

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

**Customs Appeal No. 61150 of 2025**

[Arising out of Order-in-Appeal No. 07/2025-26 dated 15.09.2025 passed by the  
Commissioner of Customs, Ludhiana]

**M/s Goyal Impex and Industries Ltd.**

Space – E, Third Floor, Surya Kiran Building, 92,  
The Mall, Ludhiana- 141001

**.....Appellant**

*VERSUS*

**Commissioner of Customs, Ludhiana**

ICD GRFL, G.T. Road, Sahnewal, Ludhiana-141120

**.....Respondent**

**APPEARANCE:**

Shri Saurabh Kapoor, Ms. Muskaan Gupta, Ms. Tanya Kumar, Ms. Muskan  
Chahuhan and Shri Gurwinder Singh, Advocates for the Appellant  
Shri Sourabh Goel (Special Counsel, CBIC) and Ms. Geetika Sharma,  
Authorized Representatives for the Respondent

**CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)**

**HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO.60053/2026**

DATE OF HEARING: 27.11.2025

DATE OF DECISION: 16.01.2026

**P. ANJANI KUMAR:**

M/s Goyal Impex Industries Ltd, the appellants, challenge the  
order dated 15.09.2025 passed by the Commissioner of Customs,  
Ludhiana, who ordered for the provisional release of goods imported  
by the appellants, vide bills of entry no. 9769822 /29.04.2025,

9804766, 9804198, 9805550 and 9806044/30.04.2025 and 9840277/02.05.2025, subject to furnishing of the bond of Rs. 8,06,03,509 and a bank guarantee of Rs. 9,12,48,585.

2. Brief facts of the case are that the appellants are in the business of import of various kind of fabrics and hold AEO status; the appellants had entered into 4 contracts, dated 23.03.2025, 28.03.2025, 29.03.2025 and 01.04.2025, with the Chinese supplier M/s Shaoxing Keqiao Mulinsheng Trading Co. Ltd., China, for import of Mix lot of polyester woven fabric with heat pressed film made of thermoplastic polyurethane rolls of assorted colours other than coated polyurethane and others. Accordingly, the goods were supplied and on the basis of invoice, packing list, bill of loading etc. 7 bills of entry were filed by the appellant importer; the goods were cleared by the EDI system. SIIB of Customs initiated inquiry into the import and have drawn 17 samples under various Panchnama dated 05.05.2025, 06.05.2025, 07.05.2025, 08.05.2025 and 09.05.2025; the samples were sent to CRCL, New Delhi. The goods were seized on 08.05.2025 and 09.05.2025 on the basis of the reports received from CRCL. The appellants, vide letter dated 16.07.2025, requested the Commissioner of Customs to release the imported goods, though provisionally, on execution of a bond without any bank guarantee looking into the status of the import of as AEO-T1 and MSME and the fact that the appellant has been importing since 1993; vide letter dated 17/19. 5.2025, the appellant submitted that only 02-04 samples were drawn from a heterogeneous stock and the same were not representatives samples; further vide letters dated 21.05.2025

and 22.05.2025 the appellants informed the Commissioner that the samples were received without test memos and therefore, the samples already drawn may be kept at abeyance; they also supplied the clarification given the supplier vide letters dated 06.05.2025 and 09.05.2025; then vide letter dated 22.05.2025 the appellants have informed the commissioner that the measurement of the samples was incorrect and therefore, the conversion to square meters from meters was incorrect. The appellants objected to the test memo and posed 15 questions; however, CRCL vide letter dated 19/20.2025 replied to only 11 questions, thus the test reports were alleged to be inconclusive.

2.1 The appellant had been requesting the department raising objections on the sampling and testing methodology. Accordingly, 258 representative samples were drawn from the 12 containers during 27.06.2025 to 18.07.2025; the appellants pursued the provisional release of the goods imported vide impugned bills of entry between 01.07.2025-19.07.2025. Meanwhile, the appellants have moved the Hon'ble Punjab and Haryana High Court, by filing a civil writ petition No. 23019 of 2025 requesting the provisional release of the goods, who directed the authorities to decide on the representation filed by the appellants regarding provisional release; the appellants were provided data pertaining to contemporaneous imports and chartered engineer's report vide email dated 08.09.2025; a personal hearing was held and the impugned order dated 15.09.2025.

3. Shri Saurabh Kapoor, Learned Counsel for the appellants submits that the impugned order is contrary to the facts of the case and has been passed in violation of principles of natural justice; the value of the imported goods has been calculated without appreciation of the facts due to incoherent and inconsistent stand on the basis of the investigation which is full of procedural irregularities and incomplete testing; the impugned order ignores the initial finding that the samples require reinvestigation and proceeds to issue of valuation and puts a stringent condition for provisional release though the circumstances do not warrant the same; the impugned order was passed disregarding the import documents without even suspecting their authority; even when contemporaneous data was given the lowest of the values was not taken disregarding the following judgements:

- *Prayas Woolen (P) Ltd. Mumbai 2016 (332) ELT 376*
- *Dujodwala Products Ltd. 2009 (235) ELT 266 (Tri. Mumbai)*
- *Hewlett Packard (I) Pvt Ltd. 2006 (204) ELT 585 (Tri-Bang.)*
- *Dwarakadas G Kanjani 2001 (137) ELT 967 (Tri-Chennai)*

