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 – 20251078NX0000424774	**Date of Order:31.10.2025**
F. No. S/10-68/2021-22/COMMR/NS-V/CAC/JNCH	**Date of Issue: 31.10.2025**

SCN No.:LDZU/856/(INT-9 OF 2017)/(ENQ-205)/2020

SCN Date: 30.12.2020

Passed by: Sh. Anil Ramteke

Commissioner of Customs, NS-V, JNCH

Order No:257/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticees: M/s. BHANU EMBROIDERIES PVT. LTD(IEC-1206005203)

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-010-071220-97 issued vide File No. DRI/LdZU/856/INT-9 of 2017/ENQ-205/2020 dated 31.12.2020 in the case of Bhanu Embroideries Pvt. Ltd. – reg.

1. BRIEF FACTS OF THE CASE

1.1 It is stated in the Show Cause Notice (SCN) bearing F. No. DRI/LdZU/856/INT-9 of 2017/ ENQ-205/2020 dated 31.12.2020 that Bhanu Embroideries Pvt. Ltd., 455, Basant Avenue, Amritsar, presently at Village Bal Kalan, Majitha Road Bye-Pass, Amritsar (hereinafter referred to as the Noticee No. 1), having IEC No. 1206005203 is engaged in the manufacturing of knitted fabrics. As per the IEC details available on the DGFT website https://dgft.gov.in, Bhanu Embroideries Pvt. Ltd., is a Private Limited Company with Sh. Sanjeev Arora and Sh. Rajiv Arora as Directors.

1.2 As per the SCN, an intelligence was received by Directorate of Revenue Intelligence, Zonal Unit, Ludhiana (hereinafter also 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 the 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 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 firm had imported 7 machines declared as "Used Fully Fashioned High Speed Knitting Machines", Model Nos. MRSS 32, MRS 25 & MRGS 25, in Bill of Entry Nos. 9395891 dtd. 29.05.2015 and 9190160 dtd. 11.05.2015 taking the benefit of exemption under Notification No. 12/2012-CE dated 17.03.2012. The details of the Bills of Entry are as follows:

S. No.	Custom House Code	BE Number	Supplier Name	Item Description as declared	Qty.	Unit Price as assessed	Invoice currency
1	INNSA1	9395891 dtd. 29.05.2015	MY Textile Solutions Ltd., Room No. 1505, 15F, Yu Sung Boon Building, Des Voeux, Road, Central Hong Kong	Used High Speed Fully Fashioned Knitting Machine, Model No. MRSS 32, 132 Inch, E24, Sr. No. 73326, 73346	2	12500	USD
2	INNSA1	9190160 dtd. 11.05.2015	Schenker Ltd., Attleborough Fields Ind. Estate, 1 Kelsey Close, Nuneation, CV11 6XN, United Kingdom	Used High Speed Fully Fashioned Knitting Machine, Model No. MRS 25, 130 Inch, 18E, Sr. No. 48792	1	18000	EUR
				Used High Speed Fully Fashioned Knitting Machine, Model No. MRGS 25, 130 Inch, 24E, Sr. No. 49878	1	18000	EUR
				Used High Speed Fully Fashioned Knitting Machine, Model No. MRS 25, 124 Inch, 18E, Sr. No. 24899	1	18000	EUR
				Used High Speed Fully Fashioned Knitting Machine, Model No. MRS 25, 126 Inch, 18E, Sr. No. 46533	1	18000	EUR
				Used High Speed Fully Fashioned Knitting Machine, Model No. MRS 25, 126 Inch, 18E, Sr. No. 46619	1	18000	EUR

1.4 Enquiry was initiated from the manufacturer M/s. Karl Mayer and their office located in Ahmedabad, India on 11.10.2017. **Shri Piyush Pathak**, authorized 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 warp 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 the 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-400053. 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. In response to the summons issued, **Shri Milind Mirkar,** CEO, Karl Mayer India Pvt. Ltd., presented himself 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 centers 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/articles; that most of the machines sold and installed in India by their company were of HKS 2 & 3 models which do not fall under the definition of "Fully Fashioned"; and that Karl Mayer India Pvt. Ltd. was not involved in the sale 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 "HKS 3M High Performance Tricot Machine for production of 3 bar Articles from light tulle over technical Coating substrates up to raised velours", he stated that the correct description of the machine was **"HKS-3M High Performance Tricot Machine for the production of all 3 bar Articles from light Tulle over technical coating substrates up to raised velours"**; that 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 further stated that ATE Enterprises Pvt. Ltd., Bhagwati House, Veera Desai Road, Andheri West, Mumbai- 400053, were the 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 ATE Enterprises have 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 ATE Enterprises 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 ATE Enterprises Pvt. Ltd., 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 Karl Mayer machines, ***e-mail correspondence between the importers and Karl Mayer through ATE Enterprises and brochures of Karl Mayer machines***. In his statement, Shri Gurudas Aras stated inter-alia **that their company was associated with M/s. Karl Mayer Group of Germany 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 the technical specifications and descriptions

were being decided by the machinery manufacturers and their company has no role to play in that; that the term "Fully Fashioned" was nowhere mentioned in any of the brochures or in the list of machines imported submitted by him for the period 2013-14 till June, 2017; that HKS 3M 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 case of Bhilosa Industries Pvt. Ltd. was the actual description whereas in case of Zenith Silk Mills Pvt. Ltd., Surat, it had been changed as "Fully Fashioned High Speed Knitting Machine HKS-3M" **on 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 3 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, Raschel and Lace 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 ATE Enterprises Pvt. Ltd., Mumbai were scrutinized, which revealed that the importers had requested ATE 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 Kudrat Corporation, another Indian importer of Karl Mayer machines clearly showed that after the request was received from the Indian importer, the representatives of ATE Enterprises Pvt. Ltd., Mumbai have 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 Ratnadeep Shipping Pvt. Ltd., in his statement dated 06.12.2017 recorded under Section 108 of the Customs Act, 1962 stated that they are 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 have 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; 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 have 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 falls 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 BE filed by Karl Mayer India Pvt. Ltd. shows 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 filed the Bill of Entries as per the description on import documents supplied to them by their clients. Further, he was informed that Bhilosa Industries Pvt. Ltd., Silvassa and many other importers who have imported these type of machines i.e. HKS 3M 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 have 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 Engineer (CE) in the presence of Customs staff. He further reiterated that they just filed Bills of Entry 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 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 imported machines as detailed in the Annexure-A to the SCN, at the premises of Bhanu Embroideries Pvt. Ltd. by the DRI officers had been done under Panchanama proceedings dated 13.11.2020. During the verification, the said 7 machines were detained under Customs Act, 1962 by the DRI officers on the reasonable belief that the same have been mis-classified as 'Fully Fashioned High Speed Knitting Machine' and thus, liable for confiscation under Section 111 of the Customs Act, 1962. The Custody of the detained goods were given to Shri Sanjeev Arora vide Supardaginama dated 13.11.2020.

1.12 Summons were issued to the Bhanu Embroideries Pvt. Ltd. on 18.11.2020 in response to which Shri Sanjeev Arora, Director of the Noticee firm appeared before the SIO, DRI and recorded his statement under Section 108 of the Customs Act, 1962 on 18.11.2020. He interalia stated that:

1.12.1 He started the company, Bhanu Embroideries Pvt. Ltd. as its founding Director; that the firm is engaged in the manufacturing of knitted fabrics; that so far, they have imported five machines (four MRS 25 and one MRGS 25 machine) vide BE No. 9190160 dtd. 11.05.2015 from United Kingdom and two MRSS 32 machines vide BE No. 9395891 dtd. 29.05.2015 from Hong Kong; the details of the machines imported are as per details as at para 1.3 above. He agreed with the detention of the imported machines as described in the panchanama dated 13.11.2020 which was drawn at the premises of Bhanu Embroideries Pvt. Ltd. On being asked whether the machines imported by them fall under the definition of 'Fully Fashioned Knitting Machine' and are capable of manufacturing shaped garments, he stated that their machines are capable of manufacturing fabrics in rolls only (rectangular shape), these machines are not capable of manufacturing shaped garments / shaped panels and thus, do not fall under the definition of 'Fully Fashioned Knitting

Machine'. On being asked, he further state that they ordered for 7 sets of "Used High Speed Knitting Machine" through their Customs Brokers, M/s Deep Logistics at Nhava Sheva and they got issued them invoices with the description 'Used Fully Fashioned High Speed Knitting Machine', Brand Karl Mayer. On the basis of the description mentioned in the supplier's invoice, their Customs Brokers, M/s Deep Logistics at Nhava Sheva filed Bills of Entry as per the description mentioned. They were not aware that there was CVD payable @12.5% instead of 6%.

1.12.2 On being asked, he opened his email i.e. bhanuembrediffmail.com by entering the password on the computer installed at DRI office. After that few printouts were taken by the DRI officer, which appeared to be relevant to the on-going investigation. He had signed all the pages of the printouts taken from above mentioned e-mail in token of its correctness. These pages were numbered from 1 to 24. He further stated that their company had received offers from various suppliers for various types of knitting machines which were in the inbox of his email account i.e. bhanuemb@rediffmail.com. He further stated that their company had entered into email correspondence with Shri Dhiraj Vij of M/s Udhav Fashions having email Id udhavfashion@gmail.com. Page No. 1 is regarding offer for sale of various Brand Karl Mayer Machines. Page No. 2 is email dated 07.02.2015 at 19.42.09 Hrs. regarding supply of five machines. These machines are having same serial numbers as mentioned in the Bill of Entry No. 9190160 dated 11.05.2015 and invoice No. 3262a dated 30.03.2015. Page No 3 & 4 relate to invoice serial No. 15/3257 dated 06.08.2014. Page No. 5 & 6 are regarding email dated 25.02.2015 at 18.19.27 from Shri Dhiraj Vij to their company. In page No. 6, the invoice No. 3262a dated 23.02.2015 mentions the description of goods as "5 Used Fully Fashioned High Speed Warp Knitting Machines". Page 7 & 8 are regarding email dated 14.04.2015 at 11.38.10 from M/s Deep Shipping to them and to udhavfashions@gmail.com. Further, page 9 to 12 are regarding email dated 14.04.2015 at 13.27.35 from their company to Sh. Dhiraj Vij.

1.12.3 In page 10, the word 'warp' is struck down. In page 11, the word 'Gandiwind-9' is struck down in sea way bill and in page 12 the word 'warp' is struck down from sea way bill attachment. Page 13 is regarding email dated 18.04.2015 at 12.48.34 regarding correction in invoice and Bill of Lading. Page 14 & 15 are regarding corrected sea way bill with the word 'warp' omitted from the description. Page 16 to 24 are regarding email dated 06.05.2015 at 20.56.48 from Shri Dhiraj Vij to their company regarding supply of Bill of Lading dated 09.04.2015, Certificate of origin dated 04.04.2015, Chartered Engineer Certificate dated 02.04.2015, invoice No. 3262a dated 30.03.2015 and Packing List dated 02.04.2015.

1.12.4 On being asked, who is the ultimate beneficiary with the mis-declaration in description in the machines imported by them, when Govt. revenue has been defrauded by wrongly mentioning description of goods, he stated that although they were the ultimate beneficiary as far as the Govt. Revenue is concerned, yet he stated that they were unaware about it. They provided the documents as received from the supplier to the Customs Broker and on the basis of those documents their Customs Broker had filed the said Bills of Entry. He agreed to pay the lawful Customs duty if it arose in the proceedings.

1.13 Accordingly, summons were issued to Shri Dhiraj Vij, resident of 9, Maqbool Road, Krishna Kutir, Amritsar, Punjab on 19.12.2020 in response to which Shri Dhiraj Vij, appeared before the SIO, DRI and recorded his statement under Section 108 of the Customs Act, 1962 on 21.12.2020.

1.13.1 In his statement Shri Dhiraj Vij stated that he was born and brought up in Amritsar. There are two firms with name and style of M/s. Udhav Fashions and M/s. U.S. Nets & Fabrics in which he is a partner; that the said two firms M/s. Udhav Fashions and M/s. US. Nets & Fabrics have been importing used knitting machines of brand Karl Mayer and LIBA from all over the world.

1.13.2 On being asked whether he has gone abroad regarding purchase of used knitting machines, he stated that he had been visiting various countries in connection with import of used knitting machines to various buyers located mainly in Amritsar and occasionally in other locations in India also; that he has imported/traded knitting machines and sold these machines in three different ways i.e. High Seas Sale basis, direct import & resale and import of used knitting machines on agency basis. He further stated that some of the used knitting machines imported by him have been retained in M/s. Udhav Fashions for production and supply of knitted fabrics.

1.13.3 On being asked whether he knew M/s. Deep Logistics or M/s. Deep Shipping Agency, he stated that he knows Shri Deepak Agarwal who is associated with M/s. Deep Logistics and M/s. Deep Shipping Agency and he knows him for last 10 years. Further, on being asked whether he knew Bhanu Embroideries Pvt. Ltd., he stated that he knows Shri Sanjeev Arora, who is Director of Bhanu Embroideries Pvt. Ltd., and around 5-6 years ago, he had supplied around five used knitting machines of Karl Mayer Brand to Bhanu Embroideries Pvt. Ltd.

1.13.4 He further stated that he used to send bulk emails regarding availability of different used knitting machines to various prospective buyers intimating regarding the make, model, YOM, present working condition as well as tentative price of the machines including photographs, if available; that when any prospective buyer responded to the offer of sale through him, he used to enter into rate negotiation as well as other formalities of the import including advance remittance; that once the terms of sale was settled, he used to provide the proforma invoice and on payment of the sale price by the prospective buyer in part/full, further necessary action regarding the supply of said machines was taken by the supplier. The same mode of communication was with Bhanu Embroideries Pvt. Ltd.

