

| | | |
|---|--|---|
|  | OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MUNDRA, KUTCH-GUJARAT -370421 PHONE: 02838-271426/271428 FAX :02838-271425 E-mail: adj-mundra@gov.in |  |
|---|--|---|

| | | |
|----------|---|--|
| A | FILE NO./ फाइल संख्या | GEN/ADJ/ADC/122/2025-Adjn |
| B | OIO NO./ आदेश संख्या | MCH/ADC/ZDC/471/2025-26 |
| C | PASSED BY/ जारीकर्ता | DIPAK ZALA, ADDITIONAL COMMISSIONER, CUSTOM HOUSE, MUNDRA. |
| D | DATE OF ORDER/ आदेश की तारीख | 30.12.2025 |
| E | DATE OF ISSUE/ जारी करने की तिथि | 30.12.2025 |
| F | SCN No. & Date/ कारण बताओ नोटिस क्रमांक | SCN No.: GEN/ADJ/ADC/122/2024-Adjn dated 15.01.2025 |
| G | NOTICEE/ IMPORTER नोटिसकर्ता/आयातक | 1. M/S. Shiva Fabrics, (IEC: GBHPS0946B), H No 216, Ward No 39, Street No 4, Mohan Singh Nagar, Ludhiana-141008. 2. Shri Sagar, Proprietor of M/s Shiva Fabrics |
| H | DIN/ दस्तावेज पहचान संख्या | 20251271MO00000038E2 |

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

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

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

5. उक्तअपील यहआदेश भेजने की दिनांक से 60दिन के भीतर दाखिल की जानी चाहिए।

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

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

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

- i. उक्त अपील की एक प्रति और
A copy of the appeal, and

ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची 1-के अनुसार न्यायालय शुल्क अधिनियम-1870के मद सं° 6-में निर्धारित 5 -/रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

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

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

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

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

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

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

BRIEF FACTS OF THE CASE

An information was received by Directorate of Revenue Intelligence, Kolkata Zonal Unit, Kolkata (hereinafter referred to as “DRI KZU”), to the effect that some importers of Chenille Yarn, falling under Tariff Item 56060090 of the First Schedule to the Customs Tariff Act, 1975, were

evading payment of appropriate customs duty by resorting to misclassification as well as mis-declaration of transaction value thereof; that the goods imported by those importers had been described as "YARN RAW WHITE IN HANK 1.3CM 12NM/1", "9/1 100% BRUSH YARN", "NYLON MINK YARN RAW WHITE IN HANK 1.3CM 12NM/1", "NYLON ALPHA LIKE YARN RAW WHITE IN HANK 0.9CM 12NM/1", etc. and during self-assessment, claimed classification of the goods under Tariff Item 54026100 or 55091100; the Basic Customs Duty (BCD) applicable for the goods classifiable under Tariff Item 54026100 or 55091100 is 5% while for items under CTH 56060090 the BCD is 10%.

2. In the course of processing the information, one such importer using the above modus operandi was identified as M/s. SHIVA FABRICS (IEC: GBHPS0946B), H NO 216, WARD NO 39, STREET NO 4, MOHAN SINGH NAGAR, LUDHIANA-141008 (hereinafter referred to as "Importer/Noticee"). Importer had filed a Bill of Entry No. 4201613 at Mundra Port (INMUN1) on 16.01.2023, the details of which are as below:

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

3. The Bill of Entry had been filed at Mundra Port (INMUN1). Accordingly, a request was made to DRI AZU vide letter dated 17.01.2023 to take up with the jurisdictional customs to ensure that the subject consignments are not released without examination in presence of officers of DRI. Thereafter, officers of DRI KZU reached Mundra Port on 19.01.2023 for examination of the above-mentioned consignment.

4. EXAMINATION OF THE IMPORT GOODS:

4.1 The Goods under Bill of entry no. 4201613 dated 16.01.2023 in Container No. ESDU4059729 (40') was examined on 19.01.2023 under Panchanama proceedings at CFS Transworld Terminal Pvt. Ltd., Bharat CFS Zone-I, AP & SEZ, Mundra Kutchh, Gujarat-370421 under Mundra Port (INMUN1). The container was first checked and the agent seals affixed on the container were verified and found intact.

4.2 Thereafter, the container was opened and goods were examined thoroughly. The container was found to be stuffed with 228 numbers of white coloured polybags marked as "NYLON MINK 1.3CM, LOT NO. HK98, NT WT: 98.0 Kgs, Gross Weight: 98.5 kgs". The white colour polybags were containing white colour yarns in hanks. The yarn appeared to be hairy yarn and appeared to be consisting of more than one strands of textile yarn twisted together and holding short textile yarn throughout its length.

