

	<p style="text-align: center;">सीमा शुल्क के प्रधान आयुक्त का कार्यालय सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT <u>Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62,</u> <u>Email-adj-mundra@gov.in</u></p>	
A. File No.	: GEN/ADJ/COMM/278/2024-Adjn-O/o Pr. Commr-Cus-Mundra	
B. Order-in-Original No.	: MUN-CUSTM-000-COM-019-25-26	
C. Passed by	: Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.	
D. Date of order and Date of issue:	: 18.08.2025. 18.08.2025	
E. SCN No. & Date	: SCN F. No. GEN/ADJ/COMM/278/2024-Adjn-O/o Pr. Commr-Cus-Mundra, dated 20.08.2024.	
F. Noticee(s) / Party / Importer	: 1. M/s Shree Ganesh Overseas, (IEC: 0596058217) House No. 6292, T/F, Block-6B, Gali No. 3&4, Near Gurudwara, Dev Nagar, Karol Bagh, New Delhi-110005. 2. Shri Banarsi Dass Khatri proprietor of M/s Shree Ganesh Overseas, House No. 6292, T/F, Block-6B, Gali No. 3&4, Near Gurudwara, Dev Nagar, Karol Bagh, New Delhi-110005.	
G. DIN	: 20250871MO000000ED6C	

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”

“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within three months from the date of communication of this order.
4. उक्त अपील के साथ - / 1000रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

8. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE:

M/s Shree Ganesh Overseas, (IEC: 0596058217) situated at House No. 6292, T/F, Block-6B, Gali No. 3&4, Near Gurudwara, Dev Nagar, Karol Bagh, New Delhi-110005 (here-in-after to be referred as M/s. SGO for sake of brevity) is engaged in trading of various kind of fabrics viz. Rexin, Rubber Sheet, Elastic, Sole, Glitter, Flock, Bonded etc. The firm purchase goods from Domestic & International market and sells in the Domestic Market.

2. Intelligence developed by DRI, Zonal Unit, Ahmedabad, indicated that M/s SGO had imported Polyurethane (PU) Coated Fabric from China by declaring the same as Textile Coated Fabric and classified the same under HS CODE/ CTH 59119090 instead of correct classification under HS CODE/ CTH 59032090 to evade the Anti-Dumping Duty imposed vide Notification No. 14/2022-Customs (ADD) dated 20.05.2022.

3. As per **Notification No. 14/2022-Customs (ADD) dated 20.05.2022**, Polyurethane (PU) Coated Fabric falling under HS Code 59032090 when imported into India from China and produced by other than M/s Anhui Anli Material Technology Co., Ltd. attracts Anti-Dumping duty @ 0.46 USD per Meters.

4. Based on the above intelligence an inquiry in the case against M/s Shree Ganesh Overseas, (IEC: 0596058217) situated at House No. 6292, T/F, Block-6B, Gali No. 3&4, Near Gurudwara, Dev Nagar, Karol Bagh, New Delhi-110005 was initiated and summons DIN-202212DDZ1000000F2EF dated 15.12.2022 & DIN-202302DDZ1000000D74C dated 06.02.2023 were issued to **Shri Banarsi Dass Khatri**, Proprietor of M/s SGO for submission of documents and recording of statement.

DOCUMENTS, STATEMENTS AND INQUIRY:

5. In response to Summons DIN-202302DDZ1000000D74C dated 06.02.2023, M/s SGO vide their email dated 13.02.2023 submitted Purchase Register, Sale Register and documents related to Import made by them viz. Bill of Entry, Invoice, Packing List, Bill of Lading etc.

6. It was revealed in the scrutiny of the documents submitted by M/s SGO that they were importing PU Coated Fabric, Flock Fabric, Textile Coated Fabrics & Glitter Fabric from China for home consumption and were clearing the same through SEZ to DTA Bills of Entry from Adani Port & Special Economic Zone Warehouse unit M/s OWS Warehouse Services LLP, Mundra.

6.1 It was also revealed that M/s SGO, had purchased "Textile Coated Fabric" from Overseas Suppliers viz. Wenzhou Asia Star International Trading Co. Ltd., Lishui Waizhongfu Supply Chain Management Co. Ltd., Wenzhou Chenyue International Trade Co. Ltd., Yiwu Haofeng Imp. & Exp. Co. Ltd. and Wenzhou Asia Star International Trading Co. Ltd. all from China.

6.2 It has also emerged from the analysis of data that M/s SGO had sold all their imported "Textile Coated Fabric" to various firms in the domestic market.

7. Based on the above facts, Summons were issued to the Partner of firm M/s Elite Traders (DIN 202303DDZ1000005880E dated 02.03.2023) and Partner of

the firm M/s State Traders (DIN 202303DDZ1000005880E) being purchasers of "Textile Coated Fabric" from M/s SGO.

7.1 Statement of Shri Shaukat Ali S/o Late Shri Alim Akhtar, Partner of M/s Elite Traders and also Authorized person of M/s State Traders was recorded under Section 108 of the Customs Act, 1962 on 20.03.2023, wherein, he inter-alia stated that:

7.2 M/s Elite Traders is a Partnership firm established in the year 2005; that he and his brother Shri Saleheen Akhtar are the Partners of the firm; that M/s Elite Traders is a trading firm, which deals in sale and purchase of various types of fabrics; that he looks after the Purchase, Sales and accounting of the firm and his brother looks after the sales.

7.3 M/s State Traders is a Partnership firm established in the year 2005; that his brother Shri Asif Kamal & Shri Mohammad Ali are the Partners of the firm; that M/s State Traders is a trading firm, which deals in sale and purchase of various types of Rexin; that the purchase of goods for M/s State Traders from suppliers is made by him; that he also looks after all the work of M/s State Traders in absence of his brothers who are the partners of M/s State Traders.

7.4 On being asked, about the details of products which are being traded by M/s Elite Traders and M/s State Traders, he stated that both firms deal with various types of fabric i.e. Jazz Napa, Wrinkle Free Jelly, Velvet, Zarina, lining material etc.; that on being specifically asked about above material, he stated that Jazz Napa, Wrinkle Free Jelly, Velvet, Zarina, lining material are local trade name of the goods and are actually PU Coated Fabric or Bonded Fabric or Flock Fabric or Glitter Fabric; that they are not using the local name Jazz Napa, Wrinkle Free Jelly, Velvet, Zarina, lining material in any documents viz. Invoice, Purchase Order or in Stock Register.

7.5 On being asked, he stated that fabrics having coating of Poly Urethane is called PU Coated Fabric; that Jazz Napa, Wrinkle Free Jelly, Leather Napa, Patent etc. are the name used in trading for PU Coated Fabric; that fabric where two layers of Lycra is pasted together is known as Bonded Fabric and Eva Lycra is name used in trading for Bonded Fabric; that Velvet Fabric is called Flock Fabric and velvet is one of the trading name of Flock Fabric; that Fabrics that has glitter on it is called Glitter Fabric and Zarina is one of the trading name of Glitter Fabric; that PU Coated Fabric, Bonded Fabric, Flock Fabric and Glitter Fabric are generally used in making Footwear, Jewelry Box, Wallet, Ladies purse etc.

7.6 On being asked, he stated that M/s Elite Traders & M/s State Traders had purchased fabrics from Delhi based firms viz. Royal Impex, Hero Traders, Pradeep Enterprise, Flair Enterprise, Fancy Rexin Store, M/s. Shree Ganesh Overseas etc.; that M/s Elite Traders & M/s State Traders were purchasing fabrics from M/s. Shree Ganesh Overseas for last 8 to 10 months; that Mr. Prince Khatri was dealing with him in respect of purchase of fabric from M/s. Shree Ganesh Overseas; that he had purchased PU Coated Fabric, Flock Fabric, Glitter Fabric, T. Coated Fabric and Polyester Bonded Fabric from M/s. Shree Ganesh Overseas.

