



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

चौथी मंज़िल 4th Floor, हुडको भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
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DIN - 20250671MN000000A82A

क	फ़ाइल संख्या FILE NO.	S/49-248/CUS/MUN/2023-24
ख	अपील आदेश संख्या ORDER-IN- APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-052-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	02.06.2025
	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order - In - Original No. MCH/ADC/AK/255/2023-24 dated 09.02.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	02.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. H.M. Trading Co., B-216, Gopal Palace, Near Shiromani Complex, Nehrunagar, Ahmedabad-380015



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल.
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर. 6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रुपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the



	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016
	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में है, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.



ORDER-IN-APPEAL

Appeal has been filed by M/s. H.M. Trading Co., B-216, Gopal Palace, Near Shiromani Complex, Nehrunagar, Ahmedabad-380015 (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/AK/255/2023-24 dated 09.02.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Custom House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that an intelligence was gathered by the SIIB, Mundra that some of importers are importing items viz. Artificial Grass/PVC Grass etc. and classifying them under CTH 39189090. The rate of duty levied as per the declared CTH at the rate 15% (BCD) + 10% (SWS) + 18% (IGST). The declared goods are grass like Floor coverings. The Floor covering of Plastics are covered under heading 3918 whereas the floor coverings of textile material are covered under chapter 57 of Schedule-I of Customs Tariff Act, 1975.

2.1 On the basis of above intelligence, it was found that the Appellant, had filed two Bills of Entry No. 7427798 dated 09.02.22 and 7459324 dated 11.02.22 at Mundra port through their Customs Broker M/s. N K Impex & Logistic Pvt. Ltd. at Mundra port for import of item "Artificial Grass" classifying the goods under CTH 39189090. The goods covered in the Bill of Entry No.7427798 dated 09.02.22 were examined by the officers of SIIB section under panchnama dated 16.02.22 and found that there are total 310 rolls of artificial grass of thickness sizes of 25 mm, 40mm and 35 mm. Similarly, the goods covered in the Bill of Entry No. 7459324 dated 11.02.22 were also examined under panchnama dated 17.02.22 and found that there are total 320 rolls of artificial grass of thickness sizes of 25 mm, 40mm and 35 mm. Further, representative samples were also drawn during both the panchnamas and sent to the CRCL, Kandla for testing.


2.2 As per test reports, it appeared that the artificial grass is mainly coverings made of two layer of woven fabric of Polypropylene and polyethylene strips, these pile type strips are tufted in the middle layer and coated with butadiene styrene from the back. The exposed surface is made from strips through tufting process; therefore, the proper classification of the goods

appeared under CTH 57033990 and not under CTH 39189090. The rate of duty applicable to the CTH 57033990 is at the rate of BCD @20% or Rs.55 per Sq. Meter (whichever is higher) +0% (SWS)+12% (IGST).

2.3 For investigation and recording of Statement, summon dated 19.03.2022 was issued to the Appellant and statement of Shri Manish Ashwinbhai Parikh, Partner of M/s H M Trading Co., Ahmedabad (IEC No. AAHFH2742R) was recorded under Section 108 of the Customs Act, 1962 on 23.03.2022.

2.4 It appeared that the Appellant had mis-declared the imported goods and attempted to import the goods by resorting to undervaluation and misclassification, therefore, the cargo covered under Bill of entry No. 7459324 dated 11.02.2022 and Bill of Entry No. 7427798 dated 09.02.2022 are liable for confiscation under Section 111(m) of the Customs Act, 1962 and therefore, were seized under section 110 of Customs Act, 1962. Details of which are as under:

SEIZURE MEMO dated 29.03.2022 in respect of seizure of goods of BE No. 7459324 dated 11.02.2022 at M/s Ashutosh- CFS., APSEZ, Mundra Port. Details of seized goods are as under:



