

	<p>प्रधान आयुक्त का कार्यालय,सीमा शुल्क सदन, एमपी और एसईजेड, मुंद्रा, कच्छ-गुजरात -370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT PHONE : 02838-271426/271428 FAX :02838-271425 Mail: group3-mundra@gov.in</p>	
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A	फा. सं./ FILE NO.	F. No. CUS/APR/INV/300/2025-Gr 3
B	मूल आदेश संख्या/ ORDER-IN-ORIGINAL NO.	MCH/ADC/ZDC/85/2025-26
C	द्वारा पारित किया गया / PASSED BY	Dipak Zala Addl. Commissioner of Customs Mundra Customs House
D	आदेश की तिथि DATE OF ORDER	13.06.2025
E	जारी करने की तिथि DATE OF ISSUE	13.06.2025
F	कारण बताओ नोटिस संख्या & तिथि SCN NUMBER & DATE	SCN and PH Waiver sought vide letter dated 05.06.2025
G	आयातक / नोटिस प्राप्तकर्ता ImPORTER / NOTICEE	M/s. Dharmba Enterprise B-202, SEC 4, BLDG NO. 1 Padmavati Nagar, Virar West Thane 401303
H	डिन संख्या / DIN NUMBER	20250671MO000000A022

1. यहआदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते परअपील कर सकताहै-

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), MUNDRA

**HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN
ROAD,
NAVRANGPURA, AHMEDABAD-380 009.”**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

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

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये 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 सं०-6 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.

5. 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.

6. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और 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.

7. 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

1. An intelligence was gathered by the officers of DRI, Ahmedabad Zonal Unit that the cargo imported under Bill of Lading No. GOSUNG81269059 dated 27.12.2024 wherein name of Importer is M/s Dharmba Enterprise (IEC No. BDRPB8355E), B-202, SEC 4, BLDG NO. 1 Padmavati Nagar, Virar West Thane 401303 at Mundra for import of ‘Laminated Textile Fabrics (Mix lot off different colours, size, gsm, width and weight)’ has possible mis-declaration. Accordingly, the container no. ZCSU7967482 pertaining to the above-referred Bill of Lading was put on hold for detail examination of the goods by the DRI, AZU, Ahmedabad, in view of the suspicion.

2. Action taken: –

2.1 Based on the above intelligence, examination of the said consignment was carried out by the officers of Directorate of Revenue Intelligence, Ahmedabad Zonal Unit, under Panchnama dated 29.01.2025, in presence of Shri Pranjal Singh, authorised person of the importer and also Operation Manager of the M/s Shoolin Trade Link LLP. On the request of the DRI officers, Shri Pranjal Singh, representative of the Customs Broker provided the import documents pertaining to the said Bill of Entry. As per the import documents, the details of the import consignments are as follows:-

Table-A

SEZ Bill of Entry No. & date	Bill of Lading No.	Container No.	Description of Goods as per B/E
7871445 dated 18.01.2025	GOSUNG81269059 dated 27.12.2024	ZCSU7967482	Laminated Textile Fabrics (Mix lot off different colours,size, gsm, width and weight)

2.2. On being requested by the officers, Shri Pranjal Singh provided the copy of the computerised weighment slip containing the net weight of the goods of container. As per the weighment slip, the net weight of the goods in the container is as follows:-

Table-B

SEZ Bill of Entry No. & date	Container No.	weight of the goods including	Net weight of the goods
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		container	
7871445 dated 18.01.2025	ZCSU7967482	30920 kgs	27,220 kgs

2.3. On being requested by the officers, all the imported goods of the said containers were de-stuffed separately and were placed on the floor in front of the container. The DRI officers then systematically examined the said goods. The DRI officers along with the Panchas also observed that the goods de-stuffed from the respective containers were similar and prima facie appeared to be the same material. The DRI officers then counted the total rolls de-stuffed from each container.

