	<p align="center"><b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT &amp; SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62</b></p>	
	A. File No.	: F. No. VIII/48-41/Adj./ADC/MCH/2017-18
B. Order-in- Original No.	: MCH/ADC/AK/104/2019-20	
C. Passed by	: Shri Ajay Kumar Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra.	
D. Date of order /Date of issue	: 01.02.2020/ 01.02.2020	
E. Show Cause Notice No. & Date	: VIII/48-87/Misc/MCH/2017-18 Dated 04.01.2018 (De-novo proceedings in view of Final Order No. A/11126/2019 dated 16.07.2019 passed by CESTAT, Ahmedabad)	
F. Noticee(s)/Party/ Importer	: M/s Mahalaxmi Industries, A-35, RIICO Industrial Area, Phase-1, Hanumangarh Jn.-335512 Rajasthan.	

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

**“ सीमा शुल्क आयुक्त (अपील), कांडला  
7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़, अहमदाबाद 380 009”  
“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA  
Having his office at 7<sup>th</sup> Floor, Mridul Tower, Behind Times of India,  
Ashram Road, Ahmedabad-380 009.”**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं०-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।  
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

**Sub.:- Show Cause Notice F. No. VIII/48-87/Misc/MCH/2017-18 Dated 04.01.2018 issued to M/s Mahalaxmi Industries, A-35, RIICO Industrial Area, Phase-1, Hanumangarh Jn.-335512, Rajasthan.**

The present case is being taken up by me for adjudication in pursuance to the Hon'ble CESTAT, Ahmedabad Final Order No. A/11126/2019 dated 16.07.2019 passed against Order-In-Appeal No. MUN-CUSTOM-000-APP-250-18-19 Dated 17.10.2018 passed by the Commissioner of Customs (Appeals), Ahmedabad. The Hon'ble Tribunal has remanded the case back for denovo consideration to the adjudicating authority for deciding fresh considering the observation made by this Tribunal in its Order dated 11.07.2019 in the case of Shree Tushar Tilak Raj & Ors vs CCE & ST Vadodara-I **and to decide the matter after following principles of natural justice and adhering to the legal provisions.**

### BRIEF FACTS OF THE CASE

M/s. Mahalaxmi Industries, A-35, RIICO, Industrial Area, Phase-1, Hanumangarh Jn., 335512 (Raj) (IEC 1309003394)(*hereinafter referred to as "the importer"/"Noticee" for the sake of brevity*), had filed Bill of Entry No. 9194035 dated 06.04.2017 for clearance of goods viz "100% Polyester Unstitched Bed Cover" classifiable under CTH 63041990. Polyester woven fabrics falling under chapter 54075490 attract basic Customs duty @ 10 % advalorem or Rs 20/- per Sqm whichever is higher. Whereas, the "polyester bed cover" falling under Chapter 6304 attracts basic Customs duty @ 10% advalorem. The details of B/E is shown as under:

Sr. No.	B/E No. and date	Description of goods	Assessable Value	No. of Pieces
1	9194035/ 06.04.2017	100% Polyester Unstitched Bed Cover	2960248	18840

1.1 During 1<sup>st</sup> Check Examination of goods on 06.04.2017, it was found that goods are (1) Unstitched fabric in the size of bed cover & (2) bed cover with raw stitching which can be easily removed and can easily be converted into fabric. Therefore, the Assessing Officers ordered for drawl of samples. The Representative samples were drawn from the said consignment vide test memo No. 176 dated 28.04.2017 and forwarded to the Textiles Committee, Mumbai and another sample drawn vide Test memo No 177 dated 28.04.2017 was forwarded to Ahmedabad Textile Industry's Research Association (ATIRA).

1.2 The Ahmedabad Textile Industry's Research Association (ATIRA) vide its letter dated 12.05.2017 submitted its test report in respect to sample drawn from goods imported vide B/E No. 9194035/ 06.04.2017 and has opined as under:-



अहमदाबाद वस्त्र उद्योग अनुसंधान संस्थान

प.जो. आंबावाडी विस्तार, अहमदाबाद - 380015. भारत

फोन : (079) 2630 7921 - 7922 - 7923 - 5132

फैक्स : (079) 2630 4677 - 1969 - 5131

ई-मेल : atiraad1@sancharnet.in वेबसाईट : www.atira.in



AHMEDABAD TEXTILE INDUSTRY'S  
RESEARCH ASSOCIATION

P.O. : Ambawadi Vistar, Ahmedabad-380015. India

Phone : (079) 2630 7921- 7922 - 7923 -5132

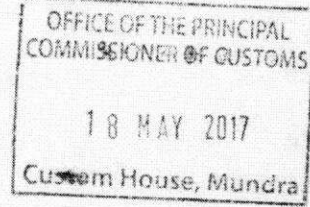
Fax : (079) 2630 4677 - 1969 - 5131

E-mail : atiraad1@sancharnet.in Website : www.atira.in

CTD/67/

Date: 12/05/2017

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



K.A.: Mr. M. Loganathan

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

Ref: F. No. VIII/48-87/GrIII/Test/Misc/17-18/946 dated 01.05.2017

BE No. & Date 9194035 dt. 06.04.2017

Party Name: M/s. Shri Mahalaxmi Industries ,Rajastan.

