

	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT -370421 PHONE : 02838-271426/271428 FAX :02838-271425	
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A	File No.	CUS/APR/INV/203/2024-Gr.3-O/o Pr. Commr-Cus-Mundra
B	OIO No.	MCH/ADC/AK/66/2024-25
C	Date of Order	11.06.2024
D	Passed by	Arun Kumar, Additional Commissioner, Import Assessment, Custom House, Mundra.
E	SCN/IR No. & Date	CUS/SIIB/46/2024-SIIB Dt. 05.04.2024
F	Noticee / Party / Importer	M/s. B G & Co., (IEC-ABBF1562C) 1 st Floor, Shop No. V-1085, Plot No. 17B, 17C & 20, Sector 19, Aksar Business, Oppo – Janta Market Road, Turbhe, Navi Mumbai, Thane Maharashtra - 400705
G	DIN	20240671MO0000999FB4

- The Order – in – Original is granted to concern free of charge.
- Any person aggrieved by this Order – in – Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. 1 to
The Commissioner of Customs (Appeal), MUNDRA,
Office at 7th floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380009
- Appeal shall be filed within Sixty days from the date of Communication of this Order.
- 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.
- Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.
- While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respect.
- 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:

1.1. An intelligence was gathered by the officers of SIIB Section, Custom House, Mundra that the cargo imported under SEZ warehouse Bill of Entry No. 1000001 dated 01.01.2024 (hereinafter referred to as '*the said BE*') filed by M/s. Fast Track CFS Private Limited, Plot No. 3, Block-C, Sector-11, APSEZ Ltd., Mundra-370421, Gujarat for and on behalf of its client M/s. B G & Company, 1st floor, Shop No. V-1085, Plot No. 17B, 17C & 20, Sector 19, Aksar Business, Oppo- Janta Market road, Turbhe, Navi Mumbai, Thane, Maharastra-400705 holding IEC No: ABBFB1562C (hereinafter referred to as '*the importer*') through their Customs Broker M/s. Aum Shipping and Logistic (hereinafter referred to as '*the CB*') at Mundra SEZ port for import of 'Cotton Woven Dyed Fabric' (CTH-52083290) has possible mis-declaration in respect of in respect of quantity, concealment and nature, composition & description. Hence, the container no. GCXU5090099 was put on hold for detailed examination of the goods by the SIIB section, Custom House, Mundra in view of the suspicion.

2. Action taken:

2.1. Based on the above suspicion, examination of the said consignment was carried out by the officers of SIIB section in presence of representative of the CB. On being asked, the representative of the CB provided copies of the said BE and other import documents viz. Bill of Lading No.

SZDG30148000 dated 16.12.2023, Invoice No. DIA-231223 dated 15.12.2023 and concerned Packing List. As per the said BE, the cargo is imported from M/s. DIA Impex Company Limited, China and the declared imported goods is 'Cotton Woven Dyed Fabric' (CTH 52083290). The declared quantity of the imported goods is 925 Bales, gross weight 25270 Kgs, 126350 square meter and total assessable value is Rs.12,70,576/- and total duty is Rs. 2,10,281/-.

2.2. During the course of examination, CFS weight of the cargo is found as 25300 Kgs which is 30 Kgs in excess from the declared gross weight i.e. 25270 Kgs. Further, during the course of examination, total 925 PKGs of different types of fabric were found stuffed into the said container, which is found 'as declared' in the import documents. The details of those packages found during the course of examination are as under:

S. No.	Code Mentioned on the packing	No. of Packages
1	YJN	110
2	YJN-SH	7
3	YJN-C	8
4	YJF	332
5	YJ-C	51
6	YJH	30
7	YJA	200
8	JYQ	67
9	YJQ-H	35
10	YJ	27
11	YJ-SH	58
Total Packages		925 Packages

3. **Investigations Conducted:**

3.1. During the course of examination, quantity of the imported goods was found as declared in respect of number of PKGs i.e. 925. Further, as per weighment conducted at the warehouse, the imported goods are found only 30 Kgs in excess from the declared weight. In view of the same, the doubt in respect of excess quantity as well as concealment is dispelled. However, on visual examination, actual nature, composition and description of the goods could not be ascertained, therefore, representative samples were drawn and forwarded to the CRCL, Kandla for testing purpose vide Test Memo No. 845 to 855 all dated 19.01.2024 issued from F. No. S/43-149/Fabric/SIIB-B/CHM/2023-24. The CRCL Kandla has reported as under:

- i. TM No. 845 (report dated 01.02.2024): the sample as received is in the form of cut piece of dyed (black coloured) woven fabric. It is made of a Polyester filament with Lycra on one side and balanced spun yarn of polyester & viscose on the other side.

GSM (as such) = 151.16

Polyester = 68.62%

Lycra = 4.10%

Viscose = Balance

It is other than Cotton fabric.

- ii. TM No. 846 (report dated 05.02.2024): the sample as received is in the form of cut piece of dyed & printed woven fabric. It is composed of

polyester multifilament yarn with lycra on one side and balanced spun yarn of Polyester & Viscose on other side.

GSM (as such) = 153.3

% of Composition:

Polyester = 67.4% by wt.

Viscose = 27.4 % by wt.

Lycra = Balance

It is other than Cotton fabric.

(iii) TM No. 847 (report dated 01.02.2024): the sample as received is in the form of cut piece of a yarn dyed woven fabric. It is composed of viscose spun yarns on one side and nylon filament yarns on other side.

GSM (as such) = 105.2

% of Composition:

Viscose = 83.56% by wt.

Nylon = Balance

It is other than Cotton fabric.

(iv) TM No. 848 (report dated 06.02.2024): the sample as received is in the form of cut piece of white knitted fabric. It is composed of polyester multifilament yarns together with Lycra.

GSM (as such) = 172.20

% of Composition:

Polyester = 96.27% by wt.

Lycra = Balance

It is other than Cotton fabric.

(v) TM No. 849 (report dated 01.02.2024): the sample as received is in the form of cut piece of a yarn dyed woven fabric having selvedge on both sides. It is composed of polyester multifilament yarns together with Lycra on both sides.

GSM (as such) = 183.7

% of Composition:

Polyester = 90.15% by wt.

Lycra = Balance

It is other than Cotton fabric.

(vi) TM No. 850 (report dated 01.02.2024): the sample as received is

in the form of cut piece of a yarn dyed woven fabric having selvedge on both sides. It is composed of blended spun yarn of polyester & viscose together with Lycra on one side.

GSM (as such) = 164.5

% of Composition:

Polyester = 65.27% by wt.

Viscose = 30.0% by wt.

Lycra = Balance

It is other than Cotton fabric.

(vii) TM No. 851 (report dated 31.01.2024): the sample as received is in the form of cut piece of white self-designed woven fabric. It is composed of polyester multifilament yarns (textured).

GSM (as such) = 147.6

It is other than Cotton fabric.

(viii) TM No. 852 (report dated 07.02.2024): the sample as received is in the form of cut piece of yarn dyed woven fabric. It is composed of blended spun yarn of Polyester and Viscose together with small amount of lycra.

