

	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT -370421 PHONE : 02838-271426/271428 FAX : 02838-271425	
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A	File No.	CUS/APR/INV/166/2024-Gr 3 -O/o Pr. Commr-Cus-Mundra
B	OIO No.	MCH/ADC/AK/41/2024-25
C	Date of Order	14.05.2024
D	Passed by	Arun Kumar, Additional Commissioner, Import Assessment, Custom House, Mundra.
E	SCN No. & Date	Importer vide their letter dated 11.03.2024 Requested for waiver of SCN
F	Noticee / Party / Importer	M/s NAPS Trading Pvt. Ltd., 436, Shreenath Bhavan, Office No. 11, 2nd Floor, Kalbadevi Road, Mumbai- 400002
G	DIN	20240571MO000000BD9A

1. The Order – in – Original is granted to concern free of charge.

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

The Commissioner of Customs (Appeal), MUNDRA,
Office at 7th floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380009

3. Appeal shall be filed within Sixty days from the date of Communication of this Order.

4. Appeal should be accompanied by a Fee of Rs. 5/- (Rupees Five Only) under Court Fees Act it must accompanied by (i) copy of the Appeal, (ii) this copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five Only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

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

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

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

*Received from
(Sourav Singh)
G/MNDRI/20234126
19712189874*

BRIEF FACT OF THE CASE

M/s NAPS Trading Pvt. Ltd (hereinafter referred to as 'the Importer') situated at Unit No.-436, Shreenath Bhavan, Office No. 11, 2nd Floor, Kalbadevi Road, Mumbai-400002 holding IEC NO: 0314013261, had filed a SEZ Warehouse Bill of Entry No. 1027975 dated 30.12.2023 (hereinafter referred to as 'the said BE') through their SEZ Warehouse, M/s Shoolin Tradelink LLP, APSEZ, Mundra for import of Cotton Woven Dyed Fabric (CTH-52083290).

2. Based on intelligence gathered by the officers of SIIB Section, Custom House, Mundra that the cargo imported under SEZ warehouse under said BE filed by M/s Shoolin Tradelink LLP, SEZ Warehouse, Plot No. 11-A, Block-11-B Sector-12-S, Light Engineering Zone, in East of JnK, APSEZ Ltd., Mundra- Gujarat-370421 (hereinafter referred to as 'the Warehouse') on behalf of its client M/s NAPS Trading Pvt. Ltd at Mundra SEZ port for import of 'Cotton Woven Dyed Fabric' under CTH-52083290 has possible mis-declaration in respect of quantity, nature, composition & description. Hence, the container no. WHSU5299950 was put on hold for detail examination of the goods by the SIIB section, Custom House, Mundra in view of the suspicion.

3. The Detail of declared goods under Bill of Entry No. 1027975 dated 30.12.2023 is as below.

Table-I

Sr No	B/E No.	Item Declared	CTH	Assessable Value	Duty
1	1027975 dated 30.12.2023	Cotton Woven Dyed Fabric	52083290	24,32,014	4,02,498

The examination of the said consignment was carried out by the officers of SIIB section in presence of authorized representative of the Warehouse. On being asked, the representative of the Warehouse provided copies of the said BE and other import documents viz. Bill of Lading No. 030D538637 dated 17.12.2023, Invoice No. SCSAC75111223 dated 15.12.2023 and concerned Packing List. As per the said BE and other import documents, the cargo is imported from M/s SC Sourcing Co. Limited, Hongkong, the declared goods is 'Cotton Woven Dyed Fabric' (CTH 52083290), quantity is 396 PKG(s), weight 27730 Kgs, 147595.82 SQM, 82919 MTR, total assessable value is Rs.24,32,014/- and total duty is Rs.4,02,498/-.

