

		<p>प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, मुन्द्रा OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT - 370 421 PHONE: 02838-271426/271428 FAX :02838-271425 ई-मेल/ E-Mail: adj-mundra@gov.in</p>
A	फा /सं .FILE NO.	GEN/ADJ/ADC/1801/2024-Adjn-O/o Pr Commr-Cus-Mundra
B	मूल आदेश सं. ORDER-IN- ORIGINAL NO.	MCH/ADC/ZDC/728/2025-26
C	द्वारा पारित किया गया PASSED BY	Dipak Zala, Additional Commissioner of Customs, Custom House, Mundra
D	आदेश की तिथि DATE OF ORDER	25-03-2026
E	जारी करने की तिथि DATE OF ISSUE	25-03-2026
F	कारण बताओ नोटिस सं एवं तिथि . SCN NO. & DATE	GEN/ADJ/ADC/1801/2024-Adjn-O/o Pr Commr-Cus-Mundra dated 13.09.2024
G	नोटिसीपार्टी / आयातक/ NOTICEE/PARTY/ IMPORTER	1. M/s. Goyal Impex and Industries Ltd. (IEC: 3093007810) 2. Shri Hira Lal Goyal, Director of M/s. Goyal Impex and Industries Ltd. (IEC: 3093007810)
H	डिन DIN	20260371MO0000212062

- यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
- यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-
Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:
"सीमा शुल्क आयुक्त) अपील(, चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद 380009"
"The Commissioner of Customs (Appeals), Mundra, 4TH Floor, Hudco Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009."
- उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within three months from the date of communication of this order.
- उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5 -/रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए -
Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by -

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प बहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के सभी मामलों में पालन किया जाना चाहिए।

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

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

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

BRIEF FACTS OF THE CASE

Intelligence gathered by the Directorate of Revenue Intelligence (DRI), Gandhidham Regional Unit that M/s. Goyal Impex and Industries Ltd. (IEC No. 3093007810), Space-E, Third Floor, Surya Kiran Building, 92, The Mall, Ludhiana-141001 (hereinafter referred to as "M/s Goyal Impex/the Importer") has imported goods and mis-declared the same as "Polyester PVC Coated Fabric" under Bill of Entry No. 7891166 dated 18.09.2023 at Mundra Custom House to evade applicable customs duties.

2 Investigation was initiated by DRI with respect to the subject consignment and the goods contained in container Nos. TEMU6773451 and TCNU6952117 covered Bill of Entry No. 7891166 dated 18.09.2023 was examined under panchnama dated 22.09.2023 drawn at Container Freight Station of M/s All Cargo Logistics Ltd. During the panchnama proceedings, two representative samples were drawn from each container for laboratory testing of fabric and coated material available on the fabric. During examination, length of roll was measured and ascertained as 100 Meters. However, the weight of cargo was found in order.

2.1 The representative samples were forwarded to Custom House Laboratory, Kandla vide Test Memo Nos. 182/2023, 183/2023, 184/2023 and 185/2023 for necessary testing in respect of nature, characteristics, chemical composition, etc. of the fabric and its coating.

2.2 The test reports were received from Custom House Laboratory, Kandla vide Test Reports Lab No. DRI-6908 dated 10.10.2023, DRI-6909 dated 11.10.2023, DRI-6910 dated 11.10.2023 and DRI-6911 dated 11.10.2023 respectively. All the test reports were received vide letter No. KCL/QR-32 dated 12.10.2023 issued by Custom House Laboratory, Kandla.

2.3 Ongoing through the test report received from Custom House Laboratory, Kandla it came to notice that 'Base woven fabric is composed of textured polyester multifilament yarns and covered/laminated material is composed of Polyurethane (PU)'. It appeared that imported goods were mis-declared by the importer with intention to evade

applicable Anti-Dumping Duty imposed vide Notification No. 14/2022-Customs (ADD) dated 20th May, 2022 issued by Department of Revenue. There was reason to believe that the subject goods imported vide Bill of Entry No. 7891166 dated 18.09.2023 were liable for confiscation as per provisions of Section 111 of Customs Act, 1962. In view of the above facts, the subject imported goods were placed under seizure as per the provisions of Section 110(1) of the Customs Act, 1962 vide Seizure Memo dated 31.10.2023.

2.4 After receiving the test reports, the importer was intimated about the test reports and Summons dated 16.10.2023, 18.10.2023 and 31.10.2023 were issued to the importer for tendering their statement. However, importer failed to appear against all the above-mentioned summons issued to them.

2.5 Shri Hira Lal Goyal, Director of M/s Goyal Impex & Industries Ltd. appeared before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 21.12.2023 against Summons dated 06.12.2023 issued to the importer. His statement was recorded under Section 108 of the Customs Act, 1962 on 21.12.2023 wherein he inter alia stated that;

- That his company is dealing in textile related products i.e. yarn, fabric, hosiery, garments specialized in stock-lot dealers of yarn blankets, textiles and plastic films.
- That they are mostly importing yarn, fabrics, plastic films. They are also importing some other items like furniture, food products or items on demand but in a very small quantity.
- That goods have been taken on 'High Seas Sale' basis against invoice no. HLG2323/HLG2324 dated 18.08.2023.
- That the import invoice, packing list, test report/survey certificate, Bill of Lading, certificate of origin, cargo transportation insurance policy, AZO test reports and Sales contract has been uploaded in e-sanchit.
- That the goods are imported in said bill of entry against the sales contract no. HLG 29 dated 26.07.2023. In the Bill of Entry No. 7891166 dated 18.09.2023, the goods have been declared as 'Polyester PVC Coated Fabric' by Customs Broker without full description as mentioned in invoice. The goods must be appropriately mentioned in invoice as 'Polyester PVC Coated/Laminated Fabric (O.T.U.) of Mix Leftover Rolls as per Sales Contract' and further the description mentioned on the invoices in Sales Contract as well. There are four consignments in the sales contract out of which three consignments have been cleared by 'M/s Do Best Infoway' under the invoices HLG2312/13, HLG2317/HLG2318 and HLG2314.
- That the description of the goods is mentioned on certificate of origin also as 'Rolls of PVC Coated/Laminated Polyester fabric. S.L./S.C.S. as per S.C. YOM 2020'. Here S.L. means Stock Lot, Stock Clearance Sale, S.C. means Sales Contract and YOM means Year of Manufacture.
- That in the bottom of the commercial invoice, it is mentioned therein that Coated Fabric Stock Lot include coating of Polyvinyl Chloride (PVC) and thereafter further mentioned that thermoplastic/Polyurethane membrane /Polyamide (PA) resin/Water proof coating with chemicals. This is the general term mentioned on the invoice and clarifying coating of PVC and is laminated with thermoplastic

Polyurethane membrane/Polyamide (PA) resin.

- That a clarification was sought from the manufacturer supplier Jiaying Ruidi Textile Co. Ltd. who vide their letter dated October 28, 2023 has mentioned the sale contract no. HLG 29 dated 26.07.2023 and stated that the description details are (i) Coated fabric stock lot include coating of Polyvinyl Chloride (ii) Laminated fabric with thermoplastic polyurethane membrane' and due to oversight, the invoice no. HLG2323/2324 dated 18.08.2023 contains the total description of the contract. The first three shipments cleared by M/s Do Best Infoway was 'Polyester PVC Coated Fabric' while this subject shipment was of 'Polyester Laminated Fabric' with thermoplastic polyurethane membrane. The last line of the said letter states that 'There is no coating made on the fabric'.
- That imported goods are Thermoplastic Polyurethane Film laminated on the fabric and there is no coating of PU on the either side of the fabric. The fabric is laminated with transparent sheet of TPU membranes (film) on the back side of the film.
- That import fabric is not covered under the scope of PU leather nor used anywhere where PU leather/ Artificial leather is used.
- That goods imported under the CTH does not attract levy of ADD in terms of Notification No. 14/2022-Customs (ADD) dated 20.05.2022. That notification specifically talks about "Polyurethane Leather which included any kind of textiles coated one sided or both sided with polyurethane". The Notification further provided that the subject goods (Polyurethane leather) falling under tariff item 5603 94 90 or 5903 20 90 alone would come within the ambit of ADD. The classification adopted on the Bill of Entry on the basis of the import documents and certification available on record is 5903 1090 which is not covered by the Notification 14/2022-Customs. That, ADD is prima facie not available to the subject imported goods.
- That the report of Custom House Laboratory indicates that the sample is "base woven fabric composed of textured polyester multifilament yarn and covered/laminated material is composed of polyurethane".
- That the test report of the Chemical Examiner, Grade-II, Custom House Kandla is inconclusive and the specifications/queries under test memo dated 25.09.2023 have not been answered.
- That the test report given by the Chemical Examiner, Custom House Laboratory is incomplete and the veracity of the same is not in consonance with the test memo itself. Moreover, the test report does not answer the questions on PVC and the nature of coating on the fabric as well as difference between covered /lamination. The method of coating or lamination is also not tested or inspected by the Custom House Laboratory, Kandla.
- That the Anti-dumping duty is made on polyurethane leather which includes any kind of textile coated with one side or both sides with polyurethane.
- That the sample may be sent for test to Textile Committee, Mumbai as per guideline for retesting of sample under Circular No. 30/2017 dated 18.07.2017.