3. Investigations Conducted:-

3.1 The said goods covered under Bill of Entry Nos. 7871445 dated 18.01.2025 (Z Type) were examined on 29.01.2025. To ascertain the exact identity of the goods as per the import documents, the samples of the goods were required to be drawn. The DRI officers, in presence of the panchas and Shri Pranjal Singh randomly drew representative samples in respect of said container/bill of entry. The said samples were placed in separate envelopes which were properly marked and sealed. The envelopes were sealed in such a manner that the envelopes could not be opened without tampering with the seal. The samples were sent for testing vide Test Memo no. 24/Dharmba Enterprise /BE no. 7871445. Test Reports in respect of the samples have been received from CRCL, Vadodara, vide Lab Report No. RCL/DRI/AH/IMP/6412/10.02.2025 dated 24.02.2025. As per the reports, the goods have been found to be as follows:-

Table-D

TM No.	Test Report No.	Report findings
24/Dharmba Enterprise /BE no. 7871445	RCL/DRI/AH/IMP/ 6412/10.02.2025	The sample as received is in the form of cut piece of dyed (black) woven fabric, having both side selvedge. It is composed of polyester filament yarn together with elastomeric yarn (PU).. <i>Width= 154.0 cm. ,Ave. GSM (as such):- 133.64 , % composition Polyester = 94.87% by wt, Elastomeric yarn = Balance</i>

Further, the importer has submitted letter from the supplier, wherein, it has been stated that the goods are “Dyed Woven Fabric Made of Polyester Texturized Filament Yarns together with Elastomeric Yarn”.

3.2. M/s. Dharmba Enterprise had declared the quantity of the goods as 91,305 SQM in BE no. 7871445 dated 18.01.2025. However, as per actual weight of the cargo found during the course of examination and GSM of the goods as per test results, the actual quantity of goods is as follows:-

Table-E

Sr. No.	BE No.	Actual Weight in KGs	GSM as per test report	Quantity of goods in SQM
1	7871445	27220	133.64	203682

3.3. The test reports received from the CRCL, Vadodara, has been examined with respect to the declaration made by the importer in the import documents. The goods were classified by the importer in the said BE in CTH 59039090 (attracting BCD at the rate of 20%). Customs Tariff Heading CTH 5903 pertains to ‘textile fabrics impregnated, coated, covered or laminated with plastics’ while the lab has reported the goods as ‘dyed (black) woven fabric, having both side selvedge. It is composed of polyester filament yarn together with elastomeric yarn (PU). Accordingly, it appears that, the imported goods do not qualify to be classified under CTH 5903 as the imported goods are not coated/laminated/impregnated with plastics. As per test results and the declaration given by the supplier, most appropriate CTH for the goods appears to be 54075290.

3.4. Rejection of declared value & Redetermination of Assessable Value: Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 (hereinafter referred to as “the CVR, 2007”) provides the method of valuation. Rule 3(1) of the CVRs, 2007 provides that subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10. Rule 3(4) ibid states that if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through Rule 4 to 9 of CVR, 2007. Whereas, it appears that, transaction value in terms of Rule 3 of the CVR, 2007, is to be accepted only where there are direct evidences with regard to the price actually paid or payable in respect of the imported goods by the importer. Whereas, in the present case, it appears that, there is reasonable doubt regarding the truth and accuracy of the declared value as the goods have been found to be mis-classified in terms of both description and classification, and hence the transaction value appears to be liable to be rejected in terms of Rule 12 of the CVR, 2007.

3.5. Whereas, the assessable value of the cargo is required to be re-determined as per the contemporary import data available on NIDB, in respect of the identical/ similar goods sold for export to India (from China) and imported at or about the same time in view of rule 4 and 5 of the CVR, 2007. Whereas, it further

appears that, the value of the imported goods could not be determined under Rule 4 *ibid* since the value of contemporaneous imports of identical goods of same nature, composition and description could not be found on NIDB. Proceeding sequentially, to Rule 5 *ibid*, as per contemporaneous import data available on NIDB, the rate of Polyester Dyed Fabric falling under CTH 54075290 and having GSM of around 125-134 is ranging from Rs. 25.64 to Rs. 29.75 per Square Metre (SQM). Further, sub-rule (3) of the said Rule-4 of CVR, 2007 states that, in applying these rules, if more than one transaction value of similar goods is found, the lowest such value shall be used to determine the value of imported goods. Further, sub-rule (2) of the said Rule-5 of CVR, 2007 states that, the provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, *mutatis mutandis*, also apply in respect of similar goods. Accordingly, the assessable value of the imported goods appears liable to be re-determined as follows: -

