



कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा,
सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,
CUSTOMS HOUSE, MP & SEZ MUNDRA,
KUTCH, GUJARAT-370421
PHONE: 02838-271463 FAX :02838-271169/271475

A	File No.	CUS/APR/INV/162/2024-Gr 3 -O/o Pr Commr-Cus-Mundra
B	OIO No.	MCH/ADC/AK/26/2024-25
C	Date of Order	29.04.2024
D	Passed by	Arun Kumar, Additional Commissioner, Import Assessment, Custom House, Mundra.
E	SCN No. & Date	Importer requested for waiver of PH & SCN vide letter dated 01.03.2024
F	Noticee / Party / Importer	M/s. R R Textiles, IX/5974, Narayan Gali, Subhash Mohalla, Gandhinagar, Delhi-110031.
G	DIN	20240471MO000000AFBB

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

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

3. Appeal shall be filed within Sixty days from the date of Communication of this Order.
4. Appeal should be accompanied by a Fee of Rs. 5/- (Rupees Five Only) under Court Fees Act it must accompanied by (i) copy of the Appeal, (ii) this copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five Only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
5. Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.
6. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respect.
7. An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty or Penalty are in dispute, where penalty alone is in dispute.

Received
V. M. V.
29/4/24

Vipul
CHM/428

Brief facts of the Case:

An intelligence was gathered by the officers of SIIB Section, Custom House, Mundra that the cargo imported under SEZ Warehouse Bill of Entry No. 1027860 dated 29.12.2023 (hereinafter referred to as '*the said BE*') filed by M/s. Fast Track CFS Private Limited, Plot No. 3, Block-C, Sector-11, APSEZ Ltd., Mundra-370421, Gujarat for and on behalf of its client M/s. R R Textiles, IX/5974, Narayan Gali, Subhash Mohalla, Gandhinagar, Delhi-110031 holding IEC No: 0516965638 (hereinafter referred to as '*the importer*'), through their Customs Broker, M/s Lara Exim Pvt. Ltd. (hereinafter referred to as '*the CB*') at Mundra SEZ port for import of 'Viscose Bleached Polyamide Fabric' (CTH-55162120) has possible mis-declaration in respect of description, quality and quantity. Hence, the container no. FSCU8706456 was put on hold for detailed examination of the goods by the SIIB section, Custom House, Mundra in view of the suspicion.

2. Action taken: -

2.1. Based on the above suspicion, examination of the said consignment was carried out by the officers of SIIB section in presence of representatives of the CB. On being asked, the representative of CB provided copies of the said BE and other import documents viz. Bill of Lading No. COAU8045287090 dated 12.12.2023, Invoice No. MGD 9027 dated 30.11.2023 and concerned Packing List. As per the said BE, the cargo is imported from M/s. Dongtai Borun Textile Technology Co. Ltd., China, the declared goods was 'Viscose Bleached Polyamide Fabric' (CTH 55162120) and quantity declared was 1413 rolls, gross weight 28000 Kgs, net weight 24350 Kgs, 88072.86 square meter, total assessable value was Rs.12,91,588/- and total duty was Rs.3,62,937/-. During the course of examination, the gross weight of the cargo is found as 27910 Kgs (instead of 28000 declared), which is only 90 Kgs short from the declared gross weight. Further, total 1407 rolls (instead of 1413 declared) of fabric were found which is 6 rolls less than the declared one.

3. Investigations Conducted:-

3.1. During the course of examination, 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. 864 and 865 both dated 22.01.2024 issued from F. No. S/43-149/Fabric/SIIB-B/CHM/2023-24. The CRCL Kandla vide report dated 05.02.2024 reported that:

- i. TM No. 864: the sample as received is in the form of cut piece of white woven fabric. It is made of Polyester multifilament yarn together with Lycra, having

GSM (Ave.) = 125.87

% Composition:-

Polyester = 95.63%

Lycra = Balance

- ii. TM No. 865: the sample as received is in the form of cut piece of dyed (blue coloured) woven fabric. It is composed of Polyester multifilament yarn together with Lycra, having

GSM (as such) = 123.68

% Composition:-

Polyester = 96.73% by wt.