4.3 The officers conducting the examination informed the CHA that the yarn appeared to be Chenille Yarn. In response, the CHA Shri Rahul Kumar Jha agreed with the statement, and voluntarily produced a test report from the supplier for the Invoice of the instant consignment, wherein the description of the goods were mentioned as "1/13 MM NYLON CHENNILE YARN RAW WHITE IN HANKS"

4.4 Representative samples were drawn in quadruplicate for testing by the appropriate authority. After completion of the examination, the polybags were re-loaded into the containers and the containers were sealed with Customs Bottle Seal. The consignment was seized under Section 110 of the Customs Act, 1962 on reasons to believe that they were mis-declared and hence liable for confiscation. The consignment was handed over to the Manager, CFS Transworld Terminals Pvt. Ltd. Mundra Port under a supurdnama dated 19.01.2023.

4.5 The examination proceedings were conducted in presence of, amongst others, two independent witnesses and the entire event was recorded under a panchnama in which all the concerned persons including the witnesses put their dated signature as a token of ratifying the activities undertaken and recorded therein on 19.01.2023.

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

6. STATEMENTS RECORDED UNDER SECTION 108

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

i) that he was appointed as an H Card Holder for the CHA firm M/s Anon Logistics by one Shri Rahul Sharma, and that he works in the CHA firm as per the directions of said Shri Rahul Sharma only.

ii) that the said Shri Rahul Sharma asked him to clear the consignment under BE 4201613 dt. 16.01.2023 of M/s Shiva Fabrics through CHA firm M/s Anon Logistics, and also asked him to appear to be present during the examination of the said consignment on 19.01.2023 at Mundra Port.

iii) that he has previously handled several other import consignments of M/s Shiva Fabrics of the same type of goods. His job was to be present at the Mundra Port at the time of examination of such import consignments, and thereafter load them onto domestic containers on trucks sent by his firm.

iv) that the owner of M/s Shiva Fabrics was Shri Sagar as per the KYC documents, although he never met him personally. He also doesn't know about the relation between the importer and the CHA firm.

v) that on enquiry during the examination, he voluntarily submitted one Test Report dated 16.12.2022 for the Invoice of the instant consignment, wherein the description of the goods were mentioned as "1/13 MM NYLON CHENNILE YARN RAW WHITE IN HANKS"

vi) that he got the Test Report of the consignment being examined from one person at his office. He submitted that the classification of the imported items in the Bill of Entry was not done by him, and he also could not comment on the invoice value of the imported goods. He only worked as per the directions given to him from his firm.

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

i) that he is the proprietor of M/s Shiva Fabrics, engaged in the import of fabrics and yarn. Further, the type of yarn they import are Nylon/Polyester yarn having feather like structures, which are also known as Chenille Yarn.

ii) that the type of yarn he had imported was covered under CTH 5606 0090.

iii) that he had found that several other importers were importing same type of yarn without declaring them as Chenille Yarn or under CTH 5606 0090. Instead they were being imported under CTH 54026100 or 55091100. By classifying Chenille Yarn under CTH 54026100 or 55091100, one has to pay BCD of 5% only, instead of 10% under CTH 56060090. Thus to save customs duty, he too classified imported yarns under CTH 54026100 or 55091100.

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

v) that he agreed with the findings in the Panchanama dated

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

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

vii) that further on being confronted with a sheet with details of imports made by him, he reviewed the sheet, put his signature on it as acknowledgement of having seen and read the same, and he agreed that type of yarn imported under the mentioned bills of entry were Chenille Yarn.

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

6.3 Further Summons dated 17.02.2023 and 03.03.2023 were issued to Shri Sagar for appearing at the office of DRI KZU, however, Shri Sagar failed to comply with the said summons, neither appearing at the office of DRI KZU after the summons were issued, nor submitting any response in this regard.

7. TESTING OF THE SAMPLES:

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

7.2 The representative samples drawn from the two import consignments covered under Bills of entry nos. 4201613 dated 16.01.2023 and 4479223 dated 03.02.2023 were sent for chemical testing to the Textiles Committee, Kolkata on 17.03.2023, with the request that the samples be tested on the following parameters:

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

7.3 The Regional Laboratory of the Textile Committee, in its reports dated 29.03.2023 stated that the samples drawn from the two import consignments covered under Bills of entry nos. 4201613 dated 16.01.2023 and 4479223 dated 03.02.2023 and forwarded to them were tested, and the results indicate that they were "**Chenille Yarn**", **having a composition of 100% Polyamide.**

8. DUTY STRUCTURE:

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

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

8.2 It could be seen that the total duty payable on the items falling under the Tariff Item 5402 6100 and 56060090 are 18.16% and 24.32%, respectively; and there was an effective duty difference of 6.16% between the two. It, therefore appeared that the impugned import goods had been deliberately mis-declared with the intent to claim classification under CTH 54026100 instead of the correct CTH 56060090 in order to evade payment of proper and correct amount of customs duty. In view of the same, it appeared that the impugned goods, covered under Bill of entry no. 4201613 dated 16.01.2023 were liable for confiscation in terms of Section 111 of the Customs Act, 1962.

