

	<p>प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, एमपी और एसईजेड, मुंद्रा, कच्छ-गुजरात -370421</p> <p>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT</p> <p>PHONE : 02838-271426/271428 FAX : 02838-271425</p>	 <p>आजादी का अमृत महोत्सव</p>
A	File No.	CUS/APR/INV/453/2024-Gr 3
B	Order-in-Original No.	MCH/ADC/AKM/201/2024-25
C	Passed by	Amit Kumar Mishra Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	23.11.2024
E	Noticee/Party/ Importer/ Exporter	M/s Ashoka Creations (IEC- AIZPK2623G) Khasra No. 32/16, 1st Floor, Main Rohtak Road, Nangloi, Delhi-110041, Delhi
F	DIN No.	20241171MO000000EADF

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

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

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

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

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

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

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

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

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

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

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

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

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

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

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

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

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

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

BRIEF FACTS OF THE CASE

M/s Ashoka Creations (IEC- AIZPK2623G) Khasra No. 32/16, 1st Floor, Main Rohtak Road, Nangloi, Delhi-110041, Delhi (hereinafter referred to as 'importer') has imported a consignment of fabrics vide container no. SEGU5274765 in the SEZ entity, M/s Sholin Tradelink LLP, APSEZ, Mundra and filed SEZ Warehouse Bill of entry no. 1012710 dated 08.07.2023. Subsequently, Bill of Entry for Home Consumption (SEZ to DTA Unit) No. 2012992 dated 13.07.2023 was filed by the importer. The said consignment was kept on hold by the Directorate of Revenue Intelligence (DRI), Zonal Unit, Ahmedabad and examined under the panchnama proceedings dated 20.07.2023.

2.1 During the examination, three representative samples (one from each type of lot as declared in the BE) were drawn by the DRI team and forwarded to the CRCL, Vadodara for testing purpose. The CRCL, Vadodara vide its reports dated 21.08.2023 and 25.08.2023 has testified the samples as under:

TABLE-I

Sr. No.	TM No. & Date	Declared cargo	Report from the CRCL, Vadodara
1	88/Ashoka/2012992 dated 24.07.2023	Polyester Knitted Fabric	<p>Sample is in the form of cut piece of self-designed, dyed woven fabric. It is composed of textured polyester filament yarn on one side and blend 2 ply spun yarn of polyester and viscose on other side.</p> <p>Percentage composition is given below:</p> <p>Polyester filament yarn (% by mass) = 38.04</p> <p>Spun yarn of viscose = 29.99%</p> <p>Spun yarn of polyester- Balance</p> <p>GSM (as such) = 324.32</p> <p>Thickness (as such) = 0.545mm</p>
2	89/Ashoka/2012992 dated 24.07.2023	Polyester woven dyed fabric	<p>The sample is a cut piece of yarn dyed self-designed knitted fabric. It is wholly composed of Polyester spun yarn and polyester filament yarn. Percentage composition is given below:</p> <p>Polyester Spun Yarn = 44.59%</p> <p>Polyester filament Yarn = balance</p> <p>GSM = 332.60</p>
5	90/Ashoka/2012992 dated 24.07.2023	Polyester Laminated fabric	<p>The sample is in the form of cut piece of dyed woven fabric coated on one side with polyacrylate type material. The woven fabric is wholly composed of polyester filament yarn.</p> <p>Percentage composition is given below:</p> <p>Polyester filament yarn of woven fabric = 91.3%</p> <p>Polyacrylate coating = Balance</p> <p>GSM (as such) = 143.02</p> <p>Thickness = 0.25 mm</p>

2.2. The above test reports were communicated to the importer by the DRI office., In

response, the importer vide letter dated 20.11.2023 addressed to the Additional Director, DRI, AZU submitted that they have imported 14443 Kgs of Polyester Knitted Fabrics, 10030 SQM of Polyester Woven Dyed Fabrics and 43283 SQM of PA Laminated Fabrics under B/L No.GOSUNGA1172618 and filed DTA Bill of Entry No.2012992 dated 13.07.2023 for DTA clearance of the same. Further, the goods were examined by the DRI office and samples were drawn for testing under Panchnama dated 20.07.2023. On receipt of the test report from lab, the report confirms that the **Sample-1** is Polyester Woven Dyed Fabrics instead of Polyester Knitted Fabrics and **sample-2** is Polyester Knitted Fabrics instead of Polyester Woven Dyed Fabrics. The importer further submitted that both items were declared in the Bill of Entry and they were in doubt that the samples were inadvertently interchanged at the time of packing of samples, resulting to which the interchanged test reports were found. Therefore, importer requested for recheck the samples and consider the declaration in the Bill of Entry as correct and genuine or re-examination and resampling of the goods.

2.3. The DRI, AZU vide letter dated 05.12.2023 forwarded the facts of the case along with request of the importer to the Deputy Commissioner of Customs, SEZ, APSEZ for necessary action. In turn, The Specified Officer, SEZ, APSEZ forwarded the said inquiry to the Special Intelligence and Investigation Branch (SIIB), Custom House, Mundra vide letter dated 02.01.2024 for further necessary action.

3.1 Thereafter, further inquiry in the matter was initiated by the SIIB, Mundra. The cargo covered under aforesaid DTA Bill of Entry No. 2012992 dated 13.07.2023 lying destuffed in the SEZ entity, M/s Sholin Tradelink LLP, APSEZ, Mundra was re-examined by the SIIB, Custom House, Mundra under Panchnama dated 20.02.2024. During the examination, the authorised person of the SEZ warehouse unit informed that after the DRI examination, the consignment was completely de-stuffed and was placed in the godown of the warehouse unit. The cargo was found placed in three lots.

