

	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.	GEN/ADJ/ADC/586/2024-Gr.3-O/o Pr. Commr-Cus-Mundra
B	OIO No.	MCH/ADC/AK/20/2024-25
C	Date of Order	19.04.2024
D	Passed by	Arun Kumar, Additional Commissioner, Import Assessment, Custom House, Mundra.
E	SCN/IR No. & Date	CUS/SIIB/HOC/62/2023-SIIB Dt. 27.02.2024
F	Noticee / Party / Importer	M/s. Global Exim, (IEC-0515027448) Shop No 4883 & 4884, P.No. 12, G/F Kucha Usdatdae, Chandni Chowk, Delhi - 110006
G	DIN	20240471MO000000D237

- 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.

Received OIO
No. MCH/ADC/AK/20/2024-25

For Chand
dt. 22/4/2024
4.13 PM
RASHU T CHAND
Shoban T
9825127614

BRIEF FACTS OF THE CASE:

1. M/s. Global Exim, (IEC-0515027448) Shop No 4883 & 4884, P.No. 12, G/F Kucha Usdatdae, Chandni Chowk, Delhi - 110006, (hereinafter referred to as "*the Importer*") had filed SEZ Bill of Entry No. 1022891 dated 28.10.2023 through their CB M/s. Shoolin TradeLink LLP (hereinafter referred to as "*the CHA*") for the goods description declared as "Mens Jacket (CTH 62104090)" (hereinafter referred to as "*the Impugned Goods*").

Based on analysis and observation of IGM, involving Container No. TCNU 7569442 declaring imports goods as Men Jacket (HS Code- 62104090) under Bill of Lading No. AKKNSA23073544 dated 17.10.2023 in respect of importer M/s. Global Exim (IEC-0515027448). The consignment appears to be high-risky for potential misdeclaration/concealment/restricted items. Hence, said consignment was put on hold by SIIB for detail examination and further investigation purpose. The details of Bill of Entry is as below:

Table-I

Sr. No.	SEZ BE No. & date	Name of the Importer	Description of the goods	Declared Quantity	Declared Assessable Value (In Rs.)
1	1022891 dated 28-10-2023	M/s. Global Exim	Men Jacket (HS Code- 62104090)	9945 Pcs	31,82,002/-

2. On the basis of said observations, the examination of goods was carried out on 03.11.2023 at M/s. Ashutosh CFS, APSEZ Mundra by the officers of SIIB, CH, Mundra in the presence of Shri Siddharth Chand Kaushik (having Aadhar No.- 8541 5423 0965), authorized representative of Importer & Shoolin Trade Link LLP (warehouse APSEZ Mundra).

3. During the examination, found that the goods were stuffed in gunny bags. Thereafter, de-stuffing of the cargo was started. Further found that the 1st row of container was stuffed with unbranded goods and after that branded clothes were found in the said container. Total 13 brands were found in the consignment as mentioned below:

Table-II

Sr. No.	Brand Name/Logo	Quantity (In Pcs)
1	Adidas	680
2	Boss	300
3	Celvin Klein	1200
4	Columbia	1680
5	EA 7 (Emporio Armani)	300
6	New Balance	516
7	Nike	680
8	Prada	240
9	Puma	2890
10	The North Face	2206
11	Tommy Hilfigure	120
12	Under Armour	120
13	Woodland	1692
14	Unbranded/ Unpopular Brand	1733
	Total	14357

3.1 In view of the Table-I, the quantity of the goods found as 14357 Pcs which is in excess of 4412 pcs as compared to declared quantity of 9945 pcs. The detail is as below:

Table-III

SEZ BE No. & date	Description of the goods	Declared Quantity	Quantity found	Declared Assessable Value (In Rs.)	Assessable value as quantity found
1022891 dated 28-10-2023	Men Jacket (HS Code- 62104090)	9945 Pcs	14357 Pcs	31,82,002/-	45,94,240/-

3.2 Further, the goods found were appeared to be fabric made but it was not possible to be sure from which material it was made of and what is its composition and grade. Therefore, in order to ascertain the composition, grade and identify from which material the goods were made of, two randomly representative sample were drawn from the items found during the examination and sent to CRCL Kandla for testing vide Test Memo no. 771/2023-24 & 772/2023-24 both dated 20.11.2023.

4 Test Report regarding **TM No. 771/2023-24** dated 20.11.2023 is as under:

"The sample as received is in the form of printed black readymade textile article (Jacket).