Date of receipt of Sample at ATIRA: 11/05/2017

Description of Goods: 100% Polyester Bed Cover (Bulk Packing )

**Test report**

- Loosely Stitched Fabric.
- 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.
- GSM of Fabric is 90
- As the fabric has been peach finished, the filament yarns are damaged. Hence actual 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.



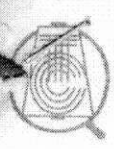

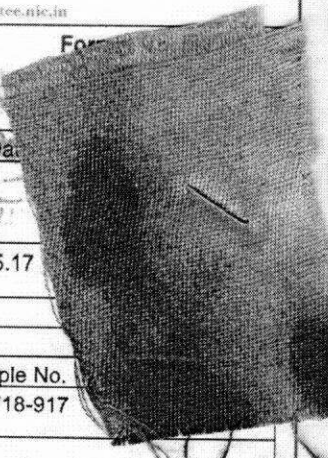
Regards,

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

1.3 The Textile Committee, Mumbai vide its Test Report No. 0153031718-917 dated 19.05.2017 had reported as under:

		प्रयोगशालाएँ <b>वस्त्र समिति</b> 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 / telabnumbal@gmail.com Website: www.textilescommittee.nic.in		LABORATORIES <b>TEXTILES COMMITTEE</b> 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 / telabnumbal@gmail.com Website: www.textilescommittee.nic.in			
<b>TEST REPORT</b>							
Test Report No: 0153031718-917							
Name & Address of Customer		Office of the Principal Commissioner of Customs House, Mp & Sez Mundra		Date			
		Custom House, Mundra					
Sample forwarding letter No. & date:		F.No. VIII/48-87/Gr.III/Test/Misc/17-18/945 dt. 1.5.17 (Test Memo No. 176 Dt. 28.4.17)					
Date of receipt of sample		15 May 2017					
Buyers Name & address (Optional):		Mahalaxmi Industries					
Customer Sample No.		BE No.9194035 dt.6.4.17		Lab. Sample No.			
Sample Description:		Polyester Bed Cover (Bulk Packing) size 230 x 450 CM-m/r.		0153031718-917			
Sample Characteristics:		Fabric					
Date of Performance of Tests:		15 May 2017 - 29 May 2017					
<b>TEST RESULTS</b>							
Sample Mark		--					
Laboratory Sample No.		0153031718-917					
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)		86.4			
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		49.0			
		Cannot be ascertained		51.0			
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		49.0			
		Cannot be ascertained		51.0			
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 Quality Assurance Officer 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 method is used. Complaints, if any, are to be received within 45 days of date of issue of the test report.							
Avail of services of Textiles Committee - Most Reliable and Most Accurate.							



प्रयोगशालाएँ  
**वस्त्र समिति**  
 वस्त्र मंत्रालय, भारत सरकार  
 वस्त्र प्रयोगशाला एवं अनुसंधान केंद्र  
 पी. बालु रोड, प्रभादेवी चौक,  
 प्रभादेवी, मुंबई - 400 025.

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 / tclabmumbai@gmail.com Website : www.textilescommittee.nic.in

**TEST REPORT**

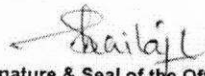
Format No. 06/26B/03

Test Report No: 0153031718-917	Date: 29 May 2017
Sample forwarding letter No. & date:	F.No. VIII/48-87/Gr.III/Test/Misc/17-18/945 dt. 1.5.17 (Test Memo No. 176 Dt. 28.4.17)
Buyers Name & address (Optional):	Mahalaxmi Industries
Customer Sample No.	BE No.9194035 dt.6.4.17

**TEST RESULTS**

Sample Mark	--
Laboratory Sample No.	0153031718-917

9	H S Code (.) EP & QA	
	Whether sample fall under the category of "madeups" as defined under the HSN	Sample cannot be classified as "madeups" but may be appropriately classified as "Polyester woven fabric"
	Correct description and classification of the sample	Could not ascertain whether the weft yarn is filament yarn or staple spun yarn. Hence, appropriate H.S. code is not provided.

