



OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOM HOUSE MUNDRA, 5-B, PORT USER BUILDING (PUB),
AP & SEZ, PORT ROAD, MUNDRA PORT, MUNDRA-370421

A	File No.:	CUS/APR/BE/521/2024-Gr.3
B	Order-in-Original No.:	MCH/ADC/AK/22/2024-25
C	Passed by:	Shri Arun Kumar Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra
D	Date of order:	23.04.2024
E	Date of issue:	23.04.2024
F	Importer:	M/s K.P. & Co. (IEC No. AVBPP6379H) FLT. NO. 13, M S PARSEKAR Chawl, Sahar Road, Opp. Kalpita society, Mumbai - 400069
G	SCN No. & Date	Importer waived SCN vide letter dated 06.04.2024
H	DIN	20240471MO0000516306

1. This copy is granted free of charge for the use of person to whom it is issued.
2. An appeal against this order lies with the **Commissioner of Customs (Appeal), Kandla**, having office at 7th floor, Mridul Tower, Behind Times of India, Ashram Road, Ahmedabad - 380009 in terms of Section 128 of the Customs Act, 1962. it should be filed within sixty days from the date of communication of this order.
3. Appeal should be filed in format prescribed. It shall be signed by the person specified in sub-rule (2) of Rule 3 of the Customs Appeal Rules, 1982. It shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate. The appeal shall be presented in person to the office of the Commissioner (Appeal), Ahmedabad, but the date of receipt in the office will be relevant date of appeal whether in time or not.
4. The copy of this order attached herein should bear a Court fee stamp of Re.1/- (Rupee one only) as prescribed under schedule-1, item 6 of the Court Fees Act, 1870.
5. Proof of payment of duty/penalty should also be attached to the original appeal.
6. Appeal should also bear a Court Fee Stamp of Rs. 5/-.
7. An appeal against this order shall lie before the Commissioner (Appeals) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, are in dispute or penalty, where penalty alone is in dispute.

Sandip Bhamwadi

23/04/2024

Sandip Bhamwadi

Order No: CHM/H/67/22-23

NO: 9662562637

Received.

Brief Facts of the Case

An intelligence was gathered by the officers of SIIB Section, Custom House, Mundra that the cargo imported under Bills of Entry No. (i) 2826127 dated 01.04.2024 and (ii) 2832667 dated 01.04.2024 (hereinafter referred to as '*the said BEs*') filed by M/s K. P. & Co., FLT No.-13, M S Parsekar Chawl, Sahar Road, Opp Kalpita Society, Mumbai-400069 having IEC No. AVBPP6379H (hereinafter referred to as '*the importer*') at Mundra port (INMUN1) through their CB M/s Siya Clearing and Forwarding Pvt. Ltd., Mundra (hereinafter referred to as '*the CB*') for import of 'Artificial Grass (O/T Reputed Brand) (CTH 67029090)' (hereinafter referred to as '*the impugned goods*') has possible mis-declaration in respect of quantity and description /classification. Hence, the containers bearing nos. (i) MRKU5342627 and (ii) ONEU1184510 covered under Bills of Lading (i) MAEU236776021 dated 07.03.2024, (ii) ONEYTS4QF0021300 dated 07.03.2024 (hereinafter referred to as '*the said BLs*') pertaining to the said BEs respectively were put on hold for detail examination of the goods by the SIIB section, Custom House, Mundra in view of the said suspicion.

2. Based on the above suspicion, examination of the consignment of impugned goods was carried out by the officers of SIIB section in presence of authorized representative of the CHA and the independent surveyors of the CFSs. On being asked, the representative of the CHA provided copies of the said BEs and other import documents viz. Bills of Lading (i) MAEU236776021 dated 07.03.2024 and (ii) ONEYTS4QF0021300 dated 07.03.2024, Invoices bearing Nos. (i) ORDU202312301 dated 25.02.2024 and (ii) VK/SKI/010/2024 dated 07.03.2024 and concerned Packing Lists. As per the said BEs and other import documents, the cargo is imported from (i) M/s Shaoxing Ouruide Technology Co. Ltd., China and (ii) M/s VK Global (HK) Ltd, Hong Kong respectively, the declared goods are 'Artificial Grass (O/T Reputed Brand) (CTH 67029090), quantities are (i) 6816 SQM, 142 Rolls & 12900 KGs and (ii) 9601 SQM, 524 PKGs & 18110 KGs, total declared assessable values/customs duties are (i) Rs.7,42,224.28 (Duty Rs.3,26,283/-) & (ii) Rs.9,27,456.60 (Duty Rs.4,07,710/-) respectively.

