

	<p style="text-align: center;">सीमा शुल्क के प्रधान 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/423/2024-Adjn-O/o Pr Commr-Cus-Mundra
B. Order-in-Original No.	: MUN-CUSTM-000-COM-027-2025-26	
C. Passed by	: Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.	
D. Date of order and Date of issue:	: 01.10.2025 01.10.2025	
E. SCN No. & Date	: GEN/ADJ/COMM/306/2024 dated 26.09.2024	
F. Noticee(s) / Party / Importer	: M/s. SG Impex (IEC No. BMFPR9668P), K-1, Ext. 2a, Mohan Garden, West Delhi-110059	
G. DIN	: 20251071MO000099459F	

1. यह अपील आदेश संबंधित 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 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.”

3. 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.

4. उक्त अपील के साथ -/ 1000रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ 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/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मद सं-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 जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ 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 FACTS OF THE CASE

M/s. SG Impex, K-1, Ext. 2a, Mohan Garden, West Delhi-110059, was engaged in import of PU-coated Fabrics and other fabrics from China for home consumption. M/s. SG IMPEX used to clear their import goods for DTA clearance through Mundra SEZ Warehousing Units at Mundra Port, Mundra.

2. The Directorate of Revenue Intelligence gathered intelligence that M/s. SG Impex indulged in evasion of Anti-dumping duty and Customs duty by way of mis-declaration of description and value of the imported goods and by way of mis-classification thereof. The intelligence further indicated that M/s. SG Impex has imported 03 consignments from China through Container Nos. EITU1697146, EGHU8362441 and FSCU8127813 and mis-declared the same as ‘Bonded Fabric (HS Code-60064200)’ and ‘Flock Fabric (HS Code-59070012). As per the details available on the Bills of Lading, the said import consignments were to be cleared through M/s. Empezar Logistics Private Limited, Mundra SEZ. Consignment wise brief details and declared description/classification of the import consignments of M/s. SG Impex are given as under;

Table-1

Sr . N o.	Container No.	Name of the importer	Bill of Lading No. and date	IGM No. and Date	Description & HS code Mentioned in Bill of Lading/IGM	Declared HS Code
1	EITU1697146	M/s. SG Impex	EGLV143269211528 dated 13.09.2022(RUD No. 1)	2323327 dated 02.10.2022	Bonded Fabric (HS Code-60064200), Flock Fabric (HS Code-59070012)	60064200 & 59070012
2	EGHU8362441		EGLV143261778693 dated 09.09.2022(RUD No. 2)	2323004 dated 28.09.2022	Bonded Fabric (HS Code-60064200), Flock Fabric (HS Code-59070012)	60064200 & 59070012
3	FSCU8127813		SNKO02A220801091 dated	2322469 dated 22.09.2022	Bonded Fabric (HS Code-	60064200 & 59070012

			07.09.2022(RUD No. 3)		60064200), Flock Fabric (HS Code- 59070012)	
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3. Acting upon the intelligence, above import consignments were put on hold vide letter dated 12.10.2022 and examination of the said import consignments was conducted by the officers of DRI under panchnama dated 19.11.2022 drawn at M/s. Seabird Marine Services Pvt. Ltd., CFS (**RUD No.4**), 21.11.2022 (**RUD No.5**) and 22.11.2022 drawn at M/s. All Cargo Logistics Limited CFS (**RUD No. 6**). After initiation of investigation in this matter, it was noticed that the importer filed Warehouse Bills of Entry No.1017171 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017173 dated 28.11.2022 (**RUD No. 7**) and declared the goods which included PU-coated fabric. It was also noticed that the importer had changed the description of the goods as “PU-coated Fabrics (HS Code 59032090)” having total quantity **118422** meters alongwith other Fabrics such as Bonded fabric, Flock Fabric, PVC Coated Fabric in every Container and the total assessable value of the said goods were declared by the importer as Rs. 1,16,69,866/-. Total declared assessable value of the goods of M/s. SG Impex for PU-coated Fabric was **Rs. 92,93,626/-** for total quantity **118422** meters and the assessable value of other goods declared as Bonded fabric, Flock Fabric, PVC Coated Fabric was **Rs. 23,61,749/-**. During investigation, the Warehouse Bills of Entry for the subject import consignments were filed by the importer through M/s. Empezar Logistics and Pvt. Ltd., a SEZ Mundra Unit. However, the said import consignments were not warehoused at the said Unit. As mentioned above, the examination of the subject import consignments was conducted at M/s. All Cargo Logistics Limited and CFS and M/s. Seabird Marine Services Pvt. Ltd. CFS. It was revealed that consequently, the importer contacted Shri Hemant Joshi of M/s. Freight Link Logistics, Gandhidham and requested to file Bills of Entry for clearance of the subject goods. Accordingly, Warehouse Bills of Entry No. 1017173 dated 28.11.2022 (DTA BE No. 2000530 dated 10.01.2023), 1017174 dated 28.11.2022 (DTA BE No. 2001189 dated 20.01.2023) and 1017171 dated 28.11.2022 (DTA BE No. 2001190 dated 20.01.2023) were filed (**RUD No. 8 all DTA Bills of Entry**).

4. During examination, it was noticed that most of the import goods pertaining to all the above 03 import consignments prima facie appeared to be PU-coated fabric whereas the same was mis-declared as ‘Bonded Fabric (HS Code-60064200)’ and ‘Flock Fabric (HS Code-59070012)’ at the time of filing IGM and the same were also mis-declared in corresponding Bills of Lading with intention to evade the applicable Anti-dumping duty. Although M/s. SG Impex changed the description and HS Code at the time of filing Bills of Entry for said import consignments, but the same

appeared to be afterthought of the importer as the DRI has already initiated inquiry in the matter. Although, at the time of filing Bills of Entry for the subject import consignments, the importer declared the description and classification for some quantity correctly, however some more quantity of PU-coated fabrics were further found mis-declared and mis-classified. Moreover, assessable value of the goods also appeared to have been grossly mis-declared to evade the applicable Customs duty. Brief details of the goods found during examination are as under;

Table-2

Sr . No.	Container No.	Description & HS code Mentioned in Bill of Lading/ IGM	Declared description in the WBE/DTA Bills of Entry	Quantity declared in the Invoice	Declared Assessable Value	Quantity found during examination (Sq Mts)	Difference in Quantity found during examination
1	FSCU8127813	Bonded Fabric (HS Code- 60064200), Flock Fabric (HS Code- 59070012)	PU Coated Fabric (0.60MM) (59032090)	31616 (Mtrs)	2350569.47	31616 (Mtrs)	0
2			PVC Coated Fabric (0.25MM) (59031090)	11818 (MTR)	341425.08	11818 (Mtrs)	0
3			Polyester Bonded Fabric (HS Code 60064200)	2856 (KGS)	294882	2980 (Kgs)	124
4			Flock Fabric (HS Code 59070012)	4024 (KGS)	365620.64	4242 (Kgs)	218 Kgs
5	EGHU8362441	Bonded Fabric (HS Code-	PU Coated Fabric (0.50mm) (59032090)	10000 (Mtrs)	619561.95	10000 (Mtrs)	0

6		60064200), Flock Fabric (HS Code-59070012)	PU Coated Fabric (0.60 mm) (59032090)	26021 (Mtrs)	1934590.78	26021 (Mtrs)	0
7			PU Coated Fabric (0.80 mm) (59032090)	6382. (Mtrs)	737855.1	6382.5 (Mtrs)	0
8			PVC Coated Fabric(0.6 mm) (59031090)	5500 (Mtrs)	317979.56	0	5500 Mtrs
9			Polyester Bonded Fabric (HS Code 60064200)	2280 (KGS)	207160.8	2280 (kgs)	0
10			Flock Fabric (HS Code 59070012)	1820 (KGS)	187915	1820 (Kgs)	0
11	EITU1697146	Bonded Fabric (HS Code-60064200), Flock Fabric (HS Code-59070012)	PU Coated Fabric (0.6 mm) (59032090)	45352.48 (SQM)	2461197.46	33104 (Mtrs)	0
12			PU Coated Fabric (0.7 mm) (59032090)	4698 (Mtrs.)	426849.8	4698 (Mtrs)	0
13			PU Coated Fabric (0.8 mm) (59032090)	6600 (SQM)	763001.57	6600 (Mtrs)	0
14			PVC Coated Fabric (0.6 mm) (59031090)	5000 (Mtrs)	289128.91	0	5000 Mtrs
15			Polyester Bonded Fabric (HS Code 60064200)	2210 (KGS)	200800.6	2210 (Kgs)	0

16			Flock Fabric (HS Code 59070012)	1519 (KGS)	156836.75	1519 (Kgs)	0
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5. Further, representative samples from the import goods were drawn during examination and under Panchnama dated 30.12.2022. The said representative samples were sent to the Customs House Laboratory vide letter dated 09.01.2023 (**RUD No.9**) for necessary testing thereof under Test Memo No. 86/2022 to 101/2022(total 16). In response, the Customs House Laboratory provided the Test Reports of the representative samples of the subject import goods to the DRI (**RUD No.10 Test Memo & reports**). Brief details of Test Reports of the representative samples (container wise) suggested the actual description of the subject goods as under;

Table-3

Sr. No.	Container No.	Sample	Actual description of goods	Coating material (PU) by %	Thickness as per Test Reports (in mm)
1	FSCU8127813	A1	Knitted fabric is composed of polyester spun yarns and coating is composed of Polyurethane alongwith inorganic additives, while further adhered pigmented polyurethane film	53.02 (polymeric film and coating material)	0.63
		B1	Woven fabric is composed of polyester multifilament yarns and coating is composed of polyvinyl chloride	---	0.25
		C1	Knitted fabric is composed of polyester multifilament yarns together with lycra and bonding material is based on polyurethane	13.6 (Lycra & Bonding material)	0.73 mm
		D1	Knitted fabric is composed of polyester multifilament yarns and flocks are composed mainly of polyester	--	1.06

2	EGHU8 362441	A1	Knitted Fabric is composed of polyester multifilament yarns and coating is composed of polyurethane	49.17	0.53
		B1	Knitted Fabric is composed of polyester multifilament yarns and coating is composed of polyurethane	63.09	0.61
		C1	Woven fabric is composed of Viscose Spun yarns having Polyurethane	42.04	0.79
		D1	Knitted Fabric is composed of polyester multifilament yarns, middle layer is composed of polyvinyl chloride and the upper layer is composed of polyurethane	4.2	0.55
		E1	Knitted Fabric is composed of polyester multifilament yarns and flocks are composed mainly of polyester	---	1.05
		F1	Knitted Fabric is composed of polyester multifilament yarns together with Lycra and bonding material is based on polyurethane	13.3(Lycra & Bonding material)	0.68
3	EITU16 97146	A1	Knitted Fabric is composed of polyester multifilament yarns and coating is composed of polyurethane	52.82	0.60
		B1	Knitted Fabric is composed of polyester multifilament yarns having greyish coating layer of polyurethane	35.4	0.70
		C1	Woven Fabric composed of Viscose Spun yarns having coating of Polyurethane	44.94	0.78
		D1	Knitted Fabric is composed of polyester multifilament yarns, middle layer is composed of polyvinyl chloride and the upper	4.2	0.55

			layer is composed of polyurethane		
		E1	Knitted Fabric is composed of polyester multifilament yarns together with Lycra and bonding material is based on polyurethane	14.3 (Lycra and bonding material based on polyurethane)	0.72
		F1	Knitted fabric is composed of polyester multifilament yarns and flocks are composed mainly of cellulosic material	---	1.03

6. From the above, it appears that the importer has mis-declared the material facts such as description, classification, value etc. Although, the importers have declared a part quantity of the import goods as ‘PU-coated Fabric CTH No. 59032090’ alongwith other fabrics while filing warehouse Bills of Entry, but the same appears afterthought of the importers as the DRI has already initiated action in the matter. However, as per the test Reports it is noticed that the importer had declared total quantity of Pu-coated fabric as **118421 Meters** whereas the actual quantity of Pu-coated Fabric was **128922 Meters**. Therefore, even after initiation of the investigation by DRI, the importer intentionally mis-declared the actual description and classification and quantity of the PU-coated Fabric which was total **10500 Meters** less than the actual quantity.

7. During investigation, it was noticed that M/s. SG Impex imported the subject three import consignments covered under Invoice No. HH22348 dated 29.08.2022, HS22-153-03 dated 01.09.2022 and Invoice No. HS22-153-04 dated 04.09.2022 **(RUD No. 11)**. The importer have submitted Certificate of AZO Test bearing No. T67475222040100044 dated 30.08.2022, F220909040 dated 10.09.2022 and F220909034 dated 10.09.2022 **(RUD No. 12)**, respectively for the clearance of the subject goods. All these AZO Test Certificates only containing the description of Bonded Fabric and Flock Fabric. The PU-coated Fabric and PVC Coated fabric were not found mentioned in the said Certificates. It is pertinent to mention here that the corresponding Bills of Lading and IGMs were also not having the description of main item i.e. Pu-coated Fabric which attract Anti-dumping duty as per Notification No. 14/2022-Customs (ADD) dated 20.05.2022 whereas the maximum quantity of the goods were Pu-coated fabric in all the 03 import consignments. This show clear intention of M/s. SG Impex of evasion of Anti-dumping duty and other duties by way of mis-declaration.

8. The test reports of the import goods indicated that whole import consignments pertaining to all 03 containers were of Pu-Coated Fabric and the same

have been imported from Chinese suppliers. The subject goods attract Anti-dumping duty as per Notification No. 14/2022-Customs (ADD) dated 20.05.2022 (**RUD No.13**). The subject goods were found mis-declared in respect of description, quantity and value thereof, hence the subject goods appeared to be liable to confiscation under the provisions of Section 111 of the Customs Act, 1962. Accordingly, the subject goods were placed under seizure under provisions of Section 110 of the Customs Act, 1962 vide Seizure Memo dated 19.11.2022, 21.11.2022 and 22.11.2022(**RUD No. 14**).

9. Further M/s. SG Impex vide letter dated 17.01.2023 & 20.01.2023 informed that they have filed DTA Bills of Entry No. 2000530 dated 10.01.2023, 2001189 and 2001190 both dated 20.01.2023 for clearance of the import goods. The importers have also requested to release on provisional basis (**RUD No.15**). Accordingly, the DRI informed the present status of the investigation as well as shared the Test Results of the representative samples of the import goods. The competent authority considering the request of the importer granted provisional release of the goods in terms of Board's Circular No. 35/2017-Customs dated 16.08.2017.

10. During investigation, it was noticed that earlier M/s. SG Impex arranged mis-declaration of the description and classification of the subject goods pertaining to all the 03 Containers as 'Bonded Fabric (HS Code-60064200), Flock Fabric (HS Code-59070012). However, after initiation of the enquiry by DRI, the importer correctly declared the description and classification of some of the goods. However, it was noticed that this time too, the importer again mis-declared the description, Classification and quantity of the import consignments. The brief details of the goods of all 03 Containers are given in Annexure-A to this Show Cause Notice. Total **128922** Meters of Pu-coated Fabric found in the all the 03 import consignments alongwith **11818** Meters of PVC Coated Fabric, **7470** Kgs of Polyester Bonded Fabric and **7581** Kgs of Flock Fabric. Therefore, as mentioned in the forgoing paras, total 128922 Meters PU-coated found in the subject 03 import consignments and the same attracts anti-dumping duty as per Notification No. 14/2022-Customs (ADD) dated 20.05.2022.

11. From the forgoing paras, it appears that M/s. SG Impex imported total 03 import consignments covered under IGM No. 2323004 dated 28.09.2022, 2322469 dated 22.09.2022 and 2323327 dated 02.10.2022, which were earlier mis-declared as '*Bonded Fabric (HS Code-60064200), Flock Fabric (HS Code-59070012)*'. But after initiation of the investigation in the matter, the importer at the time of filing Bills Entry No. 2000530 dated 10.01.2023, 2001189 dated 20.01.2023 and 2001190 and date 20.01.2023, correctly declared some of the quantity of PU-coated Fabric and classified the same under appropriate Chapter heading. However, a little quantity **10500 Meters** of Pu-coated Fabric falling under HS Code 59032090 were still not

declared correctly. It is noticed that the subject 03 import consignments were containing more than 2/3 volume of Pu-coated fabric, however M/s. SG Impex not only arranged to mis-declare the description of the goods as Bonded Fabric & Flock Fabric but also mentioned the HS Code 60064200 and 59070012 of the same in the Bill of Lading and respective IGMs. Whereas the declared goods found in very little quantity in all the 03 import consignments. These facts clearly indicate the mala-fide intention of the importer of evasion of Customs duty and Anti-dumping duty. Although M/s. SG Impex had changed the description and classification of the goods at the time of filing Bills of Entry for these import consignments but same clearly appeared an afterthought of the importer as the DRI had already initiated investigation in the matter by way of putting on hold the said import consignments.

11.1. Further it was noticed that that the importer had also mis-declared the value of the goods at the time of filing of Warehouse Bills of Entry. The present import consignments have been imported from a Chinese Supplier M/s. LishuiHaihe International Enterprises Co. Ltd. and M/s. Wenzhou Asia Star International Trading Co. Ltd. The said company also used to export their similar product to other importers into India at high rates. Some of their major clients in India are M/s. Miqat International, Ananyaa Impex, M/s. Mangla Trading Corpn. etc.. On going through the available data of import of the subject fabrics, imported from M/s. Lishui Haihe International Enterprises Co. Ltd., there appears a significant difference in the value of goods when supplies have been made to the above-mentioned importers in comparison to the rate as declared by M/s. SG Impex. In this regard, a comparative chart of rate of similar goods in respect of M/s. SG Impex and other importers is given hereunder.

Sr. No.	Name of the Chinese supplier	Declared goods	Thicknes s of the goods	Quantity	Rate declared by M/s. SG Impex (USD per Qty)	Average rate of the goods when supplied to other companies (USD per Qty)	Differenc e in (USD per Qty)
1	LISHUI HAIHE INTERNATIONAL	PU coated Fabric (HS Code 59032090)	0.6 to 0.63	90741	0.9	1.25	0.35
2		PU coated Fabric (HS Code 59032090)	0.53/0.55	20500	0.75	1.25	0.50
3		PU coated Fabric (HS	0.79/0.80	12983	1.40	1.45	0.05

		Code 59032090)					
4		PU coated Fabric (HS Code 59032090)	0.70	4698	1.10	1.45	0.35
5		PVC Coated Fabric (59031090)	0.25	11818	0.35	0.50	0.15
6		Polyester Bonded Fabric (HS Code 60064200)	0.68	2280	1.10	1.45	0.35
7		Polyester Bonded Fabric (HS Code 60064200)	0.72/0.7 3	5190	1.25	1.5	0.25
8		Flock Fabric (59070012)	1.03	1519	1.10	1.25	0.15
9		Flock Fabric (59070012)	1.05 to 1.06	6062	1.25	1.25	0

From the above, it appears that M/s. SG Impex also indulged in the evasion of Customs Duty by way of undervaluation of import goods. It is noticed that M/s. SG Impex while filing Bills of Entry for the subject import consignments declared total assessable value for all the import consignments as **Rs. 1,16,69,866/-**, whereas considering the thickness and prime quality nature of the goods the appropriate assessable value of all these import consignments comes to **Rs. 1,59,91,197/-**. Detailed calculation of the assessable value of the goods is given in Annexure-A.

11.2. The test reports of the above subject import consignments indicated that the goods pertaining to the subject import consignments were PU-coated fabric in maximum quantity alongwith other fabrics such as PVC coated fabric, Flock Fabric, Polyester Bonded Fabric of different thickness. The goods were of prime quality and deserve higher rate i.e. assessable value for calculation of applicable Customs Duty. However, it appears that the importer in connivance with the supplier had intentionally mis-declared the value of the goods at the time of filing Warehouse Bills of Entry with deliberate intention of evasion of Customs Duty.

11.3. The present import consignments have been imported from Chinese Suppliers M/s. Lishui Haihe International Enterprises Co. Ltd. and M/s. Wenzhou Asia Star International Trading Co. Ltd. As confirmed by the importer Shri Gaurav Raj in his statement dated 29.12.2022, he used to communicate with Ms. Tracy (Lishui) and Ms. Jesse for bargaining and placing of the orders of their product. The DRI has investigated a separate case of evasion of anti-dumping duty and Customs duty by way of mis-declaration and mis-classification by M/s. Alia International. The import consignments of M/s. Alia International were of the same period as of M/s. SG Impex. During investigation of the said case, it was noticed that one person Shri Kunal Kamra used to place Orders for Pu-coated Fabric with Ms. Tracy. M/s. Alia International had imported total 05 Containers having total quantity 333800 Mtrs. The said goods were also found mis-declared in respect of description, classification, quantity and value. However, during investigation, mobile phone conversations of Shri Kunal Kamra and Ms. Tracy were resumed which indicated that the supplier used to supply the subject goods i.e. Pu-coated Fabric @ 1.26 to 1.43 \$ per Mtrs. **(RUD No. 16).** This value of the subject goods was also stated by Shri Kunal Kamra during recording his statement. These facts also indicated that the appropriate value of the PU-coated fabric imported from China are near to \$1.25 to 1.5 per meter.

12. As per Notification No. 14/2022-Customs (ADD) dated 20.05.2022, PU-coated fabric falling HS code 59032090 when imported from any Country including China and produced other than by M/s. Anhui Anli Material Technology Limited, attracts Anti-dumping duty @USD 0.46 per Meters. Therefore, total 333800 Meters of pu-coated Fabric which was found in the subject 05 import consignments attract Anti-dumping duty as per Notification No. 14/2022-Customs (ADD) dated 20.05.2022.