*It is contesting two layers fitted with metallic button (09) **outer layer is made of polyester woven (spun yarn) fabric having coated/covered on outer side surface with Polymeric material based on Polyurethane.***

Inner lining (front and back) fabric is made of polyester knitted fabric having cut pile on one side, inner lining (arms) built with non-woven polyester fibers with polyester woven fabric (filament yarn).

Total wt of sample = 1050.0 grms.

% Composition

Total Polyester = 54.17 %

Buton = 1.70%

Coated/covered Material (PU) = balance".

4.2 Test Report regarding **TM No. 772/2023-24** dated 20.11.2023 is as under:

*"The sample as received is in the form of printed black colored readymade textile article (Jacket with hood) fitted with zip fastner (In front, both side pocket and joining hood) and elastic strip in wrist position consisting three layers. **Upper woven fabric is composed of polyester filament yarn coated/covered with polymeric material based on Polyurethane.** Middle of with fibrous filling (raw type) is composed of polyester. Inner black woven fabric is composed of Nylon filament yarn, golden color printed woven fabric is composed of polyester filament yarn and black polyester knitted fabric having raised fiber on one side which is coated/covered with polymeric material based on Polyurethane on one side (each of three layers stitched in different please).*

Total wt. of article = 902 grms.

Polyester = 79.0%

Nylon = 13.45%

Polyurethane = 3.69%

Zip Fastner = 3.34%

Elastic Strip = Balance"

5. In view of the Lab Report, the goods imported under Bills of Entry no. 1022891 dated 28.10.2023 are mis-declared in terms of classification and description of the goods.

6 Classification of Goods Imported:

6.1 It is well established that classification of the garments to be decided on the basis of its physical features of the garment and composition of the outermost layer of the garment as outermost layer provides the essential character to the garment. The relevant extract from

the book "CUSTOMS CLASSIFICATION OF TEXTILES AND TEXTILE ARTICLES UNDER HSN - EXPLANATORY NOTES" is reproduced below:

"The classification of a garment is not affected by the presence of parts or accessories, provided these parts and accessories remain trimmings only. Therefore, in terms of Rule 3(b), the garments are classified according to the composition of the outer shell fabric as this shell fabric imparts essential character to the garment. Sometimes, the inner lining is heavier than the shell fabric in a garment. Even then no account of weight shall be taken while determining classification."

6.2 Whereas, to decide the classification of the impugned garment, first, classification of the fabric of upper layer of the garment is to be decided.

6.3 Whereas, from the both of the test report it is evident that outermost layer of the impugned garments is made of "Woven Polyester fabric coated with Polyurethane (Plastic)".

6.4 The entry under the Tariff Heading 5903 reads as:

5903 - TEXTILE FABRICS, IMPREGNATED, COATED, COVERED OR LAMINATED WITH PLASTICS, OTHER THAN THOSE OF HEADING 5902

6.5 The relevant CTH and respective rate of duty under sub-headings of above heading is as below:

- TEXTILE FABRICS, IMPREGNATED, COATED, COVERED OR LAMINATED WITH PLASTICS

<i>Sub-Heading</i>	<i>Description</i>
<i>5903 10 -</i>	<i>With polyvinyl chloride</i>
<i>5903 20 -</i>	<i>With polyurethane</i>
<i>5903 90 -</i>	<i>Other</i>

6.6 In view of the above, when fabric is coated with any type of plastic material, the merit classification is under heading 5903 and the merit sub-heading of "Woven Polyester fabric coated with Polyurethane (Plastic)" is under Sub-heading 5903 20.

6.7 Now, it is established that the classification of outermost fabric used in impugned garments are classifiable under sub-heading 590320.

6.8 Further, Chapter note 6 of Chapter 62 provides,

"6. Garments which are, prima facie, classifiable both in heading 6210 and in other headings of this Chapter, excluding heading 6209, are to be classified in heading 6210."

6.9 As per above Note, heading 6210 is preferable over any other heading of the chapter 62. Further, heading 6210 provides,

6210 - GARMENTS, MADE UP OF FABRICS OF HEADING 5602, 5603, 5903, 5906 OR 5907

6.10 As the outermost fabric of the impugned garments is classifiable under Heading 5903, the merit classification of impugned garment is under heading 6210.

