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Date: 07.06.2025

CESTAT Ahmedabad Upholds Correct Classification of Pre-Painted Galvanized Steel under CTH 7210

The Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Ahmedabad, has ruled in favor of the appellant-importer, KLJ Polymers & Chemicals Limited, setting aside a reclassification attempt and differential duty demand initiated by the customs department. The dispute revolved around whether the imported product—Pre-painted Galvanized Steel Sheets—should be classified under Customs Tariff Heading (CTH) 7210 70, as declared by the importer, or under CTH 7225 99, as proposed by the department on grounds of alleged alloy content.

Dispute Summary

- **Product:** Colour-coated galvanized steel coils/sheets.
- **Declared Classification by Importer:** CTH 7210 (covering flat-rolled products of iron or non-alloy steel, plated or coated).
- **Revenue's Allegation:** The product contains alloying elements (including boron), qualifying it under CTH 7225 for other alloy steel.

The customs authorities alleged suppression of facts and misdeclaration by the importer and raised a demand of differential duty, invoking extended limitation under Section 28 of the Customs Act.

Appellant's Key Arguments

1. **Correct Classification Declared:** The imported goods were in line with the characteristics defined under CTH 7210—non-alloy flat-rolled steel products plated with zinc and painted.

2. **BIS Standards Compliance:** The imported goods conformed to IS 277 and IS 14246, applicable to non-alloy steel with zinc coating.
3. **No Intent to Evade Duty:** Full technical details, chemical composition, and product specifications were submitted at the time of import.
4. **No Evidence of Alloy Steel Composition:** The presence of trace elements like boron was within permissible limits for non-alloy steel.

Tribunal's Key Observations

- The Tribunal concluded that the mere presence of boron in trace amounts does not convert the product into alloy steel, unless it meets specific percentage thresholds and is intentionally added for properties enhancement.
- The department failed to conclusively establish that the imported steel had been deliberately alloyed.
- Reliance on chemical composition reports alone, without industry context or BIS standard evaluation, was deemed insufficient to support reclassification.
- The department's invocation of extended limitation period and suppression allegation was rejected due to complete disclosure by the importer.

Final Order

- The CESTAT set aside the reclassification and the demand notice, affirming that:

“The goods rightly fall under CTH 7210. There is no misdeclaration or suppression justifying invocation of extended period or penalty.”

Legal and Industry Significance

This ruling is important for importers of steel and metal products, reaffirming that:

- Minor or unintentional presence of alloying elements does not alter the classification.
- Accurate declaration with BIS conformity is a strong legal defense.
- The burden lies on the department to prove intent and materiality in classification disputes.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Ahmedabad

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Write to us at office@aadrikaalaw.com

Tel: +91-11-4999 2707 | +91-9999005379

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**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10103 of 2024 – DB

(Arising out of Order in Original AHM-CUSTOM-000-PR.COM-19 TO 21-2023-24 dated 30.11.2023 passed by the Pr. Commissioner, Customs- Ahmedabad)

KLJ POLYMERS & CHEMICALS LIMITED

Plot No.8A, KLJ House,
Najafgarh Road, New Delhi-110015

.....Appellant

VERSUS

Commissioner of CUSTOMS - Customs Ahmedabad

Customs House, Near All India Radio,
Navrangpura, Ahmedabad-380009,
Gujarat

.....Respondent

APPEARANCE:

Shri Pramod Kumar Rai, Advocate appeared for the appellant
Shri Girish Nair, Assistant Commissioner (AR) appeared for the department

CORAM:

HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10453/2025

DATE OF HEARING: 24.04.2025

DATE OF DECISION: 05.06.2025

SOMESH ARORA

1.1 M/s. KLJ Polymers & Chemicals Ltd (the appellant importer) was engaged in import of different types of chemicals, PVCs, pigments etc and also engaged in manufacturing and trading of polymers, pigments, lubricants, stabilizers etc.

1.2 During the course of verification of records by the audit and on perusal of EDW data, it was noticed that the importer had mis-classified "Styrene Butadiene Copolymer" under CTH 39039010/39039090 instead of CTH 40021990 and wrongly availed the benefit of Sr. No. 262/266 of Not. No. 50/2017-Cus dated 30.06.2017. It was also noticed that they imported Styrene Butadiene Copolymer under CTH 39039090 instead of CTH 40021990 in Bill of Entry No 2124869 dated 16.06.2017 and availed the benefit of Sr. No. 239 of Not No. 12/2012-Cus dated 17.03.2012. During the course of verification of records and on perusal of EDW data, it was noticed that the importer had mis-classified Styrene Butadiene Copolymer under CTH 39039090 instead of CTH 40021990 and wrongly availed benefit of Sr. No 296 instead of Sr No. 322 of Not. No. 69/2011-Cus dated 29.07.2011 on goods imported from Japan on the basis of country of origin certificate.

1.3 The following three Show Cause Notices dated 08.06.2022, 21.02.2023 and 18.04.2023 were issued to the importer proposing the following:

(a) Classification of "Styrene Butadiene Copolymer (SBC)" imported by them be not reassessed under CTH 40021990 instead of CTH 39039010/ 39039090.

(b) Exemption of benefit of Sr. No.262/66 of Not. No. 50/2017-Cus dated 30.06.2017 & Sr. No. 296 of Not. No. 69/2011-Cus dated 29.07.2011 be not denied.

(c) Diff. duty alongwith interest be not demanded under Section 28(4) & 28AA respectively of the Customs Act, 1962.

(d) Goods imported by them by misclassifying the same be not confiscated under section 111(m) & 111 (o) of the Customs Act, 1962.

(e) Penalty under section 112 (a)/ 114 A & 114 AA of the Customs Act, 1962 be not imposed.

SCN dt.	ICD/ Port & Period	Value of goods	Diff. duty
18.04.2023	ICD Tumb. (17 B/E) [30.04.2021 to 18.10.2022]	15,07,81,863/-	48,92,866/-
21.02.2023	ICD Tumb. (65 B/E) [24.08.2018 to 05.03.2021]	40,13,94,800/-	1,04,80,098/-
08.06.2022	ICD Tumb. (15 B/E) + JNCH [16.06.2017 to 17.01.2019] (17 B/E)	20,77,09,436/-	+ 33,63,753/-

1.4 The Adjudicating Authority decided the matter vide order dt.30.11.2023 wherein he found that the importer was claiming classification under CTH 39039010/39039090. Chapter 3903 was for 'Polymers of Styrene, in Primary Forms' and CTH 39039010 was specifically for 'Copolymers, solely of styrene with allyl alcohol, of any acetyl value of 175 or more whereas importer himself had admitted that imported goods contained "Butadiene". As the impugned

imported goods do not contain allyl alcohol of any acetyl value of 175, these would not fall under CTH 39039010. The wording 'copolymers' is intended to specify a particular subset of copolymers that are composed exclusively of 'styrene and allyl alcohol and have a specific acetyl value of 175 or more. Thus, styrene mixed / blended with Butadiene is not covered under CTH 39039010.