12.1. The above notification further clarified that ‘for the purposes of this notification, rate of exchange applicable for the purposes of calculation of such anti-dumping duty shall be the rate which is specified in the notification of the Government of India, Ministry of Finance (Department of Revenue), issued from time to time, in exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and the relevant date for the determination of the rate of exchange shall be the date of presentation of the bill of entry under section 46 of the said Act.’ Accordingly, in the present case, the rate of exchange is to be taken as per Notification No. 02/2023-Customs (N.T.) dated 05.01.2023 **(RUD No.17).**

13. During investigation, following statements of related persons have been recorded;

13.1. Statement of Shri Jignesh Khimji Noriya, Assistant Manager of Shipping Agent M/s. Evergreen Shipping Agency (India) Pvt. Ltd. was recorded on 07.12.2022 under Section 108 of the Customs Act, 1962(RUD No.18).

M/s. Evergreen Shipping Agency issued Bills of Lading Nos. EGLV143269211528 dated 13.09.2022 (Container No. EITU1697146) and EGLV143261778693 dated 09.09.2022 (Container No. EGHU8362441) for the import consignments of M/s. SG Impex wherein description of the goods were mis-declared as 'Bonded Fabric (HS Code-60064200)' and 'Flock Fabric (HS Code-59070012)'.

During recording of his statement Shri Jignesh Khimji Noriya stated that the subject Bills of Lading were prepared by their overseas agent on the basis of the details provided by the Shipper/agent in China; that the description/classification data used are taken from the uploaded data of import consignments by their counterpart/agents at the load port of consignments on their common portal shipmentlink.com. This data contains all the details which were mentioned in the corresponding Bills of Lading.

He was asked about the reason for the above variations between the descriptions as shown on the invoices and the corresponding Bs/L. When Shri Jignesh was shown the copies of said invoices he stated that he found that there were difference in material particulars such as description of goods, HS code and quantity etc. On being asked who was responsible for mis-declaring the said material particulars in Bills of Lading, he stated that as a carrier or shipping line they gave empty container to shipper to stuff their Cargo, after stuffing process/customs process done at POL container is exported from shipper country to importing country; that the Shipper proceed to stuff the cargo by their own, they as a carrier are not well aware with the actual cargo and they proceed for preparation the Bill of Lading on the basis of data/instructions given by the shipper.

On being asked that if the notify party in all the above consignments in the respective B/L were shown as "M/s Empezar Logistics P.L.", then why the said consignments were shifted to other CFS, Shri Jignesh stated that though the notify party of all the above consignments were shown as M/s Empezar Logistics CPS, at the time of actual receipt of the containers the Containers were put on hold by DRI and the importers were non-responsive, they arrange to place the containers in the CFS with whom he had agreements; that accordingly, they had arrange to shift the said Container in the CFS.

On being asked about all the import consignments of M/s. SG Impex handled by his company till date, Shri Jignesh Khimji Noriya stated that they have handled only below mentioned import consignments of M/s. SG Impex;

Name of the importer	IGM No. and date	Bill of Lading No. and Date	Declared description of goods in Bill of Lading
M/s. SG Impex	2323327/0 2.10.2022	EGLV1432692115 28 dated 13.09.2022	Bonded Fabric HS code 60064200 and Flock Fabric HS code 59070012
	2323004/2 8.09.2022	EGLV1432617786 93 dated 09.09.2022	Bonded Fabric HS code 60064200 and Flock Fabric HS code 59070012

On being asked he further stated that the above import consignments of M/s. SG Impex are presently on hold at Mundra Port.

On being asked **who approached him for clearance of the above mentioned consignments**, Shri Jignesh Khimji Noriya stated that he did not remember the name of the person, however generally CHA approach us for delivery of the import consignments; that in case of M/s. SG Impex the communication received from some Gaurav Raj through email id gauravraj92@gmail.com and requested to take delivery for the empty containers.

On being asked who declared the description of the import goods in the IGM pertaining to above consignments and what were the supportive documents for declaring the said description of the import goods, Shri Jignesh Khimji Noriya stated that they have declared the description of the import goods on the basis of Bill of Lading/data received by them from their counterpart/agent; that their agent at the Shipper country i.e. M/s. Evergreen Shipping Agency (China) Co. Ltd., China prepared the Bill of Lading for the said import consignments; that they remained in regular contact with their counterpart at China M/s. Evergreen Shipping Agency (China) Co. Ltd., China, Shri Jignesh Khimji Noriya stated that we remain in contact with their Chinese agent through email on regular basis and as and when required.

On being asked on what basis the description of the import goods was declared in the Bills of Lading pertaining to the above import consignments, Shri Jignesh Khimji Noriya stated that he was not much aware about the documents sought by their Chinese counterpart/agent from their clients, however he stated that he would seek the copies of Invoice/packing list etc. from the shipper of their agent.

Shri Jignesh Khimji Noriya was shown the copies of Invoices/packing lists of the consignments handled by him and asked to offer his comments. The details of the said consignments are as under;

Sr. No.	Name of the importer	Invoice No. and date	Bill of Lading No. and date	Comments
1	SG IMPEX BMFPR9668P	HS22-153-04 Dt.04.09.22	EGLV14326 9211528 Dtd.13.09.22	BL show bonded fabric & Flock Fabric whereas invoice show PU/PVC coated fabric in addition to smaller quantities of BL items.
2	SG IMPEX BMFPR9668P	HS22-153-03 Dt.01.09.22	EGLV14326 1778693 Dtd. 09.09.22	BL show bonded fabric & Flock Fabric whereas invoice show PU/PVC coated fabric in addition to smaller quantities of BL items.

On being asked about the reason for the above variations between the descriptions as shown on the invoices and the corresponding Bs/L, Shri Jignesh Khimji Noriya stated that he had seen the copies of said invoices and found that there were difference in material particulars such as description of goods, HS code and quantity etc. However, he was not aware with the reason of the said difference; that he would arrange the supportive documents from their Chinese counterpart/agent and would revert back with reason of said difference in material particulars of the import goods. He further added that he had provided the copies of invoices pertaining to the consignments of M/s. SG Impex. In these invoices also, the said difference was noticed.

On being asked who mentioned the material particulars of import goods such as description of goods, HS code and quantity etc. in the Bills of Lading/IGM and why the said particulars are different from the details available in the corresponding invoices, Shri Jignesh Khimji Noriya stated their Chinese counterpart/agent mentioned the said material particulars in the Bills of Lading; that he was not aware with the actual reason for the said difference, however he would try to find out the reason for the same and will revert back.

From the facts and evidences as discussed in the foregoing paras, it appeared that manipulated details/documents have been prepared by him, therefore he was asked whether he agreed with the same and who was responsible for the preparation of said manipulated documents, Shri Jignesh Khimji Noriya stated that they as a carrier or shipping line give empty container to shipper to stuff their cargo; that after stuffing process/customs process done at POL container to be export from shipper

country to importing country; that the Shipper proceed to stuff the cargo by their own, they as a carrier not well aware with the cargo which they have stuffed into the container; that they proceed for to preparation the Bill of Lading on the basis of data which is given by the shipper in the shipping instructions to my company; that in the present case, his company has prepared the Bills of Lading, however, he was not aware of on what basis these documents have been prepared; that he will find out the reason by arranging the copies of shipping instructions provided by the Shipper to his company; that the details in Bills of Lading and Invoices were different from each other, he was not aware who was responsible in his company for preparation of said documents.

He was shown Panchnama dated 21.11.22 & 22.11.22 of consignment of the importer M/s. SG Impex at Allcargo Logistics CFS were different from what they had declared in the IGM and shown on the B/L, he was asked to offer his comments, Shri Jignesh Khimji Noriya stated that during the examination he had witnessed that both the consignments had larger portion of PU Coated fabrics instead of declared goods of IGM or Bill of Lading.

Shri Jignesh Khimji Noriya was asked whether he was aware about the provisions of Section 30 of the Customs Act, 1962, he was aware with the provisions of Section 30 of the Customs Act, 1962 and also understand that on behalf of the person in charge of the vessel, they have to file Import Manifest with Customs, with correct declaration therein; that they were also supposed to subscribe to the correctness of the information provided in the said manifest.

13.2. Statement of Ms. Indu S Pillai, Document Manager for Shipping Agencies M/s Parekh Marine Services Pvt. Ltd. and M/s Seabridge Marine, C-8, Shakti Nagar, Gandhidham (RUD No. 19)

On being asked to describe the business activities such as booking , delivery, filing of IGM/EGM etc. of his company at his Gandhidham office, she stated that in case of imports she generally received data of import consignments from their counterpart/agent which were uploaded by his counterpart/agents at the load port of consignments on his common portal www.sinokor.co.kr; that this data contains all the details which were mentioned in the corresponding Bills of Lading. On the basis of that data they proceed for filing IGM without effecting any alterations; that after filing of IGM they wait for their customers/importer/agent who approaches them to take delivery of the consignments and provide them with the original copies of Bills of Lading; that the customers directly receive the original Bill of Lading; that she verified the details of the description of the goods mentioned in the Bill of Lading with the details available on his common portal on the basis of which they filed IGM;

after verification the details she gave the delivery of the goods to their customers after collecting the dues.

That in case of exports, they receive the copy of Shipping Bill along with Invoice/packing list etc. for filing EGM and generating Bill of Lading. The shipper approaches them with the documents and after verifying the details of the export goods she proceeds for generating the Bill of Lading; that after generating the Bill of Lading she hands over the original copy of Bill of Lading to the authorized representative of the exporter for further necessary action at their end; that they arranged to send the said original copy of Bill of Lading to his consignees in order to take delivery of the goods in import country; that they uploaded the said details on their common portal for the convenience of their principal and the agent in the importing country for smooth delivery of the consignments.

On being asked about how many import consignments had been handled by her company of M/s. SG Impex and asked to provide the 'details of all Bills of Lading and supporting documents of all the import Consignments, she stated that the details of single import consignment of M/s. SG Impex which had been handled by his company in near past through Container No. FSCU8127813 is as under:

Name of the	IGM No. and	Bill of Lading No. and Date	Declared description of goods in Bill of Lading	Supporting Invoice/ doc
M/s. SG Impex, New Delhi.	232246 9/22.0 9 .22	SNK002A2280 1091 Dtd. 07.09.22	1182rolls Bonded Fabric HS code 60064200 and Flock Fabric HS code 59070012	Not available at present, he assured to provide the same after arranging from his

She stated that the above import consignment of M/s SG Impex was on hold at Mundra port, M/s S G Impex was his new customer and on reference from M/s Empezar logistics P. Ltd., SEZ warehouse they had handled the consignment, as for the other firms, she was not sure of having handled their consignments but she would check details from her database and confirm about all imports by those.

On being asked about who approached her for clearance of the above-mentioned consignments, she stated that she did not remember the name of the person, however generally CHA would approach her for delivery of the import consignments, at present she did not remember as to what correspondence had been ensued with the importers in this regard but per her knowledge there had not been any correspondence regarding clearance of the goods from the importer till date. In case of M/s SG Impex as per the B/L details some “Gaurav Raj“ having PAN No. BMFPR9668P, Mobile no. 850xxxxxxx & email ID gauravraj92@gmail.com were informed on which she would have mailed the arrival notice.

On being asked about who declared the description of the import goods in the IGM pertaining to above consignments mentioned in the Bill of Lading and what were the supportive documents for declaring the said description of the import goods, she stated that she had declared the description of the import goods on the basis of Bill of Lading 07.09.2022 & Cargo Manifest, received by her from their counterpart/agent at Ningbo China, she put her sign before her for the authenticity of the same.

On being asked about who prepared that Bill of Lading for the subject import consignment, she stated that her agent at the Shipper country i.e. M/s. Sinokor Merchant Marine Co. Ltd., Ningbo, China had prepared the Bill of Lading for the said import consignment on 07.09.2022.

On being asked whether her branch remained in regular contact with their Chinese agent/counterpart i.e. M/s Sinokor Merchant Marine Co. Ltd., Ningbo (China), China, she stated that she remains in regular contact with her Chinese agent through portal of Sinokor as well as through email and as and when required.

On being asked on what basis the description of the import goods have been declared in the Bills of Lading pertaining to the above import consignments, she stated that she was not much aware about the documents sought by their Chinese counterpart/agent from their clients.

On being asked to provide the copies of supportive invoices related to the above-mentioned Bill of Lading, she stated that the copies of supportive documents/invoices/packing lists were not available with her at present, however she assured that she would arrange the same from her Chinese counterpart/agent in a week.

On being asked about reason for the above variations between the descriptions as shown on the invoices and the corresponding Bs/L, she stated that she had seen the copies of said invoices and found that there were difference in material particulars such as description of goods, HS code and quantity etc. However, she was not aware with the reason of the said difference; that she would arrange the supportive documents from her Chinese counterpart/agent and revert back with reason of said difference in material particulars of the import goods, she also stated that she had not seen the copies of invoices or packing list pertaining to the above consignment of M/s. SG Impex; that in these invoices also, the said differences were noticed; that she was not aware of the reason thereof.

On being asked who mentioned the material particulars of import goods such as description of goods, HS code and quantity etc. in the Bills of Lading/IGM and why said particulars were different from the details available in the corresponding invoices, she stated that their Chinese counterpart/agent would have mentioned the said material particulars in the Bills of Lading; that she was not aware as to why said details were different from the ones mentioned in the corresponding invoices, she would try to find out the reason of the same and will revert back.

From the facts and evidences as discussed in the foregoing paras, it appears that manipulated details/documents had been prepared by her company, did she agreed, if yes, who was responsible in her company for the preparation of said manipulated documents, she stated that they as a carrier or shipping line give empty container to shipper to stuff their cargo; that after stuffing process/customs process done at POL container to be export from shipper country to importing country; that the shipper proceeds to stuff the cargo by their own, she as a carrier is not well aware with the cargo which they had stuffed into the container that they proceeded to preparation the Bill of Lading on the basis of data which was given/uploaded in her company's portal; that in the present case, her company had prepared the Bills of Lading, however, she was not aware of on what basis these documents had been prepared; that she would find out the reason by arranging the copies of shipping instructions provided by the Shipper to his company. The details in Bills of Lading and Invoices were different from each other, she was not aware who was responsible in her company for preparation of said documents she assured to find out the reason thereof and revert back.

She was shown the Panchnama dated 19.11.2022 drawn at Seabird Marine Services (Gujarat) for consignments pertaining to M/s S G Impex and asked to go through the same and offer her comments. After perusal of the same, she stated that her representative Mr. Salina Krishna Rao, Sr. Executive, M/s Parekh Marine Services P. Ltd., Mundra had attended the examination and had witnessed the Panchnama, copies of both Panchnama and seizure memo dated 19.11.2022 were given to her and she was fully agree with the same.

On being asked about whether she was aware about the provisions of Section 30 of the Customs Act, 1962, what was her understanding about said legal provisions, she stated that she was aware about the provisions of Section 30 of the Customs Act, 1962 and also understand that in that case, as she was not the vessel owning line, the representative of Wan Hai had to file IGM on behalf of the person in charge of the vessel owner M/s. Wan Hai; that his vessel agent had to file the Import Manifest with Customs, with correct declaration therein, as supplied by them to her. On being asked whether she was aware of impact of any ADD on the PU Coated fabric/faux leather/artificial leathers classifiable under CTH 56039400 & 59032090, She stated that no, she was not aware of imposition of such anti dumping duty on those products.

13.3. Statement of Shri Gaurav Raj Jha, Proprietor of M/s. SG Impex was recorded under Section 108 of the Customs Act, 1962 on 29.12.2022 (RUD No. 20);

On being asked he stated that his firm M/s SG Impex engaged in trading of synthetic fabric such as PU coated fabric, PVC coated fabric, flock fabric etc. by procuring

those locally (Indian) as well as through import mostly from China, his work was in mainly Delhi and nearby area.

On being asked about placing of orders for import goods, Shri Gaurav Raj stated that he had placed the order of the import consignment of his firm M/s SG Impex through call on Phone No.+8615825718363 to Ms. Jesse (Wenzhou) and on +8615057886730 Ms. Tracy (Lishui), both the suppliers were manufacturing firms and he had imported one/two consignments from him in year 2021. Further he stated that he had no copy of orders placed by him available with him as the order were placed on telephonic calls only.

On being asked about fixing of pricing for their import goods viz. PU Coated, PVC Coated, Polyurethane Bonded and Flock Fabrics by him with so many colours and varieties, he stated that due to his association with the trade for last 7-8 years, he knew the marketability and price ranges in India, their prices were dependent on the thickness of PU/PVC coated fabric on per meter prices.

He admitted that he himself used to contact foreign suppliers for placing of the orders and for discussion/bargaining of the goods; that he contacted the supplier on his own on phone, earlier he had also imported shipments from the same suppliers in Jan/Feb 2021; that he never visited China for the subject business dealings.

On being asked about what was the use of import goods, whether he had manufacturing unit or otherwise, he stated that the import goods were used in auto seat cover, footwear bags, handle bags, sofas etc., no, he does not have any manufacturing unit.

On being asked about who booked the container for transportation of the goods, he stated that the transportation was booked by shipper from China as his B/L was on CIF basis so it was the responsibility of the shipper for delivering the cargo till Mundra port.

On being asked about the Customs clearance of the subject goods, he stated that Sh. Hemant Joshi, of M/s. Freight Link logistics, Gandhidham had filed his warehousing Bill of Entry on 28.11.22, the earlier proforma bill of entry available at the time of examination, were prepared by M/s. Empezar Logistics.

He stated that as his consignment was on hold since 12.10.22, he was at Gandhidham only for the same and the Bill of Entry was filed in his presence only, hence he had approved the same.

On being asked about the details available in the Bills of Lading, CTH, Bill of Entry, for his consignments for the particulars as reflected in the IGM/BL filed at the time of Import vis a vis the details as reflected on his proposed TP/Warehousing B/E (with SEZ Req. Id.), what was the reason behind the non-declaration of correct particulars in the IGM/BL or even the COOs produced by him, and was also asked

the reason for non-reflection of PU/PVC Coated fabrics in his consignments, he stated that he checked with the proforma B/E in respect of his consignments in the three 40 feet containers, he agreed to the fact that the declaration in the IGM/BL were of Bonded Fabric & Flock Fabrics only under CTH 60064200 & 59070012 respectively for total number of rolls, whereas in the trial Bill of Entry they had prepared for filing and shown during the examination had the details of actual content of the consignments, viz. PU Coated & PVC coated; that after sailing of his consignment, he had received the Invoice and packing list along with B/L copy which was prepared by the exporter, he had never made any request to his supplier for not showing the same or to declare other items.

On being asked whether he raised objection against the incorrect export documents of his consignment with the shipper or anyone, as even COOs were showing total rolls as Flock Fabric under HS Code No.6006 for his consignments, he stated that he agreed to the same but the export documents were filed by his suppliers only and he had not raised any objection with anyone for seeking amendment of the IGM/BL for his consignments.

On being asked whether he was aware that the goods PU Coated fabrics from China were attracting ADD since May-2022, he stated that being member of the association and in the business of fabrics, he was aware of the ADD and in the B/E he had filed on 28.11.22, he had applied ADD for his Imported goods.

On being asked about the quantities reflected in the three Bs/E dated 28.11.22, wherein for each of the consignments he had revised the Standard Unit of Quantity for PU Coated/PVC coated fabrics into Square Meters as shown below, please confirm as to how he had multiplied the length with 1.37 meters constant uniformly for both the items, he stated that he agreed to the fact that the first B/E was showing the length of the PU/PVC coated items as shown in the Commercial Invoices and Packing Lists, however as the unit of quantity for those items is in Square Meters, he converted the same with the breadth of the rolls of PU/PVC as 1.37 meter to arrive at the correct square meters for each of the items and filed the Bill of Entry accordingly, 1.37 meters was uniform length of both the products, so he had shown the correct quantity in our B/E.

On being asked about all his invoices were showing CIF values and commercial invoices were showing "payment terms : 100% Advance TT" , how come he claim that he had not effected any payments there against, he stated that he had protested with the sellers on receiving those invoices and them having shown payment terms as 100% advance though he had procured the goods on credit, on the same the Exporters had issued letters afterwards addressed to Bank Manager, Kotak Mahindra Bank, New Delhi wherein they had agreed to their fresh payment terms in respect of the invoices, and now fresh payment terms being on 90 days credit from date of issuance of B/L was given by him, he produced those letters after

putting his signatures thereon alongwith the copies of new B/E he filed and pkg. list and commercial invoices.

On being asked whether he had any correspondence or had raised any concern with him, especially as the letters were never produced so far with this office, he stated that in China most of trade were conducted on phone and minimum correspondence was taking place, he had telephonically informed them of the above and he had issued the letters.

On being asked why he did not obtain revised Commercial Invoices at the time of filing of Bill of Entry/ preparation or at the time of examination of his consignments, he stated that he had not obtain any revised Commercial Invoices, apart from the Invoices produced, he has not received any other invoices in this regard, he had received the letter by courier only.

