
		<p>आयुक्त, सीमा शुल्क का कार्यालय, OFFICE OF THE COMMISSIONER OF CUSTOMS न्यू कस्टम हाउस, बालाजी मंदिर के पास, न्यू कांडला 370210 NEW CUSTOMS HOUSE, NEAR BALAJI TEMPLE, NEW KANDLA-370210 दूरभाष Phone No. 02836-270222 फैक्स Fax No 02836-271467 E-mail: commr-cuskandla@nic.in</p>	 <p>सत्यमेव जयते</p>
DIN-20260571ML000061876C			
A	File No.	GEN/GEN/ADJ/COMM/41/2026-Adjn-O/o Commr-Cus-Kandla	
B	Order-in-Original No.	KND-CUSTM-000-COM-01 -2026-27	
C	Passed by	Nitin Saini, Commissioner of Customs, Customs House Kandla,	
D	Date of Order	12-05-2026	
E	Date of Issue	12-05-2026	
F	SCN No. & Date	SCN -F. No. DRI/GRU/INV-1/2007-08 date 30.01.2029	
G	Noticee / Party / Importer / Exporter	1. M/s. Milton's Pvt. Ltd., Arvind House, C.S. No.180/1, Quay Street, Darukhana, Near Sewree Police Station, Reay Road (E), Mumbai-400 010. 2. Shri Purshottam N. Amersay, Director of M/s. M/s. Milton's Pvt. Ltd., Arvind House, C.S. No.180/1, Quay Street, Darukhana, Near Sewree Police Station, Reay Road (E), Mumbai-400 010.	

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

“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,

2nd Floor, Bahumali Bhavan Asarwa,

Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad-380004”

3. Appeal shall be filed within three months from the date of

communication of this order.

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

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

6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

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

8. An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded wise duty or duty and penalty are in dispute, or penalty wise if penalty alone is in dispute.

Brief facts of the case:

1.1 M/s. Milton's Private Limited, Plot No. 19 to 22 & 35 to 38, Sector 1, Kandla Special Economic Zone (formerly, Kandla Free Trade Zone), Gandhidham having their registered office at Arvind House, C. S. No. 180/1, Quay Street, Near Sewree Police Station at Reay Road (E), Darukhana, Mumbai (**hereinafter referred to as "MPL"**) were engaged in manufacture of ready made garments like jackets, pants, shirts etc. made of cotton, denim, synthetic fabrics etc. Until January, 2001, when MPL stopped its operations, the said unit was exporting the entire quantity of ready made garments to various countries.

1.2 MPL had executed Legal Agreement on 7.1.1997 for Rs.42 crores and thereafter a B-17 Bond on 25.6.2001 for Rs.10 crores. They had also executed Continuity Bonds bearing Sl. No. 18 dated 12.1.1992 and 19 dated 12.2.1992 for Rs.50 crores each for the purpose of import and indigenous procurement of raw materials, components etc. for production and export of such consignments without payment of duty. The said legal agreement, B-17 Bond and Continuity Bonds were executed in terms of

Notification No. 133/94-Cus dated 22.6.1994 and Notification No. 126/94-CE dated 2.9.1994, as amended. Pursuant to this, MPL had taken the benefit of exemption from payment of duties at the time of import as well as indigenous raw materials, components etc. The Continuity Bonds executed by them were debited with the duty leviable at the time of import(s) and at the time export, these were credited with appropriate custom duty payable on raw material/inputs used in manufacture of such goods entered for export. As per show cause notice, these bonds are valid.

2. DRI collected intelligence that 11 consignments of ready made garments and 1 consignment of re-export of dyed 100% cotton canvas (as per details given in Annexure-"A" to show cause notice) cleared for export by MPL during the year 2000-2001 were not exported but were diverted into open market. Further, they also cleared 15 imported machines (as per details given in Annexure-"C") for repairs in DTA on a Letter of Guarantee and these machines were not brought back (returned back) in their unit in KASEZ.

3. On 19.6.2007, the officers of DRI searched the premises of MPL and resumed registers relating to export of finished goods Register Part III, Book No. 1, 1998-99, Imported goods Register Part I, 2000-2001, AR 4 Export proof file, Export Proof file and Export T. P. 1999-2000 & 2000-2001 etc. in the presence of Shri Gulshan Bhatnagar, former Accounts Manager. In the course of search, Shri Bhatnagar informed about documents relating to 2000-2001 that after earthquake in January, 2001, the material and record was shifted to godown of M/s. Miltons Pvt. Ltd. (earlier M/s. Harsha Enterprises) situated at Plot No. 7, Sector II, KASEZ and that on 27.4.2002, there was a fire accident in M/s. Harsha Enterprises and all material and records lying there was destroyed.

4.1 During investigation, statement (s) of Shri Purshottam Nandlal Amersey, Director of MPL was recorded under section 108 of Customs Act, 1962 on 3.10.2007, 29.10.2007, 17.3.2008 and 15.7.2008.

4.2 In his statement-dated 3.10.2007, he stated inter alia that MPL was situated at Plot No. 19 to 22 & 35 to 38, Sector I, KASEZ & Plot No. 7, Sector No. II, KASEZ; that both the premises were used for manufacturing purposes; that both the premises were owned by MPL; that in addition, they had hired the premises at shed No. 97 to 100, Sector I, KASEZ; that they were manufacturing ready made garments like jackets, pants, shirts etc. made of cotton, jeans, synthetic fabrics etc.; that they were exporting 100% of their finished product; that there was no DTA sale; that they were manufacturing ready made garments until 25/1/2001; that they stopped

manufacturing activities in all their premises at KASEZ from 26/1/2001 onwards due to earthquake; that in earthquake, the office premises at plot No. 19 to 22 & 35 to 38, Sector 1 and Shed No. 97 to 100, Sector I was damaged; the premises at Plot No. 7, Sector II was not damaged in earthquake: that all the raw material & records from Plot No. 19 to 22 & 35 to 38, Sector 1, KASEZ & raw materials and some machinery from Shed No. 97 to 100, Sector 1 were shifted to Plot No. 7, Sector II, KASEZ after the earthquake. On being asked about the procedure followed for export, he stated that upon receipt of orders from the overseas suppliers, they intimate the quantity of material to be dispatched to their KASEZ unit; that the staff at MPL, KASEZ used to prepare AR-4/invoice/packing list etc. and submit the same to Customs, KASEZ and dispatch the goods along with copies of AR-4 and other export documents to Mumbai for onward export; that on receipt of documents from their Kandla unit, their office at Mumbai used to prepare shipping bill, G. R. Form etc. and submit the same to Custom authorities for export purposes; that on completion of export, the endorsed AR-4 was returned to their Kandla unit for submission to KASEZ Customs as a proof of export; that most of their export during 2000-2001 had taken place from JNPT Nhava Sheva and sometimes from Tuticorin; that almost all the shipping bills were filed on self-basis at Nhava Sheva and Tuticorin. On being asked as to whether export had taken place against AR 4 Nos. 1683/30.8.2000, 2377/6.11.2000, 2436/16.11.2000, 2534/21.11.2000, 2535/21.11.2000, 2727/11.12.2000, 2804/16.12.2000, 2805/16.12.2000, 2902/27.12.2000, 2903/27.12.2000, 2942/29.12.2000 and 3035/10.1.2001 filed with Customs, KASEZ, he stated that MPL had cleared ready made garments from Mumbai, however, they were not able to trace the export documents at their Mumbai office; that the export documents were also lying with their KASEZ unit; that however, in earthquake and then in fire accident, all the documents therein were destroyed; that they were making all out efforts to trace the documents; that he promised to submit whatever documents were available, by 26.10.2007.

4.3 In the course of his further statement-dated 29.10.2007, he submitted copies of shipping bill No. 1395793 dated 24.11.2000 (corresponding to AR-4 No. 2535 dated 22.11.2000), shipping bill No. 1395824 dated 24.11.2000 (corresponding to AR-4 No. 2534 dated 21.11.2000) and shipping bill No. 1412220 dated 22.12.2000 (corresponding to AR-4 No. 2805 dated 16.12.2000); that he also submitted copies of duly endorsed AR-4 No. 1683 dated 30.8.2000, 2377 dated 6.11.2000 and 2436 dated 10.11.2000; that he also submitted copies of Bank Realization Certificates in respect of AR-4 No. 2535 dated 22.11.2000 & 2534 dated 22.11.2000 of Union Bank of India, Mumbai Samachar Marg, Mumbai On being asked about the proof of export in

respect of these consignments, he stated that they were not traceable on that date.

4.4 Further, in his further statement dated 17.03.2008, on being told that verification of AR-4 Nos. 1683/30.8.2000, 2377/6.11.2000 and 2436/10.11.2000 by Custom House, Nhava Sheva had revealed that correct dates of shipping bills shown on the reverse of these AR-4s were 13.3.2007 (in respect of S/B No. 5077615 corresponding to AR-4 No. 1683), 18.3.2007 (in respect of S/B No. 5094284 corresponding to AR-4 No. 2377) and 19.3.2007 (in respect of S/B No. 5095059 corresponding to AR-4 No. 2436) and not the dates shown in the AR-4s and the name of exporter was also other than MPL, he stated that only paragraph 5 & 6 of their letter-dated 26.10.2007 addressed to Sr. Intelligence Officer should be taken on record and not the other AR-4s for which they were unable to get all the documents despite diligent efforts. He confirmed having submitted AR-4 Nos. 1683/30.8.2000, 2377/6.11.2000 and 2436/10.11.2000 along with proof of export by showing S/B Nos. 5077615/8.9.2000, 5094284/10.11.2000 and 5095059/14.11.2000. On being asked whether the documents submitted were genuine, he stated that he had no idea. On being further asked as to who had the idea about those documents, he stated that he had no idea; that he got all the six documents from their overseas agents M/s. Amerex of New York and M/s. Otto Versand of Germany; that owing to death of Shri Vijaysinh Liladhar, the main partner of their CHA firm M/s. Vijaysinh Liladhar & Company, the said CHA firm was in a state of disorder and hence, the shipping bills were not available with their CHA; that he had no idea about the genuineness of the records submitted by him during the statement; that he agreed that as Managing Director, he and his company had taken the benefit of exports; that on the basis of report-dated 14.1.2008 of Additional Commissioner of Customs (MCD), JNCH, Nhava Sheva, when he was told that actually goods exported under shipping bill No. 5077615 (submitted by MPL as proof of export against AR-4 No. 1683 dated 30.8.2000), S/B No. 5094284 (submitted by MPL as proof of export against AR-4 No. 2377 dated 6.11.2000) and S/B No. 5095059 dated 14.11.2000 (submitted by MPL as proof of export against AR-4 No. 2436 dated 10.11.2000) were Polyethylene Terephthalate (PET) chips exported by M/s. Reliance Industries Ltd., Mumbai, viscose yarn exported by M/s. Reliance Chemotexi Industries Ltd., Mumbai and cotton made ups exported by M/s. Madhu Industries Ltd., Ahmedabad respectively and the correct dates of these shipping bills were 19.3.2007 (and not 8.9.2000), 18.3.2007 and 19.3.2008, as shown by them, he stated that it was an error. He further stated that they had not manipulated the documents and that they had clearly stated that they had no documents for 6 AR-4 forms and if they wanted to manipulate, they would have done so for all the missing 6 AR 4 forms as well; that they depended upon the overseas agents for submission of documents relating to exports as they had lost all the documents related

thereto; that he agreed with the report-dated 14.1.2008 of Additional Commissioner of Customs (MCD), JNCH, Nhava Sheva which confirmed that goods cleared under AR-4 No. 2534 dated 21.11.2000, 2535 dated 22.11.2000 & 2805 dated 16.12.2000 were exported under shipping bill Nos. 1395824 dated 24.11.2000, 1395793 dated 24.11.2000 and 1412220 dated 22.12.2000; that for remaining AR-4s, he submitted that they had exported the goods through JNPT or Tuticorin which may be verified on the basis of record available with KASEZ custom authorities. In regard to removal of 15 machines under Letter of Guarantee No. 12/19.4.2001, he submitted that the letter of guarantee was between KASEZ and MPL and that KASEZ had never raised this point with them; that the matter was 7 years old and it was presumed that the machines were returned back; that if it were not returned, KASEZ could have sent them notice for payment followed by stoppage of import/export facilities; that all import/export procedures were verified by KASEZ and therefore, they depended upon them for compliance especially when the matter is 7 years old; that they were unable to submit bank realization certificates in respect of 9 shipping bills where no proof of export was available as the bank officials were not responding.

