



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

सीमा शुल्क भवन, आल इंडीया रेडीऑॅ के बाजु मे, नवरंगपुरा, अहमदाबाद 380009

दर भाष (079) 2754 46 30 फैक्स (079) 2754 23 43

**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD
CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD 380009
PHONE : (079) 2754 46 30 FAX (079) 2754 23 43**

निबन्धित पावती डाक द्वारा / By SPEED POST A.D.

फा. स./ F. No.:VIII/10-19/Commr./O&A/2023-24

DIN-20241071MN000000C5F8

आदेश की तारीख/Date of Order : 03.10.2024

जारी करने की तारीख/Date of Issue : 03.10.2024

द्वारा पारित/Passed by:-

**शिव कुमार शर्मा, प्रधान आयुक्त
Shiv Kumar Sharma, Principal Commissioner**

मूल आदेश संख्या : Order-In-Original No: AHM-CUSTM-000-PR.COMMR-48-2024-25
dated 03.10.2024 in the case of Shri Puneet Kesharlal Rungata, Partner of M/s.
Abhishek Impex, Abhishek House, Kadampali Society, Bhattar Char Rasta, Bhatta
Road, Surat.

1. जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।
1. This copy is granted free of charge for private use of the person(s) to whom it is sent.
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंजिल, बहुमाली भवन, गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।
2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad - 380004.
3. उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त

अपील को चार प्रतियों में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियों में अंग्रेजित किए जाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.
4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।
4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)
5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।
5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
6. केंद्रिय सीमा शुल्क अधिनियम, 1962 की धारा 129 ए के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।
6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.
7. इस आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्ष जुरमाना के बारेमें विवाद है उसका भुक्तान करके अपील की जा शकती है।
7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".
8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।
8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice Nos. V.62/15-52/PI-II/02-Pt.III dated 20.09.2006 issued by the Commissioner of Central Excise, Ahmedabad-I to M/ Bhairavi Exim. P. Ltd and others alongwith Shri Shri Puneet Kesharlal Rungata, Partner of M/s. Abhishek Impex, Abhishek House, Kadampali Society, Bhattar Char Rasta, Bhatta Road, Surat (Denovo proceeding as per CESTAT's Final Order No A/10488/2023 dated 13.03.2023)

BRIEF FACTS OF THE CASE:

M/s. Bhairavi Exim Pvt. Ltd, 120, Makhiwala Compound, PWD Dhal, Near Chandola Talav, Narol, Ahmedabad (hereinafter referred to as the said EOU) was permitted to set up a 100% Export Oriented EOU (100% EOU) by the Development Commissioner, Kandla Special Economic Zone, Gandhidham (KSEZ), vide letter F.No. KSEZ/100%EOU/II/A-101/271 dated 4.6.2001 for manufacture of various ready made garments like ladies salwar suit, dupatta, nighties, etc. They were granted a licence for a private bonded warehouse under 100% EOU Scheme under Section 58 of the Custom Act, 1962, as a private bonded warehouse for storage of imported raw materials, etc. for the manufacture of the above final products, without payment of duty on importation and also granted permission for in bond manufacturing under Section 65 of the of the Custom Act, 1962 vide letter F.No. IV/16-3/2001-P dated 23.5.2001, by the Deputy Commissioner, Central Excise and Customs of erstwhile Division-V, Ahmedabad-I (now Division-IV, Ahmedabad-I). The said EOU executed a B-17 Bond for Rs.50 lacs on 24.5.2001 and further a bond of Rs.1 crore on 19.2.2002.

2.1 An information was received by the Department that the said EOU was indulging in evasion of duty by way of illegally selling the imported fabrics in local market instead of using the same in the manufacture of finished export goods. An investigation was, therefore, started. Investigation conducted is outlined in the Show Cause Notice No.V.62/15-52/PI-II/02-Pt.III dated 20.09.2006 issued by the Department. The investigations conducted are briefly reproduced in subsequent paras.

2.2 The Central Excise officers, Ahmedabad-I, on receiving the information that the said EOU was indulging in evasion of Customs duty by way of diverting the procured duty free imported fabrics into the local market, visited and searched the premises of the said EOU on 24/25.9.2002 in presence of independent panchas and Shri Hemantbhai Jayantilal Shah, Authorized Signatory and one of the Directors of the said EOU. During the search proceeding, a physical stock of imported raw materials was carried out, with the following details:-

As per records (receipt & issue i.e. Annexure "A" (A-I) register)			On physical verification		
Product	Cartons	Quantity	Quantity	Cartons	Shortage
Dyed polyester fabrics (imported)	214	83286 sq. m.	79394 sq. m.	204	3892 sq. m.

3.1 A stock verification of the final product was also carried out. It was noticed that a quantity of 19915 pieces of Maxis was available physically and it tallied with the quantity mentioned in daily stock i.e. Annexure 'A' (A-VIII) register for the year 2002-03. It was shown that a quantity of 60124 sq. m. of 100% polyester fabrics were used to produce 19915 pieces of Maxis. It was noticed that Maxis were manufactured out of polyester dyed and printed fabrics. However, as per record it was shown that the quantity of 72503 sq. m. procured imported fabrics under Bill of Entry No.270161, Bill of Entry No.274348 and Bill of Entry No.275960 dated 8.7.02 have been utilized for manufacture of 19915 pieces of Maxis. As per said Bills of Entry, description of fabrics has been mentioned as polyester dyed fabrics. It was found that the Maxis lying in stock were not manufactured from the said imported fabrics and the imported fabrics were also not available physically in the factory premises of the said EOU.

3.2 Shri Hemantbhai Jayantilal Shah deposed that they had manufactured the said Maxis from indigenously procured raw materials (fabrics) and imported fabrics were not used by them for the manufacture of said maxis. He also stated that the

indigenous procurements of fabrics were made from Shri Rohit Mistry, a broker of Surat. The raw materials (3892 sq. m.) found short and imported dyed polyester fabrics (72503 sq. m.) shown to have been used in the manufacture of 19915 pieces of Maxis were actually sold on cash basis under delivery challans to M/s. Prem Textiles, M/s. Ajay Traders, M/s. Jagdish Katara, M/s. Shree Ram Textiles and M/s. Umed Textiles, all of Delhi, M/s. V. V. Nichol of Bhiwandi and M/s. Prakash Traders of Mumbai.

3.3 During search proceeding samples of Maxis of different varieties from different bales were drawn and the said 19915 pieces (97 bales) of Maxis made from indigenous 100% dyed and printed polyester fabrics valued at Rs.7,16,940/- were seized, besides certain records.

4 Simultaneous search was carried out at the office premises of the said EOU situated at 402, Bhagwati Complex, Paldi, Ahmedabad, on 24.9.2002. Shri Ritesh Prafulbhai Gandhi, Accountant stated that four firms were functioning from the said premises viz. M/s. Bhairavi Exim Pvt Ltd. Certain records lying at the office premises pertaining to the said EOU were withdrawn, vide panchnama drawn on 24.9.2002.

5.1 In the course of the inquiry, Shri Hemantbhai Jayantilal Shah, Director of the said EOU, in his statement dated 25.9.2002, inter alia, deposed that:

- the said EOU was functioning for the past one and a half years. He was one of the Directors and the other two Directors were Shri Anandkumar M. Kapadia and Shri Sureshbhai Desai. However, he used to handle the entire operations of the said EOU like warehousing, import, production, packing etc.
- he accepted that the shortage of 10 cartons measuring 3892 sq. m. of dyed polyester fabrics.
- the quantity of 19915 pieces of Maxis was manufactured from fabrics purchased from the local market through a broker Shri Rohit of Surat.
- they had never imported dyed & printed polyester fabrics or procured them from a Domestic Tariff Area (DTA) EOU. The quantity of 72503 sq. m. of imported dyed polyester fabrics imported vide Bill of Entry No.270161, Bill of Entry No. 274348 and Bill of Entry No. 275960 dated 8.7.02 were not used in the manufacture of 19915 pieces of Maxis. He accepted the total duty forgone amounting to Rs.16,73,335/- on 72503 sq. m. of 100% polyester imported fabrics.
- he also accepted the duty foregone amounting to Rs.1,38,451/- on 3892 sq. m. imported fabrics found short.
- he accepted the total duty forgone was Re.18,11,786/- on the quantity of 76395 sq. m. of imported 100% polyester dyed fabrics.
- the total quantity of 76395 sq. m. imported dyed fabrics were sold to different buyers in the month of July, 2002, as detailed in delivery challans filed in Sr. No.27 of Annexure 'A' to the panchnama drawn at the said EOU on 24/25.9.2002.

5.2 Shri Hemantbhai Jayantilal Shah, in his later statement dated 27.9.2002, inter alia, deposed that:

- Shri Anandbhai M. Kapadia, Director of the said EOU used to stay in Ahmedabad for 3 to 4 days and dealt with the work relating to procurement, export, payments, bank, etc.
- the entire work of the said EOU was looked after by him under the directions of Shri Anandbhai M. Kapadia.
- the 7 delivery challans detail the clearances of imported polyester fabrics which were sold to the different parties. Payments for the said transactions were received by Shri Anandbhai M. Kapadia and Shri Mahendrabhai K. Kapadia, (father of Shri Anandbhai M. Kapadia).

- he was not aware about the receipt of 72000 pieces (60 bales) of 100% polyester readymade scarf, purchased from M/s. Shivam Overseas, 7-8, Khadi Park Gala, Bhiwandi under Bill No.35 dated 18.4.2002 and Lorry Receipts Nos.516848 and 516849 both dated 19.4.2002. Shri Anandbhai K. Kapadia would be in a position to say something about this transaction.

6 A search panchnama was drawn on 1.10.2002 at the premises of M/s. Rajesh Transport Co., Kalupur, Ahmedabad. Shri Mangilal Nathulal Mali, Proprietor of M/s. Rajesh Transport admitted to have transported goods on behalf of the said EOU. On going through the Lorry receipts and other records, it was noticed that the said transport Company had booked goods in their own vehicles No.GJ-17 T-8915, GJ -1 TT-6821 and GJ-3 V-4391 and also booked goods on commission basis for other vehicles. Certain records were withdrawn under the panchnama.

7 Shri Mangilal Nathulal Mali, Proprietor of M/s. Rajesh Transport Company, in his statement dated 2.10.2002, inter alia, deposed that:

- from January 2002, the firm was functioning in the present name at present address and previously it was functioning in the name of M/s. Rajesh Tempo Services from another premises.
- he was engaged only in issuing LRs for transporting the fabrics at various places on commission basis. He used to give two LRs issued by him to M/s. Bhairavi Exim Pvt. Ltd. Either M/s. Bhairavi Exim Pvt. Ltd. used to bring the vehicles or they were arranged by him from Kalupur for the transportation. As per instruction of a person of M/s. Bhairavi Exim Pvt. Ltd., he used to mention the name of consignee, address of consignee, description of goods and transportation charges on the LRs issued by him. For this purpose he was charging Rs.50/- per LR.
- the white copy available in the document were the original copies of LRs received back with the signature of the receiver on the back of the LRs showing proof the receipt of the goods at the destination.
- pages 57 to 61 of the seized file were LRs issued on behalf of M/s. Rajesh Tempo Services and goods were received from the said EOU on the dates mentioned on the said documents.
- they had started using the book mentioned at Sr. No.2 of Annexure 'A' to the said panchnama, from January, 2002 (Sr. Nos.1001 to 1022 were used), Sr. No. 1004 and 1005 were cancelled and replaced by Sr. No.1009 and Sr. No.1010 dated 13.1.2002 and 19.1.2002, respectively. LR No.1103 (shown in book mentioned at Sr. No.3 of Annexure 'A' of the said panchnama) was issued to the said EOU and cancelled on its receipt from the said EOU.
- the delivery slip book mentioned at Sr. No.4 of Annexure 'A' to panchnama, contained delivery slips issued for transportation through the driver of the vehicle.
- the delivery slip placed at page No.31 detailed the transportation of goods to Changodar on behalf of the said EOU.

8 Shri Tilakbhai Umarshi Shah, Proprietor of M/s. Vijay Roadlines, Narol-Sarkhej Highway, Ahmedabad, in his statement dated 2.10.2002, inter alia, deposed that:

- they had two loading vehicles having No. GJ-18 T-2322 and GJ-18 T-1125.
- their transport business with the said EOU was through Shri Yogeshbhai Vaidya and the orders were booked on his directions. They had received cash payments against the bookings.
- regarding Entry dated 20.1.2002 in LR Book mentioned at Sr. No 3 of the statement for the booking of 74 bales from Chandola to Bhiwandi through truck bearing registration No.GTD 5525, he stated that they had issued LR No.1029 dated 20.1.2002. The LR was prepared by his

brother Shri Vijay Shah and they had loaded 74 bales of fabrics from the said EOU on the directions of Shri Yogeshbhai Vaidya. The consignor name was shown as M/s. Ganesh Textiles, Ahmedabad whereas the goods were consigned to M/s Raj Textiles, Bhiwandi.

9.1 Shri Rajendra Kumar Nihalchand Sachdeva, Manager in M/s. Okara Trade Parcel Carriers, Behind New Cloth Market, Ahmedabad, in his statement dated 4.10.2002, inter alia, deposed that:

- the present address was their head office for Ahmedabad and they were having two other offices, one at Sitaram Estate, Narol, Ahmedabad and another one at Sunrise Estate, Bavla Gandhinagar Highway, Ahmedabad.
- regarding document mentioned at Sr. No.22 of the panchnama drawn on 24/25.9.2002 at the said EOU, especially 4 LRs issued by M/s. Okara Trade Parcel Carriers and placed at Page Nos.7, 9, 43 and 47, he stated that the style of proforma and printed details of the LRs are similar as mentioned on the LR available in their office but their authenticity was in doubt for two reasons, (i) they did not have an office at Calcutta and (ii) the photocopies of 3 LRs did not bear GR numbers. The authenticity of these LRs could be ascertained from their Mumbai office.
- they used to keep certain blank copies of LR marked as 'Head Office copy' which were used to issue as a duplicate LR in case of the loss of the original copy of LR issued by them.
- regarding the business dealing with the said EOU, he stated that they had received a part payment of Rs.7000/- from the said EOU for transportation. The payment was received against booking made by M/s. Ganesh Textiles of Chandola Talav, Narol, Ahmedabad at their Narol Office (GR No.62240 dated 22.4.2002 for 86 bales of polyester fabrics). The consignment was booked to one Mr. Ashok Rungta of Bhiwandi and delivery was to be made at Mangidhar Roadlines, Village Puriya or Purna, Godown No. 10 at Bhiwandi.
- Seven other bookings were made in the name of M/s. Ganesh Textiles under GR Nos.71166 dated 28.3.2002, 71165 dated 27.3.2002, 81072 dated 1.5.2002, 81235 dated 13.5.2002, 81255 dated 14.5.2002, 83101 dated 12.6.2002 and 83162 dated 15.6.2002 on 'To Pay' basis i.e. freight will be paid by the consignee at the receiving destination.
- for three bookings, delivery challan of M/s. Ganesh Textiles bearing dated 13.5.2002, 1.5.2002 and 13.5.2002 were given.
- in all 8 bookings, the goods transported was polyester fabrics and he did not know whether the bookings made by M/s. Ganesh Textiles were on behalf of M/s. Ganesh Textiles or not.

9.2 Shri Sureshbhai V. Gonnade, Booking Clerk of M/s. Okara Trade Parcel Carriers of Narol, Ahmedabad, in his statement dated 5.10.2002, inter alia, deposed that:

- the 8 LRs No.62240 dated 22.4.2002, 71166 dated 28.3.2002, 71165 dated 27.3.2002, 81072 dated 1.5.2002, 81235 dated 13.5.2002, 81255 dated 14.5.2002, 83101 dated 12.6.2002 and 83162 of 15.6.2002, he stated that except LR No. 62240, all were 'To Pay' LRs.
- the bookings of all 8 consignments were made by M/s. Ganesh Textiles and they had received the copies of delivery challans at the time of booking. The consignment was dispatched to the consignor mentioned in the LRs and the goods transported were 100% polyester fabrics; that for the LR No. 62240, they had received the payment of Rs.7000/-.

10. Shri Yogesh K. Vaidya, in his statement dated 5.10.2002, inter alia, deposed that:

- he worked as a Project Consultant and was the Director in two firms namely M/s. Premium Polyfab and M/s. Lajja Yarns, both located at 402,

Bhagwati Complex, Paldi, Ahmedabad. He was also authorized signatory of the said EOU for specific purpose.

- he used to advise the said EOU on their production policy and dispatch.
- regarding the vouchers showing 'Cash received from Vaidya Saheb', he stated that he used to keep cash in hand on behalf of the said EOU if it was of a considerable amount and though he was not authorized in writing, it was well within the knowledge of the Directors of the said EOU.

