



A	File No.	CUS/AG/MISC/413/2025-Gr 3-O/o Pr Commr-Cus-Mundra
B	OIO No.	MCH/ADC/AKM/336/2024-25
C	Date of Order	12.03.2025
D	Passed by	Amit Kumar Mishra Additional Commissioner, Import Assessment, Custom House, Mundra.
E	SCN No./IR No. & Date	CUS/SIIB/ALT/445/2024-SIIB dated 21.02.2025
F	Noticee / Party / Importer	M/s. White Ink Trade Private Limited Everest Chambers 705, B Wing, Plot No 794, Near Star Plus Office, Andheri, Kurla Road Marol, Andheri East, Mumbai-400059
G	DIN	20250371MO0000000D7A

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

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.

BRIEF FACT OF THE CASE: -

M/s. White Ink Trade Private Limited (IEC: AADCW2769A) (hereinafter referred to as “the importer” for sake of brevity) having its registered office at Everest Chambers 705, B Wing, Plot No 794, Near Star Plus Office, Andheri, Kurla Road Marol, Andheri East, Mumbai-400059, filed the following Bill of Entry for import of Other Knitted or Crocheted Fabrics, of Synthetic Fibers N.E.S, (Single Jersey MMF Spun 100% Polyester Grey Knitted Fabric) falling under CTH-60063200 at Mundra Port:-

TABLE -A

Sr. No.	Bill entry No. of and Date	Container Nos.	Description of goods	Assessable Value of goods (in Rs.)	Duty BCD+SWS (in Rs.)	(incl. IGST (in Rs.)
1	4789811 dated 30.07.2024	WEDU8263897	Other Knitted or Crocheted Fabrics, of Synthetic Fibers N.E.S, (Single Jersey MMF Spun 100% Polyester Grey Knitted Fabric)	1,77,42,711	0	8,87,136

2. Examination and Investigation:

Based upon NCTC alert, the consignment covered under bill of lading no. MUSJEBMUN00186 dated 22.07.2024 was put on hold for SIIB examination. The examination of goods was carried out in presence of Shri Narendra Sinh Jadeja representative of CHA-M/s. World Cargo Logistics and Shri Ismail Sumra, Sr. Executive of Ashutosh CFS. During the examination, the container number and seal number was cross checked with the import documents (Bill of entry) submitted by the CHA representative and was found same as declared in documents. The goods/cargo covered under said bill of entry is Other Knitted or Crocheted Fabrics, of Synthetic Fibers N.E.S, (Single Jersey MMF Spun 100% Polyester Grey Knitted Fabric) under CTH-60063200. During examination, the container seal was cut and on opening the gate of container, it was

observed that goods/cargo were white color fabric available in rolls, each roll was packed in transparent plastic polyethylene film. Further, from the packing of the rolls, it was seen that there was a sticker, pasted on all rolls, the description mentioned on sticker was "ST/SN, ROLL NO-, NET WEIGHT-". Further, the container was 100% de-stuffed with the help of labours, and random rolls were selected for weightment and found that weight of selected rolls was same as mentioned on sticker pasted on that rolls. The length of each roll was same and was found approx. 5.5 feet. During the examination, it was observed that there was only one type of cargo i.e., fabric in white color. Further, with the help of labour and surveyor, all rolls were quantified and found that there were total 768 rolls, which was same as declared in the Bill of entry. Thereafter, the representative sample from randomly selected roll no. 86 was drawn for lab testing to ascertain the exact nature, composition of the goods and the same were sent to CRCL, Kandla vide test memo no. 95/05.08.2024.

2.2 The CRCL, Kandla had sent the test report vide no. SIIB/DRI 4568 dated 09.08.2024, wherein it is mentioned that the composition of sample consists 91.20% Polyester by weight and balance Lycra.

The relevant portion of the report is reproduced hereunder:

<i>Nature:</i>	<i>The Sample as received is in the form of cutpiece of white weft knitted fabric.</i>
<i>Composition:</i>	<i>It is composed of Polyester multifilaments yarn along with small amount of Lycra. GSM (as such)= 226.1 Selvedge to selvedge width (cms)=164 % Composition, % of Polyester = 91.20% by wt. % of Lycra = balance.</i>
<i>Notes/ Comments:</i>	
	<i>Sealed remnant sample returned herewith</i>

From the above test report received from CRCL, Kandla, the goods were found to be containing more than 5% elastomeric yarn. Therefore, it appears that the goods have been mis-classified.