2.1 During the course of examination entire cargo was de-stuffed in the warehouse of the CFSs from the containers for the examination and counted with the help of independent surveyors of the CFSs. Total 142 Rolls (MRKU5342627) and 524 PKGs (ONEU1184510) of impugned goods were found. The number of rolls/packages exactly matches with that mentioned in the BLs and other import documents. Thereafter, those rolls/packages were opened on random selection basis and it was found that those are floor covering rolls. As per examination and weighment conducted at the CFSs, the weight in KGs and area in square meter of the impugned goods are found as under:

Sr. No.	Container No.	Number of Pkg	B/L weight (Kg)	CFS weight (Kg)	Difference (Kg)	SQM as per surveyor report
1	MRKU5342627	142 Rolls	12900	12310	590 kg (short)	6816 SQM (no difference)
2	ONEU1184510	524 PKGs	18110	19590	1480 kg (excess)	9516 SQM (85 SQM short)

3. Investigations Conducted: -

3.1 During the course of examination, quantity of the imported goods in respect of number of Rolls/PKGs was found as declared in the said BE and other import documents. However, as per weighment conducted at the CFSs quantity of the impugned goods have been found 590 Kgs short (MRKU5342627) and 1480 Kgs excess (ONEU1184510) from that declared in the import documents. However, during the course of the examination, independent surveyors of CFSs after completing the process of counting and measurement of the impugned goods submitted reports in Tally Sheets. As per survey reports/Tally Sheets submitted by the independent surveyors at the CFSs, the quantity in square meter of the impugned goods have been found (i) 6816 SQM i.e. as declared (MRKU5342627) and (ii) 9516 SQM i.e. 85 SQM short (ONEU1184510) from the declared quantity in square meter mentioned in the said BE and other import documents.

3.2 Further, a statement of Shri Mehul Bhikhubhai Patel, authorized person of the importer was recorded under section 108 of the Customs Act, 1962 on 06.04.2024, wherein he submitted that:

* they are in the business of trading/wholesaling from last 05 years and taken GSTIN in Nov-2018; they import mostly from China and have imported Artificial Grass first time and mostly they import decorative items.

* they have imported Artificial Grass i.e. floor covering made of textile material which does not fall in the CTH 6702 9090; the imported goods are new for them and their supplier suggested to classify this item in the CTH 6702 9090 which is also mentioned in the copy of bill of lading.

* their imported item Artificial Grass i.e. floor covering made of textile material should be rightly classified under Chapter 57.

* they further confirm that the item imported under BE No. 2826127 dated 01.04.2024 is Turf textile floor covering for which correct classification is 57033100 and the item imported under BE No. 2832667 dated 01.04.2024 is textile floor covering for which correct classification is 57033990.

* they requested to decide their case on merit basis and they stated that, they are ready to pay differential customs duty along with applicable fine and penalty as imposed by the department.

* they also confirmed that, they do not want any SCN and PH in the matter; they will not file any appeal and will not claim any refund in this matter in future as well and also submitted copy of the consent letters dated 06.04.2024.

3.3 Further, the importer vide letter dated 06.04.2024 has also submitted that, they have imported 'Artificial Grass' and classified the item under CTH 67029090 vide BE No. 2826127 dated 01.04.2024; that, they confirmed that the cargo is floor covering of textile material (Turf) which is rightly classifiable under CTH 57033100 in which applicable Customs duty is 20% or Rs.55 per sq. meter, whichever is higher; that, they are importing this item for the first time and as such, they are not fully aware of the customs rules and procedures; that, therefore, they were unable to identify correct classification of goods; that, the shipper had also suggested the 67029090 CTH which is mentioned on BL; that, they do not want and personal hearing and show cause notice in the matter; that, they are ready to pay applicable duty and penalty imposed by the department; that, they will not file any appeal and will not claim any refund in this matter in future as well.

