



OFFICE OF THE PRINCIPAL COMMISSIONER OF
CUSTOMS, CUSTOMS HOUSE, MP & SEZ
MUNDRA, KUTCH-GUJARAT -370421
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A	File No.	CUS/APR/INV/142/2024-Gr.3 -O/o Pr. Commr-Cus-Mundra
B	OIO No.	MCH/ADC/AK/31/2024-25
C	Date of Order	03.05.2024
D	Passed by	Arun Kumar, Additional Commissioner, Import Assessment, Custom House, Mundra.
E	SCN No. & Date	Importer vide their letter dated 25.01.2024 Requested for waiver of SCN
F	Noticee / Party / Importer	M/s Shree Radhakrishna Overseas, Unit No.- A/6, Room No. 3:2, Sai Kru Sector-8 B, CBD Belapur, Navi Mumbai-400614
G	DIN	20240571MO0000111461

1. The Order – in – Original is granted to concern free of charge.
2. 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
3. Appeal shall be filed within Sixty days from the date of Communication of this Order.
4. 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.
5. Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.
6. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respect.
7. 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.

Dhirendra Shukla
6/5/24
5-4798

BRIEF FACT OF THE CASE: -

M/s Shree Radhakrishna Overseas, situated at Unit No.- A/6, Room No. 3:2, Sai Kru Sector-8 B, CBD Belapur, Navi Mumbai-400614 holding IEC NO: DXPPS4031G (hereinafter referred to as 'the Importer'), had filed a Bill of Entry No. 7778596 dated 11-09-2023 through their Customs Broker, M/s DSR Logistics at Mundra port for import of Polyester Knitted Fabric & Girls Knitted Tops.

2. Based on analysis and observation of IGM, involving Container No. FCIU 7012507 (40') concerning imports under Bill of Entry No. 7778596 dated 11-09-2023 appear 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 Detail of declared goods under Bill of Entry No. 7778596 dated 11-09-2023 is as below:

Table-I

Sr No	B/E No.	Item Declared	CTH	Rate	Quantity	Assessable Value	Duty
1	7778596 dated 11-09-2023	Polyester knitted Fabric	60063200	\$1.2/kgs	11853kgs	11,94,071	2,80,368
2		Girls Knitted Top	61062010	\$ 25/Pcs	7650pcs	1,60,554	2,08,840
3		Total				13,54,625	4,89,208

On the basis of said observations, the examination of goods was carried out on 14.09.2023 at M/s. Seabird Marine Services Pvt. Ltd. CFS, APSEZ Mundra by the officers of SIIB, CH, Mundra in the presence of Shri. Krishna Nand Shahi, proprietor of M/s. Shree Radhakrishna Overseas.

3. During the examination, it was found that the goods were stuffed as roll sheets (declared as Polyester Knitted Fabric) in the said container which was covered by a plastic material from outside. One fabric roll was wrapped in a single plastic wrap. Fabric in these rolls appeared to be knitted fabric and each roll having the marking of net weight which was verified by physical weighment of 2 rolls and found as marked. The weight of each roll is 38 Kgs (+/- 1 kg). Width of the fabric measured to be 1.5 meter approx. The count of these rolls was 107. Total quantity of the goods calculated to be 4066 Kgs approx.

4. After one line of above-mentioned fabric, another type of fabric rolls was found and two rolls of fabric wrapped in a single plastic wrap. Fabric in these rolls appeared to be woven fabric and each roll having the marking of length which was verified by physical measurement of 2 rolls and found as marked. Width of the fabric measured to be 1.5 meter approx. Most of the rolls (having two rolls inside) bearing marking of 60 meters. The count of these rolls was 157. Total Quantity of these goods calculated to be 14130 Sq Meter approx.

5. After destuffing of half the container, remaining goods were found to be packed in plastic gunny bags and found total 108 bags whereas importer has declared 51 bags in packing list. After that all the bags were opened and examined and the goods found as upper body garments designed to be wear by girls and quantity of these goods calculated to be 17542 Pcs. Randomly samples from all 03 consignments were drawn for testing to ascertain the goods.

