

	<p style="text-align: center;">कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा, सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 <b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421</b> <b>Phone No.02838-271165/66/67/68 FAX.No.02838- 271169/62,</b> <b>Email: <u>adj-mundra@gov.in</u></b></p>	
<b>A. File No.</b>	:	GEN/ADJ/COMM/524/2024-Adjn-O/o Pr Commr-Cus-Mundra
<b>B. Order-in-riginal No.</b>	:	<b>MUN-CUSTM-000-COM-34-25-26</b>
<b>C. Passed by</b>	:	Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
<b>D. Date of order Date of issue:</b>	:	<b>06.11.2025</b> 06.11.2025
<b>E. SCN No. &amp; Date</b>	:	GEN/ADJ/COMM/524/2024/Adjn dated 07-11-2024.
<b>F. Noticee(s) / Party / Importer</b>	:	1. M/s Om Enterprises 2. Shri Hari Kishan (Proprietor of M/s Om Enterprise) 3. Shri Arun Jyoti, Partner of M/s. Jai Maa Enterprise 4. Shri Amit Jain, Proprietor of M/s A.N. Enterprises. 5. Shri Kapil Kotiya, Proprietor of M/s Ocean Logistics 6. Shri Banarsi Dass Khatri, 7. Shri Sabu George 8. M/s Jai Maa Enterprises 9. M/s A.N. Enterprises
<b>G. DIN</b>	:	<b>20251171MO0000217042</b>

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए 3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2<sup>nd</sup> फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”

**“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2<sup>nd</sup> floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”**

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।  
Appeal shall be filed within three months from the date of communication of this order.
4. उक्त अपील के साथ -/ 1000 रुपये का शुल्क टिकट लगा होना चाहिए, जहाँ शुल्क, व्याज, दंड या शास्ति रुपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए, जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रुपये से अधिक किंतु पचास लाख रुपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए, जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रुपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ऊ्यूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

8. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

### **BRIEF FACTS OF THE CASE**

M/s. Om Enterprises (IEC No. ARRPK7735L) having registered address at C-112/85, Plot No.2/56, East Park Lane, Near Govt. Girls School, Karol Bagh, New Delhi - 110005 is engaged in import of PU-coated Fabrics and other fabrics from

China for home consumption. M/s. Om Enterprise used to import these goods in Mundra SEZ Warehouse Unit M/s. OWS Warehouse Services LLP, Mundra and subsequently file SEZ to DTA Bill of Entry in the SEZ for their DTA removal.

**2.** Intelligence developed by the Directorate of Revenue Intelligence (DRI) Ahmedabad indicated that M/s. Om Enterprise (herein after referred to as OM) is indulging in evading payment of Anti-dumping duty and appropriate levy of Customs duty during their import of Fabrics by way of mis-declaration of description and mis-classification of these good. In terms of Govt. of India, Ministry of Finance, Department of Revenue Notification No. 14/2022-Customs (ADD) dated 20.05.2022 issued from F.No. 190354/115/2022-TRU, PU-coated fabric falling under HS code 59032090, when imported from any Country including China and produced by entities other than by M/s. Anhui Anli Material Technology Limited, attracts Anti-dumping duty @USD 0.46 per Meters.

**3.** The intelligence further indicated that 02 such consignments of PU Coated fabrics imported by M/s. Om Enterprise from China through Bill of Entry No. 1015307 dt. 27.0.2022 and Bill of Entry No.1015306 dt. 27.10.2022 by mis-declaring the description of goods as Felt Woven Coated Fabric and mis-classifying it under CTI 59119090 are lying at Mundra SEZ Warehouse Unit M/s. OWS Warehouse Services LLP. Acting upon the above intelligence, import consignments in Bill of Entry No. 1015307 dt. 27.10.2022 and Bill of Entry No.1015306 dt. 27.10.2022 of M/s. Om Enterprise were examined by the officers of DRI at Mundra SEZ Warehouse Unit M/s. OWS Warehouse Services LLP, under Panchnama dated 12.11.2022. During the course of examination, different type of goods in rolls were found in the import consignments as detailed below –

**Table-1**  
**Bill of Entry No.1015307 dt 27.10.2022**

Goods Type	Total No. of Rolls	Total Length of Fabric in each Roll (in meters)	Width of Fabric in each Roll (in meters)
Type – 1	557	50	1.5
Type – 2	89	50	1.5
Type – 3	187	50	1.5
Type – 4	112	70	1.5
Type – 5	134	40	1.5
Type – 6	170	50	1.5

**Table-2**  
**Bill of Entry No.1015306 dt 27.10.2022**

Goods Type	Total No. of Rolls	Total Length of Fabric in each Roll (in meters)	Width of Fabric in each Roll (in meters)
Type – 1	825	65	1.5

Type – 2	98	50	1.5
Type – 3	172	30	1.5
Type – 4	40	50	1.5
Type – 5	55	50	1.5

The above goods i.e. Fabrics were found to have some coating which indicated the possibility of the fabric being PU Coated and therefore, representative samples from all the 06 types of goods in Bill of Entry No. 1015307 dt. 27.10.2022 and in all 05 types of goods in Bill of Entry No.1015306 dt. 27.10.2022 were drawn in the presence of the representative of the Warehouse and the Panchas. The goods were thereafter detained pending result of the Testing of the Samples. The samples were forwarded to CRCL, Vadodara.

**3.1** Subsequently, the import consignments in respect of Bill of Entry No. 1014717 dt. 17.10.2022 of M/s. OM were also examined by the officers of DRI at Mundra SEZ Warehouse Unit M/s. OWS Warehouse Services LLP, under Panchnama dated 13.11.2022. During the course of examination, different type of goods in rolls were found as detailed below –

**Table-3**  
**Bill of Entry No.1014717 dt 17.10.2022**

Goods Type	Total No. of Rolls	Total Length of Fabric in each Roll (in meters)	Width of Fabric in each Roll (in meters)
Type – 1	790	50	1.5
Type – 2	443	40	1.5
Type – 3	182	50	1.5
Type – 4	99	50	1.5

During the examination, these goods i.e. Fabrics were found to have some coating which indicated the possibility of the fabric being PU Coated and therefore, representative samples from all the 04 types of goods in Bill of Entry No. 1014717 dt. 17.10.2022 were drawn in the presence of the representative of the Warehouse and the Panchas. The goods were thereafter detained pending result of the Testing of the Samples. The samples drawn were further forwarded to CRCL, Vadodara for ascertaining its true identity and coating.

**3.2** The samples of imported goods drawn as discussed above at para 3 & 3.1 were forwarded to CRCL, Vadodara. Details of the Test results received is tabulated as under –

**Table-4**

Bill of Entry No. & Dt.	Type of goods	Test Memo No.	Test Result as per CRCL Report
	Type-1	9/OM/1015307 dt.	Dyed Woven Fabric Coataed with

1015307 dt 27.10.2022		18.11.2022	Compounded Polyurethane on one side.
	Type-2	10/OM/1015307 dt. 18.11.2022	Dyed knitted Fabric having raised fibres on one surface, coated with compounded polyurethane on one side.
	Type-3	11/OM/1015307 dt. 18.11.2022	Dyed viscose cut Fibres passed on Polyurethane Layer forming check pattern.
	Type-4	12/OM/1015307 dt. 18.11.2022	White knitted Fabric coated with compounded polyurethane laminated with PVC film.
	Type-5	13/OM/1015307 dt. 18.11.2022	Non-Woven Bonded Fabric coated with Compounded Polyurethane on one side.
	Type-6	14/OM/1015307 dt. 18.11.2022	White knitted Fabric having raised Fibres, coated with Compounded Polyurethane.
1015306 dt. 27.10.2022	Type-1	15/OM/1015306 dt. 18.11.2022	White knitted Fabric having raised Fibres on one surface, coated with Compounded Polyurethane on one side.
	Type-2	16/OM/1015306 dt. 18.11.2022	White knitted Fabric coated with Compounded Polyurethane on one side.
	Type-3	17/OM/1015306 dt. 18.11.2022	Dyed Non-Woven fabric coated with compounded polyurethane on one side
	Type-4	18/OM/1015306 dt. 18.11.2022	White knitted Fabric having raised fibres on one side, coated with compounded polyurethane having laminated with PVC film.
	Type-5	19/OM/1015306 dt. 18.11.2022	Dyed knitted Fabric having raised fibres on one surface, coated with compounded polyurethane laminated with PVC film.
1014717 dt. 17.10.2022	Type-1	35/OM/1014717 dt. 17.10.2022	Dyed knitted Fabric having raised fibres, of polyester filament yarns, coated with compounded polyurethane on one side having shining surface.
	Type-2	36/OM/1014717 dt. 17.10.2022	Dyed knitted fabric having raised fibres on one side, of polyester filament yarns, coated with compounded polyurethane on one side having glossy surface laminated with polyurethane film.
	Type-3	37/OM/1014717 dt. 17.10.2022	Dyed self-designed knitted fabric of polyester filament yarns backed with white non-woven fabric of polyesters fibres, both layers are pasted together with polymeric material based on compounded polyurethane.
	Type-4	38/OM/1014717 dt. 17.10.2022	Dyed knitted fabric made of polyester filament yarns, coated with compounded polyurethane on one side.

In view of the above test reports, the goods as mentioned in Table-A, B & C above, collectively in 3953 Nos. of Rolls having Approx. Length of 2,03,055 Meters

imported vide Bills of Entry as mentioned above were found to be Fabrics coated with Compounded Polyurethane which were mis-declared and mis-classified by the importer and Anti-dumping duty leviable on it were not paid on it in terms of Govt. of India, Ministry of Finance, Department of Revenue Notification No. 14/2022-Customs (ADD) dated 20.05.2022. The above imported goods were therefore placed under seizure vide Seizure Memo issued F.No.DRI/AZU/CI/ENQ-01(INT-21)/2023 dtd. 09.01.2023 under Section 110(1) of the Customs Act, 1962. Subsequently, the above goods were ordered for provisional release by the Competent authority i.e. Customs House, Mundra vide their letter F.No.CUS/APR/INV/91/2023-Gr 3 -O/o Pr. Commr-cus-Mundra dated 25.04.2023.

4. During further course of the investigation, the imported goods in respect of Bill of Entry No. 1015514 dt. 31.10.2022, Bill of Entry No.1015513 dt. 31.10.2022, Bill of Entry No.1015612 dt. 05.11.2022 and Bill of Entry No.1015777 dt. 05.11.2022 of M/s. Om Enterprises were also examined by the officers of DRI at Mundra SEZ Warehouse Unit M/s. OWS Warehouse Services LLP, under Panchnama dated 17.01.2023. During the course of examination, different type of goods in rolls were found in the import consignments as detailed below –

**Table-5**

**Bill of Entry No.1015513 dt 31.10.2022**

Goods Type	Total No. of Rolls	Total Length of Fabric in each Roll (in meters)	Width of Fabric in each Roll (in meters)
Type – 1	207	50	1.45
Type – 2	492	50	1.5
Type – 3	350	50	1.5

**Table-6**

**Bill of Entry No.1015514 dt 31.10.2022**

Goods Type	Total No. of Rolls	Total Length of Fabric in each Roll (in meters)	Width of Fabric in each Roll (in meters)
Type – 1	225	50	1.5
Type – 2	704	50	1.5
Type – 3	413	40	1.5
Type – 4	114	50	1.5
Type – 5	62	50	1.5

**Table-7**

**Bill of Entry No.1015612 dt 05.11.2022**

Goods Type	Total No. of Rolls	Total Length of Fabric in each Roll (in meters)	Width of Fabric in each Roll (in meters)
Type – 1	798	50	1.5
Type – 2	450	50	1.5

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**Table-8**  
**Bill of Entry No.1015777 dt 05.11.2022**

Goods Type	Total No. of Rolls	Total Length of Fabric in each Roll (in meters)	Width of Fabric in each Roll (in meters)
Type – 1	519	50	1.45
Type – 2	206	50	1.40
Type – 3	377	40	1.40

During the examination under Panchnama, these goods i.e. Fabrics were found to have some coating which indicated the possibility of the fabric being PU Coated and therefore, representative samples from all the types of goods in Bill of Entry No. 1015514 dt. 31.10.2022, Bill of Entry No.1015513 dt. 31.10.2022, Bill of Entry No.1015612 dt. 05.11.2022 and Bill of Entry No.1015777 dt. 05.11.2022 were drawn in the presence of the representative of the Warehouse and the Panchas. The goods were thereafter detained pending result of the Testing of the Samples. The samples drawn were further forwarded to CRCL, Vadodara for ascertaining its true identity and coating, if any.

**4.1** The Test results in respect of these samples of imported received from CRCL, Vadodara is tabulated as under –

Bill of Entry No. & Dt.	Type of goods	Test Memo No.	Test Result as per CRCL Report
1015514 dt. 31.10.2022	Type-1	57/OM/1015514 dt. 19.01.2023	Dyed Woven Fabric coated with compounded polyurethane and laminated with transparent polyester film on one side.
	Type-2	58/OM/1015514 dt. 19.01.2023	White knitted Fabric having raised fibres on one surface coated with compounded polyurethane on one side.
	Type-3	59/OM/1015514 dt. 19.01.2023	Dark Grey knitted fabric of Polyester filament yarns & coated with compounded polyurethane on one side having glossy surface laminated with PVC film.
	Type-4	60/OM/1015514 dt. 19.01.2023	White knitted fabric of Polyester filament yarns & coated with compounded polyurethane on one side having glossy surface laminated with PVC film.
	Type-5	61/OM/1015514 dt. 19.01.2023	Dark Grey knitted fabric of Polyester filament yarns & coated with compounded polyurethane on one side having glossy surface laminated with PVC film.
1015513 dt.	Type-1	54/OM/1015513 dt. 19.01.2023	White knitted fabric having raised fibres on one surface coated with compounded

31.10.2022			polyurethane on one side.
	Type-2	55/OM/1015513 dt. 19.01.2023	Dyed knitted fabric having raised fibres on one surface coated with compounded polyurethane on one side.
	Type-3	56/OM/1015513 dt. 19.01.2023	Dyed knitted fabric having raised fibres on one surface coated with compounded polyurethane on one side.
1015612 dt. 05.11.2022	Type-1	62/OM/1015612 dt. 19.01.2023	Dark Grey knitted fabric having raised fibres on one side of Polyester filament yarns & coated with compounded polyurethane on other side
	Type-2	63/OM/1015612 dt. 19.01.2023	White knitted fabric having raised fibres on one side, of polyester filament yarns, coated with Compounded Polyurethane on other side.
1015777 dt. 05.11.2022	Type-1	64/OM/1015777 dt. 19.01.2023	White knitted fabric having raised fibres on one side, of polyester filament yarns, coated with Compounded Polyurethane on other side.
	Type-2	65/OM/1015777 dt. 19.01.2023	Dark Grey knitted fabric having raised fibres on one side of Polyester filament yarns & coated with compounded polyurethane on other side
	Type-3	66/OM/1015777 dt. 19.01.2023	Woven Fabric of spun yarns of viscose & coated with compounded polyurethane on the one side having glossy surface, laminated with PVC film.

In view of the above test reports, the goods collectively in 4917 Nos. of Rolls having Approx. Length of 2,37,950 Meters imported vide Bills of Entry as mentioned above were found to be Fabrics coated with compounded polyurethane which were mis-declared and mis-classified by the importer and Anti-dumping duty leviable on it were not paid on it in terms of Govt. of India, Ministry of Finance, Department of Revenue Notification No. 14/2022-Customs (ADD) dated 20.05.2022. The above imported goods were therefore placed under seizure vide Seizure Memo issued F. No. DRI/AZU/CI/ENQ-01(INT-21)/2023 dated 29.03.2023 under Section 110(1) of the Customs Act, 1962. Subsequently, the above goods were ordered for provisional release by the Competent authority i.e. Customs House, Mundra vide their letter F.No.CUS/APR/INV/91/2023-Gr 3 -O/o Pr. Commr-cus-Mundra dated 25.04.2023.

**5.** In terms of Govt. of India, Ministry of Finance, Department of Revenue Notification No. 14/2022-Customs (ADD) dated 20.05.2022 issued from F. No. 190354/115/2022-TRU , PU-coated fabric falling under HS code 59032090, when imported from any Country including China and produced by entities other than by M/s. Anhui Anli Material Technology Limited, attracts Anti-dumping duty @USD 0.46 per Meters.



**5.1.** The above notification further also clarifies that “for the purposes of this notification, rate of exchange applicable for calculation of such anti-dumping duty, shall be the rate which is specified in the notification of the Government of India, Ministry of Finance (Department of Revenue), issued from time to time, in exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and the relevant date for the determination of the rate of exchange shall be the date of presentation of the bill of entry under section 46 of the Customs Act, 1962”.

**6.** In terms of Ministry of Commerce & Industry (D.C.) Notification No. S.O. 2666(E) dated 05.08.2016, Officers of Directorate of Revenue Intelligence (DRI) is authorised by the Central Government, to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in Special Economic Zone.

## **7. Search conducted during the investigation**

**7.1** During the course of investigation, Search at the Registered Premises at 5289, Hardhiyan Singh Road, Karol Bagh Delhi - 110005, Godown of M/s Jai Maa Enterprises situated at 7/23, Kirti Nagar, Near Under Pass, New Delhi and Residence of Shri Arun Jyoti Mahajan, Partner of M/s Jai Maa Enterprises situated at D-11, Kirti Nagar, New Delhi was carried out under Panchnama dated 21.11.2022. During the search various types of fabric roles appearing to be coated with some materials were found at the registered premises and godown of the firm. On being asked, Shri Arun Jyoti Mahajan informed that these fabrics are coated with Poly Urethane (PU). During the search at the residential premises of Shri Arun Jyoti Mahajan, some documents in respect of Sale and purchases of the firm were found. Shri Arun Jyoti informed that the Sales & Purchase documents are with Shri Anil Kumar Sharma, his CA who appeared during the Panchnama and provided the required sales and purchase documents in a Pen Drive related to the firm. The above documents in soft and digital form are retrieved by the officers during the Search. It was informed by Shri Arun Jyoti Mahajan that they make most of their purchases from M/s. JMV Enterprises, M/s. OM Enterprises and Alfa Impex. He further stated that the goods which were purchased from said firms were PU coated fabric, Flock fabric, Glitter fabric, Polyester Bonded fabric.

**7.2** Search at the registered premises of M/s. Om Enterprise situated at C-112/85, Plot No.2/56, East Park Lane, Near govt. Girls School, Karol Bagh, New Delhi – 110005 was conducted under Panchnama dated 23.11.2022. During the search, Shri Hari Kishan, Proprietor of M/s. Om Enterprise was found at the premises. No documents related to the inquiry/import were found at the premises during the search. On being asked, Shri Hari Kishan informed that all the documentation work related to the firm is done from the office situated at 212, Vishal Tower, Janakpuri, Delhi and after completion of the work, the documents are forwarded to their CA for filing of returns.

**7.3** Search at the Shop of M/s Ritika Traders and M/s Kishor Traders located at MG/54/1/10, Thakkar Bapa Nagar, CS Road, Chembur, Mumbai & 53/2/2 Thakkar Bapa Nagar, CS Road, Chembur, Mumbai was carried out on 16.12.2022 under Panchnama proceedings dated 16.12.2022. M/s. Ritika Traders & M/s. Kishor Traders are engaged in trading of various fabrics used in footwear & other goods and the search was carried out in connection with purchases of imported goods by them. During the search, Shri Kishor Kumar Ramuram Naval, Proprietor of M/s. Kishor Traders stated that they purchase PU Coated Fabric, Flock Fabric, Glitter Fabric etc. which is used in Ladies Footwear and their main suppliers are M/s. Jai Maa Enterprises, M/s.Bhagwati International & M/s. Tayesha International. The officers draw sample of goods purchased by M/s. Kishor Traders against Invoice No.2022-23/1405 dt. 12.1.2022 issued by M/s. Jai Maa Enterprises & sample of goods purchased by M/s.Ritika Traders against Invoice No.2022-23/2022 dt. 20.10.2022 issued by M/s. Jai Maa Enterprises.

**7.3.1** The above samples of goods drawn under Panchnama dated 16.12.2022 were sent to the CRCL, Vadodara for conducting test to ascertain the actual identification of the goods. The details divulged in Test Reports provided by CRCL provided in respect of these samples are as under -

<b>Sr . No</b>	<b>Test Memo No. and Date</b>	<b>Test Report No. and Date</b>	<b>Bill of Entry No. (SEZ and SEZ to DTA) &amp; Date</b>	<b>Declared Description declared in BE</b>	<b>Appropriate description of goods as per Test Reports</b>
1	52/KISHOR/54 dated 19.12.2022	RCL/AZU/DRI/3351/22. 12.2022 dt. 04.01.2023	Sample of goods purchased by M/s. Kishor Traders, Mumbai which were drawn under Panchnama dt.16.12.2022	Textile Coated Fabric Sold to M/s. Kishor Trader by M/s. Jai Maa Enterprises under Invoice No. 2022-23/1045 dt. 12.11.2022	Dyed Knitted Fabric having raised fibers on one surface, coated with compounded polyurethane on one side.
			Sample of goods purchased by	Glitter Fabric Sold to M/s. Kishor Trader by M/s. Jai Maa	White Knitted

2	53/RITIKA/47 dated 19.12.2022	RCL/AZU/DRI/ 3352/22.  12.2022 dt. 04.01.2023	M/s.Ritika Traders, Mumbai which were drawn under Panchnama dt.16.12.202 2	Enterprises under Invoice No. 2022- 23/1312 dt. 23.10.2022	Fabric having raised fibers on one surface, coated with compound d polyurethan e on one side.
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**7.4** Further search at the residential premises of Shri Arun Jyoti Mahajan, Partner of M/s. Jai Maa Enterprises situated at D-11, Kirti Nagar, New Delhi was carried out under Panchnama dated 28.12.2022. During the search of the examination, documents relevant to inquiry were found and the same were resumed. Further, mobile phones of Shri Ankur Mahajan, Son of Shri Arun Jyoti Mahajan were also resumed for inquiry.

**7.5** Search at the registered premises of M/s. JMV Enterprise at 216, Vishal Tower, Distt Centre, Janakpuri, New Delhi was carried out under Panchnama dated 21.11.2022. During the search Shri Kapil Kotiya, Proprietor of M/s. Ocean Logistics and freight forwarding and Customs agent of M/s. JMV Enterprise was found at the premises. During the course of search print out of the import documents of M/s. JMV Enterprise, M/s. Om Enterprise & other firms with whom Shri Kapil Kotiya was carrying the customs clearance & freight forwarding work was taken out from the email Id of Kapil Kotiya i.e. [kapillogis@gmail.com](mailto:kapillogis@gmail.com) and the same were resumed in the Box File containing pages from 01 to 671.

## **8. Statements recorded in the case**

During the course of investigation, in order to collect the evidence/corroborative evidence statement of persons who were directly/indirectly involved in export of goods were recorded by the DRI under the provisions of Section 108 of Customs Act, 1962. The facts of statements of such persons have been mentioned in the Show Cause Notice and the records of statements thereof have been attached to Show Cause Notice as RUDs. For sake of brevity contents of statements of such persons are not produced hereunder. The details of the persons whose statements were recorded are as under: -

- Statement of Shri Hari Kishan S/o Shri Panchu Ram, Proprietor of M/s Om Enterprises (Importer) was recorded on 27.11.2022 under Section 108 of the Customs Act, 1962.

- Statement of Shri Kapil Kotiya S/o Shri Ratan Lal, Proprietor of M/s Ocean Logistics was recorded on 27.11.2022 under Section 108 of the Customs Act, 1962.
- Statement of Shri Ankur Mahajan S/o Shri Arun Jyoti Mahajan, Proprietor of M/s Bhagwati International was recorded on 28.12.2022 under Section 108 of the Customs Act, 1962.
- Statement of Shri Narendrachand Ramniwas Moriya S/o Shri Ramniwas Moriya, authorized person of Kishor Traders, Mumbai was recorded on 10.02.2023 under Section 108 of the Customs Act, 1962.
- Statement of Shri Kapil Kotiya S/o Shri Ratan Lal, Proprietor of M/s Ocean Logistics, was recorded on 03.03.2023 under Section 108 of the Customs Act, 1962.
- Statement of Shri Arun Jyoti Mahajan S/o Shri Hansraj Mahajan, Partner of M/s Jai Maa Enterprises, was recorded on 17.05.2023 under Section 108 of the Customs Act, 1962.
- Statement of Shri Tulsi Dass Chopra S/o Shri Bhola Ram, authorized representative of M/s Bharat Exports, was recorded on 21.05.2023 under Section 108 of the Customs Act, 1962.
- Statement of Shri Mohd Arif Iraqi S/o Shri Mohd. Mobin, Manager & authorized representative of M/s Amin Leather & Products, was recorded on 22.05.2023 under Section 108 of the Customs Act, 1962.
- Statement of Shri Sanjay Dhingra S/o Shri Atam Prakash Dhingra, authorized representative of M/s R.S. Enterprise, New Delhi, was recorded on 28.05.2023 under Section 108 of the Customs Act, 1962.
- Statement of Shri Kapil Kotiya S/o Shri Ratan Lal, Proprietor of M/s Ocean Logistics, was recorded on 16.07.2024 under Section 108 of the Customs Act, 1962.
- Statement of Shri Amit Jain, S/o Shri Abhinandan Jain, Proprietor of M/s A.N. Enterprises was recorded on 29.07.2024 under Section 108 of the Customs Act, 1962.
- Statement of Shri Amit Jain, S/o Shri Abhinandan Jain, Proprietor of M/s A.N. Enterprises, was recorded on 12.09.2024, under Section 108 of the Customs Act, 1962.
- Statement of Shri Hari Kishan S/o Shri Panchu Ram, Proprietor of M/s Om Enterprises (Importer) was recorded on 18.09.2024 under Section 108 of the Customs Act, 1962.

- Statement of Shri Arun Jyoti Mahajan, Partner of M/s Jai Maa Enterprises was recorded on 19.09.2024 under Section 108 of the Customs Act, 1962.
- Statement of Shri Kapil Kotiya S/o Shri Ratan Lal, Proprietor of M/s Ocean Logistics, was recorded on 19.09.2024 under Section 108 of the Customs Act, 1962.
- Statement of Shri Sabu George, S/o Shri Kottackal Chacko George, Partner of M/s Rainbow Shipping Services, was recorded on 03.10.2024 under Section 108 of the Customs Act, 1962.
- Statement of Shri Prince Khatri, S/o Shri B.D. Khatri, authorized representative of M/s Dee Pee Leather Store, was recorded on 21.10.2024 under Section 108 of the Customs Act, 1962.

## **9. MODUS ADOPTED IN THE CASE**

The investigation conducted in the case had revealed that Shri Arun Jyoti Mahajan, Partner of M/s. Jai Maa Enterprises, an IEC Holder and importer of various types of Fabrics including PU Coated Fabrics from China, having registered address at 5289, Hardhyan Singh Road, Karol Bagh, New Delhi-110005, Shri Amit Jain, Proprietor of M/s A.N. Enterprises, Shri B.D. Khatri, Proprietor of M/s. Shree Ganesh Overseas and Shri Kapil Kotiya, Proprietor of M/s. Ocean Logistics, a firm involved in freight forwarding and customs clearance work, in collusion with each other, had devised a modus operandi to import PU Coated Fabrics falling under HS code 59032090 from China by mis-declaring it as Textile Coated Fabric or Glitter Fabric or Felt Woven Coated Fabric & further mis-classifying it under CTH 59119090 & 59050090 in order to evade payment of Customs duty at appropriate rate. PU Coated Fabrics when imported from any Country including China and produced by entities other than by M/s. Anhui Anli Material Technology Limited at the relevant period under investigation and correctly classified under HS Code 59032090, attracts Anti-dumping duty @USD 0.46 per Meters in terms of Notification No. 14/2022-Customs (ADD) dated 20.05.2022, Basic duty of 20% (i.e. 10% additional Basic duty as leviable under CTH , SWS @ 10% and IGST @ 5% of the Assessable Value, whereas goods falling under CTH 59119090 are leviable to Basic duty of 10%, SWS @ 10% and IGST @ 5% of the Assessable Value.

In the above Scheme of defrauding the Govt. Exchequer, Shri Kapil Kotiya was responsible in creating name-sake firms, by using credentials of his friends and relatives who were in dire need of livelihood. He was also roping in other firms who were interested in lending their IEC's for making imports of other firms. These persons were offered petty salaries to work as Proprietor of these firms. After setting up the firm, Shri Kapil Kotiya used to acquire IEC of these firms and the same was then lent by him to various traders who wished to import PU Coated Fabric from China. In the instant investigation, Shri Kapil Kotiya had used the IEC of M/s. Om Enterprises and the same was lent by him to M/s. Jai Maa Enterprises, M/s. A.N. Enterprises and M/s. Shree Ganesh Overseas to import their goods i.e. PU Coated Fabrics by resorting to mis-declaring the Description of the goods and

its classification under Customs Tariff during the course of their import in order to evade payment of applicable Anti-Dumping duty imposed on it, in terms of Notification No. 14/2022-Customs (ADD) dated 20.05.2022.

**10.** The Classification of goods in the First Schedule – Import Tariff is governed by the General Rules for Interpretation Rules. These Rules are intended to be consulted and applied each the goods are to be classified under the Import Tariff. Rule 1 of the GIR i.e. General Interpretation Rules provides that classification of the goods shall be determined according to the terms of the Headings and any relative Section or Chapter Notes and, provided such Headings or Notes do not otherwise require, according to the provisions at Rule 2 to Rule 5. Rule 6 of the GIR further provides that the classification of goods in the sub-headings of a heading shall be determined according to the term of those sub-headings and any related sub-heading Notes and, mutatis mutandis, to the above rules.

**11.** M/s. Om Enterprises, had filed SEZ to DTA Bills of Entry at Adani Ports and Special Economic Zone (INAJM6), Mundra for domestic clearance of imported goods as detailed below –

<b>S. No.</b>	<b>SEZ B/E No. &amp; Date</b>	<b>SEZ to DTA B/E No. &amp; dt.</b>	<b>Declared HS CODE / CTH</b>	<b>Declared description of good</b>	<b>Declared Quantity (in Kgs.)</b>
1	1011061 dt. 20.08.22	2013691 dt.10.09.22	59119090	Textile Coated Fabric	25354
2	1011237 dt. 23.08.22	2012671 dt.24.08.22	59119090	Textile Coated Fabric	21438
3	1012134 dt.07.09.22	2013801 dt.13.09.22	59119090	Textile Coated Fabric	20696
	1012134 dt. 07.09.22	2013801 dt.13.09.22	59119090	Glitter Fabric	3794
4	1012253 dt.09.09.22	2014640 dt.26.09.22	59119090	Textile Coated Fabric	19614
5	1012535 dt. 15.09.22	2014056 dt.19.09.22	59119090	Textile Coated Fabric	25200
6	1013244 dt.26.09.22	2015360 dt.07.10.22	59119090	Textile Coated Fabric	21420
	1013244 dt.26.09.22	2015360 dt.07.10.22	59119090	Glitter Fabric	2747
7	1013940 dt.06.10.22	2015522 dt.11.10.22	59119090	Textile Coated Fabric	25195
8	1014717 dt.17.10.22	2017089 dt.03.11.22	59119090	Textile Coated Fabric	19266
9	1015306 dt.27.10.22	2017249 dt.05.11.22	59119090	Felt Woven Coated Fabric	24876
10	1015307 dt.27.10.22	2016889 dt.01.11.22	59119090	Felt Woven Coated Fabric	24637
11	1015514 dt.31.10.22	2008159 dt.11.05.23	59119090	Felt Woven Coated Fabric	25378
12	1015513 dt.31.10.22	2017929 dt.16.11.22	59119090	Felt Woven Coated Fabric	25047
13	1015612	2017410	59119090	Felt Woven Coated Fabric	24480

	dt.01.11.22	dt.08.11.22			
14	1015777 dt.03.11.22	2017411 dt.08.11.22	59119090	Felt Woven Coated Fabric	25080
15	1013946 dt.06.10.22	2015954 dt.15.10.22	59119090	Textile Coated Fabric	25330
16	1013941 dt.06.10.22	2015499 dt.10.10.2	59119090	Textile Coated Fabric	20393
17	1013953 dt.06.10.22	2015684 dt.12.10.22	59119090	Textile Coated Fabric	25642

**12.1** Out of the above 17 import consignments, 03 consignments mentioned at Sr. No.15 to 17 were provisionally assessed by Officers of SEZ and as such the same are not included in the instant investigation.

**12.2** The present investigation covers the remaining 14 consignments which were imported by M/s. Om Enterprises at APSEZ, Mundra as detailed below

S. No.	SEZ B/E No. & Date	SEZ to DTA B/E No. & Dt.	Declared HS CODE / CTH	Declared description of good	Declared Quantity (in Kgs.)	Ass. Value (Rs.)
1	1011061 dt. 20.08.22	2013691 dt.10.09.22	59119090	Textile Coated Fabric	25354	24,47,675/-
2	1011237 dt. 23.08.22	2012671 dt.24.08.22	59119090	Textile Coated Fabric	21438	20,70,911/-
3	1012134 dt.07.09.22	2013801 dt.13.09.22	59119090	Textile Coated Fabric	20696	19,97,992/-
	1012134 dt. 07.09.22	2013801 dt.13.09.22	59119090	Glitter Fabric	3794	2,59,443/-
4	1012253 dt.09.09.22	2014640 dt.26.09.22	59119090	Textile Coated Fabric	19614	18,92,359/-
5	1012535 dt. 15.09.22	2014056 dt.19.09.22	59119090	Textile Coated Fabric	25200	24,31,296/-
6	1013244 dt.26.09.22	2015360 dt.07.10.22	59119090	Textile Coated Fabric	21420	21,19,295/-
	1013244 dt.26.09.22	2015360 dt.07.10.22	59119090	Glitter Fabric	2747	1,92,517/-
7	1013940 dt.06.10.22	2015522 dt.11.10.22	59119090	Textile Coated Fabric	25195	24,92,793/-
8	1014717 dt.17.10.22	2017089 dt.03.11.22	59119090	Textile Coated Fabric	19266	19,39,701/-
9	1015306 dt.27.10.22	2017249 dt.05.11.22	59119090	Felt Woven Coated Fabric	24876	26,05,761/-
10	1015307 dt.27.10.22	2016889 dt.01.11.22	59119090	Felt Woven Coated Fabric	24637	25,83,805/-
11	1015514 dt.31.10.22	2008159 dt.11.05.23	59119090	Felt Woven Coated Fabric	25378	26,20,279/-
12	1015513 dt.31.10.22	2017929 dt.16.11.22	59119090	Felt Woven Coated Fabric	25047	26,23,673/-
13	1015612 dt.01.11.22	2017410 dt.08.11.22	59119090	Felt Woven Coated Fabric	24480	25,64,280/-
14	1015777 dt.03.11.22	2017411 dt.08.11.22	59119090	Felt Woven Coated Fabric	25080	26,27,130/-

**12.3** The consignment mentioned at Sr. No.01 to 07 of the Table under Para 12.2 are past consignment which were already cleared by the M/s. Om Enterprise for Home consumption. Further, in respect of 07 consignment mentioned at Sr. No.08 to 14 of the above Table, the “Out of Charge (OOC)” Order were not given by Customs Authorities in respect of goods and these goods were lying at M/s. OWS Warehouse Services LLP, APSEZ, Mundra. These goods were examined and samples thereof were drawn by the officer of DRI under Panchnama. Subsequently, on the basis of the test report of the CRCL, Vadodara which revealed them to be PU Coated Fabric, these goods were put under Seizure.