4. Classification of the imported goods:

4.1 Whereas, carpets and floor coverings of textile material are covered under Chapter-57. For illustration, relevant Headings and description of the Customs Tariff is being reproduced herein under:

The Note 1 of Chapter 57 is reproduced below:

"1. For the purposes of this Chapter, the term "carpets and other textile floor coverings" means floor coverings in which textile materials serve as the exposed surface of the article when in use and includes articles having the characteristics of textile floor coverings but intended for use for other purposes..."

Therefore, as per Chapter Note 1 of Chapter 57, the impugned goods appear to be rightly classified under chapter 57.

4.2 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.

4 . 3 The impugned goods were found mis-declared in terms of classification/CTH. 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 5703 of the Import Tariff specifically include “Carpets and other textile floor coverings (including turf), tufted, whether or not made up”, accordingly impugned goods are appropriately classifiable under the heading 5703. Further, the said heading covers goods classifiable under the following sub-headings at the single dash (-) level:

- i. Of wool or fine animal hair;
- ii. Of nylon or other polyamides;
- iii. Of other man-made textile material;
- iv. Of other textile materials;

4.4 In respect of impugned goods, all the sub-headings (i), (ii) & (iv) above have been ruled out as the goods is found to be floor covering of man-made textile materials, therefore, the merit sub-heading of the imported goods appear to be under (iii), i.e. Of other man-made textile material. The said sub-heading covers goods further classifiable under the following sub-headings at the double dash (--) level:

- i. Turf;
- ii. Other;

4.5 As per examination report, statement and letter of the importer asserting, the impugned goods covered under BE No. 2826127 and 2832667 both dated 01.04.2024 are floor covering of textile material (Turf)” and floor covering of textile material respectively. Therefore, the impugned are required to be classified in sr. no. (i) and (ii) above respectively. There is no further sub-heading at the triple dash (---) level in respect of goods to be classified in sr. no. (i) above and hence, it is observed that importer has mis-classified the goods imported vide BE No. 2826127 dated 01.04.2024 under CTH 67029090 instead of correct CTH 57033100.

4.6 The sub-heading at (ii) above covers goods further classifiable under the following sub-headings at the triple dash (---) level:

- i. Carpets, carpeting and rugs;
- ii. 100% polypropylene carpet mats with jute, rubber, latex or PU foam backing

iii. Other;

iv.

4.7 As per examination report, statement and letter of the importer asserting, the impugned goods covered under BE No. 2832667 both dated 01.04.2024 are floor covering of textile material and quality & backing has nowhere been specified in the BE and other import documents. Hence, it is observed that importer has mis-classified the subject goods under CTH 67029090 instead of correct CTH 57033990.

4.8 Whereas, it appears that, the description of the goods declared in the said BEs is general and is found to be appropriate in view of the general use of the impugned goods i.e. floor coverings of artificial grass. Hence there appears no reason to doubt the truth or accuracy of the rate & value declared in relation to the impugned goods. Furthermore, the mistake in identifying the correct and proper CTH has already been accepted by the importer in his statement dated 06.04.2024 as well as letter dated 06.04.2024. Accordingly, total customs duties on the impugned goods calculated @20% ad-valorem as well as @Rs.55 per square meter in respect of impugned goods covered under BE No. 2826127 and 2832667 both dated 01.04.2024 are detailed under:

BE No. & Date	Correct CTH	Quantity in SQM	Ass. Value (as Declared)	Duty Rate	BCD	SWS @ 0%	Value for IGST	IGST @12%	Total Duty (Rs.)
2826127 dated 01.04.2024	5703 3100	6,816	7,42,224.28	20%	1,48,445	0	8,90,669	1,06,880	2,55,325
2832667 dated 01.04.2024	5703 3990	9,601	9,27,456.60	20%	1,85,491	0	11,12,948	1,33,554	3,19,045
2826127 dated 01.04.2024	5703 3100	6,816	7,42,224.28	55 /SQM	3,74,880	0	11,17,104	1,34,053	5,08,933
2832667 dated 01.04.2024	5703 3990	9,601	9,27,456.60	55 /SQM	5,28,055	0	14,55,512	1,74,661	7,02,716

