

Outward No. 5528

	<p>प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, एमपी और एसईजेड, मुंद्रा, कच्छ-गुजरात -370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT PHONE : 02838-271426/271428 FAX :02838-271425</p>	
A	File No.	CUS/APR/BE/FNL/533/2024-Gr 2
B	Order-in-Original No.	MCH/ADC/AKM/155/2024-25
C	Passed by	Amit Kumar Mishra Additional Commissioner Custom House, Mundra.
D	Date of order	09.10.2024
E	Noticee/Party/ Importer/ Exporter	M/s. STAPLE INDIA IMPEX, 2A/ 43, Geeta Colony, Delhi - 110031
F	DIN No.	20241071MO000000D1A9

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

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

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

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

“ सीमा शुल्क आयुक्त (अपील),
 चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद-380 009 ”
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
Having his office at 4th Floor, HUDCO Building, Ishwar Bhuvan Road,
Navrangpura, Ahmedabad-380 009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by -

i. उक्त अपील की एक प्रति और

A copy of the appeal, and

ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

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

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

Brief facts of the Case:

The importer, M/s. STAPLE INDIA IMPEX, having address at Regd. 2A/43, Geeta Colony, Delhi had filed B/E 3413224 dated 10.05.2024 of BL No. ONEYNB4JA2164600 dated 17.04.2024 through their Custom Broker M/s. Anax Air Services Pvt. Ltd. at Mundra Port for import of “Surplus Goods of 100% Polyvinyl Chloride Coating on Multiple side with Mix Colors and Different Size in Lot”.

2. Details of declared goods under BE No. 3413224 dated 10.05.2024 is as below:-

Table-I

Item No. in BE	Description of Goods	Appropriate CTH	Qty. (kgs)	Assessable Value	BCD	SWS	IGST	Customs Duty
1	Surplus Goods of 100% Polyvinyl Chloride Coating on Multiple side with Mix Colors and Different Size in Lot	39219099	22981	5,19,468	51947	5195	103790	160932

2. The above imported goods have been classified by the importer under CTH 39219099 which has following description in the Customs Tariff:

HS Code Item Description BCD SWS IGST

3921 Other plates, sheets, film,

foil and strip of plastics

.....

-	<i>Cellular</i>			
39219099	--	<i>Other</i>	10%	1% 18%

3. On verification of above BE in EDI system, it is noticed that the above BE was filed on 10.05.2024 in RMS and it was sent to examine the goods as per rms instructions. The above goods was examined by the officers of Dock Examination on 06.07.2024 and submitted following report which is reproduced as under:-

"container selected for scanning and reported mismatch. Verified container no. and seal no. found seal intact. Opened and examined the cargo as per exam order under the supervision of supdt.(DE) and in presence of CBR. On visual examination, goods not appear to be 100% PVC coating on multiple side. However, goods to be woven fabric and liable to be classified under cth 5513/5515".

4. Further, sample was sent by the Examining Officer to Textile Committee, Mumbai for testing vide Test Memo Nos. TM 752/13.07.2024. Subsequent, Test Report No. 0153032425-1334 dated 26.08.2024 has been received from Textile Committee, Mumbai of the above imported shipment. Relevant portion of the Test Reports regarding nature and composition of the goods is reproduced as under:

Test Report in respect of TM No. 752 dated 26.08.2024

□

4.1. As per Test Reports issued by the Textile Committee in respect of Test Memo Nos. **752 dated 26.08.2024**, of the goods is "*Polyester Polyurethane Filament Yarn 100% Dyed Woven manmade Fibre*". Further, it is submitted that the goods is not embroidered. It is neither Pile nor Flocked. It is also not Fleeced Fabric. It is neither Net nor Tulle. It is not Tricot. The received sample is Woven man-made fibre, basis which it is more appropriate to classify the goods as dyed filament yarn 100% under CTH 54075290. Specifications and duty structure of CTH 54075290 is as below:

<i>HS Code</i>	<i>Item Description</i>	<i>BCD</i>	<i>SWS</i>	<i>IGST</i>
5407	<i>Woven fabrics of synthetic filament yarn including woven fabrics obtained from materials of heading 54.04</i>			
.....	<i>Dyed</i>			

- Other woven fabrics containing 85% or more by weight of textured polyester filaments:

54075290 -- Other 20% or Rs. 23 0% 5%
per sq. mtr.,
whichever is
higher

5. The importer vide their letter (received on 06.09.2024) has requested to re-assess the BE No. 3413224 dated 10.05.2024 as per Test report received from Textile Committee and they agree to pay differential duty vide DFIA. They have also requested to waive SCN and PH for this matter.

6. Rejection of declared value & Redetermination of Assessable Value:

Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 (hereinafter referred to as "the CVR, 2007") provides the method of valuation. Rule 3(1) of the CVRs, 2007 provides that "Subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10". Rule 3(4) ibid states that "if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through Rule 4 to 9 of CVR, 2007". Whereas, it appears that, transaction value in terms of Rule 3 of the CVR, 2007, is to be accepted only where there are direct evidences with regard to the price actually paid or payable in respect of the imported goods by the importer. Whereas, in the present case, it appears that, the impugned goods have been mis-declared in respect of quantity, quality, nature & description. Hence, there is reasonable doubt regarding the truth and accuracy of the declared value, and hence is liable to be rejected in terms of Rule 12 of the CVR, 2007.

Further, the assessable value of the consignment is liable to be re-determined under Rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962 on the basis of contemporary import data available on NIDB / ICES for the identical goods.

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

Table-II

1	Filament Yarn 100% Dyed Woven manmade Fibre	54075290	22981 (158271sqm)	33,74,338	6,74,868	37,961	40,87,167	36,40,233	0	3,86,370	40,26,603
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Qty in sqm for above item is calculated considering gsm of 145.2 as per test report

BCD - @ 20% or Rs. 23 per sq.mtr., whichever is higher

IGST-@ 5%

6.2. The applicable Customs duty on the imported goods comes to Rs. 40,26,603/- instead of Rs. 1,60,932/- as self-assessed by the importer in the said BE; hence, there is short levy of Customs duty amounting to Rs. 38,65,671/-.

7. 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. 38,65,671/. They not only failed to declare and assess the correct duty payable on the goods but also mis-declared the goods under CTH 39219099 instead of the correct CTH as mentioned in Para 6 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.

8. 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 14. Valuation of goods. - (1) *For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such*

other conditions as may be specified in the rules made in this behalf:

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

"Rule 4. Transaction value of identical goods. (1) (a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

"Rule 5. Transaction value of similar goods. (1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that (2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

Rule 12. Rejection of declared value (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

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.]”

9. Thus, by the act of omission and commission, it appears 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

10. The importer vide their letter received on dated 06.09.2024 has submitted that they agree with the test reports and they agree to pay differential duty vide DFIA and do not want Show Cause Notice/Personal Hearing in the matter.

DISCUSSION AND FINDINGS

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

12. I find that B/E 3413224 dated 10.05.2024 was filed for clearance of import shipment of "Surplus Goods of 100% Polyvinyl Chloride Coating on Multiple side with Mix Colors and Different Size in Lot" arrived vide BL No. ONEYNB4JA2164600 dated 17.04.2024. Details of goods as declared in the BE have been discussed in Para 1 above.

13. I find that the above BE was filed on 10.05.2024 in RMS and it was sent to examine the goods as per rms instructions. The above goods was examined by the officers of Dock Examination on 06.07.2024. During examination, it was noticed that the *goods not appear to be 100% PVC coating on multiple side. However, goods to be woven fabric and liable to be classified in other CTH*'. Therefore, samples were sent to Textile Committee, Mumbai for testing vide Test Memo Nos. TM 752/13.07.2024.

14. I find that Test Report No. 0153032425-1334 dated 26.08.2024 has been received from Textile Committee, Mumbai of the above imported shipment. I have gone through the Test Reports as discussed in Para 4 above.

