



**प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद**

“सीमा शुल्क भवन,” पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380 009.

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**DIN: 20250871MN000038983C**

**PREAMBLE**

A	फाइल संख्या/ File No.	:	GEN/ADJ/ADC/1159/2025-ICD-SRT-CUS-COMMRTE-AHMEDABAD
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-03/O&A/JC/2014 dated 21.05.2014
C	मूल आदेश संख्या/ Order-In-Original No.	:	<b>117/ADC/SR/O&amp;A/2025-26</b>
D	आदेश तिथि/ Date of Order-In-Original	:	<b>29.08.2025</b>
E	जारी करनेकी तारीख/ Date of Issue	:	<b>29.08.2025</b>
F	द्वारापारित/ Passed By	:	<b>Shravan Ram,</b> Additional Commissioner, Customs Ahmedabad.
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	<b>M/S. MURALIDHAR CREATION (PROPRIETOR- SHRI RADHESHYAM DUDHAT), PLOT NO. 39-40, AMBIKA INDUSTRIAL ESTATE, OPP. BHAVANI INDUSTRIAL ESTATE, SAROLI, SURAT, GUJARAT.</b>
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क(अपील), चौथी मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

**BRIEF FACTS OF THE CASE:**

The officers of the Directorate of Revenue Intelligence, Regional Unit, Surat (hereinafter referred to as DRI for the sake of brevity) received specific information to the effect that M/s. Rudrani Impex Private Ltd., (IEC No. 5206040142) 309, Union Trade Center, B/s. Apple Hospital, Udhna Darwaja, Surat (hereinafter referred to as M/s. RIPL for the sake of brevity), importer and High Seas Seller, was engaged in evasion of Customs duty by diversion of imported Computerized Embroidery Machines falling under CTH 84479020, imported from China against dummy IEC & EPCG licence holders on payment of either Zero duty or 3% concessional Customs duty EPCG Scheme under Customs Notification No. 22/2013-Cus. dated 18.04.2013 and 103/2009-Cus dated 11.09.2009 respectively. M/s. RIPL, with the connivance of other persons, obtained the IECs in the name of various dummy proprietary firms and obtained Zero duty /3% concessional duty EPCG Licences on these dummy IECs holder firms from the DGFT authorities. Further, M/s. RIPL, Imported Computerized Embroidery Machines from China and shown the said machines sold on High Sea Sale basis to these dummy/ fictitious IECs holder firms as well as to certain actual IECs holder firms and got cleared the said machines against EPCG Licences of these firms on payment of Nil Customs duty/ 3% concessional Customs duty and also sold the said machines in cash, to various buyers.

**2.** Acting on the said intelligence, office premises of M/s. RIPL, Surat situated at 309, Union Trade Center, B/s. Apple Hospital, Udhna Darwaja, Surat was searched on 29.11.2013 under Panchnama dated 29.11.2013 (**RUD-1**) in presence of independent panchas and Shri Salil Natveral Shah and Shri Kaushal D. Shukla, both the Directors of M/s. RIPL and various incriminating documents in respect of creation of dummy/fictitious IECs, obtaining EPCG Licences from DGFT, imports and High Sea Sale (HSS) agreement of the Embroidery Machines with such dummy IEC holders, Bank-related documents including cheque-books, deposit counter foils of said created fictitious IEC holders and other loose papers containing financial transactions and machine sale details, rubber stamps of created IECs were recovered and seized under the provisions of Customs Act, 1962.

**3.** Simultaneously, Letter dated 29.11.2013 (**RUD-2**) was forwarded to the Customs, ICD, Sachin, Surat requesting to hold the live consignments of Embroidery Machines, wherein High sea seller was M/s. RIPL and also to forward the documents in respect of imports of Computerised embroidery machines wherein M/s. RIPL was the High Sea Seller. The Deputy Commissioner, Customs, ICD, Sachin, Surat vide letter F. No. VIII/6-3093/ICD Sachin/2013-14 dated 29.11.2013 (**RUD-3**) informed that the consignment of Embroidery Machines

wherein M/s. RIPL was High Sea Seller already cleared by Customs but pending delivery by Custodian was put on hold. The Deputy Commissioner, Customs, ICD, Sachin, Surat vide letter dated 02.12.2013 (**RUD-4**) was requested to provide the details in respect of Embroidery machines put on hold with the custodian and they vide letter F. No.VIII/6-3093/ICD Sachin/2013-14 dated 05.12.2013 (**RUD-5**) forwarded the details of 19 Embroidery Machines lying with Custodian, ICD, Sachin, Surat. Out of the said 19 Embroidery Machines, 9 Embroidery Machines were cleared in the name of M/s. Muralidhar Creation and 1 Embroidery Machine was cleared in the name of M/s. Vency Creation and remaining 9 Embroidery Machines were cleared in the name of three firms viz. M/s. Skyline Creation (4 Embroidery Machines), M/s. Sweta Creation (1 Embroidery Machine) & M/s. Modern Creation (4 Embroidery Machines). Further, the Deputy Commissioner, Customs, ICD, Sachin, Surat vide letter F. No.VIII/6-3093/ICD Sachin/2013-14 dated 31.12.2013 (**RUD-6**) forwarded the photo copies of import documents in respect of importers wherein M/s. RIPL was the High Sea Seller.

**4.** During the course of investigation statement of Shri Salil Natverlal Shah, Director of M/s. RIPL was recorded on 29.11.2013 under Section 108 of the Customs Act, 1962, wherein, among other things he interalia stated that they had imported Computerised Embroidery Machines from China and sold the same on High Sea sale basis to the various buyers based in Surat; that amongst those buyers some buyers were actual buyers having their manufacturing factory; that he produced the details of the said genuine buyers where machines had been actually installed and same were verifiable; that in remaining cases, the importers to whom they had shown the Embroidery machines sold on High sea sale basis did not have the factory premises and hence the said machines had not been installed in the premises shown in the IEC and in EPCG Licences of the said importers; that the said Embroidery machines had been sold to persons other than shown in import documents on cash sale.

As regards clearance of Computerised Embroidery Machines against the said EPCG Licences of the dummy IEC firms, separate action is being initiated against M/s. RIPL and others under the Customs Act, 1962.

**5.** As stated by Shri Salil Natverlal Shah, the Director of M/s. RIPL in his statement recorded on 29.11.2013 (**RUD-7**) and scrutiny of the documents seized from the premises of M/s. RIPL and documents received from the Customs, ICD, Sachin, Surat, it was revealed that in the year 2013, out of total imports of 687 Embroidery machines valued at Rs.39.10 Crores (Approx.) and sold on High Sea sale basis to the various 70 buyers based in Surat by M/s. Rudrani Impex Private Ltd., only 19 buyers were found to be actual buyers having their manufacturing factory. Hence, the verification of the said actual buyers was undertaken.

**5.1 M/s. Muralidhar Creation** (IEC No. 5213005390) (hereinafter referred to as the Noticee for the sake of brevity), Plot No: P/206, 1St Floor, Vibhag-2 GIDC-2, Katargam Road, Fulpada Road, Katargam, Surat and was one out of the total 19 actual importers. M/s. Muralidhar Creation had obtained following Zero duty EPCG Licences from DGFT, Surat:-

<b>Name of the Unit</b>	<b>EPCG Licence No. and date</b>	<b>Description of goods as per EPCG licence</b>	<b>Declared Branch Address in EPCG Licences</b>	<b>Quantity of Embroidery Machines allowed for import</b>	<b>Duty Forgone (in Rs.)</b>
M/s. Muralidhar Creation	5230011946 dated 14.06.2013	Computerized Embroidery Machine 615, 250*500*1200, With Single Sequin	Plot No: P/206, 1St Floor, Vibhag-2 GIDC- 2. Katargam Road, Fulpada Road, Katargam, Surat	15	25,59,150/-
	5230012800 dated 18.10.2013	Flat Computerized Embroidery Machine 615 250*500*1200 W/O Cutter With Standard Accessories	Plot No: P/206, 1St Floor, Vibhag-2 GIDC- 2. Katargam Road, Fulpada Road, Katargam, Surat	12	16,62,153/-

The Noticee had imported from China on High Sea Sale basis from M/s. RIPL and got cleared 24 Computerised Embroidery Machines falling under CTH 84479020 against above said EPCG licences as under:-

<b>EPCG Licence No. and date</b>	<b>Bill of Entry No./ date</b>	<b>Description of Machine</b>	<b>Quantity (in Set)</b>	<b>Ass. Value (in Rs.)</b>	<b>Duty Forgone (in Rs.)</b>
5230011946 dated 14.06.2013 <b>(RUD-8)</b>	3071659 dated 22.08.2013	Computerized Embroidery Machine 615, 250*500*1200, With Single Sequin	4	33,16,008/-	7,57,811/-
	3071660 dated 22.08.2013		4	33,16,008/-	7,57,811/-
	3071877 dated 22.08.2013		4	33,16,008/-	7,57,811/-
5230012800 dated 18.10.2013 <b>(RUD-9)</b>	3850422 dated 19.11.2013	Computerized Embroidery Machine 615 250*500*1200 W/o Cutter	4	23,40,202/-	5,34,809/-
	3850426 dated 19.11.2013		4	23,40,202/-	5,34,809/-
	3850428 dated 19.11.2013		4	23,40,202/-	5,34,809/-
<b>TOTAL</b>			<b>24</b>	<b>1,69,68,630/-</b>	<b>38,77,860/-</b>

The above Computerized Embroidery Machines were imported by the Noticee on High Sea Sale basis from M/s. RIPL on payment of Zero duty under Customs Notification No. 22/2013-Cus. dated 18.04.2013. Out of above 24 Computerized Embroidery Machines of the Noticee, 15 Computerized Embroidery

Machines have been delivered to them and 9 Computerized Embroidery Machines in respect of Bills of Entry No. 3850422 dated 19.11.2013 (4 Machines), 3850426 dated 19.11.2013 (4 Machines) & 3850428 dated 19.11.2013 (1 Machine) were lying with the Custodian, ICD Sachin, Surat.

**6.** The premises shown as Branch address in IEC and EPCG licence of the Noticee situated at Plot No: P/206, 1St Floor, Vibhag-2 GIDC- 2, Katargam Road, Fulpada Road, Katargam, Surat was visited on 11.12.2013 by the officers of DRI, Surat for verification of Computerized Embroidery Machines imported by the Noticee under Panchnama dated 11.12.2013 (**RUD-10**) in presence of independent panchas. During the course of verification, it was noticed that firm namely M/s. Ravi Creation (Proprietor- Shri Pareshkumar B. Bhuva) was functioning at the said address with 9 old Embroidery Machines and during the verification of the said premises, no Computerized Embroidery Machines of M/s. RIPL was found installed therein. Shri Pareshkumar B. Bhuva further informed that actual owner of the said 9 Embroidery Machines installed in the said premises in the name of M/s. Ravi Creation was Shri Radheshyam V. Dudhat, owner of the Noticee firm. During the proceedings of verification, Shri Radheshyam V. Dudhat also arrived at the said premises and informed that Shri Pareshkumar B. Bhuva was working as per his directions and all the 15 Computerized Embroidery Machines of M/s. RIPL imported in the Noticee firm have been installed by them at another premises situated at Plot No. 39/40, Ambika Industrial Estate, Saroli, Surat.

**7.** The officers of DRI Surat visited the premises i.e. Plot No. 39/40, Ambika Industrial Estate, Saroli, Surat on 30.12.2013 for verification of 24 Computerized Embroidery Machines Imported by the Noticee and 13 Computerized Embroidery Machines imported by M/s. Bal Mukund Creation on 30.12.2013. The verification of the said imported Computerized Embroidery Machines was carried out under Panchnama dated 30.12.2013 (**RUD-11**) in presence of independent panchas and Shri Radheshyam V. Dudhat, Proprietor of the Noticee firm. During the course of verification, total 25 Computerized Embroidery Machines of M/s. RIPL were found installed in the said premises i.e. at Plot No. 39/40, Ambika Industrial Estate, Saroli, Surat, out of which 12 Computerized Embroidery Machines were imported by M/s. Muralidhar Creation & 13 Computerized Embroidery Machines were imported by M/s. Bal Mukund Creation. The floor wise details of 25 Computerized Embroidery Machines found installed there were as under:-

<b>Floor</b>	<b>Type Of Computerised Embroidery Machines</b>	<b>No. of Machines found Installed</b>
Ground floor	615 Single Sequence	6
1 <sup>st</sup> Floor	---do---	6
2 <sup>nd</sup> Floor	---do---	6
3 <sup>rd</sup> Floor	---do---	7
<b>Total</b>		<b>25</b>

The said 25 Computerised Embroidery Machines were placed under seizure under the provisions of Section 110(1) of the Customs Act, 1962 under the panchnama dated 30.12.2013, as the same were found installed in the premises other than the declared premises in IEC & EPCG licence. The seized goods were handed over to Shri Radheshyam Dudhat, Proprietor of the Noticee firm for safe custody under Suparatnama dtd. 30.12.2013 (**RUD-12**).

As regards seizure of 13 Computerised Embroidery Machines pertaining to M/s. Bal Mukund Creation, separate action is being initiated against M/s. Bal Mukund Creation and others under the Customs Act, 1962.