  
 Signature & Seal of the Officer  
 Page 2 of 2

**SHAILAJA SOREJ**  
 Quality Assurance 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.

Avail of services of Textiles Committee - Most Reliable and Most Accurate.

1.4 As per the above test reports received from the Ahmedabad Textile Industry's Research Association (ATIRA), Ahmedabad and The Textile Committee, Mumbai it appeared that the samples cannot be classified as made-ups but appropriately classified as "Polyester Woven

Fabric/loosely stitched fabric" under CTH 54075490 in terms of definition of made up given at Note 7 of Section XI of "Textile and Textile Articles" a text of which is reproduced as under:

*7. For the purposes of this Section, the expression "made up" mean*

- (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 sub clause of this Note, but excluding fabrics and cut edges or 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 shipping 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) knitted or crocheted to shape, whether presented as separate items or in the form of a number of items in the length.*

*Further as per Chapter Note 1 of Chapter 63 "Sub-chapter I applies only to made up articles, of any textile fabrics.*

1.5 From the above definition it is clear that to qualify as made up the condition mentioned given at Note 7 of Section XI "Textile and Textile Articles", are required to be satisfied. Fabrics in running length (loosely & unevenly stitched) cannot be termed as bed covers i.e. Made-ups. The cloth/fabric has to be stitched firmly in order to assume the shape of a bed cover. As per the test result as the goods that are imported by importer declaring the same as bed cover cannot be sold in the market as bed cover. The goods imported by importer are loosely, unevenly, asymmetrically stitched and hence put the same in the category of fabrics. 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" the same cannot be classified under Chapter 63 of the Customs Tariff.

1.6 It appeared that the goods imported by the said importer vide Bill of Entry No. 9194035 dated 06.04.2017 as detailed in Annexure "A" to the SCN, have been appropriately categorized and classified as "polyester woven fabric" as per the details of test results given by Textiles Committee, Mumbai 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 there is a use of texturized yarn in warp and no component could be ascertained for weft component 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 and the details thereof are as under:

<b>5407</b>		Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404
<b>5407-1</b>	-	Woven fabrics obtained from high tenacity yarn of nylon or other polyamides or of polyester
<b>5407-2</b>	-	Woven fabrics obtained from strip or the like
<b>5407-3</b>	-	Fabrics specified in Note 9 to Section XI
<b>5407-4</b>	-	Other woven fabrics, containing 85% or more by weight of filaments of Nylon or other Polyamides
<b>5407-5</b>	-	Other woven fabrics, containing 85% or more by weight of textured polyester filaments
<b>5407-6</b>	-	Other woven fabrics, containing 85% or more by weight of polyester filaments
<b>540761</b>	--	Containing 85% or more by weight of non-textured polyester filaments
<b>54076900</b>	--	Other
<b>5407-7</b>	-	Other woven fabrics, containing 85% or more by weight of synthetic filaments
<b>5407-8</b>	-	Other woven fabrics, containing less than 85% by weight of synthetic filaments, mixed mainly or solely with cotton
<b>5407-9</b>	-	Other woven fabrics

1.7 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.

1.8 Chapter 540751 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 the said importer as detailed in Annexure "A" to the SCN, fall under Chapter Sub Heading 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. 29,60,248/-, Basic Customs duty @ 10% would come to Rs. 2,96,025/-, whereas if calculated on Sq. Meter basis, the same would be calculated as follows :

Total Sq. Meter(as per Annexure "A"to the SCN) = 194994Sq. Meter

Basic Customs duty @ Rs 20 per Sq. Meter = 194994X 20 = 38,99,880/-

1.9 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.

1.10 From the facts discussed in the foregoing paras and material evidences available on record, it transpired that the said importer had imported polyester woven fabrics from the overseas suppliers, and had resorted to mis-declaration, by declaring the description of the goods and also size of piece of the textile fabric, 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 Higher customs duty leviable thereon. The product (goods) declared by the importer as "polyester unstitched bed cover" was not the correct description (as is evident from the opinion of the Textiles Committee, Mumbai & ATIRA, Ahmedabad). In the instant case, the importer had furnished wrong declaration, statement & documents to the Customs while filing of the bill of entry and 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.

1.11 From the above, it appeared that the said importer in connivance with the overseas supplier had wilfully mis-stated the description of "polyester woven fabrics" before the Customs authority as "polyester unstitched bed cover" at the time of import with a view to escape from higher applicable and payment of 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 wilful mis-statement/ mis-declaration and suppression of facts.