Lycra = Balance

It is other than Viscose Bleached Polyamide Fabric.

3.2. The test reports received from the CRCL Kandla has been examined with respect to the declaration made by the importer in the import documents. The goods have been classified by the importer in the said BE under CTH 55162120 (BCD = 20%). However, it appears that Customs Tariff Heading CTH 5516 belongs to 'woven fabrics of artificial staple fibre' while the lab has reported it as 'woven fabric composed of Polyester multifilament yarn'. Hence, it appears that the imported goods do not qualify to be classified under CTH 5516. Furthermore, as per the test report received from the CRCL, Kandla, the imported goods is other than Viscose Bleached Polyamide Fabric. As per test results, nearest CTH appears to be 54076190 meant for 'woven fabrics of synthetic filament

yarn' attracting BCD @20% or Rs.150/- per kg., whichever is higher. As the cargo is found mis-declared in respect of nature, composition and description, the same was placed under seizure vide Seizure Memo dated 29.02.2024.

3.3. Rejection of declared value & Redetermination of Assessable Value:

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 CVR, 2007 provides that "Subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10". 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". 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. In the present case, it appears that 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.

3.4. 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. 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. Proceeding sequentially, to Rule 5 *ibid*, as per contemporaneous import data available on NIDB, the rate of woven fabric made of Polyester multifilament yarn together with Lycra having similar nature, composition and description is ranging from Rs.413.79/- to Rs.780.50/- per Kg. 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 value of net 24350 Kgs of the imported goods is required to be re-determined as Rs.1,00,75,787/-

(=24350 x 413.79) instead of Rs.12,91,588/- as declared in the said BE.

3.5. The applicable BCD on the imported goods comes to Rs.20,15,157/- (@20% ad-valorem) and Rs.36,52,500/- (@150 per Kgs). Accordingly, it appears that the BCD, when taken on per kg basis is higher than the ad-valorem duty and hence, the customs duty calculation on the imported goods is required to be taken on the basis of BCD@150 per Kgs. Accordingly total Customs duty on the imported goods comes to Rs.43,38,914/- instead of Rs.3,62,937/- as self-assessed by the importer in the said BE, thus there appears non/short levy of Customs duty amounting to Rs.39,75,977/- as calculated under:

Sr. No.	Duty calculated during the investigation	Amount (Rs./Kgs)	Duty calculated by the importer in BE	Amount (Rs./Kgs)	Difference (Rs./Kgs)
1	Net weight	24350 kgs		24350 Kgs	NIL
2	Value	1,00,75,787/-	Value	12,91,588/-	87,87,198/-
3	BCD @150 per kg	36,52,500/-	BCD @20% ad-valorem	2,58,318/-	33,94,182/-
4	SWS @0%	0/-	SWS @10%	25,832/-	(-)25,832/-
5	Taxable Value for IGST (2+3+4)	1,37,28,287/-	Taxable Value for IGST (2+3+4)	15,75,738/-	1,21,52,549/-
6	IGST @5%	6,86,414/-	IGST @5%	78,787/-	6,07,627/-
7	TOTAL duty (3+4+6)	43,38,914/-	TOTAL duty (3+4+6)	3,62,937/-	39,75,977/-

3.6. The importer vide letter dated 01.03.2024 has submitted that by oversight, shipper has sent wrong consignment to them; that the said consignment was never ordered by them; that they had talked to the shipper who admitted the mistake and advised them to clear the consignment which belong to some other party; that the cargo ordered by them was not dispatched by the shipper. The importer further submitted that they are accepting the test reports issued by the CRCL Kandla in respect of Test Memo no. 864 & 865/23-24 dated 22.01.2024; that they are ready to pay differential duty in this concern; that they do not want personal hearing and/or show cause notice; that they authorise Mr. Sabu George in this matter.