**8.** Statement of Shri Radheshyam Dudhat, Proprietor of the Noticee firm was recorded on 30.12.2013(**RUD-13**) in response to the Summons dated 30.12.2013(**RUD-14**) wherein he interalia stated that:-

(i). he started M/s. Muralidhar Creation in the year 2009 with four old second hand Embroidery Machines at Plot No. 723, S.K. Nagar Industrial Estate, Dumbhal, Surat taken on rent; that M/s. Bal Mukund Creation, 108, Shividarshan Society-1, Puna Simada Road, Punagam, Surat was also started in August, 2011 wherein his younger brother Shri Ankit Dudhat was the proprietor of the said firm; that both the said firms were engaged in the manufacturing activities of embroidery work i.e. doing the embroidery work on sarees/dress materials, etc. on embroidery machines on job work basis; that he and his younger brother Ankit Dudhat looked after business activities of both the firms; that he was looking after import of machineries and the work related to marketing including getting the embroidery work on jobwork basis and his brother Ankit looked after Banking, Finance and production i.e. embroidery job work on fabrics of both the firms;

(ii). for import of new Embroidery machines he came in contact of Shri Kaushal Shukla, Director of M/s. RIPL and inquired about process for importing embroidery machines; that he has taken Import Export Code No. 5213005390 from DGFT, Surat in the month of May, 2013 showing the address L-14, Lower Ground Floor, New Abhilasha Market, Near New Adarsh Market, Ring Road, Surat and branch address as P/206, 1st Floor Vibhag-2, GIDC-2. Katragam Road, Fulpada Road, Katargam, Surat; that they also obtained following two Zero duty EPCG Licences in the name of his firm M/s. Muralidhar Creation under Notification No. 22/2013 dated 18.04.2013 by engaging the services of Shri Ranjish Das having Mobile No. 9825945242;

<b>Licence No. &amp; date</b>	<b>Description &amp; No. of Machines</b>	<b>Duty saved (in Rs.)</b>	<b>Place of Installation</b>
5230011946 dated 14.06.2013	Computerised Embroidery Machine Model	25,59,150/-	P/206, 1st Floor Vibhag-2, GIDC-2, Katragam Road,

	615, 6 needle, 15 heads, Embroidery area 250x500x1200, Single Sequin without Cutter -15 Nos		Fulpada Road, Katargam, surat
5230012800 dated 18.10.2013	Computerised Embroidery Machine Model 615, 6 needle, 15 heads, Embroidery area 250x500x1200, Single Sequin without Cutter-12 Nos	16,62,153/-	----do----

that the above IEC and EPCG licences were obtained with the help of Shri Kaushal D. Shukla, Director of M/s. RIPL as per the documents submitted by him for the above mentioned addresses; that after obtaining the said IEC and EPCG licences, they imported total 24 sets of Embroidery Machines from China on High Sea Sale basis from M/s. RIPL as under:-

<b>Sl. No.</b>	<b>Bill of Entry No.</b>	<b>Date</b>	<b>Quantity in set</b>	<b>Ass. Value in Rs.</b>
1	3071659	22-08-2013	4	16,96,266/-
2	3071660	22-08-2013	4	16,96,266/-
3	3071877	22-08-2013	4	17,00,092/-
4	3850422	19-11-2013	4	14,38,054/-
5	3850426	19-11-2013	4	14,38,054/-
6	3850428	19-11-2013	4	14,71,857/-
<b>Total</b>			<b>24</b>	

(iii), out of the said 24 machines, they had received and installed 12 (Sl. No. 1 to 3) machines at 39-40, Ambika Industrial Estate, Opp. Bhavani Industrial Estate, Saroli, Surat whereas the remaining 12 (Sl. No. 4 to 6) machines had not been received so far from the High Sea Seller, though the Bills of Entry have been filed and the same have been cleared from the Customs; that the High Sea Seller had informed that the said remaining 12 machines had been withheld with Custodian at ICD Sachin, Surat; that they had installed 12 Embroidery Machines of M/s. RIPL other than the place of installation shown in the IEC and above EPCG Licences as there was no space available for installation of the machines in the premises located at P/206, 1<sup>st</sup> Floor Vibhag-2, GIDC-2, Katargam Road, Fulpada Road, Katargam, Surat and they had taken another premises on rent at 39-40, Ambika Industrial Estate, Opp. Bhavani Industrial Estate, Saroli, Surat from July, 2013 and installed the said machines therein; that they had not obtained any prior permission from the DGFT or Customs for installation of the said 12 Embroidery machines; that the said new premises i.e. 39-40, Ambika Industrial

Estate, Opp. Bhavani Industrial Estate, Saroli, Surat was owned by Shri Lalitbhai Nanubhai Dobariya but any rent deed was not entered into by them;

(iv). He was present during the Panchnama dated 30.12.2013 drawn at 39-40, Ambika Industrial Estate, Opp. Bhavani Industrial Estate, Saroli, Surat underwhich above 12 imported Computerised Embroidery Machines valued at Rs.51,00 000/- (market value) of his firm M/s. Muralidhar Creation alongwith the 13 Imported Computerised Embroidery Machines valued at Rs.55,25,000/- (Market value) of M/s. Bal Mukund Creation had been seized as the same were installed and put to use at the premises other than the premises declared in the IEC and EPCG Licences; that he agreed with the seizure of said machinery and also the contents of the said Panchnama dated 30.12.2013; that he was also present during the Panchnama dated 11.12.2013 drawn at P/206, 1 Floor Vibhag-2, GIDC-2, Katragam Road, Fulpada Road, Katargam, Surat underwhich the 9 second hand old Embroidery machines installed therein were verified and no any new Embroidery Machine of M/s. RIPL was found there;

(v). He was shown Panchanana dated 29.11.2013 drawn at the office premises of M/s. RIPL, situated at 309, Union Trade Centre, B/s. Apple Hospital, Udhna Darwaja, Ring Road, Surat; that he was also shown File No. 9 of Annexure A (page Nos. 1 to 119) **(RUD-15)** pertaining to M/s. Muralidhar Creation; that the said file No. 9 contained the documents in respect of imports of Computerised Embroidery Machines in M/s. Muralidhar Creation as well as M/s. Bal Mukund Creation on High sea sale basis from M/s. RIPL, that he was shown page No. 33 of said File No. 9 was copy of Importer Exporter Code (IEC) bearing No. 5213005390 in respect of M/s. Muralidhar Creation wherein branch address of M/s. Muralidhar Creation was shown in the said IEC as P/206, 1<sup>st</sup> Floor Vibhag-2, GIDC-2, Katragam Road, Fulpada Road, Katargam, Surat; on being asked about the same, he stated that he had taken the IEC at the above address as his another unit in the name of M/s. Ravi Creation was also functioning at the said address where one of his employee Shri Pareshkumar Babubhai Bhuva was looking after the overall work as per his directions and address proof of the said premises i.e. Electricity Bill for the month of March 2013, placed at page No. 21 of said File No. 9, was available with him which was required for taking IEC;

(vi). on being asked about the rent deed for the said premises i.e. P/206, 1 Floor Vibhag-2, GIDC-2, Katragam Road, Fulpada Road, Katargam, Surat placed at page nos. 35 to 37, of the said file No. 9 wherein Smt. Mayuriben Rameshchandra Mehta was shown as owner of the said premises and a rent deed with effect from 05.08.2013 entered with M/s. Muralidhar Creation, Surat, he stated that the said Rent deed was not actually correct rent deed and same had not been entered with

the owner of the said premises but was created by them and the photograph of Smt. Mayuriben Rameshchandra Mehta pasted on the said rent deed was not of Smt. Mayuriben Rameshchandra Mehta; that actually, the photograph pasted on the said rent deed was of Smt. Dipikaben Pareshkumar Bhuva wife of Shri Pareshkumar Babubhai Bhuva and Identity Card i.e. Election Photo Identity Card used there was also fabricated in the name of Smt. Mayuriben Rameshchandra Mehta; that the said rent deed was registered at Sl. No. 12118 dated 14.11.2013 by Nita J. Mevada, Advocate and Notary, Government of India, Surat, Gujarat (Registration No. NTR/5334); that the said rent deed was prepared and got registered, however, his photograph and signature appearing on the said rent deed was true and correct;

(vii). that the rent deed of the premises i.e. 39-40, Ambika Industrial Estate, Opp. Bhavani Industrial Estate, Saroli, Surat placed at page nos. 57 to 61 of the said file No. 9 wherein Shri Lalitbhai Nanubhai Dobariya was shown as owner of the said premises and a rent deed with effect from 22.08.2013 entered with Shri Radheshyam V. Dudhat, Proprietor of M/s. Muralidhar Creation, Surat and Shri Ankit V. Dudhat, Proprietor of M/s. Bal Mukund Creation was not actually correct rent deed and same had not been entered with the owner of the said premises but it was created by them and the photograph of Shri Lalitbhai Nanubhai Dobariya pasted on the said rent deed was not of Shri Lalitbhai Nanubhai Dobariya; that actually, the photograph pasted on the said rent deed was of Shri Pareshkumar Babubhai Bhuva, who was his cousin; that the said rent deed was registered at Sl. No. 65408 dated 12.09.2013 by I.M Zala, Advocate and Notary, Government of India, Surat, Gujarat (Registration No. 5186); that the said rent deed was prepared and got registered, however, the photographs, signature and thumb impression of him and his brother were true and correct;

(viii). that the rent deed of the premises i.e. L-14, Lower Ground Floor, New Abhilasha Market, Near New Adarsh Market, Ring Road, Surat placed at page nos. 22 to 26 of the said file No. 9 wherein Shri Pareshkumar Babubhai Bhuva was shown as owner of the said premises and a rent deed with effect from 14.08.2013 entered with Shri Radheshyam V. Dudhat was not actually correct rent deed and same had not been entered with the owner of the said premises but, it was created by them with the help of M/s. RIPL; that the photograph pasted on the said rent deed was of Shri Pareshkumar Babubhai Bhuva, his cousin but he was not the owner of the said premises; that the said rent deed was registered at Sl. No. 32796/2013 dated 15.08.2013 by K.D. Bagadiya, Notary, Surat City, Gujarat, Government of Gujarat (Registration No. 707); that the said rent deed was prepared and got registered, however, the photographs, signature and Thumb

impression of him and his cousin Shri Pareshkumar Babubhai Bhuva were true and correct;

(ix). The said fabricated rent deed dated 22.08.2013 created for 39-40, Ambika Industrial Estate, Opp. Bhavani Industrial Estate, Saroli, Kadodara Road, Surat was used for change of address in IEC and EPCG Licences; that the said rent deed was also used for intimation about addition of Factory Premises to the Customs, ICD Sachin, Surat, as per letter available at page no. 68 of the file No. 9; that the said file also contained above both the EPCG Licences at page Nos. 1 to 5 and 52 to 56, copy of Bank Guarantee at page Nos. 27 to 30, Bond at page Nos. 39 & 44 of M/s. Muralidhar Creation; that the page No. 76 to 119 were the documents viz. Debit Note, Bill of Entries, Delivery receipts, High Sea Sale Agreement related to imports of 15 Embroidery machines by M/s. Bal Mukund Creation, owned by his brother Shri Ankit V. Dudhat;

(x). he knew that the Computerised Embroidery Machines imported under Zero duty EPCG scheme were required to be installed and used in the premises declared in IEC and EPCG Licences for the manufacture of the embroidery fabrics and to be exported as per the conditions of the EPCG Licence but his firm had not installed the above seized 12 Computerised Embroidery Machines in declared premises and thereby violated conditions of EPCG Licence and relevant Customs Notification; that he also knew that it was an offence under the Customs Act and he accepted the said offence and agreed to pay the Customs duty leviable on the said seized Computerised Embroidery Machines.

**9.** Statement of Shri Paresh Bhuva, Proprietor of M/s. Ravi Creation, Plot No. P/206, 1st Floor Vibhag-2, GIDC-2, Katragam Road, Fulpada Road, Katargam, Surat was recorded under Section 108 of the Customs Act, 1962 on 08.01.2014(**RUD-16**) in response to the Summons dated 08.01.2014(**RUD-17**) wherein he interalia stated that:-

(i) he is associated with Shri Radheshyam V. Dudhat, his cousin in the work of Embroidery at Plot No. P/206, 1st Floor Vibhag-2, GIDC-2, Katragam Road, Fulpada Road, Katargam, Surat in the year 2012 and within few days Shri Radheshyam V. Dudhat, opened a new firm in the name of M/s. Ravi Creation and made him Proprietor of the same; that he was shown panchnama dated 11.12.2013 drawn at P/206, 1 Floor Vibhag-2, GIDC-2, Katragam Road, Fulpada Road, Katargam, Surat under which the 9 second hand old Embroidery machines installed therein were verified; that the owner of all the 9 Embroidery machines installed in the said premises was Shri Radheshyam V. Dudhat, Proprietor of M/s. Muralidhar Creation, however on paper Shri Radheshyam V. Dudhat made him

Proprietor of M/s. Ravi Creation and he was working as per directions given by Shri Radheshyam V. Dudhat; that Shri Radheshyam V. Dudhat gave him a salary of Rs.20,000/- per month; that he had signed on Rent deed and other documents as asked by Shri Radheshyam V. Dudhat without knowledge of uses of the said documents;

(ii). He was shown statement dated 30.12.2013 of Shri Radheshyam V. Dudhat, Proprietor of M/s. Muralidhar Creation, Surat and statement dated 30.12.2013 of Shri Ankit V. Dudhat, Proprietor of M/s. Bal Mukund Creation, Surat; that he was also shown Panchanama dated 29.11.2013 drawn at the office premises of M/s. Rudrani Impex Pvt. Ltd., situated at 309, Union Trade Centre, B/s. Apple Hospital, Udhna Darwaja, Ring Road, Surat; that he was also shown File No. 9 of Annexure A (page Nos. 1 to 119) pertaining to M/s. Muralidhar Creation; that he supplied the copy of electricity bill in respect of P/206, 1 Floor Vibhag-2, GIDC-2, Katragam Road, Fulpada Road, Katargam, Surat for the month of March 2013, placed at page No. 21 of said File No. 9 to Shri Radheshyam V. Dudhat, as he was looking after the works functioning at the said address, that the page nos. 22 to 26 of the said file No. 9 was rent deed of the premises i.e. L-14, Lower Ground Floor, New Abhilasha Market, Near New Adarsh Market, Ring Road, Surat wherein he was shown as owner of the said premises and a rent deed with effect from 14.08.2013 entered with Shri Radheshyam V. Dudhat; that actually he was not the owner of the said premises and he had signed therein as asked by Shri Radheshyam V. Dudhat and the photograph pasted on the said rent deed was his photograph; that the said Rent deed was not actually correct rent deed and same was created by Shri Radheshyam V. Dudhat;

(iii). the rent deed for the premises 1.e. P/206, 1<sup>st</sup> Floor Vibhag-2, GIDC-2, Katragam Road, Fulpada Road, Katargam, Surat placed at page nos. 35 to 37 of the said file No. 9 wherein Smt. Mayuriben Rameshchandra Mehta was shown as owner of the said premises and a rent deed with effect from 05.08.2013 entered with M/s. Muralidhar Creation, Surat was not actually correct rent deed and same had not been entered with the owner of the said premises but it was also created by Shri Radheshyam V. Dudhat; that the photograph of Smt. Mayuriben Rameshchandra Mehta pasted on the said rent deed was not of Smt. Mayuriben Rameshchandra Mehta and actually, the photograph pasted on the said rent deed was of his wife Smt. Dipikaben Pareshkumar Bhuva and Identity Card i.e. Election Photo Identity Card used there was also of his wife Smt. Dipikaben Pareshkumar Bhuva which was fabricated in the name of Smt. Mayuriben Rameshchandra Mehta; that the photographs and identity card of his wife were supplied to Shri Radheshyam V. Dudhat by him but he did not have any knowledge about the fabrication and signature in the name of Smt. Mayuriben Rameshchandra Mehta

made in the said deed; that the same might be done by Shri Radheshyam V. Dudhat;

(iv). the rent deed of the premises i.e. 39-40, Ambika Industrial Estate, Opp. Bhavani Industrial Estate, Saroli, Surat placed at page nos. 57 to 61 of the said file No. 9 wherein Shri Lalitbhai Nanubhai Dobariya was shown as owner of the said premises and a rent deed with effect from 22.08.2013 entered with Shri Radheshyam V. Dudhat, Proprietor of M/s. Muralidhar Creation, Surat and Shri Ankit V. Dudhat, Proprietor of M/s. Bal Mukund Creation was not actually correct rent deed and same had not been entered with the owner of the said premises but was created by Shri Radheshyam V. Dudhat and the photograph of Shri Lalitbhai Nanubhai Dobariya pasted on the said rent deed was not of Shri Lalitbhai Nanubhai Dobariya. Actually, the photograph pasted on the said rent deed was his photograph and he had signed therein as asked by Shri Radheshyam V. Dudhat; that he was not the owner of the said premises i.e. 39-40, Ambika Industrial Estate, Opp. Bhavani Industrial Estate, Saroli, Surat;

(v). he did not have any connection with the purchase of Embroidery Machines by Shri Radheshyam V. Dudhat and his firms and he was only one of the employee of him and provided him the photos and identity cards of his, his wife as per his directions and he was working in M/s. Ravi Creation, Plot No. P/206, 1st Floor Vibhag-2, GIDC-2, Katragam Road, Fulpada Road, Katargam, Surat as per his directions.

