

	<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/445/2024-Gr 3
B	Order-in-Original No.	MCH/ADC/AKM/162/2024-25
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. HRJ Impex Private Limited Shewale House, Dr C G Road, Wadvali Village, Opp. Borla CHS Ltd, Chembur, Mumbai Maharashtra- 400 074
F	DIN No.	20241071MO0000313052

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 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

On the basis of alert received from the NCTC to the effect of possibility of misdeclaration/concealment of electrical/mandatory BIS non-compliant goods, the import consignment covered under BL No. TRLJEAMUN9714108 and Container No. INLU4103290 arrived at M/s Holistic Global Corporation, FTWZ, Mundra having declared goods as Fabrics under CTH-56039200 was kept on hold for SIIB examination and further inquiry into the matter.

2. EXAMINATION OF THE GOODS AND INVESTIGATION CONDUCTED:

2 . 1 Examination of Container No. INLU4103290 imported under Bill of Lading No TRLJEAMUN9714108 was done in presence of representative of the SEZ entity, M/s Holistic Global Corporation, FTWZ, Mundra on 16.05.2024 at the premises of the SEZ warehouse. During the examination, SEZ warehouse representative informed that the container arrived in the SEZ on 10.04.2024 and seal cutting permission of the container was granted on 12.04.2024. Accordingly, the cargo of the container was already de-stuffed in the SEZ warehouse. Further `the importer's representative informed that the SEZ Bill of Entry for Warehouse No. 1006376 dated 09.04.2024 has been filed by the SEZ entity M/s Holistic Global Corporation, FTWZ, Mundra on behalf of the importer M/s HRJ Impex Private Limited. The cargo was found de-stuffed in premises in the SEZ warehouse. The details of consignment as per documents submitted during the examination and the cargo found during the examination is as under

TABLE-1

SEZ Bill of entry No and date	As Per Documents			Found during the examination as pointed by the SEZ entity's representative
	Item Description	Qty	Value (in Rs)	
1006376 dated 09.04.2024	(i) Woven Fusible Interlining Fabrics (CTH-59039090)	(i) 91603.576 SQM (ii) 2100 Kgs	(i) 6,29,386/- (ii) 70,854/-	(i) 670 Bales (ii) 51 Bales
	(ii) Non-woven Fabric (CTH-56039200)	(Total- 729 Bales)		(Total- 721 Bales)

2.2 During visual examination, actual nature of the goods could not be ascertained, therefore two samples of the fabric rolls (one from each type) were drawn for testing purpose. The samples were forwarded to the CRCL, Kandla vide Test Memos No. 17/2024-25 & 18/2024-25 both dated 16.05.2024.

2.3 The CRCL, Kandla vide test reports dated 06.06.2024 has reported as under:

Sr. No.	BE No. & Date	TM No. & Date	Declared cargo	Report from the CRCL, Kandla	Remark
1	1006376 dated 09.04.2024	17/2024-25 dated 16.05.2024	Woven Fusible Interlining Fabrics (CTH-59039090)	Sample as received is in the form of a cut piece of yarn dyed woven fabric having self-designed on both sides. It is composed of multifilament Yarn of Polyester (Non-Textured)	The sample does not merit the classification under CTH-59039090 as woven Fusible Interlining Fabrics.
2	1006376 dated 09.04.2024	18/2024-25 dated 16.05.2024	Non-Woven fabric (CTH-56039200)	Sample as received is in the form of cut piece of white non-woven fabric having embossed on both sides. It is mainly composed of polypropylene together with inorganic fillers.	The sample merits the classification under CTH-5603 meant for <i>“non-woven, whether or not impregnated coated, covered or laminated fabric of manmade filaments. AS declared</i>

In view of the above test reports, it appears that

- i. Sample-2 is correctly declared as Non-Woven fabric under rightly classifiable under CTH-56039200 as under
- ii. Sample-1 does not merit the classification under CTH-59039090 as woven Fusible Interlining Fabrics. However, the sample appears as more appropriately covered under Chapter-54 under the description of **‘Man-made filaments; strip and the like of man-made textile material’**. For detail analysis, relevant chapter descriptions of the Chapter-54 of the Customs Tariff which is nearest to the composition of the sample provided vide the test report received from the CRCL, Kandla is reproduced hereinunder