1.12 In terms of Section 46 (4) of Customs Act, 1962, the importer is required to make a declaration as to truth of the contents of the bills of entry submitted for assessment of Customs duty. The said noticee had wrongly declared the goods imported by them as '100% Polyester Unstitched Bed Cover' under CTH 63041990 instead of correct classification under CTH 54075490 in as much as they were fully aware that the said goods do not fall under the classification of made up goods. Thus it appeared that the said noticee has contravened the provisions of sub section (4) of Section 46 of the Customs Act, 1962, in as much as, they had mis-declared the goods imported as '100% Polyester Unstitched Bed Cover' in the declaration in form of Bill of Entry filed under the provisions of Section 46(4) of the Customs Act 1962 and mis-classified the goods under Customs tariff heading 63041990, in order to evade the customs duty. This constitutes an offence of the nature covered in Section 111(m) of the Customs Act, 1962.

1.13 In view of 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 unstitched 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" to this SCN liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

1.14 It also appeared that instant Bill of Entry for consignments of **18840pcs of "polyester woven fabrics" totally admeasuring 194994Sq. Meter totally valued at Rs 2960248/-** imported as per Annexure "A" to the SCN and subsequently, as per the request made by the said importer vide letter dated 07.12.2017, the instant Bill of Entry was assessed provisionally on 08.12.2017 against Bond for full amount of value with 25% Bank Guarantee of differential duty. The amount of **Rs. 52,14,533/-** needs to be demanded and recovered from the importer by finally assessing the said Bill of Entry under Section 18(2) of the Customs Act, 1962 . However, the importer has paid an amount of **Rs. 8,71,527/-** at the time of clearance of goods which is required to be appropriated towards duty demanded from M/s Mahalaxmi Industries.

1.15 It appeared that the said importer is responsible for the mis-declaration of imported goods viz. "polyester woven fabrics" as "polyester bed cover", in order to evade higher Customs duty leviable on the imports of "polyester woven fabrics". The aforesaid acts of willful mis-declaration of the description of the goods on the part of said importer, with a view to evade higher Customs duty leviable thereon, as detailed in Annexure A to the SCN, have made the subject goods liable for confiscation under Section 111 (m) of the Customs Act, 1962 and,

therefore, the said importer also rendered liable to penalty under the provisions of Section 112(a) of the Customs Act, 1962 for importing such mis-declared goods.

1.16 The said importer had paid a total duty amount of **Rs.8,71,527/-** at the time of provisional assessment of the goods in respect of Bill of Entry No. 9194035 dated 06.04.2017.

2. Accordingly, a Show Cause Notice bearing F.No. VIII/48-87/Misc/MCH/2017-18 dated 04.01.2018 was issued to M/s Mahalaxmi Industries, A-35, RIICO Industrial Area, Phase-1, Hanumangarh Jn., 335512 (Raj) (IEC1309003394) whereby they were called upon to show cause to the Additional Commissioner of Customs, having his office at, Port User Building, Mundra Port, Mundra, Kutch, Gujarat as to why

- (i) the classification of the imported goods i.e. "polyester woven fabrics" imported by mis-declaring the same as "polyester bed cover" under **CTH 6341990** should not be rejected and the same should not be re-classified correctly under **CTH 54075490** of the Customs Tariff Act, 1975 and, Bill of Entry No. 9194035 dated 06.04.2017 assessed provisionally should not be finalised.
- (ii) the goods viz. **18840pcs** of "polyester woven fabrics" admeasuring **194994Sq. Meter**, imported vide Bill of Entry as per Annexure "A" to the SCN, valued at **Rs. 29,60,248/-** (as detailed in Annexure A) by mis-declaring the same as "polyester bed cover" should not be confiscated under the provisions of Section 111 (m) of the Customs Act, 1962;
- (iii) The total customs duty leviable on the said goods amounting to **Rs.52,14,533/-** should not be demanded and recovered from the importer by finally assessing the said Bill of Entry under Section 18(2) of the Customs Act, 1962 and as the importer has already paid an amount of **Rs.8,71,527/-**, they are further required to show cause as to why the same should not be appropriated towards duty demanded.
- (iv) Interest should not be charged and recovered from them under Section 18(3) of the Customs Act, 1962 on the duty demanded at (iii) above;
- (v) Penalty should not be imposed upon them under the provisions of Section 112(a) of the Customs Act, 1962;

3. After following due process of law, adjudicating authority i.e. the Additional Commissioner of Customs, Custom House, Mundra vide O-I-O No. MCH/ADC/GPM/01/2018-19 dated 09.04.2018, passed the order in the case matter as under:-

- (i) I hold description of the goods imported under the Bill of Entry Nos. 9194035 dated 06.04.2017 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 to duty accordingly.
- (ii) I order to confiscate the goods viz. 18840 pcs of "polyester woven fabrics" admeasuring 194994 Sq. Meter, imported vide Bills of Entry No. 9194035 dated 06.04.2017, totally

valued at Rs. 29,60,248/-, 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.5,00,000/-(Rupees Five Lakh only) in lieu of confiscation in terms of Section 125 of the Customs Act, 1962.

