
 सत्यमेव जयते	<p>भारत सरकार/ Government of India वित्त मंत्रालय/ Ministry of Finance आयुक्त सीमा शुल्क एनएस-II का कार्यालय, केंद्रीकृत अधिनिर्णयन प्रकोष्ठ, जवाहरलाल नेहरू सीमा शुल्क भवन न्हावा शेवा, तालुका-उरण, जिला -रायगढ़, महाराष्ट्र- 400 707 OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-II CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA, DIST- RAIGAD, MAHARASHTRA-400707</p>	
DIN : 20251278NT0000555D7D		
आदेश की तिथि : 30.12.2025 Date of Order		
जारी किए जाने की तिथि : 30.12.2025 Date of Issue		
आदेशसं. : 328/2025-26/आयुक्त/एनएस-II/ सीएस/जेएनसीएच Order No. : 328/2025-26/Commr /NS-II /CAC /JNCH		
पारितकर्ता : श्री गिरिधर जी. पाई Passed by : आयुक्त, सीमाशुल्क (एनएस-II), जे.एन.सी.एच, न्हावा शेवा SH. GIRIDHAR G. PAI Commissioner of Customs (NS-II), JNCH, Nhava Sheva		
पक्षकार (पार्टी)/ नोटिसीकानाम : मेसर्स प्रिंटवेल ओफ़सेट Name of Party/Noticee : M/s. Printwell Offset		

मूलआदेश
ORDER-IN-ORIGINAL

1. इस आदेश की मूल प्रतिकी प्रतिलिपि जिस व्यक्तिको जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।

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

F. No. S/10-25/2016-17/CAC/NS-IV(Comm)/JNCH
SCN F.No. DRI/AZU/JRU/INT-04/2015-16 Dated 06.06.2016 &
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2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम १९६२ की धारा १२९(ए) के तहत इस आदेश के विरुद्ध सी ई एस टी ए टी, पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीज़नल बेंच), ३४, पी. डी. मेलोरोड, मस्जिद (पूर्व), मुंबई- ४००००९को अपील कर सकता है, जो उक्तअधिकरण के सहायकरजिस्ट्रार को संबोधित होगी।

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.

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

Main points in relation to filing an appeal:-

फार्म Form	: फार्मन. सीए३, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कमसे कम एक प्रति प्रमाणित होनी चाहिए) Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy)
समय सीमा Time Limit	: इस आदेश की सूचना की तारीख से ३ महीने के भीतर Within 3 months from the date of communication of this order
फीस Fee	: (क) एक हजार रुपये-जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५ लाख रुपये या उस से कम है। (a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less. (ख) पाँच हजार रुपये- जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५ लाख रुपये से अधिक परंतु ५० लाख रुपये 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 (ग) दस हजार रुपये-जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५० लाख रुपये से अधिक है। (c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.
भुगतान की रीति Mode of Payment	: क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीयकृत बैंक द्वारा सहायक रजिस्ट्रार, सी ई एस टी ए टी, मुंबई के पक्षमें जारी किया गया हो तथा मुंबई में देय हो। A crossed Bank draft, in favour of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.

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सामान्य : विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, १९९२, सीमाशुल्क (अपील) नियम, १९८२ सीमाशुल्क, उत्पादन शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, १९८२ का संदर्भ लिया जाए।
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.

इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उस में माँगे गये शुल्क अथवा उद्गृहीत शास्ति का ७.५ % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमाशुल्क अधिनियम, १९६२ की धारा १२९ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी ।

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 129 of the Customs Act 1962.

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Subject:- Adjudication of Show Cause Notice vide F.No. DRI/AZU/JRU/INT-04/2015-16 Dated 06.06.2016 & SCN No. 572/2024-25/CC/EPCG/NS-II/CAC/JNCH Dated 20.06.2024 issued to M/s. Printwell Offset (IEC-2411012403) and others-reg.

Brief Facts of the Case

Whereas M/s Printwell Offset, Rajkot IEC-2411012403 having registered Office at 378/A, Aji GIDC Main Road, Nr. Bavisi Way Bridge, Opp. Sahkari Mandali, Rajkot-360003 (hereinafter also referred to as "PO") were engaged in offset printing business. Intelligence gathered by the officers of Directorate of Revenue Intelligence, Jamnagar indicated that PO, Rajkot had secured an EPCG Authorization No. 2430001677 dated 03.07.2012 from DGFT, Rajkot against which they imported three machines (i) Heidelberg Suprasetter A 106 Model with M-Kits and software and Raptro + 85... (ii) Heidelberg Speedmaster CD 102, Five Color Offset Printing Press 72 x 102 CM..... and (iii) High Speed Cutter Polar N115 Plus including standard equipment & accessories S. No.8231148 under bills of entry No. 8270493 dated 19.10.2012; No. 8288223 dated 22.10.2012 and No. 8288712 dated 22.10.2012 respectively and cleared from Air Cargo Complex, Mumbai and Nhava Sheva-VI, Mumbai. The party had shown export through M/s Nemlaxmi Books (India) Pvt. Ltd, Surat (hereinafter referred to as "Nemlaxmi") and claimed third party export. PO had obtained Export Obligation Discharge Certificate (EODC) from DGFT, Rajkot based on the said exports undertaken by Nemlaxmi, Surat. PO showed job work for Nemlaxmi, Surat by undertaking Title Print (of first and last page) on note books using the imported machine which was later shown exported by Nemlaxmi, Surat. By merely carrying out title print, of two pages, licensee had taken undue benefit of export value of full note book. The value addition of PO in the export value of Nemlaxmi, Surat was only 4.27%. They had obtained EODC from DGFT, Rajkot vide Redemption of EPCG authorization letter dated 30.04.2015, on the basis of misrepresented export value i.e. showing the full value of export undertaken by Nemlaxmi, Surat, the third party exporter. (copy of bill of entry No. 8270493 dated 19.10.2012; 8288223 dated 22.10.2012 and 8288712 dated 22.10.2012; copy of EPCG Authorization No. 2430001677 dated 03.07.2012 and copy of EODC dated 30.04.2015 at Sr. No.1 of RUD).

2. Acting on the intelligence, the officers of DRI Jamnagar visited the premises of PO, Rajkot on 23.04.2015 and collected copy of EPCG Authorization, Bill of Entry, Export Obligation Discharge Certificate and other relevant documents and on scrutiny of documents the intelligence was confirmed.

3. A statement of Shri Jitendra Jadavbhai Kakadia, Partner of the PO, Rajkot was recorded on 29.04.2015 wherein he, interalia stated that:

- a) Printwell Offset was established in April-2011 and there were three other partners in the firm and he was responsible for taking the decisions of the firm in all the matters;
- b) They had obtained zero duty EPCG License No.2430001677 dated 03.07.2012 from DGFT, Rajkot for import Heidelberg Suprasetter A 106 Model with M-Kits and software and Raptro + 85 ...; Heidelberg Speedmaster CD 102, Five Color Offset Printing Press 72 x 102 CM..... and High-Speed Cutter Polar N115 Plus including

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standard equipment & accessories S. No. 8231148 under bills of entry No. 8270493 dated 19.10.2012, No. 8288223 dated 22.10.2012 and No. 8288712 dated 22.10.2012 respectively and availed customs duty exemption of Rs.2,47,49,694/-;

- c) purpose was to import the machineries for undertaking offset UV printing works on the packaging materials and notebooks, the export product declared in the application for EPCG was 48202000-exercise books/note books/writing pads/registers/drawing books and 48026290 ruled paper;
- d) 70% work was undertaken on the imported machineries for printing on the packaging materials and catalogues and 30% works undertaken for printing on note books, exercise books/note books/writing pads/registers/drawing books and ruled paper;
- e) The export obligation against the EPCG License No. 2430001677 dated 03.07.2012 was completed through third party exports and applied for Export Obligation Discharge Certificate to DGFT, Rajkot;
- f) Third party exporter was Nemlaxmi, Surat and the export product was exercise book; that they have undertaken title print on the cover pages of the exercise books for Nemlaxmi, Surat using the machineries imported under EPCG License No. 2430001677 dtd.03.07.2012;
- g) Nemlaxmi has exported the exercise books through JNCH, Nhava Sheva; that they had undertaken title print on cover page on the imported machineries at their unit in Rajkot, for which Nemlaxmi used to send them papers and after completing the work of title print they were sending the printed materials to Surat; that they were charging for the above work and raised invoices to Nemlaxmi;
- h) total amount of Rs.63,47,206/- was charged to Nemlaxmi for the work of title print on cover pages of exercise book and this was the only expense/charges in the whole process of export done by Nemlaxmi;
- i) they had not taken any special permission from DGFT for the work of title print on the exercise book, that the condition sheet to the license provided export obligation through third party export; that they had intimated the Central Excise Authority at Surat and Rajkot about the job work undertaken under provision of Notification No. 214/86-CE dated 25.03.1986;
- j) The materials were sent by Nemlaxmi to their unit for title print through their private vehicle, and after completion of title print, the goods were sent back through private vehicle arranged by them;
- k) He did not have any documentary evidence showing transportation of materials from Nemlaxmi to their unit and the printed materials sending back to Nemlaxmi.
- l) Shri Kamal Bhai, General Manager of Nemlaxmi was the person whom he communicated/contacted;
- m) On being shown that under the EPCG License No. 2430001677 dtd.03.07.2012 they imported capital goods availing duty benefit of Rs.2,47,49,694/- and export obligation was Rs.14,84,98,164/-, they applied for EODC showing export of exercise book/note book/writing pad/register/drawing book (RITC-48202000) and ruled paper (RITC-48026290) valued at Rs.14,84,98,171/- (USD-2673234.40), but the paper sheets were imported/procured by Nemlaxmi and supplied for title print, for which Rs.63,47,206/- was charged i.e except for the title print pre-dominant manufacturing activities

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relating to export product was under taken by Nemlaxmi and also cost wise borne by Nemlaxmi and asked how merely by charging Rs. 63,47,206/- export obligation for the value of Rs. 14,84,98,171/- was shown to be fulfilled by them to which he replied that he agreed to the above, but they had submitted the shipping bills along with the documents to DGFT for EODC and EODC was granted by DGFT. (copy of statement dtd.29.04.2015 at Sr.No. 2 of RUD).

4. A statement of Shri Vimal Kumar Sekhani, Director of Nemlaxmi, Surat was also recorded on 29.06.2015 wherein he interalia stated that;

- a) They had undertaken third party export on behalf of Printwell Offset, Rajkot. They had given job work for outer cover printing to M/s Printwell Offset, Rajkot.
- b) They had supplied printing paper to Printwell Offset, Rajkot which was purchased from M/s BILT Graphic Paper Product Ltd., Indapur, Dist Pune under Tax Invoice cum challans.
- c) The materials were supplied to Printwell Offset, Rajkot by their tempo bearing Registration No. GJ-05-U-7572. Name of the Driver, Challan No. would be provided later if available with them.
- d) Since the goods were transported in their own Tempo, no transport documents were made. The work was done overnight and the same was returned in the same tempo.
- e) They had not entered into any written agreement with M/s Printwell Offset for job work activities and also for third party export.
- f) They were not aware that the intimation for job work was to be given to The Central Excise department as they were not having any Central Excise Registration prior to 2004. Since job work was carried out in the meager quantity, they had not intimated the department.
- g) They had started giving intimation to the Central Excise authority only after audit was carried out in the Year 2013-14. The same point was taken by audit. They had no intention to hide the transaction.
- h) On being asked that the firm being a Central Excise Registered unit they were statutorily required to follow the legal provisions related to the third party export and that they had no evidence to show that the materials were sent to Printwell Offset for title print and also they did not give any intimation which was also statutorily mandatory to be given to Central Excise Authority to which he agreed (copy of statement dtd.29.06.2015 at Sr.No.3 of RUD).

5. A letter was written to the Joint Director General, Jt. DGFT Office, Rajkot vide F.NO. DRI/JRU/INT-03/2015 dated 07.10.2015 in which it was informed that PO, Rajkot by merely carrying out title print (first and last page), had taken undue benefit of export value of full note book. That the value addition of M/s Printwell Offset in the export value of Nemlaxmi, Surat was only 4.27% and accordingly they had obtained EODC on the basis of misrepresented export value i.e. showing the full value of export undertaken by Nemlaxmi, Surat i.e third party exporter. It was also requested to confirm the view taken by DRI urgently and to initiate necessary action against the firm at their end. The Deputy Director General Foreign Trade, Rajkot vide Adjudication Order issued from F.NO.24/21/021/00044/AM13

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dated 02.12.2015 withdrew the redemption issued on 30.04.2015 to M/s Printwell Offset, Rajkot. (Adjudication Order dtd.02.12.2015 at Sr. No.4 of RUD).

6. From the above, it appeared that M/s. Printwell Offset had not completed the export obligation and therefore the said offset printing machines imported under bills of entry No. 8270493 dated 19.10.2012, No. 8288223 dated 22.10.2012 and No. 8288712 dated 22.10.2012 were liable for confiscation under Section 111(o) of the Customs Act, 1962. Accordingly, the offset machines i.e 1) Heidelberg Suprasetter A 106 Model with M-Kits and software and Raptro + 85 ... 2) Heidelberg Speedmaster CD 102, Five Color Offset Printing Press 72 x 102 CM..... 3) High Speed Cutter Polar N115 Plus including standard equipment & accessories S. No.8231148 totally valued at **Rs. 9,57,34,316/-** were placed under Seizure u/s 110 of the Customs Act, 1962 under Seizure Panchnama dated 08.12.2015. The seized goods were handed over to Shri Jitendra Jadhavbhai Kakadia, Partner of PO under Supratnama dated 08.12.2015 (**Copy of Panchnama and copy of Supratnama both dated 08.12.2015 at Sr.No.5 of RUD**).

7. PO vide letter dtd.09.12.2015 addressed to the DGFT, Rajkot and copy to DRI, Jamnagar requested to lift the seizure and open the seal of all the machines. In reply DRI, Jamnagar vide letter dtd.10.12.2015 directed PO to approach the adjudicating authority for provisional release of the seized machines in terms of Section 110(A) of the Customs Act, 1962. (**copy of letter dtd.09.12.2015 and copy reply letter dtd.10.12.2015 at Sr. No.6 of RUD**).

8. PO filed a Special Civil Application No.20606 of 2015 before the Hon'ble High Court of Gujarat at Ahmedabad. The prayer of PO in the SCA was as under;

1. to quash and set aside the order dated 02.12.2015 passed by Respondent No.2 i.e. DGFT, Rajkot
2. to quash and set aside seizure of three offset printing machines imported by the petitioner under bills of entry No.8270493 dtd.19.10.2012, 8288223 dtd.22.10.2012 and 8288712 dtd.22.10.2012 that had been seized under panchnama dtd.08.12.2015
3. to quash and set aside the letter dtd.10.12.2015 issued by the Respondent No.3 i.e. DRI, Jamnagar rejecting the request of lifting the seizure of printing machines seized under panchnama dtd.08.12.2015.

9. PO vide letter dtd.28.12.2015 addressed to the Commissioner of Customs, JNCH and the Commissioner of Customs, Air Cargo Complex, Sahar requested for provisional release of the seized machineries. DRI, Jamnagar vide letter dtd.05.02.2016 forwarded No Objection letter for provisional release of the seized machines. (**Copy of letter dtd.28.12.2015 and letter dtd.05.02.2016 at Sr. No.7 of RUD**).

10. Assistant Commissioner of Customs, EPCG Section JNCH vide letter dtd.09.02.2016 informed PO that the seized machines covered under B/E No.8288223 dtd.22.10.2012 and No.8288712 dtd.22.10.2012 were released provisionally subject to following condition;

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- 1.) Bond for full value of goods.
- 2.) Bank Guarantee for full duty amount
- 3.) Bank Guarantee equal to 25% of duty amount as mentioned above (Copy of letter dtd.09.02.2016 at Sr. No.8 of RUD).

11. PO vide letter dtd.17.02.2016 requested Commissioner of Customs, JNCH to reconsider the amount of Bank Guarantee for provisional release of the seized machines. Assistant Commissioner of Customs, EPCG Section JNCH vide letter dtd.15.03.2016 replied to PO that the request for modification of conditions for provisional release had not been considered (Copy of letter dtd.17.02.2016 and letter dtd.15.03.2016 at Sr. No.9 of RUD).

12. Hon'ble High Court of Gujarat at Ahmedabad vide oral order dtd.29.03.2016 in para 6, 7 and 8 ordered as under;

6. Under the circumstances, without entering into the merits of the contentions of the rival parties, the court is of the view that the interests of justice would be served if the order of provisional release of the seized goods as contained in the communication dated 09.02.2016 is modified to the following extent:

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

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

7. And the petitioner is further required to be directed to furnish a bank guarantee of Rs.43,50,000/- which had been returned to it on account of issuance of the Export Obligation Discharge Certificate

8. In the light of the above discussion, the petition is disposed of in following terms:

1) The order of provisional release of the seized goods dtd.09.02.2016 issued by the Commissioner of Customs, NS IV, JNCH shall stand modified to the following extent: The seized goods shall be provisionally released subject to:

(i) The petitioner furnishing of a bond for the full value of goods.

(ii) The petitioner furnishing a bank guarantee to the extent of 30% of the duty amount.

2) The petitioner shall also furnish a bank guarantee for a sum of Rs.43.50 lakhs. (Copy of the order dtd.29.03.2016 at Sr. No.10 of RUD)

13. The entire course of events can be summarized as follows:

- a) PO, Rajkot had obtained a Zero duty EPCG Authorization No. 2430001677 dated 03.07.2012 from Jt. DGFT, Rajkot. The Duty Saved amount was Rs. 2,62,87,860/-. The export item was "48202000-Exercise books/ Note books/Writing pads/Registers/ Drawing Books and 48026290-Ruled paper". The export obligation was fixed at Rs. 15,77,27,160/- and USD-2839372.81 (FOB Value of export goods). They had imported three machines i.e. 1) Heidelberg Suprasetter A 106 Model with M-Kits and

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software and Raptro + 85 ... 2) Heidelberg Speedmaster CD 102, Five Color Offset Printing Press 72 × 102 CM..... 3) High Speed Cutter Polar N115 Plus including standard equipment & accessories S. No.8231148 and cleared the same under Bill of Entry No. 8270493 dated 19.10.12 at Air Cargo Complex, Sahar, No. 8288223 dated 22.10.12 and No. 8288712 dated 22.10.12 at JNCH, Nhava Sheva against the said Zero duty EPCG Authorization in terms of Custom Notification No. 102/2009 dated 11.09.2009 without payment of customs duty. The declared Assessable Value totally amounted to Rs. 9,57,34,316/- and the total Customs Duty forgone was Rs. 2,47,49,693/-.

- b) PO contacted Nemlaxmi, Surat who were engaged in export of Note Book and as per their verbal understanding PO had printed only title of cover page of the note book exported by Nemlaxmi Books (India) Pvt. Ltd, Surat under 64 Shipping Bills totally valued at USD 2002272.53 and in INR 11,12,26,239/-. Nemlaxmi, Surat was shown as third party exporter under the above mentioned 64 Shipping Bills.
- c) PO had obtained a letter dated 22.09.2014 from Nemlaxmi, Surat wherein a Declaration stating that the goods covered under 64 Shipping Bills were manufactured with the help of the capital goods imported by M/s. Printwell Offset, Rajkot under EPCG Scheme vide EPCG Authorization No. 2430001677 dated 03.07.2012 (copy of letter dated 22.09.14 at Sr. No.11 of RUD).
- d) PO, Rajkot had printed cover pages of Note Books exported under 64 Shipping Bills and the total job work charges was Rs.63,47,206/- but claimed the export value (FOB) of entire note book i.e. USD 2673234.40 and in INR 14,84,98,171/-. The value addition of PO was 4.27% only.
- e) The EPCG Authorization No. 2430001677 dated 03.07.2012 was redeemed by DGFT, Rajkot vide their letter F.No. 24/21/021/00044/AM13 dated 18.06.2012.
- f) The Deputy Director General Foreign Trade, Rajkot vide their letter F.NO.24/21/021/00044/AM13 dated 02.12.2015 had withdrawn the redemption issued on 30.04.2015 to M/s Printwell Offset, Rajkot.
- g) PO had filed SCA No. 20606 of 2015 before the Honble High Court of Gujarat at Ahmedabad.
- h) The Hon'ble High Court of Gujarat at Ahmadabad vide order dated 23.03.2016 had modified the conditions for provisional release of the seized machines.
- i) The Hon'ble High Court did not quash the withdrawal of the redemption of Export Obligation but allowed the petitioner to fulfill export obligation as they still had time in terms of EPCG License.

14. The Hon'ble High Court of Gujarat at Ahmadabad vide the order dated 23.03.2016 at Para 5 also observed that *"In the light of the fact that the principal relief prayed for in this petition has not been pressed. It is not necessary to enter into the merits of the impugned order dated 02.12.2015 withdrawing the redemption issued to the petitioner. However, consequent to the said order, as on date, the petitioner's redemption stands withdrawn. Resultantly, the petitioner firm would be required to fulfill the export obligation in terms of the EPCG scheme authorization granted to it. Since the first part of the export obligation was to be completed within a period of four years. It appears that the petitioner still has time to*

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fulfill the export obligation. As rightly submitted by the learned counsel for the petitioner, if the machines imported under EPCG scheme remain under seizure, the condition thereof is likely to deteriorate, which would not benefit either the petitioner nor the revenue. On the other hand, if the petitioner firm is permitted to use the machines, it may be in a position to fulfill the export obligation, which would be in the benefit of the scheme....."

15. From above, it is clear that the Hon'ble High Court of Gujarat at Ahmadabad had given PO another opportunity to fulfill the export obligation under the EPCG scheme using the imported machines imported under EPCG Authorization No. 2430001677 dated 03.07.2012.

16. It appeared that PO had fulfilled the export obligation and obtained Export Obligation Discharge Certificate wrongly by printing only the cover pages of Note Book i.e. first and last page on the imported machineries which were later shown exported under 64 Shipping Bills by Nemlaxmi and thus wrongly claiming benefit of third party export on the entire value of the note books to the tune of Rs. 14,84,98,171/-. Nemlaxmi, Surat had issued wrong declaration dated 22.09.2014 stating that goods exported under 64 Shipping Bills had been manufactured by PO and on the basis of this wrong declaration PO had obtained Export Obligation Discharge Certificate from DGFT which was subsequently withdrawn by the Deputy Director General Foreign Trade, Rajkot vide their letter dated 02.12.2015. It also appeared that there was no written agreement between the Authorization holder i.e PO and the ultimate exporter i.e Nemlaxmi, Surat as prescribed under Para 5.10(d)(i) as prescribed under Hand Book of Procedure 2015-16. Further PO had not issued any invoice duly incorporating EPCG authorization number and date at the time of dispatch of the goods. Similarly, no lorry receipt/logical evidence for transportation of goods from the premises of PO to the premises of third party i.e Nemlaxmi, Surat was produced by PO which were required as per Para 5.10(d)(ii) & (iii) of Hand Book of Procedure 2015-16. It was evident that PO had violated the condition (9) of the Notification No.102/2009-Cus dtd.11.09.2009 by showing export obligation for the entire value of the note books. The Hon'ble High Court Gujarat in its Order dated 23.03.2016 had not quashed the seizure of the machineries but only modified the conditions of the provisional release and also allowed M/s. Printwell to make further exports to fulfill their export obligation. Therefore, it appeared that the said machineries seized under section 110 and ordered to be provisionally released as per the terms modified by the Hon'ble High of Gujarat were liable for confiscation under Section 111(o) of the Customs Act, 1962 read with Section 124 of the Customs Act, 1962. This Act of M/s. PO had rendered themselves liable for penalty under Section 112(a) of the Customs Act, 1962.

17. Nemlaxmi, Surat, was aware that PO, Rajkot had printed only the cover pages of note book i.e. first and last page, which were exported under 64 Shipping Bills and had knowingly given wrong declaration that the goods exported by them under 64 Shipping Bills were manufactured by PO, Rajkot. Due to the wrong declaration given by Nemlaxmi, Surat, PO, Rajkot had obtained EODC on misrepresented FOB Value. Thus, Nemlaxmi, Surat had facilitated PO in fulfilling the export obligation wrongly. This act of Nemlaxmi, Surat had

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rendered the three machines totally valued at Rs. 9,57,34,316/- liable for confiscation under Section 111 (o) of the Customs Act, 1962 read with Section 124 of the Customs Act, 1962 and thereby made themselves liable for penalty under Section 112(a) of the Customs Act, 1962.

18. Therefore, Printwell Offset, Rajkot having office at 378/A, Aji GIDC Main Road, Nr. Bavisi Way Bridge, Opp. Sahkari Mandali, Rajkot-360003 and IEC-2411012403 was called upon to show cause in writing, to the Commissioner of Customs, Nhava Sheva IV, having his office at Jawarlal Nehru Custom House, Nhava Sheva, Taluka-Uran, Dist-Raigad, Maharashtra-400707, within 30 days from the date of receipt of the Show Cause Notice F.No. DRI/AZU/JRU/INT-04/2015-16 Dated 06.06.2016 as to why: -

- 1) The "Heidelberg Speedmaster CD 102, Five Color Offset Printing Press 72 x 102 CM..... and High Speed Cutter Polar N115 Plus including standard equipment & accessories S. No.8231148" totally valued at Rs. 8,83,26,723/-, imported under Bill of Entry No. 8288223 dtd.22.10.12 and 8288712 dtd.22.10.12 should not be confiscated under Section 111(o) of the Customs Act, 1962 read with Section 124 of the Customs Act, 1962.
- 2) ii) Penalty should not be imposed under Section 112(a) of the Customs Act, 1962 on them.

19. Printwell Offset, Rajkot having office at 378/A, Aji GIDC Main Road, Nr. Bavisi Way Bridge, Opp. Sahkari Mandali, Rajkot-360003 and IEC-2411012403 was also called upon to show cause in writing, to the Commissioner of Customs (Import), Air Cargo Complex, Sahar, having his office at Air Cargo Complex, Sahar, Andheri East, Mumbai within 30 days from the date of receipt of the Show Cause Notice F.No. DRI/AZU/JRU/INT-04/2015-16 Dated 06.06.2016 as to why: -

- 1) The "Heidelberg Suprasetter A 106 Model with M-Kits and software and Raptro + 85 ..." valued at Rs. 74,07,593/-, imported under Bill of Entry No. 8270493 dtd.19.10.12 should not be confiscated under Section 111(o) of the Customs Act, 1962 read with Section 124 of the Customs Act, 1962.
- 2) Penalty should not be imposed under Section 112(a) of the Customs Act, 1962 on them.

20. Further, M/s Nemlaxmi Books (India) Pvt. Ltd, Surat, was called upon to show cause in writing, to the Commissioner of Customs, Nhava Sheva -IV Mumbai having his office at Jawarlal Nehru Custom House, Nhava Sheva, Taluka-Uran, Dist-Raigad, Maharashtra-400707 and to the Commissioner of Customs (Import), Air Cargo Complex, Sahar, having his office at Air Cargo Complex, Sahar, Andheri East, Mumbai, within 30 days from the date of receipt of the Show Cause Notice F.No. DRI/AZU/JRU/INT-04/2015-16 Dated 06.06.2016 as to why penalty should not be imposed upon them under Section 112(a) of the Customs Act, 1962.

21. Since the Hon'ble High Court of Gujarat in its order dated 29.03.2016 had not quashed the order of the Jt. DGFT dated 02.12.2015 withdrawing the EODC issued to the

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noticee but allowed them to fulfill the export obligation by making further exports; the SCN F.No. DRI/AZU/JRU/INT-04/2015-16 Dated 06.06.2016 was issued only to cover the seizure of the plant and machinery and the duty foregone on the import of machinery was not demanded in the said show cause notice and the same would be examined on the expiry of the export obligation period available under the said EPCG license in consultation with the office of the Joint DGFT.

22. All the noticees were required to produce at the time of showing cause, all the evidence upon which they intended to rely in support of their defence. They were further directed to inform the Adjudicating Authority, as to whether they desired to be heard in person before the case was adjudicated within 30 days from the date of receipt of the notice. If no cause was shown within 30 days from the date of receipt of the notice or if they failed to appear before the Adjudicating Authority, when the case was posted for hearing, the case would be adjudicated on the basis of evidence available on the records, ex parte without any further notice to them.

