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|  | <p style="text-align: center;">सीमा शुल्क के प्रधान आयुक्त का कार्यालय<br/>सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात</p> <p style="text-align: center;"><b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS</b></p> <p style="text-align: center;"><b>CUSTOMS HOUSE MUNDRA, KUTCH, GUJARAT</b></p> <p style="text-align: center;"><b>Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62      Email id: adj-mundra@gov.in</b></p> |  |
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DIN:-20250171MO0000444CBB

DATE:-15.01.2025

**SHOW CAUSE NOTICE UNDER SECTION 28(4) OF THE CUSTOMS ACT, 1962**

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% while for items under CTH 56060090 the BCD is 10%.

**2.** In the course of processing the information, one such importer who could be identified to be using the above modus operandi was found to be M/s Shiva Fabrics (IEC: GBHPS0946B), H. NO. 216, ST. NO. 4, MOHAR SINGH NAGAR, LUDHIANA (PUNJAB) - 141008. It was also found that on 16.01.2023, the importer had a Bill of Entry at Mundra Port (INMUN1), the details of which are as below:

| <b>No.</b> | <b>HEADING</b>              | <b>DECLARATION MADE BY IMPORTER IN B/E</b>   |
|------------|-----------------------------|--|
| 1.         | <b>Bill of Entry:</b>       | 4201613 dated 16.01.2023   |
| 2.         | <b>Description of goods</b> | 1.3 CM YARN IN HANK  |
| 3.         | <b>CTH Declared</b>         | 5402 6100  |
| 4.         | <b>Quantity (KGs)</b>       | 22344 KGS/228 Bales  |
| 5.         | <b>Unit Price (CIF)</b>     | \$1.5/KG   |
| 6.         | <b>Invoice No.</b>          | WH122153 dated 16.12.2022  |
| 7.         | <b>Supplier</b>             | Zhangjiagang Wellhow Trading Co. Ltd., Guotai Oriental Plaza No. 9, Renmin East Road, Zhangjiagang, Jiangsu, China |

**3.** The Bill of Entry had been filed at Mundra Port (INMUN1). Accordingly, a request was made to DRI AZU vide letter dated 17.01.2023 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, officers of DRI KZU reached Mundhra Port on 19.01.2023 for examination of the above-mentioned consignment. **(RUD-01)**

**4 .** The Goods under Bill of entry no. 4201613 dated 16.01.2023 in Container No. ESDU4059729 (40') was examined on 19.01.2023 under Panchanama proceedings at CFS Transworld Terminal Pvt. Ltd., Bharat CFS Zone-I, AP & SEZ, Mundra Kutchh, Gujarat-370421 under Mundra Port (INMUN1). The container was found to be stuffed with 228 numbers of white coloured polybags marked as "NYLON MINK 1.3CM, LOT NO. HK98, NT WT: 98.0 Kgs, Gross Weight: 98.5 kgs", 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. During examination the CHA voluntarily produced a test report from the supplier for the Invoice of the instant consignment, wherein the description of the goods were mentioned as "1/13 MM NYLON CHENILLE YARN RAW WHITE IN HANKS". Representative samples were drawn in quadruplicate for testing. by the appropriate authority. After examination, the consignment was seized under Section 110 of the Customs Act, 1962 on reasons to believe that they were mis-declared and hence liable for confiscation. The examination proceedings were recorded under a panchnama dated 19.01.2023. **(RUD-02)**

**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. Consequently, it seemed that the subject 02 (two) consignments were imported improperly by deliberately suppressing the description of the goods in full and misclassifying the same under CTH 5402 6100 in order to evade payment of appropriate amount of customs duties and would therefore be liable to confiscation under Section 111 of Customs Act, 1962. (Copy of the Seizure Order dated 19.01.2023 and Supurdnama dated 19.01.2023 are annexed as RUD-03 and RUD-04 respectively)

**6.1** Summons were issued under Section 108 of the Customs Act, 1962 to Shri Rahul Kumar Jha, H-Card Holder of M/s Anon Logistics, the CHA of the impugned consignment, and his statement was recorded thereafter on 19.01.2023 and 20.01.2023 wherein he, *inter-alia*, made the following

submissions:

- i) that he was appointed as an H Card Holder for the CHA firm M/s Anon Logistics by one Shri Rahul Sharma, and that he works in the CHA firm as per the directions of said Shri Rahul Sharma only.
- ii) that the said Shri Rahul Sharma asked him to clear the consignment under BE 4201613 dt. 16.01.2023 of M/s Shiva Fabrics through CHA firm M/s Anon Logistics, and also asked him to appear to be present during the examination of the said consignment on 19.01.2023 at Mundra Port.
- iii) that he has previously handled several other import consignments of M/s Shiva Fabrics of the same type of goods. His job was to be present at the Mundra Port at the time of examination of such import consignments, and thereafter load them onto domestic containers on trucks sent by his firm.
- iv) that the owner of M/s Shiva Fabrics was one Shri Sagar as per the KYC documents, although he never met him personally. He also doesn't know about the relation between the importer and the CHA firm.
- v) that on enquiry during the examination, he voluntarily submitted one Test Report dated 16.12.2022 for the Invoice of the instant consignment, wherein the description of the goods were mentioned as "1/13 MM NYLON CHENNILE YARN RAW WHITE IN HANKS"
- vi) that he got the Test Report of the consignment being examined from one person at his office. He submitted that the classification of the imported items in the Bill of Entry were not done by him, and he also could not comment on the invoice value of the imported goods. He only worked as per the directions given to him from his firm.

(Copies of the summons dated 19.01.2023 to Shri Rahul Kumar Jha and statements dated 19.01.2023 and 20.01.2023 of Shri Rahul Kumar Jha are annexed as **RUD-05 and RUD-06**)

**6.2** Thereafter, summons were issued to Shri Sagar (Proprietor of M/s Shiva Fabrics) and his statement was recorded thereafter on 02.02.2023 wherein he, inter-alia, made the following submissions:

- i) that he is the proprietor of M/s Shiva Fabrics, engaged in the import of fabrics and yarn. Further, the type of yarn they import are Nylon/Polyester yarn having feather like structures, which are also known as Chenille Yarn.
- ii) that the type of yarn he had imported was covered under CTH 5606 0090.
- iii) that he had found that several other importers were importing same type of yarn without declaring them as Chenille Yarn or under CTH 5606 0090. Instead they were being imported under CTH 54026100 or

55091100. By classifying Chenille Yarn under CTH 54026100 or 55091100, one has to pay BCD of 5% only, instead of 10% under CTH 56060090. Thus to save customs duty, he too classified imported yarns under CTH 54026100 or 55091100.

iv) that on being confronted with the Test Report dated 16.12.2022 which was submitted during examination of the imported goods, he said he received the said test report from the supplier of the goods in China.

v) that he agreed with the findings in the Panchanama dated 19.01.2023 drawn during the examination of goods under BE 4201613 dated 16.01.2023 at Mundra Port, wherein it appeared that the imported goods were mis-declared, and that he was willing to pay the differential duty.

vi) that further on being confronted with an invoice of the same supplier, issued to an Indian importer, pertaining to identical goods as imported by him, wherein the unit price of the goods was \$3.21/KG instead of \$1.5/KG as declared by him, he admitted that apart from mis-declaration, he also resorted to undervaluation, for the purpose of surviving in the trade.

vii) that he agreed to pay the differential duty as per the correct classification and the correct value determined by the department.

(Copies of the summons dated 24.01.2023 to Shri Sagar and statement dated 02.02.2023 of Shri Sagar are annexed as (**RUD-07 and RUD-08**)

**6.3** Further Summons dated 17.02.2023 and 03.03.2023 were issued to Shri Sagar for appearing at the office of DRI KZU, however, Shri Sagar failed to comply with the said summons, neither appearing at the office of DRI KZU after the summons were issued, nor submitting any response in this regard. (Copies of the summons dated 17.02.2023 and 03.03.2023 to Shri Sagar are annexed as (**RUD-09 and RUD-10**).

