



**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

Email : importsectionmundra@gmail.com

A	File No.	CUS/APR/BE/MISC/532/2023-Gr 3-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/MK/22/2023-24
C	Passed by	Mukesh Kumari Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	04.05.2023
E	Date of Issue	04.05.2023
F	SCN No. & Date	Importer has requested for waiver of SCN/PH vide letter dated 28.04.2023
G	Noticee/Party/ Importer/ Exporter	M/s. Fashion Avenue (IEC No. CRVPP6585R), B-10, Vijay Block, Laxmi Nagar, East Delhi, Delhi-110092.
H	DIN No.	20230571MO000000ECF8

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

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 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/- रुपये 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 ड्यूटी/ ब्याज/ 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, where penalty alone is in dispute.

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BRIEF FACT OF THE CASE

Intelligence was developed to the effect that container No(s). ZCSU7263843 and ZCSU7472729 (hereinafter referred as “the said Containers”) lying at unit of M/s Steinweg Sharaf (India) Private Limited, SEZ, Mundra Port may contain some mis-declared/concealed goods. Accordingly, the officers of the SIIB, Mundra Customs visited the premises of M/s Steinweg Sharaf (India) Private Limited, SEZ, Mundra Port on 14.02.2023 with prior intimation to the specified officer issued by the competent authority.

2. The examination of the said containers was done at M/s Steinweg Sharaf (India) Private Limited, SEZ, Mundra in presence of representative of SEZ unit and Authorized CHA of the importer. CHA M/s Cargo Concepts Bombay Pvt. Ltd., Mundra provided import document in respect of both the containers alongwith the copies of the Bills of Entry (Ex-bond). The details of the Bills of Entry (Ex-bond) are as under:

Container No.	Bill of Entry (Ex-bond) & date	Date of Assmnt./ Ex-bond	Description of Goods	Unit	Total Qty Doz	Total Qty. No(s)	Ass.Value (in Rs.)
ZCSU7163843	20027669 dated 10.02.2023	--	Baby Leggings	doz	4396	52752	300298
			Girls Leggings	doz	3460	41520	413628
			Girls Plazo	doz	1800	21600	230552
			Girls Slip	doz	1250	15000	37358
			Packing Ass.	kgs	100	-	8539
ZCSU7472729	2002768 dated 10.02.2023	13.02.2023	Baby Leggings	doz	3676	44112	250397
			Girls Leggings	doz	3260	39120	388807
			Girls Plazo	doz	3265	39180	419558

3. During the course of examination it is observed that the containers were stuffed with PP woven bags, whereas, while opening the bags it was observed that approx 40% to 50% of the front part of the containers were containing the declared goods and the bags which were stuffed in the second half portion of the containers were containing different types of female undergarments and some men's underwear.

3.1. The detail of the goods found during the examination is as follows;

Table- A for Container No. ZCSU7163843

Sr. No.	Item Description	Total Number of Bags	Quantity found (No.)	Qty Declared (No.)	Short (-)/ Excess (+)
1	Baby Leggings	130	42252	52752	(-) 10500
2	Girls Leggings	122	33600	41520	(-) 7920
3	Girls Plazo	95	22740	21600	(+) 1140
4	Girl Slips	0	0	15000	(-) 15000
5	Girls Bra	43	22680	0	(+) 22680
6	Girls Bra Panty Set	2	1200	0	(+) 1200
7	Girls Briefs	14	20580	0	(+) 20580
8	Men Underwear	50	60000	0	(+) 60000
9	Tags	5	102500	100(kgs)	-

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10	Empty Woven Bag	2	280	0	(+) 280
Total		463	305552		

Table- B for Container No. ZCSU7472729

Sr. No.	Item Description	Total Number of Bags	Number of Pieces in Bags	Quantity	Qty Declared (No.)	Short /Excess
1	Girls Leggings	79	300	19320	39120	(-)19800
2	Girls Plazo	178	240	44520	39180	(+)5340
3	Baby Leggings	93	432	33145	44112	(-)10967
4	Girls Bra	119	700	141340	0	(+)141340
5	Thigh Length Inner Shorts Girls	1	800	800	0	(+)800
Total		470		239125		

4. In view of the above tables, it is noticed that the consignment was grossly mis-declared in terms of quantity & description of declared goods and also containing concealed goods viz 'ladies and gents under garments' in the guise of "Girls Leggings & Baby Leggings".