6.11 Further, the subheading is to be decided. Heading 6210 is divided under following sub-headings:

"6210 - GARMENTS, MADE UP OF FABRICS OF HEADING 5602, 5603, 5903, 5906 OR 5907
6210 10 - Of fabrics of heading 5602 or 5603
6210 20 - Other garments, of the type described in sub-headings 6201
6210 30 - Other garments, of the type described in sub-headings 6202
6210 40 - Other men's or boys' garments
6210 50 - Other women's or girls' garments"

6.12 Now, the sub-heading 621010 covers the garment made from the fabric of heading

5602 or 5603, however, the impugned garment is made of the fabric of heading 5903, the sub-heading 621010 is ruled out.

6.13 Further, as per examination report, the garment appears to be designed to be worn by man, the sub-headings 621030 and 621050 has also be ruled out.

6.14 Now, only two sub-heading are left, i.e. 621020 and 621040 which covers the following:

*“6210 20 - Other garments, of the type described in sub-headings 6201
6210 40 - Other men’s or boys’ garments”*

6.15 Now, the final sub-heading of the goods is to be decided by the type of the garment under import. 621040 is a residual sub-heading. If the garment under import is a type described in subheading 6201, the classification of the impugned goods is under heading 621020 otherwise the merit classification of impugned goods is under subheading 621040. In other words, the difference between subheading 621020 and 621040 is that the garments, when made of normal fabric (i.e. other than coated fabric), classifiable under heading 6201, the similar garment made of coated fabric is classifiable under subheading 621020, otherwise the garment is classifiable under 621040.

Now, Heading 6201 covers:

*“6201 MEN’S OR BOYS’ OVERCOATS, CAR-COATS, CLOAKS, ANORAKS
(INCLUDING SKI-JACKETS), WINDCHEATERS, WIND-JACKETS AND SIMILAR
ARTICLES”*

6.16 As per explanatory notes of the heading 6201, this heading covers a category of garments for men or boys, characterized by the fact that they are generally worn over all other clothing for protection against the weather.

6.17 From the above, it is clear that the jackets/coats which are worn over all clothing for protecting against weather is classifiable under heading 6201. Therefore, the similar jackets/coats made up from coated fabric is classifiable under subheading 6210 20.

6.18 Further, the name “Jacket” also appears under heading 6203, however, as per explanatory note of heading 6203, the “Jacket or Blazer” under this heading has the same characteristics as the suit coats and suit jackets described in Chapter Note 3(a). Chapter Note 3(a) of Chapter 62 is as below:

“3(a) the term —suit means a set of garments composed of two or three pieces made up, in respect of their outer surface, in identical fabric and comprising:

*—one suit coat or jacket the **outer shell of which, exclusive of sleeves, consists of four or more panels, designed to cover the upper part of the body, possibly with a tailored waistcoat** in addition whose front is made from the same fabric as the outer surface of the other components of the set and whose back is made from the same fabric as the lining of the suit coat or jacket; and*

— one garment designed to cover the lower part of the body and consisting of trousers, breeches or shorts (other than swimwear), a skirt or a divided skirt, having neither braces nor bibs”

6.19 On conjoint reading of explanatory notes of 6201 and 6203, it appears that the jackets, in form of blazer or suit jacket which is tailored to the size and used in formal wear is a type of jacket described under heading 6203, however, on the other side, the jackets which are casual, free size and designed to protect from the adverse weather is a type of jacket described under heading 6201.

6.20 Further, as per examination report, physical appearance of the impugned garment i.e. “jackets” is as follows:

Table-IV

Features	Noted by us, panchas	Way of Identification
Whether designed for Man or Woman	Designed for Man/Boy	By the Size

Whether designed for protection from adverse weather or designed for formal wearing	Designed for protection from cold.	Quilted material inside
Length	Length ending from waistline to mid-thigh	By measuring
Opening and mode of fastening	Full opening and Zipper/Buttons for fastening	By visual inspection
Sleeves	Full Sleeves	By visual inspection
Pocket	At waist	By visual inspection
Panel (length wise part of fabrics which were joint by stitching)	Made from 3 panels	By visual inspection
Lining (matter inside the outer layer of garment)	Quilted material	By visual inspection
Collar	With Collar	By visual inspection
Fitting	Loose fitting designed to be wear as outermost garment	By visual inspection
Vent (cut on bottom of backside of Jacket/coat)	No vent	By visual inspection

6.21 As per above features noted down in examination report are implying that the jacket under import is to be worn over all clothing for protecting against the cold weather, the jacket under import is of casual wear, the jacket under import is free-size and not tailored to the size and the same is found be made of coated fabric in test report, therefore the merit classification of the "man's Jacket" under import appeared to be under sub-heading 6210 20. The BCD under the said CTH was Rs. 365/- per piece. However, the BCD under the CTH 62104090 is Rs. 65/- per piece. There is a duty difference of Rs. 300/- per piece.