4. During the course of examination total 396 PKG(s) of fabric were found, which is found 'as declared' in the import documents. However, as per weighments conducted at terminal and the warehouse, the actual net weight of the cargo is found as under:

Weighment	The Warehouse	Port Terminal
Gross Weight	31620	31400

Container tare weight	3700	3700
Net weight of cargo	27920	27700
Net weight of cargo as per import documents (BL/Invoice/Packing List)	27730	27730
Difference in Kgs.	(+) 190 (excess)	(-) 30 (less)

5. During the course of examination, quantity of the imported goods was found as declared in respect of number of PKGs. Further, as per weighment conducted at port terminal the quantity of the imported goods has been found 30 Kgs short from that declared in import documents. However, as per weighment conducted at the warehouse the imported goods are found 190 Kgs in excess from the declared weight which is within the limit of 0% to 1%. Furthermore, in view of 1/2019-20 dated 12.04.2019 issued by the Principal Commissioner of Customs, Customs House Mundra, issued from F. No. VIII/48-53/PN-4/AG/Mundra/2015-16, variation upto 1% in weight is to be ignored.

6. On visual examination, actual nature, composition and description of the goods could not be ascertained, therefore representative samples were drawn and forwarded to the CRCL, Kandla for testing purpose vide Test Memo No. 862 dated 19.01.2024 issued from F. No. S/43-149/Fabric/SIIB-B/ CHM/2023-24. The CRCL Kandla vide report dated 31.01.2024 reported that,

“The sample as received is in the form of cut piece of off white (undyed/unbleached) woven fabric. It is made of cotton, having.

GSM (Ave.) = 139.74”

The aforementioned test report was subsequently also conveyed to the importer by this office vide letter dated 12.02.2024 issued from F. No. S/43-149/Fabric/SIIB-B/CHM/2023-24.

7. Classification of Goods Imported:

The aforementioned test report received from the CRCL Kandla as discussed above have been examined with respect to the declaration made by the importer to determine the correct and proper CTH of the imported goods. It is pertinent to mention that, principles for the classification of goods are governed by the Harmonized Commodity Description and Coding System (Harmonized System or HSN) issued by the World Customs Organization, Brussels and the General Rules for Interpretation specified there under. The General Rules for the Interpretation (GIR) specified in the Import Tariff are in accordance with the GIR specified in the HSN. In terms of GIR 3A of the HSN and the import Tariff-The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the

goods. Further, GIR 6 of the HSN and the import Tariff specifies that -the classification of goods in the subheadings of a heading shall be determined according to the terms of those sub-headings and any related sub-heading notes.

7.1 The goods covered under Test Memo Number 862 (report dated 31.01.2024) were found mis-declared in terms of description of the goods as the goods were declared as “Dyed woven fabrics of cotton”, however, as per test report the goods are other than “Un-bleached/Undyed Woven fabrics of cotton”. Therefore, the correct Classification of the goods is required to be ascertained. It is apparent that, as far as the entries at heading level are concerned, heading 5208 of the Import Tariff specifically include “Woven fabric of cotton weighing not more than 200 GSM”, accordingly impugned goods are appropriately classifiable under the heading 5208. Further, the said Heading covers goods classifiable under the following sub-headings at the single dash (-) level:

- i. Unbleached;
- ii. Bleached;
- iii. Dyed;
- iv. Of yarns of different colours;
- v. Printed;

7.2 All the sub-headings (ii) to (v) above have been ruled out as the goods is found to be unbleached/undyed woven fabric, therefore, the merit sub-heading of the imported goods appear to be under (i), i.e. Unbleached woven fabrics of cotton. The said sub-heading covers goods further classifiable under the following sub-headings at the double dash (--) level:

- i. Plain weave, weighing not more than 100 GSM;
- ii. Plain weave, weighing more than 100 GSM;
- iii. 3-thread or 4-thread twill, including cross twill;
- iv. Other fabrics.

7.3 As per test result, the goods are “off white, unbleached/undyed woven fabric”, and quality of weaving has nowhere been specified in the lab test report. Therefore, the imported goods don’t appear to be classifiable in sr. no. (i) to (iii) above but is requited to be classified in sr. no. (iv) above. Hence, it is observed that importer has mis-classified the subject goods under CTH 52083290 instead of correct CTH 52081990. Whereas, it appears that, in common business parlance valuation of the unbleached fabric of same composition would be less than that of bleached fabric, hence there appears no reason to doubt the truth or accuracy of the rate & value declared in relation to the imported goods. Furthermore, as per Customs Tariff, the goods falling under CTH 52081990 and 52083290 both attract BCD @10% ad-valorem and there is no difference in the duty structure of both CTH as detailed under:

TM	Correct CTH as				Duty		SWS @		Total Duty
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No.	per test reports	Wt	Sq Mtr	Ass. Value	Rate	BCD	10%	IGST @5%	(Rs.)
862	5208 1990	27,920	1,99,800	24,32,014	10%	2,43,201	24,320	1,34,977	4,02,498

8. As per test result under TM No. 862 dated 19.01.2024, goods found in the import consignment appear to be classifiable under CTH 52081990 wherein the applicable rate of duty is 10%. Hence, it is observed that importer mis-classified the subject goods under CTH 52083290 instead of correct CTH 52081990. However, there is no difference in the duty structure of both CTH.

Whereas, the importer vide letter dated 11.03.2024 authorised Mr. Pranjal Singh on their behalf to give statement and produce documents. The importer further submitted that, they do not want personal hearing and/or show cause notice in this matter and abide by decision taken by the department. Whereas, accordingly a statement of Shri Pranjal Singh, authorised person of the importer was recorded on 13.03.2024, wherein he submitted copies of the import documents viz. the said BE, BL, Invoice, Packing List etc. He also perused examination report dated 17.01.2024, test reports dated 31.01.2024 and agreed with the same. Whereas, under his statement, Shri Pranjal Singh, authorised person of the importer interalia stated that:

(i) They are in the business of trading/wholesaling of various types of fabrics since long and registered under GST since July 2017; they procure trading goods mostly by way of imports from other countries especially from China.

(ii) They started importing these goods at Mundra port for last 5-6 years from their Hong-Kong /China based suppliers; they file BE and clear their imports from Customs with the help of their Custom House Agents.

(iii) They were not aware of mis-declaration in respect of nature, composition and description of the imported goods earlier and came to know about such mis-declaration only after the examination and testing of the imported goods.

(iv) as the classification of the fabric is very complex in customs, therefore they were not able to identify correct Customs CTH of the imported goods; that as per test reports, the nearest CTH appears to be '52081990'; that duty structure of both CTH is same and their intention is not to evade customs duty and by mistake they were not able to identify correct Customs CTH of the present consignment.

(v) The said BE is required to be re-assessed in respect of goods imported vide the said BE which are found mis-declared in respect of nature, composition and description; they accept re-assessment of these goods found mis-declared whatsoever would be done by the department.

(vi) They do not wish any personal hearing and show cause notice in the matter; they will not file any appeal and will not claim any refund in this matter in future as well.

(vii) The mistake as outlined above is not at all intentional and they wish to clear the consignment and are ready to pay differential duty alongwith applicable interest/penalty.

9. 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. However, the goods, i.e. "Dyed woven fabrics of cotton" are found to be mis-declared in terms of description and classification, hence they were liable to be re-assessed under section 17(4) of the Customs Act, 1962.

10. RELEVANT LEGAL PROVISIONS:

(A) RELEVANT PROVISIONS OF SEZ ACT, 2005:

2. Definitions. — In this Act, unless the context otherwise requires,
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(o) "**Import**" means—

- (i) bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or
- (ii) Receiving goods, or services by a Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone;

Section 21: Single enforcement officer or agency for notified offences.

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- 1. The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.
- 2. The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offence or offences committed in a Special Economic Zone.
- 3. Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection, search or seizure as is provided under the relevant Central Act in respect of the notified offences.

Section 22: Investigation, inspection, search or seizure. —

The agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation, inspection, search or seizure in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone:

Provided that no investigation, inspection, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub- section (2) or sub-section (3) of section 21 without prior approval of the Development Commissioner concerned:

Provided further that any officer or agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner

Notification Nos. 2665(E) and 2667(E) dated 05.08.2016:

1. In exercise of the powers conferred by section 22 of the Special Economic Zones Act, 2005 (28 of 2005), the Central Government by Notification No. 2667(E) dated 05.08.2016 issued by the Ministry of Commerce & Industry, has authorized the jurisdictional Customs Commissioner, in respect of offences under the Customs Act, 1962 (52 of 1962) to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. The enforcement officer(s), for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit with prior intimation to the Development Commissioner, concerned. Under Section 21(1) of the SEZ Act, 2005, the Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.
2. The Central Government, by the Notification 2665(E) dated 05.08.2016 has notified offences contained in Sections 28, 28AA, 28AAA, 74, 75, 111, 113, 115, 124, 135 and 104 of the Customs Act, 1962 (52 of 1962) as offences under the SEZ Act, 2005.

