchased White Strips Label tape & few consignments of Tape Ribbons Strips from M/s. Osyan Trading Enterprise Private Limited.
- On being asked to produce the email communication of the purchase order (of White Strips Label Tape) sent to M/s. Osyan Trading Enterprise Private Limited, he stated that they send purchase order by courier or by hand; that since the thickness, design & type of material must be specific, they give sample material to M/s. Osyan Trading Enterprise Private Limited.
- On being asked whether the word “Printed Labels” is mentioned anywhere in the description of purchase invoice, tax invoice, away bill, proforma invoice, purchase order or any other purchase documents for the goods purchased from M/s. Osyan Trading Enterprise Private Limited, he replied in negative.
- On being asked to provide courier details of the print instructions sent to M/s. Osyan Trading Enterprise Private Limited, he stated that he would provide such details by 11.03.2024.

13.2. It appeared from the above statement of Shri Suresh Kumar Jain, Authorised Person of M/s. Pragathi Sales, New Delhi that they have purchased White Strips Label tape & Narrow Woven Fabric Rolls from M/s. Osyan Trading Enterprise Private Limited; that they sent purchase order with pre-printed information through courier. Despite of Shri Suresh Kumar Jain’s assurance to furnish courier/email details by 11.03.2024, he did not adduce any such details with respect to the purchase order sent to M/s. Osyan Trading Enterprise Private Limited.

14. Forensic Analysis of the two computers, which were used to maintain all the records related to purchase of imported goods of M/s. Osyan Trading Enterprise Pvt Ltd & were recovered from the premises of M/s. Osyan Trading Enterprise Private Limited under Mahazar dated 03.10.2022. Examination of the said two computers revealed that that M/s. Osyan Trading Enterprise Pvt Ltd has neither received any mails from their domestic customers nor sent any mails to their Chinese Suppliers with respect to the print instructions, which were supposed to be printed on the imported textile fabric strips; that no details of the courier were also found.

15. Analysis & Discussion:

The classification of the subject imported goods has been discussed below:

CHAPTER 58 in SECTION-XI of the First Schedule to the Customs Tariff Act deals with “Special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery”.

15.1. Heading 58.07 of Customs Tariff Act, 1975 is as under: -

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5807	LABELS, BADGES AND SIMILAR ARTICLES OF TEXTILE MATERIALS, IN THE PIECE, IN STRIPS OR CUT TO SHAPE OR SIZE, NOT EMBROIDERED			
5807 10	-	<i>Woven :</i>		
5807 10 10	---	Of cotton	kg. 25%	-
5807 10 20	---	Of man-made fibre	kg. 25%	-
5807 10 90	---	Other	kg. 25%	-
5807 90	-	<i>Other :</i>		
5807 90 10	---	Felt or non-woven	kg. 25%	-
5807 90 90	---	Other	kg. 25%	-

15.2. The product under consideration are the textile fabrics in roll form having different widths. The importer in his statement dated 03.10.2022 stated that since the imported goods are used in Label industry, they have declared the subject imported items are Labels. *However*, the Customs classification of the goods is to be decided based on the nature of the goods as presented to the Customs & end use of the goods is not the sole criteria for deciding the classification of the goods. Even though the word “Label” is not defined in the Customs Tariff, 1975, in the Explanatory Notes it is clearly stated that what constitutes a ‘Label’ for classification under CTH 5807. The relevant portion of the HSN Explanatory Notes for the CTH Sub Heading 5807 (Page No. XI- 5807-1) is reproduced below for ease of reference:

58.07 - Labels, badges and similar articles of textile materials, in the piece, in strips or cut to shape or size, not embroidered.

5807.10 - Woven

5807.90 - Other

Subject to the conditions specified below this heading covers :

- (A) **Labels of any textile material** (including knitted). These include labels of a kind used for marking wearing apparel, household linen, mattresses, tents, soft toys, or other goods. They are utilitarian labels bearing individual inscriptions or motifs. Such labels include, *inter alia*, commercial labels bearing the trade name or trade mark of the manufacturer or the nature of the constituent textile (“silk”, “viscose rayon”, etc.) and labels used by private individuals (boarding school pupils, soldiers, etc.) to identify their personal property; the latter variety sometimes bear initials or figures or comprise sometimes a framed space to take a hand-written inscription.
- (B) **Badges and similar articles of any textile material** (including knitted). This category includes badges, emblems, “flashes”, etc., of a kind normally sewn to the outer part of wearing apparel (sporting, military, local or national badges, etc., badges bearing the names of youth associations, sailors’ cap badges with the name of a ship, etc.).

The above articles are classified in this heading **only** if they fulfil the following conditions :

- (1) They must not be embroidery. The inscriptions or motifs on the articles classified here are generally produced by weaving (usually broché work) or by printing.
- (2) They must be in the piece, in strips (as is usually the case) or in separate units obtained by cutting to size or shape but must not be otherwise made up.

This heading **does not include** labels, badges and similar articles, which have been embroidered (**heading 58.10**) or made up otherwise than by cutting to shape or size (**heading 61.17, 62.17 or 63.07**).

15.3. On plain reading of above, it is evident that Labels falling under CTH 5807 can be made of any textile material but they (labels) should be bearing individual inscription or motifs. Further, from condition number 1, it is evident that inscription or motifs on the articles falling under CTH 5807 are produced by weaving or printing and it shall not be produced by way of embroidery.

16. During the course of investigation, from visual inspection & examination of the live consignment imported vide Bill of Entry No. 2623872 dtd 27/09/2022 at M/s. Gateway Distripark Ltd (GDL) CFS, Navi Mumbai and test reports of samples drawn thereof, it has been established that the subject goods imported & declared as ‘Labels’ and classified under Chapter Sub-Heading 5807 did not contain any inscription or motif on them either by weaving or printing. This fact has been accepted by Shri Pannalal Ranka, in his statement dated 03.10.2022. In other words, the subject imported goods do not fulfil the mandatory condition required for classification under CH.58.07. It therefore appeared that M/s. Osyen Trading Enterprise Pvt Ltd have misdeclared the description of the imported goods and also have misclassified them. Similarly, the test reports in respect of the samples drawn from the seized goods (stock

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maintained at the warehouse godown of the importer) received from the Quality Assurance Officer, Textiles Committee, Chennai also confirmed that the samples do not contain embroidery/adhesive/inscription or motif either by weaving or printing. For example, the Lab report in respect of Test Memo No.1, for Sample C1 states as under:

“The sample is 100% Polyester Narrow woven Fabric (man-made fiber) on both warp & weft. It has selvages. It does not contain embroidery/adhesive/inscription or motif either by weaving or printing.”

From the above, it appeared that the goods imported vide Bill of Entry No. 2623872 dated 27.09.2022 are not classifiable under CTH 58071020/580171090/58079090; that on physical verification of the stock of goods available at the warehouse & from the test reports of the samples drawn thereof, it is evident that the goods imported in the earlier consignments also does not contain any inscription or printing. On being asked to identify the imported goods which have pre-printed labels but are declared as “White Strips Label Tape -Man Made Fibers” at the time of filing the bill of entry, the importer stated that they do not maintain separate records for pre-printed and plain labels. Neither the importer nor their domestic customers produced any details of the purchase order for the pre-printed labels till date. Therefore, the said goods imported in the earlier consignments were also appeared to be mis- declared as ‘Labels’ & the classification adopted by them for the subject goods imported under CTH 58071020 or 580171090 or 58079090 is incorrect and requires reclassification.

17. In this regard, it is relevant to refer to Chapter Note 5 to Chapter 58, which states as under:—

“For the purposes of heading 5806, the expression —narrow woven fabrics means:

- (a) woven fabrics of a width not exceeding 30 cm, whether woven as such or cut from wider pieces, provided with selvages (woven, gummed or otherwise made) on both edges;*
- (b)*
- (c) ”*

18. Heading 58.06 of Customs Tariff Act, 1975 is as under: -

SECTION-XI		CHAPTER-58		
(1)	(2)	(3)	(4)	(5)
5806	NARROW WOVEN FABRICS OTHER THAN GOODS OF HEADING 5807; NARROW FABRICS CONSISTING OF WARP WITHOUT WEFT ASSEMBLED BY MEANS OF AN ADHESIVE (BOLDUCS)			
5806 10 00	- Woven pile fabrics (including terry toweling and similar terry fabrics) and chenille fabrics	kg.	25%	-
5806 20 00	- Other woven fabrics, containing by weight 5% or more of elastomeric yarn or rubber thread	kg.	25%	-
5806 31	- Other woven fabrics :			
5806 31 10	--- Of cotton :			
5806 31 20	--- Typewriter ribbon cloth	kg.	25%	-
5806 31 90	--- Newar cotton	kg.	25%	-
5806 32 00	--- Other	kg.	25%	-
5806 39	--- Of man-made fibres	kg.	25%	-
5806 39 10	- Of other textile materials :			
5806 39 20	--- Goat hair putti tape	kg.	25%	-
5806 39 30	--- Jute webbing	kg.	25%	-
5806 39 90	--- Other narrow fabrics of jute	kg.	25%	-
5806 40 00	- Other	kg.	25%	-
	- Fabrics consisting of warp without weft assembled by means of an adhesive (bolducs)	kg.	25%	-

The HSN explanatory notes state the goods which are excluded under the heading. The relevant portion of the same is reproduced for ready reference:

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This heading **excludes** :

- (a) Bandages, medicated or put up in forms or packings for retail sale (**heading 30.05**).
- (b) Narrow woven fabrics with woven fringes, braided galloons and braids (**heading 58.08**).
- (c) Narrow woven fabrics more specifically covered by other headings, e.g., those having the character of :
 - (1) Woven labels, badges and similar articles, in strips (**heading 58.07 or 58.10**).
 - (2) Wicks for lamps, stoves, lighters, candles or the like (**heading 59.08**).
 - (3) Textile hosepiping or similar tubing (**heading 59.09**).
 - (4) Transmission or conveyor belts or belting of **heading 59.10**.

From a combined reading of the above, narrow woven fabrics more specifically covered by other headings like woven labels, badges and similar articles, in strips falling under CTH 5807 are excluded from CTH 5806.

19. As discussed supra, it appeared that the subject goods (including the past imports) are not labels and would not fall under CTH 5807. Secondly, as per chapter note 5 supra, narrow woven fabrics are woven fabrics of a width not exceeding 30cm, whether woven as such or cut from wider pieces, provided with selvages (*woven, gummed or otherwise made*) on both edges). From the test reports of samples drawn from the live consignment imported under Bill of Entry No. 2623872 dated 27.09.2022, it is revealed that the goods imported are narrow woven fabric of polyester; that these textile strips are not exceeding 30cm and contains Warp, Weft & Selv- edges. Hence, the subject imported goods are to be considered as “Narrow woven fabrics” of man-made fiber. Examination of the subject live consignment under Panchnama proceedings dated 11.10.2022, revealed that the imported goods did not contain any inscription or motif on them. Further, examination conducted at the warehouse of No.10, Massey’s Enterprises Pvt Ltd, No.17, North Railway Terminus Road, Royapuram, Chennai-13 on 03.10.2022, under Mahazar proceedings 03.10.2022 also revealed that the stock of the imported goods available at the said warehouse were imported over the period, and did not contain any inscription or motif on them. These facts were also not disputed either by M/s. Osyan Trading Enterprise Pvt Ltd or authorised person of the company. M/s. Osyan Trading Enterprise Pvt Ltd also did not adduce any documentary evidence to prove that the subject imported goods were printed with any inscription or motif. Despite the reasonable time given to the domestic customers of M/s. Osyan Trading Enterprise Pvt Ltd, they failed to provide any courier/email/pre-print request details with respect to the purchase order sent to M/s. Osyan Trading Enterprise Private Limited. Therefore, the textile strips imported by M/s. Osyan Trading Enterprise Pvt Ltd, and which have of a width not exceeding 30 cm appeared to be rightly classifiable under **CTH 58063200** as “*narrow woven fabrics of manmade fibres*”.

APPLICABLE LEGAL PROVISIONS:

20. The relevant provisions of law pertaining to import of goods in general, the policy & rules relating to imports, the liability of the goods to confiscation and the persons concerned to penalty for illegal importation under the provisions of Customs Act, 1962 and the other laws for the time being in force are summarised as under:

Section 2(2) of the Customs Act, 1962: “*assessment*” means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to-

- (a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;

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

Section 2(14) of the Customs Act, 1962: *"dutiable goods" means any goods which are chargeable to duty and on which duty has not been paid;*

Section 2(16) of the Customs Act, 1962: *"entry" in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes the entry made under the regulations made under Section 84.*

Section 11A(a) of the Customs Act, 1962: *"illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force.*

Section 17 of the Customs Act, 1962:

- (1) An importer entering any imported goods under section 46 or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.*
- (2) The proper officer may verify the entries made under section 46 or section 50 and the self assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.*
- (3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.*
- (4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.*

Section 28(4) of the Customs Act, 1962.

Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded. –

- (4) Where any duty has not been levied or not paid or has been short- levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-*

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- (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.

Section 28AA of the Customs Act, 1962. 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.*

(3) *Notwithstanding anything contained in sub-section (1), no interest shall be payable where,-*

the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

(a) *such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.*

Section 46 of the Customs Act, 1962,

(1) *The importer of any goods,*

(2) *.....*

(3) *.....*

(4) ***The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry*** and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

(4A) *The importer who presents a bill of entry shall ensure the following, namely:-*

- (a) ***the accuracy and completeness of the information given therein;***
- (b) *the authenticity and validity of any document supporting it; and*
- (c) *compliance with the restriction or prohibition, if any, relating to the goods*

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under this Act or under any other law for the time being in force.

Section 111(d) of the Customs Act. 1962,

Any goods are liable to confiscation, 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.

Section 111(m) of the Customs Act. 1962,

Any goods are liable to confiscation, 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;

Section 114A of the Customs Act, 1962,

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.

Suppression of Facts and invocation of extended period:

21. Shri.Pannalal Ranka, Authorised person of M/s. Osyan Trading Enterprise Private

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Limited, in his statement dated 03.10.2022 stated that “*the goods imported by M/s. Osyan Trading Enterprise Private Limited vide BE No. 2623872 dated 27.09.2022 **are plain rolls of textile material, used for Garment industry to make labels and the said goods do not contain any inscription or printing**”.* As discussed in Para No. 15-19, the subject imported goods rightly fall under CTH 58063200. In terms of Notification No.82/2017-Cus dated 27.10.2017, the goods falling under CTH 58063200 attract 20% of BCD, whereas the goods falling under CTH 58071020/58071090/58079090 attract 10% of BCD. Therefore, it appeared that M/s. Osyan Trading Enterprise Private Limited, Chennai were wilfully mis-declaring plain strips of narrow woven fabrics imported by them as “Labels” at the time of import and misclassifying them under CTH 58071020/58071090/580719090 with the intention to wrongly avail the benefit of of Notification No.82/2017-Cus dated 27.10.2017 and thereby to evade payment of appropriate Customs Duties.

22. On physical verification of the stock of goods, imported over the period (14.05.2018 to 27.09.2022) valued at Rs.4.91 Cr, available at the warehouse No.10, Massey’s Enterprises Pvt Ltd, No.17, North Railway Terminus Road, Royapuram, Chennai-13 under Mahazar proceedings dated 03.10.2022, it is revealed that none of the imported goods i.e., Narrow woven fabrics contain any inscription or printing and the same was recorded in the Mahazar dated 03.10.2022 which was signed by authorized person of the company. Therefore, it is evident that the subject imported goods were Plain Rolls of textile strips of various sizes and that these Plain Rolls did not contain any inscription/print or markings. Therefore, the said goods imported in the earlier consignments were also appeared to be mis-declared in terms of description at the time of imports, resulting in wrong availment of benefits of notification thereby contravening the provisions of the Customs Act, 1962.

23. M/s. Osyan Trading Enterprise Private Limited has majorly imported the subject goods from Chinese supplier M/s. Five Element Industry Limited. The description, unit price, supplier details declared in the earlier consignments is identical to that of the live consignment viz. BE No. 2623872 dated 27.09.2022. Some of the bill of entries of the of earlier consignments are compared with the live consignment and reproduced below for reference:

Table-III

BE No. & Date	Supplier Name	Description	UQC	Unit Price in USD
2623872 dated 27.09.2022 (Live consignment)	M/s. Five Element Industry Limited	WHITE STRIPS LABEL TAPE 15 MM X 183 M 1200 ROLLS MAN MADE FIBERS	KGS	2.999077
4306476 dated 14-06-2021 (Past Consignment)	M/s. Five Element Industry Limited	WHITE STRIPS LABEL TAPE 15 MM X 183 M (UNDYED) 2400 ROLLSMAN MADE FIBERS	KGS	2.997337
4618625 dated 09-07-2021 (Past Consignment)	M/s. Five Element Industry Limited	WHITE STRIPS LABEL TAPE 15 MM X 183 M 800 ROLLS MAN MADE FIBERS	KGS	2.999609
4757353 dated 21-07-2021 (Past Consignment)	M/s. Five Element Industry Limited	WHITE STRIPS LABEL TAPE 15 MM X 183 M (QTY 800 ROLLS)	KGS	2.99962

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It appeared from the above table that there is no significant difference between the unit price of the subject imported goods of the live consignment & past consignment. Usually, the printed labels would be on higher side compared to the plain labels. However, from the import data, it is noticed that unit price of the majority of the subject imported products are within the unit price range of the subject live consignment. Further, it appeared that the goods imported in the earlier consignments were identical to that of the live consignment imported vide BE No. 2623872 dated 27.09.2022; that the said subject goods in the earlier consignments are plain textile strips which does not contain any printing or inscriptions; that they were mis-declared by mentioning as “white strips label tape” instead of “plain textile strips-narrow woven fabrics” & misclassified under CTH 58071020/58071090/580719090 instead of CTH 58063200;

24. On being asked about the purchase order placed with their domestic customers M/s. J. G. Impex Pvt. Ltd, M/s. Pragati Sales, M/s. H. V. Enterprises, to whom the alleged printed labels were sold to, the importer stated that he received the design of wash care instructions by courier. Even though their domestic customers M/s. J. G. Impex Pvt. Ltd & M/s. Pragati Sales in their respective statements stated that they sent purchase order with pre-printed information through courier to M/s. Osyan Trading Enterprise Private Limited, neither the importer nor their domestic customers produced the courier details of the said purchase order till date in support of their claims. It also appeared from the forensic analysis of two Computers, which were used to maintain all the records related to purchase of imported goods of M/s. Osyan Trading Enterprise Pvt Ltd & were recovered from the premises of M/s. Osyan Trading Enterprise Private Limited vide Mahazar dated 03.10.2022; that M/s. Osyan Trading Enterprise Pvt Ltd has neither received any mails from their domestic customers nor sent any mails to their Chinese Suppliers with respect to the print instructions that were supposed to be printed on the textile fabric strips; that no details of the courier were also found. From the above, it appeared that the importer has imported only plain strips of narrow woven fabrics in the guise of printed labels.

