



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
सीमा शुल्क भवन, आल इंडीया रेडियो के पास, नवरंगपुरा, अहमदाबाद 380009
दूर भाष (079) 2754 46 30 फैक्स (079) 2754 23 43
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD
CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD
380009
PHONE: (079) 2754 46 30 FAX (079) 2754 23 43

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

फा. सं./ F. No.: DRI/AZU/GI-02/ENQ-20/2018
DIN- 20241271MN0000502982

आदेश की तारीख/Date of Order : 26.12.2024
जारी करने की तारीख/Date of Issue : 26.12.2024

द्वारा पारित :-

शिव कुमार शर्मा, प्रधान आयुक्त

Passed by :-

Shiv Kumar Sharma, Principal Commissioner

मूल आदेश संख्या :

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-59-2024-25 dtd. 26.12.2024 in the case of M/s. Rajkalp Mudranalya Private Limited situated at beside Shilpgram-II, off S P Ring Road, Near Karnavati Eye Hospital, Ognaj, Dantali Industrial Estate Road, Lapkaman, Ahmedabad -380060.

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

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

Sub: Show Cause Notice No. DRI/AZU/GI-02/ENQ-20/2018 dated 27.02.2019 issued by the ADG, DRI, Ahmedabad Zonal Unit, Ahmedabad to M/s. Rajkalp Mudranalya Private Limited situated at beside Shilpgram-II, off S P Ring Road, Near Karnavati Eye Hospital, Ognaj, Dantali Industrial Estate Road, Lapkaman, Ahmedabad -380060 & others.

BRIEF FACTS OF THE CASE

1. Specific intelligence was developed by the Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad that M/s. Rajkalp Mudranalya Private Limited situated at beside Shilpgram-II, off S P Ring Road, Near Karnavati Eye Hospital, Ognaj, Dantali Industrial Estate Road, Lapkaman, Ahmedabad - 380060 (herein after referred to as "Rajkalp" for the sake of brevity) had imported three printing machines, as details hereunder, under EPCG License No. 0830001976 dated 28.03.2007 at concessional rate of Customs duty under Notification No. 97/2004 -Customs dated 17.09.2004 as amended. As per the condition of the said license, Rajkalp was required to export the goods of FOB value of Rs. 146014576/- equivalent to USD 32,84,917/-(FOB). However, export obligation was not fulfilled by Rajkalp even after completion of export obligation period of 10 years (extended) from issue of aforesaid EPCG License.

2. The details of printing machines imported vide three Bills of Entry filed at ICD, Sabarmati (Khodiyar) & Air Cargo Complex, Ahmedabad under aforesaid EPCG license were as under (RUD-01):

S. No.	Printing Machine	Bill of Entry & date	License No. & date	Assessable Value of goods (Rs.)	Duty saved/duty debited Amount (Rs.)	Port of import
1.	One Set of Mitsubishi Sheet-fed Offset Press	632765 dated 19.04.07	0830001976 dated 28.03.07	52671500	13621576	ICD, Sabarmati, Ahmedabad
2.	Kodak Series Trendsetter III800 Quantum S speed with DCK	639526 dated 11.05.07	0830001976 dated 28.03.07	4412746	1141197	Air Cargo Complex, Ahmedabad
3.	Hologram Machine UVY-104 Calchem U.S.A	638443 dated 27.09.07	0830001976 dated 28.03.07	13481309	3486453	ICD, Sabarmati, Ahmedabad
4.	Total			70565555	1,82,49,226	

3. Based on the above intelligence, preliminary inquiry was initiated against M/s. Rajkalp Mudranalaya Private Limited and the documents related to import & export under the aforesaid EPCG license were called for from them vide Summons dated 21.08.2017. Rajkalp provided import & export documents under the aforesaid EPCG license alongwith their letters to DGFT regarding extension in export obligation period vide their letter dated 26.08.2017.

4. Scrutiny of the documents submitted by Rajkalp indicated that they had imported the aforementioned three Printing machines at concessional rate of duty under EPCG License No.0830001976 dated 28.03.2007. Rajkalp had executed the Bond along with Bank Guarantee of Rs. 28,05,000/-of Bank of

Baroda, Mandvi, Baroda before Customs authority. The details of Bank Guarantee were as under:

S. No.	Printing Machine	Bill of Entry date	Assessable Value of goods (Rs.)	Bank Guarantee(Rs.)	Port of import
1.	One Set of Mitsubishi Sheet-fed Offset Press	632765 dated 19.04.07	52671500	2100000	ICD, Sabarmati, Ahmedabad
2.	Kodak Series Trendsetter III800 Quantum S speed with DCK	639526 dated 11.05.07	4412746	180000	Air Cargo Complex, Ahmedabad
3.	Hologram Machine UUY-104 Calchem U.S.A	638443 dated 27.09.07	13481309	525000	ICD, Sabarmati, Ahmedabad
4.	Total			2805000	

The conditions of the aforesaid Bonds were as under;

(i) Rajkalp shall observe all the term & condition of the Notification No. 97/2004-Customs dated 17.09.2004.

(ii) Rajklap shall observe all the term & condition of the license.

(iii) Rajkalp shall fulfil the export obligations as specified in the above said Notification and the license and shall produce evidence of having so fulfilled the export obligation within 30 days from the expiry of the specified export obligation period to the satisfaction of the Government.

(iv) In the event of the failure to fulfil full or part of export obligation as specified in the said Notification and the license they, (Rajkalp) undertake to pay the customs duty but for the exemption and also interest @15% per annum thereon forthwith and without any demur, to the Government.

(v) They, (Rajkalp) shall comply with the conditions and limitations stipulated in the said import and export policy/Foreign Trade Policy as amended from time to time.

(vi) They (Rajkalp) shall not change the name and style under which they are doing business or change the location of manufacturing premises except with the written permission of the Government.

5. As per the Condition Sheet & Amendment Sheet attached to the said license the import and export items permitted were as under:

Import Item Details:

Sr. No.	Item Description	Item Code	Qty	Duty saved(Rs.)
1	One Set of Mitsubishi Sheet-fed Offset Press	84431300	1	
2	Kodak Series Trendsetter III800 Quantum S speed with DCK	84436090	1	
3	Hologram Machine UUY-104 Calchem	84436090	1	

U.S.A		
Total Duty Saved		18251822

Export item details:

Sr. No	Export Item Description	ITCHS	Sr. No	Export Item Description	ITCHS
1	Boxes (cartons, Boxes & cases Corrugated Paper or Paper Board)	48191010	6	Others	48173090
2	Boxes(Folding Cartons, Boxes Cases of Uncorrugates Paper)	48192020	7	Pamphlets, booklets, Brochures, Leaflets	49011020
3	Printed Books	49011010	8	Trade Catalogues	49011020
4	Posters	49111010			
5	Printed Inlay Cards	49111030			

6. The above export obligation was required to be fulfilled by Rajkalp within a period of eight years. The period of eight years expired on 27.03.2015. Further extension of two years from the date of issue of the said EPCG license was granted by DGFT vide License Amendment Sheet dated 02.01.2017 (RUD-06) which expired on **27.03.2017**. Rajkalp had shown export of goods valued at Rs.45,37,318.4/- against total obligation of Rs.14,60,14,576/-/USD 32,84,917/-till **23.08.2017**. No further extension was granted by DGFT after 27.03.2017.

7. Scrutiny of the export documents submitted by Rajkalp vide their letter dated 26.08.2017 revealed that the Shipping Bills showing the export of goods by Rajkalp was under duty drawback and other scheme but not towards the export obligation under aforesaid EPCG license. It therefore appeared that no export had been made by Rajkalp under the aforesaid EPCG license till 27.03.2017. On perusal of the conditions of the Notification No. 97/2004-Customs dated 17.09.2004, it appeared:-

8. The condition mentioned in Para no. (2) of Notification No. 97/2004-Customs dated 17.09.2004 (RUD-07) reads as under:-

"(2) The importer is required to fulfil the export obligation on FOB basis equivalent to eight times of the duty saved on the goods imported as specified on the license within a period of eight years".

In this case, Rajkalp had not exported any goods towards the fulfilment of aforesaid EPCG license and accordingly had not fulfilled the export obligation on FOB basis equivalent to eight times of the duty saved within stipulated export obligation period of 10 years (**extended**) from issue of said EPCG license which expired on 27.03.2017. Thus, it appeared that Rajkalp has violated condition mentioned in Para no. (2) of Notification No. 97/2004-Customs dated 17.09.2004.

9. Further, the condition mentioned in Para no. (4) of Notification No. 97/2004-Customs dated 17.09.2004 read as under:-

"(4) That the importer is required to produce evidence within 30 days from the expiry of each block from the date of issue of license to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner Of Customs showing the extent of export obligation fulfilled and where the export obligation of any particular block is not fulfilled in terms of the preceding condition, the importer shall within three month from the expiry of the said block pay duties of customs along with the interest @ 15% per annum from the date of clearance of the goods".

The condition casts obligation on the importer that details of export obligation fulfilled in two blocks i.e. Block of 1st to 6th year & Block of 7th to 8th year, of 50% each of total export obligation, must be produced with evidence before the Customs Authorities within 30 days of expiry of each block. But in this case, Rajkalp had neither produced any evidences before customs to show that stipulated export obligation for each block had been fulfilled nor paid custom duties along with interest @15% per annum. Thus, it appeared that Rajkalp has also violated condition mentioned in Para no. (4) of Notification No. 97/2004-Customs dated 17.09.2004.

10. In view of above, a search was conducted on 16.08.2018 at the premises of M/s Rajkalp Mudranalaya Private Limited, where the above mentioned three machines were installed, under panchnama dated 16.08.2018.

11. Scrutiny of documents resumed during the panchnama dated 16.08.2018 revealed that Rajkalp had prepared various Tax invoices during the period from March 2018 to July 2018 showing the supply of different kind of Books to Quarterfold Printabilities situated at 1207, Cyber One, Plot No. 4 & 6, Sector 30A, Vashi, Navi Mumbai – 400 703. The said supply was shown under **EPCG license No. 0830001976** and it was endorsed in the said Tax invoices that "We are supplying Third Party Exporter". Rajkalp had also prepared E way Bills purportedly showing the transport of the Books shown in the Tax Invoices from their factory at Lapkaman to Quarterfold Printabilities, 1207, Cyber One, Plot No. 4 & 6, Sector 30A, Vashi, Navi Mumbai – 400 703 through Bhavin Transport Co. Further, the Lorry receipts of Bhavin Transport Co resumed under panchnama dated 16.08.2018 showed that printed books meant for reading as per invoice, were purportedly transported by consignor – Rajkalp to consignee – Quarterfold Printabilities, Vashi, Navi Mumbai by road through different vehicles.

12. It appeared from the scrutiny of the documents that M/s Rajkalp Mudranalaya Pvt. Ltd. had written letters dated 14.07.2017 & 30.08.2017 to the Chairman, EPCG Committee, DGFT, New Delhi seeking second extension for 03 years in respect of EPCG license no. 0830001976 dated 28.03.2007 (after expiry of first extension On 27.03.2017). In this connection, Foreign Trade Development Officer, DGFT, New Delhi vide mail dated 12.09.2017, letter F. 01/37/2018/137/AM-17/EPCG-II dated 12.09.2017 & mail dated 04.12.2017 (RUD-11), advised Rajkalp to approach RA, Ahmedabad for extension in Export obligation period in respect of EPCG license no. 0830001976 dated 28.03.2007 in terms of Public Notice No. 36/2015-20 dated 25.10.2017. Accordingly Rajkalp approached the RA, Ahmedabad, who explained to them that their case does not fall under the allowances of Public Notice 35 & 36 and it was beyond the power of RA to grant the extension. The same thing was also conveyed to Foreign Trade Development Officer, DGFT, New Delhi by Rajkalp (RUD-12). It therefore appeared that no further extension, after the expiry of EPCG license on 27.03.2017, was granted to Rajkalp by DGFT.

13. Scrutiny of records i.e. **Machine Daily Report, CTP Record Register and Delivery Challan Books**, resumed from the factory premises of Rajkalp revealed that there was no entry in aforesaid documents which showed that goods were produced in the factory premises of Rajkalp situated at Dantali Industrial Estate Road, Lapkaman, Ahmedabad for the purpose of export by themselves or for further supply to any third party for the purpose of exports. Thus, it appeared that Rajkalp neither produced nor supplied any goods for further export purpose.

14. A statement dated 16.08.2018 of Shri Kalpesh Patel, CEO & Managing Director of Rajkalp was recorded under Section 108 of the Customs Act, 1962 wherein he inter-alia stated that they were yet to fulfill the export obligation of USD 32,84,917/-(FOB); that till 27.03.2017, they had exported goods valued at Rs 13 Lakhs only (FOB) (Approx) & DGFT had not extended the period for fulfillment of export obligation after 27.03.2017. **(The export of goods valued at Rs 13 Lakhs was not under EPCG scheme).**

15. A statement dated 16.08.2018 of Shri Jignesh Agrawal, Machine Operator of Rajkalp was recorded under Section 108 of the Customs Act, 1962 wherein he inter-alia stated that he had been working as Machine operator in Rajkalp for last 02 years; that during the printing work he worked on one machine named *Mitsubishi Sheet-fed Offset printing Press* (imported duty free under EPCG); that whatever printing job work were received from their clients,

the details of the said job work alongwith the client's name were mentioned in 'Rajkalp Order Form' and according to that he had operated the printing work;— that he had entered all entry in Machine Daily Report showing the printing works done by him; that he had not done any other printing work which is not mentioned/entered in Machine Daily Report; he revealed that another person named Shri Sangam Ramnath Mhatre also worked as a machine operator in Rajkalp; that they both worked in different shifts and whatever printing works were done by them was entered by them in Machine Daily Report regularly; that he had not done any job work for company named M/s. Quarterfold Printabilites, Navi Mumbai and accordingly he did not make any entry in Machine Daily Report; that he never received any 'Rajkalp Order Form' with client's name as M/s. Quarterfold Printabilites, Navi Mumbai.

16. A statement dated 16.08.2018 of Shri Sangam Ramnath Mhatre, Machine Operator of Rajkalp was recorded under Section 108 of the Customs Act, 1962 wherein he inter-alia stated that he had been working as Machine operator in M/s. Rajkalp Mudranalaya for last 11 years; that he used to receive printing work in form of 'Rajkalp Order Form' from Shri Kalpesh Patel, CEO & MD of Rajkalp and according to that he had operated the printing work; that he had entered all entry in Machine Daily Report showing the printing works done by him; that he had not done any other printing work which is not mentioned/entered in Machine Daily Report; that another person named Shri Jignesh Agrawal worked as a machine operator in Rajkalp; that they both worked in different shifts and whatever printing works were done by them, they entered that in Machine Daily Report regularly.

17. A statement dated 16.08.2018 of Shri Jayesh Patel, Supervisor of Rajkalp was recorded under Section 108 of the Customs Act, 1962 wherein he inter-alia stated that he had been working as Supervisor in Rajkalp for last 02 months; that he operated the works related to final binding & packing of materials (goods) printed in Rajkalp and issued Delivery Challans as per 'Rajkalp Order Form'; that he used to mention the name & address of the clients, Challan Number & date and description of the goods in Delivery Challans; that they never delivered any goods to M/s. Quarterfold Printabilites, Navi Mumbai and he had never issued any Delivery Challan with client name as M/s. Quarterfold Printabilites;

18. A statement dated 16.08.2018 of Shri Mitesh Vadera, working in CTP section of Rajkalp Mudranalaya was recorded under Section 108 of the Customs Act, 1962 under which he inter-alia stated that he had been working as worker

in CTP section of Rajkalp for last 08 years; that he made CTP plates which were further used in printing work; that whichever CTP plates had been made by him, entry alongwith the job number & client's name for those plates had been made by him in CTP Record Register; that he had never been directed to make plates for printing work for the client named M/s. Quarterfold Printabilites and accordingly he had never made any CTP plate for M/s. Quarterfold Printabilites.

19. In view of above statements and verification of documents, it appeared that Rajkalp had violated the terms and conditions of the aforesaid EPCG License read with Notification No. 97/2004 -Customs dated 17.09.2004 and 100/2009-Customs dated 11.09.2009 issued by Central Board of Indirect Taxes and Customs. Therefore, under a reasonable belief that the said three machines were liable for confiscation under the provisions of Customs Act, 1962, the said three machines were placed under seizure by Seizure Memo dated 16.08.2018 under the provisions of the Customs Act, 1962 and handed over to Shri Kalpesh Patel, CEO & MD of Rajkalp vide Supratnama dated 16.08.2018 for safe custody.

20. Rajkalp had forwarded a letter dated 22.08.2018 to DRI Ahmedabad office. They have produced the copy of the below mentioned documents along with the said letter.

- i- EPCG License
- ii- Condition Sheet & item list
- iii- Amendment Sheets
- iv- Bills of Entry for the imported machine
- v- Copy of Shipping Bills.

In the aforesaid letter, they have claimed that they had exported the goods of FOB value of Rs. 12,81,91,516/-. On verification, it was noticed that all exports effected by Rajkalp mentioned at S. No. 01 to 05 in Annexure 8 were done before 27.03.2017, but these export were done under Free SB Involving Remittance of Foreign Scheme (00) and not under aforesaid EPCG license. Further export made by Rajkalp which were mentioned at S. No. 06 was effected under Duty Drawback Scheme (19) and export made by Rajkalp which were mentioned at S. No. 55 & 56 was effected after 27.03.2017 under Free SB Involving Remittance of Foreign Scheme (00) and other exports by Rajkalp to SEZ, Gandhinagar mentioned at Sr. No. 7 to 15, 30 & 37 were effected after 27.03.2017 which was beyond Export Obligation period. Remaining all other exports mentioned at Sr. No. 16 to 29 & Sr.No. 31 to 36 and 38 to 54 in annexure 8 were effected through third party exporter-M/s. Quarterfold Printabilities, Navi Mumbai.