B. RELEVANT PROVISIONS OF SPECIAL ECONOMIC ZONES RULES, 2006:

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

47 (5) Refund, Demand, Adjudication, Review and Appeal with regard

to matters relating to authorise operations under Special Economic Zones Act, 2005, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise Authorities in accordance with the relevant provisions contained in the Customs Act, 1962, Central Excise Act, 1944, and the Finance Act, 1994 and the rules made thereunder or the notifications issued thereunder.

(C) RELEVANT PROVISIONS OF CUSTOMS ACT, 1962:

Section 2(22): "goods" includes (a) vessels, aircrafts and vehicles; (b) stores; (c) baggage; (d) currency and negotiable instruments; and (e) any other kind of movable property;

Section 2(23): "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

Section 2(25): "imported goods", means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;

Section 2(26): "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes [any owner, beneficial owner] or any person holding himself out to be the importer;

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.

Section 11A: "illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force.

Section 46. Entry of goods on importation:

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.

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

- (a) The accuracy and completeness of the information given therein;
- (b) The authenticity and validity of any document supporting it; and
- (c) Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

Section 111. Confiscation of improperly imported goods, etc. – The following goods brought from a place outside India shall be liable to confiscation: -

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

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect

thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

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

Any person, -

- a. who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or
 - (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

Shall be liable, -

- i.
- ii. In the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

125. Option to pay fine in lieu of confiscation.

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] *[Inserted by Act 80 of 1985, Section 9 (w.e.f. 27.12.1985).]* 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] *[Substituted by Finance Act, 2018 (Act No. 13 of 2018), dated 29.3.2018.]* 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.] *[Substituted by Act*

80 of 1985, Section 9, for sub-Section (2) (w.e.f. 27.12.1985).]

(3) [Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending. Explanation. - For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.] *[Inserted by Finance Act, 2018 (Act No. 13 of 2018), dated 29.3.2018.]*

Section 17. Assessment of duty. –

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

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

Section 46. Entry of goods on importation. –

(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:

11. The importer has mis-declared the undyed woven fabrics of cotton as Dyed woven fabrics of cotton. Therefore, the importer has, by his acts of omission, rendered the goods liable for confiscation under section 111(m) of the Customs Act, 1962.

12. As the importer by his acts of omission, rendered the goods liable for confiscation under section 111(m) of the Customs Act, 1962 and is, therefore, also liable for penalty under section 112(a)(ii) of the Customs Act, 1962.

13. In view of the above facts, it appears that–

- i. The classification of the imported goods i.e. 52083290 declared by the importer in the SEZ Warehouse Bill of Entry No. 1027975 dated 30.12.2023 is liable to be rejected and the goods are liable to be re-

classified under CTH 52081990.

- ii. The said SEZ Warehouse Bill of Entry No. 1027975 dated 30.12.2023 is liable to be re-assessed accordingly under Section 17(4) of the Customs Act, 1962.
- iii. The goods have been imported by way of mis-declaration in contravention of Sec 46 of the Customs Act, 1962 and are therefore liable for confiscation under Section 111 (m) of the Customs Act, 1962.
- iv. The importer M/s NAPS Trading Pvt. Ltd., 436, Shreenath Bhavan, Office No. 11, 2nd floor, Kalbadevi Road, Mumbai-400002 holding IEC No: 0314013261 are liable for Penalty under Section 112(a) (ii) of the Customs Act, 1962.

Waiver of Notice and Personal Hearing

14. The importer vide letter dated 11.03.2024 has submitted that, they do not wish any personal hearing and Show Cause Notice in the matter.