**10.** In view of the above, Summons were issued to the owners of the premises i.e. Plot No. P/206, GIDC-2, Katragam Road, Fulpada Road, Katargam, Surat and Plot No. 39-40, Ambika Industrial Estate, Opp. Bhavani Industrial Estate, Saroli, Surat for further investigation in this matter.

**10.1** Statement of Shri Ramesh Mehta, Proprietor of M/s. Raju Textiles, Plot No. P/206, Ground Floor Vibhag-2, GIDC-2, Katragam Road, Fulpada Road, Katargam, Surat was recorded under Section 108 of the Customs Act, 1962 on 27.01.2014(**RUD-18**) in response to the Summons dated 15.01.2014(**RUD-19**) wherein he interalia stated that:-

(i). he was Proprietor of M/s. Raju Textile, Plot No. P/206, Vibhag-2, GIDC-2, Katragam Road, Fulpada Road, Katargam, Surat wherein 36 Power looms at ground floor had been installed; that owner of the 1st Floor of the said Plot No. P/206, Vibhag-2, GIDC-2, Katragam Road, Fulpada Road, Katargam, Surat was his daughter Smt. Mayuri Ramesh Mehta who after marriage became Smt Mayuri Riteshkumar Bamaniya; that he looked after all the matters regarding rent/lease

of the said premises and had been authorized to produce documents and to give statement by his daughter Smt. Mayuri R. Bamaniya, owner of the said premises;

(ii). He was shown panchnama dated 11.12.2013 drawn at P/206, 1 Floor Vibhag-2, GIDC-2, Katragam Road, Fulpada Road, Katargam, Surat underwhich the 9 second hand old Embroidery machines installed therein were verified; that he had given the said premises i.e. Plot No. P/206, 1st Floor Vibhag-2, GIDC-2, Katragam Road, Fulpada Road, Katargam, Surat to one Shri Paresh Bhuva, Proprietor of M/s. Ravi Creation since August-2012; that M/s. Ravi Creation was engaged in the works of Embroidery Job work and they have installed 9 Embroidery Machines on the said plot for the same; that he produced copy of Rent deed dated 04.12.2013(**RUD-20**) made with M/s. Ravi Creation (Prop. Shri Paresh Bhuva) for the period of 01.12.2013 to 31.05.2014 at a rent of Rs.32,000/- per month;

(iii). He was shown seized File No. 9 containing 119 pages seized under the Panchanama dated 29.11.2013 drawn at the office of M/s. Rudrani Impex Pvt. Ltd. situated at 309, Union Trade Centre, Surat; that the page nos. 35 to 37 of the said File No. 9 was rent deed of the premises i.e. Plot No. P/206, 1st Floor Vibhag-2, GIDC-2, Katragam Road, Fulpada Road, Katargam, Surat wherein Smt. Mayuriben Rameshchandra Mehta was shown as owner of the said premises and a rent deed with effect from 05.08.2013 entered with M/s. Muralidhar Creation, Surat; that the said Rent deed was not correct rent deed and they had not given the said premises on rent to M/s. Muralidhar Creation, Surat and hence no any rent deed was made; that the photograph pasted on the said rent deed was of some other person and not of his daughter Smt. Mayuriben, Voter Identity Card pasted there was also not of his daughter Smt. Mayuriben and appeared to be fabricated in the name of his daughter Smt. Mayuriben Rameshchandra Mehta; that the signatures made on the said rent deed were also not of his daughter; that all the matters regarding renting of the said premises ie. Plot No. P/206, 1st Floor Vibhag-2, GIDC-2, Katragam Road, Fulpada Road, Katargam, Surat were looked after by him and he had never entered any such rent deed for the said premises with M/s. Muralidhar Creation, Surat;

(iv). He did not know Shri Radheshyam V. Dudhat and had never given his above said premises on rent to Shri Radheshyam V. Dudhat; that he did not know any firm in the name of M/s. Muralidhar Creation, Surat and at Plot No. P/206, 1st Floor Vibhag-2, GIDC-2, Katragam Road, Fulpada Road, Katargam, Surat, no firm in the name of M/s. Muralidhar Creation, Surat was running at any time at the said premises.

**10.2** Statement of Shri Lalitbhai Dobariya, owner of the premises of Plot No. 39 - 40, Ambika Industrial Estate, Opp. Bhavani Industrial Estate, Saroli, Surat was recorded under Section 108 of the Customs Act, 1962 on 29.01.2014(**RUD-21**) in response to the Summons dated 15.01.2014 (**RUD-22**) wherein he interalia stated that:-

he was the owner of the said Plot No. 39-40, Ambika Industrial Estate, Opp. Bhavani Industrial Estate, Saroli, Surat and gave the said premises to Shri Radheshyam Dudhat, Proprietor of M/s. Muralidhar Creation and Shri Ankit Dudhat, Proprietor of M/s. Balmukund Creation on rent of Rs.1,45,000/- per month since July-2013 under Rent deed; that he was shown seized File No. 9 containing 119 pages seized under the Panchanama dated 29.11.2013 drawn at the office of M/s. Rudrani Impex Pvt. Ltd. situated at 309, Union Trade Centre, Surat; that the page nos. 57 to 61 of the said File No. 9 was rent deed of the premises i.e. Plot No. 39-40, Ambika Industrial Estate, Opp. Bhavani Industrial Estate, Saroli, Surat wherein he was shown as owner of the said premises and a rent deed for five years with effect from 25.08.2013 entered with Shri Radheshyam Dudhat, Proprietor of M/s. Muralidhar Creation and Shri Ankit Dudhat, Proprietor of M/s. Balmukund Creation; that the said Rent deed was not correct rent deed and Photo pasted on the said rent deed was not his photograph and also the signatures made on the said rent deed were not his signatures; that he gave the said premises i.e. Plot No. 39-40, Ambika Industrial Estate, Opp. Bhavani Industrial Estate, Saroli, Surat to the above both persons only for 11 months, however the said rent deed was made for 5 years, that the said rent deed was created by making forge signatures of his and by pasting photo of some other person, shown as Lalitbhai; that he did not know the person whose photo has been pasted on the said Rent deed.

**11.** In view of the above facts stated by Shri Paresh Bhuva, Shri Ramesh Mehta and Shri Lalitbhai Dobariya, further statement of Shri Radheshyam Dudhat, Proprietor of M/s. Muralidhar Creation was recorded under Section 108 of the Customs Act, 1962 on 05.02.2014(**RUD-23**) in response to the Summons dated 05.02.2014 (**RUD-24**) wherein he interalia stated that:-

(i). he produced Bank statement of following accounts of M/s. Muralidhar Creation showing the payments to M/s. Rudrani Impex Pvt. Ltd., in respect of purchase of 12 Single Sequence Computerised Embroidery Machines of M/s. Rudrani Impex Pvt. Ltd. seized under Panchanama dated 30.12.2013 drawn at their premises i.e. Plot No. 39-40, Ambika Industrial Estate, Opp. Bhavani Industrial Estate, Saroli, Surat:-

(a). Term Loan Account No. 60137520154 with Bank of Maharashtra, Reshamwala Market, Ring Road, Surat wherein one entry of Rs. 75,00,000/- dated 10.07.2013 is mentioned. The said amount of Rs.75,00,000/- was taken as term loan by us in M/s. Muralidhar Creation from Bank of Maharashtra, Reshamwala Market, Ring Road, Surat and the same was paid to M/s. RIPL towards purchasing of 12 Single Sequence Computerised Embroidery Machines on High Sea sale basis.

(b). Current Account No. 290102000013138 with IDBI Bank, Surat wherein following entries were mentioned as payments to M/s. RIPL on various dates:

S.NO	Date	Amount (in Rs)
1	28.05.2013	3,50,000.00
2	30.05.2013	1,50,000.00
3	21.06.2013	20,53,000.00
<b>Total</b>		<b>25,53,000.00</b>

the above amount of Rs.25,53,000/- was paid to M/s. RIPL as margin money for purchase of said 12 Single Sequence Computerised Embroidery Machines. Thus we have paid total Rs.1,00,53,000/- to M/s. Rudrani Impex Pvt. Ltd. for the said 12 Single Sequence Computerised Embroidery Machines @ Rs.8,37,750/- per machine;

(ii). He was shown photo copies of import documents from page no. 1835 to 1895 in respect of import of 12 Single Sequence Computerised Embroidery Machines in the name of M/s. Muralidhar Creation under Bills of Entry No. 3071659, 3071660 and 3071877 all dated 22.08.2013 against zero duty EPCG Licence No. 5230011946 dated 14.06.2013; that those were copies of EPCG Licence, Bills of Entries, Commercial Invoices, Packing Lists, High Sea Sale Agreements, etc. in respect of import of 12 Embroidery Machines in M/s. Muralidhar Creation which were placed under seizure under Panchnama dated 30.12.2013 drawn at their premises i.e. Plot No. 39-40, Ambika Industrial Estate, Opp. Bhavani Industrial Estate, Saroli, Surat; that they had got sanction bank loan only for 12 Single Sequence Computerised Embroidery Machines and hence imported only 12 Single Sequence Computerised Embroidery Machines, out of 15 as mentioned in the said EPCG Licence No. 5230011946 dated 14.06.2013; that he was also shown photo copies of import documents in respect of imports of 12 Computerised Embroidery Machines in the name of their unit M/s. Muralidhar Creation received from the Customs, ICD, Sachin, Surat; that the said 12 Flat Computerised Embroidery Machines have been imported by them under Bill of Entry No. 3850422, 3850426 and 3850428 all dated 19.11.2013 against Zero duty EPCG Licence No. 5230012800 dated 18.10.2013 through M/s. RIPL on High

Sea Sale basis and out of said 12 Computerised Embroidery Machines, 9 Computerised Embroidery Machines were still lying with Custodian, ICD, Sachin, Surat; that the remaining 3 Computerised Embroidery Machines were sold by them on cash basis in domestic market of Surat through one agent namely Shri Jitubhai whose whereabouts and contact no was not with him; that he did not know about the person whom they had sold the said three Computerised Embroidery Machines, as the same were sold through Shri Jitubhai @ Rs.4,25,000/- per machine;

(iii). That they had no space for installation of any other machine in the premises of M/s. Muralidhar Creation at Plot No. 39-40, Ambika Industrial Estate, Opp. Bhavani Industrial Estate, Saroli, Surat and at P/206, 1<sup>st</sup> Floor Vibhag-2, GIDC-2, Katragam Road, Fulpada Road, Katargam, Surat; that it was true that all the said 12 Computerised Embroidery Machines had been imported by them under said EPCG Licence No. 5230012800 dated 18.10.2013 without payment of duty and same were to be installed in the new premises to be taken on rent which still they had not finalized because of financial problem; that they had to sell out 3 machines but remaining 9 machines would be installed at new premises, if taken on rent; that the said 9 Computerised Embroidery Machines, if would not have been withheld by the department at ICD Sachin, Surat, they might have sold the said 9 machines also as due to financial problem and new premises had not been finalized;

(iv). He knew that the Computerised Embroidery Machines imported under Zero duty EPCG scheme were required to be installed and used in the premises declared in IEC and EPCG Licences for the manufacture of the embroidery fabrics and to be exported as per the conditions of the EPCG Licence but the said 12 Computerised Embroidery Machines imported under EPCG Licence No. 5230012800 dated 18.10.2013 without payment of Customs duty were imported by them in the name of his firm but they had sold 3 machines in domestic market of Surat on cash basis and thereby violated conditions of EPCG Licence and relevant Customs Notification; that he also knew that it was an offence under the Customs Act and accepted the said offence and agreed to pay the Customs duty leviable on the said 3 Computerised Embroidery Machines at the earliest.

**12.** The Computerised Embroidery Machines lying with the Custodian, ICD, Sachin, Surat were examined on 11.02.2014 by the officers of DRI, Surat under Panchnama dated 11.02.2014 (**RUD-25**) in presence of independent panchas, Shri Alpesh Kanjibhai Korat, Executive (Operation), M/s. DGDC Ltd., Custodian of ICD, Sachin, Surat, Shri Kaushal Shukla, Director of M/s. RIPL, Shri Hareshkumar Gadhiya (H Card Holder), Manager of M/s. Ukinex Commercial

Services, Surat (CHA), Shri Radheshyam Dudhat, Proprietor of the Noticee firm and Shri Chandrakant Navadiya, Proprietor of M/s. Vency Creation.

During the course of verification, Shri Radheshyam Dudhat, Proprietor of the Noticee firm informed that earlier they had imported 12 Computerised Embroidery Machines but they had installed the same at Plot No. 39/40, Ambika Industrial Estate, Saroli, Surat which is other than declared premises in IEC & EPCG Licence. He further informed that they had imported another 12 Computerised Embroidery Machines under various 3 Bills of Entries, out of which 9 Machines were lying with the Custodian, ICD, Sachin, Surat and remaining 3 machines had been sold by them in local market in cash as there was no space at Plot No. 39/40, Ambika Industrial Estate, Saroli, Surat.

Therefore, the said 9 Computerised Embroidery Machines of M/s. RIPL imported by the Noticee totally valued at Rs. 52,57,110/- (Ass. Value) were placed under seizure under the provisions of Section 110(1) of the Customs Act, 1962 under the panchnama dated 11.02.2014, as the same were to be installed other than declared premises in IEC & EPCG licence and were handed over to the Custodian, ICD, Sachin, Surat for safe custody under Suparatnama dtd. 11.02.2014 **(RUD-26)**.