GSM (as such) = 121.0

% of Composition:

Polyester = 41.2% by wt.

Viscose = 54.2% by wt.

Lycra = Balance

It is other than Cotton fabric.

(ix) TM No. 853 (report dated 07.02.2024): the sample as received is in the form of cut piece of yarn dyed woven fabric. It is composed of blended spun yarn of Polyester and Viscose together with small amount of lycra.

GSM (as such) = 149.81

% of Composition:

Polyester = 45.11% by wt.

Viscose = 49.93% by wt.

Lycra = Balance

It is other than Cotton fabric.

(x) TM No. 854 (report dated 06.02.2024): the sample as received

is in the form of cut piece of dyed (light green coloured) woven fabric. It is composed of spun yarns on one side and Polyester spun yarn with lycra on other side.

GSM (as such) = 113.21

% of Composition:

Polyester = 97.54% by wt.

Lycra = Balance

It is other than Cotton fabric.

(xi) TM No. 855 (report dated 05.02.2024): the sample as received is in the form of cut piece of white self-designed woven fabric. It is composed of Polyester multifilament yarns and Viscose spun yarn.

GSM (as such) = 151.67

% of Composition:

Polyester = 67.35% by wt.

Viscose = Balance

It is other than Cotton fabric.

3.1.1. All the aforementioned test reports were subsequently also conveyed to the importer by this office vide letter dated 12.02.2024 issued from F.No. S/43-149/Fabric/SIIB-B/CHM/2023-24.

3.2. Classification of the imported goods: The test reports received from the CRCL Kandla as discussed above have been examined with respect to the declaration made by the importer to determine the correct and proper CTH of the imported goods. It is pertinent to mention that principles for the classification of goods are governed by the Harmonized Commodity Description and Coding System (Harmonized System or HSN) issued by the World Customs Organization, Brussels and the General Rules for Interpretation specified there under. The General Rules for the Interpretation (GIR) specified in the Import Tariff are in accordance with the GIR specified in the HSN. In terms of GIR 3A of the HSN and the import Tariff, the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods. Further, GIR 6 of

the HSN and the import Tariff specifies that the classification of goods in the subheadings of a heading shall be determined according to the terms of those sub-headings and any related sub-heading notes.

3.3. TM Nos. 845 & 855: The goods covered under Test Memo Number 845 & 855 are found mis-declared in terms of description of the goods as the goods were declared as “Cotton Woven Dyed Fabric”; however, as per test report, the goods are “other than Cotton Fabric”. Therefore, the correct Classification of the goods is required to be ascertained. It is apparent that as far as the entries at heading level are concerned, heading 5407 of the Import Tariff specifically include “Woven Fabric of synthetic filament yarn, including woven fabrics obtained from materials of heading 54.04”, accordingly, impugned goods are appropriately classifiable under the heading 5407. The said Heading covers goods classifiable under the following sub-headings at the single dash (-) level:

- i. Woven fabrics obtained from high tenacity yarn of nylon or other polyamides or of polyesters;
- ii. Woven fabrics obtained from strip or the like;
- iii. Fabrics specified in Note 9 to Section XI;
- iv. Other woven fabrics, containing 85% or more by weight of filaments of nylon or other polyamides;
- v. Other woven fabrics, containing 85% or more by weight of textured polyester filaments;
- vi. Other woven fabrics, containing 85% or more by weight of polyester filaments;
- vii. Other woven fabrics, containing 85% or more by weight of synthetic filaments;
- viii. Other woven fabrics, containing less than 85% by weight of synthetic filaments, mixed mainly or solely with cotton;
- ix. Other woven fabrics.

3.3.1. All the subheading from (i) to (viii) above has been ruled out as their composition/specifications do not meet the test results and therefore, the merit subheading of the impugned goods appear to be under (ix), i.e. “Other woven fabrics”. The relevant Tariff item at the double dash (--) level:

- i. Unbleached or Bleached;
- ii. Dyed;

- iii. Of yarns of different colours;
- iv. Printed.

3.3.2. The sub-heading (i), (iii) & (iv) above have been ruled out and as per test results therefore, the merit subheading of the impugned goods appear to be under (ii), i.e. “Dyed”. Therefore, as per test result under TM Nos. 845 and 855, the concerned imported goods appear to be classifiable under CTH 54079200 wherein the applicable rate of duty is 20% or Rs.40 per square meter, whichever is higher (BCD) + 0% (SWS) + 5% (IGST).

3.4. TM No. 846: The goods covered under Test Memo Number 846 were found mis-declared in terms of description of the goods as the goods were declared as “Cotton Woven Dyed Fabric”, however, as per test report the goods are “other than Cotton Fabric”. Therefore, the correct Classification of the goods is required to be ascertained. It is apparent that, as far as the entries at heading level are concerned, heading 5407 of the Import Tariff specifically include “Woven Fabric of synthetic filament yarn, including woven fabrics obtained from materials of heading 54.04”, accordingly impugned goods are appropriately classifiable under the heading 5407. The said Heading covers goods classifiable under the following sub-headings at the single dash (-) level:

- i. Woven fabrics obtained from high tenacity yarn of nylon or other polyamides or of polyesters;
- ii. Woven fabrics obtained from strip or the like;
- iii. Fabrics specified in Note 9 to Section XI;
- iv. Other woven fabrics, containing 85% or more by weight of filaments of nylon or other polyamides;
- v. Other woven fabrics, containing 85% or more by weight of textured polyester filaments;
- vi. Other woven fabrics, containing 85% or more by weight of polyester filaments;
- vii. Other woven fabrics, containing 85% or more by weight of synthetic filaments;
- viii. Other woven fabrics, containing less than 85% by weight of synthetic filaments, mixed mainly or solely with cotton;
- ix. Other woven fabrics.

3.4.1. All the subheading from (i) to (viii) above has been ruled out as

their composition/specifications do not meet the test results and therefore, the merit subheading of the impugned goods appear to be under (ix), i.e. “Other woven fabrics”. The relevant Tariff item at the double dash (--) level:

- i. Unbleached or Bleached;
- ii. Dyed;
- iii. Of yarns of different colours;
- iv. Printed.

3.4.2. The sub-heading (i), (ii) & (iii) above have been ruled out and as per test results therefore, the merit subheading of the impugned goods appear to be under (iv), i.e. “Printed”. Therefore, as per test result under TM No. 846, the concerned imported goods appear to be classifiable under CTH 54079400 wherein the applicable rate of duty is 20% or Rs.40 per square meter, whichever is higher (BCD) + 0% (SWS) + 5% (IGST).

