सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

चौथी मंज़िल **4th Floor,** हडको भवन **HUDCO Bhawan,** ईश्वर भुवन रोड़ **Ishwar Bhuvan Road**
नवरंगपुरा **Navrangpura,** अहमदाबाद **Ahmedabad – 380 009**
दूरभाष क्रमांक **Tel. No. 079-26589281**

DIN - 20250871MN000000C923

क	फ़ाइल संख्या FILE NO.	(1) S/49-250/CUS/MUN/2023-24 (2) S/49-85/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-154 to 155-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	08.08.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	(1) Letter No. GEN/ADJ/ADC/911 /2023-Adjn-O/o Pr Comr-Cus-Mundra dtd. 01.03.2023 conveying decision of Additional Commissioner, Customs, Mundra. (2) Order-in-Original No. MCH/ADC/AK/7/2024-25 dated 09.04.2024 issued by Additional Commissioner, Customs, Mundra
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	08.08.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Iskon Sales Corporation, Basement 4994/5, Sant Nagar, Gali NO.5, Karol Bagh, Delhi-110 005

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम **1962** की धारा **129** डी डी **(1)** (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से **3** महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए **:**
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.**6** अनुसूची **1** के अधीन निर्धारित किए गए अनुसार इस आदेश की **4** प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की **4** प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की **4** प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, **1962** (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. **200/-**(रूपए दो सौ मात्र)या रु.**1000/-**(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित भुगतान के प्रमाणिक चलान टी.आर.**6** की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.**200/-** और यदि एक लाख से अधिक हो तो फीस के रूप में रु.**1000/-**
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the

	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. **2** के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम **1962** की धारा **129** ए **(1)** के अधीन फॉर्म सी.ए.**-3** में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, **1962** की धारा **129** ए **(6)** के अधीन, सीमाशुल्क अधिनियम, **1962** की धारा **129** ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्त अधिनियम की धारा **129 (**ए**)** के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER-IN-APPEAL

Following two appeals have been filed by M/s. Iskon Sales Corporation, Basement 4994/5, Sant Nagar, Karol Bagh, Delhi-110 005, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the decision/orders as mentioned against them in Table-I below:-

Table-I

Sr.No	Appeal File No.	Decision/ Order appealed against
1	S/49-250/CUS/MUN/2023-24	Letter No. GEN/ADJ/ADC/911 /2023-Adjn-O/o Pr Comr-Cus-Mundra dtd. 01.03.2023 conveying decision of Additional Commissioner, Customs, Mundra.
2	S/49-85/CUS/MUN/2024-25	Order-in-Original No. MCH/ADC/AK/ 7/2024-25 dated 09.04.2024 issued by Additional Commissioner, Customs, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant is engaged in trading of various fabrics e.g. Flock Fabrics, Non-Woven Lining, Artificial Leather etc. Intelligence gathered by the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit (hereinafter referred as "DRI") 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 59039090 instead of correct classification under CTH 59032090 to evade Anti-Dumping Duty imposed vide Notification No.14/2022-Customs(ADD) dated 20.05.2022.

2.1 PU Coated Textile Fabrics other than 'Imitation leather fabrics, of cotton' are classifiable under the chapter heading 59032090 of the Customs Tariff attracting duties leviable thereunder, while PVC coated fabrics other than 'Imitation leather fabrics, of cotton' are classifiable under the chapter heading 59031090 and PA Coated Fabrics are classifiable under the chapter heading 59039090 of the Customs Tariff and attracts duties leviable thereunder. It appeared that vide Notification No.14/2022-Customs(ADD) dated 20.05.2022 issued by the Government of India Ministry of Finance, Department of Revenue, New Delhi has imposed Anti Dumping Duty on PU Coated Fabrics' classifiable under CTH 59032090.