On being asked whether he agreed that for the instance of incorrect declaration of his consignments in IGM/Bill of Lading as well as suppression of the actual quantity under import, he was liable for payment of differential duty as well as penalties, he stated he had not prepared IGM or B/L however he had not sought any amendment in these documents after receiving from shipper alongwith Commercial Inv. & Pkg. List on around 25.09.22. But he was not aware of the fact that all the descriptions of full consignment was required alongwith CTH and should be mentioned on BL that can be amended also hence he had neither instructed any of them to seek amendment in respective B/L or IGM, at the time of filing B/E dated 28.11.22, he filed the proper CTH of his goods through his CHA, this resulted in different declaration in the B/L and IGM with those of Bill of Entry for the goods under import by him, as for quantity, he agreed that in some of items there was higher width in import cargo which was uniformly calculated in the new B/E he had filed on 28.11.2022, and he agreed to bear the differential duty and dues as imposed thereon.

During his statement, he was shown the statements of Ms. Indu S. Pillai, Document Manager for Shipping Agency M/s. Parekh Marine Services Pvt.Ltd. M/s. Seabridge Marine Gandhidham and Shri Jignesh Khimjibhai Noriya, Asst. Manager of Shipping Agency M/s. Evergreen Shipping Agency in India Pvt. Ltd. Gandhidham who were issued the Bill of Ladings/IGMs wherein incorrect material particulars were mentioned on the directions of the Shipper i.e. the counterpart of the importer M/s. SG Impex. After perusal of the said statement, Shri Gaurav Raj admitted that the facts mentioned in the said statements are correct.

During his statement, he was shown the statement of Shri Hemant Balkrishan Joshi of Customs Broker, M/s. Freightlink Logistics, Gandhidham, wherein he admitted knowingly mentioning of incorrect description, classification etc. in the IGM and Bills of Lading and other documents. Shri Hemant Joshi during his statement also

stated that the importer also ready to pay the applicable Customs Duty and Anti-dumping duty on the subject import consignments of M/s. SG Impex. After perusal of the said statement of Shri Hemant Joshi, Shri Gaurav Raj confirmed that the facts submitted by Shri Hemant Joshi are correct.

On being asked whether he was aware of the Anti-Dumping Duty on the PU Coated Fabrics imported from China per Notification No.14/2022-Cus (ADD) dated 20.05.2022, he stated that he aware about the ADD on the PU Coated Fabrics/Faux Leather covered under Chapter Heading 5603 9400 & 5903 2090 per Notification No.14/2022-Cus (ADD) dated 20.05.22, whereby the ADD of 0.46 USD per meter had been imposed on these items if imported from China for period of five years from Notification.

13.4. Further Statement of Shri Gaurav Raj proprietor of M/s. SG Impex was recorded on 18.03.2023 under the provisions of Section 108 of the Customs Act, 1962 (RUD No. 21)

During recording of his statement, Shri Gaurav Raj was shown the 16 Test Reports received from the Laboratory for the representative samples drawn from his 03 import consignments and asked to offer his comments. After perusal of the said Test Reports, he stated that agreed with the details reflected in the Test Reports.

On being asked about why had he classified the items as PVC or Bonded Fabric when the Laboratory had declared after testing that some of the items of the same were showing percentage of Polyurethane or clarifying that the bonding material was based on PU, should not it required to be considered as PU coated/bonded fabrics, he stated that he saw that the percentage shown in the above items classified by us as PVC or Bonded Fabric under their chapter heading in the test reports was very small and he had no knowledge that such small presence would render their classifications to be changed to those of PU Fabrics. Further he wanted to add that even for the items declared by them as PU Coated fabrics, there was larger portion or 50% presence of other materials, still he had declared them as PU coated only.

On being asked about whether he was liable to pay the ADD on the quantities of the above items, because the ADD is based on square meter and he had declared the bonded fabrics in unit of KGs, did he agree with the GSM tested by the laboratory, he stated that as per his understanding he was not liable to pay the ADD, however he agreed with the thickness and GSM as tested and reported by the laboratory in the test reports and reflected above.

On being asked whether he was aware of the Anti-Dumping Duty on the PU Coated Fabrics imported from China per Notification No.14/2022-Cus (ADD) dated

20.05.22, he stated that he knew about the ADD on the PU Coated Fabrics/Faux Leather per Notification No.14/2022-Cus (ADD) dated 20.05.22, whereby the ADD of 0.46 USD per meter had been imposed on these items if imported from China for period of five years from Notification.

13.5. Statement of Shri Hemant Balkrishan Joshi, Operation head of Customs Broker firm M/s. Freight Link Logistics was recorded on 27.12.2022 (RUD No. 22)

He stated that his firm M/s Freight Link Logistics, Gandhidham was a CHA license holder and forwarding firm since last eight to ten years. His firm was proprietary firm of Sh. Samaran Manimanan, F-Card holder, who sits at the head office at Chennai. Power of Attorney holder Sh. Deepak Singh, G-card holder handles this branch. Shri Hemant Joshi stated that M/s. SG Impex was owned by Shri Gaurav Raj Jha and he met him at Mundra Port in the month of October, 2022 and Shri Gaurav Raj requested him to get clear the subject import consignments; that he provided him required documents.

During recording his statement, he was shown the details of Bills of Lading and IGMs of the subject import consignments as mentioned below;

Sl No	B/L date	No.&	Container No.	items and qtyas per IGM	C/ne & IEC, M/s	Notify . Party	PNAMA/ seizure DTD.
1	EGLV143269 211528 Dtd13.09.22		EITU1697 146	1209 ROLLS BONDED FABRIC HS 60064200, FLOCK FABRIC 59070012	SG IMPE X BMFP R966 8P	Empez ar Logisti cs Pvt Ltd	21.11.22/ carried out at M/s Allcargo Logistics CFS.
2	EGLV143261 778693 Dtd 09.09.22		EGHU836 2441	1160 ROLLS BONDED FABRIC HS 60064200, FLOCK FABRIC 59070012	SG IMPE X BMFP R966 8P	Empez arLogi stics Pvt Ltd	21.11.22/ carried out at M/s Allcargo Logistics CFS.
3	SNK002A228 01091 Dtd 07.09.22 Sinokor		FSCU8127 813	1182 rolls Bonded fabric HS60064200,	SG IMPE X BMFP	Empez ar Logisti	19-11-22/ carried out at M/s Seabird

	Merchant Marine Co., Ltd.		FLOCK FABRIC 59070012	R966 8P	cs Pvt Ltd	CFS, Mundra
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After perusal of the said documents he confirmed that the description and CTH of the import goods have been mis-declared and the said import consignments were originated in China.

After perusal of the copies of Bills of Lading, Shri Hemant Joshi stated that he checked warehouse Bills of Entry they had proposed to file for clearance of the above consignments and he confirmed that he had prepared the Bills of Entry from the Invoices of those consignments which were supplied to him by the Importers on 27/28.10.22 and verbally asked him to file the Bills of Entry.

On being asked about the descriptions and CTH as shown in the IGM and the B/E being different and who asked him to mention classifications separately for each of the multiple items in the Bs/E, he stated that the Chapter heading in IGM were for products other than PU/PVC Coated fabrics whereas in the B/E he had filed the chapter heading of each items of the consignments were shown separately; that Sh. Gaurav Raj, Proprietor of M/s SG Impex given him the Invoices and Packing list upon which he had found the classifications from Tariff and shown those against each of the items.

On being asked Shri Hemant Joshi stated that he was fully aware about the ADD on the PU Coated Fabrics/Faux Leather covered under Chapter Heading 5603 9400 & 59032090 as per Notification No.14/2022-Cus (ADD) dated 20.05.22, whereby the ADD of 0.46 USD per meter had been imposed on these items if imported from China for period of five years.

He agreed that by showing the incorrect description and classification of the subject goods in respective Bills of Lading and IGMs, the importer appears to be making an attempt for evasion of ADD.

On being asked whether he got the warehousing B/E checked or verified from the importers, he stated that he would check as to whether he had forwarded those B/E for getting checked from the importers or otherwise, generally before filing he send the checklist to the importers for any commodities and only after their “OK” he proceed to file the BE. However, he did not provide any document in support of the same.

On being asked whether they were ready to pay up the dues alongwith the penalty and ADD, he stated that after seizure of the goods, they had conveyed him and requested him to get release of the consignments and shown his readiness for payment of the government dues.

On being asked whether he knew any other associates of the importer firms, and physically visited their offices, he stated that he did not know any other persons or associates of M/s. SG Impex till date; neither had he visited their office.

During his statement, Shri Hemant Joshi assured to provide their communication/conversations with the importer or other related persons however he did not provide the same.

14. Valuation of the goods imported by M/s. SG Impex covered under Bills Entry No. 2000530 dated 10.01.2023, 2001189 dated 20.01.2023 and 2001190 dated 20.01.2023 imported through Container Nos. FSCU8127813, EGHU8362441, EITU1697146:-

14.1. M/s. SG Impex imported total 03 import consignments covered under IGM No. 2323004 dated 28.09.2022, 2322469 dated 22.09.2022 and 2323327 dated 02.10.2022, which were earlier mis-declared as '*Bonded Fabric (HS Code-60064200), Flock Fabric (HS Code-59070012)*'. But after initiation of the investigation in the matter, the importer at the time of filing Bills Entry No. 2000530 dated 10.01.2023, 2001189 dated 20.01.2023 and 2001190 dated 20.01.2023, correctly declared some of the quantity of PU-coated Fabric and classified the same under appropriate Chapter heading. However, a quantity of **10500 Meters of Pu-coated Fabric falling under HS Code 59032090 were still not declared correctly.** It is noticed that the subject 03 import consignments were containing more than 2/3 volume of Pu-coated fabric, however M/s. SG Impex not only arranged to mis-declare the description of the goods as Bonded Fabric & Flock Fabric but also mentioned the HS Code 60064200 and 59070012 of the same in the Bill of Lading and respective IGMs. These facts clearly indicate the mala-fide intention of the importer of evasion of Customs duty and Anti-dumping duty.

14.2. Further it was noticed that that the importer had also mis-declared the value of the goods at the time of filing of Warehouse Bills of Entry and then at the time of filing DTA Bills of Entry. The present import consignments have been imported from Chinese Suppliers M/s. Lishui Haihe International Enterprises Co. Ltd. and M/s. Wenzhou Asia Star International Trading Co. Ltd. The said company also used to export their similar product to other importers into India at high rates. Some of their major clients into India are M/s. Miqat International, Ananyaa Impex, M/s. Mangla Trading Corpn. Etc..Ongoing through the available data of import of the subject fabrics, imported from M/s. Lishui Haihe International Enterprises Co. Ltd., there

appears a significant difference in the value of goods when supplies have been made to the above-mentioned importers in comparison to the rate as declared by M/s. SG Impex. In this regard, a comparative chart of rate of similar goods in respect of M/s. SG Impex and other importers is given hereunder.

Sr. No.	Name of the Chinese supplier	Declared goods	Thicknes s of the goods	Quantity	Rate declared by M/s. SG Impex (USD per Qty)	Average rate of the goods when supplied to other companies (USD per Qty)	Differen ce in (USD per Qty)
1	LISHUI HAIHE INTERNATIONAL	PU coated Fabric (HS Code 59032090)	0.6 to 0.63	90741	0.9	1.25	0.35
2		PU coated Fabric (HS Code 59032090)	0.53/0.55	20500	0.75	1.25	0.50
3		PU coated Fabric (HS Code 59032090)	0.79/0.80	12983	1.40	1.45	0.05
4		PU coated Fabric (HS Code 59032090)	0.70	4698	1.10	1.45	0.35
5		PVC Coated Fabric (59031090)	0.25	11818	0.35	0.50	0.15
6		Polyester Bonded Fabric (HS Code 60064200)	0.68	2280	1.10	1.45	0.35
7		Polyester Bonded Fabric (HS Code 60064200)	0.72/0.73	5190	1.25	1.5	0.25

8		Flock Fabric (59070012)	1.03	1519	1.10	1.25	0.15
9		Flock Fabric (59070012)	1.05 to 1.06	6062	1.25	1.25	0

14.3. The test reports of the above subject import consignments indicated that the goods pertaining to the subject import consignments were PU-coated fabric in maximum quantity alongwith other fabrics such as PVC coated fabric, Flock Fabric, Polyester Bonded Fabric of different thickness. The goods were of prime quality and deserve higher rate i.e. assessable value for calculation of applicable Customs Duty. However, it appears that the importer in connivance of the supplier had intentionally mis-declared the value of the goods at the time of filing Warehouse Bills of Entry with deliberate intention of evasion of Customs Duty.

14.4. From the above, it appears that M/s. SG Impex also indulged in the evasion of Customs Duty by way of undervaluation of import goods. It is noticed that M/s. SG Impex while filing Bills of Entry for the subject import consignments declared total assessable value for all the import consignments as **Rs. 1,16,69,866/-**, whereas considering the thickness and prime quality nature of the goods the appropriate assessable value of all these import consignments comes to **Rs. 1,59,91,197/-**. Detailed calculation of the assessable value of the goods is given in Annexure-A.

14.5. From the above, it appears that M/s. SG Impex also indulged in the evasion of Customs Duty by way of undervaluation of import goods besides deliberate intention of evasion of anti-dumping duty on Pu-coated Fabrics. On the basis of facts discussed above, it appears that M/s. SG Impex have imported total **128922 Meters of Pu-coated Fabric alongwith 11818 Mtrs of PVC Coated Fabric, 7470 Kgs of Polyester Bonded Fabric and 7581 Kgs of Flock Fabric** having different thickness as appears from Test-reports. The total declared value of all the 03 import consignments at the time of filing Warehouse Bills of Entry is **Rs. 1,16,55,375/-** and at the time of filing DTA Bills of Entry the total value of the subject goods were declared as **Rs. 1,16,69,866/-** whereas appropriate rate of the subject goods were **Rs. 1,59,91,197/- as given in Annexure-A to the SCN.**

15. In view of the above, the value declared by the importer in the corresponding Bills of Entry and invoices did not appear to be the true transaction value under the provisions of Section 14 of the Customs Act, 1962 read with the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and thus the same appear liable to be rejected in terms of Rule 12 of CVR, 2007. The

value is required to be re-determined by sequentially proceeding in terms of **Rules 4 to 9 of CVR, 2007**. The relevant Rules of CVR, 2007 are reproduced hereunder:

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3. Determination of the method of valuation. -

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

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that -

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -

(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

(i) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

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;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(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 such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(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.

Further, as per Rule 6 of the CVR, 2007, if the value cannot be determined under Rule 3, 4 & 5, then the value shall be determined under Rule 7 of CVR, 2007.

Rule 7 of the CVR, 2007, stipulates that:-

(1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions : -

(i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within India;

(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

15.1. While the investigation was going on, M/s. SG Impex sought provisional release of the subject consignments. Since the DRI noticed undervaluation in the subject import consignment, the importer while filing DTA Bills of Entry for the subject consignments had declared a little higher assessable value of the goods and the provisional assessment of the goods was done at **Rs. 1,16,69,866/-**. However, this time too, the importer appears to have declared the value of the goods much less than the appropriate assessable value. As during investigation, the appropriate value of the subject 03 import consignments covered under Bills Entry No. 2000530 dated 10.01.2023, 2001189 dated 20.01.2023 and 2001190 dated 20.01.2023 comes to **Rs. 1,59,91,197/-** as given in the Annexure-A to this Investigation Report.

Therefore, neither the declared assessable value of the goods at the time of filing Warehouse Bills of Entry i.e. **Rs. 1,16,55,375/-** nor the assessable value of **Rs. 1,16,69,866/-** as declared at the time of filing DTA Bills of Entry is the actual transaction value for the subject import consignments. The same have been mis-declared with clear intention of evasion of appropriate Customs duty and anti-dumping duty applicable thereon.

15.2. As mentioned above, the assessable value of **Rs. 1,16,55,375/-** declared by the importer at the time of filing Warehouse Bills of Entry No. 1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022 and the value of **Rs. 1,16,69,866/-** declared by the importer at the time of filing DTA Bills of Entry No.2000530 dated 10.01.2023, 2001189 dated 20.01.2023 and 2001190 dated 20.01.2023 are liable to be rejected under Rule 12 of Customs Valuation Rules 2007 as there has been significant mis-declaration in respect of description, classification and value thereof. Therefore, the declared assessable value of the goods covered under warehouse Bills of Entry and DTA Bills of Entry as mentioned is liable to be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and re-determined under Section 14 of the Customs Act, 1962 under Rule 5 Customs Valuation (Determination of value of imported goods) Rules, 2007 as **Rs. 1,59,91,197/-**.

16. Mis-declaration and liability to confiscation of imported goods imported by M/s. SG Impex covered under IGM No. 2323004 dated 28.09.2022, 2322469 dated 22.09.2022 and 2323327 dated 02.10.2022 (BL Nos. SNKO02A220801091 dated 07.09.2022, EGLV143261778693 dated 09.09.2022 and EGLV143269211528 dated 09.09.2022) imported through Container Nos. FSCU8127813, EGHU8362441, EITU1697146 for which the importer filed DTA Bills Entry No. 2000530 dated 10.01.2023, 2001189 dated 20.01.2023 and 2001190 dated 20.01.2023: -

16.1. M/s. SG Impex arranged to mention the description of the goods pertaining to all the 03 subject import consignments as 'Bonded Fabric (HS Code-60064200)' and 'Flock Fabric (HS Code-59070012)' whereas most of the cargo in the import consignments were of PU-coated Fabric which attract Anti-dumping duty as per Notification No. 14/2022-Customs (ADD) dated 20.05.2022. During examination and consequently as Test Reports thereof, it was noticed that only 7470 Kg of Polyester Bonded Fabrics and 7581 Kgs of Flock Fabrics were found therein. Total 128922 Meter of Pu-coated fabric and 11818 Meters of PVC Coated Fabric were found in the said import consignments. Therefore, it appears that whole import consignments covered under IGM No. 2323004 dated 28.09.2022, 2322469 dated 22.09.2022 and 2323327 dated 02.10.2022 were found mis-declared in respect of

description, classification, quantity thereof therefore the same appears to be liable for confiscation under the provisions of Section 111(f) of the Customs Act, 1962.

Although the importers had mis-declared the goods as 'Bonded Fabric (HS Code-60064200), Flock Fabric (HS Code-59070012)' in the BL and IGM, however, consequently when the import consignments were intercepted by the DRI, M/s. SG Impex had declared a little quantity i.e. 162237 Sq. Mtrs (**118422 Mtrs**) of PU-Coated Fabrics (HS Code 59032090) as PU-coated Fabric alongwith 22318 Meters of PVC Coated Fabric, **7346 Kgs of Polyester Bonded Fabric and 7363 Kgs of Flock Fabric. However, as per Test Reports, the 03 import consignments of M/s. SG Impex were containing** total 128922 Meters of Pu-coated Fabric alongwith 11818 Mtrs of PVC Coated Fabric, 7470 Kgs of Polyester Bonded Fabric and 7581 Kgs of Flock Fabric having different thickness. The corresponding Bills of Lading were also containing the Classification of the goods alongwith description of the import goods which were other than the classification of PU-coated fabric whereas whole consignments were found as Pu-coated fabric. Further the AZO Test Certificates submitted by the importer during investigation, clearly containing description of the goods of only Bonded Fabric and Flock Fabric only. No description of Pu-coated Fabric and PVC Coated Fabric were found mentioned in the AZO Test Certificates. This shows that the goods were intentionally mis-declared to escape from the payment of applicable Customs duty and anti-dumping duty. Since the DRI had already initiated action against the said import consignments after filing of IGM, the importer had changed the description and classification of the goods and arranged to declare PU-coated fabrics and other fabrics at the time of filing warehouse Bills of Entry. It further appears that M/s. SG Impex, while filing Warehouse Bills of Entry had changed the HS code and declared the same as different from the HS codes as mentioned in the IGM and Bills of Lading, but the same appears to be afterthought of the importer in order to escape of the interception of enforcement agency. Moreover, since the goods in the subject 03 import consignments were found mis-declared in respect of description and quantity thereof and thickness thereof the declared value of the subject goods cannot be considered as true transaction value of the goods. Therefore, the subject import consignments were also found mis-declared in respect of its value also. The total value of the goods declared by M/s. SG Impex was **Rs. 1,16,55,375/-** at the time of filing of Warehouse Bills of Entry and **Rs. 1,16,69,866/-** (1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022) at the time of filing DTA Bills of Entry (2000530 dated 10.01.2023, 2001189 dated 20.01.2023 and 2001190 and date 20.01.2023). However, considering the appropriate value of the subject goods supplied by the same Chinese suppliers on the basis of its thickness, the appropriate assessable value of the subject goods comes to **Rs. 1,59,91,197/- (as given in Annexure-A)**. It appears that the importer also wanted to evade the payment of anti-dumping duty through undervaluation of the import

goods. Therefore, M/s. SG Impex not only found indulged in the evasion of Anti-dumping duty by way of mis-declaration and mis-classification of the subject goods but also indulged in evasion of Customs duty by way of grossly undervaluation thereof. In view of the above, as the subject goods were found mis-declared in respect of quantity, value, description, classification thereof, the same appears to be liable for confiscation under the provisions of Section 111(l), 111(m) of the Customs Act, 1962, also.

16.2. In view of the above, all the 03 import consignments imported by M/s. SG Impex having total quantity 128922 Meters of Pu-coated Fabric alongwith 11818 Mtrs of PVC Coated Fabric, 7470 Kgs of Polyester Bonded Fabric and 7581 Kgs of Flock Fabric having different thickness were found mis-declared in respect of description, classification, value, quantity and other material particulars in order to evade the applicable Customs duty and Anti-dumping duty thereon. M/s. SG Impex in connivance with their Chinese suppliers knowingly and deliberately mis-declared the description and classification of subject import consignments. Such act of omission and commission of M/s. SG Impex rendered the subject goods total quantity 128922 Meters of Pu-coated Fabric alongwith 11818 Mtrs of PVC Coated Fabric, 7470 Kgs of Polyester Bonded Fabric and 7581 Kgs of Flock Fabric, liable to confiscation under Section 111(f), 111(l) and 111(m) of the Customs Act, 1962.