3.2 Further, the importer has questioned the labelling of the samples and have doubted that the labels of the samples may have been inter-changed inadvertently during the first instances during the drawl of samples by the DRI, AZU in as much as the earlier result of all three samples testified the goods as declared in the DTA Bill of entry, collectively. Therefore, resampling of the cargo was done and total six representative samples (two from each lot) were drawn randomly from all the three stacks during Panchnama dated 20.02.2024 and forwarded to the CRCL, Kandla. The CRCL, Kandla vide letter dated 13.03.2024 returned the samples with remarks that since the sample have already been tested by one of the Regional CRCL Laboratory (CRCL Vadodara), the re-test for the samples to be done by the CRCL, New Delhi only as the Director RLs, CRCL New Delhi is the only appellate authority to retest the sample.

3.3 Thereafter, the samples (total 6) were forwarded to the CRCL, Delhi vide letter dated 21.03.2024. The CRCL, Delhi vide letter dated 14.06.2024 has submitted test reports as under:

TABLE-II

Sr. No.	TM No. & Date	Declared cargo	Report from the CRCL, Delhi	Remark
1	873 dated 14.02.2024	Polyester Knitted Fabric (CTH-60063200)	<p>Sample is a cut piece of yarn dyed (black colour and multi-coloured) weft of two types of yarns, one is black coloured filament yarns composed of polyester and other is multi-coloured spun yarn of acrylic loosely wrapped by black coloured filament yarn of polyester.</p> <p>Percentage composition is given below:</p> <p>Polyester (% by mass) = 52.85</p> <p>Acrylic (% by mass) = balance</p> <p>GSM (as such) = 123.65</p> <p>Thickness (as such) = 1.03 mm</p>	<p>Merits the classification of CTH-60063200 as "Dyed knitted fabric. It is made of two types of yarns, one is black coloured filament yarns composed of polyester and other is multi-coloured spun yarn of acrylic loosely wrapped by black coloured filament yarn of polyester.</p> <p>Percentage composition is given below:</p> <p>Polyester (% by mass) = 52.85</p> <p>Acrylic (% by mass) = balance</p> <p>GSM (as such) = 123.65</p> <p>Thickness (as such) = 1.03 mm</p> <p>Thus, the sample appears as declared</p>
2	874 dated 14.02.2024	Polyester Knitted Fabric (CTH-60063200)	<p>The sample is in the form of cut piece of dyed (grey coloured) knitted fabric. It is made of filament yarn of nylon along with elastomeric yarn.</p> <p>Percentage composition is given below:</p> <p>Nylon filament yarn = 53.17%</p> <p>Elastomeric yarn = balance</p> <p>GSM = 199.65</p> <p>Thickness (as such) = 0.43 mm</p>	<p>Merits the classification of CTH-60041000 on the basis of presence of elastomeric yarn as 46.83% as "Knitted Fabric containing by weight 5% or more of elastomeric yarn or rubber thread"</p> <p>Thus, the sample appears as mis declared.</p>

3	875 dated 14.02.2024	Polyester woven dyed fabric (CTH-54075290)	<p>The sample is in the form of cut piece of dyed (mustard yellow coloured) woven fabric. Woven fabric is made of filament yarn of polyester along with elastomeric yarns on wrap and weft side.</p> <p>Percentage composition is given below:</p> <p>Polyester filament yarn = 95.54%</p> <p>GSM (as such) = 136.72</p> <p>Thickness = 0.30</p>	<p>The report does not specify the Polyester filament yarn as Textured or non-textured which is vital for classification of the product under CTH- 54075290 as “other dyed woven fabrics containing 85% of more by weight of textured polyester filament which attracts BCD @ 20% or Rs. 23 per sqm, whichever is higher or under CTH-54076190 as “other dyed woven fabrics containing 85% of more by weight of non-textured polyester filament which attract BCD @ 20% or Rs. 150 per Kg., whichever is higher</p>
4	876 dated 14.02.2024	Polyester woven dyed fabric (CTH-54075290)	<p>The sample is in the form of cut piece of dyed (black coloured) woven fabric. Woven fabric is made of filament yarn of polyester along with elastomeric yarns on wrap and weft side.</p> <p>Percentage composition is given below:</p> <p>Polyester filament = 95.81%</p> <p>Elastomeric yarn = Balance</p> <p>GSM (as such) = 130.10</p> <p>Thickness = 0.26</p>	<p>The report does not specify the Polyester filament yarn as Textured or non-textured which is vital for classification of the product under CTH- 54075290 as “other dyed woven fabrics containing 85% of more by weight of textured polyester filament which attracts BCD @ 20% or Rs. 23 per sqm, whichever is higher or under CTH-54076190 as “other dyed woven fabrics containing 85% of more by weight of non-textured polyester filament which attract BCD @ 20% or Rs. 150 per Kg., whichever is higher</p>

5	877 dated 14.02.2024	Polyester Laminated fabric (CTH-59039090)	<p>The sample is in the form of cut piece of dyed (blue coloured) woven fabric having polymeric coating on one side. Woven fabric is made of filament yarn of polyester and polymeric material. Coating is composed of acrylic based polymeric material. Coating can be seen with naked eye. Percentage composition is given below:</p> <p>Polyester fabric = 90.67% Polymeric coating (acrylic based) = Balance GSM (as such) = 132.90 Thickness = 0.18</p>	<p>Merits the classification of CTH-59039090 as " other Textile fabrics coated with plastic (acrylic based polymeric material)"</p> <p>Thus, the sample appears as declared</p>
6	878 dated 14.02.2024	Polyester laminated fabric (CTH-59039090)	<p>The sample is in the form of cut piece of dyed (greyish black coloured) woven fabric having polymeric coating on one side. Woven fabric is made of filament yarns of polyester and polymeric material. Coating is composed of acrylic based polymeric material. Coating can be seen with naked eye. Percentage composition is given below:</p> <p>Polyester fabric = 90.18% Polymeric coating (acrylic based) = Balance GSM (as such) = 131.89 Thickness = 0.18</p>	<p>Merits the classification of CTH-59039090 as " other Textile fabrics coated with plastic (acrylic based polymeric material)"</p> <p>Thus, the sample appears as declared</p>
Further, it has been reported that Azo dyes (banned) is not detected in each of the six samples				