23. Corrigendum No. DRI/AZU/JRU/INT-04/2015-16 dated 15.07.2016 to the SCN F.No. DRI/AZU/JRU/INT-04/2015-16 Dated 06.06.2016 was issued by the DRI, Ahmedabad Zonal Unit whereby following correction was made: -

Para 19 at page no. 10, Para 20 at page no. 11 and copy to at Sr. No. 2 at page no. 12 of the said show cause notice, may be read as:

19. Now, therefore, Printwell Offset, Rajkot having office at 378/A, Aji GIDC Main Road, Nr. Bavisi Way Bridge, Opp. Sahkari Mandali, Rajkot-360003 and IEC-2411012403 is hereby called upon to show cause in writing, to the Commissioner of Customs (IV), (Air Cargo Complex-Export), Air Cargo Complex, Sahar, Mumbai having his office at Air Cargo Complex, Sahar, Andheri East, Mumbai within 30 days from the date of receipt of this Show Cause Notice as to why:-

i) The "Heidelberg Suprasetter A 106 Model with M-Kits and software and Raptro + 85 ..." valued at Rs. 74,07,593/-, imported under Bill of Entry No. 8270493 dtd.19.10.12 should not be confiscated under Section 111(o) of the Customs Act, 1962 read with Section 124 of the Customs Act, 1962.

ii) Penalty should not be imposed under Section 112(a) of the Customs Act, 1962 on them.

20. Now, therefore, M/s Nemlaxmi Books (India) Pvt. Ltd, Surat, is hereby called upon to show cause in writing, to the Commissioner of Customs, Nhava Sheva -IV Mumbai having his office at Jawaharlal Nehru Custom House, Nhava Sheva, Taluka-Uran, Dist-Raigad, Maharashtra-400707 and to the Commissioner of Customs (IV), (Air Cargo Complex-Export), Air Cargo Complex, Sahar, Mumbai having his office at Air Cargo Complex, Sahar, Andheri East, Mumbai, within 30 days from the date of receipt of this Show Cause Notice as to why penalty should not be imposed upon them under Section 112(a) of the Customs Act, 1962.

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Copy to:

2. Commissioner of Customs (IV), (Air Cargo Complex-Export), Air Cargo Complex, Sahar, Mumbai having his office at Air Cargo Complex, Sahar, Andheri East, Mumbai for adjudication purpose.

24. Pursuant to work allocation in the jurisdiction as ordered vide Public Notice No. 91/2018 dated 30.05.2018 issued by the Additional Commissioner pf Customs, Chief Commissioner's Office, Mumbai-II, another Corrigendum dated 28.03.2019 to the SCN F.No. DRI/AZU/JRU/INT-04/2015-16 Dated 06.06.2016 read with Corrigendum No. DRI/AZU/JRU/INT-04/2015-16 dated 15.07.2016 was issued by the DRI, Ahmedabad Zonal Unit whereby following correction was made: -

Para 18 at page no. 10, Para 20 at page no. 11 and page no. 12 of the said show cause notice read with Corrigendum No. DRI/AZU/JRU/INT-04/2015-16 dated 15.07.2016, may be read as:

18. Now, therefore, Printwell Offset, Rajkot having office at 378/A, Aji GIDC Main Road, Nr. Bavisi Way Bridge, Opp. Sahkari Mandali, Rajkot-360003 and IEC-2411012403 is hereby called upon to show cause in writing, to the Commissioner of Customs, Nhava Sheva-II, having his office at Jawaharlal Nehru Custom House, Nhava Sheva, Taluka-Uran, Distt.- Raigad, Maharashtra-400707, within 30 days from the date of receipt of this Show Cause Notice as to why:-

20. Now, therefore, M/s Nemlaxmi Books (India) Pvt. Ltd, Surat, is hereby called upon to show cause in writing, to the Commissioner of Customs, Nhava Sheva -II Mumbai having his office at Jawaharlal Nehru Custom House, Nhava Sheva, Taluka-Uran, Dist-Raigad, Maharastra-400707 and to the Commissioner of Customs (IV), (Air Cargo Complex-Export), Air Cargo Complex, Sahar, Mumbai having his office at Air Cargo Complex, Sahar, Andheri East, Mumbai, within 30 days from the date of receipt of this Show Cause Notice as to why penalty should not be imposed upon them under Section 112(a) of the Customs Act, 1962.

Copy to:

1. Commissioner of Customs, Nhava Sheva-II, Jawaharlal Nehru Custom House, Nhava Sheva, Taluka-Uran, Dist-Raigad, Maharastra-400707- for adjudication purpose.

25. Since the noticees were asked to show cause to two different adjudicating authorities in respect of imports made by them at two Ports (i.e Mumbai Air Cargo & Nhava Sheva port) under their respective jurisdictions, the Principal Director General Revenue Intelligence (DGRI) issued Notification No.21/2019-Customs (NT/CAA/DRI) dated 13.05.2019 whereby the Principal Commissioner/ Commissioner of Customs (Nhava Sheva-II), Jawaharlal Nehru Custom House, Raigad was appointed as Common Adjudicating Authority for the purpose of adjudication in respect of all imports covered in the Show Cause Notice dated 06.06.2016 vide F.No. DRI/AZU/JRU/INT-04/2015-16 read with Corrigenda dated 15.07.2016 and 28.03.2019.

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26. Thereafter, in light of Hon'ble Supreme Court's judgement dated 09.03.2021 in the case of M/s. Canon India Pvt Ltd and also to the Instruction No. 04/2021-Customs dated 17.03.2021 issued by CBIC giving direction to keep SCN pending, the proper officer had kept the case in Call Book category on 30.09.2021 in terms of section 28(9A)(C) of the Customs Act, 1962 and the adjudication proceeding were kept in abeyance till such time Board issues clarification with regard to the SCN. Intimation letter dated 01.02.2022 was also sent to all the noticees in terms of section 28(9A)(C) *ibid*.

27. Moreover, with reference to the demand and recovery of duty involved in the goods imported through multiple ports viz. Mumbai Air Cargo, Nhava Sheva under a single EPCG Authorisation, the competent authority i.e, Commissioner of Customs, NS-II, JNCH, Nhava Sheva, Tal: Uran, Dist.-Raigad, Maharashtra-400707 issued Show Cause Notice No. 572/2024-25/CC/EPCG/NS-II/CAC/JNCH Dated 20.06.2024 in terms of the Notification No. 102/2009-Cus dated 11.09.2009 read with Section 143 (3) of Customs Act, 1962 since the port of registration in the EPCG Authorisation was Nhava Sheva Sea (INNSA1) and the Bond & Bank Guarantee had been executed at JNCH, Nhava Sheva.

28. Above mentioned SCN No. 572/2024-25/CC/EPCG/NS-II/CAC/JNCH Dated 20.06.2024 brought out the following additional facts: -

29. M/s. Printwell was permitted by Hon'ble High Court to fulfil export obligation as per the terms of the EPCG authorization. The export obligation period in respect of EPCG authorization No. 2430001677 dated 03.07.2012 lapsed on 02.07.2018. Therefore, the Joint Director, DGFT, Rajkot was requested vide letter dated 02.01.2019 (RUD No.18) to inform actions taken in respect of the authorization and the then status thereof. In response, the Deputy Director, DGFT, Rajkot vide letter No. 24/21/021/00044/AM13 dated 05.02.2019 (RUD No.19) informed that M/s. Printwell had been informed to file fresh redemption as per Para 5.10(c) of the HBOP.

30. Therefore, M/s. Printwell was requested vide letter dated 08.05.2019 (RUD No.20) to submit copy of application for redemption/EODC, copy of EODC/ redemption certificate issued by DGFT, copies of all the shipping bills under which export obligation had been fulfilled by them. In response, M/s. Printwell vide their letter dated 16.05.2019 (RUD No.21) replied that all the documents had been handed over to the investigating officer while recording statement on 29.04.2015.

31. A summons dated 24.06.2019 was issued to Shri Jitendra Jadavbhai Kakadia, partner of M/s. Printwell to remain present on 08.07.2019 for giving statement and producing documents i.e., application for redemption/ EODC, copy of EODC/ redemption certificate, shipping bills under which export obligation had been fulfilled after the order dated 23.03.2016 of Hon'ble High Court, copies of sales agreement or purchase order etc. In response, M/s. Printwell vide their letter dated 04.07.2019 (RUD No.22) informed that the Deputy Director, DGFT, Rajkot has vide Order-in-Original F.No.24/21/021/00044/AM13

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dated 28.07.2016 ordered that "the noticee has done third party exports with value addition in the export of 4.27%. So this case would be referred to Director General of Foreign Trade, New Delhi for Foreign Trade Policy (2009-15) clarification whether full export value of the exported products should be considered under the Export obligation or corresponding value addition of 4.27% should be considered under Export Obligation". M/s. Printwell also informed that the Dy. DGFT, Rajkot vide letter F No. 24/21/021/00044/AM13 dated 25.02.2019 had made reference in this regard to EPCG Section, DGFT, New Delhi. M/s. Printwell also submitted copies of the OIO dated 28.07.2016 and letter dated 25.02.2019 issued by the Deputy Director, DGFT, Rajkot."

32. Therefore, the matter was again referred to the Joint Director, DGFT, Rajkot vide letter dated 25.04.2019 (RUD No.23) followed by reminders, to ascertain the decision taken. The Joint Director, DGFT, Rajkot vide letter No. F.No. 24/21/021/00044/AM13 dated 28.08.2020 (RUD No.24) informed that M/s. Printwell had neither submitted any request for redemption of the authorization nor any document evidencing fulfilment of export obligation and thus the DGFT had not given any closure letter. It was further informed that the DGFT, Rajkot had made reference to DGFT (HQ) in a similar case and it was clarified that "there is no provision for job work in the FTP 2009-14" and therefore, any export made contrary to provisions of FTP may not be considered towards fulfilment."

33. In view of the clarification issued by the DGFT, a summons No. CBIC-DIN-202010DDZ100004P6BBO dated 12.10.2020 was issued to M/s. Printwell to give statement/evidence on 22.10.2020 and produce documents i.e., copy of application for redemption/ EODC, copy of redemption/ EODC, list of shipping bills under which EO has been fulfilled etc. Shri Jitendra Jadavbhai Kakadia, partner of M/s. Printwell appeared on 22.10.2020 and submitted a letter dated 19.10.2020 (RUD No.25) wherein they informed that vide their letter dated 06.07.2019, they had requested DGFT for clarification in the matter. He said that in the absence of any clarification regarding shortfall in export obligation already done by them, they were not in a position to export anything further against the EPCG licence. Thus, no document sought in the summons was available with him. Statement of Shri Jitendra Jadavbhai Kakadia was recorded on 22.10.2020 (RUD No.26) wherein he stated that:

- i. their routine business was manufacturing of brochures, packaging boxes, title pages of notebook/ exercise book etc. and job work of offset printing etc. He was working partner and looks after work related to job work, Customs matters, DGFT matters, banking work, purchase of raw material. He took final decision in all the matter and therefore, he was responsible for all the business activities of M/s. Printwell. They had received Show Cause Notice No.DRI/AZU/JRU/INT-04/2015-16 dated 06.06.2016 issued by the Additional Director General, Directorate of Revenue Intelligence, Ahmedabad. He had read all the relied upon documents and agreed with the facts mentioned in statements, panchnama and other documents enclosed with the Show Cause Notice dated 06.06.2016. He was fully aware of the inquiry conducted by DRI.
- ii. after 2016, they had not exported any goods under EPCG authorization No.2430001677. Therefore, he was unable to produce any document/ information as

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called for vide summons dated 12.10.2020. The Deputy Director, DGFT, Rajkot vide OIO dated 28.07.2016 had ordered that the case will be referred to DGFT, New Delhi for clarification. The Dy Director, DGFT, Rajkot had referred the matter to DGFT, New Delhi vide letter dated 25.02.2019 and they had submitted copies of the DGFT order and letter vide their letter dated 04.07.2019. They had also sent reminders to DGFT on 06.07.2019 and 03.09.2020. Till that date, they had not received any reply from DGFT.

- iii. they had obtained zero duty EPCG Authorization No. 2430001677, dated 03.07.2012 and imported printing machinery namely Heidelberg Suprasetter A105, Heidelberg Speed master CD 102 Five Colour Offset printing press, and High-Speed Cutter Polar N 115 along with accessories of these machines. All these machines were imported under Bills of Entry No. 8270493/19.10.2012, No. 8288223/22.10.2012 and 8288712/22.10.2012 and Customs duty exemption of Rs. 2,47,49,694/- under Notification No.102/2009- Cus dated 11.09.2009 was availed by them. As per the condition of the Zero duty EPCG authorization and Customs Notification No.102/2009-Cus dated 11.09.2009, they were required to export the goods namely exercise books/ notebooks/ writing pads/ registers/ drawing books (ITC HS 48202000) and ruled paper (ITC HS 48026290) having FOB value of six times the duty saved. They were required to export the goods during six years from the date of EPCG authorization No. 2430001677 dated 03.07.2012 (i.e., during 03.07.2012 to 02.07.2018).
- iv. all the machines imported under EPCG authorization No.2430001677 were lying at his print unit situated at Plot No. 378, Aji GIDC main road, Opp. Sahkar Bhawan, Nr Bavasi way bridge, Rajkot.
- v. during the export obligation period from 03.07.2012 to 02.07.2018, they fulfilled their export obligation only by third party exports through M/s. Nemlaxmi, wherein they had printed title pages of exercise book/ notebook/ writing pad/ register/ drawing book (RITC/ CTH 48202000) and Ruled paper exported by M/s. Nemlaxmi Books (India) Pvt. Ltd. The list of shipping bills was as per the 'No Objection Certificate' dated 22.09.2014 given by M/s. Nemlaxmi. Except those third-party exports mentioned in the certificate dated 22.09.2014, they had not made any direct or third-party exports under EPCG scheme. They received the printing charges only. They had not undertaken any other process on the exported goods. They had not purchased title pages or papers of the exported exercise books/ notebooks. All their third-party exports were only through M/s. Nemlaxmi during the year 2013 and 2014. The contract with M/s. Nemlaxmi was oral and no written agreement/ contract was signed for the printing work of the exported goods. The goods were dispatched in the truck sent by M/s. Nemlaxmi, therefore, they did not have lorry receipts in respect of the goods dispatched to the third party exporter, M/s. Nemlaxmi.
- vi. as regards the process carried out by them on the exported goods, he stated that the title papers/ pages of exported exercise books/ notebooks were supplied by M/s. Nemlaxmi. They carried out cutting/ sizing and printing on the same using the imported offset machines. They received printing charges of Rs. 63,47,206/- through cheque from M/s. Nemlaxmi.

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- vii. they manufactured notebook/ exercise books similar to the exported goods, for selling in the local market. But the quantity was limited. They printed title pages of notebook/ exercise books and remaining work was done through job work from other units because for bulk ruling (lining) of notebook / exercise book papers, "paper ruling machine" was required, which they did not have.
- viii. on being asked about fulfilment of export obligation after the order dated 23.06.2016 of Hon'ble High Court, he stated that they had not fulfilled any export obligation, except third party exports through M/s. Nemlaxmi that was done earlier. During the period from 03.07.2018 to till that date (i.e., after completion of EO period), they had not exported any goods under EPCG scheme. They had not received EODC or redemption certificate from DGFT.
- ix. on being shown a letter No. 24/21/021/00044/AM13 dated 28.08.2020 of the Joint Director, DGFT, Rajkot, according to which the DGFT (HQ) had clarified that "there is no provision for job work in the FTP 2009-14", Shri Jitendra Kakadia agreed that as per the clarification given by DGFT (HQ) Delhi, the job work could not be considered. He further stated that they had not made any application for redemption, EODC or extension of export obligation.
- x. He admitted that in the event of failure to fulfil the conditions of EPCG authorization No. 2430001677 and conditions framed under FTP-2009-2014, HBOP and Customs Notification No.102/2009-Cus dated 11.09.2009, they were required to pay duty along with interest. As per the clarification dated 28.08.2020 given by DGFT, the condition relating to fulfilment of export obligation, they had not fulfilled the conditions. However, he said that he would check with DGFT authorities as they had not received any clarification from DGFT.

34. M/s. Printwell, vide their letter dated 31.10.2020 (RUD No.27) submitted copy of ledger account of M/s. Nemlaxmi for the FY 2013-14 and copy of relevant bank statement of SBI A/c No.33041592335 evidencing receipt of job work charges of exported goods and online Ecom application No.24/11/012/40300/0714/0181 dated 30/31.10.2020 made to Policy Relaxation Cell, DGFT, New Delhi regarding extension of EO period. Shri Jitendra Jadavbhai Kakadia informed that he was not well versed with English, but his statement was recorded in English only. Therefore, he requested that submissions made by him in letters dated 16.05.2019, 04.07.2019 & 19.10.2020 and online Ecom application might be taken on record and considered as his submissions. Shri Jitendra Kakadia further submitted that neither the Joint Director, DGFT, Rajkot nor any of other proper officer from DGFT, HQ, New Delhi had issued any clarification in response to letter No.24/21/021/00044/AM13 dated 25.02.2019 of the Deputy Director, DGFT, Rajkot. He further submitted that the issue was not about "any provision for job work in the FTP 2009-14" but issue involved was value to be adopted for the purpose of computing export obligation when exports were made through third party.

35. Since M/s. Printwell informed that they had applied to the Policy Relaxation Committee, DGFT, Delhi vide their Ecom Application No. 24/11/012/40300/ 0714/0181 dated 30/31.10.2020, the Deputy Director (PRC), DGFT, New Delhi was requested vide

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letter No. DRI/JRU/INT04/2015 Pt.I dated 25.11.2020 to inform the then status of the PRC application. The Deputy Director, PRC, DGFT, New Delhi vide letter No.01/60/162/454/AM19/PRC dated 01.12.2020 (RUD No.28) informed that no request/application had been found received from M/s. Printwell Offset in PRC division as on date and hence no information was available with them regarding the same.

36. As no application before PRC appeared to have been made by M/s. Printwell, a summons CBIC-DIN-202012DDZ1000094029C dated 18.12.2020 was issued to Shri Jitendra Jadavbhai Kakadia, partner of M/s. Printwell to produce documents and give evidence. Shri Jitendra Jadavbhai Kakadia appeared on 18.12.2020 and submitted a letter dated 18.12.2020 (RUD No.29) wherein he submitted that their DGFT consultant had submitted the application to PRC on 14.12.2020. Statement of Shri Jitendra Jadavbhai Kakadia was recorded on 18.12.2020 (RUD No.30) wherein he reiterated and confirmed the contents of his statement dated 22.10.2020. He further stated that:

- i. His statement dated 22.10.2020 was explained to him in Gujarati by the DRI officer as well as his friend.
- ii. ii) On being shown letter No.01/60/162/454/AM19/PRC dated 01.12.2020 wherein the Deputy Director (PRC), DGFT, New Delhi has informed that no such application from M/s. Printwell was received, Shri Jitendra Kakadia stated that as per his knowledge, his consultant had made an application to the PRC, DGFT, New Delhi. They had sent hard copy of their application on 14.12.2020. He assured and undertook that in the event of no relief from PRC, DGFT, New Delhi, he would pay Customs duty Rs. 2,47,49,694/- along with interest.
- iii. iii) Being main Partner/ Managing Partner and authorized signatory of the partnership firm, he had signed application for EPCG authorization, Customs Bond and other documents. He had taken decision regarding printing job work and export thereof.
- iv. iv) As regards job work of M/s. Nemlaxmi, he negotiated and discussed the matter with Shri Vimal, who was the owner of M/s. Nemlaxmi Books India Pvt. Ltd.

37. M/s. Printwell vide their application dated 14.12.2020 to the PRC, DGFT, New Delhi had requested to issue proper clarification regarding balance amount of export obligation and requested to grant further period of 4 years for completing balance export obligation. The DGFT, EPCG section, New Delhi vide letter F.No.01/60/162/395/AM-21/PRC/EPCG/25 dated 17.12.2021 to DRI clarified as under;

"It was observed that since RA has cancelled EODC issued to M/s. Printwell Offset, the DRI can take further action as they deem fit. This case is not a matter of EPCG committee as there is no relaxation or nexus involved".

Thus, it appeared that PRC had rejected the application for extension of EO period and clarification on third party exports. In this context, it was evident that M/s. Printwell was liable to pay duty saved at the time of import of machineries to the extent of not fulfillment of export obligation as they had failed to fulfill the conditions prescribed under the exemption notifications.

Legal Provisions under the Customs Act, 1962:-

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38. M/s. Printwell had imported capital goods under Zero duty EPCG Scheme vide Bill of Entry No.8270493/19.10.2012, No.8288223/22.10.2012 & No.8288712/22.10.2012 having total assessable value of Rs.9,57,34,315/- and availed Customs duty exemption of Rs.2,47,49,694/- under Notification No.102/2009-Cus dated 11.09.2009 and EPCG Authorisation No.2430001677. This period was covered under the provisions of Foreign Trade Policy 2009-2014.

38.1. Chapter 5 of Foreign Trade Policy 2009-2014 (FTP 2009-2014) titled Export Promotion Capital Goods (EPCG) Scheme (as amended on 05.06.2012 vide DGFT Notification No.01 (RE-2012)/2009-14 dated 05.06.2012) and relevant sub paras there under read as:-

"Zero duty EPCG Scheme

5.1 (a) Zero duty EPCG scheme allows import of capital goods (including CKD/SKD thereof as well as computer software systems) for preproduction, production and post production at zero Customs duty, subject to an export obligation **equivalent to 6 times of duty saved on capital goods imported under EPCG scheme, to be fulfilled in 6 years** reckoned from Authorization issue-date. (b) (c) (d)..... (h).....

Conditions for import of Capital Goods

5.4 Import of capital goods shall be subject to Actual User condition till export obligation is completed.

Export obligation

5.5 Following conditions shall apply to the fulfillment of the export obligation:-

(a) Export Obligation shall be fulfilled by export of goods manufactured /services rendered by the applicant.

(b) EO under the scheme shall be, over and above, the average level of exports achieved by him in the preceding three licensing years for the same and similar products within the overall EO period including extended period, if any; except for categories mentioned in paragraph 5.7.6 of HBP Vol. I. Such average would be the arithmetic mean of export performance in the last three years for the same and similar products provided that Premier Trading House (PTH) shall have option of fixing average level of exports based on arithmetic mean of export performance in the last five years instead of three years.

(c) Upto 50% EO may also be fulfilled by exports of other good(s) manufactured or service(s) provided by the same firm / company, or group company / managed hotel, which has the EPCG authorization. However, EPCG authorizations issued prior to 01.04.2008 will be governed by earlier policy provisions.

(d) However, in such cases, additional export obligation imposed shall be over and above average exports achieved by the unit/company/group company/managed hotel in preceding three years for both the original and the substitute product(s) /service(s), despite exemptions in Para 5.7.6 of HBP v1.

(e) Shipments under Advance Authorization, DFRC, DFIA, or Drawback scheme, or incentive schemes under Chapter 3 of FTP; would also count for fulfillment of EPCG EO.

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(f) EO can also be fulfilled by the supply of ITA-I items to DTA, provided realization is in free foreign exchange.

(g) Exports shall be physical exports. However, deemed exports as specified in paragraph 8.2 (a), (b), (d), (f), (g) & (j) of FTP shall also be counted towards fulfillment of export obligation, along with usual benefits available under paragraph 8.3 of FTP.

(h) Royalty payments received in freely convertible currency and foreign exchange received for R&D services shall also be counted for discharge under EPCG. Payment received in rupee terms for port handling services, in terms of Chapter 9 of FTP shall also be counted for EO discharge.

38.2. Chapter 5 of Handbook of Procedure (HBOP) 2009-14 framed under Foreign Trade Policy 2009-14 vide DGFT Public Notice No.1/2009-14 dated 27.08.2009 and revised vide Public Notice No. 1(RE-2012)/ 2009- 2014 dated 05.06.2012 provides procedure to be followed in respect of EPCG authorizations and fulfillment of export obligation. Relevant sub paras of the Chapter 5 of the HBOP (2009-14) pertaining to conditions for fulfillment of export obligation are as under:

5.7 Conditions for fulfilment of Export Obligation In addition to conditions mentioned in paragraph 5.5 of FTP, following conditions shall also be applicable for fulfilment of export obligation:

5.7.1 (a) EPCG authorization holder shall export either directly or through third party(s). If a merchant exporter is EPCG authorization holder, name of supporting manufacturer shall also be indicated on shipping bills.

(b) At the time of export, EPCG authorization number and date shall be endorsed on shipping bills which are proposed to be presented towards discharge of export obligation.

5.7.2 Export proceeds shall be realized in freely convertible currency except for deemed exports. Exports to SEZ units /Supplies to developers/ Co-developers, irrespective of currency of realization would also be counted for discharge of Export Obligation.

5.7.3

5.7.4.....

5.7.5.....

5.7.6.....

5.8 The Authorization holder under the EPCG scheme shall fulfill the export obligation over the specified period in the following proportions:

For Zero Duty EPCG Scheme

Period from the date of issue of authorisation	Minimum Export Obligation to be fulfilled
Block of 1st to 4th year	50%
Block of 5th and 6th year	50%

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39. The Ministry of Finance issued Notification No.102/2009-Cus., dated 11.09.2009 (as amended) to give effect to the Zero duty EPCG scheme in accordance with Para 5.1 of Chapter-5 of the FTP 2009-14. The Notification No.102/2009-Cus. dated 11.09.2009 exempted goods specified in the Table annexed thereto, from:

- (i) the whole of the duty of Customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), and
- (ii) the whole of the additional duty leviable thereon under Section 3 of the said Customs Tariff Act, when specifically claimed by the importer.

The exemption under this notification was subject to certain conditions, and the relevant conditions read as follows:

"2. The exemption under this notification shall be subject to the following conditions, namely; -

- (1).....
- (2).....
-
- (6) that the goods imported shall not be disposed of or transferred by sale or lease or any other manner till export obligation is complete.
- (7) that the importer executes a bond in such form and for such sum and with such surety or security as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs binding himself to comply with all the conditions of this notification as well as to fulfill export obligation on Free On Board (FOB) basis equivalent to six times the duty saved on the goods imported as may be specified on the authorization, or for such higher sum as may be fixed or endorsed by the Licensing Authority or Regional Authority in terms of Para 5.10 of the Handbook of Procedures Vol I, issued under para 2.4 of the Foreign Trade Policy, within a period of six years from the date of issue of Authorization, in the following proportions, namely :-

S. No.	Period from the date of issue of Authorization	Proportion of total export obligation
(1)	(2)	(3)
1.	Block of 1st to 4th year	50%
2.	Block of 5th to 6th year	50%

.....
.....

Provided also that export obligation of a particular block may be set off against the excess exports made in the said preceding block(s);

-
- (9) that the importer produces within 30 days from the expiry of each block from the date of issue of authorization or within such extended period as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow,



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evidence to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs showing the extent of export obligation fulfilled, and where the export obligation of any particular block is not fulfilled in terms of the preceding condition, the importer shall within three months from the expiry of the said block pay duties of customs equal to an amount which bears the same proportion to the duties leviable on the goods, but for the exemption contained herein, which the unfulfilled portion of the export obligation bears to the total export obligation, together with interest at the rate of 15% per annum from the date of clearance of the goods;

.....
 (13) notwithstanding anything contained in condition (8) above, where the Licensing Authority or Regional Authority grants extension of blockwise period for any block(s) or overall period of fulfilment of export obligation upto a period of two years or regularization of shortfall in export obligation, not exceeding five percent of such export obligation, the said block-wise period or overall period of export obligation shall be extended or condoned by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be : Provided that in respect of sick units referred to in the first proviso to condition (6), extension of overall period of export obligation shall not be allowed.

39.1. Thus, from the above, it was evident that the import of Capital Goods under EPCG Authorizations Scheme was allowed, subject to condition that the importer had to comply with all the conditions of the said Notifications as well as to fulfill export obligation on Free on Board (FOB) basis equivalent to six times/Eight times (whichever applicable in Concessional Duty EPCG scheme or Zero Duty EPCG Scheme) the duty saved on the goods imported in terms of the Foreign Trade Policy-2009- 2014, within specified period (block wise) from the date of issuance of EPCG Authorizations. Also the said Notifications provide that **'where the export obligation of any particular block is not fulfilled in terms of the prescribed conditions, the importer shall within three months from the expiry of the said block pay duties of customs of an equal amount equal to that portion of duties leviable on the goods, but for the exemption contained herein which bears the same proportion as the unfulfilled portion of the export obligation bears to the total export obligation together with interest at the rate of 15 per cent per annum from the date of clearance of the goods'.**

39.2. Further, the said Notifications provide that the goods imported should not be disposed of or transferred by sale or lease or any other manner till export obligation is completed. The importer was also required to file a bond before the Customs Authorities, wherein the importer was required to undertake that they would observe all the terms and conditions specified in the notification and the EPCG authorization. Further, the provisions of FTP 2009-14 read with HBOP 2009-14 and condition sheet attached with the EPCG authorization stipulated that the export obligation would be fulfilled by the use of the imported capital goods.

