



OFFICE OF THE PRINCIPAL COMMISSIONER OF
CUSTOMS, CUSTOMS HOUSE, MP & SEZ
MUNDRA, KUTCH-GUJARAT -370421
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A	File No.	CUS/APR/INV/169/2024-Gr.3-O/o Pr. Commr-Cus-Mundra
B	OIO No.	MCH/ADC/AK/74/2024-25
C	Date of Order	13.06.2024
D	Passed by	Arun Kumar, Additional Commissioner, Import Assessment, Custom House, Mundra.
E	SCN/IR No. & Date	CUS/SIIB/49/2024-SIIB Dt. 05.04.2024
F	Noticee / Party / Importer	M/s. Elite Trading House (IEC-CADPR9549G) KH No. 64/14/2, Block-S, Phase-1, Budh vihar, North West Delhi - 110086
G	DIN	20240671MO0000999CAF

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

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

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

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

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

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

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

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

Received
Mundra
21.06.2024
(C. A. 1)
Shashikant Patel (L.P.)

1. Brief facts of the Case:

1.1. An intelligence was gathered by the officers of SIIB Section, Custom House, Mundra that the cargo imported under SEZ Warehouse Bill of Entry No. 1001421 dated 19.01.2024 (hereinafter referred to as '*the said BE*') filed by M/s. Shoolin Tradelink LLP, SEZ Warehouse, Plot No. 11-A, Block-11-B Sector-12-S, Light Engineering Zone, in East of JnK, APSEZ Ltd., Mundra-Gujarat-370421 (hereinafter referred to as '*the Warehouse*') for and on behalf of its client M/s. Elite Trading House, KH No. 64/14/2 Block S, Phase-1, Budh Vihar, North West Delhi-110086 holding IEC No: CADPR9549G (hereinafter referred to as '*the importer*') at Mundra SEZ port for import of (i) Viscose Bleached Polyamide Woven Fabric (CTH-55162120), (ii) Polyester Knitted Fabric (CTH-60063200) and (iii) Polyester Dyed Fabric (CTH-54075290) (hereinafter referred to as '*the imported goods*') has possible mis-declaration in respect of in respect of quantity and nature, composition & description. Hence, the container no. YMLU8885150 was put on hold for detailed examination of the goods by the SIIB section, Custom House, Mundra in view of the suspicion.

2. Action taken: -

2.1. Based on the above suspicion, examination of the said consignment was carried out by the officers of SIIB section in presence of authorized representative of the Warehouse. On being asked, the representative of the Warehouse provided copies of the said BE and other import documents viz. Bill of Lading No. YMJAS232166504 dated 13.12.2023, Invoice No. WS231130 dated 28.11.2023 and concerned Packing List. As per the said BE and other import documents, the cargo is imported from M/s. WA SAI Textile Co. Limited, Hongkong and the declared goods are (i) Viscose Bleached Polyamide Woven Fabric (CTH-55162120), (ii) Polyester Knitted Fabric (CTH-60063200) and (iii) Polyester Dyed Fabric (CTH-54075290). The quantity of imported goods is 390 Bales, weight is 20293.800 Kgs, total assessable value is Rs.19,11,241/- and total customs duty is Rs. 24,98,672/-.

2.2. During the course of examination total 390 PKG(s) of fabric were found, which is found 'as declared' in the import documents. However, as per weighments conducted at terminal and the warehouse, the actual net weight of the cargo is found as under:

Weighment	The Warehouse	Port Terminal
Gross Weight	24360	24494
Container tare weight	4200	4200
Net weight of cargo	20160	20294
Net weight of cargo as per import documents (BL/Invoice/Packing List)	20293.8	20293.8
Difference in Kgs.	(-) 133.8 (short)	(+) 0.200 (excess)

3. Investigations Conducted:-

3.1. During the course of examination, quantity of the imported goods was found as declared in respect of number of PKGs i.e. 390. Further, as per weighment conducted at port terminal the quantity of the imported goods have been found 0.200 Kgs in excess from that declared in import documents. However, as per weighment conducted at the warehouse the imported goods are found 133.98 Kgs short from the declared weight. In view of the same, the first doubt in respect of excess quantity is dispelled. On visual examination, actual nature, composition and description of the goods could not be ascertained, therefore representative samples were drawn and forwarded to the CRCL, Kandla for testing purpose vide Test Memo No. 866, 867 & 868 all dated 23.01.2024 issued from F. No. S/43-149/Fabric/SIIB-B/CHM/2023-24. The CRCL Kandla has reported as under:

i. TM No. 866 (report dated 02.02.2024): the sample as received is in the form of cut piece of dyed (green coloured) knitted fabric. It is composed of Polyester filament yarn alongwith Lycra.

GSM (as such) = 159.6
 % of Polyester = 96.6 by wt.
 Lycra = Balance

It is other than Viscose Bleached Polyamide Fabric.

ii. TM No. 867 (report dated 05.02.2024): the sample as received is in the form of cut piece of dyed (black coloured) knitted fabric. It is composed of Polyester multifilament yarns together with Lycra.

GSM (as such) = 147.51

% Composition:

Polyester = 97.22% by wt.