21. In order to verify the veracity of the Lorry Receipts (LR) resumed from the premises of Rajkalp under panchnama dated 16.08.2018, enquiry was extended to transporter M/s. Bhavin Transport Co., Office No. 21, Transport Nagar, Narol Char Rasta, Narol, Ahmedabad-382405 who had purportedly issued Lorry receipts (LR) showing the transportation of goods of Rajkalp from their factory at Dantali to merchant exporter - M/s. Quarterfold Printabilities, Navi Mumbai. A statement dated 04.09.2018 of Shri Suresh Bhogilal Mehta Manager of M/s Bhavin Transport Co (RUD-21) was recorded under Section 108 of Customs Act, 1962 wherein he inter-alia stated that he was contacted/approached by one Shri Sandip Patel, employee of Rajkalp in the month of March 2018 and he asked him (Suresh Mehta) to facilitate them by issuing L.R. (Lorry Receipt) without actually transporting the goods as they wanted to show that the goods were transported from their factory premises of Rajkalp to M/s. Quarterfold Printabilities, Navi Mumbai; that as he offered him good commission @ Rs. 1000/- per LR, he (Suresh Mehta) accepted his offer and issued total 39 L.Rs from their company M/s Bhavin Transport Co from March 2018 to July 2018 without actually transporting the goods shown thereof in the said 39 LRs. He prepared the LR showing the name of the consignor as M/s Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad, name of the consignee as M/s. Quarterfold Printabilities, Navi Mumbai; that he had raised invoices on M/s Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad for freight (transportation) charge for the all 39 LRs; that the trucks shown in the said 39 LRs were never used for the transportation of goods of Rajkalp; that he admitted that the trucks having the registration details shown in the said LRs were actually rented out to some other transporters through brokers and sometimes some of the said trucks stayed idle at their transport office in Ahmedabad, on the dates mentioned in the aforesaid 39 LRs; that he confessed that he never transported any goods of Rajkalp to M/s. Quarterfold Printabilities, Navi Mumbai either by his transport companies or any other transport company.

22. **Provisional release of the goods seized under seizure memo dated 16.08.2018 :**

A letter F.No. VIII/48-576/Cus/T/2018 dated 28.08.2018 was received in DRI office from Deputy Commissioner, (Tech) Customs, Custom House Ahmedabad seeking NOC for provisional release of seized goods of Rajkalp under seizure memo dated 16.08.2018. The NOC for provisional release of seized goods was granted by DRI Ahmedabad vide letter F. No. DRI/AZU/GI-02/END-20/2018 dated 30.08.2018 in terms of Board Circular No. 35/2017-Customs dated 16.08.2017. Accordingly, Joint Commissioner of Customs vide

letter F.No. VIII/10-29/Pr. Commr/O & A/2018 dated 31.08.2018 had asked M/s. Rajkalp Mudranalaya Pvt. Ltd. to furnish a bond for Rs. 7,05,65,554/- and Bank guarantee for an amount of Rs. 2,70,00,000/- in lieu of provisional release of seized goods of M/s. Rajkalp Mudranalaya Pvt. Ltd. in terms of Board Circular No. 35/2017- Customs dated 16.08.2017 read with Board Circular No. 24/2011- Customs dated 31.05.2011.

Thereafter, M/s. Rajkalp Mudranalaya Pvt. Ltd. furnished a bond for Rs. 7,05,65,554/- and Bank guarantee for an amount of Rs. 2,70,00,000/- in terms of above letter dated 31.08.2018 of Joint Commissioner of Customs for provisional release of seized goods and same was conveyed to DRI Ahmedabad office by Deputy Commissioner, Customs Division Paldi vide letter F.No. VIII/48-214/CUS/Paldi/ T/2018-19 dated 06.09.2018 and, accordingly, the seized goods were provisionally released.

23. Based on the inquiry conducted, it appeared that the no goods meant for export were manufactured in the factory of Rajkalp and transport LR's were prepared on paper only to show that the goods were transported from Rajkalp to M/s. Quarterfold Printabilities, Navi Mumbai. In order to further verify the fact, a search was carried out on 06.09.2018 at office premises of M/s. Quarterfold Printabilities, Navi Mumbai, Cyber One IT Park, 12th Floor, Office No. 1207, Plot No. 4 & 6, Sector No. 30A, Vashi, Navi Mumbai-400703 by DRI Officers and panchnama dated 06.09.2018. Further, statements of following persons were recorded under Section 108 of the Customs Act, 1962.

24. Statement dated 06.09.2018 of Shri Dheeraj Omprakash Wadhwani, Production and Purchase Manager of M/s Quarterfold Printabilities was recorded under Section 108 of the Customs Act, 1962 wherein he inter-alia stated and revealed that he joined M/s. Quarterfold Printabilities, 403, Shubham Atlanta, Chembur, Mumbai-400071 on 03.01.2014 as Account Manager; that M/s. Quarterfold Printabilities was engaged in the business of Print Management which include printing of Text Books and other educational print materials and outsourcing of the same; that he clarified that the production facility of printing has been started in M/s. Quarterfold Printabilities since last May 2018 at Plot No. L 143, Near Glasstech Industries, Near Sakal Newspaper Press, Taloja, MIDC, Navi Mumbai; that he was responsible for outsourcing, Production Planning and Client Servicing; that he was promoted to the post of Production and Purchase Manager in November 2016; that he was contacted/approached by one Ms. Shachee Agrawal of M/s. Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad in 2017 and he was in contact with her telephonically on her mobile No. 9825944462 and on her email id (print.rajkalp@gmail.com) from his email id (dheeraj@quaterfoldltd.com); that

she initially gave quotes for carrying out job of printing books but same could not be materialized at that time; that M/s. Quarterfold Printabilities, Navi Mumbai had not given any order to Rajkalp; that no printing work has been given by him to Rajkalp till date and no printing work was done and supplied by Rajkalp to M/s. Quarterfold Printabilities till date.

25. Statement dated 07.09.2018 of Shri Manoj Dhankani, Managing Director of M/s Quarterfold Printabilities was recorded under Section 108 of the Customs Act, 1962 wherein he inter-alia stated that he joined M/s. Quarterfold Printabilities, 403, Shubham Atlanta, Chembur, Mumbai-400071 on 01.04.2015 as general Manager; that he was contacted/approached by Ms. Shachee Agrawal and her father Shri Kalpesh Patel both of M/s Rajkalp Mudranalaya Pvt. Ltd. in 2016 for export of the goods on their behalf; that he was in contact with both of them telephonically on her mobile No. 9825944462 and her father's mob. No. 9824033559 and they personally visited at their office four or five times till then; that she initially gave quotes for carrying out job of printing books but same could not be materialized at that time; that M/s. Quarterfold Printabilities, Navi Mumbai had not given any order to Rajkalp; that Ms. Shachee Agrawal/ Kalpesh Patel of Rajkalp requested him (Manoj Dhankani) that if he favoured them in fulfillment of export obligation in respect of EPCG License No. 0830001976 dated 28.03.2007, then they would favour him in getting contact for printing job work in Gujarat; that Shri Manoj accepted her offer; that since M/s. Quarterfold Printabilities was already doing the exports of the printed text books from their own firm, Shri Manoj was ready to mention name of M/s Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad as supporting manufacturer in the invoices, packing lists and in Shipping Bills; that he instructed his subordinate Shri Ashwin Bajaj - head export documentation & Shri Anup Sharma - Export documentation department to prepare Customs Invoice mentioning the name of M/s Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad as a supporting manufacturer without procuring any goods from them; that he also confessed the goods which were exported under all Shipping Bills in which M/s Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad mentioned as a supporting manufacturer were actually manufactured in their own factory premises addressed Plot No. L 143, Near Glasstech Industries, Near Sakal Newspaper Press, Talaja, MIDC, Navi Mumbai or procured from some other vendors namely M/s. Print house Pvt. Ltd, M/s. Siddhi Vinayak Print Mail, M/s. Creative Print Media, M/s. Hexagon etc.; that exported goods under the Shipping Bills in which M/s Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad were mentioned as a supporting manufacturer were neither produced nor supplied to them by M/s Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad.

26. Statement dated 07.09.2018 of Shri Anup Sharma, Export Document Executive, of M/s Quarterfold Printabilities was recorded under Section 108 of the Customs Act, 1962 under which he inter-alia stated and revealed that he joined M/s. Quarterfold Printabilities, on 06.11.2017 as Export Document Executive; that he was responsible for preparing export documents i.e. Custom Invoices, Packing List, B/L draft approval etc.; that he was verbally directed by Shri Manoj Dhankani, Managing Director of M/s Quarterfold Printabilities to mention the name of M/s Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad as supporting manufacturer in the invoices, packing lists and in Shipping Bills without providing any supportive documents which shows that the particular consignment was manufactured and supplied by M/s Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad; that as per direction, he mentioned the name of M/s Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad in the invoices, packing lists and further directed CHA to mention M/s Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad as supporting manufacturer in Shipping Bills and the same was mentioned by the CHA. Further Shri Anup Sharma had confirmed the statement dated 06.09.2018 of Shri Dheeraj Omprakash Wadhwani, Production and Purchase Manager of M/s Quarterfold Printabilities wherein Shri Dheeraj Omprakash Wadhwani stated that no printing work has been given by Shri Dheeraj to Rajkalp till that date and no printing work was done and supplied by Rajkalp to M/s. Quarterfold Printabilities till that date.

27. DRI, Ahmedabad vide letters dated 24.08.2018 & 19.09.2018 communicated to DGFT, Ahmedabad that by adopting aforesaid modus operandi, Rajkalp, in connivance with Merchant Exporter- M/s. Quarterfold Printabilities and transporter-M/s. Bhavin Transport Co., they had knowingly indulged in fraudulent activity of getting name & IEC of their company M/s. Rajkalp Mudranalaya Pvt. Ltd and mentioned as supporting manufacturer in the Shipping Bills filed by M/s. Quarterfold Printabilite showing FOB value of Rs. 120157951.50/- without manufacturing and supplying any goods to M/s. Quarterfold Printabilities with an intent to further submit them to DGFT towards fulfilment of their export obligation and to obtain EODC against the said EPCG License No.0830001976 dated 28.03.2007 fraudulently. In response to the above, DGFT vide email dated 19.09.2018 communicated to DRI Ahmedabad that the matter had been taken on record. Action against the firm for violating the license condition, by fraudulently getting their EPCG numbers endorsed by third party, would be initiated.

28. Further, in view of the statement dated 04.09.2018 of Shri Suresh Bhogilal Mehta, Manager of M/s Bhavin Transport Co, a statement dated 08.10.2018 of Shri Sandip Patel, Accountant of M/s. Rajkalp Mudranalaya

Private Limited was recorded under Section 108 of the Customs Act, 1962 under which he stated and confessed inter-alia that he joined M/s Rajkalp Mudranalaya Private Limited as accountant in March 2016; that M/s Rajkalp Mudranalaya Private Limited is engaged in Printing work involving printing of books, calendars, catalogues, etc.; factory premises of M/s Rajkalp Mudranalaya Private Limited is located at Plot No. 2-3/29, Beside Shilpgram-II, Off S P Ring Road, Near Karanavati Eye Hospital, Ognaj Dantali Industrial Estate Road, Lapkaman, Ahmedabad-380060; that he looked after all routine accounting operation of M/s Rajkalp Mudranalaya Private Limited i.e. GST payment, preparation of Invoices, E-way Bills, Salary Bills etc.; that Shri Kalpesh Patel, CEO & MD of M/s Rajkalp Mudranalaya Pvt. Ltd told him that he (Kalpesh Patel) required some transporter who can facilitate them by issuing L.R.(Lorry Receipt) without actually transporting the goods as they (M/s. Rajkalp) wanted to show that the goods were transported from their factory premises of Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad to M/s. Quarterfold Printabilities, Navi Mumbai on the basis of said LR; that as he knew one transporter Shri Suresh Mehta of M/s. Bhavin Transport, Narol, Ahmedabad, he contacted Shri Suresh Mehta (Mob No.9328011220) manager & operator of M/s Bhavin Transport Co., Office No. 21, Transport Nagar, Narol Char Rasta, Narol, Ahmedabad-382405 and asked him to facilitate them by issuing L.R.(Lorry Receipt) without actually transporting the goods to show that the goods were transported from factory premises of Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad to M/s. Quarterfold Printabilities, Navi Mumbai on the basis of said LR; that as per the direction of Shri Kalpesh Patel, he offered Shri Suresh Mehta good commission @ Rs. 1000 per LR and he also offered him that they would make payment to Bhavin Transport towards bills / invoice raised by them for transportation and Shri Suresh Mehta would keep the said payment for some time for their own use; that Shri Suresh Mehta accepted their offer and accordingly, as per understanding between Shri Suresh Mehta and him, Shri Suresh Mehta had issued total 39 L.Rs from his company M/s Bhavin Transport Co showing the name of the consignor as M/s Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad, name of the consignee as M/s. Quarterfold Printabilities, Navi Mumbai from March, 2018 to July 2018 without actually transporting the goods from M/s. Rajkalp Mudranalaya Pvt. Ltd. to M/s. Quarterfold Printabilities shown thereof in the said 39 LRs; that he prepared E-Way bills on the basis of the LR No. and truck No. provided by M/s Bhavin Transport Co. and further, the copy of E-way bills and Tax-Invoices were sent by him through mail from their email id i.e. print.rajkalp@gmail.com to Shri Suresh Mehta's email id suresh3160@yahoo.com; that after preparation of LR, consignee copy – yellow color was received by them from Bhavin Transport though courier service &

through post; that M/s. Bhavin Transport Co. has raised invoices upon M/s. Rajkalp Mudranalaya Pvt. Ltd for freight charge for these 39 LRs & M/s Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad has paid total Rs. 5,44,580/- out of total payable amount of Rs.11,95,205/- to M/s. Bhavin Transport Co through NEFT in bank account of M/s Bhavin Transport Co(Union Bank of India Account no. 422301010037224); that he confirmed that M/s. Rajkalp Mudranalaya Pvt. Ltd. never transported any goods to M/s. Quarterfold Printabilities, Navi Mumbai as shown in the aforesaid LR and E- way bills.

29. In light of forgoing statements and evidences on record, a detailed statement dated 08.10.2018 of Shri Kalpesh Patel, CEO & MD of M/s. Rajkalp Mudranalaya private limited was recorded under Section 108 of the Customs Act, 1962 under which he stated and confessed inter-alia that he was the Chief Executive Officer and Managing Director of M/s Rajkalp Mudranalaya Private Limited; that his daughter Ms Shachee Patel, one of the Directors of the Company and his wife Smt. Ranna Kalpesh Patel were other Directors of the Company; that M/s Rajkalp Mudranalaya Private Limited was engaged in Printing work involving printing of books, calendars, catalogues, etc.; that he had imported following three machines at concessional rate of Customs duty under EPCG License No. 0830001976 dated 28.03.2007 under Notification No. 97/2004 -Customs dated 17.09.2004:-

1. One Set of Mitsubishi Sheet-fed Offset Press
2. Kodak Series Trendsetter III 800 Quantum S speed with DCK
3. Hologram Machine UVY-104 Calchem U.S.A

Accordingly, they saved Customs Duty amounting to Rs 1,82,49,226/- on the import of the aforesaid three machines under the aforesaid EPCG license and the export obligation required to be fulfilled against that import was USD 32,84,917/-(FOB) during the period of 10 years **(Extended)** which expired on 27.03.2017; that they could not fulfill the export obligation for aforesaid EPCG License till 27.03.2017; that DGFT had not extended further period for fulfilling the aforesaid export obligation under EPCG license; that as export obligation was not fulfilled by them, he & his daughter Shachee Agrawal contacted/approached Shri Manoj Dhankani, Managing Director of merchant exporter-M/s Quarterfold Printabilities, Cyber One IT Park, 12th Floor, Office No. 1207, Plot No. 4 & 6, Sector No. 30A, Vashi, Navi Mumbai-400703 in 2016 for showing export of the goods on their behalf; that he with his daughter personally visited at their aforesaid office four or five times; that he & his daughter Shachee Agrawal initially gave quotes for carrying out job of printing books as vendor for them, but the same could not be materialized at that time; that they didn't get any order for printing job from M/s. Quarterfold

Printabilities, Navi Mumbai till date and M/s. Rajkalp Mudranalaya had not sold/supplied any goods to them; that he and Shachee Agrawal requested Shri Manoj Dhankani that if he favoured them in fulfillment of export obligation by way of mentioning their name in Shipping Bills filed by M/s. Quarterfold Printabilities, then Shri Kalpesh Patel & Shachee Agrawal would favour them in getting vendors for printing job work in Gujarat; that Shri Manoj accepted their offer and accordingly he mentioned name and IEC number of M/s. Rajkalp Mudranalaya Private Limited, Ahmedabad as supporting manufacturer in the customs invoices, packing lists & Shipping Bills without procuring any goods from M/s. Rajkalp Mudranalaya Private Limited; that M/s. Rajkalp Mudranalaya Private Limited had raised around 39 tax-invoices on M/s. Quarterfold Printabilities without having manufactured and supplied any goods meant for export to M/s Quarterfold Printabilities.

(ii) He also confessed in his statement dated 08.10.2018 that as per his direction, their accountant Shri Sandeep Patel contacted one transporter Shri Suresh Mehta, manager & operator of M/s Bhavin Transport Co., Office No. 21, Transport Nagar, Narol Char Rasta, Narol, Ahmedabad-382405 in the month of March, 2018 and asked him to facilitate them by issuing L.R.(Lorry Receipt) without actually transporting the goods as they wanted to show that the goods were transported from their factory premises of M/s Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad to M/s. Quarterfold Printabilities, Navi Mumbai on the basis of said LR, for which Shri Kalpesh Patel offered Shri Suresh Mehta good commission @ Rs. 1000 per LR and they also offered him that they would make payment to him towards bills / invoice raised by Shri Suresh Mehta for transportation and he(Suresh Mehta) would keep the said payment for some time for his own use; that Suresh Mehta accepted their offer and accordingly, as per understanding between Shri Suresh Mehta and them, Suresh Mehta had issued total 39 L.Rs from his company M/s Bhavin Transport Co showing the name of the consignor as M/s Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad, name of the consignee as M/s. Quarterfold Printabilities, Navi Mumbai from March, 2018 to July 2018 without actually transporting any goods from M/s. Rajkalp Mudranalaya Pvt. Ltd. to M/s. Quarterfold Printabilities shown thereof in the said 39 LR's; that as per his direction, Shri Sandeep Patel prepared E-Way bills on the basis of the LR Nos. and truck Nos. provided by M/s Bhavin Transport Co.; that as per his direction Shri Sandeep sent the copy of E-way bills and Tax-Invoices through mail from their email id i.e. print.rajkalp@gmail.com to Suresh Mehta's email id suresh3160@yahoo.com; that for these 39 LR's, M/s Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad had paid total Rs.5,44,580/- out of total payable amount of Rs.11,95,205/- to M/s. Bhavin Transport Co through NEFT in bank account of M/s Bhavin Transport

Co (Union Bank of India Account no. 422301010037224); that for these L.Rs Shri Suresh Mehta had charged commission of Rs.1000/- per L.R and rest amount after deducting the amount of commission, Shri Suresh Mehta had to return to them in cash, but he hadn't returned the rest amount to them and Shri Kalpesh Patel also did not insist him for the same.

