

	<p style="text-align: center;">सीमा शुल्क के आयुक्त का कार्यालय सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात OFFICE OF THE COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62, <u>Email-adj-mundra@gov.in</u></p>	
A. File No.	: GEN/ADJ/COMM/309/2024-Adjn-O/o Pr. Commr- Cus-Mundra	
B. Order-in-Original No.	: MUN-CUSTM-000-COM-20-25-26	
C. Passed by	: Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.	
D. Date of order and Date of issue:	: 01.09.2025 01.09.2025	
E. SCN No. & Date	: SCN F. No. GEN/ADJ/COMM/309/2024-Adjn-O/o Pr. Commr-Cus-Mundra, dated 02.09.2024.	
F. Noticee(s) / Party / Importer	: M/s. Vinayak Creations	
G. DIN	: 20250971MO0000616066	

- यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
- यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-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 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:
“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”
“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”
- उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within three months from the date of communication of this order.
- उक्त अपील के साथ -/ 1000 रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रुपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रुपये से अधिक किंतु पचास लाख रुपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रुपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्ड पीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।
Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less,

Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।
Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

8. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

Brief Fact of the Case

1. M/s. Vinayak Creations (IEC-0512015414), having address at 89-C, 2nd Floor, DDA Janta Flats, Pitampura Village, Pitampura, Delhi (hereinafter referred to as 'the importer'), was found to be engaged in evasion of customs duty on import of fabrics by mis-declaring the same in their Bills of Entry. The imports were routed through an SEZ Warehousing Unit namely M/s OWS Warehouse Services LLP, Survey No. 169, Sector-8, Village Dhruve, Mitap Road, MPSEZ, Mundra, District Kutch, Gujarat (hereinafter referred to as 'M/s OWS'). The importer was declaring the imported fabric as "Lining Fabric for Headgear" under Chapter 65 of the Customs Tariff Act, 1975, whereas the same actually appeared to be "Polyester Woven Fabric" classifiable under Chapter 54 of the said Act. By misclassifying the imported fabric under Chapter 65, the importer sought to avail lower duty liability and thereby evade customs duty.
2. One of such consignments was imported vide Bill of Entry No. 2007996 dated 10.06.2022 wherein the importer declared the goods as "Lining Fabric for Headgear" under CTI 65070000. The declared classification falls under "Head-bands, linings, covers, hat foundations, hat frames, peaks and chinstraps for headgear" in the CTA, 1975. To substantiate the declaration, the importer produced commercial invoice, packing list, bill of lading and bill of entry showing description as "Lining Fabric for Headgear". However, on examination of the nature of the goods and by reference to the scope of Heading 6507 and its Explanatory Notes, it appeared that the imported goods did not qualify as lining fabric for headgear, but were in fact polyester woven fabrics imported in roll form.
3. The issue of classification of lining fabric under Heading 6507 has been examined in international jurisprudence. Reference is drawn to the United States International Trade Commission Ruling HQ 959277 dated 10.12.1996, wherein similar goods imported in roll form and claimed as headbands for baseball caps were denied classification under Heading 6507 on the grounds that the imported fabric was not cut to length, not otherwise ready for incorporation into headgear, and its identity as headbands could not be seen with certainty until after further processing. The principles laid down in the said ruling squarely apply to the present case, as the fabric imported by M/s Vinayak Creations was also in roll form, not cut to length, nor otherwise ready for incorporation into headgear. Further investigations revealed that the goods were subsequently sold as such to various traders, including manufacturers of

caps, who described the further processes required to convert the imported fabric into lining material.

4. Pursuant to specific intelligence, officers of the Directorate of Revenue Intelligence, Zonal Unit, Ludhiana (hereinafter referred to as 'DRI') conducted search operations at the business premises of the importer on 07.09.2022. Search was also conducted at their godown premises located at Amrood Wali Gali, Khasra No. 106/416/471, North West Delhi, Village Khera Garhi, Delhi, on the same date. During the course of search at the godown premises, the proprietor of the importer firm, Shri Vikas Mahajan, furnished details of stock position of the imported fabrics declared as "Lining Fabric for Headgear" under CTI 65070000. The stock was found in the form of rolls and was quantified as 1,56,720 kgs, valued at Rs. 86,19,600 (inclusive of clearing expenses). On reasonable belief that the said stock was in fact 100% Polyester Woven Fabric classifiable under Chapter 54 of the CTA, 1975, the goods were detained under Panchnama dated 07.09.2022. The detained stock was handed over to Shri Vikas Mahajan under Supurdginama dated 07.09.2022. Further, representative samples marked as C-1, C-2 and C-3 were drawn from the detained goods for further examination and testing.
5. The statement of Shri Vikas Mahajan, Proprietor of M/s Vinayak Creations, was recorded on 07.09.2022 under Section 108 of the Customs Act, 1962. In his statement, he admitted that his firm had been importing fabrics from China and Taiwan through SEZ Mundra, Gujarat, and sometimes through ICD Tughlakabad. He stated that when consignments arrived at Mundra Port, the goods were de-stuffed in the warehouse of M/s OWS, after which they were self-assessed and cleared on payment of appropriate customs duty. He further explained that on occasions when the system was not functioning, M/s OWS paid the customs duty on their behalf and later raised debit notes for reimbursement. According to him, the only reason for routing imports through SEZ Mundra was the shorter transit time of about 20 days, as compared to 30-40 days required for imports through non-SEZ ports.
6. Shri Mahajan further revealed that orders were received telephonically, and based on these, further orders were placed with overseas suppliers. He identified M/s Jiaxing Haiwo Import & Export Co. Ltd., China, and M/s Suzhou Joy Textile Co. Ltd., China, among their major foreign suppliers, and stated that payments were directly made to these suppliers. He categorically admitted that they had always received the fabric, including the so-called "lining fabric for headgear," in roll form only, and not in cut pieces. He also signed the Panchnama dated 07.09.2022 drawn at their

godown premises in token of correctness and acceptance, and undertook to supply details of Bills of Entry covering the detained goods within a day or two. He confirmed that all stocks of fabric lying in their godown premises were imported goods.