7.8 After perusing Invoice No. 0080 dated 04.10.2022 issued to them by M/s. Shree Ganesh Overseas wherein goods described as T. Coated Fabric were shown as purchased by M/s Elite Traders and further asked about the specific purchase and receipt of goods under the Invoice, he stated that he had ordered

PU Coated Fabric from M/s. Shree Ganesh Overseas and has actually received PU Coated Fabric from M/s. Shree Ganesh Overseas against Invoice No. 0080 dated 04.10.2022 however, M/s. Shree Ganesh Overseas has mentioned T. Coated Fabric instead of PU Coated Fabric in their invoice; that he did not know the reason of mentioning T. Coated Fabric in the Invoice No. 0080 dated 04.10.2022 instead of PU Coated Fabric.

7.10 After having perused Invoice No. 0087 dated 19.10.2022 issued by M/s. Shree Ganesh Overseas wherein goods described as T. Coated Fabric were shown as purchased by M/s State Traders and further asked about the specific purchase and receipt of goods under the Invoice, he stated that M/s State Traders had ordered PU Coated Fabric from M/s. Shree Ganesh Overseas and has actually received PU Coated Fabric from M/s. Shree Ganesh Overseas against Invoice No. 0087 dated 19.10.2022 however, M/s. Shree Ganesh Overseas has mentioned T. Coated Fabric instead of PU Coated Fabric in their invoice; that he did not know the reason of mentioning T. Coated Fabric in the Invoice No. 0080 dated 04.10.2022 instead of PU Coated Fabric.

7.11 He had not raised objection to **M/s. Shree Ganesh Overseas** for mentioning PU Coated Fabric as T. Coated Fabric in the invoices.

7.12 On being specifically asked about not raising any objection to **M/s. Shree Ganesh Overseas** he stated, as both descriptions covered Coated Fabric and also GST Rate was same either PU Coated Fabric mentioned in the invoice or T. Coated Fabric.

7.13 He had not checked the HSN Code for PU Coated Fabric & T. Coated Fabric; that he had only checked GST Rate and that was same for both the descriptions.

7.14 On being asked, he stated that he looks after the purchase for **M/s Elite Traders and M/s State Traders only** from supplier **M/s Shree Ganesh Overseas**.

8. Summons DIN 202403DDZ10000111F85 dated 20.03.2023 was issued to Shri Banarsi Dass Khatri, Proprietor of M/s Shree Ganesh Overseas u/s. 108 of the Customs Act, 1962 for recording of his statement and in response Shri Prince Khatri, Authorised representative of Shri Banarsi Dass Khatri, appeared to tender the statement.

8.1 Statement of Shri Prince Khatri S/o Shri Banarsi Dass Khatri, authorized person of M/s Shree Ganesh Overseas vide authority letter dated 27.03.2024 was recorded under Section 108 of the Customs Act, 1962 on 27.03.2024, wherein, he inter-alia stated that M/s. Shree Ganesh Overseas is a proprietor firm established by his father Shri Banarsi Dass Khatri in May-2022; that registered address of the firm is H. No.6292, T/F, Block-6B, Gali No.3 & 4, Near Gurudwara, Dev Nagar, Karol Bagh, New Delhi, Central Delhi, Delhi, 110005; that this firm is into trading business of various types of Rexin, Rubber Sheet, Elastic, Sole, Glitter, Flock, Bonded; that the firm purchased goods from Domestic & International market and sale in the Domestic Market; that he is assisting his father in the trading business of M/s. Shree Ganesh Overseas and he was acquainted with all the business activities of the M/s. Shree Ganesh Overseas; that his father Shri Banarsi Dass Khatri takes all the decisions for operation of M/s. Shree Ganesh Overseas; that on being specifically asked about the Rexin which are being traded by M/s. Shree Ganesh Overseas, he stated that it is artificial leather being used in ladies footwear & Purse, phone cover, diaries

etc. and it is coated with Polyurethane on one side and the other side is fabric; that they had made import of goods between the period June-2022 to Oct-2022;

8.2 Further on having perused following SEZ Bills of Entry, it's corresponding DTA Bill of Entry and import invoices in respect of import made by M/s Shree Ganesh Overseas -

- (i) SEZ Bill of Entry No. 1012165 dated 07-09-2022, SEZ to DTA Bill of Entry No. 2013602 dated 09-09-2022 and Invoice No. HS22-5315 dated 06-08-2022.
- (ii) SEZ Bill of Entry No. 1012162 dated 07-09-2022, SEZ to DTA Bill of Entry No. 2013604 dated 09-09-2022 and Invoice No. 22WZSHLF003 dated 01-08-2022.
- (iii) SEZ Bill of Entry No. 1012164 dated 07-09-2022, SEZ to DTA Bill of Entry No. 2013700 dated 12-09-2022 and Invoice No. CY22YGA005 dated 20-08-2022.
- (iv) SEZ Bill of Entry No. 1012472 dated 14-09-2022, SEZ to DTA Bill of Entry No. 2014057 dated 19-09-2022 and Invoice No. HC2208011 dated 10-08-2022.
- (v) SEZ Bill of Entry No. 1012627 dated 17-09-2022, SEZ to DTA Bill of Entry No. 2014060 dated 19-09-2022 and Invoice No. HS22-5316 dated 26-08-2022

he stated that goods were mentioned in the above SEZ & DTA Bills of Entry were "Textile Coated Fabric" but they had imported "PU Coated Fabric" in guise of "Textile Coated Fabric" in the above import & DTA clearances;

8.3 Further, On perusing of Chapter notes under Chapter 59 of the Indian Customs Tariff regarding classification of goods under heading 5911 and after being specifically told to go through the para no.8, he states that para 8 of Chapter notes of Chapter 59 clarifies the goods which are being classified under heading 5911; that the goods/fabric imported by above mentioned Bills of Entry does not fall in any of the category of goods or expressions mentioned in the said notes; that fabrics imported by them were not in cut pieces as mentioned at (a) to para 8, but were in rolls; that further these goods are also not of a kind used for technical purposes as mentioned at (b) to para 8; that the goods imported were actually being used in ladies footwear & purse, mobile covers, diaries only; that after perusing the sub-heading mentioned under HS CODE/ CTH 5911, he stated that goods imported by them vide Bills of Entry perused by him in above paras does not fall in any sub headings under HS CODE/ CTH Heading 5911; that they had never dealt in textile products which were meant for technical uses.

8.4 Further, he examined Invoices which were submitted by M/s. Elite Traders, as detailed below -

S. No.	Invoice No.	Date	Issued to	Goods Description
1	0087	19.10.2023	M/s State Traders	supply/sale of T. Coated Fabric
2	0090	29.10.2023	M/s State Traders	supply/sale of T. Coated Fabric

3	0091	01.11.2023	M/s State Traders	supply/sale of T. Coated Fabric
4	0080	04.10.2023	M/s Elite Traders	supply/sale of T. Coated Fabric
5	0082	05.10.2023	M/s Elite Traders	supply/sale of T. Coated Fabric
6	0085	14.10.2023	M/s Elite Traders	supply/sale of T. Coated Fabric
7	0088	28.10.2023	M/s Elite Traders	supply/sale of T. Coated Fabric
8	0092	02.11.2023	M/s Elite Traders	supply/sale of T. Coated Fabric
9	0093	05.11.2023	M/s Elite Traders	supply/sale of T. Coated Fabric
10	0097	10.11.2023	M/s Elite Traders	supply/sale of T. Coated Fabric
11	0099	16.11.2023	M/s Elite Traders	supply/sale of T. Coated Fabric

After perusing the above Invoices, he stated that these Invoices were issued by M/s.Shree Ganesh Overseas to M/s State Traders & M/s Elite Traders for supply/sale of T. Coated Fabric, however they had actually supplied them PU Coated Fabric under these invoices.

8.5 Further, on perusing the statement dated 20.03.2023 of Shri Shaukat Ali partner of M/s Elite Traders and authorized person of M/s State Traders, he agreed with the facts mentioned therein and also stated that M/s Elite Traders and M/s State Traders had ordered the PU Coated Fabric and they have supplied them PU Coated Fabric, however as in the import documents these goods were mentioned as T. Coated Fabric, they had supplied these imported goods to M/s Elite Traders & M/s State Traders mentioning them in sale invoices as Textile Coated Fabric; that the overseas suppliers in China had suggested to declare PU Coated Fabric as Textile Coated Fabric to avoid Anti-Dumping Duty imposed on import of PU Coated Fabric and they had not objected to their suggestion and accordingly, they had received commercial invoices by mentioning the goods as Textile Coated Fabric instead of PU Coated Fabric; that they had filed Bill of Entry by mentioning the goods which were mentioned on the Commercial Invoices; that they had opted the HS CODE/ CTH mentioned on the Bill of Ladings i.e. 59119090 for Textile Coated Fabric in the Bills of Entry.

