
	<p>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MUNDRA, KUTCH-GUJARAT -370421 PHONE: 02838-271426/271428 FAX :02838-271425 E-mail: adj-mundra@gov.in</p>	
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A FILE NO./ फ़ाइल संख्या	GEN/ADJ/ADC/107/2025-Adjn
B OIO NO./ आदेश संख्या	MCH/ADC/ZDC/416/2025-26
C PASSED BY/ जारीकर्ता	DEEPAK ZALA, ADDITIONAL COMMISSIONER, CUSTOM HOUSE, MUNDRA.
D DATE OF ORDER/ आदेश की तारीख	04.12.2025
E DATE OF ISSUE/ जारी करने की तिथि	04.12.2025
F SCN No. & Date/ कारण बताओ नोटिस क्रमांक	SCN No.: GEN/ADJ/ADC/107/2024-Adjn dated 13.01.2025
G NOTICEE/IMPORTER नोटिसकर्ता/आयातक	1. M/S BHOLE NATH HOSIERY MILLS (IEC: BDCPM6096E), 1104, PURANA BAZAR, LUDHIANA, PUNJAB-141001. 2. Shri Satyam Malhotra, propeirtor of M/S BHOLE NATH HOSIERY MILLS
H DIN/ दस्तावेज़ पहचान संख्या	20251271MO00006656DF

1. यहआदेश संबन्धित को निःशुल्क प्रदान किया जाता है।
2. This Order - in - Original is granted to the concerned free of charge.
3. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते परअपील कर सकताहै-
4. Any person aggrieved by this Order - in - Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमाशुल्कआयुक्त (अपील),
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,
नवरंगपुरा,अहमदाबाद 380 009”

**“THE COMMISSIONER OF CUSTOMS (APPEALS),
HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN
ROAD,
NAVRANGPURA, AHMEDABAD-380 009.”**

5. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

6. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5 -/रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –

i. उक्त अपील की एक प्रति और

A copy of the appeal, and

ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची 1-के अनुसार न्यायालय शुल्क अधिनियम-

1870 के मद सं० 6-में निर्धारित 5 -/रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

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.

7. अपील ज्ञापन के साथ ड्यूटी /ब्याज /दण्ड /जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

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

8. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और सीमाशुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

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

9. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5 % भुगतान करना होगा।

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 are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE:

An information was received by Directorate of Revenue intelligence, Kolkata Zonal Unit, Kolkata (hereinafter referred to as “DRI KZU”), to the effect that some importers of Chenille Yarn, falling under Tariff Item 56060090 of the First Schedule to the Customs Tariff Act, 1975, were evading payment of appropriate customs duty by resorting to misclassification as well as mis-declaration of transaction value thereof; that the goods had been imported from; that the importer had described the goods as “YARN RAW WHITE IN HANK 1.3CM 12NM/1” , “9/1 100%

BRUSH YARN”, “NYLON MINK YARN RAW WHITE IN HANK 1.3CM 12NM/1”, “NYLON ALPHA LIKE YARN RAW WHITE IN HANK 0.9CM 12NM/1”, etc. and during self-assessment, claimed classification of the goods under Tariff Item 54026100 or 55091100; the Basic Customs Duty (BCD) applicable for the goods classifiable under Tariff Item 54026100 or 55091100 is 5% whereas for items under CTH 56060090 the BCD is 10%.

2. During the course of processing the information, one such importer using the above modus operandi was identified as M/s Bhole Nath Hosiery Mills (IEC: BDCPM6096E) (hereinafter referred to as “Importer/Noticee”), located at 1104, PURANA BAZAR, LUDHIYANA, Punjab-141001. importer had filed two Bills of Entry at Mundra Port (INMUN1) on 19.01.2023, the details of which are as below:

No.	HEADING	DECLARATION MADE BY IMPORTER IN B/E	
1.	Bills of Entry:	4251658 dated 19.01.2023	4251168 dated 19.01.2023
2.	Description of goods	YARN IN HANK 1.3 CM	YARN IN HANK 0.9 CM
3.	CTH Declared	5402 6100	5402 6100
4.	Quantity (KGs)	22540 (230 pkg)	22736 (232 pkg)
5.	Unit Price (CIF per KG in USD)	1.5	1.5
6.	Invoice No.	WH122154 dated 24.12.2022	WH122155-1 dated 20.12.2022
7.	Supplier	Zhangjiagang Wellhow Trading Co. Ltd. RM 701, Guotai Oriental Plaza No. 9, Renmin East Road, Zhangjiagang, Jiangsu, China	

3. The Bills of Entry had been filed at Mundra Port (INMUN1). Accordingly, a request was made to DRI AZU vide letter dated 19.01.2023 to take up with the jurisdictional customs to ensure that the subject consignments are not released without examination in presence of officers of DRI. Thereafter, vide letter dated 20.01.2023, DRI KZU requested DRI Gandhidham RU for examination of the consignments under the above two B/Es by the Customs authorities in presence of officers of DRI Gandhidham RU and draw samples from therein.

4. EXAMINATION OF THE IMPORT GOODS:

4.1 The Goods under Bills of entry no. 4251658 & 4251168 both dated

19.01.2023 in Container No. EITU9335061 & TCNU1654531 respectively were examined on 28.01.2023 under Panchanama proceedings at M/s. Saurashtra Freight Pvt. Ltd., Bharat CFS Zone-I, Mundra Post 7 SEZ Road, Mundra, Gujarat-370421 under Mundra Port (INMUN1). The examination of the above mentioned 02 (two) import consignments found loaded in two 40' Containers were carried out in an identical manner. In respect of both the import consignments, the agent seal affixed on the containers were verified and found intact.

4.2 On examination of the goods covered under Bill of Entry No. 4251658 dated 19.01.2023 and contained in container no. EITU9335061, the container was found to be stuffed with 230 numbers of white coloured polybags marked as "NYLON MINK 1.3CM, LOT NO. HK98, NT WT: 98.0 Kgs, Gross Weight: 98.5 kgs". The white colour polybags were having white colour yarns in hanks. The yarn appeared to be hairy yarn and appeared to be consisting of more than one strands of textile yarn twisted together and holding short textile yarn throughout its length.

4.3 On examination of the goods covered under Bill of Entry No. 4251168 dated 19.01.2023 and contained in container no. TCNU1654531, the container was found to be stuffed with a total of 232 numbers of white colour polybags having two types of inscription/declaration as "NYLON MINK 0.9 CM, LOT No. TSJY- 0.9, Nt. Wt.98.0 Kgs, Gross weight 98.5 Kgs and as "NYLON MINK 1.3 CM, LOT No. SF66, Nt. Wt.:98.0 Kgs, Gross weight 98.5 Kgs. On opening the package bearing mark as 1.3 CM, it was found that the same was containing white colour yarns in hanks. The yarn appeared to be hairy yarn and appeared to be consisting of more than one strands of textile yarn twisted together and holding short textile yarn throughout its length. Same thing was found on opening the package bearing mark as 0.9 CM. Representative samples were drawn from differently marked polybags in random, in quadruplicate for testing by the appropriate authority.

5. Based on the findings of the examination of the imported yarn and also considering the fact that description of goods as declared in the import documents was not adequate enough for correctly classifying the goods, it prima facie appeared that the importer had deliberately provided insufficient particulars of the goods sought to be imported in order to enable him to claim classification of the goods under an incorrect heading i.e. 5402 6100 with the motive to escape levy of appropriate amount of customs duties payable on such goods. On preliminary visual inspection, the imported goods appeared to be Chenille Yarn.