**12.4** During the investigation, it was also found that M/s. Om Enterprise had filed Bill of Entry B/E No.2019764 dt. 13.12.2022 and B/E No.2019668 dt. 12.12.2022, B/E No.1018010 dt.09.12.2022, 2019665 dt.12.12.2022 and 2019693 dt.12.12.2022 wherein the description of the goods was mentioned as “PU Fabric” under CTH 59032090, whereas in the corresponding Bills of Lading, Invoices and Packing List of the import, the description of these goods was mentioned as “Fabric” falling under CTH 59119090. Since the Goods declaration in the above Bills of Entry was “PU Fabric the instant investigation does not cover and above mentioned import. Further, concerned Customs authorities was informed in the above matter to take appropriate course of action in the matter. The change of correct declaration of the imported goods by the importer is a testimony of the rampant mis-declaration of PU Coated Fabric made by many traders during their import. It is the result of DRI intervention which has made these importers in declaring the true description of the goods.

**13.** The investigation conducted in the case revealed that the goods imported by M/s Om Enterprise vide 14 Bills of Entry from the Table mentioned at para 12.2 above were “PU Coated Fabric” which merited rightly to be classifiable under HS CODE/ CTH 59032090, whereas the same were imported by M/s. Om Enterprise by mis-declaring it as Textile Coated Fabric”, “Felt Woven Coated Fabric” and “Glitter Fabric” and further mis-classifying it under HS CODE/ CTH 59119090 & 59050090. The above act of mis-declaring it as “Textile Coated Fabric” and “Felt Woven Coated Fabric” classifying it under HS CODE/ CTH 59119090 & 59050090 by M/s. Om Enterprise was made with the sole intention to evade payment of applicable Anti-dumping duty leviable on it in terms of Notification No.14/2022-Customs (ADD) dated 20.05.2022.

**14.** During the course of Investigation, examination of goods imported vide 07 Bills of Entry was conducted under Panchnama dated 12.11.2022, 13.11.2022 & 17.01.2023. The Test Reports issued by Central Excise & Customs Laboratory, Vadodara in respect of these goods is as detailed below –

Bill of Entry No. & Dt.	Type of goods	Test Memo No.	Test Result as per CRCL Report
	Type-1	35/OM/1014717 dt. 17.10.2022	Dyed knitted Fabric having raised fibres, of polyester filament yarns, coated with compounded polyurethane on one side



1014717 dt. 17.10.2022			having shining surface.
	Type-2	36/OM/1014717 dt. 17.10.2022	Dyed knitted fabric having raised fibers on one side, of polyester filament yarns, coated with compounded polyurethane on one side having glossy surface laminated with polyurethane film.
	Type-3	37/OM/1014717 dt. 17.10.2022	Dyed self-designed knitted fabric of polyester filament yarns backed with white non-woven fabric of polyesters fibers, both layers are pasted together with polymeric material based on compounded polyurethane.
	Type-4	38/OM/1014717 dt. 17.10.2022	Dyed knitted fabric made of polyester filament yarns, coated with compounded polyurethane on one side.
1015514 dt. 31.10.2022	Type-1	57/OM/1015514 dt. 19.01.2023	Dyed Woven Fabric coated with compounded polyurethane and laminated with transparent polyester film on one side.
	Type-2	58/OM/1015514 dt. 19.01.2023	White knitted Fabric having raised fibres on one surface coated with compounded polyurethane on one side.
	Type-3	59/OM/1015514 dt. 19.01.2023	Dark Grey knitted fabric of Polyester filament yarns & coated with compounded polyurethane on one side having glossy surface laminated with PVC film.
	Type-4	60/OM/1015514 dt. 19.01.2023	White knitted fabric of Polyester filament yarns & coated with compounded polyurethane on one side having glossy surface laminated with PVC film.
	Type-5	61/OM/1015514 dt. 19.01.2023	Dark Grey knitted fabric of Polyester filament yarns & coated with compounded polyurethane on one side having glossy surface laminated with PVC film.
1015307 dt. 27.10.2022	Type-1	09/OM/1015307 dt. 27.10.2022	Dyed Woven Fabric Coated with compounded Polyurethane on one side.
	Type-2	10/OM/1015307 dt. 27.10.2022	Dyed knitted fabric (having raised fibres on one surface), coated with compounded Polyurethane on one side.
	Type-3	11/OM/1015307 dt. 27.10.2022	White woven fabric coated with compounded Polyurethane on one side. Dyed viscose cut fibres passed on Polyurethane layer forming check pattern.
	Type-4	12/OM/1015307 dt. 27.10.2022	White knitted fabric coated with compounded Polyurethane laminated with PVC film.
	Type-5	13/OM/1015307 dt. 27.10.2022	Non-woven bonded fabric, coated with compounded Polyurethane on one side.
	Type-6	14/OM/1015307 dt. 27.10.2022	White knitted fabric having raised fibres, coated with compounded Polyurethane.
1015306 dt. 27.10.2022	Type-1	15/OM/1015306 dt. 27.10.2022	White knitted fabric (having raised fibres on one surface), coated with Compounded Polyurethane on one side.
	Type-2	16/OM/1015306 dt. 27.10.2022	White knitted fabric coated with Compounded Polyurethane on one side.
	Type-3	17/OM/1015306 dt. 27.10.2022	Dyed Non-woven fabric coated with Compounded Polyurethane on one side
	Type-4	18/OM/1015306 dt. 27.10.2022	White knitted fabric (having raised fibres on one surface), coated with Compounded

			Polyurethane on one side.
	Type-5	19/OM/1015306 dt. 27.10.2022	Dyed knitted fabric having raised fibres on one side, coated with Compounded Polyurethane on one side
1015513 dt. 31.10.2022	Type-1	54/OM/1015513 dt. 31.10.2022	White knitted fabric (having raised fibres on one surface), coated with Compounded Polyurethane on one side.
	Type-2	55/OM/1015513 dt. 31.10.2022	Dyed knitted fabric having raised fibres on one side, coated with Compounded Polyurethane on one side
	Type-3	56/OM/1015513 dt. 31.10.2022	Dyed knitted fabric having raised fibres on one side, coated with Compounded Polyurethane on one side
1015612 dt. 01.11.2022	Type-1	62/OM/1015612 dt. 01.11.2022	Dark Grey knitted fabric having raised fibers on one side, of Polyester filament yarns, coated with compounded polyurethane on other side.
	Type-2	63/OM/1015612 dt. 01.11.2022	White knitted fabric having raised fibres on one side, of Polyester filaments yarns coated with Compounded Polyurethane on one side
1015777 dt. 03.11.2022	Type-1	64/OM/1015777 dt. 03.11.2022	White knitted fabric having raised fibres on one side, of Polyester filaments yarns coated with Compounded Polyurethane on one side
	Type-2	65/OM/1015777 dt. 03.11.2022	White knitted fabric having raised fibres on one side, of Polyester filaments yarns coated with Compounded Polyurethane on one side
	Type-3	66/OM/1015777 dt. 03.11.2022	Woven fabric of spun yarns of viscose & coated with compounded polyurethane on the one side having glossy surface laminated with PVC film.

**14.1** Shri Kapil Kotiya, Proprietor of M/s. Ocean Logistics and forwarding and customs agent of M/s. Om Enterprise in his statement dated 16.07.2024 had produced consignment wise details of actual owner of the goods who had ordered these goods from the overseas supplier through M/s. Om Enterprises in Annexure-B. According to the details produced in Annexure-B, the order for the goods imported under Bills of Entry No.1015306 dt.27.10.2022, 1015307 dt.27.10.2022 and 1015777 dt.03.11.2022 were placed to their Overseas Supplier by M/s. Jai Maa Enterprise i.e. the actual owner of the goods. Similarly, the order for the goods imported under Bills of Entry No.1014717 dt.17.10.2022 & 1015514 dt.31.10.2022 were placed to their Overseas Supplier by M/s. A.N. Enterprise i.e. the actual owner of the goods and the order for the goods imported under Bills of Entry No.1015513 dt.31.10.2022 and 1015612 dt.01.11.2022 were placed to their Overseas Supplier by M/s. Dee Pee Leather i.e. the actual owner of the goods.

**14.2** Shri Arun Jyoti Mahajan, S/o Shri Hansraj Mahajan, Partner of M/s. Jai Maa Enterprises in his statement recorded on 19.09.2024 under section 108 of the Customs Act, 1962 was perused with the above Test Memo and their Test Reports issued by Central Excise & Customs Laboratory, Vadodara mentioned at para 14.1, in respect of sample of goods drawn from the goods imported vide Bills of Entry No.1015306 dt.27.10.2022, 1015307 dt.27.10.2022 and 1015777 dt.03.11.2022

(DTA Bill of Entry No.2017249 dt.05.11.2022, 2016889 dt.01.11.2022 & 2017411 dt.08.11.2022) and after perusing the same, he agreed with the facts/reports mentioned & expressed in the Test Report and admitted that Felt Woven Coated Fabric ordered by their firm from the overseas supplier and imported by M/s. Om Enterprise vide Bills of Entry No.1015306 dt.27.10.2022, 1015307 dt.27.10.2022 and 1015777 dt.03.11.2022 (DTA Bill of Entry No.2017249 dt.05.11.2022, 2016889 dt.01.11.2022 & 2017411 dt.08.11.2022) were actually PU Coated Fabrics and he has sold these goods various firms in domestic market. He further also agreed that they have placed order for PU Coated Fabrics from overseas suppliers which were later imported and cleared by M/s. Om Enterprises. He was also perused with the details of the actual owners of the imported goods by M/s. Om Enterprise, which was submitted under Annexure-B by Shri Kapil Kotiya in his statement dated 16.07.2024 and after perusing it he admitted that goods mentioned at Sr. No.2, 3, 6, 7, 9, 10 & 14 of Annexure-B submitted by Shri Kapil Kotiya in his statement dated 16.07.2024 were directly ordered by him from the Overseas Supplier and were later imported through M/s. Om Enterprise. He further stated these goods imported by M/s Om Enterprises were transferred to them by M/s.Om Enterprise through domestic sale under GST after Customs Clearance. He further also agreed that all the "Textile Coated Fabric", "Felt Woven Coated Fabric" & "Glitter Fabric" as mentioned at Sr. No.2, 3, 6, 7, 9, 10 & 14 of Annexure-B submitted by Shri Kapil Kotiya in his statement dated 16.07.2024 were ordered by them from overseas suppliers and later imported by M/s. Om Enterprise were PU Coated Fabric and they were mis-declared and mis-classified and Anti-dumping duty on it was not paid during the import. He further also stated/admitted that he has furnished Bond & Bank Guarantee for provisional release of the above seized goods of M/s. Om Enterprises for securing and safeguarding his ownership of the goods.

**14.3** Shri Amit Jain, s/o Shri Abhinandan Jain, proprietor of M/s A.N. Enterprises in his statement recorded on 12.09.2024 under section 108 of the Customs Act, 1962 was perused with the above Test Memo and their Test Reports issued by Central Excise & Customs Laboratory, Vadodara, in respect of sample of goods drawn from the goods imported vide Bills of Entry No.1014717 dt.17.10.2022 and 1015514 dt.31.10.2022 (SEZ to DTA Bill of Entry No.2017089 dt.03.11.2022 & 2008159 dt.11.05.2023 respectively) and after perusing the same, he stated that he agrees with the above test report in respect of goods imported by Om Enterprises which has revealed it to be various fabrics Coated with compounded Polyurethane on one side. He further also admitted that Shri Kapil Kotiya had introduced M/s. Om Enterprises to him and had told him to imports goods through this firm. He also stated that he has ordered PU Coated Fabric through Bill of Entry No. 1014717 dt. 17.10.2022 (DTA Bill of Entry No.2017089 dt. 03.11.2022) and Bill of Entry No.1015514 dt. 31.10.2022 (DTA Bill of Entry No.2008159 dt. 11.05.2023), but these goods were seized by DRI. He stated that the Overseas Suppliers in China suggested to declare PU Coated Fabric as Textile Coated Fabric or Felt Woven Coated Fabric to avoid Anti-dumping duty imposed on import and he agreed to their suggestion. He was perused with the statement of Shri Kapil Kotiya dated

16.07.2024 along with Annexure-B (M/s Om Enterprise) submitted by Shri Kapil Kotiya in the said statement and after perusing it he agreed that he had ordered the goods to overseas supplier which were imported vide Bills of Entry of M/s. Om Enterprise as mentioned in Sr. No. 1, 4, 5, 8 & 11. He further also stated that he had actually sold PU Coated Fabric by declaring the same as Textile Coated Fabric in the invoices issued by his firm i.e. A.N. Enterprises.

**14.4** Shri Prince Khatri, S/o B. D. Khatri, Authorized Representative of M/s. Dee Pee Leather Store, in his statement recorded u/s.108 of the Customs Act, 1962 on 21.10.2024 wherein he interalia stated that he looking after the trading business of M/s Dee Pee Leather Store. He was perused with the above Test Memo and their Test Reports issued by Central Excise & Customs Laboratory, Vadodara, in respect of sample of goods drawn from the goods imported vide Bills of Entry No.1015513 dt.31.10.2022 and 1015612 dt.01.11.2022 (SEZ to DTA Bill of Entry No.2017929 dt.16.11.2022 & 2017410 dt.08.11.2022 respectively) and after perusing the same, he stated that he agrees with the report given in the above test reports in goods imported by Om Enterprises vide SEZ Bill of Entry No. 1015612 dated 01.11.2022 & 1015513 dt. 31.10.2022. He stated that the above Bills of Entry were filed for imported of Felt Woven Coated Fabric by M/s Om Enterprises and these goods were ordered by his father Shri B.D. Khatri and after the after customs clearance of the goods imported vide above Bills of Entry, these goods were intended for transfer to firms belonging to our family through domestic GST invoices. He further stated that his family owns three trading firms, which are into trading business of fabrics i.e. M/s Shree Ganesh Overseas (Proprietor Shri B.D. Khatri), M/s J M D Enterprises (Proprietor Shri Rajesh Khatri) & M/s Dee Pee Leather Store (Proprietor Shri Dharam Pal Khatri). He further clarified that that Shri B.D. Khatri is his father, Shri Dharam Pal Khatri is his father's brother and Shri Rajesh Khatri is son of Shri Dharam Pal Khatri. He also stated that his father Shri B.D. Khatri had ordered these goods from overseas supplier of China i.e. Wenzhou Chenyue International Trade Co., Ltd & Wenzhou Asia Star International Trading Co., Ltd. and the import documents viz. Commercial Invoice, Packing List, Bill of Lading etc. in respect of the above goods received from the overseas supplier were sent by him to Shri Kapil Kotiya for clearance of goods.

**14.4.1** It is noteworthy to mention here that investigation against a number of firms including M/s. JMV Enterprise and M/s. Shree Ganesh Overseas for evasion of Anti-dumping duty in import of PU Coated Fabric has been carried out by this office. Shri B.D.Khatri is the Proprietor of the firm, M/s.Shree Ganesh Overseas and after completion of investigation against the firm, the report u/s. 28BB of the Customs Act, 1962 has also been forwarded to the jurisdictional Customs authority at Customs House has also been sent by this office.

**14.4.2** During the investigation in the case of M/s. JMV Enterprise, search at their registered premises was made under Panchnama dated 21.11.2022. During the search, Shri Kapil Kotiya was found present there and had introduced himself as the representative of M/s. JMV Enterprise. He also informed that he is providing

freight forwarding services to M/s. Om Enterprises also. On being asked about the documents connected to import of Fabrics, Shri Kapil Kotiya had informed that all the documents are available in his email [kapillogis@gmail.com](mailto:kapillogis@gmail.com) and provided the printout of it from the computer installed at the premises. These documents were resumed by the officers in a made-up file containing pages from 01 to 671 under the Panchnama dated 21.11.2022. Documents at Page No.479 to 495 of the above made-up file which was resumed during the Panchnama dt.21.11.2022 drawn at the premises of M/s. JMV Enterprise is a copy of email dt. 31.10.2022 which was forwarded by Shri B.D.Khatri from his email Id [bdass34@gmail.com](mailto:bdass34@gmail.com) to Shri Kapil Kotiya on his email Id [kapillogis@gmail.com](mailto:kapillogis@gmail.com). Vide above email copy of Commercial Invoice No.HS22-5318 dt. 12.10.2022 issued by M/s. Wenzhou Asia Star International Trading Co. Ltd., Packing list of goods covered under Commercial Invoice No.HS22-5318 dt. 12.10.2022 issued by M/s. Wenzhou Asia Star International Trading Co. Ltd., Test Report of goods under Invoice No. HS22-5318 issued by M/s. Wenzhou Asia Star International Trading Co. Ltd., Bill of Lading No.GOSUNGB9964845 and Country of Origin Certificate have been forwarded by Shri B.D.Khatri to Shri Kapil Kotiya. All the above documents are part of the Import documents in respect of import of goods made by M/s. Om Enterprise under SEZ Bill of Entry No.1015612 dt. 01.11.2022 (SEZ to DTA B/E No.2017410 dt. 08.11.2022) at APSEZ, Mundra. Similarly documents at Page No.461 to 477 of the above made-up files which was resumed during the Panchnama dt.21.11.2022 drawn at the premises of M/s. JMV Enterprise is a copy of email dt. 26.10.2022 which was forwarded by Shri B.D.Khatri from his email Id [bdass34@gmail.com](mailto:bdass34@gmail.com) to Shri Kapil Kotiya on his email Id [kapillogis@gmail.com](mailto:kapillogis@gmail.com). Vide above email copy of Commercial Invoice No.CY22YGA008 dt. 10.10.2022 issued by M/s. Wenzhou Asia Star International Trading Co. Ltd., Packing list of goods covered under Commercial Invoice No.CY22YGA008 dt. 10.10.2022 issued by M/s. Wenzhou Asia Star International Trading Co. Ltd., Test Report of goods under Invoice No. CY22YGA008, Bill of Lading No.EGLV143269214730 and Country of Origin Certificate have been forwarded by Shri B.D.Khatri to Shri Kapil Kotiya. All the above documents are part of the Import documents in respect of import of goods made by M/s. Om Enterprise under SEZ Bill of Entry No.1015513 dt. 31.10.2022 (SEZ to DTA B/E No.2017929 dt. 16.11.2022) at APSEZ, Mundra. Further, documents at Page No.345 to 365 of the above made-up file which was resumed during the Panchnama dt.21.11.2022 drawn at the premises of M/s. JMV Enterprise is a copy of email dt. 10.09.2022 which was also forwarded by Shri B.D.Khatri from his email Id [bdass34@gmail.com](mailto:bdass34@gmail.com) to Shri Kapil Kotiya on his email Id [kapillogis@gmail.com](mailto:kapillogis@gmail.com). Vide above email copy of Commercial Invoice No.HS22-5316 dt.26.08.2022 issued by M/s. Wenzhou Asia Star International Trading Co. Ltd., Packing list of goods covered under Commercial Invoice No.HS22-5316 dt.26.08.2022 issued by M/s. Wenzhou Asia Star International Trading Co. Ltd., Test Report of goods under Invoice No. HS22-5316 and Bill of Lading /Country of Origin Certificate, in respect of the goods have been forwarded by Shri B.D.Khatri to Shri Kapil Kotiya. All the above documents are part of the Import documents filed by M/s. Shree Ganesh in their import of goods made under SEZ Bill of Entry No.1012627 dt. 17.09.2022 (SEZ to DTA B/E No.2014060 dt. 19.09.2022. The

investigation conducted by this office in the case of M/s. Shree Ganesh Overseas has covered the above import and the duty evaded in the import has been covered in the SCN.

**14.4.3** The customs clearance and forwarding work of both the firms viz. M/s. Shree Ganesh Overseas and M/s. Om Enterprise were carried out by Shri Kapil Kotiya. Shri Prince Khatri, Authorised representative of M/s. Dee Pee Leather Stores in his statement recorded u/s. 108 of the Customs Act, 1962 on 21.10.2024 has stated that the goods imported by M/s. Om Enterprise vide SEZ Bill of Entry No.1015513 dt.31.10.2022 (SEZ to DTA Bill of Entry No.2017929 dt.16.11.2022) and SEZ Bill of Entry No.1015612 dt.01.11.2022 (SEZ to DTA Bill of Entry No.2017410 dt.08.11.2022) were ordered by his father Shri B.D.Khatri. He has also stated that the documents viz. Commercial Invoice, Packing List, Bill of Lading etc. received from the overseas supplier were sent to Shri Kapil Kotiya for clearance of goods by his father Shri B.D. Khatri. Documents at Page No.345 to 365 of the made-up file which was resumed during the Panchnama dt.21.11.2022 drawn at the premises of M/s. JMV Enterprise clearly states that Shri B.D.Khatri in the capacity of being Proprietor of M/s. Shree Ganesh Overseas has forwarded the documents related to import made by his firm from his email Id [bdass34@gmail.com](mailto:bdass34@gmail.com) to Shri Kapil Kotiya on their email Id [kapillogis@gmail.com](mailto:kapillogis@gmail.com). The Documents at Page No. 479 to 4959 & Page No. 461 to 477 of the same made-up file which was resumed during the Panchnama dt.21.11.2022 drawn at the premises of M/s. JMV Enterprise also clearly states that Shri B.D.Khatri in the capacity of being Proprietor of M/s. Shree Ganesh Overseas has forwarded the documents related to import made by M/s. Om Enterprise firm from his same email Id [bdass34@gmail.com](mailto:bdass34@gmail.com) to Shri Kapil Kotiya on their email Id [kapillogis@gmail.com](mailto:kapillogis@gmail.com). The email id of both Shri B.D.Khatri and Shri Kapil Kotiya in forwarding the documents of M/s. Shree Ganesh Overseas and M/s. Om Enterprise are same and this unrefutably establish the fact that was stated by Shri Prince Khatri in his statement dt. 21.10.2024 that his father has ordered the goods from the Overseas Supplier in respect of goods imported by M/s. Om Enterprise vide SEZ Bill of Entry No.1015513 dt.31.10.2022 (SEZ to DTA Bill of Entry No.2017929 dt.16.11.2022) and SEZ Bill of Entry No.1015612 dt.01.11.2022 (SEZ to DTA Bill of Entry No.2017410 dt.08.11.2022) and by virtue of the above fact becomes the *de jure* owner of the goods.

**14.5** Shri Narendrachand Ramniwas Moriya S/o Shri Ramniwas Moriya, Authorized person of M/s. Kishor Traders & M/s.Ritika Traders , Mumbai in his statement dated 10.02.2023 was perused with Panchnama dated 16.12.2023 drawn at the premises of Kishor Traders, Mumbai wherein samples of goods from the lot having Product Mark(PM) as "Kishor/54 which were purchased by M/s. Kishor Traders from M/s. Jai Maa Enterprises, New Delhi, under Invoice No.2022-23/1405 dated 12.11.2022 and from the lot having Product Mark (PM) as RITIKA/47 which were purchased by Ritika Traders from M/s Jai Maa Enterprises, New Delhi under Invoice no. 2022-23/1312 dated 20.11.2022 were drawn by the DRI officers. He was also perused test report issued by CRCL, Vadodara under lab

No. RCL/AZU/DRI/3351/22-13-2022 in respect of the sample of M/s. Kishore Traders, Mumbai & forwarded to CRCL Vadodara under test memo No. 52/KISHOR/54 dated 19.12.2022, wherein it was reported by CRCL, Vadodara that the sample of goods are tested as “made of dyed knitted fabric (having raised fibers on one surface), Coated with compounded Polyurethane on one side”. He was further also perused test report issued by CRCL, Vadodara under lab No. RCL/AZU/DRI/3352/22-12-2022 in respect of the sample forwarded under test memo No. 53/RITIKA/47 dated 19.12.2022 wherein it was reported by CRCL, Vadodara that the sample of goods are tested as “made of dyed knitted fabric (having raised fibers on one surface), Coated with compounded Polyurethane on one side”. He was further perused with Invoice No.2022-23/1405 dated 12.11.2022 issued by M/s. Jai Maa Enterprises to M/s. Kishor Traders with goods description “Textile Coated Fabric” and after perusal of the same he stated that the goods ordered and received by them under Invoice No.2022-23/1405 dated 12.11.2022 from M/s. Jai Maa Enterprises was PU Coated Fabric. They have ordered goods viz. Napa, Firangi, Wrinkle Free Jelly etc. (local trade name for PU Coated fabric) from their domestic suppliers (M/s. Jai Maa Enterprises) and have received these goods from the suppliers but the description of the goods is mentioned as Textile Coated Fabric in the invoice issued by M/s. Jai Maa Enterprises. He was also perused with Invoice No.2022-23/1312 dated 20.11.2022 issued by M/s. Jai Maa Enterprises to M/s. Ritika Traders with goods description “Glitter Fabric” and after perusal of the same he stated that the goods ordered and received by them under Invoice No.2022-23/1312 dated 20.11.2022 from M/s. Jai Maa Enterprises was PU Coated Fabric. They have ordered PU Coated fabric from their domestic suppliers (M/s. Jai Maa Enterprises) and have received these goods from the suppliers but the description of these goods are mentioned as Glitter Fabric in the invoice issued by M/s. Jai Maa Enterprises.

**15.** The evidences and facts divulged in the form of above Statements recorded during the course of investigation and Test reports issued by CRCL, Vadodara in respect of seized goods clearly establishes that the goods in the case which were declared as Textile Coated Fabric, Felt Woven Coated Fabric and Glitter Fabric and imported by M/s. OM Enterprise vide 14 Bills of Entry as mentioned above under para 12.2 were “Textile Fabrics Coated with Polyurethane on one side”. Therefore, these goods appear to be rightly classified under CTH 59032090.

**16.** Further, the above goods imported by M/s. Om Enterprise by declaring it as “Felt Woven Coated Fabric” or “Textile Coated Fabric” or “Glitter Fabric” and by classifying it under CTI 59119090 & 59050090 were actually found to be “PU (Polyurethane) coated fabrics” correctly classified under CTI 59032090. These goods when imported under correct CTH i.e. 59032090 are leviable to Basic duty @ 20%, SWS @ 10%, IGST @ 12%, Anti-Dumping Duty @ 0.46 USD per meters in terms of Notification No. 14/2022-Customs (ADD) dated 20.05.2022 and IGST @ 12%. on Anti-Dumping Duty. By way of mis-declaration and mis-classification, M/s. OM appears to have evaded payment of Basic Customs duty at appropriate rate and payment of Anti-dumping duty in their import against 14 Bills of Entry.



**17.** The differential duty evaded in respect of seized goods covered under 07 Bill of Entry as mentioned at Sr. No.08 to 14 of the Table at para 12.2 to the SCN is calculated at Rs.2,11,66,372/-. The duty calculation in this regard is as per Annexure-X.

**17.1** Further, the differential duty evaded in respect of the remaining past import consignment covered under 07 Bill of Entry mentioned at Sr. No.01 to 07 of the Table at para 12.2 of the report is calculated at Rs. 1,15,64,091/-. The duty calculation in this regard is as per Annexure-Y.

**18.** In view of the above facts, it appeared that M/s. Om Enterprise has indulged themselves in the evasion of Customs Duty by way of misdeclaration and misclassification of imported goods. It is noticed that total Assessable value of the goods imported under above Bills of Entry is Rs. 3,34,68,909/- and the total evasion of duty in the case is Rs. 3,27,30,463/- as calculated under Annexure-X & Annexure-Y of the Show Cause Notice.

**VIOLATION OF VARIOUS LEGAL PROVISIONS OF CUSTOMS ACT, 1962 BY M/s. OM ENTERPRISE -**

**19.** Under the Self-Assessment regime, it is the responsibility & duty of the importer/exporter to ensure correct declaration & classification of the goods, applicable rate of duty, value, and benefit or exemption notification claimed, if any, in respect of the imported or exported goods while presenting Bill of Entry or Shipping Bill. In the present case, it appears that the M/s. OM has willfully indulged themselves in the contravention of the above provisions with a mala fide intention to evade applicable payment of applicable Customs Duty & Anti-Dumping duty on their imported goods as in terms of Notification No. 14/2022-Customs (ADD) dated 20.05.2022. By their above act, they appear to have violated the provisions of Section 17 read with Section 46 of the Customs Act, 1962.

**19.1** In terms of Section 46(4) of the Customs Act, 1962, it is mandatory for the importer to make and subscribe to a declaration as to the truth of the contents of the bill of entry being presented.

**19.2** Further, in terms of Section 17 of the Customs Act, 1962, relating to Assessment of duty, it is mandatory for the importer, save as otherwise provided in Section 85 of the Act, to self-assess the duty, and in case it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under the Act, re-assess the duty leviable on such goods.

**19.3** In terms of sub-section 2 of Section 2 of the Customs Act, 1962, "assessment" means determination of the duty of any goods and the amount of duty, tax, Cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) or under any other law for the time being in force, with reference to-



- (a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;
- (b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;
- (c) exemption or concession of duty, tax, Cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;
- (d) the quantity, weight, volume, measurement or other specifics where such duty, tax, Cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;
- (e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, Cess or any other sum is affected by the origin of such goods;
- (f) any other specific factor which affects the duty, tax, Cess or any other sum payable on such goods and includes provisional assessment, self-assessment, re assessment and any assessment in which the duty assessed is nil.

**19.4** In terms of Section 28(4) of the Customs Act, 1962 - Where any duty has not been levied or has been short-levied or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, - (a) collusion; or (b) any willful mis-statement; or (c) suppression of facts, by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

**19.5** Further, Section 28AA(l) stipulates that - the person, who is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-Section (2), whether such payment is made voluntarily or after determination of the duty under that Section.

**19.6** As per Section 114A of the Customs Act, 1962 - Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful 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.

**19.7** Section 114AA of the Customs Act provides penalty for use of false and incorrect material. If a person knowingly or unknowingly 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 purpose of this Act, shall be liable to a penalty not exceeding five times the value of the goods.

**19.8** Further, Section 111(m) of the Customs Act, 1962, specifies that, any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77, are liable to confiscation.

**19.9** As per Section 112 of the Customs Act, 1962 - Any person, -(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, 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, to penalty.

## **20. Role and culpability of the importer/person/firm involved –**

### **20.1 Role and culpability of Shri Kapil Kotiya in the case:**

**20.1.1** The modus adopted for defrauding the Govt. Exchequer involved engaging of Name-Sake IEC holder firms who sublated their IEC to facilitate the imports. This arrangement was made by Shri Kapil Kotiya, by roping in his friends, known persons/relatives who had lost their jobs during and post Covid period and offering them with a regular salary to act as the Proprietor of these firm. Shri Kapil Kotiya used to take their credentials and created/established such IEC holding firms and their Bank Account. He used to exercise overall control on all the activities of such firms viz. banking transactions and other import related activities. The IEC of M/s. Om Enterprises was used by him for effecting the import of goods ordered by the actual owner of the goods viz. M/s. Jai Maa Enterprise, M/s. A.N. Enterprise and M/s. Shree Ganesh Overseas by adopting the above modus.

**20.1.2** Shri Hari Kishan, Proprietor of M/s. Om Enterprises, in his Statement recorded u/s. 108 of the Customs Act, 1962 on 23.11.2022 had categorically stated that he has never met any person of the firms who are using the IEC of M/s. Om Enterprise and his nephew Shri Kapil Kotiya is lending the IEC of his firm to various domestic firms to import their goods through our firms IEC. He also stated that he is being paid by Shri Kapil Kotiya for allowing this arrangement. He further also stated that he is not handling any work of his firm other than signing bank documents and all the work is being handled by Shri Kapil Kotiya.

**20.1.3** Shri Kapil Kotiya, Proprietor of M/s. Ocean Logistics, in his statement recorded u/s.108 of the Customs Act, 1962 on 27.11.2022 has admitted to the fact that he is handling all day-to-day work of M/s. Om Enterprise and he used to lend the IEC of the firm to other local Traders/Firms for importing their required goods. He also stated that in the whole process of import, the actual owner of the goods i.e. Domestic/Local Traders directly used to contact the Overseas Suppliers of the goods and their place order of their intended goods and also used to provide the

details of the IEC lending firm to the Overseas Suppliers. The Overseas Suppliers provide the Import documents directly to these Domestic/Local Traders who are the actual Buyers/Owners of the goods who in turn used to forwarded it to him for Customs Clearance and after Customs Clearance these imported goods were directly transported to the premises of the said Domestic Trader under Sale Invoices generated by IEC lending firm. All the finance related to the above transaction is being borne by the actual owner/Local Traders of the goods. He further stated that these Domestic/Local Traders are his regular clients and he used to attend their work related to customs clearance and freight forwarding in the past and as they required such IEC holding firms, he had provided it to them for making import. He also stated that the Proprietor of the IEC holding firm didn't indulge in any work related to the firm except putting signatures on the Banking documents. He further also stated that his clients i.e. the Domestic/Local Traders or Actual Owner of the goods used to import PU Coated Fabric from China before imposition of Anti-Dumping duty on it but later on they stopped such import after imposition of Anti-Dumping duty.