## **7. TESTING OF THE SAMPLES:**

**7.1** M/s Shiva Fabrics had subsequently filed another BE 4479223 dt 03.02.2023, having declared items similar to the consignment under BE 4201613 dated 16.01.2023, but classifying them under CTH 5606 0900 this time. A letter dated 04.02.2023 from DRI KZU was sent to DRI AZU, for drawing samples from the goods under BE 4479223 dt 03.02.2023, for the purpose of testing. In response, representative samples were forwarded to DRI KZU by SIIB, Mundra Customs vide letter dated 22.02.2023. (Copies of the letter dated 04.02.2023 to DRI AZU and Letter dated 22.02.2023 from SIIB, Custom House, Mundra are annexed as (**RUD-11 and RUD-12**)

**7 . 2** The representative samples drawn from the two import consignments covered under Bills of entry nos. 4201613 dated 16.01.2023 and 4479223 dated 03.02.2023 were sent for chemical testing to the Textiles Committee, Kolkata on 17.03.2023, 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.

(Copies of the letters dt. 17.03.2023 to the Textile Committee, Kolkata are annexed as **RUD-13**)

**7.3** The Regional Laboratory of the Textile Committee, in its report dated 29.03.2023 that all the samples forwarded to them were tested, and the results indicate that they were **"Chenille Yarn", having a composition of 100% Polyamide.**

**(Copies of the reports of the Regional Laboratory of the Textile Committee dated 29.03.2023 are annexed as RUD-13 and RUD-14)**

## **8. DUTY STRUCTURE:**

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

| CTH        | <b>5402 6100</b>        |  | <b>5606 0090</b>        |                                       |
|------------|-------------------------|--|-------------------------|---------------------------------------|
| 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<br>(AV+BCD+SWS) | 12% of<br>Rs (100+5+0.5) =<br>Rs 12.66 | 12 % of<br>(AV+BCD+SWS) | 12% of<br>Rs (100+10+1) =<br>Rs 13.32 |
| Total Duty | 18.16%                  | 5+0.5+12.66=18.16                      | 24.32%                  | 10+1+13.32=24.32                      |

**8.2** 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 Bill of entry no. 4201613 dated 19.01.2023 were liable for confiscation in terms of Section 111 of the Customs Act, 1962.

## **9. CLASSIFICATION OF THE GOODS:**

**9.1** As per the Explanatory Notes (HSN), chenille yarn classified under heading 5606 is defined as under:

**(B) CHENILLE YARN (INCLUDING FLOCK CHENILLE YARN)**

*Chenille yarn 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 core 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."*

**9.2** The importer, in respect of the imported goods covered under the Bill of Entry 4201613 dt. 16.01.2023, 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 5402 6100 is 5%, and the said Tariff Item covers goods of following description :-

**CHAPTER 54 - MAN-MADE FILAMENTS; STRIP AND THE LIKE OF MAN-MADE TEXTILE MATERIALS**

**5401 SEWING THREAD OF MAN-MADE FILAMENTS, WHETHER OR NOT PUT UP FOR RETAIL SALE**

**5402 SYNTHETIC FILAMENT YARN (OTHER THAN SEWING THREAD), NOT PUT UP FOR RETAIL SALE, INCLUDING SYNTHETIC MONOFILAMENT OF LESS THAN 67 DECITEX**

- High tenacity yarn of nylon or other polyamides, whether or not textured :
- ..
- High tenacity yarn of polyesters, whether or not textured:
- ..
- Textured yarn :
- ..
- Other yarn, single, untwisted or with a twist not exceeding 50 turns per metre
- ..
- Other yarn, single, with a twist exceeding 50 turns per metre
- ..
- Other Yarn, Multiple (Folded) Or Cabled**

**5402 6100 --- Of Nylon Or Other Polyamides**

**9.3** 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%, and the description of the Tariff Item 56060090 is as follows:

**CHAPTER 56 - WADDING, FELT AND NONWOVENS; SPECIAL YARNS; TWINE, CORDAGE, ROPES AND CABLES AND ARTICLES THEREOF**

**5601 WADDING OF TEXTILE MATERIALS AND ARTICLES THEREOF; TEXTILE FIBRES, NOT EXCEEDING 5 MM IN LENGTH (FLOCK), TEXTILE DUST AND MILL NEPS**

..

