



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

"सीमाशुल्कभवन , "पहलीमंजिल , पुरानेहाईकोर्टकेसामने ,नवरंगपुरा ,अहमदाबाद – 380 009.

दूरभाष : (079) 2754 4630 **E-mail:** cus-ahmd-adj@gov.in **फैक्स :** (079) 2754 2343

PREAMBLE

A	फाइलसंख्या/ File No.	: VIII/10-65/ICD-SND/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	: Waiver of SCN by the Importer
C	मूलआदेशसंख्या/ Order-In-Original No.	: 34/ADC/VM/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	: 17.05.2024
E	जारीकरनेकीतारीख/ Date of Issue	: 17.05.2024
F	द्वारापारित/ Passed By	: Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	: To, M/s. Swastik Decor (having IEC – 0815004656), Plot No. 29, Devraj Industrial Park, Pirana Piplaj Road, Piplaj, Ahmedabad – 382405.
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हें यह जारी किया जाता है।	
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), ४वि मंजिल, हडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।	
(3)	अपील के साथ केवल पांच (५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:	
(i)	अपील की एक प्रति और;	
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच (५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।	
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५% अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।	

BRIEF FACTS OF THE CASE:

M/s. Swastik Decor (having IEC - 0815004656), Plot No. 29, Devraj Industrial Park, Pirana Piplaj Road, Piplaj, Ahmedabad - 382405, have filed Bill of Entry No. 3199141 dated 25.04.202 at Custom ICD Sanand, Ahmedabad, through their appointed Customs Broker M/s. Kaushali International. The goods have been imported from foreign supplier M/s. Tongxiang Polyfur Textile Technology, Dama Industrial Zone, Tongxiang City, 314513, Zhejiang, China vide invoice No. WI24TS0220 dated 25.03.2024, Bill of Lading No. MEDUGW699664 dated 31.03.2024. The assessable value has been declared as Rs. 3582915.09 and assessed duty is Rs. 1006799/-.

2. The goods under import are declared to be different types of 100% Polyester Knitted Fabric classifiable under CTH 60063200 as per below details:

Table-I

S. No.	Description of goods	Item Sr. No. in BE	Quantity of subject item (Kg)	Declared unit price/Kg (in USD)	Declared CIF price/Kg (in USD)
1	100% Polyester Knitted Fabric- Basel	1	2373.60	2.765403	2.8377
2	100% Polyester Knitted Fabric- Breeze	2	1084.70	2.765373	2.8373
3	100% Polyester Knitted Fabric- Almeria	3	8334.20	3.574343	3.6688
4	100% Polyester Knitted Fabric- Kimberley	4	1020.10	1.970621	2.022

3. The bill of entry was marked to faceless assessment group (FAG) for assessment. The FAG raised a query to the importer regarding present import price being lower than the minimum import price (MIP) imposed vide DGFT Notification No. 77/2023 dated 16.03.2024 on import of synthetic knitted fabrics under CTH 6006.

3.1 The importer in their reply submitted that they do not have any objection to load the value @ 3.5 USD/Kg.

3.2 However, not satisfied with the importer's reply, the Faceless Assessment Group pushed the Bill of Entry to this port with following remarks:

"BE may be pushed to PAG since goods being imported are prohibited since declared price is less than the MIP prescribed. Importer accepted for value enhancement but subject goods if declared less than MIP becomes prohibited and liable for confiscation and adjudication."

4. Accordingly, goods were examined on 100% basis and found to be as declared in import documents. The examination report is being re-produced below for reference:

"As directed, examined 100% of the goods and the same found as knitted fabric which has been verified with invoice/packing list/import documents. Container and seal No. found and tallied with that mentioned in BL. PTR has been uploaded in e-sanchit. Examination conducted in the supervision of deputy commissioner and in presence of representative of CHA."