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39.3. Further, any goods imported into India without complying with the statutory requirements/ conditions were liable for confiscation under Section 111 of the Customs Act, 1962 along with penalty under Section 112 of the Customs Act, 1962. The relevant provisions of Section 111 and Section 112 of the Customs Act, 1962 are as under:

Section 111. Confiscation of improperly imported goods, etc.

The following goods brought from a place outside India shall be liable to confiscation: -

(a)...

.....

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

Section 112. Penalty for improper importation of goods, etc.

Any person, -

(a) who, in relation to any goods, does or omits to do any act which act omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

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

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty 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 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 penalty so determined;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty # not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

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39.4. Any goods exported from India without complying with the statutory requirements/ conditions were liable for confiscation under Section 113 along with penalty under Section 114 of the Customs Act, 1962. The relevant provisions of Section 113 and Section 114 of the Customs Act, 1962 are as under:

Section 113. Confiscation of goods attempted to be improperly exported, etc. -

The following export good shall be liable to confiscation:

(a).....

.....

(i) any goods entered for exportation which do not correspond in respect of value or in any other material particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77.

Section 114. Penalty for attempt to export goods improperly, etc. -

Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 113, or abets the doing or omission of such an act, shall be liable, -

(i)

(ii)....

(iii) In the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is greater.

39.5. Section 114A. Penalty for short-levy or non-levy of duty in certain cases. -

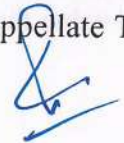
Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has [xxx] been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:

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

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

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may



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be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section [28AA], and twenty-five per cent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

Explanation. - For the removal of doubts, it is hereby declared that -

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (8) of section 28] relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.]

39.6. Section 114AA. and incorrect Penalty for use of false 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.

39.7. Further, any contravention of the Customs Act, 1962 for which no specific penalty is provided is subject to penalty under Section 117 of the Customs Act, 1962. The relevant provisions of Section 117 are as under:

Section 117. Penalties for contravention, etc., not expressly mentioned. - Any person who contravenes any provision of this Act or abets any such contravention who fails to comply with any provision of this act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to penalty not exceeding four lakh rupees.

39.8. Section 143: Power to allow import or export on execution of bonds in certain cases-

1) Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the Assistant Commissioner of Customs or Deputy Commissioner of Customs approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond.

2) If the thing is done within the time specified in the bond, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall cancel the bond

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as discharged in full and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it, and in such a case that person shall not be liable to any penalty provided in this Act or, as the case may be, in such other law for the contravention of the provisions thereof relating to the doing of that thing.

3) If the thing is not done within the time specified in the bond, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law.

Summary of Investigation carried out by JNCH

40. From the scrutiny of the documents and investigation carried out, it appeared that:
- i. M/s. Printwell, Rajkot had obtained Zero Duty EPCG Authorisation No. 2430001677 dated 03.07.2012 from the Regional Authority, DGFT, Rajkot. As per the EPCG Authorization, duty saved amount was Rs.2,62,87,860/- and export item was Exercise Books/ Note Books/Writing Pads/Registers/Drawing Books (ITCHS48202000) and Ruled Paper (ITCHS- 48026290). The EPCG authorization stipulated that the authorization holder was required to export the items worth US\$ 28,39,372.81 (Indian Rs.15,77,27,166/- i.e. six times duty saved amount).
 - ii. M/s. Printwell imported printing machinery namely (1) Heidelberg Suprasetter A105, (2) Heidelberg Speed Master CD 102 Five Colour Offset printing press, and (3) High Speed Cutter Polar N 115 along with accessories of these machines and cleared the same under Bills of Entry No. 8270493/19.10.2012, No.8288223/22.10.2012 and No.8288712/ 22.10.2012 under EPCG scheme and availed Customs duty exemption under Notification No.102/2009-Cus dated 11.09.2009. The declared assessable value of these machineries was Rs. 9,57,34,315/- and actual total duty saved amount was Rs. 2,47,49,694/-.
 - iii. Proportionate export obligation which was required to be fulfilled by M/s. Printwell was US\$ 26,73,234.26 (Indian Rupees 14,84,98,164/-).
 - iv. M/s. Printwell contacted M/s. Nemlaxmi, Surat who was engaged in export of notebook and as per their verbal understanding, M/s. Printwell had printed only title page of the notebooks/ exercise books/ registers/ ruled papers etc. exported by M/s. Nemlaxmi under 64 shipping bills totally valued at USD 20,02,272 having FOB value of Rs. 12,16,46,716/- as per Annexure-A. These shipping bills were filed by M/s. Nemlaxmi wherein name of M/s. Printwell and their EPCG authorization No.2430001677 was declared as third party. In this way, M/s. Printwell had carried out job work of title pages of notebook only and did not manufacture the exported goods.
 - v. M/s. Printwell had printed title pages of notebooks / exercise books / registers exported under the shipping bills as per Annexure - A and total job work charge of Rs. 63,47,206/- was collected from M/s. Nemlaxmi but the entire export value (FOB) of entire notebook/ exercise books/ registers of USD 20,02,272.53 (Total FOB value in Rs.12,16,46,716/-) was claimed under export obligation. The value addition of M/s.

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Printwell was only 4.27% of total EO Rs. 14,84,98,164/- which was required to be fulfilled.

- vi. M/s. Printwell had obtained a "No Objection Certificate" dated 22.09.2014 wherein M/s. Nemlaxmi had given a declaration that the material exported by them against these 64 shipping bills had been manufactured with the help of the capital goods imported by M/s. Printwell under EPCG authorization No. 2430001677 dated 03.07.2012.
- vii. On the basis of the job worked goods exported by M/s. Nemlaxmi, M/s. Printwell fraudulently obtained EODC/ Redemption letter dated 30.04.2015 from the office of the Joint Director, DGFT, Rajkot.
- viii. Consequent upon initiation of inquiry by DRI, the Deputy Director, DGFT, Rajkot had withdrawn the redemption order dated 30.04.2015 and also placed M/s. Printwell under denied entity list, with direction to file fresh redemption request.
- ix. As per the Order dated 23.03.2016 of Hon'ble High Court, M/s. Printwell was required to fulfil the export obligation in terms of the EPCG scheme authorization granted to them. However, M/s. Printwell had admittedly not fulfilled the export obligation.
- x. The Joint Director, DGFT, Rajkot had communicated clarification of DGFT, HQ, wherein it was clarified that "there is no provision for job work in the FTP 2009-14".
- xi. M/s. Printwell vide their application dated 14.12.2020 to the PRC, DGFT, New Delhi requested to issue proper clarification regarding balance amount of export obligation and requested to grant further period of 4 years for completing of balance export obligation. DGFT, EPCG section, New Delhi vide letter F.No.01/60/162/395/AM-21/PRC/EPCG/25 dated 17.12.2021 to DRI clarified that as the RA had cancelled the EODC issued to M/s. Printwell Offset, the DRI could take further action as they deemed fit.

41. From the records and evidences discussed in the foregoing paras, it appeared that the importer, M/s. Printwell imported the Capital Goods i.e. offset printing machinery as stated above, under Bills of Entry No. 8270493 dated 19.10.12; No. 8288223 dated 22.10.12 and No. 8288712 dated 22.10.12 respectively cleared from Air Cargo Complex, Mumbai and JNCH, Nhava Sheva by availing Customs duty exemption of Rs. 2,47,49,694/- under Customs Notification No.102/2009-Cus dated 11.09.2009 and EPCG Authorisation No. 2430001677 dated 03.07.2012. Therefore, they were required to export goods worth US\$ 2673234.27 or INR 14,84,98,164/- (i.e., 6 times duty saved on Capital Goods) during the export obligation period i.e., 03.07.2012 to 02.07.2018. As per the condition of the EPCG authorization, they were required to manufacture Exercise Books / Notebooks / Writing Pads / Registers / Drawing Books (ITCHS 482020000) and Ruled Paper (ITCHS 48026290) by use of the machinery imported under EPCG scheme and export the same under EPCG scheme, so as to avail the duty exemption under the EPCG authorization and Customs Notification No. 102/2009-Cus dated 11.09.2009. However, M/s. Printwell did not fulfill the conditions.

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42.1. It appeared that M/s. Printwell had failed to fulfill both the block as well as complete Export obligations as required under the EPCG Scheme. The DGFT authorities had clarified that there was no provision for job work under FTP 2009-14. Further, The DGFT, EPCG section, New Delhi vide letter F.No.01/60/162/395/AM-21/PRC/EPCG/25 dated 17.12.2021 clarified that as the RA had cancelled EODC issued to M/s. Printwell Offset, the DRI could take further action as they deemed fit. Hence, the third-party exports fraudulently undertaken by M/s. Printwell through M/s. Nemlaxmi did not qualify towards fulfillment of export obligation in as much as M/s. Printwell had carried out printing job work of only title pages of the exported goods. Hence, eligible export obligation fulfilled by M/s. Printwell was NIL.

42. During the inquiry, it was observed from the statements recorded and documents submitted that M/s. Printwell had printed title pages of notebooks exported by M/s Nemlaxmi and received Rs. 63,47,206/- (i.e., 4.27% of EO stipulated) towards job work charges of title page printing. They did not even purchase papers required for printing of title pages, as the same were supplied by M/s Nemlaxmi. M/s. Printwell had never declared M/s Nemlaxmi as supporting manufacturer in their EPCG authorisation. However, M/s. Printwell claimed to have fulfilled export obligation by declaring the exports made through M/s Nemlaxmi, who was actual manufacturer of the exported goods. M/s Nemlaxmi had issued wrong declaration/ NOC dated 22.09.2014 stating that the exported goods had been manufactured with the help of capital goods imported by M/s. Printwell. In fact, except printing title pages, M/s. Printwell had not undertaken any manufacturing activity on the exported goods. Thus, it appeared that the importer had fraudulently claimed the ineligible third party exports against their Export Obligation and also fraudulently obtained EODC from DGFT authorities.

42.1. Further, Shri Jitendra Jadavbhai Kakadia in his statements dated 22.10.2020 and 18.12.2020 had stated that they only printed title pages of the notebooks (which were printed on imported offset printing machinery) and they did not have facility of ruling the papers of notebooks (i.e., making linings on the notebook papers). However, from the goods exported, as detailed in Annexure-A, it appeared that M/s. Printwell had exported the goods i.e. "Ruled Papers" and claimed for export obligation under EPCG Authorisation, however, 'Ruled Papers' were not manufactured/ processed by the machines imported under EPCG scheme.

42.2. Whereas it appeared that M/s. Printwell entered into collusion with M/s Nemlaxmi to fraudulently fulfil the export obligation by exporting the goods which had no nexus with the machines imported by them under EPCG scheme.

42.3. Therefore, it appeared that the third-party exports of the goods having total FOB value of Rs. 12,16,46,716/- as detailed in Annexure-A was not eligible to the importer under the EPCG Scheme as stated above.

42.4. From the investigation, it appeared that the M/s. Printwell had:
a) failed to fulfill export obligation as per the provisions of the EPCG Authorization and Notification No.102/2009-Cus dated 11.09.2009.

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b) mis-used the EPCG scheme in as much as they made fraudulent third-party exports of the goods with intention to evade payment of Customs Duty.

42.5. By not fulfilling export obligation and arranging fraudulent third- party exports, M/s. Printwell had grossly misused the EPCG scheme and contravened the provisions of the Foreign Trade Policy, conditions of the EPCG authorization and the Notification No.102/2009-Cus dated 11.09.2009. The acts and omissions on the part of the importer appeared to have rendered the imported machines liable for confiscation under Section 111(o) of the Customs Act, 1962. A Show Cause Notice No. DRI/AZU/JRU/INT-04/2015-16 dated 06.06.2016 had been issued to M/s. Printwell and M/s Nemlaxmi proposing confiscation of the imported machinery.

42.6. From the discussions above, it appeared that M/s. Printwell had failed to fulfill the Export Obligation prescribed under the EPCG Authorization issued to them and also failed to fulfil the conditions stipulated in the EPCG authorization and Customs Notification No.102/2009-Cus dated 11.09.2009. The said third party export of job worked goods were not eligible as fulfillment of export obligation, as clarified by DGFT authorities. The duty leviable / foregone at the time of import on the said capital goods amounting to Rs. 2,47,49,694/-(Rupees Two Crore, Forty Seven Lakhs, Forty Nine Thousand, Six Hundred and Ninety Four Only) (as detailed in Annexure-B attached) might be demanded and recovered along with interest from M/s Printwell Offset under the provisions of Notification No. 102/2009-Cus dated 11.09.2009 read with conditions of the bond and bank guarantee executed by them at the time of importation of capital goods, in as much as M/s. Printwell had failed to comply with the above stated conditions of the said Notification.

43. All the above acts on the part of the importer, M/s Printwell Offset, Rajkot appeared to be in violation of provisions of Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rule 11 & Rule 14 of the Foreign Trade (Regulation) Rules, 1993, the conditions to the EPCG authorization and Notification No. 102/2009-Cus dated 11.09.2009 which mandate fulfilment of export obligation within specified time (block wise) from the date of issuance of EPCG Authorisation or within the extended time period had also been contravened.

43.1. Further, apart from not fulfilling export obligation in respect of the imported machine, it appeared that the importer had resorted to fraudulent claim of export of the goods which were not produced or manufactured by them, which was the primary condition of the EPCG authorization. M/s. Printwell Offset fraudulently declared third party exports of their job worked goods with the third-party exporter i.e. M/s Nemlaxmi, with sole intention to defraud the exchequer by evading the duty.

43.2. The acts and omissions on the part of M/s. Printwell had rendered the capital goods imported under Zero duty EPCG Authorisation liable for confiscation under Section 111 (o) of the Customs Act, 1962. As a consequence, M/s. Printwell also appeared to have rendered themselves liable for penalty under Section 112 (a) & (b) / 114A of the Customs Act, 1962.



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43.3. M/s. Printwell entered into collusion with M/s Nemlaxmi and wrongly mentioned EPCG authorization No.2430001677 dated 03.07.2012 in the shipping bills of M/s. Nemlaxmi whereas the exported goods were not manufactured by M/s. Printwell, despite knowing that the goods being exported by third party exports would not qualify as export obligation against EPCG authorization. These acts and omissions on the part of M/s. Printwell rendered the goods exported under Shipping Bills as mentioned in Annexure-A, totally valued at Rs. 12,16,46,716/- liable for confiscation under Section 113 (i) of the Customs Act, 1962 and M/s. Printwell Offset appeared liable to penalty under Section 114 (iii). However, since the goods were exported, they were not available for confiscation.

43.4. M/s. Printwell fraudulently obtained EODC from DGFT authorities on the basis of wrong NOC/ declaration dated 22.09.2014 issued by M/s Nemlaxmi with sole intention to defraud the exchequer. This false declaration on the part of M/s. Printwell appeared to have rendered them liable to penalty under Section 114AA of the Customs Act, 1962.

44. Shri Jitendra Jadavbhai Kakadia, Partner of M/s. Printwell obtained EPCG authorization from DGFT, Rajkot in the name of M/s. Printwell Offset and after obtaining the same, he failed to fulfill the export obligation against the import of capital goods under EPCG Authorization. Shri Jitendra Jadavbhai Kakadia had stated in his statement dated 22.10.2020 and 18.12.2020 that he was authorized representative of M/s. Printwell and was responsible for all business activities of the importer firm. He had also admitted that fulfillment of export obligation by printing only title pages on job work and exporting the same through the third-party exporter M/s Nemlaxmi was his decision. He had executed bond before Customs authorities undertaking to fulfill all the conditions. He was aware of the relevant provisions of FTP that as per the said policy and relevant notifications issued by C.B.E.C. (now C.B.I.C.), they had to comply with all the conditions of the said Notifications as well as to fulfill export obligation in terms of the Foreign Trade Policy 2009-2014, within specified period from the date of issuance of EPCG Authorization.

44.1. Shri Jitendra Jadavbhai Kakadia was aware that as per the policy provisions and relevant notifications issued by C.B.E.C. (now C.B.I.C.) they had to fulfill export obligation by exporting the goods manufactured using the capital goods imported under the EPCG scheme by them. Shri Jitendra Jadavbhai Kakadia had also violated the provisions of Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rule 11 & Rule 14 of the Foreign Trade (Regulation) Rules, 1993. Therefore, it appeared that Shri Jitendra Jadavbhai Kakadia, partner of M/s. Printwell had knowingly indulged himself in the act of violation of provisions of Foreign Trade Policy 2009-2014 and conditions imposed under Notification No. 102/2009-Cus., dated 11/09/2009 which rendered the said capital goods imported duty free liable for confiscation under Section 111(o) of the Customs Act, 1962 and therefore had rendered himself liable for penalty under the provisions of **Section 112 (a) & (b) and Section 117** the Customs Act, 1962.

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44.2. By arranging fake/ fraud third party exports by declaring the exports of the goods which were not manufactured by them, Shri Jitendra Jadavbhai Kakadia had rendered the said exported goods liable for confiscation under Section 113 (i) and had thereby rendered himself liable for penalty under **Section 114 (iii)** of the Customs Act, 1962. Shri Jitendra Jadavbhai Kakadia masterminded the fraudulent third-party export by way of collusion with M/s. Nemlaxmi and obtained incorrect NOC/ declaration dated 22.09.2014 from M/s. Nemlaxmi. He was very well aware that the goods being exported by them were not manufactured in their factory and therefore did not qualify for exports against EPCG authorization. However, he knowingly and intentionally made false declaration in their application for EODC (ANF-5B). This false declaration on the part of the importer had rendered him liable to penalty under **Section 114AA** of the Customs Act, 1962.

45. **M/s. Nemlaxmi Books (India) Pvt. Ltd.**, a third-party exporter, entered into collusion with M/s. Printwell. They were very well aware that M/s. Printwell had carried out only job work process on the title pages sent by them and the notebooks/ exercise books etc. exported by them had not been manufactured by M/s. Printwell. Further, M/s Nemlaxmi also declared EPCG authorization number of M/s. Printwell in their shipping bills of ruled papers, as detailed in Table-1 above, which were not manufactured by M/s. Printwell using the machines imported under EPCG. However, they fraudulently mentioned EPCG authorization number 2430001677 of M/s. Printwell in the shipping bills filed by them and also wrongly issued NOC/ declaration dated 22.09.2014 declaring that the material exported by them had been manufactured with the help of the capital goods imported by M/s. Printwell. In fact, M/s Nemlaxmi had manufactured the exported goods by arranging the said job work of printing the title pages. These acts and omissions on the part of M/s. Nemlaxmi rendered the goods exported under Shipping Bills as mentioned in Annexure-A, totally valued at **Rs. 12,16,46,716/-** liable for confiscation under **Section 113 (i)** of the Customs Act, 1962 and had also rendered themselves liable to penalty under **Section 114 (iii)** and **Section 114AA** of the Customs Act, 1962. However, since the goods are exported, they are not available for seizure.

45.1. M/s Nemlaxmi Books (India) Pvt. Ltd. also assisted and abetted M/s. Printwell in defrauding the exchequer by helping them to fraudulently fulfil the export obligation so as to evade payment of Customs duty on the machines imported under EPCG scheme. This act on the part of M/s Nemlaxmi had rendered the imported machines liable for confiscation under Section 111(o) of the Customs Act, 1962 and thereby made themselves liable for penalty under **Section 112 (a) & (b)** and **Section 117** of the Customs Act, 1962.

46. Shri Vimal Kumar Sekhani, being the Director of M/s. Nemlaxmi, Surat had helped in fraudulently mentioning the EPCG Authorization No.2430001677 of M/s. Printwell in the shipping bills filed by M/s. Nemlaxmi, Surat and also wrongly issued NOC/ declaration dated 22.09.2014 declaring that the materials exported by M/s. Nemlaxmi, Surat had been manufactured with-the help of the capital goods imported by M/s. Printwell. In fact, M/s Nemlaxmi had manufactured the exported goods by arranging the said job work of printing the title pages only by M/s. Printwell. M/s. Printwell fraudulently obtained EODC from DGFT authorities on the basis of wrong NOC/declaration dated 22.09.2014 issued by M/s

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Nemlaxmi with sole intention to defraud the exchequer. This false NOC/declaration on the part of Shri Vimal Kumar Sekhani, Director of M/s. Nemlaxmi, Surat appeared to have rendered him liable to penalty under **Section 114 (iii), Section 114AA** and **Section 117** of the Customs Act, 1962.

47. Whereas, it appeared that M/s Nemlaxmi and M/s. Printwell had undertaken the exports of the subject goods having FOB value of **Rs. 12,16,46,716/- (Rupees Twelve Crore, Sixteen Lakhs, Forty-Six Thousand, Seven Hundred and Sixteen Only)**, as shown in Annexure-A to this notice through the ports mentioned below.

Table -2				
Sr. No.	Port of Export	Shipping Bill No. & date	Total Assessable Value (In Rs.)	Jurisdictional Customs Authorities
(1)	(2)	(3)	(4)	(5)
1	Custom House, Mundra, (INMUN1)	As per Annexure-A	10,05,57,378/-	The Principal Commissioner/ Commissioner of Customs, Mundra.
2	Custom House, Nhava Sheva (INNSA1)	As per Annexure-A	2,10,89,778/-	The Principal Commissioner/ Commissioner of Customs, NS-II, JNCH, Nhava Sheva.
Total			12,16,46,716/-	

47.1. M/s Printwell Offset, Rajkot had imported the machineries by filing Bills of Entry under EPCG Authorization No. 2430001677 dated 03.07.2012. The total duty exemption of Rs. 2,47,49,694/- (Rupees Two Crore, Forty-Seven Lakhs, Forty-Nine Thousand, Six Hundred and Ninety Four Only) as enumerated in Annexure-B to this investigation report claimed by M/s. Printwell Offset, Rajkot appeared to be recoverable from them under Notification No.102/2009-Cus. dated 11.09.2009 along with interest, as discussed in para supra. The details of the imported goods, value of the goods and duty exemption availed along with respective Jurisdictional Customs Authorities are detailed below as Table-3:

Table -3					
Sr. No.	CH / Port of Import	Bill of Entry No. & date	Total Assessable Value (in Rs.)	Duty Exemption availed (in Rs.)	Jurisdictional Customs Authorities
(1)	(2)	(3)	(4)	(5)	(6)

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1	Mumbai Air Cargo (INBOM4)	8270493/19.10.2012	74,07,593/-	19,15,046/-	The Pr. Commissioner/ Commissioner of Customs (IV), (Air Cargo Complex - Export) Air Cargo Complex, Sahar, Mumbai
2	Nhava Sheva Sea Port (INNSA1)	8288223/22.10.2012	8,50,10,943/-	2,19,77,437/-	The Principal Commissioner/ Commissioner of Customs, NS-II, JNCH, Nhava Sheva, Tal: Uran, Dist.-Raigad, Maharashtra400707
3	Nhava Sheva Sea Port (INNSA1)	8288712/22.10.2012	33,15,780/-	8,57,211/-	
Total			9,57,34,316/-	2,47,49,694/-	

47.2 In view of above, in the instant case, vide SCN No. 572/2024-25/CC/EPCG/NS-II/CAC/JNCH Dated 20.06.2024, M/s. Printwell Offset was also called upon to show cause to the Commissioner of Customs, NS-II, having office at Jawaharlal Nehru Customs House, Nhava Sheva - II, Tal. Uran, Dist. Raigad, Maharashtra 400 707 as to why:

- (i) The exemption from payment of duty in respect of EPCG Authorisation No. 2430001677 dated 03.07.2012 under Zero duty EPCG scheme read with Notification No.102/2009-Cus dated 11.09.2009 for the capital goods imported vide Bills of Entry as mentioned in Table-3 and Annexure-B to this notice above should not be denied to them;
- (ii) The proportionate Customs Duty foregone of **Rs. 2,47,49,694/- (Rupees Two Crore, Forty-Seven Lakhs, Forty-Nine Thousand, Six Hundred and Ninety Four Only)** as detailed in Annexure-B attached, should not be demanded and recovered from them under Notification No. 102/2009-Cus dated 11.09.2009;
- (iii) Interest as applicable, on the duty demanded above, should not be charged and recovered from them under Notification No. 102/2009-Cus dated 11.09.2009 read with the conditions of the Bond executed by them at the time of import;
- (iv) Penalty should not be imposed upon them under **Section 112(a) & (b)** of the Customs Act, 1962,
- (v) Penalty should not be imposed upon them under **Section 114 (iii)** of Customs Act,1962.
- (vi) Penalty should not be imposed upon them under **Section 114A and Section 114AA** of the Customs Act, 1962;
- (vii) Bonds executed by them at the time of import should not be enforced in terms of **Section 143(3)** of the Customs Act, 1962, for recovery of the Customs Duty of Rs. 2,47,49,694/- and interest thereupon.

47.3. In view of above, in the instant case, vide SCN No. 572/2024-25/CC/EPCG/NS-II/CAC/JNCH Dated 20.06.2024, Shri Jitendra Jadavbhai

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Kakadia, Partner of M/s. Printwell Offset was called upon to show cause to the Commissioner of Customs, NS-II, having office at Jawaharlal Nehru Customs House, Nhava Sheva II, Tal. Uran, Dist. Raigad, Maharashtra 400 707 as to why:

- (i) Penalty should not be imposed on under **Section 112 (a) & (b)**, of the Customs Act, 1962.
- (ii) Penalty should not be imposed on under **Section 114 (iii)** of the Customs Act, 1962.
- (iii) Penalty should not be imposed on under **Section 114AA** of the Customs Act, 1962.
- (iv) Penalty should not be imposed on under **Section 117** of the Customs Act, 1962.

47.4. In view of above, in the instant case, vide SCN No. 572/2024-25/CC/EPCG/NS-II/CAC/JNCH Dated 20.06.2024, M/s. Nemlaxmi Books (India) Pvt. Ltd. was called upon to show cause to the Commissioner of Customs, NS-II, having office at Jawaharlal Nehru Customs House, Nhava Sheva - II, Tal. Uran, Dist. Raigad, Maharashtra 400 707 as to why:

- (i) the goods exported by under Shipping Bill mentioned in Annexure - A, totally valued at Rs. **12,16,46,716/- (Rupees Twelve Crores, Sixteen Lakhs, Forty-Six Thousand, Seven Hundred and Sixteen Only)** should not be confiscated under **Section 113 (i)** of the Customs Act, 1962;
- (ii) Penalty should not be imposed under **Section 114 (iii)** of the Customs Act, 1962
- (iii) Penalty should not be imposed under **Section 114AA** of the Customs Act, 1962
- (iv) Penalty should not be imposed under **Section 117** of the Customs Act, 1962.

47.5. In view of above, in the instant case, vide SCN No. 572/2024-25/CC/EPCG/NS-II/CAC/JNCH Dated 20.06.2024, Shri Vimal Kumar Sekhani, Director of M/s. Nemlaxmi, Surat was called upon to show cause to the Commissioner of Customs, NS-II, having office at Jawaharlal Nehru Customs House, Nhava Sheva - II, Tal. Uran, Dist. Raigad, Maharashtra 400 707 as to why:

- (i) Penalty should not be imposed on under **Section 114 (iii)**, **Section 114AA** and **Section 117** of the Customs Act, 1962.

48. Attention was also invited to Section 127B of the Customs Act, 1962, according to which the noticee might make an application before the Hon'ble Settlement Commission containing a full and true disclosure of the duty liability which had not been disclosed before the proper officer and may obtain immunity from prosecution and penalty subject to the conditions laid down by Hon'ble Settlement Commission, as stipulated in Section 127 (Chapter XIVA) of the Customs Act, 1962.