25. Shri Pannalal Ranka in his statement dated 03.10.2022 stated that they majority imported printed labels and supplied them to their domestic customers. However, it appeared from the statement of the domestic customers of M/s. Osyan Trading Enterprise Private Limited that there is no mention of the word “Printed Labels” anywhere in the description of purchase invoice, tax invoice, away bill, proforma invoice, purchase order or any other purchase documents for the goods purchased from M/s. Osyan Trading Enterprise Private Limited.

26. On being asked to identify the imported goods which have pre-printed labels but are declared as “White Strips Label Tape -Man Made Fibers” at the time of filing the bill of entry, Shri Pannalal Ranka stated that it takes time to reconcile the data as they do not maintain separate records for pre-printed and plain labels. Till date Shri Pannalal Ranka has not produced any data for the pre- printed labels and plain labels.

Obligation under Self-assessment

27. The importer had subscribed to a declaration as to the truthfulness of the contents of the Bills of Entry in terms of Section 46(4) of the Customs Act, 1962, in all their import declarations. Further, consequent upon the amendment to Section 17 of the Customs Act, 1962 vide Finance Act, 2011, '**Self-Assessment**' had been introduced in Customs. Section 17 of the Customs Act, 1962, effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2018 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which was defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data

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entry through the service centre, a Bill of Entry number was generated by the Indian Customs Electronic Data Interchange System for the said declaration.

28. Thus, under the scheme of self-assessment, it was the importer who must doubly ensure that he declared the correct classification / CTH of the imported goods, the applicable rate of duty, value, **and the benefit of exemption notification claimed**, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 08.04.2011, it was the added and enhanced responsibility of the importer to declare the correct description, value, applicability of Notification benefit etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. Further, it is a settled fact that the exemption notification is to be interpreted strictly and it would be the liability of the importer to prove that the imported goods come under the purview of the subject exemption notification.

29. Section 17(1) & Section 2 (2) of the Customs Act, 1962 read with CBIC Circular No. **17/2011**- Customs dated 08.04.2011 cast a heightened responsibility and onus on the importer to determine duty, classification etc. by way of self-assessment. The importer, at the time of self-assessment, is required to ensure that he declared the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Investigation conducted revealed that the importer has mis-declared the description & classified under wrong CTH by suppressing and misstating the true nature of the imported goods, solely with an intention to avail the benefits of lower duty structure applicable to the goods falling under CTH 58071090/58071020/58079090. In view of the wilful suppression of actual description of the goods resulting in misclassification and evasion of payment of appropriate Customs duty, the provisions relating to extended period are liable to be invoked in the instant case in terms of Section 28 (4) of the Customs Act, 1962, to raise demand of duty evaded during the period May-2018 to October-2022.

Quantification of Duty liability:

30. The effective rate of BCD on goods falling under Chapters 50 to 63 have been notified vide Notification No. 82/2017-Cus., dated 27.10.2017 and the said notification was in effect till 30.04.2022. From 01.05.2022, the tariff rate of duty as per Customs Tariff Act, 1975 is applicable. In terms of the said notification & Customs Tariff Act, 1975, the applicable rate of duty for goods covered under CH 58.06 is as under:-

Table-IV

S. No.	Chapter/ Heading/ Sub- heading/ Tariff item	Description	BCD Rate of Duty	IGST	Remarks
(1)	(2)	(3)	(4)	(5)	
1.	5807 (58071020, 58071090 58079090)	& All goods	10%	12%	Effective BCD as per S.No. 147 of the said Notification
2.	5806 32 00	All goods	20%	5%	BCD-Tariff Rate

31. Therefore, the goods falling under CTH 5806 3200 attract 20% BCD and IGST at 5%. Consequent to redetermination of the classification of the goods under the appropriate heading as discussed above, the differential duty has been calculated for the period from 20.09.2019 (first bill of entry) to 27.09.2022 (last bill of entry). On perusal of the import data gathered and downloaded from

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ISS and ICES data base for the period from 20.09.2019 to 27.09.2022, it is noticed that for various bills of entry, the importer has availed MEIS Scrips for the payment of BCD. The said MEIS scrips were randomly verified and arrived at the differential BCD&SWS required to be paid by M/s. Osyana Trading Enterprise Pvt. Ltd on port-wise. They have imported the subject items vide 146 Past and 1 Live Bills of Entry through Nhava Sheva Port, Chennai Sea Port, Chennai Aircargo & CPL Dadri Port during the period from 20.09.2019 to 27.09.2022. Accordingly, the differential duty of BCD & SWS payable in respect of imported products port-wise has been computed Annexure-B and abstract of the same is given below:

Table-V

Port Code	CIF VALUE	BCD PAID @ 10%	BCD PAYABLE @ 20%	DIFFEENTIAL BCD	DIFFERENTIAL SWS	TOTAL DIFF. DUTY
INCPL 6	3813558.5	381355.85	762711.7	381355.85	38135.585	419491.435
INMAA1	33619236	3361923.597	6723847.194	3361923.597	336192.3597	3698115.957
INMAA4	154565.76	15456.576	30913.152	15456.576	1545.6576	17002.2336
INNSA1	543107130	54310713.01	108621426	54310713.01	5431071.301	59741784.31
Grand Total	580694490	58069449.03	116138898.1	58069449.03	5806944.903	63876393.93

Table-A

Annexure - B

Sr.No.	Bill Of Entry	BE Date	PORT	Assess Val	BCD Paid @10%	BCD Payable @20%	SWS Paid	SWS Payable	Diff BCD Payable	Diff SWS Payable	Total Diff. Duty
1	5145015	3/10/2019	INMAA4	77282.88	7728.288	15456.576	772.8288	1545.6576	7728.288	772.8288	8501.117
2	5179265	4/10/2019	INMAA1	1835063.17	183506.317	367012.634	18350.6317	36701.2634	183506.317	18350.6317	201856.9
3	5228427	9/10/2019	INMAA1	1836513.37	183651.337	367302.674	18365.1337	36730.2674	183651.337	18365.1337	202016.5
4	9432364	3/11/2020	INMAA1	2151987.76	215198.776	430397.552	21519.8776	43039.7552	215198.776	21519.8776	236718.7
5	9830408	4/12/2020	INMAA1	2856877.55	285687.755	571375.51	28568.7755	57137.551	285687.755	28568.7755	314256.5
6	4153343	1/6/2021	INNSA1	3614209.58	361420.958	722841.916	36142.0958	72284.1916	361420.958	36142.0958	397563.1
7	4523881	1/7/2021	INNSA1	3267607.86	326760.786	653521.572	32676.0786	65352.1572	326760.786	32676.0786	359436.9
8	5662406	1/10/2021	INNSA1	5336000.53	533600.053	1067200.106	53360.0053	106720.0106	533600.053	53360.0053	586960.1
9	5664473	1/10/2021	INNSA1	3616369.48	361636.948	723273.896	36163.6948	72327.3896	361636.948	36163.6948	397800.6
10	5665363	1/10/2021	INNSA1	3686564.28	368656.428	737312.856	36865.6428	73731.2856	368656.428	36865.6428	405522.1
11	5666307	1/10/2021	INNSA1	2352426.49	235242.649	470485.298	23524.2649	47048.5298	235242.649	23524.2649	258766.9
12	4167374	2/6/2021	INNSA1	5442333.94	544233.394	1088466.788	54423.3394	108846.788	544233.394	54423.3394	598656.7
13	3799898	3/5/2021	INNSA1	2452083.37	245208.337	490416.674	24520.8337	49041.6674	245208.337	24520.8337	269729.2
14	3827425	5/5/2021	INNSA1	3483431.51	348343.151	696686.302	34834.3151	69668.6302	348343.151	34834.3151	383177.5
15	4206121	5/6/2021	INNSA1	4341615.43	434161.543	868323.086	43416.1543	86832.3086	434161.543	43416.1543	477577.7
16	4570298	5/7/2021	INNSA1	3555961.32	355596.132	711192.264	35559.6132	71119.2264	355596.132	35559.6132	391155.7
17	5319857	5/9/2021	INMAA1	3379232.61	337923.261	675846.522	33792.3261	67584.6522	337923.261	33792.3261	371715.6
18	3837875	6/5/2021	INNSA1	3697972.18	369797.218	739594.436	36979.7218	73959.4436	369797.218	36979.7218	406776.9
19	5332605	6/9/2021	INNSA1	5340947.68	534094.768	1068189.536	53409.4768	106818.9536	534094.768	53409.4768	587504.2
20	5718993	6/10/2021	INNSA1	3678902.87	367890.287	735780.574	36789.0287	73578.0574	367890.287	36789.0287	404679.3
21	5719027	6/10/2021	INNSA1	3525403.23	352540.323	705080.646	35254.0323	70508.0646	352540.323	35254.0323	387794.4
22	4252043	9/6/2021	INNSA1	3283356.42	328335.642	656671.284	32833.5642	65667.1284	328335.642	32833.5642	361169.2
23	4252051	9/6/2021	INNSA1	2225429.04	222542.904	445085.808	22254.2904	44508.5808	222542.904	22254.2904	244797.2
24	4618625	9/7/2021	INNSA1	3570893.44	357089.344	714178.688	35708.9344	71417.8688	357089.344	35708.9344	392798.3
25	3887357	10/5/2021	INNSA1	5107906.54	510790.654	1021581.308	51079.0654	102158.1308	510790.654	51079.0654	561869.7
26	6190152	10/11/2021	INMAA1	5282023.74	528202.374	1056404.748	52820.2374	105640.4748	528202.374	52820.2374	581022.6
27	6621435	10/12/2021	INNSA1	5303289.35	530328.935	1060657.87	53032.8935	106065.787	530328.935	53032.8935	583361.8
28	6621862	10/12/2021	INNSA1	3786682.05	378668.205	757336.41	37866.8205	75733.641	378668.205	37866.8205	416535
29	8097834	1/4/2022	INNSA1	3580926.83	358092.683	716185.366	35809.2683	71618.5366	358092.683	35809.2683	393902
30	8097890	1/4/2022	INNSA1	3587742.57	358774.257	717548.514	35877.4257	71754.8514	358774.257	35877.4257	394651.7
31	9377441	2/7/2022	INNSA1	3996666.84	399666.684	799333.368	39966.6684	79933.3368	399666.684	39966.6684	439633.4
32	9826464	2/8/2022	INNSA1	4309254.94	430925.494	861850.988	43092.5494	86185.0988	430925.494	43092.5494	474018
33	8123895	3/4/2022	INCPL6	3813558.5	381355.85	762711.7	38135.585	76271.17	381355.85	38135.585	419491.4
34	5843011	3/8/2022	INNSA1	6177164.58	617716.458	1235432.916	61771.6458	123543.2916	617716.458	61771.6458	679488.1
35	2280398	3/9/2022	INNSA1	3944085.87	394408.587	788817.174	39440.8587	78881.7174	394408.587	39440.8587	433849.4
36	6544565	4/5/2022	INNSA1	4645403.6	464540.36	929080.72	46454.036	92908.072	464540.36	46454.036	510994.4
37	8965667	4/6/2022	INNSA1	4023443.86	402344.386	804688.772	40234.4386	80468.8772	402344.386	40234.4386	442578.8

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38	8145729	5/4/2022	INNSA1	3755694.57	375569.457	751138.914	37556 9457	75113.8914	375569.457	37556.9457	413126.4
39	8145738	5/4/2022	INNSA1	2620578.22	262057.822	524115.644	26205.7822	52411.5644	262057.822	26205.7822	288263.6
40	9411755	5/7/2022	INNSA1	6099775.05	609977.505	1219955.01	609977.505	121995.501	609977.505	60997.505	670975.3
41	9412605	5/7/2022	INNSA1	4438145.6	443814.56	887629.12	44381.456	88762.912	443814.56	44381.456	488196
42	2300621	5/9/2022	INNSA1	5986861.52	598686.152	1197372.304	59868.6152	119737.2304	598686.152	59868.6152	658554.8
43	2301316	5/9/2022	INNSA1	4307037.8	430703.78	861407.56	43070.378	86140.756	430703.78	43070.378	473774.2
44	2323584	6/9/2022	INNSA1	5654168.81	565416.881	1130833.762	56541.6881	113083.3762	565416.881	56541.6881	621958.6
45	8579293	7/5/2022	INNSA1	4008657.9	400865.79	801731.58	40086.579	80173.158	400865.79	40086.579	440952.4
46	8579344	7/5/2022	INNSA1	3721268.41	372126.841	744253.682	37212.6841	74425.3682	372126.841	37212.6841	409339.5
47	8579375	7/5/2022	INNSA1	4029431.4	402943.14	805886.28	40294.314	80588.628	402943.14	40294.314	443237.5
48	7004953	8/1/2022	INMAA1	5247610.78	524761.078	1049522.156	52476.1078	104952.2156	524761.078	52476.1078	577237.2
49	7412074	8/2/2022	INNSA1	3735409.09	373540.909	747081.818	37354.0909	74708.1818	37354.0909	37354.0909	410895
50	7412178	8/2/2022	INNSA1	3657617.41	365761.741	731523.482	36576.1741	73152.3482	365761.741	36576.1741	402337.9
51	7023706	10/1/2022	INNSA1	3723980.3	372398.03	744796.06	37239.803	74479.606	37239.803	37239.803	409637.8
52	7024013	10/1/2022	INNSA1	3564343.39	356434.339	712868.678	35643.4339	71286.8678	356434.339	35643.4339	392077.8
53	7433765	10/2/2022	INNSA1	3642674.16	364267.416	728534.832	36426.7416	72853.4832	364267.416	36426.7416	400694.2
54	7042021	11/1/2022	INNSA1	3666184.44	366618.444	733236.888	36661.8444	73323.6888	36661.8444	36661.8444	403280.3
55	7451315	11/2/2022	INNSA1	3672797.44	367279.744	734559.488	36727.9744	73455.9488	367279.744	36727.9744	404007.7
56	8634456	11/5/2022	INNSA1	2618468.67	261846.867	523693.734	26184.6867	52369.3734	261846.867	26184.6867	288031.6
57	8634468	11/5/2022	INNSA1	3731367.7	373136.77	746273.54	37313.677	74627.354	373136.77	37313.677	410450.4
58	9963794	11/8/2022	INNSA1	4442562.92	444256.292	888512.584	44425.6292	88851.2584	444256.292	44425.6292	488681.9
59	7056314	12/1/2022	INNSA1	3342337.05	334233.705	668467.41	33423.3705	66846.741	334233.705	33423.3705	367657.1
60	7465304	12/2/2022	INNSA1	3293778.96	329377.896	658755.792	32937.7896	65875.5792	329377.896	32937.7896	362315.7
61	7469171	12/2/2022	INNSA1	8222320.3	822232.03	1644464.06	82223.203	164446.406	822232.03	82223.203	904455.2
62	9508992	12/7/2022	INMAA1	3172571.52	317257.152	634514.304	31725.7152	63451.4304	317257.152	31725.7152	348982.9
63	3929144	13/05/2021	INNSA1	3598921.38	359892.138	719784.276	35989.2138	71978.4276	359892.138	35989.2138	395881.4
64	3929239	13/05/2021	INNSA1	3474856.31	347485.631	694971.262	34748.5631	69497.1262	347485.631	34748.5631	382234.2
65	3929999	13/05/2021	INNSA1	5521027.51	552102.751	1104205.502	55210.2751	110420.5502	552102.751	55210.2751	607313
66	4659480	13/07/2021	INNSA1	5250231.91	525023.191	1050046.382	52502.3191	105004.6382	525023.191	52502.3191	577525.5
67	4661891	13/07/2021	INNSA1	2211803.3	221180.33	442360.66	22118.033	44236.066	22118.033	22118.033	243298.4
68	5240666	13/11/2021	INNSA1	5298334.75	529833.475	1059666.95	52983.3475	105966.695	529833.475	52983.3475	582816.8
69	6240776	13/11/2021	INNSA1	3265677.36	326567.736	653135.472	32656.7736	65313.5472	326567.736	32656.7736	359224.5
70	4306390	14/06/2021	INNSA1	3749303.62	374930.362	749860.724	37493.0362	74986.0724	37493.0362	37493.0362	412423.4
71	4306476	14/06/2021	INNSA1	3649867.35	364986.735	729973.47	36498.6735	72997.347	364986.735	36498.6735	401485.4
72	9543559	14/07/2022	INNSA1	4160442.59	416044.259	832088.518	41604.4259	83208.8518	41604.4259	41604.4259	457648.7
73	5848934	14/10/2021	INNSA1	5472663.87	547266.387	1094532.774	54726.6387	109453.2774	54726.387	54726.387	601993
74	6675607	14/12/2021	INNSA1	3755060.65	375506.065	751012.13	37550.6065	75101.213	375506.065	37550.6065	413056.6
75	7496394	15/02/2022	INNSA1	5063232.91	506323.291	1012646.582	50632.3291	101264.6582	506323.291	50632.3291	556955.6
76	6689591	15/12/2021	INNSA1	3638728.87	363872.887	727745.774	36387.2887	72774.5774	36387.2887	36387.2887	400260.2
77	6689608	15/12/2021	INNSA1	2447100.82	244710.082	489420.164	24471.0082	48942.0164	244710.082	24471.0082	269181.1

