
	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT -370421 PHONE : 02838-271426/271428 FAX :02838-271425	 सत्यमेव जयते
A	File No.	CUS/APR/BE/MISC/839/2023-Gr 3-O/o Pr Commr-Cus-Mundra
B	OIO No.	MCH/ADC/MK/115/2023-24
C	Passed by	Mukesh Kumari, Additional Commissioner (Import), Custom House, Mundra.
D	SCN No. & Date	The importer requested for waiver in PH/SCN vide letter dated 05.07.2023
E	Noticee / Party / Importer	M/s. Swastik Textiles, 214, 2 ND Floor, Milan Shopping Center, Near Milan Subway Road, West Mumbai, Maharashtra-400054
F	DIN	20230771MO000000D35F

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

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

3. Appeal shall be filed within Sixty days from the date of Communication of this Order.
4. Appeal should be accompanied by a Fee of Rs.5/- (Rupees Five Only) under Court Fees Act it must accompanied by (i) copy of the Appeal, (ii) this copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs.5/- (Rupees Five Only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
5. Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.
6. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respect.
7. An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty or Penalty are in dispute, where penalty alone is in dispute.

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BRIEF FACT OF THE CASE:

M/s. Swastik Textiles holding IEC NO: AEGFS3414Q (hereinafter referred to as 'the Importer'), had imported "Polyester Dyed Fabric" declared quantity 129591 SQM vide Bill of Entry No. 2006704 dated 20.04.2023 at OWS Warehousing Services LLP, Survey No 169, Sector-8, Village-Dhruve, Mital Road, MPSEZ, Mundra. **The subject cargo having total declared value is Rs. 21,47,323/- (Rs. 16.57 per Square Meter)**

2 An NCTC alert was received that the goods have been imported under Duty Free Import Authorisation (DFIA license). Duty exemption is available provided that the items imported match the specifications and quantity as mentioned in the said authorization. The NCTC alert stated that since no DFIA license has been uploaded in SEZ online, it is to be ascertained whether specifications as mentioned in the DFIA license used by the buyer match the item in the current consignment. The consignment was lying in OWS Warehouse and the same was put on hold for SIIB examination.

3. The goods were examined by the SIIB officers in presence of authorised representative of the CHA and the warehouse. It was found that there was no concealment in as much as only fabric was found in the consignment. Sample was taken and sent for testing. The CHA representative was asked to submit DFIA license(s) in the matter.

The details of the testing reports are as given below:

Table-A

Sr. No.	Test Report No.	B.E./Date	Report
1	1524	2006704/20.04.2023	Dyed Woven Polyester Fabric (GSM-100.6)
	1525		Dyed Woven Polyester Fabric (GSM-100.3)

3.1. As per the details given in above table, the goods imported are found to be "Dyed Woven Polyester Fabric" i.e. goods description has been found as declared. However, quantity found is 1,57,785 SQM whereas declared quantity is 1,29,591 SQM. Also, value declared is Rs. 16.57 per SQM while as per DFIA license submitted; value should be Rs. 29.5 per SQM.

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Therefore, the goods were seized vide seizure memo dated 15.06.2023.

3.2. Importer has two DFIA licenses, wherein goods to be imported are “Man-made Polyester Dyed & or Bleached Fabric” with GSM 100+/-10%. The goods found are “Dyed Woven Polyester fabric” having GSM 100.3 and 100.6 (two samples were sent). Therefore, the goods are permitted to be imported under DFIA licenses available. However, the quantity declared is 28194 SQM more than what is declared in the Bill of Entry.

4. In view of the above, mis-declaration of quantity and value was found. 28194 SQM excess fabric was found and value declared was found low. Therefore, the goods are liable for confiscation under Section 111(l) & (m) of the Customs Act, 1962. Therefore, the goods were seized vide seizure memo dated 15.06.2023.

5. RELEVANT LEGAL PROVISIONS

5.1 SECTION 46 of the Customs Act, 1962

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 to the proper officer a bill of entry for home consumption or warehousing in the prescribed form:

Provided that the ¹[Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically, allow an entry to be presented in any other manner:

Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the

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same.

(2) *Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.*

(3) *The importer shall present the bill of entry under sub-section (1) before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:*

Provided that a bill of entry may be presented within thirty days of the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.]

(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.*

(5) *If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.*

5.2. SECTION 111 (l) & (m) OF THE CUSTOMS ACT, 1962:

111. Confiscation of improperly imported goods etc.

The following goods brought from the place outside India shall be liable to confiscation:

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

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in the declaration made under section 77;

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

5.3. SECTION 112 OF THE CUSTOMS ACT, 1962:

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, harboring, 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,

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(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;

1[(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

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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.

