

	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT -370421 PHONE : 02838-271426/271428 FAX :02838-271425	
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A	File No.	CUS/APR/INV/211/2024-Gr.3-O/o Pr. Commr-Cus-Mundra
B	OIO No.	MCH/ADC/AK/65/2024-25
C	Date of Order	11.06.2024
D	Passed by	Arun Kumar, Additional Commissioner, Import Assessment, Custom House, Mundra.
E	SCN/IR No. & Date	CUS/SIIB/7/2024-SIIB Dt. 17.04.2024
F	Noticee / Party / Importer	M/s. Milwaukee & Co (IEC-ABTFM0398P) F-01, A-4, Haware Centurian Complex, Plot No. 88-91, Sector 19A, Seawoods, Navi Mumbai, Thane, - 400706
G	DIN	20240671MO0000777A73

- The Order – in – Original is granted to concern free of charge.
- 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

The Commissioner of Customs (Appeal), MUNDRA,
Office at 7th floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380009
- Appeal shall be filed within Sixty days from the date of Communication of this Order.
- Appeal should be accompanied by a Fee of Rs. 5/- (Rupees Five Only) under Court Fees Act it must accompanied by (i) copy of the Appeal, (ii) 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.
- Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.
- While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respect.
- 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 or Penalty are in dispute, where penalty alone is in dispute.

Relieved
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 (Amr - P. pali)
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Brief facts of the Case

M/s Milwaukee & CO (hereinafter referred as 'The Importer') (IEC No.ABTFM0398P) having Address F-01, A-4, Haware Centurian Complex, Plot No. 88 to 91, Sector 19 A, Seawoods, Navi Mumbai, Thane, Maharashtra-400706 had filed a SEZ Warehouse Bill of Entry No.1027883 dated 29.12.2023 (hereinafter referred to as '*the said BE*') through their CB M/s. Aum Shipping and Logistics at SEZ, Mundra Port for Declared item Cotton Woven Dyed Fabric (CTH-52083290).

2. An intelligence was gathered by the officers of SIIB Section, Custom House, Mundra that the cargo imported under SEZ warehouse Bill of Entry No. 1027883 dated 29.12.2023 filed by M/s Fast Track CFS Private Limited, Plot No. 3, Block-C, Sector-11, APSEZ Ltd., Mundra-370421, Gujarat for and on behalf of it's client M/s Milwaukee & CO, F-01, A-4, Haware Centurian Complex, Plot No. 88 to 91, Sector 19 A, Seawoods, Navi Mumbai, Thane, Maharashtra-400706 holding IEC No: ABTFM0398P (hereinafter referred to as '*the importer*'), through their Customs Broker, M/s Aum Shipping and Logistics. (hereinafter referred to as '*the CHA*') at Mundra SEZ port for import of Cotton Woven Dyed Fabric (CTH-52083290) has possible mis-declaration in respect of description, quality and quantity. Hence, the container no. WHSU5648688 was put on hold for detail examination of the goods by the SIIB section, Custom House, Mundra in view of the suspicion.

2.1 Based on the above suspicion, examination of the said consignment was carried out by the officers of SIIB section on 12.01.2024 in presence of representatives of CHA. On being asked, the representative of CHA provided copies of the said BE and other import documents viz. Bill of Lading No. 031D585654 dated 14.12.2023, Invoice No. BOL 23-24/034 dated 12.12.2023 and concerned Packing List. As per the said BE, the cargo is imported from M/s Brion Co. Limited, Hong Kong, the declared goods was 'Cotton Woven Dyed Fabric' (CTH-52083290) and quantity declared was 1102 rolls, gross weight 25791.3 Kgs, 128956 square meter, total assessable value was Rs.12,96,782/- and total duty was Rs. 2,14,617/-.