5. Summons dated 15.02.2023 were issued to the Importer -M/s. Fashion Avenue, CHA -M/s Cargo Concepts Bombay Pvt. Ltd. and the SEZ Unit – M/s Steinweg Sharaf India Pvt. Ltd., Mundra for seeking clarification regarding the consignments and submission of relevant details/documents in respect of the said consignments. In response to Summons dated 15.02.2023, a statement of Shri Kanhaiya J. Kasera, G-Card Holder of the CHA- M/s Cargo Concepts Bombay Pvt. Ltd. was recorded on 15.02.2023, they agreed to the content and procedure of panchnama, further they stated that they are not at all aware of the mis-declaration/ concealment of undeclared goods in the cargo and that in the past consignments the goods were cleared to DTA after examination by the Customs Officials and there was nothing objectionable observed. The importer is a wholesale trader of hosiery dress material and he produced KYC of the importer.

6. Statement of Shri Baddam Thirupathi, Manager of the SEZ unit M/s Steinweg Sharaf India Pvt. Ltd., Mundra was recorded on 15.02.2023, he also agreed to the content and procedure of panchnama.

7. During the course of investigation, search has been conducted to the premises of the Importer to get the details of the business and the genuineness of the importer. During the search, Scrutiny of the records received under panchnama revealed that the importer is engaged in import and trading of garments viz. Ladies Leggings, Baby Leggings, Girls Plazo & Girls Slips.

8. Further, in response to summons dated 15.02.2023, a statement of Shri Sanjay Arora, Authorized Signatory of the importer was recorded on 17.02.2023 and 03.03.2023, he also agreed to the content and procedure of Panchnama. Further, they have informed by their authorized CHA that during the examination of the goods under Panchnama dated 14.02.2023, some mis-match of description and undeclared goods were found in the cargo imported by their firm; he further stated that they were not aware about the undeclared goods found in their cargo before 14.02.2023 and they got to know this only after the examination of the goods by the departmental official in presence of their CHA. The

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undeclared goods viz. undergarments found during examination might have been due to human mistake at the loading end or may be at the shipper's end. That their firm is engaged in the wholesale business/trading of different types of ladies, girls and baby leggings; however, sometimes they receive specific orders for other hosiery items and accordingly, they put the order of the same to their foreign based shipper. This time also on the basis of specific order from their client, they have ordered for import of girl slips. As the said item is similar to brasseries; hence, it appears that due to some mis-understanding at the shipper end, wrong products have been loaded in their cargo. He apologized for that and requested to kindly understand the same; he submitted that the imported undeclared items viz. Bra, Panties, Men Briefs etc. found in the cargo are of no use for them, as they are not at all familiar in sale purchase of undergarments; therefore, he requested that their firm may be permitted to re-export the said goods. They do not want any Show Cause Notice or Personal Hearing in the matter and as stated above they agree to pay applicable fine and penalty for their mistake and requested that their firm may be allowed to re-export of the imported undeclared items viz. Bra, Panties, Men Briefs etc. found in the cargo.

9. The imported cargo is grossly mis-declared in terms of quantity and quality of goods. Therefore, the transaction value declared by the importer under Section 14 of the Customs Act, 1962 is liable to be rejected as per Rule 12 of the Customs Valuation (Determination of Value of Imported Goods), Rule, 2007 due to mis-declaration observed during examination. Accordingly, the Empanelled Chartered Engineer Shri Kunal Ajay Kumar of M/s. Suvika Associates, carried out an inspection of the sample goods of the cargos for valuation purposes on 20.02.2023 and submitted his valuation report vide report No. CUS/222/22-23 dated 22.02.2023 for the Market Value of the goods of same description.