Lycra = Balance

iii. TM No. 868 (report dated 01.02.2024): the sample as received is in the form of a cut piece of dyed (blue coloured) woven fabric having self-design on one side. It is composed of Polyester multifilament yarn together with small amount of Lycra.

GSM (as such) = 182.2

% Composition:

Polyester = 96.89% by wt.

Lycra = Balance

3.1.1. All the aforementioned test reports were subsequently also conveyed to the importer by this office vide letter dated 12.02.2024 issued from F. No. S/43-149/Fabric/SIIB-B/CHM/2023-24.

3.2. Classification of the imported goods: The test reports received from the CRCL Kandla as discussed above have been examined with respect to the declaration made by the importer to determine the correct and proper CTH of the imported goods. It is pertinent to mention that principles for the classification of goods are governed by the Harmonized Commodity Description and Coding System (Harmonized System or HSN) issued by the World Customs Organization, Brussels and the General Rules for Interpretation specified thereunder. The General Rules for the Interpretation (GIR) specified in the Import Tariff are in accordance with the GIR specified in the HSN. In terms of GIR 3A of the HSN and the import Tariff, the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods. Further, GIR 6 of the HSN and the import Tariff specifies that - the classification of goods in

the subheadings of a heading shall be determined according to the terms of those sub-headings and any related sub-heading notes.

3.2.1. TM No. 866 (report dated 02.02.2024): The goods covered under Test Memo Number 866 were found mis-declared in terms of description of the goods as the goods were declared as "Viscose Bleached Polyamide Woven Fabric"; however, as per test report, the goods are other than "Viscose Bleached Polyamide Woven Fabric". Therefore, the correct classification of the goods is required to be ascertained. It is apparent that as far as the entries at heading level are concerned, heading 6006 of the Import Tariff specifically include "Other knitted or crocheted fabrics", accordingly impugned goods are appropriately classifiable under the heading 6006. The said Heading covers goods classifiable under the following sub-headings at the single dash (-) level:

- i. Of wool or fine animal hair;
- ii. Of cotton;
- iii. Of synthetic fibres;
- iv. Of artificial fibres;
- v. Other;

3.2.2. All the sub-headings (i), (ii), (iv) & (v) above has been ruled out as the goods is not made of wool or fine animal hair, cotton, artificial fibres, other, therefore, the merit sub-heading of the imported goods appear to be under (iii) i.e. of synthetic fibres. The said sub-heading covers goods further classifiable under the following sub-headings at the double dash (--) level:

- i. Unbleached or bleached;
- ii. Dyed;
- iii. Of yarns of different colours;
- iv. Printed.

3.2.3. As per test result, the goods are "Dyed", therefore the imported goods appear to be classifiable under CTH 6003200. Hence, it is observed that importer mis-classified the subject goods under CTH 55162120 instead of correct CTH 60063200. It appears that, the applicable rate of duty is same i.e. 20% (BCD) + 10% (SWS) + 5% (IGST) in both of the CTH. The quantity of these goods have been declared as 1473 square meter and

hence, net weight of these goods keeping the GSM=159.60 as reported by the lab comes to 235.09 Kgs $[(159.60 \times 1473)/1000]$.

3.3. TM No. 867 (report dated 05.02.2024): In respect of the goods mentioned at sr.no. 2 of the said BE and Test Memo No. 867 (report dated 05.02.2024) as detailed at (ii) at Para 3.1 above, nothing adverse has been reported by the lab and the goods are found to be 'as declared' in the import documents. Accordingly, it is found that the goods are rightly classified under CTH 60063200 and there is no need of re-determination of the classification of those goods.

3.4. TM No. 868 (report dated 01.02.2024): The goods covered under Test Memo Number 868 are declared as "Polyester Dyed Fabric: CTH 54075290" which belongs to woven fabrics of textured polyester filaments; however, test report does not mention that the goods are 'textured'. Therefore, the correct Classification of the goods is required to be ascertained. It is apparent that as far as the entries at heading level are concerned, heading 5407 of the Import Tariff specifically include 'Woven Fabric of synthetic filament yarn, including woven fabrics obtained from materials of heading 54.04'; accordingly, impugned goods are appropriately classifiable under the heading 5407. The said Heading covers goods classifiable under the following sub-headings at the single dash (-) level:

- i. Woven fabrics obtained from high tenacity yarn of nylon or other polyamides or of polyesters;
- ii. Woven fabrics obtained from strip or the like;
- iii. Fabrics specified in Note 9 to Section XI;
- iv. Other woven fabrics, containing 85% or more by weight of filaments of nylon or other polyamides;
- v. Other woven fabrics, containing 85% or more by weight of textured polyester filaments;
- vi. Other woven fabrics, containing 85% or more by weight of polyester filaments;
- vii. Other woven fabrics, containing 85% or more by weight of synthetic filaments;
- viii. Other woven fabrics, containing less than 85% by weight of synthetic filaments, mixed mainly or solely with cotton;
- ix. Other woven fabrics;

3.4.1. All the subheadings from (i) to (v) and (vii) to (ix) above has been ruled out as their composition/specifications do not meet the test results and therefore, the merit subheading of the impugned goods appear to be under (vi), i.e. "Other woven fabrics, containing 85% or more by weight of polyester filaments". The relevant Tariff item at the double dash (--) level:

- i. Containing 85% or more by weight of non-textured polyester filaments;
- ii. Other

3.4.2. The sub-heading (ii) above has been ruled out as per test results; therefore, the merit subheading of the impugned goods appear to be under (i) i.e. "Other woven fabrics, containing 85% or more by weight of polyester filaments - Containing 85% or more by weight of non-textured polyester filaments". The relevant Tariff item at the triple dash (---) level:

- i. Polyester shirtings;
- ii. Polyester suitings;
- iii. Other

3.4.3. The sub-heading from (i) & (ii) above has been ruled out as the goods have not been specified to be used as shirtings or suitings in the test results therefore, the merit subheading of the impugned goods appear to be under (iii) i.e. "Other woven fabrics, containing 85% or more by weight of polyester filaments - Containing 85% or more by weight of non-textured polyester filaments - Other". Therefore, as per test result under TM No. 868 (report dated 01.02.2024), goods found in the import consignment appear to be classifiable under CTH 54076190 wherein the applicable rate of duty is 20% or Rs.150 per Kgs., whichever is higher (BCD) + 0% (SWS) + 5% (IGST). Hence, it is observed that importer has mis-classified the subject goods under CTH 54075290 instead of correct CTH 54076190 with an intention to evade payment of the applicable Customs duty. Consequently, the subject goods are found liable to be assessed at the rate of 20% or Rs.150 per Kgs., whichever is higher (BCD). The quantity of these goods have been declared as 97737 square meter and accordingly, net weight of these goods keeping the GSM=182.00 as reported by the lab comes to 17788.13 Kgs [= (182.00 x 97737)/1000]. Accordingly, BCD@150 per KG comes to Rs.26,68,220/- which is found on higher side of the 20% ad-valorem BCD.

3.5. All the above test results are summarised as under:

Name of the importer	Cargo declared	CTH Declared	TM No.	Test results	Correct CTH as per test results
M/s. Elite Trading House	Viscose Bleached Polyamide Woven Fabric	5516 2120	866	Dyed knitted fabric, polyester multifilament yarn GSM-159.6, polyester-96.6%, lycra-balance other than viscose bleached polyamide fabric	6006 3200 (mis-declared)
	Polyester Knitted Fabric	6006 3200	867	dyed knitted fabric, polyester multifilament yarn GSM-147.51, polyester-97.22, Lycra-Balance	6006 3200 (as declared)
	Polyester Dyed Fabric	5407 5290	868	Dyed woven fabric self design on one side Polyester multifilament yarn. GSM-182.2, Polyester-96.89%, lycra-balance	5407 6190 (mis-declared)

4 . Rejection of declared value & Redetermination of Assessable

Value: It appears that transaction value in terms of Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 (hereinafter referred to as "*the CVR, 2007*") is to be accepted only where there are direct evidences with regard to the price actually paid or payable in respect of the imported goods by the importer. In respect of goods mentioned at sr.no. 1 & 3 of the said BE and sr. no. (i) & (iii) at Para 3.1 above, it appeared that there is reasonable doubt regarding the truth and accuracy of the declared value which is liable to be rejected in terms of Rule 12 of the CVR, 2007. Further, Rule 3 of the CVR, 2007 provides the method of valuation and Rule 3(1) of the CVR, 2007 provides that "Subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10". Further, Rule 3(4) ibid states that "if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through Rule 4 to 9 of CVR, 2007".

4.1. The assessable value of the goods mentioned at sr. no. 1 & 3 of the said BE and sr.no. (i) & (iii) at Para 3.1 above is required to be redetermined as per the contemporary import data available on NIDB, in respect of the identical/similar goods sold for export to India (from China) and imported at or about the same time in view of Rule 4 & 5 of the CVR, 2007. It further appears that the value of those imported goods could not be determined under Rule 4 ibid since the value of contemporaneous

imports of identical goods of same nature, composition and description could not be found on NIDB.

4.1.1. On proceeding sequentially to Rule 5 ibid, as per contemporaneous import data available on NIDB, the rate of goods having nature, composition and description similar to the goods mentioned at sr. no. 1 of the said BE and sr.no. (i) at Para 3.1 above is ranging from Rs. 72.99 to Rs. 96.09 per square meter. Further, as per contemporaneous import data available on NIDB, the rate of goods having nature, composition and description similar to the goods mentioned at sr.no. 3 of the said BE and sr.no. (iii) at Para 3.1 above is ranging from Rs. 413.79 to Rs. 780.50 per Kg. Further, sub-rule (3) of the said Rule 4 of the CVR, 2007 states that in applying these rules, if more than one transaction value of similar goods is found, the lowest such value shall be used to determine the value of imported goods. Further, sub-rule (2) of the said Rule 5 of the CVR, 2007 states that the provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, *mutatis mutandis*, also apply in respect of similar goods.

