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 – 20251278NX000038733C **Date of Order: 24.12.2025**

F. No. S/10-130/2021-22/CC/NS-V/CAC/JNCH **Date of Issue: 24.12.2025**

SCN No.: DRI/LDZU/856/INT-9 of 2017/ENQ-213/2020

SCN Date: 29.12.2020

Passed by: Sh. Anil Ramteke

Commissioner of Customs, NS-V, JNCH

Order No: 316/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticee: M/s. Unique Embroideries (IEC: 1206001437)

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 issued vide File No. DRI/LDZU/856/INT-9 of 2017/ENQ-213/2020 dated 29.12.2020 in the case of M/s. Unique Embroideries – reg.

1. BRIEF FACTS OF THE CASE

1.1 It is stated in the Show Cause Notice (SCN) bearing File No. DRI/LDZU/856/INT-9 of 2017/ENQ-213/2020 dated 29.12.2020 that M/s. Unique Embroideries, Khasra No. 1419, Khata Khatoni no. 439/680, Near Suncity Amusement Park, Batala Road, Amritsar (hereinafter referred to as the Noticee), having IEC No. 1206001437 is engaged in the manufacturing of knitted fabrics. As per the IEC details available on the DGFT website https://dgft.gov.in, M/s. Unique Embroideries Fab, is a partnership firm with Smt Sonia Madaan, Sh. Sumit Madaan, Shri Vijay Gupta, Smt. Indira Gupta & Sh. Nitin Gupta as its partners.

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 2 machines declared as "Used Fully Fashioned High Speed Knitting Machines", Model No. HKS2-3 EBA vide Bill of Entry Nos. 9718668 dated 27.06.2015 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	Item Description as declared	Qty.	Unit Price as assessed	Invoice currency
1	INNSA1	9718668 dated 27.06.2015	Used High Speed Fully Fashioned Knitting Machine, Model No. HKS2-3 EBA, 32E, 130 Inch, Sr. No. 83334, 85415	2	15000	USD

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 by the officers of DRI, 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 The two machines imported vide Bill of Entry No. 9718668 dated 27.06.2015 were detained by the DRI officers during the Panchnama proceedings dated 24.11.2020 and the custody of the detained goods was handed over to Sh. Sumit Madaan, Partner of M/s. Unique Embroideries. During the Panchnama proceedings Sh. Sumit Madaan told that the said machines uses yarns as raw materials and produce 'Fabric Sheets/rolls'. Sh. Sumit Madaan also showed the panchas and DRI officers one of the available imported machine in running position. He showed the panchas and DRI officers the 'yarn beams' were in the appropriate place in the machine and the net fabric sheets were coming out of the machine in rectangular form and ultimately it was being collected in the form of a 'roll fabric'. On being further asked Sh. Sumit Madaan told DRI officers that the machine has no functionality to make such "pre-shaped panels of fabric" and clarified that the said machine can manufacture fabric sheets, however the fabric being manufactured shall remains in rectangular sheets/panels only and then it is required to cut out the required shape of fabric from the rectangular fabric sheet being manufactured on this machine. He further told that the functionality of the other imported machine is also similar to this machine.

1.12 Three summons dated 11.12.2020,15.12.2020 and 18.12.2020 were issued to the M/s. Unique Embroideries but the noticee didn't respond to any of the summons.

1.13 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.

1.13.1 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.

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

1.13.3 On being asked by the DRI officers that- What is the Fully Fashioned Knitting Machine, he stated that Fully Fashioned Knitting Machines are those machines which can manufacture prescribed shapes of the fabric as per the requirement. The Non-Fully Fashioned machines 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.

1.13.4 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.

1.13.5 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'.

1.13.6 On being asked by the DRI officers that why such certificate/report was submitted to Indian Customs bearing the words 'Fully Fashioned' in the description of the said machine, he stated again

that the said report was meant only for the purpose of valuation of the said machine and not for the description of the machine. He further added that at the time of inspection of the machine at Customs port, the machines are kept in dismantled form inside the containers and usually there is no scope of running the said machine and therefore, at that time he had submitted the report on the basis of import documents and visual appearance of the said machine. However, today, after having seen the functionality and configuration of the said machine he can say that this machine is not 'Fully Fashioned'.

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

1.14 Shri Deepak 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.

1.15 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.

1.16 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. M/s. Unique Embroideries 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. 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.