Table-F

Sr. No.	Fabric	Qty in SQM	Value per SQM of similar goods	Assessable Value of imported goods
1	Fabric with 133.64 GSM (BE no. 7871445)	203682	25.64	52,22,406

3.6. The duty on the importer goods is required to be re-determined on the basis of applicable rates. For CTH 54075290, applicate rate of Basic Customs Duty is higher of 20% or Rs. 23 per SQM. Applicable Duty in respect of the imported goods is calculated in Table-G as follows: -

Table-G**Duty in respect of Bill of Entry no. 7871445 dated 18.01.2025**

Sl No.	Duty calculated during the investigation	Qty/ Amount	Duty calculated by the importer in BE	Qty/ Amount	Difference
1	Quantity in SQM	2,03,682		91,305	1,12,377
2	Assessable Value	52,22,406	Value	9,54,320	42,68,086
3	BCD @23 per SQM	46,84,686	BCD @20% ad-valorem	1,90,864	44,93,822

4	SWS @0%	0	SWS @10%	19,086	-19,086
5	Taxable Value for IGST (2+3+4)	99,07,092	Taxable Value for IGST (2+3+4)	11,64,270	87,42,8 22
6	IGST @5%	4,95,355	IGST @12%	139712	3,55,64 3
7	TOTAL duty (3+4+6)	51,80,041	TOTAL duty (3+4+6)	3,49,662	48,30,3 79

3.7. Whereas, statement of Shri Pranjal Singh, authorised representative of the importer i.e. M/s Dharmba Enterprise was recorded on 24.04.2025. He perused CRCL, Vadodara's test report No. RCL/DRI/AH/IMP/6412/10.02.2025 dated 24.02.2025 and agreed with the same. In the statement, he inter-alia stated that:

- He agreed with the findings given in the reports and agree that the fabric is Dyed Woven fabric made of Polyester texturized filament yarns together with elastomeric yarn (PU).;
- The goods are appropriately classifiable under CTH 54075290;
- He agreed that the actual quantity of the goods is 2,03,682 SQM;
- He accepted that goods imported by M/s. Dharmba Enterprise have been mis-declared in the Bill of Entry in terms of description and classification. He further requested that valuation of the goods may be done in accordance with the applicable rules;
- M/s. Dharmba Enterprise would clear the goods for home consumption. They would file T Type Bill of Entry for clearance of the same;
- They are ready to pay applicable duty along with applicable fine and penalty as decided by the department. He requested that issuance of Show Cause Notice and personal hearing may please be waived in the present case. They would not file any appeal and will not claim any refund in this matter in future.

4. RELEVANT LEGAL PROVISIONS:

(A) RELEVANT PROVISIONS OF SEZ ACT, 2005:

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

.....

(o) “**import**” means—

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

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

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

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

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

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

Provided that no investigation, inspection, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or sub-section (3) of section 21 without prior approval of the Development Commissioner concerned:

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

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

1. *In exercise of the powers conferred by section 22 of the Special Economic Zones Act, 2005 (28 of 2005), the Central Government by Notification No. 2667(E) dated 05.08.2016 issued by the Ministry of Commerce & Industry, has authorized the jurisdictional Customs Commissioner, in respect of offences under the Customs Act, 1962 (52 of 1962) to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. The enforcement officer(s), for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit with prior intimation to*

the Development Commissioner, concerned. Under Section 21(1) of the SEZ Act, 2005, the Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.

2. *The Central Government, by the Notification 2665(E) dated 05.08.2016 has notified offences contained in Sections 28, 28AA, 28AAA, 74, 75, 111, 113, 115, 124, 135 and 104 of the Customs Act, 1962 (52 of 1962) as offences under the SEZ Act, 2005.*

47 (5) *Refund, Demand, Adjudication, Review and Appeal with regard to matters relating to authorise operations under Special Economic Zones Act, 2005, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise Authorities in accordance with the relevant provisions contained in the Customs Act, 1962, Central Excise Act, 1944, and the Finance Act, 1994 and the rules made thereunder or the notifications issued thereunder.*

(B) RELEVANT PROVISIONS OF CUSTOMS ACT, 1962:

Section 2(22): *"goods" includes (a) vessels, aircrafts and vehicles; (b) stores; (c) baggage; (d) currency and negotiable instruments; and (e) any other kind of movable property;*

Section 2(23): *"import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;*

Section 2(25): *"imported goods", means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;*

Section 2(26): *"importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes [any owner, beneficial owner] or any person holding himself out to be the importer;*

Section 2(39): *"smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113.*

Section 11A: *"illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force.*

Section 17. Assessment of duty. –

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

..

