

	<b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MP &amp; SEZ MUNDRA, KUTCH-GUJARAT -370421 PHONE : 02838-271426/271428 FAX :02838-271425</b>	 सत्यमेव जयते
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A	File No.	CUS/APR/INV/388/2024-Gr 3-O/o Pr Commr-Cus-Mundra
B	OIO No.	MCH/ADC/AK/136/2024-25
C	Date of Order	06.09.2024
D	Passed by	Arun Kumar, Additional Commissioner, Import Assessment, Custom House, Mundra
E	SCN/PH	Importer requested for waiver of PH & SCN vide letter dated. 12.08.2024
F	Noticee / Party / Importer	M/s UMA INTERNATIONAL (PAEPS9781R) Second Floor, Survey No. 54/1/P3/P1, Plot No. 9 and 10, Maruti Corner 2, Office No. 206, Adani Port Road, Shree Enterprise, Dhrab Mundra, Kachchh, Gujarat - 370421
G	DIN	20240971MO0000666D33

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 7<sup>th</sup> 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.



**Brief Facts of the Case**

M/s. Uma International (IEC- PAEPS9781R), Second Floor, Survey No. 54/1/P3/P1, Plot No. 9 and 10, Maruti Corner 2, Office No. 206, Adani Port Road, Shree Ganesh Enterprise, Dhrab Mundra, Kachchh, Gujarat-370421 had filed a SEZ warehouse Bill of entry 1010752 dated 18.06.2024 and further they had filed DTA Bill of entry no. 2012369 Dated 20.06.2024 for import of "PA Coated Fabric (CTH:-59039090)". The declared country of origin is China (CN).

The details of the SEZ bill of entry is as under:-

SEZ warehouse Bill No(s). & Date	Description of Goods	SEZ DTA bill of entry no.	Qty. Packages	Declared Ass. Value in (Rs.)	Total Duty
1010752 dated 18.06.2024	PA Coated Fabric	2012369 Dated 20.06.2024	866 Pkg.	6,72,714/-	2,46,482/-

**2. Issue in Brief:**

Whereas, a NCTC alert has been received to the effect that the above mentioned SEZ bill of entry filed by M/s. Uma International (IEC No. WHSU5352422) appeared to be risky for potential mis-declaration /concealment of restricted/prohibited items. Further, it has been informed from NCTC that 100% examination is required for this consignment.

**3. Investigation:**

3.1 Based upon the NCTC alert, the consignment was put on hold for SIIB Examination by letter dated 24.06.2024 addressed to the Development Commissioner, APSEZ Mundra, Kachchh-370421, according to S.O. 2667, Notification No. C1/1/2009-SEZ dated 05.08.2006 issued by the Department of Commerce. Before initiation of examination, representative of importer produced the copy of SEZ bill of entry, invoice and packing list and informed that container seal was already cut and unloaded on 20.06.2024 near gate no. 03 in warehouse of Fast track CFS Private limited before receiving the NCTC Alert. After seal cutting permission given by SEZ officer. The examination of goods was carried out on 27.06.2024 in



presence of representative of importer M/s. Uma International and CFS representative in Fast track CFS.

3.2 During examination, it was observed that goods/cargo were packed in rolls, and all rolls were placed in shed of warehouse of CFS, rolls are of two different colour i.e., white and grey colour, further, with the help of representative of importer and surveyor, rolls were opened to verify the goods, and on opening the rolls it appeared that there were two different type of fabric pattern were available of similar nature/type. Further, with the help of labour and surveyor all the fabrics pattern rolls were segregated and quantified. The total no. of rolls of fabrics found were 866 (as declared in the BE) out of which 617 were of first type and 249 were of second type. As the exact nature and characteristic of fabric cannot be ascertained by visual examination, hence randomly two set of samples from both type of fabric pattern were drawn for testing to ascertain the composition (Marking available on packing material wherein sample were drawn for first type from MB-511 and for second of type from MB-339) and sealed in presence of Shri Vipul Gadvi authorized representative of importer and representative of M/s. Fasttrack CFS, APSEZ, Mundra for further lab testing. During the examination, weighment of some randomly selected rolls are carried out and observed that weight of selected roll of first type of fabric comes around 23.6 kgs/per roll approximately and weight of selected rolls of second type fabric comes around 27.7 Kgs/per roll approximately, and accordingly, details of weight of both types of fabric are tabled as under:-