**13.** On the basis of import documents received from the Deputy Commissioner of Customs, ICD, Sachin, Surat, vide Letters dated 31.12.2013 and 26.02.2014 **(RUD-27)** in respect of Bill of Entry No. 3071659 dated 22.08.2013, Bill of Entry No. 3071660 dated 22.08.2013, Bill of Entry No. 3071877 dated 22.08.2013, Bill of Entry No. 3850422 dated 19.11.2013, Bill of Entry No. 3850426 dated 19.11.2013 and Bill of Entry No. 3850428 dated 19.11.2013 the details of import of Computerised Embroidery Machines imported by the Noticee under EPCG Licence Number 5230011946 dated 14.06.2013 **(RUD-8)** and 5230012800 dated 18.10.2013 **(RUD-9)** at ICD Sachin, Surat were as under: **(RUD-28 to 33)**

B/E Number	B/E Date	Item Description	Quantity Imported (in Nos.)	Unit Price as per Customs assesment in USD	Exchange rate	Assessable value (in Rs.)	Duty Forgone in Rs.
EPCG Licence Number 5230011946 dated 14.06.2013							
3071659	22/08/ 2013	Computerized Embroidery Machine 615, 250*500*1200, <u>With Single Sequin</u> , W/O Cutter, With Standard Accessories	4	13000.00	61.90	3316008	757811
3071660	22/08/ 2013	Computerized Embroidery Machine 615, 250*500*1200,					

		<u>With Single Sequin</u> , W/O Cutter, With Standard Accessories	4	13000.00	61.90	3316008	757811
3071877	22/08/2013	Computerized Embroidery Machine 615, 250*500*1200, <u>With Single Sequin</u> , W/O Cutter, With Standard Accessories	4	13000.00	61.90	3316008	757811
EPCG Licence Number 5230012800 dated 18.10.2013							
3850422	19/11/2013	Computerized Embroidery Machine 615 250*500*1200 W/O Cutter, With Standard Accessories	4	9000.00	63.10	2340202	534809
3850426	19/11/2013	Flat Computerized Embroidery Machine 615 250*500*1200 W/O Cutter, With Standard Accessories	4	9000.00	63.10	2340202	534809
3850428	19/11/2013	Flat Computerized Embroidery Machine 615 250*500*1200 W/O Cutter, With Standard Accessories	4	9000.00	63.10	2340202	534809
<b>Total</b>			<b>24</b>			<b>16968630</b>	<b>3877860</b>

**14.** On scrutiny of the documents received from the Customs, ICD, Sachin, Surat, it was noticed that the Noticee had imported above said 24 Computerized Embroidery Machines under Export Promotion Capital Goods (EPCG) Authorisation Scheme as per the provisions of the Foreign Trade Policy-2009-14 and conditions of Notification No. 22/2013-Cus. dated 18.04.2013. the Noticee had executed bond of Rs.79,65,000/- **(RUD-34)** along with Bank Guarantee of Rs.4,27,000/- bearing No. BG/505/2013-14 dated 12.08.2013 **(RUD-35)** issued by the Kapol Co-operative Bank Ltd., Surat against EPCG Licence No. 5230011946 dated 14.06.2013 and bond of Rs.50,35,000/- **(RUD-36)** along with Bank Guarantee of Rs.2,42,000/- bearing No. 0306BG004242013 dated 30.10.2013 **(RUD-37)** issued by the South Indian Bank Ltd., Surat against EPCG Licence No. 5230012800 dated 18.10.2013, before the Deputy Commissioner of Customs, ICD, Sachin, Surat, at the time of clearance of said 24 machines in terms of para 6 of the above said notification. The main conditions of Bond given for import of goods under EPCG Licences at the port of importation were:

- 1. the obligor(s) shall fulfill all the conditions of the said notification, observe all the terms and conditions of the said notification.*

2. the obligor (s) shall observe all the terms and conditions specified in the licence.
3. the obligor(s), shall fulfill the export obligation as specified in the said notification and the licence and shall produce evidence of having so fulfilled the export obligation within 30 days from the expiry of the specified export obligation period to the satisfaction of the Government.
4. In the event of failure to fulfill full or part of the export obligation as specified in the said notification and the licence, the obligor(s), hereby undertake to pay the Customs duty but for the exemption and also interest @ 18% per annum thereon forthwith and without any demur, to the Government.
5. the obligor (s), shall comply with the conditions and limitations stipulated in the said import and export policy/foreign trade policy as amended from time to time.
6. the obligor (s), shall not change the name and style under which the obligor(s), are doing business or change the location of the manufacturing premises except with the written permission of the Government.

*If each and everyone of the above conditions is duly complied with by the obligor(s), the above written bond shall be void and of no effect; otherwise the same shall remain in full force and effect and virtue.*

*It is hereby declared by the obligor(s) and the Government as follows:*

1. *The above written bond is given for the performance of an act in which the public are interested.*
2. *The Government through the Commissioner of Customs or any other officer of Customs shall recover the sums due from the obligor(s) in the manner laid down in Sub-section (1) of Section 142 of the Customs Act, 1962.*

*Provided always that the liability of the surety here under shall not be impaired or provided discharged by reason of any time being granted, or any forbearance, act or omission of the Government (whether with or without knowledge or the consent of the surety) in respect of or in relation to the obligation and condition to the performed or discharged by the obligor(s) nor shall it be necessary to sue the obligor(s) before suing the surety for amounts here under.”*

**15.** Whereas, the Noticee vide letters dated 22.08.2013 & 19.11.2013 placed in the import documents of respective Bill of Entries addressed to the Assistant Commissioner of Customs, ICD, Sachin, Surat gave their No Objection for the assessment of Computerized Embroidery Machines done by the Customs. Authorities and agreed with the loaded value of said imported Computerized Embroidery Machines. The Noticee also declared that they will not dispute/challenge/ contest the loaded value of the goods.

**16.** From the foregoing facts & circumstances and material evidences, as brought during the course of investigations, it transpires that: -

- (I) Zero duty EPCG scheme under Notification No.22/2013 Customs dated 18.4.2013 is available to the imports subject to actual user condition and the goods imported cannot be transferred or sold, etc. till the fulfillment of Export Obligation, Installation and use of the imported capital goods is provided for in the Customs notifications for which certificates either from Jurisdictional Central Excise officer or Chartered Engineer has to be produced certifying its Installation and use.
- (II) The salient features of Notification No.22/2013 Customs dated 18.4.2013 are as under;

**Notification no. 22/2013-Cus. Dated 18.04.2013**

This Notification provide exemption from so much of duty of customs leviable thereon which is specified in the First schedule to the Customs Tariff Act, 1975 as is in excess of the amount calculated at the rate of three percent ad-valorem and the whole of the additional duty leviable thereon under Section 3 of the said Customs Tariff Act when specifically claimed by the importer subject to following conditions;

- (1) the goods imported are covered by a valid authorization issued under the EPCG scheme in terms of Chapter 5 of the Foreign Trade Policy permitting import of goods at zero customs duty;
- (2) .....
- (3) .....
- (4) .....
- (5) that the goods imported shall not be disposed of or transferred by sale or lease or any other manner till export obligation is complete;
- (6) .....
- (7) .....
- (8) .....
- (9) .....
- (10) that the capital goods imported, assembled or manufactured are installed in the importer's factory or premises and a certificate from the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, is produced confirming installation and use of capital goods in the importer's factory or premises, within six months from the date of completion of imports or within such extended period as the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, may allow.....

Provided further that if the Importer, including an importer who is a Common Service Provider (CSP), is not registered with the Central Excise or if the importer is a service provider (other than a CSP), as the case may be, he may produce the said certificate of installation and usage issued by an independent Chartered Engineer:

- (11) .....

(III) From the above, it is clear that Notification No. 22/2013-Cus, dated 18.04.2013 provides full exemption from payment of BCD and ACD with a condition at S. No. 2(5) of the said Notification that the goods imported shall not be disposed of or transferred by sale or lease or any other manner till export obligation is complete. From the conditions as enumerated in the above said Notification it appears that if any importer had disposed off the Capital Goods imported under the above Notification without completing Export Obligation, then duty exemption benefit of the above Notification is not available to them.

(IV) From the above, it is clear that Notification No. 22/2013-Cus. dated 18.04.2013 provides full exemption from payment of BCD and ACD with a condition at S. No. 2(10) of the said Notification that the capital goods imported, assembled or manufactured are installed in the importer's factory or premises and a certificate from the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, or by an independent Chartered Engineer, as the case may be, is produced confirming installation and use of capital goods in the importer's factory or premises, within six months from the date of completion of imports. From the conditions as enumerated in the above said Notification it appears that if any importer had not been installed the Capital Goods imported under the above Notification in their declared factory premises and had not submitted the Certificate confirming installation and use of capital goods in the importer's factory or premises within six months from the date of completion of imports, then duty exemption benefit of the above Notification is not available to them.

(V) Whereas it appears, in the instant case, such similar modus operandi has been adopted by the Noticee and the reasons for coming to conclusion are enumerated as under;

(i) The office of the DGFT, Surat on the basis of Application made by said importer issued Zero duty EPCG Authorisations No. 5230011946 dated 14.06.2013 and 5230012800 dated 18.10.2013 for import of the Computerised Embroidery Machines as mentioned in para 5.1 above. It therefore appears that the importer had obtained the said EPCG licenses for import of Computerised Embroidery Machines to be installed at Plot No: P/206, 1<sup>st</sup> Floor, Vibhag-2 GIDC-2, Katargam Road, Fulpada Road, Katargam, Surat.

(ii) Further, it appears, after obtaining the Authorisations, on the basis of misrepresentation of the facts, the Noticee had filed Bill of Entry and other documents

and imported the impugned goods on payment of Zero Customs duty under Customs Notification No. 22/2013-Cus. dated 18.04.2013.

(iii) During the verification of premises declared as Branch address in IEC and EPCG licence by the Noticee i.e. Plot No: P/206, 1<sup>st</sup> Floor, Vibhag-2 GIDC- 2, Katargam Road, Fulpada Road, Katargam, Surat, it was found that another unit was functioning at the said premises and no any Computerised Embroidery Machine of M/s. RIPL was found installed there. Further, owner of the said premises informed that they never gave their premises on rent to Shri Radheshyam Dudhat, Proprietor of the Noticee firm. Thus, the rent deed submitted by Shri Radheshyam Dudhat, Proprietor of the Noticee firm in respect of said Plot No: P/206, 1<sup>st</sup> Floor, Vibhag-2 GIDC-2, Katargam Road, Fulpada Road, Katargam, Surat to the DGFT, Surat for obtaining IEC and EPCG Licence was forged and created by the Noticee only to misuse the EPCG Scheme.

(iv) Shri Radheshyam Dudhat, Proprietor of the Noticee firm in his statements recorded on 30.12.2013 and 05.02.2014 under Section 108 of the Customs Act, 1962, accepted that the premises declared as Branch address before DGFT to obtain IEC & Zero duty EPCG Licence i.e. Plot No: P/206, 1<sup>st</sup> Floor, Vibhag-2 GIDC- 2, Katargam Road, Fulpada Road, Katargam, Surat was never in the possession of the Noticee firm and all the 12 Computerized Embroidery Machines imported by them under zero duty EPCG scheme in respect of EPCG Licence No. 5230011946 dated 14.06.2013 had been installed by them at Plot No. 39-40, Ambika Industrial Estate, Opp. Bhavani Industrial Estate, Saroli, Surat which is other premises than declared in IEC & EPCG Licence place.

(v) Further, in respect of 12 Computerised Embroidery Machines imported under EPCG Licence No. 5230012800 dated 18.10.2013, 9 Computerised Embroidery Machines were lying with the Custodian ICD, Sachin, Surat and 3 Computerised Embroidery Machines were delivered to the Noticee and all the said 3 Computerised Embroidery Machines imported under Zero duty EPCG scheme were sold by the Noticee in local market in cash and in respect of remaining 9 Computerised Embroidery Machines, they were planning either to install the same at another place or to sale the same in local market in cash. Shri Radheshyam Dudhat, Proprietor of the Noticee firm in his statements recorded on 05.02.2014 under Section 108 of the Customs Act, 1962, accepted the above facts and stated that due to financial problem, they had sold 3 Computerised Embroidery Machines delivered to them and in respect of remaining 9 Computerised Embroidery Machines, they were planning either to install the same at another place or to sale the same in local market in cash.

(vi) The exemption under related Customs Notification No.22/2013 - Customs dated 18.4.2013 under the EPCG scheme is subject to the condition that the goods imported are covered by a valid authorization issued under the Export Promotion Capital Goods (EPCG) Scheme in terms of Chapter 5 of the Foreign Trade Policy permitting import of goods at zero customs duty and that the goods imported shall not be disposed of or transferred by sale or lease or any other manner till export obligation is complete. It therefore appears that the Noticee had mis-declared the same in all the documents filed before the customs authority for clearance of above machines;

(vii) From the above, it appears that the Noticee had imported Computerized Embroidery Machines & got cleared in the name of forged/created documents in respect of addresses of the firm by availing the Customs duty EPCG scheme benefits. It appears, the Noticee had intentionally mis-declared the addresses of the firm before the every authority viz. banks for taking loan, the DGFT for taking the license and Customs authority with intention to avail undue benefit under the EPCG scheme.

(viii) Further, the said imported Computerised Embroidery machines have been finally assessed by the Customs, ICD, Sachin, Surat and no appeal or protest have been filed against the assessment of the Bills of Entry filed by the Noticee. Hence, the value of the Embroidery machines imported at the port of ICD, Sachin, Surat appears to have been correctly assessed.

**17.** In view of the above discussion, actual Customs duty leviable on the importation of above said 24 imported Computerized Embroidery Machines by the Noticee, at the applicable rate on 22.08.2013 and 19.11.2013 was worked out. The Noticee had imported 24 Computerized Embroidery Machines on payment of zero customs duty under EPCG Licence No. 5230011946 dated 14.06.2013 and 5230012800 dated 18.10.2013, vide Bills of Entry No. 3071659, 3071660 & 3071877 all dated 22.08.2013 and 3850422, 3850426 & 3850428 all dated 19.11.2013 on High sea Sale basis from M/s. RIPL for Assessable Value of Rs. 1,69,68,630/- and the duty forgone for the said import comes to Rs. 38,77,860/-, as mentioned in Para 13 above.

