



**OFFICE OF THE PRINCIPAL COMMISSIONER
OF CUSTOMS
CUSTOMS HOUSE, MP & SEZ
MUNDRA, KUTCH-GUJARAT -370421
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सत्यमेव जयते

A	File No.	CUS/APR/BE/MISC/465/2023-Gr 3-O/o Pr Commr-Cus-Mundra
B	OIO No.	MCH/31/ADC/MK/2023-24
C	Passed by	Mukesh Kumari, Additional Commissioner (Import), Customs House, Mundra.
D	OIA No. & Date	MUN-CUSTM-000-APP-312-21-22 dated 08.03.2022 passed by the Commissioner (Appeals) Customs Ahmedabad
E	Noticee / Party / Importer	M/s Mahalaxmi Industries, A-35, RIICO Industrial Area, Phase-I, Hanumangarh Jn. (Rajasthan)-335512
F	DIN	20230571M00000053630

- 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.

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.

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.

I/1185172/2023

The present case is being taken up by me for adjudication in pursuance to the Order-In-Appeal No. MUN-CUSTM-000-APP-312-21-22 Dated 08.03.2022 passed by the Commissioner of Customs (Appeals), Ahmedabad against Order-In-Original MCH/ADC/AK/104/2019-20 dated 01.02.2020. The Hon'ble Commissioner (Appeals) has set aside and remitted to the lower authority for de-novo proceedings and ordered to adjudicating authority for passing a fresh order with following the principles of natural justice and legal provisions.

BRIEF FACT OF THE CASE.

M/s. Mahalaxmi Industries, A-35, RIICO, Industrial Area, Phase-1, Hanumangarh Jn., 335512 (Raj) (IEC-1309003394) (hereinafter referred to as "the importer, Noticee for the sake of brevity), had filed Bill of Entry No. 9194035 dated 06.04.2017 for clearance of 18840 pcs of goods "**100% Polyester Unstitched Bed Cover**" having total assessable value is Rs. 29,60,248/-classifying under CTH 63041990 attracting basic Customs duty @ 10% ad-valorem. Based upon test report, the declared "**100% Polyester Unstitched Bed Cover**" rightly classifiable under chapter 54075490 attract basic Customs duty @ 10 % ad-valorem or Rs 20/- per Sqm whichever is higher.

2. During 1st Check Examination of goods on 06.04.2017, it was found that goods are (1) Unstitched fabric in the size of bed cover & (2) bed cover with raw stitching which can be easily removed and can easily be converted into fabric. Therefore, the Assessing Officers ordered for drawl of samples. The Representative samples were drawn from the said consignment vide test memo No. 177 dated 28.04.2017 and forwarded to the Ahmedabad Textile Industry's Research Association (ATIRA).

3. The Ahmedabad Textile Industry's Research Association (ATIRA) vide its letter dated 12.05.2017 submitted its test report in respect to sample drawn from goods imported vide B/E No. 9194035/ 06.04.2017 and has opined as under: -

- Loosely Stitched Fabric.
- The fabric contains 100% polyester
- The fabric contains all texturized filament yarns in warp and weft.
- The filaments of weft are getting broken due to peaching process given to the fabric.
- The fabric is woven and printed.
- GSM of Fabrics 90
- As the fabric has been peach finished, the filament yarns are damaged. Hence actual

strength or warp and weft yarns used in making the fabric cannot be determined. Generally, high tenacity yarns are not used in home textiles. These are used in industrial fabrics.

4 . As per the above test reports received from the Ahmedabad Textile Industry's Research Association (ATIRA), Ahmedabad it appeared that the samples cannot be classified as made-ups but appropriately classified as "Polyester Woven Fabric/loosely stitched fabric" under CTH 54075490 in terms of definition of made up given at Note 7 of Section XI of "Textile and Textile Articles" a text of which is reproduced as under:

7. For the purposes of this Section, the expression "made up" mean

- (A) *cut otherwise than into squares or rectangles;*
- (b) *produced in the finished state, ready for use {or merely needing separation by cutting dividing threads) without sewing or other working {for example certain dusters, towels, table cloths, scarf squares; blankets};*
- (c) *Cut to size and with at least one heat sealed edge with a visibly tapered or compressed border and the other edges treated as described in any other sub clause of this Note, but excluding fabrics and cut edges or which have been prevented from unravelling by hot cutting or by other simple means;*
- (d) *hemmed or with rolled edges, or with a knotted fringe at any of the edges, but excluding fabrics the cut edges of which have been prevented from unravelling by stitching or by other simple means;*
- (e) *cut to size and having undergone a process of drawn thread work;*
- (f) *assembled by sewing, gumming or otherwise {other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded};*
- (g) *knitted or crocheted to shape, whether presented as separate items or in the form of a number of items in the length.*

Further as per Chapter Note 1 of Chapter 63 Sub-chapter I applies only to made up articles, of any textile fabrics.

5. From the above definition it is clear that to qualify as made up the condition mentioned given at Note 7 of Section XI "Textile and Textile Articles", are required to be satisfied. Fabrics in running length (loosely & unevenly stitched) cannot be termed as bed covers i.e. Made-ups. The cloth/fabric has to be stitched firmly in order to assume the shape of a bed cover. As per the test result as the goods that are imported by importer declaring the same as bed cover cannot be sold in the market as bed cover. The goods imported by importer are loosely, unevenly, asymmetrically stitched and hence put the same in the category of fabrics. Plain reading of Chapter Note 1 of Chapter 63 clearly implies that if the goods imported do not fall under the category of "made-ups" the same cannot be classified under Chapter 63 of the Customs Tariff.

6. It appeared that the goods imported by the said importer vide Bill of Entry No. 9194035 dated 06.04.2017, have been appropriately categorized and classified as "polyester woven fabric" as per the details of test results given by Textiles Committee, ATIRA, Ahmedabad. It appeared that "polyester woven fabrics" fall under chapter 54 or 55 of the Customs Tariff depending on the type of yarn used in the weaving of such fabrics. From the details of the test reports of the Textiles committee, in respect of the said consignment, it appeared that there is a use of texturized yarn in warp and no component could be ascertained for weft component by weight. ATIRA, Ahmedabad in their test reports has identified the yarn in the warp and weft as "texturized yarn" and since the fabric has undergone a process of peaching, the same was getting broken/ruptured. Chapter 5407 of the Customs Tariff deals with "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404 and Chapter 5512 to chapter 5516 of the Customs Tariff deals with "Woven Fabrics of Synthetic Staple Fibre". In the instant case, the fabric is "made out of filament yarn, which is texturized". Hence the said fabrics are appropriately classifiable under chapter 5407 of the Customs Tariff and the details thereof are as under:

5407	Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404	
5407-1	-	Woven fabrics obtained from high tenacity yarn of nylon or other polyamides or of polyester
5407-2	-	Woven fabrics obtained from strip or the like
5407-3	-	Fabrics specified in Note 9 to Section XI
5407-4	-	Other woven fabrics, containing 85% or more by weight of filaments of Nylon or other Polyamides

5407-5	-	Other woven fabrics, containing 85% or more by weight of textured polyester filaments
5407-6	-	Other woven fabrics, containing 85% or more by weight of polyester filaments
540761	--	Containing 85% or more by weight of non-textured polyester filaments
54076900	--	Other
5407-7	-	Other woven fabrics, containing 85% or more by weight of synthetic filaments
5407-8	-	Other woven fabrics, containing less than 85% by weight of synthetic filaments, mixed mainly or solely with cotton
5407-9	-	Other woven fabrics

7. Fabric made out of high tenacity yarns are mostly used for Industrial purpose and textile fabric in the instant case are mostly meant for the manufacture of textile articles used in household and not in Industries. Accordingly, the goods in the instant case cannot be classified under chapter 540710 of the Customs Tariff. Note 9 mentions "the woven fabrics of chapter 50 to 55 include fabrics consisting of layers of parallel textile yarns superimposed on each other at acute or right angles. These layers are bonded at the intersections of the yarns by an adhesive or by thermal bonding. Further these fabrics are not woven by strips and are not fabrics specified in Note 9 to Section XI, hence, they do not fall under chapter 540720 or 540730 of the Customs Tariff. The fabric is made up of 100% Polyester Filament Yarn but not of any Nylon or other Polyamides, hence, the CTH 540740 is also not applicable in the instant case.