1.5 With regard to mis-classification of the subject imported goods under CTH39039090, the Adjudicating Authority found that CTH 39039090 is for **"Other"** which is residuary entry and all other goods covered under 3903 would merit classification under CTH 39039090. The Customs Heading '3903' is for "Polymers of Styrene, in primary forms" and so, only goods containing 'Polymers of Styrene' are covered under CTH 39039090 and not copolymers' except otherwise specifically mentioned in various Tariff items under 3903. He found that there is no mention of "Styrene Butadiene Copolymer" in any of the Tariff Item under CTH 3903.

1.6 There is a specific heading CTH 4002 which covers "Styrene-butadiene Rubber (SBR); carboxylated styrene-butadiene rubber (XSBR). It is not disputed that the impugned goods contain monomer of Styrene with monomer of Butadiene. The Adjudicating Authority relied on the judgement of Hon'ble Supreme Court in the case of Commissioner of C. Ex, Bhubaneswar vs Champdany Industries Ltd reported at 2009 (241) E.L.T. 481 (SC) wherein it was held that when specific heading exists, goods not classifiable under residuary heading and such principle hardened into a rule of law by reason of consistent view taken by the Court. He found that there is a specific heading 4002 for 'Styrene-butadiene Rubber (SBR), carboxylated styrene-butadiene rubber (XSBR) and it is not disputed that the impugned goods contain the monomer of styrene with monomer of butadiene, hence the impugned goods are appropriately classifiable under CTH 40021990.

1.7 With regard to the Certificate dated 29.09.2023 issued by foreign supplier INEOS Solutions, Singapore who is a manufacturer of "Styrene Butadiene Copolymer with the proprietary name KR99HG, the Adjudicating Authority found that the same cannot be relied as the importer has not produced any evidence that the goods covered in the present 03 Show Cause Notices were supplied by INEOS Solutions of Singapore. The said Certificate is of dated 27.09.2023 whereas the goods were imported during the period from 16.06.2017 to 18.10.2022. The importer has not adduced any technical literature / chemical composition/Test Reports which can say that the imported

goods viz "Styrene Butadiene Copolymer" were classifiable under CTH 39039010 or 39039090.

1.8 The Adjudicating Authority further found that the importer is not disputing that the impugned goods contained monomer of Styrene and monomer of Butadiene. As per Note 1 of Chapter 40, it is stated that "Except where the context otherwise requires, throughout this Schedule, the expression "rubber" means the natural rubber, balata, gutta-percha, guayule, chicle and similar natural gums, Synthetic Rubber, Factice derived from oils, and such substance reclaimed." Further, in Chapter Note 4, it is stated that in Note 1 to this Chapter and in heading 4002, the expression "synthetic rubber applies to:-

"Unsaturated synthetic substances which can be irreversibly transformed by vulcanisation with Sulphur into non-thermoplastic substances which, at a temperature between 18⁰ C and 29⁰ C, will not break on being extended to three times their original length and will return, after being extended to twice their original length, within a period of five minutes, to a length not greater than one and a half times their original length. For the purposes of this test, substances necessary for the cross-linking, such as vulcanising activators or accelerators, may be added; the presence of substances as provided for by Note 5(B) (ii) and (iii) is also permitted. However, the presence of any substances not necessary for the cross-linking, such as extenders, plasticisers and fillers, is not permitted?"

1.9 The Adjudicating Authority found that the Deputy Commissioner Customs Audit Commissionerate, NCH, New Delhi had issued Final Audit Report to the importer and informed them regarding mis-classification of the impugned goods imported by them. However, the importer failed to produce any Chemical Composition/literature/evidence adduced in support of classification claimed by them.

1.9.1 Vide letter dated 19.08.2021, the importer replied to Audit wherein they merely cited Chapter Notes of CTH 3903 and 4002 and did not submit any documents related to Chemical Composition/literature/evidence in support of classification claimed by them. Importer attached a Certificate dated 08.04.2008 from M/s. Chevron Phillips Chemicals Asia Pte Ltd, Singapore which read as under:

"K-resin SBC grades are currently shipped using two different Harmonized Tariff codes.

4002 19.00. 20

3903.90.50. 00

For K-resin SBC grades to be shipped under United States Harmonized Tariff Schedule Chapter 40, K-resin must be tested and should meet following 2 requirements:-

(1) Specific composition requirement:- Definition for section 4002 is given for polymer composition, 'by containing over 50% styrene by weight of dry polymer All K-resin SBC grades are greater than 60% styrene by weight of dry polymer.

(2) Elastics recovery requirements:- The elastics recovery of a vulcanized sample is described within 4002. This testing is performed by an outside / independent laboratory (University of Louvain) which is the official Harmonized Tariff Classification Testing Lab for Belgium.

The K-resin SBC that meets the elastics recovery requirements described in Chapter 40 are KR03, KR03NW KR05, KR05NW, KR10, KK38, XK40, BK11 CK02 DK11. DK13. DK15, KR99HG, SKR14, SKR15 and SKR40

K-resin SBC Grades KR01, BK10 BK12, BK13, BK15. BK18 XK41 and SKR13 meet the requirements of United States Harmonized Tariff Schedule under the Heading /Subheading 3903 "polymers of styrene" and are further described under Section 3903 90 50 as "Other".

1.9.2 From plain reading of the aforesaid information provided by M/s Chevron Philips Chemical Asia Pte Ltd, Singapore, the Adjudicating Authority found that importer had imported "Styrene Butadiene Copolymer Grade KR99HG in major quantity which falls under CTH 4002 and they have not imported any Grade of Styrene Butadiene Copolymer which falls under CTH 3909 as described by the overseas supplier. Therefore, he found that the importer had mis-classified impugned goods under CTH 39039010 / 39039090 which merit classification under CTH 40021990. He further found that the importer is not eligible to the benefit of exemption No. 50/2017-Cus dated 30.06.2017 as amended and Not. No. 69/2011-Cus dated 29.07.2011 as amended.