78	6691520	15/12/2021	INNSA1	5084395.25	508439.525	1016879.05	50843.9525	101687.905	508439.525	50843.9525	559283.5
79	8290186	16/04/2022	INNSA1	3400325.11	340032.511	680065.022	34003.2511	68006.5022	340032.511	34003.2511	374035.8
80	8290225	16/04/2022	INNSA1	4658785.43	465878.543	931757.086	46587.8543	93175.7086	465878.543	46587.8543	512466.4
81	8290252	16/04/2022	INNSA1	4881001.09	488100.109	976200.218	48810.0109	97620.0218	488100.109	48810.0109	536910.1
82	8295910	16/04/2022	INNSA1	3606764.85	360676.485	721352.97	36067.6485	72135.297	360676.485	36067.6485	396744.1
83	8295991	16/04/2022	INNSA1	3619181.47	361918.147	723836.294	36191.8147	72383.6294	361918.147	36191.8147	398110
84	4703949	16/07/2021	INNSA1	3276544.88	327654.488	655308.976	32765.4488	65530.8976	327654.488	32765.4488	360419.9
85	5068776	16/08/2021	INNSA1	5366125.86	536612.586	1073225.172	53661.2586	107322.5172	536612.586	53661.2586	590273.8
86	2016509	16/08/2022	INNSA1	4271265.44	427126.544	854253.088	42712.5544	85425.3088	427126.544	42712.5544	469839.2
87	2022360	16/08/2022	INNSA1	6410508.04	641050.804	1282101.608	64105.0804	128210.1608	641050.804	64105.0804	705155.9
88	6706707	16/12/2021	INNSA1	5236953.88	523695.388	1047390.776	52369.5388	104739.0776	523695.388	52369.5388	576064.9
89	9157313	17/06/2022	INNSA1	3612824.8	361282.48	722564.96	36128.248	72256.496	361282.48	36128.248	397410.7
90	6283875	17/11/2021	INNSA1	3731878.37	373187.837	746375.674	37318.7837	74637.5674	373187.837	37318.7837	410506.6
91	3984656	18/05/2021	INNSA1	3493819.6	349381.96	698763.392	34938.196	69876.392	349381.96	34938.196	384320.2
92	9600850	18/07/2022	INNSA1	4092507.66	409250.766	818501.532	40925.0766	81850.1532	409250.766	40925.0766	450175.8
93	5497443	18/09/2021	INNSA1	2029390.01	202939.001	405878.002	20293.9001	40587.8002	202939.001	20293.9001	223232.9
94	5502477	18/09/2021	INNSA1	3311796.79	331179.679	662359.358	33117.9679	66235.9358	331179.679	33117.9679	364297.6
95	6304293	18/11/2021	INNSA1	5285950.32	528595.032	1057190.064	52859.5032	105719.0064	52859.5032	52859.5032	581454.5
96	8742350	19/05/2022	INNSA1	3986596.13	398659.613	797319.226	39865.9613	79731.9226	398659.613	39865.9613	438525.6
97	9618329	19/07/2022	INNSA1	6053687.5	605368.75	121073.5	60536.875	121073.75	605368.75	60536.875	665905.6
98	5120150	20/08/2021	INNSA1	3600722.74	360072.274	720144.548	36007.2274	72014.4548	360072.274	36007.2274	396079.5
99	5123118	20/08/2021	INNSA1	3289139.83	328913.983	657827.966	32891.3983	65782.9666	328913.983	32891.3983	361805.4
100	4757353	21/07/2021	INNSA1	3650917.1	365091.71	730183.42	36509.171	73018.342	365091.71	36509.171	401600.9
101	2538065	21/09/2022	INNSA1	5997542.17	599754.217	1199508.434	59975.4217	119950.8434	599754.217	59975.4217	659729.6
102	4408681	22/06/2021	INNSA1	3266332.93	326633.293	653266.586	32663.3293	65326.6586	326633.293	32663.3293	359296.6
103	4408743	22/06/2021	INNSA1	2878655.82	287865.582	575731.164	28786.5582	57573.1164	287865.582	28786.5582	316652.1
104	7975581	23/03/2022	INNSA1	3865506.17	386550.617	773101.234	38655.0617	77310.1234	386550.617	38655.0617	425205.7
105	7975616	23/03/2022	INNSA1	3620522.71	362052.271	724104.542	36205.2271	72410.4542	362052.271	36205.2271	398257.5
106	7975807	23/03/2022	INNSA1	3473260.67	347326.067	694652.134	34732.6067	69465.2134	347326.067	34732.6067	382053.7
107	7976122	23/03/2022	INNSA1	3812855.84	381285.584	762571.168	38128.5584	76257.1168	381285.584	38128.5584	413414.1
108	6807063	23/12/2021	INNSA1	3343531.31	334353.131	668706.262	33435.3131	66870.6262	334353.131	33435.3131	367788.4
109	6808944	23/12/2021	INNSA1	5566559.19	556655.919	1113311.838	55665.5919	111331.1838	55665.919	55665.919	612321.5
110	4055925	24/05/2021	INNSA1	3515573.85	351557.385	703114.77	35155.7385	70311.477	35155.385	35155.7385	386713.1
111	6388760	24/11/2021	INNSA1	3643521.64	364352.164	728704.328	36435.2164	72870.4328	364352.164	36435.2164	400787.4
112	6816959	24/12/2021	INNSA1	3823228.51	382322.851	764645.702	38232.2851	76464.5702	382322.851	38232.2851	420555.1
113	6817018	24/12/2021	INNSA1	5146675.89	514667.589	102933.5178	51466.7589	102933.5178	51466.7589	51466.7589	56134.3
114	7219726	25/01/2022	INMAA1	3872520.05	387252.005	774504.01	38725.2005	77450.401	387252.005	38725.2005	425977.2
115	214538	25/04/2022	INNSA1	4065110.78	406511.078	813022.156	40651.078	81302.2156	406511.078	40651.078	447162.2
116	597826	25/10/2021	INNSA1	335078.84	33507.884	670157.68	33507.884	67015.768	33507.884	33507.884	36858.7
117	6405141	25/11/2021	INNSA1	3588127.57	358812.757	717625.514	35881.2757	71762.5514	358812.757	35881.2757	39469.4

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118	6405148	25/11/2021	INNSA1	3624769.11	362476.911	724953.822	36247.6911	72495.3822	362476.911	36247.6911	338724.6
119	6405243	25/11/2021	INNSA1	3600233.81	360023.381	720046.762	36002.3381	72004.6762	360023.381	36002.3381	396025.7
120	6405250	25/11/2021	INNSA1	3813804.89	381380.489	762760.978	38138.0489	76276.0978	381380.489	38138.0489	419518.5
121	9722873	26/07/2022	INNSA1	4334130.93	433413.093	866826.186	43341.3093	86682.6186	433413.093	43341.3093	476754.4
122	9722893	26/07/2022	INNSA1	3034905.32	303490.532	606981.064	30349.0532	60698.1064	303490.532	30349.0532	333839.6
123	9723332	26/07/2022	INNSA1	5969602.38	596960.238	1193920.476	59696.0238	119392.0476	596960.238	59696.0238	656656.3
124	7247228	27/01/2022	INNSA1	5110388.08	511038.808	1022077.616	51103.8808	102207.7616	511038.808	51103.8808	562142.7
125	8855148	27/05/2022	INNSA1	3595063.7	359506.37	719012.74	35950.637	71901.274	359506.37	35950.637	395457
126	8855202	27/05/2022	INNSA1	3388301.41	338830.141	677660.282	33883.0141	67766.0282	338830.141	33883.0141	372713.2
127	8855309	27/05/2022	INNSA1	3524571.81	352457.181	704914.362	35245.7181	70491.4362	352457.181	35245.7181	387702.9
128	9293464	27/06/2022	INNSA1	4484975.6	448497.56	896995.12	44849.756	89699.512	448497.56	44849.756	493347.3
129	5215541	27/08/2021	INNSA1	3731768.34	373176.834	746353.668	37317.6834	74635.3668	373176.834	37317.6834	410494.5
130	5215905	27/08/2021	INNSA1	5288086.24	528808.624	1057617.248	52880.8624	105761.7248	528808.624	52880.8624	581689.5
131	2623872	27/09/2022	INNSA1	4000688.88	400068.888	800137.776	40006.8888	80013.7776	400068.888	40006.8888	440075.8
132	2624146	27/09/2022	INNSA1	5884625.82	588462.582	1176925.164	58846.2582	117692.5164	588462.582	58846.2582	647308.8
133	6024661	27/10/2021	INNSA1	3419857.54	341985.754	683971.508	34198.5754	68397.1508	341985.754	34198.5754	376184.3
134	6025203	27/10/2021	INNSA1	3595387.58	359538.758	719077.516	35953.8758	71907.7516	359538.758	35953.8758	395492.6
135	6025204	27/10/2021	INNSA1	3826609.54	382660.954	765321.908	38266.0954	76532.1908	382660.954	38266.0954	420927
136	7260846	28/01/2022	INMAA1	3984835.42	398483.542	796967.084	39848.3542	79696.7084	398483.542	39848.3542	438331.9
137	3735799	28/04/2021	INNSA1	3583801.56	358380.156	716760.312	35838.0156	71676.0312	358380.156	35838.0156	394218.2
138	7284024	29/01/2022	INNSA1	5233278.69	523327.869	1046655.738	52332.7869	104665.5738	523327.869	52332.7869	575660.7
139	8054207	29/03/2022	INNSA1	5301031.08	530103.108	1060206.216	53010.3108	106020.6216	530103.108	53010.3108	583113.4
140	9324471	29/06/2022	INNSA1	3509052.24	350905.224	701810.448	35090.5224	70181.0448	350905.224	35090.5224	385995.7
141	3771325	30/04/2021	INNSA1	3409485.99	340948.599	681897.198	34094.8599	68189.7198	340948.599	34094.8599	375043.5
142	9346449	30/06/2022	INNSA1	4094183.86	409418.386	818836.772	40941.8386	81883.6772	409418.386	40941.8386	450360.2
143	2228070	30/08/2022	INNSA1	3091187.87	309118.787	618237.574	30911.8787	61823.7574	309118.787	30911.8787	340030.7
144	6462859	30/11/2021	INNSA1	3498605	349860.5	699721	34986.05	69972.1	349860.5	34986.05	384846.6
145	6888745	30/12/2021	INNSA1	3647005.45	364700.545	729401.09	36470.0545	72940.109	364700.545	36470.0545	401170.6
146	6895320	30/12/2021	INNSA1	3176061.74	317606.174	635212.348	31760.6174	63521.2348	317606.174	31760.6174	349366.8
147	4976717	20/09/2019	INMAA4	77282.88	7728.288	15456.576	772.8288	1545.6576	7728.288	772.8288	8501.117
Grand Total				580694490.3	58069449.03	116138898.1	5806944.903	11613889.81	58069449.03	5806944.903	63876394

32. Duty payment under protest:

During the course of investigation, M/s. Osyen Trading Enterprise Pvt. Ltd paid Rs.1,75,00,000/-under protest vide TR6 Challan No. HC256/28.10.2022 [RUD-A14] detailed below:

Table-VI

S. No	D.D No & Date	DD amount	BCD/SWS	IGST Amou nt	Port Nam e	TR-6Challan Number and Date
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	517306 dt. 03.10.2022	1,75,00,000	BCD - 1,59,09,091/- SWS- 15,90,909/-	-	Nhava Sheva	HC256/28.10.2022
Total		Rs.1,75,00,000/-	Rs.1,75,00,000/-	-		

Confiscation:

33. M/s. Osyen Trading Enterprise Pvt. Ltd appear to have imported the subject goods by mis-declaring these goods as ‘Labels’ instead of ‘narrow woven fabrics’ and misclassifying them under CTH 58071020/ 58071090/ 580719090 instead of correct CTH 58063200 at the time of import by way of giving in- sufficient details & deliberately and intentionally suppressed the actual nature of imported goods, with the intention of availing the benefits of lower duty structure applicable to the goods falling under CTH 58071090/58071020/58079090 by supressing the facts in their Bills of Entry & and thereby contravened the provisions of Section 46 (4) & 46(4A) of the Customs Act, 1962 and Notification No. 82/2017-Cus., dated 27.10.2017 as discussed in foregoing paras. Hence, it appeared that the subject goods imported vide Bill of Entry No. 2623872 dated 27/09/2022 valued at Rs. 40,00,689/- and the subject goods imported earlier during the period from 20.09.2019 to 27.09.2022 valued at Rs.57,66,93,801/- (as detailed in Annexure-B) & are to be

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held liable/liable for confiscation under the provisions of section 111(m) of the Customs Act, 1962.

Penalty:

34. As brought out in the findings, M/s. Osyan Trading Enterprise Pvt. Ltd appear to have suppressed the facts as discussed in Paras 21 to 27 at the time of filing of Bills of Entry with the intention of avoiding payments of applicable BCD & SWS. M/s. Osyan Trading Enterprise Pvt. Ltd appear to have not provided the true description of the goods imported, with the sole intention to avoid detection of incorrect classification adopted by them and to evade payment of appropriate Customs Duty. M/s. Osyan Trading Enterprise Pvt. Ltd appeared to have deliberately classified the subject imported goods under CTH Nos.58071020, 58071090 &58079090 instead of CTH No. 58063200 with an intention to evade payment of appropriate BCD, SWS payable on such imported goods. The investigation had also brought out documents showing the mis- classification and mis-declaration of the subject imported goods and also misusing the benefits given under Notification No. 82/2017-Cus., dated 27.10.2017 for evading the payment of applicable BCD & SWS. Inasmuch as the liability to pay differential duty along with interest has arisen due to short levy by misstatement & suppression of facts, M/s. Osyan Trading Enterprise Pvt. Ltd appear to have rendered themselves liable to penalty under the provisions of Section 112 (a) and/or 114A of the Customs Act, 1962.

35. Further, it is evident that Mr. Pannala Ranks, Director of M/s. Osyan Trading Enterprises is aware about the difference in duty structure of Tape Ribbon Strips for labels- Cotton cleared in CTH 58063190 (BCD 10%, IGST 5%), Tape-Ribbon Strips of Polyester cleared in CTH 58063200 (BCD 20%, 10% SWS, IGST 5%) & White Strips Label Tape -Man Made Fibers cleared in 58071020 (BCD 10%, 10% SWS, IGST 12%). He also accepted the fact that they have imported 'Tape-Ribbon Strips of Polyester' under CTH 5807 instead of CTH 58063200. Therefore, the directors of M/s. M/s. Osyan Trading Enterprises appear to be liable to penalty under the provisions of Section 114AA of the Customs Act, 1962.

Jurisdiction:

36. Subsequent to enactment of Finance Act, 2022, the CBIC issued Notification No. 28/2022 Customs (N.T.) dated 31.03.2022 assigning the proper officer for the purpose of Section 110AA. In terms of Sr. No. 1 of said notification, in case where there are multiple jurisdictions, the jurisdiction having the highest amount of duty, refund, at the stage of transfer, is assigned as the proper officer for the said case. As detailed in Table-VI above, the highest duty implication under Section 28 is under Nhava Sheva Sea Port (INNSA1) which falls under the jurisdiction of the Commissioner of Customs (NS-III), Jawaharlal Nehru Custom House, Nhava Sheva, Tal-Uran, Raigad-400707.

37. From the foregoing discussions, facts, and the provisions of law, it appeared that M/s. Osyan Trading Enterprise Pvt. Ltd have deliberately declared the incomplete description, mis-classified the subject imported Products valued Rs. 58,06,94,490/- vide 146 past Bills of entry and 1 Live Bill of Entry during for the period from 20.09.2019 to 27.09.2022 as detailed in Annexure -B to this report. The BCD & SWS to be demanded due to mis-classification & mis-declaration works out to Rs. 6,38,76,394/- (Six Crores Thirty-Eight Lakhs Seventy Six thousand Three Hundred Ninety Four rupees only).

38. Now, therefore, M/s. Osyan Trading Enterprise Pvt. Ltd (IEC No. AABCO2445B) registered at No. 67, Narayana Mudali Street, 2nd Floor Sowcarpet, Chennai, Tamil Nadu- 600001 in respect of Bills of entry covered in Annexure -B, were called upon to show cause in writing to the **Adjudicating Authority**, i.e., the Commissioner of Customs, NS-III, Jawaharlal Nehru Custom House, Nhava Sheva, Tal. Uran, Distt- Raigad, Maharashtra- 400707, within 30 (Thirty) days from the receipt of this notice, as to why:

- a)** The declared classification of subject goods imported vide 146 past Bills of Entry and 1 Live Bill of Entry filed during the period from 20.09.2019 to 27.09.2022 and classified under CTH 58071020, 58071090 & 58079090 should not be rejected and reclassified to correct

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classification of CTH 58063200.

b) The subject goods valued at Rs. 40,00,689/- (Rs. Forty Lakhs Six Hundred and Eighty Nine only) imported vide Bill of Entry No. 2623872 dated 27/09/2022 should not be confiscated under the provisions of Section 111(m) of the Customs Act, 1962.

c) The subject imported goods valued Rs. 57,66,93,801/- (Rs. Fifty Seven Crore Sixty Six Lakhs Ninety Three Thousand Eight Hundred One only) imported vide 146 past Bills of Entry from 20.09.2019 to 27.09.2022 should not be held liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

d) The differential Customs Duty of Rs. 4,40,076/- (Rupees Four Lakh Forty Thousand Seventy-Six Only) in respect of Live Bill of Entry No. 2623872 dated 27/09/2022 should not be paid/ recovered from the Importer.

e) The differential Customs Duty of Rs. 6,34,36,318/- (Rupees Six Crore Thirty-Four Lakh Thirty-Six Thousand Three Hundred Eighteen only) in respect of 146 past Bills of Entry from 20.09.2019 to 27.09.2022, which was not levied by reason of wilful mis-statement and suppression of facts should not be demanded from the importer, in terms of the provisions of Section 28 (4) of the Customs Act, 1962.

f) The applicable interest should not be recovered from them in terms of the provisions of Section 28 (4) of the Customs Act, 1962 read with section 28(10) & 28AA of the Customs Act, 1962.

g) M/s. Osyan Trading Enterprise Pvt. Ltd should not be held liable for penalty under the provisions of Sections 112(a) and/or 114A of the Customs Act, 1962.

h) M/s. Osyan Trading Enterprise Pvt. Ltd should not be held liable for penalty under the provisions of Sections 114AA of the Customs Act, 1962.

i) An amount of **Rs. 1,75,00,000/-** paid by M/s. Osyan Trading Enterprise Pvt. Ltd towards differential duties (BCD & SWS) paid under protest should not be treated as voluntary duty payment and should not be appropriated against the differential duty payable by them as demanded in sub-para (d) above.

j) The bank guarantee no. 6031NDDG00001023 dated 17.11.2022 of an amount of Rs.1,20,00,000/- furnished by M/s. Osyan Trading Enterprise Pvt. Ltd at the time of provisional release of seized goods, should not be appropriated against the demand proposed in sub-paras (e), (f) & (g) above.

WRITTEN SUBMISISON

39. The written submission dated 10.07.2025 of the Noticee is as follows:-

39.1 At the outset, we, Osyan Trading Enterprise Pvt. Ltd. (the importer), submit that the SCN under reference is ill conceived and not sustainable on limitation and merits, being based on erroneous facts and law. We submit that the proposals in the SCN need to be dropped on the following amongst other grounds which are without prejudice to each other:

39.2 Classification for live consignment NOT disputed:

The SCN has proposed classification of the goods covered under the live bill of entry no. 2623872 dated 27/09/2022 under CTH 5806 3200 based on detailed examination and Test

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Report. These goods did not have any inscription or painting or embroidery. The Noticee, Importer, therefore, is not contesting the proposal for classification under 5806 3200 as proposed in the SCN. The Noticee Importer has voluntarily deposited an amount of Rs. 1,75,00,000 upon realizing the mistake in the declared classification.

Apparently, there was an error in the goods dispatched by the supplier and the importer had no occasion to examine the imported goods before the Customs Authorities did, under a Panchana dated 11/10/2022. It may be appreciated that the subject bill of entry no. 2623872 dated 27/09/2022) was filed on the basis of the supplier's invoice and the packing list which advised the classification under heading 2807 1020 as can be ascertained from the related import documents appended to the subject SCN as RUD A5.