17. Demand of Customs Duty and Anti-Dumping Duty on the subject goods of M/s. SG Impex imported through Container Nos.FSCU8127813, EGHU8362441 and EITU1697146 covered under WH Bill of Entry No.1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022 and DTA Bills of Entry No. 2000530 dated 10.01.2023, 2001189 dated 20.01.2023 and 2001190 and date 20.01.2023, respectively: -

17.1. From forgoing paras, it is revealed that the importer intentionally mis-declared the PU-coated fabric as 'Bonded Fabric (HS Code-60064200), Flock Fabric (HS Code-59070012)' in the corresponding Bills of Lading and IGM with deliberate intention of evasion of Anti-dumping duty. The importer was very well aware with the applicability of anti-dumping duty on the said goods as per Notification No. 14/2022-Customs (ADD) dated 20.05.2022. However, it was revealed that M/s. SG Impex imported total 128922 Meters of PU-coated Fabric alongwith 11818 Mtrs of PVC Coated Fabric, 7470 Kgs of Polyester Bonded Fabric and 7581 Kgs of Flock Fabric. The 128922 Meters of PU-coated Fabric found concealed in the subject import consignments attract total **Rs. 49,63,736/-** Anti-Dumping Duty alongwith other duties.

17.2. Although after initiation of the investigation by DRI, the importer managed to declare the subject goods correctly to some extent at the time of filing of Warehouse

Bills of Entry and corresponding DTA Bills of Entry. But the same appears to be afterthought of the importer to escape from the consequent penal provisions. However, some of the goods were still found mis-declared in respect of quantity and other material particulars. Further, it was noticed that the importer also indulged in gross undervaluation of the other goods. M/s. SG Impex had declared total assessable value of all Fabrics including PU-coated Fabric as **Rs. 1,16,55,375/-** at the time of filing of Warehouse Bills of Entry (1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022) and **Rs. 1,16,69,866/-** at the time of filing DTA Bills of Entry (2000530 dated 10.01.2023, 2001189 dated 20.01.2023 and 2001190 dated 20.01.2023). **Total declared Customs duty was of Rs. 91,82,146/-**. However, considering thickness, prime quality of the subject goods it was noticed that the appropriate assessable value of the subject goods comes to **Rs. 1,59,91,197/- (as given in Annexure-A) which attracts total Customs Duty of Rs. 1,14,18,558/-** (BCD 31,98,239/-, SWS Rs. 3,19,824/-+ ADD Rs. 49,63,736/-+ IGST Rs. 29,36,759/-) on total 128922 Meters of Pu-coated Fabric alongwith 11818 Mtrs of PVC Coated Fabric, 7470 Kgs of Polyester Bonded Fabric and 7581 Kgs of Flock Fabric as detailed in Annexure-A to this Investigation Report.

17.3. As mentioned above, the importer had initially mis-declared the value of goods as **Rs. 1,16,55,375/-** at the time of filing of Warehouse Bills of Entry, however as the DRI had initiated investigation in this matter, the importer enhanced the assessable value of the goods to some extent and thereby declared the same as **Rs. 1,16,69,866/-** at the time of filing DTA Bills of Entry. Also total Customs duty liability was **Rs. 91,82,146/-** whereas the appropriate assessable Value of the subject import consignments was **Rs. 1,59,91,197/-** and the applicable Customs duty alongwith Applicable Antidumping duty and IGST comes to **Rs. 1,14,18,558/-**. A detailed chart of duty calculation is given hereunder;

Container No.	Description & HS code Mentioned in Bill of Lading	Description & HS code of the goods	Total Assessable value of the goods declared by the importer (in Rs.)	Declared Ass. Value in DTA BEs (in Rs.)	Total duty declared (in Rs.)	Quantity found in examination and calculation of assessable value (in Rs.)	Description of goods as per Test Reports	Thickness (in mm)	Appropriate rate in USD per Mtrs	Total duty to be paid (BCD+SWS+ADD +IGST) (in Rs.)

FSCU 81278 13	Bond ed Fabri c (HS Code- 6006 4200) , Flock Fabri c (HS Code- 5907 0012)	PU Coated Fabric (0.60M M) (59032 090)	2350 569.4 7	238 187 2	223 316 9	3161 6	PU Coated Fabric (5903209 0)	0.6 3	1.25	2575339 .453
		PVC Coated Fabric (0.25M M) (59031 090)	3414 25.08	345 972. 3	126 764. 2	1181 8	PVC Coated Fabric	0.2 5	0.5	181215. 3211
		Polyest er Bonded Fabric (HS Code 600642 00)	2948 82	298 809. 6	839 65.3 3	2980	Polyester Bonded Fabric (HS Code 60064200)	0.7 3	1.5	137084. 5296
		Flock Fabric (HS Code 590700 12)	3656 20.64	370 489. 7	901 03.1	4242	Flock Fabric (HS Code 59070012)	1.0 6	1.25	162615. 3732
EGHU 83624 41	Bond ed Fabri c (HS Code- 6006 4200) , Flock Fabri c (HS Code- 5907 0012)	PU Coated Fabric (0.50m m) (59032 090)	6195 61.95	617 311. 7	651 738. 2	1000 0	PU Coated Fabric (5903209 0)	0.5 3	1.25	814568. 4
		PU Coated Fabric (0.60 mm) (59032 090)	1934 590.7 8	192 756 5	181 359 6	2602 1	PU Coated Fabric (5903209 0)	0.6 1	1.25	2119588 .434

		PU Coated Fabric (0.80 mm) (59032090)	737855.1	735175.2	540978.3	6382.5	PU Coated Fabric (59032090)	0.79	1.45	559045.5748
		PVC Coated Fabric (0.6 mm) (59031090)	317979.56	316824.6	116084.5	5500	PU Coated Fabric (59032090)	0.55	1.25	448012.62
		Polyester Bonded Fabric (HS Code 60064200)	207160.8	206408.4	58000.76	2280	Polyester Bonded Fabric (HS Code 60064200)	0.68	1.45	101387.3501
		Flock Fabric (HS Code 59070012)	187915	187232.5	45534.94	1820	Flock Fabric (HS Code 59070012)	1.05	1.25	69768.972
EITU1697146	Bonded Fabric (HS Code-60064200)	PU Coated Fabric (0.6 mm) (59032090)	2461197.46	2452259	2307265	33104	PU Coated Fabric (59032090)	0.6	1.25	2696547.231
	, Flock Fabric (HS Code-59070012)	PU Coated Fabric (0.7 mm) (59032090)	426849.8	425299.2	355755.5	4698	PU Coated Fabric (59032090)	0.7	1.45	411499.5864

		PU Coated Fabric (0.8 mm) (59032 090)	7630 01.57	760 230. 6	559 414. 9	6600	PU Coated Fabric (5903209 0)	0.7 8	1.45	578096. 4816
		PVC Coated Fabri (0.6 mm) (59031 090)	2891 28.91	288 078. 8	105 552. 1	5000	PU Coated Fabric (5903209 0)	0.5 5	1.25	407284. 2
		Polyest er Bonded Fabric (HS Code 600642 00)	2008 00.6	200 071. 3	562 20.0 4	2210	Polyester Bonded Fabric (HS Code 60064200)	0.7 2	1.45	98274.5 8056
		Flock Fabric (HS Code 590700 12)	1568 36.75	156 267. 1	380 04.1 6	1519	Flock Fabric (HS Code 59070012)	1.0 3	1.25	58230.2 574
Total			1165 5375	116 698 66	918 214 7	Total				114185 58.37

18. Role and culpability on the importer/person/firm involved: -

18.1. Role and culpability of Shri Gaurav Raj proprietor of M/s. SG Impex, Delhi

18.1.1. From the investigation conducted in the present case, it was revealed that M/s. SG Impex imported PU-coated fabric *total quantity* 128922 Meters of Pu-coated Fabric which attracts anti-dumping duty as per Notification No. 14/2022-Customs (ADD) dated 20.05.2022. Although the importers had mis-declared the goods as ‘Bonded Fabric (HS Code-60064200), Flock Fabric (HS Code-59070012)’ in the BL and IGM, however, consequently when the import consignments were intercepted

by the DRI, M/s. SG Impex declared some of the quantity of the goods as PU-coated Fabric total 162238 Sq. Mtrs. (118422 Mtrs) alongwith other goods as PVC coated Fabric (HS code 59031090) total quantity 30575 Sq. Mtrs. (22318 Mtrs), Polyester Bonded Fabric (HS Code 60064200) total quantity 7346 Kgs, Flock Fabric (HS Code 59070012) total quantity 7363 Kgs, whereas the actual quantity of these fabric were found as below;

Sr. No.	Description/HS code of the goods	Quantity declared	Actual quantity found
1	PU-coated Fabric	162238 Sq. Mtrs. (118422 Mtrs)	128922 Meters
2	PVC coated Fabric (HS code 59031090)	30575 Sq. Mtrs. (22318 Mtrs),	11818 Meters
3	Polyester Bonded Fabric (HS Code 60064200)	7346 Kgs	7470 Kgs
4	Flock Fabric (HS Code 59070012)	7363 Kgs	7581 KGs

Further, M/s. SG Impex also indulged into evasion of Customs duty by way of undervaluation. Total assessable value of the subject goods was declared by the importer as **Rs. 1,16,55,375/-** at the time of filing Warehouse Bills of Entry and **Rs. 1,16,69,866/-** at the time of filing DTA Bills of Entry, whereas the appropriate assessable value of the subject goods appeared to be of **Rs. 1,59,91,197/-** and the applicable Customs duty alongwith Applicable Antidumping duty and IGST comes to **Rs. 1,14,18,558/-**

18.1.2. The corresponding Bills of Lading were containing Classification of the goods other than the classification of PU-coated fabric whereas most quantity of the goods were found as PU-coated fabric which attract Anti-dumping duty. Also, M/s. SG Impex submitted AZO Test Certificates for the subject consignments. These certificates containing description of the goods only as 'Bonded Fabric' and 'Flock Fabric'. These descriptions were the same as declared in the Bills of Lading and corresponding IGMs. These facts clearly indicate that the subject goods were deliberately mis-declared and PU-coated fabric were not mentioned in the said shipping documents with clear intention of evasion of anti-dumping duty. Since the DRI had already initiated action against the said import consignments after filing of IGM, the importer arranged to declare PU-coated fabrics and other fabrics at the time of filing Warehouse Bills of Entry by declaring a fraction of the goods as PU coated fabric alongwith other declared fabrics. It further appears that M/s. SG Impex, while filing Warehouse Bills of Entry had changed the HS code and declared the same as different from the HS codes as mentioned in the IGM and Bills of Lading,

but the same appears to be afterthought of the importer in order to escape of the interception of enforcement agency.

18.1.3. As appears from forgoing paras, M/s. SG Impex also indulged in evasion of Customs duty and other duties by way of mis-declaration value of the goods. M/s. SG Impex had declared total assessable value of all Fabrics including PU-coated Fabric as **Rs. 1,16,55,375/-** at the time of filing of Warehouse Bills of Entry (1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022) and **Rs. 1,16,69,866/-** at the time of filing DTA Bills of Entry (2000530 dated 10.01.2023, 2001189 dated 20.01.2023 and 2001190 dated 20.01.2023). However, considering thickness, prime quality of the subject goods it was noticed that the appropriate assessable value of the subject goods comes to **Rs. 1,59,91,197/- (as given in Annexure-A) which attracts total Customs Duty of Rs. 1,14,18,558/-** (BCD 31,98,239/- SWS Rs. 3,19,824/-+ ADD Rs. 49,63,736/-+ IGST Rs. 29,36,759/-) on total 128922 Meters of Pu-coated Fabric alongwith 11818 Mtrs of PVC Coated Fabric, 7470 Kgs of Polyester Bonded Fabric and 7581 Kgs of Flock Fabric.

18.1.4. During investigation, it is revealed that Shri Gaurav Raj proprietor of M/s. SG Impex in connivance with their suppliers, mis-declared the subject goods in respect of description, classification, value, quantity and other material particulars in order to evade the applicable Customs duty thereon. M/s. SG Impex in connivance with their Chinese suppliers knowingly and deliberately mis-declared the description and classification of all subject 03 import consignments. Shri Gaurav Raj admitted that all the conversations of his firm were made by himself for import of the goods from China. As per the provisions of Section 46 of the Customs Act, 1962, an importer is required to furnish the correct and true information/documents to the proper officer, however, in the present case the importer failed to furnish the correct and true information/documents to the proper officer of Customs. Such act of commission and omission on the part of M/s. SG Impex, rendered the subject goods mentioned in Annexure-A to this investigation Report liable to confiscation under Section 111(f), 111(m) and 111 (l) of the Customs Act, 1962 and thereby rendered himself liable to penalty under **Section 112(a) and 112 (b)** of the Customs Act, 1962.

18.1.5. It is clear from the forgoing paras that Shri Gaurav Raj of M/s. SG Impex has submitted documents to the Customs broker which were not containing correct and true declaration of the subject goods. He provided the incorrect details/documents to the Customs authorities for import, warehousing and clearance of the subject offending goods. He also forwarded incorrect documents for filing of import documents for these consignments with false declarations. He knowingly and intentionally made/signed/used and/or caused to be

made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, classification, value etc., with mala-fide intention, and it appears that M/s. SG Impex is also liable to penalty under **Section 114AA of the Customs Act, 1962.**

18.2. Role and culpability of M/s Freight Link Logistics, the Customs Broker who dealt with import documents of import consignments of M/s. SG Impex: -

18.2.1. M/s Freight Link Logistics was the Customs Broker of M/s. SG Impex. They have dealt with the documents of import consignments of the subject importer. During investigation, it was noticed that they have dealt with the subject import consignments so casually that they did not even seek any clarification reason for not declaring the Pu-coated Fabrics in the Bills of Lading and IGM as the maximum quantity in all the 03 import consignments were of Pu-coated Fabric which attract Anti-dumping duty as per Notification No. 14/2022-Customs (ADD) dated 20.05.2022.

18.2.2. During statement Shri Hemant Joshi stated that they had filed the Bills of Entry on the basis of invoices provided by the importer M/s. SG Impex. The corresponding Bills of Lading and IGM of all the 03 import consignments were containing different description and classification than the actual ones. The import goods were PU-coated fabric falling under HS code 59032090, whereas the same were mis-declared as *'Bonded Fabric (HS Code-60064200), Flock Fabric (HS Code-59070012)* with clear intention of evasion of applicable Anti-dumping duty. Also, the AZO Test Certificate pertaining to the subject import consignments (Containing the invoice Nos. of the 03 import consignments) were only containing the description of the Bonded Fabric and Flock Fabric i.e. as mentioned in the Bills of Lading. These facts clearly show the mala-fide intention of the importer. Had the DRI not put the said import consignments on hold, the importer would have continued to clearance of the said goods with declared description and classification of the goods in the Bills of Lading and IGM. M/s Freight Link Logistics, being an experienced Customs Broker did not bother to ask the importer the actual reason thereof. However, M/s Freight Link Logistics did not seek any supporting documents/clarification for mentioning of the description and classification of the goods in the BL and IGM. They have also not sought the reason for not containing the description of Pu-coated Fabric in the AZO Test Certificate of the said import invoices. It appears that M/s Freight Link Logistics handled the subject consignments in very casual manner in spite of the facts that the importer was of clear mala-fide intention. The import goods were of sensitive nature and the facts were showing clear intention of evasion of applicable anti-dumping duty, however, it appears that M/s Freight Link Logistics intentionally and irresponsibly dealt with the import consignments of M/s. SG Impex.

18.2.3. M/s Freight Link Logistics were very well aware with the applicability of Notification No. 14/2022-Customs (ADD) dated 20.05.2022, and the description of the goods mentioned in the IGM and BLs were showing clear intention of evasion of anti-dumping duty. However, as the DRI put the said import consignments on hold, the importer arranged the invoices containing the goods declared as PU-coated fabrics and other declared fabric, however maximum quantity of the goods in the import consignments were found as PU-coated fabrics. Further, it appears that the importer wanted to adjust the payment of anti-dumping duty by way of undervaluation of the subject goods. Accordingly, they also found indulged in gross mis-declaration of assessable value of the import goods. The description and classification of the subject import goods were plainly different from the actual description and classification; however, M/s Freight Link Logistics was not bothered to take any written reply or reason thereof from the importer. Such act of commission and omission on the part M/s Freight Link Logistics rendered the subject goods mentioned in Annexure-A to this investigation Report liable to confiscation under Section 111(f), 111(m) and 111 (l) of the Customs Act, 1962 and thereby rendered himself liable to penalty under Section 112(a) and 112 (b) of the Customs Act, 1962.

18.2.4. Further from the foregoing para, it appears that M/s Freight Link Logistics, 8 Ojas Complex, Nr. Nimaya Hotel, Gandhidham caused to prepare false and incorrect documents for the import consignments of M/s. SG Impex for warehousing and clearance of the subject goods covered under above 03 import consignments. They have knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, classification, value etc. Therefore, M/s Freight Link Logistics is also liable to penalty under Section 114AA of the Customs Act, 1962.

19.1. Now therefore, M/s. SG Impex (IEC No. BMFPR9668P), H. No. 2A, K-1 Extn, Mohan Garden, West Delhi, Delhi-110059, is hereby called upon to show cause in writing to the Pr. Commissioner of Customs, Customs House, Mundra, having his office situated at 'Port User Building (PUB), Mundra Port' within 30 days from the receipt of the Show Cause Notice as to why: -

i) the description “Bonded Fabric (HS Code-60064200), Flock Fabric (HS Code-59070012)” and HS code thereof declared at the time of filing of Import General Manifest for the subject 03 import consignments, should not be rejected and the same should not be held liable for confiscation under Section 111(f) of the Customs Act, 1962, and the same be classified under appropriate HS code as mentioned in the **Annexure-A to this Show Cause Notice** which includes PU-coated Fabric, PVC coated Fabric, Bonded Fabric and Flock Fabric.

ii) declared description of PVC coated fabric in Warehouse BE as well as DTA BE having **quantity 10500 Meters** and declared classification thereof under HS code 59031090, should not be rejected and the same should not be classified under their appropriate HS Code 59032090 under Customs Tariff Act, 1975 being the same actually found as PU-coated Fabric.

iii) declared assessable value of **Rs. 6,07,108/- (Rupees Six Lakh Seven Thousand One Hundred Eight Only)** (Warehouse BEs) & **Rs. 6,04,903/- (Six Lakh Four Thousand Nine Hundred Three Only)** (DTA BEs) of PVC Coated Fabric having **quantity 10500 Meters** as mentioned at para (ii) above, should not be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and the same be re-determined as **Rs. 10,98,563/- (Rupees Ten Lakh Ninety Eight Thousand Five Hundred Sixty Three Only)** under Rule 5 Customs Valuation (Determination of value of imported goods) Rules, 2007.

iv) total **quantity 10500 Meters** of PU-coated Fabric falling under HS Code No. 59032090 of Customs Tariff Act, 1975 should not be held liable for confiscation under Section 111(f), 111(l), 111(m) and Section 119 of the Customs Act, 1962 as the same were found mis-declared as PVC Coated Fabric (HS code 59031090) and also mis-declared in respect of assessable value thereof.

v) the declared assessable value of Rs. 92,93,626/- (Rupees Ninety Two Lakh Ninety Three Thousand Six Hundred Twenty Six Only) of PU-Coated Fabrics (HS Code 59032090) having quantity 162237 Sq. Mtrs. (118422 Mtrs) in the Warehouse Bills of Entry No. 1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022 & Rs. 92,99,712/- (Rupees Ninety Two Lakh Ninety Nine Thousand Seven Hundred Twelve Only) in the corresponding DTA Bills of Entry, should not be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and the same be re-determined as **Rs. 1,26,85,821/- (One Crore Twenty Six Lakh Eighty Five Thousand Eight Hundred Twenty One Only)** as mentioned in Annexure-A) under Rule 5 Customs Valuation (Determination of value of imported goods) Rules, 2007.

vi) total quantity 162237 Sq. Mtrs. (118422 Mtrs) of PU-Coated Fabrics (HS code 59032090) imported under warehouse Bills of Entry No. 1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022, should not be held liable for confiscation under Section 111(f) and 111(m) of the Customs Act, 1962 as the same were found mis-declared in respect of assessable value thereof.

vii) declared assessable value of Rs. 3,41,425/- (Three Lakh Forty One Thousand Four Hundred Twenty Five Only) of PVC coated Fabrics (HS code 59031090) having quantity 16190.55 SQM (11818 Mtrs) in Warehouse Bills of Entry

No.1017173 dated 28.11.2022 and assessable value of Rs. 3,45,972/- (Three Lakh Forty Five Thousand Nine Hundred Seventy Two Only) declared in corresponding DTA Bill of Entry No. 2000530 dated 10.01.2023, should not be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and same be re-determined as **Rs. 4,94,583/- (Four Lakh Ninety Four Thousand Five Hundred Eighty Three Only)** (as mentioned in Annexure-A) under Rule 5 Customs Valuation (Determination of value of imported goods) Rules, 2007.

