



OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOM HOUSE: MUNDRA, KUTCH
MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421
Phone No. 02838-271029/423 FAX No. 02838-271425
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A	File No.	CUS/APR/INV/125/2023-Gr 3-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/MK/124/2023-24
C	Passed by	Mukesh Kumari Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	25.07.2023
E	Date of Issue	26.07.2023
F	SCN No. & Date	Importer vide letter dated 11.07.2023 has requested for waiver of PH and SCN in the matter
G	Noticee/Party/ Importer/ Exporter	M/s. Himanshu Overseas, 9091, Zameer Wali Gali, Nawab Ganj, Azad Market, Delhi-110 006
H	DIN No.	20230771MO0000111576

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

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमाबली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है।

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमा शुल्क आयुक्त (अपील),
7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by -

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

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. अपील ज्ञापन के साथ ज्ञाप्ति/ व्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

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

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

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

BRIEF FACT OF THE CASE:-

M/s. Himanshu Overseas, having its address at 9091, Zameer Wali Gali, Nawab Ganj, Azad Market, Delhi-110 006 and holding IEC No. ARTPG3065B [herein after referred to as M/s. Himanshu for sake of brevity] is engaged in trading of various fabrics e.g. PVC Coated Fabric, PA Coated Fabric, Polyester Dyed Fabric, Polyester Lining Fabric etc. M/s Himanshu purchases fabrics from Overseas and Domestic market.

2. An intelligence gathered by the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit (hereinafter referred as "DRI" too, for sake of brevity) indicated that, some importers were importing 'PU Coated Textile Fabrics' by mis-declaring the same as "PVC or PA Coated Fabrics" and classifying under Customs Tariff Heading [CTH] 59031090 or 590390900 instead of correct classification under CTH 59032090 to evade Anti-Dumping Duty imposed vide Notification No. 14/2022-Customs(ADD) dated 20.05.2022.

3. Based on the aforesaid intelligence, officers of DRI, Ahmedabad Zonal Unit conducted search at the warehouse premises of M/s. OWS Warehouse Service LLP, APSED, Mundra and examined the goods imported vide Bill of Entry NO.1015778 dated 03.11.2022/Bill of Entry (SEZ to DTA) NO. 2012788 dated 07.11.2022 by M/s. Himanshu Overseas. During the Examination, Representative samples of fabrics were drawn for testing at Central Excise & Customs Laboratory, Vadodara under Panchnama dated 13.11.2022 in presence of General Manager of M/s. OWS Warehouse Service LLP and authorized person of Custom Broker Firm. The samples drawn were sent for testing at Central Excise & Customs Laboratory, Vadodara vide TEST MEMO No: 39/HIM/1015778 & 40/HIM/1015778 both dated 18.11.2022.

4. The Chemical Examiner after due testing of the samples drawn gave the test reports vide Lab. No. RCL/AH/DRI/3049/01.12.2022 & RCL/AH/DRI/3050/01.12.2022 both dated 22.12.2022 that "**the samples is in the form of cut piece of dyed woven fabrics made filament yarns of polyester, coated with compounded polyurethane on one side**" for Test Memo N0.39/HIM/1.015778 and "**the sample is in the form of cut piece of dyed woven fabrics made of filament yarns of polyester**

coated with compounded polyurethane on one side” for Test Memo No.40/HIM/1015778.

5. As per Notification No. 14/2022-Customs(ADD) dated 20.05.2022 issued by the Under Secretary to the Government of India, Ministry of Finance, Department of Revenue PU Coated Fabrics import from China attracts anti-dumping duty. The said notification imposes on the goods, the description of which is specified in column (3) of the Table below, falling under tariff item of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the country as specified in the corresponding entry in column (4), exported from the country as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry in column (6) and imported into India, an anti-dumping duty at the rate equal to the amount as specified in the corresponding entry in column (7), in the currency as specified in the corresponding entry in column (9) and as per unit of measurement as specified in the corresponding entry in column (8), of the said Table –