The matter may be deemed to be conclusive

The importer humbly submits that the matter related to the live bill of entry number 2623872 dated 27/09/2022 should be deemed to be conclusive in view of the provisions of Section 28(5) read with Section 28(6) of the Customs Act, 1962 as the differential duty amounting to Rs. 4,40,075.80 (**less adjustment on account IGST payable@5% as against the IGST paid@12%,**) interest thereon under section 28AA of the Customs Act, 1962 (for the period from 01/10/2022 till the deposit of Rs. 1,75,00,000 on 28/10/2022), and penalty equal to 15% of the differential duty stands paid before the issuance of the SCN.

It follows that the importer may not be penalized in excess of the penalty of Rs. 15% of the differential duty and the redemption fine may not be imposed in respect of these goods.

39.3 No duty liability in respect of the Past 146 consignments

The goods stored in Warehouse number 10 can't be considered as imported goods. These goods stored in Warehouse number 10, Massey Enterprises Pvt. Ltd, Royapuram, Chennai-30 and examined on 03/10/2022 could not be considered as the stock of goods imported over a period of time (under heading 5807) as suggested in paragraph 19 of the SCN.

39.4 No evidence that the goods stored in Warehouse No. 10 were imported goods with classification under Heading 5807

The SCN does not lead any evidence that the said goods stored in the Warehouse number 10 were imported. The authorized person of the importer, Mr. Pannalal Ranka, in his statement recorded on 03/10/2022 (RUD A4) and reproduced in paragraph 6.1 of the SCN, has nowhere admitted that the goods stored in Warehouse number 10 were the goods imported in the past under heading 5807 by M/s Osyan Trading Enterprises.

In reply to question number 11, he has clarified that the importer were only a trader; They did not deal with any manufacturing activity after importation; Sometimes, they got orders with pre-print request; Accordingly, they placed orders with the requirement of their customers on the overseas suppliers.

Mr. Pannalal Ranka, in reply to question number 13, has again reiterated that they placed orders with their suppliers with pre-print request. He also reiterated that the customs authorities have satisfied themselves after examination of the cargo and cleared the consignments under heading 5807.

Only because Mr. Pannalal Ranka could not segregate on the spot, their pre-printed imported labels from the plain strips of textile materials without printing, in reference to the bills of entry, it cannot be said that all goods imported in the past were 'plain strips of textile'.

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39.5 The stock of plain strips correctly classified under heading 5806

The SCN does not appreciate that M/s Osyan has also been importing the goods of heading 5806 (the plain strips). The SCN has ignored the explanation that the stock found in the Warehouse no. 10 was imported from time to time classifying the 'plain strips' under heading 5806. We enclose herewith some bills of entry on sample basis assessed correctly under heading 5806. The Customs Act does not require storage of imported goods bill of entry-wise in a private warehouse. As such there cannot be any adverse inference against the Importer in respect of the stock of 'plain strips found in the Warehouse no. 10.

39.6 Onus on the department: Goods not notified under section 123

The SCN ignores the settled principle of law that once any goods were part of the landmass of India outside the customs area, the onus was on the department to establish that such goods were imported with any kind of irregularity.

The goods stored in Warehouse number 10 were not the goods notified under section 123 of the Customs Act, 1962. In the circumstances, the onus was on the department to prove that these goods found to be 'plain strips of textile materials' were actually imported by the present noticee Mr. Osyan Trading Enterprises.

It needs to be appreciated that the suspicion, howsoever strong, is not a substitute for hard reliable evidence.

39.7 Demand does not exceed 54.01 Lakh with necessity for adjustment on account of IGST payable@5%, instead of IGST paid@12%

Deemed Closure in case the goods stored in Warehouse No 10 are considered as imported:

It appears that the goods examined in the Warehouse number 10 were not stored firm-wise. The SCN has ignored the fact that those goods stored in the Warehouse number 10 were imported under heading 5806 only. It is, thus, not tenable to link those goods stored in Warehouse number 10 to the past imports assessed under heading 5807 without reasonable evidence.

The importer vehemently argues that those goods in Warehouse number 10 valued Rs 4.91 crore could not be considered as imported goods, all the more assessed under heading 5807. However, if a different view is taken, the differential duty involved in these goods does not exceed Rs. 49.10 Lakh BCD + 4.91 Lakh SWS as detailed in Table-V in the SCN. In that event the proceedings related to these goods should be deemed to be closed under the provisions of section 28(5) read with section 28(6) of the Customs Act, 1962 in view of the payment of Rs 1.75 crore during the stage of investigations, with a view to buy peace of mind.

39.8 Hypothetical Premise: Goods of description identical to the description in the live consignment were also 'Plain strips'

It needs to be appreciated that the description identical to the description in the live consignment does not lead to an inference that the goods imported earlier were also the offending goods. i.e. 'plain strips of textile' classifiable under heading 5806 instead of the heading 5807.

The SCN makes such a conjecture in its Para 23.

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Obviously, the premise is highly hypothetical. Only because the importer was caught on the wrong foot, once in a case of the live Bill of Entry, there cannot be a presumption that there was similar irregularity in every previous consignment. **It is relevant that multiple past consignments were cleared by the customs authorities after due examination.**

39.9 Many consignments in the past cleared after examination by the Proper Officers:

It may be appreciated that the clearance of many past imported consignments was allowed by the proper officers of customs after physical examination of the goods.

On sample basis, we enclose herewith copies of the bills of entry with the related examination orders, as detailed below.

It
may be
appreciated
that
various

	Bill of Entry No. (date)	Sr. No. of Annexure-B	Examination Order and Percentage of Examination.
1	2323584 (06/09/2022)	44	<i>Examination Order:</i> <i>Open & examine 10% (purely on random basis) at item level. verify declared quantity, description, claimed notification</i> There is an endorsement of 10% examination on the face of the Bill of Entry for container no. CSNU 6388974
2	8579344 (07/05/2022)	46	There is an endorsement of 10% examination on the face of the weighment slip supported by Seal cutting was Order; Seal cutting was necessary only for examining the Container No BEAU 2570571; The Examination Order: <i>Please follow RMS / Targeter's,/ Intervenor's instructions and examine thoroughly at least 10% of goods, Check the declaration, for the description, quantity, claimed notification.</i>
3	7496394 (15/02/2022)	75	There is an endorsement of 10% examination on the face of the bill of entry and Previous Test Report
4	9600850 (18/07/2022)	92	There is an endorsement of 20% examination on the face of the bill of entry and Previous Test Report
5	2538065 (21/09/2022)	101	There is an endorsement of 100% examination on the face of the Bill of Entry
6	9722893 (26/07/2022)	122	<i>Examination Order: Open and examine 20% or more from the container, verify description, quantity, Verify correctness of declared CTH.</i> There is an endorsement of 20% examination on the face of the Bill of Entry for the container no. ZIMU 117768
7	9324471 (29/06/2022)	140	There is an endorsement of 30% destuffing on the face of the Bill of Entry, indicating that the Container No CAIU 3629642 was examined
8	2228070 (30/08/2022)	143	<i>Examination Order: Please follow RMS / Targeter's, / Intervenor's instructions and examine thoroughly at least 10% of goods, verify declared quantity, description, claimed notification.</i> There is an endorsement of 10% examination on the face of the Bill of Entry and approving the rate of BCD.

consignments imported in the past were examined between 10% to 100% as tabulated above.

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Only upon the due examination of description & therefore, logically CTH, and the claim to exemption notification, the consignments were allowed to be cleared.

The importer could retrieve the data from the customs broker after consistent follow-up. It needs to be appreciated that the importer is best in Chennai and a senior citizen facing periodic health issues. As such the importer was constrained in getting the relevant data from the customs broker.

39.10 Request to retrieve the information for all the subject bills of entry

In this backdrop, we humbly request you to access the information related to examination orders, examination reports and samples drawn for testing. In a few cases cited above, besides the examination orders, the details of examination are scribbled, endorsed on the face of the bills of entry by the examining officers giving out of charge.

We, humbly, submit that the principle of preponderance of probability weighs in favour of the importer Noticee considering the multiple cases of examination of the imported consignments cited above, as against the solitary case of the live consignment.

39.11 The import was generally against the purchase orders placed by the customers on the importer

The SCN in Para 19 makes an averment that the importer M/s Osyan Trading Enterprises did not adduce any documentary evidence to prove that the goods imported in the past were printed with any inscription or motifs.

It is stated that despite reasonable time given to the domestic customers of the importer, they failed to provide any courier, email, pre-print request details with respect to the purchase orders sent to the importer.

In this backdrop, we humbly submit that the premise is misleading with a revenue prejudice. It may be noted that the authorized persons of the customers in their respective statements have stated that the communication with the importer was mostly by **WhatsApp** or by courier.

Presuming that the customers failed to produce any Purchase Orders, the importer did present a few Purchase Orders placed by the customers on them. A few sample copies are enclosed herewith for ready reference. However, the investing officers, for the reasons best known to them, have refused to take cognizance of such Purchase Orders. It may be noted that the 'labels' classified under Heading 5807 are of utilitarian nature as noted in the HSN explanatory notes.

Purchase Orders in reference to Catalogue

The different types of instructions were always codified by the importer in the form of a catalogue. It may be noted that the purchase orders by the customers specify the product codes such as OS-NT-101, OS-SS-201, OS-WS301, OS- WD 401, OS-DS 501 in reference to the product catalogue of the importer. Copy of the product catalogue is enclosed herewith for ready reference.

39.12 Request for Cross Examination of the Customer Representaives

In case the veracity of the submissions is questioned, we request you to give us the opportunity of cross-examining the representatives of the customers whose statements have been referred and relied upon in the SCN. 6.

39.13 Normal Price difference of the 'printed labels' and 'plain strip' not established:

The SCN in Para 23 has tabulated the unit price for the 'plain strips' found in the live consignment with the unit prices of three previous bills of entry with identical description.

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It is suggested that there is no significant difference between the unit prices implying that the past consignments must also be of plain strips without any inscriptions or motifs printed on them. However, the data is not of much relevance because it does not establish the normal price differential between the printed labels and the plain strips. The SCN also fails to appreciate that the printing of plain strips is not a very costly affair. As such, there may not be much of price difference between the printed labels and the plain strips to draw any inference.

Thus, the premise based on the price differential between the printed labels and the plain strips is inconclusive. In view of the foregoing submissions, the duty demand in respect of the past consignments is not sustainable/

39.14 The Re-computation of duty demand: Necessity for adjustment on account of IGST payable@5%, instead of IGST paid@12%

Without prejudice to the submissions on merit, as above or on limitation in the succeeding paragraph, we submit that the differential duty demand needs to be adjusted for IGST paid@12% instead of IGST payable @5%, as noted in Para 30 of the SCN.

39.15 Limitation: *Extended period not invokable:*

The SCN dated 10/09/2024 has demanded duty in respect of 147 bills of entry filed in 20/09/2019 to 27/09/2022 (including one live consignment) under section 28(4) of the Customs Act, 1962.

We submit that the said demand in respect of the bills of entry filed before 10/09/2022 is barred by limitation of two years from the relevant date under the provisions of section 28(1) of the Customs Act, 1962 as it existed at the material time.

The SCN is in error in invoking the extended period of limitation of 5 years under section 28(4) as substituted with effect from 08/04/2011 in absence of ingredients such as *(a) collusion; or (b) any willful mis-statement; or (c) suppression of facts, with intention to evade payment of duty.*

Therefore, the demand is not sustainable under, besides on merit, on the grounds of limitation to the extent it relates to the bills of entry filed before 10/09/2022.

39.16 No Wilful mis-statement: Recovery Not Due under Section 28(4)

The SCN has proposed to recover duty under the provisions of section 28 (4) of the Customs act, 1962. The said sub section (4) of section 28 comes into play only where any duty has not been levied or not paid by reason of *(a) Collusion; or (b) willful mis-statement; or (c) Suppression of facts by the importer.*

The relevant provisions under section 28(4) reads as under:

28 Recovery of duties not levied or short-levied or erroneously refunded

- (4) Where any duty has not been levied or has been short-levied or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-*
 - (a) collusion; or*
 - (b) any willful mis-statement; or*
 - (c) suppression of facts,*

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

Accordingly, the SCN can be served within five years from the relevant date (the date of payment of duty) if the duty was short levied by reason of - (a) collusion; or (b) any willful mis-statement; or (c) suppression of facts by the importer.

In the present case, none of these ingredients are present. The charge if wilful mis-statement (mis-declaration) of description and consequential mis-classification as alleged in Para 29 of the SCN, is not sustainable being based on the presumption on the basis of a solitary bill of entry ignoring multiple bills of entry where the imported goods were examined before clearance.

The description in the past bills of entry was correct and as a corollary the charge of mis-classification is also not sustainable. Presuming that there was error in claiming the benefit of exemption, such error in assessment cannot be equated with the mis-declaration. The elements of declaration as relevant for the purpose of filing the bills of entry under section 46 should not be confused with the elements of assessment under section 17 of the Customs Act, 1962. Otherwise, the provisions of section 28(1) would be rendered redundant.

It needs to be appreciated that the importer classified the goods under CTH 5807 as per their understanding, described the goods in the bill of entry in conformity with the import invoice based on the Purchase Orders specifying the product codes in the catalogue.

It may be appreciated that it makes no difference that the subject bills of entry were under 'self-assessment' during the relevant period (with effect from 08/04/2011). It needs to be appreciated that the assessment of duties (involving classification and determination of rate of duty) was distinct from 'declaration' in the bill of entry. Assessment follows declaration. The 'description' in the bill of entry constitutes 'declaration' for the purpose of assessment (determination of classification and rate of duty).

Moreover, the assessment used to be made by the proper officer prior to 08/04/2011 and is now being verified by the proper officer under the provisions of section 17 of the Customs Act, 1962, as amended.

39.17 Interest not payable:

Interest is an accessory to the principal. Therefore, the Noticee Importer is not liable for payment of any interest as demanded in the SCN if the demand in the SCN is set aside, being not sustainable under law on merits as also on limitation.

39.18 Subject goods not liable for confiscation under section 111(m), irrespective of the decision on classification

The SCN is in error in proposing that the subject goods are liable for confiscation under section 111(m) of the Customs Act, 1962.

The section 111(m) reads as under:

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

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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;

The SCN in Para 33 thereof has noted that the subject imported goods were liable for confiscation under section 111(m) of the Customs Act, 1962 as the Noticee-Importer misclassified the goods as 'Labels' instead of 'narrow woven fabrics' under CTH 58071020/5807109Q/ 580719090 instead of correct CTH 58063200 at the time of import by way of giving in-sufficient details and deliberately and intentionally suppressed the actual nature of imported goods, with the intention of availing the benefits of lower duty structure applicable to the goods falling under CTH 58071090/58071020/58079090 by suppressing the facts in their Bills of Entry .

However, the observation is misleading in as much as the importer had declared the complete description of the subject imported goods, referring the goods as "White Strips Label Tape. MM x ... MM Rolls Man Made Fibres" referring the goods as labels, being printed with the utilitarian information.

The charge of mis-declaration of description is presumptuous and based on a solitary live consignment bill of entry no. 2623872 dated 27/09/2022 ignoring the multiple past bills of entry cleared after due examination.

Settled Legal Position

It is a settled position of law that the classification and the claim to exemption are the matters of assessment and bonafide belief of the importer and not the matters of 'any other particulars' as referred in section 111(m) of the Customs Act, warranting confiscation. In this context, the Noticee refers to the decision of Supreme Court in the case of **Northern Plastic Ltd. Vs. CCE reported in 1998 (101) E.L.T. 549 (S.C.)**

The Supreme Court has held as under:

22. that the classification and reference to exemption notification in the bills of entry was in the nature of a claim made on the basis of the belief entertained by the Appellant (Assessee) and therefore cannot be said to be a mis-declaration as contemplated by section 111 (m) of the Customs Act, 1962. As the Appellant has given full and correct particulars as regards the nature and size of the goods, it is difficult to believe that it had referred to the wrong exemption notification with any dishonest intention to evading proper payment of countervailing duty.

23. We, therefore, hold that the appellant had not mis-declared the imported goods either by making a wrong declaration as regards the classification of the goods or by claiming benefit of the exemption notifications which have been found not applicable to the imported goods. We are also of the view that the declarations in the bill of entry were not made with any dishonest intention of evading payment of customs and countervailing duty.

In the light of the decision of the Supreme Court, the SCN is in error in holding the subject goods liable for confiscation under section 111(m) of the Customs Act, 1962, for the alleged error in classification under CTI 8531 2000 as per understanding of the Noticee.

In this context, attention is also invited to the following decisions:

- (i) M/s Wockhardt Ltd. in Appel No. 85921 of 2019. Refer Order No. A/85511/2022 dated 11/04/2022;
- (ii) M/s ThyssenKrupp Industries India P Ltd [2016 (343) ELT 533 (T-Mumbai)].

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39.19 Distinction between elements of assessment and elements of declaration:

The SCN alleges in Para 33 thereof that the Noticee Importer contravened the provisions of Section 46 (4) 85 46(4A) of the Customs Act, 1962.

However, it needs to be noted that the 'declaration in the bill of entry' under section 46 was different from 'the assessment of the bill of entry' under section 17. The elements of information - such as description of the imported goods, the country of origin, the supplier details, quantity / weight of the imported goods, unit rate, terms of invoice - were in the nature declaration (statement) made by the importer in the bill of entry under the provisions of section 46 of the Customs Act, 1962. The classification and consequent decision on the rate of duty in the light of the exemption under some notification, the determination of assessable value and the duty payable were the elements of 'assessment' of the bill of entry under the provisions of section 17 of the Customs Act, 1962. At the cost of repetition we submit that there was no error in description for the past bills of entry.

39.20 No change even after introduction of Self-Assessment:

The SCN in Para 27 thereof has referred to amendment in Section 17 of the Customs Act, 1962.

However, it is relevant to note that the classification and claim to exemption remain the matters of assessment and not the matters of declaration in the bill of entry. No change has been brought about in this respect with introduction of 'self-assessment' with effect from 08/04/2011. There is no change in the manner of filing the bill of entry prior to 08/04/2011 and thereafter, except for the introduction of the deeming fiction of assessment. Prior to 08/04/2011 also, the elements of assessment – the classification, exemption notification were provided in the bill of entry, with the understanding that the classification/ claim to exemption were in the nature of proposal to assessment and the proper officer would make the assessment. The approval to the proposal was considered as 'assessment' With effect from 08/04/2011, the bill of entry contains the same elements of the declaration and assessment, but with understanding that the bill of entry is already assessed by the importer and the verification of the assessment is left to the proper officer. Such a change arises from the amendment in section 17, without any amendment in section 46 of the Customs Act, 1962. In effect, there is no change in the elements of declaration and the elements of assessment even with the introduction of the concept of the self-assessment. The change is in understanding about the role of the customs officer- earlier the officer was considered to be doing the assessment, now the officer is considered to be verifying the assessment.

39.21 Decision in the case of Northern Plastic remains valid

Therefore, there being no change in the elements of declaration and the assessment, as also in the provisions of section 46 or section 111(m) of the Customs Act, 1962, the decision of the Hon'ble Supreme Court in the case of Northern Plastic in the case of **Northern Plastics Ltd. [1998 (101) ELT 549 (S.C.)]** remains relevant even in the self-assessment era.