**20.1.4** Shri Arun Jyoti Mahajan, Partner of M/s. Jai Maa Enterprises, in his statement recorded u/s.108 of the Customs Act, 1962 on 17.05.2023 has admitted that they have purchased various type of Fabrics including PU coated fabrics from M/s. Om Enterprises. He also admitted that they used to place order for such fabrics to Overseas Supplier and the same were imported through the IEC of M/s. Om Enterprises. He further also stated that Shri Kapil Kotiya is the person who looks after all the work of M/s. Om Enterprises and in the import of goods through M/s. Om Enterprises, his role is placing order directly to the Overseas suppliers and rest of all the work is handled by Shri Kapil Kotiya. He further clarified the character and usage of various types of fabrics wherein he stated that PU coated fabric is a type of artificial leather which is used in footwear and as garment. He further also clarified that the fabric known by the term Textile Coated Fabrics is actually used for PU Coated Fabrics. He further stated that he had received PU Coated Fabrics but, in their Invoice, the goods were mentioned as Textile Coated Fabrics and these goods were further sold by him mentioning the same description of the goods i.e. Textile Coated Fabrics. He also stated that such above mentioned goods have been sold by them to M/s. Kishore Traders, Mumbai

**20.1.5** Shri Ankur Mahajan, Son of Shri Arun Jyoti Mahajan, Partner of M/s. Jai Maa Enterprises, in his statement recorded u/s.108 of the Customs Act, 1962 on 28.12.2022 has stated that he and his father Shri Arun Jyoti Mahajan looks after the business of M/s. Jai Maa Enterprises. He stated that they have order PU Coated Fabrics from China and have received the same from M/s. Om Enterprises through Invoices wherein the goods have been mentioned as Textile Coated Fabrics. He also stated that he does not know about the Proprietor of M/s. Om Enterprises but they contact Kapil for purchase of goods. He stated that he takes samples of goods from the manufacturers in China and gives details of the shortlisted samples and desired quantity to Shri Kapil Kotiya or himself places the order of goods directly to the Suppliers of goods in China through Phone. The Invoices, Packing list and Bill of Lading is received either by him or by Kapil Kotiya.

**20.1.6** Shri Amit Jain, Proprietor of M/s. A.N. Enterprise, in his statement recorded u/s. 108 of the Customs Act, 1962 on 12.09.2024 has inter alia stated that the firm M/s Om Enterprises was introduced to me by Shri Kapil Kotiya and Shri Kapil Kotiya has further told me that the imports of goods ordered by me will be made through this firm. He admitted that the order of the goods to the Overseas Suppliers in respect of the goods imported by M/s. Om Enterprise vide SEZ Bills of Entry No. 1011061 dt. 20.08.2022, No. 1012253 dt. 09.09.2022, No. 1012535 dt. 15.09.2022, 1014717 dt. 17.10.22 & 1015514 dt. 31.10.22 were placed by him

**20.1.7** The above facts emerged from the Statements recorded during the course of investigation in the case clearly reveals that Shri Kapil Kotiya is the kingpin, instrumental in effecting whole scheme of evasion of Anti-dumping duty in the import of PU Coated Fabrics and payment of appropriate Customs duty in the import of Non-woven Fabrics, thereby defrauding the Government Exchequer. Shri Kapil was well versed with the procedure for importing the goods as well as its customs clearance work undertaken by Customs Broker as he had formerly dealt with freight forwarding work and also used to indulge in customs clearance of imported goods by taking assistance of Customs Brokers. His clients were regular importer of PU Coated Fabrics from Overseas Suppliers based in China. After the imposition of Anti-dumping duty on PU Coated Fabrics imported from China, vide Notification No. 14/2022-Customs (ADD) dated 20.05.2022, the landing cost of these PU Coated Fabrics increased significantly. Shri Kapil Kotiya devised the modus to evade the applicable Anti-dumping duty in the import of PU Coated Fabrics imposed vide Notification No. 14/2022-Customs (ADD) dated 20.05.2022, wherein he used to create dummy / name sake type of IEC based firms using credentials of his friends and known persons and further used to offered it to his potential clients on lending basis for importing PU Coated Fabrics by way of mis-declaring the same as Fabrics other than PU Coated Fabrics. The interested firms used to place order directly to the Overseas Suppliers of PU Coated Fabrics in China and forward the import documents received by them from Overseas suppliers to Shri Kapil Kotiya. They also used to forward the remittance against the import to Overseas Suppliers through these dummy /name sake type of firm i.e. the Importer in the instant case. The work related to import of the above goods through dummy / name sake type of firm using its IEC its subsequent customs clearance of the goods and the direct supply of these goods from the port to the premises of the actual owner (interested firm) was looked after by Shri Kapil Kotiya. The interested firms (Actual Owner of the goods) who also used to import PU Coated Fabrics before imposition of Anti-dumping duty, would stand benefitted of the duty portion (Anti-dumping duty) by resorting to such malpractice in connivance with Shri Kapil Kotiya, who also stands benefitted monetarily. The so-called Proprietors of the dummy /name-sake firms established by Shri Kapil Kotiya were only required to append signatures on Banking/Import transaction documents and had no other role in the import and local sale of the goods. They were paid monthly salary of Rs.15000/- by the Shri Kapil Kotiya who used to exercise overall control on all the affairs of these Dummy firms. The above acts of Kapil Kotiya demonstrate his culpable/criminal mindset and undoubtedly prove his mens-rea in the whole act of defrauding the Govt Exchequer by evading the

applicable payment of Anti-dumping Duty imposed vide Notification No. 14/2022-Customs (ADD) dated 20.05.2022. The above facts clearly reveals that Shri Kapil Kotiya has employed himself in receiving import documents from these firms (Beneficial owners of the goods) and has also further forwarded these documents to Customs Brokers to facilitate import of the goods using the IEC of these name-sake/dummy firms created by him. He is also found to indulge in forwarding the imported goods from the port to the beneficiary owner's premises. By indulging himself in the above acts, Shri Kapil Kotiya is found to have indulged himself in the act or omission, in relation of the goods, which would render such goods liable to confiscation under section 111 of the Customs Act, 1962 and by indulging in such acts, he has rendered himself liable for penalty under section 112(a) & (b) of the Customs Act, 1962. Further, Shri Kapil Kotiya was well aware about the levy of Anti-dumping duty on the mis-declared goods imported through IEC of M/s. OM but even though he had intentionally/knowingly causes to be made (to make something happen or exist) declaration, documents which is false or incorrect in any material particular, in the transaction of any business for the purpose of this Act and thereby has also rendered himself liable for penalty u/s. 114AA of the Customs Act, 1962.

**20.2 Role and culpability of M/s. Jai Maa Enterprises and Shri Arun Jyoti Mahajan, Partner of M/s. Jai Maa Enterprises in the case:**

**20.2.1** Shri Ankur Mahajan, Son of Shri Arun Jyoti Mahajan, Partner of M/s. Jai Maa Enterprises, in his statement recorded u/s.108 of the Customs Act, 1962 on 28.12.2022 has stated that he and his father Shri Arun Jyoti Mahajan looks after the business of M/s. Jai Maa Enterprises. He stated that they have order PU Coated Fabrics from China and these goods were imported through by M/s. Om Enterprises and later were received from them through Invoices wherein the goods have been mentioned as Textile Coated Fabrics. He had further elaborated about the process involved in these types of import and stated that he used to take samples of goods from the manufacturers in China and would then give the details of the shortlisted samples and desired quantity to Shri Kapil Kotiya to place the order or himself used to place the order of goods directly to the Suppliers of goods in China through Phone. He further also stated that they mostly mention the trading name of PU Coated Fabric viz. Napa, Wrinkle Free, A-one, Jazz Napa Zarina, Check Zarina, TC Lycra, Eva BB etc., while placing order to overseas suppliers in China.

**20.2.2** Shri Arun Jyoti Mahajan, Partner of M/s. Jai Maa Enterprises, in his statement recorded u/s.108 of the Customs Act, 1962 on 17.05.2023 & 19.09.2024 has admitted that they have purchased various type of Fabrics including PU coated fabrics from M/s. Om Enterprises. He also admitted that they used to place order for such fabrics to Overseas Supplier and the same were imported through the IEC of M/s. Om Enterprises. He further also stated that Shri Kapil Kotiya is the person who looks after all the work of M/s. Om Enterprises including the import of goods through M/s. Om Enterprises and its local sale and his role in the entire import is limited to placing the order of the goods directly to the Overseas suppliers and rest of all the work is handled by Shri Kapil Kotiya. He further also admitted that he had received PU Coated Fabrics from M/s.Om Enterprise but in its Invoice, the

goods were mentioned by M/s. Om Enterprise as Textile Coated Fabrics and he had further sold these goods to M/s. Kishore Traders, Mumbai by mentioning the same description of the goods i.e. Textile Coated Fabrics. He further also clarified the identity of the goods with description "Textile Coated Fabric", "Felt Woven Coated Fabrics" and "Glitter Fabric" imported by him through M/s.Om Enterprise are actually PU Coated Fabric. He further stated that he did not know the reason of using term Textile Coated Fabric or Felt Woven Coated Fabric or Glitter Fabric for declaring PU Coated Fabric but admitted they have received invoices mentioning these descriptions instead of PU Coated Fabric.

**20.2.3** Shri Narendrachand Ramniwas Moriya S/o Shri Ramniwas Moriya, Authorized person of M/s.Kishor Traders, Mumbai, in statement recorded on 10.02.2023 stated that the Textile Coated Fabric purchased by them from M/s. Jai Maa Enterprises was PU Coated Fabric. He also stated that the PU Coated fabric is mostly known as Napa, Firangi, Wrinkle Free Jelly etc. and they have ordered to supply goods viz. Napa, Firangi, Wrinkle Free Jelly etc. and have received it as ordered but M/s. Jai Maa Enterprise has mentioned the description of the same in invoices as Textile Coated Fabric. He was perused with the Panchnama dated 16.12.2023 drawn at Thakkar Bapa Nagar, CST Road, Chembur, Mumbai under which goods having Product Mark (PM) as "Kishor/54" purchased by them from M/s. Jai Maa Enterprises, New Delhi, through Invoice No.2022-23/1405 dated 12.11.2022 and transported vide E-way Bill Number 741297609478 dated 12.11.2022 and Transportation Bill/invoice No.274769 dated 15.11.2022 issued by M/s. Satkartar Roadlines. He was also perused with Test Memo No.52/KISHOR/54 dated 19.12.2022 and its Test Report of CRCL Vadodara bearing Lab No.RCL/AZU/DRI/3351/22-12-2022 dated 04.01.2023 issued by CRCL Vadodara in respect of the Sample of the goods drawn under above Panchnama dated 16.12.2023 in respect of goods received under Invoice No.2022-23/1405 of M/s. Jai Maa Enterprises and after perusing the above documents, he agreed with the Test Report of CRCL Vadodara holding that the goods forwarded under the Test Memo No.52/KISHOR/54 dated 19.12.2022 are found to be coated with Compounded Polyurethane on one side.

**20.2.4** The facts emerged from the above Statements recorded during the course of investigation in the case clearly reveals that M/s. Jai Maa Enterprises represented through its Partner Shri Arun Jyoti Mahajan is the major beneficiary of the duty evaded in the case. Shri Arun Jyoti Mahajan had indulged themselves in the entire scheme of fraud in connivance with Shri Kapil Kotiya with the sole intention of defrauding the Govt Exchequer by way of evading the Anti-dumping duty on import of goods. Shri Kapil Kotiya was known to them as he had handled their imports made during earlier period also. After imposition of Anti-dumping duty vide Notification No. 14/2022-Customs (ADD) dated 20.05.2022, they had, in active connivance of Shri Kapil Kotiya hatched the modus to hire dummy/name sake IEC holding firms to facilitate their import of PU Coated Fabrics by mis-declaring the same as "Textile Coated Fabric" and "Felt Woven Coated Fabrics". The placing of Order of goods were directly made by them and their outward remittances were also borne by them, whereas, their counterpart Shri Kapil Kotiya was entrusted with the role of customs clearing the goods and further transporting it to their

premises by way of showing it as Local Sale. The above acts demonstrate their culpable/criminal mindset and undoubtedly prove their mens-rea in the whole act of defrauding the Govt Exchequer by evading the applicable payment of Anti-dumping Duty imposed vide Notification No. 14/2022-Customs (ADD) dated 20.05.2022.

**20.2.5** The above facts further also clearly reveal that M/s. Jai Maa Enterprise represented through Shri Arun Jyoti Mahajan, Partner, received import documents from overseas supplier as an Beneficial owner of the goods and Shri Arun Jyoti Mahajan has further forwarded these documents to Shri Kapil Kotiya to facilitate import of the goods using the IEC of these name-sake/dummy firms created by him. From the investigation, it reveals that M/s Jai Maa Enterprises is the beneficial owner for the corresponding goods mentioned in table in para 24.1 of the Show Cause Notice. Hence, M/s Jai Maa Enterprises is liable to pay the differential Customs Duty (BCD+SWS+IGST+ADD+IGST on ADD) for the goods imported by them (as a beneficial owner). In the investigation it was found that M/s Jai Maa Enterprises acted in collusion with different persons for suppressing the facts and mis-declaring the goods to evade the Customs duty. Accordingly, it appears that they are liable for penalty under section 114 A of the Customs Act, 1962. By commission of above acts, Shri Arun Jyoti Mahajan, Partner of M/s. Jai Maa Enterprise, is found to have indulged himself in the act or omission, in relation of the goods, which would render such goods liable to confiscation under section 111 of the Customs Act, 1962. Further by indulging in the above act, he has rendered himself liable for penalty under section 112(a) & (b) of the Customs Act, 1962. Further, Shri Arun Jyoti Mahajan, Partner of M/s. Jai Maa Enterprise was well aware about the levy of Anti-dumping duty on the mis-declared goods imported through IEC of M/s. Om Enterprise but even though, he had intentionally/knowingly causes to be made (to make something happen or exist) declaration, documents which is false or incorrect in any material particular, in the transaction of any business for the purpose of this Act and thereby has also rendered himself liable for penalty u/s. 114AA of the Customs Act, 1962.

**20.3 Role and culpability of M/s. Shri Banarsi Dass Khatri, Proprietor of M/s. Shree Ganesh Overseas in the case:**

**20.3.1** Shri Kapil Kotiya, Proprietor of M/s. Ocean Logistics and Mastermind of the whole scheme of evasion of duty in the case, in his statement recorded on 16.07.2024 u/s.108 of the Customs Act, 1962 has stated that M/s. Jai Maa Enterprise, M/s. A.N. Enterprise and M/s. Dee Pee Leather Store are the actual owner of the goods imported by M/s. Om Enterprise. He further also produced consignment wise details of the owner of the goods which were imported by M/s. Om Enterprise at Annexure-B under his statement. As per the details in the Annexure-B, the actual owner of the goods imported by M/s. Om Enterprise vide SEZ Bill of Entry No.1015513 dt. 31.10.2022 & 1015612 dt. 01.11.2022 are M/s. Dee Pee Leather Store.

**20.3.2** Shri Hari Kishan, Proprietor of M/s. Om Enterprise, in his statement recorded on 18.09.2024 u/s. 108 of the Customs Act, 1962 has stated that the actual owner of the goods imported by his firm vide SEZ Bill of Entry No.1015513 dt. 31.10.2022 & 1015612 dt. 01.11.2022 were M/s. Dee Pee Leather Store and the

same after import were sold to M/s. Anand Garments Pvt. Ltd. on their instructions.

**20.3.3** Shri Prince Khatri, Authorized representative of M/s. Dee Pee Leather Store, in his statement recorded on 21.10.2024 u/s. 108 of the Customs Act, 1962 has stated that his family owns three firms involved in trading of fabrics, M/s. Shree Ganesh Overseas, Proprietor Shri Banarsi Dass Khatri (his Father), M/s. Dee Pee Leather Store, Proprietor Shri Dharam Pal Khatri (his Uncle) and M/s. J.M.D. Enterprise, Proprietor Shri Rajesh Khatri (his nephew). He stated that he is also looking after the work related to all these firms. He stated that the goods in respect of Import made by M/s. Om Enterprise vide SEZ Bill of Entry No.1015513 dt. 31.10.2022 & 1015612 dt. 01.11.2022 were ordered from the overseas supplier by his father (Shri Banarsi Dass Khatri) and the import documents in respect of the same were forwarded by his father to Shri Kapil Kotiya for customs clearance.

**20.3.4** Following documents were resumed under Panchnama dt.21.11.2022 during the search at the registered premises of M/s. JMV Enterprise-

- (i) copy of email correspondence dt.10.09.2022 made by Shri Banarsi Dass Khatri (his father) from his email Id [bdass34@gmail.com](mailto:bdass34@gmail.com) to Shri Kapil Kotiya on their email Id [kapillogis@gmail.com](mailto:kapillogis@gmail.com) forwarding import documents against SEZ Bill of Entry No.1012627 dt. 17.09.2022 (SEZ to DTA B/E No.2014060 dt. 19.09.2022) in respect of his firm M/s.Shree Ganesh Overseas.
- (ii) copy of email correspondence dt. 26.10.2022 made by Shri Banarsi Dass Khatri (his father) from his email Id [bdass34@gmail.com](mailto:bdass34@gmail.com) to Shri Kapil Kotiya on their email Id [kapillogis@gmail.com](mailto:kapillogis@gmail.com) forwarding import documents in SEZ Bill of Entry No.1015513 dt. 31.10.2022 (SEZ to DTA B/E No.2017929 dt. 16.11.2022) made by M/s. Om Enterprise.
- (iii) copy of email correspondence dt. 31.10.2022 made by Shri Banarsi Dass Khatri (his father) from his email Id [bdass34@gmail.com](mailto:bdass34@gmail.com) to Shri Kapil Kotiya on their email Id [kapillogis@gmail.com](mailto:kapillogis@gmail.com) forwarding import documents of SEZ Bill of Entry No.1015612 dt. 01.11.2022 (SEZ to DTA B/E No.2017410 dt. 08.11.2022) in respect of M/s. Om Enterprise.

A bare perusal of the above details can conclude that vide above emails, the sender of this email i.e. Shri Banarsi Dass Khatri, Proprietor of M/s. Shree Ganesh Overseas has not only forwarded the import documents in respect of his firm i.e. M/s. Shree Ganesh Overseas to Shri Kapil Kotiya, but has also forwarded the import documents of the goods imported by M/s. Om Enterprise vide SEZ Bill of Entry No.1015513 dt. 31.10.2022 & 1015612 dt. 01.11.2022 to Shri Kapil Kotiya. Shri Kapil Kotiya, during the investigation has already stated that the Overseas Suppliers send the import documents in respect of the goods ordered to the actual owners of the goods and same were then forwarded by them to him. In the instant case, it has been unrefutably proved that Shri Banarsi Dass Khatri, Proprietor of M/s. Shree Ganesh Overseas, in the capacity of being the actual owner of the goods has received these import documents and same were forwarded by him to Shri Kapil Kotiya vide his email dated 26.10.2022 & 31.10.2022.

**20.3.4** The facts and the Statements recorded during the course of investigation in the case clearly reveals that Shri Banarsi Dass Khatri, Proprietor of M/s. Shree Ganesh Overseas is also one of the beneficiaries of the duty evaded in the case. He



has indulged himself in the entire scheme of fraud in connivance with Shri Kapil Kotiya with the sole intention of defrauding the Govt Exchequer by way of evading the payment of appropriate Customs duty on import of goods. Shri Banarsi Dass Khatri, Proprietor of M/s. Shree Ganesh Overseas has indulged himself in importing of PU Coated Fabrics by mis-declaring and mis-classifying their true identity and engaging freight forwarders i.e. Shri Kapil Kotiya. Shri Kapil Kotiya in the entire modus had employed dummy/name sake IEC holding firms to facilitate their import of PU Coated Fabric mis-declaring the same as "Felt Woven Coated Fabric". The placing of Order of goods were directly made by Shri Banarsi Dass Khatri, Proprietor of M/s. Shree Ganesh Overseas, whereas, his counterpart Shri Kapil Kotiya was entrusted with the role of customs clearing the goods and further transporting it to their premises or to the premises he identifies, by way of showing it as Local Sale. The above acts demonstrate the culpable/criminal mindset of Shri Banarsi Dass Khatri, Proprietor of M/s. Shree Ganesh Overseas and undoubtedly prove his mens-rea in the whole act of defrauding the Govt Exchequer by evading the applicable payment of Customs Duty.

**20.3.5** The above facts clearly reveal that Shri Banarsi Dass Khatri, Proprietor of M/s. Shree Ganesh Overseas, has employed himself in receiving import documents from overseas supplier being the Beneficial owner of the goods and further forwarding these documents to Shri Kapil Kotiya to facilitate import of the goods using the IEC of these name-sake/dummy firms created by him. By indulging himself in the above acts, Shri Banarsi Dass Khatri, Proprietor of M/s. Shree Ganesh Overseas, is found to have indulged himself in the act or omission, in relation of the goods, which would render such goods liable to confiscation under section 111 of the Customs Act, 1962. Further by indulging in the above act, he has rendered himself liable for penalty under section 112(a) & (b) of the Customs Act, 1962. Further, Shri Banarsi Dass Khatri, Proprietor of M/s. Shree Ganesh Overseas was also an importer of PU Coated Fabric and being such importer was well aware about the levy of Customs duty at higher rate on the mis-declared goods imported through IEC of M/s. Om Enterprise but even though, he had intentionally/knowingly causes to be made (to make something happen or exist) declaration, documents which is false or incorrect in any material particular, in the transaction of any business for the purpose of this Act and thereby has also rendered himself liable for penalty u/s. 114AA of the Customs Act, 1962.

**20.4 Role and culpability of M/s. A.N. Enterprise and Shri Amit Jain, Proprietor of M/s. A.N. Enterprise in the case:**

**20.4.1** Shri Hari Kishan, Proprietor of M/s. Om Enterprises, in his Statement recorded u/s. 108 of the Customs Act, 1962 on 23.11.2022 & 18.09.2024 had admitted that the IEC of his firm was utilized by M/s. A.N. Enterprises for importing goods and his nephew Shri Kapil Kotiya is dealing with the concerned person of M/s. A.N. Enterprise for import of goods. Shri Hari Kishan was also perused with Annexure-B (A chart showing the Bill of Entry wise imported goods and their actual beneficial owners) which was submitted by Shri Kapil Kotiya under his statement dated 16.07.2024 and after perusing the same, he has concord that the goods imported by M/s. Om Enterprise were ordered by the respective beneficial owners of the goods, as mentioned in Annexure-B (in case of the

beneficial owner of the goods i.e. M/s. A.N. Enterprise, imports made by M/s. Om Enterprise vide SEZ Bills of Entry No.1011061 dt. 20.08.2022, 1012253 dt. 09.09.2022, 1012535 dt. 15.09.2022, 1014717 dt. 17.10.2022 & 1015514 dt. 31.10.2022). Shri Hari Kishan was further also perused with Annexure-I (A chart showing Bill of Entry wise domestic buyers of the goods with DTA Sale Invoice details) and after perusing the same, he agreed that after customs clearance of the goods imported by his firm, it was sold to the firm under the Invoice, as mentioned in Annexure-I.

**20.4.2** Shri Kapil Kotiya, Proprietor of M/s Ocean Logistics in his statement recorded u/s. 108 of the Customs Act, 1962 on 16.07.2024, has stated that M/s. Jai Maa Enterprise, M/s. A.N. Enterprise and M/s. Dee Pee Leather Store are the actual owner of the goods imported by M/s. Om Enterprise. The order of the respective goods is placed to the Overseas Supplier by the above actual owner of the goods. He further also stated that Shri Amit Jain, Proprietor of M/s. A.N. Enterprises had also forwarded funds amounting to Rs. 73,08,021/- in the bank account of M/s. Om Enterprise for securing the provisional release of the goods seized in respect of SEZ Bills of Entry 1014717 dt. 17.10.2022 (DTA to SEZ Bill of Entry No. 2017089 dt. 03.11.2022) and SEZ Bill of Entry No.1015514 dt. 31.10.2022 (SEZ to DTA Bill of Entry No.2008159 dt. 11.05.2023).

**20.4.3** Shri Amit Jain, s/o Shri Abhinandan Jain, proprietor of M/s A.N. Enterprises in his statement recorded on 29.07.2024 under section 108 of the Customs Act, 1962 wherein he was inter alia perused with Statement dt. 21.05.2024 of Shri Tulsi Dass Chopra, Authorized representative of M/s. Bharat Export, Statement dt. 22.05.2024 of Shri Mohd. Arif Iraqi, Manager of M/s. Amin Leather and Statement dt. 28.05.2024 of Shri Sanjay Dhingra, Authorized representative of M/s. R.S. Enterprise. After perusing the above statements, he agreed with all the facts mentioned in the above statement and stated that the goods imported by him thorough the IEC of M/s. Om Enterprises were further domestically sold by him to these Traders.

**20.4.4** Shri Amit Jain, s/o Shri Abhinandan Jain, proprietor of M/s A.N. Enterprises in his further statement recorded on 12.09.2024 under section 108 of the Customs Act, 1962 stated that Shri Kapil Kotiya had introduced M/s. Om Enterprises to him and had told him to imports goods through this firm. He was perused with the statement of Shri Kapil Kotiya dated 16.07.2024 along with Annexure-B (M/s Om Enterprise) submitted by Shri Kapil Kotiya in the said statement and after perusing it he agreed that he had ordered the goods to overseas supplier which were imported vide Bills of Entry of M/s. Om Enterprise as mentioned in Sr. No. 1, 4, 5, 8 & 11. He further also stated that he had actually sold PU Coated Fabric by declaring the same as Textile Coated Fabric in the invoices issued by his firm i.e. A.N. Enterprises. He was further perused with the Test Memo and their Test Reports issued by Central Excise & Customs Laboratory, Vadodara, in respect of sample drawn from the goods imported by M/s. Om Enterprise vide Bills of Entry No.1014717 dt.17.10.2022 and 1015514 dt.31.10.2022 (SEZ to DTA Bill of Entry No.2017089 dt.03.11.2022 & 2008159

dt.11.05.2023 respectively) and after perusing the same, he stated that he agrees with the above test report in respect of goods imported by M/s. Om Enterprises which has revealed it to be various fabrics Coated with compounded Polyurethane on one side.

**20.4.5** The facts emerged from the above Statements recorded during the course of investigation in the case clearly reveals that Shri Amit Jain, Proprietor of M/s. A.N. Enterprises is also one of the major beneficiary of the duty evaded in the case. Shri Amit Jain had indulged himself in the entire scheme of fraud in connivance with Shri Kapil Kotiya with the sole intention of defrauding the Govt Exchequer by way of evading the Anti-dumping duty on import of goods. Shri Kapil Kotiya was known to them as he had handled their imports made during earlier period also. After imposition of Anti-dumping duty vide Notification No. 14/2022-Customs (ADD) dated 20.05.2022, they had, in active connivance of Shri Kapil Kotiya hatched the modus to hire dummy/name sake IEC holding firms to facilitate their import of PU Coated Fabrics by mis-declaring the same as "Textile Coated Fabric" and "Felt Woven Coated Fabrics". The placing of Order of goods to the overseas supplier was directly made by him and their outward remittances was also borne by him, whereas, their counterpart Shri Kapil Kotiya was entrusted with the role of customs clearing the goods and further transporting it to their premises by way of showing it as Local Sale. The above acts demonstrate his culpable/criminal mindset and undoubtedly prove his mens-rea in the whole act of defrauding the Govt Exchequer by evading the applicable payment of Anti-dumping Duty imposed vide Notification No. 14/2022-Customs (ADD) dated 20.05.2022.

**20.4.6** The above facts further also clearly reveal that M/s. A.N. Enterprise represented through Shri Amit Jain, Proprietor received import documents from the overseas supplier as a beneficial owner of the goods and Shri Amit Jain has further forwarded these documents to Shri Kapil Kotiya to facilitate import of the goods using the IEC of these name-sake/dummy firms created by him. From the investigation, it reveals that M/s. A.N. Enterprise is the beneficial owner for the corresponding goods mentioned in table in para 24.1 of the Show Cause Notice. Hence, M/s. A.N. Enterprise is liable to pay the differential Customs Duty (BCD+SWS+IGST+ADD+IGST on ADD) for the goods imported by them (as a beneficial owner). In the investigation it was found that M/s. A.N. Enterprise acted in collusion with different persons for suppressing the facts and mis-declaring the goods to evade the Customs duty. Accordingly, it appears that they are liable for penalty under section 114 A of the Customs Act, 1962. By indulging himself in the above acts, Shri Amit Jain, Proprietor of M/s. A.N. Enterprises, is found to have indulged himself in the act or omission, in relation of the goods, which would render such goods liable to confiscation under section 111 of the Customs Act, 1962. Further by indulging in the above act, he has rendered himself liable for penalty under section 112(a) & (b) of the Customs Act, 1962. Further, Shri Amit Jain, Proprietor of M/s. A.N. Enterprises was well aware about the levy of Anti-dumping duty on the mis-declared goods imported through IEC of M/s. Om Enterprises but even though, he had intentionally/knowingly causes to be made (to

make something happen or exist) declaration, documents which is false or incorrect in any material particular, in the transaction of any business for the purpose of this Act and thereby has also rendered himself liable for penalty u/s. 114AA of the Customs Act, 1962.

**20.5 Role and culpability of Shri Hari Kishan, Proprietor of M/s. Om Enterprise in the case:**

**20.5.1** Shri Hari Kishan, Proprietor of M/s. Om Enterprises, in his Statement recorded u/s. 108 of the Customs Act, 1962 on 23.11.2022 & 18.09.2024 had admitted that the goods imported by his firm were actually owned by domestic traders M/s. Jai Maa Enterprise, M/s. A.N. Enterprise etc. and these imported goods after securing its customs clearance, were directly forwarded to the premises of these domestic traders. After perusing the Test Reports of CRCL, Vadodara, he agreed that the imported goods which were declared as Textile Coated Fabric and Felt Woven Coated Fabric were actually PU Coated Fabric and Non-Woven Fabric. He also agreed to the fact that he has provided the IEC of his firm to Shri Kapil Kotiya for lending it to other domestic traders for facilitating their imports. He further also agreed that Shri Kapil Kotiya used to exercise over-all control on the activities of M/s. Om Enterprise and he was paid amount by Shri Kapil Koitya for allowing imports of other domestic traders through the IEC of his firm.

**20.5.2** Shri Kapil Kotiya, Proprietor of M/s Ocean Logistics in his statement recorded u/s. 108 of the Customs Act, 1962 on 27.11.2022 & 03.03.2023, has admitted that he is looking after all the business activity of M/s. Om Enterprises. He further stated that the Letter dated 19.01.2023 of M/s. OM Enterprises addressed to the Deputy Commissioner, SEZ Mundra requesting for clearance of goods PU Fabrics covered under (DTA) Bill of Entry No.2019872 dt. 14.12.2022 and B/E No.2019670 dt. 12.12.2022 was issued and signed by Shri Hari Kishan under his instructions. He also provided the details of those Domestic traders who had utilized the IEC of M/s. Om Enterprises for importing their consignments.

**20.5.3** Shri Arun Jyoti Mahajan S/o Shri Hansraj Mahajan, Partner of M/s Jai Maa Enterprises in his statement recorded u/s. 108 of Customs Act, 1962 on 17.05.2023, has stated that they purchased Glitter Fabric, Polyester Bonded, PU Coated Fabric, Textile Coated Fabric etc. from M/s.OM Enterprises. On being asked about the Proprietor of M/s. OM Enterprise, he further stated that Shri Kapil Kotiya is looking after all the work of M/s.Om Enterprises and he does not know what was his designation in the firm.

**20.5.4** Shri Ankur Mahajan S/o Shri Arun Jyoti Mahajan Proprietor of M/s Bhagwati International in his statement recorded u/s. 108 of Customs Act, 1962 on 28.12.2022, stated that they had purchased PU Coated Fabric, Textile Coated Fabric, Bonded Fabric etc. from M/s.Om Enterprises. He further stated that he did not know Shri Sanjeev Shekhar Malhotra. He also stated that he did not know the Proprietor/Partner/Employee of M/s. Om Enterprises and only contacts Shri Kapil Kotiya for purchase of goods from this firm.

**20.5.5** The facts in the above Statements recorded during the course of investigation in the case clearly reveals that Shri Hari Kishan, Proprietor of M/s. Om Enterprise has not practiced proper due diligence in exercising the work of the firm. When provided with monetary benefits, he as the Proprietor of the firm has agreed to act and had indulged in effecting imports of goods owned by other domestic traders without checking the credentials and actual details of the goods to be imported. He had indulged himself in the entire scheme of fraud in connivance with Shri Kapil Kotiya which resulted in evading the payment of appropriate Customs duty leviable on PU Coated Fabric and Non-woven Fabric during their import. Shri Hari Kishan, Proprietor of M/s. OM Enterprise had indulged himself in importing of PU Coated Fabric by mis-declaring and mis-classifying their true identity at the behest of Shri Kapil Kotiya. The above acts clearly demonstrate the culpable/criminal mindset of Shri Hari Kishan, Proprietor of M/s. Om Enterprise and undoubtedly establish his mens-rea in the whole act of defrauding the Govt Exchequer by evading the applicable payment of Customs Duty.

**20.5.6** The above facts clearly establish that Shri Hari Kishan, Proprietor of M/s. Om Enterprise, has employed himself in importing goods on the basis of mis-declared and mis-classified document. By indulging himself in the above acts, Shri Hari Kishan, Proprietor of M/s. Om Enterprise, is found to have indulged himself in the act or omission, in relation of the goods, which would render such goods liable to confiscation under section 111 of the Customs Act, 1962. Further by indulging in the above act, he has rendered himself liable for penalty under section 117 of the Customs Act, 1962.

**21.** From the evidences as elaborated in foregoing paras as well as confirmatory statements on record it appears that M/s. Om Enterprise have willfully mis-stated & suppressed the correct description & classification of PU Coated Fabric during their import before the Customs authorities at APSEZ Mundra with an intent to evade the Anti-Dumping Duty in terms of Notification No. 14/2022-Customs (ADD) dated 20.05.2022 and payment of other Customs Duty at the time of its domestic clearance.

**22.** Further, it also appears from the foregoing paras that M/s. Om Enterprise have intentionally and willfully mis-stated, suppressed actual facts in collusion with different entities, in contravention to the provisions u/s. 46(4) & (4A) of the Customs Act, 1962 and thereby have evaded duty to the tune of Rs. 3,27,30,463/- as discussed supra.

**23.** It also appears from the foregoing paras that M/s. Om Enterprise have and made declarations and produced documents etc., which are false and incorrect in nature. By indulging in these acts during the transaction of their business, M/s. Om Enterprise have rendered themselves to be liable for penalty under Section 112(a) & 112(b) of the Customs Act, 1962.

**24.** It was also found during the course of investigation that Shri Sabu George has failed to exercise proper due diligence in discharging his obligations mandated under Customs Brokers Licensing Regulations, 2018. Shri Sabu George, S/o Shri Kottackal Chacko George, Partner of M/s. Rainbow Shipping Services, in his statement recorded on 03.10.2024 u/s.108 of the Customs Act, 1962 has stated that he has taken KYC of the importer from Shri Kapil Kotiya before preparing the checklist for filing of Bill of Entry but they have not taken the approval of the Importer for the checklist prepared by them. He further stated that he has not contacted or communicated with anyone else except Shri Kapil Kotiya for the import of goods made by M/s. Om Enterprises. The investigation has revealed that the evasion of duty in the case was orchestrated by Shri Kapil Kotiya and other domestic traders of fabrics and in the above scheme the proper discharge of the responsibility entrusted on the Customs Brokers could have proven as a deterrent if Shri Sabu George, Customs Broker would have exercised due diligence in discharging his duties entrusted under CBLR, 2018. By indulging in the above act, Shri Sabu George, G Card bearing number CHM/G/18/2018 dated 29.05.2018 issued by Mundra Customs appears to have committed offence punishable under 117 of the Customs Act, 1962.

