OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-V)
सीमाशुल्कआयुक्त (एनएस - V) काकार्यालय
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA,
जवाहरलालनेहरुसीमाशुल्कभवन, न्हावाशेवा,
TALUKA – URAN, DISTRICT - RAIGAD, MAHARASHTRA -400707
तालुका - उरण, जिला - रायगढ़ , महाराष्ट्र 400707

DIN – 20251078NX00008187E7 **Date of Order:31.10.2025**

F. No. S/10-77/2021-22/COMMR/NS-V/CAC/JNCH **Date of Issue: 31.10.2025**

SCN No.: DRI/LDZU/856/INT-9 of 2017/ENQ-250/2020

SCN Date: 14.12.2020

Passed by: Sh. Anil Ramteke

Commissioner of Customs, NS-V, JNCH

Order No:251/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticees: M/s. LOTUS NETS PVT. LTD(IEC-1210002175)

ORDER-IN-ORIGINAL
मूल - आदेश

1. The copy of this order in original is granted free of charge for the use of the person to whom it is issued.

1. इस आदेश की मूल प्रति की प्रतिलिपि जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए नि:शुल्क दी जाती है।

2. Any Person aggrieved by this order can file an Appeal against this order to CESTAT, West Regional Bench, 34, P D'Mello Road, Masjid (East), Mumbai - 400009 addressed to the Assistant Registrar of the said Tribunal under Section 129 A of the Customs Act, 1962.

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम 1962 की धारा 129 (ए) के तहत इस आदेश के विरुद्ध सी.ई.एस.टी.ए.टी., पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीज़नल बेंच), 34, पी. डी'मेलो रोड, मस्जिद (पूर्व), मुंबई - 400009 को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

3. Main points in relation to filing an appeal:-

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

Form -	Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy).
फार्म -	सीए3, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कम से कम एक प्रति प्रमाणित होनी चाहिए).

Time Limit - Within 3 months from the date of communication of this order.
समय सीमा - इस आदेश की सूचना की तारीख से 3 महीने के भीतर

Fee -फीस-

(a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less.

(क) एक हजार रुपय जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये या उस से कम है।

(b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 Lakh.

(ख) पाँच हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये से अधिक परंतु 50 लाख रुपये से कम है।

(c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.

(ग) दस हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 50 लाख रुपये से अधिक है।

Mode of Payment - A crossed Bank draft, in favor of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.

भुगतान की रीति – क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीय कृत बैंक द्वारा सहायक रजिस्ट्रार, सी.ई.एस.टी.ए.टी., मुंबई के पक्ष में जारी किया गया हो तथा मुंबई में देय हो।

General - For the provision of law & from as referred to above & other related matters, Customs Act, 1962, Customs (Appeal) Rules, 1982, Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 may be referred.

सामान्य - विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, 1962, सीमाशुल्क (अपील) नियम, 1982, सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, 1982 का संदर्भ लिया जाए।

4. Any person desirous of appealing against this order shall, pending the appeal, deposit 7.5% of duty demanded or penalty levied therein and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129E of the Customs Act 1962.

4. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उसमें माँगे गये शुल्क अथवा उद्गृहीत शास्ति का 7.5 % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमाशुल्क अधिनियम, 1962 की धारा 129 E के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

Sub: Adjudication of Show Cause Notice DIGIT ID:D-010-141220-116 issued vide File No. DRI/LDZU/856/INT-9 of 2017/ENQ-250/2020 dated 14.12.2020 in case of M/s Lotus Nets Pvt. Ltd.– reg.

1. BRIEF FACTS OF THE CASE

1.1 It is stated in Show Cause Notice (SCN) bearing F. No. DRI/LDZU/856/INT-9 OF 2017/ENQ-250/2020 dated 14.12.2020 that **M/s Lotus Nets Pvt. Ltd.**, situated at P.O. Rayon & Silk Mills, G.T. Road, Amritsar - 143001(hereinafter referred to as the 'Noticee'), having IEC No. 1210002175 are engaged in the manufacturing of Knitted Fabrics. The Noticee is a Private Limited concern with name of Shri Sarvpreet Singh Bubber and Smt. Harneet Kaur as its Directors.

1.2 As per the SCN, an Intelligence was received by the Directorate of Revenue Intelligence, Zonal Unit, Ludhiana (hereinafter referred to as "DRI") that importers pan-India mainly based at Ludhiana, Amritsar, Mumbai & Haryana have been importing 'Used High performance Tricot Knitting Machines' manufactured by "Karl Mayer", a German concern having production base in Germany and China, mis-declaring the same as "Fully Fashioned High Speed Knitting", thereby claiming exemption benefits under Notification No.12/2012-CE dated 17.03.2012, as amended, and were paying CVD @ 6% instead of the applicable rate of 12% (till 27.02.2015)/12.5% (w.e.f. 28.02.2015 till 30.06.2017). The intelligence indicated that the machines manufactured by Karl Mayer/LIBA were not covered under the definition of "Fully Fashioned" machines and were thus attracting CVD @ 12% (till 27.02.2015)/12.5% (w.e.f. 28.02.2015 till 30 06.2017).

1.3 The Noticee had imported three used knitting machines declared as "Used Fully Fashioned High Speed Knitting Machine, Model No. HKS2" and " Used Fully Fashioned High Speed Warp Knitting Machine Brand Karlmayer, Model – MRSS-42" vide Bill of Entry Nos. 2035090 dated 27.07.2015 and 9501869 dated 29.04.2017 taking the benefit of exemption under Notification No.12/2012-CE dated 17.03.2012. The details of the Bill of Entry are as follows:

Custom House Code	BE Number & Date	Item Description as declared	Qty.	Unit Price	Invoice Currency	CVD paid @%
INNSA1	2035090 dt. 27.07.2015	Used Fully Fashioned High Speed Knitting Machine, Model No. HKS2, 180 Inch, 28E, Serial No. 70398	1	28000	Euro	6
INNSA1	9501869 dt. 29.04.2017	Used Fully Fashioned High Speed Warp Knitting Machine Brand Karlmayer, Model No. – MRSS-42, 130 Inch, 18E	2	14250	USD	6

1.4 Enquiry was initiated from the manufacturer M/s. Karl Mayer and their office situated in Ahmedabad, India was visited by the DRI officials on 11.10.2017. **Shri Piyush Pathak,** authorised person of the office at Ahmedabad vide his letter dated 11.10.2017 informed the visiting DRI officials that at their Ahmedabad office, they were manufacturing creels for the wrap preparation machine since 2015 which was sold in the domestic Indian market only. They further informed that they did not have any technical knowledge of imported machines of Karl Mayer supplied from Germany or China and they have their technical team sitting in their head office situated at Bhagwati House, Veera Desai Road, Andheri West, Mumbai 400 053. Further, vide their letter 12.10.2017, they supplied self-signed copies of brochures pertaining to 19 models of machines manufactured by M/s. Karl Mayer. Summons were issued to the CEO, Karl Mayer India Pvt. Ltd., Mumbai, for appearance on 25/30.10.2017. In response to the summons issued, **Shri Milind Mirkar**, CEO, Karl Mayer India Pvt. Ltd., appeared on 30.10.2017 and requested that statement of **Shri Kevin Socha**, who was their MD for India operations and more conversant, may be recorded in respect of the matter.

1.5 **Mr. Kevin Socha,** in his voluntary statement dated 30.10.2017 under Section 108 of the Customs Act, 1962 inter-alia stated that, he started work in the UK in 1978 in the textile industry and in 1988 moved into textile machinery manufacturing and sales business; that he had joined Karl Mayer HK Ltd. in December, 2006 as Managing Director and was looking after the Asia Pacific region; that in 2009 he was instrumental in establishing Karl Mayer India Pvt. Ltd (in short 'KMIN') with headquarters in Mumbai and training centres in Surat & Amritsar. He further stated that the term "Fully Fashioned" is normally associated with Weft Knitting machines; that though this term "Fully Fashioned" is not used in respect of Warp Knitting machines, even though there were types of Warp knitting machines which can produce garment panels and complete 'one piece' or seamless garments; that **HKS 2 and HKS 3 models** cannot produce this type of products/fully fashioned articles; that most of the machines sold and installed in India by their company were of HKS 2 & 3 types which do not fall under the definition of "Fully Fashioned"; and that Karl Mayer India Pvt. Ltd. was not involved in the sales process for new machines or spare parts for imported machines; that they were only involved once the machine was sold and delivered to India, at which time, they were responsible to arrange to install the machines. On being shown Bill of Entry No.2095900 dated 10.05.2013 filed by M/s Zenith Silk Mills Pvt. Ltd., Surat and Bill of Entry No.7061969 dated 11.06.2012 filed by M/s Karl Mayer India Pvt. Ltd., the description of machine was "HKS3M High Performance Tricot Machine for production of all 3 bar Articles from light Tulle over technical Coating substrates up to raised velours", he stated that the correct description of the machine was **"HKS3M High Performance Tricot Machine for the production of all 3 bar Articles from light Tulle over technical Coating substrates up to raised velours"** and in his opinion the situation has arisen because **of pressure from market by some buyers** to use this description in their paperwork; that the competitive pressure in the market at the time resulted in their sales and order fulfilment to agree to use ***the description as "Fully Fashioned" as per the request of some buyers.*** He had further stated that M/s ATE Enterprises Pvt. Ltd., Bhagwati House, Veera Desai Road, Andheri West, Mumbai - 400053 were sole selling agent of Karl Mayer machines in India and they were exclusively selling those machines on behalf of the Karl Mayer Group in the Indian market; that they (ATE) had the sole responsibility to market Karl Mayer's complete product portfolio in the Republic of India and maintain the routine contact with the customers and the market in general in order to find potential sales of new machinery and spare parts; that they (ATE) also maintained contact with existing customers and generally promote the interests of the Karl Mayer Group in India.