4. Learned Counsel submits that there was no mis-declaration the declaration was correctly made in metres as required for CTH 59039090; while converting the EDI system has converted into square metres; there was no change in the quantity; converting by the system into square metres does not mean mis-declaration; the impugned order does not specify as to why the declared value under Section 14 was rejected and as to how the value was arrived proceeding sequentially as held by Hon'ble Supreme Court in the case of Eicher Tractors, 2000(122) ELT 321 (SC); the mis-

declaration in respect of some bills of entry has been alleged on the basis of improper, incomplete test report without adhering to the norms; he submits that the valuation was arrived at on the basis of the chartered engineer's certificate, who was appointed at the back of the importer, which is illegal and the said chartered engineer is not competent to give report on the value of stock lot; the chartered engineer's moreover did not provide any methodology, contemporarily market data or justification for enhancement of the value. Learned Commissioner erred in holding that the appellants have failed to submit documentary evidence for lot wise, colour wise, differences in value despite the detailed submission dated 22.05.2025; Learned Counsel further submits that the valuation and the conditions put forth for provisional release are exorbitant, onerous and beyond the financial capacity of the importer; he relies on the following cases:

- *Tollin Rubbers Pvt Ltd 2004 (163) ELT 289 (SC)*
- *Shri Venkatesh Enterprises 2005 (192) ELT 818 (Tri. Mad.)*
- *Iqaira Inc. 2004 (170) ELT 583*
- *Garva Enterprises 2018 (362) ELT 134*
- *Jaya Shakti Papers 2021 (377) ELT 641 (Mad.)*
- *Kelvin Infotech Pvt Ltd. 2015 (316) ELT 146 (Tri. Del.)*
- *Shahnus Impex 2024 (388) ELT 78 (Del.)*
- *Dinesh Bhaboot Mal Salecha 2022 (381) ELT 762 (Tri. Bom.)*

4. Learned Counsel submits that though Customs law has not prescribed test standards for testing PU on fabric, there are various tests prescribed by IS for testing of PU in general as it has multiple usage on various surfaces. He submits that tests and the equipment required are as follows.

<b>S. No.</b>	<b>Tests</b>	<b>Equipment</b>
<b>1.</b>	Hardness Test C 1.3.5.2	Shore A hardness tester and / or Shore D hardness tester
<b>2.</b>	Tensile Modulus of elasticity test C1.3.5.2	Tensile testing machine with suitable grips force indicator/recorder Extensometer/stain gauges with minimum accuracy of 1%-gauge length.  (As per IS 13360 (Part 5/Sec1): 2021/ISO 527-1  IS 13360 (Part g/Sec 2) 2017/ISO 527-2: 2012  IS 13360 (Part 5/Sec 3) 2018/ISO 527-3: 1995  IS 1330 (Part 5/ Sec 25):2004/ISO 527-4: 1997  ISO 527-5: 2021
<b>3.</b>	Hardness Tests as per ISO 180: 2018	

4.1. Learned Counsel submits that the use of TPU and PU are varied and a unique test is not sufficient to determine the quality and character of the impugned goods; as per IS 12649: 1989, following tests are required to be conducted for various Applications.

<b>S. No.</b>	<b>Products</b>	<b>Tests Required</b>
1.	Fumigation Covers	To test Fumigation Covers Fumigation retention properties, Adequate tear

		resistance and Light Weight
2.	Water resistant Fabrics	Water Proofness
3.	Tarpaulin	Water Repellency or Water proofness as applicable Tear resistance
4.	Upholstery Materials	Abrasion and tear resistance Flexibility and retention of flexibility under condition of stress and hot/cold climate Flame retardance
5.	Material for footwear	Flexibility waterproofness
6.	Chemically resistant material	Resistance to specific chemicals, such as, acids, alkalis, petroleum products and chemicals likely to come in contact in actual use.
7.	Radiation Proof Material	Resistance against various radiation hazards met by (i) Medical workers and (ii) Workers in nuclear installations etc.
8.	Fire Resistant Fabric	Fire Resistance water proofness Rot Proofness
9.	Flotation Equipment	Air Proofness Waterproofness Weathering (Ozone) resistance
10.	Mountaineering Equipment	Lightness in weight Reasonable abrasion resistance. Adequate color brightness Resistance to weathering (ozone) and ultraviolet rays.
11.	Rot-Resistant Fabric	Rot-resistance properties

4.2. Learned Counsel submits that three more tests have been prescribed recently to test Coated and Treated Fabrics; they are Bursting Strength [PCD 13 IS Code 7016 (Part 6) -1984], Blocking Resistance [PCD 13 IS 7016 (Part 9): 2003] and Tear Strength [PCD 13 IS 7016 (Part III): 1984]

4.3. Learned Counsel submits that there are no prescribed test Standards as per IS for the purpose of testing TPU on Fabric Coated or Otherwise; as per international standards, i.e. ISO and ASTM the following tests are required to be conducted.

<b>Sl. No.</b>	<b>Test Required</b>	<b>Source of Test method</b>
1.	Density ASTM D 297	Technical Data Sheet of Dichtomatic – Manufacturer of TPU coatings of Germany
2.	Hardness ASTM D 2240 Shore A	-do-
3.	Tensile Strength ASTM D 412	-do-
4.	Elongation at Break ASTM D 412	-do-
5.	Compression set ASTM D 395	-do-
6	Change after aging in <u>Air 70h/100 C</u> Hardness (ASTM D573 Shore A) Tensile Strength (ASTM D573) Elongation at Break (ASTM D471) Volume change (ASTM D471)	-do-