7. It is pertinent to highlight that in this statement, the importer admitted that "lining fabric for headgear" had always been received in roll form, not in cut pieces, thereby contradicting the claim that it could be classified as articles of Chapter 65. This admission was corroborated from the import documents already discussed earlier.
8. Pursuant to the above, DRI vide letter dated 15.09.2022 forwarded sample C-1 (drawn under Panchnama dated 07.09.2022) to CRCL, New Delhi, for testing. CRCL, vide report dated 27.09.2022, opined that the sample described in import documents as "Lining Fabric for Headgear" was in fact a "Dyed woven fabric wholly composed of non-textured multifilament yarns of polyester on both sides." Accordingly, the goods were held classifiable under CTI 54076190 of the Customs Tariff Act, 1975.
9. In view of the above, it appeared that the importer had imported 100% non-textured polyester woven fabric under the guise of "Lining Fabric for Headgear" (CTI 65070000), thereby mis-declaring the goods. Consequently, the detained fabric weighing 1,56,720 kgs, as covered under Panchnama dated 07.09.2022, appeared liable for confiscation under Section 111 of the Customs Act, 1962. The said goods were accordingly seized under Section 110 of the Act vide Seizure Memo dated 21.10.2022. Thereafter, Show Cause Notice dated 06.03.2023 was issued to the importer by the Commissioner of Customs, Customs House, Mundra, in respect of the seized fabric.
10. Further investigation into the modus operandi of misdeclaration revealed that the importer was fully aware of the scope of CTI 65070000. In one of their past consignments, they had imported "Cap Accessories (Metal)" correctly under CTI 65070000 vide Bill of Entry No. 2006297 dated 29.06.2021. This demonstrated their knowledge that cap accessories were legitimately classifiable under Heading 6507, and that fabrics in roll form could not be so classified. Supporting documents such as commercial invoice, packing list, bill of entry, and bill of lading in respect of the said consignment were placed on record.
11. In order to ascertain the actual nature of the imported fabrics in circulation, follow-up searches were conducted at the premises of buyers who had purchased the goods from the importer. One such search was conducted on 22.12.2022 at the premises of M/s Abhinav Sales, Basti Sheikh Road, Near Babrik Chowk, Jalandhar, Punjab, who had purchased

goods from the importer. The proceedings were recorded under Panchnama dated 22.12.2022. During the search, stock of fabric lying at their premises was detained on the reasonable belief that it had been imported by mis-declaring the goods as “Lining Fabric for Headgear” under CTI 65070000, whereas the same was liable for classification under CTH 5407 as polyester woven fabric.

The details of the detained stock were as follows:

Roll No.	Description	Weight (in Kgs.)	Remark
1	Non-Texturized Polyester Woven Fabric	9.410	White Coloured roll
2	Non-Texturized Polyester Woven Fabric	9.990	Black Coloured roll
3	Non-Texturized Polyester Woven Fabric	9.510	Black Coloured roll
4	Non-Texturized Polyester Woven Fabric	9.450	White Coloured roll
5	Non-Texturized Polyester Woven Fabric	9.420	White Coloured roll
Total		47.780	

Subsequently, samples of the detained fabric were drawn vide Panchnama dated 31.01.2023 at the premises of M/s Abhinav Sales, Jalandhar. Samples A-1 to A-4 (from Roll No. 1) and B-1 to B-4 (from Roll No. 2) were taken for testing.

12. Pursuant to the seizure of goods at the premises of M/s Abhinav Sales, Jalandhar, the samples marked A-1 and B-1 were sent by DRI to CRCL, New Delhi, vide letter dated 15.02.2023 for chemical examination. CRCL, vide its test reports dated 23.02.2023, confirmed that both the samples were composed of non-textured multifilament yarns of polyester. Specifically, sample A-1 was reported as “White woven fabric composed of non-textured multifilament polyester yarns,” while sample B-1 was reported as “Dyed woven fabric composed of non-textured multifilament polyester yarns.” These findings once again established that the fabric, though declared as “Lining Fabric for Headgear” under CTI 65070000, was in fact non-textured polyester woven fabric falling under CTI 54076190 of the Customs Tariff Act, 1975. It was also confirmed that such fabric had been further sold to M/s Abhinav Sales, Jalandhar.

13. The samples drawn from the seized/detained stock were forwarded to the Central Revenues Control Laboratory (CRCL), New Delhi for testing and classification. CRCL, after detailed examination, reported that the samples were polyester woven fabrics composed of non-textured multifilament yarns, both dyed and undyed, and not "lining fabrics for headgear" as declared by the importer. The laboratory report confirmed that the correct classification of the said goods is under CTI 54076190 as "Woven fabrics of synthetic filament yarn, containing 85% or more by weight of textured polyester filaments: other woven fabrics, containing 85% or more by weight of non-textured polyester filaments," and not under CTI 65070000 as claimed. The details of the samples tested, their source of seizure, importer's declaration, and CRCL's findings are summarized in the following table:

Sl. No.	Source of Sample	Sample Mark	Description as per Importer	CRCL Findings	Correct Classification
1	Seized stock of 1,56,720 kgs at godown of M/s Vinayak Creations (Panchnama dated 07.09.2022)	C-1 (representative sample)	"Lining Fabric for Headgear" under CTI 65070000	Dyed woven fabric wholly composed of non-textured multifilament yarns of polyester on both sides	CTI 54076190 – Non-textured polyester woven fabric
2	Detained stock at premises of M/s Abhinav Sales, Jalandhar (Panchnama dated 22.12.2022 & 31.01.2023)	A-1 (from Roll No. 1 – White)	"Lining Fabric for Headgear" under CTI 65070000	White woven fabric composed of non-textured multifilament polyester yarns	CTI 54076190 – Non-textured polyester woven fabric
3	Detained stock at premises of M/s Abhinav Sales, Jalandhar (Panchnama dated 22.12.2022 & 31.01.2023)	B-1 (from Roll No. 2 – Black)	"Lining Fabric for Headgear" under CTI 65070000	Dyed woven fabric composed of non-textured multifilament polyester yarns	CTI 54076190 – Non-textured polyester woven fabric

14. In view of these results, the detained stock of 47.780 kgs of fabric at the premises of M/s Abhinav Sales (detained under Panchnama dated 22.12.2022) was held liable for confiscation under Section 111 of the Customs Act, 1962. Accordingly, vide Seizure Memo dated 07.06.2023, the said stock was seized under Section 110 of the Act. A Show Cause Notice dated 19.06.2023 was also issued to the importer by the Assistant Commissioner of Customs, Mundra, in respect of the said seized goods.
15. During the investigation, the statement of Shri Vivek Khanna, Authorised Signatory of M/s Abhinav Sales, Jalandhar, was recorded on 22.12.2022 under Section 108 of the Act. He stated that their firm was engaged in trading different types of fabrics, including polyester woven fabric (both texturized and non-texturized), PU coated fabric, polyester knitted fabric, MC EVA sheets, plastic film rolls, and PU adhesive. He admitted that they had purchased 15,266 kgs of non-texturized polyester woven fabric in rolls against Invoice No. VC/321/2022-23 dated 05.07.2022, issued by M/s Vinayak Creations, wherein the description was mentioned as "Lining Fabric for Headgear" under HSN 65070000. He signed the said invoice in token of having seen it and clarified that he did not know why such description was used in the invoice since the actual goods were polyester woven fabric in roll form. He further confirmed that the goods were billed in kgs or linear meters, and that as on the date of search, only 47.78 kgs of stock remained. The balance quantity had been sent to their sister concern, M/s Sambhav Enterprises, for job work of lamination/bonding with PU Foam or EVA sheet. After such processing, the goods were marketed as fabric laminated with PU Foam (classifiable under HSN 59032090) or with EVA (classifiable under HSN 59039090) and sold to sports goods and footwear manufacturers for use in gloves, leg guards, and shoes. His statement thus established that the fabrics were received and dealt with in rolls, and had no relation to "ready-made linings for headgear."
16. On 10.03.2023, search was conducted at the premises of M/s M.D.G. Footwear Pvt. Ltd., Rohini, Delhi, who had also purchased goods from the importer. Statement of Shri Vishal Gupta, Director of the company, was recorded on the same day under Section 108 of the Act. He admitted having received 1,15,404 kgs of non-texturized polyester woven fabric in roll form against six invoices issued by M/s Vinayak Creations, bearing Nos. VC/216/2022-23, VC/217/2022-23, VC/244/2022-23, VC/328/2022-23, VC/338/2022-23 and VC/384/2022-23. He also confirmed that the goods were always received in rolls and billed in kgs. He expressed ignorance as to why the description "Lining Fabric for

Headgear” appeared in the invoices. This admission proved that the goods were sold in roll form and were in reality polyester woven fabrics.

16.1 On the same date, 10.03.2023, search was also conducted at the premises of M/s Han International, Tughlakabad Extension, New Delhi. Statement of Shri Atul Kathuria, Proprietor of M/s Han International, was recorded under Section 108 of the Act. He confirmed that his firm was engaged in trading interlining materials such as woven/non-woven, microdot interlining, coat interlining, stretch interlining, shoulder pads, bra cups, and water-soluble film. He admitted receiving one consignment of 13,901 kgs of polyester woven fabric in roll/folded bale form from M/s Vinayak Creations against Invoice No. VC/466/2022-23 dated 04.08.2022. He also confirmed that the order was placed verbally, that billing was done in kgs, and that the fabric was described in the invoice as “lining fabric for headgear” but in fact was received as polyester woven fabric rolls.

16.2 Another key purchaser was M/s Sambhav Cap Creations, Jalandhar, a manufacturer of caps and garments. Search was conducted at their premises on 16.12.2022, and statement of Shri Vivek Khanna, Partner, was recorded under Section 108 of the Act. He stated that they purchased various fabrics including polyester woven fabrics (both texturized and non-texturized), polyester knitted fabric, cotton twill, and cotton matty from suppliers including M/s Vinayak Creations. He admitted that all fabrics were received in roll form and billed in kgs or meters. He produced Invoice No. VC/564/2022-23 dated 01.09.2022 of M/s Vinayak Creations, wherein the description was mentioned as “Lining Fabric for Headgear.” He confirmed that what was actually received was non-texturized polyester woven fabric in rolls. He explained that they used this fabric to manufacture lightweight caps and reversible hats, in which one side was cotton fabric and the other side polyester woven fabric. He expressed ignorance as to why “lining fabric for headgear” was written in the invoice, as in reality the fabric was plain woven polyester rolls.

