



OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOM HOUSE: MUNDRA, KUTCH
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A	File No.	CUS/APR/INV/266/2024-Gr 5-6-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/AK/62/2024-25
C	Passed by	ARUN KUMAR Hon'ble Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	07.06.2024
E	Noticee/Party/ Importer/ Exporter	M/s. Sphathik Archives, 526, Kali Devi Madar Gate, Near I.T.I. Fatehgarh, Farrukhabad
F	DIN No.	20240671MO0000111AEB

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सी-ए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है।

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. - 1 to:

“सीमा शुल्क आयुक्त (अपील),
चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन 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/- 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 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-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 ज्यूटि/ व्याज/ 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, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क 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.

Rcvd
963821885
D.N.Tiwari

Brief Facts of the Case:

M/s. Sphathik Archives (IEC-AOZPK2439Q) (hereinafter referred to as 'the Importer') having address 526, Kali Devi Madar Gate, Near I.T.I. Fatehgarh, Farrukhabad had filed Bill of Entry No. 2525124 dated 11.03.2024 (hereinafter referred to as 'the BE') for import of following mentioned goods in container no. WHSU6347781, through its authorised Customs Broker firm M/s. Bhairav Cargo Clearing Agency, CB code – AAQFB2238RCH001 (hereinafter referred as 'the CB'). The details of the BE are as follows:

Table-A

Sr No.	Declared Goods	Declared Quantity	Declared Assessable Value (in Rs.)
1	Garment Accessories – Glass Beads	3980 kg	2,06,662/-
2	Garment Accessories - Plastic Beads	2647 kg	1,66,265/-
3	Garment Accessory - STRAPS	60 kg	3,518/-
4	Sunglasses (unbranded)	84 doz	4,221/-
5	Optical Frame (Unbranded)	2817 doz	1,17,962/-
6	Empty bags for sunglasses	534 doz	16,100/-
7	Hotfix Tape Roll	204 pcs	42,713/-
8	Car Vacuum Cleaner	1020 pcs	85,425/-
9	Car Accessories-Air Conditioning-Control Valve	700 pcs	12,898/-
10	Aluminium Film Balloon	9000 kg	5,65,313/-
11	Metal Button	90 kg	5,729/-
12	Metal Beads	224 kg	13,132/-
13	Earring (Immitation Jewellery)	36 kg	47,109/-
14	Artificial flower	2332 kg	1,46,479/-
15	Metal Hook	75 kg	4,397/-
16	Door Sensor	6 pcs	879/-
17	Polyester Knitted Fabrics (mix lot, mix colour, mix GSM)	1870 kg	1,56,613/-
18	Glass Chatons SS12	1300 kg	1,63,313/-
19	Glass Chatons SS23	1116 kg	1,12,158/-

- On the basis of intelligence, the container was put on hold for any prohibited/restricted goods concealed behind/within the declared goods. The examination of the goods was carried out in Ashutosh CFS, Mundra on 16.03.2024 in the presence of Shri Panchraj Sinh, Docs. Executive, Ashutosh CFS, Mundra and Shri Deep Narayan Tiwari, 'G' card holder of CB firm M/s. Bhairav Cargo Clearing Agency. Shri Deep Narayan Tiwari submitted the

import documents and container seal was tallied and after finding it tallied, the bottle seal was cut. On opening the container, there were green PP cover over rectangle boxes with various marking, all the containers' goods were taken out one after another. The goods were found as declared as per the Bill of Entry and other import documents. With the help of surveyor, packing list of the cartons was tallied physically. The container having similar packing dimensions were selected. The number of cartons was found tallied against the description mentioned in the packing list. Randomly, the cartons of similar were opened to count number of smaller packages and the same were also found tallied. The PP bags were counted and the number of bags found as 873 as declared. During the examination, no goods other than declared were found in the container. The goods were handed over to CFS for safe custody.

3. Representative sample of the goods polyester knitted fabrics (Mix Lot, Mix Colour, Mix GSM) which was drawn in the examination report dated 16.03.2024 and sent to CRCL, Kandla vide Test Memo No. 916/23-24 dated 28.03.2024. Test report in respect of said Test Memo has been received from CRCL, Kandla and the same is reproduced hereunder:-

SIIB-13024/29.03.2024
Report:-
Received only one sample. The sample as received is in the form of a cut piece of Black coloured knitted fabric having self-designed (with cut piles) on one side. It is composed of polyester filament yarns and cut piles made of polyester fibres.
GSM (as such) =294.8

4. The importer has classified the polyester knitted fabrics (Mix Lot, Mix Colour, Mix GSM) under the CTH-60063400. In view of the Test Report, it is apparent that as far as the entries at heading level are concerned, heading 6001 of the Import Tariff specifically include 'Pile fabrics, including "long pile" fabrics and terry fabrics, knitted or crocheted', accordingly impugned goods are appropriately classifiable under the heading 6001.

