

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA
REGIONAL BENCH – COURT NO.1**

Customs Appeal No. 78048 of 2018

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/46/2018 dated: 31.05.2018 passed by Commissioner of Customs (Port), Kolkata.)

M/s. Rashmi Umbrella Pvt. Ltd.

(40A, Armenian Street, 1st Floor, Kolkata – 700 001.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

(Customs House, 15/1 Strand Road Kolkata- 700001.)

...Respondent

APPEARANCE :

Present for the Appellant: Mr. Sudhir Mehta, Advocate

Present for the Respondent: Mr. Subrata Debnath, Authorised Representative

CORAM:

HON'BLE MR. ASHOK JINDAL MEMBER (JUDICIAL)

HON'BLE MR. RAJEEV TANDON MEMBER (TECHNICAL)

FINAL ORDER No...77664/2023

DATE OF HEARING : 06.12.2023

DATE OF DECISION : 06.12.2023

PER: RAJEEV TANDON

The impugned appeal has been filed by M/s. Rashmi Umbrella Pvt. Ltd. assailing the Order in Original No. KOL/CUS/COMMISSIONER/PORT/46/2018 dated 31.05.2018 passed by the learned Commissioner of Customs (Port), Kolkata. Vide the impugned order the learned Commissioner has directed the group to finally assess the Bill of Entry 4868053 dated 11.03.2014 as per his findings. He has further dropped the charges in respect of past imports, Bill of Entry for which had been finally assessed by the department.

As for provisionally assessed Bills of Entry the order in original directs the finalization of the said Bills of Entry as well.

2. The short question in the present appeal concerns the classification of the imported goods declared as non-texturised polyester lining fabric other than upholstery fabric imported in rolls. The department based on intelligence gathered in respect of certain importers alleging mis-declaration and mis-classification of umbrella cloth panel fabric classifiable under CTH 5407 by declaring them as non-texturised polyester lining fabric coated, classifying the same under 5903 or declaring the imported goods as non-texturised polyester lining fabric (other than upholstery), classifiable under 540761, carried out certain investigations and issued notice to the appellant for the rightful classification of the imported goods.

3. At the time of interception by the department one live Bill of Entry No. 4868053 dated 11.03.2014, filed by the appellant was taken up for investigations. In respect of various others Bills of Entry listed at annexure 1(total-16) or annexure 2 (total-42) of the show cause notice, the imported goods were not available physically and information thereto had been culled out by the department from records. However, in respect of some of these Bills of Entry filed by the department, the assessment were provisional and accordingly the order passed by the learned Adjudicating Authority for finalization of the said Bills of Entry as per his findings referred to supra.

4. At the outset we are of the opinion that all provisional assessments if hitherto not finalized, can only be so done based on details available on record and on the basis of outcomes and test result of sample of the imported goods undertaken if any. No assessment can be finalized on the basis of presumptions and generalization in respect of certain imports having been made by the appellants in the past or on the basis of their purported

admission in the absence of any corroborative evidence suffice to state that such finalization can only be based on documentary analysis of the imported goods, failing which the department has no authority to arbitrate and force upon the importers their assumed reasons for a particular classification. This is to state therefore, that the only issue in the present appeal that would survive for consideration is in respect of the live Bill of Entry No. 4868053 dated 11.03.2014, that was subjected to test and analysis by the department.

5. We note that in the present dispute the assessee had also approached the Hon'ble High Court and filed a writ petition No. 213 of 2016. The said writ petition was disposed by the Hon'ble High Court with the following orders:

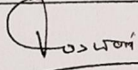
"W.P No. 213 of 2016 is disposed of by directing the goods, or samples drawn there from, to be tested by the Textile Committee Laboratory. All expenses for such repeat test will be borne by the petitioner by a substantial pre-deposit equivalent to thrice the cost for the re-examination, which will be refunded to the petitioner in the event the test report justifies the petitioner's description of the goods. In the event the test report goes against the petitioner, the amount deposited by the petitioner will stand forfeited.

The exercise of sending the goods/samples to the Textile Committee laboratory should be completed within a week from date and the result obtained within a fortnight."