5. Shri P. N. Amersey and his son Shri H. P. Amersey, both Directors of MPL filed Criminal Miscellaneous Applications bearing Nos. 137/2008 and 138/2008 respectively for anticipatory bail before Hon. Court of Additional Sessions Judge, Gandhidham. During the court proceedings in the matter, they filed applications for withdrawal of the said bail applications and prayed that DRI may be directed to interrogate them in the presence of Advocate. Hon. Court decided the said applications vide orders dated 26.05.2008 and permitted them to withdraw the same with a liberty to file fresh applications, if so desired. However, their prayer for direction to DRI was rejected. Thereafter, they did not file any fresh application in this regard.

6. Further statement of Shri P. N. Amersey was recorded on 15.07.2008. He was shown reports-dated 10.6.2008 and 11.6.2008 of DRI, Tuticorin containing details of 10 consignments of men's and ladies shirts exported from Tuticorin by his company during 2000-01 under drawback scheme and copies of available 6 shipping bills along with copies of drawback declaration and related documents. To this, he stated that the same were not related to his unit in KASEZ, Gandhidham. He further stated that out of 12 AR-4s, he has produced proof of export in respect of 6 AR-4s; that out of these 6 AR-4s, 3 AR-4s have been found genuine and the remaining 3 AR-4s were found fake; that he has paid duty amounting to Rs.83,50,229/-; that in regard to remaining 6 AR-4s, he stated that he has exported the garments cleared under the said 6 AR-4s and that he tried to locate the documents but could not find them; that if these were

not exported, KASEZ Customs would have sent them a notice; that he had cleared 15 machines without payment of duty for repair under Letter of Guarantee No. 12/19.4.2001; that he has not received notice from KASEZ Customs regarding failure to receive back these 15 machines; that as such, he thought that KASEZ Customs might have erroneously kept the Letter of Guarantee open; that he is willing to pay the duty if concrete evidence is shown to the effect that goods have been diverted to the local market and in the case of machinery, Custom authorities of KASEZ giving him details about the alleged non-return of the machines.

7. On 23.4.2008, statement of Shri Nikhil P. Bhatia, Partner of CHA M/s. Vijaysinh Liladhar & Co. was recorded under section 108 of Customs Act, 1962 wherein he stated inter alia that they were attending the work of MPL, Mumbai/KASEZ until 2004; that thereafter, they have not attended their work, that they had attended only 3 consignments of exports covered by S/B Nos. 1395824/24.11.2000, 1395793/24.11.2000 and 1412220 dated 22.12.2000; that except for these 3 consignments, they had not attended any other consignments appearing in the chart containing details of 12 export consignments shown to him by DRI. [

8. On the above basis, it is noted in the show cause notice that on being called upon to submit the proof of export against the 12 AR-4s under consideration, Shri P. N. Amersey, in his statement-dated 29.10.2007 submitted copies of 3 shipping bills bearing Nos. 1395793 dated 24.11.2000 (corresponding to AR-4 No. 2535 dated 22.11.2000), No. 1395824 dated 24.11.2000 (corresponding to AR-4 No. 2534 dated 21.11.2000) and No. 1412220 dated 22.12.2000 (corresponding to AR-4 No. 2805 dated 16.12.2000). He also submitted copies of AR-4 Nos. 1683 dated 30.8.2000, 2377 dated 6.11.2000 and 2436 dated 10.11.2000 duly endorsed with details like shipping Bill No. & date, name of vessel, destination and date of sailing. However, he did not produce the copies of shipping bills.

8.1 The above details have been summarized in the show cause notice as under:

SL	AR-4 No. & date	Description of goods	Quantity	Shipping bill No. & date	Destina
1	1683/30.8.2000	Re-export of Dyed 100% Cotton Canvas	476 Rolls (37111)Yards	5077615/08.09.2000	Honkc
2	2377/6.11.2000	Boys & Ladies wool Jackets	1476 pcs	5094284/10.11.2000	Japa

3	2436/10.11.2000	Boys wool jackets	2100 pcs	5095059/14.11.2000	Japa
4	2534/21.11.2000	Men's denim Jackets	3456 pcs	1395824/14.11.2000	USA
5	2535/22.11.2000	Men's denim Jackets	2388 pcs	1395793/ 24.11.2000	USA
6	2805/16.12.2000	Men's cotton Shorts	1638 pcs	1412220/ 22.12.2000	Switzer.

8.2 On being requested to verify the details furnished by MPL, Additional Commissioner, JNCH, Nhava Sheva vide his letter F. No. S/26-Gen-157/2007/MCD/JNCH dated 14.1.2008 provided the following details:

Sl.	AR-4/date	S/B no. & date	EGM No.	Destination	Remarks
1	--	1412219/22.12.2000	958	Switzerland	S/B was filed under drawback and hence, not related to KASEZ unit
2		1395824/24.11.2000	92	USA	Found to be genuine
3		1395793/24.11.2000	93	USA	Found to be genuine
4		5094284/18.03.2007	147	Japan	S/b was filed by M/s. Reliance Chemotex industries Ltd. Mumbai. The date of shipping is 18.03.20227
5	4683/ 30.8.2000	5077615/13.03.2007	419	Hong Kong	S/B was filed by M/s. Reliance Industries

					Ltd. Mumbai. The date of Shipping bill is 13.03.2007
6	--	1400460/4.12.2000	1023	Switzerland	S/B was filed under drawback and hence, not related to KASEZ unit
7	2805/16.12.2000	1412220/22.12.2000	547	Switzerland	Found to be genuine
8	2436/ 10.11.2000	5095059/ 19.03.2007	427	Japan	S/B was filed by M/s. Madhu Industries, Ahmedabad The date of Shipping bill is 19.03.2007

8.3 As para 9 of the show cause notice, out of proof of export submitted by MPL in respect of 6 AR-4s, 3 were found to be genuine while those submitted in respect of remaining 3 were found to be fake. With regard to Sl. No. 1 & 6 of the above table, the shipping bills were filed under drawback scheme which is not available to export of goods by FTZ/SEZ units. Thus, export covered by Sl. No. 1 & 6 of the above table could not be related to 12 AR-4s under consideration. In regard to remaining 6 AR-4s, MPL could not produce any documentary proof to prove positive export. Details regarding export of goods covered by the remaining 6 AR-4s were also not found from Custom House, Nhava Sheva.

8.4 In response to the enquiry conducted with New Custom House, Ballard Estate, Mumbai about export made by MPL, during 1.6.2000 to 31.1.2001, Joint Commissioner of Customs (EP), New Custom House, Ballard Estate, Mumbai vide his letter F. No. S/16-Misc/695/2007 dated 13.7.2007 reported that MPL, Mumbai had not exported any goods during this period.

8.5 As per para 10 of the show cause notice, enquiry conducted with

Custom House, Tuticorin through Assistant Director, DRI, Tuticorin about export made by MPL during 1.6.2000 to 31.1.2001 revealed that MPL had exported following 10 consignments during January & February, 2001:

Sl.	S/b No. & date	Description of goods	Remarks
1.	1027487/25.1.2001	Cotton P/L Woven Ladies Shirts	S/B received and filed under drawback Scheme
2	1027499/25.1.2001	Polyster/Rayon Woven Men's Shirts	S/B received and filed under drawback Scheme
3	1027775/27.1.2001	Polyster/Rayon Woven Men's Tailored Collar Shirts	S/B received and filed under drawback Scheme
4	1027780/27.1.2001	Polyster/Rayon Woven Men's Tailored Collar Shirts	S/B received and filed under drawback Scheme
5	1027796/27.1.2001	Cotton P/L Woven Ladies Shirts	S/B received and filed under drawback Scheme
6	1027811/27.1.2001	Cotton P/L Woven Ladies Shirts	S/B not received from CH, Tuticorin
7	1027812/27.1.2001	Cotton P/L Woven Ladies Shirts	S/B not received from CH, Tuticorin
8	1027835/27.1.2001	Cotton P/L Woven Ladies Shirts	S/B received and filed under drawback Scheme
9	1027836/27.1.2001	Cotton P/L Woven Men's Shirts	S/B not received from CH, Tuticorin.
10	1028288/29.1.2001	Polyester/Rayon Woven Shirts	S/B not received from CH, Tuticorin

8.6 As per para 11 of the show cause notice, export of goods covered by the remaining 6 AR-4s were also not found from Custom House, Tuticorin. Out of 10 shipping bills filed with Custom House, Tuticorin, 6 were filed under drawback scheme which is not available to export of goods by FTZ/SEZ units. The goods covered by these 10 shipping bills were also different from those cleared by MPL, KASEZ. Shri P. N. Amersey, Director has accepted these facts in his statement-dated 15.7.2008.

9. As per para 12 of the show cause notice, enquiry was also conducted with Bank of Baroda, Worli Branch, Mumbai and Union Bank of India, Nariman Point Branch, Mumbai to verify foreign exchange realization against export of goods covered by the AR-4s under consideration.

9.1 Assistant Director, DRI Zonal Unit, Mumbai vide his letter No. DRI/MZU/D/Enq-17/07-08 dated 19.3.2008 informed that the statement of account of MPL and FBP (Foreign Bills purchased) register of Bank of Baroda for the period 1.4.2000 to 31.3.2001 prima facie revealed that the remittances towards the consignments covered by the shipping bills referred to by DRI for the purpose of investigation were not received in the

said bank. The visit report-dated 18.3.2008 given by the officer deputed for enquiry with Bank of Baroda revealed that the shipping numbers found in the FBP register are other than those under consideration.

9.2 Enquiry conducted with Union Bank of India revealed that Nariman Point Branch of the said bank do not have any such account. Enquiry conducted with the Foreign Exchange Section, M. S. Marg Branch, Mumbai of the said bank as well as visit report-dated 18.3.2008 revealed that except for goods covered by AR-4 No. 2534 dated 21.11.2000, 2535 dated 22.11.2000 and 2805 dated 16.12.2000, no remittance was received.

9.3 On this basis, it is noted in para 13 of the show cause notice that out of goods cleared under 12 AR-4s (details of which are given in Annexure-"A" thereto), only those goods which are covered by 3 AR-4s (Sl. No. 4 to 6 *ibid*) were exported

10. In para 14, it is alleged in the show cause notice that the 3 AR-4s, which were found to be false were fabricated by MPL themselves with a view to cheat the Department and to avoid verification and subsequent repercussions, MPL had used the name of overseas agents.