WRITTEN SUBMISSIONS

49. M/s. Nemilaxmi Books (India) Pvt. Ltd., made submissions dated 06.05.2019 stating that:

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- In the SCN at para 17 it has been alleged that the noticee has issued a wrong declaration dated 22/09/2014 to M/s. Printwell offset, Rajkot IEC 241012403, stating therein that goods exported under 64 Shipping Bill, were manufactured by M/s. Printwell offset, Rajkot; that there was verbal agreement between noticee and M/s. Printwell offset as prescribed under para 5.10 (d)i) of Hand Book of Procedural 2015-16; that the noticee had given wrong declaration knowingly on the basis of which Print well offset, Rajkot had obtained EODC on misrepresented F.O.B. value of Export. Thus, the noticee has facilitated M/s. Printwell offset, Rajkot in fulfilling the export obligation wrongly, which act of noticee have rendered the offset Printwell Machine value at Rs. 8,83,26,723/- liable to confiscation U/s. 111(o) of the Customs act 1962, and thereby attracted noticee liable for imposition of penalty under Section 112(a) of the Customs Act 1962.
- We hereby submit in defence that the impugned SCN has been issued beyond the limitation period of six months from the date of assessment of Bill of Entry bearing No. 8270493, 8288223 and 8288712, which is dated 19/10/2012, 22/10/2012 and 22/10/2012 respectively as per the provision laid down under Section 28(1)(b) of the Customs Act 1962. Hence six months period is already expired on 22/03/2013 by counting the period from the date of BOE. In the present case SCN cannot be legally issued by invoking the extended period of limitation.
- We submit that E.P.C.G. Authorisation No. 2430001677 dated 03/07/2012 was issued by Jt D.G.F.T., Rajkot to M/s. Printwell offset, Rajkot, in terms of the provisions as laid down under para 5.7.1 of Chapter 5 of Hand Books of procedures, stipulating for the compliance of the conditional specified therein in relation to the terms and condition for fulfilment of export obligation which read as under :-
"EPCG Authorisation holder shall export either directly or through third party at the time of export EPCG Authorisation No. and date shall be enclosed on the shipping Bill which are proposed towards discharge of export obligation"
- Thus, it is crystal clear beyond the doubt that only the terms and conditions as stipulated under 5.7.1. of Chapter 5 of Hand Book of procedures for the licensing period of 2009-2014 will be applicable for the compliance to be made as far as the EPCG Authorisation No. 2430001677 dated 03/07/2012 is concerned. Which is dated 03/09/2012, since governed by the provisions as laid down under Hand Books of Procedure in force and in operating for the licensing period 2009-2014 only.
- Para 5.7.1 of chapter 5 of hand Book of procedure for the licensing period 2009-2014 does not talk or stipulate any condition for furnishing the declaration by the main exporter under whose name shipping bill was filed with the customs, which is the subject case matter of the noticee where declaration is required to be issued either in favour of Jt D.G.F.T or addressing the name of the E.P.C.G. Authorisation holder vis-a- vis declaration in question as relied upon by the department to makeout the frivolous show cause Notice.
- In any case however notwithstanding the facts as stated herein above in the foregoing without prejudice it is noteworthy to observe here at this juncture that the declaration dated 22.09.2014 furnished by the noticee and heavily relied upon by the department

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neither is addressed to Jt D.G.F.T Rajkot nor to Printwell offset Rajkot who is the actual E.P.C.G. Authorisation Holder no. 2430001677 dated 03.07.2012 nor contain declaration by the noticee regarding the actual FOB value of goods manufactured by Printwell Offset Rajkot.

- Notification No. 102/2009-Cus dated 11.09.2009 (copy enclosed) contain the definition of manufacture under Sr. No. 5 of explanation attached to the said notification reading as under :- "manufacture has the same meaning as defined in clause (f) of section 2 of the central Excise Act, 1944 where "manufacture" includes any process" incidental or ancillary to the completion of a manufactured product" and the word manufacture, shall be construed accordingly and shall include not only a person who employs hired labour in manufacture of excisable goods but also any person who engages in their manufacture on his own account.
- In accordance with the definition of "manufacture" specified in section 2(f) of the Central excise Act, 1944 implies to mean that even certain manufacturing process carried out by Printwell Offset Rajkot in relation to the completion of manufacturing process of export product by the noticee in its own name would amount to manufacturing operatic carried out by Printwell Offset Rajkot by the use of capital goods imported under E.P.C.G. Authorisation No. 2430001677 dated 03/07/2012 to meet and fulfil terms and conditions as laid down under Para 9.12 of the Foreign Trade Policy 2009-2014 for the utilization of the capital goods in the manufacture of export product ultimately and eventually physically exported by the noticee to a foreign country thereby complying with the definition of "capital goods" attached with the aforementioned notification.
- Sr. No.3 of the explanation attached to the aforementioned notification specify Foreign Trade Policy means the Foreign Trade Policy 2009-2014 published vide notification no. 1/2009-2014 dated 27.08.2009 as amended from time to time.
- There is no stipulation either under the provisions of Foreign Trade Policy 2009-2014 or under the hand Book of Procedures 2009-2014 or under the notification no. 102/2009 dated 11.09.2009 or under E.P.C.G Authorisation no. 2430001677 dated 03/07/2012 for the minimum or maximum value addition to be achieved by the E.P.C.G. Authorisation Holder and as such the allegation and charge attempted to be made out by the department by taking the shelter of imposing the condition of "value addition" is not sustainable in law since the same is imaginary, nonexistence and have been created by the D.R.I department themselves on their own without the authority of law.
- Taking into consideration the humble submission as made here in above in the forgoing in totality it is proved beyond any iota of doubt that the noticee has not contravened or violated any provision as contained under Notification No. 1/2009-2014 dated 11.09.2009 as well as the terms and conditions contained under Para 5.7.1 of Hand Book of Procedure the licensing period 2009-2014.
- Thus, there is no collusion or any willful misstatement or suppression of facts on the part of the noticee and therefore five years extended period of limitation will not be applicable in the case of the noticee by any stretch of imagination and in the figment of thought in whatever manner.

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- Even period limitation of one years was expired on 21.10.2013 from the date of Bill of Entry which is dated 22.10.2012 and whereas the impugned SCN is dated 06.06.2016 and which was received by the noticee only on 11.06.2016 at Surat in his office.
- The copy of Para 5.10 (d) (ii) & (iii) of Hand Book of procedure for the licensing period of 2015-2020 is enclosed herewith for your kind perusal, ready reference and record. This Para must be read in conjunction with the public notice 1/2015-2020 dated 01.04.2015 (copy enclosed) which stipulate in express terms and condition to mean that Foreign Trade Policy and hand Book of procedure 2015-2020 shall come in to force With effect from 1st April 2015 and no provision has been made to apply retrospectively about its applicability for the licensing period 2009-2014.
- The provisions as laid down under Para 5.10 (d) (ii) & (iii) of Hand Book of procedure for the licensing period of 2015-2020 are not applicable to the case of the noticee in context with E.P.C.G Authorisation no. 243000 1677/2009 dated 03.07.2012 issued in favour of Printwell Offset Rajkot where the provisions as laid down under Para 5.7.1 of Hand Book of procedure for the licensing period of 2009-2014 will be attracted and only those provisions will apply to the case of the noticee and which have not been violated or contravened by the noticee under whatsoever manner.
- No penalty is imposable therefore on the noticee under Section 112 (a) of the Customs Act, 1962 since the provisions of section 111 (o) of the Customs Act, 1962 are not attracted to the case of the noticee in light of the facts as submitted hereinabove in the foregoing.
- During mid-term review of Policy 2015-20 a Public Circular 22/2015-20 dated 29/03/2019 was issued and clarified the applicability of amendment to para 5.10 (c) of Hand Book of Procedure 2015-20. This amendment come w.e.f. 05/12/2017. The updated provision reproduce here below:-

Para 5.10 (c) of HBP (2015-20) (updated as on 5.12.2017) states that :-

*"In case the Authorization Holder wants to export through a third party export documents viz, Shipping bill / Bill of export etc. shall indicate name of both authorization holder and supporting manufacturer, if any, along with EPCG authorization number. BRC, GR declaration export order and invoice should be in the name of third party exporter. The goods exported through third party should be manufactured by the EPCG Authorisation Holder or the supporting manufacturer where the capital goods imported under the authorisation have been installed. **Proceeds realized through normal banking channel from third party exporter's account to the authorization holder's account on account of such export inly shall be counted towards fulfilment of export obligation.**"*

(Text in bold is an amendment incorporated in the mid-term review).

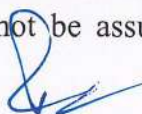
- Further it was clarified that the amendment to the para 5.10 (c) of HBP 2015-20 shall be applicable to third party exports made prior to 05.12.2017. third party export which have been made prior to 05.12.2017 will be governed by the provision of the relevant policy / procedure.

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- Prior to this clarification by Policy Circular No. 22/2015-20 dated 29/03/2019, there was no clarification for fulfilment of export obligation under EPCG Scheme, in case of third party export. In the present case the period of Shipping Bill pertaining to Financial Year 2013-14, therefore the policy 2009-14 was not clear on this issue. Hence no penalty U/s. 112(a) of the Customs Act 1962 can be imposed on the noticee.
- Accordingly, it has been prayed that:
 - it is to be held that the impugned Show Cause notice dated 06.06.2016 is not sustainable in law on the facts as well as on the ground of legal position of law applicable to the case.
 - The impugned SCN is time barred as issued beyond the normal limitation period of six months as allowed under Section 28 (i) (b) of the Customs Act, 1962.
 - The charges and allegations as attempted to be made out under the impugned SCN are frivolous.
 - The concept of "value addition" is nonexistent, imaginary, fabricated and artificially created by the D.R.I on their own to develop a frivolous case without any authority of law and hence not sustainable in law as devoid of any merit.
 - The impugned SCN dated 06.06.2016 is withdrawn in toto in its entirety by dropping all the charges and allegations as attempted to be made out therein.
 - Personal hearing may kindly be granted to the notice at an early date in order to enable the noticee to justify the stand and contention as per the humble submission made above in the forgoing to the satisfaction of your honour.

49.1. M/s. Nemilaxmi Books (India) Pvt. Ltd. And its director Shri Vimal Kr. Sekhani, made submissions dated 10.09.2024 stating that: -

- We hereby submit that this SCN has been issued U/s-124 r/w sec 143 of customs Act 1962, and both this section is not applicable to co-noticee M/s. Nemlaxmi Books (India) Pvt. Ltd. and its Director Shri. Vimal Kumar Sekhani. Hence this SCN should not be legally considered to be issued to co-noticee. Therefore in absent of any legal notice to co-noticee no penalty under Customs Act 1962, can be imposed.
- On the Co-noticee the main allegation is canvassed at para 44 of impugned SCN. It has been alleged in the notice that M/s. Nemlaxmi has issued declaration/NOC dated 22/09/2014 declaring that the material exported by them have been manufactured with the help of the capital goods imported by M/s. Printwell – Main Noticee. After the investigation it had been found by DRI officers that M/s. Nemlaxmi had exported the note books and Title Cover of Note Book was printed by M/s.Printwell. it should be noted that without title cover Note Books can not be manufactured by M/s. Nemlaxmi. Therefore the NOC/Declaration given by M/s. Nemlaxmi was absolute true and correct and with no-malafide intention. It should also be noted that DGFT had already issued EODC to M/s. Printwell. DGFT, Rajkot had issued EODC, on the basis of Shipping Bills of M/s. Nemlaxmi, after verification of all documents, which was genuine and legal. After issue of EODC Customs department had also release Bank Guarantee to M/s. Printwell. So it can not be assumed that due to acts and



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omission on the part of M/s.Nemlaxmi, rendered the goods exported under Shipping Bills as mentioned in Annexure-A to SCN. We further submit that officers of DGFT, Rajkot had issued EODC, after verification of documents and after fulfillment of EO under Foreign Trade Policy, and their competency and knowledge cannot be doubted. There is no allegation in the SCN that M/s. Nemlaxmi had made breach of any provision of FTP or any section of Customs Act. It appears from the allegation in SCN, that first time DRI, Rajkot had raised this issue before DGFT, Rajkot. This issue is completely interpretation of FTP, hence it cannot be said that there was any mala-fide intention of either M/s. Nemlaxmi or M/s. Printwell to this mis-use the provision of FTP.

- In the impugned SCN, first time issue was raised by DGFT, HQ in the FTP 2009-2014, that there was no provision of job work, as given at para 37 (X) of impugned notice. We hereby submit that M/s. Nemlaxmi had get job work done from M/s. Printwell of cover title for manufacture of Note Books, which has been exported. M/s. Nemlaxmi had followed the notification 214/86 of Central Excise and issued Job Work challan. To follow this process amendment in the EPCG licence of M/s.Printwell is not legally required. In short M/s. Nemlaxmi had followed all the legal provisions of FTP, Customs Act 1962 and Central Excise Act 1944. At clause (a) of para 5.02 of FTP it is mentioned that EPCG scheme covers, manufacturer exporter, with and without supporting manufacturer, and service provider. In this case Printwell was doing jobwork of M/s. Nemlaxmi. It means he was providing service of Jobwork, which is covered in FTP. Considering job challan under notification 214/86, Central Excise, EODC had been issued to M/s. Printwell by DGFT. Now Customs Department cannot raise question on the act of DGFT.
- In this notice it is proposed to imposed penalty U/s-113(i) and U/114(ii) and 114AA and U/s-117 of Act on M/s. Nemlaxmi. We do not reproduce the provision of section because it is given at para 36 of impugned SCN. We submit that no penalty can be imposed SCN. We submit that no penalty can be imposed U/s-113(i) on M/s. Nemlaxmi because the ingrediance of this section is absent in the present case. There is nothing on record that how the value of goods exported, which do not correspond with the value of this Act. Therefore, in absent of any specific allegation U/s-113(i), no specific submission can be made but in absent of any ingrediance of this section, no penalty can be imposed U/s-113(i).
- We further submit that no penalty can be imposed U/s-114(ii) of the Act in the present case. Because note book exported by M/s. Nemlaxmi was exempted goods under Central Excise and not liable to duty. The penalty U/s-114(ii) can be imposed only on dutiable goods and the duty has been determined U/s-28(8) of the Act. But the case of M/s. Nemlaxmi is not covered under this provision, hence no penalty can be imposed U/s-114(ii) of the Act.
- We further submit that no penalty can be imposed on M/s. Nemlaxmi under Section 114A, because there is no issue of short levy of non-levy of duty in the hands of M/s. Nemlaxmi.
- We further submit that no penalty can be imposed U/s-117 of the Act because M/s. Nemlaxmi has not contravenes any provision of this Act or abets any such

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contravention or who fails to comply with any provision of this Act with which it was his duty to comply. It should be noted that no duty has been demanded from M/s. Nemlaxmi only it is proposed to impose penalty under various sections of the Act.

- We further submit that no personal penalty can be imposed on Shri Vimal Kumar Sekhani, Director of M/s. Nemlaxmi Books (India) Pvt. Ltd., U/s-114(iii), U/s-114AA and U/s-117 of the Act because no ingrediance of this section is available in the present case for imposition of penalty on the Director of the company.
- We further submit that if the ingrediance for impose of penalty is absent in the present case than no penalty should be imposed, after judiciously verification of documents, submission and fact of the case. If any penalty is proposed in SCN, then it does not mean that Adjudicating Authority must impose penalty. He should apply his own knowledge and with judicious analysis he can drop the proposal of imposing of penalty.
- We would like to be heard personally before the adjudication of this case.

49.2. M/s. Nemilaxmi Books (India) Pvt. Ltd. And its director Shri Vimal Kr. Sekhani, made submissions dated 05.10.2024 stating that: -

- For the above mentioned SCN, we have already sent our defense reply dated 10.09.2024 vide speed post.
- Against the letter of P.H. we are submitting our written submission in addition to defense Reply.
- We are the Co-noticee in this case, and we are third party exporter. There is no dispute that we had followed all the provisions of Customs Act 1962 as well as the provision and procedure of Foreign Trade Policy. In this SCN, it is proposed to impose penalty under various section of the Customs Act 1962.
- We hereby submit that it was held in the case of **M/s. Tetra Pack Vs. CC 2005 (190) ELT 257(CESTAT)** that Customs notification have to be interpreted keeping the provisions of FTP in mind. In this case main noticee had submitted all documents with DGFT Rajkot and DGFT, Rajkot had issued EODC against EPCG licence. It is settled position of law that One licence is generated or EODC is issued by licencing authority then the Customs authorities cannot refuse on an allegation that there was misrepresentation as held in the case of **M/s. Titan Medical System Vs. CC 2003 (151) ELT 254 (SC.)**
- In this case it is proposed to impose penalties under various section on co-noticee. It is the general rule that penal statute pre-supposes *mens-rea* element. The principle is based on the maxim 'actus non facit reum mens sit rea'. i.e. an act is not criminal unless there is criminal intent. – T N Lakshmaiah V. State of Karnataka 2001 (7) SCALE 256.
 - State of mind (culpable mental state) like intention, motive, knowledge of a fact or belief in a fact or reasons to believe in facts are difficult to prove. Section 138A of Customs Act, therefore, provides that such mental state shall be presumed by Court. Prosecution (here the customs department) need not prove the guilty state of mind of the accused. If the accused claims that he did not have guilty mind, he has to prove the same. In legal terminology it is

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explained as "burden of proof regarding nonexistence of '**Mens rea**' is on the accused". This proof has to be '**beyond reasonable doubt**'.

- We further submit that considering the fact of the case and our submission no penalty should be imposed U/s-114(iii), U/s-114AA and U/s-117 of Customs Act 1962.
- We would like to be heard personally before the adjudication of the matter.

49.3. M/s. Nemilaxmi Books (India) Pvt. Ltd. And its director Shri Vimal Kr. Sekhani, made submissions dated 17.10.2024 stating that: -

- In this matter the main party is M/s. Printwell Offset, Rajkot and above mentioned both the party is Co-noticee. In the SCN it is proposed to confiscate goods and impose penalty under various section of Customs Act 1962.
- We have already submitted our reply vide letter dated 10/09/2024 and 05/10/2024. We had submitted our VAKALATNAMA vide letter dated 09/09/2024. In the defence reply we have submitted that we had exported note Books/Exercise Book/Writing Pads/Registers/Drawing Books, and Title Print (of first and last page) was printed by M/s. Printwell, Rajkot on job work basis. For Printing the TITLE Print by M/s. Printwell Rajkot had used imported Machinery. On their request we had issued NOC dated 22/09/2014 to M/s. Printwell, Rajkot.
- We further submit that goods can not be confiscated U/s-113(i) of Act, because same are not available and already exported. Further provision of Section 113(i) can be invoked only when any goods entered for exportation not corresponding in respect of value or any other particulars in shipping bill or declaration of contents Baggage. But there is no ingredient in SCN, to invoke provision of Section 113(i) of Customs Act 1962. We further rely on the judgment of M/s. Ramayan Impex Vs. C.C. 2005 (189) ELT 446 (CESTAT), Hence goods can not be confiscated U/s- 113(i) of Customs Act 1962.
- We further submit that in absence of mens-rea and any ingredient of Section 114(iii), Section 114AA and Section 114 of the Customs Act, 1962 no penalty should be imposed on both co-noticee.
- We do not want any further personal hearing.

49.4. M/s. Printwell Offset, made submissions dated 07.01.2023 stating that: -

- M/s. Printwell at the very outset submits that the said allegations are totally baseless and contrary to the provisions of the Hand Book of Procedure as stood at the material time i.e. the said authorization was issued under Foreign Trade Policy and Hand Book of Procedure - 2009-2014. Even allegations of violation of condition No. 9 of the Notification No. 102/2009-Cus. Dated 11.09.2009 that by showing export obligation for the entire value of the note book is also beyond the said condition, without appreciating and understanding the said condition; and
- M/s. Printwell without admitting anything and without prejudice to other submission submits that impugned Show Cause Notice dated 06.06.2016 given/served/communicated on 18.07.2016 i.e. after six months from the date of seizure without sufficient cause being shown and without extension of six months period by

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the Principal Commissioner or Commissioner of Customs, therefore, goods are required to be returned to M/s. Printwell unconditionally as provided under Section 110(2) of the Customs Act, 1962 as stood at the material time i.e. prior to 29.03.2018 and goods cannot be confiscated now, therefore, impugned SCN is liable to be set aside on the following grounds with a request that same may please be considered independent and without prejudice to one another.

- M/s. Printwell before making submission on legal points submits that it had printed cover pages of exercise note books for M/s. Nemlaxmi Books (India) Pvt. Ltd., Surat (Hereinafter referred to as "M/s. Nemlaxmi") and M/s. Nemlaxmi had used those note books covers for manufacture of Exercise Books which were exported by M/s. Nemlaxmi with mention of name of M/s. Printwell and its authorization No. 2430001677 in 64 Shipping Bills and fulfilled the export obligations. It is not matter of dispute that M/s. Nexlaxmi has never availed any benefit of EPCG against the same shipping bills based on which Redemption/EODC was issued to M/s. Printwell. It is admitted facts on record that Redemption Letter (EODC) against the said authorization No. 2430001677 was issued from F. No. 24/21/021/00044/AM13 dated 30.04.2015 by the proper officer of the DGFT, Rajkot. Hereto annexed and marked as Exhibit - II is the copy of Redemption/EODC letter dated 30.04.2015 (RUD 01 Annexure - A to the SCN Page - 8).
- M/s. Printwell submits that at the behest of the DRI officers the Dy. DGFT, Rajkot vide interim order File No. 24/21/021/00044/AM13 dated 02.12.2015 inter alia withdrawn redemption issued on 30.04.2015. (RUD Sr. No. 4 of Annexure - A to the SCN - Page 17).
- M/s. Printwell submits that the said Dy. DGFT, Rajkot while passing Order-in-Original File No. 24/21/021/00044/AM13 dated 28.07.2016 subsequent to said interim order passed following order inter alia holding at para 16 that

"The notice (it should be noticee) has done Third Party exports with value addition in the export products is 4.27% so this case shall be referred to Directorate General of Foreign Trade, New Delhi for Foreign Trade Policy (2009-15) clarification whether full export value of the exported products should be considered under Export Obligation or corresponding value addition of 4.27% should be considered under Export Obligation."

Hereto annexed and marked as Exhibit - III is the copy of Order-in-Original dated 28.07.2016.

- M/s. Printwell most respectfully submits that it clearly reveals from the above that even the Dy. DGFT was no sure whether export obligations were rightly discharged or otherwise. Therefore, interim order for withdrawal of redemption dated 30.05.2015 was totally erroneous and without any authority at all as well as even beyond his jurisdiction as per para 2.3 of the FTP and Section 16 of the Foreign Trade (D & R) Act, 1992 as such review of any decision power lies with Director General.
- M/s. Printwell most respectfully submits that till date the proper officer of the DGFT, Rajkot has neither communicated decision of the Director General nor determined balance value of export obligations to be made that too with extension of time limit for discharge of balance export obligations if any I had made reference in this regard

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to Jt. DGFT, Rajkot vide letter dated 29.01.2022. Hereto annexed and marked as Exhibit - IV is the acknowledged copy of letter dated 29.01.2022.

- Thus, in view of the admitted facts on record it is not finalized whether export obligation fulfilled by M/s. Printwell was complete and correct or any shortfall is there. Therefore, in absence of final decision in the matter and during the pendency of decision including if any shortfall for extension of time limit for fulfillment of balance export obligations, it will be premature to decide present SCN and held that goods are imported under EPCG is liable to confiscation under Section 111(o) of the Customs Act, 1962 and any penal consequences thereto. Therefore, it is prayed that not to pass any adverse order in the matter till decision of DGFT in the matter.
- M/s. Printwell most respectfully submits export obligation fulfilled by taking FOB value of goods exported by third party was correct as per the FTP and HBP provisions as stood during 2009-2014. As exports were made between 12.07.2013 to 11.04.2014 and EODC was issued on 30.04.2015.
- M/s. Printwell most respectfully invite kind attention of your honour that according to DRI as per the provisions of Para 5.10(d) of HBP 2015-20 relating to third party exports, value of Covers which were printed by it with the help of imported machines under EPCG have to be taken while computing export obligation and not entire value of note books. Notebooks/ exercise books inner pages were printed by M/s. Nemlaxmi and outer cover were printed by it. It is admitted fact on record that the goods were exported by M/s. Nemlaxmi. While applying for export obligation discharge certificate, it had considered entire value of notebooks as per the existing provisions of FTP i.e. prior to 01.04.2015. In its humble views the said provisions of para 5.10(d) of HBP 2015-20 were applicable to third party exports made on or after 01.04.2015 only. Since, such exports were made prior to 01.04.2015 same are governed by the provisions of earlier relevant policy/ procedure as clarified by Directorate General of Foreign Trade vide Policy Circular No. 3/2015-20 dated 02.09.2015. Hereto annexed and collectively marked as Exhibit - V are copies of Chapter - 5 of Foreign Trade Policy, 27.08.2009 to 31.03.2014 effective from 05.06.2012 issued under Notification No. 1(RE-2012)/2009-2014 dated 05.06.2012, Chapter - 5 of Handbook of Procedures (Vol. I) 27.08.2009 to 31.03.2014 effective from 05.06.2012 issued under Public Notice No. 1(RE-2012)/ 2009-2014 dated 05.06.2012, Handbook of Procedures (01.04.2015 to 31.03.2020) vide Public Notice No. 1/2015-2020 dated 01.04.2015 (Para 10) and Policy Circular No. 3/2015-20 dated 02.09.2015.
- Therefore, in its humble submissions revocation of EODC based on the interpretation made by the DRI is not in consonance with the provisions of the policy.
- M/s. Printwell most respectfully further submits that the Policy nowhere provides on the valuation aspect especially value addition for the purpose of counting export obligations etc. Your honour is also aware with the fact that paragraph 14 - Details of Physical Exports ... of ANF 5B provides in column No. 3 FOB read with remarks bearing ++ "Only export/...../capable of being made/.... out of capital goods imported under the Authorisation for discharge of export obligation imposed on the Authorisation and export proceeds realized to be included." and as per paragraph 7 read with Explanation (2) "Export Obligation" means obligation on the importer to

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export to a place outside India, goods manufactured or capable of being manufactured by the use of capital goods imported in terms of this notifications..... Hereto annexed and marked as Exhibit - VI is the copy of ANF 5B as filed before the Jt. DGFT, Rajkot for EODC.

- M/s. Printwell submits that thus, on harmonious reading of FTP as well as notification No. 102/2009-Cus. dated 11.09.2009, goods capable of being manufactured with the help of the imported goods can be exported through third party and there is no need of manufacture of goods with the help of the capital goods. In the instant case it is not matter of dispute that exercise books etc. exported can be manufactured with the help of the capital goods.
- M/s. Printwell submits that since, FTP, HB and notification issued by Customs etc. are nowhere provide that value equal to goods manufactured with the imported capital goods is to be taken as export obligation and not the FOB value of goods exported under claim of EPCG Benefits, in view of the above provisions, value of third party have to be considered towards export obligation. **It is also fact that third party has not availed any benefit of export against any EPCG license.** Without admitting anything but for the sake of argument it is assumed that goods manufactured by importer is sold to third party at the rate Rs.100 and third party exports it at the rate of Rs.200, which value is required to be taken as 50% value addition is made by the third party. There is no prohibition of value addition by third party in the any of the provisions.
- M/s. Printwell without prejudice to the above further submits that it had manufactured title cover pages of exercise books so as to complete the manufacture of exercise note book and as per the provisions of Explanation 5 to the Notification No. 102/2009-Cus. dated 11.09.2009 for the purpose of said notification "manufacture" has same meaning as defined under Section 2(f) of the erstwhile Central Excise Act, 1944. As per Section 2(f) ibid manufacture any process incidental or ancillary to the completion of manufactured product. Thus, it has to be construed that notebooks exported through third party were manufactured by it only.
- M/s. Printwell submits that when exports made through the third party value for the purpose of computing export obligation is to be taken FOB value realized by the third party as per para 5.5 of FTP 2009-2014 read with para 5.7 of HBP 2009-2014 as stood at the material time (exports were made between 12.07.2013 to 11.04.2014) read with Policy Circular No.3/2015-20 dated 02.09.2015 and not in terms of Para 5.10(d) of HBP 2015-2020.
- M/s. Printwell further submits that allegations of not fulfilled conditions of clause (i) to iii) of Para 5.10(d) of HBP-2015-2020 are also contrary to said circular and not required to be fulfilled at all for the export made prior to 01.04.2015.
- M/s. Printwell in view of the above submits that in its humble submissions in absence of such specific provisions about value to be adopted for the purpose of computing export obligation through third party exports under the HBP-2009-2014 i.e. only value of goods supplied by authorization holder, FOB value realized by the third party have to be considered especially when the third party has not availed any benefit of such export under para 5.5 of FTP.

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- M/s. Printwell in view of the above further submits that it has not violated condition No. 9 of Notification No. 102/2009-Cus. Dated 11.09.2009 as the said condition nowhere provides as alleged in the SCN that export obligation cannot be discharged by showing entire value of note book. In any case it had fulfilled export obligation well before the stipulated time limit and even after withdrawal of EODC there is not decision on para 16 of Order-in-Original dated 28.07.2016. Even DRI has not issued any Show Cause Notice demanding Customs Duty which was foregone at the time of import. Thus, as on today it is not the case of the department that export obligations are not fulfilled. Therefore, goods are not liable to confiscation under Section 111(o) of the Customs Act, 1962 and there cannot be any consequential penalty too.
- M/s. Printwell therefore in view of the above submits that goods are not liable to confiscation not to speak of under clause (o) of Section 111 of the Customs Act, 1962 as there is no violation of any of the conditions of notification not to speak of condition No. 9 in view of the above detailed submissions.
- M/s. Printwell further submits that once it is held that goods are not liable to confiscation under Section 111(0) of the Customs Act, 1962, no penalty is imposable under Section 112 (a) of the Customs Act, 1962.
- M/s. Printwell without admitting anything further submits that for the sake of argument it is presumed that penalty can be imposed even then as per Section 112(a) (ii) ibid such penalty can be not exceeding ten percent of duty sought to be evaded or five thousand rupees, whichever is higher. In the instant case, till date there is no demand of duty from M/s. Printwell nor any allegation of evasion of duty of customs, therefore, at the most maximum penalty imposable upon it comes to Rs. 5,000/- only.
- M/s. Printwell without admitting anything and without prejudice to submission made in para supra most respectfully submits that seized goods (Provisionally released on execution of bond and bank guarantee) are required to be released unconditionally on the following grounds:
 - M/s. Printwell submits that goods were seized on 08.12.2015 under Section 110 of the Customs Act, 1962 and as per sub-section (2) of Section 110 of the Customs Act, 1962, where any goods are seized and no notice is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized. It further provides that the said period of six months may, on sufficient cause being shown, be extended by the Principal Commissioner of Customs or Commissioner of Customs for a period of not exceeding six months.
 - In the instant case SCN dated 06.06.2016 was given on 18.07.2016 by speed post to M/s. Printwell. Therefore, same was not given within six months of the seizure, nor any extension of further six months has been granted by the Principal Commissioner or Commissioner. Therefore, as per said provisions of sub-section (2) of Section 110 ibid and settled position of law by various decisions amongst other following decisions of apex court including constitution bench of the Apex Court that goods are required to be returned unconditionally.