1.6 **Shri Gurudas Aras**, Director (Textile Engineering Group) of M/s. A.T.E. Enterprises Pvt. Ltd., Mumbai, local agent of the supplier, while tendering his statement under Section 108 of the Customs Act, 1962, on 07.05.2018 submitted a list of importers of machines from Karl Mayer, Germany; **e-mail correspondence between the importers and Karl Mayer through A.T.E., and brochures of Karl Mayer machines**. In his statement, Shri Aras inter-alia stated **that their company was associated with M/s. Karl Mayer Group of Germany as an Agent for about 5 decades** and was responsible for marketing machines manufactured by Karl Mayer; that he was not in a position to explain the term "Fully Fashioned" and the machines falling under that category, as their company was handling more than 50 principals and above 1000 products due to which he was not aware of each and every machine and technical details; that technical specifications and description was being decided by the machinery manufacturers and their company has no role to play in that; that the term "Fully Fashioned" was nowhere mentioned on any of the brochures or in the list of machines imported, submitted by him for the period 2013-14 till June, 2017; that HKS 3 M was the most saleable machine model of Karl Mayer, **which manufactures fabrics only.** On being shown commercial invoice No.10564364/1 dated 11.04.2013 issued by Karl Mayer to Zenith Silk Mills Pvt. Ltd., Surat, wherein the machine model was described as "Fully Fashioned High Speed Knitting Machine HKS-3M" and the commercial invoice No.10557814/8 dated 04.07.2013 issued by M/s Karl Mayer to Bhilosa Industries Pvt. Ltd., Silvassa, wherein the machine model HKS 3M was described as "High Performance Tricot Machine HKS-3M", he stated that the description in the case of Bhilosa Industries Pvt. Ltd. was the actual description whereas in case of Zenith Silk Mils Pvt. Ltd., Surat, it had been changed as "Fully Fashioned High Speed Knitting Machine HKS-3M" **on the request of the importer made vide their email dated 15.12.2012**; and that as ATE Enterprises were not involved in Customs clearance, they were not aware about the rate of Customs duties in India.

1.7 During the course of investigation, DRI had gathered opinions from certain renowned institutions in the field of Textiles, such as National Institute of Fashion Technology (NIFT), Delhi and Indian Institute of Technology (IIT), Delhi and also from a major German supplier of fully fashioned machines.

1.7.1 NIFT, Delhi, vide their letter dated 24.09.2018 opined that the model HKS 2 of M/s. Karl Mayer, Germany **does not fall under the category of fully fashioned knitting machine as the said model is not fully capable to manufacture shaped garments and shaped panels.**

1.7.2 IIT, Delhi, vide their letter dated 12.12.2018 opined that **Fully Fashioned machines are mainly used in Weft Knitting.** IIT further defined the Weft and Warp Knitting as "the technique of producing fabrics by employing only yarns that resemble weft as used in the weaving process is known as Weft knitting; whereas the technique of converting a sheet of warp yarns resembling a warp sheet of the weaving process into a knitted fabric is known as Warp knitting. Weft knitting fabrics are widely used in shaped and fitted garments while warp knit fabrics are used as fabric yardage." According to IIT, the Karl Mayer machine models HKS 2, HKS 3, HKS 4….. machines belong to the category of warp knitting to produce fabric yardage of complicated designs and presently, these models do not fall under the category of 'Fully Fashioned' to manufacture shaped garments or shaped panels.

1.7.3 M/s. Stoll India Pvt. Ltd., manufacturer of "Fully Fashioned" machines, confirmed vide their letter dated 22.08.2018 that M/s. Shima Seiki, Japan; M/s. Steiger, China/Switzerland; M/s. Hongkima, Cixingstc, China and M/s. Universal, Germany also manufacture fully fashioned machines. The manufacturing of Cotton frame machines viz. Scheller, Bentley have been closed and only reconditioned/old machines are available in market.

1.7.4 'South Gujarat Warp Knitters Association, Surat' requested 'Ministry of Textile, New Delhi' to issue technical details about 'Fully Fashioned High Speed Knitting Machine'. The Office of the Textile Commissioner constituted a committee to decide on the Technical details of 'Fully Fashioned High Speed Knitting Machine' and forwarded the committee's report vide letter F. No. 4(136)/2019/TMB/Misc/4-6 dated 05.02.2020 in which the committee explained three methods of manufacturing knitwear categories i.e. Cut and Sew, Fully Fashioned and Whole Garment manufacturing. The said committee explained that-

> *"Fully fashioned knitwear is made by knitting panels of the garment fully fashioned (sleeves, torso, etc.). The panels are trimmed and a linking machine is used to attach them to make a complete garment. The linking machine requires* a *skilled human operator to manually load all the knitted loops onto the machine for linking. Labour costs are higher than cut and sew, but the seams produced are flatter and waste is low. Fully fashioned manufacturing is generally used for high volume mass production."*

1.7.5 Further, the Fairchild Dictionary on Textiles by Dr. Isabel B. Wingate defines the term "Full Fashioned" as under:

> *"A knit fabric made on a flat knitting machine and shaped by adding or reducing stitches. This method of shaping improves the fit of an article.*
>
> *Uses: fitted articles, e.g., hosiery, sweaters, underwear."*

1.8 The emails submitted by **Shri Gurudas Aras**, Director (Textile Engineering Group) of M/s. A.T.E. Enterprises Pvt. Ltd., Mumbai, were scrutinized, which revealed that the importers had requested M/s. A.T.E. Enterprises Pvt. Ltd., Mumbai, to change the nomenclature of machines from "HKS 3M Tricot Machine" to "HKS 3M High Speed Fully Fashioned Machine".

1.9 The emails in case of M/s. Kudrat Corporation, another Indian importer of M/s. Karl Mayer machines clearly showed that after the request was received from the Indian Importer, the representatives of M/s. AT.E. Enterprises Pvt. Ltd., Mumbai had clearly and explicitly e-mailed the German manufacturer, Karl Mayer to change the description of goods from "HKS 3M High

Performance Tricot Machine" to "HKS 3M Fully Fashioned High Speed Knitting Machine" without even changing the Proforma Invoice Number.

1.10 Shri Deepak Kamal Agarwal, Custom Broker cum authorized signatory of M/s Deep Shipping Agency and M/s Ratnadeep Shipping Pvt. Ltd., in his statement dated 06.12.2017 recorded under Section 108 of the Customs Act, 1962, stated that they were mainly catering to the Amritsar and Ludhiana based importers in the Textile Industry; that on being shown various Bills of Entry submitted by him, where Karl Mayer/ Liba machines of German origin had been cleared through them, the importers have claimed exemption under Notification No.12/2012-CE dated 17.03.2012, as amended (Sl. No.230) on the Bills of Entries filed by them, and paid CVD @ 6% and this exemption was available for "High Speed Fully Fashioned Machines" and its parts; and further being asked whether the Karl Mayer Warp knitting machines got cleared through their Custom Broker firms were High Speed Fully Fashioned eligible for exemption under Notification No.12/2012-CE dated 17.03.2012, as amended (Sl. No.230), he stated that they had filed Bills of Entries as per the description mentioned in the documents submitted by their clients. During the statement, the DRI officer explained him that: **"the Fully Fashioned Knitting machines are those knitting machines that produce custom pre-shaped pieces of a knitted garment. Fully fashioned knitting cuts down on the amount of material required to make a garment by eliminating selvage, the remnants that would be left after cutting from a rectangular fabric sheet. For example, a sweater requires at least four pieces of fabric: two sleeves, the front piece, and the back piece. With full-fashioning, the machine produces only the four required pieces."** On being asked whether the various type of warp knitting machines cleared through them fall under the above mentioned definition, he stated that as per his understanding the machines cleared through them are **capable of manufacturing knitted fabrics in rolls only** but regarding the above definition, he submitted that he is not a technical person to comment whether the machines cleared by them falls under the above definition or not.