**5407 WOVEN FABRICS OF SYNTHETIC FILAMENT
YARN, INCLUDING WOVEN FABRICS OBTAINED FROM
MATERIALS OF HEADING 5404**

- *Other woven fabrics, containing 85% or more by weight of polyester filaments*

**5407 61 --- Containing 85% or more by weight of
non-textured polyester filaments**

5407 61 10 --- Polyester shirting

5407 61 20 --- Polyester suiting

5407 61 90 --- Other

From the above, it appears that the sample is more appropriately falls under the description of **“Woven Fabric of Non-Textured Polyester Filament Yarn (CTH-54076190)”** which attracts duty @ 20% or Rs. 150 Per Kg whichever is higher.

2.4 From the above, it was noticed that item no. 1 of the SEZ WH BE No. 1006376 dated 09.04.2024 is found mis declared. Therefore, Summons dated 24.06.2024 was issued to the importer firm to get clarification in the matter. In response, Shri Mayur Shankarlal Bhanusali, authorised representative of the importer firm appeared on 27.06.2024. In his statement recorded on 27.06.2024, he, inter-alia stated that

- *He has been authorised to represent the company, M/s HRJ Impex Private Limited vide authority letter dated 26.06.2024 issued by the Director of the company.*
- *They are engaged in trading of fabric material since May, 2022.*
- *They have imported one consignment of fabrics vide Bill of Lading Number TRLJEAMUN9714108 dated 03.04.2024 (Container No. INLU4103290) at Mundra Port from China and have filed SEZ warehouse Bill of Entry No. 1006376 dated 09.04.2024 at APSEZ, Mundra for warehousing in SEZ unit- M/s Holistic Global Corporation.*
- *They have imported 'Woven Fusible Interlining Fabric' and 'Non-Woven Fabrics' vide the aforesaid consignment.*
- *He shown his agreement with the examination report dated 17.05.2024 and drawl of the representative samples.*
- *On being perused the test reports received from the CRCL, Kandla he stated that in case of sample no. 2, the sample is found of Non-Woven Fabric which they have declared in the Customs documents.*
- *In case of sample no. 1, he agreed that the test results show the sample as mis-declared in as much as it appears more appropriately merits description of Woven fabrics of non-textured polyester filament.*
- *they were not aware about the exact quality and nature of the item*
- *they came to know about the exact nature of the item only on receipt of Test Reports shown to them by the department.*
- *on checking the test report, they have no option other than to accept the test report and proceed accordingly.*
- *On being shown the respective chapter details, he agrees to the facts that in case of item under sample-1 above, the appropriate description of the item is Woven fabrics of non-textured polyester filament yarn and appropriate classification of the imported item appears under 54076190 instead of CTH-59039090 declared by them in the Customs documents.*
- *They are ready to pay the applicable duty along with fine and penalty in accordance with the findings of the test results which merits the classification of cargo imported by us under CTH 54071690.*
- *On being asked to provide the quantity of the item no. 1 in Kgs., he stated that he do not have any mechanism to convert the quantity of the said item of the aforementioned Bill of entry from square metres/ metres to kilograms. However, the total weight of the cargo as per the Bill of entry is 22016 Kgs and the weight of item at S. No. 2 i.e. Non-Woven Fabrics is 2100 Kgs, as such the weight of the item at S. No. 1 can be arrived at **19916 Kgs (22016 Kgs-2100 Kgs)**.*
- ***they are ready to pay applicable duty along with fine and penalty for the item mentioned at S. No. 1 of the BE no 1006376 dated 09.04.2024.***
- ***they do not require any Show Cause Notice or Personal hearing in this matter.***

In view of the above, it appears that the authorised representative, Shri Mayur Shankar Lal Bhanushali of the importer company, in his statement dated 27.06.2024 has categorically admitted the test report. He further admitted the mis-declaration stating it was based on the supplier's documents from Singapore. Further, since CTH-54076190 attracts duty @ 20% or Rs. 150 Per Kg whichever is higher. However, the unit quantity of the cargo in the Customs documents is declared in **Meter/sqm**. Therefore, on being asked, the importer has submitted that since the total weight of the cargo is 22016 kgs out of which 2100 kgs attributed to the item under reference of Sample-2, Non-Woven Fabrics which is found as declared, the weight of the item no. 1 as approximately **19916 kgs**, which may be

considered for the purpose of the Customs duty calculation. **The importer agreed with the classification of the item under reference of sample- 1 above under CTH-54076190 and agreed to pay the applicable duties, fines, and penalties without SCN and PH.**

VALUATION OF THE ITEM UNDER IMPORT:

3.1 In the present matter, DTA Bill of Entry has not been filed till date. Here, it is pertinent to mention that as per Rules 48 of SEZ rules, 2006, some of the provisions of Customs Act, 1962 come in picture only after filling of DTA bill of Entry.