3.7. A statement of Mr. Sabu George, authorised person of the importer was recorded on 08.03.2024 wherein he submitted copies of the import documents viz. BE, BL, Invoice, Packing List etc. He also perused

examination report dated 22.01.2024, test reports dated 31.01.2024 & 05.02.2024, seizure memo and supratnama dated 29.02.2024 and agreed with the same. He interalia stated that:

- they are in the business of trading/wholesaling of various types of fabrics since long and registered under GST since July 2017; they started importing these goods at Mundra port in the FY 2022-23 mostly from our Hong-Kong/China based suppliers.
- they are not old & regular importer and are not fully aware of the Customs rules and procedures; they file BE and clear our imports from Customs with the help of Custom House Agents.
- they were not aware of mis-declaration in respect of nature, composition and description of the imported goods earlier and came to know about such mis-declaration only after the examination and testing of the imported goods.
- they have placed oral order through their agent at China for purchase/import of 'Viscose Bleached Polyamide Fabric' CTH 55162120 as per commercial invoice and packing list; however, the supplier has sent /loaded consignment of 'Polyester Fabric' by mistake.
- their supplier had advised them to clear this consignment which belong to some other party and the order placed by them were not dispatched by the supplier; they confirm that as per test reports, the nearest CTH appears to be '54076190'.
- the BE is required to be re-assessed as the imported goods are found mis-declared in respect of nature, composition and description; they shall accept the re-valuation and re-assessment whatsoever would be done by the department.
- they do not wish any personal hearing and show cause notice in the matter; they will not file any appeal and will not claim any refund in this matter in future as well.

4. RELEVANT LEGAL PROVISIONS:

(A) RELEVANT PROVISIONS OF SEZ ACT, 2005:

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

(o) “**import**” means—

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

(ii) *receiving goods, or services by a Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone;*

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

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

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

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

Provided that no investigation, inspection, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those

referred to in sub- section (2) or sub-section (3) of section 21 without prior approval of the Development Commissioner concerned:

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

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

(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.*

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.*

(B) 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:-

--

(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:*

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

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

the said officer thinks fit:

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

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

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

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

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

(C) 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.*

5. Summary of Investigations Conducted:

5.1. M/s. Fast Track CFS Private Limited had filed SEZ warehouse Bill of Entry No. 1027860 dated 29.12.2023 for and on behalf of its client M/s. R R Textiles (IEC No: 0516965638) through their Customs Broker M/s. Lara Eximp Pvt. Ltd. at Mundra SEZ port for import of ‘Viscose Bleached Polyamide Fabric’ (CTH-55162120) in the container no. FSCU8706456. Furthermore, the said goods have been brought into the APSEZ, Mundra i.e. a place in India from a place outside India by sea. Hence, the same falls under the definition of ‘import’ as provided in the SEZ Act, 2005.

5.2. On the basis of the examination report, test reports and investigation carried out in this regard, the imported goods are found mis-declared in respect of nature, composition and description (viscose bleached polyamide fabric) and CTH (55162120) as declared in the said BE. The imported goods are in fact found to be woven fabric of polyester filament yarn together with lycra and are rightly classifiable under CTH 54076190.

These facts have also been admitted by the importer in their letter dated 01.03.2024 as well as in the statement dated 08.03.2024 of the authorized person of the importer. 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. Further, the imported goods are also found undervalued in view of the contemporary import data and hence, are required to be re-assessed on the basis of NIDB data for similar goods in view of Rule 5 of the CVR, 2007. In view of the same, the assessable value of the imported goods is re-determined as Rs.1,00,75,787/- as discussed at Para 3.4 above. Accordingly, total Customs duty on these imported goods comes to Rs.43,38,914/- instead of Rs.3,62,937/- as self-assessed by the importer in the said BE. Thus, there appears non/short levy of Customs duty amounting to Rs.39,75,977/- as discussed at Para 3.5 above..

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

Section 17. Assessment of duty. –

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

..

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

Section 46. Entry of goods on importation. –

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

5.4. The importer vide letter dated 01.03.2024 has submitted that by oversight, shipper has sent wrong consignment to them; that the said consignment was never ordered by them; that they had talked to the shipper who admitted the mistake and advised them to clear the consignment which belong to some other party; that the cargo ordered by them was not dispatched by the shipper. The importer further submitted that they are accepting the test reports issued by CRCL Kandla in respect of samples drawn vide Test Memo nos. 864 & 865/23-24 dated 22.01.2024; that they are ready to pay differential duty in this concern; that they do not want personal hearing and/or show cause notice; that they authorise Mr. Sabu George in this matter. Furthermore, authorised person of the importer under his statement dated 08.03.2024 has admitted these facts and interalia stated that the BE is required to be re-assessed as the imported goods are found mis-declared in respect of nature, composition and description; that they shall accept the re-valuation and re-assessment whatsoever would be done by the department.