6. Pursuant to the said order of the Hon'ble High Court the sample were sent for re-test to the Textile Committee Laboratory- sample A, B and C were drawn against Bill of Entry No. 4868053 dated 11.03.2014 and Sample D was drawn from importers' factory duly certified by him. On completion of the formalities as required for retest, the Reports dated 03.03.2016 were received from the Regional Laboratory Textiles Committee as follows:-

- a) Test Report No: TC/LC/ST/97/2016-17 dated 27.04.2016 for Sample-A;
- b) Test Report No: TC/LC/ST/98/2016-17 dated 27.04.2016 for Sample-B;
- c) Test Report No: TC/LC/ST/101/2016-17 dated 27.04.2016 for Sample-C;
- d) Test Report No: TC/LC/ST/103/2016-17 dated 27.04.2016 for Sample-D;"

The test results as obtained are extracted hereinbelow:

क्षेत्रीय प्रयोगशाला वस्त्र समिति (वस्त्र मंत्रालय, भारत सरकार) ब्लॉक 'जी एन' प्लॉट- ३८/३ सेक्टर-V सॉल्ट लेक, कोलकाता - ७०० ०९१		 164		Regional Laboratory Textiles Committee (Ministry of Textiles, Govt. of India) Block-'GN'Plot-38/3, Sector-V Salt Lake, Kolkata -700 091	
Tel (Off) 91-33-2357 5155/1008 Tele Fax : 2357 5202 E-mail - kolkata.tc@gmail.com					
TEST REPORT					
Test Report No: TC/LC/ST/97/2016-17				Format No.12/20A/01	
Name and Address of Customer		Deputy Commissioner Special Investigation Branch, Govt. of India Office of the Principal Commissioner of Customs, Port 15/1, Strand Road, Custom House, Kolkata-700001			
Sample Forwarding letter No. & Date		F.No. S121 - 21 / 2014 SIB (Pt), Dtd. 18/04/2016			
Date of receipt of sample		19/04/2016			
Buyers Name & Address (Optional):		---			
Customer Sample No.		---			
Sample Description:		FABRIC(BLACK)		Lab. Sample No. CCO-97	
Sample Characteristics :		---			
Date of performance of Tests :		19/04/2016 - 27/04/2016			
TEST RESULTS					
Sample Mark		SAMPLE - A			
Laboratory Sample No.		CCO - 97			
B1.	Whether the fabric is woven, knitted or other please specify?	Woven fabric			
B2.	Whether Woven fabric is made of synthetic filament yarn?	Yes			
B3.	Whether synthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm strip and like of synthetic textile materials of an apparent width not exceeding 5 mm?	Fabric made of synthetic multifilament yarn.			
B4.	Whether obtained from high tenacity yarn of nylon or other polyamides or of polyesters?	Cannot be ascertained			
B5.	Whether textured fabric or non-textured fabric of polyester or anything etc. and also specify the % of textured or non-textured filaments.	Warp - Non Texturised yarn Weft - Non Texturised yarn % of Non Texturised yarn - 100			
B6.	Whether the fabric is coated?	No			
B7.	If coated, then whether the same can be seen with naked eyes?	No			
Note: Test sl. No. 5 subcontracted from H.O - Mumbai.					
Page 1 of 2		Signature and Seal of the Officer  सुमन गोस्वामी क. गु. आ. अ. (प्रयोगशाला) Suman Goswami Jr. Quality Assurance Officer (Lab)			
Sample is not drawn by Textiles Committee. Results related only to the samples tested. This test report is not to 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 is conditioned and tested at a temp. of 27±2°C (instead 21±1°C) and 65 ± 2% RH wherever ASTM/AATCC test methods are adopted. Complaints, if any, are to be received within 45 days of date of issue of the test report. Head Office : P. Balu Road, Prabhadevi Chowk, Prabhadevi, Mumbai-400 025 Tel : +91-22-6652 7500 (Board) Fax : +91-22-6652 7554 Textiles Committee- Most Reliable and Most Accurate.					

प्रादेशिक प्रयोगशाला
वस्त्र समिति
(वस्त्र मंत्रालय, भारत सरकार)
ब्लॉक 'जी एन' प्लॉट- ३८/३ सेक्टर-V
सॉल्ट लेक, कोलकाता - ७०० ०९१

Regional Laboratory
Textiles Committee
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Salt Lake, Kolkata -700 091

Tel (Off) 91-33-2357 5155/1008 Tele Fax : 2357 5202
E-mail - kolkata.tc@gmail.com

TEST REPORT Format No. 12/20A/01

Continuation Sheet of Test Report No.: TC/LC/ST/97/2016 - 17 Dt. 27/04/2016

Sample Mark	SAMPLE - A
Laboratory Sample No.	CCO - 97
B8. If coating can be seen with naked eyes then whether this coating was seen with naked eyes without taking into consideration any colour change i.e whether this coating is seen with naked eyes, only when, the colour changes?	No
B9. If after chemical test, coating is found, then what is the nature of the coating i.e. whether these are PVC or other coating material like aluminium paste?	Not coated.
B10. Whether these coatings have been applied are in nature of water proof and or anti UV radiation type of materials and have been applied only with that purpose?	Not coated.
B11. Whether these fabrics are used for or as umbrella fabric and or upholstery / lining fabric.	Cannot be ascertained. However the end use of the fabric is upto customers' / users' choice & latest fashion trend.
B12. Please specify the composition and its nature of the fabric	Nature of Fibre (IS 667:1981-RA 2013) Warp & Weft - polyester - 100% % Composition % of Polyester - 100 (excluding Finish)

