

	<p>प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, एमपी और एसईजेड, मुंद्रा, कच्छ-गुजरात -370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT PHONE : 02838-271426/271428 FAX :02838-271425</p>	
A	File No.	CUS/SHED/OBJ/386/2024-Docks Examn
B	Order-in-Original No.	MCH/ADC/AKM/160/2024-25
C	Passed by	Amit Kumar Mishra Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	18.10.2024
E	Noticee/Party/Importer/ Exporter	M/s. Anand Garments Private Limited, (IEC- 0509040306) Khasra No. 59/20, Plot No. 20 and 21, Mundka, New Delhi - 110041
F	DIN No.	20241071MO0000555B03

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 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),
चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद-380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
Having his office at 4th Floor, HUDCO Building, Ishwar Bhuvan Road,
Navrangpura, 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 ड्यूटी/ व्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिए।
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.

BRIEF FACT OF THE CASE: -

M/s Anand Garments Private Limited, New Delhi (IEC- 0509040306) situated at Khasra No. 59/20, Plot No. 20 and 21, Mundka, New Delhi - 110041 holding IEC NO: (hereinafter referred to as 'the Importer'), had filed a Bill of Entry No. 5525223 dated 10.09.2024 through their Customs Broker, M/s Atul Wadhwa at Mundra port for import of Baby Suit, Girls Pajama, Baby Top and Foot Cover declared under CTH 61119090, 61083990, 61119090 and 61161000 respectively having declared assessable value of Rs. 32,00,050/- and duty of Rs. 9,01,824/-

2. The RMS System prescribed the Examination Order of 100% examination of the goods. Accordingly, the Docks Officer examined the goods, stuffed in the Container No. TXGU6142192 vide Bill of Lading No. KMTCNB0818839, Commercial Invoice No. HH2408014 dated. 16.08.2024, in line with the order prescribed by the RMS. The Importer has declared the items in the Bill of Entry No. 5525223 dated. 10.09.2024 as under :-

TABLE-I

Sr. No.	Item	CTH	Qty as per Packing List	Qty as per Invoice and BE	Value declared (Rs.)
1	Baby Suit	61119090	25 cartons/2020 Kg	2020 Kg	8,57,490/-
2	Girls Pajama	61083990	65 cartons/3020 Kgs	2804 Doz	19,04,476/-
3	Baby Top	61119090	18 cartons/972 Kgs	600 Doz/972 Kgs	4,07,520/-
4	Foot Cover	61161000	212 cartoons/4520 Kgs	150 Doz/300 pairs	30,564/-
			320 Cartoon/10532 Kgs		32,00,050/-

3. During the course of examination, it was noticed that the declared Item No. 01 i.e Baby Suit is correctly declared in the Bill of Entry in terms of Description, Classification, Valuation, Quantity, Country of Origin and in other respects. However, 13250 Pieces of Item No. 02 i.e Girls Pajama found instead of 33648 Pieces declared in the Bill of Entry.

3.1 Further, the Item No. 03 i.e Baby Top (declared under CTH 61119090) valued at Rs. 4,07,520/- found mis-declared in respect of Description, Quantity, Classification and Valuation. It is observed that the item No. 03 i.e Baby Top (CTH 61119090) are not Baby Top but Jersey/Sweater of different size for kids appears to be classifiable under CTH-61103010 attracts Basic Customs Duty **(BCD) @ 20% or Rs. 110 per piece, whichever is higher.**

3.2 Further, the Item No. 04 i.e Foot Cover (CTH 61161000) was mis-declared in terms of Description, Quantity, Classification, and Valuation. The Item No. 04 found during examination are not Foot Cover but slipper (footwear) with rubber sole and uppers of textile materials appears to be classifiable under CTH-64041990 as Other Footwear with outer sole of Rubber and uppers of textile materials and attracts BCD @ 35 % and IGST @ 18%.

