


		OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT -370421 PHONE : 02838-271426/271428 FAX :02838-271425	 सत्यमेव जयते
A	File No.	CUS/APR/BE/SO/140/2023-Gr 3-O/o Pr Commr-Cus-Mundra	
B	OIO No.	MCH/ADC/MK/89/2023-24	
C	Passed by	Mukesh Kumari, Additional Commissioner (Import), Custom House, Mundra.	
D	SCN No. & Date	Importer requested for waiver in PH/SCN vide their letter dated 18.05.2023	
E	Noticee / Party / Importer	M/s Garg Fancy Readymade Store/IEC AFYPG3041E A-19, Shive Shakti Market, Shakti Market, Madangir, New Delhi - 110062	
F	DIN	20230671M00000283047	

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

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

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

	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT -370421 PHONE : 02838-271426/271428 FAX :02838-271425	 सत्यमेव जयते
A	File No.	CUS/APR/BE/SO/140/2023-Gr 3-O/o Pr Commr-Cus-Mundra
B	OIO No.	MCH/ADC/MK/89/2023-24
C	Passed by	Mukesh Kumari, Additional Commissioner (Import), Custom House, Mundra.
D	SCN No. & Date	Importer requested for waiver in PH/SCN vide their letter dated 18.05.2023
E	Noticee / Party / Importer	M/s Garg Fancy Readymade Store/IEC AFYPG3041E A-19, Shive Shakti Market, Shakti Market, Madangir, New Delhi - 110062
F	DIN	

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

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

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

I/1259083/2023

BRIEF FACT OF THE CASE

M/s Garg Fancy Readymade Store (IEC AFYPG3041E) (hereinafter referred to as "said importer" for sake of brevity) having its registered office at A-19, Shive Shakti Market, Shakti Market, Madangir, New Delhi - 110062, attempted to import a consignment. The consignment arrived Mundra vide BL No A33CX52904. On specific intelligence that the said goods may contain e-cigarette and other undeclared items, the said consignment was taken on hold by Special Intelligence and Investigation Branch, Mundra (hereinafter referred to as "SIIB") for detailed examination. The details of the said bill of lading are as under:

Sr. No.	Bill of Lading No. & Date	Description of Goods (as declared on Bill of Lading)	Quantity in MTs	Container No.
1.	A33CX52904, 18.09.2022	Baby Garments and Garment Accessories (HSN Code-61062010)	12.62	IAAU1687787

2. Based on the above intelligence, Officers of the SIIB intercepted the container No. IAAU1687787 corresponding to Bill of Lading No. A33CX52904 dated 18.09.2022 for examination. Examination of the said container was done by the officers of SIIB in presence independent panchas and representative of concerned CFS. During the examination it was found that the container was stuffed with PP bags and cartons.

2.1 Detailed inventory of the items found in container no. IAAU1687787 during the examination is as under:

Sr No	Marking on Cartons	No of Cartons	Total Pcs	Remarks
1	DRD	2	196	Louis Vuitton Ladies Hand Bag
2	DRD	1	45	Louis Vuitton Carry Bag (approx 10kg capacity)
3	DRD	1	75	Adidas Ladies Hand bag
4	AST	52	2080	Adidas Brand Sports Shoes
5	AST	86	3440	Nike Brand Sports Shoes
6	AST	4	160	Converse Brand Sports Shoes
7	AST	25	1000	Jordan Brand Sports Shoes
8	AST	13	520	Asics Brand Sports Shoes
9	AST	5	200	Reebok Brand Sports Shoes
10	AST	10	400	New Balance brand Sports Shoes
		1	11	Coach Brand Backpack (6), Tory Burch Brand Ladies hand bag (5)
		1	12	Coach Brand Brief Case Bag (12)
		1	12	Tory Burch Brand Ladies Hand Bag (4), Coach Brand backpack (4), Tory Burch Belly (4)
				Tory Burch Brand Belly (14),

