


	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT -370421 PHONE : 02838-271426/271428 FAX :02838-271425	 सत्यमेव जयते
A	File No.	CUS/APR/BE/SAO/62/2023-Gr 3-O/o Pr Commr-Cus-Mundra
B	OIO No.	MCH/ADC/MK/93/2023-24
C	Passed by	Mukesh Kumari, Additional Commissioner (Import), Custom House Mundra.
D	SCN No. & Date	Importer requested for waiver in PH/SCN vide their letter dated 24.06.2023
E	Noticee / Party / Importer	M/s Krishna Spare parts, (IEC No. BXNPK0527R) 242A, Gali No 9, Village Gopalpur, North Delhi-110009
F	DIN	20230671MO0000555AAD

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

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

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

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BRIEF FACTS OF THE CASE: -

M/s. Krishna Spare parts holding IEC NO: BXNPK0527R (hereinafter referred to as 'the Importer'), had filed Bill of Entry No. 4210042 dated 16.01.2023 for import goods mentioned in Table-A. The subject cargo having total declared assessable value is. Rs. 10,81,278/- and total declared duty is Rs. 3,96,181/-

(Table-A)

Sr. No.	Description of Goods as Declared	Qty Declared (Meter)	Declared Value of the Goods as per BE (Rs.)	Classified under
1	Glitter Coated fabric	12450	239674	59039090
2	PVC Coated Fabric	12250	287081	59039090
3	Non-woven coated fabric	26500	554512	59039090

2. The container containing the above cargo was lying on terminal for a long period and therefore, the said container was put on hold for SIIB examination suspecting concealment/mis-declaration. The containers were destined to SEZ initially.

3. The goods were examined by the SIIB officers in presence of authorised representative of the CHA. It was found that there was no concealment in as much as only fabric was found in the consignment. Quantity was also verified since counting of rolls was found as declared on Invoice and Packing List provided by the representative of the CHA during examination. Rolls of different colours, thickness/GSM were found and therefore, the consignment was found to be stocklot. However, samples were still drawn and sent to the CRCL for testing.

4. Since the container was lying at terminal for long and destined to SEZ initially, on importer's request provisional release of goods was allowed. Since there were various kinds of rolls in terms of thickness/GSM/colours, 2 samples from each container were taken. The details of the testing reports are as given below:

Table-B

Sr. No.	Item Description Declared	Test Result	Correct Classification

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1	Glitter Coated Fabric	Bonded Fabric having knitted layers with glitter on one side and white layer on other side. Both the layers adhered to using adhesive material.	60063400
2	PVC Coated Fabric	PVC coated having woven fabric base	59039090
3	Non-woven Fabric	PU coated fabric having non-woven base	59032090

4.1 As per the details given in above table, item number 1 and 3 are misclassified. **Item number 1 has been classified under CTH 59039090 while correct classification should be 60063400. Also, item number 3 has been classified under CTH 59039090 while since the Polyurethane coating has been found. Therefore, correct classification for item number 3 should be 59032090.** Hence, the importer has imported the goods by way of mis-declaration/misclassification in terms of CTH. For more appreciation of the facts, text of the CTH 5903 and 6006 is being reproduced as under:

5903 TEXTILE FABRICS, IMPREGNATED, COATED, COVERED OR LAMINATED WITH PLASTICS, OTHER THAN THOSE OF HEADING 5902

5903 10 - With polyvinyl chloride:

5903 10 10 --- Imitation leather fabrics of cotton

5903 10 90 --- Other

5903 20 - With polyurethane:

5903 20 10 --- Imitation leather fabrics, of cotton

5903 20 90 --- Other

5903 90 - Other:

5903 90 10 --- Of cotton

5903 90 20 --- Polyethylene laminated jute fabrics

5903 90 90 --- Other

6006 OTHER KNITTED OR CROCHETED FABRICS:

- of synthetic fibres:

6006 31 00 -- unbleached or bleached

6006 32 00 -- Dyed

6006 33 00 -- of yarns of different colours

6006 34 00 -- Printed

5. As the importer declared item 1 as “Glitter Coated Fabric” and

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classified it under CTH 59039090 while on testing of the representative sample it was found that the imported goods are “Bonded Fabric” classifiable under CTH 60063400. Similarly, item 3 is declared “PVC Coated Non-Woven Fabric”, classified under CTH 59039090 while the goods have been found to be “PU coated fabric having non-woven base” classifiable under CTH 59032090.

6. As the goods were found mis-declared in terms of description and classification, the assessable Value declared by the importer is liable to be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Hence, to re-determine correct value as per Customs Valuation Rules, 2007, NIDB data was searched. As the value of impugned goods could not be determined under the provisions of sub-rule (1) of Rule 3 of the Customs Valuation Rules (CVR), 2007, the same was required to be determined sequentially under rule 4 to 9 of CVR 2007.

