
	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT -370421 PHONE : 02838-271426/271428 FAX :02838-271425	
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A	File No.	CUS/APR/SCN/670/2023-GR. 3-O/o Pr. Commr- Cus-Mundra
B	OIO No.	MCH/ADC/AK/6/2024-25
C	Date of Order	09.04.2024
D	Passed by	Arun Kumar, Additional Commissioner, Import Assessment, Custom House, Mundra.
E	SCN No. & Date	CUS/APR/SCN/670/2023-Gr.3
F	Noticee / Party / Importer	M/s Tulsi Woolens, Village-Guria, P.O. Thathra, District-Varanasi, Uttar Pradesh - 221307
G	DIN	20240471MO0000111251

1. The Order – in – Original is granted to concern free of charge.

2. Any person aggrieved by this Order – in – Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. 1 to

The Commissioner of Customs (Appeal), MUNDRA,
Office at 7th floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380009

3. Appeal shall be filed within Sixty days from the date of Communication of this Order.

4. Appeal should be accompanied by a Fee of Rs. 5/- (Rupees Five Only) under Court Fees Act it must accompanied by (i) copy of the Appeal, (ii) this copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five Only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.

6. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respect.

7. An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty or Penalty are in dispute, where penalty alone is in dispute.

q/c

BRIEF FACTS OF THE CASE: -

CB (Customs Broker)- M/s. Sadguru International on behalf of Importer M/s. Tulsi Woolens, 1515001491 having address at Village- Guria, P.O. Thathra, District- Varanasi, Uttar Pradesh- 221307 (hereinafter referred to as 'the importer', filed BE No. 6778652 dated 21.12.2021 (hereinafter referred to as 'the said Bill of Entry') for importation of goods, declared as Raw Wool (Raw Wool 32 Micron & Above) (Not Corded or Combed) Carpet Grade Raw Wool", (hereinafter referred to as 'the said imported goods') falling under CTH 51012900. The goods were stuffed in container no. INKU6654870 and Country of Origin was declared as Turkmenistan.

2. An information was received from NCTC vide e-mail dated 22.12.2021 informing that the goods covered under Container No. INKU6654870 was categorised as risky cargo. In view of the intelligence communicated by NCTC, the goods covered under Bill of Entry No. 6778652 dated 21.12.2021, were examined thoroughly by the Officers of SIIB, Customs House, Mundra under Panchnama dated 24.12.2021. Examination of the Cargo was conducted in presence of independent Panchas and Customs Broker representative i.e. Shri Dinesh Bhai V Patel, H-Card holder, who presented himself as representative of the Importer and Shri Deepak Singh, Executive, Operations of TG Terminals CFS. On inspection of the Container One Time Bottle Seal No. IGMP 1299 was found affixed on the Container. On visual inspection, the commodity appears to be 'Raw Wool'. A surveyor of CFS was also present during the examination, as per his report the quantity of the goods found was 62 Bales.

The details of the bill of entry are as under:

BE No & date	Description of Goods & CTH declared	Qty	Rate (Rs.) Per KG	Declared Value (Rs.)	Declared Duty Payable (Rs.)
6778652 dated 21.12.2021	Raw Wool (Raw Wool 32 Micron & Above) (Not Corded or Combed) Carpet Grade Raw Wool" CTH - 51012900	18,700	Rs. 42.69 (.60 USD) (USD=77.15 INR)	8,75,361.26	24,072

3. In view of the examination of the goods under Panchnama dated 24.12.2021, to seek clarification in the matter, Summons to the Importer dated 29.09.2022 and Shipping Line were issued on 30.05.2023. Further, on the reasonable belief that the importer has mis-declared the goods in terms of country of origin with malafide intention to evade customs duty, therefore, the goods covered under the instant Bill of Entry were seized in terms of Section 110 of the Customs Act, 1962 under Seizure Memo and handed over for safe custody to the Custodian CFS.

3.1 In response to Summons dated 29.09.2022, a statement of Shri Abhinay Baranwal, Authorized Representative of the importer was recorded on 10.10.2022 wherein;

On being asked about the import made vide bill of entry no. 6778652 dated 21.12.2021, Shri Abhinay Baranwal replied that order for importation of consignment was placed through an indentor and that the importer imported goods only from dubai and never from Pakistan.