5. Learned Counsel submits further that international manufacturers, of TPU, namely Artic Seals, Germany conduct various tests, colour-wise, standard-wise and physical properties wise, to identify types of TPU coated on Polyester. He places reliance on the information available on the website of the "NAN YA Tiwan" a company dealing in manufacture of TPU Coated Fabrics etc. research papers published by Indian and Chinese Authors on studies of Coating TPU-PDMS on Polycotton Fabrics for Versatile Protection and submits that they refer to tests which are required to be conducted; the same tests are conducted by the Textile committee as well. He submits that the Foreign Supplier, vide letter dated 18.06.2025, clarified that in order to test if the fabric is quoted with TPU or impregnated with a coating, specific tests are required to be conducted; sales contracts entered into also clarified that the coating in some of the materials is not visible through naked eyes and can be checked subject to specific tests. He submits that though the appellants submitted the data to the adjudicating authority, he failed to get the said tests conducted. He submits that a look at the Test memos dated 19.05.2025 and 20.05.2025, would reveal that despite specific queries put forth by the Respondent, CRCL has failed to address to all the queries put forth by the Respondent Authorities. He submits that the Commissioner erred in rejecting the declared classification of goods, as *Mixed Lot of Polyester Woven Fabric with Heat Pressed film made of TPU Rolls of Assorted Colour Other than Coated PU ODD*, on the basis of the findings of the Test Reports dated 19.05.2025 and 20.05.2025. He submits that the Appellant

had imported similar goods on an earlier occasion vide Bill of Entry No. 9387015 dated 23.11.2023; CRCL New Delhi refused to conduct testing claiming lack of facility for conducting tests especially "FITR Analysis"; in that case, the department had sent the samples for testing to "Textile Committee", who confirmed the declaration given by the appellants; in the impugned case, the Respondent erred in rejecting the declared classification of "*Rolls of fabric of various colours*" on the ground that the same are without any lamination; the findings rendered by the Respondent are based on the test results communicated by CRCL New Delhi, which are inconclusive; He submits that the reports issued by CRCL cannot be relied as they have no proper testing facilities; the tests were not conducted properly and the tests are inconclusive. He submits that inconclusive test reports cannot be relied upon as held in

- *Sunrise Traders (2022) 382 ELT 23 (S.C.)*
- *Oil Energy (2023) 12 CENTAX 256 (Tri-Ahm)*
- *Kerela Footwear Products 2009 (248) ELT 749 (Tri- Bang)*
- *Gas trade International (2025) 29 Centax 8 (S.C.)*
- *Sael Ltd (2025) 30 Centax 217 (Tri-All) affirmed in (2025) 30 Centax 218 (S.C.)*

6. Learned Counsel submits that the Respondents erred in rejecting the declared transaction value on the ground that the imported goods do not confirm to the declared classification of goods in question. It is pertinent to mention that the very basis of the rejection of the declared transaction value is based on the re-classification; once the said re-classification does not stand its legs having been based on inconclusive reports, the rejection of declared

transaction value is liable to be dropped on the sole ground itself; the invoice presented was rejected for no reason; once the transaction value is rejected and reasons for such rejection fall under the exceptions to Section 14 only, authorities can proceed to enhance the value for the purpose of valuation; imported goods are stock lot and therefore, the value cannot be decided on the basis of cotemporaneous reports. He relies on the following cases.

- *Eicher Tractors 2000 (122) ELT 321 (SC)*
- *Sai Impex 1992 (62) ELT 616 (Tri)*
- *Pashupati Industries INC. 2017 (358) ELT 840 (Tri-Del);*
- *Kelvin Infotech Pvt Ltd. 2015 (316) ELT 146 (Tri. Del.)*
- *Jaya Shakti Papers 2021 (377) ELT 641 (Mad. High Court).*

7. Learned Counsel submits that the Appellant is a regular importer of similar goods; other importers have also imported similar goods; the value declared by the Appellant is much more than the imports made by similarly situated importers. He submits that the adjudicating Authority has erred in relying on the opinion of the Chartered Engineer, who does not possess either academic or Technical competence to give an opinion on valuation of fabrics; Chartered Engineer based his report on the Test Reports, dated 19.05.2025 and 20.05.2025, issued by CRCL; further, the said report is silent about the source of enquiry conducted by the said Chartered Engineer; Moreover, CBIC vide circular No. 25/2015 dated 15.10.2015, mandates for taking services of Chartered Engineers in case of Old & Used items and not for Textiles. He relies on *Techni group International Pvt Ltd. (2024) 19 Centax 226 (Tri-Mad)* and *R G Gupta & Co 2017 (356) ELT 470 (Tri-Chd).*

8. Learned Counsel submits that the Adjudicating Authority erred ordering, submission of a Bank Guarantee amounting to Rs 9,12,48,585, to secure Differential Customs Duty amounting to Rs. 4,15,94,117 and Redemption Fine & Penalty that may be imposed on the imported goods; the condition of Bank Guarantee cannot be imposed on the Appellant for the reason that no Show Cause Notice and adjudication order have been issued; Respondent placed reliance on the Circular No. 35/2017; the said Circular has been struck down by the Hon'ble Delhi High Court in the case of Its My Name Pvt. Ltd. 2021 (375) ELT 545 (Del.); the High Court's order was upheld by Hon'ble Supreme Court. He submits that imposition of Bank Guarantee is bad in law as held in the following judgments.

- *N C Alexender (2024) 23 Centax 153 (S.C.)*
- *Indusina Exim L.L.P (2024) 16 CENTAX 118 (Bom.)*
- *Shanus Impex (2024) 15 Centax 129 (Del.)*
- *S.K. Overseas W.P. (C) No. 15728 of 2023*
- *Ausil Corporation Pvt Ltd (2024) 24 Centax 35 (Del.)*
- *Rocktek Infra Services P Ltd W.P. (C) 12489 of 2024*
- *Gaurav Electronics 2015 (324) ELT 149 (P&H)*
- *Ramakrishna Electro Components P Ltd W P (C) No. 9453 of 2024*
- *M/s Nabha Steel & Metals CWP No. 1402 of 2024 Order dated 09.04.2024*
- *M/s Prenda Creations P Ltd CWP No. 9301 of 2023 Order dated 24.07.2023*
- *M/s Nakshatra Overseas CWP No. 441 of 2023 Order dated 11.01.2023.*