1.10 The Adjudicating Authority did not accept the importer's plea that there is no breach of condition of Exemption Notification and held that the importer has mis-classified the goods and wrongly availed the benefit of Exemption Notification with clear intent to evade Customs Duty. He held that the impugned goods covered under the three SCNS are liable for confiscation under Section 111(m) and 111(0) of the Customs Act, 1962. Further, relying on the judgement of Hon'ble High Court of Madras in the case of Visteon

Automotive Systems India Ltd reported at 2018 (009) G.S.T.L. 0142 (Mad) which has been relied upon by High Court of Gujarat in the case of Synergy Fertichem Ltd vs Union of India reported in 2020 (33) GS.T.L. 513 (Guj.), he found that Redemption Fine under Section 125(1) is liable to be imposed in lieu of confiscation of the impugned goods. He also held that the importer has failed to correctly self-assess the Customs Duty on the impugned goods and also willfully violated the provisions of sub-section (4) and (4A) of Section 46 of the Act, hence extended period is correctly involved.

1.11. In view of the above, the Adjudicating Authority held the classification of imported goods under 40021990, denied the benefit of exemption Notification and confirmed the demand for the extended period alongwith interest. He also held the goods liable to confiscation under Section 111 (m) & 111 (o) imposed invoked penalties and redemption fine in lieu of confiscation. Aggrieved by the order, the present appeal has been filed.

2. Opening the arguments, Learned Advocate for the appellant submitted as follows:-

2.1 The appellant had imported following grades of Styrene Butadiene Copolymer (SBC) from different manufacturers/suppliers and classified them under CTH 3903, whereas revenue has classified it as synthetic Rubber under CTH 4002 with confirmation of consequential differential duty along with penalty/redemption fine on account of alleged mis-classification in the impugned OIO.

Sr. No.	Description of product (SBC)	Classification claimed by Appellant	Classification claimed by Revenue
1.	SBC PB 587	Chapter 39: Plastics CTH 3903 [Polymer of Styrene] Tariff Entry: 39039090 as of Copolymer of styrene	Chapter 40: Rubber CTH 4002 [Synthetic Rubber] Tariff Entry: 40021990 as Styrene-Butadiene Rubber (SBR)
2.	PB 585		
3.	ASAFLEX 825		
4.	ASAFLEX 830		
5.	K RESIN OFF SPECS		
6.	PB 5302		
7.	SAN 300 H		
8.	KR 99 HG		
9.	CN 08		

- **Definition of the imported product (SBC) and concept of 'thermoplastic vs Non-thermoplastic (Thermosetting) materials', 'Plastics Vs. Rubber' & 'SBR vs TPR'**

2.2 ScienceDirect.com defines Styrene-Butadiene Copolymer (SBC) as an engineering thermoplastic material derived from a copolymer of styrene and butadiene, with styrene content of at least 70%. It is transparent, easily melted, and highly colorable, offering a good balance of stiffness, rigidity, and toughness. It is thus a commercially important thermoplastic elastomer.

2.3 Thermoplastic vs Non-thermoplastic (Thermosetting) materials : **Thermoplastic** materials can be molded, shaped, and pressed into shapes. They can be reheated and recycled and again molded, shaped, and pressed into shapes like any other plastic. On the other hand, **Non-thermoplastic** (Thermosetting) materials have a very rigid structure. Initially, during their manufacturing process, they can be heated, molded, shaped, and pressed into shapes but once set, they cannot be reheated and recycled since they are permanently set. Thermosetting materials are generally stronger than thermoplastic materials due to three-dimensional network of bonds (cross-linking) and are also better suited to high-temperature applications as strong covalent bonds between polymer chains cannot be broken easily.

2.4 Plastic Vs Rubber : Some polymers are synthetic whereas others are naturally occurring compounds. Plastic is a synthetic polymer whereas rubber could be natural as well as synthetic polymer. Rubber is obtained by creating extensive cross-linking between polymer chains to create a rigid structure. Plastic is known for its plasticity whereas Rubber is known for its elastomeric properties. On account of rigid structure of Rubber, the recycling process of Rubber is more complex compared to recycling of plastics. Unlike plastics, Rubber cannot be recycled by simple heating and melting.

2.5 Styrene-Butadiene Rubber (SBR) Vs Thermoplastic elastomers (TPE)/ Thermoplastic Rubbers (TPR) : Styrene-butadiene rubber (SBR) describes families of synthetic rubbers derived from styrene and butadiene (the version developed by Goodyear is called Neolite). About 50% of car tires are made from various types of SBR. SBR is not to be confused with thermoplastic elastomer, styrene-butadiene block copolymer, although being derived from the same monomers. Thermoplastic elastomers (TPE)/ thermoplastic rubbers (TPR), are a class of copolymers or a physical mix of polymers (usually a plastic and a rubber) that consist of materials with both thermoplastic and elastomeric properties. While most elastomers are thermosets, thermoplastic

elastomers are not, in contrast making them relatively easy to use in manufacturing.

2.6 Learned Advocate submitted that for classifying the imported products under CTH 4002, revenue has not done any testing of the product and has solely relied upon a document dated 08.04.2008 issued much earlier than the period of dispute and that too, with respect to just one grade by a private third-party M/s Chevron Philips Chemical Asia Pte. Ltd, Singapore, who is not supplier of the products in question. The said document of 2008 related to KR99HG cannot be applied for classifying the product firstly on creditability issues and secondly because every product formulation keeps on changing with time depending on the evolving requirement of industry. This document dated 08.04.2008 has been firstly treated as gospel truth without any examination of product in question. Secondly, it has been extrapolated for the period 9 to 14 years later and that too for all grades of SBC to classify them under CTH 4002 without any kind of testing and without referring to any product literature.

2.7. Styrene Butadiene Copolymer (SBC) is a synthetically produced polymer, where monomer units are styrene and butadiene. Thus, by referring to rule 2(b) of the General Rules for interpretation of Import Schedule, it can be classified as Styrene polymer as well as Butadiene polymer.

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

2.8. Chapter note 4 of Chapter 39 reads as under:-

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

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

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

Thus, as per this chapter note, SBC with more than 70% of styrene needs to be classified as polymer of styrene under CTH 3903.

2.9 Rule 3(a) & 3(b) of the Rules of Interpretation reads as under:-

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

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

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable."