6.1 Summons was issued to Shri Satyam Malhotra, Proprietor of M/s Bhole Nath Hosiery Mills, the importer, on 10.02.2023, under Section 108 of the Customs Act, 1962, asking him to appear before the DRI officer at the office of DRI KZU, Kolkata on 15.02.2023. However, the importer failed to respond to the said summons. Accordingly, a fresh summons was issued to the importer on 17.02.2023 asking him to appear before the DRI officer on 23.02.2023.

6.2 Shri Satyam Malhotra, the proprietor of the import firm M/s Bhole Nath Hosiery Mills, appeared before the DRI officer on 23.02.2023 in response to summons under Section 108 of the Customs Act, and in his statement, he inter alia made the following submissions:

- i. that he has been importing such synthetic yarns through his firm M/s Bhole Nath Hosiery Mills (IEC: BDCPM6096E) since 2022.
- ii. that the yarn he imports is of Nylon/Polyester.
- iii. that the yarn composed of nylon also contains strands of hair/feathers along the length. The length of hair/feather is 1.3 CM or 0.9 CM and that he admits that this type of yarn is also known as Chenille Yarn.
- iv. that he has been shown a list of past imports made by his firm i.e. M/s. Bhole Nath Hosiery Mills, and he admits that the yarn imported by the firm M/s. Bhole Nath Hosiery Mills against those past Bills of entry mentioned in the list shown to him are Chenille Yarn having hair/feather is 1.3 CM or 0.9 CM.
- v. that he has been shown the description of the goods that are covered under Tariff heading Chapter 56, and he admits that the yarn imported by him through his firm M/s Bhole Nath Hosiery Mills are indeed covered under Chapter 5606 0090.
- vi. that on being asked he admits that though the imported goods have been declared as Chenille Yarn in the Bill of entry No.3325504 dated 16.11.2022, the same was still not classified under tariff 56060090, and he also admits that the goods had been misclassified in order to save the Customs duty.
- vii. that he had noticed some other importers importing Chenille yarn without declaring it as such; that they are importing it under different descriptions and mis classifying the same under CTH 5402 6100 or 5509 1100 etc. So, keeping in mind this practice, he has also classified the imported yarns under 54026100.
- viii. that BCD on goods under CTH 5606 0090 is 10% whereas BCD on goods under CTH 5402 6100 or 5509 1100 etc. is only 5%. Thus to save duty he had resorted to misdeclaration in Bill of entry.
- ix. that in respect of his imported consignments under Bills of entry

nos. 4251658 and 4251168 both dated 19.01.2023, he has deliberately classified the imported yarn under 5402 6100 instead of 5606 0090 and mis-declared/ suppressed the description of the goods by not declaring them as CHENILLE YARN in order to save customs duty of 5% as was being done by other importers also. That he will henceforth classify these types of yarn under 5606 0090.

- x. that he has seen the Panchanama dated 28.01.2023 and he agrees with the findings mentioned in the said Panchanama in respect of the Bills of Entry no.4251658 & 4251168 both dated 19.01.2023. That he admits that the imported yarn under the said BOEs is hairy yarn having hair attached throughout the length. That he also admits that the imported yarn has not been correctly classified and he is ready to pay the differential duty as per the correct classification under CTH 5606 0090.

7.1 The applicable rate of duty on the items covered under CTH 5402 6100 and 5606 0090 are as follows:

CTH	5402 6100		5606 0090	
AV		Rs 100		Rs 100
BCD	5% of AV	Rs. 5	10% of AV	Rs. 10
SWS	10% of BCD	Rs. 0.5	10% of BCD	Rs. 1
IGST	12 % of (AV+BCD+SWS)	12% of Rs (100+5+0.5) = Rs 12.66	12 % of (AV+BCD+SWS)	12% of Rs (100+10+1) = Rs 13.32
Total Duty	18.16%	5+0.5+12.66= 18.16	24.32%	10+1+13.32= 24.32

7.2 It could be seen that the total duty payable on the items falling under the Tariff Item 5402 6100 and 56060090 are 18.16% and 24.32%, respectively; and there was an effective duty difference of 6.16% between the two. It therefore appeared that the impugned import goods had been deliberately mis-declared with the intent to claim classification under CTH 54026100 instead of the correct CTH 56060090 in order to evade payment of proper and correct amount of customs duty. In view of the same, it appeared that the impugned goods, covered under Bills of entry no. 4251658 & 4251168 both dated 19.01.2023 were liable for confiscation in terms of Section 111 of the Customs Act, 1962. Accordingly, the two

consignments under BE 4251658 and 4251168 both dated 19.01.2023 were seized under Section 110 of the Customs Act, 1962 on 14.03.2023.

8. TESTING OF THE SAMPLES:

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8.1 The representative samples drawn from the two import consignments covered under Bills of entry nos. 4251658 and 4251168 both dated 19.01.2023 at the time of their examination on 28.01.2023, were sent for chemical testing to the Textiles Committee, Kolkata on 28.03.2023, with the request that the samples be tested and a report on the same be provided on the following parameters:

- i. Composition of the yarn (Whether Nylon/ Polyester/ Acrylic etc.)
- ii. Description of the yarn (Whether Glimped Yarn/ Chenille Yarn/ Loop wale yarn etc.)
- iii. Structure of the yarn (length of hair attached to the yarn along the length etc.)
- iv. Any other parameters that may be relevant in the identification of the yarn.

8.2 The Regional Laboratory of the Textile Committee, in its report dated 10.04.2023 that the samples tested by them were **“Chenille Yarn”, having a composition of 100% Polyamide.**

9.1 The importer, in respect of the imported goods covered under both Bills of Entry, had claimed classification under CTH 5402 6100. As per the First Schedule of the Customs Tariff Act, 1975, the applicable rate of BCD on the items falling under Tariff Item 54026100 is 5%.

9.2 On the other hand, as per the First Schedule of the Customs Tariff Act, 1975, the applicable rate of BCD on the items falling under Tariff Item 56060090 is 10%.

9 . 3 The competent authority i.e. the O/o the Pr. Commissioner of Customs, Mundra, vide letter dt. 03.05.2023 accorded permission dated for provisional release of the goods imported vide B/E 4251658 & 4251168 both dated 19.01.2023 against submission of Bank Guarantee for the amount Rs. 15,00,000/- for each of the BE, and Bond for the amount equivalent to the value of the goods.

9.4 The importer, in respect of the goods covered under Bills of entry nos. 4251658 and 4251168 both dated 19.01.2023 had declared the unit value as USD 1.5/Kg (CIF). The goods were declared only as “Yarn in Hank 1.3cm/ Yarn in Hank 0.9cm. The importer had claimed classification of the impugned goods under CTH 5402 6100. The goods on chemical testing were reported as Chenille Yarn, having a composition of 100% Polyamide. Hence the same appeared to be classifiable under CTH 5606 0090.