8.6 Further, he stated that goods declared as Textile Coated Fabric in the SEZ BE 1012165 dated 07-09-2022 (DTA BE 2013602 dated 09-09-2022), SEZ BE 1012162 dated 07-09-2022 (DTA BE 2013604 dated 09-09-2022), SEZ BE 1012164 dated 07-09-2022 (DTA BE 2013700 dated 12-09-2022), SEZ BE 1012472 dated 14-09-2022 (DTA BE 2014057 dated 19-09-2022) and SEZ BE 1012627 dated 17-09-2022 (DTA BE 2014060 dated 19-09-2022) were meant to use for manufacturing of ladies footwear & purse, phone cover, diaries only.

8.7 He stated that he agreed that PU Coated Fabric were imported by M/s.Shree Ganesh Overseas vide Bill of SEZ BE 1012165 dated 07-09-2022 (DTA BE 2013602 dated 09-09-2022), SEZ BE 1012162 dated 07-09-2022 (DTA BE 2013604 dated 09-09-2022), SEZ BE 1012164 dated 07-09-2022 (DTA BE 2013700 dated 12-09-2022), SEZ BE 1012472 dated 14-09-2022 (DTA BE 2014057 dated 19-09-2022) and SEZ BE 1012627 dated 17-09-2022 (DTA BE 2014060 dated 19-09-2022), by mis-declaring it Textile Coated Fabric.

8.8 Further, on being asked, he admitted that he was aware that Anti-Dumping Duty was imposed on PU Coated Fabric vide Notification No. 14/2022-Customs (ADD) dated 20.05.2022 and accordingly import of 191280 Meter of PU Coated Fabric by Shree Ganesh Overseas which were wrongly declared as "Textile Coated Fabric" vide SEZ BE 1012165 dated 07-09-2022 (DTA BE 2013602 dated 09-09-2022), SEZ BE 1012162 dated 07-09-2022 (DTA BE 2013604 dated 09-09-2022), SEZ BE 1012164 dated 07-09-2022 (DTA BE 2013700 dated 12-09-2022), SEZ BE 1012472 dated 14-09-2022 (DTA BE 2014057 dated 19-09-2022) and SEZ BE 1012627 dated 17-09-2022 (DTA BE 2014060 dated 19-09-2022) were liable to levy of Anti-Dumping Duty in terms of above notification dated 20.05.2022.

8.9 Further, he also submitted the actual packing list of the Invoice No. HS22-5315 dated 06-08-2022, 22WZSHLF003 dated 01-08-2022, CY22YGA005 dated 20-08-2022, HC2208011 dated 10-08-2022 & HS22-5316 dated 26-08-2022 in which quantity of goods in meters were also mentioned and was asked to check whether the quantity mentioned in Packing List matches exactly with that in Invoice and B/E.

8.10 Further, after perusing the submitted packing lists of above-mentioned invoices, he stated that total 191280 Meter PU Coated Fabric, as per packing list submitted by him and the quantity mentioned in the Bills of Entry were imported by them by mis-declaring it as Textile Coated Fabric; that they had not received invoices from the supplier in which actual goods i.e. PU Coated Fabric are mentioned but have received actual packing list only as they required the quantity of fabric in meters.

8.11 Further, he stated to have voluntarily deposited Anti-Dumping duty along with applicable IGST amounting Rs. 79,26,050/- in Customs Account through TR-6 Challans.

9. During the course of inquiry of the case, various evidences in the form of statement of the Authorized Person of M/s. SGO & Partner of M/s Elite Traders were recorded and documents/records submitted by M/s. SGO and other firms were scrutinized which revealed that M/s. SGO had imported Polyurethane (PU) Coated Fabric from China by mis-declaring the same as Textile Coated Fabric with a mala-fide intention to evade Anti-Dumping Duty imposed on Polyurethane (PU) Coated Fabric vide Notification No. 14/2022-Customs (ADD) dated 20.05.2022.

9.1 It also appears from the investigation conducted in the case that M/s SGO were very well aware that they were importing PU Coated Fabric, however the same was mentioned in the Bill of Entry and other connected documents viz. Invoice, Packing List etc. as Textile Coated Fabric and were classified under HS CODE/ CTH/HS Code 59119090 during their import, to evade Anti-Dumping Duty imposed vide Notification No. 14/2022-Customs (ADD) dated 20.05.2022. It was also observed that M/s SGO were aware about the correct classification of PU Coated Fabric as they had previously imported PU Coated Fabric vide SEZ Bill of Entry No. 1006528 dated 06.06.2022 and its subsequent DTA Bill of Entry No. 2007818 dated 07.06.2022 for domestic clearance, in which they had declared the goods description correctly i.e. PU Coated Fabric and had classified it under 59032090.

9.2 It also appears from the investigation that M/s. SGO, after receipt of PU Coated Fabric which were imported by mis-declaring it as Textile Coated Fabric, further indulged in selling it to their buyers in the local market again by raising

Sales Invoices for sale of goods mentioned as "T Coated Fabric" for the purpose of not getting caught of their mis-doings.

CLASSIFICATION OF GOODS:

10. Chapter 59 of the Indian Customs Tariff deals with Textile Fabrics and Textile Articles of a kind suitable for industrial use.

10.1 The description of goods under HS CODE/ CTH 5911 as per prevailing Customs Tariff reads is as under:

5911		TEXTILE PRODUCTS AND ARTICLES, FOR TECHNICAL USES, SPECIFIED IN NOTE 8 TO THIS CHAPTER	Effective rate of duty
5911 10 00	-	<i>Textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams)</i>	
5911 20 00	-	Bolting cloth, whether or not made up	
	-	Textile fabrics and felts, endless or fitted with linking devices, of a kind used in papermaking or similar machines (for example, for pulp or asbestos-cement) :	
5911 31	--	Weighing less than 650 g/m ² :	
5911 31 10	---	Felt for cotton textile industries, woven	10%
5911 31 20	---	Woven textiles felt, whether or not impregnated or coated, of a kind commonly used in other machines	10%
5911 31 30	---	Cotton fabrics and articles used in machinery and plant	10%
5911 31 40	---	Jute fabrics and articles used in machinery or plant	10%
5911 31 50	---	Textile fabrics of metalised yarn of a kind commonly used in paper making or other machinery	10%
5911 31 90	---	Other	10%
5911 32	--	Weighing 650 g/m ² or more:	
5911 32 10	---	Felt for cotton textile industries, woven	10%
5911 32 20	---	Woven textiles felt, whether or not impregnated or coated, of a kind commonly used in other machines	10%
5911 32 30	---	Cotton fabrics and articles used in machinery and plant	10%
5911 32 40	---	Jute fabrics and articles used in machinery or plant	10%
5911 32 50	---	Textile fabrics of metalised yarn of a kind commonly used in paper making or other machinery	10%
5911 32 90	---	Other	10%
5911 40 00	-	Filtering or Straining cloth of a kind used in oil presses or the like, including that of human hair	

5911 90	-	Other	
5911 90 10	---	Paper maker's felt, woven	10%
5911 90 20	---	Gaskets, washers, polishing discs and other machinery parts of textile articles	10%
5911 90 90	---	Other	10%

10.2 Further, Chapter Note of Chapter-59 of the Indian Customs Tariff reads as:

8. Heading 5911 applies to the following goods, which do not fall in any other heading of Section XI:

- (a) *textile products in the piece, cut to length or simply cut to rectangular (including square) shape (other than those having the character of the products of headings 5908 to 5910), the following only:*
 - (i) *textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams);*
 - (ii) *bolting cloth;*
 - (iii) *filtering or straining cloth of a kind used in oil presses or the like, of textile material or of human hair;*
 - (iv) *flat woven textile fabrics with multiple warp or weft, whether or not felted, impregnated or coated, of a kind used in machinery or for other technical purposes;*
 - (v) *textile fabrics reinforced with metal, of a kind used for technical purposes;*
 - (vi) *cords, braids and the like, whether or not coated, impregnated or reinforced with metal, of a kind used in industry as packing or lubricating materials;*
- (b) *textile articles (other than those of headings 5908 to 5910) of a kind used for technical purposes [for example, textile fabrics and felts, endless or fitted with linking devices, of a kind used in paper making or similar machines (for example, for pulp or asbestos-cement), gaskets, washers, polishing discs and other machinery parts].*