3.5. TM No.847: The goods covered under Test Memo No. 847 were found mis-declared in terms of description of the goods as the goods were declared as “Cotton Woven Dyed Fabric”, however, as per test report the goods are “other than Cotton Fabric”. Therefore, the correct Classification of the goods is required to be ascertained. It is apparent that, as far as the entries at heading level are concerned, heading 5408 of the Import Tariff specifically include “Woven Fabric of artificial filament yarn, including woven fabrics obtained from materials of heading 54.05”, accordingly impugned goods are appropriately classifiable under the heading 5408. The said Heading covers goods classifiable under the following sub-headings at the single dash (-) level:

- i. Woven fabrics obtained from high tenacity yarn of viscose rayon;
- ii. Other woven fabrics, containing 85% or more by weight of artificial filament or strip or the like;
- iii. Other woven fabrics;

3.5.1. All the subheading from (i) & (ii) above has been ruled out as their composition/specifications do not meet the test results and therefore, the merit sub-heading of the impugned goods appear to be under (iii), i.e. “Other woven fabrics”. The relevant Tariff item at the double dash (--) level:

- i. Unbleached or bleached;
- ii. Dyed;
- iii. Of yarns of different colours;
- iv. Printed

3.5.2. The sub-heading (i), (iii) & (iv) above has been ruled out and as per test results therefore, the merit subheading of the impugned goods appear to be under (ii), i.e. "Dyed". The relevant Tariff item at the triple dash (---) level:

- i. Fabrics of rayon;
- ii. Other;

3.5.3. As per test results the merit subheading of the impugned goods in respect of Test Memo Number 847 appear to be under (ii), i.e. "Other" and hence, sub-heading (i) above has been ruled out. Therefore, as per test results in respect of Test Memo Numbers 847, the concerned imported goods appear to be classifiable under CTH 54083290 wherein the applicable rate of duty wherein the applicable rate of duty is 20% or Rs.44 per square meter, whichever is higher (BCD) + 0% (SWS) + 5% (IGST).

3.6. TM No. 848: The goods covered under Test Memo Number 848 were found mis-declared in terms of description of the goods as the goods were declared as "Cotton Woven Dyed Fabric", however, as per test report the goods are "other than Cotton Woven Dyed Fabric". Therefore, the correct Classification of the goods is required to be ascertained. It is apparent that, as far as the entries at heading level are concerned, heading 6006 of the Import Tariff specifically include "Other knitted or crocheted fabrics", accordingly impugned goods are appropriately classifiable under the heading 6006. The said Heading covers goods classifiable under the following sub-headings at the single dash (-) level:

- i. Of wool or fine animal hair;
- ii. Of cotton;
- iii. Of synthetic fibres;
- iv. Of artificial fibres;
- v. Other;

3.6.1. All the sub-headings (i), (ii), (iv) & (v) above has been ruled out

as the goods is not made of wool or fine animal hair, cotton, artificial fibres, other, therefore, the merit sub-heading of the imported goods appear to be under (iii), i.e. of synthetic fibres. The said sub-heading covers goods further classifiable under the following sub-headings at the double dash (--) level:

- i. Unbleached or bleached;
- ii. Dyed;
- iii. Of yarns of different colours;
- iv. Printed.

3 . 6 . 2 . As per test result, the goods are “Dyed”, therefore the imported goods appear to be classifiable under CTH 60063200. Hence, it is observed that importer mis-classified the subject goods under CTH 52083290 instead of correct CTH 60063200. Whereas, it appears that, the applicable rate of duty is same i.e. 20% (BCD) + 10% (SWS) + 5% (IGST) in both of the CTH.

3.7. TM No. 849: The goods covered under Test Memo Number 849 were found mis-declared in terms of description of the goods as the goods were declared as “Cotton Woven Dyed Fabric”, however, as per test report the goods are “other than Cotton Fabric”. Therefore, the correct Classification of the goods is required to be ascertained. It is apparent that, as far as the entries at heading level are concerned, heading 5407 of the Import Tariff specifically include “Woven Fabric of synthetic filament yarn, including woven fabrics obtained from materials of heading 54.04”, accordingly impugned goods are appropriately classifiable under the heading 5407. The said Heading covers goods classifiable under the following sub-headings at the single dash (-) level:

- i. Woven fabrics obtained from high tenacity yarn of nylon or other polyamides or of polyesters;
- ii. Woven fabrics obtained from strip or the like;
- iii. Fabrics specified in Note 9 to Section XI;
- iv. Other woven fabrics, containing 85% or more by weight of filaments of nylon or other polyamides;
- v. Other woven fabrics, containing 85% or more by weight of textured polyester filaments;
- vi. Other woven fabrics, containing 85% or more by weight of

- polyester filaments;
- vii. Other woven fabrics, containing 85% or more by weight of synthetic filaments;
- viii. Other woven fabrics, containing less than 85% by weight of synthetic filaments, mixed mainly or solely with cotton;
- ix. Other woven fabrics.

3.7.1. All the subheading from (i) to (v) and (vii) to (ix) above has been ruled out as their composition/specifications do not meet the test results and therefore, the merit subheading of the impugned goods appear to be under (vi), i.e. "Other woven fabrics, containing 85% or more by weight of polyester filaments". The relevant Tariff item at the double dash (-) level:

- i. Containing 85% or more by weight of non-textured polyester filaments;
- ii. Other;

3.7.2. As per test results, the merit subheading of the impugned goods in respect of Test Memo Number 849 appear to be under (i), i.e. "Containing 85% or more by weight of non-textured polyester filaments" and hence, sub-heading (ii) above has been ruled out. Therefore, as per test results in respect of Test Memo Number 849, the concerned imported goods appear to be classifiable under CTH 54076190 wherein the applicable rate of duty wherein the applicable rate of duty is 20% or Rs.150 per Kgs., whichever is higher (BCD) + 0% (SWS) + 5% (IGST).

3.8. TM No. 850, 852 and 853: The goods covered under Test Memo Number 850, 852 and 853 were found mis-declared in terms of description of the goods as the goods were declared as "Cotton Woven Dyed Fabric", however, as per test report the goods are "other than Cotton Fabric". Therefore, the correct Classification of the goods is required to be ascertained. It is apparent that, as far as the entries at heading level are concerned, heading 5515 of the Import Tariff specifically include "Other woven Fabrics of synthetic staple fibres", accordingly impugned goods are appropriately classifiable under the heading 5515. The said Heading covers goods classifiable under the following sub-headings at the single dash (-) level:

- i. Of polyester staple fibres;
- ii. Of acrylic or modacrylic staple fibres;
- iii. Other woven fabrics;

3.8.1. All the subheading from (ii) & (iii) above has been ruled out as their composition/specifications do not meet the test results and therefore, the merit subheading of the impugned goods appear to be under (i), i.e. "Of polyester staple fibres". The relevant Tariff item at the double dash (--) level:

- i. Mixed mainly or solely with viscos rayon staple fibres;
- ii. Mixed mainly or solely with man-made filaments;
- iii. Mixed mainly or solely with wool or fine animal hair;
- iv. Other;

3.8.2. The sub-heading (ii), (iii) & (iv) above has been ruled out and as per test results therefore, the merit subheading of the impugned goods appear to be under (i), i.e. "Mixed mainly or solely with viscos rayon staple fibres". The relevant Tariff item at the triple dash (---) level:

- i. Unbleached;
- ii. Bleached;
- iii. Dyed;
- iv. Printed;
- v. Other;

3.8.3. The sub-heading (i), (ii), (iv) & (v) above have been ruled out and as per test results therefore, the merit subheading of the impugned goods appear to be under (iii), i.e. "Dyed". Therefore, as per test result under TM Nos.850, 852 & 853, the concerned imported goods appear to be classifiable under CTH 55151130 wherein the applicable rate of duty is 20% or Rs.40 per square meter, whichever is higher (BCD) + 0% (SWS) + 5% (IGST).