4.1.2. Accordingly, the assessable value of 1473 square meter of the imported goods mentioned at sr.no. 1 of the said BE and sr.no. (i) at Para 3.1 above is required to be re-determined as Rs.1,07,514/- ($=1473 \times 72.99$) instead of Rs.18,582/- as declared in the said BE. Accordingly, total Customs duty on these mis-declared goods comes to Rs.30,212/- instead of Rs. 5,222/- as self-assessed by the importer in the said BE. Thus, there appears non/short levy of Customs duty amounting to Rs. 24,990/- in respect of goods mentioned at sr.no. 1 of the said BE and sr.no. (i) at Para 3.1 above as calculated under:

Sr. No.	Duty calculated during the investigation	Amount (Rs./Kgs)	Duty calculated by the importer in BE	Amount (Rs./Kgs)	Difference (Rs./Kgs)
1	Net quantity /weight	235.09 Kgs		1473 SQM	
2	Value	1,07,514/-	Value	18,582/-	88,932/-
3	BCD @20% ad-valorem	21,503/-	BCD @20% ad-valorem	3,716/-	17,787/-
4	SWS @10%	2,150/-	SWS @10%	372/-	1,778/-
5	Taxable Value for IGST (2+3+4)	1,31,167/-	Taxable Value for IGST (2+3+4)	22,670/-	1,08,497/-
6	IGST @5%	6,559/-	IGST @5%	1,134/-	5,425/-
7	TOTAL duty (3+4+6)	30,212/-	TOTAL duty (3+4+6)	5,222/-	24,990/-

4.1.3. Similarly, the assessable value of 17788.13 Kgs of the imported goods mentioned at sr. no. 3 of the said BE and sr. no. (iii) at Para 3.1 above is required to be re-determined as Rs.73,60,552/- (=17788.13 x 413.79) instead of Rs. 17,26,125/- as declared in the said BE. Accordingly, total Customs duty on these mis-declared goods comes to Rs. 31,69,659/- instead of Rs. 24,46,655/- as self-assessed by the importer in the said BE. Thus, there appears non/short levy of Customs duty amounting to Rs. 7,23,004/- in respect of goods mentioned at sr.no. 3 of the said BE and sr.no. (iii) at Para 3.1 above as calculated under:

Sr. No.	Duty calculated during the investigation	Amount (Rs./Kgs)	Duty calculated by the importer in BE	Amount (Rs./Kgs)	Difference (Rs./Kgs)
1	Net quantity /weight	17788.13 Kgs		97737 SQM	
2	Value	73,60,552/-	Value	17,26,125/-	56,34,427/-
3	BCD @150 per KGs	26,68,220/-	BCD @Rs.23 per SQM	22,47,951/-	4,20,269/-
4	SWS @0%	0/-	SWS @0%	0/-	0/-
5	Taxable Value for IGST (2+3+4)	1,00,28,772/-	Taxable Value for IGST (2+3+4)	39,74,076/-	60,54,696/-
6	IGST @5%	5,01,439/-	IGST @5%	1,98,704/-	3,02,735/-
7	TOTAL duty (3+4+6)	31,69,659/-	TOTAL duty (3+4+6)	24,46,655/-	7,23,004/-

4.1.4. Accordingly, total Customs duty on the imported goods comes to Rs. 32,46,666/- instead of Rs. 24,98,672/- as self-assessed by the importer in the said BE and there appeared non/short levy of Customs duty amounting to Rs. 7,47,994/- as calculated under:

TM	Correct CTH as per test results	Wt	Sq Mtr	Ass. Value	Duty Rate	BCD	SWS @0%/10%	IGST @5/12%	Total Duty
866	6006 3200	235.09	1,473	1,07,514	20%	21,503	2,150	6,558	30,212
867	6006 3200	1,980.20	13,424	1,66,535	20%	33,307	3,331	10,159	46,796
868	5407 6190	17,788.13	97,737	73,60,552	150/Kgs	26,68,220	0	5,01,439	31,69,659
		20,003	76,34,601			27,23,030	5,481	5,18,156	32,46,666

4.2. The importer vide letter dated 11.03.2024 has submitted that they do not want personal hearing and/or show cause notice in this regard and abide by the decision taken by the department. Further, they authorised

Mr. Aditya Singh on their behalf to give statement and produce documents. A statement of authorised person of the importer was recorded on 13.03.2024, wherein he submitted copies of the import documents viz. BE, BL, Invoice, Packing List etc. and consent/authorisation letter dated 11.03.2024. He also perused examination report dated 23.01.2024 and all three lab test reports dated (i) 01.02.2024, (ii) 05.02.2024 and (iii) 02.02.2024 and agreed with the same. He interalia stated that:

- they are in the business trading/wholesaling of various types of fabrics only from last 01 year and registered under GST since March 2023; that they started importing these goods at Mundra port from last one year only; that they import mostly from Hong-Kong/China based suppliers.
- they are not old & regular importer and as such, they are not fully aware of the Customs rules and procedures; that they file BE and clear imports from Customs with the help of our SEZ Warehouse unit only.
- they were not aware of mis-declaration in respect of nature, composition and description of the imported goods earlier and came to know about such mis-declaration only after the examination and testing of the imported goods.
- there are three different items and due to lack of knowledge of Customs CTH, they are unable to identify correct CTH.
- the BE is required to be re-assessed in respect of goods imported vide SEZ warehouse Bill of Entry No. 1001421 dated 19.01.2024 in which part consignments were found mis-declared in respect of nature, composition and description.
- they will accept the re-valuation and re-assessment of these goods found mis-declared whatsoever would be done by the department.
- they do not wish any personal hearing and show cause notice in the matter; that they will not file any appeal and will not claim any refund in this matter in future as well.
- they are not a regular importer and don't have in depth knowledge of the Customs Rules and procedures. Therefore, they are unable to identify correct CTH and the mistake, as outlined above, is not at all intentional and

they wish to clear the consignment and are ready to pay differential duty alongwith applicable interest/penalty.