9.1 The importer, in respect of the imported goods covered under the Bill of Entry 4201613 dated 16.01.2023, had claimed classification under CTH 5402 6100. As per the First Schedule of the Customs Tariff Act, 1975, the applicable rate of BCD on the items falling under Tariff Item 5402 6100 is 5%.

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

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

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

..

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

9.3 The importer, in respect of the goods covered under Bill of entry no. 4201613 dated 16.01.2023 had declared the unit value as USD 1.5/Kg (CIF). The goods were declared only as “1.3 CM YARN IN HANK”. The importer had claimed classification of the impugned goods under CTH 5402 6100. The goods on chemical testing were reported as Chenille Yarn, having a composition of 100% Polyamide. Hence the same appeared to be classifiable under CTH 5606 0090.

10.1 The findings of the physical examination and the subsequent chemical testing of the import consignment clearly showed that the goods found physically do not have any relation with the goods declared in the import documents. Consequently, the CIF values of goods as declared in the said import documents cannot be considered as the values that truly or correctly represent the goods actually imported. It, therefore, appears that there are sufficient grounds to doubt the truth and accuracy of the value so declared and there are enough reasons to believe that the declared values do not represent the actual transaction value and, therefore, liable to be rejected in terms of Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

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

Rule 12. Rejection of declared value. –

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of

such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

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

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

10.3 Evidences of contemporaneous import of such goods showed that Chenille Yarn made of 100% polyamide were being imported with unit values starting from USD 3.21/Kg (CIF) for the different specifications of yarn. It had been admitted by the importer in his statement dated 02.02.2023 that he had resorted to the same modus in respect of his earlier imports also. In fact, it could be seen that he had suppressed the correct value and resorted to mis-classification in respect of one of the consignments, even though he had declared the goods as Nylon and Polyester Chenille Yarn.

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

10.5 In terms of Rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the value of those imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued. Hence it appears that the value of the goods covered under Bills of entry nos. 4201613 dated 16.01.2023 may be re-determined in terms of Rule 5 – Transaction value of Similar Goods of Customs Valuation (Determination of Value of Imported

Goods) Rules, 2007.

10.6 It was, therefore, evident that the importer had deliberately mis-declared the description and value of the goods and had also resorted to mis-classification of the same to evade payment of proper customs duty on the imported goods. It was found that the importer, in respect of the goods covered under Bill of entry no. 4201613 dated 16.01.2023, had paid customs duty totaling Rs. 5,09,441/- . By considering the unit value of the impugned goods as USD 3.21/Kg (CIF) and classifying the same under CTH 5606 0090, it could be ascertained that the actual duty payable in respect of the impugned goods was **Rs. 14,60,007/-**. It could, therefore, be seen that the importer by resorting to mis-declaration of description and value and also by mis-classifying the import goods, had tried to **evade customs duty amounting to Rs. 9,50,566/-** in respect of the goods covered under Bill of entry no 4201613 dated 16.01.2023.

Table-A

| | |
|-----------------------------|------------------------|
| B/E No. & Date | 4201613/16.01.2023 |
| Item Description | Yarn in Hank 1.3CM |
| Quantity Decl. | 22344 Kgs. |
| Unit Price | USD 1.5/Kg |
| Assessable Value | 28,05,289.20/- |
| Duty Paid (18.16%) | 5,09,441/- |
| Apparent CTH | Correct 56060090 |
| Apparent Unit Price | USD 3.21/Kg |
| Apparent Value | Assessable 60,03,319/- |
| Duty (24.32%) | Payable 14,60,007/- |
| Differential Payable | Duty 9,50,566/- |

Exchange rate: 1USD=83.7 INR

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

11.2 After due consideration of the request of the importer, DRI, KZU vide

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

- i. The importer shall pay the differential duty on the basis of classification of the seized goods under Tariff Item 56060090, instead of the declared Tariff Item 54026100 and on the basis of the Unit Price of the goods as 3.21\$/Kg (CIF), instead of the declared Unit Price as 1.5\$/Kg (CIF).
- ii. The importer shall furnish appropriate bond, equivalent to the full re-determined value of the seized goods; and
- iii. The importer shall furnish an appropriate Bank Guarantee/ Security Deposit to cover the amount of redemption Fine and Penalties that may be levied at the time of adjudication as deemed fit.