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

Section 46. Entry of goods on importation:

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.

(4A) the importer who presents a bill of entry shall ensure the following, namely:

- (a) The accuracy and completeness of the information given therein;*
- (b) The authenticity and validity of any document supporting it; and*
- (c) Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.*

Section 111. Confiscation of improperly imported goods, etc. – *The following goods brought from a place outside India shall be liable to confiscation:-*

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(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

Section 112. Penalty for improper importation of goods, etc. –

Any person,-

- a. who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*
- b. who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,*

shall be liable,-

- i.*
- ii. in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:*

114AA. Penalty for use of false and incorrect material.—

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

(C) Relevant Provisions of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007:

“Rule 4. Transaction value of identical goods. - (1) (a) *Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;*

.....

(3) *In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.*

“Rule 5. Transaction value of similar goods . - (1) *Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:*

Provided that

(2) *The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.*

Rule 12. Rejection of declared value . - (1) *When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.*

5. Summary of Investigations Conducted:

5.1 M/s Dharmba Enterprise, had filed SEZ warehousing (Z Type) Bill of Entry Nos. 7871445 dated 18.01.2025 and the goods were destined to SEZ Unit M/s. SHOOLIN TRADE LINK LLP, APSEZ, Mundra, APSEZ, Mundra, for import of “LAMINATED TEXTILE FABRICS (MIX LOT OFF DIFFERENT COLOURS, SIZE, GSM, WIDTH AND WEIGHT) falling under CTH-59039090 in the container no. ZCSU7967482.

5.2 Whereas, on the basis of the examination report, test reports and investigation carried out in this regard, the imported goods appear to be mis-declared in respect of nature, composition and description (LAMINATED TEXTILE FABRICS (MIX LOT OFF DIFFERENT COLOURS, SIZE, GSM, WIDTH AND WEIGHT) and CTH (59039090) as declared in the said Bill of Entry. The imported goods are actually found to be “Dyed Woven fabric made of Polyester texturized filament yarns together with elastomeric yarn (PU)” and are appropriately classifiable under CTH 54075290. These facts have been admitted by the authorized representative of the importer in the statement dated 24.04.2025. Whereas, it appears that, the importer has failed to declared true and correct description, CTH as well as assessable value of the goods imported in the said BE. Further, the imported goods also appear to be undervalued in view of the contemporaneous import data and hence it appears that the above Bill of Entry are required to be re-assessed on the basis of NIDB data for the similar goods in view of Rule 5 of the CVR, 2007. In view of the same, the assessable value of the

imported goods appears liable to be re-determined as discussed at para 3.5 above. Accordingly, total Customs duty on these imported goods also appears liable to be re-determined as discussed at para 3.6 above.

5.3. The authorized representative of the importer in his statement dated 24.04.2025 stated that M/s. Dharmba Enterprise would clear the goods for home consumption and they would file T Type Bill of Entry for clearance of the same. Also, warehousing Bill of Entry is typically filed when goods are imported and stored in a bonded warehouse without immediate payment of customs duties. The duties are deferred until the goods are either cleared for domestic consumption or re-exported. During the self-assessment process, the importer had declared applicable BCD, which further supports the interpretation that the goods were not intended for re-export. In the case of goods meant for re-export, the BCD would be zero, and this should be explicitly stated. The self-assessment process allows importers to declare the classification and applicable duties on imported goods. By levying the BCD, the importer effectively confirmed that the goods were meant for domestic clearance (DTA) and not re-export. Therefore, based on these facts, it is evident that the, though the SEZ Unit/Importer did not file a DTA BE, but the available information supports the conclusion that the goods were intended for DTA clearance only.