11. Further, MPL had removed 15 imported machines (4 Nos. of Reece Eyelet Hole Machines, 10 Nos. of Juki Needle Feed-off Stitch Machines & Juke Needle Lock Stitch Sewing Machines and 1 vacuum machine) having total value of Rs.18, 84,106/- without payment of duty to DTA for repairs under cover of a letter of guarantee No. 12/19.4.2001 and by undertaking to bring back these machines within a period of 60 days. On enquiry, the Specified Officer, KASEZ informed that these machines have not been brought back and the letter of guarantee given by the unit is neither cancelled nor endorsed and is still alive.

12. On completion of investigation, Additional Director General, DRI Zonal Unit, Ahmedabad issued show cause notice No. DRI/GRU/INV-01/2007-08 dated 30.1.2009 to MPL and their Director Shri Purshottam N. Amersey, *inter alia* alleging and proposing as follows:

"20. To sum up, M/s. Milton's Private Limited, KASEZ had cleared readymade garments under 11 AR-4s & one consignment of Re-export of Dyed 100% Cotton Canvas under 1 AR-4, without payment of duty, to Mumbai for export purpose as mentioned in the table below:

--	--	--	--

Sr. No.	AR-4 No./ Date	Description	Value as per AR-4 (Rs.)	Remarks
1	1683 / 30.08.2000	Re-export 100% dyed cotton canvas	48,73,972	Copy of AR-4 produced by the Exporter, as proof of export which contained fake shipping bill number etc.
2	2377 / 06.11.2000	Boys & Ladies Wool Jackets	10,92,240	-do-
3	2436 / 10.11.2000	Boys Wool Jackets	8,74,125	-do-
4	2534 / 21.11.2000	100% Cotton Mens Jackets	13,33,532	Actually exported
5	2535 / 16.12.2000	100% Cotton Mens Jackets	8,83,560	-do-
6	2805 / 22.11.2000	100% Cotton Mens Jackets	2,40,958	-do-
7	2727 / 11.12.2000	Boys & Mens Jackets	14,05,483	No documents produced as proof of export
8	2804/16.12.2000	Boys & Mens Jackets	2,64,509	-do-
9	2902 / 27.12.2000	Mens Denim Jackets	10,55,233	-do-
10	2903 / 27.12.2000	Mens Nylon Jackets	7,28,520	-do-
11	2942 / 27.12.2000	Mens Denim Jackets	6,96,951	-do-
12	3035 / 10.01.2001	Mens Jackets	5,99,936	-do-

During investigation, it was found that goods cleared under only AR-4s (Sr. No. 4 to 6 of the table) were actually exported. M/s. Milton's Private Limited submitted documents as proof of export in respect of other 3 AR 4s (Sr. No. 1 to 3 of the table), which on verification were found to be fake. The act of submitting fabricated documents is clearly an attempt to mislead the Department. They failed to produce proof of export in respect of remaining 6 AR-4s (Sr. No. 7 to 12 of the table). No details of export made under said 6 AR-4s were available with Jawaharlal Nehru Custom House, Nhava Sheva, New CH Mumbai and CH Tuticorin. Their CHA M/s. Vijaysinh Liladhar & Co., Mumbai had reported that they handled only 3 consignments, which were found to be genuine. M/s. Milton's Private Limited failed to submit Bank Realization Certificates in respect of the nine consignments for which no proof of export is available. Looking to these facts, it appears that the goods cleared without payment of duty, under said 9 AR 4s for export, were actually not exported.

21. Further M/s. Milton's Private Limited was allowed duty free

imports of raw material and also its procurement from DTA for the production or manufacture of articles for export out of India in terms of Notification No. 133/94-Cus dt. 22.06.1994 as amended and Notification No. 126/94-CE dated 02.09.1994 as amended. For this case the importer also had furnished a Bond undertaking to utilize the duty free raw materials for manufacture of ready made garments like Jackets, Shorts etc. for export out of India. Whereas M/s. Miltons Private Limited have not fulfilled the conditions of the bond and aforesaid Notifications in as much as they failed to export the goods manufactured out of the duty free raw materials. Therefore, the differential Central Excise duty equivalent to the aggregate duties of Customs on ready made garments in respect of 8 consignments (as shown in Annexure-B at Sl. No. 1 to 8) amounting to Rs.1,11,28,524/- is required to be recovered from M/s. Milton's Private Limited by enforcing the said legal agreement, B-17 Bond and continuity Bonds executed by them (as indicated in Para 1 above) under the provisions of Notification No. 133/94-Cus dated 22/06.1994 and Notification No. 126/94-CE dated 02.09.1994 read with proviso to sub-section (1) of Section 3 of the Central Excise Act, 1944, erstwhile Rule 14 A of the Central Excise Rules, 1944 and Section 38 A of the Central Excise Act, 1944. Interest at the prescribed rate on said excise duty evaded is also required to be recovered from M/s. Miltons Private Limited under the provisions of Notification No. 133/94-Cus dated 22/06/1994 and Notification No. 126/94-CE dated 02/09/1994 by enforcing the said legal agreement, B-17 Bond and continuity Bonds. The subject goodswere in the name of other exporting firms instead of M/s. Milton's Pvt. Ltd., hence it appears that they had falsified, manipulated and fabricated documents to show that the goods had been exported, while in fact the same were not exported. Instead of owning the responsibility for such fabricated documents, he stated that the said documents were received from their overseas agents, who were not supposed to possess those documents. Further he stated that in spite of repeated efforts, bankers were not providing the bank realization certificates. Since no exports had taken place, there is no chance of getting any bank realization certificates. Therefore, he was blaming the bankers to hide the fact of not exporting the goods cleared under 9 AR 4s. He failed to submit any proof of submission of proof of export to the KASEZ authorities, in respect of subject goods. On being shown the evidences that the 3 sets of documents which he had submitted as proof of export, instead of accepting them as fake, he stated that it was error. He tried to evade payment of excise duty on the goods cleared under 3 AR 4s by way of submitted fabricated documents. Hence, it can be seen that right from the beginning Shri Purshottam N. Amersey had deliberately tried to cheat and mislead the Department by resorting to various unethical means. For the acts of

omission and commission as mentioned above, on the part of Shri Purshottam N. Amersey, provisions of penalty under Rule 14 A and Rule 209A of the Central Excise Rules, 1944 read with Section 38 A of the Central Excise Act, 1944 and provisions of penalty under Section 112 (a) of the Customs Act, 1962 is clearly attracted.

21.1 The Customs duty amounting to Rs.52,40,557/- towards one consignment of re-export of Dyed 100% Cotton Canvas (as shown in Annexure-B at St. No. 9) is also required to be recovered from M/s. Milton's Private Limited by enforcing the bond along with interest at the prescribed rate on Customs duty evaded, under the provisions of Notification No. 133/94-Cus dated 22/06/1994 read with Sub-section (3) of Section 143 of the Customs Act, 1962. The subject consignment of Re-export of Dyed 100% Cotton Canvas was cleared under AR-4 against the said legal agreement, B-17 Bond and continuity Bonds furnished by M/s. Milton's Private Limited to Customs authorities at KASEZ, and the said bonds are still alive. Therefore, as it is a matter of contractual obligation, the limitation of time period for raising demand is not applicable in this case and the duty of Rs.52,40,557/- is recoverable by enforcement of the said bond. Interest on duty evaded is also required to be recovered by enforcing the bond in terms of Notification No. 133/94-Cus dt. 22.06.1994 as amended read with sub-section (3) of Section 143 of the Customs Act, 1962. Further, the Dyed 100% Cotton Canvas in question covered by the said 1 AR-4 is liable to confiscation under Section 111 (0) & (j) of the Customs Act, 1962. Moreover, penalty under Section 112 (a) of the Customs Act, 1962 for failure to re-export the subject consignment cleared from Kandla Free Trade Zone (now KASEZ) is also clearly attracted.

22. They also cleared 15 (fifteen) numbers of imported machines (one number of Vacuum machine, four numbers of Button Hole machines and ten numbers of Juki Needle Feed-Off Stitch Machines & Juki Needle Lock Stitch Sewing Machines) involving duty of Rs.9,56,600/- to domestic tariff area, without payment of duty, for repairs under Letters of Guarantee No. 12/19.04.2001, with the condition that the same would be returned to their factory within 60 days from the date of removal of machines but they have not brought back the 15 machines to their factory. They failed to give proof of return of 15 machines, cleared under said Letter of Guarantee to domestic tariff area for repairs. When told that the said Letter of Guarantee was still alive, confirming that the goods were not returned to their unit in KFTZ (now KASEZ) after repairs and he is required to pay duty on subject machines, Shri Purshottam N. Amersey, director of M/s. Milton's Private Limited, could not give satisfactory reply and stated

that KASEZ had never raised this point with them and hence it was presumed that the machines had been returned. On being asked about the proof of return of said machines to their unit in KASEZ, instead of proper reply or evidence he attempted to shift the onus to KASEZ authorities stating that if they were not returned, then KASEZ could have sent them notice for payment, following by stoppage of import/export facilities. Despite giving repeated chances they failed to submit any evidence to show that the 15 imported machines values at Rs.18,84,106/- which were cleared (as mentioned in Annexure C) to domestic tariff area for the purpose of repairs returned to their unit. Further, the Letter of Guarantee is still open and valid. The Specified Officer, KASEZ confirmed vide letter issued from F. No. KASEZ/CUS/GC/01/06-99-00 dated 19.08.2008 that the said imported 15 machines were not returned back to KFTZ (now KASEZ) as the subject Letter of Guarantee is alive and not cancelled and no endorsement is made on it. It is therefore, evident that the 15 machines remained in domestic tariff area.

23. Therefore, the Customs duty amounting to Rs.9,56,600/- towards not returning the said 15 machines to KFTZ (Now KASEZ) (as shown in Annexure-C) is also required to be recovered by enforcing the said legal agreement, B-17 Bond, continuity Bonds and the said Letter of Guarantee from M/s. Milton's Private Limited, along with interest at the prescribed rate on Customs duty evaded, under the provisions of Sub-section (3) of Section 143 of the Customs Act, 1962 read with Notification No. 133/94-Cus dated 22.06.1994 as amended from time to time. The 15 machines were cleared under the said Bonds and Letter of Guarantee given by M/s. Milton's Private Limited to Customs authorities at KFTZ (now KASEZ) and the same are still alive. Therefore, as it is a matter of contractual obligation, the limitation of time period for raising demand is not applicable in this case. The aforesaid act of not submitting proof of returning back the 15 machines to the factory in KASEZ which were taken out for repairs, resulted in evasion of duty of Rs.9,56,600/- and thereby constitutes an offence of the nature described under Section 112 (a) of the Customs Act, 1962 read with Notification No. 133/94-Cus dated 22.06.1994 on the part of M/s. Milton's Private Limited. The said machines were imported duty free for use in the manufacture of export product. The said machines were cleared DTA for repairing purposes. The machines were supposed to be brought back to their factory at KFTZ for use in the manufacture of export product. However, the machines were not brought back to their factory. Therefore, 15 imported machines, which were not returned to the factory in KFTZ (now KASEZ) are liable for confiscation under Section 111 (o) & (j) of the Customs Act, 1962. Further, penalty under Section

112 (a) of the Customs Act, 1962 for failure to furnish proof of return of the machines cleared from KFTZ (now KASEZ) for repairs to domestic tariff area is also clearly attracted by M/s. Milton's Private Limited.

