

	<b>OFFICE OF THE COMMISSIONER</b>	
<b>CUSTOM HOUSE, KANDLA</b>		
<b>NEAR BALAJI TEMPLE, NEW KANDLA</b>		
<b>Phone : 02836-271468/469 Fax: 02836-271467</b>		
<b>DIN- 20240771ML0000999C0B</b>		
A	File No.	GEN/ADJ/ADC/462/2024-Adjn
B	Order-in-Original No.	KND-CUSTM-000-COM-06-2024-25
C	Passed by	M. Ram Mohan Rao, Commissioner of Customs, Custom House, Kandla.
D	Date of Order	02.07.2024
E	Date of Issue	02.07.2024
F	SCN NO. & Date	Waiver of Show Cause notice
G	Noticee / Party / Importer / Exporter	i. M/s. Cargo Care Agency, Shed No. 366, FA I type, Phase I, Sector IV, KASEZ, Gandhidham, Kutch, Gujarat, PIN -370230. ii. M/s HZSH Textile LLP, 215, Milan Shopping Centre, Milan Sub way Road, Santacruz (West), Mumbai-400054.

1. This Order - in - Original is granted to the concerned free of charge.
2. Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

**Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,**

2nd Floor, Bahumali Bhavan Asarwa,

Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad - 380004

3. Appeal shall be filed within three months from the date of communication of this order.
4. Appeal should be accompanied by a fee of Rs.1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.
6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules, 1982 should be adhered to in all respects.
8. An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded wise duty or duty and penalty are in dispute, or penalty wise penalty alone is in dispute.

#### **BRIEF FACTS OF THE CASE:-**

M/s Cargo Care Agency (hereinafter referred to as 'SEZ unit') situated at Shed No. 366, FA I type, Phase I, Sector IV, Kandla Special Economic Zone, Gandhidham, Kutch was granted Letter of Approval (LOA) dated 02.02.2021 vide F.No. KASEZ/IA/34/2020-21 by the Development Commissioner, Kandla SEZ under Section 15(9) of the SEZ Act, 2005 read with Rule 18 of the SEZ Rules, 2006 to operate as an SEZ unit and carry out authorized operations of warehousing and trading services activity. The Unit Approval Committee (UAC) after due deliberations has approved the requests of the said SEZ unit for inclusion of additional items in their warehousing service activity and accordingly, amendments in the original LOA have been made from time to time. They have executed Bond-cum-Legal Undertaking in the Form-H containing the terms and conditions for setting up and operating the unit in the Special Economic Zone including the requirement of achieving positive Net Foreign Exchange as provided under the Special Economic Zone Rules, 2006 and orders made there-under, hereinafter referred to as the rules.

2. The said SEZ unit had filed Bills of Entry mentioned below in table-1 for import of goods declared as "**Polyester Coated Industrial Fabric**", on behalf of the DTA client, namely, M/s HZSH Textile LLP, 215, Milan Shopping Centre, Milan Subway Road, Santacruz (West), Mumbai-400054 (hereinafter referred to as "said DTA Client/ Noticee-2"). The subject goods were subjected to sampling and representative samples were drawn and forwarded to CRCL Kandla for ascertaining the correct description and composition of the imported goods. Test Reports from CRCL Kandla indicated that the subject goods had been mis-declared / mis-classified before KASEZ

Customs authorities. The details of the goods have been mentioned in the Table-I below for reference.

**Table-I**

Sr. No.	BE No./ Date	Declared Description of goods	Quantity	Assessable Value (in INR)	Container No.
1	1014311 dated 13.09.2022	Polyester Coated Industrial Fabric	131884 sqm	1167107	BEAU6050114
2	1013978 dated 07.09.2022	Polyester Coated Industrial Fabric	131978 sqm	1167939	EGHU9726424

**2.1. Issue pertaining to goods imported vide BE No 1014311 dated 13.09.2022 and 1013978 dated 07.09.2022.**

2.1.1 The said SEZ Unit had filed Bill of Entry No 1014311 dated 13.09.2022(**RUD-2**) and 1013978 dated 07.09.2022 (**RUD-3**) for the import of goods declared as “*Polyester Coated Industrial Fabric*” on behalf of the DTA Client. The subject goods was subjected to sampling and representative samples were drawn and forwarded to CRCL Kandla for ascertaining the correct description, composition of the subject goods vide Test Memo No 928, 930&931 all dated 27.09.2022 (**RUD-4**) for the Bill of Entry no 1014311 dated 13.09.2022 and Test Memo No 948 dated 29.09.2022(**RUD-5**) for the Bill of Entry no 1013978 dated 07.09.2022. Results of the Test Reports received from CRCL, Kandla are reproduced below for reference: -