Signature and Seal of the Officer
सुमन गोस्वामी
क. गु. अ. (प्रयोगशाला)
Suman Goswami
Jr. Quality Assurance Officer (Lab)

Page 2 of 2

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TEST REPORT

Format No.12/20A/01

Test Report No:TC/LC/ST/98/2016-17

Name and Address of Customer	Deputy Commissioner Special Investigation Branch, Govt. of India Office of the Principal Commissioner of Customs, 15/1, Strand Road, Custom House, Kolkata-700001
Sample Forwarding letter No. & Date	F.No. S121 - 21 / 2014 SIB (Pt), Dtd. 16/4/2016
Date of receipt of sample	19/04/2016
Buyers Name & Address (Optional):	---
Customer Sample No.	---
Sample Description:	FABRIC(PRINTED)
Sample Characteristics :	---
Date of performance of Tests :	19/04/2016 - 27/04/2016

Lab.
Sample
No.
CCO-98

TEST RESULTS

Sample Mark	SAMPLE - A
Laboratory Sample No.	CCO - 98
B1. Whether the fabric is woven, knitted or other please specify?	Woven fabric
B2. Whether Woven fabric is made of synthetic filament yarn?	Yes
B3. Whether synthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm strip and like of synthetic textile materials of an apparent width not exceeding 5 mm?	Fabric made of synthetic multifilament yarn.
B4. Whether obtained from high tenacity yarn of nylon or other polyamides or of polyesters?	Cannot be ascertained
B5. Whether textured fabric or non-textured fabric of polyester or anything etc. and also specify the % of textured or non-textured filaments.	Warp - Non Texturised yarn Weft - Texturised yarn % of Non Texturised yarn - 61.9 % of Texturised yarn - 38.1
B6. Whether the fabric is coated?	No
B7. If coated, then whether the same can be seen with naked eyes?	No

Note: Test sl. No. 5 subcontracted from H.O - Mumbai.

Signature and Seal of the Officer

सुमन गोस्वामी
क. गु. आ. अ. (प्रयोगशाला)
Suman Goswami
Jr. Quality Assurance Officer (Lab)

Page 1 of 2

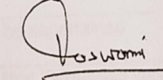
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TEST REPORT			
Format No. 12/20A/01			
Continuation Sheet of Test Report No.: TC/LC/ST/98/2016 - 17 Dt. 27/04/2016			
Sample Mark		SAMPLE - A	
Laboratory Sample No.		CCO - 98	
B8.	If coating can be seen with naked eyes then whether this coating was seen with naked eyes without taking into consideration any colour change i.e whether this coating is seen with naked eyes, only when, the colour changes?	No	
B9.	If after chemical test, coating is found, then what is the nature of the coating i.e. whether these are PVC or other coating material like aluminium paste?	Not coated.	
B10.	Whether these coatings have been applied are in nature of water proof and or anti UV radiation type of materials and have been applied only with that purpose?	Not coated.	
B11.	Whether these fabrics are used for or as umbrella fabric and or upholstery / lining fabric.	Cannot be ascertained. However the end use of the fabric is upto customers'/ users' choice & latest fashion trend.	
B12.	Please specify the composition and its nature of the fabric:	Nature of Fibre (IS 667:1981-RA 2013) Warp & Weft - polyester - 100% % Composition % of Polyester - 100 (excluding Finish)	
 Signature and Seal of the Officer सुमन गोस्वामी क. गु. आ. अ. (प्रयोगशाला) Suman Goswami Jr. Quality Assurance Officer (Lab)			
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TEST REPORT

Test Report No: TC/LC/ST/99/2016-17
Format No.12/20A/01
Dt.22/04/2016

Name and Address of Customer
Deputy Commissioner
Special Investigation Branch, Govt. of India
Office of the Principal Commissioner of Customs
15/1, Strand Road, Custom House,
Kolkata-700001

Sample Forwarding letter No. & Date
F.No. S121 - 21 / 2014 SIB (Pt) , Dtd. 18/04/2016

Date of receipt of sample
19/04/2016

Buyers Name & Address (Optional):

Customer Sample No.

