

1833 & 1834

	<p style="text-align: center;"> <b>सीमा शुल्क के प्रधान आयुक्त का कार्यालय</b>  <b>सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात</b>  <b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS</b>  <b>CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT</b>  <b>Phone No.02838-271165/66/67/68</b>  <b>FAX.No.02838-271169/62,</b>  <b>Email-adj-mundra@gov.in</b> </p>	
<b>A. File No.</b>	:	GEN/ADJ/COMM/645/2023-Adjn-O/o Pr. Commr- Cus-Mundra
<b>B. Order-in-Original No.</b>	:	MUN-CUSTM-000-COM-13-24-25 dated 30.05.2024
<b>C. Passed by</b>	:	<b>K. Engineer,</b> <b>Principal Commissioner of Customs,</b> <b>Customs House, AP &amp; SEZ, Mundra.</b>
<b>D. Date of order and Date of issue:</b>	:	30.05.2024. 30.05.2024.
<b>E. SCN No. &amp; Date</b>	:	SCN F.No. GEN/ADJ/COMM/645/2023-Adjn, dated 09.10.2023.
<b>F. Noticee(s) / Party / Importer</b>	:	<b>M/s. Sram Trading Company</b> (IEC No. BCRPK2904D), Sadguru Smart City, 101, Nana Kapaya, Shantivan Road, Mundra Kutch, Gujarat-370421; and another.
<b>G. DIN</b>	:	20240571MO000000B876

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. 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 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2<sup>nd</sup> फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004” “Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2<sup>nd</sup> floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

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Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ - / 1000रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs. 50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति परु अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन 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. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

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

7. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal 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.

**1. FACTS OF THE CASE IN BRIEF:**

**1.1. M/s. SRAM Trading Company** (IEC No. BCRPK2904D), Sadguru Smart City, 101, Nana Kapaya, Shantivan Road, Mundra Kutch, Gujarat-370421, (**hereinafter referred to as "M/s. SRAM"**), was engaged in import of PU-coated Fabrics and other fabrics from China for home consumption. M/s. SRAM used to clear their import goods for DTA clearance through Mundra SEZ Warehouse Unit M/s. Empezar Logistics Pvt. Ltd., Mundra.

**1.2.** The Directorate of Revenue Intelligence (i.e., DRI), gathered intelligence that M/s. SRAM indulged in evasion of **Anti-dumping duty** and **Customs duty** by way of mis-declaration of description of goods and mis-classification of the goods. The intelligence further indicated that M/s. SRAM has imported **04** consignments of fabrics from China through Container Nos. **FCIU9268680, TCKU6541960, EITU1377100 and TCLU8966977** and the declared description of goods in the IGM and corresponding Bills of Lading were Bonded Fabric (60064200), Flock Fabric (59070012), Mix Lot of Artificial Coated Fabric for Auto Seat Cover (59032090), Mix Lot of Artificial Coated Fabric For Auto Seat Cover (59031090) etc.

**1.3.** Acting upon the intelligence, **above import consignments were put on hold and examination of the goods was conducted by the officers of DRI under panchanama dated 08.11.2022 & 30.12.2022 and 19.01.2023**. The description of the goods as declared for the said import consignments in the IGM and Corresponding Bills of Lading are given as under;

**Table-1**

<b>Sr. No.</b>	<b>Container No.</b>	<b>Bill of Lading No. and date</b>	<b>IGM No. and date</b>	<b>Declared Description and classification in BL/IGM</b>
1	FCIU9268680	EGLV14325206870 1 dtd. 31.08.2022	2322541 dated 23.09.2022	Bonded Fabric (60064200)
				Flock Fabric (59070012)
2	TCKU6541960	EGLV14325808115 6 dtd. 24.08.2022	2321965 dated 16.09.2022	Mix Lot of Artificial Coated Fabric For Auto Seat Cover (59032090)
				Mix Lot of Artificial Coated Fabric For Auto Seat Cover (59031090)
				Bonded Fabric (60064200)
				Flock Fabric (59070012)
3	EITU1377100	EGLV14325808321 3 dtd. 27.08.2022	2321620 dated 12.09.2022	Bonded Fabric (60064200)
				Flock Fabric (59070012)
4	TCLU8966977	HASLC5622080000 8 dtd. 12.08.2022	2320518 dated 30.08.2022.	Mix Lot of Artificial Coated Fabric For Auto Seat Cover (59032090)
				Mix Lot of Artificial Coated Fabric For Auto Seat Cover (59031090)
				Bonded Fabric (60064200)
				Flock Fabric (59070012)

**1.4.** In order to find out the actual nature, description and classification of the goods, the representative samples were drawn and sent to the laboratory for necessary testing. The Laboratory provided the Test Reports Nos. 8264 to 8276 and 8878 to 8881. The brief details of Test results of the representative samples are as under;

**Table-2**

Sr. No	Contain er No.	Bill of Lading No. and date	IGM No. and date	Declared Description and classification in BL/IGM	Declare d Quantit y (in Mtrs/K g) at the time of filing Bill of Entry	Declare d Value of the goods (in Rs.)	Appropriate description of goods as per Test Reports
1	FCIU92 68680	EGLV1432 52068701 dated 31.08.2022	23225 41 dated 23.09.2022	Bonded Fabric (60064200)	10044	115937 9	PU coated Fabric (HS Code 59032090)
				Flock Fabric (59070012)	17122	127053 8	PU coated Fabric (HS Code 59032090)
					10000	577150	PU coated Fabric (HS Code 59032090)*
					3164	286959	Polyester multifilament yarn Fabric with Lycra and bonding material (Polyurethane)
					3784	389989	Flock Fabric (59070012)
2	TCKU65 41960	EGLV1432 58081156 dated 24.08.2022	23219 65 dated 16.09.2022	Mix Lot of Artificial Coated Fabric For Auto Seat Cover (59032090)	30635	227327 0	PU coated Fabric (HS Code 59032090)
				Mix Lot of Artificial Coated Fabric For Auto Seat Cover (59031090)	10715	309208	PVC coated Fabric (59031090)
				Bonded Fabric (60064200)	3188	289136	Polyester multifilament yarn Fabric with Lycra and bonding material Polyurethane (60064200)
				Flock Fabric (59070012)	3450	355565	Polyester multifilament yarn Fabric and flock fabric (59070012)
3	EITU13 77100	EGLV1432 58083213 dated	23216 20 dated	Bonded Fabric (60064200)	36632	271827 7	PU coated Fabric (HS Code 59032090)

		27.08.2022	12.09.2022	Flock Fabric (59070012)	9690	399470	PVC Coated Fabric (59031090)
					2857	259115	Polyester multifilament yarn Fabric with Lycra and bonding material (Polyurethane)
					2873.5	296150	Polyester multifilament yarn Fabric and flock fabric
4	TCLU89 66977	HASLC562 20800008 dated 12.08.2022	23205 18 dated 30.08.2022	Mix Lot of Artificial Coated Fabric For Auto Seat Cover (59032090)	8476	259281	PU coated Fabric (HS Code 59032090)
				Mix Lot of Artificial Coated Fabric For Auto Seat Cover (59031090)	24387	392631	PVC Coated Fabric
				Bonded Fabric (60064200)	3025	243513	Polyester multifilament yarn Fabric with Lycra and bonding material (Polyurethane)
				Flock Fabric (59070012)	3657	441583	Polyester Flock Fabric

**1.5.** As mentioned above, from the Test Reports the import consignments were found containing PU-coated fabrics (HS Code 59032090) along with other declared fabrics, whereas the importers have declared the description of goods as Bonded Fabric, Flock Fabric, Mix Lot of Artificial Fabric etc. However, it appears that that out of above 04 import consignments, the importer in 02 (TCKU6541960 and TCLU8966977) import consignments have also declared the description of goods as 'Mix Lot of Artificial Coated Fabric For Auto Seat Cover' with having HS code 59032090 for **total quantity 39111 Mtrs at the time of filing IGM** for the said import consignments. **However, as per Test Reports total 112909 Meters PU-coated Fabrics were found in all the above 04 import consignments.**

**1.6. The above import consignments were put on hold by the DRI on 12.10.2022 for examination thereof.** At that time the above import consignments had arrived at Mundra Port under IGM No. 2320518 dated 30.08.2022, 2321620 dated 12.09.2022, 2321965 dated 16.09.2022 and 2322541 dated 23.09.2022. However, it appears that when the import consignments were put on hold by DRI, the importers arrange to declare the PU-coated fabrics and other fabrics at the time of filing warehouse Bills of Entry. Although, M/s. SRAM, while filing Warehouse Bills of Entry for the said consignments had changed the HS code and declared the same to be different from the HS codes as mentioned in the IGM and Bills of Lading, but the same appears to be afterthought of the importer as the DRI has already initiated action in the matter. The details of Warehouse Bills of Entry are as under;

Table-3

Container No.	Bill of Lading No. and date	IGM No. and date	Declared Description and classification in BL/IGM	Warehouse Bill of Entry No. and date	Declared Description and classification in Bill of Entry	Declared Quantity (in Mtrs/Kg) at the time of filing Bill of Entry	Declared Value of the goods (in Rs.)	Appropriate description of goods as per Test Reports
FCIU9 26868 0	EGLV14 3252068 701 dated 31.08.20 22	23225 41 dated 23.09. 2022	Bonded Fabric (60064200 )	1016106 dated 09.11.20 22	PU Coated Fabric Thickness 0.8 mm (59032090 )	10044	1159379	PU coated Fabric (HS Code 59032090)
			Flock Fabric (59070012 )		PU Coated Fabric Thickness 0.6 mm (59032090 )	17122	1270538	PU coated Fabric (HS Code 59032090)
					PVC Coated Fabric Thickness 0.6 mm (59031090 )	10000	577150	PU coated Fabric (HS Code 59032090) *
					Polyester Bonded Fabric (60064200 )	3164	286959	Polyester multifilament yarn Fabric with Lycra and bonding material ( Polyurethane)
					Flock Fabric (59070012 )	3784	389989	Flock Fabric (59070012 )
TCKU 65419 60	EGLV14 3258081 156 dated 24.08.20 22	23219 65 dated 16.09. 2022	Mix Lot of Artificial Coated Fabric For Auto Seat Cover (59032090 )	1016101 dated 09.11.20 22	PU Coated Fabric Thickness 0.6 mm (59032090 )	30635	2273270	PU coated Fabric (HS Code 59032090)
			Mix Lot of Artificial Coated Fabric For Auto Seat Cover (59031090 )		PVC Coated Fabric Thickness 0.25 mm (59031090 )	10715	309208	PVC coated Fabric
			Bonded Fabric (60064200 )		Polyester Bonded Fabric (60064200 )	3188	289136	Polyester multifilament yarn Fabric with Lycra and bonding material ( Polyurethane)

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		Flock Fabric (59070012 )		Flock Fabric (59070012 )	3450	355565	Polyester multifilam ent yarn Fabric and flock fabric	
EITU1 37710 0	EGLV14 3258083 213 dated 27.08.20 22	23216 20 dated 12.09. 2022	Bonded Fabric (60064200 )	1015314 dated 27.10.20 22	PU Coated Fabric thickness 0.6 mm	36632	2718277	PU coated Fabric (HS Code 59032090)
			Flock Fabric (59070012 )		PVC Coated Fabric thickness 0.45 mm	9690	399470	PVC Coated Fabric (59031090 )
					Polyester Bonded Fabric	2857	259115	Polyester multifilam ent yarn Fabric with Lycra and bonding material (Polyurethane)
					Flock Fabric (59070012 )	2873.5	296150	Polyester multifilam ent yarn Fabric and flock fabric
TCLU 89669 77	HASLC5 6220800 008 dated 12.08.20 22	23205 18 dated	Mix Lot of Artificial Coated Fabric For Auto Seat Cover (59032090 )	1011862 dated 01.09.20 22	Mix Lot of Artificial Coated Fabric For Auto Seat Cover (59032090 )	8476	259281	PU coated Fabric (HS Code 59032090)
			Mix Lot of Artificial Coated Fabric For Auto Seat Cover (59031090 )		Mix Lot of Artificial Coated Fabric For Auto Seat Cover (59031090 )	24387	392631	PVC Coated Fabric
			Bonded Fabric (60064200 )		Bonded Fabric (60064200 )	3025	243513	Polyester multifilam ent yarn Fabric with Lycra and bonding material (Polyurethane)

			Flock Fabric (59070012 )		Flock Fabric (59070012 )	3657	441583	Polyester Flock Fabric
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**1.7.** As per **Notification No. 14/2022-Customs (ADD) dated 20.05.2022**, PU-coated fabric falling under HS Code 59032090 when imported from any Country including China and produced other than by M/s. Anhui Anli Material Technology Limited, attracts Anti-dumping duty @USD 0.46 per Meters. Therefore, total 112909 Meters of PU-coated Fabric which was found in the subject 04 import consignments attract Anti-dumping duty as per Notification No. 14/2022-Customs (ADD) dated 20.05.2022.