S. N o.	Heading, Sub head ing or Tar iff Item	Description of Goods	Country o f Origin	Country o f Export	Producer	Amoun t	Unit of measure ment	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	59039490 59032090	Polurethane Leather which includes any kind of textiles coated one side or both sides with polyurethane	China PR	Any Country including China PR	Anuj Anil Material Technology Co. Ltd	Nill	Meters	USD
2	-do-	-do-	China PR	Any Country including China PR	Any producer other than S. N. 1	0.46	Meters	USD
3	-do-	-do-	Any Country other than China PR	China PR	Any	0.46	Meters	USD

5.1 In view of the above, it appeared that PU Coated Fabrics imported from China by M/s. Himanshu Overseas are correctly classifiable under CTH 59032090 and is covered under the Anti-Dumping duty notification. Therefore, it is alleged that the importer had grossly violated the

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Notification No. 14/2022-Customs(ADD) dated 20.05.2022 in as much as they had attempted to import the goods by way of mis-declaration and mis-classification of the goods. The importer had mis-declared and mis-classified the goods imported under Bill of Entry No. NO.1015778 dated 03.11.2022/Bill of Entry (SEZ to DTA) NO.2012788 dated 07.11.2022 dated 11.03.2022 in respect of description and classification. Therefore, the imported goods i.e. 1378 Rolls of PU Coated Fabrics stored and warehoused at OWS Warehouse Services LLP, APSEZ, Mundra, were placed under seizure under Section 110(1) of the Customs Act, 1962 vide Seizure memo dated 25.01.2023 under the reasonable belief that the same were liable for confiscation under the Section 111(m) & 119 of the Customs Act, 1962. Copy of the seizure memo was also given to the Custodian i.e. OWS Warehouse Services LLP, APSEZ, Mundra.

6. A search was conducted at premises of importer M/s. Himanshu Overseas, 9091, Zameer Wali Gali, Nawab Ganj, Azad Market, Delhi-110006 under Panchnama dated 26.11.2022. During the course of search proceedings, Shri. Himanshu Goyal, Proprietor of the firm informed that documents of the import consignment imported by M/s. Himanshu at Adani Port & Special Economic Zone were not received from CHA/CB, he further informed that the communication with overseas buyer were done through phone and the documents from the buyers were received through courier.

6.1. During the course of inquiry, the statement of Shri Himanshu Goyal, Proprietor of M/s. Himanshu Overseas, 9091, Zameer Wali Gali, Nawab Ganj, Azad Market, Delhi-110006 was recorded on 24.04.2023 under Section 108 of the Customs Act 1962, wherein he stated that he is proprietor of the firm. The firm was established in the year 2017 with its registered address as 9091, Zameer Wali,Gali, Nawab Ganj, Azad Market, Delhi 100006. He was into the business of trading of fabrics e.g. PVC Coated Fabric, PA Coated Fabric, Polyester Dyed Fabric, Polyester Lining Fabric etc. He stated that goods description "Mix Lot of Polymeric Coated Fabric" was mentioned when goods having various coating material, various thickness, various GSM were imported in one consignment. He agreed with the Test Memo No. 39/HIM/1015778 date 18.11.2022 & 40/HIM/1015778 date 18.11.2022 and respective test reports Lab. No. RCL/AH/DRI/3049/01.12.2022dated26.12.2022&RCL/AH/DRI/3050/01 .12.2022 dated 26.12.2022 for the samples drawn during the panchanama

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dated 13.11.2022 at OWS Warehousing Services LLP, Mundra, he accepted the said test reports in which fabric were tested as PU Coated Fabric. He stated that they ordered for the Mix Lot of PVC or PA coated fabric, but supplier might have forwarded the wrong goods or goods may contain fabric with PU Coating under the consignment shipped and the same has been imported vide Bill of Entry No. 1015778 dated 03.11.2022.