2.2 During the course of examination, the gross weight of the cargo is found as 25750 Kgs (instead of 25791.3 declared), which is only 41.3 Kgs short from the declared gross weight. Further, during the course of examination total 1102 PKGs were found stuffed into the said container, which is found tallied with the number of packages mentioned in the import documents. The details of those packages found during the course of examination are as under:

S. No.	Code Mentioned on the packing	No. of Packages
1	GT8254A-2	124

2	SD-2878	227
3	SD-2880	320
4	GT8251 (DC04 PD)	96
5	GT8250C (DC05 RFP)	123
6	GT8251 (DC05 PD)	96
7	GT8249 (DC02)	116
Total Packages		1102

3. During the course of examination, quantity of the imported goods was found as declared in respect of number of PKGs i.e. 1102. Further, as per weighment conducted at the warehouse the imported goods are found 41.3 Kg short from the declared weight. In view of the same, the first doubt in respect of excess quantity is dispelled. However, on visual examination, actual nature, composition and description of the goods could not be ascertained, therefore representative samples were drawn and forwarded to the CRCL, Kandla for testing purpose vide Test Memo Nos. 838 to 844 all dated 19.01.2024 issued from F. No. S/43-149/Fabric/SIIB-B/CHM/2023-24. The CRCL Kandla has submitted test results vide different letters and reported as under:

- i. TM No. 838: the sample as received is in the form of dyed (maroon colour) self-designed woven fabric. It is made of textured polyester filament yarn.

GSM (as such) = 142.66

It is other than cotton fabric.

- ii. TM No. 839: the sample as received is in the form of a cut piece of white woven fabric having selvage on both side. It is composed of polyester multi filament yarn (textured).

GSM (as such) = 143.8

It is other than cotton fabric.

- iii. TM No. 840: the sample as received is in the form of a cut piece of dyed (Light Blue coloured) woven fabric. It is composed of polyester multi filament yarn together with lycra on one side and textured polyester multi filament yarn on other side.

GSM (as such) = 138.5

% Composition

Polyester = 97.5% by wt.

Lycra = Balance

It is other than cotton fabric.

- iv. TM No. 841: the sample as received is in the form of a cut piece of white woven fabric having self-design on one side and plain on other side. It is made of two-layer fabric bonded together by weaving. It is composed wholly of polyester multi filament yarn (textured).

GSM (as such) = 172.9

It is other than cotton fabric.

- v. TM No. 842: the sample as received is in the form of a cut piece of white self-designed woven fabric, made by two-layers of fabric bonded together by weaving. It is composed wholly of polyester multi filament yarn (textured).

GSM (as such) = 166.8

It is other than cotton fabric.

- vi. TM No. 843: Sample as received is in the form of a cut piece of dyed (blue coloured) self-designed woven fabric, made by two-layers of fabric bonded together by weaving. It is composed of polyester multi filament yarns (textured).

GSM (as such) = 165.96

It is other than cotton fabric.

- vii. TM No. 844: Sample as received is in the form of a cut piece of woven fabric having printed self-designed surface on one side and while plain surface on other side. It is made of two layer of fabric bonded together by weaving. It is composed wholly polyester multi filament yarns (textured).

GSM (as such) = 168.8

It is other than cotton fabric.

3.1 All the aforementioned test reports were subsequently also conveyed to the importer by this office vide letter dated 12.02.2024 issued from F. No. S/43-149/Fabric/SIIB-B/CHM/2023-24.

3.2 Classification of the imported goods: The test reports received from the CRCL Kandla as discussed above have been examined with respect to the declaration made by the importer to determine the correct and proper CTH of the imported goods. It is pertinent to mention that, 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. Further, GIR 6 of the HSN and the import Tariff specifies that - the classification of goods in the subheadings of a heading shall be determined according to the terms of those sub-headings and any related sub-heading notes.

3.3 TM Nos. 838 to 844: The goods covered under all Test Memo Numbers 838 to 844 were found mis-declared in terms of description of the goods as the goods were declared as “Cotton Woven Dyed Fabric”, however, as per test report the imported goods are “other than cotton fabric”. Therefore, the correct classification of the goods is required to be ascertained. It is apparent that, as far as the entries at heading level are concerned, heading 5407 of the Import Tariff specifically include “Woven Fabric of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404”, accordingly impugned goods are appropriately classifiable under the heading 5407. The said Heading covers goods classifiable under the following sub-headings at the single dash (-) level:

- i. Woven fabrics obtained from high tenacity yarn of nylon or other polyamides or of polyesters;
- ii. Woven fabrics obtained from strip or the like;
- iii. Fabrics specified in Note 9 to Section XI;
- iv. Other woven fabrics, containing 85% or more by weight of filaments of nylon or other polyamides;
- v. Other woven fabrics, containing 85% or more by weight of textured polyester filaments;
- vi. Other woven fabrics, containing 85% or more by weight of polyester filaments;
- vii. Other woven fabrics, containing 85% or more by weight of synthetic filaments;
- viii. Other woven fabrics, containing less than 85% by weight of synthetic filaments, mixed mainly or solely with cotton;
- ix. Other woven fabrics;