4.1 Entry under the Tariff Heading 6001 reads thus:

6001 - 'Pile fabrics, including "long pile" fabrics and terry fabrics, knitted or crocheted'

4.2 The above Heading covers goods classifiable under the following sub-headings at the single dash (-) level:

- i. "Long pile" fabrics:
- ii Looped pile fabrics:
- iii other:

Tariff Heading at the single dash (-) level mentioned at point (iii) above covers

goods classifiable under the following sub-headings at the double dash (--) level:

- i. of cotton
- ii. of man-made fibres

4.3 In view of the above, as per test report, it appears that the goods are appropriately classifiable under the CTH-60019200. After the change in the classification of the goods, the NIDB data of the contemporaneous import was taken, the value of the subject goods had been found to be fair, hence the transaction value of the subject goods is accepted. As rate of duty under the above said both CTH are same. Hence, differential duty payable in respect of subject goods is zero, as mentioned in table-B below:-

Table-B

Duty structure for the CTH-60063400			Duty structure for the CTH-60019200			Differential Duty Payable (in Rs.)
BCD	SWS	IGST	BCD	SWS	IGST	
20%	10% of BCD	5%	20%	10% of BCD	5%	0

5. During the examination, the goods were found to be as declared. Further, the valuation of Aluminium Film Balloon, Glass Chatons SS12, Glass Chatons SS23 and Car Vacuum cleaner was checked. The NIDB data has been taken in respect of the said 04 types of goods. After analyzing the NIDB data, it appears that the importer has undervalued the value of said 04 types of goods. The duty calculation sheet is as under:-

Table-C

Item/goods	Quantity	Unit	Declared Per unit price (in USD)	Declared per unit price (in Rs.) (1 USD=83.75 INR)	Value as per NIDB (Rs. per Unit)
Car Vacuum Cleaner	1020	pcs	1	83.75	117.74
Aluminium Film Balloon	9000	kgs	0.75	62.8125	101.69
Glass Chatons SS12	1300	kgs	1.5	125.625	232.54
Glass Chatons SS23	1116	kgs	1.2	100.5	237.69

Item/goods	Assessable Value (in Rs.)	BCD (in Rs.)	SWS (in Rs.)	IGST (in Rs.)	Total Duty Payable (in Rs.)	Duty Paid (in Rs.)	Differential Duty Payable (in Rs.)

Car Vacuum Cleaner	120095	12009	1201	23995	37205	26464	10742
Aluminium Film Balloon	915210	183042	18304	200980	402326	248511	153816
Glass Chatons SS12	302302	60460	6046	18440	84947	45891	39056
Glass Chatons SS23	265262	53052	5305	16181	74539	31516	43022
Total	1602869	308564	30856	259596	599018	352382	2,46,636/-

6. The NIDB data has been taken in respect of Aluminium Film Balloon, Glass Chatons SS12, Glass Chatons SS23 and Car Vacuum cleaner and after analysing the NIDB data, it appears that declared value by the importer was not the proper/actual value. The Transaction Value given by the Importer as per Rule 3 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 cannot be taken because as per the NIDB Data, it was found that the Importer has mis-declared the value of imported goods in respect of Aluminium Film Balloon, Glass Chatons SS12, Glass Chatons SS23 and Car Vacuum Cleaner. The Transaction value is to be rejected in terms of Rule 12 of the Customs Valuation Rules, 2007 read with Section 14 of the Customs Act, 1962 and re-determined as mentioned in Table-C. The importer has undervalued the value of above said 4 types of goods, thus rendering the goods liable for confiscation under the provisions of section 111(m) of the Customs Act, 1962 and penalty under Section 112(a) of the Customs Act, 1962 to be imposed on the importer.

7. In this case, it appears that the importer has paid total duty (BCD, SWS & IGST) in respect of Aluminium Film Balloon, Glass Chatons SS12, Glass Chatons SS23 and Car Vacuum cleaner amounting to Rs.3,52,382/-. However, after re-determining the assessable value in respect of Aluminium Film Balloon, Glass Chatons SS12, Glass Chatons SS23 and Car Vacuum cleaner, total duty (BCD, SWS & IGST) payable comes out to Rs.5,99,018/-. Therefore, it appears that the importer is liable to pay differential duty amounting to Rs.2,46,636/- (Rs.5,99,018 – Rs.3,52,382) in respect of above said 04 type goods, as mentioned in Table-C.

