

	<p style="text-align: center;">प्रधानआयुक्तकाकार्यालय,सीमाशुल्कसदन, एमपीऔरएसईजेड, मुंद्रा, कच्छ-गुजरात -370421</p> <p style="text-align: center;">OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT</p> <p style="text-align: center;">PHONE : 02838-271426/271428 FAX :02838-271425</p>	
A	File No.	CUS/APR/BE/MISC/3503/2024-Gr 3
B	Order-in-Original No.	MCH/ADC/AKM/182/2024-25
C	Passed by	Amit Kumar Mishra Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	30.10.2024
E	Noticee/Party/ Importer/ Exporter	M/s. Rajeev Trading Company Sri Ram Market Ashok Raj Path, Patna – 800004
F	DIN No.	20241071MO0000123471

1. यहअपीलआदेशसंबन्धितकोनि:शुल्कप्रदानकियाजाताहै।

This Order - in - Original is granted to the concerned free of charge.

2. यदिकोईव्यक्तिइसअपीलआदेशसेअसंतुष्टहैतोवहसीमाशुल्कअपीलनियमावली 1982 केनियम3 केसाथपठितसीमाशुल्कअधिनियम 1962 कीधारा 128Aकेअंतर्गतप्रपत्रसीए- 1-मेंचारप्रतियोगीमेनीचेबताएगाएपतेरअपीलकरसकताहै-

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:

**“सीमाशुल्कआयुक्त (अपील),
 चौथी मंजिल, हुड्को बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद-380 009”**
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
**Having his office at 4th Floor, HUDCO Building, Ishwar Bhuvan Road,
 Navrangpura, Ahmedabad-380 009.”**

3. उक्तअपीलयहआदेशभेजनेकीदिनांकसे60 दिनकेभीतरदाखिलकीजानीचाहिए।

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

4. उक्तअपीलकेपरन्यायालयशुल्कअधिनियमकेतहत5/- रुपएकाटिकटलगाहोनाचाहिएऔरइसकेसाथनिम्नलिखितअवश्यसंलग्नकियाजाए-

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

(i) उक्तअपीलकीएकप्रतिअरूप

A copy of the appeal, and

(ii) इसआदेशकीयहप्रतिअथवाकोईअन्यप्रतिजिसपरअनुसूची-1 केअनुसारन्यायालयशुल्कअधिनियम-1870 केमदसं-6 मेनिर्धारित5/- रुपयेकान्यायालयशुल्कटिकटअवश्यलगाहोनाचाहिए।

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. अपीलज्ञापनकेसाथड्यूटी/ व्याज/ दण्ड/ जुर्मानाआदिकेभुगतानकाप्रमाणसंलग्नकियाजानाचाहिये।

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

6.अपीलप्रस्तुतकरतेसमय, सीमाशुल्क (अपील) नियम,1982 औरसीमाशुल्कअधिनियम, 1962 केअन्यसभीप्रावधानोंकेतहतसभीमामलोंकापालनकियाजानाचाहिए।

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

7. इसआदेशकेविरुद्धअपीलहेतुजहांशुल्कयाशुल्कऔरजुर्मानाविवादमेंहो,अथवादण्डमें,जहांकेवलजुर्मानाविवादमेंहो,Commissioner (A)केसमक्षमांगशुल्कका7.5% भुगतानकरनाहोगा।

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

BRIEF FACT OF THE CASE: -

M/s. Rajeev Trading Company situated at Sri Ram Market Ashok Raj Path, Patna - 800004 IEC No. AAHFR8603F (hereinafter referred to as 'the Importer'), had filed two **Bill of Entry No. 5799006 dated 25.09.2024** and **No. 5807833 dated 26.09.2024** for 'Home Consumption' for clearance of the goods declared as 'Cotton Woven Undyed Fabric' declared under Customs Tariff Head (CTH) 52082290 through their Customs Broker, M/s Fairdeal Services at Mundra port.