6.2. From the foregoing it was alleged that the goods in the instant case i.e. PU Coated Fabrics classifiable under CTH 59032090, have been imported by way of gross mis-declaration of the description of goods by declaring the same as "Mix Lot of Polymeric Coated Fabrics" classifiable under CTH 59039090. The relevant Customs Tariff Head 5903 reads as under:

SECTION-XI				CHAPTER-59
(1)	(2)	(3)	(4)	
5903	Textile Fabrics, Impregnated, Coated, Covered Or Laminated With Plastics, Other Than Those Of Heading 5902			
590310	With polyvinyl chloride :			
59031010	Imitation leather fabrics of cotton	m2	*20%	
59031090	Other	m2	*20%	
590320	With polyurethane :			
59032010	Imitation leather fabrics, of cotton	m2	*20%	
59032090	Other	m2	*20%	
590390	Other:			
59039010-	Of-cotton	m2	*20%-	
59039020	Polyethylene laminated jute fabrics	m2	*20%	
59039090	Other	m2	*20%	

6.3 Thus, it appeared that the M/s. Himanshu Overseas has indulged in import of the goods by mis-declaring the description of import goods and thereby mis-classifying the same, with a view to evade payment of applicable anti-dumping duty. They had thus failed to make correct declaration before the Customs in respect of the goods imported by them.

7. In terms of Section 46(4) of the Customs Act, 1962, the importer has to certify the truth of the contents of the Bills Entry. In the instant case

the importer was fully aware of the actual goods imported by them. Thus, in view of the facts discussed in the foregoing paras and material evidences available on records, it is alleged that M/s Himanshu, have contravened the provisions of Section 46(4) of the Customs Act, 1962, in as much as they had intentionally mis-declared the description of the goods imported by them.

7.1. It further appeared that in terms of Section 17 of the Customs Act 1962, an importer entering any imported goods under Section 46, shall, self-assess the duty, leviable on such goods. Whereas it appeared that the importer, M/s Himanshu in the instant case has failed to assess the true duty leviable on PU Coated Fabrics Classifiable under CTH 59032090 by resorting to mis-declaration and mis-classification of the import goods as Mix Lot of Polymeric Coated Fabrics under CTH 59039090.

7.2. In view of the facts discussed in foregoing paras and the material evidences available on record it appeared that M/s Himanshu made a deliberate attempt to illicitly import 27,780 Kgs of PU Coated Fabrics having declared assessable Value of Rs. 9,21,404/- under the cover of Bills of Entry No. 1015778 dated 03.11.2022 (Bill of Entry of Home Consumption), in the guise of Mix Lot of Polymeric Coated Fabrics, thereby attempted to evade duty to the tune of Rs.52,54,573/- [i.e. the applicable anti-dumping duty]

7.3. It is therefore alleged that the PU Coated Fabrics was imported by resorting to mis-declaration of the same as Mix Lot of Polymeric Coated Fabrics in the Bill of entry filed under Section 46 of the Customs Act,1962 and accordingly the PU Coated Fabrics imported in the guise of Mix Lot of Polymeric Coated Fabrics having declared assessable Value of Rs.- 9,21,404/- is liable to confiscation under the provisions of Section 111(d) and (m) of the Customs Act, 1962 in as much as the goods have been imported by mis-declaring the description of the goods with a view to evade detection. Such an act of import in gross violation to the provisions of Customs Act has rendered the goods liable to confiscation under Section 111 and constitutes “Smuggling” as defined under Section 2 (39) *ibid*. Accordingly M/s Himanshu, have rendered themselves liable to penalty under Section 112 (a) and (b) of the Customs Act 1962.

7.4. It also appeared from the foregoing paras that Shri Himanshu Goyal,

Proprietor of M/s Himanshu Overseas was fully aware about the nature of the goods imported in as much as he at all times had tried to advance unsubstantiated claim that the goods imported by them was PVC or PA coated fabrics. He claimed that he has ordered for Mix Lot of PVC or PA coated fabrics, but has not provided any legitimate documents to substantiate his 'claim he has ordered for Mix Lot of PVC or PA coated fabrics. He accepted the test reports of Central Excise & Customs Laboratory, Vadodara, which confirmed that the samples test were PU coated fabrics.

