

	<b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS</b> <b>CUSTOMS HOUSE, MUNDRA, KUTCH- GUJARAT -370421</b> <b>PHONE: 02838-271426/271428</b> <b>FAX :02838-271425</b> <b>E-mail: adj-mundra@gov.in</b>	
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<b>A</b>	<b>FILE NO./</b> फाइल संख्या	GEN/ADJ/ADC/115/2025-Adjn
<b>B</b>	<b>OIO NO./</b> आदेश संख्या	MCH/ADC/ZDC/473/2025-26
<b>C</b>	<b>PASSED BY/</b> जारीकर्ता	DIPAK ZALA, ADDITIONAL COMMISSIONER, CUSTOM HOUSE, MUNDRA.
<b>D</b>	<b>DATE OF ORDER/</b> आदेश की तारीख	31.12.2025
<b>E</b>	<b>DATE OF ISSUE/</b> जारी करने की तिथि	31.12.2025
<b>F</b>	<b>SCN No. &amp; Date/</b> कारण बताओ नोटिस क्रमांक	SCN No.: GEN/ADJ/ADC/115/2024-Adjn dated 15.01.2025
<b>G</b>	<b>NOTICEE/ IMPORTER</b>  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
<b>H</b>	<b>DIN/</b> दस्तावेज़ पहचान संख्या	20251271MO0000777B5E

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 सकता है-
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 4<sup>TH</sup> 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 1870-के मद सं<sup>०</sup> 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 ड्यूटी /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 had been imported from; that the importer had described the goods 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.** During the course of processing the information, one such importer using the above modus operandi was identified as M/s Shiva Fabrics (IEC: GBHPS0946B) (hereinafter referred to as "Importer/Noticee"), H. NO. 216, ST. NO. 4, MOHAR SINGH NAGAR, LUDHIANA (PUNJAB) - 141008. Importer had filed a Bill of Entry at Mundra Port (INMUN1), the details of which are as below:

<b>No.</b>	<b>HEADING</b>	<b>DECLARATION MADE BY IMPORTER IN B/E</b>
1.	<b>Bill of Entry:</b>	4201613 dated 16.01.2023
2.	<b>Description of goods</b>	1.3 CM YARN IN HANK
3.	<b>CTH Declared</b>	5402 6100
4.	<b>Quantity (KGs)</b>	22344 KGS/228 Bales
5.	<b>Unit Price (CIF)</b>	\$1.5/KG
6.	<b>Invoice No.</b>	WH122153 dated 16.12.2022
7.	<b>Supplier</b>	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 Mundhra Port on 19.01.2023 for examination of the above-mentioned consignment.

**4.** 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 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", 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. During examination the CHA voluntarily produced a test report from the supplier for the Invoice of the instant consignment, wherein the description of the goods was mentioned as "1/13 MM NYLON CHENNILE YARN RAW WHITE IN

HANKS". Representative samples were drawn in quadruplicate for testing by the appropriate authority. After examination, 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 examination proceedings were recorded under a panchnama dated 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. On preliminary visual inspection, the imported goods appeared to be Chenille Yarn.

**6.1** Summons was 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 one 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 CHENILLE 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 classifications of the imported items in the Bill of Entry were 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 identical 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.

**7.1** M/s Shiva Fabrics had subsequently filed another BE 4479223 dt 03.02.2023, having declared items similar to the 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 dt 03.02.2023, for the purpose of testing. In response, representative samples were forwarded to DRI KZU by SIIB, Mundra Customs 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 and a report on the same be provided 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 report dated 29.03.2023 that all the samples forwarded to them were tested, and the results indicate that they were **“Chenille Yarn”, having a composition of 100% Polyamide.**

**7 . 4** 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.

## **8. DUTY STRUCTURE:**

**8 . 1** The applicable rate of duty on the items covered under CTH 5402 6100 and 5606 0090 are as follows:

<b>CTH</b>	<b>5402 6100</b>	<b>5606 0090</b>	
AV		Rs 100	Rs 100
BCD	5% of AV	Rs. 5	10% of AV
SWS	10% of BCD	Rs. 0.5	10% of BCD
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
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**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 19.01.2023 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 dt. 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%.