2. The RMS System prescribed the Examination Order of 100% examination of the goods. Accordingly, the Docks Officer examined the goods in line with the order prescribed by the RMS. The Importer has declared the goods in the said Bills of Entry as under:-

TABLE-I

Sr No.	Bill of Entry No & Date	Declared Description of the Goods	Country of Origin	Declared CTH	Declared Quantity(kg) (Gross Weight)/Metres	Quantity Found in SQM	Declared Unit Price (Exchange Rate \$ 1 = Rs.84.6)	Declared Assessable Value (CIF)	Declared Duty (Rs.) (Total= 16.550 %BCD @ 10%, SWS @10% and IGST @ 5%)
1	5799006/ 25.09.2024	Cotton Woven Undyed Fabric	China	52082290	27100 Kgs/100120 Metres	151181	\$0.210/Metre	1798743	297691
2	5807833/ 26.09.2024	Cotton Woven Undyed Fabric	China	52082290	27607 kgs/100685 Metres	152034	\$0.210/Metre	1808893	299372

3. During the examination, the goods found as roll sheets **declared as Cotton Woven Undyed Fabric** under CTH 52082290. Further, it was noticed by the docks officer that the goods, *prima facie*, is **dyed fabric** and therefore, Samples from fabric rolls were drawn for testing to ascertain the composition, grade and to identify the description of the goods. Samples of the consignments were sent to CRCL Kandla for testing purpose vide Test Memo (TM) No. 1238738/1238739/1238740 all dated 30.09.2024 for the **Bill of Entry No. 5799006 dated. 25.09.2024** & Test Memo (TM) No. 1238737 dated. 30.09.2024 for the **Bill of Entry No. 5807833 dated. 26.09.2024** and the test reports received are as under:-

3.1 Report regarding TM No. 1238738 dated 30.09.2024 is as under:

"The Sample as received is in the form of cut piece of dyed (black

colour) woven fabric.

It is composed of Polyester filament yarn (texturized) along-with small amount of Lycra.

GSM (as such) = 135.90

Selvedge to Selvedge width (cms) = 152

% Composition, % of Polyester = 94.26 % by wt.

% of Lycra = balance;

It is other than Cotton undyed fabric”

3.2 Report regarding TM No. 1238739 dated 30.09.2024 is as under:

“The Sample as received is in the form of cut piece of dyed (maroon colour) woven fabric.

It is composed of Polyester filament yarn (texturized) along-with small amount of Lycra.

GSM (as such) = 135.25

Selvedge to Selvedge width (cms) = 148

% Composition, % of Polyester = 95.17 % by wt.

% of Lycra = balance;

It is other than Cotton undyed fabric”

3.3 Report regarding TM No. 1238740 dated 30.09.2024 is as under:

“The Sample as received is in the form of cut piece of dyed (green colour) woven fabric.

It is composed of Polyester filament yarn (texturized) along-with small amount of Lycra.

GSM (as such) = 123.10

Selvedge to Selvedge width (cms) = 150

% Composition, % of Polyester = 96.30 % by wt.

% of Lycra = balance;

It is other than Cotton undyed fabric”

3.4 Report regarding TM No. 1238737 dated 30.09.2024 is as under:

“The Sample as received is in the form of cut piece of dyed (red colour) woven fabric.

It is composed of Polyester filament yarns (texturized) along-with small amount of Lycra.

GSM (as such) = 133.2

Selvedge to Selvedge width (cms) = 151

*% Composition, % of Polyester = 94.0 % by wt.
 % of Lycra = balance;
 It is other than Cotton undyed fabric”*

In view of the Lab Reports, the goods imported under the above-mentioned Bills of Entry are found to be mis-declared in terms of classification, description and valuation.

4. Classification of Goods Imported:

4.1 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 there under. 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 goods 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 subheadings and any related Subheading Notes...

4 . 2 As per above mentioned Test Memos, 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.

4.3 Entry under the Tariff Heading 5407 reads thus:

5407-'Woven Fabric of synthetic filament yarn, including woven fabrics obtained from materials of heading 54.04'

4.4 The above 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;**

Tariff Heading at the single dash (-) level mentioned at v above covers goods classifiable under the following sub-headings at the double dash (--) level:

- i. Dyed.