4. Further, to ascertain the value of the imported items, opinion of the empaneled Chartered Engineer was sought for. The CE has submitted his opinion vide CE report No. ABJ:INSP:CE:ATUL:24-25:01 dated 30.09.2024. Item wise quantity found during the examination and suggestive value of these items are as under :-

TABLE-II

Sr. No.	Item declared (a)	More appropriate description as per examination (b)	No. of cartons/bags found (c)	Pieces per carton/bag (d)	Total No. of Pieces (e)	Per unit Average CIF value of the item as per CE (f)	Total Value of Items as per CE (g)	More appropriate HSN (h)	Applicable Duty (BCD+SW S+IGST) (i)
1	Baby Suit	Baby Suit	25	200	5000	---	857490	61119090	240955
2	Girls Pajama	Girls Pajama	60	200	12000	57.75	765187.5	61083990	215017
			5	250	1250				
			65		13250				
3	Baby Top	Jersey	18	200	3600	90.75	326700	61103010	432135
4	Foot Cover	Foot wear	198	80	15840	93.5	1523115	6404190	839540
			15	30	450				
			213		16290				
	Total		321				3472493		1727647

5. Thus, it appears that the importer has short levied the Customs duty as under on the imported items vide aforesaid BE by way of mis-declaration of the Quantity, Description and Mis-classification of the goods. The below mentioned table-III shows the applicable Differential Duty:-

TABLE-III

Item No in the BE (a)	More appropriate description as per examination (b)	Total Value of Items as per CE (c)	Applicable Duty (BCD+SWS+IGST) (d)	Value declared by the importer in the BE (e)	Duty declared by the importer (f)	Differential value (g)	Differential duty (h)
2	Girls Pajama	765187.5	280365	1904477	535158	-1139290	-320141
3	Jersey	326700	482724	407520	114513	-80820	317622
4	Foot wear	1523115	966112	30564	11199	1492551	828341
		2615003	1729201	2342561	660870	272441	825822

6. Briefly, out of the total four items under import it appears that :-

- i. Item no.- 1 is correctly classified under Baby Suit (CTH-61119090)
- ii. Item no. 2 is correctly classified under Girls Pajama (CTH-61083990). However, total No. of 20,398 pieces found in less quantity (Declared 33648, Found 13250 Pieces).
- iii. Item No. 3 is wrongly classified as Baby Top (CTH-61119090), whereas the same appears as more appropriately classifiable as Jersey (CTH-61103010) and will attract specific BCD @ 20% or Rs. 110 per piece, whichever is higher.
- iv. Item No. 4 is wrongly classified as Foot Cover (CTH-61161000), whereas the same appears as more appropriately classifiable as Foot Wear (CTH-64041990) and will attract BCD @ 35 %.

7. Classification of the imported goods: The principles for the classification of goods are governed by the Harmonized Commodity Description and Coding System (Harmonized System or HSN) issued by the World Customs Organization, Brussels and the General Rules for Interpretation specified there under. The General Rules for the Interpretation (GIR) specified in the Import Tariff are in accordance with the GIR specified in the HSN. In terms of GIR 3A of the HSN and the import Tariff-The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be

regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

8.1 Item No. 02 in the Bill of Entry :- The goods 'Girls Pajama' were found in less quantity. Total No. of 20,398 pieces found in less quantity (Declared 33648, Found 13250 Pieces).