7. As per Rule 4 of CVR, 2007, 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; and As per Rule 5 of CVR, 2007 the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued. To determine the value of the imported goods as per Rule 4 or Rule 5 of CVR 2007, contemporaneous data of import of identical or similar goods for three months was retrieved from ICES 1.5. On perusal of the retrieved data, data of similar items [Rules 5 of the Customs Valuation Rules (CVR), 2007] in terms of description, quantity and country of origin was found and thus, value of item number 1 was found to be Rs. 4,34,291/-; of item 2 was found to be Rs. 4,08,744/- and of item 3 was found to be Rs. 6,20,610/-. **Thus, total value was found to be Rs. 14,63,644/-.**

8. RELEVANT LEGAL PROVISIONS

8.1 SECTION 46 of the Customs Act, 1962

Entry of goods on importation - (1) *The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically to the proper officer a bill of entry for home*

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consumption or warehousing in the prescribed form:

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

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

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

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

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

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

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any,

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relating to the imported goods.

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

8.2. SECTION 111 (m) OF THE CUSTOMS ACT, 1962:

111. Confiscation of improperly imported goods etc.

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

(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

8.3. SECTION 112 OF THE CUSTOMS ACT, 1962:

Penalty for improper importation of goods, etc. -Any person, -

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

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, 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,

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

1[(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the

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duty sought to be evaded or five thousand rupees, whichever is higher:

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

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

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

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

8.4. Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (Rejection of declared value):

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

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

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sub-rule (1).

Explanation. -(1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include

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(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents.

9. In View of the Above Facts, It Appears That:

- i. The importer has mis-declared goods while importing in contravention to section 46 of the Customs Act, 1962. Therefore, the subject goods covered under Bills of Entry bearing number 4210042 dated 16.01.2023 valued at Rs. 14,63,644/- are liable for confiscation under section 111(m) of the Customs Act, 1962;
- ii. Importer is liable to pay the differential duty including Basic Customs

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Duty, IGST, SWS & Antidumping Duty of Rs. 12,45,750/- and interest as applicable under the provisions of the Customs Act, 1962;

- iii. Penalty on the importer M/s Krishna Spare Parts, 242A, Gali No 9, Village Gopalpur, North Delhi-110009 should be imposed under Section 112(a) of the Customs Act, 1962.

WAIVER OF PERSONAL HEARING AND SCN

- 10.** The Importer, vide their letter dated 24.06.2023 Submitted that they do not want any show cause notices and personal hearing in this matter.

DISCUSSION & FINDING

11. I have carefully gone through the Investigation report dated 10.06.2023 issued by the Deputy Commissioner of Customs (SIIB), Mundra and I find that M/s. Krishna Spare parts holding IEC NO: BXNPK0527R (hereinafter referred to as 'the Importer'), had filed Bill of Entry No. 4210042 dated 16.01.2023 for clearance of "Glitter Coated fabric, PVC Coated Fabric & Non-woven coated fabric under CTH 59039090. The cargo having declared assessable value is Rs.10,81,278/- and total declared duty is Rs. 3,96,181/-.

12. I find that the container covered under subject bill of entry subject was lying on terminal for a long period and therefore, the container was put on hold for 100% examination and further investigations by SIIB in this regard. During investigation it was found that there was no concealment in as much as only fabric was found in the consignment. Quantity was also verified since counting of rolls was found as declared on Invoice and Packing List provided by the representative of the CHA during examination. Rolls of different colours, thickness/GSM were found and therefore, the consignment was found to be stocklot. However, samples were drawn and sent to the CRCL for testing. Since the container was lying at terminal for long and destined to SEZ initially, on importer's request provisional release of goods was allowed.

13. I find that declared item 1 as "Glitter Coated Fabric" and classified it under CTH 59039090 while on testing of the representative sample it was

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found that the imported goods are “Bonded Fabric” classifiable under CTH 60063400. Similarly, item 3 is declared “PVC Coated Non-Woven Fabric”, classified under CTH 59039090 while the goods have been found to be “PU coated fabric having non-woven base” classifiable under CTH 59032090. As per CBIC Notification No. 14/2022 – Customs (ADD) dated 20.05.2022 imposed Anti-dumping duty on import of “Polyurethane Leather which includes any kind of textile coated one sided or both sided with Polyurethane” falling under tariff item 5603 94 90 or 5903 20 90 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). As per above Notification it is clear that 0.46 USD per Meter Anti-dumping duty is applicable on import of “Polyurethane Leather which includes any kind of textile coated one sided or both sided with Polyurethane” from China.

14. I find that the goods were found mis-declared in terms of description and classification, the assessable Value declared by the importer is liable to be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Hence, to re-determine correct value as per Customs Valuation Rules, 2007, NIDB data was searched. As the value of impugned goods could not be determined under the provisions of sub-rule (1) of Rule 3 of the Customs Valuation Rules (CVR), 2007, the same was required to be determined sequentially under rule 4 to 9 of CVR 2007.