Therefore, by referring to Rule 3 (a) and 3(b) read with Section/Chapter Notes read with HSN explanatory notes, CTH 3903 covers Polymers of Styrene, in primary forms, whereas CTH 4002 covers Synthetic Rubber, in primary forms. Thus, CTH 3903 describes the product specifically, whereas description under CTH 4002 is generic in nature. The product in question acquires its essential characteristics of plastics from styrene and thus, on this count also needs to be classified under CTH 3903.

2.10 Further, in the context of SBC, based on the essential characteristics as explained in HSN, one subset of SBC with properties akin to plastic falls under 3903 and another subset of SBC with properties akin to rubber falls under 4002, and these two subsets are mutually exclusive. The HSN explanatory notes to CTH 3903 (extracted below) specifically states that a subset of "Styrene Butadiene Copolymer" shall be classified under CTH 3903.

"This heading covers polystyrene and copolymers of styrene. The most important copolymers of styrene and styrene-acrylonitrile (SAN) Copolymers, acrylonitrile-butadiene-styrene (ABS) copolymers and styrene-butadiene copolymers. Most of the styrene-butadiene copolymers with substantial amounts of butadiene comply with the requirements of Note 4 to Chapter 40 and are therefore classified in Chapter 40 as synthetic rubber. For the classification of polymers (including copolymers), chemically modified polymers and polymers blends, see the General Explanatory notes to this Chapter."

2.11 As per HSN explanatory notes, Styrene Butadiene Copolymers (SBC) are specifically included under CTH 3903. The product in question contains more than 70% styrene. Further, SBC is classified under CTH 4002 only when it contains substantial amount of butadiene and comply with the requirements of Note 4 to Chapter 40. The Note 4 to Chapter 40 is reproduced below:

Note 4. In Note 1 to this Chapter and in heading 4002, the expression "synthetic rubber" applies to:

(a) unsaturated synthetic substances which can be irreversibly transformed by vulcanisation with sulphur into non-thermoplastic substances which, at a temperature between 18 degree centigrade and 29 degree centigrade, will not break on being extended to three times their original length and will return, after being extended to twice their original length, within a period of five minutes, to a length not greater than one and a half times their original length. For the purposes of this test, substances necessary for the cross-linking, such as vulcanising activators or accelerators, may be added; the presence of substances as provided for by Note 5(B)(ii) and (iii) is also permitted. However, the presence of any substances not necessary for the cross-linking, such as extenders, plasticisers and fillers, is not permitted;

(b) thioplasts (TM); and

(c) natural rubber modified by grafting or mixing with plastics, depolymerised natural rubber, mixtures of unsaturated synthetic substances with saturated synthetic high polymers provided that all the above-mentioned products comply with the requirements concerning vulcanisation, elongation and recovery in (a) above.

Therefore, for classification of imported products under CTH 4002 following conditions (all) must be satisfied:

- a. It must be unsaturated.
- b. It must not contain any substances not necessary for the cross-linking such as extenders, plasticisers and fillers.
- c. It should be capable of irreversibly transformed by vulcanisation with sulphur into non-thermoplastic substances which at a temperature between 18 degree C and 29 degree C
 - i. Will not break on being extended to three times its original length. [Breaking Test]
 - ii. Must return after being extended to twice its original length, within a period of five minutes, to a length not greater than one and a half times its original length. [Elastic Recovery Test]

2.12 Learned Advocate submitted that they supplied above requirements and technical data sheets during the investigation but the department has neither conducted any test nor taken any opinion from any expert to confirm above parameters. The samples of the imported products were sent by the Importer for testing on the above parameters to Indian Rubber Manufacturers Research Association (IRMRA), an autonomous body operating under the administrative control of Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry, Govt. of India. The Learned Advocate submitted copy of the test reports alongwith synopsis. Summary of the test results as mentioned in the test reports is reproduced below:

Sr. No.	Product Name	Whether saturated or unsaturated synthetic substance?	Whether the product contains any substances other than SBC, which is not necessary for the cross-linking, such as extenders, plasticisers and fillers etc.	Whether it will break on being extended to three times its original length? (at 25°C) (Original length 25mm)	Whether it will return after being extended to twice its original length, within a period of five minutes, to a length not greater than one and a half times its original length? (at 25°C) (Original length 25mm)	Whether condition of CTH 4002 satisfied?
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	SBC PB 587	Saturated synthetic substances	Yes, it has substances other than SBC which does not play any role in cross linking	No. It breaks at 900 % elongation.	Yes. Final length is 27.25 mm which is less than one and a half times of the original length	NO
2.	PB 585	Saturated synthetic substances	Yes, it has substances other than SBC which does not play any role in cross linking	No. It breaks at 840% elongation.	Yes. Final length is 25.74 mm which is less than one and a half times of the original length	NO
3.	ASAFLEX 825	Unsaturated synthetic substances	Yes, it has substances other than SBC which does not play any role in cross linking	Yes. It breaks at 140% elongation.	No. Final length is 43.3 mm which is greater than one and a half times of the original length.	NO
4.	ASAFLEX 830	Saturated synthetic substances	Yes, it has substances other than SBC which does not play any role in cross linking	No. It breaks at 390% elongation.	No. Final length is 41.43mm which is greater than one and a half times of the original length.	NO
5.	K RESIN OFF SPECS	Saturated synthetic substances	Yes, it has substances other than SBC which does not play any role	It cannot be vulcanized with sulphur	It cannot be irreversibly transformed by vulcanisation with sulphur into non-	NO

			in cross linking		thermoplastic substances	
6.	PB 5302	Saturated synthetic substances	Yes, it has substances other than SBC which does not play any role in cross linking	No. It breaks at 850% elongation	Yes. Final length is 28 mm which is less than one and a half times of the original length	NO
7.	SAN 300 H	Saturated Synthetic Substance	Yes, it has substances other than SBC which does not play any role in cross linking	YES. It breaks at 10% elongation itself.	No. It breaks at 10% elongation itself.	NO
8.	KR 99 HG	Saturated Synthetic Substance	Yes, it has substances other than SBC which does not play any role in cross linking	NO. It breaks at 450 % elongation.	NO. Final length is 47.33mm which is greater than one and a half times of the original length.	NO
9.	CN 08	Saturated synthetic substances	Yes, it has substances other than SBC which does not play any role in cross linking	Yes. It breaks at 30% elongation.	No. it breaks at 30% elongation itself.	NO

2.13 As per above table, except the product at sr. no. 3, all the remaining 8 products are "saturated synthetic substance" which do not satisfy the first criteria of chapter note 4 of chapter 40. The product "ASAFLEX 825" mentioned at sr. no. 3 of the above table fails the "breaking test" and "elastic recovery test" as prescribed under note 4 of chapter 40 of the Customs tariff Act, 1975. Thus, none of the imported products fulfill the conditions of chapter note 4 of chapter 40 and hence, do not merit for being classified under CTH 4002. Therefore, the imported products are to be classified under CTH 3903 only and the appellant has rightly claimed the benefit of exemption notification no. 50/2017-cus dated 30.06.2017 and 69/2011-Cus dated 29.07.2011 as applicable to CTH 3903. He pleaded that the demand of differential duty and consequential penalty and RF is not sustainable on merit.