24 Shri Purshottam N. Amersey is the Director of M/s. Milton's Private Limited. He is looking after the affairs of M/s. Milton's Private Limited at Mumbai as well as Kandla. In respect of proof of export of goods against the subject AR-4s, he stated that all the goods cleared under the said AR-4s were exported, however all documents relating to export were destroyed. He submitted 6 sets of documents in his statement dt. 29.10.2007. All the AR-4s submitted by him were sent for verification. The verification report received indicated that exports have been affected against only 03 AR-4s. Shipping bill No, mentioned in remaining 03 AR-4s were in the name of other exporting firms instead of M/s. Milton's Pvt. Ltd., hence it appears that they had falsified, manipulated and fabricated documents to show that the goods had been exported, while in fact the same were not exported. Instead of owning the responsibility for such fabricated documents, he stated that the said documents were received from their overseas agents, who were not supposed to possess those documents. Further he stated that in spite of repeated efforts, bankers were not providing the bank realization certificates. Since no exports had taken place, there is no chance of getting any bank realization certificates. Therefore, he was blaming the bankers to hide the fact of not exporting the goods cleared under 9 AR 4s. He failed to submit any proof of submission of proof of export to the KASEZ authorities, in respect of subject goods. On being shown the evidences that the 3 sets of documents which he had submitted as proof of export, instead of accepting them as fake, he stated that it was error. He tried to evade payment of excise duty on the goods cleared under 3 AR 4s by way of submitted fabricated documents. Hence, it can be seen that right from the beginning Shri Purshottam N. Amersey had deliberately tried to cheat and mislead the Department by resorting to various unethical means. For the acts of omission and commission as mentioned above, on the part of Shri Purshottam N. Amersey, provisions of penalty under Rule 14 A and Rule 209A of the Central Excise Rules, 1944 read with Section 38 A of the Central Excise Act, 1944 and provisions of penalty under Section 112 (a) of the Customs Act, 1962 is clearly attracted.

25. On account of the said omissions and commissions on the part of M/s. Milton's Private Limited, KASEZ, Gandhidham they have rendered

(i) 18050 Pcs of ready made garments (as shown in Annexure B at Sl. No. 1 to 8) valued at Rs.67,16,997/- (Rupees Sixty Seven Lakh Sixteen Thousand Nine Hundred Ninety Seven only) cleared under AR3 Nos. 2377/06.11.2000, 2436/10.11.2000, 2727/11.12.2000, 2804/16.12.2000, 2902/27.12.2000, 2903/27.12.2000, 2942/27.12.2000, 3035/10.01.2001 liable for confiscation under Section 111 (o) & (j) of the Customs Act, 1962 & erstwhile Rule 209 (1) (a) of the Central Excise Rules, 1944 read with Section 38 A of the Central Excise Act, 1944.

(ii) 37111 yards (476 rolls) of 100% dyed cotton canvas (as shown in Annexure B at Sl. No. 9) valued at Rs.48,73,972/- (Rupees Forty Eight Lakh Seventy Three Thousand Nine Hundred Seventy Two Only) cleared under AR 4 No. 1683/30.08.2000 for re-export, liable to confiscation under Section 111 (o) & (j) of the Customs Act, 1962.

(iii) 15 nos of imported machines (as shown in Annexure C) valued at Rs.18,84,106/- (Rupees Eighteen Lakh Eighty Four Thousand One Hundred Six Only) cleared to DTA for repairs under the said Bonds and Letter of Guarantee which were not brought back to KASEZ, Nable for confiscation under section 111 (o) & (j) of the Customs Act, 1962.

(iv) themselves liable to pay Central Excise duty of Rs.1,11,28,524/- (Rupees One Crore Eleven Lakh Twenty Eight Thousand Five Hundred Twenty Four Only) chargeable on the said readymade garments (as shown in Annexure B at St. No. 1 to 8) by enforcing the said legal agreement, B-17 Bond and continuity Bonds under the provisions of Notification No. 133/94-Cus dated 22.06.1994 as amended from time to time read with sub section (3) of Section 143 of the Customs Act, 1962 and Notification No. 126/94-CE dated 02.09.1994 asamended read with proviso to sub-section (1) of Section 3 of the Central Excise Act, 1944 and erstwhile Rule 14 A of the Central Excite Rules, 1944 read with Section 38 A of the Central Excise Act, 1944.

(v) themselves liable to pay Customs duty of Rs.52,40,557/- (Rupees Fifty Two Lakh Forty Thousand Five Hundred Fifty Seven Only) chargeable on the Dyed 100% cotton canvas (as shown in Annexure It at St. No. 91 which were cleared for re-

export and not actually exported, by enforcing the bond under the provisions of Notification No. 133/94 Cus dated 22.06.1994 as amended from time to time read with Sub-section (3) of Section 143 of the Customs Act, 1962.

(vi) themselves liable to pay Customs duty of Rs.9,56,600/- (Rupees Nine Lakh Fifty Six Thousand Six Hundred Only) chargeable on the said 15 imported machines removed to DTA under the said legal agreement, 8-17 Bond, continuity Bonds & Letter of Guarantee for repair without payment of duty (as shown in Annexure C) by enforcing the said bonds & the said Letter of Guarantee under the provisions of Notification No. 133/94-Cun dated 22.06.1994 as amended from time to time, read with Sub-section (3) of Section 143 of the Customs Act, 1962.

(vii) themselves liable to pay interest at appropriate rate on the duty as at (iv) supra in terms of the said legal agreement, B 17 bond and continuity Bond executed with Customs KFTZ (now KASEZ) read with Notification No. 126/94 CE dated 02.09.1994 as amended and Notification No. 133/94-Cus dated 22.06.1994 and as amended from time to time read with Sub-section (3) of Section 143 of the Customs Act, 1962.

(viii) themselves liable to pay interest at appropriate rate on the duty as at (v)&(vi) supra in terms of the said legal agreement, B-17 Bond and continuity Bonds executed with Customs KFTZ (now KASEZ) read with Notification No. 133/94-Cus dated 22.06.1994 and Sub section (3) of Section 143 of the Customs Act, 1962.

(ix) themselves liable for penalty under erstwhile Rule 14A of the Central Excise Rules, 1944 read with Section 38 A of the Central Excise Act, 1944.

(x) themselves liable for penalty under Section 112 (a) of the Customs Act, 1962

26. Therefore, M/s. Milton's Private Limited, Arvind House, C. S. No. 180/1, Quay Street, Near Sewree Police Station at Reay Road (E), Darukhana, Mumbai were called upon to show cause in writing to the Commissioner of Customs, Custom House, Near Balaji Mandir,

Kandla as to why:

(i) 10050 Pcs of ready made garments (as shown in Annexure B at Sl. No. 1 to 8) valued at Rs.67,16,997/- (Rupees Sixty Seven Lakh Sixteen Thousand Nine Hundred Ninety Seven only) cleared under AR4 Nos. 2377/06.11.2000, 2436/10.11.2000, 2727/11.12.2000, 2804/16.12.2000, 2902/27.12.2000, 2903/27.12.2000, 2942/27.12.2000, 3035/10.01.2001 should not be confiscated under Section 111 (o) & (j) of the Customs Act, 1962 & erstwhile Rule 209 (1) (a) of the Central Excise Rules, 1944 read with Section 38 A of the Central Excise Act, 1944.

(ii) 37111 yards (476 rolls) Re-export of 100% Dyed cotton canvas (as shown in Annexure B at Sl. No. 9) valued at Rs.48,73,972/- (Rupees Forty Eight Lakh Seventy Three Thousand Nine Hundred Seventy Two Only) cleared under AR4 No. 1683/30.08.2000 should not be confiscated under Section 111 (o) & (j) of the Customs Act, 1962.

(iii) 15 nos. of imported machines (as shown in Annexure C) valued at Rs.18,84,106/- (Rupees Eighteen Lakh Eighty Four Thousand One Hundred Six Only) cleared to DTA for repairs under the said Bonds and Letter of Guarantee which were not brought back to KASEZ, should not be confiscated under section 111 (o) & (j) of the Customs Act, 1962.

(iv) Central Excise duty of Rs.1,11,28,524/- (Rupees One Crore Eleven Lakh Twenty Eight Thousand Five Hundred Twenty Four Only) chargeable on the said readymade garments (as shown in Annexure B at Sl. No. 1 to 8) should not be recovered from them by enforcing the said legal agreement, B-17 Bond and continuity Bonds under the provisions of Notification No. 133/94-Cus dated 22.06.1994 as amended, read with sub section (3) of Section 143 of the Customs Act, 1962 and Notification No. 126/94-CE dated 02.09.1994 as amended read with proviso to sub-section (1) of Section 3 of the Central Excise Act, 1944 and erstwhile Rule 14 A of the Central Excise Rules, 1944 read with Section 38 A of the Central Excise Act, 1944.

(v) Customs duty of Rs.52,40,557/- (Rupees Fifty Two Lakh Forty Thousand Five Hundred Fifty Seven Only) chargeable on the said Re-export of Dyed 100% cotton canvas (as shown in

Annexure B at Sl. No. 9) should not be recovered from them by enforcing the said legal agreement, B-17 Bond and continuity Bonds, under the provisions of Sub-section (3) of Section 143 of the Customs Act, 1962 read with Notification No. 133/94-Cus dated 22.06.1994 as amended.

(vi) Customs duty of Rs. 9,56,600/- (Rupees Nine Lakh Fifty Six Thousand Six Hundred Only) chargeable on the said 15 imported machines removed to DTA under the said legal agreement, B-17 Bond, continuity Bonds & Letter of Guarantee for repair without payment of duty (as shown in Annexure C) should not be recovered by enforcing the said legal agreement, B-17 Bond, continuity Bonds and the said Letter of Guarantee under Sub-section (3) of Section 143 of the Customs Act, 1962 read with Notification No. 133/94-Cus dated 22.06.1994 as amended.

(vii) Rs.83,50,229/- (Rupees Eighty Three Lakh Fifty Thousand Two Hundred Twenty Nine only) paid vide TR 6 challan No. MIL/KDL/2008 dated 14.06.2008 (as shown in Annexure D) should not be appropriated towards the duty demanded at (iv) to (vi) above

(viii) Interest at appropriate rate on the duty demanded at (iv) by enforcing the said legal agreement, 8-17 bond and continuity Bonds under the provisions of Notification No. 133/94-Cus dated 22.06.1994 as amended and Notification No. 126/94-CE dated 02.09.1994 as amended from time to time.

(ix) Interest at appropriate rate should not be recovered on the duty demanded at (v) & (vi) by enforcing the said legal agreement, B-17 Bond, continuity Bonds and Letter of Guarantee, under the provisions of Notification No. 133/94-Cus dated 22.06.1994 and sub-section (3) of Section 143 of the Customs Act. 1962.

(x) Penalty should not be imposed on them under Section 112 (a) of the Customs Act, 1962 and under erstwhile Rule 14A of the Central Excise Rules, 1944 read with Section 38 A of the Central Excise Act, 1944.

27. Shri Purshottam N. Amersey, Director, M/a. Milton's Private Limited, Arvind House, C. S. No. 180/1, Quay Street, Near Sewree

Police Station at Reay Road (E), Darukhana, Mumbai is also hereby called upon to show cause in writing to the Commissioner of Customs, Custom House, Near Balaji Mandir, Kandla as to why penalty should not be imposed on him under erstwhile Rule 14A and 209A of the Central Excise Rules, 1944 read with Section 38 A of the Central Excise Act, 1944 and Section 112 (a) of the Customs Act, 1962."