1.17 M/s. Unique Embroideries 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 M/s. Unique Embroideries 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:

S. No.	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.)
1.	9718668 dated 27.06.2015	19,77,868/-	1,44,601/-

1.18 Since, M/s. Unique Embroideries 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.

1.19 Accordingly, M/s. Unique Embroideries, Amritsar, Punjab was called upon to show cause as to why:

(i) Customs duty amounting to **Rs. 1,44,601/- (Rupees One Lakh Forty Four Thousand Six Hundred One 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;

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

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

1.21 Vide Notification No. 23/2021-Customs (NT/CAA/DRI) dated 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

2.1 There is only one Noticee in the subject SCN viz. M/s. Unique Embroideries. In terms of principal of natural justice, all the Noticees were granted opportunity of Personal Hearing (PH). Personal Hearings were scheduled on 21.04.2023, 04.05.2023, 05.06.2023, 29.10.2025 and 17.11.2025.

2.2 Sh. Gautam Chugh, Advocate, Authorised Representative of the Noticees, M/s. Unique Embroideries, appeared for personal hearing on 17.11.2025. During the hearing, he made following submissions:

a) No opportunity of pre-notice consultation has been given by the department to the Noticees before the issue of impugned SCNs, thereby, violating their rights.

b) The assessment of the Bills of Entry involved in these cases 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.

c) Larger period of limitation is not invokable in these 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.

d) 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 officials of IIT, Delhi and NIFT, Delhi to allege that the machines are not fully fashioned. However, these officials have not seen the actual working of the machine. 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.

e) That out of subject 21 cases, in 9 cases, the importer has paid the differential duty, therefore, the proceedings should be concluded in terms of Section 28(2) of the Customs Act, 1962, in these cases. In view of the above submission, he requested for dropping of the Show Cause Notices against all the Noticees mentioned in Column 5 of the above table

3. WRITTEN SUBMISSION OF THE NOTICEES

3.1 Goods cleared after final assessment, no appeal filed by the Department against the order of assessment, assessments cannot be re-opened by issue of a show cause notice.

The statute therefore, provides to any person aggrieved by any decision or order passed under the Act by an officer of customs lower in rank than a Commissioner of Customs, a right to appeal to the Commissioner (Appeals) within a period of sixty days from the date of communication of the order or decision. That it is submitted that in the present case, for all the imports, Bills of Entry were duly filed by the noticee and the same were assessed by the Customs authorities, after necessary inquiry and due scrutiny of all the documents. It is settled law that the assessment made on the Bill of Entry is an appealable order.

That without prejudice to the above, it is submitted that the subject imports were cleared after declaring its appropriate classification, description and value. At the time of assessment no objections were raised by the Customs authorities. In all cases goods were examined by the Customs authorities and it is submitted that the said orders have attained finality and the same cannot be disturbed by issuance of the impugned Show Cause Notice.

Further, they cited following case laws in favour of their arguments

- Escorts Limited v. Union of India, 1998 (97) ELT 211 (SC)
- Ashoosons v. Commissioner of Customs, New Delhi, 2009 (239) ELT 107 (Tri.-Del.)
- Collector of Central Excise v. M.M. Rubber Co., 1991 (55) ELT 289 (SC)

3.2. That it is further submitted that clearances of the goods were allowed by the Customs authorities after assessment and examination of the goods by the proper officer. The order of assessment passed under Section 17 of the Customs Act, 1962 and the order of clearance passed under Section 47 of the Customs Act, 1962 are quasi-judicial orders, which can be set aside only by the competent appellate authority, on an appeal being filed against the same. It cannot be reopened just by issuance of a Show Cause Notice. With regard to this following case laws were cited

- Collector of Customs, Cochin v. Arvind Export (P) Ltd., 2001 (130) ELT 54 (Tri.-LB)
- Commissioner of Customs (Imports), Mumbai v. Lord Shiva Overseas, 2005 (181) ELT 213 (Tri.-Mumbai)
- Vittesse Export Import v. Commissioner of Customs (EP), Mumbai , 2008 (224) ELT 241 (Tri.-Mumbai)
- Collector of Central Excise, Kanpur v. Flock (India) Pvt. Ltd., 2000 (120) ELT 285 (SC)
- Priya Blue Industries Ltd. v. Commissioner of Customs (Preventive), 2004 (172) ELT 145 (SC)
- Jai Hind Overseas v. CC, Cochin, 2009 (90) RLT 48 (CESTAT-Ban.)