DISCUSSION & FINDING

15. I have carefully gone through the Investigation report dated 05.04.2024 issued by the Deputy Commissioner of Customs (SIIB), Mundra. I find that M/s NAPS Trading Pvt. Ltd. situated at 436, Shreenath Bhavan, Office No. 11, 2nd Floor, Kalbadevi Road, Mumbai-400002 holding IEC NO: 0314013261 (hereinafter referred to as 'the Importer'), had filed a Bill of Entry No. BE- 1027975 dated 30.12.2023 through their Customs Broker, M/s Shoolin Tradelink LLP for import of Cotton Woven Dyed Fabric. The importer vide letter dated 11.03.2024 has submitted that, they do not wish any personal hearing and Show Cause Notice in the matter. Therefore I find that the principle of natural justice as provided in section 122A of the Customs Act, 1962 has been complied. Hence I proceed to decide the case on the basis of the documentary evidence available on records.

16. Ongoing through the facts of the case, I find that the main issue that needs to be decided is the classification of the goods imported vide SEZ BE No. 1027975 dated 30.12.2023. The importer has declared the goods under CTH 52083290 imported under said BE and it is proposed in the Investigation report that goods covered under said BE are liable to be re-classified under CTH 52081990. Further it needs to be decided whether proposal for confiscation of the goods under section 111(m) of the Customs Act, 1962 and consequent penalty on the importer under section 112 (a)

(ii) of the Customs Act, 1962 is proper or otherwise.

17. Based on intelligence, said consignment involving Container No. FCIU 7012507 (40') concerning imports under Bill of Entry No. 1027975 dated 30.12.2023 appears to be high-risky for potential misdeclaration/concealment/restricted items. Hence, said consignment was put on hold by SIIB for detail examination and further investigation purpose

18. The examination of the said consignment was carried out by the officers of SIIB section in presence of authorized representative of the Warehouse. On being asked, the representative of the Warehouse provided copies of the said BE and other import documents viz. Bill of Lading No. 030D538637 dated 17.12.2023, Invoice No. SCSAC75111223 dated 15.12.2023 and concerned Packing List. As per the said BE and other import documents, the cargo is imported from M/s SC Sourcing Co. Limited, Hongkong, the declared goods are 'Cotton Woven Dyed Fabric' (CTH 52083290), quantity is 396 PKG(s), weight 27730 Kgs, 147595.82 SQM, 82919 MTR, total assessable value is Rs.24,32,014/- and total duty is Rs.4,02,498/-.

During the course of examination total 396 PKG(s) of fabric were found, which is found 'as declared' in the import documents. Further, as per weighment conducted at the warehouse the imported goods are found 190 Kgs in excess from the declared weight which is within the limit of 0% to 1%. Furthermore, in view of Public Notice No.1/2019-20 dated 12.04.2019 issued by the Principal Commissioner of Customs, Customs House Mundra, issued from F. No. VIII/48-53/PN-4/AG/Mundra/2015-16, variation upto 1% in weight is to be ignored.

19. On visual examination, actual nature, composition and description of the goods could not be ascertained, therefore representative samples were drawn and forwarded to the CRCL, Kandla for testing purpose vide Test Memo No. 862 dated 19.01.2024 issued from F. No. S/43-149/Fabric/SIIB-B/ CHM/2023-24. The CRCL Kandla vide report dated 31.01.2024 reported that,

"The sample as received is in the form of cut piece of off white (undyed/unbleached) woven fabric. It is made of cotton, having.

GSM (Ave.) = 139.74"

The aforementioned test report was subsequently also conveyed to the importer by this office vide letter dated 12.02.2024 issued from F. No. S/43-149/Fabric/SIIB-B/CHM/2023-24.

20. Classification of the imported goods:

The aforementioned test report received from the CRCL Kandla as discussed above have been examined with respect to the declaration made by the importer to determine the correct and proper CTH of the imported goods. The goods covered under Test Memo Number 862 (report dated

31.01.2024) were found mis-declared in terms of description of the goods as the goods were declared as “Dyed woven fabrics of cotton”, however, as per test report the goods are “Un-bleached/Undyed Woven fabrics of cotton”. It is apparent that, as far as the entries at heading level are concerned, heading 5208 of the Import Tariff specifically include “Woven fabric of cotton weighing not more than 200 GSM”, accordingly impugned goods are appropriately classifiable under the heading 5208. Further, the said Heading covers goods classifiable under the following sub-headings at the single dash (-) level:

- i. Unbleached;
- ii. Bleached;
- iii. Dyed;
- iv. Of yarns of different colours;
- v. Printed;

All the sub-headings (ii) to (v) above have been ruled out as the goods is found to be unbleached/undyed woven fabric, therefore, the merit sub-heading of the imported goods appear to be under (i), i.e. Unbleached woven fabrics of cotton. The said sub-heading covers goods further classifiable under the following sub-headings at the double dash (--) level:

- v. Plain weave, weighing not more than 100 GSM;
- vi. Plain weave, weighing more than 100 GSM;
- vii. 3-thread or 4-thread twill, including cross twill;
- viii. Other fabrics.