8. The investigation has established that Aluminium Film Balloon, Glass Chatons SS12, Glass Chatons SS23 and Car Vacuum cleaner have been undervalued and polyester knitted fabrics have been mis-classified by the importer. Vide letter dated 25.04.2024, wherein the importer informed that they are ready to accept the value and ready to pay the duty. Further, the importer also informed they do not want any Show Cause Notice or Personal Hearing in the matter.

9. LEGAL PROVISIONS

Legal provisions applicable in this case under the Customs Act 1962 are as follows:

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

Rule 3. Determination of the method of valuation.-

(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

(2) Value of imported goods under sub-rule (1) shall be accepted: Provided that - (a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which - (i) are imposed or required by law or by the public authorities in India; or (ii) limit the geographical area in which the goods may be resold; or (iii) do not substantially affect the value of the goods; (b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued; (c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and (d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price. (b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time. (i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India; (ii) the deductive value for identical goods or similar goods; (iii) the computed value for identical goods or similar goods: Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related; (c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) 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.

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).

Explanation.-(1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) 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 misdeclaration 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

Customs Act, 1962

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, and such other documents relating to the imported goods as

may be prescribed.

(4A) The importer who presents a BE shall ensure the following :

- a. *accuracy and completeness of the information given therein;*
- b. *the authenticity and validity of any document supporting it; and*
- c. *compliance with 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 for confiscation:*

(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 transhipment, with the declaration for transhipment 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) 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, whichever is the greater;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty 219 [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty 220 [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.

10. In view of the on-going paras, it appears that:

- a. The import of 1870 kg of the polyester knitted fabrics (Mix Lot, Mix Colour, Mix GSM), to be classified under the CTH-60019200 instead of the CTH-60063400.
- b. The assessable value of Aluminium Film Balloon, Glass Chatons SS12, Glass Chatons SS23 and Car Vacuum cleaner declared by the importer to be rejected and re-determined as mentioned in Table-C.
- c. The importer is liable to pay differential duty amounting to Rs. 2,46,636/- as mentioned in Table-C, therefore, the said bill of entry is liable to re-assessed under Customs Act, 1962.
- d. The goods mentioned above at (a) and (b) are liable for confiscation under Section 111(m) of the Customs Act, 1962.
- e. Penalty on the importer M/s. Sphathik Archives (IEC-AOZPK2439Q) to be imposed under Section 112(a) of the Customs Act, 1962.

WAIVER OF SHOW CAUSE NOTICE AND PERSONAL HEARING

11. The importer vide letter dated 25.04.2024 has submitted that they are ready to accept the value and pay the duty and they do not want any Show Cause Notice or Personal Hearing in the matter.

DISCUSSION AND FINDINGS

12. I have carefully gone through Investigation Report No. 29/2024-25 dated 11.05.2024 issued by Deputy Commissioner of Customs (SIIB), Custom House, Mundra. The importer vide letter dated 25.04.2024 has submitted that they are ready to accept the value and pay the duty and they do not want any Show Cause Notice or Personal Hearing in the matter, hence, i find that the principle of natural justice has been complied with and no SCN in the matter has been issued. I find that the issue to be decided in the instant IR is, whether impugned goods are liable for confiscation and whether the importer is liable for penal action as proposed.

13. I find that M/s. Sphathik Archives (IEC-AOZPK2439Q), had filed Bill of Entry No.2525124 dated 11.03.2024 for import of goods, as mentioned in Table-A above, in container no. WHSU6347781 through Customs Broker M/s. Bhairav Cargo Clearing Agency.

14. I find that on the basis of intelligence, the container was put on hold for any prohibited/restricted goods concealed behind/within the declared goods. The examination of the goods was carried out in Ashutosh CFS, Mundra on 16.03.2024 in the presence of

Shri Panchraj Sinh, Docs. Executive, Ashutosh CFS, Mundra and Shri Deep Narayan Tiwari, 'G' card holder of CB firm M/s. Bhairav Cargo Clearing Agency. I find that during the examination, container seal was found tallied; the goods were found as declared as per the BE and other import documents; the number of cartons was found tallied against the description mentioned in the packing list; on opening the cartons of similar goods on random basis, number of smaller packages were also found tallied; the number of PP bags were found as 873 as declared; no goods other than declared in the BE were found in the container. The goods were handed over to CFS for safe custody.