11. Shri Uttamkumar Vishnudayal Tiwari, an employee in the said EOU, in his statement dated 7.10.2002, inter alia, deposed that:

- his work in the said EOU was to load/unload vehicles, make octroi payments, as per the directions of Shri Hemantbhai Jayantilal Shah, Director in the said EOU.
- the goods were loaded from the premises of the said EOU and dispatched under the delivery challans of M/s. Ganesh Textiles. He gave the details of the delivery challans of M/s Ganesh Textiles, the corresponding LRs of M/s. Okara Trade Parcel Carriers and the details of cartons loaded in the vehicles.
- the fabrics transported on the above LRs of M/s. Okara Trade Parcel Carriers, were imported 100% polyester fabrics and they were consigned to different buyers as mentioned in the respective LRs.
- the imported polyester fabrics was also transported through the transport agencies like M/s. Rajesh Transport Company and M/s. Vijay Road lines and also in the local market to different buyers.

12. Shri Anandbhai Mahendrakumar Kapadia, Director of the said EOU, in his statement dated 8.10.2002, inter alia, deposed that:

- he was looking after the work related to procurement of imported 100% polyester fabrics and finance related work. He accepted the facts mentioned in the panchnama(s) drawn on 24/25.9.2002 at the factory premises of the said EOU, drawn on 25.9.2002 at the godown located at Rabia Bivi Estate, drawn on 24.9.2002 at the office premises of the said EOU at 402, Bhagwati Complex and facts mentioned in the statements of Shri Hemantbhai Jayantilal Shah, Director in the said EOU, recorded on 25.9.2002 and 27.9.2002, being true and correct.
- the 72000 pieces of scarves were procured from Bhiwandi and cleared for export under AR3A.
- the procurement of said scarves was made on behalf of M/s. Cosmos Trading Co, KSEZ, Gandhidham, Kandla and the payment was also made by M/s. Cosmos Trading Co.
- Shri Hemantbhai Jayantilal Shah or Shri Mahendrakumar K. Kapadia (father of Shri Anandbhai M. Kapadia) would be aware of the exact nature of dealing and the intention behind the procurements.
- regarding 4 LRs issued by M/s Okara Trade Parcel Carriers, he stated that the LRs pertained to return of rejected goods sent for export through various merchant exporters for which Shri Hemantbhai J. Shah or Shri Mahendrakumar K. Kapadia would be able to say something about the authenticity of the LRs.
- they had taken the help for local transportation from M/s. Rajesh Transport Co and further details could be had from Shri Hemantbhai Jayantilal Shah or Shri Mahendrakumar K. Kapadia.
- regarding documents handed over by Shri Rajinderkumar Sachdeva, Manager of M/s. Okara Trade Parcel Carriers under statement dated 4.10.2002, (mentioned at Page 4 & 5 of statement of Shri Anandbhai M. Kapadia), he admitted that 8 lorry receipts (in 3 cases supported by delivery challans of M/s. Ganesh Textiles) pertained to the removal of

- imported 100% polyester woven/knitted dyed fabrics from the said EOU to various buyers illicitly.
- for LR No.62240, they had made payments through cheque and for the remaining LRs, the consignor was required to make the payment to the transporter.
- the delivery challans of M/s. Ganesh Textiles were prepared by Shri Hemantbhai Jayantilal Shah or Shri Mahendrabhai K. Kapadia.
- there was no trading firm in the name of M/s. Ganesh Textiles.
- the sale proceeds in the name of M/s. Ganesh Textiles were received by Shri Mahendrabhai K.Kapadia
- he was not aware of the names and addresses of the buyers.
- the statement of Shri Tilakbhai U. Shah, Proprietor in M/s. Vijay Road Lines, recorded on 2.10.2002, is true and correct.
- regarding the entries dated 19.1.2002 and 20.1.2002 mentioned in the diary and the corresponding Lorry Receipts No.1028 dated 19.1.2002 and 1029 dated 20.1.2002, he accepted that the dispatches of 74 bales of polyester fabrics of the said EOU were made in the name of M/s. Ganesh Textiles consigned to M/s. Raj Textiles, Bhiwandi.
- the 100% polyester fabrics were meant for production of readymade garments to be exported by them. However, these were diverted (cleared illicitly) to Bhiwandi under the directions of Shri Mahendrabhai K. Kapadia.
- that he was aware that indigenous procured 100% polyester fabrics were being used to manufacture readymade garments to fulfill the export obligation.
- M/s. Fashion World, Dhoraji had been created just to increase the capacity of the said EOU.
- the LRs were issued by M/s. Rajesh Transport Co. for a small consideration and they were not transporting anything or sending the goods for job work to M/s. Fashion World.

13. Shri Hemantbhai Jayantilal Shah, in his statement dated 10.10.2002, on being shown the entries dated 19.1.2002 and 20.2.2002 mentioned in the diary, alongwith the corresponding LR No.1028 dated 19.1.2002 and 1029 dated 20.1.2002, deposed that Shri Yogeshbhai Vaidya had asked for the vehicles from M/s. Vijay Roadlines. He further deposed that:

- M/s. Ganesh Textiles was a fictitious firm created by Shri Anandbhai M. Kapadia, Shri Mahendrabhai K. Kapadia and Mr. Yogeshbhai Vaidya.
- the 100% polyester fabrics imported by the said EOU was sold illicitly (diverted) to the domestic buyers. The 148 bales containing 48495 sq. m. of polyester fabrics, shown as re-warehoused at Page 50 of the receipt & issue i.e. Annexure "A" (A-1) register for 2001-2002 was diverted / sold to M/s. Raj Textiles, Bhiwandi.
- regarding the entry at Page 50 register detailing the goods sent for job work under challan No. 1 & 2, both dated 22.1.2002, he accepted that the removals were not made for job work to M/s. Fashion World, Dhoraji and that the LRs N0.1006 and 1007, both dated 22.1.2002 were fabricated and were bought from M/s. Rajesh Transport Co, without movement of goods.
- M/s. Fashion World, Dhoraji had been created just to increase the production capacity of the said EOU.
- the LRs were issued by M/s. Rajesh Transport Co. for a small consideration and they had not transported or sent goods for job work to M/s. Fashion World.
- regarding the documents handed over by Shri Rajinderkumar Sachdeva, Manager of M/s. Okara Trade Parcel Carriers, he admitted that 8 lorry receipts (in 3 cases supported by delivery challans of M/s. Ganesh Textiles) pertained to the removal of imported 100% polyester fabrics

- from the said EOU to various buyers, illicitly, under the directions of Shri Mahendrabhai K. Kapadia and Shri Yogeshbhai Vaidya.
- they had prepared all 8 delivery challans, out of which only 3 were available with M/s. Okara Trade Parcel Carriers and the rest could have been sent to the consignee by the transporter.
- after co-relating the goods with receipt & issue i.e. Annexure "A" (A-1) register, he identified the respective Bill of Entries under which the import of fabrics took place and diverted (sold illicitly) under the said 8 LRs of M/s. Okara Trade Parcel Carriers, as per details mentioned at Page 5 & 6 of his statement.
- the illicit removals of imported fabrics used to take place after completion of re-warehousing and excise formalities.
- Mr. Uttamkumar Tiwari and Mr. Pathak, both employees in the said Unit used to assist him in this work

14. Shri Raju Bacchansingh Tack, Booking Clerk in M/s. New India Transport Co. of Narol, Ahmedabad, in his statement dated 12.10.2002, deposed that Shri Uttamkumar Tiwari had come to his premises on 12.6.2002 with the consignment of 50 cartons of 100% polyester fabrics alongwith delivery challan of M/s. Ganesh Textiles at 4, Rabia Bivee Estate, Narol, Ahmedabad and consigned to M/s. Ganesh Textiles, Bhiwandi. The booking was made on 12.6.2002 under LR No.50557 dated 12.6.2002 and the LR was made as 'To pay'.

15. Shri Anandbhai M. Kapadia, Director in the said EOU, in his further statement dated 16.10.2002, accepted the deposition of Shri Hemantbhai, recorded on 10.10.2002 being true and correct. On being shown the 8 lorry receipts handed over by Shri Rajendra Sachdeva of M/s. Okara Trade Parcel Carriers and 2 LRs handed over by Shri Tilakbhai U. Shah of M/s. Vijay Roadlines in their respective statements, he stated that the imported fabrics were diverted to local market illicitly under the 10 lorry receipts. The details were given by him at Page 1 to 3 of his statement. He further admitted that they had procured either indigenous fabrics to manufacture readymade garment or ready garment directly from various DTA Units from local market for replacing the imported goods cleared illicitly in order to fulfill their export obligation.

16. Shri Salimbhai Abdulbhai Barafwala, Manager in M/s. South Gujarat Transport Service, Narol, Ahmedabad, in his statement dated 17.10.2002, deposed that in the month of April, 2002, a consignment of CP goods were booked from their Bhiwandi Office by the consignor M/s. Shivam Overseas and were consigned as 'Self' under LR Nos. 516848 and 516849, both dated 19.4.2002 (50 + 10 bales). The CP goods (as mentioned in LRs i.e. goods made from fabrics) were received in their Piplej Office from Bhiwandi and entered in their Entry book at Page No. 2743. The CP goods were delivered to M/s. Bhairavi Exim Pvt. Ltd. They had received cash payments towards transport of said goods amounting to Rs.9260/- and Rs.1860/- from the said EOU. The goods were loaded in vehicle Nos.GJ-2 T-5874 and GJ-9 T-4796 and delivered to the said EOU.

17. Shri Imranbhai M. Hakim, Booking Clerk in M/s. Surat-Ahmedabad Transport Pvt. Ltd. of Narol, Ahmedabad, in his statement dated 17.10.2002, deposed that he was working in the Transport Company for the past 4 years. He further stated that they had received transported goods consigned to the said EOU. He gave the list of LRs, quantity, delivery date and the originating place of dispatch of the said goods to the said EOU (as detailed in Page 2 of his statement).

18. Shri Hemantbhai Jayantilal Shah, in his further statement dated 18.10.2002, stated, inter alia, that:

- they had procured 72000 pieces of scarves packed in 60 bales from M/s. Shivam Overseas, Bhiwandi.

- they had transported them in two vehicles from the transporter's Piplej office and off loaded at their godown at 4, Rabia Bivee Estate.
- The intention behind procurement of scarves could be clarified by Shri Anandbhai M. Kapadia, Mahendrabhai K. Kapadia and Yogeshbhai Vaidya.
- 50 cartons of imported polyester fabrics (6670 metres) procured by the said EOU were removed under the delivery challans of M/s. Ganesh Textiles to Bhiwandi.
- they had procured indigenous polyester fabrics of low quality for manufacture of readymade garments for export and the goods received under LR No. 498951 were received on 6.8.2002 and sent back to Surat. He did not know under which Transport Company, the goods were sent back and that the payment of freight made to the transporter was correct.

19. In a follow-up, a panchnama was drawn on 18.10.2002 at the premises of M/s. Delhi Punjab Golden Carriers, Outside Raipur Gate, Ahmedabad. Photocopies of LRs No.805075 dated 9.3.2002, 808920 dated 1.7.2002, 808748 dated 25.6.2002, 809173 dated 11.7.2002, 809195 dated 13.7.2002, 808919 dated 1.7.2002 and 809111 dated 29.6.2002 alongwith page No. 261, 262, 263, 267, 270, 274 and 275 of booking and dispatch register were withdrawn in presence of Shri Rajesh Mahavir Prasad Sharma, Manager in the above firm.

20. Shri Rajesh Mahavir Prasad Sharma, Manager in M/s. Delhi Punjab Golden Carriers, Outside Raipur Gate, Ahmedabad, in his statement dated 22.10.2002, deposed that they had transported goods under LR Nos.808919 dated 1.7.2002 (107 cartons) consigned to M/s. Krishna Grey Checking, Bhiwandi and under LR No. 808748 dated 25.6.2002 (107 cartons) consigned to self, Ludhiana. The sender's name in both the cases was M/s. Mahalaxmi Textiles. However, the goods were actually loaded from the factory premises of the said EOU i.e. M/s. Bharavi Exim Pvt. Ltd. Ahmedabad.

21. Shri Yogeshbhai Vaidya, Authorised Signatory of the said EOU, in his statement dated 21.10.2002, inter alia, revealed the following facts:

- on being shown the statement of Shri Tilak U. Shah of M/s. Vijay Roadlines, recorded on 2.10.2002 alongwith the LRs No.1028 dated 19.1.2002 and 1029 dated. 20.1.2002, he stated that he introduced M/s. Vijay Roadlines to the said EOU and on the telephonic request from Shri Hemantbhai Jayantilal Shah, he had made arrangement for two vehicles.
- the name of the buyer of the fabrics under the above LRs may be clarified by Shri Anandbhai M. Kapadia or Shri Mahendrabhai K. Kapadia.
- after seeing the statement of Shri Anandbhai M. Kapadia recorded on 8.10.2002, he accepted that he was instrumental in the manufacture and dispatch of garments in the said EOU.
- after going through the statement of Shri Hemantbhai Jayantilal Shah, recorded on 10.10.2002, he accepted that he was aware that the imported fabrics were not being utilized in the manufacture of garment for exports and he also knew that the imported fabrics were being diverted into the domestic market illicitly. The buyers to whom the goods were sold illicitly were the same from whom the said EOU had purchased imported fabrics on high sea sale basis; that the payments were only book adjustments (credit & debit).
- he had no idea about the EOU named M/s. Fashion World at Dhoraji.

after going through the statement of Shri Hemantbhai Jayantilal Shah, recorded on 18.10.2002, he stated that 72000 pieces of scarves packed in 60 bales were purchased from M/s. Shivam Overseas, Bhiwandi by the said EOU on the directions of M/s. Cosmos Trading Co, KSEZ, Gandhidham for replacement of duty free imported fabrics removed illicitly in domestic market by M/s. Cosmos Trading. The scarves were cleared to M/s. Cosmos Trading Co. from the said EOU for export. The goods were sub standard garments and not export worthy.

on being shown the statement of Shri Imran M. Hakim of M/s. Surat-Ahmedabad Transport Pvt. Ltd. alongwith the four LRs, he stated that the LRs pertain to receipt of readymade garments for further export by the said EOU and the details may be had from Shri Anandbhai M. Kapadia or Shri Mahendrabhai K. Kapadia.

22. In a follow-up, a panchnama was drawn on 22.10.2002 in the premises of M/s. Jay Marketing, Revdi Bazar, Ahmedabad. Shri Rameshbhai Nutandas Harwani was present during the course of the panchnama. He deposed that:

- Shri Bhanubhai Nutandas Harwani was the Proprietor in the firm.
- They had purchased a quantity of 10200 metres of 100% polyester imported fabrics, also known as MINK from the said EOU on 20.11.2001 at the rate of Rs.84 per metre, through Shri Vishwanath Dalal. The goods were given by Shri Hemantbhai Jayantilal Shah from the said EOU. They had made payments of Rs.8,56,800/- against the receipt of goods to Shri Vishwanath Dalal. Except one bale of 23.05 linear metres, the remaining goods were sold to different buyers at the rate of Rs.100 to Rs.110 per metre.
- he gave the details about the bale lying with them (as detailed in Page 3 of the statement) and the said bales were placed under seizure.

23. A panchnama was drawn at office premises of M/s. Adani Textile Industries, Navrangpura, Ahmedabad on 22.10.2002 in presence of independent panchas and Shri Kalpeshbhai J. Trivedi, Manager cum Accountant. Shri Kalpeshbhai J. Trivedi stated that three firms were functioning from the same premises namely M/s. Ezee Textile Traders, M/s. Evergreen Textiles and M/s. Esteem Textile Traders. Certain records were withdrawn as listed in Annexure 'A' to the panchanama. It appeared that the register No.9 of the withdrawn records detailed in Annexure 'A', gave the details of payments made by different firms. On being asked, Shri Kalpeshbhai J. Trevedi stated that he did not know the firms mentioned at Sr. No.3, 4, 8, 9, 10 and 13 whereas rest of the firms were partnership ones. The register was maintained by Shri Ratnabhai Belani.

24. A panchnama was drawn on 22.10.2002 at the premises of M/s. Adani Textile Industries, Changodar in presence of independent panchas and Shri Dixit Bhagwatprasad Chaurasia, Authorised Signatory in the firm. On being shown consignment note No.018908 dated 6.9.2002 recovered from the table of Shri Dixit, issued by M/s. Excellent Road Carriers and consigned to M/s. Bhairavi Exim Pvt. Ltd, Shri Dixit stated that they had received 86 cartons under the above consignment note/LR and purchase bills are available at their office. They had sold the entire goods under the delivery challans of M/s. Adani Textile Industries.