Sample Description:
FABRIC(PRINTED)

Sample Characteristics :

Date of performance of Tests :
19/04/2016 - 22/04/2016

TEST RESULTS

Sample Mark	LABORATORY SAMPLE NO.	SAMPLE - B
B1. Whether the fabric is woven, knitted or other please specify?	CCO - 99	Woven fabric
B2. Whether Woven fabric is made of synthetic filament yarn?	Yes	Yes
B3. Whether synthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm strip and like of synthetic textile materials of an apparent width not exceeding 5 mm?	Fabric made of synthetic multifilament yarn.	Fabric made of synthetic multifilament yarn.
B4. Whether obtained from high tenacity yarn of nylon or other polyamides or of polyesters?	Cannot be ascertained	Cannot be ascertained
B5. Whether textured fabric or non-textured fabric of polyester or anything etc. and also specify the % of textured or non-textured filaments.	Warp - Non Texturised yarn Weft - Texturised yarn % of Non Texturised yarn - 61.0 % of Texturised yarn - 39.0	Warp - Non Texturised yarn Weft - Texturised yarn % of Non Texturised yarn - 61.0 % of Texturised yarn - 39.0
B6. Whether the fabric is coated?	No	No
B7. If coated, then whether the same can be seen with naked eyes?	No	No

Note: Test sl. No. 5 subcontracted from H.O - Mumbai.

Signature and Seal of the Officer
सुमन गोस्वामी
क. गु. आ. अ. (प्रयोगशाला)
Suman Goswami
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सॉल्ट लेक, कोलकाता - ७०० ०९१

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TEST REPORT Format No. 12/20A/01

Continuation Sheet of Test Report No.: TC/LC/ST/99/2016 - 17 Dt. 22/04/2016

Sample Mark	SAMPLE - B	
Laboratory Sample No.	CCO - 99	
B8. If coating can be seen with naked eyes then whether this coating was seen with naked eyes without taking into consideration any colour change i.e whether this coating is seen with naked eyes , only when , the colour changes?	No	
B9. If after chemical test , coating is found, then what is the nature of the coating i.e. whether these are PVC or other coating material like aluminium paste ?	Not coated.	
B10. Whether these coatings have been applied are in nature of water proof and or anti UV radiation type of materials and have been applied only with that purpose?	Not coated.	
B11. Whether these fabrics are used for or as umbrella fabric and or upholstery / lining fabric.	Cannot be ascertained. However the end use of the fabric is upto customers/ users' choice & latest fashion trend.	
B12. Please specify the composition and its nature of the fabric	Nature of Fibre (IS 667:1981-RA 2013) Warp & Weft - polyester - 100% % Composition % of Polyester - 100 (excluding Finish)	

Signature and Seal of the Officer
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क. गु. आ. अ. (प्रयोगशाला)
Suman Goswami
Jr. Quality Assurance Officer (Lab)