**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 and also the value of the past consignments covered under Bills of Entry nos. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated

18.10.2022 and 3324913 dated 16.11.2022 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. By re-determining the unit values of the goods covered under Bills of Entry nos. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 dated 16.11.2022 on the basis of evidences of contemporaneous import of Nylon/ Polyester Chenille Yarn, it was found that the importer was liable to pay customs duty amounting to **Rs. 82,45,817/-** against these past consignments. It was however found that the total duty paid against these consignments was **Rs. 43,07,095/-**. The details of the same are under tabulated:-

Sr. N o.	1	2	3	4	5	5	6	T O T A L
B/E No. & Date	7852765/ 14.03.22	8150704/ 05.04.22	8873366/ 28.05.22	9092271/ 13.06.22	292993 8/ 18.1 0.22	292993 8/ 18.1 0.22	332491 3/ 16.1 1.22	
Item Desc.	100% Nylon Mink Yarn Raw White in Hank 1.3CM 12 NM/1	100% Nylon Mink Yarn Raw White in Hank 1.3CM 12 NM/1	100% Nylon Mink Yarn Raw White in Hank 1.3CM 12 NM/1	100% Nylon Mink Yarn Raw White in Hank 1.3CM 12 NM/1	Yarn Raw White inn Hank 0.9CM 12NM/1	Yarn Raw White inn Hank 1.3CM 12NM/1	Yarn Raw White inn Hank 1.3CM 12NM/1	
Declared C TH	55091100	55091100	55091100	54026100	540261 00	540261 00	540261 00	
Quantity Decl.	21160 Kgs	21252 Kgs	21252 Kgs	21620 Kgs	920 Kgs	20608 Kgs	21528 Kgs	
Unit Price Decl.	2.5 \$/Kg	2.5 \$/Kg	2.5 \$/Kg	2.5 \$/Kg	2 \$/Kg	2 \$/Kg	2 \$/Kg	
Assesable Value	40,54,785/-	40,85,697/-	41,76,018/-	42,42,925/-	1,51,708 9/-	33,98,25 9/-	36,08,09 2/-	<b>2,37,17,484/-</b>
Duty Paid (18.16%)	7,36,349/-	7,41,962.60	7,58,365/-	7,70,515/-	27,550.1 0/-	6,17,123 .90/-	6,55,229 .70/-	<b>43,07,095/-</b>
Correct CT H	56060090	56060090	56060090	56060090	5606009 0	5606009 0	5606009 0	
Re-determine	3 \$/Kg (1\$= 76.65 INR)	3.45 \$/Kg (1 \$= 76.9 INR)	3.45 \$/Kg (1 \$= 78.6 INR)	3.45 \$/Kg (1 \$= 78.5 INR)	3.4 \$/Kg (1\$= 82.45 INR)	3.29 \$/Kg (1\$= 82.45 INR)	3.29 \$/Kg (1\$= 82.45 INR)	

Unit Price								
Re-determined AV	48,65,742/-	56,38,262/-	57,62,905/-	58,55,237/-	2,57,904/-	55,90,136/-	59,35,313/-	3,39,05,498/-
Duty Payable (24.32 %)	11,83,348.45/-	13,71,225.28/-	14,01,538.46/-	14,23,993.52/-	67,722.16/-	13,59,521.17/-	14,43,468.04/-	82,56,817/-
<b>Difference in Duty Payable</b>	<b>4,46,999.45/-</b>	<b>6,29,262.68/-</b>	<b>6,43,173.56/-</b>	<b>6,53,478.32/-</b>	<b>35,172.06/-</b>	<b>7,42,397.27/-</b>	<b>7,88,238.34/-</b>	<b>39,38,722/-</b>

**10.7** It thus appears that customs duty amounting to **Rs. 39,38,722/-** had been short paid/ evaded by the importer in respect of the goods covered under Bills of Entry nos. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 dated 16.11.2022.

**10.8** Since, the importer had admittedly, mis-declared the description and value of the goods and had also resorted to mis-classification of the same deliberately to evade payment of proper customs duty on the imported goods, the evaded duty amounting to **Rs. 39,38,722/-** appears to be recoverable in terms of Section 28(4) of the Customs Act, 1962. It was found that the importer was also liable to pay interest on the duty evaded in respect of the past consignments in terms of Section 28AA. It was, therefore, found that the duty evaded in respect of the goods covered under Bills of Entry nos. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 dated 16.11.2022 amounting to **Rs.39,38,722/-** and the interest on the said evaded duty, is also required to be recovered from the importer M/s Shiva Fabrics in terms of Section 28 of the Customs Act, 1962. In view of the willful mis-statement/ suppression of facts which resulted in the evasion of duty in respect of these past consignments, the importer, M/s Shiva Fabrics also appears to be liable to a penal action as provided under Section 114A of the Customs Act, 1962.