1.13.5 On going through the relevant portion of statement dated 18.11.2020 of Shri Sanjeev Arora, Director of Bhanu Embroideries Pvt. Ltd., he admitted that the e-mail Id of his firm or documents supplied by him are clearly mentioned to the best of knowledge and belief; that he agrees that his firm has received email dated 14.04.2015 as mentioned in the question from M/s. Deep Shipping and further on the same day email dated 14.04.2015 was received from Bhanu Embroideries Pvt. Ltd. giving him the directions for the corrections in the Invoice. Further, vide his email dated 18.04.2015 at 12:48:34, the corrected invoice and Bill of Lading were emailed to Bhanu Embroideries Pvt. Ltd., as e-mail attachments.

1.13.6 On being asked the purpose for omitting the word 'Warp' from the commercial invoice and correcting the description as "Used Fully Fashioned High Speed Knitting Machine", he stated that these additions/deletions in the commercial invoice have been made for smooth Customs clearance. He further stated that he does not have any proof with him wherein any Customs officer has objected to the word 'Warp' or not having mentioned the word 'Fully Fashioned Highspeed Knitting Machine' in the commercial invoice.

1.13.7 On being asked whether it is possible that the supplier can change the description portion in the commercial invoice when the invoice number and date has been generated, he answered in an affirmative stating that - Yes, it is possible in order to satisfy the requirement of buyer/customer.

1.14 Shri Ramchandra Krishna Jagtap, Chartered Engineer and Director of Murlidhar Shenvi Insurance Surveyors & Loss Assessors Pvt. Ltd. in his statement recorded under Section 108 of the Customs Act, 1962 on 20.11.2020, 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.

1.14.1 He was shown various reports wherein he submitted his report in respect of Old & Used Karl Mayer Machine / Karl Mayer / Liba machines of German origin, submitted by him to Indian

Customs. 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.

1.14.2 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.

1.14.3 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 manufacture 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.

1.14.4 He along with the DRI officers visited the business premises of 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.

1.14.5 He was shown a panchnama dated 25.11.2020 containing 4 pages drawn at the business premises of R.G. Merchandisers Pvt. Ltd. regarding the verification and the functionality of the said machine in this regard. 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'.

1.14.6 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'.

1.14.7 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.

1.15 Shri Deepak Kamal Agarwal, Custom Broker Cum authorized signatory of M/s. Deep Shipping Agency and 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 Murlidhar Shenvi Insurance Surveyors & Loss Assessors Pvt. Ltd. and Panchnama dated 25.11.2020 drawn at the office

premises of R.G. Merchandisers Pvt. Ltd., C-134, Phase-V, Focal Point Ludhiana, he accepted the contents of the same and put his dated signature.

1.16 Further, a team of DRI officers accompanied by a Customs Empaneled 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 firm 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 firm are not fully fashioned.

1.17 During investigations, certain e-mails were unearthed from which it became apparent that the mis-declaration of the machinery by the importer was intentional and in connivance with one, Shri Dhiraj Vij (a trader of Used Karl Mayer Machines) and the Customs Broker, Shri Deepak Kamal Agarwal, Partner in M/s Deep Shipping Agency. In these recovered emails, the Customs Broker, Shri Deepak Kamal Agarwal is seen to be stressing upon the importer to amend the description of the machinery in the commercial invoice to read exactly as 'Used Fully Fashioned High Speed Knitting Machine' which is the term used at Sr. No. 230 of List 5 in Notification No. 12/2012-CE for claim of exemption. It appeared that Shri Deepak Kamal Agarwal being a Customs Broker himself was supposed to discharge the obligations cast upon him under the then prevalent Customs Brokers Licencing Regulations, 2013, which, inter-alia, cast upon him the responsibility of advising his client to comply with the provisions of the act and in case of non-compliance, bring the matter to the notice of the Assistant Commissioner of Customs, and exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to Customs clearance work. As emerging from the emails recovered in the case of Bhanu Embroidery Pvt. Ltd., the Customs Broker was, rather than advising his client to comply with provisions of Customs law, was to the contrary advising and abetting the importer to use the words specifically mentioned in the notification for availment of Customs benefit, without fully satisfying himself as to whether the description was actually applicable to the goods imported by his client. The *mens-rea* of the Customs Broker to make available undue Customs duty benefits to his client becomes even more clear from his direction in the e-mail dated 14.04.2015 related to Bill of Lading which reads as follows: ***"following correction required in B/L; The description should read as 'used fully fashioned high speed knitting machine'***. The e-mails recovered show that it was only on the advice of Customs Broker that the importer had contacted the trader of the machinery and got the import documents amended for claim of undue Customs duty exemption. Therefore, it appeared that the Customs Broker was intentionally involved in the racket of fraudulent manipulation in the description of imported machinery to make benefits of Customs duty available to ineligible importers and through his ommissions and commissions appeared to have rendered himself liable to penalty under Section 112 and Section 114AA of the Customs Act, 1962, apart from the other action which may separately be taken against him under the Customs Brokers Licensing Regulations.

1.18 Further, Summons were issued to Shri Deepak Kamal Agarwal, on 18.12.2020 to appear before the Deputy Director, DRI, LdZU on 21.12.2020 in response to which Shri Deepak Kamal Agarwal, sent a mail dated 21.12.2020 citing that *'it is impossible to travel between Mumbai & Ludhiana due to prevailing pandemic. After my last visit to Ludhiana, I was not feeling well presently I am in home isolation'.*

1.18.1 Another summons was issued by DRI, Ludhiana to Shri Deepak Kamal Agarwal, Deep Shipping Agency on 23.12.2020 to appear before the Deputy Director, DRI, LdZU on 26.12.2020 and delivered by mail on 24.12.2020 citing *'In the circumstances, any authorized representative may be sent to Ludhiana in your place as evidence is to be confronted while recording the statement'*, in response to which Shri Deepak Kamal Agarwal, sent mail dated 25.12.2020 stating that:

> *"I have received the summons by email directing me to attend your office at Ludhiana on Saturday 26/12/2020 at 11.00 am. Sir I refer my mail of 21/12/2020 stating that I am in home isolation. I again state that I am still not well and therefore request to excuse me to attend on 26/12/2020. Further I want to state as under:*
>
> *We are given to understand that there are some queries regarding Email dated 14/03/2015 of Bhanu Embroideries Pvt. Ltd. I want to say that we never advised any Importer or the Supplier to describe the machines as FULLY FASHION in the Invoice. I had asked in our mail dated 14/03/2015 to Bhanu Embroideries for the correction in commercial Invoice, the "word WARP should not be mentioned in the description in the invoice" and never asked to describe the machines as FULLY FASHION in the Invoice. It was already mentioned in the Commercial Invoice received by us from M/s. Bhanu Embroideries.*
>
> *Regarding the suggestions made by us for the Bill of Lading, I would like to state that the description of goods in the Bill of Lading does not compromise the revenue. The word WARP is inconsequential. We had made the said suggestions to avoid delay, as matter of abundant precaution the mail was issued by my office. I again assure your goodself of our full cooperation in the matter."*

1.18.2 He further sent a mail dated 26.12.2020 stating:

> *"We refer your mail of 24th December asking to depute any Authorized representative in my place to Ludhiana. I would like to state that my Father Mr. Kamal Agarwal is authorized person in our CHA firm and he is 72 years old and is Cancer patient, hence he cannot travel to Ludhiana. There is no other person conversant with the case in my office. I request to kindly take my email dated 25th December, 2020 on record as my statement. I assure my full cooperation in the matter."*

1.19 Investigation of DRI as forthcoming in statement of Shri Gurudas Aras dated 07.05.2018 showed 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. Bhanu Embroideries Pvt. Ltd. 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 Sanjeev Arora, Director of the Bhanu Embroideries Pvt. Ltd. in his statement dated 18.11.2020. 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 firm was by way of wilful mis-statement and suppression of facts, described as 'Fully fashioned' before Indian Customs, so the Noticee firm could obtain undue Customs duty benefit under Notification No. 12/2012-CE dated 17.03.2012 and all import documents and bills 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.

1.20 Bhanu Embroideries Pvt. Ltd. had fraudulently claimed effective rate of CVD at 6% in terms of Notification No. 12/2012-CE dated 17.03.2012 on the basis that imported machines were fully fashioned, but since it is not so, the Bhanu Embroideries Pvt. Ltd. appeared liable to pay

CVD @ 12.5%. The duty evaded and recoverable under Section 28(4) of the Customs Act, 1962, is as per details below:

Bill of Entry No. and date (all of port INNSA1)	Value of Goods (in Rs.)	Customs duty recoverable, as per Annexure-A to the SCN (in Rs.)
9395891 dtd. 29.05.2015 and 9190160 dtd. 11.05.2015	86,42,627/-	6,31,856/-

1.21 Further, the goods covered under Bills of Entry No. 9395891 dtd. 29.05.2015 and 9190160 dtd. 11.05.2015 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 04.12.2020.

1.22 Further, Bhanu Embroideries Pvt. Ltd. vide their letter dated 02.12.2020 deposited a Demand Draft No. 005589 dtd. 27.11.2020 of Rs. 1,38,915/- and 005591 dtd. 01.12.2020 of Rs. 4,92,941/- in respect of the differential duty payable in respect of import of machineries vide Bill of Entry No. 9395891 dtd. 29.05.2015 and 9190160 dtd. 11.05.2015.

1.23 Since, Bhanu Embroideries Pvt. Ltd. appeared to have evaded Customs duty, they appeared liable for penalty under Section 114A of the Customs Act, 1962. Further, since the Noticee firm 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.

1.24 Shri Deepak Kamal Agarwal, M/s. Deep Shipping Agency & Deep Logistics who is the Customs Broker of Noticee No. 1 actively connived with Noticee No. 1 to fraudulently change the description of imported goods in order to evade duty and rendered the imported goods liable to confiscation under Section 111 of the Customs Act, 1962, hence, he also appeared to be liable for penalty under Section 112 of the Customs Act, 1962. Further, he knowingly and intentionally caused to be made a false entry by Noticee No. 1 and hence, he also appeared to be liable for penalty under Section 114AA of the Customs Act, 1962.

1.25 Since, Sh. Dhiraj Vij actively connived with the Bhanu Embroideries Pvt. Ltd. to fraudulently change the description of imported goods in order to evade duty and rendered the imported goods liable to confiscation under Section 111 of the Customs Act, 1962, hence, he appeared to be liable for penalty under Section 112 of the Customs Act, 1962. Further, he knowingly and intentionally caused to be made a false entry by the Noticee No. 1 and hence, he also appeared to be liable for penalty under Section 114AA of the Customs Act, 1962.

1.26 Accordingly, Bhanu Embroideries Pvt. Ltd., Amritsar, Punjab was called upon to show cause as to why:

(i) The goods imported vide Bills of Entry No. 9395891 dtd. 29.05.2015 and 9190160 dtd. 11.05.2015 as detailed in Annexure-A to the SCN having assessable value of **Rs. 86,42,627/- (Rupees Eighty Six Lakh Forty Two Thousand Six Hundred Twenty Seven Only)** and seized vide Seizure Memo dated 04.12.2020 should not be confiscated under the provisions of Sections 111(m) and 111(o) of the Customs Act, 1962;

(ii) Customs duty amounting to **Rs. 6,31,856/- (Rupees Six Lakh Thirty One Thousand Eight Hundred Fifty Six 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.

1.27 Shri Deepak Kamal Agarwal of Customs Broker firm M/s. Deep Logistics, now renamed as Deep Shipping Agency was also called upon to show cause and explain as to why penalty should not be imposed on him under Section 112 of the Customs Act, 1962 and under Section 114AA of the Customs Act, 1962.

1.28 Sh. Dhiraj Vij was also called upon to show cause and explain as to why penalty should not be imposed on him under Section 112 and under Section 114AA of the Customs Act, 1962.

1.29 Vide Notification No. 23/2021-Customs (NT/CAA/DRI) dated 05.03.2021 (Sl. No. 153), the Commissioner of Customs, NS-V, JNCH, Nhava Sheva, has been appointed by CBIC, as Common Adjudication Authority. Accordingly, I have taken up the present case for adjudication.

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

2.1 There are three Noticees in the subject SCN viz. (1) Bhanu Embroideries Pvt. Ltd., (2) Sh. Deepak Kamal Aggarwal & (3) Sh. Dhiraj Vij. In terms of principal of natural justice, all the Noticees were granted opportunity of Personal Hearing (PH). Personal Hearings were scheduled on 01.06.2023, 19.06.2023, 20.07.2023, 11.09.2025, 25.09.2025 & 09.10.2025. Noticee No. 1 & 3 attended the personal hearing (PH) on 09.10.2025 and Noticee No. 2 attended the personal hearing (PH) on 25.09.2025.

2.2 Sh. Gautam Chugh, Advocate, Authorised Representative of the two Noticees, Bhanu Embroideries Pvt. Ltd., Amritsar and Sh. Dhiraj Vij, appeared for personal hearing on 09.10.2025. During the hearing, he made following submissions:

a) The assessment of the Bills of Entry involved in this case has not been challenged by the department. In terms of Hon'ble Supreme Court judgement in the matter of ITC Ltd. Vs Commissioner of Central Excise, Kolkata-IV, the department should have filed an appeal against the assessment.
b) Larger period of limitation is not invokable in this case as the impugned knitting machines have been imported with same nomenclature and classification since last 15 years and the same has never been challenged by the revenue.
c) In the exemption Notification No. 12/2012-CE dtd. 17.03.2012, fully fashioned machine has not been defined. The department has relied upon the personal opinion of IIT, Delhi and NIFT, Delhi to allege that the machines are not fully fashioned. The actual user who uses / works on the machine can determine whether the machine is fully fashioned or not. The impugned machines are capable of manufacturing all articles and are indeed fully fashioned.
d) In respect of Co-noticee, Sh. Dhiraj Vij, in the SCN penal action has been proposed against him. However, in the entire SCN no evidence as to his role in alleged connivance/mis-declaration has been defined. Abetment has to be proved beyond doubt. Mere assertion that Sh. Dhiraj Vij connived cannot merit imposition of penalty.
e) He undertook to submit reply to the SCN by 16th October, 2025 and requested for dropping of the Show Cause Notice against the above two Noticees.