(iii) Further, Shri Kalpesh Patel also confessed & stated in his statement dated 08.10.2018 that whatever printing work had been done by them in their factory premise, has been entered in their production record book i.e. "Machine Daily Report"; that they could not export any goods under the aforesaid EPCG license till 27.03.2017; that they had fraudulently shown the export of goods valued at Rs. 120157951.50/- through Quarterfold Printabilities, Navi Mumbai wherein name & IEC of M/s. Rajkalp Mudranalaya Pvt. Ltd was shown as supporting manufacturer in Shipping Bills filed by Quarterfold Printabilities; that the said goods were never manufactured in their factory premises and the records such as Invoice, E way bills, LR's etc. were created by them to claim that the goods manufactured by M/s. Rajkalp Mudranalaya Pvt. Ltd were transported through Bhavin Transport to Quarterfold Printabilities, Navi Mumbai, which had further exported vide Shipping Bills filed by Quarterfold Printabilities showing the name & IEC of M/s. Rajkalp Mudranalaya Pvt. Ltd as supporting manufacturer in Shipping Bills. Further he confirmed that they never manufactured and supplied any goods meant for export to M/s. Quarterfold Printabilities, Navi Mumbai.

(iv) Further, Shri Kalpesh Patel also stated in his statement dated 08.10.2018 that by adopting above modus operandi, they, in connivance with Merchant Exporter- M/s. Quarterfold Printabilities and transporter-M/s. Bhavin Transport Co. knowingly indulged in fraudulent activity of getting name & IEC of their company M/s. Rajkalp Mudranalaya Pvt. Ltd mentioned as supporting manufacturer in the Shipping Bills filed by M/s. Quarterfold Printabilities showing FOB value of Rs. 120157951.50/- without manufacturing and supplying any goods to M/s. Quarterfold Printabilities with an intent to further submit them to DGFT towards fulfillment of their export obligation and to obtain EODC against the said EPCG License No.0830001976 dated 28.03.2007 fraudulently.

30. In view of discussion in foregoing paras, it appeared that Shri Kalpesh Patel, CEO & MD of M/s. Rajkalp Mudranalaya Pvt. Ltd & Ms. Shachee Agrawal, Director of M/s. Rajkalp Mudranalaya Pvt. Ltd in connivance with Merchant Exporter- M/s. Quarterfold Printabilities and transporter-M/s. Bhavin Transport Co. knowingly/consciously indulged in creating /fabricating the documents i.e. Tax-Invoices, Lorry Receipts, E-way Bills, Custom Invoices, Packing List,

Shipping Bills etc. showing that the goods were transported from factory premises of M/s. Rajkalp Mudranalaya Pvt. Ltd, Dantali, Ahmedabad to M/s Quarterfold Printabilities, Navi Mumbai & further exported by M/s Quarterfold Printabilities and indulged in fraudulently getting the name & IEC of M/s. Rajkalp Mudranalaya Pvt. Ltd, as supporting manufacturer in the Shipping Bills filed by M/s Quarterfold Printabilities showing FOB value of Rs. 120157951.50/- without manufacturing and supplying any goods to M/s. Quarterfold Printabilities with an intent to further submit them to DGFT towards fulfillment of their export obligation and to obtain EODC against the said EPCG License No.0830001976 dated 28.03.2007 fraudulently.

31. In view of the statements of Shri Kalpesh Patel, CEO & MD of M/s. Rajkalp Mudranalaya Private Limited and statement of Shri Manoj Dhankani, Managing Director of M/s Quarterfold Printabilities, it is observed that Ms. Shachee Agrawal (daughter of Shri Kalpesh Patel), Director of M/s. Rajkalp Mudranalaya Pvt. Ltd was actively involved in aforesaid fraudulent activities of getting the name & IEC of M/s. Rajkalp as supporting manufacturer in the Shipping Bills filed by M/s Quarterfold Printabilities showing FOB value of Rs. 120157951.50/- without manufacturing and supplying any goods to M/s. Quarterfold Printabilities with an intent to further submit them to DGFT towards fulfillment of their export obligation and to obtain EODC against the said EPCG License No.0830001976 dated 28.03.2007 fraudulently. Therefore, Ms. Shachee Agrawal, Director of Rajkalp was summoned vide summon dated 26.10.2018, 05.11.2018 & 13.11.2018 to appear before Senior Intelligence officer of DRI, Ahmedabad for recording of her statement. But she in utter disregard to the summons issued to her, did not appear before the DRI Ahmedabad to give her statement and thus deliberately dishonored the same.

32. M/s Quarterfold Printabilities had filed 37 Shipping Bills with Nhava Sheva Customs for the export of Educational Printed Books. In the invoices & Shipping Bills, they had mentioned the name & IEC of M/s. Rajkalp Mudranalaya Pvt. Ltd as supporting Manufacturer and the goods mentioned therein were shown as manufactured and supplied by M/s. Rajkalp Mudranalaya Pvt. Ltd, Ahmedabad. However, inquiry conducted in the case and evidences available on record as discussed herein above revealed that the goods shown as manufactured by Rajkalp were actually not manufactured and supplied by Rajkalp to M/s. Quarterfold Printabilities. It therefore, appeared that M/s Quarterfold Printabilities had mis-declared the material particular that the Rajkalp was the supporting manufacture of the goods mentioned in the

Export Invoices and Shipping Bills, exported by M/s Quarterfold Printabilities. Therefore the goods exported by M/s Quarterfold Printabilities showing the name of Rajkalp as supporting manufacture in the Shipping Bills filed with the Customs, Nhava Sheva were liable for confiscation under Section 113(i) of the Customs Act, 1962.

33. **ROLE OF PERSONS (LEGAL/NATURAL) AND FIRMS IN THIS ACT OF FRAUDULENT ACTIVITY AND IN MIS-USE OF EPCG LICENSE:**

(i) M/s. Rajkalp Mudranalaya Pvt. Ltd., had imported three printing machines under EPCG License No. 0830001976 dated 28.03.2007 at concessional rate of Customs duty under Notification No. 97/2004 –Customs dated 17.09.2004 as amended, but export obligation had not been fulfilled against these goods which were imported at concessional rate of Customs duty under aforesaid EPCG license even after completion of obligation period of 10 years (*extended*). M/s. Rajkalp Mudranalaya Private Limited saved duty amounting to Rs. 1,82,49,225.76/- and against that M/s. Rajkalp Mudranalaya was required to fulfill export obligation equivalent to eight times of the duty saved on FOB basis valued at USD 32,84,917/-(FOB) under aforesaid EPCG License during the period of 10 years (*Extended*) from the date of issue of the said EPCG license, which finally expired on 27.03.2017 as per condition mentioned in Para No. (2) of Notification No. 97/2004-Customs dated 17.09.2004. Against the said export obligation, they had not exported any goods under that license till 27.03.2017 and no further extension was granted by DGFT after 27.03.2017. Further the condition mentioned in Para (4) of Notification No. 97/2004-Customs dated 17.09.2004 casts obligation on the importer that details of export obligation fulfilled in two blocks i.e. Block of 1st to 6th year & Block of 7th to 8th year, of 50% each of total export obligation, must be produced with evidence before the Customs Authorities within 30 days of expiry of each block. But in this case M/s. Rajkalp Mudranalaya Pvt. Ltd had neither produced any evidences before customs to show that stipulated export obligation for each block had been fulfilled nor had they paid custom duties along with interest @15% per annum as per condition mentioned in para (4) of Notification No. 97/2004-Customs dated 17.09.2004. Thus M/s. Rajkalp Mudranalaya Pvt. Ltd. had violated conditions mentioned in Para No. (2) & (4) of Notification No. 97/2004-Customs dated 17.09.2004. They had also indulged in fabricating of documents in connivance with the third party exporter showing third party export against their export obligation without manufacturing or supplying any goods to the third party exporter. Thus, they had also violated the provisions of Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rule 11 & Rule 14 of the Foreign Trade (Regulation) Rules, 1993.

Thus M/s. Rajkalp Mudranalaya Pvt. Ltd had rendered the goods imported at concessional rate of duty liable for confiscation under Section 111(d) and Section 111(o) of the Customs Act, 1962 and had rendered themselves liable to penalty under Section 112 (a)& 112(b) of the Customs Act 1962. They had also rendered the goods exported by M/s Quarterfold Printabilities showing the name of Rajkalp as supporting manufacturer in the Shipping Bills filed with the Customs, Nhava Sheva liable for confiscation under Section 113(i) of the Customs Act, 1962 and had rendered liable for penalty under Section 114(iii).

(ii) Shri Kalpesh Patel, CEO & MD of M/s. Rajkalp Mudranalaya Pvt. Ltd had knowingly submitted fabricated documents i.e. Shipping Bills vide letter dated 22.08.2018 and submitted documents i.e. Tax-Invoices, Lorry Receipt, E-way Bills etc. under his statement recorded on 16.08.2018 under Section 108 of the Customs Act, 1962 to mis-lead the enquiry being carried out by DRI. By adopting this modus operandi, Shri Kalpesh Patel, CEO & MD of M/s. Rajkalp Mudranalaya Pvt. Ltd & Ms. Shachee Agrawal, Director of M/s. Rajkalp Mudranalaya Pvt. Ltd in connivance with a Merchant Exporter- M/s. Quarterfold Printabilities and one transporter-M/s. Bhavin Transport Co. knowingly/consciously indulged in fabricating / manipulating the documents i.e. Tax-Invoices, Lorry Receipt, E-way Bills, Custom Invoices, Packing List, Shipping Bills etc. showing that the goods were transported from factory premises of M/s. Rajkalp Mudranalaya Pvt. Ltd, Dantali, Ahmedabad to M/s Quarterfold Printabilities, Navi Mumbai & further exported by M/s Quarterfold Printabilities and indulged in fraudulently getting the name & IEC of M/s. Rajkalp Mudranalaya Pvt. Ltd, as supporting manufacturer in the Shipping Bills filed by M/s Quarterfold Printabilities showing FOB value of Rs. 120157951.50/- without manufacturing and supplying any goods to M/s. Quarterfold Printabilities with an intent to further submit them to DGFT towards fulfillment of their export obligation and to obtain EODC against the said EPCG License No.0830001976 dated 28.03.2007 fraudulently. Thus they had also violated the provisions of Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rule 11 & Rule 14 of the Foreign Trade (Regulation) Rules, 1993. Thus, Shri Kalpesh Patel, CEO & MD of M/s. Rajkalp Mudranalaya Pvt. Ltd & Ms. Shachee Agrawal, Director of M/s. Rajkalp Mudranalaya Pvt. Ltd had rendered the goods imported at concessional rate of duty liable for confiscation under Section 111(d) and Section 111(o) of the Customs Act, 1962 and had rendered themselves liable to penalty under Section 112 (a) & 112(b) of the Customs Act 1962. They had also rendered the goods exported by M/s Quarterfold Printabilities showing the name of Rajkalp as supporting manufacturer in the Shipping Bills filed with the Customs, Nhava

Shreeva liable for confiscation under Section 113(i) of the Customs Act, 1962 and have rendered liable for penalty under Section 114(iii).

Further, Shri Kalpesh Patel, CEO & MD of M/s. Rajkalp Mudranalaya Pvt. Ltd & Ms. Shachee Agrawal, Director of M/s. Rajkalp Mudranalaya Pvt. Ltd knowingly and intentionally signed documents or caused to be made, signed/used documents as discussed in detail hereinabove, which they knew or had reason to believe that these documents were false, incorrect & fabricated and prepared with intention to further submit them to DGFT towards fulfillment of their export obligation and to obtain EODC against the aforesaid EPCG License fraudulently. Hence the said act on the part of Shri Kalpesh Patel, CEO & MD of M/s. Rajkalp Mudranalaya Pvt. Ltd & Ms. Shachee Agrawal, Director of M/s. Rajkalp Mudranalaya Pvt. Ltd had rendered them liable for penalty under Section 114AA of the Customs Act, 1962.

(iii) Further, Ms. Shachee Agrawal did not appear before the DRI inquiry officer in response to summons issued to her under Section 108 of Customs Act, 1962 and did not honour the summons issued to her under Section 108 of the Customs Act, 1962. The non-compliance of summons on the part of Ms. Shachee Agrawal had rendered her liable for penalty under Section 117 of the Customs Act, 1962.

34. Shri Sandip Patel, Accountant of M/s. Rajkalp Mudranalaya Private Limited had knowingly indulged in arranging fabricated transport documents viz. Lorry Receipts, E ways Bills, Invoices for the purpose of showing the name of Rajkalp as supporting manufacturer in the export documents filed by Merchant exporter M/s. Quarterfold Printabilities, Navi Mumbai without actually procuring the goods from Rajkalp with an intention to fulfill the export obligation fraudulently under EPCG license.

(i) As mentioned in his statement recorded on 08.10.2018, he knew one transporter Shri Suresh Mehta of M/s. Bhavin Transport, Narol, Ahmedabad and he convinced to facilitate Rajkalp by issuing L.R. (Lorry Receipt) without actually transporting the goods to show that the goods were transported from factory premises of Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad to M/s. Quarterfold Printabilities, Navi Mumbai on the basis of said LR. He offered commission of Rs. 1000 per LR to Shri Suresh Mehta. Accordingly, Shri Suresh Mehta had issued total 39 L.Rs from his company M/s Bhavin Transport Co showing the name of the consignor as M/s Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad, name of the consignee as M/s. Quarterfold Printabilities, Navi Mumbai from March, 2018 to July 2018 without actually transporting the goods from M/s. Rajkalp Mudranalaya Pvt. Ltd. to M/s. Quarterfold Printabilities shown thereof in the said 39 LR.

(ii) Thus it appeared that Shri Sandip Patel had arranged fabricated documents viz. Lorry Receipts, E ways Bills, Invoices etc. By using these fabricated documents, Shri Kalpesh Patel, CEO & MD of M/s. Rajkalp Mudranalaya Pvt. Ltd & Ms. Shachee Agrawal, Director of M/s. Rajkalp Mudranalaya Pvt. Ltd in connivance with a Merchant Exporter- M/s. Quarterfold Printabilites had created a fiction that the goods were transported from factory premises of M/s. Rajkalp Mudranalaya Pvt. Ltd, Dantali, Ahmedabad to M/s Quarterfold Printabilities, Navi Mumbai & further exported by M/s Quarterfold Printabilities and indulged in fraudulently getting the name & IEC of M/s. Rajkalp Mudranalaya Pvt. Ltd, as supporting manufacturer in the Shipping Bills filed by M/s Quarterfold Printabilities showing FOB value of Rs. 120157951.50/- without manufacturing and supplying any goods to M/s. Quarterfold Printabilities with an intent to further submit them to DGFT towards fulfillment of their export obligation and to obtain EODC against the said EPCG License No.0830001976 dated 28.03.2007 fraudulently. Thus Shri Sandip Patel had aided and abetted Rajkalp in getting their name endorsed as supporting manufacturer in the export invoice and Shipping Bill without actually supplying any goods to M/s. Quarterfold Printabilities. Thus, he had violated the provisions of Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rule 11 & Rule 14 of the Foreign Trade (Regulation) Rules, 1993. Thus, Shri Sandip Patel had rendered the goods imported at concessional rate of duty liable for confiscation under Section 111(d) and Section 111(o) of the Customs Act, 1962 and had rendered him liable to penalty under Section 112 (a) & 112(b) of the Customs Act 1962. The above act on the part of Shri Sandip Patel had also rendered the goods exported by M/s Quarterfold Printabilities liable for confiscation under Section 113(i) of the Customs Act, 1962 and had rendered himself liable for penalty under Section 114(iii).

(iii) Further, Shri Sandip Patel Accountant of M/s. Rajkalp Mudranalaya Private Limited knowingly and intentionally signed documents or caused to be made, signed/used documents as discussed in detail hereinabove, which he knew or had reason to believe that these documents were false, incorrect & fabricated and prepared with intention to further submit them by Rajkalp to DGFT towards fulfillment of their export obligation and to obtain EODC against the aforesaid EPCG License fraudulently. Hence the said act on the part of Shri Sandip Patel rendered him liable for penalty under Section 114AA of the Customs Act, 1962 too.

35. M/s Quarterfold Printabilities, & Shri Manoj Jethanand Dhankani, Managing Director M/s Quarterfold Printabilities, had facilitated M/s. Rajkalp

Mudranalaya Pvt. Ltd in getting the name and IEC of M/s. Rajkalp Mudranalaya Pvt. Ltd as supporting manufacturer in the Shipping Bills filed by M/s Quarterfold Printabilities showing FOB value of Rs. 120157951.50/- without manufacturing and supplying any goods from M/s. Rajkalp Mudranalaya Pvt. Ltd to M/s. Quarterfold Printabilities with an intent to further submit them to DGFT towards fulfillment of their export obligation and to obtain EODC against the aforesaid EPCG License. Thus M/s Quarterfold Printabilities had knowingly concerned themselves in the act of aiding and abetting M/s. Rajkalp Mudranalaya Pvt. Ltd in afore-discussed fraudulent activity with an intent to help them obtain EODC against the said EPCG License No.0830001976 dated 28.03.2007 and had mis-declared that the goods exported under the Shipping Bills were manufactured by M/s. Rajkalp Mudranalaya Pvt Ltd. and wrongly showing the name of M/s. Rajkalp Mudranalaya Pvt Ltd. as supporting manufacturer in the Shipping Bills. Thus they had also violated the provisions of Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rule 11 & Rule 14 of the Foreign Trade (Regulation) Rules, 1993. Thus M/s Quarterfold Printabilities, & Shri Manoj Jethanand Dhankani, Managing Director M/s Quarterfold Printabilities had rendered the goods imported at concessional rate of duty liable for confiscation under Section 111(d) and Section 111(o) of the Customs Act, 1962 and had rendered themselves liable to penalty under Section 112 (a) & 112(b) of the Customs Act 1962. They had also rendered the goods exported by M/s Quarterfold Printabilities showing the name of Rajkalp as supporting manufacture in the Shipping Bills filed with the Customs, Nhava Sheva liable for confiscation under Section 113(i) of the Customs Act, 1962 and had rendered themselves liable for penalty under Section 114(iii).

36. Further, Shri Manoj Jethanand Dhankani, Managing Director M/s Quarterfold Printabilities, knowingly and intentionally signed documents or caused to be made, signed/used documents as discussed in detail hereinabove, which he knew or had reason to believe that these documents were false, incorrect & fabricated and prepared with intention to help Rajkalp for further submission to DGFT towards fulfillment of their export obligation and to obtain EODC against the aforesaid EPCG License fraudulently. Hence the said act on the part of Shri Manoj Jethanand Dhankani, Managing Director M/s Quarterfold Printabilities, rendered him liable for penalty under Section 114AA of the Customs Act, 1962.