8. Chapter 540751 covers "other woven fabrics, containing 85% or more by weight of textured polyester filaments;" in the instant case as evident from the test reports issued by ATIRA, Ahmedabad as discussed in the foregoing para, that the fabric is made entirely of "texturized yarn" and hence it appeared that the same falls under the category of "fabrics with composition of texturized yarn more than 85% of the total weight". Further these fabrics are printed in nature and are not "Terylene and Dacron Sarees, "polyester shirting", "polyester saree" but fabrics used for making bed sheet/bed cover/duvet cover etc. It therefore appeared that the goods imported by the said importer, fall under Chapter Sub Heading 5407 5490 under the head "printed - other fabrics" attracting duty @ 10% advalorem or Rs. 20 per Sq. Meter, whichever is higher. Since the total value of the goods in the instant case is Rs. 29,60,248/-, Basic Customs duty @ 10% would come to Rs. 2,96,025/-, whereas if calculated on Sq. Meter basis, the same would be calculated as follows :

Total Sq. Meter = 194994 Sq. Meter

Basic Customs duty @ Rs 20 per Sq. Meter = 194994X 20 = 38,99,880/-

9. On comparison of the two basic Customs duty i.e. 10 % ad-valorem and Rs. 20 per Sq. Meter it is found that the amount calculated by applying the specific rate of duty @ Rs. 20 per Sq. Meter is higher and the same is applicable in the instant case.

10. From the facts discussed in the foregoing paras and material evidences available on record, it transpired that the said importer had imported polyester woven fabrics from the overseas suppliers, and had resorted to mis-declaration, by declaring the description of the goods and also size of piece of the textile fabric, which is other than the correct description of the goods, in the invoices and the documents filed before the Customs authority at the time of imports, with an intent to evade Higher customs duty leviable thereon. The product (goods) declared by the importer as "polyester unstitched bed cover" was not the correct description (as is evident from the opinion of the Textiles Committee, ATIRA, Ahmedabad). In the instant case, the importer had furnished wrong declaration, statement & documents to the Customs while filing of the bill of entry and thereby suppressing the actual description of the goods imported by them, with an intention to evade Customs duty leviable thereon, by adopting the modus as detailed hereinabove.

11. From the above, it appeared that the said importer in connivance with the overseas supplier had wilfully mis-stated the description of "polyester woven fabrics" before the Customs authority as "polyester unstitched bed cover" at the time of import with a view to escape from higher applicable and payment of customs duty. The correct description and classification of the imported product was also suppressed at the time of filing of Bill of Entry by presenting an invoice with a different description of the goods. Thus, it appeared that the applicable customs duty liability had not been discharged by the importer by way of wilful mis statement/ mis-declaration and suppression of facts.

12. In terms of Section 46 (4) of Customs Act, 1962, the importer is required to make a declaration as to truth of the contents of the bills of entry submitted for assessment of Customs duty. The said noticee had wrongly declared the goods imported by them as '100% Polyester Unstitched Bed Cover¹' under CTH 63041990 instead of correct classification under CTH 54075490 in as much as they were fully aware that the said goods do not fall under the classification of made up goods. Thus it appeared that the said noticee has contravened the provisions of sub section (4) of Section 46 of the Customs Act, 1962, in as much as, they had mis-declared the goods imported as '100% Polyester Unstitched Bed

I/1185172/2023

Cover' in the declaration in form of Bill of Entry filed under the provisions of Section 46(4) of the Customs Act 1962 and mis-classified the goods under Customs tariff heading 63041990, in order to evade the customs duty. This constitutes an offence of the nature covered in Section 111(m) of the Customs Act, 1962.