On being questioned about the movement of container no. INKU6654870 from origin port: PKKHI-KARACHI to NPOD: AEJISA-REBEL ALI, tracked on the website of PICT i.e. pict.com.pk/en/online-tracking it was stated by him that seal number of container is not given in another document of PICT container tracking, seal number of container is 00167 and weight of the container is 22.6 MT's. the shipment differs in seal number and weight.

He stated that PICT container tracking document revealed that the seal number of container and weighment is different on import shipment and container. In other documents, there was no seal number. Therefore, it revealed that the consignment imported is from Dubai and not from Pakistan.

He requested for release of goods as there is a possibility that the goods may be damaged and not in usable condition. Assurance was given by them to be present whenever they would be called and co-operate fully in investigation.

3 . 2 a summons dated 30.05.2023 was issued to the Manager of Shipping Line, M/s. IGM Shipping Pvt. Ltd. and in response of the same, Shri Kaki Praveen Kumar, Operation Manager appeared and tendered his statement under section 108 of the Customs Act, 1962. During the statement he submitted self-attested copies of Bill of Lading from Jabel Ali to Mundra Port and email exchange to Importer, Dubai Customs Export Documents and also submitting copy of Bill of lading No. IGMKHIJEA2021165 dated 03.12.2021 for container No. INKU6654870 from Karachi Port to Jabel Ali Port.

4. On scrutiny of the documents on record and statements of Importer and Operation manager of shipping line following points are observed: -

a. The impugned goods i.e "Raw Wool (Raw Wool 32 Micron & Above) (Not Corded or Combed) Carpet Grade Raw Wool" were declared of Turkmenistan (TK) origin and exported from Jabel Ali Port(UAE) by the supplier M/s Siyab AL Khaleej Trading FZ LLC,UAE.

b. From the Container tracking site available on public domain, it shows that the Container No. INKU6654870 loaded from Karachi, Pakistan Vide BL No. IGM/KHI/JEA/2021165 dated 03.12.2021 having declared description of the goods as "Ready Garments (62 Bales), Total Gross Weight 18.762 Kgs, Net Wt. 18700 Kgs and reached at Jabel Ali port UAE on 07.12.2021.

c. Thereafter, the container No. INKU6654870 (same which was earlier transported from Karachi to UAE) was loaded from Jabel Ali Port and destined to Mundra Port under BL No. JEAMUN11004241 dated 17.12.2021 having declared description as Carpet Grade Wool (62 Bales), Total Gross Weight 18.762 Kgs, Net Wt. 18700 Kgs and reached at Mundra Port.

d. The consignee in the BL No. IGM/KHI/JEA/2021165 dated 03.12.2021 (From Karachi to Jabel Ali) and Shipper/Exporter in BL No. JEAMUN11004241 dated 17.12.2021 (Jabel Ali to Mundra) both are same i.e M/s. Siyab AL Khaleej Trading FZ LLC, add- Business Centre Rakez Ras AL Khaimah, UAE.

e. The COO Certificate no. TMIR72844950 signed by Director, the Chamber of Commerce & Industry at Turkmenistan, certifying that the goods are produced in Turkmenistan issued on 18.12.2021, however the goods were loaded from

Dubai on 16.12.2021. Thus, it appears to be afterthought and dubious.

Analysis of the investigation:

5 . It is evident from the above investigation and evidences/documents available on record that No. of Bales, gross weight and Net Weight and Consignee/ shipper of the BoE remained as such after its loading at Karachi Port till the Container reached at Mundra. It, therefore, appears that the imported goods "Raw Wool (Carpet Grade 32 Micron & Above) (Not Carded or Combed) Carpet Grade Raw Wool" imported in Container INKU6654870, BoE No. 6778652 dated 21.12.2021 are of Pakistan origin and not of Turkmenistan origin as claimed by the importer. Therefore, it appears that importer has mis-declared the Country of Origin of the said import item in the said Bill of Entry.

6. After introduction of self-assessment vide Finance Act, 2011, the onus lies on the importer for making true and correct declaration with respect to all aspects of the Bill of Entry and to pay the correct amount of Duty. In the instant case, it appears that the importer has mis-declared the Country of Origin as Turkmenistan instead of actual Country of Origin i.e. Republic of Pakistan with intent to evade appropriate Customs Duty (relevant Notification No. 05/2019 dated 16.02.2019) during self- assessment at the time of filing of Bills of Entry. As such, the declaration with respect to the Country of Origin by the importer is misleading and this act on the part of importer resulted in short levy of Duties, which led to undue monetary benefit to the importer.