9. Shri Saurabh Goel, Learned Special Counsel for the Revenue reiterates the findings of the impugned order and submits that the Importer has committed a fraud with an intention to evade

payment of duty and has imported goods by camouflaging them with TPU laminated fabric; it is a case of fraud committed by an importer; the importer mis-utilised AEO (Authorized Economic Operator) status, which entitled them to simplified customs procedures and reduced controls, conferred on them; the importer committed breach of trust to defraud the exchequer. Learned Special Counsel submits that the averments of the learned counsel on the parameters to be tested have no bearing on the impugned reports, Customs Tariff Heading itself and the Explanatory notes prescribe a Test by Touch to identify the TPU coated fabrics. Once it is confirmed that the imported goods are not TPU coated fabrics, mis-declaration is established; all the averments on the basis of technical literature are an attempt to escape after the fraud was caught.

10. Learned Special Counsel for the Revenue submits that in the present case, the Bond and Bank Guarantee has been demanded from the importer by the competent authority in terms of the provisions contained in Section 110A of the Customs Act, 1962; accordingly, keeping the fraud committed by the importer in mind and with a view to secure the interest of Revenue secured, the Adjudicating authority has rightly ordered that a Bank Guarantee amounting to Rs. 9.12 crores be given; the admissibility of Circular No. 35/2017- Cus dated 16.08.2017, has been discussed in detail in Para No. 89 of the impugned Order. Learned Special Counsel submits that in case the importer finds it harsh and difficult to give a Bank Guarantee, the importer may, subject to the acceptance of the

Adjudicating Authority, pledge any property or fixed assets to that extent.

11. Learned Special Counsel for Revenue, rebuts the reliance of the Counsel for the appellants on various cases and submits that the facts of the various cases are different from the present case; in the impugned case, the importer has tried to fraudulently import goods of different description in the guise of stock lot, with intent to evade payment of customs duty; accordingly, provisional release order has been issued to cover the differential duty along-with fine/penalty. He further differentiates the cases relied upon by the appellants as follows.

(i). the cases of N.C. Alexander (2024) 23 Centax 153 (S.C.); Indusina Exim L.L.P (2024) 16 Centax 118 (Bom.); Shanu's Impex (2024) 15 Centax 129 (Del.); S.K. Overseas (2024) 15 Centax 150 (Del.); Prenda Creations Pvt Ltd (CWP No. 9301 of 2023) (P&H HC) and Nakshatra Overseas (CWP No. 441 of 2023) (P&H HC) deal with release of Perishable goods and as such not applicable to the facts of the case; further, the case of Shanu's Impex (2024) 15 Centax 129 (Del.), the security deposit demanded was set aside on the ground that the impugned order fixed the value of the bond and deposit in the light of Circular No. 35/2017-Cus dated 16.08.2017, whereas in the instant case, the admissibility of the Circular is dealt by the impugned order itself.

(ii). The case of Rocktek Infra Services Pvt Ltd W.P. (C) 12489 of 2024, only wrong classification was involved; in the instant case, involves not only misclassification but also mis-declaration of value;

the four sales contracts dated 23.03.2025, 28.03.2025, 29.03.2025 and 01.04.2025, relied upon have been placed on record only after the initiation of examination by the customs authorities.

(iii). In the case of Gaurav Electronics 2015 (324) ELT 149 (P&H); Amit Enterprises (CWP No. 6732 of 2011) (P&H HC), Shilpi Crafts (CWP No. 8148 of 2012) (P&H HC) and Pallahan Industries (CWP No. 12695 of 2015) (P&H HC) the importer had already paid the differential duty amounting to Rs.30 lakhs; further the case of Pallahan Industries (CWP No. 12695 of 2015) (P&H HC) pertains to export; these cases cannot be compared with instant case involving breach of trust by the importer, with an AEO status in defrauding the government exchequer.

(iv). In Ramakrishna Electro Components P Ltd W P (C) No. 9453 of 2024, the impugned order therein failed to record or assign any reasons for a bank guarantee, in the present case, the Bond and Bank Guarantee has been demanded from the importer in terms of Section 110A of the Customs Act, 1962.

(v). in the case of It's My Name Pvt Ltd. - 2021 (375) ELT A160 (SC), the Hon'ble Apex Court did not only interfere with the order of Delhi High Court but also enhanced amount of bank guarantee from Rs.10 Cr to Rs.15 Cr, for provisional release of goods valued at Rs.28.23 Cr.

12. Learned Special Counsel submits furthermore, the judgments relied upon by the appellant regarding 'inconclusive test reports and testing standards' are also not relevant in the present case. It is submitted that every essential test to determine the classification of

the imported goods, as required under the relevant Customs Tariff Heading, has been done by CRCL, New Delhi in the present case and all test reports have been shared with the importer. As such, the contention of the importer regarding inconclusive test report and testing standards is devoid of merits in the present case. Learned special Counsel relies on the following cases.

- *T.L. Verma & Co. Pvt Ltd 2009 (234) ELT 203 (P&H) upheld in 2010 (251) ELT A116 (SC)*
- *Zest Aviation Pvt Ltd. 2013 (289) ELT 243 (DEL)*
- *Maggie Marketing Pvt Ltd 2019 (366) ELT 70 (DEL)*
- *Unik Traders 2019 (367) E.L.T. 353 (Mad.)*
- *Malabar Diamond Gallery Pvt Ltd 2016 (341) E.L.T. 65 (Mad.)*
- *Classic Interiors Customs Appeal No. 51454 of 2022- CESTAT- New Delhi*

13. Heard both sides and perused the records of the case. The appellants imported goods declared as Stock Lot of fabrics laminated with TPU, under four sales contracts dated 23.03.2025, 28.03.2025, 29.03.2025 and 01.04.2025, from a Chinese supplier and filed the bills of entry. On the basis of an intelligence received, revenue intercepted the consignments and have drawn samples. On examination, it was observed that the only the goods in the front rows of the container appeared to be "Rolls of fabric with a thin plastic film laminated on one side of the fabric as declared and that these rolls were used to conceal "Rolls of fabric of various colours without any lamination". On testing the impugned goods, CRCL gave a report to the effect that the goods were other than declared. It appeared to the revenue that the goods actually were as follows.