7.5 Thus, it appeared that Shri Himanshu Goyal, Proprietor of M/s Himanshu Overseas, had made an attempt to illicitly smuggle 27,780 Kgs of PU Coated Fabrics **having Assessable value of Rs. 9,21,404/-** in the guise of Mix Lot of Polymeric Coated Fabrics, and he would have succeeded in his attempt but for the detection by DRI. The PU Coated Fabrics classifiable under CTH 59032090 imported from china attracts Anti-Dumping duty vide Notification No. 14/2022-Customs (ADD) dated 20.05.2022. thus, had it not been for the timely detection by the DRI, it would have resulted in blatant smuggling of a goods and would also have resulted in **evasion of duty to the tune of Rs. 52,54,573/-** [i.e. the difference between the duty on Mix Lot of Polymeric Coated fabrics shown in the Home Consumption (SEZ to DTA) Bills of Entry as against the duty payable on PU Coated Fabrics].

7.6. In view of above, it appear that Shri Himanshu Goyal, Proprietor of M/s Himanshu Overseas, have done various acts of commission and omission which have rendered the goods liable to confiscation under Section 111 of the Customs Act, 1962 and consequently is liable to penalty under section 112(a) and (b) of the Customs Act, 1962. Further, Shri Himanshu Goyal appears to have indulged in presenting documents falsifying the true identity of the goods, before the Customs authorities for import of the goods. Thus has knowingly and intentionally made a declaration under the Bill of Entry filed under Section 46 of the Customs Act 1962, which is false and incorrect. Hence, he has committed offences of the nature as described under the Section 114AA of the Customs Act 1962 and have consequentially rendered himself liable to penalty under the said Section 114AA of the Customs Act 1962. He has also contravened various provisions of Customs Act for which no express penalty is provided

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for such contraventions/omission and have accordingly-rendered-themselves liable for penalty under Section 117 the Customs Act, 1962 too.

8. RELEVANT LEGAL PROVISIONS

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.

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

SECTION 111 Confiscation of improperly imported goods, etc - The following goods brought from a place outside India shall be liable for 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 transhipment, with the declaration for transhipment 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) 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 1 [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

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

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

3 [(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 4 [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 5 [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 6 [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.]

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

SECTION 117 Penalties for contravention, etc, not expressly mentioned. - Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding ten thousand rupees.

9. Accordingly, M/s. Himanshu Overseas, having its address at 9091, Zameer Wali Gali, Nawab Ganj, Azad Market, Delhi-110 006 is hereby called upon to show cause in writing to the Additional Commissioner of Customs having office situated at office of the Commissioner of Customs, Port User Building, Mundra Port, Mundra, Gujarat - 370421 as to why: -

(i) The impugned goods i.e. PU Coated Fabrics quantity 27,780 Kg [Bill of Entry Quantity] (Seized quantity 1378 Rolls) having Assessable value of Rs. 9,21,404/- and mis-declared as Mix Lot of Polymeric Coated Fabrics in the Bills of Entry, seized during the panchnama dated 13.11.2022, should not be classified under the Customs Tariff Heading 59032090 instead of declared Customs Tariff Heading 59039090;

(ii) The impugned goods i.e. PU Coated Fabrics quantity 27780 Kg [Bill of Entry Quantity] (Seized quantity 1378 Rolls) having Assessable value of Rs. 9,21,404/- and mis-declared as Mix Lot of Polymeric Coated Fabrics, in the Bills of Entry, seized during the panchnama dated 13.11.2022, should not be confiscated under the provisions of Section 111(d) and (m) of the Customs Act, 1962

(iii) Penalty should not be imposed on them under Section 112 (a) and (b) of the Customs Act, 1962;

(iv) Penalty should not be imposed on them under Section 14AA of the Customs Act, 1962;

(v) Penalty should not be imposed on them under Section 117 of the Customs Act, 1962;

WAIVER OF PERSONAL HEARING

10. The importer vide their letter dated 11.07.2023 had informed that they do not want any personal hearing in this matter and requested to allow them to re-export the subject goods to the supplier.