Sr. No.	Type of Cargo	No. of rolls	Total weight
1	First type	617	617*23.6=14561 Kgs
2	Second type	249	249*27.7=6897 Kgs

The total net weight of cargo is 21,458 Kgs which is approximately similar to declared quantity in commercial invoice i.e., 21,480 Kgs. The sealed samples were sent to CRCL Kandla vides Test Memo No. 91(second type) and Test Memo No. 92(first type) on 27.06.2024.

3.3 Further, CRCL Kandla vides Test report no. 3420-SIIB/05-07-2024 dated 23.07.2024 for TM No. 91 and Test report no. 3421-SIIB/05-07-2024 dated 22.07.2024 for TM No. 92 submitted the lab report. The



laboratory test report for the said consignment reproduced hereunder:-

**Test report No. 3420-SIIB/05-07-2024 dated 23.07.2024 for Test Memo No. 91(second type) cargo**

Nature:	The Sample as received is in the form of cutpiece of dyed and printed warp knitted fabric.dull red coloured powder.
Composition	It is composed of Polyester filaments yarns. GSM(as much) = 214.64 Selvedge to Selvedge width (cms) =166 It is not coated fabric.
Note/comments:	
	Sealed remnant sample returned herewith.

**Test report No. SIIB-3421/05.07.2024 for Test Memo No. 92(first type) cargo**

The sample as received is in the form of a cut piece of self-designed woven fabric printed surface on one side. The base woven fabric is composed of polyester filament yarn (textured) and nylon filament yarns.

GSM (as much) = 116.31

Width, as such (Selvedge to selvedge) = 146 cm

% composition

Polyester = 89.79

Nylon=balance

**4 Classification of the imported goods:**

4.1 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 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 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.

4.2 **TM Nos. 91:** The goods covered under Test Memo Number 91 are found mis-declared in terms of description of the goods as the goods were declared as "PA Coated fabric classified under CTH-59039090", however, as per test report the goods are "dyed and printed warp knitted fabric composed of Polyester filaments yarns and GSM(as much) = 214.64". 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 6005 of the Import Tariff specifically include "Warp knit fabrics (including those made on gallon knitting machines), other than those of headings 60.01 to 60.04", accordingly impugned goods are appropriately classifiable under the heading 6005. The said Heading covers goods classifiable under the following sub-headings at the single dash (-) level:

- i. of cotton:
- ii. of synthetic fibres:
- iii. of artificial fibres:
- iv. Other:

4.2.1 The subheading (i), (iii) and (iv) 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 (ii), as the description of goods is polyester filament yarn covers under subheading (ii) i.e., of synthetic fibres. The relevant Tariff item at the double dash (---) level:

- i. Shade Nets, conforming to IS 16008;
- ii. Other;

4.2.2 The sub-heading (i), above has been ruled out and as per test results therefore, the merit subheading of the impugned goods appear to be under (ii), i.e. "Other". Accordingly impugned goods are appropriately



classifiable under the heading 60053790. Therefore, as per test result under TM Nos. 91, the concerned imported goods appear to be classifiable under CTH 60053790 wherein the applicable rate of duty is 20% (BCD) + 2% (SWS) + 5% (IGST) per kg.

4.3 **TM No. 92:** The goods covered under Test Memo Number 92 were found mis-declared in terms of description of the goods as the goods were declared as "PA Coated Fabric classified under CTH-59039090", however, as per test report the goods are "woven fabric having printed on one side and composed of polyester filament yarn (textured) and nylon filament yarns". 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.