5.4. Thus, by the act of omission and commission at the level of importer, it appears that, the importer has contravened the provisions of Section 46 and Section 17 of the Customs Act, 1962, in as much as, they failed to make correct and true declaration and information to the Customs Officer in the form of Bill of Entry and also failed to assess their duty liability correctly and accordingly the goods imported by the importer appear liable to be confiscation under Section 111(l) and Section 111(m) of the Customs Act, 1962 and the importer M/s. Dharmba Enterprise have rendered themselves liable for penalty under Section 112(a)(ii) of the Customs Act, 1962. Further, it appears that the importer has used Bill of Lading, invoices and packing list while filing Bill of Entry, these documents contain incorrect or false material particulars regarding the quantity, and description of the goods imported by them. Accordingly, the importer appears to have rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962.

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

- i. The classification of the goods i.e. 59039090 as declared by the importer in the Z Type Bill of Entry no. 7871445 dated 18.01.2025 is liable to be rejected and the goods are liable to be re-classified under CTH 54075290, as discussed in foregoing paras;
- ii. The assessable value of these mis-declared imported goods imported vide Bill of Entry no. 7871445 dated 18.01.2025 is liable to be re-determined as Rs. 52,22,406/- (instead of Rs. 9,54,320/- as declared in the BE) under Rule

5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962;

- iii. Total Customs duty involved in the goods imported vide Bill of Entry no. 7871445 dated 18.01.2025 comes to Rs. 51,80,041/- (Rupees Fifty-one Lakh Eighty Thousand and Forty-one only) instead of Rs. 3,49,662/- (Rupees Three lakh Forty Nine Thousand Six Hundred and Sixty Two only) as declared in the BE;
- iv. The said Bill of Entry no. 7871445 dated 18.01.2025 is liable to be re-assessed accordingly under Section 17(4) of the Customs Act, 1962;
- v. The goods have been imported by way of mis-declaration in contravention of Sec 46 of the Customs Act, 1962 and are therefore liable for confiscation under Section 111(l) and Section 111(m) of the Customs Act, 1962;
- vi. The importer M/s. Dharmba Enterprise (IEC No. BDRPB8355E), B-202, SEC 4, BLDG NO. 1 Padmavati Nagar, Virar West Thane 401303, is liable for Penalty under Section 112(a)(ii) of the Customs Act, 1962;
- vii. The importer M/s. Dharmba Enterprise (IEC No. BDRPB8355E), B-202, SEC 4, BLDG NO. 1 Padmavati Nagar, Virar West Thane 401303, is liable for Penalty under Section 114AA of the Customs Act, 1962.

7. Discussions and Findings

7.1 I have carefully gone through the Investigation report dated 09.05.2025 issued by Deputy Commissioner of Customs (SIIB), Mundra Customs House and other records of the case. I find that representative of Importer M/s Dharmba Enterprises in his statement dated 24.04.2025 has requested for waiver of issuance of Show Cause Notice and personal hearing. Further, Importer vide letter dated 05.06.2025 has also requested for waiver of SCN and personal hearing. Hence I proceed to decide the case on the basis of the documentary evidences available on records. The main issues before me in this case are to be decided as mentioned below:

- a) Whether the classification of the goods i.e. 59039090 as declared by the importer in the Bill of Entry No. 7871445 dated 18.01.2025 is liable to be rejected and the same are liable to be re-classified under CTH 54075290.
- b) Whether the assessable value of these mis-declared imported goods imported vide Bill of Entry No. 7871445 dated 18.01.2025 is liable to be re-determined as Rs. 52,22,406/- (*Rupees Fifty Two Lakh Twenty Two Thousand Four Hundred and Six only*) (instead of Rs. 9,54,320/- as declared in the BE) under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

c) Whether the total Customs duty involved in the imported goods is Rs. 51,80,041/- (Rupees Fifty One Lakh Eighty Thousand and Forty One only) instead of Rs. 3,49,662/- (Rupees Three lakh Forty Nine Thousand Six Hundred and Sixty Two only) as declared in the BE.

d) Whether the said Bill of Entry No. 7871445 dated 18.01.2025 is liable to be re-assessed accordingly under Section 17(4) of the Customs Act, 1962.

e) Whether the goods have been imported by way of mis-declaration in contravention of Sec 46 of the Customs Act, 1962 and are therefore liable for confiscation under Section 111(l) and Section 111(m) of the Customs Act, 1962.

f) Whether the importer M/s. Dharmba Enterprises (IEC No. BDRPB8355E) is liable for Penalty under Section 112(a)(ii) and 114AA of the Customs Act, 1962.