I/1259083/2023

11	SH	1	21	Karl Lagerfield brand belly (7)
		1	28	Tory Burch Ladies Hand Bag Large (5), Coach Brand Large Brief Case bag (2), Michael Kors Brand Ladies Handbag - medium (5), Coach Ladies Hand bag - medium (3), Tory Burch Ladies Handbag medium (2), Coach Ladies Hand bag small(11)
		1	11	Marc Jacobs brand Ladies handbag
		1	6	Tory Burch Ladies Hand Bag Large size
		1	40	Marc Jacobs Brand Ladies Handbag Small size
		1	20	Marc Jacobs Brand Ladies Handbag Large (6), Furla Italy Hand Bag (1), Tory Burch Large Ladies Bag (2), Coach Brand Ladies Handbag Medium (7), Marc Jacobs Medium size Ladies Hand bag (1), Michael Kors belly (3)
		1	9	Marc Jacobs Brand Ladies Handbag Large
12	SRJ	1	115	Jacket/Windcheater
		3	271	Tomy Hilfiger Jacket (185), Armani Jacket(86)
		2	196	Gidison Jacket
		3	289	Fendi Jacket (191), Sg Yizhu Jacket (98)
		6	437	Zara Leather Jacket (168), Louis Voution Denim Jacket (86), GUCCI (183)
		3	259	Leather Jacket (unbranded - 71), Versache (87), Tomy Hilfiger Jacket (101)
		1	120	Trouser knitted (Lower)
		2	120	North Face Jacket
		1	72	Sweatshirt
13	SH	1	60	Fashion Black
14	SRJ, DW, DRD, SH	29	1979	Jackets- Zara (468), Unpopular Chinese Brands (1571)
15	DRD, DW	4	415	T Shirt, Sweat shirt
16	DRD, SRJ	5	396	Burberry Jacket (97), Christian Dior Jacket (100), Lacoste Jacket (96), Versace Jacket (103)
17	DW	2	235	Ladies Sweater
18	DW	1	100	Trouser knitted (Lower)
19	JB	28	4480	IGET Brand e-cigarette (5000puffs)
20	78	2	1	UAV Frame
21	3L-910-6E- B/W	471	471	PVC Shoe Rack (6 Compartments)
22	3L-910-4E- B/W	446	446	PVC Shoe Rack (4 Compartments)
23	3L-910-2E- B/W	51	306	PVC Shoe Rack (2 Compartments)

2.2. As the goods were mis-declared therefore, Panchnama dated 07.10.2022

I/1259083/2023

was drawn in the presence of the independent panchas for the same. Immediately, a search was arranged at premises of the importer firm through Customs (Preventive), Delhi. The search was also joined by officer of the SIIB, Mundra. Search was conducted by officers of Customs (Preventive), Delhi under panchnama dated 08.10.2022. No incriminating evidences were found during search. Documents were seized from the premises of M/s Garg Fancy Readymade Store. On perusal of documents, no incriminating evidence was found.

2.3. In view of the above, it appears that the said importer attempted to import e-cigarette and other undeclared items by concealing the same. Import of e-cigarette is prohibited vide Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019. Since prohibited and undeclared goods were found, the goods were liable for confiscation under Section 111(d) & (l) of the Customs Act, 1962 and therefore, the goods were seized vide seizure memo dated 22.11.2022 under Section 110 of the Customs Act, 1962.

2.4. Summons dated 14.10.2022 were issued to Shri Ashok Kumar Garg, proprietor of Garg Fancy Readymade Store to appear on 17.10.2022 for recording of statement. Shri Ashok Kumar Garg did not turn up for statement on 17.10.2022. However, bail application No 1946 of 2022 filed by Shri Ashok Kumar Garg in Patiala District Courts, New Delhi was received. It was prayed by the applicant Shri Ashok Kumar Garg before the Court that he could not travel to Mundra at such a short notice and could not comply with summons. He further submitted before the Court that he feared his arrest in the matter and therefore, prayed for interim protection from arrest. The Court vide order dated 23.11.2022 granted anticipatory transit bail for 7 days from the date of order and directed Shri Ashok Kumar Garg to appear before competent authority.

3. As the items imported vide the Bill of Lading No. A33CX52904 contained prohibited item and other items were found mis-declared, hence on reasonable belief that goods imported vide abovementioned Bill of Lading were liable to be confiscated under Section 111(d) & 111(l) of Customs Act 1962, accordingly, the abovementioned goods were seized on 22.11.2022 under Section 110 of Customs Act, 1962.