2.2 Based on the aforesaid intelligence, officers of DRI, Ahmedabad Zonal Unit conducted search at the warehouse premises of M/s. OWS Warehouse Service LLP, APSEZ, Mundra and examined the goods imported vide Bill of Entry NO.1015704 dated 02.11.2022/Bill of Entry (SEZ to DTA) NO. 2017241 dated 05.11.2022 by the appellant. Representative samples of fabrics were drawn for testing at Central Excise & Customs Laboratory, Vadodara under Panchnama dated 12.11.2022 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. 1/ISKON/1015704 & 2/ISKON/1015704 both dated 18.11.2022 vide FNO.DRI/AZU/CI/INT-21/2022 dated 18.11.2022. The Chemical Examiner after due testing of the samples drawn gave the test reports vide Lab. No. RCL/AH/DRI/3011/01.12.2022 & RCL/AH/DRI/3012/ 01.12.2022 both dated 23.12.2022 that "the samples is in the form of cut piece of cut-piece of sheet. It is made of dyed knitted fabric (having raised fibres on one surface), coated with compounded Polyurethane on one side" for Test Memo NO. 1/ISKON/1015704 and "the sample is in the form of cut piece of sheet. It is made of white woven fabric coated with compounded Polyurethane on one side on one side" for Test Memo No.2/ISKON/1015704.

2.3 As per Notification No. 14/2022-Cus. (ADD) dated 20.05.2022 issued by the Under Secretary to the Government of India, Ministry of Finance, Department of Revenue, Import of PU Coated Fabrics 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.

TABLE-I

S. N.	Heading. Sub-heading or Tariff Item	Description of Goods	Country of Origin	Country of Export	Producer	Amount	Unit of Measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	5603 94 90 5903 20 90	Polyurethane Leather which includes any kind of textile coated one sided or both sided with Polyurethane	China PR	Any country including China PR	Anhui Anli Material Technology Co., Ltd.	NIL	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

2.4 It appeared that PU Coated Fabrics imported from China by the appellant are correctly classifiable under CTH 59032090 and is covered under the Anti-Dumping duty notification. Therefore, it appeared that the appellant had grossly violated the Notification No. 14/2022-Cus. (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. 1015704 dated 02.11.2022/ Bill of Entry (SEZ to DTA) No. 2017241 dated 05.11.2022 in respect of description and classification. Therefore, the imported goods i.e. 1749 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 11.01.2023 under the reasonable belief that the same were liable for confiscation under Section 111(m) & 119 of the Customs Act, 1962.

2.5 A search was conducted at premises of importer M/s. Iskon Sales Corporation having its address at 4994/5, Sant Nagar, Gali NO.5, Karol Bagh, Delhi-110 005 under Panchnama dated 25.11.2022. During the course of search proceedings, two made up files bearing Sr. No. 1 to 133 (File No.1) and Sr.No.1 to 171 (File No.2) containing sale invoices of Iskon Sales Corporation was resumed by DRI officers. Further, Shri Prashant Gautam, Proprietor of the firm informed that documents of the import consignment imported by the appellant were available with their CA Shri Rahul Girdhar and the same was made available to the DRI officer by Shri Rahul Girdhar in soft copy (pen drive).

2.6 During the course of inquiry, the statement of Shri Prashant Gautam, Proprietor of M/s. Iskon Sales Corporation, Delhi-110006 was recorded on 13.02.2023 under Section 108 of the Customs Act 1962, wherein he stated that Iskon Sales Corporation is proprietorship firm and he was the proprietor of the firm. He had established firm in the year 2015. He stated that their firm engaged in trading for various types of fabrics. He stated that he was doing business of trading in fabrics e.g. Flock Fabric, Non-Woven Lining, Artificial Leather etc. He stated that synthetic leather called as artificial leather and is made by coating the fabric from different type of plastics material like PVC and PU. The same used in manufacturing of shoes, purse, hand bags etc. He stated that he was importing PU Coated Fabric, PVC Coated Fabric, Bonded Fabric, Non-Woven Fabric & Flock Fabric only from Republic of China. He did not purchase the goods from local manufacturers. He stated that he had stopped import of PU Coated Fabric after implementation of Anti-dumping Duty on PU Coated fabric. He stated Textile Coated Fabric and Polyester Bonded Fabric were imported by their firm. He stated that Textile Coated fabric is artificial leather and also used in same application as PU Coated Fabric. He stated that he do not know the difference between Textile Coated Fabric & PU Coated Fabric. He stated that he was aware that anti-dumping duty was imposed on import of PU Coated Fabric. He stated that goods mentioned in Bill of Entry was imported by him and Bill of Entry had been filed by them. He stated that Textile Coated Fabrics were not available in their stock, they had sold all Textile Coated Fabrics. He stated that he will produce invoice, packing list and Bill of Lading for all import consignment. He has stated HS Code/CTH 59119090 of goods in Bill of Entry No. (SEZ to DTA Unit) 2013607 dated 09.09.2022.