2.6 The importer, vide letter dated 05.04.2024 and 16.04.2024, requested for sending the sample for test to Textile Committee, Mumbai. The Samples were sent to Textile Committee, Mumbai with approval from competent authority vide Test Memo dated 15.05.2024 for re-testing as per request made by importer.

2.7 The test reports were received from Textile Committee, Mumbai vide letter dated 10.06.2024. Each of the Test Report including FTIR Test suggested that 'Received sample is Polyester not coated with PVC' and Layer 1 Film is made up of 'Thermoplastic Polyurethane'.

2.8 Shri Hira Lal Goyal, Director of M/s Goyal Impex & Industries Ltd. appeared before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 27.06.2024 against Summons dated 24.06.2024 issued to the importer. His statement was recorded under Section 108 of the Customs Act, 1962 on 27.06.2024 wherein he inter alia stated that;

- That he has gone through the 4 test reports bearing No. 0153032425-587, 0153032425-588, 0153032425-589 and 0153032425-590 including test report for presence of dyes prohibited by the Government of India under Section 6(2)(D) of the Environment (Protection) Act, 1986 (29 of 1986) read with Rule 13 of the Environment (Protection) Rules, 1986. Also, please go through the test reports no. 0223032425-1512, 0223032425-1513, 0223032425-1514 and 0223032425-1515 for Bill of Entry No. 7891166 dated 18.09.2023 provided by Textile Committee, Mumbai (total 12 pages) and put his dated signatures on copy of each test report in affirmation of being seen.
- That he has also been provided with copy of each test report.
- That in the Bill of Entry No. 7891166 dated 18.09.2023, the goods have been declared as 'Polyester PVC Coated Fabric' by Customs Broker without full description as mentioned in invoice. The goods must be appropriately mentioned in invoice as 'Polyester PVC Coated/Laminated Fabric (O.T.U.) of Mix Leftover Rolls as per Sales Contract'.
- That the description of the goods is mentioned on certificate of origin also as 'Rolls of PVC Coated/Laminated Polyester fabric. S.L./S.C.S. as per S.C. YOM 2020'. Here S.L. means Stock Lot, Stock Clearance Sale, S.C. means Sales Contract and YOM means Year of Manufacture. In the bottom of the commercial invoice, it is mentioned therein that Coated Fabric Stock Lot include coating of Polyvinyl Chloride (PVC) and thereafter further mentioned that thermoplastic/Polyurethane membrane /Polyamide (PA) resin/Water proof coating with chemicals. It is the general term mentioned on the invoice and clarifying coating of PVC and is laminated with thermoplastic Polyurethane membrane/Polyamide (PA) resin.
- That the relevant tariff heading is '59039090' as the fabric is laminated with 'Thermoplastic Polyurethane' which is other than 'Polyvinyl Chloride' and 'Polyurethane'.
- That there is no antidumping duty levied on CTH '59039090'.
- That it is requested that the seizure memo dated 31.10.2023 may be withdrawn alleging the goods are attracting anti-dumping duty and their goods be released under tariff heading '59039090'.

3. Seizure:

3.1 In view of the test report received from Custom House Laboratory, Kandla it came

to notice that 'Base woven fabric is composed of textured polyester multifilament yarns and covered/laminated material is composed of Polyurethane (PU)'. It appeared that imported goods were mis-declared by the importer with intention to evade applicable Anti-Dumping Duty imposed vide Notification No. 14/2022-Customs (ADD) dated 20th May, 2022 issued by Department of Revenue. There was reason to believe that the subject goods imported vide Bill of Entry No. 7891166 dated 18.09.2023 were liable for confiscation as per provisions of Section 111 of Customs Act, 1962. Accordingly, the subject imported goods were placed under seizure as per the provisions of Section 110(1) of the Customs Act, 1962 vide Seizure Memo dated 31.10.2023. However, subsequent test reports including FTIR Test received from Textile Committee, Mumbai vide letter dated 10.06.2024 suggested that 'Received sample is Polyester not coated with PVC' and Layer 1 Film is made up of 'Thermoplastic Polyurethane'. Textile Committee, Mumbai is designated as a referral lab as per Circular No. 46/2020-Cus Dt 15.10.2020 and hence in view of Para F of Circular No. 30/2017-Customs dated 18.07.2017, report of Textile Committee, Mumbai will prevail over report of CRCL Kandla when it comes to determining the nature of samples. The goods declared in Bill of Entry are 'Polyester PVC Coated Fabric' while the report from Textile Committee suggests that '**Received sample is Polyester not coated with PVC**' and also it is not coated but '**laminated**'. The report suggests that goods are mis-declared and actual description should be 'Polyester Thermoplastic Polyurethane Laminated Fabric' and actually classifiable under CTH '59039090' instead of '59031090'. It is also clear from test reports of Textile Committee that goods are actually 'Laminated' and not 'Coated' and also the goods are 'not Coated with PU Leather' hence, do not fall under the purview of Anti-Dumping Duty imposed vide Notification No. 14/2022-Customs (ADD) dated 20th May, 2022 issued by Department of Revenue.

3.2 The Commissioner of Customs, Custom House-Mundra, has granted extension upto 18.09.2024 for further investigation and issuance of Show Cause Notice thereof.

4. Rejection of Description and CTH of the imported goods:

Ongoing through the detailed Test Reports related to the subject import consignment of M/s. Goyal Impex received from Textile Committee, it is revealed that the subject goods not only mis-declared in respect of description of the goods but also mis-declared in respect of classification thereof. The declared classification of the subject import consignment is under HS Code 59031090 whereas the actual goods found as 'Thermoplastic Polyurethane Laminated Fabric' classifiable under CTH '59039090' of Customs Tariff Act, 1975. Therefore, the declared description and classification of the subject goods is liable to be rejected.

Moreover, during investigation, the importer submitted in his statement dated 27.06.2024 that he agreed with the test Reports of received from Textile Committee. Shri Hiralal Goyal specifically submitted that the actual goods covered under his import consignment was different from the declared one and the same appropriately be classified under CTH 59039090. Therefore, the importer also agreed with the mis-declaration of description and classification of the subject import consignment.

Since the subject import consignment is found in gross mis-declaration, same falls under the category of offending goods and therefore liable to be confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

5. Rejection of Assessable Value of the imported goods:

5.1. The actual goods covered under his import consignment was different from the

declared one. The value declared in the Bill of Entry cannot be considered as true assessable value when the nature of goods declared in the Bill of Entry is itself wrong. Hence the declared value of the consignment is liable to be rejected as per Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

5.2. In view of the above, the value declared by the importer in the corresponding Bill of Entry and invoices did not appear to be the true transaction value under the provisions of Section 14 of the Customs Act, 1962 read with the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and thus the same appear liable to be rejected in terms of Rule 12 of CVR, 2007. The value is required to be re-determined by sequentially proceeding in terms of **Rules 4 to 9 of CVR, 2007.**

5.3 Since data of import of identical goods is not available hence value of the goods cannot be determined using Rule 4. Subsequently Rule 5 of Customs Valuation Rules 2007 is to be applied to arrive at the correct value of the subject consignment.

5.4 The present import consignments have been imported from a Chinese Supplier M/s. Jiaxing Ruidi Textile Co. Ltd, China. As appeared from contemporary data of import of the said fabrics, it is noticed that one importer M/s. Garg Garments and Cloth Merchant has imported similar type of fabric having similar thickness, description, nature etc. at Nhava Sheva Port in the month of September, 2023 vide Bill of Entry No. 7657976 Dt 03.09.2023 at Nhava Sheva Customs. On-going through the details available in ICES, it has also been noticed that test reports of Textile Committee, Mumbai of aforesaid Bill of Entry No. 7657976 Dt 03.09.2023 is similar to that of reports of Textile Committee, Mumbai available in subject case. M/s. Garg Garments and Cloth Merchant has imported the said fabric from the supplier M/s. Shaoxing Muzhan Import & Export Co, China and declared the Unit price of the fabric as USD 0.18 per Sq. Mtrs which comes to approx. Rs. 117.63 per kgs considering the net weight. In the subject case, unit of goods imported by M/s Goyal Impex has been declared in Bill of Entry as 'Metre' while in invoice width has been mentioned as '54-58 " SL/SCS'. Considering the variable width declared by the importer M/s Goyal Impex, value of goods can be ascertained on Rs./kgs. M/s. Garg Garments and Cloth Merchant has imported total 13240 Kgs of the similar fabric from the supplier of same Country i.e. China and declared total assessable value of Rs. 15,57,378/-. Whereas on going through the declared assessable value of the import consignment covered under Bill of Entry No. 7891166 dated 18.09.2023 of M/s. Goyal Impex, it is noticed that they have imported goods of weight of total 50871 kgs (Net weight). Taking into account unit rate of Rs. 117.63 per kgs (Bill of Entry No. 7657976 Dt 03.09.2023 pertaining to M/s. Garg Garments and Cloth Merchant), the appropriate assessable value of Bill of Entry No. 7891166 dated 18.09.2023 filed by M/s Goyal Impex comes to **Rs. 59,83,792/-** for the declared quantity 50871 Kgs (Net Weight). Therefore, it appears that the importer M/s. Goyal Impex have deliberately mis-declared the assessable value of Rs. 21,62,854/- whereas considering the appropriate Unit price of the subject goods, the appropriate assessable value comes to **Rs. 59,83,792/-**.