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**ASSISTANT COLLECTOR OF CUSTOMS AND SUPERINTENDENT,
 PREVENTIVE SERVICE CUSTOMS, CALCUTTA AND OTHERS Versus
 CHARAN DAS MALHOTRA - 1983 (13) E.L.T. 1477 (S.C.)**

Seizure - Extension of period for retention of seized goods cannot be granted without sufficient cause and without an opportunity of being heard to the person whose goods are seized - Proviso to Sections 110(2) and 124 of the Customs Act, 1962 - Scope.

Since sub-section (2) of Section 110 of the Customs Act contemplates some sort of enquiry, therefore, the Collector is expected not to pass extension orders mechanically or as a matter of routine but only on being satisfied that there exists facts which indicate that the investigation could not be completed for bona fide reasons within the time laid in Section 110(2) and extension of the period has become necessary. Therefore, the words 'sufficient cause being shown' in Section 110(2) must mean that the Collector must determine on materials placed before him that they warrant extension of time. Therefore, there is no question in such cases of the subjective satisfaction of the collector because what he is asked to do by the proviso is to determine that the cause shown before him warrants an extension of time. Hence, it is difficult to comprehend how he can come to this determination unless he has before him the pros and cons of the matter because ex-parte determination by the Collector would expose his decision to be one sided and based on incorrect statement of facts. Therefore, the power under the proviso to Section 110 of the Customs Act, 1962 are not to be exercised without an opportunity of being heard given to the person from whom the goods were seized. [paras 12 to 15]

Seizure - Distinction between Section 110(1) and Section 110(2) of the Customs Act, 1962.

- It will be noticed that whereas sub-section (1) of Section 110 uses the expression "reason to believe" for enabling a Customs officer to seize goods, the proviso to sub-section (2) uses the expression "sufficient cause being shown". Thus, sub-section (1) does not contemplate an enquiry at the stage of seizure, the only requirement being the satisfaction of the concerned officer that there are reasons to believe that the goods are liable to confiscation by reason of the illegal importation. It is, therefore, clear that in view of words 'sufficient cause being shown' in Section 110(2), the legislature did not intend to give the Collector the same power for extension of time. (para 13]

Seizure - Burden of proof is on the Customs Officer who extends time for retention of the seized goods - Section 110 of the Customs Act, 1962.

- If the investigation could not be completed for bona fide reasons within the time laid down in Section 110(2) and the extension of period became necessary, the burden of proof is clearly on the Customs Officer applying for extension and not on the person from whom the goods are seized. (para 12)

Judicial function and administrative function - Distinction between.

- The dividing line between judicial and administrative functions is thin and gradually evaporating and the functions performed by those doing judicial and administrative functions have the same object, namely, to do justice and deciding the question fairly and justly where the rights of citizens are affected to their prejudice. In the former

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case, there would be express rules of procedure but the object of these rules is only to enable or facilitate to decide fairly and justly. [para 14]

Seizure - Two extensions granted for retention of goods - Whether opportunity of being heard should be given to both extensions? - Proviso to Section 110(2) of the Customs Act, 1962 - Scope.

- Since the power of extension was quasi-judicial and required judicial approach and would deprive the person from whom the goods are seized of the right to have the goods restored to him on the expiry of six months from the date of seizure, the opportunity of being heard must be given before passing an order in both the cases. (para 16)

I.J. RAO, ASSISTANT COLLECTOR OF CUSTOMS Versus BIBHUTI HUSHAN BAGH - 1989 (42) E.L.T. 338 (S.C.)

Seizure - Confiscation proceeding - Extension of six months period for retention of seized goods cannot be granted without notice and hearing to the person from whom goods seized - Notice to be issued before expiry of period - Damage or injury likely to be caused by extension to be considered - Such person not entitled to know about the nature and course of investigation process - When service of notice evaded, Collector can extend original period and thereafter to afford a post decisional hearing to determine whether extension is to be cancelled or not - Words and Phrases - "Sufficient cause being shown" - Meaning of - Section 110(2) and 124(a) of the Customs Act, 1962 and applicable to Central Excises by virtue of Section 12 of the Central Excises and Salt Act, 1944 - Rule 200 of the Central Excise Rules, 1944.

- Section 110(2) of the Customs Act, 1962 provided that the seized goods are to be returned if no notice for confiscation or penalty is issued under Section 124 of the Customs Act, 1962 within 6 months which period can further be extended by Collector "on sufficient cause being shown". There is no doubt that the words "on sufficient cause being shown" in the proviso to Section 110(2) of the Act indicates that the Collector of Customs must apply his mind to the point whether a case for extending the period of six months is made out or not. What is envisaged is an objective consideration of the case and a decision to be rendered after considering the material placed before him to justify the request for extension. The Customs Officer concerned who seeks the extension must show good reason for seeking the extension for the reason that the investigation is still not complete and it cannot yet be said whether a final order confiscating the goods should be made or not. As more time is required for investigation, he applies for extension of time. The Collector must be satisfied that the investigation is being pursued seriously and that there is need for more time for taking it to its conclusion. The question is whether the person claiming restoration of goods is entitled to notice before time is extended. The right to notice flows not from the mere circumstance that there is a proceeding of a judicial nature, but indeed it goes beyond for the reasons that right of a person are likely to be prejudicially effected, he is entitled to an opportunity to put forward his case. Therefore the person from whose possession the goods have been seized is entitled to notice of the proposal before the Collector for the extension of the original period of six months mentioned in Section 110(2) of the Customs Act, 1962 and he is also entitled to be heard upon

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such proposal but subject to the restriction that he is not entitled to information as to the investigation which is in process because there can be no right in any person to be informed midway, during an investigation of the material collected in the case against him and moreover there is need for maintaining confidentiality of the investigation proceedings. However, such person from whom goods have been seized can set up a case for the damage, injury or hardship that is likely to be caused to him because of the extension. Such damage, injury or hardship may be the need for immediate possession having regard to the nature of seized goods or critical market conditions, or that the goods are required urgently to meet an emergency in relation to a vocational or private need etc. In the normal course such notice for extension must go to such person before the expiry of the original period of six months but where the service of the notice is evaded it would be open to the Collector to grant extension if he is satisfied that there is a sufficient cause and thereafter when notice is served on the person concerned to afford a post decisional hearing to him in order to determine whether the order of extension should be cancelled or not - 1983 (13) E.L.T. 1477 (S.C.) and 1983(13) E.L.T. 1520 (S.C.) considered. AIR 1968 Mysore 89; AIR 1970 Cal. 134 and 1981 (8) E.L.T. 268(Guj.) overruled. (paras 8, 13 to 16)

HARBANS LAL Versus COLLECTOR OF CENTRAL EXCISE & CUSTOMS - 1993 (67) E.L.T. 20 (S.C.)

Seizure - Show cause notice - Seized goods required to be returned to the owner unless show cause notice issued within six months - Ex parte order extending the period for issue of show cause notice vitiated - Sections 110 (2) and 124 of Customs Act, 1962 - Sections 110(2) and 124 ibid as made applicable to Central Excise under Section 12 of Central Excises and Salt Act, 1944 - Rule 233A of Central Excises Rules, 1944.

- Unquestionably thus is the settled position of law that while extending time under Section 110(2), the owner of the seized goods is entitled to notice, because the seized goods on the expiry of period of six months are required to be returned to him, and if that period was to be extended for another period of six months he had the right to be heard. The High Court in the decision under appeal has thus rightly observed that it was not disputed before it that the ex parte order extending the time by another six months as postulated in Sections 110(2) and 124 of the Act, was vitiated. (para 7)

Seizure - Show cause notice if not issued within six months seized goods to be returned but confiscation and penalty imposable - Sections 110 and 124 of Customs Act, 1962 are independent, distinct and exclusive of each other - Show cause notice under Section 124 survives even if seized goods are returned or returnable to their owner in non-issue of notice in time - Sections 110 and 124 ibid as made applicable to Central Excise under Section 12 of Central Excises and Salt Act, 1944 - Rule 233A of Central Excise Rules, 1944.

- The ratio of this Court afore-quoted in Charandas Malhotra's case, thus settles the question afore-posed and the answer is that these two Sections 110 and 124 are independent, distinct and exclusive of each other, resulting in the survival of the proceedings under Section 124, even though the seized goods might have to be returned, or stand returned, in terms of Section 110 of the Act, after the expiry of the

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permissible period of seizure. 1985 (22) E.L.T. 44 (Kar.); AIR 1975 P & H 130; 1988 (37) E.L.T. 528 (Bom.) confirmed, 1977 (83) Part-II Crl. Law Journal 1331 overruled. [paras 8, 10]

- M/s. Printwell most respectfully submits that your honour is very much aware that as per settled position of law above judicial pronouncement including Constitutional Bench of Hon'ble Apex Court are binding upon all under Article 141 of the Constitution of India. Amongst other following decisions and CBIC decisions in this regard may please be referred.

UNION OF INDIA Versus KAMLAKSHI FINANCE CORPORATION LTD. - 1991 (55) E.L.T. 433 (S.C.)

Strictures passed by Bombay High Court against two Assistant Collectors for flouting of Collector Appeals' order on classification based on a Tribunal judgment against which department had gone in appeal to Supreme Court) upheld by Supreme Court - Department directed to pay utmost regard to judicial discipline and give effect to orders of higher appellate authorities which are binding on them.

- The learned Additional Solicitor General submits that the learned Judges have erred in passing severe strictures /1990 (47) E.L.T. 231 (Bom.) against the two Assistant Collectors who had dealt with the matter. He submitted that these officers had given reasons for classifying the goods under Heading 39.19 and not 85.46 and could do no more. He submitted that they acted bona fide in the interests of Revenue in not accepting a claim which, they felt, was not tenable. Sri Reddy is perhaps right in saying that the officers were not actuated by any mala fides in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer. But what Sri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or of any factual mala fides but with the fact that the officers, in reaching their conclusion, by-passed two appellate orders in regard to the same issue which were placed before them, one of the Collector (Appeals) and the other of the Tribunal. The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. The impression or anxiety of the Assistant Collector that, if he accepted the assessee's contention, the department would lose revenue and would also have no remedy to have the matter rectified is also incorrect. Section 35E confers adequate powers on the department in this regard. In the light of these amended provisions, there can be no justification for any Assistant Collector or Collector refusing to follow the order of the Appellate Collector or the Appellate Tribunal, as the case may be, even where he may have some reservations on its correctness. He has to follow the order of the higher appellate authority. This may instantly cause some prejudice to the Revenue but the remedy is also in the hands of the same officer. He has only to bring the matter to the notice of the Board or the Collector so as to enable appropriate proceedings being taken under Section 35E(1) or (2) to keep the interests of the department alive. If the officer's view is the correct one, it will no doubt be finally upheld and the Revenue

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will get the duty, though after some delay which such procedure would entail. It is clear that the observations of the High Court, seemingly vehement, and apparently unpalatable to the Revenue, are only intended to curb a tendency in revenue matters which, if to become widespread, could result in considerable harassment to the assessee-public without any benefit to the Revenue. We would like to say that the department should take these observations in the proper spirit. The observations of the High Court should be kept in mind in future and utmost regard should be paid by the adjudicating authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to the orders of the higher appellate authorities which are binding on them. [paras 5-8]

Precedent - Principles of judicial discipline - Orders passed by Collector (Appeals) and Tribunal binding on all adjudicating and appellate authorities within their respective jurisdiction.

It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. (para 6)

Precedent - Principles of judicial discipline - Revenue to unreservedly follow appellate authority's order unless operation thereof suspended by a competent Court - Mere fact of appeal having been filed against the order no ground for not following it. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws. (para 6)

Tapes - Electrical insulation tapes classifiable under Heading 85.46 and not under Heading 39.19 of Central Excise Tariff Act, 1985 - Tribunal's judgment having attained finality at Supreme Court's level.

We are not called upon to enter into the merits of the classification in the present case except to observe that the decision of the Tribunal in the case of M/s. Chetna Polycoats Put. Ltd. was the subject-matter of Civil Appeal No. 2321 of 1989 preferred by the department which was dismissed at the stage of admission by this Court on 13th February, 1991. /1988 (37) E.L.T. 253 (Tri.) and 1991 (53) E.L.T. A-28 (SC) 1-5-1991 referred to). [para 4]

E.I. DUPONT INDIA PVT. LTD. Versus UNION OF INDIA - 2014 (305) E.L. T. 282 (Guj.)

Refund - Cenvat credit - Inputs used in manufacture of goods cleared by DTA units to 100% Export Oriented Units - Refund not to be denied on the ground that it is case of

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deemed export and not physical export - Rule 5 of Cenvat Credit Rules, 2004. (2012 (276) E.L.T. 9 (Guj.) relied on). (para 6)

Writ Petition - Existence of alternative remedy - Precedent - Binding decision of jurisdictional High Court not followed by adjudicating authority - High Court to interfere with impugned order in exercise of power under Article 226 of Constitution of India despite alternative remedy being available to petitioner. - There is a direct binding decision of Gujarat High Court in the case of NBM Industries which is in favour of the assessee holding that on inputs used in manufacture of goods cleared by DTA units to 100% EOU refund of Cenvat credit would be available to the assessee. In this decision the revenue pressed in to service the decision of the Madras High Court in the case of BAPL Industries Ltd. (which has been relied upon by adjudicating authority in the present case) and the Division Bench after considering the said decision held as stated hereinabove - Despite the decision of this court in the case of NBM Industries was pressed into service by the claimant and was pointed out to the adjudicating authority, the adjudicating authority has not followed the said decision solely on the ground that the said decision is not in the case of assessee but is in the case of another assessee. It is required to be noted that the decision of Division Bench of this Court in the case of NBM Industries is binding on the adjudicating authority. It was not open for the adjudicating authority not to follow the binding decision of this Court in the case of NBM Industries, solely on the ground that the said decision is in case of another assessee. Under the circumstances, despite the alternative remedy available to the petitioner, the High Court has to interfere with the impugned orders in exercise of powers under Article 226 of Constitution of India. [2012 (276) E.L.T. 9 (Guj.); 2007 (216) E.L.T. 678 (Bom.); 1991 (55) E.L.T. 433 (S.C.) relied on]. [paras 5, 5.1, 5.2, 5.3, 5.4]

Contempt of Court - Law declared by High Court - Strictures against adjudicating authority - Law laid down by jurisdictional High Court not followed - Wilful disregard of law laid down by High Court, prima facie, amounts to Civil contempt as defined in Section 2(2b) of Contempt of Courts Act, 1971 - Binding decision of higher appellate authorities/ Courts not permitted to be ignored under the guise of interests of revenue - However, Contempt proceedings to be dropped in view of unconditional apology tendered by relevant officer and absence of any mala fide - Article 226 of Constitution of India. 2012 (276) E.L.T. 9 (Guj.); 2007(216) E.L.T. 678 (Bom.); 1991 (55) E.L.T. 433 (S.C.) relied on]. [paras 5, 5.1, 5.2, 5.3, 5.4, 5.5]

Adjudication - Precedent - Binding decisions of higher appellate authorities/ Courts on identical questions of law repeatedly ignored by lower authorities despite clear and specific and authoritative pronouncements to this effect by higher authorities/ Courts - C.B.E & C. directed to issue a detailed circular to all adjudicating authorities as to binding effect of orders passed by higher appellate authorities/ Courts. [2013 (298) E.L.T. 451 (Guj.); 2007 (210) E.L.T. 678 (Bom.); 1991 (55) E.L.T. 733 (S.C.) relied on]. [paras 6.1, 6.2]

Instruction F. No. 201/01/2014-CX.6, dated 26-6-2014 issued by CBIC

Subject: Instructions regarding need to follow Judicial discipline in adjudication proceedings.

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Kind attention is invited to the order of Hon 'ble High Court of Gujarat at Ahmedabad in case of M/s. E.I. Dupont India Put. (hereinafter referred to as M/s. Dupont) in Special Civil Application No. 14917 to 14921 of 2013 dated 25-10-2013 (2013-TIOL-1172- HC-AHM-CX = 2014 (305) E.L.1. 282 (GuJ.). M/s. Dupont had filed appeal before the Hon'ble High Court against rejection of a refund claim on an issue which had earlier been decided by the Hon'ble High Court against the revenue, though in a matter relating to a different assessee. Thus for deciding the refund, a binding precedent judgment existed.

2. However the binding precedent was not followed which led to litigation before the Hon'ble High Court to which Hon'ble High court took a serious view. It may be noted that on the subject of consequential refund, where the department has gone in appeal there already exists a Circular No. 695/11/2003-CX., dated 24-2-2003/2003 (152) E.L.T. (T42)). This circular of the Board is binding on all field officers. Had this circular been followed in the case, unnecessary litigation as well as adverse observation of the Hon'ble High Court could have been avoided. This circular is once again brought to the notice of field officers with direction that it is followed scrupulously.

3. The judgment of Hon'ble High Court in M/s. Dupont case (supra) under reference may be perused by the field officers for complete understanding of the issues involved and directions of the Hon'ble High Court on need to follow judicial discipline. Judgment of the Hon'ble Supreme Court in case of Union of India v. Kamlakshi Finance Corporation Ltd. (1991 (55) E.L.T. 433 (S.C.) = 2002-TIOL- 484-SC-CX-LB) may also be perused as this is an authoritative pronouncement on the issue and has also been cited by the Hon'ble High Court.

4. The contents of this instruction may be brought to the notice of all adjudicating authorities under your jurisdiction with direction to follow the same scrupulously.

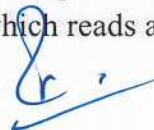
- M/s. Printwell without admitting anything further submits that though two proviso are inserted under sub-section (2) of Section 110 of the Customs Act, 1962 with effect from 29.03.2018 by Section 92 of the Finance Act, 2018, however same cannot be applied to the goods seize on 08.12.2015 and provisionally released on execution of bond duly supported by Bank Guarantee which are accepted on 27.04.2016 as one year time limit was expired before such provisions were inserted.
- M/s. Printwell in view of the above most respectfully prays to drop the proceedings initiated under the impugned show cause notice in the interest of justice.
- M/s. Printwell craves leave to add to, alter or delete any of the submissions before or during the course of hearing.
- M/s. Printwell wishes to be heard in person before any adverse decision in the matter.

49.5. M/s. Printwell Offset, made submissions dated 01.10.2024 stating that:

- Please refer to above cited application dated 30.10.2020 made before Hon'ble PRC submitted online on 03.11.2020 (Running into Page 1 to 130), which includes additional submissions in the matter at page 12 to 18 with all exhibits. However, scan copy of the same is once again enclosed for ready reference.

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- The said application was physically submitted on 14.12.2020 with a copy to Jt. DGFT, Rajkot. Acknowledged copy of the letter with Receipt issued by your office is also once again enclosed.
- FTDO, DGFT, New Delhi vide Email dated 23.01.2023 (epcg-dgft@gov.in) with reference to our said representation/ application dated 14.12.2020 followed by reminders by emails dated 04.01.2022, 16.09.2022 and 18.10.2022 inter alia informed that documents regarding what kind of third party export have been made nor documents related to third party exports are submitted.
- Which was replied by email dated 09.05.2023, followed by reminder dated 21.07.2023. Copies of the said two emails are enclosed.
- We have vide our letter dated 06.09.2024 addressed to the Jt. DGFT, Rajkot with a copy to your office sent by email dated 06.09.2024 sent the reminder in the matter.
- In this matter your kind attention is invited toward order F. No. 24/21/021/00044/AM13 dated 28.07.2016 which has created the present situation and cause of concern wherein the learned Dy. DGFT had ordered at para 15 page 4 that *"The noticee has done third party exports with value addition in the export product is 4.27% So this case shall be referred to Directorate General of Foreign Trade, New Delhi for Foreign Trade Policy (2009-2015) clarification whether full export value of the exported products should be considered under Export Obligation or corresponding value addition of 4.27% should be considered under Export Obligation."*
- We have not received any reply in this regard till date. In absence of reply we are helpless not sure whether Export Obligation Discharge Certificate already issued was correct of we have to fulfill balance export obligations if any. In absence of any reply and response, our license dated 03.07.2012 wherein EODC was issued on 30.04.2015 and withdrawn on 02.12.2015 is expired on 02.07.2018.
- In our humble view we have rightly fulfilled export obligations through third party exports in view of the policy prevailing at the material time viz. FOB value of the third party exports are to be taken upon for computing EO for EPCG Authorisation issued under FTP 2009-14 as provided under 5.5 of FTP read with Para 5.7 of HBP of 2009-14.
- Even as per Policy Circular No. 3/2015-20 dated 02.09.2015 that provisions of para 5.10(d) of HBP 2015-20 shall be applicable to third party exports made on or after 01.04.2015 (even in respect of exports made under EPCG authorizations issued prior to 01.04.2015). Third party exports which have been made prior to 01.04.2015 will be governed by the provisions of relevant policy/procedure. In our case export obligations were discharged during 12.07.2013 to 11.04.2014 and last shipping bill was of dated 11.04.2014. It is worth to mention that the said third party has not availed any benefit against the said shipping bills for capital goods under EPCG except benefit DFIA etc. which were permissible under the FTP/HBP as stood at the material time. So, its case is fully covered by the said erstwhile FTP 2009-14 as per the said Circular dated 20.09.2015.
- In this regard your kind attention is also invited subsequent Policy Circular No. 22/2015-20 dated 29.03.2019 especially para 3 and 4 which reads as under:



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" 3. It is clarified that the amendment to para 5. 10(c) of HBP 2015-20 shall be applicable to third party exports made on or after 05.12.2017. Third party exports which have been made prior to 05.12.2017 will be governed by the provisions of the relevant policy/ procedure.

4. Accordingly, in the case of third party exports, holder can count till 04.12.2017 the full realized value of the shipping bill towards fulfillment of export obligation subject to counting of exports only once towards the EPCG obligation and maintenance of Average Export Obligation."

- Therefore, it is once again prayed that EODC dated 30.04.2015 may be restored at an early date.
- It may please be appreciated that it is admitted fact on record that we have already fulfilled export obligations in the manner clarified by the said two circulars. In any case even after said two circulars if the department is not agreed with our submissions, alternatively we are ready to fulfill balance export obligation which may be determined by the department as stated in earlier representation read with para 16 page 4 of Order dated 28.07.2016. Therefore, it is once again prayed that either EODC may be restored or exact balance export obligation to be fulfilled may be determined and extension may be granted for the same.
- Now, the Commissioner of Customs, NS-II, JNCH, NhavaSheva has issued SCN No. 572/2024-25/CC/EPCG/NS-22/ CAC/JNCH dated 20.06.2024 issued from F. No. DRI/AZU/JRU/INT-03/2015/716 S/ 26-Misc-06/2024-25/EPSCMMC, copy of the same is already submitted to Rajkot office on 02.09.2024. Now, the Commissioner has fixed 2nd personal hearing in the matter on 17.10.2024 in the said SCN. Copy of hearing letter dated 19.09.2024 is also enclosed.
- We most respectfully further submit that it may please be appreciated that Order F.No. 24/21/021/00044/AM13 dated 02.12.2015 passed by the learned Dy. DGFT, Rajkot withdrawing redemption issued on 30.04.2015 was beyond his jurisdiction as review of any order under Section 16 of the FDRA, 1992 is with only Director General. As per settled position of law amongst other decision of Hon'ble High Court of Madras in the case of Simplex Infrastructures Ltd. Vs. UOI - 2020 (373) ELT 574 (Mad.) as and when the export obligation discharge certificate is issued, the said officer becomes "functus officio" and if at all such an order of such officer is to be reviewed, the same can be done only by the Director General, as provided under Section 16.
- Therefore, in view of the above we most respectfully pray to your good office either restore our EOC or give us decision that whether export obligation already discharged by taking FOB value of Third Party Exports for EPCG Authorisation issued under FTP 2009-14 was correct or the value realised by the EPCG Authorisation Holder as provided under Para 5.5 of FTP read with Para 5.7 of HBP 2009-14 is to be taken.
- We wish to be heard in person in the matter. An early action in the matter is solicited looking to the long pending representation since 30.10.2020 submitted on 31.10.2020 on line and physically submitted on 14.12.2020 as well as in view of the hearing fixed by the Commissioner, NS-II, JNCH, NhavaSheva on 17.10.2024.

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- In spite of specific request your office has without making any reference to our letter dated 11.09.2024 and also without any clarification on SCN F. No. DRI/AZU/JRU/INT-04/2015-16 dated 06.06.2016 (Seizure Portion) in the same matter has again fixed hearing in the matter. Therefore, it is once again prayed to wait in the matter till the decision of DGFT and in case of any doubt before further proceeding in the matter a reference may be made to DGFT for clarification in the matter under intimation to us in the interest of justice.

49.6. M/s. Printwell Offset, made submissions dated 15.10.2024 stating that:

- Please refer to the above cited show cause notices dated 20.06.2024 and 06.06.2016, your office letter F.No. S/ 10-069/24-25/Commr / EPSMMC/NS-II/CAC/JN.# dated 19.09.2024 intimating date & time of Personal Hearing i.e. 17.10.2024 at 04:00 PM and M/s. Printwell Offsets letters dated 11.09.2024 and 30.09.2024.
- It appears that your office has not taken into consideration M/s. Printwell Offset's letter dated 11.09.2024 sent by email and also speed post while fixing another date of hearing. rearing date is also fixed without any reference to above referred seizure portion SCN, wherein hearing is already held before your office way back on 10.01.2023 even after same was brought to the notice of your office.
- M/s. Printwell vide its letter dated 11.09.2024 cleared why it has sought time and also enclosed copy of letter dated 06.09.2024 addressed to the Chairman PRC, DGFT, New Delhi. However, your office has mechanically fixed next date of hearing i.e. 17.10.2024 in the matter though SCN is issued before few months only. So, M/s. Printwell vide its letter dated 30.09.2024 sent reminder to Chairmen PRC, New Delhi with a copy to Jt.DGFT, Rajkot and your good office (sent by email dated 01.10.2024 on aforesaid 3 email ids) with reference to your office said letter inter alia requesting to wait till the decision of DGFT (which is final and binding upon all including Customs as per FTP and settled position of law) else a reference may be made to DGFT in case of any doubt about pendency of the representation of M/s. Printwell Offset. It may please be appreciated that M/s. Printwell Offset is not benefited by making any delay but at the same time fixing hearing and passing order mechanically like SCN issued by DRI, it will amount to gross injustice to it.
- We, P. R. Associates, Advocates, Rajkot/Ahmedabad is authorised in the above referred matter. (Authorisation duly signed and accepted is enclosed with photo id) Our Founder and Principal Associate Shri P. D. Rachchh, Advocate is stationed at Ahmedabad, therefore, it is requested that if the hearing is to be held on 17.10.2024 same may be held in virtual and link for same may be sent to our email id- prassociates08@gmail.com.
- In this regard your attention is invited towards para 3 of Instructions issued by CBIC from F. No. 390/Misc/3/2019-JC dated 21.08.2020 to conduct personal hearing through video conferencing and even your office has also given such option in letter dated 19.09.2024.
- It is also requested to confirm well in advance that hearing will be held through virtual mode on the same date i.e. 17.10.2024 that too for both the SCNs.

F. No. S/10-25/2016-17/CAC/NS-IV(Comm)/JNCH
SCN F.No. DRI/AZU/JRU/INT-04/2015-16 Dated 06.06.2016 &
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- It is also requested that these adjournment requests may not be counted for 3 adjournments (i.e. four dates of hearings).