- (iii) I order to pay differential duty amounting to Rs.43,43,006/- under the provisions of Section 18(2) of the Customs Act, 1962
- (iv) I order to pay interest on the differential duty amount of Rs. 43,43,006/- under the provisions of Section 18(3) of the Customs Act, 1962
- (v) I impose a penalty of Rs.4,00,000/- (Rupees Four Lacs only) on M/s Shri Mahalaxmi Industries, Hanumangarh, Rajasthan under Section 112(a) of Customs Act, 1962.

4. Being aggrieved with the above-stated Order-In-Original dated 09.04.2018, M/s Shri Mahalaxmi Industries filed an appeal before the Commissioner of Customs (Appeals), Mundra in terms of Section 128 A(1)(a) of the Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982.

5. The appeal filed by M/s Shri Mahalaxmi Industries was decided by the Commissioner of Custom (Appeals), Mundra vide Order-In-Appal No. MUN-CUSTM-000-APP-250-18-19 dated 17.10.2018 wherein on the basis of his findings he rejected the appeal stating as under-

*"I do not find any reasons to interfere with the impugned order passed by the adjudicating authority. Accordingly, I reject the appeal filed by the appellant"*

6. Further, being aggrieved with the above-stated Order-In-Appeal dated 17.10.2018, M/s Shri Mahalaxmi Industries filed an appeal before the Hon'ble Customs, Excise & Service Tax Appellate Tribunal, Ahmedabad in terms of Section 129 A(1)(a) of the Customs Act, 1962.

7. The Hon'ble CESTAT, Ahmedabad vide Final Order No. A/11126/2019 dated 16.07.2019 have remanded back the matter to the original Adjudicating Authority. The order of the CESTAT is reproduced herewith:-

*"We find that on identical issue this Tribunal has disposed of bunch of appeals by way of remand to the adjudicating authority vide final order no. 11086-11103/2019 dated 11.07.2019, therefore, in this appeal also impugned Order is set aside and appeal is allowed by way of remand to the adjudicating authority for deciding fresh considering the observation made by this Tribunal in its order dated 11.07.2019 in the case of Shree Tushar Tilak Raj & Ors Vs CCE & ST Vadodara-I."*

8. Further, the aforesaid CESTAT's Final order dated 16.07.2019 has been reviewed and accepted by the department on 13.09.2019. Accordingly, the matter is taken up for adjudication.

## PERSONAL HEARING

9. M/s Shri Mahalaxmi Industries, A-35, RIICO Industrial Area, Phase-1, Hanumangarh Jn., 335512 (Raj) was given opportunity to attend personal hearing on 06.11.2019, 17.11.2019, 09.12.2019 and 26.12.2019 as per the direction of Hon'ble CESTAT. However, neither they attended any of the hearing on the scheduled dates and time nor they filed any defence reply in their case matter.

## DISCUSSION AND FINDINGS

10. I have carefully gone through the entire records of the case including the Show Cause Notice dated 04.01.2018, and directions given by the Hon'ble CESTAT, Ahmedabad. I find that in the present case, as per the requirement of natural justice, sufficient opportunities have been given to the Noticee to remain present for personal hearing and file defence submission, if any. However, they neither appeared for any of the scheduled hearings nor made any submission in defence of their case. The adjudication process cannot go indefinitely waiting for the noticee to turn up for personal hearing. Therefore, I find that the principle of Natural Justice, as prescribed in Section 122A of the Customs Act, 1962 has been completed. Hence, I am going to proceed to decide the case on the basis of documentary evidences available with the department and merits of the case.

10.1 I find that the CESTAT, Ahmedabad has directed to decide the case fresh considering the observation made by this Tribunal in its order dated 11.07.2019 in the case of Shree Tushar Tilak Raj & Ors Vs CCE & ST Vadodara-I.

10.2 I have gone through the Final Order No. A/11086-11103/2019 dated 11.07.2019 passed by the CESTAT, Ahmedabad in the case of Shree Tushar Tilak Raj & Ors Vs CCE & ST Vadodara-I which is related to the goods imported by the appellants declaring the same as Polyester Bed Cover under Custom Tariff Heading 63041903 whereas the same is claimed as polyester fabric under Custom Tariff Heading 54075490 by the department.