3.4 The Test reports received from the CRCL, Delhi has been analysed and it is noticed that

- i. In case of sample No. 1, 5 & 6, the CRCL, Delhi report testifies the samples **as declared**.
- ii. In case of sample no. 3 & 4, the report does not specify the Polyester filament yarn as Textured or Non- Textured which is vital for classification of the product under

CTH- **54075290** as “other dyed woven fabrics containing 85% of more by weight of **textured polyester filament** which attracts BCD @ 20% or Rs. 23 per sqm, whichever is higher or under CTH-**54076190** as “other dyed woven fabrics containing 85% of more by weight of **non-textured polyester filament** which attract BCD @ 20% or Rs. 150 per Kg., whichever is higher.

iii. In case of sample no. 2, the report shows the presence of 47 % (approx) elastomeric yarn in the Fabric, which Merits the classification of **CTH-60041000** on the basis of **presence of elastomeric yarn as 46.83%** as “Knitted Fabric containing by weight 5% or more of elastomeric yarn or rubber thread”. However, presence of this high percentage of elastomeric yarn is quite unusual as the CTH-6002 & 6004 are differentiated on the basis of limit of elastomeric yarn at 5% only. The importer has also requested to recheck the above fact with the lab.

3 . 5 Furthermore, the above test reports were forwarded to the importer vide email dated 25.06.2024. In response, vide email dated 26.06.2024, the importer has requested to lab for re-check the result of sample No. 2 wherein, 47 % Elastomeric Yarn was reported.

3.6 Thereafter, clarification in this regard was sought from the CRCL, Delhi vide letter dated 01.07.2024. In response, the CRCL, Delhi vide letter dated 15.07.2024 has clarified that

- i. sample no. 3 (TM No. 875) & sample no. 4 (TM No. 876) each of the two samples is composed of **textured polyester filament yarns** and elastomeric yarn on warp and weft side.
- ii. sample no. 2 (TM No. 874) - the sample was rechecked and verified. It is observed that the percentage of elastomeric yarn (spandex yarn) is same as reported earlier in the re-test report.

3.7 In view of the Test reports of the CRCL, Delhi and subsequent clarification, it is noticed that

- i. In case of sample No. 1, 5 & 6, the CRCL, Delhi report testifies the samples **as declared**.
- ii. In case of sample no. 3 & 4 (declared as Polyester Woven Dyed Fabric), the sample is composed of textured filament yarn with less than 5 % elastomeric yarn. Thus, the sample is found **as declared** classifiable under CTH - **54075290** as “other dyed woven fabrics containing 85% of more by weight of **textured polyester filament**”
- iii. In case of sample no. 2 declared as Polyester Knitted Fabric -CTH-60063200, the sample is found as having 46.83% of elastomeric yarn (spandex yarn) and hence, does not merit classification under Polyester Knitted Fabric **Thus, the sample is found as mis declared**.

CLASSIFICATION:

4.1 From the Test reports and subsequent clarification received from the CRCL, Delhi, it is noticed that one item, i.e. sample no. 2, out of the two samples drawn from the first lot of items declared in the DTA Bill of Entry as Polyester Knitted Fabric and classified under CTH-60063200 is found as **knitted fabric** made of filament yarn of nylon (53.17%) along with elastomeric yarn (balance- 46.83%). As per the composition of the fabric, it appears more appropriately classifiable under Chapter Heading 6004 as under:

6004 Knitted or crocheted fabrics of a width exceeding 30 cm, containing by weight 5% or more of elastomeric yarn or rubber thread, other than those of heading 60.01

60041000 -- Containing by weight 5 % or more of elastomeric yarn but not containing rubber thread

From the above, it appears that the aforesaid sample is more appropriately falls under the description of “**Knitted fabric containing by weight 5% or more of elastomeric yarn but not containing rubber thread**” under CTH- 60041000 which attracts duty @ 20% + SWS+IGST @ 5%.

4.2 From the above analysis, it is noticed that the item of sample no. 2 (**total 255 rolls- having approximate weight of 8166.21 Kgs**), declared as Polyester Knitted Fabric -CTH-60063200 is found mis declared and requires to be re-classified in more appropriate classification under CTH-60041000 and valuation of the same is also required to be ascertain in terms of the Customs Valuation Rules, 2007.

VALUATION OF THE ITEM UNDER IMPORT:

5.1 In the present matter, DTA Bill of Entry has been filed till date. Here, it is pertinent to mention that as per Rules 48 of SEZ rules, 2006, some of the provisions of Customs Act, 1962 come in picture only after filling of DTA bill of Entry.

The Rule 47 (4) of the SEZ Rules, 2006 read as under:

(4) Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made thereunder.

The Rule 48(2) of the SEZ rules is reproduced below:

“(2) Valuation of the goods and/or services cleared into Domestic Tariff Area shall be determined in accordance with provisions of Customs Act and rules made thereunder as applicable to goods when imported into India”

5.2 On the basis of outcome of the test reports, as discussed above, the item covered under sample no. 2 is found as mis declared as Polyester Knitted Fabric -CTH-60063200 instead of actual description of the item as Knitted fabric containing by weight 5% or more of elastomeric yarn but not containing rubber thread” under CTH- 60041000. The declared value of the said item is calculated on the proportional basis as under:

TABLE-III

Sr. No. of the BE	Sample No.	Total Roll	total weight (Kg)	weight per roll	Total value declared	Average value per Kg	No. of Roll of individual lot taken for sample	Weight of the individual lot taken for sample	Value of the individual lot taken for sample
1	1	451	14443	32.02	1346665	93.24	196	6276.78	585247
	2						255	8166.22	761418

5.3 From the above calculation, it appears that the declared assessable value of the said item (**total 255 rolls- having approximate weight of 8166.21 Kgs**) was Rs. 7,61,418/- in the SEZ DTA BE which appears as incorrect and required to be re-determined in accordance with the CVR due to change in the classification of the impugned goods.