5. From the table-I above, it is seen that the declared CIF/ Import unit price for items at Sr. No. 1,2 & 4 of the Bill of Entry are below the Minimum import Price prescribed. The total declared assessable value/CIF value for these three items is Rs. 10,02,251.67 and the Assessable value/CIF Value arrived at as per the DGFT imposed MIP is Rs. 13,22,919.36.
6. On further enquiry with the importer regarding the import price is less than the prescribed under DGFT Notification No. 77/2023 dated 16.03.2024 and that why necessary action not be initiated under the Customs Act, 1962, the importer again submitted that they do not have any objection to load the value @ 3.5 USD/Kg as per the relevant notification.
7. Further, the relevant portion of the DGFT Notification No. 77/2023 dated 16.03.2024 is being re-produced below for reference:

Notification No. 77/2023
New Delhi, Dated: 16th March 2024

Subject: Imposition of Minimum Import Price on Synthetic Knitted Fabrics up to 15th September 2024 -reg

S.O.: In exercise of powers conferred by Section 3 read with Section 5 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2023, as amended from time to time, the Central Government hereby revises the Import Policy and Import Policy Condition of the following ITC(HS) Codes under Chapter 60 of ITC (HS) 2022, Schedule-I(Import Policy), for the period up to 15th September 2024 as under:

ITC(HS) Code	Item Description	Import Policy	Revised Import Policy	Existing Policy condition	Revised Policy condition
60063100	-Of synthetic fibres -- Unbleached or bleached	Free	Prohibited	-	However, import is 'Free' if CIF value is 3.5 US Dollar and above per Kilogram
60063200	-Of synthetic fibres -- Dyed	Free	Prohibited	-	However, import is 'Free' if CIF value is 3.5 US Dollar and above per Kilogram

8. Now, as the goods under import appeared to be liable for confiscation under Section 111(d) of the Customs Act, 1962, the same were placed under Seizure vide Seizure Memo issued vide F. No. CUS/SHED/OBJ/207/2024-ICD-SNND-CUS-COMMRTE-AHMEDABAD dated 14.05.2024.
9. As, the goods under import are prohibited as per the DGFT Notification No. 77/2023 dated 16.03.2024, the same appears to be liable to confiscation under Section 111(d) of the Customs Act, 1962.

9.1 The relevant portion of the Section 111 of the Customs Act 1962 is being reproduced below:

"111. Confiscation of improperly imported goods, etc.

- The following goods brought from a place outside India shall be liable to confiscation:-

(a)

.....
(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

.....
10. Further, as the goods appear to be liable to confiscation under Section 111(d) of the Customs Act, 1962, the importer is liable to penalty under Section 112 (a)(i) of the Customs Act, 1962 which is reproduced as under :

"SECTION 112. Penalty for improper importation of goods, etc.

Any person, -

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

(b)
shall be liable, -

(i) 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)

(iii)

PERSONAL HEARING AND SUBMISSIONS

11. The importer vide letter dated 15.05.2024 requested for clearance of the goods and stated that there is no intention to bring the goods at lower value against the relevant notification and that they do not have any objection to load value @3.5 USD/Kg. They have further submitted that they do not want any Personal Hearing (PH) and Show Cause Notice (SCN) in the matter.

DISCUSSION AND FINDING

12. I have carefully gone through the relevant case records. I find that the importer had requested for waiver of Show Cause Notice. The request for non-issuance of written Show Cause Notice is accepted in terms of the

first proviso to Section 124 of the Customs Act, 1962 and accordingly, the matter is taken up for decision on merits.

13. The facts of the case indicate that the goods under import are declared to be different types of 100% Polyester Knitted Fabric classifiable under CTH 60063200 as per below details:

Table-I

S. No.	Description of goods	Item Sr. No. in BE	Quantity of subject item (Kg)	Declared FOB price/Kg (in USD)	Declared CIF price/Kg (in USD)
1	100% Polyester Knitted Fabric-Basel	1	2373.60	2.765403	2.8377
2	100% Polyester Knitted Fabric-Breeze	2	1084.70	2.765373	2.8373
3	100% Polyester Knitted Fabric-Almeria	3	8334.20	3.574343	3.6688
4	100% Polyester Knitted Fabric-Kimberley	4	1020.10	1.970621	2.022

14. I find that, during assessment, the faceless assessment group (FAG) raised a query to the importer regarding present import price being lower than the minimum import price (MIP) imposed vide DGFT Notification No. 77/2023 dated 16.03.2024 on import of synthetic knitted fabrics under CTH 6006.

14.1 I find that the importer in their reply submitted that they do not have any objection to load the value @ 3.5 USD/Kg.

15. I find that, the goods were examined on 100% basis and found to be as declared in import documents. The examination report is as below:

"As directed, examined 100% of the goods and the same found as knitted fabric which has been verified with invoice/packing list/import documents. Container and seal No. found and tallied with that mentioned in BL. PTR has been uploaded in e-sanchit. Examination conducted in the supervision of deputy commissioner and in presence of representative of CHA."

16. I find that on further enquiry, the importer re-iterated that they do not have any objection to load the value @ 3.5 USD/Kg as per the relevant notification.