10.3 Whereas, the HS CODE/ CTH Sub Heading 5903 as per prevailing Customs Tariff covered goods as under:

5903		Textile Fabrics, Impregnated, Coated, Covered or Laminated with Plastics, Other Than Those of Heading 5902	Effective Rate of Duty
5903 10	-	With Polyvinyl Chloride:	-
5903 10 10	---	Imitation leather fabrics of cotton	20%
5903 10 90	---	Other	20%
5903 20	-	With Polyurethane:	-

5903 20 10	---	Imitation leather fabrics, of cotton	20%
5903 20 90	---	Other	20%
5903 90	-	Other:	-
5903 90 10	---	Of cotton	20%
5903 90 20	---	Polyethylene laminated jute fabrics	20%
5903 90 90	---	Other	20%

10.4 M/s. SGO had imported goods declared as Textile Coated Fabric vide following Bills of Entry filed at Mundra Port –

S. No.	Port Code	SEZ Bill of Entry No. & Date	HS CODE/ CTH	Declared description of good
1	INMUN1	1012165 dt. 07-09-2022	59119090	Textile Coated Fabric
2	INMUN1	1012162 dt. 07-09-2022	59119090	Textile Coated Fabric
3	INMUN1	1012164 dt. 07-09-2022	59119090	Textile Coated Fabric
4	INMUN1	1012472 dt. 14-09-2022	59119090	Textile Coated Fabric
5	INMUN1	1012627 dt. 17-09-2022	59119090	Textile Coated Fabric

The above imported goods were later cleared by M/s. SGO by filing Bills of Entry for Home Consumption (SEZ to DTA) bearing number 2013602 dated 09-09-2022, 2013604 dated 09-09-2022, 2013700 dated 12-09-2022, 2014057 dated 19-09-2022 and 2014060 dated 19-09-2022 respectively.

10.4.1 During the course of investigation the statement of Shri Prince Khatri S/o Shri Banarsi Dass Khatri, and authorized person of M/s Shree Ganesh Overseas was recorded under Section 108 of the Customs Act, 1962 on 27.03.2024 wherein he interalia had stated that the goods imported by them were coated with Polyurethane on one side and the other side of it was fabric and the imported goods were actually being used in manufacturing of Ladies footwear & purse, mobile covers, diaries.

10.4.2 Shri Prince Khatri in his above statement also perused the Tariff description under HS CODE/ CTH 5911 and Chapter Note.8 of Chapter 59 of the Tariff under-which the applicability criteria for the goods to fall under HS CODE/ CTH 5911 has been mentioned in expressible terms. After perusing these criteria, he stated that the goods imported by them were not in cut to shape or in piece but were in rolls. He further also stated that the goods imported were also not of a kind used for technical purposes as mentioned in the Chapter Note. He further clarified that the goods imported by them were used in manufacture of Ladies Purse & Footwear, Mobile Covers and Diaries. It was also clarified by him that they have never dealt in Textile products which were meant for technical uses.

10.4.3 The Classification of goods in the First Schedule – Import Tariff is governed by the General Rules for Interpretation Rules. These Rules are intended to be consulted and applied each time when the goods are to be classified under the Import Tariff. Rule 1 of the GIR (General Interpretation Rules provides that classification of the goods shall be determined according to the terms of the Headings and any relative Section or Chapter Notes and, provided such Headings

or Notes do not otherwise require, according to the provisions at Rule 2 to Rule 5. Rule 6 of the GIR further provides that the classification of goods in the sub-headings of a heading shall be determined according to the term of those sub-headings and any related sub-heading Notes and, mutatis mutandis, to the above rules.

10.4.4 The clarification in respect of the characteristics of the goods divulged by Shri Prince Khatri in his statement dated 27.03.2024 to the effect that the goods imported by them were not in cut to shape or in piece, but were in rolls and further that the goods imported were also not of a kind used for technical purposes as mentioned in the Chapter Note No.8 under Chapter 59 of Customs Tariff leads to an undeniable & undisputed conclusion that the goods imported in the subject case by virtue of them being not falling in any of the criteria applicable to HS CODE/ CTH 5911 are not covered under the description of the goods covered under HS CODE/ CTH 5911. The above fact clears any ambiguity of classification of the goods in the instant case and by no stretch of imagination the same can be held classifiable under HS CODE/ CTH 5911.

10.4.5 Shri Prince Khatri in his statement dated 27.03.2024 has stated that the goods imported by them were coated with Polyurethane on one side and the other side of it was fabric and the imported goods were actually being used in manufacturing of Ladies footwear & purse, mobile covers, diaries. The statutory documents filed by M/s.SGO alongwith the Bill of Entry viz. Packing List also represents the goods in “ROLLS”.

10.4.6 The General Rules of Interpretation also stipulates that when the goods are *prima facie*, classifiable under two or more heading, the classification under the Heading which provides the most-specific description shall be preferred to headings providing a more general description. The goods in the case are found to be Textile Fabrics Coated with Polyurethane on one side and the other side of it contained fabric and therefore appears to be covered under description under the Heading 59032090. As such these goods cannot be classified under any other Tariff Heading other than the most appropriate and correct classification under the Heading 59032090.

10.4.7 The above facts and figures clearly establishes that M/s SGO had imported “PU Coated Fabric” falling under HS CODE/ CTH 59032090 by mis-declaring it as “Textile Coated Fabric” falling under HS CODE/ CTH 59119090 with the sole intention to evade payment of applicable Anti-dumping duty leviable on it in terms of Notification No.14/2022-Customs (ADD) dated 20.05.2022.

10.5 It is further also found that M/s. SGO by way of mis-classification of PU Coated Fabric under CTH 59119090 instead of its correct classification CTH 59032090 has also short paid the Basic Duty. As per the prevailing Customs Tariff effective Basic Customs duty on goods falling under CTH 59032090 was 20%, whereas effective Basic Customs duty on goods falling CTH 59119090, was 10%. Subsequently, on account of short payment of BCD, applicable IGST and SW were also short paid.

ANTI DUMPING DUTY & CUSTOMS DUTY:-

11. As per the Notification No. 14/2022-Customs (ADD) dated 20.05.2022, Polyurethane (PU) Coated Fabric falling under HS Code 56039490 & 59032090 when imported into India attracts Anti-dumping duty as detailed below:

S. N.	Heading, Sub- heading or Tariff Item	Description of Goods	Country of Origin	Country of Export	Producer	Amount	Unit of Measurement	Currency
1.	5603 94 90 5903 20 90	Polyurethane Leather which includes any kind of textile coated one sided or both sided with Polyurethane	China PR	Any country including China PR	Anhui Anli Material Technology Co., Ltd.	NIL	Meters	USD
2.	-do-	-do-	China PR	Any country including China PR	Any Producer other than S. N. 1	0.46	Meters	USD
3.	-do-	-do-	Any country other than China PR	China PR	Any	0.46	Meters	USD

11.1 In terms of the Notification No. 14/2022-Customs (ADD) dated 20.05.2022, Polyurethane (PU) Coated Fabric falling under HS Code 56039490 & 59032090, when imported from any Country including China and produced by Any Producer other than by M/s Anhui Anli Material Technology Co., Ltd. would attract Anti-Dumping duty @ 0.46 USD per Meters.