15. I find that representative sample of the goods Polyester Knitted Fabrics (Mix Lot, Mix Colour, Mix GSM) was drawn in the examination report dated 16.03.2024 which was sent to CRCL, Kandla vide Test Memo No. 916/23-24 dated 28.03.2024. Test report in respect of said Test Memo has been received from CRCL, Kandla on the basis of which, it appears that the goods are appropriately classifiable under the CTH-60019200 as discussed in Para 4 above. As rate of duty under the above said both CTH are same. Hence, differential duty payable in respect of subject goods is zero.

16. I find that the valuation of Aluminium Film Balloon, Glass Chatons SS12, Glass Chatons SS23 and Car Vacuum cleaner was checked with the NIDB data and after analysing the NIDB data, it was found that the importer has mis-declared the value of these imported goods and accordingly, their Transaction value is to be rejected in terms of Rule 12 of the Customs Valuation Rules, 2007 read with Section 14 of the Customs Act, 1962 and re-determined as detailed in Table-C above. The importer has paid total duty (BCD, SWS & IGST) of Rs.3,52,382/- in respect of these goods whereas, after re-determining the assessable value of these goods, total duty (BCD, SWS & IGST) payable comes out to Rs.5,99,018/- as calculated in Table-C above. Therefore, it appears that the importer is liable to pay differential duty amounting to Rs.2,46,636/- in respect of the above said 04 goods.

17. I find that the investigation has established that Aluminium Film Balloon, Glass Chatons SS12, Glass Chatons SS23 and Car Vacuum cleaner have been undervalued and Polyester Knitted Fabrics have been mis-classified by the importer. By these acts of omission and commission, 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 for the above said 04 goods.

17.1. I find that the importer has misclassified the goods Polyester Knitted Fabrics under CTH 60063200 whereas appropriate CTH of the goods is 60019200 as per the Test Report

and also, the goods Aluminium Film Balloon, Glass Chatons SS12, Glass Chatons SS23 and Car Vacuum cleaner have been undervalued for which assessable value has been re-determined as Rs.16,02,869/- resulting in short payment of Rs.2,46,636/-. In view of the same, I hold that the importer has rendered these goods liable for confiscation under section 111(m) of the Customs Act, 1962 and the importer is liable for penalty under section 112(a) (ii) of the Customs Act, 1962.

18. Section 125(1) of the Customs Act, 1962 provides that:

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

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

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

18.1. I find that the said provision makes it mandatory to grant an option to the owner of confiscated goods to pay fine in lieu of confiscation in case the goods are not prohibited. Considering the facts of the case, I find it appropriate to grant an option to the importer to pay fine in lieu of confiscation.

19. In view of the foregoing discussion and findings, I pass the following order:

ORDER

- i. I reject the classification of Polyester Knitted Fabrics (Mix Lot, Mix Colour, Mix GSM) having assessable value of Rs.1,56,613/- declared under CTH-60063400 in BE No. 2525124 dated 11.03.2024 and order to re-classify the same under CTH-60019200;
- ii. I reject the assessable value of the goods Aluminium Film Balloon, Glass Chatons SS12, Glass Chatons SS23 and Car Vacuum Cleaner imported under the above said

BE, under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determine the same as Rs.16,02,869/- under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

- iii. I order to re-assess the said Bill of Entry accordingly under Section 17(4) of the Customs Act, 1962.
- iv. I confiscate the goods mentioned at (i) and (ii) above, imported in contravention of Section 46 of the Customs Act, 1962, under Section 111(m) of the Customs Act, 1962. However, considering facts of the case and provisions of the Section 125 of the Customs Act, 1962, I give an option to the importer to re-deem the same on payment of Redemption Fine of Rs.2,00,000/-(Rs. Two lakh Only) in lieu of confiscation.
- v. I impose penalty of Rs. 20,000/-(Rs. Twenty Thousand Only) on the importer M/s. Sphathik Archives, Farrukhabad, under Section 112(a)(ii) of the Customs Act, 1962.

20. 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

Arun Kumar

Date: 07-06-2024 13:01:00

Arun Kumar

ADDITIONAL COMMISSIONER

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

To,
M/s. Sphathik Archives,
526, Kali Devi Madar Gate,
Near I.T.I. Fatehgarh, Farrukhabad.

Copy to:

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