2.3 Sh. Deepak Kamal Agarwal, along with his Authorised Representative, Sh. A. S. Sahota, appeared for personal hearing on 25.09.2025. During the hearing, he submitted written submission dated 25.09.2025, reiterated the submissions made therein and requested for dropping of the Show Cause Notice as far as it is directed against him.

2.4 M/s Bhanu Embroideries Pvt. Ltd., Amritsar (Noticee No. 1), did not submit reply to the SCN inspite of undertaking during the PH to submit the same by 16.10.2025.

2.5 Sh. Deepak Kamal Aggarwal, Noticee No. 2 vide his letter dated 09.09.2025 made following submissions:

(i) The SCN is answerable to the Additional Commissioner of Customs, JNCH and he has not received any corrigendum from DRI regarding case being made answerable to the Commissioner of Customs, JNCH. Hence, file may be forwarded to appropriate adjudicating authority i.e. Additional Commissioner.

(ii) The DRI has relied upon selectively on few emails exchanged by the co-noticees or others but the entire chain of email and other correspondence is required to be brought on record to properly and correctly apprehend the contents of the emails relied upon in the SCN. He requested that entire correspondence including emails be brought on record and copies of them made available to him to file the reply to the SCN.

(iii) The Fully-Fashioned High-Speed Knitting Machines were being cleared all over India. Many other importers and Customs Brokers have cleared these machines regularly with the benefit of the Notification No. 12/2012-CE dated 17.03.2012. Thus, the entire data of clearances of identical machines with benefit of notification be brought on record.

(iv) As above SCN has relied upon opinions of Experts, the Noticee requested to make available the entire correspondence exchanged by the DRI to enable him to file reply to the SCN.

(v) Old as well as new machines were always cleared after due examination and not under section 17(1) of the Customs Act. The examination of the goods used to be carried out under the supervision of Dy. Commissioner as well as the Chartered Engineer. Therefore, the Noticee requested to give the names, designation and examination reports given by such officers as well as Chartered Engineers and also requested for cross examination of all such officers and Chartered Engineers.

(vi) He requested cross-examination of all the persons whose statements and opinions are relied upon in the SCN.

2.6 Further, Shri Deepak Kamal Aggarwal, Noticee No. 2 vide his letter dated 23.09.2025 submitted reply to the subject Show Cause Notice, wherein he made following submissions:

2.6.1 They are holding customs pass since 1973 and never came to any adverse notice; they have always complied the CBLR/CHALR, Customs Act, Rules and Regulations made thereunder, various Notifications, Public Notices and Policy Circulars issued from time to time, hence, enjoyed unblemished track record; they have handled various reputed companies/firms having AEO status.

2.6.2 During the normal course, the employees of the firm had attended to clearance of 'Fully Fashioned High Speed Knitting Machines', new as well as old at JN Port, cleared through J. N. Custom House on behalf of various importers. The firm had filed various Bills of Entry on behalf of such importers after obtaining due authorization and verification of credentials of the importer as required under CBLR. All the Bills of Entry were filed strictly on the basis of documents and as per the instructions of the importers.

2.6.3 Regarding clearance of 'Fully Fashioned High Speed Knitting Machine', all the Bills of Entry were assessed finally after examination and in most of the cases, examination was done under supervision of Dy. Commissioner along with approved Chartered Engineer and the benefit of said notification was extended; all the Bills of Entry were reassessed under Section 17(2) and not under Section 17(1); old and used machines, are invariably accompanied with pre-shipment inspection certificate approved by DFGT and same was invariably submitted at the time of assessment and examination of the goods.

2.6.4 Fully Fashioned High Speed Knitting Machines, new as well as old, were cleared at all Port/ICDs regularly by various other Custom Brokers in similar manner under claim of Notfn. No. 12/2012-CE dated 17.03.2012, thus, no adverse inference can be drawn only against their firm.

2.6.5 Before they started clearances in the year 2015, the benefit of the Notification in respect of Fully Fashioned High Speed Knitting Machine was being claimed by various importers/CBs and was being allowed by the department. Thus, relying on earlier clearances, they in routine manner, at the instructions of the importer and on the basis of documents, filed the Bills of Entry claiming benefit of the Notification.

2.6.6 The DRI had issued various identical SCNs from 2019 onwards to the importers and the suppliers/ local representatives of the suppliers, but they were not made the co-noticee at all, but subsequently in few SCN issued in December, 2020, they were also joined as a co-noticee due to change in the authority issuing the SCNs.

2.6.7 Two of the SCNs issued to M/s A. K. Aggarwal & Bros. & M/s Parmodh Woollen Mills and them were adjudicated by the preceding Adjudicating Authority vide O-i-O No. 222/2023-24 dtd. 31.01.2024 and O-i-O No. 220/2023-24 dtd. 29.01.2024. The proceedings as far as these were directed against them were dropped on merits. The allegations and the evidences relied upon in these two SCNs are one and the same and the SCNs are mirror image of the present SCN. Thus, the issue has already been decided and thus, following the ratio of the above orders, the present SCN, as far as it is directed against them is also required to be dropped in the interest of justice and equity, more so when both the above orders have been accepted by the department. I is a settled law that the order of the coordinate bench are binding on another co-ordinate bench. Reliance in this regard placed on the following case laws:

a) *Shivalaya Ispat & Power Pvt. Ltd. – 2018(360) E.L.T. 914 (Chhattisgarh)*
b) *Reliance Industries Ltd. – 2015 (326) E.L.T. 664 (Guj.)*
c) *Mangalore Refinery & Petrochemicals Ltd. – 2016 (42) STR 6(Kar.)*

2.6.8 Each of the Bills of Entry filed for clearance of the goods was re-assessed under Section 17(2) of the Customs Act, 1962 and none of the Bill of Entry was ever assessed under Section 17(1) of the Act, under self-assessment; that in the case of old and used machines, the goods are invariably accompanied with the Pre-Shipment Inspection Certificate issued by the Competent Agency and the said certificate was invariably submitted to the proper officer at the time of assessment as well as examination of the goods. Further, all such goods were also examined by the local Chartered Engineer and were also examined under the supervision of the Dy. Commissioner of Customs.

2.6.9 Determination of the appropriate rate of duty and ascertaining eligibility for exemption / concession in a notification is not the responsibility of the importer.

2.6.10 The department had always extended benefit to similar/identical machines for decades without having any reference or parameter or any definitions which are now being taken as the definition of 'Fully Fashioned High Speed Knitting Machines' on the basis of opinions obtained by the DRI. It is now after the DRI investigation, a new definition is adopted and the benefit of the notification is proposed to be denied and thus, the issue involved is/was of a technical nature and the CB has no role to play. The documents, such as Manufacture invoice, Pre-Shipment Inspection Certificate of Agencies approved by DGFT, approved Chartered Engineers / Agencies of the Load Port coupled with the Certificate of the approved Local Chartered Engineer were the basis for filing Bills of Entry and claim of the Notification and the CB could not have any option but to file the documents as per these certificates and invoices and was statutorily under obligation to claim the benefit of the notification as per the instructions of the importers.

2.6.11 The goods were always examined under the supervision of the Dy. Commissioner of Customs and the Chartered Engineer and thus, whether to extend the benefit of the notification or deny the same after examination was the sole discretion of the proper officer and the CB had no role whatsoever in the extension of the benefit of the notification.

2.6.12 Reference was drawn to following cases wherein such cases have gone before the CESTAT and the only dispute was raised about the policy violation and not that the Machine is not Fully-Fashioned:

(i) *1999 (109) E.L.T. 709 (Tribunal) - In the CEGAT, Northern Bench, New Delhi i.r.o. Lalsons Vs. Collector of Custom,s Bombay*

(ii) *1997 (95) E.L.T. 364 (Tribunal)- In the CEGAT, Northern Bench, New Delhi i.r.o. Peejay Woollens P. Ltd. Vs. Collector of Customs, Bombay-II*

(iii) *2017(351) E.L.T. 299 (Tri-Chennai) i.r.o. Marshall Safety Products Vs. Commissioner of Cus.(Sea Port), Chennai*

2.6.13 In the case of Marshall Safety Products the benefit to a Knitting Machine capable of manufacturing Hand Gloves was denied on the ground that the same is not High Speed whereas it was admitted that the same is fully fashioned. Thus, it clearly proves that even the machines capable of manufacturing Gloves were admitted to be Fully Fashioned and were eligible for benefit of the notification if the same were also High Speed.

2.6.14 The benefit of acting bonafide has been extended to the Officers, who are experts whereas the CB having no expertise has been made a co-noticee; that in the matter as to whether to extend or deny the benefit, it is the discretion of the officer and thus, the similar protection is required to be extended to the CB. Even the Chartered Engineer who as an expert examined the goods physically and certified the same as per the description given in the Bill of Entry has been given benefit of acting bonafidely and thus, the same benefit of acting in a bonafide manner without having any intention to aid or abet in any evasion of duty and is not the beneficiary, is required to be extended to them. The Chartered Engineer's say that he has only verified the value of the goods cannot be accepted, as for verifying the value and arriving at fair value the first step is to ascertain the description of the goods and in absence of the description not tallying with the goods, the invoice value cannot be verified as fair and thus, the mere say of the CE that he did not verify the description is not true as the CB and the officers have relied upon the certification of the Expert and thus, the benefit of bonafide extended to the CE must be extended to them also, who is not expert and trained and has not been physically examining the goods as the processing of the documents and examination of the goods was being handled by the staff of the CB firm in a routine manner.

2.6.15 Extraneous material not relevant to the present import

2.6.15.1 The statement dated 30.10.2017 of Mr. Kevin Socha of Karl Mayor India Pvt. Ltd. It pertains to the B/E No. 2095900 dated 10.05.2013 of one Zenith Silk Mills Pvt. Ltd. Surat and said importer, Zenith Silk or its import in 2013 are no way concerned with the present import or the clearance handled by them in the year 2015 onward and thus, no cognizance of the same may be taken. Similarly, the statement dated 07.05.2018 of one Shri Gurudas Aras of ATE Enterprises refers to an e-mail dated 15.12.2012 and other emails of 2013, 2014 reproduced at page 12, 13, 14 & 15 of the SCN, the said Emails are not remotely concerned with the present import covered by the present SCN and/or clearances by them and thus, extraneous material brought in may be discarded.

2.6.15.2 That the evidence of Sh. Kevin Socha and Sh. Gurudas Aras along with emails dated 15.12.2012 clearly indicate that these machines were being described as High Speed Fully Fashion Machine much before they started clearance from 2015 onward and thus, no adverse view be taken against them as the clearances were handled by the CB firm in a routine manner without having any knowledge that there was any mis-description about the machine not being fully fashioned.

2.6.15.3 The SCN had drawn an adverse inference against the CB on the ground that the CB staff had suggested to one of the importers, Bhanu Embroiders (P) Ltd. to delete the Word 'WARP'

from the description given in the Invoice and Bill of Lading vide an Email dated.14.04.2015 and in this regard the following submissions may be appreciated:

(i) The said email was sent by one of the staff members without anything to do with the claim of benefit of notification as even the machines with the description of Fully-Fashioned High-Speed Warp Knitting Machines were also being extended the benefit of the Notification No. 12/20012-CE dated 17.03.2012. In this regard, copies of Bills of Entry No. 9184446 dtd. 11/05/15, 2504617 dtd. 07/09/15, 2620319 dtd. 16/09/15, 9500695 dtd. 29/04/17, 9899251 dtd. 31/05/17, 9899266 dtd. 31/05/17 & 9501869 dtd. 29/04/17 were submitted.

(ii) The Chartered Engineer Certificate dated 02.04.2015 issued by John Francis 30, Old Ashby Road has described the machine without word 'Warp' and thus, the staff advised in bonafidely.

(iii) Whether the Knitting Machine is Warp Knitting / Weft Knitting/ Circular Knitting / Flat Knitting or any other types is of no consequence for claim of notification as all types of Knitting Machines are eligible for benefit of notification, if the same are 'High Speed' and 'Fully Fashioned'. Thus, there was no malafide intention for suggesting the correction of the description as per the CE Certificate who is an Expert and the description given by him was required to be considered more appropriate than trader.

(iv) As and when the Description of the goods was not 'Fully Fashioned' or 'High Speed', they never filed any Bill of Entry under claim of Notification, and it was advised to the importers that the same is not available and in this regard copies of Bills of Entry No. 2721429/26.09.2015 and 2960067/17.10.2015 were enclosed for reference wherein the benefit was not claimed.

(v) Thus, the corrections advised bonafidely, as per the certificate of the expert, which is having statutory force as the same is required to be accompanied with the goods as per the FTP have wrongly been viewed adversely without adducing any evidence to prove that the same were meant for any undue claim of exemption, as whether the machinery is warp or weft knitting machine is/ was inconsequential for the benefit of the Notification as the benefit was being extended to Warp Knitting Machines as well.