16.3 Further, on 13.04.2023, a supplementary statement of Shri Vivek Khanna was recorded. He clarified that the fabric received under Invoice No. VC/564/2022-23 was indeed used by them for manufacturing caps, hats, and bags. He produced photographs to demonstrate the process, showing that the fabric rolls were cut into strips to make linings, which were stitched into caps. He further admitted that such fabric could also be used for making entire caps, sports items, bags, and garments. His statement thus confirmed that the fabric imported and supplied by M/s Vinayak Creations was non-texturized polyester

woven fabric requiring further processing, and was not ready-made “lining fabric for headgear” as declared in the import documents.

17. From the above evidences, it stood established that all buyers—including traders and manufacturers—received the goods in roll form as polyester woven fabric, and the description of “lining fabric for headgear” was a misdeclaration used only in the invoices. The goods in their imported form did not qualify for classification under CTI 65070000.

18. Summonses dated 30.12.2022, 12.01.2023 and 20.03.2023 were issued to the importer for recording his statement. In response, the importer submitted that due to the hospitalization of his brother, who was undergoing dialysis, he was unable to appear. Thereafter, further Summonses dated 27.03.2023 and 05.04.2023 were issued to the importer, but he still did not appear. Consequently, a complaint dated 28.03.2023 was filed under Section 174 of the Indian Penal Code before the Court of Chief Judicial Magistrate, Ludhiana for securing the appearance of Shri Vikas Mahajan in the office of DRI. The said complaint has been listed for hearing on 09.09.2024.

19. The importer also filed Writ Petition No. 5922/2023 before the Hon’ble High Court of Delhi, which is still pending adjudication and is listed for hearing on 01.08.2024.

20. During the course of investigation, the importer voluntarily submitted Demand Drafts bearing Nos. 200867/200976 dated 04.02.2023/15.03.2023 and 200900/200975 dated 15.02.2023/15.03.2023 amounting to Rs. 55,24,686/- and Rs. 37,90,314/- respectively towards admission of their duty liability. These amounts were deposited vide TR-6 Challan No. 300 dated 15.04.2023.

21. It was further found that the importer had earlier been importing the same fabric i.e., Non-textured Polyester Woven Fabric under CTI 54076190. Records revealed that the importer imported 7 consignments of such fabric through the following Bills of Entry:

Table - A

Sr. No.	Bill of Entry No. & date	Description of goods/fabric	CTI
1	2013718 dated 25.12.2021	Polyester Non Textured Lining Fabric	54076190
2	2013772 dated 27.12.2021	Polyester Non Textured Lining Fabric	54076190

3	2013877 dated 29.12.2021	Polyester Non Textured Lining Fabric	54076190
4	2000225 dated 06.01.2022	Polyester Non Textured Lining Fabric	54076190
5	2000684 dated 17.01.2022	Non Textured Polyester Lining Fabric	54076190
6	2000848 dated 19.01.2022	Non Textured Polyester Lining Fabric	54076190
7	2001428 dated 31.01.2022	Polyester Non Textured Lining Fabric	54076190

21.1. Period-wise effective basic customs duty on CTI 54076190, is as under:

Table - B

Sr. No.	Period	Basic Customs Duty	Remarks
1.	01.03.2006 – 01.01.2022	@20%	Sr. No. 51 of the Notification No. 14/2006- Customs dated 01.03.2006
The said Notification No. 14/2006-Customs dated 01.03.2006 was rescinded vide Notification No. 05/2022-Customs dated 01.02.2022. For the period 02.02.2022 – 30.04.2022, effective BCD on CTI 54076190 was operated through Notification No. 82/2017-Customs dated 27.10.2017 which was amended by Notification No. 07/2022-Customs dated 01.02.2022 which came into force w.e.f. 02.02.2022.			
2.	02.02.2022 - 30.04.2022	@20% or Rs. 150/- /kg., whichever is higher	Sr. No. (xvii) of Notification No. 07/2022- Customs dated 01.02.2022 read with Notification No. 82/2017- Customs dated 27.10.2017.
3.	From 01.05.2022 onwards	@20% or Rs. 150/- /kg.,	Read with Clause 98 (b) of Finance Act,

		whichever is higher	2022 which came into effect from 01.05.2022.
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21.2 Accordingly, it is seen from the Table-B above that the effective rate of Basic Customs Duty (BCD) on goods falling under CTI 54076190 was 20% up to 01.02.2022. However, with effect from 02.02.2022, the applicable BCD was revised to 20% or Rs.150 per kg., whichever is higher. It was noticed that until 31.01.2022, the importer declared their consignments of “Non-textured Polyester Woven Fabric” under CTI 54076190, since the applicable BCD was 20%. However, immediately after the revision of duty structure with effect from 02.02.2022, whereby duty incidence increased substantially on goods classified under CTI 54076190, the importer started declaring the very same goods as “Lining Fabric for Headgear” under CTI 65070000, attracting a lower rate of duty @10%. This conduct clearly indicates that the importer willfully mis-stated the description of goods and deliberately misclassified them with the intent to evade payment of legitimate customs duty.

22. On the basis of CRCL test reports, the statement of the importer and corroborative statements of certain buyers, it has been established that the goods in question were actually “Non-textured Polyester Woven Fabric” imported in roll form, correctly classifiable under CTI 54076190. However, by mis-declaring the same as “Lining Fabric for Headgear” under CTI 65070000, the importer effected clearance of 64 consignments, weighing 11,74,160 kgs in total, through 64 Bills of Entry as detailed in Annexure-A of SCN. Such misdeclaration resulted in short payment of customs duty to the tune of Rs. 19,09,55,047/- comprising differential basic customs duty of Rs. 17,08,07,946/-, differential SWS of Rs. 1,70,80,795/-, and differential IGST of Rs. 30,66,307/-. The said amount is recoverable from the importer under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Act.

