



कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा,
सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421
**OFFICE OF THE PRINCIPAL COMMISSIONER OF
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| | | |
|--------------------------|---|--|
| Name of Importer | : | M/s Krishna Plastics |
| Address of Importer | : | First Floor, Shop No.-8/1, Khasra No. Swaran Park, Mundka, Delhi-110041 |
| IEC No. | : | AROPK1956C |
| Name of CB | : | M/s Anax Air Services Pvt. Ltd. |
| Supplier details | : | M/s. Wenzhou Wilk International Trading Co. Ltd. |
| Bill of Entry No. & Date | : | <p>Bill of Entry No.</p> <p>1. 7137515 dated 31.07.2023</p> <p>2. 7336536 dated 12.08.2023</p> |
| DIN No. | : | 20241271MO0000222D79 |

**SHOW CAUSE NOTICE ISSUED UNDER SECTION 124 OF THE
CUSTOMS ACT, 1962**

M/s. Krishna Plastics, First Floor, Shop No.-8/1, Khasra No. Swaran Park, Mundka, Delhi-110041 (IEC Code: AROPK1956C) has filed the 02 Bills of Entry as mentioned below in the Table -A, through their CHA M/s. Anax Air Services Pvt. Ltd. wherein the goods were declared as "Both side PVC Coated Fabric in roll with mix size colour, GSM in lot" and classified the same under CTH 39219099.

| Bill of Entry No. | Bill of Lading No. | Name of Importer | Name of Shipper | CTH | Description | Container No. |
|--------------------------|--------------------|-----------------------|--|---------|--|---------------|
| 7137515 dated 31.07.2023 | GOSUNGB1172748 | M/s. Krishna Plastics | M/s. Wenzhou Wilk International Trading Co. Ltd. | 3921909 | Both side PVC Coated Fabric in roll with mix size colour, GSM in lot | PRSU8853647 |
| 7336536 dated 12.08.2023 | GOSUNGB20165085 | | | | | ZCSU6654009 |

2. On the basis of Intelligence gathered by the officers of CIU, Mundra, both Bills of Entry were put on hold on 03.01.2024 for detailed examination. Examination of the goods covered under above mentioned Bills of Entries stuffed in 20 feet Containers bearing No. PRSU8853647 & ZCSU6654009 were done by the officers of the CIU in presence of two independent panchas, Representative of CFS and Representative of CHA under Panchnama dated 05.01.2024 (**RUD-1**) drawn at M/s. Seabird Marine Services (Gujarat) Pvt. Ltd., CFS, AP & SEZ, Mundra (Kutch).

3. Thereafter, the officers examined the goods covered under both Bills

of Entry and it was noticed that the goods might be mis-declared in terms of description/classification. Actual description/classification of the goods could not be identified by the officers or any of the persons present. However, during the examination by CIU, Quantity of the goods was found matched to the quantity as declared by the importer. Thereafter, to ascertain correct description/classification of the goods, the samples of the consignments were sent to CRCL Kandla for testing purpose vide Test Memo No. 16 to 20 all dated 09.01.2024 and in this regard, the test report received from the CRCL, Kandla is as under **(RUD-2)** :-