The decision has been followed by the Hon'ble Tribunal in the case of M/s Wockhardt Ltd. in Appel No. 85921 of 2019. Refer Order No. A/85511/2022 dated 11/04/2022 involving classification of 'Icing sugar / Suresphere / Suglets' cleared from Air Cargo Complex, Sahar between June 2011 to September 2014. The Tribunal referred to the decision in the case of Northern Plastics in Para 4.3, as also the decision of the Tribunal in case of M/s Thyssenkrup Industries India P Ltd [2016 (343) ELT 533 (T-Mumbai)].

The Tribunal set aside the redemption fine and penalty in the light of the decision of the Supreme Court that the goods were not liable for confiscation and as a consequence, penalty was not imposable. The duty was voluntarily paid by the importers as the classification proposed by the department was found to be correct.

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Therefore, presuming that the Noticee erred in classification, such erroneous classification would at the most involve be a case of erroneous assessment.

39.22 Section 28(1) cannot be rendered redundant

If there was no distinction between the declaration in the bills of entry and the assessment, the sub-section (1) of section 28 would be rendered redundant. Every error in assessment would then be colored as mis-declaration (misstatement). It is relevant that the scope of section 46 has not been altered while introducing the self-assessment under section 17 of the Customs Act, 1962.

The Noticee Importer, therefore, submits that the SCN issued after more than 2 years from the relevant date is barred by limitation prescribed u/s 28(1) of the Customs Act, 1962 and referring to the provisions of section 28(4) instead

39.23 *Goods Not Available for Confiscation; Cannot be Confiscated: Redemption Fine Not Imposable:*

Even otherwise, the goods covered by past 146 bills of entry as listed in Annexure-B to the SCN were not seized at any point of time, were not assessed provisionally and were not cleared against a bond. The stock in the Warehouse No 10 does not relate to the impugned goods covered any of the past bills of entry.

Irrespective of the decision on the seized goods in the Warehouse No 10 (as imported goods or otherwise) valued Rs 4.91 Crore, the remaining goods referred in the Annexure-B to the SCN are not available. It may be noted that the Annexure-B relates to goods with CIF value of Rs 58,06,94,490. Thus, the presuming for the sake of argument that the goods stored in the Warehouse No. 10 valued Rs 4.91 core and the goods related to the live consignment valued Rs. 4,40,075, the rest of the imported goods valued Rs. 53,12 crores are not available for confiscation. It is a settled proposition of law that the goods which are not available for confiscation cannot be confiscated and redemption fine cannot be imposed under the provisions of section 125 of the Customs Act, 1962. In this context, we refer to and rely upon the following decisions:

- (i) CC(I), Mumbai Vs Finesse Creation Inc. **2009 (248) ELT 122 (Bom.)** affirmed by Hon'ble Supreme Court as reported in **2010 (255) ELT A120 (S. C.)**;
Followed by:
 - (a) Hon'ble Bombay High Court in case of CC, NS-I Vs Frigorifico Allana Pvt. Ltd. **2024 (12) TMI 101 (Bom.)** &
 - (b) CESTAT, Mumbai in- **Shashi Dhawal Hydraulics Vs CC(I) Mumbai reported in 2019 (370) ELT 999 (Tri. Mum.)**;
- (ii) The decision in the case of the Tribunal Larger Bench in case of CCE, Nashik Vs Shivkripa Ispat Ltd. reported in **2009 (235) ELT 623 (Tri-LB)**
- (iii) The decision of Hon'ble High Court of Punjab & Haryana in the case of CC, Amritsar Vs. Raja Impex Pvt. Ltd. reported in **2008 (229) ELT 185 (P&H)**.

We humbly submit that it is necessary to follow the judicial discipline and hold that redemption fine should not be imposed for the goods not available for confiscation, even if it held that the Importer mis-declared and mis-declared the goods imported under the past consignment.

39.24 Penalty NOT imposable:

Penalty under section 112(a) not imposable:

The SCN has proposed penalty on the Noticee under the provisions of Section 112(a) which reads as under:

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112. *Penalty for improper importation of goods, etc.-*

Any person, -

- (a) *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*
- (b) *Not relevant*

Shall be liable, -

- (i) *in the case of goods in respect of which any prohibition is in force **to a penalty** ...*
- (ii) *in the case of dutiable goods, other than prohibited goods, **to a penalty** ...*
- (iii) *in the case of goods in respect of which the value stated in the entry made under this Act, is higher than the value thereof **to a penalty** ...*
- (iv) *in the case of goods falling both under clauses (i) and (iii), **to a penalty** ...*
- (v) *in the case of goods falling both under clauses (ii) and (iii), **to a penalty** ...*

The Noticee submits that –

- The subject goods are not liable for confiscation as detailed above; except the live consignment; and
- There was no in declaration of the goods error and consequential assessment of the imported goods under CTH 5807 based on their bonafide belief that the imported goods were 'printed labels';
- The declaration based on their belief, duly verified by the proper officers of customs on multiple occasions could not be considered as 'act or omission' which would render the imported goods liable to confiscation.

Therefore, the Noticee submits that the penalty under section 112(a) is not attracted in the present case.

Penalty under Section 114A not imposable:

The SCN proposes to impose penalty on the importer under section 114A of the Customs Act, 1962 which reads as under:

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 willful 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 shall also be liable to pay a penalty equal to the duty or interest so determined :

At the outset we submit that the penalty under section 114A is not sustain=able as the demand for differential duty is not sustainable on merits as also on limitation. It may be appreciated that ingredients specified in sub-section (4) of section 28 are identical with the circumstances attracting penalty under section 114A of the Customs Act, 1962. We therefore submit that equal penalty under section 114A is not imposable in the present case as the demand in the SCN is not sustainable on merits of the issue.

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In this context, we refer to and rely upon the decision of Hon'ble Supreme Court in the case of **Northern Plastic Ltd V/s Collector of Customs & Central Excise reported in 1998 (101) ELT 549(SC)**.

Penalty under section 114AA not impossible:

The SCN has proposed to impose penalty on the Noticee Importer under section 114AA of the Customs Act, 1962.

The relevant section 114AA reads as under:

114AA *Penalty for use of false and incorrect material*

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

The mute question is whether the imported goods (the past consignments) were mis-declared with the knowledge of the importer, the essential ingredient of the section 114AA being the knowledge of the offence or mens rea. As elaborately argued in the preceding paragraphs, the Import invoice based on which the bills of entry were filed was not 'false or incorrect' in any manner. It follows that the penalty under section 114AA is not attracted on the importer (or its director), though the SCN in para 38 has proposed penalty only on the importer.

Legislative Intent in respect of penalty under section 114AA:

It is also relevant to note that the inclusion of Section 114AA in the Customs Act, 1962 was proposed in the Taxation Law (amendment) Bill 2005, in the light of 27th report of the Standing Committee on Finance during Fourteenth Lok Sabha. The information furnished by Ministry states that the section 114 provides for penalty for improper exportation of goods involving serious manipulations / forgery of the documents. The intention of legislature was to penalise the exporters who resorted to improper exportation of goods wherein the exports were on paper only and that no goods left the shores of India and particularly where the exporters availed/ reaped huge benefits fraudulently under various export benefits. To curb such incidences such draconian provisions like penalty up to 5 times the value of goods under section 114AA were sought to be imposed.

- (i) In this context, attention is invited to the order no. **A/85533/2024 dated 03/06/2024 passed by Hon'ble CESTAT, Mumbai in appeal no. C/85299/2021** filed by Suresh Kumar Aggarwal.

Penalty of Rs. 5,00,000 was imposed under section 114AA on the said Appellant, Partner of M/s ICS Cargo which had facilitated the Customs clearance of power tools imported from China by certain importers during the year 2017. The impugned order involved various issues covering rejection of declared value of imported goods, re-determination of value, demand for differential duty with interest, confiscation besides imposition of penalties on various importers and co-noticees under section 112(a), 114A and 114AA. Hon'ble Bench in Para 8.3 of the order has observed as under:

8.3In contrast to the above, legal provisions under Section 114AA ibid does not mention about the goods which are liable for confiscation, but it deals with the situation of certain conduct of a person, in transaction of any business for the purpose of Customs Act, 1962. Any transaction for the purpose of customs law sans goods, can therefore be indicative that the various actions

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mentioned in Section 114AA *ibid*, such as making or signing of any declaration, statement or document which is false or incorrect, which may lead to such action that renders the person doing such action being liable for penalty, is without reference to the goods, and is only relating to declaration, statement or document without presence of goods. In the perspective of import of goods, the act of making any declaration or statement or documents for customs law starts from filing of Import Manifest under Section 30 *ibid* and filing of Bill of Entry under Section 46 *ibid* in case of licit import, when the vessel enters into the country/India; and in case illicit import when the smuggled goods enter the 'customs waters' for taking necessary action as provided under the Customs Act, 1962. Since, in all these situations elaborated above, as goods are involved, invoking the penal provisions under Section 114AA *ibid* is not appropriate, rather penal provisions under Section 112 or 114A is more appropriate.

Hon'ble Bench in Para 11 of the order has further observed as under:

*I have come to the considered view that the provisions of Section 114AA *ibid* does not apply to the present case of the appellant co-noticee who is a Partner in a Customs Broker firm, as neither there was any dummy export being made only on paper, nor there was any criminal intent involving evasion of duty. In fact, the present case deal with demand of short paid duty arising from under valuation of imported goods by various importers, in which the appellant-CB being co-noticee had only facilitated as a customs broker, but was imposed a penalty under Section 114AA *ibid*. Hence, I had come to the considered view that imposition of penalty under Section 114AA does not arise in the present case of the appellant.*

- (ii) Final Order no. **40588/2017 dated 30/03/2017 passed by Hon'ble CESTAT, Chennai in appeal no. C/41565/2016** filed by Premax Logistics

Hon'ble Bench has observed in Para 5.4 of the decision that it is but obvious that the adjudicating authority has been injudicious and peremptory in imposition of the impugned penalty under section 114AA, since, unless it is proved that the person to be penalized, has knowingly or intentionally implicated himself in use of false or incorrect materials, there can be no justification for penalty under that section. This requirement has not been met satisfactorily either in the notice or the impugned order and hence I do not have any hesitation in setting aside the same.

39.25 Issue of Interpretation:

It is a settled principle that penalty is not imposable in the matter involving issue of interpretation. In the present case, the Noticee was under a bonafide belief that the subject goods were correctly classifiable under CTH 5807. It needs to be appreciated that the classification under CTH 5807 is the matter of belief of the Noticee and not a matter of 'any other particular' as referred in clause (m) of the Section 111 of the Customs Act, 1962

39.26 No Penalty Only Because it is Lawful So to Do

Even otherwise, the penalty should not be imposed only because it is lawful so to do. The Noticee refers to the decision of Hon'ble Supreme Court in the case of **M/s Hindustan Steel Vs State of Orissa reported in 1978 (2) ELT (J159) (SC)** wherein the Supreme Court has observed as under:

"7..... An order imposing penalty for failure to carry out a statutory obligation is the result of quasi-criminal proceeding and penalty will not ordinarily be imposed unless the party obliged either deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious

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disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so...”

The conduct of the Noticee Importer in the present case does not indicate that The Noticee acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of their obligation. Hence, imposition of penalty on them is not warranted in facts and circumstances of the case.

PERSONAL HEARING

40. Authorized Representative Shri Prashant Patankar appeared before me on behalf of the Noticee and reiterated his written submission dated 10.07.2025 on behalf of the Noticee.

DISCUSSION & FINDINGS:

41. I have carefully gone through the Show Cause Notice (SCN) and its Relied Upon Documents (RUDs), Defence submissions, material on record and facts of the case. Before going into the merits of the case, I would like to discuss whether the case has reached finality for adjudication.

Principles of natural justice

42. Before going into the merits of the case, I observe that in the instant case, in compliance of the provisions of Section 28(8) the Customs Act, 1962 and in terms of the principle of natural justice, personal hearing opportunity was granted to the Noticee and Personal Hearing was attended by the authorized representative of the Noticee on 14.07.2025. The Authorized Representatives of Noticee reiterated their written submissions and confirmed that nothing more they want to add to their submissions. 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.)]

43 Framing of issues

Pursuant to a meticulous examination of the Show Cause Notice and a thorough review of the case records, the following pivotal issues have been identified as requisite for determination and adjudication:

- a) As to whether the declared classification under CTH 58071020, 58071090 & 58079090 of the subject goods imported vide 146 past Bills of Entry and 1 Live Bill of Entry filed during the period from 20.09.2019 to 27.09.2022 should be rejected and reclassified under CTH 58063200 as proposed in the Show Cause Notice.
- b) As to whether the differential Customs Duty of Rs. 4,40,076/- (Rupees Four Lakh Forty Thousand Seventy-Six Only) in respect of Live Bill of Entry No. 2623872 dated 27/09/2022 and differential Customs Duty of Rs. 6,34,36,318/- (Rupees Six Crore Thirty-Four Lakh Thirty-Six Thousand Three Hundred Eighteen only) in respect of 146 past Bills of Entry from 20.09.2019 to 27.09.2022, should be demanded from the importer, in terms of the provisions of Section 28 (4) of the Customs Act, 1962 along with the applicable interest as per the provisions of Section 28(10) read with section 28AA of the Customs Act, 1962.
- c) As to whether an amount of Rs. 1,75,00,000/- paid by M/s. Osyan Trading Enterprise Pvt. Ltd towards differential duties (BCD & SWS) paid under protest should be treated as voluntary duty payment and Bank guarantee no. 6031NDDG00001023 dated 17.11.2022 of Rs.1,20,00,000/- furnished at the time of provisional release of seized goods, should be appropriated against the demand of Differential Duty proposed against the Noticee.

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- d) As to whether the subject goods valued at Rs. 40,00,689/- (Rs. Forty Lakhs Six Hundred and Eighty-Nine only) imported vide Bill of Entry No. 2623872 dated 27/09/2022 and the goods valued Rs. 57,66,93,801/- (Rs. Fifty-Seven Crore Sixty-Six Lakhs Ninety-Three Thousand Eight Hundred One only) imported vide 146 past Bills of Entry from 20.09.2019 to 27.09.2022 should be confiscated under the provisions of Section 111(m) of the Customs Act, 1962.
- e) As to whether M/s. Osyan Trading Enterprise Pvt. Ltd should be held liable for penalty under the provisions of Sections 112(a) and/or 114A of the Customs Act, 1962.
- f) As to whether M/s. Osyan Trading Enterprise Pvt. Ltd should be held liable for penalty under the provisions of Sections 114AA of the Customs Act, 1962.

44. NOW I TAKE UP THE FIRST QUESTION AS TO WHETHER THE DECLARED CLASSIFICATION UNDER CTH 58071020, 58071090 & 58079090 OF THE SUBJECT GOODS IMPORTED VIDE 146 PAST BILLS OF ENTRY AND 1 LIVE BILL OF ENTRY FILED DURING THE PERIOD FROM 20.09.2019 TO 27.09.2022 SHOULD BE REJECTED AND RECLASSIFIED UNDER CTH 58063200 AS PROPOSED IN THE SHOW CAUSE NOTICE.

Absence of Label establishes non applicability of CTH 5807.

44.1 I observe that the classification of the subject imported goods is the core question in the entire case of the department. I observe that the Noticee has imported the goods under CTH 58071020, 58071090 & 58079090. The classification under CTH 58.07 is discussed below: -

CHAPTER 58 in SECTION-XI of the First Schedule to the Customs Tariff Act deals with “Special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery”.

Heading 58.07 of Customs Tariff Act, 1975 is as under: -

5807	LABELS, BADGES AND SIMILAR ARTICLES OF TEXTILE MATERIALS, IN THE PIECE, IN STRIPS OR CUT TO SHAPE OR SIZE, NOT EMBROIDERED			
5807 10	-	Woven :		
5807 10 10	---	Of cotton	kg. 25%	-
5807 10 20	---	Of man-made fibre	kg. 25%	-
5807 10 90	---	Other	kg. 25%	-
5807 90	-	Other :		
5807 90 10	---	Felt or non-woven	kg. 25%	-
5807 90 90	---	Other	kg. 25%	-

44.2 The product under consideration are the textile fabrics in roll form having different widths. The Importer in his statement under section 108 of the Customs Act, 1962 dated 03.10.2022 has admitted that they have declared the subject imported goods as Labels. Even though the word “Label” is not defined in the Customs Tariff, 1975, in the Explanatory Notes it is clearly stated that what constitutes a ‘Label’ for classification under CTH 5807. The relevant portion of the HSN Explanatory Notes for the CTH Sub Heading 5807 (Page No. XI- 5807-1) is reproduced below:

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58.07 - Labels, badges and similar articles of textile materials, in the piece, in strips or cut to shape or size, not embroidered.

5807.10 - Woven

5807.90 - Other

Subject to the conditions specified below this heading covers :

- (A) **Labels of any textile material** (including knitted). These include labels of a kind used for marking wearing apparel, household linen, mattresses, tents, soft toys, or other goods. They are utilitarian labels bearing individual inscriptions or motifs. Such labels include, *inter alia*, commercial labels bearing the trade name or trade mark of the manufacturer or the nature of the constituent textile ("silk", "viscose rayon", etc.) and labels used by private individuals (boarding school pupils, soldiers, etc.) to identify their personal property; the latter variety sometimes bear initials or figures or comprise sometimes a framed space to take a hand-written inscription.
- (B) **Badges and similar articles of any textile material** (including knitted). This category includes badges, emblems, "flashes", etc., of a kind normally sewn to the outer part of wearing apparel (sporting, military, local or national badges, etc., badges bearing the names of youth associations, sailors' cap badges with the name of a ship, etc.).

The above articles are classified in this heading **only** if they fulfil the following conditions :

- (1) They must not be embroidery. The inscriptions or motifs on the articles classified here are generally produced by weaving (usually broché work) or by printing.
- (2) They must be in the piece, in strips (as is usually the case) or in separate units obtained by cutting to size or shape but must not be otherwise made up.

This heading **does not include** labels, badges and similar articles, which have been embroidered (**heading 58.10**) or made up otherwise than by cutting to shape or size (**heading 61.17, 62.17 or 63.07**).

44.3 On plain reading of above, it is evident that Labels falling under CTH 5807 can be made of any textile material but **should be bearing individual inscription or motifs**. Further, it is observed that from condition number 1, it is evident that inscription or motifs on the articles falling under CTH 5807 are **produced by weaving or printing and it shall not be produced by way of embroidery**.