8.2 Item No. 03 in the Bill of Entry.- The goods 'Baby Top' were found mis-declared in terms of description of the goods as the goods were declared as "Baby Top", however, during examination, the goods found as "Jersey". Therefore, the correct Classification of the goods is required to be ascertained. The impugned goods/'Jersey of different size for kids' are appropriately classifiable under the heading 61103010. The said Customs Tariff Heading covers goods ;

6110 – Jersey, Pullovers, cardigans, waist-coats and similar articles, knitted or crocheted, all goods of sale value exceeding Rs. 1000 per piece

61103010- Of man-made fibres- Synthetic Fibres

8.3 Item No. 04 in the Bill of Entry: Whereas, in respect of the goods of Item No. 04 declared as Foot Cover (CTH- **61161000**) and however as per examination report, the same has been found slipper (footwear) with rubber sole and uppers of textile materials appears to be classifiable under CTH-64041990 as Other Footwear with outer sole of Rubber and uppers of textile materials and attracts BCD @ 35 %. Accordingly, the impugned goods are appropriately classifiable under the CTH-64041990. Accordingly, the declared assessable value of 16290 pieces of these goods is required to be re-determined on account of mis-declaration in quantity & description.

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

Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 (hereinafter referred to as "the CVR, 2007") provides the method of valuation. Rule 3(1) of the CVRs, 2007 provides that "Subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10". Rule 3(4) ibid states that "if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through Rule 4 to 9 of CVR, 2007". Whereas, it appears that, transaction value in

terms of Rule 3 of the CVR, 2007, is to be accepted only where there are direct evidences with regard to the price actually paid or payable in respect of the imported goods by the importer. Whereas, in the present case, it appears that, the impugned goods have been mis-declared in respect of quantity, quality, nature & description. Hence, there is reasonable doubt regarding the truth and accuracy of the declared value, and hence is liable to be rejected in terms of Rule 12 of the CVR, 2007.

Accordingly, the consignment is found mis-declared in respect of quantity, description, classification and valuation which resulted into short-levy of duty amounting to Rs. 8,25,822/- as calculated at para supra (Table-III). Hence, it appears that, the consignment is liable for confiscation under Section 111(1) and 111(m) of the Customs Act, 1962. Furthermore, for the said act of omission and commission, the importer appears liable for the penal action under the provisions of Section 112(a)(ii) of the Customs Act, 1962.

10. The importer vide letter dated. 17.10.2024 has accepted the valuation done by the Chartered Engineer vide C.E ABJ:INSP:CE:ATUL:24-25:01 dated 30.09. and they are ready to pay differential duty along with applicable fine and penalty. The importer confirmed that they do not want any personal hearing and show cause notice in the matter. Further, they also submitted not to file any appeal against the differential duty paid.

11. RELEVANT LEGAL PROVISIONS:

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

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

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

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

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

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

Section 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:

Section 46. *Entry of goods on importation:*

.....

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

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

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

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

--

(l) *any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77*

(m) *any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;*

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

Any person,-

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

(b),

shall be liable,-

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

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

"Rule 4. Transaction value of identical goods. (1) (a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

"Rule 5. Transaction value of similar goods. (1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that (2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

Rule 6. Determination of value where value can not be determined under rules 3, 4 and 5.-If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8. Provided that at the request of the importer, and with the approval of the proper officer, the order of application of rules 7 and 8 shall be reversed.

Rule 7. Deductive value.-

(1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions : -

(i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within India;

(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same

time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India,

at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

8. Computed value.- Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-

(a) the cost or value of materials and fabrication or other processing employed in producing

the imported goods;

(b) an amount for profit and general expenses equal to that usually reflected in sales of goods

of the same class or kind as the goods being valued which are made by producers in the country of exportation

for export to India;

(c) the cost or value of all other expenses under sub-rule (2) of rule 10.

9. Residual method.-

(1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India;

Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

(2) No value shall be determined under the provisions of this rule on the basis of -

(i) the selling price in India of the goods produced in India;

(ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;

(iii) the price of the goods on the domestic market of the country of exportation;

(iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;

(v) the price of the goods for the export to a country other than India;

(vi) minimum customs values; or

(vii) arbitrary or fictitious values.

Rule 12. Rejection of declared value (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further

information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

Section 17. Assessment of duty. –

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

..