TABLE-B

| Sr. No. | Test Memo No. and Date | Test Report dated | Bill of Entry | Description declared | Result of Test Report | | | |
|---------|--|-------------------|--------------------------|---|-----------------------|---|--|---|
| | | | | | GSM | % and Coating | Type of Fabric | Remarks |
| 1 | 16/09.01.2024 (Wrinkle Free TPU) | 31.01.2024 | 7137515 dated 31.07.2023 | Both side PVC Coated Fabric in roll with mix size colour, GSM in lot (CTH-39219099) | 211.2 | One side coated with PVC and PVC film | Woven fabric composed of Cotton | The sample as received is in the form of cut piece of dyed (Pale Greenish) fabric having golden colour coated/covered surface on one side. The base woven fabric is composed of cotton coated/covered material composed of compound PVC and Laminated with golden coloured lacquered PVC film and again laminated with Transparent PVC film. |
| 2 | 17/09.01.2024 (Jazz Napa 0.6) | 23.01.2024 | | | 310.7 | One side coated with Poly-Urethane | Polyester filament Yarn | The sample in the form of a cut piece of yellowest fabric coated/covered on one side. Base knitted fabric is made of Polyester filament Yarn & coating/covered material composed of Poly-Urethane . |
| 3 | 18/09.01.2024(TPU-0.7) | 31.01.2024 | 7336536 dated 12.08.2023 | Both side PVC Coated Fabric in roll with mix size colour, GSM in lot (CTH-39219099) | 380.1 | One side coated with Polyvinyl Chloride (PVC) | Knitted fabric composed of Polyester filament Yarn | The sample in the form of cut-piece of dyed (grey) fabric having shiny coated/covered surface on one side. The base weft knitted fabric having raised fibres on one side is composed of Polyester filament yarn and coated/covered material is composed of compounded PVC which is further laminated with lacquered PVC film which is again laminated with polyester film. |
| 4 | 19/09.01.2024(Wrinkle Free Patent 0.6) | 30.01.2024 | | | 416.5 | One side coated with Poly-Urethane | Knitted fabric composed of non-textured Polyester | The sample in the form of cut-piece of pink colored fabric having raised fibre on one side and coated/covered on other side. The base knitted fabric is composed of Non-textured Polyester filament yarn of Coated/Covered material is |

| | | | | | | |
|---|---|----------------|--|-------|---|--|
| | | | | | Filament Yarn | composed of Polyurethane . |
| 5 | 20/ 09.01.2024(P VC Sheep Lining) | 30.01.2 024 | | 373.9 | One side coated with Polyvinyl Chloride (PVC) fabric composed of polyester multi filament yarns | The sample in the form of cut-piece of black coloured fabric having raised fibre on one side and coated/covered on other side (black coloured). The weft knitted fabric is composed of polyester multi filament yarns and coated/covered material is composed of Polyvinyl Chloride (PVC). |

4. As per the report received from the CRCL, Kandla, the imported goods covered under both Bills of Entry No. 7137515 dated 31.07.2023 and 7336536 dated 12.08.2023 are found mis-declared in terms of description of the goods and classification. There are some differences in duty liability on coated/ laminated/ impregnated fabric or covered fabric. Therefore, CIU vide letter dated 07.06.2024 (**RUD-3**) requested to CRCL, Kandla to confirm whether the samples of the fabric covered under Test Memo No. 17 & 19 dated 19.01.2024 are coated/ laminated/ impregnated or covered with Polyurethane. In this regard, clarification has been received from CRCL, Kandla vide their letter dated 12.06.2024 (**RUD-4**), wherein they have submitted that in light of analytical findings, the sample under reference can be considered as "**base Polyester knitted fabric laminated with polyurethane**".

5. As per test result dated 23.01.2024 and 30.01.2024, CRCL Kandla has held that the goods were coated/covered with material of Poly-Urethane. Whereas the CRCL Kandla again clarified that the subject goods as base Polyester Knitted fabric laminated with Polyurethane. As both reports are contradictory with respect to their finding and as per **notification no. 14/2022-cus (ADD) dated 20.05.2022**, anti-dumping duty is applicable for import of textiles coated with PU. Therefore, after getting approval of the competent authority, the second set of samples which was found with PU coated textile were forwarded to the CRCL, Delhi for re-testing (**RUD-5**) and to confirm "whether the sample of the fabric is coated with Polyurethane or otherwise".