44.4 I further observe that during the examination of the live consignment imported vide Bill of Entry No. 2623872 dt.27/09/2022 at M/s. Gateway Districtpark Ltd (GDL) CFS, Navi Mumbai and test reports of samples drawn thereof, it has been established that the subject imported goods are declared as 'Labels' and classified under Chapter Sub-Heading 5807 which does not contain any inscription or motif on them either by weaving or printing. **I observe that CTH 5807 is only for labels, badges and similar articles for serving the purpose of at a glance information to the user about the products on which labels or badges are placed. Since there is no dispute about the fact in the instant case that imported goods does not contain any label or badge or visual cues about any prospective products, the imported goods do not qualify as a product or articles of CTH 5807.** I further observe that Shri Pannalal Ranka, in his statement under section 108 of the Customs Act, 1962 dated 03.10.2022 has accepted that goods imported by them does not have any inscription or motif on them either by weaving or printing. It is evident that the subject imported goods do not fulfil the mandatory condition required for classification under CH.58.07.

44.5 I observe that CTH 58063200 is for narrow woven fabrics of man made fiber as Eleven representative samples of the goods pertaining to Bill of Entry No. 2623872 dated 27/09/2022 were drawn from the live import consignment during the course of examination vide Panchanama dated 11.10.2022 & three representative samples drawn from the stock of goods which were seized at warehouse vide Mahazar dated 03.10.2022 were sent for testing to the Textiles Committee, North Wing, 1st Floor, NSC Board Complex, R.K. Mutt Road, Mylapore, Chennai-04 vide letter F.No.DRI/CZU/VIII/48/ENQ-01/INT- 46/2022 dated 21.10.2022 with Test Memos 1 to 2. The test report in respect of all the 14 samples have been received vide reports dated 26.10.2022 from the Quality Assurance Officer, Textiles Committee, Chennai.

44.5.1 Analysis of the Test Report: The results of the Test report in respect of the 14 samples sent for testing are as below:

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Sl. No.	Test Memo No.	Sample Name	Test Result						
			Inscription /Printing	Embroidered	Whether woven	Composition	Warp & Weft	Selvedges	Width
1	Test Memo-1	A1	No	No	yes	Nylon & Polyester	Yes	Yes	25mm
2	Test Memo-1	B1	No	No	yes	Polyester	Yes	Yes	44mm
3	Test Memo-1	C1	No	No	yes	Polyester	Yes	Yes	20mm
4	Test Memo-2	13MM X20 0Y	No	No	yes	Polyester	Yes	Yes	14mm
5	Test Memo-2	15MM X20 0Y	No	No	yes	Polyester	Yes	Yes	15mm
6	Test Memo-2	20MM X18 3M	No	No	yes	Polyester	Yes	Yes	20mm
7	Test Memo-2	25MM X20 0Y	No	No	yes	Polyester	Yes	Yes	25mm
8	Test Memo-2	30MM X20 0Y	No	No	yes	Polyester	Yes	Yes	30mm
9	Test Memo-2	32MM X18 3M	No	No	yes	Polyester	Yes	Yes	32mm
10	Test Memo-2	35MM X20 0M	No	No	yes	Polyester	Yes	Yes	35mm
11	Test Memo-2	40MM X20 0Y	No	No	yes	Polyester	Yes	Yes	40mm
12	Test Memo-2	44MM X20 0Y	No	No	yes	Polyester	Yes	Yes	44mm
13	Test Memo-2	15MM X20 0M	No	No	yes	Polyester	Yes	Yes	15mm
14	Test Memo-2	20MM X20 0M	No	No	yes	Polyester	Yes	Yes	20mm

44.5.2 From the above, I find that none of the 14 samples have any inscription or painting or embroidery. All these samples are Narrow woven fabric, contains warp & weft and has selvedges. All these samples are made of man-made fibres and are not exceeding the width of 30 cm.

44.5.3 In view of above, there is no dispute about the fact that all the goods are of man made fiber and are narrow woven fabric and are of made fiber and are narrow woven fiber of less than 30 cm. In this way all the goods squarely fall in the scope of heading of CTH 58063200 which is for narrow woven fiber, as per Rule 1 of GIR the classification shall be determined according to the terms of the heading and any section and chapter notes since in the instant case, the imported goods squarely fall in the scope of CTH 58063200 which has also been accentuated by the chapter note 5 of the CTH 58063200. Further, since there is no dispute about the fact that imported goods do not contain any priority, label, badge, Inscription etc, the same do not qualify for CTH 5807.

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44.5.4 The data of bills of entry of 12 bills of entry during the relevant period for goods valued at Rs. 1,37,82,745/-, has been retrieved from the Customs EDI system wherein the importer has imported goods under CTH 58063200 with description “White Strips Tape”. The only difference in the said description is that said strips of polyester are not meant for labels. However, I find on reading the description of the Customs Tariff Heading that CTH 5806 3200 covers all white polyester tapes irrespective of their purpose or usage in manufacturing of labels or otherwise. This difference of absence of word label is immaterial because if the white strips of polyester are plain without any printing of any label, badge or inscription, the both kind of white strips, either containing word label in description or otherwise, will be classified under CTH 58063200. Further, the classification of white strips of polyester without any pre-printed label or inscription will fall under CTH 58063200 irrespective of it’s purpose or usage in manufacturing of labels. Therefore, all goods, which have been imported by describing them as “White Strip Label tape” or “White Strip Tape”, have to be classified under CTH 58063200. The presence of word label or purpose in form of manufacturing label cannot affect the classification under CTH 58063200 simply because the goods are in form of white polyester strips without having any printing, label, badge and description.

44.5.5 However, there is no possibility that the goods seized from Chennai warehouse are the very same goods which were imported under CTH 58063200 under above said 12 bills of entry because of following reasons

- The period of 12 bills of entry is from 2019 to 2020, whereas the case has been booked after 2 years on 03.10.2022.
- The value of imported goods under above 12 bills of entry is Rs. 1,37,82,745/-, whereas the value of seized goods is 4.91 Crores.
- In any case, i) the practice of import under CTH 58063200 till 05.12.2020 ii) seizure of the identical goods i.e. white polyester strips under live bill of entry and iii) seizure of the identical goods i.e. white polyester strips in Chennai Warehouse, very clearly and unambiguously establishes that there is no element of truth in the claim of the importer that white strips of polyester under live BOE has been sent due to any error on the part of supplier. It is clearly an afterthought in order to mislead and cover their practice of misdeclaration.

Further I observe that, the test reports in respect of the samples drawn from the seized goods (stock maintained at the warehouse of the importer) received from the Quality Assurance Officer, Textiles Committee, Chennai also confirmed that the samples do not contain embroidery/adhesive/inscription or motif either by weaving or printing. The Lab report in respect of Test Memo No.1, for Sample C1 states as under:

“The sample is 100% Polyester Narrow woven Fabric (man-made fiber) on both warp & weft. It has selvedges. It does not contain embroidery/adhesive/inscription or motif either by weaving or printing.”

I further reiterate the facts of Test Report as tabulated at para 10.1 Table – II. The test report clearly states that none of the goods contain any label, badge, inscription or embroidery etc. which may serve the purpose of label. Since the CTH 5807 is meant only for labels, therefore, it has been established that the goods imported vide Bill of Entry No. 2623872 dated 27.09.2022 does not merit classification under CTH 58071020/580171090/58079090. Further it has been established that the stock of goods available at the warehouse & from the test reports of the samples drawn thereof, that the goods imported in the earlier consignments also does not contain any inscription or printing. I further observe that, **the Importer was asked to identify the imported goods which have pre-printed labels but are declared as “White Strips Label Tape -Man Made Fibers” at the time of filing the bill of entry, the Importer stated that they**

do not maintain separate records for pre-printed and plain labels. Neither the importer nor their domestic customers produced any details of the purchase order for the pre-printed labels till date. In view of the above, the said goods imported in the past consignments were also mis-declared as ‘Labels’ & were classified under CTH 58071020 or 580171090 or 58079090.

Reasons that Imports by the noticee are Covered under CTH 58063200 and not under 5807.

44.6 I first produce the provisions of both the headings name CTH 5807 and 58063200.

5807	LABELS, BADGES AND SIMILAR ARTICLES OF TEXTILE MATERIALS, IN THE PIECE, IN STRIPS OR CUT TO SHAPE OR SIZE, NOT EMBROIDERED				
5807 10	-	Woven :			
5807 10 10	---	Of cotton	kg.	25%	-
5807 10 20	---	Of man-made fibre	kg.	25%	-
5807 10 90	---	Other	kg.	25%	-
5807 90	-	Other :			
5807 90 10	---	Felt or non-woven	kg.	25%	-
5807 90 90	---	Other	kg.	25%	-

Now I produce the provisions of CTH 5806

SECTION-XI		CHAPTER-58			
(1)	(2)	(3)	(4)	(5)	
5806	NARROW WOVEN FABRICS OTHER THAN GOODS OF HEADING 5807; NARROW FABRICS CONSISTING OF WARP WITHOUT WEFT ASSEMBLED BY MEANS OF AN ADHESIVE (BOLDUCS)				
5806 10 00	-	Woven pile fabrics (including terry toweling and similar terry fabrics) andchenille fabrics	kg.	25%	-
5806 20 00	-	Other woven fabrics, containing by weight 5% or more of elastomeric yarnor rubber thread	kg.	25%	-
	-	Other woven fabrics :			
5806 31	---	Of cotton :			
5806 31 10	---	Typewriter ribbon cloth	kg.	25%	-
5806 31 20	---	Newar cotton	kg.	25%	-
5806 31 90	---	Other	kg.	25%	-
5806 32 00	---	Of man-made fibres	kg.	25%	-
5806 39	---	Of other textile materials :			
5806 39 10	---	Goat hair puttis tape	kg.	25%	-
5806 39 20	---	Jute webbing	kg.	25%	-
5806 39 30	---	Other narrow fabrics of jute	kg.	25%	-
5806 39 90	---	Other	kg.	25%	-
5806 40 00	-	Fabrics consisting of warp without weft assembled by means of an adhesive (bolducs)	kg.	25%	-

In this regard, it is relevant to refer to Chapter Note 5 to Chapter 58, which states as under:
—

“For the purposes of heading 5806, the expression —narrow woven fabrics means:

- (d) woven fabrics of a width not exceeding 30 cm, whether woven as such or cut from wider pieces, provided with selvages (woven, gummed or otherwise made) on both edges;
- (e)
- (f) ”

I find after going through the above legal provisions and facts of the case that there is no dispute about the fact that all goods under live bill of entry and goods seized from Chennai warehouse are of man made fiber in form of narrow woven fabric of less than 30 cm. In this way, all the said goods squarely fall in the scope of heading of CTH 58063200. As per Rule 1 of GIR the classification shall be determined according to the terms of the heading and any section and chapter notes since in the instant case, the imported goods squarely fall in the scope of CTH 58063200 which has also been accentuated by the chapter note 5 of the CTH 58063200. Further, since there is no dispute about the fact that imported goods do not contain any label, badge, Inscription etc, the same do not qualify for CTH 5807.

44.7 I further observe that the above findings have been corroborated by the following oral

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evidences brought on record by the investigation. Statement of Shri Pannalal Ranka, Authorized Person of M/s. Osyen Trading Enterprise Private Limited, Chennai was recorded under Section 108 of Customs Act, 1962, on 03.10.2022. Some of the questions inter-alia asked and reply furnished are reproduced below: -

Q.1 Tell us about yourself and about work profile of your company.

A.1 After completing my education I joined my family business with elder brother. After that, I joined my family business with elder brother M/s. Sha Maggaji Manormal and worked there for 5 years. After that I started my own financing business and continued it till 2017. In 2017, we started a firm M/s. Osyen Trading Enterprise Private Limited (IEC. AABCO2445B), a Private Limited company with directors as family members Shri/S Vinod Kumar Ranka, Nitesh Kumar Ranka, Manoharmal Vishal ranka. We are the traders and importers of Labels/Fabrics/Textile Materials from China. I am taking care of all the activities of the company M/s. Osyen Trading Enterprise Private Limited.

Q.2 Please inform about your CHA for the bills of entry filed by you?

A.2 Majority of our bills are filed by M/s. Ascent Logistics, Mumbai.

Q.3 Please see the mahazar dated 03.10.2022 drawn in your presence at 67, Narayana Mudali Street, Sowcarpet, Chennai-600001, and offer your comments.

A.3 I have gone through the mahazar dated 03.10.2022 drawn at 67, Narayana Mudali Street, Sowcarpet, Chennai-600001 and appended my dated signature as a token of having seen the same. In this regard, I wish to state that I was available during the mahazar proceedings dated 03.10.2022 drawn at 67, Narayana Mudali Street, Sowcarpet, Chennai- 600001 and I accept the contents of the said mahazar to be true and correct.

Q.4 Please inform about the different types of goods imported by M/s. Osyen Trading Enterprise Private Limited.

A.4 We mostly import Labels/Fabrics/Textile Materials from China and trade such goods in domestic market. Different types of materials imported by us are "Tape-Ribbon Strips for labels- Cotton", "Tape-Ribbon Strips of Polyester" & "White Strips Label Tape -Man Made Fibers".

Q.5 What is the CTH & duty structure followed for such "Tape Ribbon Strips for labels- Cotton", "Tape-Ribbon Strips of Polyester" & "White Strips Label Tape -Man Made Fibers" imported by you?

A.5 Tape Ribbon Strips for labels- Cotton are cleared in CTH 58063190 (BCD 10%, IGST 5%), Tape-Ribbon Strips of Polyester are cleared in CTH 58063200 (BCD 20%, 10% SWS, IGST 5%) & White Strips Label Tape -Man Made Fibers are cleared in 58071020 (BCD 10%, 10% SWS, IGST 12%).

Q.6 Please see the Bill of Entry No. 2623872 dated 27.09.2022 arrived in one container FCIU5240107 and offer your comments.

A.6 The said Bill of Entry No. 2623872 dated 27.09.2022 was filed by CHA M/s. Ascent Logistics, Mumbai at Nhava Sheva Mumbai. The goods declared are "White Strips Label Tape (Assorted sizes)- Man Made Fibers". The supplier of the said goods is M/s. Five Element Industry Limited, China. The said goods were under CTH

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58071020. We have followed the duty structure of 10% BCD, 10% SWS & 12% IGST.

Q.7. Please see the heading of CTH Sub Heading 5807 i.e., "LABELS, BADGES AND SIMILAR ARTICLES OF TEXTILE MATERIALS, IN THE PIECE, IN STRIPS OR CUT TO SHAPE OR SIZE, NOT EMBROIDERED" and CTH 58071020 "Woven: -- of man-made fibre". Whether the imported goods under Bill of Entry No. 2623872 dated 27.09.2022 are labels of made of woven man-made fibres?

A.7. The said imported goods under Bill of Entry No. 2623872 dated 27.09.2022 are made of woven man-made fibres. The said goods are plain textile materials cut into strips of different shapes and sizes, made of polyesters (man-made fibres). They do not have any embroidery. Hence, they are declared as "White Strips Label Tape – Man Made Fibers". They are meant to be sold to different traders in domestic market.

Q.8. Please see the heading of CTH Sub Heading 5806 i.e., "NARROW WOVEN FABRICS OTHER THAN GOODS OF HEADING 5807; NARROW FABRICS CONSISTING OF WARP WITHOUT WEFT ASSEMBLED BY MEANS OF AN ADHESIVE (BOLDUCS)" and CTH 58063200 "Woven: -- of man-made fibre". Whether the imported goods under Bill of Entry No. 2623872 dated 27.09.2022 will fall under this category?

A.8. They may fall under CTH 58063200 also since the said CTH 58063200 also deals woven fabrics of man-made fibres. I do not have much technical knowledge about this. We are only traders of such imported goods. We do not deal with any manufacturing activity after importation. Based on the demand from our domestic customers, we import the same from various Chinese suppliers.

*Q.9. Please see the HS explanatory notes mentioned in Chapter Heading 5807 ("XI-5807-1") wherein it is mentioned that "(A) **Labels of any textile material (including knitted):** These include labels of a kind used for marking wearing apparel, household linen, mattresses, tents, soft toys, or other goods. They are utilitarian labels bearing individual inscriptions or motifs. The above articles are classified in this heading only if they fulfil the following conditions: (1) They must not be embroidery. The inscriptions or motifs on the articles classified here are generally produced by weaving (usually broche work) or by printing. (2) They must be in the piece, in strips (as is usually the case) or in separate units obtained by cutting to size or shape but must not be otherwise made up:". Offer your comments.*

A.9. I am not aware of such explanatory notes. The said goods viz., 'Label' has been classified under 58071090 based on our understanding of the Customs Tariff. I do not have enough technical knowledge of the imported products. However, as stated earlier, our products do not have any embroidery. They are pieces of fabrics cut into different shapes. To your specific query, I state that the goods imported in Bill of Entry No. 2623872 dated 27.09.2022 does not have any inscriptions or motifs, no impressions of Trade Mark or Trade Name or any logo on the said rolls. They are plain rolls without labels made of made of woven man-made fibres. They are not pre-printed. They are used for manufacture of final products, i.e., Labels. I also state that, the suppliers also quote the same tariff headings in the invoices.

Q.10. Whether the imported labels/textile strips under Bill of Entry No. 2623872 dated 27.09.2022 are narrow woven fabric of man-made fibres?

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A.10. I do not have enough technical knowledge of the imported products. They are made of man-made fibres i.e., Polyester. They could be narrow woven fabrics of man-made fibres.

Q.11. Whether the previous consignments which were declared as “White Strips Label Tape -Man Made Fibers” under CTH 5807 are same as the goods imported under Bill of Entry No. 2623872 dated 27.09.2022?

A.11. As stated earlier, we are only traders of such imported goods. We do not deal with any manufacturing activity after importation. Based on the demand from our domestic customers, we import the same from various Chinese suppliers. Sometimes, we also get orders with pre-print request. Accordingly, we place orders with the requirement of our customers. Since the goods are used in Label industry, we always followed the description “White Strips Label Tape -Man Made Fibers”.

Q.12. Do you have any test certificate to prove the nature and composition of imported labels/textile strips? At any point of time during the time of assessment whether Customs have drawn sample for testing purpose?

A.12. We don't have any test certificate to prove the nature and composition of imported labels/textile strips. I also add that till date Customs has not drawn any sample at the time of assessment. The Customs have satisfied themselves after examination of the cargo and cleared the said consignments under CTH 5807. We have never mis-declared our import cargo. The description is always given as “White Strips Label Tape -Man Made Fibers”. The same is followed in our domestic sale also.

Q.13. Do you have any proof to justify that the goods imported under description “White Strips Label Tape -Man Made Fibers” are labels containing inscriptions or motifs, but not plain textile strips?

A.13. As stated earlier, I also placed orders with our suppliers with pre- print request. The same may be verified with our GST data. I wish to reiterate that the Customs have satisfied themselves after examination of the cargo and cleared the said consignments under CTH 5807.

Q.14. Please inform about your overseas supplier details, mode of communication, payment mode and who has suggested the suggested the classification of imported goods.

A.14. We mainly purchase labels/textile strips from Five Element Industry Limited, Xinxu wuxing silk Co. Ltd, Huzhou Xingyi Label Manufacture Co. Ltd, Zhejiang King Label Technology Co., Ltd of China. We always import standard materials, hence formal communication through email was never required. We send and receive import documents through air-courier and payments are made through Banks. The classification of the imported goods is arrived based on the classification given in the import Invoice by our supplier.