## **25. Confiscation of the goods -**

It is evident from the facts divulged during the course of investigation that M/s.Om Enterprise has indulged themselves in mis-declaration and mis-classification of the goods covered under Bills of Entry filed during their imports before APSEZ, Mundra as mentioned below:

<b>S. No.</b>	<b>SEZ B/E No. &amp; Date</b>	<b>SEZ to DTA B/E No. &amp; Dt.</b>	<b>Declared HS CODE / CTH</b>	<b>Declared description of good</b>	<b>Declared Quantity (in Kgs.)</b>	<b>Ass. Value (Rs.)</b>
1	1011061 dt. 20.08.22	2013691 dt.10.09.22	59119090	Textile Coated Fabric	25354	24,47,675/-
2	1011237 dt. 23.08.22	2012671 dt.24.08.22	59119090	Textile Coated Fabric	21438	20,70,911/-
3	1012134 dt.07.09.22	2013801 dt.13.09.22	59119090	Textile Coated Fabric	20696	19,97,992/-
	1012134 dt. 07.09.22	2013801 dt.13.09.22	59119090	Glitter Fabric	3794	2,59,443/-
4	1012253 dt.09.09.22	2014640 dt.26.09.22	59119090	Textile Coated Fabric	19614	18,92,359/-
5	1012535 dt. 15.09.22	2014056 dt.19.09.22	59119090	Textile Coated Fabric	25200	24,31,296/-
6	1013244 dt.26.09.22	2015360 dt.07.10.22	59119090	Textile Coated Fabric	21420	21,19,295/-
	1013244 dt.26.09.22	2015360 dt.07.10.22	59119090	Glitter Fabric	2747	1,92,517/-
7	1013940 dt.06.10.22	2015522 dt.11.10.22	59119090	Textile Coated Fabric	25195	24,92,793/-
8	1014717 dt.17.10.22	2017089 dt.03.11.22	59119090	Textile Coated Fabric	19266	19,39,701/-
9	1015306 dt.27.10.22	2017249 dt.05.11.22	59119090	Felt Woven Coated Fabric	24876	26,05,761/-

10	1015307 dt.27.10.22	2016889 dt.01.11.22	59119090	Felt Woven Coated Fabric	24637	25,83,805/-
11	1015514 dt.31.10.22	2008159 dt.11.05.23	59119090	Felt Woven Coated Fabric	25378	26,20,279/-
12	1015513 dt.31.10.22	2017929 dt.16.11.22	59119090	Felt Woven Coated Fabric	25047	26,23,673/-
13	1015612 dt.01.11.22	2017410 dt.08.11.22	59119090	Felt Woven Coated Fabric	24480	25,64,280/-
14	1015777 dt.03.11.22	2017411 dt.08.11.22	59119090	Felt Woven Coated Fabric	25080	26,27,130/-

The investigation conducted in the case has revealed that the goods imported vide above Bills of Entry were PU Coated Fabric, whereas they were mis-declared by M/s. Om Enterprise as Textile Coated Fabric or Felt Woven Coated Fabric or Glitter Fabric. It was also revealed that these goods were also mis-classified and were classified under CTH 59119090, whereas these goods, by virtue of being either PU Coated Fabric merited to be rightly classified under 59039090. By indulging in the above act of mis-declaration and mis-classification, the goods imported vide above Bills of Entry by M/s. Om Enterprise appears to be liable for confiscation under Section 111(m) of the Customs Act, 1962.

**25.1** The investigation conducted in the case has revealed that the Acutal Owner/ Beneficial Owner of the goods imported by M/s. Om Enterprise, covered under 14 Bills of Entry which were filed at Adani Ports and Special Economic Zone (INAJM6), Mundra are as detailed below –

Sr. No.	SEZ Bill of Entry No.	SEZ to DTA Bill of Entry No.	CTH NO.	Item Description	Declared Qty (KGS)	Ownership of the Goods
1	1011061 dt.20-08-2022	2013691 dt. 10.09.2022	59119090	TEXTILE COATED FABRIC	25354	M/s AN Enterprises
2	1011237 dt. 23.08.2022	2012671 dt. 24.08.2022	59119090	TEXTILE COATED FABRIC	21438	M/s Jai Maa Enterprises
3	1012134 dt.07.09.2022	2013801 dt.13.09.2022	59119090	TEXTILE COATED FABRIC	20696	M/s Jai Maa Enterprises
4	1012253 dt.09.09.2022	2014640 dt.26.09.2022	59119090	TEXTILE COATED FABRIC	19614	M/s AN Enterprises
5	1012535 dt.15.09.2022	2014056 dt.19.09.2022	59119090	TEXTILE COATED FABRIC	25200	M/s AN Enterprises
6	1013244 dt.26.09.2022	2015360 dt.07.10.2022	59119090	TEXTILE COATED FABRIC	21420	M/s Jai Maa Enterprises

7	1013940 dt. 06.10.2022	2015522 dt.11.10.2022	59119090	TEXTILE COATED FABRIC	25195	M/s Jai Maa Enterprises
8	1014717 dt.17.10.2022	2017089 dt.03.11.2022	59119090	TEXTILE COATED FABRIC	19266	M/s AN Enterprises
9	1015306 dt.27.10.2022	2017249 dt.05.11.2022	59119090	FELT WOVEN COATED FABRIC	24876	M/s Jai Maa Enterprises
10	1015307 dt.27.10.2022	2016889 dt.01.11.2022	59119090	FELT WOVEN COATED FABRIC	24637	M/s Jai Maa Enterprises
11	1015514 dt.31.10.2022	2008159 dt.11.05.2023	59119090	FELT WOVEN COATED FABRIC	25378	M/s AN Enterprises
12	1015513 dt.31.10.2022	2017929 dt.16.11.2022	59119090	FELT WOVEN COATED FABRIC	25047	Shri Banarsi Dass Khatri proprietor of Shree Ganesh Overseas
13	1015612 dt.01.11.2022	2017410 dt.08.11.2022	59119090	FELT WOVEN COATED FABRIC	24480	Shri Banarsi Dass Khatri proprietor of Shree Ganesh Overseas
14	1015777 dt.03.11.2022	2017411 dt.08.11.2022	59119090	FELT WOVEN COATED FABRIC	25080	M/s Jai Maa Enterprises

**PAYMENT OF ANTI-DUMPING DUTY AND INTEREST: -**

**26.** During the course of investigation, M/s. OM had voluntarily deposited amounts as detailed below against duty liability towards Anti-Dumping Duty. The said amounts were deposited into the Govt. account vide GAR-7/TR-6 Challans as detailed below:



Sr. No.	DD No. & Date	Challan Number & Date	Amount	Remark	RUD No.
1	023120 dt. 13.01.2023	TR6/GAR 7 Challan No. OM/ENQ-01/01 dt.16.01.2023	25,00,000/-	Voluntary Payment of Anti-Dumping Duty	<b>78</b>
2	023121 dt. 13.01.2023	TR6/GAR 7 Challan No. OM/ENQ-01/02 dt.16.01.2023	25,00,000/-	Voluntary Payment of Anti-Dumping Duty	<b>79</b>
3	023363 dt. 28.04.2023	TR6/GAR 7 Challan No. OM/ENQ-01/03 dt.16.01.2023	28,13,680/-	Voluntary Payment of IGST on Anti-Dumping Duty	<b>80</b>
4	055357 dt. 18.10.2024	TR-6/GAR 7 Challan No.OM/01/2024	5,00,000/-	Voluntary Payment of Anti-Dumping Duty	<b>81</b>
5	055372 dt. 23.10.2024	TR-6/GAR 7 Challan No.OM/02/2024	8,00,000/-	Voluntary Payment of Anti-Dumping Duty	<b>82</b>
6	055374 DT. 28.10.2024	TR-6/GAR 7 Challan No.OM/03/2024	6,50,000/-	Voluntary Payment of Anti-Dumping Duty	<b>83</b>
<b>TOTAL DUTY PAID</b>			<b>97,63,680/-</b>		

**27.** Accordingly, in respect of goods imported by M/s. Om Enterprise which were seized and released provisionally on submission of Bond and Bank Guarantee as mentioned in Annexure-X at Para 17 to the SCN , **M/s. OM Enterprise (IEC-ARRPK7735L), M/s A N Enterprises, M/s Jai Maa Enterprises and Shri Banarsi Dass Khatri**, were called upon to show cause as to why :

(i) Goods as mentioned in Annexure-X at Para 17 to the SCN imported vide Bills of Entry having total assessable value of Rs. 1,75,64,629/- (Rupees One Crore Seventy Five Lakh Sixty Four Thousand six Hundred and Twenty Nine only) should not be liable to confiscation as per the provisions of Section 111 (m) of the Customs Act, 1962.

(ii) The declared Classification i.e. 59119990 and description of good “Felt Woven Coated Fabric” in SEZ Bill of Entry No.1015306 dt. 27.10.2022 (SEZ to DTA Bill of Entry No.2017249 dt.05.11.2022), SEZ Bill of Entry No.1015307 dt. 27.10.2022 (SEZ to DTA Bill of Entry No.2016889 dt.01.11.2022), SEZ Bill of Entry No.1015514 dt. 31.10.2022 (SEZ to DTA Bill of Entry No.2008159 dt.11.05.2023), SEZ Bill of Entry No.1015513 dt. 31.10.2022 (SEZ to DTA Bill of Entry No.2017929 dt.16.11.2022), SEZ Bill of Entry No.1015612 dt. 01.11.2022 (SEZ to DTA Bill of Entry No.2017410 dt.08.11.2022) and SEZ Bill of Entry No.1015777 dt. 03.11.2022 (SEZ to DTA Bill of Entry No.2017411 dt.08.11.2022) should not be rejected.

(iii) The declared Classification i.e. 59119990 and description of good “Textile Coated Fabric” imported vide SEZ Bill of Entry No. 1014717 dt. 17.10.2022 (SEZ to DTA Bill of Entry No.2017089 dt.03.11.2022) should not be rejected.

(iv) The goods imported vide above Bills of Entry should not be re-classified under HS CODE/CTI 59032090 and its description should not be considered as Polyurethane (PU) Coated Fabric as mentioned in Annexure-X at Para 17 to the SCN.

(v) The goods Imported vide above Bills of Entry should not be reassessed after considering the differential Customs Duty (BCD+SWS+IGST+ADD+IGST on ADD) of Rs. 2,11,66,372/- (Rupees Two Crore Eleven Lakh Sixty Six Thousand Three Hundred and Seventy Two only) in respect of Bills of Entry as mentioned in Annexure-X at Para 17 to the SCN. The Bill of entry should not accordingly be reassessed under section 17 of Customs Act, 1962.

(vi) The differential Customs Duty of Rs. 2,11,66,372/- (Rupees Two Crore Eleven Lakh Sixty Six Thousand Three Hundred and Seventy Two only) in respect of Bills of Entry as mentioned in Annexure-X at Para 17 to the SCN should not be recovered by enforcing the Bond and Bank Guarantee submitted by the Importer for securing the provisional release of goods.

**28.** In respect of past consignment of M/s. Om Enterprise wherein the goods were cleared as mentioned in Annexure-Y at Para 17.1 to impugned SCN, **M/s. OM Enterprise (IEC-ARRPK7735L), M/s A N Enterprises, and M/s Jai Maa Enterprises** were called upon to show cause as to why:  
(i) The declared Classification under HSN/CTH 59119990 against the description of goods "Textile Coated Fabric" and declared Classification 59050090 against the description of goods "Glitter Fabric" as mentioned in Annexure-Y at Para 17.1 to the impugned SCN should not be rejected.

(ii) The goods imported vide above Bills of Entry as mentioned in Annexure-Y at Para 17.1 (of the impugned SCN) should not be re-classified under HS CODE/ CTH 59032090 and its description should not be considered as "Polyurethan (PU) Coated Fabric".

(iii) The differential Customs Duty (BCD+SWS+IGST+ADD+IGST on ADD) of Rs. 1,15,64,091/- (Rupees One Crore Fifteen Lakh Sixty Four Thousand and Ninety One only) in respect of above Bills of Entry as also mentioned in Annexure-Y at Para 17.1 to the impugned SCN should not be demanded under the provision of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28(AA) of the Customs Act, 1962 and the same should not be recovered from the **Actual Owner/ Beneficial Owner** of the imported goods as mentioned in the Table at Para 24.1 of the impugned SCN.

(iv) Goods imported vide above Bills of Entry as mentioned in Annexure-Y at Para 17.1 of the report, having assessable value of Rs. 1,59,04,280/- (Rupees One Crore Fifty Nine Lakh Four Thousand and Eighty only) should not be held liable to confiscation as per the provisions of Section 111 (m) of the Customs Act, 1962.

(v) The differential Duty liability of Rs. 1,15,64,091/- (Rupees One Crore Fifteen Lakh Sixty Four Thousand and Ninety One only) should not be adjusted from the Voluntary Payment of Rs. 97,63,680/- (Rupees Ninety Seven Lakh Sixty Three Thousand Six Hundred and Eighty only) deposited by them.

**29.** Further, the following persons/companies/firms/concerns as appearing in column 2 of the following table were, individually and separately, called upon to show cause as to why penalty should not be imposed on each of them individually under below mentioned penal provisions, separately of the Customs Act, 1962 (as appearing at column 3 to 7 of the table)

Sr No	Name(Sh/Ms/Smt/M/s)	Penal provisions under Customs Act, 1962				
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	<b>M/s. Om Enterprises</b>	112(a)	112(b)			
2	<b>Shri Hari Kishan</b> , Proprietor of M/s Om Enterprises					117
3	<b>Shri Arun Jyoti</b> , Partner of M/s. Jai Maa Enterprise	112(a)	112(b)		114AA	
4	<b>Shri Amit Jain</b> , Proprietor of M/s. A.N. Enterprise	112(a)	112(b)		114AA	
5	<b>Shri Banarsi Dass Khatri</b> , Proprietor of M/s. Shree Ganesh Overseas	112(a)	112(b)		114AA	
6	<b>Shri Kapil Kotiya</b> , proprietor of M/s Ocean Logistics	112(a)	112(b)		114AA	
7	<b>Shri Sabu George</b> , G Card Holder					117
8	<b>M/s. Jai Maa Enterprises</b>			114A		
9	<b>M/s A N Enterprises</b>			114A		

#### **RECORDS OF PERSONAL HEARING-**

**30.** Following the principles of natural justice, opportunities of personal hearing were granted on 25.09.2025, 07.10.2025 & 10.10.2025. Shri Harish Kohli, Advocate appeared on behalf of Noticees i.e. M/s Banarsi Dass Khatri, Shri Amit Jain & M/s A.N. Enterprises. Shri Sunil Kumar, Advocate, on behalf of M/s Om Enterprises, Shri Hari Kishan, Proprietor of M/s Om Enterprises, Shri Arun Jyoti, Partner of M/s Jai Maa Enterprise, Shri Kapil Kotiya, Proprietor of M/s Ocean Logistics, Shri Sabu George, Partner of M/s Rainbow Shipping Services, M/s Jai Maa Enterprises, vide email dated 14.10.2025 has submitted written reply in lieu of personal hearing.

- Shri Harish Kohli (Advocate) appeared for hearing on 10.10.2025 on behalf of Shri Amit Jain (Noticee No. 4 of the impugned SCN) and reiterated and placed reliance on the written submission dated 06.10.2025 and further requested for cross examination of Shri Hari Kishan (Noticee No. 2 of the impugned SCN), Shri Kapil Kotiya (Noticee No. 5 of the impugned SCN) & Shri Sabu George (Noticee No. 7 of the impugned SCN).
- Shri Harish Kohli (Advocate) appeared for hearing on 10.10.2025 on behalf of Shri Banarsi Dass Khatri (Noticee No. 6 of the impugned SCN) and reiterated and placed reliance on the written submission dated 06.10.2025 and further requested for cross examination of Shri Hari Kishan (Noticee No. 2 of the impugned SCN), Shri Kapil Kotiya (Noticee No. 5 of the impugned SCN) & Shri Sabu George (Noticee No. 7 of the impugned SCN).
- Shri Harish Kohli (Advocate) appeared for hearing on 10.10.2025 on behalf of M/s A.N. Enterprises (Noticee No. 9 of the impugned SCN) and reiterated and placed reliance on the written submission dated 06.10.2025 and further requested for cross examination of Shri Hari Kishan (Noticee No. 2 of the impugned SCN), Shri Kapil Kotiya (Noticee No. 5 of the impugned SCN) & Shri Sabu George (Noticee No. 7 of the impugned SCN).

## WRITTEN SUBMISSION

**31.1 M/s Om Enterprises, (Noticee No. 1) and Shri Hari Kishan, Proprietor of M/s Om Enterprises (Noticee No 2)** submitted their written submission dated 08.10.2025 submitted through their authorized representative Shri Sunil Kumar (Advocate), wherein they made the following submissions

**(i) The goods correctly declared and classified; Test Reports align with declaration:**

The SCN erroneously contends that the goods were mis-declared as "Felt Woven Coated Fabric" under CTH 59119090, asserting they merit classification under CTH 59032090 as PU-coated fabrics. This assertion is fundamentally flawed, as the CRCL test reports unequivocally corroborate noticee declaration. For instance:

Numerous samples are identified as "dyed knitted fabric having raised fibres on one surface, coated with compounded polyurethane" (e.g., RUD Nos. 5, 15, 22, 26-28, 29-32). The presence of "raised fibres" is characteristic of felt fabrics, and the coating with "compounded polyurethane" (a mixture, not pure PU) aligns with "coated fabric" in trade understanding.

Other reports describe "non-woven bonded fabric coated with compounded polyurethane" (RUD Nos. 8, 12) or "dyed viscose cut fibres pasted on polyurethane layer forming check pattern" (RUD No. 6), indicating specialized textiles rather than simplistic PU-coated materials. Applying viscose cut fibers by pasting them onto a polyurethane layer differs significantly from standard polyurethane leather fabrics.

Noticee declaration was made in good faith, predicated on supplier documents, chemical composition and physical inspection. The SCN fails to adduce any positive evidence of intentional mis-declaration, such as forged documents or concealed facts. Mere reliance on DRI intelligence, absent corroborative proof, cannot sustain allegations of evasion. It is a well settled principle that the burden to prove mis-declaration lies squarely on the department, requiring cogent evidence beyond suspicion.

**(ii) ADD applicable solely to Fabrics Coated with Pure Polyurethane; Compounded Polyurethane is distinct and excluded:**

The ADD Notification imposes duty on "Polyurethane Leather which includes any kind of textile coated one sided or both sided with Polyurethane" falling under HS code 59032090" imported from China (excluding those from M/s. Anhui Anli Material Technology Limited) at USD 0.46 per meter. However, this is inapplicable to noticee goods for the following reasons:

The Test Reports Confirm the Importer's Declaration, Not the Revenue's Allegation. The SCN relies on the very test reports to allege mis-classification. However, a careful perusal of these reports reveals that they confirm the Respondent's declaration rather than contradicting it. The test reports consistently state that the fabrics are "coated with compounded Polyurethane." The distinction between "Polyurethane (PU)" and "Compounded Polyurethane" is the crux of this matter. The ADD Notification No. 14/2022-Customs (ADD) (RUD No. 1) imposes duty solely on "PU-coated fabric falling under HS code 59032090," implying fabrics coated with pure polyurethane (PU) having leather like feel and characteristics. However, the CRCL reports uniformly specify "coated with compounded polyurethane"—a critical distinction.

Elaborating technically: Polyurethane is a base polymer formed by reacting polyols and isocyanates, resulting in a versatile material used in coatings. "Compounded," as used in textile contexts, refers to a formulated mixture where PU chemicals are mixed with other inorganic chemical(s) such as Poly Vinyl Chloride, Acrylics, fillers (e.g., calcium carbonate), stabilizers, pigments, cross-linkers, plasticizers, etc to modify properties like viscosity, adhesion, flexibility, cost, or environmental resistance. This compounding process alters the chemical and physical characteristics, making it a composite material rather than pure PU. In coatings, compounding of polymers such as PVC with Polyurethane and other chemicals and fillers enhances durability for various applications, giving more flexibility and strength but it is not equivalent to Polyurethane alone, which is typically a homogeneous polymer without such modifications.

Here's a detailed comparison table highlighting the differences between PU (Polyurethane) coated fabrics and compounded polymer coated fabrics (typically PVC or other polymer blends):

**Comparison Table: PU Coated vs. Compounded PU Coated Fabrics**

Feature	PU Coated Fabric	Compounded PU Coated Fabric
Base Material	Polyester or nylon with polyurethane coating	Polyester or nylon with PVC or other polymer blends
Flexibility	Highly flexible and soft	Stiffer and less flexible
Weight	Lightweight	Heavier due to thicker coating
Waterproofing	Good waterproofing with breathability	Excellent waterproofing but non-breathable
Breathability	Breathable (moisture can escape)	Non-breathable
Durability	Good abrasion resistance	Very high durability and abrasion resistance
Chemical Resistance	Resistant to oils, greases, and mild acids	Excellent resistance to chemicals
UV Resistance	Can be UV resistant depending on formulation	Generally good UV resistance
Applications	Apparel, Shoes, Bags, etc.	Tarpaulins, industrial covers, inflatable structures
Cost	Typically higher due to advanced properties	Generally lower
Finish Options	Matte, glossy, textured; customizable	Glossy, matte; less customizable

In the SCN, CRCL's use of "compounded" (e.g., "coated with compounded polyurethane on one side") deliberately distinguishes it from pure polyurethane, implying a mixed formulation. This places the goods under CTH 59039090 ("Other" plastic-coated textiles), not 59032090 ("With polyurethane"), as mixtures fall under residual categories per HSN Explanatory Notes to Chapter 59. The ADD notification does not explicitly cover compounded polyurethane. Extending it would violate strict interpretation rules. As per settled principles of classification, tariff entries must be construed narrowly—coatings with compounds/mixtures are excluded from specific headings unless stated.

The Noticee has further submitted that CTH 5903 10 is designated for textile fabrics coated with Polyvinyl Chloride (PVC), while CTH 5903 20 applies to those coated with Polyurethane. All other textile fabrics coated with polymers other than PVC or Polyurethane are to be classified under the residual heading, CTH 5903 90. Therefore, the classification of the goods under CTH 5903 2090 by the department is without legal or factual foundation, as the product in question is compounded polyurethane, a substance distinct from pure polyurethane.

**(iii) ADD Notification is confined to “PU Leather”, Goods possess distinct appearance, placing them outside scope:**

The ADD Notification No. 14/2022-Customs (ADD) suggests that ADD is applicable on the products having the description as “Polyurethane Leather which includes any kind of textile coated one sided or both sided with Polyurethane”.

From the description given under the above ADD notification, it is clear that the ADD is applicable only on goods having following characteristics:-

- a. Polyurethane Leather - Means fabric having leatherette characteristics visually and a leather substitute.
- b. There has to be coating.
- c. The coating should be of Chemical Polyurethane, only.

Any goods which do not fulfill all the above characteristics/criterion cannot be considered to be subject to the ADD in terms of the subject notification.

Noticee goods, as per CRCL reports, comprise knitted/woven/non-woven fabrics featuring raised fibers, check patterns, or glossy surfaces, devoid of the homogeneous leather-mimicking texture. For example, descriptions like "having raised fibres" or "glossy surface laminated with PVC film" (e.g., RUD Nos. 16, 23) evince a fabric-like appearance rather than leather substitute. Furthermore, none of the test report or panchnama or examination report relied upon by the SCN explicitly mentions that the goods are having leather-like appearance.

**(iv). That laminated fabrics excluded from ADD Scope:**

A substantial portion of the goods involves lamination, as evidenced by CRCL reports:

- "Coated with compounded polyurethane laminated with PVC film" (e.g., RUD Nos. 7, 13, 14, 16, 18, 23-25, 33);
- "Laminated with transparent polyester film" (RUD No. 21); or
- "Backed with white non-woven fabric pasted with polymeric material based on compounded polyurethane" (RUD No. 17).

Lamination is completely different process from the coating process. The key difference is that lamination involves bonding multiple layers of material together to form a composite structure, whereas coating involves applying a liquid substance to a single substrate to form a protective or decorative surface layer. Lamination creates multi-layered material with enhanced strength and stability, while coating provides surface properties and protection to an existing material.

The ADD notification clearly suggests that Anti Dumping Duty is applicable only to the PU Coated Fabric (as per the description of the goods given under the product description column in the notification), not PU laminated fabric. In coating, liquid is transferred to the fabric base whereas lamination is the hot transfer process of a film over the fabric base. Furthermore, the lamination process doesn't

give the product a leather appearance as substitute of leather, which is one of the essential characteristics to be considered for the levy of the Anti-dumping duty in terms of the subject notification. This non-inclusion of the process prevents broadening the ADD to unrelated products. Thus, levying ADD on laminated goods would be *ultra vires* the notification.

**(v) That no evasion of duty; valuation and exchange rate correct:** All duties were remitted based on the declared classification and value, with no under-valuation alleged or proven. Quantities, widths, and lengths matched during physical examination, as detailed in Tables 1–8 of the SCN. The exchange rate for potential ADD calculation (under Section 14 of the Act) is irrelevant, as no ADD accrues.

**(vi) That procedural irregularities and absence of Mens Rea: full cooperation evidencing good faith:** Searches yielded no evidence of intent to evade; buyers' statements affirm bona fide trade. The provisional release order dated 25.04.2023 bespeaks lack of prima facie guilt. DRI officers, empowered under Notification S.O. 2666(E) dated 05.08.2016, have failed to establish willful misconduct, essential for penalties under Sections 112/114A or confiscation under Section 111. Penalties sans mens rea are unsustainable. Noticee compliance with all summons and provision of information demonstrate cooperation and lack of malafide. Buyer samples (RUD Nos. 39–40) are extraneous, post-dating imports and reaffirming compounded PU.

**(vii) That SCN is Time-Barred under Section 28 of the Act:** The imports transpired in October–November 2022, with relevant dates under Section 28 being the Bill of Entry filing dates. The SCN, issued on 07.11.2024, exceeds the normal 2-year limitation under Section 28(1). As all the goods have been assessed and examined by the Customs before clearance. Invocation of the 5-year extended period under Section 28(4) requires proof of fraud, collusion, or suppression—elements absent here, as declarations were transparent with no intention to evade duties.

**(viii). That the Payments Made during Investigation Were under Coercion and Duress; Entitled to Refund with Interest as Mere Deposits, Not Duty:**

During the course of the DRI investigation, including searches at noticee premises and summons under Section 108 of the Act, noticee were subjected to undue pressure and coercive measures by the officers. Under the threat of arrest, detention of goods, and other intimidatory tactics, noticee were compelled to make deposits towards alleged duty liabilities, even before the issuance of the SCN and without challenging the already assessed Bill of Entry.

These deposits were not voluntary admissions of liability but were extracted under duress, as is common in such investigations where officers pressurize taxpayers to deposit amounts equivalent to purported evasions. Judicially, such



coerced payments have been recognized as invalid, and noticee deny any willful evasion or mens rea.

In the event the SCN is quashed and no liability confirmed, noticee are entitled to immediate refund of all such deposits from the date of payment, along with interest at the applicable rate under Section 27A of the Act or analogous provisions. The delay in refund, if any, would attract interest, as amounts withheld without justifiable reasons warrant compensation.

**31.2 Shri Arun Jyoti, (Noticee No. 3 & Partner of M/s Jai Maa Enterprise) and M/s Jai Maa Enterprises (Noticee No 8)** submitted their written submission dated 08.10.2025 submitted through their authorized representative Shri Sunil Kumar (Advocate). I observe that the submissions made by the said noticees are substantially similar to those made by the other noticees in this case. Therefore, only the relevant portions of their submissions are reproduced here for the sake of brevity. The following submissions have been made by the Noticees:

**(i) That limited and Bona Fide Role as downstream buyer; no involvement in imports or knowledge of goods' composition; absence of malafide intention demonstrated by legitimate entities:** Noticee engagement was purely domestic and post-import, confined to purchasing cleared goods for resale. Noticee did not participate in Bills of Entry filing, declarations, or customs processes. The SCN fails to produce any evidence—such as communications, financial links beyond standard payments, or statements—demonstrating our knowledge of or participation in alleged mis-declarations. As buyers, noticee are not required to independently verify import classifications or chemical compositions, relying on the suppliers' information and customs clearance. Crucially, all importer firms and related entities possess valid and existent IECs (e.g., M/s. Om Enterprises' IEC ARRPK7735L is duly registered and acknowledged as legitimate in the SCN itself; similarly, other traders operate with verifiable registrations and addresses, as per search panchnamas). No bogus or fictitious firms were used, which unequivocally indicates the absence of any malafide intention to orchestrate evasion. Allegations of noticee being "aware" or "facilitating" are speculative and unsubstantiated; Noticee intentions were purely commercial, without ulterior motive. In *Amritlakshmi Machine Works v. Commissioner of Customs (Import), Mumbai: 2016 (335) E.L.T. 225 (Bom.)*, the Bombay High Court held that abetment requires mens rea, and mere facilitation without knowledge does not suffice. The burden to establish mens rea lies on the department, which is unmet here. Even if re-classification is attempted, the goods' compounded polyurethane coating (detailed below) renders ADD inapplicable, negating any evasion.

**(ii) That the goods correctly declared based on suppliers' information; CRCL Test Reports align with declarations:** The declarations as "Felt Woven Coated Fabric" under CTH 59119090 were made by the importer on the basis of the suppliers' information; noticee had no role or knowledge thereof. The CRCL reports (RUD Nos. 4-18, 21-33, 39-40) corroborate this, describing goods with "raised fibres," "non-woven bonded" structures, or "viscose cut fibres," coated with

compounded polyurethane—features consistent with felt-like coated textiles, not pure PU leather. No evidence suggests we were aware of any discrepancies or willfully participated. Noticee adopt the importer's submissions which was in turn based on the suppliers' information / documentations that the declarations were honest, based on supplier descriptions, and the reports do not indicate pure PU, supporting non-liability for ADD. The use of legitimate IECs by all parties further negates malafide. Furthermore department has not provided any evidence suggesting that noticee have influenced any decision making including the declarations given by the supplier at loading port or at the import port by the persons involved.

**(iii) That ADD Inapplicable as Goods are coated with Compounded Polyurethane, Distinct from Pure Polyurethane; Elaborate Technical Distinction:** The Test Reports confirm the declarations, Not the Revenue's Allegation. The SCN relies on the very test reports to allege mis-classification. However, a careful perusal reveals they confirm the declarations rather than contradicting them. The reports consistently state "coated with compounded Polyurethane." The distinction between "Polyurethane (PU)" and "Compounded Polyurethane" is crucial. The ADD Notification No. 14/2022-Customs (ADD) (RUD No. 1) imposes duty solely on "PU Leather which includes any kind of textile coated one sided or both sided with Polyurethane falling under HS code 59032090," implying pure polyurethane (PU). However, the CRCL reports uniformly specify "compounded polyurethane"—a critical distinction.

Elaborating technically: Polyurethane is a base polymer formed by reacting polyols and isocyanates. "Compounded polyurethane" refers to a mixture where pure PU is blended with additives like fillers (e.g., calcium carbonate), stabilizers, pigments, cross-linkers, or plasticizers to modify properties. This alters the material's characteristics, making it a composite, not pure PU. In coatings, compounded PU enhances durability but is not equivalent to homogeneous PU. CRCL's use of "compounded" distinguishes it from pure PU, placing goods under CTH 59039090 ("Other"), not 59032090, per HSN Notes. The notification does not cover compounded PU; extending it violates strict interpretation, as per the established principle of interpretation. Tariff entries must be construed narrowly—mixtures fall under residuals.

The classification under CTH 59032090 is unfounded, as compounded PU is distinct from pure PU.

**(iv) That the Goods Lack "PU Leather" Characteristics; Laminated Fabrics Excluded from ADD Scope:** The defence submissions on this point are similar to those made by the other noticees. Hence, the same are not repeated here for the sake of brevity.

**(v) That No Evasion of Duty; Valuation, Quantity and other parameters:** The defence submissions on this point are similar to those made by the other noticees. Hence, the same are not repeated here for the sake of brevity.

**(vi) That Procedural Irregularities and Absence of Mens Rea; Full Cooperation Evidencing Good Faith:** The defence submissions on this point are similar to those made by the other noticees. Hence, the same are not repeated here for the sake of brevity.

**31.3 Shri Amit Jain (Noticee No. 4) and M/s A.N. Enterprises, (Noticee No 9) through Shri Harish Kohli (Advocate) submitted written submission dated 06.10.2025 wherein they inter alia, submitted:**

- (i) That during the course of normal business the Noticee No. 1, M/s. Om Enterprises (IEC No. ARRPK7735L) who was engaged in importing of PU-coated Fabrics and other kind of fabrics from China for home consumption approached the answering noticees through Mr. Kapil Kotiya (The Noticee No. 5 herein), who was also known personally to the Noticee and offered that they are used to import and clear these goods in Mundra SEZ Warehouse Unit M/s. OWS Warehouse Services LLP, Mundra and subsequently file SEZ to DTA Bill of Entry in the SEZ for their DTA removal.
- (ii) That it is revealed from the show cause notice that intelligence developed by the Directorate of Revenue Intelligence (DRI) Ahmadabad indicated that M/s. Om Enterprise was indulged in evading payment of Anti-dumping duty and appropriate levy of Customs duty during their import of Fabrics by way of mis-declaration of Description and mis-classification.
- (iii) That the Noticee Nos. 4 and 9 were neither involved in, nor aware of, the import process, the clearance procedure, or the specific Bills of Entry related to the consignments. It is therefore submitted that Noticee Nos. 4 and 9 were merely purchasers of the goods and had no role in the importation or pre-clearance activities.
- (iv) That Mr. Kapil Koiya informed the Noticee that an investigation was underway at Mundra Port by the Directorate of Revenue Intelligence (DRI). He stated that the Noticee was only required to visit the DRI office to sign certain documents as he had purchased the goods and had paid advance money. Accordingly, the Noticee sent his son for this purpose.
- (v) That the Noticee had purely commercial dealings with M/s Om Enterprises, from whom the goods were purchased within India. The Noticee had no direct contractual relationship with any foreign suppliers, did not open or finance any Letter of Credit or bank transaction related to imports, and never used to send the payment to the overseas supplier of the goods. The goods were purchased domestically from M/s Om Enterprises through Mr. Kapil Kotiya, in good faith, with no knowledge of any misdeclaration or evasion of Anti-Dumping Duty (ADD).
- (vi) That there is no legal bar on purchasing goods from a trader who has already cleared the goods through Customs and sending direct payments to his overseas suppliers. The Noticee acted as a bona fide third-party buyer and cannot be held liable for any acts or omissions of M/s Om Enterprises in the course of importation.