7. The aforesaid facts shows that the importer had resorted to willful mis-declaration of Country of Origin, the relevant Customs Duty Notification number in the Bills of Entry of the said imported goods by suppressing the said material facts, which shows the ulterior motive of the importer to evade payment of applicable Customs Duty in respect of said imported goods cleared for home consumption. Thus, as per Notification No. 05/2019-Customs dated 16.02.2019, In the First Schedule to the Customs Tariff Act, in Section XXI, in Chapter 98, tariff item 9806 00 00 the duty on the goods i.e. Raw Wool Carpet Grade imported from the Islamic State of Pakistan 98060000 is leviable @ 200% BCD + 10% SWS + 18% IGST. The duty calculation on the said imported goods is as under;

Table-A

BE No & date	Description of Goods & CTH declared	Qty	Rate (Rs.) Per KG	Declared Value (Rs.)	Revised Duty Payable (Rs.)
6778652 dated 21.12.2021	Raw Wool (Raw Wool 32 Micron & Above) (Not Corded or Combed) Carpet Grade Raw Wool" CTH - 51012900	18,700	Rs. 42.69 (.60 USD) (USD=77.15 INR)	8,75,361.26	24,30,003/-

* [BCD @200%:17,50,723/- + SWS@10%: 1,75,072/-+ IGST@18%: 5,04,208 = 24,30,003/-]

Since the importer had mis-declared the COO and applicable duties in respect of imported goods; hence, in terms of Section 111(m) of the Customs Act, 1962, the said goods were liable for confiscation.

Relevant Provisions of Law:

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

8.1. Statutory provisions under Custom Act, 1962:

Notification No.05/2019-Customs dated 16.02.2019:

G.S.R.(E). – WHEREAS, the Central Government is satisfied that the import duty leviable on all goods originating in or exported from the Islamic Republic of Pakistan, falling under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), should be increased and that circumstances exist which render it necessary to take immediate action.

NOW, therefore, in exercise of the powers conferred by sub-section (1) of section 8A of the Customs Tariff Act, the Central Government, hereby directs that the First Schedule to the Customs Tariff Act, shall be amended in the following manner, namely: - In the First Schedule to the Customs Tariff Act, in Section XXI, in Chapter 98, after tariff item 9805 90 00 and the entries relating thereto, the following tariff item and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)
9806 00 00	All goods originating in or exported from the Islamic Republic of Pakistan	-	200 %	-

SECTION 17 Assessment of duty — (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

SECTION 46 Entry of goods on importation (4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

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

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

- (a) collusion; or
- (b) any willful 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 not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub- section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

Explanation- For the purposes of this section, “relevant date” means, -

- (a) in a case where duty is not levied or not paid or short-levied or short-paid, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;
- (b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;
- (c) in a case where duty or interest has been erroneously refunded, the date of refund;
- (d) in any other case, the date of payment of duty or interest.

SECTION 28AA Interest on delayed payment of duty— (1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to paid interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

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

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

- (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods

under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54.

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

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

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in and other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five percent of the penalty so determined;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

SECTION 114AA Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.]

Contravention of Provisions:

9. In terms of Section 46(4) of the Customs Act, 1962, the importer, while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry. Further, in terms of Section 46(4A), the importer who presents a bill of entry shall ensure the accuracy and completeness of the information given therein, the authenticity and validity of any document supporting it and compliance with restriction or prohibition, if any, relating to the goods under this act or under any other law for the time

being in force.

9.1. The impugned bill of entry was self-assessed by the importer in terms of Section 17(1) of the Customs Act, 1962. If the goods are of Turkmenistan Origin the goods attracted BCD @2.5%, however, the goods appear to be Pakistan Origin, therefore, the imported goods shall attract BCD@ 200% with applicable SWS @ 10%.

9.2. From the above discussed facts and statutory provisions, it is clear that the imported goods i.e. "Raw Wool Carpet Grade" Classified under CTH 51012900 are originated from Pakistan and is classifiable under CTH 98060000 which attract higher rate of BCD, therefore are appears to be liable for confiscation under Section 111(m) of the Customs Act, 1962. The total duty payable as in Table-A at para 7 amounting to Rs. 24,30,003/- (BCD@200%; SWS@10% & IGST@18%) as per notification no. 05/2019-Customs dated 16.02.2019, is required to be recovered from the importer under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. The importer appears to be liable for penalty under Section 114AA for knowingly and intentionally making incorrect declaration for the COO of the goods to evade payment of duty. The importer M/s. Tulsi woolens appears to be liable for penalty under Section 112(a) of the Customs Act, 1962 for rendering the goods liable to confiscation under Section 111 (m) of the Customs Act, 1962.