3.3.1 All the subheading from (i) to (iv) and (vi) to (ix) above has been ruled out as their composition/specifications do not meet the test results and therefore, the merit subheading of the impugned goods appear to be under (v), i.e. “Other woven fabrics, containing 85% or

more by weight of textured polyester filaments”. The relevant Tariff item at the double dash (--) level:

- i. Unbleached or bleached;
- ii. Dyed;
- iii. Of yarns of different colours;
- iv. Printed

3.3.2 The sub-heading (i), (iii) & (iv) above has been ruled out and as per test results therefore, the merit subheading of the impugned goods appear to be under (ii), i.e. “Dyed”. The relevant Tariff item at the triple dash (---) level:

- i. Polyester shirtings;
- ii. Polyester suitings;
- iii. Terylene and dacron sarees;
- iv. Polyester sarees;
- v. Other;

3.3.3 The sub-heading from (i) to (iv) above has been ruled out as the goods have not been specified to be used as shirtings/sutings/sarees in the test results therefore, the merit subheading of the impugned goods appear to be under (v), i.e. “Other”. Therefore, as per test result under all TM Nos. 838 to 844, the imported goods appear to be rightly classifiable under CTH 54075290 wherein the applicable rate of duty is 20% or Rs.23 sq. mtr., whichever is higher (BCD) + 0% (SWS) + 5% (IGST). Hence, it is observed that importer has mis-classified the subject goods under CTH 52083290 instead of correct CTH 54075290 with an intention to evade payment of the applicable customs duty. In view of the same the imported goods have been found liable for confiscation under section 111 of the Customs Act, 1962 and hence, were seized under section 110 of the Customs Act, 1962 vide seizure memo dated 29.02.2024. All the above test results may be summarised as under:

Cargo declared	CTH Declared	TM	Test results	Correct CTH
Cotton Woven Dyed Fabric	5208 3290	838	Woven Fabric of polyester multifilament yarn textured other than cotton fabric	5407 5290 (mis-declared)
Cotton Woven Dyed Fabric	5208 3290	839	Woven Fabric of polyester multifilament yarn textured other than cotton fabric	5407 5290 (mis-declared)
Cotton Woven Dyed Fabric	5208 3290	840	Woven Fabric of polyester multifilament yarn textured other than cotton fabric	5407 5290 (mis-declared)
Cotton Woven Dyed			Woven Fabric of polyester multifilament yarn	5407 5290 (mis-

Fabric	5208 3290	841	textured other than cotton fabric	declared)
Cotton Woven Dyed Fabric	5208 3290	842	Woven Fabric of polyester multifilament yarn textured other than cotton fabric	5407 5290 (mis-declared)
Cotton Woven Dyed Fabric	5208 3290	843	Woven Fabric of polyester multifilament yarn textured other than cotton fabric	5407 5290 (mis-declared)
Cotton Woven Dyed Fabric	5208 3290	844	Woven Fabric of polyester multifilament yarn textured other than cotton fabric	5407 5290 (mis-declared)

3.4 Consequently, the subject goods are found liable to be assessed at the rate of 20% or Rs.23 per sq. mtr. Whichever is higher (BCD). In the said BE, invoice and detail packing list, total quantity of these goods have been declared as 128956 sq. mtr. and 25791.3 KGs. However, it appears that, net quantity in square meter of the impugned goods is required to be ascertained keeping the different GSMs as reported by the CRCL lab, which comes to 153589.50 square meter. Accordingly, BCD@23 per square meter comes to Rs.35,32,559/-, as tabulated below:

TM	Wt	GSM	Sq Mtr	Duty Rate @Rs.23/Sq. mtr.	BCD
838	1822.30	142.66	12773.73	23	293796
839	6290.50	143.8	25044.51	23	576024
840	8362.00	138.5	60375.45	23	1388635
841	1738.10	172.9	10052.63	23	231211
842	3960.80	166.8	23745.80	23	546153
843	1638.40	165.96	9872.26	23	227062
844	1979.20	168.8	11725.12	23	269678
Total	25791.30		153589.50		35,32,559

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 the assessable value declared in the BE is liable to be rejected in terms of Rule 12 of the CVR, 2007.