2.7 From the foregoing it appeared 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 59030990. 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 appellant 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 imported goods as "Textile Coated Fabrics" under CTH 5903090.

2.8 It thus appeared, in view of the facts discussed in foregoing paras and the material evidences available on record that the appellant made a deliberate attempt to illicitly import 25,370 Kgs of PU Coated Fabrics having declared assessable Value of Rs. 21,29,056/- under the cover of Bills of Entry No. 2017241 dated 05.11.2022 (Bill of Entry of Home Consumption (SEZ to DTA unit)) in the guise of Textile Coated Fabrics, thereby attempted to evade duty to the tune of Rs. 33,71,023/- i.e. the applicable anti-dumping duty. It therefore appeared that the PU Coated Fabrics was imported by resorting to mis-declaration of the same as Textile 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 Textile Coated Fabrics having declared assessable Value of Rs. 21,29,056/- is liable to confiscation under the provisions of Section 111(d) and 111 (m) of the Customs Act, 1962 in as much as the goods have been imported by misdeclaring 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, the appellant have rendered themselves liable to penalty under Section 112(a) and 112(b) of the Customs Act 1962.

2.9 It also appeared from the foregoing paras that Shri Prashant Gautam, Proprietor of M/s Iskon Sales Corporation 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 Textile Coated Fabrics. He claimed that he had stopped the import of PU coated fabrics after implementation of Anti-dumping duty. However, they had not submitted any tangible evidences in support of their claim. Thus, it appeared that Shri Prashant Gautam, Proprietor of M/s Iskon Sales Corporation, had made an attempt to illicitly smuggle 25,370 Kgs of PU Coated Fabrics having Assessable value of Rs. 21,29,056/- in the guise of Textile 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-Cus. (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 goods and would also have resulted in evasion of duty to the tune of Rs. 33,71,023/- i.e. the difference between the duty on Textile Coated Fabrics shown in the Home Consumption [SEZ to DTA] Bills of Entry as against the duty payable on PU Coated Fabrics].

2.10 Thus it appeared that Shri Prashant Gautam, Proprietor of M/s Iskon Sales Corporation, have done various acts of commission and omission which have rendered the goods liable to confiscation under Section 111 of the Customs Act and consequentially is liable to penalty under Section 112(a) and 112(b) of the Customs Act, 1962. Further, Shri Prashant Gautam 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. He has also contravened various provisions of Customs Act for which no express penalty is provided for such contraventions/omission and have accordingly rendered themselves liable for penalty under Section 117 of the Customs Act, 1962 too.

2.11 In view of the above, a Show Cause Notice under F. No. GEN/ADJ/ADC/911/2023-ADJIN, dated 04.05.2023 was issued to M/s. Iskon Sales Corporation, as to why:-

i. The impugned goods i.e. PU Coated Fabrics quantity 25,370 Kg [Bill of Entry Quantity] (SEZ to DTA Unit) (Seized quantity 1749 Rolls) having Assessable value of Rs. 21,29,056/- and mis-declared as Textile Coated Fabrics in the Bills of Entry, seized during the panchnama dated 12.11.2022, 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 25,370 Kg [Bill of Entry Quantity] (SEZ to DTA Unit) (Seized quantity 1749 Rolls) having Assessable value of Rs. 21,29,056/- and mis-declared as Textile Coated Fabrics in the Bills of Entry, seized during the panchnama dated 12.11.2022, should not be confiscated under the provisions of Section 111(d) and 111(m) of the Customs Act, 1962:

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

iv. Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962;