4.5. As per the above-mentioned test reports, the goods found in the import consignment are actually classifiable under CTH 54075290 wherein the applicable rate of duty is 20% or Rs. 23 per Square Metre (SQM) (BCD)+0%(SWS)+ 5% (IGST) whichever is higher. Hence, it is observed that importer mis-classified the subject goods under CTH **52085290** instead of the correct CTH **54075290** with an intention to evade payment of the applicable BCD. Consequently, the subject goods were liable to be assessed at the rate of 20% or **Rs. 23 per Sq. mtr.**, whichever is higher BCD. Thus, the non-payment of applicable duty has resulted in short levy of duties which needs to be recovered from the importer along with the applicable interest and penalty.

5.1 Accordingly, the assessing officer (PAG) raised queries to the Importer to justify the classification of the subject goods declared under Customs Tariff Head (CTH) 52082290. In response to the queries, the Importer submitted his reply/written submission dated. 25.10.2024 that :-

I am writing to formally address an issue with the shipment received under Bill of Lading Numbers KMTCNBO8197198 and KMTCNBO8193199, dated 28/08/2024. The discrepancy in the goods supplied has been caused solely by an error on the part of our supplier, SHAOXING KEQIAO MULINSHENG TRADING CO LTD in Ningbo, China. Our original order was explicitly for Cotton Woven Undyed Fabric as specified in the purchase order dated 10/08/2024 and the accompanying invoice and packing list. However, upon inspection of the goods, it was discovered that the shipment included materials other than cotton fabric, contrary to both our order and the declared shipping details.

1. Mistake of the Supplier:

The supplier's error in dispatching incorrect goods has led to

unintended complications. We had no prior knowledge of this discrepancy, as we relied on the supplier's assurance of the shipment contents aligning with our purchase specifications.

2. Lack of Control Over Supplier's Warehouse:

As an importer, I do not have direct control over the storage, handling, or dispatch procedures at the supplier's warehouse. My responsibility is limited to placing the order and awaiting its correct fulfillment based on specified terms. The lack of physical oversight over the supplier's operations limited my ability to prevent this error.

3. No Fault of the Importer:

I wish to clarify that I took all reasonable and necessary precautions to ensure the accuracy of the order. Any misdeclaration or discrepancy in the goods received is attributable entirely to the supplier's mistake, with no error or oversight on my part as the importer.

4. Request for Leniency in Fine & Penalty:

In light of these circumstances, I respectfully request a compassionate approach regarding any fines or penalties that may arise from this misdeclaration. I exercised due diligence throughout the ordering and import process, and the misalignment in goods was beyond my control. Imposing a substantial penalty on me would, therefore, be unduly harsh.

5. Communication with Supplier Post-Discovery:

Upon discovering the discrepancy, I immediately contacted SHAOXING KEQIAO MULINSHENG TRADING CO LTD to address the error. Our correspondence with the supplier demonstrates our proactive efforts to investigate the cause and seek assurances that future shipments would strictly comply with our specifications.

6. Preventive Measures for Future Compliance:

In response to this incident, we have reviewed and enhanced our internal procedures, emphasizing supplier accountability and reinforcing checks to prevent such errors from recurring. These steps include requiring pre-shipment verification from the supplier

and establishing clear communication protocols to confirm order specifications.

7. Documentation of Prior Correct Orders:

I would like to bring to your attention that we have a consistent history of compliance and adherence to customs regulations in all previous shipments. This incident is an isolated occurrence, and prior orders have been accurately fulfilled without any discrepancies. This track record should serve as an assurance of our commitment to regulatory compliance.

8. Negative Financial Impact Due to Misdeclaration:

This error has also resulted in unexpected costs and operational setbacks for us as the importer. The need to correct the misdeclaration and address subsequent issues has placed an additional financial burden on our business, further highlighting the unintended impact of the supplier's error.

9. Request for Show Cause Notice Waiver:

Given the above circumstances, I respectfully request that the issuance of a Show Cause Notice be waived. We are fully cooperative and willing to work with customs authorities to resolve this matter transparently. I hope that our proactive approach and openness demonstrate our commitment to rectifying this situation in good faith.

10. Assurance of Full Cooperation with Customs:

Please be assured of my full cooperation with all customs procedures to ensure a smooth resolution. I am prepared to provide any additional documents or clarifications needed and am committed to fulfilling all necessary steps to close this matter swiftly and satisfactorily.

In view of the above, I kindly request your understanding and consideration of this unique situation. I believe that this case warrants a fair evaluation, taking into account the uncontrollable factors and the importer's adherence to due process.