viii) total quantity 16190.55 SQM (11818 Meters) of PVC Coated Fabric in Warehouse Bills of Entry No.1017173 dated 28.11.2022 and in corresponding DTA Bill of Entry No. 2000530 dated 10.01.2023 as mentioned in para (vii) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962 as the same were found mis-declared in respect of assessable value thereof.

ix) the declared assessable value of Rs. 7,02,843/- (Seven Lakh Two Thousand Eight Hundred Forty Three Only) of Polyester Bonded Fabric (HS Code 60064200) having quantity 7470 Kgs in the Warehouse Bills of Entry No. 1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022 and declared assessable value of Rs. 7,05,289/- (Seven Lakh Five Thousand Two Hundred Eighty Nine Only) in corresponding DTA Bills of Entry, should not be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and same be re-determined as **Rs. 9,19,068/-(Nine Lakh Nineteen Thousand Sixty Eight Only)** (as mentioned in Annexure-A) under Rule 5 Customs Valuation (Determination of value of imported goods) Rules, 2007.

x) total having quantity 7470 Kgs of Polyester Bonded Fabric (HS Code 60064200) imported under warehouse Bills of Entry No. 1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022 which was mis-declared as 7346 Kgs, should not be held liable for confiscation under Section 111(l) and 111(m) of the Customs Act, 1962 as the same were found mis-declared in respect of assessable value and quantity thereof.

xi) the declared assessable value of total Rs. 7,10,372/- (Seven Lakh Ten Thousand Three Hundred Seventy Two Only) of Flock Fabric (HS Code 59070012) having quantity 7581 KGs, in the Warehouse Bills of Entry No. 1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022 and total declared assessable value of Rs. 7,13,989/- (Seven Lakh Thirteen Thousand Nine Hundred Eighty Nine Only) in corresponding DTA Bills of Entry, should not be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and same be re-determined as **Rs. 7,93,162/-(Seven Lakh Ninety Three Thousand One Hundred Sixty Two Only)** (as mentioned in

Annexure-A) under Rule 5 Customs Valuation (Determination of value of imported goods) Rules, 2007.

xii) total having quantity 7581 KGs of Flock Fabric (HS Code 59070012) imported under warehouse Bills of Entry No. 1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022 which was mis-declared as 7363 Kgs, should not be held liable for confiscation under Section 111(l) and 111(m) of the Customs Act, 1962 as the same were found mis-declared in respect of assessable value and quantity thereof.

xiii) the applicable Customs Duties and Anti-dumping duty total **Rs. 1,14,18,558/- (One Crore Fourteen Lakh Eighteen Thousand Five Hundred Fifty Eight Only)** on total 128922 Meters of Pu-coated Fabric alongwith 11818 Mtrs of PVC Coated Fabric, 7470 Kgs of Polyester Bonded Fabric and 7581 Kgs of Flock Fabric as per Annexure-A covered under the subject 03 import consignments covered under Warehousing Bills of Entry No. 1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022 (DTA Bills of Entry No.2000530 dated 10.01.2023, 2001189 dated 20.01.2023 and 2001190 and date 20.01.2023) should not be demanded under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

xiv) Amount of total Customs duty (BCD+SWS+Anti-dumping duty+IGST) paid by M/s. SG Impex during investigation at the time of provisional release i.e. filing of DTA Bills of Entry No. 2000530 dated 10.01.2023, 2001189 dated 20.01.2023 and 2001190 and date 20.01.2023 should not be appropriated against the total demand of Customs duty.

xv) The amount of differential Customs duty, interest, fine, and penalty should not be recovered through enforcing the Bank Guarantee submitted by M/s. SG Impex at the time of provisional release of the goods.

xvi) Penalty should not be imposed on them under Section 112(a) and 112(b) of the Customs Act, 1962.

xvii) Penalty should not be imposed on them under Section 114A of the Customs Act, 1962.

xviii) Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962.

19.3. Now therefore, M/s. Freightlink Logistics, 8 Ojas complex, Nr. Nimaya Hotel, Gandhidham, may be called upon to show cause in writing to the Commissioner of Customs, Custom House Mundra having his office at Port User Building, Customs House, Mundra, within 30 days from the receipt of the Show Cause Notice as to why;

- (i) Penalty should not be imposed on them under Section 112(a) and 112(b) of the Customs Act, 1962.
- (ii) Penalty should not be imposed on them separately under Section 114AA of the Customs Act, 1962

WRITTEN SUBMISSION AND PERSONAL HEARING

20. I observe that ‘*Audi alteram partem*’, is an important principle of natural justice that dictates to hear the other side before passing any order. Therefore, personal hearing in the matter was granted to the noticee on 18.09.2025. Accordingly, Advocate Shri Chinmaya Seth, authorized representative of the noticee appeared on behalf of the Noticee and during PH, he has reiterated the written submission dated 09.12.2024 and additional submission dated 17.09.2025 and inter alia stated that:

THE COMMISSIONER OF CUSTOMS IS NOT THE COMPETENT AUTHORITY AS PER THE SEZ ACT, 2005 TO ADJUDICATE THE SAID MATTER

A. Because it is submitted that the Commissioner of Customs is not the competent authority to adjudicate the said matter since it relates to SEZ and the same can be proved from the following points:

- (i) Admittedly, the said goods were imported through SEZ and the same is a matter of record.
- (ii) It is no longer res-integra that the goods imported vide SEZ are governed by SEZ Act, 2005 and not Customs Act, 1962
- (iii) Admittedly, as per the SEZ Act, 2005, specifically Section 23 of the SEZ Act, 2005, only designated courts can try the notified offences under the SEZ Act, 2005. The relevant section is re-produced below for your quick perusal:

23. Designated Courts to try suits and notified offences —

(1) The State Government, in which the Special Economic Zone is situated, may, with the concurrence of the Chief Justice of the High Court of that State, designate one or more courts— (a) to try all suits of a civil nature arising in the Special Economic Zone; and (b) to try notified offences committed in the Special Economic Zone.

(2) No court, other than the court designated under sub-section (1), shall try any suit or conduct the trial of any notified offence referred to in that sub-section:

Provided that the courts, in which any suit of a civil nature in a Special Economic Zone had been filed before the commencement of this Act, shall continue to try such suit after such commencement:

Provided further that the courts, in which any trial of any notified offence is being conducted before the commencement of this Act, shall continue to conduct the

trial of such offence after the commencement of this Act: Provided also that the courts competent to try any notified offence, before the commencement of this Act, shall conduct the trial in respect of such offence after the commencement of this Act until the courts have been designated under sub-section (1) and all such cases relating to such trials shall thereafter be transferred to such courts so designated which shall conduct the trial from the stage at which such cases were so transferred”

(iv) Taking the above-mentioned Section into consideration it can be clearly inferred that no Show Cause issued for the notified offence can be adjudicated by the Commissioner of Customs, hence, the said proceedings cannot proceed forward.

SHOW CAUSE NOTICE INVALID AS SECTION 28(4) CAN ONLY BE INVOKED FOR DIFFERENTIAL DUTY

B. Because the impugned Show Cause Notice is invalid as Section 28(4) can only be invoked if there is a question of differential duty. It is pertinent to mention here that the impugned Show Cause Notice specifically para 4 of the impugned Show Cause Notice, the DRI itself states that the correct entries were made in the Bill of Entries filed by the Noticee. Further, the Noticees were always willing to pay the duty on the declared value of goods. Hence, on this ground along the impugned Show Cause Notice is liable to be set aside.

DESCRIPTION OF BILL OF LADING NOT COVERED UNDER THE CUSTOMS ACT, 1962

C. Because it is submitted that Description of Bill of Lading is not covered under Customs Act, 1962 and the same can be proved from the following points:

(i) It is submitted that only when a self-declaration is made by the importer, the said question correct declaration comes into play.

(ii) Admittedly, the Bill of Lading is made by the Shipping Line and the importer has no role to play in the same.

(iii) Admittedly, even as per the statements recorded during the course of investigation which are re-produced in the impugned Show Cause Notice, this fact that the Bill of Lading is created by the Shipping line on the instructions received from China.

(iv) Hence, taking the abovementioned points into consideration, since the entire Show Cause Notice is based on the description of goods on the Bill of Lading, the same is liable to be set aside on this ground alone.

DECLARATION UNDER SECTION 46 OF THE CUSTOMS ACT, 1962 BY WAY OF BILL OF ENTRY IS THE FIRST DECLARATION

- D. Because it is submitted that the first declaration made by the importer in respect of goods starts only when he files the Bill of Entry as per Section 46 the Customs Act, 1962. The relevant Section is re-produced below:

“Entry of goods on importation.

46. (1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting ⁹³[electronically] ⁹⁴[on the customs automated system] to the proper officer a bill of entry for home consumption or warehousing ⁹⁵[in such form and manner as may be prescribed] : ⁹⁶**Provided** that the ⁸⁹[Principal Commissioner of Customs or] Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically ⁹⁴[on the customs automated system], allow an entry to be presented in any other manner:

Provided further that] if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

⁹⁷[(3) The importer shall present the bill of entry under sub-section (1) ^{97a}[before the end of the day (including holidays) preceding the day] on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

^{97b} **Provided** that the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival:

Provided further that] a bill of entry may be presented ⁹⁸[at any time not exceeding thirty days prior to] the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

^{98a} **Provided also** that] where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.]

(4) The importer while presenting a bill of entry shall ⁹⁹[***] 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, ¹[and such other documents relating to the imported goods as may be prescribed].

² [(4A) The importer who presents a bill of entry shall ensure the following, namely:—

(a)		<i>the accuracy and completeness of the information given therein;</i>
(b)		<i>the authenticity and validity of any document supporting it; and</i>
(c)		<i>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.]</i>

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

- E. Because it is submitted that as per para 4 of the impugned Show Cause Notice, the DRI itself accepts that the correct Bill of Entries were filed by the Noticees. Further, para 13.1 and 13.2 of the impugned Show Cause Notice, the Shipping Agencies itself accepts that the Bill of Lading is prepared by Shipping line in China.
- F. Hence, taking the abovementioned points into consideration, the Noticee is not liable for the declaration made in Bill of Lading, hence the impugned Show Cause Notice is liable to be set aside on this ground alone.

ACTION OF THE DRI PRE MATURE

- G. Because it is submitted that the action of the DRI was pre mature at best and the same can be proved from the following points:
 - (i) It is submitted that taking the abovementioned grounds into consideration, only when a Bill of Entry is filed, the importer becomes liable for the declaration made in the said Bill of Entries.
 - (ii) It is submitted that the DRI, even though it has alleged intelligence should have waited for the Importer to file the Bill of Entry.
 - (iii) It is submitted that the Show Cause Notice cannot be issued on the ground of assumption and presumption that merely because Bill of Lading is incorrect, the Noticees will mis declare the goods in the said Bill of Entries.
 - (iv) Hence, taking the abovementioned points into consideration, since the action of DRI was pre-mature, hence, the impugned Notice is liable to be set aside on this ground alone.

NO MISDECLARATION OF GOODS

- H. Because it is submitted that the Noticee declared true and correct description of goods in the Bill of Entries filed by it and the same can be confirmed from the para 4 and 11 of the impugned Show Cause Notice. Hence, it is submitted that under no circumstances, the Noticee has mis-declared the goods.

NO DATA PROVIDED FOR CONTEMPORARY VALUE

- I. Because it is submitted that entire impugned Show Cause Notice, insofar as undervaluation of goods is concerned solely relies on para 14.2 of the impugned Show Cause Notice as it states that many companies imported similar goods from the same supplier. However, in utter shock and dismay, neither the contemporary data has been re-produced, nor the same has been made as an RUD in the impugned Show Cause Notice. Hence, in the absence of the contemporary data, the impugned Show Cause Notice insofar as it relates under valuation is liable to be set aside on this ground alone.

CUSTOMS VALUATION (DETERMINATION OF VALUE OF IMPORTED GOODS) RULES, 2007 HAVE BEEN INCORRECTLY APPLIED

- J. It is submitted that Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 have been incorrectly applied and the same can be proved from the following points:
- K. At the very onset it is stated that although the Rules have been re-produced in the impugned Notice, specifically Para 15, however, the said rules have not been applied and merely the para seeking response from the Noticee states that the value of the said goods were rejected under Rule 12 and re-determined under Rule 5. Hence, admittedly, in absence of the application and reasoning provided for the said rejection, the impugned Show Cause Notice is liable to be set aside on this ground alone.
- L. **Incorrectly Rejected value under Rule 12 of the Valuation Rules:** It is submitted that the value of the goods imported by the noticee has been incorrectly rejected and the same can be proved from the following points:
- (i) The Rule 12 of the CVR, 2007 is re-produced below for your quick perusal.
- “Rule 12: Rejection of declared value. –*
- (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.*
- (2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).*
- Explanation. -(1) For the removal of doubts, it is hereby declared that: -*

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

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

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include –

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents.”

(ii) That on bare perusal of the impugned Show Cause Notice, specifically, para 15.2, it can be found that the value of goods have been incorrectly rejected under Rule 12 and the same can be proved from the following points:

(iii) As per para 15.2, the value has been rejected under Rule 12 without providing any reasons thereof.

(iv) It is pertinent to mention here that the Show Cause Notice in par 14.2 refers to some contemporary data which has neither been re-produced in the impugned Show Cause Notice, nor made an RUD.

(v) It is submitted that in absence of any such data being part of the impugned Show Cause Notice, it can be clearly inferred that the said data is merely on the basis of assumption and presumption and not on the basis of actual data.

(vi) Hence, taking the abovementioned points into consideration, the value declared by the Noticee was incorrectly rejected under Rule 12 of the CVR, 2007

VALUATION RULES NOT CORRECTLY FOLLOWED FOR RE-DETERMINATION OF VALUE UNDER CVR, 2007

M. It is submitted that before going into merits of how the valuation rules have not been applied correctly, it is most respectfully submitted that the value of goods

of the noticee in the impugned Notice has been solely determined on the basis of the table given in para 14.2 of the impugned Show Cause Notice. However, the said data cannot be used due to the following reasons:

- (i) The said data does not disclose the name of the importers, the period in which the said import was made, the quantity of the import, the quality of goods of the import etc.
- (ii) Taking the abovementioned points into consideration, it is submitted that the data **re-produced in para 14.2** cannot be used to re-determine the value of the impugned goods.

N. **Incorrectly applied Rule 4 to 7 of the CVR, 2007:** Because at the very onset it is submitted that there are no findings in the impugned Show Cause Notice apart from the alleged contemporary data which has been challenged in the abovementioned ground.

O. Because it is submitted that it is no longer res-Integra that the valuation rules have to go consequentially from 4 to 7. Hence, the said re-determination of value is liable to be set aside on this ground alone.

P. **Incorrectly applied Rule 4 of the CVR, 2007:** It is submitted that Rule 4 has been incorrectly applied and the same can be proved from the following points:

- (i) The Rule 4 is re-produced below for your quick perusal:

“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; Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962. (b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods. (c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(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.”

(ii) That on bare perusal of para 15 of the impugned Notice, it can be found that it is submitted that here are no findings on record to show that the DRI tried to to get any contemporary data for the import made by the Noticee.

(iii) Hence, in absence of any contemporary data, it is submitted that Rule 4 has not been correctly applied in the said matter.

Q. **Incorrectly applied Rule 5 of the CVR, 2007:** It is submitted that Rule 5 has been incorrectly applied and the same can be proved from the following points:

(i) The Rule 5 is re-produced below for your quick perusal:

“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 such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(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.”

(ii) That on bare perusal of para 15 of the impugned Notice, it can be found that no evidence has been brought on record to prove that the goods imported by the Noticees and the alleged incomplete data used to create the table in para 14.2 are similar in nature. It is re-iterated that the impugned Notice is bereft of any material particulars of the alleged contemporary data with regards to quality, quantity, size, date of import, party name etc.

(iii) Hence, in absence of any authentic contemporary data [which cannot be used as evidence], it is submitted that Rule 5 has not been correctly applied in the said matter.

R. Because it is submitted that the DRI has not given any analysis with regards to application of Rule 7 or Rule 9 of the CVR, 2007.

S. Hence, taking the abovementioned grounds into consideration, the value declared by the Noticee is correct and no evidence has been brought on record to prove otherwise.

NOTICEES HAD DECLARED THE TRUE AND CORRECT VALUE OF GOODS

T. Because it is submitted that the Noticee had declared true and correct value of goods and the same can be proved from the following points:

- (i) It is submitted that the Noticee declared true and correct value of goods as per Section 14 of the Customs Act, 1962.
- (ii) That it is an admitted fact that the noticee declared true and correct value in the Bill of Entries and the same is a matter of record.
- (iii) It is submitted that no technical evaluation was carried out vis a vis any data which is used as similar goods.
- (iv) That admittedly, in absence of the technical data, contemporary data only on the basis of description cannot be used to derive the value of goods.
- (v) That it is an established the Customs Valuation (Determination of Imported Goods) Rules, 2007 cannot be read in isolation. Transaction value of the goods has to be determined in accordance with provisions of Section 14 of the Customs Act, 1962. If, value cannot be ascertained as per the provisions of the said Section only then valuation rules can be resorted to.
- (vi) That the transaction value in the instant case was declared based on mutually agreed value and there is no evidence on record that the same was influenced by any additional consideration. Even otherwise as per Rule 3 read with Rule 12 of Customs Valuation (Determination of Imported Goods) Rule, 2007, value has to be determined by applying the Rules in sequential order. Reason for rejecting value is not sustainable in view of the fact that no contemporary data has been provided or made part of the impugned Show Cause Notice.
- (vii) That it is submitted that the reason of rejecting the value of goods merely on the basis of some presumption and assumption is beyond the provisions of Customs Act, 1962
- (viii) That it is pertinent to mention here that parameters like, company, no of units imported, price negotiation etc play a major role in deriving the contemporary data. Admittedly none of the above parameters have been brought on record by the investigating authority, hence the increase in value on the basis of the alleged contemporary data is not sustainable.
- (ix) That the Investigating Authority erred by not taking into consideration that Price list/ invoices of the foreign supplier/ other importers is not a proof of transaction value invariably and existence of the price list/ invoice cannot be the sole reason to reject the transaction value. Further, a price list is really no more than a general quotation and It does not preclude discounts which may be granted for a variety of reasons including stock clearance. Also, a discount is a commercially acceptable measure which may be resorted to by a vendor for a variety of reasons including stock clearance. Hence, it is submitted that production of description of B/Es of other importers cannot discharge the onus cast on customs authorities to prove the existence of special circumstances indicated in Section 14(1) of Customs Act, 1962. The same was by the Hon'ble Supreme Court in the matter of **EICHER TRACTORS LTD.**

Versus COMMISSIONER OF CUSTOMS, MUMBAI, 2000 (122) E.L.T. 321 (S.C.)
as under:

“22. In the case before us, it is not alleged that the appellant has mis-declared the price actually paid. Nor was there a mis-description of the goods imported as was the case in Padia Sales Corporation. It is also not the respondent's case that the particular import fell within any of the situations enumerated in Rule 4(2). No reason has been given by the Assistant Collector for rejecting the transaction value under Rule 4(1) except the price list of vendor. In doing so, the Assistant Collector not only ignored Rule 4(2) but also acted on the basis of the vendor's price list as if a price list is invariably proof of the transaction value. This was erroneous and could not be a reason by itself to reject the transaction value. A discount is a commercially acceptable measure, which may be resorted to by a vendor for a variety of reasons including stock clearance. A price list is really no more than a general quotation. It does not preclude discounts on the listed price. In fact, a discount is calculated with reference to the price list. Admittedly in this case discount up to 30% was allowable in ordinary circumstances by the Indian agent itself. There was the additional factor that the stock in question was old and it was a one time sale of 5 year old stock. When a discount is permissible commercially, and there is nothing to show that the same would not have been offered to anyone else wishing to buy the old stock, there is no reason why the declared value in question was not accepted under Rule 4(1).

23. In the circumstances, production of the price list did not discharge the onus cast on the Customs authorities to prove that the value of the 1989 bearings in 1993 as declared by the appellant was not the “ordinary” sale price of the bearings imported.”

(i) Following the above-mentioned judgment, the same was also held by Hon’ble CESTAT, Principal Bench, New Delhi in the matter of **SARA ELECTRO ACOUSTICS PVT. LTD Vs. COMMISSIONER OF CUS., NEW DELHI** in 2009 (240) E.L.T. 448 (Tri. - Del.) wherein it held that wide variation between price found in price lists etc. and prices declared by importers although throw strong suspicion but no evidence in the form of contemporaneous import of comparable goods relied on to enhance value. Hence, enhancement of assessable value not justified and Transaction value is acceptable as per Section 14(1) of Customs Act, 1962 read with Rule 4 of Customs (Valuation) Rules, 1988.

(ii) Hence, taking the abovementioned points and case laws into consideration, it is submitted that the noticee has declared the correct value of goods.