4.3.1 All the subheading from (i) to (v) & from (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. Unbleached or Bleached;
- ii. Dyed;
- iii. Of yarns of different colours;
- iv. Printed.

4.3.2 The sub-heading (i) to (iii) above have been ruled out and as per test results therefore, the merit subheading of the impugned goods appear to be under (iv), i.e. “Printed”. The relevant Tariff item at the double dash (--) level:-

- i. Terylene and Dacron sarees
- ii. Polyester shirtings
- iii. Polyester sarees
- iv. Other

4.3.3 As per test results the subheading of the impugned goods in respect of Test Memo Number 92 appears to be under (ii) as above mentioned, i.e. “Other” and hence, sub-heading (i) to (iii) above has been ruled out. Therefore, as per test results the concerned imported goods appear to be classifiable under CTH 54075490 wherein the applicable rate of BCD is 20% or Rs.20 per square meter, whichever is higher + 0% (SWS) + 5% (IGST).

4.4 The above test results summarised hereunder:-

Cargo declared	CTH Declared	TM	Test results	Correct CTH	Remarks
PA Coated Fabric	59039090	91	dyed and printed warp knitted fabric composed of Polyester filaments yarns	60053790	Mis-declared
	59039090	92	woven fabric having printed on one side and composed of polyester filament yarn (textured) and nylon filament yarns	54075490	Mis-declared

4.5 In view of above, it appears that, the importer has mis-classified the imported goods under CTH 59039090 instead of correct CTH-60053790 & CTH 54075490. Accordingly, the goods have been found liable for confiscation under Section 111(m) of the Customs Act, 1962.

5. Further, during the investigation, a Summon dated 01.08.2024 was issued to importer for recording a statement. In response, statement dated



02.08.2024 was recorded, wherein, he, inter-alia stated that:-

- He is the Authorized person of M/s. Uma International and looks after all the port clearance related work of M/s. Uma International. The said firm is a trading firm and operational since December-2023
- He perused the SEZ DTA bill of Entry 2012369 dtd. 20.06.2024 filed by SEZ entity M/s. Fast Track CFS Private Limited in respect of the importer i.e. M/s. Uma International and agreed with the contents mentioned in bill of entry and put his dated signature in token of heaving seen the same.
- He perused the examination report dtd. 27.06.2024 and agreed with the contents mentioned in examination report and put his dated signature in token of heaving seen the same.
- He perused the Test report No. 3420-SIIB/05-07-2024 dated 23.07.2024 for Test Memo No. 91(second type cargo) and in token of having seen put his dated signature on it. Under test report No. 3420-SIIB/05-07-2024 dated 23.07.2024 goods are dyed and printed warp knitted fabric.
- He perused the Test report No. SIIB-3421/05.07.2024 for Test Memo No. 92(first type cargo) and in token of having seen put his dated signature on it. Under test report No. 3421-SIIB/05-07-2024 dated 22.07.2024 goods are woven fabric having printed on one side and composed of polyester filament yarn (textured) and nylon filament yarns.
- On being asked about the difference between declared goods i.e., PA Coated fabric classified under CTH-59039090 and as per Test report received from CRCL Kandla. He stated that they do not have much knowledge of the fabric and they works on the trading basis, And due to the lack of knowledge mistake happened on their end and they agreed with the same and ready to the pay differential duty arises due to the change in classification along with interest and penalty if applicable as per Customs Act, 1962.