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

Section 46. Entry of goods on importation. –

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

12. The importer vide letter dated. 17.10.2024 has accepted the valuation as suggested by the Chartered Engineer vide C.E Report No. ABJ:INSP:CE:ATUL:24-25:01 dated 30.09.2024 and they are ready to pay differential duty along with applicable fine and penalty. The importer confirmed that they do not want personal hearing and show cause notice in the matter. Further, they also submitted not to file any appeal against the differential duty paid.

13. In view of the above facts, it appears that -

- i. The description, valuation and classification of the Item No. 03 i.e Baby Top under CTH 61119090 imported vide Bill of Entry no. 5525223 dated 10.09.2024 declared by the importer is liable to be rejected and those goods are liable to be re-classified under CTH 61103010 and value thereof is also to be rejected and re-determined.
- ii. The description, valuation and classification of the Item No. 04 i.e Foot Cover under CTH 61119090 imported vide Bill of Entry no. 5525223 dated 10.09.2024 declared by the importer is liable to be

- rejected and those goods are liable to be re-classified under CTH 64041990 and value thereof is also to be rejected and re-determined.
- iii. The assessable value (Rs. 32,00,050/-) of the imported goods declared by the importer in the Bill of Entry No. 5525223 dated 10.09.2024 is liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
 - iv. The assessable value of the consignment is liable to be re-determined as Rs. 34,72,493/- under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 12 of the Customs Act, 1962.
 - v. Total applicable customs duty on re-assessed value of goods comes to Rs. 17,27,647/- (Rupees Seventeen Lakhs Twenty Seven Thousand Six Hundred Forty Seven Only) instead of Rs.9,01,824/- as declared in the said BE and accordingly customs duty not/short levied comes to Rs. 8,25,822/-.
 - vi. The Bill of Entry no. 5525223 dated 10.09.2024 is liable to be re-assessed accordingly under Section 17(4) of the Customs Act, 1962.
 - vii. The goods imported vide Bill of Entry no. 5525223 dated 10.09.2024 by way of non/mis-declaration in contravention of Sec 46 of the Customs Act, 1962 are therefore liable for confiscation under Section 111 (1) and 111(m) of the Customs Act, 1962.
 - viii. The importer M/s Anand Garments Private Limited, New Delhi (IEC-0509040306) situated at Khasra No. 59/20, Plot No. 20 and 21, Mundka, New Delhi - are liable for Penalty under Section 112(a) (ii) of the Customs Act, 1962.

14. WAIVER OF NOTICE AND PERSONAL HEARING

The importer has requested that they do not want any Show Cause Notice or Personal Hearing in the matter and necessary adjudication proceeding/action may be initiated in respect of the said Bill of Entry as per the Customs Act, 1962.

DISCUSSION & FINDING

15. I have carefully gone through the facts, materials of the case available on record, the report of the Docks Officer and the report of the Chartered Engineer's vide No. ABJ:INSP:CE:ATUL:24-25:01 dated 30.09.2024 and I find that Importer M/s Anand Garments vide their letter dated. 17.10.2024 has requested for waiver of the show cause notice and personal hearing in the matter. Therefore I find that the principle of natural justice as provided in section 122A of the Customs Act, 1962 has been completed. Hence I proceed to decide the case on the basis of the documentary evidence available on records.

16. Ongoing through the facts of the case, I find that the following issues needed to be decided in the present proceedings:

- i. Whether the declared classification and description of the goods needs to be rejected and the same is liable to be re-classified or otherwise.
- ii. Whether the declared value of the goods is liable to be rejected and redetermined or otherwise.
- iii. Whether the Importer is liable for penalty under Section 112(a) (ii) of the Customs Act, 1962.

17. I find that during examination the docks officer observed mis-declaration in respect of quantity, description, classification and valuation in respect of the goods declared in the said Bill of Entry filed by the Importer M/s Anand Garments Pvt Ltd for Home Consumption.