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

2.12 The appellant, during the course of personal hearing on 03.01.2024, had requested for re-testing of the goods and cross examination. The appellant was communicated about the decision of the adjudicating authority , vide letter dated 01.03.2024 wherein it was informed to them that the samples of the import consignment in the subject case were drawn and forwarded to CRCL, Vadodara by the investigating agency for testing various parameters such as Nature of the Fabric, Composition of the Fabric, and other as mentioned in the Test Memo No.1/15KON/1015704 dated 18.11.2022. The goods were tested by CRCL Vadodara, and the Test Report dated 23.12.2022, thus forwarded contained detailed report regarding of the Fabric, Composition of the Fabric, it's thickness & Composition and its contents (in %). Therefore, the contention that the report of the CRCL was merely based on the suggestion of a person, was far from truth. The test-report of the Chief Examiner and Chief Chemist of the Government Laboratory could not be brushed aside. Further, it was also informed to them that they had made a request at such a late date much after issuance of Show Cause Notice, which was not in consonance with the guidelines or re-testing of samples issued by the Board vide Circular No. 30/2017-Cus. dated 18-07-2017 issued under F.No. 450/15/2017-Cus. Reliance was also placed on following case laws:

(a) Supreme Court in the case of Polyglass Acrylic Manufacturing Company Limited, 2003(153) ELT 276 has observed that the test report obtained at the instance of revenue has a great force and it should not be ignored.

(b) Similarly, Hon'ble Tribunal in the case of Collector of Central Excise, Ahmedabad vs. Cellulose Products of India, 2OOO (124) ELT 1 133 [maintained by Hon. Supreme Court as reported per 2OOl (127) ELT A 165] has observed that the test report of departmental chemist/chief chemist is to be preferred over opinion of outside agencies.

(c) Further, Hon'ble Supreme Court in the case of Reliance Cellulose Products Limited 1997(931 ELT 646 wherein at para 12 of the Government cannot be lightly brushed aside on the basis of opinion of some private persons obtained by the appellant.

(d) Hon'ble Supreme Court in the case of Shree Tirumala Udyog Vs' Collector of Customs, Bangalore, 2003(1621 ELT 908 wherein at para 37 ibid it is held that results not shown to be inaccurate or fraudulent could not be discarded.

2.13 Further, with regard to cross examination, it was informed that cross examination of the person who provided test report in the subject case, was sought without indicating specific reason for the same. Moreover, cross examination of the said person shall not bring out any new facts. Hence, the request for cross-examination was not sustainable as nothing new other than what was available on record was likely to come out of cross examination. Accordingly, the request for re-testing of the goods and cross examination in the subject made during the personal hearing held on 03.01.2024 was not permitted.

2.14 Consequently, the Adjudicating Authority adjudicated the show cause notice vide impugned order wherein he ordered as under :-

i. He rejected the declared classification of imported goods i.e. PU Coated Fabrics (quantity 25,370 Kgs) imported vide Bill of Entry No. 1015704 dated 02.11.2022 and order to re-classify the same under Custom Tariff Heading 59032090 of the first schedule of the Customs Tariff Act, 1975;

ii. He ordered to confiscate the goods imported vide Bill of Entry No. 1015704 dated 02.11.2022 having assessable value of Rs. 21,29,056/- under Section 111(m) of the Customs Act, 1962. However, he gave an option to the importer to redeem the confiscated goods on payment of redemption fine of Rs.3,15,000/- under Section 125 of Customs Act, 1962;

iii. He ordered to recover the Anti-Dumping Duty of Rs. 33,71,023/- along with applicable interest at appropriate rate under Section 28AA ibid, on the goods i.e. PU Coated Fabrics (quantity 25,370 Kg) imported vide Bill of Entry No. 1015704 dated 02.11.2022 in terms of Notification No.14/2022-Cus. (ADD) dated 20.05.2022;

iv. He imposed a Penalty of Rs. 1,75,000/- (Rs. One Lakh Seventy Five Thousand) on M/s. Iskon Sales Corporation, Basement 4994/5, Sant

Nagar, Gali No. 5, Karol Bagh, Delhi-110005 under Section 112(a)(ii) of the Customs Act, 1962;

v. He imposed a Penalty of Rs. 1,00,000/- (Rs. One Lakh only) on M/s. Iskon Sales Corporation under Section 114AA of the Customs Act, 1962;

vi. He refrained from imposing any penalty on M/s. Iskon Sales Corporation under Section 112(b) and 117 of the Customs Act 1962, for the reasons discussed in order.

3. SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned letter dated F.No. GEN/ADJ/ADC/911/2023-Adjn dated 01.03.2024 and impugned order the Appellant has filed the present appeals as per Table-I above, wherein they have submitted grounds which are as under:-

3.1 The appellant has submitted that the impugned order has been passed mechanically and in arbitrary manner in gross violation of principles of natural justice and in as much as without following the customs law and valuation rules. Thus the same is liable to be set aside being bad both on facts and in law and if permitted to stand would result in miscarriage of justice.

3.2 The adjudicating authority has not even considered the lawful submission of the appellant that the appellant had filed an appeal before this appellate authority against the impugned letter dated 01.03.2024 issued by the respondent for the denial is bad in law and is contrary to the facts of the case and if permitted to stand would result in miscarriage of justice.

3.3 The impugned letter dated 01.03.2024 of denial is in utter disregard to the Principles of Natural Justice and equality, as in the absence of the proper remedy, the issuance of the show cause notice is merely a formality which will cause complete miscarriage of justice.

3.4 The impugned letter dated 01.03.2024 of denial is arbitrary, colonial and contrary to the Constitution of India. The adjudicating authority had wrongly concluded and/or noted that during the investigation the appellant had not requested for the re-testing of the goods to the DRI. The appellant had duly raised his objection for the test report and requested for the re-test before the DRI also. Even otherwise the appellant had filed an appeal before this hon'ble appellate authority.

3.5 The adjudicating authority had wrongly concluded and/or noted that during the personal hearing the authorized representative was failed to produce any legitimate document to support his claim. The adjudicating authority has failed to note that the Bill of Entry is well supported with import documents Viz Commercial Invoice & Packing List admittedly sent by the foreign exporter of the goods. Because for the proper, unbiased and fair justice, it is essential to allow the appellant for the proper re-test of the subject goods and also to allow the cross examination to reveal the complete truth.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 12.06.2025, following the principles of natural justice wherein Shri Harish Kohli, Advocate appeared for the hearing on behalf of the appellant and he re-iterated the submission made at the time of filing the appeal. He also submitted additional submissions as under :-

(i) In Appeal No. S/49-250/CUS/MUN/2023-24, there is no requirement for a pre-deposit, as the relief sought is solely for a re-test, which was not granted by the authority. The denial of this request constitutes a violation of the principles of natural justice.

(ii) With respect to Appeal No. S/49-85/CUS/MUN/2024-25, it is clarified that the required pre-deposit has already been made. The consignment in question is a live consignment and remains under the effective control of the Customs Department. Therefore, it is respectfully submitted that this appeal may be decided on its merits.

Furthermore, it is submitted that both appeals are interrelated, and denial of the re-test would result in grave injustice to the innocent appellant.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned orders passed by the Additional Commissioner, Customs House, Mundra and the defense put forth by the Appellant in their appeals.

5.1 On going through the material on record, I find that following issues required to be decided in the present appeals which are as follows:

(i) Whether the rejection of the Appellant's request for re-test of the goods and cross-examination of the Chemical Examiner is legally sustainable and in consonance with the principles of natural justice.

(ii) Whether the re-classification of the imported goods as PU Coated Fabrics under CTH 59032090 and the demand for Anti-Dumping Duty (ADD) are legally sustainable.

(iii) Whether the goods are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962.

(iv) Whether the imposition of penalties under Section 112(a)(ii) and Section 114AA of the Customs Act, 1962, is legally sustainable and proportionate.