6. As per findings during Examination, Samples of the consignments sent to CRCL Kandla for testing purpose vide Test Memo No. 697/2023-24, 698/2023-24 & 699/2023-24 all dated 18.09.2023.

Table-II (As per Examination)

Sr. No.	Description of the Goods	Total Rolls	Total Quantity for Duty Calculation	Test Memo No.
1	Polyester Knitted Fabric	107	4066 Kgs Approx	697/2023-24
2	Woven Fabric	157	14130 Sqm. Approx.	698/2023-24
3.	Girls Knitted Top	108	17542 Pcs	699/2023-24

6.1 Test Report regarding TM No. 697/2023-24 dated 18.09.2023 is as under:

“The Sample as received is in the form of cut piece of yarn **dyed knitted fabric** having selvedge on both sides.

It is composed of Polyester multifilament yarn.

GSM (as such) = 465.3”

6.2 Test Report regarding TM No. 698/2023-24 dated 18.09.2023 is as under:

“The Sample as received is in the form of cut piece of **Dyed (Grey) woven fabric** having raised fibre on both sides. It is composed of textured polyester multifilament yarn on one side and blended spun yarn of

polyester and viscose together with lycra on other side.

GSM (as such) = 379.59

% Composition---Polyester = 77.10 (% of filament yarn (textured)= 50.74

Viscose=19.28 (% of Spun Blended yarn= Balance

Lycra = Balance”

6.3 Test Report regarding TM No. 699/2023-24 dated 18.09.2023 is as under:

“Sample as received is in the form of greenish coloured knitted textile made up article (garments, **long sleeves girls top**) having applique work on front side with plastic sequins & glass beads.

It is composed of viscose spun yarn & nylon filament yarn (three ply Core yarn).

Total wt. of article = 339.7 gm

% Composition

% of viscose spun yarn = 75.1% by cut

% of Nylon filament yarn= Balance.”

6.4. In view of the Lab Report, the goods imported under Bills of Entry no. 7778596 dated 11-09-2023 are mis-declared in terms of quantity and description of the goods.

7 Classification of Goods Imported:

7.1 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 subheadings and any related Subheading Notes...

7.2 Classification of Dyed Knitted Fabric as per TM No. 697/2023-24 dated 18.09.2023:

7.2.1 The goods found in the import consignment as declared and rightly classified under CTH 60063200 wherein the applicable rate of duty is 20% (BCD). There is no need to re-determination of the classification as the goods were found as declared in testing.

7.3 Classification of Dyed Woven Fabric as per TM No. 698/2023-24 dated 18.09.2023:

7.3.1 The goods covered under Test Memo Number 698/2023-24 were found mis-declared in terms of description of the goods. The goods were declared as "Knitted Fabric", however, as per test report the goods found "Woven Fabric". Therefore, the correct Classification of the goods is required to be ascertained.

7.3.2 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 54.04**', accordingly impugned goods are appropriately classifiable under the heading 5407.

7.3.3 Entry under the Tariff Heading 5407 reads thus:

5407-'Woven Fabric of synthetic filament yarn, including woven fabrics obtained from materials of heading 54.04'

7.3.4 The above 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;

All the subheading from (i) to (viii) above has been ruled out as weight of synthetic filament is less than 85% and not mixed with cotton, therefore, the merit subheading of the impugned goods appear to be under (ix), i.e. other woven fabric. The relevant Tariff item at the double dash (--) level:

- i. Dyed;

7.3.5 Therefore, as per test result under TM No. 698/2023-24 dated 18.09.2023, goods found in the import consignment appear to be classifiable under CTH 54079200 wherein the applicable rate of duty is 20% or Rs. 40 per Sq. mtr., whichever is higher. Hence, it cannot be classified under CTH 60063200 which attracts duty structure 20%(BCD). Hence, it is observed that importer mis-classified the subject goods under CTH 60063200 instead of correct CTH 54079200 with an intention to evade payment of the applicable BCD. Consequently, the subject goods were liable to be assessed at the rate of 20% or Rs. 40 per Sq. mtr., whichever is higher BCD. 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.