4.1 Whereas, the assessable value of the cargo is now 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. Whereas, further it appears that, the value of the imported goods could not be determined under Rule 4 ibid since the value of contemporaneous imports of identical goods of same nature, composition and description could not be found on NIDB. Proceeding sequentially, to Rule 5 ibid, as per contemporaneous import data available on NIDB, the rate of fabrics having similar nature, composition and description is found ranging from Rs.20.76 to Rs.99.41 per square meter.

4.2 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 also 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 the imported goods have been re-determined taking the lowest of such values i.e. Rs.20.76 per square meter as available on NIDB import data of the similar goods. Accordingly, the assessable value of 153589.50 square meter of the imported goods is required to be re-determined as Rs.31,88,518/- instead of Rs.12,96,782/- as declared in the said BE. Accordingly, total Customs duty on the imported goods comes to Rs.38,68,613/- instead of Rs.2,14,617/- as self-assessed by the importer in the said BE as calculated below:

TM	Sq Mtr	Ass. Value	BCD Rate	BCD	SWS @0%	Value for IGST	IGST @5%	Total Duty
838	12773.73	2,65,183	23 /sqm	2,93,796	0.00	5,58,979	27,949	3,21,745
839	25044.51	5,19,924	23 /sqm	5,76,024	0.00	10,95,948	54,797	6,30,821
840	60375.45	12,53,394	23 /sqm	13,88,635	0.00	26,42,039	1,32,101	15,20,736
841	10052.63	2,08,693	23 /sqm	2,31,211	0.00	4,39,904	21,995	2,53,206
842	23745.80	4,92,963	23 /sqm	5,46,153	0.00	10,39,116	51,956	5,98,109
843	9872.26	2,04,948	23 /sqm	2,27,062	0.00	4,32,010	21,601	2,48,663
844	11725.12	2,43,413	23 /sqm	2,69,678	0.00	5,13,091	25,655	2,95,333

Total	153589.50	31,88,518		35,32,559	0.00	67,21,077	3,36,054	38,68,613
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4.3 Accordingly, there appears non/short levy of Customs duty amounting to Rs.36,53,996/- as calculated under:

Sr. No.	Duty calculated during the investigation	Amount (Rs./Kgs)	Duty calculated by the importer in BE	Amount (Rs./Kgs)	Difference (Rs./Kgs)
1	Net weight	25750 kgs	Net weight	25791.3Kgs	(-) 41.3 Kg
2	Square meter	153589.50	Square meter	128956	24633.50
3	Value	31,88,518/-	Value	12,96,781/-	18,91,737/-
4	BCD	35,32,559/-	BCD@10%	1,29,678/-	34,02,881/-
5	SWS @0%	0/-	SWS @10%	12,968/-	(-)12,968/-
6	Taxable Value for IGST (3+4+5)	67,21,077/-	Taxable Value for IGST (3+4+5)	14,39,427/-	52,81,650/-
7	IGST	3,36,054/-	IGST	71,971/-	2,64,083/-
8	TOTAL duty (4+5+7)	38,68,613/-	TOTAL duty (4+5+7)	2,14,617/-	36,53,996/-

5. Whereas, the importer vide letter dated 20.03.2024 has informed that, as per the test reports, the cargo covered under bill of entry no. 1027883 dated 29.12.2023 found other than the declared in the BE; that, the shipper informed that the consignment was mistakenly sent which belong to their other buyer. The importer further requested to give permission to re-export of the cargo. The importer further submitted that, they do not want any SCN/PH in the matter and ready to pay fine and penalty as imposed by the authority. Whereas, a voluntary statement of Shri Tushar Bhanji Bhanushali, authorised person of the importer was recorded on 21.03.2024 under section 108 of the Customs Act, 1962, wherein he submitted copies of the import documents viz. said BE, BL, Invoice, and Packing List etc. He also perused examination report dated 12.01.2024, test reports in respect of all TM Nos. from 838 to 844 all dated 19.01.2024, seizure memo and supratnama dated 29.02.2024 and agreed with the same. He interalia stated that:

- M/s Milwaukee & Co is a partnership firm engaged in trading/wholesaling of various types of fabrics and is registered with GSTN and having GSTIN-27ABTFM0398P1Z7.
- They procure trading goods i.e. various types of fabrics mostly by way of imports from other countries especially from China.