**10.9** The relevant portion of Section 28 reads as follows:

**Section 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded-**

*Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, -*

- (a) collusion; or
- (b) any wilful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been <sup>11</sup>[so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

**10.10** The relevant portion of Section 28AA reads as follows:

**Section 28AA. Interest on delayed payment of duty. -**

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

**10.11** The relevant portion of Section 114A of the Customs Act, 1962 reads as follows:

**Section 114A. Penalty for short-levy or non-levy of duty in certain cases. -**

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determine

**11. PROVISIONAL RELEASE OF THE SEIZED GOODS:**

**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 physically released.

## **12. FINDINGS OF THE INVESTIGATION:**

**12.1** From the enquiry conducted pursuant to the detention and examination of the impugned consignments imported by M/s Shiva Fabrics, covered under B/E 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: 5402 6100 instead of 5606 0090, 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 bills 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, herein above, 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 5606 0090. 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 imports also.

**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, 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 bills 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 Bills 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 herein above 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. Admittedly the same modus had been resorted to by the importer in respect of the **past consignments covered under Bills of Entry nos. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 dated 16.11.2022.**

**16.3** The classification claimed by the importer in respect of these past consignments are also required to be rejected and the said goods are required to be reclassified under CTS 5606 0090 and duty is to be levied at correct rate on re-assessment of the impugned Bills of Entry. Further, the declared value in respect of these past consignments 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.

**16.4** The duty evaded in respect these past consignments need to be demanded in terms of Section 28(4) along with applicable interest in terms of Section 28AA of the Customs Act, 1962.

**17.** Accordingly, Show Cause Notice dated 15.01.2025 was issued to the M/s Shiva Fabrics, Shri Sagar wherein they were called upon to show cause in writing to the Additional Commissioner of Customs, Custom House, Mundra, as to why:

- a. The assessment of the goods covered under the past consignments imported by M/s Shiva Fabrics vide Bills of Entry Nos. Bills of Entry nos. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 dated 16.11.2022, claiming assessment under 5402 6100 or 5509 1100 should not be rejected and the impugned goods covered under the subject past bills of entry should not be reassessed by reclassifying the same under CTH 5606 0090.
- b. The declared values for the goods covered under the past consignments imported by M/s Shiva Fabrics vide Bills of Entry Nos. Bills of Entry nos. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 dated 16.11.2022, should not be rejected in terms of Rule 12 and re-determined at values detailed in the Annexure to this Report, 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 duty evaded in respect of the goods covered under Bills of Entry nos. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 dated 16.11.2022 amounting to **Rs. 39,38,722/- (Rupees Thirty Nine Lakhs Thirty Eight Thousand Seven Hundred and Twenty Two only)** should not be recovered in terms of Section 28(4) of the Customs Act, 1962 and the interest on the said evaded duty should not be collected in terms of Section 28AA of the Act, *ibid*.
- d. The goods covered under the past consignments imported by M/s Shiva Fabrics vide Bills of Entry Nos. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 dated 16.11.2022, should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962.
- e. Penalty under Section 114A of the Customs Act, 1962, should not be imposed on Shri Sagar, Proprietor of the import firm, M/s Shiva Fabrics, for the willful mis-statement/ suppression of facts which resulted in the evasion of duty in respect of these past consignments covered under Bills of Entry nos. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 dated 16.11.2022.
- f. Subject to the fifth proviso to Section 114A of the Customs Act, 1962, penalty under Section 112(a) of the Customs Act, 1962 should not be imposed upon Shri Sagar, Proprietor of the import firm, M/s Shiva Fabrics since the acts of omission and commission of the said importer, for the reasons mentioned above, have rendered the said goods liable to confiscation under Section 111 of the Customs Act, 1962.

- g. Subject to the fifth proviso to Section 114A of the Customs Act, 1962, penalty under Section 112(b) of the Customs Act, 1962 should not be imposed upon Shri Sagar, Proprietor of the import firm, M/s Shiva Fabrics since since said importer had acquired possession of the said goods and was concerned in purchasing and selling the said goods which, for the reasons mentioned above, the said importer knew or had reason to believe were liable to confiscation under Section 111 of the Customs Act, 1962.
- h. Penalty under Section 114AA of the Customs Act, 1962, should not be imposed on Shri Sagar, Proprietor of the import firm, M/s Shiva Fabrics, for deliberately and consciously suppressing the materials facts about the essential details of the imported goods before the Customs authorities and using misleading terminologies, as such intentionally causing to make false declarations before the Customs authorities for assessment of the said goods which did not correspond to the imported goods in respect of these past consignments covered under Bills of Entry nos. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 dated 16.11.2022.
- i. Any liabilities arising due to the above or otherwise shall not be adjusted against the Bank Guarantees 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 NOTICEES/IMPORTER**