**Test results of sample under Bill of Entry no 1014311 dated 13.09.2022: -**

**a. Test Memo No 928 dated 27.09.2022: -**

*“The sample as received is in the form of cut piece of blue coloured woven fabric coated on their files on one side. Coating is composed of **Polyurethane** & Fabric is made up of Polyester Multifilament Yarn.*

*GSM= 127.7*

*Polyester= 94.4%*

*coating= Balance*

.....”.

**b. Test Memo No 930 dated 27.09.2022: -**

*“The sample as received is in the form of black colour cut piece of woven fabric having coating on one side. Base fabric is composed of polyester multifilament yarns and Coating is composed of **Polyurethane** (PU).*

*GSM (as such) = 129.4*

*% of Polyester filament yarn= 95.74%*

*% of polyurethane= Balance*

.....”.

**c. Test Memo No 931 dated 27.09.2022: -**

*“The sample as received is in the form of cut piece of dyed (maroon coloured) woven fabric having coating on one side. Fabric is made up of polyester multifilament yarns and Coating is composed of **Polyurethane**(PU).*

*GSM= 130.9*

*% of Polyester filament yarn= 95.74%*

*% of polyurethane= Balance*

.....”.

**Test results of sample under Bill of Entry no 1013978 dated 07.09.2022: -**

**a. Test Memo No 948 dated 07.09.2022 (RUD-5): -**

*“The sample as received is in the form of black colour cut piece of woven fabric having coating on one side. Base fabric is made up of polyester multifilament yarns and coating is composed of **Polyurethane** (PU).*

*GSM (as such) = 130.97*  
*% Composition*  
*% Polyester filament yarn= 93.1%*  
*% of polyurethane= Balance*

2.1.2 CRCL test report revealed that the subject goods did not conform to the declared description in the Bill of Entry filed before Customs authorities. The goods, originated from China have been declared as “Polyester Coated Industrial Fabric” and classified under Tariff Headings 59039090. Whereas the test results indicated that the subject goods were Polyurethane (PU) coated fabric, and it appeared that the subject goods merited classification under CTH 59032090.

2.1.3 “Polyurethane Leather which includes any kind of textile coated one sided or both sided with Polyurethane” falling under CTH 59032090, are subject to **Antidumping Duty** in terms of Notification No. 14/2022-ADD Dated 20.05.2022 issued by the Government of India. As per the said notification, Antidumping duty of USD 0.46 per mtr is leviable on the subject goods in terms of Sr no. 2 of the Table mentioned in the notification as the subject goods are originated from China and producer of the goods is other than the producer mentioned at the Sr no 01 of the Table mentioned in the notification.

## **2.2 *Rejection of Declared Value as per the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007) for mis-declared goods***

2.2.1 CRCL test report revealed that the subject goods did not conform to the declared description in the Bill of Entry filed before Customs authorities, therefore the transaction value as declared by the DTA Client appeared to be liable for rejection under Rule 12 of the Customs Valuation Rules, 2007. Since the goods appeared to be mis-declared, the value declared by the DTA Client could not be considered as transaction value as per the provisions of sub-rule (1) of rule 3 of CVR, 2007 read with Rule 12 of the Customs Valuation Rules, 2007. Therefore the value of the goods needed to be re-determined by proceeding sequentially through rule 4 to rule 9 of the CVR, 2007 as given under explanation of Rule 12 of the Customs Valuation Rules, 2007.

## 2.2.2 **Re-determination of the value of the goods as per CVR, 2007**

Transaction value of the identical goods at identical commercial level, were tried to be ascertained. However, no such import data was found. Therefore, Rule 4 of the CVR, 2007 appeared to be not applicable in the instant case. Subsequently, an attempt had been made to re-determine the Value in terms of Rule 5 of CVR 2007 by referring to contemporary Import data available on NIDB. The Unit value for the subject goods might be considered as **Rs 28.91 per SQM.**

The details of the differential Customs Duty on account of under-valuation and applicability of ADD on the subject goods appeared to be recoverable from the DTA Client/SEZ unit are mentioned in the **Annexure-B.**

## 2.3 **Status of the Goods.**

Whereas DTA Bill of entry No 2011691 dtd. 07.10.2022 (RUD-6) has been filed for clearance of the goods imported vide import BE No 1014311 dated 13.09.2022. However, for the goods imported vide other import BE No 1013978 dated 07.09.2022, the DTA Bill of Entry is not yet filed. Further, the goods imported vide both the above BEs (i.e. BE No 1014311 dated 13.09.2022 and BE No 1013978 dated 07.09.2022) are still lying at the said SEZ Unit. The average width of the goods is 56 inches which comes to approx. 1.422 meter. The Customs duty calculation is mentioned in the Annexure-B.

