

	<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/APR/INV/29/2025-Gr 3-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/AKM/264/2024-25
C	Passed by	Amit Kumar Mishra Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	22.01.2025
E	Noticee/Party/Importer/ Exporter	M/s Mayana Enterprises Sharda Chambers, Building No. 131, Keshavji Nayak Road, Gr. Flr. G-Mumbai - 400009
F	DIN No.	20250171MO0000015173

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/- 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 ज्यूटि/ 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.

Brief facts of the Case:

An intelligence was gathered by the officers of SIIB Section, Custom House, Mundra that the cargo imported under Bill of Entry No.5066575 dated 15.08.2024&5115135 dated 17.08.2024(hereinafter referred to as '*the said BE*') filed by M/s Mayana Enterprises, Sharda Chambers, Building No. 131, Keshavji Nayak Road, GR. FLR. G-Mumbai-400009 having IEC No. 0301058458(hereinafter referred to as '*the importer*') at Mundra port (INMUN1) for import of "Plain Polyester PA Coated Fabric (Polymeric Compound)" (CTH-59039090)(hereinafter referred to as "*the impugned goods*") has possible mis-declaration in respect of quantity and nature, composition & description. Hence, the container bearing no.CULU6245630 & BEAU5192264 covered under Bill of Lading no. CULVNGB2427191 dated 28.07.2024 &under Bill of Lading no.140401919541 (hereinafter referred to as '*the said BL*') pertaining to the said BE respectively were put on hold for detail examination of the goods by the SIIB section, Custom House, Mundra in view of the said suspicion.

2. Based on the above suspicion, Examination in respect of above consignment covered Bills of entry No. 5115135 dated 17.08.2024 & 5066575 dated 15.08.2024 of M/s Mayana Enterprise is conducted on 04.09.2024 in presence of Authorized representative of M/s Mayana Enterprise, Shri Niranjana Kumar Pandey and CFS representative Shri Haresh Maheshwari, Manager, Operations

2.1 During the course of examination. The weightment slips of the containers generated at CFS weighbridge were cross-checked. The weight mentioned on the slips as well as Bills of Lading are as under.

TABLE-A

Sr. No.	Bill of Entry no. & Date	Container No.	B/L Packing List Weight (Kgs)	CFS Weight (Kgs)	Difference (kgs)
1.	5115135 dated 17.08.2024	CULU6245630	27180	28690	1510
2.	5066575 dated 15.08.2024	BEAU5192264	26880	27680	800

2.2 In view of above, it appears that declared weight i.e. 27180 Kgs and CFS weight of the cargo is found as 28690 Kgs which is 1510 Kg excess in respect of B.E No.5115135 dated 17.08.2024 and in respect of B.E No 5066575 dated 15.08.2024 declared weight i.e.26880 Kgs and CFS weight of the cargo is found as 27680 Kgs which is 800 Kg excess.

2.3 Examination of container no. CULU6245630 covered under Bill of Entry No. 5115135 dated 17.08.2024:

During the course of examination of container no. CULU6245630, it was found that rolls covered with plastic were stuffed into the container. Thereafter, entire cargo was de-stuffed in the warehouse from the container for the examination. After complete de-stuffing, 1420 fabric rolls of different colors were found in container. Each roll contains 100 meters of fabric. Upon visual examination, all the fabric rolls appeared identical in appearance. However, the actual nature, description, and composition of the goods cannot be ascertained visually. Therefore, to accurately determine these characteristics, one representative sample from the lot has been drawn for testing purpose.

2 . 4 Examination of container no. BEAU5192264 covered under Bill of Entry No. 5066575 dated 15.08.2024:

Further, during the course of examination of container no. BEAU5192264 it was found that goods packed in PP bags were stuffed into the container. Thereafter, entire cargo was destuffed in the warehouse from the container for the examination. During the course of destuffing of the container, it was revealed that the container was stuffed with PP bags which further contain rolls of fabric. After complete de-stuffing, 660 PP bags were found, each PP Bag contains 12 rolls of fabric (each roll 35 MTR of fabric approx) which resulting in total 2,77,200 MTR of fabric. Further, to ascertain actual composition of the items one representative sample of each item have been drawn for testing purpose.