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

(i) we acknowledge the receipt of the above-referred Show Cause Notice issued under the provisions of the Customs Act, 1962, in connection with the import of yarn as below:-

S.No. Bill Of Entry Date

- 1. 7852765 14.03.2022
- 2. 8150704 05.04.2022
- 3. 8873366 28.05.2022
- 4. 9092271 13.06.2022
- 5. 2929938 18.10.2022
- 6. 3324913 16.11.2022

**1(i)** Denial of allegations for Previous Consignments:-

**(ii)** We note that the present Show Cause Notice seeks to extend the alleged contravention to our previous consignments, which were duly assessed, examined, and finally cleared by the Customs authorities without any objection or seizure. We respectfully deny and contest any allegation relating to those consignments, as they were legally imported and released after due satisfaction of the department. Once goods are duly examined, assessed, and cleared for home consumption, the presumption of correctness attaches to such clearance. Your kind attention is invited to the following judgments which clearly states that demand cannot be raised for old consignments on the basis of current allegations :-

a. In this regard, the Hon'ble Supreme Court in CCE v. Flock (India) Pvt. Ltd., (2000) 6 SCC 650 held that once assessment has attained finality, it cannot be reopened merely based on subsequent proceedings.

b. Commissioner of Customs (Prev.), New Delhi Versus Marks Marketing P. Ltd. 2017 (CESTAT DELHI):-

The Marks Marketing ruling reinforced an important legal principle in customs law: Past assessments that have become final cannot be disturbed without specific and substantial evidence of undervaluation or misdeclaration for those particular past transactions. The judgment prevents the customs department from raising blanket demands for differential duty based on generic findings from a single, unrelated import. Any such evidences based on the examination report of live consignment, one cannot extrapolate the same to the past consignments. Accordingly, demand for all the past consignments set aside

c. PK Exim vs. CC, Mundra, Final order No. A/12326/2021 dated 31.8.2021 (Tri.- Ahmedabad).

"The final order in the case of *PK Exim vs. CC, Mundra* (Final Order No. A/12326/2021) was decided by the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), Ahmedabad, on August 31, 2021. The tribunal held that the examination report for a "live" consignment of imported goods cannot be used to demand additional duty on similar "past" consignments".

d. Vivek Metals Vs Commissioner of Customs (CESTAT Bangalore):-

CESTAT Bangalore held that without any such evidences based on the examination report of live consignment, one cannot extrapolate the same to the past consignments. Accordingly, demand for all the past consignments set aside.

e. In case of Chandan Tobacco Co. 2014 (311) ELT 593 (Tri- Ahmd) :- In this case it was also held by the Larger Bench of the Appellate Tribunal has held in paragraph Nos. 21 and 23 of the decision that results of samples drawn in one year cannot be used for making inferences against the assessee for clearances in previous years

because doing so would be in the nature of assumption and presumption.

(iii) When the overall facts and circumstances of this case are considered, it would clearly emerge that we are not guilty of declaring any wrong information while filing the Bills of Entry. The goods have been cleared for home consumption also, and they are no longer available for confiscation. We therefore request you to withdraw the proposal to order confiscation of the above goods, and oblige.

(iv) Thus, it is a settled legal position that analysis report of one sample taken from one consignment of goods would be relevant only for that consignment, and not for other consignments. This principle is more relevant in a case like the present one where sample is taken from the last consignment and test report is proposed to be applied for the goods imported and cleared in past. We submit that the report of Regional Laboratory of Textile Committee, Kolkata cannot be considered to be relevant for any other consignments imported and cleared in past because this report is only for samples drawn from the goods covered under Bills of Entry 4201613 dated 16.1.2023. The report of Regional Laboratory of Textile Committee, Kolkata is irrelevant and inapplicable for the goods covered under first 6 Bills of Entries which are referred in the show cause notice.

(v) There is no evidence at all on record of this case to show the composition, nature etc. of the consignments imported under the past 6 Bills of Entry. There is no evidence on record to show that the goods imported under the past 6 Bills of Entry were Chenille Yarns. There is no evidence from us or from the overseas suppliers confirming that the goods/consignments covered under 6 previous Bills of Entry were absolutely similar to the goods covered under the Bills of Entry 4201613 dated 16.1.2023. Therefore, the report of Regional Laboratory of Textile Committee, Kolkata, for the sample drawn from the consignments for which Bills of Entry 4201613 dated 16.1.2023 were filed, cannot be straightaway applied for the goods imported under 6 Bills of Entry filed in past. There is no report and opinion for the goods imported under the past 6 Bills of Entry showing that the goods were Chenille Yarns; and therefore there is no basis for the proposal to reassess and re-classify the consignments covered under the past 6 Bills of Entry.