DISCUSSION & FINDINGS

11. I have carefully gone through the Show Cause Notice dated 10.05.2023, submissions made before me and the available case records. Hence, I proceed to decide the case on the basis of facts and documentary evidences available on records. In this case, the matter to be decided by me is as to whether.

(i) The impugned goods i.e. PU Coated Fabrics quantity 27,780 Kg [Bill of Entry Quantity] (Seized quantity 1378 Rolls) having Assessable value of Rs. 9,21,404/- and mis-declared as Mix Lot of Polymeric Coated Fabrics in the Bills of Entry, seized during the panchnama dated 13.11.2022, should be classified under the Customs Tariff Heading 59032090 instead of declared Customs Tariff Heading 59039090;

(ii) The impugned goods i.e. PU Coated Fabrics quantity 27780 Kg [Bill of Entry Quantity] (Seized quantity 1378 Rolls) having Assessable value of Rs. 9,21,404/- and mis-declared as Mix Lot of Polymeric Coated Fabrics, in the Bills of Entry, seized during the panchnama dated 13.11.2022, should be confiscated under the provisions of Section 111(d) and (m) of the Customs Act, 1962

(iii) Penalty should be imposed on them under Section 112 (a) and (b) of the Customs Act, 1962;

(iv) Penalty should be imposed on them under Section 114AA of the Customs Act, 1962;

(v) Penalty should be imposed on them under Section 117 of the Customs Act, 1962;

11. I find that M/s. Himanshu Overseas, having its address at 9091, Zameer Wali Gali, Nawab Ganj, Azad Market, Delhi-110 006 and holding IEC No. ARTPG3065B [herein after referred to as M/s. Himanshu for sake of brevity] is engaged in trading of various fabrics e.g. PVC Coated Fabric, PA Coated Fabric, Polyester Dyed Fabric, Polyester Lining Fabric etc. M/s Himanshu purchases fabrics from Overseas and Domestic market.

12. I find that an intelligence gathered by the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit (hereinafter referred as "DRI" too, for sake of brevity) indicated that some importers were importing 'PU Coated Textile Fabrics' by mis-declaring the same as "PVC or PA Coated Fabrics" and classifying under Customs Tariff Heading [CTH] 59031090 or 590390900 instead of correct classification under CTH 59032090 to evade Anti-Dumping Duty imposed vide Notification No. 14/2022-Customs(ADD) dated 20.05.2022.

13. I find on the aforesaid intelligence, officers of DRI, Ahmedabad Zonal Unit conducted search at the warehouse premises of M/s. OWS Warehouse Service LLP, APSED, Mundra and examined the goods imported vide Bill of Entry NO.1015778 dated 03.11.2022/Bill of Entry (SEZ to DTA) NO. 2012788 dated 07.11.2022 by M/s. Himanshu Overseas. During the Examination, Representative samples of fabrics were drawn for testing at Central Excise & Customs Laboratory, Vadodara under Panchnama dated 13.11.2022 in presence of General Manager of M/s. OWS Warehouse Service LLP and authorized person of Custom Broker Firm. The samples drawn were sent for testing at Central Excise & Customs Laboratory, Vadodara vide TEST MEMO No: 39/HIM/1015778 & 40/HIM/1015778 both dated 18.11.2022.

14. I find the the test reports that "**the samples is in the form of cut piece of dyed woven fabrics made filament yarns of polyester, coated with compounded polyurethane on one side**" for Test Memo NO.39/HIM/1.015778 and "**the sample is in the form of cut piece of**

dyed woven fabrics made of filament yarns of polyester coated with compounded polyurethane on one side" for Test Memo No.40/HIM/1015778.