Bill of Entry	Description	CTH
	Rolls of fabric with a thin plastic film laminated on one side of the fabric	59032090
	Rolls of fabric of various colours without any lamination	54075290/ 54075129
9804198 dt 30.04.2025	Rolls of fabric with soft, velvet like texture on one side	60019200
	Rolls of fabric of various colours without velvet like texture	60064200/ 60064100
9804766 dt. 30.04.2025	Rolls of fabric with soft, velvet like texture on one side	60019200
	Rolls of fabric of various colours without velvet like texture	60063200/ 60063100

14. Thus, it appeared to the Revenue that the goods were mis declared. It also appeared that the goods were undervalued. Total quantity of fabrics imported was ascertained to be 1457129.71 SQM and 91807.90 Kgs respectively. On the basis of a report dated 26.08.2025, given by the chartered Engineer, revenue arrived at the total value of imported goods was Rs 8,06,03,509/- and the duty payable was Rs. 4,15,94,117/-. The appellants repeatedly requested for provisional release of the goods and have approached the Hon'ble High Court of Punjab & Haryana by filing a civil writ petition no 23019 of 2025. Hon'ble high court directed the authorities to decide on the representation filed by the appellants regarding provisional release. After giving a personal hearing, Learned Commissioner has passed the following order.

*95. In view of the foregoing discussions, I pass the following order: -*

*(i). I order for provisional release of impugned goods imported vide seven BoE Nos. 9769822 dated 29.04.2025, 9804766, 9804198, 9805550, 9805120 & 9806044 all dated 30.04.2025 &*

*No. 9840277 dated 02.05.2025, seized vide seizure memo dated 08.05.2025 & 09.05.2025. The importer shall furnish a Bond equal to the assessable value of the impugned goods i.e. 8,06,03,509/- (Rupees Eight crore six lakh three thousand five hundred nine only) to bind himself to pay in case of any duty demand/ fine/ penalty/ interest as may be leviable on such goods, subsequently in adjudication.*

*(ii) The importer is required to furnish Bank Guarantee/ Security (containing clause binding the issuing Bank to keep it renewed and valid till payment of full liability in this case, or in the event of non-renewal of bank guarantee, the guaranteed amount be credited to Govt. account by the bank on its own) of Rs. 9,12,48,585/- (Rupees Nine crore twelve lakh forty-eight thousand five hundred eighty-five only) as security covering payment of any possible future liabilities of Duty(ies)/penalties/ fines payable against the said goods.*

15. On the other hand, learned counsel for the appellants submits that certificates issued by the supplier placed on record were not considered. Issues raised the appellants vis a vis (i) Improper sampling process; (ii) Test Memo not provided; (iii) Incomplete and leading Test Memo Format; and (iv) legal and policy violations etc. were not addressed. The appellants further submit that the impugned order was passed disregarding the import documents without even suspecting their authority; the value of the goods was ascertained by a Chartered Engineer, who was not either academically or professionally competent to value the goods in question; while taking the contemporaneous value for adopting, the adjudicating authority did not consider the lowest of the prices; similar goods are being imported in other Ports of the country and Revenue has not taken similar measures in respect of other importers while they have singled out and targeted the appellant herein.

16. Learned Counsel for the appellant submits that the CRCL have not conducted all the tests required to be done for import for identifying mixed lot of polyester woven fabrics with heat pressed film made of TPU (Thermo Plastic Polyurethane). He submits that the impugned goods are required to be tested as per standards IS 12649:98 and that further three tests are required to be done as per IS (7016). He also submits the various tests required to be conducted as per ASTM and the standard tests that repeated manufacturers like Artic Seals, Germany and others conduct to identify TPU coated on various material including polyester. A look at the test results given by the CRCL indicates that the above tests were not done. On perusal of some of the test reports we find that the samples drawn from the goods imported vide Bill of Entry No. 9769822/29.04.2025 and 9806044/ 30.04.2025 were reported to be laminated/visible with naked eye and in respect of samples drawn from other Bills of Entry it was reported either "NA" or "others". It is not mentioned whether the coating/impregnation was not noticeable by naked eye. We find that explanatory notes to HSN for Chapter 59 says that heading 59.03 applies to those which are not seen with naked eye also. For ease of reference, relevant notes are extracted as below.

*2. Heading 59.03 applies to:*

*(a) Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square metre and whatever the nature of the plastic material (compact or cellular), other than:*

*(1) Fabrics in which the impregnation, coating or covering cannot be seen with naked eye (usually Chapters 50 to 55, 58 or 60);*

*for the purpose of this provision, no account should be taken of any resulting change of colour;*

*(2) Products which cannot, without fracturing, be bent manually around a cylinder of a diameter of 7mm, at a temperature between 15C and 30C (usually chapter 39)*

*(3) Products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of colour (chapter 39)*

*(4) Fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments (usually chapters 50 to 55, 58 or 60)*

*(5) Plates, sheets or strip of cellular plastics, combined with textile, fabric, where the textile fabric is present merely for reinforcing purposes (Chapter 39); or*

*(6) Textile products of heading 58.11;*

.....