10.1 The findings of the physical examination and the subsequent chemical testing of the import consignment clearly showed that the goods found physically do not have any relation with the goods declared in the import documents. Consequently, the CIF values of goods as declared in the said import documents cannot be considered as the values that truly or correctly represent the goods actually imported. It, therefore, appears that there are sufficient grounds to doubt the truth and accuracy of the value so declared and there are enough reasons to believe that the declared values do not represent the actual transaction value and, therefore, liable to be rejected in terms of Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Accordingly, it also appears that the transaction value of the items, sought to be imported under the impugned bill of entry, cannot be determined under the provisions of sub-rule (1) of Rule 3 of the rules ibid and the correct value needs to be ascertained and arrived at by proceeding sequentially in accordance with Rules 4 to 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Rule 12 of the Customs Valuation (Determination of Value of Imported Goods), Rules, 2007 reads as follows:

Rule 12. Rejection of declared value. –

- 1. When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.*
- 2. At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such*

importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

10.2 Accordingly, it also appears that the transaction value of the items, sought to be imported under the impugned bill of entry, cannot be determined under the provisions of sub-rule (1) of Rule 3 of the rules *ibid* and the correct value needs to be ascertained and arrived at by proceeding sequentially in accordance with Rules 4 to 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

10.3 Evidences of contemporaneous import of such goods showed that Nylon Chenille Yarn of certain specifications were being imported with unit values ranging from USD 2.75 to USD 3.45/Kg (CIF) and above. It had been admitted by the importer in his statement dated 23.02.2023 that he had resorted to the same modus in respect of his earlier imports also. In fact, it could be seen that he had suppressed the correct value and resorted to mis- classification in respect of one of the consignments, even though he had declared the goods as Nylon and Polyester Chenille Yarn.

10.4 Accordingly, the evidences of contemporaneous import of such items were obtained from the database. The values found in respect of the past consignments are shown in the annexed chart showing calculation of duty for the said consignments. Rule 4 of the Customs Valuation (Determination of Value of imported Goods) Rules, 2007 provides for determination of the transaction value on the basis of identical goods sold for export to India and imported at or about the same time as the goods being valued. However, due to the imported goods being generic in nature, they could not be termed as 'identical goods' with respect to the other imported goods of similar description in contemporaneous period, hence their value cannot be determined by applying provisions of Rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

10.5 In terms of Rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the value of those 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. Hence it appears that the value of the goods covered under Bills of entry nos. 4251658 and 4251168 both dated 19.01.2023 and also the value of the past consignments covered under Bills of Entry nos. 2742269 dated 05.10.2022, 2929794 dated 18.10.2022 and 3325504 dated 16.11.2022 may be re-determined in terms of Rule 5 – Transaction value of Similar Goods of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

10.6 It was, therefore, evident that the importer had deliberately mis-declared the description and value of the goods and had also resorted to mis-classification of the same to evade payment of proper customs duty on the imported goods. By re-determining the unit values of the goods covered under Bills of Entry nos. 2742269 dated 05.10.2022, 2929794 dated 18.10.2022 and 3325504 dated 16.11.2022 on the basis of evidences of contemporaneous import of Nylon/ Polyester Chenille Yarn, it was found that the differential duty payable in respect to three past consignments was **Rs. 24,28,754/-**. The details of the same are under tabulated:-

TABLE-A

Sr.No.	1	2	3	3	3	TOTAL
B/E No. & Date	2742269/ 05.10.2022	2929794/ 18.10.2022	3325504/ 16.11.2022	3325504/ 16.11.2022	3325504/ 16.11.2022	
Item Desc.	Yarn Raw white in hank	Yarn Raw white in hank	Yarn Raw white in hank	Nylon Chenille Yarn/	Polyester Chenille Yarn	
Declared CTH	54026100	54026100	54026100	54026100	54026100	
Quantity Decl.	24,378 Kgs	22,172 Kgs	20,700 Kgs	276 Kgs	184 Kgs	
Unit Price	2 \$/Kg	2\$/Kg	2\$/Kg	2\$/Kg	2\$/Kg	
Assessable Value	39,19,982/-	36,56,163/-	34,69,320/-	46,257.60/-	30,838.40/-	1,11,22,561/-
Duty Paid (18.16%)	7,11,869/-	6,63,959/-	6,30,028.5/-	8,400.4/-	5,600.20/-	20,19,857/-
Correct CTH	56060090	56060090	56060090	56060090	56060090	
Re-determined Unit Price	3.29\$/Kg (1\$=80.4 INR)	3.29\$/Kg (1\$= 82.45 INR)	3.29\$/Kg (1\$= 83.8)	3.45\$/Kg (1\$= 83.8)	2.75\$/Kg (1\$= 83.8)	
Re-determined AV	64,48,371/-	60,14,388/-	57,07,031.4/-	79,794.36/-	42,402.80/-	1,82,91,988/-
Duty Payable (24.32%)	15,68,244/-	14,62,699/-	13,87,950/-	19,406/-	10,312/-	44,48,611/-
Differential Duty Payable	8,56,375/-	7,98,740/-	7,57,921.54/-	11,005.59/-	4,712.16/-	24,28,754/-

10.7 Since, the importer had admittedly, mis-declared the description and value of the goods and had also resorted to mis-classification of the same deliberately to evade payment of proper customs duty on the imported goods, the evaded duty amounting to **Rs. 24,28,754/-**, appears to be recoverable in terms of Section 28(4) of the Customs Act, 1962. It was found that the importer was also liable to pay interest on the duty evaded in respect of the three past consignments in terms of Section 28AA. It was, therefore, found that the duty evaded in respect of the goods covered under Bills of Entry nos. 2742269 dated 05.10.2022, 2929794 dated 18.10.2022 and 3325504 dated 16.11.2022 amounting to **Rs. 24,28,754/-** and the interest on the said evaded duty, is also required to be recovered from the importer M/s Bhole Nath Hosiery Mills in terms of Section 28 of the Customs Act, 1962. In view of the willful

mis-statement/ suppression of facts which resulted in the evasion of duty in respect of these three past consignments, the importer, M/s Bhole Nath Hosiery Mills also appears to be liable to a penal action as provided under Section 114A of the Customs Act, 1962.

10.8 As discussed, hereinabove, evidences of contemporaneous import of such goods showed that Chenille Yarn made of 100% polyamide were being imported with unit values USD 3.21/Kg (CIF) and above. It, therefore, appears that there are sufficient grounds to doubt the truth and accuracy of the value so declared and there are enough reasons to believe that the declared values do not represent the actual transaction value and, therefore, liable to be rejected in terms of Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Accordingly, it also appears that the transaction value of the items, sought to be imported under the impugned bill of entry, cannot be determined under the provisions of sub-rule (1) of Rule 3 of the rules *ibid* and the correct value needs to be ascertained and arrived at by proceeding sequentially in accordance with Rules 4 to 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

10.9 The importer had admitted in his statement dated 23.02.2023 that the yarn imported by him through his firm M/s Bhole Nath Hosiery Mills are indeed covered under CESH 5606 0090. This deliberate suppression of the actual description of the goods, also allowed the importer to suppress the actual transaction value of the said import goods. He also admitted that he had resorted to the same modus in respect of his earlier three imports also. In fact, it could be seen that he had suppressed the correct value and resorted to mis-classification in respect of one of the consignments, even though he had declared the goods as Nylon and Polyester Chenille Yarn.

11.1 In terms of sub-clause (4A) of Section 46 of Customs Act, 1962, the importer while presenting a bill of entry is required to ensure, amongst others, the accuracy and completeness of the information given therein. In the instant case, neither the importer nor the concerned Customs Broker, mentioned or disclosed before Customs, the exact particulars of the goods necessary for proper assessment of the bill of entry in question.

11.2 Similarly, in terms of Section 46(4) of Customs Act, 1962, the importer is required to make a declaration as regards the truth of the contents of the Bill of Entry submitted for assessment of customs duty. In view of the discussions made in the foregoing paragraphs, it appears that the importer, M/s Bhole Nath Hosiery Mills has deliberately attempted to evade payment of BCD at appropriate rate by cleverly

suppressing the actual description of the import goods and thereby craftily took refuge of the CTH that attracts BCD at much lesser rate.