15. As per Notification No. 14/2022-Customs(ADD) dated 20.05.2022 issued by the Under Secretary to the Government of India, Ministry of Finance, Department of Revenue PU Coated Fabrics import from China attracts anti-dumping duty. The said notification imposes on the goods, the description of which is specified in column (3) of the Table below, falling under tariff item of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the country as specified in the corresponding entry in column (4), exported from the country as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry in column (6) and imported into India, an anti-dumping duty at the rate equal to the amount as specified in the corresponding entry in column (7), in the currency as specified in the corresponding entry in column (9) and as per unit of measurement as specified in the corresponding entry in column (8), of the said Table –

S. N o.	Heading, Sub head ing or Tar iff Item	Description of Goods	Country o f Origin	Country o f Export	Producer	Amoun t	Unit of measure ment	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	59039490 59032090	Polurethane Leather which includes any kind of textiles coated one side or both sides with polyurethane	China PR	Any Country including China PR	Anuj Anil Material Technology Co. Ltd	Nill	Meters	USD
2	-do-	-do-	China PR	Any Country including China PR	Any producer other than S. N. 1	0.46	Meters	USD
3	-do-	-do-	Any Country other than China PR	China PR	Any	0.46	Meters	USD

16. In view of the above, I find that PU Coated Fabrics imported from China by M/s. Himanshu Overseas are correctly classifiable under CTH 59032090 and is covered under the Anti-Dumping duty notification.

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Therefore, it appeared that the importer had grossly violated the Notification No. 14/2022-Customs(ADD) dated 20.05.2022 in as much as they had attempted to import the goods by way of mis-declaration and mis-classification of the goods. The importer had mis-declared and mis-classified the goods imported under Bill of Entry No. NO.1015778 dated 03.11.2022/Bill of Entry (SEZ to DTA) NO.2012788 dated 07.11.2022 dated 11.03.2022 in respect of description and classification. Therefore, the imported goods i.e. 1378 Rolls of PU Coated Fabrics stored and warehoused at OWS Warehouse Services LLP, APSEZ, Mundra, were placed under seizure under Section 110(1) of the Customs Act, 1962 vide Seizure memo dated 25.01.2023 under the reasonable belief that the same were liable for confiscation under the Section 111(d) & 111(m) of the Customs Act, 1962.

17. I find that a search was conducted at premises of importer M/s. Himanshu Overseas, 9091, Zameer Wali Gali, Nawab Ganj, Azad Market, Delhi-110006 under Panchnama dated 26.11.2022. During the course of search proceedings, Shri Himanshu Goyal, Proprietor of the firm informed that documents of the import consignment imported by M/s. Himanshu at Adani Port & Special Economic Zone were not received from CHA/CB, he further informed that the communication with overseas buyer were done through phone and the documents from the buyers were received through courier. During the course of inquiry, the statement of Shri Himanshu Goyal, Proprietor of M/s. Himanshu Overseas, 9091, Zameer Wali Gali, Nawab Ganj, Azad Market, Delhi-110006 was recorded on 24.04.2023 under Section 108 of the Customs Act 1962, wherein he stated that he is proprietor of the firm. He was into the business of trading of fabrics e.g. PVC Coated Fabric, PA Coated Fabric, Polyester Dyed Fabric, Polyester Lining Fabric etc. He stated that goods description "Mix Lot of Polymeric Coated Fabric" was mentioned when goods having various coating material, various thickness, various GSM were imported in one consignment. He agreed with the Test Memo No. 39/HIM/1015778 date 18.11.2022 & 40/HIM/1015778 date 18.11.2022 and respective test reports Lab. No.RCL/AH/DRI/3049/01.12.2022dated26.12.2022&RCL/AH/DRI/3050 /01.12.2022 dated 26.12.2022 for the samples drawn during the panchanama dated 13.11.2022 at OWS Warehousing Services LLP, Mundra, he accepted the said test reports in which fabric were tested as PU Coated Fabric. He stated that they ordered for the Mix Lot of PVC or PA

coated fabric, but supplier might have forwarded the wrong goods or goods may contain fabric with PU Coating under the consignment shipped and the same has been imported vide Bill of Entry No. 1015778 dated 03.11.2022.