1.10.1 On being asked that the B/E filed by Karl Mayer India Pvt Ltd. showed that CVD @ 12.5% was applicable on HKS 3M and as per the statement dated 30.10.2017 of Mr. Kevin Socha, the correct description of it was without the word 'High Speed Fully Fashioned', he stated that they were not aware that these machines are not High Speed Fully Fashioned machines; that they had filed the Bill of Entries as per the description on import documents supplied to them by their clients. Further, he was informed that M/s. Bhilosa Industries Pvt. Ltd., Silvassa and many other importers who had imported these type of machines i.e. HKS 3 M had not declared these machines as Fully Fashioned High Speed and appropriately paid CVD @ 12.5%, whereas on the bills of entries filed through them, these machines have been declared as High Speed Fully Fashioned and thus, CVD @ 6% has been paid by claiming exemption under Notification No.12/2012- CE dated 17.03.2012, to this, he stated that they had filed the Bills of Entry on the basis of the description mentioned in the supplier's invoice and they were not aware that there was CVD @12.5% instead of 6% on these machines.

1.10.2 He was shown copies of Bills of Entry Nos. 2960067 dated 17.10.2015 and 2721429 dated 07.10.2015 pertaining to imports made by M/s. U. S. Nets & Fabrics, Amritsar, for the imports of used Karl Mayer Knitting machines HKS-3M machines imported from Karl Mayer Textile Machinery Ltd., Germany, where CVD has been appropriately paid @ 12.5% without claiming the exemption under Notification No.12/2012-CE dated 17.03.2012, as amended. He was asked, when the Karl Mayer warp knitting machines are same, the supplier is same, the country of origin is same then why CVD exemption has been claimed on some machines and not on the other. Does it not indicate that they were part of this fraud to benefit their clients, who had wrongly claimed the said exemption under Notification No.12/2012-CE dated 17.03.2012 and paid CVD @ 6% instead of applicable rate of 12.5%. In this regard, he stated that they, as Custom Broker have filed the check list / Bill of Entry as per the description in the documents submitted to them and as per the description on documents presented to them by M/s. U. S. Nets & Fabrics, Amritsar i.e. Invoice, P/list, B/L etc. there was no mention of the words 'High Speed Fully Fashioned', as such, they filed the subject B/Es without claiming the exemption under Notification No.12/2012-CE dated 17.03.2012 available for High Speed Fully Fashioned. Further, he stated that they had mostly got cleared old and used machinery for Amritsar based customers and it was got cleared under first check examination conducted by local Chartered Engineers (CEs) in the presence of Customs staff. He further reiterated that they just filed bills of entries as per the documents submitted by their clients. He was asked how the old machinery is assessed, he stated that all the old machinery at Nhava Sheva were examined under first check examination, the local CE also examined the machines along with the Customs staff and gave their report, on the basis of which, the Customs assessed the Bill of entry. Further, he was shown email dated 09.11.2017, sent by Karl Mayer, Germany to M/s. Jagdamba Yarns Pvt. Ltd. With the above e-mail response from Karl Mayer, the discussions held with DRI officers and the statement of Mr. Kevin Socha, he was convinced that Liba/Karl Mayer Warp Knitting Machines cleared through them are not High Speed Fully Fashioned Machines; that he himself would convince all his clients to deposit the differential duties.

1.11 Further, the verification of the machine imported under Bill of Entry No.2035090 dated 27.07.2015 and 9501869 dated 29.04.2017, at the premises of Noticee by the DRI officers had been done under Panchanama proceedings dated 09.12.2020. During the verification, the said 3 machines were detained under the Customs Act, 1962, by the DRI officers on the reasonable belief that the same have been mis-classified and thus, liable for confiscation under Section 111 of the Customs Act, 1962. The custody of the detained machines were handed over to Shri Sarvpreet Singh Bubber, MD of Noticee vide Supardaginama dated 09.12.2020.

1.12 Summons were issued to the Noticee in response to which Shri Sarvpreet Singh Bubber, MD of Noticee appeared before the SIO, DRI and recorded his statement under Section 108 of the Customs Act, 1962 on 10.12.2020. He interalia stated as under :

1.12.1 That M/s Lotus Nets Pvt. Ltd. is a limited company; that the firm is engaged in the manufacturing of knitted fabrics; that so far, they have imported three used knitting machines of Karl Mayer Brand (one 'HKS-2' and two 'MRSS-42') and the details the machines imported are as per details as at Para 1.3 above. He further submitted that he agrees with the detention of the imported machine as described in the panchanama dated 09.12.2020 which was drawn at the premises of M/s Lotus Nets Pvt. Ltd.; that they ordered three sets of 'Used High Performance warp Knitting Machine' through their Customs Brokers, M/s Deep Logistics and on the basis of the description mentioned in the supplier's invoice, their Customs Broker filed the Bill of Entry; that they were not aware that these machines are not High Speed Fully Fashioned machines: that they have imported all these machines on payment of 6% CVD.

1.12.2 On showing/informing (i) the relevant portion of statement dated 30.10.2017 of Mr. Kevin Socha, MD Karl Mayer India Pvt Ltd, (ii) that M/s. Bhilosa Industries Pvt. Ltd., Silvassa and many other importers who had imported these type of machines i.e. HKS 3 M had not declared these machines as Fully Fashioned High Speed and appropriately paid CVD @ 12.5%, and (iii) Enquiry mail of M/s. Jagdamba Yarns Pvt. Ltd., Surat with M/s Karl Mayer dated 03.11.2017 and reply mail dated 09.11.2017 received from the supplier M/s Karl Mayer, he stated that he is fully convinced that one set of used HKS 2 knitting machine and two sets of used MRSS-42 Knitting machine imported by them are not High Speed Fully Fashioned machine.

1.13 Shri Ramchandra Krishna Jagtap, Chartered Engineer and Director of M/s Murlidhar Shenvi Insurance Surveyors & Loss Assessors Pvt. Ltd., in his statement recorded under Section 108 of the Customs Act, 1962 on 27.11.2020, stated that he mainly does valuation related to import of Plant & Machinery; that he examines/inspects the machinery and then submit his report before clearance of the said machinery from Customs Port as and when his services required by Customs Broker or Customs Officer at the port.

1.13.1 He was shown various reports wherein he submitted his report to Indian Customs in respect of Old & Used Karl Mayer Machine / Karl Mayer /Liba machines of German origin. On being pointed out the description of the machines mentioned in the reports submitted by him, he submitted that the description of the said machines in reports submitted by him are same as mentioned in their respective Commercial Invoices presented to Indian Customs.

1.13.2 On being asked by the DRI officer that what is the basis of the words "Fully Fashioned" mentioned in the reports, he stated that they have submitted reports for the said machines' valuation purposes only and that they kept description of the said machines as it was mentioned on the import documents i.e. Bill of Entry, Commercial Invoice and Packing List as submitted by the concerned Importer.

1.13.3 On being asked by the DRI officers that - What is the Fully Fashioned Knitting Machine?, he stated that Fully Fashioned knitting machines are those machines which can manufacture prescribed shapes of the fabric as per the requirement. The Non Fully Fashioned machines manufactures fabric in square/rectangular panels which is collected in the form of rolls on the machines however, the Fully Fashioned Machine can make shaped panels of fabric which can be sewn together to make a garment.

1.13.4 He alongwith the DRI officers visited the business premises of M/s. R.G. Merchandisers Pvt. Ltd. situated at C-134, Phase-V, Focal Point, Ludhiana-141010, where one such old & used machine model Karl Mayer MRS-25 was kept. The said Machine was cleared through Customs Nhava Sheva port with CE certificate submitted by him which reads the description of the machines having the words "Fully Fashioned". He carefully inspected the said machine and requested Shri Arjun Gupta, Director of the firm to turn on the machine to see its functioning. Shri Arjun Gupta then turned on the machine and he carefully examined the functionality and working of the said machine. It was using the threads from the bobins and manufacturing the fabric in rectangular form which was being collected by the machine on the beams.

1.13.5 He was shown a panchnama dated 25.11.2020 containing 4 pages drawn at the business premises of M/s. R.G. Merchandisers Pvt. Ltd. regarding the verification and the functionality of the said machine, he went through the contents of the said panchnama and put his dated signatures with remarks "Seen & accepted". On being asked by the DRI officer, he stated that this Karl Mayer machine model is not 'Fully Fashioned'.

1.13.6 On being asked by the DRI officers that why such certificate/report was submitted to Indian Customs bearing the words 'Fully Fashioned' in the description of the said machine, he stated again that the said report was meant only for the purpose of valuation of the said machine and not for the description of the machine. He further added that at the time of inspection of the machine at Customs port, the machines are kept in dismantled form inside the containers and usually there is no scope of running the said machine and therefore, at that time he had submitted the report on the basis of Import documents and visual appearance of the said machine. However, today, after having seen the functionality and configuration of the said machine, he can say that this machine is not Fully Fashioned.

1.13.7 Further, on being asked regarding other such machine models, he stated that Karl Mayer/ Liba Machine models namely MRS 18, MRS 26E, MRES-30, MRS-25, MRSS 32, MRSS-42, MRGSF 31, COPCENTRA 2KE, COP-3, KS2, KS3, HKS-2 M, HKS-3 M etc. are not 'Fully Fashioned' machines.

