 <p>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62</p>	
A. File No.	: VIII/48- 18 /Adj/Pr.Commr./MCH/2017-18
B. Order-in- Original No.	: MUN-CUSTM-000-COM- 012 -18-19
C. Passed by	: Shri Sanjay Kumar Agarwal Commissioner of Customs, Custom House, AP & SEZ, Mundra.
D. Date of order / Date of issue	: 02.07.2018/ 02.07.2018
E. SCN No. & Date	: F.No. S/15-09/ENQ/SIIB/CHM/17-18 dated 26.10.2017
F. Noticee(s)/Party/Importer	: 1. that M/s Utkarsh Chemicals, B.G. 32, Pushpa Complex, Hisar, Haryana-125001. 2. Shri Mukesh Kumar Garg, Proprietor of M/s Utkarsh Chemicals, B.G. 32, Pushpa Complex, Hisar, Haryana- 125001.

- यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
- यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129 A (1) के अंतर्गत प्रपत्र सीए- 3 में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है- Any person aggrieved by this Order - in - Original may file an appeal under Section 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:
“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवा कर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्रीमिल कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद 380 004”
“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,
2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge,
Girdharnagar PO, Ahmedabad 380 004.”
- उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within three months from the date of communication of this order.
- उक्त अपील के साथ 1000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो -/5000, रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड, व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्डपीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।
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.
- उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत -/5 रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची 1-1, न्यायालय शुल्क अधिनियम, 1870 के मद सं 6-के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए। 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 paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.
- अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।
Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए। While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.
- इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा। An appeal against this order shall lie before the Tribunal on payment of 7.5 % of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

Sub: SCN F.No. S/15-09/ENQ/SIIB/CHM/17-18 dated 26.10.2017 issued to ~~that~~ M/s Utkarsh Chemicals, B.G. 32, Pushpa Complex, Hisar, Haryana-125001 and others.

Brief facts of the case:

Intelligence was gathered by DRI, Ahmedabad indicated that M/s Utkarsh Chemicals, B.G. 32, Pushpa Complex, Hisar, Haryana-125001 (*hereinafter referred to as "the importer"*) were importing goods namely Polyester Woven Fabrics (classifiable under CTH-5407) by mis-declaring the same as "100% polyester bed cover" classifying the same under CTH- 6304, thereby evading payment of higher Customs duty leviable thereon. Polyester woven fabrics falling under chapter 5407 attract basic Customs duty @ 10 % ad-valorem or Rs 11/- to 87/- per SQM or Rs 115/- to Rs 150/- per Kg whichever is higher, whereas the "polyester bed cover" falling under Chapter 6304 attracts basic Customs duty @ 10% ad-valorem. The importer had filed Bill of entry No. 8562944 dated 15.02.2017 declared description of the goods as 100% Polyester Printed Bed Cover Specification 225x225 cm (24696 Pcs) valued at Rs.36,23,113/-.

2. The officers of SIIB, Mundra examined the goods vide panchnama dated 01.05.2017 it was found that there were 343 packages (72 pieces per package) of rectangular shape of printed fabrics, folded and loosely stitched from two sides. The measurement of the textile material of the goods was 225 cms X 225 cms. Sample was drawn from the said consignment and forwarded to the Textiles Committee, Mumbai vide letter F.No. S/15-09/Enq/SIIB/CHM/17-18 dated 09.05.2017. Textiles Committee, Mumbai submitted the report vide Test Report No. 0153031718-972 dated 06.06.2017 is reproduced herein below:

प्रयोगशालाएँ वस्त्र समिति वस्त्र मंत्रालय, भारत सरकार वस्त्र प्रयोगशाला एवं अनुसंधान केंद्र पी. बालु रोड, प्रभादेवी चौक, प्रभादेवी, मुंबई - 400 025. Tel. : +91-22-6652 7541 / 545 / 550 Fax : +91-22-6652 7554 E-mail : dlab.tc@nic.in / telabmumbai@gmail.com Website : www.textilescommittee.nic.in		LABORATORIES TEXTILES COMMITTEE Ministry of Textiles, Government of India Textile Laboratory & Research Centre P. Balu Road, Prabhadevi Chowk, Prabhadevi, Mumbai-400 025. Tel. : +91-22-6652 7541 / 545 / 550 Fax : +91-22-6652 7554 E-mail : dlab.tc@nic.in / telabmumbai@gmail.com Website : www.textilescommittee.nic.in	
TEST REPORT			
Test Report No: 0153031718-972		Date: 06 Jun 2017	
Name & Address of Customer		OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: Custom House, M.P. & S.E.Z. Mundra (Kutch)-370421	
Sample forwarding letter No. & date:		F.No. S/15-09/Enq/SIIB/CHM/2017-18/1096 dt. 9.5.17 (Test Memo No. 81 dtd.9.5.17)	
Date of receipt of sample		17 May 2017	
Buyers Name & address (Optional):		Utkarsh Chemicals	
Customer Sample No.		BE No.8562944/ 15.02.17	
Sample Description:		100% Polyester Bed Cover Size 225 x 225 CM-m/r.	
Sample Characteristics:		Fabric	
Date of Performance of Tests:		17 May 2017 - 05 Jun 2017	
TEST RESULTS			
Sample Mark		0153031718-972	
Laboratory Sample No.			
1	Identification of fibre (IS 667:1981)	Warp & Weft	Polyester
2	Fibre Blend Composition (%):	Polyester	100
3	Weight of Sample (TC/Lab TM-03)	Weight per Square meter (g)	68.7
4	Whether made of staple spun yarn/Filament yarn /Staple spun Fibre ((In house))	Warp	Filament yarn
		Weft	Cannot be ascertained as the yarn ruptures on untwisting
	Percentage of Staple / Filament Yarn / Staple Fibre	Filament yarn	39.8
		Cannot be ascertained	60.2
5	Whether Texturised/ Non texturised yarn (In house)	Warp	Texturised Yarn
		Weft	Cannot be ascertained as the yarn ruptures on untwisting
	Percentage of Texturised/ Non Texturised yarn	Texturised Yarn	39.8
		Cannot be ascertained	60.2
6	Whether Woven/Knitted/Non woven	Woven	
7	Whether Unbleached/Bleached/Dyed/Printed/Yarns of Different Colour (In house)	Printed	
8	Whether made of High tenacity yarn (In house)	Sample is not made of high tenacity yarn	
SHAILAJA SOOREJ <i>Shailaja</i>			
Signature & Seal of the Officer			
Sample not drawn by Textiles Committee. Results relate only to sample tested. This test report shall not be published in any form without the explicit written consent of the Textiles Committee. Please quote Test Report No. and date for all future correspondence. Sample conditioned and tested at a temp. of 27 ± 2° C (instead of 20/21 ± 2/1° C) and 65 ± 2% RH wherever ISO / ASTM / AATCC test methods adopted. Complaints, if any, are to be received within 45 days of date of issue of the test report.			
Page 1 of 2			
Avail of services of Textiles Committee - Most Reliable and Most Accurate.			