6. In view of above, it appears that, the importer has mis-classified the



imported goods classified under CTH 59039090 instead of correct CTH as detailed at para-supra with an intention to evade payment of the applicable customs duty. Consequently, the imported goods are found liable to be re-classified in different CTH arrived on the basis of lab test results as discussed at para-supra and are also liable to be re-assessed accordingly. Further, in the said BE, invoice and packing list, total quantity of these goods have been declared as 21,480 KGs. However during the course of examination the weight of the imported goods is found as 21,458 KGs., which is approx. similar to declared weight and as per Test report, cargo are two types (1) Knitted (2) woven, and duty is required to be calculate for Knitted fabric as per Kgs. and duty and net quantity of the woven goods is required to be ascertained in square meter. The details of cargo are mentioned hereunder:-

Sr. No.	Test Memo No.	Goods ascertained	Classification of goods	Quantity in Kgs. or Square Meter	GSM
1	91	Knitted fabric	60053790	6897 Kgs.	214.64
2	92	Woven fabric	54075490	14561 Kgs. or 125191 Square Meter	116.31

7 . **Rejection of declared value & Redetermination of Assessable Value:**

7.1 Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 (hereinafter referred to as “the CVR, 2007”) provides the method of valuation. Rule 3(1) of the CVRs, 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". 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". Whereas, it appears that, transaction value in terms of Rule 3 of 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. Whereas, in the present case, it appears that, it is observed that importer has mis-classified the subject goods under CTH 59039090 instead of correct CTH with an intention to evade payment of the applicable customs duty. Accordingly, there is reasonable doubt regarding the truth and accuracy of the declared value, and hence is liable to be rejected in terms of Rule 12 of the CVR, 2007. In view of the same the imported goods have been found liable for confiscation under section 111 of the Customs Act, 1962.



7.2 Whereas, it appears that, the assessable value of the cargo is required to be re-determined 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. Whereas, further it appears that, the value of the 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. Preceding sequentially, to Rule 5 ibid, as per contemporaneous import data available on NIDB, the rate of fabrics having similar nature, composition and description is having different ranges as discussed at para-supra. Further, sub-rule (3) of the said Rule-4 of 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 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. Accordingly, the assessable values of the imported goods are required to be re-determined taking the lowest of such values available on NIDB import data of the similar goods as discussed at para-supra.

7.3 Whereas, contemporaneous import data available on NIDB, the rates per unit of goods having similar nature, composition and description have been found ranging within some limits, lowest of which are required to be taken in view of sub-rule (2) of the said Rule-5 of CVR, 2007 to arrive at the assessable value of the imported goods. After analysing, the NIDB data as per Rule 5, the appropriate value for the goods falling under CTH-60053790 appears to be Rs. 171.14/Kgs and the appropriate value for the goods falling under CTH-54075490 appears to be Rs. 34.66/SQM. Accordingly, the assessable value of the imported goods is re-determined as **Rs. 55,19,473/-** instead of total assessable of **Rs. 6,72,714/-** as declared in the said BE and duty as per new CTH and re-determined assessable is calculated as under:-

Table-1 (Amount in Rs.)

Sr. No.	TM	Correct CTH as per test results	No. of Rolls	Kgs	GSM	Total Kg/Sqm for duty calculation	Rate per unit of the similar goods as per NIDB (in rs.)	Total Assessable Value as per NIDB Data
1.	91	60053790	249	6897	214.64	6897 Kgs.	171.14	1180353
2.	92	54075490	617	14561	116.31	125191 Sqm.	34.66	4339120
		<b>Total</b>	<b>866</b>	<b>21,458</b>				



In continuation of Table-1

Sr. No.	Qty in Kg/SQM	Re-determined Value as per NIDB (Rs)	Total Duty as per investigation					
			BCD @ 20% adv	BCD @ Rs. 20 per SQM	Applicable BCD	SWS	IGST @ 5%	Total Duty
1	6897 Kgs	1180353	236071	NA	236071	23607	72002	331680
2	125191 SQM	4339120	867824	2503820	2503820	0	342147	2845967
TOTAL		5519473			2739891	23607	414149	3177646

8. 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.—**

- 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 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.*
- 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:**

1. *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.*
2. *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 transshipment, with the declaration for transshipment 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:

**(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.

**9. Summary of Investigations Conducted:**

9.1 M/s Fast Track CFS Private Limited, had filed SEZ warehouse Bill of Entry No. 1010752 dated 18.06.2024 and DTA bill of entry no. 2012369 Dated 20.06.2024 for and on behalf of it's client M/s Uma International, Second Floor, Survey No. 54/1/P3/P1, Plot No. 9 and 10, Maruti Corner 2,



Office No. 206, Adani Port Road, Shree Ganesh Enterprise, Dhrab Mundra, Kachchh, Gujarat-37042 holding IEC No: PAEPS9781R for import of 'PA Coated fabric classified under CTH-59039090 in the container no. WHSU5352422. Furthermore, the said goods have also 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.