23. Relevant Legal provisions, in so far related to the facts of the case are as under:-

SECTION 2 OF THE CUSTOMS ACT, 1962

Section 2. Definitions-

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 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 of the Customs Act, 1962 provides for filing of Bill of Entry upon importation of goods, which casts a responsibility on the Importer to declare truthfully, all contents in the Bill of Entry. Section 46(4) and 46(4A) are reproduced below:-

Section 46(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.”

Section 46(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 under any other law for the time being in force.”

b. **Section 28(4) of the Customs Act, 1962** provides that “Where any duty has not been levied or not paid or has been short-levied or short- paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

- (a) collusion; or

- (b) any willful mis-statement; or
- (c) suppression of facts,

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

c. **Section 28(AA) of Customs Act, 1962** provides interest on delayed payment of duty-

(1) Where any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-Section (2), or has paid the duty under sub-Section (2B), of Section 28, shall, in addition to the duty, be liable to pay interest at such rate not below ten percent and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-Section (2), or sub-Section (2B), of Section 28, till the date of payment of such duty:

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

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act.

e. **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

(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.

f. **Section 114A** of the Customs Act, 1962 deals with the penalty by reason of collusion or any willful mis-statement or suppression of facts. The relevant provision is reproduced below:-

114A - Penalty for short-levy or non-levy of duty in certain cases –

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-Section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined: Provided that where such duty or interest, as the case may be, as determined under sub-Section (8) of Section 28, and the interest payable thereon under Section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this Section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

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

Section 114AA prescribes penalty for use of false and incorrect material, which is reproduced as hereunder:-

“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.”

Section 125. *Option to pay fine in lieu of confiscation.-(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 1[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.”*

24. As per Section 17(1) of the Customs Act, 1962, the responsibility for correct self-assessment of duty lies on the importer. By deliberately mis-declaring the goods and undervaluing their duty liability, the importer

contravened the provisions of Section 46(4) and 46(4A) of the Act. Further, in terms of Section 111(m), any goods that do not correspond in respect of description, classification or value with the particulars furnished in the Bill of Entry are liable to confiscation. In the present case, since the importer misdeclared the subject goods in order to evade customs duty, the same are rendered liable to confiscation under Section 111(m) of the Act.

25. In addition, Section 112(a)(ii) of the Act provides that any person who does or omits to do any act which renders goods liable to confiscation under Section 111, or abets such act or omission, shall be liable to penalty. Given that the goods under import have been rendered liable to confiscation under Section 111(m), the importer is also liable to penal action under Section 112(a)(ii) of the Act.

25.1 Further, since the duty evasion of Rs. 19,09,55,047/- arose due to willful mis-statement, suppression of facts and deliberate misdeclaration, the importer is liable for imposition of penalty under Section 114A of the Act. The investigation has also brought out that false and incorrect information was intentionally furnished at the time of import with a view to evade duty. Therefore, the importer is also liable for penalty under Section 114AA of the Act.

26. M/s. Vinayak Creations (IEC- 0512015414), 89-C, 2nd Floor, DDA Janta Flats, Pitampura Village, Pitampura, Delhi (hereinafter referred to as the importer may be called upon to show cause in writing to the Principal Commissioner of Customs, Customs House, Mundra, having his office situated at 'First Floor, Port User Building (PUB), Mundra Port' within 30 days from the receipt of the Show Cause Notice, as to why:

- (i) The description and classification of imported goods provided by the importer as "Lining Fabric for Headgear" of CTI 65070000 in the Bills of Entry, should not be rejected and instead be reclassified as "Non-textured Polyester Woven Fabric" under CTH 54076190;
- (ii) The duty amounting to Rs. 19,09,55,047/- [differential customs duty amounting to Rs. 17,08,07,946/-, differential SWS amounting to Rs. 1,70,80,795/- & differential IGST amounting to Rs. 30,66,307/-], as detailed in Annexure-A, should not be demanded and recovered from the importer under section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.
- (iii) The goods valued at Rs. 5,31,60,542/- as detailed in Annexure-A, should not be held liable to confiscation under the provisions of Section 111 (m) of the Customs Act, 1962;

- (iv) Penalty should not be imposed on the importer under Section 112(a) of the Customs Act, 1962
- (v) Penalty should not be imposed on the importer under Section 114A & 114AA of the Customs Act, 1962.

Submission and Personal hearing

27. The noticee, M/s Vinayak, was granted opportunities of personal hearing on 25.07.2025, 21.08.2025 and 26.08.2025, which were duly communicated vide letters dated 15.07.2025, 14.08.2025 and 21.08.2025 respectively. However, neither the noticee nor any authorized representative appeared on the scheduled dates of hearing, nor was any written submission received from them.

Discussion and Findings

28. I find that the noticee was provided adequate opportunities to submit their written reply and to appear for personal hearing. However, neither any reply was filed nor was any personal hearing attended by the noticee. Therefore, I find that the condition of Principles of Natural Justice under Section 122A of the Customs Act, 1962 has been complied. Hence, I proceed to decide the cases ex-parte, based on the evidences available on record.

29. I have carefully gone through the Show Cause Notice dated 02.09.2024 and the Relied Upon Documents, including the statements recorded under Section 108 of the Customs Act, 1962, the panchnama covering the seizure of goods, the Central Revenues Control Laboratory (CRCL) test reports, and the annexures of SCN containing details of the Bills of Entry and seized stock. I now proceed to frame the issues to be decided in the instant SCN before me. On a careful perusal of the subject Show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be determined in respect of M/s Vinayak Creations: -

1. Whether the description and classification of the imported goods as "Lining Fabric for Headgear" under CTI 65070000 is to be rejected and whether the same are classifiable as "Non-textured Polyester Woven Fabric" under CTI 54076190.