5. **RELEVANT LEGAL PROVISIONS:**

(A) **RELEVANT PROVISIONS OF SEZ ACT, 2005:**

2. Definitions.— In this Act, unless the context otherwise requires,—

.....
(o) “**import**” means—

- (i) *bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or*
- (ii) *receiving goods, or services by a Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone;*

Section-21: Single enforcement officer or agency for notified offences.

1. *The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.*
2. *The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offence or offences committed in a Special Economic Zone.*
3. *Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection, search or seizure as is provided under the relevant Central Act in respect of the notified offences.*

Section 22: Investigation, inspection, search or seizure.—

The agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation, inspection, search or seizure in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone:

Provided that no investigation, inspection, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub- section (2) or sub-section (3) of section 21 without prior approval of the Development Commissioner concerned:

Provided further that any officer or agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner

Notification Nos. 2665(E) and 2667(E) dated 05.08.2016:

In exercise of the powers conferred by section 22 of the Special Economic Zones Act, 2005 (28 of 2005), the Central Government by Notification No. 2667(E) dated 05.08.2016 issued by the Ministry of Commerce & Industry, has authorized the jurisdictional Customs Commissioner, in respect of offences under the Customs Act, 1962 (52 of 1962) to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. The enforcement officer(s), for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit with prior intimation to the Development Commissioner, concerned. Under Section 21(1) of the SEZ Act,2005, the Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.

The Central Government, by the Notification 2665(E) dated 05.08.2016 has notified offences contained in Sections 28, 28AA, 28AAA, 74, 75, 111, 113, 115, 124, 135 and 104 of the Customs Act,1962 (52 of 1962) as offences under the SEZ Act,2005.

B. RELEVANT PROVISIONS OF SPECIAL ECONOMIC ZONES RULES, 2006:

47(4) *Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made there under.*

47 (5) Refund, Demand, Adjudication, Review and Appeal with regard to matters relating to authorise operations under Special Economic Zones Act, 2005, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise Authorities in accordance with the relevant provisions contained in the Customs Act, 1962, Central Excise Act, 1944, and the Finance Act, 1994 and the rules made thereunder or the notifications issued thereunder.

(C) RELEVANT PROVISIONS OF CUSTOMS ACT, 1962:

Section 2(22): "goods" includes (a) vessels, aircrafts and vehicles; (b) stores; (c) baggage; (d) currency and negotiable instruments; and (e) any other kind of movable property;

Section 2(23): "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

Section 2(25): "imported goods", means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;

Section 2(26): "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes [any owner, beneficial owner] or any person holding himself out to be the importer;

Section 2(39): "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113.

Section 11A: "illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force.

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, relating to the imported goods.

(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.*

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

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

(m) *any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;*

Section 112. Penalty for improper importation of goods, etc. –

Any person,-

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

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

shall be liable,-

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

Section 125. *Option to pay fine in lieu of confiscation. -*

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, [no such fine shall be imposed]:

Provided further that without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

Explanation.- For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]”

(D) Relevant Provisions of Customs Valuation (Determination of

Value of Imported Goods) Rules, 2007:

“Rule 4. Transaction value of identical goods. - (1) (a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

.....

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

“Rule 5. Transaction value of similar goods. -(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued;

Provided that

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

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.

6. Summary of Investigations Conducted:

6.1. M/s. Shoolin Tradelink LLP had filed SEZ warehouse Bill of Entry No. 1001421 dated 19.01.2024 for and on behalf of its client M/s. Elite Trading House (IEC No: CADPR9549G) at Mundra SEZ port for import of (i) Viscose Bleached Polyamide Woven Fabric (CTH-55162120) (ii) Polyester Knitted Fabric (CTH-60063200) and (iii) Polyester Dyed Fabric (CTH-54075290) in the container no. YMLU8885150. Furthermore, the said

goods have been brought into the APSEZ, Mundra i.e. a place in India from a place outside India by sea. Hence, the same falls under the definition of 'import' as provided in the SEZ Act, 2005.

6.2. On the basis of the examination report, test reports and investigation carried out in this regard, the quantity in number of packages is found ok and the quantity in weight is found short from the declared net weight and hence, the doubt in respect of excess quantity is dispelled. Furthermore, part consignment of the imported goods mentioned at sr.no. 2 of the said BE and at sr.no. (ii) of Para 3.1 above is found 'as declared' and also, nothing adverse has been reported by the lab in respect of the same. However, it is found that the goods mentioned at sr.no. 1 & 3 of the said BE and sr. no. (i) & (iii) at Para 3.1 above are wrongly described and classified by the importer in CTH 55162120 & 54075290 respectively. Whereas, as per test results nearest CTH of those imported goods appears to be 60063200 & 54076190 respectively. These facts have also been admitted by the authorized person of the importer in his statement dated 13.03.2024.