4 . Subsequent to the Court Order dated 23.11.2022, as directed by the Court, Shri Ashok Kumar Garg appeared for statement on 29.11.2022. In his statement dated 29.11.2022, Shri Ashok Kumar Garg deposed, interalia, that:

- He was sole proprietor of Garg Fancy Readymade Store. The firm was

I/1259083/2023

established in 1992. This being a family business, proprietorship kept on changing from time to time;

- They are into retail/wholesale trading of garments, decorative items and accessories such as bags, belts, shoes, etc.;

- He would cooperate in the investigation completely;

- Subsequent to the search at their firm in Delhi, when they got to know about e-cigarette and other undeclared items, he contacted his shipper through e-mail dated 28.10.2022. The shipper confirmed that some items, other than the ordered ones, had been loaded by mistake. He produced copy of email to this effect;

- He met Ms. Nicole in China when he went to China to explore the market. Subsequently, he placed orders to Nicole over phone. Ms Nicole manages all the procurements and other logistics such as loading, container booking in China;

- He gave orders for present consignment in August. Order was for Jackets, Shoes, Shoe rack and Ladies Bags, etc and not for e-cigarettes;

- He ordered only Jackets, Shoes, Shoe rack and Ladies Bags only. He stated that he ordered only items and not their brands. He requested that the goods may be examined again by some professional again to ascertain whether goods actually carry exact brand name (or are actually branded) because sometime the manufacturers in China print certain set of words on goods to make them attractive which may not be first copy or so.

- He did not file Bill of Entry till date and that the goods that are legally permitted should be released. For other goods, he requested that his shipper is ready to take the goods back or the Customs may dispose the goods as deemed fit.

- He would pay whatever fine and penalty is applicable in the matter.

- Since the container was under detention, Section 49 should be allowed so that the container may be handed over to the line.

4.2. As requested by Shri Ashok Kumar Garg, Section 49 was granted to Shri Ashok Kumar Garg since it did not appear that the container might have been used for concealing any item. Subsequently Warehouse Bill of Entry No 3864640 dated 22.12.2022 was filed by the importer.

5. VALUATION OF THE GOODS:

A. Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 is about rejection of the declared value of the imported goods. Rule 12(iii) says that:

- The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the mis-declaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents.

B. As the goods declared in the subject Bill of Lading No A33CX52904 dated 18.09.2022 were found to be prohibited and mis-declared in terms of various parameters value of the goods attempted to be imported vide abovementioned Bill of Lading needs to be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

iii. Rule 3(4) of Customs Valuation Determination of Value of Import Goods) Rules, 2007 says that "if the value cannot be determined under the provisions of sub-rule 3(1), the value shall be determined by proceeding sequentially through rule 4 to 9."

i v . As the value of impugned goods could not be determined under the provisions of sub-rule (1) of Rule 3 of the Customs Valuation Rules (CVR), 2007, the same was required to be determined sequentially under rule 4 to 9 of CVR 2007:

v. As per Rule 4 of CVR, 2007, 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; Further, as per Rule 5 of CVR,

I/1259083/2023

2007 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: To determine the value of the imported goods as per Rule 4 or Rule 5 of CVR 2007, contemporaneous data of import of identical or similar goods for three months was retrieved from ICES 1.5. On perusal of the retrieved data, no data of identical or similar items in terms of description, quantity and country of origin was found, therefore value of the goods cannot be determined as per Rule 4 and 5 of the Customs Valuation Rules (CVR), 2007.

vi. As per Rule 6 of the CVR, 2007 if the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8.

vii. Further, due to non-availability of the actual profit, transportation, general expenses in each transaction and cost of production & profit percentage of the supplier, it appears that determination of value under Rule 7 and Rule 8 of the CVR 2007 is not a feasible option.

viii. Therefore, the valuation of impugned goods was to be done under Rule 9 of the CVR, 2007 using reasonable means consistent with the principles and general provisions of these Rules and on the basis of data available in India. In this connection opinion was sought from the empanelled Chartered Engineer and Chartered Engineer vide his report No. ABJ: INSP: CE:23-24:02 dated 04.04.2023 gave his opinion regarding estimated assessable value of the goods imported vide bill of lading no. A33CX52904 dated 18.09.2022. **As per the CE report, estimated assessable value of the goods comes out to be Rs. 94,42,647/-.**