13. In view of the facts discussed in the foregoing paras and material evidences available on record, it appeared that the importer has contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they had intentionally mis-declared the description of their imported product as "polyester unstitched bed cover" whereas the actual product was "polyester woven fabrics", thereby suppressing the correct description and classification of the

□ imported goods, while filing the declaration, seeking clearance at the time of the importation of the impugned goods. This act on the part of importer had rendered the goods, liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

14. It also appeared that instant Bill of Entry for consignments of **18840pcs of "polyester woven fabrics" totally admeasuring 194994Sq. Meter totally valued at Rs 2960248/-** imported and subsequently, as per the request made by the said importer vide letter dated 07.12.2017, the instant Bill of Entry was assessed provisionally on 08.12.2017 against Bond for full amount of value with 25% Bank Guarantee of differential duty. The amount of Rs. 52,14,533/-needs to be demanded and recovered from the importer by finally assessing the said Bill of Entry under Section 18(2) of the Customs Act, 1962. However, the importer has paid an amount of **Rs. 8,71,527/-** at the time of clearance of goods which is required to be appropriated towards duty demanded from M/s Mahalaxmi Industries.

15. It appeared that the said importer is responsible for the mis-declaration of imported goods viz. "polyester woven fabrics" as "polyester bed cover", in order to evade higher Customs duty leviable on the imports of "polyester woven fabrics". The aforesaid acts of willful mis declaration of the description of the goods on the part of said importer, with a view to evade higher Customs duty leviable thereon, have made the subject goods liable for confiscation under Section 111 (m) of the Customs Act, 1962 and therefore, the said importer also rendered liable to penalty under the provisions of Section 112(a) of the Customs Act, 1962 for importing such mis-declared goods.

16. The said importer had paid a total duty amount of **Rs. 8,71,527/-** at the time of provisional assessment of the goods in respect of Bill of Entry No. 9194035 dated 06.04.2017.

17. Accordingly, a Show Cause Notice bearing F.No. VIII/48-87/Misc/MCH/2017-18 dated 04.01.2018 was issued to M/s Mahalaxmi Industries, A-35, RIICO Industrial Area, Phase-1, Hanumangarh Jn., 335512 (Raj) (IEC1309003394) whereby they were called upon to show cause to the Additional Commissioner of Customs, having his office at, Port User Building, Mundra Port, Mundra, Kutch, Gujarat as to why:

- i. the classification of the imported goods i.e. "polyester woven fabrics" imported by mis declaring the same as "polyester bed cover" under **CTH 63041990** should not be rejected and the same should not be reclassified correctly under **CTH 54075490** of the Customs Tariff Act, 1975 and, Bill of Entry No. 9194035 dated 06.04.2017 assessed provisionally should not be finalised.
- ii. the goods viz. **18840pcs** of "polyester woven fabrics" admeasuring **194994Sq. M e t e r**, imported vide Bill of Entry as per Annexure "A" to the SCN, valued at **Rs. 29,60,248/-** (as detailed in Annexure A) by mis-declaring the same as "polyester bed cover" should not be confiscated under the provisions of Section 111 (m) of the Customs Act, 1962;
- i i i . The total customs duty leviable on the said goods amounting to **Rs.52,14,533/-should** not be demanded and recovered from the importer by finally assessing the said Bill of Entry under Section 18(2) of the Customs Act, 1962 and as the importer has already paid an amount of **Rs.8,71,527/-**, they are further required to show cause as to why the same should not be appropriated towards duty demanded.
- iv. Interest should not be charged and recovered from them under Section 18(3) of the Customs Act, 1962 on the duty demanded at (iii) above;
- v. Penalty should not be imposed upon them under the provisions of Section 112(a) of the Customs Act, 1962;

18. After following due process of law, adjudicating authority i.e. the Additional Commissioner of Customs, Custom House, Mundra vide O-I-O No. MCH/ADC/GPM/01/2018-19 dated 09.04.2018, passed the order in the case matter as under: -

- (i) I hold description of the goods imported under the Bill of Entry Nos. 9194035 dated 06.04.2017 as "polyester woven fabrics", correctly

I/1185172/2023

classifiable under tariff item 54075490 of the first schedule to the Customs Tariff Act, 1975. Accordingly, I reject the classification of the imported goods declared under tariff item 63041990 under a self-assessed bill of entry and order to classify the goods under tariff item 54075490 to re-assess to duty accordingly.