2.6.16 Extended period wrongly invoked

The demand of duty cannot be sustained as the extended period cannot be invoked in the facts and circumstances of the case and thus, the demand itself being not suitable, no penalty can be imposed on them in the present SCN and thus, the SCN invoking extended period u/s 28(4) of Act is otherwise in excess of jurisdiction and / or without jurisdiction as none of the ingredient of Section 28(4) of the Act such as suppression, willful mis-statement or collusion are mentioned, not to speak of producing any evidence to prove the said ingredient and the extended period u/s 28(4) of the Act is not invokable and is wrongly invoked. In this regard the following submission may be taken on record:

2.6.16.1 All bills of entry assessed under Section 17(2) and under self-assessment u/s 17(1).

The SCN claims that the all the B/E were assessed under self-assessment procedure under section 17(1) of the Customs Act, 1962 and attempts to justify the invocation of provisions of section 28(4) on that ground. All the Bills of Entry were not assessed under self-assessment procedure but the same were assessed by the proper officer under section 17(2) after due verification of all the documents, declaration and Test Reports and the Bill of Entry was assessed finally by the Proper Officer. The mere assessment under a statutory provision of section 17(1) does not establish suppression or fraud, collusion or any attempt to evade any duty and thus, invoking provisions of section 28(4) and 114A is totally without any jurisdiction and or is in excess of jurisdiction. Further, not only all the Bills of Entry were re-assessed under section 17(2) of the Customs Act, 1962, but the goods covered by each and every Bill of Entry were examined 100% under DC/Docks supervision. Thus, it is abundantly clear that not only the proper officer who re-

assessed the Bills of Entry under section 17(2) and granted benefit of the Notification but the said re-assessment was specifically re-verified at the time of physical examination of the goods as the examination order had specifically been carried out with reference to correct levy of duty. It is now settled legal position that the extended period cannot be invoked, when the Bill of Entry was re-assessed under section 17(2) of the Act. Reliance in this regard was placed on the judgment passed by CESTAT, Chennai - *Customs Appeal No. 40219 of 2019 in case of Dr. Rai Memorial Cancer Institute Appellant Vs. Commissioner of Customs-VIII (General), Chennai.*

2.6.16.2 Earlier assessment amount to order-in-adjudication and cannot be modified by issuing SCN u/s 124 or 28

All the Bs/E were re-assessed finally under section 17(2) of the Customs Act, 1962 and thereafter the same were permitted clearance by the proper officer, who passed order under Section 47 of the Custom Act, 1962 permitting clearance for home consumption after due satisfaction that the appropriate amount of duty as re-assessed has been paid on the said goods. Thus, the goods were cleared pursuant to the orders in assessment passed under Section 17 read with section 47 of the Custom Act, 1962 and the said orders cannot be called in question by issuing a SCN and thus, present proceedings are totally in excess of jurisdiction and / or without jurisdiction and / or are thus, required to be withdrawn solely on this ground alone. Reliance in this regard is placed on the judgment of

(i) Priya Blue Industries - 2004 (172) E.L.T. 145 (SC),
(ii) Flock India Ltd. - 2000 (120) E.L.T. 285 (SC),
(iii) Lord Shiva Overseas - 2005(181) E.L.T. 213 (Tri.-Mumbai)
(iv) Paras Electrical – 2009 (246) E.L.T. 231 (T).

2.6.16.3 The demand of duty under section 28(4) is made wrongly and the same cannot be said to be sustainable even on merits and / or limitation and thus, the demand of duty not being sustainable, no penalty can be imposed on them under section 112 or 114AA of the Custom Act, 1962. In this regard, it is settled law that when the demand of duty on any ground including limitation is not sustainable, no penal action can be taken and thus, no penalty can be imposed under the provisions of Customs Act, 1962. Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court in the matter of *1995 (76) E.L.T. 497 (SC) - HMM Limited.*

2.6.16.4 All material particulars including value were correctly declared in the B/E as per the documents received from the importer which include the Pre-inspection certificate issued by the approved Expert Agency and thus, the allegation of any aiding or abetting in rendering the goods liable to confiscation under section 111(m) of the Custom Act, 1962 cannot be made against them and thus, no consequential penalty under section 112 can be imposed on them on the basis of allegation that the goods are liable to confiscation under section 111(m) of the Customs Act, 1962; that there was no post import condition imposed in respect of the goods and thus, the goods cannot be and are not liable to confiscation under the provisions of section 111(o) of the Customs Act, 1962 and the provisions have been invoked without any supporting evidences and thus, no consequential penalty under section 112 can be imposed for any alleged violation of section 111(o) of the Act.

2.6.16.5 The impugned SCN invokes section 114AA wherein it is a pre-requisite that the person must act with prior knowledge whereas the impugned SCN only alleges lack of care and negligence which do not justify the imposition of any penalty u/s 112 or 114AA of the Act. Reliance in this regard is placed on the following judgments:

(i) *Bureau Veritas -2003 (156) E.L.T. 688 (T) as affirmed by the Hon'ble Supreme Court as reported in 2005 (181) E.LT. 3 (S.C.)*
(ii) *Sanco Trans Limited v/s. Collector Customs, Bangalore.- 1996 (83) E.L.T. 557 (Tri.)*
(iii) *Shri Khuller vs. Collector of Customs & C. Ex. - 1991(52) E.L.T. 557 (Tri.)*

(iv) *Trade wings limited - 2009 (243) E.L.T. 439 (Tri.)*
(v) *K. Ramanna - 2009 (238) ELT 620 (Tri.)*

2.6.16.6 There is no allegation that the firm has violated any provision of any statue deliberately so as to gain unlawfully. Thus, no penalty is imposable on the firm. Reliance is placed on the following judgments in this regard:

(i) *1996 (88) E.L.T. 12 (SC); Pratibha Processors Vs. Union of India.*
(ii) *1978 E.L.T. (J159) (S.C) Hindustan Steel Ltd. V/s. State of Orissa.*
(iii) *1983 E.L.T 1261 (Tribunal) Merck Spares, Delhi V/s. C.C.E & C, New Delhi.*

There is no allegation or evidence that the undersigned or the CB has earned anything more than the normal clearing charges or he was the beneficiary of any alleged evasion in any manner and thus, no penalty should be imposed on them.

2.7 Sh. Dhiraj Vij, Noticee No. 3 vide letter dated 24.10.2025 made following submissions:

2.7.1 The present case proceedings have been initiated against the noticee on the sole ground that the noticee has actively connived with Bhanu Embroideries Pvt. Ltd. and in collusion with Bhanu Embroideries Pvt. Ltd., fraudulently altered the description of imported goods with the intent to evade Customs duty. There was not any active involvement of the noticee with Bhanu Embroideries Pvt. Ltd, Amritsar. Therefore, in the absence of any active involvement of the noticee in the whole episode and in the backdrop of the substantive factum that the noticee was not in knowledge of the any activity of import of the goods, the show cause notice proposing confiscation as well as penal action on the notice does not stands and accordingly, may be dropped in entirety. Reliance was placed on following case laws:

(i) *M. Shashikant & Company V/s. Union of India 1987 (30) ELT 868 (Bombay)*
(ii) *Mahadev Baburao Darekar V/s. Commissioner of Customs 2001(135) ELT 365*

2.7.2 There is no evidence against the noticee and there is nothing in the show cause notice that there was meeting of minds of the noticee and Bhanu Embroidery Pvt Ltd and accordingly, the charge of penalties is not sustainable against the noticee. Reliance was placed on following case laws:

(i) U Shivasubramaniam V/s. Commissioner of Customs 2004(165) ELT 97
(ii) Sri Ram V/s. State of U.P. Air 1975 SC 175

The Hon'ble Supreme Court has ordained in unequivocal terms that in order to constitute abetment; the abettor must be shown to have intentionally added to the commission of crime. However, the subject show cause notice against the notice does not speak about any such intention of the noticee and therefore, penalties cannot be constituted against the noticee and accordingly, the subject show cause notice may be dropped in the light of the facts on record and keeping with the ratio of the law laid down by the judgments referred to supra.

2.7.3 No penalty imposable when demand of duty is not sustainable – The demand of duty from Bhanu Embroideries Pvt. Ltd. is not sustainable in law. Once the demand of duty is found to be non-sustainable, the question of levy of penalty does not arise. Reliance was placed on following case laws:

(i) Collector of Central Excise v. H.M.M. Limited, 1995 (76) ELT 497 (SC).
(ii) Commissioner of Central Excise, Aurangabad v. Balakrishna Industries, 2006 (201) ELT 325 (SC).

2.7.4 Penalty under Section 114AA not imposable – The noticee was in no way concerned in making of any false statement or document or declaration before the Customs authorities nor was there any knowledge or intention to make, sign or use or cause to be made, signed or used, any

declaration, statement or document, which was false in any material particular. The show cause notice does not bring out any evidence to this effect. Therefore, no penalty under this Section can be imposed on the noticee.

Further, the imposition of penalty under this provision requires false or incorrect statement or document or declaration to be made by a person knowingly or intentionally. Therefore, this provision again requires presence of mens rea on the part of the noticee. The conduct of the noticee in this case was bonafide and the noticee never resorted to any misdeclaration of description of value of the goods. In all the cases, Bills of Entry were filed and all the imports were duly assessed and the goods were physically examined by the Customs authorities before allowing clearance. No evidence of the noticee knowingly or intentionally making, signing or using or causing to be made, signed or used, any declaration, statement or document which was false or incorrect in any material particular has been brought forth in the SCN. Therefore, the proposal for imposition of penalty upon the noticee under Section 114AA is not sustainable in law.

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. The case was taken out from call book after the amendments w.r.t. 'Proper Officer' for issuing SCNs were 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 provided under Section 28(9A) of the Customs Act, 1962. Subsequently, the Noticee filed Writ Petition before the Hon'ble Punjab and Haryana High Court and the subject case was again transferred to call book on 11.09.2023, as the Hon'ble High Court vide its interim order dated 07.07.2023 stayed further proceedings in the matter. The said Writ Petition was disposed of by the Hon'ble Punjab and Haryana High Court vide its Order dated 09.01.2025 and accordingly, the case was taken out from call book. Therefore, the SCN has now been taken for adjudication proceedings within the time limit as per Section 28(9) of the Customs Act, 1962.

3.2 I have carefully gone through the show cause notice and the relied upon documents, material on record, submissions made by the Noticees during personal hearing as well as their written submissions. Accordingly, I proceed to decide the case on merit.

3.3 The principles of natural justice have been followed during the adjudication proceedings. Opportunity for personal hearing was granted to the Noticees on 01.06.2023, 19.06.2023, 20.07.2023, 11.09.2025, 25.09.2025 & 09.10.2025. Noticee No. 1 & 3 attended the personal hearing (PH) on 09.10.2025 and Noticee No. 2 attended the personal hearing (PH) on 25.09.2025.

3.4 I note that Bhanu Embroideries Pvt. Ltd. had imported used knitting machines declaring the same as 'Fully Fashioned Machines' and availed the concessional rate of duty based on this description. On a careful perusal of the Show Cause Notice and case records, I find that following main issues are involved in this case which are required to be decided:

(i) Whether cross-examination of various persons as requested by the Noticee No. 2 is essential or otherwise.
(ii) Whether the demand of differential duty is sustainable without challenging the assessment.
(iii) Whether the subject goods imported by Bhanu Embroideries Pvt. Ltd. were mis-declared with an intention to evade the applicable Customs duty by availing the benefit of Notification No. 12/2012-C. Ex. dated 17.03.2012.
(iv) Whether duty of Rs. 6,31,856/- along with interest is recoverable invoking the extended period of limitation of five years.
(v) Whether the goods imported under Bills of Entry Nos. 9395891 dtd. 29.05.2015 and 9190160 dtd. 11.05.2015 as detailed in Annexure-A to the SCN having assessable value of

Rs. 86,42,627/- should be confiscated under the provisions of Sections 111(m) and 111(o) of the Customs Act, 1962.

(vi) Whether penalty is imposable under section 114A and 114AA of the Customs Act, 1962 on Bhanu Embroideries Pvt. Ltd., as proposed in the Show Cause Notice.

(vii) Whether penalty is imposable under section 112 and 114AA of the Customs Act, 1962 on Shri Deepak Kamal Agarwal of Customs Broker firm, M/s. Deep Logistics now renamed as M/s. Deep Shipping Agency, as proposed in the Show Cause Notice.

(viii) Whether penalty is imposable under section 112 and 114AA of the Customs Act, 1962 on Shri Dhiraj Vij, as proposed in the Show Cause Notice.

(ix) Whether the voluntary deposit of Rs. 6,31,856/- made vide vide Demand Draft No. 005589 dtd. 27.11.2020 of Rs. 1,38,915/- and No. 005591 dtd. 01.12.2020 of Rs. 4,92,941/-, should be appropriated against total duty liability.

3.5 I find that the SCN has alleged that the importer Bhanu Embroideries Pvt. Ltd. (Noticee No. 1) 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.

3.6 The undisputed fact is that Bhanu Embroideries Pvt. Ltd. imported the goods, as detailed in para 1.3 above, claiming benefit under Notification No. 12/2012-CE dated 17.03.2012 and saved total duty of Rs. 6,31,856/- by such availment of Notification benefit at the time of import.

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

3.7.1 The relevant extract of the **Notification No. 12/2012-CE 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.**

.....

3.8 Considering the facts of the case as evident from the SCN and taking into account the submissions of the Noticees 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 the 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.

3.8.1 I observe that 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."

3.8.2 Further, I observe that Shri Bipin Kumar, Asstt. Professor, Fabric Manufacturing Textile Technology, IIT Delhi, New Delhi vide his letter dtd. 13.12.2018 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."

3.8.3 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.