**18.** During the course of investigation, the Noticee voluntarily paid the Customs duty of Rs.16,04,482/- leviable on import of 12 Computerized Embroidery Machines imported under EPCG Authorisation No. 5230012800 dated 18.10.2013 by mis-declaring the address of the firm, out of which 3 Machines have been sold by them in local market in cash and 9 machines were placed under seizure on

11.02.2014 at ICD, Sachin, Surat. The details of payments are as under:- **(RUD-38 to 43)**

<b>Sl. No.</b>	<b>Amount paid in Rs.</b>	<b>TR-6 Challan No./Date</b>
1	2,00,000/-	55/2013-14 dated 24.02.2014
2	2,01,055/-	67/2013-14 dated 13.03.2014
3	5,34,812/-	68/2013-14 dated 13.03.2014
4	1,33,703/-	69/2013-14 dated 13.03.2014
5	5,34,812/-	70/2013-14 dated 13.03.2014
6	100/-	71/2013-14 dated 13.03.2014
<b>Total</b>	<b>16,04,482/-</b>	

**19.** From the facts discussed in forgoing paras and material evidences available on record, it appears that Shri Radheshyam Dudhat, Proprietor of the Noticee, by way of willful mis-statement and suppression of facts, fraudulently availed benefits in terms of Para 5.1 of the Policy and also contravened the provisions of Chapter 5 of the Foreign Trade Policy 2009-14, the conditions of the bond executed by the Noticee for availing zero Duty EPCG Scheme at the time of importation before the designated authority of Customs read with Notification No.22/2013 Customs dated 18.4.2013, in as much as they had obtained zero duty EPCG Authorisation by giving false declarations to the DGFT, Surat regarding the address of the firm.

**20.** On the basis of such authorization the Noticee had imported 24 Computerized Embroidery Machines having total assessable value of Rs.1,69,68,630/- under Bills of Entry No. 3071659, 3071660 & 3071877 all dated 22.08.2013 and 3850422, 3850426 & 3850428 all dated 19.11.2013 by willfully mis-declaring the address of the firm as Plot No: P/206, 1<sup>st</sup> Floor, Vibhag-2 GIDC-2, Katargam Road, Fulpada Road, Katargam, Surat. The said address of the firm on verification was found in the possession of other firm and person, as evident from the Panchnama dated 11.12.2013 drawn at Plot No: P/206, 1St Floor, Vibhag-2 GIDC-2, Katargam Road, Fulpada Road, Katargam, Surat, statement dated 30.12.2013 and 05.02.2014 of Shri Radheshyam Dudhat Proprietor of the Noticee firm, Statement dated 08.01.2014 of Shri Paresh Bhuva, Proprietor of M/s. Ravi Creation, Plot No. P/206, 1 Floor Vibhag-2, GIDC-2, Katragam Road, Fulpada Road, Katargam, Surat and statement dated 27.01.2014 of Shri Ramesh Mehta, appeared on behalf of owner of Plot No. P/206, 1<sup>st</sup> Floor, Vibhag-2, GIDC-2, Katragam Road, Fulpada Road, Katargam, Surat, as discussed in paras supra. Thus, all the 24 imported Computerized Embroidery Machines having total assessable value of Rs.1,69,68,630/- imported under zero duty EPCG scheme appears to be not covered under the valid EPCG license as the said EPCG license was obtained by the Noticee by furnishing forged documents in respect of address of the firm from the licensing authority i.e. DGFT, Surat. Thus, it appears that these imports involve violation of the provisions of Para 5.1 of the Foreign Trade

Policy and Notification No.22/2013 - Customs dated 18.4.2013. As a result, it appears Customs duty exemption under relevant Notification No.22/2013 - Customs dated 18.4.2013 is also not available to impugned machines and therefore the same are liable for full rate of Customs duties. Therefore, there appears to be violation of the provisions of Rule 14 of the Foreign Trade (Regulations) Rules, 1993 read with Section 11 of the Foreign Trade (Development and Regulations) Act, 1992. Thus, it appears that the said imports Involve violations of the provisions of Para 5.1 of the Foreign Trade Policy and conditions of Notification No.22/2013 Customs dated 18.4.2013, whose benefit they had availed, which violations have rendered the goods i.e. 24 imported Computerized Embroidery Machines valued at Rs. 1,69,68,630/- liable to confiscation under Section 111 (0) of the Customs Act, 1962.

**21.** That M/s. Muralidhar Creation (Proprietor Shri Radheshyam Dudhat), had deliberately mis-declared the address of the firm by willful mis-statement and suppression of facts and in contravention to the various provisions of Foreign Trade Policy and the Customs Act and Rules made there under and they had not installed the Capital Goods i.e. 12 machines imported under the above Notification No. 22/2013-Cus. dated 18.04.2013 in their declared factory premises and had not submitted the Certificate confirming installation and use of capital goods in the importer's factory or premises within six months from the date of completion of imports. Further, they have sold 3 Computerised Embroidery Machines in local market in cash and also they have no any other premises for installation & use of 9 (Nine) more machine lying with Custodian of ICD Sachin Surat which were placed under seizure on 11.02.2014. All the 24 imported "Computerized Embroidery Machines" having total assessable value of Rs.1,69,68,630/- imported under Bills of Entry No. 3071659, 3071660 & 3071877 all dated 22.08.2013 and 3850422, 3850426 & 3850428 all dated 19.11.2013 by the Noticee under zero duty EPCG scheme are not covered under the valid EPCG licenses which they had obtained from the licensing authority i.e. DGFT. As a result Customs duty exemption under relevant Notification No.22/2013-Customs dated 18.4.2013 appears not available to impugned machines and therefore liable for full rate of Customs duties. The Customs duty amounting to Rs. 38,77,860/- (as mentioned in Para 13 above) was liable to be recovered from the Noticee under proviso to Section 28(4) of the Customs Act 1962 by invoking the extended period read with Notification No.22/2013-Customs dated 18.4.2013 along with applicable interest under the said Notification in terms of Bond executed by them. The said acts of omission and commission on the part of M/s. Muralidhar Creation appear to have rendered them liable for penal action under the provisions of Section 114A and 112(a) of the Customs Act, 1962.

Further, it appears that the Noticee (Proprietor Shri Radheshyam Dudhat) knowingly submitted false and incorrect Rent Deeds prepared on the basis of forged Electricity Bills and Identity Proofs, before the DGFT, Surat to obtain IEC & EPCG Licences and before Customs at the time of registration of the said EPCG Licences in order to misuse the EPCG scheme and to evade payment of Customs duty. The said facts have been accepted by Shri Radheshyam Dudhat, Proprietor of the Noticee firm in his statements dated 30.12.2013 & 05.02.2014 that they had prepared and submitted false rent deeds to the DGFT, Surat for obtaining IEC and EPCG Licences, by forging electricity Bills and identity Proofs, which is corroborated by statement dated 08.01.2014 of Shri Paresh Bhuva, Proprietor of M/s. Ravi Creation, statement dated 27.01.2014 of Shri Ramesh Mehta, owner of Plot No. P/206, Vibhag-2, GIDC-2, Katragam Road, Fulpada Road, Katargam, Surat and statement dated 29.01.2014 of Shri Lalitbhal Dobariya, owner of the premises of Plot No. 39-40, Ambika Industrial Estate, Opp. Bhavani Industrial Estate, Saroli, Surat. The said acts of commission on the part of the Noticee firm through its proprietor Shri Radheshyam Dudhat appears to have rendered themselves liable for penal action under the provisions of Section 114AA of the Customs Act, 1962, which reads as follows:-

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

**22.** In the view of the above, **M/s. Muralidhar Creation** (IEC No. 5213005390), Plot No. 39-40, Ambika Industrial Estate, Opp. Bhavani Industrial Estate, Saroli, Surat (Proprietor- Shri Radheshyam Dudhat) was issued a show cause notice No. VIII/10-03/O&A/JC/2014 dated 21.05.2014 by the Joint Commissioner of Customs, Surat, as to why:

- (i) The benefit of Zero Duty EPCG Scheme under Notification No.22/2013-Customs dated 18.4.2013 on 24 Computerized Embroidery Machines imported by them should not be denied;
- (ii) The seized goods i.e. 21 Computerized Embroidery Machines totally valued at **Rs. 1,03,65,454/- (Market Value) (Rupees One Crore Three Lakhs Sixty Five Thousand Four Hundred Fifty Four only) (Ass. Value- Rs. 1,52,13,479/-)** should not be confiscated under Section 111(o) of the Customs Act, 1962 read with Notification No.22/2013-Customs dated 18.4.2013 and in terms of Bond executed by them;
- (iii) 3 Computerized Embroidery Machines totally valued at **Rs. 17,55,152/- (Ass. Value) (Rupees Seventeen Lakh Fifty Five Thousand One Hundred Fifty Two only)** sold by them in local market in cash should not be held

liable for confiscation under Section 111(o) of the Customs Act, 1962 read with Notification No.22/2013-Customs dated 18.4.2013 and in terms of Bond executed by them. However, as the goods are not available for confiscation, why fine in lieu of confiscation should not be imposed under Section 125 of Customs Act, 1962 read with conditions of Notification No. 22/2013-Cus. dated 18.04.2013;

- (iv) The Customs duty at applicable rate totally amounting to **Rs. 38,77,860/- (Rupees Thirty Eight Lakh Seventy Seven Thousand Eight Hundred Sixty only)** (equal to duty foregone) on above 24 Computerized Embroidery Machines should not be demanded and recovered from them in terms of Bond executed by them, as per Notification No.22/2013 - Customs dated 18.4.2013 read with proviso to Section 28(4) of the Customs Act, 1962;
- (v) The amount of **Rs.16,04,482/- (Rupees Sixteen Lakh Four Thousand Four Hundred Eighty Two only)** voluntarily deposited by them towards Customs duty on 9 Machines seized at ICD, Sachin, Surat and 3 machines sold in local market in cash, should not be appropriated and adjusted towards their duty liability mentioned at (iv) above;
- (vi) Interest at the appropriate rate should not be recovered from them on the said Customs duty as at (iv) above, in terms of Bond executed by them under Notification No.22/2013-Customs dated 18.4.2013, readwith Section 28AA of the Customs Act, 1962;
- (vii) The Bonds of Rs.79,65,000/- and Rs.50,35,000/- furnished by them against the above consignment imported under Zero Duty EPCG Scheme in terms of Notification No.22/2013-Customs dated 18.4.2013 should not be enforced and security in form of Bank Guarantee for Rs.4,27,000/- and Rs.2,42,000/-, furnished by them should not be encashed and appropriated towards their duty liabilities, interest thereon, fine and penalties.
- (viii) Penalty should not be imposed upon them in terms of Section 114A of the Customs Act, 1962;
- (ix) Penalty should not be imposed upon Shri Radheshyam Dudhat, the Proprietor of M/s. Muralidhar Creation (IEC No. 5213005390), Plot No. 39-40, Ambika Industrial Estate, Opp. Bhavani Industrial Estate, Saroli, Surat under the provisions of Section 114AA of Customs Act, 1962;

**22.1.** The Noticee applied for Provisional Release of 9 sets of seized Computerised Embroidery Machines lying with the Custodian, ICD-Sachin, Surat vide their letter dated 31.03.2014 and 09.06.2014 and the same were released by the Deputy Commissioner, Customs Division, Surat on submission of a Bond amounting to Rs. 52,77,290/- and furnishing of a Bank Guarantee for Rs. 4,25,000/- by the Noticee.

**22.2.** The case was adjudicated by the then adjudicating authority vide OIO No. 20/JC/SRT/O & A/2014 dt. 30.09.2014 wherein the adjudicating authority passed order as under: –

- (i) disallowed the benefit of Zero Duty EPCG Scheme under Notification No.22/2013- Customs dated 18.4.2013 to 24 imported Computerized imported vide Bill of entry no. 3071659, 3071660 and 3071877 all dt. 22.08.2013 and Bills of Entry No. 3850422, 3850426 and 3850428 all dated 19.11.2013;
- (ii) Ordered for confiscation of impugned seized goods i.e. 12 Computerized Embroidery Machines totally valued at **Rs. 99,48,024/- (Rupees Ninety Nine Lakh Forty Eight Thousand Twenty Four only)** under the provisions of Section 111(o) of the Customs Act, 1962. However, allowed the noticee an option to release the said goods on payment of redemption fine of Rs. 29,84,000/- (Rupess Twenty Nine Lakh Eighty Four Thousand) under Section 125 read with 111(o) of the Customs Act, 1962 and Notification No.22/2013-Customs dated 18.4.2013 and in terms of Bond executed by them.
- (iii) Ordered for confiscation of impugned seized goods i.e. 9 Computerized Embroidery Machines totally valued at Rs.52,65,454/- (Rupees Fifty Two Lakh Sixty Five Thousands Four Hundred Fifty Four only) under the provisions of Section 111(o) of the Customs Act, 1962. However, as the seized goods have been got provisionally released by the Noticee by submitting a Bond amounting to Rs. 52,77,290/- and furnishing of a Bank Guarantee for Rs. 4,25,000/- by the Noticee, imposed redemption fine of Rs. 15,83,000/- (Rupees fifteen lacs eighty three thousand) under Section 125 of the Customs Act, 1962.
- (iii) Ordered for confiscation of 3 Computerized Embroidery Machines totally valued at **Rs. 17,55,152/- (Ass.Value) (Rupees Seventeen Lakhs Fifty Five Thousand One Hundred Fifty Two only)**, sold by them in local market in cash, under the provisions of Section 111(o) of the Customs Act, 1962 read with Notification No.22/2013-Customs dated 18.4.2013 and in terms of Bond executed by the Noticee. Since the goods were not available confiscation, imposed redemption fine of Rs.5,26,000/- (Rupees five lacs twenty six thousand) in lieu of confiscation under Section 125 of Customs Act, 1962 read with conditions of Notification No. 22/2013-Cus, dated 18.04.2013,;
- (iv) confirmed the demand of Customs duty amounting to **Rs. 38,77,860/- (Rupees Thirty Eight Lakhs Seventy Seven Thousand Eight Hundred Sixty only)** (equal to duty foregone) on 24 Computerized Embroidery Machines and ordered for recovery the same from M/s. Muralidhar Creation in terms of proviso to Section 28(4) of the Customs Act, 1962;
- (v) ordered to appropriate the amount of Rs.16,04,482/- (Rupees Sixteen Lakhs, Four Thousand, Four Hundred, Eighty Two only) voluntarily deposited by the Noticee towards Customs duty on 9 Machines seized at ICD, Sachin, Surat

and 3 Machines sold in local market in cash. The amount may be adjusted against the duty liability mentioned at (iv) above.