37. Shri Anup Sharma, Export Document Executive, of M/s Quarterfold Printabilities, had facilitated M/s. Rajkalp Mudranalaya Pvt. Ltd by way of mentioning the name and IEC of M/s. Rajkalp Mudranalaya Pvt. Ltd as

supporting manufacturer in the Customs Invoices & Packing Lists and further in the Shipping Bills filed by M/s Quarterfold Printabilities showing FOB value of Rs. 12,01,57,951.50/-. He mentioned the name & IEC of M/s. Rajkalp Mudranalaya Pvt. Ltd as supporting manufacturer in the Customs Invoices & Packing Lists on verbal directions of Shri Manoj Dhankani, Managing Director of M/s Quarterfold Printabilities without receiving any supportive documents. Further, he knew that no printing work was done by M/s. Rajkalp Mudranalaya Pvt. Ltd. for M/s. Quarterfold Printabilities and no goods were procured by M/s. Quarterfold Printabilities from M/s. Rajkalp Mudranalaya Pvt. Ltd. Further he also directed CHA to mention M/s Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad as supporting manufacturer in Shipping Bills and the same was mentioned by the CHA.

(i) Thus Shri Anup Sharma had knowingly concerned himself in the act of aiding and abetting M/s. Rajkalp Mudranalaya Pvt. Ltd in afore-discussed fraudulent activity in as much as he had mis-declared the name of M/s. Rajkalp Mudranalaya Pvt Ltd. as supporting manufacturer in the Shipping Bills and other export documents showing that the said goods exported under the Shipping Bills filed by M/s Quarterfold Printabilities were manufactured by M/s. Rajkalp Mudranalaya Pvt. Thus he had also violated the provisions of Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rule 11 & Rule 14 of the Foreign Trade (Regulation) Rules, 1993. Thus, the act of omission and commission on the part of Shri Anup Sharma, Export Document Executive, of M/s Quarterfold Printabilities had rendered the goods imported at concessional rate of duty liable for confiscation under Section 111(d) and Section 111(o) of the Customs Act, 1962 and had rendered him liable to penalty under Section 112 (a) & 112(b) of the Customs Act 1962. He had also rendered the goods exported by M/s Quarterfold Printabilities showing the name of Rajkalp as supporting manufacture in the Shipping Bills filed with the Customs, Nhava Sheva liable for confiscation under Section 113(i) of the Customs Act, 1962 and had rendered him liable for penalty under Section 114(iii). Further, Shri Anup Sharma, Export Document Executive, of M/s Quarterfold Printabilities, knowingly and intentionally made, signed documents or caused to be made, signed as discussed in detail hereinabove, which he knew or had reason to believe that these documents were false, incorrect & fabricated and prepared with intention to help Rajkalp for further submission to DGFT towards fulfillment of their export obligation and to obtain EODC against the aforesaid EPCG License fraudulently. Hence the said act on the part of Shri Anup Sharma, Export Document Executive, of M/s Quarterfold Printabilities, rendered him liable for penalty under Section 114AA of the Customs Act, 1962 too.

58. Shri Suresh Mehta, Manager of M/s. Bhavin Transport Co., Office No. 21, Transport Nagar, Narol Char Rasta, Narol, Ahmedabad-382405 had facilitated M/s. Rajkalp Mudranalaya Pvt. Ltd by way of preparing fabricated & false documents i.e. Lorry Receipt, Invoices for showing the transportation of goods meant for export of M/s. Rajkalp Mudranalaya Pvt Ltd from their factory at Dantali to merchant exporter - M/s. Quarterfold Printabilities, Navi Mumbai without actually transporting any goods from factory premises of M/s Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad to M/s. Quarterfold Printabilities, Navi Mumbai either by his transport companies or any other transport company. Shri Suresh Mehta, Manager of M/s Bhavin Transport Co also inter-alia stated & confessed in his statement dated 04.09.2018 that he had issued total 39 L.Rs on M/s. Rajkalp Mudranalaya from their company M/s Bhavin Transport Co from March 2018 to July 2018 without actually transporting the goods shown thereof in the said 39 LR's and he had also received good commission @ Rs. 1000/- per Lorry Receipt. Thus he had knowingly concerned himself in the act of aiding and abetting M/s. Rajkalp Mudranalaya Pvt. Ltd in fraudulent activity of showing that the goods were transported from factory premises of M/s. Rajkalp Mudranalaya Pvt Ltd to merchant exporter -M/s. Quarterfold Printabilities, Navi Mumbai. Thus he had also violated the provisions of Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rule 11 & Rule 14 of the Foreign Trade (Regulation) Rules, 1993. Thus he had rendered the goods imported at concessional rate of duty liable for confiscation under Section 111(d) and Section 111(o) of the Customs Act, 1962 and had rendered himself liable to penalty under Section 112(a) & 112(b) of the Customs Act 1962. He had also rendered the goods exported by M/s Quarterfold Printabilities showing the name of Rajkalp as supporting manufacture in the Shipping Bills filed with the Customs, Nhava Sheva liable for confiscation under Section 113(i) of the Customs Act, 1962 and had rendered himself liable for penalty under Section 114(iii). Further, Shri Suresh Mehta, Manager of M/s. Bhavin Transport Co., knowingly and intentionally signed documents or caused to be made, signed/used documents as discussed in detail hereinabove, which were used to show the fake transportation of goods for export by M/s. M/s Quarterfold Printabilities which he knew or had reason to believe that these documents were false, incorrect & fabricated and prepared with intention to help Rajkalp for further submission to DGFT towards fulfillment of their export obligation and to obtain EODC against the aforesaid EPCG License fraudulently. Hence, the said act on the part of Shri Suresh Mehta, Manager of M/s. Bhavin Transport Co., rendered himself liable for penalty under Section 114AA of the Customs Act, 1962.

39. Therefore, M/s. Rajkalp Mudranalaya Pvt. Ltd., beside Shilpgram-II, off S P Ring Road, Near Karnavati Eye Hospital-Ognaj, Dantali Industrial Estate—Road, Lapkaman, Ahmedabad -380060 was required to show cause to the Principal Commissioner, Customs, Ahmedabad as to why:-

- (i) The seized three printing machines i.e. (i) One Set of Mitsubishi Sheet-fed Offset Press (ii) Kodak Series Trendsetter III800 Quantum S speed with DCK (iii) Hologram Machine UY-104 Calchem U.S.A valued Rs.7,05,65,555/-(Rupees Seven Crore Five Lakhs Sixty Five Thousand Five Hundred Fifty Five) imported by M/s. Rajkalp Mudranalaya Pvt. Ltd at concession rate of Customs duty under EPCG License No. 0830001976 dated 28.03.2007 under Notification No. 97/2004 –Customs dated 17.09.2004 & 100/2009-Customs dated 11.09.2009, should not be confiscated under Section 111 (d) & (o) of the Customs Act, 1962.
- (ii) The duty saved amount of Rs.**1,82,49,226/-** (Rupees One Crore Eighty Two Lakhs Forty Nine Thousands Two Hundred Twenty Six only) at the time of import of aforesaid three printing machines by M/s. Rajkalp Mudranalaya Pvt. Ltd at concessional rate of Customs duty under EPCG License No. 0830001976 dated 28.03.2007, should not be demanded and recovered from them under the provisions of Notification No. No. 97/2004 –Customs dated 17.09.2004 & 100/2009-Customs dated 11.09.2009 read with the condition of Bonds executed by them at the time of import.
- (iii) Interest as applicable should not be charged and recovered from them under Notification No. 97/2004 –Customs dated 17.09.2004 & 100/2009-Customs dated 11.09.2009 read with the condition of Bonds executed by them at the time of import on the duty demanded at (ii) above.
- (iv) Penalty should not be imposed upon M/s. Rajkalp Mudranalaya Pvt. Ltd under Section 112(a) & 112(b) of the Customs Act 1962.
- (v) The amount of Rs.28,05,000/- (Rupees Twenty Eight Lakhs Five thousand only) furnished by M/s. Rajkalp Mudranalaya Pvt. Ltd as Bank Guarantee at the time of import of afore said three

machines should not be appropriated against the duty and interest demanded at (ii) & (iii) above, penalty proposed at Sr. No. (iv) above and fine etc.

- (vi) The amount of Rs. 2,70,00,000/- (Rupees Two Crores Seventy Lakhs only) furnished by M/s. Rajkalp Mudranalaya Pvt. Ltd as Bank Guarantee for provisional release of seized goods should not be appropriated against the duty and interest demanded at (ii) & (iii) above, penalty proposed at Sr.No. (iv) above and fine etc..

40. Shri Kalpesh Patel, CEO & MD of M/s. Rajkalp Mudranalaya Pvt. Ltd, was required to show cause to the Principal Commissioner of Customs, Ahmedabad as to why :-

- (i) Penalty should not be imposed upon him under Section 112 (a) & 112 (b) of the Customs Act 1962.
- (ii) Penalty should not be imposed upon him under Section 114 AA of the Customs Act 1962.

41. Ms. Shachee Agrawal, Director of M/s. Rajkalp Mudranalaya Pvt. Ltd. was required to show cause to the Principal Commissioner of Customs, Ahmedabad as to why :-

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

42. Shri Sandip Patel, Accountant of Rajkalp Mudranalaya Pvt. Ltd residing at E-1/29/2, Royal Bungalows, Sterling City, Bopal, Dascroi, Ahmedabad - 380 058, Shri Suresh Mehta, Manager of M/s. Bhavin Transport Co., Office No. 21, Transport Nagar, Narol Char Rasta, Narol, Ahmedabad-382405, M/s Quarterfold Printabilities, Shri Manoj Jethanand Dhankani, Managing Director of M/s Quarterfold Printabilities & Shri Anup Sharma, Export Document Executive, of M/s Quarterfold Printabilities, Cyber One IT Park, 12th Floor, Office No. 1207, Plot No. 4 & 6, Sector No. 30A, Vashi, Navi Mumbai-400703 were required to show cause to the Principal Commissioner, Customs, Ahmedabad as to why :-

- (i) Penalty should not be imposed upon them under Section 112 (a) & 112 (b) of the Customs Act 1962.
- (ii) Penalty should not be imposed upon them under Section 114 AA of the Customs Act 1962.

43. Therefore, M/s Quarterfold Printabilities, Cyber One IT Park, 12th Floor, Office No. 1207, Plot No. 4 & 6, Sector No. 30A, Vashi, Navi Mumbai-400703 was required to show cause to the Principal Commissioner of Customs, Nhava Sheva II as to why:-

- (i) The goods valued at Rs. 120157951.50/- (Twelve Crore One Lakh Fifty Seven thousand Nine Hundred Fifty One Rupees only) as detailed in Annexure A should not be held liable for confiscation under Section 113 (i) of Customs Act, 1962.
- (ii) Penalty should not be imposed upon them under Section 114(iii) of the Customs Act, 1962.

44. Shri Kalpesh Patel, CEO& MD of M/s. Rajkalp Mudranalaya Pvt. Ltd, & Ms. Shachee Agrawal, Director of M/s. Rajkalp Mudranalaya Pvt. Ltd. residing at 14, Ramesh Park Society, Nr. Gujarati Vishvakosh Building, Usmanpura, Ahmedabad City, Naranpura Vistar, Ahmedabad-380013, Shri Sandip Patel, Accountant of Rajkalp Mudranalaya Pvt. Ltd residing at E-1/29/2, Royal Bungalows, Sterling City, Bopal, Dascroi, Ahmedabad - 380 058, M/s. Shri Manoj Jethanand Dhankani, Managing Director of M/s Quarterfold Printabilities & Shri Anup Sharma, Export Document Executive, of M/s Quarterfold Printabilities, Cyber One IT Park, 12th Floor, Office No. 1207, Plot No. 4 & 6, Sector No. 30A, Vashi, Navi Mumbai-400703 and Shri Suresh Mehta, Manager of M/s. Bhavin Transport Co., Office No. 21, Transport Nagar, Narol Char Rasta, Narol, Ahmedabad-382405 were required to show cause to the Principal Commissioner, Nhava Sheva II as to why :-

Penalty should not be imposed upon them under Section 114(iii) & 114 AA of the Customs Act, 1962.

45. **APPOINTMENT OF COMMON ADJUDICATING AUTHORITY**

The Board vide Notification No.16/2019-Customs(N.T/CAA/DRI) dated 22.04.2019 appointed the Principal Commissioner of Customs, Ahmedabad as a common adjudicating authority as there were 2 adjudicating authorities, including Principal Commissioner, Nhava Sheva-II), Raigad.

46. **FILING APPLICATION BEFORE HON'BLE SETTLEMENT COMMISSION**

The following parties/persons approached the Settlement Commission and allowed to be proceeded with on 27.10.2020 as per Section 127C(1) of the Customs Act, 1962 and the same were settled as per the details below

Sr. No.	Name of the party/person	Date of filing application before Settlement Commission, Additional Bench, Mumbai	Settlement Commission Final Order No.06/Final Order/Cus/PSG/2021 dated 18.02.2021 issued from F.No.04/Cus/PSG/2020-SC(MB)				Whether all amounts paid
			Customs duty (Rs.)	Interest (Rs.)	Redemption Fine (Rs.)	Penalty (Rs.)	
1.	M/s Rajkalp Mudranalaya Pvt. Ltd.	13.03.2020	1,82,49,226	3,41,18,133	15,40,382	12,00,000	Yes
2.	Shri Kalpesh Patel, Director of M/s Rajkalp Mudranalaya Pvt. Ltd.	26.10.2020	-	-	-	2,00,000	Yes
3.	Shri Sandip Patel, Accountant of M/s Rajkalp Mudranalaya Pvt. Ltd.	23.10.2020	-	-	-	10,000	Yes
4.	Mrs.Shachee Agrawal, Director, M/s Rajkalp Mudranalaya Pvt. Ltd.	23.10.2020	-	-	-	25,000	Yes

Sr. No.	Name of the party/person	Date of filing application before Settlement Commission, Additional Bench, Mumbai	Settlement Commission Final Order No.52/FO/Cus/AP/2023 dated 10.11.2023 issued from F.No.04/Cus/PSG/2020-SC(MB)				Whether all amounts paid
			Customs duty (Rs.)	Interest (Rs.)	Redemption Fine (Rs.)	Penalty (Rs.)	
1.	Shri Suresh Mehta, C/o, M/s Bhavin Transport Co.	15.03.2021	-	-	-	25,000	Yes

I find that M/s Quarterfold Printabilities, Cyber One IT Park, 12th Floor, Office No. 1207, Plot No. 4 & 6, Sector No. 30A, Vashi, Navi Mumbai-400703, Shri Manoj Jethanand Dhankani, Managing Director of M/s Quarterfold Printabilities & Shri Anup Sharma, Export Document Executive, of M/s Quarterfold Printabilities, have not filed any application before the Settlement Commission, I, proceed to adjudicate the matter in case of the said three noticees.

PERSONAL HEARING

47. A personal hearing was fixed on 11.11.2024 [in virtual mode], were all the three noticees did not appear. A letter dated 09.11.2024 was received from the three noticees requesting 15 days extension. Accordingly, a personal hearing [in virtual mode] was fixed on 26.11.2024.

The personal hearing [in virtual mode] fixed on 26.11.2024 was represented by Shri Abhishek Chopra, on behalf of M/s Quarterfold Printabilities, Shri Manoj Jethanand Dhankani, Managing Director of M/s Quarterfold Printabilities & Shri Anup Sharma, Export Document Executive, of M/s Quarterfold Printabilities and submitted that they would a defence reply within 7 seven days.

DEFENCE REPLY

48. A defence reply dated 27.11.2024 was received from M/s Quarterfold Printabilities on behalf of all three noticees, wherein they have contended that Additional Director General, DRI does not have jurisdiction to issue a show cause notice under Section 28 of the Customs Act and therefore, the SCN is liable to be dropped on this ground alone. They further submitted that:

(i) THE EXPRESSION 'PROPER OFFICER' IS DEFINED IN SECTION 2(34) OF THE CUSTOMS ACT AS UNDER:

"2(34) 'proper officer', in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Commissioner of Customs;"

From a combined reading of the above provisions it is evident that a notice under Section 28 can only be issued by the 'proper officer' and the 'proper officer' for issuing a notice under Section 28 is the officer of customs who is assigned those functions by the Board or the Commissioner of Customs in terms of Section 2(34) of the Customs Act.

(ii) PERSON WHO HAS MADE ASSESSMENT UNDER SECTION 17 IS THE PROPER OFFICER TO ISSUE SHOW CAUSE NOTICE UNDER SECTION 28 OF THE CUSTOMS ACT

1. The proper officer for the purposes of Section 28 of the Customs Act is that officer who has been assigned the specific function of assessment of bill of entry. In other words, the proper officer for issuing a show cause notice under Section 28(1) of the Customs Act will be the proper officer who has

assessed the concerned bills of entries under Section 17 of the Customs Act. This proposition also finds support in the judgment of the Supreme Court in ***Commissioner of Customs vs. Sayed Ali &Anr.***, reported at **2011 (265) ELT 17(SC)**. It is pertinent to point out that even the language used in Section 28(11) of the Customs Act shows that the legislature wanted to link between the proper officer for the purposes of Section 17 and Section 28 of the Customs Act. Section 28(11) provides that all officers of Customs shall be deemed to have and always had the power of assessment under Section 17 and shall be deemed to have been and always had been the proper officers for the purposes of this section. Thus, the effect of Section 28(11) of the Customs Act is merely to confer the power of assessment under Section 17 on the officers of DGCEI, Preventive, etc. and such officers would also be proper officers for the purposes of issuing a show cause notice under Section 28 of the Customs Act. Thus, in cases where the officers of Preventive, DGCEI, etc. had exercised the power of proper officer to make assessments under Section 17, only in those cases, the said officers (Preventive, DGCEI, etc.) will also have the power of proper officer to issue a show cause notice under Section 28 of the said act.

2. However, in cases, where the bills of entries were assessed under Section 17 by proper officers exercising jurisdiction over respective Customs Ports, only those officers (and not preventive) will be proper officers for the purpose of issuance of a Show Cause Notice under Section 28 of the Customs Act. Admittedly, the ADG in the instant case did not assess any of the bills of entry covered by the present SCN. Moreover, it is submitted that the ADG does not even have the jurisdiction to make assessment or reassessment under Section 17 of the Customs Act.

3. Even after the amendment to Section 28 by insertion of sub-section (11), the proper officer for the purposes of section 28 will be only that proper officer who made assessment of bills of entry under section 17 of the Act.

4. The earlier Section 28(1) of the Customs Act (dealing with issuance of Show Cause Notice) and section 28 (2) of the Customs Act (dealing with adjudication of Show Cause Notice) both used the expression "The Proper Officer". Similarly, in the newly inserted Section 28 of the Customs Act, sub-section (1) (a) (dealing with the issuance of Show Cause Notice) and sub-section (8) (dealing with adjudication) also uses the expression "The Proper Officer". Conspicuously, both old and new section 28 of the Customs Act did not use expressions "A Proper Officer" or "Any Proper Officer".

5. It is submitted that Section 28 of the Customs Act does not make a reference to a proper officer or any proper officer. The Hon'ble Supreme Court has held in the case of **Consolidated Coffee Ltd vs. Coffee Board** reported at **(1980) 3 SCC 358** that the use of the definite article 'the' is very significant as opposed to 'an' or 'any'.