11.2 Shri Prince Khatri S/o Shri Banarsi Dass Khatri, authorized by the proprietor of M/s Shree Ganesh Overseas, in his statement recorded under Section 108 of the Customs Act, 1962 on 27.03.2024 has admitted that he was aware that Anti-Dumping Duty was imposed on PU Coated Fabric vide Notification No. 14/2022-Customs (ADD) dated 20.05.2022. He has further admitted that in terms of Notification No.14/2022-Customs (ADD) dated 20.05.2022 the import of 191280 Meter of PU Coated Fabric by Shree Ganesh Overseas which were wrongly declared as "Textile Coated Fabric" vide SEZ BE 1012165 dated 07-09-2022 (DTA BE 2013602 dated 09-09-2022), SEZ BE 1012162 dated 07-09-2022 (DTA BE 2013604 dated 09-09-2022), SEZ BE 1012164 dated 07-09-2022 (DTA BE 2013700 dated 12-09-2022), SEZ BE 1012472 dated 14-09-2022 (DTA BE 2014057 dated 19-09-2022) and SEZ BE 1012627 dated 17-09-2022 (DTA BE 2014060 dated 19-09-2022) are liable to levy of Anti-Dumping Duty.

11.3 For the purpose of calculation of such anti-dumping duty, the rate of exchange applicable shall be the rate which is specified in the notification of the Government of India, Ministry of Finance (Department of Revenue), issued from time to time, in exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and the relevant date for the determination of the rate of exchange shall be the date of presentation of the bill of entry under section 46 of the said Act. Accordingly, in present case, the rate of exchange is to be taken as per Notification No. 73/2022 - Customs (N.T.) dated 01.09.2022 & 78/2022 - Customs (N.T.) dated 15.09.2022.

11.4 The Basic Customs duty on goods falling under CTH 59032090 prevalent at the time of import is 20% whereas the same on goods falling under CTH

59119090 is 10%. The rate of IGST leviable in both CTHs are @ 12% and leviable SWS is @ 10% (of BCD).

12. Thus, the facts, material evidence available on record and statements of various persons recorded during the course of inquiry, as mentioned in foregoing paras, reveal that -

12.1 M/s SGO is proprietorship firm established by Shri Banarsi Dass Khatri in May-2022 which is engaged in trading of various kind of fabrics. M/s SGO were importing PU Coated Fabrics to be used in Ladies footwear & purse, phone cover, dairies etc. from suppliers based in China.

12.2 It has emerged in the investigation that M/s. SGO had initially imported one consignment of PU Coated Fabric classifying it under HS CODE/ CTH 59032090 vide SEZ Bill of Entry No. 1006528 dated 06.06.2022 filed at Mundra Port and later cleared the same by filing DTA Bill of Entry No.2007818 dated 07.06.2022 at MPSEZ Mundra after paying appropriate duties.

12.3 The Government vide Notification No. 14/2022-Customs (ADD) dated 20.05.2022 had imposed Anti-Dumping duty @ 0.46 USD per meters for the goods viz. "Polyurethane Leather which includes any kind of textile coated one sided or both sided with Polyurethane" falling under HS CODE/ CTH 56039490 & HS CODE/ CTH 59032090 when originated and exported from China PR or Any Country other than China PR but excluding those produced by M/s. Anhui Anli Material Technology Co. Ltd.

12.4 It appears from the investigation that M/s. SGO, in collusion with Chinese Suppliers viz. *Wenzhou Asia Star International Trading Co., Ltd., Lishui Waizhongfu Supply Chain Management Co., Ltd., Wenzhou Chenyue International Trade Co., Ltd., Yiwu Haofeng Imp. & Exp. Co., Ltd. and Wenzhou Asia Star International Trading Co., Ltd.* devised an modus operandi to evade payment of Antidumping duty on the import of goods by suppressing its correct identity of being PU Coated Fabrics falling under HS CODE/ CTH 59032090 and mis-declaring it as Textile Coated Fabric and classified it under HS CODE/ CTH 59119090 in the Import Invoice, Packing List and other import documents.

12.5 It appears that M/s SGO was very well aware regarding applicability of Anti-Dumping duty on their import of PU Coated Fabric from China @ 0.46 USD per meters in terms of Notification No. 14/2022-Customs (ADD) dated 20.05.2022 and had intentionally indulged in mis-declaring such goods as Textile Coated Fabric with the sole intention to evade payment of applicable Anti-Dumping duty leviable on such goods.

12.6 It appears that M/s. SGO has further also concealed the correct identity of their imported goods during its sale in Domestic market to local buyers and has declared it as T. Coated Fabric (Textile Coated Fabric). Shri Shaukat Ali partner of M/s Elite Traders who had ordered & purchased the PU Coated Fabric form M/s SGO in his statement recorded u/s 108 of the Customs Act, 1962 has accepted that against their order they have received PU Coated Fabric from M/s SGO, however they got the invoice in which T. Coated Fabric were mentioned instead of PU Coated Fabric.

12.7 After confronting with the above facts, Shri Prince Khatri authorized person of M/s SGO in his statement recorded u/s 108 of the Customs Act, 1962 has accepted that they have imported PU Coated Fabric by mis-classifying & declaring the same as Textile Coated Fabric as Anti-Dumping duty were imposed on PU Coated Fabric.

12.7 It is further also found that M/s. SGO by way of mis-classification of "PU Coated Fabric" under CTH 59119090 instead of its correct classification CTH 59032090 has also short paid the Basic Duty. As per the prevailing Customs Tariff effective Basic Customs duty on goods falling under CTH 59032090 was 20%, whereas effective Basic Customs duty on goods falling CTH 59119090, was 10%. Subsequently, on account of short payment of BCD, applicable IGST and SWS were also short paid.

12.8 The undeniable fact that M/s. SGO had already imported PU Coated Fabric by declaring correctly from China leaves no further room to hold that their subsequent imports of the same goods made by way of mis-declaration and mis-classification was a willful and intentional act with the sole intention to defraud the Government Exchequer by evading the applicable payment of Anti-Dumping duty. Therefore, from the above facts and as discussed in the foregoing paras, it appears that the said mis-declaration by the importer is willful and intentional, to evade the Anti-Dumping Duty.

VIOLATION OF VARIOUS LEGAL PROVISIONS OF CUSTOMS ACT, 1962 BY M/s SHREE GANESH OVERSEAS:-

13. From the evidences as elaborated in foregoing paras as well as confirmatory statements on record it appears that M/s. SGO have willfully mis-stated the goods description of the PU Coated Fabric imported by them and suppressed the actual classification in their import documents filed before the Customs authorities at APSEZ Mundra with an intent to evade the Anti-Dumping Duty in terms of Notification No. 14/2022-Customs (ADD) dated 20.05.2022.

13.1 In terms of Section 46(4) of the Customs Act, 1962, it is mandatory for the importer to make and subscribe to a declaration as to the truth of the contents of the bill of entry being presented.

13.2 Further, in terms of Section 17 of the Customs Act, 1962, relating to Assessment of duty, it is mandatory for the importer, save as otherwise provided in Section 85 of the Act, to self-assess the duty, and in case 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 the Act, re-assess the duty leviable on such goods.

13.3 In terms of sub-section 2 of Section 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 (51 of 1975) 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;
- (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 therefor 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.

13.4 In terms of Section 28(4) of the Customs Act, 1962 - 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 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 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.

13.5 Further, Section 28AA(l) stipulates that - 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.

13.6 As per 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.

13.7 Section 114AA of the Customs Act provides penalty for use of false and incorrect material. If a person knowingly or unknowingly 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 purpose of this Act, shall be liable to a penalty not exceeding five times the value of the goods.

13.8 Further, Section 111(m) of the Customs Act, 1962, specifies that, any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77, are liable to confiscation.

13.9 As per Section 112 of the Customs Act, 1962 - Any person, -(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he

knows or has reason to believe are liable to confiscation under Section 111, shall be liable, to penalty.

CONTRAVENTIONS AND CHARGES: -

14. Under the Self-Assessment regime, it is the responsibility & duty of the importer/exporter to ensure correct declaration & classification of the goods, applicable rate of duty, value, benefit or exemption notification claimed, if any, in respect of the imported or exported goods while presenting Bill of Entry or Shipping Bill. In the present case, it appears that the M/s. SGO has willfully indulged in the contravention of the above provisions with a mala fide intention to evade applicable payment of Anti-Dumping duty on their imported goods in Notification No. 14/2022-Customs (ADD) dated 20.05.2022. By their above act, they appear to have violated the provisions of Section 17 read with Section 46 of the Customs Act, 1962.