13. The aforesaid Show Cause Notice issued by the Additional Director General, DRI Zonal Unit, Ahmedabad was adjudicated vide OIO No. KDL/COMMR./15/09-10, dated 31.08.2009 (issued on 14.09.2009) by the Commissioner, Custom House, Kandla, wherein following order was passed:-

(i) I hold 18050 pcs of ready made garments (as shown at Sl. No. 1 to 8 of Annexure-"B" to show cause notice) valued at Rs.67,16,997/- (Rupees Sixty Seven Lakh Sixteen Thousand Nine Hundred Ninety Seven only) cleared under AR-4 Nos. 2377/6.11.2000, 2436/10.11.2000, 2727/11.12.2000, 2804/16.12.2000, 2902/27.12.2000, 2903/27.12.2000, 2942/27.12.2000, 3035/10.1.2001, as liable for confiscation under erstwhile Rule 209 (1) (a) of Central Excise Rules, 1944 read with section 38 A of the Central Excise Act, 1944, as proposed in the show cause notice. As goods have already been removed at the material time, they are not available for confiscation and hence, its actual confiscation is not ordered. However, the goods having been removed under bond, I impose fine of **Rs.25,00,000/- (Rupees Twenty Five Lakh only)** in lieu of confiscation of the said goods under section 34 of Central Excise Act, 1944.

(ii) I hold 37111 yards (476 rolls) of 100% dyed cotton canvas (as per Sl. No. 9 of Annexure-"B" to show cause notice) valued at Rs.48,73,972/- (Rupees Forty Eight Lakh Seventy Three Thousand Nine Hundred Seventy Two only) cleared under AR-4 No. 1683/30.8.2000 as liable for confiscation under section 111 (o) & (j) of Customs Act, 1962. As goods have already been removed at the material time, they are not available for confiscation and hence, its actual confiscation is not ordered. However, the goods having been removed under bond, I impose fine of **Rs.20,00,000/- (Rupees Twenty Lakh only)** in lieu of confiscation of the said goods under section. 125 (1) of Customs Act, 1962.

(iii) I hold 15 Nos. of imported machines (as per details given in Annexure-"C" to show cause notice) valued at Rs.18,84,106/- (Rupees

Eighteen Lakh Eighty Four Thousand One Hundred & Six only) cleared to DTA for repairs under Letter of Guarantee, which were not brought back to KASEZ as liable for confiscation under section 111 (o) & (j) of Customs Act, 1962. As goods have already been removed at the material time, they are not available for confiscation and hence, its actual confiscation is not ordered. However, the goods having been removed under bond, I impose fine of **Rs.10,00,000/- (Rupees Ten Lakh only)** in lieu of confiscation of the said goods under section 125 (1) of Customs Act, 1962.

(iv) I confirm the demand for Central Excise duty of **Rs.1,11,28,524/- (Rupees One Crore Eleven Lakh Twenty Eight Thousand Five Hundred Twenty Four only)** involved in goods covered by Sl. No. (i) above along with interest leviable thereon, against MPL under proviso to sub-section (1) of section 3 of Central Excise Act, 1944 & erstwhile Rule 14 A of Central Excise Rules, 1944 read with section 38 A of Central Excise Act, 1944, as proposed in the show cause notice.

(v) I confirm the demand for Custom duty of **Rs.52,40,557/- (Rupees Fifty Two Lakh Forty Thousand Five Hundred Fifty Seven only)** involved in goods covered by Sl. No. (ii) above along with interest leviable thereon, against MPL under the provisions of sub-section (3) of section 143 of Customs Act, 1962 read with Notification No. 133/94-Cus dated 22.6.1994, as amended, as proposed in the show cause notice.

(vi) I confirm the demand for Custom duty of **Rs.9,56,600/- (Rupees Nine Lakh Fifty Six Thousand Six Hundred only)** involved in 15 imported machines removed to DTA under Letter of Guarantee for repair without payment of duty (as per details given in Annexure-"C" to show cause notice) along with interest leviable thereon, against MPL in terms of sub-section (3) of section 143 of Customs Act, 1962 read with Notification No. 133/94-Cus dated 22.6.1994, as amended, as proposed in the show cause notice.

(vii) I order for appropriation of **Rs.83,50,229/- (Rupees Eighty Three Lakh Fifty Thousand Two Hundred Twenty Nine only)** paid by MPL vide TR-6 challan No. MIL/KDL/001/2008 dated 14.6.2008 towards the duty liability as confirmed against them hereinabove, as proposed in the show cause notice,

(viii) I impose penalty of **Rs.15,00,000/- (Rupees Fifteen Lakh only)** against MPL under section 112 (a) of Customs Act, 1962.

(ix) I impose penalty of **Rs.1,11,28,524/- (Rupees One Crore Eleven Lakh Twenty Eight Thousand Five Hundred Twenty Four only)** against MPL under Rule 14 A of erstwhile Central Excise Rules, 1944 read with Section 38 A of Central Excise Act, 1944.

(x) I impose penalty of **Rs.7,50,000/- (Rupees Seven Lakh Fifty Thousand only)** against Shri P. N. Amersey, Director of MPL under section 112 (a) of Customs Act, 1962.

(xi) I impose penalty of **Rs.5,00,000/- (Rupees Five Lakh only)** against Shri P. N. Amersey, Director of MPL under Rule 14 A of erstwhile Central Excise Rules, 1944, Rule 209 A of Central Excise Rules, 1944 read with section 38 A of Central Excise Act, 1944.

(xii) The Government dues as confirmed above shall be recovered from MPL by enforcing the Legal Agreement, B-17 Bond, Continuity Bonds and Letter of Guarantee executed by MPL.

14. Being aggrieved with the above mentioned Order-In-Original issued by the Commissioner, Custom House Kandla, MPL and Shri P. N. Amersey, Director of MPL filed an appeal before the Hon'ble CESTAT, Ahmedabad bearing appeal No. C/593/2009 & C/594/2009.

14.1 The aforesaid appeals filed by both the Noticees, alongwith various other appeals filed by other parties/appellants, were disposed of by the Hon'ble CESTAT by way of remand to the adjudicating authority, keeping all issues open vide its Final Order No. A/12608-12633/2017, dated 18.09.2017. The order portion of the Final Order is as under:-

"4. We find that this Tribunal in Rahul Arora's case (supra) taking into consideration the principles of law relating to authority of the DRI officers to issue show cause notice for the period prior to 6.7.2011 under the Customs Act, 1962 has observed that there are two views possible on the said issue and consequently, remanded the matter to the adjudicating authority. It is observed in Para 10 as follows:

"10. The developments show that there are two views holding

the field and the matter not stand before the Hon'ble Supreme Court. In an earlier case, the Hon'ble Supreme Court in the case of Chandna Impex vx. C.C., Delhi-2012 (26). STR 257 (SC) had remanded the matter to the Tribunal with a direction to examine the issue of jurisdiction afresh in the light of decision in Sayed Ali (supra). As already observed the entire issue in once again before the Hon'ble Apex Court. In these circumstances, we deem it fit to set aside the impugned order and remand the matters to the original adjudicating authority to first decide the issue of jurisdiction, after the availability of Supreme Court decision in the case of Mangali Impex (supra) and then the merits of the case."

5. Following the aforesaid precedent, the present appeals filed by the Assessee-Appellants are remanded to the adjudicating authority, keeping all issues open. The Appeals are allowed by way of remand and to be decided in the light of above observation. Misc. application also stands disposed of."

14.2 Hon'ble CESTAT, in its above order have clearly directed to first decide the issue of jurisdiction, that too after the availability of Supreme Court decision in the case of Mangli Impex and then decide the case on merits. Accordingly, there was clear injunction issued by the CESTAT to decide the case after decision of Hon'ble Supreme Court in the matter of Mangli Impex. Accordingly, the case was transferred to Call Book in terms of clause (b) of Section 28(9A) of the Customs Act, 1962.

14.3 The matter of Mangali Impex (now known as Aspam Petrochem Pvt. Ltd) was registered as C.A. No. 006142/2019 before the Hon'ble Supreme Court which was further tagged with M/s Cannon India Pvt. Ltd. (Review Petition No. 400 of 2021) judgement. Hon'ble Supreme Court delivered its order in above referred Review Petition No. 400 of 2021 vide its order dated 07.11.2024 wherein it was held that certain important circulars and notifications empowering DRI officers were not considered earlier. As a result, the Court corrected its position and ruled that officers of the Directorate of Revenue Intelligence (DRI) and similar agencies are valid "proper officers" under Section 28 of the Customs Act, 1962, and therefore have the jurisdiction to issue show cause notices.

The Court clarified that its review is limited only to the issue of jurisdiction, and the earlier findings in Canon India regarding limitation (time-bar) remain unchanged. It also set aside the Delhi High Court's decision in Mangali Impex case and approved the Bombay High Court's view in Sunil Gupta case.

14.4 As the final judgment in the matter of Mangli Impex tagged with M/s Cannon India Pvt. Ltd. (Review Petition No. 400 of 2021) was delivered by the Hon'ble Supreme Court of India, the remanded back SCN was retrieved from Call Book on 17.02.2025 for adjudication.

15. DEFENCE REPLY:-

Shri Hasit Dave, Advocate on behalf of the Noticee submitted their submission vide e-mail dated 23.03.2026 wherein he interaila stated that:-

15.1 The show cause notice (hereinafter referred to as "SCN") has not invoked the charging sections mandating any demand of Customs duty or Central Excise duty, and having been issued after a period of 7.5 years of the alleged exports, it is miserably time-barred.

15.2 Invocation of section 143 of the Customs Act, read with the exemption notifications, and Rule 14-A read with Section 38-A of the Central Excise Act and the B-17 Bond only—without invoking the charging Section 28 of the Customs Act and Section 4 of the Central Excise Act—renders the notice bad in law, besides being hopelessly time-barred.

15.3 Since even where there is no time prescribed to perform an act (S.143), the Hon'ble Courts have consistently taken the view that the same shall be done within a reasonable period, i.e., within five years. Admittedly, in the present case, the SCN was issued after seven and a half years of the exports. We rely upon direct case laws on the Subject which are readily annexed h/w and marked **Annexure A.**

15.4 No written notice under Section 143 of the Customs Act or Rule 8 of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, nor under Rule 14-A of the Central Excise Rules read with Section 38-A of the C. Ex Act, was ever issued by the Proper Officer for the alleged failure to furnish proof of export at the relevant point in time within 60 days of the export of goods under the AR-4s procedure as envisaged.

15.5 Equally, KASEZ has never issued any notice asserting that proof of export was not submitted; therefore, it cannot be claimed that the export was not done. Therefore, the export was valid and legal in the absence of any written demand to produce proof of export at the given time. Consequently, the invocation of this provision in the SCN is bad in law and hopelessly time-barred.

15.6 The central board of excise & Customs (CBEC) has repeatedly issued binding circulars, including Circular No. 354/70/97-CX dated 13.11.1997. Copy attached as **Annexure B.** This circular makes it

obligatory for the Customs Department to issue the Notice within the stipulated period if proof of export is not received by them within 60 days, and a maximum of 180 days; therefore, by not following this mandatory procedure, the DRI could not have issued a vague SCN invoking such provisions without invoking the necessary charging provisions, which is admittedly time-barred and without jurisdiction.

