



कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा,
सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,
CUSTOMS HOUSE, MP & SEZ MUNDRA,
KUTCH, GUJARAT-370421
PHONE: 02838-271463 FAX :02838-271169/271475

A	File No.	CUS/APR/ASS/743/2024-Gr 3 -O/o Pr Commr-Cus-Mundra
B	OIO No.	MCH/ADC/AK/44/2024-25
C	Date of Order	14.05.2024
D	Passed by	Arun Kumar, Additional Commissioner, Import Assessment, Custom House, Mundra.
E	SCN No. & Date	Importer requested for waiver of PH & SCN vide letter dated 02.05.2024
F	Noticee / Party / Importer	M/s. S.K. Enterprises, A-228, Meera Bagh, Paschim Vihar, West Delhi, Delhi-110087
G	DIN	20240571MO0000888DB8

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.

BRIEF FACTS OF THE CASE

M/s. S.K. Enterprises, A-228, Meera Bagh, Paschim Vihar, West Delhi, Delhi holding IEC-0511092474 (hereinafter referred to as 'the Importer' for the sake of brevity) filed Bill of Entry No. 2918773 dated 06.04.2024 (hereinafter referred to as 'the BE' for the sake of brevity) through the Customs Broker M/s. A B Logistics hereinafter referred to as 'the CB' for the sake of brevity) for the clearance of 17136 kgs (Gr. Wt. 18886 kgs) of "Polyester Knitted Fabrics (Rolls of Different Colours & GSM)" under CTH 60063400 at unit price of USD 1.18/kg, having total Assessable Value of Rs. 17,05,597/-. The importer has availed the country of origin benefit under Sr.No. A646 of Notification No. 50/2018-Customs dated 30.06.2018 and applicable duty on the goods is declared as Rs. 4,00,475/-.

2. The said BE has gone in Faceless Assessment (INWFD6) and has been pushed to Port Assessment Group (PAG) after one query. After BE was pushed to PAG, 2nd query was raised to the importer by PAG which is as follows: *"It is noticed that Master B/L date is 20.03.2024 for the current consignment and therefore, DGFT Notification No. 77/2023 dated 16.03.2024 vide which MIP of 3.5 USD has been imposed on synthetic knitted fabrics, is applicable in your case. Whereas, unit price declared by you is less than MIP. Please clarify."*

2.1. In query reply, the importer/CB submitted that *"We had placed the order for the goods on 24.01.2024 with our supplier. Gate in date for our goods at Gangji Terminal (Phase IV), Ningbo Port, China is 12.03.2024 and House B/L for the same has been issued on 13.03.2024. IGM has been filed by the Shipping Line considering both House B/L dated 13.03.2024 and Master B/L dated 20.03.2024. Since House B/L has already been issued on 13.03.2024, the said DGFT notification dated 16.03.2024 is not applicable in our case. Supporting documents in this connection have been uploaded vide IRN No. 2024041500151783 & 2024041500151991. We have also uploaded PTR of same related supplier vide IRN No. 2024041500151784. We request you to consider our request and kindly assess the BE at declared price only."*

3. The DGFT Notification No. 77/2023 dated 16.03.2024 regarding

“Imposition of Minimum Import Price on Synthetic Knitted Fabrics up to 15th September 2024” has been issued vide which Import Policy for following ITC (HS) Codes: 60063100, 60063200, 60063300, 60063400 & 60069000, has been revised from Free to Prohibited with Revised Policy Condition “However, import is ‘Free’ if CIF value is 3.5 US Dollar and above per Kilogram”.

3.1. Relevant Para 2.17(a) and Para 11.11 S.No.(i) of Handbook of Procedures, 2023 (HBP, 2023) is reproduced as under:

2.17 Date of reckoning of Import / Export

- (a) Date of reckoning of import is decided with reference to date of shipment / dispatch of goods from supplying country as given in Paragraph 11.11 of Handbook of Procedures and not the date of arrival of goods at an Indian port.