9.2 Whereas, on the basis of the examination report, test reports and investigation carried out in this regard, the quantity in respect of number of packages is found 'as declared' and the weight is also found approximately similar to the declared weight. However, the imported goods are found mis-declared in respect of nature, composition and description PA Coated fabric and CTH (59039090) as declared in the said BE. The imported goods are found to be other than PA Coated fabric and are rightly classifiable under different CTHs as discussed at para-supra. These facts have also been admitted by the importer in their statement dated 02.08.2024. Further, the imported goods are also found undervalued in view of the contemporary import data available on NIDB and hence are required to be re-assessed on the basis of NIDB data for the similar goods in view of Rule 5 of the CVR, 2007. Whereas, accordingly, it appears that, the importer has failed to declare true and correct description, CTH as well as assessable value of the goods imported vide the said BE and hence, the cargo is liable for confiscation under section 111(m) of the Customs Act, 1962.

9.3 Accordingly, the assessable value of the imported goods is re-determined as Rs. 55,19,473/- as discussed at para 7.3 above. Accordingly, total duty on these imported goods comes to tune of Rs. 31,77,646/- as discussed in table-1 at Para 7.3 above instead of Rs. 2,46,482/- as self-assessed by the importer in the said BE, thus there appears non/short levy of Customs duty amounting to Rs. 29,31,164/- (Rs. 31,77,646/- (minus) Rs. 2,46,482/-). 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 and hence are liable for penalty under section 112(a)(ii) of the Customs Act, 1962. 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 transshipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:

9.4 The importer vide letter dated. 12.08.2024 requested for release the cargo; they do not want any SCN and PH in the matter, they are ready to pay fine, penalty as imposed by the department.

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

- i. The classification of the goods i.e. 59039090 as declared by the importer in the SEZ warehouse Bill of Entry No. 1010752 dated 18.06.2024 and DTA bill of entry no. 2012369 Dated 20.06.2024 is liable to be rejected and the goods are liable to be re-classified under different CTHs as discussed at the preceding paras 4.2 & 4.3 of this Order in accordance with the CRCL lab test reports.
- ii. The total assessable value of the imported goods is liable to be re-determined as Rs. 55,19,473/- (Rupees Fifty Five Lakh, Nineteen thousand and four hundred seventy three only), as discussed at the preceding para 7.3 of this Order instead of Rs. 6,72,714/- (Rupees Six Lakh Seventy two thousand and seven hundred fourteen only) as declared in the DTA Bill of Entry No. 2012369 Dated 20.06.2024, 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. Total Customs duty involved in the imported goods comes to **Rs. 31,77,646/-** (Rupees Thirty one Lakh, seventy seven thousand and



- six hundred forty six only) as discussed at the preceding Para 7.3 of this Order, instead of Rs. 2,46,482/- (Rupees Two Lakh forty six thousand four hundred eighty two only) as declared in the BE.
- iv. The said SEZ Warehouse Bill of Entry No. 1010752 dated 18.06.2024 wherein DTA bill of entry no. 2012369 Dated 20.06.2024 is liable to be re-assessed accordingly under Section 17(4) of the Customs Act, 1962.
  - v. The goods having re-determined value of Rs. 55,19,473/- have been imported by way of mis-declaration in contravention of Sec 46 of the Customs Act, 1962 and are therefore liable for confiscation under Section 111 (m) of the Customs Act, 1962.
  - vi. The importer i.e., M/s. Uma International, holding IEC No: PAEPS9781R are liable for Penalty under Section 112(a)(ii) of the Customs Act, 1962.