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

11.4 Further, a letter dated 22.06.2023 was received from the Assistant Commissioner of Customs, Custom House, Mundra wherein it was informed that the importer had submitted the requisite bond and bank guarantee, and thereafter the impugned goods were provisionally released. The detail of Bank Guarantee is as under:-

| Bank Guarantee No. | BG issue date | Expiry Date | Amount of BG (INR) |
|--------------------|---------------|--------------------------------------|--------------------|
| 6319NDDG00001424 | 15.05.2023 | 16.08.024 (with auto-renewal clause) | 20,00,171/- |

12.1 From the enquiry conducted pursuant to the detention and examination of the impugned consignments imported by M/s Shiva Fabrics, covered under BE 4201613 dated 16.01.2023 it is revealed that the importer resorted to mis-declaration by not disclosing the essential characteristics of the goods sought to be imported with the sole purpose of classifying the goods under CTS: 54026100 instead of 56060090, so that they could avoid payment of Customs Duty at higher rate that ought to have been leviable on such goods. The importer while filing the bill of entry had provided incomplete description about the goods. In the import documents, the goods were declared as "1.3 CM YARN IN HANK". The outcome of the chemical test of the representative samples clearly showed that the samples drawn from the seized import consignments were "Chenille Yarn", having a composition of 100% Polyamide.

12.2 The findings of the physical examination and the subsequent chemical testing of the import consignment clearly establishes the fact that the goods found physically do not have any relation with the goods declared in the import documents. Consequently, the CIF values of goods as declared in the said import documents cannot be considered as the values that truly or correctly represent the goods actually imported. As discussed, hereinabove, evidences of contemporaneous import of such goods showed that Chenille Yarn made of 100% polyamide were being imported with unit values USD 3.21/Kg (CIF) and above. It, therefore, appears that there are sufficient grounds to doubt the truth and accuracy of the value so declared and there are enough reasons to believe that the declared values do not represent the actual transaction value and, therefore, liable to be rejected in terms of Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Accordingly, it also appears that the transaction value of the items, sought to be imported under the impugned bill of entry, cannot be determined under the provisions of sub-rule (1) of Rule 3 of the rules *ibid* and the correct value needs to be ascertained and arrived at by proceeding sequentially in accordance with Rules 4 to 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

12.3 The importer had admitted in his statement dated 02.02.2023 that the yarn imported by him through his firm M/s Shiva Fabrics are indeed covered under CTH 56060090. This deliberate suppression of the actual description of the goods, also allowed the importer to suppress the actual transaction value of the said import goods. He also admitted that he had resorted to the same modus in respect of his earlier three imports also. In fact, it could be seen that he had suppressed the correct value and resorted to mis-classification in respect of one of the consignments, even though he had declared the goods as Nylon and Polyester Chenille Yarn.

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

13.2 Similarly, in terms of Section 46(4) of Customs Act, 1962, the importer is required to make a declaration as regards the truth of the contents of the Bill of Entry submitted for assessment of customs duty. In view of the discussions made in the foregoing paragraphs, it appears that the importer, M/s Shiva Fabrics has deliberately attempted to evade payment of BCD at appropriate rate by cleverly suppressing the actual description of the import goods and thereby craftily took refuge of the CTH that attracts BCD at much lesser rate.

14. It therefore appears that the importer, M/s Shiva Fabrics had knowingly and intentionally and by design attempted to evade payment of customs duty at proper and correct rate by way of willful mis-statement and/or understatement about the goods imported by it, thereby mis-

classifying the same in order to evade true and correct payment of duty of customs otherwise leviable on such items. The acts of omission and commission on the part of the importer in respect of the impugned import goods, appears to have rendered the said goods liable to confiscation under Section 111(m) of the Customs Act, 1962.

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

16.1 As has been revealed in the course of the investigation, the importer, M/s Shiva Fabrics at the time of filing the impugned Bill of Entry had deliberately and consciously suppressed the materials facts about the exact nature of the imported Yarns under import before the concerned customs authority. Instead, they craftily provided incomplete and misleading description of the item in question, which facilitated them to classify the goods under an inappropriate heading having lower BCD. This deliberate suppression of the actual description of the goods, also allowed the importer to suppress the actual transaction value of the said import goods. The importer, in respect of the goods covered under Bill of entry no. 4201613 dated 16.01.2023 had declared the unit value as USD 1.5/Kg (CIF). Evidences of contemporaneous import of such goods showed that Chenille Yarn made of 100% polyamide were being imported with unit values USD 3.21/Kg (CIF) and above.

16.2 So, it appears from the discussions made hereinabove that the present case is a clear case of suppression of facts resorted to by the importer with the sole motive to enjoy undue monetary benefit of paying much lesser amount of duty on the import goods covered under **B/E 4201613 dated 16.01.2023**. Therefore, it appears that the classification claimed by the importer is required to be rejected and the goods under import are required to be reclassified under CTH 5606 0090 and duty is to be levied at correct rate on re-assessment of the impugned Bill of Entry following the provisions of Section 12, Section 14 and Section 17(4) of the Customs Act, 1962.