10. The goods "Women & Men undergarments" were concealed in the cargo in the guise of Girls Leggings & Baby Leggings with an intention to evade the customs duty. Further, from the CE report dated 22.02.2023, it is observed that the valuation of the declared goods was also at lower side than the actual value of the goods. Moreover, it appears that the declared goods i.e. Girls Leggings & Baby Leggings were used for concealment of the undeclared goods. Therefore, the imported goods were seized under Section 110 of the Custom Act, 1962 on the reasonable belief that they are liable for confiscation under Section 111(m) and Section 119 of the Customs Act, 1962 vide seizure memo dated 24.02.2023.

11. Classification of the Goods & Applicable Duty:

- The declared goods i.e. Girls legging & Baby Leggings are classified by the importer in appropriate CTH 61159600 and Girls Plazo are classified by the importer in appropriate CTH 62082990 and the goods attract BCD@20%, SWC@10% & IGST@5%.
- The concealed goods i.e. Women Bra & Girls Bra are classifiable under CTH 62121000 [Brassieres] and attracts **BCD 20% or Rs.30 per piece, whichever is higher.**
- The concealed goods i.e. Men Underwear are classifiable under CTH 61071210 [Underwear & Briefs of Synthetic fibre] and attracts **BCD 20% or Rs.30 per piece, whichever is higher.**

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- The concealed goods i.e. Girl's Briefs (panties) are classifiable under CTH 61082210 [Briefs and panties of Synthetic fibre] and attract **BCD 20% or Rs.25 per piece, whichever is higher.**
- The concealed goods i.e. 'Bra-Panty Set' are nothing but same color & style Bra & Panty packed together for retail sale. Accordingly, Bra from the set are classified under CTH 62121000 [Brassieres] & Panty from the set are CTH 61082210 [Briefs and panties of Synthetic fibre]

12. Re-valuation of Goods:

12.1 In continuation to the statement dated 02.03.2023, the importer vide their letter dated 18.03.2023 and dated 23.03.2023 requested for second opinion on the valuation of the goods found in Container No. ZCSU7472729 & ZCSU7163843 on the following grounds:

(A). These leggings are sold to the whole sale market of Delhi at the price of Rs. 30-45 per Pc. These leggings are of sub-standard quality and economical for the weaker section of the society. The data of import of leggings from any customs of India shows that these leggings are assessed on 1.40-1.60 USD per Dozen. The importer has also submitted copies of previous Bills of Entry for same description and local sales invoice for goods sold by them to their customers. Vide letter dated 23.03.2023 the Importer has also submitted that they are ready to pay differential duty along with applicable fine and penalty on the contemporaneous price of the similar goods.

(B). The importer also submitted that their supplier of China i.e. M/s Yiwu Harvest Import and Export Co. Ltd. is continuously asking them to re-export the goods urgently which were wrongly loaded in these containers of other buyer of Egypt. The importer has also enclosed letter received from their supplier in their name; wherein their supplier undertakes to bear all the expenses and penalties. Further, vide letter dated 23.03.2023 the importer submitted that they are ready to pay fine & penalty for re-export.

(C). The importer also submitted that the under garments made for girls of age group of 10-12 years are not bra, therefore they requested to consider such items in girls slips and not as undergarment bra; however, vide letter dated 23.03.2023, the importer submitted that the said goods are bra and not as per their order of girls slips.

13. On the basis of the request submitted by the importer and accorded by the competent authority, a market survey of the similar goods have been conducted by the officers of this section as per Rule (6) (Residual Method) of Customs Valuation (Determination of Value of Export Goods) Rules, 2007. Going through the comparative Market price provided by the Chartered Engineer, Market Price arised out of Residual Method & the Assessment Data of previous Bills of Entry available with this office, it is observed that the Market Price arised out of Residual Method is much nearer to the data of previous bill of entry for similar goods, accordingly, the same has been considered for assessment purpose. Further, deducting of retailer margin (10%), transportation (5%), whole-seller margin (10%), duties & landing cost of the products (30%), the valuation of the products arised out near by 45% of the market value of the product. Accordingly, the

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valuation of the products arised as per deduction valuation rules is as under;