That it is respectfully submitted that ratio of the aforesaid judgments is applicable to the case of the noticee. Therefore, in the absence of any appeal against the orders of assessment as well as the orders of clearance passed by the proper officers of Customs, the said orders of assessments / clearances have attained finality and the same cannot be disturbed by issuance of the impugned Show Cause Notice, in the absence of any appeal against the same having been filed by the Department.

3.3 Extended period not invocable if demand contrary to approved classification / assessment

That was submitted above, all the Bills of Entry were assessed by the Customs authorities after due scrutiny of the supplier's invoices and examination of the goods. It is submitted that assessment of a Bill of Entry is akin to approval of a classification list on the Central Excise side. It is settled law that approval of a classification list is not an empty formality and that in case of a show cause notice issued contrary to an approved classification list, demand can only be prospective It is submitted that applying the ratio of the same, it can be said that in the Customs

matters, once the clearance of the goods has been allowed after assessment of the Bill of Entry after due scrutiny of the documents and examination of the goods, extended period of demand is not invocable.

Further, they cited following case laws in favour of their arguments

- Tata Iron & Steel Co. Ltd. v. Union of India, 1988 (35) ELT 605 (SC)
- Rainbow Industries (P) Ltd. v. Collector of Central Excise, Vadodara, 1994 (74) ELT 3 (SC)
- Commissioner of Central Excise, Madras v. T.K.K. Pharma Ltd., 2006 (198) ELT 481 (SC)
- Espi Industries and Chemicals Pvt. Ltd. v. Collector of Central Excise, Hyderabad, 1996 (82) ELT 444 (SC)
- O.K. Play (India) Ltd. v. Commissioner of Central Excise, Delhi, 2005 (180) ELT 300 (SC)
- Paresh Plastics P. Ltd. v. Commissioner of Central Excise, Rajkot, 2008 (226) ELT 415 (Tri.-Ahmd.)

3.4 Proviso to be strictly construed

That it is respectfully submitted that extended period is invocable only under the proviso to Section 28(1) of the Customs Act, 1962. In the case of Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay, 1995 (78) ELT 401 (SC), Hon'ble Supreme Court held that the proviso being an exception to the main Section has to be construed strictly.

Further, they also cited following case laws in favour of their arguments

- Tamil Nadu Housing Board v. Collector of Central Excise, Madras, 1994 (74) ELT 9 (SC)
- Continental Foundation Jt. Venture v. Commissioner of Central Excise, Chandigarh, 2007 (216) ELT 177 (SC)
- Commissioner of Central Excise, Chandigarh v. Punjab Laminates Pvt. Ltd., 2006 (202) ELT 578 (SC)

That in the light of the foregoing, the noticee respectfully submit that in the present case there has been no collusion or willful mis-statement or suppression of facts by them. The department has attempted to submit unreliable and vague evidence that the noticee have made mis-statements or suppressed facts. The department has failed to provide any evidence of mis statement or suppression of facts and therefore, considering the strict construction mentioned above, the extended period under the Proviso to Section 28 is not invocable.

3.5 That the Bill of Entry filed by the noticee have been assessed and exemption has been granted by the customs department. The department has now issued show cause notice proposing to deny the exemption granted to the noticee by the customs department while assessing the Bills of Entry filed by the Appellant. The exemption can only be denied by the same authority which

has originally assessed the Bills of Entry and that too only after the original self-assessed Bills of Entry are set-aside. The Hon'ble Supreme Court in the case of ITC Ltd. Vs. Commissioner of Central Excise Kolkata-IV 2019 TIOL-418-SC-CUS-LB has clearly held that in the absence of setting aside of assessment order which includes self-assessment, an assessee cannot seek refund under Section 27 of the Customs Act.

The Hon'ble Apex Court has held that Section 27 is sort of execution and in the name of execution, assessed shipping bill/bill of entry cannot be recalled. In the show cause notice, the Respondent has proposed to deny the exemption granted to the Appellant even though the very Bills of Entry by way of which the Appellant availed the exemption have not been challenged and still holds stand. The Respondent cannot re-call the Bills of Entry filed by the Appellant by way of the show cause notice and impugned order without following due procedure.