11.11 Date of shipment/Dispatch in respect of Imports

Date of shipment/dispatch for imports will be reckoned as under:-

S.No.	Mode of Transportation	Date of Shipment / Dispatch
(i)	By Sea	The date affixed on the Bill of Lading

4. In view of the above foregoing para, Date of reckoning of import is decided with reference to date of shipment / dispatch of goods from supplying country which is the date affixed on the Bill of Lading. In the instant case, Shipped on Board Date is 20.03.2024 as per Master Bill of Lading No. MEDUOC054360 dated 20.03.2024 issued for the current consignment and hence, DGFT Notification No. 77/2023 dated 16.03.2024 appears to be applicable for the subject import.

5. The importer vide letter no. Nil dated 16.04.2024 has submitted that they entered into the negotiations with M/s. Shaoxing Keqiao BuBusen Import And Export Co. Ltd, Shaoxing, Zheijaing Province, China for purchase of “Polyester Knitted Fabrics (Rolls of Different Colours & GSM)” at the negotiated price at the relevant time @ USD1.18/Kg vide Sales Contact No. BBS-240124 dated 24.01.2024. After the execution of the contract, the supplier started the production of goods as per the commitments. After the goods were ready, the supplier had loaded the goods in Container No. FSCU7288963//40HC on 12.03.2024. The container reached the Export Container Yard of Gangji Terminal (Phase IV)

at Ningbo port on 12.03.2024.

5.1. They have further submitted that the vessel was supposed to arrive on 15.03.2024; however, due to some reasons, the same sailed on 20.03.2024. All the relevant documents pertaining to consignment like invoice, packing list, B/L were prepared by the shipper on 13.03.2024 and Certificate of Origin was issued by the Competent Authority on 15.03.2024.

5.2. They have further submitted that after the receipt of documents, they had filed the Prior Bill of Entry No. 2918773 dated 06.04.2024 under CTH 60063400 for the clearance of the goods as per the invoice value. The goods were already handed over to the Customs Authority of China on 12.03.2024 for export and House B/L No. SHSE24030058 dated 13.03.2024 was already generated which clearly means that goods were received for export on 12.03.2024. The importer contested that since the export procedure was already completed by the shipper before the issuance date of Notification No. 77/2023 dated 16.03.2024, this notification has no applicability to the subject consignment exported prior to the issuance of this notification.

6. In this connection, letter F.No. CUS/APR/ASS/743/2024-Gr 3-O/o Pr Commr-Cus-Mundra dated 22.04.2024 was sent to the shipping line M/s. MSC Agency India Pvt Ltd to clarify the need and authenticity of filing IGM on both House B/L and Master B/L, to which they have informed vide their email dated 23.04.2024 that they had filed correct IGM with MBL MEDUOC054360 and Correct Date is 20.03.2024 and that wrong Date has been filed by Freight Forwarder M/s. Oak Shipping in their console IGM as per their HBL dated 13th March 2024.

7. In view of the above reply from the shipping line, it appears that the DGFT Notification No. 77/2023 dated 16.03.2024 is applicable in the instant case as the correct B/L date has been reported as 20.03.2024 by the shipping line. Hence, it appears that the importer has attempted to import the goods in contravention of the Policy Condition of Minimum Import Price of USD 3.5/kg on the goods falling under CTH 60063400 imposed vide the said DGFT Notification as the declared unit price (CIF value) of the imported goods is USD 1.18/kg which is lower than USD 3.5/kg (minimum import price for which import is 'Free'). The re-

determined assessable value of the goods at CIF value of USD 3.5/kg which comes to Rs. 50,58,976/- (17136 kgs x USD 3.5 x 84.35) and applicable Customs duty thereupon comes to Rs. 11,87,848/-.