16.3 The declared value in respect of the import goods covered under B/E 4201613 dated 16.01.2023 also need to be rejected in terms of Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined in terms of Rule 5 of the said Valuation Rules.

17. Accordingly, Show Cause Notice dated 15.01.2025 was issued to M/s. Shiva Fabrics (IEC: GBHPS0946B), H. No. 216, ST. No. 4, Mohar Singh Nagar, Ludhiana (Punjab) wherein they were called upon to show cause as to why:

- a. The assessment of the goods self-declared as "1.3 CM YARN IN HANK" imported vide Bill of Entry No. 4201613 dated 16.01.2023 filed at INMUN1, claiming assessment under 5402 6100 should not be rejected and the impugned goods covered under the subject bill of entry should not be reassessed under Section 17(4) of the Custom Act, 1962 by reclassifying the same under 5606 0090.
- b. The declared value of USD 1.5/Kg (CIF) for the goods imported vide Bill of Entry No. 4201613 dated 16.01.2023 should not be rejected in terms of Rule 12 and re-determined at USD 3.21/ Kg (CIF) in terms of Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 on the basis of contemporaneous evidences of import of such goods.
- c. The goods declared as "1.3 CM YARN IN HANK" imported vide Bill of Entry No. 4201613 dated 16.01.2023 filed at INMUN1, should not be should not be confiscated under Section 111(m) of the Customs Act, 1962 for being imported improperly by deliberately suppressing material facts about the nature of the said goods with the sole intent to suppress the correct value and also avoid appropriate amount of duty by resorting to mis-classification of the said goods under a wrong tariff heading.
- d. The differential duty amounting to Rs.9,50,567/- (Rupees Nine Lakhs Fifty Thousand Five Hundred and Sixty Seven only) (as detailed in the Annexure to this Report), should not be levied and collected on the said goods imported vide Bill of Entry No. 4201613 dated 16.01.2023 in terms of Section 12, Section 14 and Section 17(4) of the Customs Act, 1962 through re-assessment of the impugned Bill of Entry.
- e. Penalty under Section 112(a), 112(b) and Section 114AA of the Customs Act, 1962 for improper importation of dutiable goods as discussed in the foregoing paragraphs should not be imposed upon Shri Sagar, Proprietor of the import firm, M/s Shiva Fabrics, on the grounds as discussed above.
- f. Any liabilities arising due to the above or otherwise shall not be adjusted against the Bank Guarantee of Rs. 20,00,171/- dated 15.05.2023 submitted by M/s Shiva Fabrics against Bill of Entry No. 4201613 dated 16.01.2023 respectively.

Written Submission of the importer/noticee

17. Shri Sahil Sharma, Authorised representative of Importer submitted their written submissions vide mail dated 10.11.2025. He inter alia submitted that:-

(i) The assessee has made request for provisional release of goods on dated 07.04.2023 and same was released by your office on dated 22.06.2023 after completing the all conditions mentioned therein.

(ii) The statement dated 02.02.2023 of the proprietor has been under coercion and the notice does not accept any misdeclaration on his part. The statement was recorded only under the threat of confiscation of goods and not providing provisional release. As the assessee was facing business losses and it is important to get the goods provisionally release, assessee gave the statement under pressure of department. It is important to mention here that there is no under valuation of goods on the part of the assessee and payment has been made to the foreign supplier as per value declared in the invoices.

(iii) At the outset, we submit that we do not wish to contest or dispute the allegations mentioned in the said Show Cause Notice. The goods under reference were already been seized, and considering the peak business season the goods were released provisionally and the need to avoid further litigation, we decided to accept the findings of the department in good faith and in the interest of bringing the matter to an early conclusion otherwise it would have been resulted into substantial loses.

(iv) We humbly request your kind consideration to take a lenient view in the matter and to finalize the proceedings without imposing any penal consequences beyond what is necessary under law. The acceptance of the allegations is made voluntarily and without prejudice, solely with the intention to maintain peace of mind and avoid prolonged proceedings.

(v) We fully understand the nature of the contravention as stated in the notice and are willing to comply with the directions/orders of the department. We assure the department that necessary steps have been/will be taken to ensure compliance with all provisions of the Customs Act and prevent recurrence of such instances in the future.

(vi) We request that the matter may kindly be treated as closed after completing the necessary formalities as per law. We also request you for a personal hearing before passing any adverse final order on the subject show cause notice, and oblige.