7.2 I find that on basis of specific intelligence, consignment imported under Bill of Lading No. GOSUNG81269059 dated 27.12.2024 in Container No. ZCSU7967482 was put on hold by DRI, AZU, Ahmedabad for detailed examination. The goods were examined by officers of DRI in presence of authorized person of Importer. The goods were declared as Laminated Textile Fabrics (Mix lot off different colours, size, gsm, width and weight) (CTH 59039090) in Bill of Entry No. 7871445 dated 18.01.2025. The declared quantity of the goods was 91,305 Sqm. The declared assessable value and duty was declared as Rs 9,54,320/- and Rs. 3,49,662/-.

7.3 I find that during examination the weight of the cargo was found to be 27,220 KGS. To ascertain the exact identity of the goods as per the import documents, the samples of the goods were required to be drawn. The DRI officers, in presence of the panchas and Shri Pranjal Singh randomly drew representative samples in respect of said container/bill of entry. The samples were sent for testing vide Test Memo no. 24/Dharmba Enterprise /BE no. 7871445. Test Reports in respect of the samples have been received from CRCL, Vadodara, vide Lab Report No. RCL/DRI/AH/IMP/6412/10.02.2025 dated 24.02.2025. As per the reports, the goods have been found to be as follows:-

TM No.	Test Report No.	Report findings
24/Dharmba Enterprise /BE no. 7871445	RCL/DRI/AH/IMP/6412/10.02.2025	<p>The sample as received is in the form of cut piece of dyed (black) woven fabric, having both side selvedge. It is composed of polyester filament yarn together with elastomeric yarn (PU)..</p> <p>Width= 154.0 cm. ,Ave. GSM (as such):- 133.64 , % composition</p>

		<i>Polyester = 94.87% by wt, Elastomeric yarn = Balance</i>
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Further, I find that the importer has submitted letter from the supplier, wherein, it has been stated that the goods are “Dyed Woven Fabric Made of Polyester Texturized Filament Yarns together with Elastomeric Yarn”.

7.4 I find that M/s. Dharmba Enterprise had declared the quantity of the goods as 91,305 SQM in BE no. 7871445 dated 18.01.2025. However, as per actual weight of the cargo found during the course of examination and GSM of the goods as per test results, the actual quantity of goods is as follows:-

Sr. No.	BE No.	Actual Weight in KGs	GSM as per test report	Quantity of goods in SQM
1	7871445	27220	133.64	203682

7.5 Further I find that Importer has declared the classification of the goods under CTH 59039090 which pertains to “Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 59.02 – Other --- other”. (attracting BCD at the rate of 20%). Customs Tariff Heading CTH 5903 pertains to ‘textile fabrics impregnated, coated, covered or laminated with plastics’ while the lab has reported the goods differently. As per test results, there was no coating/lamination/impregnation found. Further the goods were found to be cut piece of dyed (black) woven fabric, having both side selvedge. It was composed of polyester filament yarn together with elastomeric yarn (PU)..

“Width= 154.0 cm, Ave. GSM (as such):- 133.64 , % composition Polyester = 94.87% by wt, Elastomeric yarn = Balance.”

Further as per declaration of supplier, the goods were composed of polyester texturized yarn together with Elastomeric Yarn, hence the most appropriate CTH for the goods is found to be 54075290 which is reproduced below for reference:

5407:Woven Fabric of Synthetic Filament Yarn including woven fabric obtained from materials of heading 54.05

- **Other woven fabrics containing 85% or more by weight of textured polyester filaments:**