3. Investigations Conducted: -

3.1 During the course of examination, the actual nature, description, and composition of the goods cannot be ascertained visually, therefore representative samples were drawn all 02 items mentioned above and forwarded to the CRCL, Kandla for testing purpose vide Test Memo No. 107 & 108 both dated 13.09.2024 issued from F.No S/SIIB/INT/431 /2024- SIIB-O/o PrCommr-cus-Mundra. The CRCL Kandla has reported as under:

i. TM No. 107(Lab.No.5655-SIIB): the sample as received is in the form of a cut piece of dyed (black) woven fabric. It is composed of Polyester filament yarn (texturized) together with small amount of lycra.

GSM (as such) = 122.8
Selvedge to Selvedge Width(cms) = 150
% Composition,
% of Polyester = 94.10% by weight
% of Lycra = Balance
It is other than PA coated fabric.

ii. TM No. 108(Lab. No. 5656-SIIB): the sample as received is in the form of a cut piece of dyed and printed woven fabric. It is composed of Polyester filament yarn (non-textured).

GSM (as such) = 52.95
Width (Selvedge to Selvedge) = 148 cm
It is other than coated.

3 . 2 **TM No. 107(Lab.No.5655-SIIB)**: The test reports received from the CRCL Kandla has been examined with respect to the declaration made by the importer in the import documents. The goods “plain polyester PA coated fabric (polymeric compound)” were classified by the importer in the BE No. 5115135 dated 17.08.2024 in CTH 59039090 (BCD = 20%). However, it appears that, Customs Tariff Heading CTH 59039090 belongs to other (textile fabrics impregnated, coated, covered, or laminated) while the lab has reported that the sample as received is in the form of a cut piece of dyed (black) woven fabric. It is other than PA coated fabric. It is composed of Polyester filament yarn (texturized) and GSM is 122.8 and % of Polyester = 94.10% by weight. Hence, it appears that, the imported goods do not qualify to be classified under CTH 5903. Furthermore, as per the test report received from the CRCL, Kandla, Whereas, as per test results nearest CTH appears to be **54075290** meant for ‘woven fabrics, containing 85% or more by weight of textured polyester filaments attracting BCD @20% or Rs.23/- per SqM., whichever is higher. Whereas, as the cargo is found mis-declared in respect of nature, composition and description

3.3 **TM No. 108(Lab. No. 5656-SIIB)**:: The test reports received from the CRCL Kandla has been examined with respect to the declaration made by the importer in the import documents. The goods “plain polyester PA coated fabric (polymeric compound)” were classified by the importer in the BE No.5066575 dated 15.08.2024 in CTH 59039090 (BCD = 20%). However, it appears that, Customs Tariff Heading CTH 59039090 belongs to other (textile fabrics impregnated, coated, covered, or

laminated) while the lab has reported that the sample as received is in the form of a cut piece of dyed and printed woven fabric. It is other than coated. It is composed of Polyester filament yarn (non-textured) and GSM is 52.95. Hence, it appears that, the imported goods do not qualify to be classified under CTH 5903. Furthermore, as per the test report received from the CRCL, Kandla, Whereas, as per test results nearest CTH appears to be **54076190** meant for woven fabrics, containing 85% or more by weight of non-textured polyester filaments attracting BCD @20% or Rs.150/- per Kgs., whichever is higher. Whereas, as the cargo is found mis-declared in respect of nature, composition and description.

3.4 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, 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.

1 .Bill of Entry No. 5115135 dated 17.08.2024:

3.5 Whereas, the assessable value of the cargo is required to be re-determined as per the contemporary import data available on NIDB, in respect of the identical/similar goods sold for export to India (from China) and imported at or about the same time in view of rule 4 & 5 of the CVR, 2007. Proceeding sequentially, to Rule 5 *ibid*, as per contemporaneous import data available on NIDB, the rate of woven fabric made of textured Polyester filaments yarn having similar nature, composition and description is ranging from Rs.17.28 to Rs.896.33 per SQM. Further, sub-rule (3) of the said Rule-4 of CVR, 2007 states that, in applying these rules, if more than one transaction value of similar goods is found, the lowest such value shall be used to determine the value of imported goods. Further, sub-rule (2) of the said Rule-5 of CVR, 2007 states that, the provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, *mutatis mutandis*, also

apply in respect of similar goods. Accordingly, the assessable value of net 28690Kgs (GSM = 122.8(as per TM) i.e $28690000/122.8=233631.92$ SQM) of the imported goods is required to be re-determined as Rs. 40,37,160/- ($=233631.92 \times 17.28$) instead of Rs.7,53,569/- as declared in the Bill of Entry No. **5115135** dated 17.08.2024.