## 3. **Legal Provisions:**

The following are the legal provisions, which are in general applicable in the present case. The list given herein is indicative and not exhaustive, as the context of legal provisions may otherwise require reference of other legal provisions, reference of which are also to be invited, as and when required:

### 3.1. **The Customs Act, 1962:**

- 3.1.1. Section 46 of the Customs Act, 1962
- 3.1.2. Section 11 of the Customs Act, 1962
- 3.1.3. Section 2(33) of the Customs Act, 1962

- 3.1.4.** Section 2(39) of the Customs Act, 1962
- 3.1.5 Section 28 of the Customs Act, 1962.
- 3.1.6.** Section 111(m) of the Customs Act, 1962.
- 3.1.7.** Section 112 of the Customs Act, 1962
- 3.1.8.** Section 114AA of the Customs Act, 1962

### **3.2. SEZ Act, 2005**

- 3.2.1** Rule 15(9) of the SEZ Rules, 2006.
- 3.2.2** Rule 18 of the SEZ Rules, 2006.
- 3.2.3** Rule 27(10) of the SEZ Rules, 2006.
- 3.2.4** Rule 29(1) of the SEZ Rules, 2006.
- 3.2.5** Rule 29(2) of the SEZ Rules, 2006.
- 3.2.6** Rule 47 of the SEZ Rules, 2006.
- 3.2.7** Rule 48 of the SEZ Rules, 2006
- 3.2.8** Section 30 of the SEZ Act, 2005.

4. Section 30 of the SEZ Act provides that any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975, where applicable, as leviable on such goods when imported. Further, Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported and export goods by the importer and exporter himself by filing a bill of entry or shipping bill, as the case may be. Under self-assessment the importer or exporter has to ensure correct classification, applicable rate of duty, value and exemption notifications, if any, in respect of imported / export goods while presenting bill of entry or shipping bill. Further, Rule 75 of the SEZ Rules, 2006 also provides that unless and otherwise specified in these rules all inward or outward movements of the goods into or from SEZ by the Unit/Developer shall be based on self-declaration made by the Unit/Developer. While importing subject goods, the said SEZ unit and their DTA client were bound for true and correct declaration and assessment. As the said SEZ unit was engaged in business of providing warehousing services in respect of subject goods, they were fully aware of specifications, characteristics, nature and description of the goods imported and warehoused on behalf of DTA client. From the above, it is evident that the said SEZ unit and the said DTA client deliberately

suppressed specifications, characteristics, nature and description of the goods and wrongly declared the classification and description of said product/goods.

5. As per Section 46(4A) of the Customs Act, 1962, the importer, who was presenting the bill of entry should ensure the accuracy and completeness of the information given therein, the authenticity and validity of any document supporting it; and compliance with the restriction or prohibition, if any, relating to the goods under the Customs Act, 1962 or under any other law for the time being in force.

5.1 As per Section 28 of the Customs Act 1962, where any duty that has been short levied for any reason, the proper officer shall serve notice on the person chargeable with the duties or the interest which has been short levied.

5.2 Further, as per Section 12 of the Customs Act 1962, the duties of the customs shall be levied on the goods imported into India. Whereas, as per Section 30 of the SEZ act 2005, any goods removed from the SEZ to DTA shall be chargeable to applicable duties of Customs, as levied on such goods when imported. Whereas, it appeared that the said SEZ unit and above mentioned DTA Client has not disclosed the material facts related to the actual specification, characteristics, nature, description of the subject goods while filing the Bill of Entry. The above discussed facts reveals that while filing the Import Bill of Entry and DTA Bill of Entry, the said SEZ unit and DTA Client has misclassified and mis declared the subject goods as detailed in Annexure-A to this notice by suppressing the material facts relating to the specification and particulars with an intent to evade the Antidumping duty leviable on the subject goods in terms of the Notification No 14/2022-ADD dated 20.05.2022. Apparently, it appears the said SEZ unit and said DTA client has violated the provisions of Section 46(4A) by way of mis-declaring the subject goods as detailed in Table-I above. Such indulgence and endeavour on the part of their part are in violation of the provisions of Section 46 of the Customs Act, 1962, irrespective of the importability of the impugned goods and other aspects involved in the case, which makes the impugned goods liable to confiscation in terms of Section 111(m) of the Customs Act, 1962 and said SEZ unit and their DTA client liable to penalty under Section 112/114A and Section 114AA of the Customs Act, 1962.