6. In this regard, a test report F. No. 25-CUS/C-50/2024-25 dated 21.08.2024 received from the CRCL, Delhi (**RUD-6**) wherein they have submitted that: -

CLR- 111 dated 19.07.2024, TM No.17 dated 09.01.2024

6.1 The sample is in the form of cut piece of dyed (Yellowish brown colored) knitted fabric, having raised fibre surface (Nappy finish) on one side and peach coloured polymeric coating on other side. The base knitted fabric is made of multifilament yarns of polyester and polymeric coating is composed of polyurethane based polymeric material and inorganic fillers. Coating can be seen with naked eye. Percentage composition of sample is given below: -

Polyester fabric (% by mass): 47.78

Polymeric coating (Polyurethane based) and inorganic fillers: balance

G.S.M. (as such) : 308.35 g/m

Thickness as such: .66 mm

CLR- 112 dated 19.07.2024 TM No.19 dated 09.01.2024,

6.2 The sample is in the form of cut piece of dyed (Pink coloured) knitted fabric, having raised fibres surface (Nappy finish) on one side and maroon coloured polymeric coating on other side. The base Knitted fabric is made of filament yarns of polyester and polymeric coating is composed of polyurethane based polymeric material and inorganic fillers. Coating can be seen with naked eye. Percentage composition of sample is given below:-

Polyester fabric (% by mass): 35.68

Polymeric coating (Polyurethane based) and inorganic fillers = balance

G.S.M. (as such) :424.62 g/m²

Thickness as such: 0.63 mm

6.3 As per the test report received from the CRCL, Delhi, the goods for which Test Memo No.17 & Test Memo No.19 both dated 09.01.2024 was generated were found as base knitted fabric is made of multifilament yarns of polyester and polymeric coating is composed of polyurethane based polymeric material and inorganic fillers. Therefore, it appears that the imported goods covered under both Bills of Entry No. 7137515 dated 31.07.2023 and 7336536 dated 12.08.2023 are one side Coated Fabric, out of which, some rolls are PVC coated Fabric, which are classifiable under CTH 59031090 and others are PU coated Fabric, which are classifiable under CTH 59032090.

The CTH 5903 reads as under:-

5903 Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 59.02

590310 - With polyvinyl chloride:

59031010 ---Imitation leather fabrics of Cotton

59031090 --- Other

590320 - With Polyurethane:

59032010 ---Imitation leather fabrics of Cotton

59032090---Other

(ADD: See Ntn.14/2022-Cus(ADD) dated 20.05.2022)

590390 - Other:

59039010 ---Of Cotton

59039020 ---Polyethylene Laminated Jute Fabrics

59039090 --- Other

6.4 In view of above, the impugned goods imported vide above mentioned 02 B's/E are found mis-declared in terms of description of the goods and classification.

7. Further, to ascertain the value of the goods covered under both BE as per actual description of the goods, CIU appointed Empanelled Chartered Engineer Shri Varun Chandok of M/s. Varun Chandok & Associates for valuation of the goods. In this regard, the Chartered Engineer has submitted inspection cum valuation report dated 28.05.2024 (**RUD-7**) which is as under: -

7.1 The Consignment produced was stuffed in containers. Consignment was visually examined and found complete rolls in prime packing mentioning details as "Item Name: Jazz Napa 0.6, PVC Sheep Lining, Wrinkle Free TPU, Wrinkle Free Patent 0.6 and TPU-0.7. Colour: Gold, Pista, Copper, and Black, Qty. 50M, 40M and

7.2 On visual examination, there are found PU Coated Fabric, PVC Coated Fabric in different colours.

7.3 Verbal market survey was conducted for suggestive local wholesale market value of these goods with samples shown to trade. Trade was of the view that proper GSM of fabric is required. However, we tried our best efforts to obtain quotations from Trades/Manufactures but they were reluctant to give process in writing. However, after having fair discussions, it was opined that PVC coated fabric has estimated suggested CIF value of Rs. 45/- to Rs. 50/- per Kg. and that of PU coated fabric has estimated suggestive market value of Rs. 150/- to Rs. 170/- per Kg."