4.9 From the above table, it is found that, the BCD @ Rs.55 per square meter is higher than that calculated on @20% ad-valorem. Hence, basic customs duty is required to be taken @Rs.55 per square meter and not on ad-valorem basis and hence assessable value of the impugned goods have nothing to do with BCD. Accordingly, total customs duties on the impugned goods comes to Rs.5,08,933/- and Rs.7,02,716/- in respect of BE No. 2826127 and 2832667 both dated 01.04.2024 respectively. Hence, differential duties comes to Rs.1,82,650/- and Rs.2,95,006/- in respect of BE No. 2826127 and 2832667 both dated 01.04.2024 respectively as detailed below:

BE No. & Date	Correct CTH	Quantity in SQM	Ass. Value	Duty Rate	Total Duty (Rs.)	Duty declared in BE (Rs.)	Differential Duty (Rs.)
2826127 dated 01.04.2024	5703 3100	6,816	7,42,224.28	55 /SQM	5,08,933	3,26,283/-	1,82,650/-
2832667 dated 01.04.2024	5703 3990	9,601	9,27,456.60	55 /SQM	7,02,716	4,07,710/-	2,95,006/-

5. RELEVANT LEGAL PROVISIONS:

(A) **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 14. Valuation of goods. - (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

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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(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:*

Section 125. *Option to pay fine in lieu of confiscation. -*

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other

law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [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.

(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.

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.]”

(B) Relevant Provisions of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007:

Rule 12. Rejection of declared value - (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further

information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

6. Summary of Investigations Conducted:

6.1 M/s K. P. & Co., Mumbai (IEC-AVBPP6379H), had filed Bills of Entry No. (i) 2826127 dated 01.04.2024 and (ii) 2832667 dated 01.04.2024 at Mundra port (INMUN1) through their Custom House Agent M/s Siya Clearing and Forwarding Pvt. Ltd., Mundra for import of 'Artificial Grass (O/T Reputed Brand) (CTH 67029090)'. Whereas, on the basis of the examination report and investigation carried out in this regard, the impugned goods are found mis-declared in respect of CTH. The impugned goods are found to be 'Floor covering of textile material (Turf)' and Floor covering of textile material respectively, therefore the impugned are required to be classified under CTH 57033100 and 57033990 respectively instead of CTH 67029090 as declared in the said BEs. Both of the CTH attract Basic Customs duty @Rs.55 per sq. meter, as the same is higher than that calculated @20% ad-valorem. These facts have also been admitted by the importer in their letter dated 11.03.2024 as well as in the statement dated 13.03.2024 of the authorized person of the importer.

6.2 Accordingly, it is found that, the importer has failed to declare true and correct description and proper CTH of the impugned goods. Thus, by the act of omission and commission at the level of importer, it appears that, the importer has contravened the provisions of Section 46 and Section 17 of the Customs Act, 1962, in as much as, they failed to make correct and true declaration and information to the Customs Officer in the form of Bill of Entry and also failed to assess their duty liability correctly. The relevant portion of said provisions is as under:

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:*

6 . 3 The authorized person of the importer in his statement dated 06.04.2024 has interalia stated that, they have imported Artificial Grass i.e. floor covering made of textile material which does not fall in the CTH 6702 9090; he admitted that they have wrongly classified the goods as suggested by their supplier; that, the imported goods are new for them and their supplier suggested to classify this item in the CTH 6702 9090 which is also mentioned in the copy of bill of lading; that, the item imported under BE No. 2826127 dated 01.04.2024 is Turf textile floor covering for which correct classification is CTH 57033100 and the item imported under BE No. 2832667 dated 01.04.2024 is textile floor covering for which correct classification is CTH 57033990. The importer further requested to decide their case on merit basis and they stated that, they are ready to pay differential customs duty along with applicable fine and penalty as imposed by the department. They also confirmed that, they do not want any SCN and PH in the matter; that, they will not file any appeal and will not claim any refund in this matter in future as well. The authorized person of the importer also submitted copy of the consent letters dated 06.04.2024 to that effect.

