



कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा,
सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,
CUSTOMS HOUSE, MP & SEZ MUNDRA,
KUTCH, GUJARAT-370421
PHONE: 02838-271463 **FAX :02838-271169/271475**

A	File No.	CUS/APR/MISC/3043/2024-Gr 3 -O/o Pr Commr-Cus-Mundra
B	OIO No.	MCH/ADC/AK/8/2024-25
C	Date of Order	10.04.2024
D	Passed by	Arun Kumar, Additional Commissioner, Import Assessment, Custom House, Mundra.
E	SCN No. & Date	Importer requested for waiver of PH & SCN vide letter dated 01.04.2024 and 04.04.2024
F	Noticee / Party / Importer	M/s. Indigo Industries, Plot No. 222, Ground Floor, Sachin GIDC, Sachin, Surat
G	DIN	20240471MO000082394E

1. The Order – in – Original is granted to concern free of charge.
2. Any person aggrieved by this Order – in – Original may file an appeal under Section 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.

*Rec'd
10/4/2024
(Jiten Thakker)
(G. C. 03/04/2024)
M/982559765*

Brief facts of the Case:

Bill of Entry No. 2313345 dated 26.02.2024 (hereinafter referred to as '*the BE*') was filed by M/s. Indigo Industries, Plot No. 222, Ground Floor, Sachin GIDC, Sachin, Surat (hereinafter referred to as '*the importer*') holding IEC No: AAEFI6461R through their Customs Broker M/s. Sharon Enterprises (hereinafter referred to as '*the CB*') at Mundra port for import of Net Wt. 11069 kgs (Gr.Wt. 11484 kgs) of Polyester Knitted Bonded Fabric (Dyes) of various types (hereinafter referred to as '*the impugned goods*') under CTH-60063200 from China. The importer has availed COO benefit under Notification No. 50/2018-Customs dated 30.06.2018 (Sr.No. A646). Details of goods as declared in the BE are as under:

Item No. in BE	Description of Goods	Qty (kgs)	Unit Price (FOB)/kg	FOB	Freight (in Rs.)	Insurance (in Rs.)	Assessable Value	Customs Duty
1	Polyester knitted bonded fabric (Dyed) (Tinder) (Qty- 2646.7 mtr, 55 rls)	1653	2.529819	350852.25			362824.35	85191.2
2	Polyester knitted bonded fabric (Dyed) (Juana Plain) (Qty- 1157.5 mtr, 24 rls)	649	2.496918	135959.93			140599.28	33012.7
3	Polyester knitted bonded fabric (Dyed) (Copper stone dyed) (Qty- 4727.4 mtr, 96 rls)	2269	2.375161	452157.26			467586.18	109789.2
4	Polyester knitted bonded fabric (Dyed) (Stripes) (Qty- 7739.3 mtr, 150 rls)	3977	3.522286	1175282.23			1215386.27	285372.7
5	Polyester knitted bonded fabric (Dyed) (Juana Print-2) (Qty- 1619.1 mtr, 32 rls)	888	2.826137	210556.25			217741.04	51125.6
6	Polyester knitted bonded fabric (Dyed) (Juana Print-1) (Qty- 1195.7 mtr, 24 rls)	655	2.829527	155495.24			160801.19	37756.1
7	Polyester knitted bonded fabric (Dyed) (Elite-1) (Qty- 1785.3 mtr, 36 rls)	978	2.920736	239658.66			247836.51	58192.0
		11069		2719961.82	92290	523	2812774.82	660440

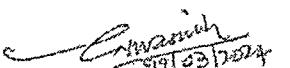
2. BE was assessed on first check basis by the FAG (Location: INWFD6). During examination, it was noticed that there is excess weight of 1036 kgs, CFS wt. being 12520 kgs and B/L wt. being 11484 kgs. Further, samples were sent by the Examining Officer to Textile Committee, Mumbai for testing vide Test Memo Nos. 1207049 & 1207050 both dated 05.03.2024 and 1207133, 1207134 & 1207135 all three dated 06.03.2024. Thereafter,

BE was pushed to PAG by FAG citing the reason: "Test report is not uploaded and also, goods found in excess as Exam Report".