18. I find that during the course of examination the Item No. 01 of the Bill of Entry found as declared in terms of Description, Classification and Value. Further, I find that Item no. 2 is correctly classified under Girls Pajama (CTH-61083990). However, total No. of 20,398 pieces found in less quantity (declared 33648, found 13250 Pieces).

Further, I find that the Item No. 03 is wrongly classified as Baby Top (CTH-61119090), whereas the same appears as more appropriately classifiable as Jersey (CTH-61103010) and will attract specific BCD @ 20% or Rs. 110 per piece, whichever is higher.

Further, I find that the Item No. 4 is wrongly classified as Foot Cover (CTH-61161000), whereas the same appears as more appropriately classifiable as Foot Wear (CTH-64041990) and will attract BCD @ 35 %.

19. Based on the examination report of the Docks Officer and Chartered Engineer as discussed in the above paras, I find that the impugned goods are found mis-declared in respect of quantity, description, classification and valuation as mentioned in Para 17 above. I further find that omission and commission on the part of the Importer has rendered the consignment liable for confiscation under Section 111(1) and 111(m) of the Customs Act, 1962

20. I find that Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 (hereinafter referred to as "the CVR, 2007") provides the method of valuation. Rule 3(1) of the CVRs, 2007 provides that "Subject to Rule 12, the value of imported goods shall be the

transaction value adjusted in accordance with provisions of Rule 10". Rule 3(4) *ibid* states that "if the value cannot be determined under the provisions of sub- rule (1), the value shall be determined by proceeding sequentially through Rule 4 to 9 of CVR, 2007".

The transaction value in terms of Rule 3 of the CVR, 2007, is to be accepted only where there are direct evidences with regard to the price actually paid or payable in respect of the imported goods by the importer. Whereas, in the present case, the impugned goods have been mis-declared in respect of quantity, quality, nature & description. Hence, there is reasonable doubt regarding the truth and accuracy of the declared value, and hence is liable to be rejected in terms of Rule 12 of the CVR, 2007.

Further, total assessable value of the imported items declared by the importer in BE was Rs. 3200050/- which appears incorrect due to non declaration and mis declaration of the items under import. Therefore, value of the consignments declared by the importer under Rule 3 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 ('CV Rules' for sake of brevity) appears to be rejected in terms of Rule 12 of the Rules, *ibid*. To ascertain the value of cargo, attempts have been made to get the details from the previous bills of entry filed by the importer and well as NIDB data for similar and identical items during the relevant period was done, however, due to various items without specification and detail, valuation of identical or similar items cannot be ascertained. Thus, valuation of the item under import could not be determined in terms of Rule 4 to 8 of the CV Rules, *ibid*. Therefore, valuation of the goods was found required to be determined under residual method of valuation provided under Rule 9 of the CV Rules *ibid* and hence, opinion of the empanelled Chartered Engineer was sought for determination of the value of the goods under import. The empanelled chartered engineer Shri Ajay Jhala has submitted his observations vide report ABJ: INSP:CE:ATUL:24-25:01 dated 30.09.2024 and has opined the total value of the cargo to be Rs. 34,72,493/- instead of Rs. 32,00,050/- as declared by the Importer in the Bill of Entry.

20.1 I find that total duty of the consignment comes to Rs.17,27,647/- instead of self-assessed duty of Rs. 9,01,824/- declared by the importer in the said BE. The differential duty comes to Rs. 8,25,822/- as calculated above in Table-III.

I find that the consignment is found mis-declared in respect of quantity, description, classification and valuation which resulted into short-levy of duty amounting to Rs. 8,25,822/- as calculated in Table-III above. Hence, the consignment is liable for confiscation under Section

111(1) and 111(m) of the Customs Act, 1962. Furthermore, for the said act of omission and commission, the importer appears liable for the penal action under the provisions of Section 112(a)(ii) of the Customs Act, 1962.