1.14 Shri Deepak Kumar Agarwal, Custom Broker cum authorized signatory of M/s. Deep Shipping Agency and M/s Ratnadeep Shipping Pvt. Ltd. in his further statement recorded under Section 108 of the Customs Act, 1962 on 03.12.2020, stated that on seeing the statement dated 27.11.2020 of Ramchandra Krishna Jagtap, Chartered Engineer Cum Director of M/s Murlidhar Shenvi Insurance Surveyors & Loss accessories Pvt. Ltd. and Panchnama dated 25.11.2020 drawn at the office premises of M/s R.G Merchandisers Pvt. Ltd., C-134, Phase-V, Focal Point, Ludhiana, he accepted the contents of the same and put his dated signature.

1.15 Further, a team of DRI officers accompanied by a Customs Empanelled Chartered Engineer, visited the business premises of one such importer based at Amritsar, Punjab to verify whether the imported machine i.e. 'Karl Mayer Model HKS-3M High Performance Tricot Knitting Machine' was capable of manufacturing shaped panels of fabrics to qualify as a fully fashioned knitting machine. The verification conducted under panchnama proceedings on 24.08.2020 and the Chartered Engineers report leave no doubt that the Karl Mayer machines imported by the Noticee were capable of manufacturing fabric in rectangular shape only and were incapable of manufacturing shaped garments and panels of fabric to qualify as Fully Fashioned Knitting Machine. The Chartered Engineer in his report, inter alia, categorically mentioned that 'Machine was not fully Fashioned Machine as machine was producing only knitted fabric but was not able to produce/manufacture customs pre-shaped of a knitted garment'. Thus, the aforesaid machines imported by the Noticee are not fully fashioned.

1.16 Further, the goods covered under Bills of Entry No.2035090 dated 27.07.2015 and 9501869 dated 29.04.2017 appeared liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962 and were seized under Section 110 of the Customs Act, 1962 vide Seizure Memo dated 12.12.2020.

1.17 Investigation of DRI as forthcoming in statement of Shri Gurudas Aras dated 07.05.2018 shows that various Indian importers had been fraudulently adding the words "Fully Fashioned" to machines of Brand Karl Mayer which actually were not Fully Fashioned Machinery and in this manner were fraudulently availing benefit under Notification No. 12/2012-CE dated 17.03.2012. The Noticee has also been found to be indulging in the same modus operandi by mentioning the words "Fully Fashioned" for Karl Mayer machinery while the machines were clearly not fully fashioned and the same has been admitted by Shri Sarvpreet Singh Bubber, MD of the Noticee in his statement dated 10.12.2020. The machines imported by them did not fall in the category "Fully Fashioned High Speed Knitting Machinery". Therefore, the description of the goods imported by the Noticee was by way of wilful mis-statement and suppression of facts, described as 'Fully fashioned' before Indian Customs, so the Noticee could obtain undue Customs duty benefit under Notification No.12/2012-CE dated 17.03.2012 and all import documents and bill of entry submitted to Indian customs were manipulated and mis-declared accordingly. Therefore, the extended period of limitation is invokable in this case as provided under section 28(4) of the Customs Act, 1962.

1.18 The Noticee had fraudulently claimed effective rate of CVD at 6% in terms of Notification No.12/2012-CE dated 17.03.2012 on basis that imported machines were fully fashioned, but since it is not so, the Noticee appeared liable to pay CVD @ 12.5%. The duty evaded and recoverable under Section 28(4) of the Customs Act, 1962, was as per details below:-

Sr. No.	Bill of Entry No. and date (all of port INNSA1)	Value of Goods (Rs.)	Customs duty recoverable, as per Annexure-A to the SCN (in Rs.)
1	2035090 dated 27.07.2015	19,89,498/-	1,45,452/-

2	9501869 dated 29.04.2017	20,67,799/-	1,51,176/-
	Total	40,57,297/-	2,96,628/-

1.19 Since the Noticee appeared to have evaded Customs duty, they were liable for penalty under Section 114A of the Customs Act, 1962. Further, since the Noticee intentionally made a false declaration that machines were fully fashioned, they appeared liable for penalty under Section 114AA of the Customs Act, 1962 as well.

1.20 Accordingly, M/s Lotus Nets Pvt. Ltd., P.O. Rayon & Silk Mills, G.T. Road, Amritsar-143001, was called upon to show cause as to why:

(i) The goods imported under Bill of Entry No.2035090 dated 27.07.2015 and 9501869 dated 29.04.2017 as detailed in Annexure-A to the SCN having assessable value of Rs. 40,57,297/- and seized vide seizure memo dated 12.12.2020 should not be confiscated under the provisions of Sections 111(m) and 111(o) of the Customs Act, 1962.

(ii) The differential Customs duty amounting to Rs. 2,96,628/- (Rupees Two Lakhs Ninety Six Thousand Six Hundred and Twenty Eight Only) as detailed in Annexure-A to the SCN should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962

(iii) Interest should not be demanded from them under Section 28AA of the Customs Act, 1962 on aforesaid amount of duty demanded.

(iv) Penalty should not be imposed upon them under Section 114A and 114AA of the Customs Act, 1962 in relation to the imported goods detailed in Annexure-A to the SCN.

1.21 Vide Notification No.23/2021-Customs (NT/CAA/DRI) dated 5.3.2021 (Sl. No.166), the Commissioner of Customs, NS-V, JNCH, Nhava Sheva, has been appointed by CBIC, as Common Adjudication Authority. I, accordingly, take up the present case for adjudication.

2. RECORD OF PERSONAL HEARINGS AND WRITTEN SUBMISSION OF THE NOTICEE

2.1 There is a single Noticee in the subject SCN. In terms of principal of natural justice, the Noticee was granted opportunity of personal hearings (PH) on 25.05.2023, 06.06.2023, 15.09.2025, 29.09.2025 and 14.10.2025 and PH intimation letters were issued by speedpost. However, the Noticee neither attended any of the three personal hearings granted to them nor submitted any written submission or reply.

3. DISCUSSION AND FINDINGS

3.1 As per CBIC Instruction No.04/2021-Cus., dated 17.03.2021, the subject case was kept pending and transferred to Call Book on 23.03.2021. This case was taken out from Call Book after the amendments w.r.t. 'Proper Officer' for issuing SCNs, made in the Finance Act, 2022. Further, the Chief Commissioner of Customs, Zone-II vide his order dated 24.03.2023 granted extension of time limit to adjudicate the case upto 30.03.2024 as per the first proviso to Section 28(9) of the Customs Act, 1962. Therefore, the case has now been taken for adjudication proceedings within the time limit as per Section 28(9) of the Customs Act, 1962.

3.2 I find that in Section 97 of Finance Act, 2022, changes/validations have been made in sub-section (34) of Section 2 of the Customs Act, more classes of officers of Customs have been specified in section 3, new sub-sections (1A), (1B), (4) and (5) inserted under Section 5, and a new section 110AA inserted relating to action subsequent to inquiry, investigation or audit which applies in specified situations. The CBIC vide Circular No. 07/2022-Customs dated 31.03.2022 and their letter F. No. 450/72/2021-Cus-IV (Part-II) dated 20.06.2022 also directed to initiate/take suitable action(s), immediately.

3.3 Further, vide mail dated 05.06.2023 from the advocate of M/s Lotus Nets Pvt. Ltd. Have stated that the notice has challenged the validity of Show Cause Notice on the grounds of jurisdiction before the Hon'ble High Court of Panjab & Haryana at Chandigarh and the Hon'ble High Court in CWP No. 12379, 12465, 12466, 12605, 12645, 12661 and12663 of 2023, was passed to grant interim stay to the adjudication proceedings vide interim orders dated 01.06.2023. Accordingly, with the approval of competent authority the case was transferred to Call Book on 06.06.2023 and the same was intimated to the noticee vide letter dated 07.06.2023. This case was taken out from Call Book after the Hon'ble High Court disposed off the subject writ petitions vide common order dated 09.01.2025.

3.4 In the light of above changes/provisions of law/Customs Act, 1962, Order passed by Hon'ble High Court Madras in W. P. No. 33099 of 2015 in case of M/s. N. C. Alexender Vs. The Commissioner of Customs, Chennai II Commissionerate read with Notification No. 23/2021-Customs (N.T./CAA/DRI) dated 05.03.2021 (Sl. No. 166) and order passed by Hon'ble High Court of Panjab & Haryana in W.P. No. 16779/2021. I proceed to decide the matter on the basis of the records and submissions of the case.

3.5 I have carefully gone through the show cause notice and the relied upon documents, material on record and submissions made by the Noticee.

3.6 The principles of natural justice have been followed during the adjudication proceedings. Opportunities of personal hearing were granted to the Noticee on 25.05.2023, 06.06.2023, 15.09.2025, 29.09.2025 and 14.10.2025. However, the Noticee neither attended any of the three personal hearings granted to them nor submitted any reply. Accordingly, I proceed to decide the case on the basis of documentary evidence available on record.