3.9. TM No. 851: The goods covered under Test Memo Number 851 were found mis-declared in terms of description of the goods as the goods were declared as "Cotton Woven Dyed Fabric", however, as per test report the goods are "other than Cotton Fabric". Therefore, the correct Classification of the goods is required to be ascertained. It is apparent that, as far as the

entries at heading level are concerned, heading 5407 of the Import Tariff specifically include “Woven Fabric of synthetic filament yarn, including woven fabrics obtained from materials of heading 54.04”, accordingly impugned goods are appropriately classifiable under the heading 5407. The said Heading covers goods classifiable under the following sub-headings at the single dash (-) level:

- i. Woven fabrics obtained from high tenacity yarn of nylon or other polyamides or of polyesters;
- ii. Woven fabrics obtained from strip or the like;
- iii. Fabrics specified in Note 9 to Section XI;
- iv. Other woven fabrics, containing 85% or more by weight of filaments of nylon or other polyamides;
- v. Other woven fabrics, containing 85% or more by weight of textured polyester filaments;
- vi. Other woven fabrics, containing 85% or more by weight of polyester filaments;
- vii. Other woven fabrics, containing 85% or more by weight of synthetic filaments;
- viii. Other woven fabrics, containing less than 85% by weight of synthetic filaments, mixed mainly or solely with cotton;
- ix. Other woven fabrics;

3.9.1. All the subheading from (i) to (iv) and (vi) to (ix) above has been ruled out as their composition/specifications do not meet the test results and therefore, the merit subheading of the impugned goods appear to be under (v), i.e. “Other woven fabrics, containing 85% or more by weight of textured polyester filaments”. The relevant Tariff item at the double dash (--) level:

- i. Unbleached or bleached;
- ii. Dyed;
- iii. Of yarns of different colours;
- iv. Printed

3.9.2. The sub-heading (i), (iii) & (iv) above has been ruled out and as per test results therefore, the merit subheading of the impugned goods appear to be under (ii), i.e. “Dyed”. The relevant Tariff item at the triple dash (---) level:

- i. Polyester shirtings;
- ii. Polyester suitings;
- iii. Terylene and dacron sarees;
- iv. Polyester sarees;
- v. Other;

3.9.3. The sub-heading from (i) to (iv) above has been ruled out as the goods have not been specified to be used as shirtings/sutings/sarees in the test results therefore, the merit subheading of the impugned goods appear to be under (v), i.e. "Other". Therefore, as per test result under TM No. 851, goods found in the import consignment appear to be classifiable under CTH 54075290 wherein the applicable rate of duty is 20% or Rs.23 per Kgs., whichever is higher (BCD) + 0% (SWS) + 5% (IGST).

3.10. TM No.854: The goods covered under Test Memo Number 854 were found mis-declared in terms of description of the goods as the goods were declared as "Cotton Woven Dyed Fabric", however, as per test report the goods are "Other than Cotton Fabric". Therefore, the correct Classification of the goods is required to be ascertained. It is apparent that, as far as the entries at heading level are concerned, heading 5512 of the Import Tariff specifically include "Woven fabrics of synthetic staple fibres, containing 85% or more by weight of synthetic staple fibres", accordingly impugned goods are appropriately classifiable under the heading 5512. The said Heading covers goods classifiable under the following sub-headings at the single dash (-) level:

- i. Containing 85% or more by weight of polyester staple fibres;
- ii. Containing 85% or more by weight of acrylic or modacrylic staple fibres;
- iii. Other;

3.10.1. All the subheading from (ii) & (iii) above has been ruled out as their composition/specifications do not meet the test results and therefore, the merit subheading of the impugned goods appear to be under (i), i.e. "Containing 85% or more by weight of polyester staple fibres". The relevant Tariff item at the double dash (--) level:

- i. Unbleached or bleached;
- ii. Other;

3.10.2. The sub-heading (i) above has been ruled out and as per test results therefore, the merit subheading of the impugned goods appear to be under (ii), i.e. “Other”. The relevant Tariff item at the triple dash (---) level:

- i. Dyed;
- ii. Printed;
- iii. Other;

3.10.3. The sub-heading (ii) & (iii) above have been ruled out and as per test results therefore, the merit subheading of the impugned goods appear to be under (i), i.e. “Dyed”. Therefore, as per test result under TM No. 854 the concerned imported goods appear to be classifiable under CTH 55121910 wherein the applicable rate of duty is 20% or Rs.25 per square meter, whichever is higher (BCD) + 0% (SWS) + 5% (IGST).

3.11. All the above test results may be summarised as under:

Cargo declared	CTH Declared	TM	Test results	Correct CTH	Remarks
Cotton Woven Dyed Fabric	5208 3290	845	Polyester multifilament yarn other than cotton fabric	5407 9200	Mis-declared
Cotton Woven Dyed Fabric	5208 3290	846	Polyester multifilament yarn	5407 9400	Mis-declared
Cotton Woven Dyed Fabric	5208 3290	847	Dyed woven fabric, Viscose spun and nylon filament yarn; other than cotton fabric	5408 3290	Mis-declared
Cotton Woven Dyed Fabric	5208 3290	848	Knitted fabric, Polyester multifilament yarns other than cotton fabric	6006 3200	Mis-declared
Cotton Woven Dyed Fabric	5208 3290	849	Polyester multifilament yarn other than cotton fabric	5407 6190	Mis-declared
Cotton Woven Dyed Fabric	5208 3290	850	Blended spun yarn of Polyester other than cotton fabric	5515 1130	Mis-declared
Cotton Woven Dyed Fabric	5208 3290	851	Textured Polyester filament yarn other than cotton fabric	5407 5290	Mis-declared
Cotton Woven Dyed Fabric	5208 3290	852	Polyester spun yarn other than cotton fabric	5515 1130	Mis-declared
Cotton Woven Dyed Fabric	5208 3290	853	Polyester spun yarn other than cotton fabric	5515 1130	Mis-declared
Cotton Woven Dyed Fabric	5208 3290	854	Polyester spun yarn other than cotton fabric	5512 1910	Mis-declared
Cotton Woven Dyed Fabric	5208 3290	855	Polyester multifilament yarn other than cotton fabric	5407 9200	Mis-declared

4. In view of above, it appears that the importer has mis-classified the imported goods under CTH 52083290 instead of correct CTH as detailed at para-supra with an intention to evade payment of the applicable Customs duty. Consequently, the imported goods are found liable to be re-classified under different CTH arrived on the basis of lab test results as discussed at para-supra and are also liable to be re-assessed accordingly. Further, in the said BE, invoice and packing list, total quantity of these goods have

been declared as 25270 KGs & 126350 sq. mtr. However, during the course of examination the weight of the imported goods is found as 25300 KGs., i.e. 30 Kgs in excess from the declared weight. Accordingly, net quantity in square meter of the impugned goods is required to be ascertained considering the different GSMs as reported by the CRCL lab, which comes to 162593.49 square meter instead of 126350 square meter as declared in the said BE, as tabulated below:

TM	Wt. (Kgs)	GSM	Sq. Mtr.
845	3675.80	151.16	24317.28
846	461.97	153.3	3013.50
847	165.35	105.2	1571.80
848	7640.51	172.2	44370.00
849	1800.09	183.7	9799.08
850	968.48	164.5	5887.44
851	6259.41	147.6	42407.96
852	1117.00	121	9231.40
853	1185.00	149.81	7910.02
854	323.50	113.21	2857.50
855	1702.87	151.67	11227.50
Total	25300.00		162593.49

5. Rejection of declared value & Redetermination of Assessable Value:

Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 (hereinafter referred to as "*the CVR, 2007*") provides the method of valuation. Rule 3(1) of the CVR, 2007 provides that "Subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10". Rule 3(4) *ibid* states that "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 of CVR, 2007". It appears that transaction value in terms of Rule 3 of the CVR, 2007, is to be accepted only where there are direct evidences with regard to the price actually paid or payable in respect of the imported goods by the importer. In the present case, it appears that the importer has mis-classified the subject goods under CTH 52083290 instead of correct CTH with an intention to evade payment of the applicable Customs duty. Accordingly, there is reasonable doubt regarding the truth and accuracy of the declared value and hence, the same is liable to be rejected in terms of Rule 12 of the CVR, 2007. In view of the same, the imported goods have been found liable for confiscation under Section 111 of the Customs Act, 1962 and hence, were seized under Section 110 of the Customs Act, 1962 vide Seizure Memo dated 29.02.2024.

5.1. It appears that the assessable value of the cargo is required to be re-determined as per the contemporary import data available on NIDB, in respect of the identical/similar goods sold for export to India (from China) and imported at or about the same time in view of Rule 4 & 5 of the CVR, 2007. Further, it appears that the value of the imported goods could not be determined under Rule 4 *ibid* since the value of contemporaneous imports of identical goods of same nature, composition and description could not be found on NIDB. Proceeding sequentially to Rule 5 *ibid*, as per contemporaneous import data available on NIDB, the rate of fabrics having similar nature, composition and description is having different ranges as discussed at *para-supra*. Further, sub-rule (3) of the said Rule 4 of CVR, 2007 states that in applying these rules, if more than one transaction value of similar goods is found, the lowest such value shall be used to determine the value of imported goods. Further, sub-rule (2) of the said Rule 5 of CVR, 2007 states that 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. Accordingly, the assessable values of the imported goods are required to be re-determined taking the lowest of such values available on NIDB import data of the similar goods as discussed at *para-supra*.

5.2. As per contemporaneous import data available on NIDB, the rates per unit of goods having similar nature, composition and description have been found ranging within some limits, lowest of which are required to be taken in view of sub-rule (2) of the said Rule 5 of CVR, 2007 to arrive at the assessable value of the imported goods. Accordingly, the assessable value of the imported goods is re-determined as Rs.1,19,96,577/- instead of total assessable of Rs.12,70,576/- as declared in the said BE, as calculated under:

TM	Correct CTH as per test results	Wt	Sq Mtr	Rate per unit of the similar goods as per NIDB			Assessable Value as per NIDB data (Rs.)
				Lowest	Highest	unit	
845	5407 9200	3675.80	24317.28	102.35	170.28	SQM	24,88,874
846	5407 9400	461.97	3013.50	137.36	174.77	SQM	4,13,935
847	5408 3290	165.35	1571.80	78.03	189.53	SQM	1,22,648
848	6006 3200	7640.51	44370.00	72.99	96.09	SQM	32,38,566
849	5407 6190	1800.09	9799.08	671.14	780.50	KG	12,08,113
850	5515 1130	968.48	5887.44	101.23	188.54	SQM	5,95,986
851	5407 5290	6259.41	42407.96	20.76	99.41	SQM	8,80,389
852	5515 1130	1117.00	9231.40	101.23	188.54	SQM	9,34,495

853	5515 1130	1185.00	7910.02	101.23	188.54	SQM	8,00,731
854	5512 1910	323.50	2857.50	57.29	152.11	SQM	1,63,706
855	5407 9200	1702.87	11227.50	102.35	170.28	SQM	11,49,135
Total		25300.00	162593.49				1,19,96,577

5.3. Accordingly, BCD per sq.mtr./Kg is found higher than that taken on ad-valorem (@20%) and hence, in the present case, BCD is required to be taken on the rate per sq.mtr./Kg. Accordingly, total Customs duty on the imported goods comes to Rs.53,89,891/- instead of Rs.2,10,281/- as self-assessed by the importer in the said BE, as calculated under:

TM	Correct CTH as per test results	Wt. (Kg)	Sq Mtr	Ass. Value (Rs.)	Duty Rate	BCD	SWS @0%/10%	IGST @5%	Total Duty (Rs.)
845	5407 9200	3675.80	24317.28	24,88,874	40 /sqm	9,72,691	0	1,73,078	11,45,769
846	5407 9400	461.97	3013.50	4,13,935	40 /sqm	1,20,540	0	26,724	1,47,264
847	5408 3290	165.35	1571.80	1,22,648	44 /sqm	69,159	0	9,590	78,750
848	6006 3200	7640.51	44370.00	32,38,566	20% ADV.	6,47,713	64,771	1,97,553	9,10,037
849	5407 6190	1800.09	9799.08	12,08,113	150 /Kg	2,70,014	0	73,906	3,43,920
850	5515 1130	968.48	5887.44	5,95,986	40 /sqm	2,35,498	0	41,574	2,77,072
851	5407 5290	6259.41	42407.96	8,80,389	23 /sqm	9,75,383	0	92,789	10,68,172
852	5515 1130	1117.00	9231.40	9,34,495	40 /sqm	3,69,256	0	65,188	4,34,444
853	5515 1130	1185.00	7910.02	8,00,731	40 /sqm	3,16,401	0	55,857	3,72,257
854	5512 1910	323.50	2857.50	1,63,706	25 /sqm	71,438	0	11,757	83,195
855	5407 9200	1702.87	11227.50	11,49,135	40 /sqm	4,49,100	0	79,912	5,29,012
Total		25300.00	162593.49	1,19,96,577		44,97,193	64,771	8,27,927	53,89,891

5.4. Accordingly, there appears non/short levy of Customs duty amounting to Rs.51,79,611/- as calculated under:

Sr. No.	Duty calculated during the investigation	Amount (Rs.)	Duty calculated by the importer in BE	Amount (Rs.)	Difference (Rs./Kgs)
1	Net weight	25300 kgs	Net weight	25270 Kgs	(+) 30 Kg
2	Square meter	1,62,593	Square meter	1,26,350	36,243
3	Value	1,19,96,577/-	Value	12,70,576/-	1,07,26,001/-
4	BCD	44,97,193/-	BCD@10%	1,27,058/-	43,70,135/-
5	SWS @0/10%	64,771/-	SWS @10%	12,706/-	52,065/-
6	Taxable Value for IGST (3+4+5)	1,65,58,541/-	Taxable Value for IGST (3+4+5)	14,10,340/-	1,51,48,201/-
7	IGST @5%	8,27,927/-	IGST	70,517/-	7,57,410/-
8	TOTAL duty (4+5+7)	53,89,891/-	TOTAL duty (4+5+7)	2,10,280/-	51,79,611/-