Please note that we were unaware of this discrepancy prior to customs clearance procedures. Upon learning of the supplier's

error, we promptly contacted them to address the matter and have since taken corrective steps to prevent such miscommunication in the future. We have also reviewed our internal procedures to ensure more rigorous checks with our suppliers before finalizing shipments.

We humbly request your understanding and consideration of the circumstances in this case. Kindly let us know if there are any additional procedures or documentation required to rectify this declaration or to address any duty or penalty considerations arising from this unintentional misdeclaration.

Thank you for your time and understanding. We remain at your disposal for any further clarifications you may need.

We also request you to waive Show Cause Notice and we are agreed with the classification of the cargo under CTH-5407 and agreed to pay the applicable duties, fines, and penalties without SCN and PH. However, considering our submission on positive note, fine and penalty may be waived or imposed nominally.

A letter from supplier in detail explanation also enclosed herewith for your reference and record please

5.2 Further, the Importer submitted an explanation letter dated. 25.10.2024 issued by the Foreign Supplier M/s SHAOXING KEQIAO MULINSHENG TRADING CO. LTD wherein it has been submitted that :-

We, SHAOXING KEQIAO MULINSHENG TRADING CO LTD, hereby acknowledge and regret the misdeclaration of the cargo shipped under Bill of Lading Nos. KMTCNBO8197198 & KMTCNBO8193199, dated 28/08/2024. This error was due to a miscommunication in our internal handling, resulting in a discrepancy between the products shipped and the details declared in the shipping documents.

The shipment was intended to contain Cotton Woven Undyed Fabric in alignment with the specifications agreed upon with Rajeev Trading Company as per the purchase order dated 10/08/2024. However, the actual shipment contents were incorrectly processed, and goods other than cotton fabric were mistakenly included.

We take full responsibility for this oversight and sincerely apologize for any inconvenience caused to Rajeev Trading Company and the customs authorities. Please rest assured that we have conducted a thorough review of our processes to prevent such errors from occurring in the future, and we have reinforced our inspection protocols to ensure alignment with all shipping and documentation requirements.

We humbly request that you consider this explanation in light of the facts presented and extend any support or guidance necessary to Rajeev Trading Company to resolve the matter with customs authorities.

Thank you for your understanding and assistance. We remain at your disposal should any further information or documentation be required.

5.3 Further, the importer has agreed with the classification of the subject goods under reference of above-mentioned Test Memos under CTH-54075290 and agreed to pay the applicable duties, fines, and penalties without SCN and PH.

6. VALUATION OF THE GOODS UNDER IMPORT:

6.1 On the basis of outcome of the test reports, as discussed above, the goods declared in the above-mentioned Bills of Entry is found as mis declared as 'Cotton woven undyed fabric (CTH-52082290)' instead of actual description of the goods as 'Polyester Woven Dyed Fabric (having GSM 125 +/- 10%)' (CTH-54075290). Therefore, the assessable value of the subject goods declared as **Rs. 17,98,743/-** in the **Bill of Entry No. 5799006 dated. 25.09.2024** and **Rs. 18,08,893/-** in the **Bill of Entry No. 5807833 dated. 26.09.2024** by the importer under Section 14 of the Customs Act, 1962 read with Rule 3 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 ('CVR' for sake of brevity) appears as incorrect and required to be rejected & re-determined in accordance with the CVR.

6.2 As per **Rule 2 (d) of the CV Rules**, "*identical goods*" means imported goods –

- i. *which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;*
- ii. *produced in the country in which the goods being valued were produced; and*
- iii. *produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;*

6.3 As per Rule 2 (f) of the CVR, "*similar goods*" means imported goods –

- i. which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;
- ii. produced in the country in which the goods being valued were produced; and
- iii. produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

6.4 Further, as per **Rule 4 of the CVR, Transaction value of identical goods is determined as under-**

1.