**1.8.** The above notification further clarified that 'for the purposes of this notification, rate of exchange applicable for the purposes of calculation of such anti-dumping duty shall be the rate which is specified in the notification of the Government of India, Ministry of Finance (Department of Revenue), issued from time to time, in exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and the relevant date for the determination of the rate of exchange shall be the date of presentation of the bill of entry under section 46 of the said Act.' Accordingly, in the present case, the rate of exchange is to be taken as per **Notification No. 90/2022-Customs (N.T.) dated 20.10.2022**.

**1.9.** Further, it was noticed that the importer had also mis-declared the value of the goods at the time of filing of Warehouse Bills of Entry. The present import consignments have been imported from a Chinese Supplier M/s. Lishui Haihe International Enterprises Co. Ltd. The said company also used to export their similar product to other importers into India. Some of their major clients in India are M/s. Miqat International, M/s. Ananya Impex, M/s. Mangla Trading Corpn. etc. On going through the available data of import of the subject fabrics, imported from M/s. Lishui Haihe International Enterprises Co. Ltd., there appears a significant difference in the value of goods when supplies have been made to the above mentioned importers in comparison to the rate as declared by M/s. SRAM. In this regard, a comparative chart of rate of similar goods in respect of M/s. Sram Trading Company and other importers is given hereunder.

Sr. No.	Name of the Chinese supplier	Declared goods	Thickness of the goods	Quantity	Rate declared by M/s. SRAM Trading Company (USD per Qty)	Average rate of the goods when supplied to other companies (USD per Qty)	Difference in (USD per Qty)
1	LISHUI HAIHE INTERNATIONAL	PU coated Fabric (HS Code 59032090)	0.54	17122	0.9	1.25	0.35
2		PU coated Fabric (HS Code 59032090)*	0.79	10000	0.7	1.45	0.75

3	Polyester multifilament yarn Fabric with Lycra and bonding material ( Polyurethane)	0.7	3164	1.1	1.5	0.4
4	Flock Fabric (59070012)	1	11000	1.25	1.25	0
5	PVC Coated Fabric	0.43	24387	0.35	0.5	0.15
6	Polyester Flock Fabric	--	10000	1.25	1.25	0

From the above, it appears that M/s. SRAM also indulged in the evasion of Customs Duty by way of undervaluation of import goods.

**1.10.** During investigation, various Summons to the proprietor of importer firm were issued. However, the same returned undelivered with remark 'left'. The Summons were also sent through given email id to the proprietor, Shri Inder Kumar. However, he did not give satisfactory reply and repeatedly avoided his presence for investigation. He regularly disobeyed the summons issued to him by way of making different excuses. Initially he was making excuses that due to health condition he was unable to attend Summons and requested to grant 10-15 days time for recording of his statement. He vide letter dated 16.12.2022 submitted that they admit their mistake of not declaring the goods in Bills of Lading; that they were ready to pay the appropriate penalty along with all the duty. However, Shri Inder Kumar never cooperated with the investigation and not presented himself for statement.

**1.11.** In response to another Summons issued to M/s. SRAM, **Shri Inder Kumar** submitted that he was suffering from Tuberculosis, therefore he could not attend summons. The DRI conducted a visit at the declared premises of M/s. SRAM i.e., Sadguru Smart City, 101, Nana Kapaya, Satvan Road, Mundra, Kutch-370421, on 20.05.2023. During visit it was noticed that Shri Inder Kumar was residing at this rented premises. The owner of the said premises was Shri Shailendra Kumar Singh who stated that he vacated the said premises in the month of March, 2023; that he used to come at the said premises only once/twice in a month and was not regular inhabitant even during his occupancy.

**1.12.** Further, in response to further summons issued to Shri Inder Kumar he submitted vide letter dated 26.07.2023 that he was unable to attend the summons in DRI office as he was suffering from Tuberculosis. He further requested to send him questionnaire related to the present investigation to enable him to reply to the same. Although from his non-cooperation tendency it appeared that he was pretending and was making false excuses of his illness as he was not willing to attend the summons, a questionnaire was sent to him and he was requested to provide the details/documents related to the import consignments of M/s. SRAM. In order to confirm whether he genuinely want to cooperate in the investigation and not deliberately avoiding his presence for record of his statement, the DRI vide email dated 17.08.2017 requested him to provide the copies of test reports, prescription, name, address and contact No. of the doctor. However, he did not reply to the said summons. Thereafter, after

issuance of another Summons dated 20.07.2023 he sent a reply vide email dated 04.09.2023 to the questionnaire wherein he intentionally did not reply to some specific questions. He was specifically asked to provide some sample sales invoices related to selling of his past import consignments, however, he deliberately did not provide the copies of even single invoice. He also avoided to answer many other questions. He also did not satisfactorily answer the remaining questions.

**1.13. Statement of Shri Santosh Kumar, Branch Manager of Shipping Agencies, M/s. Samsara Shipping P. Ltd.- sub-agents of M/s. Sinokor India P. Ltd., Mumbai was recorded under Section 108 of the Customs Act, 1962, on 30.12.2022.**

- On being asked to describe the business activities such as booking, delivery, filing of IGM/EGM etc. of his company at his Gandhidham office, he stated that in case of imports he generally received data of import consignments from their counterparts/agents which were uploaded by them at the load port of consignments on his common portal [www.heunga.portal](http://www.heunga.portal) powered by Sinokor. That data contains all the details which were mentioned in the corresponding Bills of Lading; that on the basis of the said data, he proceeds for filing IGM without effecting any alterations; that after filing of IGM he waits for their customers/importer/agent who approached him to take delivery of the respective consignments and provide him with the original copies of Bills of Lading along with the import documents like high seas sale/purchase letters and if B/L was surrendered NOC from their customers before collecting their service charges and issuing Delivery Order; that the customers directly received the original Bill of Lading from Shippers or banks; that they verify the details of the description of the goods mentioned in the Bill of Lading with the details available on their common portal on the basis of which he files IGM. After verification of the details, he gives the delivery of the goods to their customers after collecting the dues.
- During investigation it was noticed that an import consignment was imported by another importer firm M/s. Alia International through Container No. TCNU8074730\* covered under Bill of Lading No. HASLC56220800967 dated 07.09.2022/ IGM 2322469 on 22.09.22. It was noticed that the said import consignment was containing PU-coated fabric, however the declared description of the said goods was "Fabrics 59031090 & 60064200". The said Container was pertaining to M/s Samsara Shipping P. Ltd., sub-agents of M/s Sinokor India P. Ltd. On being asked about the said consignment, Shri Santosh Kumar stated that on arrival of container TCNU8074730 on 24.09.22 at Mundra Port, he sent Cargo Arrival Notice to the importers on 21.09.22 through email [khan.parvez2309@gmail.com](mailto:khan.parvez2309@gmail.com) & notify party M/s Empezar Logistics P.L. On being asked about any amendment in the Bill of Lading/IGM, Shri Santosh Kumar stated that their counterpart of Ningbo had, vide email dated 07.09.2022 informed that "*Shipper wants to change CNEE & notify, would you please be kindly to approve in system? Thanks a lot*" the original consignee was M/s SRAM Trading Co., Mundra with address of Mundra and email [sramtradingcompany1111@gmail.com](mailto:sramtradingcompany1111@gmail.com) (Mobile No.91xxxx) which was proposed to be altered to ALIA International, Delhi with address and email of [khan.parvez2309@gmail.co](mailto:khan.parvez2309@gmail.co) (Mobile No.97xxxxxx). The notify party Empezar Logistics Pvt. Ltd. remained same, however below its name "on behalf of Sram trading company" the name of new consignee "Alia International" was to be inserted. The alteration was allowed at 16.11.

Hrs. on 07.09.22 by him. The IGM was filed in name of altered names and addresses as appearing on the B/L generated from portal after amendment. On being asked about whether any documents for change/reason of Consignee change was supplied by him, he stated that he produced an amendment request letter of shipper and system generated change screen shot, as the consignee was amended after the vessel had sailed the B/L was open for amendment for four-five days and the shipper had requested for change in the names of consignee and notify party; that as the B/L was generated after the change, the new B/L has revised consignee names only; that the exact reasons behind the alterations would be informed to load port.

- On being asked about whether there were any other requests from associates in respect of that consignment, he stated that on 30.09.22 an email was received by him from Importer M/s Alia International to send the above container back to POL China; that the importer informed that "*he did not hold any claim over the Container No. TCNU8074730/40HQ under BL HASLC6220800967 which has been exported from China to Mundra Port India.*"
- From the above conversations of the importer and Shipper with the shipping agents, it shows that the above import consignment pertaining to Container No. TCNU8074730 was also pertaining to M/s. STC, however it was consequently changed in the name of other importer M/s. Alia international. This container was examined by the DRI, Gandhidham and found stuffed with PU-coated fabric which attract anti-dumping duty. This shows that M/s. Sram Trading Company was in the past also involved in mis-declaration of description and classification of the goods as found in the subject 04 import consignments.

*\*For this consignment pertaining to container No. TCNU8074730, a separate investigation against M/s. Alia International is being conducted"*

**1.14. Statement of Shri Jignesh Khimjibhai Noriya, Assistant Manager of Shipping Agent of M/s.Evergreen Shipping Agency (India) Pvt. Ltd., was recorded on 07.12.2022 under Section 108 of the Customs Act, 1962.**

- Shri Jignesh Khimjibhai Noriya stated that they were working as Shipping agent for M/s. Evergreen Shipping Agency Pvt. Ltd. in India. He was shown the copies of Bills of Lading No. EGLV143258083213 dated 27.08.2022, EGLV143252068701 dated 31.08.2022 and EGLV143258081156 dated 24.08.2022 and corresponding Invoices as submitted for the said consignments. On perusal of the same, he agreed with the facts that the description of the goods mentioned in the Bills of Lading were different from the same as mentioned in the corresponding invoices. On being asked he stated that their counterpart in China had prepared the said Bills of Entry on the basis of details as provided by the overseas Shipper/supplier. However, he stated that he was not aware what documents were sought by their counterpart in China for preparation of the Bills of Lading. He further added that as a carrier or shipping line they give empty container to shipper to stuff their cargo; that after stuffing process, as carrier are not well aware with the actual cargo stuffed by the shipper; that they prepare the Bill of Lading on the basis of data given by the shipper in the Shipping instructions to their company.

**1.15. Statement of Shri Sailendra Kumar Singh was recorded under Section 108 of the Customs Act, 1962, on 26.06.2023 (RUD No.21).**

- Shri Sailendra Kumar Singh was working as a Manager in MDS Marine Services, Plot No. 588, Office No. 3, Manohar Complex, Ward No. 12C, Police Char Rasta, Gandhidham. On being asked, he stated that he knew Mr. Inder Kumar, who was running a firm called "SRAM Trading Co."; that Mr. Inder Kumar approached him in January 2022 through an estate agent Mr. Budhuba for renting the vacant first floor of his tenement located at Sadguru Smart City, 101, Nana Kapaya, Shantivan Road, Mundra, Kacch-370421.
- On being asked, Shri Sailendra Kumar Singh stated that he (Inder Kumar) stayed from January- 2022 to November-2022, and since November he had left the said premises. On being asked about whether he had any documents related to Shri Inder Kumar, he provided copies of his Aadhar Card and Police verification report. He further stated that Mr. Inder Kumar told him that he was working at a CHA firm at Mundra and was involved in the work of clearing and forwarding; that he used to live with his wife and daughter till November-2022; that after November, 2022 the house remain locked and he had reminded him on 30.12.2022 that the rent agreement was expiring on 10.01.2023; that he informed that he wanted to vacate the tenement. As per the documents provided by Shri Shailendra Kumar Singh, summons to Shri Inder Kumar were issued on his new address.