7 . 4 Classification of Long Sleeves Girls Top as per TM No. 699/2023-24 dated 18.09.2023:

7.4.1 The goods found in the import consignment are found as declared and rightly classified under CTH 61062010 wherein the applicable rate of duty is 20% or Rs.25 per piece whichever is higher. There is no need to re-determination of the classification as the goods were found as declared in testing.

8. Rejection and Redetermination of Valuation:

8.1 Whereas as per test report, the goods declared as knitted fabric and girls top are found as declared, therefore, the value of these two items

appears to be correct under rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. However, some of the knitted fabric is found mis-declared and the same is found “woven Fabric” in testing.

8.2 As the goods, i.e. “Woven Fabric” are found to be mis-declared in terms of description and value, hence they were liable to be re-assessed under section 17(4) of the Customs Act, 1962. Since mis-declaration of goods, in parameters such as description, which have relevance to value, was noticed, the declared value of the goods is liable to be rejected under Rule 12, of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and is liable to be re-determined in terms of Rule 12, explanation 1 (i), of the said Rules, by going sequentially from Rule 4 to 9 thereof.

8.3 The importer had imported Woven fabric by mis-declaring it “knitted fabric”, further Rule 4 (identical goods) of the said rules, could not be invoked in this case, Therefore, the valuation is to be decided in terms of the rule 5 of the CVR which provides method for valuation in respect of similar goods. Therefore, the following bills of entry containing similar goods were relied upon for valuation purpose:

Table-III: Contemporaneous import of “Woven Fabric”

Sr No	Bill of entry No and date	Description of goods	Quantity under import (in Sqm)	CIF Rate per Kgs (in Rs.)
1	9542545 dated 05-01-2024	Woven Fabric	4798 SQM	162
2	9204611 dated 13-12-2023	Woven Fabric	10560 SQM	162.28
3	9422359 dated 27.12.2023	Woven Fabric	4868 SQM	167.15

8.5 Based upon the abovementioned Bills of Entry, considering the minimum value, the contemporaneous CIF value of “Woven Fabric” works out to be 162 per SQM. The CIF value of Bill of Entry No. 7778596 dated 11.09.2023 is worked out to be as below:

Table-IV

Sr. no.	Bill of Entry and date	Description of the Goods	Quantity	Rate	CIF value (in Rs.)
1.	7778596 dated 11-09-2023	Polyester Knitted Fabric	4066 Kgs. Approx.	Rs. 100.74 per kg as declared as the goods found as declared in	4,09,609

			terms of description.	
	Woven Fabric	14130 Sqm. Approx.	Rs. 162 Per SQM as per NIDB Data	22,89,060
	Girls Knitted Top	17542 Pcs	Rs. 20.9875 per piece as declared as the goods found as declared in terms of description	3,68,163
Total				30,66,832

In view of the above the re-determined value of the impugned goods covered under BE no. 7778596 dated 11-09-2023 calculated to be Rs. 30,66,832/-.

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

Table-V

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.)	Remarks
1	Polyester Knitted Fabric	4066 Kgs Approx	4,09,609	60063200	81,922	8,192	24,986	1,15,100	The goods found as declared
2	Woven Fabric	14130 Sqm. Approx..	22,89,060	54079200	5,65,200	0	1,42,713	7,07,913	The goods found mis-declared in terms of Description
3	Girls Knitted Top	7650 Pcs	1,60,554	61062010	1,91,250	0	17,590	2,08,840	The goods found as declared
4	Girls Knitted Top	9892 pcs	2,07,609	61062010	2,47,300	0	22,746	2,70,046	The goods found mis-declared in terms of Quantity
	Total		30,66,832		10,85,672	8,192	2,08,035	13,01,899	
Duty Already Paid							4,89,208		
Duty Difference							8,12,691		