5.5 On going through above, it is revealed that the subject import consignment has been grossly mis-declared in order to evade the applicable Customs Duty. This shows a big difference in the value of goods when supplies have been made to the above-mentioned importer M/s Garg Garments and Cloth Merchant in comparison to the rate as declared by M/s. Goyal Impex. In this regard, a comparative chart of rate of similar goods in respect of M/s. Goyal Impex and other importer M/s Garg Garments and Cloth Merchant is given hereunder:

Sr.	BE No. and Name	Declared goods	Weight of the	Declared	Rate and Value
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No.	of the Chinese supplier	(found mis-declared)	goods (gm/sq. mtrs) as per reports of Textile Committee, Mumbai	Quantity (Net weight in Kgs)	
1.	BE No. 7657976 dated 03.09.2023 : M/s Shaoxing Muzhan Import & Export Co., China	Thermoplastic PU Laminated Polyester Fabric Width 58	130	13240	Value Rs. 15,57,379/- accordingly rate comes to approx. Rs. 117.63 per kgs
2.	BE No. 7891166 dated 18.09.2023 : M/s. Jiaying Ruidi Textile Co. Ltd, China	Polyester PVC Coated Fabric found as Thermoplastic PU Laminated Polyester Fabric	104, 129, 132.7, 134.5 (for each 4 samples)	50871	Considering rate of approx. Rs. 117.63 per kgs, new value comes to Rs. 59,83,792/-

5.6. From the above, it appears that M/s. Goyal Impex indulged in the evasion of Customs Duty by way of mis-declaration of description, classification etc. of the import goods with deliberate intention of evasion of Customs duty. It is revealed that M/s. Goyal Impex not only mis-declared the nature classification of the goods but also indulged into gross undervaluation thereof. On the basis of facts discussed above, it appears that there was a total quantity of 50871 Kgs subject goods imported by M/s. Goyal Impex and declared the assessable value of the same as Rs. 21,62,854/-. Whereas, the appropriate assessable value of the subject import consignment comes to Rs. 59,83,792/-.

5.7. During investigation, the appropriate value of the subject import consignment of M/s. Goyal Impex covered under Bill of Entry No. 7891166 dated 18.09.2023 comes to **Rs. 59,83,792/-**. Therefore, the declared assessable value of the goods as **Rs. 21,62,854/-** cannot be considered the actual transaction value for the subject import consignment. The same appeared to have grossly been mis-declared with clear intention of evasion of appropriate Customs duty applicable thereon.

5.8. As mentioned above, the transaction value of **Rs. 21,62,854/-** declared by the importer while filing Bill of Entry No. 7891166 dated 18.09.2023 is liable to be rejected under Rule 12 of Customs Valuation Rules 2007 as there has been significant mis-declaration in respect of description, classification and value thereof. Since the declare value of the subject goods is liable to be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007, therefore the same is required to be re-determined under Section 14 of the Customs Act, 1962 under Rule 5 Customs Valuation (Determination of value of imported goods) Rules, 2007 as **Rs. 59,83,792/-**. The applicable Customs duty on the import consignment having total quantity of 50871 Kgs is required to be payable by the Importer.

6. Liability of imported goods for confiscation

It is apparent from the above that the importer has mis-declared the description, CTH and value in the import documents. In case of both Bill of lading and Bill of Entry, the

goods have been declared under HS Code 59031090 and description is 'Polyester PVC Coated Fabric' in Bill of Entry while in case of Bill of lading, the description is 'PVC Coated/Laminated Polyester Fabric'. Hence, it appears that the 2979 Rolls of 'Polyester Thermoplastic Polyurethane Laminated Fabric' actually classifiable under CTH '59039090' instead of '59031090' having declared assessable value **Rs. 21,62,854/-** and re-determined as **Rs. 59,83,792/-** are liable for confiscation under Section 111(m) of the Customs Act, 1962.

7. As mentioned above, the transaction value of Rs. 21,62,854/- declared by the importer while filing Bill of Entry No. 7891166 dated 18.09.2023 is liable to be rejected under Rule 12 of Customs Valuation Rules 2007 as there has been significant mis-declaration in respect of description, classification and value thereof. Since the declared value of the subject goods is liable to be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007, therefore the same is required to be re-determined under Section 14 of the Customs Act, 1962 under Rule 5 of Customs Valuation (Determination of value of imported goods) Rules, 2007 as Rs. 59,83,792/-. Consequent upon the re-determination of value, the applicable Customs duty on the import consignment having total quantity of 50871 Kgs is required to be payable by the Importer.

8. Relevant Legal Provisions: Relevant main legal provisions are reproduced below for ease of reference:

(A) 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

(2) 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.

[Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.]

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(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.

(B) SECTION 46. Entry of goods on importation, sub-section 46(4) reads as:

(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, and such other documents relating to the imported goods as may be prescribed.

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

.....

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

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

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

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

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

(E) SECTION 114AA. Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

(F) Section 125: Option to pay fine in lieu of confiscation.

(i) *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:*

9. Roles of various persons:

9.1 From the investigations carried out as narrated in foregoing paras, it is revealed that the importer M/s. Goyal Impex and Industries Ltd. (IEC No. 3093007810), Space-E, Third Floor, Surya Kiran Building, 92, The Mall, Ludhiana-141001 imported 'Polyester Thermoplastic Polyurethane Laminated Fabric' actually classifiable under CTH '59039090' instead of '59031090' vide Bill of Entry No. 7891166 dated 18.09.2023 and mis-declared the description, classification and value in the import documents and thereby appears to have violated the provisions of Section 14 and Section 46 of the Customs Act, 1962. Hence, it appears that the 2979 Rolls of 'Polyester Thermoplastic Polyurethane Laminated Fabric' actually classifiable under CTH '59039090' instead of '59031090' having declared assessable value **Rs. 21,62,854/-** are liable for confiscation under Section 111(m) of the Customs Act, 1962. During investigation, the appropriate value of the subject import consignment of M/s. Goyal Impex covered under Bill of Entry No. 7891166 dated 18.09.2023 comes to **Rs. 59,83,792/-**. Therefore, the declared assessable value of the goods as **Rs. 21,62,854/-** cannot be considered the actual transaction value for the subject import consignment. The same appeared to have grossly been mis-declared with clear intention of evasion of appropriate Customs duty applicable thereon. From the above it also appears that the importer is liable for penal action under **Section 112 (a) and 112(b)** of the Customs Act, 1962. M/s Goyal Impex and Industries Ltd. knowingly and intentionally made, signed or used and/or caused to be made/signed/used import documents and other related documents, which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods, therefore they are also be liable to penalty under **Section 114AA** of the Customs Act, 1962.

9.2. The omission and commission on the part of Shri Hira Lal Goyal, Director of M/s. Goyal Impex and Industries Ltd. (IEC No. 3093007810), Space-E, Third Floor, Surya Kiran Building, 92, The Mall, Ludhiana-141001 who were knowingly concerned in mis-declaration of the description, classification and value in the import documents rendered themselves liable to penalty under **Section 112 (a) and 112(b)** of the Customs Act, 1962. Shri Hira Lal Goyal, Director of M/s. Goyal Impex and Industries Ltd. knowingly and intentionally made, signed or used and/or caused to be made/signed/used import documents and other related documents, which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods, therefore they are also be liable to penalty under **Section 114AA** of the Customs Act, 1962.

10.1 Accordingly, Show Cause Notice dated 13.09.2024 was issued to M/s. Goyal Impex and Industries Ltd. (IEC No. 3093007810), Space-E, Third Floor, Surya Kiran Building, 92, The Mall, Ludhiana-141001 wherein they were called upon to show cause as to why:

(i) the declared description of 2979 Rolls as 'Polyester PVC Coated Fabric' classified under CTI '59031090' should not be rejected and impugned bill of entry should not be re-assessed under description as 'Polyester Thermoplastic Polyurethane Laminated Fabric' with classification under CTI '59039090'.

(ii) the declared assessable value Rs. 21,62,854/- (CIF) should not be rejected and re-determined as Rs.59,83,792/- under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

(iii) the goods covered under Bill of Entry No. 7891166 dated 18.09.2023 have assessable value Rs. 59,83,792/- should not be confiscated under Section 111(m) of the Customs Act, 1962.

(iv) penalty should not be imposed on the Importer M/s Goyal Impex and Industries Limited under Sections 112(a), 112(b) &114AA of the Customs Act, 1962.

10.2 The said Show Cause Notice dated 13.09.2024 was also issued to Shri Hira Lal Goyal, Director of M/s Goyal Impex and Industries Ltd., Space-E, Third Floor, Surya Kiran Building, 92, The Mall, Ludhiana-141001, calling upon him to show cause as to why penalty should not be imposed on him under Sections 112(a), 112(b) & 114AA of the Customs Act, 1962.