(ii) I order to confiscate the goods viz. 18840 pcs of "polyester woven fabrics" admeasuring 194994 Sq. Meter, imported vide Bills of Entry No. 9194035 dated 06.04.2017, totally valued at Rs. 29,60,248/-, under the provision of Section 111(m) of the Customs Act, 1962. I hereby give an option to the noticee to redeem the impugned confiscated goods on payment of redemption fine of Rs.5,00,000/- (Rupees Five Lakh only) in lieu of confiscation in terms of Section 125 of the Customs Act, 1962.

(iii) I order to pay differential duty amounting to Rs.43,43,006/- under the provisions of Section 18(2) of the Customs Act, 1962.

(iv) I order to pay interest on the differential duty amount of Rs. 43,43,006/- under the provisions of Section 18(3) of the Customs Act, 1962.

(v) I impose a penalty of Rs.4,00,000/- (Rupees Four Lacs only) on M/s Shri Mahalaxmi Industries, Hanumangarh, Rajasthan under Section 112(a) of Customs Act, 1962.

19. Being aggrieved with the above-stated Order-In-Original dated 09.04.2018, M/s Shri Mahalaxmi Industries filed an appeal before the Commissioner of Customs (Appeals), Mundra in terms of Section 128 A(1)(a) of the Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982.

20. The appeal filed by M/s Shri Mahalaxmi Industries was decided by the Commissioner of Custom (Appeals), Mundra vide Order-In-Appeal No. MUN-CUSTM-000-APP-250-18-19 dated 17.10.2018 wherein on the basis of his findings he rejected the appeal stating as under-

"I do not find any reasons to interfere with the impugned order passed by the adjudicating authority. Accordingly, I reject the appeal filed by the appellant"

21. Further, being aggrieved with the above-stated Order-In-Appeal dated 17.10.2018, M/s Shri Mahalaxmi Industries filed an appeal before the Hon'ble Customs, Excise &

Service Tax Appellate Tribunal, Ahmedabad in terms of Section 129 A(l)(a) of the Customs Act, 1962.

22. The Hon'ble CESTAT, Ahmedabad vide Final Order No. A/11126/2019 dated 16.07.2019 have remanded back the matter to the original Adjudicating Authority. The order of the CESTAT is reproduced herewith:-

"We find that on identical issue this Tribunal has disposed of bunch of appeals by way of remand to the adjudicating authority vide final order no. 11086-11103/2019 dated 11.07.2019, therefore, in this appeal also impugned Order is set aside and appeal is allowed by way of remand to the adjudicating authority for deciding fresh considering the observation made by this Tribunal in its order dated 11.07.2019 in the case of Shree Tushar Tilak Raj & Ors Vs CCE & ST Vadodara-1."

23. Further, the aforesaid CESTAT's Final order dated 16.07.2019 has been reviewed and accepted by the department on 13.09.2019. Accordingly, the matter is taken up for adjudication. After following due process of law, adjudicating authority i.e. the Additional Commissioner of Customs, Custom House, Mundra vide O-I-O No. MCH/ADC/AK/104/2018-19 dated 09.04.2018, passed the order in the case matter as under:-

(i) I hold description of the goods imported under the Bill of Entry Nos. 9194035 dated 06.04.2017 as "polyester woven fabrics", correctly classifiable under tariff item 54075490 of the first schedule to the Customs Tariff Act, 1975. Accordingly, I reject the description classification of the imported goods declared under tariff item 63041990 under self-assessed bill of entry and order to classify the goods under tariff item 54075490 to reassess to duty accordingly.

(ii) I order to confiscate the goods viz. 18840 pcs of "polyester woven fabrics" admeasuring 194994 Sq. Meter, imported vide Bills of Entry No. 9194035 dated 06.04.2017, totally valued at Rs. 29,60,248/-, under the provision of Section 111(m) of the Customs Act, 1962. Since, the goods were provisionally assessed on execution pf bond for full amount of value supported by 25% bank guarantee of differential duty, I hereby impose redemption fine of Rs.6,00,000/-(Rupees Six Lakh only) in lieu of confiscation in terms of Section 125 of the Customs Act, 1962 and order to enforce the Bond and encash Bank Guarantee towards such redemption fine.