- (vii) That the core allegation that the Noticee is the “actual importer” is factually and legally incorrect. There is no customs documentation—such as Bill of Entry, Invoice, Packing List, Letter of Credit, or Shipping Bill—that bears the name of the Noticee. All such documents are in the name of M/s Om Enterprises, who is the legal importer as per the official records. The Noticee, is a genuine domestic trader engaged solely in post-import commercial transactions. He had no role whatsoever in the import, classification, or customs clearance of the goods in question. Accordingly, the Show Cause Notice issued against the Noticee is devoid of merit and deserves to be withdrawn.
- (viii) That the entire case in the Show Cause Notice hinges on the alleged misdeclaration of goods—specifically, misclassification under an incorrect HSN code—resulting in evasion of ADD. However, all import-related declarations and classifications were made by M/s Om Enterprises, based on the documentation provided by the overseas suppliers. The Noticee had no involvement or influence in the import declarations. No evidence has been presented to show that the Noticee had knowledge of or intent to participate in any misdeclaration. There is no record of any communication, instruction, or financial benefit linking the Noticee to the classification or the alleged evasion. In fact, the goods were duly cleared by Customs after examination, sampling, and lab testing, with no objections raised at the time. The Noticee relied on the clearance in good faith.
- (ix) That as per Section 2(26) of the Customs Act, 1962, an “Importer” is a person who imports or holds himself out as the importer. In the present case, all imports were made exclusively by M/s Om Enterprises under their IEC, and all Bills of Entry are in their name. Therefore, no demand of customs duty or ADD can be lawfully raised against the present Noticee under Section 28 of the Customs Act. Likewise, no penalty can be imposed under Sections 112, 114AA, or 114A in the absence of evidence demonstrating knowledge, intent, or active involvement on the part of the Noticee—which is clearly lacking in this case.
- (x) That, the CRCL test reports (RUD Nos. 4–18, 21–33, and 39–40) describe the goods as “Coated with Compounded Polyurethane”—and not as “PU Leather” as defined in ADD Notification No. 14/2022-Cus (ADD). This distinction is significant. ADD is applicable only to PU Leather under HS Code 59032090, which refers to fabrics homogeneously coated with pure polyurethane, typically resembling leather in appearance and finish. However, many of the tested samples in this case exhibited lamination with PVC film or non-woven raised fibres, which do not fall within the scope of the ADD notification. Even assuming—without admitting—that there was any misclassification, no ADD liability arises. Consequently, no penalty or recovery can be imposed on the Noticee.
- (xi) That the Noticee is a bona fide purchaser who acquired goods in the ordinary course of business, relying on valid invoices and supplier representations. All payments were made through legitimate banking channels. The Noticee has fully cooperated with the investigation, responded to all summons, and voluntarily provided all relevant documents and statements. There are no

allegations of document fabrication, use of fictitious firms, or misuse of IECs. All involved entities are registered, traceable, and genuine. In the absence of mens rea or any unlawful benefit, invocation of Sections 112 or 114A is entirely unwarranted. The Hon'ble Bombay High Court in *Amritlakshmi Machine Works v. Commissioner of Customs* [2016 (335) ELT 225] clearly held that both knowledge and intent are essential preconditions for imposing penalty under Section 112.

- (xii) That the Show Cause Notice also relies on statements allegedly made by the Noticee. It is respectfully submitted that these statements were recorded under repeated and coercive summons, without proper rest, legal counsel, or adequate understanding of the legal implications. The noticee was forced to sign on the pre-print papers. Such statements lack evidentiary value and cannot be the basis for penal action.
- (xiii) That it is respectfully submitted that Noticee No. 4 is the sole proprietor of M/s A N Enterprises, which has been arrayed as Noticee No. 9 in the present Show Cause Notice. Under the established principles of law, particularly in the case of sole proprietorship concerns, the proprietor and the proprietorship firm are not treated as separate legal entities. In the eyes of law, a sole proprietorship has no independent existence apart from its proprietor. Therefore, Noticee No. 4 and M/s A N Enterprises (Noticee No. 9) are one and the same legal person, and any action, liability, or obligation attributable to the firm is directly attributable to its proprietor. Consequently, for the purposes of this proceeding, both Noticee No. 4 and Noticee No. 9 must be treated as a single entity, and duplication of allegations or proceedings against both in a separate capacity is unwarranted and without legal basis.
- (xiv) That the Noticee is not the importer and had no role whatsoever in the import process. The goods were purchased domestically from a legitimate importer after customs clearance. There is no evidence of the Noticee's involvement in misclassification, intent to evade ADD, or any financial or procedural participation in the imports. Moreover, the CRCL test reports do not establish that the goods fall within the scope of the ADD notification. The SCN is based on assumptions rather than substantive evidence, and therefore, is legally unsustainable and liable to be dropped.

**31.4. Shri Kapil Kotiya (Noticee No. 5 & Proprietor of M/s Ocean Logistics),** Noticee have made their written submission dated 08.10.2025 through their authorized representative Shri Sunil Kumar (Advocate). I observe that the submissions made by the said noticees are substantially similar to those made by the other noticees in this case. Therefore, only the relevant portions of their submissions are reproduced here for the sake of brevity. The following submissions have been made by the Noticees:

**(i) That, Limited and Bona Fide Role as Service Provider; No Direct Involvement in Declaration or Knowledge of Goods' Composition; Absence of Malafide Intention Demonstrated by legitimate entities.**

Noticee engagement was purely professional and ancillary, confined to logistics coordination and subcontracting clearances. Noticee did not prepare, sign, or influence the Bills of Entry declarations, which were handled by licensed brokers based on importer-provided documents. The SCN fails to produce any evidence—such as emails, communications, or financial transactions—demonstrating Noticee knowledge of or participation in alleged mis-declarations. As a freight forwarder, Noticee not required to independently verify goods' chemical composition (e.g., coatings), relying instead on client assurances. Crucially, all importer firms and related entities involved possess valid and existent IECs (e.g., M/s. Om Enterprises' IEC ARRPK7735L is duly registered and acknowledged as legitimate in the SCN itself; similarly, downstream traders like M/s. Jai Maa Enterprises, M/s. JMV Enterprises, M/s. Ritika Traders, and M/s. Kishor Traders operate with verifiable registrations and addresses, as per search panchnamas). No bogus or fictitious firms were used, which unequivocally indicates the absence of any malafide intention to orchestrate evasion. The labeling of me as the "mastermind" is speculative and unsubstantiated; Noticee intentions were purely to provide lawful services, without any ulterior motive. In the case of *Amrit lakshmi Machine Works v. The Commissioner of Customs (Import)*, Mumbai: 2016 (335) E.L.T. 225 (Bom.), a Full Bench of the Bombay High Court had considered has held that the word 'abetment' is required to be assigned the same meaning as under Section 3(1) of the General Clauses Act, 1897. The court further opined as under:

".....Mere facilitation without knowledge would not amount to abetting an offence. Parliament has specifically included abetment in Section 112(a) of the Act, to include acts done with knowledge, otherwise the first portion thereof "Any person - (a) who in relation to any goods does or omits to do any act ...." would cover acts done or omitted to be done on account of instigation and/or encouragement without knowledge. However, the first portion of Section 112(a) of the Act is only to make person of first degree in relation to the act or omission strictly liable. Persons who are not directly involved in the act or omission to act, which has led the goods becoming liable for confiscation cannot be made liable unless some knowledge is attributed to them. Therefore, it is to cover such cases that Section 112(a) of the Act also includes a person who abets the act or omission to act which has rendered the goods liable to confiscation. Imposing penalty upon an abettor without any mens rea on his part would bring all business to a halt as even innocent facilitation provided by a person which has made possible the act or omission to act possible could result in imposing of penalty. The burden to establish mens rea lies on the department, which is unmet here. Even if re-classification is attempted, the goods' compounded polyurethane coating (detailed below) renders ADD inapplicable negating any evasion.

**(ii)** That, Goods Correctly Declared Based on Provided Information; CRCL Test Reports Align with Importer's Declaration: The defence submissions on this point are similar to those made by the other noticees. Hence, the same are not repeated here for the sake of brevity.

(iii) That, ADD Inapplicable as Goods are Coated with Compounded Polyurethane, Distinct from Pure Polyurethane; Elaborate Technical Distinction: The defence submissions on this point are similar to those made by the other noticees. Hence, the same are not repeated here for the sake of brevity.

(iv) That, Laminated Fabrics Expressly Excluded from DGTR Findings and ADD Scope; Compounded Nature Reinforces Exclusion: The defence submissions on this point are similar to those made by the other noticees. Hence, the same are not repeated here for the sake of brevity.

(v) That, SCN Time-Barred under Section 28 of the Act: The defence submissions on this point are similar to those made by the other noticees. Hence, the same are not repeated here for the sake of brevity.

**31.5. Shri Banarsi Dass Khatri (Noticee No. 6 & Proprietor of M/s Shree Ganesh Overseas) through Shri Harish Kohli (Advocate) submitted written submission dated 06.10.2025 wherein they inter alia, submitted:**

(i) That it is pertinent to clarify that certain goods were verbally purchased in advance by the Noticees from Noticee No. 1 through Mr. Kapil, and advance payment was also made for the same — even before the consignments were cleared. However, Noticee Nos. 6 was neither involved in, nor aware of, the import process, the clearance procedure, or the specific Bills of Entry related to the consignments. It is therefore submitted that Noticee Nos. 6 was merely purchasers of the goods and had no role in the importation or pre-clearance activities.

(ii) That subsequently, Mr. Kapil Koiya informed the Noticee that an investigation was underway at Mundra Port by the Directorate of Revenue Intelligence (DRI). He stated that the Noticee was only required to visit the DRI office to sign certain documents as he had purchased the goods and had paid advance money. Accordingly, the Noticee sent his son for this purpose.

(iii) It is important to place on record that the Noticee had purely commercial dealings with M/s Om Enterprises, from whom the goods were purchased within India. The Noticee had no direct contractual relationship with any foreign suppliers, did not open or finance any Letter of Credit or bank transaction related to imports, and never used to send the payment to the overseas supplier of the goods. The goods were purchased domestically from M/s Om Enterprises through Mr. Kapil Kotiya, in good faith, with no knowledge of any misdeclaration or evasion of Anti-Dumping Duty (ADD).

(iv) That there is no legal bar on purchasing goods from a trader who has already cleared the goods through Customs and sending direct payments to his overseas suppliers. The Noticee acted as a bona fide third-party buyer and cannot be held liable for any acts or omissions of M/s Om Enterprises in the course of importation.

**(v)** That the core allegation that the Noticee is the “actual importer” is factually and legally incorrect. There is no customs documentation—such as Bill of Entry, Invoice, Packing List, Letter of Credit, or Shipping Bill—that bears the name of the Noticee. All such documents are in the name of M/s Om Enterprises, who is the legal importer as per the official records. The Noticee, is a genuine domestic trader engaged solely in post-import commercial transactions. He had no role whatsoever in the import, classification, or customs clearance of the goods in question. Accordingly, the Show Cause Notice issued against the Noticee is devoid of merit and deserves to be withdrawn.

**(vi)** The entire case in the Show Cause Notice hinges on the alleged misdeclaration of goods—specifically, misclassification under an incorrect HSN code—resulting in evasion of ADD. However, all import-related declarations and classifications were made by M/s Om Enterprises, based on the documentation provided by the overseas suppliers. The Noticee had no involvement or influence in the import declarations. No evidence has been presented to show that the Noticee had knowledge of or intent to participate in any misdeclaration. There is no record of any communication, instruction, or financial benefit linking the Noticee to the classification or the alleged evasion. In fact, the goods were duly cleared by Customs after examination, sampling, and lab testing, with no objections raised at the time. The Noticee relied on this clearance in good faith.

**(vii)** That, as per Section 2(26) of the Customs Act, 1962, an “Importer” is a person who imports or holds himself out as the importer. In the present case, all imports were made exclusively by M/s Om Enterprises under their IEC, and all Bills of Entry are in their name. Therefore, no demand of customs duty or ADD can be lawfully raised against the present Noticee under Section 28 of the Customs Act. Likewise, no penalty can be imposed under Sections 112, 114AA, or 114A in the absence of evidence demonstrating knowledge, intent, or active involvement on the part of the Noticee—which is clearly lacking in this case.

**(viii)** That, the CRCL test reports (RUD Nos. 4–18, 21–33, and 39–40) describe the goods as “Coated with Compounded Polyurethane”—and not as “PU Leather” as defined in ADD Notification No. 14/2022-Cus (ADD). This distinction is significant. ADD is applicable only to PU Leather under HS Code 59032090, which refers to fabrics homogeneously coated with pure polyurethane, typically resembling leather in appearance and finish. However, many of the tested samples in this case exhibited lamination with PVC film or non-woven raised fibres, which do not fall within the scope of the ADD notification. Even assuming—without admitting—that there was any misclassification, no ADD liability arises. Consequently, no penalty or recovery can be imposed on the Noticee.

**(ix)** That the Noticee is a bona fide purchaser who acquired goods in the ordinary course of business, relying on valid invoices and supplier representations. All payments were made through legitimate banking channels. The Noticee has fully cooperated with the investigation, responded to all summons, and voluntarily provided all relevant documents and statements. There are no allegations of



document fabrication, use of fictitious firms, or misuse of IECs. All involved entities are registered, traceable, and genuine. In the absence of mens rea or any unlawful benefit, invocation of Sections 112 or 114A is entirely unwarranted. The Hon'ble Bombay High Court in *Amritlakshmi Machine Works v. Commissioner of Customs* [2016 (335) ELT 225] clearly held that both knowledge and intent are essential preconditions for imposing penalty under Section 112.

**(x)** That the Show Cause Notice also relies on statements allegedly made by the Noticee. It is respectfully submitted that these statements were recorded under repeated and coercive summons, without proper rest, legal counsel, or adequate understanding of the legal implications. The noticee was forced to sign on the pre-print papers. Such statements lack evidentiary value and cannot be the basis for penal action.

**(xi)** That in conclusion, the Noticee is not the importer and had no role whatsoever in the import process. The goods were purchased domestically from a legitimate importer after customs clearance. There is no evidence of the Noticee's involvement in misclassification, intent to evade ADD, or any financial or procedural participation in the imports. Moreover, the CRCL test reports do not establish that the goods fall within the scope of the ADD notification. The SCN is based on assumptions rather than substantive evidence, and therefore, is legally unsustainable and liable to be dropped.

**31.6. Shri Sabu George (Noticee No. 7 & G-Card Holder and Partner of M/s Rainbow Shipping Services)** have made their written submission dated 08.10.2025 through their authorized representative Shri Sunil Kumar (Advocate). I observe that the submissions made by the said noticees are substantially similar to those made by the other noticees in this case. Therefore, only the relevant portions of their submissions are reproduced here for the sake of brevity. The following submissions have been made by the Noticee:

**(i) That Limited and Bona Fide Role as Customs Broker; Full Compliance with CBLR, 2018 Obligations; Absence of Malafide Intention Demonstrated by Legitimate Entities and Due Diligence:**

Noticee engagement was purely professional under license, confined to facilitating clearances based on importer documents. Noticee did not prepare or influence the substantive declarations (e.g., description, classification), which were provided by the importer. As per Regulation 10(e) of CBLR, 2018, Noticee exercised due diligence to ascertain the correctness of information imparted to the client regarding clearance. Under Regulation 10(d), Noticee advised the importer to comply with the Act and regulations, and there was no non-compliance reported. Crucially, Noticee conducted KYC verification under Regulation 10(n), verifying IEC (ARRPK7735L), GSTIN, identity, and address using authentic documents (e.g., PAN, Aadhaar, bank statements)—no physical verification is required, and Noticee were reasonably satisfied. The SCN fails to produce any evidence—such as communications or statements—demonstrating Noticee knowledge of or

participation in alleged mis-declarations. All importer firms and related entities possess valid and existent IECs (e.g., M/s. Om Enterprises' IEC ARRPK7735L is duly registered and acknowledged as legitimate in the SCN itself). No bogus or fictitious firms were used, which unequivocally indicates the absence of any malafide intention. Allegations of facilitation are speculative; Noticee intentions were purely to provide lawful services under CBLR, 2018, without ulterior motive. In *Amritlakshmi Machine Works v. Commissioner of Customs (Import), Mumbai: 2016 (335) E.L.T. 225 (Bom.)*, the Bombay High Court held that abetment requires mens rea, and mere facilitation without knowledge does not suffice. The burden to establish mens rea or breach of obligations lies on the department, which is unmet here. Even if re-classification is attempted, the goods' compounded polyurethane coating (detailed below) renders ADD inapplicable, negating any evasion.

While the SCN alleges a failure to exercise due diligence in discharging Noticee duties under the CBLR, 2018, it omits any mention of the specific regulation that was purportedly violated. Consequently, the proposition of a penalty is illegal and baseless, as there is no proof of a lapse in duty. The Hon'ble Kerala High Court in the case *MBK Logistics Private Limited Vs Commissioner of Customs* has held that penalty under section 117 of the Customs Act cannot be sustained since no reasons are assigned for imposition of the same.

Furthermore, Requirement of mens rea is a sine qua non for imposing a penalty on Customs Broker as held by CESTAT in the case of *Sea Queen Shipping Services (P) Ltd. v. Commr. of Customs*, 2019. As the SCN does not identify any violation of law, the imposition of a penalty is unlawful. Consequently, the current proceedings against Noticee deserve to be discontinued.

**(ii) That Filing of BE on the basis of documents provided by the Importer or Freight Forwarders:** The declarations as "Felt Woven Coated Fabric" under CTH 59119090 were provided by the importer/Freight Forwarder based on supplier documents; Noticee had no role in determining them but verified their plausibility through due diligence under Regulation 10(e). No evidence suggests Noticee were aware of any discrepancies or willfully participated. Furthermore, the department has not provided any evidence suggesting Noticee influenced declarations at the loading or import port. All the goods were presented for assessments and examination by the officers of Customs and only after assessment and examination goods were cleared.

### **DISCUSSION AND FINDINGS**

**32.** I have carefully gone through the facts of the case, Show Cause Notice and the noticee's submissions filed through mail communication and during the course of personal hearing. The principles of natural justice, particularly *audi alteram partem*, have been duly complied with by granting adequate opportunity to the noticees to present their defence. Noticee's have not sought any further hearing in the subject case. Accordingly, I proceed to examine the issues involved in the present case in light of the available records, statutory provisions, and judicial

precedents. On a careful perusal of the subject show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided: -

- (i) Whether the goods mentioned in Annexure-X at Para 17 to the SCN imported vide Bills of Entry having total assessable value of Rs. 1,75,64,629/- are liable for confiscation as per the provisions of Section 111 (m) of the Customs Act, 1962 or otherwise.
- (ii) Whether the declared Classification and description thereof are liable to be rejected and the same is required to be classified with correct description or otherwise.
- (iii) Whether the subject bills of entry are required to be re-assessed with the applicable duty or otherwise.
- (iv) Whether the differential duty of Rs. 2,11,66,372/- (Rupees Two Crore Eleven Lakh Sixty Six Thousand Three Hundred and Seventy Two only) in respect of Bills of Entry as mentioned in Annexure-X at Para 17 to the SCN is required to be recovered by enforcing the Bond and Bank Guarantee submitted by the Importer for securing the provisional release of goods or otherwise.
- (v) Whether the declared Classification and description of the goods imported as mentioned in Annexure-Y at Para 17.1 to the SCN, are liable to be rejected and the same is required to be classified with correct description or otherwise.
- (vi) Whether the differential Customs Duty of Rs. 1,15,64,091/- (*in respect of above Bills of Entry as also mentioned in Annexure-Y at Para 17.1 to the SCN*) along with applicable interest is required to be recovered from the Actual Owner/ Beneficial Owner of the imported goods as mentioned in the Table at Para 24.1 of the Notice.
- (vii) Whether the goods cleared in the past shipments are liable for confiscation as per the provisions of Section 111 (m) of the Customs Act, 1962 or otherwise.
- (viii) Whether the differential Duty liability of Rs. 1,15,64,091/- can be adjusted from the Voluntary Payment of Rs. 97,63,680/- or otherwise.
- (ix) Whether the Noticees are liable for penalty or otherwise.

**33.** I find that the Importer, M/s. Om Enterprises (IEC No. ARRPK7735L), was engaged in the import of PU-coated fabrics and other fabrics from China for home consumption. Investigation revealed a specific routing mechanism adopted for duty evasion by way of mis-declaration of description and classification of the goods at the time of importation. I noticed that the goods were first imported into Mundra SEZ Warehouse Unit of M/s. OWS Warehouse Services LLP, and thereafter, SEZ to

DTA Bills of Entry were filed at the SEZ for removal into the Domestic Tariff Area (DTA). I observe that this practice, while legally permissible under the SEZ Act, 2005 and Customs Act, 1962, provided an opportunity for layered scrutiny avoidance, as SEZ imports are subject to relaxed documentation compared to regular port clearances.

**34.1** I find that the intelligence developed by the DRI indicated that M/s. Om Enterprise was indulged in evading payment of Anti-dumping duty and appropriate levy of Customs duty during their import of Fabrics by way of mis-declaration of description and mis-classification of these goods. In terms of Notification No. 14/2022-Customs (ADD) dated 20.05.2022 issued by CBIC, PU-coated fabric falling under HS code 59032090, when imported from any Country including China and produced by entities other than by M/s. Anhui Anli Material Technology Limited, attracts Anti-dumping duty @USD 0.46 per Meters. Officers of DRI examined the goods imported by M/s Om Enterprises, covered under (i) Bill of Entry No. 1015307 dated 27.10.2022 & Bill of Entry No. 1015306 dated 27.10.2022 under Panchnama dated 12.11.2022, (ii) Bill of Entry No. 1014717 dated 17.10.2022 under Panchnama dated 13.11.2022 & (iii) Bill of Entry No 1015514 dated 31.10.2022, 1015513 dated 31.10.2022, 1015612 dated 05.11.2022 & 1015777 dated 05.11.2022, under Panchnama dated 17.01.2023. Total 28 type of samples drawn from 7 Bills of Entry as mentioned above, were forwarded to CRCL, Vadodara for ascertaining the true identity and coating. Test Reports of CRCL, Vadodara reveal the goods to be PU Coated Fabrics and these goods were put under seizure.

**34.2** I further find during the investigation, it was also found that M/s. Om Enterprise had filed Bill of Entry B/E No.2019764 dt. 13.12.2022 and B/E No. 2019668 dt. 12.12.2022, B/E No.1018010 dt. 09.12.2022, 2019665 dt. 12.12.2022 and 2019693 dt. 12.12.2022 wherein the descriptions of the goods were mentioned as "PU Fabric" under CTH 59032090, whereas in the corresponding Bills of Lading, Invoices and Packing List of the import, the descriptions of these goods were mentioned as "Fabric" falling under CTH 59119090. Since the Goods declaration in the above Bills of Entry was "PU Fabric", the present proceedings does not cover the said import consignment. However, I noticed that the said change of correct declaration of the imported goods by the importer is a testimony of the rampant mis-declaration of PU Coated Fabric made by many traders during their import. It is the result of DRI intervention which has made these importers in declaring the true description of the goods.

**34.3.** I find that all 28 samples (6 from BE No. 1015307 dt 27-10-2022, 5 from BE No 1015306 dt 27-10-2022, 4 from BE No 1014717 dt 17-10-2022, 3 from BE No. 1015513 dt 31-10-2022, 5 from BE No 1015514 dt 31-10-2022, 2 from BE No 1015612 dated 5-11-2022 and 3 from BE No 1015777 dated 5-11-2022) sent to CRCL, Vadodara were tested and were found to be "fabrics coated with compounded polyurethane". From the CRCL Test results, it had been revealed that the declared description "Felt Woven Coated Fabric", "Textile Coated Fabrics" were

incorrect; that the goods were not felt-based but woven or knitted fabrics with PU coating on one side; that the coating was not generic but specifically compounded polyurethane (PU). I find that these reports, issued by a statutory laboratory under Section 144, are reliable and conclusively establish that the goods attracts merit classification under CTH 59032090 which attracts Anti-Dumping Duty as per Notification No. 14/2022-Customs (ADD) dated 20.05.2022. I find that consequent to the CRCL confirmation of PU coating, the consignments covered under SEZ BE No. 1015307 dt 27-10-2022, 1015306 dt 27-10-2022, 1014717 dt 17-10-2022, 1015513 dt 31-10-2022, 1015514 dt 31-10-2022, 1015612 dated 5-11-2022 and 1015777 dated 5-11-2022 were placed under seizure vide Seizure Memo dated 09-01-2023 & 29-03-2023. The goods were provisionally released by the competent authority later on Bond and Bank Guarantee.

**35.1** I find that the investigation extended beyond the SEZ warehouse through searches at importer and trader premises which cover searches at different premises and the recovery of documents and physical samples into the domestic supply chain. The investigation revealed how the mis-declaration scheme was continued from the point of import all the way to the downstream traders, forming a clear pattern of deliberate concealment aimed at avoiding anti-dumping duty (ADD) and evading checks by the authorities at each stage. This evidence also provided the foundation for the later confessional statements. The material gathered through these searches is strong and clearly proves that the mis-description of the goods as "Textile Coated Fabric/Felt Woven Fabric" was not mistake at the time import but a deliberate method which adopted by multiple companies to evade duties.

**35.2** I find that during the course of investigation, searches at the Registered Premises the Godown of M/s Jai Maa Enterprises, New Delhi and Residence of Shri Arun Jyoti Mahajan, Partner of M/s Jai Maa Enterprises situated, New Delhi was carried out under Panchnama dated 21.11.2022. During the search various types of fabric roles appearing to be coated with some materials were found at the registered premises and godown of the firm. On being asked, Shri Arun Jyoti Mahajan informed that these fabrics are coated with Poly Urethane (PU). During the said search documents in respect of Sale and purchases of the firm were found. Shri Arun Jyoti through his CA provided the required sales and purchase documents in a Pen Drive related to the firm. It has been revealed from the said search that Shri Arun Jyoti Mahajan purchased fabrics (PU coated fabric, Flock fabric, Glitter fabric, Polyester Bonded fabric) from M/s. JMV Enterprises, M/s. OM Enterprises and Alfa Impex. CRCL testing later confirmed that the goods were actually PU-coated fabric.

**35.3** I also find that a search at the registered premises of M/s. Om Enterprise situated, New Delhi was conducted under Panchnama dated 23.11.2022 and Shri Hari Kishan, Proprietor of M/s. Om Enterprise was found at the premises who informed that all the documentation work related to the firm is done from the office situated at 212, Vishal Tower, Janakpuri, Delhi and after completion of the work,

the documents are forwarded to their CA for filing of returns. No documents related to the inquiry/import were found at the premises during the search.

**35.4** Later, a search was also conducted at the shops of M/s. Ritika Traders and M/s. Kishor Traders, located in Mumbai. Both firms traded in fabrics used in footwear and related products. The search focused on their purchase of imported goods which revealed that these local firm were engaged in trading of various fabrics used in footwear. I noticed that Shri Kishor Kumar Ramuram Naval (Proprietor of M/s. Kishor Traders) admitted that they purchased PU Coated Fabric, Flock Fabric, Glitter Fabric etc., which is used in Ladies Footwear; from M/s. Jai Maa Enterprises, M/s.Bhagwati International & M/s. Tayesha International. The officers draw sample of goods purchased by M/s. Kishor Traders against Invoice No.2022-23/1405 dt. 12.11.2022 issued by M/s. Jai Maa Enterprises & sample of goods purchased by M/s. Ritika Traders against Invoice No. 2022-23/2022 dt. 20.10.2022 issued by M/s. Jai Maa Enterprises. CRCL Test Report confirmed the goods to be “Fabrics Coated with compounded Polyurethane (PU)”.

**35.5** The samples taken from Ritika Traders and Kishor Traders on 16.12.2022 confirmed the actual nature/composition/description of the goods. The CRCL test reports confirmed that the fabrics were coated with compounded polyurethane. This downstream testing proved that the mis-declaration continued throughout the supply chain, with no correction at any stage. The CRCL results from these local level samples directly connected the seized SEZ consignments to the goods sold to end-users. These evidences provided the complete trail and supporting confiscation, duty demand, and penalties. This evidence also ruled out any defense that the mis-declaration was limited to import documentation or live shipments. The showed that the mis-declaration made at the import stage continued in domestic sales. The false description helped to maintain uniformity in records, avoid tax detection, and hide the true beneficiaries from direct involvement in the imports. Shri Arun Mahajan’s admission about the goods purchased matched the CRCL findings from SEZ samples, which proved that **M/s. Jai Maa Enterprises was one of the real users of IEC of M/s OM Enterprises and beneficiaries of the mis-declared imports.**

**35.6** I also find that a search at the registered premises of M/s. JMV Enterprise, New Delhi was carried out under Panchnama dated 21.11.2022 and Shri Kapil Kotiya (Proprietor of M/s. Ocean Logistics and freight forwarding and Customs agent of M/s. JMV Enterprise) was found to be present there. During the course of search print out of the import documents of M/s. JMV Enterprise, M/s. Om Enterprise & other firms with whom Shri Kapil Kotiya was carrying the customs clearance & freight forwarding work was taken out from the email Id of Kapil Kotiya i.e. [kapillogis@gmail.com](mailto:kapillogis@gmail.com) and the same were resumed in the Box File containing pages from 01 to 671.

**35.7** From the above, it is clear that the mis-declaration scheme was extended into the domestic market through a network of connected persons/firms. The

searches at the importer's office, at the premises of the beneficiaries, and at the shops of downstream traders, and the recovery of false invoices and physical samples; constitute undisputable evidences of a planned duty evasion setup. These findings clearly show that Shri Kapil Kotiya acted as the main coordinator who used his uncles' IEC of M/s. OM Enterprises by using the documents of its proprietor and this import firm was used for importation of mis-declared goods at their name for the purpose of supply these imported goods to actual beneficiaries.

**36.** I observe that statements of several connected persons were recorded during the course of the investigation. While each of these statements carries its own legal significance, certain key facts have emerged from them that need to be discussed separately to better understand the method adopted by the persons involved for duty evasion. The specific roles and culpability of each individual will be examined in detail in the subsequent paragraphs. At this stage, I will discuss the key facts that have directly emerged from the statements of the connected persons. Some of these statements were recorded following searches conducted at their respective premises and serve as crucial downstream evidence confirming the actual receipt, invoicing, and use of the mis-declared imported goods. These facts establish a clear link between the SEZ warehouse consignments and the domestic supply chain, explaining how the same mis-declared goods entered and circulated in the domestic market. These statements are an important part of the evidence which support and confirm the content of the documents resumed during the searches and test results collected during the investigation.

**36.1** Shri Hari Kishan (Proprietor of M/s Om Enterprises) in his statement dated 23.11.2022 admitted that the firm was established in the year 2018 he lent the IEC to other firms through Shri Kapil Kotiya who is his nephew. From the said statement, I find that Shri Hari Kishan was aware that the domestic traders (M/s. Jai Maa Enterprises, M/s. A.N. Enterprises and M/s. Bhagwati Enterprises) were using the IEC of M/s. Om Enterprise although he claimed that he never met anyone from these firms and Shri Kapil Kotiya is dealing with these firms. He claimed that there is no fix financial remuneration received by him on account of lending the IEC but Shri Kapil Kotiya gives him money from time to time whenever he requires. This fact of not receiving any fix amount also confirmed by Shri Kotiya during his statement dated 27.11.2022. I noticed that remittance against the imported goods which were made to overseas suppliers were received from these domestic firms who actually were ordering the goods and Proprietor of M/s Om Enterprises was not handling any work in the firm except operating its bank account but work was handled solely by Shri Kapil Kotiya. In his further statement dated 18.09.2024, after reviewing copies of bills of entry, CRCL Test reports, panchnamas drawn at SEZ warehouse unit, seizure Memos, statements; Shri Hari Kishan (Proprietor of M/s Om Enterprises) revealed/admitted that the bills of entry were filed by M/s Om Enterprises, however these goods were actually were actually ordered by the respective beneficial owner of the goods which are mentioned in Annexure-B of the statement of Shri Kapil Kotiya. He also admitted that the goods imported vide Bill of Entry No.1015307 dt. 27.10.2022 were ordered to overseas

supplier by Shri Arun Jyoti Mahajan (Proprietor of M/s. Tayesha International); that the goods imported vide Bill of Entry No.1015513 dt. 31.10.2022 & 1015612 dt. 01.11.2022 were ordered to overseas supplier by Dee Pee Leather Store and the same after customs clearance were sold to M/s. Anand Garments Pvt. Ltd. on the instructions given by M/s. Dee Pee Leather Store.

**36.2** Shri Kapil Kotiya (Proprietor of M/s Ocean Logistics), in his statement dated 27.11.2022 admitted that he managed operations of M/s. JMV Enterprises, M/s. OM Enterprises, and M/s. J Bridge Worldwide. This acceptance clarify that he was using their IECs to import goods on behalf of domestic traders. He explained the process of import: (i) domestic traders placed orders with overseas suppliers, (ii) forward the import documents to him who forward them to Customs Broker for clearance, (iii) and took delivery as a local purchase once customs clearance was done under the dummy IEC firm's name. I find that Shri Kapil Kotiya approached friends and relatives who were unemployed during COVID-19 to set up IEC firms for monetary compensation. He confirmed that IEC of M/s Om Enterprises was specifically provided for use by M/s Jai Maa Enterprises, M/s Bhagwati Enterprises, M/s Tayesha International, and M/s KG Overseas. Further, in his subsequent statement dated 03.03.2023, Shri Kapil Kotiya was confronted with various documents, seizure memos, and statements recorded in the case. After perusing them, he agreed with the facts mentioned therein. He confirmed that the goods imported by M/s Om Enterprises were actually ordered by the respective beneficial owners and he provided consignment wise details of the importer firm who utilized the IEC of M/s. Om Enterprises. I also find that later bills of entry (after seizure of previous consignments) were filed correctly by M/s. Om Enterprises with the correct description as "PU Fabrics", however, these consignment was also hold for further scrutiny. M/s. Om Enterprises vide Letter dated 19.01.2023, requested for clearance of these goods. Now, the fact that is emerged from the statement dated 03.03.2025 is that the said letter was issued on the directions of Shri Kapil Kotiya. Thus, there is no doubt that Shri Kapil Kotiya was aware about the all details of the shipments and controlling the activities of the firm as confirmed by other accused persons and proprietor of M/s. Om Enterprises. Though he initially denied knowledge of mis-declaration, from the statement dated 03.03.2023; I find that he managed the operation of M/s. OM Enterprises and he actively participated in the mis-declaration scheme.