2.3 A letter dated 20.08.2024 was received from the importer, wherein they requested for re-testing of the goods. Accordingly, the remnant sample was sent to CRCL Delhi vide test memo no. 121/19.09.2024. The CRCL, Delhi had sent the test report vide letter F. No. 26-CUS/C-107/2024-25 dated 11.11.2024, wherein it is mentioned that the

composition of sample consists 94.11% Polyester by mass and balance Elastomeric yarn.

The relevant portion of the report is reproduced hereunder:

“RETEST – REPORT

The sample is in the form of cut piece of off-white weft knitted fabric. It is made of multifilament yarn of polyester along with elastomeric yarn (spandex). It has following percentage composition: -

Polyester filament yarn (% by mass) = 94.11

Elastomeric yarn (spandex) % by mass = Balance

G.S.M. (as such) = 224 g/ m²

The sample u/r is other than pile fabric and bonded fabric.

The sample u/r is other than coated/impregnated / covered/laminated fabric.

Sealed remnant sample returned separately.”

From the above test report received from CRCL, Delhi, the goods were found to be containing more than 5% elastomeric yarn. Therefore, the goods appear to be classifiable under **CTH - 60041000** instead of **CTH - 60063200** as declared by the importer. Therefore, it appears that the goods have been mis-classified.

3. Classification of the imported goods:

3.1 The test reports received from the CRCL, Kandla and CRCL, Delhi as discussed above have been examined with respect to the declaration made by the importer to determine the correct and proper CTH of the imported goods. The goods covered under Test Memo no. 95/05.08.2024 are found to be mis-declared in terms of classification of the goods as the goods were declared as "Other Knitted or Crocheted Fabrics, of Synthetic Fibers N.E.S, (Single Jersey MMF Spun 100% Polyester Grey Knitted Fabric under CTH 60063200", however, as per test reports, the goods have more than 5% elastomeric yarn. Therefore, the correct Classification of the goods is required to be ascertained. It is apparent that, as far as the entries at heading level are concerned, heading 6004 of the Import Tariff specifically include "Knitted or Crocheted Fabrics of a Width Exceeding 30 cm, Containing by Weight 5% or more of Elastomeric Yarn or Rubber Thread, other than those of Heading 6001", accordingly, impugned goods appear to be appropriately classifiable under the heading 6004. The said Heading covers relevant Tariff item at the single dash (-) level as follows:

i. Knitted or crocheted fabrics of a width exceeding 30 cm, containing by weight 5 percent or more of elastomeric yarn or rubber thread, other than those of heading 60.01:

ii. Other:

The sub-heading (ii), above has been ruled out as per test results. Therefore, the merit subheading of the impugned goods appears to be under (i), i.e. "Knitted or crocheted fabrics of a width exceeding 30 cm, containing by weight 5 percent or more of elastomeric yarn or rubber thread, other than those of heading 60.01". Accordingly, impugned goods are appropriately classifiable under the Tariff item 60041000. Therefore, as per test report, received from CRCL Kandla and CRCL, Delhi, the imported goods appear to be classifiable under CTH 60041000, wherein, the applicable rate of duty is 20% (BCD) + 2% (SWS) + 5% (IGST) per kg.

3.2 In view of the above, it appears that the importer has imported the goods containing more than 5% elastomeric yarn. Accordingly, the goods appear to be appropriately classifiable under CTH-60041000. Therefore, the importer has mis-declared and mis-classified the goods under CTH-60063200 instead of correct CTH-60041000. Accordingly, the goods appear to be liable for confiscation under Section 111 (f), (1), (m) and (q) of the Customs Act, 1962.

4.1 The importer has availed the Country of Origin based exemption on declared goods, i.e. ""Other Knitted or Crocheted Fabrics, of Synthetic Fibers N.E.S, (Single Jersey MMF Spun 100% Polyester Grey Knitted Fabric", from applicable Customs duty as per Notification No. 22/2022- Customs dated 30.04.2022, as amended vide Notification no. 08/2023- Customs dated 01.02.2023, Notification no. 20/31.03.2023 and 36/2023- Customs dated 29.04.2023. The Section 28DA of the Customs Act, 1962 read with Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 provides for procedure regarding claim of preferential rate of duty. The relevant provisions of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 are reproduced below:-

Rule 4. "Origin related information to be possessed by importer.-

The importer claiming preferential rate of duty shall-

(c) exercise reasonable care to ensure the accuracy and truthfulness of the aforesaid information and documents."