**1.16. Statement of Shri Mekwan Martin, the Assistant Manager, M/s Empezar Logistics Pvt. Ltd. was recorded on 14.09.2023:**

- Shri Mekwan Martin stated that as per available records, the examination of the following import consignments pertaining to M/s. Sram Trading Company was conducted at the premises of M/s. Empezar Logistics Pvt. Ltd. and PU-coated fabrics were found during examination;

Sr. No	SEZ Bill of Entry No.	Container No.	Name of Importer	B/L No. and date	Description of the goods declared	Panchnam a dated
1	1011862 dated 01.09.2022	TCLU 89669 77		HASLC56 22080000 8 DATED 12.08.2022	1. Artificial coated fabric for auto seat cover 2. Bonded Fabric 3. Flock fabric	19.01.2023
2	1015314 dated 27.10.2022	EITU1 37710 0	M/s Sram Trading Co.	EGLV143 25808321 3 DATED 27.08.2022	1. PU coated fabric 2. PVC coated fabric 3. Polyester Bonded fabric 4. Flock Fabric	30.12.2022 and 08.11.2022
3	1016106 dated 09.11.2022	FCIU 92686 80		EGLV143 25206870 1 DATED 31.08.2022	1. PU coated fabric 2. PVC coated fabric 3. Polyester Bonded fabric 4. Flock Fabric	30.12.2022 and 08.11.2022
4	1016101 dated 09.11.2022	TCKU 65419 60		EGLV143 25808115 6 DATED 24.08.2022	1. PU coated fabric 2. PVC coated fabric 3. Polyester Bonded fabric 4. Flock Fabric	30.12.2022 and 08.11.2022

- On being asked about past import consignments of M/s. Sram Trading Company cleared through M/s. Empezar Logistics Pvt. Ltd, he stated that as per their Company's record, it was noticed that apart from the above 04 import consignments, they had handled total 29 import consignments of M/s. Sram Trading Company in the past.
- On being asked about filing of Bills of Entry for the above import consignments of M/s. Sram Trading Company, he stated that as regards for above 04 import consignments the Bills of Entry Nos. 1011862 dated 01.09.2022 and 1015314 dated 27.10.2022 had been filed by M/s Empezar Logistics Pvt. Ltd. and Bill of Entry Nos. 1016106 dated 09.11.2022 and 1016101 dated 09.11.2022 had been filed by M/s. Freightlink Logistics.

**1.17. Statement of Shri Hemant Balkrishan Joshi, Operation head of M/s Freightlink Logistics, recorded under Section 108 of the Customs Act, 1962, on 27.12.2022:**

- On being asked about two firms M/s.SRAM & SG Impex, Shri Hemant stated that M/s SRAM, Mundra was owned by Sh. Inder Kumar and M/s SG Impex, Delhi was owned by Sh. Gaurav Raj Jha; that he had met them at Mundra Port during month of October 22.
- On being asked about the past import consignments of similar goods he had handled of these firms, he stated that he had not handled similar goods prior to the live shipments, which were seized after examination by DRI.
- On being asked, further he stated that clients, Sh. Gaurav Raj of SG Impex and Sh. Inder Kumar of SRAM Trading had informed him about arrival of the import consignments and arranging for clearance from Mundra Port; that Mr. Manpreet of his office had received those import documents in his mail account and he produced the same after putting his signatures thereon.
- On being asked about Bills of entry filed by them in respect of M/s. SRAM, he stated that he had filed below 02 warehouse Bills of Entry for M/s. SRAM;

Sl. No.	B/L No.& date	Contain er No.	items and qty as per IGM	C/nee & IEC, M/s	PNAMA/ seizure DTD.
1	EGLV 1432520687 01 dated 31.08.2022	FCIU926 8680	1154 Rolls Bonded Fabric(HS Code No.60064200) & Flock Fabric HS Code No.59070012	SRAM Trdg. Co. Mundra IEC BCRPK290 4D	08-11- 2022/ Empezar Logistics CFS
2	EGLV 1432580811 56 dated 24.08.2022	TCKU654 1960	1182 Rolls Mix lot of artificial coated fabric for auto seat cover Bonded Fabric(HS Code No.59032090 & 59031090), Bonded Fabric HS Code 60064200 & Flock Fabric HS Code No.59070012)	SRAM Trdg. Co. Mundra IEC BCRPK290 4D	08-11- 2022/ Empezar Logistics CFS

- He stated that he checked the above details with the respective B/Ls & confirm that the same details with CTH were reflected from the consignments originating from China.
- He was shown the copies of the following Bills of Entry and asked to offer his comment to which he agreed:

S.No.	items and qty per IGM	Contain er No.	C/nee & IEC	B/E Proposed Items & CTH declared	QTY IN BE Metre/ SQM/KG
1	1154 Rolls Bonded Fabric (HS Code No.60064200) & Flock Fabric HS Code No.59070012	FCIU92 68680	SRAM Trading Co. Mundra	251 Roll PU Coated Fabric 0.6 MM (Used for car seat cover) (59032090)	10044
				343Roll PU Coated Fabric 0.8 MM (Used for car seat cover) (59032090)	17122
				200 Roll PVC Coated 0.6 mm Fabric 59031090	10000
				140 Roll poly Bonded fabric 60064200	3164
				220 roll Flock Fabric 59070012	3784
2	1182 Rolls Mix lot of artificial coated fabric for auto seat cover Bonded Fabric(HS Code No.59032090 & 59031090), Bonded Fabric HS Code 60064200 & Flock Fabric HS Code No.59070012)	TOKU65 41960	SRAM Trdg. Co. Mundra IEC BCRPK2904 D	614 roll PU Coated Fabric 0.6mm 59032090	30635
			SRAM Trdg. Co.	215 rl. PVC Coated fabric 0.25mm 59031090	10715
			SRAM Trdg. Co.	150 rl. polyester Bonded fabric 60064200	3188
			SRAM Trdg. Co.	203 rl. Flock Fabric 59070012	3450

- He stated that he checked all the warehouse Bills of Entry they had proposed to file for clearance of the above consignments with the details as shown above, and confirmed that the details as shown above were as per the copies of B/E he had produced. He had prepared the Bills of Entry from the Invoices of those consignments which were supplied to him by the Importers on 27/28.10.22 and verbally asked him to file the Bill of Entry for M/s SRAM.

- On being asked about the difference of descriptions and CTH mentioned in the IGM/BL and Bill of Entry he was also asked about the person who asked him to mention the said classifications separately for each of the multiple items in the B/E, he stated that the Chapter heading in IGM were for products other than PU/PVC Coated fabrics whereas in the B/E he had mentioned the chapter heading of each items of the consignments were shown separately; that Sh. Inder Kumar of M/s SRAM Traders had given him the Invoices and Packing list on the basis of which he had found the classifications from Tariff and mentioned the same in the Bill of Entry.
- On being asked whether he was aware with the applicability of Anti Dumping Duty on PU-coated Fabrics imported from China as per Notification No.14/2022-Cus (ADD) Dated 20.05.22, he stated that he was very well aware with applicability of Anti-dumping duty on PU-coated Fabrics/Faux Leather covered under Chapter Heading 5603 9400 & 5903 2090 as per Notification No.14/2022-Cus (ADD) Dated 20.05.22, whereby the ADD @ 0.46 USD per meters had been imposed on these items if imported from China for period of five years.
- On being asked whether he agreed that by showing the description and classification of the goods as per IGM and the same in the respective Bills of Lading and IGMs was attempt for evasion of ADD, he stated that he agreed that an attempt for evasion of ADD was made by declaring other descriptions and CTH in the IGMs for the consignments by the Importers.
- On being asked about the importer, M/s SRAM had not turned up in spite of several summons issued to him, he stated that he had no communication or meeting with Sh. Inder Kumar for one month.
- On being asked about whether he knew any other associates of the importer firms and whether physically visited the offices of the importer, he stated that he did not know any other persons or associates of M/s SRAM neither he had visited their office.

## 2. VALUATION OF THE GOODS

**2.1.** During investigation, it was noticed that that **the importer has also mis-declared the value of the goods at the time of filing of Warehouse Bills of Entry**. The present import consignments have been imported from a Chinese Supplier M/s. Lishui Haihe International Enterprises Co. Ltd., Prima facie the declared value of the import goods appeared to be **grossly undervalued**. Accordingly, import data of the said goods was analysed which shows that the subject import consignments have been mis-declared in respect of value thereof in order to evade the applicable Customs Duty. The said company also used to export their similar product to other importers into India at higher rates. Some of their major clients into India are M/s. Miqat International, M/s. Ananyaa Impex, M/s. Mangla Trading Corporation etc. On going through the available data of import of the subject fabrics, imported from M/s. Lishui Haihe International Enterprises Co. Ltd., there appears a big difference in the value of goods when supplies have been made to the above-mentioned importers in comparison to the rate as declared by M/s. SRAM. In this regard, a comparative chart of rate of similar goods in respect of M/s. SRAM and other importers on sample basis is given hereunder;

Sr. No.	Name of the Chinese supplier	Declared goods	Thickness of the goods	Quantity	Rate declared by M/s. Sram Trading Company (USD per Qty)	Average rate of the goods when supplied to other companies (USD per Qty)	Difference in (USD per Qty)
1	LISHUI HAIHE INTERNATIO NAL	PU coated Fabric (HS Code 59032090)	0.54	17122	0.9	1.25	0.35
2	LISHUI HAIHE INTERNATIO NAL	PU coated Fabric (HS Code 59032090)*	0.79	10000	0.7	1.45	0.75
3	LISHUI HAIHE INTERNATIO NAL ENTERPRISE CO., LTD	Polyester multifilament yarn Fabric with Lycra and bonding material (Polyurethane)	0.7	3164	1.1	1.5	0.4
4	LISHUI HAIHE INTERNATIO NAL ENTERPRISE CO., LTD	Flock Fabric (59070012)	1	11000	1.25	1.25	0
5	LISHUI HAIHE INTERNATIO NAL ENTERPRISE CO., LTD	PVC Coated Fabric	0.43	24387	0.35	0.5	0.15
6	LISHUI HAIHE INTERNATIO NAL ENTERPRISE CO., LTD	Polyester Flock Fabric	--	10000	1.25	1.25	0

From the above, it appears that M/s. Sram Trading Company also indulged in the evasion of Customs Duty by way of undervaluation of import goods. On calculating the appropriate value of the goods as per the Unit price of the goods at which the same supplier had supplied the same to other importers in India. It is noticed that total value of the goods imported under above 04 import consignments was **Rs.1,20,98,971/-** whereas as per the appropriate Unit price the total assessable value comes to **Rs.1,98,91,171/-** as mentioned in **Annexure A** to this Notice.

**2.2.** In view of the above, the value declared by the importer in the corresponding Bills 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**. The relevant Rules of CVR, 2007 are reproduced hereunder: -

**2.3. Determination of the method of valuation.-**

(1) *Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;*

(2) *Value of imported goods under sub-rule (1) shall be accepted:*

*Provided that -*

*(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -*

*(i) are imposed or required by law or by the public authorities in India; or*

*(ii) limit the geographical area in which the goods may be resold; or*

*(iii) do not substantially affect the value of the goods;*

*(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;*

*(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and*

*(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.*

*(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.*

*(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.*

*(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;*

*(ii) the deductive value for identical goods or similar goods;*

*(iii) the computed value for identical goods or similar goods;*

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

#### **2.4. Transaction value of identical goods. -**

(1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

#### **Rule 5 (Transaction value of similar goods):-**

(1) Subject to the provisions of rule 3, 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;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

Further, as per Rule 6 of the CVR, 2007, if the value cannot be determined under Rule 3, 4 & 5, then the value shall be determined under Rule 7 of CVR, 2007.

**Rule 7 of the CVR, 2007, stipulates that:-**

(1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions :-

- (i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;
- (ii) the usual costs of transport and insurance and associated costs incurred within India;
- (iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

**2.5.** As mentioned above, the transaction value declared by the importer in case of Bill of Entry No. **1016106 dated 09.11.2022, 1016101 dated 09.11.2022, 1015314 dated 27.10.2022 and 1011862 dated 01.09.2022** are liable to be rejected under **Rule 12 of Customs Valuation Rules 2007** as there has been significant mis-declaration in respect of parameters such as description, classification and value thereof. Therefore, the declared value of the goods covered under subject Bills of Entry of **Rs. 1,20,98,971/-** is liable to be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and 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. 1,98,91,171/-**.