2.14 Learned Advocate submits that post the period of dispute, appellant as well as other parties have imported various grades of SBC including KR99HG grade by classifying under CTH 3903 which has been accepted by the department and the bills of Entry are finally assessed.

2.15 To classify the imported product under CTH 4002, the department has not addressed the legal requirement. The whole SCN and OIO is silent as to whether the imported product satisfies the conditions as prescribed under

Note 4 to Chapter 40 or not and thus, the entire proceeding is vitiated. The product data sheets submitted during investigation has not been taken on record. Further, during the relevant period, supplier itself was classifying the product under Chapter 39 and a number of other parties have imported the product under CTH 3903.

2.16 Department has classified the imported product (SBC) under Tariff Entry: 40021990 as Styrene-Butadiene Rubber (SBR) which is a thermoset material, without discussing as to how properties of SBR are satisfied. SBR is widely used in Tyre industry whereas the product in question has no application in tyre industry at all.

2.17 The product has been correctly declared at the time of import and there is neither any misdeclaration nor any suppression of fact. The present case is purely an issue of classification/legal interpretation for which allegation of suppression and misdeclaration cannot hold good. Therefore, substantial part of demand as shown in opening para is time barred. Reliance is placed on the following case laws:

- i. Northern Plastic Ltd. v. Commissioner [1998 (101) E.L.T. 549 (S.C.)]
- ii. O.K. Play (India) Ltd. v. Commissioner [2005 (180) E.L.T. 300 (S.C.)]
- iii. National Radio & Electronics Co. v. Commr. [2000 (119) E.L.T. 746]

2.18 For the reasonings given, the goods are not liable to confiscation. The present case relates to classification which is an interpretational issue and thus, no penalty can be imposed under section 112(a) & (b) and section 114A, 114AA of the Customs Act. In the case of Commissioner of Customs Vs Vodafone Essar Gujarat Ltd. 2020 (373) ELT 421 [para 7], Hon'ble CESTAT held that in cases of classification, penalty under Section 112 cannot be imposed. In the case of Kores (India) Ltd Vs Commissioner of Customs (I), Nhava Sheva 2019 (370) ELT 1444 [para 5.6], Hon'ble CESTAT Division Bench held that in cases where only dispute is with respect to classification, penal provisions of Section 112 cannot be invoked. In the case of Sirthai Superware (Supra) [para 4.9 & 4.10], the Hon'ble CESTAT Mumbai held that in cases where description of goods matches the actual content of the consignment and if the issue is with respect to classification, penalty cannot be imposed either under Section 112 or 114A of the Customs Act, 1962.

2.19 It is a trite law that when goods are not available for confiscation, imposition of redemption fine is not sustainable at all. There is nothing which can be redeemed in the present case and thus, legally no redemption fine can be imposed. The Appellant rely on the decision of Hon'ble Tribunal in M/s Shiv

Kripa Ispat Pvt. Ltd. V/s Commissioner of C. EX. & CUS. Nasik, 2009 (235) E.L.T. 623 (Tri. - LB).

3. The Learned AR relied on the findings of the lower Authority and argued as follows:

3.1 The importer was claiming classification under CTH 39039010/39039090. Heading 3903 is for 'Polymers of Styrene, in Primary Forms' and CTH 39039010 was specifically for 'Copolymers, solely of styrene with allyl alcohol, of acetyl value 175 or more' whereas importer himself had admitted that their impugned imported goods contained "Butadiene". As the impugned imported goods do not contain allyl alcohol of any acetyl value of 175, these would not fall under CTH 39039010. The wording 'copolymers' is intended to specify a particular subset of copolymers that are composed exclusively of 'styrene and allyl alcohol and have a specific acetyl value of 175 or more'. Thus, the styrene mixed / blended with Butadiene is not covered under CTH 39039010.

3.2 CTH 39039090 is for 'Other' which is a residuary entry and all other goods covered under 3903 would merit classification under CTH 39039090. Customs Heading '3903' is for "Polymers of Styrene, in primary forms" and so, only goods containing 'Polymers of Styrene' are covered under CTH 39039090 and not 'copolymers' except otherwise specifically mentioned in various Tariff items under CTH 3903. There is no mention of "Styrene Butadiene Copolymer" in any of the Tariff Item under CTH 3903.

3.3 There is a specific heading CTH 4002 which covers "Styrene-butadiene Rubber 9SBR, carboxylated styrene-butadine rubber (XSBR). It is not disputed that the impugned goods contain monomer of Styrene with monomer of butadiene. It is a laid down principle that when specific heading exists, goods are not classifiable under residuary heading and such principle has hardened into a rule of law by reason of consistent view taken by the Court. The importer does not dispute that the impugned goods do not contain butadiene rubber. Thus, the impugned goods are appropriately classifiable under CTH 40021990.

3.4 Vide letter dated 19.08.2021, the Importer submitted as under:

"From 1st August 2019 Customs rolled out new version of EDI system SCMTR 2018 where sea arrival manifest has to be filed and the 6-digit HSN code was mandatory in Bill of Lading description. In the Bill of Lading, the foreign supplier from Japan started classifying the SBC under CTH 4002 and based on that, we have classified the product under

CTH 4002 which also attracts NIL duty under Notification No. 69/2011-Cus".

3.5 During the relevant period of the impugned SCN, the importer had imported Styrene Butadiene Copolymer under CTH 39039010 as well as 39039090. They had also started classifying the same product under CTH 4002 for imports from Japan which indicates that the importer has been regularly changing classification of the subject goods with a view to claim exemptions from Customs duty.

3.6 The importer had, along with their letter dated 19.08.2021 addressed to the Superintendent (PBA-2), Customs Audit Commissionerate, NCH, New Delhi, enclosed a Certificate from Chevron Phillips Chemicals Asia Pte Ltd, Singapore (foreign supplier) attaching the procedure "Evaluations of Elastics Recovery of Vulcanized K-resin SBC" which is performed by an outside / independent laboratory (University of Louvain) which is the official Harmonized Tariff Classification Testing Lab for Belgium as per which Styrene Butadiene Copolymer of grade KR99HG (which has been the import product of the importer) meets the elastics recovery requirements described in Chapter 40. M/s. Chevron Phillips has also separately listed out K-resin SBC Grades that would fall under the Chapters 39 and 40.