2. Whether the differential duty amounting to Rs. 19,09,55,047/- (comprising differential customs duty of Rs. 17,08,07,946/-, differential Social Welfare Surcharge of Rs. 1,70,80,795/-, and differential IGST of Rs. 30,66,307/-), as detailed in Annexure-A of SCN, is recoverable from the importer under Section 28(4) of the

Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

3. Whether the goods valued at Rs. 5,31,60,542/- as detailed in Annexure-B of SCN are liable to confiscation under Section 111(m) of the Customs Act, 1962.

4. Whether penalty is imposable on the importer under Section 112(a) of the Customs Act, 1962.

5. Whether penalty is imposable on the importer under Sections 114A and 114AA of the Customs Act, 1962

30. The foremost question that arises for decision is whether the importer, M/s Vinayak Creations, correctly described and classified the goods in their Bills of Entry filed during the period February 2022 to August 2022. As per Annexure-A of the Show Cause Notice, the importer filed sixty-four Bills of Entry declaring the description of the imported consignments as "Lining Fabric for Headgear" under Customs Tariff Item 65070000. These imports covered an aggregate of 11,74,160 kgs of material.

30.1 It is a settled legal position that under Section 17 of the Customs Act, 1962, the primary obligation rests upon the importer to make a true, correct and complete declaration as to description, quantity, value and classification of goods at the time of filing the Bill of Entry. The duty liability is determined on the basis of this self-assessment, subject to verification by the proper officer. If the importer suppresses or misstates any material fact so as to claim an inapplicable classification, such misdeclaration not only vitiates the assessment but also renders the goods liable to confiscation under Section 111(m) of the Act and exposes the importer to penal consequences. Therefore, the determination of the true nature of the goods is of central importance in this proceeding.

30.2 During investigation by the officers of the Directorate of Revenue Intelligence, it was revealed that the goods imported under the said Bills of Entry were not lining fabric for headgear but were in fact polyester woven fabrics in rolls. This finding was substantiated by the search and seizure conducted on 07.09.2022 at the importer's godown. A stock of 1,56,720 kgs of similar fabric, valued at Rs. 86,19,600 (inclusive of clearing expenses), was found stored in the premises. The panchnama drawn on the same date in the presence of independent witnesses describes the goods as fabric in rolls of different lengths and widths. The very fact that the goods were in roll form shows that they could not be considered as "lining fabric for headgear." The expression "lining fabric

for headgear” suggests a cut-to-size or specially shaped fabric piece capable of direct use in the manufacture of headgear. Rolls of polyester fabric cannot by themselves be described as such. The physical appearance of the seized stock thus directly contradicted the importer’s declared description.

30.3 Further, samples of the seized goods were drawn and forwarded to the Central Revenues Control Laboratory (CRCL) for detailed examination. The test reports received from CRCL confirmed that the goods were polyester woven fabrics composed of synthetic filament yarns. No indication of any specialized treatment, processing, coating, or shaping to make the goods fit for exclusive use as lining for headgear was found. The CRCL findings are scientific evidence which unambiguously establish that the correct classification of the goods is under Chapter 54, Heading 5407, more specifically under sub-heading 54076190 as polyester woven fabric. These reports completely negate the classification under Chapter 65 claimed by the importer.

30.4 The documentary and scientific evidence is further corroborated by testimonial evidence. The statement of Shri Vikas Mahajan, Proprietor of M/s Vinayak Creations, was recorded under Section 108 of the Customs Act, 1962 on 07.09.2022. In his statement, Shri Vikas Mahajan admitted that the consignments imported by him were received in rolls of polyester fabric. Although he sought to contend that these fabrics could be used as lining fabric, he did not dispute the fact that the goods were in roll form and were not cut or shaped pieces specifically designed for lining of headgear. His statement thus corroborates the evidence that the description furnished in the Bills of Entry as “lining fabric for headgear” was not a true and correct description of the goods. His admission about import of rolls itself undermines the claim of classification under Chapter 65. Independent statements of buyers of these goods, such as M/s MDG Footwear, M/s Han International, M/s Abhinav Sales and M/s Sambhav Cap Creations, consistently stated that they purchased polyester woven fabric in roll form from the importer. None of the buyers described the goods as lining fabric for headgear. The consistency of these buyer statements supports the conclusion that the goods were polyester fabrics rather than the declared description.

30.5 An additional and significant circumstance is the timing of the change in declaration by the importer. Prior to the Union Budget of February 2022, the importer had declared similar consignments under CTH 5407 as polyester woven fabrics. After the budgetary amendment increased the duty on polyester fabrics under Heading 5407, the importer began declaring the same goods as “lining fabric for headgear” under Heading 6507, which attracted a lower rate of duty.

This sudden and consistent change in description after the budget amendment is a strong indicator of deliberate misdeclaration with the object of evading higher customs duty. It is a well-recognised principle that conduct of the importer, when viewed in the backdrop of statutory changes, can throw light on intention. In the present case, the conduct of the importer demonstrates clear intention to suppress the true nature of the goods and to claim a more favourable classification that was not applicable.

30.6 Taking into account the sequence of events, the physical verification at the importer's premises on 07.09.2022, the seizure of 1,56,720 kgs of stock valued at Rs. 86,19,600/- (inclusive of clearing expenses), the CRCL reports confirming the goods to be polyester woven fabric, the categorical statements of the importer and his buyers, and the suspicious change of declaration coinciding with the February 2022 budgetary increase of duty, I find that the description of the goods as "lining fabric for headgear" in the Bills of Entry was a wilful misdeclaration. The goods imported under the said Bills of Entry are correctly classifiable under CTI 54076190 as polyester woven fabrics.