Rule 8. "Miscellaneous. -

(2) Where it is established that an importer has suppressed the facts, made wilful mis-statement or colluded with the seller or any other person, with the intention to avail undue benefit of a trade agreement, his claim of preferential rate of duty shall be disallowed and he shall be liable to penal action under the Act or any other law for the time being in force."

4.2 During the course of investigation, Summons dated 10.01.2025 was issued to the importer i.e, M/s. White Ink Trade Private Limited to produce the documents and to tender statement pertaining to the Bill of entry no. 4789811 dated 30.07.2024. In response, a statement of Shri Mahavirsinh Pravinsinh Gohil, Authorised representative of M/s. White Ink Trade Private Limited was recorded on 16.01.2025 , wherein, he, inter-alia stated that:-

- He looks after the day to day work of the firm, M/s. White Ink Trade Private Limited and the firm is engaged in the trading of Spices in the local market.
- He perused the test report Lab no.4568-SIIB/06.08.2024 from CRCL Kandla and stated that they had not agreed to the result of the above test report and therefore requested for the re-testing of the goods.
- He perused the re-test report sent by CRCL, New Delhi vide letter F.No.26-CUS/C-107/2024-25 dated 11.11.2024 and stated that they accept the above mentioned report and requested to allow them for re-export of the goods mentioned in the Bill of Entry no.4789811 dated 30.07.2024.
- He agreed that the goods declared in the bill of entry no. 4789811 dated 30.07.2024 should fall into the CTH-60041000 (containing by weight 5% or more of elastomeric yarn but not containing rubber thread) and not in CTH-60063200 as declared in the said Bill of Entry.
- On being asked that the benefit of the COO (Country of Origin

notification no. 022/2022 dated 30.04.2022 Sr.no. 6283) is not admissible to them due to mis-classification of goods in Bill of Entry no. 4789811 dated 30.07.2024, he stated that they had placed the order for the material under CTH-60063200 (Other knitted OR Crocheted fabrics, of synthetic Fibers), as declared in the said Bill of Entry, to the supplier but as the supplier not supplied the goods as per their requirement, they want to re-export the goods to the supplier. Further, he admitted that due to mis-classification, they are not entitled to the benefit of the COO (Country of Origin notification no. 022/2022 dated 30.04.2022).

- He further stated that as the material imported vide Bill of Entry no.4789811 dated 30.07.2024 is not as per their specification/composition, they have requested to re-export the cargo of the said Bill of Entry to the supplier. He also stated that they are agree to pay any fine/penalty as per customs procedure and don't want any SCN/PH. He requested to allow them to re-export the cargo.

From the above, it appears that the importer has mis-classified the goods as "Other Knitted or Crocheted Fabrics, of Synthetic Fibers N.E.S, (Single Jersey MMF Spun 100% Polyester Grey Knitted Fabric" under CTH 60063200, however, as per test reports, received from CRCL Kandla and CRCL, Delhi, the imported goods are "Knitted or Crocheted Fabrics of a Width exceeding 30 cm, containing by Weight 5% or more of Elastomeric Yarn or Rubber Thread, other than those of Heading 6001" and the same appears to be classifiable under CTH 60041000. Therefore, the importer has mis-declared and mis-classified the goods & suppressed the facts to avail undue benefit of a trade agreement. The importer has agreed with the test reports and stated that they had placed the order for the material under CTH-60063200 (Other knitted OR Crocheted fabrics, of synthetic Fibers) to the supplier but the supplier had not supplied the goods as per their requirement. They have also agreed that the benefit of the COO based exemption (notification no. 22/2022 dated 30.04.2022) is not admissible to them due to mis-classification of goods in Bill of Entry no. 4789811 dated 30.07.2024. Further, they requested to allow them for re-export of the goods mentioned in the Bill of Entry no.4789811 dated 30.07.2024. Accordingly, it appears that the benefit of preferential rate of duty is liable to be disallowed on the declared goods i.e. "Other Knitted or Crocheted Fabrics, of Synthetic Fibers N.E.S, (Single Jersey MMF Spun 100% Polyester Grey Knitted Fabric".