The order portion in Para-4 of the aforesaid order dated 11.07.2019 of the CESTAT, Ahmedabad, is reproduced herewith:-

*"We have carefully considered the submission made by both the sides and perused the records. We find that the Ld. Counsel has raised very important preliminary issue that the adjudicating authority instead of deciding the matter on general meaning of made ups and fabric should have decided on the basis of statutory provision as provided under Chapter Notes of Section XI of Customs Tariff as well as on the HSN Notes. In these facts, we are of the view that the matter needs to be reconsidered by the adjudicating authority. All the issues are kept open. Since in these matters, this Tribunal had allowed the early hearing application and the matter appears to be of urgent nature, the adjudicating authority should pass a de novo adjudication order preferably within a period of 3 months from the date of this order. Needless*

*to say that the appellant should be given sufficient opportunity of personal hearing and making their submission, if any, required. Accordingly, we set aside the impugned order and allow all the appeals by way of remand to the adjudicating authority for passing a fresh order."*

10.3 I find that the Tribunal vide aforesaid order dated 11.07.2019 has directed that the matter needs to be reconsidered by the adjudicating authority, all the issues are kept open and for passing a fresh order on the basis of statutory provision as provided under Chapter Notes of Section XI of Customs Tariff as well as on the HSN Notes.

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

- (i) Correct classification of the goods imported by the noticee by declaring the same as "100% Polyester Unstitched Bed cover" and classified under CTH 63041990 of the first schedule to the Customs Tariff Act, 1975.
- (ii) Whether the goods viz. 18840 pcs admeasuring 194994 Sq. Meter, imported vide Bill of Entry No. 9194035 Dated 06.04.2017, valued at Rs. 29,60,248/-, are liable for confiscation under the provisions of Section 111 (m) of the Customs Act, 1962.
- (iii) Whether, the Customs duty amounting to Rs. 52,14,533/- is required to be demanded and recovered from the importer under Section 18(2) of the Customs Act, 1962 along with interest under Section 18(3) ibid and the duty amounting to Rs.8,71,527/- already paid by them be appropriated towards the duty demanded.
- (iv) Whether the importer is liable for penalty under the provisions of Section 112 (a) of the Customs Act,1962.

10.5 The foremost issue before me to decide in this case is as to whether the goods imported by the noticee by declaring the same as "100% Polyester Unstitched 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. The facts of the case indicate that in order to verify the identity and characteristics of the imported goods the samples 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/67/ dated 12.05.2017 for sample drawn from goods covered under bill of entry no 9194035 dated 06.04.2017 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 12.05.2017 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". I further find that the samples 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". 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 aim and responsibility given to the Textile Committee can be seen from the website, which 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 Customs authorities, exporters and importers on the matter related to classification of textile and clothing articles in India"*

In view of the aforesaid facts, I find that the reports of the Textile Committee, Mumbai and ATIRA, Ahmedabad are in line with each other and establish identity of the imported goods as fabrics instead of made-ups. I find that the importers have classified their goods under CTH 63041990 and declared the same as "100% polyester unstitched bed cover" and have paid basic customs duty @ 10% Ad valorem, whereas on the other hand the department claims that the same be classified under CTH 54075490 as "Polyester Woven Fabrics".

Before I proceed to evaluate the stand of the importers, it is highly required to discuss the length and breadth of the relevant tariff entries that have been declared by the importer (CTH 63041990) as well as claimed by the department (CTH 54075490).

10.5.1 Firstly, in view of Hon'be Tribunal, Ahmedabad directions, I discuss the statutory provision as provided under Chapter Notes of Section XI of Customs tariff as well as on the HSN Notes. I find that Sub-chapter I of Chapter 63 of HSN covers other made up textile articles. It is

found that heading 6304 of HSN falls under Sub-chapter I and it specifically covers other furnishing articles, excluding those of heading 9404. The relevant portion of heading 6304 of HSN reads as under-

**6304-OTHER FURNISHING ARTICLES, EXCLUDING THOSE OF HEADING 9404**

**-Bedspreads**

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential Areas
63041100	Knitted or crocheted	u	10%	-
6304 19	Other:			
6304 1910	Bedsheets and bedcovers, of cotton	u	10%	-
6304 1920	Bedspreads of silk	u	10%	-
6304 1930	Bedsheets and bedcovers of man-made fibres	u	10%	-
6304 1940	Bedsheets and bedcovers of cotton, Handloom	u	10%	-
<b>6304 1990</b>	<b>Other</b>	<b>u</b>	<b>10%</b>	<b>-</b>