3.6 Whereas, the applicable BCD on the imported goods comes to Rs. 8,07,432/- (@20%ad-valorem, Rs.4037160/-*20%) and Rs.53,73,534 /- (Rs.23/- per SqM. $233631.92*23$). Accordingly, it appears that the BCD when taken on per SqM basis is higher than the ad-valorem duty. Hence, the customs duty calculation on the imported goods is required to be taken on the basis of BCD@ Rs.23/- per SqM. Accordingly total Customs duty on the imported goods comes to Rs 58,44,068/- (BCD + IGST) instead of Rs.2,76,108/- as self-assessed by the importer in the said BE, thus there appears non/short levy of Customs duty amounting to Rs.55,76,960/- as calculated under:

TABLE-B

Duty calculated during the investigation	Amount	Duty calculated by the Importer in BE	Amount	Difference
Net weight	28690	Net weight	27180	1510
Value	4037160	Value	753569	3283591
BCD @23 per SQM	5373534	BCD @ 20% Ad-valorem	150714	5222820
SWS @10%	0	SWS @10%	15071	-15071
Taxable Value for IGST (2+3+4)	9410694	Taxable Value for IGST	919354	8491340
IGST @5%	470534	IGST @12%	110322	360212
TOTAL duty (3+4+6)	5844068	Total Duty	267108	5576960

2. Bill of Entry No. 5066575 dated 15.08.2024:

3.7 Whereas, the assessable value of the cargo is required to be re-determined as per the contemporary import data available on NIDB, in respect of the identical/ similar goods sold for export to India (from China) and imported at or about the same time in view of rule 4 & 5 of the CVR, 2007. Proceeding sequentially, to Rule 5 ibid, as per contemporaneous import data available on NIDB, the rate of printed woven fabric of Polyester filament yarn (non-textured) having similar nature, composition and description is ranging from Rs.270.79 to Rs.2508 per Kg. Further, sub-rule (3) of the said Rule-4 of CVR, 2007 states that, in applying these rules, if

more than one transaction value of similar goods is found, the lowest such value shall be used to determine the value of imported goods. Further, sub-rule (2) of the said Rule-5 of CVR, 2007 states that, the provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods. Accordingly, the assessable value of net 27680Kgs of the imported goods is required to be re-determined as Rs.74,95,467/- (=27680 x 270.79) instead of Rs.7,43,490/- as declared in the Bill of Entry No. 5066575 dated 15.08.2024.

3.8 Whereas, the applicable BCD on the imported goods comes to Rs.14,99,093/- (@20% ad-valorem, Rs.74,95,467/-* 20%) and Rs.41,52,000/- (@ 150 per Kgs, 27680*150). Accordingly, it appears that, the BCD, when taken on per kg duty basis is higher than the duty @20% ad-valorem and hence, the customs duty calculation on the imported goods is required to be taken on the basis of BCD@ 150 per Kgs. Accordingly total Customs duty on the imported goods comes to Rs.47,34,373/- (BCD + IGST) instead of Rs.2,72,415/- as self-assessed by the importer in the said BE, thus there appears non/short levy of Customs duty amounting to Rs.44,61,958/- as calculated under:

TABLE- C

Duty calculated during the investigation	Amount	Duty calculated by the Importer in BE	Amount	Difference
Net weight	27680	Net weight	26880	800
Value	7495467	Value	743490	6751977
BCD @150 per kg	4152000	BCD @ 20% Ad-valorem	148698	4003302
SWS @10%	0	SWS @10%	14870	-14870
Taxable Value for IGST (2+3+4)	11647467	Taxable Value for IGST	907058	10740409
IGST @5%	582373	IGST @12%	108847	473526
TOTAL duty (3+4+6)	4734373	Total Duty	272415	4461958