Sr.No.	Description of Goods	Market Price per unit (Rs)	Assessment Price per unit (Rs.)
1	Baby Leggings	30.00	16.50
2	Girls Leggings	75.00	33.75
3	Girls Plazo	70.00	31.50
4	Bra	40.00	22.00
5	Girls Brief	40.00	22.00
6	Men Underwear	35.00	19.25
7	Thigh Length Inner Shorts	40.00	22.00
8	Tag	1.00	0.55
9	P.P. Woven Bags	10.00	5.50

14. The importer vide their letter dated 31.03.2023, submitted that the value of the goods as per market survey is acceptable to them and they are ready for re-asessment on the said value and ready to pay penalty as applicable. The detailed calculation sheet for valuation of goods and duty payable thereon is enclosed alongwith this investigation report. The summary of duty payable and paid is as under;

15. Differential Duty Payable:

15.1 In respect of Declared Goods

Sr. No.	Container No.	DTA Bill of Entry No. & Date	Duty paid as per Assmnt. Order/advance (Rs.)	Duty payable on re-assessment (Rs.)	Differential duty (Rs.)
1	ZCSU7163843	In-bond:1002833 dated 10.02.2023 Ex-bond: 20027669 dated 10.02.2023	265398.82	694981.72	429582.899
2	ZCSU7472729	In-bond:1002770 dated 09.02.2023 Ex-bond: 2002768 dated 10.02.2023	278541.00	703030.39	424489.387
Total Differential Duty on declared goods			543939.82	1398012.11	854072.286

15.2. In respect of concealed goods

Sr. No.	Container No.	DTA Bill of Entry No. & Date	Duty paid as per Assmnt. Order/advance (Rs.)	Duty payable on re-assessment (Rs.)	Differential duty (Rs.)
1	ZCSU7163843	In-bond:1002833 dated 10.02.2023 Ex-bond: 20027669 dated 10.02.2023	-	3640233.60	3640233.60
2	ZCSU7472729	In-bond:1002770 dated 09.02.2023 Ex-bond: 2002768 dated 10.02.2023	-	5058364.80	5058364.80
Total Differential Duty on concealed goods				8698598.40	8698598.40

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16. Further, it appears that the Custom Broker did not follow due diligence in respect of imported goods. Further, he has also failed to comply with the provisions of the Custom Broker Licencing Regulations, 2018 (CBLR, 2018), thus, appears to be liable for penal action under Section 117 of the Customs Act, 1962 for contravention of CBLR, 2018

17. Relevant Provisions of Law:

17.1. The relevant provisions of law pertaining to import of goods in general, the policy & rules relating to imports, the liability of the goods to confiscation and the persons concerned to penalty for illegal importation under provisions of Customs Act, 1962 and the other laws for the time being in force are summarized as under:

Section 2(25) defined the terms "Import Goods":

"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 46: Entry of goods on importation. – “(1) The importer of any goods, other than goods intended for transit or trans-shipment, shall make entry thereof by presenting electronically to the proper officer a Bill of Entry for home consumption or warehousing in the prescribed form:

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

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

(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.”

Section 111(f): any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;

Section 111(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;

Section 111(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 119: *Confiscation of goods used for concealing smuggled goods. —Any goods used for concealing smuggled goods shall also be liable to confiscation. Explanation. — In this section, “goods” does not include a conveyance used as a means of transport.*

Section 112(a)(ii) -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

SECTION 14. Valuation of goods. - (1) *For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf :*

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

Provided further that the rules made in this behalf may provide for, -

- (i)
- (ii)
- (iii) *the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:*

Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a Bill of Entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

(2)

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007; Notification No. 94/2007 - Customs (N.T.)