15.7 Admittingly, since no demand was raised nor was a demand notice issued within 60 to 180 days of the submission of our proof of export for all 9 AR-4s, the present demand under the impugned notice after seven and a half years of export is bad in law and without jurisdiction.

15.8 Admittingly, due to a massive earthquake in Kandla, our unit was closed entirely, and intimation was given to both the Customs and the Development Commissioner, KASEZ; this was followed by a massive fire outbreak in the unit in the year 2002 which destroyed all our records and existing machinery, including documents lying in the factory. Therefore, we could not again reproduce such proof of export (Once submitted already) and other documents, including receipt for 15 machines in our factory. However, this was duly intimated to both Customs and the Development Commissioner, KASEZ at the relevant time itself, which was also certified vide letter dated 30.04.2002. We have already provided a detailed reply to the SCN dated 24.02.2009 submitted to Your Honour which contains all these details.

15.9 The B-17 Bond sought to be invoked against us for this demand of duties with interest and penalties—being the only source of demand under the SCN—also does not survive, since our bond was never accepted after 2001, as per the letter of the Deputy Commissioner No. KASEZ/CUS/B-17/Bond-02-03, which is re-produced h/w for your perusal also and marked **Annexure C**.

15.10 Therefore, the SCN fails entirely for being without jurisdiction and hopelessly time-barred in view of the settled law on the subject (Annexure A), as also the B-17 Bond stands cancelled and unrenewed after the closure of our factory in 2001, as per the Customs Department's own letter attached hereinabove.

Scrutiny of documents: Evidence on Merits

15.11 A.R.4 No.1683 dated 30.8.2000 Application number given by the KFTZ- Milton's number is 002 dated 30.8.2000 regarding RE-EXPORT of Cotton Canvas measuring 37111 Yards (in Rolls) valued at Rs.61,91,850/- (FOB value Rs.46,73,972) exported to M/s Textilasia Limited, Hong Kong. The contents of the AR4 has been certified by the Preventive Officer of KFTZ and Appraiser of KFTZ that the consignment has been examined and

found description correct and after examination the same has been sealed with Led Seal No.18 on 30.8.2000.

15.12 The Preventive officer B.A.Meena certified that the seals on the packages were found intact and satisfied with the particulars of the consignment. He also certified that the consignment was shipped under his supervision under shipping bill No.5077615 dated 8.9.2000 by S.S. Savarnah which left for Hongkong on 19.9.2000. The Mate Receipt No.253/17.9.2000 has been written on the AR4.

15.13 A.R.4 No.2377 dated 6.11.2000 Application number given by the KFTZ- Milton's number is 093 dated 6.11.2000 regarding export of Boys Jeans and Ladies Jeans in 1476 pcs. valued at Rs.3,69,000/- (FOB value Rs.10,92,340) exported to M/s Tomen Corporation of Tokyo, Japan. The contents of the AR4 has been certified by the Preventive Officer of KFTZ and Appraiser of KFTZ that the consignment has been examined and found description correct and after examination the same has been sealed with Led Seal No.5 on 6.11.2000.

15.14 The Preventive officer R.L.Meena, Superintendent certified that the seals on the packages were found intact and satisfied with the particulars of the consignment. He also certified that the consignment was shipped under his supervision under shipping bill No.5094284 dated 10.11.2000 by S.S. Lahiever which left for Tokyo on 17.11.2000. The Mate Receipt No.498/18.11.2000 has been written on the AR4.

15.15 A.R.4 No.2436 dated 10.11.2000 Application number given by the KFTZ- Milton's number is 094 dated 10.11.2000 regarding export of Boys Jackets in 2100 pcs. valued at Rs.3,04,500/- (FOB value Rs.8,74,125) exported to M/s Tomen Corporation of Tokyo, Japan. The contents of the AR4 has been certified by the Preventive Officer of KFTZ and Appraiser of KFTZ that the consignment has been examined and found description correct and after examination the same has been sealed with Led Seal No.8 on 6.11.2000.

15.16 The Preventive officer B or R. L. Meena, Superintendent certified that the seals on the packages were found intact and satisfied with the particulars of the consignment. He also certified that the consignment was shipped under his supervision under shipping bill No.3095070 dated 14.11.2000 by S.S (not legible) which left for Tokyo on 17.11.2000. The Mate Receipt No.327/18.11.2000 has been written on the AR4.

15.17 It is further submitted that it is specific case of the department that about Sr. No. 7 to 12 that the exporter has not produced documents on record as proof of export. It is submitted that above evidence may also be available on the 6 AR4s if lying with the Customs officials of KFTZ Or

with the Customs authorities where the goods contained in the aforesaid AR4s were exported. In absence of the documents no charges can be levied on the exporter.

15.18 It is submitted that the department is not denying the basic facts of the case that Milton's Private Limited (MPL) situated at Plot No.19 to 22 and 35 to 38 of Sector I Kandla-KSEZ formerly KFTZ.

15.19 On 26.1.2001 due to massive earthquake the office premises at Plot No.19 to 22 and 35 to 38 and Shed No.97 to 100 was damaged. Thereafter the activities of the factory has been closed.

15.20 The Plot No.7 of Sector II was not damaged in the earthquake. All raw materials and records from Plot No. 10 to 22 and 35 to 38 and raw materials and some machinery from Shed No.97 to 100 were shifted to Plot No.7.

15.21 On 28.4.2002 major fire broke out in Kandla Unit of the company and substantial loss occurred in regard to the properties and the papers/documents/records were destroyed.

15.22 Shri M.A. Desai, Director retired from the office and directorship of the company pm 30.11.2001 and expired on 2.9.2006.

15.23 Time bar matter: The period involved in the case is from 30.8.2000 to 10.1.2001 as seen from the AR4s.

15.24 In terms of Annexure 'C' no actual date of removal of 15 machinery is available on record. However Letter of Guarantee No. 12/19 dated 19.4.2001.

15.25 The entire period of dispute is 2000-2001 and 2001 to 2002 (up to 19.4.20010).

15.26 The show cause notice has been issued on 30.1.2009 by the Additional Director General of Ahmedabad answerable to the Commissioner of Customs, Kandla.

15.27 In the show cause notice the department for the purpose of claiming the time period stated :

15.28 In all the transactions involved in the show cause notice the emphasis has been placed on the Bonds and the letter of Guarantee executed by the MPL on long back dates and there were alive and stating that it is a matter of contractual obligation, the limitation of time period for

raising demand is not applicable in this case.’

15.29 It is submitted that at para 15.4 of the impugned order the Ld. Commissioner, Customs, Kandla has observed that “the argument of MPL that the show cause notice is time barred. In this regard, I find that since MPL have not produced the proof of export in terms of the bond(s) executed by them, they are required to pay the duty liable on the goods cleared for export. Thus the show cause notice is not time barred as the goods were not exported in terms of bond(s) executed for export of the goods.”

15.30 No attempt has been to invoke proviso to sub-section (1) of Section 28 of the Customs Act, 1962 to invoke the parameters like reason of collusion or any willful mis-statement or suppression of facts and not brought any valuable evidence on record to prove such act.

15.31 It is submitted that if we could summed up the discrepancies of the show cause notice as well as the impugned order, following points were very much important, which required to be taken into account.

15.32 All the exports documents including AR4s were submitted to the Customs authority at the time of export for its verification. The same has been done and required certificates have also been given on the documents itself at the time of export. No facts were hidden. Therefore the parameters as stated in the Section 28(1) viz. reason of collusion or any willful mis-statement or suppression of facts is not proved. The SCN is time barred.

15.33 In terms of Board’s Circular No. 354/70/97-CX. 13.11.97 it was obligatory on the part of the Department to issue show cause notice within the stipulated period to stop the clearance of the export goods or to cancel the bond (s) executed if the proof of export is not received by them within the time given i.e. 60 days/180 days.

15.34 No such notice has been issued in the transactions i.e. AR4s involved in this case or in any other transactions in past. The track record of MPL is very clear with the department.

15.35 Moreover Rule 14A of the erstwhile Central Excise Rules, 1944 states that

“Where any person, who has removed excisable goods for export in-bond in accordance with the provisions of rule 13 or 14 fails to export or to furnish proof of such export to the satisfaction of the Collector in the manner laid down in any notification issued under rule 12, he shall, upon a written demand being made by the proper officer, forthwith pay the duty leviable on such goods and shall also be liable to a penalty which may, subject to a maximum of two

thousand rupees, extend to twice the amount of duty and until such duty and penalty are paid, the Collector may in his discretion refuse to permit such person to make further exports of excisable goods in-bond:

15.36 Till the date of issue of the present show cause notice no such notice under Customs Act, 1962 and Central Excise Rules has been issued to MPL in this regard.

15.37 The documents relating to the six AR4s are not traceable. Department has also not provided with the documents relating to the six AR4s.

15.38 No information/particulars/documents has been provided by the department for the 15 machines alleged to have been removed in DTA for repaid and its receipt thereof.

15.39 Department is not having the documents. They have placed reliance on the correspondences exchanged between the Customs houses and alleged the fake removal of the goods for export.

15.40 It is very common understanding that the goods of 2000 can not be exported in the Year 2007. In the span of 7 years the goods might deteriorated and no foreign party would accept such goods.

15.41 The Director's statements on this point are very useful. Rs.83,50,229/- paid is required to be refunded as department failed to verify the particulars mentioned in the three AR4s.

15.42 The Noticee therefore submits that the SCN and the impugned demand deserves to be dismissed.

Note: PS. No penalty can be imposed on Mr. Purshottam N. Amersey, Director of Miltons under the impugned SCN now, since he has expired in 2021 and the proceedings against him stand abated.

Also find attached the Resolution empowering Mr Gulshan Bhatnagar as the Constituted attorney to sign all replies appeals etc. for the Company.

16. Personal Hearing:

16.1 Personal Hearing in the matter was fixed on 29.01.2026, 11.02.2026 & 26.02.2026 vide this office letter dated 21.01.2026, 02.02.2026 & 18.02.2026. In response to this office 3rd PH letter dated 18.02.2026 fixing the date of Personal hearing on 26.02.2026, Shri Hasit

Dave, Advocate of the Noticee vide email dated 25.02.2026 submitted that their issue of Refund of Pre-deposit and this being a delayed adjudication is pending before the Hon'ble Gujarat High Court under WP SCA no 17142/2025 which is listed tomorrow before the Hon'ble Court. So they requested this office that since the issues are pending before the Hon'ble Gujarat High Court kindly adjourn this case till the Hon'ble High Court hears and decides the pending WP 17142/2025.

16.2 In response to their email, this office granted 4th and final opportunity of personal hearing vide this office letter date 11.03.2026 fixing the date of personal hearing on 18.03.2026 and also informing that the issue pending before the Hon'ble High Court i.e. refund of deposited amount during investigation is different from the case pending for adjudication. Further, there is no any stay on adjudication of the Hon'ble High Court of Gujarat.

16.3 On 18.03.2026, Shri Hasit Dave, Advocate of the Noticee appeared for personal hearing in virtual mode and submitted that firstly due to earthquake and then fire outbreak in 2002, all the records were burnt due to which documents could not be produced. He further submitted that this was informed to both the Custom Kandla and KASEZ and duly certified also that all records were destroyed which was produced with their earlier reply to the subject SCN dated 24.02.2009. Further, the bond was not active, as the same was cancelled/not renewed after 2000. Hence, in absence of B-17 Bond and its continuity also no demand under this SCN cannot survive.