10. Therefore, M/s. Tulsi Woolens, having address at Village- Guria, P.O. Thathra, District- Varanasi, Uttar Pradesh- 221307, were issued the SCN F.No. S/43-16/Inv. Tulsi Woolens/SIIB-D/CHM/21-22 dtd. 19.09.2023 requiring them to show cause to the Additional Commissioner of Customs, Customs House, Mundra having his office situated at 1st Floor, Custom House, PUB, Mundra, as to why:

- i. Classification of 18700 kgs. of "Raw Wool (Carpet Grade 32 Micron & Above) (Not Carded or Combed) Carpet Grade Raw Wool" imported vide BE No. 6778652 dated 21.12.2021, BL No. JEAINMUN11004241 dated 17.12.2021 under Chapter Tariff Heading No. 51012900 should not be rejected & the same should not be classified under Chapter Tariff Heading No. 98060000 of the Customs Tariff Act, 1975.
- ii. 18700 kgs. of "Raw Wool (Carpet Grade 32 Micron & Above) (NotCarded or Combed) Carpet Grade Raw Wool" imported vide BE No. 6778652 dated 21.12.2021, BL No. JEAINMUN11004241 dated 17.12.2021 having assessable valued at Rs. 8,75,361/- (Rupees Eight Lakhs Seventy-five Thousand Three Hundred sixty-one) only should not be confiscated under Section 111(m) of the Customs Act, 1962.
- iii. The customs Duty of Rs. 24,30,003/- (Twenty-four lakhs thirty thousand and three only) should not be recovered by the way of re-assessment under the provisions of Customs Act, 1962.
- iv. Penalty should not be imposed upon them under the provisions of Sections 112(a) of the Customs Act, 1962.
- v. Penalty should not be imposed upon them under the provisions of Sections 114AA of the Customs Act, 1962.

11.DEFENCE SUBMISSIONS: -

11.1 - On behalf of Importer, Enact Legal submitted defence reply of

SCN vide their letter dated 03.02.2024 that noticee was unaware of any such information or 'reasonable beliefs' as stated in the impugned SCN. In the statements by the Importer and Operations manager of the shipping line it is clearly stated that the impugned goods i.e. "Raw Wool (Raw Wool 32 Micron & above) (Not corded or combed) Carpet Grade Raw Wool" were declared of Turkmenistan origin and exported from Jabel Ali Port (UAE) by the supplier M/s Siyab Al Khaleej Trading FZ LLC, UAE. The COO certificate bearing No. TMIR73844950 has also been issued by the Director of Chamber of Commerce and Industry of Turkmenistan. Hence the impugned goods should not be classified under chapter tariff heading no. 98060000 of the Customs Tariff Act, 1975.

11.2 - The impugned SCN has invoked Section 111(m) of the Customs Act, 1962 against the Noticee for imposing penalty as per the reasonable belief that the goods were imported from Pakistan. However, in the statement recorded by the partner Mr. Abhinay Baranwal dated 10.10.2022 under Section 108 of the Customs Act, 1962 he has clearly stated about the movement of container no. INKU6654870. He stated that the seal number of the container is not given and in another document of PICT container tracking, the seal number of container is 00167 and weight of the container is 22.6 MT's and shipment have different seal number and weight. In such circumstances, there is no substantive basis to invoke Section 111(m) against the Noticee and thus, the same is liable to be dropped.

11.3 - As per noticee submission Impugned goods were imported from Turkmenistan and not Pakistan hence they attract BCD @2.5% under CTH 51012900. Thus the duty amount of Rs. 24,30,003/- should not be recovered by reassessment under the provisions of the Customs Act, 1962.

11.4 - The Impugned SCN has invoked Section 112(a) of the Customs Act, 1962 against the Noticee for imposing penalty on him for improper importation of goods. In reply of this noticee submitted that the noticee is not liable for confiscation of the goods hence the question of imposition of penalty under Section 112 of the Act does not arise and penalty deserve to be set aside.