14.1 The goods imported by M/s. SGO, as detailed in the Table mentioned at para 11.4 above were imported by way of mis-declaration and mis-classification and as such the same becomes liable to be confiscated under Section 111(m) of the Customs Act, 1962. The above act further renders M/s. SGO liable for penalty under Section 112(a) of the Customs Act, 1962.

14.2 Whereas, it also further appears from the foregoing paras that M/s. SGO have intentionally and willfully made declarations and produced documents etc., which are false and incorrect in nature in contravention to the provisions u/s. 46(4) & (4A) of the Customs Act, 1962. By indulging in these acts during the transaction of their business, M/s. SGO have rendered themselves to be liable for penalty under Section 114A and 114AA of the Customs Act, 1962.

PAYMENT OF ANTI-DUMPING DUTY AND INTEREST: -

15. During the course of investigation, M/s. SGO had voluntarily deposited Rs. 79,26,050/- against duty liability towards Anti-Dumping Duty along with applicable interest of Rs. 9,50,250. The said amounts were deposited into the Govt. account vide GAR-7/TR-6 Challans as detailed below:

Sr. No.	DD No. & Date	Challan Number & Date	Amount	Remark
1.	007076 dt. 22.05.2023	CI/ENQ-33/2023/SGO- ADD/1 dt. 23.05.2023	29,97,015	Anti-Dumping Duty
2.	007075 dt. 22.05.2023	CI/ENQ-33/2023/SGO- IGST/1 dt. 23.05.2023	3,59,645	Differential IGST On ADD
3.	007081 dt. 08.06.2023	CI/ENQ-33/2023/SGO- ADD/2 dt. 12.06.2023	25,15,940	Anti-Dumping Duty
4.	007082 dt. 08.06.2023	CI/ENQ-33/2023/SGO- IGST/2 dt. 12.06.2023	3,01,915	Differential IGST On ADD
5.	007323 dt. 09.10.2023	CI/ENQ-33/2023/SGO- ADD/3 dt. 13.10.2023	15,63,870	Anti-Dumping Duty

6.	007322 dt. 09.10.2023	CI/ENQ-33/2023/SGO- IGST/3 dt. 12.10.2023	1,87,665	Differential IGST On ADD
7.	007454 dt. 18.03.2024	CI/ENQ-33/2023/SGO- 2024/2 dt. 21.03.2024	9,50,250	Interest

16. Vide CBIC Notification No.25/2022-Customs (N.T.) dated 31.03.2022, the Board has delegated all the powers of the officers of Customs to the officers of DRI with jurisdiction exercisable to the whole of India. Further, CBIC Notification No.26/2022-Customs (N.T.) dated 31.03.2022, the Board has assigned the Officers of DRI to be proper officer to perform various functions as specified in the Customs Act, 1962 including Section 28 read with Section 17, subject of Section 110AA of the Customs Act, 1962. The above provisions of the Act mandates that after inquiry/investigation of the offence, the relevant documents of the case along-with a report in writing is required to be transferred to the proper officer having jurisdiction, in respect of the assessment of such duty in the case or to an officer to whom proper officer is subordinate (i.e. the Jurisdictional Customs formation).

17. Now, therefore, **M/s Shree Ganesh Overseas** is hereby called upon to show cause, in writing, to the Principal Commissioner of Customs, Customs House Mundra having his office situated at Port User Building, Mundra Port, Mundra, Gujarat – 370421, within 30 days from the receipt of this show cause notice, as to why:

- (i) The declared Classification i.e. 59119990 and description of good “Textile Coated Fabric” imported vide below mentioned Bills of Entry should not be rejected:
 - a. *SEZ BE 1012165 dated 07-09-2022 (DTA BE 2013602 dated 09-09-2022),*
 - b. *SEZ BE 1012162 dated 07-09-2022 (DTA BE 2013604 dated 09-09-2022),*
 - c. *SEZ BE 1012164 dated 07-09-2022 (DTA BE 2013700 dated 12-09-2022),*
 - d. *SEZ BE 1012472 dated 14-09-2022 (DTA BE 2014057 dated 19-09-2022),*
 - e. *SEZ BE 1012627 dated 17-09-2022 (DTA BE 2014060 dated 19-09-2022).*
- (ii) The goods imported vide Bills of Entry mentioned in para (i) above should not be re-classified under HS CODE/ CTH 59032090 and its description should not be considered as Polyurethane (PU) Coated Fabric.
- (iii) The applicable Anti-Dumping Duty of **Rs. 79,26,038/- (Rupees Seventy-Nine Lakhs Twenty Six Thousands Thirty Eight Only)** on total 191280 meters PU Coated Fabric declared as Textile Coated Fabric imported vide Bills of Entry mentioned in para (i) above, should not be demanded under the provision of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28(AA) of the Customs Act, 1962 as mentioned in the Annexure A to this notice.
- (iv) The differential **Customs Duty** (BCD+SWS+IGST) of **Rs. 14,36,182/-** in respect of Bills of Entry mentioned in para (i) above, should not be demanded under the provision of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28(AA) of the Customs Act, 1962 as mentioned in the Annexure B to this notice.

- (v) Goods imported vide Bills of Entry as listed in para (i) above having assessable value of **Rs. 1,16,57,321/- (Rupees One Crore Sixteen Lakh Fifty Seven Thousand Three Hundred and Twenty One only)** should not be held liable to confiscation as per the provisions of Section 111 (m) of the Customs Act, 1962. Since the same are not physically available for confiscation, why fine in lieu of confiscation should not be imposed on them under Section 125 of the Customs Act, 1962.
- (vi) The amount of **Rs. 79,26,050/- (Rupees Seventy Nine Lakh Twenty Six Thousands fifty Only)** already deposited by them should not be adjusted towards their liability of Anti-Dumping Duty & Customs Duty of **Rs.93,62,220/- (Rupees Ninety Three Lakh Sixty Two Thousand Two Hundred Twenty) {Anti-Dumping Duty Rs. 79,26,038/- + Customs Duty Rs. 14,36,182/-}** as mentioned in para (iii) & (iv) above.
- (viii) The amount of **Rs. 9,50,250/- (Rupees Nine Lakh Fifty Thousand Two Hundred Fifty only)** already deposited by them should not be adjusted towards the interest liability on duty amount as mentioned in para (iii) & (iv) above.

18. **Shri Banarsi Dass Khatri**, proprietor of M/s Shree Ganesh Overseas is called upon to show cause to the Principal Commissioner of Customs, Customs House Mundra having his office situated at Port User Building, Mundra Port, Mundra, Gujarat-370421, within 30 days from the receipt of this show cause notice, as to why Penalty should not be imposed upon him under Section 112(a), 112(b), Section 114A, Section 114AA and Section 117 of the Customs Act, 1962.

WRITTEN SUBMISSIONS AND PERSONAL HEARING

19. I observe that 'Audi alteram partem', is an important principle of natural justice that dictates to hear the other side before passing any order. Therefore, personal hearing in the matter was granted to the noticee on 12.06.2025 and 03.07.2025. Accordingly, Advocate Shri Harish Kohli, authorized representative of the noticee appeared on behalf of the Noticee and during PH he re-iterated submission dated 10.06.2025 and inter-alia stated that:

- i. The issuance of the Show Cause Notice in the present case is not warranted and justified as per law, as our client had already voluntarily paid the differential duty, applicable interest, and penalty (which is 15% of the duty) prior to the issuance of the Show Cause Notice, in accordance with the provisions laid down under Section 28(5) and 28(6) of the Customs Act, 1962.
- ii. It is submitted that the provisions to Section 28(5) (after amendments) states that if the duty and interest are paid before issuance of Show Cause Notice, no notice shall be served under sub-section (1) or (4) of the Customs Act, 1962.
- iii. According to Provisions to Section 28(5), no show cause notice should be issued under Section 28(4) if:

- a. The person admits the short levy or non-levy was due to reasons attracting Section 28(4) (i.e., fraud/suppression).
- b. The person pays the full duty and interest voluntarily, before issuance of Show Cause Notice.
- c. and also pays the mandatory penalty under Section 28(5), which is 15% of the duty (within 30 days from the date of communication of liability).