4.3 Short payment of duty:

Since as per the Lab test report received from CRCL Kandla and CRCL Delhi, the goods imported vide Bill of entry no. 4789811 dated 30.07.2024 were found mis-declared in terms of classification. Therefore, the benefit of preferential rate of duty is liable to be disallowed on the declared goods i.e. "Other Knitted or Crocheted Fabrics, of Synthetic Fibers N.E.S, (Single Jersey MMF Spun 100% Polyester Grey Knitted Fabric". Accordingly, it appears that the importer is liable to pay duty (BCD+SWS+IGST) of Rs. 49,85,702/- instead of duty of Rs. 8,87,135/- (IGST), as declared in the said BE and the duty, as per new CTH, is calculated as under:-

TABLE-B

Sr No	Declared Goods	Goods found	CTH Declared	Correct CTH	Value (in Rs)	BCD @ 20% (in Rs)	SWS @ 2% (in Rs)	IGST @ 5% (in Rs)	Total Duty (Rs)
	Other Knitted or Crocheted Fabrics, of Synthetic Fibres N.E.S (Single Jersey MMF Spun 100% Polyester Grey Knitted fabric)	Width Exceeding 30 cm, containing by Weight 5% or more Elastomeric Yarn or Rubber Thread, other than those of Heading 6001"	60063200	60041000	17742711	3548542	354854	1082305	4985702

05. RELEVANT LEGAL PROVISIONS:

(A) 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 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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(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),
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

6. Summary of Investigations Conducted:

6.1 The importer M/s White Ink Trade Private Limited (IEC AADCW2769A), had filed Bill of Entry No. 4789811 dated 30.07.2024 at Mundra port (INMUNI) through their Custom Broker M/s World Cargo Logistics, for import of "Other Knitted or Crocheted Fabrics, of Synthetic Fibers N.E.S, (Single Jersey MMF Spun 100% Polyester Grey Knitted Fabric)". The said bill of entry was put on hold on the basis of NCTC Alert for SIIB examination.

6.2 Whereas, on the basis of the investigation carried out in this regard, it appears that the importer has imported the goods "Other Knitted or Crocheted Fabrics, of Synthetic Fibers N.E.S, (Single Jersey MMF Spun 100% Polyester Grey Knitted Fabric)" under CTH 60063200. However, as per test reports, received from CRCL Kandla and CRCL, Delhi, the imported goods are found as "Knitted or Crocheted Fabrics of a Width exceeding 30 cm, containing by Weight 5% or more of Elastomeric Yarn or Rubber Thread, other than those of Heading 6001" and the same appears to be classifiable under CTH 60041000. Therefore, the imported goods appear to be mis declared and misclassified. The importer has also availed the Country of Origin based exemption on declared goods, i.e. ""Other Knitted or Crocheted Fabrics, of Synthetic Fibers N.E.S, (Single Jersey

MMF Spun 100% Polyester Grey Knitted Fabric", from applicable Customs duty as per Notification No. 22/2022-Customs dated 30.04.2022, as amended vide Notification no. 08/2023-Customs dated 01.02.2023, Notification no. 20/31.03.2023 and 36/2023-Customs dated 29.04.2023. However, the benefit of Country of Origin based exemption appears liable to be rejected as per Section 28DA of the Customs Act, 1962 read with Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 due to mis-declaration and misclassification of imported goods. The importer has agreed with the test reports and stated that they had placed the order for the material under CTH-60063200 (Other knitted OR Crocheted fabrics, of synthetic Fibers) to the supplier but the supplier had not supplied the goods as per their requirement. They have also agreed that the benefit of the COO based exemption (notification no. 22/2022- Customs dated 30.04.2022 Sr.no. 6283) is not admissible to them due to mis-classification of goods in the said Bill of Entry. Further, they requested to allow them for re-export of the goods mentioned in the Bill of Entry no.4789811 dated 30.07.2024. Thus, by the act of omission and commission at the level of importer, it appears that, these goods are liable for confiscation under Section 111 (f), (1), (m) and (q) of the Customs Act, 1962.