During the panchnama proceeding the relevant documents were called for and obtained. On perusal of the said documents, it was found that said fabrics were imported vide Bill of Entry No.1612 dated 23.8.02 (rotation No. 12021/254) by M/s. Bhairvi Exim Pvt. Ltd. on payment of duty and the same were sold to M/s. Ezy Textile under invoice No.BEPL-08 dated 8.9.02.

On being shown the papers placed at pages No.7 to 39, specially three packing slips, of file No.1 withdrawn during the panchnama proceedings and showing the consignee as M/s. Bhairavi Exim Pvt. Ltd, Shri Dixit deposed that the goods mentioned under the packing slips were received by them on different dates and were sold to different buyers under delivery slips of M/s. Adani Textile Industries as per instructions from their office at Navrangpura, Ahmedabad.

On being shown the pages 29 to 33, Shri Dixit accepted that they had received a quantity of 118 bales/cartons and only 35 bales were lying in the godown at present; all the 118 bales had been purchased from M/s Bhairavi Exim Pvt. Ltd; that there were no other goods lying in the godown purchased from M/s. Bhairavi Exim Pvt. Ltd.

The said 35 bales of imported textile pieces (synthetic fabrics – Flak fabrics) were placed under detention for further verification and certain records were also withdrawn during the panchnama.

25. In a follow-up, a panchnama was drawn on 26.10.2002 at the premises of M/s. Systematic Corporation, 906, 9th floor Rajhans Building Ring Road, Surat in presence of Shri Ramprasad Sharma, an employee of M/s. Reliable Polyfab India Ltd. No documents whatsoever were found during the panchnama from the said premises.

26. In a follow-up, a panchnama was drawn on 26.10.2002 at the premises located at 1006, Adarsh Market, Ring Road, Surat in presence of Shri Vishnu Choithram Bhatia. Shri Bhatia stated that he is the Proprietor in shop and three other firms were functioning from the same premises namely M/s. Girish Textiles, M/s. Om Fabrics and M/s Arihant Synthetics. Certain documents pertaining to the imports made by M/s. Bhairavi Exim Pvt. Ltd. were placed under seizure.

27. Shri Vishnu Choithram Bhatia, Proprietor in M/s. Arihant Textiles, in his statement dated 26.10.2002, inter alia, deposed that:

- he knew Shri Mahendrabhai K. Kapadia since 1994 and the said EOU for the past one year.
- he was the agent of Shri Deepak Bajaj of M/s. Season's International for high sea sales of imported fabrics.
- about 6 to 7 high sea sales of imported fabrics had taken place between Shri Deepak Bajaj and the said EOU for which they had acted as brokers.
- he and Shri Deepak Bajaj had visited Ahmedabad to meet Shri Yogeshbhai Vaidya and Shri Hemantbhai Jayantilal Shah.
- cheques for brokerage were issued to him by M/s. V-7 Overseas of Shri Deepak Bajaj but no collection was made as per instructions from Shri Deepak Bajaj.

28. A panchnama was drawn on 26.10.2002 at the premises of M/s. Real Exports, 5007, Trade House, Ring Road, Surat in presence of Shri Rajeev Arora, Proprietor. One file numbered 1 to 35 was withdrawn.

29. Shri Imran Mahmoodbhai Hakim, Booking Clerk in M/s. Surat-Ahmedabad Transport Pvt. Ltd., Narol, in his further statement dated 28.10.2002 deposed that for the period from April, 2002 to July 2002, 8 consignments were booked by the said EOU to Bhiwandi, Saroli (Surat) and Surat on 'To Pay' basis.

30. Shri Hemantbhai Jayantilal Shah, Director in the said EOU, in his further statement dated 29.10.2002 stated that 72000 pieces of scarves packed in 60 bales were procured from M/s. Shivam Overseas, Bhiwandi under bill No. 35 dated 18.4.2002 on behalf of M/s. Cosmos Trading Co. KSEZ, Gandhidham. The payments were also made by M/s. Cosmos Trading Co.

On being shown 4 LRs i.e. LR Nos.893292 dated 10.6.02, 498951 dated 3.7.02, 495716 dated 23.5.02 and 495739 dated 24.5.02 of M/s. Surat-Ahmedabad Transport Pvt. Ltd. and a letter of 27.5.2002 issued by him from their factory, he accepted that the polyester fabrics procured under the 4 LRs were inferior quality for the manufacture of garments for export. On being shown the LRs. 808919 dated 1.7.2002 and 808748 dated 25.6.2002 of M/s. Delhi Punjab Golden Carriers, he stated that the consignor shown as M/s. Mahalaxmi Textiles is nothing but M/s Bhairavi Exim Pvt. Ltd. and they had removed duty free imported fabrics illicitly to Bhiwandi and Ludhiana vide above two LRs on the direction of Shri Vishnu Bhatia, an agent of Shri Deepak Bajaj.

He further stated that the high sea sales of the imported fabrics has taken place in June, 2002 and the consideration must have been received by Shri Mahendrabhai K. Kapadia or Shri Deepak Bajaj of Mumbai or Shri Bhatia of Surat; that the imported fabrics diverted under the two LRs were mentioned on Pages 14 and 15 of receipt & issue i.e. Annexure "A" (A-1) register for 2002-2003 (mentioned at Sr. No 3 of Annexure 'A' to the panchnama drawn on 24/25.9.2002) showing a quantity of 41423 sqm and 41861 sqm, respectively (total 214 cartons); that the cheques given by M/s V-7 Overseas were related to consideration to be received by the said EOU towards diversion of 214 cartons of imported fabrics; that Shri Deepak Bajaj was the actual importer.

On being asked regarding contradictory statement in respect of fabrics found physically in stock on 24/25.9.2002, as shown at Page 14 & 15 receipt & issue i.e. Annexure "A" (A-1) Register (mentioned at Sr. No 3 of Annexure 'A' to the panchnama drawn on 24/25.9.2002) and illicit diversion of the said imported fabrics mentioned at Page 14 & 15 of the receipt & issue i.e. Annexure "A"(A-1) register as accepted by him, he stated that some other imported fabrics physically available on that date was tallied/co-related against the 214 cartons shown in the register at Page 14 & 15 (shown in stock), but actually the said imported fabrics received and recorded at Pages 14 & 15 were already diverted to the domestic market under the 2 LRs, prior to the drawal of the panchnama; that he did not know as to which fabrics were available packed in 204 cartons at the time of the drawal of the panchnama and the same will be clarified later on.

On being shown the panchnama drawn on 22.10.2002 at M/s. Adani Textile Industries, Changodar, packing List Nos.0724/2001 dated 24.7.2001, 900913 dated 31.10.2001 and 901106 dated 24.1.2002, of file numbered 1 of the said panchnama in the name of the said EOU alongwith the corresponding Bills of Entry No.243 dated 20.8.2001, 238 dated 4-12-2001 and 10843/6, he stated that goods covered under the said Bills of Entry pertained to imported fabrics which were diverted by them to the godown of M/s. Adani Textile Industries after completion of warehousing formalities in their factory.

31. Shri Vishnu C. Bhatia, Proprietor in M/s. Arihant Synthetics of Surat, in his statement dated 30.10.2002, stated that he knew Shri Deepak Bajaj who had business interest in firms namely M/s. Seasons International and M/s. Prima Gold Impex Companies. Shri Deepak Bajaj, the actual importer had made high sea sales of imported polyester fabrics to the said EOU in the months of June and July, 2002 and he had acted as a broker between Shri Deepak Bajaj and the said EOU.

After having gone through the panchnama drawn on 26.10.2002 at his business premises and his earlier statement recorded on 26.10.2002 alongwith the 5 cheques, he stated that the cheques were the premium amount to be received by the said EOU for the diversion of imported goods and for which the deal was made between Shri Deepak Bajaj and Shri Yogeshbhai Vaidya; that the cheque has been issued by the Proprietor of M/s. V-7 Overseas in favour of M/s. Pervez Textiles (fake

name); that the cheques were not handed over to Shri Mahendrabhai K. Kapadia or Shri Anandbhai M. Kapadia on the instructions of Shri Deepak Bajaj.

On being shown the two LRs No.808748 dated 25.6.2002 and 808919 dated 1.7.2002 issued by M/s. Delhi Punjab Goods Carriers, Ahmedabad and after having gone through the panchnama, he stated that the said LRs pertained to illicit removal of imported fabrics procured by the said EOU on high sea sales basis from Shri Deepak Bajaj.

He further stated that he knew about this as per the telephonic communication he had with Shri Deepak Bajaj; that the removal of the procured imported fabrics was made during the month of June, 2002 to buyers outside Ahmedabad; that the names of the actual buyers and their addresses was not known to him as instructions were issued by Shri Deepak Bajaj; that the brokerage was fixed @ 50 paise per meter for the whole deal but he had not received any brokerage.

32. Shri Anand M. Kapadia, Director in the said EOU, in his further statement dated 29.10.2002, inter alia, deposed the following facts:

- 72000 pieces of scarves packed in 60 bales were procured from M/s. Shivam Overseas, Bhiwandi vide bill No. 35 dated 18.4.2002 on behalf of M/s. Cosmos Trading Co, KSEZ Gandhidham. The payments were also made by M/s. Cosmos Trading Co.
- on being shown the LRs 808919 dated 1.7.2002 and 808748 dated 25.6.2002 and on being asked about the diversion of imported fabrics mentioned at Pages 14 & 15 of receipt & issue i.e. Annexure "A"(A-1) register, he stated that they had diverted said 214 cartons of duty free imported fabrics illicitly to Bhiwandi and Ludhiana under the above two LRs on the direction of Shri Vishnu Bhatia, an agent of Shri Deepak Bajaj. The high sea sales of the imported fabrics has taken place in June, 2002 and the consideration of Rs.8 to 10 per metre has been received by Shri Mahendrabhai K. Kapadia. The cheques given by M/s. V-7 Overseas were related to consideration to be received to the said EOU towards diversion of 214 cartons of imported fabrics.
- it was mis-stated (deposed) at the time of the panchnama proceeding on 24/25.9.2002 at the said EOU regarding physical availability of 214 cartons of imported fabrics. In this regard the clarification given by Shri Hemantbhai Jayantilal Shah in his statement recorded on 29.10.2002 is correct and acceptable to him. The fabrics which were so called found physically available, has actually been diverted to the domestic market under the above 2 LRs, prior to the drawal of the panchnama.
- on being shown the panchnama drawn on 22.10.2002 at M/s. Adani Textile Industries, Changodar, packing List Nos.0724/2001 dated 24.7.2001, 900913 dated 31.10.2001 and 901106 dated 24.1.2002, of file numbered 1 of the said panchnama in the name of the said EOU alongwith the corresponding Bills of Entry No.243 dated 20.8.2001, 238 dated 4-12-2001 and 10843/6, he stated that goods covered under the said Bills of Entry pertained to imported fabrics which were diverted by them to the godown of M/s. Adani Textile Industries, after completion of warehousing formalities in their factory.

33. Shri Hemantbhai Jayantilal Shah, Director in the said EOU, in his further statement dated 5.12.2002, deposed the following facts:

- he had left the said EOU on 22.11.2002.
- The 204 cartons which were physically available at the time of drawal of panchnama dated 24/25.9.2002, were out of the total procurements of 241 cartons purchased from M/s. Tabrez Impex, Sachin Special Economic Zone ('SSEZ'), Surat i.e. (71 cartons mentioned at Page No. 44 of receipt & issue i.e. Annexure "A" (A-1) register, 73 cartons at Page No.

43 of receipt & issue i.e. Annexure "A"(A-1) register and 97 cartons at Page No 46 of receipt & issue i.e. Annexure "A"(A-1) register for the year 2001-2002 (mentioned at Sr. No.2 of Annexure 'A' to the panchnama drawn on 24/25.9.2002 in the said EOU) and the said imported fabrics had not been fully diverted as the consideration of Rs.8 to 10 per metre was not received from M/s. Tabrez Impex, the actual importer. Until 22.11.2002, the said 204 cartons were lying in the factory premises and he was not aware of the present status of the same.

34. Shri Riteshbhai Prafulbhai Gandhi, Computer Operator cum Accountant in the said EOU, in his statement dated 29.10.2002, after being shown the file withdrawn during the panchnama drawn on 24.9.2002 at the office premises located at 402, Bhagwati Complex, Ahmedabd, stated that he was maintaining the vouchers related to loading, unloading, tempo rent etc. given by Shri Uttambhai, Shri Pathakbhai and Shri Himmatbhai Jayantilal Shah.

35. A panchnama was drawn on 5.12.2002 at the premises of the said EOU in presence of Shri Anandkumar M. Kapadia, Director of the said EOU. A physical verification was carried out about the 204 cartons lying in the bonded store room on the day of the search on 24/25.9.2002 and it was noticed that the said 204 cartons were not available physically. On being asked whereabouts of 204 cartons of imported polyester fabrics, Shri Anandbhai M. Kapadia admitted that they had sold / cleared the same in the domestic market.

36. Shri Anandbhai M. Kapadia, Director in the said EOU, in his further statement dated 5.12.2002, inter alia, deposed that:

- the 204 cartons of polyester fabrics which were physically available at the time of drawal of panchnama dated 24/25.9.2002, were out of the total procurements of 241 cartons of polyester fabrics procured from M/s. Tabrez Impex, Sachin Special Economic Zone ('SSEZ'), Surat (71 cartons mentioned at Page No. 44 of receipt & issue i.e. Annexure "A"(A-1) register, 73 cartons mentioned at Page No.43 of receipt & issue i.e. Annexure "A"(A-1) register and 97 cartons mentioned at Page No 46 of receipt & issue i.e. Annexure "A"(A-1) register for the year 2001-2002 and the said imported fabrics had not been fully diverted as the consideration of Rs.8 to 10 per metre was not received from M/s. Tabrez Impex, the actual importer.
- he accepted the statement of Shri Hemantbhai Jayantilal Shah, recorded on 5.12.2002 being true and correct.
- he admitted that the entire 241 cartons of imported polyester fabrics procured from M/s. Tabrez Impex includes 204 cartons physically available in the bonded storeroom during the panchnama proceedings on 24/25.9.2002 at the said EOU. The said fabrics had been removed illicitly to buyers in the domestic market.
- on being shown Page 10 of daily stock register i.e. Annexure 'A' (A-VIII) for the year 2002-2003 (mentioned at Sr. No.26 to the panchnama drawn on 24/25.9.2002 at the said EOU) and the entry dated 21.9.2002 showing the closing stock of 1900 sq. m. in the plant room, he admitted that the said quantity of 1900 sq. m. imported fabrics were also cleared illicitly in the domestic market and Shri Hemantbhai Jayantilal Shah would be able to clarify the origin of the imported fabrics diverted into the domestic market. Shri Mahendrabhai K. Kapadia would be able to give the details of the buyers of 241 cartons and 1900 sq. m. of imported polyester fabrics.

37. Shri Mahendrakumar Keshavlal Kapadia alias Mannabhai, (father of Shri Anandbhai M.Kapadia, Director in the said EOU, in his statement dated 16.12.2002, inter alia, deposed that:

- though he did not have any authority, he managed the day to day business affairs of the said EOU and Shri Anandbhai M. Kapadia and Shri Hemantbhai Jayantilal Shah worked under his directions.
- on being shown the panchnama drawn on 24/25.9.2002 at the factory premises of the said EOU and panchnama drawn on 24.9.2002 at 402, Bhagwati Complex, Ahmedabad, he accepted the facts mentioned in the said panchnamas as true and correct. The 214 cartons of imported fabrics shown at Sr. No.14 & 15 of receipt & issue i.e. Annexure "A"(A-1) register for the year 2002-03, had already been diverted to the local market without payment of duty prior to search On 24/25/9/02. The imported fabrics covered vide Bill of Entry Nos.270161, Bill of Entry No.274348 and Bill of Entry No.275960 dated 8.7.02 shown at Entry No. 16, 17 and 18 of receipt & issue i.e. Annexure "A"(A-1) register for the year 2002-03 measuring 72503 sq. m. had been diverted to the local market illicitly.
- He accepted the statements dated 8.10.2002, 16.10.2002 and 29.10.2002 of Shri Anandbhai M. Kapadia and statements of Shri Hemantbhai Jayantilal Shah recorded on 25.9.2002, 27.9.2002, 10.10.2002, 18.10.2002 and 29.10.2002 as true and correct.
- they had procured 72000 pieces of scarves from M/s. Shivam Overseas, Bhiwandi under Bill No.35 dated 18.4.2001 through M/s. South Gujarat Transport under LRs Nos.516848 and 516849, both dated 19.4.2002; that the procurement of 72000 Pieces of scarves was made through M/s Cosmos Trading Co, KSEZ, Gandhidham and the payment has also been made by M/s. Cosmos Trading Co; that to meet their export obligations, they had dispatched the said 72000 pieces scarves under AR 3A Nos.1 & 2, both dated 1.5.2002 to M/s. Cosmos Trading Co, KSEZ, Gandhidham in the guise of scarves manufactured out of imported fabrics.
- the imported fabrics meant for manufacture of 72000 pieces of scarves were diverted into the local market in the guise of exports of made-up garments through ARE1 Nos.50 dated 26.2.2002, 51 dated 8.3.2002, 52 dated 13.3.2002 and 53 dated 23.3.2002 respectively; the said consignment were shown as returned as rejected goods and accordingly, the department was informed about this on 1.5.2002.
- regarding document No.22 of Annexure-A, withdrawn under panchnama drawn on 24/25.9.2002 at the said EOU, he stated that on the basis of these documents, an attempt has been made to show that the goods cleared under the above ARE1s has been received back as rejected goods.
- as the imported fabrics procured duty free had been diverted in the local market, the question of receiving back the made up garments did not arise.
- the documents placed at Pages 7 to 15 were fabricated as confirmed by Shri Rajendrakumar Sachdeva, Manager of M/s. Okara Trade Parcel Carriers in his deposition recorded on 4.10.2002.