10.5.2 I further find that Chapter 54 of HSN covers Man-made filaments; strip and the like of man-made textile materials. It is found that heading 5407 of HSN specifically covers woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404. The relevant portion of heading 5407 of HSN reads as under-

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

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential Areas
5407 54	Printed :			
5407 5410	Terylene and Dacron sarees	m <sup>2</sup>	10% or Rs.20 per sq.m whichever is higher	-
5407 5420	Polyester shirtings	m <sup>2</sup>	10% or Rs.20 per sq.m whichever is higher	-
5407 5430	Polyester sarees	m <sup>2</sup>	10% or Rs.20 per sq.m whichever is higher	-
<b>5407 5490</b>	<b>Other Other woven fabrics, containing 85% or more by weight of polyester filaments</b>	<b>m<sup>2</sup></b>	<b>12.5% or Rs.20 per sq.m whichever is higher</b>	<b>-</b>

I find that as per Chapter Note 1 of Chapter 63 the "Sub-chapter I applies only to made-up articles, of any textile fabrics". I further find that Sub-chapter I covers goods falling under

CTH 6301 to 6307 and the definition of "made-up" are given in Section Note 7 of Section XI "Textile and Textile Articles" which reads as under:

*"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) Knitted or crocheted to shape, whether presented as separate items or in the form of a number of items in the length."*

10.5.3 From the above definition, it is quite clear that to qualify as made up the aforesaid conditions mentioned in Note 7 of Section XI "Textile and Textile Articles", are required to be satisfied. 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" the same cannot be classified under Chapter 63 of the Customs Tariff. I find that as per Section Note 7(b), 'made-up' 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, the goods imported are (1) Unstitched fabric in the size of bed cover & (2) Bed cover with raw stitching which can be easily removed and can be easily converted into fabric. Fabrics in running length (loosely & unevenly stitched) cannot be termed as bed covers i.e. Made-ups. The cloth/fabric has to be stitched firmly in order to assume the shape of a bed cover. 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. I find that 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, I find that the goods imported by the noticee declaring them as "100% Polyester Unstitched 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. Accordingly, I find that the goods do not satisfy the conditions of the Section note 7 to be classified as made-ups and consequently cannot be considered as made-ups as they are not the finished product, their edges are not hemmed or with rolled edges, or with a knotted fringe at any of the edges.

10.5.4 Further, in regard to department's claim that the imported goods is "polyester woven fabrics" classifiable under CTH 54075490 of Customs Tariff Act, 1975, I find that 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 and would merit description as "Polyester woven fabrics" only.

10.5.5 I also 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". 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 the noticee 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 the noticee by mis-declaring the same as "polyester bed cover" under CTH 63041930 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 and should be re-assessed accordingly.

10.6 After deciding appropriate classification, I proceed further to decide the issue of confiscation of the imported goods viz. 18840 pcs of "polyester woven fabrics", totally admeasuring 194994 Sq. meters, valued at Rs.29,60,248/- under the provisions of Section 111(m) of the Customs Act, 1962.

In this connection, I find that In terms of Section 46 (4) of Customs Act, 1962, the importer is required to make a declaration as to truth of the contents of the bill of entry submitted for assessment of Customs duty. The said importer had wrongly declared the goods imported by them as '100% Polyester Unstitched Bed Cover' under CTH 63041990 instead of correct classification under CTH 54075490 in as much as they were fully aware that the said goods do not fall under the classification of made-up goods. Thus I find that the said importer has contravened the provisions of sub section (4) of Section 46 of the Customs Act, 1962 in as much as they had intentionally mis-declared the description of their imported product as "polyester unstitched 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. Accordingly, for the said act on the part of importer, the said imported goods are liable to confiscation under Section 111(m) of the Customs Act, 1962.

10.7 I find that on appropriate classification, the total duty in respect of impugned consignments comes to Rs.52,14,533/- as detailed below:

(a) The total value of the goods is Rs. 29,60,248/-.

BCD @ 10% *ad valorem* = Rs. 2,96,025/-.

(b) Total Sq. Meter = 194994 Sq. Meter

BCD @ Rs 20 per Sq. Meter = 194994 X 20 = Rs. 38,99,880/-

(c) 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. 52,14,533/-.

10.8 I find that the instant Bill of Entry was assessed provisionally on 08.12.2017 against Bond for full amount of value with 25% Bank Guarantee of differential duty on the basis of mis-declaration of the goods as "100% Polyester Unstitched Bed Cover" and mis-classification under CTH 63041990. Thus I find that the amount of **Rs. 52,14,533/-** is required to be demanded and recovered from the importer by finally assessing the said Bill of Entry under Section 18(2) of the Customs Act, 1962. However, I find that the importer has already paid an amount of **Rs. 8,71,527/-** at the time of clearance of goods which is required to be appropriated towards duty demanded from M/s Mahalaxmi Industries. Thus, I hold that the differential duty worked out to be Rs. 43,43,006/- is required to be recovered from the importer under the provisions of Section 18(2) of the Customs Act, 1962 along with interest thereupon under the provisions of Section 18(3) of the Customs Act, 1962.