3. In view of the above, 24696 pcs of polyester woven fabrics (size 225 cms X 225 cms) imported vide bill of entry no 8562944 dated 15.02.2017 by mis-declaring the same as "100% Polyester Printed Bed Cover (size 225 cms X 225 cms)" totally valued at Rs.36,23,133.35/- was placed under seizure on 01.05.2017 under the provisions of the Customs Act, 1962 on reasonable belief that the same were liable for confiscation under the Customs Act, 1962.

4. Another set of sample drawn from the Bills of Entry no 8562944 dated 15.02.2017 and was sent to ATIRA (Ahmedabad Textile Industry's Research Association), Ahmedabad, vide letter F.No S/15-09/Enq/CHM/17-18 dated 09.05.2017 to ascertain whether the said fabrics are made up of filament yarn/ staple yarn and the other components of the fabric which the Textiles Committee was unable to ascertain. ATIRA, vide their test report no CTD/68-1/ dated 15.05.2017 confirmed that the samples are made up of 100% polyester. The fabric is woven and printed. It contains all texturized filament yarns in both warp and weft. The filaments of weft are getting broken due to peaching process done on fabric. In the report dated 15.05.2017, ATIRA also confirmed that "As the fabric has been peach finished, the filament yarns are damaged. Hence actual strength of the warp and weft yarns used in making the fabric cannot be determined. Generally, high tenacity yarns are not used in home textiles. These are used in Industrial fabrics". Copy of the report is reproduced herein below:

अहमदाबाद वस्त्र उद्योग अनुसंधान संस्थान
 पी.ओ. आंबावाडी विस्तार, अहमदाबाद - 380015, भारत
 फोन : (079) 2630 7921 - 7922 - 7923 - 5132
 फेक्स : (079) 2630 4677 - 1969 - 5131
 ई-मेल : atiraad1@sancharnet.in वेबसाइट : www.atira.in

AHMEDABAD TEXTILE INDUSTRY'S
 RESEARCH ASSOCIATION
 P.O. : Ambawadi Vistar, Ahmedabad-380015, India
 Phone : (079) 2630 7921- 7922 - 7923 -5132
 Fax : (079) 2630 4677 - 1969 - 5131
 E-mail : atiraad1@sancharnet.in Website : www.atira.in

To
 Deputy Commissioner(SIIB)
 Office of The Principal Commissioner of Customs
 Customs House, Port User Building
 Mundra Port & SPL Economic Zone
 Mundra, Kutch
 Gujarat-370 421

CTD/68-1/
 Date: 15/05/2017

K.A.: Mr. T. Samaya Murali

Sub: The Test Report of the sample submitted in the sealed cover

Ref: F. No. S/15-09/48-87/Enq/CHM/17-18/262 dated 11.05.2017
 Test memo No-66 dt 09/05/17

BE No. & Date 8562944 dt. 15.02.2017

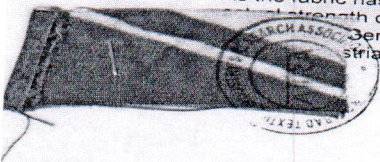
Party Name: M/s. Utkarsh Chemicals, Hisar, Haryana.

Date of receipt of Sample at ATIRA: 12/05/2017

Description of Goods: 100% Polyester Bed Cover (220X225 cms)

Test report

- Unstitched Fabric Size 229x228.
- The fabric contains 100% polyester.
- The fabric contains all texturised filament yarns in warp and weft.
- The filaments of weft are getting broken due to peaching process given to the fabric.
- The fabric is woven and printed.
- As the fabric has been peach finished, the filament yarns are damaged. Hence strength of warp and weft yarns used in making the fabric cannot be determined. Generally, high tenacity yarns are not used in home textiles. These are used in Industrial fabrics.



Regards,

Bipasha Maiti/ D.S. Trivedi
 Chemical Technology Division

Page 1 of 1
 The tested samples will be kept for 45 days from the date of this report, and then discarded
 For technical information of client only. Not for advertisement, promotion, publicity or litigation

5. In view of the above, it appeared that the M/s Utkarsh Chemicals had declared their goods as "100% polyester printed bed cover" falling under chapter 63041990 attracting basic customs duty @ 10% Ad valorem. As per Chapter Note 1 of Chapter 63 "Sub-chapter I applies only to made-up articles, of any textile fabrics". Sub-chapter I covers goods falling under chapter

heading 6301 to 6307 and made-ups are defined under Note 7 of Section XI "Textile and Textile Articles". Plain reading of chapter note 1 of chapter 63 clearly implies that if the goods imported do not fall under the category of "made-ups" they cannot be classified under chapter 63 of the Customs Tariff. In view of the opinion of the Textiles Committee, it appeared that the said goods do not fall under the category of "made-ups". The said goods appeared to be mis-declared by M/s Utkarsh Chemicals as "polyester printed bed cover" and do not fall under chapter 63041990 of the Customs Tariff, as declared by the importer.