8. It also appears that the importer has failed to observe the Policy Condition of Minimum Import Price of USD 3.5/kg on the goods falling under CTH 60063400 imposed vide DGFT Notification No. 77/2023 dated 16.03.2024 and hence, rendered the goods liable for confiscation under the provisions of Section 111(d) of the Customs Act, 1962. Further, the importer is involved in improper importation of goods which are liable for confiscation and are prohibited in nature at the time of import; therefore, the importer is liable for penal action under the provisions of Section 112(a)(i) of the Customs Act, 1962.

9. The relevant legal provisions are as detailed hereunder:

(A) Relevant Provisions of the Customs Act, 1962:

9.1. **Section 2. Definitions** - *In this Act, unless the context otherwise requires*

(1)

....

(33) *“prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported, have been complied with;*

9.2. **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.*

9.3. 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.]*

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

a.

....

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

....

9.5. Section 112. Penalty for improper importation of goods etc. –
Any person,-

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

(b)

shall be liable,-

- i. in the case of goods in respect of which any prohibition is in force*

under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

....

(B) Provisions of the Foreign Trade (Development and Regulation) Act, 1992

9.6. Section 3. Powers to make provision relating to imports and exports.

(1) The Central Government may by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.

(2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.

Provided *that the provisions of this sub-section shall be applicable, in case of import or export of services or technology, only when the service or technology provider is availing benefit under the foreign trade policy or is dealing with specified services or specified technologies*

(3) All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

....

9.7. Section 4. Foreign Trade Policy- *The Central Government may, from time to time, formulate and announce, by notification in the Official Gazette, the foreign trade policy and may also, in like manner, amend that policy:*

Provided that the Central Government may direct that, in respect of the Special Economic Zones, the foreign trade policy shall apply to the goods, services and technology with such exceptions, modifications and adaptations, as may be specified by it by notification in the Official Gazette.

9.8. Section 11: Contravention of provisions of this Act, rules, orders and foreign trade policy

(1) No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made there under and the foreign trade policy for the time being in force.

WAIVER OF PERSONAL HEARING AND SHOW CAUSE NOTICE

10. The importer M/s. S.K. Enterprises vide their letter dated 02.05.2024 has submitted that they do not require Personal Hearing & Show Cause Notice in the matter.

DISCUSSION & FINDINGS

11. I have carefully gone through the facts of the case and records & evidences submitted before me and I find that the importer vide their letter dated 02.05.2024 has requested for the waiver of Personal Hearing & 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 completed. Hence, I proceed to decide the case on the basis of the documentary evidence available on records.

12. I find that the importer M/s. S.K. Enterprises has filed Bill of Entry No. 2918773 dated 06.04.2024 through the CB M/s. A B Logistics for clearance of 17136 kgs (Gr. Wt. 18886 kgs) of "Polyester Knitted Fabrics (Rolls of Different Colours & GSM)" under CTH 60063400 at unit price of USD 1.18/kg, having total Assessable Value of Rs. 17,05,597/-. The importer has availed the country of origin benefit under Sr.No. A646 of Notification No. 50/2018-Customs dated 30.06.2018 and applicable duty on the goods is declared as Rs. 4,00,475/-.

13. I find that the assessing officer at the time of assessment observed that the unit CIF value of the goods is below USD 3.5/kg. I observe that as per DGFT Notification No. 77/2023 dated 16.03.2024 regarding "Imposition of Minimum Import Price on Synthetic Knitted Fabrics up to 15th September 2024", Import Policy for following ITC (HS) Codes: 60063100, 60063200, 60063300, 60063400 & 60069000, has been revised from Free to Prohibited with Revised Policy Condition "However, import is 'Free' if CIF

value is 3.5 US Dollar and above per Kilogram”.

14. I find that the importer had contested that since the goods were already handed over to the Customs Authority of China on 12.03.2024 for export and House B/L No. SHSE24030058 dated 13.03.2024 was already generated before the issuance date of Notification No. 77/2023 dated 16.03.2024, this notification has no applicability to the consignment exported prior to the issuance of this notification.