Therefore, any extension of the present allegation to earlier consignments is without factual or legal basis and deserves to be dropped.

**2. Section 28(4) of the Act:**

- a. The subject show cause notice is issued to us invoking Section 28(4) of the Customs Act, but this provision is not applicable in the present

case. Therefore, the show cause notice is ex-facie illegal and without jurisdiction.

- b. Where any duty had not been levied or not paid or had been short levied or short paid or erroneously refunded by reason of (a) collusion; or (b) any wilful mis-statement; or (c) suppression of facts, by the importer, then the proper Custom officer possesses power to invoke sub section (4) of Section 28 of the Act for demanding such duty. When any of the above ill-intentions were established by the Customs against the importer, then the extended period of limitation can be invoked by the proper Customs officer under Section 28(4) of the Act. But in the facts of the present case, none of the above referred ill-intentions is even *prima facie* established against us, and therefore invocation of Section 28(4) of the Act is an action without jurisdiction.
- c. This provision of sub section (4) of Section 28 of the Act can be invoked when the importer was found to be guilty of any suppression of facts, any wilful mis-statement or collusion; but not when any information was not submitted by the importer or some wrong information was submitted on the basis of any *bonafide* impression. What is "suppression" is considered by the Hon'ble Supreme Court in the case of Continental Foundation Jt. Venture V/s CCE, Chandigarh reported in 2007 (216) ELT 177 (SC), and it is held by the Hon'ble Supreme Court that mere omission to give correct information was not suppression of facts unless it was deliberate and to stop the payment of duty. In the previous case like Messrs Jaiprakash Industries Ltd. reported in 2002(146) ELT 481 (SC) also, the Hon'ble Supreme Court has held that a *bonafide* doubt as to non-dutiability of goods was sufficient for the assessee to challenge the demand on the point of limitation. Thus, it is a totally settled legal position that such allegations would be justified only when the assessee knew about the duty/tax liability and still however, he did not pay the duty/tax and deliberately avoided such payment, and it was only in such a situation where suppression of facts on part of the assessee could be justifiably alleged by the Revenue. However, mere failure in giving correct information would not be a case where the Revenue can allege suppression or mis-declaration.
- d. In the facts of the present case, there is no justifiable reason for alleging suppression of facts, or wilful mis-statement or any ill-intention or malafide against us; and therefore invocation of section 28(4) of the Act is an action wholly illegal and without jurisdiction.

### **3. Acceptance of Allegations for Current Consignment in Good Faith:-**

Regarding the current consignment, we wish to state that we are not contesting the allegation raised in the present SCN. Our acceptance is made purely in good faith and in the interest of early closure of the matter, as our business season was at its peak at the time of provisional release of goods.

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. Our decision is not an admission of guilt, but a practical step to avoid prolonged proceedings and to maintain peace of mind. We sincerely request your good office to take a lenient and sympathetic view in this matter and conclude the proceedings without imposing harsh penal consequences.

**4.** In view of the above submissions and judicial precedents cited, we humbly request that:

The allegations relating to previous consignments may kindly be dropped in full and the current case may kindly be decided with leniency, considering our cooperation and voluntary acceptance.

In the above premises, we submit that there is no justification nor any merits in any of the proposals levelled in the subject show cause notice. We therefore request you to withdraw this show cause notice, and we also request you to drop all the demands and proposals levelled against us in this case. We shall be pleased to provide any further clarification or documentation if required.

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**

**20.** In compliance of principle of natural justice "Audi alteram partem", opportunities to be heard were granted to the noticees through virtual mode. Shri Sahil Sharma, authorized representative of M/s. Shiva Fabrics appeared for hearing through virtual mode on 20.11.2025 to attend the scheduled personal hearing and 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 the goods have already been cleared by the customs after proper checking. Thus they are not liable for any duty of demanded by invoking section 28(4) of Custom Act. 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**

**21.** 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 declared description of the subject goods i.e. "Yarn Raw white in hank" and declared classification thereof as 54026100 OR 55091100 are liable to rejected or otherwise, and the subject goods 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. **39,38,722/- (Rupees Thirty Nine Lakh Thirty Eight Thousand Seven Hundred and Twenty-Two only)** demanded under SCN is recoverable from the Noticees in terms of Section 28(4) of the Customs Act, 1962 or otherwise.

(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 as proposed under the SCN or otherwise.