(vi) Ordered for recovery of Interest at the applicable rate from M/s Muralidhar Creation on the Customs duty as mentioned at (iv) above, in terms of Section 28AA of the Customs Act, 1962;

(vii) Imposed penalty of Rs.38,77,860/- (Rupees Thirty Eight lakh Seventy seven Thousand Eight Hundred Sixty only) on M/s. Muralidhar Creation, (Proprietor Shri Radheshyam V. Dudhat); Plot No. 39-40, Ambika Industrial Estate, Opp. Bhavani Industrial Estate, Saroli, Surat) under Section 114A of the Customs Act, 1962;

(viii) Imposed Penalty of Rs.5,00,000/- (Rupees Five Lakh only) on Shri Radheshyam V. Dudhat, the Proprietor of M/s. Muralidhar Creation (IEC No. 5213005390), Plot No. 39-40, Ambika Industrial Estate, Opp. Bhavani Industrial Estate, Saroli, Surat under the provisions of Section 114AA of Customs Act, 1962;

(ix) Ordered to recover the aforesaid liabilities, including the amounts of fine and penalty imposed, if not paid forthwith by M/s. Muralidhar Creation, by enforcing/encashing the Bond for Rs.79,65,000/-, Rs. 50,35,000/-, Rs. 52,77,290/- and Bank Guarantees for Rs.4,27,000/-, Rs.2,42,000/-, Rs.4,25,000/- executed by M/s. Muralidhar Creation at the time of availing the benefit of Notification No.22/2013 - Customs dated 18.4.2013.

**22.3.** Being aggrieved with the Order in Original No. 20/JC/SRT/O & A/2014 dt. 30.09.2014 issued by the Joint Commissioner of Customs, Surat the noticee filed an appeal with the Commissioner of Customs (Appeals), Ahmedabad. The Commissioner of Customs (Appeals), Ahmedabad, vide Order-in-Appeal No. AHD-CUSTM-000-APP-442-14-15 dated 19.03.2015, upheld the order of the adjudicating authority and rejected the appeal filed by the appellant/noticee.

**22.4.** Being aggrieved with the Order-in-Appeal No. AHD-CUSTM-000-APP-442-14-15 dated 19.03.2015 issued by the Commissioner of Customs (Appeals), Ahmedabad, the noticee filed an appeal with Honorable CESTAT, Ahmedabad. Further, Honorable CESTAT, Ahmedabad vide final order no 11976-11977/2024 dated 04.09.2024, allowed the appeal by way of remand to the adjudicating authority for redetermination of duty, interest and penalty considering submissions or legal authorities that may be pleaded by M/s. Muralidhar Creation. Accordingly, as directed by the Honorable CESTAT, the case has been taken up for fresh adjudication.

**DEFENSE SUBMISSION AND PERSONAL HEARING:**

**23.** Opportunities for Personal hearing was given to the noticee on 26.12.2024, 24.02.2025, 25.03.2025 and 03.06.2025. Shri S. Suriyanarayanan, Advocate on behalf of M/s Muralidhar Creation, attended virtual hearing on 03.06.2025 and requested for two weeks' time for submission of written reply. He further requested that EODC should be accepted by the department, which has already been submitted at ICD Sachin in 2023. Thereafter, Shri S. Suriyanarayanan, Advocate submitted written submission dated 02.07.2025, the details of their written submission is as under-

- Vide Order in Original no 20/JC/SRT/O & A/2014 dated 30.09.2014, show cause notice dated 20.05.2014 issued in respect of computerised embroidery machines cleared against EPCG license no 5230011946 dated 14.06.2013 and EPCG license no 5230012800 dated 18.10.2013 were upheld and bank guarantees of ₹ 4,27,000/- + ₹ 2,42,000/- + ₹ 4,25,000/- executed by Muralidhar Creation was encashed by ICD, Sachin, Customs Department.
- In addition to the bank guarantees encashed, an amount of rupees 16,04,482/- was recovered by DRI was also appropriated towards customs duties towards 12 machines (9 machines seized at ICD Sachin and 3 machines alleged to have been sold in local market in cash) in the order in original dated 30.09.2014.
- In the meantime on fulfilment of export obligation, DGFT granted EODC dated 30.08.2019 against EPCG license no 5230011946 dated 14.06.2013 and EODC dated 21.04.2023 against EPCG license no 5230012800 dated 18.10.2013 to Muralidhar Creation. Photocopies of these EODCs have already been submitted to proper officer in ICD Sachin by Muralidhar Creation.
- Ultimately Honourable CESTAT vide its final order no 11976-11977/2024 dated 04.09.2024 allowed the appeal of Muralidhar Creation. Honourable CESTAT held that the ratio in Vency Creation to the effect that diversion of machinery is of no consequence if export obligation is discharged should be considered by the adjudicating authority. Accordingly matter was remanded to your honour to consider the submissions and legal authorities to be pleaded by Muralidhar Creation.
- Accordingly the following submissions are made as per the instructions of Muralidhar Creation-
- None of the machine was sold by Muralidhar Creation and EODC has been issued by DGFT for the entire 2 EPCG licenses.

- Alternatively and without prejudice to the contention that the allegation of 3 machines being sold in the open market for cash was false, Muralidhar Creation submits that on recovery of duty against 3 machines, the requirement to comply with the post importation condition does not exist. Consequently the import of 3 machines stands regularised and section 101 (o) of the Customs Act, 1962 becomes inapplicable and therefore imposition of penalty in respect of 3 machines is not sustainable. Reliance is placed on the following judgements: -

*Phillips (India) Ltd Versus CC-2000 (12) TMI 195-CEGAT, Mumbai*

*Global Boards Ltd Versus CC (Export)-2019 (8) TMI 336-CESTAT Mumbai*

*Maruti Udyog Ltd Versus CC-2001 (2) TMI 210-CEGAT Mumbai*

- Muralidhar Creation further pleads that since the licensing authority, namely, DGFT has issued EODC for the entire 2 EPCG licenses (which includes the 3 machines falsely alleged to have been sold by Muralidhar Creation), confiscation, recovery of duty and imposition of redemption fine is bad in law. Reliance is placed on *Apex International Versus CC-2022 (11) TMI 59-CESTAT Mumbai*.
- No personal penalty on sole proprietor of the firm can be imposed separately as sole proprietor firm and sole proprietor are one and the same. Reliance is placed on *Satyender Singh Vs CC-2005 SCC Online CESTAT 56*.
- At the worst only the duty amount for 3 machines alleged to have been sold in the market for cash, namely, rupees 1,33,707/- (₹16,04,482/- divided by 12) can be adjusted by the revenue towards duty liability and balance amount of ₹ 14,70,775/- and the amounts of bank guarantees, namely, 4,27,000/- + ₹ 2,42,000/- + rupees 4,25,000/- have to be refunded to Muralidhar Creations with interest as per law.

### **DISCUSSIONS AND FINDINGS:**

**24.** I have carefully gone through the Show cause notice, order dt. 04.09.2024 of Hon'ble CESTAT, Ahmedabad, records, submissions and facts in the present case.

**25.** I find that in the present case a Show Cause Notice No. VIII/10-03/O&A/JC/2014 dated 21.05.2014 was issued to M/s Muralidhar Creation (the Noticee). The Noticee had imported 24 computerised Embroidery machines vide Bills of Entry No.3071659, 3071660, 3071877 all dated 22.08.2013 and 3850422,

3850426, 3850428 all dated 19.11.2013. The goods were cleared under EPCG Scheme availing exemption under Notification No. 22/2013-Cus dated 18.04.2013. On investigation, the DRI found that 12 imported machineries had been installed at a premises different from the one indicated in the EPCG license. Few machines were alleged to be sold in open market. Investigation also revealed that importers had willfully manipulated the rent deeds and other documents in order to obtain the said EPCG licenses as also to avail the benefit of notification. Consequently, the SCN apart from seeking to deny the benefit of exemption notification to the subject goods, also proposes confiscation of the subject goods (which had been seized during the Investigations) and so also imposition of penalty on the noticee. I further find that Honorable CESTAT, Ahmedabad vide final order no 11976-11977/2024 dated 04.09.2024 has allowed the appeal of the noticee by way of remand to the adjudicating authority for redetermination of duty, interest and penalty considering submissions or legal authorities that may be pleaded by the noticee. In view of Hon'ble CESTAT, Ahmedabad direction, the case has been taken up for fresh adjudication. Now, the main issues for consideration before me are as follows:-

- (i) Whether the benefit of Zero Duty EPCG Scheme under Notification No.22/2013- Customs dated 18.4.2013 on 24 Computerized Embroidery Machines should be denied to the noticee or otherwise.
- (ii) Whether the noticee are liable to pay the Customs duty at applicable rate totally amounting to Rs. 38,77,860/- in terms of Bond executed by them, as per Notification No.22/2013 Customs dated 18.4.2013 read with proviso to Section 28(4) of the Customs Act, 1962.
- (iii) Whether the 21 Nos. of Computerized Embroidery Machines, Ass. Value- Rs.1,52,13,479/-, be confiscated under Section 111(0) of the Customs Act, 1962 read with Notification No.22/2013 Customs dated 18.4.2013 in terms of Bond executed by them or otherwise. Whether redemption fine in lieu of confiscation is liable for 03 Nos. of Computerized Embroidery Machines alleged to have been sold in the market or otherwise.
- (iv) whether the noticee are liable for penalty in terms of Section 114A of the Customs Act, 1962. And whether penalty under Section 114AA of the Customs Act, 1962 is imposable on Shri Radheshyam V. Dudhat or otherwise.

**26. Now I proceed to decide whether the noticee has fulfilled the conditions of Notification No. 22/2013-Customs dated 18.4.2013 for the EPCG license issued to them. And whether the noticee are liable to pay the**

**Customs duty at applicable rate totally amounting to Rs. 38,77,860/- or otherwise.**

**26.1** It is evident that Notification No. 22/2013-Cus dated 18.04.2013 provides full exemption from payment of BCD and ACD subject to certain conditions. Condition at S. No. 2(5) of the said Notification provides that the goods imported shall not be disposed of or transferred by sale or lease or any other manner till export obligation is complete. In other words if any importer had disposed off the Capital Goods imported under the above Notification without completing Export Obligation, the duty exemption benefit of the above Notification is not available to them. By breaching this condition he loses his eligibility for benefit of exemption under said Notification.

**26.2** Further, condition at S. No. 2(10) of the said Notification provides that the capital goods imported, assembled or manufactured are installed in the importer's factory or premises and a certificate from the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, or by an independent Chartered Engineer, as the case may be, is required to be produced confirming installation and use of capital goods in the importer's factory or premises, within six months from the date of completion of imports.

A careful reading of the above referred conditions establish that the notification is available to "Actual Users" where the importer is bound to discharge his export obligation with the machines installed at the declared premises.

**27.1** In the present case Noticee had imported 24 Computerised Embroidery Machines from China on High Sea Sale basis from one M/s Rudrani Impex Pvt. Ltd. (IEC No. 5206040142), 309, Union Trade Centre, B/s Apple Hospital, Udhna, Surat (importer and High Seas seller). They approached the office of the DGFT, Surat with an application enclosing the details required for issuance of licence. The DGFT, Surat, issued Zero duty EPCG Authorisation No. 5230011946 dated 14.06.2013 and 5230012800 dated 18.10.2013 for Import of total 24 Computerised Embroidery Machines of description "Computerised Embroidery Machine Model 615, Embroidery Area: 250X500X1200 mm. without cutter. The Noticee had obtained the IEC and the said EPCG licenses for import of Computerized Embroidery Machines declaring the name and address of the supporting manufacturer as M/s Muralidhar Creation, P/206, 1 Floor, Vibhag-2, GIDC-2, Katargam Road, Fulpada Road, Katargam, Surat, Gujarat. After obtaining the Authorisations, on the basis of mis-representation

of the facts, the noticee had filed Bill of Entry and other documents and imported the impugned goods availing the benefit of Zero Customs duty under Customs Notification No. 22/2013-Cus. dated 18.04.2013 at the declared branch address in IEC and EPCG as P/206, 1<sup>st</sup> Floor, Vibhag-2, GIDC-2, Katargam Road, Fulpada Road, Katargam, Surat. On visit by the officers of DRI on 11.12.2013, it was noticed that a firm namely M/s Ravi Creation (Prop-Shri Pareshkumar B. Bhuva) was functioning at the said address with 9 old Embroidery Machines. During the Panchnama proceedings, Shri Pareshkumar B. Bhuva informed that actual owner of the said 9 Embroidery Machines was Shri Radheshyam V. Dudhat, owner of M/s Muralidhar Creation, Surat. Shri Radheshyam V. Dudhat also joined the Panchnama proceedings and informed that Shri Bhuva was working as per his directions. That out of total 24 Machines they have received the delivery of only 12 Computerised Embroidery Machines and all the 12 Machines from M/s Rudrani Impex imported by M/s Muralidhar Creation were installed by them at another premises situated at Plot No. 39/40, Ambika Industrial Estate, Saroli, Surat. The Officers of the DRI visited the premises at Plot No. 39/40, Ambika Industrial Estate, Saroli, Surat on 30.12.2013 for verification of 24 Computerised Embroidery Machines imported by the Noticee. On verification, total 25 Machines of M/s Rudrani Impex brand were found installed in the above said premises out of which 12 Computerised Embroidery Machines were imported by the M/s Muralidhar Creation/the Noticee and 13 Computerised Embroidery Machines were imported by M/s Bal Mukund Creation. The 25 Computerised Embroidery Machines found in the above said premises were placed under seizure as the same were found installed in the premises other than the declared premises in IEC and EPCG Licence.

**27.2** In addition to the above evidences in the form of Panchnama drawn on 11.12.2013 and 30.12.2013, also have corroborative evidence in the form of statement of Shri Radheshyam V. Dudhat, Proprietor of the noticee firm recorded on 30.12.2013 & 05.02.2014 under Section 108 of the Customs Act, 1962, wherein he accepted that none of the 24 Machines imported by them under Zero duty EPCG Licence were installed at P/206, 1<sup>st</sup> Floor, Vibhag-2, GIDC-2, Katargam Road, Fulpada Road, Katargam, Surat. The premises i.e. P/206, 1<sup>st</sup> Floor, Vibhag-2, GIDC-2, Katargam Road, Fulpada Road, Katargam, Surat, Gujarat declared as Branch address before DGFT for obtaining IEC & Zero duty EPCG Licences was never in their possession. He admitted that out of the 24 Machines imported by them, 12 Computerised Embroidery Machines have been installed at Plot No. 39/40, Ambika Industrial Estate, Saroli, Surat, which are the premises other than the premises declared in IEC & EPCG Licences.