I find that Shri Kapil Kotiya during his statement dated 16.07.2024 provided Annexure-B wherein consignment wise details of actual beneficial owners were mentioned. He also revealed that bank guarantees for provisional release of the seized shipment were funded by the actual owners. He revealed that Shri Amit Jain (Proprietor of M/s. A.N. Enterprises) provided funds to prepare Bank Guarantee for release of goods seized by DRI which were imported vide Bill of Entry No.1014717 dt. 17.10.2022 and Bill of Entry No.1015514 dt. 31.10.2022. In his statement dated 19.09.2024, he again admitted full operational control. He confirmed that the goods imported by M/s Om Enterprises were actually ordered by the respective beneficial owners and he provided consignment wise details of the importer firm



who utilized the IEC of M/s. Om Enterprises. Further, in his subsequent statement dated 19.09.2027, Shri Kapil Kotiya was confronted with various documents, seizure memos, test results, copies of bills of entry, Annexure-B, and statements recorded in the case. After perusing them, he agreed with the facts mentioned therein and admitted that the subject goods were PU Coated Fabric and merits classification under CTH 59032090.

These statements clearly show Shri Kotiya as the mastermind, coordinator between the actual importer and dummy IEC holder.

**36.3** Shri Ankur Mahajan (Proprietor of M/s. Bhagwati International) in his statement dated 28.12.2022 stated that his family firms (M/s. Jai Maa Enterprises, M/s. Bhagwati International, M/s. Tayesha International) traded in PU-coated, PVC-coated, glitter, non-woven, and bonded fabrics. They stopped direct imports in 2018 and began buying from M/s. JMV Enterprises, M/s. OM Enterprises, and M/s. Alpha Impex. He did not know Shri Hari Kishan (IEC holder of M/s. Om Enterprises) and dealt only with Shri Kapil Kotiya who arranged door-step delivery and for this purpose he also visited their shop in Karol Bagh. He admitted ordering PU-coated fabric from Chinese suppliers like Volcano International and Cinorich, sometimes through Shri Kotiya, and that invoices from M/s. Om Enterprises declared the goods as "Textile Coated Fabric" though they were PU-coated. He acknowledged knowing about ADD on PU-coated fabric from China, and admitted using the same false description in resale invoices to maintain consistency and claimed to get benefit of Rs. 30,000 to 90,000 per container when the goods purchased from local firms. I notice that he himself had also placed the order directly to the Overseas Supplier in China for importation of PU Coated Fabric although he claimed ignore about the mis-declaration in the description. I find no forced in the said claim, due to the reason that the IEC holder does not even know the persons who were actually importing the goods. Thus, there is no doubt that the real beneficiary had placed the orders for PU Coated Fabrics and received the related documents directly from the Chinese suppliers, which were subsequently forwarded to Shri Kapil Kotiya for the customs clearance.

**36.4** Shri Arun Jyoti Mahajan (Partner of M/s. Jai Maa Enterprises) in his statements dated 17.05.2023 and 19.09.2024 admitted purchasing glitter, polyester bonded, PU-coated, and textile coated fabric of Chinese origin from M/s. Om Enterprises. He said that Shri Kapil Kotiya handled all of M/s. Om Enterprises operations, and that he himself did not know the proprietor's role. On perusal of his statement dated 17.05.2023, I find that at Q/A No. 8, he admitted that *"we have purchased Glitter Fabric, Polyester Bonded, PU Coated Fabric, Textile Coated Fabric etc. from Om Enterprises & M/s. JMV Enterprises, however, such fabric if ordered by us to overseas supplier and imported the same in the name and IEC of OM Enterprises & JMV Enterprises"* He confirmed reselling the imported goods under the same false description to local buyers. I find from the said statement that Invoice No. 2022-23/1405 dated 12.11.2022 issue to Kishore Traders, Mumbai was signed by Shri Arun Jyoti Mahajan for sale of Textile Coated Fabric (false

description) and the said goods were, upon testing, were found PU-coated fabric. I find that during the premise search of M/s. Kishore Traders, sample were drawn under dated 16.12.2022 from the fabric which was sold under Invoice No. 2022-23/1405 dated 12.11.2022. CRCL report is revealed the identity/nature of the goods to be coated with compounded Polyurethane. On perusal of the test results and Panchanama dated 16.12.2022, he admitted that he sold PU Coated Fabric to Kishore Traders, Mumbai by mentioning the same as Textile Coated Fabric in the invoice. He further revealed the fact that all the Textile Coated Fabric procured by his firm i.e. M/s Jai Maa Enterprise from M/s JMV Enterprises & M/s. OM Enterprises were PU Coated Fabric and the same was sold to various firms mentioning the same as Textile Coated Fabric in their sale Invoices. Thus, there remains no scope for doubt that the past imports made by M/s. Om Enterprises and sold to M/s. Jai Maa Enterprises were PU Coated Fabrics.

Shri Arun Jyoti Mahajan in his subsequent statement dated 19.09.2024 perused the Annexure-B submitted by Shri Kapil Kotiya during his dated 16.07.2024 and accepted that goods imported by the M/s Om Enterprises and mentioned at Sr. No. 2, 3, 6, 7, 9, 10 & 14 in Annexure -B of the statement of Shri Kapil Kotiya were actually ordered by the M/s Jai Maa Enterprises from the Overseas Supplier. These goods imported by M/s Om Enterprises were later transferred to M/s Jai Maa Enterprises & M/s Tayesha International through domestic sale under GST after Customs Clearance. From the said statement, I also notice that Shri Arun jyoti accepted that these goods were actually ordered by M/s Jai Maa Enterprises to the overseas supplier in China. Thus, I have no doubt that M/s Jai Maa Enterprises is the actual beneficial owner of these imported goods imported under 07 Bills of Entry.

**36.5** In his statement dated 10.02.2023 Shri Narendrachand Ramniwas (Authorized person of Kishor Traders) stated that M/s Kishor Traders dealing in sale and purchase of various types of fabrics under the proprietorship of Shri Kishor Kumar Naval. From the said statement it is also revealed that Shri Kishor Kumar Naval (Prop. Of M/s Kishor Traders) was also looking after the work related sale and purchase of M/s. Ritika Traders. The said firms were engaged in trading various types of fabrics (Firangi, Munmun, Nonwoven Napa, Madras, Wrinkle Free Jelly, Samosa, Tracktor, Armani etc) mainly used in ladies' footwear and related products. He confirmed that goods purchased from M/s. Jai Maa Enterprises were invoiced as "Textile Coated Fabric," but the actual goods received were PU-coated fabric. He specifically referred to Invoice No. 2022-23/1405 dated 12.11.2022, issued by M/s. Jai Maa Enterprises vide which PU-coated fabric was supplied under a misleading description. Further, he confirmed the sample drawn under Panchnama dated 16.12.2023 were from the goods that was purchased by M/s. Ritika Traders from M/s. Jai Maa Enterprises under Invoice No.2022-23/1312 dated 20.11.2022. He clearly stated that they had purchased PU Coated fabric from M/s Jai Maa Enterprises irrespective of whatever the description mentioned by M/s. Jai Maa in the sales invoices.

**36.6** From the statement dated 29.07.2024 of **Shri Amit Jain** (proprietor of M/s A.N. Enterprises), I find that the said firm was engaged in the business of importing/trading of various types of fabrics but after imposition of Anti-dumping duty on PU Coated Fabric, they stopped import and have started to procure PU Coated Fabric from M/s. Om Enterprise, M/s. Arora Vinyl, M/s. Gandhi Textile and M/s. New Style International etc. he admitted that PU Coated Fabric, PVC Coated Fabric were purchased from M/s. Om Enterprises. Shri Amit Jain, after perusal of the statements of (i) Tulsi Dass Chopra (M/s. Bharat Exports), (ii) Shri Mohd Airf Iraqi (Manager of M/s. Amin Leather & Products) (iii) Shri Sanjay Dhingra (Authorised representative of M/s. R.S. Enterprises); not only admitted that he sold goods to these firm which purchased from M/s. Om Enterprises but also affirmed that the contents of the statements. Thus, I have no doubt that M/s. A. N. Enterprises supplied PU Coated fabrics to these firms as confirmed by these downstream buyers (M/s. Bharat Exports, M/s. Amin Leather & Products & M/s. R.S. Enterprises). In the said statement, Shri Amit Jain stated that he has known Shri Kapil Kotiya and assigned him the transportation and customs clearance work of goods imported by M/s. A.N. Enterprises. From this, I find that the proprietor of the firm and Shri Kapil Kotiya were well acquainted with each other and shared a working relationship in respect of import activities.

From the statement dated 12.09.2024 of Shri Amit Jain, I find that goods (correct description-PU-Coated Fabric) imported under Bill of Entry No.1011061 dt. 20.08.2022 (DTA Bill of Entry No. 2013691 dt. 10.09.2022), Bill of Entry No.1012253 dt. 09.09.2022 (DTA Bill of Entry No.2014640 dt. 26.09.2022) and Bill of Entry No.1012535 dt. 10.09.2022 (DTA Bill of Entry No.2014056 dt. 19.09.2022) were actually ordered by him to Overseas Supplier in China although he claimed that description was mis-declared on the suggestion of supplier to avoid Anti-dumping duty imposed on import. From the said fact, I find the he not only mis-declared the goods in respect of description but also get prepared the false documents with incorrect details which were later submitted before the Customs Authority for clearance of goods. This act directly made him liable for penal action. I find that with the help of Shri Kapil Kotiya, he also ordered PU Coated Fabric by using the IEC of M/s. OM Enterprises vide Bill of Entry No. 1014717 dt. 17.10.2022 (DTA Bill of Entry No.2017089 dt. 03.11.2022) and Bill of Entry No.1015514 dt. 31.10.2022 (DTA Bill of Entry No.2008159 dt. 11.05.2023). He admitted, after perusal of the test results of these 02 bills of entry from CRCL that he agrees with the test results. Further, in his statement dated 12.09.2027, Shri Amit Jain was confronted with the seizure memos, copies of bills of entry, Annexure-B and the statements of Shri Kapil Kotiya dt. 16.07.2024. After perusing them, he agreed with the facts mentioned therein and admitted that he had placed orders for "PU Coated Fabric" through M/s. Om Enterprise and that the goods were deliberately mentioned in the import documents as "Textile Coated Fabric" or "Felt Woven Coated Fabric".

From the above findings, I find that **M/s A.N. Enterprises is the actual beneficial owner/importer** of the goods imported under the following 05 Bills of Entry:

- (i) 1011061 dt. 20.08.2022 (DTA Bill of Entry No. 2013691 dt. 10.09.2022)
- (ii) 1012253 dt. 09.09.2022 (DTA Bill of Entry No. 2014640 dt. 26.09.2022)
- (iii) 1012535 dt. 10.09.2022 (DTA Bill of Entry No. 2014056 dt. 19.09.2022)
- (iv) 1014717 dt. 17.10.2022 (DTA Bill of Entry No. 2017089 dt. 03.11.2022)
- (v) 1015514 dt. 31.10.2022 (DTA Bill of Entry No. 2008159 dt. 11.05.2023)

**36.7** From the statement dated 21.05.2024 of Shri Tulsi Dass Chopra (Authorised representative of M/s. Bharat Exports), I find that they ordered Fabric for manufacturing Ladies Foot Wear from M/s. A.N. Fabric. On perusal of Invoice No. GST/22-23/1403 dated 14.12.2022 issued to them by M/s. A.N. Fabric with goods description "Textile Coated Fabric, Non-Woven lining fabric and Polyester Non-Woven coated with PU", he admitted that M/s. Bharat Exports have order PU Coated Fabric from M/s. A.N. Enterprise and they have received the same under the said Invoice from them. I noticed that they didn't objected to wrong description mentioned in the Invoice as the as the GST rate was same between the received goods and on paper mentioned goods. He confirmed, after perusing the chapter sub headings of 5903 & 5911, that goods purchased by them from M/s. A.N. Enterprise were PU Coated Fabric, they fall under CTH 59032090.

**36.8** Shri Mohd Arif Iraqi (Manager & Authorised representative of M/s. Amin Leather & Products), in his statement dated 22.05.2024 stated that Shri Naved Lari is the Proprietor of M/s. Amin Leather & Products and the firm manufactures Safety Shoes, Safety Garments & Finished Leather. The fact which is emerged from the said statement is that PVC Coated Fabric Invoice No. GST/22-23/1312 dated 26.11.2022 to M/s. A.N. Enterprise for manufacturing of Safety Shoes. However, the description was mentioned as "Textile Coated Fabric" under CTH 5911900. Due to same GST rates on both fabrics under sub heading 5911 & 590, they have not raised any objection. However, he confirmed that the goods purchased by them from M/s. A.N. Enterprise were PU Coated Fabric and they fall under CTH 59032090.

**36.9** From the statement dated 28.05.2024 of Shri Sanjay Dhingra (Authorised representative of M/s. R.S. Enterprise, New Delhi), I find that the said firm manufacture Garment Covers and procure raw materials i.e. Coated Fabric (imported) from M/s. A.N. Enterprises. He by submitting purchase and sales register and copy of invoices, confirmed that the terms "Coated Fabric" is used for PU Coated Fabric which is purchased from M/s. A.N Enterprises. I find that M/s. M/s. A.N. Enterprises have mentioned the description of goods both as Textile Coated Fabric or PU Coated Fabric. Shri Sanjay Dhingra specifically mentioned that M/s. A.N. Enterprises started mentioning goods description as under their Invoices as "Textile Coated Fabric" or "Coated Textile Fabric" after May 2022. Due to same GST rates on both fabrics under sub heading 5911 & 590, they have not

raised any objection. However, he confirmed that the goods purchased by them from M/s. A.N. Enterprise were PU Coated Fabric and they fall under CTH 59032090. For better appreciation, sifting from correct description to incorrect description can be seen from the below table:

Invoice No.	Invoice date	Description of Goods in Invoices	HSN/SAC in Invoices	Details of Goods against Entries in Purchase Register
GST/22-23/017	04.04.2022	PU Coated Fabric	59032090	Coated Fabric (Import)
GST/22-23/065	13.04.2022	PU Coated Fabric	59032090	Coated Fabric (Import)
GST/22-23/1032	01.10.2022	Textile Coated Fabric	59119090	Textile Coated Fabric
GST/22-23/1380	08.12.2022	Textile Coated Fabric	59119090	Coated Fabric (Import)
GST/22-23/1399	13.12.2022	Textile Coated Fabric	59119090	Textile Coated Fabric
GST/22-23/1705	15.02.2023	PU Fabric Thickness	59032090	Coated Fabric (Import)

**36.10** Shri Prince Khatri, S/o B. D. Khatri (M/s. Dee Pee Leather) in his statement dated 21.10.2024 stated that M/s Dee Pee Leather Store is a proprietor firm established by his grandfather, at present his uncle Shri Dharam Pal Khatri is proprietor of this firm and he is looking after the trading business of M/s Dee Pee Leather Store. From the said statement, I noticed that his family owns three trading firms i.e. M/s Shree Ganesh Overseas (Proprietor **Shri B.D. Khatri**, he is also father of Shri Prince Khatri), M/s J M D Enterprises (Proprietor Shri Rajesh Khatri) & M/s Dee Pee Leather Store (Proprietor Shri Dharam Pal Khatri). He after perusal of panchnama dated 17.01.2023 drawn at M/s OWS Warehouse Services LLP and test results for the goods; agreed with all the facts mentioned in the said panchnama confirmed the goods to be fabrics coated with compounded polyurethane. He also agreed with the contents/facts mentioned in the said statement dt. 18.09.2024 of Shri Hari Kishan and admitted that the goods imported vide SEZ Bill of Entry No. 1015612 dated 01.11.2022 1015513 dt. 31.10.2022 were actually ordered by his father Shri B.D. Khatri which were intended for transfer to firms belonging to their family through domestic GST invoices.

From the above, I find that the goods imported under these 02 bills were ordered by Shri B.D. Khatri to Chinese supplier (i.e. Wenzhou Chenyue International Trade Co., Ltd & Wenzhou Asia Star International Trading Co., Ltd) and the import documents were directly received from the overseas supplier by Shri B.D. Khatri which were sent by to Shri Kapil Kotiya for clearance of goods. Thus, I have no doubt that **Shri B.D. Khatri is the actual beneficial owner of these imported goods** who with the not only mis-declared the goods in respect of description but also get prepared the false documents from Chinese suppliers with incorrect details which were later submitted before the Customs Authority for

clearance of goods. These acts done on the part of Shri B. D. Khatri directly make him liable for penal action.

**36.11** Shri Sabu George (Partner of M/s. Rainbow Shipping Services) in his statement dated 03.10.2024 stated that M/s. Rainbow Shipping Services is a clearing & forwarding firm and he is a G Card Holder; that he is also a signing authority in M/s. Lara Exim Pvt. Ltd., a Customs Broker firm. From the said statement, I noticed that forwarding and Customs Clearance work of M/s. OM Enterprises was provided to them by Shri Kapil Kotiya and all import related documents were forwarded to them by Kapil Kotiya for filing of Bill of Entry. From the said statement, I find that they failed to obtain the prior approvals of the Importer for the checklist prepared by them. They tried to cover up by calling it as a trade practice.

### **37. MODUS ADOPTED FOR DUTY EVASION:**

**37.1** I find that in this case, dummy firms such as M/s. Om Enterprises, M/s. JMV Enterprises were created and used for importing goods. These firms existed only on paper and had no real business activity. The actual control and order placement were handled by domestic traders. In the present case, M/s. Om Enterprises was used as a means for import, however, the order were actually placed directly by the domestic trades/actual beneficiaries like M/s. Jai Maa Enterprises, M/s. A. N. Enterprises and Shri B.D. Khatri, Proprietor of M/s. Shree Ganesh Overseas. Shri Kapil Kotiya (Proprietor of M/s. Ocean Logistics) designed and managed this setup. He provided IECs of These dummy firms to the domestic traders. During the COVID-19 period, he approached to his unemployed relative and friends including Shri Hari Kishan (who is the uncle of Shri Kapil Kotiya) in lieu of monetary consideration. In his statement dated 23.11.2022 & 18.09.2024, Proprietor of M/s. Om Enterprises admitted that he had no involvement in or knowledge of import activities. He only signed documents and received payment for his role, while Shri Kapil Kotiya managed all key operations, including handling bank accounts, preparing and submitting documents, and dealing with customs clearance. I find that this setup allowed the real beneficiaries to place orders directly with Chinese suppliers using the name of M/s. Om Enterprises. This modus helped them avoid direct interaction with customs authorities and escape duty liability by way of mis-declaration and mis-classification.

**37.2** I also find that domestic traders i.e. M/s. Jai Maa Enterprises, M/s. A.N. Enterprises and Shri B.D. Khatri (Proprietor of M/s. Shree Ganesh Overseas) directly negotiated and placed orders for PU-coated fabrics with Chinese suppliers. They received import documents (i.e. Bills of Lading, Invoices, and Packing Lists) from these suppliers and handed them over to Shri Kapil Kotiya for Customs Clearance. In his statement dated 16.07.2024, Shri Kapil Kotiya confirmed that the actual owners were responsible for ordering the goods, providing documents, and deciding delivery destinations. As discussed under foregoing paragraphs, the real beneficiaries had directly placed orders with the overseas supplier and thereafter

they used to send the documents received from the overseas supplier to Shri Kapil Koitya who arranged Customs Clearances and other related documentation through M/s Om Enterprises. The goods description as "Textile Coated Fabric/Felt Woven Fabrics," were mentioned in the invoice even though they were PU-coated Fabrics. This document-handling method ensured that the dummy importer appeared as the consignee on record, while the real traders controlled the transactions from order to delivery.

**37.3** The imports were deliberately mis-declared the description of goods at the customs stage as "Felt Woven Coated Fabric" or "Textile Coated Fabric" under CTH 59119090, instead of correctly declaring them as PU-coated fabrics under CTH 59032090, to evade payment of applicable Customs Duty and Anti-Dumping Duty. CRCL test reports confirmed that the goods were compounded polyurethane coated fabrics. The mis-declaration in respect of description and classification shown in Bills of Lading clearly show that this was not a mistake but a deliberate act which was done with the sole intention to evade legitimate customs duty and ADD at the rate of USD 0.46 per meter. However, after interception of DRI, they have correctly declared the imported goods.

**37.4** I find that Customs clearance was handled by Shri Kapil Kotiya through commissioned licensed Customs Brokers, including M/s. Rainbow Shipping Services and M/s. Lara Exim Pvt. Ltd., using the false documents. These goods were cleared from the Mundra SEZ Warehouse and transported directly to the actual domestic/local owners (i.e. M/s. Jai Maa Enterprises, M/s. A.N. Enterprises and M/s. Shree Ganesh Overseas). This setup was used with the motive to erase any connection between the dummy importer and the actual goods by giving a false impression that the domestic sale was legitimate. The same mis-declaration in respect of description and classification was continued in domestic sales. M/s. Jai Maa Enterprises issued invoices to local buyers mentioning the goods description as "Textile Coated Fabric." In his statement dated 17.05.2023 Shri Arun Jyoti Mahajan admitted that he procured PU-coated fabric from M/s. Om Enterprises and the same was sold to various firms mentioning the same description as Textile Coated Fabric in their sale invoices. Shri Narendrachand Ramniwas Moriya (M/s. Kishor Traders) confirmed on 10.02.2023 that they purchased PU-coated fabric from M/s. Jai Maa Enterprises against Invoice No. 2022-23/1405 dated 12.11.2022, though the invoice labeled it as "Textile Coated Fabric,". CRCL's report on a sample (*which was drawn from the goods found during the premise visit of M/s. Kishor Traders*) from this invoice matched the goods from the SEZ warehouse which confirmed that the cleared goods which were supplied to M/s. Kishore Traders by M/s. Jai Maa were the same.

**37.5** From the above, it is evident that Shri Kapil Kotiya charged a fix amount per container to the actual beneficiaries and included this in the invoice value. Additionally, M/s. Ocean Logistics raised separate forwarding bills. The funds for Bank Guarantees used for provisional release of goods were also provided by the actual traders or beneficiary owners of the imported goods and this fact has been

disclosed by Shri Kapil Kotiya on 16.07.2024 during the investigation period. I also noticed that the SEZ route was chosen strategically to take advantage of the lighter scrutiny applied to SEZ warehousing.

**37.6** From the above discussion, it is evident that the *modus operandi* involved the use of dummy IEC firms controlled by Shri Kapil Kotiya, while the actual traders or beneficiaries handled order placement and related documentation. The goods were deliberately mis-declared under CTH 5911 9090 and 59050090, cleared under false descriptions, and goods were directly delivered to the real buyers under the guise of domestic sales, followed by the continued circulation of false invoices in the supply chain. This entire duty evasions scheme was designed to evade customs duty by submitting incorrect and misleading documents as well as deliberate suppression and misstatement of facts before the Customs authorities at the time of importation.

### **38. Classification of the goods and applicability of Anti-Dumping Duty:**

**38.1** I find that the main charges proposed in the Show Cause Notice (SCN) related to and based on to the mis-declaration of the description and mis-classification of the imported fabrics. I find that chapter 59 of the Indian Customs Tariff deals with Textile Fabrics and Textile Articles of a kind suitable for industrial use. The relevant portion of Tariff Heading 5911 is reproduced below for reference:

<b>5911</b>		<b>TEXTILE PRODUCTS AND ARTICLES, FOR TECHNICAL USES, SPECIFIED IN NOTE 8 TO THIS CHAPTER</b>	<i>Effective rate of duty</i>
5911 10 00	-	<i>Textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams)</i>	
5911 20 00	-	<i>Bolting cloth, whether or not made up</i>	
	-	<i>Textile fabrics and felts, endless or fitted with linking devices, of a kind used in papermaking or similar machines (for example, for pulp or asbestos-cement) :</i>	
5911 31	--	<i>Weighing less than 650 g/m<sup>2</sup>:</i>	
5911 31 10	---	<i>Felt for cotton textile industries, woven</i>	10%
5911 31 20	---	<i>Woven textiles felt, whether or not impregnated or coated, of a kind commonly used in other machines</i>	10%
5911 31 30	---	<i>Cotton fabrics and articles used in machinery and plant</i>	10%
5911 31 40	---	<i>Jute fabrics and articles used in machinery or plant</i>	10%
5911 31 50	---	<i>Textile fabrics of metalized yarn of a kind commonly</i>	10%



		<i>used in paper making or other machinery</i>	
5911 31 90	---	<i>Other</i>	10%
5911 32	--	<i>Weighing 650 g/m<sup>2</sup> or more:</i>	
5911 32 10	---	<i>Felt for cotton textile industries, woven</i>	10%
5911 32 20	---	<i>Woven textiles felt, whether or not impregnated or coated, of a kind commonly used in other machines</i>	10%
5911 32 30	---	<i>Cotton fabrics and articles used in machinery and plant</i>	10%
5911 32 40	---	<i>Jute fabrics and articles used in machinery or plant</i>	10%
5911 32 50	---	<i>Textile fabrics of metalized yarn of a kind commonly used in paper making or other machinery</i>	10%
5911 32 90	---	<i>Other</i>	10%
5911 40 00	-	<i>Filtering or Straining cloth of a kind used in oil presses or the like, including that of human hair</i>	
5911 90	-	<i>Other</i>	
5911 90 10	---	<i>Paper maker's felt, woven</i>	10%
5911 90 20	---	<i>Gaskets, washers, polishing discs and other machinery parts of textile articles</i>	10%
5911 90 90	---	<i>Other</i>	10%

Further, the relevant portion of Tariff Heading 5903 also reproduced below for reference:

5903		<i>Textile Fabrics, Impregnated, Coated, Covered or Laminated with Plastics, Other Than Those of Heading 5902</i>	<i>Effective Rate of Duty</i>
5903 10	-	<i>With Polyvinyl Chloride:</i>	-
5903 10 10	---	<i>Imitation leather fabrics of cotton</i>	20%
5903 10 90	---	<i>Other</i>	20%
5903 20	-	<i>With Polyurethane:</i>	-
5903 20 10	---	<i>Imitation leather fabrics, of cotton</i>	20%
5903 20 90	---	<i>Other</i>	20%
5903 90	-	<i>Other:</i>	-
5903 90 10	---	<i>Of cotton</i>	20%
5903 90 20	---	<i>Polyethylene laminated jute fabrics</i>	20%
5903 90 90	---	<i>Other</i>	20%

**38.2** In the present case, M/s. Om Enterprises declared the imported goods as "Textile Coated fabric", "Felt Woven Coated Fabric" & "Glitter Fabric" under CTH 59119090/59050090. However, the subject goods, upon testing from the Central Revenue Control Laboratory (CRCL), Vadodara, found as "*woven or knitted fabrics coated with compounded polyurethane (PU)*" and found as "dyed woven fabrics

coated with compounded polyurethane (PU) laminated with PVC film on one side.” The said test results were issued by a notified and accredited customs laboratory which is a credible and scientific evidence of the true nature of the goods. I find that no contrary test result or expert opinion has been produced by the importer and the test results were acknowledged by the Noticees during the investigation period at the time to tendering their voluntarily statements. I find that this misclassification facilitated the evasion of anti-dumping duty (ADD) under Notification No. 14/2022-Customs (ADD) dated 20.05.2022 for PU-coated fabrics from China (at the rate of USD 0.46 per meter for non-exempt producers) and non-payment of basic customs duty (BCD), social welfare surcharge (SWS), and integrated goods and services tax (IGST).

**38.3** I notice that the GIR, which are binding principles for uniform classification under the HS Nomenclature (as per the World Customs Organization - WCO), provide a step-by-step methodology to resolve such disputes, and their application here supports the re-classification proposed in the SCN. Under the General Rules for the Interpretation of the Import Tariff (GIR), classification of imported goods must be determined according to the terms of the headings, section and chapter notes, and, only when these are not decisive, by resorting to subsequent interpretative principles. Therefore, it is imperative to first examine whether the description and characteristics of the imported goods correspond to the heading under which they were declared.

As per GIR-1, *"The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions."* I observe that GIR 1 mandates starting with the plain language of the headings and notes, without resorting to subsequent rules unless ambiguity arises. In this case, the imported goods were declared under specific Heading 5911: *"Textile products and articles, for technical uses, specified in Note 8 to this Chapter,"* with subheading 591190: *"Other."* However, Note 8 to Chapter 59 explicitly limits Heading 5911 to specific technical products. Tariff Heading 5903 of the Customs Tariff specifically covers "Textile fabrics impregnated, coated, covered or laminated with plastics." The essential condition for inclusion under Heading 5903 is that the textile base is coated, covered or impregnated with plastic materials. Polyurethane being a form of plastic, a textile fabric coated with compounded polyurethane is squarely classifiable under Heading 5903.

**38.4** I find that the CRCL test reports confirm the goods as fabrics coated with compounded polyurethane on one side. During the recording of statements, the noticees and other individuals clearly stated that the imported fabric have been used primarily in the manufacturing of footwear and garments. Thus, there is no doubt that the imported fabric do not align with the specialized technical uses enumerated in Note 8. The imported fabrics in the subject case are not bolting cloths, straining cloths, or metal-reinforced fabrics for machinery; instead, they are

general-purpose coated fabrics which excludes them from the ambit of Heading 5911. Tariff Heading 5911 covers only textile products for technical uses as specified and must meet the technical criterion. There is no doubt, as revealed from the test reports, that these goods are ordinary coated fabrics meant for general commercial use such as upholstery, footwear, and garments, and not specialized textile products for technical applications. Thus, under GIR 1, the classification under CTH 59119090 is untenable.

**38.5** For the PU-coated fabrics, Heading 5903 reads: *"Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902."* Subheading 590320 specifies: *"With polyurethane."* The Explanatory Notes to Heading 5903 provide a comprehensive commentary: This heading covers textile fabrics which have been impregnated, coated, covered or laminated with plastics (e.g., poly(vinyl chloride)), whatever the nature of the plastic used and whatever the nature of the textile fabric (woven, knitted, nonwovens, felts, etc.). Further the said explanatory notes states that *"The fabrics of this heading are used for a variety of purposes including furnishing materials, the manufacture of handbags and travel goods, garments, slippers, toys, etc., in book binding, as adhesive tapes, in the manufacture of electrical equipment, etc."* I observe that the CRCL reports clearly identify the samples as *"....coated with compounded polyurethane on one side....,"* matching this description precisely. I find that under GIR 1, the PU-coated goods squarely fall under 59032090, as the heading's terms and Explanatory Notes cover them without any ambiguity.

**38.6** In examining the issue of classification, it is observed that the goods in question consist of a textile layer coated with polyurethane. Rule 2(b) of the General Rules for the Interpretation of the First Schedule to the Customs Tariff Act, 1975 extends the scope of headings to include mixtures and composite goods, thereby necessitating an assessment of which component imparts the essential character to the product. The polyurethane coating is not merely a surface treatment. On the contrary, it substantially alters the physical and functional nature of the textile base. The coating provides a smooth, leather-like appearance, enhances the strength and durability of the fabric, imparts water-resistant properties, and determines the commercial perception of the goods in the market as "PU Coated Fabric." Thus, it is clear that the essential character of the product is derived predominantly from the polyurethane component rather than the underlying textile layer. Under GIR 3(b), which provides that composite goods shall be classified according to the material or component that gives them their essential character, the coating of polyurethane must be considered the decisive factor for classification. Therefore, the goods are appropriately classifiable under Heading 5903 as "Textile fabrics impregnated, coated, covered or laminated with plastics," and not under Heading 5911.

**38.7** If prima facie the goods appear to fall under more than one heading, i.e. 5903 (for coated fabrics) and 5911 (for technical fabrics), the rules of classification under the General Interpretative Rules (GIR) apply. According to GIR

3(a), the heading that gives the most specific description should be chosen over a general one. In this case, Heading 5903 specifically covers plastic-coated fabrics, while Heading 5911 is a broader category for technical textiles. Even under GIR 3(b), where classification depends on the material giving the product its essential character, the PU coating gives the goods their leather-like finish, again supporting classification under 5903. As a final fallback, GIR 3(c) provides that when goods could fall under multiple headings, the one that appears last in numerical order is chosen. However, I find that 5903 is more specific heading for the subject goods, hence, heading 5903 is still prevails over 5911. GIR 6 applies the same principle when deciding between subheadings. There is no need to apply GIR 2 (incomplete goods) or GIR 4 (similar goods), because the products are in finished/complete stage.

**38.8** I find that classification of the imported goods is reinforced by the factual evidence gathered during the investigation. The statements of various persons directly concerned with the import and trade of these goods substantiate that the goods were in fact PU Coated Fabrics. Shri Kapil Kotiya, Proprietor of M/s. Ocean Logistics, who was handling the customs clearance of these consignments, admitted that the goods imported through the IEC of M/s. OM Enterprises were polyurethane-coated fabrics. I find that M/s. Jai Maa Enterprises, M/s. A. N. Enterprises and Shri B. D. Khatri have ordered PU coated fabric from China and the terms/description used in the import documents was actually PU Coated Fabrics. Goods found during the searches of domestics buyes and contents of their statements (as discussed earlier) clearly show that goods procured by these beneficial owners from M/s. Om Enterprises were “*PU Coated Fabrics*” which were sold to various firms mentioning the false description as “*Textile Coated Fabric*” “*Glitter Fabrics*” & “*Felt Woven Fabrics*” in their sales Invoices. Thus, it is evident that the Importer have imported only “PU Coated Fabric” and “Non-Woven Fabric” by mis-classifying them under incorrect Tariff Heading. Accordingly, I hold that the classification declared by the importer was incorrect and the imported goods (seized and past cleared) are correctly classifiable under CTH 59032090. As a result of this reclassification, the goods become liable to payment of the applicable Basic Customs Duty, Social Welfare Surcharge, IGST, and the Anti-Dumping Duty as prescribed under Notification No. 14/2022-Customs (ADD) dated 20.05.2022. The goods imported under Bills of Entry, as mentioned in Annexure-X at Para 17 to the impugned Show Cause Notice and Annexure-Y at Para 17.1 to the impugned Show Cause Notice, squarely fall within the purview of Notification No. 14/2022-Customs (ADD) dated 20.05.2022 and liable for payment of anti-dumping duty at the rate of USD 0.46 per meter. The detailed calculation and applicability of these duties will be discussed in the subsequent part of this order.