540752 --Dyed

54075290 ---Other

7.6 I find that, in the present case, there were reasonable doubts regarding the truth and accuracy of the declared value as the goods have been found to be mis-declared in terms of quantity, description and classification, and hence the transaction value is rejected in terms of Rule 12 of the CVR, 2007 and needs to be re-determined in terms of Rule 4-9 of the CVR 2007. Whereas, the assessable value of the cargo is required to be re-determined as per the contemporary import data available on NIDB, in respect of the identical/ similar goods sold for export to India (from China) and imported at or about the same time in view of rule 4 and 5 of the CVR, 2007. Whereas, the value of the imported goods could not be determined under Rule 4 *ibid* since the value of contemporaneous imports of identical goods of same nature, composition and description could not be found on NIDB. Proceeding sequentially, to Rule 5 *ibid*, as per contemporaneous import data available on NIDB, the rate of Polyester Dyed Fabric falling under CTH 54075290 and having GSM of around 125-134 is ranging from Rs. 25.64 to Rs. 29.75 per Square Metre (SQM). Further, sub-rule (3) of the said Rule-4 of CVR, 2007 states that, in applying these rules, if more than one transaction value of similar goods is found, the lowest such value shall be used to determine the value of imported goods. Further, sub-rule (2) of the said Rule-5 of CVR, 2007 states that, the provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, *mutatis mutandis*, also apply in respect of similar goods. Accordingly, the assessable value of the imported goods is required to be re-determined as follows:-

Sr. No.	Fabric	Qty in SQM	Value per SQM of similar goods	Assessable Value of imported goods (in Rs)
1	Fabric with 133.64 GSM (BE no. 7871445)	203682	25.64	52,22,406

7.7 Further, I find that the duty on imported goods are required to be re-determined on the basis of applicable rates. For CTH 54075290, applicate rate of Basic Customs Duty is higher of 20% or Rs. 23 per SQM. Applicable Duty in respect of the imported goods is calculated as follows: -

Sl No.	Duty calculated during the investigation	Qty/ Amount	Duty calculated by the importer in BE	Qty/ Amount	Difference
1	Quantity in SQM	2,03,682		91,305	1,12,377
2	Assessable Value	52,22,406	Value	9,54,320	42,68,086

3	BCD @23 per SQM	46,84,686	BCD @20% ad-valorem	1,90,864	44,93,822
4	SWS @0%	0	SWS @10%	19,086	-19,086
5	Taxable Value for IGST (2+3+4)	99,07,092	Taxable Value for IGST (2+3+4)	11,64,270	87,42,822
6	IGST @5%	4,95,355	IGST @12%	1,39,712	3,55,643
7	TOTAL duty (3+4+6)	51,80,041	TOTAL duty (3+4+6)	3,49,662	48,30,379

7.8 I find that in the statement recorded under Section 108 of the Customs Act, 1962, authorized representative of M/s Dharmba Enterprises stated that they agree with the findings given in the test reports. He agreed that goods are appropriately classifiable under 54075290 and actual quantity of the goods is 2,03,682 SQM. He further requested to determine valuation in terms of Customs Valuation Rules, 2007. Further he accepted that they are ready to pay applicable duty, fine and penalty and will file Bill of Entry for home consumption. Vide letter dated 05.06.2025, they again requested to waive the Show Cause Notice and personal hearing.

7.9 As discussed above in length, I find that in the instance case, although warehouse Bill of Entry was filed by M/s Dharmba Enterprises, the goods were not meant for re-export as nothing specifically was mentioned by them on the Bill of Entry. When the goods are meant for export, importers specify the same while filing Warehousing Bill of Entry, however, the importer have not specified that the goods are meant for re-export in the Warehousing Bill of Entry filed by them. Had their intention been of exporting the goods, they would have clearly specified the same in the Bill of Entry filed by them, however, the importer have failed to do so. From this, it is clear that although DTA BE was not filed, yet the goods were meant for DTA clearance and further during statement, representative of Importer has stated that they will clear the goods in home consumption.