5.4 As per **Rule 2 (d) of the CV Rules**, "identical goods" means imported goods –

- (i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;
- (ii) produced in the country in which the goods being valued were produced; and
- (iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

5.5 As per Rule 2 (f) of the CVR, "*similar goods*" means imported goods –

- (i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;
- (ii) produced in the country in which the goods being valued were produced; and
- (iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

5.6 Further, as per **Rule 4 of the CVR, Transaction value of identical goods is determined as under-**

(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.*
 - a. *Further, as per Rule 5 of the CVR, Transaction value of similar goods is determined as under –*
4. *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

5.7 In view of the above, to ascertain the contemporary value of the imported item (sample no. 2), ADVAIT PORTAL data has been checked and it is noticed that no data of import of the said item under CTH-60041000 is available for the Mundra Port from the same supplier. Thus, it appears that no data of 'identical goods' in terms of Rule 2 (d) of the CVR is available. Thereafter, to ascertain the data of 'similar goods' under CTH-60041000 import at Mundra Port has been checked and it is noticed that the lowest assessable unit price of the similar item is **Rs. 286.52 per Kg (USD 3.45 per Kg and Exchange Rate- IUSD=83.05 INR at the relevant time)** for the BE No. 6729183 dated 05.07.2023 for the item classified under CTH-60041000 which appears as more appropriately considerable as 'Similar goods' to the impugned goods so far as CTH of the item is concerned. Therefore, considering the above unit price, the assessable value of the impugned item comes to **Rs. 23,39,806/-** in terms of Rule 5 & Rule 4 of CVR. Here, it is pertinent to mention that the importer has declared assessable value of this item as **Rs. 7,61,418/-** on the SEZ DTA BE filed by them. Thus, it appears that the importer has undervalued the impugned item under import to the extent of **Rs. 15,78,388/-**.

5.8 Thus, the valuation of the impugned item needs to be rejected under Rule 12 of the CVR, 2007 and need to be re-determined as in terms of Rule 5 & Rule 4 of CVR read with Rule 47 (4) and 48 (2) of the SEZ Rules, 2006 by way of valuation of the similar item available as discussed in para supra.

DUTY CALCULATION:

5.9 In the SEZ DTA BE filed by the importer, the impugned item was declared as Polyester Knitted Fabric -CTH-60063200 having declared value of **Rs. 7,61,418/-** on which duty has been calculated as BCD @ 20%+ SWS+IGST @5%. instead of actual description of the item as Knitted fabric containing by weight 5% or more of elastomeric yarn but not containing rubber thread under CTH- 60041000 having appropriate assessable value of **Rs. 23,39,806/-** on which applicable duty is BCD @ 20%+ SWS+IGST @5%.

5.10 Furthermore, it appears that the importer has availed the benefit of reduced customs duty provided vide Notification No. 50 dated 30th June 2018, as amended vide which tariff concession upto 20% in case of item no. 1 of the BE, i.e. Polyester Knitted Fabric -CTH-60063200. Relevant portion of the said Notification is reproduced herein under:

S. No.	Chapter, Heading No., Sub-Heading No., or tariff item	Description of goods	Extent of tariff concession (percentage of applied rate of duty; %)
645.	6005 3500 to 6005 44 00	All goods	20
646.	6006 31 00 to 6006 44 00	All goods	20
647	6802 21 90	All goods	5

From the discussion in para supra, it appears that a part of the item no.1 is more appropriately classifiable under CTH-60041000 which is not mentioned in the above Notification No. 50 dated 30.06.2018 and hence, benefit of reduced rate of customs duty is not available on this item. Thus, total duty leviable on the impugned item is calculated as under:

TABLE-IV

Sr. N o. of t he B E	Qty in Kg / SQM	CTH de clared	CTH as per inve stigation	Re-deter mined V alue	Total Duty as per investigation				Value declar ed	Duty Declared				Difference	
					BCD @ 2 0% adv/ 23 psqm	SWS	IGST @ 5%/12%	Total D uty		BCD	SWS	IGST	Total	Value	Duty
1 (1)	6276.7 8 Kg	6006320 0	60063200	585247	93640	9364	34413	137416	585247	93639	9364	34413	137416	0	0
1(2)	8166.2 2 Kg	6006320 0	60041000	2339806	467961	46796	142728	657485	761418	121827	12183	44771	178781	157838 8	478704
2	10030	5407529 0	54075290	317299	230690	0	27399	258089	317299	230690	0	27399	258089	0	0
3	43283	5903909 0	59039090	360331	72066	7207	52752	132025	360331	72066	7207	52752	132025	0	0
				3602683	864357	63367	257293	118501 6	2024295	518223	28753	159336	706312	157838 8	478704

* NO CHANGE IN THE VALUE AND DUTY OF ITEM NO. 1(1), 2 & 3 OF THE BE AS THE ITEM IS FOUND AS DECLARED.

** In case of item no.1(1) the goods are found as declared under CTH-60063200, hence benefit of reduced rate of duty in terms of Notification no. 50/2018 is available, whereas, in case of item no. 1(2) the goods are found mis declared and correct classification appears under CTH-6004100 which is out of the purview of said notification, hence benefit of reduced rate of duty is not available on this item.