49.7. M/s. Printwell Offset, made submissions dated 15.10.2024 stating that: -

- The noticee through their Authorised Representative, Advocate, Shri P. D. Rachchh, vide their submission dated 15.10.2024, submitted that It appears that your office has not taken into consideration M/s. Printwell Offset's letter dated 11.09.2024 sent by email and also speed post while fixing another date of hearing. Hearing date is also fixed without any reference to above referred seizure portion SCN, wherein hearing is already held before your office way back on 10.01.2023 even after same was brought to the notice of your office.
- M/s. Printwell vide its letter dated 11.09.2024 cleared why it has sought time and also enclosed copy of letter dated 06.09.2024 addressed to the Chairman PRC, DGFT, New Delhi. However, your office has mechanically fixed next date of hearing i.e. 17.10.2024 in the matter though SCN is issued before few months only. So M/s. Printwell vide its letter dated 30.09.2024 sent reminder to Chairmen PRC, New Delhi with a copy to Jt. DGFT, Rajkot and your good office (sent by email dated 01.10.2024 on aforesaid 3 email ids) with reference to your office said letter inter alia requesting to wait till the decision of DGFT (which is final and binding upon all including Customs as per FTP and settled position of law) else a reference may be made to DGFT in case of any doubt about pendency of the representation of M/s. Printwell Offset. It may please be appreciated that M/s. Printwell Offset is not benefited by making any delay but at the same time fixing hearing and passing order mechanically like SCN issued by DRI, it will amount to gross injustice to it.
- It is also requested that these adjournments request may not be counted for 3 adjournments (i.e. four date of hearings).

49.8. M/s. Printwell Offset, made submissions dated 09.12.2024 stating that: -

- Please refer to the above cited show cause notices dated 20.06.2024 and 06.06.2016, your Office letter S/ 10-069/24-25/Commr/EPSCMMC/NS-II/CAC/JNCH dated 23.10.2024 intimating date & time of Personal Hearing i.e. 10.12.2024 at 04:00 PM. M/s. Printwell Offsets letters dated 11.09.2024 and 30.09.2024, our letter dated 15.10.2024 and M/s. Printwell offset Representation dated 29.11.2024 addressed to DGFT with a copy to your office.
- It is respectfully submitted that as stated in earlier correspondence that M/s. Printwell Offset's representation is under active consideration by PRC, DGFT, New Delhi and it is expected that decision thereon will be communicated soon.
- M/s. Printwell vide its letter dated 30.09.2024 has sent reminder to Chairman PRC, New Delhi with a copy to Jt. DGFT, Rajkot and your good office (sent by email dated 01.10.2024 on aforesaid 3 email ids) with reference to your office said letter ter alia requesting to wait till the decision of DGFT (which is final and binding upon all including Customs as per FTP and settled position of law) else a reference may be made to DGFT in case of any doubt about pendency of the representation of M/s. Printwell Offset. It may please be appreciated that M/s. Printwell Offset is not

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benefited by making any delay. It is trying hard to avoid undue litigation in the matter. M/s. Printwell Offset submitted last representation dated 29.11.2024 sent through email dated 30.11.2024 inter alia again requesting to restore the EOCD against EPCG No. 2430001677 dated 03.07.2012 / Clarification on computation of Export Obligation for Exports through Third Parties under FTP 2009-2014 and Applicability of New Para 5.10(a) HBP dated 05.12.2017 in light of DGFT Policy Circular No. 3/2015-20 dated 02.09.2015. Copy of same was also marked to your office.

- I, the undersigned, P. D. RACHCHH, Advocate, of M/s. P. R. Associates, Advocates, Rajkot / Ahmedabad am authorised in the above referred matters. Authorisation duly signed and accepted with photo id is already sent through our letter dated 15.10.2024.
- Therefore, it is requested that kindly wait for one more month or hearing may be held through virtual mode. If hearing is to be held on tomorrow 10.12.2024 as per intimation a link for same may be sent on email id - prassociates08@gmail.com in addition to client's email id.
- It is also requested to confirm well in advance that hearing will be held through virtual mode on the same date i.e. 10.12.2024 that too for both the SCNs. These adjournment requests may not be counted for 3 adjournments (i.e. four dates of hearings) in the circumstances narrated above, if hearing may not be held through virtually.

49.9. M/s. Printwell Offset, made submissions dated 11.01.2025 stating that: -

- **Issue Involved-** Whether duty of Customs can be demanded by on capital goods imported under EPCG authorization No. 2430001677 dated 03.07.2012 on the alleged ground of violation of Condition No. 9 of Notification No. 102/2009-Cus. Dated 11.09.2009 as amended, especially when once export obligation discharged certificate was issued by the proper officer of the DGFT and withdrawn by other officer of the same rank of the DGFT by interim order dated 02.12.2015 and in final order dated 28.07.2016 ordered that "The Notice (it should be noticee) has done third party exports with value addition in the export products is 4.27% so this case shall be referred to DGFT, New Delhi for FTP 2009-15 clarification whether full export value of the exported products should be considered under Export Obligation or Corresponding value of addition of 4.27 % should be considered under export obligation. Especially when the DGFT has vide recent Policy Circular No. 10/2024-25 dated 13.12.2024 has clarified that amendment to Para 5. 10(c) of HBP, 2015-20 (mid-term review) is prospective in nature and would be applicable to the third party exports made against EPCG Authorisation (s) issued on or after 05.12.2017 only and Jt. DGFT, Rajkot has certified about the correctness of EODC issued earlier and asked to DGFT, New Delhi for restoration of EODC and revocation of earlier orders 02.12.2015 and 28.07.2016.
- Decision of DGFT is awaited on whether EODC F. No. 24/21/021 /00044/AM13 dated 30.04.201. Prayed that now wait till decision of DGFT, New Delhi on the same.

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- **Period of dispute-** Bills of Entry No. 8270493 dated 19.10.2012 and 8288223 dated 22.10.2012 & 8288712 dated 22.10.2012 at Air Cargo Complex, Sahar, Andheri (E), Mumbai and JNCH, Nhava Sheva respectively.

Amount involved: Rs. 2,47,49,694/-

- M/s. Printwell Offset, Rajkot (Hereinafter referred to as M/s. Printwell") is engaged in printing of various items and for that it had imported various machines as mentioned in the said EPCG Authorisation (Hereinafter referred to as Authorisation") as well as said three bills of entry.
- M/s. Printwell submits that prior to the another SCN No. impugned SCN, DRI/AZU/JRU/INT-04/2015-16 2. 06.06.2016 (read with corrigendum dated 28.03.2019) for seizure portion of the goods imported under the and said Bills of Entry is issued. The same is of referred at paragraph 21 the impugned SCN.
- M/s. Printwell submits that hearing was held on 10.01.2023 before your good office and written submission dated 07.01.2023 sent by email dated 07.01.2023 in the said SCN dated 06.06.2016 and according to it no order is issued in the said matter till date.
- Therefore, it is most respectfully submitted that both the SCNS may please be decided together and said written submissions dated 07.01.2023 may please be considered as part of this reply as facts of the case and grounds are almost similar for confiscation of seized goods and demand of duty except some further developments are discussed in the impugned SCN dated 20.06.2024.
- 1. M/s. Printwell submits that from Paragraph 27 to 34 of the impugned SCN has discussed further investigation in the matter and according to M/s. Printwell its matter is pending before the DGFT, New Delhi and Dy. DGFT, Rajkot for clarification in the matters viz. its application dated 30/31.10.2020 before Policy Relaxation Committee (PRC) for clarification on valuation of export goods in case of third party exports as well as reference made by the Dy. DGFT, Rajkot in continuation to his Order-in-Original dated 28.07.2016 wherein it is inter alia held that
 "16. The noticee has done third parts exports uwith value addition in the export products is 4.27% so this case shall be referred to Directorate General of Foreign Trade New Delhi for Foreign Trade Policy (2009-15) Clarification whether full export value of the exported products should be considered under Export Obligation or corresponding value addition of 4.27% should be considered under Export Obligation".
- 1. However, according to the communication received from the DGFT by the DRI no request / application had been found received from M/s. Printwell offset in PRC division as on date i.e. 01.12.2020. It failed to understand why and how DGFT, Delhi has replied like that especially when such application was made online and also acknowledged copy of such application was submitted before the DRI.
- 2. M/s. Printwell again vide its letter dated 14.12.2020 requested to the PRC, DGFT, New Delhi for clarification and the DGFT, EPCG

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Section, New Delhi had vide letter dated 17.12.2021 said to have been stated that this case is not a matter of FEPCG committee as there is no relaxation or nexus involved. Therefore, DRI has presumed that PRC has rejected the application for extension of EP period and clarification on third party exports. In fact both the DGFT as well as so called apex agency DRI both have implicated the innocent importer/exporter in sheer disregard to the provisions of the policy as stood at the material time read with Policy Circular No. 3/2015-20 dated 02.09.2015 that "the provisions of Para 5.10d) of HBP 2015-20 shall be applicable to third party exports made on or after 01.04.2015. The third by exports the which have been made prior to 1.04.2015 will be governed provisions of relevant policy/procedure"

especially when the D. DGFT was not supposed to revoke its EODC dated 30.04.2015 already issued to by his predecessor as such power is vested upon the DG as per FTA and settled position of law by Honble High Court. Apart from that there was no further clarification on para 16 of said OIO dated 28.07.2016 of the Dy. DGFT, Rajkot.

- M/s. Printwell vide its application/reminder dated 30.09.2024 addressed to Chairman, PRC, New Delhi with a copy to your good office as well as Jt. DGFT, Rajkot with reference to its original application dated 30.10.2020 and said OIO dated 28.07.2016 again requested for restoration of EODC or decision on which value is to be taken for computation of export obligation.
 1. M/s. Printwell vide its email dated 01.10.2024 addressed to DGFT, Delhi, Rajkot and your good office with reference to said reminder dated 30.09.2024 again requested for matter clarification in the at an early date.
 2. Advocate of M/s. Printwell vide his letter dated sent by email dated 15.10.2024 15.10.2024 and email dated alia 16.10.2024 inter appraised about the Delhi reference pending before the DGFT, New and also requested to make reference in the matter for clarification in the matter.
 3. M/s. Printwell vide its letter dated 30.11.2024 addressed to Chairman, PRC, EPCG, DGFT, New Delhi with a copy to your good office sent by email dated 30.11.2024 requested for restoration of the EODC or clarify with reference to the DGFT two circulars on the very subject and settled position of law by Hon'ble High Court of Madras in the case of Simplex Infrastructure Ltd. Vs. UOI 2020 (373) ELT 574 (Mad.) that when the export obligation discharge certificate is issued, the said officer becomes functus officio" and if at all such an order of such officer is to be reviewed, the same can be done only by the Director General, as provided under Section 16 of the FTA, 1992.
 4. The Advocate of M/s. Printwell vide his letter 09.12.2024 sent by email dated 09.12.2024 again inter alia appraised about pendency of representation and invited your kind attention towards earlier correspondence.

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5. The Advocate appeared in virtual mode for hearing on 11.12.2024 and inter alia appraised about development in the matter and also requested to grant one more date of hearing. Accordingly, next date of hearing is granted for 13.01.2025.
6. The Jt. DGFT, New Delhi vide Policy Circular No. 10/2024-25 dated 13.12.2024 inter alia set aside Policy Circular No. 22/2015-20 dated 29.03.2019 issued by the DGFT and clarified based on the Hon'ble High Court of Gujarat's decision in SCA No. 16316 / 2021 as SLCP (civil) against the said decision has been dismissed by Hon'ble Apex Court on 02.08.2024 that "In pursuance of the above, it is informed that the amendment to the para 5.10(c) of HBP, 2015-20 (Mid-term review) is prospective in nature and would be applicable to the third party exports made against EPCG Authorisation(s) issued on or after 05. 12.2017 only."

Hereto annexed and marked as Exhibit - I is the copy of said circular dated 13.12.2024 and 29.03.2019.

1. letter The FTD0, (EPCG Section), DGFT, New Delhi has vide his F. No. 01/60/162/395/AM-21 /PRc/EPCG/ 19 dated 18.12.2024 addressed to the Jt. DGFT, Rajkot with a copy to M/s. Printwel with reference to M/s. Printwell's letters dated 01.10.2024 and 29.11.2024 on the subject - M/s. Printwell Offset - Request TO clarification to either restore their EODC or give them decision that whether EO already discharged by taking FOB Value of third Party exports for EPCG Authorisation issued under FTP - 2009-14 was correct or the value realized by the EPCG Authorisation Holder as provided under para 5.5 of FTP read with para 5.7 of HBP 2009 14" against Authorisation No. 243000677 dated 03.07.2012, with the approval of the DGFT inter alia asked the R.A. Rajkot may please examine the above request of M/s. Printwell Offset in accordance with:

- (i) DGFT Policy Circular No. 10 dated 13.12.2024 issued in compliance to the judgement dated 21.12.2023 of the Hon'ble High Court of Ahmedabad in SCA No. 16316/2021 which has been later upheld on 02.08.2024 by the Hon'ble Supreme Court in SLP(C) No. 29793/2024.
- (ii) The provisions of the Foreign Trade Policy / Handbook of Procedures for fulfilment of Export Obligation though third party exports.

Hereto annexed and marked as Exhibit - II is the copy of said letter dated 18.12.2024.

2. The FTDO, DGFT, Rajkot vide letter F. No. 24/21/021/00044/AM13 dated 24.12.2024 addressed to DGFT, New Delhi with reference to aforesaid letter dated 18.12.2024 inter alia informed that
 "This office has re-examined the request for restoration of EODC F. No. 24/21/021/00044AM13 dated 30.04.2015 made by the firm which was further withdrawn by this office on account of inputs received from DRI vide interim order FE. No. 24/21/021/000/AM13 dated 02. 12.2015 read with Order-in-Original dated 28.07.20216 Facts of the case:

EPCG No. 2430001677 dated 03.07.2012

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 SCN F.No. DRI/AZU/JRU/INT-04/2015-16 Dated 06.06.2016 &
 SCN No. 572/2024-25/CC/EPCG/NS-II/CAC/JNCH Dated 20.06.2024

Duty Saved value allowed/utilized - Rs. 2,62, 8 7, 760/ Rs. 2,47,49,694/

Specific export obligation re-fixed- 26, 73,234.40 USD

Specific exports obligation fulfilled 2,00, 22,572.53 USD

- Firm has submitted ANF 5B and supporting documents i.e. Shipping Bills and BRCs and NOC from third party exports.
- Firm has completed above specific export obligation within first block with claiming full FOB of shipping bills by third party exports.
- It is submitted that the firm has already submitted all the required documents for EODC and on fulfilment of required export obligation, the case was closed. Exports made between 12.07.2013 to 11.03.2014 before introduction of para 5.10(d) of HBP 201 5-20 which was further clarified by Policy Circular 03 dated 02.09.2015 that provisions of Para 5.10 HBP 2015-20 shall be applicable on exports made on or after 01.04.2015. Hence, it is understood that para 5.10(d) will not be applicable in this case.
- During policy year 2009-14 under EPCG third party exports were allowed in terms of Para 5.7.1 (a) HBP 2009-14 and shipping bill having EPCG No for correlation of third party exports and EPCG also given and no restriction on counting of full FOB of Shipping Bills existed.
- Now, as per recent Policy Circular 10 dated 13.12.2024, the amendment to Para 5.10(d) of Hand Book of Procedure 2015-20 (Mid-term Review) is prospective in nature and would be applicable to the third party exports made against EPCG Authorisation(s) issued after 05.12.2017 only. In the instant case EPCG Authorisation was issued well prior to 05.12.2017 i.e. on 03.07.2012.
- In view of the above, it is stated that EODC F. No. 24/21/021/00044AM13 dated 30.04.2015 was granted correctly as per existing provision and was withdrawn based on the investigation initiated by the DRI on account of less value addition from the manufacturer.

You are therefore, in view of the above, requested to kindly clarify F. No. whether this office can reinstate withdrawn EODC revoke 24/21/021/00044/ Order AM13 dated 30.04.2015 and dated 02.12.2015 and 28.07.2016 issued by this office in the light of Policy OIO dated Circular 10 dated 13.12.2024. The details of this case already submitted to your end forwarded and again for further instructions.

This issued with the approval of Joint DGFT."

Hereto annexed and marked as Exhibit - III is the copy of said letter dated 24.12.2024

1. Thus, in view of the above, it is admitted facts on record that as per the provisions of HBP duly supported by clarification issued by DGFT that export obligation discharged by M/s. Printwell was well within all four of the export obligation provisions of the FTP and HBP and even discharge certificate issued by the Jt.

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DGFT was also well within all four of the provisions of FTP and HBP as stood at the material time.

2. Now only issue is pending about whether 30.04.2015 restoration of EODC dated and revocation of Orders dated 02.12.2015 and 28.07.2016 Delhi.
3. M/s. Printwell's vide its email dated 09.01.2025 sought the clarification from Jt. DGFT, Rajkot with reference to DGFT, New Delhi's letter dated 18.12.2024 has sought the status of the reply to EPCG Section.
4. The Joint DGFT, Rajkot vide his email dated 09.01.2025 informed that his office has taken up the matter with H.I. for further instructions w.r.t. letter dated 18.12.2024.

Hereto annexed and collectively marked as Exhibit - IV are the copy of emails dated 09.01.2025.

- M/s. Printwell in view of the most respectfully submits that matter viz. both the SCNs may please be kept pending till the restoration of EODC dated 30.04.2015 and revoke both the said orders dated 02.12.2015 and 28.07.2016 passed by the Dy. DGFT, Rajkot. It is very much hopeful that clarification will be received within a fortnight as concern officer of the DGFT, New Delhi was on leave during the last week and its EODC will be restored and said two Orders will be revoked. Once, same is done both the aforesaid Show Cause Notices will not survive and require to be withdrawn/set aside.
- M/s. Printwell on receipt of the said clarifications wishes to make further submission in the matter and also wishes to be heard in person before adverse decision in the matter.

In convenience caused to your office is highly regretted.

49.10. M/s. Printwell Offset, made further written submissions dated 22.08.2025 stating that:

- M/s. Printwell Offset, Rajkot (Hereinafter referred to as "M/s. Printwell") is engaged in printing of various items and for that it had imported various machines as mentioned in the said EPCG Authorisation (Hereinafter referred to as "Authorisation") as well as said three bills of entry.
- M/s. Printwell submits that it has already filed detailed reply dated 07.01.2023 sent by email dated 07.01.2023 in the SCN No. DRI/AZU/JRU/INT-04/2015-16 dated 06.06.2016 (Seizure portion).
- M/s. Printwell has also filed detailed reply to dated 11.01.2025 submitted vide email dated 11.01.2025 to the SCN No. 572/2024-25/CC/EPCG/NS-II/CAC/JNCH dated 20.06.2024 with all exhibits.
- M/s. Printwell vide its email dated 30.11.2024 addressed to DGFT With a copy to your good office inter alia enclosing letter dated 29.11.2024 addressed to The Chairman EPCG, Committee, DGFT, New Delhi with your goods office narrating

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 SCN F.No. DRI/AZU/JRU/INT-04/2015-16 Dated 06.06.2016 &
 SCN No. 572/2024-25/CC/EPCG/NS-II/CAC/JNCH Dated 20.06.2024

brief facts of the case with all exhibits including Interim order dated 02.12.2015 (Exhibit - F) and Order-in-Original dated 28.07.2016 (Exhibit K).

- M/s. Printwell submits that from Paragraph 27 to 34 of the impugned SCN has discussed further investigation in the matter and according to M/s. Printwell its matter was pending before the DGFT, New Delhi and Dy. DGFT, Rajkot for clarification in the matters viz. its application dated 30/31.10.2020 before Policy Relaxation Committee (PRC) for clarification on valuation of export goods in case of third party exports as well as reference made by the Dy. DGFT, Rajkot in continuation to his Order-in-Original dated 28.07.2016 wherein it is inter alia held that

"16. The noticee has done third party exports with value addition in the export products is 4.27% so this case shall be referred to Directorate General of Foreign Trade New Delhi for Foreign Trade Policy (2009-15) Clarification whether full export value of the exported products should be considered under Export obligation or corresponding value addition of 4.27% should be considered under Export Obligation".

- The Jt. DGFT, New Delhi vide Policy Circular No. 10/2024-25 dated 13.12.2024 inter alia set aside Policy Circular No. 22/2015-20 dated 29.03.2019 issued by the DGFT and clarified based on the Hon'ble High Court of Gujarat's decision in SCA No. 16316 / 2021 as SLCP (civil) against the said decision has been dismissed by Hon'ble Apex Court on 02.08.2024 that

"In pursuance of the above, it is informed that the amendment to the para 5.10(c) of HBP, 2015-20 (Mid-term review) is prospective in nature and would be applicable to the third EPCG party exports made against Authorisation(s) issued on or after 05.12.2017 only."

The copy of said circular dated 13.12.2024 and 29.03.2019 are already enclosed as Exhibit - I with reply dated 11.01.2025 submitted vide email dated 11.01.2025 and reiterated in PH dated 13.01.2025.

- The FTDO, (EPCG Section), DGFT, New Delhi has vide his letter F. No. 01/60/162/395/AM-21/PRC/EPCG/19 dated 18.12.2024 addressed to the Jt. DGFT, Rajkot with a copy to M/s. Printwell with reference to M/s. Printwell's letters dated 01.10.2024 and 29.11.2024 on the subject "M/s. Printwell Offset - Request for clarification to either restore their EODC or give them decision that whether EO already discharged by taking FOB Value of third party exports for EPCG Authorisation issued under FTP - 2009-14 was correct or the value realized by the EPCG Authorisation Holder as provided under para 5.5 of FTP read with para 5.7 of HBP 2009 14" against Authorisation No. 243000677 dated 03.07.2012, with the approval of the DGFT inter alia asked the R.A. Rajkot may please examine the above request of M/s. Printwell Offset in accordance with:

F. No. S/10-25/2016-17/CAC/NS-IV(Comm)/JNCH
 SCN F.No. DRI/AZU/JRU/INT-04/2015-16 Dated 06.06.2016 &
 SCN No. 572/2024-25/CC/EPCG/NS-II/CAC/JNCH Dated 20.06.2024

- (i) DGFT Policy Circular No. 10 dated 13.12.2024 issued in compliance to the judgement dated 21.12.2023 of the Hon'ble High Court of Ahmedabad in SCA No. 16316/2021 which has been later upheld on 02.08.2024 by the Hon'ble Supreme Court in SLP(C) No. 29793/2024.
- (ii) The provisions of the Foreign Trade Policy / Handbook of Procedures for fulfilment of Export Obligation though third party exports.

The copy of said letter dated 18.12.2024 is already enclosed as Exhibit - II with the reply dated 11.01.2025.

- The FTDO, DGFT, Rajkot vide letter F. No. 24/21/021/00044/AM13 dated 24.12.2024 addressed to DGFT, New Delhi with reference to aforesaid letter dated 18.12.2024 inter alia informed that

*"This office has re-examined the request for restoration of EODC F. No. 24/21/ 02 1/00044AM13 dated 30. 04.2015 made by the firm which was further withdrawn by this office on account of inputs received from DRI vide interim order F. No. 24/21/021/000/AM13 dated 02.12.2015 read with Order-in-Original dated 28.07.20216 Facts of the case:
 EPCG No. 2430001677 dated 03. 07.2012*

Duty Saved value allowed/utilized - Rs. 2,62,87,760/ Rs. 2,47,49,694/

Specific export obligation re-fixed - 26, 73,234.40 USD

Specific exports obligation fulfilled 2, 00,22, 572.53 USD (74.90%) "

Firm has submitted ANF 5B and supporting documents i.e. Shipping Bills and BRCS and NOC from third party exports.

Firm has completed above specific export obligation within first block with claiming full FOB of shipping bills by third party exports.

It is submitted that the firm has already submitted all the required documents_ for EODC and on fulfilment of required export obligation, the case was closed. Exports made between 12.07.2013 to 11.03.2014 before introduction of para 5.10(d) of HBP 2015-20 which was further clarified by Policy Circular 03 dated 02.09.2015 that provisions of Para 5.10 HBP 2015-20 shall be applicable on exports made on or after 01.04.2015. Hence, it is understood that para 5.10d) will not be applicable in this case.

During policy year 2009-14 under EPCG third party exports were allowed in terms of Para 5.7.1 (4) HBP 2009-14 and shipping bill having

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EPCG No for correlation of third party exports and EPCG also given and no restriction on counting of full FOB f Shipping Bills existed.

Now, as per recent Policy Circular 10 dated 13.12.2024, the amendment to Para 5.10(d) of Hand Book of Procedure 2015-20 (Mid-term Review) is prospective in nature and would be applicable to the EPCG third exports made party against Authorisation was issued well prior to 05.12.2017 i.e. on 30.07.2012.

In view of the above, it is stated that EODC F. No. 24/21/O21/00044AM13 dated 30.04.2015 was granted correctly as per existing provision and was withdrawn based on the investigation initiated by the DRI on account of less value addition from the manufacturer.

You are therefore, in view of the above, requested to kindly clarify whether this office can reinstate withdrawn EODC F. No. 24/21/021/00044/AM13 dated 30.04.2015 and revoke Order dated 02. 12.2015 and OIO dated 28.07.2016 issued by this office in the light of Policy Circular 10 dated 13.12.2024.

The details of this case already forwarded and again submitted to your end for further instructions.

This issued with the approval of Joint DGFT."

The copy of said letter dated 24.12.2024 is already submitted as Exhibit - III with reply dated 11.01.2025.

- Jt. DGFT, New Delhi vide his letter dated 14.02.2025 addressed to Jt. DGFT, Rajkot with a copy to M/s. Printwell with reference to the letter dated 24.12.2024 of RA, Rajkot inter alia clarified that
*"In case of third party exports, an EPCG authorization holder can count till 04.12.2017 the full realized value of Shipping Bill towards fulfilment of EO subject to counting of exports only once towards the EPCG obligation and maintenance of average Export Obligation.
 Accordingly, R.A., Rajkot may please examine and take necessary action on the request of M/s. Printwell Offset, Rajkot on the basis of PC No. 10 dated 13. 12.2024 read with extant provisions of FTP/HB."*

Hereto annexed and marked as Exhibit-A is the copy of letter dated 14.02.2025.

- The FTDO, Jt. DGFT, Rajkot vide his 24/21/021/00044/AM13 dated 06.08.2025 addressed to your good office with a copy to M/s. Printwell with reference to

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clarification from DGFT, Hq, New Delhi's letter dated 14.02.2025 has inter alia communicated that

Vide said letter DGFT, HQ clarified that "it is clarified that In case of third party exports, an EPCG authorization holder can count till 04. 12.2017 the full realized value of Shipping Bill towards fulfilment of EO subject to counting of exports only once towards the EPCG obligation and maintenance of average Export Obligation.

Your attention also invited towards DGFT Policy Circular No. 10/ 2024-25 dated 13.12.2024 by it is clarified that amendment to the para 5.10fc) HBP 2015-20 (Mid terms review) is prospective in nature and would be applicable to the third party exports made against EPCG authorization issued on or after 05.12.2017 only.

In light of the above clarification and policy circular it is found that all exports made prior 04.12.2017 and on the basis of redemption granted to EPCG No. 2430001677 dated 03.07.2012 on 30.04.2015 was consistent with DGFT policy provision and correctly issued. You are therefore requested to kindly take necessary action accordingly."

Hereto annexed and marked as Exhibit - B is the copy of letter dated 06.08.2025.

- M/s. Printwell in view of the above most respectfully submits that EODC dated 30.04.2015 (RUD-3) to the SCN dated 20.06.2024 was correctly issued therefore, withdrawal of the same vide interim order dated 02. 12.2015 and Order-in-Original dated 28.07.2016 subject to clarification from DGFT now stand restored. It is further clarified that since both the said orders were not final but interim as well as subject to clarification by DGFT it had not preferred any appeal against those orders as per settled position of law.
- M/s. Printwell submits that as per the information gathered office of the DGFT, Rajkot has also sent aforesaid letter dated 06.08.2025 with its enclosure to your good office.
- M/s. Printwell in view of the above most respectfully submits that since now export obligations are stood discharged as per EODC/Redemption letter dated 30.04.2015 issued by the proper officer of the DGFR, Rajkot both the SCNs do not survive and therefore, proceedings initiated vide both the SCNs may please be dropped with consequential relief.
- M/s. Printwell sure that your honour will be satisfied with the submissions made with all documentary evidences till date however, still any clarification, documents etc. is required it is ready to co-operate in the matter.

RECORD OF PERSONAL HEARING

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50. Personal hearing was scheduled on any of the dates on 10.01.2023, 17.01.2023 & 23.01.2023 by the erstwhile Adjudicating authority for both the Noticees with regard to SCN No. DRI/AZU/JRU/INT-04/2015-16 Dated 06.06.2016. On behalf of M/s. Printwell Offset, Shri Pankaj Rachchh, Advocate, appeared before the erstwhile Adjudicating Authority for the Personal Hearing held on 23.01.2023 and referred to their written submission dated 07.01.2023.