**22.** 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.

**Whether the declared description of the subject goods i.e. "Yarn Raw white in hank" and declared classification thereof as 54026100 OR 55091100 are liable to rejected or otherwise, and the subject goods are rightly classifiable under CTH 5606 0090 or otherwise.**

**23.1** I find that representative samples were drawn from 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 to know about item description, composition thereof. Regional Laboratory of the Textile Committee, in its report dated 29.03.2023 reported that all the samples forwarded to them is "**Chenille Yarn**", having a composition of 100% Polyamide.

**23.2** I find that during investigation, Shri Sagar, Proprietor, M/s. Shiva Fabrics in his statement, he has been shown a list of past imports made by his firm i.e. M/s. Shiva Fabrics, he admitted that the yarn imported by the firm M/s. Shiva Fabrics against those past Bills of entry mentioned in the list shown to him are **Chenille Yarn**. He admitted that he has deliberately mis-classified the imported goods under 54026100 or 55091100 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 agreed to pay differential duty as per the correct classification and the correct value determined by the department.

CUSTOM HOUSE NUMBER	RE NUMBER	RE DATE	NAME OF THE IMPORTER	COUNTRY OF ORIGIN	SUPPLIER NAME	ITEM DESCRIPTION	CTN	QUANTITY	UOC	UNIT	PRICE IN USD
1	INMUNI 785276	14/03/2022	SHIVA FABRICS	CN	SUZHOU RH2 TEXTILE TECHNOLOGY CO LTD	100% NYLON MINK YARN RAW WHITE IN HANK 1.3CM 12NM/1	55091100	21160	KGS	2.5	
2	INMUNI 8150704	04/05/2022	SHIVA FABRICS	CN	SUZHOU RH2 TEXTILE TECHNOLOGY CO LTD	100% NYLON MINK YARN RAW WHITE IN HANK 1.3CM 12NM/1	55091100	21252	KGS	2.5	
3	INMUNI 8873986	28/05/2022	SHIVA FABRICS	CN	SUZHOU RH2 TEXTILE TECHNOLOGY CO LTD	100% NYLON MINK YARN RAW WHITE IN HANK 1.3CM 12NM/1	55091100	21252	KGS	2.5	
4	INMUNI 9092271	13/06/2022	SHIVA FABRICS	CN	SUZHOU RH2 TEXTILE TECHNOLOGY CO LTD	NYLON MINK YARN RAW WHITE IN HANK 1.3CM 12NM/1	54026100	21620	KGS	2.5	
5	INMUNI 2029938	18/10/2022	SHIVA FABRICS	CN	ZHANGJIAGANG FOREUS TRADING CO LTD	YARN RAW WHITE IN HANK 0.9CM 12NM/1	54026100	920	KGS	2	
6	INMUNI 2929938	18/10/2022	SHIVA FABRICS	CN	ZHANGJIAGANG FOREUS TRADING CO LTD	YARN RAW WHITE IN HANK 1.3CM 12NM/1	54026100	20608	KGS	2	
7	INMUNI 3324913	16/11/2022	SHIVA FABRICS	CN	ZHANGJIAGANG WELL-OW TRADING CO LTD	YARN RAW WHITE IN HANK 1.3CM 12NM/1	54026100	21528	KGS	2	

**23.3** 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 on past import made by his firm and ready to pay differential duty along with applicable interest and penalty. 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**<sup>[1]</sup> and in the case of **Percy Rustomji Basta**<sup>[2]</sup> 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**<sup>[3]</sup> 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**<sup>[4]</sup> 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<sup>[5]</sup>, 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".*

**23.4** 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.

**23.5** 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.

**23.6** In view of the above facts, findings, Customs Tariff, explanatory notes, I hold that impugned goods are Chenille Yarn and rightly classifiable under 56060090. I hold so.

**(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. 39,38,722/- (Rupees Thirty-Nine Lakh Thirty-Eight Thousand Seven Hundred and Twenty-Two only) demanded under SCN is recoverable from the Noticees in terms of Section 28(4) of the Customs Act, 1962 or otherwise.**

**24.1** 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 which was also admitted by the importer in his statement before DRI. As a result, declared 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).*

**24.2** 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.

**24.3** I find that contemporaneous import of such goods showed that Chenille Yarn made of 100% polyamide were being imported with unit values around 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 past imports also.

**24.4** 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.

**24.5** 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 Bills of entry nos. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 dated 16.11.2022 dated 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.