6.3. It appeared that the importer has failed to declare true and correct description, CTH as well as assessable values of the goods mentioned at sr.no. 1 & 3 of the said BE and sr.no. (i) & (iii) at Para 3.1 above. Further, the part consignments of the imported goods are also found undervalued in view of the contemporary import data and hence, valuation of the same is required to be rejected in terms of Rule 12 of the CVR, 2007. It appears that the assessable values of those goods mentioned at sr.no. 1 & 3 of the said BE and sr.no. (i) & (iii) at Para 3.1 are required to be re-determined on the basis of NIDB data for the similar goods in view of Rule 5 of the CVR, 2007. In view of the same, the assessable value of the goods mentioned at sr.no. 1 of the said BE and sr.no. (i) at Para 3.1 above is re-determined as Rs.1,07,514/- ($=1473 \times 72.99$) instead of Rs.18,582/- as declared in the said BE. Accordingly, total Customs duty on these mis-declared goods comes to Rs.30,212/- instead of Rs.5,222/- as self-assessed by the importer in the said BE. Thus, there appears non/short levy of Customs duty amounting to Rs.24,990/- in respect of goods mentioned at sr.no. 1 of the said BE and sr.no. (i) at Para 3.1 above.

6.3.1. Similarly, the assessable value of the goods mentioned at sr.no. 3 of the said BE and sr.no. (iii) at Para 3.1 above is re-determined as Rs.

73,60,552/- (=17788.13 x 413.79) instead of Rs.17,26,125/- as declared in the said BE. Accordingly, total Customs duty on these mis-declared goods comes to Rs. 31,69,659/- instead of Rs. 24,46,655/- as self-assessed by the importer in the said BE. Thus, there appears non/short levy of Customs duty amounting to Rs. 7,23,004/- in respect of goods mentioned at sr.no. 3 of the said BE and sr.no. (iii) at Para 3.1 above.

6.3.2. Accordingly, total Customs duty on the imported consignment comes to Rs. 32,46,666/- instead of Rs. 24,98,672/- as self-assessed by the importer in the said BE; thus, there appears non/short levy of Customs duty totally amounting to Rs. 7,47,994/- which needs to be recovered from the importer along with the applicable interest and penalty.

6.4. Thus, by the act of omission and commission at the level of importer, it appears that the importer has contravened the provisions of Section 46 and Section 17 of the Customs Act, 1962, in as much as they failed to make correct and true declaration and information to the Customs Officer in the form of Bill of Entry and also failed to assess their duty liability correctly. The relevant portion of said provisions is as under:

Section 17. Assessment of duty. –

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

..

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

Section 46. Entry of goods on importation. –

(1) The importer of any goods, other than goods intended for transit or transhipment, 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:

6.5. The importer vide letter dated 11.03.2024 has submitted that they do not want personal hearing and/or show cause notice in this regard and abide by the decision taken by the department. Further, they authorised Mr. Aditya Singh on this behalf to give statement and produce documents. Furthermore, the authorized person of the importer under his statement dated 13.03.2024 has admitted these facts and interalia stated that there are three different items and due to lack of knowledge of Customs CTH, they are unable to identify correct CTH; that they are ready to pay differential duty alongwith applicable interest/penalty; that they do not wish any personal hearing and show cause notice in the matter; that they will not file any appeal and will not claim any refund in this matter in future as well.

7. In view of the above facts, it appears that –

- i. The classification of the goods mentioned at sr.no. 1 of the said BE i.e. 55162120 as declared by the importer in the SEZ Bill of Entry No. 1001421 dated 19.01.2024 is liable to be rejected and the goods are liable to be re-classified under CTH 60063200.
- ii. The assessable value of those mis-declared imported goods mentioned at sr.no. 1 of the said BE is liable to be re-determined as Rs.1,07,514/- (Rupees One Lakh Seven Thousand Five Hundred and Fourteen only) instead of Rs.18,582/- (Rupees Eighteen Thousand Five Hundred and Eighty Two only) as declared in the said BE under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.
- iii. The classification of the goods mentioned at sr.no. 3 of the said BE i.e. 54075290 as declared by the importer in the SEZ Bill of Entry No. 1001421 dated 19.01.2024 is liable to be rejected and the goods are liable to be re-classified under CTH 54076190.
- iv. The assessable value of those mis-declared imported goods mentioned at sr.no. 3 of the said BE is liable to be re-determined as Rs. 73,60,552/- (Rupees Seventy Three Lakh Sixty Thousand Five Hundred and Fifty Two only) instead of Rs. 17,26,125/- (Rupees Seventeen Lakh Twenty Six Thousand One Hundred and Twenty Five only) as declared in the said BE under Rule 5 of the Customs

Valuation (Determination of Value of Imported Goods) Rules,2007 read with Section 14 of the Customs Act,1962.