7.4 As per the report submitted by the Chartered Engineer, total value of the imported goods covered under both Bills of Entry has arrived at Rs. 47,90,640/- (Rs. Forty-Seven Lacs Ninety Thousand Six Hundred Forty). The detailed calculation sheet is as under :-

Table- C

| Bill of Entry No. | Description | Length in meter | GSM | Wt. | Sq M | Unit Price Per Kg. as per CE | Total assessable Value in Rs. | BCD @ 20 % | SWS@ 2% | ADD @ 0.46\$ per meter | IGST @ 12% | Total Duty Payable |
|--------------------------|-------------------------|-----------------|--------|-------|--------|------------------------------|-------------------------------|------------|---------|------------------------|------------|--------------------|
| 7137515 dated 31.07.2024 | Wrinkle Free TPU | 37883 | 211 | 27870 | 131960 | 50 | 1393500 | 27870 | 27870 | 0 | 204008 | 510578 |
| 7336536 dated 12.08.2023 | Jazz Napa 0.6 | 19808 | 308.35 | 8545 | 27712 | 170 | 1452650 | 29053 | 29053 | 761736 | 304076 | 1385396 |
| | Wrinkle Free Patent 0.6 | 13807 | 424.62 | 8202 | 19316 | 170 | 1394340 | 278868 | 27887 | 530962 | 267847 | 1105564 |
| | PVC Sheep Lining | 10016 | 373.9 | 5239 | 14012 | 50 | 261950 | 52390 | 5239 | 0 | 38349 | 95978 |

| | | | | | | | | | | | |
|--------------|-------|--------------|------|-----------|----|---------------------|--------------------|--------------|---------------------|--------------------|---------------------|
| TPU 0.7 | 10838 | 380.1 1 | 5764 | 1516 4 | 50 | 288200 | 57640 | 5764 | 0 | 42192 | 105596 |
| Total | | 55620 | | | | 479064 0 | 9581 28 | 95813 | 12926 98 | 85647 4 | 320311 3 |

Note :- in respect of B/E No. 7336536 dated 12.08.2023 Length of the goods has been ascertained during panchanama dated 05.01.2024, and GSM has been reported by CRCL Kandla and Delhi. On the basis of the same, item wise weight has been ascertained for calculation of assessable value and duty.

8. Accordingly, total assessable value of the imported goods covered under 02 impugned B's/E has arrived at **Rs. 47,90,640/- (Rs. Forty Seven Lacs Ninety Thousand Six Hundred Forty)** however, the importer has declared the total assessable value of the goods covered under both BE is Rs. 13,86,919/- which is lower than actual value of the goods.

9. In view of the above, it appears that importer M/s. Krishna Plastics, First Floor, Shop No.-8/1, Khasra No. Swaran Park, Mundka, Delhi-110041(IEC Code: AROPK1956C) has imported the goods covered under 02 impugned Bills of Entry No. 7137515 dated 31.07.2023 and 7336536 dated 12.08.2023 by way of mis-declaration of description, mis-classification and undervaluation. Therefore, goods are liable for confiscation under Section 111 (l) & Section 111 (m) of the Customs Act, 1962 and accordingly, the same were seized vide seizure memo dated 11.06.2024 (**RUD-8**) by the CIU officers and the incident report was sent on 14.06.2024 (**RUD-9**) to the Board.