6 M/s Utkarsh Chemicals vide bills of entry No. 8562944 dated 15.02.2017 imported the goods as detailed in Annexure "A", have been appropriately categorized and classified as "polyester woven fabric" by the Textiles committee and ATIRA, Ahmedabad. It appeared that "polyester woven fabrics" fall under chapter 54 or 55 of the Customs Tariff depending on the type of yarn used in the weaving of such fabrics. From the details of the test reports of the Textiles committee, in respect of the said consignment, it appeared that the warp component was more than 50% and the weft component was cannot be ascertained by weight. ATIRA, Ahmedabad in their test reports has identified the yarn in the warp and weft as "texturized yarn" and since the fabric has undergone a process of peaching, the same was getting broken/ruptured. Chapter 5407 of the Customs Tariff deals with "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404" and Chapter 5512 to chapter 5516 of the Customs Tariff deals with "Woven fabrics of Synthetic Staple Fibre". In the instant case, the fabric is "made out of filament yarn, which is texturized". Hence the said fabrics are appropriately classifiable under chapter 5407 of the Customs Tariff. Hence the said fabrics are appropriately classifiable under chapter 5407 of the Customs Tariff.

7.1 Fabric made out of high tenacity yarns are mostly used for Industrial purpose and textile fabric in the instant case are mostly meant for the manufacture of textile articles used in household and not in Industries. Accordingly, the goods in the instant case cannot be classified under chapter 540710 of the Customs Tariff. Note 9 mentions "the woven fabrics of chapter 50 to 55 include fabrics consisting of layers of parallel textile yarns superimposed on each other at acute or right angles. These layers are bonded at the intersections of the yarns by an adhesive or by thermal bonding. Further these fabrics are not woven by strips and are not fabrics specified in Note 9 to Section XI, hence, they do not fall under chapter 540720 or 540730 of the Customs Tariff. The fabric is made up of 100% Polyester Filament Yarn but not of any Nylon or other Polyamides, hence, the CTH 540740 is also not applicable in the instant case.

7.2 Chapter 540750 covers "other woven fabrics, containing 85% or more by weight of textured polyester filaments;" In the instant case as evident from the test reports issued by ATIRA, Ahmedabad as discussed in the foregoing para, that the fabric is made entirely of "texturized yarn" and hence it appeared that the same falls under the category of "fabrics with composition of texturized yarn more than 85% of the total weight". Further these fabrics are printed in nature and are not "Terylene and Dacron sarees", "polyester shirting", "polyester saree" but fabrics used for making bed sheet/bed cover/quilt cover etc. It therefore appeared that

the goods imported by M/s Utkarsh Chemicals under Bill of Entry as detailed in Annexure "A", fall under chapter 5407 5490 under the head "printed - other fabrics" attracting duty @ 10% advalorem or Rs 20 per Sq. meter whichever is higher. Since the total value of the goods in the instant case is Rs. 36,23,113/35 (as per Annexure "A"), Basic Customs duty @ 10% would come to Rs. 3,62,311/-, whereas if calculated on Sq. Meter basis, the same would be calculated as follows :

Total Sq. Meter (as per Annexure "A" to the SCN) = 2,50,047 Sq. Meter

Basic Customs duty @ Rs 20 per Sq. Meter = 2,50,047 X 20 = 50,00,940/-

7.3 On comparison of the two basic Customs duty i.e 10% ad valorem and Rs 20 per Sq. Meter it is found that the amount calculated by applying the specific rate of duty @ Rs 20 per Sq. Meter is higher and the same is applicable in the instant case.

8. From the facts discussed in the foregoing paras and material evidences available on record, it transpires that M/s Utkarsh Chemicals had imported polyester woven fabrics from the overseas suppliers, and had resorted to mis-declaration, by declaring the description of the goods, which is other than the correct description of the goods, in the invoices and the documents filed before the Customs authority at the time of imports, with an intent to evade customs duty leviable thereon. The product (goods) declared by the importer before the Customs authority for clearance of the said imported consignments of "polyester woven fabrics" was not the correct description (as is evident from the opinion of the Textiles Committee, Mumbai & ATIRA, Ahmedabad), whereas it was declared as "polyester printed bed cover", before the customs at the time of Import. In the instant case, the importer had furnished wrong declaration, statement & documents to the Customs while filing of the bill of entry as detailed in Annexure "A" thereby suppressing the actual description of the goods imported by them, with an intention to evade Customs duty leviable thereon, by adopting the modus as detailed hereinabove. Thus, the declared description and classification in respect of the said imported consignments of "polyester woven fabrics", mis-declared as "polyester printed bed cover" by M/s Utkarsh Chemicals is liable to be rejected and the same needs to be reclassified under CTH 54075490.

9. From the above, it appeared that M/s Utkarsh Chemicals in connivance with the overseas supplier had willfully mis-stated the description of "polyester woven fabrics" before the Customs authority at the time of import with a view to evading higher applicable customs duty. The correct description and classification of the imported product was also suppressed at the time of filing of bill of entry by presenting an invoice with a different description of the goods. Thus, it appeared that the applicable customs duty liability had not been discharged by the importer by way of willful mis-statement/ mis-declaration and suppression of facts and therefore, the differential customs duty is liable to be recovered by invoking the provisions of the extended period of limitation under Section 28(4) of the Customs Act, 1962.