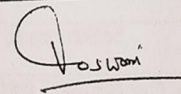
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Tel (Off) 91-33-2357 5155/1008 Tele Fax : 2357 5202 E-mail - kolkata.tc@gmail.com					
TEST REPORT					
Test Report No: TC/LC/ST/100/2016-17				Format No. 12/20A/01 Dt. 22/04/2016	
Name and Address of Customer		Deputy Commissioner Special Investigation Branch, Govt. of India Office of the Principal Commissioner of Customs 15/1, Strand Road, Custom House, Kolkata-700001			
Sample Forwarding letter No. & Date		F.No. S121 - 21 / 2014 SIB (Pt), Dtd. 18/04/2016			
Date of receipt of sample		19/04/2016			
Buyers Name & Address (Optional):		---			
Customer Sample No.		---			
Sample Description:		FABRIC(BLACK)			
Sample Characteristics :		---			
Date of performance of Tests :		19/04/2016 - 22/04/2016			
TEST RESULTS					
Sample Mark		SAMPLE - B			
Laboratory Sample No.		CCO - 100			
B1. Whether the fabric is woven, knitted or other please specify?		Woven fabric			
B2. Whether Woven fabric is made of synthetic filament yarn?		Yes			
B3. Whether synthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm strip and like of synthetic textile materials of an apparent width not exceeding 5 mm?		Fabric made of synthetic multifilament yarn.			
B4. Whether obtained from high tenacity yarn of nylon or other polyamides or of polyesters?		Cannot be ascertained			
B5. Whether textured fabric or non-textured fabric of polyester or anything etc. and also specify the % of textured or non-textured filaments.		Warp - Non Texturised yarn Weft - Non Texturised yarn % of Non Texturised yarn - 100			
B6. Whether the fabric is coated?		No			
B7. If coated, then whether the same can be seen with naked eyes?		No			
Note: Test sl. No. 5 subcontracted from H.O - Mumbai.					
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Tel (Off) 91-33-2357 5155/1008 Tele Fax : 2357 5202 E-mail - kolkata.tc@gmail.com		Format No. 12/20A/01	
TEST REPORT			
Continuation Sheet of Test Report No.: TC/LC/ST/100/2016 - 17 Dt. 22/04/2016			
Sample Mark	SAMPLE - B		
Laboratory Sample No.	CCO - 100		
B8.	If coating can be seen with naked eyes then whether this coating was seen with naked eyes without taking into consideration any colour change i.e whether this coating is seen with naked eyes , only when , the colour changes?	No	
B9.	If after chemical test , coating is found, then what is the nature of the coating i.e. whether these are PVC or other coating material like aluminium paste ?	Not coated.	
B10.	Whether these coatings have been applied are in nature of water proof and or anti UV radiation type of materials and have been applied only with that purpose?	Not coated.	
B11.	Whether these fabrics are used for or as umbrella fabric and or upholstery / lining fabric.	Cannot be ascertained. However the end use of the fabric is upto customers'/ users' choice & latest fashion trend.	
B12.	Please specify the composition and its nature of the fabric .	Nature of Fibre (IS 667:1981-RA 2013) Warp & Weft - polyester - 100% % Composition % of Polyester - 100 (excluding Finish)	
		 Signature and Seal of the Officer सुमन गोस्वामी क. गु. आ. अ. (प्रयोगशाला) Suman Goswami Jr. Quality Assurance Officer (Lab)	
Page 2 of 2			
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(वस्त्र मंत्रालय, भारत सरकार)
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सॉल्ट लेक, कोलकाता - ७०० ०९१

Regional Laboratory
Textiles Committee
(Ministry of Textiles, Govt. of India)
Block 'GN' Plot-38/3, Sector-V
Salt Lake, Kolkata - 700 091

Tel (Off) 91-33-2357 5155/1008 Tele Fax : 2357 5202
E-mail - kolkata.tc@gmail.com

TEST REPORT

Test Report No: TC/LC/ST/101/2016-17 Format No. 12/20A/01
Name and Address of Customer Deputy Commissioner
Special Investigation Branch, Govt. of India
Office of the Principal Commissioner of Customs (R)
15/1, Strand Road, Custom House,
Kolkata-700001

Sample Forwarding letter No. & Date F.No. S121 - 21 / 2014 SIB (Pt) , Dtd. 18/04/2016
Date of receipt of sample 19/04/2016
Buyers Name & Address (Optional): ---
Customer Sample No. ---

Sample Description: FABRIC(BLACK)
Sample Characteristics : ---
Date of performance of Tests : 19/04/2016 - 27/04/2016

TEST RESULTS

Sample Mark	SAMPLE - C
Laboratory Sample No.	CCO - 101
B1. Whether the fabric is woven, knitted or other please specify?	Woven fabric
B2. Whether Woven fabric is made of synthetic filament yarn?	Yes
B3. Whether synthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm strip and like of synthetic textile materials of an apparent width not exceeding 5 mm?	Fabric made of synthetic multifilament yarn.
B4. Whether obtained from high tenacity yarn of nylon or other polyamides or of polyesters?	Cannot be ascertained
B5. Whether textured fabric or non-textured fabric of polyester or anything etc. and also specify the % of textured or non-textured filaments.	Warp - Non Texturised yarn Weft - Non Texturised yarn % of Non Texturised yarn - 100
B6. Whether the fabric is coated?	No
B7. If coated, then whether the same can be seen with naked eyes?	No

Note: Test sl. No. 5 subcontracted from H.O - Mumbai.

Page 1 of 2

Signature and Seal of the Officer
सुमन गोस्वामी
क. गु. आ. अ. (प्रयोगशाला)
Suman Goswami
Jr. Quality Assurance Officer (Lab)

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वस्त्र मंत्रालय, भारत सरकार)
ब्लॉक 'जी एन' प्लॉट- ३८/३ सेक्टर-V
सॉल्ट लेक, कोलकाता - ७०० ०९१