- They are in the business of trading/wholesaling of various types of fabrics from last 1 year only.
- They started importing these goods at Mundra port in this year only; they, they import mostly from Hong-Kong /China based suppliers.
- They are not old & regular importer and as such, they are not fully aware of the Customs rules and procedures; that, they file BE and clear imports from Customs with the help of their Custom House Agents only.
- They were not aware of such mis-declaration in respect of nature, composition and description of the imported goods earlier and came to know about such mis-declaration only after the examination by the SIIB as well as testing of the imported goods.
- The consignment was mistakenly sent by the shipper which belong to their other buyer; therefore, they want to re-export the consignment to the Shipper.
- They do not wish any personal hearing and show cause notice in the matter; that, they are ready to pay applicable fine and penalty imposed by the department; that, they will not file any appeal and will not claim any refund in this matter in future as well.

6. **RELEVANT LEGAL PROVISIONS:**

(A) RELEVANT PROVISIONS OF SEZ ACT, 2005:

2. Definitions.— In this Act, unless the context otherwise requires,—

.....

(o) “import” means—

(i) *bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or*

(ii) *receiving goods, or services by a Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone;*

Section 21: Single enforcement officer or agency for notified offences.—

1. *The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.*
2. *The Central Government may, by general or special order, authorise any*

officer or agency to be the enforcement officer or agency in respect of any notified offence or offences committed in a Special Economic Zone.

3. *Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection, search or seizure as is provided under the relevant Central Act in respect of the notified offences.*

Section 22: Investigation, inspection, search or seizure.—

The agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation, inspection, search or seizure in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone:

Provided that no investigation, inspection, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or sub-section (3) of section 21 without prior approval of the Development Commissioner concerned:

Provided further that any officer or agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner

Notification Nos. 2665(E) and 2667(E) dated 05.08.2016:

1. *In exercise of the powers conferred by section 22 of the Special Economic Zones Act, 2005 (28 of 2005), the Central Government by Notification No. 2667(E) dated 05.08.2016 issued by the Ministry of Commerce & Industry, has authorized the jurisdictional Customs Commissioner, in respect of offences under the Customs Act, 1962 (52 of 1962) to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. The enforcement officer(s), for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit with prior intimation to the Development Commissioner, concerned. Under Section 21(1) of the SEZ Act, 2005, the Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.*
2. *The Central Government, by the Notification 2665(E) dated 05.08.2016 has notified offences contained in Sections 28, 28AA, 28AAA, 74, 75, 111, 113, 115, 124, 135 and 104 of the Customs Act, 1962 (52 of 1962) as offences under the SEZ Act, 2005.*

B. RELEVANT PROVISIONS OF SPECIAL ECONOMIC ZONES RULES, 2006:

47(4) *Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made there under.*

47 (5) *Refund, Demand, Adjudication, Review and Appeal with regard to matters relating to authorise operations under Special Economic Zones Act, 2005, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise Authorities in accordance with the relevant provisions contained in the Customs Act, 1962, Central Excise Act, 1944, and the Finance Act, 1994 and the rules made thereunder or the notifications issued thereunder.*

(C) RELEVANT PROVISIONS OF CUSTOMS ACT, 1962:

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 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:-*

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(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) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable,-

i.

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:*

(D) 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 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.

125. Option to pay fine in lieu of confiscation.

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof 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 [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] *[Inserted by Act 80 of 1985, Section 9 (w.e.f. 27.12.1985).]* an option to pay in lieu of confiscation such fine as the said officer thinks fit:[Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply:Provided further that] *[Substituted by Finance Act, 2018 (Act No. 13 of 2018), dated 29.3.2018.]* without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges, payable in respect of such goods.] *[Substituted by Act 80 of 1985, Section 9, for sub-Section (2) (w.e.f. 27.12.1985).]*

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.Explanation. - For removal of

doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.] *[Inserted by Finance Act, 2018 (Act No. 13 of 2018), dated 29.3.2018.]*

7. Summary of Investigations Conducted:

7.1 M/s Fast Track CFS Private Limited, had filed SEZ warehouse Bill of Entry No. 1027883 dated 29.12.2023 for and on behalf of it's client M/s Milwaukee & Co., Navi Mumbai, Maharashtra (IEC: ABTFM0398P) through their Customs Broker, M/s Aum Shipping and Logistic at Mundra SEZ port for import of 'Cotton Woven Dyed Fabric' (CTH-52083290) in the container no. WHSU5648688. Furthermore, the said goods have also been brought into the APSEZ, Mundra i.e. a place in India from a place outside India by sea. Hence, the same falls under the definition of 'import' as provided in the SEZ Act, 2005.