5 . 4 Section 114A- Penalty for short-levy or non-levy of duty in certain cases. -

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under shall also be liable to pay a penalty equal to the duty or interest so determined

6. Results of the test report were communicated to the importer vide letter dated 17.05.2023 over email. The importer submitted a letter dated 22.05.2023 stating that they accept the test report and requested to release the goods as early as possible. Further, the importer vide letter dated 07.06.2023 requested again to release the goods and submitted that they are ready to pay appropriate fine/penalty in the matter. The importer also submitted that they will either pay the differential duty or debit the excess quantity in a valid DFIA license.

7. Value of the excess quantity (28194 SQM) is Rs. 8,61,223/- since as per the DFIA license submitted, value per square meter is Rs. 29.5/-.

8. CALCULATION OF DUTY:

In view of the above, duty calculation on excess quantity is given below:

Sr No	BE No	SQM	Unit Price (Per SQM)	Total Value	Total Duty (BCD+IGST = Rs. 23 per SQM+5%IGST)

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1	2006704	28194	29.5	831723	790560
Total				8,31,723/-	7,90,560/-

Calculation of differential IGST on account of value enhancement is as under:

SQM	Value (Rs. 29.5 per SQM)	IGST as per original value (Rs.)	Revised IGST (Rs.)	Differential IGST (Rs.)
129591	38,22,935/-	2,71,299/-	3,55,079/-	83,781/-

9. IN VIEW OF THE ABOVE FACTS, IT APPEARS THAT:

- i. The importer has mis-declared goods in terms of quantity and value while importing in contravention to section 46 of the Customs Act, 1962. Value declared is liable to be rejected and re-determined as Rs. 46,54,658/-. Therefore, the subject goods covered under Bills of Entry bearing number 2006704 dated 20.04.2023 valued at Rs. 46,54,658/- are liable for confiscation under section 111(l) & (m) of the Customs Act, 1962;
- ii. Importer is liable to pay the differential duty including Basic Customs Duty and IGST of Rs. 7,90,560/- for excess quantity 28194 SQM and interest as applicable under the provisions of the Customs Act, 1962;
- iii. Importer is liable to pay the differential IGST amount of Rs. 83,781/- on account of value enhancement and interest as applicable under the provisions of the Customs Act, 1962;
- iv. Penalty on the importer M/s Swastik Texiles, 214, 2nd Floor, Milan Shopping Center, Near Milan Subway Road, Santacruz, West Mumbai, Maharashtra-400054 should be imposed under Section 112(a) &/or 114 A of the Customs Act, 1962.

WAIVER OF PERSONAL HEARING AND SCN

10. The Importer, vide their letter dated 05.07.2023 Submitted that they do not want any show cause notices and personal hearing in this matter and ready to pay differential duty, fine and penalty.

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DISCUSSION & FINDING

11. I have carefully gone through the Investigation report dated 28.06.2023 issued by the Deputy Commissioner of Customs (SIIB), Mundra and I find that M/ s .Swastik Textiles holding IEC NO: AEGFS3414Q (hereinafter referred to as 'the Importer'), had imported "Polyester Dyed Fabric" declared quantity 129591 SQM vide Bill of Entry No. 2006704 dated 20.04.2023 at OWS Warehousing Services LLP, Survey No 169, Sector-8, Village-Dhruve, Mital Road, MPSEZ, Mundra. The subject cargo having total declared value is Rs. 21,47,322/- (Rs. 16.57 per Square Meter).

12. I find that as per NCTC alert the subject cargo was hold by the SIIB for further examinations. On physical examination of the goods carried out by the SIIB officers, the goods were found as declared in terms of description. Samples were drawn and reports suggested that the goods were as declared i.e. "Dyed Polyester Woven Fabric" (classified under CTH 54075290). However, the goods were found mis-declared in terms of quantity. Total quantity declared is 129591 SQM while the quantity found is 157785 i.e. 28194 SQM excess quantity has been found. Therefore, it appears that goods are mis-declared in respect of quantity. Further, value as per the DFIA license should be Rs. 29.5/- per SQM while the value declared is Rs. 16.57 per SQM. Therefore, the goods have been mis-declared in terms of value also.

13 . I Find that Value of the excess quantity (28194 SQM) is Rs. 8,61,223/- since as per the DFIA license submitted, value per square meter is Rs. 29.5/-.