3. Meanwhile, Test Reports dated 22.03.2024 have been received from Textile Committee, Mumbai as per which, AZO dyes have not been detected in any of the samples. Relevant portion of the Test Reports regarding nature and composition of the goods are produced below Test Memo wise:

Test Memo No. 1207133 dated 06.03.2024 (For item no. 2)

 <p>प्रयोगशाळार्थ वस्त्र समिति भारत सरकार, वस्त्र नियंत्रण वस्त्र प्रयोगशाला एवं अनुसंधान केंद्र पालघर रोड, प्रधानी बाजार, ठाणे - 400 024 Tel. +91/22-66527 550 / 607 / 541/ 542 Fax: 91/22-6652 7551 E-mail: dtbctc@nic.in * Website: www.textilescommittee.nic.in</p>		<p>LABORATORIES TEXTILES COMMITTEE Government of India, Ministry of Textiles Textile Laboratory & Research Centre P. Bala Road, Prabhadevi Chowk, Parel, Mumbai - 400 025</p> <p> वस्त्र समिति भारत सरकार</p>
TEST REPORT Format No. 04/26B/03 Test Report No. 0153052324-2217 (Part-II) Date: 22 Mar 2024 Sample forwarding letter No. & date: Test Memo No. 1207133 dated 05 C3, 2024 Buyers Name & address (Optional): Indigo Industries Customer Sample No.: BE No. 2313345 dtd 26/02/2024		
TEST RESULTS		
Sample Mark		**
Laboratory Sample No.	0153052324-2217	
1 Identification of fibre (IS 667)	Layer I, Knitted Pile Layer II : Knitted	Polyester Polyester Polyester
2 Fibre Blend Composition (%) (IS 667)	100	
3 Whether Unbleached/ Bleached/ Dyed/ Printed/ Yarns of different colour (In house)	Layer I Pile dyed Layer II Yarns of different colours	
4 Whether Coated/ Laminated/ Impregnated	Sample is assembled in Layers	
5 Whether Woven/ Nonwoven/ Knitted	Layer I & II Knitted	
6 Type of weave	Not applicable	
7 Whether Pile	Layer I Pile Layer II , Not pile	
8 Whether made of Staple spun yarn/ Filament yarn/ Staple spun fibre (In house) (Excluding Pile in Layer I)	Layer I Knitted Layer II Knitted	Filament yarn Filament yarn, Cannot be ascertained **
Percentage of Filament yarn/ Staple spun yarn/ Staple spun fibre	Filament yarn/ Cannot be ascertained	
9 Whether Textured / Non-Textured yarn (Excluding pile in Layer I)	Layer I - Knitted Layer II - Knitted	Cannot be ascertained *** Non textured yarn, Cannot be ascertained **
Percentage of Textured yarn/ Non textured yarn	Textured yarn/ Cannot be ascertained	
10 Weight of Sample (TCI/ Lab TM-03)	Weight per square meter (g)	396.4
* Pile cannot be separated from basic fabric. Hence this test cannot be carried out. ** Yam breaks while testing. Hence this test cannot be ascertained. *** Sufficient length of yarn cannot be raveled from fabric. Hence this test cannot be ascertained.		
Sample not drawn by Textiles Committee. Results relate only to the sample tested. Signature & Seal of the Officer This test report shall not be published in any form without the explicit written consent of the Textiles Committee. Please quote Test Report No. and date for all future correspondence. प्रधानी वास्त्र नियंत्रण केंद्र 2 of 2 Complaints if any, are to be received within 45 days from the date of issue of this report. प्रधानी वास्त्र नियंत्रण P. N. WASNIK		
Avail services of Textiles Committee, Most Reliable and Most Accurate. DIRECTOR (LABORATORIES) वस्त्र समिति, भारत सरकार, वस्त्र नियंत्रण केंद्र, प्रधानी वास्त्र नियंत्रण		

 <p>प्रयोगशालाएँ वस्त्र समिति भारत सरकार, वस्त्र वंचाल्य वस्त्र प्रयोगशाला एवं अनुसंधान केंद्र वी.पाटे नगर, प्रभादेवी चौक, मुंबई, मुंबई - 400 025 Tel: +91-22-66527 560 / 607 / 641 / 542 Fax: 91/22-6652 7554 E-mail: 4lab_tp@nic.in / telabmumbai@gmail.com * Website: www.textilescommittee.nic.in</p>	<p>LABORATORIES TEXTILES COMMITTEE</p> <p>Government of India, Ministry of Textiles Textiles Laboratory & Research Centre P. Bala Road, Prabhadevi Chowk, Prabhadevi, Mumbai - 400 025</p> <p>प्रयोगशाला वस्त्र समिति मुंबई</p>	<p>TEXTILES COMMITTEE SERVICES TESTING & RESEARCH SERVICES TESTING & RESEARCH SERVICES TESTING & RESEARCH SERVICES TESTING & RESEARCH SERVICES</p> <p>प्रयोगशाला वस्त्र समिति मुंबई</p>																																																																					
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Test Memo No. 1207050 dated 05.03.2024 (For item no. 6)