**24.6** 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 mentioned in table-A above, 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 ( (i) Rs. 48,65,742/- for B/E No. 7852765 dated 14.03.2022, (ii) Rs. 56,38,261.86/- for B/E No. 8150704 dated 05.04.2022, (iii) Rs. 57,62,904.84/- for B/E No. 8873366 dated

28.05.2022, (iv) Rs. 58,55,236.50/- for B/E No. 9092271 dated 13.06.2022, (v) Rs. 58,48,039.98/- for B/E No. 2929938 dated 18.10.2022 and (vi) Rs. 59,35,312.66/- for B/E No. 3324913 dated 16.11.2022 and re-assessment is required to be done as per section 17(4) of the Customs Act, 1962 as per duty leviable as per duty structure of chapter 56060090 (BCD:10%, SWS: 10%, IGST: 12% = 24.32%). The re-assessment resultant a duty difference of **Rs. 39,38,722/- (Rupees Thirty-Nine Lakh Thirty-Eight Thousand Seven Hundred and Twenty-Two only)** which is to be recovered by the noticee.

**24.7** Therefore, I conclude that Show Cause Notice has rightly proposed re-determination of assessable value under the provision of rule 5 of CVR, 2007.

**24.8** Looking into the facts and circumstances of the case, sub-section (4) of the Section 28 is applicable, which is reproduced as under: -

*(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by*

*reason of—*

- (a) collusion; or*
- (b) any wilful mis-statement; or*
- (c) suppression of facts,*

*by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.*

In the instant matter, it appeared that the importer had deliberately mis-declared/mis-classified the goods and also suppressed the actual value and description of the goods in contravention of various provisions of the Customs Act and Rules there under with an intent to evade Customs Duty of **Rs. 39,38,722/- (Rupees Thirty-Nine Lakh Thirty-Eight Thousand Seven Hundred and Twenty-Two only)**. Hence, the provisions of the Section 28(4) of the Customs Act, 1962 for invoking extended period for demand of duty is rightly invokable in the instant case. Therefore, the differential duty amounting **Rs. 39,38,722/-** as demanded under SCN are recoverable from the Noticees in terms of 28(4) of the Customs Act, 1962. Further, I find that interest on delayed payment of duty which accrues automatically once demand of duty is confirmed is also recoverable from the importer under the provisions of Section 28AA of the Customs Act, 1962. For this, I rely on the decision of the **Hon'ble Apex Court in the case of CCE Pune Vs SKF India Ltd. [2009(239) ELT (385) SC]**.

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

**25.1** As per my detailed findings in Para 23 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 or 55091100 and evaded Customs duty amounting to **Rs. 39,38,722/- (Rupees Thirty-Nine Lakh Thirty-Eight Thousand Seven Hundred and Twenty-Two only).**

**25.2** 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.

**25.3** 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

**25.4** 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."*

**25.5** As the provisions of Section 111 (m) suggests in the instant case, the importer did not declare correct CTH /description of the goods and 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.

**25.6** In the present proceedings, I observed that the goods imported vide impugned bills of entry are not available for confiscation, as the matter pertains to improper importation of goods cleared in the past. Therefore, redemption fine under section 125(1) of the Customs Act, 1962 is not imposable in the instant case. In this regard, I rely upon the decision of Hon'ble High Court of Bombay in the matter of Commissioner of Customs (Import), Mumbai vs Finesse Creation (Inc.) 2009 (248) E.L.T 122 (Bom.) wherein Para 5 and 6, the Hon'ble Court held that: -

*5. In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter.*

*6. In these circumstances, in our opinion, the tribunal was right in holding that in the absence of the goods being available no fine in lieu of confiscation could have been imposed. The goods in fact had been cleared earlier. The judgment in Weston (supra) is clearly distinguishable. In our opinion, therefore, there is no merit in the questions as framed. Consequently, appeal stands dismissed."*

The above decision of the Hon'ble High Court of Bombay has been affirmed by the Hon'ble Supreme Court of India 2010 (255) E.L.T. A120 (S.C.) [12-05-2010].

Further, I hold that the impugned goods are liable for confiscation under the provisions of Section 111 (m) of the Customs Act, 1962. However, since the goods are not physically available for confiscation, I refrain from imposing any redemption fine.

**Whether acts of the importer attract penal action as proposed under the SCN or otherwise.**

**26.1** I find that the SCN proposes penalty on the notice under section of 114A of the Customs Act, 1962. Provisions of Section 114A of the Customs Act, is re-produced herein below:-

**"SECTION 114A. Penalty for short-levy or non-levy of duty in certain cases. –**

*Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has <sup>2</sup> [\*\*\*\*] been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:*

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

**Provided** further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

.....