10. Further, summons dated 20.06.2024 (**RUD-10**) was issued to the importer by CIU but importer did not comply the summons issued to him. Accordingly, fresh summons dated 02.07.2024, 25.09.2024 and 14.10.2024 were issued by SIIB section (**RUD-11**), but importer did not turn up for tendering statement. Further, CIU issued summons dated 20.06.2024 (**RUD-12**) to the CHA M/s. Anax Air Services Pvt Ltd., Delhi. In compliance of the summons issued by this office, Shri G Sathyaranarayanan, F-Card Holder of the CHA Company appeared before the IO of CIU and a statement under section 108 of the Customs Act, 1962 was recorded on 01.07.2024 (**RUD-13**) wherein he interalia stated that -

He doesn't know personally the owner of the importer firm M/s. Krishna Plastics, Delhi (IEC: -AROPK1956C) and he never meet them, they have appointed Shri Dasari Narayan Murti to look after all works related to their company at Mundra Port on monthly salary basis. As Mr. Dasari Narayan Murti is also the G-card holder of their company M/s Anax Air Services Private Limited, New Delhi, so they have made a contract with them to make marketing on behalf of our company and take work order from new customers and decided to file import and export documents with CHA license of their company and equally divide the profit earned from work order receive by them.

He stated that they associate with M/s. Krishna Plastics, Delhi (IEC: -AROPK1956C) through Shri Dasari Narayan Murti and they have filed Bills of Entry only on the basis of documents received from the importer through email and as per discussion made with Mr. Dasari Narayanmurti, they have to receive only Agency charges of Rs.7500/- Per container for filling Bill of Entry and get clearance for the consignment.

11. Since, during statement recorded on 01.07.2024, Shri G Sathyaranarayanan, F-Card Holder of the CHA Company M/s Anax Air Services Private Limited has interalia stated that Shri Dasari Narayan

Murti is overall looking after work related to Mundra and they have made a contract with Shri Murti to make marketing on behalf of our company and take work order from new customers and decided to file import and export documents with CHA license of their company. Summons dated 25.09.2024 and 14.10.2024 (**RUD-14**) were issued to Shri Dasari Narayan Murti however he did not turn up for tendering his statement.

12. In view of the above, it appears that the importer has mis-declared the description of the goods and mis-classified the goods under CTH 39219099 instead of correct CTH 59031090 & 59032090 with an intention to evade payment of the applicable higher BCD as well as ADD applicable on goods falling under CTH 59032090 as per Notification No. 14/2022-Customs (ADD) dated 20.05.2022. Further, importer has not presented himself before the CIU/SIIB for tendering his/her statement for further investigation purpose even after issuing summons dated 20.06.2024, 02.07.2024, 25.09.2024 and 14.10.2024.

13. Further, the value declared by the importer in the corresponding Bills of Entry and invoices did not appear to be the true transaction value under the provisions of Section 14 of the Customs Act, 1962 read with the provisions of the Customs Valuation (determination of Value of Imported Goods) Rules, 2007 and thus the same appear liable to be rejected in terms of Rule 12 of CVR, 2007. The value is required to be re-determined by sequentially proceeding in terms of Rules 4 to 9 of CVR, 2007. The relevant Rules of CVR, 2007 are reproduced hereunder: -

14. Rejection of transaction value of the imported goods and determination of the value of the import goods

Since during examination, goods are found mis declared and the concerned person had not cooperated with the investigation, the actual transaction value of the goods could not be found out for both the import consignments. Therefore, the value declared by the importer in the Bills of Entry did not appear to be the true transaction value under the provisions of Section 14 of the Customs Act, 1962 read with the provisions of the Customs Valuation (determination of Value of Imported Goods) Rules, 2007 and thus the same appear liable to be rejected in terms of Rule 12 of CVR, 2007, the value is required to be re-determined by sequentially proceeding in terms of Rules 4 to 9 of CVR, 2007. Since identical/ similar data is not available for goods imported vide two Bill of Entry i.e. 7137515 dated 31.07.2024 and 7336536 dated 12.08.2023, therefore their value appears to be determinable under Rule 9 (Residual method) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with sub-section (1) of Section 14 of Customs Act, 1962 and on the basis of objective and quantifiable data available in India. The relevant Rules of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 are reproduced here under :-

9. Determination of the method of valuation-

(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that -

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -

(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

i. do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

4. Transaction value of identical goods. -

(1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

Rule 5 (Transaction value of similar goods).-

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

Further, as per Rule 6 of the CVR, 2007, if the value cannot be determined under Rule 3, 4 & 5, then the value shall be determined under Rule 7 of CVR, 2007.