3.9 Statement of Shri Parag Dodia, authorised person and authorised by the proprietor (Shri Darshan Shah) of importer was recorded on 21/10/2024, wherein he submitted copies of the import documents viz. BE, BL, Invoice, and Packing List etc. He also perused examination report dated 10.09.2024; test reports dated 05.09.2024 & 27.09.2024 and agreed with the same. He inter-alia stated that: Their firm M/s Mayana Enterprises is a proprietorship firm and Shri Darshan Shah is the

proprietor of the firm. Their firm engaged in trading/wholesaling of various types of textiles. They are registered with GSTN and having GSTIN.27AAKPS1708D1ZS. He is the person duly authorised by the firm to attend the proceedings of the present case of import of goods vide Bill of Entry No.5115135 dated 17.08.2024&5066575 dated 15.08.2024. The Bills of entry were filed by CB M/s SRV Shipping on their behalf. He has been working as an accountant with M/s Mayana Enterprises for 8 years. He submitted the authority letter dated 21.10.2024, issued by M/s Mayana Enterprises. They procured their trading goods i.e. various types of fabrics mostly by way of imports from other countries especially from China. He stated that some time as per requirement they also purchase from local market. They are in the business of trading/wholesaling from last 15 years. They had taken GSTIN in July-2017. They import mostly from China. They trade in various type of textiles/fabric and other garment accessories. He submitted copies of import documents in respect of goods imported by them Bills of entry no. 5115135 dated 17.08.2024&5066575 dated 15.08.2024 viz. Copy of Bill of Entry, Bill of Lading, Commercial Invoice and concerned Packing List under his dated signature. He perused Bill of Entry No. 5115135 dated 17.08.2024 filed by M/s SRV Shipping on their behalf and put his dated signature on it in token. That BE filed for import of 74010 MTR (1420 Rolls) of Plain Polyester PA Coated Fabric (Polymeric Compound) declared CTH-59039090. They have declared total Customs duty payable amounting to Rs. 2,76,108/-. He perused Bill of Entry No. 5066575 dated 15.08.2024 filed by M/s SRV Shipping on their behalf and put his dated signature on it in token. This BE filed for import of 73020 MTR (660 Rolls) of Plain Polyester PA Coated Fabric (Polymeric Compound) declared CTH-59039090. They have declared total Customs duty payable amounting to Rs. 2,72,414/-. He perused examination report dated 05.09.2024 in respect of their consignment imported vide Bills of Entry No. 5115135 dated 17.08.2024 & 5066575 dated 15.08.2024 and in token put his dated signature on the same. The examination was carried out in the presence of Shri Niranjana Kumar Pandey, authorized representative of M/s Mayana Enterprises. He agreed with the contents of the said examination report dated. Total 1420 packages/rolls (each rolls contains 100 meters of fabric) (Bill of Entry No.5115135 dated 17.08.2024) and 660 PP Bags, each PP bag contains 12 rolls of fabric (each roll 35 MTR of fabric approx.) (BE No.5066575 dated 15.08.2024) found stuffed in the container. He perused Custom Tariff heading (CTH) of the imported items i.e. 59039090 listed in the subject Bills of entry. He found as follows: *Textile fabrics, impregnated, coated, covered or laminated with plastics, other than those of heading 5902 – other*

He perused CRCL, Kandla Lab test report No. 5655 (BE NO. 5115135) wherein it is

found during the test;

Composition:

It is composed of polyester filament yarn (texturized) together with small amount of Lycra.

GSM (as such) =122.8

Selvedge to selvedge width (CMS)=150

% of polyester=94.1% by wt.

% of Lycra=Balance

It is other than PA coated.

He perused CRCL, Kandla Lab test report No. 5655 (BE NO. 5115135) wherein it is found during the test;

Composition:

It is composed of polyester filament yarn (non-textured)

GSM (as such) =52.95

Selvedge to selvedge width (CMS)=148

It is other than coated.