|   |
|---|
| 5602 FELT, WHETHER OR NOT IMPREGNATED, COATED, COVERED OR LAMINATED   |
| ..  |
| 5603 NONWOVENS, WHETHER OR NOT IMPREGNATED, COATED, COVERED OR LAMINATED  |
| ..  |
| 5604 RUBBER THREAD AND CORD, TEXTILE COVERED; TEXTILE YARN, AND STRIP AND THE LIKE OF HEADING 5404 OR 5405, IMPREGNATED   |
| ..  |
| 5605 METALLISED YARN, WHETHER OR NOT GIMPED, BEING TEXTILE YARN, OR STRIP OR THE LIKE OF HEADING 5404 OR 5405, COMBINED WITH METAL IN THE FORM OF THREAD, STRIP OR POWDER OR COVERED WITH METAL                 |
| ..  |
| <b>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 WALES-YARN:</b> |
| <i>5606 00 10 --- Trimmings, of cotton</i>  |
| <i>5606 00 20 --- Trimmings, of man-made fibres</i>   |
| <i>5606 00 30 --- Trimmings, of zari</i>  |
| <b>5606 00 90 --- Other</b>   |

**9.4** The importer, in respect of the goods covered under Bill of entry no. 4201613 dated 16.01.2023 had declared the unit value as USD 1.5/Kg (CIF). The goods were declared only as “1.3 CM YARN IN HANK”. 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.

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 Chenille Yarn made of 100% polyamide were being imported with unit values starting from USD 3.21/Kg (CIF) for the different specifications of yarn. It had been admitted by the importer in his statement dated 02.02.2023 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. 4201613 dated 16.01.2023 and also the value of the past consignments covered under Bills of Entry nos. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 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. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 dated 16.11.2022 on the basis of evidences of contemporaneous import of Nylon/ Polyester Chenille Yarn, it was found that the importer was liable to pay customs duty amounting to **Rs. 82,45,817/-** against these past consignments. It was however found that the total duty paid against these consignments was **Rs. 43,07,095/-**.

**10.7** It thus appears that customs duty amounting to **Rs. 39,38,722/-** had been short paid/ evaded by the importer in respect of the goods covered under Bills of Entry nos. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 dated 16.11.2022.

(Copy of the chart showing calculations of differential duty in respect of the past consignments of M/s Shiva Fabrics is annexed as **RUD-15**)

**10.8** 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. 39,38,722/-** 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 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. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 dated 16.11.2022 amounting to **Rs.39,38,722/-** and the interest on the said evaded duty, is also required to be recovered from the importer M/s Shiva Fabrics 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 past consignments, the importer, M/s Shiva Fabrics also appears to be liable to a penal action as provided under Section 114A of the Customs Act, 1962.

**10.7** The relevant portion of Section 28 reads as follows:

**Section 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded-**

*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 <sup>11</sup>[so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show*

cause why he should not pay the amount specified in the notice.

**10.8** The relevant portion of Section 28AA reads as follows:

**Section 28AA. Interest on delayed payment of duty. -**

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

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

**10.9** The relevant portion of Section 114A of the Customs Act, 1962 reads as follows:

**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 has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determine

## **11. PROVISIONAL RELEASE OF THE SEIZED GOODS:**

**11.1** The importer M/s Shiva Fabrics (IEC: GBHPS0946B), vide letter dated 07.04.2023 made a request for provisional release of the import goods covered under BE 4201613 dated 16.01.2023 under Section 110A of the Customs Act, 1962.

(Copy of the letter dated 07.04.2023 from M/s Shiva Fabrics requesting for provisional release is annexed as **RUD-16**)

**11.2** After due consideration of the request of the importer, DRI, KZU vide its letter dated 26.04.2023 informed the office of the Principal Commissioner of Customs, Custom House, Mundra, that, if deemed fit, the seized goods may be provisionally released under the provisions of Section 110A of the Customs Act, 1962, on the following conditions or any other such conditions as deemed fit by the competent authority as below:

- i. The importer shall pay the differential duty on the basis of classification of the seized goods under Tariff Item 56060090, instead

of the declared Tariff Item 54026100 and on the basis of the Unit Price of the goods as 3.21\$/Kg (CIF), instead of the declared Unit Price as 1.5\$/Kg (CIF).