The Rule 47 (4) of the SEZ Rules, 2006 read as under:

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

The Rule 48(2) of the SEZ rules is reproduced below:

“(2) Valuation of the goods and/or services cleared into Domestic Tariff Area shall be determined in accordance with provisions of Customs Act and rules made thereunder as applicable to goods when imported into India”

3.2 The importer has filed a SEZ Bill of Entry for Warehousing without any mention of re-export, and during self-assessment, they have levied the applicable BCD instead of recognizing the non-applicability of BCD in the case of re-export. Additionally, it should be noted that when goods are imported for re-export purposes, this must be declared in the import Bill of Entry (BOE). Upon examining the submitted documents, it is clear that the invoice and packing list were issued to the consignee declared as the importer, and the Bill of Lading listed the importer as the notify party.

3.3 Furthermore, a warehouse BOE is typically filed when goods are imported and stored in a bonded warehouse without immediate payment of customs duties. The duties are deferred until the goods are either cleared for domestic consumption or re-exported. During the self-assessment process, the importer levied the applicable BCD, which further supports the interpretation that the goods were not intended for re-export. In the case of goods meant for re-export, the BCD would be zero, and this should be explicitly stated. The self-assessment process allows importers to declare the classification and applicable duties on imported goods. By levying the BCD, the importer effectively confirmed that the goods were meant for domestic clearance (DTA) and not re-export. Therefore, based on these facts, it is evident that the, though the SEZ Unit/Importer did not file a DTA BE, but the available information supports the conclusion that the goods were intended for DTA clearance only.

3.4 On the basis of outcome of the test reports, as discussed above, the item no. 1 above appears to be found as mis declared as Woven Fusible Interlining Fabrics (CTH-59039090) instead of actual description of the item as “Woven Fabric of Non-Textured Polyester Filament Yarn (CTH-54076190)”. Therefore, the assessable value of the item no. 1 declared as **Rs. 6,29,386/-** in the SEZ BE by the importer under Section 14 of the Customs Act, 1962 read with Rule 3 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 (‘CVR’ for sake of brevity) appears as incorrect and required to be re-determined in accordance with the CVR.

3.5 As per **Rule 2 (d) of the CV Rules, "identical goods" means imported goods –**

(i) *which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;*

(ii) *produced in the country in which the goods being valued were produced; and*

(iii) *produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;*

3.6 As per Rule 2 (f) of the CVR, "**similar goods**" means imported goods –

(i) *which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;*

(ii) *produced in the country in which the goods being valued were produced; and*

(iii) *produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;*

3.7 Further, as per **Rule 4 of the CVR, Transaction value of identical goods is determined as under-**

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;*

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

- b. *In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.*
- c. *Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.*

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences

in distances and means of transport.

(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.

3.8 Further, as per ***Rule 5 of the CVR, Transaction value of similar goods is determined as under –***

(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 such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(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

3.9 In view of the above, to ascertain the value of the imported item (Sr. no. 1 of the BE), NIDB PORTAL data has been checked and it is noticed that no data of import of the said item under CTH-60064200 is available for the Mundra Port where the unit quantity of the imported item is in Kgs. and imported from UAE. Thus, it appears that no data of 'identical goods' in terms of Rule 2 (d) of the CVR is available. Therefore, to ascertain the data of 'similar goods' under CTH- 60064200 import at other ports has been checked for CTH-54076190 and it is noticed that the lowest assessable unit price of the similar item is **Rs. 159.49** per Kg at the Customs Site – INCPL6 (Dadri CGML) for the BE No. 2385456 dated 01.03.2024 for the item "100% POLYESTER DYED FABRIC" which appears as more appropriately considerable as 'Similar goods' to the impugned goods so far as description and quantity of the item is concerned. Therefore, considering the above unit price, the assessable value of the impugned item comes to **Rs 31,76,403/- (19916 kg x Rs. 159.49)** in terms of Rule 5 & Rule 4 of CVR. Here, it is pertinent to mention that the importer has declared assessable value of this item as **Rs. 6,29,386/-** on the SEZ WH BE filed by them. Thus, it appears that the importer has undervalued the impugned item under import to the extent of **Rs. 25,47,017/-**.