**Waiver of Show Cause Notice and Personal Hearing**

11. The importer vide letter dated 12.08.2024 has submitted that they do not want any personal hearing and/or Show Cause Notice in the matter. Thus I find that Principles of Natural Justice are complied with.

12. I have carefully gone through Investigation Report No. 73/2024-25 dated. 20.08.2024 issued by Deputy Commissioner of Customs (SIIB), Custom House Mundra.

13. I find that issues to be decided in the present proceedings are as follows:-

- i) Whether the goods have been correctly declared in terms of Classification and valuation or otherwise.
- ii) Whether goods are liable for confiscation and whether importer is liable for penalty under relevant sections of Customs Act, 1962 or otherwise.

14. I find that the SIIB, MCH had put on hold the cargo imported under SEZ Warehouse Bill of Entry No. 1010752 dated. 18.06.2024 filed by M/s Fast Track CFS Private Limited for and on behalf of its client M/s Uma International IEC No. PAEPS9781R through their Customs Broker, M/s Lara Exim Private Ltd at Mundra SEZ port for import of 'PA Coated Fabric' (CTH-59039090). The examination of the goods was carried out on 27.06.2024 in presence of representative of importer M/s Uma



International and CFS representative in M/s Fast Track CFS.

15. I find that during the course of examination, the quantity of the imported goods was found in order and not in excess. However, 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. 91 (second type) and 92 (first type) both dated. 27.06.2024. The CRCL, Kandla vides Test Report No. 3420-SIIB/05-07-2024 dated 23.07.2024 for TM No. 91 and Test Report No. 3421-SIIB/05-07-2024 dated. 22.07.2024 for TM No. 92 submitted the lab report. The laboratory test report for the said consignment reported that :-

**Test report No. 3420-SIIB/05-07-2024 dated 23.07.2024 for Test Memo No. 91(second type) cargo**

Nature:	The Sample as received is in the form of cutpiece of dyed and printed warp knitted fabric.dull red coloured powder.
Composition	It is composed of Polyester filaments yarns. GSM(as much) = 214.64 Selvedge to Selvedge width (cms) =166 It is not coated fabric.
Note/comments:	
	Sealed remnant sample returned herewith.

**Test report No. SIIB-3421/05.07.2024 for Test Memo No. 92(first type) cargo**

The sample as received is in the form of a cut piece of self-designed woven fabric printed surface on one side. The base woven fabric is composed of polyester filament yarn (textured) and nylon filament yarns.

GSM (as much) = 116.31

Width, as such (Selvedge to selvedge) = 146 cm

% composition

Polyester = 89.79

Nylon=balance

16. I find that the goods have been mis-classified by the Importer in the said BE under CTH 59039090. The goods under TM No. 91 and 92 are



classifiable under CTH 60053790 and 54075490 respectively as detailed in above Para 4 (4.1 to 4.5). Therefore, the Importer has mis-classified the imported goods classified under CTH 59039090 instead of correct CTH 60053790 & CTH 54075490.

17. I find that Rule 3 of the CVR, 2007 provides the method of valuation. Rule 3(1) of the CVRs, 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". 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". Whereas, it appears that, transaction value in terms of Rule 3 of 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. Whereas, in the present case, it appears that, it is observed that importer has mis-classified the subject goods under CTH 59039090 instead of correct CTH with an intention to evade payment of the applicable customs duty. Accordingly, there is reasonable doubt regarding the truth and accuracy of the declared value, and hence is liable to be rejected in terms of Rule 12 of the CVR, 2007.