6. The importer vide letter dated 20.03.2024 has informed that the shipment under BL No. SZDG30148000 dated 16.12.2023 was meant to load for another country and by mistake the shipper has sent this consignment to them for which they have filed warehouse BE No. 1000001 dated 01.01.2024. The importer has requested for permission to re-export

the consignment back to the shipper and submitted that they are ready to pay fine and penalty as imposed by the department; that they do not want any SCN and PH in the matter. A statement of Shri Tushar Bhanji Bhanushali, authorised person of the importer was also recorded on 21.03.2024 wherein he submitted copies of the import documents viz. BE, BL, Invoice, Packing List, etc. He also perused examination report dated 15.01.2024, test reports in respect of TM Nos. from 845 to 855 all dated 19.01.2024, Seizure Memo and Supratnama dated 29.02.2024 and agreed with the same. He interalia stated that:

- M/s. B G & Company is a partnership firm engaged in trading/wholesaling of various types of fabrics. We are registered with GSTN and having GSTIN-27ABBFB1562C1ZZ.
- They procure trading goods i.e. various types of fabrics mostly by way of imports from other countries especially from China; sometimes as per requirement they also procure from domestic market.
- They are in the business of trading/wholesaling of various types of fabrics from last 7-8 months only; they have started importing these goods at Mundra port from last 7-8 months only.
- They import mostly from Hong-Kong/China based suppliers; they are not old & regular importer and as such, they are not fully aware of the Customs rules and procedures; they file BE and clear imports from Customs with the help of Custom House Agents only.
- The examination of the imported goods was carried out in the presence of proprietor of their CB M/s. AUM Shipping and Logistics and he agreed with the contents of the said examination report.
- They have ordered cotton woven dyed fabric to shipper, but after examination by the SIIB, they came to know that the consignment was not as per order; the shipper informed that they have sent wrong consignment by mistake.
- He also confirmed that as per test reports, the fabric is other than declared goods and the nearest CTH of the imported goods appears to be '54079200 for TM No. 845 &

855', '54079400 for TM No. 846', '54083290 for TM No. 847', '60063200 for TM No. 848', '54076190 for TM No. 849', '55151130 for TM No. 850, 852 & 853', '54075290 for TM No. 851' & '55121910 for TM No. 854'.

- Shipment covered under bill of lading no. SZDG30148000 dated 16.12.2023 was meant to load for another country but by mistake shipper sent the consignment to them.
- They want to re-export the consignment to the shipper; that they do not wish any personal hearing and show cause notice in the matter.
- They are ready to pay applicable fine and penalty imposed by the department; that, they will not file any appeal and will not claim any refund in this matter in future as well.

7. RELEVANT LEGAL PROVISIONS:

(A) RELEVANT PROVISIONS OF SEZ ACT, 2005:

2. Definitions.— In this Act, unless the context otherwise requires,—

.....

(o) “**import**” means—

(i) *bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or*

(ii) *receiving goods, or services by a Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone;*

Section 21: Single enforcement officer or agency for notified offences.—

1. *The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.*
2. *The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offence or offences committed in a Special Economic Zone.*
3. *Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection, search or seizure as is provided under the relevant Central Act in respect of the notified offences.*

Section 22: Investigation, inspection, search or seizure.—

The agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation, inspection, search or seizure in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone:

Provided that no investigation, inspection, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or sub-section (3) of section 21 without prior approval of the Development Commissioner concerned:

Provided further that any officer or agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner

Notification Nos. 2665(E) and 2667(E) dated 05.08.2016:

1. *In exercise of the powers conferred by section 22 of the Special Economic Zones Act, 2005 (28 of 2005), the Central Government by Notification No. 2667(E) dated 05.08.2016 issued by the Ministry of Commerce & Industry, has authorized the jurisdictional Customs Commissioner, in respect of offences under the Customs Act, 1962 (52 of 1962) to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. The enforcement officer(s), for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit with prior intimation to the Development Commissioner, concerned. Under Section 21(1) of the SEZ Act, 2005, the Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.*
2. *The Central Government, by the Notification 2665(E) dated 05.08.2016 has notified offences contained in Sections 28, 28AA, 28AAA, 74, 75, 111, 113, 115, 124, 135 and 104 of the Customs Act, 1962 (52 of 1962) as offences under the SEZ Act, 2005.*

B. RELEVANT PROVISIONS OF SPECIAL ECONOMIC ZONES RULES, 2006:

47(4) *Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made there under.*

47 (5) *Refund, Demand, Adjudication, Review and Appeal with regard to*

matters relating to authorise operations under Special Economic Zones Act, 2005, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise Authorities in accordance with the relevant provisions contained in the Customs Act, 1962, Central Excise Act, 1944, and the Finance Act, 1994 and the rules made thereunder or the notifications issued thereunder.

(C) RELEVANT PROVISIONS OF CUSTOMS ACT, 1962:

Section 2(22): *"goods" includes (a) vessels, aircrafts and vehicles; (b) stores; (c) baggage; (d) currency and negotiable instruments; and (e) any other kind of movable property;*

Section 2(23): *"import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;*

Section 2(25): *"imported goods", means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;*

Section 2(26): *"importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes [any owner, beneficial owner] or any person holding himself out to be the importer;*

Section 2(39): *"smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113.*

Section 11A: *"illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force.*

Section 46. Entry of goods on importation:

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

(4A) *the importer who presents a bill of entry shall ensure the following, namely:*

- (a) The accuracy and completeness of the information given therein;*
- (b) The authenticity and validity of any document supporting it; and*
- (c) Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.*

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

--

(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;

Section 112. Penalty for improper importation of goods, etc. –

Any person,-

- a. *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*
- b. *who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,*

shall be liable,-

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

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

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, [no such fine shall be imposed]:

Provided further that without prejudice to the provisions of the proviso to

sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

Explanation.- For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]"

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

“Rule 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;

.....

(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

(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.

Rule 12. Rejection of declared value. - (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported

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

8. Summary of Investigations Conducted:

8.1. M/s. Fast Track CFS Private Limited had filed SEZ warehouse Bill of Entry No. 1000001 dated 01.01.2024 for and on behalf of its client M/s. B G & Company, 1st floor, Shop No. V-1085, Plot No. 17B, 17C & 20, Sector 19, Aksar Business, Oppo- Janta Market road, Turbhe, Navi Mumbai, Thane, Maharastra-400705 holding IEC No: ABBFB1562C through their Customs Broker, M/s. Aum Shipping and Logistic at Mundra SEZ port for import of 'Cotton Woven Dyed Fabric' (CTH-52083290) in the container no. GCXU5090099. Furthermore, the said goods have been brought into the APSEZ, Mundra i.e. a place in India from a place outside India by sea. Hence, the same falls under the definition of 'import' as provided in the SEZ Act, 2005.