5.1. Duty Calculation sheet as per CE certificate: -

Sr No	Marking on Cartons	Remarks	No of Cartons	Total Pcs	Average per unit Market Price of the goods assessed by CE (in INR) approx..	Total Market value of the goods assessed by CE (in INR) approx	Total Assessable value of the goods (in INR) approx..
1	DRD	Louis Vuitton Ladies Hand Bag	2	196	1300	254800	140140
2	DRD	Louis Vuitton Carry Bag (approx 10kg capacity)	1	45	70	3150	1732.5
3	DRD	Adidas Ladies Hand bag	1	75	1450	108750	59812.5

I/1259083/2023

4	AST	Adidas Brand Sports Shoes	52	2080	750	1560000	858000
5	AST	Nike Brand Sports Shoes	86	3440	750	2580000	1419000
6	AST	Converse Brand Sports Shoes	4	160	650	104000	57200
7	AST	Jordan Brand Sports Shoes	25	1000	620	620000	341000
8	AST	Asics Brand Sports Shoes	13	520	580	301600	165880
9	AST	Reebok Brand Sports Shoes	5	200	750	150000	82500
10	AST	New Balance brand Sports Shoes	10	400	600	240000	132000
11	SH	Coach Brand Backpack (6), Tory Burch Brand Ladies hand bag (5)	1	11	1500	16500	9075
		Coach Brand Brief Case Bag (12)	1	12	1300	15600	8580
		Tory Burch Brand Ladies Hand Bag (4), Coach Brand backpack (4), Tory Burch Belly (4)	1	12	1400	16800	9240
		Tory Burch Brand Belly (14), Karl Lagerfield brand belly (7)	1	21	1350	28350	15592.5
		Tory Burch Ladies Hand Bag Large (5), Coach Brand Large Brief Case bag (2), Michael Kors Brand Ladies Handbag - medium (5), Coach Ladies Hand bag - medium (3), Tory Burch Ladies Handbag medium (2), Coach Ladies Hand bag small(11)	1	28	1200	33600	18480
		Marc Jacobs brand Ladies handbag	1	11	1300	14300	7865
		Tory Burch Ladies Hand Bag Large size	1	6	1650	9900	5445
		Marc Jacobs Brand Ladies Handbag Small size	1	40	1000	40000	22000
		Marc Jacobs Brand Ladies Handbag Large (6), Furla Italy Hand Bag (1), Tory Burch Large Ladies Bag (2), Coach Brand Ladies Handbag Medium (7), Marc Jacobs Medium size Laides Hand bag (1),	1	20	1200	24000	13200

I/1259083/2023

		Michael Kors belly (3)					
		Marc Jacobs Brand Ladies Handbag Large	1	9	1750	15750	8662.5
12	SRJ	Jacket/Windcheater	1	115	450	51750	28462.5
		Tomy Hilfiger Jacket (185), Armani Jacket(86)	3	271	750	203250	111787.5
		Gidison Jacket	2	196	650	127400	70070
		Fendi Jacket (191), Sg Yizhu Jacket (98)	3	289	400	115600	63580
		Zara Leather Jacket (168), Louis Voution Denim Jacket (86), GUCCI (183)	6	437	750	327750	180262.5
		Leather Jacket (unbranded - 71), Versache (87), Tomy Hilfiger Jacket (101)	3	259	550	142450	78347.5
		Trouser knitted (Lower)	1	120	200	24000	13200
		North Face Jacket	2	120	450	54000	29700
		Sweatshirt	1	72	300	21600	11880
13	SH	Fashion Black	1	60	250	15000	8250
14	SRJ, DW, DRD, SH	Jackets- Zara (468), Unpopular Chinese Brands (1571)	29	1979	350	692650	380957.5
15	DRD, DW	T Shirt, Sweat shirt	4	415	180	74700	41085
16	DRD, SRJ	Burberry Jacket (97), Christian Dior Jacket (100), Lacoste Jacket (96), Versace Jacket (103)	5	396	800	316800	174240
17	DW	Ladies Sweater	2	235	250	58750	32312.5
18	DW	Trouser knitted (Lower)	1	100	180	18000	9900
19	JB	IGET Brand e-cigarette (5000puffs)	28	4480	1850	8288000	4558400
20	78	UAV Frame	2	1	1000	1000	550
21	3L-910-6E-B/W	PVC Shoe Rack (6 Compartments)	471	471	550	259050	142477.5
22	3L-910-4E-B/W	PVC Shoe Rack (4 Compartments)	446	446	400	178400	98120
23	3L-910-2E-B/W	PVC Shoe Rack (2 Compartments)	51	306	200	61200	33660

5.2. The Chartered Engineer was also requested to give opinion with regard to whether the goods are copy of Branded goods or otherwise to which the Chartered Engineer submitted that these are replica.