Record of Personal Hearing

18. In compliance of principle of natural justice "Audi alteram partem", opportunities to be heard were granted to the noticees on 25.09.2025, 14.10.2025, 10.11.2025, 18.11.2025 and 20.11.2025 through virtual mode. Shri Shail Sharma, Authorised representative of noticee, appeared for hearing before the adjudicating authority through virtual mode on 20.11.2025 wherein he re-iterated their submission vide letters dated

10.11.2025. Further, he submitted that alleged discrepancies as mentioned in Show Cause Notice are "not intentional" and there is "no mens rea" on the part of noticee. He further submitted that to avoid prolonged litigation and bring the matter to closure, importer agreed to deposit differential duty, fine and penalty the amount as decided. Additionally, he requested that the matter may be settled sympathetically and appropriate relief may be extended. He has nothing more to add. The hearing is concluded.

DISCUSSION AND FINDINGS

19. I have carefully gone through the facts of the case, SCN, records of the case. The principles of natural justice have been complied with by granting adequate opportunities to the noticee to present their defence. Now, I proceed to examine the issues involved in the present case in light of available records, statutory provisions and judicial precedents. On careful perusal of the Show Cause Notice, written submission and case records, I find that the following issues arise for determination in this adjudication:

- (i) Whether the impugned goods imported vide Bill of Entry No. 4201613 dated 16.01.2023 mentioned in SCN are rightly classifiable under CTH 5606 0090 or otherwise.
- (ii) Whether the declared value of the imported goods is liable for rejection under Rules 12 of CVR 2007 and the same can be re-determined under Rule 5 of CVR, 2007 or otherwise.
- (iii) Whether the differential duty to the tune of **Rs. 9,50,566/- (Rupees Nine Lakh Fifty Thousand Five Hundred Sixty-Six only)** demanded under SCN are recoverable from the Noticees in terms of Section 12, Section 14 and Section 17(4) of the Customs Act, 1962 on re-assessment of the impugned Bills of Entry.
- (iv) Whether the imported goods are liable for confiscation under section 111(m) of the customs Act, 1962 or otherwise.
- (v) Whether acts of the importer attract penal action under Section 112 (a), 112(b) and 114AA of the Customs Act, 1962 or otherwise.

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

(A) Whether the impugned goods imported vide Bill of Entry No. 4201613 dated 16.01.2023 mentioned in SCN are rightly classifiable under CTH 5606 0090 or otherwise.

20.1 I find that representative samples were drawn from the imports consignments covered under the subject bills of entry at the time of

examination on 19.01.2023 and were sent to Textile Committee, Kolkata on 17.03.2023 to know about item description and composition thereof. Textile Committee, Kolkata in its report dated 29.03.2023 reported that sample is "**Chenille Yarn**", having a composition of 100% polyamide.

20.2 I noticed that during investigation, Shri Sagar, Proprietor, M/s. Shiva Fabrics in his statement admitted that he has mis-classified the imported goods under 54026100 instead of 56060090 and mis-declared/suppressed the description of the goods by not declaring them as CHENILLE YARN in order to save customs duty. He has admitted in his statement that the yarns imported by his firm M/s. Shiva Fabrics are indeed covered under CTH 56060090.

20.3 Statement of Shri Sagar, Proprietor, M/s. Shiva Fabrics was recorded by DRI under section 108 of the Customs Act, 1962 on 02.02.2023. He accepted the liability and ready to pay differential duty along with applicable interest and penalty. Noticee's allegation in his submission that statement dated 02.02.2023 was recorded under coercion and under the threat of confiscation of goods is baseless and unsubstantiated by any evidence. The Noticee, in fact, tendered his statement voluntarily, without any threat, duress, or intimidation. His signature on every page of the statement further confirms his willingness and voluntariness to provide the statement. Further, it is relevant here to refer to some landmark judicial pronouncements on the issue of acceptability of statements recorded under provisions of section 108 of the Act.

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

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

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

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

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

(B) CHENILLE YARN (INCLUDING FLOCK CHENILLE YARN)

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

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

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

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

5606 - GIMPED YARN, AND STRIP AND THE LIKE OF HEADING 5404
OR

5405, GIMPED (OTHER THAN THOSE OF HEADING 5605 AND GIMPED
HORSEHAIR YARN); CHENILLE YARN (INCLUDING FLOCK CHENILLE
YARN); LOOP WALE-YARN:

5606 00 10 --- Trimmings, of cotton

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

5606 00 30 --- *Trimmings, of zari*

5606 00 90 --- *Other*

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

20.6 In view of the above facts, findings, Customs Tariff, explanatory notes and outcome of test report dated 11.04.2023 received from Textile Committee, I hold that impugned goods are Chenille Yarn and are rightly classifiable under 56060090.

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

&

(iii) Whether the differential duty to the tune of Rs. 9,50,566/- (Rupees Nine Lakh Fifty Thousand Five Hundred Sixty-Six only) demanded under SCN are recoverable from the Noticees in terms of Section 12, Section 14 and Section 17(4) of the Customs Act, 1962 on re-assessment of the impugned Bills of Entry.