10. From the facts discussed in the foregoing paras and material evidences available on record, it appeared that the importer has contravened the provisions of Section 46(4) of the

Customs Act, 1962 in as much as they had intentionally mis-declared the description of their imported product as "polyester printed bed cover" whereas the actual product was "polyester woven fabrics", thereby suppressing the correct description and classification of the imported goods, while filing the declaration, seeking clearance at the time of the importation of the impugned goods. This act on the part of importer had rendered the goods, as detailed in Annexure- "A" liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

11. It also appeared that the consignments of 24696 pcs of "polyester woven fabrics" totally admeasuring 250047 Sq. Meter totally valued at Rs 36,23,133/35, imported vide bill of entry as per Annexure "A" in the name of M/s Utkarsh Chemicals and subsequently placed under seizure vide seizure memo dated 01.05.2017, was imported by mis- declaring the same as "polyester printed bed cover" and classifying the same under CTH 63041990 as against the actual description of the goods i.e "polyester woven fabrics" falling under CTH 54075490. The total customs duty leviable on the said goods amounting to Rs. 66,56,692/- needs to be demanded and recovered from the importer under Section 28 (4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. However, the importer has paid an amount of Rs.10,66,681/- at the time of assessment of goods in respect of the said Bill of Entry which is required to be appropriated towards duty demanded. Therefore, the Customs duty not paid/short paid amounting to Rs. 66,56,692/- as indicated in the Annexure "A" to the SCN, payable on the seized goods is liable to be recovered from M/s Utkarsh Chemicals under Section 28 (4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. The said acts of omission and commission on the part of the M/s Utkarsh Chemicals have rendered themselves liable for penal action under the provisions of Section 114A/112(a) of the Customs Act, 1962. The said seized goods as detailed in Annexure-A also appeared liable for confiscation under Section 111(m) of the Customs Act, 1962.

12. No one turned up in response of the Summons dated 21.06.2017, 14.07.2017 & 03.08.2017 issued to M/s Utkarsh Chemicals. As M/s Utkarsh Chemicals is a Proprietorship Firm & Shri Mukesh Garg, is the Proprietor of M/s Utkarsh Chemicals. Shri Mukesh Garg was looking after import/export of the firm and also interacting with the overseas suppliers for import of these goods. Being concerned with imports and their documentation, it appeared that he was responsible for the said mis-declaration of imported goods viz. "polyester woven fabrics" as "polyester printed bed cover", in order to evade higher Customs duty leviable on the imports of "polyester woven fabrics". The aforesaid acts of willful mis-statement and mis-declaration of the description of the goods by M/s Utkarsh Chemicals, with a view to evade higher Customs duty leviable thereon, as detailed in Annexure A, have made the subject goods liable for confiscation under Section 111 (m) of the Customs Act, 1962. For the above mentioned acts of omission and commission on the part of Shri Mukesh Garg, has rendered himself liable for penal action under the provisions of Section 112 (a) of the Customs Act, 1962. Shri Mukesh Garg, had knowingly and intentionally made, signed and fabricated documents as discussed in detail hereinabove, which were presented to the Customs authorities which they knew were false and incorrect in

respect of the description of the imported goods. Hence, the said acts on the part of them have rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962. Further, penalty is also proposed on M/s Utkarsh Chemicals under the provisions of Section 114A / 112(a) of the Customs Act, 1962 for importing such mis-declared goods.

13. Therefore, M/s Utkarsh Chemicals vide Show Cause Notice F. No: S/15-09/Enq/SIIB/CHM/17-18 dated 26.10.2017 was called upon to show cause to the Principal Commissioner of Customs, Mundra SEZ Port, Mundra, as to why:-

- (i) The classification of the imported goods i.e “polyester woven fabrics” imported by mis-declaring the same as “polyester printed quilt cover” under CTH 63041990 should not be rejected and the same should not be re-classified correctly under CTH 5407 54 90 of the Customs Tariff Act, 1975;
- (ii) The goods viz. 24696 pcs of polyester woven fabrics admeasuring 250047 Sq. Meter imported vide bill of entry no 8562944 dated 15.02.2017 by mis-declaring the same as “100% Polyester Printed Bed Cover (size 225 cms X 225 cms)” totally valued at Rs.36,23,133/35 which were seized vide Seizure Memo dated 01.05.2017, should not be confiscated under the provisions of Section 111 (m) of the Customs Act, 1962;
- (iii) Total Customs duty leviable on the said goods amounting to Rs. 66,56,692/- (as detailed in Annexure A) leviable on the seized imported goods, should not be demanded and recovered under Section 28 (4) of the Customs Act, 1962 & as the importer has already paid an amount of Rs.10,66,681/-, the same should not be appropriated towards duty demanded.
- (iv) Interest should not be charged and recovered from them under Section 28AA of the Customs Act, 1962 on the duty demanded at (iii) above;
- (v) Penalty should not be imposed upon M/s Utkarsh Chemicals, under the provisions of Section 114A /114AA/112(a) of the Customs Act, 1962;

14. Also Show cause Notice was issued to Shri Mukesh Garg, Proprietor of M/s Utkarsh Chemicals as to why penalty should not be imposed upon her under the provisions of Section 114A /114AA/112(a) of the Customs Act, 1962;

Defence Submissions and Personal Hearing:-

15. Shri Prem Ranjan Kumar, advocate of the said importer vide their letter dated 20.11.2017 requested to grant permission to re-export of the goods imported, to the supplier in view of liberty granted by the Hon’ble High Court. They also requested for refund of duty already paid. Subsequently, personal hearing was fixed on 27.12.2017 and re-fixed on 12.01.2018 wherein Shri Prem Ranjan Kumar, advocate of the said importer appeared and stated that they have filed SCA No. 427 of 2018 in the matter before the High Court, Gujarat and requested to keep the matter in abeyance in view of their SCA and reiterated to grant permission of re-export of goods and refund of duty already paid. Further vide letter dated 03.05.2018 Advocate of the noticee Shri Prem Ranjan Kumar informed that now the original supplier has refused to get the goods back so they have withdrawn the writ petition filed before the Hon’ble

High Court on 01.05.2018 with liberty to avail the compliance in terms of order dated 10.08.2017 of the competent authority permitting provisional clearance under Bond and Bank Guarantee and requested for format of Bank Guarantee and the bond for provisional release which were forwarded to them vide letter F.No. VIII/48-1028/Misc/Gr.III/2017-18 dated 16.05.2018. The withdrawal request has been granted by the Hon,ble High Court in the Civil Application No. 427 of 2018 through oral order dated 01.05.2018. However, the noticee has not submitted the required Bond and Bank Guarantee till passing of this order. Accordingly, personal hearing was fixed on 13.06.2018 and again re-fixed on 29.06.2018 but nobody appeared. Hence, further adjudication process in the matter is being initiated.