18. I find that the goods in the instant case i.e. PU Coated Fabrics classifiable under CTH 59032090, have been imported by way of gross mis-declaration of the description of goods by declaring the same as "Mix Lot of Polymeric Coated Fabrics' classifiable under CTH 59039090. The relevant Customs Tariff Head 5903 reads as under:

SECTION-XI				CHAPTER-59
(1)	(2)	(3)	(4)	
5903	Textile Fabrics, Impregnated, Coated, Covered Or Laminated With Plastics, Other Than Those Of Heading 5902			
590310	With polyvinyl chloride :			
59031010	-- Imitation leather fabrics of cotton	m2	*20%	
59031090	---	Other	m2	*20%
590320	---- With polyurethane :			
59032010	- Imitation leather fabrics, of cotton	m2	*20%	
59032090	----- Other	m2	*20%	
590390	- Other:			
59039010-	--- Of-cotton	m2	*20%-	
59039020	--- Polyethylene laminated jute fabrics	m2	*20%	
59039090	--- Other	m2	*20%	

19. I find that the M/s. Himanshu Overseas has indulged in import of the goods by mis-declaring the description of import goods and thereby mis-classifying the same, with a view to evade payment of applicable anti-dumping duty. They had thus failed to make correct declaration before the Customs in respect of the goods imported by them.

20. I find that in terms of Section 17 of the Customs Act 1962, an importer entering any imported goods under Section 46, shall, self-assess the duty, leviable on such goods. Whereas, it appeared that the importer,

M/s Himanshu in the instant case has failed to assess the true duty leviable on PU Coated Fabrics Classifiable under CTH 59032090 by resorting to mis-declaration and mis-classification of the import goods as Mix Lot of Polymeric Coated Fabrics under CTH 59039090.

21. In view of the facts discussed in foregoing paras and the material evidences available on record i find that M/s Himanshu made a deliberate attempt to illicitly import 27,780 Kgs of PU Coated Fabrics having declared assessable Value of Rs. 9,21,404/- under the cover of Bills of Entry No. 1015778 dated 03.11.2022 (Bill of Entry of Home Consumption), in the guise of Mix Lot of Polymeric Coated Fabrics, thereby attempted to evade duty to the tune of Rs. 52,54,573/- [i.e. the applicable anti-dumping duty]

22. I find that the PU Coated Fabrics was imported by resorting to mis-declaration of the same as Mix Lot of Polymeric Coated Fabrics in the Bill of entry filed under Section 46 of the Customs Act,1962 and accordingly the PU Coated Fabrics imported in the guise of Mix Lot of Polymeric Coated Fabrics having declared assessable Value of Rs.- 9,21,404/- is liable to confiscation under the provisions of Section 111 (d) and (m) of the Customs Act,1962 in as much as the goods have been imported by mis-declaring the description of the goods with a view to evade detection. Such an act of import in gross violation to the provisions of Customs Act has rendered the goods liable to confiscation under Section 111 and constitutes "Smuggling" as defined under Section 2 (39) ibid. Accordingly M/s Himanshu, have rendered themselves liable to penalty under Section 112 (a) and (b) of the Customs Act 1962.

23. I find that the foregoing paras that Shri Himanshu Goyal, Proprietor of M/s Himanshu Overseas was fully aware about the nature of the goods imported in as much as he at all times had tried to advance unsubstantiated claim that the goods imported by them was PVC or PA coated fabrics. He claimed that he has ordered for Mix Lot of PVC or PA coated fabrics, but has not provided any legitimate documents to substantiate his 'claim he has ordered for Mix Lot of PVC or PA coated fabrics. He accepted the test reports of Central Excise & Customs Laboratory, Vadodara, which confirmed that the samples test were PU coated fabrics.