DISCUSSION AND FINDINGS

17. I have carefully gone through the Show Cause Notice No. DRI/GRU/INV-01/2007-08 dated 30.01.2009, the relied upon documents, the statements recorded under Section 108 of the Customs Act, 1962, the earlier adjudication history, the remand order of the Hon'ble CESTAT, and the written and oral defence submissions of M/s Milton's Private Limited and Shri Purshottam N. Amersey.

18. At the outset, I record that the Hon'ble CESTAT, vide Final Order No. A/12608-12633/2017 dated 18.09.2017, set aside the earlier order and remanded the matter to the original adjudicating authority, keeping all issues open, with a direction to decide the jurisdictional issue after availability of the Hon'ble Supreme Court decision in *Mangali Impex*. I find that the said Mangali Impex matter was later tagged with M/s Canon India Pvt. Ltd. (Review Petition no. 400 of 2021). Accordingly, the jurisdictional objection regarding DRI officers no longer survives in view of the Hon'ble

Supreme Court review judgment dated 07.11.2024 in *Commissioner of Customs v. Canon India Pvt. Ltd.*, wherein it was held that officers of DRI and similarly situated officers are proper officers for the purposes of Section 28 and competent to issue show cause notices thereunder. I therefore proceed to decide the matter on merits.

19. MPL was a KASEZ unit engaged in manufacture and export of readymade garments. It had executed a Legal Agreement dated 07.01.1997 for Rs.42 crores, B-17 Bond dated 25.06.2001 for Rs.10 crores and Continuity Bonds Sl. Nos. 18 dated 12.01.1992 and 19 dated 12.02.1992 for Rs.50 crores each. These bonds were executed for duty-free import/procurement of raw materials and inputs under Notification No. 133/94-Cus dated 22.06.1994 and Notification No. 126/94-CE dated 02.09.1994, subject to the obligation that the resultant goods would be exported or that goods temporarily removed would be brought back. I therefore find that the liability in the present case arises from failure to fulfil conditions of duty-free procurement/import and from breach of bond obligations.

20. The investigation commenced on the intelligence that 11 consignments of readymade garments and one consignment of re-export of dyed 100% cotton canvas, cleared under AR-4s during 2000-2001, were not exported but diverted. It was also alleged that 15 imported machines removed to DTA for repairs under Letter of Guarantee No. 12 dated 19.04.2001 were not brought back to KASEZ.

21. During search on 19.06.2007, DRI resumed records including Export Finished Goods Register Part III, Imported Goods Register Part I 2000-2001, AR-4 export proof file, export proof file and export TP records. Shri Gulshan Bhatnagar, former Accounts Manager, stated that after the earthquake in January 2001, materials and records had been shifted to Plot No. 7, Sector II, KASEZ and that a fire occurred there on 27.04.2002, destroying material and records. I accept that MPL has relied upon earthquake and fire as an explanation for non-availability of records. However, that explanation cannot override independent customs, CHA and bank verifications, particularly where MPL itself produced three AR-4s carrying shipping bill particulars which were subsequently found to belong to other exporters and different goods.

22. Shri Purshottam N. Amersey, Director of MPL, in his statement dated 03.10.2007, explained MPL's export procedure. He stated that KASEZ staff prepared AR-4/invoice/packing list, submitted the documents to Customs, KASEZ and dispatched goods with AR-4 and other export

documents to Mumbai; thereafter Mumbai office prepared shipping bills and GR forms; after export, endorsed AR-4s were returned to Kandla for submission to KASEZ Customs as proof of export. He further stated that most exports during 2000-2001 took place through JNPT Nhava Sheva and sometimes through Tuticorin. Thus, by MPL's own admission, proof of export should normally have existed in the form of shipping bills, EGMs, endorsed AR-4s, CHA records and bank realization records.

23. When Shri Amersey was asked about AR-4 Nos. 1683/30.08.2000, 2377/06.11.2000, 2436/10.11.2000, 2534/21.11.2000, 2535/22.11.2000, 2727/11.12.2000, 2804/16.12.2000, 2805/16.12.2000, 2902/27.12.2000, 2903/27.12.2000, 2942/29.12.2000 and 3035/10.01.2001, he stated that MPL had cleared goods from Mumbai but could not trace export documents at Mumbai office and that the documents lying at KASEZ had been destroyed. Thus Shri Amersey showed his inability to produce proof.

24. In his further statement dated 29.10.2007, Shri Amersey produced copies of shipping bills in respect of only three AR-4s, namely:

1. Shipping Bill No. 1395793 dated 24.11.2000 corresponding to AR-4 No. 2535 dated 22.11.2000;
2. Shipping Bill No. 1395824 dated 24.11.2000 corresponding to AR-4 No. 2534 dated 21.11.2000;
3. Shipping Bill No. 1412220 dated 22.12.2000 corresponding to AR-4 No. 2805 dated 16.12.2000.

He also produced copies of endorsed AR-4 No. 1683 dated 30.08.2000, AR-4 No. 2377 dated 06.11.2000 and AR-4 No. 2436 dated 10.11.2000, showing shipping bill particulars as proof of export. However, he did not produce the corresponding shipping bills for these three AR-4s.

25. The verification conducted by the Additional Commissioner, JNCH, Nhava Sheva, vide letter F. No. S/26-Gen-157/2007/MCD/JNCH dated 14.01.2008, is decisive. The said verification confirmed that:

- Shipping Bill No. 1395824 dated 24.11.2000, EGM No. 92, destination USA, corresponding to AR-4 No. 2534, was genuine;
- Shipping Bill No. 1395793 dated 24.11.2000, EGM No. 93, destination USA, corresponding to AR-4 No. 2535, was genuine;
- Shipping Bill No. 1412220 dated 22.12.2000, EGM No. 547, destination Switzerland, corresponding to AR-4 No. 2805, was genuine.

Thus, I accept export only in respect of these three AR-4s.

26. The same JNCH verification also established that the proof produced by MPL for three other AR-4s was false. The details are as follows:

- For AR-4 No. 1683 dated 30.08.2000, MPL showed Shipping Bill No. 5077615 dated 08.09.2000 for re-export of 37111 yards / 476 rolls of dyed 100% cotton canvas to Hong Kong. JNCH reported that Shipping Bill No. 5077615 was actually dated 13.03.2007, covered PET chips, and was filed by M/s Reliance Industries Ltd., Mumbai, not by MPL.
- For AR-4 No. 2377 dated 06.11.2000, MPL showed Shipping Bill No. 5094284 dated 10.11.2000 for boys and ladies wool jackets, 1476 pieces, destination Japan. JNCH reported that Shipping Bill No. 5094284 was actually dated 18.03.2007, covered viscose yarn, and was filed by M/s Reliance Chemotex Industries Ltd., Mumbai, not by MPL.
- For AR-4 No. 2436 dated 10.11.2000, MPL showed Shipping Bill No. 5095059 dated 14.11.2000 for boys wool jackets, 2100 pieces, destination Japan. JNCH reported that Shipping Bill No. 5095059 was actually dated 19.03.2007 and was filed by M/s Madhu Industries, Ahmedabad, not by MPL.

27. When confronted with this report in his statement dated 17.03.2008, Shri Amersey admitted that MPL had submitted AR-4 Nos. 1683, 2377 and 2436 with the above shipping bill particulars. When asked whether the documents were genuine, he stated that he had no idea. He further stated that he obtained the documents from overseas agents, namely M/s Amerex of New York and M/s Otto Versand of Germany. I find this explanation unacceptable. Shipping bills are generated and maintained by Customs/CHA/exporter records. MPL has not shown how overseas agents could lawfully possess or supply customs shipping bill particulars of other Indian exporters, much less particulars dated March 2007 for goods allegedly exported in 2000. I therefore hold that the AR-4 endorsements produced for AR-4 Nos. 1683, 2377 and 2436 cannot be accepted as proof of export.

28. The notice has argued that the AR-4s bear certificates of Customs/KFTZ officers and therefore export must be accepted. I do not agree. The endorsement relied upon by MPL is precisely what was verified from the gateway customs station. Once JNCH, Nhava Sheva reported that the shipping bill numbers shown on the AR-4s belonged to other exporters, other goods and later dates, the mere presence of endorsements on AR-4 copies cannot establish export. On the contrary, the mismatch between the

AR-4 endorsements and JNCH records proves that the documents produced by MPL were not reliable.

29. For the remaining six AR-4s, namely AR-4 Nos. 2727 dated 11.12.2000, 2804 dated 16.12.2000, 2902 dated 27.12.2000, 2903 dated 27.12.2000, 2942 dated 27.12.2000 and 3035 dated 10.01.2001, MPL produced no shipping bills, no EGM particulars, no bank realization certificates and no independent proof of export. The SCN records that no export details for these six AR-4s were found at JNCH, Nhava Sheva. New Custom House, Ballard Estate, Mumbai, vide letter F. No. S/16-Misc/695/2007 dated 13.07.2007, reported that MPL, Mumbai had not exported any goods during 01.06.2000 to 31.01.2001. Custom House, Tuticorin verification also did not support MPL's case. The Tuticorin shipping bills found during January-February 2001 were either under drawback scheme, which was not available for FTZ/SEZ exports, or related to goods different from the goods cleared under the disputed AR-4s. Shri Amersey accepted these facts in his statement dated 15.07.2008. I therefore find that MPL failed to prove export of the goods covered by these six AR-4s.

30. The CHA evidence also supports the Department's case. M/s Vijaysinh Liladhar & Co., Mumbai reported that they handled only three consignments covered by Shipping Bill Nos. 1395824 dated 24.11.2000, 1395793 dated 24.11.2000 and 1412220 dated 22.12.2000. These are the same three consignments which JNCH found genuine. The CHA specifically did not support export of the remaining disputed consignments. This is relevant and admissible because Shri Amersey himself stated that the CHA was connected with the exports.

31. The banking enquiries further corroborate non-export. Enquiry with Bank of Baroda, Worli Branch, Mumbai, through DRI Mumbai letter No. DRI/MZU/D/Enq-17/07-08 dated 19.03.2008 and visit report dated 18.03.2008, showed that remittances for the shipping bills under investigation were not received and that shipping bill numbers in the FBP register were other than those under consideration. Enquiry with Union Bank of India revealed that Nariman Point Branch did not have such account, and enquiry with Foreign Exchange Section, M. S. Marg Branch, Mumbai showed that remittance was received only for AR-4 Nos. 2534 dated 21.11.2000, 2535 dated 22.11.2000 and 2805 dated 16.12.2000. Thus, the banking trail supports export of only the three accepted AR-4s and not the nine disputed consignments.

32. I therefore hold that out of the 12 AR-4s investigated, goods under

only three AR-4s, namely AR-4 Nos. 2534, 2535 and 2805, were proved to have been exported. For AR-4 Nos. 1683, 2377 and 2436, MPL produced false/fake proof of export. For AR-4 Nos. 2727, 2804, 2902, 2903, 2942 and 3035, MPL failed to produce any proof of export and independent verification from gateway customs stations, CHA and banks did not support export.

33. I now deal with the 15 imported machines. MPL removed 15 imported machines, namely one vacuum machine, four button hole machines and ten Juki needle feed-off stitch / lock stitch sewing machines, valued at Rs.18,84,106/-, to DTA for repairs under Letter of Guarantee No. 12 dated 19.04.2001, with an undertaking to return the machines within 60 days. The Specified Officer, KASEZ, vide letter F. No. KASEZ/CUS/GC/01/06-99-00 dated 19.08.2008, confirmed that the machines had not been brought back to KFTZ/KASEZ, that the Letter of Guarantee was alive and not cancelled, and that no endorsement of return was made on it. MPL has produced no contrary evidence. Shri Amersey's statement that KASEZ never raised the issue and therefore the machines may be presumed to have been returned is not evidence. I therefore hold that the 15 machines were not returned to KASEZ and that duty is recoverable by enforcing the bonds and Letter of Guarantee.