(i) Further he stated that DRI show cause notice is misplaced as they have already got redemption letter from DGFT. DRI has not taken into consideration that their license was issued under FTP 2009-14 while issuing the show cause notice they have referred to the provisions of under the policy of 2015-16.

(ii) Further, he also referred to RUD-4 wherein interim order has been issued by Dy. Director General of Foreign Trade who has issued it for Jt. Director General of Foreign Trade withdrawing the redemption issued on 30.04.2015. Shri Rachchh Stated that this power lies only with DGFT and it could not have been issued by an officer subordinate to him. On a query whether the impugned interim order was appealed against by them he replied in negative as the order was an interim one. Final order dated 28.07.2016 in para 16 states that this case shall be referred to DGFT for policy clarification which has not been done yet and therefore no demand notice was issued by DRI and the instant show cause notice has been issued only for the confiscation and penalty part. Further since the issue whether their EODC is right or wrong remains undetermined; the goods do not become liable to confiscation.

(iii) He further referred to para 5.1 (a) of FTP wherein it is written that the export obligation should be equivalent to 6 times of duty saved on capital goods. It is nowhere written that the value will not include the value of the third party exporter. Para 5.71 of HBP authorizes third party export with endorsement on shipping bills in this regard.

(iv) Further, he referred to para 5.10 of the FTP 2015-20 wherein a new provision in sub para (c) was inserted which state that the goods exported through third party should be manufactured by EPCG authorisation holder or the supporting manufacturer. Such provision was not present in the earlier policy.

(v) He stated that the provisions contending para 5.10(d) was not present in the earlier FTP. He placed reliance on circular no. 3 /2015-20 dt. 02.09.2015 of DGFT., which states that para 5.10 (d) of HBP shall not be applicable to third party exports made prior to 01.04.2015.

(vi) They have not violated any of the conditions of customs notification as well.

(vii) As per Section 110 (2) of Customs Act, 1962, if the notice is not issued within 6 months from the date of seizure then seized goods are required to be return to the

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person from whose possession same were seized unconditionally. In this case, therefore, the goods were seized on 08.12.2015 and SCN dated 06.06.2016 was served on 18.07.2016 therefore, goods cannot be confiscated.

(viii) Nothing further to add.

50.1. Next Personal hearing was scheduled by the erstwhile Adjudicating authority thrice for M/s. Nemlaxmi Books (India) Pvt. Ltd. on 31.01.2023, 14.03.2023 & 13.04.2023 with regard to SCN F.No. DRI/AZU/JRU/INT-04/2015-16 Dated 06.06.2016, however they did not appear on any of the scheduled dates.

50.2. Next Personal hearing was scheduled by the erstwhile Adjudicating authority on 12.09.2024 for all the noticees with regard to SCN No. 572/2024-25/CC/EPCG/NS-II/CAC/JNCH Dated 20.06.2024 however no one appeared.

50.3. Next personal hearing was scheduled by the erstwhile Adjudicating authority on 17.10.2024 through virtual mode for both the SCN No. 572/2024-25/CC/EPCG/NS-II/CAC/JNCH Dated 20.06.2024 and SCN F.No. DRI/AZU/JRU/INT-04/2015-16 Dated 06.06.2016 on request of the representative of M/s. Printwell Offset. However, due to network issue, virtual hearing could not be held on the said date and the next personal hearing was scheduled on 10.12.2024 for all the noticees on request of M/s. Printwell Offset.

50.4. On behalf of M/s. Printwell Offset, Shri Pankaj Rachchh, Advocate, appeared before the erstwhile Adjudicating Authority for the Personal Hearing held on 10.12.2024 through video conferencing and re-iterated their written submission made vide letter dated 09.12.2024 including submissions dated 07.01.2023, 30.09.2024 (submitted by email dated 01.10.2024) and 29.11.2024 (submitted by email dated 30.11.2024).

- (i) It was submitted that seizure portion SCN No. DRI/AZU/JRU/INT-04/2015-16 dated 06.06.2016 was also issued in the matter as informed earlier vide letters dated 11.09.2024, 30.09.2024, 15.10.2024 and 09.12.2024. Reply to the said SCN was already filed on 07.01.2023 and also appeared in personal hearing on 10.01.2023 (reply sent by email dated 07.01.2023).
- (ii) It was further submitted that as regard to the SCN dated 20.06.2024, issue was pending before Chairman, Policy Relaxation Committee, DGFT, New Delhi as per email dated 01.10.2024 addressed to DGFT with a copy to your office enclosing reminder dated 30.09.2024 and also representation dated 30.11.2024 by email addressed to DGFT, New Delhi with a copy to your office enclosing representation dated 29.11.2024 with all exhibits.
- (iii) As per instruction from client, representation was likely to be decided within a month time, so requested for one month time and would like to make submissions in the matter on receipt of decision of PRC, EPCG, DGFT, New Delhi.
- (iv) He requested for further one month time for the final submission. It had been clarified to him that it would be the last opportunity for personal hearing and the case would be

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decided on the basis of the facts and submissions made by him on the last P.H. i.e. on 13.01.2025

50.5. On behalf of M/s. Printwell Offset, Shri Pankaj Rachchh, Advocate appeared before the erstwhile Adjudicating Authority for the Personal Hearing held on 13.01.2025 through video conferencing and reiterated their submission dated 11.01.2025 and requested to keep the proceedings in abeyance for at least one more month as they were expecting EODC by DGFT.

50.6. Next Personal hearing was scheduled by the erstwhile Adjudicating authority on 19.03.2025 and on 28.04.2025 for all the noticees with regard to SCN No. 572/2024-25/CC/EPCG/NS-II/CAC/JNCH Dated 20.06.2024 however no one appeared.

50.7. Next Personal hearing was scheduled by the undersigned on 08.05.2025 for all the noticees with regard to SCN No. 572/2024-25/CC/EPCG/NS-II/CAC/JNCH Dated 20.06.2024 however no one appeared.

50.8. Next Personal hearing was scheduled by the undersigned on 07.08.2025 for all the noticees with regard to SCN No. 572/2024-25/CC/EPCG/NS-II/CAC/JNCH Dated 20.06.2024 and SCN No. DRI/AZU/JRU/INT-04/2015-16 dated 06.06.2016.

50.8.1. On behalf of the M/s. Printwell Offset and its partner Shri Jitendra Jadavbhai Kakadia, Shri Pankaj Rachchh, Advocate, appeared before the undersigned for the Personal Hearing held on 07.08.2025 through video conferencing and submitted as:-

- (i) In the matters on behalf of M/s. Printwell Offset and Shri Jitendra J. Kakadia, he reiterated the submissions dated 07.01.2023 and 11.01.2025 already submitted.
- (ii) He specifically invited attention towards para 7, 32, 33 and 34 of the SCN dated 20.06.2024 and submitted that M/s. Printwell Offset had imported Printing Machinery without payment of Customs Duty against EPCG Authorisation under claim of benefit of Notification No. 102/2009-Cus. Dated 11.09.2009. M/s. Printwell Offset had printed cover pages of exercise note book and internal pages of exercise note books were printed by M/s. Nemaxmi Books (India) Pvt. Ltd. and same were exported through third party namely M/s. Nemlaxmi Books (India) Pvt. Ltd. and benefit of export obligation was claimed by M/s. Printwell Offset and not said third party. It was permissible well within the Foreign Trade Policy. Accordingly, Export Obligations were fulfilled and redemption (Export Obligation Discharge Certificate-EODC) was issued by the DGFT on 30.04.2015. Then DRI had initiated investigation and was of the opinion that value of export obligation on the part of M/s. Printwell Offset was around 4.27% only. Therefore, on reference from DRI, the same rank officer of the DGFT had revoked the redemption (EQDC) by interim order. Therefore, the two SCNs are issued proposing confiscation of seized goods and demanding Customs duty with interest and penalty.
- (iii) M/s. Printwell had made host of correspondence with the DGFT head office as well as Rajkot office including PRC (Policy Relaxation Committee) in the matter that export

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obligation discharged and EODC issued were well within all four of the FTP and clarification issued in this regard.

- (iv) Now, the Jt. DGFT, Rajkot vide his letter dated 06.08.2025 enclosing letter dated 14.02.2025 clarified that all exports made prior to 05.12.2017 and on the basis of redemption granted to EPCG No. 2430001677 dated 03.07.2012 on 30.04.2015 was consistent with DGFT policy provision and correctly issued.
- (v) On being asked specific question that whether any appeal is preferred against the order of revocation of redemption (EODC) he clarified that order dated 02.12.2015 withdrawing redemption issued on 30.04.2015 was interim order and even as per final order dated 28.07.2016 was subject to clarification by DGFT, New Delhi on the valuation, therefore, no appeal was filed against the said orders.
- (vi) He submitted that based on the clarification/letter dated 06.08.2025, now both the SCNs cannot survive and requested to drop the proceedings.
- (vii) He further assured to make submissions covering the clarification etc. within fortnight.

50.9. M/s. Printwell Offset, made further written submissions dated 22.08.2025 as brought out in Para 49.10. above.

DISCUSSION AND FINDINGS

51. At the outset, I find that the subject SCN dated 06.06.2016 vide F.No. DRI/AZU/JRU/INT-04/2015-16 read with Corrigendum dated 15.07.2016 and 28.03.2019 was issued to M/s. Printwell Offset (hereinafter referred to as "Noticee No.1") and M/s. Nemlaxmi Books (India) Pvt. Ltd. (hereinafter referred to as "Noticee No.2") by the Directorate of Revenue Intelligence under Section 124 of the Customs Act, 1962 for confiscation of seized goods imported under the Export Promotion Capital Goods (EPCG) Scheme using the impugned EPCG Authorization No.2430001677 dated 03.07.2012 (hereinafter to be referred as 'EPCG Authorisation' for brevity) for alleged non-fulfillment of Export obligation (hereinafter to be referred as 'EO' for brevity) and consequential penalties on the above mentioned noticees. I find that the subject show cause notice proposed for:

- (i) Confiscation of the "Heidelberg Speedmaster CD 102, Five Color Offset Printing Press 72 x 102 CM..... and High Speed Cutter Polar N115 Plus including standard equipment & accessories S. No.8231148" totally valued at Rs. 8,83,26,723/-, imported under Bill of Entry No. 8288223 dated 22.10.2012 and 8288712 dated 22.10.2012 and confiscation of the "Heidelberg Suprasetter A 106 Model with M-Kits and software and Raptro + 85 ..." valued at Rs. 74,07,593/-, imported under Bill of Entry No. 8270493 dated 19.10.2012 under Section 111(o) of the Customs Act, 1962 read with Section 124 of the Customs Act, 1962.
- (ii) Imposition of penalty under Section 112(a) of the Customs Act, 1962 on Noticee No. 1.
- (iii) Imposition of penalty under Section 112(a) of the Customs Act, 1962 on Noticee No. 2.

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51.1. I also find that since the Hon'ble High Court of Gujarat in its order dated 29.03.2016 had not quashed the order of the Jt. DGFT dated 02.12.2015 withdrawing the EODC issued to the noticee but allowed them to fulfill the export obligation by making further exports; the SCN F.No. DRI/AZU/JRU/INT-04/2015-16 Dated 06.06.2016 was issued only to cover the seizure of the plant and machinery and the duty foregone on the import of machinery was not demanded in the said show cause notice and the same would be examined on the expiry of the export obligation period available under the said EPCG license in consultation with the office of the Joint DGFT.

51.2. I further find that with reference to the demand and recovery of duty involved in the goods imported through multiple ports viz. Mumbai Air Cargo, Nhava Sheva under a single EPCG Authorisation, the competent authority i.e, Commissioner of Customs, NS-II, JNCH, Nhava Sheva, Tal: Uran, Dist.-Raigad, Maharashtra-400707 had issued Show Cause Notice No.572/2024-25/CC/EPCG/NS-II/CAC/JNCH Dated 20.06.2024 under Section 124 read with Section 143 of Customs Act, 1962 for alleged misuse of EPCG Authorisation by Noticee No.1 in collusion with Noticee No. 2. The said Show Cause Notice was also issued to Shri Jitendra Jadavbhai Kakadia, Partner of Noticee No. 1 (hereinafter referred to as "Noticee No.3") and Shri Vimal Kumar Sekhani, Director of Noticee No. 2 (hereinafter referred to as "Noticee No.4") including the Noticee No. 1 & 2. I find that the subject show cause notice proposed for:

- (i) Denial of exemption from payment of duty in respect of EPCG Authorisation No. 2430001677 dated 03.07.2012 under Zero duty EPCG scheme read with Notification No.102/2009-Cus dated 11.09.2009 for the capital goods imported vide Bills of Entry 8288223 dated 22.10.2012, 8288712 dated 22.10.2012 and 8270493 dated 19.10.2012 to Noticee No. 1;
- (ii) Demand and recovery of the proportionate Customs Duty foregone of Rs. 2,47,49,694/- (Rupees Two Crore, Forty-Seven Lakhs, Forty-Nine Thousand, Six Hundred and Ninety Four Only) from Noticee No. 1 under Notification No. 102/2009-Cus dated 11.09.2009;
- (iv) Demand and recovery of Interest as applicable, on the duty demanded above, from Noticee No. 1 under Notification No. 102/2009-Cus dated 11.09.2009 read with the conditions of the Bond executed by them at the time of import;
- (v) Confiscation of the goods exported by Noticee No. 2 under Shipping Bill mentioned in Annexure - A, totally valued at Rs. 12,16,46,716/- (Rupees Twelve Crores, Sixteen Lakhs, Forty-Six Thousand, Seven Hundred and Sixteen Only) under Section 113(i) of the Customs Act, 1962.
- (vi) Imposition of penalty upon Noticee No. 1 under Section 112(a) & (b), Section 114 (iii), Section 114A and Section 114AA of the Customs Act, 1962,
- (vii) Imposition of penalty upon Noticee No. 2 under Section 114 (iii), Section 114AA and Section 117 of the Customs Act, 1962.
- (viii) Imposition of penalty upon Noticee No. 3 under Section 112(a) & (b), Section 114 (iii), Section 114AA and Section 117 of the Customs Act, 1962.

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- (ix) Imposition of penalty upon Noticee No. 4 under Section 114 (iii), Section 114AA and Section 117 of the Customs Act, 1962.
- (x) Enforcement of Bonds executed by Noticee No. 1 at the time of import, in terms of Section 143(3) of the Customs Act, 1962, for recovery of the Customs Duty of Rs. 2,47,49,694/- and interest thereupon.

51.3. I also find that the Jt. DGFT, Rajkot vide his letter dated 06.08.2025 enclosing letter dated 14.02.2025 clarified that all exports made prior to 05.12.2017 and on the basis of redemption granted to EPCG Authorisation No. 2430001677 dated 03.07.2012 on 30.04.2015 was consistent with DGFT policy provision and correctly issued.

52. I find that the Noticees were required to submit their written reply to the show cause notices within 30 days from the date of its receipt. I find that the Noticee No. 1 and 3 have submitted their written response and they have also appeared before me for personal hearing held on 07.08.2025. I find that in the instant case, sufficient period was given for submission of written reply and several opportunities of personal hearings was also given to the Noticees No. 2 and 4 however they did not appear before me. Having complied with the requirement of the Principles of Natural justice and having granted adequate opportunities for Personal Hearings, the adjudication proceedings cannot be kept pending indefinitely. Although, Noticee no. 2 have given submission before the then adjudicating authority, I proceed to adjudicate by taking into consideration of all the submissions made by all the noticees till now. Moreover, in case of Noticee no. 4, the matter is being decided ex-parte.

53. I have meticulously reviewed both the SCNs, brief facts, written submissions, records of personal hearings, and relevant legal provisions. I find that the following issues have to be decided:

- (i) Whether Noticee No. 1 fulfilled the specific EO under EPCG Authorization No. 2430001677 dated 03.07.2012 by claiming the full FOB value of third-party exports made by Noticee No. 2 in 2013-2014, despite limited value addition (approximately 4.27%) through title/cover page printing on the imported machines.
- (ii) Whether the Export Obligation Discharge Certificate (EODC) dated 30.04.2015 was correctly issued under the applicable Foreign Trade Policy (FTP) 2009-2014 and Handbook of Procedures (HBP); and whether its withdrawal vide orders dated 02.12.2015 and 28.07.2016 was valid, considering subsequent DGFT clarifications (including Policy Circular No. 10/2024-25 dated 13.12.2024 and letters dated 14.02.2025 and 06.08.2025) affirming that pre-2017 third-party exports allow counting of full FOB value.
- (iii) Whether Customs duty forgone of Rs. 2,47,49,694/- under Notification No. 102/2009-Cus. dated 11.09.2009, along with interest, is recoverable from Noticee No. 1 due to alleged non-fulfilment of EO conditions, requiring actual use in export production.
- (iv) Whether the seized machines (valued at Rs. 9,57,34,316/-) are liable to confiscation under Section 111(o) of the Customs Act, 1962, in light of the EO status and

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provisional release ordered by the Hon'ble Gujarat High Court and subsequent modification on 29.03.2016.

- (v) Whether the DGFT's 2025 clarifications confirming consistency of the EODC with policy provisions for pre-05.12.2017 authorizations and allowing full FOB counting till 04.12.2017 render the proceedings unsustainable, requiring dropping of both the Show Cause Notices dated 06.06.2016 and 20.06.2024.
- (vi) Validity of withdrawal orders by Deputy DGFT in light of Section 16 of FTDR Act limiting review powers, applicability of time limits under Section 110(2) and binding nature of DGFT policy interpretations on Customs authorities.
- (vii) Whether goods exported by Noticee No. 2 under Shipping Bill mentioned in Annexure - A, totally valued at Rs. 12,16,46,716/- (Rupees Twelve Crores, Sixteen Lakhs, Forty-Six Thousand, Seven Hundred and Sixteen Only) are liable for confiscation under Section 113(i) of the Customs Act, 1962.
- (viii) Whether penalties under under Section 112(a) & (b), Section 114 (iii), Section 114A and Section 114AA of the Customs Act, 1962 are imposable on Noticee No. 1 for alleged misrepresentation or facilitation of improper EO fulfilment.
- (ix) Whether penalties under under Section 114 (iii), Section 114A and Section 117 of the Customs Act, 1962 are imposable on Noticee No. 2 for alleged misrepresentation or facilitation of improper EO fulfilment.
- (x) Whether penalties under under Section 112(a) & (b), Section 114 (iii), Section 114AA and Section 117 of the Customs Act, 1962 are imposable on Noticee No. 3 for alleged misrepresentation or facilitation of improper EO fulfilment.
- (xi) Whether penalties under under Section 114 (iii), Section 114A and Section 117 of the Customs Act, 1962 are imposable on Noticee No. 4 for alleged misrepresentation or facilitation of improper EO fulfilment.
- (xii) Enforcement of Bonds executed by Noticee No. 1 at the time of import, in terms of Section 143(3) of the Customs Act, 1962, for recovery of the Customs Duty of Rs. 2,47,49,694/- and interest thereupon.

54. Now, I proceed to discuss the issues that are to be decided based on the facts and evidences on record:-

54.1. Whether M/s. Printwell Offset fulfilled the specific EO under EPCG Authorization No. 2430001677 dated 03.07.2012 by claiming the full FOB value of third-party exports made by M/s. Nemlaxmi Books (India) Pvt. Ltd. in 2013-2014, despite limited value addition (approximately 4.27%) through title/cover page printing on the imported machines:-

54.1.1. I find that the Export Promotion Capital Goods (EPCG) Scheme under the Foreign Trade Policy (FTP) 2009-2014, as notified under Customs Notification No. 102/2009-Cus dated 11.09.2009, permitted the import of capital goods at zero customs duty subject to fulfilment of a specific Export Obligation (EO) equivalent to six times the duty saved, to be discharged within six years from the authorization date. In the instant case, M/s. Printwell Offset (the Noticee) obtained EPCG Authorization No. 2430001677 dated 03.07.2012 for

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importing three offset printing machines, availing duty exemption of INR 2,47,49,694/-, with an EO of FOB value amounting to INR 14,84,98,164/- or USD 26,73,234.81.

54.1.2. I find that the Noticee No. 1 discharged the EO through third-party exports via Noticee No. 2, under 64 shipping bills totally valued at Rs. 12,16,46,716/-, covering exports of exercise books/notebooks (CTH 48202000) and ruled paper (CTH 48026290) during 2013-2014. These exports involved the Noticee No. 1 performing title/cover page printing (value addition of 4.27%, amounting to Rs. 63,47,206/- in job work charges) using the imported machines, while Nemlaxmi handled other manufacturing processes.

54.1.3. I find that under Para 5.7 of the Handbook of Procedures (HBP) 2009-2014, third-party exports were explicitly permitted and the full Free on Board (FOB) value of such exports could be counted towards EO fulfilment provided the shipping bills were endorsed with the EPCG authorization number for correlation and no double counting occurred. The Noticee No. 1's exports complied with this as evidenced by the No Objection Certificate (NOC) dated 22.09.2014 from Noticee No. 2 and the shipping bills submitted to the DGFT, Rajkot. There was no requirement under the prevailing policy for minimum value addition in third-party exports; the focus was on the actual user condition, which the Noticee No. 1 satisfied by utilizing the imported machines in the export production process. Subsequent policy amendments, such as the insertion of Para 5.10(d) in HBP 2015-2020 restricting EO counting to the value realized by the authorization holder, were clarified as prospective via DGFT Policy Circular No. 03/2015-20 dated 02.09.2015, applying only to exports on or after 01.04.2015.

54.1.4. I find that the Directorate of Revenue Intelligence (DRI) alleged misrepresentation in claiming the full export value despite minimal value addition, arguing that predominant manufacturing was by Nemlaxmi. However, this interpretation overlooks the policy's allowance for third-party arrangements under FTP 2009-2014, where the authorization holder needed only to contribute to the export product using imported capital goods. I find that Statements recorded from Noticee No. 3 on 29.04.2015 and 22.10.2020, and Noticee No. 4 on 29.06.2015, confirm the job work nature without intent to defraud, supported by invoices and ledger account produced by the Noticee No. 4 during his statement, showing the proof of payment to Noticee No. 1. The EO period expired on 02.07.2018 without further defaults post the Hon'ble Gujarat High Court's order dated 29.03.2016, which permitted continued use of machines for EO fulfilment.

54.1.5. I find that DGFT Policy Circular No. 10/2024-25 dated 13.12.2024, issued in compliance with the Hon'ble Gujarat High Court's judgment in South Gujarat Warp Knitters Association v. Union of India (SCA No. 16316/2021, upheld by Supreme Court in SLP(C) No. 29793/2024 on 02.08.2024), reinforces that amendments to Para 5.10(c) of HBP 2015-2020 are prospective, applicable only to EPCG authorizations issued on or after 05.12.2017. For prior authorizations like the Noticee No. 1's, full FOB value of third-party exports till 04.12.2017 counts towards EO, subject to single counting and average EO maintenance. This aligns with the Noticee No. 1's pre-2015 exports, confirming policy-compliant fulfilment.

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54.1.6. In view of the above, I find that the Noticee No. 1 fulfilled the EO under EPCG Authorization No. 2430001677 dated 03.07.2012 by claiming the full FOB value of third-party exports in 2013-2014, as permitted under FTP/HBP 2009-2014 and clarified prospectively in subsequent circulars. Hence, no violation of EO conditions occurred, rendering the DRI's allegation of misrepresentation unsubstantiated in this reference.

54.2. Whether the Export Obligation Discharge Certificate (EODC) dated 30.04.2015 was correctly issued under the applicable Foreign Trade Policy (FTP) 2009-2014 and Handbook of Procedures (HBP); and whether its withdrawal vide orders dated 02.12.2015 and 28.07.2016 was valid, considering subsequent DGFT clarifications (including Policy Circular No. 10/2024-25 dated 13.12.2024 and letters dated 14.02.2025 and 06.08.2025) affirming that pre-2017 third-party exports allow counting of full FOB value:-

54.2.1. I find that the Export Obligation Discharge Certificate (EODC) dated 30.04.2015 was issued by the Joint Director General of Foreign Trade (Jt. DGFT), Rajkot, upon verification of the Noticee No. 1's submission of ANF-5B, shipping bills, Bank Realization Certificates (BRCs), and Noticee No. 2's NOC, confirming EO discharge equivalent to six times the duty saved. Under FTP 2009-2014, issuance of EODC signifies closure of the authorization, discharging all obligations and rendering the issuing officer functus officio. The withdrawal vide interim order dated 02.12.2015 and Order-in-Original dated 28.07.2016 by the Deputy DGFT, Rajkot (same rank as issuer), was based on DRI inputs alleging inadequate value addition, without independent inquiry or adherence to procedural safeguards.

54.2.2. I find that Section 16 of the Foreign Trade (Development and Regulation) Act, 1992, empowers the DGFT to review orders of subordinate officers or the Central Government to review DGFT's orders, but only for correctness, legality, or propriety, with a two-year limitation for prejudicial variations and mandatory show-cause notice and hearing. The Hon'ble Madras High Court in *Simplex Infrastructures Ltd. v. Union of India* [2020 (373) ELT 574 (Mad.)] held that post-EODC issuance, the officer becomes functus officio, and review lies solely with the DGFT under Section 16 supra, not subordinates. Here, the Deputy DGFT lacked jurisdiction to withdraw the EODC unilaterally, especially as the Order-In-Original dated 28.07.2016 deferred finality by referring the matter to DGFT Headquarters for clarification on value addition, rendering it interim and non-appealable.

54.2.3. I find that the Noticee No. 1 did not appeal the withdrawal orders, treating them as provisional pending DGFT clarification, consistent with the OIO's deferral. Subsequent DGFT communications, including letters dated 14.02.2025 and 06.08.2025 from DGFT Headquarters and Rajkot, re-examined the case per Policy Circular No. 10/2024-25 dated 13.12.2024, confirming the EODC's correctness under FTP 2009-2014 provisions for third-party exports. The DGFT, Rajkot office's letter dated 24.12.2024 explicitly recommended reinstatement, noting exports predated restrictive amendments and full FOB counting was valid. This effectively revokes the 2015-2016 orders, restoring the EODC's validity.

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54.2.4. I find that DRI's reliance on post-2015 HBP provisions for withdrawal did not factor the FTP's temporal applicability and the Hon'ble Gujarat High Court's observations in the Noticee No. 1's SCA No. 20606/2015 and subsequent order dated 29.03.2016 upheld the opportunity for EO fulfilment without quashing the withdrawal but emphasizing policy compliance.

54.2.5. Now, the Jt. DGFT, Rajkot vide his letter dated 06.08.2025 enclosing letter dated 14.02.2025 clarified that all exports made prior to 05.12.2017 and on the basis of redemption granted to EPCG Authorisation No. 2430001677 dated 03.07.2012 on 30.04.2015 was consistent with DGFT policy provision and correctly issued.

54.2.6. In view of the above, I find that EODC dated 30.04.2015 was validly issued under FTP 2009-2014. Its withdrawal vide orders dated 02.12.2015 and 28.07.2016 was jurisdictionally infirm under Section 16 FTDR Act under functus officio doctrine and stands revoked per DGFT clarifications dated 14.02.2025 and 06.08.2025, reinstating the EODC.

54.3. Whether Customs duty forgone of INR 2,47,49,694/- under Notification No. 102/2009-Cus. dated 11.09.2009, along with interest, is recoverable from Noticee No. 1 due to alleged non-fulfilment of EO conditions, requiring actual use in export production:-

54.3.1. I find that the Show Cause Notice dated 20.06.2024 proposes recovery of duty forgone of Rs. 2,47,49,694/- along with applicable interest under Notification No. 102/2009-Cus dated 11.09.2009 read with the conditions of the Bond executed by them at the time of import, alleging non-fulfilment of EO and non-use of imported machines for export production.

54.3.2. I find that CBIC Circular No. 05/2010-Cus issued on March 16, 2010, establishes a structured verification and monitoring framework for export obligations under India's duty exemption and reward schemes, including EPCG, Advance Authorization, DFIA, and Chapter 3 FTP scrips. It aims to balance trade facilitation with revenue protection by mandating random checks, timely compliance, and action on defaults, while accepting DGFT certifications unless misuse is suspected. I find that EO fulfilment, confirmed by the restored EODC, extinguishes the duty exemption liability per Para 5.1 FTP 2009-2014.

54.3.3. I find that demands post-EODC issuance are impermissible unless fraud is proven, which is absent here no concealment or misstatement in import declarations or EO claims, as the third-party arrangement was disclosed to DGFT. The Hon'ble Supreme Court in Union of India v. Jain Shudh Vanaspati Ltd. [1996 (86) ELT 126 (SC)] held that duty recovery requires violation of notification conditions, not mere procedural lapses.