Further, the Hon'ble Supreme Court in the case of **Shri Ishar Alloys Steels Ltd vs J ayaswals Neco Ltd** reported at **(2001) 3 SCC 609** has held

"The" is the word used before nouns, with a specifying or particularizing effect as opposed to the indefinite or generalizing force of a "a" or "an". It determines what particular thing is meant; that is, what particular thing we are to assume to be meant. "The" is always mentioned to denote a particular thing or a person."

Thus, even if it is assumed that the effect of section 28(11) is to deem all officers of customs as proper officers retrospectively (effective from April 8, 2011), still it cannot be said that any one of those proper officers was empowered to issue a show cause notice under Section 28 of the Customs Act. The phrase "the proper officer" signifies that out of the larger pool of proper officers, only that officer who is assigned the functions of "the proper officer" for the purpose of the assessment of imported goods in question under Section 17 will have jurisdiction to issue show cause notice in terms of Section 28(1) of Customs Act.

6. The proper officer for the purposes of Section 28 of the Customs Act will be that officer who has been assigned the specific function of assessment of bill of entry. In other words, the proper officer for issuing Show Cause Notice under Section 28(1) will be the proper officer who has assessed the concerned bills of entries under Section 17 of the Customs Act.

7. It is pertinent to point out that even the language used in Section 28(11) of the Customs Act shows that the legislature wanted to link between the proper officer for the purposes of Section 17 and Section 28. Section 28(11) of the Customs Act provides that all officers of Customs shall be deemed to have and always had the power of assessment under Section 17 of the Customs Act and shall be deemed to have been and always had been the proper officers for the purposes of this section.

8. Thus, the effect of Section 28(11) of the Customs Act is merely to confer the power of assessment under section 17 on the officers of DGCEI,

Preventive, etc. and such officers would also be proper officers for the purposes of issuing SCN under Section 28. Thus, in cases where the officers of Preventive, DGCEI, etc. had exercised the power of proper officer to make assessments under Section 17, only in those cases, the said officers (Preventive, DGCEI, etc.) will also have the power of proper officer to issue a show cause notice under Section 28 of the Customs Act.

9. However, in cases, where the bills of entries were assessed under Section 17 of the Customs Act by proper officers exercising jurisdiction over respective Customs Ports, only those officers (and not preventive) will be proper officers for the purpose of issuance of show cause notice under Section 28 of the Customs Act. Admittedly, the office of the ADG did not assess any of the bills of entry covered by the present SCN.

10. The ADG did not even have the jurisdiction to make assessment or reassessment under Section 17 of the Customs Act. It is therefore, submitted that the office of the ADG, is not the 'proper officer' for the purpose of issuing the SCN under Section 28 of the Customs Act, even after the insertion of sub-section (11). Therefore, the impugned SCN suffers from the vice of lack of jurisdiction and thus it is non-est and void ab initio.

(iii) Exercise of jurisdiction by first officer would oust the jurisdiction of other officers having concurrent jurisdiction

The Hon'ble P&H High Court in the case of ***Kenapo Textiles Pvt Ltd and another vs. State of Haryana and Others*** reported at **84 STC 88**. The Hon'ble Supreme Court in the case of ***V K Ashokan vs. Assistant Commissioner***, reported at **(2009)14 SCC 85** has observed that where two statutory authorities could exercise the same power and if the matter is heard by one, the other cannot exercise it. Reference may also be had to the case of ***India Household and Healthcare Ltd vs. LG Household and Healthcare Ltd*** reported at **(2007) 5 SCC 510** wherein the Hon'ble Supreme Court has identified the rationale for applying the doctrine of judicial comity. Thus, once the bills of entry filed by the Noticees have been assessed by the proper officers having jurisdiction over respective ports under Section 17, jurisdiction of all other officers including ADG to issue any notice for short-levy or non-levy in respect of those bills of entries would stand ousted. In view of the above, the ADG should not have issued the impugned SCN for the period from 11.2.2013 to 22.02.2014.

(iv) Conferment of concurrent jurisdiction without any guideline is arbitrary, discriminatory and violative of article 14 of Constitution of India

1. Even assuming for the sake of argument but without admitting that by virtue of sub-section (11) inserted in new Section 28 of the Customs Act, all officers of customs have been deemed to be proper officers for the purpose of section 28 even the period prior to April 8, 2011, still such provision is bad in law as it does not lay down any guideline as to who will exercise the power of proper officer and under what circumstances. In support of the above contention, reliance is placed on the judgment of the Andhra Pradesh High Court in the case of **Sri Balaji Rice Company v. CTO [1984] 55 STC 292**.

The relevant portion of the judgment of the Andhra Pradesh High Court is extracted below:

"Point No. (2) : By reason of conferment of powers of assessment on the three Assistant Commissioners (Intelligence) and ten Commercial Tax Officers (Intelligence) by the Commissioner by the notification dated 24th December, 1981, published in the Andhra Pradesh Gazette dated 4th February, 1982, a dealer is liable to be assessed not only by any of the said officers but also by the local Commercial Tax Officer under section 14(1), and also the authorities higher to him including the Deputy Commissioner and Joint Commissioner under section 14(4-C) and also by the Special Commercial Tax Officer (Evasions), to whom one or more districts have been assigned by the Commissioner's notification dated 2nd December, 1975, published in the Andhra Pradesh Gazette dated 18th December, 1975. Thus, a plurality of officers have been conferred with powers to assess a single dealer without laying down any guidelines as to who should exercise the power of assessment. No doubt, the second proviso to G.O. No. 1091 as amended by G.O. No. 434 confers power on the Joint Commissioner and Assistant Commissioner (Intelligence), and Commercial Tax Officer (Intelligence), to exercise the powers of assessing authority over the entire State of Andhra Pradesh in cases of all dealers in respect of whose transactions any suppression or omission, whether or not fraudulent or wilful, is detected by such officer or brought to his notice in any manner whatsoever, and cannot exercise the powers of an assessing authority in other cases, and the third proviso provides that when any such officer undertakes the assessment of any dealer under the second proviso, the assessing authority of the area having jurisdiction to assess such dealer shall not exercise such jurisdiction for the relevant period or year. Even so, the same powers are exercisable by the Commercial Tax Officer having jurisdiction over the area and also the other authorities higher to him and the Special Commercial Tax Officer (Evasions). Thus, it is not possible to postulate as to which officer among the said officers will exercise the powers of assessment over a particular dealer. Even in cases covered by the second proviso to G.O. No. 1091, it is not clear as to which of the said officers mentioned therein can exercise the powers of the assessing authority. No guidelines have been laid down for exercising the power of assessment by the aforesaid officers. Therefore, while in the case of one dealer, the local Commercial Tax Officer or the Special Commercial Tax Officer (Evasions) may exercise the powers of assessment, in the case of others, the Assistant Commissioners, Intelligence, or the Commercial Tax Officers, Intelligence may exercise such power and thus, the power to assess is capable of being exercised in a discriminatory manner. Further, the dealers carrying on business in a particular place are being subjected to assessment by the Assistant Commissioners, Intelligence, and Commercial Tax Officers, Intelligence, having their head-quarters in far off places, and this will certainly create hardship and inconvenience to the dealers with regard to appearing at distant places and production of books and accounts. Further, rule 33 which provides for appeals does not seem to provide for appeal against an assessment order made by the Assistant Commissioner, Intelligence, or Commercial Tax Officer, Intelligence.

The learned Government Pleader contends that under rule 33(1)(c)(iii), an appeal lies against any assessment passed or proceedings recorded "by a Commercial Tax Officer having jurisdiction over the area of more than one division, to the Appellate Deputy Commissioner of Commercial Taxes specified by the Commissioner of Commercial Taxes", and that the Commissioner has, by his order dated 18th September, 1982, passed in exercise of the said powers conferred by rule 33(1)(c)(iii), specified that "in the case of an assessment made or a penalty levied on any dealer by a Commercial Tax Officer (Intelligence) an appeal shall lie to the Appellate Deputy Commissioner in whose jurisdiction the principal place of business of the dealer is situated". Firstly, rule 33(1)(c)(iii) refers only to an assessment passed or proceeding recorded "by a Commercial Tax Officer having jurisdiction over the area of more than one division" and not a Commercial Tax Officer, Intelligence. A Commercial Tax Officer having jurisdiction over the area of more than one division cannot be equated to a Commercial Tax Officer, Intelligence, having jurisdiction over the entire State of Andhra Pradesh. Therefore, rule 33(1)(c)(iii) does not, as it stands, empower the Commissioner of Commercial Taxes to specify an Appellate Deputy Commissioner of Commercial Taxes for the purpose of appeal over the assessment passed or proceeding recorded by the Commercial Tax Officers, Intelligence, and therefore, the notification issued by the Commissioner in his reference dated 18th September, 1982, specifying the Appellate Deputy Commissioner as the appellate authority in the case of assessments made by the Commercial Tax Officer, Intelligence, is illegal and without jurisdiction. Further, rule 33(1)(c)(iii) does not cover cases of assessments made by the Assistant Commissioners, Intelligence, and no remedy of appeal is available to dealers in such cases. The learned Government Pleader fairly submitted that rule 33(1)(c)(iii), as it stands, does not provide for appeals against assessments made by the Assistant Commissioners, Intelligence. Thus, in the case of assessments made by the local Commercial Tax Officers or Special Commercial Tax Officers (Evasions), the remedy of appeal is available to dealers assessed by such officers, whereas in the case of dealers subjected to assessment by the Commercial Tax Officers, Intelligence, and Assistant Commissioners, Intelligence, no remedy of appeal is available. Thus, the dealers assessed by the Assistant Commissioners, Intelligence, and Commercial Tax Officers, Intelligence, are discriminated against by depriving them of a valuable remedy of appeal. Thus, the availability of remedy of appeal is made to depend upon which out of the several assessing authorities exercises the powers of assessment over the dealers, and thus the power of assessment is capable of being exercised in an arbitrary and discriminatory manner.

For the foregoing reasons, we hold that the powers of assessment conferred on the Commercial Tax Officers, Intelligence, and, Assistant Commissioners, Intelligence, by G.O.Ms. No. 1091 as amended by G.O. No. 434 dated 30th March, 1982, read with the Commissioner's notification dated 24th December, 1981, published in the Andhra Pradesh Gazette dated 4th February, 1982, are arbitrary and discriminatory and violative of the rights of the petitioners under article 14 of the Constitution."

The ratio of the above judgment is squarely applicable to facts of the present case. Sub-section (11) to Section 28 of the Customs Act seeks to confer the powers of proper officer on all officers of customs, without any guidelines whatsoever as to who will exercise the power in which situation. Even Notification No. 44/2011-Cus. (N.T.), dated July 6, 2011 issued, assigning the functions of the proper officer to various officers does not lay down any such guideline. Therefore, such conferment of concurrent jurisdiction on plurality of officers without guideline is liable to be struck down as held in the above judgment. In the case of **Sivaramakrishnanvs. State of Kerala and others** reported at [1995 (1) ILR 92], the Court has held that the existence of multiplicity of officers of the same status exercising power over the same area can lead to chaos and confusion, and conflicting orders. It may even lead to multiplicity of proceedings regarding the same subject matter causing hardship and inconvenience to dealers. The reasoning of the Hon'ble AP High Court in the case of **Sri Balaji Rice**

Company vs. Commercial tax officer reported at **1984 (55) STC 292** was also upheld. The Hon'ble Supreme Court has held in the Constitutional Bench decision of **State of Punjab and another vs. Khan Chand** reported at **(1974) 1 SCC 549** that when no guideline has been laid down and uncontrolled power has been conferred upon an authority arbitrariness and the power to discriminate are writ large on the face of the said provision and would be in violation of Article 14 of the Constitution of India. Further, the Hon'ble Supreme Court has even held that it is not necessary to go into the question as to whether the power would be used in an arbitrary manner suffice it that there is a possibility of arbitrariness and discrimination. The Hon'ble Supreme Court has also held in the case of **Air India vs. Nergesh Meerza** reported at **(1981) 4 SCC 335** that when power has been conferred upon an authority to decide matters of moment without laying down any guideline or principles or norms the power has to be struck down as being violative of Article 14. Thus, Section 28 (11) in so far as it allows multiple officers to exercise jurisdiction over the same subject matter without any guideline is patently arbitrary and in violation of Article 14 of the Constitution of India.

(v) There has been no assignment of function of assessment /re-assessment to DRI officers even after the amendment

They submit that as per the decision of the Hon'ble Supreme Court in **Sayed Ali** case reported at **2011 (265) ELT 17(SC)**, a customs officer who has been assigned the specific function of assessment and reassessment of duty in the jurisdictional area by either the Board or the Commissioner of Customs in terms of Section 2(34) of the Customs Act is competent to issue show cause notice under Section 28 of the Customs Act. Thus, the key is that the officer concerned must be "assigned the specific functions" of assessment/ reassessment. It is submitted that sub-section (11) added to Section 28 does not have the effect of assigning the specific functions of assessment/ reassessment to the concerned officers. The said sub-section merely empowers certain officers with the power of assessment under section 17. The fact that an officer has been empowered to do certain act does not *ipso facto* mean that he has been assigned the specific function of doing such act. An officer who has been empowered to do an act, may still not do such act. On the contrary, if an officer is specifically assigned the function of doing an act, then it would amount to dereliction of duty if he does not do such act. No amendment has been made to section 2(34) of the Customs Act defining a "proper officer". The said Section 2(34) of the Customs Act

remains the same as considered by the Hon'ble Apex Court in **Sayed Ali case** (supra). Hence, the mandate of Section 2(34) of the Customs Act continues to be that of determination of a proper officer solely based on the specific functions assigned to that officer. Therefore, the ADG cannot be treated as proper officer for the purposes of Section 17/ Section 28 of the Customs Act, as the specific function of assessment/ reassessment was not assigned to him, even if he is deemed to be empowered to perform such functions by way of section 28(11) of the Customs Act. Consequently, the Noticees submit that the newly inserted section 28(11) of the Customs Act does not cure the defect pointed out by the Hon'ble Apex Court in **Syed Ali case** (supra). On the basis of the aforementioned, it is therefore submitted that the ADG is not the 'proper officer' for the purpose of issuing the SCN under Section 28 of the Customs Act. Therefore, the present SCN suffers from the vice of lack of jurisdiction and thus it is *non-est* and *void ab initio*.

(vi) CONDITION OF THIRD PARTY EXPORTS ARE SATISFIED IN THE PRESENT CASE, THUS THERE IS NO VIOLATION BY THE NOTICEES

As per the Exim policy 2002-2007, para-9.55, 'third party export' meant export made by an exporter or manufacturer on behalf of another exporter(s). In such cases, shipping bill had to indicate the names of both the exporter/manufacturer and exporter(s). The export therefore qualified as 'third party export' in terms of the policy. This definition of third party export underwent a slight modification in Foreign Trade Policy 2004 and the amended definition of third party export is as under :-

"Third party exports" means exports made by an exporter or manufacturer on behalf of another exporter(s). In such cases, export document such as shipping bills etc. shall indicate the name of both the manufacturing exporter/manufacturer and third party exporter(s). The BRC, GR declaration, export order and the invoice should be in the name of the third party."

It is admitted that the invoice and BRC declaration were in the name of noticees. Thus there is no violation by the noticees. The reliance can also be placed upon CBEC Circular No. 120/95-Cus., dated 23-11-1995, in support of the claim that third party exports could be counted towards discharge of export obligation. The said circular read as follows :-

"After introduction of Para 41(11) and Para 59(A) in the EXIM Policy (92-97) with effect from 30th March, 1994, under which exports by Advance Licence holders through third party were allowed, doubts were expressed by some of the Commissioners of Customs, whether and how the export through a third party by an Advance Licence holder under DEEC Scheme or EPCG holder could be counted for the purpose of discharge of export obligation of the licence holder. A view had been expressed that the definition of exporter under Section 2(20) and that of importer under Section 2(26) of the Customs Act, 1962 require that there can be only one importer/one exporter at a time for the goods exported or imported, as the case may be. The matter was

discussed by the Board and the issue was also referred to the Law Ministry for opinion.

2. The Law Ministry have now clarified that Section 13 of the General Clauses Act, 1897 provides that unless there is anything repugnant in the subject, words used in singular shall include the plural and vice-versa.

3. Accordingly the terms 'Exporter' and 'Importer' can be said to cover one or more than one exporter/importer of the goods within the meaning of Section 2(20) and Section 2(26) of the Customs Act, 1962. In view of Ministry of Law's opinion, it has been decided that there is no objection to allowing third party exports under the Customs Act.

4. In this regard, attention is invited to Ministry's Circular No. 23/94, dated 6-10-1994 issued from F. No. 603/136/94-DBK(Pt) under which it was clarified that third party import of capital goods viz. by the EPCG licence holder through a leasing finance company could be allowed.

5. Accordingly, exports made through a third party (export order holder) can be counted towards discharge of export obligation by the EPCG licence holder or to the Advance Licence holder as the case may be subject to the conditions

(a) There is a contractual agreement between the EPCG licence holder/advance licence holder and the third party (export order holder) in respect of export goods sought to be exported.

(b) Shipping Bill and all other export documents should prominently indicate that it is third party exports.

(c) Shipping bills shall be filed after jointly being signed by the EPCG licence holder/Advance Licence holder as well as export order holder.

(d) Both the licence holder as well as the export order holder will be required to make a declaration on the shipping bill that in a case of any default/fraud, they will be jointly and severally liable for action under the Customs Act, 1962 or any other Act for the time being in force at the time of making the exports."

This was reviewed vide Circular No. 30/2005-Cus., dated 12-7-2005. The relevant paragraph relied on by the assessee is reproduced below :-

"10.1 Third Party Exports :

In terms of para 2.34 read with para 9.62 of the Foreign Trade Policy, 2004-09, "Third Party Exports" have been defined to mean exports made by an exporter or manufacturer on behalf of another exporter(s). In such case, export document such as shipping bills etc. shall indicate the name of both the manufacturing exporter/manufacturer and third party exporters(s). The DRC, GR declaration, export order and the invoice should be in the name of the third party exporter. The definition of "Third Party Exports" in Circular No. 120/95-Cus., dated 23-11-1995 accordingly stands amended to fall in line with the definition of third party exports given under the Foreign Trade Policy. The other conditions of the Circular remain unchanged."

Thus, from the above definition of third party exporters' appearing in para 9.62 of the Hand Book of Procedures Vol-I. He reproduced the following conditions prescribed in Circular No. 120/95 Cus., dated 23-11-1995 issued by CBEC.