7.10 From the discussions above, I find that the Imported goods were mis-declared in terms of classification, quantity and description. Goods were found to be Dyed Woven Fabric made of polyester texturized yarn together with elastomeric yarn and rightly classifiable under 54075290. Further, the value of the imported goods is to be re-determined to Rs. 52,22,406/- as per provisions of CVR, 2007 and the duty on the imported goods is Rs. 51,80,041/- instead of Rs. 3,49,662/- as self-assessed by the importer in the said BE. Further, I find that by the act of omission and commission on the part of M/s Dharmba Enterprises, they have violated the provisions of Section 46 (4A) which stipulates that while presenting the Bill of Entry Importer have to ensure the accuracy and completeness of the information and authenticity and validity of any document supporting it. **Section 17 (1) & Section 2 (2) of the Customs Act, 1962 read with CBIC Circular No. 17/2011-**

Customs dated 08.04.2011, cast a heightened responsibility and onus on the importer to determine duty, classification etc. by way of self-assessment. The importer, at the time of self- assessment, is required to ensure that he declared the correct classification, country of origin, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. By violating the provisions of Section 46(4) and Section 17 of the Customs Act, 1962 and mis-declaring the imported goods in terms of quantity, value and classification and by not including imported goods in Entry, the Importer has led the goods rendered for confiscation under Section 111(l) and Section 111(m) of the Customs Act, 1962. Further, Importer have rendered themselves liable for penalty under section 112(a) (ii) of the Customs Act, 1962 which stipulates that any person who, in relation to any dutiable goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111 or abets the doing or omission of such an act will be liable for penalty for improper importation of goods. Further, importer has knowingly and intentionally used Bill of Lading, invoices and packing list while filing Bill of Entry, these documents contain incorrect or false material particulars regarding the quantity, and description of the goods imported by them. Accordingly, the importer has rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962 which stipulates that if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or documents which is false or incorrect in any material particular in the transaction of any businesses for the purpose of this Act would be liable for penalty.

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

ORDER

8.1 I hold that the classification of the imported goods 59039090 as declared by the importer in the Bill of Entry No. 7871445 dated 18.01.2025 is liable to be rejected and the same are liable to be re-classified under CTH 54075290.

8.2 I hold that the declared value of the imported goods vide Bill of Entry No. 7871445 dated 18.01.2025 i.e. **Rs. 9,54,320/-** (*Rupees Nine Lakh Fifty-Four Thousand Three Hundred and Twenty Only*) is liable to be rejected under Rule 12 of CVR, 2007 and the value of these mis-declared goods in terms of quantity, description and classification is liable to be re-determined to **Rs. 52,22,406/-** (*Rupees Fifty-Two Lakh Twenty-Two Thousand Four Hundred and Six Only*) under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

8.4 I order to re-assess the Bill of Entry 7871445 dated 18.01.2025 accordingly under Section 17(4) of the Customs Act, 1962 with total consequential duty of **Rs. 51,80,041/-** (*Rupees Fifty-One Lakh Eighty Thousand and Forty One Only*) and

differential duty of **Rs. 48,30,379/-** (*Rupees Forty-Eight Lakh Thirty Thousand Three Hundred and Seventy-Nine Only*).

8.5 I order to confiscate the goods having re-determined value of **Rs. 52,22,406/-** (*Rupees Fifty-Two Lakh Twenty-Two Thousand Four Hundred and Six Only*) imported vide Bill of Entry No. 7871445 dated 18.01.2025 under Section 111(l) and Section 111 (m) of the Customs Act, 1962. Further, I give an option to redeem the goods on payment of redemption fine of **Rs. 5,00,000/-** (*Rupees Five lakh Only*) under Section 125 of the Customs Act, 1962.

8.5. I impose penalty of **Rs. 4,00,000/-** (*Rupees Four lakh Only*) on M/s Dharmba Enterprises under Section 112 (a) (ii) of the Customs Act, 1962.

8.6 I impose penalty of **Rs. 2,00,000 /-** (*Rupees Two lakh Only*) on M/s Dharmba Enterprises under Section 114AA of the Customs Act, 1962.

9. This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

(Dipak Zala)
Addl. Commissioner of Customs
Customs House, Mundra

BY Speed Post A.D / E-mail

To, (The Noticee):-

M/s Dharmba Enterprise
B-202, SEC 4, BLDG NO. 1
Padmavati Nagar, Virar West
Thane 401303

Copy to:

1. The Addl. Commissioner (SIIB), Customs House, Mundra.
2. The Deputy/Assistant Commissiner, TRC Mundra
3. The Deputy Commissioner, RRA Customs House, Mundra.
4. The Deputy/ Assistant Commissioner (EDI), Custom House, Mundra.
5. Notice Board.
6. Guard File