7. In view of the above facts, it appears that-

- i. The classification of the goods imported vide 2826127 dated 01.04.2024 i.e. 6702 9090 declared by the importer is liable to be rejected and the goods are liable to be re-classified under CTH 57033100.
- ii. The classification of the goods imported vide 2832667 dated 01.04.2024 i.e. 6702 9090 declared by the importer is liable to be rejected and the goods are liable to be re-classified under CTH 57033990.
- iii. Both the Bills of Entry (i) 2826127 dated 01.04.2024 and (ii) 2832667 dated 01.04.2024 are liable to be re-assessed accordingly under Section 17(4) of the Customs Act, 1962.
- iv. The goods have been imported vide Bills of Entry (i) 2826127 dated 01.04.2024 and (ii) 2832667 dated 01.04.2024 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.
- v. The importer M/s K.P. & Co., FLT No.-13, M S Parsekar Chawl, Sahar Road, Opp Kalpita Society, Mumbai-400069 having IEC No. AVBPP6379H are liable for Penalty under Section 112(a)(ii) of the

Customs Act, 1962.

WAIVER OF NOTICE AND PERSONAL HEARING

8. The Importer vide their letter dated 06.04.2024 requested for waiver of the show cause notice and personal hearing in the matter.

DISCUSSION & FINDING

9. I have carefully gone through the Investigation report No. 17/2024-25 dated 17.04.2024 issued by the Deputy Commissioner of Customs (SIIB), Mundra and I find that the importer M/s K. P. & Co. vide their letter dated 06.04.2024 has requested for the waiver of the show cause notice and personal hearing 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.

10. On going 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 BE Nos. 2826127 dated 01.04.2024 and 2832667 dated 01.04.2024. The importer has declared the goods under CTH 6702 9090 in both the BEs and it is proposed in the Investigation Report that the goods covered under BE No. 2826127 dated 01.04.2024 and 2832667 dated 01.04.2024 are liable to be re-classified under CTH 57033100 and 57033990 respectively which needs to be decided whether proposal is proper or otherwise. Further it needs to be decided whether proposal for confiscation of the goods under section 125 of the Customs Act, 1962 and consequent penalty on the importer under section 112 (a)(ii) of Customs Act, 1962 is proper or otherwise.

11. I find that the importer M/s K. P. & Co. holding IEC NO: AVBPP6379H had filed Bills of Entry No. 2826127 dated 01.04.2024 and 2832667 dated 01.04.2024 through their Customs Broker M/s Siya Clearing and Forwarding Pvt. Ltd. for import of Artificial Grass (O/T Reputed Brand) (CTH 67029090).

11.1. An intelligence was gathered by the officers of SIIB Section, Custom House, Mundra that the cargo imported under said BEs filed by M/s K. P. & Co., at Mundra port (INMUN1) for import of 'Artificial Grass (O/T Reputed Brand) (CTH 67029090)' has possible mis-declaration in respect of quantity and description /classification. Hence, the containers bearing nos. (i) MRKU5342627 and (ii) ONEU1184510 covered under Bills of Lading (i) MAEU236776021 dated 07.03.2024, (ii) ONEYTS4QF0021300 dated 07.03.2024 pertaining to the said BEs respectively were put on hold for detail examination of the goods by the SIIB section, Custom House, Mundra in view of the said suspicion.

11.2. Based on the above suspicion, examination of the consignment of impugned goods was carried out by the officers of SIIB section in presence of authorized representative of the CHA and the independent surveyors of the CFSs. As per the said BEs and other import documents, the cargo is imported from (i) M/s Shaoxing Ouruide Technology Co. Ltd., China and (ii) M/s VK Global (HK) Ltd, Hong Kong respectively, the declared goods are 'Artificial Grass (O/T Reputed Brand) (CTH 67029090), quantities are

(i) 6816 SQM, 142 Rolls & 12900 KGs and (ii) 9601 SQM, 524 PKGs & 18110 KGs, total declared assessable values/customs duties are (i) Rs.7,42,224.28 (Duty Rs.3,26,283/-) & (ii) Rs.9,27,456.60 (Duty Rs.4,07,710/-) respectively.