**6. Accordingly, an Investigation Report dated 17.05.2024 stating the summary as given below, has been received by this office from the office of KASEZ, Gandhidham.**

6.1. Now, therefore, it is proposed that the DTA client/Importer, namely, M/s HZSH Textile LLP, 215, Milan Shopping Centre, Milan Sub way Road, Santacruz (West), Mumbai-400054, may be called upon to Show Cause as to why:

- a. The classification of the subject goods declared under Customs Tariff heading 59039090 of the Customs Tariff Act, 1975, in the Bills of Entry appearing in Table-I above, should not be rejected and re-classified under Customs Tariff item as detailed in **Annexure-A** to this notice.
- b. The goods mentioned in Table-I above should not be held liable to confiscation under section 111(m) of the Customs Act, 1962.
- c. Differential Customs duty as mentioned at Sr.No. 1 of table in **Annexure-B** attached to the notice, should not be demanded and recovered from them under Section 30 of the SEZ Act, 2005 read with Section 28 (4) of the Customs Act 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962 for the subject goods.
- d. Penalty under Section 112 / 114A of the Customs Act, 1962 should not be imposed on them for reasons discussed above.
- e. Penalty under Section 114AA of the Customs Act, 1962 should not be imposed on the importer for the reasons discussed above.

6.2. Now, therefore, it is proposed that the SEZ Unit, namely, M/s. Cargo Care Agency, Shed No. 366, FA I type, Phase I, Sector IV, Kandla Special Economic Zone, Gandhidham, Kutch may be called upon to Show Cause as to why:

- a. The classification of the subject goods declared under Customs Tariff heading 59039090 of the Customs Tariff Act, 1975, in the Bills of Entry appearing in Table-I above, should not be rejected and re-classified under Customs Tariff item as detailed in Annexure-A to this notice.
- b. The goods mentioned in Table-I above should not be held liable for confiscation under section 111(m) of the Customs Act, 1962.
- c. Total Customs duty as mentioned in Sr No-1 of the table in Annexure-B attached to the notice, should not be demanded and recovered from them under Section 30 of the SEZ Act, 2005 read with Section 28 (4) of the Customs Act 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962 for the subject goods.

- d. Penalty under Section 112 / 114A of the Customs Act, 1962 should not be imposed on them for reasons discussed above.
- e. Penalty under Section 114AA of the Customs Act, 1962 should not be imposed on the SEZ unit for the reasons discussed above.
- f. Bond-cum-Legal Undertaking in Form-H furnished by the said SEZ Unit should not be enforced towards the duty and other liabilities arising out of subject goods removed from the said SEZ unit to DTA as detailed in Annexure-B.

7. **Waiver of Show cause notice and Permission to re-export of goods-**

7. The DTA client/importer vide letter dated 29.02.2024 and SEZ unit vide letter dated 12.03.2024 requested for waiver of SCN in the instant matter and requested for re-export of subject goods. In pursuance of the same, this office vide letter dated 18.06.2024 intimated the charges proposed in SCN to both the noticees. Further, they were allowed to state their willingness of waiver of SCN and hearing.

7.1 The DTA Client as well as the importer vide their letters dated 19.06.2024 requested for re-export of the whole quantity of both the Bills of Entry viz. 1014311 dated 13.09.2022 and 1013978 dated 07.09.2022. They further requested to waive the SCN and personal hearing in the matter.

7.2 The Hon'ble Supreme Court (Three Judge Bench) in their Order dated 04.04.2002 in the case of Commissioner of Customs, Mumbai Vs. Virgo Steels reported in 2002 (141) E.L.T. 598 (SC) has held that the Show Cause Notice has to be issued to the party before raising demand and that mandatory requirement of issuing a Show Cause Notice can be waived by the Noticee under Section 28 of the Customs Act. As the right of receiving the Show Cause Notice under Sec 28 is being personal to the person concerned, the same can be waived by that person.