PENALTY CANNOT BE IMPOSED UPON THE NOTICEES UNDER SECTION 112 OF THE CUSTOMS ACT, 1962

U. It is submitted that the Penalty cannot be imposed on the Noticees under Section 112 of the Customs Act, 1962 and the same can be proved from the following points:

(i) That the provisions of Section 112 of the Customs Act, 1962 under which the subject Show Cause Notice proposes penalty on me, seek to penalize: *Any person,—*

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

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

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, 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;

(ii) It is submitted that that by any stretch of imagination, the Noticees cannot be brought within the ambit of the provisions of Section 112 as no documents/ evidences have been brought on record to show that the goods were undervalued and hence goods were liable for confiscation. Further, it is further submitted that no evidence has been brought on record to prove that the Noticee did or omit to do any act which act or omission would render such goods liable to confiscation under section 111. It is specifically re-iterated that the DRI itself accepts that correct declaration was made in the impugned Bill of Entries. It is pertinent to mention here that the Noticee imported the goods as per due procedure of law. It is re-iterated that the Show Cause Notice is not only contradictory to itself but also solely relied on the data which is contrary to established principles of law. Hence it is re-iterated that penalty cannot be imposed on the Noticee under Section 112 of the Customs Act, 1962.

V. Because the penalty cannot be imposed on the Noticee under Section 114A of the Customs Act, 1962 and the same can be proved from the following points:

(i) That the provisions of Section 114A of the Customs Act, 1962 under which the subject Show Cause Notice proposes penalty on me, seek to penalize: *“Where the duty has not been levied or has not 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 wilful 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 (2) of section 28 shall, also be liable to pay a penalty equal to the duty or interest so determined....”

(ii) It is submitted that that by any stretch of imagination, the noticee cannot be brought within the ambit of the provisions of Section 114A as no evidence has been brought on record that the Noticee has short paid the duty. It is re-iterated that the Noticee was never given an opportunity to pay the duty as the DRI acted in pre mature manner and seized the goods even before the Bill of Entry could be filed. Hence it is re-iterated that penalty cannot be imposed on me under Section 114A of the Customs Act, 1962.

W. Because it is submitted that the penalty cannot be imposed under Section 114AA of the Customs Act, 1962 and the same can be proved from the following points:

(i) That the provisions of Section 114AA of the Customs Act, 1962 under which the subject Show Cause Notice proposes penalty on me, seek to penalize: *“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.”*

(ii) It is submitted that that by any stretch of imagination, the noticee cannot be brought within the ambit of the provisions of Section 114AA as this section is applicable only for those who have 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. It is pertinent to mention here that has correct true and collect value of goods in the Bill of Entries [and the same is matter of record] and no evidence has been brought on record to prove otherwise. Hence it is re-iterated that penalty cannot be imposed on the Noticee under Section 114AA of the Customs Act, 1962.

DOCUMENTS NOT PROVIDED ALONG WITH THE IMPUGNED SHOW CAUSE NOTICE AND HENCE ARE REQUESTED TO BE PROVIDED BEFORE THE ADJUDICATION OF THE SAID SHOW CAUSE NOTICE

X. That it is respectfully submitted that the Contemporary data including, name of the Importer, B/E nos. quality, quantity, technical specification etc. has not been made an RUDs which form the basis of which the allegations have been made in the impugned Show Cause Notice.

Y. It is pertinent to mention here that the DRI should have made the contemporary data as part of the Show Cause Notice as they are the sole basis on which the allegations have been made. Hence, it is requested that the abovementioned documents be provided before the adjudication of the impugned Show Cause Notice. The noticee seeks to rely on the following judgments:

In the matter of **V.V. Mineral Vs. Commissioner of Central Excise, Tirunelveli**, in 2016 (332) E.L.T. 289 (Mad.) as follows:

“No enquiry can be fair and complete unless the person facing enquiry is furnished with all the requisite documents. It is a well settled legal position that right to fair hearing is a guaranteed right. Every person before an authority who is exercising the adjudicating powers has a right to know the evidence to be used against him. The principle is firmly established and recognized by the Apex Court in **Dhakeswari Cotton Mills Ltd. Vs. Commissioner of Income-Tax, West Bengal** reported in 1995 1 SCR 941, wherein it has been held that the law is well settled that if prejudiced allegations are to be made against a person, he must be given particulars of that before hearing, so that he can prepare his defense.”

PROVIDE CROSS EXAMINATION OR DENY THE CROSS EXAMINATION AFTER PASSING A DETAILED SPEAKING ORDER BEFORE THE FINAL ADJUDICATION OF THIS MATTER

Z. Because is submitted that the Noticee requests Cross Examination of the followings based on reasoning provided below:

(i) **Cross Examination of Shri Jignesh Khimji Noriya, Assistant Manager of M/s Evergreen Shipping Agency [Para 13.1 of the SCN], M/s Indu S Pillai, Document Manager for Shipping Agencis M/s Parekh Marine Services Pvt. Ltd., and Sh. Hemant Balkirshan Joshi, Operations Head of Customs Broker Firm M/s Freight Link Logistics [Para 13.5]:** The cross examination of the abovenamed persons are required for the following reasons:

➤ The said Shri Jignesh Khimji Noriya, Assistant Manager of M/s Evergreen Shipping Agency [Para 13.1 of the SCN], M/s Indu S Pillai, Document Manager for Shipping Agencis M/s Parekh Marine Services Pvt. Ltd., and Sh. Hemant Balkirshan Joshi, Operations Head of Customs Broker Firm M/s Freight Link Logistics [Para 13.5] have given incriminating statements against the Noticees.

➤ The SCN seeks to rely on the said statements in the impugned Show Cause Notice.

➤ Section 138B of the Customs Act, 1962 clearly states that the relevancy of the statements has to be been confirmed before relying on the same as

evidence to adjudicate the Show Cause Notice under Customs Act, 1962. The relevant section is re-produced below for your quick perusal:

• 138B. Relevancy of statements under certain circumstances.—

(1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall so far as may be apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court.]”

(ii) Because admittedly, since Shri Jignesh Khimji Noriya, Assistant Manager of M/s Evergreen Shipping Agency [Para 13.1 of the SCN], M/s Indu S Pillai, Document Manager for Shipping Agencis M/s Parekh Marine Services Pvt. Ltd., and Sh. Hemant Balkirshan Joshi, Operations Head of Customs Broker Firm M/s Freight Link Logistics [Para 13.5] have taken the name of the Noticees, the Appellant is seeking permission to cross examining the abovementioned people before submitting our final reply in the interest and furtherance of justice.

(iii) Because in the matter of **Jha Shipping Agency Vs. Union Of India, 2011 (264) E.L.T. 321 (Cal.)**, the Hon’ble High Court had set aside the order passed by the Hon’ble Tribunal holding that the Tribunal should have scrupulously examined whether deposition of witnesses was relied on by adjudication authority, and even if cross-examination of those persons was not asked for, whether the authority had offered it to appellant, more so, as appellant had asked for the cross-examination at the outset. It was further held by the Hon’ble Court that

“According to us if the decision in the justice delivery system results in evil and civil consequences natural justice has to be followed. One of the facets of the natural justice is to afford to the adversary to cross-examine the person or persons whose testimony or statements were relied on in decision making process.”

(iv) Because admittedly, The Hon'ble High Court of Calcutta **Sampad Narayan Mukherjee Vs. Union of India and Ors. in C.A Nos. 25447(W) of 2018, reported in 2019 SCC OnLine Cal150 wherein** in similar facts and identical circumstances, upon detailed analysis of the provisions of the Customs Act, 1962, **held that cross-examination under Section 138B is an indefeasible right and part and parcel of the principles of natural justice.** The relevant extract is as follows:

"The Act of 1962 empowers the customs authorities to make an enquiry, initiate adjudication proceedings and file prosecution. The Act of 1962 allows an appeal against an order in original passed in the adjudication proceeding. There is provisions for revision also. When making an enquiry, an officer of the Customs may require attendance of a person to make a statement. He is empowered to require a person to make a statement under Section 108 of the Act of 1962. Such a statement made in the course of an enquiry, and if its limited to the enquiry, then, the question of the person making the statement being open to cross-examination does not arise. However, once an adjudication proceeding is initiated, and a statement made under Section 108 of the Act of 1962 is introduced as a piece of evidence in such adjudication proceedings, then, the person making that statement must be made available for cross-examination to the party against whom such statement has been used in the adjudication proceedings, subject to the provisions of Section 138B of the Act of 1962. If the conditions prescribed under Section 138B (1) of the Act of 1962 is satisfied, then, the statement made by a person under Section 108 of the Act of 1962 would become relevant in the adjudication proceedings, notwithstanding, such a person not being cross-examined by the person who is affected by such a statement.

In the facts of the present case, the order in original records that, the petitioner was disallowed cross-examination of any person making any statement against the petitioner under Section 108 of the Act of 1962. The order in original relies upon such statements as evidence. The impugned order in original does not record a finding that, any of the conditions specified under Sections 138B (1) of the Act of 1962 stands satisfied thereby making such statements relevant without cross-examination of such witness by the petitioner".

The copy of the judgment is annexed herein and marked as **ANNEXURE A8**

(v) Hence taking the abovementioned judgment into consideration, it is requested that permission should be granted to cross of the abovementioned people as mentioned above.

PROVIDING CROSS EXAMINATION IS MANDATORY IF THE DEPARTMENT SEEKS TO RELY ON THE SAID STATEMENTS

AA. Because it is submitted that providing Cross Examination is mandatory in nature if the department seeks to rely on the said statements and the same can be proved from the following points:

(i) It is submitted that the provisions of Excise Act, specifically Section 9D is para materia to Section 138B of the Customs Act, 1962. The same can be proved from the following:

(ii) **Excise Act 9D. Relevancy of statements under certain circumstances.—**

(1) A statement made and signed by a person before any Central Excise Officer of a gazetted rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court.

(iii) **Customs Act 138B. Relevancy of statements under certain circumstances.**

“(1)A statement made and signed by a person before any Gazetted Officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,-

(a)when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b)when the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court.]

(iv) That it is no longer res-integra that it is mandatory to provide cross examination to the noticee, if the Department seeks to rely on the statements of the persons whom cross examination has been sought by the Noticee. The same has been held in catena of judgments including the following:

(v) **CESTAT Decision- Commissioner of CGST & Central Excise, Jaipur -I, Vs. Bonafide Arts Pvt Ltd. [Excise Appeal No. 507505 of 2020]**

The Hon'ble Principal Bench of the CESTAT in a recent judgment of **Commissioner of CGST & Central Excise, Jaipur -I, Vs. Bonafide Arts Pvt Ltd.** [Excise Appeal No. 507505 of 2020] was please to hold the following:

*“18. It is true that if the manufacturer had not manufactured the goods they could not have been supplied by the manufacturer to the first stage dealer and further to the second stage dealer and to the respondent. It certainly creates enough reasons to doubt but the issue can only be decided through a thorough investigation. If the assessee says that it had received the goods, the question is, if the second stage dealer had supplied the goods. In this case, he says he had supplied the goods. The next question is to enquire if the first stage dealer had sold the goods to the second stage dealer. The third stage of investigation is ascertaining if the manufacturer had supplied to the goods to the first stage dealer. Examining the records of each of this individual companies/ firms and recording their statements can only reveal the complete truth. **If such an investigation requires statements to be recorded and if revenue proposes to use such statements in the proceedings against the assessee the procedure prescribed under the section 9D has to be followed. Otherwise, such statements are not only NOT admissible but are not even relevant to the proceedings. In this case, all the statements are rendered irrelevant as the Adjudicating Authority had not followed the procedure prescribed under section 9D.**”*

(vi) **Punjab and Haryana High Court decision - G Tech Industries Vs. Union of India [Punjab & Haryana High Court] [2016 [339] E.L.T. 209 (P&H)]**

“8. As already noticed herein above, sub-section (1) of Section 9D sets out the circumstances in which a statement, made and signed before a Gazetted Central Excise Officer, shall be relevant for the purpose of proving the truth of the facts contained therein. If these circumstances are absent, the statement, which has been made during inquiry/investigation, before a Gazetted Central Excise Officer, cannot be treated as relevant for the purpose of proving the facts contained therein. In other words, in the absence of the circumstances specified in Section 9D(1), the truth of the facts contained in any statement, recorded before a Gazetted Central Excise Officer, has to be proved by evidence other than the statement itself. The evidentiary value of the statement, insofar as proving the truth of the contents thereof is concerned, is, therefore, completely lost, unless and until the case falls within the parameters of Section 9D(1).

9. *The consequence would be that, in the absence of the circumstances specified in Section 9D(1), if the adjudicating authority relies on the statement, recorded during investigation in Central Excise, as evidence of the truth of the facts contained in the said statement, it has to be held that the adjudicating authority has relied on irrelevant material. Such reliance would, therefore, be vitiated in law and on facts.*

10. *Once the ambit of Section 9D(1) is thus recognized and understood, one has to turn to the circumstances referred to in the said sub-section, which are contained in clauses (a) and (b) thereof.*

11. *Clause (a) of Section 9D(1) refers to the following circumstances :*

- (i) when the person who made the statement is dead,*
- (ii) when the person who made the statement cannot be found,*
- (iii) when the person who made the statement is incapable of giving evidence,*
- (iv) when the person who made the statement is kept out of the way by the adverse party, and*
- (v) when the presence of the person who made the statement cannot be obtained without unreasonable delay or expense.*

12. *Once discretion, to be judicially exercised is, thus conferred, by Section 9D, on the adjudicating authority, it is self-evident inference that the decision flowing from the exercise of such discretion, i.e., the order which would be passed, by the adjudicating authority under Section 9D, if he chooses to invoke clause (a) of sub-section (1) thereof, would be pregnable to challenge. While the judgment of the Delhi High Court in J&K Cigarettes Ltd. (supra) holds that the said challenge could be ventilated in appeal, the petitioner has also invited attention to an unreported short order of the Supreme Court in UOI and Another v. GTC India and Others in SLP (C) No. 21831/1994, dated 3-1-1995 [since reported in 1995 (75) **E.L.T.** A177 (S.C.)], wherein it was held that the order passed by the adjudicating authority under Section 9D of the Act could be challenged in writ proceedings as well. Therefore, it is clear that the adjudicating authority cannot invoke Section 9D(1)(a) of the Act without passing a reasoned and speaking order in that regard, which is amenable to challenge by the assessee, if aggrieved thereby.*

13. *If none of the circumstances contemplated by clause (a) of Section 9D(1) exists, clause (b) of Section 9D(1) comes into operation. The said clause prescribes a specific procedure to be followed before the statement can be admitted in evidence. Under this procedure, two steps are required to be followed by the adjudicating authority, under clause (b) of Section 9D(1), viz.*

- (i) the person who made the statement has to first be examined as a witness in the case before the adjudicating authority, and*

(ii) the adjudicating authority has, thereafter, to form the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.”

(vii) That the Noticee is squarely covered by the abovementioned judgments and hence requests that the cross examination sought by granted to the Noticee.

BB. That the Noticee requests that the **decision of cross examination be conveyed before passing the final order** and accordingly seeks to rely on the following judgment of Hon’ble High Court of Gujarat, in the case of **Mahek Glazes Pvt. Ltd. Vs. Union of India [2014 (300) E.L.T. 25 (Guj)]** wherein the Hon’ble Court was pleased to hold as under:

“6. Having heard learned counsel for the parties, we are inclined to interfere on the short ground of serious breach of principles of natural justice in the process of passing final order of adjudication. We say so because the adjudicating authority, though categorically informed by the representative of the petitioners that the petitioners are serious about exercise of their right to cross-examination and further that any meaningful participation in the adjudicating proceedings can take place only after such cross-examination is granted, the authority proceeded to decide such request only along with the final order of adjudication. Whether the petitioners had a right to seek cross-examination in the facts of the present case, is not our brief at the moment. We, therefore, refuse to comment on the petitioners’ insistence for cross-examination or authority’s reluctance to grant it. What we, however, find is that the petitioners had atleast a right to be told whether such application is being granted or refused before final order was passed. When the petitioners prayed for cross-examination and reasonably expected that the same would be granted, they cannot be expected to participate in the adjudicating proceedings up to the final stage. In other words, without dealing with and disposing of the petitioners’ application for cross-examination, the adjudicating authority could not have finally adjudicated the issues. If he was of the opinion that the request for cross-examination was not tenable, by giving reasons, he could have rejected it. We wonder what would have happened, if he was inclined to accept such a request. In such a situation, he himself could not have finally disposed of the show cause notice proceedings. In either case, the petitioners had a right to know the outcome of their application.

The copy of the judgment is annexed herein and marked as **ANNEXURE A9**

20.1 The noticee vide letter dated 17.09.2025 provide additional submission wherein they interalia stated that :

A. The Commissioner of Customs lacks jurisdiction to adjudicate this matter as the goods were imported through an SEZ, which is governed by the SEZ Act,

2005. Specifically, Section 23 of the SEZ Act designates only certain courts to try suits and notified offences related to SEZs, thereby excluding the Commissioner of Customs from adjudicating such cases. Therefore, the Show Cause Notice issued cannot be adjudicated by the Commissioner, and the proceedings must be set aside.

- B. The Show Cause Notice is invalid because Section 28(4) of the Customs Act, 1962, applies only when there is a discrepancy in the duty paid. In this case, the DRI itself acknowledges in paragraph 4 of the notice that the correct details were provided in the Bill of Entries and that the Noticees were willing to pay the duty on the declared value. Since no differential duty is involved, the Show Cause Notice should be quashed.
- C. The Show Cause Notice is liable to be set aside as it is primarily based on the description of goods in the Bill of Lading, which is not governed by the Customs Act, 1962. The Bill of Lading is prepared by the Shipping Line, not the importer, and as confirmed in the statements recorded during the course of investigation, the contents are based on instructions from overseas (China). Since the importer makes no self-declaration in the Bill of Lading, any discrepancy therein cannot form the basis for proceedings under the Customs Act.
- D. The Show Cause Notice is liable to be set aside as the first and only declaration made by the importer under the Customs Act, 1962 is through the Bill of Entry filed under Section 46. The Bill of Lading, being prepared solely by the Shipping Line abroad (as admitted in paras 13.1 and 13.2 of the SCN), is not a declaration by the importer and thus cannot form the basis of any allegation. Moreover, para 4 of the SCN itself confirms that the Noticees filed correct Bills of Entry. Therefore, any reliance on the Bill of Lading to allege misdeclaration is legally unsustainable.
- E. The impugned Show Cause Notice is liable to be set aside as the action of the DRI was premature. In the present case, the DRI proceeded solely on assumptions based on the Bill of Lading prepared by the foreign shipping line without waiting for the importer to file the Bill of Entry. Mere issuance of Show Cause Notice based on presumed misdeclaration, without any actual filing or act by the importer, is legally unsustainable.
- F. The Show Cause Notice is liable to be set aside as there is no misdeclaration by the Noticee.
- G. The allegation of undervaluation in the Show Cause Notice cannot be sustained, as it is based only on a vague reference in para 14.2 to imports by other companies from the same supplier. However, no actual data regarding

those imports has been provided or enclosed as a relied upon document (RUD). Without any supporting evidence or contemporary value details, the undervaluation claim is baseless, and the Show Cause Notice deserves to be set aside on this ground alone.

- H. The impugned Show Cause Notice is liable to be set aside as the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, have been incorrectly applied. The value declared by the Noticee was wrongly rejected under Rule 12 without providing any reasons or supporting contemporary data, which itself has not been produced or relied upon.
- I. Further, Rules 4 and 5 have been improperly applied without any evidence or proper comparison of identical or similar goods, as the alleged data lacks essential details such as importer names, quantities, quality, and dates. Additionally, there is no analysis or application of Rules 7 or 9. Therefore, the declared value is correct, and the valuation reassessment is without basis.
- J. The Noticee declared the true and correct value of goods as per Section 14 of the Customs Act, 1962, supported by the Bill of Entries on record. The rejection of the declared value by the authorities is unsustainable as no technical or contemporaneous data was furnished to justify such rejection. Mere reliance on incomplete or presumptive data without detailed parameters such as importer identity, quantity, or price negotiations is contrary to the valuation principles.
- K. No penalty can be imposed on the Noticee under Sections 112 and 114AA of the Customs Act, 1962, as there is no evidence to establish that the goods were undervalued or that any false or incorrect declaration was made. The Noticee had complied with all legal formalities and declared the true and correct value in the Bill of Entry, which is accepted as a matter of record. Without proof of wilful misstatement, suppression, or any act rendering the goods liable for confiscation, the imposition of penalty under these provisions is legally untenable.
- L. The Show Cause Notice is fundamentally flawed as it fails to provide the essential contemporary data including importer details, Bill of Entry numbers, and technical specifications which form the basis of the allegations.