**Provided** also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

**26.2** Penalty under Section 114A can be imposed in cases where the duty has not been levied or has been short-levied by reason of collusion or any wilful mis-statement or suppression of facts. I find on the basis of the evidences and above discussions that the importer in the present case has wilfully mis-classified the goods whereas they were fully aware, for such act and omissions, **I hold the importer liable to penalty under Section 114A of the Customs Act, 1962.**

**26.3** Now, I come to examine the penalty imposable on the Noticee under Section 112(a) and 114A of the Customs Act, 1962. I find that Section 114A stipulates that the person who is liable to pay duty by reason of collusion or any wilful mis-statement or suppression of facts as determined under section 28, is also liable to pay penalty under Section 114A. These acts and omissions of the Importer rendered them liable for penal action under Section 114A of the Customs Act, 1962.

**26.4** I find that there is mens-reas on the part of the importer to evade customs duty by way of misdeclaration in terms of item description, valuation and mis-classification to evade customs duty and thereby payment of short duty. The act of the importer has rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962, and therefore also has rendered themselves liable for penalty under section 112(a) of the Customs Act, 1962. However, I find that as per 5th

proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive. As penalty is being imposed under Section 114A of the Customs Act, 1962, no penalty is being imposed under Section 112(a), *ibid*.

**26.5** As regards imposition of penalty under Section 114 AA of Customs Act, 1962 on Shri Sagar, Proprietor of M/s. Shiva Fabrics, the Section 114 AA envisages penalty on a person, who 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. I observe that Shri Sagar deliberately and consciously suppressing the materials facts about the essential details of the imported goods before the Customs authorities and using misleading terminologies, as such intentionally causing to make false declarations before the Customs authorities for assessment of the said goods which did not correspond to the imported goods in respect of these past consignments covered under Bills of Entry nos. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 dated 16.11.2022 and for their act of omission and commission they have rendered themselves liable for penalty under Section 114 AA of the Customs Act, 1962. I hold so.

**23.** 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 (09.CM/1.3CM) under CTH 54026100/55091100 under Bills of Entry No. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 dated 16.11.2022 and order to amendment in description, and re-classification as "Chenille Yarn" under CTH 56060090;

(ii) I order to reject the declared assessable value of the goods imported vide Bills of entry no. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated 18.10.2022 and 3324913 dated 16.11.2022 valued at **Rs. 2,37,17,484/- (Rupees Two Crore Thirty-Seven Lakh Seventeen Thousand Four Hundred and Eighty-Four only)** under Rule 12 of CVR, 2007 and order to re-determine the same at **Rs. 3,39,05,498/- (Rupees Three Crore Thirty-Nine Lakh Five Thousand Four Hundred And Ninety-Eight 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 Bills of Entry Nos. 7852765 dated 14.03.2022, 8150704 dated 05.04.2022, 8873366 dated 28.05.2022, 9092271 dated 13.06.2022, 2929938 dated

18.10.2022 and 3324913 dated 16.11.2022 having re-determined value of **Rs. 3,39,05,498/- (Rupees Three Crore Thirty-Nine Lakh Five Thousand Four Hundred And Ninety-Eight only)** under Section 111(m) read with provisions of Section 46 (4) and Section 46 (4A) of the Customs Act, 1962 and since the impugn goods have already been cleared for Home Consumption and not physically available for confiscation, I refrain from imposing redemption fine under section 125 of the Customs Act, 1962;

(iv) I confirm demand of differential Customs duties totally amounting **Rs. 39,38,722/- (Rupees Thirty-Nine Lakh Thirty-Eight Thousand Seven Hundred and Twenty-Two only)**, as discussed hereinabove and the same is to be recovered from M/s. Shiva Fabrics under Section 28(4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962;

(v) I impose penalty of **Rs. 39,38,722/- (Rupees Thirty-Nine Lakh Thirty-Eight Thousand Seven Hundred and Twenty-Two only)** on M/s. Shiva Fabrics under Section 114A of the Customs Act, 1962 for the reasons of wilful mis-statement and suppression of facts. I refrain from imposing penalty under section 112 (a) of the Customs Act, 1962, since as per 5th proviso of Section 114A, penalty under Section 112 and 114A are mutually exclusive.

(vi) I Impose penalty of Rs. 50,000 (Rupess Fifty Thousand only) on the Shri Sagar, Proprietor, M/s. Shiva Fabrics under Section 114AA of the Customs Act, 1962.

**24.** 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.

**25.** The Show Cause Notice bearing no. GEN/ADJ/ADC/115/2025-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, ST. NO. 4,  
MOHAR SINGH NAGAR, LUDHIANA (PUNJAB) -  
141008.

ii. SHRI SAGAR, proprietor of M/s. SHIVA FABRICS, H.  
NO. 216, ST. NO. 4, MOHAR SINGH NAGAR, LUDHIANA  
(PUNJAB) - 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/EDI), Mundra.
- iii. Guard File.

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