On going through the Tariff and above test reports, he stated that they have imported textile material which does not fall in the CTH59039090 as declared by M/s Mayana Enterprises. He admitted that they have wrongly classified the goods imported vide Bills of entry 5115135 dated 17.08.2024 & 5066575 dated 15.08.2024.

He stated that the imported goods covered under above mentioned Bills of Entry were mis-classified/declared by M/s Mayana Enterprises. After the examination of the cargo by SIIB, they study this item and also consult with some of their consultants; they imported item textile material should be rightly classified under Chapter 54. He confirmed that the item imported under BE No. 5115135 dated 17.08.2024 and under BE No.5066575 dated 15.08.2024 for which correct classification are CTH 54076190 and CTH 54075290. He requested to decide their case on merit basis and they are ready to pay differential customs duty along with applicable fine and penalty as imposed by the department. He also confirmed that they do not want any SCN and PH in the matter. He further confirmed that they will not file any appeal and will not claim any refund in this matter in future as well. He also submitted copy of the consent letter dated 21.10.2024.

3.10 Whereas, the importer vide letter dated.21.10.2024 has submitted that, they are ready to pay difference amount duty with fine and penalty and they will not take refund or they will not go with any appeal and they do not want SCN and PH notice.

3.11 Accordingly, the consignment is found mis-declared in respect of quantity,

nature and description which resulted into short-levy of total duty amounting to Rs.1,00,38,918/- (Rs.55,76,960/- + Rs. 44,61,958) as calculated at para supra. Hence, it appears that, the consignment is liable for confiscation under Section 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.

3.12 Further, **vide Investigation Report dated. 26.12.2024**, it appears that :-

- i. The classification of the fabric imported vide **Bill of Entry no. BE No. 5115135 dated 17.08.2024** I.e. CTH 59039090 declared by the importer is liable to be rejected and those goods are liable to be re-classified under CTH 54075290.
- ii. The classification of the fabric imported vide **Bill of Entry no. BE No. 5066575 dated 15.08.2024** i.e.59039090 declared by the importer is liable to be rejected and those goods are liable to be re-classified under CTH 54076190.
- iii. The assessable value of these mis-declared imported goods is liable to be re-determined as **Rs. 40,37,160/-** instead of **Rs. 7,53,569/-** as declared in the Bill of Entry No. 5115135 dated 17.08.2024 under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs act 1962.
- iv. The assessable value of these mis-declared imported goods is liable to be re-determined as **Rs. 74,95,467/-** instead of Rs. 7,43,490/- as declared in the Bill of Entry No. 5066575 dated15.08.2024 under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.
- v. Total applicable customs duty on re-assessed value of comes to **Rs. 58,44,068/-** instead of Rs.2,76,108/- as declared in the Bill of Entry No. 5115135 dated 17.08.2024.
- vi. Total applicable customs duty on re-assessed value of comes to **Rs. 47,34,373/-** instead of Rs.2,72,415/- as declared in the Bill of Entry No. 5066575 dated 15.08.2024.
- vii. The said Bill of Entry No. 5115135 dated 17.08.2024 & 5066575 dated 15.08.2024 is liable to be re-assessed accordingly under Section 17(4) of the Customs Act, 1962.
- viii. The goods imported vide Bill of Entry no. 5115135 dated 17.08.2024 & 5066575 dated 15.08.2024 by way of non/mis-declaration in

contravention of Sec 46 of the Customs Act, 1962 and are therefore liable for confiscation under 111(m) of the Customs Act, 1962.

- ix. The importer M/s Mayana Enterprises, Sharda Chambers, Building No. 131, Keshavji Nayak Road, GR. FLR. G-Mumbai- 400009 having IEC No. 0301058458 are liable for Penalty under Section 112(a)(ii) of the Customs Act, 1962.

DISCUSSION AND FINDINGS

4. I have carefully gone through the facts of the case along with submissions of the importer vide their letter dated 21.10.2024. I find that the importer vide said letter have stated that they do not want any show cause notice and personal hearing in the instant case and are ready to pay differential customs duty along with applicable fine and penalty. Hence, I proceed to decide the case on the basis of material available on records.