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

- i. The classification of the goods i.e. 55162120 as declared by the importer in the Bill of Entry No. 1027860 dated 29.12.2023 is liable to be rejected and the goods are liable to be re-classified under CTH 54076190.
- ii. The assessable value of these mis-declared imported goods is liable to be re-determined as Rs.1,00,75,787/- (instead of Rs.12,91,588/- as declared in the BE) under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.
- iii. Total Customs duty involved in the imported goods comes to Rs.43,38,914/- (Rupees Forty Three Lakh Thirty Eight Thousand Nine Hundred and Fourteen only) instead of Rs.3,62,937/- (Rupees Three Lakh Sixty Two Thousand Nine Hundred and Thirty Seven only) as declared in the BE.

- iv. The said Bill of Entry No. 1027860 dated 29.12.2023 is liable to be re-assessed accordingly under Section 17(4) of the Customs Act, 1962.
- v. The goods have been imported by way of mis-declaration in contravention of Section 46 of the Customs Act, 1962 and are therefore, liable for confiscation under Section 111(m) of the Customs Act, 1962.
- vi. The importer M/s, R R Textiles, IX/5974, Narayan Gali, Subhash Mohalla, Gandhinagar, Delhi-110031 holding IEC No: 0516965638 are liable for Penalty under Section 112(a)(ii) of the Customs Act, 1962.

WAIVER OF SHOW CAUSE NOTICE AND PERSONAL HEARING

7. The importer vide letter dated 01.03.2024 has submitted that they do not want any personal hearing and/or Show Cause Notice in the matter.

DISCUSSION AND FINDINGS

8. I have carefully gone through Investigation Report No. 72/2023-24 dated 21.03.2024 issued by Deputy Commissioner of Customs (SIIB), Custom House, Mundra.

9. I find that on the basis of an intelligence gathered by the officers of SIIB Section, Custom House, Mundra, the cargo imported under SEZ Warehouse Bill of Entry No. 1027860 dated 29.12.2023 filed by M/s. Fast Track CFS Private Limited for and on behalf of its client M/s. R R Textiles holding IEC No: 0516965638 through their Customs Broker, M/s Lara Eximp Pvt. Ltd. at Mundra SEZ port for import of 'Viscose Bleached Polyamide Fabric' (CTH-55162120) in container no. FSCU8706456, was put on hold for detailed examination by the SIIB section, Custom House, Mundra on suspicion of possible mis-declaration in respect of description, quality and quantity. The said goods have been brought into the APSEZ, Mundra i.e. a place in India from a place outside India by sea. Hence, the same falls under the definition of 'import' as provided in the SEZ Act, 2005.

10. I find that during the course of examination, 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. 864 and 865 both dated 22.01.2024 issued from F. No. S/43-149/Fabric/SIIB-B/CHM/2023-24. The CRCL Kandla vide report dated 05.02.2024 reported that:

- iii. TM No. 864: the sample as received is in the form of cut piece of white woven fabric. It is made of Polyester multifilament yarn together with Lycra, having

GSM (Ave.) = 125.87

% Composition:-

Polyester = 95.63%

Lycra = Balance

- iv. TM No. 865: the sample as received is in the form of cut piece of dyed (blue coloured) woven fabric. It is composed of Polyester multifilament yarn together with Lycra, having

GSM (as such) = 123.68

% Composition:-

Polyester = 96.73% by wt.

Lycra = Balance

It is other than Viscose Bleached Polyamide Fabric.

10.1. I find that the goods have been classified by the importer in the said BE under CTH 55162120 (BCD = 20%). However, Customs Tariff Heading CTH 5516 belongs to 'woven fabrics of artificial staple fibre' while the lab has reported it as 'woven fabric composed of Polyester multifilament yarn'. Hence, the imported goods do not qualify to be classified under CTH 5516. Furthermore, as per the test report received from the CRCL, Kandla, the imported goods is other than Viscose Bleached Polyamide Fabric and its nearest CTH appears to be 54076190 meant for 'woven fabrics of synthetic filament yarn' attracting BCD @20% or Rs.150/- per kg, whichever is higher. As the cargo is found mis-declared in respect of nature, composition and description, the same was placed under seizure vide

Seizure Memo dated 29.02.2024.