6.22 Duty in respect of the said bill of entry works out to be as tabulated below:

Table-V

BE No. & Date	Declared Assessable Value	Assessable Value as per Quantity Found (In Rs.)	Duty @ 20% or Rs. 65 per piece, whichever is higher (BCD)+ 0%(SWS)+05% (IGST)	Duty @ 20% or Rs. 365 per piece, whichever is higher (BCD)+ 0% (SWS)+05%(IGST)	Duty difference
1022891 dated 28.10.2023	31,82,002/-	45,94,240/-	12,09,577/-	57,32,032/-	45,22,455/-

7. As per Test result, goods found in the import consignment is actually classifiable under CTH 6210 20 wherein the applicable rate of duty is 20% or Rs. 365 per piece, whichever is higher (BCD)+0%(SWS)+05% (IGST). Hence, it cannot be classified under CTH 62104090. Hence, it is observed that importer mis-classified the subject goods under CTH 62104090 instead of correct CTH 621020 with a malafide intention. Consequently, the subject goods were liable to be assessed at the rate of 20% or Rs. 365 per piece, whichever is higher (BCD)+0%(SWS)+05% (IGST). Thus, the non-payment of applicable duty has resulted in short levy of duties which needs to be recovered from the importer along with the applicable interest and penalty.

8. IPR angle of goods in terms of Intellectual Property Rights (Imported Goods) Enforcement Rules 2007:

8.1 This office has issued a letter dated 08.12.2023 to IPR Cell to verify IPR angle of goods in terms of Intellectual Property Rights (Imported Goods) Enforcement Rules 2007 through respective right holders. Against said letter, IPR cell issued letters dated 28.12.2023 to right holders of respective brands to identify the branded goods in terms of Intellectual Property Rights (Imported Goods) Enforcement Rules 2007 and communicated IPR right holders to join proceedings and during the course of proceedings following IPR right holders have confirmed that goods are counterfeited and submitted Bond & Bank Guarantee in terms of Rule 5 (a) of the IPT Enforcement Rules, 2007:

Table-VI

Sr. No.	Brand Name	IPR Right Holders

1	Adidas, Nike & Under Armour	The Legist IPR Services Ltd.- New Delhi
2	Calvin Klein	Anand & Anand, Delhi.
3	Columbia	M/s. ZeusIP Advocates LLP, Delhi

8.2 In view of the Intellectual Property Rights (Imported Goods) Enforcement Rules 2007, goods mentioned in below Table-VII are required to be deemed as “Prohibited” within the meaning of Section 11 of the Customs Act, 1962 read with Rule-6 of the IPR Rules, 2007, which reads as under:

“6. Prohibition for import of goods infringing intellectual property rights. - After the grant of the registration of the notice by the Commissioner on due examination, the import of allegedly infringing goods into India shall be deemed as prohibited within the meaning of Section 11 of the Customs Act, 1962.”

Table-VII

Sr. No.	Brand Name/Logo	Quantity (In Pcs)
1	Adidas	680
2	Nike	680
3	Under Armour	120
4	Celvin Klein	1200
5	Columbia	1680
	Total	4360

8.3 Authorized representatives of the IPR Right holder mentioned in below table VIII did not join the proceedings under the provisions of the IPR, Rules 2007. Whereas, in view of Rule 7(3) of the IPR Rules, 2007 if the right holder fails to join the proceedings within ten working days, the goods shall be released treating as non-prohibited. The said rule is reproduced as under:

“Rule 7(3)- Where clearance of the goods suspected to be infringing intellectual property has been suspended and the right holder or his authorised representative does not join the proceedings within a period of ten working days from the date of suspension of clearance leading to a decision on the merits of the case, the goods shall be released provided that all other conditions of import of such goods under the Customs Act, 1962, have been complied with:

Provided that the above time-limit of ten working days may be extended by another ten days in appropriate cases by the Commissioner or an officer authorized by him in this behalf.”