Rule 7 of the CVR, 2007, stipulates that:-

(1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions :-

(i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of

imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within India;

(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

Rule 8 of the CVR, 2007, stipulates that:-

Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-

(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;

(c) the cost or value of all other expenses under sub-rule (2) of rule 10.

Rule 9 of the CVR, 2007, stipulates that:-

(1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India;

Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

(2) No value shall be determined under the provisions of" this rule on the basis of

—

(i) the selling price in India of the goods produced in India;

(ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;

(iii) the price of the goods on the domestic market of the country of exportation; (iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;

- (v) the price of the goods for the export to a country other than India;
- (vi) minimum customs values; or
- (vii) arbitrary or fictitious values.

15. As mentioned above, the declared assessable value of the goods Rs. 576710/- of Bill of Entry No. 7137515 dated 31.07.2023 and Rs. 8,10,209/- of Bill of Entry No. 7336536 dated 12.08.2023 cannot be considered as assessable value of the goods and hence the same is liable to be rejected under Rule 12 of Customs Valuation Rules 2007 as there has been observed misdeclaration of goods in terms of value and description. In absence of credible data of import of similar goods and other constraints the value of these goods cannot be determined in terms of Rule 4,5,6,7,8 of Customs Valuation Rules 2007. Hence the value is to be determined in terms of Rule 9 of said rules.

16. Therefore, the value provided by the Chartered Engineer may be considered as the assessable value of these goods. Therefore, the invoice value of the goods is required to be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and re-determined under Section 9 of the Customs Act, 1962.

17. Confiscation and mis-classification

17.1. Bill of Entry No. 7137515 dated 31.07.2023: -

During examination of Import consignment covered under Bills of Entry No. 7137515 dated 31.07.2023, it was noticed that goods were declared as "Both Side PVC coated fabric in roll with mix size colour, GSM in lot" and classified under HSN code 39219099 wherein applicable duty is @ 30.980% (10% BCD+1% SWS +18% IGST), however as per test report dated 31.01.2024, goods were found as one side PVC coated and it appears that goods are rightly classifiable under HSN code 59031090 wherein applicable duty is @36.640% (20% BCD+2% SWS+12% IGST). Further the declared assessable value of the goods is of Rs. 5,76,710/- and as per the Report dated 28.05.2024 provided by Chartered Engineer, the total assessable value of the goods pertaining to the B/E No. 7137515 dated 31.07.2023 comes to Rs. 13,93,500/- only. Accordingly, it appears that the goods have been mis-declared with respect to description, classification and value and thereby rendered the impugned goods imported vide B/E No. 7137515 dated 31.07.2023 liable for confiscation under Section 111(m) of the Customs Act, 1962.

17.2. Bill of Entry No. 7336536 dated 12.08.2023 :-

During examination of Import consignment covered under Bills of Entry No. 7336536 dated 12.08.2023, it was noticed that goods were declared as "Both Side PVC coated fabric in roll with mix size colour, GSM in lot" and classified under HSN code 39219099 wherein applicable duty is @ 30.980% (10% BCD+1% SWS +18% IGST), however as per test report dated 23.01.2024, 30.01.2024 and 31.01.2024, goods were found as one side PVC coated fabric and one side PU coated fabric and it appears that goods are rightly classifiable under HSN code 59031090 wherein

applicable duty is @36.640% Per Square Metre (20% BCD+2% SWS+12% IGST) and 59032090 wherein applicable duty is @36.640% Per Square Metre (20% BCD+2% SWS+12% IGST) along with Anti-Dumping Duty of 0.46 USD/ Metre imposed vide Notification No. 14/2022-Cus (ADD) dated 20.05.2022. Further the declared assessable value of the goods is of Rs. 8,10,209/- and as per the Report dated 28.05.2024 provided by Chartered Engineer, the total assessable value of the goods pertaining to the B/E No. 7336536 dated 12.08.2023 comes to Rs. 33,97,140/- (Rs. Thirty-Three Lacs Ninety-Seven Thousand One Hundred Forty only).