LEGAL PROVISIONS APPLICABLE IN THE CASE:

6. Following provisions of law are applicable in the present case:

SECTION 11 (1) OF THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992:

"No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made there under and the export and import policy (now termed as Foreign Trade Policy) for the time being in force".

6.2. SECTION 46(4) OF THE CUSTOMS ACT, 1962:

(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, and such other documents relating to the imported goods as may be prescribed.

—

6.3 SECTION 111 (d), (l) OF THE CUSTOMS ACT, 1962:**111. Confiscation of improperly imported goods etc.**

The following goods brought from the place outside India shall be liable to confiscation

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs water for the purpose of being imported contrary to any prohibition imposed by or under this Act or any other law for the time being in force.

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report which are not so mentioned;

(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.

6.4 SECTION 112(a) OF THE CUSTOMS ACT, 1962 :**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, shall be liable,—

- i. in the case of goods in respect of which **any prohibition is in force** under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;*

*(ii) in the case of **dutiable goods**, other than prohibited goods, to a penalty [not exceeding the duty sought to be evaded on such goods or five thousand rupees],*

I/1259083/2023

whichever is the greater;

7 . After the CE certificate dated 04.04.2023 was received from the Chartered Engineer, letters dated 17.04.2023 were issued to the Right Holders to join the proceedings under IPR Rules, 2007 issued vide Notification No 47/2007 –Customs (N.T.) dated 08.05.2007. Letters from few brand holders returned undelivered and representatives from “Adidas”, “Reebok”, “Converse” and “Nike” brands joined the proceedings and submitted technical report through email dated 05.05.2023 (RUD-2, 3, 4 & 5). As per the technical reports submitted by these right holders, the goods were found counterfeit and requested that such goods be destroyed. However, as prescribed in Notification No 47/2007-Customs (N.T.) dated 08.05.2007, no indemnity bond has been executed by the right holders as on date. No other right holder joined the proceedings as on date.

7.1 Further, in continuation of the subject investigation report the Deputy Commissioner (SIIB) vide their letter dated 19.05.2023 has informed that letter have been received from Reliance Brands Limited on behalf of brands “Coach”, “Tory Burch”, “Michael Kors” and “Burberry” through email dated 26.04.2023 & 19.05.2023 that they would join the proceedings. They, also requested that the matter may be adjudicated while suspending clearance of abovementioned 4 brands since they may join the proceedings under Intellectual Property Rights (Imported Goods) enforcement Rules, 2007.

7.2 Now, in continuation of the subject investigation report the Deputy Commissioner (SIIB) vide their letter dated 05.06.2023 has informed that no right holder has joined the proceedings as on date after expired time limit and requested to absolute confiscation of the goods i.e. NIKE, ADIDAS, REEBOK, CONVERSE, TORY BRUCH and ZARA in addition to e-cigarettes.

8. In view of the above it appears that:

(i) The goods imported vide Bill of Lading No. A33CX52904, 18.09.2022 having assessable value of **Rs. 94,42,647/- (Rupees Ninety-Four Lakhs Forty-Two Thousand Six Hundred and Forty-Seven only)** are liable for confiscation under Section 111(d) and 111(l) of the Customs Act, 1962.

(ii) The beneficial owner is liable for penal action under Section 112(a)(i) of the Customs Act, 1962.

WAIVER OF PERSONAL HEARING AND SCN

9. Personal hearing in this matter was fixed on 19.05.2023, the Importer,

I/1259083/2023

vide their letter dated 18.05.2023 submitted that they do not want any show cause notices and personal hearing in this matter.

-
DISCUSSION & FINDING

10. I have carefully gone through the Investigation report dated 10.05.2023 issued by the Deputy Commissioner of Customs (SIIB), Mundra and I find that M/s Garg Fancy Readymade Store, had imported goods vide Bill of Lading A33CX52904, 18.09.2022, were declared as Baby Garments and Garment Accessories and on examination various undeclared items (details mentioned in para 2.1) were found, thus, the goods were mis-declared.