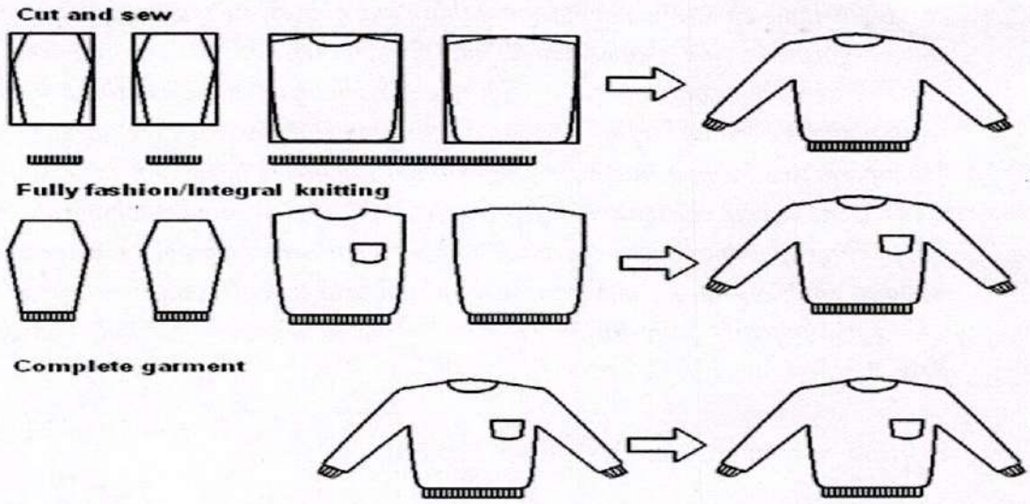
3.9 I find that it was brought out during the cross-examination before my preceding Adjudicating Authority in the case of M/s Maruti Knit Tex that the opinions were based on their wide experience in the related fields and on Articles published in journals of international repute. The details of these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

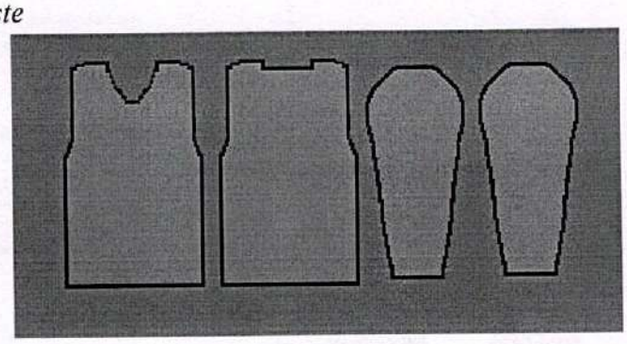


(b) **Excerpts from Article "Three Dimensional Seamless Garment Knitting on V-bed Flat Knitting Machines" published in Volume 4, Issue 3, Spring 2005 of Journal Of Textiles and Apparel Technology and Management.**

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*

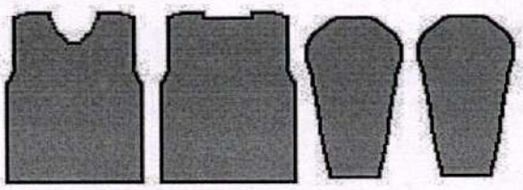


Front Body Back Body Sleeves

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.

3.10 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 its report on 11.11.2019, summary of which is extracted below:

"In summary, ***Knitted garment manufacturing started with cut and sew method. Developments in technology 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 3 dimensional 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."***

3.11 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 Bipin 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, along with 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.

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

3.13 I find that during the course of his statement recorded on 30.10.2017 under Section 108 of the Customs Act, 1962, **Shri Kevin 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 Kevin 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, they agreed to use the "Fully Fashioned" description.**

3.14 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 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.

3.15 Further, I find that a team of DRI officers accompanied by a Customs Empaneled 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 19.11.2020 and the Chartered Engineers report leave no doubt that the Karl Mayer machines imported by the Noticee No. 1 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 Bhanu Embroideries Pvt. Ltd. are not fully fashioned.

3.16 I find 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, they 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 Bhanu Embroideries Pvt. Ltd. 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 bills 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.

3.17 Bhanu Embroideries Pvt. Ltd. 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:

S. No.	BE Number	Assessable Value (in Rs.)	Duty saved by claiming Notfn. No. 12/2012-C. Ex (in Rs.)
1	9395891 dated 29.05.2015	19,00,102/-	1,38,915/-
2	9190160 dated 11.05.2015	67,42,525/-	4,92,941/-
		86,42,627/-	**6,31,856/-**

3.18 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, Bhanu Embroideries Pvt. Ltd. mis-declared description of machine while filing Bills of Entry Nos. 9395891 dtd. 29.05.2015 and 9190160 dtd. 11.05.2015 of JNCH, Nhava Sheva.

3.19 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 Sanjeev Arora, Director of Bhanu Embroideries Pvt. Ltd. was fully convinced by the Investigating Agency that the 7 machines referred in the above two Bills of Entries of Model MRSS 32, MRS 25 and MRGS 25 are warp knitting machines manufactured by Karl Mayer and were not 'High Speed Fully Fashioned Machines' and are not eligible for the benefit of the notification claimed. I also find that the Chartered Engineer of Murlidhar Shenvi Insurance Surveyors & Loss Assessors Pvt. Ltd. had accepted that the Karl Mayer Machines imported by the Noticee are not fully fashioned and the report given was only to the effect of valuation purpose and not for the description purpose.

3.20 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 these machines with the technology or 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. Consequently, the importer is also liable to pay interest thereupon under Section 28AA of the Customs Act, 1962.

3.21 I find that the importer has 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 and they had also deposited the Demand Drafts of the differential duty.

3.22 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 "***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. In order to get benefit of such notification granting exemption the claimant has to show that he satisfies the eligibility criteria……"*

3.23 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."*

3.24 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 machines imported vide Bills of Entry mentioned in Table as at para 1.3 above, are not falling in that category.

3.25 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.

3.26 The goods are not eligible for the claimed benefit of Notification, the same having been availed by way of mis-statement and willful suppression of facts in the form of mis-declaring the description of the machines. Hence, I find that in the case at hand, the ingredients of fraud, suppression, collusion, mis-representation 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.

3.27 I find that during the PH on 09.10.2025, the importer has contended that the goods were imported on the basis of assessed Bills of Entry which are in themselves to be considered as appealable orders under Section 47 of the CA, 1962; that the assessment orders being quasi-judicial orders, they ought be challenged before taking recourse to Section 28 of the Customs Act; that the demand of duty is not sustainable as the assessment has not been challenged by the Department. They relied upon the case of *ITC Ltd. Vs Commissioner of Central Excise, Kolkata-IV [2019 (368) ELT 216 (SC)].*

3.27.1 In this context, I find that there are plenty of case laws of various Appellate Forums, wherein it is held that for demand of short levy of Customs Duty, assessment is not required to be challenged. In the case of M/s. ITC Ltd., the Hon'ble Supreme Court was dealing with the issue of filing Refund under Section 27 of the Customs Act, 1962 without taking recourse to modify the assessment. The Hon'ble Supreme Court observed (Para 44 and 47 of the judgment) that refund proceedings under Section 27 are in the nature of execution for refunding amount and assessment cannot be challenged by way of refund application. It is also held that any order including self-assessment can be modified under Section 128 or under other relevant provisions of the Act. Thus, the judgment was given in the backdrop of different set of facts to hold that appeal against the assessment of Bill of Entry to modify the assessment is prerequisite for sanctioning of refund and refund sanctioning authority cannot adjudicate the exigencies involved. Hence, reliance placed by the Noticee on case law of M/s. ITC Ltd. is of no avail in the case on hand.

3.27.2 I find that this issue has also been settled by the Hon'ble Supreme Court in the case of *Union of India V/s. Jain Shudh Vanaspati Limited [reported at 1996 (86) ELT 460 (SC)]* wherein it has been clearly held that Show Cause Notice under Section 28 of the Customs Act, 1962 can be issued without revising the order of assessment. The same ratio was once again pronounced by the Hon'ble Supreme Court in the case of *Collector of Central Excise, Bhubaneshwar V/s. Re-Rolling Mills [reported at 1997 (94) ELT 8 (SC)].* Once again by relying the ratio of *Jain Shudh Vanaspati Limited [reported at 1996 (86) ELT 460 (SC)]* the Civil Appeal No. 327/1998 filed by Component Corporation was rejected by the Supreme Court as reported at *Component Corporation V/s Collector – 1998 (99) ELT A228* and thus, upholding the Tribunal's order dated 19-09-1996 reported at *Component Corporation V/s. Collector of Customs, New Delhi – 1997 (93) ELT 225 (Tribunal).*

3.27.3 I further rely upon some of the judgments, the details of the same as follows:

(i) *M/s. Interglobe Aviation Ltd. V/s. Pr. Commissioner Bangalore reported in 2022 (379) ELT 235 (Tri. Bang.);*

"18. Coming to the issue as to whether the issuance of notice under section 28 of Customs Act, 1962 was correct as no appeals have been filed against the assessed bills of entry, we find that the appellants placed reliance on the decision of Hon'ble Supreme Court in the case of ITC Ltd Vs Commissioner of Central Excise, Kolkata IV, 2019 (368) ELT 216 (SC) wherein it was held that the sign/endorsement made on the bill of entry is an order of assessment under Section 17 which is an appealable order and any person including the departmental authorities who are aggrieved by order of self-assessment should challenge the assessment by way of filing an appeal against such self-assessment under Section 128 of the Customs Act, 1962; they submit that in the absence of any appeal against the Out of Charge orders for clearance of goods or the Bills of Entry passed by the proper officers of Customs, the said orders of assessment and clearance have attained finality and the same cannot be challenged or negated by issuance of the impugned order.

18.1. Learned Commissioner, on the other hand, finds that the case laws submitted by the appellants pertained to the era where goods were assessed duty by the officers whereas in the present case, the goods have been cleared on self-assessment basis. We find that the appellants have relied upon the recent decision of Hon'ble Supreme Court in the case of ITC Ltd. Vs CCE, Kolkata-IV, 2019 (368) ELT 216(SC). We find that the issue for consideration before Apex Court was about refund and in this context, Hon'ble Apex Court has observed that in terms of the provisions of Section 27 read with Section 17 of the Customs Act, 1962, no refund claim is maintainable unless the order of assessment is challenged. The Hon'ble Supreme Court observes that: 47. When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act.

18.2. On going through the above cited case, we find that the issue which was considered by the Hon'ble Apex Court was not "Demand" issued under Section 28 but "Refund" under Section 27. We find that the Apex Court has not, anywhere in the order, observed that for issuing a demand under Section 28, the assessment order needs to be challenged under the provisions of Section 128. We cannot read such a conclusion from the judgment. Therefore, we find that in view of the provisions of Section 17 and Section 28 of the Customs Act, 1962, the demand issued is in order. We find that learned Commissioner has rightly relied upon the order of Hon'ble Madras High Court, 2006 (199) ELT 405."

(ii) *Commissioner of Customs, C. Ex. & ST, Hyderabad-II V/s. M/s. S.V. Technologies Pvt. Ltd. reported in 2019 (369) ELT 1631 (Tri. Hyd.);* wherein it has been clearly held that Show Cause Notice can be issued without challenging the assessment in view of the issue already settled by the Supreme Court in the case of Jain Shudh Vanaspati Limited. It has been further held that judgment of *Priya Blue Industries - 2004 (172) ELT 145 (SC)* and *Flock (India) Private Limited - 2000 (120) ELT 285 (SC)* are clearly distinguishable being related to refund and not demand.

3.28 I find that the Noticee No. 2, Shri Deepak Kamal Agarwal in his written submission dated 09.09.2025 has requested for entire correspondence/e-mail relied upon in Show Cause Notice. Also, they have requested for entire correspondence exchanged by DRI which has been relied upon

in the SCN for arriving at the opinion formed by experts. In this regard, I find that the investigation agency viz. DRI, Zonal Unit, Ludhiana has informed vide their e-mail dated 21.09.2023, that they have already forwarded all the Relied Upon Documents in the SCN to the noticee, Shri Deepak Kamal Agarwal. Therefore, I find that the request for supply of any additional documents viz. entire correspondence/e-mail, will not lead to any fresh facts and as such I consider the request, is tact of delaying adjudication proceedings.

3.29 Further, I find that the Noticee No. 2, Shri Deepak Kamal Agarwal in his written submission sought cross-examination of various persons whose statements and opinions are relied upon in the SCN, the Chartered Engineers and the officers who had given the examination report.

3.29.1 In this connection, it may be stated that there are more than 150 plus similar cases of Show Cause Notices issued by DRI to various importers of such goods during the relevant period and in the adjudication proceedings of one such case w.r.t. M/s Maruti Knit Tex, Surat, my preceding Adjudicating Authority, allowed cross-examination of all the relevant persons i.e. **Shri Kevin Socha, Karl Mayer; Shri Gurudas Aras, Director, ATE; Shri Bipin Kumar, Asstt. Professor, IIT New Delhi and Shri Ashok Prasad, Associate Professor, NIFT New Delhi. The record of Cross-examination is detailed below:**

3.29.2 Cross examination of Shri Kevin Socha, Karl Mayer by KPS Legal on behalf of importer M/s Maruti Knit Tex held by video conferencing on 25.11.2020 is as under:

Q1. What is your Professional Qualification as per the statement given to DRI?
Ans. I am a Chartered Colorist, I am an Associate of the Society of Dyers and Colourist.

Q2. What kind of specialised Expertise do you get in this field of this degree of colorist?
Ans. The Chartered Colourist degree is focused on matter of textile coloration, colour Physics, textile chemistry, textile management and textile production techniques.

Q3. As per your statement you categorized the machines into four categories Tricot System, Raschel System, Rigid Warpers and Elastic Warpers as per page 2 and 3 of the statement
Ans. Yes, it a general grouping of the type of machines that we produce.

Q4. Is HKS series of machine is covered under Tricot system
Ans. Yes

Q5. Is Tricot machine used to produce wide range of fabrics for many end uses eg. Sportswear, saree, swimwear. These machines are usually very high speed and usually produce large quantities of material, is it yes or no?
Ans. Yes.