10.2. I find that Rule 3 of the CVR, 2007 provides the method of valuation. Rule 3(1) of the CVR, 2007 provides that "Subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10". 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". 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. In the present case, 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.

10.3. 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. Further, 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. Proceeding sequentially, to Rule 5 *ibid*, as per contemporaneous import data available on NIDB, the rate of woven fabric made of Polyester multifilament yarn together with Lycra having similar nature, composition and description is ranging from Rs.413.79/- to Rs.780.50/- per Kg. 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 value of net 24350 Kgs of the imported goods is required to be re-determined as Rs.1,00,75,787/- (=24350 x 413.79) instead of Rs.12,91,588/- as declared in the said BE.

10.4. I find that the applicable BCD on the imported goods comes to Rs.20,15,157/- (@20% ad-valorem) and Rs.36,52,500/- (@150 per Kgs). Accordingly, it appears that the BCD, when taken on per kg basis is higher

than the ad-valorem duty and hence, the customs duty calculation on the imported goods is required to be taken on the basis of BCD@150 per Kgs. Accordingly total Customs duty on the imported goods comes to Rs.43,38,914/- instead of Rs.3,62,937/- as self-assessed by the importer in the said BE, thus there appears non/short levy of Customs duty amounting to Rs.39,75,977/- as calculated in Para 3.5 above.

10.5. I find that the importer vide letter dated 01.03.2024 has submitted that by oversight, shipper has sent wrong consignment to them; that the said consignment was never ordered by them; that they had talked to the shipper who admitted the mistake and advised them to clear the consignment which belong to some other party; that the cargo ordered by them was not dispatched by the shipper. The importer further submitted that they are accepting the test reports issued by the CRCL Kandla in respect of Test Memo Nos. 864 & 865/23-24 dated 22.01.2024; that they are ready to pay differential duty in this concern; that they do not want personal hearing and/or show cause notice; that they authorise Mr. Sabu George in this matter.

10.6. I find that a statement of Mr. Sabu George, authorised person of the importer was recorded on 08.03.2024 (as detailed in Para 3.7 above) wherein he submitted copies of the import documents viz. BE, BL, Invoice, Packing List etc. and also perused examination report dated 22.01.2024, test reports dated 31.01.2024 & 05.02.2024, seizure memo and supratnama dated 29.02.2024 and agreed with the same.

11. I find that the importer, by the act of omission and commission, has contravened the provisions of Section 46 and Section 17 of the Customs Act, 1962, in as much as, they failed to make correct and true declaration and information to the Customs Officer in the form of Bill of Entry and also failed to assess their duty liability correctly. Therefore, the importer has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and is, therefore, liable for penalty under section 112(a) (ii) of the Customs Act, 1962. I further find that the goods in question can be redeemed on payment of redemption fine in terms of Section 125 of the Customs Act, 1962.

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

ORDER

- i. I reject the classification of the goods i.e. 55162120 as declared by the importer in the Bill of Entry No. 1027860 dated 29.12.2023 and order to re-classify the goods under CTH 54076190;
- ii. I reject the declared value of the goods as Rs.12,91,588/- and order to re-determine the assessable value of these mis-declared imported goods as Rs.1,00,75,787/- 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 duty accordingly on redetermined value on re-assessment;
- iii. I confiscate the impugned goods having re-determined value of Rs.1,00,75,787/- 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 redeem the same on payment of Redemption Fine of Rs. 10,00,000/- (Rs. Ten Lac Only) in lieu of confiscation.
- iv. I impose penalty of Rs. 1,00,000/- (Rs. One Lac Only) on the importer M/s. R R Textiles, Delhi under Section 112(a)(ii) of Customs Act, 1962.

13. 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.


29/04/2024
Arun Kumar

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

To,
M/s. R R Textiles,
IX/5974, Narayan Gali,
Subhash Mohalla, Gandhinagar,
Delhi-110031.

Copy to:

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