Discussion and Findings:-

16. I have gone through the Show Cause Notice, relied upon documents, import documents, submission made in written as well as submission made during personal hearing. I have also gone through the test report of the Textile Committee, Mumbai and the test report of ATIRA, Ahmedabad.

17. I find that the following main issues are involved in the subject Show Cause Notice, which is required to be decided:-

- (i) Correct classification of the imported goods imported by M/s Utkarsh Chemicals, Hisar, Haryana by declaring the same as "Polyester Bed Cover" under CTH 63041990 of the schedule to the Customs Tariff Act, 1975;
- (ii) Whether the goods viz. 24696 pcs admeasuring 250047 Sq. Meter, imported vide bill of entry as per Annexure "A" to the SCN, valued at Rs.36,23,133/- and seized vide seizure memo dated 01.05.2017, are liable for confiscation under the provisions of Section 111 (m) of the Customs Act, 1962;
- (iii) Whether, the total customs duty amounting to Rs.66,56,692/-(as detailed in Annexure A to the SCN) leviable on the seized imported goods, can be demanded and recovered under Section 28 (4) of the Customs Act, 1962. As the importer has already paid an amount of Rs.10,66,681/- the same can be appropriated towards duty demanded.
- (iv) Whether interest can be recovered under Section 28AA of the Customs Act, 1962;
- (v) Whether penalty can be imposed under the provisions of Section 114A/112(a) of the Customs Act,1962;
- (vi) Whether penalty can be imposed upon Shri Mukesh Kumar Garg, Proprietor of M/s Utkarsh Chemicals, Hisar, Haryana under the provisions of Section 114AA/112(a) of the Customs Act, 1962;

18. After having framed the main issues to be decided, now I proceed to deal with each of the issues individually, herein below:

19. The foremost issue before me to decide in this case is as to whether the goods imported by M/s Utkarsh Chemicals, Hisar, Haryana by declaring the same as "Polyester Bed Cover" are

classifiable under CTH 63041990 or under CTH 54075490 of CTA, 1975 as "Polyester Woven Fabrics" as alleged in the show cause notice.

20.1. I find that in order to verify the identity and characteristics of the imported goods representative sample were sent to Textile Committee, Mumbai for their opinion/ testing as to whether the samples are covered under the category of "made-ups" as defined under HSN (Harmonized System of Nomenclature) and also to ascertain the composition, correct description, GSM etc in respect of the said item and the textile committee vide their test results opined that "Sample cannot be classified as "made-ups" (quilt cover/ bed cover) but appropriately as "Polyester woven fabric".

20.2 The Textile Committee has been created by an Act of Parliament i.e. Textile Committee Act 1963 (41 of 1963). The Textile Committee, as an organization, started functioning from 22nd August, 1964. By virtue of Section 3 of the said Act, the Textile Committee is a statutory body with perpetual succession. The Textile Committee is under the administrative control of the Ministry of Textiles, Government of India. Acting as a facilitator, the Committee acts as 'a one stop service provider' to the textile trade, industry and other stakeholders', including state governments. It is the only organization in the country to provide HS classification of textile items, star rating of ginning and pressing factories and promoting hand-woven products through Handloom mark scheme. As per the web-site of textile committee, (<http://textilescommittee.nic.in/services/classification-textiles>) in matter relating to classification of textile they are designated authority to advice Customs. The exact text taken from the said url is reproduced below:

"All legally traded commodities in the world trade are classified under universally accepted" Harmonized commodity Description and coding System" popularly known as HS. The system of classification assigns a unique code to each product depending upon its composition of raw materials, characteristics and end-use. Such codes are universally applied for the purpose of customs duties, quotas and other schemes such as duty drawback etc.,

The Textile Committee is the designated authority to advice the Indian Custom authorities, exporters and importers on the matter related to classification of textile and clothing articles in India"

20.3 I find that in order to verify the identity and characteristics of the imported goods representative sample were drawn from the consignments of M/s Utkarsh Chemicals, Hisar, Haryana by the investigating officers during investigation and the same were sent to ATIRA (Ahmedabad Textile Industry's Research Association), Ahmedabad to ascertain whether the said fabrics are made up of filament yarn/ staple yarn and to ascertain the other components of the fabric which the Textiles Committee was unable to ascertain. I find that ATIRA, vide their test report no CTD/68-1 dated 15.05.2017 for sample drawn from goods covered under bill of entry no 8562944 dated 15.02.2017 confirmed that the samples are made up of 100% polyester. The fabric is woven and printed. It contains all texturized filament yarns in both warp and weft. The filaments of weft are getting broken due to peaching process done on fabric. In the report dated 15.05.2017, ATIRA also confirmed that "As the fabric has been peach finished, the filament yarns are damaged. Hence actual strength of the warp and weft yarn

used in making the fabric cannot be determined. Generally high tenacity yarns are not used in home textiles. These are used in Industrial fabrics".

20.4 I find that the reports of the Textile Committee, Mumbai and ATIRA, Ahemdabad are in line with each other and establish identity of the imported goods as fabrics instead of made-ups.

20.5 I find that M/s Utkarsh Chemicals, Hisar, Haryana, had declared their goods as "100% Polyester Bed Cover" covered under CTH 63041990 attracting basic customs duty @ 10% Ad valorem. As per Chapter Note 1 of Chapter 63 "Sub-chapter I applies only to made-up articles, of any textile fabrics". Sub-chapter I covers goods falling under CTH 6301 to 6307 and "made-ups" are defined under Note 7 of Section XI "Textile and Textile Articles". The Section Note 7 of Section XI of "Textile and Textile Articles" reads:

- 7- For the purpose of this Section, the expression "**made up**" means:-
- (a) Cut otherwise than into squares or rectangles;
 - (b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, table cloths, scarf squares, blankets);
 - (c) Cut to size and with at least one heat-sealed edge with a visibly tapered or compressed border and the other edges treated as described in any other subparagraph of this Note, but excluding fabrics the cut edges of which have been prevented from unravelling by hot cutting or by other simple means;
 - (d) Hemmed or with rolled edges, or with a knotted fringe at any of the edges, but excluding fabrics the cut edges of which have been prevented from unravelling by whipping or by other simple means;
 - (e) Cut to size and having undergone a process of drawn thread work;
 - (f) Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded);
 - (g) Knotted or crocheted to shape, whether presented as separate items or in the form of a number of items in the length.