On being shown the daily stock i.e. Annexure 'A'(A-VIII) register and daily receipt & issue i.e. Annexure "A"(A-1) register of imported raw material, all of Annexure 'A' to the panchnama drawn on 24/25.9.2002 at the said EOU and after identification of the imported fabrics (which were shown to have been used in the manufacture of 72000 pieces of scarves locally procured), two Annexure A-1 and A-2 were prepared and attached to his statement; that Annexure A-1 showed the details of date-wise production of 72000 pieces of scarves and Annexure A-2 showing details of consumption of imported fabrics, bills of entry wise shown to have used in the manufacture of the said scarves.

On being shown the documents Sr. No.1 to 38 handed over by Shri Rajendrakumar Sachdeva, Manager in M/s. Okara Trade Parcel Carriers under his statement, he admitted that the imported duty free fabrics were diverted illicitly in the

local market through M/s. Okara Trade Parcel Carriers vide documents mentioned above, as per his directions.

On being shown the LR Nos.1028 dated 19.1.2002 and 1029 dated 20.1.2002 alongwith the statement of Shri Tilakbhai U. Shah, Proprietor in M/s. Vijay Road lines of Narol, he stated that 74 bales of polyester fabrics under each LR have been dispatched to M/s. Raj Textiles; that there was no firm in the name of M/s Ganesh Textiles and the said EOU had used their name for diverting the imported duty free fabrics under his instructions.

On being shown the statement of Shri Rajubhai Bachansingh Tack of M/s. New India Transport Co. alongwith LR No.505575 dated 12.6.2002 and the delivery challan of M/s. Ganesh Textiles, he accepted that 50 cartons of imported polyester fabrics procured by the said EOU were removed to Bhiwandi through the above LR, under his directions.

On being shown the statement of Shri Rajesh Sharma, Manager in M/s. Delhi Punjab Golden Carriers and the two LRs Nos. 808919 dated 1.7.2002 and 808748 dated 25.6.2002, he admitted that the consignor shown as M/s Mahalaxmi Textiles was nothing but M/s Bhairavi Exim Pvt Ltd. only and they had removed / diverted imported polyester fabrics to Bhiwandi and Ludhiana under the above two LRs.

- After having gone through the statement of Shri Imranbhai M. Hakim of M/s. Surat-Ahmedabad Transport Pvt. Ltd recorded on 17.10.2002, he accepted that they had received 232 cartons of goods (scarves) under LR No. 8983292 dated 24.5.2002, 498951 dated 3.7.2002, 495716 dated 23.5.2002 and 495739 dated 24.5.2002 through M/s. Surat-Ahmedabad Transport Pvt. Ltd.; that the goods received were actually scarves made out of sub-standard quality fabrics. They had returned 32 cartons back to Surat (received under LR No. 498951). On being further asked, he stated that the said procurement of 200 cartons comprising 120000 pieces scarves made out of sub-standard fabrics had been arranged by Shri Nilesh Bansal of M/s. Cosmos Trading Co, KSEZ, Gandhidham and they had cleared these sub-standard scarves under AR-3A 6 & 7, both dated 16.6.2002 to M/s. Cosmos Trading Co. situated at KSEZ, Gandhidham in the guise of scarves manufactured out of imported fabrics.

- On being asked about where the imported fabric meant for the manufacture of 200 cartons of scarves were diverted, he accepted that out of the total imported fabrics, the quantity of fabrics meant for manufacture of 63000 pieces of scarves were diverted in the local market in the guise of exports of made up garments through ARE1 Nos.25 & 28, both of 24.11.2001 and 37 of 1.1.2002. The said consignment were shown as returned back as rejected goods and accordingly the department was informed about this on 1.6.2002.

- On being shown pages 41 to 51 of document No.22 withdrawn under panchnama drawn on 24/25.9.2002 at the said EOU and after having gone through them, he stated that on the basis of the said documents, an attempt has been made to show that the goods cleared under the above ARE1s has been received back as rejected goods.

- the imported fabrics procured duty free had been diverted in the local market, the question of receiving back the made up garments did not arise. He admitted that the documents placed at Pages 41 to 51 were fabricated as confirmed by Shri Rajendrakumar Sachdeva, Manager of M/s Okara Trade Parcel Carriers in his deposition recorded on 4.10.2002. The balance imported fabrics meant for manufacture of 57000 pieces of scarves had also been diverted into the local market.

- on being shown the daily stock register Annexure 'A'(A-VIII) and daily receipt & issue i.e. Annexure "A"(A-1) register of imported raw material, all of Annexure 'A' to the panchnama drawn on 24/25.9.2002 at the said EOU and after having gone through the same, he identified the imported fabrics (which were shown to have been used in the manufacture of 120000 scarves locally procured) and on that basis two Annexure B-1 and B-2 were prepared and attached to his statement; that Annexure B-1 showed the details of date-wise production of 120000 scarves and Annexure B-2 showing details consumption of imported fabrics, bills of entry wise, shown to have been used in the manufacture of said scarves.
- on being shown the 8 LRs handed over by Shri Imranbhai Hakim of M/s. Surat Ahmedabad Transport in his statement recorded on 28.10.2002, he stated the total 93 bales covered under LR No. 684679 dated 17.4.2002, 684709 dated 20.4.2002, 684796 dated 27.4.2002 and 684937 dated 14.5.2002 were imported fabrics procured by them duty free and diverted into the local market; that these goods were out of 180 cartons procured under Annexure-34 dated 8.11.2001 (Bill of Entry 303/01-02 of 13.11.01 entered at Page No.27 of receipt & issue i.e. Annexure "A"(A-1) register, re-warehoused on 19.11.2001).
- as regards LRs No.685009 dated 21.5.2002, 686250 dated 20.6.2002, 686508 dated 9.7.2002 and 686509 dated 9.7.2002, the procurements were indigenous fabrics for manufacturing garments and as the quality of fabrics was not good, they rebooked the same to the original consignor as such.
- On being asked about the seizure of 23.05 meters of imported fabrics at the premises of M/s. Jay Marketing and purchase of 10200 meters of fabrics by M/s. Jay Marketing, he stated that the fabrics might be the part of sales made through Shri Vishwanath Bihani, out of the fabrics procured vide Bill of Entry No.10194/235 (invoice No. TIRPT/35/2001 dated 29.10.2001) shown at Page No 25 of receipt & issue i.e. Annexure "A" (A-1) register.
- on being shown the panchnama drawn on 22.10.2002 at the godown of M/s. Adani Textile Industries alongwith file No. 1 of the said panchnama and on being asked regarding the receipt of packing list of imported fabrics in the name of the said EOU and recovered at the said godown, he stated that in this regard the facts mentioned in the statements of Shri Hemantbhai Jayantilal Shah and Shri Anandbhai M. Kapadia, both recorded on 29.10.2002 were correct and acceptable to him and the goods procured by the said EOU had been diverted to the said godown after completion of warehousing formalities.
- On being shown the panchnama drawn on 5.12.2002 at the factory premises of the said EOU and the statements of Shri Hemantbhai Jayantilal Shah and Shri Anandbhai M. Kapadia both recorded on 5.12.2002, he admitted that 241 cartons of imported duty free fabrics shown at Pages 43, 44 & 46 of receipt & issue i.e. Annexure "A" (A-1) register have been illicitly sold in the local market as per his directions.
- On being shown the statement of Shri Hemantbhai Jayantilal Shah recorded on 10.10.2002, he admitted that all the documents were fake and the name of the job worker M/s. Fashion World, Dhoraji was fabricated in order to increase the production capacity of their EOU; that no goods had been sent for job work to M/s Fashion World and no finished garments had been received from M/s Fashion World.
- On the basis of the facts disclosed by him, one Annexure 'C' was prepared and attached to his statement. After going through the entire Annexure 'C' showing diversion of imported fabrics, he admitted and accepted the details mentioned in the said annexure as being true and correct.

38: Shri Mahendrakumar K. Kapadia, in his further statement dated 3.1.2003, inter alia, deposed that:

- on being shown letter of 24.6.2002 issued by M/s. Seasons International to Shri Bhatia and the 5 cheques (recovered under panchnama drawn on 26.10.2002 at the premises of M/s. Arihant Synthetics, Surat), he admitted that the cheques were meant for him and due to some dispute, the cheques were not encashed. He had received the premium amount in cash for diversion of imported fabrics to local market in respect of Bill of Entry No.747719 related to procurement of 31075 yards of fabrics.
- M/s. Parvez Textiles was a fake firm.
- he received another premium amount for the diversion of imported fabrics to local market for Bill of Entry No.270161, measuring 54540 sqm. The details of the above diversion have been mentioned at Sr. No 10 & 17 of Annexure 'C', respectively attached to his statement recorded on 16.12.2002.
- the fabrics were diverted under the directions of Shri Deepak Bajaj through Shri Vishnu C. Bhatia.
- a further quantity of 41423 sqm. was also diverted in the same way under the directions of Shri Deepak Bajaj through Shri Vishnu C. Bhatia (Sr. No. 9 of Annexure 'C' to his earlier statement recorded on 16.12.2002). The LRs had been mentioned accordingly for Sr. No.9 & 10 of Annexure 'C' to his statement while the transportation for Sr. No.17 was arranged by Shri Vishnu Bhatia and Shri Deepak Bajaj on their own.
- 10200 metres of imported duty free fabrics were purchased by M/s. Jay Marketing from M/s. Systematic Corporation through Shri Vishwanath Bihani, out of the fabrics procured vide Bill of Entry No.10194/235, shown at Page No.25 of receipt & issue i.e. Annexure "A" (A-1) register for the year 2001-02. Out of the quantity of 39983.10 sq. m. imported under said Bill of entry, a quantity of 20383 sq. m. was diverted into the local market through Shri Vishwanath Bihani in November, 2001 (Sr. No.28 of Annexure 'C' to his earlier statement recorded on 16.12.2002). The transportation was arranged by Shri Vishwanath Bihani.
- on being shown the three packing lists in the name of the said EOU found at the godown of M/s. Adani Textile Industries, Changodar and after having gone through the same, he admitted that the packing list No.0724/2001 dated 24.7.2001, 900913 dated 31.10.2001 and 901106 dated 24.1.2002 of file No.1 of the said panchnama pertained to the corresponding Bills of Entry No. 243 dated 20.8.2001, 238 dated 4-12-2001 and 10843/6 through which 100% polyester fabrics were imported and subsequently the said fabrics were diverted to the local market through M/s. Adani Textiles, Changodar. Shri Kamlesh Trivedi and Shri Dikshit Bhagwatprasad Chaurasia were in constant touch with them in respect of the above diversion (Sr. No.11, 12 & 13 of Annexure 'C' to his earlier statement recorded on 16.12.2002). The transportation was done by M/s. Rajesh Transport Company and LR was not issued.
- the goods mentioned at Sr. No.1, 2, 3, 4, 5, 7, 8, 21, 22, 24, 27 and 33 of Annexure 'C' to his earlier statement recorded on 16.12.2002 were diverted through Shri Sunil Soman, an agent of Surat; that the transportation was arranged by Shri Sunil Soman. He did not know the names of the actual purchasers. He further accepted that the fabrics mentioned at Sr.6, 18 & 19 of Annexure 'C' to his earlier statement recorded on 16.12.2002, were diverted through Shri Vishnu Bhatia. The names of the actual purchasers were not known to him and the transport documents of Sr. No.18 & 19 were prepared on the directions of Shri Vishnu Bhatia and dispatched to him directly.
- the fabrics mentioned at Sr. No.20, 29 and 31 were diverted through Shri Puneet Rungta of M/s Abhishek Impex of Surat.

- the fabrics mentioned at Sr. No 14, 15, 16 and 30 were diverted through M/s. Tabrez Impex of Surat.
- the fabrics mentioned at, Sr. No.34 were diverted through Shri Nilesh Bansal of M/s Cosmos Trading Co, KSEZ, Gandhidham. The actual buyers were not known to him and the transportation were arranged by the persons to whom the fabrics were diverted.
- the good mentioned at Sr. 23, 25, 26, 32, 35 and 36 were diverted to local market on cash basis in Ahmedabad and the buyers were not known to him as the sales were effected through various agents. The quantity of 1900 sqm fabrics was procured indigenously for testing purpose of their sewing machines and entered at Page No. 3, 9 and 14 of receipt & issue i.e. Annexure "A"(A-1) register for the year 2001-2002 and this duty paid fabrics was sold in local market.

39. Shri Dixit Bhagwatiprasad Chaurasiya, Godown in-charge in M/s. Adani Textiles Industries (Trading Division), Changodar, in his statement dated 10.1.2003, inter alia, deposed that:

- he was looking after the receipt and dispatch of fabrics (indigenous and imported) under the directions of Shri Kamlesh J. Trivedi, Accountant in M/s. Adani Textile Industries of Navrangpura, Ahmedabad.
- after going through Page 5 of File No.1 withdrawn under panchnama drawn on 22.10.2002 at their premises, he stated that this paper contains the details of duty paid imported fabrics which were received from M/s. Bharavi Exim Pvt. Ltd. and they had submitted copies of purchase bills and Bills of Entry evidencing payment of duty during the said panchnama (Page No 40 to Page 75 of file No.1).
- on being asked as to why the purchase bills were in the name of M/s. Ezy Textile Traders and onwards delivery slips for sale were being issued by M/s. Adani Textile, he stated that since purchase and sale bills were dealt by their office, Shri Kamlesh Trivedi, their accountant would be able to clarify it. On being shown Pages placed at Sr. No.6 to 23 of file No.1 and three packing slips (Page 2 of his statement) alongwith the statements of Shri Hemant Jayantilal Shah, Shri Anandkumar M. Kapadia, both recorded on 29.10.2002 and Shri Mahendrabhai K. Kapadia recorded on 16.12.2002 and 3.1.2003, he deposed that initially he was under the impression that the goods under three packing lists were duty paid imports like other purchases from the said EOU by their firm. However, on verification he stated that the goods in respect of the 3 packing slips never came to their godown and the packing lists might have come by mistake with other packing lists from their Navrangpura office. He had not dealt with the said EOU for diversion of the goods as detailed in the three packing lists and he did not accept the facts related to this point in the statements of Shri Anandbhai M. Kapadia, Shri Hemantbhai Jayantilal Shah and Shri Mahendrabhai K. Kapadia.

40. Shri Kamlesh J. Trivedi, Accountant in M/s. Adani Textiles Industries (Trading Division), Navrangpura, Ahmedabad, in his statement dated 10.1.2003, accepted the facts mentioned in the panchnama drawn on 22.10.2002 at his office premises to be true and correct. He further deposed that:

- Shri Stavan Belani had maintained the register No. 9 of Annexure 'A' to the said panchnama for his personal use, which contained some commercial transactions with various firms. He was shown the statement of Shri Dixit Bhagwatiprasad Chaurasiya, Godown in-charge in M/s. Adani Textiles Industries (Trading Division), Changodar, recorded on 10.1.2003 and the panchnama drawn at their Changodar godown on 22.10.2002. After having gone through the same, he deposed that the details of duty paid imported fabrics had already been given with evidencing documents. On being asked as to why the purchase bills were

in the name of M/s. Ezy Textile Traders and onwards delivery slips for sale were being issued by M/s Adani Textile, he stated that the particulars regarding sales and purchase and transaction actually pertained to duty paid imported fabrics and evidence of payment of duty had already been furnished and it does not have any relevancy in the present case. On being shown Pages 6 to 23 of file No.1 of the panchnama drawn at their Changodar godown and three packing slips (as detailed at Page 2 of statement dated 10.1.2003 of Shri Dixit Bhagwatiprasad Chaurasiya, Godown in-charge in M/s. Adani Textiles Industries (Trading Division), Changodar alongwith the statements of Shri Hemant Jayantilal Shah, Shri Anandbhai M. Kapadia, both recorded on 29.10.2002 and Shri Mahendrabhai K. Kapadia, recorded on 16.12.2002 and 3.1.2003, he stated that the goods in respect of the 3 packing slips never came to their godown and the lists might have come by mistake with other packing lists from their Navrangpura office. He had not dealt with the said EOU for diversion of the goods as detailed in the three packing lists and he did not accept the facts related to this point in the statements of Shri Anandbhai M. Kapadia, Shri Hemantbhai Jayantilal Shah and Shri Mahendrabhai K. Kapadia.