17. I find that the DGFT vide Notification No. 77/2023 dated 16.03.2024 has revised the import Policy condition of the ITC (HS) codes under Chapter 60 of ITC (HS), 2022 schedule-I (Import Policy) from 'Free' to 'Prohibited' with the condition that 'import is 'free' if CIF value is 3.5 US Dollar and above per Kilogram'.

18. In the instant case, I find that the declared CIF value/Import unit price for items at Sr. No. 1,2 & 4 of the Bill of Entry are below the Minimum import Price prescribed under the DGFT Notification No. 77/2023 dated 16.03.2024 and the total declared assessable value/CIF value for these

three items is Rs. 10,02,251.67 and the Assessable value/CIF Value arrived at as per the DGFT imposed MIP (i.e. 3.5USD/Kg) is Rs.13,22,919.36.

19. I find that the as the goods appeared to be liable to confiscation under section 111(d) of the Customs Act, 1962, the same were placed under seizure, vide seizure memo dated 14.05.2024.

20. Now, as the import price of the goods under import have been declared to be substantially lower than the Minimum import price prescribed, the import of the same becomes 'prohibited' and the same are liable for confiscation under Section 111(d) of the Customs Act, 1962.

"111. Confiscation of improperly imported goods, etc.

- The following goods brought from a place outside India shall be liable to confiscation:-

(a)

.....

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

.....

.....

21. Further, as the goods are liable to confiscation under Section 111(d) of the Customs Act, 1962, the importer is liable to penalty under Section 112 (a)(i) of the Customs Act, 1962 which is reproduced as under :

"SECTION 112. Penalty for improper importation of goods, etc.

Any person, -

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

(b).....

shall be liable, -

(i) 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)

(iii)

22. I find that the importer vide letter dated 15.05.2024 has requested for clearance of the goods and stated that there is no intention to bring the goods at lower value against the relevant notification and that they do not have any objection to load value @3.5 USD/Kg. They have further submitted that they do not want any Personal Hearing (PH) and Show Cause Notice (SCN) in the matter. The request for non-issuance of written Show Cause Notice is accepted in terms of the first proviso to Section 124

of the Customs Act and accordingly, the matter is taken up for decision on merits.

23. As the impugned goods are found to be liable to confiscation under Section 111(d) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125(1) of the Customs Act, 1962 is liable to be imposed in lieu of confiscation in respect of the imported goods.

The Section 125(1) of the Customs Act, 1962 reads as under:

"125. Option to pay fine in lieu of confiscation.

(1) Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit...:

[Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply:

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

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

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

24. In view of aforementioned Discussion and Findings, I pass the following Order:

ORDER

- (i)** I reject the declared assessable value of the goods at Sr. Nos. 1, 2 & 4 of the Bill of Entry No. 3199141 dated 25.04.2024 under Rule 12 of the Customs Valuation Rules, 2007 and re-determine the same as per the guidelines of the DGFT to Rs.13,22,920/-.

- (ii) I order confiscation of the subject goods imported vide Bill of Entry No. 3199141 dated 25.04.2024 under Section 111(d) of the Customs Act, 1962.
- (iii) The importer is given an option to redeem the subject confiscated goods on payment of redemption fine amounting **Rs.1,00,000/-** (Rupees One Lakh only) in terms of Section 125(1) of the Customs Act, 1962.
- (iv) I impose penalty of **Rs.50,000/- (Rupees Fifty Thousand only)** on the importer M/s. Swastik Décor (IEC: 0815004656) in terms of the provisions of Section 112(a)(i) of the Customs Act, 1962.


(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-65/ICD-SND/O&A/HQ/2024-25
DIN : 20240571MN000000EEE9

Date : 17.05.2024

BY SPEED POST

To,

M/s. Swastik Decor (IEC – 0815004656),
Plot No. 29, Devraj Industrial Park,
Pirana Piplaj Road, Piplaj, Ahmedabad - 382405

Copy to:

- (i) The Principal Commissioner of Customs, Ahmedabad. (Kind attn.: RRA Section)
- (ii) The Deputy Commissioner of Customs, ICD Sanand, Ahmedabad.
- (iii) The Deputy Commissioner of Customs (Task Force), Ahmedabad.
- (iv) The System In-Charge, Customs, HQ, Ahmedabad for uploading on the official web-site.
- (v) CHA: M/s. Kaushali International, through DC, ICD-Sanand.
- (vi) Guard File.