Q.15. From your import data, can you identify the goods which have pre- printed labels but are declared as “White Strips Label Tape -Man Made Fibers” at the time of filing the bill of entry?

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A.15. Majority of our pre-printed labels are imported from M/s. Five Element Industry Limited, China, Zhejiang King Label Technology Co., Ltd & M/s. Xingyi label manufacture Co. Ltd. It takes time to reconcile the data as we do not maintain separate records for pre-printed and plain labels. We are doing the trading business and not given importance to the classification of goods at the time of Import. We do not have any intention to misclassify the imported goods. As we do not have enough technical knowledge & lack of awareness about the clarification given in the HS explanatory notes, we have classified both pre-printed labels & plain labels in one CTH i.e., 5807. I am submitting sample labels available with us for your reference.

Q.16. Upon importation, to whom were the pre-printed labels sold to in India?

A.16. The pre-printed labels were sold to M/s. J. G. Impex Pvt. Ltd., New Delhi (GST- 07AAACJ2058E1ZX), M/s. Pragati Sales, New Delhi (GST- 07ACPPN5072N1ZW), M/s. H. V. Enterprises, Mumbai (GST- 27AAEPS0956M1Z7).

Q.17. At present whether the stock in your godown has any “White Strips Label Tape -Man Made Fibers” to show that you have imported pre- printed labels?

A.17. The pre-printed labels are imported on the bulk orders of our domestic customers. Our suppliers in China manufacture the said labels with instructions given by our domestic customers. The said manufactured labels are then imported and immediately supplied to our customers. Based on production demands of the customer & in order to avoid payment delays, we deliver the goods at the earliest. However, the plain textile strips are for trading purpose only. Based on the day-to-day orders, we dispatch the same to our domestic customers. Hence, the stock in our godown contains only Plain label strips of Man-Made Fibers.

Q.18. How much worth goods of the said “White Strips Label Tape -Man Made Fibers” are stored in warehouse?

A.18. The goods viz. “White Strips Label Tape -Man Made Fibers” of worth nearly Rs. 4.5 Crores is stored in our warehouse at present. As stated earlier, none of the said stock contains pre-printed labels as they were dispatched to the customs upon arrival to reduce our warehousing expenses.

Q.19. It appears from the nature, material composition and end use that the imported labels/textile strips & goods stored in your godown are rightly classifiable under CTH 5806 3200. Offer your comments.

A.19. I admit that I don't have enough technical knowledge to ascertain the nature and composition of imported material. As informed earlier, we are doing the trading business and not given importance to the classification of goods at the time of Import. We would like to get technical advice in this matter. We don't have any intention to evade payment of duty, to show our voluntary compliance and our intention; today we have deposited Rs.1,75,00,000/- towards our duty liability. However, the payment may be considered as duty under protest and we request you to follow principles of natural justice while finalizing the issue.

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44.8 I observe that as per statement dated 03.10.2022 of Shri Pannalal Ranka, who has confirmed that he is responsible for the day-to-day operations of M/s. Osyan Trading Enterprise Private Limited, the following facts emerge:

- It was observed that the goods imported under Bill of Entry No. 2623872 dated 27.09.2022 comprises of plain textile materials cut into strips of varying shapes and sizes, made of woven man-made fibres (polyester). It has been categorically stated that the said goods do not bear any embroidery or printing at the time of import.
- Shri Pannalal Ranka has further admitted that the subject goods, based on their nature and composition, may also be classifiable under CTH 58063200, which pertains to woven fabrics of man-made fibres, although the company does not possess adequate technical knowledge to definitively determine the correct classification under the Customs Tariff.
- It is further observed that the importation of the said goods is carried out based on specific requirements of domestic customers, and the company procures these goods from multiple Chinese suppliers. Shri Pannalal Ranka has also confirmed that, on occasion, orders are received with requests for pre-printed materials; however, no separate records are maintained by the company to distinguish between pre-printed and plain textile strips.
- The goods are reportedly used in the label manufacturing industry, and they have consistently declared “White Strips Label Tape – Man Made Fibers.” in trade documents and import declarations. Furthermore, it is admitted that no separate documentation or stock records are maintained to account for the differentiation between pre-printed and non-printed textile strips.
- In view of the above, it is evident that the importer has relied on trade nomenclature and commercial understanding for classifying the goods. Shri Pannalal Ranka admitted that they have not given importance to the classification of goods at the time of Import. Accordingly, these facts are taken on record for consideration while determining the correct classification, valuation, and applicability of duties under the provisions of the Customs Act, 1962 and the First Schedule to the Customs Tariff Act, 1975.

44.9 I further observe 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 *Taylor’s Treatise on the Law of Evidence*, VI. I).

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- 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 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.*

44.10 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.**

44.11 I further observe that investigation has brought out various evidence. The details of which are as follows:-

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Sr.No	Evidence
1	Search Proceedings vide mahazar dated 03.10.2022 drawn at Rajendra Complex, No. 67, Narayana Mudali Street, 2nd Floor Sowcarpet, Chennai, Tamil Nadu- 600001
2	Search Proceedings vide mahazar dated 03.10.2022 drawn at Warehouse No.10, Massey's Enterprises Pvt Ltd, No.17, North Railway Terminus Road, Royapuram, Chennai-13
3	Statement of Shri Vinod Ranka, one of the Directors of M/s. Osyan Trading Enterprise Private Limited, Chennai recorded under Section 108 of Customs Act, 1962, on 03.10.2022
4	Statement of Shri Pannalal Ranka, Authorised Person of M/s. Osyan Trading Enterprise Private Limited, Chennai recorded under Section 108 of Customs Act, 1962, on 03.10.2022
5	Bill of Entry No. 2623872 dtd 27/09/2022 & relevant import documents
6	Examination of goods imported vide Bill of Entry No. 2623872 dtd 27/09/2022 at M/s. Gateway Distripark Ltd (GDL) CFS, Navi Mumbai vide Panchanama dated 11.10.2022
7	Seizure Memorandum dated 11.10.2022
8	Letter F.No. DRI/CZU/VIII/48/ENQ-01/INT-46/2022 dated 21.10.2022 addressed to Textiles Committee, North Wing, 1st Floor, NSC Board Complex, R.K. Mutt Road, Mylapore, Chennai-04 for testing of 14 samples
9	The test report dated 26.10.2022 in respect of all the 14 samples received from the Quality Assurance Officer, Textiles Committee, Chennai
10	The importer vide letter dated 26.10.2022 seeking provisional release of all the seized goods
11	Provisional release order issued by the Assistant Commissioner of Customs, Appraising Group-III, NS-III, JNCH vide Provisional Release order CBIC DIN – 20221178NV00000DD8D dated 22.11.2022 on execution of Bond for an amount of Rs.5,31,00,689/- and Bank Guarantee for an amount of Rs.1,20,00,000/-
12	Statement of Shri Kamalesh Kumar, Authorized Person of M/s. JG Impex Private Limited, Domestic Customer of M/s. Osyan Trading Enterprise Private Limited
13	Statement of Shri Suresh Kumar Jain, Authorised Person of M/s. Pragathi Sales, New Delhi, Domestic Customer of M/s. Osyan Trading Enterprise Private Limited.
14	Payment of Rs.1,75,00,000/-vide TR6 Challan No. HC256/28.10.2022

44.12 It has been established that the subject goods (including the past imports) are not labels and would not fall under CTH 5807. Further, as per chapter note 5 supra, narrow woven fabrics are woven fabrics of a width not exceeding 30cm, whether woven as such or cut from wider pieces, provided with selvages (*woven, gummed or otherwise made*) on both edges). The test reports of samples drawn from the live consignment imported under Bill of Entry No. 2623872 dated 27.09.2022, has confirmed that the goods imported are narrow woven fabric of polyester and are textile strips not exceeding 30cm and contains Warp, Weft & Selvages. Therefore, the subject imported goods are to be considered as “Narrow woven fabrics” of man-made fibre. Examination of the subject live consignment under Panchnama proceedings dated 11.10.2022, revealed that the imported goods did not contain any inscription or motif on them. Further, examination conducted at the warehouse of No.10, Massey's Enterprises Pvt Ltd, No.17, North Railway Terminus Road, Royapuram, Chennai-13 on 03.10.2022, under Mahazar proceedings 03.10.2022 also revealed that

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the stock of the imported goods available at the said warehouse were imported over the period, and did not contain any inscription or motif on them the same were not challenged either by M/s. Osyan Trading Enterprise Pvt Ltd or authorised person of the company. I further observe that M/s. Osyan Trading Enterprise Pvt Ltd has not produced any documentary evidence to prove that the subject imported goods were printed with any inscription or motif. Despite the reasonable time given to the domestic customers of M/s. Osyan Trading Enterprise Pvt Ltd, they also failed to provide any courier/email/pre-print request details with respect to the purchase order sent to M/s. Osyan Trading Enterprise Private Limited.

44.13 I observe that the noticee also acknowledges that the classification of the goods covered under live Bill of Entry No. 2623872 dated 27/09/2022 is not disputed. The classification under CTH 5806 3200 has been determined based on a detailed examination and test report. It is noted that the goods in question do not bear any inscription, painting, or embroidery, and the importer has accepted the proposed classification under CTH 5806 3200 as stated in the Show Cause Notice (SCN).

44.14 However, the noticee has contended that there was an error in the goods dispatched by the supplier, and that the importer had no occasion to examine the goods prior to their arrival.

I find **no merit** in the contention of the noticee for the following reasons:

- There is no merit in the contention that the goods under live bill of entry have been sent by mistake because they have not been able to provide any correspondence, email, whatsapp chat, lodging of any complaint by the importer to the supplier, any correspondence or documentary evidence in this regard on the part of supplier, shipper or any other third person.
- Moreover, the notice has been found in possession of identical goods in the warehouse which clearly shows that importer was importing identical goods earlier as well. it is because the importer has not provided any evidence of such identical goods from any other sources.
- The data of bills of entry of 12 bills of entry during the relevant period for goods valued at Rs. 1,37,82,745/-, has been retrieved by this adjudicating authority from the Customs EDI system wherein the importer has imported goods under CTH 58063200 with description "White Strips Tape". The only difference in the said description is that said strips of polyester are not meant for labels. In any case, the said past import clearly shows that importer themselves were importing some goods under CTH 58063200 also. However, I observe that there is no possibility that the goods seized from Chennai warehouse are the very same goods which were imported under CTH 58063200 under above said 12 bills of entry because of following reasons
 - The period of 12 bills of entry is from 2019 to 2020, whereas the case has been booked after 2 years on 03.10.2022.
 - The value of imported goods under above 12 bills of entry is Rs. 1,37,82,745/-, whereas the value of seized goods is 4.91 Crores.
- In any case, i) the practice of import under CTH 58063200 till 05.12.2020 ii) seizure of the identical goods i.e. white polyester strips under live bill of entry and iii) seizure of the identical goods i.e. white polyester strips in Chennai Warehouse, very clearly and unambiguously establishes that there is no element of truth in the claim of the importer that white strips of polyester under live BOE has been sent due to any error on the part of supplier. It is clearly an afterthought in order to mislead and cover their practice of misdeclaration.

In light of the above, the explanation offered by the noticee does not hold sufficient merit and is therefore **not accepted**.

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44.14 The noticee has also contended that there is no conclusive evidence to prove that the goods stored in Warehouse No. 10 were actually imported by classifying them under Heading 5807.

I find **no merit** in the noticee's contention, for the following reasons:

- I reproduce my findings at para 14.14 mutis-mutandis.
- On examination of the data available in the system, there is no dispute that the noticee has been declaring CTH 5807 for imports of all white strips of polyester for manufacturing labels in the guise as if the said white strips itself were some labels.
- The DRI has produced list of 146 Bills of Entry (as Table- A) and all the details have been checked and found that although the goods have been identical or in line of live bill of entry.
- I also observe that the test reports have confirmed beyond any doubt that the goods under live B/E and goods seized from Chennai Warehouse are identical in from of white strips of polyester. The said goods are not in form of labels, however, the same can be used for manufacturing label.
- The goods under examination and under past 146 bills of entry are **identical** in all material respects — including description, supplier, classification, valuation, and other relevant parameters — to those in the live consignment.
- The importer has **not produced any evidence** to support the claim that the goods in question under Heading 5807 are actually in form of labels. In case the goods were labels, they must pertain to some products/manufacturer, for which noticee could have produced evidence from the manufacturer to whom such labels were supplied.
- As per the available records, **M/s. Osyan Trading Enterprise Pvt. Ltd.** has **not submitted any documentary evidence** to substantiate the assertion that the imported goods were printed with any inscription, motif, or similar distinguishing feature.
- In any case, there is no dispute that the importer is a trader and was importing in bulk quantity. In such situation, if they were importing label the same could be for any specific products or manufacturer. However, the importer has failed to provide any such information about any product or manufacturer to whom such labels were pertaining. It clearly shows that actually all imported strips of polyester were plain white without any printing, badge or label.
- Despite being granted **sufficient time**, the domestic customers of M/s. Osyan Trading Enterprise Pvt. Ltd. failed to produce any documentation — such as courier records, email communications, or pre-print requests — that could link the subject goods to any printed or custom-ordered specifications.
- Upon examination, **none of the 14 samples** taken from the warehouse bear any inscription, painting, or embroidery. All the samples are narrow woven fabrics, composed of warp and weft yarns, with selvages, made of man-made fibres, and all are **less than 30 cm in width**, conforming to the description under Heading **5806 3200**.

In view of the above, the contention of the noticee is **unsubstantiated and not acceptable**.

44.15 The noticee has contended that many past consignments were cleared after examination by the Proper Officers and therefore implied that the classification now proposed should not be questioned.

I find no merit in this contention for the following reasons:

- As per Section 17 of the Customs Act, 1962, the Importer is required to self-assess the duty leviable on goods entered under Section 46. While the Proper Officer may verify the self-assessment, which is limited to number of self-assessed Bills of Entry, as selected by the Risk Management System (RMS) of the department.
- The verification is based entirely on the information and documents provided by the Importer. Under the self-assessment, onus lies on the Importer to declare all relevant and accurate details. The Department has placed substantial trust in Importers to make truthful

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declarations, which is why most Bills of Entry are facilitated without detailed assessment, except where selected by RMS.

- Importantly, the recovery of duty is under Section 28(4) of the Customs Act, 1962, regardless of previous clearances based on self-assessment. Under Section 28(1), where duties have been short-paid or short-levied not involving collusion, willful misstatement, or suppression of facts, the proper officer is empowered to raise a demand within two years from the relevant date. In cases involving collusion, willful misstatement, or suppression, the period extends to five years, as per Section 28(4) of the Act.
- In all previous instances, the assessments were conducted solely on the basis of the documents and declarations provided by the Importer. Any physical examination, where conducted, was based on the description declared at the time of import, which, in this case, referred merely to "white strips label tape" under Heading 5807.

5807	LABELS, BADGES AND SIMILAR ARTICLES OF TEXTILE MATERIALS, IN THE PIECE, IN STRIPS OR CUT TO SHAPE OR SIZE, NOT EMBROIDERED			
5807 10	-	Woven :		
5807 10 10	---	Of cotton	kg. 25%	-
5807 10 20	---	Of man-made fibre	kg. 25%	-
5807 10 90	---	Other	kg. 25%	-
5807 90	-	Other :		
5807 90 10	---	Felt or non-woven	kg. 25%	-
5807 90 90	---	Other	kg. 25%	-

- It is pertinent to note that the importer failed to disclose critical characteristics such as the presence or absence of inscription, motifs, printing, or weaving techniques. The description furnished was, therefore, incomplete and misleading, thereby preventing accurate classification and appropriate duty determination at the time of assessment.

In view of the above it is an undisputed fact that the past clearances cannot be used as a valid ground to justify the classification or claim innocence, particularly when the earlier declarations were vague or suppressive in nature. The present classification under Heading 5806 is based on detailed examination and test reports, unlike the earlier self-assessed consignments.

44.16 Therefore, in view of the above findings the textile strips imported by M/s. Osyan Trading Enterprise Pvt Ltd, are having width not exceeding 30 cm and does not have inscription or motifs are rightly classifiable under **CTH 58063200** as “*narrow woven fabrics of manmade fibres*”.

B. AS TO WHETHER THE DIFFERENTIAL CUSTOMS DUTY OF RS. 4,40,076/- (RUPEES FOUR LAKH FORTY THOUSAND SEVENTY-SIX ONLY) IN RESPECT OF LIVE BILL OF ENTRY NO. 2623872 DATED 27/09/2022 AND DIFFERENTIAL CUSTOMS DUTY OF RS. 6,34,36,318/- (RUPEES SIX CRORE THIRTY-FOUR LAKH THIRTY-SIX THOUSAND THREE HUNDRED EIGHTEEN ONLY) IN RESPECT OF 146 PAST BILLS OF ENTRY FROM 20.09.2019 TO 27.09.2022, SHOULD BE DEMANDED FROM THE IMPORTER, IN TERMS OF THE PROVISIONS OF SECTION 28 (4) OF THE CUSTOMS ACT, 1962 ALONG WITH THE APPLICABLE INTEREST AS PER THE PROVISIONS OF SECTION 28(10) READ WITH SECTION 28AA OF THE CUSTOMS ACT, 1962.

45. I observe that from the discussions above, it is an undisputed fact that the importer has misclassified the imported goods under CTH 58071020, 58071090 & 58079090 as the imported goods are not labels. Further, as per chapter note 5 supra, narrow woven fabrics are woven fabrics of a width not exceeding 30cm, whether woven as such or cut from wider pieces, provided with selvages (*woven, gummed or otherwise made*) on both edges). The test reports of samples drawn

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from the live consignment imported under Bill of Entry No. 2623872 dated 27.09.2022, has confirmed that the goods imported are narrow woven fabric of polyester and are textile strips not exceeding 30cm and contains Warp, Weft & Selvedges. Therefore, the subject imported goods are to be considered as “Narrow woven fabrics” of man-made fibre. Examination of the subject live consignment under Panchnama proceedings dated 11.10.2022, revealed that the imported goods did not contain any inscription or motif on them. Further, examination conducted at the warehouse of No.10, Massey’s Enterprises Pvt Ltd, No.17, North Railway Terminus Road, Royapuram, Chennai-13 on 03.10.2022, under Mahazar proceedings 03.10.2022 also revealed that the stock of the imported goods available at the said warehouse were imported over the period, and did not contain any inscription or motif on them the same were not challenged either by M/s. Osyan Trading Enterprise Pvt Ltd or authorised person of the company. I further observe that M/s. Osyan Trading Enterprise Pvt Ltd has not produced any documentary evidence to prove that the subject imported goods were printed with any inscription or motif. Despite the reasonable time given to the domestic customers of M/s. Osyan Trading Enterprise Pvt Ltd, they also failed to provide any courier/email/pre-print request details with respect to the purchase order sent to M/s. Osyan Trading Enterprise Private Limited.