16.1. Explanatory notes to HSN under 59.03 provide that

*59.03 Textile fabric impregnated, coated, covered or laminated with plastics, other than those of heading 59.02.*

*5903.10- With poly (vinyl chloride)*

*5903.20- With polyurethane*

*5903.90- Other*

*This heading covers textile fabrics which have been impregnated, coated, covered or laminated with plastics (e.g. poly (vinyl chloride))*

*Such products are classified here whatever their weight per m<sup>2</sup> and whatever the nature of the plastic component (compact or cellular), provided,*

*(1) That, in case of impregnated, coated or covered fabrics, the impregnation, coating or covering can be seen with the naked eye otherwise than by a resulting change in colour.*

*Textile fabrics in which the impregnation, coating or covering cannot be seen with the naked eye or can be seen only by reason of a resulting change in colour usually fall in Chapters 50 to 55, 58 or 60. Examples of such fabrics are those impregnated with substances designed solely to render them cease-proof, moth-proof unshrinkable or waterproof (e.g. waterproof gabardines and poplins). Textiles fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments are also classified in Chapters 50-55, 58 or 60.*

.....

17. In view of the above, it appears, prima facie, that fabrics in which the impregnation, coating or covering cannot be seen with naked eye and fabrics in which the impregnation, coating or

covering can be seen with the naked eye otherwise than by a resulting change in colour can fall under 59.03. Therefore, the sense perceptible nature of the fabric cannot be the only determinative factor to decide the classification of fabrics. We find that the appellants submit that they have posed a number of queries to CRCL and only 8 of them answered; the parameters submitted by the supplier were not considered before testing and that the total tests were not conducted as per IS or ASTM.

18. Having heard the rival contentions and after going through the facts of the case and the jurisprudence evolved in this regard, we find that the provisional release is in the nature of an interim action and therefore, we need not go to the correctness of the classification either claimed by the appellants or proposed by the Revenue. The investigations are yet to be completed. Learned Commissioner records, in the impugned order that the investigation has been taking time; revenue has strong reasons to believe that there is a gross mis-declaration of quantity and value, Misclassification, resulting in huge duty evasion; further investigation in the matter is still ongoing; statements of the concerned persons are being recorded; the supplier also needs to be cross examined, as the sale contracts have appeared just one day after the investigation started; the importer has not produced any communication email, courier etc. details to prove how he has received these sales contracts immediately after the investigation started. Under the circumstances, we are of the considered opinion that it will be prejudicial and more so, it would appear pre-

determined to say that the Bank Guarantee ordered should be enough to cover the liabilities in the form of fine and penalty that may be imposed on completion of the adjudication. Therefore, we find that the issue lies in a narrow compass to decide whether the conditions put forth by the adjudicating authority for provisional release are justified in the facts and circumstances of the case or they need moderation or revision.

19. We find that both the appellants and Revenue placed reliance on a number of cases they want to rely upon. The appellants rely on set of cases where either the Circular No. 35/2017-Customs, dated 16-8-2017 was struck down or where in it was ordered that conditions of provisional release must not be harsh to destroy the importer. We find that the learned Special Counsel for the appellants submits that the cases relied upon by the appellants are distinguishable on the facts of the case and submits that the Adjudicating authority himself has dealt in detail about the said circular. We find that Learned adjudicating authority though accepts that though the Hon'ble Delhi High Court held that para 2 of Circular No. 35/2017-Cus. is clearly contrary to Section 110A and is, consequently, void and unenforceable at law, proceeds to say that the facts of the said case are distinguishable; provisional release was being considered in light of provisions of Section 110 of the Act and that the said Circular No. 35/2017-Cus. supra has been considered and found valid & legal by the various High Courts in judgments rendered subsequently. Learned Commissioner relies on Hon'ble Karnataka High Court's decision dated 11.06.2024 in WP No. 4798 of 2024 in the case of

Worth Electronics Services Private Ltd and Madras High Court's decision in the case of Shree Venkateshwara Bullion -2025(391) ELT338(Mad).

20. We find that Hon'ble Delhi High Court on the case of Ausil Corporation Pvt Ltd (2024) 24 Centax 35 (Del.) held that

*55. As far as the circular dated January 20, 2016 is concerned, regulation 2(2) of the Customs (Provisional Duty Assessment) Regulations, 2011 provides for a maximum payment of only 20 per cent. of duty differential in the case of a provisional assessment. The insistence on a bank guarantee for the entire differential duty appears to be contrary to regulation 2(2). The court is unable to accept the plea of Mr. Dubey that the above circular emerges from the regulation 4 and is intended to adequately secure the Revenue and ensure uniformity of provisional assessments across all ports. The said circular does not leave the issue of what conditions should be imposed for provisional assessment to the concerned customs officer. It requires the officer to demand 100 per cent bank guarantee even in respect of those bills of entries which have been provisionally assessed under section 18 of the Act. It certainly is contrary to proviso (a) to section 151A inasmuch it dictates to the customs officer in what manner he should complete a provisional assessment. The consequent impugned letter dated January 22, 2016 came to be issued to M/s. J. B. Overseas only on the basis of the said circular.*

21. We find that Hon'ble High Court of Delhi in the case of Rocktek Infra Services Pvt Ltd, W.P.(C) 12489/2024, held as under

*13. The Customs Department has already accepted the prayer for provisional release. The issue is only in respect of the conditions that are to be imposed. The Court has considered the total value of the goods and the amount of the Bank Guarantee. The calculated amount for the bank guarantee would be substantial and may almost constitute 70-80% of the value of the goods itself. The imposition of conditions being a discretionary matter, in the facts of this case, this Court is of the opinion that it would be just and fair that apart from the Bond which has been directed, the Bank Guarantee to the tune of 30% of the differential duty be furnished by the Petitioner. Ordered accordingly.*