41. Shri Vishnu C. Bhatia, in his further statement dated 21.1.2003, after going through the statement of Shri Mahendrabhai K. Kapadia recorded on 16.12.2002, alongwith Annexure 'C' to the statement, stated that for Sr. No 9 and 10 of Annexure 'C', he had clarified his position in his earlier statement recorded on 30.10.2002. For Sr. No 6, 17, 18 and 19, he admitted that he had acted as a broker between the said EOU and Shri Deepak Bajaj (the actual importer for diversion of the imported fabrics); that the imported fabrics were purchased by Shri Deepak Bajaj of M/s. Season International and Shri Deepak Bajaj would be in a better position to explain about the transportation of the imported fabrics from the said EOU.

42. Shri Anandbhai M. Kapadia, Director in the said EOU, in his further statement dated 21.1.2003, accepted the version of Shri Mahendrabhai K. Kapadia, recorded on 16.12.2002 and 3.1.2003 further deposed that:

- Shri Mahendrabhai K.Kapadia though not having any authority in the said EOU was fully responsible for the affairs of the said EOU.
- on being shown Annexure A-1 showing date-wise production of 72000 pieces of scarves alongwith Annexure A-2 showing the details of consumption of imported fabrics, bills of entry wise shown to have used in the manufacture of the said scarves, with reference to the statement of Shri Mahendrabhai K. Kapadia, recorded on 16.12.2002, he admitted that the production shown is only book entries and the said scarves had not been manufactured from imported fabrics.
- the imported fabrics had been diverted into the local market.
- the substandard quality of scarves were procured from M/s. Shivam Enterprise through M/s. Cosmos Trading Co of KSEZ, Gandhidham and the same were dispatched under AR 3A Nos. 1 & 2 to M/s. Cosmos Trading Co, KSEZ, Gandhidham for fulfillment of their export obligation.
- on being shown Annexure B-1 showing date-wise production of 120000 pieces of scarves alongwith Annexure B-2 showing details of consumption of imported fabrics, bills of entry wise shown to have used in the manufacture of the said scarves, he admitted that the production shown is only book entries and said scarves had not been manufactured from imported fabrics; that the imported fabrics had been diverted into the local market. Substandard quality of scarves were procured through Shri Nilesh Bansal of M/s. Cosmos Trading Co of KSEZ, Gandhidham and the same were dispatched under AR3A Nos.6 & 7 to M/s. Cosmos Trading Co, KSEZ, Gandhidham for fulfillment of their export obligation.

- he accepted the fact mentioned in worksheet namely Annexure 'C' of statement of Shri Mahendrabhai K.Kapadia, recorded on 16.12.2002, showing the entire details of imported fabrics diverted in the local market and the names of agents and buyers revealed in the statement of Shri Mahendrabhai K. Kapadia recorded on 3.1.2003 as true and correct.

43. Shri Nilesh Radheshyam Bansal, partner in M/s. Cosmos Trading Co, KSEZ, Gandhidham, in his statement dated 30.1.2003, deposed that:

- (on being shown the statements of Shri Mahendrabhai K. Kapadia recorded on 16.12.2002 and 3.1.2003), he had not dealt with M/s. Shivam Overseas for the procurement of 72000 pieces of scarves by the said EOU.
- they had received 72000 pieces of scarves and 120000 pieces of scarves from the said EOU under AR 3A Nos.1 & 2 and AR 3A Nos.6 & 7 respectively, but he was not aware of the origin/procurement of these scarves.
- he was also not involved in diversion/transportation of 619 rolls of imported fabrics as detailed in Sr. No 34 of Annexure C to the statement of Shri Mahendrabhai K. Kapadia recorded on 16.12.2002. In support of payments, Shri Bansal submitted the ledger accounts for the period from 1.4.2002 to 31.12.2002.

44. Shri Ramesh Nutandas Harwani, Authorised Signatory in M/s. Jay Marketing, in his further statement dated 20.3.2003, reiterated the depositions already made in his earlier statement recorded on 22.10.2002.

45. Shri Puneet Kesharlal Rungta, Partner in M/s. Abhishek Impex, Surat, in his statement dated 8.4.2003, deposed that they had sold consignments of imported fabrics on high sea sale basis (as detailed at Sr. No. 20, 29 & 31 of Annexure 'C' to the statement of Shri Mahendrabhai K. Kapadia recorded on 16.12.2002) to the said EOU and payments were received through cheque from the said EOU. He was not involved in the diversion of the imported fabrics in the local market.

46. Shri Ilyas Ibrahim Kapadia, proprietor in M/s. Tabrez Impex, Sachin Special Economic Zone, Surat, in his statement dated 20.10.2003, on being shown the statements of Shri Mahendrabhai K. Kapadia recorded on 16.12.2002 and 3.1.2003, admitted to have sold 8 consignments of imported fabrics, as per details of Annexure 'A' to his statement, to the said EOU on high sea sale basis and payment of Rs.1,02,66,603/- was still pending to be realized for which they had filed a case against the said EOU in the Court at Surat. Their firm was not involved in any diversion of the imported fabrics by the said EOU in the local market.

47. Shri Deepak Bajaj, Proprietor in M/s. Seasons International of Mumbai and Director in M/s. Prima Gold Impex Ltd., in his statement dated 29.10.2003, deposed that:

- the said EOU had placed some orders for fabrics which did not materialize.
- they had a godown at Raj Rajeshwari Compound, Kalyan-Bhivandi Road, Bhiwandi.
- Shri Bhatia had acted as an agent and procured orders for 5 containers of fabrics for the said EOU which did not materialize.
- he had visited the said EOU with Shri Vishnu Bhatia and met Shri Yogeshbhai Vaidya on 22.6.2002 at Ahmedabad.
- he did not know anything about the firms M/s. V-7 Overseas and M/s. Shri Shakti and the letter dated 24.6.2002 did not originate from his office.
- he was not aware and had not stuck any deal with Shri Yogeshbhai Vaidya for diversion of 214 cartons (107 + 107) under LR No.808919 dated 1.7.2002 and 808748 dated 25.6.2002.

- he had not remitted any money towards removal of duty free imported fabrics under the above LRs as per the letter dated 24.6.2002 said to be issued from his office.
- he did not owe any money to Shri Uttambhai of M/s. Mahalaxmi Trading Co, Bhiwandi.

48. Shri Vishnu Choitram Bhatia, Proprietor in M/s. Arihant Synthetics, in his further statement dated 6.11.2003, deposed that he met Shri Deepak Bajaj and Shri Uttambhai of M/s Mahalaxmi Trading Co, Bhiwandi on 22.6.2002 and a meeting was held at the said EOU between Shri Deepak Bajaj, Shri Yogesh Vaidya and Shri Hemant Jayantilal Shah and further stated that:

- he had acted as a broker in the grey procurement between Shri Deepak Bajaj and Shri Uttambhai of M/s Mahalaxmi Trading Co, Bhiwandi and he knew that Shri Deepak Bajaj owed some money to Shri Uttambhai of M/s. Mahalaxmi Trading Co, Bhiwandi.
- he had received the letter dated 24.6.2002 and the 5 cheques of M/s. V-7 Overseas from M/s. Season's International by courier and on the instructions of Shri Deepak Bajaj. The cheques were not sent to Shri Mahendrabhai K. Kapadia.
- on being asked about the diversion of fabrics under 2 LRs as shown in the letter dated 24.6.2002 (31075 + 37022.70 = 68097.70 metres) booked by the said EOU and one consigned to M/s. Shri Krishna Grey Checking, Bhivandi and another in the name of M/s. Mahalaxmi consigned to self, Ludhiana, he stated that Shri Uttambhai had a trading firm by the name M/s. Mahalaxmi Trading at Bhivandi, Mumbai and Shri Deepak Bajaj had a godown at Bhivandi and the bookings were made as per the meeting between Shri Deepak Bajaj, Shri Yogesh Vaidya and Shri Hemant Jayantilal Shah on 22.6.2002.

49 Shri Uttamchand Kesrimal Shah, in his statement dated 31.1.2004, inter alia, deposed that:

- he had a trading firm by the name M/s. Mahalaxmi Trading working on commission basis for grey fabrics procurement.
- Shri Deepak Bajaj had a firm named M/s. D G Exports and other firms namely M/s Seasons International and M/s. Prima Gold Impex.
- he visited the said EOU on 22.6.2002 with Shri Deepak Bajaj.
- Shri Deepak Bajaj owed some money to him on account of grey fabric procurement. After the closed door meeting of Shri Deepak Bajaj with the persons in the said EOU, Shri Deepak Bajaj stated that Shri Uttambhai would get his money after the imported goods were sold. After sometime, he had some knowledge that the imported goods had reached Bhivandi. He had not received the payments till date.
- Shri Vishnu Bhatia was a trader of Surat.
- Mr Mahendrabhai K. Kapadia was engaged in trading of grey from 1996-97 and therefore, he knew him.

50 Shri Kamlesh J. Trivedi, Accounts Manager in M/s. Adani Textile Industries of Navrangpura, Ahmedabad, in his further statement dated 10.6.2004, deposed that Shri Stavan Belani, working in their firm at the relevant time had written the register mentioned at Sr. No. 9 of the panchnama and had no relevance with M/s. Adani Textile Industries. On being specifically asked about the issuance of cheques No.871216 dated 14.5.2002 for Rs.5 lacs to the said EOU, he stated that the amount would have been towards the part payment of the fabrics and he will give the details of such transaction from the accounts; that the registers mentioned at Sr. No.1 to 8 of the panchnama drawn on 22.10.2002 at their premises were consignment wise sale files of imported fabrics pertaining to the said EOU from the firm M/s. Ezy Textiles, M/s Esteem Textiles Traders etc. and file No. 11 pertained to sales bills of fabrics of M/s. Ezy Textile Traders.

51 A notice to show cause was issued on 17.4.2003 to M/s Jay Marketing of Revdi Bazar, Ahmedabad by the Assistant Commissioner of Central Excise, Division IV, Ahmedabad-I from F.No.V.62/15-10/OA/2003-2004. The notice proposed the confiscation of the seized quantity 23.05 metres of imported polyester fabrics valued at Rs.1931/- . Penal provisions were also invoked.

52 The 35 bales of imported fabrics detained at the premises of M/s. Adani Textile Industries, Changodar (as detailed at Annexure 'A' to the panchnama drawn on 22.10.2002) were released vide letter F.No.V.62/15-52/PI-II/2002/Part-II dated 16.10.2003 after verification of genuineness that the said fabrics were part of duty paid imported fabrics imported vide Bill of entry No.000357 dated 12.8.2002.

53(i) From the foregoing investigation, the facts and evidences available on record and various corroborative evidences collected during the investigation as discussed in foregoing paras, it appears that M/s. Bhairavi Exim Pvt. Ltd. (a 100% EOU unit) imported duty free raw materials viz polyester dyed fabrics under Notification No.53/97-Cus dated 3.6.97 as amended on high sea sales basis from Mr. Deepak Bajaj, Proprietor of M/s Seasons International, Mumbai, Mr. Iliyas Ibrahim Kapadia, Proprietor of M/s Tabrez Impex, Surat and Mr. Punit Karsanlal Rungta, Partner of M/s. Abhishek Impex, Surat who were the main Consignee and sold the goods on high sea sale basis to M/s. Bhairavi Exim Pvt. Ltd. However M/s. Bhairavi Exim Pvt. Ltd. without utilizing the same in the manufacture of ready-made garments diverted the said duty free imported fabrics into the domestic Market in violation of the provisions of Notification No.53/97-Cus dated 3.6.97 as amended by adopting various modus operandi as discussed hereinabove. In order to fulfill the export obligation M/s. Bhairavi Exim Pvt.Ltd. procured inferior quality of readymade garment made from indigenous fabrics from local market and shown the garment in their production register as made out of imported fabrics. The import by M/s. Bhairavi Exim Pvt. Ltd and subsequent diversion to local market appear to be on behalf of Mr. Deepak Bajaj, Mr. Iliyas Ibrahim Kapadia and Mr. Punit Karsanlal Rungta.

(ii) The investigation conducted reveals that M/s. Bhairvi Exim Pvt. Ltd. imported duty free polyester fabrics i.e. 102 cartons vide Bill of Entry No.10722 dated 24.1.02 (Invoice No. 25350 dated 10.2.2002), 107 cartons vide Bill of Entry No.747405 (invoice No.110/02-(A) dated 1-4-02), 107 cartons vide Bill of Entry No.747719 (invoice No.110/02-B dated 8-4-02), 227 cartons vide Bill of Entry No.270161 (invoice No.STL-8016/02 dated 21.05.02), 17 cartons vide Bill of Entry No.274348 (Invoice No.BCPL/00106/02 dated 30.5.02) and 31cartons vide Bill of Entry No.275960 dated 8.7.02 (Invoice No.ST/412/02 dated 11.5.02). All the above mentioned fabrics have been shown warehoused in the said unit and entered at Page No.5, 14, 15, 16, 17 and 18 of receipt & issue i.e. Annexure "A" (A-1) warehouse register for the year 2002-03. The total quantities of 198894.31 Sqm involving Customs duty to the tune of Rs.6221337/- had been imported vide above mentioned Bills of Entry. It appears that the said imported fabrics were not used in the manufacture of ready-made garments for subsequent export and the same were diverted / sold into local market through Mr. Deepak Bajaj proprietor of M/s. Seasons International Mumbai and his broker / agent Mr. Vishnu C. Bhatia, proprietor of M/s. Arihant Synthetics. On the direction of Mr. Deepak Bajaj, Mr. Vishnu C. Bhatia, played major role as he looked after all the work relating to sale of fabrics on high sea sales basis, coordinating between Mr. Deepak Bajaj and Mr. Hemant Jayantilal Shah director of the said unit for diversion of the goods, arranging payment of premium to M/s. Bhairarvi Exim Pvt. Ltd. The said fabrics were first purchased from the foreign seller by Mr. Deepak Bajaj and subsequently the same were sold to M/s. Bhairavi Exim Pvt. Ltd. on high sea sales basis. After completion of the re-warehousing formalities the fabrics were sold in the local market by M/s. Bhairarvi Exim Pvt. Ltd. who got some remuneration / premium in cash from Mr. Deepak Bajaj. Out of said diverted fabrics 86 cartons of imported fabrics were transported through M/s. Okara Trade Parcel Carriers Ahmedabad and

114 cartons through M/s. Delhi Punjab Golden Carriers, Outside Raipur Gate, Ahmedabad. In order to fulfill the export obligation they procured inferior quality of readymade garment made from indigenous fabrics from local market and had shown said garment in their production register as made out of imported fabrics. The above mentioned facts are corroborated by Mr. Hemant bhai Jayantilal Shah, Mr. Anandbhai M. Kapadia and Mr. Mahendrabhai K. Kapadia in their respective depositions.

(iii) The investigation conducted further reveals that M/s. Bhairvi Exim Pvt. Ltd. imported duty free polyester fabrics i.e. 180 cartons vide Bill of Entry No.303 dated 13.11.01 (invoice No.SEZ/289/01-02 dated 13.11.01) 194 cartons vide Bill of Entry No.301 dated 9.11.01 (invoice No.SEZ/287/01-02 dated 13.11.01), 73 cartons vide Bill of Entry No.202 dated 24.9.01 (Invoices No.SEZ/358/01-02 dated 29.12.01), 71 cartons vide Bill of Entry Bill of Entry No.350 dated 12.12.01 (invoice No.SEZ/359/01-02 dated 29.12.01) and 97 cartons vide Bill of Entry No.342 dated 10.12.01 (Invoice No.SEZ/363/01-02 dated 1.1.02). All the above mentioned fabrics have been shown warehoused in the said unit and entered at Page No. 27 (two entry), 43, 44 and 46 respectively of receipt & issue i.e. Annexure "A" (A-1) register for the year 2001-02. It appears that out of total quantity of fabrics imported vide above Bills of Entry a quantity of 157609 Sqm involving Customs duty to the tune of Rs.4608924/- were not used in the manufacture of ready-made garments for subsequent export and the same were diverted / sold into local market through Mr. Ilyas Ibrahim Kapadia, Proprietor in M/s. Tabrez Impex Sachin Special Economic Zone, Surat. The said fabrics were first purchased from the foreign seller by Mr. Ilyas Ibrahim Kapadia and subsequently the same were sold to M/s. Bhairavi Exim Pvt. Ltd on high sea sales basis. After completion of the re-warehousing formalities the fabrics were sold into the local market by M/s. Bhairavi Exim Pvt. Ltd. who got some remuneration / premium in cash from M/s. Tabrez Impex Surat. Out of said diverted fabrics 93 cartons of imported fabrics were transported through M/s. Surat-Ahmedabad Transport Pvt. Ltd. In order to fulfill the export obligation they procured the inferior quality of readymade garment made from indigenous fabrics from local market and had shown the said garment in their production register as made out of imported fabrics. Out of the said diverted fabrics some quantities had been shown as used in the manufacture of 31353 pieces of scarves. However said scarves were procured from local market made out of indigenous fabrics. The said scarves made out of indigenous fabrics were exported vide AR-3A Nos.6 & 7 both dated 16.6.2002 to M/s. Cosmos Trading Co. KSEZ, Gandhidham, Kandla. The readymade garment (120000 pieces scarves) made from indigenous fabrics were procured through M/s. Surat-Ahmedabad Transport Pvt. Ltd, Narol, Ahmedabad. The above mentioned facts have also been corroborated by Mr. Hemantbhai Jayantilal Shah, Mr. Anandbhai M. Kapadia and Mr. Mahendrabhai K. Kapadia in their respective depositions.