3.7 During the course of hearing, Advocate for the appellant submitted copies of Test Reports issued by Indian Rubber Manufacturers Research Association. However, there is no mention as to from where the samples have been derived. This document was not a part of the documents presented before the Adjudicating Authority and no Misc Application has been preferred to bring in these.

3.8 Some sample Bills of Entry subsequent to the period of dispute have been submitted but the same were not presented before the Adjudicating Authority and no Misc Application has been preferred to bring in additional documents to be relied upon. Learned AR prayed that no reliance should be placed upon them.

4. In rejoinder, Learned Advocate for the appellant submitted as below:-

4.1 The word "**substantial**" is defined in dictionary as below.

Substantial: Large in amount, Value or Importance. [Oxford Dictionary]

Substantial: Being significant or large and having substance. [Black Law Dictionary]

4.2 In the context of product composition, "substantial" does not necessarily mean "predominant" or "majority." It is somewhat flexible term that indicates a significant or meaningful amount, but not necessarily the largest portion. For example, a food product might contain "substantial amount" of a certain ingredient (perhaps 15-25%) without that ingredient being the predominant or majority component. Similarly, a fabric might be described as having "substantial wool content" say 30-40%, even though the majority is synthetic. Therefore, in absence of a legally defined meaning of 'substantial', the exact interpretation can vary depending on industry, regulatory context, and common usage in a particular field.

4.3 In the context of HSN explanatory notes to CTH 3903, between styrene and butadiene, styrene being more than 70%, it cannot be said that butadiene is substantial compared to styrene. Styrene is a component which is essential for giving plasticity to the product which is essential for classification under Chapter 39 and butadiene is a component which is essential for giving properties required for rubber for classifying the product under Chapter 40. Therefore, in the context of HSN explanatory notes to CTH 3903, butadiene component should be of a such higher quantity, so that the product satisfies requirements of Note 4 to Chapter 40, and then only butadiene can be said to be in substantial quantity. As long as requirements of note 4 are not satisfied, it cannot be said that butadiene is in substantial quantity.

4.4 This tribunal vide Final Order No. A/10666-10671/2022, pronounced on 07.06.2022 in the case of Astral Limited vs. C.C. Ahmedabad Customs has decided classification under an entry corresponding to predominant material which was more than 50%. Similarly, in Samson Rubber Industries vs. C.C. Chennai MANU/CC/0132/2005, the tribunal classified the goods under Chapter 47 of the Customs Tariff Act, based on predominance of hardwood pulp constituting 60-70% of the product and rejected classification under Chapter 38 as a plasticizer.

4.5 Vide submission dated 08.05.2025, the department mentioned that not ordering for confiscation of goods is a technical omission in the sense that Ld. Adjudicating Authority has not specifically mentioned that these goods are liable to confiscation. In fact, in para 9 of the Show Cause Notice dated 03.06.2014, it is mentioned that:

**9. It further appears that the Noticee No.2 and Noticee No.3 were the persons who devised whole modus operandi by creating a trading firm, with sole intent to wrongly avail the benefit of the said notification. Thus, they knowingly deal with the offended goods, which they knew had reasons to believe that were*

liable to confiscation and hence both the noticees have rendered themselves liable to penal action under Rule 26 of the Central Excise Rules, 2002."

The revenue relied upon the judgement of this Hon'bel Tribunal in the case of Radhika Prints Pvt. Ltd. Vs. CCE, Surat 2013 (294) E.L.T. 159 (Tri-Ahmd.) which is squarely applicable to this case. It was held that the Show Cause Notice makes it clear that the goods were offending in nature and therefore, liable to confiscation and adjudicating authority has recorded a finding that goods are offending in nature. There is only a technical omission in the sense that he has not specifically mentioned that these goods are liable to confiscation. In view of the specific allegation in the show cause notice which indicates the nature of offence as far as goods are concerned and the consequences of such offence, the findings recorded by the original adjudicating authority is sufficient to show that the goods were liable to confiscation and therefore, imposition of penalty is justified.

5. We heard both the sides. We find that the product involved is Styrene-Butadiene Copolymer (SBC) which the appellants have claimed classification under 3903 as polymer of styrene while revenue claims it under CTH 4002 as synthetic rubber in primary form. Out of three show cause notices, one is within the normal period of limitation while the other two are after invoking extended period of limitation. The learned Advocate submits that their classification earlier under 39039010 in the past was due to clerical mistake but actually their product is covered under CTH 3903, even as per HSN Explanatory Notes of the contemporary period. There has been no test report of the department on record but admitted position is Styrene-Butadiene Copolymer as Styrene Monomer is more than 70% and Butadiene monomer is less than 30%. Due to pre-dominance of styrene monomer, it deserves to be classified as polymer of styrene. As far as classification by revenue is concerned which is under Tariff Entry 40021990 as styrene butadiene rubber (SBR), the product is required to be shown as rubber rather than styrene-butadiene copolymer. The appellants were seeking to rely on the certificate issued by the supplier regarding composition by seeking help of bill of lading, bill of entry, commercial invoice to show during relevant time INEOS Solution has supplied KR99HG with respect to which the certificate has been issued.

5.1 He also pleaded that the certificate of Chevron Singapore of 2008 is not relevant because the same is of 2008 vintage whereas the dispute is of 2017 onwards and also because Chevron Philips stopped their K-Resin SBC business including KR99HG manufacturing in 2016 and the entire business of manufacturing was taken over by INEOS Solution. He refers to a press release

dated 01.03.2017 which has been placed on record. He also stated that certificate of 2008 is per curiam because out of five to six parameters to be satisfied under Note 4 of Chapter 40, the certificate discusses just one parameter of elastic recovery. Therefore, the product fails even on the ground of keenness. The certificate of 2008 which was stated treats predominance of styrene as parameter under Note 4 which is factually incorrect. He also referred to test report issued by Indian Rubber Manufacturers Research Association (IRMRA) under Ministry of Commerce, Government of India with respect to all the grades of SBC imported by the appellant during the relevant period, covering all parameters of Note 4 of Chapter 40. He therefore stated that because of extensiveness of the parameters tested, the report is more reliable.