11. M/s. Goyal Impex and Industries Ltd. vide letter dated 02.12.2024 had requested for Provisional release of the goods. The competent authority acting on the importer's application, has permitted for provisional release for goods imported vide Bill of Entry No. 7891166 dated 18.09.2023 on submission of bond of the value of Rs. 59,83,792/- and bank guarantee of Rs. 18,00,000/- having auto renewal clause. Details of Bond and Bank Guarantee are as follows:-

	Document No.	Date	Amount (INR)
Bond	2002423023	24.02.2025	59,83,792/-
Bank Guarantee	00420100001034	30.01.2025	18,00,000/-

RECORDS OF PERSONAL HEARING

1 2 . Personal Hearing in the matter was held on 28.11.2025. Shri B N Gururaj, advocate and authorised representative of noticees, appeared for hearing through virtual mode and he re-iterated his written submission dated 28.11.2025 forwarded through mail.

He submitted that High Seas Seller imported 4 consignments from Chinese supplier, out of which 3 consignments have been cleared through Mundra Port. Investigation conducted by DRI, focused entirely on applicability of anti-dumping duty. But, the SCN proposes reclassification and enhancing the value of the goods and was issued under section 124 to impose on redemption fine and penalty. Hence, the evidence collected by the investigation cannot be relied on in this proceedings.

He stated that the department has relied upon an import made in Nhava Sheva port, which was made around the same time. The description of the relied upon import, is varying in composition and width. Therefore, the relied upon import is not a comparable import. Prime quality goods cannot be relied upon for determining the value of the stock-lot quality goods. In this matter, he relied upon a case of Kelvin Infotech Private Limited; the Hon'ble Court examines what is stock lot. These are leftover material or disposal material or rejected material or defective materials which

the manufacturer would want to dispose of. So, such goods may be sold at a big discount also, at a discounted price. Therefore, they can't be compared with prime quality material. He submitted that the subject import is a stock lot material, which can't be compared with the prime quality import made at Nhava Sheva port. Therefore, it is not a contemporaneous import which can be relied upon.

He further submitted that the High Seas seller cleared three consignments about 15 days before this consignment. So, that is more contemporaneous which come from the same source of supply under the same contract, and description is same. So, there is no need for revising the value in this matter.

He submitted that the description given is corroborated by its supply contract as well as by the invoice. There is no discrepancy. The only difference is that TPU was not described in Bill of Entry; it was described as PVC coated. During the investigation as well as in the reply, importer has pointed out that the Customs Broker made a mistake. Though he was given all the documents, he made a mistake. He described only the polyester PVC coated portion but not the other portion. A mistake committed by a Customs Broker should not be foisted on the importer.

Therefore, there is no liability for confiscation because all the descriptions given are in accordance with the documents produced which are before the department, and the error, if any, has occurred at the end of the Customs Broker. And when there is no liability for confiscation, there can be no penal liability under section 112(a), 112(b) and 114AA on the importer in this matter. The supplier had written one letter where he admitted these errors. That is one of the relied upon documents in the show cause notice. It is a letter written by the supplier on 28/10/2023, where he says he has made a mistake in giving the description. For the same reason, he also requested for dropping the proposed penalties on Mr. HL Goyal, Director. He has nothing more to add. Hearing is concluded.

WRITTEN SUBMISSION OF THE IMPORTER/NOTICEES

13. Shri B N Gururaj, advocate and authorised representative of noticee submitted their written submissions on behalf of M/s. Goyal Impex & Industries Ltd. (Importer) and its director Shri Hiralal Goyal vide mail dated 28.11.2025, wherein he submitted the following:

"1. DRI's investigation is no longer the basis for the SCN . - The Goyal Impex & Industries Ltd (GIIL for short), which is the importer of the disputed consignment of fabrics states that the DRI commenced the investigation and dragged it on for a year on the premise that the subject fabrics were chargeable to anti-dumping duty under Notification No. 14/2022-Cus(ADD), dated 20.05.2022. But, when the subject SCN was issued, it has abandoned this quest for ADD liability. The importer has written letter dated 25.2.2025 requesting the information with supporting documents about changing the complexion of case by abandoning investigation of ADD and switching to undervaluation. As on this day, neither the required information nor any reply has been received by the importer.

2. The importer submits that by its letter No. 393, dt 25.02.2025, the importer has requested the disclosure of material relating to the decision to change the case from the demand of ADD to that of undervaluation. This request was first made in the interim reply to SCN, date 19.11.2024. However, this request has not been complied with until now. The importer submits that this information is vital for its defence inasmuch as the

material and information gathered during the investigation has nothing whatsoever to do with undervaluation or mis-declaration of material particulars. During the summons proceeding, Mr. Hiralal Goyal, director of the importer was not confronted with Bill of Entry No. 7657976, dt 03.09.2023. Therefore, for contesting the validity of this adjudication, it is vital that importer is informed of the reason for converting an ADD demand investigation into a case of undervaluation of goods under Section 14 of the Act and Customs Valuation (DPIG) Rules, 2007.

3. In the absence of fair and proper disclosure of this vital information, the importer reiterates its submission in the interim reply that the decision to drop the demand of ADD and change to alleged undervaluation is malicious and is intended to somehow continue the proceeding against the noticees. It also results in violation of the Principles of Natural Justice, which is sine qua non in a quasi-judicial proceeding. The SCN does not demand anti-dumping duty on the subject goods. Hence, the importer submits that the materials gathered during the investigation are no longer relevant and cannot be relied on at all in this adjudication. All the investigative materials are required to be discarded by the learned AA.

4. Three other identical consignments cleared without demur. - The importer submits that the consignment of fabrics which is the subject matter of dispute in this SCN was purchased on High Sea basis from M/s. Do Best Infoway, Ludhiana. The high sea seller had imported four consignments of same goods from the same Chinese supplier, and had sold one consignment to GIL on high sea basis. The other three consignments were cleared by the high sea seller from Mundra Customs itself without facing any issues vide Bills of Entry No. 7590368, dt 29.08.2023, 7645867, dt 02.09.2023, and 7551688, dt 26.08.2023. In other words, the assessing officer in Mundra Customs itself found no problem of ADD or undervaluation with these consignments. However, this problem has been raised only with respect to the present importer's consignment.

5. In this context, the importer relies on the judgment of the Hon'ble Supreme Court in CC, Cochin v. Global Industries, 2023 (9) Centax 74 (SC), wherein the apex court has dismissed the Revenue appeal. From the perusal of the judgment of CESTAT, Bengaluru, (Global Industries v. CC, Cochin, 2011(272) ELT 724 (T-Bang)), which was challenged in this case, it emerges that the imported goods under challenge had been supplied by the supplier and the past consignments of comparable description and quantity had been cleared without raising any dispute. Besides, the quantity of import was not comparable to the consignment under assessment. Hence, Hence, the Hon'ble Apex Court held that no question of law arose and dismissed the appeal. We submit that Customs Act, 1962 being a central legislation must be implemented and enforced uniformly throughout the country. Under identical circumstances, Mundra custom house cannot take divergent views.

6. No demand of duties/taxes can be confirmed in this adjudication. -The importer submits that the SCN has been issued under Section 124 of the Customs Act, 1962. Evidently, the proposed enhancement of declared transaction value from Rs. 21,62,854/-, to Rs.59,83,792/-, without demanding the differential duty is intended only to recover redemption fine and impose penalties on the importer and its director. Hence, the importer submits that in this adjudication proceeding, no customs duty or IGST demands can be confirmed.

7. Contracted price rejected without any grounds. - The importer submits that it is an undisputed fact that the imports have been made under contracted price by the high sea seller, M/s. Do Best Infoway. No grounds have been made out in the SCN for

rejecting the contracted price, more so, when three consignments of the high-sea seller have been cleared without demur by the same custom house. Hence, rejection of the declared transaction value is arbitrary. In support of this proposition of law, the importer relies on the judgment in CC (I), *Nhava Sheva v. Angen Imports Pvt Ltd*, 2012 (286) ELT 221 (T-Mum). Reliance is also placed on the ratio of *Kelvin Infotech Pvt Ltd v. CC, CE & ST, Meerut*, 2015 (316) ELT 146 (T-Del), wherein in the context of import of assorted brand of LCD TVs as stock lot, the tribunal has restated the same position of law. Besides i as already submitted in the interim reply, the mandatory procedure under Rule 12 of the Valuation Rules have not been complied with in the SCN.

8. Relied-on import at Nhava Sheva port not of comparable goods. - The importer submits that ex facie, the basis for this enhancement of value taken from a stray import from Nhava Sheva Port is not comparable with the subject imports either in terms of quantity under assessment, or description. The importer provides below a comparative table showing how dissimilar the relied-on import from its imports:

Points for comparison	Present Import	Relied-on Import
Port of import	Mundra	Nhava Sheva
Description of goods	Polyester PVC coated/laminated fabric (OUT) of mix leftover rolls as per sales contract goods are mix type colour/GSM/roll size of grade C. YoM- 2017-18, Width 54"-58".	Thermoplastic PU laminated polyester fabric 58 inches width.
Classification	5903 90 90	5903 20 90
Quantity	50871 kgs net	13240 kgs net
Declared price	0.093 USD/kg	0.18 USO/sq mtr
Date of import	18.09.2023	03.09.2023
Supplier	Jiaxing Ruidi Textile Company. PRC	Shaoxing Muzhan Import & Export Company. PRC.
Test report of Textile Committee.	Polyester 85.4% to 92.1% PU 7.9% to 14.6% Thickness 0.01 mm to 0.06 Mm GSM 104 to 134 (Four test reports of Textile Committee).	Polyester 88.5% PU 11.5% Thickness 0.25 mm GSM 130 (Single test report of the Textile Committee).