10.9 As discussed above, the impugned goods are liable for 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 the noticee, against the order of confiscation by paying redemption fine as provided under Section 125 of the Customs Act, 1962. I find that as provided under Section 125(2) *ibid*, the noticee 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 the noticee chooses to exercise the option to redeem the confiscated goods. I find that since the goods were provisionally assessed on execution of Bond for full amount of value supported by 25% Bank Guarantee of differential duty, I hold that the Bond is required to be enforced and the Bank Guarantee is required to be encashed towards such redemption fine in lieu of confiscation under Section 125 of the Customs Act, 1962


10.10 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 said importer is responsible for the mis-declaration of imported goods as "100% Polyester Unstitched Bed Cover", in order to evade higher Customs duty and for such act of mis-declaration of description of the subject goods by them, the importer is liable to penalty under Section 112(a) *ibid*.

11. 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. 9194035 dated 06.04.2017 as "polyester woven fabrics", correctly classifiable under tariff item 54075490 of the first schedule to the Customs Tariff Act, 1975. Accordingly, I reject the description 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 and re-assess to duty accordingly.
- (ii) I order the confiscation of the goods viz. 18840 pcs of "polyester woven fabrics" admeasuring 194994 Sq. Meter, imported vide Bill of Entry No. 9194035 dated 06.04.2017, totally valued at Rs. 29,60,248/-, under the provision of Section 111(m) of the Customs Act, 1962. Since, the goods were provisionally assessed on execution of Bond for full amount of value supported by 25% Bank Guarantee of differential duty, I hereby impose redemption fine of Rs.6,00,000.00 (Rupees Six Lakhs only) in lieu of confiscation under Section 125 of the Customs Act, 1962 and order to enforce the Bond and encash Bank Guarantee towards such redemption fine.

- (iii) I confirm the demand of total customs duty of Rs.52,14,533/- leviable on the said goods. As the importer has already paid an amount of Rs.8,71,572/-, I order for the appropriation of the same towards the duty demanded. I further order to recover the differential duty amounting to **Rs.43,43,006/- (Rupees Forty Three Lakh Forty Three Thousand Six only )** under the provisions of Section 18(2) of the Customs Act, 1962
- (iv) I order to charge and recover interest from the importer M/s Mahalaxmi Industries, A-35,RIICO Industrial Area, Phase-1, Hanumangarh Jn.-335512, Rajasthan on the differential duty of Rs. 43,43,006/- at Sr. No. (iii) above under the provisions of Section 18(3) of the Customs Act, 1962
- (v) I impose a penalty of Rs.5,00,000.00/- (Rupees Five Lakhs only) on the importer M/s Mahalaxmi Industries, A-35,RIICO Industrial Area, Phase-1,Hanumangarh Jn.-335512, Rajasthan under Section 112(a) of Customs Act, 1962.
12. This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

  
[AJAY KUMAR]  
ADDITIONAL COMMISSIONER

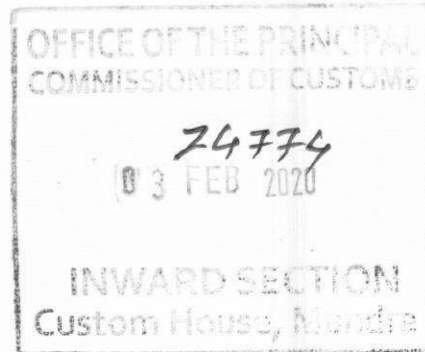
F. No. VIII/48-41/Adj/ADC/MCH/2017-18

Dated: 01.02.2020

BY SPEED POST

To,

M/s. Mahalaxmi Industries,  
A-35, RIICO Industrial Area,  
Phase-1, Hanumangarh Jn.-335512,  
Rajasthan



Copy to:

1. The Chief Commissioner (in Situ), Custom House, Mundra.
2. The Deputy/Assistant Commissioner (RRA), Custom House, Mundra.
3. The Deputy/Assistant Commissioner (TRC), Custom House, Mundra.
4. The Deputy/Assistant Commissioner (EDI), Custom House, Mundra.
5. The Deputy/Assistant Commissioner (GR-III), Custom House, Mundra.
6. Guard File.

  
P.O. (EDI)

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