7.2 Whereas, on the basis of the examination report, test reports and investigation carried out in this regard, the quantity in respect of number of packages is found 'as declared' and the weight is also found short (41.3 kg only) from the declared weight and hence, the doubt in respect of excess quantity is dispelled. However, the imported goods are found mis-declared in respect of nature, composition and description (cotton woven dyed fabric) and CTH (52083290) as declared in the said BE. The imported goods are infact found to be other than cotton fabric and are rightly classifiable in 54075290. These facts have also been admitted by the importer in their letter dated 20.03.2024 as well as in the statement dated 21.03.2024 of the authorized person of the importer. Further, the imported goods are also found undervalued in view of the contemporary import data available on NIDB and hence are required to be re-assessed on the basis of NIDB data for the similar goods in view of Rule 5 of the CVR, 2007. Whereas, accordingly, it appears that, the importer has failed to declare true and correct description, CTH as well as assessable value of the goods imported vide the said BE.

7.3 Accordingly, the assessable value of the imported goods is re-determined as Rs.31,88,518/- as discussed at para-supra and summarized at para 4.2 above. Accordingly, total Customs duty on these imported goods comes to Rs.38,68,613/- instead of Rs.2,14,617/- as self-assessed by the importer in the said BE, thus there appears non/short levy of Customs duty amounting to Rs.36,53,996/- as discussed at 4.3 above. Thus, by the act of omission and commission at the level of importer, it appears that, 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. The relevant portion of said provisions is as under:

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:

7.4 The importer vide letter dated 20.03.2024 has submitted that, as per the test report, the cargo covered under bill of entry no. 1027883 dated 29.12.2023 found other than the declared in the BE; that, the shipper informed that the consignment was mistakenly sent which belong to their other buyer. The importer further requested to give permission to re-export of the cargo. The importer further submitted that, they do not want any SCN/PH in the matter and ready to pay fine and penalty as imposed by the authority. These facts have also been re-iterated by the authorised person of the importer in his statement dated 21.03.2024.

8. In view of the above facts, it appears that –

- i. The classification of the goods i.e. 52083290 as declared by the importer in the SEZ warehouse Bill of Entry No. 1027883 dated 29.12.2023 is liable to be rejected and the goods are liable to be re-classified under CTH 54075290 in accordance with the CRCL lab test reports.
- ii. The total assessable value of the imported goods is liable to be re-determined as Rs.31,88,518/- (Rupees Thirty One Lacs Eighty Eight Thousand Five Hundred and Eighteen only), instead of Rs.12,96,781/- (Rupees Twelve Lacs Ninety Six Thousand Seven Hundred Eighty One only) as declared in the BE under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.
- iii. Total Customs duty involved in the imported goods comes to Rs.38,68,613/- (Rupees

Thirty Eight Lacs Sixty Eight Thousand Six Hundred and Thirteen only) instead of Rs.2,14,617/- (Rupees Two Lacs Fourteen Thousand Six Hundred and Seventeen only) as declared in the BE.

- iv. The said Bill of Entry No. 1027883 dated 29.12.2023 is liable to be re-assessed accordingly under Section 17(4) of the Customs Act, 1962.
- v. The goods have been imported by way of mis-declaration in contravention of Sec 46 of the Customs Act, 1962 and are therefore liable for confiscation under Section 111 (m) of the Customs Act, 1962.
- vi. The importer M/s Milwaukee & CO, F-01, A-4, Haware Centurian Complex, Plot No. 88 to 91, Sector 19 A, Seawoods, Navi Mumbai, Thane, Maharashtra - 400706 holding IEC No: ABTFM0398P are liable for Penalty under Section 112(a) (ii) of the Customs Act, 1962.

Waiver of Notice and Personal Hearing

9. The importer vide their letter dated 20.03.2024 has requested for re-export of the imported goods and requested for waiver of the show cause notice and personal hearing in the matter.

DISCUSSION AND FINDINGS

10. I have carefully gone through the Investigation report no. 14/2024-25 dated 17.04.2024 issued by the Deputy Commissioner of Customs (SIIB), Mundra. I find that Importer M/s Milwaukee & CO vide their letter dated 20.03.2024 has requested for re-export of the imported goods and waiver of 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.