11.3. As per examination and weighment conducted at the CFSs, the weight in KGs and area in square meter of the impugned goods are found as under:

Sr. No.		Container No.	Number of Pkg	B/L weight (Kg)	CFS weight (Kg)	Difference (Kg)	SQM as per surveyor report
1		MRKU5342627	142 Rolls	12900	12310	590 kg (short)	6816 SQM (no difference)
2		ONEU1184510	524 PKGs	18110	19590	1480 kg (excess)	9516 SQM (85 SQM short)

11.4. During the course of examination, quantity of the imported goods in respect of number of Rolls/PKGs was found as declared in the said BE and other import documents. However, as per weighment conducted at the CFSs quantity of the impugned goods have been found 590 Kgs short (MRKU5342627) and 1480 Kgs excess (ONEU1184510) from that declared in the import documents. However, as per survey reports/Tally Sheets submitted by the independent surveyors at the CFSs, the quantity in square meter of the impugned goods have been found (i) 6816 SQM i.e. as declared (MRKU5342627) and (ii) 9516 SQM i.e. 85 SQM short (ONEU1184510) from the declared quantity in square meter mentioned in the said BE and other import documents.

11.5. Further, a statement of Shri Mehul Bhikhubhai Patel, authorized person of the importer was recorded under section 108 of the Customs Act, 1962 on 06.04.2024, as detailed in Para 3.2 above. Further, the importer vide letter dated 06.04.2024 has also submitted that, they have imported 'Artificial Grass' and classified the item under CTH 67029090 vide BE No. 2826127 dated 01.04.2024; that, they confirmed that the cargo is floor covering of textile material (Turf) which is rightly classifiable under CTH 57033100 in which applicable Customs duty is 20% or Rs.55 per sq. meter, whichever is higher; that, they are importing this item for the first time and as such, they are not fully aware of the customs rules and procedures; that, therefore, they were unable to identify correct classification of goods; that, the shipper had also suggested the 67029090 CTH which is mentioned on BL;

12. Classification of the imported goods:

12.1. I find that the carpets and floor coverings of textile material are covered under Chapter-57. For illustration, relevant Headings and description of the Customs Tariff is being reproduced herein under:

The Note 1 of Chapter 57 is reproduced below:

“1. For the purposes of this Chapter, the term “carpets and other textile floor coverings” means floor coverings in which textile materials serve as the exposed surface of the article when in use and includes articles having the characteristics of textile floor coverings but intended for use for other purposes...”

Therefore, as per Chapter Note 1 of Chapter 57, the impugned goods appear to be rightly classified under chapter 57.

12.2. The impugned goods were found mis-declared in terms of classification/CTH. 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 5703 of the Import Tariff specifically include “Carpets and other textile floor coverings (including turf), tufted, whether or not made up”, accordingly impugned goods are appropriately classifiable under the heading 5703

12.3. As per examination report, statement and letter of the importer asserting, the impugned goods covered under BE No. 2826127 and 2832667 both dated 01.04.2024 are floor covering of textile material (Turf) and floor covering of textile material respectively. it is observed that importer has mis-classified the goods imported vide BE No. 2826127 dated 01.04.2024 under CTH 67029090 instead of correct CTH 57033100.

12.4. As per examination report, statement and letter of the importer asserting, the impugned goods covered under BE No. 2832667 dated 01.04.2024 are floor covering of textile material and quality & backing has nowhere been specified in the BE and other import documents. Hence, it is observed that importer has mis-classified the subject goods under CTH 67029090 instead of correct CTH 57033990.