Rule 2. Definitions-(d) *"identical goods" means imported goods –*

- (i) *which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;*
- (ii) *produced in the country in which the goods being valued were produced; and*
- (iii) *produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person,*

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but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

17.2 Custom Broker Licencing Regulations, 2018

10(d). advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

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

- i. The goods covered under the DTA B/E Nos. 2007668/1002833 dated 10.02.2023 & 2007669/1002770 dated 10.02.2023 having re-assessable value of Rs 92,95,385/- (Rupees Ninety-Two Lakhs Ninety-Five Thousand Three Hundred Eight Five only) are liable for confiscation under section 111(f), 111(i) and 111(m) of the Customs Act, 1962 and the concealed goods are liable for confiscation under section 119 of the Customs Act, 1962
- ii. The items mentioned in the Bills of Entry Nos. 2007668/1002833 dated 10.02.2023 & 2007669/1002770 dated 10.02.2023 may be re-assessment as per market price.
- iii. The items found concealment may be allowed to re-export.
- iv. The importer is liable to be penalized under Section 112(a) of the Customs Act, 1962.
- v. The Customs Broker is liable to be penalized under Section 117(a) of the Customs Act, 1962 for contravention of CBLR, 2018.

WAIVER OF PERSONAL HEARING AND SCN

19. The Importer, vide their letter dated 28.04.2023 Submitted that they do not want any show cause notices and personal hearing in this matter and they are ready to fine & Penalty. The CHA M/s Cargo Concept (Bombay) Pvt Ltd vide letter dated 28-04-2023 has submitted that he was unaware about the mis-declaration of the cargo in the container. He has filed Bill of entry as per documents submitted by the importer. He requested to waive fine and penalty.

DISCUSSION AND FINDINGS

20. I have carefully gone through the Investigation report dated 18.04.2023, the written submissions dated 28.04.2023 submitted by the Noticee & CHA and the available records of the case. I find that the following issues are involved in the subject Investigation report, which are required to be decided-

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i. Whether the value of the goods imported M/s. Fashion Avenue, (IEC NO: CRVPP6585R), vide DTA Bills of Entry No(s), 2007668/1002833 dated 10.02.2023 & 2007669/1002770 dated 10.02.2023 rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

ii. Whether the mis-declared goods imported under the DTA B/E Nos. 2007668/1002833 dated 10.02.2023 & 2007669/1002770 dated 10.02.2023 having re-assessable value of Rs 43,25,400/- (Rupees Forty Three Lakhs Twenty-Five Thousand Four Hundred only) are liable for confiscation under section 111(f), 111(l) and 111(m) of the Customs Act, 1962 and the declared goods of valued Rs. 49,69,984/- (Rs. Forty Nine Lac Sixty Nine Thousand Nine Hundred Eighty Four) used for concealing are liable for confiscation under section 119 of the Customs Act, 1962

iii. Whether the items mentioned in the Bills of Entry Nos. 2007668/1002833 dated 10.02.2023 & 2007669/1002770 dated 10.02.2023 may be re-assessment as per market price.

iv. Whether the items found concealment may be allowed to re-export.

v. Whether the importer is liable for penalty under section 112(a) of the Customs Act, 1962.

vi. Whether the Customs Broker is liable to be penalized under Section 117 of the Customs Act, 1962.

21. I find that importer M/s Fashion Avenue (hereinafter referred to as 'the said importer') had filled the DTA Bills of Entry Nos. 2007668/1002833 dated 10.02.2023 & 2007669/1002770 dated 10.02.2023 for import of miscellaneous goods i.e. Baby/Girls Leggings, Girls Plazo, Girls Slip. Based on a specific intelligence that a consignment may be having mis-declared/concealed goods, container bearing number ZCSU7263843 and ZCSU7472729 covering under subject bill of entry was put on hold for further examination and investigation. The examination of the said container was conducted by the officer of SIIB in presence of CFS Staff and Authorised Representative of CHA.