10. With the introduction of self-assessment under Section 17(1) of Customs Act, 1962 the onus lies on the importer to correctly self-assess the bill of entry with correct amount of leviable duties. By the said act of not correctly self-assessing the applicable BCD, the importer received undue monetary benefit and caused loss to the public exchequer to the tune of Rs. 8,12,691/. They not only failed to declare and assess the correct duty payable on the goods but also mis-declared the classification of the goods 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.

11. The relevant provisions of Customs Act,1962 are as under:

11.1 **As per section 17(1)** of the Customs Act, 1962, 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.

11.2 **As per Section 46(4)** of the Customs Act, 1962 the importer who is presenting the Bill of Entry shall, at the foot thereof, 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.

11.3 **Section 110:** Seizure of goods, documents and things. -

"(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

.....

(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:

....."

11.4 **SECTION 111.** Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable to 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 transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;

11.5 **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 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(m) 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 [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 [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 [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.

12. In view of the above, the importer, therefore, appears liable for payment of differential amount of duty of Rs. 8,12,691/- in respect of the goods imported by way of mis-declaration in terms of classification and quantity.

13. The importer has mis-declared the 14130 square meter of woven

fabric as knitted fabric as mentioned at sr. no. 2 of Table-V above. Therefore, the importer has, by his acts of omission, rendered the goods liable for confiscation under section 111(m) of the Customs Act, 1962.

14. The importer has mis-declared the quantity of "girls kintted Top" as 7650 pcs instead of actual quantity of 17,542 pcs. Therefore, the importer has imported 9892 pcs in excess of the declared quantity as mentioned at sr. no. 4 of Table-V above. Therefore, the importer has, by his acts of omission, rendered the goods liable for confiscation under section 111(l) of the Customs Act, 1962.

15. As the importer by his acts of omission, rendered the goods liable for confiscation under section 111(m) and 111(l) of the Customs Act, 1962 and is, therefore, also liable for penalty under section 112(a) of the Customs Act, 1962.

Further, the importer vide letter dated 25.01.2024 has submitted that, they do not wish any personal hearing and Show Cause Notice in the matter.

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

(i) The classification of the goods (Woven Fabric) as claimed by the importer under CTH 60063200 is liable to be rejected and the goods are liable to re-classified under CTH 54079200 as per sr. no. 2 of Table-V above and B/E is liable to be re-assessed accordingly.

(ii) The declared value of Rs. 7,84,462/- of the goods (woven Fabric) covered under B/E No. 7778596 dated 11-09-2023 as per Sr. No. 2 of Table-V is liable to be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the same is liable to be re-determined as Rs. 22,89,060/- as mentioned in Sr. No. 2 of Table-V above under rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with section 14 of Customs Act, 1962 and B/E is liable to be re-assessed accordingly.

(iii) The declared quantity of the goods "Girls Knitted Top" as 7650 pcs is liable to be rejected and liable to be re-determined as 17542 pcs and B/E is liable to be re-assessed accordingly.

(iv) The goods having redetermined value Rs. 22,89,060/- mentioned at sr no 02 of of Table-V and imported vide B/E no 7778596 dated 11-09-

2023 is liable to be confiscated under section 111(m) of the customs Act, 1962.

(v) The goods having value Rs. 2,07,609/-, mentioned at Sr. no 04 of of Table-V and imported in excess of declared quantity vide B/E no 7778596 dated 11-09-2023 is liable to be confiscated under section 111(l) of the customs Act, 1962.

(vi) Penalty is liable to be imposed under section 112(a) of the Customs Act, 1962 on the importer.