3.10 Thus, the valuation of the imported item no. 1 needs to be rejected under Rule 12 of the CVR, 2007 and need to be re-determined as in terms of Rule 5 & Rule 4 of CVR read with Rule 47 (4) and 48 (2) of the SEZ Rules, 2006 by way of valuation of the similar item available on the NIDB Portal as discussed in para supra.

DUTY CALCULATION:

4.1 In the SEZ WH BE filed by the importer, the impugned item was declared as Woven Fusible Interlining Fabrics under CTH-59039090 on which duty has been calculated as BCD @ 20%+ SWS+IGST @12%. Whereas, from the discussion above, it appears that same item is classifiable under CTH-54076190 as **Woven Fabric of Non-Textured Polyester Filament Yarn and attracts BCD @ 20% or Rs. 150 Per Kg.** whichever is higher + SWS @0%+IGST @ 5%. Thus, total duty leviable on the impugned item is calculated as under:

Sr. No. of the BE	Qty in Kg	Re-determined Value as per NIDB (Rs)	Total Duty as per investigation						Value declared	Duty Declared				Difference	
			BCD @ 20% adv	BCD @ 150 per Kg	Applicable BCD	SWS	IGST @ 5%/12%	Total Duty		BCD	SWS	IGST	Total	Value	Duty

1	19916	3176403	635281	2987400	2987400	0	308190	3295590	629386	125877	12588	92142	230607	2547017	3064983
2*	2100	70854	14171	NA	14171	1417	10373	25961	70854	14171	1417	10373	25961	0	0
TOTAL	22016	3247257	649452		3001571	1417	318563	3321551	700240	140048	14005	102515	256568	2547017	3064983

*** NO CHANGE IN THE VALUE AND DUTY OF ITEM NO. 2 OF THE BE AS THE ITEM IS FOUND AS DECLARED**

4.2 In view of the above, it appears that the importer has short levied the Customs duty to the tune of **Rs. 30,64,983/-** (BCD- 28,61,523/- + SWS (-) 12,588/- + IGST- 2,16,048/-) in respect to the item no. 1 of the SEZ WH BE filed by the importer by way of mis classify and mis declaration of the imported goods.

4.3 The CRCL Test reports have been disclosed to the importer. The authorised representative of the importer firm, in his statement dated 27.06.2024 and letter dated. 10.07.2024 has categorically admitted the test results and has shown their consent to pay applicable duty along with fine and penalty for the item mentioned at S. No. 1 of the BE no 1006376 dated 09.04.2024. He has further submitted that they do not require any Show Cause Notice or Personal hearing in this matter.

LEGAL PROVISIONS:

5.1 As per 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;*

5.2 **SECTION 46** of the Act, prescribes that 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, and such other documents relating to the imported goods as may be prescribed.

5.3 Further, **Section 111** of the Act, prescribes the Confiscation of improperly imported goods, etc. as under

The following goods brought from a place outside India shall be liable for confiscation:

(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.

5.4 **Further, Section 112** of the Act provides the penal provisions for improper importation of goods, etc. which read as under:

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:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;]

5.5 SECTION 124 prescribes the mandatory issuance of show cause notice before confiscation of goods, which read as under:

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person –

4. *is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*
5. *is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and*

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.

5.6 SECTION 125 provides the Option to pay fine in lieu of confiscation as under:

(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, 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, 3 [no such fine shall be imposed]:

Provided further that, 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.]

(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.

OUTCOME OF THE INVESTIGATION:

6.1 From the above discussion, it appears that the M/s Holistic Global, SEZ entity has filed SEZ Ware House Bill of Entry No. 1006376 dated 09.04.2024 for import of Fabric items on behalf of Indian client, M/s HRJ Impex Private Limited. Upon investigation and the test reports of the samples received from the CRCL, Kandla, it has been found that the one item under import (item no. 1 of the BE) declared as 'Woven Fusible Interlining Fabric (CTH-5909090) is more appropriately found to be classifiable as **Woven Fabric of Non-Textured Polyester Filament Yarn and classifiable under CTH-54076190** which attract BCD @ 20% or Rs. 150 Per Kg. whichever is higher + SWS @0%+IGST @ 5%.