(iv) The investigation conducted further reveals that M/s. Bhairvi Exim Pvt. Ltd have imported duty free polyester fabrics i.e. 94 cartons vide Bill of Entry No.9688/577 dated 12.8.01 (Invoice No.8410 dated 11.9.01), 1241 rolls vide Bill of Entry No.10112/234 dated 22.10.01 (invoice No.MY/01/458 dated 4.10.01) and 81 cartons vide Bill of Entry No.9660/105 dated 7.8.2001 (Invoices K-004/01 dated 22.7.01). All the above mentioned fabrics have been shown warehoused in the said unit and entered at Page No.26, 41 and 48 respectively of receipt & issue i.e. Annexure "A" (A-1) register for the year 2001-02. It appears that out of total quantities of fabrics imported vide above Bills of Entry a quantity of 81910 Sqm involving Customs duty to the tune of Rs.1457388/- were not used in the manufacture of ready-made garments for subsequent export and the same were diverted / sold into local market through Mr. Punit Kasharlal Rugta Partner M/s Abhishek Impex, Surat. The said fabrics were first purchased from the foreign seller by Mr. Punit Kasharlal Rugta and subsequently the same were sold to M/s. Bhairavi Exim Pvt. Ltd. on high sea sales basis. After completion of the re-warehousing formalities the fabrics were sold into the local market. In order to fulfill the export obligation they procured the inferior quality of readymade garment made from indigenous fabrics from local market and had shown

said garment in their production register as made out of imported fabrics. Out of the said diverted fabrics some quantities had been shown as used in the manufacture of 18925 pieces of scarves. However said scarves were procured from local market made out of indigenous fabrics. The said scarves made out of indigenous fabrics were exported vide AR-3A Nos.1 & 2 both dated 1.5.2002 and AR-3A Nos 6 & 7 both dated 16.6.2002 to M/s. Cosmos Trading Co., KSEZ, Gandhidham, Kandla. The readymade garment of 120000 pieces scarves made from indigenous fabrics had been procured through M/s. Surat-Ahmedabad Transport Pvt. Ltd., Narol, Ahmedabad and 72000 pieces of scarves through M/s. South Gujarat Transport Service, Narol, Ahmedabad. The above mentioned facts are corroborated by Mr. Hemantbhai Jayantilal Shah, Mr. Anandbhai M. Kapadia and Mr. Mahendrabhai K. Kapadia in their respective depositions.

(v) The investigation conducted further reveals that M/s. Bhairvi Exim Pvt. Ltd. imported duty free polyester fabrics i.e. 147 cartons vide Bill of Entry No.9697/114 dated 13.8.01 (Invoices No.0724/01 dated 24.7.01), 50 cartons vide Bill of Entry No.238 dated 4.12.01 (invoice No.900913 dated 31.10.01) and 99 cartons vide Bill of Entry No.10843/6 (invoice No.901106 dated 24.1.02). All the above mentioned fabrics have been shown warehoused in the said unit and entered at Page No.10, 34 and 61 respectively of receipt & issue i.e. Annexure "A" (A-1) register for the year 2001-02. It appears that total quantities of 88634.41 Sqm of fabrics imported involving Customs duty to the tune of Rs.2833111/- were not used in the manufacture of ready-made garments for subsequent export and the same were diverted / sold into local market through Mr. Kamlesh J. Trivedi of M/s. Adani Textile Industries, Ahmedabad after completion of the re-warehousing formalities. In order to fulfill the export obligation they procured inferior quality of readymade garment made from indigenous fabrics from local market and had shown said garment in their production register as made out of imported fabrics. Out of the said diverted imported fabric some quantities had been shown as used in the manufacture of 11253 pieces of scarves but in reality the said scarves were procured from the local market made out of indigenous fabrics. The said scarves made out of indigenous fabrics were exported vide AR-3A Nos.1&2 both dated 1.5.2002 to M/s. Cosmos Trading Co. KSEZ Gandhidham, Kandla. The readymade garment (72000 pieces of scarves) made from indigenous fabrics were procured through M/s. South Gujarat Transport Service Narol Ahmedan. The said imported fabrics were transported through Mr. Mangilal Nathulal Mali Proprietor of M/s. Rajesh Transport Company, Ahmedabd to the godown of M/s. Adani Textile Industries Chagodar. However, LRs were not issued. The said fact have been accepted by Mr. Mangilal Nathulal Mali in his statement dated 2.10.2002. However, in delivery slip placed at page No.31 (detailed the transportation of goods to Changodar on behalf of the said Unit) of The slip book mentioned at Sr. No.4 of Annexure 'A' to the panchnama dated 1.10.02 drawn at the premises of M/s. M/s. Rajesh Transport Company he had mentioned wrong information about consignor, consignee and description of the goods. The above mentioned facts are corroborated by Mr. Hemant bhai Jayantilal Shah, Mr. Anandbhai M. Kapadia and Mr. Mahendrabhai K. Kapadia in their respective depositions.

(vi) The investigation conducted further reveals that M/s. Bhairvi Exim Pvt. Ltd imported duty free polyester fabrics, 619 rolls vide Bill of Entry No.KSEZ/02427 dated 19.12.01 (invoice No.13 dated 8.4.2002). The above mentioned fabrics have been shown warehoused in the said unit and entered at Page No.4 of receipt & issue i.e. Annexure "A" (A-1) register for the year 2002-03. It appears that out of total quantity of fabrics imported vide above Bills of Entry a quantity of 26922 Sqm involving Customs duty to the tune of Rs.1659032/- were not used in the manufacture of ready-made garments for subsequent export and the same were diverted / sold into local market through Mr. Nilesh Radheshyam Bansal, partner M/s. Cosmos Trading Co., KSEZ, Gandhidham, Kandla after completion of the re-warehousing formalities. In order to fulfill the export obligation they procured the inferior quality of readymade

garment made from indigenous fabrics from local market and had shown said garment in their production register as made out of imported fabrics. Out of the said diverted fabrics some quantities had been shown as used in the manufacture of 8229 pieces of scarves, however said scarves were procured from local market made out of indigenous fabrics. The said scarves made out of indigenous fabrics had been exported vide AR-3A Nos.6 & 7 both dated 16.6.2002 to M/s. Cosmos Trading Co. KSEZ Ghandhidham, Kandla. The readymade garment (120000 pieces) made from indigenous fabrics had been procured through M/s. Surat-Ahmedabad Transport Pvt. Ltd Narol Ahmedabad. The above mentioned facts are corroborated by Mr. Hemant bhai Jayantilal Shah, Mr. Anandbhai M. Kapadia and Mr. Mahendrabhai K. Kapadia in their respective depositions.

(vii) The investigation conducted further reveals that M/s. Bhairvi Exim Pvt. Ltd have imported duty free polyester fabrics, 100 cartons vide Bill of Entry No.10194/235 (invoice No.TIRPT/35/01 dated 29.10.01). The above mentioned fabrics have been shown warehoused in the said unit and entered at Page No.25 of receipt & issue i.e. Annexure "A" (A-1) register for the year 2001-02. It appears that out of total quantities of fabrics imported vide above Bills of Entry a quantity of 20383 Sqm involving Customs duty to the tune of Rs.654880/- were not used in the manufacture of ready-made garments for subsequent export and the same were diverted / sold into local market through Mr. Vishwanath Bihani of M/s Systematic Corporation, Ring Road, Surat, after completion of the re-warehousing formalities. Out of the diverted quantity of 20383 sqm, M/s. Jay Marketing Ahmedabad had purchased 10200 metres of fabrics. Out of the said quantity of 10200 meters, a quantity of 23.05 sqm was seized during the panchnama drawn on 22.10.2002 at M/s. Jay Marketing Ahmedabad. Mr. Rameshbhai Nutandas Harwani has accepted that they had purchased a quantity of 10200 meters of 100% polyester imported fabrics from the said Unit during the panchnama proceedings and his deposition recorded on 22.10.2002. In order to fulfill the export obligation they procured the inferior quality of readymade garment made from indigenous fabrics from local market and had shown said garment in their production register as made out of imported fabrics. The said diverted fabrics had been shown as used in the manufacture of 9165 pieces of scarves. However said scarves were procured from local market made out of indigenous fabrics. The said scarves made out of indigenous fabrics had been exported vide AR-3A Nos.6 & 7 both dated 16.6.2002 to M/s .Cosmos Trading Co., KSEZ, Gandhidham, Kandla. The readymade garment (120000 pieces scarves) made from indigenous fabrics had been procured through M/s. Surat-Ahmedabad Transport Pvt. Ltd., Narol, Ahmedabad. The above mentioned facts are corroborated by Mr. Hemant bhai Jayantilal Shah, Mr. Anandbhai M. Kapadia and Mr. Mahendrabhai K. Kapadia in their respective depositions.

(viii) The investigation conducted further reveals that M/s. Bhairvi Exim Pvt. Ltd have imported duty free polyester fabrics, 971 Rolls vide Bill of Entry No.11187/14 (Invoice No.2495 dated 6.3.02), 60 cartons vide Bill of Entry No.11332/48 (Invoice No.15644 dated 9.4.02), 148 cartons vide Bill of Entry No.5521/74 dated 30.1.02 (invoice No.RT-234L-B dated 9.1.02), 110 cartons vide Bill of Entry No.11332/251 dated 26.4.02 (invoice No 15645 dated 9.4.02), 107 cartons vide Bill of Entry No.11537/481 (Invoice No.12660 dated 7.5.02), 105 cartons vide Bill of Entry Bill of Entry No.11537/483 (invoice No.12657 dated 7.5.2002), 100 cartons vide Bill of Entry No.10194/236 (Invoice No.TIRPT/36/01dated 29.10.01), 148 cartons vide Bill of Entry No.10490/91 dated 18.12.2001 (Invoice No.RT-28-1 dated 28.11.01), 91 cartons vide Bill of Entry No.7040 dated 29.8.2000 (Invoice No.GW-297/2000), 120 cartons vide Bill of Entry No.10795/184 (Invoice No.TIRPT/78/02 dated 15.1.02), 86 cartons vide Bill of Entry No.5417/146 (Invoice No.1198/K-IN dated 15.12.01) and 103 cartons vide Bill of Entry No.10722/352 (Invoice No.25204 dated 24.1.02). All the above mentioned fabrics have been shown warehoused in the said unit and entered at Page No.3, 6, 10, 11, 12 and 13 of receipt & issue i.e. Annexure "A" (A-1) register for the

year 2002-03 and entered at page no.24, 50, 53, 58, 62 and 66 of receipt & issue i.e. Annexure "A" (A-1) register for the year 2001-02 respectively. It appears that out of total quantities of fabrics imported vide above Bills of Entry a quantity of 368540.19 Sqm involving Customs duty to the tune of Rs.12120400/- were not used in the manufacture of ready-made garments for subsequent export and the same were diverted / sold into local market through Mr.Sunil Soman Surat after completion of the re-warehousing formalities. It appears that out of total diverted fabrics 583 cartons of fabrics were transported through M/s. Okara Trade Parcel Carriers Ahmedabad, 50 Cortons were transported through M/s. New India Transport Co., Narol, Ahmedabad and 148 cartons were transported through M/s. Vijay Roadline, Narol, Ahmedabad. Shri Yogeshbhai Vaidya, Consultant-cum-authorized signatory of the said unit had made arrangement for transportation and played a major role in diversion of imported duty free fabrics into local market. In order to fulfill the export obligation they procured the inferior quality of readymade garment made from indigenous fabrics from local market and had shown said garment in their production register as made out of imported fabrics. Out of the said diverted fabrics some quantities had been shown as used in the manufacture of 74618 pieces of scarves. However said scarves were procured from local market made out of indigenous fabrics. The said scarves made out of indigenous fabrics had been exported vide AR-3A Nos. 1&2 both dated 1.5.2002 and AR-3A Nos.6 & 7 both dated 16.6.2002 to M/s. Cosmos Trading Co., KSEZ, Gandhidham, Kandla. The readymade garment (120000 pieces scarves) made from indigenous fabrics had been procured through M/s. Surat-Ahmedabad Transport Pvt. Ltd., Narol, Ahmedabad and 72000 pieces of scarves through M/s. South Gujarat Transport Service Narol Ahmedanbad. The above mentioned facts are corroborated by Mr. Hemantbhai Jayantilal Shah, Mr. Anandbhai M. Kapadia and Mr. Mahendrabhai K. Kapadia in their respective depositions.

(ix) The investigation conducted further reveals that M/s. Bhairvi Exim Pvt. Ltd have imported duty free polyester fabrics, 125 cartons vide Bill of Entry No.10754/198 (Invoice No.906772 dated 31.12.01), 59 cartons vide Bill of Entry No.5526/29 (invoice No.KM-2019 dated 20.1.02), 105 cartons vide Bill of Entry No.10904 dated 18.2.02, 108 cartons vide Bill of Entry No.11200/72 dated 2.4.02 (invoice No.SI-020040(A/B) dated 5.3.02), 42 cartons vide B/L No.SSBOMO23L19935 dated 28.3.02 (Invoice No.DUSHUO-15 dated 25.3.02) and 43 cartons vide Bill of Entry No.11300/259 dated 15.4.02 (Invoice No.CD-21422 dated 7.3.02). All the above mentioned fabrics have been shown warehoused in the said unit and entered at page No.59, 64, 65 of receipt & issue i.e. Annexure "A" (A-1) for the 2001-02 and at page No.2, 7 and 8 of receipt & issue i.e. Annexure "A" (A-1) register respectively for the year 2002-03 respectively. It appears that out of total quantities of fabrics imported vide above Bills of Entry a quantity of 134368.37 Sqm involving Customs duty to the tune of Rs.4703468/- were not used in the manufacture of ready-made garments for subsequent export and the same were diverted / sold into local market on cash basis in Ahmedabad and the buyers were not known as the sales were effected through various agent after completion of the re-warehousing formalities. In order to fulfill the export obligation they procured the inferior quality of readymade garment made from indigenous fabrics from local market and had shown said garment in their production register as made out of imported fabrics. The said diverted fabrics had been shown as used in the manufacture of 38457 pieces of scarves, however said scarves were procured from local market made out of indigenous fabrics. The said scarves had been exported vide AR-3A No.1 & 2 both dated 1.5.2002 and AR-3A Nos.6 & 7 both dated 16.6.2002 to M/s. Cosmos Trading Co., KSEZ, Gandhidham, Kandla. The readymade garment (120000 pieces scarves) made from indigenous fabrics had been procured through M/s. Surat-Ahmedabad Transport Pvt. Ltd., Narol, Ahmedabad and 72000 pieces of scarves through M/s. South Gujarat Transport Service, Narol, Ahmedanbad. The above mentioned facts are corroborated by Mr. Hemantbhai Jayantilal Shah, Mr. Anandbhai M. Kapadia and Mr. Mahendrabhai K. Kapadia in their respective depositions.

54 The entire illicit clearances and diversion of duty free imported fabrics in the local market by the said EOU has been worked out as per Annexure 'A' to the SCN and the total duty forgone works out to be Rs.3,42,58,540/-. The total illicit clearances / diversion in the local market have been accepted by Shri Hemantbhai Shah, Shri Anandbhai M. Kapadia and Shri Mahendrabhai K. Kapadia in their various depositions recorded on different dates.

55. After accepting the duty liability, the said EOU voluntarily paid Rs.36 lacs (vide TR 6 challan No. 001/2002-2003 dated 16.10.02 for Rs.2 lacs, TR 6 challan No. 002/2002-2003 dated 29.10.2002 for Rs.1 lac, TR 6 challan No.03/2002-2003 dated 18.11.2002 for Rs.2 lacs and TR 6 challan dated 13.11.2002 for Rs.31 lacs) towards part payment of the duty liability.