**3. MIS-DECLARATION AND CONFISCATION OF THE IMPORT GOODS PERTAINING TO CONTAINER NOS. EITU1377100, FCIU9268680, TCKU6541960 AND TCLU8966977:-**

**3.1. Mis-declaration in respect of description, classification and quantity of the goods:-**

**3.1.1.** From forgoing paras, it is revealed that M/s. SRAM has imported PU-coated fabric (**total quantity 112909 Meters**) which attract anti-dumping duty as per Notification No. 14/2022-Customs (ADD) dated 20.05.2022, PVC Coated Fabric (total fabric 44780 Meters), Polyester multifilament yarn Fabric with Lycra and bonding material (12342 Kgs) and Flock Fabric (total quantity 13908 Kgs). Although the importers had declared total **39111 Meters** of "**Mix Lot of Artificial Coated Fabric For Auto Seat Cover (59032090)**" in the IGMs and corresponding Bills Lading. It appears that the importer has intentionally not declared the description of goods as PU-coated fabric with mala-fide intention. Further, since the DRI had already initiated action against the said import consignments after filing of IGM, the importer arranged to declare PU-coated fabrics and other fabrics at the time of filing warehouse Bills of Entry by declaring the total quantity of PU-coated fabric having quantity 94433 Meters along with other declared fabrics. It appears that M/s. SRAM, while filing Warehouse Bills of Entry had changed the HS code and declared the same as different from the HS codes as mentioned in the IGM and Bills of Lading, but the same appears to be afterthought of the importer in order to escape of the interception of enforcement agency.

**3.1.2.** Moreover, as per the test reports total **112909 Meters PU-coated fabrics** were found mis-declared in the subject 04 import consignments. Although, the importer had declared the '*Mix Lot of Artificial coated fabric for Auto seat cover (HS code 59032090)*' in 02 Bills of Lading out of subject 04 Bills of Lading and IGM, but they had not declared the actual description of the goods. Further, the importer taking cognizance of action initiated by DRI, **declared total 94433 Meters of PU-coated** fabric attracting anti-dumping duty of **Rs. 38,27,537/-**, however the same was also less than the actual quantity of the said goods i.e. **112909 Meters of PU-coated Fabric**.

#### **4.1. MIS-DECLARATION IN RESPECT OF VALUE OF THE GOODS:-**

**4.1.2.** As mentioned in forgoing paras it appears that the importer had also mis-declared the value of the goods at the time of filing of Warehouse Bills of Entry. The present import consignments have been imported from a Chinese Supplier M/s. Lishui Haihe International Enterprises Co. Ltd., Prima facie the declared value of the import goods appeared to be gross undervalued. Accordingly, import data of the said goods was analysed which showed that the subject import consignments have been mis-declared in respect of value thereof in order to evade the applicable Customs Duty. The said company also used to export their similar product to other importers into India at higher rates. Some of their major clients into India are M/s. Miqat International, Ananyaa Impex, M/s. Mangla Trading Corporation etc. On going through the available data of import of the subject fabrics, imported from M/s. Lishui Haihe International Enterprises Co. Ltd., there appears a significant difference in the value of goods when supplies have been made to the above mentioned importers in comparison to the rate as declared by M/s. SRAM.

**4.1.3.** From the above, it appears that M/s. Sram Trading Company also indulged in the evasion of Customs Duty by way of undervaluation of import goods. On calculating the appropriate value of the goods as per the Unit price of the goods at which the same supplier had supplied the same to other importers in India. It is noticed that total value of the goods imported under above 04 import consignments was **Rs.1,20,98,971/-** whereas as per the

appropriate Unit price the total assessable value comes to **Rs.1,98,91,171/-** as mentioned in **Annexure A** to subject Notice.

**4.1.4.** In view of the above, it appears that the goods covered under subject 04 import consignments pertaining to Warehouse Bills of Entry No. 1016106 dated 09.11.2022, 1016101 dated 09.11.2022, 1015314 dated 27.10.2022 and 1011862 dated 01.09.2022, have been mis-declared in respect of description, classification, quantity and value thereof. Since the goods, i.e., total quantity 73198 Meters of PU-coated fabrics and 9678 Meters of PVC coated fabrics found during examination of the goods pertaining to Container No. FCIU9268680 and EITU1377100 have not been declared at the time filing import General Manifest, therefore, the same appears to be liable for confiscation under Section 111(f) of the Customs Act, 1962. Also, total goods covered under Bills of Entry No. 1016106 dated 09.11.2022, 1016101 dated 09.11.2022, 1015314 dated 27.10.2022 and 1011862 dated 01.09.2022, found mis-declared in respect of value also, therefore the same appears to liable for confiscation under Section 111(m) of the Customs Act, 1962.

## **5. DEMAND OF CUSTOMS DUTY AND ANTI DUMPING DUTY ON THE SUBJECT GOODS:-**

**5.1.** From forgoing paras, it is revealed that the importer intentionally did not declare the PU-coated fabric in the Bills of Lading and IGM. The importer was very well aware with the applicability of anti-dumping duty on the said goods as per **Notification No. 14/2022-Customs (ADD) dated 20.05.2022**. In the subject 04 import consignments, total 112909 Meters of PU-coated Fabric were found which attracts anti-dumping duty of **Rs.43,57,610/-**. However, the importer had declared the '*Mix Lot of Artificial coated fabric for Auto seat cover (HS code 59032090)*' in 02 Bills of Lading out of subject 04 Bills of Lading and IGM, but they had not declared the actual description of the goods. The importer taking cognizance of action initiated by DRI declared total 94433 Meters of PU-coated fabric attracting anti-dumping duty of **Rs.38,27,537/-** which is less than the actual quantity of the said goods i.e., 112909 Meters of PU-coated fabric. Therefore, the importer has declared total **Anti-dumping duty to Rs.38,27,537/-** (the value declared in the Warehouse Bills of Entry).

**5.2.** It was further noticed that the importer also involved in gross undervaluation of the goods as mentioned in Annexure-A to the Investigation Report and thereby indulged in evasion of differential Customs Duty to **Rs.25,18,076/-** as the total declared Customs duty by the importer was **Rs.46,14,159/-**; whereas as per Rule 5 of the Customs Valuation Rules on import of total 112909 Meters of PU-coated fabric, 44780 Meters PVC Coated Fabric, 12342 Kgs Polyester multifilament yarn Fabric with Lycra, and 13907.5 Kgs Flock Fabric, the total Customs Duty liability on the subject 04 import consignments comes to **Rs.71,32,235/-**.

**5.3.** In view of the above, it is noticed that total duty liability on the subject 04 import consignments comes to **Rs.1,14,89,845/- (Anti-dumping duty of Rs.43,57,610/-+ other Customs Duty of Rs. 71,32,235/-)**

## **6. RELEVANT LEGAL PROVISIONS:**

### **6.1. SECTION 111 of the Customs Act, 1962 - Confiscation of improperly imported goods, etc. –**

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

- (a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;
- (b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;
- (c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;
- (d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
- (e) any dutiable or prohibited goods found concealed in any manner in any conveyance;
- (f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;
- (g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;
- (h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;
- (i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;
- (j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;
- (k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;
- (l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;
- (m) [any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];
- (n) any dutiable or prohibited goods transited with or without transshipment or attempted to be so transited in contravention of the provisions of Chapter VIII;
- (o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time

being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

<sup>3</sup>[(p) any notified goods in relation to which any provisions of Chapter IVA or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.]

## **6.2. 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, 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 <sup>4</sup>[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 <sup>7</sup>[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.]

## **6.3. Section 114A of the Customs Act, 1962- Penalty for short-levy or non-levy of duty in certain cases—**

Where the duty has not been levied or has not 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 willful 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 sub-section (2) of section 28 shall, also be liable to pay a penalty equal to the duty or interest so determined:]

[PROVIDED that where such duty or interest, as the case may be, as determined under sub-section (2) of section 28, and the interest payable thereon under section 28AB, is paid within thirty days from the date of the 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 duty or interest, as the case may be, so determined:

PROVIDED FURTHER that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

PROVIDED ALSO that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

PROVIDED ALSO that where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AB, and twenty-five per cent. of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

PROVIDED ALSO that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

*Explanation*—For the removal of doubts, it is hereby declared that—

- (i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (2) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;
- (ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.]

**6.4. SECTION 114AA of the Customs Act, 1962:- 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.]

**6.5. Section 117 of the Customs Act, 1962:-** Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [ten thousand rupees].

## **7. ROLE AND CULPABILITY ON THE IMPORTER/PERSON/FIRM INVOLVED:-**

### **7.1. ROLE AND CULPABILITY OF SHRI INDER KUMAR PROPRIETOR OF M/S. SRAM:**

**7.1.1.** From the investigation conducted in the present case, it was revealed that M/s. SRAM imported PU-coated fabric (**total quantity 112909 Meters**) which attracts anti-dumping duty as per Notification No. 14/2022-Customs (ADD) dated 20.05.2022, PVC Coated Fabric (total fabric 44780 Meters), Polyester multifilament yarn Fabric with Lycra and bonding material (12342 Kgs) and Flock Fabric (total quantity 13908 Kgs). Although the importers had declared total 39111 Meters of "Mix Lot of Artificial Coated Fabric For Auto Seat Cover (59032090)" in the IGMs and corresponding Bills Lading, it appears that the importer has intentionally not declared the description of goods as PU-coated fabric with malafide intention. Further, since the DRI had already initiated action against the said import consignments after filing of IGM, the importer arranged to declare PU-coated fabrics and other fabrics at the time of filing warehouse Bills of Entry by declaring the total quantity of PU-coated fabric having quantity 94433 meters along with other declared fabrics. It further appears that M/s. SRAM, while filing Warehouse Bills of Entry had changed the HS code and declared the same as different from the HS codes as mentioned in the IGM and Bills of Lading, but the same appears to be afterthought of the importer in order to escape the interception of enforcement agency.

**7.1.2.** It was further noticed that the importer is also involved in gross undervaluation of the goods as mentioned in Annexure A to the Notice and thereby indulged in evasion of differential Customs Duty to the tune of **Rs.25,18,076/-** as the total declared Customs duty by the importer was of **Rs.46,14,159/-** whereas as per **Rule 5 of the Customs Valuation Rules**, the total Duty liability on the import consignments was to **Rs.71,32,235/-**. Therefore, the importer appears to have indulged in evasion of **Customs Duty of Rs. 25,18,076/-**.

**7.1.3.** Further, total Anti-dumping duty as per Notification No. 14/2022-Customs (ADD) dated 20.05.2022, on total **112909 Meters** of PU-coated Fabric which was found mis-declared in the subject 04 import consignments comes to **Rs.43,57,610/-**. Therefore, apart from evasion of Customs Duty of **Rs.25,18,076/-**, the importer indulged in the evasion of Anti-dumping duty on the subject 04 import consignments.

**7.1.4.** During investigation, various summons to the Proprietor of importer firm were issued. However, the same returned undelivered with remark 'left'. The summons were also sent through given email id to the proprietor, however he did not give satisfactory reply. He repeatedly avoided his presence for investigation. He regularly disobeyed the summons issued to him by way of making different excuses. Initially he was making excuses that due to health condition he was unable to attend summons and requested to grant 10-15 day time for recording of his statement. Shri Inder Kumar was the proprietor of M/s. SRAM. He vide letter dated 16.12.2022 submitted that they admitted their mistake of not declaring the goods in Bills of Lading; that they were ready to pay the appropriate penalty along with all the duty. However, Shri Inder Kumar never cooperated with the investigation and did not present himself for statement. In response to another Summons issued to **M/s.SRAM**, Shri Inder Kumar submitted that he was suffering from Tuberculosis, therefore he could not attend to summons. He also left the rented residential premises, which was declared address of the importer firm. He left the said premises without informing the concerned person after the DRI had initiated investigation in the subject case. His activity indicated his deliberate and mala-fide intention of

evasion of Custom duty and other applicable duty. During investigation he never cooperated with the investigation and regularly avoided his presence. Such act of commission and omission on the part of **Shri Inder Kumar** rendered the subject goods mentioned in **Annexure-A** to this Notice liable to confiscation under **Section 111(f) and 111(m) of the Customs Act, 1962** and thereby rendered himself liable to penalty under **Section 112(a), 112 (b) and 117 of the Customs Act, 1962**.