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

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

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

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

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

6.5 Further, as per **Rule 5 of the CVR, Transaction value of similar goods is determined as under –**

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

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

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

6.6 Further, as per Rule 12 of the CVR, 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).

Explanation.- (1) For the removal of doubts, it is hereby declared that:-

- i. *This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.*
- ii. *The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers. (iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include*

—

- (a) *the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;*
- (b) *the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;*
- (c) *the sale involves special discounts limited to exclusive agents;*
- (d) **the mis-declaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;**
- (e) *the non declaration of parameters such as brand, grade, specifications that have relevance to value; (f) the fraudulent or manipulated documents*

6.7 In view of the above, to ascertain the value of the imported goods, NIDB PORTAL data has been checked and it is noticed that no identical data of import of the said goods

under CTH-54075290 is available for the Mundra Port as well as other ports where the quantity and other specification match with the subject goods. Thus, it appears that no data of 'identical goods' in terms of Rule 2 (d) of the CVR is available. Therefore, to ascertain the data of 'similar goods' under CTH- 54075290 import has been checked for CTH-54075290 and it is noticed that the lowest assessable unit price of the similar goods in comparable quantity is **Rs. 25.22** per SQM at the Customs Site – INMUN 1 (Mundra Port) for the **BE No. 4602595 dated 19.07.2024 (Qty-152310 SQM) & 4487803 dated 13.07.2024 (Qty-149719 SQM)** for the goods "POLYESTER WOVEN DYED FABRIC (125 GSM +/- 10% AND WIDTH-58\" which appears as more appropriately considerable as 'Similar goods' to the impugned goods so far as description and quantity of the goods is concerned. Therefore, considering the above unit price, the assessable value of the impugned goods comes to **Rs. 38,12,785/-** and **Rs. 38,34,297/-** for the Bill of Entry No. 5799006 dated. 25.09.2024 and 5807833 dated. 26.09.2024 respectively as shown in Table-II, in terms of Rule 5 & Rule 4 of CVR. Here, it is pertinent to mention that the importer has declared assessable value of the subject goods as **Rs. 17,98,743/-** in the Bill of Entry No. 5799006 dated. 25.09.2024 and **Rs. 18,08,893/-** in the Bill of Entry No. 5807833/ 26.09.2024 filed by the Importer. Thus, it appears that the importer has undervalued the impugned goods under import to the extent of **Rs. 12,30,924/- & Rs. 12,37,868/-** in the Bill of Entry No. 5799006 dated. 25.09.2024 and 5807833 dated. 26.09.2024 respectively.

6.8 Thus, the valuation of the imported goods needs to be rejected under Rule 12 of the CVR, 2007 and need to be re-determined as in terms of Rule 5 & Rule 4 of CVR by way of valuation of the similar goods available on the NIDB Portal as discussed in para supra.

DUTY CALCULATION:

7.1 In the above-mentioned Bills of Entry filed by the importer, the impugned goods were declared as 'Cotton Woven Undyed Fabric' under CTH-52082290 on which duty has been calculated as BCD @ 10%+ SWS @10% +IGST @12%. Whereas, from the discussion above, it appears that same goods is classifiable under CTH-54075290 as **Polyester Woven Dyed Fabric and attracts BCD @ 20% or Rs. 23 Per Sqm. whichever is higher + SWS @0%+IGST @ 5%.** Thus, total duty leviable on the subject goods (hereinafter referred to as 'the impugned goods') is calculated as under:

TABLE-II

Sr No.	Bill of Entry No & Date	Actual description of the Goods as per test report	Correct CTH	Declared Quantity(kg) (Gross Weight)/Metres	Qty Found in SQM	Re-determined Unit Price as per NIDB Data (in Rs.)/SQM	Re-determined Assessable Value as per NIDB Data (in Rs.)	Re-determined Duty (Rs.) (Rs. 23/SQM, SWS @ 0%, IGST @5%)	Differential Duty	Differential Assessable Value
1	5799006/ 25.09.2024	Polyester Woven Dyed Fabric (125 GSM +/- 10%)	54075290	27100 Kgs/100120 Metres	151181	25.22	3812784	3841660	3543969	2014041
2	5807833/ 26.09.2024	Polyester Woven Dyed Fabric (125 GSM +/- 10%)	54075290	27607 kgs/100685 Metres	152034	25.22	3834297	3863336	3563964	2025404

7.2 In view of the above, it appears that the importer has short levied the Customs duty to the tune of **Rs 35,43,969/- and Rs. 35,63,964/-** in respect to the subject goods declared

under Bill of **Entry No. 5799006 dated. 25.09.2024** and **Bill of Entry No. 5807833 dated. 26.09.2024** respectively filed by the importer by way of mis-classification and mis declaration of the imported goods.