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TEST REPORT

Continuation Sheet of Test Report No.: TC/LC/ST/101/2016 -17 Dt. 27/04/2016

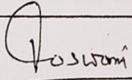
Format No. 12/20A/01

Sample Mark	Laboratory Sample No.	TEST REPORT
B8.	If coating can be seen with naked eyes then whether this coating was seen with naked eyes without taking into consideration any colour change i.e whether this coating is seen with naked eyes, only when, the colour changes?	SAMPLE - C CCO - 101 No
B9.	If after chemical test, coating is found, then what is the nature of the coating i.e. whether these are PVC or other coating material like aluminium paste?	Not coated.
B10.	Whether these coatings have been applied are in nature of water proof and or anti UV radiation type of materials and have been applied only with that purpose?	Not coated.
B11.	Whether these fabrics are used for or as umbrella fabric and or upholstery / lining fabric.	Cannot be ascertained. However the end use of the fabric is upto customers'/ users' choice & latest fashion trend.
B12.	Please specify the composition and its nature of the fabric	Nature of Fibre (IS 667:1981-RA 2013) Warp & Weft - polyester - 100% % Composition % of Polyester - 100 (excluding Finish)

Signature and Seal of the Officer
सुमन गोस्वामी
क. गु. आ. अ. (प्रयोगशाला)
Suman Goswami
Jr. Quality Assurance Officer (Lab)

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Tel (Off) 91-33-2357 5155/1008 Tele Fax : 2357 5202 E-mail - kolkata.tc@gmail.com					
TEST REPORT					
Test Report No:TC/LC/ST/102/2016-17				Format No.12/20A/01	
Name and Address of Customer				Dt.27/04/2016	
Deputy Commissioner Special Investigation Branch, Govt. of India Office of the Principal Commissioner of Customs(P 15/1, Strand Road, Custom House, Kolkata-700001					
Sample Forwarding letter No. & Date				F.No. S121 - 21 / 2014 SIB (Pt), Dtd. 18/04/2016	
Date of receipt of sample				19/04/2016	
Buyers Name & Address (Optional):				---	
Customer Sample No.				---	
Sample Description:				FABRIC(PRINTED)	
Sample Characteristics :				---	
Date of performance of Tests :				19/04/2016 - 27/04/2016	
TEST RESULTS					
Sample Mark				SAMPLE - C	
Laboratory Sample No.				CCO - 102	
B1.	Whether the fabric is woven, knitted or other please specify?			Woven fabric	
B2.	Whether Woven fabric is made of synthetic filament yarn?			Yes	
B3.	Whether synthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm strip and like of synthetic textile materials of an apparent width not exceeding 5 mm?			Fabric made of synthetic multifilament yarn.	
B4.	Whether obtained from high tenacity yarn of nylon or other polyamides or of polyesters?			Cannot be ascertained	
B5.	Whether textured fabric or non-textured fabric of polyester or anything etc. and also specify the % of textured or non-textured filaments.			Warp - Non Texturised yarn Weft - Texturised yarn % of Non Texturised yarn - 62.8 % of Texturised yarn - 37.2	
B6.	Whether the fabric is coated?			No	
B7.	If coated, then whether the same can be seen with naked eyes?			No	
Note: Test sl. No. 5 subcontracted from H.O - Mumbai.					
Page 1 of 2				Signature and Seal of the Officer  सुमन गोस्वामी क. गु. आ. अ. (प्रयोगशाला) Suman Goswami Jr. Quality Assurance Officer (Lab)	
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(वस्त्र मंत्रालय, भारत सरकार)
ब्लॉक 'जी एन' प्लॉट- ३८/३ सेक्टर-V
सॉल्ट लेक, कोलकाता - ७०० ०९१

Regional Laboratory
Textiles Committee
(Ministry of Textiles, Govt. of India)
Block-'GN'Plot-38/3, Sector-V
Salt Lake, Kolkata -700 091

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E-mail - kolkata.tc@gmail.com

TEST REPORT

Format No. 12/20A/01

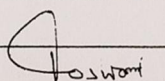
Continuation Sheet of Test Report No.: TC/LC/ST/102/2016 - 17 Dt. 27/04/2016

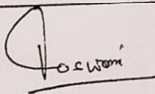
Sample Mark	SAMPLE - C	
Laboratory Sample No.	CCO - 102	
B8.	If coating can be seen with naked eyes then whether this coating was seen with naked eyes without taking into consideration any colour change i.e whether this coating is seen with naked eyes, only when, the colour changes?	No
B9.	If after chemical test, coating is found, then what is the nature of the coating i.e. whether these are PVC or other coating material like aluminium paste?	Not coated.
B10.	Whether these coatings have been applied are in nature of water proof and or anti UV radiation type of materials and have been applied only with that purpose?	Not coated.
B11.	Whether these fabrics are used for or as umbrella fabric and or upholstery / lining fabric.	Cannot be ascertained. However the end use of the fabric is upto customers/ users' choice & latest fashion trend.
B12.	Please specify the composition and its nature of the fabric	Nature of Fibre (IS 667:1981-RA 2013) Warp & Weft - polyester - 100% % Composition % of Polyester - 100 (excluding Finish)