Table-VIII

Sr. No.	Brand Name/Logo	Quantity (In Pcs)
1	Boss	300
2	EA 7 (Empario Armani)	300
3	New Balance	516
4	Prada	240
5	Puma	2890
6	The North Face	2206
7	Tommy Hilfiger	120
8	Woodland	1692
9	No Brand	1733
	Total	9997

8.4 Duty in respect of the goods of said bill of entry works out to be as tabulated below:

i. Branded Jackets infringing IPR:

Table-IX

Sr. No	Description of the Goods	Total Quantity	Value (in Rs.)	CTH	BCD (In Rs.)	SWS (In Rs.)	IGST (in Rs.)	Total Duty (in Rs.)
1	Men jacket (IPR Violation)	4360 Pcs	13,95,200	621020	15,91,400	0	1,49,330	17,40,730

In view of the above, total duty on the Men Jacket infringing IPR violation under IPR Rules, 2007 valued at Rs. 13,95,200/- is liable to be confiscated under Section 111(d), 111(l) and 111(m) of the Customs Act, 1962 and the applicable duty is calculated as Rs. 17,40,730/-.

- ii. Jackets not infringing IPR/ IPR and right holders did not join the proceedings or failed to fulfil requirements of the IPR Rules, 2007:

Table-X

Sr. No	Description of the Goods	Total Quantity	Value (in Rs.)	CTH	BCD (In Rs.)	SWS (In Rs.)	IGST (in Rs.)	Total Duty (in Rs.)
1	Men jacket	9997 Pcs	31,99,040	621020	36,48,905	0	3,42,397	39,91,302

8.5 In view of the above, total duty on the Men Jacket not infringing IPR/ IPR right holders did not join the proceedings or failed to fulfil requirements of the IPR Rules, 2007 valued at Rs.31,99,040/- is liable to be confiscated under Section 111(l) and 111(m) of the Customs Act, 1962 and the applicable duty is calculated as Rs. 39,91,302/-.

9. 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. 39,91,302/-. 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 62104090 instead of the correct CTH of 621020, 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.

10. **LEGAL PROVISIONS:** Legal provisions applicable in this case under the Customs Act, 1962 are as follows:

“Section 46(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, and such other documents relating to the imported goods as may be prescribed.”

“Section 46(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(d): of the Customs Act 1962 states that any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or

any other law for the time being in force are liable to confiscation.”

“Section 111(m): *any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;”*

“Section 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) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(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;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty 4 [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty 5 [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty 6 [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]

In view of the above, the importer, therefore, appears liable for payment of duty of Rs. 39,91,302/- attempted to evade by them in respect of the goods imported by way of mis-declaration in terms of classification.

11. The importer has, by his acts of omission, rendered the goods having value of Rs. 45,94,240/- is liable for confiscation under section 111(d), 111(m) & 111(l) of the Customs Act, 1962 and is, therefore, also liable for penalty under section 112(a) of the Customs Act, 1962.

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

- i. The classification of the goods as claimed by the importer under CTH 62104090 is liable to be rejected and the goods are liable to re-classified under CTH 621020 as per Table-IX & X above and SEZ B/E is liable to be re-assessed accordingly.
- ii. The goods mentioned in Table IX at para 8.4 (i) above having value of Rs.13,95,200/- were found to be counterfeit goods imported in violation of the IPR Rules, 2007, as

confirmed by the Intellectual Right holders of respective brands. Hence, these are liable for confiscation under Section 111(d), 111(m) and 111(l) of the Customs Act, 1962 read with the Intellectual Property Rights, Rules 2007.

- iii. The goods mentioned in Table X para 8.4 (ii) above not infringing IPR/ IPR right holders did not join the proceedings or failed to fulfill requirements of the IPR Rules, 2007, having value of Rs. 31,99,040/-, are liable for confiscation under Section 111(l) and 111(m) of the Customs Act, 1962.
- iv. Penalty is liable to be imposed under section 112(a) of the Customs Act, 1962 on the importer.