7.3 The CRCL Test reports have been disclosed to the importer. The Importer vide letter dated. 25.10.2024 has categorically admitted the test results and has shown his consent to pay applicable duty along with fine and penalty for the subject goods declared in the Bill of Entry No. 5799006 dated. 25.09.2024 and and Bill of Entry No. 5807833 dated. 26.09.2024. He has further submitted that they do not require any Show Cause Notice or Personal hearing in this matter.

8. The relevant provisions of Customs Act, 1962 are as under:

8.1 As per section 17(1) of the Customs Act, 1962, 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.

8.2 As per Section 46(4) of the Customs Act, 1962 the importer who is presenting the Bill of Entry shall, at the foot thereof, 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.

8 . 3 SECTION 111. Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable to confiscation: (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;

8.4 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 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(m) shall be liable-

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

greater;

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

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

9. The importer has, by his acts of omission, with intent to evade duty as calculated in **table II** above has rendered the goods covered under the Bill of Entry No. 5799006 dated. 25.09.2024 and 5807833 dated. 26.09.2024 liable for confiscation under section 111(m) of the Customs Act, 1962 and is, therefore, also liable for penalty under section 112(a) of the Customs Act, 1962.

10. In view of the above, it appears that: -

- i. The classification of the goods, covered under the above-mentioned Bills of Entry, as claimed by the importer under CTH 52082290 is liable to be rejected and the goods are liable to re-classified under CTH 54075290, as per Table-II above and B/E is liable to be re-assessed accordingly as per Table-II.
- ii. The value of the goods, covered under the above-mentioned Bills of Entry, declared by the Importer is liable to be rejected on account of mis-declaration of the goods and the same appears to be re-determined as per the of the Customs Valuation (Determination of value of imported goods) Rules, 2007.
- iii. The goods having re-determined assessable value Rs. 38,12,784/- and Rs. 38,34,297/-imported vide Bill of Entry no. 5799006 dated. 25.09.2024 and Bill of Entry No. 5807833 dated. 26.09.2024 respectively are liable for confiscation under Section 111 (m) of the Customs Act, 1962.
- iv. The importer M/s. Rajeev Trading Company having IEC No. AAYFG4522H situated at Sri Ram Market Ashok Raj Path, Patna - 800004 are liable for Penalty under Section 112(a)(ii) of the Customs Act, 1962.

11. WAIVER OF NOTICE AND PERSONAL HEARING

The importer vide their letter dated 25.10.2024 has requested that they do not want any Show Cause Notice or Personal Hearing in the matter and requested for deciding the case as per merit.

DISCUSSION & FINDING

12. I have carefully gone through the facts/documents/material/evidence available on records of the case and submission of the Importer dated. 25.10.2024 and Purchase Order dated. 10.08.2024 and I find that Importer M/s Rajeev Trading Company vide their letter dated 25.10.2024 has requested for waiver of the show cause notice and personal hearing in the matter. Therefore I find that the principle of natural justice as provided in section 122A

of the Customs Act, 1962 has been completed. Hence I proceed to decide the case on the basis of the documentary evidence available on records.

13. Ongoing through the facts of the case, I find that the main issues that need to be decided are the classification and valuation of the goods imported vide BE No. 5799006 dated. 25.09.2024 and No. 5807833 dated. 26.09.2024. The Importer has declared the goods under CTH 52082290 imported under said BE and as per the results of the test reports the goods covered under said Bill of Entry are liable to be re-classified under CTH 54075290. Further, the declared value of the impugned goods needs to be rejected under the provisions of Rule 12 of the CVR, 2007 and to be re-determined in terms of the provisions of CVR, 2007. Further it needs to be decided whether the subject impugned goods are to be confiscated under the provisions of the Section 111 of the Customs Act, 1962 and consequent penalty on the importer under section 112 a (ii) of the Customs Act, 1962 is to be imposed.

14. I find that the Importer M/s RAJEEV TRADING COMPANY IEC No. AAHFR8603F had filed two Bills of Entry No. 5799006 dated 25.09.2024 and Bill of Entry No. 5807833 dated. 26.09.2024 through their Customs Broker M/s Fairdeal Services for import of 'Cotton Woven Undyed Fabric' declared under CTH-52082290.