7.3 Since the noticees have chosen to waive show cause notice, matter is taken up for adjudication proceedings.

**Discussion and findings:-**

8. I find that the instant matter pertains to mis-declaration and consequently mis classification and undervaluation of goods by the SEZ unit i.e. M/s.Cargo Care Agency and DTA client i.e. M/s HZSH Textile LLP. I have carefully gone through the Investigation report, request letters for waiver of show cause notice & personal

hearing and re-export of goods and other relied upon documents supplied by the office of KASEZ.

9. In the instant case, the issues to be decided by me are:-

- (i) whether the Classification & the Value of the subject goods declared in the Bill of Entry, needs to be rejected and reclassified/re-evaluated as per the Investigation report;
- (ii) whether the subject goods imported by the said SEZ unit on behalf of DTA client are liable for confiscation under section 111(m) of the Customs Act, 1962;
- (iii) whether the DTA client is liable to pay differential duty as per the attached annexures under the provisions of Section 28 of the Customs Act, 1962.
- (iv) whether the DTA Client is liable for Penalty under Section 112/114A/114 AA of the Customs Act, 1962.
- (v) whether the said SEZ Unit is liable for Penalty under Section 112/114A/114AA of the Customs Act, 1962.

10. I find that the SEZ unit i.e. M/s. Cargo Care Agency had filed Bills of Entry, mentioned below, for import of goods declared as "Polyester Coated Industrial Fabric", on behalf of the DTA client, namely, M/s HZSH Textile LLP. Representative samples of the subject goods were drawn and forwarded to CRCL Kandla vide Test Memo No 928, 930&931 all dated 27.09.2022 (RUD-4) for the Bill of Entry no 1014311 dated 13.09.2022 and Test Memo No 948 dated 29.09.2022(RUD-5) for the Bill of Entry no 1013978 dated 07.09.2022 for ascertaining the correct description and composition of the imported goods. On receipt of Test Reports from CRCL Kandla, it was observed that the subject goods had been mis-declared / mis-classified before KASEZ Customs authorities. The details of the goods are as follows:

<b>Sr. No.</b>	<b>BE No./ Date</b>	<b>Declared Description of goods</b>	<b>Quantity</b>	<b>Assessable Value (in INR)</b>	<b>Container No.</b>
1	1014311 dated 13.09.2022	Polyester Coated Industrial Fabric	131884 sqm	1167107	BEAU6050114
2	1013978 dated 07.09.2022	Polyester Coated Industrial Fabric	131978 sqm	1167939	EGHU9726424

**11. Test results of sample under Bill of Entry no 1014311 dated 13.09.2022: -****d. Test Memo No 928 dated 27.09.2022: -**

*"The sample as received is in the form of cut piece of blue coloured woven fabric coated on their files on one side. Coating is composed of Polyurethane & Fabric is made up of Polyester Multifilament Yarn.*

*GSM= 127.7*

*Polyester= 94.4%*

*coating= Balance*

*....."*

**e. Test Memo No 930 dated 27.09.2022: -**

*"The sample as received is in the form of black colour cut piece of woven fabric having coating on one side. Base fabric is composed of polyester multifilament yarns and Coating is composed of Polyurethane (PU).*

*GSM (as such) = 129.4*

*% of Polyester filament yarn= 95.74%*

*% of polyurethane= Balance*

*....."*

**f. Test Memo No 931 dated 27.09.2022: -**

*"The sample as received is in the form of cut piece of dyed (maroon coloured) woven fabric having coating on one side. Fabric is made up of polyester multifilament yarns and Coating is composed of Polyurethane(PU).*

*GSM= 130.9*

*% of Polyester filament yarn= 95.74%*

*% of polyurethane= Balance*

*....."*

**Test results of sample under Bill of Entry no 1013978 dated 07.09.2022: -****b. Test Memo No 948 dated 07.09.2022 (RUD-5): -**

*"The sample as received is in the form of black colour cut piece of woven fabric having coating on one side. Base fabric is made up of polyester multifilament yarns and coating is composed of Polyurethane (PU).*

*GSM (as such) = 130.97*

*% Composition*

*% Polyester filament yarn= 93.1%*

*% of polyurethane= Balance*

12. I find that the goods, originated from China have been declared as "Polyester Coated Industrial Fabric" and classified under Tariff Headings 59039090. It is clear from the findings of the test results that the subject goods are Polyurethane (PU) coated fabric, and therefore the goods merit classification under CTH 59032090.