15. I find that, as per Rule 4 of CVR, 2007, 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; and As per Rule 5 of CVR, 2007 the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued. To determine the value of the imported goods as per Rule 4 or Rule 5 of CVR 2007, contemporaneous data of import of identical or similar goods for three months was retrieved from ICES 1.5. On perusal of the retrieved data, data of similar items [Rules 5 of the Customs Valuation Rules (CVR), 2007] in terms of description, quantity and country of origin was found and thus, value of item number 1 was found to be Rs. 4,34,291/-; of item 2 was found to be Rs. 4,08,744/- and of item 3 was found to be Rs. 6,20,610/-. **Thus total value was found to be Rs. 14,63,644/-.**

16. CALCULATION OF DUTY:

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Item No	Item Description	SQM	Unit Price (Per SQM)	Total Value	Total Duty (BCD+IGST +SWS+ADD)
1	Bonded Fabric having knitted layers with glitter on one side and white layer on other side. Both the layers adhered to using adhesive material	17031	25.5	434291	122036
2	PVC Coated Fabric	17031	24	408744	149764
3	PU coated fabric having non-woven base	17031	36.44	620610	1370131
TOTAL				14,63,644/	16,41,931/

17. In view of above, I find that the Importer had paid duty of Rs. 3,96,181/- in respect of the above mentioned bill of entry, however, duty payable in respect of these items is Rs. 16,41,931/-. Thus, differential duty is Rs. 12,45,750/- (Rupees Twelve Lakh Forty-Five Thousand and Seven Hundred Fifty only) in respect of the above mentioned bill of entries.

18. I find that the importer has imported the goods by way of mis-declaration/classification in terms of CTH to avoid the applicable duty and anti-dumping duty which resulted into loss of revenue. The importer has mis-declared goods while importing in contravention to section 46 of the Customs Act, 1962. Therefore, the subject goods covered under Bill of Entry No. 4210042 dated 16.01.2023 valued at Rs. 14,63,644/- (Rupees Fourteen Lakh Sixty-Three Thousand Six Hundred and Forty-Four only) are liable for confiscation under section 111(m) of the Customs Act, 1962.

19. I find that the importer has mis-declared the description of the goods. The importer declared item 1 as “Glitter Coated Fabric” and classified it under CTH 59039090 while on testing of the representative sample it was found that the imported goods are “Bonded Fabric” classifiable under CTH 60063400. Similarly, item 3 is declared “PVC Coated Non-Woven Fabric”, classified under CTH 59039090 while the goods have been found to be “PU coated fabric having non-woven base” classifiable under CTH 59032090. Hence, self-assessment done by the importer under section 17(1) of the Customs Act, 1962 appears to be incorrect and the subject Bill of Entry need to be re-assessed under

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Section 17(4) of the Customs Act, 1962 ibid correctly.

20. I find that the importer while filing the impugned Bill of Entry has subscribed to a declaration regarding correctness of the contents of Bill of Entry under Section 46(4) of the Act, ibid. Further, Section 46(4A) of the Act, casts an obligation on the importer to ensure accuracy of the declaration and authenticity of the documents supporting such declaration. In the instant case, the importer failed to discharge the statutory obligation cast upon him and made wrong declaration about the description & CTH of imported goods.

21. In view of the above, I find that the importer has mis-declared in terms of description, and classification therefore the import goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and importer is liable for penal action under Section 112 (a) of the Customs Act, 1962. Section 125 of the Customs Act, 1962 Provide that Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation where is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods an option to pay in lieu of confiscation such fine as the said officer thinks fit. I find that said provision makes it mandatory to grant an option to owner of the confiscated goods to pay fine in lieu of confiscation in case the goods are not prohibited. I find it appropriate to allow for redeem under section 125 of the Customs Act, 1962.

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

ORDER

i . I order for confiscation of the goods covered under Bill of Entry No. 4210042 dated 16.01.2023 having re-determined assessable value Rs. **14,63,644/- (Rupees Fourteen Lakh Sixty-Three Thousand Six Hundred and Forty-Four only)** under Section 111(m) of the customs Act, 1962. However, considering facts of the case and provisions of the Section 125 of the Customs Act, 1962, I give option to re-deem the same on payment of Redemption Fine of Rs. 2,00,000/- (Rs. Two Lakh only/-) in

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lieu of confiscation.

ii. I order to recover the differential duty including BCD+SWS+IGST+ADD of **Rs. 12,45,750/- (Rupees Twelve Lakh Forty-Five Thousand and Seven Hundred Fifty only)** against the Bills of Entry Nos. 4210042 dated 16.01.2023 and applicable interest under the provisions of Customs Act, 1962.

iii. I impose penalty of Rs. 1,25,000/- (Rs one Lakh Twenty Five Thousand only) on the importer M/s. Krishna Spare parts, (IEC No. BXNPK0527R), under Section 112 (a) of the Customs Act, 1962

23. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

Signed by

Mukesh Kumar
Additional Commissioner of Customs

Date: 27-06-2023, 16:54:38
Mundra

F. NO. CUS/APR/BE/SAO/62/2023-Gr 3-O/o Pr Commr-Cus-Mundra

27-06-2023

To

M/s. Krishna Spare parts, (IEC No. BXNPK0527R)
242A, Gali No 9, Village Gopalpur,
North Delhi-110009.

Copy to:

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