17.3 The goods are correctly classifiable under CTH 59031090 and CTH 59032090 under which applicable Basic Custom duty is 20%. Further, under CTH 59032090, ADD @ 0.46USD/Metre is also applicable.

Therefore, the total Duty for the goods imported by M/s Krishna Plastics arrives to Rs. 32,01,113/- (Rupees Thirty-Two Lacs One Thousand One Hundred Thirteen Rupees). The details of duty calculation are as per the table below : -

| Bill of Entry No. | Description | Appropriate CTH | Total assessable Value in Rs. | BCD@ 20% | SWS@ 2% | ADD @0.46\$ per meter | IGST @12% | Total Duty Payable |
|--------------------------|-------------------------|-----------------|-------------------------------|---------------|--------------|-----------------------|---------------|--------------------|
| 7137515 dated 31.07.2024 | Wrinkle Free TPU | 59031090 | 1393500 | 278700 | 27870 | 0 | 204008 | 510578 |
| 7336536 dated 12.08.2023 | Jazz Napa 0.6 | 59032090 | 1452650 | 290530 | 29053 | 761736 | 304076 | 1385396 |
| | Wrinkle Free Patent 0.6 | 59032090 | 1394340 | 278868 | 27887 | 530962 | 267847 | 1105564 |
| | PVC Sheep Lining | 59031090 | 261950 | 52390 | 5239 | 0 | 38349 | 95978 |
| | TPU 0.7 | 59031090 | 288200 | 57640 | 5764 | 0 | 42192 | 105596 |
| Total | | | 4790640 | 958128 | 95813 | 1292698 | 856474 | 3203113 |

17.4 In view of above, it appears that M/s Krishna Plastics (IEC No. AROPK1956C) mis-declared the goods imported vide 02 Bills of Entry No. 7137515 dated 31.07.2023 and 7336536 dated 12.08.2023 with respect to description, classification and value. M/s. Krishna Plastics (IEC No. AROPK1956C) deliberately suppressed the facts regarding the actual description, classification and value of the imported goods which came out during the investigation. M/s Krishna Plastics (IEC No. AROPK1956C) was well aware about the implication of higher duties and anti-dumping duty on said import goods on its actual value and they have knowingly and deliberately undervalued the import goods with intent to evade the Customs Duties. During investigation, the government empanelled valuer determined the actual value pertaining to Bill of Entry No. 7137515 dated 31.07.2023 is Rs. 13,93,500/- and for B/E No.7336536 dated 12.08.2023

is Rs. 33,97,140/- . The total value of the goods covered under both B/E is found to be Rs. 47,90,640/- and, thereby rendered the impugned goods imported vide 02 Bills of Entry liable for confiscation under Section 111(l) and (m) of the Customs Act, 1962.

18. Relevant Legal provision

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, and 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. Krishna Plastic has wilfully indulged themselves in the contravention of the above provisions with a mala fide intention to evade applicable payment of applicable Customs Duty & Anti-Dumping duty on their imported goods as in terms of 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.

18.2 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.

18.3 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.

18.4 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.

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

(1) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(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 77²[in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment 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 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, -

(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 penalty⁴[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 :]

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.]

19. Thus, by the act of omission and commission, it appears that the importer has contravened the provisions of Section 46 and Section 17 of the Customs Act, 1962, in as much as, they failed to make correct and true declaration and information to the Customs Officer in the form of Bill of Entry and also failed to assess their duty liability correctly. The omission and commission on the part of M/s Krishna Plastics i.e. mis-declaration, Mis Classification and undervaluation of subject goods by way of collusion, wilful mis-statement and suppression of facts have rendered the subject imported goods vide Bill of Entry No.7137515 dated 31.07.2023 and 7336536 dated 12.08.2023 liable to confiscation under 111(l) and (m) of the Customs Act,1962. For such act of omission and commission, the importer has rendered themselves liable to penalty under Section 112(a)(ii) and/or 114AA of the Customs Act, 1962.