3.6 That further in continuation to above, we would like to submit as under:

The said machines (second hand as well as brand new) have been imported under the trade name of "Fully-Fashioned High-Speed Knitting Machines" since more than 25 years and by more than 200 units from all across India from more than 15 Countries. Under Notification no. 12/2012 CE Dt.17.03.2012, exemption of 6% CVD.

In order to bring the major change in the textile industry, the then Prime Minister of India, in 2001, had formed a steering committee to Page 27 of 39 study and propose various options for the same. Notification 12/2012 has its origins based on this committee report. A part of that memorandum produced here under: -

Whereas office Memorandum No. S-4/412000 — TPC (PT) D1.09.11.2001 by Ministry of Textiles.

List of Textile Machineries exempted from CVD:-

S. No.1 = High Speed Warping Machines with yarn tensioning, pneumatic suction devices and accessories.

S. No.2 = Beam knotting machines.

S. No. 7 = Fully fashioned high speed knitting machines.

List of critical Marment machineries exempted from CVD

S. No.1 = Computerized flat bed knitting machines.

S. No.2 = Whole garment making machines (knitted).

3.6.1 The DRI contends that the word Fully Fashioned means a garment making machine. Our counter is that, if such was the case, why the Ministry of textile has specified critical garment making machines (which DRI claims them to be fully fashioned machine) separately than the "fully fashioned high speed knitting machines" .It is worthwhile to note that in the same the machines mentioned in serial no. 1 & 2 are preparatory machines for warp knitting Industry which shows the whole intention of the then ministry to cover warp knitting Industry under the

exemptions as how is it possible that preparatory machines are eligible for duty exemptions but not the main machines!!

3.6.2 In this regard it is also needs to be understood that the term "Fully Fashion" is a method and not a machine so it becomes a vague term when it's used for any machine. The rest of the description -"High Speed Knitting Machine" is an undisputed term for all kind of warp knitting machines. It should be noted that the machines which make whole garments, though they are highly technical machines but are not covered under high-speed knitting machines. So going by DRI's definition there remains no machines which can be finally classified under the term "Fully fashioned high speed knitting machines".

3.6.3 Subsequently, on 5th Oct, 2018, Mr. Kevin Socha, Managing Director, of Karl Mayer HK Ltd, has submitted various videos confirming versatility of Warp Knitting Machine to DRI , Ludhiana, which confirms our submission of producing shrug and other panels etc.. to support our machine falls under definition of Fully Fashioned as described by Dr. lsabel Wingate , in Fairchild's Dictionary of Textiles. During cross examination, Mr. Bipin Kumar, Assistant Professor, 111- New Delhi has also confirmed that subject machine can manufacture ladies shrug.

Ladies Shrug, do not need any further stitching except buttons, and the same is garment covered under HSN Code-6114.30, Polyester knitted other garments (capes), copy of Textile Committee, Government of India, Ministry of Textiles, Textile Laboratory & Research Centre, Test Report No.0111062223-2713 Dt.30 August 2022. Various technical officers from Karl Mayer Germany have also issued Certificate certifying warp knitting as Fully Fashioned High Speed Knitting machine.

3.6.4 Mr. Bipin Kumar, Assistant Professor, IIT- New Delhi, mentioned one of the "Source: Autex Research Journal 12.3(2012) 67-75: Composites : Part A 31(2000) 197-220" Journal of Textile and Apparel Technology and Management,2005, Vol.4 No.3, he has referred only few pages which explains about garment but skipped entire chapter explains about "Fully Fashioned performs" on page 213, which says

"The fully fashioned knitting technology has been used to produce near-net shape reinforcement for engineering composites.

Word Fully Fashioned is not connected to only GARMENTS.

3.6.5 We have also explained in detail to The Office of Textile Commissioner, they considered our case positively and issued letter F.No.4 (136)/2019/TMB/MISC/04 dtd.11.12.2020, confirming benefit should be granted to industry for their importing the machinery as fully fashioned high speed knitting machine.

Under the said Notification, hundreds of textile machineries are covered and given benefit of reduced CVD to increase investment and to generate employment. There is no reason to exclude our machines which are most versatile, highly productive and used in varied application of technical textiles, garments, upholstery, sportswear, shoes and amongst many other industries. There are no manufacturers of these machines in India till date.