22. I find that some of the goods found mis-declared in terms of quantity & description and also containing concealed goods viz "Ladies and gents under garments' in the guise of "Girls Leggings & Baby Leggings)" as compared with the declaration made by the importer in the import documents. Accordingly, summons dated 15.02.2023 were issued to the Importer -M/s. Fashion Avenue, CHA -M/s Cargo Concepts Bombay Pvt. Ltd. and the SEZ Unit – M/s Steinweg Sharaf India Pvt. Ltd., Mundra for seeking clarification regarding the consignments and submission of relevant details/documents in respect of the said consignments. In response to Summons dated 15.02.2023, statement of Shri Kanhaiya J. Kaseera, G-Card Holder of the CHA- M/s Cargo Concepts Bombay Pvt. Ltd. Shri Baddam Thirupathi, Manager of the SEZ unit M/s Steinweg Sharaf India Pvt. Ltd., Mundra was recorded on 15.02.2023, they agreed to the content and procedure of panchnama, further they stated that they are not at all aware of the mis-declaration/ concealment of undeclared goods in the cargo and that in the past consignments the goods were cleared to DTA after examination by the Customs Officials and there was nothing objectionable observed. The importer is a wholesale trader of hosiery dress material and he produced KYC of the importer.

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23. I find that during the course of investigation, search has been conducted to the premises of the Importer to get the details of the business and the genuineness of the importer. During the search, Scrutiny of the records received under panchnama revealed that the importer is engaged in import and trading of garments viz. Ladies Leggings, Baby Leggings, Girls Plazo & Girls Slips. Accordingly, a statement of Shri Sanjay Arora, Authorized Signatory of the importer was recorded on 17.02.2023 and 03.03.2023, he also agreed to the content and procedure of panchnama. They accept the mis-match of description and undeclared goods were found in the cargo imported by their firm; he further stated that they were not aware about the undeclared goods found in their cargo before 14.02.2023 and they got to know this only after the examination of the goods by the departmental official in presence of their CHA. The undeclared goods viz. undergarments found during examination might have been due to human mistake at the loading end or may be at the shipper's end. That their firm is engaged in the wholesale business/trading of different types of ladies, girls and baby leggings; however, sometimes they receive specific orders for other hosiery items and accordingly, they put the order of the same to their foreign based shipper. This time also on the basis of specific order from their client, they have ordered for import of girl slips. As the said item is similar to brasseries; hence, it appears that due to some mis-understanding at the shipper end, wrong products have been loaded in their cargo. He apologized for that and requested to kindly understand the same; he submitted that the imported undeclared items viz. Bra, Panties, Men Briefs etc. found in the cargo are of no use for them, as they are not at all familiar in sale purchase of undergarments; therefore, he requested that their firm may be permitted to re-export the said goods. They do not want any Show Cause Notice or Personal Hearing in the matter and as stated above they agree to pay applicable fine and penalty for their mistake and requested that their firm may be allowed to re-export of the imported undeclared items viz. Bra, Panties, Men Briefs etc. found in the cargo.

24. I find that the imported cargo is grossly mis-declared in terms of quantity of goods. Therefore, the transaction value declared by the importer under Section 14 of the Customs Act, 1962 is liable to be rejected as per Rule 12 of the Customs Valuation (Determination of Value of Imported Goods), Rule, 2007 due to mis-declaration observed during examination. Accordingly, the Empanelled Chartered Engineer Shri Kunal Ajay Kumar of M/s. Suvika Associates, carried out an inspection of the sample goods of the cargos for valuation purposes on 20.02.2023 and submitted his valuation report vide report No. CUS/222/22-23 dated 22.02.2023 for the Market Value of the goods of same description.

25. I find the goods "Women & Men undergarments" were concealed in the cargo in the guise of Girls Leggings & Baby Leggings with an intention to evade the customs duty. Further, from the CE report dated 22.02.2023, it is observed that the valuation of the declared goods was also at lower side than the actual value of the goods. Moreover, it appears that the declared goods i.e. Girls Leggings & Baby Leggings were used for concealment of the undeclared goods. Therefore, the imported goods were seized under Section 110 of the Custom Act, 1962 on the reasonable belief that they are liable for confiscation under Section 111(m) and Section 119 of the Customs Act, 1962 vide seizure memo dated 24.02.2023.