**27.3** In his statement dated 05.02.2014, Shri Radheshyam V. Dudhat has stated that out of 24 Computerised Embroidery Machines, 12 Machines were imported by them under Bills of Entry No. 3850422, 3850426 and 3850428 all dated 19.11.2013 against Zero duty EPCG Licence No. 5230012800 dated 18.10.2013 through M/s Rudrani Impex Pvt. Ltd. Out of said 12 Computerised Embroidery Machines, 9 Computerised Embroidery Machines were lying with the Custodian, ICD-Sachin, Surat. He also admitted that the remaining 3 Computerised Embroidery Machines were sold by them in local market in cash @ 4,25,000/- per Machine. However, he did not reveal the name of the buyer of the said 3 Computerised Embroidery Machines. On being asked as to where he would have installed the said 9 Computerised Embroidery Machines, if the said Machines had not been withheld by the Department at ICD-Sachin, Surat, he confessed that he might have sold the said 9 Machines also as they were having financial problem and new premises had not been finalized. He also stated that he knew that the Computerised Embroidery Machines imported under Zero duty EPCG Scheme were required to be installed and used in the premises declared in IEC and EPCG Licences.

**27.4** I find that the exemption under related Customs Notification No.22/2013-Customs dated 18.4.2013 under the EPCG scheme is subject to the condition that the goods imported are covered by a valid authorization issued under the Export Promotion Capital Goods (EPCG) Scheme in terms of Chapter 5 of the Foreign Trade Policy 2009-2014 and the said authorization is produced for debit by the proper officer of Customs at the time of clearance. The investigation reveals that the noticee had mis-declared in the documents filed before the customs authority for clearance of above machines.

**27.5** Also, I find that the Noticee had imported Computerized Embroidery Machines and got them cleared by producing forged/created documents in respect of addresses of the firm by availing the Customs duty EPCG scheme benefits. The noticee had intentionally mis-declared the addresses of the firm before the every authority viz. the DGFT for taking the license and Customs authority with intention to avail undue benefit under the EPCG scheme. I further find that the said imported Computerised Embroidery machines have been finally assessed by the Customs, ICD, Sachin, Surat and no appeal or protest have been filed against the assessment of the Bills of Entry was filed by the noticee. I therefore find that the value of the Embroidery machines imported at the port of ICD, Sachin, Surat was correctly assessed.

**28.** As provided in condition No. 6 of Notification No.22/2013-Customs dated 18.4.2013 the Noticee have executed a Bond. The condition No. 5 & 6 of the bond

are very specific, with regards to (i) adhering to the conditions of import and export policy/foreign trade policy and (ii) Not to change the location of the manufacturing premises except with the written permission of the Government. The noticee obtained the authorization bearing No. 5230011946 dated 14.06.2013 for zero duty EPCG scheme by the Director General of Foreign Trade. The authorization mentioned above was attached with a condition sheet, marked as Annexure 'A', as per the condition No. 15, of the sheet, the name and address of the supporting manufacturer was mentioned as Muralidhar Creation, situated at P/206, 1<sup>st</sup> Floor, Vibhag-2, GIDC-2, Katargam Road, Fulpada Road, Katargam, Surat. It is pertinent to mention the condition No. 13 of the Annexure'A', wherein it is stipulated that the "Import of capital goods under the authorization shall be subject to actual user condition".

**28.1** The Government had prescribed certain conditions so as to monitor the export obligations or any other post import obligations and more importantly to prevent the misuse of duty free importation of goods. The noticee was not in possession of the EPCG licence for the premises, where the subject machines were found to be installed. (During the course of physical verification of the imported machines), Shri Radheshyam V. Dudhat, Proprietor of the Noticee firm in his statement dated 30.12.2013 had admitted that he knew that the Computerized Embroidery Machines imported under Zero duty EPCG Scheme were required to be installed and used in the premises declared in IEC and EPCG Licences for the manufacture of the embroidery fabrics and to be exported as per the conditions of the EPCG Licence, but, his firm had not installed the 12 Computerised Embroidery Machines in declared premises and thereby violated the conditions of EPCG Licence and relevant Customs Notification.

**28.2.** The import has been made under the EPCG Scheme, the Scheme in clear terms implies that if the importer fails to install the imported Capital goods at the premises declared with the Customs Authority's and the DGFT, the importer would no longer be eligible for the benefit of the above said Notification.

**29.** The Noticee had obtained IEC No. from DGFT by submitting forged documents as address proof and also submitting the rent agreement at the premises L-14, Abhilasha Textile Market, Salabatpura, Ring Road, Surat, & P/206, 1<sup>st</sup> Floor, Vibhag-2, GIDC-2, Katargam Road, Fulpada Road, Katargam, Surat and 39-40, Ambika Industrial Estate, Opp. Bhavani Indl. Estate, Saroli, Surat fraudulently by fabricating documents and making their relatives as owner of the said premises. I find that investigation has clearly revealed that the Noticee was not in possession of the declared premises mentioned in the EPCG licence and the Computerised Embroidery Machines were imported by the Noticee with

intent to diversion of the same to places other than the premises declared in the EPCG Licence, in violation of the EPCG Scheme and Notification No. 22/2013-Cus. Dated 18.04.2013 and in contravention of the provisions of the Custom Act, 1962.

**30.** From the three Panchnamas dated 11.12.2013 drawn at P/206, 1st Floor, Vibhag-2, GIDC-2, Katargam Road, Fulpada Road, Katargam, Surat, the Panchnama dated 30.12.2013 at the premises at 39-40, Ambika Industrial Estate, Opp. Bhavani Indl. Estate, Saroli, Surat and Panchnama dated 11.02.2014 drawn at ICD Sachin, Surat as well as from the statement dated 08.01.2014 of Shri Pareshkumar Bhuva, Proprietor of M/s Ravi creation, P/206, 1<sup>st</sup> Floor, Vibhag-2, GIDC-2, Katargam Road, Fulpada Road, Katargam, Surat, Statement dated 27.01.2014 of Shri Ramesh Mehta who appeared on behalf of owner of premises at P/206, 1<sup>st</sup> Floor, Vibhag-2, GIDC-2, Katargam Road, Fulpada Road, Katargam, Surat, statement dated 29.01.2014 of Shri Lalitbhai Dobarria, owner of 39-40, Ambika Industrial Estate, Opp. Bhavani Indl. Estate, Saroli, Surat, I find that none of the imported Computerised Embroidery machines were found at the declared address. Also, confessional statements dated 30.12.2013 and 05.02.2014 of Shri Radheshyam V. Dudhat, Proprietor of the Noticee firm removes any ambiguity on the whole intention of availment of benefits of EPCG Scheme in terms of para 5.1 of the Policy by mis-statement and suppression of material facts from the Customs Department as well as DGFT.

**31.** As per the Notification No. 22/2013-Cus dated 18.04.2013, it is necessary and mandatory that the capital goods are required to be installed in the premises declared in the application made to the licensing authority i.e. DGFT authorities. Though the above conditions are mandatory the same has not been followed by the noticee. Thus, the mis-declaration of the premises and non-installation of the said imported goods was unearthed by DRI and in case of Bills of Entry No. 3071659, 3071660 and 3071877 all 22.08.2013 and Bills of Entry No. 3850422, 3850426 and 3850428 all dated 19.11.2013 also the mis-declaration was already made and loss of revenue would have occurred had the DRI had not intervened and seized the machines. The intention of the noticee was evident from the sale of the 03 Nos of imported Computerised Embroidery machines in the open market on cash basis in contravention of the Notification No. 22/2013-Cus dated 18.04.2013.

**32.** Thus, I find that one of the conditions for extending the benefit of Notification No. 22/2013-cus dated 18.04.2013 admittedly does not stand fulfilled by the Noticee. The zero rate of duty under the notification is dependent upon the fulfillment of condition annexed thereto. I find that the language used in the said

notification is clear and lead to only one fact that the imported capital goods should be installed in the factory declared in the license and not any other space. The said goods having not installed in the declared factory premises, the condition cannot be said to have been fulfilled so as to claim the benefit of the same. Thus, it is proved beyond doubt that the noticee were not entitled to claim the benefit of 'zero duty' under notification 22/2013-Cus. Dated 18.04.2013.

**33.** Now coming to the contentions raised by the Noticee in their defence reply/written submission dt. 02.07.2025, I proceed to examine the same on merit:

**33.1** They have submitted that none of the machine was sold by Muralidhar Creation and EODC has been issued by DGFT for the entire 2 EPCG licenses. The noticee in their written submission dt. 02.07.2025 have further submitted that alternatively and without prejudice to the contention that the allegation of 3 machines being sold in the open market for cash was false, Muralidhar Creation submits that on recovery of duty against 3 machines, the requirement to comply with the post importation condition does not exist. Consequently the import of 3 machines stands regularised and section 111 (o) of the Customs Act, 1962 becomes inapplicable and therefore imposition of penalty in respect of 3 machines is not sustainable and relied upon Hon'ble CESTAT case laws in their support.

**33.2** Another contention of the Noticee is that since the licensing authority, namely, DGFT has issued EODC for the entire 2 EPCG licenses (which includes the 3 machines falsely alleged to have been sold by Muralidhar Creation), confiscation, recovery of duty and imposition of redemption fine is bad in law. They relied upon Hon'ble CESTAT decision in the case of *Apex International Versus CC-2022 (11) TMI 59-CESTAT Mumbai*.

**33.3** They further submitted that no personal penalty on sole proprietor of the firm can be imposed separately as sole proprietor firm and sole proprietor are one and the same. They relied upon Hon'ble CESTAT decision in the case of *Satyender Singh Vs CC-2005 SCC Online CESTAT 56*.

**34.** In the instant case the Noticee has imported total 24 Computerised Embroidery Machines vide Bill of Entry Nos. 3071659, 3071660 and 3071877 all 22.08.2013 and Bills of Entry No. 3850422, 3850426 and 3850428 all dated 19.11.2013 availing a zero rate of duty on the condition that the goods will be put to use for manufacture and export of certain products up to certain value within a specified period at declared premises. They have furnished forged rent deeds and 12 Machines out of 24 Machines were found installed at premises other than declared in IEC and EPCG Licence as evident from panchnama dated 30.12.2013

drawn at 39-40, Ambika Indl. Esatae, opp. Bhavani Indi. Esatae, Saroli, Surat and Panchnama dated 11.12.2013 at P/206, 1<sup>st</sup> Floor, Vibhag-2, GIDC-2, Katargam Road, Fulpada Road, Katargam, Surat. Also, in his statement dated 30.12.2013 & 05.02.2014 recorded under Section 108 of Customs Act, 1962, Shri Radheshyam V. Dudhat has admitted to the offence committed by him. Resultantly, the duty liability has to be discharged in full without availing the benefit of the exemption. I also find that the 9 sets of seized Computerised Embroidery Machines lying with the Custodian, ICD-Sachin, Surat, were released by the Deputy Commissioner, Customs Division, Surat on submission of a Bond amounting to Rs. 52,77,290/- and furnishing of a Bank Guarantee for Rs. 4,25,000/- by the Noticee. Further, as the Noticee have sold the three Computerised Embroidery Machines in the local market in cash,

**34.1.** I find that it is evident from panchnamas and statements that the noticee had made false entries in various documents and fabricated the documents. I also find from the records and statements recorded by the investigation that the impugned imported capital goods were not found and installed at the premises declared in the EPCG authorization and documents submitted before customs authorities. The noticee has failed to appreciate that it is settled law that conditions of the exemption notifications are to be followed scrupulously.

**34.2.** I find that the noticee has argued that DGFT has issued EODC for fulfillment of export obligation in the present case and as such they are eligible for the benefit of Notification No. 22/2013-Cus. Dated 18.04.2013. I find that noticee has failed to appreciate that submission of EODC is only one of the ingredients of availing the Notification No. 22/2013-Cus. Dated 18.04.2013. It is evident that EODC has been issued in respect of 03 Nos. of Computerised Embroidery Machines also which have been admittedly sold by the noticee and never been used for the intended production and resultant export. Noticee has failed to appreciate the fact that mere submission of Export Obligation Discharge Certificate (EODC) only would not render them eligible for availment of Notification No. 22/2013-Cus. Dated 18.04.2013, specifically when the investigation done by Directorate of Revenue Intelligence (DRI) have clearly brought out that fabricated documents were used for obtaining EPCG authorization and impugned imported capital goods were never found and installed at the premises declared in the EPCG authorization License.

**34.3.** I also find that Hon'ble CESTAT in the present case has relied upon the decision of Vency Creation V/s Commissioner of Customs, Ahmedabad reported in 2019(369) ELT 1126 ( Tri- AHD). I find that Hon'ble CESTAT in the case of M/s Vency Creation V/s Commissioner of Customs, Ahmedabad has observed that

diversion of machinery, other than the address declared due to termination of rent deed etc is of no consequence. Hon'ble CESTAT in the said case also observed that no investigation was conducted/no statement was recorded from the declared premise owners. Hon'ble CESTAT in the case of M/s Vency Creation V/s Commissioner of Customs, Ahmedabad has observed in Para -4 as under-:

*We have gone through rival submissions. We find that an allegation has been made that the appellant had diverted the machines imported under EPCG scheme and not installed the same in the address declared in the license. The explanation of the appellant is that he had entered into an agreement with the land lord and on that basis he had applied for the license under EPCG scheme, however, when the machines were imported the land lord refused to give premise of land and as a result he had to install the machine at a different premise, nearby. In support of his claim regarding renting of the said premise, he had produced the rent agreement. Revenue has sought to disregard the rent agreement on the basis of what the land lord told the Revenue officials. However, no statements of the said land lord were recorded, nor the said land lord was confronted with the said rent agreement. In these circumstances, we are unable to uphold the charge that the appellant had not entered into the rent agreement for the said premises.*

I find from above that the noticee has failed to appreciate that in the present case a detailed investigation has been carried by the DRI and statements of all the declared premise owners as well as statement of noticee have been recorded by the investigation agency namely DRI. The panchanamas were drawn at declared premises and statement of owner of these persons were recorded, as detailed in para-30 above, which reveal that Shri Radheshyam Dhudhat was not in possession of the premise where the 12 machines were found installed. Thus facts in the present case are entirely different from the facts in the case of M/s Vency Creation V/s Commissioner of Customs, Ahmedabad and for this reason can not be relied upon. I further find that noticee has voluntarily paid the customs duty applicable on 12 Nos. machines, 09 of which were seized at ICD Sachin and 03 of which were sold in open market on cash basis. I find that investigation has clearly revealed that impugned imported capital goods were never found and installed at the premises declared in the IEC & EPCG authorization.