9. From the perusal of the above Table, it is clear that the relied-on import is neither identical goods, nor similar to the goods under assessment. Furthermore, the goods are also not manufactured by the same exporter in PR China. From the description of the goods found in Invoice No. 23081, dt 22.08.2023, it is seen the goods are of prime quality, being of uniform width, thickness, and GSM. Relevant test report of the relied-

on import affirms these factors. The goods are not described or declared as "Stock lot". Hence, the relied-on import is not comparable goods at all. Therefore, enhancement of declared value based on this import at Nhava Sheva customs is contrary to the definition of "identical goods" and "similar goods" in Rule 2(d) and 2(f), as also contrary to Rules 5 and 6 of the Customs Valuation (DPIG) Rules, 2007.

10. Failure to appreciate what "stock lot" is. - The appellant submits that during the investigation as well as in the SCN, there is failure to understand the difference between stock lots and prime quality goods. Stock lot goods need not necessarily have to look old or worn out and stock lot is a term used internationally for goods, which are remnant and not sold for various reasons. Hence, in the hands of the buyer, pursuant to negotiations, the goods are sold as a stock lot material and the transaction value has necessarily to be accepted unless the tests as laid out in the Rules are satisfied to disprove the value which onus lies on the Department. It is common commercial practice to dispose stock lots at discounted lower prices. This explanation finds judicial acceptance in *RV Fashions v. CC (Exports), Nhava Sheva, 2009 (246) ELT 535 (T-Mum)*.

11. Revised valuation arbitrary and unknown to law. -The importer submits that the manner in which the alternative value of Rs.59,83,792/- has been arrived at is arbitrary. M/s. Garg Garments & Cloth Merchant have imported the relied-on consignment of fabrics vide Bill of Entry No. 7657976, dated 03.09.2024 at a declared price of US\$ 0.18 **per square meter**. This price has been converted into price per kilogram based on the declared net weight of that consignment which 13240 kgs. How this conversion has been arrived at has not been disclosed in the SCN. The notice comes to conclusion that the value is "approx." Rs.117.63 **per kg**, without disclosing the rate of exchange adopted in the relied-on bill of entry, which is vital for supporting the enhancement of the value. Nevertheless, this computed rate has been multiplied with the net weight of the importer's consignment, which is 50,871 kgs, to arrive at the revised assessable value of Rs.59,83,792/-. The Importer submits that weight adopted would include the weight of packing materials and Cores used for the fabric rolls.

12. The importer submits that the relied-on import from Nhava Sheva port has been discovered from NIDB, which is impermissible in law. There is also no allegation that any additional consideration has paid by the importer to the supplier. Furthermore, in view of comparability between the relied-on import and the import under assessment, the importer submits that proposed redetermination of the transaction value is untenable in law. In this context, the importer places reliance on the judgment of the Hon'ble CESTAT in *BBM Impex Pvt Ltd v. CC(Preventive), New Delhi, 2021 (376) ELT 743 (T-Del)*, which applies on all the fours to the present case. Reliance is also placed on *AD Jayaveera Pandian Nadar & Sons v. CC, Chennai, 2002 (148) ELT 1190 (T-Chennai)* in support of the proposition that relied-on import of smaller quantity cannot be considered as contemporaneous import for enhancement of goods under assessment.

13. The importer also places reliance on the ratio of *Karan International v. CC (Port), Kolkata, 2024 (15) Centax 381 (T-Cal)*, which substantially agrees with the judgment in *BBM Impex* and further holds that prime quality imports cannot be relied-on for enhancing the value of goods which are sub-prime (manufactured out of scrap in that-case).

14. Mandatory conditions of Rule 12 not followed. - procedure prescribed under Rule 12 of the Customs Valuation(DP,IG) Rules, 2007 have not been followed before

rejecting the declared transaction value. In this context, reliance is placed on the ratio of the judgment of the Hon'ble Tribunal in *Sedna Impex India Pvt Ltd v. CC, Faridabad, 2017 (347) ELT 317 CT-Chandigarh*), wherein the Tribunal held that even if a contemporaneous import price higher than the import under assessment is found, it cannot be rejected without following the procedure prescribed under Rule 12, *supra*. Hence, the importer submits that the enhancement of transaction value is contrary to law and deserves to be dropped.

15. In view of the submissions made in Paragraphs 8 to 14, the importer submits that the imports cleared by the high sea seller M/s. Do Best Infoway from this Custom House itself, vide Bills of Entry No. 7590368, dt 29.08.2023, 7645867, dt 02.09.2023, and 7551688, dt 26.08.2023 are liable to be treated as contemporaneous import and the proceeding under this SCN dropped.

16. Imported goods not liable to confiscation. - The importer submits that the proposal to hold the subject imported goods liable to confiscation under Section 111(m) is wrong. The SCN has failed to make out a case of misdeclaration of material particulars. The SCN proposes enhancement of value, which stands on weak facts and infirm in law. The proposed reclassification does not result in any demand of duty of customs or IGST. Hence, mere reclassification of the goods by the Revenue cannot lead to the inference of misdeclaration of material particulars. In support of this submission, the importer relies on the judgment of the Hon'ble Tribunal in *Daxen Agrotech India Pvt Ltd v. Principal CC (Imports), 2024 (20) Centax 467 (T-Del)*, wherein it has been held that the goods cannot be confiscated on the ground of misclassification under Section 111(m) of the Act.

17. Lapses of CB cannot attach to the importer. - The importer has also repeatedly pointed out in its depositions, correspondences, and replies that the Customs Broker M/s. Radhika Shipping Services failed to provide full description as available in the invoice / sales contract, and failed to disclose TPU laminated fabrics. It was not either the importer's or its director's error. Nevertheless, the SCN tries to foist this lapse on the importer, instead of impleading the Customs Broker for its incompetence and ineptness in the discharge of its duty.

18. The importer submits that while giving his statement on 21.12.2023 and on 27.6.2024, Mr.Hiralal Goyal has implicated the Customs Broker by contending that this customs broker has failed to give full description of the goods as per the invoice and sales contract even though he was in possession of these documents. Attention is invited to Page 2, answer to Question No. 5 in the Statement dated 21.12.2023 and Page 2, Para 1 in the Statement dated 27.06.2024. Hence, neither the importer nor its director can be charged of the error of misdeclaration under Section 111(m) of the Act.

19. Law of agency does not apply to unlawful conducts. - The importer submits that even though there is a Principal-Agent relation between the Importer and the CB, the acts of CB can bind the importer so long as they are lawful. Lapses on the part of agent, i.e., CB leading to legal consequences cannot bind the importer, who is the Principal. Hence, the consequences of alleged misdeclaration under Section 111(m) cannot be sustained against the importer in this adjudication proceeding.

20. Penalties not imposable. - The importer submits that the penalties proposed in the SCN are contrary to law and ignore the plain language and scope/applicability of Section 112(a) & (b) as well as Section 114AA. Clause (a) of Section 112 applies to an importer who commits errors or omissions which render the goods liable to

confiscation. Whereas, clause (b) applies to a person who deals in goods which he has reason to believe are liable to confiscation. Evidently, the second category of persons are other than importers, who deal in imported goods which are liable to confiscation. Therefore, both the clauses cannot be invoked against the same person. Against the company which is the importer, only Section 112(a) could have been invoked. Against Mr. Hiralal Goyal, only clause (b) of Section 112 could have been invoked. Both clauses cannot be invoked against both the company and the authorised signatory. Hence, the proposed penalties under Section 112 fail.

21. Secondly, penalty under Section 114AA can be invoked against a person who knowingly makes any false declaration or uses false document, while transacting customs business. In this case, as already stated, the wrong description of the goods is the result of the blunder on the part of the CB. The investigation does not state that any of the documents filed under Section 46 are false. This fact has been brought on record in the deposition of Mr. Hiralal Goyal in his two depositions, which stand without contradiction. Therefore, the proposal to impose penalty under Section 114AA on both the importer and its director is without factual basis.

Submissions of Mr. Hiralal Goyal:

22. The investigation did not challenge the role and conduct of Mr. Hiralal Goyal in the present import. He was never questioned by the SIO for the purpose of bringing him under Section 112 or Section 114AA. The investigators never raised any doubt about the genuineness and authenticity of the documents submitted by the importer while filing the cargo declaration. Out of blue, with no supporting material, the SCN proposes to impose penalty on him under all the available penal provisions of the Act. It is well settled law that merely because a person who holds a given position in the company, he cannot be charged of violation of law, unless there is evidence pointing to his complicity. The director of the importer reiterates the defences of the importer-company against the proposed penalties in his defence also.

Wherefore, the noticees most respectfully pray that the proceedings under the subject show cause notice been dropped in the interest of justice. The noticees pray accordingly."