**7.1.5. Shri Inder Kumar** in spite of having issued various Summons, did not provide the specific documents related to import, selling and purchasing of the subject goods. He provided the incorrect details/documents to the Customs authorities for import, warehousing and clearance of the subject offending goods. He also forwarded incorrect documents for filing of import documents for these consignments with false declarations. He knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, classification, value etc., with malafide intention, and it appears that Shri Inder Kumar is also liable to penalty under **Section 114AA of the Customs Act, 1962**.

**8.** Since the investigation in the present matter could not be completed within 06 months as per provisions of Section 124 of the Customs Act, 1962 due to unavoidable circumstances, **the competent authority, had granted extension for issuance of Show Cause Notice in this matter vide Order dated 10.04.2023.**

**9.** Therefore; a show cause notice No. GEN/ADJ/COMM/645/2023-Adjn dated 09.10.2023 was issued to **M/s. Sram Trading Company** (IEC No. BCRPK2904D), by the Principal Commissioner of Customs, Customs House, Mundra; wherein it is proposed to:-

- (i) Demand the applicable Anti-dumping duty of **Rs.43,57,610/- (Rupees Forty Three Lakhs Fifty Seven Thousand Six Hundred Ten Only)** on total **112909 Meters** of PU-coated Fabric which was found concealed in the subject **04** import consignments covered under Warehousing Bills of Entry No. 1016106 dated 09.11.2022, 1016101 dated 09.11.2022, 1015314 dated 27.10.2022 and 1011862 dated 01.09.2022, under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 as mentioned in Annexure A to this Notice.
- (ii) Reject the declared assessable value of **Rs.1,20,98,971/-** for total **112909 Meters** of PU coated fabric falling under HS Code 59032090, 44780 Meters PVC Coated Fabric falling under HS Code 59031090, 12342 Kgs Polyester multifilament yarn Fabric with Lycra falling under HS Code 60064200, and 13908 Kgs Flock Fabric falling under HS Code 59070012, which does not appear to be true transaction value as per forgoing paras; under Rule 12 of Customs Valuation Rules 2007 as there has been observed significant mis-declaration; and re-determine under Section 14 of the Customs Act, 1962 under Rule 5 of Customs Valuation (Determination of value of imported goods) Rules, 2007 as **Rs.1,98,91,171/-**; and demand the applicable Customs Duty of **Rs.71,32,235/- (Rupees Seventy One Lakhs Thirty Two Thousand Two Hundred Thirty Five Only)** under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962, as given in **Annexure-A** to this Notice.

- (iii) Confiscate the goods with total quantity of **73198 Meters** of PU-coated fabrics and **9678 Meters** of PVC coated fabrics found during examination of the goods pertaining to Container No. FCIU9268680 and EITU1377100 have not been found declared at the time filing import General Manifest; under Section 111(f) of the Customs Act, 1962.
- (iv) Confiscate the goods mentioned at para (ii) above, since these goods found mis-declared in respect of description, classification, quantity and value thereof; under Section 111(m) of the Customs Act, 1962.
- (v) Impose Penalty upon **Shri Inder Kumar Proprietor of M/s. SRAM** under Section 112(a), Section 112(b), Section 114A, Section 114AA and Section 117 of the Customs Act, 1962.

#### **10. DEFENSE SUBMISSION:**

**10.1. M/s. Sram Trading Company** (IEC No. BCRPK2904D) (**Noticee-1**), and **Shri Inder Kumar Proprietor of M/s. SRAM** (**Noticee-2**) have submitted their reply dated 08.05.2024 against impugned SCN, wherein they interalia submitted as under:

**The Commissioner of Customs is not the competent authority as per the SEZ Act, 2005 to adjudicate the said matter**

**A.** Because it is submitted that the Commissioner of Customs is not the competent authority to adjudicate the said matter since it relates to SEZ and the same can be proved from the following points:

- (i) Admittedly, the said goods were imported through SEZ and the same is a matter of record.
- (ii) It is no longer res-integra that the goods imported vide SEZ are governed by SEZ Act, 2005 and not Customs Act, 1962
- (iii) Admittedly, as per the SEZ Act, 2005, specifically Section 23 of the SEZ Act, 2005, only designated courts can try the notified offences under the SEZ Act, 2005.
- (iv) Taking the above mentioned Section into consideration it can be clearly inferred that no Show Cause issued for the notified offence can be adjudicated by the Commissioner of Customs, hence, the said proceedings cannot proceed forward.

**Show Cause Notice invalid as Section 28(4) can only be invoked for differential duty**

**B.** Because the impugned Show Cause Notice is invalid as Section 28(4) can only be invoked if there is a question of differential duty. It is pertinent to mention here that the impugned Show Cause Notice specifically para 6 of the impugned Show Cause Notice, the DRI itself states that the correct entries were made in the Bill of Entries filed by the Noticee. Further, the Noticees were always willing to pay the duty on the declared value of goods. Hence, on this ground along the impugned Show Cause Notice is liable to be set aside.

**Description of Bill of Lading not covered under the Customs Act, 1962**

**C.** Because it is submitted that Description of Bill of Lading is not covered under Customs Act, 1962 and the same can be proved from the following points:

- (i) It is submitted that only when a self-declaration is made by the importer, the said question correct declaration comes into play.
- (ii) Admittedly, the Bill of Lading is made by the Shipping Line and the importer has no role to play in the same.
- (iii) Admittedly, even as per the statements recorded during the course of investigation which are re-produced in the impugned Show Cause Notice, this fact that the Bill of Lading is created by the Shipping line on the instructions received from China.
- (iv) Hence, taking the abovementioned points into consideration, since the entire Show Cause Notice is based on the description of goods on the Bill of Lading, the same is liable to be set aside on this ground alone.

**Declaration under Section 46 of the Customs Act, 1962 by way of Bill of Entry is the first declaration**

**D.** Because it is submitted that the first declaration made by the importer in respect of goods starts only when he files the Bill of Entry as per Section 46 the Customs Act, 1962.

**E.** Because it is submitted that as per para 6 of the impugned Show Cause Notice, the DRI itself accepts that the correct Bill of Entries were filed by the Noticees. Further, para 8.3 of the impugned Show Cause Notice itself accept that the Bill of Lading is prepared by Shipping line in China.

**F.** Hence, taking the abovementioned points into consideration, the Noticee is not liable for the declaration made in Bill of Lading, hence the impugned Show Cause Notice is liable to be set aside on this ground alone.

**Action of the DRI premature**

**G.** Because it is submitted that the action of the DRI was pre mature at best and the same can be proved from the following points:

- (i) It is submitted that taking the abovementioned grounds into consideration, only when a Bill of Entry is filed, the importer becomes liable for the declaration made in the said Bill of Entries.
- (ii) It is submitted that the DRI, even though it has alleged intelligence should have waited for the Importer to file the Bill of Entry.
- (iii) It is submitted that the Show Cause Notice cannot be issued on the ground of assumption and presumption that merely because Bill of Lading is incorrect, the Noticees will mis declare the goods in the said Bill of Entries.
- (iv) Hence, taking the abovementioned points into consideration, since the action of DRI was pre-mature, hence, the impugned Notice is liable to be set aside on this ground alone.

**No misdeclaration of goods**

**H.** Because it is submitted that the Noticee declared true and correct description of goods in the Bill of Entries filed by it and the same can be confirmed from the para 6 of the impugned Show Cause Notice. Hence, it is submitted that under no circumstances, the Noticee has mis-declared the goods.

**No data provided for contemporary value**

**I.** Because it is submitted that entire impugned Show Cause Notice, insofar as undervaluation of goods is concerned solely relies on para 7 of the impugned Show Cause Notice as it states that many companies imported similar goods from the same supplier. However, in utter shock and dismay, neither the contemporary data has been re-produced, nor the same has been made as an RUD in the impugned Show Cause Notice. Hence, in the absence of the contemporary data, the impugned Show Cause Notice insofar as it relates under valuation is liable to be set aside on this ground alone.

**Cannot be forced to give inculpatory statements:**

**J.** Because it is submitted that the DRI in para 8.1.2 of the impugned Show Cause Notice has incorrectly held that the noticee did not corporate in the investigation. It is submitted admittedly, the Noticee did respond to the questionnaire sent by the DRI. However, it is no longer res-integra that the Noticee cannot be forced to give inculpatory statements against himself.

**K.** Because it is submitted that the noticee is squarely covered by the above-mentioned judgment hence under no circumstances it can be stated that the Noticee did not corporate with the investigation.

**Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 have been incorrectly applied**

**L.** It is submitted that Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 have been incorrectly applied and the same can be proved from the following points

**M.** Incorrectly Rejected value under Rule 12 of the Valuation Rules: It is submitted that the value of the goods imported by the noticee has been incorrectly rejected and the same can be proved from the following points:

- (i) That on bare perusal of the impugned Show Cause Notice, specifically, para 9.1, 9.2 and 9.3, it can be found that the value of goods have been incorrectly rejected under Rule 12 and the same can be proved from the following points:
- (ii) As per para 9.1, the value has been rejected under Rule 12 solely on the ground of some contemporary data which has neither been re-produced in the impugned Show Cause Notice, nor made an RUD.
- (iii) It is submitted that in absence of any such data being part of the impugned Show Cause Notice, it can be clearly inferred that the said data is merely on the basis of assumption and presumption and not on the basis of actual data.
- (iv) Hence, taking the abovementioned points into consideration, the value declared by the Noticee was incorrectly rejected under Rule 12 of the CVR, 2007

**Valuation Rules not correctly followed for re-determination of value under CVR, 2007.**

**N.** It is submitted that before going into merits of how the valuation rules have not been applied correctly, it is most respectfully submitted that the value of goods of the noticee in the impugned Notice has been solely determined on the basis of the table given in para 9.1 of the impugned Show Cause Notice. However, the said data cannot be used due to the following reasons:

- (i) The said data does not disclose the name of the importers, the period in which the said import was made, the quantity of the import, the quality of goods of the import etc.
- (ii) Taking the abovementioned points into consideration, it is submitted that the data re-produced in para 9.1 cannot be used to re-determine the value of the impugned goods.

**O. Incorrectly applied Rule 4 to 7 of the CVR, 2007:** Because at the very onset it is submitted that there are no findings in the impugned Show Cause Notice apart from the alleged contemporary data which has been challenged in the abovementioned ground.

**P.** Because it is submitted that it is no longer res-Integra that the valuation rules have to go consequentially from 4 to 7. Hence, the said re-determination of value is liable to be set aside on this ground alone.

**Q. Incorrectly applied Rule 4 of the CVR, 2007:** It is submitted that Rule 4 has been incorrectly applied and the same can be proved from the following points:

- (i) That on bare perusal of para 9 of the impugned Notice, it can be found that it is submitted that here are no findings on record to show that the DRI tried to get any contemporary data for the import made by the Noticee.
- (ii) Hence, in absence of any contemporary data, it is submitted that Rule 4 has not been correctly applied in the said matter.

**R. Incorrectly applied Rule 5 of the CVR, 2007:** It is submitted that Rule 5 has been incorrectly applied. Hence, in absence of any authentic contemporary data [which cannot be used as an evidence], it is submitted that Rule 5 has not been correctly applied in the said matter.

**S.** Because it is submitted that the DRI has not given any analysis with regards to application of Rule 7 or Rule 9 of the CVR, 2007.

**T.** Hence, taking the abovementioned grounds into consideration, the value declared by the Noticee is correct and no evidence has been brought on record to prove otherwise.

**U. Noticees had declared the true and correct value of goods**

- (i) It is submitted that the Noticee declared true and correct value of goods as per Section 14 of the Customs Act, 1962.
- (ii) It is submitted that no technical evaluation was carried out vis a vis any data which is used as similar goods. That admittedly, in absence of the technical data, contemporary data only on the basis of description cannot be used to derive the value of goods.
- (iii) That the Investigating Authority erred by not taking into consideration that Price list/ invoices of the foreign supplier/ other importers is not a proof of transaction value invariably and existence of the price list/ invoice cannot be the sole reason to reject the transaction value. Further, a price list is really no more than a general quotation and It does not preclude discounts which may be granted for a variety of reasons including stock clearance. Also, a discount is a commercially acceptable measure which may be resorted to by a vendor for a variety of reasons including stock clearance. Hence, it is submitted that production of description of B/Es of other importers cannot discharge the onus cast on customs authorities to prove

the existence of special circumstances indicated in Section 14(1) of Customs Act, 1962. The same was by the Hon'ble Supreme Court in the matter of EICHER TRACTORS LTD. Versus COMMISSIONER OF CUSTOMS, MUMBAI, 2000 (122) E.L.T. 321 (S.C.) and judgment of Hon'ble CESTAT, Principal Bench, New Delhi in the matter of SARA ELECTRO ACOUSTICS PVT. LTD Vs. COMMISSIONER OF CUS., NEW DELHI in 2009 (240) E.L.T. 448 (Tri. - Del.).