8.2. On the basis of the examination report, test reports and investigation carried out in this regard, the quantity in respect of number of packages is found 'as declared' and the weight is found in excess (30 kgs only) from the declared weight and hence, the doubt in respect of concealment is dispelled. However, the imported goods are found mis-declared in respect of nature, composition and description (cotton woven dyed fabric) and CTH (52083290) as declared in the said BE. The imported goods are in fact found to be other than cotton fabric and are rightly classifiable under different CTHs as discussed at para-supra. These facts have also been admitted by the importer in their letter dated 20.03.2024 as well as in the statement dated 21.03.2024 of the authorized person of the importer. Further, the imported goods are also found undervalued in view of the contemporary import data available on NIDB and hence, are required to be re-assessed on the basis of NIDB data for the similar goods in view of Rule 5 of the CVR, 2007. Accordingly, it appears that the importer has failed to declare true and correct description, CTH as well as assessable value of the goods imported vide the said BE and hence, the cargo is liable for confiscation under section 111(m) of the Customs Act, 1962.

8.3. The assessable value of the imported goods is re-determined as Rs.1,19,96,577/- as discussed at Para 5.2 above and total Customs duty on these imported goods comes to Rs.53,89,891/- as discussed at Para 5.3 above instead of Rs.2,10,281/- as self-assessed by the importer in the said BE. Thus, there appears non/short levy of Customs duty amounting to Rs.51,79,611/- as discussed at Para 5.4 above. Hence, by the act of omission and commission at the level of importer, it appears that the importer has contravened the provisions of Section 46 and Section 17 of the Customs Act, 1962, in as much as, they failed to make correct and true declaration and information to the Customs Officer in the form of Bill of Entry and also failed to assess their duty liability correctly and are liable for penalty under section 112(a)(ii) of the Customs Act, 1962. The relevant portion of said provisions is as under:

Section 17. Assessment of duty. –

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

..

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

Section 46. Entry of goods on importation. –

(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:

8.4. The importer vide letter dated 20.03.2024 has informed that the shipment under BL no. SZDG30148000 dated 16.12.2023 was meant to load for another country and by mistake the shipper has sent the consignment to them for which they have filed warehouse BE No. 1000001 dated 01.01.2024; the importer requested for permission to re-export the

consignment back to the shipper; that they are ready to pay fine and penalty as imposed by the department; that they do not want any SCN and PH in the matter. These facts have also been re-iterated by the authorised person of the importer in his statement dated 21.03.2024.

9. In view of the above facts, it appears that –

- i. The classification of the goods i.e. 52083290 as declared by the importer in the SEZ warehouse Bill of Entry No. 1000001 dated 01.01.2024 is liable to be rejected and the goods are liable to be re-classified under different CTHs as discussed at Para 3.11 above in accordance with the CRCL lab test reports.
- ii. The total assessable value of the imported goods is liable to be re-determined as Rs.1,19,96,577/- (Rupees One Crore Nineteen Lacs Ninety Six Thousand Five Hundred and Seventy Seven only), as discussed at Para 5.2 above instead of Rs.12,70,576/- (Rupees Twelve Lacs Seventy Thousand Five Hundred and Seventy Six only) as declared in the said BE under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.
- iii. Total Customs duty involved in the imported goods comes to Rs.53,89,891/- (Rupees Fifty Three Lacs Eighty Nine Thousand Eight Hundred and Ninety One only) as discussed at Para 5.3 above, instead of Rs.2,10,281/- (Rupees Two Lacs Ten Thousand Two Hundred and Eighty One only) as declared in the said BE.
- iv. The said Bill of Entry No. 1000001 dated 01.01.2024 is liable to be re-assessed accordingly under Section 17(4) of the Customs Act, 1962.
- v. The goods have been imported by way of mis-declaration in contravention of Sec 46 of the Customs Act, 1962 and are therefore, liable for confiscation under Section 111 (m) of the Customs Act, 1962.
- vi. The importer M/s. B G & Company, 1st floor, Shop No. V-1085, Plot No. 17B, 17C & 20, Sector 19, Aksar Business, Oppo- Janta Market road, Turbhe, Navi Mumbai, Thane, Maharastra-400705 holding IEC No: ABBFB1562C are liable for Penalty under Section 112(a)(ii) of the Customs Act, 1962.

WAIVER OF SHOW CAUSE NOTICE AND PERSONAL HEARING

10. The importer vide their letter dated 20.03.2024 has submitted that they do not want any personal hearing and/or Show Cause Notice in the matter.

DISCUSSION AND FINDINGS

11. I have carefully gone through Investigation Report No. 18/2024-25 dated 17.04.2024 issued by Deputy Commissioner of Customs (SIIB), Custom House, Mundra. I find that following issues needs to be decided in the present proceedings-

i. Whether declared classification needs to be rejected and imported goods are liable to be reclassified or otherwise.

ii. Whether declared value of goods is liable to be rejected and redetermined or otherwise.

iii. Whether importer is liable for penalty under section 112(a)(ii) of Customs Act, 1962 or otherwise.

12. I note that vide letter dt. 20.03.2024, importer has already requested not to issue SCN and they don't want personal hearing. I find that principles of Natural justice have been complied with. Thus I proceed to decide the matter.

13. I find that an intelligence was gathered by the officers of SIIB Section, Custom House, Mundra that the cargo imported under SEZ Warehouse Bill of Entry No. 1000001 dated 01.01.2024 filed by M/s. Fast Track CFS Private Limited, APSEZ Ltd., Mundra for and on behalf of its client M/s. B G & Company, Navi Mumbai, Thane holding IEC No: ABBFB1562C through their Customs Broker M/s. Aum Shipping and Logistic at Mundra SEZ port for import of 'Cotton Woven Dyed Fabric' (CTH-52083290) has possible mis-declaration in respect of quantity, concealment and nature, composition & description. Accordingly, the container no. GCXU5090099 was put on hold for detailed examination of the goods by the SIIB section, Custom House, Mundra in view of the suspicion. The said goods have been brought into the APSEZ, Mundra i.e. a place in India from a place outside India by sea. Hence, the same falls under the definition of 'import' as provided in the SEZ Act, 2005.

14. I find that based on the above suspicion, examination of the said

consignment was carried out by the officers of SIIB section in presence of representative of the CB who provided copies of the said BE and other import documents as per which, the cargo is imported from M/s. DIA Impex Company Limited, China and the declared imported goods is 'Cotton Woven Dyed Fabric' (CTH 52083290). The declared quantity of the imported goods is 925 Bales, gross weight 25270 Kgs, 126350 square meter and total assessable value is Rs.12,70,576/- and total duty is Rs.2,10,281/-.

14.1. I find that during the course of examination, quantity of the imported goods was found as declared in respect of number of PKGs i.e. 925. Further, as per weighment conducted at the warehouse, the imported goods are found only 30 Kgs in excess from the declared weight. In view of the same, the doubt in respect of excess quantity as well as concealment is dispelled. However, on visual examination, actual nature, composition and description of the goods could not be ascertained, therefore, representative samples were drawn and forwarded to the CRCL, Kandla for testing purpose vide Test Memo No. 845 to 855 all dated 19.01.2024 issued from F. No. S/43-149/Fabric/SIIB-B/CHM/2023-24.