DISCUSSION & FINDING

17. I have carefully gone through the Investigation report dated 01.03.2024 issued by the Deputy Commissioner of Customs (SIIB), Mundra and I find that M/s Shree Radhakrishna Overseas situated at Unit No.- A/6, Room No. 3:2, Sai Krupa Sector-8 B, CBD Belapur, Navi Mumbai-400614 holding IEC NO: DXPPS4031G (hereinafter referred to as 'the Importer'), had filed a Bill of Entry No. BE- 7778596 dated 11-09-2023 through their Customs Broker, M/s DSR Logistics for import of Polyester Knitted Fabric & Girls Knitted Top.

18. Based on analysis and observation of IGM, involving Container No. FCIU 7012507 (40') concerning imports under Bill of Entry No. 7778596 dated 11-09-2023 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 examination of goods was carried out on 14.09.2023 at M/s. Seabird Marine Services Pvt. Ltd. CFS, APSEZ Mundra by the officers of SIIB, CH, Mundra in the presence of Shri. Krishna Nand Shahi, proprietor of M/s. Shree Radhakrishna Overseas.

19. During the examination, it was found that the goods were stuffed as roll sheets (declared as Polyester Knitted Fabric) in the said container which was covered by a plastic material from outside. One fabric roll was wrapped in a single plastic wrap. Fabric in these rolls appeared to be knitted fabric The count of these rolls was 107. Total quantity of the goods calculated to be 4066 Kgs approx.

After one line of above-mentioned fabric, another type of fabric rolls was found and two rolls of fabric wrapped in a single plastic wrap. Fabric in these rolls appeared to be woven fabric. The count of these rolls was 157. Total Quantity of these goods calculated to be 14130 Sq Meter approx.

After destuffing of half the container, remaining goods were found to be packed in plastic gunny bags and found total 108 bags whereas importer has declared 51 bags in packing list. After that all the bags were opened and examined and the goods found as upper body garments designed to be wear by girls and quantity of these goods calculated to be 17542 Pcs. Randomly samples from all 03 consignments were drawn for testing to ascertain the goods. Samples of the consignments sent to CRCL Kandla for testing purpose vide Test Memo No. 697/2023-24, 698/2023-24 & 699/2023-24 all dated 18.09.2023.

Classification of Dyed Knitted Fabric as per TM No. 697/2023-24 dated 18.09.2023:

As per test report the goods covered under Test Memo No. 697/2023-24 dated 18.09.2023 were found as declared and rightly classified under CTH 60063200 wherein the applicable rate of duty is 20%. There is no need to re-determination of the classification as the goods were found as declared in testing.

Classification of Dyed Woven Fabric as per TM No. 698/2023-24 dated 18.09.2023:

As per test report the goods covered under Test Memo Number 698/2023-24 were found mis-declared in terms of description of the goods. The goods were declared as "Knitted Fabric", however, as per test report the goods found "Woven 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 54.04**', accordingly impugned goods are appropriately classifiable under the heading 5407.

Classification of Long Sleeves Girls Top as per TM No. 699/2023-24

dated 18.09.2023:

As per test report the goods covered under test memo no. 699/2023-24 dated 18.09.2023 were found as declared and rightly classified under CTH 61062010 wherein the applicable rate of duty is 20% or Rs.25 per piece whichever is higher. There is no need to re-determination of the classification as the goods were found as declared in testing.

20. Rejection and Redetermination of Valuation:

As per test report, the goods declared as knitted fabric and girls top are found as declared, therefore, the value of these two items appears to be correct under rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. However, some of the knitted fabric is found mis-declared and the same is found “woven Fabric” in testing.

The importer had imported Woven fabric by mis-declaring it “knitted fabric”, the value of identical goods could not be retrieved from NIDB data, considering nature of import, quantity, composition, GSM of the fabric, place and time of importation, therefore, Rule 4 of the said rules, could not be invoked.

Therefore, the valuation is to be decided in terms of the rule 5 of the CVR which provides method for valuation in respect of similar goods.