5.11 In view of the above, it appears that the importer has short levied the Customs duty to the tune of **Rs. 4,78,704/-** (BCD- 3,46,134/- + SWS 34,613/- + IGST- 97,957/-) in respect to the item no. 1 of the SEZ DTA BE filed by the importer by way of mis classify and mis declaration of the imported goods.

5.12 The CRCL Test reports have been disclosed to the importer. The importer firm vide letter dated NIL received on 08.08.2024 has categorically admitted the test results and has shown their consent to pay applicable duty along with fine and penalty. He has further submitted that they do not require any Show Cause Notice or Personal hearing in this matter.

LEGAL PROVISIONS:

6.1 As per Section 2 (39), '**Smuggling**', in relation to any goods, means *any act or omission which will render such goods liable to confiscation under section 111 or section 113;*

6.2 **SECTION 46** of the Act, prescribes that the importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

6.3 Further, **Section 111** of the Act, prescribes the Confiscation of improperly imported goods, etc. as under

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

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

6.4 Further, **Section 112** of the Act provides the penal provisions for improper importation of goods, etc. which read as under:

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)

(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:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;]

6.5 **SECTION 124** prescribes the mandatory issuance of show cause notice before confiscation of goods, which read as under:

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person –

4. *is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*
5. *is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty*

mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.

6.6 SECTION 125 provides the Option to pay fine in lieu of confiscation as under:

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

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, 3 [no such fine shall be imposed]:

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

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

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

OUTCOME OF THE INVESTIGATION:

7.1 From the above discussion, it appears that M/s Ashoka Creations has imported a consignment of fabrics vide container no. SEGU5274765 in the SEZ entity, M/s Sholin Tradelink LLP, APSEZ, Mundra and filed SEZ Warehouse Bill of entry no. 1012710 dated 08.07.2023. Subsequently, Bill of Entry for Home Consumption (SEZ to DTA Unit) no. 2012992 dated 13.07.2023 was filed by the importer. Upon investigation and on the basis of test reports of the samples received from the CRCL, Delhi and subsequent clarifications, it has been found that the one item under import (sample no. 2 of the item no. 1 of the BE) declared as Polyester Knitted Fabric -CTH-60063200 was found as Knitted fabric containing by weight 5% or more of elastomeric yarn but not containing rubber thread classifiable under CTH- 60041000.

7.2 The declared assessable value of the said item (**total 255 rolls- having approximate weight of 8166.21 Kgs**) was Rs. 7,61,418/- in the SEZ DTA BE which appears as incorrect and required to be re-determined in accordance with the CVR due to change in the classification of the impugned goods.

7.3 Therefore, the value of similar goods is required to be taken to ascertain the value of the impugned item (Sr. no. 1 of the BE). From analysis of the ADVAIT Portal, and it is noticed that the lowest assessable unit price of the similar item is **Rs. 286.52 per Kg** for the BE No. 6729183 dated 05.07.2023 for the item classified under CTH-60041000. Therefore, considering the above unit price, the assessable value of the impugned item comes to **Rs. 23,39,806/-** in terms of Rule 5 & Rule 4 of CVR. Here, it is pertinent to mention that the importer has declared assessable value of this item as **Rs. 7,61,418/-** in the SEZ DTA BE filed by them. Thus, it appears that the importer has undervalued the impugned item under import to the extent of **Rs. 15,78,388/-**. Thus, the valuation of the said item needs to be rejected under Rule 12 of the CVR, 2007 and need to be re-determined as in terms of Rule 5 & Rule 4 of CVR read with Rule 47 (4) and 48 (2) of the SEZ Rules, 2006. Therefore, it appears that the importer has contravened Section 14 and Section 46 of the Customs Act, 1962 read with Rule 11 of the CVR, 2007 in as much as they failed to declare correct value of the goods in the Customs document filed by them. These acts of omission and commission on the part of importer has made the imported goods having re-determined value of **Rs 23,39,806/-** liable for confiscation under Section 111 (m) of the Act, *ibid* and has thus rendered themselves liable for penal action under Section 112 (a) (ii) of the Customs Act, 1962.

7.4 In view of the above, it appears that by way of mis classify and mis declaration of the imported goods the importer has short levied the Customs duty to the tune of **Rs. 4,78,704/-** (BCD- 3,46,134/- + SWS 34,613/- + IGST- 97,957/-) in respect to the sample no. 2 of item no. 1, (**total 255 rolls- having approximate weight of 8166.21 Kgs**) of the SEZ DTA BE filed by the importer.

8. WAIVER OF NOTICE AND PERSONAL HEARING: -

The importer firm vide letter dated Nil received on 08.08.2024 has categorically admitted the test results and has shown their consent to pay applicable duty along with fine and penalty. He has further submitted that they do not require any Show Cause Notice or Personal hearing in this matter.

9. In view of the above, it appears that :-

- i. The classification and description of the **Item no. 1(2)-Table IV, (total 255 rolls- having approximate weight of 8166.21 Kgs)** ('the impugned goods) of the SEZ DTA BE No. 2012992 dated 13.07.2023 declared as Polyester Knitted Fabric -CTH-60063200 is liable to be rejected and need to re-classify as Knitted fabric containing by weight 5% or more of elastomeric yarn but not containing rubber thread classifiable under CTH-60041000.
- ii. The declared value, i.e. **Rs. 7,61,418/-** of above item is liable to be rejected and required to be re-determined at **23,39,806/-** in terms of Rule 5 & Rule 4 of CVR read with Rule 47 (4) of the SEZ Rules, 2006.
- iii. The imported goods having re-determined value of **23,39,806/-** is liable for confiscation under Section 111 (m) of the Act, *ibid*.
- iv. Differential duty amounting to **Rs. 4,78,704/-** (BCD- 3,46,134/- + SWS 34,613/- + IGST- 97,957/-) short levied on the above said imported item is required to be added into the DTA Bill of Entry by way of re-assessment.
- v. Penalty under Section 112 (a) (ii) of Customs Act, 1962 is imposable upon the importer.