iv. It is submitted that, our client has already deposited the entire. Differential duty, interest and 15% penalty prior of issuance of the show cause notice. It is pertinent to note that our client has deposited the requisite voluntarily in order to avoid any litigation and to co-operate with the DRI department. Thus, it is submitted that proceedings are liable to be concluded in view of Section 28(5) and 28(6) of the Act.

v. That as held in the matter of Union of India v. M/s. Sony India Pvt. Ltd., 2014 (306) E.L.T. 660 (Del.) M/s. Sony India Pvt. Ltd. paid the differential customs duty and interest voluntarily, before issuance of Show Cause Notice. The department still went ahead and issued an Show Cause Notice under Section 28(4). The Delhi High Court held that once the assessee has accepted the liability and paid the amount along with interest, the department is not required to proceed with a show cause notice under Section 28(4), provided the conditions laid down under Section 28(5) (including payment of 15% penalty) are fulfilled. The court emphasized the objective of revenue efficiency and dispute resolution. It supported the idea that voluntary compliance should be encouraged, and that issuance of Show Cause Notice in such cases defeats the legislative intent.

vi. That further in the matter of CCE & ST vs. Adecco India Private Limited – 2019 (30) GSTL 95 (SC) The Hon’ble Supreme Court held that where the assessee voluntarily pays tax, interest, and 15% penalty before issuance of SCN, issuance of SCN is not valid, and the matter stands concluded.

vii. That in the matter of Commissioner of Customs vs. Caretech Solutions – 2021 (50) GSTL 209 (Tri. Chennai) it was held that if the duty, interest, and 15% penalty have been paid voluntarily, the benefit under Section 28(5) should be extended and no further proceedings should be initiated.

viii. That similarly in re: Indo Japan Steel Ltd – 2020 (374) ELT 317 (Tri. - Ahmd.) the Hon’ble CESTAT had quashed the Show Cause Notice issued post voluntary payment and ruled that the Revenue cannot issue a notice after payment in accordance with the statutory scheme.

ix. It is relevant to mention that post Finance Act, 2011 and amendments through Finance Act, 2015 & 2016: “No notice shall be

served under sub-section (1) or (4) where the person has paid the duty, interest and penalty under sub-section (5) before the issuance of notice.

x. It is submitted that as our client had deposited the entire amount of differential duty with interest and 15% penalty amount as it came in the knowledge of our client as per law and without going into any dispute to avoid any further litigation.

xi. The Noticee craves leave of the learned Adjudicating Authority to add, modify, alter, and/ or to delete any submissions, if so required in the interest of justice.

xii. They further prayed to drop the show cause notice as the same are not legally sustainable as the **proceedings are liable to be concluded in view of Section 28(5) and 28(6) of the Act.**

DISCUSSION AND FINDINGS:

20. I have carefully gone through the Show Cause Notice, the relied upon documents, the submission made by the Noticee, the legal provisions and the records available before me. The issues before me to decide are as under:

- (i) Whether the declared Classification i.e. 59119090 and description of good “Textile Coated Fabric” imported vide below mentioned Bills of Entry be rejected;
 - a. *SEZ BE 1012165 dated 07-09-2022 (DTA BE 2013602 dated 09-09-2022),*
 - b. *SEZ BE 1012162 dated 07-09-2022 (DTA BE 2013604 dated 09-09-2022),*
 - c. *SEZ BE 1012164 dated 07-09-2022 (DTA BE 2013700 dated 12-09-2022),*
 - d. *SEZ BE 1012472 dated 14-09-2022 (DTA BE 2014057 dated 19-09-2022),*
 - e. *SEZ BE 1012627 dated 17-09-2022 (DTA BE 2014060 dated 19-09-2022).*
- (ii) Whether the goods imported vide Bills of Entry mentioned in para (i) above be re-classified under HS CODE/ CTI 59032090 and its description be considered as Polyurethane (PU) Coated Fabric;
- (iii) Whether, the applicable Anti-Dumping Duty of **Rs. 79,26,038/- (Rupees Seventy-Nine Lakhs Twenty Six Thousands Thirty Eight Only)** on total 191280 meters PU Coated Fabric declared as Textile Coated Fabric imported vide Bills of Entry mentioned in para (i) above, be demanded under the provision of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28(AA) of the Customs Act, 1962 as mentioned in the Annexure A to the SCN;
- (iv) Whether, the differential **Customs Duty** (BCD+SWS+IGST) of **Rs. 14,36,182/-** in respect of Bills of Entry mentioned in para (i) above, be demanded under the provision of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28(AA) of the Customs Act, 1962 as mentioned in the Annexure B to the SCN.
- (v) Whether the Goods imported vide Bills of Entry as listed in para (i) above having assessable value of **Rs. 1,16,57,321/- (Rupees One Crore Sixteen Lakh Fifty Seven Thousand Three Hundred and Twenty One only)** be held

liable to confiscation as per the provisions of Section 111 (m) of the Customs Act, 1962. Since the same are not physically available for confiscation, whether the fine in lieu of confiscation be imposed on them under Section 125 of the Customs Act, 1962 or otherwise.

- (vi) Whether, the amount of **Rs. 79,26,050/-** (*Rupees Seventy Nine Lakh Twenty Six Thousands fifty Only*) already deposited by them be adjusted towards their liability of Anti-Dumping Duty & Customs Duty of **Rs.93,62,220/-** (*Rupees Ninety Three Lakh Sixty Two Thousand Two Hundred Twenty*) {Anti-Dumping Duty Rs. 79,26,038/- + Customs Duty Rs. 14,36,182/-} as mentioned in para (iii) & (iv) above.
- (vii) Whether the amount of **Rs. 9,50,250/-** (*Rupees Nine Lakh Fifty Thousand Two Hundred Fifty only*) already deposited by them be adjusted towards the interest liability on duty amount as mentioned in para (iii) & (iv) above.
- (viii) Whether the penalty be imposed upon Shri Banarsi Dass Khatri, proprietor of M/s Shree Ganesh Overseas under Section 112, 114A, 114AA and 117 of the Customs Act, 1962

21. I have carefully examined the allegations set forth in the Show Cause Notice as well as the submissions made by the Noticee. SCN, based on an in-depth investigation carried out by DRI which included recording statements of importer and their buyers M/s Elite Traders and M/s State Traders and examining documentary evidences such as actual packing list of imported goods, alleged that M/s Shree Ganesh Overseas (SGO), a proprietorship, had imported Polyurethane (PU) Coated Fabric from China by declaring the same as Textile Coated Fabric and classified the same under CTI 59119090 instead of correct classification under CTI 59032090 to evade the Anti-Dumping Duty imposed vide Notification No. 14/2022-Customs (ADD) dated 20.05.2022. It was revealed during the investigation that the imported goods were not meant for any technical applications/uses but, as PU coated fabric, were used in making of ladies footwear & purse, mobile covers, diaries, etc. The importer has been cooperating from the very start of investigation by DRI and the conclusion drawn by DRI were accepted by the importer at that time basis which they voluntarily deposited the ADD of ₹70,76,825/-, IGST of ₹8,49,225/- and interest of ₹9,50,250.

22. During the course of adjudication too, it has been submitted by the Advocate Shri Harish Kohli in written reply dated 10.06.2025 and during personal hearing on 03.07.2025 that the allegations levelled in Show Cause Notice were already been accepted by them during investigation proceedings and that the impugned goods are PU coated fabric of CTI 59032090. He further submitted that the issuance of the Show Cause Notice in the present case was not warranted since they had already voluntarily paid the differential duty, applicable interest and penalty prior to the issuance of the Show Cause Notice as per Section 28(5) and 28(6) of the Customs Act, 1962.