13. I further find that "Polyurethane Leather includes any kind of textile coated one sided or both sided with Polyurethane" falling under CTH 59032090, are subject to antidumping duty in terms of Notification No 14/2022-ADD Dated 20.05.2022 issued by the Government of India. As per the said notification, Antidumping duty of USD 0.46 per mtr is leviable on the subject goods in terms of Sr. no 2 of the Table mentioned in the notification as the subject goods are originated from China and producer of the goods is other than the producer mentioned at the Sr. no 01 of the Table mentioned in the notification.

**14. Rejection of Declared Value as per the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007) for mis-declared goods**

14.1 In view of the CRCL test report the subject goods do not conform to the declared description in the Bill of Entry filed before Customs authorities, therefore the transaction value as declared by the DTA Client is liable to be rejected for rejection under Rule 12 of the Customs Valuation Rules, 2007. Since the goods have been mis-declared, the value declared by the DTA Client cannot be considered as transaction value as per the provisions of sub-rule (1) of rule 3 of CVR, 2007 read with Rule 12 of the Customs Valuation Rules, 2007. Therefore the value of the goods needs to be re-determined by proceeding sequentially through rule 4 to rule 9 of the CVR, 2007 as given under explanation of Rule 12 of the Customs Valuation Rules, 2007.

**15. Re-determination of the value of the goods as per CVR, 2007**

Transaction value of the identical goods at identical commercial level, were tried to be ascertained. However, no such import data was found. Therefore, Rule 4 of the CVR, 2007 is not applicable in the instant case. Subsequently, an attempt has been made to re-determine the Value in terms of Rule 5 of CVR 2007 by referring to contemporary Import data available on NIDB. The Unit value for the subject goods is to be considered as Rs 28.91 per SQM.

**16.** The details of the differential Customs Duty on account of under-valuation and applicability of ADD on the subject goods are mentioned in the Annexure-B to the Investigation report.

**16.1** These details (Annexure-B) are reproduced below:-

**Table- A**

Sr. No.	BE No. and date	Description of the goods as per Test results	CTH based on Test Report	Qty in sqm	Declared Value	Re-determined Value (@ Rs 28.91 Per Sqm)	Basic Customs Duty (@20%)	SWS (10% on BCD)	Antidumping Duty (0.46 USD Per m) (=SQM/Average Width (1.422 m) *0.46* Conversion Rate (82.45 Rs)))	IGST Leviable as per Correct Classification in INR	Effective Customs Duty in INR Payable/For gone as per correct Classification	DTA BE Status
1	2	3	4	5	6	7	8	9	10	11	13	14
1	1014311 dated 13.09.2022	PU Coated Woven Fabric	59032 090	131 884	13048 60 (DTA Value)	381276 6	7,62,55 3	76255 .33	35,17,556	980296	53,36,660	DTA Filed
2	1013978 dated 07.09.2022	PU Coated Woven Fabric	59032 090	131 978	11679 39 (Import Value)	381548 4	7,63,09 7	76309 .68	35,20,063	980994	53,40,464	DTA Not filed

**16.2 Case of BoE No. 1014311 dated 13.09.2022:-**

In this regard, I find that Bill of Entry no. 1014311 dated 13.09.2022 for warehousing was filed by way of mis-declaration and mis-classification as discussed in the foregoing paras which resulted in improper importation of goods into SEZ. Further, in

order to clear the goods into DTA, the SEZ unit filed DTA Bill of Entry which resulted into differential duty of Customs amounting to Rs. 53,36,660/- which is recoverable under Section 28(4) of the Customs Act, 1962 read with Section 30 of the SEZ Act, 2005. It is clear that the importer and SEZ unit have tried to evade duties of customs by filing of Bill of Entry for home consumption. Once the Bill of Entry for Home consumption is filed, the intention to evade the duty of Customs becomes apparent. However, it is also seen that, in respect of Bill of Entry No. 1014311 dated 13.09.2022, DTA client/importer as well as SEZ unit vide letters dated 19.06.2024, mentioned in Para 7.1 above, have requested for re-export of said goods.

### **16.3 Case of BoE No. 1013978 dated 07.09.2022:-**

I find that the Bill of Entry for Home Consumption (DTA Bill of Entry) has not been filed against Import BoE No. 1013978 dated 07.09.2022 by the DTA client/importer. It is pertinent to note that the liability of Customs duty including ADD, CVD and Safeguard duty etc. arises only when the goods are cleared into Domestic Tariff Area (DTA) on filing of Bill of Entry for Home consumption.