6.3 The importer has declared the goods as "Other Knitted or Crocheted Fabrics, of Synthetic Fibers N.E.S, (Single Jersey MMF Spun 100% Polyester Grey Knitted Fabric)" under CTH 60063200 instead of correct description and CTH as "Knitted or Crocheted Fabrics of a Width exceeding 30 cm, containing by Weight 5% or more of Elastomeric Yarn or Rubber Thread, other than those of Heading 6001" under CTH 60041000. Accordingly, the imported goods appear to be found mis declared and mis classified. Further, the importer has wrongly availed the benefit of Country of Origin based exemption and was liable to pay the duty (BCD + SWS + IGST) of Rs. 49,85,702/- on the import of goods instead of Rs. 8,87,135/- (IGST), as declared in the said BE. Thus, there appears to be non/short levy of Customs duty amounting to Rs. 40,98,567/-. Thus, in view of the act of omission and commission at the level of importer, it appears that, the importer has contravened the provisions of Section 46 of the Customs Act, 1962, in as much as, they failed to make correct and true declaration and information in the Bill of Entry and hence appears to be liable for penalty under section 112(a)(ii) of the Customs Act, 1962.

The relevant portion of said provisions is as under:

Section 46. Entry of goods on importation. -

1. The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:

(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 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.

6.4 It appears that the importer has knowingly submitted false and incorrect declaration in the bill of entry no. 4789811 dated 30.07.2024 and invoice submitted before Customs authorities. The said bill of entry is under First Check, however it appears that the First Check was requested by importer after query had been raised by the department during assessment. Therefore, the importer has thereby rendered themselves liable for penalty under Section 114 AA of the Customs Act, 1962.

6.5 The importer vide letter dated 17.02.2025 requested to waive issuance of show cause notice and personal hearing and requested for permission to re-export the cargo imported by bill of entry no. 4789811 dated 30.07.2024.

7. In view of the above facts, it appears that-

- i. The classification of the goods, i.e. CTH-60063200, as declared by the importer in the Bill of Entry No. 4789811 dated 30.07.2024 is liable to be rejected and the goods are liable to be re-classified under CTH-60041000 as discussed at para 3.1 & 3.2 in accordance with the CRCL Kandla and CRCL Delhi lab test reports.
- ii. The benefit of Country of Origin based exemption on declared goods, i.e. "Other Knitted or Crocheted Fabrics, of Synthetic Fibers N.E.S, (Single Jersey MMF Spun 100% Polyester Grey Knitted Fabric)", from applicable Customs duty as per Notification No. 22/2022- Customs dated 30.04.2022 is liable to be denied as discussed at Para 4.1 to 4.3 under Section 28DA of the Customs Act, 1962 read with Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020.
- iii. Total Customs duty involved in the imported goods comes to Rs. 49,85,702/- (Rupees Forty Nine Lakh, Eighty five thousand and seven hundred two only) instead of Rs. 8,87,135/-, as declared in the said BE as discussed at Para 4.3.
- iv. The said Bill of Entry No. 4789811 dated 30.07.2024 is liable to be re-assessed under Section 17(4) of the Customs Act, 1962.
- v. The declared goods, i.e. "Other Knitted or Crocheted Fabrics, of Synthetic Fibers N.E.S, (Single Jersey MMF Spun 100% Polyester Grey Knitted Fabric), having assessable value of Rs. 1,77,42,711/-have been imported by way of mis-declaration and mis classification in contravention of Section 46 of the Customs Act, 1962 and are therefore liable for confiscation under Section 111 (f), (1), (m) and (q) of the Customs Act, 1962.
- vi. The importer i.e., M/s. White Ink Trade Private Limited, holding IEC No: AACDW2769A are liable for Penalty under Section 112(a)(ii) and Section 114AA of the Customs Act, 1962.

08. DEFENCE SUBMISSION, WAIVER OF NOTICE AND PERSONAL HEARING

The Importer vide Letter 06.03.2025 filed their written submissions, wherein it was stated that –

- That they came to know after the CRCL Delhi Lab report that the fabric contains 94.11 % polyester and a minuscule percentage of elastomeric yarn, specifically 5.89 %. They like to emphasize that this percentage is extremely small and does not alter the essential characteristics of the fabric. In fact, the percentage of elastomeric yarn is so negligible that it can be considered de minimis.
- That the small percentage should not be the determining factor of the classification of fabric.
- That this is their company's first time importing this consignment and they relied solely on the documents provided by our foreign supplier. They are attaching the documents for consideration as proof.
- That had no reasons to doubt the accuracy of these documents as they were provided by their supplier, who is responsible for ensuring the correctness of the information. Unfortunately, the supplier incorrectly classified the goods, which led to the detention of our consignment by the SIIB.
- They have attached the purchase order and other supporting documents, which clearly show that they ordered goods under CTH 60063200.