DISCUSSION AND FINDINGS

10. I have carefully gone through the Investigation Report dated. 29.08.2024 issued by the Deputy Commissioner of Customs (SIIB), Mundra and I find that Importer M/s

Ashoka Creations vide their statement dated. 08.08.2024 has categorically admitted the test results and has shown their consent to pay applicable duty along with fine and penalty. Hence I proceed to decide the case on the basis of the documentary evidences available on records.

11. On going through the facts of the case, I find that the following issues needed to be decided in the present proceedings :-

- i. Whether the declared classification of the goods needs to be rejected and the same is liable to be re-classified or otherwise.
- ii. Whether the declared value of the goods is liable to be rejected and re-determined or otherwise.
- iii. Whether the Importer is liable for penalty under Section 112(a)(ii) of the Customs Act, 1962.

12. I find that the goods the M/s Sholin Tradelink LLP, APSEZ, Mundra has filed SEZ Warehouse Bill of Entry No. 1012710 dated. 08.07.2023, subsequently Bill of Entry for Home Consumption (SEZ to DTA Unit) No. 2012992 dated. 13.07.2023 was filed by M/s Ashoka Creation. The said consignment was kept on hold by the Directorate of Revenue Intelligence (DRI), Zonal Unit, Ahmedabad and examined under the panchnama proceedings dated. 20.07.2023.

13. I find that the three representative samples were drawn by the DRI and forwarded to the CRCL, Vadodara for testing purpose. The CRCL, Vadodara had given its report dated. 21.08.2023 and 25.08.2023 and the test results thereof mentioned in Table-I of Para 2.1 above.

13.1 I further find that the results of report dated. 21.08.2023 and 25.08.2023 were communicated to the importer by the DRI office. The importer vide letter dated. 20.11.2023 addressed to the Additional Director, DRI, AZU submitted that they had imported 14443 Kgs of Polyester Knitted Fabrics, 10030 SQM of Polyester Woven Dyed Fabrics and 43283 SQM of PA Laminated Fabrics under B/L No. GOSUNGA1172618 and filed DTA Bill of Entry No. 2012992 dated. 13.07.2023 for DTA clearance of the same. Further, the Importer submitted that both items were declared in the Bill of Entry and they were in doubt that the sample were inadvertently interchanged at the time of packing of samples, resulting to which the interchanged test reports were found. Therefore, the importer requested for re-check the samples and consider the declaration in the Bill of Entry as correct and genuine or re-examination and re-sampling of the goods.

13.2 I find that the DRI, AZU vide letter dated 05.12.2023 forwarded the facts of the case along with request of the importer to the Deputy Commissioner of Customs, SEZ, APSEZ for necessary action. In turn, The Specified Officer, SEZ, APSEZ forwarded the said inquiry to the Special Intelligence and Investigation Branch (SIIB), Custom House, Mundra vide letter dated 02.01.2024 for further necessary action.

Thereafter, further inquiry in the matter was initiated by the SIIB, Mundra. The cargo covered under aforesaid DTA Bill of Entry 2012992 dated 13.07.2023 lying destuffed in the SEZ entity, M/s Sholin Tradelink LLP, APSEZ, Mundra was re-examined by the SIIB, Custom House, Mundra under Panchnama dated 20.02.2024. During the examination, the authorised person of the SEZ warehouse unit informed that after the DRI examination, the consignment was completely de-stuffed and was placed in the godown of

the warehouse unit. The cargo was found placed in three lots.

13.3 I find that the importer had questioned the labelling of the samples and had doubted that the labels of the samples may had been inter-changed inadvertently during the first instances during the drawl of samples by the DRI, AZU in as much as the earlier result of all three samples testified the goods as declared in the DTA Bill of entry, collectively. Therefore, resampling of the cargo was done and total six representative samples (two from each lot) were drawn randomly from all the three stacks during Panchnama dated 20.02.2024 and forwarded to the CRCL, Kandla. The CRCL, Kandla vide letter dated 13.03.2024 returned the samples with remarks that since the sample had already been tested by one of the Regional CRCL Laboratory (CRCL Vadodara), the re-test for the samples to be done by the CRCL, New Delhi only as the Director RLs, CRCL New Delhi is the only appellate authority to retest the sample.

13.4.1 I find that, on request of the Importer as discussed in above paras, the samples (total 6) were forwarded to the CRCL, Delhi vide letter dated. 21.03.2024. The CRCL, Delhi vide letter dated. 14.06.2024 had reported the results as mentioned in **TABLE-II, Para 3.3** above.

The Test Reports received from the CRCL, Delhi was analysed and it was noticed that

- a. In case of sample No. 1, 5 & 6, the CRCL, Delhi report testifies the samples **as declared**.
- b. In case of sample no. 3 & 4, the report does not specify the Polyester filament yarn as Textured or Non- Textured which is vital for classification of the product under CTH- **54075290** as “*other dyed woven fabrics containing 85% of more by weight of textured polyester filament* which attracts BCD @ 20% or Rs. 23 per sqm, whichever is higher or under CTH-**54076190** as “*other dyed woven fabrics containing 85% of more by weight of non-textured polyester filament* which attract BCD @ 20% or Rs. 150 per Kg., whichever is higher.
- c. In case of sample no. 2, the report shows the presence of 47 % (approx) elastomeric yarn in the Fabric, which Merits the classification of **CTH-60041000** on the basis of **presence of elastomeric yarn as 46.83%** as “*Knitted Fabric containing by weight 5% or more of elastomeric yarn or rubber thread*”. However, presence of this high percentage of elastomeric yarn is quite unusual as the CTH-6002 & 6004 are differentiated on the basis of limit of elastomeric yarn at 5% only. The importer has also requested to recheck the above fact with the lab.