**34.4.** In this connection, a reference was also made to HQ Review Section, Customs Ahmedabad to ascertain the status of the order of Hon'ble CESTAT in the case of M/s Vency Creation V/s Commissioner of Customs, Ahmedabad reported in 2019(369) ELT 1126 ( Tri- AHD) & M/s Murlidhar Creation V/s Commissioner of Customs, Ahmedabad( Final Order No. 11976-11977/2024 in

matter of Customs Appeal No. 11630 of 2015). HQ Review Section, Customs Ahmedabad vide email dt. 28.07.2025 & 30.07.2025 communicated that both the orders of Hon'ble CESTAT in the case of M/s Vency Creation & M/s Murlidhar Creation have been accepted on lower Monetary ground by the department.

**35.** In view of discussions in the forgoing paras, I find that the noticee are not eligible for the benefit of 'zero duty' under notification 22/2013-Cus. dated 18.04.2013. Consequently, the imported capital goods attract appropriate customs duties. Accordingly, I hold that the demand in the Show Cause Notice, under Not. No 22/2013-Cus dated 18.04.2013 read with proviso to Section 28(4) of the Customs Act, 1962 is legal and sustainable.

**36. Now I proceed to decide whether the noticee is liable for confiscation of Capital Goods and penalties as proposed in the Show Cause Notice.**

**36.1** On a careful perusal of Section 111(o) of the Customs Act, 1962, I find that under said Section, "if any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer", then such goods are liable to confiscation. Therefore, the commission/omission on the part of the Noticee, i.e., the failure of the Noticee to fulfill the condition of the Notification No. 22/2013-Cus dated 18.04.2013, by not installing the goods of required value within the specified premises by way of mis-declaration and by disposing off three of the Machines in the local market in cash, the suppression and wilful mis-statement by the Noticee gets squarely covered by the eventualities mentioned under Section 111(o) of the Customs Act, 1962 which make the goods liable for confiscation. Further, I find that the Tribunal, Mumbai in the case of CC Mumbai Vs Multimetal Ltd. 2002 (144) ELT 574 (Tri-Mumbai) has held that when mis-declaration is established, goods are liable to confiscation irrespective of whether there was mala fide or not. This decision has been upheld by the Apex court as reported in 2003 (151) ELT A309 (SC). In the instant case, as the mis-declaration and suppression of facts leading to contravention of the various provisions of Foreign Trade Policy and the Customs Act have been fully established, I have no hesitation to hold that the entire goods covered by the show cause notice are liable to confiscation under section 111(o) of the Customs Act, 1962.

**36.2.** Noticee have submitted that on recovery of duty against 03 machines, the requirement to comply with the post importation condition does not exist and Section 111(o) becomes inapplicable and no penalty can be imposed in respect of

03 machines. They relied upon the decision of M/s Phillips (India) Ltd Versus CC-2000 (12) TMI 195-CEGAT, Mumbai, M/s Global Boards Ltd Versus CC (Export)-2019 (8) TMI 336-CESTAT Mumbai and Maruti Udyog Ltd Versus CC-2001 (2) TMI 210-CEGAT Mumbai. I find that in the decision of M/s Phillips (India) Ltd Versus CC-2000 (12) TMI 195-CEGAT, Mumbai Hon'ble CESTAT has observed that – *unless it can be shown that there was a deliberate attempt to avail the benefit of the deferred payment of duty provided in this notification, it would not be proper to apply the provisions relating to confiscation and penalty only on the ground that the export obligation has not been fulfilled.* Thus, it is evident that facts of the case in M/s Phillips (India) Ltd were not identical with present case since the noticee has submitted forged documents to avail the benefit of notification in the present case and as such cannot be relied upon. I find that in the case of M/s Maruti Udyog Ltd Versus CC-2001 (2) TMI 210-CEGAT Mumbai there has been no breach in the condition of the exemption and hence goods were not liable for confiscation and penalty. In the present case **noticee have submitted forged and fabricated document for issue of EPCG authorization, have failed to install the capital goods at the declared premises and sold few of the impugned machines in the open market as well.** Accordingly, I find that case laws cited by the noticee are not identical to the case in hand and as such cannot be relied upon.

**36.3.** Accordingly, I hold 24 Nos. of Computerised Embroidery Machines liable for confiscation under section 111(o) of the Customs Act, 1962 and redemption fine can also be imposed on said goods in lieu of confiscation. I further find that redemption fine can also be imposed on the 03 Nos of Computerised Embroidery Machines which were sold in the open market on cash basis.

**37.** With regards to leviability of interest in the present case, I find that the Noticee has to pay the amount of duty saved on the import, if it failed to comply with its licensing conditions and post import conditions required to be complied under Customs notification No. 22/2012-Cus dated 18.04.2013. I find that when the Noticee availed of a benefit on a solemn assurance and furnished a legal undertaking to the effect, that it shall perform certain acts necessary for the enjoyment of the benefit being extended in its favor. I form an opinion that the Noticee cannot enjoy those benefits, when the conditions, subject to which the benefit was extended, are violated. I find that noticee cannot avail of a benefit which was available subject to its performing conditions prescribed for the same, without performing such conditions. With regard to interest on the amount of duty recoverable from the Noticee, I find that as per Section 28AA. which deals with interest on delayed payment of duty, it is provided that where a person is chargeable with duty within a specified time, he shall pay, in addition to the duty, interest at such rate from the due date of payment till the date of payment of such

duty. It is, thus, evident that duty determined as payable would earn interest in the event of a delay.

**38.** I find that Show Cause Notice proposes Penalty on the Noticee under Section 114A. The discussions in the foregoing paras leave no ambiguity that M/s Muralidhar Creation/the Noticee imported the goods and mis-declared the address of the premises in the Bills of Entry and EPCG license with a view to claim benefit of exemption Notification No. 22/2013-Cus dated 18.04.2013 so as to evade payment of appropriate duties of Customs thereon. According to 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 wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined”*, In the instant case, it is apparent from the findings recorded herein before that there was suppression and mis-declaration by the Noticee which eventually led that the goods are liable to confiscation. I find that Penalty is an action (in personam) on the importer while the duty and fine are (action in rem) on the goods. I am of the opinion that liability to penalty arises when a person who in relation to any goods acts or omits any act which act or omission would render the goods liable to confiscation. Any person who abets or aids the commission of an act or omits to such an act (which renders the goods liable for confiscation) is also liable to penalty. I find that, when a person acquires possession or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other way dealing in goods which he knows or has reason to believe are liable to confiscation under Section 111 is also liable to penalty under Section 114A. In the instant case the appellant imported the goods subject to a condition that the capital goods were to be installed at a specific premises mentioned in the IEC and EPCG Authorisation, but the Noticee failed to do so and also sold three of the imported Computerised Embroidery Machines in the local market in cash. Therefore, the goods became liable to confiscation under Section 111(o). Since the goods are liable to confiscation under Section 111(o), penalty under Section 114A is attracted. The SCN has clearly brought out the Involvement and active role played by Shri Radheshyam V. Dudhat, Proprietor of M/s. Muralidhar Creation/the Noticee. It is seen that Shri Radheshyam V. Dudhat in his statement dated 30.12.2013 and 05.02.2014 categorically admitted acts of omission and commission rendering the imported goods liable to confiscation under Section 111(o) of the Act.

I therefore, hold that M/s Muralidhar Creation are liable to penalty under Section 114(A) of the Customs Act, 1962 equal to the customs duty payable on the goods which was sought to be evaded and determined herein as payable.

**39.** I also find that the Show cause notice proposes to impose penalty on Shri Radheshyam Dudhat, Proprietor of the Noticee firm under Section 114AA of the Customs Act, 1962. As per Section 114AA of the Customs Act, 1962:

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

In this regard, I find that Shri Radheshyam V. Dudhat has directly indulged in mis-declaration of the address of the firm by willful mis-statement and suppression of facts as he deliberately submitted fabricated and incorrect Rent Deeds on the basis of forged electricity Bills and identity proofs before the DGFT to obtain IEC and EPCG Licences and before Customs at the time of Registration of the said EPCG Licences with intent to misuse the EPCG Scheme and evade payment of Customs duty. He had also not installed the 12 imported Computerised Embroidery Machines in their declared factory premises. He further violated the provisions of EPCG Scheme and Customs Act as he deliberately sold three Computerised Embroidery Machines in local market in cash without fulfilling the accrued export obligation on the said Machines. He has admitted to his offence detailed above in his statement dated 30.12.2013 and 05.02.2014. The noticee has submitted that no personal penalty on sole proprietor of the firm can be imposed separately and relied upon the decision of Hon'ble CESTAT in the case of Satyender Singh V/s CC -2005 SCC Online CESTAT 56. I find that the noticee has failed to appreciate that penalty has been imposed on the noticee firm under Section 114A of the Customs Act, 1962 for non payment of customs duty and penalty has been imposed upon Shri Radheshyam Dudhat, Proprietor of M/s. Muralidhar Creation under Section 114AA of the Customs Act, 1962 for using false and incorrect material. Separate penalty has not been imposed on the noticee firm and the Proprietor for the same act of commission or omission and as such case law relied upon by the noticee is not squarely applicable to the present case. Accordingly, I find that the acts of commission on the part of Shri Radheshyam Dudhat, Proprietor of M/s. Muralidhar Creation attracts penalty under the provisions of Section 114AA of the Customs Act, 1962.

**40.** In view of above discussion and findings, I pass the following order:

## **ORDER**

**(i)** I deny the benefit of Zero Duty EPCG Scheme under Notification No.22/2013- Customs dated 18.4.2013 to 24 Computerized Embroidery Machines imported by M/s. Muralidhar Creation;

**(ii)** I hold seized goods i.e. 12 Computerized Embroidery Machines totally valued at **Rs. 99,48,024/- (Rupees Ninety Nine Lakh Forty Eight Thousand Twenty Four only)** liable to confiscation under the provisions of Section 111(o) of the Customs Act, 1962. However, I hereby allow the Noticee an option to redeem the said goods on payment of redemption fine of **Rs. 25,00,000/- (Rupees Twenty Five Lakh only)** in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

**(iii)** I hold seized goods i.e. 9 Computerized Embroidery Machines totally valued at **Rs.52,77,290/- (Rupees Fifty Two Lakh Seventy Seven Thousand Two Hundred Ninety only)** liable for confiscation under the provisions of Section 111(o) of the Customs Act, 1962. As the seized goods have been got provisionally released by the Noticee by submitting a Bond amounting to Rs. 52,77,290/- and furnishing of a Bank Guarantee for Rs. 4,25,000/- by the Noticee, I impose redemption fine of **Rs. 13,00,000/- (Rupees Thirteen Lakh only)** in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

**(iv)** I hold 3 Computerized Embroidery Machines totally valued at **Rs. 17,55,152/- (Ass.Value) (Rupees Seventeen Lakh Fifty Five Thousand One Hundred Fifty Two only)** sold by them in local market in cash liable for confiscation under Section 111(o) of the Customs Act, 1962. However, as the goods are not available for confiscation, I impose a redemption fine of **Rs.4,50,000/- (Rupees Four Lakh Fifty Thousand Only)** in lieu of confiscation under Section 125(1) of Customs Act, 1962.

**(v)** I confirm the demand of Customs duty totally amounting to **Rs. 38,77,860/- (Rupees Thirty Eight Lakh Seventy Seven Thousand Eight Hundred Sixty only)** (equal to duty foregone) on above 24 Computerized Embroidery Machines and order to recover the same from M/s. Muralidhar Creation in terms of proviso to Section 28(4) of the Customs Act, 1962;

**(vi)** I order that the duty amount of **Rs.16,04,482/- (Rupees Sixteen Lakh Four Thousand Four Hundred Eighty Two only)** voluntarily deposited by them towards Customs duty on 9 Machines seized at ICD, Sachin, Surat and 3 Machines sold in local market in cash shall be adjusted towards their duty liability mentioned at (v) above;

**(vii)** I order to recover interest at the appropriate rate from M/s Muralidhar Creation on the Customs duty confirmed at (v) above, in terms Section 28AA of the

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Customs Act, 1962 read with Notification No. 22/2013-Cus dated 18.04.2013 as amended and conditions of Bond executed and furnished by them in terms of Section 143 of the Customs Act, 1962;

**(viii)** I impose penalty of **Rs. 38,77,860/- (Rupees Thirty Eight Lakh Seventy Seven Thousand Eight Hundred Sixty only)** on M/s. Muralidhar Creation, (Proprietor Shri Radheshyam V. Dudhat); Plot No. 39-40, Ambika Industrial Estate, Opp. Bhavani Industrial Estate, Saroli, Surat) under Section 114A of the Customs Act, 1962;

**(ix)** I impose Penalty of **Rs.4,00,000/- (Rupees Four lakh only)** on Shri Radheshyam V. Dudhat, the Proprietor of M/s. Muralidhar Creation (IEC No. 5213005390), Plot No. 39-40, Ambika Industrial Estate, Opp. Bhavani Industrial Estate, Saroli, Surat under Section 114AA of Customs Act, 1962;

**(x)** The aforesaid liabilities, including the amounts of fine and penalty imposed, if not paid forthwith by M/s Muralidhar Creation, shall be recovered by enforcing the Bond for Rs.79,65,000/-, Rs. 50,35,000/-, Rs. 52,77,290/- executed by the noticee. I order to appropriate the amount of Rs. 10,94,000/- by encashment of the Bank Guarantee for Rs.4,27,000/-, Rs.2,42,000/-, Rs.4,25,000/-, submitted by the Noticee. The same is required to be encashed and deposited in Government exchequer. The amount may be adjusted against the duty, interest and fine/penalty liability confirmed above.

**41.** The Show Cause Notice No. VIII/10-03/O&A/JC/2014 dated 21.05.2014 is disposed of in above terms.

**(Shravan Ram)**  
Additional Commissioner  
Customs Ahmedabad

**DIN: 20250871MN000038983C**

F. No. GEN/ADJ/ADC/1159/2025-ICD-SRT-CUS-COMMRTE-AHMEDABAD

Dated: 29.08.2025

By Speed Post A.D./E-mail /Hand Delivery/Through Notice Board

**To,**

**M/S. MURALIDHAR CREATION  
(PROPRIETOR- SHRI RADHESHYAM DUDHAT),  
PLOT NO. 39-40, AMBIKA INDUSTRIAL ESTATE,  
OPP. BHAVANI INDUSTRIAL ESTATE, SAROLI,  
SURAT-395010, GUJARAT.**

Copy to:-

1. The Principal Commissioner, Customs, Ahmedabad.
2. The Deputy Commissioner of Customs, ICD-Sachin, Surat.
3. The System In-Charge, Customs HQ, Ahmedabad for uploading on the official website i.e. <http://www.ahmedabadcustoms.gov.in>
4. The Joint Director General, DGFT, 6<sup>th</sup> Floor, Resham Bhavan Lal Darwaja, Surat-395003 for information and necessary action.
5. The Assistant Director, DRI, Surat, Regional Unit, Surat.
6. Guard File/Office copy.
7. Notice Board