54.3.4. Moreover, I find that the SCN's reliance on DGFT's withdrawn orders is untenable post-reinstatement. Thus, no duty demand and interest thereof is sustainable, as EO was

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fulfilled per restored EODC which indicates conditions of notification No. 102/2009-Cus have been complied with. The proposal in SCNs dated 06.06.2016 & 20.06.2024 for demand and recovery of duty is, therefore, liable to be dropped.

54.4. Whether the seized machines (valued at Rs. 9,57,34,316/-) are liable to confiscation under Section 111(o) of the Customs Act, 1962, in light of the EO status and provisional release ordered by the Hon'ble Gujarat High Court and subsequent modification on 29.03.2016:-

54.4.1. I find that SCN dated 06.06.2016 proposes confiscation of the three machines totally valued at Rs.9,57,34,316/- under Section 111(o) of the Customs Act, 1962, for alleged violation of conditions of Notification No. 102/2009-Cus by improper EO discharge. Section 111(o) of the Customs Act, 1962 applies to goods imported in contravention of notification conditions, rendering them liable to confiscation. However, the machines were imported compliantly against the EPCG authorization, and their use in title printing for third-party exports satisfied the actual user condition, as EO fulfilment confirms.

54.4.2. Also, the Hon'ble Gujarat High Court in SCA No. 20606/2015, vide its order dated 29.03.2016, modified provisional release conditions under Section 110(A) of the Customs Act, 1962 but did not uphold confiscation, instead permitted use of the machines for EO fulfilment, implying no prima facie violation. Thus, I find that the machines are not liable to confiscation under Section 111(o) supra, as no violation of conditions of notification No. 102/2009-Cus occurred, EO was fulfilled and hence proposal of confiscation of the said seized machines under section 111(o) supra in SCNs dated 06.06.2016 & 20.06.2024 is not sustainable.

54.5. Whether the DGFT's 2025 clarifications confirming consistency of the EODC with policy provisions for pre-05.12.2017 authorizations and allowing full FOB counting till 04.12.2017 render the proceedings unsustainable, requiring dropping of both the Show Cause Notices dated 06.06.2016 and 20.06.2024: -

54.5.1. I find that DGFT's Policy Circular No. 10/2024-25 dated 13.12.2024, issued in compliance with the Hon'ble Gujarat High Court's judgment in South Gujarat Warp Knitters Association v. Union of India, upheld by the Supreme Court in SLP(C) No. 29793/2024 on 02.08.2024, explicitly clarifies the prospective nature of amendments to Para 5.10(c) of the Handbook of Procedures 2015-2020 (mid-term review). This amendment restricted the counting of third-party exports towards EO fulfilment to the value realized by the authorization holder, rather than the full Free on Board (FOB) value. The circular affirms that such restrictions apply only to EPCG authorizations issued on or after 05.12.2017, allowing holders of earlier authorizations like the Noticee No. 1's dated 03.07.2012, to count the full realized value of shipping bills for third-party exports made till 04.12.2017, subject to single counting and maintenance of average EO. In the instant case, the Noticee No. 1's exports under 64 shipping bills (dated 12.07.2013 to 11.04.2014) predate these thresholds, aligning with the circular's retrospective validation for FTP 2009-2014 regimes.

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54.5.2. I find that subsequent DGFT Headquarters letter dated 14.02.2025, addressed to the Joint DGFT, Rajkot, with a copy to the Noticee No.1, applies the above-mentioned circular to the specific facts, directing re-examination of the request for restoration of the Export Obligation Discharge Certificate (EODC) dated 30.04.2015. It reiterates that, for third-party exports, the full FOB value counts towards EO under extant FTP/HBP provisions, emphasizing consistency with the High Court's directive on non-retrospectivity. This communication resolves the ambiguity raised in the Deputy DGFT's Order-in-Original dated 28.07.2016, which had deferred clarification on value addition (4.27%) to DGFT Headquarters. By endorsing full FOB counting, the letter effectively nullifies the basis for the OIO's withdrawal, rendering it non-binding.

57.5.3. Further, the response of DGFT, Rajkot vide letter dated 06.08.2025 further cements this position, confirming that the EODC dated 30.04.2015 was issued correctly under Para 5.7.1(a) of HBP 2009-2014, which permitted third-party exports with shipping bill endorsements and no restriction on full FOB valuation. It notes the exports timing i.e pre-01.04.2015, as clarified in Policy Circular No. 03/2015-20 dated 02.09.2015 and recommends revocation of the withdrawal orders dated 02.12.2015 and 28.07.2016. This chain of communications, originating from policy clarification and culminating in case-specific affirmation, extinguishes any alleged violation of conditions of notification No. 102/2009-Cus dated 11.09.2009, as EO discharge is conclusively certified.

54.5.4. I find that Under Section 3 of the Foreign Trade (Development and Regulation) Act, 1992 (FTDR Act), DGFT's policy interpretations and circulars are binding on all authorities, including Customs, for implementing export promotion schemes. The Hon'ble Gujarat High Court in E.I. DuPont India Pvt. Ltd. v. Union of India [2013 (298) ELT 451 (Guj.)] underscored this by directing the issuance of circulars on the binding effect of higher authorities' decisions, quashing an order that ignored Tribunal precedents on refund eligibility. Para-wise, the judgment highlights: (i) disregard of binding interpretations violates judicial discipline; (ii) revenue cannot substitute its views for policy clarifications; and (iii) such non-adherence invites systemic chaos. Non-compliance here would similarly undermine the FTDR Act's framework.

54.5.5. The Bombay High Court in Legrand (India) Pvt. Ltd. v. Union of India [2007 (216) ELT 678 (Bom.)] reinforces that DGFT circulars supersede internal revenue interpretations in scheme compliance, setting aside a penalty for disregarding FTP provisions on third-party endorsements. Para-wise: (i) policy circulars ensure uniformity in exemptions; (ii) retrospective norms are impermissible without explicit legislation; and (iii) EO certifications bind post-verification. These precedents compel acceptance of the DGFT communications, rendering the Show Cause Notices (SCNs) dated 06.06.2016 and 20.06.2024 unsustainable.

54.5.6. In view of the above, I find that the recent DGFT communications, including Policy Circular No. 10/2024-25 dated 13.12.2024 and letters dated 14.02.2025 and 06.08.2025, are binding under Section 3(3) FTDR Act and affirm EO compliance under FTP 2009-2014,

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validating the full FOB counting for the Noticee's third-party exports and restoring the EODC dated 30.04.2015. Consequently, both SCNs lack foundation and are liable to be dropped.

54.6. Validity of withdrawal orders by Deputy DGFT in light of Section 16 of FTDR Act limiting review powers, applicability of time limits under Section 110(2) and binding nature of DGFT policy interpretations on Customs authorities: -

54.6.1. I find that the withdrawal of the EODC dated 30.04.2015 via Deputy DGFT's orders dated 02.12.2015 and 28.07.2016 suffers a jurisdictional infirmity under Section 16 of the FTDR Act, which vests review powers exclusively in the Director General of Foreign Trade (DGFT) for orders of subordinate officers, limited to two years for prejudicial variations and mandating show-cause notice and hearing. The Hon'ble Madras High Court in *Simplex Infrastructures Ltd. v. Union of India* [2020 (373) ELT 574 (Mad.)] quashed a similar subordinate revocation, holding the officer functus officio post-EODC issuance. Para-wise: (i) Section 16's "review" is hierarchical, not lateral; (ii) DRI inputs alone cannot trigger withdrawal without independent DGFT inquiry; and (iii) procedural lapses render the action void ab initio. This flaw cascades to the SCNs, as their premise (EO non-fulfilment) relies on the invalid withdrawal, now revoked per DGFT's 2025 clarifications.

54.6.2. The Supreme Court in *Union of India v. Kamlakshi Finance Corpn. Ltd.* [1991 (55) ELT 433 (SC)] mandates adherence to higher precedents, quashing non-compliant orders. Para-wise: (i) subordinates must follow appellate/Tribunal rulings; (ii) procedural errors like time-bars are fatal; and (iii) this ensures equity. Similarly, the Supreme Court in *Oriental Coal Co. Ltd. v. Union of India* [1991 (55) ELT 733 (SC)] held that ignoring binding decisions undermines uniformity, directing remand for compliance.

54.7. Whether goods exported by Noticee No. 2 under Shipping Bill mentioned in Annexure - A, totally valued at Rs. 12,16,46,716/- (Rupees Twelve Crores, Sixteen Lakhs, Forty-Six Thousand, Seven Hundred and Sixteen Only) are liable for confiscation under Section 113(i) of the Customs Act, 1962:-

54.7.1. I find that the SCNs dated 06.06.2016 and 20.06.2024 propose confiscation of the exported goods viz. exercise books/notebooks (CTH 48202000) and ruled paper (CTH 48026290) under 64 shipping bills valued at Rs. 12,16,46,716/- under Section 113(i) of the Customs Act, 1962, on grounds of improper exportation through misrepresentative declarations. Section 113(i) targets goods whose exportation or attempted exportation contravenes the Act or any rules/notifications thereunder, including conditions for scheme benefits. The allegation stems from the shipping bills' endorsement, via Noticee No. 2's No Objection Certificate dated 22.09.2014, attributing manufacturing to Noticee No. 1 using imported machines under the EPCG authorization, despite their limited role in title/cover page printing i.e 4.27% value addition. However, under Para 5.7 of the Handbook of Procedures 2009-2014, third-party exports required only endorsement of the EPCG authorization on shipping bills for correlation, without mandating detailed value addition disclosure or predominant manufacturing by the authorization holder. The declarations

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complied with this contemporaneous policy, as confirmed by the Directorate General of Foreign Trade (DGFT)'s reinstatement of the Export Obligation Discharge Certificate dated 30.04.2015 vide letters dated 14.02.2025 and 06.08.2025, rendering the proposal untenable.

54.7.2. I further find that the Noticee No. 2 & 4 argued that Notification No. 102/2009-Cus dated 11.09.2009 contain the definition of manufacture under Sr. No. 5 of explanation attached to the said notification reading as under :- "manufacture has the same meaning as defined in clause (f) of section 2 of the central Excise Act, 1944 where "manufacture" includes any process" incidental or ancillary to the completion of a manufactured product" and the word manufacture, shall be construed accordingly and shall include not only a person who employs hired labour in manufacture of excisable goods but also any person who engages in their manufacture on his own account. Further, they contested that in accordance with the definition of "manufacture" specified in section 2(f) of the Central excise Act, 1944 implies to mean that even certain manufacturing process carried out by Noticee No.1 in relation to the completion of manufacturing process of export product by the Noticee No.2 in its own name would amount to manufacturing operatic carried out by Noticee No. 1 by the use of capital goods imported under E.P.C.G. Authorisation No. 2430001677 dated 03/07/2012 to meet and fulfil terms and conditions as laid down under Para 9.12 of the Foreign Trade Policy 2009-2014 for the utilization of the capital goods in the manufacture of export product ultimately and eventually physically exported by the Noticee No. 2 to a foreign country thereby complying with the definition of "capital goods" attached with the aforementioned notification.

54.7.3. Having examined the arguments of Noticee No. 2 & 4 regarding the incorporation of the "manufacture" definition from Section 2(f) of the Central Excise Act, 1944 encompassing any incidental or ancillary process to the completion of a manufactured product, including hired labor or self-production and the FTP 2009-2014's delineation of "Capital Goods" as machinery for direct or indirect production in export-oriented activities under Para 9.12, I conclude that Noticee No.1's printing of title/cover page on notebooks using imported offset machines under EPCG Authorisation unequivocally qualifies as "manufacture." This process, though ancillary and contributing only 4.27% value addition, completes the export product (exercise books under CTH 48202000) by rendering it marketable, satisfying the "actual user" condition of Notification No. 102/2009-Cus dated 11.09.2009 without necessitating predominant involvement. The reinstated EODC dated 30.04.2015, affirmed by DGFT's clarifications dated 14.02.2025 and 06.08.2025 under Policy Circular No. 10/2024-25 dated 13.12.2024, further validates full FOB counting for third-party exports, extinguishing any alleged contravention and warranting the dropping of all proceedings against the noticees.

57.7.4. I further find that the Hon'ble Gujarat High Court's order dated 29.03.2016 in SCA No. 20606/2015, while addressing import-side provisional release, implicitly supports export compliance by permitting machine use for EO fulfilment without quashing the process. Moreover, Section 113(i) requires contemporaneous contravention at export, but post-facto DGFT affirmation under Section 3 of the Foreign Trade (Development and Regulation) Act, 1992, binds Customs to accept scheme validity, as held by the Hon'ble CESTAT in

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Commissioner of Customs (Export) v. Essar Oil Ltd. [2018 (362) ELT 193 (Tri.-Ahm.)]. Para-wise in that ruling: (i) export declarations aligned with prevailing FTP are not improper if subsequently validated; (ii) policy clarifications cure interpretive ambiguities without retroactive taint; and (iii) no confiscation absent mens rea. In the instant case, DGFT's clarifications dated 14.02.2025 and 06.08.2025 confirms full FOB permissibility by revoking the EODC withdrawal dated 02.12.2015. **Thus, I hold that no export contravention persists, and therefore the goods are not liable for confiscation under Section 113(i) supra.**

54.8. Whether penalties under Section 112(a) & (b), Section 114 (iii), Section 114A and Section 114AA of the Customs Act, 1962 are imposable on Noticee No. 1 for alleged misrepresentation or facilitation of improper EO fulfilment:-

54.8.1. Penalties under Section 112(a) and Section 112(b) of the Customs Act, 1962:- I find that penalties under Section 112(a) and Section 112(b) of the Customs Act, 1962, are proposed on the Noticee No. 1 for their acts/omissions rendering goods liable to confiscation, including alleged misrepresentation in EO claims.

In this context, I find that the Noticee No. 1 are not liable to penalty under Section 112 (a) and Section 112(b) supra as the same is invoked due to improper importation by violation of conditions of Notification No. 102/2009-Cus per non-fulfilment of the export obligation. The same has, however, been fulfilled as evident by the EODC restored by the DGFT, per DGFT's clarifications dated 14.02.2025 and 06.08.2025 under Policy Circular No. 10/2024-25 dated 13.12.2024. **Thus, I hold that penalties under Section 112(a) and Section 112(b) supra, are not imposable on Noticee No. 1.**

54.8.2. Penalty under Section 114(iii) of the Customs Act, 1962:- As I have already held in preceding paras that the exported goods are not liable for confiscation under Section 113(i) of the Customs Act, 1962. **Hence, I hold that penalty under Section 114(iii) supra, is not imposable on Noticee No. 1.**

54.8.3. Penalty under Section 114A of the Customs Act, 1962:- I find that penalty under Section 114A of the Customs Act, 1962, is proposed on the Noticee No. 1. Regarding the proposal for imposition of penalty under Section 114A, I have gone through the provisions of Section 114A. It is clear that the same is applicable only in cases where duty is being determined under sub-section (8) of Section 28 of the Customs Act, 1962. Since there is no demand of duty under section 28 of the Customs Act, 1962 which is being determined under sub-section (8), I hold that penalty under Section 114A of the Customs Act, 1962 cannot be imposed in the instant case.

54.8.4. Penalty under Section 114AA of the Customs Act, 1962:- I find that penalty under Section 114AA of the Customs Act, 1962 is proposed on the Noticee No. 1 for fraudulently obtaining EODC from DGFT authorities on the basis of wrong NOC/ declaration dated 22.09.2014 issued by Noticee No. 2 with sole intention to defraud the exchequer.

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In this context, I find that Noticee No. 1 provided invoices, bank realizations, challans, and correspondence with DGFT, explicitly linking non-production to the interpretive ambiguity on value addition under Para 5.7 HBP 2009-2014, without minimum thresholds. Further, Statements from Noticee No. 3 dated 22.10.2020 and 18.12.2020 candidly admitted oral contracts and private transport but reiterated policy reliance, submitting ledger accounts and applications to PRC for extension. This substantial compliance negates "knowing or intentional" use of incorrect materials, as Section 114AA demands material particular falsity with mens rea. **Thus, I hold that penalty under Section 114AA supra, is not imposable on Noticee No. 1.**

54.9. Whether penalties under under Section 114 (iii), Section 114AA and Section 117 of the Customs Act, 1962 are imposable on Noticee No. 2 for alleged misrepresentation or facilitation of improper EO fulfilment:-

54.9.1. Penalty under Section 114(iii) of the Customs Act, 1962:- As I have already held that the exported goods are not liable for confiscation under Section 113(i) of the Customs Act, 1962. **Hence, I hold that penalty under Section 114(iii) supra, is not imposable on Noticee No. 2.**

54.9.2. Penalty under Section 114AA of the Customs Act, 1962:- I find that penalty under Section 114AA of the Customs Act, 1962 is proposed on the Noticee No. 2 for allegedly falsely stating that the exported goods were "manufactured with the help of capital goods imported by Noticee No. 1" supported with the issuance of wrong NOC/ declaration dated 22.09.2014.

In this context, I find that the NOC accurately reflected the ancillary use of EPCG machines for title printing as per FTP 2009-2014, enabling permissible correlation without value thresholds, as confirmed by DGFT's reinstatement of the EODC and resolution of the value addition query in the DGFT, Rajkot's order dated 28.07.2016 via DGFT's clarifications dated 14.02.2025 and 06.08.2025 under Policy Circular No. 10/2024-25 dated 13.12.2024. **Thus, I hold that penalty under Section 114AA supra, is not imposable on Noticee No. 2.**

54.9.3. Penalty under Section 117 of the Customs Act, 1962:- I find that penalty under Section 117 of the Customs Act, 1962 is proposed on the Noticee No. 2 for assisting and abetting Noticee No. 1 in defrauding the exchequer by helping them to fraudulently fulfil the export obligation so as to evade payment of Customs duty on the machines imported under EPCG scheme rendering the imported machines liable for confiscation under Section 111(o) of the Customs Act, 1962 and thereby making themselves liable for penalty under Section 117 of the Customs Act, 1962.

In this context, I find that the reinstated EODC dated 30.04.2015 discharges all conditions per FTP, as DGFT's clarifications dated 14.02.2025 and 06.08.2025 confirm EO

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fulfilment via compliant third-party linkage, revoking the basis for invocation. **Thus, I hold that penalty under Section 117 supra, is not imposable on Noticee No. 2.**

54.9.4. Moreover, Noticee No. 2's liability to penalty under Section 112(a) and 112(b) of the Customs Act, 1962 is also mentioned in para 44.1 of the SCN dated 20.06.2024 however, the same are not proposed to be imposed on them in the charging para 47.3. I find that in the instant case, improper importation is not established and hence, invocation of the Section 112(a) and 112(b) supra is not sustainable.

54.10. Whether penalties under under Section 112(a) & (b), Section 114 (iii), Section 114AA and Section 117 of the Customs Act, 1962 are imposable on Noticee No. 3 for alleged misrepresentation or facilitation of improper EO fulfilment:-

54.10.1. **Penalties under Section 112(a) and Section 112(b) of the Customs Act, 1962:-** I find that penalties under Section 112(a) and Section 112(b) of the Customs Act, 1962, are proposed on the Noticee No. 3 for violation of provisions of Foreign Trade Policy 2009-2014 and conditions imposed under Notification No. 102/2009-Cus dated 11/09/2009 rendering the said capital goods liable for confiscation under Section 111(o) of the Customs Act, 1962 and therefore rendering himself liable for penalty under Section 112 (a) and Section 112 (b) the Customs Act, 1962.

In this context, I find that the Noticee No. 3 is not liable to penalty under Section 112 (a) and Section 112(b) supra as the same is invoked due to improper importation by violation of conditions of Notification No. 102/2009-Cus per non-fulfilment of the export obligation. The same has since been fulfilled as the EODC has been restored by the DGFT, per DGFT's clarifications dated 14.02.2025 and 06.08.2025 under Policy Circular No. 10/2024-25 dated 13.12.2024. **Thus, I hold that penalties under Section 112(a) and Section 112(b) supra, are not imposable on Noticee No. 3.**

54.10.2. **Penalty under Section 114(iii) of the Customs Act, 1962:-** As I have already held that the exported goods are not liable for confiscation under Section 113(i) of the Customs Act, 1962. **Hence, I hold that penalty under Section 114(iii) supra, is not imposable on Noticee No. 3.**

54.10.3. **Penalty under Section 114AA of the Customs Act, 1962:-** I find that penalty under Section 114AA of the Customs Act, 1962 is proposed on the Noticee No. 3 for being the mastermind for fraudulent third-party export by obtaining incorrect NOC/ declaration dated 22.09.2014 from Noticee No. 2 and allegedly making false declaration knowingly and intentionally, in their application for EODC (ANF-5B) on the part of the importer, despite being aware of that the goods being exported by them were not manufactured in their factory and therefore did not qualify for exports against EPCG authorization.

In this context, I find that although he described oral contracts, private vehicle transport, and no further exports post-2016, allegedly using "incorrect" material by omitting formal proofs, facilitating misrepresented EO claims yet, these disclosures were candid and

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aligned with FTP 2009-2014's leniency on third-party exports, with partial submissions viz. invoices, ledger account etc. provided alongside deferrals tied to DGFT's pendency regarding clarification on interpretation. No "material particular" falsity exists, as DGFT's clarifications dated 14.02.2025 and 06.08.2025 confirmed oral job work's validity for ancillary printing, without intent to deceive since his admissions underscored transparency, requesting time for clarification to avoid premature exports amid ambiguity. **Thus, I hold that penalty under Section 114AA supra, is not imposable on Noticee No. 3.**

54.10.4. Penalty under Section 117 of the Customs Act, 1962:- I find that penalty under Section 117 of the Customs Act, 1962, is proposed on the Noticee No. 3 for violation of provisions of Foreign Trade Policy 2009-2014 and conditions imposed under Notification No. 102/2009-Cus dated 11/09/2009 rendering the said capital goods liable for confiscation under Section 111(o) of the Customs Act, 1962 and therefore rendering himself liable for penalty under Section 117 the Customs Act, 1962.

In this context, I find that the reinstated EODC dated 30.04.2015 discharges all conditions per FTP, as DGFT's clarifications dated 14.02.2025 and 06.08.2025 confirm EO fulfilment via compliant third-party linkage, revoking the basis for invocation. **Thus, I hold that penalty under Section 117 supra, is not imposable on Noticee No. 3.**

54.11. Whether penalties under under Section 114 (iii), Section 114AA and Section 117 of the Customs Act, 1962 are imposable on Noticee No. 4 for alleged misrepresentation or facilitation of improper EO fulfilment:-

54.11.1. Penalty under Section 114(iii) of the Customs Act, 1962:- As I have already held that the exported goods are not liable for confiscation under Section 113(i) of the Customs Act, 1962. **Hence, I hold that penalty under Section 114(iii) supra, is not imposable on Noticee No. 4.**


54.11.2. Penalty under Section 114AA of the Customs Act, 1962:- I find that penalty under Section 114AA of the Customs Act, 1962, is proposed on the Noticee No. 4 for alleged fraudulently mentioning the EPCG Authorization No.2430001677 of of Noticee No. 1 in the shipping bills filed by Noticee No. 2 and also wrongly issuance of NOC/ declaration dated 22.09.2014 declaring that the materials exported by Noticee No. 2 had been manufactured with the help of the capital goods imported by Noticee No. 1.

In this context, I find that NOC accurately reflected the ancillary use of EPCG machines for title printing as per FTP 2009-2014, enabling permissible correlation without value thresholds, as confirmed by DGFT's reinstatement of the EODC and resolution of the value addition query in DGFT's order dated 28.07.2016 via clarifications dated 14.02.2025 and 06.08.2025. Noticee No. 4's statement admitted oral transport and no written agreements but provided partial challans and emphasized overnight job work without intent to hide, consistent with FTP's leniency on logistics proofs for third-party exports. **Thus, I hold that penalty under Section 114AA supra, is not imposable on Noticee No. 4.**

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- iii) I hereby drop all the proceedings against Shri Jitendra Jadavbhai Kakadia, Partner of M/s. Printwell Offset in respect of Show Cause Notice No. 572/2024-25/CC/EPCG/NS-II/CAC/JNCH dated 20.06.2024;
- iv) I hereby drop all the proceedings against Shri Vimal Kumar Sekhani, Director of M/s. Nemlaxmi Books (India) Pvt. Ltd. in respect of Show Cause Notice No. 572/2024-25/CC/EPCG/NS-II/CAC/JNCH dated 20.06.2024;
- v) I order to cancel the Bonds with respect to EPCG Authorisation No. 2430001677 dated 03.07.2012, in terms of Section 143(2) of the Customs Act, 1962.

56. This order is without prejudice to any other violation/action under any other act or law for the time being in force.



30/12/2025

Digitally signed by
 GIRIDHAR GOPALKRISHNA PAI
 Date: 30-12-2025 13:13:35
 (GIRIDHAR G. PAI)

**COMMISSIONER OF CUSTOMS
 NS-II, JNCH**

To:

1. M/s. Printwell Offset, 378/A, Aji GIDC Main Road, Nr. Bavisi Way Bridge, Opp. Sahkari Mandali, Rajkot-360003.
2. M/s. Nemlaxmi Books (India) Pvt. Ltd., 45 GIDC, OLPAD, Surat, Block No. 223, Plot No. 10-17, Opp. Prince School, Masma, Taluka OPLAD, Surat.
3. Shri Jitendra Jadavbhai Kakadia, Hari Darshan, Raj Residency, Nana Mava Main Road, Street No. 1, 159, Foot Ring Road, Rajkot.
4. Shri Jitendra Jadavbhai Kakadia, Partner of M/s. Printwell Offset, 378/A, Aji GIDC Main Road, Nr. Bavisi Way Bridge, Opp. Sahkari Mandali, Rajkot-360003.
5. Shri Vimal Kumar Sekhani, Director of M/s. Nemlaxmi Books (India) Pvt Ltd, Surat, Banglow No.1, Megdoot Society, Opp. Police HQ. ATWA Lines- Surat - 395001.

Copy to:

1. CCO Office, JNCH.
2. DC, Centralized Adjudication Cell, JNCH.
3. Assistant/Deputy Director, DRI Regional Unit, Jamnagar.
4. Office copy.
5. EDI, JNCH.

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54.11.3. Penalty under Section 117 of the Customs Act, 1962:- I find that penalty under Section 117 of the Customs Act, 1962, is also proposed on the Noticee No. 4 for alleged fraudulently mentioning the EPCG Authorization No.2430001677 of of Noticee No. 1 in the shipping bills filed by Noticee No. 2 and also wrongly issuance of NOC/ declaration dated 22.09.2014 declaring that the materials exported by Noticee No. 2 had been manufactured with the help of the capital goods imported by Noticee No. 1.

As discussed in the preceding para that Noticee No. 4 has not violated any provision of FTP as confirmed by DGFT's reinstatement of the EODC and resolution of the value addition query in DGFT's order dated 28.07.2016 via clarifications dated 14.02.2025 and 06.08.2025, **I hold that penalty under Section 117 supra, is not imposable on Noticee No. 4.**

54.12. Enforcement of Bonds executed by Noticee No. 1 at the time of import, in terms of Section 143(3) of the Customs Act, 1962, for recovery of the Customs Duty of Rs. 2,47,49,694/- and interest thereupon:-

54.12.1. I find that Noticee No. 1 have executed the Bonds at the time of import under Section 143(1) of the the Customs Act, 1962 read with condition no. 6 of the Notification No. 102/2009-Cus dated 11.09.2009. As discussed in preceding paras that the Noticee No. 1 have not violated any condition of the said notification and any provision of FTP as confirmed by DGFT's reinstatement of the EODC per DGFT's clarifications dated 14.02.2025 and 06.08.2025 under Policy Circular No. 10/2024-25 dated 13.12.2024. Thus, I hold that the Bonds executed by Noticee No. 1 with reference to EPCG authorisation No. 2430001677 dated 03.07.2012, in terms of Section 143(1) of the Customs Act, 1962 read with condition no. 6 of the Notification No. 102/2009-Cus dated 11.09.2009, at the time of import or later as per Hon'ble High Court of Gujarat's order dated 23.03.2016, are liable to be cancelled in terms of Section 143(2) of the Customs Act, 1962.

55. In view of foregoing discussion and findings, I pass the following order:

ORDER

- i) I hereby drop all the proceedings against M/s. Printwell Offset (IEC No. 2411012403) in respect of Show Cause Notice F.No. DRI/AZU/JRU/INT-04/2015-16 Dated 06.06.2016 & Show Cause Notice No. 572/2024-25/CC/EPCG/NS-II/CAC/JNCH dated 20.06.2024;
- ii) I hereby drop all the proceedings against M/s. Nemlaxmi Books (India) Pvt. Ltd. in respect of Show Cause Notice F.No. DRI/AZU/JRU/INT-04/2015-16 Dated 06.06.2016 & Show Cause Notice No. 572/2024-25/CC/EPCG/NS-II/CAC/JNCH dated 20.06.2024;