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

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

Rule 12. Rejection of declared value. -

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

value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

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

21.3 I find that contemporaneous import of such goods showed that Chenille Yarn made of 100% polyamide were being imported with unit values USD 3.21/Kg (CIF) and above. It had been admitted by the importer in his statement dated 02.02.2023 that he had resorted to the same modus in respect of his earlier imports also.

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

21.5 I find that in terms of Rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the value of those imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued. Hence, the value of the goods covered under Bill of entry No. 4201613 dated 16.01.2023 is to be re-determined in terms of Rule 5 – Transaction value of Similar Goods of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

21.6 I find that contemporaneous import of such goods showed that Chenille Yarn made of 100% polyamide were being imported with unit values USD 3.21/Kg (CIF) and above. Further, I find that Shri Sagar, Proprietor, M/s. Shiva Fabrics in his statement recorded under Section 108 of the Customs Act, 1962 on 02.02.2023 admitted that imported yarn under the said BOEs has not been correctly classified and he is ready to pay the differential duty as per the correct classification under CTH 5606 0090. By considering the unit value of the impugned goods as USD 3.21/Kg (CIF) assessable value of the subject goods is required to be re-determined under Section 14 of the Customs Act, 1962 as per aforementioned table-A (Rs. 60,03,319/- for B/E No. 4201613 dated 16.01.2023) and re-assessment is required to be done as per section 17(4) of the Customs Act, 1962 as per duty livable as per duty structure of chapter 56060090 (BCD:10%, SWS: 10%, IGST: 12% = 24.32%). The re-assessment resultant a duty difference of Rs. **9,50,566/-** (Rupees Nine

Lakh Fifty Thousand Five Hundred and Sixty-Six only) which is to be recovered by the noticee.

21.7 Therefore, I conclude that Show Cause Notice has rightly proposed re-determination of assessable value under the provision of rule 5 of CVR, 2007 and the differential duty to the tune of Rs. 9,50,566/- (Rupees Rupees Nine Lakh Fifty Thousand Five Hundred and Sixty-Six only only) demanded under SCN are recoverable from the Noticees in terms of Section 14 and Section 17(4) of the Customs Act, 1962.

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

22.1 As per my detailed findings in Para 20 above, the impugned goods are Chenille Yarn and are rightly classifiable under CTH 56060090, but the importer has willfully wrongly mis-declared as "Yarn in Hank" and mis-classified the goods under CTH 54026100 and evaded Customs duty amounting to **Rs. 9,50,566/- (Rupees Rupees Nine Lakh Fifty Thousand Five Hundred and Sixty-Six only only)**.

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

22.3 From the above, I find that the Noticee has violated Sub-Section (4) and 4(A) of Section 46 of the Customs Act as they have mis-declared and

mis-classified the goods and evaded the payment of applicable duty. I find that the Noticee was required to comply with Section 46 which mandates that the importer filing the Bill of Entry must make true and correct declarations and ensure the following:

- i. Accuracy and completeness of the information declared;
- ii. The authenticity and validity of any document supporting the information provided; and
- iii. Comply with restrictions or prohibitions relating to the goods under this Act or any law in force at the time being

22.4 I find that the Show Cause Notices propose confiscation of goods under the provisions of Section 111 (m) of the Customs Act, 1962. Provisions of Section 111 (m) of the Customs Act, 1962 is re-produced herein below:

“any goods which do not correspond in respect of value or in any other particular with the entry made under this Act, shall be liable to confiscation.”

22.5 In the present case, the importer failed to furnish the correct information such as item description, valuation, correct CTH, hence, contravened the provisions of Section 46 of the Customs Act, 1962. These acts of omission and commission on the part of the importer rendered the goods liable for confiscation under the provisions of Section 111 (m) of the Customs Act, 1962.

22.6 As I have already held these goods liable for confiscation in previous para under Section 111(m) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCN. The Section 125 ibid read as under:-

“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.”

(i) I find that in the instant case, option to redeem the goods through provisional release has already been availed by the Importer. Now the question remains that whether redemption fine can be imposed on the goods which already provisionally released.

In this regard, I place reliance on the judgment of the Hon'ble Apex Court in the case of M/s. WESTON COMPONENTS LTD. Versus COMMISSIONER

OF CUSTOMS, NEW DELHI- 2000 (115) E.L.T. 278 (S.C.) wherein the Apex Court held that:

"It is contended by the learned Counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the custody of the respondent-authority. It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine."

I believe the ratio of the aforementioned judgment is directly applicable to the present case, as the goods were also allowed under Bond and Bank Guarantee. Consequently, I find that redemption fine under Section 125 of Customs Act, 1962 is warranted in respect of goods imported under the subject Bills of entries.

(E) Whether acts of the importer attract penal action under Section 112 (a), 112(b) and 114AA of the Customs Act, 1962 or otherwise.