11. I find that the goods were mis-declared in terms of quantity, accordingly a search was conducted at premises of the importer firm through Customs (Preventive), Delhi. No incriminating evidences were found during search. Documents were seized from the premises of M/s Garg Fancy Readymade Store. On perusal of documents, no incriminating evidence was found.

12. I find that summons dated 14.10.2022 were issued to Shri Ashok Kumar Garg, proprietor of Garg Fancy Readymade Store to appear on 17.10.2022 for recording of statement. Shri Ashok Kumar Garg did not turn up for statement on 17.10.2022. However, bail application No 1946 of 2022 filed by Shri Ashok Kumar Garg in Patiala District Courts, New Delhi. It was prayed by the applicant Shri Ashok Kumar Garg before the Court that he could not travel to Mundra at such a short notice and could not comply with summons. He further submitted before the Court that he feared his arrest in the matter and therefore, prayed for interim protection from arrest. The Court vide order dated 23.11.2022 granted anticipatory transit bail for 7 days from the date of order and directed Shri Ashok Kumar Garg to appear before competent authority. I find that subsequent to the Court Order dated 23.11.2022, as directed by the Court, Shri Ashok Kumar Garg appeared for statement on 29.11.2022 and statement was recorded and he submitted their written submission.

13. I find that the goods declared in the subject Bill of Lading No A33CX52904 dated 18.09.2022 were found to be prohibited and mis-declared in terms of various parameters value of the goods attempted to be imported vide abovementioned Bill of Lading needs to be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Therefore, the valuation of impugned goods was to be done under Rule 9 of the CVR, 2007 using reasonable means consistent with the principles and general provisions of these Rules and on the basis of data available in India. In this connection opinion was sought from the empanelled Chartered Engineer and Chartered Engineer vide his report No. ABJ: INSP: CE:23-24:02 dated 04.04.2023 gave his

I/1259083/2023

opinion regarding estimated assessable value of the goods imported vide bill of lading no. A33CX52904 dated 18.09.2022. **As per the CE report, estimated assessable value of the goods comes out to be Rs. 94,42,647/-.**

14. I find that the CE certificate dated 04.04.2023 was received from the Chartered Engineer, accordingly letters dated 17.04.2023 were issued to the Right Holders to join the proceedings under IPR Rules, 2007 issued vide Notification No 47/2007 –Customs (N.T.) dated 08.05.2007. Letters from few brand holders returned undelivered and representatives from **“Adidas”, “Reebok”, “Converse” and “Nike”** brands joined the proceedings and submitted technical report through email dated 05.05.2023. As per the technical reports submitted by these right holders, the goods were found counterfeit and requested that such goods be destroyed. However, as prescribed in Notification No 47/2007-Customs (N.T.) dated 08.05.2007, no indemnity bond has been executed by the right holders as on date. No other right holder joined the proceedings as on date.

15. I find that the Deputy Commissioner (SIIB) vide their letter dated 19.05.2023 has informed that letter have been received from Reliance Brands Limited on behalf of brands “Coach”, “Tory Burch”, “Michael Kors” and “Burberry” through email dated 26.04.2023 & 19.05.2023 that they would join the proceedings. They, also requested that the matter may be adjudicated while suspending clearance of abovementioned 4 brands since they may join the proceedings under Intellectual Property Rights (Imported Goods) enforcement Rules, 2007.

16. I also find that the Deputy Commissioner (SIIB) vide their letter dated 05.06.2023 has informed that no right holder has joined the proceedings as on date after expired prescribed time limit as per Rule 7(3) of the Intellectual Property Rights (Imported Goods) enforcement Rules, 2007 and requested to absolute confiscation of the goods i.e. **NIKE, ADIDAS, REEBOK, CONVERSE, TORY BRUCH and ZARA in addition to e-cigarettes.**

17. I find that the said importer attempted to import e-cigarette and other undeclared items by concealing the same. Import of e-cigarette is prohibited vide Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019. Since prohibited and undeclared goods were found, the goods were liable for confiscation under Section 111(d) & (l) of the Customs Act, 1962.