6.2 However, the unit quantity of the cargo in the Customs documents is declared in **Meter/sqm**. Total weight of the cargo is 22016 kgs out of which 2100 kgs attributed to the item under reference of Sample-2, Non-Woven Fabrics which is found as declared. Therefore, the weight of the item no. 1 is calculated at **19916 kgs** for the purpose of the Customs duty calculation.

6.3 Further, to ascertain the value of the imported item (Sr. no. 1 of the BE), NIDB PORTAL data has been checked and it is noticed that no data of import of the said item under CTH-54076190 is available for the Mundra Port where the unit quantity of the imported item is in Kgs. and imported from UAE. Therefore, to ascertain the data of 'similar goods' under CTH- 54076190 import at other ports has been checked for CTH-54076190 and it is noticed that the lowest assessable unit price of the similar item is **Rs. 159.49** per Kg at the Customs Site – INCPL6 (Dadri CGML) for the BE No. 2385456 dated 01.03.2024 for the item "100% POLYESTER DYED FABRIC" which appears as more appropriately considerable as 'Similar goods' to the impugned goods so far as description and quantity of the item is concerned. Therefore, considering the above unit price, the assessable value of the impugned item comes to **Rs 31,76,403/- (19916 kg x Rs. 159.49)** in terms of Rule 5 & Rule 4 of CVR. Here, it is pertinent to mention that the importer has declared assessable value of this item as **Rs. 6,29,386/-** on the SEZ WH BE filed by them. Thus, it appears that the importer has undervalued the impugned item under import to the extent of **Rs. 25,47,017/-**. Thus, the valuation of the imported item no. 1 needs to be rejected under Rule 12 of the CVR, 2007 and need to be re-determined as in terms of Rule 5 & Rule 4 of CVR read with Rule 47 (4) and 48 (2) of the SEZ Rules, 2006. Therefore, it appears that the importer has contravened Section 14 and Section 46 of the Customs Act, 1962 read with Rule 11 of the CVR, 2007 in as much as the failed to declare correct value of the goods in the Customs document filed by them. These acts of omission and commission on the part of importer has made the imported goods having re-determined value of **Rs 31,76,403/-** in the SEZ WH-BE No. 1006376 dated 09.04.2024 liable for confiscation under Section 111 (m) of the Act, *ibid* and has thus rendered themselves liable for penal action under Section 112 (a) (ii) of the Customs Act, 1962.

6.4 In view of the above, it appears that by way of mis classify and mis declaration of the imported goods the importer has short levied the Customs duty to the tune of **Rs. 30,64,983/- (BCD- 28,61,523/- + SWS (-) 12,588/- + IGST- 2,16,048/-)** in respect to the item no. 1 of the SEZ WH BE filed by the importer which is required to be added into the respective DTA Bill of Entry, likely to be filed by the importer.

7. WAIVER OF NOTICE AND PERSONAL HEARING: -

The authorised representative of the importer firm, in his statement dated 27.06.2024 and **letter dated. 10.07.2024** has shown their consent to pay applicable duty along with fine and penalty for the item mentioned at S. No. 1 of the SEZ WH BE no

1006376 dated 09.04.2024. He has further submitted that they do not require any Show Cause Notice or Personal hearing in this matter.