11.5 - The Impugned SCN has also proposed imposition of penalty under Section 114AA for knowingly or intentionally makes a sign or used or causes to be made signed or used any false or incorrect declaration statement or document. In reply of this noticee submitted that importer has furnished the department with all the requisite documents such as bill of Entry and Invoice. Further the importer was unaware and had no intention to import goods from Pakistan and the goods were imported through an indenter under a signed contract hence there is no role of the importer to import goods from Pakistan. In such circumstances, invocation of Section 114AA has no ground and thus, liable to fail.

In the above circumstances, noticee requested that the Show Cause Notice to be discharged and dropped and the personal penalties proposed under section 112 and 114AA of the Act to be dropped against the noticees.

PERSONAL HEARING: -

12. The importer was granted opportunities of personal hearing as per principle of natural justice on 13.12.2023, 04.01.2024 and 05.02.2024, but no

one appeared for Scheduled PH. However, the importer submitted defence reply as mentioned above and prayed that the proceedings initiated in the SCN be dropped.

DISCUSSION & FINDINGS: -

I have carefully gone through the case records, SCN, applicable provisions of law and defence reply of Importer submitted before me. The importer was granted three opportunities of personal hearing as per principle of natural justice, but no one appeared for Scheduled PH. therefore I find that the principle of natural justice as provided in section 122A of the Custom Act 1962 have been followed. Hence, I proceed to decide the case on the basis of the documentary evidence available on records.

13. I find that following issues need to be decided-

(i) Whether classification of 18700 kgs. of Raw Wool Imported vide BE No 6778652 dated 21.12.2021 under chapter tariff heading No. 51012900 should be rejected and the same should be classified under chapter Tariff Heading No. 98060000 of the Customs Tariff Act, 1975 or otherwise.

(ii) Whether the Customs Duty of Rs. 24,30,003/- (Twenty-four Lakhs Thirty Thousand and Three Only) should be recovered by the way of re-assessment under the provisions of Customs Act, 1962 or otherwise.

(iii) Whether 18700 kgs Raw Wool Imported vide BE No 6778652 dated 21.12.2021 having assessable valued at Rs. 8,75,361/- only should be confiscated under Section 111(m) of the Customs Act, 1962 or otherwise.

(iv) Penalty should be imposed upon them under the provisions of Section 112(a)(ii) of the Customs Act, 1962 or otherwise.

(v) Whether penalty should be imposed upon them under the provisions of Section 114AA of The Customs Act, 1962 or otherwise.

14. I find that as per information received from NCTC vide e-mail dated 21.12.2021, Officers of the SIIB, CH Mundra intercepted the container No. INKU6654870 covered by the said bill of entry at TG Terminal CFS, Mundra for examination. The goods were examined under Panchnama dtd. 24.12.2021. During the examination, it was observed that the imported goods are 'Raw Wool' as per appearance. Country of Origin Declared i.e. Turkmenistan was found to be mis-declared and the goods appeared to be of Pakistan Origin, therefore, the goods covered under the instant Bill of Entry were seized in terms of Section 110 of the Customs Act, 1962 under Seizure Memo F.No.S/43-16/Inv.TulsiWoolens/SIIB-D/CHM/21-22 dated 08.07.2023 and handed over for safe custody to the Custodian CFS.

14.1 Further, a summons dated 30.05.2023 was issued to the Manager of Shipping Line, M/s. IGM Shipping Pvt. Ltd. and in response of the same, Shri Kaki Praveen Kumar, Operation Manager appeared and tendered his statement under section 108 of the Customs Act, 1962. During the statement he submitted self-attested copies of Bill of Lading from Jabel Ali to Mundra Port and email exchange to Importer, Dubai Customs Export

Documents and also submitted copy of Bill of lading No. IGMKHIJEA2021165 dated 03.12.2021 for container No. INKU6654870 from Karachi Port to Jabel Ali Port.

14.2 Further, the tracking of container on PICT website (Pakistan International Container Terminal Limited), clearly shows that the same container i.e. NKU6654870 loaded from Karachi, Pakistan Vide BL No. IGM/KHI/JEA/2021165 dated 03.12.2021 having declared description of the goods as "Ready Garments (62 Bales), Total Gross Weight 18.762 Kgs, Net Wt. 18700 Kgs and reached at Jabel Ali port UAE on 07.12.2021

14.3 The container No. INKU6654870 (same which was earlier transported from Karachi to UAE) was loaded from Jabel Ali Port and destined to Mundra Port under BL No. JEAMUN11004241 dated 17.12.2021 having declared description as Carpet Grade Wool (62 Bales), Total Gross Weight 18.762 Kgs, Net Wt. 18700 Kgs and reached at Mundra Port.