**38.9** I noticed that the noticees through their written submissions submitted that the Anti-Dumping Duty (ADD) Notification is not applicable to their goods. They contended that the CRCL test reports actually support their declaration, as they describe the goods as “coated with compounded polyurethane,” not pure polyurethane. They emphasized that the said ADD Notification applies only to fabrics coated with pure polyurethane (PU) under HS Code 5903 2090. They

explained that compounded polyurethane is a mixture of polyurethane with other materials such as PVC, acrylics, fillers, stabilizers, and pigments, which alter its chemical and physical properties. Hence, it is not the same as pure polyurethane. They further stated that CRCL's reference to "compounded polyurethane" clearly distinguishes the goods from those coated with pure PU. Therefore, such goods should fall under CTH 5903 9090 ("Other plastics") and not under 5903 2090 ("With polyurethane"). Since the ADD Notification covers only PU-coated fabrics, they argued that applying it to compounded polyurethane would be incorrect and contrary to the principles of strict tariff interpretation.

At the outset, I find that the Noticees have accepted that the goods should fall under Tariff Heading 5903. This clearly shows that the goods were mis-declared at the time of import. I notice that claim to classify the goods under residual heading (59039090) is not correct and ignore the SCN's reliance on independent CRCL testing. Further, this claim also ignore the veracity of corroborative statements (e.g., Shri Arun Jyoti Mahajan, Shri Amit Jian and Shri Prince Khatri, Shri Kapil Kotiya, Shri Sanjay Dhingra, Modh Arif Iraqi, Shri Tulsi Dass Chopra, Shri Narendrachand Moriya etc.) wherein the said individuals admitted that the imported goods were "PU Coated Fabrics. Shri Amit Jain, Proprietor of M/s A.N. Enterprises, in his statement dated 12.09.2024, categorically admitted that he had ordered PU Coated Fabric from Chinese suppliers using the name and IEC of M/s. Om Enterprises and that the overseas suppliers had advised him to declare the goods as "Textile Coated Fabric" or "Felt Woven Coated Fabric" to avoid payment of Anti-Dumping Duty. He further acknowledged, after being shown the CRCL test reports pertaining to Bills of Entry No. 1014717 dated 17.10.2022 and 1015514 dated 31.10.2022, that the samples tested were fabrics coated with compounded polyurethane and that the reports were correct. Similarly, Shri Arun Jyoti Mahajan in his statement dated 17.05.2023, accepted that the goods purchased and sold by his firm as "Textile Coated Fabric" were actually "PU Coated Fabric," and that such nomenclature was used only to disguise the true identity of the goods. Further, Shri Kapil Kotiya, in his statement dated 03.03.2023, admitted that the goods imported vide Bill of Entry No. 1015307 dated 27.10.2022 and other consignments were found to be coated with compounded polyurethane as per CRCL report, and he accepted the correctness of the laboratory findings. Further, Shri Prince Khatri (Authorized representative of M/s. Dee Pee Leather Store) in his statement dt. 21.10.2024 admitted that goods imported vide SEZ Bill of Entry No.1015513 dt. 31.10.2022 & 1015612 dt. 01.11.2022 were ordered from the overseas supplier by his father (Shri Banarsi Dass Khatri) and the import documents in respect of the same were forwarded by his father to Shri Kapil Kotiya for customs clearance. ". I noticed that these statements were not retracted and facts stated by an individual persons were also found to be confirmed with the other's statements. Thus, I have no doubt that the goods imported under IEC of M/s. OM Enterprises were PU Coated Fabrics which are classifiable under CTH 59032090.

I noticed that PU formulated with additives to enhance applicability, durability, or performance in fabric coatings. This compounding does not change

the base chemical identity; it remains polyurethane. The Explanatory Notes to Heading 5903 explicitly cover "textile fabrics impregnated, coated, covered or laminated with plastics (e.g., poly(vinyl chloride))," and polyurethane is listed as a type of plastic, without qualifiers for purity or compounding. Additives in chemical compounds do not alter classification if the essential character remains unchanged. Further, the laboratory reports do not, at any point, describe the coating as being of a different polymeric base. Each report consistently state that the fabric is "woven or knitted, coated with compounded polyurethane (PU)," which establishes polyurethane as coating material. The fact that the coating compound contains pigments or fillers does not alter its polymeric identity. Accordingly, applying GIR 1 and GIR 3(b), the goods must be classified according to the component giving them their essential character, which is the polyurethane coating. The proper heading, therefore, is 5903 20, which specifically covers "Textile fabrics impregnated, coated, covered or laminated with plastics—with polyurethane." The reliance placed by the Noticees on the residual heading 5903 9090 is incorrect. In the case of subject shipments, the coating is of polyurethane, thus, the goods cannot be placed in the "other" category under 5903 9090.

The contention that the goods are laminated and not coated is also not sustainable. The CRCL's terminology—"coated with compounded polyurethane, laminated with PVC film on one side"—describes sequential processes applied to the same article. The first process, coating with polyurethane, determines the essential character of the goods; the subsequent lamination with a thin PVC film is a surface enhancement which does not alter the fundamental classification. The test reports as well as the physical examination under panchnama confirmed that the textile backing, hence, the goods cannot not excluded from Heading 5903 merely because of an additional lamination layer.

Based on the above discussion, I find that the importer's arguments regarding classification are without merit.

#### **Discussion and Findings on Applicability of the Extended Period of Limitation under Section 28(4) of the Customs Act, 1962**

**39.1** I find that the Show Cause Notice proposes recovery of differential customs duty amounting to Rs. 1,15,64,091/- (as mentioned at Sr. No.01 to 07 of the Table at para 12.2 of the SCN) in respect of 07 consignments that had already been cleared for home consumption through the SEZ route under the IEC of M/s. Om Enterprises, while the actual importers and beneficiaries were identified as M/s. A N Enterprises, M/s Jai Maa Enterprises and Shri Ganesh Overseas. Before determining the recoverability of the said amount, it is essential to examine whether the extended period of limitation under Section 28(4) of the Customs Act, 1962 has been correctly invoked.

**39.2** I notice that Section 28(4) of the Customs Act provides that where any duty has not been levied, or has been short-levied, due to collusion, wilful mis-

statement, or suppression of facts by the importer with intent to evade payment of duty, the proper officer may issue notice for recovery within five years from the relevant date. For invocation of this extended period, the following conditions must be satisfied:

- there must be wilful mis-statement or suppression of facts;
- the importer must have knowledge of the true nature of the goods or facts suppressed; and
- there must be a clear intent to evade payment of duty.

**39.3** In the present case, the evidence on record clearly establishes the fulfilment of all these conditions. The goods were repeatedly imported and cleared under misleading descriptions as “Textile Coated Fabric,” “Glitter Fabric,” and “Felt Woven Coated Fabric”, under Tariff Headings 5911 and 5905. However, the CRCL test reports and statements of the concerned individuals revealed that the goods were in fact Polyurethane (PU) Coated Fabrics. These incorrect descriptions and tariff headings were deliberately adopted to disguise the true character of the goods and evade legitimate higher rate of duties and Anti-Dumping Duty (ADD) applicable on PU-coated fabrics of Chinese origin under Notification No. 14/2022-Customs (ADD) dated 20.05.2022.

**39.4** I find that the acts of willful misstatement are evident through the deliberate mis declaration of description and classification of the goods in the Bills of Entry, invoices, and domestic sales records, even though the importers knew the actual product type. Shri Kapil Kotiya admitted in his statement dated 03.03.2023 that he was looking after the activity related to clearance of the shipments related to M/s. Om Enterprises. He admitted that the goods imported were actually PU-coated and should have been correctly declared in the invoice. I note that he claimed ignorance of the mis-declaration; however, no evidence or document has been produced before me to substantiate this claim. On the contrary, it is an undisputed fact that he was in full control and management of all affairs of the importing firm, M/s. Om Enterprises, which makes his plea of unawareness untenable.

**39.5** From the statement dated 17.05.2023 & 19.09.2024 of Shri Arun Jyoti, I find that **M/s. Jai Maa Enterprises** has ordered PU coated fabric from China for use of footwear and garments manufacturing; that textile Coated Fabric imported by them is just another name given to PU Coated Fabrics; that Felt Woven Coated Fabric is actually PU Coated Fabric; that they have continued to mention the false description in further local sale to local buyers (such as M/s. Kishore Traders ) to cover up the mis declaration. I also find that goods found at the premise of M/s Kishore Traders were the same which were cleared by M/s. Jai Maa Enterprises using the IEC of M/s. Om Enterprises. This fact was also confirmed by Shri Arun Jyoti Mahajan in his statement dated 17.05.2025 wherein he disclosed that Invoice No. 2022-23/1405 dated 12.11.2022 was signed by him and issued to Kishore

Traders, Mumbai for sale of Textile Coated Fabric. I notice that on perusing the Panchanama dated 16.12.2022 and Test Memo No. 52/Kishor/54 dated 19.12.2022 in respect of the sample of goods drawn from the premises of M/s. Kishore Traders, Mumbai under the Panchnama date 16.12.2022 and Test Report Lab No. RCL/AZU/DRI/3351/22-12-2022 dated 04.01.2023 issued by CRCL Vadodara; he admitted that he sold PU Coated Fabric to Kishore Traders, Mumbai by mentioning the false description as Textile Coated Fabric in the invoice. I find it an admittedly facts that goods procured by M/s Jai Maa Enterprise from M/s. Om Enterprises & M/s. JMV Enterprises were "*PU Coated Fabrics*" which were sold to various firms mentioning the false description as "*Textile Coated Fabric*" in their sales Invoices.

**39.6** Similarly, I find that **Shri Amit Jain (Proprietor of M/s A.N. Enterprises)** after perusal of the statements of (i) Tulsi Dass Chopra (M/s. Bharat Exports), (ii) Shri Mohd Airf Iraqi (Manager of M/s. Amin Leather & Products) (iii) Shri Sanjay Dhingra (Authorised representative of M/s. R.S. Enterprises); not only admitted that he sold goods to these firm which purchased from M/s. Om Enterprises but also affirmed the contents of the statements. I find that his firm was engaged in the direct import activities but after imposition of ADD on PU Coated Fabric, they have started to procure PU Coated Fabric from M/s. Om Enterprise. I find that Shri Amit Jain directly ordered "PU Coated Fabric" to Overseas Supplier in China and with the help of foregin supplier prepared false documents with incorrect false description to evade Anti-Dumping Duty. He admitted the liability to order 05 shipments by using this method. These above acts demonstrate his culpable/criminal mindset and prove his mens-rea in the whole act of defrauding the Govt Exchequer by evading the applicable payment of Anti-dumping Duty. This use of false description and incorrect classification at time of importation and clearance of the imported goods, demonstrates willful misstatement under Section 28(4) of the Customs Act, 1962.

**39.7** I find that none of the Noticee disclosed the actual description or classification of the imported goods at the time of their importation and clearance from Customs. The Importers had suppressed the goods' true nature, classification, and ownership. The dummy IEC of M/s. Om Enterprises was used to disguise the real importers (M/s. Jai Maa Enterprises, M/s A N Enterprises and M/s Shree Ganesh Overseas). Proprietor of M/s. Om Enterprises lent his IEC for monetary benefit while Shri Kapil Kotiya managed all operations of the firm. The goods were delivered directly to the actual owners and funds came from their accounts. The CRCL's testing of seized goods confirmed the nature of goods as PU coating. The voluntary deposit of Rs. 97,63,680/- after DRI action indicates acknowledgment of suppressed facts. The deliberate suppression of facts by doing act of non-disclosure of the true nature and identity of the goods led to an incorrect assessment of duty which resulted in the evasion and non-payment of legitimate Customs Duty.

**39.8** I find that the modus operandi was systematic and calculated. The actual traders or beneficial owners (M/s. Jai Maa Enterprises, M/s A N Enterprises and



M/s Shree Ganesh Overseas) used the IEC of M/s. OM Enterprises for import of goods to obscure the import trail. They have further mis-declared the product descriptions and adopted incorrect tariff headings to avoid ADD and applicable Customs Duty. The goods were sold in the domestic market under incorrect descriptions. These acts were deliberate, repeated, and coordinated with a clear intention to defraud the government exchequer.

**39.9** Had there been any genuine doubt about classification or applicability of ADD, the importers could have opted for provisional assessment or first check. Instead, they chose to clear the goods with false descriptions and incorrect classification. It is further noticed that none of the parties voluntarily disclosed the true facts. The real nature of the goods and the ownership structure came to light only through the detailed DRI investigation and test results conducted by CRCL. These facts establishes that material information which was necessary for correct assessment was knowingly withheld from the Department. I find that “suppression of facts” means deliberate concealment of material particulars with intent to evade duty. The facts of the present case squarely satisfy this definition. The acts of the importers cannot be seen as mistakes or misunderstandings; it demonstrates mens rea and conscious concealment. These acts clearly show a deliberate intention to hide the true nature of the goods. These actions prove a planned and intentional method which was adopted with the intention to evade legitimate customs duty.

**39.10** In view of the above, I find it appropriate to invoke the extended period under Section 28(4) of the Customs Act, 1962, for recovery of legitimate government duties. Accordingly, the differential duty amounting to Rs. 1,15,64,091/- is hereby confirmed and the same is recoverable under the extended period prescribed in Section 28(4), along with interest under Section 28AA of the Customs Act, 1962.

In light of the above discussions and findings, the noticees’ claim that extended period of time cannot be applied to the present proceedings does not hold any merits.

**CALCULATION OF DIFFERENTIAL DUTY/BENFICIAL OWNER/ACTUAL IMPORTER OF THE IMPORTED GOODS:**

**40.1** I find that Shri Arun Jyoti Mahajan (Partner of M/s. Jai Maa Enterprises), during recording of statement dated 19-09-2024, after perusal of the test results in respect of sample of goods drawn from the goods imported vide SEZ Bills of Entry No. 1015306 dated 27.10.2022, 1015307 dated 27.10.2022 and 1015777 dated 03.11.2022 (goods put under seizure and subsequently released on Bond and Bank Guarantee), admitted in his statement dated 19.09.2024 that the subject goods were imported by their firm (M/s. Jai Maa Enterprises) by using the IEC of M/s. Om Enterprises. Further, investigation conducted, as discussed in the above paras had also revealed that SEZ Bills of Entry No. 1011237 dated 23.08.2022, 1012134 dated 07.09.2022 & 1013244 dated 26.09.2022 (past consignments) were also

imported by M/s Jai Maa Enterprises. Shri Arun Jyoti in his statement dated 19.09.2024 further admitted that the ordered goods were actually *PU-coated fabrics* and that the vague descriptions were adopted and ADD was not paid during its import. On perusal of the Annexure-B submitted by Shri Kapil Kotiya in his statement dated 16.07.2024, Shri Arun Jyoti Mahajan admitted that goods mentioned at Sr. No. 2, 3, 6, 7, 9, 10 & 14 of Annexure-B were directly ordered by him from the Overseas Supplier and were later imported under the IEC of M/s. Om Enterprise. I find that the goods imported vide bills of entry mentioned at Sr. No. 2, 3, 6, 7, 9, 10 & 14 of Annexure-B were transferred to them by M/s. Om Enterprises through domestic sale under GST after Customs Clearance. In view of the above, I find that M/s. Jai Maa Enterprises admittedly imported these 07 consignments by mis-declaring and mis-classifying to evade legitimate Customs Duty which is required to be recovered from them **being beneficial owner/actual Importer** of these imported goods.

**40.2** As discussed earlier, I find that goods mentioned at Sr. No. 1, 4, 5, 8 & 11 of Annexure-B submitted by Shri Kapil Kotiya were admittedly imported by Shri Amit Jain (Proprietor of A.N. Enterprises) through M/s. Om Enterprises. Thus, I find that **M/s A.N. Enterprises is the actual beneficial owner/importer** of the goods imported under the following 05 Bills of Entry:

- (i) 1011061 dt. 20.08.2022 (DTA Bill of Entry No. 2013691 dt. 10.09.2022)
- (ii) 1012253 dt. 09.09.2022 (DTA Bill of Entry No. 2014640 dt. 26.09.2022)
- (iii) 1012535 dt. 10.09.2022 (DTA Bill of Entry No. 2014056 dt. 19.09.2022)
- (iv) 1014717 dt. 17.10.2022 (DTA Bill of Entry No. 2017089 dt. 03.11.2022)
- (v) 1015514 dt. 31.10.2022 (DTA Bill of Entry No. 2008159 dt. 11.05.2023)

**40.3** As discussed earlier, I find that Shri Prince Khatri, S/o B. D. Khatri admitted that the goods imported vide SEZ Bill of Entry No. 1015612 dated 01.11.2022 and SEZ Bill of Entry No. 1015513 dt. 31.10.2022 were actually ordered by his father Shri B.D. Khatri which were intended for transfer to firms belonging to their family through domestic GST invoices. Thus, I find that **Shri B.D. Khatri is the actual beneficial owner/importer** of the goods imported under the above mentioned 02 Bills of Entry.

**40.4** I find that Shri Hari Kishan (Proprietor of M/s. Om Enterprises) in his statement dated 18.09.2024/23.11.2022 had accepted that he had allowed the use of his IEC for these imports in lieu of monetary consideration. He further corroborated and affirmed the fact that goods imported under these 14 bills of entry were actually imported by the actual importers. I find that Shri Hari Kishan, upon showing the statements of Shri Kapil Kothiya, agreed with the facts mentioned the said statement and have not countered the veracity of those statements. Thus, I have no doubt that M/s. Jai Maa Enterprises imported total 07 consignments, M/s A N Enterprises imported total 05 consignments & Shri B.D.

Khatri (Proprietor of Shree Ganesh Overseas) imported total 02 consignments using the IEC of M/s. Om Enterprises.

**40.5 Differential Duty on Past Cleared Consignments (as mentioned in Annexure-Y at Para 17.1 to the impugned Show Cause Notice):** Based on the correct reclassification, I find that the differential customs duty (comprising BCD, SWS, IGST, ADD, and IGST on ADD), in respect of past cleared 04 Bill of Entry which were imported by the M/s. Jai Maa Enterprises, has been calculated at Rs. 83,64,266/-, in respect of past cleared 03 Bill of Entry which were imported by M/s. A N Enterprises duty calculated at Rs. **31,99,825/-**. Thus, Total differential duty (in r/o 7 Bills of Entry) has been calculated at **Rs. 1,15,64,091/-**. Since these consignments had already been cleared for home consumption, the above differential duty amount is recoverable under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA, as the short payment arose due to a wilful misstatement and suppression of the true description and classification of the imported goods.

**40.6 Differential Duty on Live Consignments (as mentioned in Annexure-X at Para 17 to the impugned Show Cause Notice):** Total 07 live consignments imported under SEZ Bills of Entry as mentioned in Annexure-X at Para 17 to the impugned Show Cause Notice, were provisionally released against bond and bank guarantee. As discussed earlier, these goods are polyurethane-coated fabrics correctly classifiable under CTH 5903 2090. Therefore, based on the correct reclassification, the differential customs duty (comprising BCD, SWS, IGST, ADD, and IGST on ADD) has been calculated at **Rs. 2,11,66,372/-** for the goods imported under these 07 Bills of Entry. Since these consignments were provisionally released against bond and bank guarantee, this amount is recoverable by enforcing those securities under Section 17 of the Customs Act, 1962.

**41. Confiscation of goods under Section 111(m) of the Customs Act, 1962:** I find that the Show Cause Notice proposes confiscation of the imported goods under the provisions of Section 111(m) of the Customs Act, 1962. In this regard, I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111 of the Customs Act, 1962 are reproduced below:-

*(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;"*

The said section provides that *"any goods which do not correspond in respect of value or in any other particular with the entry made under this Act, or in respect of which any material particular has been mis-declared in the Bill of Entry or other document, shall be liable to confiscation."* Thus, any incorrect or false declaration of

material particulars such as description, classification, or value attracts confiscation of the goods imported under such declaration. This provision allows for confiscation of any goods that have been mis-declared in the Bill of Entry or other import documents in respect of description, classification, value, or any other detail relevant to duty assessment.

I find that the Show Cause Notice (SCN) proposed confiscation under these provisions for all consignments which includes 07 seized live consignments and 07 previously cleared consignments. I have already discussed in details about the modus adopted to defraud the government exchequer by deliberately mis-declaring the description and classification of the goods at the time of their importation. Further, the concealment of ADD liability and actual ownership is another material misstatement. Dummy IECs were used to conceal the identities of actual beneficiaries. Shri Kapil Kotiya provided consignments wise list of real beneficiaries which were confirmed through the independent evidences including the statement of beneficiaries. I find that these false declaration of description and classification were not a bonafide mistake but an deliberate mis-declaration of material particulars within the meaning of Section 111(m) of the Customs Act, 1962 which was done to evade Customs Duties including anti-dumping duty by defrauding the government exchequer. Accordingly, I find that the seized goods and past cleared goods are liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962. .

**42. Imposition of Redemption Fine:** As I have already held these goods liable for confiscation in previous para under Section 111(m) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCNs. The Section 125 ibid reads as under:-

**“Section 125. Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1[or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit.”**

**(i) Goods seized at M/s OWS Warehouse Services LLP:** In respect of goods imported under Bills of Entry as mentioned at Annexure-X at Para 17 to the impugned Show Cause Notice, which seized at M/s OWS Warehouse Services LLP; I find that in the instant case option to redeem the goods through provisional release has already been availed by the Importer. Now the question remains that whether redemption fine can be imposed on the goods which already provisionally released. In this regard, I place reliance on the judgment of the Hon’ble Apex Court in the case of **M/s. WESTON COMPONENTS LTD. Versus COMMISSIONER OF**

**CUSTOMS, NEW DELHI- 2000 (115) E.L.T. 278 (S.C.)** wherein the Apex Court held that:

*“It is contended by the learned Counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the custody of the respondent-authority. It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine.”*

I believe the ratio of the aforementioned judgment is directly applicable to the present case, as the goods in the current shipment were also allowed under Bond and Bank Guarantee. Consequently, I find that a redemption fine is warranted in respect of goods imported under the subject 07 Bills of Entry as mentioned at Annexure-X to the impugned Show Cause Notice.

**(ii) Goods which were neither seized nor provisionally released:** In respect of past imported goods under 07 Bills of Entry; as mentioned at Annexure-Y at Para 17.1 to the impugned Show Cause Notice, I find that the goods in question which are proposed to be confiscated were already cleared and the same are not available physically for confiscation. Thus, I refrain from imposing redemption fine in respect of goods imported under these 07 bills of entry.

**43. With regards to Cross Examination sought by the Noticees:**

**(i)** I find that Shri Amit Jain (Noticee No. 4), Shri Banarsi Dass Khatri (Noticee No. 6) and M/s A.N. Enterprises (Noticee No. 9), through their advocate, have requested for cross-examination of Shri Hari Krishan (Proprietor of M/s Om Enterprises– Noticee No. 2), Shri Kapil Kotiya (Noticee No. 5), and Shri Sabu George (Noticee No. 6). The applicants have contended that the allegations against them are unsupported by independent documentary evidence and rest solely upon the statements of these individuals. Therefore, in the interest of justice and adherence to the principles of natural justice, they seek an opportunity to cross-examine the said persons to effectively defend themselves against the charges in the Show Cause Notice.

**(ii)** I find that the request for cross examination has been made at the final stage of the proceedings. This appears to be a delaying tactic intended to prolong the adjudication process without any substantive justification. As discussed under foregoing paragraphs, the findings are not solely based on the statements of these individuals but are supported by examination of goods, searches at the premises of downstream buyers, statements of downstream buyers, e-mail communications send by the Noticees themselves to Shri Kapil Kotiya, scientific test reports (i.e.

CRCL) and even admissions made by the requesting noticees themselves. I find that each noticee was given ample opportunity to present their defense, access all relied-upon documents (RUDs), and participate in personal hearings. The noticees were afforded full opportunity to defend themselves during hearings, this satisfied principles of audi alteram partem.

**(iii)** As elaborated in the Order, these statements are corroborated by independent evidence such as emails recovered under Panchnama dated 21.11.2022 which revealed the use of dummy IECs for misdeclared goods. For instance, Shri Hari Kishan's statement (dated 18.09.2024) confirming the beneficial ownership of goods by M/s A.N. Enterprises and Shri B. D. Khatri is backed by Annexure-B provided by Shri Kapil Kotiya and domestic sale invoices. Similarly, Shri Kapil Kotiya's detailed statements (dated 16.07.2024 and others) on the creation of name-sake firms are independently validated through admissions made by Shri Amit Jain during his statements.

**(iv)** Further, on examining the statement of Shri Sabu George dated 03.10.2024, I note that he has not even mentioned the names of Shri Amit Jain or Shri B.D. Khatri. Therefore, I fail to understand how these noticees can claim that their culpability is based solely on the statement of Shri Sabu George. From this fact alone, I find that their request for cross-examination is baseless and appears to be a mere attempt to delay the adjudication proceedings.

**(v)** Furthermore, the requesting noticees themselves have made incriminating admissions. As discussed, Shri Amit Jain (statements dated 29.07.2024 and 12.09.2024) admitted to placing orders directly to Chinese Suppliers, forging the documents with the help of suppliers to evade ADD by misdeclaring the goods as "Textile Coated Fabrics," importing the mis-declared goods using the IEC of a dummy firm and selling them in the domestic market. These facts have been corroborated by statements of downstream buyers (Shri Tulsi Dass Chopra, Shri Mohd. Arif Iraqi, and Shri Sanjay Dhingra) and related email correspondence. Similarly, Shri Banarsi Dass Khatri's role is evident from emails where he forwarded import documents for consignments under SEZ Bills of Entry Nos. 1015513 and 1015612 which was also confirmed by his son (during statement dated 21.10.2024). The involvement of M/s A.N. Enterprises as the beneficial owner is further proven by their financial contributions for provisional release. Thus, the request for cross-examination lacks merit since the findings are based on multiple corroborated evidence.

**(vi)** I find that Shri Amit Jain (Proprietor of M/s A.N. Enterprises) and Shri Banarsi Dass Khatri, have during investigation, admitted to their respective roles in the import, procurement and downstream sale of PU-coated fabrics imported through the IEC of M/s Om Enterprises. Shri Amit Jain, in his statements recorded under Section 108 of the Customs Act, 1962 on 29.07.2024 and 12.09.2024, categorically admitted that he had placed orders with overseas suppliers in China for PU-coated fabrics, which were imported in the name of M/s Om Enterprises as

advised by Shri Kapil Kotiya. He further admitted that the goods were imported by declaring it as *Textile Coated Fabric*, however the goods were in fact PU-coated fabrics. The samples drawn from these consignments were tested by the CRCL, Vadodara, which found the imported fabrics coated with compounded polyurethane (PU). When confronted with these test results, Shri Amit Jain accepted the findings of CRCL and agreed that the imported goods were PU-coated fabrics. No contrary evidence, technical report or expert opinion was ever produced by the applicants to rebut these scientific findings. Shri Amit Jain in his statement dt. 29.07.2024, after perusal of the statements of (i) Tulsi Dass Chopra (M/s. Bharat Exports), (ii) Shri Mohd Airf Iraqi (Manager of M/s. Amin Leather & Products) (iii) Shri Sanjay Dhingra (Authorised representative of M/s. R.S. Enterprises); not only admitted that he sold PU Coated fabrics to these firm which purchased from M/s. Om Enterprises but also affirmed that the facts of the statements. The departmental evidence is supported by these statements of downstream buyers who purchased these imported goods from M/s A.N. Enterprises. However, Shri Amit Jain have not provided any clarification till date to the point about supply PU-Coated Fabrics to these downstream buyers. Similarly, Shri Amit Jain has also agreed with the statement of Shri Kapil Kotiya (dt. 16.07.2024) wherein M/s A.N. Enterprises was identified as the actual owner of the goods imported in the name of M/s Om Enterprises. During his statement dated 12.09.2024 of Shri Amit Jain, himself admitted that goods were actually ordered by him to Overseas Supplier in China although he claimed that description was mis-declared on the suggestion of supplier to avoid Anti-dumping duty imposed on import. From the said fact, I find the he not only mis-declared the goods in respect of description but also get prepared the false documents with incorrect details which were later submitted before the Customs Authority for clearance of goods.

**(vii)** The statement of Shri Prince Khatri (21.10.2024) establishes his father role as a domestic trader who placed orders for PU-coated fabrics through Shri Kapil Kotiya using the IEC of M/s Om Enterprises. He, when confronted with the contents/facts mentioned in the statement dt. 18.09.2024 of Shri Hari Kishan, not only agreed on the facts but also admitted that the goods imported vide SEZ Bill of Entry No. 1015612 dated 01.11.2022 1015513 dt. 31.10.2022 were actually ordered by his father Shri B.D. Khatri which were intended for transfer to firms belonging to their family through domestic GST invoices.

His name also appears in Annexure-B produced by Shri Kapil Kotiya, identifying him as one of the domestic traders for whom such imports were arranged. Thus, I have no doubt that Shri B.D. Khatri who with the not only mis-declared the goods in respect of description but also get prepared the false documents from Chinese suppliers with incorrect details which were later submitted before the Customs Authority for clearance of goods.

**(viii)** It is further noted that none of the applicants, including Shri Amit Jain and Shri Banarsi Dass Khatri, has retracted their statements recorded under Section 108 of the Customs Act, 1962. The statements remain voluntary, consistent, and corroborated by independent documentary and scientific evidence. Even after

issuance of the Show Cause Notice dated 07.11.2024, the applicants have not disputed the CRCL test reports or any of the connected statements. The present request for cross-examination, made only on 06.10.2025, i.e., nearly one year after issuance of the Show Cause Notice, clearly appears to be an afterthought, devoid of any new or justifiable grounds. As the applicants have themselves accepted these facts and never retracted their statements, I find no necessity for cross-examination of the witnesses sought. Noticees own uncontroverted confessional statements constitute direct and primary evidence of the conspiracy, mens rea, and duty evasion. While Section 138B mandates relevance and admissibility of statements, it does not confer an absolute right to cross-examination in quasi-judicial proceedings, which are not akin to court trials under the Evidence Act, 1872. Cross-examination is an element of procedural justice, not a sine qua non of natural justice, and may be denied where statements are corroborated by independent evidence. The detailed information provided by the Noticees leaves no doubt that they were one of the key individuals involved in the cartel responsible for importing goods into India with the intent to evade legitimate government taxes in the form of Customs Duty. It is evident that they not only managed the import operations within the country but also oversaw the importation of goods from overseas suppliers by preparing forged documents. Any prudent person, after scrutiny the facts of the case, would clearly understand that Shri Amit Jain and Shri B. D. Khatri were actively involved in the scheme planned to evade anti-dumping duty by mis-declaring the goods and concealing their true description and nature. Further, it is a settled position that proceedings before the quasi-judicial authority is not at the same footing as proceedings before a court of law and it is the discretion of the authority as to which request of cross examination to be allowed in the interest of natural justice. I also rely on following case-laws in reaching the above opinion:-

- a. **Poddar Tyres (Pvt) Ltd. v. Commissioner - 2000 (126) E.L.T. 737:-** wherein it has been observed that cross-examination not a part of natural justice but only that of procedural justice and not 4 'sine qua non'.
- b. **Kamar Jagdish Ch. Sinha Vs. Collector - 2000 (124) E.L.T. 118 (Cal H.C.):**- wherein it has been observed that the right to confront witnesses is not an essential requirement of natural justice where the statute is silent and the assessee has been offered an opportunity to explain allegations made against him.
- c. **Shivom Ply-N-Wood Pvt. Ltd. Vs Commissioner of Customs & Central Excise Aurangabad- 2004(177) E.L.T 1150(Tri.-Mumbai):**- wherein it has been observed that cross-examination not to be claimed as a matter of right.
- d. Hon'ble Andhra Pradesh High Court in its decision in **Sridhar Paints v/s Commissioner of Central Excise Hyderabad** reported as 2006(198) ELT 514 (Tri-Bang) held that: ..... denial of cross-examination of witnesses/officers is not a violation of the principles of natural justice, We find that the Adjudicating Authority has reached his conclusions not only on the basis of the statements of the concerned persons but also the various



incriminating records seized. We hold that the statements have been corroborated by the records seized (Para 9)

- e. Similarly in **A.L Jalauddin v/s Enforcement Director reported as 2010(261)ELT 84 (mad) HC** the Hon High court held that; ".....Therefore, we do not agree that the principles of natural justice have been violated by not allowing the appellant to cross-examine these two persons: We may refer to the following paragraph in AIR 1972 SC 2136 = 1983 (13) E.L.T. 1486 (S.C.) (Kanungo & Co. v. Collector, Customs, Calcutta)".
- f. **In the case of Patel Engg. Ltd. vs UOI reported in 2014 (307) ELT 862 (Bom.) Hon'ble Bombay High Court has held that;**
- g. "Adjudication — Cross-examination — Denial of—held does not amount to violation of principles of natural justice in every case, instead it depends on the particular facts and circumstances — Thus, right of cross-examination cannot be asserted in all inquiries and which rule or principle of natural justice must be followed depends upon several factors — Further, even if cross-examination is denied, by such denial alone, it cannot be concluded that principles of natural justice had been violated." [para 23]
- h. **In the case of Suman Silk Mills Pvt. Ltd. Vs. Commissioner of Customs & C.Ex., Baroda [2002 (142) E.L.T. 640 (Tri.-Mumbai)], Tribunal observed at Para 17 that—**  
 "Natural Justice — Cross-examination — Confessional statements — No infraction of principles of natural justice where witnesses not cross-examined when statements admitting evasion were confessional."
- i. **In the case of Commissioner of Customs, Hyderabad v. Tallaja Impex reported in 2012 (279) ELT 433 (Tri.), it was held that—**  
 "In a quasi-judicial proceeding, strict rules of evidence need not to be followed. Cross-examination cannot be claimed as a matter of right."
- j. **Hon'ble Tribunal in the case of P. Pratap Rao Sait v/s Commissioner of Customs reported as 1988 (33) ELT (Tri) has held in Para 5 that:**  
 "The plea of the learned counsel that the appellant was not permitted to cross-examine the officer and that would vitiate the impugned order on grounds of natural justice is not legally tenable."

From the above discussion, I find the request for cross-examination is devoid of merit. It is unnecessary in view of the admitted facts, corroborated evidence, noticees own admissions, scientific findings, and was also filed belatedly after accepting the material facts.

**44. ROLE AND CULPABILITY OF THE NOTICEES:** I have already discussed in detail the role, involvement, and culpability of each of the noticees in the preceding paragraphs of this order while discussing the facts and evidence on record. However, to determine the applicability and quantum of penalty under the relevant

provisions of the Customs Act, 1962, it is necessary to briefly summarize their respective involvement/contribution in the acts of mis-declaration, abetment, or violations established in this case. The findings discussed under upcoming paragraphs are for imposing penalty, thus, role and culpabilities of the Noticees should be read together with the discussion made earlier in this order. The content of the discussion are reproduced here for the sake of brevity. Non-repetition of any specific facts (which discussed earlier) in this section will not, in any way, alter or weaken the findings already recorded on merits in the preceding parts.