30.7 Accordingly, I find that the classification declared by the importer under CTI 65070000 is to be rejected and the correct classification of the goods is under CTI 54076190.

31. Section 28(4) of the Customs Act, 1962 provides that where any duty has not been levied, or has been short-levied, or has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the same shall be recovered with interest. For its application, two conditions must be satisfied: first, that there has been a short-levy or non-levy of duty, and second, that such short-levy has occurred by reason of wilful mis-statement, suppression of facts, or collusion.

31.1 In the present case, the noticee imported 64 consignments covering a total quantity of 11,74,160 kgs of fabric. These were declared in the Bills of Entry as "Lining Fabric for Headgear" under CTI 65070000. Investigation revealed, and CRCL confirmed through its test report dated 27.09.2022, that the goods were in fact dyed woven fabrics composed wholly of non-textured multifilament polyester yarns, correctly classifiable under CTI 54076190. The correct classification attracted a higher rate of duty, namely 20% or Rs. 150 per kg whichever is higher, as against 10% under CTI 65070000. Annexure-A to the notice has quantified that such misdeclaration resulted in a short payment of duty amounting to Rs. 19,09,55,047/-, which comprises differential basic

customs duty, social welfare surcharge, and IGST. Thus, the fact of short-levy is established on record.

31.2 The next question is whether such short-levy was caused by wilful mis-statement or suppression of facts. The description of the goods as “Lining Fabric for Headgear” in the Bills of Entry, invoices and import documents is found to be factually incorrect. The goods were admittedly received in rolls, as stated by the proprietor of the importing firm in his own Section 108 statement, where he categorically admitted that all consignments were received in roll form and never in cut pieces. The buyers of the importer also consistently confirmed the same fact. M/s MDG Footwear stated that they had received non-texturized polyester woven fabric in rolls against invoices describing it as lining fabric. M/s Han International admitted receipt of fabric in rolls and folded bales under similar incorrect descriptions. M/s Abhinav Sales admitted to purchasing of polyester woven fabric described as lining fabric in the invoices, which they used for lamination with PU foam and EVA. M/s Sambhav Cap Creations, a manufacturer of caps, stated that they purchased such fabric rolls from the importer, cut them into strips, and stitched them into caps and hats, thereby confirming that the imported fabric required further processing and was not a ready-to-use lining for headgear. All these statements corroborate the scientific test reports and the physical evidence that the goods were polyester woven fabrics in rolls and not lining fabric as declared.

31.3 The wilfulness of the mis-statement is further evident from the conduct of the importer. Until January 2022, identical fabric had been correctly classified by the importer under CTI 54076190, when the applicable duty rate was 20%. However, from February 2022, the duty on that tariff was revised to 20% or Rs. 150 per kg, whichever was higher, resulting in higher duty incidence. Immediately thereafter, the importer began to declare the same goods under CTI 65070000, thereby availing the lower duty of 10%. This change of classification is not coincidental but a deliberate act intended to evade payment of duty. It is also pertinent that the importer had earlier imported cap accessories under CTI 65070000, demonstrating that they were aware of the proper scope of that heading. Despite such knowledge, they chose to describe polyester woven fabric rolls as lining fabric under that tariff heading. This shows clear intention to mislead the department and evade duty liability.

31.4 The suppression of facts is also evident from the manner in which the goods were dealt with in the trade. The invoices described the goods as lining fabric for headgear, but the goods were sold and purchased in rolls, billed in kgs or running metres, and used for various purposes including lamination,

manufacturing of caps, hats, garments, bags, footwear and sports goods. At no stage were the goods supplied in the form of lining fabric or cut to length. The importer concealed this reality from Customs at the time of import and presented documents as if they were importing lining fabric, thereby suppressing material facts.

31.5 The seizure proceedings also confirm the falsity of the description. On 07.09.2022, a stock of 1,56,720 kgs of fabric declared as lining fabric for headgear was detained from the godown of the importer, and samples were drawn. CRCL opined the goods to be dyed woven polyester fabric. Later, further samples from buyers also confirmed the same finding. This chain of evidence leaves no doubt that the goods were not as declared.

31.6 Thus, both requirements of Section 28(4) are satisfied. There is a clear case of short-levy of duty by reason of wilful mis-statement and suppression of facts. Accordingly, the differential duty of Rs. 19,09,55,047/- is liable to be recovered from the importer under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA.

32. Section 111 of the Customs Act, 1962 enumerates the circumstances in which imported goods become liable to confiscation. Clause (m) specifically provides that any goods which do not correspond in respect of value, quality, description, quantity, or weight with the entry made under this Act, or in respect of which any declaration or document is false, shall be liable to confiscation. The object of this clause is to ensure strict compliance with truthful and accurate declarations at the time of importation, as any misdescription directly impacts assessment, classification, and duty.

32.1 In the present case, the importer filed 64 Bills of Entry during the period under investigation, declaring the goods as "Lining Fabric for Headgear" under CTH 65070000. However, investigation revealed that the goods were, in fact, dyed and undyed woven fabric composed of non-textured multifilament polyester yarns, as confirmed by CRCL reports dated 27.09.2022 and 23.02.2023, correctly classifiable under CTH 54076190. This has been corroborated by the physical form of the goods, statements of buyers, and the importer's own admissions under Section 108. The misdeclaration was not minor or technical in nature; it went to the very identity and classification of the goods and had a direct bearing on the applicable rate of duty.

32.2 It is true that all 64 consignments covered by the Bills of Entry in Annexure-A of SCN, totaling 11,74,160 kgs valued at Rs. 5,31,60,542/-, were already out-of-charged and cleared at the time of investigation.