13. **Summary of Investigation:** From the investigation conducted in the present case and from the foregoing discussions, it appears that: -

(i) The importer M/s. Global Exim not only failed to declare and assess the correct duty payable on the goods imported vide SEZ Bill of Entry No. 1022891 dated 28.10.2023 but also mis-declared the classification of the goods under CTH 62104090 instead of the correct CTH of 621020, with an intention to evade payment of correct duty on the goods imported, further they also mis-declared the goods in terms of violation of IPR Rules, 2007 and quantity

(ii) The assessable value of Rs. 31,82,002/- declared by the importer in the said Bill of Entry is required to be rejected and the said Bill of Entry is required to re-assessed as per findings in examination report mentioned above.

(iii) The items declared at Sr. no. 1 to 5 in Table-VII at Para 8.2 above having re-determined value of **Rs. 13,95,200/-** were found to be counterfeit goods imported in violation of the IPR Rules, 2007, as confirmed by the Intellectual Right holders of respective brands. Hence, these are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962 read with the Intellectual Property Rights, Rules 2007.

(iv) The importer M/s Global Exim, appears to be liable for penalty under provisions of section 112(a)(i) of the Customs Act, 1962 in respect of the goods mentioned at Para-(iii) above.

(v) All the other goods mentioned at Sr. No. 1 to 10 in Table-VIII at para 8.3 above i.e. Mens Jacket not infringing IPR/IPR right holders did not join the proceedings or failed to fulfill requirements of the IPR Rules, 2007, having re-determined value of **Rs. 31,99,040/-** are liable for confiscation under Section 111(m) of the Customs Act, 1962.

(vi) The importer, M/s Global Exim, appears to be liable for penalty under provisions of section 112(a)(ii) of the Customs Act, 1962 in respect of the goods mentioned at Para-(v) above.

WAIVER OF NOTICE AND PERSONAL HEARING

The Importer vide their letter dated 06.02.2024 has submitted that they don't want any personal hearing and show cause notice in the matter. Further Importer vide letter dated 21.03.2024 requested for allowing Re-export of the subject goods.

DISCUSSION & FINDING

14. The importer vide their letter dated 06.02.2024 requested from waiver of opportunities of personal hearing as per principle of natural justice. therefore, I find that the principle of natural justice as provided in section 122A of the Custom Act 1962 have been followed. Hence, I proceed to decide the case on the basis of the documentary evidence available on records.

15. I have carefully gone through the Investigation Report dated 24.02.2024 issued by the Deputy Commissioner (SIIB), Custom House, Mundra and I find that Based on analysis and observation of IGM, involving Container No. TCNU 7569442 concerning imports of declared goods as Men Jacket (HS Code- 62104090) under Bill of Lading No. AKKNSA23073544 dated

17.10.2023 in respect of importer M/s. Global Exim (IEC- 0515027448), the consignment appears to be high-risky for potential misdeclaration/concealment/restricted items. Hence, the said consignment was put on hold by SIIB for detail examination and further investigation purpose.

16. I find that in view of the inputs received, the officers of SIIB, Customs House, Mundra carried out examination of the impugned goods stuffed into container no. TCNU 7569442 covered under Bill of Entry No. 1022891 dated 28.10.2023. During the course of examination of the impugned goods, goods appeared to be mens jackets of different brands, instead of the as declared in the Bill of Entry 1022891 dated 28.10.2023. RSS were also drawn from the consignment for the purpose of classification and further investigation.

17. I find that from the examination, it was noticed that the goods were stuffed in gunny bags. Thereafter, de-stuffing of the cargo was started. Further found that the 1st row of container was stuffed with unbranded goods and after that branded clothes were found in the said container. the quantity of the goods found as 14357 Pcs which is in excess of 4412 pcs as compared to declared quantity of 9945 pcs, wherein Total 13 brands and unbranded goods were found in the consignment.

Further, the goods found were appeared to be fabric made but it was not possible to be sure from which material it was made of and what is its composition and grade. Therefore, in order to ascertain the composition, grade and identify from which material the goods were made of, two randomly representative sample were drawn from the items found during the examination and sent to CRCL Kandla for testing vide Test Memo no. 771/2023-24 & 772/2023-24 both dated 20.11.2023.

As per Test result, goods found in the import consignment is actually classifiable under CTH 6210 20 wherein the applicable rate of duty is 20% or Rs. 365 per piece, whichever is higher. Hence, it cannot be classified under CTH 62104090. Hence, it is observed that importer mis-classified the subject goods under CTH 62104090 instead of correct CTH 621020 with a mala fide intention. Consequently, the subject goods were liable to be assessed at the rate of 20% or Rs. 365 per piece, whichever is higher. Thus, the non-payment of applicable duty has resulted in short levy of duties which needs to be recovered from the importer along with the applicable interest and penalty.