DISCUSSION AND FINDING

21. I have carefully gone through the Show Cause Notice, the relied upon documents, the submission made by the Noticee, the legal provisions and the records available before me. The issues before me to decide are as under:

i) Whether the description ““Bonded Fabric (HS Code-60064200), Flock Fabric (HS Code-59070012)” and HS code thereof declared at the time of filing of Import General Manifest for the subject 03 import consignments, be rejected and the same be held liable for confiscation under Section 111(f) of the Customs Act, 1962, and the same be classified under appropriate HS code as mentioned in the **Annexure-A to the Show Cause Notice** which includes PU-coated Fabric, PVC coated Fabric, Bonded Fabric and Flock Fabric.

ii) Whether the declared description of PVC coated fabric in Warehouse BE as well as DTA BE having **quantity 10500 Meters** and declared classification thereof under HS code 59031090, be rejected and the same be classified under their appropriate HS Code 59032090 under Customs Tariff Act, 1975 being the same actually found as PU-coated Fabric.

iii) Whether the declared assessable value of **Rs. 6,07,108/- (Rupees Six Lakh Seven Thousand One Hundred Eight Only)** (Warehouse BEs) & **Rs. 6,04,903/- (Six Lakh Four Thousand Nine Hundred Three Only)** (DTA BEs) of PVC Coated Fabric having **quantity 10500 Meters** as mentioned at para (ii) above, be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and the same be re-determined as **Rs. 10,98,563/- (Rupees Ten Lakh Ninety Eight Thousand Five Hundred Sixty Three Only)** under Rule 5 Customs Valuation (Determination of value of imported goods) Rules, 2007.

iv) Whether the total **quantity 10500 Meters** of PU-coated Fabric falling under HS Code No. 59032090 of Customs Tariff Act, 1975 be held liable for confiscation under Section 111(f), 111(l), 111(m) and Section 119 of the Customs Act, 1962 as the same were found mis-declared as PVC Coated Fabric (HS code 59031090) and also mis-declared in respect of assessable value thereof.

v) Whether the declared assessable value of Rs. 92,93,626/- (Rupees Ninety Two Lakh Ninety Three Thousand Six Hundred Twenty Six Only) of PU-Coated Fabrics (HS Code 59032090) having quantity 162237 Sq. Mtrs. (118422 Mtrs) in the Warehouse Bills of Entry No. 1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022 & Rs. 92,99,712/- (Rupees Ninety Two Lakh Ninety Nine Thousand Seven Hundred Twelve Only) in the corresponding DTA Bills of Entry, be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and the same be re-determined as **Rs. 1,26,85,821/-(One Crore Twenty Six Lakh Eighty Five**

Thousand Eight Hundred Twenty One Only) as mentioned in Annexure-A) under Rule 5 Customs Valuation (Determination of value of imported goods) Rules, 2007.

vi) Whether the total quantity 162237 Sq. Mtrs. (118422 Mtrs) of PU-Coated Fabrics (HS code 59032090) imported under warehouse Bills of Entry No. 1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022, be held liable for confiscation under Section 111(f) and 111(m) of the Customs Act, 1962 as the same were found mis-declared in respect of assessable value thereof.

vii) Whether the declared assessable value of Rs. 3,41,425/- (Three Lakh Forty One Thousand Four Hundred Twenty Five Only) of PVC coated Fabrics (HS code 59031090) having quantity 16190.55 SQM (11818 Mtrs) in Warehouse Bills of Entry No.1017173 dated 28.11.2022 and assessable value of Rs. 3,45,972/- (Three Lakh Forty Five Thousand Nine Hundred Seventy Two Only) declared in corresponding DTA Bill of Entry No. 2000530 dated 10.01.2023, be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and same be re-determined as **Rs. 4,94,583/- (Four Lakh Ninety Four Thousand Five Hundred Eighty Three Only)** (as mentioned in Annexure-A) under Rule 5 Customs Valuation (Determination of value of imported goods) Rules, 2007.

viii) Whether the total quantity 16190.55 SQM (11818 Meters) of PVC Coated Fabric in Warehouse Bills of Entry No.1017173 dated 28.11.2022 and in corresponding DTA Bill of Entry No. 2000530 dated 10.01.2023 as mentioned in para (vii) be held liable for confiscation under Section 111(m) of the Customs Act, 1962 as the same were found mis-declared in respect of assessable value thereof.

ix) Whether the declared assessable value of Rs. 7,02,843/- (Seven Lakh Two Thousand Eight Hundred Forty Three Only) of Polyester Bonded Fabric (HS Code 60064200) having quantity 7470 Kgs in the Warehouse Bills of Entry No. 1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022 and declared assessable value of Rs. 7,05,289/- (Seven Lakh Five Thousand Two Hundred Eighty Nine Only) in corresponding DTA Bills of Entry, be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and same be re-determined as **Rs. 9,19,068/-(Nine Lakh Nineteen Thousand Sixty Eight Only)** (as mentioned in Annexure-A) under Rule 5 Customs Valuation (Determination of value of imported goods) Rules, 2007.

x) Whether the total having quantity 7470 Kgs of Polyester Bonded Fabric (HS Code 60064200) imported under warehouse Bills of Entry No. 1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171dated 28.11.2022 which was mis-declared as 7346 Kgs, be held liable for confiscation under Section 111(l) and

111(m) of the Customs Act, 1962 as the same were found mis-declared in respect of assessable value and quantity thereof.

xi) Whether the declared assessable value of total Rs. 7,10,372/- (Seven Lakh Ten Thousand Three Hundred Seventy Two Only) of Flock Fabric (HS Code 59070012) having quantity 7581 KGs, in the Warehouse Bills of Entry No. 1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022 and total declared assessable value of Rs. 7,13,989/- (Seven Lakh Thirteen Thousand Nine Hundred Eighty Nine Only) in corresponding DTA Bills of Entry, be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and same be re-determined as **Rs. 7,93,162/-** (Seven Lakh Ninety Three Thousand One Hundred Sixty Two Only) (as mentioned in Annexure-A) under Rule 5 Customs Valuation (Determination of value of imported goods) Rules, 2007.

xii) Whether the total having quantity 7581 KGs of Flock Fabric (HS Code 59070012) imported under warehouse Bills of Entry No. 1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022 which was mis-declared as 7363 Kgs, be held liable for confiscation under Section 111(l) and 111(m) of the Customs Act, 1962 as the same were found mis-declared in respect of assessable value and quantity thereof.

xiii) Whether the applicable Customs Duties and Anti-dumping duty total **Rs. 1,14,18,558/-** (One Crore Fourteen Lakh Eighteen Thousand Five Hundred Fifty Eight Only) on total 128922 Meters of Pu-coated Fabric alongwith 11818 Mtrs of PVC Coated Fabric, 7470 Kgs of Polyester Bonded Fabric and 7581 Kgs of Flock Fabric as per Annexure-A covered under the subject 03 import consignments covered under Warehousing Bills of Entry No. 1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022 (DTA Bills of Entry No.2000530 dated 10.01.2023, 2001189 dated 20.01.2023 and 2001190 and date 20.01.2023) be demanded under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

xiv) Whether the amount of total Customs duty (BCD+SWS+Anti-dumping duty+IGST) paid by M/s. SG Impex during investigation at the time of provisional release i.e. filing of DTA Bills of Entry No. 2000530 dated 10.01.2023, 2001189 dated 20.01.2023 and 2001190 and date 20.01.2023 be appropriated against the total demand of Customs duty.

xv) Whether the amount of differential Customs duty, interest, fine, and penalty be recovered through enforcing the Bank Guarantee submitted by M/s. SG Impex at the time of provisional release of the goods.

xvi) Whether the penalty be imposed on them under Section 112(a) and 112(b) of the Customs Act, 1962.

xvii) Whether the penalty be imposed on them under Section 114A of the Customs Act, 1962.

xviii) Whether the penalty be imposed on them under Section 114AA of the Customs Act, 1962.

xix) Whether the penalty be imposed on M/s. Freightlink Logistics under Section 112(a), 112(b) and Section 114AA of the Customs Act, 1962.

22. I have carefully gone through the records of the case, the allegations made in the Show Cause Notice dated 03.10.2024, the relied upon documents, and the replies filed by the Noticee including the interim reply dated 09.12.2024 and the additional submissions dated 17.09.2025 subsequently filed.

23. I find that the DRI acted upon intelligence that M/s. SG Impex has imported 03 consignments from China through Container Nos. EITU1697146, EGHU8362441 and FSCU8127813 and which had been mis-declared as '*Bonded Fabric*' and '*Flock Fabric*'. The consignments were placed on hold, and detailed examination was carried out by DRI officers under Panchnamas dated 19.11.2022, 21.11.2022 and 22.11.2022. The examination established that the consignments primarily comprised PU-coated fabrics, with smaller quantities of PVC-coated fabrics, bonded fabrics, and flock fabrics also present. Representative samples were duly drawn and forwarded to the CRCL, Kandla, for chemical analysis.

23.1 I find that the goods were declared in the Bills of Lading and Import General Manifests (IGMs) as "Bonded Fabric" and "Flock Fabric". However, on examination and on the basis of subsequent test reports, it was revealed that the majority of the consignments in all three containers actually comprised PU-coated fabrics, which attract anti-dumping duty under Notification No. 14/2022-Cus. (ADD) dated 20.05.2022. Since the goods were mis-declared in respect of description, quantity, and value, they are rendered liable to confiscation under Section 111 of the Customs Act, 1962. Consequently, the goods were placed under seizure in terms of Section 110 of the Customs Act, 1962, under Seizure Memos dated 19.11.2022, 21.11.2022, and 22.11.2022.

23.2 Meanwhile after examination of goods by DRI, the importer filed warehouse Bills of Entry (1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022) wherein the description was changed to "PU-coated Fabrics" along with other Fabrics such as Bonded fabric, Flock Fabric, PVC Coated Fabric. Thereafter, the importer also filed DTA Bills of Entry (2000530 dated 10.01.2023, 2001189 dated 20.01.2023 and 2001190 dated 20.01.2023) for clearance of goods. Since the consignments had already been placed under seizure, the importer sought

provisional release of the goods. Considering the request, the competent authority permitted provisional release in terms of Board’s Circular No. 35/2017-Customs dated 16.08.2017.

23.3 Although, at the time of filing the Warehouse as well as the corresponding DTA Bills of Entry for the subject consignments, the importer declared the description and classification of certain quantities correctly, a significant portion of PU-coated fabrics was still found to be misdeclared and misclassified. A comparative analysis of the quantities declared vis-à-vis those actually found during examination is set out below.

Stage	Declared goods			
IGM/BL	Bonded Fabric & Flock Fabric			
	PU coated fabric	PVC coated fabric	Bonded fabric	Flock Fabric
Warehouse B/E	118422 Mtrs	22318 Mtrs	7346 Kgs	7363 Kgs
DTA B/E	118422 Mtrs	22318 Mtrs	7346 Kgs	7363 Kgs
As per Examination and Test report	128922 Mtrs (+10500 Mtrs)	11818 Mtrs (-10500 Mtrs)	7470 Kgs (+124 Kgs)	7581 Kgs (+ 218 Kgs)

23.4 From the above, it is evident that the examination and laboratory test reports conclusively establish that the bulk of the consignments comprised PU-coated fabrics classifiable under CTI 59032090, which are liable to anti-dumping duty in terms of Notification No. 14/2022-Cus. (ADD) dated 20.05.2022. While the importer had declared the total quantity of PU-coated fabric as **118421 meters**, the actual quantity found was **128922 meters**. Further, in both the Warehouse and DTA Bills of Entry, the importer declared **10500 meters** of fabric as PVC-coated fabric under CTI 59031090, whereas the laboratory reports conclusively establish that the coating was of polyurethane. Accordingly, these goods are correctly classifiable as PU-coated fabrics under CTI 59032090.

24. Further, I find that the core issue in the present case revolves around the misdeclaration of description, classification, and valuation of the imported goods by the importer. At the time of filing the Warehouse Bills of Entry, the importer declared a total assessable value of Rs. 1,16,55,375/-. Subsequently, when the consignments

were provisionally released on the importer's request through the corresponding DTA Bills of Entry, the declared assessable value was revised to Rs. 1,16,69,866/-. These two sets of declarations are inconsistent and contradictory. Both figures are incorrect and have been deliberately engineered to conceal the true value of the consignments, thereby evading legitimate customs duty as well as avoiding anti-dumping duty through misdeclaration of description.

24.1 From the foregoing, it is clear that the values declared in respect of the impugned consignments do not reflect the true transaction value as required under Section 14 of the Customs Act, 1962 read with Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Rule 12 of the said Rules further provides that where the proper officer has reason to doubt the truth or accuracy of the declared value, such value shall be liable to rejection. In the present case, the declared assessable value of Rs. 1,16,55,375/- at the warehousing stage and Rs. 1,16,69,866/- at the DTA stage are inconsistent, unreliable, and do not represent the true transaction value. I therefore find that the said declared values are liable to rejection under Rule 12 of the 2007 Rules read with Section 14 of the Customs Act, 1962.

24.2 On scrutiny of contemporaneous import data of similar PU-coated fabrics from the same Chinese suppliers into India, I find that the present consignments were imported from M/s. Lishui Haihe International Enterprises Co. Ltd. and M/s. Wenzhou Asia Star International Trading Co. Ltd. The records reveal that these very suppliers exported similar PU-coated fabrics to other Indian importers such as M/s. Miqat International, M/s. Ananyaa Impex, and M/s. Mangla Trading Corporation at significantly higher prices. For this purpose, the investigating officers examined Bills of Entry for similar consignments (imported under Bill of Entry No. 8542122 dated 04.05.2022 and 8773897 dated 21.05.2022) imported contemporaneously from the same suppliers by the said importers that demonstrate that PU-coated fabrics of comparable thickness and specifications were being imported at values ranging between USD 1.25 and USD 1.45 per meter. In contrast, M/s. SG Impex declared values ranging only between USD 0.35 and USD 1.25 per meter. This stark undervaluation establishes that the declared values were neither genuine nor acceptable. The Bills of Entry of other importers made around the same time give a fair and reliable basis for valuing similar goods. Accordingly, I find that valuation under Rule 4 cannot be applied, since the noticee's own declarations are neither genuine nor acceptable. The Bills of Entry of other importers, along with import data and supplier communications found during the investigation, provide a reliable basis for valuation under Rule 5, which is based on the transaction value of similar goods imported at or around the same time. Therefore, I determine that the correct assessable value of the subject consignments arrive at **Rs. 1,59,91,197/-** under Rule 5 of CVR, 2007 and accordingly, the applicable Customs duty alongwith

Applicable Antidumping duty and IGST comes to **Rs. 1,14,18,558/-** (Annexure-A to the SCN).

24.3 The comparative analysis of values declared and determined is produced below:

Stage	Assessable Value				In Rs.
	PU coated fabric	PVC coated fabric	Bonded fabric	Flock Fabric	Total
Warehouse B/E	9293626	948534	702843	710372	11655375
DTA B/E	9299712	950876	705289	713989	11669866
As per contemporaneous import (Rule-5) (Annexure-A to SCN)	12685821	1593146	919068	793162	15991197

25. From the investigation and examination of the goods, it has been established that the consignments actually comprised mainly PU-coated fabrics measuring 128,922 meters, which attract anti-dumping duty in terms of Notification No. 14/2022-Cus. (ADD) dated 20.05.2022. However, the importer had initially misdeclared the consignments in the Bills of Lading and Import General Manifests as “Bonded Fabric” (CTI 60064200) and “Flock Fabric” (CTI 59070012). Subsequently, after the consignments were placed on hold by the DRI, the importer altered the description in the Warehouse Bills of Entry to “PU-coated Fabrics” (CTI 59032090) along with other fabrics such as Bonded Fabric, Flock Fabric, and PVC-coated Fabric. This shifting of description and classification at different stages clearly reflects a conscious afterthought on the part of the importer to cover up the true nature of the goods once enforcement action had been initiated.

25.1 Further, it was observed that the quantities declared by the importer did not tally with the quantities actually found on examination. While the importer declared a total of 118,422 meters of PU-coated fabric, the actual quantity was found to be 128,922 meters. In addition, as discussed earlier, the importer grossly misdeclared the assessable value of the goods. At the time of filing the Warehouse Bills of Entry, the value was declared at only Rs. 1,16,55,375/-, and at the time of filing the DTA Bills of Entry, it was marginally revised to Rs. 1,16,69,866/-. However, contemporaneous import data and evidence gathered during investigation clearly

established that the correct assessable value of the subject consignments was Rs. 1,59,91,197/- as determined under Rule 5 of the Customs Valuation Rules, 2007. In view of these findings, I hold that the importer's acts of misdeclaration in respect of description, quantity, and value render the impugned goods liable to confiscation under Sections 111(f), 111(l), 111(m), and 119 of the Customs Act, 1962.

25.2 As I already held these goods liable for confiscation in previous para under Section 111(f), 111(l) and 111(m) & 119 of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCN. The Section 125 *ibid* reads as under:-

“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.”*

25.3 A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods by paying redemption fine. I find that in the instant case option to redeem the goods through provisional release has already been availed by the Importer. Now the question remains that whether redemption fine can be imposed on the goods which already cleared for home consumption. In this regard, I place reliance on the judgment of the Hon'ble Apex Court in the case of ***M/s. WESTON COMPONENTS LTD. Versus COMMISSIONER OF CUSTOMS, NEW DELHI- 2000 (115) E.L.T. 278 (S.C.)*** wherein the Apex Court held that:

“It is contended by the learned Counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the custody of the respondent-authority. It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine.”

I believe the ratio of the aforementioned judgment is directly applicable to the present case, as the goods in the current shipment were also allowed under Bond

and Bank Guarantee. Consequently, I find that a redemption fine is warranted in this matter and see no grounds to challenge its imposition.

26. From the case records, it is evident that the goods were seized and subsequently provisionally released under Section 110A of the Customs Act, 1962, in line with Board Circular No. 35/2017. The Importer as well the department and investigating have not disputed this fact that the goods were provisionally released upon the request made by the Importer under execution of Bond and Bank Guarantee as mandated under Board Circular 35/2017-Cus. I noticed that the Show Cause Notice proposes a demand under Section 28(4); however, it is settled legal position that Sections 110 and 28(4) pertain to distinct stages and typically cannot be invoked simultaneously. Section 110A deals with seizure and provisional release pending adjudication, whereas Section 28(4) applies to the recovery of duty only after final assessment or clearance of goods. The Hon'ble Apex Court and Tribunals have upheld this differentiation in various rulings. Thus, I find that the demand of recovery of duty under the provisions of section 28 is pre-mature.

26.1 In the present case, the liability for duty flows directly from clear acts of misdeclaration and suppression established during the DRI's investigation. Therefore, even though the invocation of Section 28(4) in the SCN at this provisional juncture is premature, the applicable charges of short-payment of duty due to misdeclaration remains independently sustainable under Section 14 of the Customs Act read with the relevant provisions of the Customs Tariff Act. I find that provisional release under Section 110A does not restrict the department from pursuing final assessment and collecting correct duty with interest and penalties. I observed that provisional relief is only interim and does not extinguish liability to duty or penalty once mis-declaration is established. I find that the Provisional release under Section 110A is merely a facilitative measure for seized goods pending inquiry and does not prejudice the adjudicating authority's jurisdiction to confiscate under Section 125 following issuance of a Show Cause Notice. Accordingly, I hold that notwithstanding the procedural inconsistency in invoking Section 28(4) at this provisional stage, the duty along with applicable interest is required to be paid by importer on account of final assessment by way of these proceedings under the provisions of the Customs Act, 1962. Further, as mentioned in para 25.1 above, wherein the goods held liable for confiscation and allowed to be redeemed under Section 125 of the Customs Act, 1962, it follows from Section 125(2) that “ *[(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.]*”. Therefore, the importer will be liable to pay full amount of duty as calculated in Annexure-A to the SCN on valuation basis of Rs. 1,59,91,197/- as upheld in para no. 24.3 above.

27. Role and culpability on the importer/person/firm involved: -

27.1 Role and culpability of Shri Gaurav Raj proprietor of M/s. SG Impex, Delhi

27.1.1. From the investigation conducted in the present case, it was revealed that M/s. SG Impex imported PU-coated fabric *total quantity* 128922 Meters of Pu-coated Fabric which attracts anti-dumping duty as per Notification No. 14/2022-Customs (ADD) dated 20.05.2022. Although the importers had mis-declared the goods as ‘Bonded Fabric (HS Code-60064200), Flock Fabric (HS Code-59070012)’ in the BL and IGM, however, consequently when the import consignments were intercepted by the DRI, M/s. SG Impex declared some of the quantity of the goods as PU-coated Fabric total 162238 Sq. Mtrs. (118422 Mtrs) alongwith other goods as PVC coated Fabric (HS code 59031090) total quantity 30575 Sq. Mtrs. (22318 Mtrs), Polyester Bonded Fabric (HS Code 60064200) total quantity 7346 Kgs, Flock Fabric (HS Code59070012) total quantity 7363 Kgs, whereas the actual quantity of these fabrics were found as below;

Sr. No.	Description/HS code of the goods	Quantity declared	Actual quantity found
1	PU-coated Fabric	162238 Sq. Mtrs. (118422 Mtrs)	128922 Meters
2	PVC coated Fabric (HS code 59031090)	30575 Sq. Mtrs. (22318 Mtrs),	11818 Meters
3	Polyester Bonded Fabric (HS Code 60064200)	7346 Kgs	7470 Kgs
4	Flock Fabric (HS Code 59070012)	7363 Kgs	7581 KGs

Further, M/s. SG Impex also indulged into evasion of Customs duty by way of undervaluation. Total assessable value of the subject goods was declared by the importer as **Rs. 1,16,55,375/-** at the time of filing Warehouse Bills of Entry and **Rs. 1,16,69,866/-** at the time of filing DTA Bills of Entry, whereas the appropriate assessable value of the subject goods was **Rs. 1,59,91,197/-** and the applicable Customs duty alongwith Applicable Antidumping duty and IGST comes to **Rs. 1,14,18,558/-**.

27.1.2 The corresponding Bills of Lading were containing Classification of the goods other than the classification of PU-coated fabric whereas most quantity of the goods were found as PU-coated fabric which attract Anti-dumping duty. Also, M/s. SG Impex submitted AZO Test Certificates for the subject consignments. These certificates containing description of the goods only as ‘Bonded Fabric’ and ‘Flock Fabric’. These descriptions were the same as declared in the Bills of Lading and corresponding IGMs. These facts clearly indicate that the subject goods were

deliberately mis-declared and PU-coated fabric were not mentioned in the said shipping documents with clear intention of evasion of anti-dumping duty. Since the DRI had already initiated action against the said import consignments after filing of IGM, the importer arranged to declare PU-coated fabrics and other fabrics at the time of filing Warehouse Bills of Entry by declaring a fraction of the goods as PU coated fabric alongwith other declared fabrics. It further observed that M/s. SG Impex, while filing Warehouse Bills of Entry had changed the HS code and declared the same as different from the HS codes as mentioned in the IGM and Bills of Lading, but the same was afterthought of the importer in order to escape of the interception of enforcement agency.