12.5 Whereas, it appears that, the description of the goods declared in the said BEs is general and is found to be appropriate in view of the general use of the impugned goods i.e. floor coverings of artificial grass. Hence there appears no reason to doubt the truth or accuracy of the rate & value declared in relation to the impugned goods. Furthermore, the mistake in identifying the correct and proper CTH has already been accepted by the importer in his statement dated 06.04.2024 as well as letter dated 06.04.2024. Accordingly, total customs duties on the impugned goods calculated @20% ad-valorem as well as @Rs.55 per square meter in respect of impugned goods covered under BE No. 2826127 and 2832667 both dated 01.04.2024 are detailed under:

BE No. & Date	Correct CTH	Quantity in SQM	Ass. Value	Duty Rate	BCD	SWS @ 0%	Value for IGST	IGST @12%	Total Duty (Rs.)
2826127 dated	5703	6,816	7,42,224.28	20%	1,48,445	0	8,90,669	1,06,880	2,55,325

01.04.2024	3100								
2832667 dated 01.04.2024	5703 3990	9,601	9,27,456.60	20%	1,85,491	0	11,12,948	1,33,554	3,19,045
2826127 dated 01.04.2024	5703 3100	6,816	7,42,224.28	55 /SQM	3,74,880	0	11,17,104	1,34,053	5,08,933
2832667dated 01.04.2024	5703 3990	9,601	9,27,456.60	55 /SQM	5,28,055	0	14,55,512	1,74,661	7,02,716

12.6 From the above table, it is found that, the BCD @ Rs.55 per square meter is higher than that calculated on @20% ad-valorem. Hence, basic customs duty is required to be taken @Rs.55 per square meter and not on ad-valorem basis and hence assessable value of the impugned goods have nothing to do with BCD. Accordingly, total customs duties on the impugned goods comes to Rs.5,08,933/- and Rs.7,02,716/- in respect of BE No. 2826127 and 2832667 both dated 01.04.2024 respectively. Hence, differential duties come to Rs.1,82,650/- and Rs.2,95,006/- in respect of BE No. 2826127 and 2832667 both dated 01.04.2024 respectively as detailed below:

BE No. & Date	Correct CTH	Quantity in SQM	Ass. Value	Duty Rate	Total Duty (Rs.)	Duty declared in BE (Rs.)	Differential Duty (Rs.)
2826127 dated 01.04.2024	5703 3100	6,816	7,42,224.28	55 /SQM	5,08,933	3,26,283/-	1,82,650/-
2832667dated 01.04.2024	5703 3990	9,601	9,27,456.60	55 /SQM	7,02,716	4,07,710/-	2,95,006/-

13. 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. 4,77,656/-. They not only failed to declare and assess the correct duty payable on the goods but also mis-declared the classification of the goods under CTH 67029090 instead of the correct CTH of 5703 3100 and CTH 5703 3990.

14. In view of the above, I find that the importer has mis-declared the goods in terms of classification 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 which I confirm so.

15. 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.

16. 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 the goods to be redeemed under section 125 of the Customs Act, 1962 on payment of appropriate redemption fine.

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

ORDER

(i) I reject declared CTH 6702 9090 of the item imported vide BE No. 2826127 dated 01.04.2024 and order to re-classify the same under CTH 57033100 of Customs Tariff Act' 1975.

(ii) I reject declared CTH 6702 9090 of the item imported vide BE No. 2832667 dated 01.04.2024 and order to re-classify the same under CTH 57033990 of Customs Tariff Act' 1975.

(iii) I order to re-assess both the Bills of Entry (i) 2826127 dated 01.04.2024 and (ii) 2832667 dated 01.04.2024 under Section 17(4) of the Customs Act, 1962 as per CTH mentioned in table at para (i) and (ii) above.

(iv) I order for confiscation the impugned goods for mis-declaration in terms of classification imported vide Bills of Entry (i) 2826127 dated 01.04.2024 and (ii) 2832667 dated 01.04.2024 having total assessable value of Rs. 16,69,681/- (Rupees Sixteen Lakhs Sixty-Nine Thousand Six Hundred Eight-One only) 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. 1,65,000/- (Rs. One Lakh Sixty Five Thousand Only) in lieu of confiscation.

(v) I impose the penalty of Rs.15,000/- (Rs. Fifteen thousand Only) on the importer, M/s K.P. & Co under Section 112 (a) (ii) 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

Arun Kumar

Date: 23-04-2024 12:24:47

(**Arun Kumar**)

Additional Commissioner (Imports),
Customs House, Mundra

To

M/s K. P. & Co. (IEC No. AVBPP6379H)

FLT No.-13, M S Parsekar Chawl,

Sahar Road, Opp Kalpita Society,

Mumbai-400069

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