Sr No.	Size of grass	Total no. of rolls	Average size of one roll (Sq Mtr.)	Total size of the item (in Sq. Mtr)	Value in Rs. Per Sq. Mtr as per NIDB	Total value of the item (in Rs)
1	25 MM	40	2.03 M × 24.9 M	2021.9	147.77	298776
2	35 MM	60	2.03 M × 24.9 M	3032.8	193.78	587696
3	25 MM	54	0.62 M × 24.9 M	833.6	147.77	123181
4	35 MM	45	1.24 M × 24.9 M	1395	193.78	270323
5	40 MM	20	2.03 M × 25 M	1015	212.37	215556
6	35 MM	51	0.62 M × 24.09 M	787.3	193.78	152563
7	25 MM	50	1.24 M × 24.9 M	1550	147.77	229044
TOTAL		320		10635.6		1877139

II SEIZURE MEMO dated 29.03.2022 in respect of seizure of goods of BE No. 7427798 dated 09.02.2022 at M/s Saurashtra - CFS., APSEZ, Mundra Port. Details of seized goods are as under:



Sr No.	Size of grass	Total no. of rolls	Average size of one roll (Sq Mtr.)	Total size of the item (in Sq. Mtr)	Value in Rs. Per Sq. Mtr as per NIDB	Total value of the item (in Rs)
1	25 MM	48	1.24 M × 24.9 M	1482	147.77	218995
2	25 MM	50	0.62 M × 24.9 M	771.9	147.77	10625
3	25 MM	36	2.03 M × 24.9 M	1819.7	147.77	268897
4	40 MM	19	2.03 M × 24.9 M	960.4	212.37	203960
5	35 MM	48	0.63 M × 24.9 M	752.9	193.78	145897
6	35 MM	60	2.03 M × 24.9 M	3032.8	193.78	587696
7	35 MM	49	1.24 M × 24.9 M	1512.9	193.78	293170
TOTAL		310		10332.6		1729240

The seized goods were handed over to respective CFSs under Supratnama dated 29.03.2022 for safe custody.

2.5 On the analysis of test reports and scrutiny of case records, it appeared that the Appellant had mis-classified the goods Artificial Grass (Tufted Artificial Grass) under CTH-39189090 instead of correct classification under CTH- 57033090 and BCD applicable @ Rs. 55 per Sq. Mtrs. and also found huge under-valuation in the cargo. Since the goods appeared to be mis-declared & undervalued with intent to evade the Customs duty, the goods were liable for confiscation under Section 111(m) of the Customs Act, 1962. Therefore, the goods were placed under seizure vide Seizure Memo's dated 29.03.2022 and the value declared by the importer was rejected as per rule 12 of the Customs Valuation (Determination of value of imported goods) rules, 2007. The value of the goods/items were taken on the basis NIDB data. Hence, the Bills of Entry were required to be re-classification and re-assessed. The details of bills of entry and to be assessed as under: -

Table-A

Sr No.	BE No & date	Details declared in BE's			To be re-assessed as per investigation		
		Quantity (in KG)	Value (in Rs.)	Total duty in % (15+10+18)	Quantity (in sq.mtr)	Value (in Rs.)	Total duty (Rs. 55 per sq. mtrs. +0+12%)
1	7427798 dated 09.02.22	18500	1248995	467999	10332.6	1729240	843997
2	7459324 dated 11.02.22	19100	1276956	478475	10635.6	1877139	880410
Total		37600	2525951	946474	20968.2	3606379	1724407