- ii. The importer shall furnish appropriate bond, equivalent to the full re-determined value of the seized goods; and
- iii. The importer shall furnish an appropriate Bank Guarantee/ Security Deposit to cover the amount of redemption Fine and Penalties that may be levied at the time of adjudication as deemed fit.

(Copy of the letter dated 26.04.2023 from DRI KZU is annexed as **RUD-17**)

**11.3** The competent authority i.e. the O/o the Pr. Commissioner of Customs, Mundra, vide letter dt. 09.05.2023 and corrigendum dt. 23.05.2023, accorded permission dated for provisional release of the goods imported vide B/E 4201613 dated 16.01.2023 against submission of Bank Guarantee for the amount Rs. 20,00,000/- and Bond for the amount equivalent to the value of the goods.

(Copy of Mundra Customs letter dated 09.05.2023 and corrigendum dated 23.05.2023 are annexed as **RUD-18**)

**11.4** Further, a letter dated 22.06.2023 was received from the Assistant Commissioner of Customs, Custom House, Mundra wherein it was informed that the importer had submitted the requisite bond and bank guarantee, and thereafter the impugned goods were physically released.

(Copy of Mundra Customs letter dated 22.06.2023 annexed as **RUD-19**)

## **12. FINDINGS OF THE INVESTIGATION:**

**12.1** From the enquiry conducted pursuant to the detention and examination of the impugned consignments imported by M/s Shiva Fabrics, covered under B/E 4201613 dated 16.01.2023 it is revealed that the importer resorted to mis-declaration by not disclosing the essential characteristics of the goods sought to be imported with the sole purpose of classifying the goods under CTS: 5402 6100 instead of 5606 0090, so that they could avoid payment of Customs Duty at higher rate that ought to have been leviable on such goods. The importer while filing the bills of entry had provided incomplete description about the goods. In the import documents, the goods were declared as "1.3 CM YARN IN HANK". The outcome of the chemical test of the representative samples clearly showed that the samples drawn from the seized import consignments were "Chenille Yarn", having a composition of 100% Polyamide.

**12.2** The findings of the physical examination and the subsequent chemical testing of the import consignment clearly establishes the fact 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. 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.

**12.3** The importer had admitted in his statement dated 02.02.2023 that the yarn imported by him through his firm M/s Shiva Fabrics are indeed covered under CTH 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 imports also.

**13.1** 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.

**13.2** The relevant portion of Section 46 of the Customs Act, 1962 reads as follows:

**Section 46. Entry of goods on importation –**

.....

.....

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

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

- *the accuracy and completeness of the information given therein;*
- *the authenticity and validity of any document supporting it; and*
- 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.*
- *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.*

**13.3** 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 Shiva Fabrics 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.

**14.** It therefore appears that the importer, M/s Shiva Fabrics 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.

**15.1** The relevant portion of Section 111 reads as follows:

**Section 111. Confiscation of improperly imported goods, etc.**

*The following goods brought from a place outside India shall be liable to confiscation:*

(a)  
(b)

....

(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 case of baggage with declaration made under Section 77 in respect thereof, or in case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;*

**15.2** 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 Shiva Fabrics is liable to a penal action as provided under Section 112(a), 112(b) and Section 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.

**16.1** Section 112 reads as follows:

**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) .....*

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

*PROVIDED that .....*

## **16.2** Section 114AA reads as follows:

### **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.*

**17.1** As has been revealed in the course of the investigation, the importer, M/s Shiva Fabrics 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 Bill of entry no 4201613 dated 16.01.2023 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.

**17.2** 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. Admittedly the same modus had been resorted to by the importer in respect of the **past consignments covered under Bills of Entry nos. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 dated 16.11.2022.**

**17.3** 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. Further, the declared value in respect of these past consignments also need 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.