 <p>प्रयोगशालाएँ वस्त्र समिति भारत सरकार, वस्त्र मंत्रालय वस्त्र प्रयोगशाला रुपैः अनुसंधान केंद्र वी. बालु रोड, प्रभादेवी चौक, प्रभादेवी, मुंबई - 400 025 Tel. +91-22-66527 550 / 607 / 641/ 542 Fax : 91/22-6652 7554 E-mail: diab.tcs@nic.in tcs.mumbai@gmail.com Website: www.textilescommittee.nic.in</p>	<p>LABORATORIES TEXTILES COMMITTEE Government of India, Ministry of Textiles Textile Laboratory & Research Centre P. Balu Road, Prabhadevi Chowk, Prabhadevi, Mumbai - 400 025</p> <p style="text-align: right;">TCS G20 अंतर्राष्ट्रीय अमर महालय</p>																																																																																	
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4. The impugned goods have been classified by the importer CTH 60063200 which has following description in the Customs Tariff:

<i>HS Code</i>	<i>Item Description</i>	<i>BCD</i>	<i>SWS</i>	<i>IGST</i>
6006	<i>Other knitted or crocheted fabrics</i>			
.....				
	- <i>Of synthetic fibres</i>			
60063200	-- <i>Dyed</i>	20%	2%	5%

4.1. As per Test Reports issued by the Textile Committee in respect of Test Memo Nos. 1207133 (for item no. 2), 1207134 (for item no. 3) & 1207135 (for item no. 5) all three dated 06.03.2024 and 1207050 dated 05.03.2024 (for item no. 6), Layer I of the goods is “Knitted and Pile” and Layer II is “Knitted and Not pile”. Further, no bifurcation regarding composition (percentage-wise) of the Pile and Not pile content in the sample has been given in the test report, basis which it is more appropriate to classify the goods as pile fabrics under CTH 60019200 as Layer I (to be understood as top layer) of the goods is “Knitted and Pile”. Specifications and duty structure of CTH 60019200 is as below :

<i>HS Code</i>	<i>Item Description</i>	<i>BCD</i>	<i>SWS</i>	<i>IGST</i>
6001	<i>Pile fabrics, including “long pile” fabrics and terry fabrics, knitted or crocheted</i>			
.....				
	- <i>Other:</i>			
60019200	-- <i>Of man-made fibres</i>	20%	2%	5%

4.2. Further, as per Test Report issued by the Textile Committee in respect of Test Memo Nos. 1207049 dated 05.03.2024 (for item no. 4), Layer I of the goods is “Woven and Pile” and Layer II is “Non woven and Not pile” which points towards the sample to be pile fabrics appearing to be classified under CTH 58019090, described as below:

<i>HS Code</i>	<i>Item Description</i>	<i>BCD</i>	<i>SWS</i>	<i>IGST</i>
5801	<i>Woven pile fabrics and chenille fabrics, other than fabrics of heading</i>			

58.02 or 58.06

.....
- *Of man-made fibres:*

58019090 -- *Pile fabrics and chenille 10% or Rs. 35 per sq.mtr., fabrics not elsewhere specified or included whichever is higher* 0% 5%

5. The importer vide their letter dated 01.04.2024 has submitted that they agree with the test reports and they are ready to pay additional Customs Duty on excess weight and do not want Show Cause Notice/Personal Hearing in the matter. Further, the importer vide their another letter dated 04.04.2024 has submitted that they are ready to pay additional Customs Duty on excess weight with respect to item Sr.No. 4 in the BE valued at 3.522 USD per kgs and also submitted that items Sr.No. 1 & 7 may be assessed on the basis of Test Report of item no. 4.

6. The importer has declared the goods as falling under CTH 60063200 and COO certificate has also been issued for CTH 600632; however, as per the test results, appropriate CTH for the item no. 4 is 58019090 and for item nos. 2, 3, 5 & 6 is 60019200. Further, the importer vide their letter dated 04.04.2024 has requested to assess the items nos. 1 & 7 on the basis of Test Report of item no. 4 which means under CTH 58019090. Therefore, COO benefit claimed by the importer under APTA Notification No. 50/2018-Customs dated 30.06.2018 (Sr.No. A646) is inadmissible to the importer in as much as the actual description/CTH of the goods in question are different than that mentioned in the COO certificate.