2.6 The case against the Appellant was under investigation for previous imports of same item. From the above discussions, it appeared that the "artificial grass" imported by the Appellant has deliberately mis classified the items in the CTH 39189090 instead of correct classification under CTH- 57033090 and under-valued the goods to evade applicable duty causing a loss of Government revenue. Therefore, it further appeared that the goods totally valued to Rs.36,06,379/- as detailed in above Table are liable for confiscation under Section 111(m) of the Customs Act, 1962 on account of the above stated misclassification and undervaluation. Further, by adopting the above modus operandi, the amount of differential duty i.e. duty not levied or paid on account of the above stated mis-classification and undervaluation was calculated to Rs.17,24,407/-. Further, they were also liable for penalty under Section 112 (a)(ii) of the Customs Act, 1962, as it appeared that the goods were liable for confiscation and that they have evaded the customs duty by willful misstatement and suppression of facts as discussed in foregoing paras. It further appeared that M/s. N K Impex & Logistic Pvt. Ltd., the Customs Broker has failed to advise his client to correctly assess and pay the appropriate Customs duty and therefore, it appeared that they are liable for penal action under Section 117 of the Customs Act, 1962.



2.7 The Appellant had requested for provisional release of the goods and ready to re-classify the goods under CTH 57033090 and payment of applicable duty thereon. The request of the Appellant has been approved by the competent authority for provisional release with reassessment of subject BE's to cover differential duty and applicable Bond and Bank Guarantee for fine/penalty or any other conditions as per the provisions of Section 110A of the Custom Act, 1962 as decided by the adjudicating authority. The competent authority ordered for provisional release of seized goods on the execution of Bond for proposed value, payment of 100% duty and furnishing of Bank Guarantee for 20% of proposed value of seized goods etc. However, the condition of furnishing of Bank Guarantee for 20% of proposed value of seized goods was revised to B.G. for Rs.3,00,000/- only, as per letter dated 08.04.2022 issued by the Dy. Commissioner (Gr. II), Custom House, Mundra. Accordingly, the Bills of entries were assessed provisionally on furnishing of Bond, B.G. etc.

2.8 Accordingly a Show Cause Notice dated 28.07.2023 was issued to the Appellant and to Customs Broker M/s N K Impex & Logistics Pvt. Ltd. as to why:

- i. the classification of item "Artificial Grass" under CTH 39189090 should not be rejected and the said goods should not be classified under CTH 57033090 under the Customs Tariff Act, 1975.
- ii. the goods with Assessable Value of Rs. 36,06,379/- (as detailed in Table-A' Table above) should not be confiscated under Section 111(m) of the Customs Act, of 1962;
- iii. Penalty under Section 112(a)(ii) of section the Customs Act, 1962 should not be imposed on M/s H M Trading Co., in in relation to the said goods.
- iv. Penalty under Section 112 of the Customs Act, of 1962 should be imposed under penalty on M/s N K Impex & Logistics Pvt. Ltd.

2.9 Consequently the adjudicating authority passed a impugned order wherein the adjudicating authority ordered as under :-

- i. He rejected the classification of item "Artificial Grass" under CTH 39189090 and ordered to re-assess the same under CTH57033090 under the Customs Tariff Act, 1975.
- ii. He confiscated the goods with re-determined Assessable Value of Rs. 36,06,379/- under Section 111(m) of the Customs Act, of 1962. However, he gave an option to the Appellant to redeem the confiscated goods on payment of Rs.3,50,000/- in lieu of confiscation under Section 125 of the Customs Act, 1962.
- iii. He imposed penalty of Rs.1,50,000/- on the Appellant Section 112(a)(ii) of section the Customs Act, 1962.
- iv. He imposed penalty of Rs. 50,000/- on the Custom Broker M/s N K Impex & Logistics Pvt Ltd under Section 117of the Customs Act, of 1962.

3. SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the Appellant has filed the present appeals wherein they have submitted grounds which are as under:-

3.1 The impugned order is passed in gross violation of the principles of natural justice inasmuch as it is passed without affording proper and sufficient opportunity of personal hearing and time for filing reply to show cause notice after supplying relied upon documents.

3.2 There is no mis-declaration of description inasmuch as goods have not been found to be other than artificial grass. Even the Adjudicating Authority has determined classification of artificial grass. Hence, goods are not liable to confiscation under Section 111 (m) of Customs Act, 1962.