- Request for re-export of our consignment, taking into account the specific circumstances of this case. That a fair and reasonable interpretation of the customs regulations would allow for the re-export of our goods

The importer has requested that they do not want any Show Cause Notice or Personal Hearing in the matter and necessary adjudication proceeding/action may be initiated in respect of the said Bill of Entry as per the Customs Act, 1962.

DISCUSSION & FINDING

09. I have carefully gone through the Investigation report No. 116/2024-25 dated 21.02.2025 issued by the Deputy Commissioner of Customs (SIIB), Mundra and I find that Importer M/s. White Ink Trade Private Limited has requested for waiver of the show cause notice and personal hearing in the matter. Therefore I find that the principle of natural justice as provided in section 122A of the Customs Act, 1962 has been completed. Hence I proceed to decide the case on the basis of the documentary evidence available on records.

10. Ongoing through the facts of the case, I find that the following issues needed to be decided in the present proceedings:

- i. Whether the declared classification of the goods needs to be rejected and the same is liable to be re-classified or otherwise.
- ii. Whether the Importer is liable for penalty under Section 112(a) (ii) and Section 114 AA of the Customs Act, 1962.

11. I find that M/s. White Ink Trade Private Limited has filed the following Bill of Entry for import of Other Knitted or Crocheted Fabrics, of Synthetic Fibers N.E.S, (Single Jersey MMF Spun 100% Polyester Grey Knitted Fabric) falling under CTH-60063200 at Mundra Port:-

TABLE -C

Sr. No.	Bill of entry No. and Date	Container Nos.	Description of goods	Assessable Value of goods (in Rs.)	Duty BCD+SWS (in Rs.) (incl.)	IGST (in Rs.)
1	4789811 dated 30.07.2024	WEDU8263897	Other Knitted or Crocheted Fabrics, of Synthetic Fibers N.E.S, (Single Jersey MMF Spun 100% Polyester Grey Knitted Fabric)	1,77,42,711	0	8,87,136

12. I find that the composition of fabric as revealed in the CRCL Kanda is as under:

% of Polyester = 91.20% by wt.

% of Lycra = balance.

Further, I find that Importer vide letter dated 20.08.2024 had requested for re-testing of the goods. Accordingly, the remnant sample was sent to CRCL Delhi vide test memo no. 121/19.09.2024. The composition of fabric as revealed in CRCL, Delhi is:

Polyester filament yarn (% by mass) = 94.11

Elastomeric yarn (spandex) % by mass = Balance

I find that as far as the entries at heading level are concerned, heading 6004 of the Import Tariff specifically include "Knitted or Crocheted Fabrics of a Width Exceeding 30 cm, Containing by Weight 5% or more of Elastomeric Yarn or Rubber Thread, other than those of Heading 6001", accordingly, impugned goods appear to be appropriately classifiable under the heading 6004. The said Heading covers relevant Tariff item at the single dash (-) level as follows:

i. Knitted or crocheted fabrics of a width exceeding 30 cm, containing by weight 5 percent or more of elastomeric yarn or rubber thread, other than those of heading 60.01:

ii. Other:

The sub-heading (ii), above has been ruled out as per test results. Accordingly, impugned goods are appropriately classifiable under the Tariff item 60041000.

13. I find that the Importer vide their Letter dated 06.03.2025 has contended that the Test report revealed that fabric contains 94.11% polyester and a minuscule percentage of elastomeric yarn, specifically 5.89 %. They have contended that the percentage of elastomeric yarn is extremely small and doesn't alter the essential characteristics of the fabric.

13.1 I find that the Importer has emphasized that the percentage of elastomeric yarn is so negligible that it can be considered de minimis. They further stated that the small percentage should not be the determining factor in the classification of the goods and the primary component of the fabric is polyester, which constitutes 94.11% of the fabric composition. The

Importer has further requested for re-export of the cargo, as they had only ordered Fabric classified under CTH 60063200 from their foreign supplier.