20. Now, therefore, M/s. Krishna Plastics (IEC: AROPK1956C) having address as First Floor, Shop No. 8/1, Khasra No, Swaran Park, Mundka, Mundka-110041 is hereby called upon to show cause in writing to the Additional Commissioner, Customs House, Mundra having office at 1st Floor, Custom House, Mundra, 5B, Port User Building, Adani Ports & SEZ, Mundra, Kutch, Gujarat – 370421 as to why :-

- a. The goods imported vide 02 Bills of Entry viz. 7137515 dated 31.07.2023 and 7336536 dated 12.08.2023 which were seized vide Seizure Memo dated 11.06.2024 are liable to be confiscated under Section 111 (l) and 111 (m) of the Customs Act, 1962, as discussed above.
- b. The declared assessable value of Rs.13,86,919/- of the said goods imported vide 02 Bills of Entry viz. 7137515 dated 31.07.2023 and 7336536 dated 12.08.2023 should not be rejected and the same should not be re determined as Rs. 47,90,640/- (Rs. Forty-Seven Lacs Ninety Thousand Six Hundred Forty) under the provisions of Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007
- c. the classification of the goods in respect of B/E No. 7137515 dated 31.07.2023 which test reports have confirmed them to be “one side PVC coated Fabric” should not be reclassified under CTH 59031090 also, the said Bills of Entry should not be accordingly reassessed under Section 17 of the Customs Act, 1962
- d. the classification of the goods in respect of B/E No. 7336536 dated 12.08.2023 which test reports have confirmed them to be “one side PVC coated Fabric” and “one side PU coated Fabric” should not be reclassified under CTH 59031090 and 59032090 respectively, also, the said Bills of Entry should not be accordingly reassessed under Section 17 of the Customs Act, 1962

- e. penalty under Section 112(a) of the Customs Act, 1962 should not be imposed on M/s. Krishna Plastics in relation to the said goods.
- f. penalty under Section 114AA of the Customs Act, 1962 should not be imposed on M/s. Krishna Plastics in relation to the said goods.

21. The noticee are hereby required to produce at the time of showing cause all the evidences upon which they intend to rely in support of their defense. They are further required to indicate in their written explanation as to whether they desire to be heard in person before the case is adjudicated. If no mention is made about this in their written explanation, it will be presumed that they do not desire a personal hearing.

22. If no cause is shown by them against the action proposed to be taken within 30 days of receipt of this notice or if they do not appear before the adjudicating authority when the case is posted for hearing, the case would be liable to be adjudicated on the basis of evidences on records.

23. This Show Cause Notice is issued without prejudice to any other actions that may be taken against the persons involved in the subject case, under the provisions of the Customs Act, 1962 or any other Allied Acts for the time being in force. The department is also free to issue addendum to this Show Cause Notice, if any, further fact/documents come to notice.

24. The documents as listed at Annexure-R is enclosed with this show cause notice.

(Amit Kumar Mishra)
Additional Commissioner
Import, Custom House, Mundra

Encl:- Annexure-R

To,

M/s. Krishna Plastics (IEC AROPK1956C)
First Floor, Shop No. 8/1, Khasra No.,
Swaran Park, Mundka, Delhi - 110041.

Copy to:

1. The Addl. Commissioner (Import Assessment Group), Customs House, Mundra.
2. Dy. Commissioner of Customs, Import Assessment Gr.-IIG, CH, Mundra.
3. The Dy./Assistant Commissioner of Customs (EDI), CH, Mundra.
4. Office Copy.