15. I find that based on RMS Instruction, the docks officer examined the goods in line with the examination order as prescribed by the RMS. During the examination, it was found that the goods were stuffed as roll sheets (declared as Cotton Woven Undyed Fabric) in the container. During Examination, the docks officer observed that *prima facie*, the declared goods are dyed fabric not undyed fabric. Further, as per examination order prescribed by the RMS, the docks officer drawn the sample vide Test Memo Nos as mentioned above in Para 3.1 to 3.4. Randomly samples were drawn for testing to ascertain the composition, grade and to identify the description of the goods. Samples of the consignments were sent to CRCL Kandla for testing purpose vide Test Memo No. 1238738, 1238739, 123874043 all dated. 30.09.2024 (Bill of Entry No. 5799006 dated. 25.09.2024) & 12338737 dated 30.09.2024 (Bill of Entry No. 5807833 dated. 26.09.2024)

On the basis of the Test Result as mentioned above in Para 3.1 to 3.2, the goods found in the import consignment are actually classifiable under CTH 54075290, as mentioned in Para 4 above, wherein the applicable rate of duty is 20% or Rs. 23 per Sq. mtr., whichever is higher (BCD)+0%(SWS)+05% (IGST). Hence, it is observed that importer mis-classified the subject goods under CTH 52082290 instead of correct CTH 54075290 with an intention to evade payment of the applicable BCD. Consequently, the subject goods were liable to be assessed at the rate of 20% or Rs. 23 per Sq. mtr., whichever is higher BCD. Thus, the non-payment of applicable duty has resulted in short levy of duties which needs to be recovered from the importer along with the applicable interest and penalty.

In view of the above Test Reports, the goods imported under Bills of Entry No. 5799006 dated. 25.09.2024 & No. 5807833 dated. 26.09.2024 are found to be mis-declared in terms of description, classification and valuation.

16. I find that the declared assessable value of the goods covered under the Bill of Entry No. 5799006 dated. 25.09.2024 & 5807833 dated. 26.09.2024 amounting to **Rs.**

17,98,743/- and Rs. 18,08,893/- respectively are liable to rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 as mentioned in Para 6.6 above and the same are to re-determined as **Rs. 38,12,784/- and Rs. 38,34,297/-** respectively in terms of Rule 5 & Rule 4 of CVR. as discussed above in Para 6.6 (for calculation vide Table-II). I further, find that the differential duty worked out to be **Rs. 35,43,969/- and Rs. 35,63,964/- (for calculation vide Table-II)**.

The total revenue implication in view of the mis-declaration is **Rs. 35,43,969/- (Rupees Thirty Five Lakhs Forty Three Thousand Nine Hundred Sixty Nine Only) & Rs. 35,63,964/- (Rupees Thirty Five Lakhs Sixty Three Thousand Nine Hundred Sixty Four Only)** in respect of the Bill of Entry No. 5799006 dated. 25.09.2024 and Bill of Entry No. 5807833 dated. 26.09.2024.

17. With the introduction of self-assessment under Section 17(1) of Customs Act, 1962 the onus lies on the importer to correctly self-assess the bill of entry with correct amount of leviable duties. By the said act of not correctly self-assessing the applicable BCD, the importer received undue monetary benefit and caused loss to the public exchequer to the tune of Rs. 35,43,969/- and Rs. 35,63,964/- for the Bill of Entry No. 5799006 dated. 25.09.2024 and Bill of Entry No. 5807833 dated. 26.09.2024 respectively. They not only failed to declare and assess the correct duty payable on the goods but also mis-declared the classification of the goods under CTH 52082290 instead of the correct CTH 54075290.

18. I find that the importer while filing the impugned Bill of Entry has subscribed to a declaration regarding correctness of the contents of Bill of Entry under Section 46(4) of the Act, ibid. Further, Section 46 (4A) of the Act, casts an obligation on the importer to ensure accuracy of the declaration and authenticity of the documents supporting such declaration. In the instant case, the importer failed to discharge the statutory obligation cast upon him and made wrong declaration about the description, classification and valuation of the imported goods.