22. Hon'ble High Court of Punjab & Haryana in the case of 2015 (324) E.L.T. 149 (P & H) Gaurav Electronics held that

*5. The petitioner has paid Rs. 30 lacs as demanded and has undertaken to pay the entire amount of differential duty as may be determined and put up on the department's website. The respondents have demanded a bank guarantee as a precondition to the release of goods, apparently to protect the interest of the revenue if any further amount is found due from the petitioner at the time of final adjudication. While considering the desirability of demanding a bank guarantee, a Division Bench held in Kuber Casting (P) Ltd. v. Union of India, 2013 (297) E.L.T. 4 (P & H) that the demand of a bank guarantee is not only harsh but squeezes the petitioner's business. We are in respectful agreement with this opinion but would point out that depending upon the facts of a case, the revenue may legitimately demand a bank guarantee; the relevant facts being a bona fide apprehension that the assessee may not discharge its liability, the assessee may not be traceable or such other circumstance as may be relevant. The condition of a bank guarantee should, however, not be imposed mechanically or as a tool to pressurize an assessee.*

23. Hon'ble High Court of Delhi in the case of Additional Director General (Adjudication) Vs. Its My Name Pvt. Ltd 2021 (375) E.L.T. 545 (Del.) held that

*86. There appears, prima facie, to be substance in the grievance voiced by the Learned ASG. In our view, therefore, the interests of justice would justify modification, of the terms fixed by the Learned Tribunal for provisional release of the seized gold, gold jewelry and silver, by requiring the respondent to furnish a bond, for the full value of the seized goods, along with a Bank Guarantee, containing an auto renewal clause, for ` 10 crores, which works out to over 30% of the value of the seized gold (including the gold of which provisional release is not being permitted). This, in our opinion, would sufficiently safeguard the interests of the Revenue.*

24. Hon'ble High Court of Punjab & Haryana in the case of Pallahan Industries 2015 (325) E.L.T. 18 (P & H) held that

*4. We have given our thoughtful consideration to the submissions made by the learned counsel for the parties.*  
*5. In 'Om Udyog v. Joint Commissioner of Customs' 2013 (287) E.L.T. 48 (P & H), a Division Bench of this Court while relying*

*upon various judgments has observed that requirement of furnishing bank guarantee of the goods is not justified on a simple dispute of classification and valuation. In the instant case also there is a dispute regarding valuation of the goods to be exported.*

*6. In 'Kuber Casting (P) Ltd. v. Union of India, 2013 (297) E.L.T. 4 (P & H), a Division Bench of this Court has again held that the demand of a bank guarantee is not only harsh, but squeezes the petitioner's business. The condition of a bank guarantee should, however, not be imposed mechanically or as a tool to pressurize an assessee.*

*7. A due consideration of the facts and circumstances of the case reveals that the petitioner has already paid ` 5,00,000/- and is also ready to furnish personal/surety bond equivalent to the declared value of the goods. The respondents have not pointed out any circumstance which may raise an apprehension or presumption that the petitioner will not discharge its liability qua any amount that may be assessed at the time of final adjudication.*

*8. Consequently, we quash the condition (b) requiring the appellant to furnish a bank guarantee of 10% amount of the declared FOB value. The petitioner shall furnish personal/surety bond and undertaking that in the eventuality of any other amount found due, it would discharge its liability, without any protest or demure subject, however, to its right to file an appeal. The goods if not released, be released to the petitioner within two weeks from the date of receipt of certified copy of this order. It is clarified that any observation made hereinbefore shall not be taken as an expression of opinion on the merits of the controversy.*

25. We find that this Bench in the case of Shanus Impex and M/s S.K. Overseas, vide Final order Nos.60002-60003/2024 dated 04.01.2024, after considering the ratio of various cases held that:

*5. Heard both sides and perused the records of the case. In the instant issue, we find that the goods are of perishable nature and it will not be anybody's gain to keep the goods rotting under seizure. We find that, prima facie, the evidence available with the Department is in the form of transcripts of messages and the investigation is in progress and the Department is yet to negate the certificate issued by the authorities in Afghanistan. Understandably, the enquiry as per the procedure laid down under the Notification regarding the rules of origin is likely to take some time. Therefore, there is nothing wrong in releasing*

*the goods provisionally as has been ordered by the competent authority. However, the only difference of opinion lies in the quantum of Bond and Bank Guarantee to be furnished for such release.*

6. *We find that the Hon'ble High Court of Gujarat in the case of Swiss Carbonate (supra) quoting from other judgments held that:*

*"There are many judgments of different High Courts which have been placed by Mr. Nayak for our consideration. One of the judgment of Delhi High Court in the case of Spirotech Heat Exchangers Pvt. Ltd. v. Union of India reported in [2016 \(341\) E.L.T. 110](#) (Del.) takes the view that the provisional release of seized goods on the condition of payment of 100% of differential duty along with bank guarantee equivalent to 25% of differential duty and bond for 100% of value of the goods would be termed as very harsh condition and contrary to the judgments of the High Courts and Supreme Court. In the said case, the Delhi High Court directed to release the goods subject to the petitioner executing a bond in a sum equivalent to 100% value of the goods and further furnishing security in the form of bank guarantee for a sum equivalent to 30% of the differential duty."*

7. *The Hon'ble High Court of Delhi in the case of Spirotech Heat Exchangers Pvt. Ltd. (supra) held that:*

6. *The Court notices that despite the aforementioned orders of this Court and the Supreme Court, the respondents are continuing to impose harsh conditions for provisional release of goods. In the present case, apart from the exporter having to pay 100% of the differential duty it has to furnish a bank guarantee equivalent to 25% of the differential duty and execute a bond for 100% of the value of the goods. Since the respondents do not appear to be inclined to follow the aforementioned orders binding order of the Supreme Court, and are compelling exporters and importers to approach this Court every time for relaxation of the conditions imposed for the provisional release of goods, the Court is of the view that relegating the petitioner to a statutory remedy would not be efficacious.*