3.6.1 Section 122A of the Customs Act, 1962, stipulates that the Adjudicating Authority shall give an opportunity of being heard to a party in a proceeding, if the party so desires. The adjudicating authority may, if sufficient cause is shown, at any stage of proceeding, grant time, from time to time, to the parties or any of them and adjourn the hearing, provided that no such adjournment shall be granted more than three times to a party during the proceeding.

3.6.2 I find that in the instant case, in compliance of provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, multiple Personal Hearings opportunities were granted by the Adjudicating Authority to the Noticee. It is observed that PH letters were sent on the address given in the SCN via speedpost. However, the Noticee neither appeared before the Adjudicating Authority in the Personal Hearings granted to them nor submitted any letter or email in response to the Personal Hearing intimation letters. From the aforesaid facts, it is observed that sufficient opportunities have been given to the Noticee but they chose not to join the adjudication proceedings.

3.6.3 The Noticee did not participate in the adjudication proceedings inspite of the fact of service of letters for personal hearings in terms of Section 153 of Customs Act, 1962. Section 153 of the Customs Act, 1962 reads as under:

> ***SECTION 153. Modes for service of notice, order, etc.*** *- (1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely: -*
>
> ---------------------------------
>
> *(b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;*
>
> ---------------------------------

Therefore, in terms of Section 153 of the Customs Act, 1962, it is observed that PH letters were duly served to the Noticee, but they did not respond. From the aforesaid facts, it is observed that sufficient opportunities have been given to the Noticee but they chose not to join the adjudication proceedings. As the matter pertains to recovery of government dues, so even in absence of the Noticee from adjudication proceedings, I am compelled to decide the matter in the interest of revenue in time bound and logical manner.

3.6.4 In this regard, it is pertinent to refer to the case of *Sumit Wool Processors Vs. CC, Nhava Sheva [2014 (312) E.L.T. 401 (Tri. - Mumbai)]* wherein Hon'ble CESTAT, Mumbai has observed that natural justice not violated when opportunity of being heard given and notices sent to addresses given by the Noticee. If appellants fail to avail such opportunity, mistake lies on them - Principles of natural justice not violated.

"8.3 We do not accept the plea of Mr. Sanjay Kumar Agarwal and Mr. Parmanand Joshi that they were not heard before passing of the impugned orders and principles of natural justice has been violated. The records show that notices were sent to the addresses given and sufficient opportunities were given. If they failed in not availing of the opportunity, the mistake lies on them. When all others who were party to the notices were heard, there is no reason why these two appellants would not have been heard by the adjudicating authority. Thus, the argument taken is only an alibi to escape the consequences of law. Accordingly, we reject the plea made by them in this regard." 2014 (312) E.L.T. 401 (Tri. - Mumbai)"

3.6.5 Having complied with the requirement of the principle of natural justice and having granted Personal Hearings to the Noticee, I proceed to decide the matter being time bound in terms of Section 28(9) of the Customs Act, 1962. Considering the aforesaid scenario, I take up this SCN for discussion on the merit of the case. With regard to proceeding to decide the case following the principle of natural justice, reliance is placed on the decision of the Hon'ble High Court of Allahabad in the case of *Modipon Ltd. vs CCE, Meerut [reported in 2002 (144) ELT 267 (All.)]* effectively dealing with the issue of natural justice and personal hearing. The extract of the observations of Hon'ble Court is reproduced herein below for reference:

"Natural justice - Hearing - Adjournment - Adjudication - Principle of audi alteram partem does not make it imperative for the authorities to compel physical presence of the party for hearing and go on adjourning proceedings so long as party does not appear before them - What is imperative for the authorities to afford the opportunity- If the opportunity afforded is not availed of by the party concerned, there is no violation of the principles of natural justice. The fundamental principles of natural justice and fair play are safeguards for the flow of justice and not the instruments for delaying the proceedings and thereby obstructing the flow of justice.

Natural justice - Hearing - Adjudication - Requirement of natural justice complied with if person concerned afforded an opportunity to present his case before the authority - Any order passed after taking into consideration points raised in such application not invalid merely on ground that no personal hearing had been afforded, all the more important in context of taxation and revenue matters. [1996 (2) SCC 98 relied on][para 22]".

3.7 I find that the Noticee had imported used knitting machines declaring the same as Fully Fashioned machines and availed the concessional rate of duty based on this description. The following issues are before me for decision:

(i) Whether the goods imported under Bill of Entry No.2035090 dated 27.07.2015 and 9501869 dated 29.04.2017 as detailed in Annexure-A to the SCN having assessable value of Rs. 40,57,297/- and seized vide seizure memo dated 12.12.2020 should not be confiscated under the provisions of Sections 111(m) and 111(o) of the Customs Act, 1962.

(ii) The differential Customs duty amounting to Rs.2,96,628/- (Rupees Two Lakhs Ninety Six Thousand Six Hundred and Twenty Eight Only) as detailed in Annexure-A to the SCN should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962

(iii) Interest should not be demanded from them under Section 28AA of the Customs Act, 1962 on aforesaid amount of duty demanded.

(iv) Penalty should not be imposed upon them under Section 114A and 114AA of the Customs Act, 1962 in relation to the imported goods detailed in Annexure-A to the SCN.

3.8 I find that the SCN has alleged that the Noticee has resorted to mis-declaration of goods as "fully fashioned machines" to claim the benefit of Notification No. 12/2012-CE dated 17.03.2012.

3.9 The undisputed fact is that the Noticee imported the said goods claiming benefit under Notification No.12/2012-CE dated 17.03.2012 and total duty saved by such availment of Notification benefit at the time of import was as mentioned in the following table:

S. No.	BE Number & Date	Item Description as declared	Qty.	Assessable Value of Goods	Duty saved by claiming Notfn. No.12/2012-C Ex (in Rs.)
1	2	3	4	5	6
1	2035090 dt. 27.07.2015	Used Fully Fashioned High Speed Knitting Machine, Model No. HKS2, 180 Inch, 28E, Serial No. 70398	1	19,89,498/-	1,45,452/-
2	9501869 dt. 29.04.2017	Used Fully Fashioned High Speed Warp Knitting Machine Brand Karlmayer, Model No. – MRSS-42, 130 Inch, 18E	2	20,67,799/-	1,51,176/-
		Total		**40,57,297/-**	**2,96,628/-**

3.10 As the mis-use of benefit of Notification No.12/2012-C.E dated 17.03.2012 has been alleged in the SCN, it will be appropriate to extract the related provisions of the Notification for proper appreciation of facts.

3.10.1 The relevant extract of the **Notification No. 12/2012-C.E dated 17.03.2012** is reproduced below for ready reference:-

Sl. No.	**Chapter or heading or sub-heading or tariff item of the First Schedule**	**Description of excisable goods**	**Rate**	**Condition No.**
1	2	3	4	5
230	84,85,90 or any other chapter	Machinery or equipment specified in list 5	6%	--

Further, the list 5 for serial no. 230 is as under:

(1) ……………………..

(38) **Fully Fashioned High Speed Knitting Machine.**

……………………..

3.11 Considering the facts of the case as evident from the SCN and taking into account the submissions of the Noticee and noting that in the ultimate analysis, the main question that falls for consideration and the issue at the root of these proceedings is the adjudication of fact whether the imported machines were covered under the category of machines called "Fully Fashioned Machines", I find it absolutely crucial to arrive at a clear understanding about the term "Fully fashioned Machine". I have perused the evidences adduced by DRI in the form of opinions obtained from Shri Ashok Prasad, Assistant Professor, Knitwear Design Department, NIFT, New Delhi and Shri Bipin Kumar, Asstt. Professor, Fabric Manufacturing Textile Technology, IIT Delhi, New Delhi, in this regard.

3.11.1 The term "Fully Fashioned" in the context of knitting machines is defined by Shri Ashok Prasad, Assistant Professor, Knitwear Design Department, NIFT, New Delhi, vide his letter No. NIFT/KD/KARL MAYER/DRI/2018 dated 24.09.2018 as under: -

> *"Fully fashioned knitting machines are those machines which are capable to manufacture shaped garments and shaped panels and further these panels are required to be sewn together to make a complete knitted garment. The main advantage of these machines is that these actually zero down the wastage as machine manufactures the garment/panel in the exact predefined shape rather than manufacturing fabric in rolls or in rectangular sheets which is the case in conventional (Non Fully Fashioned) knitting machines. Fully fashioned flat knitting machines acre generally flexible in nature and capable to cater complex stitch designs, shaped knitting and precise width adjustments. The most renowned companies which manufacture fully fashioned knitting machines are e.g. Stoll, Universal, Shima Seiki."*
>
> In the same opinion, it has been further opined:
>
> *"The model no. HKS 3 of M/s. Karl Mayer, Germany does not fall under the category of fully fashioned knitting machine as machine is not Fully capable to manufacturer shaped garments and shaped panels."*

3.11.2 Shri Bipin Kumar, Asstt. Professor, Fabric Manufacturing Textile Technology, IIT Delhi, New Delhi, vide his letter dtd.12.12.2018 has defined the term "Fully Fashioned" as under:-

> *"As per published literatures, fully fashioned knitting machines can shape-knit the garment pieces and add pockets, thereby reducing time and waste of yarn. Moreover, highly advanced fully fashioned machines knit the entire garment in one piece, eliminating the need for cutting and sewing. Fully fashioned machines are widely popular in computerized*

weft knitting machines. To fall under the category of "fully fashioned", the machine should have several capabilities including narrowing, widening, loop transfer, adding circular panels, racking, individual loop control, changing knit structure (e.g. rib to purl, rib to single jersey, etc.), varying structural elements (stitch length, weft insertion, knit, tuck and float), segmented takedown across the width of the fabric, etc.