15. I find that the impugned goods have been classified by the importer under CTH 39219099 whereas, as per Test Reports issued by the Textile Committee in respect of Test Memo Nos. Test Memo Nos. **752 dated 26.08.2024**, of the goods is "*Polyester Polyurethane Filament Yarn 100% Dyed Woven manmade Fibre*". It is neither Pile nor Flocked. It is also not Fleeced Fabric. The received sample is Woven man-made fibre, basis which it is more appropriate to classify the goods as dyed filament yarn 100% under CTH 54075290.

16. I find that the importer vide their letter received on 06.09.2024 has requested to re-assess the BE No. 3413224 dated 10.05.2024 as per Test report received from Textile Committee and they agree to pay differential duty vide DFIA. They have also requested to waive SCN and PH for this matter.

16.1. I find that as per Test Report appropriate CTH is 54075290 for which BCD rate- "20% or Rs. 23 per sq. mtr., whichever is higher", SWS-0%, IGST-5% and same has been considered for assessing duty liability.

17. I find that goods imported vide BE No. 3413224 dated 10.05.2024 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.

18. I find that Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 (hereinafter referred to as "the CVR, 2007") provides the method of valuation. Rule 3(1) of the CVRs, 2007 provides

that "Subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10". Rule 3(4) ibid states that "if the value cannot be determined under the provisions of sub- rule (1), the value shall be determined by proceeding sequentially through Rule 4 to 9 of CVR, 2007".

The transaction value in terms of Rule 3 of the CVR, 2007, is to be accepted only where there are direct evidences with regard to the price actually paid or payable in respect of the imported goods by the importer. Whereas, in the present case, the impugned goods have been mis-declared in respect of quantity, quality, nature & description. Hence, there is reasonable doubt regarding the truth and accuracy of the declared value, and hence is liable to be rejected in terms of Rule 12 of the CVR, 2007.

19. I find that the assessable value of the imported goods is re-determined as Rs. 40,87,167/- on which applicable Customs duty comes to 40,26,603/- as calculated in Para 6 above, instead of Rs. 1,60,932/- as self-assessed by the importer in the said BE; hence, there is short levy of Customs duty amounting to Rs. 38,65,671/-. Assessable value of the goods and applicable Customs duty thereupon are re-determined as under:

Table-II

Item No. in BE	Description of Goods	Appropriate CTH	Qty. (kgs)	FOB	Freight (20% of FOB)	Insurance (1.125% of FOB)	Assessable Value	BCD	SWS	IGST	Customs Duty
1	Polyester Polyurethane Filament Yarn 100% Dyed Woven manmade Fibre	54075290	22981 (158271sqm)	33,74,338	6,74,868	37,961	40,87,167	36,40,233	0	3,86,370	40,26,603

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. 39219099 as declared by the importer in the Bill of Entry No. 3413224 dated 10.05.2024 and order to re-classify the goods under CTH 54075290 as per Para 18 above in view of the Test Reports issued by the Textile Committee, Mumbai and re-assess the BE accordingly.
- ii. I reject the declared value of Rs. 5,19,468/- of the goods covered under BE No. 3413224 dated 10.05.2024 and order to re-determine the same as Rs. 40,87,167 as detailed in table-II above and re-assess BE accordingly.
- iii. I order to re-assess the BE No. 3413224 dated 10.05.2024 under section 17(4) of the Customs Act, 1962 with applicable customs duty on 40,26,603/- instead of declared Customs duty Rs. 1,60,932/-
- iv. I order to confiscate the impugned goods having re-determined assessable value of Rs. 40,87,167/- imported vide the subject BE, on account of misclassification 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. 4,00,000/- (Rupees Four Lakhs only) in lieu of confiscation.
- v. I impose penalty of Rs. 2,00,000 (Rupees Two Lakhs only) on the importer STAPLE INDIA IMPEX, 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.

(Amit Kumar Mishra)
Additional Commissioner
Custom House, Mundra

To,
M/s. STAPLE INDIA IMPEX,
2A/ 43, Geeta Colony,
Delhi
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.