8. In view of the above, it appears that :-

- i. The classification and description of the item no. 1 of the SEZ WH BE no 1006376 dated 09.04.2024 declared under CTH-5909090 as Woven Fusible Interlining Fabric is liable to be rejected and need to re-classify under CTH-54076190 as **Woven Fabric of Non-Textured Polyester Filament Yarn.**
- ii. The declared value, i.e. **Rs. 6,29,386/-** of item no. 1 of the SEZ WH BE no 1006376 dated 09.04.2024 is liable to be rejected at the time of filing DTA Bill of Entry under Rule 12 of the CVR, 2007 and required to be re-determined at **Rs 31,76,403/-** in terms of Rule 5 & Rule 4 of CVR at the time of filling of DTA Bill of Entry read with Rule 47 (4) of the SEZ Rules, 2006.
- iii. The imported goods having re-determined value of **Rs 31,76,403/-** is liable for confiscation under Section 111 (m) of the Act, *ibid*.
- iv. Differential duty amounting to **Rs. 30,64,983/-** (BCD- 28,61,523/- + SWS (-) 12,588/- + IGST- 2,16,048/-) short levied on the above said imported item is required to be added into the DTA Bill of Entry, likely to be filed by the importer.
- v. Penalty under Section 112 (a) (ii) of Customs Act, 1962 is imposable upon the importer.

DISCUSSION AND FINDINGS

9. I have carefully gone through the Investigation report dated 15.07.2024 issued by the Deputy Commissioner of Customs (SIIB), Mundra and I find that Importer M/s HRJ Impex Private Limited vide their statement dated 27.06.2024 has categorically shown his agreement to pay the applicable duty, fine and penalties without SCN and PH.. 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.

10. 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 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 re-determined or otherwise .
- iii. Whether the Importer is liable for penalty under Section 112(a) (ii) of the Customs Act, 1962.

11. I find that based on the alert received from the NCTC, the officers of SIIB Section, Customs House, Mundra had conducted detailed examination for possible mis-declaration in respect of quantity and nature, composition & description of the Container No. INLU4103290 under Bill of Lading No. TRLJEAMUN9714108 in presence of representative of the SEZ entity, M/s Holistic Global Corporation, FTWZ, Mundra on 16.05.2024 at the premises of the SEZ warehouse .

12. I find that the samples of the goods were forwarded to CRCL Kandla vide Test Memos No. 17/2024-25 & 18/2024-25 both dated 16.05.2024 and based on the findings of the Lab Report as discussed in the para supra, the goods (Item No. 01 –“Woven Fusible Interlining Fabrics” were found misclassified under CTH 59039090. I find that as per the test report Item No. 01 confirms the description ‘Woven Fabric having self-designed on both sides and composed of multifilament yarn of Polyester (Non-Textured), the impugned goods are more akin to be made of multifilament yarn of Polyester (Non-Textured). Thus, the impugned goods are more appropriately classifiable under the description of “Woven Fabric of Non-Textured Polyester Multi-Filament Yarn (CTH-54076190)” which attracts duty @ 20% or Rs. 150 Per Kg+ IGST @ 5%. But, the importer has classified the Item No. 01 under CTH-59039090 as ‘Woven Fusible Interlining Fabrics’. Thus, it appears that the importer has mis-classified the impugned imported item No. 01. Further, I find that the test report of goods- “Dyed Woven Fabric composed of Multifilament Yarn of Polyester (Non-Textured)” (Item no-1) merits classification under CTH-54076190 and the goods ‘Non-Woven Fabric’ under CTH 56039200 (Item No. 02) was found as declared.

13. I find that to ascertain the value of the imported item (Sr No. 1 of the BE), NIDB PORTAL data has been checked and it is noticed that no data of import of the said item under CTH-54076190 from UAE is available for the Mundra Port where the unit quantity of the imported item is in Kgs. Thus, it appears that no data of ‘identical goods’ in terms of Rule 2 (d) of the CVR is available. Therefore, to ascertain the data of ‘similar goods’ under CTH- 54076190 import at other ports has been checked for CTH-54076190 and it is noticed that lowest assessable unit price of the similar item is Rs. 159.49 per Kg at the Customs Site – INCPL6 (Dadri CGML) for the BE No. 2385456 dated 01.03.2024 for the item “100% POLYESTER DYED FABRIC” which appears as more appropriately considerable as ‘Similar goods’ to the impugned goods so far as description and quantity of the item is concerned. Therefore, considering the above unit price, the assessable value of the impugned item comes to Rs 31,76,403/- (19916 kg x Rs. 159.49) in terms of Rule 5 & Rule 4 of CVR. Here, it is pertinent to mention that the importer has declared assessable value of this item as Rs. 6,29,386/- on the SEZ WH BE filed by them. I find that the importer has undervalued the impugned item under import to the extent of Rs. 25,47,017/-. Thus, the valuation of the imported item no. 1 needs to be rejected under Rule 12 of the CVR, 2007 and need to be re-determined as in terms of Rule 5 & Rule 4 of CVR read with Rule 47 (4) and 48 (2) of the SEZ Rules, 2006. Therefore, the importer has contravened Section 14 and Section 46 of the Customs Act, 1962 read with Rule 11 of the CVR, 2007 in as much as the failed to declare correct value of the goods in the Customs document filed by them. These acts of omission and commission on the part of importer has made the imported goods having re-determined value of Rs. 31,76,403/- in the SEZ WH-BE No. 1006376 dated 09.04.2024 liable for confiscation under Section 111 (m) of the Act, ibid and has thus rendered themselves liable for penal action under Section 112 (a) (ii) of the Customs Act, 1962.