8. *The Hon'ble High Court of Gujarat in the case of Printwell Offset (supra) held that:*

5. *In the light of the fact that the principal relief prayed for in this petition has not been pressed, it is not necessary to enter into the merits of the impugned order dated 2-12-2015 withdrawing the redemption issued to the petitioner. However, consequent to the said order, as on date, the petitioner's redemption stands withdrawn. Resultantly, the petitioner firm would be required to fulfil the export obligation in terms of the*

*EPCG scheme authorization granted to it. Since the first part of the export obligation was to be completed within a period of four years, it appears that the petitioner still has time to fulfil the export obligation. As rightly submitted by the learned counsel for the petitioner, if the machines imported under EPCG scheme remain under seizure, the condition thereof is likely to deteriorate, which would not benefit either the petitioner nor the Revenue. On the other hand, if the petitioner firm is permitted to use the machines, it may be in a position to fulfil the export obligation, which would be in the benefit of the scheme. On a perusal of the order of provisional release, it is apparent that three conditions have been imposed for the purpose of provisional release of the goods. Firstly, the petitioner is required to furnish of a bond for the full value of the goods, to which the petitioner has no objection. Secondly, the petitioner is required to furnish a bank guarantee for the full duty amount, which is the main bone of contention. Thirdly, the petitioner is required to furnish a bank guarantee equal to 25% of duty amount. This condition is in the nature of penalty, and hence, at this stage, the question of furnishing a bank guarantee towards penalty would not arise.*

*6. Under the circumstances, without entering into the merits of the contentions of the rival parties, the Court is of the view that the interests of justice would be served if the order of provisional release of the seized goods as contained in the communication dated 9-2-2016, is modified to the following extent :*

*(i) The first condition which requires the petitioner to furnish a bond for the full value of the goods is required to be sustained*

*(ii) The second condition which requires the petitioner to furnish bank guarantee for full duty amount is required to be modified by directing the petitioner to furnish a bank guarantee to the extent of 30% of the duty amount in line with the decision of the Supreme Court in Commissioner of Customs, ICD, TKD, New Delhi v. Navshakti Industries Pvt. Ltd. (supra).*

*9. We find that various High Courts have been consistent in taking the view that Bank Guarantee of about 25% of the differential duty along with Bond for full duty would suffice for provisional release of seized goods. In the instant case, learned Authorized Representative seeks to rely on the judgment of Hon'ble Punjab & Haryana High Court in the case of T.L. Verma & Company Pvt. Ltd. (supra). We find that in this case and also other cases relied upon by the Authorized Representative, the facts are not comparable as the cases, referred to, were regarding seizure of non-perishable goods and goods alleged to have been smuggled. To that extent, we find that the cases cited by the Authorized Representative cannot be*

*relied upon. In the instant case, the goods have been cleared by the jurisdictional Customs Authorities after satisfying themselves about the conditions of import and the same were seized by DRI at a later date; the goods are of perishable nature and the exact origin of the goods is yet to be ascertained. Therefore, considering the facts and circumstances of the case, we find that the following conditions would suffice in the interest of justice:*

*(i) The importers shall furnish a Bond covering the full value of goods and bind themselves to pay the differential duty along with fine, penalty and interest that may be levied on adjudication of the case.*

*(ii) The importers shall furnish Bank Guarantee equal to 30% of the alleged differential duty.*

26. In view of the above, we find that while the adjudicating authority is well within his right to impose conditions for provisional release of the goods, the said conditions should not be so impracticable and harsh so as to kill the importer's business itself as held by various decisions as above. It has to be borne in mind that no two cases can be identical and a single fact can differentiate one case from the other. Therefore, any decision following the other cases would lead to disastrous results. Therefore, a considered decision needs to be taken based on the facts and circumstances of the case before hand. The appellants claim that there are certain inadequacies in the investigation, sampling, testing and the valuation of the goods as pointed out by the appellant. We find that the peculiar facts of the case are that:

- the goods are not per se prohibited; the importer is not a flyby night operator; they are in the business for more than 30 years and were importing regularly at the Port in question and in other Ports;

- the Appellant had imported similar goods on an earlier occasion vide Bill of Entry No. 9387015 dated 23.11.2023 and CRCL New Delhi refused to conduct testing claiming lack of facility for conducting tests especially "FITR Analysis"; the said consignments have been cleared after getting the same tested from Textile Committee; In the instant case, the opinion of Textile Committee has not been taken;
- CRCL has not addressed all the queries raised by the importer and have not tested all the parameters as per Indian or International standards;
- The Academic and Professional competence of the Chartered Engineer to evaluate the goods and the source of the methodology he adopted are forthcoming.
- Revenue seeks to assess most of the impugned goods on per square meter basis. However, for the purposes of Bond, BG, they consider the total value.
- appellant's averment that the impugned goods cannot be actually sold in the market at the value arrived at by the Revenue cannot be discarded.
- The adjudicating authority himself finds that the investigation is in progress.

27. In view of the above, we find that the interest of justice and also the interest of Revenue will be safeguarded by seeking a bond for the full value of the goods and Bank Guarantee to the extent of 30% of the duty estimated. We further find that the other conditions for the provisional release, as ordered by the Commissioner of Customs, need not be interfered with. Accordingly, the appeal is partly allowed subject the appellant complying with the above directions, the goods shall be released within a period of two weeks.

(Order pronounced in the open court on 16/01/2026)

**(S. S. GARG)**  
**MEMBER (JUDICIAL)**

**(P. ANJANI KUMAR)**  
**MEMBER (TECHNICAL)**