Q6. At Page 6 of statement, on being asked when did the machine capable to the called fully fashioned were introduced by Karl Mayer, you advised that this would have to be checked with your production and design department. You will advise by the end November, 2017. Did you state so?
Ans. Yes.

Q7. Para 1 of statement at page 7 it was stated "Karl Mayer India Ltd. not involved in sales process of new machine or spare parts of imported machines." Is this correct?
Ans. Statement is correct in respect of sales process of imported machines.

Q8. Regarding 5 October 2018 letter of Karl Mayer by Shri Kevin Socha to DRI Ludhiana– Was it written by you?
Ans. Yes.

Q9. Para 1 of this letter says that Tricot Warp Knitting machine is the most common and the most versatile type of Warp knitting machine in the textile industry. Is it so?
Ans. Yes

Q10. Garment No. 1, machine shown in the video is a normal Tricot Warp Knitting machine shown producing the fabric used in Garment #1. This fabric could be produced on most, suitably equipped, tricot machines with 3 or more guide bars. This fabric is converted to sleeveless garment by one stitch as shown in video. This garment is shown in the video and photo.
Do you agree with contents?
Ans. Yes.

Q11. Last line on this letter- These materials produced by HKS 3M, and Copcentra/Liba machines are capable of being used for producing fashion garments – Do you agree?
Ans. Factual context of sentence is correct.

Q12. Was the letter dated 28.01.2019 to DRI written by Karl Mayer?
Ans. This letter was written by MD Dr. Pawan Kumar Singh, on behalf of Karl Mayer India Pvt. Ltd.

Q13. In the said letter at 3rd para it is stated that "Karl Mayer India has not done any transaction and no role to play." Whether Karl Mayer India Pvt. Ltd. has no role to play in import of subject machines?
Ans. In the context of the DRI enquiry KMIPL played no role in import of machines.

Q14. Has Karl Mayer, Germany yielded to demand of the importers in India for mis-declaration of machine supplied by them?
Ans. Yes. Karl Mayer yielded to demand of importers to change the description of machines.

Q15. Has Karl Mayer "connived" in this transaction with Indian importers?
Ans. Karl Mayer responded to pressure from importer for change in description of machine.

Q16. Has the Karl Mayer Germany advised Indian Importers that it cannot change the description of machines and made any communication to DRI in this regard?
Ans. When the request were received initially, as per company policy, request would have been rejected

Q17. Do you have any documentary evidence available that the request would have been rejected?
Ans. It is normal practice, however, no document is presently available in support.
No statement/evidence of this nature was given to DRI.

Q18. Karl Mayer as Multi National Company must be following due diligence. Does Karl Mayer Germany give correct description in export invoices to all countries?
Ans. Karl Mayer normally does so.

Q19. Whether Karl Mayer Germany was supplying fully fashioned machines to India since 2000 or before?
Ans. I do not believe that Karl Mayer Germany used the term "Fully Fashioned machine" prior to time period in DRI enquiry.

Q20. Is it mandatory to mention full description of machine in the export documents?
Ans. Not mandatory.

Q21. Is it mandatory to mention the full description in the brochure?
Ans. No. It is a commercial advertisement document.

Q22. Did the technical team of Karl Mayer Germany inspection certificate confirming description of machine?
Ans. No. It is not Normal

Q23. Do Karl Mayer Germany give inspection certificate in most of cases before shipment
Ans. Not normal, unless LC Document requires

Q24. Is 'sleeves' and 'Torso' in some type of knitted panels made of knitted fabric?
Ans. Torso or sleeves may be made of knitted fabric as well as woven fabric or non-woven fabric it is not limited to knitted fabric. The description 'panel' is not appropriate for this.

Q25. Whether any kind of garment cannot be produced by HKS machine?
Ans. Garment can be produced but fully fashioned garment cannot be produced by HKS machine.

Q26. What is a fully fashioned garment?
Ans. A fully fashioned garment is a garment made usually using a weft knitting machine producing body shaped panels usually made by reducing number of stitches to produce panels which can be assembled into final garment like a sweater or a cardigan and it can also be a dress, stocking.

Q27. At page 7 of the Statement, it was stated 'HKS3M High performance Tricot machine for the production of all 3 bar articles from light Tulle over Technical coating substrates upto raised velours' whether the full nomenclature is mentioned on the brochure?
Ans. The wording may not be exact term but content will be there in brochure. The text mentioned in statement is taken from the document.

Q28. Whether any regulating authority guidelines are there in world to define machine for fully fashioned garment.
Ans. I am not aware. These names are coming from established principles in industry and customs and practice.

Q29. Whether "fully fashioned" is a machine or a method?
Ans. A method of producing fully fashioned garment which can be produced by a machine type.

Q30. At page no. 5 of the statement, it was stated that HKS 4 machine have a capability in this field, what is it used to produce?
Ans. HKS 4 is used to produce Sports shirt panel, t-shirts. HKS4 is nothing like HKS3.

3.29.3 Cross examination of Shri Gurudas Aras, Director, ATE by KPS Legal on behalf of importer M/s Maruti Knit Tex held on 26.11.2020 is as under:

Q1. What is your Qualification?
Ans. I have done my Masters degree in Textile Engineering and Post Graduation in Marketing Management.

Q2. From how many years you are working in A.T.E?
Ans. I am working in M/s A.T.E Enterprises for the last 39 years.

Q3. From how many years, M/s A.T.E Enterprises is sole agent of M/s Karl Mayer?
Ans. M/s A.T.E Enterprises is sole agent of M/s Karl Mayer for more than 5 decades.

Q4. What is Fully Fashioned machine?
Ans. I am not a technical person and am not aware of definition of Fully Fashioned machine.

Q5. As a textile expert, are you not aware of Fully Fashioned machine?
Ans. Textile is a vast area and I represent 50 principals including Trutzschler, Monfores etc. and handling thousands of machines. It is a big area and am not aware of each and every machine.

Q6. Who is a proper specialized person who can provide proper definition of Fully Fashioned Machine?
Ans. The manufacturer, M/s Karl Mayer can answer this question.

Q7. Since how long is this Fully Fashioned Machine being imported into India?
Ans. After research we found out that some second hand machines were imported from 2002.

Q8. Whether Customs or DRI has alleged any mis-declaration of description of identical machine in past also?
Ans. To the knowledge of ATE, not prior to 2014 i.e. subject case.

Q9. Whether ATE has any brochure of the machine?
Ans. The brochure is not available with me. It should be available on the website of the manufacturer.

Q10. Do you have any documentary evidence of advice by Karl Mayer to ATE/importer that the description cannot be changed?
Ans. During the dispute period, there is no such correspondence.

Q11. Do you mean to say that Karl Mayer readily accepted to mention full description of machine?
Ans. I have no knowledge of such correspondence.

Q12. Do you admit that ATE or any of its employee connived or abetted with Importer for mis-declaration of machine?
Ans. No. We are agent of Karl Mayer and we pass on whatever request comes from buyer. We are bound to do so. Karl Mayer is entitled to accept or reject it. Once order is booked by ATE, then Karl Mayer and importer directly deal with each other.

Q13. Has ATE or any of its employee accepted any illegal or improper request of importer claiming wrong description of subject machines in Import Invoice after booking, please confirm.
Ans. After booking of order, communication of M/s Karl Mayer is directly with the Importer.

Q14. Whether the HKS 2M/ HKS 3M can make fabric panels, shrugs or strings?
Ans. I do not know.

Q15. At Page No. 5 of your statement before DRI, you have stated that description in case of Bhilosa is right and in case of Zenith the description is not right. What prompted you to comment so?
Ans. I was shown brochure and invoices by DRI officer and asked to comment on difference in description of two machines. After seeing brochure and invoices, I stated one machine matches the brochure and the other did not.

Q16. Who decides the full and complete description of the machine made by the Karl Mayer?
Ans. As the Manufacturer, Karl Mayer decides it.

Q17. Pre-shipment certificate is prepared by Karl Mayer's technical team prior to shipment. Is it correct?
Ans. ATE's role seizes after booking of order. Karl Mayer would be aware of this aspect.

Q18. Are you aware of Pre-shipment Certificate issued by Karl Mayer?
Ans. No.

Q19. Whether the alleged request from the Importer for change of description was made before or after the finalization of the purchase deal?
Ans. Irrespective of the stage, whatever request is made by importer is communicated by ATE to Karl Mayer. It is upto them to accept or reject. We have no role to play.

Q20. Was any request made by the importer for change in Import Invoice or Contract?
Ans. I do not recollect. Whatever request is received is communicated to Karl Mayer.

Q21. Before DRI investigation, was any clarification/advice received from Karl Mayer that machine is not Fully Fashioned Machine?
Ans. For earlier period, I do not know.

3.29.4 Cross examination of Shri Bipin Kumar, Asstt. Professor, IIT New Delhi by KPS Legal on behalf of importer M/s Maruti Knit Tex held on 01.12.2020 is as under:

Q1. What is your Qualification, job profile?
Ans. I am Asstt. Professor in Department of Textile and Fibre Engineering, IIT Delhi. Since 2005, I am in the domain of Textile Engineering and Science, particularly in last 3 years I have worked a lot in knitting industry and knitting related research.

Q2. In your opinion dated 12.12.2018 given to DRI, you have stated that "As per published literatures, fully fashioned knitting machine 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 machine. 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.
You have also opined that model HKS2, HKS3, HKS4 Raschel and lace machines (RSJ, DJ, ML, OJ, MT, TL and JL) manufactured by Karl Mayer are at present not capable to fall under the category of 'Fully fashioned machine' to manufacture shaped garments or shaped panels. Please state what kind of capabilities these machines are supposed to have to be covered under Fully Fashioned machines?
Ans. Fully Fashioned machine should have several capabilities like narrowing, widening, loop transfer, adding circular panels and these type of functionalities. The Warp knitting machines listed in the current proceedings lack lot of these functionalities which other weft knitting machines have. Some of the Warp knitting machines are able to do some functionalities like narrowing and widening but many other functionalities which are required from weft knitting perspective are missing completely in these types of machines. Specially loop transfer, creating a circular panel in the machine, creating tuck, float required in fully fashioned category most type functionalities are not there in these type of machines.
Warp knitting machines lack lot of functionalities which weft knitting machines have. Missing functionalities are loop transfer creating tuck and many other functionalities

Q3. In your opinion did you mention that HKS2, HKS3 and HKS 4, Raschel and Lace machine are not fully fashioned machines?

Ans. In my opinion HKS2, HKS3 and HKS 4, Raschel lace are not fully fashioned machines as per literature.

Q4. To be specific, are Raschel and Lace not Fully Fashioned machines?
Ans. If you see functionality of Fully Fashioned machine, in my opinion these are not fully fashioned machine. I would like to add 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. I will forward the copy of the said letter.

Q5. Does HKS3 have capacity of narrowing fabric width?
Ans. Yes, HKS3 machine have narrowing capacity.

Q6. Did you examine the machine?
Ans. I have seen the complete brochure and website address where machine details were provided.

Q7. Is your opinion based on article/ literature available online?
Ans. My opinion is based not only on article and literature available but all the understanding that I have already practiced physically on different types of warp and weft knitting machine.

Q8. Did you refer any technical guidelines other than that three articles referred by you?
Ans. I did refer to many Government documents/ literature related to knitting machine other than the three references mentioned and I try to understand the terminologies used in the fully garment knitting machines. I will share the documents.

Q9. Whether Fully Fashioned machine can shape a knitting fabric?
Ans. This definition is totally wrong.

Q10. Do you agree that HKS 2 and HKS 3 machine can make knitting panels such as sleeves and torso?
Ans. All knitting machines can make panels such as sleeves and torso, including HKS2 and HKS3 models.

Q11. What type of authority are seen in the articles referred by you, are they accepted by the Textile Ministry or some administrative forum of government?
Ans. All the articles are published in renowned website as reputed journals which is cross verified by many reviewers in our field. So, I do not see any reason for not accepting these articles because these articles are quite well cited and well recognized by many reviewers and researchers across the world.

Q12. Are you aware that there is a disclaimer to the article that the opinion given by the author is personal opinion only?
Ans. All opinions are opinions of authors. No research articles are published in renowned journals until and unless cross verified by many other reviewers in the category.

Q13. Are you aware of technical capabilities of all five machines referred in your opinion, HKS 2, HKS3, HKS4, Raschel and Lace?

Ans. As per the brochures and website information, I have gone through most of the specifications, but I have physically not seen the samples of machines.

Q14. Can fully fashioned machine shape knit the garment pieces and pockets?

Ans. Fully fashioned knitting machine can shape knit garment pieces but for doing that the machine should have the capability of all the required functions which is mentioned down the line in the para 2 i) (a) of the opinion.

Q15. Did the brochure mention model number?

Ans. Documents submitted by DRI had brochure and complete specification of each of these category of machines of all five models.

Q16. Can you share the brochure?

Comment : The Adjudicating Authority did not allow the question on the grounds that witness cannot be asked to produce documents.

Q17. Can shrug be made on HKS3 machine?

Ans. These are fabric yardage which are open fabrics and not garments. These can be made by HKS3 machine.

Q18. Shrug is worn by ladies, is shrug not a garment?

Ans. Shrug is worn by ladies but does not require too much of cutting and sewing like other garments.

Q19. Can you visit our factory to see the functioning of the machine?

Comment : The Adjudicating Authority disallowed the question being outside the scope of cross-examination.

3.29.5 Cross examination of Shri Ashok Prasad, Associate Professor, NIFT New Delhi by KPS Legal on behalf of importer M/s Maruti Knit Tex held on 10.12.2020 is as under:

Q1. What is your Qualification and Profile?

Ans. I am working in NIFT, I am an Associate Professor, I have done Masters in Computer Science and I am working last 20 years in Knitting Background and have expertise in Knitware.