26. I find that the importer vide their letter dated 18.03.2023 and dated 23.03.2023 requested for second opinion on the valuation of the goods found in Container No. ZCSU7472729 & ZCSU7163843. On the basis of the request submitted by the importer and accorded by the competent authority, a market survey of the similar goods have been conducted by the officers SIIB as per Rule (6) (Residual Method) of Customs Valuation

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(Determination of Value of Export Goods) Rules, 2007. Going through the comparative Market price provided by the Chartered Engineer, Market Price arised out of Residual Method & the Assessment Data of previous Bills of Entry available with this office, it is observed that the Market Price arised out of Residual Method is much nearer to the data of previous bill of entry for similar goods, accordingly, the same has been considered for assessment purpose. Further, deducting of retailer margin (10%), transportation (5%), whole-seller margin (10%), duties & landing cost of the products (30%), the valuation of the products aroused out near by 45% of the market value of the product.

27. I find that the value of the declared goods as per market survey is acceptable by the importer and they are ready for re-assessment on the said value and ready to pay penalty as applicable. **The total re-assessed value of the declared goods for the both bill of entry is Rs. 49,69,985 total differential duty Rs. 8,54,073/- is payable.** The details of the declared goods are as under:-

Container No. ZCSU7163843 BE No.1002833 dated 10.02.2023

(Amount in Rs.)

Sr. No.	Item Description	CTH	Total Qty	Mkt price	Ass. Import Price (45%)	Total Value after re-assessment
1	Baby Leggings	61159600	42252	30	13.50	570402.00
2	Girl Leggings	61159600	33600	75	33.75	1134000.00
3	Girls Plazo	61159600	22740	70	31.50	716310.00
4	Tags	48219090	102500	1	0.45	46125.00
5	Empty Woven Bag	39232990	280	10	4.50	1260.00
	Total		201372			2468097.00

Container No. ZCSU7472729 BE No.1002770 dated 09.02.2023

(Amount in Rs.)

Sr. No.	Item Description	CTH	Total Quantity	Mkt price	Ass. Import Price (45%)	Total Value after re-assessment
1	Girl Leggings	61159600	19320	75	33.75	652050.00
2	Girls Plazo	61159600	44520	70	31.50	1402380.00
3	Baby Leggings	61159600	33145	30	13.50	447457.50
	Total		96985			2501887.50

28. Further, I find that the importer has requested to allow them to **re-export** the following undeclared goods found in the consignment and also submitted that they are ready to pay the applicable expenses and fine/penalty for the same. **The undeclared goods having total re-assessable value is Rs. 43,25,400/-**

28.1 Container No. ZCSU7163843 BE No.1002833 dated 10.02.2023

(Amount in Rs.)

Sr. No.	Item Description	CTH	Total Quantity	Mkt price	Ass. Import Price (45%)	Total Value after re-assessment

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1	Women/Girls Bra	61121000	22680	40	18.00	408240.00
2	Bra [Girls Bra Panty Set]	61121000	1200	40	18.00	21600.00
3	Panty [Girls Bra Panty Set]	61082210	1200	40	18.00	21600.00
4	Girls Briefs	61082210	20580	40	18.00	370440.00
5	Men Underwear	61071210	60000	35	15.75	945000.00
	Total		105660			1766880.00

28.2 Container No. ZCSU7163843 BE No.1002833 dated 10.02.2023

(Amount in Rs.)

Sr. No.	Item Description	CTH	Total Quantity	Mkt price	Ass. Import Price (45%)	Total Value after re-assessment
1	Women/Girls Bra	61121000	141340	40	18.00	2544120.00
2	Thigh Length Inner Shorts Girls	61159600	800	40	18.00	14400.00
	Total		142140			2558520.00

29. In view of above, I find that the importer had imported undeclared goods to evade applicable duty on the goods. During investigation the importer has also admitted the facts of receipt of undeclared goods in the cargo and submitted that they may be allowed to re-export the goods found in concealment and that they are ready to pay applicable fine and penalty for the same. Further, it is observed that the valuation of the declared goods in the Bills of Entry was also declared at lower side than the actual value of the goods; in this regards, the importer has admitted for re-valuation of the declared goods and submitted that they are ready to pay differential duty along with fine and penalty arised out of the re-assessment. I find that the importer has suppressed the material facts and misclassified the goods to evade applicable BCD and IGST and for their act of omission and commission, **which rendered the impugned goods (Declared + Un-declared goods) re-assessable valued to Rs. 9295384.50/-** are liable for confiscation under Section 111(f), Section 111(l) & Section 111(m) and whereas, the declared goods valued Rs. 49,69,984/- (Rs. Forty Nine Lac Sixty Nine Thousand Nine Hundred Eighty Four) used for concealing the un-declared goods are liable for confiscation under section 119 of the Customs Act, 1962 and M/s Fashion Avenue has also rendered liable for penalty under section 112(a) of the Customs Act, 1962.