I/1185172/2023

(iii) I confirm the demand of total customs duty of Rs.52,14,533/- leviable on the said goods. As the importer has already paid an amount of Rs.8,71,572/-, I order for the appropriation of the same towards the duty demanded. I further order to 'recover the differential duty amounting to Rs.43,43,006/- (Rupees Forty-Three Lakh Forty-Three Thousand Six only) under the provisions of Section 18(2) of the Customs Act, 1962 .

(i v) I order to charge and recover interest from the importer M/s Mahalaxmi Industries, A-35, RIICO Industrial Area, Phase-1, Hanumangarh Jn.-335512, Rajasthan on the differential duty of Rs. 43,43,006/- at Sr. No. (iii} above under the provisions of Section 18(3) of the Customs Act, 1962.

(v) I impose a penalty of Rs.5,00,000.00/- (Rupees Five Lakhs only) on the importer M/s Mahalaxmi Industries, A-35, RIICO Industrial Area, Phase-1, Hanumangarh Jn.-335512, Rajasthan under Section 112(a} of Customs Act, 1962.

24. Being aggrieved with the above-stated Order-In-Original dated 01.02.2020, M/s Shri Mahalaxmi industries filed an appeal before the Commissioner of Customs (Appeals), Ahmedabad in terms of Section 128 A(l)(a) of the Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982.

25. The appeal filed by M/s Shri Mahalaxmi Industries was decided by the Commissioner of Custom (Appeals), Ahmedabad vide Order-In-Appal No. MUN-CUSTM-000-APP-312-21-22 dated 08.03.2022 wherein on the basis of his findings he rejected the appeal stating as under-

"The order has been passed without any personal hearing and without any written submission in defence and thus without observing the submission. Hence, remitting of the case has become sine qua non to meet the ends of justice. Accordingly, the impugned order is set aside and remitted to the lower authority for de-novo proceedings. I remit the matter back to the adjudication authority for passing a fresh order, following the principles of natural justice and legal provisions. "

PERSONAL HEARING AND WRITTEN SUBMISSION:

26. The importer vide their letter dated 25.04.2023 has submitted that they do not want any SCN and personal hearing in this matter. Further, they requested release the cargo on

I/1185172/2023

the basis of CESTAT order.

FINDINGS AND DISCUSSION

27. I have gone through the facts of the case, the documents available on records and submission made by the Importer I find that importer M/s Mahalaxmi Industries filed a Bill of Entry (BE) No. 9194035/ 06.04.2017 for clearance, of imported goods declared as "100% Polyester Unstitched Bed Cover" and classified under tariff entry 6304 19 90. During first check examination on 06.04.2017, representative sample was drawn vide test memo no. 177/ 28.04.2017 and forwarded to Ahmedabad Textile Industry's Research Association (ATIRA). From test reports received from Textiles Committee and ATIRA, it appeared that samples cannot be classified as made-ups but appropriately classifiable as Polyester Woven Fabric/ Loosely Stitched Fabric classifiable under tariff entry 5407 54 90 in terms of definition of 'made-up' given at Note 7 of Section XI of 'Textile and Textile Articles'. A show cause notice dated 04.01.2018 was issued in the matter, which was adjudicated by the Additional Commissioner of Customs, Mundra vide Order-in-Original (OIO) dated 09.04.2018, wherein, description of goods was held to be "Polyester Woven Fabric" and accordingly, ordered the goods to be classified under tariff entry 5407 54 90, instead of declared entry 6304 19 90. Further, the goods valued at Rs.29,60,248/- were ordered to be confiscated under section 111(m) with an option to redeem the same on payment of redemption fine of Rs.5,00,000/-. It was further ordered to pay the differential duty of Rs. 43,43,006/- under section 18(2), alongwith interest in terms of section 18(3) of the Customs Act, 1962. A penalty of Rs. 4,00,000/- was also imposed under section 112(a) of the Customs Act, 1962.