Q2. Do you have any Textile related degree?

Ans. I have done certificate courses in Textile, Total design system course, course on Shima Seiki machine and Stoll weft knitting machine, courses in Knitting, I have been trained with SASMIRA, WRA.

Q3. What was the maximum length of any course relating to textile industry you have done?

Ans. I have done 3 weeks in-house training in Japan on weft knitting textile, 5 days in-house training course with ATE, Ahmedabad, agent of Karl Mayer Warp Knitting Machine). I am teaching theory on Warp and Weft Knitting.

Q3. Did you give opinion dated 24.09.2018?

Ans. Yes. I have given opinion vide letter dated 24.09.2018.

Q4. Do you agree HKS 2, HKS 3 and HKS 4 can make shaped panel by adding stitches?

Ans. These machines are not fully capable of making shaped garments/panel as it is not capable to make packet or collar, bottom hole as integral garments and hence it is not "Fully Fashioned machine". Now Karl Mayer has taken over Stoll in July 2020 which is capable of making seamless garments.

Q5. Are you aware of technical specifications of five machines HKS 2, HKS3, HKS4 and Models RSJ, ML,OJ,MT,TL, AND JL of Raschel and Lace machine?

Ans. I saw the literature for technical information and brochure. On the basis of the technical information I state that the machines are not capable of making a integral garment.

Q6. Did you observe actual functioning of machine?
Ans. No. I have seen literature. I know technical aspects of machine. I was doing a project with respect to making of integral garments on Warp and Weft Machine in NIFT. We visited lot of industries, we found only weft machine was making integral garment. Stoll, Santoni is making integral/ seamless garment.

Q7. Is your opinion based on technical international agency/ Ministry of Textile directions?
Ans. My opinion was based on basis of literature, research, references and knowledge of developing world.
Q8. Are you aware of any Textile Ministry guidelines regarding Fully Fashioned Machine?
Ans. No.

Q9. Were you shown relevant brochure of machine mentioned model number, full description, specification, technical data (size) including application?
Ans Yes, I have seen the technical data, relevant literature, brochure with model number, full description and specification of the machine.

Q10. Do you have brochures and can you share?
Ans. I have the brochure provided by DRI in Department library. I will share the same with adjudicating authority through email.

Q11. Can a shrug be made by the HKS 2, HKS 3 and HKS 4 machine?
Ans. I do not know.

Q12. Can HKS 2, HKS3 model machine make a knitting panel such as torso, sleeve etc?
Ans. Narrowing of sleeve is possible but knitting torso is not possible.

Q13. Do you accept our request to visit actual machine site to have observation of functioning of the machine?
Comment The adjudicating authority disallowed the question being outside the scope of cross –examination.

Q14. What other literature you referred to while giving opinion dated 24.09.2018?
Ans. I referred the Research cases, the details of which I do not recall at this moment.

Q15. Do you accept the opinion is not based on literature?
Ans. I have literature and references on which opinion was given and I will provide the same.

3.29.6 On perusal of the record of the cross-examinations referred in above Paras, I find the opinions of cross-examination of IIT and NIFT experts, Shri Kevin Socha and Shri Gurudas Aras were based on their wide experience in the related fields and various evidences based on Articles published in international reputed journals.

3.29.7 With respect to the request of the Noticee for cross-examination of the officers who had examined the goods in the Bills of Entry, I find that since the case is based on various evidences, opinions & statements of the Noticee, hence, I do not find any force in granting any further cross-examination.

3.29.8 In this regard, I find that Sub-section 138(B)(2) lays down that the provisions given under 138B(1) *shall so far as may be*, apply to any other proceedings under the Customs Act. Any other proceeding in its fold also includes the adjudication proceedings. But the language of the section

unambiguously says that this provision would be applicable as far as possible in the other proceeding also. It means that applicability of Section 138(B)(2) is also contemplated in case of any other proceedings as envisaged by the legislature, which covers adjudication proceedings also. The sub-section has used the word "shall so far as may be" which suggest that **as far as possible, cross examination may be permitted by adjudicating authority in the interest of justice. However, it is explicit that it is not mandatory provisions, but at the same time, discretion has to be applied cautiously**. However, for invocation of these provisions, maximum possibilities may be exhausted.

3.29.9 I find that in the interest of justice, it is required to see whether the cross-examination is absolute necessity, so that miscarriage of justice could be avoided to the Noticee or permitting cross examinations would unnecessarily protract the litigation and will not serve any purpose. **I find that cross examination becomes necessary in such situation wherein the outcome of the case only rests upon the statement of the persons whose cross examination has been sought but when there are other evidences available which proves the guilt of the Noticee, means proves the mis-declaration, mis-classification, duty evasion, confiscation and imposition of penalty, then even denial of cross examination would not neither cause any injustice nor affect the outcome of the case**. As discussed in above paras, I find that in addition to the statement/opinion of IIT and NIFT expert and Shri Kevin Socha and Shri Gurudas Aras, there are adequate other evidences - email correspondences among the suppliers & their agents and importer/s, the invoices raised by Karl Mayer in respect of such supplies to importers in India bearing the correct /incorrect description, catalogues and write-ups of the machines, Committee (formed by Textile Commissioner) report dated 11.11.2019 etc. which proves the case beyond doubt. In this regard, I rely on the following judicial pronouncements:

(i) In ARUN GUPTA Versus COMMISSIONER OF CUSTOMS (EXPORT), MUMBAI, 2010 (260) E.L.T. 449 (Tri. – Mumbai), it was held that denial of cross-examination of co-noticees did not cause any violation of natural justice. Cross-examination of co-noticees were sought by Noticee only during personal hearing and no effort to produce them though they were known to noticee. Co-noticees statements were recorded against noticee during investigation and it remained un-retracted.

(ii) In MAYA MAHAL INDUSTRIES Versus COLLECTOR OF CENTRAL EXCISE, MEERUT, 1995 (80) E.L.T. 118 (Tribunal), it was held that summoning of co-noticee for giving notice was not proper. Cross-examination of co-noticee to be done only, if he wishes – Principles of natural justice not violated for not summoning co-noticee for cross-examination – (Section 33 of the Central Excises & Salt Act, 1944).

(iii) In the case of Kanungo & Co. Vs. Collector of Customs, Calcutta & Others [1993(13) E.L.T. 1486 (S.C.)], wherein it was unequivocally held that for proceedings under Customs Act, the right to compliance to the principles of natural justice does not cover the right to cross examination witnesses. Relevant Para 12 is reproduced wherein the Hon'ble Supreme Court observed as follows –

"*In our opinion, the principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordingly, I hold that there is no force in the third contention of the appellant.*"

(iv) In the case of Suman Silk Mills Pvt. Ltd. Vs. Commissioner of Customs & C.Ex., Baroda [2002 (142) E.L.T. 640 (Tri.-Mumbai)], Tribunal observed at Para 17 that-

"*Natural Justice – Cross-examination – Confessional statements – No infraction of principles of natural justice where witnesses not cross-examined when statements admitting evasion were confessional.*"

(v) In the case of Commissioner of Customs, Hyderabad V. Tallaja Impex reported in 2012(279) ELT 433 (Tri.), it was held that-

"In a quasi-judicial proceeding, strict rules of evidence need not to be followed. Cross examination cannot be claimed as a matter of right."

(vi) In the case of Patel Engg. Ltd. vs UOI reported in 2014 (307) ELT 862 (Bom.) Hon'ble Bombay High Court has held that;

"Adjudication – Cross-examination – Denial of- held does not amount to violation of principles of natural justice in every case, instead it depends on the particular facts and circumstances – Thus, right of cross-examination cannot be asserted in all inquiries and which rule or principle of natural justice must be followed depends upon several factors – Further, even if cross-examination is denied, by such denial alone, it cannot be concluded that principles of natural justice had been violated." [para 23]

(vii) Hon'ble Tribunal in its decision in Sridhar Paints v/s Commissioner of Central Excise, Hyderabad reported as 2006(198) ELT 514 (Tri-Bang) has held that:

"..... denial of cross-examination of witnesses/officers is not a violation of the principles of natural justice, we find that the Adjudicating Authority has reached his conclusions not only on the basis of the statements of the concerned persons but also the various incriminating records seized. We hold that the statements have been corroborated by the records seized" (Para 9)

(viii) Hon'ble Punjab and Haryana High Court in its decision in the case of Azad Engg. Works v/s Commissioner of Customs and Central Excise, reported as 2006(2002) ELT 423, held that;

"..... *It is well settled that no rigid rule can be laid down as to when principles of natural justice apply and what is their scope and extent. The said rule contains principles of fair play. Interference with an order on this ground cannot be mechanical. Court has to see prejudice caused to the affected party. Reference may be made to judgment of Hon'ble the Supreme Court in K.L. Tripathi v. State Bank of India and others, AIR 1984 SC 273"*

(ix) Hon'ble Tribunal in the case of P Pratap Rao Sait v/s Commissioner of Customs reported as 1988 (33) ELT (Tri) has held in Para 5 that:

"..... The plea of the learned counsel that the appellant was not permitted to cross-examine the officer and that would vitiate the impugned order on grounds of natural justice is not legally tenable.

(x) A.L Jalauddin v/s Enforcement Director reported as 2010(261) ELT 84 (Mad HC) the Hon High court held that ;

"*.... Therefore, we do not agree that the principles of natural justice have been violated by not allowing the appellant to cross-examine these two persons. We may refer to the paragraph in AIR 1972 SC 2136 = 1983 (13)* E.L.T. *1486 (S.C.) (Kanungo & Co. v. Collector, Customs, Calcutta)"*

(xi) Poddar Tyres (Pvt) Ltd. v. Commissioner – 2000 (126) E.L.T. 737: – Wherein it has been held that cross-examination not a part of natural justice but only that of procedural justice and not a 'sine qua non'.

(xii) Kumar Jagdish Ch. Sinha v. Collector – 2000 (124) E.L.T. 118 (Cal H.C.): – In this case it has been held that the right to confront witnesses is not an essential requirement of natural justice where the statute is silent and the assessee has been offered an opportunity to explain allegations made against him.

(xiii) A.K. Hanbeen Motarred vs. Collector – 2000 (125) E.L.T. 173 (Mad HC): wherein it has been held that the strict rule of burden of proof applicable to criminal prosecution may not be applicable to proceedings before Customs authorities.

(xiv) Shivom Ply N-Wood Pvt. Ltd. Vs Commissioner of Customs & Central Excise Aurangabad- 2004(177) E.L.T 1150(Tri. -Mumbai): – wherein it has been held that cross-examination not to be claimed as a matter of right.

3.29.10 Hence, I do not find any force in granting cross-examination, again and again of the same persons. The request of cross-examination of the persons in each individual case, will not lead to any fresh facts and as such I consider the request of cross-examination, is tact of delaying adjudication proceedings. Accordingly, I reject the request.

3.30 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 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 the importers from Karl Mayer, Germany using the services of their sole agent for the territory of India, namely ATE 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'.

3.30 I find that Shri Kevin Socha in his statement dated 30.10.2017 recorded under Section 108 of the Customs Act had admitted that HKS 2 & 3 models cannot produce fully fashioned articles and also not being described as "Fully Fashioned"; that this situation (i.e. situation of mis-match of description) 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 Kevin 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. I find that the importer and the supplier both under oath and in their truthful submissions have admitted that they were the colluding party in this case and they decided to manipulate the description to avail the notification benefit. It was the sole request of the importer to the supplier Karl Mayer, Germany to include terms or words in the description of the machine so that the notification benefit can be availed.

3.32 The above re-strengthens my finding that on the request of the importer, the description of imported machines was changed by Karl Mayer, Germany to include the terms "Fully Fashioned Machine" in the invoice thereby leading to filing of the Bills of Entry for subject goods with the changed description. Further, as per Section 111(o), when goods are exempted from Customs duty subject to a condition and the same is not observed, the imported goods are liable to confiscation. In the instant case, I find that in respect of the imported machines, the importer had claimed benefit of exemption Notification No. 12/2012-CE dated 17.03.2012. The benefit of said notification was conditional and was available only to "Fully Fashioned High Speed Knitting Machine". However, as elucidated in the foregoing paras, the Knitting Machines imported by the importer were wrongly declared as 'Fully Fashioned'. Thus, I find that in breach of conditions of the Notification, the Noticee has wrongly claimed benefit of the said exemption Notification. I, accordingly, hold that the impugned goods are liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962.

3.33 Now, I take up the issue of imposition of penalty on the Noticees. For this purpose, it is appropriate to reproduce the provisions of Section 112, 114A and 114AA of the Customs Act, 1962 as under:

Section 112 (Penalty for improper importation of goods etc.) reads as:
"Any person,-
(a) who in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is greater;
(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of Section 114A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher……"

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 liable 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.

3.34 I find that Shri Sanjeev Arora, Director of Bhanu Embroideries Pvt. Ltd., in his statement dated 18.11.2020 admitted that they were knowing the working of the imported machines and the machines imported by them were capable of manufacturing ***fabrics only and not shaped garments*** and did not fall under the definition of 'Fully Fashioned'. He further agreed to pay the differential duty over and above 6% already paid at the time of assessment of the Bills of Entry. I find that the importer, Bhanu Embroideries Pvt. Ltd. (Noticee No. 1) actively connived with the supplier to fraudulently change the description of imported goods in order to evade duty and thus, rendered the goods liable for confiscation under Section 111 of the Customs Act, 1962.