18. In view of above, I find that the following should be confiscated under 111(l) of the Customs Act, 1962.

--	--	--	--	--	--	--	--

I/1259083/2023

Sr No	Marking on Cartons	Remarks	No of Cartons	Total Pcs	Average per unit Market Price of the goods assessed by CE (in INR) approx..	Total Market value of the goods assessed by CE (in INR) approx	Total Assessable value of the goods (in INR) approx..
1	DRD	Louis Vuitton Ladies Hand Bag	2	196	1300	254800	140140
2	DRD	Louis Vuitton Carry Bag (approx 10kg capacity)	1	45	70	3150	1732.5
3	AST	Jordan Brand Sports Shoes	25	1000	620	620000	341000
4	AST	Asics Brand Sports Shoes	13	520	580	301600	165880
5	AST	New Balance brand Sports Shoes	10	400	600	240000	132000
6	SH	Coach Brand Backpack (6),	1	6	818	8998	4949
		Coach Brand Brief Case Bag (12)	1	12	1300	15600	8580
		Coach Brand backpack (4),	1	4	467	5600	3080
		Karl Lagerfield brand belly (7)	1	7	450	9450	5198
		Coach Brand Large Brief Case bag (2), Michael Kors Brand Ladies Handbag - medium (5), Coach Ladies Hand bag - medium (3), Coach Ladies Hand bag small(11)	1	21	900	25200	13860
		Marc Jacobs brand Ladies handbag	1	11	1300	14300	7865
		Marc Jacobs Brand Ladies Handbag Small size	1	40	1000	40000	22000
		Marc Jacobs Brand Ladies Handbag Large (6), Furla Italy Hand Bag (1), Coach Brand Ladies Handbag Medium (7), Marc Jacobs Medium size Laides Hand bag (1), Michael Kors belly (3)	1	18	1080	23760	11880
		Marc Jacobs Brand Ladies Handbag Large	1	9	1750	15750	8662.5
7	SRJ	Jacket/Windcheater	1	115	450	51750	28462.5
		Tomy Hilfiger Jacket (185), Armani Jacket(86)	3	271	750	203250	111787.5
		Gidison Jacket	2	196	650	127400	70070
		Fendi Jacket (191), Sg Yizhu Jacket (98)	3	289	400	115600	63580
		Louis Voution Denim Jacket (86), GUCCI (183)	6	269	462	201750	110963
		Leather Jacket (unbranded - 71), Versache (87), Tomy Hilfiger Jacket (101)	3	259	550	142450	78347.5
		Trouser knitted (Lower)	1	120	200	24000	13200
		North Face Jacket	2	120	450	54000	29700
		Sweatshirt	1	72	300	21600	11880
8	SH	Fashion Black	1	60	250	15000	8250
9	SRJ, DW, DRD, SH	Unpopular Chinese Brands (1571)	29	1511	267	528850	290868
10	DRD, DW	T Shirt, Sweat shirt	4	415	180	74700	41085
		Burberry Jacket (97), Christian Dior Jacket (100),			800	316800	174240

I/1259083/2023

11	DRD, SRJ	Lacoste Jacket (96), Versace Jacket (103)	5	396			
12	DW	Ladies Sweater	2	235	250	58750	32312.5
13	DW	Trouser knitted (Lower)	1	100	180	18000	9900
14	78	UAV Frame	2	1	1000	1000	550
15	3L-910-6E-B/W	PVC Shoe Rack (6 Compartments)	471	471	550	259050	142477.5
16	3L-910-4E-B/W	PVC Shoe Rack (4 Compartments)	446	446	400	178400	98120
17	3L-910-2E-B/W	PVC Shoe Rack (2 Compartments)	51	306	200	61200	33660
TOTAL							22,16,278/-

18.1 Further, I also find that the following IPR infringing and prohibited goods should be **absolutely confiscated** under Section 111(d) & (l) of the Customs Act, 1962: -

Sr No	Remarks	No of Cartons	Total Pcs	Average per unit Market Price of the goods assessed by CE (in INR) approx..	Total Market value of the goods assessed by CE (in INR) approx.	Total Assessable value of the goods (in INR) approx..
1	Adidas Ladies Hand bag	1	75	1450	108750	59813
2	Adidas Brand Sports Shoes	52	2080	750	1560000	858000
3	Nike Brand Sports Shoes	86	3440	750	2580000	1419000
4	Converse Brand Sports Shoes	4	160	650	104000	57200
5	Reebok Brand Sports Shoes	5	200	750	150000	82500
6	Tory Burch Brand Ladies hand bag (5)	1	5	682	7502	4126
	Tory Burch Brand Ladies Hand Bag (4), Tory Burch Belly (4)	1	8	933	11200	6160
	Tory Burch Brand Belly (14),	1	14	900	18900	10395
	Tory Burch Ladies Hand Bag Large (5), Tory Burch Ladies Handbag medium (2),	1	7	300	8400	4620
	Tory Burch Ladies Hand Bag Large size	1	6	1650	9900	5445
	Tory Burch Large Ladies Bag (2),	1	2	120	240	1320
	Zara Leather Jacket (168),	6	168	288	126000	69300
7	IGET Brand e-cigarette (5000puffs)	28	4480	1850	8288000	4558400
8	Zara Jacket (468),	29	468	83	163800	90090
TOTAL						72,26,369/-