19. In view of the above, I find that the importer has mis-declared the goods in terms of description, classification and valuation therefore the imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and importer is liable for penal action under Section 112 (a) (ii) of the Customs Act, 1962. Section 125 of the Customs Act, 1962 Provide that whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation where 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 an option to pay in lieu of confiscation such fine as the said officer thinks fit. I find that said provision makes it mandatory to grant an option to owner of the confiscated goods to pay fine in lieu of confiscation in case the goods are not prohibited. I find it appropriate to allow for redeem under section 125 of the Customs Act, 1962.

20. In view of the above, I pass following Order:

ORDER

- i. I reject the description of the goods declared as 'Cotton Woven Undyed Fabric' and

order to declare as 'Polyester Woven Dyed Fabric.

- ii. I reject declared CTH 52082290 of the goods imported vide Bill of Entry No. 5799006 dated. 25.09.2024 and No. 5807833 dated. 26.09.2024 and order to re-classify and re-assess the same under CTH 54075290 as detailed in Para 4 above.
- iii. I reject the declared value of Rs. 17,98,743/- and Rs. 18,08,893/- of the goods covered under Bill of Entry No. 5799006 dated 25.09.2024 & Bill of Entry No. 5807833 dated. 26.09.2024 respectively and order to re-determine the same as **Rs. 38,41,660/-** and **Rs. 38,63,336/-** respectively as per Table-II above and reassess accordingly.
- iv. I order to re-assess the Bill of Entry No. 5799006 dated 25.09.2024 & Bill of Entry No. 5807833 dated. 26.09.2024 under section 17(4) of the Customs Act, 1962 with applicable customs duty amounting to **Rs. 38,41,660/-** (Rupees Thirty Eight Lakhs Forty One Thousand Six Hundred Sixty Only) & **Rs. 38,63,336/-** (Rupees Thirty Eight Lakhs Sixty Three Thousand Three Hundred Thirty Six Only) respectively instead of the declared Customs duty **Rs. 2,97,691/-** (Rupees Two Lakhs Ninety Seven Thousand Six Hundred Ninety One Only) and **Rs. 2,99,372/-** (Rupees Two Lakhs Ninety Nine Thousand Three Hundred Seventy Two Only).
- v. I order to the Importer to pay the differential duty amounting to **Rs. 35,43,969/- (Rupees Thirty Five Lakhs Forty Three Thousand Nine Hundred Sixty Nine Only)** in respect of the Bill of Entry No. 5799006 dated. 25.09.2024 and **Rs. 35,63,964/- (Rupees Thirty Five Lakhs Sixty Three Thousand Nine Hundred Sixty Four Only)** in respect of the Bill of Entry No. 5807833 dated. 26.09.2024 as calculated in Table-II above.
- vi. I order to confiscate the said goods declared under the Bill of Entry No. 5799006 dated. 25.09.2024 and No. 5807833 dated. 26.09.2024 having re-determined value of **Rs. 38,12,784/-** (Rupees Thirty Eight Lakhs Twelve Thousand Seven Hundred Eighty Four Only) and **Rs. 38,34,297/-** (Rupees Thirty Eight Lakhs Thirty Four Thousand Two Hundred Ninety Seven Only) 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. 7,00,000/-** (Rupees Seven Lakhs Only) (**Rs. 3,50,000/- on each Bill of Entry**) in lieu of confiscation.
- vii. I impose the penalty of **Rs. 4,00,000/-** (Rupees Four Lakhs Only) (**Rs. 2,00,000/- on each Bill of Entry**) on the importer M/s Rajeev Trading Company under Section 112 (a) (ii) of Customs Act, 1962.

21. 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.

AMIT KUMAR MISHRA

ADDITIONAL COMMISSIONER

ADC, Import Assessment
Customs House, Mundra

To,

M/s. Rajeev Trading Company

Sri Ram Market Ashok Raj Path,
Patna - 800004 IEC No. AAHFR8603F

Copy to:

1. The Dy. Commissioner of Customs, Docks, CH, Mundra
2. The Dy. Commissioner of Customs, RRA, CH, Mundra
3. The Dy. Commissioner of Customs, TRC, CH, Mundra
4. The Dy. Commissioner of Customs, EDI, Mundra.
5. Office Copy