15. I have gone through the Test Results discussed in Para 3 above and find that the importer has mis-classified the imported goods under CTH 52083290 instead of correct CTHs as detailed in Para 3.11 above, with an intention to evade payment of the applicable Customs duty. Consequently, the imported goods are found liable to be re-classified under different CTHs arrived on the basis of lab test results discussed in Para 3 above and are also liable to be re-assessed accordingly. Further, in the said BE, invoice and packing list, total quantity of these goods have been declared as 25270 KGs & 126350 sq.mtr. However, during the course of examination, the weight of the imported goods is found as 25300 KGs. i.e. 30 Kgs in excess from the declared weight. Accordingly, net quantity in square meter of the impugned goods is required to be ascertained considering the different GSMs as reported by the CRCL lab, which comes to 162593.49 square meter instead of 126350 square meter as declared in the said BE, as tabulated in Para 4 above.

16. I find that Rule 3 of the CVR, 2007 provides the method of valuation. Rule 3(1) of the CVR, 2007 provides that "Subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with

provisions of Rule 10". Rule 3(4) *ibid* states that "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 of CVR, 2007". It appears that transaction value in terms of Rule 3 of the CVR, 2007, is to be accepted only where there are direct evidences with regard to the price actually paid or payable in respect of the imported goods by the importer.

16.1. In the present case, it appears that that importer has mis-classified the subject goods under CTH 52083290 instead of correct CTHs with an intention to evade payment of the applicable Customs duty. Accordingly, there is reasonable doubt regarding the truth and accuracy of the declared value and hence, the same is liable to be rejected in terms of Rule 12 of the CVR, 2007. In view of the same, the imported goods have been found liable for confiscation under Section 111 of the Customs Act, 1962 and hence, the same were seized under Section 110 of the Customs Act, 1962 vide seizure memo dated 29.02.2024.

16.2. I find that the assessable value of the cargo is required to be re-determined as per the contemporary import data available on NIDB, in respect of the identical/similar goods sold for export to India (from China) and imported at or about the same time in view of Rule 4 & 5 of the CVR, 2007. Accordingly, the assessable value of the imported goods is re-determined as Rs.1,19,96,577/- instead of total assessable of Rs.12,70,576/- as declared in the said BE, as discussed in Para 5.1 and 5.2 above. Total Customs duty on the imported goods comes to Rs.53,89,891/- instead of Rs.2,10,281/- as self-assessed by the importer in the said BE as calculated in Para 5.3 above. Hence, there appears non/short levy of Customs duty amounting to Rs.51,79,611/-.

17. I find that the importer vide letter dated 20.03.2024 has informed that the shipment under BL no. SZDG30148000 dated 16.12.2023 was meant to load for another country and by mistake the shipper has sent this consignment to them for which they have filed SEZ Warehouse BE No. 1000001 dated 01.01.2024. The importer has requested for permission to re-export the consignment back to the shipper and submitted that they are ready to pay fine and penalty as imposed by the department; that they do not want any SCN and PH in the matter. A statement of Shri Tushar Bhanji Bhanushali, authorised person of the importer was recorded on 21.03.2024 as detailed in Para 6 above, wherein he submitted copies of the

import documents viz. BE, BL, Invoice, Packing List, etc. and perused Examination Report dated 15.01.2024, Test Reports in respect of TM Nos. from 845 to 855 all dated 19.01.2024, Seizure Memo and Supratnama dated 29.02.2024 and agreed with the same. He has also stated in his statement that they want to re-export the consignment to the shipper and do not wish any personal hearing and show cause notice in the matter.

18. I find that the importer, by the act of omission and commission, has contravened the provisions of Section 46 and Section 17 of the Customs Act, 1962, in as much as, they failed to make correct and true declaration and information to the Customs Officer in the form of Bill of Entry and also failed to assess their duty liability correctly. Therefore, the importer has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and is, therefore, liable for penalty under section 112(a) (ii) of the Customs Act, 1962. I further find that the goods in question can be redeemed on payment of redemption fine in terms of Section 125 of the Customs Act, 1962. Having held that goods can be redeemed on payment of Redemption fine and considering the fact that importer has agreed to re-export the goods, I deem it fit not to subject the impugned case through the rigors of redemption fine. Since goods are being re-exported and not allowed to be cleared for home consumption, this prohibits the importer from deriving any benefits out of domestic sale. Further, the importer is bound to incur expenditure on arranging re-export of the goods. In such circumstances I am of the opinion that a lenient view may be taken while imposing redemption fine.

19. In view of the above, I pass the following order:

ORDER

i. I reject the classification of the goods i.e. 52083290 as declared by the importer in the SEZ Warehouse Bill of Entry No. 1000001 dated 01.01.2024 and order to re-classify the goods under different CTHs as discussed at Para 3.11 above, in accordance with the CRCL Kandla Test Reports.

ii. I re-determine the total assessable value of the imported goods as Rs.1,19,96,577/- (Rupees One Crore Nineteen Lacs Ninety Six Thousand Five Hundred and Seventy Seven only), as discussed at Para 5.2 above,

instead of Rs.12,70,576/- (Rupees Twelve Lacs Seventy Thousand Five Hundred and Seventy Six only) as declared in the said Bill of Entry, under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

iii. I order to re-assess the said Bill of Entry No. 1000001 dated 01.01.2024 accordingly under Section 17(4) of the Customs Act, 1962.

iv. I order to confiscate the goods imported by way of mis-declaration in contravention of Section 46 of the Customs Act, 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 an option to the importer to re-deem the same on payment of Redemption Fine of Rs.11,00,000/- (Rs. Eleven Lakh Only) in lieu of confiscation for re-export purpose only as requested by the importer. The re-export is to be made to the same supplier/shipper within a period of 120 days from the date of receipt of this order.

v. I impose penalty of Rs. 1,50,000/- (Rs. One Lakh Fifty Thousand Only) on the importer M/s. B G & Company, Navi Mumbai, Thane holding IEC No: ABBFB1562C under Section 112(a)(ii) of the Customs Act, 1962.

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

Signed by

Arun Kumar

Date: 10-06-2024 19:38:2

Arun Kumar

ADDITIONAL COMMISSIONER

ADC/JC-II-O/o Pr Commissioner-Customs-Mundra

To,
M/s. B G & Company,
1st floor, Shop No. V-1085, Plot No. 17B, 17C & 20,
Sector 19, Aksar Business, Oppo- Janta Market road,
Turbhe, Navi Mumbai, Thane, Maharastra-400705.

Copy to:

1. The Deputy Commissioner of Customs (SIIB), CH, Mundra.
2. The Assistant Commissioner of Customs (RRA), CH, Mundra.
3. The Assistant Commissioner of Customs (TRC), CH, Mundra
4. The Assistant Commissioner of Customs (EDI), CH, Mundra.
5. Office Copy.0