**17.4** The duty evaded in respect these 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.

**17.5** Section 12 of the Customs Act, reads as follows:

**Section 12. Dutiable goods. -**

*(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.*

*(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.*

**17.6** Section 14 of the Customs Act, reads as follows:

**Section 14. Valuation of goods. -**

*(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or, as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and the price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf.*

*Provided .....*

**18.** In view of the above, M/s Shiva Fabrics (IEC: GBHPS0946B), H. NO. 216, ST. NO. 4, Mohar Singh Nagar, Ludhiana (Punjab) – 141008 are hereby called upon to show cause to **the Additional Commissioner of Customs, Customs House, Mundra** having his office situated at 1st Floor, Custom House, PUB, Mundra, in writing within thirty days from the receipt of this notice as to why: -

- a. The assessment of the goods covered under the past consignments imported by M/s Shiva Fabrics vide Bills of Entry Nos. Bills of Entry

nos. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 dated 16.11.2022, claiming assessment under 5402 6100 or 5509 1100 should not be rejected and the impugned goods covered under the subject past bills of entry should not be reassessed by reclassifying the same under CTH 5606 0090.

- b. The declared values for the goods covered under the past consignments imported by M/s Shiva Fabrics vide Bills of Entry Nos. Bills of Entry nos. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 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. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 dated 16.11.2022 amounting to **Rs. 39,38,722/- (Rupees Thirty-Nine Lakhs Thirty-Eight Thousand Seven Hundred and Twenty-Two 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 past consignments imported by M/s Shiva Fabrics vide Bills of Entry Nos. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 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 Sagar, Proprietor of the import firm, M/s Shiva Fabrics, for the willful mis-statement/ suppression of facts which resulted in the evasion of duty in respect of these past consignments covered under Bills of Entry nos. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 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 Sagar, Proprietor of the import firm, M/s Shiva Fabrics 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 Sagar, Proprietor of the import firm, M/s Shiva Fabrics since 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 Sagar, Proprietor of the import firm, M/s Shiva Fabrics, 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 past consignments covered under Bills of Entry nos. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 dated 16.11.2022
- i. Any liabilities arising due to the above or otherwise shall not be adjusted against the Bank Guarantees of Rs. 20,00,171/- dated 15.05.2023 submitted by M/s Shiva Fabrics against Bill of Entry No. 4201613 dated 16.01.2023 respectively..

19. The above Noticees are further required to state specifically in their written reply as to whether they wish to be heard in person before the case is adjudicated. If no specific mention is made about this in their written submissions, it shall be presumed that they do not wish to be heard in person. They should produce at the time of showing cause, all the evidences upon which they intend to rely in support of their defense.

20. They are further required to note that their reply should reach within 30 (thirty) days or within such extended period as may be allowed by

the adjudicating authority. If no cause is shown against the action proposed above within 30 days from the receipt of this Show Cause Notice or if they do not appear before the adjudicating authority as and when the case is posted for hearing, the case is liable to be decided ex-parte on the basis of facts and evidences available on record.

21. This Show Cause Notice is issued without prejudice to any other action that may be taken against them, under this Act or any other law for the time being in force, or against any other Company, person(s), goods and conveyances whether named in this Notice or not.
22. The documents relied upon for the purpose of this Notice are attached to this Notice as Annexure-R and the copies thereof wherever not earlier supplied are enclosed herewith or would be made available for inspection on demand being made in writing within 30 days from the date of the receipt of this Notice.
23. The Department reserves its right to amend, modify or supplement the Notice at any time on the basis of evidences available/evidences gathered later on, prior to the adjudication of the case.

Encl: Annexure.

(अमित कुमार मिश्र)  
अतिरिक्त आयुक्त सीमा शुल्क,  
कस्टम हाउस, मुद्रा

Date: 15.01.2025.

F. No. GEN/ADJ/COMM/115/2025-Adjn

To,

- i. M/s Shiva Fabrics (IEC: GBHPS0946B), H. NO. 216, ST. NO. 4, MOHAR SINGH NAGAR, LUDHIANA (PUNJAB) – 141008
- ii. Shri Sagar, Proprietor of the import firm, M/s Shiva Fabrics, H No 216, Shiva Fabrics, St No 4, Mohar Singh Nagar, Ludhiana-141008

Copy to:

1. The Additional Director, Directorate of Revenue Intelligence (DRI), Kolkata Zonal Unit, 8, Ho Chi Minh Sarani, Kankaria Estates, Park Street area, Kolkata, West Bengal 700071.
2. Guard File