18. I find that on checking up with IPR Cell regarding registration of IPR application of right holder with Custom House Mundra, it is found that right holders of the brands mentioned at Sr. No. 1, 2, 3, 4 and 5 in Table-VII of Para 8.2 above i.e. 'Nike', 'Adidas', 'Under armour', 'Calvin Kelin' and 'Columbia' have filed applications for enforcement of their IPR rights under the provisions of the Intellectual Property Rights (Imported Goods), Enforcement Rules, 2007 (hereinafter referred to as "**the IPR Rules, 2007**"). Accordingly, the Mens Jacket of the brands mentioned at Sr. No. 1, 2, 3, 4 and 5 in Table-VII of Para 8.2 above i.e. 'Nike', 'Adidas', 'Under armour', 'Calvin Kelin' and 'Columbia' are allegedly infringing IPR and are required to be deemed as "Prohibited" within the meaning of Section 11 of the Customs Act, 1962 read with Rule-6 of the IPR Rules, 2007.

19. I find that the authorized representatives of IPR right holders of the brands mentioned at Sr. No. 1, 2, 3, 4 and 5 in Table-VII of Para 8.2 above i.e. 'Nike', 'Adidas', 'Under armour', 'Calvin Klein' and 'Columbia' were informed about the imported consignment and suspicion of being branded. The IPR right holders were also requested to inspect/examine the consignment in terms of Rule 07 of the IPR Rules, 2007.

18.1. The Legist IPR Services Ltd.- New Delhi, the authorized representative of the IPR Right holders of the brands Adidas, Nike & Under Armour, Anand & Anand, Delhi the authorized representative of the IPR Right holders of the brands Calvin Klein and M/s. ZeusIP Advocates LLP, Delhi, the authorized representative of the IPR Right holders of the brand 'Columbia' joined the proceedings and after due examination, reported that the subject goods being imported under their brand name are counterfeit products and submitted Bond & Bank Guarantee in terms of Rule 5 (a) of the IPR Enforcement Rules, 2007.

19.2. Authorized representatives of the IPR Right holder mentioned in above table VIII did not join the proceedings under the provisions of the IPR, Rules 2007. Whereas, in view of Rule 7(3) of the IPR Rules, 2007 if the right holder fails to join the proceedings within ten working days, the goods shall be released treating as non-prohibited

18.3. In view of the above, I find that the Mens jacket of the brands mentioned at Sr. No. 1, 2, 3, 4 & 5 Table-VII of Para 8.2 above i.e. 'Nike', 'Adidas', 'Under armour', 'Calvin Klein' and 'Columbia' are liable for confiscation under Section 111(d) and 111(m) of the Customs

Act, 1962 read with the IPR Rules, 2007. Further, the goods of un-registered brands/brands who did not participate in the proceedings of IPR Rules, 2007 mentioned at Sr. No. 1 to 9 in Table-VIII of Para 8.3 above are liable for confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, the goods covered under the subject Bill of Entry No. 1022891 dated 28.10.2023 had been seized under the provisions of section 110 of the Customs Act, 1962.

19. The classification of the goods as claimed by the importer under CTH 62104090 is liable to be rejected and the goods are liable to re-classified under CTH 621020 as per Table-IX & X above and SEZ B/E is liable to be re-assessed accordingly

20. In view of the foregoing paras, I find that the Mens Jacket of 'Nike', 'Adidas', 'Under armour', 'Calvin Klein' and 'Columbia' brands are counterfeit as reported by the authorized representatives of the IPR right holders. Further, IPR right holders have also fulfilled their obligations as provided under IPR Rules, 2007. Hence, these goods valued at **Rs. 13,95,200/-** (as detailed in Table-IX of Para 8.4 above) are allegedly infringing IPR and are required to be deemed as "Prohibited" within the meaning of Section 11 of the Customs Act, 1962 read with Rule-6 of the IPR Rules, 2007 and are liable to be confiscated under Section 111(d) and 111(m) of the Customs Act, 1962.

20.1. I further find that total duty on the Mens jacket not infringing IPR/ IPR right holders did not join the proceedings or failed to fulfill requirements of the IPR Rules, 2007 valued at **Rs. 31,99,040/-**, (as detailed in Table-X of Para 8.4 above).