3.7. PENALTY NOT IMPOSABLE

That the show cause notice proposes imposition of penalty on the noticee under Sections 114A & 114AA of the Customs Act, as applicable. It is respectfully submitted that the proposal for imposition of penalty on the noticee is not sustainable for the following reasons:

3.7.1 No penalty imposable when demand of duty is not sustainable:

That it is submitted that for the reasons given in the foregoing paragraphs, the demand of duty 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. Further, they cited following case laws in favour of their arguments

- Collector of Central Excise v. H.M.M. Limited, 1995 (76) ELT 497 (SC)
- Commissioner of Central Excise, Aurangabad v. Balakrishna Industries, 2006 (201) ELT 325 (SC)
- Commissioner of C. Ex. & Cus. V. Nakoda Textile Industries Ltd., 2009 (240) ELT 199 (Bom.)

3.7.2 Proposal for imposition of Penalty vague / Provisions of Section 114A mutually exclusive

That without prejudice to the above, it is respectfully submitted that the impugned show cause notice proposes levy of penalty under 114A & 114AA of the Customs Act, 1962. It is respectfully submitted that the proposal suffers from the vice of vagueness. The show cause notice mentions all the provisions in the Customs Act, 1962, under which penalty can possibly be imposed, it does not say clearly which of the provision is sought to be invoked in the case of the noticee. The proposal for levy of penalty under the impugned show cause notice is therefore, vague and is not sustainable.

That in the case of Commissioner of Central Excise, Bangalore v. Brindavan Beverages (P) Ltd., 2007 (213) ELT 487 (SC), Hon'ble Supreme Court held that show cause notice is the foundation on which the Department has to build up its case, if the allegations in the show cause notice are not specific and on the contrary vague, it is sufficient to hold that noticee was not given proper opportunity to meet allegations indicated in the show cause notice.

3.7.3 The proposal to impose penalty under Sections 114A as well as under Section 114AA is also not sustainable for the reason that the provisions of Section 114A are mutually exclusive. The fifth proviso to Section 114A specifically provides that where any penalty has been levied under this Section, no penalty shall be levied under Section 114A. It is therefore, submitted that the provisions of Section 114A cannot be invoked simultaneously and the proposal to levy penalty in the show cause notice is therefore, not sustainable in law.

That as already submitted, the conduct of the noticee was bonafide. Therefore, it cannot be said that the noticee in any manner, abetted the doing or omission of an act, which act or omission rendered the goods liable to confiscation.

Further, they cited following case laws in favour of their arguments

- Shri Ram v. State of U.P., (1975) 3 SCC 495
- M. Shashikant & Co. v. Union of India, 1987 (30) ELT 868 (Bom.)
- Commissioner of Customs (EP) v. P.D. Manjrekar, 2009 (244) ELT 51 (Bom.)

3.7.4 Penalty under Section 114A not imposable

That from a bare reading of Section 114A of the Customs Act, 1962, it is evident that levy of penalty under Section 114A is linked to confirmation of demand under Section 28 of the Customs Act, 1962 and the same ingredients as are applicable for invoking extended period under the proviso to Section 28(1) of the Customs Act, 1962, are applicable for levy of penalty under this Section as well. As already submitted, there was no collusion or any wilful mis-statement or suppression of facts on the part of the Noticee and therefore the proposal for levy of penalty under Section 114A is not sustainable in law.

That in the case of Commissioner of Customs, Mumbai v. M.M.K. Jewellers, 2008 (225) ELT 3 (SC), Hon'ble Supreme Court held that Penalty under Section 114A is imposable only when the demand is confirmed under the proviso to Section 28 of the Act .That it is therefore, submitted that the liability to penalty under Section 114A of the Customs Act, 1962 can arise only when the duty has not been levied or short-levied etc. by reason of collusion or any willful misstatement or suppression of facts. As already submitted, there was no willful misstatement or suppression of facts in the instant case. It is submitted that all the clearances of the imported goods were effected under Bills of Entry and the goods were allowed clearance after proper assessment as well as examination of the goods. Therefore, it is submitted that no penalty under Section 114A is imposable on the noticee.

3.7.5 Penalty under Section 114AA not imposable

Without prejudice to the submissions in the foregoing paragraphs, it is submitted that the liability to penalty under Section 114AA of the Customs Act, 1962 can arise only when 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. As already submitted, 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.

That 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. As already submitted, the conduct of the noticee in this case was bonafide and the noticee never resorted to any mis declaration 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.