12. It therefore appears that the importer, M/s Bhole Nath Hosiery Mills had knowingly and intentionally and by design attempted to evade payment of customs duty at proper and correct rate by way of willful mis-statement and/or understatement about the goods imported by it, thereby mis-classifying the same in order to evade true and correct payment of duty of customs otherwise leviable on such items. The acts of omission and commission on the part of the importer, appears to have rendered the said goods liable to confiscation under Section 111(m) of the Customs Act, 1962.

13. After introduction of self-assessment vide Finance Act, 2011, the onus lies on the importer for making true and correct declaration in all aspects in the Bill of Entry and to pay the correct amount of duty. In the instant case, importer had self-assessed both the bills of entry but did not pay the correct amount of import duties by way of mis-declaration and mis-classification with intent to evade payment of legitimate customs duty. So, it appears that the importer, M/s Bhole Nath Hosiery Mills is liable to a penal action as provided under Section 112(a), 112(b) and 114AA of the Customs Act, 1962 for being involved in importation of goods by mis-declaring the description of the same in the import documents so as to enable them to mis-declare the value of the goods and also avail the benefit of paying the customs duties at much lower rate.

14.1 As has been revealed in the course of the investigation, the importer, M/s Bhole Nath Hosiery Mills at the time of filing the impugned Bills of Entry had deliberately and consciously suppressed the materials facts about the exact nature of the imported Yarns under import before the concerned customs authority. Instead, they craftily provided incomplete and misleading description of the item in question, which facilitated them to classify the goods under an inappropriate heading having lower BCD. This deliberate suppression of the actual description of the goods, also allowed the importer to suppress the actual transaction value of the said import goods. The importer, in respect of the goods covered under Bills of entry nos. 4251658 and 4251168 both dated 19.01.2023 had declared the unit value as USD 1.5/Kg (CIF). Evidences of contemporaneous import of such goods showed that Chenille Yarn made of 100% polyamide were being imported with unit values USD 3.21/Kg (CIF) and above.

14.2 So, it appears from the discussions made hereinabove that the present case is a clear case of suppression of facts resorted to by the

importer with the sole motive to enjoy undue monetary benefit of paying much lesser amount of duty on the import goods covered under B/E 4251658 & 4251168 both dated 19.01.2023. Admittedly the same modus had been resorted to by the importer in respect of the past consignments covered under **Bills of Entry nos. 2742269 dated 05.10.2022, 2929794 dated 18.10.2022 and 3325504 dated 16.11.2022**, the classification claimed by the importer in respect of these past consignments are also required to be rejected and the said goods are required to be reclassified under CTSH 5606 0090 and duty is to be levied at correct rate on re-assessment of the impugned Bills of Entry.

14.3 Further, the declared value in respect of these three past consignments also needs to be rejected in terms of Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined in terms of Rule 5 of the said Valuation Rules.

14.4 The duty evaded in respect these three past consignments need to be demanded in terms of Section 28(4) along with applicable interest in terms of Section 28AA of the Customs Act, 1962.

15. Accordingly, Show Cause Notice dated 13.01.2025 was issued to M/s Bhole Nath Hosiery Mills wherein they were called upon to show cause as to why:

- a. The assessments of the goods covered under the three past consignments imported vide Bills of Entry Nos. Bills of Entry nos. 2742269 dated 05.10.2022, 2929794 dated 18.10.2022 and 3325504 dated 16.11.2022, claiming assessment under 5402 6100 should not be rejected and the impugned goods covered under the subject three bills of entry should not be reassessed by reclassifying the same under 5606 0090.
- b. The declared values for the goods covered under the three past consignments imported vide Bills of Entry Nos. Bills of Entry nos. 2742269 dated 05.10.2022, 2929794 dated 18.10.2022 and 3325504 dated 16.11.2022, should not be rejected in terms of Rule 12 and re-determined at values detailed in the Annexure to this Report, in terms of Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 on the basis of contemporaneous evidences of import of such goods.
- c. The duty evaded in respect of the goods covered under Bills of Entry nos. 2742269 dated 05.10.2022, 2929794 dated

18.10.2022 and 3325504 dated 16.11.2022 amounting to **Rs. 24,28,754/- (Rupees Twenty-Four Lakhs Twenty-Eight Thousand Seven Hundred and Fifty-Four only)** should not be recovered in terms of Section 28(4) of the Customs Act, 1962 and the interest on the said evaded duty should not be collected in terms of Section 28AA of the Act, *ibid*.

- d. The goods covered under the three past consignments imported vide Bills of Entry Nos. Bills of Entry nos. 2742269 dated 05.10.2022, 2929794 dated 18.10.2022 and 3325504 dated 16.11.2022, should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962.
- e. Penalty under Section 114A of the Customs Act, 1962, should not be imposed on Shri Satyam Malhotra, Proprietor of the import firm, M/s Bhole Nath Hosiery Mills, for the willful mis-statement/ suppression of facts which resulted in the evasion of duty in respect of these three past consignments covered under Bills of Entry nos. 2742269 dated 05.10.2022, 2929794 dated 18.10.2022 and 3325504 dated 16.11.2022.
- f. Subject to the fifth proviso to Section 114A of the Customs Act, 1962, penalty under Section 112(a) of the Customs Act, 1962 should not be imposed upon Shri Satyam Malhotra, Proprietor of the import firm, M/s Bhole Nath Hosiery Mills since the acts of omission and commission of the said importer, for the reasons mentioned above, have rendered the said goods liable to confiscation under Section 111 of the Customs Act, 1962.
- g. Subject to the fifth proviso to Section 114A of the Customs Act, 1962, penalty under Section 112(b) of the Customs Act, 1962 should not be imposed upon Shri Satyam Malhotra, Proprietor of the import firm, M/s Bhole Nath Hosiery Mills since said importer had acquired possession of the said goods and was concerned in purchasing and selling the said goods which, for the reasons mentioned above, the said importer knew or had reason to believe were liable to confiscation under Section 111 of the Customs Act, 1962.
- h. Penalty under Section 114AA of the Customs Act, 1962, should not be imposed on Shri Satyam Malhotra, Proprietor of the import firm, M/s Bhole Nath Hosiery Mills, for deliberately and consciously suppressing the materials facts about the essential details of the imported goods before the Customs authorities and using misleading terminologies, as such intentionally causing to make false

declarations before the Customs authorities for assessment of the said goods which did not correspond to the imported goods in respect of these three past consignments covered under Bills of Entry nos. 2742269 dated 05.10.2022, 2929794 dated 18.10.2022 and 3325504 dated 16.11.2022.

- i. Any liabilities arising due to the above or otherwise shall not be adjusted against the Bank Guarantees of Rs. 15,08,335/- dated 15.05.2023 and of Rs. 15,00,042/- dated 16.05.2023 submitted by M/s Bhole Nath Hosiery Mills against Bills of Entry Nos. 4251658 dated 19.01.2023 and 4251168 dated 19.01.2023 respectively.

Submission of the importer and Record of Personal Hearing

16.1 In compliance of principle of natural justice “Audi alteram partem”, opportunities to be heard were granted to the noticee on 26.09.2025, 14.10.2025 and 10.11.2025 through virtual mode. The Importer failed to turn up for the personal hearing before the adjudicating authority.

16.2 Shri Sahil Sharma, Authorized representative of Importer submitted their written submission through mail on 24.11.2025. He submitted that:-

(i) We note that the present Show Cause Notice seeks to extend the alleged contravention to our previous consignments, which were duly assessed, examined, and finally cleared by the Customs authorities without any objection or seizure.

(ii) We respectfully deny and contest any allegation relating to those consignments, as they were legally imported and released after due satisfaction of the department. Once goods are duly examined, assessed, and cleared for home consumption, the presumption of correctness attaches to such clearance.