13.4.2 I further find that, the above test reports were forwarded to the importer vide email dated 25.06.2024. In response, vide email dated 26.06.2024, the importer had requested to lab for re-check the result of sample No. 2 wherein, 47 % Elastomeric Yarn was reported. Thereafter, clarification in this regard was sought from the CRCL, Delhi vide letter dated 01.07.2024. In response, the CRCL, Delhi vide letter dated 15.07.2024 had clarified that

- i. sample no. 3 (TM No. 875) & sample no. 4 (TM No. 876) each of the two samples is composed of **textured polyester filament yarns** and elastomeric

yarn on warp and weft side.

- ii. sample no. 2 (TM No. 874) - the sample was rechecked and verified. It is observed that the percentage of elastomeric yarn (spandex yarn) is same as reported earlier in the re-test report.

13.4.3 Based on the clarification received from the CRCL, Delhi, I find that:-

- i) In case of sample No. 1, 5 & 6, the CRCL, Delhi report testifies the samples **as declared**.
- ii) In case of sample no. 3 & 4 (declared as Polyester Woven Dyed Fabric), the sample is composed of textured filament yarn with less than 5 % elastomeric yarn. Thus, the sample is found **as declared** classifiable under CTH - **54075290** as “other dyed woven fabrics containing 85% of more by weight of **textured polyester filament**”
- iii) In case of sample no. 2 declared as Polyester Knitted Fabric - CTH-60063200, the sample is found as having 46.83% of elastomeric yarn (spandex yarn) and hence, does not merit classification under Polyester Knitted Fabric **Thus, the sample is found as mis declared.**

14. I find on the basis of the clarification received from the CRCL, Delhi that One item i.e Sample No. 02 (Table-I, Para 2.1) out of the two samples drawn from the first lot of items declared in the DTA Bill of Entry as Polyester Knitted Fabric and classified under CTH-60063200 is found as **knitted fabric** made of filament yarn of nylon (53.17%) along with elastomeric yarn (balance- 46.83%).

14.1 I find that as per the composition of the fabric, the item No. 02 (Table-I, Para 2.1) is classifiable under Chapter Heading 6004 as “**Knitted or crocheted fabrics of a width exceeding 30 cm, containing by weight 5% or more of elastomeric yarn or rubber thread, other than those of heading 60.01**”. The said No. 02 specifically merits the classification under Customs Tariff Item 6004 1000 having by weight 5% or more of elastomeric yarn but not containing rubber thread. I, therefore, find that the aforesaid sample is more appropriately falls under the description of “**Knitted fabric containing by weight 5% or more of elastomeric yarn but not containing rubber thread**” under CTH- **60041000** which attracts duty @ 20% + SWS+IGST @ 5%.

14.2 I find that the **Item no. 1(2)-Table IV (total 255 rolls- having approximate weight of 8166.21 Kgs)**, declared as Polyester Knitted Fabric -CTH-60063200 is found mis declared and requires to be re-classified in more appropriate classification under CTH-60041000.

15. I find that the on the basis of outcome of the test reports, as discussed in above paras, the item covered under **Item no. 1(2)-Table IV** is found as mis-declared as Polyester Knitted Fabric instead of actual description of the item as ‘Knitted Fabric containing by weight 5% or more of elastomeric yarn but not containing rubber thread’ under CTH 6004 1000. The declared value of the said item is calculated on the proportional basis, as mentioned in Table-III in Para 5.2 and the same comes to Rs. 7,61,418/-. The declared value Rs. 7,61,418/- appears to be incorrect and required to be re-determined in accordance with the CVR due to change in the classification of the impugned goods.

15.1 I find that the Importer had filed the DTA Bill of Entry No. 2012992 dated. 13.07.2023. As per Rules 48 of SEZ rules, 2006, some of the provisions of Customs Act, 1962 come in picture only after filling of DTA bill of Entry as mentioned in above paras from 5.1 to 5.6. I find that to ascertain the contemporary value of the imported item **Item no. 1(2)-Table IV**, ADVAIT PORTAL data has been checked and it is noticed that no data of import of the said item under CTH-60041000 is available for the Mundra Port from the same supplier. Thus, no data of ‘identical goods’ in terms of Rule 2(d) of the Customs Valuation Rules, 2007 (the CVR) is available. Further, to ascertain the data of ‘similar goods’ under CTH- 60041000 import at Mundra Port has been checked and it is noticed

that the lowest assessable unit price of the similar item is **Rs. 286.52 per Kg (USD 3.45 per Kg and Exchange Rate- IUSD=83.05 INR at the relevant time)** for the **BE No. 6729183 dated 05.07.2023** for the item classified under CTH-60041000 which appears as more appropriately considerable as 'Similar goods' to the impugned goods so far as CTH of the item is concerned. Therefore, considering the above unit price, the assessable value of the impugned item comes to **Rs. 23,39,806/-** in terms of Rule 5 & Rule 4 of CVR. However, the importer had declared the assessable value of this item as **Rs. 7,61,418/-** on the SEZ DTA BE filed by them. Therefore, I find that the importer had undervalued the impugned item under import to the extent of **Rs. 15,78,388/-**.

15.2 I further find that the valuation of the impugned item needs to be rejected under Rule 12 of the CVR, 2007 and need to be re-determined as in terms of Rule 5 & Rule 4 of CVR read with Rule 47 (4) and 48 (2) of the SEZ Rules, 2006 by way of valuation of the similar item available as discussed in para supra.