- *There is a contractual agreement between the advance licence holder and the third party (export order holder) in respect of export goods sought to be exported;*
- *Shipping Bill and all other export documents should prominently indicate that it is third party exports;*

- *Shipping bills shall be filled after jointly being signed by the Licence holder as well as export order holder;*
- *Both the licence holder as well as the export order holder will be required to make a declaration on the shipping bill that in a case of any default/fraud, they will be jointly and severally liable for action under the Customs Act, 1962 or any other Act for the-” time being in force at the time of making the exports.*

(VII) NO FRAUD OR FORGERY IN THE PRESENT CASE.

1. It is a well-settled law that to commit an offence of fraud the element of intention of is of utmost importance. It has been sufficiently proven by the noticee that the element of intention is nowhere in the present case. Fraud is a concept descriptive of human conduct, an act of trickery or deceit. According to Webster’s Third New International Dictionary –

“Fraud” in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another.”

In Black’s Legal Dictionary –

“Fraud” is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury.”

In Concise Oxford Dictionary –

“It has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick.”

In Story’s Equity Jurisprudence, 14th Edition, Vol.1,

“Fraud indeed, in the sense of a Court of Equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence, justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another.”

According to Halsbury’s Laws of England –

“A representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact.”

Section 17 of the Indian Contract Act, 1872 –

“It defines “fraud” as an act committed by a party to a contract with intent to deceive another.”

Indian Penal Code, 1860 does not define fraud. It envisages of confining and dealing with the offence of fraud on the intention to ‘defraud’. The act of the ‘doer’ to make him culpable for the offence of fraud, primarily, is his intention and to defraud in doing the act. Section 25 of the Code dealing with the definition of ‘fraudulently’ does not give any insight or meaning of the word ‘defraud’.

2. The definition of 'fraudulently' in the Code limits and confines the term 'defraud' for the purpose of offence of fraud. Fraud under the law of contract, defined under Section 17 of the Indian Contract Act, has a wider and extensive application. But, so far as the offences of fraud under the Indian Penal Code, the definition of 'fraudulently' under Section 25 makes its explicit that there can be no offence of fraud unless there is an intention to defraud. When that be so, where the Code does not provide a definition for 'fraud' it has limited and cringed the offences of fraud confining them to acts of deception, planned and practised, excluding from its purview all constructive frauds. The Apex Court in **Dr. S.Dutt v. State of Uttar Pradesh (AIR 1966 SC 523)**, dilating upon the words "with intent to deceive" has observed that it does not indicate a bare intent to deceive, but intent to cause a person to act, or omit to act, on account of deception practised upon him, to his advantage. The words 'but not otherwise' after the words 'with intent to deceive' in the definition of 'fraudulently' it has been observed clearly shown, that the words intent to defraud are not synonymous with intent to deceive and requires some action resulting in some disadvantage which but for the deception, the person deceived would have avoided". So, under the Indian law a penal offence of fraud, demands for successful prosecution the twin elements of 'intent to defraud' of the offender — (i) an intent to deceive another and (ii) an intent to cause, by that deception, injury to some person. To constitute a fraud, it is necessary that a person should intentionally make a false statement to deceive another party and thereby induce him to enter into a contract. If the intention to deceive the party is absent, there is no fraud as held in the case of **Derry vs. Peek [1889] UKHL 1**. In **Vimla (Dr.) vs. Delhi Administration, AIR 1963 SC 1572**; and **Indian Bank vs. Satyam Fibres (India) (P) Ltd., (1996) 5 SCC 550** the Supreme Court said:

"“Fraud” means an intention to deceive; whether it is from any expectation of advantage to the party himself or from ill will towards the other is immaterial. The expression “fraud” involves two element, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable, or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied.”

(viii) Goods are not liable for confiscation. Noticee did not mentioned

EPCG authorization not on shipping bill

1. It is undisputed that EPCG authorization number is not mentioned on the shipping bill. In absence of EPCG authorization number on shipping bill the said shipping bill cannot be considered for Export Obligation fulfilment and therefore the allegation that they have colluded with EPCG license holder for full filling his export obligation is not sustainable. Further the SCN has proposed confiscation of exported goods under section 113(i) of the customs Act. Clause (i) of Section 113 also relates to "any goods" which do not correspond in any material particular with the entry made. It is submitted that goods have not been mis-declared by the noticees while shipping bills. Further noticees have not violated any of the conditions of the third party exports. There is no mis-declaration in the shipping bills with regards to material particular of goods. Thus goods are not liable for confiscation in the present case. In this regards reliance is placed upon decision in case of SANCTUM WORKWEAR PVT. LTD. reported vide 2016 (334) E.L.T. 698 (Tri. - Mumbai) wherein Hon'ble Court has held as under:

*3. I find that there is no misdeclaration of description of goods in the Shipping Bill. Neither is there any mis-declaration of value. The claim of drawback separately on Jackets & Pants is an error but mala fide intention cannot be ascribed to invoke penalty. **Section 113(i) can be invoked when there is mis-declaration of description or value. In this case it is not so.***

4. There being no wilful misdeclaration on the part of the appellant, penalty is not sustainable. Reliance is placed on the decision of Hon'ble Apex Court in the case of Northern Plastic Ltd. v. Commissioner of Customs and Central Excise - 1998 (101) E.L.T. 549 (SC) which was followed by the Tribunal in the case of ISGEC Heavy Engineering Ltd. v. Commissioner of Customs (Exports) - 2015 (318) E.L.T. 284 (Tri.-Mumbai).

2. In case of DEC Agrotec Pvt ltd. report in 2015 (327) E.L.T. 674 (Tri. - Mumbai) wherein Hon'ble Cestat has held as under;

6. We have gone through the impugned order. We observe that in this case the description of the goods was found to be correct and it is only the drawback serial number which was found to be incorrect and on being pointed by the Revenue during examination of the goods, the appellant accepted the new drawback serial number. Keeping in view of the above facts, we do not consider it to be a fit case for imposition of redemption fine and penalty. Accordingly, the redemption fine and penalty are set aside.

3. Reliance is also placed upon decision in case of ISGEC Heavy Engineering Ltd. v. Commissioner — 2015 (31s8) E.L.T. 284 (Tribunal) wherein Hon'blie Court has held as under:

5. After dispensing with the requirement of any pre-deposit, we take up the appeal itself for consideration. We have also perused the export document filed by the appellant and observe that the appellant had given correct description of the goods under export and also correctly classified goods under Customs Tariff and RITC. The appellant committed a mistake while quoting the serial number of the drawback schedule. Therefore, there is no wilful misdeclaration on the part of the appellant while making the claim for drawback. In the instant case, it is for the Customs authority to verify the claim of the appellant and determine the quantum of drawback the appellant is eligible for. In the case of Northern Plastic Ltd., the Apex Court held that if the appellant being importer claimed duty exemption on the bona fide belief that he is eligible for exemption, it cannot be said to be a misdeclaration as contemplated by

Section 111(m) of the Customs Act, 1962 so long as the appellant has given full and correct particulars, as regards the nature of the goods. The ratio of the said decision applies to the facts of the present case. In the present case we have already noticed that the appellant had given correct description of goods and the only error committed by the appellant was quoting the wrong serial number of the drawback schedule. In these circumstances, the question of confiscation of the goods and imposition of fine would not arise at all. Accordingly, we allow the appeal. The bank guarantee executed by the appellant shall be discharged and returned forthwith.

4. Reliance is also placed upon decision in case of JAI AMBE MANUFACTURERS- 2017 (358) E.L.T. 737 (Tri. - Mumbai). Relevant part of the decision is extracted and reproduced as under:

7. The appellant, admittedly, manufactured and exported 'sliver/carded web' from 'polyester waste' instead of using imported 'acrylic waste'. This would not be due discharge of export obligation as per general note 1 referred supra or the exemption notification. However, there is no prohibition on export of the goods. We also do not find any misdeclaration as 'acrylic' and 'polyester' are of synthetic origin. The cited exemption notification governs the import and utilization of goods exempted under advance licence scheme. They do not purport to govern export goods except to the extent of allowing permitted export goods to be due discharge of export obligation.

8. In the above circumstances we are not convinced that Section 113(d) of Customs Act, 1962 can be invoked to confiscate the export goods. The export is allowable against free shipping bills. The goods could have been denied the privilege of fulfillment of export obligation which would have sufficient for any action to be taken on import goods. Penalty under Section 114 also fails.

(ix) Penalty under Section 114(iii) is not imposable

As submitted above, goods are not liable for confiscation in the present case as there is no mis-declaration of description of goods or value of goods. Thus penalty under section 114 is also not imposable.

(x) Penalty under Section 114AA is not imposable in the present cases

They have not made, signed or used any false or incorrect declaration, statement or document. Thus the penalty under Section is not imposable. In any case the alleged manipulation is not a material particular. They have not given any false statement, document which is false or incorrect therefore, Section 114 AA will not apply. In any case, once the penalty is imposed on the main noticees, the separately penalty ought not to be imposed on the employee.

(xi) Penalty under Section 114AA is not imposable because the present case does not pertain to the non export of the goods.

1. It is further submitted that penalty under Section 114AA is imposable only in those situations where exports benefits are claimed without exporting the goods and by presenting forged documents. In support of this argument reliance is placed on the **Twenty Seventh Report of the Standing**

Committee of Finance wherein insertion of Section 114AA was discussed at para 62. For the ease of perusal the entire discussion is reproduced below:-

Clause 24 (Insertion of new Section 114AA)

62. Clause 24 of the Bill reads as follows:

After Section 114A of the Customs Act, the following Section shall be inserted, namely:—

"114AA. Penalty for use of false and incorrect material.—if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

63. The information furnished by the Ministry states as follows on the proposed provision:

*"Section 114 provides for penalty for improper exportation of goods. **However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action even when no goods were actually exported.** The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new Section 114 AA is proposed to be inserted after Section 114A."*

64. It was inter-alia expressed before the Committee by the representatives of trade that the proposed provisions were very harsh, which might lead to harassment of industries, by way of summoning an importer to give a 'false statement' etc. Questioned on these concerns, the Ministry in their reply stated as under:

***"The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported but papers are being created for availing the benefits under various export promotion schemes.** The apprehension that an importer can be summoned under Section 108 to give a statement that the declaration of value made at the time of import was false etc., is misplaced because person summoned under Section 108 are required to state the truth upon any subject respecting which they are being examined and to produce such documents and other things as may be required in the inquiry. No person summoned under Section 108 can be coerced into stating that which is not corroborated by the documentary and other evidence in an offence case."*

65. The Ministry also informed as under:

"The new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes."

66. The Committee observe that owing to the increased instances of wilful fraudulent usage of export promotion schemes, the provision for levying of penalty upto five times the value of goods has been proposed. The proposal appears to be in the right direction as the offences involve criminal intent which cannot be treated at par with other instances of evasion of duty. The Committee, however, advise the Government to monitor the implementation of the provision with due diligence and care so as to ensure that it does not result in undue harassment."

(Emphasis supplied)

The aforesaid extract from the report of the standing committee explains the purpose for which Section 114AA has been inserted in the Customs Act, 1962. The purpose is to punish those people who avail export benefits without exporting anything. Such cases involve serious criminal intent and it cannot be equated with the cases of duty evasion. The perusal of the aforesaid extract makes it clear that Section 114AA was inserted to penalize in circumstances where export benefits are availed without exporting any goods. According to the legislatures, Section 114AA of the Customs Act provided penalty for improper exportation of goods and it was not covering situations where goods were not exported at all. Such serious manipulators could have escaped penal action even when no goods were actually exported. Therefore, it is submitted that penalty under Section 114AA is imposable only in those circumstances where export benefits are availed without exporting any goods. Therefore, penalty under Section 114AA is not applicable in the present case. Further statements have been recorded under pressure thus same cannot be relied upon against the noticees. In any case, statements are contrary to record.

(xii) Personal penalty is not imposable on employee of Noticees

The employee has no specific role alleged in the SCN. He is merely employee and could not do anything independently on their own. They rely on the following case laws :

- (i) Cipta Coated Steels Ltd. v. Commissioner of C. Ex., Aurangabad - 1999 (113) E.L.T. 490 (Tribunal)

- (ii) Z.U. Alvi v. Commissioner of C. Ex., Bhopal - 2000 (117) E.L.T. 69 (Tribunal)

It was held that appellant, an employee of the manufacturer not having any existence independent of manufacturer as far as Central Excise Law is concerned. Appellant having acted only in his capacity as an employee of manufacturer, not falls within the purview of Rule 209A of Central Excise Rules, 1944.

- (iii) O.P. Aggarwal v. Commissioner of Customs, Kandla - 2005 (185) E.L.T. 387 (Tribunal)

It was held that employees of company carrying out orders given to them are not person in charge/responsible for conduct of its business and are not liable to penalty - Sections 111, 112, 113 and 114 of Customs Act, 1962.

(xiii) Cross examinations may be permitted

SCN has relied statement of various persons to impose penalty on the noticees.

- Statement of Shri Shri Kalpesh Patel, CEO & Managing Director of Rajkalp
- Statement of Jignesh Agrawal, Machine Operator of Rajkalp
- Statement of Shri Sangam Ramnath Mhatre, Machine Operator of Rajkalp
- Statement of Shri Jayesh Patel, Supervisor of Rajkalp
- Statement of Mitesh Vadera, working in CTP section of Rajkalp Mudranalaya
- Statement of Shri Suresh Bhogilal Mehta, Manager of M/s Bhavin Transport Co

It is submitted that the noticees cross examination of the persons. In this connection reference can be made to the decision of Hon'ble Bombay High Court in the case of *Nirmal Seeds Ltd.* 2017-TIOL-627-HC (Mum-Cx) = 2017 (350) E.L.T. 486 (Tribunal) and the decision of Hon'ble Punjab & Haryana High Court in the case of *G. Tech Industries* - 2016 (339) E.L.T. 209 (P & H) wherein Hon'ble Court held has under:

In view of the above facts and circumstances, the impugned Order-in-Original dated 4-4-2016 passed by respondent No. 2 stands set aside. Resultantly, the show cause notice issued to the petitioner is remanded to respondent No. 2 for adjudication de novo by following the procedure contemplated by Section 9D of the Act and the law laid down by various judicial Authorities in this regard including the principles of natural justice in the following manner :-

- (i) *In the event that the Revenue intends to rely on any of the statements, recorded under Section 14 of the Act and referred to in the show cause notices issued to Ambika and Jay Ambey, it would be incumbent on the Revenue to apply to Respondent No. 2 to summon the makers of the said statements, so that the Revenue would examine them in chief before the adjudicating authority, i.e., before Respondent No. 2.*

- (ii) A copy of the said record of examination-in-chief, by the Revenue, of the makers of any of the statements on which the Revenue chooses to rely, would have to be made available to the assessee, i.e., to Ambika and Jay Ambey in this case.
- (iii) Statements recorded during investigation, under Section 14 of the Act, whose makers are not examination-in-chief before the adjudicating authority, i.e., before Respondent No. 2, would have to be eschewed from evidence, and it would not be permissible for Respondent No. 2 to rely on the said evidence while adjudicating the matter. Neither, needless to say, would be open to the Revenue to rely on the said statements to support the case sought to be made out in the show cause notice.
- (i) Once examination-in-chief, of the makers of the statements, on whom the Revenue seeks to rely in adjudication proceedings, takes place, and a copy thereof is made available to the assessee, it would be open to the assessee to seek permission to cross-examine the persons who have made the said statements, should it choose to do so. In case any such request is made by the assessee, it would be incumbent on the adjudicating authority, i.e., on Respondent No. 2 to allow the said request, as it is trite and well-settled position in law that statements recorded behind the back of an assessee cannot be relied upon, in adjudication proceedings, without allowing the assessee an opportunity to test the said evidence by cross-examining the makers of the said statements. If at all authority is required for this proposition, reference may be made to the decisions of the Hon'ble Supreme Court in *Arya AbhushanBhandar v. U.O.I.*, 2002 (143) E.L.T. 25 (S.C.) and *SwadeshiPolytex v. Collector*, 2000 (122) E.L.T. 641 (S.C.).

DISCUSSION AND FINDINGS

49. I have carefully gone through the records of the case and considered the written submissions of all the three noticees in question.

50. The moot point for determination in this case is whether the goods valued at Rs.12,01,57,951.50 of M/s Quarterfold Printabilities were liable for confiscation under Section 113(i) of the Customs Act, 1962 and liable to penalty under Section 114(iii) of the Customs Act, 1962 and also whether Shri Manoj Jethanand Dhankani, Managing Director of M/s Quarterfold Printabilities & Shri Anup Sharma, Export Document Executive, of M/s Quarterfold Printabilities were liable to penalty under Section 114(iii) and 114AA of the Customs Act, 1962 for their conscious fraudulent action in enabling the EPCG Licence Holder, M/s Rajkalp Mudranalaya to obtain EODC(Export Obligation Discharge Certificate) against a EPCG Licence No.0830001976 dated 28.03.2007 issued by the DGFT.

51. The case of the Department against M/s Quarterfold Printabilities, Shri Manoj Jethanand Dhankani, Managing Director of M/s Quarterfold Printabilities & Shri Anup Sharma, Export Document Executive, of M/s Quarterfold Printabilities is that they, collectively, had facilitated M/s. Rajkalp Mudranalaya Pvt. Ltd [EPCG licence holder] in getting the name and IEC of M/s. Rajkalp Mudranalaya Pvt. Ltd., as supporting manufacturer, in the Shipping Bills filed by M/s Quarterfold Printabilities, without actual manufacture and supply of goods from M/s. Rajkalp Mudranalaya Pvt. Ltd to M/s. Quarterfold Printabilities. The department has contended that this

was done with an intention to enable M/s. Rajkalp Mudranalaya Pvt. Ltd [EPCG licence holder] towards fulfillment of their export obligation and to obtain EODC from DGFT against the aforesaid EPCG License. M/s. Rajkalp Mudranalaya Pvt. Ltd [EPCG licence holder] was, found to indulge in fabricating of documents in connivance with the third party exporter, M/s Quarterfold Printabilities showing third party export against their export obligation without manufacturing or supplying any goods to the third party exporter, and accordingly, violated the provisions of Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rule 11 & Rule 14 of the Foreign Trade (Regulation) Rules, 1993. As a natural corollary, the three co-noticees M/s Quarterfold Printabilities, Shri Manoj Jethanand Dhankani, Managing Director of M/s Quarterfold Printabilities & Shri Anup Sharma, Export Document Executive, of M/s Quarterfold Printabilities, involved in such facilitation were proposed penalty under Section 112(a), 112(b) & 114AA of the Customs Act, 1962.