3.8. The Proceeding stand concluded on payment of entire duty of Customs. That the noticee craves leaves to submit that the entire amount of duty stands deposited before issuance of show cause notice and accordingly all proceedings stand concluded in terms of Section 28(2) of the Customs Act, 1962. The show cause notice itself should not have been issued in terms of the binding provisions of the Customs Act, 1962 and is in utter disregards to the provisions of the Act may kindly be dropped in entirety, since the proceedings stand concluded on payment of the entire amount of duty deposited in terms of section 28(2) of the Act 1962.

3.9. PRAYER

That in the light of the facts referred to supra and the defense submissions and keeping with the ratio of the judgments referred to supra the show cause notice may kindly be dropped in entirety.

4. DISCUSSION AND FINDINGS

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

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

4.3 Further, vide mail dated 05.06.2023 from the advocate of M/s. Unique Embroideries have stated that the notice has challenged the validity of Show Cause Notice on the grounds of jurisdiction before the Hon'ble High Court of Panjab & Haryana at Chandigarh and the Hon'ble

High Court in CWP No. 12379, 12465, 12466, 12605, 12645, 12661 and12663 of 2023, was passed to grant interim stay to the adjudication proceedings vide interim orders dated 01.06.2023. Accordingly, with the approval of competent authority the case was transferred to Call Book on 06.06.2023 and the same was intimated to the noticee vide letter dated 07.06.2023. This case was taken out from Call Book after the Hon'ble High Court disposed off the subject writ petitions vide common order dated 09.01.2025.

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

4.5 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.

4.6 The principles of natural justice have been followed during the adjudication proceedings. Opportunity for personal hearing was granted to the Noticees on 21.04.2023, 04.05.2023, 05.06.2023, 29.10.2025 and 17.11.2025. Sh. Gautam Chugh, Advocate, Authorised Representative of the Noticees, M/s. Unique Embroideries attended the personal hearing (PH) on 17.11.2025.

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

(i) The differential Customs duty amounting to **Rs. 1,44,601/- (Rupees One Lakh Forty Four Thousand Six Hundred One 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

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

(iii) 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.

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

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

S. No.	BE Number & Date	Item Description as declared	Qty.	Assessable Value of Goods	Duty saved by claiming Notfn. No.12/2012-C Ex (in Rs.)
1	2	3	4	5	6
1	9718668 dated 27.06.2015	Used High Speed Fully Fashioned Knitting Machine, Model No. HKS2-3 EBA, 32E, 130 Inch, Sr. No. 83334, 85415	2	19,77,868/-	1,44,601/-

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

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

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

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

(1) .....

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

.....

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

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

"Fully fashioned knitting machines are those machines which are capable to manufacture shaped garments and shaped panels and further these panels are required to be sewn together to make a complete knitted garment. The main advantage of these machines is that these actually zero down the wastage as machine manufactures the garment/panel in the exact predefined shape rather than manufacturing fabric in rolls or in rectangular sheets which is the case in conventional (Non Fully Fashioned) knitting machines. Fully fashioned flat knitting machines are 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."

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

"As per published literatures, fully fashioned knitting machines can shape-knit the garment pieces and add pockets, thereby reducing time and waste of yarn. Moreover, highly advanced fully fashioned machines knit the entire garment in one piece, eliminating the need for cutting and sewing. Fully fashioned machines are widely popular in computerized weft knitting machines. To fall under the category of "fully fashioned", the machine should have several capabilities including narrowing, widening, loop transfer, adding circular panels, racking, individual loop control, changing knit structure (e.g. rib to purl, rib to single jersey, etc.), varying structural elements (stitch length, weft insertion, knit, tuck and float), segmented takedown across the width of the fabric, etc.
Example: The most renowned companies which manufacture fully fashioned knitting machines are Stoll, Shima Seiki, etc."

4.11.3 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.

4.12 I find that it was brought out during the cross examination before my preceding Adjudicating Authority in the case of M/s Maruti Knit Tex that the opinions were based on their