21. With the introduction of self-assessment under Section 17(1) of Customs Act, 1962 the onus lies on the importer to correctly self-assess the bill of entry with correct amount of leviable duties. By the said act of not correctly self-assessing the applicable BCD, the importer received undue monetary benefit and caused loss to the public exchequer to the tune of Rs. 8,25,822/-. They not only failed to declare and assess the correct duty payable on the goods but also mis-declared the classification of the goods imported vide Bill of Entry 5525223 dated 10.09.2024 with an intention to evade payment of correct duty on the goods imported. Thus, there is a reason to believe that the importer deliberately and wilfully misstated the facts in terms of applicability of duty, causing loss to Govt. Revenue.

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

23. In view of the above, I find that the importer has mis-declared the goods from Item No. 02 to 04 of the Bill of Entry in terms of description, quantity, classification and valuation in the said Bill of Entry No-5525223 dated 10.09.2024, therefore the imported goods liable for confiscation under Section 111(l) and 111 (m) of the Customs Act, 1962 and importer is liable for penal action under Section 112 (a) (ii) 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.

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

ORDER

- i. I order to reject the description, valuation and classification of the Item No. 03 i.e Baby Top under CTH 61119090 imported vide Bill of Entry no. 5525223 dated 10.09.2024 declared by the importer and order to change the description of Item No. 03 from 'Baby Top to Jersey of different size for Kids'. I reject the declared classification under CTH 61119090 and order to re-classify the same under CTH 61103010. I order to re-determine the value of the Item No. 03 as per Table-II (Serial No. 03, Column f).
- ii. I order to reject the description, valuation and classification of the Item No. 04 i.e Foot Cover under CTH 61161000 imported vide Bill of Entry no. 5525223 dated 10.09.2024 declared by the importer and order to change the description of Item No. 04 from 'Foot Cover to Foot Wear (Slippers) with rubber sole and uppers to textile materials'. I reject the declared classification under CTH 61161000 and order to re-classify the same under CTH 64041990. I order to re-determine the value of the Item No. 04 as per Table-II (Serial No. 04, column f).
- iii. I order to reject the total declared assessable value of **Rs. 32,00,050/-** by the importer in the Bill of Entry No. 5525223 dated 10.09.2024 under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and order to re-determine the same to **Rs. 34,72,493/-** (as per Table-II) under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- iv. I order to the Importer to pay the applicable total duty amounting to **Rs. 17,27,647/-** on re-determined value as per Table-II instead of **Rs. 9,01,824/-** as declared in the said BE and accordingly customs duty not/short levied comes to **Rs. 8,25,822/-**
- v. I order to re-assess the Bill of Entry no. 5525223 dated 10.09.2024 under Section 17(4) of the Customs Act, 1962.
- vi. I order to confiscate the said goods having re-determined value of **Rs. 26,15,003/-** (Rupees Twenty Six Lakhs Fifteen Thousand Three Only) (only for the items i.e. girls pajama, jersey, footwear as per Table-III) under Section 111(l) and 111(m) of the Customs Act, 1962. However, considering facts of the case and provisions of the Section 125 of the Customs Act, 1962, I give an option to the importer to re-deem the same on payment of Redemption Fine of Rs. 2,50,000 (Rs, Two Lakhs Fifty Thousand only) in lieu of confiscation.

(vi) I impose the penalty of Rs 80,000 /- (Rs Eighty thousand only) on the importer M/s Anand Garments Private Limited under Section 112 (a) (ii) of Customs Act, 1962.

25. 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
Amit Kumar Mishra
ADDITIONAL COMMISSIONER
Date: 18-10-2024 16:00:07
ADC/JC-II-O/o Pr
Commissioner-Customs-
Mundra

To
M/s Anand Garments Private Limited, New Delhi (IEC- 0509040306)
Khasra No. 59/20, Plot No. 20 and 21, Mundka, New Delhi - 110041

Copy to:

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