14. I find that it is undisputed from the findings of the Test Report of CRCL Delhi that the percentage of the Elastomeric Yarn is 5.89 % of total weight of the fabric , and therefore the impugned goods are rightly classifiable under CTH 60041000 **as per the heading 6004 of the Import Tariff specifically include "Knitted or Crocheted Fabrics of a Width Exceeding 30 cm, Containing by Weight 5% or more of Elastomeric Yarn or Rubber Thread, other than those of Heading 6001".** Therefore, the declared classification of the goods in the Bill of Entry No.- 4789811 dated 30.07.2024 under CTH 60063200 is liable to be disapproved and the correct classification of the goods is 60041000 as per the Customs Tarrif Act,1975.

15. I find that the Importer in their Statement recorded on 16.01.2025 stated that they had placed the order for the material under CTH 60063200 (Other Knitted or Crocheted fabrics, of synthetic Fibres) to the Supplier but as the supplier not supplied the goods as per their requirement, they want to re-export the goods to the Supplier. I find that in this case, a marginal increase in percentage i.e. 0.89 % of elastomeric yarn (as per the heading 6004, Elastomeric Yarn by Weight less than 5% is permissible) has rendered the goods classifiable under CTH 60041000. While this discrepancy may seem significant, it is essential to consider the circumstances surrounding the importer's declaration in the Bill of Entry.

It is crucial to note that the Importer had relied on the documentation provided by the foreign supplier, which is a common practice in the International Trade. The Importer had filed the Bill of Entry based on the information available to them, and it is not uncommon for such documentation to contain errors and discrepancies. In the absence of any malafide intention or mens-rea, it is reasonable to extend the benefit of doubt to the Importer.

16. It is pertinent to note that the import duty (BCD@ 20% + SWS@2% + IGST @ 5%) is same for both CTH 60063200 and 60041000. This fact further re-inforces the notion that there was no intention on the part of the Importer to evade higher duty. However ,this should not be taken as a justification for the error, but rather as a mitigating factor.

17. I find that as the goods were found classifiable under CTH 60041000, the benefit of the COO based exemption (notification no. 22/2022-Customs dated 30.04.2022 Sr.no. 6283) is not admissible to them. Further, the Importer has requested to allow them for re-export of the goods mentioned in the Bill of Entry no.4789811 dated 30.07.2024. I find that in the instant case, there is no mensrea to establish that the misclassification of goods was wilful and the importer has deliberately suppressed the correct information/facts in the documents. I find reliance on the judgement of the Hon'ble Bombay High Court in Commissioner of Customs vs. Gaurav Enterprises. (2006 (193) ELT 532 (Bom.)] held that *claiming the benefit of exemption in the Bills of Entry filed does not amount to suppression/mis-declaration on the part of the Assesse*. In Lewel Altair Shipping Private Limited Vs. Commissioner of Customs [2019(366) ELT 318 (Tri-Hyd.)] which was affirmed by the Hon'ble Supreme Court , it was held that *claiming an incorrect classification or benefit of ineligible exemption does not amount to making a false or incorrect statement because it is not an incorrect description of goods but only a claim made by the assesse.....*".

In the above case, the importer had filed documents on the basis of documentation provided by their foreign supplier. After testing of the goods, Given this circumstance, it is reasonable to conclude that the Importer's mistake was not a deliberate attempt to mislead or deceive. Rather, it appears an error resulting from reliance on information provided by the Supplier. In the absence of clinching evidence establishing the Importer's culpability, it would be unfair to impose a severe penalty. Therefore, considering the mitigating circumstances, a penalty on the lower side should be imposed under Section 114 AA of the Customs Act,1962.

18. However, I find that the importer while filing the impugned Bill of Entry has subscribed to a declaration regarding correctness of the contents of Bill of Entry under Section 46(4) of the Act, ibid. Further, Section 46 (4A) of the Act, 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 statuary obligation cast upon him and made wrong declaration about the description & CTH of imported goods.