3.3 The Adjudicating Authority has nowhere rejected the declared value and determined the same in accordance with provisions of Section 14 read with Rule 12 and Rule 4 to 9 of Customs Valuation Rules, 2007. There is also no evidence to show evidence of any extra payment paid or payable to overseas supplier by the Appellant. As such, there is no mis-declaration of value and hence, goods are not liable to confiscation under Section 111 (m) of Customs Act, 1962 on this count also. Inasmuch as goods are not liable for confiscation under Section 111 (m), the Appellant is not liable for penalty under Section 112 (a)(ii) of Customs Act, 1962.

3.4 The provisions of Section 111 (m) of Customs Act, 1962 would not apply in cases involving pure classification where description of goods is not in dispute. Therefore, on this ground also, imposition of fine under Section 125 in lieu of confiscation and penalty under Section 112 (a)(ii) of Customs Act, 1962 is not tenable in the eyes of law.

3.5 The Adjudicating Authority has nowhere disputed the fact that goods are floor coverings of plastic and are capable of use as wall or ceiling coverings also. Hence, the Appellant had correctly classified the same under Chapter 3918. However, the Adjudicating Authority has classified the same under Chapter sub heading 5703 39 90 by relying upon test reports issued by Custom House laboratory, Kandla inter alia reporting that goods are tufted without appreciating the true meaning and context of tuft and without affording sufficient opportunity to cross-examine the Chemical Examiner who had carried out the test and issued reports.

PERSONAL HEARING:

4. Personal hearing in the matter was held on 20.05.2025 in physical mode. Shri Vikas Mehta, Consultant, appeared for hearing representing the Appellant. He had reiterated the submissions made in the appeal memorandum.

AH

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Custom House, Mundra and the defense put forth by the Appellant in their appeal. The Appellant has filed the present appeal on 18.03.2024. In the Form C.A.-1, the Appellant has mentioned date of communication of the Order-In-Original dated 09.02.2024 as 20.02.2024. Hence, the appeal has been filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. The Appellant has paid entire duty amount involved in the two Bills of Entry. As the appeal has been filed within the stipulated time-limit under Section 128(1) of the Customs Act, 1962 and with the mandatory pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal.

5.1 On going through the material on record, I find that following issues are to be decided in the present appeal:

- (i) Whether the rejection of classification of "Artificial Grass" under CTH 39189090 and reassessment of the same under CTH 57033090 by the adjudicating authority is correct.
- (ii) Whether the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962, due to mis-classification and undervaluation.
- (iii) Whether the penalty imposed on the Appellant under Section 112(a)(ii) of the Customs Act, 1962, is justified.

5.2 Firstly, I take up the issue of rejection of classification of "Artificial Grass" under CTH 39189090 and reassessment of the same under CTH 57033090. The core of the classification dispute lies in whether "Artificial Grass" is a plastic floor covering (CTH 3918) or a tufted textile floor covering (CTH 5703). The test reports from CRCL, Kandla, are crucial here. The reports clearly state that the goods are "made of woven base fabric of Polypropylene and polyethylene strips, these pile type strips are tufted in the middle layer and coated with butadiene styrene from the back. The exposed surface is made from strips through tufting process."

5.3 Chapter Note 1 of Chapter 57 of the Customs Tariff Act, 1975, explicitly defines "carpets and other textile floor coverings" as "floor coverings in

which textile materials serve as the exposed surface of the article when in use and includes articles having the characteristics of textile floor coverings but intended for use for other purposes." The description "tufted" and the composition involving polypropylene and polyethylene strips (which, when tufted, form a textile-like surface) squarely bring the goods within the ambit of Chapter 57, CTH 3918, on the other hand, covers "Floor coverings of plastics," implying a more homogenous plastic composition rather than a tufted textile structure.