As per Section Note 7(b), 'made-ups' means the articles "produced in finished stage" and excludes fabrics, cut edges of which have been prevented from unravelling by hot cutting or by other simple means and as per Section Note 7(c) fabrics, cut edges of which have been prevented from unravelling by hot cutting or by other simple means are excluded from the definition of made-ups. As per Section note 7(d) the made-ups were defined as articles with hemmed or with rolled edges, or with a knotted fringe at any of the edges, but excluding fabrics, the cut edges of which have been prevented from unravelling by whipping or other simple means. However, as per the identity of the goods established above the goods imported are single piece fabrics which had uneven, temporary stitches on two sides, easily removable and rough in nature. The edges found on these fabrics are rough which have not been hemmed/ rolled / knotted at any side of the edges and the constituent material/ yarn was clearly visible and the constituent material / yarn can be easily unravelled by simple means like pulling etc. Thus, I find that the goods cannot be considered as made up and appropriately classify as fabrics.

20.6. Further, I find that in the case of Kapri International Pvt. Ltd. Vs. Collector of Central Excise Meerut reported at 1986(23)ELT 538(Tribunal), the Hon'ble tribunal has held that bed-sheets, bed covers, table cloths etc. are articles of daily use in practically every household. No

expertise is required to say that bed-sheets and bed-covers etc. are different from fabrics in running length. The fabric in running length cannot be used as bed-sheets, bed-covers or table cloths. Nor are the fabrics in length known as bed-sheets, bed covers or table cloth. The cloth must be cut to required size and then hemmed and stitched. Only then, it assumes the shape of the bed-sheets, bed-covers, table cloths etc.

20.7. I find that CBEC Circular No. 557/53/2000-CX dated 03.11.2000 clarified that unhemmed/ unstitched Dhotis/ Sarees which are basically woven as fabrics in running lengths with same pattern of weaving and which do not contain extra threads contributing greater thickness to the cloth with the outermost line running at or near the edge at regular intervals, so as to provide a substitute for hem (i.e. to protect unravelling of yarn or to prevent fraying of the edges), will continue to be classifiable as fabrics under Chapter 52/ 54/ 55. Rectangular (including square) articles simply cut out from such long running length fabrics without other working and not incorporating fringes formed by cutting dividing threads, even if sold folded or put up in packing will not be regarded as “product in the finished state” and would merit classification as fabrics as per this practice followed hitherto.

20.7.1 Further, in the above said circular, a clarification given by Directorate General of Foreign Trade has been referred that as per Policy Circular No. 15 (RE-99)/ 1999-2000, dated 2-7-1999 unhemmed and/or unstitched odhanies are classifiable as fabric whereas hemmed and/ or stitched odhanies are classifiable as made-ups under DEPB scheme. Thus the circular clarifies that articles which are Rectangular (including square) articles simply cut out from such long running length fabrics without other working and not incorporating fringes formed by cutting dividing threads, even if sold folded or put up in packing will not be regarded as “product in the finished state” and would merit classification as fabrics. In the instant case also the goods imported are single piece fabrics which had uneven, temporary stitches on two sides, easily removable and rough in nature; Also, the edges found on these fabrics are rough which have not been hemmed/ rolled / knotted at any side of the edges cannot be regarded as product in the finished state and so merit classification as fabrics.

20.8. Thus if a fabric has undergone processes of cutting, hemming and stitching of running cloth bringing into existence a new distinct commercial product, then only the new product is classifiable as made-up, otherwise the same merit classification as fabric only. Therefore, in light of the above discussions and various test reports, I find that the goods imported by M/s Utkarsh Chemicals, Hisar, Haryana, declaring them as “Polyester Bed Cover are not hemmed, stitched and are not in ready to use condition. These are just rectangular (including square) articles simply cut out from such long running length fabrics without other working and also are not incorporating fringes formed by cutting dividing threads and cannot be regarded as “product in the finished state” and cannot be sold in the market as bed cover/quilt cover and thus I find that they would merit classification as “Polyester woven fabrics” only.

21. Now, as the identity of the goods is decided, I proceed further to decide the correct

classification of the imported goods i.e. "polyester woven fabrics". Polyester woven fabrics are covered under Chapter 54 or 55 of the Customs Tariff Act, 1975 depending on the type of yarn used in the weaving of such fabrics. The CTH 5407 of the CTA, 1975 deals with "woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404" and CTH 5512 to CTH 5516 deals with "woven fabrics of synthetic staple fibre". In the instant case, the fabric is "made out of filament yarn, which is texturized". Hence the said fabrics are appropriately classifiable under CTH 5407.

21.1 Further, I find that fabric made out of high tenacity yarns are mostly used for industrial purpose and textile fabric in the instant case are mostly meant for the manufacture of textile articles used in household and not in industries. Accordingly, the goods in the instant case cannot be classified under sub-heading 540710. Further these fabrics are not woven by strips and are not fabrics specified in Note 9 to Section XI, they do not merit classification under sub-heading 540720 or 540730. Since the constituent material used in the manufacture of these fabrics is polyester filament/ polyester staple fibre and not filament of nylon or other polyamides, these goods cannot be classified under sub-heading 540741 to 540744. The sub-heading 540751 to 540754 covers "other woven fabrics, containing 85% or more by weight of textured polyester filaments". As per above discussed test reports issued by ATIRA, Ahmedabad, the fabric is made entirely of "texturized yarn" and hence it appeared that the same is covered under the category of "fabrics with composition of texturized yarn more than 85% of the total weight". Further these fabrics are printed in nature and are not "terylene and dacron sarees", "polyester shirting", "polyester saree" but are fabrics used for making bed sheet/ bed cover/ quilt cover etc. Thus I hold that the goods imported by M/s Utkarsh Chemicals, Hisar, Haryana, under the subject Bills of Entry are appropriately classifiable under tariff item 54075490 as "printed - other fabrics" which attract BCD @ 10% ad valorem or Rs 20/- per sq. Meter, whichever is higher. Thus, as discussed above, the classification of the goods imported by M/s Utkarsh Chemicals, Hisar, Haryana, by mis-declaring the same as "Polyester Bed Cover" under CTH 63041990 is liable for rejection and I hold that it should be re-classified as "polyester woven fabrics" under tariff item 54075490 under the first schedule to the Customs Tariff Act, 1975.