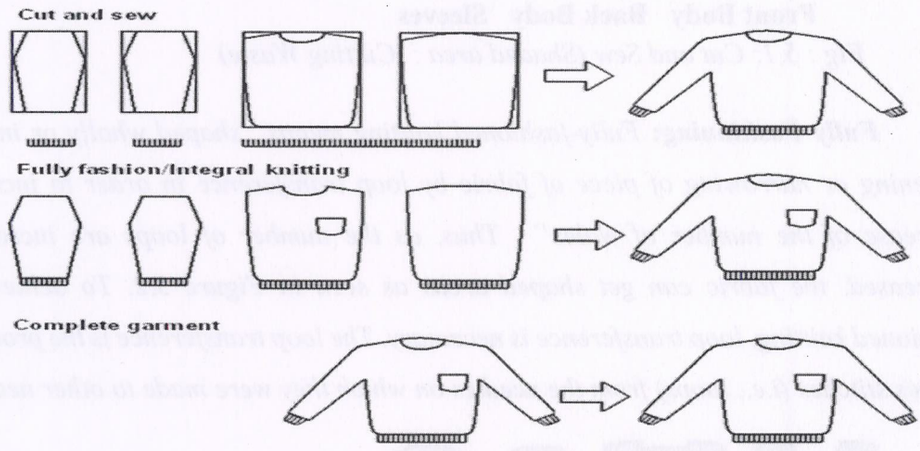
wide experience in the related fields and on Articles published in journals of international repute. The details of these publications and other material are as under:-

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

Knitting technologies

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

Following Figures illustrates the different available knitting technologies:

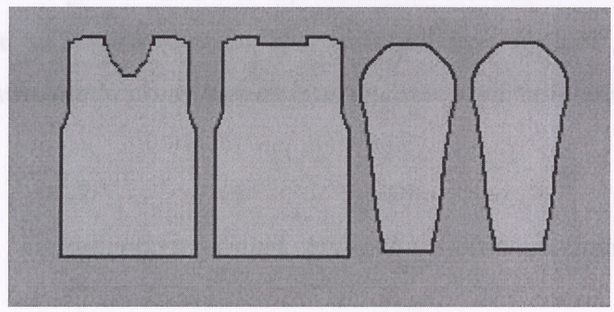


Excerpts from Article "Three Dimensional Seamless Garment Knitting on V-bed Flat Knitting Machines" published in Volume 4, Issue 3, Spring 2005 of Journal Of Textiles and Apparel Technology and Management.

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

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

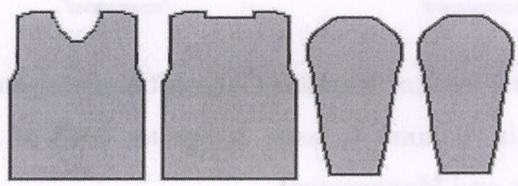
5.1 ***Cut and Sew production****: Cut and sew production is created by the use of one entire panel of fabric. Figure 5.1 below shows the cutting layout for the front and rear body portions and also the sleeve portions required to create a sweater. Through the cutting and sewing process, the finished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



Front Body Back Body Sleeves

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

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



Front Body Back Body Sleeves

Fig : 5.2 : Fully Fashioned Production)

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

4.13 I also find that on representation by South Gujarat Warp Knitters to the Textile Ministry requesting that Textile Commissioner office may issue technical details about Fully Fashioned High Speed Knitting Machine in view of perceived erroneous interpretations in respect of description, and admissibility of Notification benefits, the Textile Commissioner constituted a Committee comprising of Shri Ajay Pandit, Director, O/o Textile Commissioner, Dr. B.K. Bahera,

Professor, IIT-Delhi and Shri D.K. Singh, President, The Textile Association (India) Delhi. The Committee submitted their report on 11.11.2019, summary of which is extracted below:

> *"In summary,* ***Knitted garment manufacturing started with cut and sew method. 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 3dimensional full garment. The complete garment made on this machine does not have seams. This machine is considered as next generation form of fully fashioned knitting machine. In fully fashioned knitting, the different shaped pieces are still required to be sewn together.*** *"*

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

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

4.16 I also find that during the course of his statement recorded on 30.10.2017 under Section 108 of the Customs Act, 1962, **Shri Socha had stated that HKS 2 and 3 bar models cannot produce types of products such as garment panels, complete, one piece or seamless garments i.e. 'fully fashioned' articles. It is important to note that on being asked to spell out the correct description of the HKS3-M machine, Shri Socha stated the correct description as "HKS3M High Performance Tricot Machine for the production of all 3 bar Articles from light Tulle over technical Coating substrates up to raised velours".** He has accepted that previously Karl Mayer India Pvt. Ltd. had imported such machines without providing the description "Fully

Fashioned Machine" in the Bills of Entry and the CVD rates thereon were paid @ 12/12.5%. **He stated further that the situation (i.e. situation of mis-match of description) had arisen because of the pressure of some buyers to use this description for paperwork and due to competitive pressure in the market at the time resulting in their Sales and order fulfilment agreed to use the "Fully Fashioned" description.**