19. The importer while filing impugned bill of entry has subscribed to a declaration regarding correctness of the contents of the Bill of Entry under Section 46(4) of the Act, *ibid*. Further, Section 46(4A) of the Act, *ibid*, casts an obligation on the importer to ensure accuracy of the declaration and authenticity of the documents supporting such declaration. In the instant case, the importer failed to discharge the statutory obligation cast upon him and made wrong declaration about the valuation of the imported goods. As the value declared by the importer is liable for rejection due to mis-declaration of the

I/1259083/2023

same under Section 12 and required to be re-determined as per Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Hence required to be re-assessed as per Section 17(5) of the Customs Act, 1962 and the said seized goods valued at **Rs. 94,42,647/- (including IPR infringing goods & e-cigarette)** are liable for confiscation under Section 111(d) & 111(l) of the Customs Act, 1962 and the importer has rendered themselves for penal action under Section 112(a)(i) of the Customs Act, 1962.

20. As per section 125 of the Customs Act, 1962 Provide that Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation where is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods an option to pay in lieu of confiscation such fine as the said officer thinks fit. I find that said provision makes it mandatory to grant an option to owner of the confiscated goods to pay fine in lieu of confiscation in case the goods are not prohibited. I find it appropriate to allow for redeem under section 125 of the Customs Act, 1962

21. I find that the importer vide their letter dated 18.05.2023 submitted that they don't want personal hearing & Show Cause Notice and requested for releasing the goods on payment of Fine/Penalty.

22. In view of above, I pass the following order.

ORDER

22.1. I order to reject the value declared in respect of goods imported vide **Bill of Lading No. A33CX52904 dated 18.09.2022** under Rule 12 of the Customs Valuation Rule 2007 and ordered to re-determined on the basis of CE Report as per Para 5.1 above for the purpose of assessment for clearance of the imported goods for home consumption.

22.2. (a) I order for confiscation the goods imported vide **Bill of Lading No. A33CX52904 dated 18.09.2022 re-assessable value of Rs. 22,16,278/- (Rupees Twenty-Two Lakh Sixteen Thousand Two Hundred Seventy-Eight Only)** mentioned in para 18 under Section 111(l) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscation goods on payment of redemption fine of Rs. 2,50,000/- (Rupees Two Lakh fifty Thousand only/-) under Section 125 of the Customs Act, 1962.

I/1259083/2023

(b) I impose the penalty of Rs.1,25,000/- (Rupees One Lakh Twenty Five Thousand only) on importer M/s Garg Fancy Readymade Store under Section 112(a)(ii) of the Customs Act, 1962 for the goods mentioned in para 18

22.3 (a) I order to **absolute confiscation of the goods mentioned in para 17 having total re-assessable value of Rs. 72,26,369/- (Rupees Seventy-Two Lakh Twenty-Six Thousand Three Hundred Sixty-Nine only)** mentioned in para 18.1 under Section 111(d) & 111(l) of the Customs Act, 1962. Also I order to dispose the as per disposal manual at the cost of importer.

(b) I impose the penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakh only) on importer M/s Garg Fancy Readymade Store under Section 112(a)(i) of the Customs Act, 1962 for the goods mentioned in para 18.1.

23. 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.

Signed by

Mukesh Kumar
Addl. Commissioner of Customs
Customs House, Mundra

Date: 23-06-2023 17:42:42

F.No. CUS/APR/BE/SO/140/2023-Gr 3-O/o Pr Commr-Cus-Mundra

23-06-2023

To,

M/s Garg Fancy Readymade Store (IEC AFYPG3041E),
A-19, Shive Shakti Market,
Shakti Market, Madangir,
New Delhi – 110062.

Copy to:

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