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.)	Remarks
1	Polyester Knitted Fabric	4066 Kgs Approx (Rs. 100.74 per KG)	4,09,609	60063200	81,922	8,192	24,986	1,15,100	goods found as declared
2	Woven Fabric	14130 Sqm. Approx. (Rs. 162 per SQM as per NIDB Data)	22,89,060	54079200	5,65,200	0	1,42,713	7,07,913	goods found mis-declared in Description
3	Girls Knitted Top	7650 Pcs (Rs.20.987 per piece)	1,60,554	61062010	1,91,250	0	17,590	2,08,840	Goods found as declared
4	Girls Knitted Top	9892 pcs (Rs.20.987 per piece)	2,07,609	61062010	2,47,300	0	22,746	2,70,046	goods found mis-declared in Quantity
Total			30,66,832		10,85,672	8,192	2,08,035	13,01,899	
Duty Already Paid								4,89,208	

Duty Difference	8,12,691	
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In view of the above table the redetermined value of the impugned goods covered under BE no. 7778596 dated 11-09-2023 calculated Rs. 30,66,832/-.

With the introduction of self-assessment under Section 17(1) of Customs Act, 1962 the onus lies on the importer to correctly self-assess the bill of entry with correct amount of leviable duties. By the said act of not correctly self-assessing the applicable BCD, the importer received undue monetary benefit and caused loss to the public exchequer to the tune of Rs. 8,12,691/. 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 60063200 instead of the correct CTH of 54079200 and mis-declared in terms of quantity also, 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.

21. I find that the importer has mis-declared in terms of quantity & classification, therefore the import goods liable for confiscation under Section 111(l) & 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.

22. I find that the importer while filing the impugned Bill of Entry has subscribed to a declaration regarding correctness of the contents of Bill of Entry under Section 46(4) of the Act, ibid. Further, Section 46(4A) of the Act, casts an obligation on the importer to ensure accuracy of the

declaration and authenticity of the documents supporting such declaration. In the instant case, the importer failed to discharge the statutory obligation cast upon him and made wrong declaration about the description & CTH of imported goods, for which they need to be visited with penal provision.

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

ORDER

- (i) I reject classification of the goods (Woven Fabric) declared by the importer under CTH 60063200 in BE No. 7778596 dated 11-09-2023 and order to re-classify the same under CTH 54079200 as per Sr. No. 2 of Table-V above and re-assess the BE accordingly.
- (ii) I reject the value of Rs.7,84,462/- of the goods (Woven Fabric) mis-declared as Polyester Knitted Fabric covered under the said BE as per Sr. No. 2 of Table-V above and redetermine as Rs.22,89,060/-under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act and order to re-assess the BE accordingly.
- (iii) I reject the declared quantity of the goods "Girls Knitted Top" i.e. 7650 pcs and order to re-determine the same as 17542 pcs and re-assess the BE accordingly.
- (iv) I confiscate the goods having re-determined value of Rs.22,89,060/- mentioned at Sr. No. 2 of Table-V above, 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. 2,30,000/-(Rs. Two lac Thirty Thousand) in lieu of confiscation.
- (v) I confiscate the goods having value of Rs.2,07,609/- mentioned at Sr. No. 4 of Table-V above and imported in excess of declared quantity vide BE No. 7778596 dated 11-09-2023 under Section 111(l) 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. 25,000/-(Rs. Twenty Five Thousand Only) in lieu of confiscation.
- (vi) I impose the penalty of Rs. 50,000/-(Rs. Fifty Thousand Only) on the

importer M/s Shree Radhakrishna Enterprise under Section 112 (a) (ii) of 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

Arun Kumar

Date: 03-05-2024 19:14:25 Additional commissioner

Custom House, Mundra

To

M/s Shree Radhakrishna Overseas

(IEC NO: DXPPS4031G)

Unit No.- A/6, Room No. 3:2,

Sai Kru Sector-8 B, CBD Belapur,

Navi Mumbai-400614

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