(iii) Your kind attention is invited to the following judgments which clearly states that demand cannot be raised for old consignments on the basis of current allegations :-

- a. In this regard, the Hon’ble Supreme Court in CCE v. Flock (India) Pvt. Ltd., (2000) 6 SCC 650 held that once assessment has attained finality, it cannot be reopened merely based on subsequent proceedings.
- b. Commissioner of Customs (Prev.), New Delhi Versus Marks Marketing P. Ltd. 2017 (CESTAT DELHI):-

The *Marks Marketing* ruling reinforced an important legal principle in customs law: Past assessments that have become final cannot be disturbed without specific and substantial evidence of undervaluation or misdeclaration for those particular past transactions. The judgment prevents the customs department from raising blanket demands for differential duty based on generic findings from a single, unrelated import.

- c. PK Exim vs. CC, Mundra, Final order No. A/12326/2021 dated 31.8.2021 (Tri.- Ahmedabad).

“The final order in the case of *PK Exim vs. CC, Mundra* (Final Order No. A/12326/2021) was decided by the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), Ahmedabad, on August 31, 2021. The tribunal held that the examination report for a "live" consignment of imported goods cannot be used to demand additional duty on similar "past" consignments”.

- d. Vivek Metals Vs Commissioner of Customs (CESTAT Bangalore):-
CESTAT Bangalore held that without any such evidences based on the examination report of live consignment, one cannot extrapolate the same to the past consignments. Accordingly, demand for all the past consignments set aside.

e. In case of Chandan Tobacco Co. 2014 (311) ELT 593 (Tri-Ahmd)

:-In this case it was also held by the Larger Bench of the Appellate Tribunal has held in paragraph Nos. 21 and 23 of the decision that results of samples drawn in one year cannot be used for making inferences against the assessee for clearances in previous years because doing so would be in the nature of assumption and presumption.

(iv) When the overall facts and circumstances of this case are considered, it would clearly emerge that we are not guilty of declaring any wrong information while filing the Bills of Entry. The goods have been cleared for home consumption also, and they are no longer available for confiscation. We therefore request you to withdraw the proposal to order confiscation of the above goods, and oblige.

(v) Thus, it is a settled legal position that analysis report of one sample taken from one consignment of goods would be relevant only for that consignment, and not for other consignments. This principle is more relevant in a case like the present one where sample is taken from the last consignment and test report is proposed to be applied for the goods imported and cleared in past. We submit that the report of Regional Laboratory of Textile Committee, Kolkata cannot be considered to be relevant for any other consignments imported and cleared in past because this report is only for samples drawn from the goods covered under Bills of Entry dated 19.1.2023. The report of Regional Laboratory of Textile Committee, Kolkata is irrelevant and inapplicable for the goods covered under first 3 Bills of Entry which

are referred to at paras 18.2 and 19.1 of the show cause notice.

(vi) There is no evidence at all on record of this case to show the composition, nature etc. of the consignments imported under the past 3 Bills of Entry. There is no evidence on record to show that the goods imported under the past 3 Bills of Entry were Chenille Yarns. There is no evidence from us or from the overseas suppliers confirming that the goods/consignments covered under 3 previous Bills of Entry were absolutely similar to the goods covered under the Bills of Entry dated 19.1.2023. Therefore, the report of Regional Laboratory of Textile Committee, Kolkata, for the sample drawn from the consignments for which Bills of Entry dated 19.1.2023 were filed, cannot be straightaway applied for the goods imported under 3 Bills of Entry filed in past. There is no report and opinion for the goods imported under the past 3 Bills of Entry showing that the goods were Chenille Yarns; and therefore there is no basis for the proposal to re-assess and re-classify the consignments covered under the past 3 Bills of Entry. Therefore, any extension of the present allegation to earlier consignments is without factual or legal basis and deserves to be dropped.

(vii) The subject show cause notice is issued to us invoking Section 28(4) of the Customs Act, but this provision is not applicable in the present case. Therefore, the show cause notice is ex-facie illegal and without jurisdiction.

(viii) This provision of sub section (4) of Section 28 of the Act can be invoked when the importer was found to be guilty of any suppression of facts, any wilful mis-statement or collusion; but not when any information was not submitted by the importer or some wrong information was submitted on the basis of any bonafide impression. What is "suppression" is considered by the Hon'ble Supreme Court in the case of Continental Foundation Jt. Venture V/s CCE, Chandigarh reported in **2007 (216) ELT 177 (SC)**, and it is held by the Hon'ble Supreme Court that mere omission to give correct information was not suppression of facts unless it was deliberate and to stop the payment of duty. In the previous case like Messrs Jaiprakash Industries Ltd. reported in **2002 (146) ELT 481 (SC)** also, the Hon'ble Supreme Court has held that a bonafide doubt as to non- dutiability

of goods was sufficient for the assessee to challenge the demand on the point of limitation. Thus, it is a totally settled legal position that such allegations would be justified only when the assessee knew about the duty/tax liability and still however, he did not pay the duty/tax and deliberately avoided such payment, and it was only in such a situation where suppression of facts on part of the assessee could be justifiably alleged by the Revenue. However, mere failure in giving correct information would not be a case where the Revenue can allege suppression or mis-declaration.

(ix) In the facts of the present case, there is no justifiable reason for alleging suppression of facts, or wilful mis-statement or any ill-intention or malafide against us; and therefore invocation of section 28(4) of the Act is an action wholly illegal and without jurisdiction.

(x) The statement dated 23.02.2023 of the proprietor has been under coercion and the notice does not accept any misdeclaration on his part. The statement was recorded only under the threat of confiscation of goods and not providing provisional release. As the assessee was facing business losses and it is important to get the goods provisionally released, assessee gave the statement under pressure of department. It is important to mention here that there is no under valuation of goods on the part of the assessee and payment has been made to the foreign supplier as per value declared in the invoices. Our decision is not an admission of guilt, but a practical step to avoid prolonged proceedings and to maintain peace of mind. We sincerely request your good office to take a lenient and sympathetic view in this matter and conclude the proceedings without imposing harsh penal consequences.

(xi) In view of the above submissions and judicial precedents cited, we humbly request you to withdraw this show cause notice, and we also request you to drop all the demands and proposals levelled against us in this case. We shall be pleased to provide any further clarification or documentation if required. We also request you kindly accept our submissions and decide the case on merits. We do not want any personal hearing.

DISCUSSION AND FINDINGS

17. I have carefully gone through the facts of the case, SCN, written submissions and records of the case. The principles of natural justice have been complied with by granting adequate opportunities to the noticee to present their defence. Now, I proceed to examine the issues involved in the present case in light of available records, statutory provisions and judicial

precedents. On careful perusal of the Show Cause Notice and case records, I find that the following issues arise for determination in this adjudication:

- (i) Whether the declared description of the subject goods i.e. “Yarn Raw white in hank” and declared classification thereof as 54026100 are liable to rejected or otherwise, and the subject goods are rightly classifiable under CTH 5606 0090 or otherwise.
- (ii) Whether the declared value of the imported goods is liable for rejection under Rules 12 of CVR 2007 and the same can be re-determined under Rule 5 of CVR, 2007 or otherwise.
- (iii) Whether the differential duty to the tune of Rs. **24,28,754/- (Rupees Twenty Four Lakh Twenty Eight Thousand Seven Hundred and Fifty Four only)** demanded under SCN is recoverable from the Noticees in terms of Section 28(4) of the Customs Act, 1962 or otherwise.
- (iv) Whether the imported goods are liable for confiscation under section 111(m) of the customs Act, 1962 or otherwise.
- (v) Whether acts of the importer attract penal action as proposed under the SCN or otherwise.