22.1 Considering the above submission and upon review, I find that the Noticee has surely discharged the ADD of ₹70,76,825/-, IGST of ₹8,49,225/- and interest of ₹9,50,250 but still there remains an outstanding differential duty (BCD, SWS, and IGST) of Rs. 14,36,182 plus interest and penalty applicable thereon. See Table below:-

S. No	Duty	Amount (in ₹)	Remarks	Reference
1	Anti Dumping Duty (ADD)	70,76,825	Paid	Annexure-A to the SCN
2	IGST on ADD	8,49,225	Paid	
3	Interest	9,50,250	Paid	
	Total Paid	88,76,300		
Assessable value = Rs. 1,16,57,321/-				
4	Differential BCD (10%)	11,65,732	Not paid	Annexure-B to the SCN
5	SWS (10%)	1,16,573	Not paid	
6	IGST (12%)	1,53,877	Not paid.	
	Total unpaid Differential Duty	14,36,182		

22.2 In absence of above differential duty payment, the conditions requisite for the closure of proceedings as stipulated under Section 28(5) and Section 28(6) of the Customs Act, 1962 remain unmet. Accordingly, the present case cannot be considered fit for closure under the said provisions. I therefore hold that the classification of impugned goods i.e PU coated fabric, as done by the importer, under CTI 59119090 is required to be rejected and the goods are required to be re-classified under CTI 59032090 and duties are to be levied accordingly. Consequently, the differential duty amounting to ₹93,62,220/- (comprising Anti-Dumping Duty of ₹79,26,038/- and Customs Duty of ₹14,36,182/-) is hereby confirmed and ordered to be recovered from M/s Shree Ganesh Overseas under the provisions of Section 28(4) of the Customs Act, 1962. The amounts of ₹79,26,050/- and ₹9,50,250/-, already deposited by the Noticee during the course of investigation, are appropriated towards the confirmed duty liability and applicable interest, respectively. Further, I hold that the impugned goods, valued at ₹1,16,57,321/-, are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962. However, considering that the goods are not available for confiscation, I refrain from imposing any redemption fine.

23. With regard to issue of levy of penalties, I find that M/s Shree Ganesh Overseas (SGO) was aware of the nature and correct classification of PU-coated fabric under CTI 5903 2090; they also knew that the fabric imported by them did not, in any way, qualify as a fabric for technical use specified in note 8 to chapter 59. They have been previously correctly importing PU coated fabric under SEZ Bill of Entry No. 1006528 dated 06.06.2022 and the corresponding DTA Bill of Entry No. 2007818 dated 07.06.2022 for domestic clearance, wherein the correct description, i.e. 'PU Coated Fabric' was duly declared and the goods were classified under CTI 5903 2090. Thus, M/s SGO wilfully mis-declared the description of the impugned goods, i.e. PU coated fabric as 'Textile Coated Fabric' or 'T. Coated Fabric' with intent to evade *inter alia* anti-dumping duty leviable at the rate of USD 0.46 per meter on goods of heading 5903, as levied vide Notification No. 14/2022-Customs (ADD) dated 20.05.2022. These facts were also admitted by Shri Prince Khatri, S/o Shri Banarsi Dass Khatri, Authorized

Representative of M/s Shree Ganesh Overseas, during his statement recorded on 27.03.2024 under Section 108 of the Customs Act, 1962 and earlier corroborated by Shri Shaukat Ali, Partner of M/s Elite Traders and Authorized Representative of M/s State Traders during his statement dated 20.03.2023.

24. In view of above discussions and findings, I pass the following order.

Order

- i. I reject the declared Classification i.e. 59112090 and description of good "Textile Coated Fabric" imported vide below mentioned Bills of Entry;
 - a. *SEZ BE 1012165 dated 07-09-2022 (DTA BE 2013602 dated 09-09-2022),*
 - b. *SEZ BE 1012162 dated 07-09-2022 (DTA BE 2013604 dated 09-09-2022),*
 - c. *SEZ BE 1012164 dated 07-09-2022 (DTA BE 2013700 dated 12-09-2022),*
 - d. *SEZ BE 1012472 dated 14-09-2022 (DTA BE 2014057 dated 19-09-2022),*
 - e. *SEZ BE 1012627 dated 17-09-2022 (DTA BE 2014060 dated 19-09-2022).*
- ii. I hold the goods imported vide Bills of Entry, mentioned in para (i) above, be re-classified under CTI 59032090 and its description be considered as Polyurethane (PU) Coated Fabric;
- iii. I confirm the demand of applicable **Anti-Dumping Duty** of **Rs. 79,26,038/-** (*Rupees Seventy-Nine Lakh Twenty Six Thousand and Thirty Eight only*) on total 191280 meters PU Coated Fabric, imported vide Bills of Entry mentioned in para (i) above, and the same is to be recovered under the provision of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28(AA) of the Customs Act, 1962 as mentioned in the Annexure A to the SCN;
- iv. I confirm the demand of differential **Customs Duty** (BCD+SWS+IGST) of **Rs. 14,36,182/-** (*Rupees Fourteen Lakh Thirty Six Thousand One Hundred and Eighty Two only*) in respect of Bills of Entry mentioned in para (i) above, and the same is to be recovered under the provision of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28(AA) of the Customs Act, 1962 as mentioned in the Annexure B to the SCN.
- v. I hold the goods, imported vide Bills of Entry as listed in para (i) above having assessable value of **Rs. 1,16,57,321/-** (*Rupees One Crore Sixteen Lakh Fifty Seven Thousand Three Hundred and Twenty One only*), liable for confiscation under the provisions of Section 111 (m) of the Customs Act, 1962. Since the same are not physically available for confiscation, I do not impose any redemption fine in lieu of such confiscation.
- vi. I order the amount of **Rs. 79,26,050/-** (*Rupees Seventy Nine Lakh Twenty Six Thousand and Fifty only*), already deposited by them, be adjusted towards their liability of Anti-Dumping Duty & Customs Duty of

Rs.93,62,220/- (Rupees Ninety Three Lakh Sixty Two Thousand Two Hundred and Twenty only) {Anti-Dumping Duty of Rs. 79,26,038/- + Customs Duty of Rs. 14,36,182/-} as mentioned in para (iii) & (iv) above.

- vii. I order the amount of **Rs. 9,50,250/-** (Rupees Nine Lakh Fifty Thousand Two Hundred and Fifty only), already deposited by them, be adjusted towards the interest liability on duty amount as mentioned in para (iii) & (iv) above.
- viii. I impose penalty of **Rs. 14,36,182/-** (Rupees Fourteen Lakh Thirty Six Thousand One Hundred and Eighty Two only), on Shri Banarsi Dass Khatri, proprietor of M/s Shree Ganesh Overseas, under Section 114A of the Customs Act, 1962. I refrain from imposing penalty under Section 112 as penalty under Section 112 and Section 114A are mutually exclusive.
- ix. I impose penalty of **Rs. 1,00,000/-** (Rupees One Lakh only), on Shri Banarsi Dass Khatri, proprietor of M/s Shree Ganesh Overseas, under Section 114AA of the Customs Act, 1962.
- x. I refrain from imposing penalty on Shri Banarsi Dass Khatri, proprietor of M/s Shree Ganesh Overseas under Section 117 of the Customs Act, 1962 as specific penalties under Sections 114A and 114AA have already been imposed.

25. The O-i-O is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or any other law for the time being in force.



18/8

(Nitin Saini)
Commissioner of Customs,
Custom House, Mundra.

Date: 18.08.2025.

F.No. GEN/ADJ/COMM/278/2024-Adjn-O/o Pr. Commr-Cus-Mundra.

By Speed Post/ email:

To, (The Noticees):

1. M/s Shree Ganesh Overseas, (IEC: 0596058217),
House No. 6292, T/F, Block-6B, Gali No. 3&4,
Near Gurudwara, Dev Nagar, Karol Bagh,
New Delhi-110005. (email: sgoverseas63@gmail.com)
2. Shri Banarsi Dass Khatri proprietor of M/s Shree Ganesh Overseas,
House No. 6292, T/F, Block-6B,
Gali No. 3&4, Near Gurudwara,
Dev Nagar, Karol Bagh,
New Delhi-110005. (email: bdass34@gmail.com)

Copy to:

1. The Additional Director General, DRI, Zonal Unit, Ahmedabad, 15 Magnet Corporate Park, Off S.G. Highway, Near Sola Flyover, Thaltej, Ahmedabd-380054. (email: driazu@nic.in)
2. The Additional Director General, Central Economic Intelligence Bureau, 6th Floor, B Wing, Janpath Bhawan, New Delhi-110001 for kind information please.
3. The Deputy/ Assistant Commissioner of Customs (EDI) for necessary action at their end.
4. Guard File.