(iv) Hence, taking the abovementioned points and case laws into consideration, it is submitted that the noticee has declared the correct value of goods.

**PENALTY CANNOT BE IMPOSED UPON THE NOTICEES UNDER SECTION 112 OF THE CUSTOMS ACT, 1962**

V. It is submitted that that by any stretch of imagination, the Noticees cannot be brought within the ambit of the provisions of Section 112 as no documents/ evidences have been brought on record to show that the goods were undervalued and hence goods were liable for confiscation. Further, it is further submitted that no evidence has been brought on record to prove that the Noticee did or omit to do any act which act or omission would render such goods liable to confiscation under Section 111. It is specifically re-iterated that the DRI itself accepts that correct declaration was made in the impugned Bill of Entries. It is pertinent to mention here that the Noticee imported the goods as per due procedure of law. It is re-iterated that the Show Cause Notice is not only contradictory to itself but also solely relied on the data which is contrary to established principles of law. Hence it is re-iterated that penalty cannot be imposed on the Noticee under Section 112 of the Customs Act, 1962.

W. It is submitted that that by any stretch of imagination, the noticee cannot be brought within the ambit of the provisions of Section 114A as no evidence has been brought on record that the Noticee has short paid the duty. It is re-iterated that the Noticee was never given an opportunity to pay the duty as the DRI acted

in pre mature manner and seized the goods even before the Bill of Entry could be filed. Hence it is re-iterated that penalty cannot be imposed on me under Section 114A of the Customs Act, 1962.

X. It is submitted that that by any stretch of imagination, the noticee cannot be brought within the ambit of the provisions of Section 114AA as this section is applicable only for those who have 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. It is pertinent to mention here that has correct true and collect value of goods in the Bill of Entries [and the same is matter of record] and no evidence has been brought on record to prove otherwise. Hence it is re-iterated that penalty cannot be imposed on the Noticee under Section 114AA of the Customs Act, 1962.

Y. It is submitted that that by any stretch of imagination, the noticee cannot be brought within the ambit of the provisions of Section 117 of the Customs Act, 1962 the show Cause Notice is bereft of any material particulars as to which action of the noticee lead to the contravention of Section 117 of the Customs Act, 1962 It is further pertinent to mention here that since the penalty has already been proposed under other sections [which are being specifically disputed by the Noticees], hence no penalty can be proposed under Customs Act, 1962

**Documents not provided along with the impugned Show Cause Notice and hence are requested to be provided before the adjudication of the said Show Cause Notice**

**Z.** That it is respectfully submitted that the Contemporary data including, name of the Importer, B/E nos. quality, quantity, technical specification etc. has not been made an RUDs which form the basis of which the allegations have been made in the impugned Show Cause Notice. It is pertinent to mention here that the DRI should have made the contemporary data as part of the Show Cause Notice as they are the sole basis on which the allegations have been made. Reliance is placed upon the judgments in the matter of **V.V. Mineral Vs. Commissioner of Central Excise, Tirunelveli, in 2016 (332) E.L.T. 289 (Mad.)**

**Provide Cross Examination or deny the cross examination after passing a detailed speaking order before the final adjudication of this matter**

- (i) Cross Examination of Shri Santosh Kumar, Branch Manager of Shipping Agencies [Para 8.2 of the SCN], Shri Jignesh Khimjibhai Noriya [Para 8.3 of the SCN], Shri Sailendra Kumar Singh [para 8.4 of the SCN], Sh. Mekwan Martin [Para 8.5 of the SCN] and Shri Hemant Balkrishan [Para 8.6 of the SCN]: The cross examination of the abovenamed persons are required.
- (ii) Case laws relied upon are: **Jha Shipping Agency Vs. Union Of India, 2011 (264) E.L.T. 321 (Cal.)**, and **Sampad Narayan Mukherjee Vs. Union of India and Ors.** in C.A Nos. 25447(W) of 2018, reported in 2019 SCC OnLine Cal150.
- (iii) Hence taking the abovementioned judgment into consideration, it is requested that permission should be granted to cross of the abovementioned people as mentioned above. That the Noticee requests that the decision of cross examination be conveyed before passing the final order and accordingly seeks to rely on the following judgment of Hon'ble High Court of Gujarat, in the case of Mahek Glazes Pvt. Ltd. Vs. Union of India [2014 (300) E.L.T. 25 (Guj)].

**10.2. Submission of M/s. SRAM dated 08.05.2024 in respect of Cross Examination:**

**M/s. Sram Trading Company** (IEC No. BCRPK2904D) (**Noticee-1**), and **Shri Inder Kumar Proprietor of M/s. SRAM** (**Noticee-2**) have submitted another reply dated 08.05.2024 against impugned SCN, wherein they interalia submitted that since the said statement was recorded under Section 108 of the Customs Act, 1962, therefore, they have an indefensible right to cross examination under Section 138B of the Customs Act, 1962. That the DRI is using this statement against the Noticee in the impugned Show Cause Notice to allegedly show the role of the Noticee, even though Noticee has no role to play in the B/L. The cross examination is required to re-inforce the fact that the said premises was rented after following the due procedure of law. Further, since the said statement was recorded under Section 108 of the Customs Act, 1962, the Applicant has an indefensible right to cross examination under Section 138B of the Customs Act, 1962. It is re-iterated that Section 138B of the Customs Act, 1962 clearly states that the relevancy of the statements has to be confirmed before relying on the same as evidence to adjudicate the Show Cause Notice under Customs Act, 1962.

## 11. RECORDS OF PERSONAL HEARING:

**11.1.** 'Audi alteram partem', is an important principal of natural justice that dictates to hear the other side before passing any order; therefore, Personal hearing in the matter was granted to all the noticees on 14.02.2024, on 21.02.2024 and 08.05.2024. Details of the PH are as under:

- (i) **1<sup>st</sup> PH conducted on 14.02.2024:** None of the noticee appeared to attend the PH.
- (ii) **2<sup>nd</sup> PH conducted on 21.02.2024:** Advocate Shri A.K. Seth attended the PH on behalf of the noticees, wherein he requested for RUDs No. 7 to 9 for filing interim reply in the matter.
- (iii) **3<sup>rd</sup> PH conducted on 08.05.2024:** Advocate Shri Chinmaya Seth appeared to attend the PH on behalf of the noticees, wherein he stated that Bill of Lading is the ground of DRI case which has not been filed by the importer. Bill of Lading is a document which has been filed by Shipping line and provided by Shipper. Further he stated that the proper valuation has not been done by DRI, neither the RUD has been provided to them regarding valuation. He requested for cross examination of the persons whose statements have been relied upon in the impugned SCN. He further requested that if the cross examination is denied, the same be conveyed to the Noticees in order for the noticees to submit final reply

## 12. DISCUSSION AND FINDINGS:

**12.1.** I have carefully gone through the **SCN bearing F.No. GEN/ADJ/ADC/645/2023-Adjn, dated 09.10.2023**; issued by the Commissioner of Customs, Custom House, Mundra; the relied upon documents; submissions made by the Noticees, legal provisions and the records available before me. The issues before me to decide are as under:

- (i) Whether the Anti-dumping duty of **Rs.43,57,610/- (Rupees Forty Three Lakhs Fifty Seven Thousand Six Hundred Ten Only)** on total **112909 Meters** of PU-coated Fabric which was found concealed in the subject **04** import consignments covered under respective Warehousing Bills of Entry, is recoverable under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 or otherwise;
- (ii) Whether the declared assessable value of **Rs.1,20,98,971/-** for total **112909 Meters** of PU coated fabric falling under HS Code 59032090, 44780 Meters PVC Coated Fabric falling under HS Code 59031090, 12342 Kgs Polyester multifilament yarn Fabric with Lycra falling under HS Code 60064200, and 13908 Kgs Flock Fabric falling under HS Code 59070012, is liable to be rejected under Rule 12 of Customs Valuation Rules 2007; and whether the assessable value is to be re-determine under Section 14 of the Customs Act, 1962 under Rule 5 of Customs Valuation (Determination of value of imported goods) Rules, 2007 as **Rs.1,98,91,171/-**, or otherwise;
- (iii) Whether the Customs Duty of **Rs.71,32,235/- (Rupees Seventy One Lakhs Thirty Two Thousand Two Hundred Thirty Five Only)** is recoverable under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962, or otherwise;

- (iv) Whether the total quantity of **73198 Meters** of PU-coated fabrics and **9678 Meters** of PVC coated fabrics found during examination of the goods pertaining to Container No. FCIU9268680 and EITU1377100 have not been found declared at the time filing import General Manifest; are liable to confiscation under Section 111(f) of the Customs Act, 1962, or otherwise;
- (v) Whether the subject goods mentioned at para (ii) above, since found mis-declared in respect of description, classification, quantity and value thereof; are liable to confiscation under Section 111(m) of the Customs Act, 1962, or otherwise;
- (vi) Whether the Penalty is imposable upon **Shri Inder Kumar Proprietor of M/s. SRAM** under Section 112(a), Section 112(b), Section 114A, Section 114AA and Section 117 of the Customs Act, 1962, or otherwise;

**13.** I find that the instant case arises out of examination of import consignments of M/s. SRAM by the DRI which revealed that PU-coated fabric (**total quantity 112909 Meters**) which attracts anti-dumping duty as per Notification No. 14/2022-Customs (ADD) dated 20.05.2022; PVC Coated Fabric (total fabric 44780 Meters); Polyester multifilament yarn Fabric with Lycra and bonding material (12342 Kgs); and Flock Fabric (total quantity 13908 Kgs); whereas, the importer had declared total 39111 Meters of "Mix Lot of Artificial Coated Fabric For Auto Seat Cover (59032090)" in the IGMs and corresponding Bills Lading. Therefore, it was revealed that the importer had intentionally not declared the description of goods as PU-coated fabric with malafide intention.

**14.** Further, it is placed on records that after filing of IGM and investigation was initiated by the DRI against the said import consignments; the importer arranged to declare **PU-coated fabrics** and other fabrics at the time of filing warehouse Bills of Entry by declaring the total quantity of **PU-coated fabric having quantity 94433 meters** along with other declared fabrics. It is also well placed on records that M/s. SRAM, while filing Warehouse Bills of Entry had changed the HS code and declared the same as different from the HS codes as mentioned in the IGM and Bills of Lading, therefore, the same is reasonably inferred to be afterthought of the importer in order to escape the interception of enforcement agency.

**15.** I find that **Shri Santosh Kumar, Branch Manager of Shipping Agencies, M/s. Samsara Shipping P. Ltd.- sub-agents of M/s. Sinokor India P. Ltd. Mumbai in his statement dated 30.12.2022 confirmed that** that the customers directly received the original Bill of Lading from Shippers or banks and after verification of the details of the description of the goods mentioned in the Bill of Lading with the details available on their common portal on the basis of which he filed IGM. After verification of the details, he gives the delivery of the goods to their customers after collecting the dues. He stated that in respect of container TCNU8074730 the original consignee was M/s SRAM Trading Co., Mundra with address of Mundra which was proposed to be altered to ALIA International, Delhi. The notify party Empezar Logistics Pvt. Ltd. remained same, however below its name "on behalf of Sram trading company" the name of new consignee "Alia International" was to be inserted. He also stated that the IGM was filed in the altered names and addresses as appearing on the B/L generated from portal after amendment. I find that this container was examined by the DRI, Gandhidham and found stuffed with PU-coated fabric which attract anti-dumping duty. This shows that M/s. Sram Trading

Company was in the past also involved in mis-declaration of description and classification of the goods as found in the subject 04 import consignments.