7. In view of the above, assessable value of the goods and applicable Customs duty thereupon are re-determined as under:

Item No. in BE	Description of Goods	Appropriate CTH	Qty. (kgs)	FOB	Freight	Insurance	Assessable Value	BCD	SWS	IGST	Customs Duty
1	Polyester knitted bonded fabric (Dyed) (Tinder) (Qty- 2646.7 mtr, 55 rls)	58019090	1653 (4512.69 sqm)	350852	10700	61	361613	157944	0	25978	183922
2	Polyester knitted bonded fabric (Dyed) (Juana Plain) (Qty- 1157.5 mtr, 24 rls)	60019200	649	135960	4146	23	140130	28026	2803	8548	39377
3	Polyester knitted bonded fabric (Dyed) (Copper stone dyed) (Qty- 4727.4 mtr, 96 rls)	60019200	2269	452157	13790	78	466025	93205	9321	28428	130953

4	Polyester knitted bonded fabric (Dyed) (Stripes) (Qty- 7739.3 mtr, 150 rls)	58019090	5013 (13685.5 sqm)	1481441	45181	256	1526877	478993	0	100294	579286
5	Polyester knitted bonded fabric (Dyed) (Juana Print-2) (Qty- 1619.1 mtr, 32 rls)	60019200	888	210556	6422	36	217014	43403	4340	13238	60981
6	Polyester knitted bonded fabric (Dyed) (Juana Print-1) (Qty- 1195.7 mtr, 24 rls)	60019200	655	155495	4742	27	160264	32053	3205	9776	45034
7	Polyester knitted bonded fabric (Dyed) (Elite-1) (Qty- 1785.3 mtr, 36 rls)	58019090	978 (2669.94 sqm)	239659	7309	41	247009	93448	0	17023	110471
	Total		12105	3026120	92290	523	3118933	927072	19669	203284	1150024

Qty in sqm for item nos. 1, 4 & 7 is calculated considering gsm of 366.3 as per test report of item no.4

BCD for item no. 1, 4 & 7- @ 10% or Rs. 35 per sq.mtr., whichever is higher

BCD for item no. 2, 3, 5 & 6- @ 20%

7.1. The applicable Customs duty on the imported goods comes to Rs.11,50,024/- instead of Rs.6,60,440/- as self-assessed by the importer in the said BE; hence, there is short levy of Customs duty amounting to Rs.4,89,584/-.

8. 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. By the said act of mis-classifying the goods and not correctly self-assessing the applicable Customs duty, the importer tried to receive undue monetary benefit and caused loss to the public exchequer to the tune of Rs.4,89,584/-. They not only failed to declare and assess the correct duty payable on the goods but also mis-declared the goods under CTH 60063200 instead of the correct CTH as mentioned in Para 7 above, with an intention to evade payment of correct duty on the goods imported. Thus, there is a reason to believe that the importer deliberately and willfully misstated the facts in terms of applicability of duty causing loss to Govt. Revenue.

9. RELEVANT LEGAL PROVISIONS OF CUSTOMS ACT, 1962 :

Section 17. Assessment of duty.-

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

on such goods.

.....

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

Section 28DA. Procedure regarding claim of preferential rate of duty. –

(10) Notwithstanding anything contained in this section, the preferential tariff treatment may be refused without verification in the following circumstances, namely:-

(ii) complete description of goods is not contained in the certificate of origin;

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, 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:-*

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

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

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

Any person,-

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

*(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,
shall be liable,-*

i.

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:*

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 [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:

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

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

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

Explanation.- For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]”

10. Thus, by an act of omission and commission, it appeared that the importer has contravened the provisions of Section 46 and Section 17 of the Customs Act, 1962, in as much as, they failed to make correct and true declaration and information to the Customs Officer in the form of Bill

of Entry and also failed to assess their duty liability correctly.

WAIVER OF SHOW CAUSE NOTICE AND PERSONAL HEARING

11. The importer vide their letter dated 01.04.2024 has submitted that they agree with the test reports and they are ready to pay additional Customs Duty on excess weight and do not want Show Cause Notice/Personal Hearing in the matter. Further, the importer vide their another letter dated 04.04.2024 has submitted that they are ready to pay additional Customs Duty on excess weight with respect to item Sr.No. 4 in the BE valued at 3.522 USD per kgs and also submitted that items Sr.No. 1 & 7 may be assessed on the basis of Test Report of item no. 4.