DISCUSSION AND FINDINGS

14. I have carefully examined the Show Cause Notice No. GEN/ADJ/ADC/1801/2024-Adjn dated 13.09.2024, the case records, the written submissions dated 28.11.2025, all judicial pronouncements cited, and the oral submissions made during the personal hearing held on 28.11.2025. The principles of natural justice have been fully complied with by granting adequate and reasonable opportunities to the noticees to present their defence. I now proceed to examine, issue-wise, the questions arising for determination in this adjudication.

On careful perusal of the Show Cause Notice, written submissions and case records, I find that the following issues arise for determination:

(i) Whether the declared description of the impugned goods as 'Polyester PVC Coated Fabric' classified under CTH 59031090 is liable for rejection or otherwise.

(ii) Whether the declared assessable value of Rs. 21,62,854/- is liable for rejection under Rule 12 of CVR 2007 and whether the same is to be re-determined under Rule 5 of CVR 2007 or otherwise.

(iii) Whether the imported goods are liable for confiscation under Section 111(m) of the

Customs Act, 1962 or otherwise.

(iv) Whether the acts and omissions of the importer and its director attract penal action under Sections 112(a) and 114AA of the Customs Act, 1962 or otherwise.

15.1 Regarding the first issue, I find that M/s Goyal Impex and Industries Ltd. filed Bill of Entry No. 7891166 dated 18.09.2023 declaring the goods as 'Polyester PVC Coated Fabric' under CTH 59031090 with an assessable value of Rs. 21,62,854/-. The consignment comprising containers TEMU6773451 and TCNU6952117 was intercepted by DRI, Gandhidham Regional Unit and examined under panchnama dated 22.09.2023 at the Container Freight Station of M/s All Cargo Logistics Ltd., Mundra. Representative samples were drawn from each container for laboratory testing.

15.2 I find that the samples were forwarded to Custom House Laboratory (CHL), Kandla, which returned test reports (Lab Nos. DRI-6908 dated 10.10.2023, DRI-6909 dated 11.10.2023, DRI-6910 dated 11.10.2023 and DRI-6911 dated 11.10.2023) indicating that the base fabric is composed of textured polyester multifilament yarn and the covered/laminated material is composed of Polyurethane (PU). The importer contested the said reports as inconclusive on the specific question of whether the goods were 'coated' or 'laminated'. Accordingly, on the importer's request and with the approval of the competent authority, representative samples were sent to Textile Committee, Mumbai, vide Test Memo dated 15.05.2024.

15.3 I find that Textile Committee, Mumbai, which is designated as a referral laboratory under Circular No. 46/2020-Cus dated 15.10.2020 - returned eight test reports vide letter dated 10.06.2024, including FTIR test results. All eight reports uniformly conclude that: "Received sample is Polyester NOT coated with PVC" and that Layer 1 Film is made up of 'Thermoplastic Polyurethane' (TPU). In terms of Para F of Circular No. 30/2017-Cus dated 18.07.2017, the report of the Textile Committee, Mumbai, being the referral laboratory, shall prevail over the report of the CHL, Kandla. The goods, therefore, are not 'Polyester PVC Coated Fabric' as declared but are 'Polyester Thermoplastic Polyurethane Laminated Fabric', correctly classifiable under CTH 59039090 of the Customs Tariff Act, 1975.

15.4 I find that Shri Hira Lal Goyal, the director of M/s Goyal Impex & Industries Ltd. in his voluntary statement recorded under Section 108 of the Customs Act, 1962 on 27.06.2024, specifically accepted the findings of the Textile Committee test reports and stated that the subject goods are appropriately classifiable under CTH 59039090. This admission carries significant evidentiary weight. The Hon'ble Supreme Court in *Romesh Chandra Mehta v. State of West Bengal, 1999 (110) ELT 324 (SC)*, has held that statements recorded under Section 108 by a gazetted officer of Customs are admissible as valid evidence. This position has been reiterated by the Hon'ble Supreme Court in *Percy Rustomji Basta v. State of Maharashtra, 1983 (13) ELT 1443 (SC)*, wherein it was held that a person giving statement under Section 108 does not stand in the character of an accused person and such statement is not hit by Section 24 of the Evidence Act. The voluntary and unretracted statement of the director thus corroborates the technical findings of the Textile Committee.

15.5 The importer has contended that the misdescription in the Bill of Entry was entirely the fault of the Customs Broker M/s Radhika Shipping Services, who allegedly reproduced only a partial description from the invoice. I have carefully considered this submission. However, I find that this contention does not absolve the importer of its statutory liability. Under the self-assessment regime introduced by the Finance Act, 2011, Section 17 of the Customs Act, 1962 casts an express duty on the importer to ensure that the Bill of Entry reflects a true, correct and complete declaration. Section 46(4) mandates the importer to subscribe to a declaration of truth of the contents of the

Bill of Entry. Section 46(4A) further requires the importer to ensure accuracy and completeness of the information given therein. These obligations are non-delegable. The importer cannot escape its statutory responsibility by attributing the misdeclaration to its customs broker. The importer engaged and authorized the customs broker and is bound by the declarations made by such agent in the course of lawful customs business. The plea that the CB's error cannot bind the importer is misplaced in the context of Sections 17, 46(4) and 46(4A) of the Act.

15.6 Accordingly, I find that the declaration of goods as 'Polyester PVC Coated Fabric' under **CTH 59031090** is incorrect and liable to be rejected. The actual goods are 'Polyester Thermoplastic Polyurethane Laminated Fabric' appropriately classifiable under **CTH 59039090** of the Customs Tariff Act, 1975. The declared description and classification are therefore held as liable for rejection.

16.1 Regarding the second issue of rejection of the declared value, I find that where goods have been found to be misdeclared in respect of their description and classification, the declared CIF value in such import documents cannot be treated as the true and correct transaction value representing the goods actually imported. The physical examination and subsequent laboratory testing reveal a clear and material mismatch between the declared description and the actual nature of the imported goods. It is a well-settled principle of customs valuation law that when the nature of goods itself is different from what was declared, the declared value loses its character as a transaction value under Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. There is, therefore, sufficient reason to doubt the truth and accuracy of the value declared in terms of Rule 12 of the said Rules. The noticees have also relied on *CC, Nhava Sheva v. Angel Overseas Pvt. Ltd.*, 2012 (286) ELT 221 (T-Mum) and *Kelvin Infotech Pvt. Ltd. v. CC, Meerut*, 2015 (316) ELT 146 (T-Del), contending that contractual/transaction value must be accepted. These judgments are distinguishable on facts; in both cases the goods were correctly described and there was no misdeclaration of the physical nature or composition of the goods. The disputes therein were solely on value, not description. In the present case, the very description of the goods - their coating material (PVC vs TPU) - has been found to be incorrect through independent scientific testing by the Textile Committee, Mumbai, and confirmed by the director's own statement. The principle that transaction value must be accepted presupposes a truthful declaration of what the goods are. When the declaration itself is false as to the nature of the goods, the foundation for accepting the transaction value ceases to exist.

16.2 Rule 12 of the Customs Valuation Rules, 2007 provides as under:

"12(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.

12(2): At the request of an importer, the proper officer shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1)."

16.3 The importer has urged that the procedure mandated under Rule 12(2) was not followed before rejecting the declared transaction value. I have considered this submission. I find that the Show Cause Notice itself, which set out in detail the grounds for doubting the declared value and called upon the noticees to show cause, constitutes

due compliance with Rule 12(2) in substance. The SCN provided the importer with full particulars of the relied-upon documents, the methodology of value re-determination, and an opportunity to be heard. The importer exercised this opportunity fully by filing a detailed written reply and making oral submissions. The procedural intent of Rule 12(2) - namely, fair notice and opportunity - has been substantially complied with. The judgment in *Sedna Impex India Pvt. Ltd. v. CC, Faridabad*, 2017 (347) ELT 317 (T-Chan), relied upon by the noticees, does not apply on the present facts since in that case no grounds for doubting the value were ever communicated to the importer, whereas here the grounds were set out at length in the SCN itself.

16.4 Since the transaction value cannot be determined under Rule 3, I proceed to determine the value sequentially in accordance with Rules 4 to 9 of CVR 2007. I find that contemporaneous import data of identical goods from the same supplier is not available on record; hence, Rule 4 cannot be applied.

16.5 Under Rule 5 of CVR 2007, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued. On examination of contemporaneous import data, I find that M/s Garg Garments and Cloth Merchant imported TPU Laminated Polyester Fabric of similar nature from China vide Bill of Entry No. 7657976 dated 03.09.2023 at Nhava Sheva at a declared unit price of USD 0.18 per sq. mtr. The Textile Committee, Mumbai, test report for this bill of entry similarly confirms Thermoplastic PU lamination. Converting the declared value over net weight of 13,240 kgs, the per-kg rate works out to approximately Rs. 117.63 per kg. Applying this rate to the 50,871 kgs imported by M/s Goyal Impex, the re-determined assessable value is **Rs. 59,83,792/-**.