27.1.3 As evident from forgoing paras, M/s. SG Impex also indulged in evasion of Customs duty and other duties by way of mis-declaration value of the goods. M/s. SG Impex had declared total assessable value of all Fabrics including PU-coated Fabric as **Rs. 1,16,55,375/-** at the time of filing of Warehouse Bills of Entry (1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022) and **Rs. 1,16,69,866/-** at the time of filing DTA Bills of Entry (2000530 dated 10.01.2023, 2001189 dated 20.01.2023 and 2001190 dated 20.01.2023). However, considering thickness, prime quality of the subject goods it was noticed that the appropriate assessable value of the subject goods comes to **Rs. 1,59,91,197/-** (as given in Annexure-A to SCN) which attracts total Customs Duty of **Rs. 1,14,18,558/-** (BCD 31,98,239/- SWS Rs. 3,19,824/-+ ADD Rs. 49,63,736/- + IGST Rs. 29,36,759/-) on total 128922 Meters of Pu-coated Fabric alongwith 11818 Mtrs of PVC Coated Fabric, 7470 Kgs of Polyester Bonded Fabric and 7581 Kgs of Flock Fabric.

27.1.4 During investigation, it is revealed that Shri Gaurav Raj proprietor of M/s. SG Impex in connivance with their suppliers, mis-declared the subject goods in respect of description, classification, value, quantity and other material particulars in order to evade the applicable Customs duty thereon. M/s. SG Impex in connivance with their Chinese suppliers knowingly and deliberately mis-declared the description and classification of all subject 03 import consignments. Shri Gaurav Raj admitted that all the conversations of his firm were made by himself for import of the goods from China. As per the provisions of Section 46 of the Customs Act, 1962, an importer is required to furnish the correct and true information/documents to the proper officer, however, in the present case the importer failed to furnish the correct and true information/documents to the proper officer of Customs. Such act of commission and omission on the part of M/s. SG Impex, rendered the subject goods mentioned in Annexure-A to this investigation Report liable to confiscation under Section 111(f), 111(m) and 111 (l) of the Customs Act, 1962 and thereby rendered himself liable to penalty under **Section 112(a)(ii)** of the Customs Act, 1962. I find that imposition of penalty under Section 112(a) and

112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty under Section 112(b) of the Act where ever, penalty under Section 112(a) of Act, is imposed.

27.1.5 I find that the penalty under Section 114A of the Customs Act is considered "pari materia" (essentially the same in legal effect) to Section 28(4) of the Customs Act, as both sections deal with situations where duty is short-levied or not paid due to collusion, willful misstatement, or suppression of facts, and impose a penalty related to the amount of unpaid duty or interest involved; essentially meaning that if a person is found liable under Section 28(4), they could also be subject to a penalty under Section 114A for the same actions. In the instant case clearance of the goods in the form out of charge of the goods has not been effected. Therefore, demand under Section 28 is premature at this stage and based on the same reasoning the question of demand of duty under section 28 does not arise. Accordingly, I refrain from imposing penalty under section 114A of Customs Act, 1962.

27.1.6 It is clear from the forgoing paras that Shri Gaurav Raj of M/s. SG Impex has submitted documents to the Customs broker which were not containing correct and true declaration of the subject goods. He provided the incorrect details/documents to the Customs authorities for import, warehousing and clearance of the subject offending goods. He also forwarded incorrect documents for filing of import documents for these consignments with false declarations. He knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, classification, value etc., with mala-fide intention, and M/s. SG Impex is also liable to penalty under **Section 114AA of the Customs Act, 1962.**

27.2 Role and culpability of M/s Freight Link Logistics, the Customs Broker who dealt with import documents of import consignments of M/s. SG Impex: -

27.2.1 It is pertinent to mention that no submission was received from M/s Freight Link Logistics and no representative of M/s Freight Link Logistics attended personal hearing on scheduled personal hearing dates. Accordingly, I proceed to pass the ex-parte order in case of M/s Freight Link Logistics.

27.2.2 M/s Freight Link Logistics was the Customs Broker of M/s. SG Impex. They have dealt with the documents of import consignments of the subject importer. During investigation, it was noticed that they have dealt with the subject import consignments so casually that they did not even seek any clarification reason for not declaring the Pu-coated Fabrics in the Bills of Lading and IGM as the maximum quantity in all the 03 import consignments were of Pu-coated Fabric which attract

Anti-dumping duty as per Notification No. 14/2022-Customs (ADD) dated 20.05.2022.

27.2.3 During statement Shri Hemant Joshi stated that they had filed the Bills of Entry on the basis of invoices provided by the importer M/s. SG Impex. The corresponding Bills of Lading and IGM of all the 03 import consignments were containing different description and classification than the actual ones. The imported goods were PU-coated fabric falling under HS code 59032090, whereas the same were mis-declared as '*Bonded Fabric (HS Code-60064200), Flock Fabric (HS Code-59070012)*' with clear intention of evasion of applicable Anti-dumping duty. Also, the AZO Test Certificate pertaining to the subject import consignments (Containing the invoice Nos. of the 03 import consignments) were only containing the description of the Bonded Fabric and Flock Fabric i.e. as mentioned in the Bills of Lading. These facts clearly show the mala-fide intention of the importer. Had the DRI not put the said import consignments on hold, the importer would have continued to clearance of the said goods with declared description and classification of the goods in the Bills of Lading and IGM. M/s Freight Link Logistics, being an experienced Customs Broker, they did not bother to ask the importer the actual reason thereof. However, M/s Freight Link Logistics did not seek any supporting documents/clarification for mentioning of the description and classification of the goods in the BL and IGM. They have also not sought the reason for not containing the description of Pu-coated Fabric in the AZO Test Certificate of the said import invoices. It appears that M/s Freight Link Logistics handled the subject consignments in very casual manner in spite of the facts that the importer was of clear mala-fide intention. The imported goods were of sensitive nature and the facts were showing clear intention of evasion of applicable anti-dumping duty, however, M/s Freight Link Logistics intentionally and irresponsibly dealt with the import consignments of M/s. SG Impex.

27.2.4 M/s Freight Link Logistics were very well aware with the applicability of Notification No. 14/2022-Customs (ADD) dated 20.05.2022, and the description of the goods mentioned in the IGM and BLs were showing clear intention of evasion of anti-dumping duty. However, as the DRI put the said import consignments on hold, the importer arranged the invoices containing the goods declared as PU-coated fabrics and other declared fabric, however maximum quantity of the goods in the imported consignments were found as PU-coated fabrics. Further, the importer wanted to adjust the payment of anti-dumping duty by way of undervaluation of the subject goods. Accordingly, they also found indulged in gross mis-declaration of assessable value of the import goods. The description and classification of the subject import goods were plainly different from the actual description and classification; however, M/s Freight Link Logistics was not bothered to take any written reply or reason thereof from the importer. Such act of commission and

omission on the part M/s Freight Link Logistics rendered the subject goods mentioned in Annexure-A to the SCN liable to confiscation under Section 111(f), 111(m) and 111 (l) of the Customs Act, 1962 and thereby rendered himself liable to penalty under **Section 112 (b)(ii)** of the Customs Act, 1962 and refrain from imposing penalty under Section 114AA of the Customs Act, 1962.

28. Noticee M/s SG Impex submitted that the Bills of Entry were correctly filed and therefore no misdeclaration can be attributed to them. I find this assertion to be factually incorrect. The change in description at the time of filing the Warehouse Bills of Entry, which occurred only after initiation of investigation by the DRI, is itself suspicious and appears to be an afterthought. More importantly, in both the Warehouse and DTA Bills of Entry, the importer deliberately declared 10,500 meters of PU-coated fabric as PVC-coated fabric under CTI 59031090 with the clear intent to evade the applicable anti-dumping duty. Thus, even at the stage of provisional release, when the true nature of the goods was already known, the importer persisted in misdeclaring the goods. This conduct clearly demonstrates a conscious and intentional misdeclaration on the part of the importer.

29. Noticee M/s SG Impex submitted that the Commissioner of Customs is not the competent authority as per the SEZ Act, 2005 to adjudicate the said matter since the goods imported vide SEZ and are governed by SEZ Act, 2005 and not Customs Act, 1962. Admittedly, as per the SEZ Act, 2005, specifically Section 23 of the SEZ Act, 2005, only designated courts can try the notified offences under the SEZ Act, 2005.

In this regard, I find that Section 23 of the SEZ Act, 2005 deals only with civil suits and trial of notified offences under the SEZ Act. Adjudication of a Show Cause Notice under Section 28 of the Customs Act, 1962 for demand of duty, confiscation, or penalty is not a criminal trial and does not fall within “civil suits” contemplated under Section 23. Hence, reliance on Section 23 is misplaced and irrelevant to the present adjudication.

30. M/s. SG Impex further submitted that the relevant document for assessment under the Customs Act is the Bill of Entry filed for home consumption or warehousing and that reliance on the Bill of Lading or Import General Manifest (IGM) for making any charge of misdeclaration or evasion is misplaced and legally unsustainable. They have argued that the Bill of Entry is a statutory document by which an importer declares the true description, quantity, and value of the imported goods and only thereafter duty is assessed and collected. The Bill of Lading is primarily a shipping document issued by the carrier or shipping line that acts as a receipt of goods and a contract of carriage from the shipper to consignee, and it does not have the same evidential value in determining assessable duty. They emphasize that since the Bill of Entry is filed later than IGM or Bill of Lading,

the correct duty has to be assessed as per the declared details at the time of filing the Bill of Entry.

30.1 In response to this point, I state that while the Bill of Entry is the key document for customs assessment and clearance, it cannot be viewed in isolation and without considering the surrounding facts and earlier documents. The department's case supported by documentary evidence from the Bill of Lading, IGM, commercial invoices, packing lists, physical examination reports, and laboratory test results. When we see these things together, these clearly show discrepancies in declaration and mis-statement of description and quantity. Bill of Lading and IGM documents are important to establish the initial description and classification provided by the exporter and shipping line and reveal the intention of the importer. Moreover, physical examination and independent verification under panchnama confirm the actual nature and quantity of goods. I noticed that the Bill of Entry does not preclude the customs authorities from relying on other evidences, especially where the importer's declarations conflict with these records or physical facts. The law mandates that accurate and true information be furnished at all stages, including at the filing of Bills of Entry (Section 46 of Customs Act), but the correctness of these declarations must be verified through examination and corroborated evidence. Where the Bills of Entry are found to be manipulated or inconsistent with physical findings and trade documents, the Department is empowered to reassess duties and invoke penal provisions. I find that Section 46(2) of the Customs Act clearly mandate the importer to furnish a true and correct Bill of Entry which includes all goods mentioned in the Bill of Lading or other receipt. Hence, any discrepancy between the Bill of Entry and the Bill of Lading or IGM is a ground for reassessment and penal proceedings. The department's reliance on Panchnamas, laboratory reports alongwith other relevant documents is fully justified in law. Hence, the contention that reliance on Bill of Lading or IGM is entirely misplaced does not hold any merit in the present case of mis-declaration. Therefore, the submission of the noticee on this point is not sustainable.

32. In view of above discussions and findings supra, I pass the following order:

ORDER

- i) I order to reject the description “Bonded Fabric (HS Code-60064200), Flock Fabric (HS Code-59070012)” and HS code thereof declared at the time of filing of Import General Manifest for the subject 03 import consignments and order to confiscate the same under Section 111(f) of the Customs Act, 1962, and order to re-classify the same under appropriate HS code as mentioned in the Annexure-A to the Show Cause Notice which includes PU-coated Fabric, PVC coated Fabric, Bonded Fabric and Flock Fabric.

- ii) I reject the declared description of PVC coated fabric in Warehouse BE as well as DTA BE having **quantity 10500 Meters** and declared classification thereof under HS code 59031090 and order to re-classify the same under their appropriate HS Code 59032090 under Customs Tariff Act, 1975 being the same actually found as PU-coated Fabric.
- iii) I order to reject the declared assessable value of **Rs. 6,07,108/-** (Rupees Six Lakh Seven Thousand One Hundred Eight Only) (Warehouse BEs) & **Rs. 6,04,903/-** (Six Lakh Four Thousand Nine Hundred Three Only) (DTA BEs) of PVC Coated Fabric having **quantity 10500 Meters** as mentioned at para (ii) above, under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and order to re-determined as **Rs. 10,98,563/-** (Rupees Ten Lakh Ninety Eight Thousand Five Hundred Sixty Three Only) under Rule 5 Customs Valuation (Determination of value of imported goods) Rules, 2007.
- iv) I order to confiscate the total **quantity 10500 Meters** of PU-coated Fabric falling under HS Code No. 59032090 of Customs Tariff Act, 1975, under Section 111(f), 111(l), 111(m) and Section 119 of the Customs Act, 1962 as the same were found mis-declared as PVC Coated Fabric (HS code 59031090) and also mis-declared in respect of assessable value thereof.
- v) I order to reject the declared assessable value of Rs. 92,93,626/- (Rupees Ninety Two Lakh Ninety Three Thousand Six Hundred Twenty Six Only) of PU-Coated Fabrics (HS Code 59032090) having quantity 162237 Sq. Mtrs. (118422 Mtrs) in the Warehouse Bills of Entry No. 1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022 & Rs. 92,99,712/- (Rupees Ninety Two Lakh Ninety Nine Thousand Seven Hundred Twelve Only) in the corresponding DTA Bills of Entry, under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and order to re-determine the same as **Rs. 1,26,85,821/-** (Rupees One Crore Twenty Six Lakh Eighty Five Thousand Eight Hundred Twenty One Only) as mentioned in Annexure-A) under Rule 5 Customs Valuation (Determination of value of imported goods) Rules, 2007.
- vi) I order to confiscate the total quantity 162237 Sq. Mtrs. (118422 Mtrs) of PU-Coated Fabrics (HS code 59032090) imported under warehouse Bills of Entry No. 1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022, under Section 111(f) and 111(m) of the Customs Act, 1962 as the same were found mis-declared in respect of assessable value thereof.

- vii) I order to reject the declared assessable value of **Rs. 3,41,425/-** (Three Lakh Forty One Thousand Four Hundred Twenty Five Only) of PVC coated Fabrics (HS code 59031090) having quantity 16190.55 SQM (11818 Mtrs) in Warehouse Bills of Entry No.1017173 dated 28.11.2022 and assessable value of Rs. 3,45,972/- (Three Lakh Forty Five Thousand Nine Hundred Seventy Two Only) declared in corresponding DTA Bill of Entry No. 2000530 dated 10.01.2023, under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and order to re-determine the same as **Rs. 4,94,583/- (Four Lakh Ninety Four Thousand Five Hundred Eighty Three Only)** (as mentioned in Annexure-A) under Rule 5 Customs Valuation (Determination of value of imported goods) Rules, 2007.
- viii) I order to confiscate the total quantity 16190.55 SQM (11818 Meters) of PVC Coated Fabric in Warehouse Bills of Entry No.1017173 dated 28.11.2022 and in corresponding DTA Bill of Entry No. 2000530 dated 10.01.2023 as mentioned in para (vii), under Section 111(m) of the Customs Act, 1962 as the same were found mis-declared in respect of assessable value thereof.
- ix) I order to reject the declared assessable value of Rs. 7,02,843/- (Seven Lakh Two Thousand Eight Hundred Forty Three Only) of Polyester Bonded Fabric (HS Code 60064200) having quantity 7470 Kgs in the Warehouse Bills of Entry No. 1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022 and declared assessable value of Rs. 7,05,289/- (Seven Lakh Five Thousand Two Hundred Eighty Nine Only) in corresponding DTA Bills of Entry, under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and order to re-determine the same as **Rs. 9,19,068/-(Nine Lakh Nineteen Thousand Sixty Eight Only)** (as mentioned in Annexure-A) under Rule 5 Customs Valuation (Determination of value of imported goods) Rules, 2007.
- x) I order to confiscate the total quantity of 7470 Kgs of Polyester Bonded Fabric (HS Code 60064200) imported under warehouse Bills of Entry No. 1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171dated 28.11.2022 which was mis-declared as 7346 Kgs, under Section 111(l) and 111(m) of the Customs Act, 1962 as the same were found mis-declared in respect of assessable value and quantity thereof.
- xi) I order to reject the declared assessable value of total Rs. 7,10,372/- (Seven Lakh Ten Thousand Three Hundred Seventy Two Only) of Flock Fabric (HS Code 59070012) having quantity 7581 KGs, in the Warehouse Bills of Entry No. 1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022 and total declared assessable value of Rs. 7,13,989/- (Seven

Lakh Thirteen Thousand Nine Hundred Eighty Nine Only) in corresponding DTA Bills of Entry, under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and order to re-determine the same as **Rs. 7,93,162/- (Seven Lakh Ninety Three Thousand One Hundred Sixty Two Only)** (as mentioned in Annexure-A) under Rule 5 Customs Valuation (Determination of value of imported goods) Rules, 2007.

- xii) I order to confiscate total quantity of 7581 Kgs of Flock Fabric (HS Code 59070012) imported under warehouse Bills of Entry No. 1017173 dated 28.11.2022, 1017174 dated 28.11.2022 and 1017171 dated 28.11.2022 which was mis-declared as 7363 Kgs, under Section 111(l) and 111(m) of the Customs Act, 1962 as the same were found mis-declared in respect of assessable value and quantity thereof.
- xiii) Since, the goods imported under these 3 shipments have already been released through provisional release, I impose a redemption fine of **Rs. 16,00,000/-** (Rupees Sixteen lakhs only) under the provisions of Section 125 of the Customs Act, 1962 in lieu of order of confiscation at point no (iv), (vi), (viii), (x) & (xii) above.
- xiv) I do not order to demand the differential duty under Section 28(4) of the Customs Act, 1962 for the reasons as stated under para 26 above. However, I order to re-assess the Bills of Entry for the purpose of levy of duty totally amounting to Rs. 1,14,18,558/- (which includes differential duty of Rs. 22,36,412/-), as mentioned in Para 26.1.
- xv) I order to appropriate the amount of total Customs duty (BCD+SWS+Anti-dumping duty+IGST) paid by M/s. SG Impex during investigation at the time of provisional release i.e. filing of DTA Bills of Entry No. 2000530 dated 10.01.2023, 2001189 dated 20.01.2023 and 2001190 and date 20.01.2023 against the duty leviable on the goods at the time of re-assessment.
- xvi) I order to enforce the Bond and Bank Guarantee submitted by M/s. SG Impex at the time of provisional release of the goods. If the amount of dues (as confirmed above) are paid in full by the Noticee, the Bond & Bank Guarantee may be cancelled by the competent authority.
- xvii) I impose penalty of **Rs. 2,00,000/-** (Rupees Two Lakh only) on M/s SG Impex under Section 112(b)(ii) of the Customs Act, 1962. However, I don't impose penalty upon them under Section 112(b) of the Customs Act, 1962 as proposed in the Show Cause notice.

xviii) I do not impose penalty on M/s. SG Impex under Section 114A of the Customs Act, 1962.

xix) I impose penalty of **Rs. 20,00,000/-** (Rupees Twenty Lakh only) on M/s SG Impex under Section 114AA of the Customs Act, 1962.

xx) I impose penalty of **Rs. 2,00,000/-** (Rupees Two Lakh only) on M/s Freight Link Logistics under Section 112(b)(ii) of the Customs Act, 1962. However, I don't impose penalty upon them under Section 112(a) of the Customs Act, 1962 as proposed in the Show Cause notice.

xxi) I don't impose penalty upon M/s Freight Link Logistics under Section 114AA of the Customs Act, 1962.

33. The Order is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962, or rules made there under or any other law for the time being in force.



(Nitin Saini)

Commissioner of Customs,
Custom House, Mundra

Date:-01.10.2025

F.No. GEN/ADJ/COMM/423/2024-Adjn-O/o Pr Commr-Cus-Mundra

List of Noticees:-

- 1- M/s. SG Impex (IEC No. BMFPR9668P), H. No. 2A, K-1 Extn, Mohan Garden, West Delhi, Delhi-110059 (email-gauravraj92@gmail.com)
- 2- M/s Freight Link Logistics, 8 Ojas Complex, Nr. Nimaya Hotel, Gandhidham(hbjoshi.20@gmail.com)

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

1. The Additional Director, Directorate of Revenue Intelligence, Gandhidham Regional Unit, Plot No. 5 & 6, Ward-5A, Near Vinayak Hospital, Adipur-370205, Kutch
2. The Additional Commissioner of Customs, CCCO, Ahmedabad.
3. The Deputy Commissioner of Customs (EDI), Custom House, Mundra

4. The Dy./Asstt. Commissioner of Customs (Legal/Prosecution),
5. The Dy./Asstt. Commissioner of Customs, AG section, Mundra
6. The Commissioner of Customs, Mundra Special Economic Zone & Port, Mundra
7. The Development Commissioner, Mundra Special Economic Zone, Mundra
8. The Deputy Commissioner of Customs/Specified Officer, Mundra Special Economic Zone, Mundra
9. Notice Board
10. Guard File