56.1 Based on investigation carried by the Department, a show cause notice dated 20.9.2006 was issued to M/s. Bhairavi Exim Pvt Ltd., Ahmedabad calling upon them to show cause to the Commissioner of Central Excise, Ahmedabad-I, as to why:

1. Imported fabrics valued at Rs.4,77,85,683/- (As per Annexure 'A' to SCN) should not be confiscated under Section 111(j) and 111(o) of the Customs Act, 1962. The said goods are, however, not available for confiscation.
2. The Customs duty amounting to Rs.3,42,58,540/- (Rupees Three crore forty two lacs fifty eight thousand five hundred forty only) leviable on imported warehouse fabrics valued at Rs.4,77,85,683/- which were imported duty free under notification No.53/97-Cus dated 3.6.1997, as amended and illicitly cleared / removed from the warehouse in the domestic market (as per Annexure 'A' to SCN) should not be recovered and demanded from them under Section 72 of the customs Act, 1962 read with proviso to Section 28 of the Customs Act, 1962 read with Notification No. 53/97-Cus dated 3.6.97, as amended.
3. The Rs.36 lacs already paid by them should not be appropriated and adjusted against their above demand.
4. Penalty should not be imposed under the provisions of Section 112/ 114A of the Customs Act, 1962 for the contraventions as discussed hereinabove.
5. Interest at the applicable rates should not be charged from them under the provisions of Section 28AB of the Customs Act, 1962 read the Notification No. 53/97-Cus dated 3.6.97, as amended.
6. B-17 bond furnished by them should not be enforced and the security if any furnished alongwith the bond should not be appropriated towards their duty liabilities.

56.2 Penalty should not be imposed on the following under the provisions of Section 112 of the Customs Act, 1962:

1. Shri Hemantbhai Shah
2. Shri Anandbhai M. Kapadia, both the Directors in the said EOU
3. Shri Yogeshbhai Vaidya, Consultant-cum authorized signatory
4. Shri Mahendrabhai Kapadia
5. Shri Deepak Bajaj, proprietor of M/s. Seasons International, Mumbai
6. Shri Vishnu C. Bhatia, proprietor of M/s. Arihant Synthetics

7. Shri Ilyas Ibrahim Kapadia, Proprietor of M/s Tabrez Impex, Sachin Special Economic Zone, Surat
8. Shri Punit Kasharlal Rungta, Partner M/s Abhishek Impex, Surat
9. Shri Kamlesh Trivedi of M/s. Adani Textile Industries, Ahmedabad
10. Shri Nilesh Radheshyam Bansal, partner of M/s. Cosmos Trading Co., KSEZ, Gandhidham, Kandla
11. Shri Vishwanath Bihani, Agent of M/s. Systematic Corporation, Surat
12. Shri Sunil Soman, relative of Shri Shyam Bihani, proprietor of M/s. Systematic Corporation, Ring Road, Surat
13. Shri Mangilal Nathulal Mali, Proprietor of M/s. Rajesh Transport Company, Ahmedabad
14. Shri Rajesh Mahavir Prasad Sharma, Manager in M/s. Delhi Punjab Golden Carriers, Ahmedabad

57. Writeen submission: Shri S. Suriyanarayanan, Advocate of Shri Punit Kesharlal Rungta (Noticee No.9), Partner M/s. Abhishek Impex, Surat in his reply dated 12.4.2007, inter alia, submitted that the entire case sought to be made out is based on statement evidences and without any supporting material or corroborative evidence to link Shri Puneet Rungta with the alleged offences/alleged diversion aof imported materials by M/s. Bhairavi Exim Pvt. Ltd.; that in his statement dated 8.4.2003 (which was recorded after the relied upon statements dated 29.10.2002 and 5.12.2002 of Shri Hemantbhai Shah, statement dated 29.10.2002 and 5.12.2002 of Shri Anandbhai Kapadia and statement dated 16.12.2002 of Shri M.K.Kapadia) Shri Puneet Rungta has unequivocally denied any involvement in the alleged diversion by main noticee unit and has stated that the imported goods were sold on high seas sales basis and payments were received through cheque; that they seek cross examination of Shri Hemantbhai Shah, Shri Anandbhai Kapadia and Shri M.K.Kapadia, and relied on the paragraph 22 of decision of Aswin S. Mehta Vs. Commissioner of Customs, Mumbai 2006 (197)ELT (tri. Mumbai) and Para 10 & 23 of decision of Jai Narain Verma Vs. Collector of Customs , Delhi 1995 (76) ELT 421 relying upon two case laws; that - when co-accused do not say in what pecuniary way Mr. Punit Rungta benfited by their alleged diversion, nor is any evidence of financial benefit to Mr. Rungta, without grant of cross examination, adjudication can not proceed at all;the officers who recorded such statements without any evidence of financial flow to Mr. Punit Rungta due to such diversion have clearly taken the sides of the co-accused, therefore, their cross examination is also required to be granted and they relied on the decision of SRD Shukla Vs. Vipin Maneklal 2000 (125) ELT 366 (Bom), N.W Jain Vs. CCE 2000 (123) ELT 50 (Bom.), Joshika Laminations P.Ltd. 2002 (147) ELT 210 (T), and Dina Metals Ltd. 2001 (137) 280 (T); that a speaking order in regard to his request for cross examination has to be passed vide the ratio in 2001 (128) ELT 276 wherein Hon'ble CEGAT haeld that when a specific request for cross examination is made in writing, order has to be passed by the adjudicating authority; that there is no evidence of Shri Rungta's involvement in the alleged diversions, nor he is benefited financially, invocation of section 112 can not be sustained against him.

58. Personal Hearing: The Personal Hearing was fixed on 17.09.2024 for Shri Puneet Kesharlal Rungta. Advocate of Noticee vide E mail dated 13.09.2024 requested to conduct Personal Hearing on virtual (online) mode. Accordingly, Personal Hearing on virtual mode was fixed on 18.09.2024. Shri S. Suriyanarayanan Advocate of the Noticee appeared for virtual hearing held on 18.09.2024 wherein he reiterated the contents of their written submission dated 12.04.2017 and he was asked whether he would like to make any additional submission to which he submitted that he would be submitting further submission only after the cross examination of Shri Hemantbhai Shah, Shri Anandbhai Kapadia and Shri M.K. Kapadia.

59.DISCussion AND FINDINGS: I have carefully gone through the case records and written submission dated 12.04.2017 and records of personal hearing held on 18.09.2024 on virtual mode.

60. This denovo proceeding has been initiated consequent to the CESTAT's Final Order No A/10488/2023 dated 13.03.2023 in respect of Appeal No. C/10018/2013 filed by Shri Puneet Kesharlal Rungta against the Order In Original No. 3/Commissioner/2008 dated passed by the Commissioner of Central Excise, Ahmedabad-I. Relevant Para of CESTAT's Final Order No A/10488/2023 dated 13.03.2023 is reproduced as under:

"When the matter was called out it was pointed out by the learned AR that all the connected matters in the impugned order has been remanded by Tribunal vide Order No. A/1748-1758/WZB/AHD/2008 dated 02.09.2008. The said order following has been observed.

9. At this stage we are only petitions filed by the appellants. concerned with the stay While as observed by the Commissioner, there is lot of evidences covered by way statements from the transporters, statement of directors, etc. as regards diversion of goods, we find some force in the arguments advanced by the Id. Advocate on behalf of the main appellant viz. M/s. Bhairavi Exim Pvt. Ltd. In respect of Sl.No. 1 to 4, Commissioner has dismissed the argument that these were covered by and order-in-original, saying that diversion of raw material has already been proved. In respect of Sl.No. 5 to 12 of the Annexure-A, we find that Commissioner of Customs has confirmed a demand of more than Rs. 1 crore on the raw materials imported and he has also demanded excess duty on the finished goods which were not exported. This aspect has been dealt by the Commissioner only by observing that the Department has already proved that the imported goods have been diverted and the adjudication order is not related to illicit diversion of subject fabrics. Whether the confirmation of demand in respect of all these consignments would amount to demanding duty on the same consignment twice or not should have been examined, analyzed and conclusion arrived at. It is also noticed that the Commissioner while dealing elaborately in respect of each consignment to show that the same have been diverted, has not dealt with the submissions of the appellants as to why the proof of export already submitted by them in respect of the consignment imported and finished goods manufactured out of them is not acceptable and need not be taken into account. This aspect is important and required in view of the submissions of the appellants that finished goods were examined and then only the same have been exported and the proof has been admitted. It is felt that there is a need to examine the contentions of the appellants in respect of each consignment and give a clear finding as to why the appellant's contention in respect of consignments is not acceptable after weighing the evidences available on record for both. This has not been done. Commissioner has done is confirming the demand on the ground that the diversion has been proved. Therefore, we feel that there is a need to re-examine the evidences and after analysis and re-examining the evidences and dealing with each consignment separately and also deal with the evidences provided by both the sides and come to a conclusion. We also feel that the contention of Dr. Yogesh Vaidya, Consultant that he was not authorized signatory for all purposes but for only for a limited purpose needs to be considered. The contention of the other appellants that since they have not dealt with the goods, no penalty is imposable on them is required to be considered in the light of the legal precedences and facts on records. What

10. In view of the above observations, we feel that appeals and stay petitions will have to be disposed of by way of remand to the adjudicating authority to adjudicate the case afresh in the light of the observations made above and give clear findings in the order after considering the submissions made by the appellants as discussed above after giving them another opportunity to present their case if they so desire."

2. Since, the matters of all other co-noticee have been remanded. The order in respect of Shri. Puneet Kesharlal Rungta in Appeal No. C/10018/2013 is also remanded on identical terms.

3. Appeal is allowed by way of remand."

60.1 In view of the aforesaid Final Order No A/10488/2023 dated 13.03.2023 of Hon'ble CESTAT, Ahmedabad, issue to be decided in the present case is whether Shri Puneet Kesharlal Rungta is liable for penalty under Section 112 of the Customs Act, 1962 or otherwise. I find that said Final Order No A/10488/2023 dated 13.03.2023 has been accepted by the Department on 08.05.2023. Further, I find that as in the said Order dated 13.03.2023 it has been stated that all the connected matter have been remanded back by the Tribunal vide Order No. A/1748/1758/WZB/AHD/2008 dated 02.09.2008. I find that Commissioner of Central Excise, Ahmedabad has concluded the denovo proceedings vide OIO No. 29/COMMISSIONER/AHD-I/2009 dated 15.09.2009 wherein the duty of Rs. 3,42,58,540/- has been confirmed alongwith equal amount of penalty under Section 114A of the Customs Act, 1962 has been confirmed and penalty has been imposed on the individual except Shri Puneet Kesharlal Rungta as his appeal was not decided in Final Order No. A/1748-1758/WZB/AHD/2008 dated 02.09.2008.

61: I have gone through the Show Cause Notice including defence reply filed by S. Suriyanarayanan, Advocate of Shri Punit Kesharlal Rungta and records of personal hearing.

61.1 I find that Shri S. Suriyanarayanan Advocate of the Noticee in his written submission dated 12.04.2017 as well as during the personal hearing held on 18.09.2024 in virtual mode has stated that he would be submitting further submission only after the cross examination of Shri Hemantbhai Shah, Shri Anandbhai Kapadia and Shri M.K. Kapadia. Thus, first of all I would like to examine whether the Noticee should be granted the cross examination or not in the facts and circumstance of the present case. I find that Shri Punit Kesharlal Rungta in his statement has merely stated that he had only sold the goods on high-sea sale to M/s. Bhairavi Exim Pvt. Ltd. and there was no role in diversion of the goods. Shri Mahendrabhai K. Kapadia, one of the main architect of the fraud has clearly stated in his statement dated 3.1.2003 that these fabrics, which are mentioned at Sr. No.20, 29, 31 of Annexure-C to his statement, were diverted through Shri Punit Kesharlal Rungta of M/s. Abhishek Impex of Surat. Shri Anandbhai M. Kapadia, Director of the said EOU, in his statement dated 21.1.2003 confirmed the facts given in the statement of Shri Mahendrabhai K. Kapadia. Therefore, no useful purpose would be served by allowing cross examination. There are plethora of decision stating that requirement for cross examination in quasi-judicial proceedings has to be examined in the facts of the case and it is not mandatory to allow all such request. In this regard, I rely on the decision of Hon'ble Delhi CESTAT in case of Shally Thaper Vs. Commissioner of Customs reported in 1993 (64) ELT 31(Tribunal) wherein, the Hon'ble Tribunal by citing the Supreme Court order in AIR 1997, SC 1627 has held that there is no hard and fast rule in quasi-judicial process is allowing cross examination and it is to be determined depending on the circumstances of the case and upheld denial of cross-examination of co-accused. In the case of Collector of Customs, Madras and Others Vs. D. Bhoormul reported in 1983(13) ELT 1546 (SC), the Hon'ble Supreme Court has held that the provisions of the Evidence Act, as well as Code of Criminal Procedure in terms, are not applicable to the adjudication proceedings. Further, Hon'ble Madras

High Court in the case of K. Balan Vs. Govt. of India reported in 1982 (10) E.L.T. 386(Madras) has held that right to cross examination is not necessarily a part of reasonable opportunity and depends upon the facts and circumstances of each case. It largely depends upon the adjudicating authority, who is not guided by the rules of evidence as such but who must offer such opportunity to the party concerned as would assure him proper opportunity to defend himself. It would, however, be in the interest of justice and fairness to the parties, that the opportunity to cross-examination is given wherever it is relevant, justified and genuine and where it is not for protracting the proceedings, as held by the Hon'ble Tribunal in the case of M.P. Jain Vs. CCE 1988 (37) ELT 577 (Tribunal). Similarly, in the case of Shivon Ply-n-Wood Pvt. Ltd/ Vs. Commissioner of Customs & Central Excise, Aurangabad report in 2004 (177) ELT 1150 (Tri. Mumbai) , wherein the Hon'ble Tribunal in Para 6 has held as under: “

“6. We observe that the Department's case is based on the balance sheets of the applicants right from the year 1994 to 1998 which were duly audited. The applicants' explanation that the discrepancies in the balance sheets and excise records is due to figures relating to sale of timber, an activity which they say they are involved in does not appear to be *prima facie* correct in view of the various statements of their own employees. Their contentions that principles of natural justice are violated inasmuch as cross-examination of persons, whose statements are relied upon, has to be weighed in the light of the facts that all the statements relied upon were placed before them. They had all the opportunity to demolish these statements during the proceedings. Cross-examination cannot be claimed as a matter of right in departmental proceedings. Each case has to be examined on its own merits. In regard to the financial hardship claimed, we observe that the audited balance sheet has not been tendered. The claim of the applicants that they have accumulated losses over the years is taken into consideration. The applicants failed to make a strong *prima facie* case in their favour. We do not consider that this is case fit to waive pre-deposit of duty and penalty completely.”

Further, Honble Tribunal in the case of Shidhar Paints Co. Pvt. Ltd Vs. Commissioner, Customs & Central Excise, Hyderabad-III, reported in 2006(198) ELT 514 (Tri. Bang.) has held that “the denial of cross examination of witness is immaterial in case of confession statements. In the said case, it was charged by the party that the adjudicating authority had denied the right of the appellant to cross-examine the witness and the investigating officers. In the said case, the Tribunal, in light of the following various case laws, cited by the Adjudicating Authority, has held that there was no violation of principles of Natural Justice by denying of cross examination of witness/officers”

The Hon'ble Tribunal while passing the aforesaid order, has relied upon the decisions in case of (i) Suman Silk Mills Pvt. Ltd Vs. CCE, Baroda reported in 2002 (142) ELT 640 (Tri. Mumbai)- No infraction of principles of natural justice where witness not cross examined when statements admitting evasion were confessional. (ii) Anil Das Vs. Commissioner of Customs, New Delhi reported in 2002 (141) ELT 135 (Tri. Del) Non allowance of cross examination of appellants when confessional statements made by themselves does not amount to violation of rule of natural justice and (iii) Beauty Dyers Vs, CCE, Chennai reported in 2001 (136) ELT339 (Tri. Chennai) Non availability of witness for cross-examination not a fatal flaw when the findings are based on documents about which there is no credible explanation and nothing on record to show statements not voluntary or effectively retracted within close proximity of the time these were detained.

It is found in the subject case that all the statements were recorded under Section 108 of the Customs Act, 1962. As there is no dispute on bona fides of these statements, only on account of these statements being relied upon, I find no

justification of cross-examination of the people whose statements are being relied upon. At no stage during investigation, any doubt was raised by any person connected with the said noticee on the facts stated by other in their statements. Therefore, merely because statements of these persons are being relied upon, these statements do not lose their validity. There was no other reason cited by the noticee for calling the purpose for cross examination, therefore, cross-examination of Shri Hemantbhai Shah, Shri Anandbhai Kapadia and Shri M.K. Kapadia is not acceptable.