Further, the Customs Broker M/s Cargo Concepts (Mombay) Pvt. Ltd. vide their letter dated 28.04.2023 has informed that they had filed the DTA Bills of Entry Nos. 2007668/1002833 dated 10.02.2023 & 2007669/1002770 dated 10.02.2023 on the basis of documents received from importer and clearance was also done as per customs procedure. they unaware of the mis-declaration. I find that CHA has filed bills of entry as per documents submitted by the importer. It is responsibility of importer to submit proper documents through CHA. I find that prima facie there is no mis-declaration or contravention on part of CHA. I find that in this situation, CHA should not be penalised u/s 117 of the Customs Act, 1962.

30. I find that the importer while filing the impugned Bill of Entry has subscribed to a declaration regarding correctness of the contents of Bill of Entry under Section 46(4) of the

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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.

31. In view of the above, I find that the importer has concealed, mis-declared in terms of description, and quantity therefore the import goods liable for confiscation under Section 111(f), Section 111(l), Section 111(m) & Section 119 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 authorized 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.

32. In view of the above, I pass following Order:

ORDER

i) I order to reject the value of the goods imported M/s. Fashion Avenue, (IEC NO: CRVPP6585R), vide DTA Bills of Entry No(s), 2007668/1002833 dated 10.02.2023 & 2007669/1002770 dated 10.02.2023 under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and order to be re-determined as deduction valuation rule.

ii) I order for confiscation of the declared goods imported vide DTA bills of entry No (s), 2007668/1002833 dated 10.02.2023 & 2007669/1002770 dated 10.02.2023 having re-assessable value of Rs. 49,69,984/- (Rupees Forty Nine Lac Sixty Nine Thousand Nine Hundred Fourty only) under Section 111(m) & 119 of the Customs Act, 1962. I order for confiscation of the undeclared goods imported vide DTA bills of entry No (s), 2007668/1002833 dated 10.02.2023 & 2007669/1002770 dated 10.02.2023 having re-assessable value of Rs. 43,25,400/- (Rupees Forty Three Lac Twenty Five Thousand Four Hundred only) under Section 111(f), 111(l) & 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of Rs. 20,00,000/- (Rupees Twenty Lac Only only) under Section 125 of the Customs Act, 1962.

iii) I order to recover the differential duty along with interest against the impugned Bill of Entry after re-determination of the value of Rs. 8,54,073/- (Rupees Eight Lakhs Fifty-Four Thousand Seventy-Three only) under the provision of Customs Act, 1962.

iv) I impose a penalty of Rs 9,00,000/- (Rupees Nine Lac Only) on the importer M/s. Fashion Avenue under Section 112 (a) (ii) of the Customs Act, 1962.

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v) I also permit to re-export of the items mentioned in para 28(1) & 28(2) of this OIO on payment of redemption fine and penalty and other charges as applicable as ordered above.

33. 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.

MUKESH KUMARI
ADDITIONAL COMMISSIONER
Custom House, Mundra

F.No.CUS/APR/BE/MISC/532/2023-Gr 3-O/o Pr Commr-Cus-Mundra

04-05-2023

To

M/s. Fashion Avenue (IEC No. CRVPP6585R),
B-10, Vijay Block, Laxmi Nagar, East Delhi,
Delhi-110092.

Copy to;

- i. The Deputy/Assistant Commissioner (RRA), Custom House, Mundra
- ii. The Deputy/Assistant Commissioner (TRC), Custom House, Mundra
- iii. The Deputy/Assistant Commissioner (EDI), Custom House, Mundra
- iv. The Deputy/Assistant Commissioner, (SIIB), Custom House, Mundra
- v. Guard File

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