- v. Total Customs duty involved in the imported goods comes to Rs. 32,46,666/- (Rupees Thirty Two Lacs Forty Six Thousand Six Hundred and Sixty Six only) instead of Rs. 24,98,672/- (Rupees Twenty Four Lacs Ninety Eight Thousand Six Hundred and Seventy Two only) as declared in the BE.
- vi. The said SEZ warehouse Bill of Entry No. 1001421 dated 19.01.2024 is liable to be re-assessed accordingly under Section 17(4) of the Customs Act, 1962.
- vii. The goods mentioned at sr.no. 1 & 3 of the said BE have been imported by way of mis-declaration in contravention of Section 46 of the Customs Act, 1962 and are therefore, liable for confiscation under Section 111 (m) of the Customs Act, 1962.
- viii. The importer M/s. Elite Trading House, KH No. 64/14/2 Block S, Phase-1, Budh Vihar, North West Delhi-110086 holding IEC No: CADPR9549G are liable for Penalty under Section 112(a)(ii) of the Customs Act, 1962.

WAIVER OF SHOW CAUSE NOTICE AND PERSONAL HEARING

8. The importer vide letter dated 11.03.2024 has submitted that they do not want any personal hearing and/or Show Cause Notice in the matter.

DISCUSSION AND FINDINGS

9. I have carefully gone through Investigation Report No. 06/2024-25 dated 05.04.2024 issued by Deputy Commissioner of Customs (SIIB), Custom House, Mundra.

10. I find that an intelligence was gathered by the officers of SIIB Section, Custom House, Mundra that the cargo imported under SEZ Warehouse Bill of Entry No. 1001421 dated 19.01.2024 filed by M/s. Shoolin Tradelink LLP, APSEZ Ltd., Mundra for and on behalf of its client M/s. Elite Trading House holding IEC No: CADPR9549G at Mundra SEZ port for import of (i) Viscose Bleached Polyamide Woven Fabric (CTH-55162120), (ii) Polyester Knitted Fabric (CTH-60063200) and (iii) Polyester Dyed Fabric (CTH-54075290), has possible mis-declaration in respect of in respect of quantity and nature, composition & description. Accordingly, the container no.

YMLU8885150 was put on hold for detail examination of the goods by the SIIB section, Custom House, Mundra in view of the suspicion. The said goods have been brought into the APSEZ, Mundra i.e. a place in India from a place outside India by sea. Hence, the same falls under the definition of 'import' as provided in the SEZ Act, 2005.

11. I find that based on the above suspicion, examination of the said consignment was carried out by the officers of SIIB section in presence of authorized representative of the Warehouse who provided copies of the said BE and other import documents as per which, the cargo is imported from M/s. WA SAI Textile Co. Limited, Hongkong and the declared goods are (i) Viscose Bleached Polyamide Woven Fabric (CTH-55162120), (ii) Polyester Knitted Fabric (CTH-60063200) and (iii) Polyester Dyed Fabric (CTH-54075290). The quantity of imported goods is 390 Bales, weight is 20293.800 Kgs, total assessable value is Rs.19,11,241/- and total customs duty is Rs.24,98,672/-.

11.1. During the course of examination, quantity of the imported goods was found as declared in respect of number of PKGs i.e. 390. Further, as per weighment conducted at port terminal, the quantity of the imported goods have been found 0.200 Kgs in excess from that declared in import documents. However, as per weighment conducted at the warehouse, the imported goods are found 133.98 Kgs short from the declared weight. In view of the same, the first doubt in respect of excess quantity is dispelled. On visual examination, actual nature, composition and description of the goods could not be ascertained; therefore, representative samples were drawn and forwarded to the CRCL, Kandla for testing purpose vide Test Memo No. 866, 867 & 868 all dated 23.01.2024 issued from F. No. S/43-149/Fabric/SIIB-B/CHM/2023-24.

11.2. As per the Test Reports issued by the CRCL Kandla discussed in Para 3.1 above, I find that the part consignment of the imported goods mentioned at sr. no. 2 of the said BE and at sr. no. (ii) of Para 3.1 above is found 'as declared' and nothing adverse has been reported by the lab in respect of the same. However, it is found that the goods mentioned at sr.no. 1 & 3 of the said BE and sr.no. (i) & (iii) at Para 3.1 above are wrongly described and classified by the importer under CTH 55162120 & 54075290 respectively. Whereas, as per test results, nearest CTH of those imported goods appears to be 60063200 & 54076190 respectively.

12. I find that the importer has failed to declare true and correct description, CTH as well as assessable values of the goods mentioned at sr.no. 1 & 3 of the said BE and sr.no. (i) & (iii) at Para 3.1 above. These part consignments of the imported goods are found undervalued in view of the contemporary import data and hence, valuation of the same is required to be rejected in terms of Rule 12 of the CVR, 2007. It appeared that the assessable values of these goods are required to be re-determined on the basis of NIDB data for the similar goods in view of Rule 5 of the CVR, 2007.

12.1. In view of the same, as discussed in Para 4.1.1 and 4.1.2 above, the assessable value of the goods mentioned at sr.no. 1 of the said BE and sr.no. (i) at Para 3.1 above is re-determined as Rs.1,07,514/- ($=1473 \times 72.99$) instead of Rs.18,582/- as declared in the said BE. Accordingly, total Customs duty on these mis-declared goods comes to Rs. 30,212/- instead of Rs. 5,222/- as self-assessed by the importer in the said BE and thus, there appears non/short levy of Customs duty amounting to Rs.24,990/-.