62. Now I proceed to decided whether Shri Puneet Kesharlal is liable for penalty under Section 112 of the Customs Act, 1962 or otherwise.

62.1 I find that basic issue involved in the present case is that M/s. Bhairavi Exim Pvt. Ltd is a 100% EOU and the main charge leveled against them in the SCN is that 100% polyester fabric was imported duty free under Notification No. 53/1997-Cus dated 03.06.1997 by them under the bills of entries listed in Annexure-A were not used for the manufacture of goods to be exported and instead were clandestinely removed from the factory and sold within the country. Details of such clandestine sale of the imported goods are listed in Annexure-A. During the search of the unit on 24/25-9-2002 certain shortages of the inputs were noticed. Total 19915 pieces of finished maxis were also found in stock and certain quantity of imported fabrics were shown to have been used in the manufacture of these maxis. It was also noticed that in the bills of entry, description of input fabrics was "polyester dyed fabrics", whereas the maxis were found to have been manufactured out of "polyester dyed and printed fabrics". During the search, Mr. Hemantbhai Jayantilal Shah, one of the Directors of the said unit was present and on being asked about the shortage of inputs and discrepancy in the material used in the manufacture of 19915 pieces of maxis, Shri Hemantbhai Jayantilal Shah informed that the said maxis were manufactured from indigenous fabrics and imported fabrics shown to have been used were actually sold. Based on the detailed investigation Show Cause Notice No. V.62/15-52/PI-II/02-Pt.II dated 20.09.2006 was issued to M/s. Bhairavi Exim Pvt. Ltd demanding duty of Rs. 3,42,58,540/- leviable on imported warehoused fabrics valued at Rs. 4,77,85,683/- which were imported duty free under notification No. 53/1997-Cus dated 03.06.1997 and illicitly removed from warehouse in the domestic market under Section 28 of the Customs Act, alongwith provisions of confiscation of the goods and penalties. Further, penalty under Section 112 were proposed on all the co-noticees who were involved in diversion of duty free goods. During the investigation, M/s. Bhairavi Exim Pvt. Ltd admitted the diversion of the imported goods in DTA and had paid Rs. 36,00,000/- voluntarily vide TR 6 challan No. 00U2002-2003 dated 16.10.02 for Rs.2 lac, TR 6 challan No. 002/2002-2003 dated 29.10.2002 for Rs.1 lakh, TR 6 challan No.03/2002-2003 dated 18.11.2002 for Rs.2 lakh and TR 6 challan dated 13.11.2002 for Rs.31 lakh.

62.2 On the basis of the information received by the Department and searches conducted thereon, further investigations were undertaken. Various statutory statements of the persons connected with the said alleged clandestine sale of imported fabrics were recorded. The said EOU had three Directors viz. S/Shri Hemantbhai Jayantilal Shah, Anandkumar M. Kapadia and Sureshbhai Desai. Statements under Section 14 of the Central Excise Act, 1944 and section 108 of the Customs Act, 1962 of Shri Hemantbhai Jayantilal Shah were recorded on 25.9.2002, 27.9.2002, 10.10.02, 18.10.02, 29.10.02 and 5.12.2002. None of these statements, which were recorded during the span of about 3 months, were retracted. Similarly, statements of Shri Anandkumar M. Kapadia under Section 14 of the Central Excise Act, 1944 and section 108 of the Customs Act, 1962 were recorded on 8.10.2002, 16.10.2002, 29.10.2002, 5.12.2002 and 21.1.2003. None of these statements were ever retracted. Perusal of these statements also shows uniformity in the narration of the facts. Relevant facts regarding diversion of imported fabric were admitted by Directors of the company. Considering uniformity in narration of facts and no retraction at any stage, the facts contained in the statements can be safely taken as correct and statements recorded are to be treated as reliable evidence.

62.3 The investigation conducted further reveals that M/s Bhairvi Exim Pvt. Ltd have imported duty free polyester fabrics i.e. 94 cartons vide Bill of Entry No. 9688/577 dated 12.8.01 (Invoice No. 8410 dated 11.9.01), 1241 rolls vide Bill of Entry No. 10112/234 dated 22.10.01 (invoice No. MY/01/458 dated 4.10.01) and 81 cartons vide Bill of Entry No. 9660/105 dated 7.8.2001 (Invoices K-004/01 dated 22.7.01) All the above mentioned fabrics have been shown warehoused in the said unit and entered at Page No 26, 41 and 48 respectively of receipt & issue i.e. Annexure "A" (A-1) register for the year 2001-02. It appeals that out of total quantities of fabrics imported vide above Bills of Entry, a quantity of 81910 Sqm involving Customs duty to the tune of Rs.1457388/- were not used in the manufacture of ready-made garments for subsequent export and the same were diverted/ sold into local market through Mr. Punit Kasharlal Rugta, Partner of M/s Abhishek Impex, Surat. The said fabrics were first purchased from the foreign seller by Mr. Punit Kasharlal Rugta and subsequently the same were sold to M/s. Bhairavi Exim Pvt. Ltd. on high sea sales basis. After completion of the re-warehousing formalities, the fabrics were sold into the local market. In order to fulfill the export obligation, they procured inferior quality of readymade garment made from indigenous fabrics from local market and had shown said garment in their production register as made out of imported fabrics. Out of the said diverted fabrics, some quantities had been shown as used in the manufacture of 18925 pieces of scarves, however said scarves were procured from local market made out of indigenous fabrics. The said scarves made out of indigenous fabrics were exported vide AR-3A Nos.1&2 both dated 1.5.2002 and AR-3A Nos 6& 7 both dated 16.6.2002 to M/s. Cosmos Trading Co. KSEZ Ghandhidham, Kandla. The readymade garment of 120000 pieces scarves made from indigenous fabrics had been procured through M/s. Surat- Ahmedabad Transport Pvt. Ltd. Narol Ahmedabad and 72000 pieces of scarves through M/s. South Gujarat Transport Service Narol Ahmedabad. The above mentioned facts are corroborated by Mr. Hemant bhai Jayantilal Shah, Mr. Anandbhai M. Kapadia and Mr. Mahendrabhai K. Kapadia in their respective depositions.

62.4 I find that Shri Mahendrakumar K. Kapadia, in his statement dated 3.1.2003, have specifically stated that the fabrics mentioned at Sr. No.20, 29 and 31 were diverted through Shri Puneet Rungta of M/s Abhishek Impex of Surat.

62.5 Shri Hemantbhai J. Shah, Director and Authorised Signatory of M/s. Bhairavi Exim Pvt. Ltd is a 100% EOU was present during the search conducted in the said EOU and during the drawal of Panchnama and on consequential queries, he intimated the officers that the maxis found in stock were not manufactured from imported fabrics and that the fabrics imported for the purpose were sold. He accepted these facts in his statement recorded on 25.9.2002 immediately after the search. He also accepted that he was handling entire affairs of the EOU, warehousing, import, production etc. In his next statement, recorded on 27.9.2002, he narrated the role played by Shri Anandumar M. Kapadia and Shri Mahendrabhai K. Kapadia, father of Shri Anandbhai.

62.6 I find that Shri Anandbhai M. Kapadia, another Director of the said EOU in his various statements has confirmed the facts given by Shri Hemantbhai J. Shah and has also explained in detail the modus operandi of the clandestine diversion of the imported fabrics as well as modus operandi for procurement of substituted goods. Both these Directors informed the investigator about the important role played by Shri Mahendrabhai Kapadia, father of Shri Anandbhai. From the revelations of Shri Hemantbhai J. Shah and Shri Anandbhai Kapadia, it is seen that Shri Mahendrabhai K. Kapadia was one of the main brain behind all the activities.

62.7 I find that apart from the statements of Directors and Authorised Signatory of M/s. Bhairavi Exim P. Ltd. 100% EOU, statement of Shri Kamlesh J. Trivedi, Manager of M/s. Adani Textile Industries was recorded wherein he admitted that imported goods was procured from M/s. Bhairavi Exim P.Ltd. 100% EOU and further diverted

in local market (DTA). through its Manager Shri Kamlesh J. Trivedi in respect of disposal of imported goods illicitly diverted imported fabrics is clearly established. Further, Statement of Shri Mangilal Nathulal Mali, Proprietor of M/s. Rajesh Transport Company, in his statement dated 2.10.2002 was recorded wherein admitted that he gave two LRs issued by him to M/s. Bhairavi Exim Pvt. Ltd. Either M/s. Bhairavi Exim Pvt. Ltd. used to bring the vehicles or they were arranged by him from Kalupur for the transportation. As per instruction of a person of M/s. Bhairavi Exim Pvt. Ltd., he used to mention the name of consignee, address of consignee, description of goods and transportation charges on the LRs issued by him. For this purpose, he was charging Rs.50/- per LR.

62.8 I find that statement of Shri Puneet Kesharlal Rungta, Partner of M/s Abhishek Impex, Surat was recorded on 08.04.2003 wherein he admitted that he had sold consignments of imported fabrics on high sea sale basis (as detailed at Sr. No. 20,29,& 31 of Annexure 'C' of Statement of Mr. Mahindra bhai K. Kapadia recorded on 16.12.2002 to M/s. Bhairavi Exim Pvt. Ltd and payments were received through cheque from the said unit and stated that he was not involved in the diversion of the imported fabrics in the local market. Shri Mahendrakumar K. Kapadia, in his statement dated 3.1.2003, have specifically stated that the fabrics mentioned at Sr. No.20, 29 and 31 were diverted through Shri Puneet Rungta of M/s Abhishek Impex of Surat. Further all the statements of Shri Mahendra kumar K. Kapadia, were confirmed by Shri Hemandbhai Shah, Director and Shri Anandkumar M Kapadia Director. Further, I do not find worth to discuss in detail as to how M/s. Bhaivari Exim Pvt. Ltd. 100% diverted the duty free imported goods in DTA as the same has been elaborated in detail in the Show Cause Notice. I find that there is no dispute that diversion by M/s. Bhaivari Exim P.Ltd has been clearly established during the investigation. Further, the Noticee had sold the goods to M/s. Bhairavi Exim P.Ltd. 100% EOU and he was well aware that the goods imported by M/s. Bhairavi Exim P.Ltd was duty free and resultant product was meant for export, however, subsequent to sale on high sea sale to M/s. Bhairavi Exim Pvt. Ltd, Shri Puneet Rungta, Partner of M/s. Ahishek Impex abetted M/s. Bhairavi Exim Pvt. Ltd in diversion of the duty free goods in DTA. Further, all the statements are not retracted till date. Therefore, I find that it is settled principle that "*What is admitted need not be proved*" as held by the Hon'ble Supreme Court in the case of Commissioner v. Systems and Components Pvt. Ltd. — 2004 (165) E.L.T. 136 (S.C.). Further, I rely on the ratio of the decision of Hon'ble Delhi Tribunal in the case of reported in 2016 (331) E.L.T. 33 (Del.) wherein it has been held as under :

"21. The upshot of the above discussion is that while the strict requirements of the Evidence Act, 1872 would not apply to enquiries and investigations undertaken by the DRI or the Customs Department, the broad principle that statements made have to be voluntary and not under threat, coercion, would nevertheless apply. Where the maker of such statement retracts it later by alleging that it was obtained under coercion, threat or duress, the burden was on the maker of the statement to prove such coercion, threat or duress. Even where he fails to do so, the adjudicating authority would not rely solely on the retracted statement but would look for other independent corroboration."

Further, I find that ratio of decision of Hon'ble Supreme Court rendered in the case of Naresh J. Sukhwani v. UOI reported in — 1996 (83) E.L.T. 258 (SC) wherein it has been held as under:

"4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act. That material incriminates the petitioner inculpating him in

the contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention inasmuch as Mr. Dudani's statement clearly inculpates not only himself but also the petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of India. Therefore we do not think that there is any illegality in the order of confiscation of foreign currency and imposition of penalty. There is no ground warranting reduction of fine."

62.9 Thus, in view of the aforesaid discussion, I find that total I find that Shri Puneet Kesharlal Rungata, Partner of M/s. Abhishek Impex, Surat have abetted M/s. Bhairavi Exim P. Ltd. in diversion of the imported duty free goods in local market and thereby goods is liable for confiscation and for such act, Shri Puneet Kesharlal Rungata, Partner of M/s. Abhishek Impex, Surat liable for penalty under Section 112(b) (ii) of the Customs Act, 1962. I rely on the ratio of decision of Hon'ble Mumbai Tribunal rendered in case of Rajesh Atmananad Agarwal Vs. Commr. of Cus. (Export), Nhava Sheva reported in 2014 (30\$) ELT 265 (Tri. Mumbai), though in the said case, stay was granted, however, it is clearly spelled out that penalty is liable to be imposed under Section 112 of the Customs Act, 1962. Relevant Para are as under:

16. *In the present case the issue is not relating to any legal interpretation of any provisions of law. It is the case of defiance of law. The Condition 3 of the Notification 32/2005-Cus. clearly prohibits transferring or selling of the goods imported and cleared free of customs duty. There is no dispute about the fact that the goods were cleared free of customs duty, diverted and were sold in the open market. The investigations have clearly revealed that the duty so saved was to be divided between DFCE holder i.e. M/s. Ankh, importers from China, brokers (the present applicant is main person) and various other persons in this case. So far as the applicant is concerned he has undoubtedly dealt with the goods. He contacted the DFCE holder, got imported the polyester spun yarn through various companies and such goods were sold on paper on high sea sale basis to the DFCE holder. During the clearance and after clearance of the goods from the Customs, the activity was monitored by the applicant and duty evaded was distributed between various players including the present applicant. Under the circumstances, prima facie the penalty has been correctly imposed under Section 112(b)(i). The said provision reads as under :-*

"Section 112.

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

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

in the case of dutiable goods, other than prohibited goods, (ii) to a penalty not exceeding five times the duty sought to be evaded on such goods or one thousand rupees, whichever is the greater;

16.1 *It may be mentioned that mens rea is required for imposition of penalty under Section 112(b) of the said Act. Prima facie the investigation has revealed the same. In my view, the cases relating to penalties have to be examined with reference to the facts of each case. Cases of penalties imposed where legal interpretation is involved are not on the same footing as the cases of diversion of goods or outright evasion of duty which is nothing but outright defiance of law. In case of outright evasion of duty, the role of each player is to be examined and thereafter the decision as to partly or fully waive the penalty has to be taken. It is to be noted that in this particular order the adjudicating*

authority has imposed on the applicant the highest amount of penalty other than the DFCE holder, applicant being *prima facie* the main manipulator.

21.2 In the present case, it is an admitted position that the appellant knowing fully well facilitated the diversion of the goods imported under Target Plus Scheme in complete disregard of the provisions of law, for which he received a consideration. Thus, the appellant appears to have actively aided and abetted evasion of customs duty and, therefore, penalty was imposable on the appellant under the provisions of Section 112(b) of the Customs Act, 1962. If penalty is imposable, there is no reason why at the interim stage, the applicant should not be put to terms. A pre-deposit of Rs. 15 lakhs against the confirmed penalty of Rs. 75 lakhs works out to only 20% of the penalty imposed and cannot be said to be harsh or excessive. Even in the earlier order of the Tribunal, the appellant has paid a sum of Rs. 68 lakhs against the confirmation of duty demand of Rs. 1.79 crore, which approximately works out to 40% of the demand confirmed. Therefore, in the present case, a pre-deposit of Rs. 15 lakhs ordered by the Member (Technical) cannot be faulted. Accordingly, I concur with the views expressed by the learned Member (Technical).

63. Having regard to the above facts and circumstances, I pass the following order:

::ORDER::

63.1 I impose penalty of Rs. 30,00,000/- (Rupees Thirty Lakh Only) under Section 112 (b) (ii) of the Customs Act, 1962 on Shri Shri Puneet Kesharlal Rungta, Partner of M/s. Abhishek Impex, Abhishek House, Kadampali Society, Bhattar Char Rasta, Bhatta Road, Surat.

64. This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and Rules/Regulations framed thereunder or any other law for the time being in force in the Republic of India.



3.10.2024

(Shiv Kumar Sharma)
Principal Commissioner

DIN- 20241071MN000000C5F8

F. No. VIII/10-19/Commr./O&A/2023-24

Date: 03.10.2024

By REGISTERED POST A.D:

✓ Shri Puneet Kesharlal Rungta,
Partner of M/s Abhishek Impex,
'Abhishek House', Kadampali Society,
Bhattar Char Rasta, Bhatta Road,
Surat

Copy to:

- (1) The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad, for information please
- (2) The Commissioner of Central Excise, Ahmedabad-I (CGST AHMEDABAD SOUTH).
- (3) The Superintendent of Customs (Systems), Ahmedabad in PDF Format for uploading on the website of Customs Commissionerate, Ahmedabad.
- (4) Guard File.