3.34.1 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. Thus, with the introduction of the self-assessment by amendment to Section 17, effective from 08.04.2011, it is an added and enhanced responsibility of the importer to declare the correct description, value, notifications etc., and to correctly classify, determine and pay the duty applicable in respect of the imported goods. The importer is squarely responsible for Self-Assessment of duty on imported goods and for filing all declarations and related documents and confirming these are true, correct and complete. Self-Assessment can result in assured facilitation

for compliant importers. However, delinquent importers would face penal action on account of wrong Self-Assessment made with intent to evade duty or avoid compliance of conditions of notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts. 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. Therefore, I find that Bhanu Embroideries Pvt. Ltd., had fraudulently claimed effective rate of CVD @ 6% in terms of Notification No. 12/2012-CE dated 17.03.2012 on the basis that imported machines were 'Fully Fashioned', but since it is not so, the Bhanu Embroideries Pvt. Ltd. is liable to pay CVD @ 12.5%. 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 Bhanu Embroideries Pvt. Ltd., has rendered themselves liable to penalty equivalent to the duty & interest so determined, under Section 114A of the Customs Act, 1962.

3.34.2 Further, I find that the importer has contravened the provisions of the Notification which has the mandate of Section 143 of the Customs Act, by deliberately giving a false declaration in respect of description of the imported machines for clearance of the same. In view of the above facts and credible evidences, I find that the importer, Bhanu Embroideries Pvt. Ltd. have deliberately and intentionally committed the contraventions as discussed supra covered under the ambit and scope of Section 114AA of the Customs Act, and accordingly they have rendered themselves liable for penalty under Section 114AA.

3.35 As regards proposal for imposition of penalty on Customs Broker, Shri Deepak Kamal Agarwal, M/s. Deep Shipping Agency (Noticee No. 2), I note that Shri Deepak Kamal Agarwal in his written submissions has forcefully contended that on the basis of their email dtd. 14.04.2015, adverse inference has been drawn against them on the ground that vide the said email they had suggested to the importer, M/s. Bhanu Embroideries (P) Ltd., to delete the word 'Warp' from the description in the Invoice. Further, he stated that the word 'Warp' has no consequence for claim of the Notification No. 12/2012-CE dated 17.03.2012, as all types of Knitting machines whether Warp Knitting/ Weft Knitting/ Circular Knitting/ Flat Knitting are eligible for benefit of notification, as long as the same are High Speed and Fully Fashioned. In this regard, I find that the aforesaid notification extends benefit to "Fully Fashioned High Speed Knitting Machines" and there is no mention of word 'Warp' therein. Thus, to be eligible for the notification benefit, knitting machine needs to be 'Fully Fashioned' and 'High Speed'. Therefore, I agree with the aforementioned contention that the word 'Warp' has no consequence for claim of the said notification.

3.35.1 I find that Shri Deepak Kumar Agarwal, in his statement recorded under the Section 108 of the Customs Act, 1962 though accepted that the machine may be of the description as suggested by the investigation and may not be eligible to the claimed notification benefit, but in same breath he stated that he is not a technical person and cannot comment on technology used in the machine. I find that the CB has filed the Bills of Entry in the impugned import, on the basis of the import documents furnished by the importer. The importer in his statement dated 18.11.2020 had stated that they were the ultimate beneficiary as far as the Government Revenue was concerned and they had provided the documents as received from the supplier to the Customs Broker and on the basis of those documents, the Customs Broker had filed the said Bills of Entry.

3.35.2 I find that the relevant Customs Brokers Licencing Regulations, 2013, gives a mandate to the Customs Broker only to provide services and facilitation to the Importer, who authorizes the Customs Broker to file Bill of Entry on his behalf. Further, the import documents are all part of transaction between the Importer and Supplier as per the contract. Thus, Customs Broker has no role to dictate the contract and the transaction between the supplier and the importer. Moreover, its not expected of the Customs Broker that he will be having all the know-how with respect to

technical specifications and features of the machines. The mandate and expectation on the part of the Customs Broker is to act in bonafide way, as per the guidelines and regulation in CBLR, 2013. They are supposed to furnish all the supporting documents as provided by the importer. As far as the description as provided by the importer and the directions given by the importer are followed and brought to the notice of customs, the Customs Broker is free of his responsibility in imparting the actual, truthful and correct description of goods. The only expectation from the CB that he should have checked the past import machines from same supplier filed without notification benefits and compared the present import and consequently should also have followed the same line without notification benefit is a stretched inference. I find that the supplier is in business of making many a models and the different imports may have been of different models with different technical specification and features. Few of these machines may be eligible for the notification benefit and rest may not be having the same. I am therefore, inclined to believe that the Customs Broker is found not indulged in a malafide act of manipulating the description as all the details and descriptions were not only given by the importer but also have been admitted by the importer during their statements dated 18.11.2020 recorded under the Section 108 of the Customs Act, 1962. I find that as the importer has taken onus of mis-declaration and in effect this exonerates the CB of any malafide or in know-how of the wrong doings and thus, there is no reason to keep the CB as colluding party in the present case.

3.35.3 I find that Shri Deepak Kamal Agarwal being a Customs Broker himself had limited scope of verifying the technical aspects in such matter and has discharged the obligations cast upon him under the then prevalent Customs Brokers Licencing Regulations, 2013. He not being a technical person relied upon the information received from the importer and filed the Bill of Entry accordingly. Therefore, I find that the Customs Broker who in case of this import, is furnished by the importer with all relevant documents for filing of Bill of Entry and with specific instructions does not appear to be involved in the fraudulent manipulation in the description of imported machinery to avail benefits of Customs duty available to ineligible importers and that the importer had already admitted to the guilt and omission and commission in the case for having rendered the imported goods liable for confiscation under Section 111 of Customs Act, 1962 and made importer liable to penalty under Customs Act, 1962.

3.35.4 I find that numerous judicial pronouncements are in existence where it has been, inter-alia, held that when there is no evidence of abetment in illegal importation of goods or wrong intent or prior knowledge about violation, penalty cannot be imposed on the Customs Broker. I also find that there is an advisory issued by the office of Chief Commissioner of Customs, Nhava Sheva vide File No. CCC/LGL/MISC/277-ADMN-O/o CC-CUS-Zone II- Nhava Sheva dated 02.12.2022 on this issue and it was advised that practice of routinely proposing penal provisions under the Customs Act, 1962 against Customs Brokers should be avoided. I find that as importer has owned the blame of conniving with the supplier to get the description changed as per the requirement of the notification benefit and also admitted to the guilt of malafide claim on notification benefit to evade legitimate customs duty, and that the importer has not cast any aspersion on the role of Customs Broker in the said import, the charges proposed against Shri Deepak Kamal Agarwal, M/s. Deep Shipping Agency & M/s. Deep Logistics, who is the Customs Broker to Bhanu Embroideries Pvt. Ltd. does not hold good and hence, I find that the consequential penalties are not imposable on CB, Shri Deepak Kumar Agarwal.

3.36 As regards proposal for imposition of penalty on Sh. Dhiraj Vij (Noticee No. 3), from the email communications unearthed during investigation, I find that Sh. Dhiraj Vij actively and intentionally connived with the importer, Bhanu Embroideries Pvt. Ltd., to fraudulently change and mis-declare the description of the imported goods in order to evade duty. In his voluntary statement dtd. 21.12.2020, recorded under Section 108 of the Customs Act, 1962, he admitted that he had changed the description of the imported machines in the commercial invoice as 'Used Fully Fashioned High Speed Knitting Machine' and omitted the word 'Warp' to facilitate clearance of the goods. He also admitted that these changes were done in the commercial invoice after the

invoice number and date had been generated. I find that the Notification No. 12/2012-CE dated 17.03.2012, extends duty benefit to "Fully Fashioned High Speed Knitting Machines" and thus, to be eligible for the notification benefit, knitting machine needs to be 'Fully Fashioned' and 'High Speed'. I find that Sh. Dhiraj Vij resorted to change of description of the imported machines in the commercial invoice for the purpose of fraudulent claim of the said notification benefit. I find that by resorting to the above mis-declaration, Sh. Dhiraj Vij rendered the imported goods liable to confiscation under Section 111 of the Customs Act, 1962, thereby making himself liable for penalty under Section 112 of the Customs Act, 1962.

3.36.1 Further, I find that by resorting to the aforesaid fraudulent changes and mis-declaration in the description of imported goods in the commercial invoice, Sh. Dhiraj Vij, has knowingly and intentionally caused to be made a false entry before the Customs authorities by the importer, Bhanu Embroideries Pvt. Ltd. Hence, Sh. Dhiraj Vij has rendered himself also liable for penalty under Section 114AA of the Customs Act, 1962.

3.37 I note that it is mentioned in the subject SCN that during the course of investigation, the importer, Bhanu Embroideries Pvt. Ltd. had voluntarily deposited an amount of Rs. 6,31,856/- (Rupees Six Lakh Thirty One Thousand Eight Hundred Fifty Six Only), vide Demand Draft No. 005589 dtd. 27.11.2020 of Rs. 1,38,915/- and No. 005591 dtd. 01.12.2020 of Rs. 4,92,941/-. In view of my upholding the demand of short paid Customs duty from the importer, I hold that the aforesaid amount of Rs. 6,31,856/- (1,38,915 + 4,92,941) be appropriated against total duty liability of Bhanu Embroideries Pvt. Ltd., subject to due verification of the payment of the said amount in the Government Account.

4. In view of the above facts of the case, the documentary evidences on record and findings on record in respect of the imports made by Bhanu Embroideries Pvt. Ltd., I pass the following order:

ORDER

(i) I deny the exemption claimed under Notification No. 12/2012-CE dated 17.03.2012 in respect of the goods imported by Bhanu Embroideries Pvt. Ltd. under Bills of Entry Nos. 9395891 dtd. 29.05.2015 and 9190160 dtd. 11.05.2015.

(ii) I confiscate the goods imported under Bills of Entry Nos. 9395891 dtd. 29.05.2015 and 9190160 dtd. 11.05.2015 as detailed in Annexure-A to the impugned SCN having assessable value of **Rs. 86,42,627/- (Rupees Eighty Six Lakh Forty Two Thousand Six Hundred Twenty Seven Only)**, under the provisions of Sections 111(m) and 111(o) of the Customs Act, 1962.

I give Bhanu Embroideries Pvt. Ltd. an option to redeem the impugned goods on payment of a fine of Rs. **8,50,000/- (Rupees Eight Lakh Fifty Thousand Only)** under Section 125(1) of the Customs Act, 1962.

(iii) I confirm the demand of differential Customs duty amounting to **Rs. 6,31,856/- (Rupees Six Lakh Thirty One Thousand Eight Hundred Fifty Six Only)** as detailed in Annexure-A to the SCN, under Section 28(4) of the Customs Act, 1962 alongwith applicable interest thereon under Section 28AA of the Customs Act, 1962.

(iv) I impose a penalty equivalent to differential duty of **Rs. 6,31,856/- (Rupees Six Lakh Thirty One Thousand Eight Hundred Fifty Six Only) along with applicable interest** under Section 28AA of the Customs Act, 1962, on Bhanu Embroideries Pvt. Ltd., under Section 114A of the Customs Act, 1962.

In terms of the first and second proviso to Section 114A ibid, if 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 penalty of **Rs. 5,00,000/- (Rupees Five Lakh Only),** on the importer Bhanu Embroideries Pvt. Ltd. under Section 114AA of the Customs Act, 1962.

(vi) I drop the charges levelled vide the subject SCN against Shri Deepak Kamal Agarwal of Customs Broker firm M/s. Deep Logistics, for the reasons as discussed supra.

(vii) I impose penalty of **Rs. 60,000/- (Rupees Sixty Thousand Only),** on Sh. Dhiraj Vij under Section 112 of the Customs Act, 1962.

(viii) I impose penalty of **Rs. 60,000/- (Rupees Sixty Thousand Only),** on Sh. Dhiraj Vij under Section 114AA of the Customs Act, 1962.

(ix) I appropriate the voluntary deposit of **Rs. 6,31,856/- (Rupees Six Lakh Thirty One Thousand Eight Hundred Fifty Six Only)** made by Bhanu Embroideries Pvt. Ltd., vide Demand Draft No. 005589 dtd. 27.11.2020 of Rs. 1,38,915/- and No. 005591 dtd. 01.12.2020 of Rs. 4,92,941/-, against total duty liability of Bhanu Embroideries Pvt. Ltd., subject to due verification of the payment of the said amount in the Government Account.

5. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or the persons/firms concerned, covered or not covered by this show cause notice, under the provisions of Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

Bhamteke 31/12/25

(अनिल रामटेके / **ANIL RAMTEKE**)
सीमा शुल्क आयुक्त / Commissioner of Customs,
एनएस-V, जेएनसीएच / NS-V, JNCH

To,

1(a) Bhanu Embroideries Pvt. Ltd.,
455, Basant Avenue, Amritsar, Punjab

1(b) Bhanu Embroideries Pvt. Ltd.,
Village Bal Kalan, Majitha Road Bye-Pass,
Amritsar, Punjab - 143001.

2. Shri Deepak Kamal Agarwal,
M/s. Deep Shipping Agency & Deep Logistics,
Moongipa Arcade, 1st Floor, F-118, Ganesh Chowk,
D N Nagar, Andheri (West), Mumbai - 400053.

3. Sh. Dhiraj Vij,
9, Maqbool Road, Krishna Kutir,
Amritsar, Punjab - 143001

Copy to:

1. The Additional Director General, Directorate of Revenue Intelligence, Ludhiana Zonal Unit, 213, Rani Jhansi Road, Civil Lines, Ludhiana – 141 001, Punjab

2. The Additional Commissioner of Customs, Group V, JNCH, Nhava Sheva, Mumbai-II

3. AC/DC (Review Cell), Chief Commissioner's Office, JNCH

4. AC/DC, Centralized Revenue Recovery Cell, JNCH

5. The Dy./Asstt. Commissioner of Customs, Customs Broker Section, New Custom House, Ballard Estate, Mumbai – 400 001

6. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.

7. EDI Section.

8. Office copy.