18. After having identified and framed the main issues to be decided, I now proceed to deal with each of the issues individually for analysis in light of facts, submissions, circumstances of the case, provisions of the Customs Act, 1962 and nuances of various judicial pronouncements.

Whether the declared description of the subject goods i.e “Yarn Raw white in hank” and declared classification thereof as 54026100 are liable to rejected or otherwise, and the subject goods are rightly classifiable under CTH 5606 0090 or otherwise.

19.1 I find that representative samples were drawn from the import consignments covered under the bills of entry 4251658 and 4251168 both dated 19.01.2023, during the examination on 28.01.2023. These samples were sent to Regional Laboratory of Textile Committee, Kolkata on 28.03.2023 to know about item description and composition thereof. Regional Laboratory of Textile Committee, in its report dated 11.04.2023 reported that sample is **“Chenille Yarn”**, having a composition of 100% polyamide.

19.2 I find that during investigation, Shri Satyam Malhotra, Proprietor, M/s. Bhole Nath Hosiery Mills in his statement, he has been shown a list of past imports (Annexure X) made by his firm i.e. M/s. Bhole Nath Hosiery Mills, he admitted that the yarn imported by the firm M/s. Bhole Nath Hosiery Mills against those past Bills of entry mentioned in the list shown to him are **Chenille Yarn** having hair/feather is 1.3 CM or 0.9 CM. He admitted that he has deliberately mis-classified the imported goods

under 54026100 instead of 56060090 and mis-declared/suppressed the description of the goods by not declaring them as CHENILLE YARN in order to save customs duty. He has admitted in his statement that the yarns imported by his firm M/s. Bhole Nath Hosiery Mills are indeed covered under CTH 56060090.

Sl No	CUSTOM HOUSE CODE	BE NUMBER	BE DATE	NAME OF THE IMPORTER	BE IEC CODE	SUPPLIER NAME	ITEM DESCRIPTION	CTH	QTY	UQC	UNIT PRICE (IN \$)
1	INMUN1	2742269	05/10/2022	BHOLE NATH HOSEYRY MILLS	BDCPM6096E	ZHANGJIAGANG FORBUS TRADING CO LTD, CHINA	YARN RAW WHITE IN HANK 0.9CM 12NM/1	54026100	7450	KGS	2
	INMUN1	2742269	05/10/2022				YARN RAW WHITE IN HANK 1.3CM 12NM/1	54026100	16928	KGS	2
2	INMUN1	2920794	18/10/2022				YARN RAW WHITE IN HANK 0.9CM 12NM/1	54026100	3680	KGS	2
	INMUN1	2920794	18/10/2022				YARN RAW WHITE IN HANK 1.3CM 12NM/1	54026100	18492	KGS	2
3	INMUN1	3325504	16/11/2022				YARN RAW WHITE IN HANK 1.3CM 12NM/1	54026100	20700	KGS	2
	INMUN1	3325504	16/11/2022				NYLON CHENILLE YARN RAW WHITE IN HANKS 1/7.5NM	54026100	276	KGS	2
	INMUN1	3325504	16/11/2022				POLYESTER CHENILLE YARN RAW WHITE IN HANKS 1/9.5NM	54026100	184	KGS	2
4	INMUN1	4251168	19/01/2023				YARN IN HANK 0.9 CM	54026100	9506	KGS	1.5
	INMUN1	4251168	19/01/2023				YARN IN HANK 0.9 CM	54026100	13233	KGS	1.5
5	INMUN1	4251658	19/01/2023				YARN IN HANK 1.3 CM	54026100	225/0	KGS	1.5

Seen 23/2/22

19.3 Statement of Shri Satyam Malhotra, Proprietor, M/s. Bhole Nath Hosiery Mills was recorded by DRI under section 108 of the Customs Act, 1962 on 23.02.2023. He accepted the liability and ready to pay differential duty along with applicable interest and penalty. Further, Statement of Shri Satyam Malhotra has been recorded over a span of 2 years, so noticees had ample time to retract the same in a proper manner. It is relevant here to refer to some landmark judicial pronouncements on the issue of acceptability of statements recorded under provisions of section 108 of the Act.

i. The Hon'ble Supreme Court in the case of **Romesh Chandra Mehta**^[1] and in the case of **Percy Rustomji Basta**^[2] has held "that the provisions of Section 108 are judicial provisions within which a statement has been read, correctly recorded and has been made without force or coercion. The provisions of Section 108 also enjoin that the statement has to be recorded by a Gazetted Officer of Customs and this has been done in the present case. The statement is thus made before a responsible officer and it has to be accepted as a piece of valid evidence".

ii. The Hon'ble Supreme Court in the case of **Badaku Jyoti Svant**^[3] has decided that "statement to a customs officer is not hit by section 25 of Indian Evidence Act, 1872 and would be admissible in evidence and in conviction based on it is correct".

iii. Hon'ble Punjab and Haryana High Court in the case of **Jagjit**

Singh^[4] has decided that “It is settled law that Customs Officers were not police officers and the statements recorded under Section 108 of the Customs Act were not hit by Section 25 of the Evidence Act. The statements under Section 108 of the Customs Act were admissible in evidence as has been held by the Hon'ble Supreme Court in the matter of Ram Singh^[5], in which it is held that recovery of opium was from accused by officers of Narcotic Bureau. Accused made confession before said officers. Officers of Central Bureau of Narcotics were not police officers within the meaning of Section 25 and 26 of the Evidence Act and hence, confessions made before them were admissible in evidence”.

19.4 In view of the foregoing discussion, I find that the statements recorded by DRI under the provisions of Section 108 of the Act form reliable evidence in the case supporting the charge of mis-declaration of import documents and evasion of Customs Duty.

19.5 I find the Explanatory Notes to HSN wherein chenille yarn classified under heading 5606, which is defined as under:

(B) CHENILLE YARN (INCLUDING FLOCK CHENILLE YARN)

Chenille yam consists generally of two or more strands of textile yarn twisted together and gripping short ends of textile yarn that may be practically perpendicular to them, the strands are sometimes maintained in loops formed on a hosiery loom. In all cases, it looks like yarn tufted with pile threads throughout its length. It is usually manufactured directly on special looms (ring twister and Raschel knitting machines, for example) or by cutting up special leno fabric: in the latter process, after the fabric has been cut along either side of each group of warp threads, it is these warp threads (ground and crossing threads) which serve as support in the chenille yarn, and the weft which forms the pile.

The heading also covers chenille yarn obtained by fixing textile flock to a score of textile yarn. In this process the core yarn passed through a glue bath and subsequently through a chamber where the textile flock is fixed radially to the core under influence of a high- tension electrostatic field.

Chenille yarn is used, inter alia, in the manufacture of chenille fabrics (heading 58.01) or of numerous articles such as furnishings, bedding, carpets, trimmings, apparel.”

The Tariff heading 5606 covers Chenille Yarn. The chapter Headings 5606 under consideration are as follows:-

5606 - GIMPED YARN, AND STRIP AND THE LIKE OF HEADING 5404 OR 5405, GIMPED (OTHER THAN THOSE OF HEADING 5605 AND GIMPED

HORSEHAIR YARN); CHENILLE YARN (INCLUDING FLOCK CHENILLE YARN); LOOP WALE-YARN:

5606 00 10 --- Trimmings, of cotton

5606 00 20 --- Trimmings, of man-made fibres

5606 00 30 --- Trimmings, of zari

5606 00 90 --- Other

As per General Rule of Interpretation (GRI) 1, goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

19.6 In view of the above facts, findings, Customs Tariff, explanatory notes, I hold that impugned goods are Chenille Yarn and rightly classifiable under 56060090. I hold so.