23.1 As observed in above Para, I find that with the introduction of self-assessment by amendments to Section 17, since 8th April, 2011, it is the added and enhanced responsibility of the importer to declare the correct description, value, quantity, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

23.2 Since I have held above that Noticee have rendered the subject goods of the said Bills of Entry as liable for confiscation under Section 111(m) of the Customs Act, 1962, I find that the next issue to be decided is the invocation of Section 112 (a), 112(b) and 114AA proposed in the Notice. Provisions of relevant sections are re-produced herein below:

"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*

.....

[(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 : 114AA. Penalty for use of false and incorrect material.—If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.]

23.3 I find that it is clear from the provision that penalty under Section 112 (a) (ii) can be imposed in cases where the acts or omissions of the importer/noticee renders the goods liable for confiscation under Section 111 of the Act. From the discussions so far, I find that the evidences clearly indicating mis-classification on their part in respect of the imported goods warranting imposition of penalty under Section 112 (a) (ii) as the fact of mis-classification was known to the assessee and not the department on the grounds of self-assessment. Result is that proposal to impose penalty under Section 112 (a)(ii) is correct and sustainable in law. I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty; therefore, I refrain from imposition of penalty on M/s. Shiva Fabrics under Section 112(b) of the Customs Act, 1962.

23.4 I find that the SCN proposed imposition of penalty on the Importer under Section 114AA of the Customs Act, 1962. I find that in spite of well aware of the nature of the imported goods, importer, consciously mis-declared the description, mis-classified and value of the goods which found to be incorrect during the course of investigation. These acts of omission and commission on the part of the Proprietor of the importing firm made the provisions of Section 114AA invokable. Therefore, I agree with the proposal of imposition of penalty on the Proprietor of the Importing firm under Section 114AA *ibid*.

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

ORDER

- i. I order to reject the description, classification and quantity of the goods declared as "Yarn in Hank 1.3CM under CTH 54026100 having declared weight 22344 Kgs and order to amendment in description and re-classification as "Chenille Yarn" under CTH 56060090, under B/E No. 4201613 dated 16.01.2023;
- ii. I order to reject the declared assessable value of the goods imported vide Bill of entry no. 4201613 dated 16.01.2023 valued at Rs. **28,05,289/- (Rupees Twenty-Eight Lakh Five Thousand Two Hundred and Eighty-Nine only)** under Rule 12 of CVR, 2007 and order to re-determine the same at **Rs. 60,03,319/- (Rupees Sixty Lakh Three Thousand Three Hundred and Nineteen only)** in terms of Rule 5 of the CVR, 2007 read with section 14 of Customs Act, 1962;
- iii. I order to confiscate the impugned goods imported vide Bill of Entry

No. 4201613 dated 16.01.2023 having re-determined value of **Rs. 60,03,319/- (Rupees Sixty Lakh Three Thousand Three Hundred and Nineteen only)** under Section 111(m) read with provisions of Section 46 (4) and Section 46 (4A) of the Customs Act, 1962, I impose redemption fine of **Rs. 6,00,000/- (Rs. Six Lakh Only)** in respect of these goods for their redemption u/s 125 of the Customs Act, 1962;

iv. I order to re-assess the Bill of Entry for the purpose of levy of duty total amounting to Rs. 14,60,007/- (which includes differential duty of Rs. 9,50,566/-) as per calculated in Table-A above. I also order to enforce Bond and the Bank Guarantees of Rs. 20,00,171/- dated 15.05.2023 and appropriate the same against B/E No. 4201613 dated 16.01.2023; if the amount of dues (as confirmed) are paid in full by the noticee, the Bond & Bank Guarantee may be released by the Competent Authority; ;

v. I impose penalty of **Rs. 90,000/- (Rupees Ninety Thousand only)** on the M/s. Shiva Fabrics under Section 112 (a)(ii) of the Customs Act, 1962;

vi. I refrain from imposing penalty on the M/s. Shiva Fabrics under Section 112(b) of the Customs Act, 1962.

(vii) I impose penalty of **Rs. 2,00,000/- (Rupees Two Lakh only)** on Shri Sagar, Proprietor, M/s. Shiva Fabrics under Section 114AA of the Customs Act, 1962.

25. 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.

26. The Show Cause Notice bearing no. GEN/ADJ/ADC/122/2025-Adjn dated 15.01.2025 stands disposed in above terms.

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

To,

- (i)** M/S. Shiva Fabrics, H No 216,
Ward No 39, Street No 4, Mohan Singh Nagar,
Ludhiana-141008.
- (ii)** Shri Sagar, Proprietor of M/S. Shiva Fabrics,
H No 216, Ward No 39, Street No 4,
Mohan Singh Nagar, Ludhiana-141008

Copy to:

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