18. I find that the assessable value of the cargo is required to be re-determined 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. Whereas, further it appears that, the value of the 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. Preceding sequentially, to Rule 5 *ibid*, as per contemporaneous import data available on NIDB, the rate of fabrics having similar nature, composition and description is having different ranges as discussed at para-supra. Further, sub-rule (3) of the said Rule-4 of 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 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. Accordingly, the assessable values of the imported goods are required to be re-determined



taking the lowest of such values available on NIDB import data of the similar goods. Accordingly, the assessable value of net 21,458 Kgs of the imported goods is required to be re-determined as **Rs. 55,19,473/-** instead of total assessable of **Rs. 6,72,714/-** as declared in the said BE.

19. I find that the applicable BCD on the imported goods comes to Rs. 2,36,071/- (@ 20% ad-valorem) for TM No. 91 vide Table-I and Rs. 25,03,820/- (@ Rs 20 per SQM) for TM No. 92 vide Table-I. Accordingly, it appears that the BCD for TM No. 92 when taken on the basis of PER SQUARE METER (per sqm) is higher than the ad-valorem duty. Hence, the customs duty calculation for TM No. 92 is required to be taken on basis of BCD @ Rs. 20 per SQM. Accordingly, total customs duty on the imported goods comes to Rs. 31,77,646/- instead of Rs. 2,46,482/- as self-assessed by the Importer in the said BE, thus there appears non/short levy of Customs duty amounting to Rs. 29,31,164/- as calculated in Continuation of Table-I of Para 7.3 above.

20. I find that the Importer by the act of omission and commission, has contravened the provisions of Section 46 and 47 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. Therefore, the Importer has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962 which I hold accordingly liable for penalty under Section 112(a) of the Customs Act, 1962. Since the goods have been held liable for confiscation, it is imperative that the Importer has rendered himself liable for penalty under Section 112(a)(ii) of the Customs Act, 1962. Therefore, I upheld imposition of penalty under Section 112(a)(ii) of the Customs Act, 1962.

21. I find that Section 125 of the Customs Act, 1962 which prescribes for :-

*"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,] [ 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”.

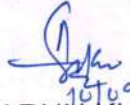
As seen from above provisions it is evident that an option to the importer should be given to redeem the goods on payment of redemption fine as goods are not prohibited or restricted. Accordingly I allow the imported goods to be redeemed on payment of Redemption fine.

22. In view of the above, I pass the following order :-

**ORDER**

- i. I reject the classification of the goods i.e CTH 59039090 as declared by the Importer in the Warehouse Bill of Entry No. 1010752 dated. 18.06.2024 and order to re-classify the goods under CTH 60053790 and CTH 54075490 for TM No. 91 and 92 respectively.
- ii. I reject the declared value of the goods as Rs. 6,72,714/- and order to re-determine the assessable value of these mis-declared imported goods as Rs. 55,19,473/- under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962 and order to recover the duty accordingly on re-determined value on re-assessment.
- iii. I confiscate the impugned goods having re-determined value of Rs. 55,19,473/- imported vide the subject BE, 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. 6,00,000/- (Rs. Six Lakh Only) in lieu of confiscation.
- iv. I impose penalty of Rs. 1,50,000/- (Rs. One Lakh Fifty Thousand Only) on the Importer M/s Uma International, Dharab, Mundra, Kutch under Section 112 (a)(ii) of the Customs Act, 1962.

23. 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.

  
10/09/2024.  
ARUN KUMAR  
ADDITIONAL COMMISSIONER  
ADC/JC-II-O/o Pr Commr-Customs  
Mundra



To,

M/s UMA INTERNATIONAL (PAEPS9781R)

Second Floor, Survey No. 54/1/P3/P1, Plot No. 9 and 10, Maruti Corner  
2, Office No. 206, Adani Port Road, Shree Enterprise, Dhrab Mundra,  
Kachchh, Gujarat – 370421

Copy to :-

- i) The Deputy Commissioner of Customs, SIIB, MCH.
- ii) The Assistant Commissioner of Customs, RRA/TRC, MCH.
- iii) The Assistant Commissioner of Customs, EDI, MCH.
- iv) Office Copy