52. The issue in brief is M/s. Rajkalp Mudranalaya Pvt. Ltd., had imported three printing machines under EPCG License No. 0830001976 dated 28.03.2007 at concessional rate of Customs duty under Notification No. 97/2004 –Customs dated 17.09.2004 as amended, but export obligation had not been fulfilled against these goods which were imported at concessional rate of Customs duty under aforesaid EPCG license even after completion of obligation period of 10 years. Shri Kalpesh Patel, CEO & MD of M/s. Rajkalp Mudranalaya Pvt. Ltd & Ms. Shachee Agrawal, Director of M/s. Rajkalp Mudranalaya Pvt. Ltd., in connivance with a Third party Exporter- M/s. Quarterfold Printabilites and one transporter-M/s. Bhavin Transport Co. had consciously submitted fabricated documents like Tax-Invoices, Lorry Receipt, E-way Bills, Custom Invoices, Packing List, Shipping Bills etc. showing that the goods were transported from factory premises of M/s. Rajkalp Mudranalaya Pvt. Ltd, Dantali, Ahmedabad to M/s Quarterfold Printabilities, Navi Mumbai & further exported by M/s Quarterfold Printabilities and indulged in fraudulently getting the name & IEC of M/s. Rajkalp Mudranalaya Pvt. Ltd, as supporting manufacturer in the Shipping Bills filed by M/s Quarterfold Printabilities with an intent to further submit them to DGFT towards fulfillment of their export obligation and to obtain EODC against the said EPCG License No.0830001976 dated 28.03.2007 fraudulently.

53. I find that the case against M/s. Rajkalp Mudranalaya Pvt. Ltd [EPCG licence holder] Shri Kalpesh Patel, Director of M/s Rajkalp Mudranalaya Pvt.

Ltd. Shri Sandip Patel, Accountant of M/s Rajkalp Mudranalaya Pvt. Ltd. Mrs. Shachee Agrawal, Director, M/s Rajkalp Mudranalaya Pvt. Ltd. Shri Suresh Mehta, C/o, M/s Bhavin Transport Co., has been settled by the Settlement Commission vide orders mentioned in earlier para. Therefore, the case against M/s Quarterfold Printabilities, Shri Manoj Jethanand Dhankani, Managing Director of M/s Quarterfold Printabilities & Shri Anup Sharma, Export Document Executive, of M/s Quarterfold Printabilities needs to be decided.

54. M/s Quarterfold Printabilities in their defence reply dated 27.11.2024 have, inter-alia, contended:-

(i) the Additional Director General, DRI does not have jurisdiction to issue a show cause notice under Section 28 of the Customs Act, 1962, by relying on the Hon'ble judgment of Supreme Court in Commissioner of Customs vs Sayed Ali reported at 2011(265) ELT 17 (SC); that the person who has made assessment under Section 17 is the proper officer to issue show cause notice under Section 28 of the Customs Act, 1962; that exercise of jurisdiction by first officer would oust the jurisdiction of other officers having concurrent jurisdiction; that conferment of concurrent jurisdiction without any guideline is arbitrary, discriminatory and violative of Article 14 of Constitution of India; that there has been no assignment of function of assessment/re-assessment to DRI officers even after the amendment.

(ii) they had fulfilled conditions of Third Party Exports, wherein they had mentioned both the exporter and manufacturer name on the relevant shipping bill, that the invoice and BRC declaration were in the name of M/s Quarterfold Printabilities.

(iii) they had fulfilled all the conditions placed under CBEC Circular No.120/95-Cus dated 23.11.95 and Board Circular No.30/2005-Cus dated 12.07.2005, wherein all exports made through third party would be counted towards discharge of export obligation.

(iv) there was no element of fraud or forgery nor mis-declaration of the goods.

55. I proceed to take up the first issue raised by M/s Quarterfold Printabilities, Shri Manoj Jethanand Dhankani, Managing Director of M/s Quarterfold Printabilities & Shri Anup Sharma, Export Document Executive, of M/s Quarterfold Printabilities in their defence, whether DRI had the

jurisdiction to issue show cause notice under Section-28 of the Customs Act, 1962 and has heavily banked on Hon'ble judgment of Supreme Court in Commissioner of Customs vs Sayed Ali reported at 2011(265) ELT 17 (SC).

56. I would like to bring to notice the judgment dated 07.11.2024 passed by the Hon'ble Supreme Court of India [INHERENT JURISDICTION] in case of Review Petition No.400 of 2021 in Civil Appeal No.1827 OF 2018 v/s Commissioner Of Customs, which analyzed, in detail, all the points raised by M/s Quarterfold Printabilities, Shri Manoj Jethanand Dhankani, Managing Director of M/s Quarterfold Printabilities & Shri Anup Sharma, Export Document Executive, of M/s Quarterfold Printabilities in their defence reply.

57. The judgment dated 07.11.2024 passed by the Hon'ble Supreme Court of India mentioned above, covers all the aspects, which encapsulates the entire defence in point No.(1) at para-54 put forth by M/s Quarterfold Printabilities & Shri Manoj Jethanand Dhankani, Managing Director & Shri Anup Sharma, Export Document Executive, of M/s Quarterfold Printabilities. They are:-

- (i) Review jurisdiction of DRI
- (ii) The decision in Commissioner of Customs v. Sayed Ali
- (iii) Changes to Section 17 w.e.f. 11.04.2011 – the assessment of bill(s) of entry and shipping bill(s)
- (iv) Scheme of Sections 17 and 28 of the Act, 1962
- (v) Use of the article 'the' in the expression "the proper officer"
- (vi) DRI officers as proper officers under section 2(34)
- (ix) Observations on the constitutional validity of Section 28 (11) of the Act, 1962.

58. I reproduce the operative portion of the said judgment delivered by the Hon'ble Supreme Court on the following points:-

(a) The decision in Commissioner of Customs v. Sayed Ali

*"81. The decision in **Sayed Ali** (supra) proceeds on the assumption that for the "proper officer" to exercise the functions under Section 28 of the Act, 1962, such officer must necessarily possess the power of assessment and reassessment under Section 17. However, a plain reading of Sections 17 and 28 of the Act, 1962 does not bring out any such inter-dependence between the two provisions. Having looked into the statutory scheme of the Act, 1962, we are of the view that the observations pertaining to the interlinkage between Sections 17 and 28 respectively of the Act, 1962 made in **Sayed Ali** (supra) do not lay down the correct position of law.*

*82. Even otherwise, the decision in **Sayed Ali** (supra) could have been arrived at without deciding on the interdependence of Section 17 and*

Section 28 of the Act, 1962 as the Customs (Preventive) officers, whose jurisdiction to issue show cause notices was under challenge in that case were not assigned the functions of the "proper officer" for the purposes of Section 28 through a notification issued by the appropriate authority. As we have observed in the foregoing parts of this judgment, assignment of functions is a mandatory requirement for the exercise of jurisdiction by the "proper officer". The observations made in **Sayed Ali** (supra) on the connection between Sections 17 and 28 of the Act, 1962 are obiter dicta at best and do not constitute the binding ratio decidendi of that judgment.

83. Further, **Sayed Ali** (supra) could not have been relied upon by this Court in **Canon India** (supra) as it could not have been applied for the period subsequent to 08.04.2011 in view of the fact that Section 17 of the Act, 1962 has undergone a radical change by virtue of the amendments made by the Finance Act, 2011."

(b) Changes to Section 17 w.e.f. 11.04.2011 – the assessment of bill(s) of entry and shipping bill(s)

"It is evident from the aforesaid that the attention of this Court in **Canon India** (supra) was not drawn to the important changes brought to Section 17 of the Act, 1962 vide Section 38 of the Finance Act, 2011 with effect from 08.04.2011.

92. The observation in paragraph 13 in **Canon India** (supra) that "where one officer has exercised his powers of assessment, the power to order reassessment must also be exercised by the same officer or his successor and not by another officer of another department though he is designated to be an officer of the same rank" has been made without taking note of the changes to Section 17 of the Act, 1962 with effect from 08.04.2011.

93. Similarly, the observation in paragraph 14 in **Canon India** (supra) is erroneous. The relevant paragraph is reproduced below:

"We find it completely impermissible to allow an officer, who has not passed the original order of assessment, to re-open the assessment on the grounds that the duty was not paid/not levied, by the original officer who had decided to clear the goods and who was competent and authorised to make the assessment. The nature of the power conferred by Section 28(4) to recover duties which have escaped assessment is in the nature of an administrative review of an act. The section must therefore be construed as conferring the power of such review on the same officer or his successor or any other officer who has been assigned the function of assessment."

In other words, the conclusion that an officer who did the assessment, could only undertake reassessment under Section 28(4) was arrived at without taking note of the abovementioned amendment to Section 17 of the Act, 1962 with effect from 08.04.2011 vide Section 38 of the Finance Act, 2011. The judgment in **Canon India** (supra) also recorded an erroneous finding that the function of re-assessment is with reference to Section 28(4) when in fact it is an exercise of function under Section 17.

94. Further, in **Canon India** (supra) the subject show cause notice was dated 19.09.2014 in respect of the Bill of Entry filed on 20.03.2012. This Court appears to have erroneously applied the provisions of Section 17 of the Act, 1962, as they stood prior to 08.04.2011 as opposed to the amended Section 17 which ought to have been applied."

(c) Scheme of Sections 17 and 28 of the Act, 1962

"We are conscious of the fact that Section 110AA of the Act, 1962, which has been introduced by the Finance Act, 2022, stipulates that a show cause notice under Section 28 of the Act, 1962 can only be issued by that

"proper officer" who has been conferred with the jurisdiction, by an assignment of functions under Section 5 of the Act, 1962, to conduct assessment under Section 17 of the Act in respect of such duty. However, we are of the view that the introduction of Section 110AA doesn't alter the statutory scheme of Sections 17 and 28 of the Act, 1962 as it stood prior to the introduction of Section 110AA. The legislature in its wisdom may introduce certain new provisions keeping in mind the exigencies of administration and taking into account the evolution of law. However, this would not by itself mean that the procedure which was being followed prior to the introduction of such changes was incorrect or in contravention of the law. The legality and correctness of an action has to be adjudged based on the statutory scheme prevailing at the time when such action took place, and incorrectness or invalidity cannot be imputed to it on the basis of subsequent changes in law. Seen thus, the contention of the respondents that Section 110AA of the Act, 1962 amounts to an admission by the petitioner on the invalidity of the legal position existing prior to its introduction, deserves to be rejected.

99. Therefore, in our considered view, the scheme of Sections 17 and 28 of the Act, 1962 indicates that there cannot be a mandatory condition linking the two provisions and the interpretation of this Court in the cases of **Sayed Ali**(supra) and **Canon India** (supra) is patently erroneous.

(d) Use of the article 'the' in the expression "the proper officer"

"102. As we have discussed in the foregoing parts of this judgment, the statutory scheme of the Act, 1962 necessitates that a proper officer can only perform specific functions under the Act if he has been assigned as "the proper officer" to perform such functions by an appropriate notification issued by the competent authority. Seen thus, it becomes clear that an officer of Customs can only perform the functions under Section 28 of the Act, 1962 if such officer has been designated as "the proper officer" for the purposes of Section 28 by an appropriate notification. The use of the article "the" in the expression "the proper officer" should be read in the context of that proper officer who has been conferred with the powers of discharging the functions under Section 28 by conferment under Section 5. In other words, the proper officer is qua the function or power to be discharged or exercised.

103. Thus, the definite article "the" in Section 28 refers to a "proper officer" who has been conferred with the powers to discharge functions under Section 28 by virtue of a notification issued by the competent authority under Section 5. In other words, the use of article "the" in Section 28 has no apparent relation with the proper officer referred to under Section 17. The proper officer under Section 28 could be said to be determinable only in the sense that he is a proper officer who has been empowered to perform the functions under Section 28 by means of a notification issued under Section 5 of the Act, 1962.

104. In **Canon India** (supra), this Court held that DRI officers did not have the power of issuing show cause notices under Section 28 as they did not fall within the meaning of the expression "the proper officers" used in Section 28 for the reason that they did not possess the power of assessment under Section 17 of the Act, 1962. However, as we have discussed in the previous parts of this judgment, contrary to the aforesaid observations of the Court, DRI officers were notified as "the proper officer" for the purposes of Sections 17 and 28 of the Act, 1962 respectively vide Notification No.44/2011-Cus-N.T. dated 06.07.2011 issued by the Central Government. Hence, those officers of DRI who were designated as "the proper officer" for the purpose of Section 28 by the aforesaid notification were competent to issue show cause notices under Section 28.

105. Craies on Statute Law¹ has stated that "the language of statutes is not always that which a rigid grammarian would use, it must be borne in mind

that a statute consists of two parts, the letter and the sense". It was observed by this Court in **State of Andhra Pradesh v. Ganeswara Rao** reported in **AIR**, 7th Ed., Page 83 **1963 SC 1850** that the aforesaid rule of construction that the provisions of a statute are to be read together and given effect to and that it is the duty of the court to construe a statute harmoniously has gained general acceptance. In **Management, S.S.L. Rly. Co. v. S.S.R.W. Union** reported in **AIR 1969SC 513**, this Court observed that the principle that literal meaning of the word in a statute is to be preferred is subject to the exception that if such literal sense would give rise to any anomaly or would result in something which would defeat the purpose of the Act, a strict grammatical adherence to the words should be avoided as far as possible. The above principles would help us to desist from affording undue stress on the definite article "the" used before the expression "proper officer" in Section 28 of the Act, 1962."

(e) **DRI officers as proper officers under section 2(34)**

129. In our view, the assignment of functions of proper officers as mentioned in Section 2(34) and entrustment of functions of customs officers as mentioned in Section 6 operate on different planes. The assignment of functions of the proper officer is to be done only to officers of customs (whether they be appointed under Section 4 or entrusted with certain functions under Section 6). There may be some overlap between the assignment of functions of proper officers under Section 2(34) read with Section 5 and the entrustment of functions of officers of customs under Section 6 in some instances but there can be no scenario in which we can hold that the "functions" under Section 6 and Section 2(34) are congruent.

130. One of the bases for the decision in **Canon India** (supra) was that no entrustment of functions under Section 6 was done in favour of the DRI officers. This, however, is a glaring misapplication of Section 6 of the Act and is in ignorance of the applicable law which is in fact Sections 2(34) read with Section 5 of the Act, 1962. Therefore, in light of the judgment of this Court in **Yashwant Sinha** (supra), we find that it is necessary to allow this review petition to do complete justice.

(f) **Observations on the constitutional validity of Section 28 (11) of the Act, 1962**

"153. We were apprised by the learned Additional Solicitor General during the course of the hearing that the Customs department has been following the protocol suggested in **Mangali Impex** (supra) since 1999. Further, no substantial empirical evidence of the misuse of Section 28(11) which was enacted over a decade ago, was presented by the parties. Therefore, we are inclined to accept the policy of the Customs department that once a show cause notice is issued, the jurisdiction of other empowered proper officers shall be excluded for such notice. We find that such policy acts as a sufficient safeguard against the apprehension of chaos or confusion or misuse.

154. Thus, we are of the considered view that the enactment of sub-section (11) of Section 28 cures the defect pointed out in **Sayed Ali** (supra) and the judgment in **Mangali Impex** (supra) deserves to be set aside.

155. It follows from the above discussion that sub-section (11) of Section 28 is constitutionally valid, and its application is not limited to the period between 08.04.2011 and 16.09.2011.

156. For the reasons in the foregoing paragraphs, we hold that the Bombay High Court judgment in **Sunil Gupta** (supra) lays down the correct position of law, whereas the Delhi High Court decision in **Mangali Impex** (supra) is incorrect and is consequently set aside."

59. I find that the above mentioned point-wise decisions passed by the Hon'ble Supreme Court of India in case of Review Petition No.400 of 2021 in Civil Appeal No.1827 OF 2018 V/s Commissioner Of Customs, has put to rest the jurisdictional issue of show cause notice issued by DRI and all other related points raised by M/s Quarterfold Printabilities, Shri Manoj Jethanand Dhankani, Managing Director of M/s Quarterfold Printabilities & Shri Anup Sharma, Export Document Executive, of M/s Quarterfold Printabilities in their defence reply dated 07.11.2024. Now, I proceed to examine the merits of the case.

60. The Foreign Trade (Development and Regulation) Act, 1992 was introduced by the Government of India to accelerate India's transition towards a globally oriented economy. In the said Act, Chapter IV, Section 11 provides:-

"(1) No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the export and import policy for the time being in force."

The corresponding rules were provided under the Foreign Trade (Regulation) Rules, 1993, wherein:-

"11. Declaration as to value and quality of imported goods.—On the importation into, or exportation out of, any customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act 1962, state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify the quality and specification of goods as stated in those documents are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance or which the goods are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents."

"14. Prohibition regarding making, signing of any declaration, statement or documents:—

(1) No person shall make, sign or use or cause to be made signed or used any declaration, statement or document for the purposes of obtaining a licence or importing any goods knowing or having reason to believe that such declaration, statement or document is false in any material particular.

(2) No person shall employ any corrupt or fraudulent practice for the purposes of obtaining any licence or importing or exporting any goods."

The concept of 'Third Party Exports' was introduced under Export-Import Policy 2002-2007 and was defined under Chapter 9:

"9.55 Third-party exports" means exports made by an exporter or manufacturer on behalf of another exporter(s). In such cases, shipping bills shall indicate the name of both the exporter/manufacturer and exporter(s)."

In the Hand Book of Procedure, 2015-2020, the conditions for fulfilment of export obligation for EPCG licence holders have been expanded to include:

"In addition to conditions in paragraph 5.04 of FTP, the following conditions shall also be applicable for fulfilment of export obligation:

(a) Name of the supporting manufacturer as well as the exporter shall be indicated on export documents.

(b) EPCG authorisation holder may export either directly or through third party(ies).

(c) In case the Authorization Holder wants to export through a third party, export documents viz., shipping bills / Bill of exports etc. shall indicate name of both authorization holder and supporting manufacturer, if any, along with EPCG authorization number. BRC, GR declaration, export order and invoice should be in the name of third party exporter. The goods exported through third party should be manufactured by the EPCG Authorisation Holder or the supporting manufacturer where the capital goods imported under the authorisation have been installed.

(d) The EPCG authorization holder shall submit the following additional documents for discharge of EO through third party (ies):

(i) A copy of agreement entered into between the authorization holder and the ultimate exporter undertaking to export the goods manufactured by the authorization holder/supporting manufacturer for fulfilment of the export obligation against the EPCG authorization in question.

(ii) Proof of having despatched the goods from authorization Holder's factory premises to the ultimate exporter/port of export viz.

(a) ARE-1 Certificate issued by Central Excise with due authentication by the Customs verifying the exports along with the shipping bill number, date and EPCG authorization number,

(b) Invoice duly incorporating the relevant EPCG authorization number & date at the time of dispatch.

(iii) Lorry Receipt (LR) /Logistical evidence for transportation of goods from the premises of the authorization holder to the third party/port of export.

(iv) An undertaking from the 3rd party on a stamp paper, declaring that the products exported for fulfilment of EO by them on behalf of the license holder as per details given in the statement of exports, were manufactured by the license holder.