Signature and Seal of the Officer
सुमन गोस्वामी
क. गु. आ. अ. (प्रयोगशाला)
Suman Goswami
Jr. Quality Assurance Officer (Lab)

Page 2 of 2

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Tel (Off) 91-33-2357 5155/1008 Tele Fax : 2357 5202 E-mail - kolkata.tc@gmail.com			
TEST REPORT			
Test Report No: TC/LC/ST/103/2016-17		Format No. 12/20A/01	
Name and Address of Customer		Deputy Commissioner Special Investigation Branch, Govt. of India Office of the Principal Commissioner of Customs 15/1, Strand Road, Custom House, Kolkata-700001	
Sample Forwarding letter No. & Date		F.No. S121 - 21 / 2014, SIB (Pt), Dtd. 18/04/2016	
Date of receipt of sample		19/04/2016	
Buyers Name & Address (Optional):		---	
Customer Sample No.		---	
Sample Description:		UMBRELLA CLOTH (PRINTED)	
Sample Characteristics :		---	
Date of performance of Tests :		19/04/2016 - 27/04/2016	
TEST RESULTS			
Sample Mark		SAMPLE - D	
Laboratory Sample No.		CCO - 103	
A.	Whether the sample F is having same characteristics and identical to sample A, B, C, D and whether replies for queries 1 to 12 of sample A, B, C, D are also applicable for sample "F"?	Samples - D is having same characteristics as of sample - A, B, C. However A, B, C are textile fabric suitable for different uses whereas sample - D is a made up article usable for commercial purpose and intended end use.	
B1.	Whether the fabric is woven, knitted or other please specify?	Woven fabric	
B2.	Whether Woven fabric is made of synthetic filament yarn?	Yes	
B3.	Whether synthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm strip and like of synthetic textile materials of an apparent width not exceeding 5mm?	Fabric made of synthetic multifilament yarn.	
B4.	Whether obtained from high tenacity yarn of nylon or other polyamides or of polyesters?	Cannot be ascertained	
B5.	Whether textured fabric or non-textured fabric of polyester or anything etc. and also specify the % of textured or non-textured filaments.	One direction - Non Texturised yarn Other direction - Non Texturised yarn % of Non Texturised yarn - 100	
B6.	Whether the fabric is coated?	No	
B7.	If coated, then whether the same can be seen with naked eyes?	No	
Note: Test sl. No. 5 subcontracted from H.O - Mumbai.			
Page 1 of 2		Signature and Seal of the Officer  सुमन गोस्वामी क. गु. आ. अ. (प्रयोगशाला) Suman Goswami Jr. Quality Assurance Officer (Lab)	
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Tel (Off) 91-33-2357 5155/1008 Tele Fax : 2357 5202 E-mail - kolkata.tc@gmail.com					
TEST REPORT					
Format No. 12/20A/01					
Continuation Sheet of Test Report No.: TC/LC/ST/103/2016 - 17 Dt. 27/04/2016					
Sample Mark			SAMPLE - D		
Laboratory Sample No.			CCO - 103		
B8.	If coating can be seen with naked eyes then whether this coating was seen with naked eyes without taking into consideration any colour change i.e whether this coating is seen with naked eyes, only when, the colour changes?			No	
B9.	If after chemical test, coating is found, then what is the nature of the coating i.e. whether these are PVC or other coating material like aluminium paste?			Not coated.	
B10.	Whether these coatings have been applied are in nature of water proof and or anti UV radiation type of materials and have been applied only with that purpose?			Not coated.	
B11.	Whether these fabrics are used for or as umbrella fabric and or upholstery / lining fabric.			It is visualized that received sample is a cover of an umbrella.	
B12.	Please specify the composition and its nature of the fabric			Nature of Fibre (IS 667:1981-RA 2013) Warp & Weft - polyester - 100% % Composition % of Polyester - 100 (excluding Finish)	
 Signature and Seal of the Officer सुमन गोस्वामी क. गु. आ. अ. (प्रयोगशाला) Suman Goswami Jr. Quality Assurance Officer (Lab)					
Page 2 of 2					
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7. Thus, from the aforesaid it is evident that the fabric is Woven and made of synthetic filament yarn. The essence of the test results is as under:

" (i) Fabric is Woven and made of Synthetic multifilament yarn (100% Polyester, Warp-Non Texturised yarn, Weft-Texturised/Non-texturised yarn).