5.2 He also stated that presently product is getting imported under CTH 3903 without any dispute. He submitted copy of some representative bills of entry in this regard which we are not relying upon as per the request of Learned AR since the same were not brought on record through proper miscellaneous application. He further stated that scienceDirect.com is authoritative site. We find styrene-butadiene copolymer (SBC) as an engineering thermoplastic material derived from copolymer of styrene and butadiene with styrene content of at least 70%.

5.3 It further states that SBC is commercial imported thermoplastic elastomer. Rubber is obtained by creating extensive cross-linking between polymer chains to create a rigid structure. Plastic is known for its plasticity whereas Rubber is known for its elastomeric properties. On account of rigid structure, recycling process of Rubber is more complex compared to recycling of plastic. Unlike plastic, Rubber cannot be recycled by simple heating and melting. Styrene butadiene rubber (SBR) describes families of synthetic rubbers derived from styrene and butadiene. About 50% of car tires are made from various types of SBR, but SBR can not be confused with thermoplastic elastomer, styrene butadiene block copolymer, although being derived from the same monomers. The submission for classifying the imported products under CTH 4002, the department has not discharged onus and has not done any testing of the product and has solely relied upon the document dated 08.04.2008 whereas, the appellant have relied upon the test report from an autonomous lab operating under Ministry of Commerce. Therefore, greater evidential value needs to be attached to the report produced by them. It was further submitted that styrene butadiene copolymer (SBC) is a synthetically produced polymer, whereas monomer units are styrene and butadiene. Therefore, even as per Rule 2(b) of the General Rules for the interpretation of

Import Schedule, the product can be classified as styrene polymer as well as butadiene polymer. Again, Note 4 of the Chapter 39 says that a Co-polymer where no monomer unit is more than 95% of weight, shall be classified as a polymer of that monomer which predominates by weight. Thus, as per Chapter Note 4 also, SBC with more than 70% of styrene needs to be classified as polymer of styrene under CTH 3903. Again, it was stated position that by referring Rule 3(a) and 3(b) read with Section/ Chapter Notes HSN Explanatory Notes, CTH 3903 covers polymers of styrene, in primary forms, whereas CTH 4002 covers synthetic rubber, in primary forms. Thus, CTH 3903 describes the product specifically, whereas description under CTH 4002 is generic in nature. The essential character of the impugned product comes from styrene and therefore, on this ground also, product needs to be classified under CTH 3903.

5.4 It was the submission of the learned Advocate that during the investigation above requirement and technical data sheets were submitted but the department has neither conducted any test nor has taken opinion from any expert to confirm above parameters which has led to present unnecessary litigation. Therefore, they were constrained to send the products for testing on above parameter to IRMRA which has given reports, completely in their favour because they have indicated that condition Note 4 of Chapter 40 does not satisfy in relation to the product. Therefore, it was stated that classification under CTH 3903 and claim of exemption by them was appropriate and therefore, demand of differential duty and consequential imposition of penalty has to be set aside. He also inter alia pleaded on limitation and imposition of penalty and fine and said that the same was not justified on the basis of factual fixation from various case laws as well as due to the reason that the dispute is essentially of legal interpretation.

5.5 After consideration of various submissions, we find that the learned Adjudicating Authority has confirmed classification of the product under CTH 4002 mainly for the reasons that the entries under CTH 3903 do not cover styrene butadiene copolymer and entry claimed by the appellant does not cover copolymer at all. The entry under CTH 4002 covers styrene butadiene rubber specifically and also because of the certificate dt.27.09.2023 of the former supplier INEOS Solutions of Singapore with respect to styrene butadiene copolymer with proprietary name KR99HG cannot be relied as the importer has not produced any evidence that the goods covered in the present three notices were supplied by INEOS Solutions, Singapore. The importer has also not produced any technical literature to support claimed classification. Similarly, the certificate dated 08.04.2008 issued by Chevron Philips Chemical,

Singapore is irrelevant. Therefore, he held classification of the imported goods under 40021990.

6. After going through the rival submission, we find that revenue had not conducted any lab testing on their own to find out if the conditions of Chapter 40 are satisfied or not. It only disputed various certificates provided by the appellant on the ground of same being not related etc. We also find that the earlier product classification entry 39039010 is not in contention before us as neither the appellant nor the respondent is seeking classification under this entry. Appellant submitted that only due to clerical mistakes, the old tariff entry was indicated on some of the Bills of entry though revenue wise there is no difference in classification now being treated under Tariff Entry 39039090 or the earlier entry of 39039010 if taken into consideration but it was pleaded that the Tariff entry of 40021990 being indicated by the Revenue was incorrect. The product is essentially a copolymer of styrene and butadiene where styrene monomer is more than 70% by weight. For the product KR99HG grade of SBC, which has been predominantly imported, styrene monomer is 75% and butadiene monomer is 25%. We find that Chapter Note 4 of Chapter 39 states as follows:-

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

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

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

From the above, it is clear that in copolymer where every monomer is 95% of weight, classification shall be determined as polymer of that monomer which predominates by weight. Therefore, in the instant case, since styrene predominates which is more than 70% in all grades of SBC, the same has to be treated as "polymer of styrene" and has to be classified as such. CTH 3903 covers polymers of styrene specifically.

6.1 While explaining the scope of CTH 3903, HSN Explanatory Notes (2017 Edition as well 2022 Edition) clarifies as under:-

"This heading covers polystyrene and copolymers of styrene The most important copolymers of styrene and styrene-acrylonitrile (SAN) Copolymers, acrylonitrile-butadiene-styrene (ABS) copolymers and styrene-butadiene copolymers Most of the styrene-butadiene copolymers with substantial amounts of butadiene comply with the requirements of Note 4 to Chapter 40 and are therefore classified in Chapter 40 as synthetic rubber For the classification of polymers (including copolymers), chemically modified polymers and polymers blends, see the General Explanatory notes to this Chapter."