28. I find that the importer filed an appeal with the Commissioner (Appeals), however, it was rejected. The importer filed further appeal with CESTAT, Ahmedabad. Hon'ble Tribunal, vide order no. A/11126/2019 dated 16.07.2019 remanded the matter back to the Adjudicating authority for deciding afresh considering the observations made by the same 'Tribunal in its order dated 11.07.2019 in the case of Shree Tushar Tilak raj & Ors v. CCE & ST, Vadodara-I. In fresh adjudication vide impugned order, the adjudicating authority maintained the decision of re-classifying the goods under 54075490 as Polyester Woven Fabric. Further, adjudicating authority ordered to confiscate the goods with a redemption fine of Rs. 6,00,000/-; confirmed the demand of Rs.52,14,533/- [and a differential duty of Rs. 43,43,006/- considering the payment of Rs.8,71,572/- already made], alongwith interest. A penalty of 5,00,000/- was also imposed under section 112(a) of the Customs Act, 1962. The importer preferred the present appeal against this order.

29. I find that being aggrieved with the above-stated Order-In-Original dated 01.02.2020, M/s Shri Mahalaxmi Industries filed an appeal before the Commissioner of Customs (Appeals), Ahmedabad vide Order-In-Appeal No. MUN-CUSTM-000-APP-312-21-22 dated 08.03.2022 in terms of Section 128 A(l)(a) of the Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982. Wherein, Hon'ble Commissioner (Appeal) has rejected the subject appeal by stating that "the order has been passed without any personal hearing and without any written submission in defence and thus without observing the submission. Hence, remitting of the case has become sine qua non to meet the ends of justice. Accordingly, the impugned order is set aside and remitted to the lower authority for de-novo proceedings. I remit the matter back to the adjudication authority for passing a fresh order, following the principles of natural justice and legal provisions. "

30. Further, I find that in similar issues/cases i.e of M/s Sunrise Traders and others; M/s Utkarsh Chemicals; M/s Diamond Creations; M/s dev Textiles the Hon'ble CESTAT vide various orders has decided the issue in favour of the appellants stating that:

"In view of the settled law, irrespective whether the Classification claimed by the appellant is correct or not since the classification proposed by the Revenue is absolutely incorrect, the entire case of Revenue will not sustain. Since the revenue has not been able to discharge their burden of proof. Hence the classification of the goods declared by the appellants cannot be disturbed. As per our above discussions and findings, the impugned orders are not sustainable. Hence, the same are set aside. The appeals are allowed with consequential relief, if any, in accordance with law."

31. I also find that in case of M/s Sunrise Traders and other similar cases the Department has filed appeal before Hon'ble Supreme Court. However, the Hon'ble Supreme Court has dismissed the Departments' Civil appeal vide order dated 05.09.2022 against the CESTAT Final Order No. A/10013-10026/2022 dated 25.01.2022.

32. In view of the above, I pass the following de-novo adjudication order in lieu of the findings and discussions made herein above: -

ORDER

(a) I accept the declared classification 63041990 of the imported goods covered under Bill of Entry No. 9194035 dated 06.04.2017 filed by M/s Mahalaxmi Industries.

I/1185172/2023

(b) I order to drop the proceedings Initiated vide the Show Cause Notice F.No. VIII/48-87/Misc/MCH/2017-18/6269 dated 04.01.2018 against the importer M/s. Mahalaxmi Industries, A-35, RIICO, Industrial Area, Phase-I, Hanumangarh, Rajasthan-335512

(c) I order to release the Bank Guarantee having total amount is Rs. 6,00,000/- (Rupees Six Lakhs Only)

33. This order is passed without prejudice to the any other action which may be contemplated against the importer or any other person in terms of any provision of the Customs Act,1962 and/or any other law for the time being in force.

Signed by Mukesh Kumari
Date: 12-05-2023 19:18:28

(Mukesh Kumari)

**Additional Commissioner,
Customs House, Mundra**

F.NO.

To

M/s Mahalaxmi Industries (IEC-1309003394),
A-35, RIICO, Industrial Area,
Phase-I, Hanumangarh,
Rajasthan-335512

Copy to:

1. The Deputy/Assistant Commissioner (RRA), Custom House, Mundra.
2. The Deputy/Assistant Commissioner (TRC), Custom House, Mundra.
3. The Deputy/Assistant Commissioner (EDI), Custom House, Mundra.
4. Guard File