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

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

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

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

S. No.	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.)
1.	9718668 dated 27.06.2015	19,77,868/-	1,44,601/-

4.21 I find that self-assessment has been introduced on 08.04.2011 vide Finance Act, 2011 wherein under Section 17(1) an importer or exporter has to make self-assessment. Thus, more reliance has been placed on importers and exporters under self-assessment Further, as per the provisions of Section 46(4) of the Customs Act, 1962, the importer of any goods is required to file a Bill of Entry, in the proforma prescribed under Bill of Entry (Form) Regulations, 1976 or Bill of Entry (Electronic Declaration) Regulations,1995, before the proper officer mentioning therein the true and correct quality, quantity and value of the goods imported and the importer while presenting the Bill of Entry shall also make and subscribe to a declaration as to the truth of the contents of such Bills of Entry. However, in the present case, the Noticee mis-declared description of machine while filing Bills of Entry No. 9718668 dated 27.06.2015 of JNCH, Nhava Sheva.

4.22 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 also find that the Chartered Engineer of M/s Murlidhar & Shenvi Insurance & Surveyors had accepted that the Karl Mayer/Liba Machine imported by the Noticee is not fully fashioned and the report given was only to the effect of valuation purpose and not for the description purpose.

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

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

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

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

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

4.26 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."

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

4.28 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.

4.29 The goods are not eligible for the claimed benefits of Notifications, the same having been availed by way of mis-statement and wilful suppression of facts in the form of mis-declaring the description of the machines. Hence, I find that in the case at hand here the ingredients of fraud, suppression, collusion, misrepresentation with intent to evade duty are undoubtedly present,

thereby attracting and enabling invocation of extended period of limitation. I accordingly, hold that the differential duty is demandable under Section 28(4), invoking the extended period of limitation as per the figures of Customs duty mentioned in column 3 of the Table in Para 4.20 above.

4.30 I find that during the PH on 17.11.2025, the authorized 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)].*

4.30.1 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.

4.30.2 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).*

4.30.3 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.

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

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

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

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

Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer

determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

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

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

4.34 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 M/s. Unique Embroideries, 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 M/s. Unique Embroideries 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 M/s. Unique Embroideries, has rendered themselves liable to penalty equivalent to the duty & interest so determined, under Section 114A of the Customs Act, 1962.

4.35 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, M/s. Unique Embroideries 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.

4.36 I find that the noticee in their written submission have stated that the entire amount of duty stand deposited before issuance of show cause notice and requested to drop the demand as the proceedings stand concluded on payment of the entire amount of duty deposited in terms of section 28(2) of the Act 1962. I find that the copy of the demand draft provided by the noticee was forwarded to cash section for verification of the same and CAO/JNCH vide F.No. S/10-Gen-03/2017-18/Cash/JNCH Pt. III vide letter dated 23.12.2025 has stated that the subject payment cannot be verified because there is no records available for this payment in Cash Section. Accordingly, I hold that the claim of payment made by the noticee cannot be accepted as the same cannot be verified by Cash Section.

5. 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 M/s. Unique Embroideries, I pass the following order:

ORDER

(i) I confirm the demand of differential Customs duty amounting to **Rs. 1,44,601/- (Rupees One Lakh Forty Four Thousand Six Hundred One Only)** as detailed in Annexure-A to the SCN and order to recover the same from **M/s. Unique Embroideries** under Section 28(4) of the Customs Act, 1962 alongwith applicable interest under section 28AA of the Customs Act, 1962.

(ii) I impose a penalty of **Rs. 1,44,601/- (Rupees One Lakh Forty Four Thousand Six Hundred One Only) plus interest thereon**, on the importer **M/s. Unique Embroideries** under Section 114A of the Customs Act, 1962 in relation to the imported goods detailed in Annexure-A to the SCN.

If such duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be twenty-five per cent of the duty and interest, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order.

(iii) I impose a penalty of Rs 15,000/- (Rupees Fifteen Thousands Only) on **M/s. Unique Embroideries** under Section 114AA of the Customs Act, 1962.

6. 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.

24/12/25

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

To,

1 **M/s. Unique Embroideries**
Khasra No. 1419, Khata Khatoni no. 439/680,
Near Suncity Amusement Park, Batala Road, Amritsar

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