Further, with the introduction of self-assessment under Section 17(1) of Customs Act, 1962 the onus lies on the importer to correctly self-assess the bill of entry with correct amount of leviable duties. In the present case, it is only after the findings of Test report, it was ascertained that the correct classification of the goods is under CTH 60041000. Therefore, Country of Origin based preferential rate of duty is not admissible, as the Customs Tariff Heading i.e 60063200 mentioned in the COO No. MOE-CoO-CICO-0098896-20240730 dated 30.07.2024 issued under CEPA (Comprehensive Economic Partnership Agreement) is different from the CTH (60041000) and is only found after testing of the goods. Although the exemption of duty is also applicable to CTH 60041000 in the Notification No- 22/2022-Customs dated 30.04.2022, but the COO benefit can't be extended due to mismatch in the Customs tariff Heading. Therefore, the Importer is liable for penalty under Section 112 (a)(ii) of the Customs Act,1962. Since in the instant case, there is a marginal deficit of percentage (0.9%) of Polyester yarns which could have made the goods eligible to remain classified in their declared classification i.e CTH 60063200,therefore, I find that a lenient approach should be adopted while imposing penalty on the Importer.

18.1 I find that the Investigation Report has stated that the goods appears to be liable for confiscation under Section 111 (f),(l),(m) and (q) of the Customs Act,1962. I find that the mis-declaration and mis-classification of the goods under CTH-60063200 instead of correct CTH-60041000 rendered the goods liable for confiscation under Section 111 (m) and (q) of the Customs Act, 1962. However, I hold that the provisions of the Section 111 (f) and (l) of the Customs Act, 1962 are not applicable in this case. The said sub-sections are invoked when the goods are not mentioned in the import manifest or when the goods are not included or found in excess of those included in the Bill of Entry . But in the present case, goods were already declared in the Import General Manifest and the Bill of Entry, although the testing revealed that they actually fall under a different Customs Tariff Heading. Nevertheless, there is no evidence to suggest that the goods were not mentioned in the Import Manifest or they were found in excess of those declared. Therefore, the provisions of the Section 111 (f) and (l) are not attracted and the goods are not liable for confiscation under these provisions but liable for confiscation under the provisions of Section 111 (m) and (q) of the Customs Act, 1962.

19. Furthermore, Section 125 of the Customs Act, 1962 provide that Whenever confiscation of any goods is authorized 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.

20. In view of the above, I pass following Order:

ORDER

- i. I reject declared CTH 60063200 of the goods imported vide BE No. 4789811 dated 30.07.2024 and order to re-classify the same under CTH 60041000 as detailed in para supra.
- ii. I deny the Country of Origin based exemption on declared goods i.e “Other Knitted or Crocheted Fabrics, of Synthetic Fibres N.E.S,(Single Jersey MMF Spun 100% Polyester Grey Knitted Fabric)” from applicable Customs duty as per Notification No. 22/2022-Customs dated 30.04.2022 under Section 28DA of the Customs Act,1962 read with Customs (Administration of Rules of Origin under Trade Agreements) Rules,2020 as the Customs Tariff Heading i.e 60063200 mentioned in the COO No. MOE-CoO-CICO-0098896-20240730 dated 30.07.2024 differs from the CTH 60041000 of the goods found after testing.
- iii. I order to confiscate the goods imported vide BE No. 4789811 dated 30.07.2024 having assessable value of Rs 1,77,42,711/- under Section 111(m) and 111(q) of the Customs Act, 1962. I hold that the provisions of Section 111 (f) and (l) of the Customs Act,1962 are not applicable in this case as discussed in para supra. I give the option to the importer to redeem the goods for re-export on payment of Rs. 8,00,000- (Rs Eight Lakhs only) as redemption fine under Section 125 of the Customs Act.
- iv. I impose the penalty of Rs 2,00,000/- (Rs Two Lakhs only) on the importer M/s. White Ink Trade Private Limited under Section 112 (a) (ii) of Customs Act, 1962.
- v. I impose the penalty of Rs 1,00,000/- (Rs One Lakh only) on the importer M/s. White Ink Trade Private Limited under Section 114 AA of Customs Act, 1962.

21. 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.

AMIT KUMAR MISHRA
ADDITIONAL COMMISSIONER
Customs House, Mundra

To,

M/s. White Ink Trade Private Limited ,
Everest Chambers 705, B Wing, Plot No 794,
Near Star Plus Office, Andheri, Kurla Road Marol, Andheri East,
Mumbai-400059

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, Mundra.
5. Office Copy