11. I find that following issues needs to be decided in the present proceedings-

- i. Whether declared classification needs to be rejected and imported goods are liable to be reclassified or otherwise.
- ii. Whether declared value of goods is liable to be rejected and redetermined or otherwise.
- iii. Whether importer is liable for penalty under section 112(a)(ii) of the Customs act, 1962 or otherwise.

12. On going through the facts of the case, I find that the main issue that needs to be decided is the classification of the goods imported vide BE No. 1027883 dated 29.12.2023. The importer has declared the goods under CTH 52083290 imported under said BE and it is proposed in the Investigation report that goods covered under said BE are liable to re-classified under CTH 54075290. Further it needs to be decided whether proposal for

confiscation of the goods under section 125 of the Customs Act, 1962 and consequent penalty on the importer under section 112 (a) (ii) of the Customs Act, 1962 is proper or otherwise.

13. I find that the importer M/s Milwaukee & CO (IEC No.ABTfM0398P) had filed a SEZ Warehouse BE No. 1027883 dated 29.12.2023 through their CB M/s Aum Shipping and Logistics for import of Cotton Woven Dyed Fabric under CTH-52083290.

14. Based on intelligence gathered by the officers of SIIB Section, Custom House, Mundra that the cargo imported under said BE having Container No. WHSU5648688 have possible mis-declaration in respect of description, quality and quantity. Hence the said container was put on hold by the SIIB Section CH, Mundra for detail examination of the goods.

15. I find that based on the above suspicion, examination of the said consignment was carried out by the officers of SIIB section on 12.01.2024 in presence of representatives of CHA. On being asked, the representative of CHA provided copies of the said BE and other import documents viz. Bill of Lading No. 031D585654 dated 14.12.2023, Invoice No. BOL 23-24/034 dated 12.12.2023 and concerned Packing List. As per the said BE, the cargo is imported from M/s Brion Co. Limited, Hong Kong, the declared goods was 'Cotton Woven Dyed Fabric' (CTH-52083290) and quantity declared was 1102 rolls, gross weight 25791.3 Kgs, 128956 square meter, total assessable value was Rs.12,96,782/- and total duty was Rs. 2,14,617/-.

16. I find that during the course of examination, the gross weight of the cargo is found as 25750 Kgs (instead of 25791.3 declared), which is only 41.3 Kgs short from the declared gross weight. Further, during the course of examination total 1102 PKGs were found stuffed into the said container, which is found tallied with the number of packages mentioned in the import documents. In view of the same, the first doubt in respect of excess quantity is dispelled. However, on visual examination, actual nature, composition and description of the goods could not be ascertained, therefore representative samples were drawn and forwarded to the CRCL, Kandla for testing purpose vide Test Memo Nos. 838 to 844 all dated 19.01.2024 issued from F. No. S/43-149/Fabric/SIIB-B/CHM/2023-24.

17. I have gone through the Test Result discussed in Para 3 above and find that the importer has mis-classified the imported goods under CTH 52083290 instead of correct CTHs 54075290, with an intention to evade payment of the applicable Customs duty. Consequently, the imported goods are found liable to be re-classified under different CTHs arrived on the basis of lab test results discussed in Para 3 above and are also liable to be re-assessed accordingly. Further, in the said BE, invoice and packing list, total quantity of these goods have been declared as 25791.3 KGs & 128956 sq.mtr. However, during the course of examination, the weight of the imported goods is found as 25750 KGs. i.e. 41.3

Kgs in short from the declared weight. Accordingly, net quantity in square meter of the impugned goods is required to be ascertained considering the different GSMs as reported by the CRCL lab, which comes to 153589.5 square meter instead of 128956 square meter as declared in the said BE, as tabulated in Para 3.4 above.

18. I find that Rule 3 of the CVR, 2007 provides the method of valuation. Rule 3(1) of the CVR, 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". 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.

18.1. In the present case, it appears that that importer has mis-classified the subject goods under CTH 52083290 instead of correct CTHs with an intention to evade payment of the applicable Customs duty. Accordingly, there is reasonable doubt regarding the truth and accuracy of the declared value and hence, the same is liable to be rejected in terms of Rule 12 of the CVR, 2007. In view of the same, the imported goods have been found liable for confiscation under Section 111 of the Customs Act, 1962 and hence, the same were seized under Section 110 of the Customs Act, 1962 vide seizure memo dated 29.02.2024.