As per test result, the goods are “off white, unbleached/undyed woven fabric”, and quality of weaving has nowhere been specified in the lab test report. Therefore, the imported goods don’t appear to be classifiable in sr. no. (i) to (iii) above but is required to be classified in sr. no. (iv) above. Hence, it is observed that importer has mis-classified the subject goods under CTH 52083290 instead of correct CTH 52081990. Whereas, it appears that, in common business parlance valuation of the unbleached fabric of same composition would be less than that of bleached fabric, hence there appears no reason to doubt the truth or accuracy of the rate & value declared in relation to the imported goods. Furthermore, as per Customs Tariff, the goods falling under CTH 52081990 and 52083290 both attract BCD @10% ad-valorem and there is no difference in the duty structure of both CTH as detailed under:

TM No.	Correct CTH as per test reports	Wt	Sq Mtr	Ass. Value	Duty Rate	BCD	SWS 10%	@ IGST @5%	Total Duty (Rs.)
862	5208 1990	27,920	1,99,800	24,32,014	10%	2,43,201	24,320	1,34,977	4,02,498

21. The importer vide letter dated 11.03.2024 authorised Mr. Pranjal Singh on their behalf to give statement and produce documents. The importer further submitted that, they do not want personal hearing and/or show cause notice in this matter and abide by decision taken by the

department. Whereas, accordingly a statement of Shri Pranjal Singh, authorised person of the importer was recorded on 13.03.2024, wherein he submitted copies of the import documents viz. the said BE, BL, Invoice, Packing List etc. He also perused examination report dated 17.01.2024, test reports dated 31.01.2024 and agreed with the same.

22. From above discussion and the test report, it is clear beyond doubt that Importer has misclassified the goods as a result I hold that declared classification ie. CTH 52083290 is incorrect and the correct classification should be 52081990 which I order so. By this act of misclassification they have also rendered the goods liable for confiscation under section 111(m) of the Customs Act, 1962 and made themselves liable to penalty under section 112(a)(ii) of the Customs Act, 1962 which I confirm accordingly.

23. Further I take note of the fact that there is misclassification of the CTH by the importer which have made the goods liable for confiscation, however the said act of misclassification has not led to any duty benefit to the importer. As goods are not prohibited or restricted in nature, the importer need not be subjected to stringent provisions of redemption fine and penalty. Considering the above facts and circumstances I take a lenient view while imposing fine and penalty.

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

ORDER

(i) I reject declared CTH 52083290 of the item imported vide BE No. 1027975 dated 30.12.2023 and order to re-classify and re-assessed the same under CTH 52081990.

(ii) The above goods imported vide BE No. 1027975 dated 30.12.2023 having total assessable value is Rs. 24,32,014/- (Rupees Twenty-four Lakhs Thirty-Two Thousand fourteen only) are liable for confiscation under Section 111(m) of the Customs Act, 1962. However, considering facts of the case and provisions of the Section 125 of the Customs Act, 1962, I give option to re-deem the same on payment of Redemption Fine of Rs. 2,00,000/- (Rs. Two Lac Only) in lieu of confiscation.

(iii) I impose the penalty of Rs. 5,000/- (Rs. Five Thousand Only) on the importer M/s NAPS Trading Pvt. Ltd under Section 112 (a) (ii) of Customs Act, 1962.

25. 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

Arun Kumar

Date: 14.05.2024, 14.13.27,
Custom House, Mundra.

To
M/s NAPS Trading Pvt. Ltd.
(IEC NO: 0314013261)
436, Shreenath Bhavan,
Office No. 11, 2nd Floor,
Kalbadevi Road, Mumbai-400002

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. Office Copy