21. By their acts of omission and commission, the importer has rendered themselves liable for penal actions under section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962.

I find that in the instant case, the goods are physically available for confiscation and the importer in their defence submission made vide letter dated 21.03.2024 also requested to allow to re-export of the goods imported under Bill of Entry No. 1022891 Dated 28.10.2023 to their foreign supplier or his nominee. I, therefore, find it appropriate to allow re-export of the subject goods subject to redemption fine under section 125 of the Customs Act, 1962. However, in this case redemption is being allowed only for re-export and thus, there will be no margin of profit. Quantum of redemption fine is being decided considering this fact.

Since I have held that goods can be allowed for re-export on payment of redemption fine, I proceed to examine the quantum of redemption fine. In this regard, I find that the importer has submitted that they are ready to pay fine and penalty and requested to allowed for re-export the goods. Further in order to complete the re-export, they are bound to incur further charges. It is obvious that the importer is not going to derive any benefit out of the goods as same are being allowed for re-export. I also find that importer has forgone his right to import by way of requesting to re-export. Also find that they have already suffered by way of detention and demurrage charge. Further since goods are not allowed for home consumption, there is no margin of profit which can obliterate by way of imposition of redemption fine. Thus, taking overall fact and circumstances of the case, it is deemed proper that importer may not be subjected to rigorous of stringent provision of imposition of redemption fine. Therefore, a lenient view is taken for imposition of redemption fine.

22. In view of foregoing discussion and findings, I pass the following Order:

ORDER

- i. I reject the assessable value of Rs. 31,82,022/- declared by the importer in the said Bill of Entry and order to re-determine the same as Rs. 13,95,200/- for items mentioned at Sr. No. 1 to 5 in Table-IX of Para 8.4 above and as Rs. 31,99,040/- for items mentioned at Sr. No. 1 to 9 in Table-X of Para 8.4 above as per CVR Rule and order to reassess the said Bill of Entry as per findings in examination report & test report.
- ii. I order for absolute confiscation of the goods (mentioned at Sr. No. 1 to 5 in Table-IX of Para 8.4 above) having re-determined value of Rs. 13,95,200/- under Section 111(d) of the Customs Act, 1962 as the same are counterfeit goods imported in violation of the IPR Rules, 2007, as confirmed by the Intellectual Right holders of respective brands. However, I give an option to re-deem the confiscated goods to the

importer in lieu of confiscation under provision of Section 125 of Customs Act, 1962 on payment of Redemption fine of Rs. 1,40,000/- (Rs One Lakh Forty Thousand Only) 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 two months from the date of receipt of this order;

- iii. I impose penalty of Rs. 50,000/- (Rs. Fifty Thousand only) on the importer M/s. Global Exim under Section 112(a)(i) of the Customs Act, 1962 in respect of the goods mentioned at Para-(ii) above;
- iv. I order to confiscate the goods (mentioned at Sr. No. 1 to 9 in Table-X of Para 8.4 above) i.e. Mens Jacket not infringing IPR/ IPR right holders did not join the proceedings or failed to fulfil requirements of the IPR Rules, 2007, having re-determined value of Rs. 31,99,040/- 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, However, I give an option to re-deem the confiscated goods to the importer in lieu of confiscation under provision of Section 125 of Customs Act, 1962 on payment of Redemption fine of Rs. 2,80,000/- (Rs. Two lakh Eighty Thousand Only) 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 two months from the date of receipt of this order;
- v. I impose penalty of Rs. 50,000/- (Rs. Fifty Thousand Only) on the importer M/s. Global Exim under Section 112(a)(ii) of Customs Act, 1962 in respect of the goods mentioned at Para-(iv) above.

23. 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

Arun Kumar

ADDITIONAL COMMISSIONER

ADC/JC-II-O/o Pr Commr-Cus-Mundra

Date: 19-04-2024 18:50:07

To,
M/s. Global Exim,
Shop No 4883 & 4884, Pvt. No. 12,
G/F Kucha Usdatdag,
Chandni Chowk, Dehi-110006.

Copy to:

1. The Deputy Commissioner of Customs (SIIB), CH, Mundra.
2. The Deputy Commissioner of Customs (RRA), CH, Mundra.
3. The Deputy Commissioner of Customs (TRC), CH, Mundra
4. The Assistant Commissioner of Customs (EDI), CH, Mundra.
5. Office Copy.