5.2 The Appellant's primary contention revolves around the denial of re-test and cross-examination, claiming a violation of natural justice. It is a settled legal position that while principles of natural justice are fundamental, they are not rigid and cannot be applied in a straitjacket formula. Their application depends on the facts and circumstances of each case. The test reports in this case were issued by the Central Excise & Customs Laboratory, Vadodara (CRCL), which is a government-authorized laboratory. Reports from such official laboratories are considered reliable and carry a presumption of correctness. The burden of proving that such a report is incorrect or unreliable lies heavily on the party challenging it. The Appellant's general assertion that the reports are "neither conclusive nor reliable" or a "mere suggestion" without providing specific, scientific counter-evidence or demonstrating a flaw in the testing methodology, is insufficient to discard an official expert report. The Chemical

Examiner's report, being a scientific assessment by a government expert, certainly carries such probative value.

5.3 The right to cross-examine a witness is an important facet of natural justice, especially when the evidence of that witness forms the sole or primary basis of an adverse finding. However, this right is not absolute. The Hon'ble Supreme Court in Kanungo & Co. vs. Collector of Customs [1983 (13) E.L.T. 1486 (S.C.)] held that where statements are used only for corroboration or to gather information, cross-examination may not be necessary. While a Chemical Examiner's report is a technical opinion, if the report itself is clear, unambiguous, and forms a significant basis for the classification and duty demand, the denial of cross-examination of the Chemical Examiner can be justified, particularly if the request is not made at the earliest opportunity or lacks specific grounds for doubting the examiner's integrity or competence beyond a general desire to challenge the report. In this case, the request for cross-examination was made after the SCN was issued, and the adjudicating authority found the reports to be clear. The Appellant has not demonstrated any specific prejudice caused by the denial, other than a general claim of miscarriage of justice.

5.4 Requests for re-testing should be made promptly and with valid reasons, ideally at the stage of sampling or immediately after receiving the initial test report, to ensure the integrity of the samples. Making such a request at a late stage (after the SCN and during adjudication) can be a ground for rejection, as the sample's condition might change over time, or it might be seen as a dilatory tactic. The adjudicating authority's decision to reject the re-test request, especially when an official laboratory report is already on record, is often upheld unless the Appellant provides compelling reasons for the delay or specific scientific reasons to doubt the initial test. The Appellant's grounds for re-test were vague, merely stating "proper re-test" and "neutral test agency" without substantiating why the government laboratory was not "neutral" or why its "parameters and methodology" were improper. Therefore, considering that the test reports were from a government laboratory, the Appellant failed to provide specific and compelling reasons to doubt their reliability, and the requests for re-test and cross-examination were not made at the earliest appropriate stage with sufficient justification, the rejection of these requests by the adjudicating authority is legally sustainable. In view of the above, the appeal filed against the decision of adjudicating authority vide letter No. GEN/ADJ/ADC/911/2023-Adjn-O/o Pr Comr-Cus-Mundra dtd. 01.03.2023 as per Sr. No. 1 of the Table-I above, is liable to be rejected.

5.5 Now coming to the issue involved in second appeal filed against the impugned OIO, before going into merits of the said appeal, I find that the said appeal bearing F.No. S/49-85/CUS/MUN/2024-25 (Sr. No. 2 of Table-I above) has been not been filed within stipulated period of 60 days. Further it is also observed that the appellant has paid the pre deposit amount of Rs.20,625/- to the extent of 7.5% of total penalty of Rs. 2,75,000/- (Rs. 1,75,000 under Section 112(a)(ii) of the Customs Act, 1962 and Rs. 1,00,000/- under Section 114AA) whereas they have contested duty demand of Rs. 33,71,023/- (Anti Dumping duty) as well as penalty.

5.5.1 It is relevant to refer to the law pertaining to filing of appeals before the Commissioner (Appeals) and the law requiring the pre-deposit of certain amount in respect of filing an appeal before the Commissioner (Appeals) contained under Section 128 and Section 129 E of the Customs Act, 1962 respectively. The text of relevant sections is reproduced below for ease of reference.

> ***"SECTION 128. Appeals to [Commissioner (Appeals)].*** *— (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a [Principal Commissioner of Customs or Commissioner of Customs] may appeal to the [Commissioner (Appeals)] [within sixty days] from the date of the communication to him of such decision or order :*
>
> *[**Provided** that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]*
>
> *[(1A) The Commissioner (Appeals) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :*
>
> ***Provided** that no such adjournment shall be granted more than three times to a party during hearing of the appeal.]*

(2) Every appeal under this section, shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf.