**16.** I find that during examination of the impugned goods representative samples were drawn to find out the actual nature, description and classification of the goods, and sent to the laboratory for necessary testing. The Test Reports the import consignments were found containing PU-coated fabrics (HS Code 59032090) along with other declared fabrics, whereas the importers have declared the description of goods as Bonded Fabric, Flock Fabric, Mix Lot of Artificial Fabric etc. However, it appears that that **out of subject 04 import consignments, the importer in 02 (TCKU6541960 and TCLU8966977) import consignments** have also declared the description of goods as 'Mix Lot of Artificial Coated Fabric For Auto Seat Cover' with having HS Code 59032090 for total quantity 39111 Mtrs at the time of filing IGM for the said import consignments. Whereas, as per Test Reports total **112909 Meters PU-coated Fabrics** were found in all the subject 04 import consignments. When the import consignments were put on hold by DRI on **12.10.2022** for examination thereof, the importers arrange to declare the PU-coated fabrics and other fabrics at the time of filing warehouse Bills of Entry whereby the importer had changed the HS code and declared the same to be different from the HS codes as mentioned in the IGM and Bills of Lading.

**17.** I observe that as per **Notification No. 14/2022-Customs (ADD) dated 20.05.2022**, PU-coated fabric falling under HS code 59032090 when imported from any Country including China and produced other than by **M/s. Anhui Anli Material Technology Limited**, attracts Anti-dumping duty @USD 0.46 per Meters. Therefore, total 112909 Meters of PU-coated Fabric which was found in the subject 04 import consignments attract Anti-dumping duty as per Notification No. 14/2022-Customs (ADD) dated 20.05.2022. The said notification further clarified that 'for the purposes of this notification, rate of exchange applicable for the purposes of calculation of such anti-dumping duty shall be the rate which is specified in the notification of the Government of India, Ministry of Finance (Department of Revenue), issued from time to time, in exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and the relevant date for the determination of the rate of exchange shall be the date of presentation of the bill of entry under section 46 of the said Act.' Accordingly, in the present case, the rate of exchange is to be taken as per Notification No. 90/2022-Customs (N.T.) dated 20.10.2022.

**18. Mis-declaration in respect of value of the goods:-**

**18.1. I find that** the importer had also mis-declared the value of the goods at the time of filing of Warehouse Bills of Entry. The present import consignments have been imported from a Chinese Supplier M/s. Lishui Haihe International Enterprises Co. Ltd. The said company also used to export their similar product to other importers into India. Some of their major clients in India are M/s. Miqat International, Ananyaa Impex, M/s. Mangla Trading Corp. etc. On going through the available data of import of the subject fabrics, imported from M/s. Lishui Haihe International Enterprises Co. Ltd., there appears a significant difference in the value of goods when supplies have been made to the above mentioned importers in comparison to the rate as declared by M/s. SRAM. In this regard, a comparative chart of rate of similar goods in respect of M/s. SRAM and other importers as detailed vide Para 7 of the impugned SCN

reveals that they also indulged in the evasion of Customs Duty by way of undervaluation of imported goods.

**18.2.** I find that Shri Inder Kumar never cooperated with the investigation and not presented himself for statement. Moreover, He deliberately did not provide the copies of even single invoice related to selling of his past import consignments as called for; which clearly suggests that they did not have substantial evidences in their support to counter the case brought in light by the DRI. This behaviour of the importer has to be given due cognizance while deciding the case. It is clear that the importer has sought to not co-operate with the investigation and impeding it while now at the time of adjudication trying to point holes in the investigation. This clearly goes against the bonafides of the importer and mens rea for the evasion clearly comes forth from the attitude of the importer during the investigation process.

#### **19. Undervaluation of the imported goods**

**19.1.** I view of above, I find that M/s. Sram Trading Company also indulged in the evasion of Customs Duty by way of undervaluation of import goods. On calculating the appropriate value of the goods as per the Unit price of the goods at which the same supplier had supplied the same to other importers in India. Therefore, I find that the transaction value declared by the importer in case of Bills of Entry No. 1016106 dated 09.11.2022, 1016101 dated 09.11.2022, 1015314 dated 27.10.2022 and 1011862 dated 01.09.2022 is evidently not 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 is liable to be rejected in terms of Rule 12 of CVR, 2007 as there has been significant mis-declaration in respect of parameters such as description, classification and value thereof. Therefore, the declared value of the goods covered under subject Bills of Entry of **Rs.1,20,98,971/-** is liable to be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and re-determined under Section 14 of the Customs Act, 1962 under Rule 5 Customs Valuation (Determination of value of imported goods) Rules, 2007. Therefore, on calculating the appropriate value of the goods as per the Unit price of the goods at which the same supplier had supplied the same to other importers in India. Total value of the goods imported under subject 04 import consignments comes to **Rs. 1,98,91,171/-** as detailed mentioned in **Annexure A** to impugned Notice.

➤ The relevant Rules of CVR, 2007 are reproduced hereunder: -

#### **Rule 5 (Transaction value of similar goods) -**

(1) *Subject to the provisions of rule 3, 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:*

*Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.*

(2) *The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.*

*Further, as per Rule 6 of the CVR, 2007, if the value cannot be determined under Rule 3, 4 & 5, then the value shall be determined under Rule 7 of CVR, 2007.*

**20.** Therefore, the goods covered under subject 04 import consignments pertaining to Warehouse Bills of Entry No. 1016106 dated 09.11.2022, 1016101 dated 09.11.2022, 1015314 dated 27.10.2022 and 1011862 dated 01.09.2022, have been mis-declared in respect of description, classification, quantity and value thereof. Since the goods, i.e., total quantity 73198 Meters of Pu-coated fabrics and 9678 Meters of PVC coated fabrics found during examination of the goods pertaining to Container No. FCIU9268680 and EITU1377100 have not been declared differently at the time filing Import General Manifest and the importer having done all he could to subvert the investigation by not appearing nor using the opportunity to come forth with documents sought for ; therefore, I find that the same are to be liable for confiscation under Section 111(f) of the Customs Act, 1962. I also find that total goods covered under Bills of Entry No. 1016106 dated 09.11.2022; BE No. 1016101 dated 09.11.2022, BE No.1015314 dated 27.10.2022 and BE No.1011862 dated 01.09.2022, found mis-declared in respect of value also, therefore the same are liable for confiscation under Section 111(m) of the Customs Act, 1962.

**21. DUTY DEMAND UNDER SECTION 28(4) OF CUSTOMS ACT, 1962**

**21.1.** The relevant legal provisions of Section 28(4) of the Customs Act, 1962 are reproduced below: -

*“28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—*

*(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—*

- (a) collusion; or*
- (b) any wilful mis-statement; or*
- (c) suppression of facts.”*

*by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.*

**Explanation-** For the purposes of this section, “relevant date” means, -

- (a) in a case where duty is not levied or not paid or short-levied or short-paid, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;*
- (b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;*
- (c) in a case where duty or interest has been erroneously refunded, the date of refund*
- (d) in any other case, the date of payment of duty or interest.*

**21.2.** I find that the importer had mis-declared the value of the goods at the time of filing of Warehouse Bills of Entry. The subject import consignments have been imported from a Chinese Supplier M/s. Lishui Haihe International Enterprises Co. Ltd. Prima facie the declared value of the import goods appeared to be gross undervalued. Analysis of the import data of the said goods showed that the subject import consignments have been mis-declared in respect of value thereof in order to evade the applicable Customs Duty. Therefore the importer by way of resorting to undervaluation of subject goods as mentioned in Annexure-A to the impugned SCN evaded the Customs Duty to **Rs.25,18,076/-** as the total declared Customs duty by the importer was **Rs.46,14,159/-** whereas as per Rule 5 of the Customs Valuation Rules on import of total 112909 Meters of PU-coated fabric, 44780 Meters PVC Coated Fabric, 12342 Kgs Polyester multifilament yarn Fabric with Lycra, and 13907.5 Kgs Flock Fabric, the total Customs Duty liability on the subject 04 import consignments comes to **Rs. 71,32,235/-**.

**22. Demand of Customs Duty and anti dumping duty on the subject goods:**

**22.1.** From the discussion in foregoing paras, I find that the importer intentionally did not declare the PU-coated fabric in the Bills of Lading and IGM. The importer was very well aware with the applicability of anti-dumping duty on the said goods as per Notification No. 14/2022-Customs (ADD) dated 20.05.2022. In the subject 04 import consignments, total 112909 Meters of PU-coated Fabric were found which attracts anti-dumping duty of **Rs.43,57,610/-**. Moreover, the importer had declared the '*Mix Lot of Artificial coated fabric for Auto seat cover (HS code 59032090)*' in 02 Bills of Lading out of subject 04 Bills of Lading and IGM, but they had not declared the actual description of the goods. I find that the importer taking cognizance of action initiated by DRI declared total 94433 Meters of PU-coated fabric attracting anti-dumping duty of **Rs.38,27,537/-** which is less than the actual quantity of the said goods i.e., 112909 Meters of PU-coated fabric. Therefore, the importer has declared total Anti-dumping duty to **Rs. 38,27,537/-** (the value declared in the Warehouse Bills of Entry).

**23. In view of above, I find that** total duty liability demandable and recoverable from M/s. SRAM on the subject 04 import consignments comes to **Rs. 1,14,89,845/- (Anti-dumping duty of Rs. 43,57, 610/-+ other Customs Duty of Rs. 71,32,235/-) under Section 28(4) of the Customs Act, 1962** readwith Notification No. 14/2022-Customs (ADD) dated 20.05.2022.

**24. CONFISCATION OF THE GOODS UNDER SECTION 111(m) OF THE CUSTOMS ACT, 1962:**

**(i).** I find that it is alleged in the SCN that the goods are liable for confiscation under Section 111(f) and Section 111(m) of the Customs Act, 1962. In this regard, I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111(f) and Section 111(m) of the Customs Act, 1962 are reproduced below: -

*(f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;*

*(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 transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;”*

**(ii).** On plain reading of the above provisions of the Section 111(f) and Section 111(m) of the Customs Act, 1962 it is clear that dutiable or prohibited goods not mentioned under the regulation in an arrival manifest, import manifest or import report or any goods, imported by way of misclassification, shall be liable to confiscation. As discussed in the foregoing para's, it is evident the Importer has deliberately misclassified the imported goods with a malafide intention to evade duty. In light of these acts of mis-classification of goods, I find that the impugned imported goods are liable for confiscation as per the provisions of Section 111(f) and Section 111(m) of Customs Act, 1962. I hold so.

**(iii).** As the impugned goods are found to be liable for confiscation under Section 111(f) and Section (m) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCNs. The Section 125 ibid reads as under:-

**“Section 125. Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1/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.”**

**(iv)** A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods, by paying redemption fine. I find that redemption fine can be imposed in those cases where goods are either physically available or the goods have been released provisionally under Section 110A of Customs Act, 1962 against appropriate bond binding concerned party in respect of recovery of amount of redemption fine as may be determined in the adjudication proceedings.

**25.** I find that M/s. SRAM (Noticee No.1) and Shri Shri Inder Kumar (Noticee No.2) vide their written submission dated 08.05.2024 sought cross examination of persons whose statements have been relied upon in the impugned SCN i.e.\_Shri Santosh Kumar, Branch Manager of Shipping Agencies, Shri Jignesh Khimjibhai Noriya, Shri Sailendra Kumar Singh, Sh. Mekwan Martin, and Shri Hemant Balkrishan.

**25.1.** In this connection, from the records available before me I find that none the aforementioned persons have retraced their respective statement. Further, the instant case is related to mis-declaration of goods in respect of classification, quantity, valuation and concealment by M/s. SRAM; which is based on documentary evidences and corroborated by voluntary statements recorded under Section 108 of the Customs Act, 1962. Besides, all the relied upon documents have already been supplied to the noticees, and the submissions made by them have been taken on record. I find that **the statements recorded under Section 108 of the Customs Act, 1962, also make for substantive evidences.**

**25.2.** I observe that when there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross examination. Reliance is placed on Judgement of **Hon'ble Supreme Court in case of K.L. Tripathi vs. State Bank of India & Ors [Air 1984 SC 273]**, as follows:

*“The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action.”*

Therefore, I find that cross examination in the instant case is not necessary.

**25.3.** I observe that the principles of proving beyond doubt and cross examination cannot be applied to a quasi-judicial proceeding where principle remains that as per the preponderance of probability the charges should be established. The cross examination of persons can be allowed during a quasi-judicial proceeding. It is true that as per 138B(2) the provision regarding cross examination shall so far as may be apply in relation to any other proceedings under the customs act. The usage of phrase 'so far as may be' in section 138B (2) shows that cross examination is not mandatory in all cases but the same may be allowed as per circumstances of the case.