In this regard, it is important to extract Section 26(1)(a) and Section 30 of the SEZ Act, 2005 below for better appreciation of the facts:-

“26. Exemptions, drawbacks and concessions to every Developer and entrepreneur.—

(1) Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely:—

(a) **exemption from any duty of customs, under the Customs Act, 1962** (52 of 1962) or the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force, **on goods imported into, or services provided in, a Special Economic Zone or a Unit, to carry on the authorized operations by the Developer or entrepreneur;**

30. Domestic clearance by Units.—Subject to the conditions specified in the rules made by the Central Government in this behalf,—

(a) **any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties**

**under the Customs Tariff Act, 1975 (51 of 1975), where applicable, as leviable on such goods when imported;”**

Therefore, it is seen that the goods are leviable to Customs duty including ADD, CVD and Safeguard duty under the provisions of Customs Act, 1962 and Customs Tariff Act, 1975, when the goods are cleared into DTA for home consumption as per the provisions of Section 30 of SEZ Act, 2005, and shall be liable to pay customs duty of Rs. 53,40,464/- (Sr.No.2 of Table A, Para 16.1 above) whenever they file Bill of Entry for Home consumption.

17. However, it is seen that, further to not filing of home consumption B/E for clearance into DTA, the noticees vide their letters dated 29.02.2024 and 12.03.2024 have requested for re-export of the goods under B/E in question.

As said in the foregoing paras, in case goods imported vide Bills of Entry no.1014311 and 1013978, the duty liability shall not arise as the imported goods are to be re-exported by the noticees.

18. **Confiscation of goods and penalties thereof:-**

I find that the importer and SEZ unit have mis-declared the goods, under both Bills of Entry, valued at Rs. 76,28,250/- imported as discussed in the foregoing paras. In this regard, it is important to note that the mis-declaration of goods has also resulted in mis-declaration of value of goods and therefore the goods are liable to be confiscated under the provisions of Section 111(m) of the Customs Act, 1962, which is reproduced herein below:-

**“Section 111(m) in the Customs Act, 1962**

(m) 1[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 2[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];”

In this regard, I also rely on the judgement of CC Mumbai VsMultimetal Ltd-2002(Tri-Mumbai), upheld in Apex court in 2003 (ELT A309 (SC), wherein it is held that when mis-declaration is established, goods are liable for confiscation irrespective of whether there was malafide or not. However, in this case, there is clear evidence of

mis-declaration and there is no explanation for the same. In view of the above, I hold that the subject goods are liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

**19. Penalties on the importer under Section 112, 114A and 114AA of the Customs Act, 1962.**

With regard to the penalties under Section 114A and/or 112 of the Customs Act, 1962, I find that both the sections 112 and 114A attract penalties for evasion of duty.

19.1 In this regard, I find that the importer has rendered the goods liable for confiscation by mi-declaring the same under the provisions of Section 111 of the Customs Act, 1962 as discussed in the foregoing paras. Therefore, it is clear that the importer as well the SEZ unit have engaged themselves in improper importation of goods rendering themselves liable for penal action under Section 112(a)(ii) of the Customs Act, 1962.

19.2 I find that Section 112(a)(ii) provides for penalty not exceeding 10% of the **“duty sought to be evaded”**. In the instant case, the SEZ unit as well as the importer sought to evade duties of Customs amounting to Rs. 53,36,660/- in case of B E no 1014311 dated 13.09.2022 by filing DTA Bill of Entry for clearing the goods into DTA. Had the investigation not been initiated, they would have been successful in evasion of duty.

19.3 As regards BoE No. 1013978 dated 07.09.2022, I find that BoE for Home consumption has not been filed for clearance of goods in DTA. Therefore, penalty under Section 112(a)(ii) is not attracted as there is no duty sought to be evaded.

19.4 I further find that Section 114A attracts penalty for non/short payment of duty by way of collusion/willfulmis-statement/fraud.

Section 114A reads as below:-

114A. [Penalty for short-levy or non-levy of duty in certain cases-

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:]

In the instant case, in case of BoE No.1014311, duty on account of test results & re-valuation is Rs. 53,36,660/-. As discussed in the foregoing paras, demand of duty arises only on clearance of imported goods into Domestic Tariff Area (DTA). It is confirmed by the office of KASEZ vide email dated 02.07.2024 that Out of Charge has not been provided in respect of subject BoE (DTA Sale). As the goods have not been cleared into DTA in case of BoE no. 1013978 also and that they have requested for re-export of goods, the penalty under Section 114A of the Customs Act, 1962 is not attracted.