Hence, I find that the container no INKU6654870 had originated from Pakistan as the container no and seal no which had been mentioned on the containers on PICT were same as the seal numbers mentioned on ICES.

14.4 The COO Certificate no. TMIR72844950 signed by Director, the Chamber of Commerce & Industry at Turkmenistan, certifying that the goods are produced in Turkmenistan issued on 18.12.2021, however the goods were loaded from Dubai on 16.12.2021. Thus, it appears to be afterthought and dubious.

In view of the above discussed facts, I find that that the goods i.e. 'Raw Wool Carpet Grade Wool Micron 32 and Above (Not Carded and Combed)' covered under the Bill of entry number 6778652 dated 21.12.2021 with declared COO as Turkmenistan have been originated from Pakistan and initially shipped from Karachi Port, Pakistan to Jebel Ali Port, UAE. Thereafter, the same goods with same Container & Seal no have been shipped by the supplier to Consignee M/s. Tulsi wollens, Varanasi, Uttar Pradesh. I find that the importer had mis-declared the COO in order to evade customs duty in respect of imported goods; hence, the declared goods imported vide Bill of entry number 6778652 dated 21.12.2021 are liable for confiscation under Section 111(m) of the Customs Act, 1962.

15. I find that the noticee was granted personal hearings on 13.12.2023, 04.01.2024 and 05.02.2024 in the matter but no one appeared from their side; however, they have submitted defence reply dated 03.02.2024 through M/s. Enact Legal vide letter dated 03.02.2024. They have stated that the noticee was unaware of any such information or 'reasonable beliefs' as stated in the impugned SCN. Further, he stated that the seal number of the container is not given and in another document of PICT container tracking, the seal number of container is 00167 and weight of the container is 22.6 MT's and shipment have different seal number and weight. Further importer submitted that he has furnished the department with all the requisite documents such as bill of Entry and Invoice. Further the importer was unaware and had no intention to import goods from Pakistan and the goods were imported through an indenter under a signed contract; hence, there is no role of the importer to import goods from Pakistan.

16. Considering the findings of SIIB and defence reply submitted by the noticee, I find that the tracking of container on PICT website (Pakistan International Container Terminal Limited), clearly shows that the container i.e. NKU6654870 (same which was earlier transported from Karachi to UAE) was loaded from Jabel Ali Port and destined to Mundra Port under BL No. JEAMUN11004241 dated 17.12.2021 having declared description as Carpet Grade Wool(62 Bales), Total Gross Weight 18.762 Kgs , Net Wt. 18700 Kgs and reached at Mundra Port.

17. The container no. and seal no. which had been mentioned on the containers on PICT were same as the seal numbers mentioned on ICES. Further the COO Certificate no. TMIR72844950 signed by Director, the Chamber of Commerce & Industry at Turkmenistan was issued on 18.12.2021, however the goods were loaded from Dubai on 16.12.2021. Thus, it appears to be afterthought and dubious.

In view of the above, I find that the goods are of Pakistan Origin which merits classification under CTH 98060000. Thus, the importer has mis-declared goods while importing in contravention to section 46 of the Customs Act, 1962.

18. I find that with the introduction of self-assessment and consequent upon amendments to Section 17, since 8th April, 2011, it is the responsibility of the importer to declare the correct description, value, notification etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. The importer failed to discharge the legal and statutory obligation in correct determination of description & classification of imported goods and duty payable. I find that the Noticee have self-assessed the above Bill of Entry in terms of Section 17 of the Customs Act, 1962 and therefore contravened the provisions of Section 46 (4) of the Customs Act, 1962 in as much as they had intentionally mis-declared the goods as of Turkmenistan (instead of Pakistan) in order to evade higher Customs Duty.