SECTION 129E. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal. *— The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal, —*

(i) under sub-section (1) of section 128, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the [Principal Commissioner of Customs or Commissioner of Customs];

(ii) against the decision or order referred to in clause (a) of sub-section (1) of section 129A, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;

(iii) against the decision or order referred to in clause (b) of sub-section (1) of section 129A, unless the appellant has deposited ten per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against :

Provided *that the amount required to be deposited under this section shall not exceed rupees ten crores :*

Provided *further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014.]"*

5.5.2 On perusal of the legal provision under the Section 128 and Section 129E of the Customs Act, 1962, it is observed that any person aggrieved by any decision or order passed under the Customs Act, 1962 may appeal to the Commissioner (Appeals) within sixty days from the date of communication to him of such decision or order. However, such appeal filed by the appellant shall not be entertained unless the appellant has made a pre-deposit as prescribed under Section 129E of the Customs Act, 1962. Thus, it is mandatory for an appellant to deposit the seven and a half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute. The statutory provision pertaining to requirement of payment of pre-deposit does not grant any discretion to the Commissioner (Appeals) to waive the requirement of pre-deposit.

5.5.3 In this regard, I also rely upon the judgment of Hon'ble High Court of Madhya Pradesh in case of Ankit Mehta V. Commissioner of CGST, Indore, [2019 (368) E.L.T. 57 (M.P.)], wherein the Hon'ble High Court of Madhya Pradesh has observed that Section 129E of the Customs Act, 1962 does not empower the Commissioner (Appeals) to waive the pre-deposit or to reduce the pre-deposit. The relevant para of the judgment is reproduced hereunder:

> *"13. This Court after careful consideration of the aforesaid judgments is of the opinion that Section 129E does not empower the Tribunal or the Commissioner (Appeals) to waive the pre-deposit or to reduce the pre-deposit, this Court is also not inclined, keeping in view the aforesaid statutory provision of law to waive or reduce the pre-deposit and, therefore, no case for interference is made out in the matter."*

5.5.4 Section 129E of the Customs Act, 1962 provides that the Commissioner (Appeals) shall not entertain any appeal under Section 128 of the Customs Act, 1962 unless the appellant has deposited seven and half percent of duty in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs. Since, the Appellant have not made pre-deposit as required under the Section 129E of the Customs Act, 1962, the appeal filed by the Appellant is liable to be dismissed for failure to deposit the amount of pre-deposit.

5.5.5 As per appeal memorandum, the date of communication of OIO has been mentioned as 09.04.2024 whereas the appeal has been filed on 27.06.2024 i.e after a delay of 19 days beyond 60 days. The appellant has filed an application for condonation of delay wherein they have submitted that the appeal has been delay as the appellant's father had met with an accident. The delay is within condonable period of 30 days, but since the appellant has not paid the full amount of mandatory pre-deposit as prescribed in Section 129E of the Customs Act, 1962, I find that the appeal is not maintainable in absence of pre-deposit as per Section 129E of the Customs Act, 1962. In view of the same, I dismiss the appeal filed against the impugned order as per Sr No. 2 in Table-I above, for non compliance of Section 129E, without going into the merits of the said appeal.

6. In light of the discussions as above, I order as under :-

   (i) The appeal bearing File No. S/49-250/CUS/MUN/2023-24 is rejected.

   (ii) The appeal bearing File N. S/49-85/CUS/MUN/2024-25 is dismissed for non compliance of Section 129E of the Customs Act, 1962

सत्यापित/ATTESTED
अधीक्षक/SUPRERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

Date:08.08.2025

(1) F. No. S/49-250/CUS/MUN/2023-24

(2) F.No. S/49-85/CUS/MUN/2024-25 9869

By Registered post A.D/E-Mail

To,
M/s. Iskon Sales Corporation,
4994/5, Basement, Sant Nagar,
Karol Bagh, New Delhi-110005.

Copy to:
1. The Chief Commissioner of Customs, Ahmedabad zone, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Mundra.
3. The Additional Commissioner of Customs, Custom House, Mundra.
4. Guard File.