DISCUSSION AND FINDINGS

12. I have carefully gone through the facts and findings of the matter.

13. I find the Bill of Entry No. 2313345 dated 26.02.2024 (was filed by M/s. Indigo Industries, Surat through their Customs Broker M/s. Sharon Enterprises at Mundra port for import of Net Wt. 11069 kgs (Gr.Wt. 11484 kgs) of Polyester Knitted Bonded Fabric(Dyes) of various types under CTH-60063200 from China. The importer has availed COO benefit under Notification No. 50/2018-Customs dated 30.06.2018 (Sr.No. A646). Details of goods as declared in the BE have been discussed in Para 1 above.

14. I find that the BE was assessed on first check basis by the FAG (Location: INWFD6). During examination, it was noticed that there is excess weight of 1036 kgs and samples were sent by the Examining Officer to Textile Committee, Mumbai for testing vide Test Memo Nos. 1207049 & 1207050 both dated 05.03.2024 and 1207133, 1207134 & 1207135 all three dated 06.03.2024. Thereafter, BE was pushed to PAG by FAG citing the reason: "Test report is not uploaded and also, goods found in excess as Exam Report".

15. I find that Test Reports dated 22.03.2024 have been received from Textile Committee, Mumbai as per which, AZO dyes have not been detected in any of the samples. I have gone through the Test Reports as discussed in Para 3 above.

15.1. I find that the impugned goods have been classified by the importer under CTH 60063200 whereas, as per Test Reports issued by the Textile Committee in respect of Test Memo Nos. 1207133 (for item no. 2), 1207134 (for item no. 3) & 1207135 (for item no. 5) all three dated 06.03.2024 and 1207050 dated 05.03.2024 (for item no. 6), Layer I of the goods is "Knitted and Pile" and Layer II is "Knitted and Not pile". Further, no bifurcation regarding composition (percentage-wise) of the Pile and Not pile content in the sample has been given in the test report, basis which it is more appropriate to classify the goods as pile fabrics under CTH 60019200 as Layer I (to be understood as top layer) of the goods is "Knitted and Pile".

15.2. Further, as per Test Report issued by the Textile Committee in respect of Test Memo Nos. 1207049 dated 05.03.2024, Layer I of the goods is "Woven and Pile" and Layer II is "Nonwoven and Not pile" which points towards the sample to be pile fabrics appearing to be classified under CTH 58019090.

16. I find that the importer vide their letter dated 01.04.2024 has submitted that they agree with the test reports and they are ready to pay additional Customs Duty on excess weight and do not want Show Cause Notice/Personal Hearing in the matter. Further, the importer vide their another letter dated 04.04.2024 has submitted that they are ready to pay additional Customs Duty on excess weight with respect to item Sr.No. 4 in the BE and also submitted that items Sr.No. 1 & 7 may be assessed on the basis of Test Report of item no. 4.

16.1. I find that as per Test Report for item no. 4, appropriate CTH is 58019090 for which BCD- "10% or Rs. 35 per sq.mtr., whichever is higher", SWS-0%, IGST-5% and same has been considered for assessing duty liability for item nos. 1 and 7. Further, appropriate CTH for item nos. 2, 3, 5 & 6 is 60019200 for which BCD-20% SWS-2%, IGST-5%.

17. I find that the importer has declared the goods as falling under CTH 60063200 and COO certificate was also issued for CTH 600632; however, as discussed in foregoing paras, appropriate CTH for the item nos. 1, 4 & 7 is 58019090 and for item nos. 2, 3, 5 & 6 is 60019200. Therefore, COO benefit claimed by the importer under APTA Notification No. 50/2018- Customs dated 30.06.2018 (Sr.No. A646) is inadmissible to the importer in as much as the actual descriptions/CTH of the goods in question are different than that mentioned in the COO. I find that the importer has not made correct declaration with respect to description and classification of the goods, which after testing are found to be misclassified and falling

under different CTH and hence, the benefit of preferential duty claim under APTA Notification cannot be allowed to the importer.

18. I find that goods imported vide BE No. 2313345 dated 26.02.2024 are found to be mis-declared in terms of description, classification and quantity; hence, they are liable to be re-assessed under section 17(4) of the Customs Act, 1962.