16.6 The importer has raised several objections to the comparability of M/s Garg Garments' import. These are examined as follows:

(i) Relied-on import not of comparable goods: The importer has submitted that the relied-upon import (BE No. 7657976, Nhava Sheva) is not comparable on account of different port of import, different supplier, different classification (CTH 59032090 vs 59039090), different quantity (13,240 kgs vs 50,871 kgs) and different unit of price (USD/sq mtr vs USD/kg). I have examined this submission. Rule 2(f) of CVR 2007 requires commercial interchangeability, not identical 8-digit classification or same supplier. The Textile Committee test reports of both consignments uniformly confirm polyester base fabric with TPU lamination, establishing identical physical characteristics. Both imports are from China within the same calendar month (September 2023). The conversion from USD/sq mtr to Rs./kg has been carried out on the basis of the declared net weight and assessable value of the relied-upon BE, matters of official ICES record. The importer has not demonstrated any arithmetic error in this methodology. The objection is therefore rejected.

(ii) Stock lot and quantity discount: The importer has contended that the subject goods are stock lot material of Grade C with Year of Manufacture 2017-18, and that the larger quantity should attract a lower unit price. I find that the description 'Mix Leftover Rolls' and 'Grade C' in the supplier's invoice is a self-serving description which cannot, by itself, justify a declared price of USD 0.093/kg against a contemporaneous rate of Rs. 117.63/kg – a difference of nearly 175%. Significantly, the Textile Committee test reports of the subject consignment confirm TPU laminated polyester fabric without any finding of substandard quality, degradation or off-grade characteristics - the test reports

speak only to composition and do not support the claim that the goods are commercially inferior or rejected material. No independent commercial evidence such as a trade body certificate, surveyor's report or buyer's rejection note quantifying any price reduction on account of stock lot nature has been produced. No quantity discount schedule or trade practice evidence has been produced either. Further, the director's second statement dated 27.06.2024 accepting reclassification to CTH 59039090 is inconsistent with the plea that the goods were substandard or off-grade material. Both objections are rejected.

(iii) Valuation methodology arbitrary and NIDB data inadmissible: The importer has relied upon *BBM Impex Pvt. Ltd. v. CC (Preventive), New Delhi, 2021 (376) ELT 743 (T-Del)* and *Karan International v. CC (Port), Kolkata, 2024 (15) Centax 381 (T-Cal)*, for the proposition that NIDB data is inadmissible for value enhancement. I find that these decisions are distinguishable on facts, wherein the enhancement was based on NIDB statistical data or proforma invoices pertaining to altogether different goods. In *Karan International*, an undisputed manufacturer's certificate established that the imported goods were manufactured from scrap making reliance on prime material prices untenable. In the present case, the relied-upon import has been identified from ICES transaction data reflecting an actual import not a statistical NIDB compilation or proforma invoice. Further, no manufacturer's certificate or equivalent undisputed evidence has been produced to establish that the subject goods are manufactured from inferior or recycled material. The Textile Committee test reports of both consignments uniformly confirm TPU laminated polyester fabric, establishing comparable physical characteristics. This case is therefore distinguishable from both *BBM Impex* and *Karan International* on facts. This objection is rejected.

(iv) Three prior consignments cleared without demur: The importer has placed strong reliance on the fact that three prior consignments (BE Nos. 7590368 dt. 29.08.2023, 7645867 dt. 02.09.2023 and 7551688 dt. 26.08.2023) of the high-seas seller M/s Do Best Infoway were cleared by Mundra Customs without any ADD or valuation dispute. Reliance has been placed on *CC, Cochin v. Global Industries, 2023 (9) Centax 74 (SC)*. I have examined this submission carefully. I find that those three consignments were cleared by the regular assessment channel without any DRI interception or investigation. The subject consignment was specifically intercepted by DRI on the basis of specific intelligence. In *Global Industries*, the Supreme Court affirmed the CESTAT finding where the Department itself had cleared past consignments of the same description under the same tariff item without raising any valuation dispute, and then sought to enhance value for a later consignment from the same supplier without any new material. The present case is factually distinguishable: the earlier BEs were of a different importer (M/s Do Best Infoway, the high-seas seller) and the present case involves a DRI investigation specifically focused on the present consignment, which yielded fresh laboratory evidence. The earlier clearances, therefore, do not create any estoppel against re-determination of value in this case.

16.7 In view of the above, I hold that the declared assessable value of **Rs. 21,62,854/-** is liable to be rejected under Rule 12 of CVR 2007 and the same is re-determined under Rule 5 of CVR 2007 read with Section 14 of the Customs Act, 1962. Applying the contemporaneous per-kg rate of Rs. 117.63 to 50,871 kgs (net weight), the re-determined assessable value comes to **Rs. 59,83,792/-**. Consequently, the self-assessment of Bill of

Entry No. 7891166 dated 18.09.2023 is liable to be rejected and the same is required to be re-assessed under Section 17(4) of the Customs Act, 1962. The duty on the declared assessable value of Rs. 21,62,854/- is **Rs. 7,92,470/-** whereas the duty on the re-determined assessable value of Rs. 59,83,792/- comes to **Rs. 21,92,461/-**, resulting in a differential duty of **Rs. 13,99,991/-** (Rupees Thirteen Lakh Ninety-Nine Thousand Nine Hundred and Ninety-One only).

The comparative position of the subject import and the relied-upon import is as follows:

Sr. No.	BE No. and Name of the Chinese supplier	Declared goods (found mis-declared)	Weight of the goods (gm/sq. mtrs) as per reports of Textile Committee, Mumbai	Declared Quantity (Net weight in Kgs)	Rate and Value
1.	BE No. 7657976 dated 03.09.2023 : M/s Shaoxing Muzhan Import & Export Co., China	Thermoplastic PU Laminated Polyester Fabric Width 58	130	13,240	Value Rs. 15,57,379/- accordingly rate comes to approx. Rs. 117.63 per kgs
2.	BE No. 7891166 dated 18.09.2023 : M/s. Jiaxing Ruidi Textile Co. Ltd, China	Polyester PVC Coated Fabric found as Thermoplastic PU Laminated Polyester Fabric	104, 129, 132.7, 134.5 (for each 4 samples)	50,871	Considering rate of approx. Rs. 117.63 per kgs, new value comes to Rs. 59,83,792/-

16.8 The importer has submitted that no duty demand can be confirmed in proceedings under Section 124 of the Customs Act, 1962. I find that this submission is misconceived. Section 124 proceedings do not bar re-assessment of a bill of entry. The re-assessment under Section 17(4) flows as a necessary consequence of rejection of the declared description, classification and value, it is not an independent duty demand but a natural outcome of the findings recorded above. The differential duty liability, if any, arises as a consequence of such re-assessment.

17.1 Regarding the third issue of confiscation, I find that Section 111(m) of the Customs Act, 1962 provides that goods which do not correspond in respect of value or in any other particular with the entry made under the Act shall be liable to confiscation. In the present case, I have found that the goods were misdeclared in respect of their description, classification as well as value. These are material particulars in the Bill of Entry under Section 46 of the Act. The misdeclaration is not limited to a peripheral or technical point - it goes to the nature of the goods themselves, their tariff classification, and their assessable value.

17.2 The importer has contended, relying on *Daxen Agritech India Pvt. Ltd. v. Principal Commissioner of Customs (Imports), 2024 (20) Centax 467 (T-Del)*, that confiscation under Section 111(m) cannot be ordered on the ground of misclassification alone. I have examined this judgment. I find that the Tribunal in *Daxen Agritech* itself clarified that Section 111(m) is attracted where there is misdeclaration of goods – the relief was

granted in that case only because the dispute was purely one of classification without any accompanying misdeclaration of description or value. In the present case, the infirmity is not confined to an incorrect tariff heading. I have found that the goods were misdeclared in description – declared as "Polyester PVC Coated Fabric" when they are in fact TPU Laminated Fabric as established by Textile Committee test reports – and the declared assessable value of Rs. 21,62,854/- is a gross undervaluation against the correct value of Rs. 59,83,792/-, representing a suppression of nearly Rs. 38 lakhs. The misdeclaration therefore covers both description and value, which is precisely the category of misdeclaration that Section 111(m) is designed to address. Daxen Agritech is accordingly distinguishable on facts and does not assist the importer.

17.3 Under the self-assessment regime under Section 17 of the Act, it is the statutory duty of the importer to ensure that the Bill of Entry reflects correct description, classification and value. Section 46(4) and 46(4A) place non-delegable obligations on the importer in this regard. The importer's argument that the customs broker's error should absolve it of confiscation liability is not tenable in law. The goods are held liable to confiscation under **Section 111(m)** on account of misdeclaration of both description and value.

17.4 Once the goods are held liable for confiscation, the next question before me is whether to allow the release of the impugned goods on Redemption Fine. I find subsection (1) of Section 125 of the Customs Act, 1962 prescribes that:

"Wherever confiscation of any goods is authorized by this Act, the officer adjudicating 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."

It is amply clear from the said section that, where the confiscated goods are not prohibited for import, discretion has been vested in the adjudicating authority to decide the issue on the basis of the facts and circumstances involved. In the present case, the goods have already been provisionally released on execution of Bond and Bank Guarantee for **Rs. 18,00,000/-**. The Hon'ble Supreme Court in *Weston Components Ltd. v. Commissioner of Customs, New Delhi, 2000 (115) ELT 278 (SC)*, has held that the mere fact that the goods were released on execution of a bond would not take away the power of the customs authorities to levy redemption fine if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods. Accordingly, even though the goods are not physically available for confiscation having already been provisionally released, I am empowered to impose redemption fine in lieu of confiscation under Section 125 of the Customs Act, 1962.