As discussed in above paras, if the goods are of Turkmenistan Origin the goods attracted BCD @2.5%, however, the goods are to be of Pakistan Origin, therefore, the imported goods shall attract BCD@ 200% with applicable SWS @ 10% therefore the imported goods merit classification under CTH CTH 98060000 instead of CTH 51012900 as declared by the Importer. Vide Notification 5/2019-Customs dated 16.02.2019, in the First Schedule to the Customs Tariff Act, in Section XXI, in Chapter 98, tariff item 9806 00 00 has been inserted for All goods originating in or exported from the Islamic Republic of Pakistan, which attracts 200% BCD. Accordingly, the imported goods i.e. Raw Wool Carpet Grade classifiable under CTH 98060000 and attracts duties as BCD @ 200% & SWS @ 10%. The duty calculation on the said imported goods is as under;

BE No & date	Description of Goods	Qty (kgs)	Rate (Rs.) Per KG	Declared Value (in Rs.)	Declared Duty Payable (in Rs.)	Revised Duty payable * (in Rs.)
6778652 dated 21.12.2021	Raw Wool Carpet Grade Wool Micron 32	18700	Rs. 42.69 (.60 USD) (USD=77.15)	8,75,361	24072/-	24,30,003/-

	and Above (Not Carded and Combed)'		INR)			
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* [BCD @200%:17,50,723/- + SWS@10%: 1,75,072/-+ IGST@18%:
5,04,208 = 24,30,003/-]

I, therefore, hold that the importer M/s. Tulsi Woolens, having address at Village-Guria, P.O.-Thathra, District- Varanasi, Uttar Pradesh- 221307 is required to pay the Customs duty of Rs. 24,30,003/-. I hold that the importer is also liable to pay interest at appropriate rate on the said amount of Rs. 24,30,003/- under the provisions of Section 28AA of the Customs Act, 1962.

20. I find that the importer has mis-declared goods in terms of classification while importing in contravention to section 46 of the Customs Act, 1962. Therefore, the subject goods covered under Bill of Entry No. 6778652 dated 21.12.2021 valued at Rs. 8,75,361/- are liable for confiscation under section 111(m) of the Customs Act, 1962. Consequently, the importer i.e. M/s. Tulsi Woolens is also liable for penal action under Section 112(a)(ii) of the Customs Act, 1962.

21. I find that, the importer is liable for penalty under Section 114AA for knowingly and intentionally making incorrect declaration for the COO of the goods to evade payment of duty.

22. As discussed above, since the subject goods "Raw Wool Carpet Grade" have been found to be originated from Pakistan and liable for confiscation, further, the goods are physically available for confiscation I, therefore, find it appropriate to allow for clearance of the subject goods subject to payment of appropriate redemption fine under section 125 of the Customs Act, 1962.

22. In view of foregoing discussion and findings, I pass the following order.

ORDER

(i) I order to reject the classification of 18700 kgs. of Raw Wool Imported vide BE No 6778652 dated 21.12.2021 under chapter tariff heading No. 51012900 and order to reclassify under chapter Tariff Heading No. 98060000 of the Customs Tariff Act, 1975.

(ii) I order for confiscation of the goods imported vide bill of 6778652 dated 21.12.2021 having assessable value of Rs. 8,75,361/- (Rupees Eight Lakhs Seventy-Five Thousand Three Hundred Sixty-One only) under Section 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of Rs. 1,20,000/- (Rs. One Lakh Twenty Thousand Only) under Section 125 of the Customs Act, 1962.

(iii) I order to recover customs duty of Rs. 24,30,003/- (Twenty-four Lakhs Thirty Thousand and Three Only) by way of re-assessment under the provisions of Customs Act, 1962.

(iv) I impose a penalty of Rs. 2,10,000/- (Rs. two Lakh Ten Thousand Only) on the importer M/s. Tulsi woolens under Section 112(a)(ii) of the Customs Act,

1962.

(v) I also impose a penalty of Rs. 1,05,000/- (Rs. one Lakh five Thousand only) on the importer M/s. Tulsi woolens under Section 114AA of the Customs Act, 1962.

23. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

24. The Show Cause notice dt. 19.09.2023 is disposed off as above.

Signed by **(Arun Kumar)**
Arun Kumar Additional Commissioner (Import),
Custom House, Mundra.
To Date: 09-04-2024 19:45:56

1. M/s. Tulsi Woolens (IEC-1304015670),
Village-Guria, P.O.-Thathra,
District- Varanasi, Uttar Pradesh- 221307

Copy to;

- i. The Assistant Commissioner (SIIB/TRC/RRA) Customs House, Mundra
- ii. The Assistant Commissioner (EDI), Customs House, Mundra
- iii. Guard file/Office Copy.