19. I find that on account of excess weight of 1036 kgs, the assessable value of the imported goods is re-determined as Rs.31,18,933/- on which applicable Customs duty comes to Rs.11,50,024/-, as calculated in Para 7 above, instead of Rs.6,60,440/- as self-assessed by the importer in the said BE. Hence, there is short levy of Customs duty amounting to Rs.4,89,584/-.

19.1. Item-wise comparison of the goods declared in the subject Bill of Entry and their actual classification on the basis of test report with applicable Customs duty calculation thereupon, is as below:

Item No. in BE	Description of Goods	As declared in BE				As per Test Reports				Difference in Customs Duty
		Declared CTH	Qty. (kgs)	Assessable Value	Customs Duty	Appropriate CTH	Qty. (kgs)	Assessable Value	Customs Duty	
1	Polyester knitted bonded fabric (Dyed) [Tinder] (Qty- 2646.7 mtr, 55 rls)	60063200	1653	362824	85191	58019090	1653 (4512.69 sqm)	361613	183922	98731
2	Polyester knitted bonded fabric (Dyed) (Juana Plain) (Qty- 1157.5 mtr, 24 rls)	60063200	649	140599	33013	60019200	649	140130	39377	6364
3	Polyester knitted bonded fabric (Dyed) (Copper stone dyed) (Qty- 4727.4 mtr, 96 rls)	60063200	2269	467586	109789	60019200	2269	466025	130953	21164
4	Polyester knitted bonded fabric (Dyed) (Stripes) (Qty- 7739.3 mtr, 150 rls)	60063200	3977	1215386	285373	58019090	5013 (13685.5 sqm)	1526877	579286	293913
5	Polyester knitted bonded fabric (Dyed) (Juana Print-2) (Qty- 1619.1 mtr, 32 rls)	60063200	888	217741	51126	60019200	888	217014	60981	9855
6	Polyester knitted bonded fabric (Dyed) (Juana Print-1) (Qty- 1195.7 mtr, 24 rls)	60063200	655	160801	37756	60019200	655	160264	45034	7278
7	Polyester knitted bonded fabric (Dyed) (Elite-1) (Qty- 1785.3 mtr, 36 rls)	60063200	978	247837	58192	58019090	978 (2669.94 sqm)	247009	110471	52279
Total			11069	2812775	660440		12105	3118933	1150024	489584

20. I find that the importer, by the act of omission and commission, has contravened the provisions of Section 46 and Section 17 of the Customs

Act, 1962, in as much as, they failed to make correct and true declaration and information to the Customs Officer in the form of Bill of Entry and also failed to assess their duty liability correctly. Therefore, the importer has rendered the goods liable for confiscation under Section 111(l) and 111(m) of the Customs Act, 1962 and is, therefore, liable for penalty under section 112(a)(ii) of the Customs Act, 1962. I further find that the goods in question can be redeemed on payment of redemption fine in terms of Section 125 of the Customs Act, 1962.

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

ORDER

- i. I reject the classification of the goods i.e. 60063200 as declared by the importer in the Bill of Entry No. 2313345 dated 26.02.2024 and order to re-classify the goods under respective CTH as per Para 19.1 above in view of the Test Reports issued by the Textile Committee, Mumbai and re-assess the BE accordingly;
- ii. I disallow the benefit of preferential duty claim available at Sr.No. 646 of APTA Notification No. 50/2018-Customs dated 30.06.2018 under Section 28DA(10)(ii) of the Customs Act, 1962 on violation of Section 46(4) of the Customs Act, 1962 and order to re-assess the BE accordingly;
- iii. I order to confiscate the impugned goods having re-determined assessable value of Rs.31,18,933/- imported vide the subject BE, on account of misclassification and excess weight under section 111(l) and (m) of the Customs Act, 1962. However, considering facts of the case and provisions of the Section 125 of the Customs Act, 1962, I give an option to the importer to re-deem the same on payment of Redemption Fine of Rs.3,10,000/- (Rs Three Lakh Ten Thousand Only) in lieu of confiscation.
- iv. I impose penalty of Rs.10,000/- (Rs. Ten Thousand Only) on the importer M/s. Indigo Industries under Section 112 (a) (ii) of Customs Act, 1962.

22. 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.


10/04/2024
Arun Kumar

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

To,
M/s. Indigo Industries,
Plot No. 222, Ground Floor,
Sachin GIDC, Sachin, Surat.

Copy to:

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