5. In the instant case, I find that the importer had filed two Bills of Entry i.e Bill of Entry no. 5115135 dated 17.08.2024 and 5066575 dated 15.08.2024 which were detained by the department of SIIB (I) to investigate the probability of mis-declaration in terms of description and value.

5.1 **With respect to Bill of Entry no. 5115135 dated 17.08.2024** I find that based on the examination report, test reports and investigation carried out in this regard, I find that the imported goods are found mis-declared in respect of nature, composition and description and CTH 59039090 as declared in the BE No. **5115135** dated 17.08.2024. I find that the goods "plain polyester PA coated fabric (polymeric compound)" were classified by the importer in the BE No. 5115135 dated 17.08.2024 in CTH 59039090 (BCD = 20%). However, I find that, Customs Tariff Heading CTH 59039090 belongs to other (textile fabrics impregnated, coated, covered, or laminated) while the lab has reported that the sample as received is in the form of a cut piece of dyed (black) woven fabric. I find that It is other than PA coated fabric. I find that It is composed of Polyester filament yarn (texturized) and GSM is 122.8 and % of Polyester = 94.10% by weight. Hence, I find that, the imported goods do not qualify to be classified under CTH 59039090 and accordingly, I reject the classification as declared in the Bill of Entry. Furthermore, on perusal of test report received from the CRCL, Kandla, I find that the nearest CTH applicable is **54075290 as it is** meant for 'woven fabrics, containing 85% or more by weight of textured polyester filaments attracting BCD @20% or Rs.23/- per SqM., whichever is higher. I also find that the declared weight is found to be

28690 Kgs instead of 27180 Kgs as declared in the Bill of Entry.

5.3 Further, I find that the goods under import are mis-declared in terms of description and quantity, I reject the declared transaction value in terms of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. However, I taking into consideration the contemporaneous import data for the similar goods in view of Rule 5 of the CVR, 2007. I order for re-determination of assessable value to Rs. 40,37,160/- as discussed at 3.5 above instead of Rs. 7,53,569/- as declared in the Bill of Entry No. 5115135 dated 17.08.2024. Accordingly I find that total Customs duty on the imported goods comes to Rs 58,44,068/-(BCD + IGST) instead of Rs.2,76,108/- as self-assessed by the importer in the said BE, thus I find that there is a non/short levy of Customs duty amounting to **Rs.55,76,960/-** as per **Table B** above.

6.1 With respect to Bill of Entry no. 5066575 dated 15.08.2024

I find that based on the examination report, test reports and investigation carried out in this regard, I find that the imported goods are found mis-declared in respect of nature, composition and description and CTH 59039090 as declared in the BE No. **5066575 dated 15.08.2024**. However, I find that, Customs Tariff Heading CTH 59039090 belongs to other (textile fabrics impregnated, coated, covered, or laminated) while the lab has reported that the sample as received is in the form of a cut piece of dyed and printed woven fabric which is other than coated. I find that it is composed of Polyester filament yarn (non-textured) and GSM is 52.95. Hence, I find that, the imported goods do not qualify to be classified under CTH 5903 therefore, I reject the same. Furthermore, as per the test report received from the CRCL, Kandla, I find that nearest CTH **54076190 is applicable as it is** meant for woven fabrics, containing 85% or more by weight of non-textured polyester filaments attracting BCD @20% or Rs.150/- per Kgs. I also find that the declared weight is found to be 27680 Kgs instead of 26880 Kgs as declared in the Bill of Entry.

6.2 Further, I find that the goods under import are mis-declared in terms of description and quantity, Therefore, I reject the declared transaction value in terms of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. However, I taking into consideration the contemporaneous import data for the similar goods in view of Rule 5 of the CVR, 2007. I order for re-determination of assessable value to **Rs. 74,95,467/-** as discussed at 3.8 above instead of Rs. 7,43,490/- as declared in the Bill of Entry No. 5066575 dated

15.08.2024. Accordingly I find that the total Customs duty on the imported goods comes to **Rs. 47,34,373/-** (BCD + IGST) instead of Rs. 2,72,415/- as self-assessed by the importer in the said BE, thus I find that there is non/short levy of Customs duty amounting to **Rs. 44,61,958/-** as per Table - C above.