18.2. I find that 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. Accordingly, the assessable value of the imported goods is re-determined as Rs.31,88,518/- instead of total assessable of Rs.12,96,781/- as declared in the said BE, as discussed in Para 4.3 above. Total Customs duty on the imported goods comes to Rs.38,68,613/- instead of Rs.2,14,617/- as self-assessed by the importer in the said BE as calculated in Para 4.3 above. Hence, there appears non/short levy of Customs duty amounting to Rs.36,53,996/-.

19. I find that the importer vide letter dated 20.03.2024 has informed that the shipment under Said BE was meant to load for another country and by mistake the shipper has sent this consignment to them for which they have filed SEZ Warehouse BE No. 1027883 dated 29.12.2023. The importer has requested for permission to re-export the consignment back to the shipper and submitted that they are ready to pay fine and penalty as imposed by the department; that they do not want any SCN and PH in the matter. A statement of Shri Tushar Bhanji Bhanushali, authorised person of the importer was recorded on 21.03.2024 as detailed in Para 6 above, wherein he submitted copies of the import documents viz. BE, BL, Invoice, Packing List, etc. and perused Examination Report dated 12.01.2024, Test

Reports in respect of TM Nos. from 838 to 844 all dated 19.01.2024, Seizure Memo and Supratnama dated 29.02.2024 and agreed with the same.

20. I find that the importer, by the act of omission and commission, 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. Therefore, the importer has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and is, therefore, liable for penalty under section 112(a)(ii) of the Customs Act, 1962. I further find that the goods in question can be redeemed on payment of redemption fine in terms of Section 125 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. Rs.36,53,996/-. They not only failed to declare and assess the correct duty payable on the goods but also mis-declared the classification of the goods under CTH 52083290 instead of the correct CTH of 54075290 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.

2 2 . In view of the above, I find that the importer has mis-declared in terms of classification therefore the imported goods liable for confiscation under Section 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 to redeem the impugned goods under section 125 of the Customs Act, 1962. Having held that goods can be redeemed on payment of Redemption fine and considering the fact that importer has agreed to re-export the goods, I deem it fit not to subject the impugned case through the rigors of redemption fine. Since goods are being re-exported and not allowed to be cleared for home consumption, this prohibits the importer from deriving any benefits out of domestic sale. Further, the importer is bound to incur expenditure on arranging re-export of the goods. In such circumstances I am of the

opinion that a lenient view may be taken while imposing redemption fine.

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

ORDER

1. I reject the classification of the goods under CTH 52083290 as declared by the importer in the SEZ Warehouse Bill of Entry No. 1027883 date 29.12.2023 and order for reclassified under CTH 54075290 in accordance with the CRCL lab test reports.
2. I order to re-determine the total assessable value of the imported goods as Rs. 31,88,518/- (Thirty One Lakhs Eighty-Eight Thousand Five Hundred Eighteen Only) instead of declared assessable value of Rs. 12,96,781/- (Twelve Lakhs Ninety Six Thousand Seven Hundred Eighty One only) under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.
3. I order for re-assess the said Bill of Entry No. 1027883 dated 29.12.2023 under section 17(4) of the Customs Act, 1962.
4. I order to confiscate the goods Imported by way of mis-declaration in contravention of Sec 46, under Section 111(m) of the Customs Act, 1962. However, considering facts of the case and provision of the Section 125 of the Customs Act, 1962, I give an option to the importer M/s Milwaukee & CO to redeem the confiscated goods on payment of redemption fine of Rs. 3,00,000/- (Rs. Three Lakh Only) in lieu of confiscation for re-export purpose only. As the importer has expressed his willingness to re-export the goods. The re-export to be made to the same supplier/his nominee within a period of 120 days from the date of receipt of this order;
5. I impose penalty of Rs. 75,000/- (Rs. Seventy Five Thousand Only) On the Importer M/s Milwaukee & CO, Navi Mumbai, Thane holding IEC No. ABTFM0398P under section 112(a) (ii) of the Customs Act, 1962.

24. 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

Arun Kumar

Date: 10-06-2024 20:29:36

Additional Commissioner
Customs House, Mundra

To

M/s Milwaukee & CO,
(IEC No.ABTfM0398P)
F-01, A-4, Haware Centurian Complex,
Plot No. 88 to 91, Sector 19 A, Seawoods,
Navi Mumbai, Thane, Maharashtra-400706

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