**44.1. M/s Om Enterprises, (Noticee No. 1) and Shri Hari Kishan (Proprietor of M/s Om Enterprises):**

- (i) I find that the M/s Om Enterprises, a proprietorship firm owned by Shri Hari Kishan, acted as a channel importer for several domestic traders M/s Jai Maa Enterprises, M/s A.N. Enterprises, and M/s Shree Ganesh Overseas, who were the actual importers and beneficiaries of the misdeclared consignments of PU Coated Fabrics imported from China through Mundra Port. Shri Hari Kishan in his statement dated 23.11.2022 admitted that he lent the IEC to other firms through Shri Kapil Kotiya who is his nephew. I find that Shri Hari Kishan was aware that the domestic traders (M/s. Jai Maa Enterprises, M/s. A.N. Enterprises and Shri B. D. Khatri) were using the IEC of M/s. Om Enterprise although he claimed that he never met anyone from these firms and Shri Kapil Kotiya is dealing with these firms. I find that Shri Hari Kishan (Proprietor of M/s Om Enterprises) knowingly lent his IEC to Shri Kapil Kotiya for monetary consideration to function as a dummy IEC holder. Due to this act, the actual beneficiaries evaded Customs Duty by way of mis-declaring the goods under incorrect description and classification. The firm's import operations were completely handled and managed by Shri Kapil Kotiya (nephew of Shri Hari Kishan) who arranged the imports and facilitated the clearance, documentation, and transportation of goods for the actual domestic traders. I observe that these admission by Shri Hari Krishan establishes Shri Sanjeev Malhotra's full awareness in the subject case.
- (ii) Despite being aware that the firm was a mediator for other traders and that Shri Kotiya controlled all operations; Shri Hari Krishan signed all import related documents without verifying contents thereof. I find that his role was active in facilitation. His mens rea is established through his confessional statements, his presence during premises search, email evidence, and voluntary deposits post-seizure.
- (iii) I find that Shri Hari Krishan continued to facilitate the scheme even after DRI intervention and continued to sign documents under Shri Kapil Kotiya's instructions. He signed letter dated 19.01.2024 on Shri Kapil Kotiya's direction which was addressed to Deputy Commissioner, SEZ Mundra for requesting clearance of PU fabrics imported under Bill of Entry No. 2019764

dt. 13.12.2022, (DTA) Bill of Entry No.2019668 dt.12.12.2022, (DTA) Bill of Entry No.2019667 dt.12.12.2022, (DTA) Bill of Entry No.1018010 dt.09.12.2022, (DTA) Bill of Entry No.2019665 dt.12.12.2022 and (DTA) Bill of Entry No.2019693 dt. 12.12.2022.

- (iv) I find that Shri Hari Krishan's culpability is not mitigated by his claimed ignorance. I find that Shri Hari Krishan was knowingly lent his IEC in lieu of monetary consideration and he did not bothered to know the business activities running in his IEC firm. These acts done by Shri Hari Krishan has rendered the subject goods liable for confiscation under the provisions of Section 111 of the Customs Act, thus, made himself liable for penal action under the provisions of Customs Act, 1962. Being proprietor of import firm, he was aware that domestic traders were importing goods
- (v) From the above, I find that that Shri Hari Krishan (proprietor of M/s. OM Enterprise) had done the acts which rendered the subject goods liable for confiscation under the provisions of Customs Act, 1962. I find that Shri Hari Krishan (proprietor of M/s. OM Enterprise) was willfully and deliberately indulged into conspiracy of importing and clearance of mis-declared goods. Further, the Importer by knowingly concerning himself in removing, depositing, harbouring, keeping, concealing, selling and dealing with mis-declared goods which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, they have made goods liable for confiscation under Section 111 of the Customs Act, 1962. In view of above, I find that the importer has rendered themselves liable for penalty under **Section 112(a)(ii)** of the Customs Act, 1962. I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty under Section 112(b) of the Act where ever, penalty under Section 112(a) of Act, is to be imposed.
- (vi) As regards the penalty under Section 117 proposed on Shri Hari Krishan (proprietor of M/s. OM Enterprise), I find that Section 117 of the Customs Act, 1962 is a covering provision which lays down that for any other contravention of the Customs Act for which express penalty has not been provided elsewhere, the person liable can be charged for penalty under this section. In this regard, I find that Shri Hari Krishan (proprietor of M/s. OM Enterprise) knowingly lent his IEC to be used by unscrupulous elements and never bothered to get to know the business activities which were being conducted in the name of M/s. Om Enterprises. This IEC was used by the actual beneficiary through Shri Kapil Kotiya for their own import, and he had used KYC of this firm for clearance of mis-declared goods by way of filing bills of entry with false descriptions and classifications. I find that Shri Hari Krishan willingly allowed to import the offending goods by way of filing Bills of Entry. He also signed the import related documents, as discussed under foregoing paragraphs. If Shri Hari Krishan had not provided his

documents, the goods would not have been imported under his IEC-holding firm. Therefore, Shri Hari Krishan cannot claim innocence. For these act done by Shri Hari Krishan, I find that he is liable for penal action under the provisions of **Section 117** of the Customs Act, 1962.

**44.2. M/S. JAI MAA ENTERPRISES AND SHRI ARUN JYOTI MAHAJAN  
(PARTNER OF M/S. JAI MAA ENTERPRISES:**

- (i) As discussed under foregoing paragraphs, it is evident that M/s. Jai Maa Enterprises acted as beneficial owner behind 07 consignments imported under the IEC of M/s. Om Enterprises. I find that M/s. Jai Maa Enterprises directly placed orders with Chinese suppliers and provided these mis-declared documents to Shri Kapil Kotiya for customs clearance. M/s. Jai Maa received or purchased the imported goods as domestic sales and further issued invoices to downstream buyers with the incorrect description as "Textile Coated Fabric."
- (ii) I find that Shri Arun Jyoti Mahajan, as the active partner, played a central role in this fraudulent arrangement. He admitted to being aware of the goods' true PU-coated nature and sold them under false descriptions to avoid Anti-Dumping Duty (ADD) and applicable Customs Duty. Investigation revealed that Invoice No. 2022-23/1405 dated 12.11.2022 issue to Kishore Traders, Mumbai was signed by Shri Arun Jyoti Mahajan for sale of Textile Coated Fabric (false description) and the said goods were, upon testing, were found PU-coated fabric. He admitted that all the Textile Coated Fabric procured by his firm i.e. M/s Jai Maa Enterprise from M/s. OM Enterprises were PU Coated Fabric and the same was sold to various firms mentioning the same as Textile Coated Fabric in their sale Invoices. Shri Arun Jyoti Mahajan in his subsequent statement dated 19.09.2024, admitted his ownership in respect of 07 consignment imported by using the IEC of M/s. Om Enterprises.
- (iii) The firm placed direct orders for PU-coated fabrics with Chinese suppliers such as Volcano International and Cinorich and handed them over the false documents to Shri Kapil Kotiya for Customs clearance purpose. Shri Ankur Mahajan also confirmed that they used to place the orders of goods directly to the Suppliers of goods in China through Phone. Thus, there is no doubt that orders were placed with full knowledge that the goods were PU-coated, but M/s. Jai Maa Enterprise accepted invoices from M/s. Om Enterprises showing the goods as "Textile Coated Fabric" for accounting convenience and resold them under the same false description to buyers such as M/s. Kishor Traders and M/s. Ritika Traders. Shri Narendrachand Ramniwas Moriya (Authorized person of M/s. Kishor Traders, Mumbai) confirmed that Textile Coated Fabric purchased by them (M/s. Kishor Traders and M/s. Ritika Traders) from M/s. Jai Maa Enterprises was PU Coated Fabric. He also stated that the PU Coated fabric is mostly known as Napa, Firangi, Wrinkle Free Jelly etc. and they have ordered to supply goods viz. Napa, Firangi, Wrinkle Free Jelly etc. and have received it as ordered but M/s. Jai Maa

- Enterprise has mentioned the description of the same in invoices as Textile Coated Fabric. He was also agreed with the test results of the samples which were drawn from the consignment lying at their premises which was purchased from M/s. Jai Maa Enterprises.
- (iv) Shri Arun Jyoti Mahajan (Partner of M/s. Jai Maa Enterprises) confirmed that all dealings were conducted through Shri Kapil Kotiya, who offered door-step delivery. These admissions demonstrate that M/s. Jai Maa Enterprises exercised full control over the import process while concealing its role behind the nominal importer. I find from the Annexure-B submitted by Shri Kapil Kotiya that all seven consignments were imported by M/s. Jai Maa Enterprises by placing orders to foreign suppliers. As an active partner, Shri Arun Jyoti Mahajan managed the domestic end of the operation. He placed orders to Chinese suppliers, purchased mis-declared goods from M/s. Om Enterprises and deliberately resold them under the same incorrect description despite knowing the fact that they have received/placed order for PU Coated Fabrics. He admitted that they received PU coated fabrics but goods were mentioned in the import documents/sale invoices as "Textile Coated Fabric". Despite being aware to this fact, they issued invoices with false descriptions to downstream buyers such as M/s. Kishor Traders and M/s. Ritika Traders.
- (v) I find that M/s. Jai Maa Enterprises represented through its Partner Shri Arun Jyoti Mahajan who is the beneficiary of the duty evaded in the case. Shri Arun Jyoti Mahajan and his firm had indulged themselves in the entire scheme of fraud in connivance with Shri Kapil Kotiya with the sole intention of defrauding the Govt Exchequer by way of evading the Anti-dumping duty on import of goods. Shri Kapil Kotiya was known to them as he had handled their imports made during earlier period also. I find that M/s. Jai Maa Enterprises and its partner, in collusion with Shri Kapil Kotiya, deliberately carried out a systematic plan to evade payment of Anti-Dumping Duty. They used dummy or name-sake IEC to conceal their involvement although all import activities starting from order placement to payment were managed and financed by the noticees themselves. Downstream buyer M/s. Kishor Traders confirmed that the goods received under Invoice No. 2022-23/1405 dated 12.11.2022 were PU-coated fabrics which were earlier purchased from M/s. Jai Maa Enterprises.
- (vi) From the above, it is evident that Shri Arun Jyoti Mahajan was fully aware about the mis-declaration. He knowingly dealt with the offending goods with intend to get the same cleared from Customs. Thus, I have no doubt that he willfully and deliberately indulged into conspiracy of importing and clearance of offending goods by way of mis-declaration and misclassification. Thus, such acts and omission had rendered impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and also rendered Shri Arun Jyoti Mahajan liable for penalty under Section **112 (b)(ii)** of the Customs Act, 1962. I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I

refrain from imposition of penalty under Section 112(a) of the Act where ever, penalty under Section 112(b) of Act, is to be imposed.

- (vii) I find that Shri Arun Jyoti Mahajan issued false invoices and collaborated with Shri Kapil Kotiya despite being aware of the mis-declaration. Thus, it is beyond doubt that he was active participants and his firm was prime beneficiaries in the evasion scheme. They placed orders, routed document for customs clearance purpose and sold the imported goods to downstream buyers with the same false description. They were very aware with the nature, description of the goods in the import consignment. However, they knowingly and intentionally made/signed/used and/or caused to be made/signed/used the documents of their company for import of the offending goods having false and incorrect material particular such as description, classification etc., therefore I hold that Shri Arun Jyoti Mahajan (Partner of M/s. Jai Maa Enterprises) is liable for penalty under **Section 114AA** of the Customs Act, 1962.
- (viii) In respect of past clearance, as I have already discussed that the goods imported under past 04 shipments are also liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962; consequently penalty under Section 114A is also found to be leviable on the actual beneficial owner or Importer M/s. Jai Maa Enterprises as the elements for penalty as per said Section 114A is *pari materia* with Section 28(4) of the Customs Act, 1962.

#### **44.3 M/S. A. N. ENTERPRISES AND SHRI AMIT JAIN (PARTNER OF M/S. A. N. ENTERPRISES):**

- (i) I have already discussed that Shri Amit Jain through it proprietorship firm M/s A.N. Enterprises acted as beneficial owner behind 05 consignments imported under the IEC of M/s. Om Enterprises. I find that he imported PU Coated Fabric through M/s. Om Enterprises and sold these fabrics to various downstream buys viz. M/s. Bharat Exports M/s. Amin Leather & Products & M/s. R.S. Enterprises etc. These downstream buyers, as disused earlier, also confirmed that Shri Amit Jain sold those PU-Coated Fabrics by mentioning incorrect description in sales invoices. Due to same GST rate under Tariff Heading 5903 & 5911, they have not raised any objection.
- (ii) I find that Shri Amit Jain and Shri Kapil Kotiya were known to each other and transportation and customs clearance work of goods imported work assigned to him by Shri Amit Jain. In his statement dated 12.09.2024, Shri Amit Jain admitted that he placed orders to Overseas Supplier in China and description was mis-declared on the suggestion of supplier to avoid Anti-dumping duty imposed on import. Thus, I find the he not only mis-declared the goods in respect of description but also get prepared the false documents with incorrect details which were later submitted before the Customs Authority for clearance of goods. This act directly made him liable for penal action under Section

114AA of the Customs Act, 1962. I find that total 05 consignments were imported by Shri Amit Jain through M/s. Om Enterprises by mis-declaring the description and classification. Thus, it is evident that Shri Amit Jain through its firm M/s A.N. Enterprises, indulged themselves in the entire scheme of fraud in connivance with Shri Kapil Kotiya with the sole intention of defrauding the Govt Exchequer by way of evading the Anti-dumping duty on import of goods. I find that M/s. Jai Maa Enterprises and its partner, in collusion with Shri Kapil Kotiya, deliberately carried out a systematic plan to evade payment of Anti-Dumping Duty. They used dummy or name-sake IEC to conceal their involvement although all import activities starting from order placement to payment were managed and financed by the noticees themselves.

- (iii) From the above, it is evident that Shri Amit Jain knowingly dealt with the offending goods for with intend to get the same cleared from Customs. Thus, I have no doubt that he willfully and deliberately indulged into conspiracy of importing and clearance of offending goods by way of mis-declaration and misclassification. Thus, such acts and omission had rendered impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and also rendered Shri Amit Jain liable for penalty under Section **112 (b)(ii)** of the Customs Act, 1962. I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty under Section 112(a) of the Act where ever, penalty under Section 112(b) of Act, is to be imposed.
- (iv) I find the Shri Amit Jain prepared the false import documents, with the help of Chinese suppliers, which contains incorrect details. These documents were submitted before the Customs Authority for clearance of goods. He placed orders, routed document for customs clearance purpose and sold the imported goods to downstream buyers with the same false description. He knowingly and intentionally made/signed/used and/or caused to be made/signed/used the documents of their company for import of the offending goods having false and incorrect material particular such as description, classification etc., therefore I hold that Shri Amit Jain (Proprietor of M/s A.N. Enterprises) is liable for penalty under **Section 114AA** of the Customs Act, 1962.
- (v) In respect of past clearance, as I have already discussed that the goods imported under past 03 consignments are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962; consequently penalty under Section 114A is also found to be leviable on the actual beneficial owner or Importer M/s. A.N. Enterprises as the elements for penalty as per said **Section 114A** is *pari materia* with Section 28(4) of the Customs Act, 1962.

#### **44.4 ROLE AND CULPABILITY OF SHRI KAPIL KOTIYA**

- (i) I find that Shri Kapil Kotiya (Proprietor of M/s Ocean Logistics) outsources customs clearance work to licensed brokers M/s Rainbow Shipping Services and M/s Lara Exim Pvt. Ltd. I find that Shri Kapil Kotiya played a central role in organizing and managing a network of dummy IEC based

imports. He created, controlled, and operated several importer firms registered under the names of unemployed friends and relatives. M/s. Om Enterprises is the firm of his uncle. The detailed contents of these statements are not repeated here for brevity, they have been duly considered and discussed in the findings of this order. Shri Kapil Kotiya handled all day-to-day operations of M/s Om Enterprises and also managed transportation of imported goods. Shri Kapil also managed similar dummy firms like M/s JMV Enterprises and M/s J Bridge Worldwide. This modus allowed actual importers to import PU-coated fabrics from China without revealing their identities. During the premises search of M/s. JMV Enterprise, Shri Kapil Kotiya was found present there. He provided import-related documents from his email ID which contains also details of import made through M/s. Om Enterprises He admitted that these documents were received from entities like M/s Dee Pee Leather, M/s Jai Maa Enterprises, and M/s A.N. Enterprises via hand delivery. This establishes his direct involvement in imports related work as a key facilitator in the supply chain. Shri Kapil Kotiya admitted that Proprietor of the IEC holding firm didn't indulge in any import related work except putting signatures on import related documents.

- (ii) I find that domestic traders (actual owners) used to place orders directly with overseas suppliers and after placing orders they forward import documents to Shri Kapil Kotiya to facilitate customs clearance by using the dummy IECs. After clearance, goods were dispatched directly to the actual owners as "domestic sales," and he was charging container wise profit and these charges were added to the invoice value. These facts also admitted by Shri Kapil himself during statement dated 27.11.2022. Thus, there is no doubt that he charged a fixed amount per consignment for facilitating clearance by mis-declaring the imported goods. I find that Shri Hari Krishan, under the direction of Shri Kapil Kotiya, signed letter dated 19.01.2023, addressed to Deputy Commissioner, SEZ Mundra, requesting clearance of goods declared as "PU Fabrics" under later Bills of Entry filed in the name of M/s. Om Enterprises. During his statement, he provided details of Domestic traders who had utilized the IEC of M/s. Om Enterprises and M/s. JMV Enterprises. In his statement dated 16.07.2024, Shri Kapil Kotiya provided consignment wise details of actual beneficial owners of the imported goods by submitting Annexure-B. Thus, there is no doubt that he was fully aware about the shipments imported by M/s Jai Maa and M/s. A. N. Enterprise and Shri B. D. Khatra through the IEC of M/s. Om Enterprises. I find that actual owners placed orders directly to the Overseas Suppliers and after receiving the import documents from these foreign supplier, the goods were imported by using the IEC of M/s. Om Enterprises with the help of Shri Kapil Kotiya. Shri Kapil directly transported imported goods from the port to the premises of the above actual owners as per their directions. Thus, it is evident that Shri Kapil Kotiya conspired with the actual importers to carry out the fraudulent



import transactions and further facilitated the clearance of goods from Customs which were found to be mis-declared in respect of description and classification.

- (iii) The fact that the Bank Guarantees (for provisional release of seized consignments) for the seized goods were funded by actual beneficiaries and not by M/s. OM Enterprises, was confirmed and disclosed by Shri Kapil Kotiya himself. This fact clearly indicates his knowledge of the mis-declaration. This also establishes that he was actively managing and controlling the import transactions. I find that Shri Kapil Kotiya is the key person behind the entire scheme of evasion of Anti-Dumping Duty by mis-declaration of description and classification. These actions demonstrate a clear intent on the part of Shri Kapil Kotiya and establish his mens rea in defrauding the Government exchequer through deliberate evasion of Anti-Dumping Duty. I find that by indulging in the above acts, Shri Kapil Kotiya has committed acts and omissions which rendered the subject goods liable to confiscation under Section 111 of the Customs Act, 1962. Accordingly, I hold that he rendered himself liable to penalty under **Section 112(b)(ii)** of the Customs Act, 1962. I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty under Section 112(a) of the Act where ever, penalty under Section 112(b) of Act, is to be imposed.
- (iv) I also find that Shri Kapil Kotiya was directly involved in receiving import documents from the beneficiary firms, forwarding them to Customs Brokers for clearance using the IECs of the dummy firms, and subsequently ensuring transportation of the cleared goods to the premises of the actual beneficiaries. I further find that Shri Kapil Kotiya was fully aware of the imposition of Anti-Dumping Duty on the mis-declared goods imported through the IEC of M/s. OM Enterprises. He procured the incorrect documents and forwarded them to Customs Broker for filing Bills of Entry and clearance of goods. He intentionally and knowingly caused the submission of false and incorrect declarations and documents in connection with the import transactions, thereby made himself liable for penalty under **Section 114AA** of the Customs Act, 1962.

#### **44.5. Shri Banarsi Dass Khatri (Proprietor of M/s. Shree Ganesh Overseas):**

- (i) I find that Shri B. D. Khatri acted as beneficial owner behind 02 seized consignments. I find that Shri B. D. Khatri ordered goods directly to Chinese supplier (i.e. Wenzhou Chenyue International Trade Co., Ltd & Wenzhou Asia Star International Trading Co., Ltd) and the import documents were directly received from the overseas supplier by Shri B.D. Khatri which were sent by to Shri Kapil Kotiya for clearance of goods. The goods imported vide SEZ Bill of Entry No. 1015612 dated 01.11.2022 1015513 dt. 31.10.2022

were intended for transfer to firms belonging to their family through domestic GST invoices.

- (ii) From the mail communication dated 10.09.2022, 26.10.2022 & 31.10.2022, clearly establish that the B. D. Khatri not only forwarded import documents related to firm to Shri Kapil Kotiya but also forwarded documents of shipments imported by M/s. Om Enterprises. Shri Kapil Kotiya, during the investigation has already stated that the Overseas Suppliers send the import documents in respect of the goods ordered to the actual owners of the goods and same were then forwarded by them to him. In the instant case, it has been unrefutably proved that Shri Banarsi Dass Khatri, in the capacity of being the actual owner of the goods has received these import documents and same were forwarded by him to Shri Kapil Kotiya through mails.
- (iii) I also find that the above facts clearly reveal that Shri Banarsi Dass Khatri, has employed himself in receiving import documents from overseas supplier being the Beneficial owner of the goods and further forwarding these documents to Shri Kapil Kotiya to facilitate import of the goods using the IEC of M/s. Om Enterprises. I find that, by indulging himself in the above acts, Shri Banarsi Dass Khatri, is found to have indulged himself in the act or omission, in relation of the goods, which render the subject goods liable to confiscation under section 111 of the Customs Act, 1962. Further by indulging in the above act, he has rendered himself liable for penalty under section 112(b)(ii) of the Customs Act, 1962. I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty under Section 112(a) of the Act where ever, penalty under Section 112(b) of Act, is to be imposed.
- (iv) I further find that Shri Banarsi Dass Khatri have forwarded incorrect of false document thorough mail to Shri Kapil Kotiya which were false in respect of material particulars. He mis-declared the goods in respect of description and get prepared the false documents from Chinese suppliers with incorrect details which were later submitted before the Customs Authority for clearance of goods. Thus, I find that he knowingly and intentionally made/signed/used and/or caused to be made/signed/used the documents of their company for import of the offending goods having false and incorrect material particular such as description, classification etc., therefore I hold that Shri B. D. Khatri is liable for penalty under **Section 114AA** of the Customs Act, 1962

#### **44.6. Shri Sabu George, G-Card Holder and Partner of M/s. Rainbow Shipping Services:**

I find that Shri Sabu George has failed to exercise proper due diligence in discharging his obligations mandated under Customs Brokers Licensing Regulations, 2018. I find that Shri Sabu George (Partner of M/s. Rainbow Shipping Services) failed to obtain the prior approvals of the Importer for the checklist prepared by them. They tried to cover up by calling it as a trade practice. The same

practice was followed by them throughout the entire period of importation. They also failed to take note of the fact that it was only Shri Kapil Kotiya who contacted them for customs clearance, even though he was neither the importer nor an authorized representative of the importing firm. They failed to verify the authenticity of the documents or to obtain approval from the importer before filing the Bills of Entry. The investigation has revealed that the evasion of duty in this case was orchestrated by Shri Kapil Kotiya along with other domestic fabric traders. In this case, if the Customs Broker had performed his duties responsibly and with due care, the fraudulent activity could have been prevented. However, Shri Sabu George failed to exercise the due diligence required under the Customs Brokers Licensing Regulations (CBLR), 2018. Accordingly, I find that by his above actions, Shri Sabu George make him liable for penal action under the provisions of **Section 117** of the Customs Act, 1962

**45.** In view of the aforesaid discussions and findings, I pass the following order:

### **ORDER**

#### **45.1 Confiscation and Redemption Fine of live shipment/Seized Goods:**

- i. I order to confiscate goods, imported vide SEZ Bills of Entry (as mentioned in Annexure-X at Para 17 to the SCN), having total assessable value of Rs. 1,75,64,629/- (Rupees One Crore Seventy Five Lakh Sixty Four Thousand Six Hundred and Twenty Nine Only) under the provisions of Section 111(m) of the Customs Act, 1962. However, as the goods imported under these bills of entry have already been provisionally released, I impose a redemption fine of **Rs. 20,00,000/- (Rupees Twenty Lakhs only)** under Section 125(1) of Customs Act, 1962 in lieu of confiscation of the goods for the reasons state in foregoing paras.
- ii. I order to reject the declared Classification i.e. 59119990 and description of good "Felt Woven Coated Fabric" in SEZ Bill of Entry No. 1015306 dt. 27.10.2022 (SEZ to DTA Bill of Entry No. 2017249 dt. 05.11.2022), SEZ Bill of Entry No.1015307 dt. 27.10.2022 (SEZ to DTA Bill of Entry No. 2016889 dt. 01.11.2022), SEZ Bill of Entry No. 1015514 dt. 31.10.2022 (SEZ to DTA Bill of Entry No. 2008159 dt. 11.05.2023), SEZ Bill of Entry No. 1015513 dt. 31.10.2022 (SEZ to DTA Bill of Entry No. 2017929 dt. 16.11.2022), SEZ Bill of Entry No. 1015612 dt. 01.11.2022 (SEZ to DTA Bill of Entry No. 2017410 dt. 08.11.2022) and SEZ Bill of Entry No.1015777 dt. 03.11.2022 (SEZ to DTA Bill of Entry No. 2017411 dt. 08.11.2022). Further, I order to re-classify the same under HS Code/CTH **59032090** with the description as "**Polyurethane (PU) Coated Fabric**".
- iii. I order to reject the declared classification i.e. 59119990 and description of good "Textile Coated Fabric" imported vide SEZ Bill of Entry No. 1014717 dt.

17.10.2022 (SEZ to DTA Bill of Entry No.2017089 dt. 03.11.2022) and order to re-classify the same under HS Code/CTH **59032090** with the description as "**Polyurethane (PU) Coated Fabric**".

- iv. I order to **re-assess these 07 Bills of Entry** [as mentioned at (ii) & (iii)] after including the applicable duties ((BCD+SWS+IGST+ADD+IGST on ADD) under Section 17(4) of the Customs Act, 1962.
- v. I order to **enforce the Bond & Bank Guarantee** to recover the differential duty of Rs. 2,11,66,372/- (Rupees Two Crore Eleven Lakh Sixty Six Thousand Three Hundred and Seventy Two Only), furnished at the time of provisional release of the goods. If the amount in respect of these subject Bills of Entry paid in full by the Noticees, the Bond & Bank Guarantee may be cancelled by the competent authority.

#### **45.2 Confiscation and Redemption Fine in respect of past consignments:**

- i. I order to reject the declared classification under HSN/CTH 59119990 against the description of goods "Textile Coated Fabric" and declared Classification 59050090 against the description of goods "Glitter Fabric" (as mentioned in Annexure-Y at Para 17.1 to the SCN). Further, I order to re-classify the same under HS Code/CTH: **59032090** with the description as "**Polyurethane (PU) Coated Fabric**".
- ii. I order to recover the differential Customs Duty (BCD+SWS+IGST+ADD+IGST on ADD) of **Rs. 1,15,64,091/- (Rupees One Crore Fifteen Lakh Sixty Four Thousand and Ninety One only)** in respect of above Bills of Entry (as mentioned in Annexure-Y at Para 17.1 to the SCN) under the provision of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28(AA) of the Customs Act, 1962. Further I order to recover the differential duty amount from the Actual Owner/Beneficial Owner of the imported goods as mentioned in the Table at Para 25.1 of the SCN.
- iii. I order to confiscate goods imported vide Bills of Entry (as mentioned in Annexure-Y at Para 17.1 of the SCN), having assessable value of Rs. 1,59,04,280/- (Rupees One Crore Fifty Nine Lakh Four Thousand and Eighty only) under the provisions of Section 111(m) of the Customs Act, 1962. However, since the goods are not physically available for confiscation, I do not impose any redemption fine.
- iv. I order to appropriate the amount of Rs. 97,63,680/- (Rupees Ninety Seven Lakh Sixty Three Thousand Six Hundred and Eighty only), already paid during the investigation, towards their Duty Liabilities.

### **45.3 Penalty under Section 112(a), 112(b), 114A, 114AA & 117 of the Customs Act, 1962:**

- i. I impose a penalty of **Rs. 25,00,000/- (Rupees Twenty Five Lakhs only)** upon M/s. Om Enterprises under Section 112(a)(ii) of the Customs Act, 1962. However, I do not impose penalty upon them under Section 112(b) of the Customs Act, 1962 for the reasons stated above.
- ii. I impose a penalty of **Rs. 3,50,000 (Rupees Three Lakhs Fifty Thousand only)** upon Shri Hari Kishan (Proprietor of Om Enterprises) under Section 117 of the Customs Act, 1962.
- iii. I impose a penalty of **Rs. 8,00,000/- (Rupees Eight Lakhs only)** upon Shri Arun Jyoti (Partner of M/s Jai Maa Enterprise), under Section 112(b)(ii) of the Customs Act, 1962, in respect of seized consignments. However, I do not impose penalty upon them under Section 112(a) of the Customs Act, 1962 for the reasons stated above.
- iv. I impose a penalty of **Rs. 40,00,000/- (Rupees Forty Lakhs only)** upon Shri Arun Jyoti (Partner of M/s Jai Maa Enterprise, under Section 114AA of the Customs Act, 1962.
- v. I impose a penalty of **Rs. 6,00,000/- (Rupees Six Lakhs only)** upon Shri Amit Jain (Proprietor of M/s A.N. Enterprise), under Section 112(b)(ii) of the Customs Act, 1962, in respect of seized consignments. However, I do not impose penalty upon them under Section 112(a) of the Customs Act, 1962 for the reasons stated above.
- vi. I impose a penalty of **Rs. 25,00,000/- (Rupees Twenty Five Lakhs only)** upon Shri Amit Jain (Proprietor of M/s A.N. Enterprise), under Section 114AA of the Customs Act, 1962.
- vii. I impose a penalty of **Rs. 5,00,000/- (Rupees Five Lakhs only)** upon Shri Banarsi Dass Khatri (Proprietor of M/s. Shree Ganesh Overseas) under Section 112(b)(ii) of the Customs Act, 1962, in respect of seized consignments. However, I do not impose penalty upon them under Section 112(a) of the Customs Act, 1962 for the reasons stated above.
- viii. I impose a penalty of **Rs. 20,00,000/- (Rupees Twenty Lakhs only)** upon Shri Banarsi Dass Khatri (Proprietor of M/s. Shree Ganesh Overseas) under Section 114AA of the Customs Act, 1962.
- ix. I impose a penalty of **Rs. 30,00,000/- (Rupees Thirty Lakhs only)** upon Shri Kapil Kotiya (Proprietor of M/s. Ocean Logistics), under Section 112(b)(ii) of the Customs Act, 1962. However, I do not impose penalty upon them under Section 112(a) of the Customs Act, 1962 for the reasons stated above.

- x. I impose a penalty of **Rs. 25,00,000/- (Rupees Twenty Five Lakhs only)** upon Shri Kapil Kotiya (Proprietor of M/s. Ocean Logistics), under Section 114AA of the Customs Act, 1962.
- xi. I impose a penalty of **Rs. 3,00,000 (Rupees Three Lakhs only)** upon **Shri Sabu George**, under Section 117 of the Customs Act, 1962.
- xii. I impose a penalty, equal to the amount of duty evaded, i.e. **Rs. 83,64,266/- (Rupees Eighty Three Lakhs Sixty Four Thousand Two Hundred Sixty Six only)** upon M/s Jai Maa Enterprise/beneficial owner under Section 114A of the Customs Act, 1962, in respect of past consignments.
- xiii. I impose a penalty, equal to the amount of duty evaded, i.e. **Rs. 31,99,825/- (Rupees Thirty One Lakhs Ninety Nine Thousand Eight Hundred and Twenty Five only)** upon M/s A.N. Enterprise/beneficial owner under Section 114A of the Customs Act, 1962, in respect of past consignments.

**46.** This order is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

**(NITIN SAINI)**  
**Commissioner of Customs, Mundra**

**By Mail/Speed Post & through proper/official channel**

To,

Notices:

1. M/s Om Enterprises, at C-112/85, Plot No.2/56, East Park Lane, Near Govt. Girls School, Karol Bagh, New Delhi - 110005
2. Shri Hari Kishan, Proprietor of M/s Om Enterprises, at C-112/85, Plot No.2/56, East Park Lane, Near Govt. Girls School, Karol Bagh, New Delhi - 110005
3. Shri Arun Jyoti, Partner of M/s. Jai Maa Enterprise situated at 5289, Hardhiyan Singh Road, Karol Bagh, New Delhi and residing at D-11, Upper Ground Floor, Kirti Nagar, New Delhi-110005.
4. Shri Amit Jain, Proprietor of M/s A.N. Enterprises, 6497, Block No.8, Dev Nagar, Karol Bagh, New Delhi - 110005

5. Shri Kapil Kotiya, S/o Shri Ratan Lal, Proprietor of M/s Ocean Logistics, 212, Vishal Tower, District Center, Janakpuri, New Delhi -110058 residing at B-6, 215-216, Upper First Floor, Rohini Sector-3, New Delhi-110085.
6. Shri Banarsi Dass Khatri, Proprietor of M/s. Shree Ganesh Overseas, situated at House No. 6292, T/F, Block-6B, Gali No. 3&4, Near Gurudwara, Dev Nagar, Karol Bagh, New Delhi-110005.
7. Shri Sabu George, G-Card Holder and Partner of M/s. Rainbow Shipping Services, Office No.220, Gokul Park Building, 2<sup>nd</sup> Floor, Gandhidham-370201.
8. M/s Jai Maa Enterprises 5289, Hardhiyan Singh Road, Karol Bagh, New Delhi-110005.
9. M/s A.N. Enterprises, 6497, Block No. 8, Dev Nagar, Karol Bagh, New Delhi-110005.

**Copy to:**

- (i) The Chief Commissioner of Customs, CCO, Ahmedabad.
- (ii) The Additional Director, Directorate of Revenue Intelligence (DRI), Ahmedabad Zonal Unit Zonal Unit 15, Magnet Corporate Park, Off S.G. Highway, Near Sola Over Bridge, Thaltej, Ahmedabad-380054.
- (iii) The Deputy/Assistant Commissioner (Legal/Prosecution), Customs House, Mundra.
- (iv) The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
- (v) The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
- (vi) Notice Board
- (vii) Guard file/Office Copy