45.1 I observe that on the basis of above stated facts the imported goods vide bill of entry no. 2623872 dated 27.09.2022 and goods examined during the Mahazar proceedings dated 03.10.2022 at Warehouse 10, Massey’s Enterprises Pvt Ltd, No.17, North Railway Terminus Road, Royapuram, Chennai-13 are **“Narrow woven fabrics” of man-made fibre** and merits classification under CTH 58063200.

The duty structure of CTH 58063200 is as follows:-

S. No.	Chapter/ Heading/ Sub- heading/ Tariff item	Description	BCD Rate of Duty	IGST	Remarks
(1)	(2)	(3)	(4)	(5)	
1.	5806 32 00	All goods	20%	5%	BCD-Tariff Rate

45.2 Therefore, the goods falling under CTH 5806 3200 attract 20% BCD and IGST at 5%. Consequent to redetermination of the classification of the goods under the appropriate heading as discussed in above paras, the differential duty has been calculated for the period from 20.09.2019 (first bill of entry) to 27.09.2022 (last bill of entry). Further I observe that on perusal of the import data gathered and downloaded from ISS and ICES data base for the period from 20.09.2019 to 27.09.2022, it has been noticed that for various bills of entry, the importer has availed MEIS Scrips for the payment of BCD. The said MEIS scrips were randomly verified and arrived at the differential BCD&SWS required to be paid by M/s. Osyan Trading Enterprise Pvt. Ltd on port-wise. The noticee has imported the subject imported goods vide 146 Past and 1 Live Bills of Entry through Nhava Sheva Port, Chennai Sea Port, Chennai Aircargo & CPL Dadri Port during the period from 20.09.2019 to 27.09.2022. Accordingly, the differential duty of BCD & SWS payable in respect of imported products port-wise has been computed Table- A above and the abstract of the same is as follows :-

Port Code	CIF VALUE	BCD PAID @ 10%	BCD PAYABLE @ 20%	DIFFEENT IAL BCD	DIFFEREN TIAL SWS	TOTAL DIFF. DUTY
INCPL 6	3813558.5	381355.85	762711.7	381355.85	38135.585	419491.435
INMA A1	33619236	3361923.597	6723847.19 4	3361923.59 7	336192.3597	3698115.957
INMA	154565.76	15456.576	30913.152	15456.576	1545.6576	17002.2336

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A4						
INNSA 1	54310713 0	54310713.01	108621426	54310713.0 1	5431071.301	59741784.31
Grand Total	58069449 0	58069449.03	116138898. 1	58069449.0 3	5806944.903	63876393.93

45.3 The Noticee has also contended that extended that **Limitation: *Extended period not invokable***

I do not find any merit in the noticee's contention as, due to deliberate misclassification of the goods, duty demand against the Noticee has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of my stand of invoking extended period, I rely upon the following court decisions:

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

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

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

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

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

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

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

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

45.4 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*

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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.

44.5 In view of the above, I find that the noticee had wilfully mis stated 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. 4,40,076/- (Rupees Four Lakh Forty Thousand Seventy-Six only) in respect of live bill of entry no. 2623872 dated 27/09/2022 should be recovered from the importer along with the applicable interest. And I also confirm differential Customs duty of Rs. 6,34,36,318/- (Rupees Six Crore Thirty-Four Lakh Thirty-Six Thousand Three Hundred Eighteen only) in respect of 146 past bills of entry from 20.09.2019 to 27.09.2022 along with the applicable interest.

C. NOW I TAKE UP THE NEXT QUESTION AS TO WHETHER AN AMOUNT OF RS. 1,75,00,000/- PAID BY M/S. OSYAN TRADING ENTERPRISE PVT. LTD TOWARDS DIFFERENTIAL DUTIES (BCD & SWS) PAID UNDER PROTEST SHOULD BE TREATED AS VOLUNTARY DUTY PAYMENT AND BANK GUARANTEE NO. 6031NDDG00001023 DATED 17.11.2022 OF RS.1,20,00,000/- FURNISHED AT THE TIME OF PROVISIONAL RELEASE OF SEIZED GOODS, SHOULD BE APPROPRIATED AGAINST THE DEMAND OF DIFFERENTIAL DUTY PROPOSED AGAINST THE NOTICEE.

46. As I have already held in the foregoing paras that the importing firm M/s. Osyan Trading Enterprises has wilfully evaded the applicable Customs duty. The importing firm evaded the duty of Rs. 4,40,076/- (Rupees Four Lakh Forty Thousand Seventy-Six only) in respect of live bill of entry no. 2623872 and of Rs. 6,34,36,318/- (Rupees Six Crore Thirty-Four Lakh Thirty-Six Thousand Three Hundred Eighteen only) in respect of 146 past bills of entry from 20.09.2019 to 27.09.2022, which should be demanded and recovered from the importing firm under Section 28 (4) of the Customs Act, 1962.

46.1 I observe that during the course of investigation, M/s. Osyan Trading Enterprise Pvt. Ltd paid Rs.1,75,00,000/-under protest vide TR6 Challan No. HC256/28.10.2022 as detailed below:

S. No	D.D No & Date	DD amount	BCD/SWS	IGST Amount	Port Name	TR-6Challan Number and Date
(1)	(2)	(3)	(4)	(5)	(6)	(7)

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1	517306 dt. 03.10.2022	1,75,00,000	BCD - 1,59,09,091/- SWS- 15,90,909/-	-	Nhava Sheva	HC256/28.10.2022
Total		Rs.1,75,00,000/-	Rs.1,75,00,000/-	-		

46.2 I find that the bank guarantee no. 6031NDDG00001023 dated 17.11.2022 of an amount of Rs.1,20,00,000/- furnished by M/s. Osyan Trading Enterprise Pvt. Ltd at the time of provisional release of seized goods, shall be appropriated against the demand, interest and penalties.

Therefore, the amount paid by the importer during investigation vide challan numbers mentioned above and the bank guarantee 6031NDDG00001023 dated 17.11.2022 of an amount of Rs.1,20,00,000/- should be appropriated against the demand of duty, interest and penalty.

D. NOW I TAKE UP THE NEXT QUESTION AS TO WHETHER THE SUBJECT GOODS VALUED AT RS. 40,00,689/- (RS. FORTY LAKHS SIX HUNDRED AND EIGHTY-NINE ONLY) IMPORTED VIDE BILL OF ENTRY NO. 2623872 DATED 27/09/2022 AND THE GOODS VALUED RS. 57,66,93,801/- (RS. FIFTY-SEVEN CRORE SIXTY-SIX LAKHS NINETY-THREE THOUSAND EIGHT HUNDRED ONE ONLY) IMPORTED VIDE 146 PAST BILLS OF ENTRY FROM 20.09.2019 TO 27.09.2022 SHOULD BE CONFISCATED UNDER THE PROVISIONS OF SECTION 111(M) OF THE CUSTOMS ACT, 1962.

47. I observe that from the discussions above in para 44, it is an undisputed fact that the importer has misclassified the imported goods under CTH 58071020, 58071090 & 58079090 as the imported goods are not labels. Further, as per chapter note 5 supra, narrow woven fabrics are woven fabrics of a width not exceeding 30cm, whether woven as such or cut from wider pieces, provided with selvages (*woven, gummed or otherwise made*) on both edges). The test reports of samples drawn from the live consignment imported under Bill of Entry No. 2623872 dated 27.09.2022, has confirmed that the goods imported are narrow woven fabric of polyester and are textile strips not exceeding 30cm and contains Warp, Weft & Selvages. Therefore, the subject imported goods are to be considered as “Narrow woven fabrics” of man-made fibre. Examination of the subject live consignment under Panchnama proceedings dated 11.10.2022, revealed that the imported goods did not contain any inscription or motif on them. Further, examination conducted at the warehouse of No.10, Massey’s Enterprises Pvt Ltd, No.17, North Railway Terminus Road, Royapuram, Chennai-13 on 03.10.2022, under Mahazar proceedings 03.10.2022 also revealed that the stock of the imported goods available at the said warehouse were imported over the period, and did not contain any inscription or motif on them the same were not challenged either by M/s. Osyan Trading Enterprise Pvt Ltd or authorised person of the company. I further observe that M/s. Osyan Trading Enterprise Pvt Ltd has not produced any documentary evidence to prove that the subject imported goods were printed with any inscription or motif. Despite the reasonable time given to the domestic customers of M/s. Osyan Trading Enterprise Pvt Ltd, they also failed to provide any courier/email/pre-print request details with respect to the purchase order sent to M/s. Osyan Trading Enterprise Private Limited.

47.1 I find that the importer had subscribed to a declaration as to the truthfulness of the contents of the bills of entry in terms of Section 46(4) of the Act in all their import declarations. Section 17 of the Act, w.e.f 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a bill of entry, in the electronic form. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, there is an added

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and enhanced responsibility of the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

47.2 I also find that, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17. Such onus appears to have been deliberately not discharged by M/s. Bhavna Steel. In terms of the provisions of Section 46(4) of the Customs Act, 1962, the importers while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and in support of such declaration, produce to the proper officer the invoice, of any, relating to the imported goods. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. In the instant case, the impugned Bills of Entry being self-assessed were substantially mis-declared by the importer in respect of the description, country of origin and assessable value while being presented to the Customs.

47.3 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].

47.4 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, the impugned goods having a total Assessable Value of Rs. 40,00,689/- (Rs. Forty Lakhs Six Hundred and Eighty-Nine only) imported vide bill of entry no. 2623872 dated 27/09/2022 and the goods valued at Rs. 57,66,93,801/- (Rs. Fifty-Seven Crore Sixty-Six Lakhs Ninety-Three Thousand Eight Hundred One only) imported vide 146 past bills of entry from 20.09.2019 to 27.09.2022 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.

47.5 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. ‘

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47.6 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).”

47.6.1 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.).

47.6.2 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.

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

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

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

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

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

47.6.4 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.

47.7 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.**

E. NOW I TAKE UP THE NEXT QUESTION AS TO WHETHER M/S. OSYAN TRADING ENTERPRISE PVT. LTD SHOULD BE HELD LIABLE FOR PENALTY UNDER THE PROVISIONS OF SECTIONS 112(A) AND/OR 114A OF THE CUSTOMS ACT, 1962.

48. As per my detailed findings in paras 44 and 45 above, I find that with the introduction of self-assessment by amendments to Section 17, since 8th April, 2011, it is the added and enhanced responsibility of the importer to declare the correct description, value, quantity, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

48.1. I reiterate my findings from paras 45 above for the question of penalty also as the same are mutatis mutandis applicable to this issue also. The provisions of Section 114 A / 112 (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*

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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.]

SECTION 112. Penalty for improper importation of goods, etc. — Any person, -

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

48.2 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

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of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (Ram Chandra Singh v. Savitri Devi and Ors.[2003 (8) SCC 319].

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

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

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

Suppression of a material fact would also amount to a fraud on the court [(Ref: Gowrishankarv. Joshi Amha Shankar Family Trust, (1996) 3 SCC 310 and S.P. Chengalvaraya Naidu's case (AIR 1994 S.C. 853)]. No judgment of a Court can be allowed to stand if it has been obtained by fraud. Fraud unravels everything and fraud vitiates all transactions known to the law of however high a degree of solemnity. When fraud is established that unravels all. [Ref: UOI v. Jain Shudh Vanaspati Ltd. - 1996 (86) E.L.T. 460 (S.C.) and in Delhi Development Authority v. Skipper Construction Company (P) Ltd. - AIR 1996 SC 2005]. Any undue gain made at the cost of Revenue is to be restored back to the treasury since fraud committed against Revenue voids all judicial acts, ecclesiastical or temporal and DEPB scrip obtained playing fraud against the public authorities are non-est. So also, no Court in this country can allow any benefit of fraud to be enjoyed by anybody as is held by Apex Court in the case of Chengalvaraya Naidu reported in (1994) 1 SCC 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.)].

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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."

48.3 As explained above, it is conclusively established that the importer M/s. Osysan Trading enterprise has misclassified the goods under CTH 58071020, 58071090 & 58079090 to evade appropriate Customs Duty. Thus, the importing firm has deliberately misclassified the goods and evaded the duty of Rs. 4,40,076/- (Rupees Four Lakh Forty Thousand Seventy-Six only) in respect of live bill of entry no. 2623872 and of Rs. 6,34,36,318/- (Rupees Six Crore Thirty-Four Lakh Thirty-Six Thousand Three Hundred Eighteen only) in respect of 146 past bills of entry from 20.09.2019 to 27.09.2022 which should be demanded and recovered from the importing firm under Section 28 (4) of the Customs Act, 1962. Consequently, the importing firm is liable for penalty under Section 114A of the Customs Act, 1962.

48.4 Since I will be imposing penalty on the importer under Section 114A, I shall refrain from imposing Penalty under Section 112(a) of the Act on the importer, M/s. Osysan Trading Enterprises, in terms of the fifth proviso to Section 114A of the Act *ibid*.

F. AS TO WHETHER M/S. OSYAN TRADING ENTERPRISE PVT. LTD SHOULD BE HELD LIABLE FOR PENALTY UNDER THE PROVISIONS OF SECTIONS 114AA OF THE CUSTOMS ACT, 1962.

49. Further I observe that Penal Action under Section 114 AA of the Customs Act has also been proposed against M/s. Osysan Trading Enterprises.

The relevant provision of the Section 114AA of the Custom Act, 1962 is as under: -

114AA Penalty for use of false and incorrect material –

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

I reiterate my findings from paras 45 for the question of penalty also as the same appears *mutatis mutandis* to this also.

49.1 I note that, The Hon'ble CESTAT, New Delhi in the case of M/s S.D. Overseas vs The Joint Commissioner of Customs in Customs Appeal No. 50712 OF 2019 had dismissed the appeal of the

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petitioner while upholding the imposition of penalty under Section 114 AA of the Customs Act, wherein it had held as under:

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

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

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

49.3 As observed in paras above, in the instant case, there is clear evidence of fraud and suppression of facts. The M/s. Oysan Trading Enterprises has cleared the imported goods by misclassifying them to avail the benefit of less rate of Basic Custom Duty. Therefore, I hold that M/s. Oysan Trading Enterprises is liable for imposition of penalty under Section 114AA *ibid*.

50. In view of the above facts of the case and findings on record, I pass the following order;

ORDER

(i). I reject the declared classification of goods imported vide 146 past Bills of Entry and 1 Live Bill of Entry filed during the period from 20.09.2019 to 27.09.2022 classified under CTH 58071020, 58071090 & 58079090 and order to re-classify the same under CTH 58063200 with applicable duties;

(ii). I confirm the demand of differential Customs duty of **Rs. 4,40,076/- (Rupees Four Lakh Forty Thousand Seventy-Six Only)** in respect of Live Bill of Entry No. 2623872 dated 27/09/2022. cleared by **M/s Oysan Trading Enterprises**, 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 confirm the demand of differential Customs Duty of **Rs. 6,34,36,318/- (Rupees Six Crore Thirty-Four Lakh Thirty-Six Thousand Three Hundred Eighteen only)** in respect of 146 past Bills of Entry from 20.09.2019 to 27.09.2022 cleared by **M/s Oysan Trading Enterprises**, 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.

(iv) I order confiscation of the imported goods vide live Bills of Entry Bill of Entry No. 2623872 dated 27/09/2022, valued at Rs. 40,00,689/- (Rs. Forty Lakhs Six Hundred and Eighty-Nine only) under Section 111(m) read with provisions of Section 46 (4) and Section 46 (4A) of the Customs Act, 1962 and impose redemption fine of Rs. 10,00,000/- (Rs. Ten Lakhs only) on M/s Oysan Trading Enterprises in respect of these goods for their redemption u/s 125 of the Customs Act, 1962;

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(v) I order confiscation of the imported goods vide past 146 bills of entry mentioned at Table -A above valued Rs. 57,66,93,801/- (Rs. Fifty-Seven Crore Sixty-Six Lakhs Ninety-Three Thousand Eight Hundred One only) under Section 111(m) read with provisions of Section 46 (4) and Section 46 (4A) of the Customs Act, 1962 and impose redemption fine of Rs. 15,00,00,000/- (Rs. Fifteen Crores only) on M/s Osyan Trading Enterprises in respect of these goods for their redemption u/s 125 of the Customs Act, 1962;

(vi). I impose a penalty equivalent to differential duty of Rs. 6,38,76,394/- (**Rupees Six Crores Thirty-Eight Lakhs Seventy-Six Thousand Three Hundred Ninety Four only**) and interest accrued there upon on the importing firm **M/s Osyan Trading Enterprises** under section 114A of the Customs Act, 1962.

In terms of the first and second proviso to Section 114A ibid, if duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be twenty-five per cent of the duty and interest, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order.

(vii). I order to appropriate the deposit of the amount of differential duty of **Rs.1,75,00,000/-(Rupees One Crore Seventy-Five Lakhs only)** and bank guarantee no. 6031NDDG00001023 dated 17.11.2022 of an amount of Rs.1,20,00,000/- furnished by M/s. Osyan Trading Enterprise Pvt. as discussed in para 46 above, against the aforesaid demand of duty, fine, penalty and interest.

(vi). I impose a penalty of **Rs. 6,00,00,000/- (Rupees Six Crores Only)** on M/s. Osyan Trading Enterprise Pvt. under Section 114 AA of the Customs Act, 1962.

Digitally signed by
Vijay Risi

Date: 14-08-2025

21:27:10
(VIJAY RISI)

**COMMISSIONER OF CUSTOMS
NS-III, JNCH**

To,

Noticee:-

M/s. Osyan Trading Enterprise Pvt. Ltd (IEC: AABCO2445B)
No. 67, Narayana Mudali Street,
2nd Floor Sowcarpet, Chennai,
Tamil Nadu- 600001

Copy to:

- a) The Commissioner of Customs, Customs Commissionerate-II (Import), No 60, Rajaji Salai, Chennai, Tamil Nadu - 600001
- b) The Principal Commissioner of Customs, Customs Commisionerate – VII (Air Cargo), New Custom House, GST Road, Meenambakkam, Chennai – 600016
- c) The Principal Commissioner of Customs, Noida Concor Complex, P.O. Container Depot, Greater Noida, Gautam Budh Nagar, Uttar Pradesh – 201311
- d) The Additional Director General, Chennai Zonal Unit, T. Nagar, G.N. Chetty Road, Chennai-17
- e) Deputy Commissioner of Customs, CAC, JNCH, Nhava Sheva.
- f) Notice Board.
- g) Office copy.

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- h. AC/DC Group III.
- i. The Asstt / Dy. Commissioner of Customs, SIIB (Import), JNCH, Nhava Sheva - to upload the OIO in DIGIT.
- j. AC/DC, Chief Commissioner's Office, JNCH
- k. AC/DC, Centralized Revenue Recovery Cell, JNCH
- l. EDI for uploading on JNCH website.