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24. I find that Shri Himanshu Goyal, Proprietor of M/s Himanshu Overseas, had made an attempt to illicitly smuggle 27,780 Kgs of PU Coated Fabrics **having Assessable value of Rs. 9,21,404/-** in the guise of Mix Lot of Polymeric Coated Fabrics, and he would have succeeded in his attempt but for the detection by DRI. The PU Coated Fabrics classifiable under CTH 59032090 imported from china attracts Anti-Dumping duty vide Notification No. 14/2022-Customs (ADD) dated 20.05.2022. thus, had it not been for the timely detection by the DRI, it would have resulted in blatant smuggling of a goods and would also have resulted in **evasion of duty to the tune of Rs. 52,54,573/-** [i.e. the difference between the duty on Mix Lot of Polymeric Coated fabrics shown in the Home Consumption (SEZ to DTA) Bills of Entry as against the duty payable on PU Coated Fabrics].

25. I find that Shri Himanshu Goyal, Proprietor of M/s Himanshu Overseas, have done various acts of commission and omission which have rendered the goods liable to confiscation under Section 111(d) & 111(m) of the Customs Act, 1962 and consequently is liable to penalty under section 112(a) of the Customs Act, 1962. Further, Shri Himanshu Goyal appeared to have indulged in presenting documents falsifying the true identity of the goods, before the Customs authorities for import of the goods. Thus has knowingly and intentionally made a declaration under the Bill of Entry filed under Section 46 of the Customs Act, 1962, which is false and incorrect. Hence, he has committed offences of the nature as described under the Section 114AA of the Customs Act, 1962 and have consequentially rendered himself liable to penalty under the said Section 114AA of the Customs Act 1962.

26. I find that Section 117 of the Customs Act, 1962 stipulates that any person who contravenes any provisions of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [four lakh rupees]. I find that penalty under Section 117 is only applicable when there is no express penalty provided under other sections of the Customs Act, 1962 whereas in the Instant case penalty has already been invoked under Section 112 and 114 AA of the Customs Act, 1962. Therefore, the importer is not liable for penal action under Section 117 of the Customs Act, 1962.

27. I find that the importer while filing the impugned Bill of Entry has

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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.

28. 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(d) & 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.

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

ORDER

i. I order to reject the declared classification the goods covered under Bills of Entry No. 1015778 dated 03.11.2022 and order to re-assessed the impugned goods i.e. PU coated Fabric under CTH 59032090.

ii. I order for confiscation of the goods covered under Bills of Entry No. 1015778 dated 03.11.2022 having declared assessable value Rs. 9,21,404/- (Rupees Nine Lakh Twenty-One Thousand Seven Hundred and Twenty-Nine only) under Section 111(d) & 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. 1,00,000/- (Rupees One Lakh only/-) for re-export purpose.

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iii. I impose penalty of Rs. 3,00,000/- (Rupees Three Lakh only) on the importer M/s. Himanshu Overseas, under Section 112 (a) (ii) of the Customs Act, 1962.

iv. I impose penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on the importer M/s. Himanshu Overseas, under Section 114 AA of the Customs Act, 1962.

v. I drop the proposal of imposition of penalty under section 117 of the Customs Act, 1962 on the importer M/s. Himanshu Overseas.

vi. I also permit to re-export of the goods on payment of redemption fine and penalty and other charges as applicable as ordered above.

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

Signed by
Mukesh Kumari
Date: 25-07-2023 18:38:15
Additional Commissioner of Customs
Custom House, Mundra

F. No.CUS/APR/INV/125/2023-Gr 3-O/o Pr Commr-Cus-Mundra

To
M/s. Himanshu Overseas,
9091, Zameer Wali Gali, Nawab Ganj,
Azad Market, Delhi-110 006.

Copy to:

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