7. Thus, I find that by the act of omission and commission at the level of importer, the importer has contravened the provisions of Section 46 and Section 17 of the Customs Act, 1962, in as much as, they failed to make correct and true declaration and information to the Customs Officer in the form of Bill of Entry and also failed to assess their duty liability correctly. Accordingly, I find that the consignment is found mis-declared in respect of quantity, nature and description which resulted into short-levy of total duty amounting to **Rs.1,00,38,918/- (Rs.55,76,960/- + Rs. 44,61,958)** as calculated at para supra. Hence, it I find that, the consignment covered vide Bill of Entry no. 5115135 dated 17.08.2024 and 5066575 dated 15.08.2024 totally re-valued at INR 1,15,32,627/- (40,37,160 + 74,95,467) is liable for confiscation under Section 111(m) of the Customs Act, 1962. Furthermore, for the said act of omission and commission, I find that the importer is liable for the penal action under the provisions of Section 112(a)(ii) of the Customs Act, 1962.

8. In view of the discussions in the foregoing Para's, I pass an order as under:

ORDER

- i. I reject the declared classification of the fabric imported vide Bill of Entry no. BE No. **5115135** dated 17.08.2024 I.e. CTH 59039090. However, I order for the same to be re-classified under **CTH 54075290**.
- ii. I reject the declared classification of the fabric imported vide Bill of Entry no. BE No. **5066575** dated 15.08.2024 i.e. 59039090 declared by the importer. However, I order for same to be re-classified under **CTH 54076190**.
- iii. I reject the declared transaction value of these mis-declared imported goods under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. However, I order for re-determination of value to Rs. **40,37,160/-** instead of Rs. 7,53,569/- as declared in the **Bill of Entry No. 5115135** dated 17.08.2024 under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.
- iv. I reject the declared assessable value of these mis-declared imported goods under Rule 12 of the Customs Valuation (Determination of Value of

Imported Goods) Rules, 2007. However, I order for re-determination of value to **Rs. 74,95,467/-** instead of Rs.7,43,490/- as declared in the **Bill of Entry No. 5066575 dated 15.08.2024** under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

- v. I order confiscation of the goods re-valued at **INR 40,37,160/-** vide Bill of Entry No. 5115135 dated 17.08.2024 & at **INR 74,95,467/-** vide Bill of Entry No. 5066575 dated 15.08.2024 under Section 111(m) of the Customs Act, 1962. However, Importer is given an option to redeem the same on payment of Redemption Fine of INR 5,00,000 (Rs. Five Lakhs only) in respect of **Bill of Entry No. 5115135** dated 17.08.2024 & Redemption Fine of INR 7,50,000/ (Rs. Seven Lakhs Fifty Thousand only) in respect of **Bill of Entry No. 5066575** dated 15.08.2024 under Section 125 of the Customs Act, 1962.
- vi. I order to the Importer to pay the differential duty amounting to **Rs. 55,76,960/- & Rs. 44,61,958/-** for Bill of Entry No. 5115135 dated 17.08.2024 & 5066575 dated 15.08.2024 respectively as per the provisions of Section 125 (2) of the Customs Act, 1962.
- vii. I impose a penalty of INR 5,55,000/ (Rs. Five Lakhs Fifty Five Thousand only) & INR 4,45,000 (Rs. Four Lakhs Forty Five Thousand only) on the importer M/s Mayana Enterprises, Sharda Chambers, Building No. 131, Keshavji Nayak Road, GR. FLR. G-Mumbai- 400009 having IEC No. 0301058458 under Section 112 (a)(ii) of the Customs Act, 1962 in respect of **Bill of Entry No. 5115135 dated 17.08.2024 & 5066575 dated 15.08.2024** respectively.
- viii. I order for re-assessment of Bill of Entry in terms of valuation, classification, description, and quantity accordingly, under Section 17(4) of the Customs Act, 1962.
- 9. 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: 22-01-2025 11:52:11
Customs House, Mundra

To,

M/s Mayana Enterprises (IEC No. 0301058458
Sharda Chambers, Building No. 131,
Keshavji Nayak Road, GR. FLR. G-Mumbai-400009

Copy to :-

- 1 The Dy. Commissioner of Customs, SIIB, 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