(ii) Fabric is not coated and it can't be ascertained that these fabrics are used for or as umbrella fabric and or upholstery/lining fabric. "

8. While we agree with the submission of the appellant that the enduse cannot be the criteria for classification of imported goods, we are of the view that the imported fabric being woven in nature and of synthetic multifilament yarn is specifically covered under CTH 5407 which reads as under:

"5407.....Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404."

9. We note that there is a categorical finding in all the test report A, B, C and D of the samples as not being found to be coated. Therefore, it is evident that the proposed heading for classification of the imported goods under chapter 59 (5903) cannot be considered applicable as the said chapter covers textiles fabric that are impregnated, coated covered or laminated. It is thus evident that the classification applicable for the said goods is to the exclusion of Chapter 59 as it covers textile fabrics as are impregnated, coated, covered or laminated. For classification of goods under chapter heading 5903, the following tests are required to be ascertained:

- “ (i) Whether the fabric is coated,
- (ii) If coated, then can it be seen with naked eyes,
- (iii) If coated can it be seen with naked eyes without taking into consideration any colour change or is it visible only when the colour changes,
- (iv) If coated, what is the nature of the coating,
- (v) Whether the coating is in the nature of water proofing and or anti UV radiation type of material,
- (vi) Whether the fabric is in the nature of non-texturised polyester lining fabric
- (vii) The usage of the fabric-whether umbrella fabric upholstery or lining fabric.
- (viii) Composition/GSM of the fabric and its nature,
- (ix) Nature of fabric-whether woven or knitted etc.

This is so as HSN for 5903 reads as:

59.03- TEXTILE FABRICS IMPREGNATED, COATED, COVERED OR LAMINATED WITH PLASTICS, OTHER THAN THOSE OF HEADING No. 59.02.

5903.10 – With polyvinyl 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., polyvinyl chloride).

Such products are classified here whatever their weight per m² and whatever the nature of the plastic component (compact or cellular), provided:

(1) That in the 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.

xxxxxxxx.

(2) That the products are not rigid, i.e., they can, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15 °C and 30 °C.

(3) That the textile fabric is not completely embedded in, nor coated or covered on both sides with, plastics.”

10. We note, that the sample sent to Delhi IIT for test in respect of the Bill of Entry No. 4868053 dated 11.03.2014 in respect of aforesaid parameters had the following results:

Sl. No.	Queries	Sample Marked as 'G'
01.	Whether the fabric is coated	Yes
02.	If coated then whether the same can be seen with naked eyes	No
03.	If coating can be seen with naked eyes then whether this coating was seen with naked eyes without taking into consideration any colour change i.e. whether this coating is seen with naked eyes only when the colour changes	No colour change

04.	If after chemical test coating is found, then what is the nature of the coating i.e. whether these are PVC or other coating material (pl. specify)	Not PVC probably PU based binder
05.	Whether this coating have been applied are in nature of water proof and or anti UV radiation type of materials and have been applied only with that purpose	Intended to be WP would give protection against UV as well
06.	Whether fabrics are "woven no texturised polyester lining fabric"	No
07.	Whether these fabrics are used for or as umbrella fabric and or upholstery fabric/lining fabric	Yes, possible use umbrella
08.	Please specify the composition and its nature of the fabric	Polyester fabric
09.	Whether the fabric is woven, kitten or other please specify	Woven

10.1. The said test report thereby reaffirms and is in corroboration of the analytical results as arrived at based on the test results as received in respect of samples sent to the Textile Committee. Moreover, as indicated supra heading 5407 is the appropriate entry for the classification of woven fabric of synthetic filament yarn. We therefore find no qualms with the findings of the learned Adjudicating Authority as regards the direction imparted for the final assessment of the Bill of Entry No. 4868053 dated 11.03.2014. In so far as the directions imparted with regard to the assessment of other Bills of Entry is concerned and said to be assessed

provisionally and still pending finalization, if any, we modify the impugned order directing that the final assessment be carried out, as per facts available on record with respect to the said shipment and not be guided by the analytical result of the Textile Committees or the CRCL's test reports available with the department in respect of other shipments/imports made by the appellant. Needless to state all legal consequences as accrue in accordance with law pursuant to our aforesaid order to either of the two sides shall automatically lie.

11. The appeal is thus disposed off in the aforesaid terms.

(Operative part of the order was pronounced in the open Court)

**Sd/-
(Ashok Jindal)
Member (Judicial)**

**Sd/-
(Rajeev Tandon)
Member (Technical)**

K.M.