6.2 Thus, HSN Explanatory Notes specifically include styrene butadiene copolymer within the scope of CTH 3903. Thus, findings of the Adjudicating Authority that copolymers of styrene butadiene are not covered under CTH 3903 is erroneous. Further, as per Rule 2(b) of General Rules for the Interpretation of 1st Schedule of Import Tariff also, a composite product like SBC, can be treated as a polymer of styrene. Extract of relevant rule is reproduced below:

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

6.3 However, HSN Explanatory Notes to CTH 3903 as extracted above itself creates an exception for a specific type of SBC copolymer which shall be classified under Chapter 40 as a synthetic rubber provided it satisfies the following requirements:

a. Butadiene component must be substantial (though what is substantial in the context is not defined either in the Customs Tariff or in the HSN Explanatory Notes)

b. The product must comply with the requirements of Note 4 to Chapter 40

6.4 In the context of HSN Explanatory Notes to CTH 3903, and a review of product literature shows that styrene is a component which is essential for giving plasticity to the product which is essential for classification under Chapter 39 and butadiene is a component which is essential for giving properties required for rubber for classifying the product under Chapter 40 Therefore, to us, in the present context, butadiene component should be of a such higher quantity so that the product satisfied the requirements of Note 4 to Chapter 40, which are meant to be satisfied by synthetic rubbers. This inference is based on the expression used which say's "most of the SBCs with substantial amounts to butadiene comply with requirements of Note 4, meaning thereby, that if butadiene is substantial, it will definitely comply with Note 4 of Chapter 40 and shall be classified under Chapter 40 as synthetic

rubber. As long as requirements of note 4 are not satisfied, it cannot be said that butadiene is in substantial quantity. Thus, essentially it has to be seen whether the product satisfies the requirements of Note 4 to Chapter 40 or not.

6.5 Revenue has not subjected the product in question for any kind of testing and has not sought any opinion from any technical expert in this regard. Whereas, Appellant has submitted test reports from Indian Rubber Manufacturers Research Association (IRMRA), an autonomous body operating under the administrative control of Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry, Government of India as per which none of the grades of SBC under dispute satisfy the requirement of Note 4 to Chapter 40 (as reproduced below) which prescribes certain requirements to be met for classification as a synthetic rubber under CTH 4002.

"Note 4. In Note 1 to this Chapter and in heading 4002, the expression "synthetic rubber" applies to

(a) unsaturated synthetic substances which can be irreversibly transformed by vulcanisation with sulphur into non-thermoplastic substances which, at a temperature between 18 degree centigrade and 29 degree centigrade, will not break on being extended to three times their original length and will return, after being extended to twice their original length, within a period of five minutes, to a length not greater than one and a half times their original length. For the purposes of this test, substances necessary for the cross-linking, such as vulcanising activators or accelerators may be added. The presence of substances as provided for by Note 5(B)(ii) and (iii) is also permitted. However, the presence of any substances not necessary for the cross-linking, such as extenders, plasticisers and fillers, is not permitted,

(b) thioplasts (TM), and

(c) natural rubber modified by grafting or mixing with plastics, depolymerised natural rubber, mixtures of unsaturated synthetic substances with saturated synthetic high polymers provided that all the above-mentioned products comply with the requirements concerning vulcanisation, elongation and recovery in (a) above."

6.6 Note 4 extracted above shows that for classification of the imported product under CTH 4002, following conditions must be satisfied:

a. It must be unsaturated.

b. It must not contain any substances other than styrene butadiene co polymer, which is not necessary for the cross-linking

c. It must be irreversibly transformed by vulcanisation with sulphur into non-thermoplastic substances.

d Further this non-thermoplastic substance, at a temperature between 18 degree C and 29 degree C [These are elastomeric properties and are most important property for Rubber]

*i. Must not break on being extended to three times its original length.
[Breaking Test]*

ii. Must return after being extended to twice its original length, within a period of five minutes, to a length not greater than one and a half times its original length [Elastic Recovery Test]

6.7 Admittedly, Revenue has not conducted any tests nor sought any expert technical opinion in support of satisfaction of above requirements. Revenue has simply relied upon the document of 2008 of Chevron Phillips Singapore which is the predecessor company of INEOS Solutions Singapore which transferred its K-Resin SBC business/manufacturing facilities to INEOS Solutions in 2016. Appellant has relied upon the certificate issued by INEOS Solutions Singapore, the group which has supplied the products in question during the relevant period. Appellant has also relied upon test reports given by IRMRA as per which the conditions of Note 4 of Chapter 40 are not satisfied.

6.8 Essential characteristics of synthetic rubber is given in chapter note 4 to chapter 40 which is not satisfied. As per Rule 3(b) of General Rules for the Interpretation of Schedule 1 of Import Tariff, in respect of composite goods, the classification should be done as if it consisted of the material/component which gives its essential character. In the present case, no application of the product, as a non-thermoplastic (i.e.) thermoset) material has been brought on record in sync with requirement of note 4 to chapter 40. It has been submitted that product is used as thermoplastic material in various industries including footwear industries. The properties are akin to more of a plastic which can be recycled. Therefore, it can be said that the product draws its essential characteristics as a plastic and not as rubber, and thus, by referring to Rule 3(b) also, the product needs to be classified under CTH 3903.

6.9 In view of above, the impugned order classifying the product under CTH 4002 cannot be sustained. We also note that extended period of limitation has been invoked in a situation where product is admittedly correctly declared on the commercial invoices and bills of entry, where generic name 'styrene butadiene copolymer' as well as the proprietary grade name has been mentioned. The correct classification in a situation like the present one requires significant understanding of chemistry-and-customs law including HSN explanatory notes. The factual details of the products were not misdeclared at all. In the circumstances, we cannot say that there is any misdeclaration of product by the Appellant, and thus, extended period of limitation cannot be invoked. There was no misdeclaration or attempt to suppress any fact in the present case. These views are supported by the

judgments rendered by the Hon'ble Supreme Court in the case of Northern Plastic Ltd. vs. Collector of Customs & Central Excise [1998 (101) ELT. 549 (S.C.)] and O.K. Play (India) Ltd. vs. Commissioner of Customs, Excise, Delhi-III, Gurgaon [2005 (180) E.L.T. 300 (S.C.)] and also by the judgment of this tribunal in the case of Panoli Intermediates India Private Limited vs. Commissioner of Customs, Kandla (Customs Appeal No. 10486 of 2024 DB). The Hon'ble Apex Court in Northern Plastic (supra), in spite of rejecting the classification adopted by importer and denying the exemption claimed, held that there is no misdeclaration as long as product was correctly declared.

6.10 The Revenue has failed to establish that the goods are not classifiable in Customs Tariff Heading 3903 and are classifiable under Customs Tariff Heading 4002. As the Revenue has failed to discharge its burden, we hold that goods are rightly classified by the importer under Customs Tariff Heading 3903 as copolymer of styrene butadiene. Consequently, demand of duty & interest confirmed on the importer vide impugned order cannot be sustained. The penalties imposed, confiscation of goods and imposition of redemption fine are also set aside.

7. The Appeal is accordingly allowed.

(Pronounced in the open court on 05.06.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)