**25.4.** I find that in the instant case there remains no scope of ambiguity for a man of prudence. Therefore, I observe that no purpose would be served to allow cross examination of such person as same would only unnecessarily protract the proceedings. I find that denial of Cross-examination does not amount to violation of principles of natural justice in every case. Further, it is a settled position that proceedings before the quasi-judicial authority is not at the same footing as proceedings before a court of law and it is the discretion of the authority as to which request of cross examination to be allowed in the interest of natural justice. I also rely on following case-laws in reaching the above opinion:-

- a. **Poddar Tyres (Pvt) Ltd. v. Commissioner - 2000 (126) E.L.T. 737**:- wherein it has been observed that cross-examination not a part of natural justice but only that of procedural justice and not 4 'sine qua non'.
- b. **Kamar Jagdish Ch. Sinha Vs. Collector - 2000 (124) E.L.T. 118 (Cal H.C.)**:- wherein it has been observed that the right to confront witnesses is not an essential requirement of natural justice where the statute is

silent and the assessee has been offered an opportunity to explain allegations made against him.

- c. **Shivom Ply-N-Wood Pvt. Ltd. Vs Commissioner of Customs & Central Excise Aurangabad- 2004(177) E.L.T 1150(Tri.-Mumbai):-** wherein it has been observed that cross-examination not to be claimed as a matter of right.
- d. Hon'ble Andhra Pradesh High Court in its decision in **Sridhar Paints v/s Commissioner of Central Excise Hyderabad** reported as 2006(198) ELT 514 (Tri-Bang) held that : .....denial of cross-examination of witnesses/officers is not a violation of the principles of natural justice, We find that the Adjudicating Authority has reached his conclusions not only on the basis of the statements of the concerned persons but also the various incriminating records seized. We hold that the statements have been corroborated by the records seized (Para 9)
- e. Similarly in **A.L Jalauddin v/s Enforcement Director reported as 2010(261)ELT 84 (mad) HC** the Hon High court held that; ".....Therefore, we do not agree that the principles of natural justice have been violated by not allowing the appellant to cross-examine these two persons: We may refer to the following paragraph in AIR 1972 SC 2136 = 1983 (13) E.L.T. 1486 (S.C.) (Kanungo & Co. v. Collector, Customs, Calcutta)".

## **26. NOW I PROCEED TO EXAMINE THE ROLES OF THE NOTICEES IN THIS ELABORATE SCHEME TO DEFRAUD THE GOVERNMENT EXCHEQUER BY WAY OF EVADING DUTIES OF CUSTOMS.**

### **26.1. Role and culpability of Shri Inder Kumar proprietor of M/s. SRAM:**

**26.1.1.** From the investigation conducted in the present case, it was revealed that M/s. SRAM actually imported PU-coated fabric (**total quantity 112909 Meters**) which attracts anti-dumping duty as per Notification No. 14/2022-Customs (ADD) dated 20.05.2022, PVC Coated Fabric (total fabric 44780 Meters), Polyester multifilament yarn Fabric with Lycra and bonding material (12342 Kgs) and Flock Fabric (total quantity 13908 Kgs). Whereas they had declared total 39111 Meters of "Mix Lot of Artificial Coated Fabric For Auto Seat Cover (59032090)" in the IGMs and corresponding Bills Lading. Therefore, it is evident that the importer has intentionally not declared the description of goods as PU-coated fabric with malafide intent to evade the duty. Further, after initiation of investigation by the DRI, the importer arranged to declare PU-coated fabrics and other fabrics at the time of filing warehouse Bills of Entry by declaring the total quantity of PU-coated fabric having quantity 94433 meters along with other declared fabrics. Thus, M/s. SRAM, while filing warehouse Bills of Entry had changed the HS code and declared different HS codes as mentioned in the IGM and Bills of Lading, clearly in order to escape the interception of enforcement agency.

**26.1.2.** I find that the importer is also involved in gross undervaluation of the goods as mentioned in Annexure A to the Notice and thereby indulged in evasion of differential Customs Duty to the tune of **Rs.25,18,076/-** as the total declared Customs duty by the importer was Rs. 46,14,159/- whereas as per Rule 5 of the Customs Valuation Rules, the total Duty liability on the import consignments was to **Rs.71,32,235/-**. Therefore, the importer have clearly indulged in evasion of Customs Duty of **Rs. 25,18,076/-**.

**26.1.3.** I find that the importer also mis-declared **112909 Meters** of PU-coated Fabric in the subject 04 import consignment which are subject to total Anti-dumping duty of **Rs.43,57,610/-** as per Notification No. 14/2022-Customs (ADD) dated 20.05.2022.

**26.1.4.** I observe that in terms of Section 28AA (1) of the Customs Act, 1962 the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

**26.1.5.** I find that Shri Inder Kumar, Proprietor of importer never cooperated with the investigation and did not present himself for statement. He also left the rented residential premises, which was declared address of the importer firm without informing the concerned person after the DRI had initiated investigation in the subject case. His activity indicated his deliberate and mala-fide intention of evasion of Custom duty and other applicable duty. His activities as discussed in detailed in foregoing paras, indicated his deliberate and mala-fide intention of evasion of Custom duty and other applicable duty. Such act of commission and omission on the part of Shri Inder Kumar rendered the subject goods mentioned in Annexure-A to impugned SCN liable to confiscation under Section 111(f) and 111(m) of the Customs Act, 1962 and thereby rendered him liable to penalty under Section 112(a), 112 (b) and 117 of the Customs Act, 1962.

**26.1.6.** I find that Shri Inder Kumar in spite of having issued various Summons, did not provide the specific documents related to import, selling and purchasing of the subject goods. He provided the incorrect details/documents to the Customs authorities for import, warehousing and clearance of the subject offending goods. He also forwarded incorrect documents for filing of import documents for these consignments with false declarations. He knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, classification, value etc., with mala-fide intention, and it appears that Shri Inder Kumar is also liable to penalty under Section 114AA of the Customs Act, 1962.

**26.1.7.** I observe that Section 114A of the Customs Act, 1962 stipulates that the person who is liable to pay duty by reason of collusion or any wilful mis-statement or suppression of facts as determined under section 28, is also be liable to pay penalty under Section 114A. These acts and omissions of the Importer rendered them liable for penal action under Section 114A of the Customs Act, 1962. I observe that as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive. When penalty under section 114A is imposed, penalty under Section 112 is not imposable. Therefore, penalty under Section 112 of Customs Act, 1962 is not warranted upon Shri Inder Kumar.

➤ Section 114A of the Customs Act, 1962 is reproduced hereunder-

*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 sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.

Provided that where such duty or interest, as the case may be, 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 the 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 duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

*Explanation. - For the removal of doubts, it is hereby declared that -*

(i) .....

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.

**26.1.8.** I find that penalty under Section 117 of the Customs Act, 1962 is imposable for contravention, etc., not expressly mentioned. Since penalty under Section 114 of the Customs Act is expressly mentioned, penalty upon Shri Shri Inder Kumar under Section 117 of the Customs Act, 1962 is not warranted. I hold so.

**27. IN VIEW OF DISCUSSION AND FINDINGS SUPRA, I PASS THE FOLLOWING ORDER:**

**ORDER**

(i) I confirm the demand of applicable Anti-dumping duty of **Rs.43,57,610/- (Rupees Forty Three Lakhs Fifty Seven Thousand Six Hundred Ten Only)** on total **112909 Meters** of PU-

coated Fabric which was found concealed in the subject 04 import consignments covered under Warehousing Bills of Entry No. 1016106 dated 09.11.2022, 1016101 dated 09.11.2022, 1015314 dated 27.10.2022 and 1011862 dated 01.09.2022; and order to recover the same from **M/s. Sram Trading Company (IEC No. BCRPK2904D)** in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962 readwith Notification No. 14/2022-Customs (ADD) dated 20.05.2022, along with applicable interest under Section 28AA of the Customs Act, 1962 as detailed vide Annexure A to impugned Notice.

(ii) I reject the declared assessable value of **Rs.1,20,98,971/-** for total 112909 Meters of PU coated fabric falling under HS Code 59032090, 44780 Meters PVC Coated Fabric falling under HS Code 59031090, 12342 Kgs Polyester multifilament yarn Fabric with Lycra falling under HS Code 60064200, and 13908 Kgs Flock Fabric falling under HS Code 59070012, under Rule 12 of Customs Valuation Rules 2007 as there has been observed significant mis-declaration, and re-determine the same under Section 14 of the Customs Act, 1962 under Rule 5 of Customs Valuation (Determination of value of imported goods) Rules, 2007 as **Rs.1,98,91,171/-**.

(iii) I confirm the demand of applicable Customs Duty of **Rs.71,32,235/- (Rupees Seventy One Lakhs Thirty Two Thousand Two Hundred Thirty Five Only)**; and order to recover the same from **M/s. Sram Trading Company (IEC No. BCRPK2904D)** in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962 as detailed vide Annexure A to impugned Notice.

(iv) I order to confiscate the impugned goods mentioned at para (ii) above which are found mis-declared in respect of description, classification, quantity and value thereof under Section 111(m) of the Customs Act, 1962; further I order to confiscate the impugned goods with total quantity of 73198 Meters of PU-coated fabrics and 9678 Meters of PVC coated fabrics found during examination of the goods pertaining to subject Containers and have not been found declared at the time filing import General Manifest under Section 111(f) of the Customs Act, 1962. However, I give **M/s. Sram Trading Company (IEC No. BCRPK2904D)**, an option to redeem the impugned goods on payment of redemption fine of **Rs. 20,00,000/- (Rupees Twenty Lakhs only)** under Section 125 of the Customs Act, 1962 in lieu of confiscation of impugned imported goods.

(v) I impose penalty of **Rs.1,14,89,845/- (Rupees One Crore Fourteen Lakhs Eighty Nine Thousand Eight Hundred Forty Five only)** upon Shri Inder Kumar Proprietor of M/s. Sram Trading Company under Section 114A of the Customs Act, 1962.

(vi) I impose Penalty of **Rs.7,50,000/- (Rupees Seven Lakhs Fifty Thousand only)** upon **Shri Inder Kumar Proprietor of M/s. Sram Trading Company** under Section 114AA of the Customs Act, 1962.

(iv) I refrain from imposing penalty upon **Shri Inder Kumar Proprietor of M/s. Sram Trading Company** under Section of Section 112(a) and

112(b) of the Customs Act, 1962 since as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive, hence, when penalty under section 114A is imposed, penalty under section 112 is not imposable.

(i) I refrain from imposing penalty in terms of Section 117 of the Customs Act, 1962 upon **Shri Inder Kumar Proprietor of M/s. Sram Trading Company**, for the reasons discussed hereinabove.

**28.** This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

*30/5/2024*  
**(K. Engineer)**  
Principal Commissioner of Customs  
Custom House Mundra.

**Date: 30.05.2024.**

**F.No. CUS/ADJ/COMM/645/2023-Adjn.**

**BY SPEED POST/BY EMAIL/ NOTICE BOARD:**

**To (The Noticees),**

*1833 & 1834* *O/C*

**1- M/s. Sram Trading Company (IEC No. BCRPK2904D),**  
Sadguru Smart City, 101, Nana Kapaya, Shantivan Road, Mundra Kutch,  
Gujarat-370421 (email- sramtradingcompany1111@gmail.com)

**2- Shri Inder Kumar, Proprietor of M/s. Sram Trading Company,**  
Sadguru Smart City, 101, Nana Kapaya, Shantivan Road, Mundra Kutch,  
Gujarat-370421 (email- sramtradingcompany1111@gmail.com)  
And Dhador (28), Mahendragarh, Haryana-123029

**COPY TO:-**

- 1) The Chief Commissioner of Customs, CCO, Ahmedabad.
- 2) The Additional Director, DRI, Gandhidham Regional Unit, Plot No.5866, Ward-5A, Near Vinayak Hospital, Adipur, Kutch-370205 (Email:driganru@nic.in), for information.
- 3) The Specified Officer, Mundra Special Economic Zone, Gandhidham.
- 4) The Deputy/Assistant Commissioner (Legal/Prosecution), Customs House, Mundra.
- 5) The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
- 6) The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
- 7) Notice Board.
- 8) Guard File.

1