17.5 Further, I have considered the question of quantum of Redemption Fine to be imposed under Section 125 of the Customs Act, 1962. I find that the subject goods are not prohibited or restricted goods and their import is otherwise permissible. I further find that the importer had purchased the goods on High Seas Sale basis and there is no prior history of offence against the noticees on record. I also note that Shri Hira Lal Goyal, Director of M/s Goyal Impex and Industries Ltd., in his statement dated 27.06.2024, voluntarily accepted the findings of the Textile Committee, Mumbai and acknowledged that the subject goods are correctly classifiable under CTH 59039090,

thereby demonstrating cooperation with the proceedings. The revenue interest stands secured by virtue of the Bond and Bank Guarantee executed by the noticees at the time of provisional release of the goods, and the interest of revenue is therefore protected. Taking into account these facts and circumstances, I find it appropriate to impose Redemption Fine at a moderate level in lieu of confiscation under Section 125 of the Customs Act, 1962.

18.1 Regarding the fourth issue of penal liability, I find that Section 112(a)(ii) of the Customs Act, 1962 provides for imposition of penalty on any person who does or omits to do any act which renders goods liable to confiscation under Section 111, where the goods are dutiable goods other than prohibited goods. In the present case, the imported goods liable for confiscation under Section 111(m), I find that the importer, M/s Goyal Impex and Industries Ltd., by filing a Bill of Entry with a misdeclared description, classification and undervalued assessable value, has committed acts and omissions which have rendered the goods liable to confiscation. Under the self-assessment regime, the responsibility to file a correct Bill of Entry rests squarely on the importer. This responsibility cannot be displaced onto the customs broker. M/s Goyal Impex is accordingly liable to penalty under **Section 112(a)(ii)** of the Customs Act, 1962.

18.2 Regarding the personal liability of Shri Hira Lal Goyal, Director, I find that in his statement dated 21.12.2023, he specifically stated that the Customs Broker had declared the goods without full description as mentioned in the invoice, and that he was aware of the correct description, nature and composition of the imported goods including the fact that they were TPU laminated fabric and not PVC coated fabric. In his second statement dated 27.06.2024, he specifically accepted the CTH 59039090 as correct. As the Director of the importing company, Shri Hira Lal Goyal was responsible for and was aware of the nature of goods being imported. Notwithstanding his awareness of the correct description and nature of goods, the Bill of Entry was filed with an incorrect and incomplete description by the customs broker engaged by his company. His personal awareness of the correct particulars, combined with his role as the directing mind of the importer company, renders him personally liable under **Section 112(a)(ii)** of the Customs Act, 1962.

18.3 The importer has submitted that Section 112(a) and Section 112(b) cannot be applied simultaneously to the same person. I accept this submission in part. I find that imposition of penalties simultaneously under Section 112(a) and Section 112(b) against the same noticee would tantamount to double penalty for the same act. Accordingly, I impose penalty only under Section 112(a)(ii) and refrain from imposing penalty under Section 112(b) in respect of both noticees.

18.4 Regarding penalty under Section 114AA of the Customs Act, 1962, I find that this provision requires that a person 'knowingly or intentionally' makes, signs or uses any declaration, statement or document which is false or incorrect in any material particular. I find that the importer's director was aware, at the time of filing of the Bill of Entry, of the correct description of the goods as TPU laminated fabric. He himself stated in his first statement dated 21.12.2023 that the invoice description was more complete and that the customs broker had used only partial description. The goods were declared as 'Polyester PVC Coated Fabric' when the director knew that a significant portion of the consignment was TPU laminated. The filing of an incomplete and materially inaccurate description in the Bill of Entry, with knowledge of the correct description, satisfies the 'knowingly' element of Section 114AA. I therefore find that penalties under **Section 114AA** are also invocable against both the importer company and its director.

18.5 I have also considered the question of quantum of penalties to be imposed under Sections 112(a)(ii) and 114AA of the Customs Act, 1962. While the acts and omissions of

the notices have been found to render the goods liable to confiscation and attract penal liability, I find that certain mitigating factors are present on record which warrant imposition of penalties at a moderate level. I find that the misdeclaration in the present case pertains to description and classification of the imported goods and does not involve any element of prohibited or restricted goods. Further, the revenue interest stands secured by virtue of the Bond and Bank Guarantee executed by the importer at the time of provisional release of the goods, and the interest of revenue is therefore protected. Taking into account these mitigating circumstances, I find it appropriate to impose penalties at a moderate level under both Section 112(a)(ii) and Section 114AA of the Customs Act, 1962.

ORDER

19. In view of the above discussion and findings, I pass the following Order:

(i) I reject the declared description and classification of goods as 'Polyester PVC Coated Fabric' under CTH 59031090 filed under Bill of Entry No. 7891166 dated 18.09.2023, and order re-assessment and re-classification of the said goods as 'Polyester Thermoplastic Polyurethane (TPU) Laminated Fabric' under CTH 59039090 of the Customs Tariff Act, 1975;

(ii) I reject the declared assessable value of **Rs. 21,62,854/-** (Rupees Twenty-One Lakh Sixty-Two Thousand Eight Hundred and Fifty-Four only) under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and re-determine the assessable value at **Rs. 59,83,792/-** (Rupees Fifty-Nine Lakh Eighty-Three Thousand Seven Hundred and Ninety-Two only) under Rule 5 of CVR, 2007;

(iii) I reject the self-assessment of Bill of Entry No. 7891166 dated 18.09.2023 and order re-assessment of the same under Section 17(4) of the Customs Act, 1962 on the re-determined assessable value of **Rs. 59,83,792/-** at the applicable duty rate for CTH 59039090. The differential duty on the imported goods comes to **Rs. 13,99,991/-** (Rupees Thirteen Lakh Ninety-Nine Thousand Nine Hundred and Ninety-One only);

(iv) I order confiscation of the impugned goods imported vide Bill of Entry No. 7891166 dated 18.09.2023 having re-determined assessable value of **Rs. 59,83,792/-** under Section 111(m) of the Customs Act, 1962. Since the goods have already been provisionally released on execution of Bond and Bank Guarantee of Rs. 18,00,000/-, I impose Redemption Fine of **Rs. 3,00,000/-** (Rupees Three Lakh Only) in lieu of confiscation under Section 125 of the Customs Act, 1962;

(v) I order enforcement of the Bond of **Rs. 59,83,792/-** and Bank Guarantee of **Rs. 18,00,000/-** furnished by M/s Goyal Impex and Industries Ltd. at the time of provisional release of the goods and appropriate the same towards recovery of duty leviable, applicable interest, redemption fine and penalties as confirmed in this Order. If the entire amount of confirmed dues is paid in full separately, the Bank Guarantee may be released by the Competent Authority;

(vi) I impose penalty of **Rs. 50,000/-** (Rupees Fifty Thousand Only) on M/s Goyal Impex and Industries Ltd. under Section 112(a)(ii) of the Customs Act, 1962;

(vii) I impose penalty of **Rs. 10,000/-** (Rupees Ten Thousand Only) on Shri Hira Lal Goyal, Director of M/s Goyal Impex and Industries Ltd., under Section 112(a)(ii) of the Customs Act, 1962;

(viii) I impose penalty of **Rs. 25,000/-** (Rupees Twenty Five Thousand Only) on M/s Goyal Impex and Industries Ltd. under Section 114AA of the Customs Act, 1962;

(ix) I impose penalty of **Rs. 10,000/-** (Rupees Ten Thousand only) on Shri Hira Lal Goyal, Director of M/s Goyal Impex and Industries Ltd., under Section 114AA of the Customs Act, 1962;

(x) I refrain from imposing penalty under Section 112(b) of the Customs Act, 1962 on both M/s Goyal Impex and Industries Ltd. and Shri Hira Lal Goyal, as discussed in para 18.3;

20. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under the 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.

21. Show Cause Notice No. GEN/ADJ/ADC/1801/2024-Adjn dated 13.09.2024 stands disposed of in the above terms.

(Dipak Zala)

Additional Commissioner of Customs,
Custom House, Mundra

To,

1. M/s. Goyal Impex and Industries Ltd. (IEC No. 3093007810),
Space-E, Third Floor, Surya Kiran Building,
92, The Mall, Ludhiana-141001
(*email id: hlggroup93@gmail.com*)

2. Shri Hira Lal Goyal,
Director of M/s. Goyal Impex and Industries Ltd. (IEC No. 3093007810),
Space-E, Third Floor, Surya Kiran Building,
92, The Mall, Ludhiana-141001
(*email id: hlggroup93@gmail.com*)

Copy to:

1. The Deputy Director, Directorate of Revenue Intelligence, Regional Unit, Gandhidham (Kutch), Gujarat - 370 205
2. The Deputy Commissioner, Import Assessment (Group-3), Custom House, Mundra
3. The Deputy Commissioner, Review, Custom House, Mundra
4. The Deputy Commissioner, TRC, Custom House, Mundra
5. The Deputy Commissioner, EDI, Custom House, Mundra
6. Guard File