13.1. CALCULATION OF DUTY:

In view of the above, duty calculation on excess quantity is given below:

Sr No	BE No	SQM	Unit Price (Per SQM)	Total Value	Total Duty (BCD+IGST = Rs. 23 per SQM+5%IGST)
1	2006704	28194	29.5	8,31,723/-	7,90,560/-
Total				8,31,723/-	7,90,560/-

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Calculation of differential IGST on account of value enhancement is as under:

SQM	Value (Rs. 29.5 per SQM)	IGST as per original value (Rs.)	Revised IGST (Rs.)	Differential IGST (Rs.)
129591	38,22,995/-	2,71,299/-	3,55,079/-	83,781/-

13.2. In view of above, I find that the Importer had paid duty for the declared quantity 129591 SQM of the cargo in respect of the above mentioned bill of entry, however, during the examination the cargo was found in excess quantity i.e. 28194 SQM therefore the duty payable in respect of total quantity 157785 SQM. Thus, differential duty is **Rs. 7,90,560/- (Rupees Seven Lakh Ninety Thousand and Five Hundred Sixty only)** in respect of the above mentioned bill of entries.

14. I find that the importer has imported the goods by way of mis-declaration in terms of quantity and valuation to avoid the applicable duty which resulted into loss of revenue. The importer has mis-declared goods while importing in contravention to section 46 of the Customs Act, 1962. Therefore, the subject goods covered under Bill of Entry No. 2006704 Dated 20.04.2023 valued at Rs. **46,54,658/- (Rupees Forty-Six Lakh Fifty-Four Thousand Six Hundred and Fifty-Eight only)** are liable for confiscation under section 111(l) & 111(m) of the Customs Act, 1962.

15. I find that the importer has mis-declared the quantity. Hence, self-assessment done by the importer under section 17(1) of the Customs Act, 1962 appeared to be incorrect and the subject Bill of Entry need to be re-assessed under Section 17(4) of the Customs Act, 1962 ibid correctly.

16. 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.

17. In view of the above, I find that the importer has mis-declared in terms of quantity and value therefore the import goods liable for

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confiscation under Section 111(l) & 111(m) of the Customs Act, 1962 and importer is liable for penal action under Section 112 (a) of the Customs Act, 1962. Section 125 of the Customs Act, 1962 Provide that 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 where is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods an option to pay in lieu of confiscation such fine as the said officer thinks fit. I find that said provision makes it mandatory to grant an option to owner of the confiscated goods to pay fine in lieu of confiscation in case the goods are not prohibited. I find it appropriate to allow for redeem under section 125 of the Customs Act, 1962.

18. In view of the above, I pass following Order

ORDER

i. I order for confiscation of the goods covered under Bill of Entry No. 2006704 dated 20.04.2023 having re-assessable value **Rs. 46,54,658/- (Rupees Forty-Six Lakh Fifty-Four Thousand Six Hundred and Fifty-Eight only)** under Section 111(l) & 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. 5,00,000 /- (Rs. Five Lakhs Only/-) in lieu of confiscation.

ii. I order to recover the differential duty including BCD+SWS+IGST of **Rs. 7,90,560/- (Rupees Seven Lakh Ninety Thousand and Five Hundred Sixty only)** against the Bill of Entry No. 2006704 dated 20.04.2023 and applicable interest under the provisions of Customs Act, 1962.

ii. I order to recover the differential IGST amount of **Rs. 83,781/- (Rupees Eighty Three Thousand and Seven Hundred Eighty One only)** on account of value enhancement and interest as applicable, under the provisions of Customs Act, 1962.

iii. I impose penalty of Rs.2,50,000/- (Rs.Two Lakh Fifty Thousand

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Only.) on the importer M/s. Swastik Textiles, (IEC No. AEGFS3414Q), under Section 112 (a) of the Customs Act, 1962.

19. 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

Mukesh Kumari
Additional Commissioner of Customs

Date: 10-07-2023 16:36:21
Custom House, Mundra

F. NO.CUS/APR/BE/MISC/839/2023-Gr 3-O/o Pr Commr-Cus-Mundra

10-07-2023

To

M/s. Swastik Textiles, (IEC No. AEGFS3414Q)
214, 2ND Floor, Milan Shopping Center, Near Milan Subway Road,
West Mumbai, Maharashtra-400054.

Copy to:

1. The Dy. Commissioner of Customs, SIIB Section, CH, Mundra
2. The Dy. Commissioner of Customs, RRA, CH, MUNDRA
3. The Dy. Commissioner of Customs, TRC, CH, Mundra
4. Office Copy