Example: The most renowned companies which manufacture fully fashioned knitting machines are Stoll, Shima Seiki, etc."

3.12 From the above, it is clear that Fully Fashioned machines are those which are capable to manufacture shaped garments/panels, with minimum seams and waste and it improves the fit of an article.

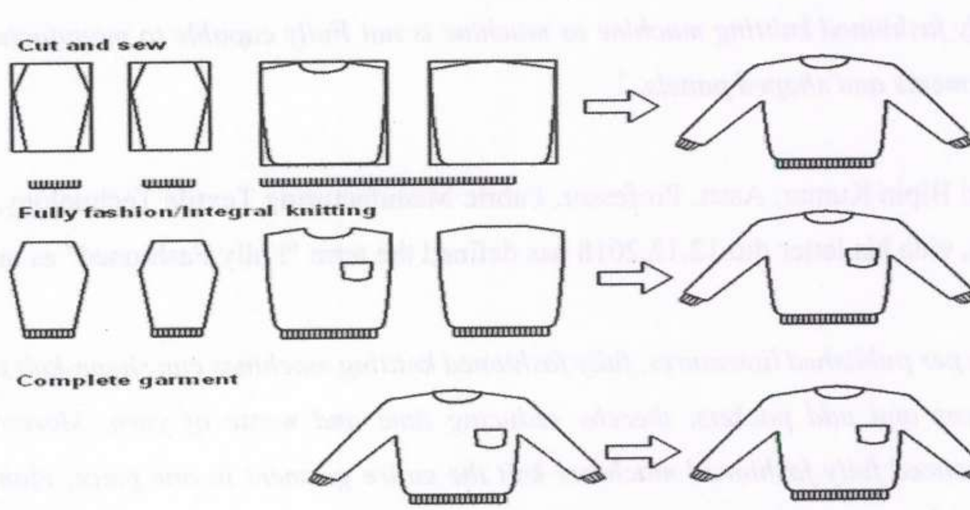
3.13 I find that it was brought out during the cross examination before my preceding Adjudicating Authority in the case of M/s Maruti Knit Tex that the opinions were based on their wide experience in the related fields and on Articles published in journals of international repute. The details of these publications and other material are as under:-

(a) **Excerpts from Article "THE KNIT ON DEMAND SUPPLY CHAIN" published in UTEX Research Journal, Vol. 12, No 3, September 2012**

Knitting technologies

The various flat knitting techniques currently available all build on the same principle: two knitting beds in an inverted V-position. The most basic machines, called cut & sew, can knit panels, which must later be cut into garment pieces. Fully fashioned and integral knitting machines are somewhat more advanced and are able to shape-knit the garment pieces and add pockets, thereby reducing time and waste of yarn. The most advanced complete garment machines knit the entire garment in one piece, eliminating the need for cutting and sewing.

Following Figures illustrates the different available knitting technologies:

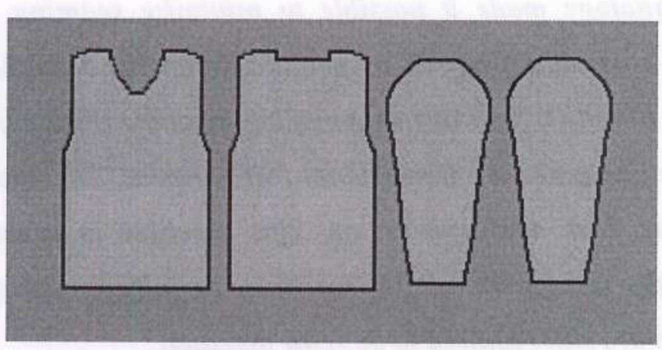


Excerpts from Article "Three Dimensional Seamless Garment Knitting on V-bed Flat Knitting Machines" published in Volume 4, Issue 3, Spring 2005 of Journal Of Textiles and Apparel Technology and Management.

5. EVOLUTION OF THE KNITTING PROCESS FROM CUT AND SEWN PRODUCTION TO SEAMLESS GARMENT KNITTING

……… the knitting industry has gradually developed since William Lee of Calverton successfully converted the actions of hand knitting with two needles into a mechanical process. Lee's work was the first attempt at mechanizing hosiery knitting in 1589. Since the invention of the frame-knitting machine, knitting technology has progressed from hand flat machines to complete garment-knitting machines. Section 5.1, 5.2, and 5.3 will explain the evolution of the knitwear process from cut-and-sew production of seamless knitting.

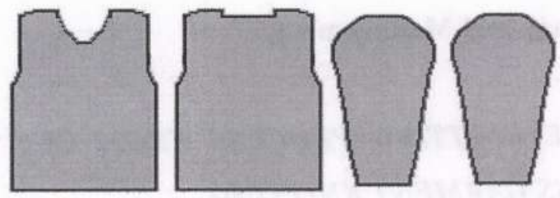
5.1 ***Cut and Sew production****: Cut and sew production is created by the use of one entire panel of fabric. Figure 5.1 below shows the cutting layout for the front and rear body portions and also the sleeve portions required to create a sweater. Through the cutting and sewing process, the finished garment is created. However, this garment production process requires several post-knitting processes including cutting and sewing. Additionally, in this process, separately knitted trimmings and pockets need stitching. The Shima Seiki Company explains that with cut and sew production, up to 40% of the original fabric can be waste*



Front Body Back Body Sleeves

Fig : 5.1: Cut and Sew (Shaded area : Cutting Waste)

5.2 ***Fully Fashioning:*** *Fully-fashioned knitting means "shaped wholly or in part by widening or narrowing of piece of fabric by loop transference in order to increase or decrease of the number of wales" . Thus, as the number of loops are increased or decreased, the fabric can get shaped areas as seen in Figure 5.2. To achieve fully-fashioned knitting, loop transference is necessary. The loop transference is the process that moves stitches (i.e., loops) from the needles on which they were made to other needles.*



Front Body Back Body Sleeves
Fig : 5.2 : Fully Fashioned Production)

In view of above, I find that it is apparent that 'Fully Fashioned knitting machines" are having advanced technology and are able to shape-knit the garment pieces and add pockets, thus reduces time and waste of yarn. The most advanced complete garment machines knit the entire garment in one piece, eliminating the need for cutting and sewing.

3.14 I also find that on representation by South Gujarat Warp Knitters to the Textile Ministry requesting that Textile Commissioner office may issue technical details about Fully Fashioned High Speed Knitting Machine in view of perceived erroneous interpretations in respect of description, and admissibility of Notification benefits, the Textile Commissioner constituted a Committee comprising of Shri Ajay Pandit, Director, O/o Textile Commissioner, Dr. B.K. Bahera, Professor, IIT-Delhi and Shri D.K. Singh, President, The Textile Association (India) Delhi. The Committee submitted their report on 11.11.2019, summary of which is extracted below:

> *"In summary, **Knitted garment manufacturing started with cut and sew method. <u>Developments in technology</u> made it possible to minimize seaming operation and produced garment by assembling panels as per the design in a method called fully fashioned technology. Finally Whole Garment making machine (Knitted) was developed in which the machine can make a 3dimensional full garment. The complete garment made on this machine does not have seams. This machine is considered as next generation form of fully fashioned knitting machine. In fully fashioned knitting, the different shaped pieces are still required to be sewn together.**"*

3.15 I find that the said report dated 11.11.2019 has not been relied upon in the SCN but I notice that during cross examination of Shri Bipin Kumar, Assistant Professor, IIT, New Delhi, on 01.12.2020 (held before my preceding adjudicating authority in the case of M/s Maruti Knit Tex), it was informed by Shri Kumar in response to Q. 5. that "*that last year there was a meeting in Textile Ministry and as a Professor, I have participated in the meeting and the decision of the committee was forwarded to the DRI wherein three category of knitting machines i.e. cut and sew, fully fashioned knitwear and fully/whole garment knitwear were clearly defined*". It is a fact that the report is prepared by a Committee, which was constituted on the specific request of the trade association, by Ministry of Textiles and was composed of an Expert in the relevant field as well as member of the Trade, alongwith a Government official. It comes out clearly that the above-mentioned report is in congruity with the technical opinions given by faculty members of IIT and NIFT having experience in the related field. The opinions given by these two persons are based on their own knowledge gained during their association in these fields and have based their opinion on various Research papers and articles published in international journals as well, relevant portions of which have been reproduced above.

3.16 I also notice that Shri Bipin Kumar in response to Q. No. 2 had replied that *"Fully Fashioned machine should have several capabilities like narrowing, widening, loop transfer, adding circular panels and these type of functionalities"*. In his further reply to Q No. 3, Shri Kumar has replied that *"In my opinion HKS2, HKS3 and HKS 4, Raschel laces are not fully fashioned machines as per literature"*.