Whether the declared value of the imported goods is liable for rejection under Rules 12 of CVR 2007 and the same can be re-determined under Rule 5 of CVR, 2007 or otherwise.

&

Whether the differential duty to the tune of Rs. 24,28,754/- (Rupees Twenty Four Lakh Twenty Eight Thousand Seven Hundred and Fifty Four only) demanded under SCN is recoverable from the Noticees in terms of Section 28(4) of the Customs Act, 1962 or otherwise.

20.1 I find that the physical examination and the subsequent chemical testing of the import consignment showed a mismatch with the declared description of the goods which was also admitted by the importer in his statement before DRI. As a result, declared CIF values of goods in the said import documents cannot be considered as the values that truly or correctly represent the goods actually imported. Therefore, there are enough reasons to believe that the declared values do not represent the actual transaction value and, consequently, liable for rejection in terms of Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Rule 12 of the Customs Valuation (Determination of Value of Imported Goods), Rules, 2007 reads as follows:

Rule 12. Rejection of declared value. –

1. *When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the*

proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

- 2. At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).*

20.2 I find that the transaction value of the items, sought to be imported under the impugned bill of entry, cannot be determined under the provisions of sub-rule (1) of Rule 3 of the rules *ibid* and the correct value needs to be ascertained and arrived at by proceeding sequentially in accordance with Rules 4 to 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

20.3 I find that contemporaneous import of such goods showed that Chenille Yarn made of 100% polyamide were being imported with unit values USD 3.21/Kg (CIF) and above. It had been admitted by the importer in his statement dated 23.02.2023 that he had resorted to the same modus in respect of his past three imports also.

20.4 I find that import data extracted with respect to contemporaneous imports was generic in nature, therefore, it could not be termed as 'identical goods' with respect to the other imported goods of similar description in contemporaneous period, hence their value cannot be determined by applying provisions of Rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

20.5 I find that in terms of Rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the value of those 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. Hence, the value of the goods covered under Bills of entry nos. 2742269 dated 05.10.2022, 2929794 dated 18.10.2022 and 3325504 dated 16.11.2022 is to be re-determined in terms of Rule 5 – Transaction value of Similar Goods of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

20.6 I find that contemporaneous import of such goods showed that Chenille Yarn made of 100% polyamide were being imported with unit values USD 3.21/Kg (CIF) and above. Further, I find that Shri Satyam Malhotra, Proprietor, M/s Bhole Nath Hosiery Mills in his statement recorded under Section 108 of the Customs Act, 1962 on 23.02.2023 admitted that imported yarn under the said BOEs has not been correctly classified and he is ready to pay the differential duty as per the correct classification under CTH 5606 0090. By considering the unit value of the

impugned goods as mentioned in table-A above, assessable value of the subject goods is required to be re-determined under Section 14 of the Customs Act, 1962 as per aforementioned table-A (Rs. 64,48,371/- for B/E No. 2742269 dated 05.10.2022, Rs. 60,14,388/- for B/E No. 2929794 dated 18.10.2022 and Rs. 58,29,229/- for B/E No. 3325504 dated 16.11.2022) and re-assessment is required to be done as per section 17(4) of the Customs Act, 1962 as per duty laviable as per duty structure of chapter 56060090 (BCD:10%, SWS: 10%, IGST: 12% = 24.32%). The re-assessment resultant a duty difference of Rs. **24,28,754/-** (Rupees Twenty-Four Lakh Twenty-Eight Thousand Seven Hundred and Fifty-Four only) which is to be recovered by the notice.

20.7 Therefore, I conclude that Show Cause Notice has rightly proposed re-determination of assessable value under the provision of rule 5 of CVR, 2007.

20.8 Looking into the facts and circumstances of the case, sub-section (4) of the Section 28 is applicable, which is reproduced as under: -

(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 wilful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

In the instant matter, it appeared that the importer had deliberately mis-declared/mis-classified the goods and also suppressed the actual value and description of the goods in contravention of various provisions of the Customs Act and Rules there under with an intent to evade Customs Duty of Rs. 24,28,754/- (Rupees Twenty-Four Lakh Twenty -Eight Thousand Seven Hundred and Fifty-Four only). Hence, the provisions of the Section 28(4) of the Customs Act, 1962 for invoking extended period for demand of duty is rightly invocable in the instant case. Therefore, the differential duty amounting **24,28,754/-** as demanded under SCN are recoverable from the Noticees in terms of 28(4) of the Customs Act, 1962. Further, I find that interest on delayed payment of duty which accrues automatically once demand of duty is confirmed is also recoverable from the importer under the provisions of Section 28AA of the Customs Act, 1962. For this, I rely on the decision of the Hon'ble Apex Court in the case of CCE Pune Vs SKF

India Ltd. [2009(239)ELT (385) SC].

Whether the imported goods are liable for confiscation under section 111(m) of the customs Act, 1962 or otherwise.

21.1 As per my detailed findings in Para 21 above, the impugned goods are Chenille Yarn and are rightly classifiable under CTH 56060090, but the importer has willfully wrongly mis-declared as “Yarn in Hank” and mis-classified the goods under CTH 54026100 and evaded Customs duty amounting to **Rs. 24,28,754/- (Rupees Twenty-Four Lakh Twenty-Eight Thousand Seven Hundred and Fifty-Four only).**

21.2 I also find that it is a fact that consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011; ‘Self-Assessment’ has been introduced in Customs. Section 17 of the Customs Act, effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in the electronic form. Provisions of the Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make proper & correct entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962) the Bill of Entry shall be deemed to have been filed and after self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 8th April, 2011, it is the added and enhanced responsibility of the importer to declare the correct description, value, quantity, notification, etc and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

21.3 From the above, I find that the Noticee has violated Sub-Section (4) and 4(A) of Section 46 of the Customs Act as they have mis-declared and mis-classified the goods and evaded the payment of applicable duty. I find that the Noticee was required to comply with Section 46 which mandates that the importer filing the Bill of Entry must make true and correct declarations and ensure the following:

- i. Accuracy and completeness of the information declared;
- ii. The authenticity and validity of any document supporting the information provided; and
- iii. Comply with restrictions or prohibitions relating to the goods under

this Act or any law in force at the time being

Section 46 of the Customs Act, 1962:

1. *The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting [electronically] [on the customs automated system] to the proper officer a bill of entry for home consumption or warehousing [in such form and manner as may be prescribed] Provided that the Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically [on the customs automated system allow an entry to be presented in any other manner:*

Provided further that, if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

.....
(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

(4A) The importer who presents a bill of entry shall ensure the following, namely:—

- (a) the accuracy and completeness of the information given therein;
 (b) the authenticity and validity of any document supporting it; and
 (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.*

21.4 I find that the Show Cause Notices propose confiscation of goods under the provisions of Section 111 (m) of the Customs Act, 1962.

Provisions of Section 111 (m) of the Customs Act, 1962 is re-produced herein below:

“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 to confiscation.”

21.5 As the provisions of Section 111 (m) suggests in the instant case, the importer did not declare correct CTH /description of the goods and hence, contravened the provisions of Section 46 of the Customs Act, 1962. These acts of omission and commission on the part of the importer rendered the goods liable for confiscation under the provisions of Section 111 (m) of the Customs Act, 1962.