12.2. Similarly, as discussed in Para 4.1.1 and 4.1.3 above, the assessable value of the goods mentioned at sr.no. 3 of the said BE and sr.no. (iii) at Para 3.1 above is re-determined as Rs.73,60,552/- ($=17788.13 \times 413.79$) instead of Rs.17,26,125/- as declared in the said BE. Accordingly, total Customs duty on these mis-declared goods comes to Rs. 31,69,659/- instead of Rs. 24,46,655/- as self-assessed by the importer in the said BE and thus, there appears non/short levy of Customs duty amounting to Rs. 7,23,004/-.

12.3. Accordingly, total Customs duty on the imported consignment comes to Rs. 32,46,666/- instead of Rs. 24,98,672/- as self-assessed by the importer in the said BE, thus, there appears non/short levy of Customs duty totally amounting to Rs. 7,47,994/- which needs to be recovered from the importer along with the applicable interest and penalty.

13. I find that the importer vide letter dated 11.03.2024 has submitted that they do not want personal hearing and/or show cause notice in the matter and abide by the decision taken by the department and they had authorised Mr. Aditya Singh on their behalf to give statement and produce documents. Statement of authorised person of the importer was recorded

on 13.03.2024 as discussed in Para 4.2 above, wherein he submitted copies of the import documents viz. BE, BL, Invoice, Packing List etc. and consent/authorisation letter dated 11.03.2024 and also perused examination report dated 23.01.2024 and all three lab test reports dated (i) 01.02.2024, (ii) 05.02.2024 and (iii) 02.02.2024 and agreed with the same.

14. I find that the importer, by the act of omission and commission, has contravened the provisions of Section 46 and Section 17 of the Customs Act,1962, in as much as, they failed to make correct and true declaration and information to the Customs Officer in the form of Bill of Entry and also failed to assess their duty liability correctly. Hence, the importer has rendered the goods liable for confiscation under Section 111(m) of the Customs Act,1962 and is, therefore, liable for penalty under section 112(a) (ii) of the Customs Act,1962.

15. Now I discuss about the applicability of section 125 of the customs Act, 1962 which read as under.

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] [Inserted by Act 80 of 1985, Section 9 (w.e.f. 27.12.1985).] an option to pay in lieu of confiscation such fine as the said officer thinks fit:

I find that the goods in question are not prohibited/restricted in nature and has not been imported in violation any Exim Policy, therefore I find that goods can be redeemed in terms of Section 125 of the Customs Act, 1962 which I allow accordingly on payment of appropriate redemption fine.

16. In view of the above discussion, I pass following order:

ORDER

- i. I reject the declared classification i.e. 55162120 of the goods mentioned at sr.no.1 in para 3.1 and order to re-classify the goods under CTH 60063200;
- ii. I order to re-determine the assessable value of goods mentioned at

sr.no. 1 of para 3.1 as Rs. 1,07,514/- (Rupees One Lakh Seven Thousand Five Hundred and Fourteen only) instead of Rs. 18,582/- (Rupees Eighteen Thousand Five Hundred and Eighty Two only) as declared in the said BE under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962;

- iii. I reject the declared classification of the goods i.e. 54075290 mentioned at sr.no. 3 of para 3.1 of said Bill of Entry No. 1001421 dated 19.01.2024 and order to re-classify the goods under CTH 54076190;
- iv. I order to re-determine the assessable value of these mis-declared imported goods mentioned at sr.no. 3 of para 3.1 as Rs. 73,60,552/- (Rupees Seventy Three Lakh Sixty Thousand Five Hundred and Fifty Two only) instead of Rs. 17,26,125/- (Rupees Seventeen Lakh Twenty Six Thousand One Hundred and Twenty Five only) as declared in the said BE under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962;
- v. I order to re-assess the SEZ Bill of Entry No. 1001421 dated 19.01.2024 under Section 17(4) of the Customs Act, 1962;
- vi. I confiscate goods mentioned at sr.no. 1 & 3 of para 3.1 having re-determined value of Rs. 74,68,066/- under section 111(m) of the customs Act, 1962. However, considering facts of the case and provisions of the Section 125 of the Customs Act, 1962, I give an option to the importer to re-deem the same on payment of Redemption Fine of Rs. 7,50,000/- (Rs. Seven Lakh Fifty Thousand Only) in lieu of confiscation.
- vii. I impose penalty of Rs.25,000/- (Rs. Twenty Five Thousand Only) on the importer M/s. Elite Trading House under Section 112(a)(ii) of Customs Act, 1962.

17. 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.

Signed by

Arun Kumar

Date: 13-06-2024 18:15:10

ADDITIONAL COMMISSIONER

ADC/JC-II-O/o Pr Commissioner-Customs-Mundra

To,
M/s. Elite Trading House,

KH No. 64/14/2 Block S, Phase-1,
Budh Vihar, North West Delhi-110086.

Copy to:

1. The Deputy Commissioner of Customs (SIIB), CH, Mundra.
2. The Assistant Commissioner of Customs (RRA), CH, Mundra.
3. The Assistant Commissioner of Customs (TRC), CH, Mundra
4. The Assistant Commissioner of Customs (EDI), CH, Mundra.
5. Office Copy.