14.1. However, in view of Para 2.17(a) and Para 11.11 S.No.(i) of Handbook of Procedures, 2023 (HBP, 2023), I find that the Date of reckoning of import is decided with reference to date of shipment/dispatch of goods from supplying country which is the date affixed on the Bill of Lading. In the instant case, Shipped on Board Date is 20.03.2024 as per Master Bill of Lading No. MEDUOC054360 dated 20.03.2024 issued for the current consignment and also, the shipping line M/s. MSC Agency India Pvt

Ltd vide their email dated 23.04.2024 has informed that they had filed correct IGM with MBL MEDUOC054360 and Correct Date is 20.03.2024 and that wrong Date has been filed by Freight Forwarder M/s. Oak Shipping in their console IGM as per their HBL dated 13th March 2024. Hence, I hold that the DGFT Notification No. 77/2023 dated 16.03.2024 appears to be applicable in the instant case.

15. I find that the importer has attempted to import the goods in contravention of DGFT Policy Condition imposed vide DGFT Notification No. 77/2023 dated 16.03.2024. As per the notification, the import of the subject goods is ‘Free’ if CIF value is 3.5 US Dollar and above per Kilogram.

15.1. Therefore, the importer has failed to observe the Policy Condition of Minimum Import Price on goods falling under CTH 60063400 and the same are prohibited in terms of DGFT Notification No. 77/2023 dated 16.03.2024 as the CIF value of the impugned goods is less than 3.5 USD/kg. Hence, the importer has rendered the goods liable for confiscation under the provisions of Section 111(d) of the Custom Act 1962. I further find that the importer is involved in improper importation of goods which are liable for confiscation and are prohibited in nature at the time of import; therefore, the importer appears to be liable for penal

action under the provisions of Section 112(a)(i) of the Customs Act, 1962.

16. Section 125(1) of the Customs Act, 1962 provides that:

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

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

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

16.1. I find that the said provision makes it mandatory to grant an option to the owner of confiscated goods to pay fine in lieu of confiscation in case the goods are not prohibited. Further, in case of prohibited goods, it provides discretion to the officer adjudicating the case which has to be exercised in view of facts and circumstances of the case. Considering these facts, I find it appropriate to grant an option to the importer to pay fine in lieu of confiscation and allow clearance of goods for Home Consumption with the condition of assessment of goods at Minimum Import Price of USD 3.5/kg as discussed above and payment of duty on the re-determined assessable value of Rs. 50,58,976/- which comes to the tune of Rs. 11,87,848/-.

17. In view of the foregoing discussion and findings, I pass the following Order:

ORDER

- a. I reject the declared unit price (CIF value) of USD 1.18/kg for the goods imported vide Bill of Entry No. 2918773 dated 06.04.2024 and order to re-assess the said Bill of Entry goods at a unit price of USD 3.5/kg.
- b. I order to confiscate the imported goods having re-determined value of Rs. 50,58,976/- imported vide the above said Bill of Entry under Section 111(d) of the Customs Act, 1962. However, considering facts of the case and provisions of the Section 125 of the Customs Act, 1962, I give an option to the importer to re-deem the same on payment of Redemption Fine of Rs. 5,15,000/- (Rs. Five Lac Fifteen Thousand Only) in lieu of confiscation.
- c. I impose a Penalty of Rs. 1,00,000/- (Rs. One Lac Only) on M/s. S.K. Enterprises under Section 112(a)(i) of Customs Act, 1962.

18. 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



Date: 14-05-2024 14:00:58

Arun Kumar

ADDITIONAL COMMISSIONER

ADC/JC-II-O/o Pr Commissioner-Customs-Mundra

To,
M/s. S.K. Enterprises,
A-228, Meera Bagh, Paschim Vihar,
West Delhi, Delhi-110087.

Copy to:

1. The Assistant Commissioner of Customs (RRA), CH, Mundra.
2. The Assistant Commissioner of Customs (TRC), CH, Mundra
3. The Assistant Commissioner of Customs (EDI), CH, Mundra.
4. Office Copy.