3.17 I also find that during the course of his statement recorded on 30.10.2017 under Section 108 of the Customs Act, 1962, **Shri Socha had stated that HKS 2 and 3 bar models cannot produce types of products such as garment panels, complete, one piece or seamless garments i.e. 'fully fashioned' articles. It is important to note that on being asked to spell out the correct description of the HKS3-M machine, Shri Socha stated the correct description as "HKS3M High Performance Tricot Machine for the production of all 3 bar Articles from light Tulle over technical Coating substrates up to raised velours".** He has accepted that previously Karl Mayer India Pvt. Ltd. had imported such machines without providing the description "Fully Fashioned Machine" in the Bills of Entry and the CVD rates thereon were paid @ 12/12.5%. **He stated further that the situation (i.e. situation of mis-match of description) had arisen because of the pressure of some buyers to use this description for paperwork and due to competitive pressure in the market at the time resulting in their Sales and order fulfilment agreed to use the "Fully Fashioned" description.**

3.18 It is worth highlighting that the term 'Fully fashioned machine" does not occur anywhere in the detailed description provided by Shri Kevin Socha. ***None of the product brochures produced by him/ Karl Mayer India Pvt Ltd. in respect of the subject machines refers to the term 'Fully fashioned machine"*** for any of the machine models. I also observe that at no stage during the course of investigations or these proceedings, have any of the Noticees produced any document or brochure of the manufacturer to substantiate the claim of the machines being "Fully Fashioned". In this regard, I have also noted the reference in the SCN to the existence of invoice of same goods having been imported by another importer, namely M/s Bhilosa Industries Pvt. Ltd., Silvassa wherein the declared description does not include the term "Fully Fashioned' and appropriate CVD @ 12.5% has been paid by the said importer.

3.19 Further, I find that a team of DRI officers accompanied by a Customs Empanelled Chartered Engineer, visited the business premises of one such importer based at Amritsar, Punjab to verify whether the imported machine i.e. 'Karl Mayer Model HKS-3M High Performance Tricot Knitting, Machine' was capable of manufacturing shaped panels of fabrics to qualify as a fully fashioned knitting machine. The verification conducted under panchnama proceedings on 24.08.2020 and the Chartered Engineers report leave no doubt that the Karl Mayer machines imported by the Noticee were capable of manufacturing fabric in rectangular shape only and were incapable of manufacturing shaped garments and panels of fabric to qualify as Fully Fashioned Knitting Machine. The Chartered Engineer in his report, inter-alia, categorically mentioned that 'Machine was not fully Fashioned Machine as machine was producing only knitted fabric but was not able to produce/manufacture customs pre-shaped of a knitted garment'. Thus, the aforesaid machines imported by the Noticee are not fully fashioned.

3.20 I find that investigation of DRI as forthcoming in statement of Shri Gurudas Aras dated 07.05.2018 shows that various Indian importers had been fraudulently adding the words "Fully Fashioned" to machines of, Brand Karl Mayer which actually were not Fully Fashioned Machinery and in this manner were fraudulently availing benefit under Notification No.12/2012-CE dated 17.03.2012. The machines imported by them did not fall in the category "Fully Fashioned High Speed Knitting Machinery". Therefore, the description of the goods imported by the Noticee was by way of wilful mis-statement and suppression of facts, described as 'Fully fashioned' before Indian Customs, so that the Noticee could obtain undue customs duty benefits under Notification No. 12/2012-CE dated 17.03.2012 and all import documents and bill of entry submitted to Indian customs were manipulated and mis-declared accordingly. Therefore, the extended period of limitation is invokable in this case as provided under section 28(4) of the Customs Act, 1962.

3.21 I find that the Noticee had fraudulently claimed effective rate of CVD at 6% in terms of notification No.12/2012-CE dated 17.03.2012 on basis that imported machines were fully fashioned, but since it is not so, the noticee shall be liable to pay CVD @ 12.5%. The duty evaded and recoverable under Section 28(4) of the Customs Act, 1962, as per details below:

Sr. No.	Bill of Entry No. and date (all of port INNSA1)	Value of Goods (Rs.)	Customs duty recoverable, as per Annexure-A to the SCN (in Rs.)
1	2035090 dated 27.07.2015	19,89,498/-	1,45,452/-
2	9501869 dated 29.04.2017	20,67,799/-	1,51,176/-
	Total	40,57,297/-	2,96,628/-

3.22 I find that self-assessment has been introduced on 08.04.2011 vide Finance Act, 2011 wherein under Section 17(1) an importer or exporter has to make self-assessment. Thus, more reliance has been placed on importers and exporters under self-assessment Further, as per the provisions of Section 46(4) of the Customs Act, 1962, the importer of any goods is required to file a Bill of Entry, in the proforma prescribed under Bill of Entry (Form) Regulations, 1976 or Bill of Entry (Electronic Declaration) Regulations,1995, before the proper officer mentioning therein the true and correct quality, quantity and value of the goods imported and the importer while presenting the Bill of Entry shall also make and subscribe to a declaration as to the truth of the contents of such Bills of Entry. However, in the present case, the Notice mis-declared description of machine while filing Bill of Entry No.2035090 dated 27.07.2015 and 9501869 dated 29.04.2017 of JNCH, Nhava Sheva.

3.23 I further find that the investigating agency has brought on record various evidences and material in the SCN in the form of various correspondences recovered from e-mail accounts. I further find that during the investigations, Shri Sarvpreet Singh Bubber, Managing Director of Noticee was fully convinced by the Investigating Agency that the 3 machines imported by them are not High Speed Fully Fashioned machine and agreed to pay differential Customs duty. I also find that the Chartered Engineer of M/s Murlidhar & Shenvi Insurance & Surveyors had accepted that the Karl Mayer/Liba Machine imported by the Noticee is not fully fashioned and the report given was only to the effect of valuation purpose and not for the description purpose.

3.24 In view of the observations and findings in paras above, I conclude that the technology of a 'fully fashioned' machine is distinctly identifiable and that at the material time, the supplier Karl Mayer, Germany was not manufacturing or offering for sale machines with the name "Fully Fashioned". I, accordingly, hold that the said term 'fully fashioned' mentioned in the import documents for the subject goods was not a true and correct description of the impugned goods and had been used only for the purpose of availing inadmissible duty benefits under notification No. 12/2012-CE dated 17.03.2012. Therefore, I find that the differential duty is demandable and recoverable from the importer under Section 28(4) of the Customs Act, 1962.

3.25 I find that the importer had declared the description as "Fully Fashioned" as the benefit of Notification No. 12/2012-C.E dated 17.03.2012 (as amended) was available to "Fully Fashioned High Speed Knitting Machine" under Sr. No. 38 of list 5 against Sr. No. 230 of the Notification. Therefore, the availment of the benefit of the Notification by the importer was not only illegal but also improper. This fact has been admitted by the importer during the investigation.

3.26 I have already held above that the goods imported by the importer are not fully fashioned machines. It is a settled position that a statute or notification **must be interpreted and construed strictly as per the wording.** There is no room of any addition or modification therein. In this regard, I refer to the observations of the Hon'ble Supreme Court in case of **Uttam Industries Vs Commissioner of Central Excise, Haryana reported in ELT vide 2011(265) E.L.T.14 (S.C.)** wherein the Hon'ble Apex Court observed that

> *"10. **It is by now a settled law that the exemption notification has to be construed strictly and there has to be strict interpretation of the same by reading the same literally.** In this connection reference can be made to the decision of this Court in Collector of Customs (Preventive), **Amritsar v. Malwa Industries Limited reported at (2009) 12 SCC 735 = 2009 (235)E.L.T. 214 (S.C.)** as also to the decision in **Kartar Rolling Mills v. Commissioner of Central Excise, New Delhi reported at (2006) 4 SCC 772 = 2006 (197)E.L.T. 151 (S.C.) = 2008 (9)S.T.R. 307 (S.C.)** wherein also it was held by this Court that findings recorded by the Tribunal and the two authorities below are findings of fact and such findings in absence of evidence on record to the contrary is not subject to interference.*
>
> *11. In order to get benefit of such notification granting exemption the claimant has to show that he satisfies the eligibility criteria.......*"

3.27 On the issue of interpretation of exemption notification, I observe that Hon'ble Supreme Court in the case of Commissioner of Customs (Import), Mumbai Versus Dilip Kumar & Company reported in 2018 (361) E.L.T. 577 (S.C.) have held that burden to prove for its entitlement is on assessee claiming exemption and that If there is any ambiguity in exemption Notification, benefit of such ambiguity cannot be claimed by assessee and it must be interpreted in favour of Revenue. I extract the relevant paras of the said decision as under:

"40. After considering the various authorities, some of which are adverted to above, we are compelled to observe how true it is to say that there exists unsatisfactory state of law in relation to interpretation of exemption clauses. Various Benches which decided the question of interpretation of taxing statute on one hand and exemption notification on the other, have broadly assumed (we are justified to say this) that the position is well-settled in the interpretation of a taxing statute : It is the law that any ambiguity in a taxing statute should ensure to the benefit of the subject/assessee, but any ambiguity in the exemption clause of exemption notification must be conferred in favour of revenue - and such exemption should be allowed to be availed only to those subjects/assesses who demonstrate that a case for exemption squarely falls within the parameters enumerated in the notification and that the claimants satisfy all the conditions precedent for availing exemption. Presumably for this reason the Bench which decided Surendra Cotton Oil Mills case (supra) observed that there exists unsatisfactory state of law and the Bench which referred the matter initially, seriously doubted the conclusion in Sun Export Case (supra) that the ambiguity in an exemption notification should be interpreted in favour of the assessee.

41. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State."

The concluding part of the abovementioned decision is reproduced below:

"52. To sum up, we answer the reference holding as under –

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export case (supra) stands overruled."

3.28 As held above, I observe that the Exemption Notification has to be interpreted strictly and the words appearing in Exemption Notification are fully fashioned machine which leave no scope for ambiguity with respect to the nature of machines where benefit of Notification would rightly accrue. The machine imported vide Bill of Entry mentioned in **Table as at para 1.3** above, is not falling in that category.

3.29 It is clear that the words and phrases as used are of paramount importance while claiming benefit of a notification. In this case at hand, I find that the description of the impugned goods has been manipulated to fit into the description provided in the claimed notifications. Had the true and correct description of the goods been declared, the claim for ineligible notification benefits would not have arisen. The mis-declaration of description is, therefore, deliberate and with the only intent to evade the appropriate duty payable on the subject goods at the time of import.

3.30 The goods are not eligible for the claimed benefits of Notifications, the same having been availed by way of mis-statement and wilful suppression of facts in the form of mis-declaring the description of the machines. Hence, I find that in the case at hand here the ingredients of fraud, suppression, collusion, misrepresentation with intent to evade duty are undoubtedly present, thereby attracting and enabling invocation of extended period of limitation. I accordingly, hold that the differential duty is demandable under Section 28(4), invoking the extended period of limitation as per the figures of Customs duty mentioned in column 3 of the Table in Para 3.21 above.

3.31 I have already concluded above that the impugned goods are other than 'Fully-Fashioned' as declared in the bill of entry and related import documents. I have also observed that M/s Karl Mayer India Pvt. Ltd. had imported the same machines during the earlier period and the description did not include the words 'fully fashioned' in respect of such machines. Later, when the imports were made directly by importers from Karl Mayer, Germany using the services of their sole agent for the territory of India, namely A.T.E. Enterprises, the description was changed to delete some of the words such as High performance Tricot machine etc. and substitute them with the words 'fully fashioned' in the invoices for the same goods. It is during this time that the imports of same machines have been found to be having the goods declared as 'fully fashioned'.

3.32 I find that Shri Kevin Socha in his statement dated 30.10.2017 recorded under Section 108 of the Customs Act, 1962 had admitted that HKS 3M models (the imported goods in present case) cannot produce fully fashioned articles and also not being described as –"fully fashioned", this situation has arisen because of pressure from the market by some buyers to use this description in their paperwork; that the competitive pressure in the market at the time resulted in their Sales and order fulfilment to agree to use the "Fully Fashioned" description when requested by the buyer. Even during his cross examination in case of M/s. Maruti Knit Tex (before my preceding Adjudicating Authority), Shri Kevin Socha, in response to the specific question with respect to his comments in the letter dated 05.10.2018 "these materials produced by HKS 3M, and Copcentra Liba machines are capable of being used for producing fashion garments", has not admitted the same and stated that factual context of the sentence is correct. I notice that Shri Socha stated clearly during the same cross examination in response to Q. No. 14 and 15 that Karl Mayer yielded to demand of Importer to change the description of machines and Karl Mayer responded to pressure from Importer for change in description of machine.

3.33 The above re-strengthens my finding that on the request of the importer/his agent, the description of imported machines was changed by the supplier to include the terms "Fully Fashioned Machine" in the invoice thereby leading to filing of the Bill of Entry for subject goods with the changed description.

3.34 I, accordingly, hold that the impugned goods are liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962.

3.35 Now, I take up the issue of imposition of penalty on the Noticee. For this purpose, it is appropriate to reproduce the provisions of Section 114A and 114AA of the Customs Act, 1962 as under:

SECTION 114A. Penalty for short-levy or non-levy of duty in certain cases. - Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be li able to pay a penalty equal to the duty or interest so determined:

Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :

SECTION 114AA. Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any *declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.*

3.36 I find that Shri Sarvpreet Singh Bubber, Managing Director of Noticee in his statement dated 10.12.2020 admitted that their machine is capable of manufacturing fabrics in rolls only (rectangular shape) and they were aware that this machine is not capable of manufacturing shaped garments/shaped panels and thus do not fall under definition of High Speed Fully Fashioned Knitting machine. He further stated that with the definition of fully fashioned machine and discussions held with DRI officers, he is convinced that 3 sets of used knitting machine imported by them are not High Speed Fully Fashioned machine.

3.37 In this regard, I observe that self-assessment has been introduced on 08.04.2011 vide Finance Act, 2011 wherein under Section 17(1) of the Customs Act, 1962 an importer is required to do self-assessment, thus placing more reliance on the importers. Further, as per the provisions of Section 46 (4) of the Customs Act, 1962, the importer of any goods is required to file a Bill of Entry before the proper officer mentioning therein the true and correct quality, quantity and value of the goods imported and subscribe to a declaration as to the truth and accuracy of the contents of such Bill of Entry. However, in the present case, the importer has mis-declared the description of machines as 'fully fashioned' while filing impugned bills of entry. It is an admitted fact that the benefit of lower rate of duty on account of claim of inadmissible benefits by mis-declaring the description accrued to the importer.

3.38 Taking all the issues relating to subject imports into account and in view of my finding that goods were mis-declared in the fashion discussed above, I find that the importer has by his acts of commission and omission, as discussed above, rendered themselves liable to penalty under Section 114A and 114AA of the Customs Act, 1962.

4. In view of the above facts of the case and findings on record in respect of the imports made by **M/s Lotus Nets Pvt. Ltd.** as detailed in Para 1.3 above, I pass the following order:-

<u>ORDER</u>

(i) I confiscate the goods imported under Bill of Entry No.2035090 dated 27.07.2015 and 9501869 dated 29.04.2017 as detailed in Annexure-A to the SCN having assessable value of Rs. 40,57,297/- and seized vide seizure memo dated 12.12.2020 under the provisions of Sections 111(m) and 111(o) of the Customs Act, 1962.
However, I give **M/s Lotus Nets Pvt. Ltd.** an option to redeem these goods on payment of a fine of Rs. 4,50,000 /- (Rupees Four Lakhs Fifty Thousand Only) under Section 125 of the Customs Act, 1962.

(ii) I confirm the differential Customs duty amounting to Rs. 2,96,628/- (Rupees Two Lakhs Ninety Six Thousand Six Hundred and Twenty Eight Only) as detailed in Annexure-A to the SCN and order to recover the same from **M/s Lotus Nets Pvt. Ltd.** under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation.

(iii) I order that interest should be demanded from **M/s Lotus Nets Pvt. Ltd.** under Section 28AA of the Customs Act, 1962 on aforesaid amount of duty demanded.

(iv) I impose penalty equivalent to differential duty and interest leviable thereon i.e. **Rs. 2,96,628/- (Rupees Two Lakhs Ninety Six Thousand Six Hundred and Twenty Eight Only) plus interest thereon**, on the importer **M/s Lotus Nets Pvt. Ltd.** under Section 114A of the Customs Act, 1962 in relation to the imported goods detailed in Annexure-A to the SCN. If such duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be twenty-five per cent of the duty and interest, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order.

(v) I impose a penalty of Rs 5,00,000/- (Rupees Five Lakhs Only) on **M/s Lotus Nets Pvt. Ltd.** under Section 114AA of the Customs Act, 1962.

5. This Order is issued without prejudice to any other action that may be taken in respect of the above goods and/or the persons/firms mentioned in the notice, under the provisions of the Act and/or any other law for the time being in force, in the Republic of India.

ARamteke 31/x/25

(अनिल रामटेके / ANIL RAMTEKE)

सीमा शुल्क आयुक्त / Commissioner of Customs

एनएस-V, जेएनसीएच / NS-V, JNCH

To,

1. M/s Lotus Nets Pvt. Ltd.,
P.O. Rayon & Silk Mills,
G.T. Road,
Amritsar – 143001

COPY TO:

1. The Additional Director of General, DRI, ARU,
   A-57, Ranjit Avenue, Amritsar, Punjab
2. Addl. Commissioner, Group V, JNCH
3. AC/DC, Chief Commissioner's Office, JNCH
4. AC/DC, Centralized Revenue Recovery Cell, JNCH
5. Supdt.(P), CHS Section, JNCH – For display on JNCH Notice Board.
6. EDI Section
7. Office Copy.