22. After deciding appropriate classification, I consider the next issue i.e. as to whether the imported 24696 pcs, totally admeasuring 250047 Sq. meters, covered under the Bill of Entry No. 8562944 dated 15.02.2017 and seized vide Seizure Memo dated 01.05.2017, are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962. I find from the test reports that the impugned goods were "polyester woven fabrics" but in connivance with the overseas supplier, M/s Utkarsh Chemiclas, Hisar, Haryana had willfully mis-stated description of the imported goods as "Polyester Bed Cover" and accordingly sought to mis-classify the same under tariff item 63041990 as against the actual classification i.e. under tariff item 54075490 with intent to evade higher applicable customs duty. M/s Utkarsh Chemiclas, Hishar, Haryana has thus violated the provisions of Section 46 (4) of the Customs Act, 1962. Accordingly, for the said act of wilful mis-declaration of description of the said imported goods, the same are liable to confiscation under Section 111(m) of the Customs Act, 1962.

23. I find that on appropriate classification total differential duty in respect of impugned consignments comes to Rs. 55,90,011/- as detailed below:

(i) The total value of the goods is Rs. 36,23,113/-.

BCD @10% *ad valorem* = Rs. 3,62,311/-.

(ii) Total Sq. Meter = 2,50,047Sq. Meter

BCD @ Rs 20 per Sq. Meter = 2,50,047 X 20 = Rs. 50,00,940/-

(iii) On comparison of the rates of BCD i.e 10 % *ad valorem* and Rs 20 per Sq. Meter, it is found that the amount calculated by applying the specific rate of duty @ Rs 20 per Sq. Meter is higher and the same is applicable in the instant case. The Total Customs Duty payable as per re classification works out to be Rs. 66,56,692/-. M/s Utkarsh Chemicals, Hisar, Haryana, has already paid duty of Rs.10,66,681/-. Thus the differential duty works out to be Rs.55,90,011/-.

23.1. In the show cause notice it has been proposed to demand and recover the said amount of differential duty under Section 28(4) of the Customs Act, 1962. The Section 28(4) of the Customs Act, 1962 reads:

“Section 28(4) Where any duty has not been levied or has been short-levied or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.”

23.2. The term “relevant date” For the purpose of Section 28, has been defined in Explanation 1, as under:

“Explanation 1.- For the purposes of this Section, "relevant date" means,-

(a) in a case where duty is not levied, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

(b) in a case where duty is provisionally assessed under Section 18, the date of adjustment of duty after the final assessment thereof;

(c) in a case where duty or interest has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty or interest.”

23.3. I find that the provision of Section 28(4) of the Customs Act, 1962 provides for demand of duty not levied or short levied by reason of collusion or wilful mis-statement or suppression of facts. As M/s Utkarsh Chemicals, Hishar, Haryana, wilfully mis-declared the description of impugned imported goods by suppressing material facts, the said condition of Section 28 *ibid* is fulfilled in the instant case. Further, I find that the said provision provides that duty can be demanded by proper officer within five years from the relevant date. Thus, I find that Section 28(4) *ibid* provides mechanism to demand duty during the period starting from the relevant date and within five years from such relevant date. The relevant date has been defined in above mentioned *Explanation-1* of Section 28. I find that in this case subject Bills of Entry were filed

for clearance of the impugned goods but order for clearance of the goods under Section 47 *ibid* could not be granted as the goods were seized vide seizure memo dated 01.05.2017. Therefore, after importation, the impugned goods are still lying in customs area and out of charge under Section 47 *ibid* is yet to be granted. In view of clause (a) of the said *Explanation-1*, I find that the relevant date in this case will start from the date on which proper officer of Customs will make an order for the clearance of impugned goods. As till date no order for clearance of impugned goods has been granted, I find it premature to demand the duty under Section 28(4) *ibid*, as this Section would kick in only after clearance of goods by customs after importation.

23.4. I find that total amount of differential duty involved in this case comes to Rs. 55,90,011/-. As discussed above, the impugned goods are liable to confiscation under Section 111(m) of the Customs Act, 1962. Since the impugned imported goods are not prohibited goods, an option of redeeming the goods is required to be granted to M/s Utkarsh Chemicals, Hishar, Haryana, against the order of confiscation by paying redemption fine as provided under Section 125 of the Customs Act, 1962. The amount of redemption fine will be decided here-in-below. I find that as provided under Section 125(2) *ibid*, M/s Utkarsh Chemicals, Hishar, Haryana, will have to pay the above mentioned amount of differential duty along with the redemption fine while exercising option to redeem the confiscated goods for home consumption. Thus, in view of these provisions, I hold that the differential duty can be recovered along with redemption fine if M/s Utkarsh Chemicals, Hishar, Haryana, chooses to exercise the option to redeem the confiscated goods.

24 It has also been proposed to demand and recover interest on the said differential duty of Rs. 55,90,011/- under Section 28AA of the Customs Act, 1962. The Section 28AA *ibid* provides that when a person is liable to pay duty in accordance with the provisions of Section 28 *ibid*, in addition to such duty, such person is also liable to pay interest at applicable rate as well. Thus, the said Section provides for payment of interest automatically along with the duty. I have already held that differential Customs Duty of Rs. 55,90,011/- is not recoverable under Section 28(4) *ibid* but can be demanded and recovered only if M/s Utkarsh Chemicals, Hisar, Haryana, opts to redeem the goods after confiscation. Therefore, I hold that the interest on differential duty cannot be demanded and recovered under the provisions of Section 28AA of the Customs Act, 1962 at this stage.