16. I find that the importer has availed the benefit of reduced customs duty provided vide Notification No. 50 dated 30th June 2018, as amended vide which tariff concession upto 20% in case of item no. 1 of the BE, i.e. Polyester Knitted Fabric -CTH-60063200. The imported Item (Sample No. 02) is more appropriately classifiable under CTH 6004 1000 which is not mentioned in the said Notification No. 50 dated. 30.06.2018 and hence, the benefit of reduced rate of customs duty is not available on this Item. Thus, the total differential duty leviable on the impugned item comes to Rs. 4,78,704/- as detailed in TABLE-IV, para 5.11

17. I further find that the CRCL Test Reports had been disclosed to the importer. The importer firm vide letter dated. NIL received on 08.08.2024 had categorically admitted the test results and had shown their consent to pay the applicable duty along with fine and penalty. The importer had submitted that they did not want any Show Cause Notice or Personal Hearing in the matter.

18. I find that the consignment is found mis-declared in respect of nature and description which resulted into short-levy of duty amounting to Rs. 4,78,704/- as calculated at para supra. Hence, the goods (item no-2) is liable for confiscation under Section 111(m) of the Customs Act, 1962. Furthermore, for the said act of omission and commission, the importer appears liable for the penal action under the provisions of Section 112(a)(ii) of the Customs Act, 1962.

19. With the introduction of self-assessment under Section 17(1) of Customs Act, 1962 the onus lies on the importer to correctly self-assess the bill of entry with correct amount of leviable duties. By the said act of not correctly self-assessing the applicable BCD, the importer received undue monetary benefit and caused loss to the public exchequer to the tune of Rs 4,78,704/- They not only failed to declare and assess the correct duty payable on the goods but also mis-declared the classification of the goods imported vide SEZ Ware House Bill of Entry 1012710 dated 08.07.2023 and DTA Bill of Entry No. 2012992 dated. 13.07.2023 with an intention to evade payment of correct duty on the goods imported. Thus, there is a reason to believe that the importer deliberately and wilfully misstated the facts in terms of applicability of duty, causing loss to Govt. Revenue.

20. I find that the importer while filing the impugned Bill of Entry has subscribed to a declaration regarding correctness of the contents of Bill of Entry under Section 46(4) of the Act, ibid. Further, Section 46 (4A) of the Act, casts an obligation on the importer to ensure accuracy of the declaration and authenticity of the documents supporting such declaration. In the instant case, the importer failed to discharge the statutory obligation cast upon him and made wrong declaration about the description & CTH of imported goods.

21. In view of the above, I find that the importer has mis-declared in terms of classification in the said Bill of Entry, therefore the imported goods liable for confiscation under Section 111 (m) of the Customs Act, 1962 and importer is liable for penal action under Section 112 (a) (ii) of the Customs Act, 1962. Section 125 of the Customs Act, 1962 Provide that 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 where 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 an option to pay in lieu of confiscation such fine as the said officer thinks fit. I find that said provision makes it mandatory to grant an option to owner of the confiscated goods to pay fine in lieu of confiscation in case the goods are not prohibited. I find it appropriate to allow for redeem under section 125 of the Customs Act, 1962.

22. In view of the above, I pass the following Order :-

ORDER

- i. I reject the declared description and classification of the **Item no. 1(2)-Table IV, (total 255 rolls- having approximate weight of 8166.21 Kgs)** of the SEZ DTA BE No. 2012992 dated 13.07.2023 declared as Polyester Knitted Fabric - CTH-60063200 and order to re-classify the same as Knitted fabric containing by weight 5% or more of elastomeric yarn but not containing rubber thread classifiable under CTH- 60041000 **as detailed in above para.**
- ii. **I reject the declared value of Rs. 7,61,418/- of Item no. 1(2)-Table IV** covered under SZE DTA BE No. 2012992 dated 13.07.2023 under rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and order to re-determined the same as Rs. **23,39,806/- as mentioned in TABLE-IV above under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rule 2007 read with Rule 47(4) & 48(2) of the SEZ Rules, 2006.**
- iii. I order to levy the differential duty amounting to **Rs. 4,78,704/- (BCD- 3,46,134/- + SWS 34,613/- + IGST- 97,957/-)** on the **Item no. 1(2)-Table IV**.
- iv. I order to confiscate the impugned goods **Item no. 1(2)-Table IV** having re-determined value of **Rs. 23,39,806/-** (Rupees Twenty Three Lakhs Thirty Nine Thousand Eight Hundred Six Only) under Section 111(m) of the Customs Act, 1962. However, considering the facts of the case and provisions of the Section 125 of the Customs Act, 1962, I give an option to the importer to re-deem the same on payment of Redemption Fine of Rs 2,50,000 (Rs Two Lakhs Fifty Thousand only) in lieu of confiscation.
- v. I impose the penalty of Rs 50,000/(Rs Fifty Thousand only) on the Importer M/s Ashoka Creation under Section 112(a) (ii) of the Customs Act, 1962.

23. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

Signed by
Amit Kumar Mishra
Date: 23-11-2024 13:56:16
AMIT KUMAR MISHRA
ADDITIONAL
COMMISSIONER
ADC/JC-II-O/o Pr
Commissioner-Customs-
Mundra

To,

M/s Ashoka Creations (IEC- AIZPK2623G)
Khasra No. 32/16, 1st Floor, Main Rohtak Road, Nangloi,
Delhi-110041, Delhi

Copy to:

1. The Dy. Commissioner of Customs, SIIB, CH, Mundra
2. The Dy. Commissioner of Customs, RRA, CH, Mundra
3. The Dy. Commissioner of Customs, TRC, CH, Mundra
4. The Dy. Commissioner of Customs, EDI, Mundra.
5. The Dy. Commissioner of Customs, SEZ Mundra
5. Office Copy