32.3 The importer's admissions under Section 108 and buyers' statements confirm that all goods under the 64 Bills of Entry, were misdeclared as polyester woven fabric rolls. Therefore, I find that the goods imported under the 64 Bills of Entry listed in Annexure-A of SCN, totaling 11,74,160 kgs valued at Rs. 5,31,60,542/-, were misdeclared as "Lining Fabric for Headgear" whereas they were actually polyester woven fabric rolls. They did not correspond to the entry made in the Bills of Entry and are thus liable to confiscation under Section 111(m).

32.4 In the instant matter, it is clear that the subject goods were neither placed under seizure nor released provisionally against execution of bond/undertaking. Consequently, the goods are not available for confiscation under the provisions of the Customs Act, 1962. I hold that, in the absence of the goods being available for confiscation, the imposition of redemption fine does not arise. This legal position stands affirmed by the Larger Bench of the Hon'ble CESTAT in Shiv Kripa Ispat Pvt. Ltd. v. CCE & Cus., Nasik [2009 (235) E.L.T. 623 (Tri. - LB)].

33. With regard to penal action under Section 114A of the Customs Act, 1962, I find that the evidence clearly establishes that the importer deliberately misdeclared polyester woven fabric in rolls as "lining fabric for headgear" under CTI 65070000, instead of the correct CTI 54076190, immediately after the 02.02.2022 tariff change, with the intent to evade higher duty. This is corroborated by CRCL test results, buyer statements, and the importer's own admission, leading to duty evasion of Rs. 19,09,55,047/-. Since such conduct amounts to wilful misstatement and suppression, penalty under Section 114A of the Customs Act, 1962, equal to the duty evaded, is leviable. Further, in view of the false declarations knowingly made and used in material particulars, penalty under Section 114AA is also attracted.

34. Further, in terms of the Fifth Proviso to Section 114A, it is clarified that where penalty is imposed under this section, no penalty shall be imposed under Section 112 or Section 114 of the Act in respect of the same duty liability. Accordingly, no separate penalty under Section 112(a) is being imposed on the noticees for the said act of undervaluation.

35. In view of the foregoing discussion and findings, I conclude that the goods imported and cleared by M/s Vinayak Creations under 64 Bills of Entry were wilfully misdeclared as "Lining Fabric for Headgear" under CTI 65070000, whereas they are correctly classifiable as polyester woven fabrics under CTI 54076190. The misdeclaration resulted in duty evasion of Rs. 19,09,55,047/-, recoverable under Section 28(4) along with applicable interest under Section

28AA. The imported goods, valued at Rs. 5,31,60,542/-, are liable to confiscation under Section 111(m). Penalty equal to the duty evaded is imposable under Section 114A and further penalty under Section 114AA for knowingly using false declarations and documents. However, penalty under Section 112(a)(ii) is not imposable in view of the mandatory and specific penal provisions under Sections 114A.

36. In view of the above discussion and findings, I hereby pass the following order: -

ORDER

- i. I order to reject the description and classification of the imported goods as "Lining Fabric for Headgear" under CTI 65070000 and order to re-classify them as "Non-textured Polyester Woven Fabric" under CTI 54076190 in respect of the 64 Bills of Entry having Assessable Value of Rs. 5,31,60,542/-.
- ii. I confirm the demand of differential duty amounting to Rs. 19,09,55,047/- [differential customs duty amounting to Rs. 17,08,07,946/-, differential SWS amounting to Rs. 1,70,80,795/- & differential IGST amounting to Rs. 30,66,307/-] and order to recover the same under Section 28(8) of the Customs Act, 1962 along with applicable interest under Section 28AA *ibid*. Further I order to appropriate the amount, of Rs. 93,15,000/- (Vide TR-6 Challan No. 300 dated 15.04.2023), paid by the importer during the Course of investigation against this demand.
- iii. I hold that the goods valued at Rs. 5,31,60,542/- covered under the aforesaid 64 Bills of Entry, are liable to confiscation under Section 111(m) of the Customs Act, 1962. However, as the goods are not available for confiscation, I refrain from imposing Redemption Fine under Section 125 of the Customs Act, 1962
- iv. I impose penalty of Rs. 19,09,55,047/- upon importer, M/s Vinayak Creations, under Section 114A of the Customs Act, 1962.
- v. I impose penalty of Rs. 2,00,00,000/- upon importer, M/s Vinayak Creations, under Section 114AA of the Customs Act, 1962.
- vi. I do not impose penalty under Section 112(a) of the Customs Act, 1962 for the reasons as discussed above.

37. This order is issued without prejudice to any action that can be taken against importer or any other person under this Act or any other law for the time being in force.



(Nitin Saini)
Commissioner of Customs,
Custom House, Mundra.
Date:-01.09.2025.

F.No. GEN/ADJ/COMM/309/2024-Adjn-O/o Pr Commr-Cus-Mundra.

To,

M/s. Vinayak Creations (IEC- 0512015414), 89-C,
2nd Floor, DDA Janta Flats, Pitampura Village,
Pitampura, Delhi.

Copy to:- for information and necessary action, if any.

1. The Chief Commissioner, Customs, Gujarat Zone, Ahmedabad for Review.
2. The Additional Director, DRI, Ludhiana Regional Unit, Ludhiana,
(Email: dri-ldh-pb@nic.in;).
3. The Specified Officer, Mundra Special Economic Zone, Mundra.
4. The Deputy/ Assistant Commissioner of Customs, (TRC/Group/EDI
sections), Custom House, Mundra.
5. Notice Board.
6. Guard File.