34. Now I will deal with noticee's plea of limitation. The present case is not a simple case of delayed demand after normal export. MPL availed duty exemption under notifications and bonds, failed to establish export/re-export, produced false proof in three cases, produced no proof in six cases, and failed to establish return of 15 machines. The duty-free clearances were conditional. Once the conditions were breached, the bonds and Letter of Guarantee became enforceable. The SCN specifically proceeds on enforcement of the Legal Agreement, B-17 Bond, Continuity Bonds and Letter of Guarantee, read with Notification No. 133/94-Cus, Notification No. 126/94-CE, Section 143(3) of the Customs Act, 1962, proviso to Section 3(1) of the Central Excise Act and erstwhile Rule 14A of the Central Excise Rules, 1944. I therefore reject the contention that absence of a written demand within 60/180 days under Board Circular No. 354/70/97-CX dated 13.11.1997 extinguishes the liability.

35. The notices have also contended that the B-17 Bond was not renewed or stood cancelled after 2001. I do not accept this contention. The disputed goods were cleared under duty-free regime and under binding legal undertakings. The liability arose from clearances already made and from failure to fulfil export/return obligations. Further, it is categorically mentioned in the SCN that the Bonds are valid. In respect of machines, the Letter of Guarantee was specifically confirmed by KASEZ on 19.08.2008 as

alive, uncanceled and without endorsement of return.

36. I also find that the Show Cause Notice was issued in terms of enforcement of bond. MPL had availed duty exemption under Notifications and bonds however failed to export the goods and failed to establish the return of 15 machines, on which duty exemptions were availed. The SCN was issued in terms of fulfilment of bond invoking the provisions of Section 143 of the Customs Act, 1962 and MPL had failed to discharge their bond obligation. Further, the Bond was alive and not cancelled. Thus, the SCN was issued within the time limit and there is no question of time barred. Accordingly, I reject the contention of the Noticee that the SCN issued is time barred.

37. I also reject the argument that the Department must produce the missing six AR-4 export documents. MPL was the beneficiary of duty exemption and MPL alone claimed export. The burden to establish fulfilment of export obligation lies on MPL. The Department nevertheless verified records from JNCH Nhava Sheva, New Custom House Mumbai, Custom House Tuticorin, CHA and banks. These independent verifications do not support MPL's claim. MPL cannot be allowed to convert its own failure to produce proof into a defence against recovery.

38. I therefore find that 18050 pieces of readymade garments covered by AR-4 Nos. 2377, 2436, 2727, 2804, 2902, 2903, 2942 and 3035, valued at Rs.67,16,997/-, were not proved to have been exported and are liable to confiscation as proposed. I also find that 37111 yards / 476 rolls of dyed 100% cotton canvas covered by AR-4 No. 1683 dated 30.08.2000, valued at Rs.48,73,972/-, were not proved to have been re-exported and are liable to confiscation as proposed. Further, I find that the 15 imported machines valued at Rs.18,84,106/-, removed to DTA for repairs under Letter of Guarantee No. 12 dated 19.04.2001, were not returned to KASEZ and are liable to confiscation as proposed.

39. Consequently, I hold that Central Excise duty of Rs.1,11,28,524/- on the readymade garments, Customs duty of Rs.52,40,557/- on the dyed cotton canvas and Customs duty of Rs.9,56,600/- on the 15 imported machines are recoverable from MPL along with applicable interest by enforcing the Legal Agreement, B-17 Bond, Continuity Bonds and Letter of Guarantee. I also hold that the amount of Rs.83,50,229/- paid vide TR-6 challan No. MIL/KDL/001/2008 dated 14.06.2008 is liable to be appropriated against the confirmed dues.

40. As regards penalty on MPL, I find that MPL not only failed to fulfil export/return obligations but also submitted false export proof for AR-4 Nos. 1683, 2377 and 2436. The conduct is not a mere procedural lapse. It is an act rendering the goods liable to confiscation and attracting penalty under Section 112(a) of the Customs Act, 1962 and erstwhile Rule 14A of the Central Excise Rules, 1944 read with Section 38A of the Central Excise Act, 1944.

41. While deciding proportion and quantum of fines and penalties, I must acknowledge the reality that the dispute is around 25 years old, the Director of the noticee-company has expired and that a substantial amount towards duty liability was already deposited by them in year 2008.

42. As regards the penalty proposed against late Shri Purshottam N. Amersey (expired in 2021), the SCN records his role as Director/Managing Director handling MPL's affairs. His statements show that he submitted the disputed documents, accepted that MPL had taken export benefit, and could not establish the genuineness of the proof produced for AR-4 Nos. 1683, 2377 and 2436. On merits, his acts and omissions attracted penal provisions. However, it is a settled principle of law embodied in the maxim "*actio personalis moritur cum persona*" that penalty being personal in nature dies with the person. Therefore, I refrain from imposition of any penalty on late Shri Purshottam N. Amersey.

43. In view of the above, I pass the following order:-

- i. I hold 18050 pcs of ready made garments (as shown at Sl. No. 1 to 8 of Annexure-"B" to show cause notice) valued at Rs.67,16,997/- (Rupees Sixty Seven Lakh Sixteen Thousand Nine Hundred Ninety Seven only) cleared under AR-4 Nos. 2377/6.11.2000, 2436/10.11.2000, 2727/11.12.2000, 2804/16.12.2000, 2902/27.12.2000, 2903/27.12.2000, 2942/27.12.2000, 3035/10.1.2001, as liable for confiscation under erstwhile Rule 209 (1) (a) of Central Excise Rules, 1944 read with section 38 A of the Central Excise Act, 1944, as proposed in the show cause notice. As goods have already been removed at the material time, they are not available for confiscation and hence, its actual confiscation is not ordered. However, the goods having been removed under bond, I impose fine of **Rs.10,00,000/- (Rupees Ten Lakh only)** in lieu of confiscation of the said goods under section 34 of Central Excise Act, 1944.
- ii. I hold 37111 yards (476 rolls) of 100% dyed cotton canvas (as per Sl. No. 9 of Annexure-"B" to show cause notice) valued at Rs.48,73,972/-

- (Rupees Forty Eight Lakh Seventy Three Thousand Nine Hundred Seventy Two only) cleared under AR-4 No. 1683/30.8.2000 as liable for confiscation under section 111 (o) & (j) of Customs Act, 1962. As goods have already been removed at the material time, they are not available for confiscation and hence, its actual confiscation is not ordered. However, the goods having been removed under bond, I impose fine of **Rs.10,00,000/- (Rupees Ten Lakh only)** in lieu of confiscation of the said goods under section. 125 (1) of Customs Act, 1962.
- iii. I hold 15 Nos. of imported machines (as per details given in Annexure-"C" to show cause notice) valued at Rs. 18, 84,106/- (Rupees Eighteen Lakh Eighty Four Thousand One Hundred & Six only) cleared to DTA for repairs under of Letter of Guarantee, which were not brought back to KASEZ as liable for confiscation under section 111 (o) & (j) of Customs Act, 1962. As goods have already been removed at the material time, they are not available for confiscation and hence, its actual confiscation is not ordered. However, the goods having been removed under bond, I impose fine of **Rs.5,00,000/- (Rupees Five Lakh only)** in lieu of confiscation of the said goods under section 125 (1) of Customs Act, 1962.
- iv. I confirm the demand for Central Excise duty of **Rs.1,11,28,524/- (Rupees One Crore Eleven Lakh Twenty Eight Thousand Five Hundred Twenty Four only)** involved in goods covered by Sl. No. (i) above along with interest leviable thereon, against MPL under proviso to sub-section (1) of section 3 of Central Excise Act, 1944 & erstwhile Rule 14 A of Central Excise Rules, 1944 read with section 38 A of Central Excise Act, 1944, as proposed in the show cause notice.
- v. I confirm the demand for Custom duty of **Rs.52,40,557/- (Rupees Fifty Two Lakh Forty Thousand Five Hundred Fifty Seven only)** involved in goods covered by Sl. No. (ii) above along with interest leviable thereon, against MPL under the provisions of sub-section (3) of section 143 of Customs Act, 1962 read with Notification No. 133/94-Cus dated 22.6.1994, as amended, as proposed in the show cause notice.
- vi. I confirm the demand for Custom duty of **Rs.9,56,600/- (Rupees Nine Lakh Fifty Six Thousand Six Hundred only)** involved in 15 imported machines removed to DTA under Letter of Guarantee for repair without payment of duty (as per details given in Annexure-"C" to show cause notice) along with interest leviable thereon, against MPL in terms of sub-section (3) of section 143 of Customs Act, 1962 read with Notification No. 133/94-Cus dated 22.6.1994, as amended, as proposed in the show cause notice.
- vii. I order for appropriation of **Rs.83,50,229/- (Rupees Eighty Three Lakh Fifty Thousand Two Hundred Twenty Nine only)** paid by MPL vide TR-6 challan No. MIL/KDL/001/2008 dated 14.6.2008 towards the duty liability as confirmed against them hereinabove, as proposed

in the show cause notice.

- viii. I impose penalty of **Rs.5,00,000/- (Rupees Five Lakh only)** against MPL under section 112 (a) of Customs Act, 1962.
- ix. I impose penalty of **Rs.1,11,28,524/- (Rupees One Crore Eleven Lakh Twenty Eight Thousand Five Hundred Twenty Four only)** against MPL under Rule 14 A of erstwhile Central Excise Rules, 1944 read with Section 38 A of Central Excise Act, 1944.
- x. I refrain from imposition of penalty on Shri P. N. Amersey (Deceased), and Director of MPL under section 112 (a) of Customs Act, 1962 and Rule 14 A of erstwhile Central Excise Rules, 1944, Rule 209 A of Central Excise Rules, 1944 read with section 38 A of Central Excise Act, 1944.
- xi. The Government dues as confirmed above shall be recovered from MPL by enforcing the Legal Agreement, B-17 Bond, Continuity Bonds and Letter of Guarantee executed by MPL.

4 4 . Show cause notice F. No. DRI/GRU/INV-1/2007-08 dated 30.1.2009 issued by DRI, Ahmedabad is disposed of in above manner.

(Nitin Saini)

Commissioner of Customs
Custom House, Kandla

F. No.: GEN/GEN/ADJ/COMM/41/2026-Adjn-O/o Commr-Cus-Kandla
DIN-20260571ML000061876C

By Speed Post/Courier/Email

To,

The Noticee:

1. M/s. Milton's Pvt. Ltd., Arvind House, C.S. No.180/1, Quay Street, Darukhana, Near Sewree Police Station, Reay Road (E), Mumbai-400 010.
2. Shri Purshottam N. Amersay, Director of M/s. M/s. Milton's Pvt. Ltd., Arvind House, C.S. No.180/1, Quay Street, Darukhana, Near Sewree Police Station, Reay Road (E), Mumbai-400 010.

Copy to:

1. The Additional Commissioner, CCO for review of the same.
2. The Assistant Commissioner, TRC, Custom House, Kandla for necessary action at their end.
3. The Assistant Commissioner, EDI, Custom House, Kandla for uploading the same at official website
4. Guard File.