14. I find that the total value of the consignment comes to. Rs. 32,47,257/- instead of self-assessed value of. Rs. 7,00,240/- declared by the importer in the said BE. The differential duty comes to Rs. 30,64,983/- as calculated under:

Table-II

Sr. No. of the BE	Qty in Kg	Re-determined Value as per NIDB (Rs)	Total Duty as per investigation						Value declared	Duty Declared				Difference	
			BCD @ 20% adv	BCD @ 150 per Kg	Applicable BCD	SWS	IGST @ 5%/12%	Total Duty		BCD	SWS	IGST	Total	Value	Duty
1	19916	3176403	635281	2987400	2987400	0	308190	3295590	629386	125877	12588	92142	230607	2547017	3064983
2*	2100	70854	14171	NA	14171	1417	10373	25961	70854	14171	1417	10373	25961	0	0
TOTAL	22016	3247257	649452		3001571	1417	318563	3321551	700240	140048	14005	102515	256568	2547017	3064983

I find that the consignment is found mis-declared in respect of nature and description which resulted into short-levy of duty amounting to Rs. 30,64,983/- as calculated at para supra. Hence, the goods (item no-1) 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.

15. 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 30,64,983/- 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 SEZ Ware House Bill of Entry 1006376 dated 09.04.2024 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.

16. 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.

17. In view of the above, I find that the importer has mis-declared in terms of classification in the said Bill of Entry, 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 for redeem

under section 125 of the Customs Act, 1962.

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

ORDER

- i. I reject the declared description and classification of the item no-1 of the SEZ WH BE 1006376 dated 09.04.2024 as 'Woven Fusible Interlining Fabrics' (CTH-59039090) and order to declare and re-classify the same as 'Woven Fabric of Non-Textured Polyester Filament Yarn' under CTH-54076190 as detailed in para above.
- ii. I reject the declared value of Rs. 6,29,386/- of the goods (item no-1) covered under SEZ WH BE 1006376 dated 09.04.2024 at the time of filing DTA Bill of Entry under rule 12 of Customs valuation (Determination of value of imported goods) Rules, 2007 and order to re-determine the same as Rs. 31,76,403/- as detailed in Table –II above under Rule 5 of the Customs Valuation (Determination of value of Imported Goods) Rule 2007 at the time of filing of DTA Bill of Entry read with Rule 47(4) & 48(2) of the SEZ Rules,2006.
- iii. I order to levy the Differential duty amounting to Rs 30,64,983/- (BCD-29,87,400 + IGST -3,08,190/-) on the item no-1 at the time of filing of DTA Bill of Entry.
- iv. I order to confiscate the said goods (item no-1) having re-determined value of Rs. 31,76,403/- (Thirty One Lakhs Seventy Six Thousand Four Hundred Three Rupees Only) under Section 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. 3,00,000 (Rs Three Lakhs only) in lieu of confiscation.
- v. I impose the penalty of Rs 2,00,000 /- (Rs Two Lakhs only) on the importer M/s. HRJ Impex Private Limited under Section 112 (a) (ii) of Customs Act, 1962.

19. 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
Date: 18-10-2024 18:35:19
AMIT KUMAR MISHRA
ADDITIONAL
COMMISSIONER
ADC/JC-II-O/o Pr
Commissioner-Customs-
Mundra

To

M/s HRJ Impex Private Limited
Shewale House, Dr C G Road, Wadvali Village,
Opp. Borla CHS Ltd, Chembur, Mumbai
Maharashtra- 400 074

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. The Dy. Commissioner of Customs, SEZ Mundra
5. Office Copy

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