21.6 In the present proceedings, I observed that the goods imported vide impugned bills of entry are not available for confiscation, as the matter

pertains to improper importation of goods cleared in the past. Therefore, redemption fine under section 125(1) of the Customs Act, 1962 is not impossible in the instant case. In this regard, I rely upon the decision of Hon'ble High Court of Bombay in the matter of Commissioner of Customs (Import), Mumbai vs Finesse Creation (Inc.) 2009 (248) E.L.T 122 (Bom.) wherein Para 5 and 6, the Hon'ble Court held that:-

5. In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter.

6. In these circumstances, in our opinion, the tribunal was right in holding that in the absence of the goods being available no fine in lieu of confiscation could have been imposed. The goods in fact had been cleared earlier. The judgment in Weston (supra) is clearly distinguishable. In our opinion, therefore, there is no merit in the questions as framed. Consequently, appeal stands dismissed.”

The above decision of the Hon'ble High Court of Bombay has been affirmed by the Hon'ble Supreme Court of India 2010 (255) E.L.T. A120 (S.C.) [12-05-2010].

Therefore, I hold that the impugned goods are liable for confiscation under the provisions of Section 111 (m) of the Customs Act, 1962. However, since the goods are not physically available for confiscation, I refrain from imposing any redemption fine.

Whether acts of the importer attract penal action as proposed under the SCN or otherwise.

22.1 I find that the SCN proposes penalty on the notice under section of 114A of the Customs Act, 1962. Provisions of Section 114A of the Customs Act, is re-produced herein below:-

“SECTION 114A. Penalty for short-levy or non-levy of duty in certain cases. –

*Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has² [****]been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under [sub-section (8) of section 28] shall also be*

liable to pay a penalty equal to the duty or interest so determined:

*[**Provided** that where such duty or interest, as the case may be, 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 the 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 per cent of the duty or interest, as the case may be, so determined:*

***Provided** further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :*

.....

***Provided** also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.*

22.2 Penalty under Section 114A can be imposed in cases where the duty has not been levied or has been short-levied by reason of collusion or any wilful mis-statement or suppression of facts. I find on the basis of the evidences and above discussions that the importer in the present case has wilfully mis-classified the goods whereas they were fully aware, for such act and omissions, **I hold the importer liable to penalty under Section 114A of the Customs Act, 1962.**

22.3 Now, I come to examine the penalty imposable on the Noticee under Section 112(a) and 114A of the Customs Act, 1962. I find that Section 114A stipulates that the person who is liable to pay duty by reason of collusion or any wilful mis-statement or suppression of facts as determined under section 28, is also liable to pay penalty under Section 114A. These acts and omissions of the Importer rendered them liable for penal action under Section 114A of the Customs Act, 1962.

22.4 I find that there is mens-rea on the part of the importer to evade customs duty by way of misdeclaration in terms of item description, valuation and mis-classification to evade customs duty and thereby payment of short duty. The act of the importer has rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962, and therefore also have rendered themselves liable for penalty under section 112(a) of the Customs Act, 1962. However, I find that as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive. As penalty is being imposed under Section 114A of the

Customs Act, 1962, no penalty is being imposed under Section 112(a), *ibid*.

22.5 As regards imposition of penalty under Section 114 AA of Customs Act, 1962 on Shri Satyam Malhotra, Proprietor of M/s. Bhole Nath Hosiery Mills, the Section 114 AA envisages penalty on a person, who 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. I observe that Shri Satyam Malhotra deliberately and consciously suppressing the materials facts about the essential details of the imported goods before the Customs authorities and using misleading terminologies, as such intentionally causing to make false declarations before the Customs authorities for assessment of the said goods which did not correspond to the imported goods in respect of these three past consignments covered under Bills of Entry nos. 2742269 dated 05.10.2022, 2929794 dated 18.10.2022 and 3325504 dated 16.11.2022 and for their act of omission and commission they have rendered themselves liable for penalty under Section 114 AA of the Customs Act, 1962. I hold so.

23. In view of the above facts of the case and findings on record, I pass the following order: -

ORDER

(i) I reject the description, classification and quantity of the goods declared as "Yarn in Hank (09.CM/1.3CM) under CTH 54026100 under Bill of Entry No. 2742269 dated 05.10.2022, 2929794 dated 18.10.2022 and 3325504 dated 16.11.2022 and order to amendment in description, and re-classification as "Chenille Yarn" under CTH 56060090;

(ii) I reject the declared assessable value of the goods imported vide Bills of entry no. 2742269 dated 05.10.2022, 2929794 dated 18.10.2022 and 3325504 dated 16.11.2022 valued at Rs. **1,11,22,561/-** (39,19,982/- + 36,56,163/- + 35,46,416/-) **(Rupees One Crore Eleven Lakh Twenty-Two Thousand Five Hundred and Sixty-One only)** under Rule 12 of CVR, 2007 and order to re-determine the same at Rs. **1,82,91,988/-** (64,48,371/- + 60,14,388/- + 58,29,229/-) **(Rupees One Crore Eighty-Two Lakh Ninety-One Thousand Nine Hundred and Eighty-Eight only)** in terms of Rule 5 of the CVR, 2007 read with section 14 of Customs Act, 1962;

(iii) I order to confiscate the impugned goods imported vide Bills of Entry Nos. 2742269 dated 05.10.2022, 2929794 dated 18.10.2022 and 3325504 dated 16.11.2022 having re-determined value of Rs.

1,82,91,988/- (Rupees One Crore Eighty-Two Lakh Ninety-One Thousand Nine Hundred and Eighty-Eight only) under Section 111(m) read with provisions of Section 46 (4) and Section 46 (4A) of the Customs Act, 1962 and since the impugned goods have already been cleared for Home Consumption and not physically available for confiscation, I refrain from imposing redemption fine under section 125 of the Customs Act, 1962;

(iv) I confirm demand of differential Customs duties totally amounting Rs. **24,28,754/- (Rupees Twenty-Four Lakh Twenty-Eight Thousand Seven Hundred Fifty-Four only)**, as discussed hereinabove and the same is to be recovered from M/s. Bhole Nath Hosiery Mills (IEC: BDCPM6096E) under Section 28(4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962;

(v) I impose penalty of Rs. **24,28,754/- (Rupees Twenty-Four Lakh Twenty-Eight Thousand Seven Hundred Fifty-Four only)** on M/s. Bhole Nath Hosiery Mills under Section 114A of the Customs Act, 1962 for the reasons of wilful mis-statement and suppression of facts. I refrain from imposing penalty under section 112 (a) of the Customs Act, 1962, since as per 5th proviso of Section 114A, penalty under Section 112 and 114A are mutually exclusive.

(vi) I Impose penalty of **Rs.1,00,000 (Rupees One Lakh only)** on the Sh. Satyam Mahotra, Proprietor, M/s. Bhole Nath Hosiery Mills under Section 114AA of the Customs Act, 1962.

24. 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.

25. The Show Cause Notice bearing no. GEN/ADJ/ADC/107/2025-Adjn dated 13.01.2025 stands disposed in above terms.

**Dipak Zala,
Additional Commissioner,
Custom House, Mundra.**

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To,

- i. M/s. BHOLE NATH HOSIERY MILLS (IEC: BDCPM6096E),
1104, PURANA BAZAR, LUDHIANA, PUNJAB-141001.
- ii. Shri Satyam Malhotra, proprietor of M/S BHOLE NATH HOSIERY MILLS
(IEC: BDCPM6096E), 1104, PURANA BAZAR, LUDHIANA, PUNJAB-
141001.

Copy to:

- i. The Additional Director, DRI, Kolkata Zonal Unit, Zonal Unit, 8, Ho CHI-Minh Sarani, Kankaria Estates, Kolkata-700071.
 - ii. The Deputy/Asstt. Commissioner of Customs, (RRA/TRC/Gr.III),
Mundra.
 - iii. The Deputy/Asstt Commissioner of Customs, EDI, Mundra.
 - iv. Guard File.
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