25. Further, I consider the proposal of imposition of penalty upon M/s Utkarsh Chemicals, Hisar, Haryana, under the provisions of Section 114A and 112(a) of the Customs Act, 1962. The penalty under Section 114A can be imposed only if duty is demanded under Section 28 *ibid* by alleging willful misstatement or suppression of facts etc. As discussed in foregoing para, M/s Utkarsh Chemicals, Hisar, Haryana, has willfully misstated the description of goods and also mis-classified the goods with intent to evade customs duty, however, since the goods have been seized in customs area before giving out of charge, I have hold that the differential duty cannot be demanded and recovered under Section 28(4) of customs Act, 1962. As the provision of imposition of penalty under Section 114A is directly linked to Section 28(4) *ibid*, I find that

penalty cannot be imposed under upon M/s Utkarsh Chemicals, Hishar, Haryana, under Section 114A ibid in this case. Further, in respect of imposition of penalty under Section 112(a) of the Customs Act, 1962, I find that once the goods are held liable for confiscation under Section 111(m) of the customs act, 1962, the person who in relation to such goods has done an act which has rendered goods liable for confiscation is liable for penalty under Section 112(a) of the Customs Act, 1962. In this case the goods have been held liable for confiscation for the act of mis-declaration of description of the subject goods by M/s Utkarsh Chemicals, Hishar, Haryana, therefore, M/s Utkarsh Chemicals, Hisar, Haryana is liable to penalty under Section 112(a) ibid. However, since M/s Utkarsh Chemicals, Hisar, Haryana being a proprietary concern, I refrain from separate penalty on Shri Mukesh Kumar Garg, Proprietor of M/s Utkarsh Chemicals, Hisar, Haryana under Section 112 (a) of the Customs Act, 1962.

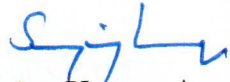
25.1 There is also a proposal for penalty under Section 114AA on Shri Mukesh Kumar Garg, Proprietor of M/s Utkarsh Chemicals, Hisar, Haryana in addition to Section 112(a) of the Customs Act, 1962. From the facts of the case, it is evident that M/s Utkarsh Chemicals is a Proprietorship firm & Shri Mukesh Garg, Proprietor of M/s Utkarsh Chemicals was looking after import/export of the firm, documentation and also interacting with the overseas suppliers for import of these goods, he knowingly/intentionally mis declared the description of the goods to mis-classify the same in order to attract lower rate of duty. Shri Mukesh Garg, had knowingly and intentionally made, signed and fabricated documents, which were presented to the Customs authorities which he knew were false and incorrect in respect of the description of the imported goods in order to attract lower rate of duty. Therefore, I hold that Shri Mukesh Kumar Garg is liable to penalty in terms of the provisions of Section 114AA of the Customs Act, 1962.

26. In view of the forgoing discussions and findings, I pass the following order:-

ORDER

- (i) I hold description of the goods imported under the Bill of Entry No. 8562944 dated 15.02.2017 as “polyester woven fabrics”, correctly classifiable under tariff item 54075490 of the first schedule to the Customs Tariff Act, 1975. Accordingly, I reject the classification of the imported goods declared under tariff item 63041990 under self-assessed bill of entry and order to classify the goods under tariff item 54075490 to re-assess duty accordingly.
- (ii) I order to confiscate the goods viz. 24696 pcs of “polyester woven fabrics” admeasuring 250047 Sq. Meter, imported vide Bill of Entry Nos. 8562944 dated 15.02.2017, valued at Rs.36,23,133/-, under the provision of Section 111(m) of the Customs Act, 1962. I hereby give an option to the noticee to redeem the impugned confiscated goods on payment of redemption fine of **Rs. 7,00,000/-(Rs. Seven Lakhs only)** in lieu of confiscation, along with payment of duty as applicable in terms of Section 125 of the Customs Act, 1962.

- (iii) I hold that demand of Customs Duty of Rs.55,90,011/-, from M/s Utkarsh Chemicals, Hishar, Haryana under Section 28(4) of the Customs Act, 1962 prior to clearance of goods is premature and thus do not demand the same under that provision. Accordingly, the proposal to demand of interest on such duty under Section 28AA of the Customs Act is also premature and thus do not demand the same.
- (iv) I impose a penalty of **Rs.55,90,011/- (Rupees Fifty-Five Lakhs Ninty Thousand Eleven only)** on M/s Utkarsh Chemicals, Hisar, Haryana under Section 112(a) of the Customs Act, 1962.
- (v) I impose a penalty of **Rs.5,00,000/-(Rs. Five Lakhs only)** on Shri Mukesh Kumar Garg, Proprietor of M/s Utkarsh Chemicals, Hisar, Haryana under Section 114AA of the Customs Act, 1962.


(Sanjay Kumar Agarwal)
Commissioner of Customs
Custom House Mundra

By RPAD/Speed Post.

F.NO.VIII/48-18/Adj/Commr/MCH/2017-18

Dated: 02.07.2018

To

- (i) M/s Utkarsh Chemicals,
B.G. 32, Pushpa Complex,
Hisar, Haryana-125001
- (ii) Shri Mukesh Kumar Garg,
B.G. 32, Pushpa Complex,
Hisar, Haryana-125001

Copy Submitted to:

- (1) The Chief Commissioner of Customs, CCO, Ahmedabad,
- (2) The Additional Director General, DRI, Ahmedabad Zonal Unit, Ahmedabad.
- (3) The Deputy Commissioner, Import Assessment, Group-III, Customs House, Mundra
- (4) The Deputy Commissioner (RRA), Customs House Mundra.
- (5) The Deputy/Assistant Commissioner (Recovery), Customs House Mundra.
- (6) The Deputy/Assistant Commissioner (EDI), Customs House Mundra.
- (7) The Deputy/Assistant Commissioner (SIIB), Customs House Mundra.
- (7) Guard File.