20. With regard to penalty under Section 114AA of the Customs Act, 1962, I find that the importer as well as the SEZ unit had made a false/incorrect statement in the Bills of Entry for warehousing by mis-declaring the goods, rendering themselves liable for penalty under Section 114AA of the Customs Act, 1962.

21. In view of the same, I hereby pass the following order:-

**In respect of DTA client/importer i.e. M/s. HZSH Textile LLP**

**A. IN RESPECT OF BoE No. 1014311 dated 13.09.2022**

- (i) I reject the classification of the subject goods declared under Customs Tariff heading 59039090 of the Customs Tariff Act, 1975, in the Bills of Entry and order to re-classify the subject goods under Customs Tariff heading 59032090.
  
- (ii) I reject the transaction value declared by the importer in the said BoE filed by SEZ unit on their behalf and order to re-determine the same in terms of the CVR, 2007 as detailed in Para 15 and 16 above.

(iii) I hold the subject goods valued at Rs. 38,12,766/- liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962 for the reasons discussed above.

However, considering the request for re-export of goods, I give an option, of redemption fine of Rs.5,00,000/- (Rupees Five Lakhs only) in lieu of confiscation, to the importer under Section 125 of the Customs Act, 1962 w.r.t goods under the subject Bill of Entry only for the purpose of re-export subject to the payment of Redemption fine and penalties as indicated here.

(iv) I impose penalty of Rs.2,00,000/- (Rupees Two Lakhs only) under Section 112(a)(ii) of the Customs Act, 1962.

(v) I impose penalty of Rs.5,00,000/- (Rupees Five Lakhs only) under Section 114AA of the Customs Act, 1962.

(vi) In view of the above, as the goods have been allowed for re-export on payment of redemption fine and penalties, the duty liability under Section 28 of the Customs Act, 1962 doesn't arise.

**B. IN RESPECT OF BoE No. 1013978 dated 07.09.2022**

(i) I reject the classification of the subject goods declared under Customs Tariff heading 59039090 of the Customs Tariff Act, 1975, in the Bills of Entry and order to re-classify the subject goods under Customs Tariff heading 59032090.

(ii) I reject the transaction value declared by the importer in the said BoE filed by SEZ unit on their behalf and order to re-determine the same in terms of the CVR, 2007 as detailed in Para 15 and 16 above.

(iii) I hold the subject goods valued at Rs. 38,15,484/- liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962 for the reasons discussed above.

However, considering the request for re-export of goods, I give an option, of redemption fine of Rs.3,00,000/- (Rupees Three lakhs only) in lieu of confiscation, to the importer under Section 125 of the Customs Act, 1962 only for the purpose of re-export.

(iv) I impose penalty of Rs.3,00,000/- (Rupees Three Lakhs only) under Section 114AA of the Customs Act, 1962.

(v) I allow re-export of goods imported vide BoE No. 1013978 dated 07.09.2022 subject to the payment of Redemption fine and penalties confirmed/imposed at (iii) to (v) above.

**In respect of SEZ Unit i.e. M/s. Cargo Care Agency**

(i) I impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) under Section 112(a)(ii) of the Customs Act, 1962.

(ii) I impose penalty of Rs. 1,00,000/- (Rupees One Lakh only) under Section 114AA of the Customs Act, 1962.

22. This order is issued without prejudice to any other action that may be taken against the importer or any other person under the Customs Act, 1962 or any other law for the time being in force.

(M. Ram Mohan  
Rao)

**Commissioner of Customs  
Custom House, Kandla**

F.No.GEN/ADJ/ADC/462/2024-Adjn

DIN- 20240771ML0000999C0B

To,

1. M/s. Cargo Care Agency, Shed No. 366, FA I type, Phase I, Sector IV, KASEZ, Gandhidham, Kutch, Gujarat, PIN -370230
2. M/s HZSH Textile LLP, 215, Milan Shopping Centre, Milan Sub way Road, Santacruz (West), Mumbai-400054

Copy to :-

1. The Deputy Commissioner of Customs, Kandla, Special Economic Zone, Gandhidham.
2. The Deputy/Assistant Commissioner of Customs, TRC/EDI/, Kandla Customs House, Kandla.
3. The Chief Commissioner, Customs, Ahmedabad for review.

4. Guard File.