5.4 Furthermore, and most significantly, the Partner of the Appellant, Shri Manish Ashwinbhai Parikh, in his statement recorded under Section 108 of the Customs Act, 1962, expressly agreed with the test reports and affirmed his readiness to accept the re-classification of the imported goods under CTH 57033090 and pay the applicable duty. This admission from the Appellant's own representative is a strong piece of evidence supporting the adjudicating authority's classification. The Hon'ble Supreme Court in CCE, Bangalore v. Indian Petrochemicals Corp. Ltd., 2005 (181) ELT 3 (SC), emphasized that classification must be based on the actual nature and composition of the goods. Given the test report and the Appellant's own admission, the re-classification is factually and legally sound.

Therefore, the Appellant's contention that the goods are plastic floor coverings and were correctly classified under CTH 3918 is untenable. The argument regarding the "true meaning and context of tuft" and the request for cross-examination of the Chemical Examiner are negated by the Appellant's prior acceptance of the test report and the re-classification during their Section 108 statement.

5.6 Now, I take up the issue whether the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962, due to mis-classification and undervaluation. The adjudicating authority found that the goods were not only mis-classified but also undervalued, leading to a loss of government revenue. The value was re-determined based on NIDB data, a method commonly used by Customs for valuation, especially when declared values are suspect. Crucially, the Appellant's Partner, in his Section 108 statement, agreed to the valuation of the items as per available NIDB data. This acceptance of the re-determined value by the Appellant undermines their current claim of "no undervaluation."

5.7 Section 111(m) of the Customs Act, 1962, states that any goods which do not correspond in respect of value or in any other particular with the entry made under this Act shall be liable for confiscation. In this case, there is a clear discrepancy in both classification (a "particular" of the entry) and value. The argument that Section 111(m) would not apply in cases involving "pure classification" is misplaced. This is not a case of pure classification; it involves deliberate mis-declaration of CTH and undervaluation with the intent to evade duty, as found by the adjudicating authority. Given the admitted undervaluation (through acceptance of NIDB data) and the deliberate mis-classification, the goods are clearly liable for confiscation under Section 111(m).

5.8 Now I take up the issue whether the penalty imposed under Section 112(a)(ii) of the Customs Act, 1962, is justified. Section 112(a)(ii) of the Customs Act, 1962, imposes a penalty on any person 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. Since it has been established that the goods are liable for confiscation under Section 111(m) due to mis-classification and undervaluation, the imposition of penalty on the Appellant under Section 112(a)(ii) is a direct consequence.


5.9 The adjudicating authority's finding that the Appellant "deliberately mis classified the items... and under-valued the goods to evade applicable duty causing a loss of Government revenue" suggests the presence of mens rea. The Appellant's own statement, where they acknowledged the correct classification and agreed to pay the differential duty, further supports the finding that they were aware of the incorrect declaration. The CESTAT in Imperial Trading LLC [2005 (181) E.L.T. 29 (Tri.-Mumbai)] held that mens rea is not always a necessary ingredient for imposing a penalty under Section 112(a) of the said Act, but even if it were, the circumstances here suggest a deliberate attempt to evade duty. Therefore, the penalty imposed under Section 112(a)(ii) is justified.

5.10 In view of the detailed discussions and findings above, it is evident that the adjudicating authority's findings are well-supported by the facts on record, including the Appellant's own admissions, and are in consonance with the relevant provisions of the Customs Act, 1962, and established legal precedents. The Appellant's grounds of appeal are found to be without merit.

6. In view of the above discussions, I agree with the observations and findings of the adjudicating authority and do not find any justification to interfere with the findings of the adjudicating authority.

7. Accordingly, I uphold the impugned order and reject the appeal filed by the Appellant.



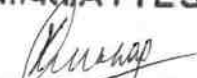

(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-248/CUS/MUN/2023-24 ¹¹²¹

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CUSTOMS (APPEALS), AHMEDABAD

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2. The Principal Commissioner of Customs, Custom House, Mundra.
3. The Additional Commissioner of Customs, Custom House, Mundra
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