(v) Financial evidence for having received proceeds through normal banking channel from third party exporter's account to the authorization holder's account towards such third party supplies.

(vi) Disclaimer certificate from third party that they shall not use such proceeds towards EO fulfillment of any EPCG authorization(S) obtained by them."

61. The principal allegation of the Department is that M/s. Rajkalp Mudranalaya Pvt. Ltd [EPCG licence holder], in connivance with Merchant Exporter-M/s. Quarterfold Printabilites and transporter-M/s. Bhavin Transport Co. knowingly/consciously indulged in creating /fabricating the documents i.e. Tax-Invoices, Lorry Receipts, E-way Bills, Custom Invoices, Packing List, Shipping Bills etc. showing that the goods were transported from factory premises of M/s. Rajkalp Mudranalaya Pvt. Ltd, Dantali, Ahmedabad to M/s Quarterfold Printabilities, Navi Mumbai. M/s Quarterfold Printabilities indulged in fraudulently mentioning the name & IEC of M/s. Rajkalp Mudranalaya Pvt. Ltd, as supporting manufacturer, in the impugned Shipping Bills filed by M/s Quarterfold Printabilities, without manufacturing and supplying any goods to M/s. Quarterfold Printabilities and with an intention to further submit them to DGFT towards fulfillment of their export obligation and to obtain EODC against the said EPCG License No.0830001976 dated 28.03.2007 fraudulently.

52. I find the show cause notice, in itself, provides direct and indirect evidences in support to the Department's contention which establishes *mensrea* in this case.

PRIMARY EVIDENCES RECOVERED FROM THE FACTORY PREMISES OF M/S. RAJKALP MUDRANALAYA PRIVATE LIMITED.

63. Firstly, the documentary evidences like Machine Daily Report, CTP Record Register, Delivery challan books, resumed from the premises of M/s. Rajkalp Mudranalaya Pvt. Ltd [EPCG licence holder] clearly showed that there were no entries evidencing that the impugned goods were produced in the factory premises.

STATEMENT OF SHRI KALPESH PATEL CEO of M/S. RAJKALP MUDRANALAYA PVT. LTD [EPCG LICENCE HOLDER]

64. Statement dated 08.10.2018 of Shri Kalpesh Patel, CEO of M/s. Rajkalp Mudranalaya Pvt. Ltd [EPCG licence holder] under Section 108 of the Customs Act, 1962 had admitted that they never manufactured any goods in their factory premises which was meant for export to M/s Quarterfold Printabilities nor supplied any goods to them; and that since DGFT had not extended period for fulfilling the export obligation under the said licence, he and his daughter Ms Shachee Patel approached Shri Manoj Dhankani, Managing Director of M/s Quarterfold Printabilities seeking help in fulfilling the export obligation and to obtain Export Obligation Discharge Certificate [EODC] from DGFT, by mentioning the name of M/s. Rajkalp Mudranalaya Pvt. Ltd in the shipping bills filed by M/s Quarterfold Printabilities. The bait offered to Shri Manoj Dhankani by Shri Kalpesh Patel was to get additional vendors/customers for M/s Quarterfold Printabilities for their own firm. Accordingly, Shri Manoj Dhankani accepted the offer and mentioned the name of M/s. Rajkalp Mudranalaya Pvt. Ltd [EPCG licence holder] as supporting manufacturer in the invoices, packing lists & shipping bills without procuring any goods from M/s. Rajkalp Mudranalaya Pvt. Ltd [EPCG licence holder]. Shri Kalpesh Patel also admitted that as per his directions, Shri Sandeep Patel, Accountant of M/s. Rajkalp Mudranalaya Pvt. Ltd., had contacted Shri Suresh Mehta, Manager & Operator of M/s Bhavin Transport Co., who facilitated in providing Lorry Receipts without actually transporting goods from M/s. Rajkalp Mudranalaya Pvt. Ltd to M/s Quarterfold Printabilities on commission basis.

CORROBORATION BY PERSONS OF M/S RAJKALP MUDRANALAYA PVT. LTD.

65. Shri Jignesh Agrawal, Shri Sangam Ramnath Mhatre, both Machine Operator of M/s. Rajkalp Mudranalaya Pvt. Ltd, Shri Jayesh Patel, Supervisor and Shri Mitesh Vadera, working in CTP Section both working in M/s. Rajkalp Mudranalaya Pvt. Ltd., had also admitted, in their respective statements dated 16.08.2016 recorded under Section 108 of the Customs Act, 1962, that they had never received any order for manufacture of the impugned goods, nor have they manufactured any impugned goods for M/s Quarterfold Printabilities.

66. Shri Sandeep Patel, Accountant of M/s. Rajkalp Mudranalaya Pvt. Ltd in his statement dated 08.10.2018 recorded under Section 108 of the Customs Act, 1962 also admitted that Shri Kalpesh Patel, CEO, M/s. Rajkalp Mudranalaya Pvt. Ltd had told him to arrange for transporters who could facilitate by providing Lorry Receipts without actual transportation of goods, and accordingly, he was in contact with Shri Suresh Patel, Manager of M/s Bhavin Transport Co., who agreed for the said job on commission basis. He also revealed that Shri Suresh Mehta had issued 39 Lorry Receipts from his company, M/s Bhavin Transport Co., showing the name of consignor as M/s. Rajkalp Mudranalaya Pvt. Ltd and consignee as M/s Quarterfold Printabilities and that he had prepared E-way bills and tax invoices through e-mail from Shri Suresh Mehta and that for these 39 LR's, M/s Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad had paid total Rs.5,44,580/- out of total payable amount of Rs.11,95,205/- to M/s. Bhavin Transport Co through NEFT in bank account of M/s Bhavin Transport Co (Union Bank of India Account no. 422301010037224); that for these LR's Shri Suresh Mehta had charged commission of Rs.1000/- per L.R and remaining amount after deducting the amount of commission, Shri Suresh Mehta had to return to them in cash.

CORROBORATION BY TRANSPORTER

67. Shri Suresh Bhogilal Mehta, Manager of M/s Bhavin Transport Co., in his statement dated 04.09.2018 recorded under Section 108 of the Customs Act, 1962 admitted that he was approached by Shri Sandeep Patel, of M/s. Rajkalp Mudranalaya Pvt. Ltd., requesting to facilitate the issuance of Lorry Receipts without actual transportation of goods from M/s. Rajkalp Mudranalaya Pvt. Ltd to M/s Quarterfold Printabilities on commission basis. He also admitted that he had never transported any goods belonging to M/s. Rajkalp Mudranalaya Pvt. Ltd to M/s Quarterfold Printabilities.

CORROBORATION BY THIRD PARTY EXPORTER M/S QUARTERFOLD PRINTABILITIES, 1207, CYBER ONE, PLOT NO. 4 & 6, SECTOR 30A, VASHI, NAVI MUMBAI - 400 703

68. Shri Dheeraj Omprakash Wadhwani, Production and Purchase Manager of M/s Quarterfold Printabilities in his statement dated 06.09.2018

recorded under Section 108 of the Customs Act, 1962 admitted that he had not given any order to M/s. Rajkalp Mudranalaya Pvt. Ltd. for supply of goods till date.

69. Shri Manoj Dhankani, Managing Director of M/s Quarterfold Printabilities in his statement dated 07.09.2018 recorded under Section 108 of the Customs Act, 1962 admitted that Shri Kalpesh Patel of M/s. Rajkalp Mudranalaya Pvt. Ltd and Shachee Patel approached him to help in fulfilling the export obligation and to obtain Export Obligation Discharge Certificate [EODC] by mentioning the name of M/s. Rajkalp Mudranalaya Pvt. Ltd in the shipping bills filed by M/s Quarterfold Printabilities. He also admitted that Shri Kalpesh Patel would, in turn, help him in getting other vendors/customers for M/s Quarterfold Printabilities and that he accepted the offer and mentioned the name of M/s. Rajkalp Mudranalaya Pvt. Ltd [EPCG licence holder] as supporting manufacturer in the invoices, packing lists & shipping bills without procuring any goods from M/s. Rajkalp Mudranalaya Pvt. Ltd [EPCG licence holder]. He also categorically admitted that all the goods exported under the impugned shipping bills were actually manufactured in the factory premises of M/s Quarterfold Printabilities/or through other similar vendors and that no goods were supplied from M/s. Rajkalp Mudranalaya Pvt. Ltd [EPCG licence holder].

70. Shri Anup Sharma, Export Document Executive of M/s Quarterfold Printabilities in his statement dated 07.09.2018 recorded under Section 108 of the Customs Act, 1962 admitted that he was directed by Shri Manoj Dhankani, Managing Director of M/s Quarterfold Printabilities to mention the name of M/s. Rajkalp Mudranalaya Pvt. Ltd [EPCG licence holder] as supporting manufacturer in the invoices, packing list and shipping bills without providing any supportive documents and was fully aware that no printing work was done by M/s. Rajkalp Mudranalaya Pvt. Ltd for M/s Quarterfold Printabilities and no goods were procured by M/s Quarterfold Printabilities from M/s. Rajkalp Mudranalaya Pvt. Ltd and that he had also directed Custom House Agent to mention M/s. Rajkalp Mudranalaya Pvt. Ltd as supporting manufacturer in shipping bills.

71. From the above, the facts emerges that M/s. Rajkalp Mudranalaya Pvt. Ltd., had imported three printing machines under EPCG License No. 0830001976 dated 28.03.2007 at concessional rate of Customs duty under Notification No. 97/2004 –Customs dated 17.09.2004 as amended, but export obligation had not been fulfilled against these goods which were imported at concessional rate of Customs duty under aforesaid EPCG license even after completion of obligation period of 10 years (*extended*) till 27.03.2017. It is also a

fact that Rajkalp had shown export of goods valued at Rs.45,37,318.4/- against total obligation of Rs.14,60,14,576/- USD 32,84,917/-till 23.08.2017 and no further extension was granted by DGFT after 27.03.2017. It is also on record that the Shipping Bills showing the export of goods by Rajkalp was under duty drawback and other scheme but not towards the export obligation under aforesaid EPCG license, and some shipping bills were shown to have been exported through the third party exporter, M/s Quarterfold Printabilities.

72. The conditions have been provided for the EPCG authorization holder for discharge of Export Obligation through third party exports in the Hand Book of Procedure, 2015-2020, in para 5.10 (*relevant extracts reproduced*):

"(a)....

(b)....

(c)

(d) *The EPCG authorization holder shall submit the following additional documents for discharge of EO through third party (ies):*

"(i)....

(ii) *Proof of having despatched the goods from authorization Holder's factory premises to the ultimate exporter/port of export viz.*

(a) *ARE-1 Certificate issued by Central Excise with due authentication by the Customs verifying the exports along with the shipping bill number, date and EPCG authorization number,*

(b) *Invoice duly incorporating the relevant EPCG authorization number & date at the time of dispatch.*

(iii) *Lorry Receipt (LR)/Logistical evidence for transportation of goods from the premises of the authorization holder to the third party/port of export."*

73. From the primary and corroborative evidences as discussed in earlier paras, it is clear that M/s. Rajkalp Mudranalaya Pvt. Ltd. through Shri Kalpesh Patel, CEO & MD of M/s. Rajkalp Mudranalaya Pvt. Ltd., who spearheaded the *modus-operandi* by obtaining fabricated documents in connivance with the third party exporter, M/s Quarterfold Printabilities, and the transporter, M/s Bhavin Transport, showing third party export against their export obligation without manufacturing or supplying any goods to the third party exporter. No evidences of impugned goods being manufactured in M/s. Rajkalp Mudranalaya Pvt. Ltd., could be seen from the Machine Daily Report, CTP record register and Delivery challan books resumed from the factory premises of M/s. Rajkalp Mudranalaya Pvt. Ltd., which was one of conditions to be followed for discharge of export obligation through third party. These acts was done purely to show the fulfilment of export obligation of M/s. Rajkalp Mudranalaya Pvt. Ltd., and eventually refrain from payment of duty foregone against EPCG licence as per condition mentioned in para (4) of Notification No. 97/2004-Customs dated 17.09.2004. Therefore, M/s. Rajkalp Mudranalaya Pvt. Ltd. had violated the

provisions of Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rule 11 & Rule 14 of the Foreign Trade (Regulation) Rules, 1993.

74. From the statements of :-

(i) Shri Kalpesh Patel, CEO & MD of M/s. Rajkalp Mudranalaya Pvt. Ltd., admitted the fact of obtaining fabricated documents like Tax-Invoices, Lorry Receipt, E-way Bills etc. in connivance with the third party exporter, M/s Quarterfold Printabilities, Navi Mumbai and the transporter, M/s Bhavin Transport, showing that the goods were transported from factory premises of M/s. Rajkalp Mudranalaya Pvt. Ltd, Dantali, Ahmedabad to M/s Quarterfold Printabilities, Navi Mumbai & further exported by M/s Quarterfold Printabilities. Shri Kalpesh Patel also categorically admitted that the impugned goods were never manufactured in M/s. Rajkalp Mudranalaya Pvt. Ltd. nor supplied any goods meant for export to M/s Quarterfold Printabilities and the same was done to fraudulently show export of goods to fulfill their export obligation.

(ii) These acts have been corroborated by the statements of the employees of M/s. Rajkalp Mudranalaya Pvt. Ltd., Shri Jignesh Agrawal, Machine Operator, Shri Sangam Ramnath Mhatre, Shri Jayesh Patel, Supervisor and Shri Mitesh Vadera, CTP section, wherein they have all admitted that no goods have been supplied to the third party exporter, M/s Quarterfold Printabilities from M/s. Rajkalp Mudranalaya Pvt. Ltd.

(iii) Shri Sandeep Patel, Accountant of M/s. Rajkalp Mudranalaya Pvt. Ltd. admitted that he had arranged for the transporter, Shri Suresh Mehta, Manager of M/s Bhavin Transport on the directions of Shri Kalpesh Patel and was offered commission for issuing lorry receipts without actually transporting the goods from the factory of M/s. Rajkalp Mudranalaya Pvt. Ltd. to the factory of M/s Quarterfold Printabilities.

(iv) The statement of Shri Dheeraj Omprakash Wadhwani, Production & Purchase Manager of M/s Quarterfold Printabilities, [third party exporter] also confirms that no printing work was done and supplied to M/s. Rajkalp Mudranalaya Pvt. Ltd.

(v) Shri Manoj Dhankani, Managing Director of M/s Quarterfold Printabilities in his statement clearly admitted that he was contacted by Shachee Agrawal and Shri Kalpesh Patel of M/s. Rajkalp Mudranalaya Pvt. Ltd and offered to help him in finding new customers for the export of goods for M/s Quarterfold Printabilities, in lieu of mentioning the name of M/s. Rajkalp Mudranalaya Pvt. Ltd., as supporting manufacturer in the documents like shipping bills/invoices for the export of goods manufactured in M/s Quarterfold

Printabilities. Shri Manoj Dhankani also admitted that the impugned goods were manufactured in the factory premises of M/s Quarterfold Printabilities and no goods were supplied from M/s. Rajkalp Mudranalaya Pvt. Ltd. Shri Anup Sharma, Export Document Executive of M/s Quarterfold Printabilities in his statement also admitted that he had prepared the documents like invoices, packing list, draft bill of lading, mentioning the name of M/s. Rajkalp Mudranalaya Pvt. Ltd. as supporting manufacturer on the directions of Shri Manoj Dhankani.

(vi) Shri Suresh Mehta, Manager of M/s Bhavin Transport in his statement admitted that he was approached by Shri Sandeep Patel, of M/s. Rajkalp Mudranalaya Pvt. Ltd to facilitate them by providing lorry receipts without actually transporting the goods from the factory of M/s. Rajkalp Mudranalaya Pvt. Ltd. to the factory of M/s Quarterfold Printabilities for commission @ Rs.1000 per lorry receipt and also that he had issued 39 such lorry receipts for M/s. Rajkalp Mudranalaya Pvt. Ltd.

75. Notwithstanding the above, I find that the proceedings against M/s. Rajkalp Mudranalaya Pvt. Ltd, Shri Kalpesh Patel, CEO and MD of M/s. Rajkalp Mudranalaya Pvt. Ltd, Ms Shachee Agrawal, Director of M/s. Rajkalp Mudranalaya Pvt. Ltd, Shri Sandeep Patel, Accountant of M/s. Rajkalp Mudranalaya Pvt. Ltd and Shri Suresh Mehta, Manager of M/s Bhavin Transport Co., has been disposed by the Settlement Commission by orders mentioned in the above paras, on payment of relevant duty/penalty, which reinforces the case against M/s Quarterfold Printabilities, Shri Manoj Jethanand Dhankani, Managing Director of M/s Quarterfold Printabilities & Shri Anup Sharma, Export Document Executive, of M/s Quarterfold Printabilities.

76. Therefore, from the above facts and evidences on record, I find that M/s Quarterfold Printabilities, Cyber One IT Park, 12th Floor, Office No. 1207, Plot No. 4 & 6, Sector No. 30A, Vashi, Navi Mumbai - 400703 had facilitated M/s. Rajkalp Mudranalaya Pvt. Ltd in getting the name and IEC of M/s. Rajkalp Mudranalaya Pvt. Ltd as supporting manufacturer in the Shipping Bills filed by M/s Quarterfold Printabilities without manufacturing and supplying any goods from M/s. Rajkalp Mudranalaya Pvt. Ltd to M/s. Quarterfold Printabilities with an intent to further submit them to DGFT towards fulfillment of their export obligation and to obtain EODC against the aforesaid EPCG License. Thus, M/s Quarterfold Printabilities had knowingly concerned themselves in the act of aiding and abetting M/s. Rajkalp Mudranalaya Pvt. Ltd in the fraudulent activity with an intent to help them obtain EODC against the said EPCG License No.0830001976 dated 28.03.2007 and had mis-declared that the goods

exported under the Shipping Bills were manufactured by M/s. Rajkalp Mudranalaya Pvt Ltd. and wrongly showed the name of M/s. Rajkalp Mudranalaya Pvt Ltd. as supporting manufacturer in the Shipping Bills. Thus, they had also violated the provisions of Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rule 11 & Rule 14 of the Foreign Trade (Regulation) Rules, 1993. Therefore, I find that M/s Quarterfold Printabilities had rendered the exported goods, valued at Rs.12,01,57,951.50, liable for confiscation under Section 113(i) of the Customs Act, 1962 and is also liable to penalty under Section 114(iii) of the Customs Act, 1962 for the reasons discussed in the above paras.

77. Shri Manoj Jethanand Dhankani, Managing Director M/s Quarterfold Printabilities, deliberately signed documents or caused to be made, signed/used documents as discussed in detail hereinabove, which he knew or had reason to believe that these documents were false, incorrect, fabricated and prepared with intention to help M/s. Rajkalp Mudranalaya Pvt. Ltd., which have enabled to fulfill their export obligation to obtain EODC against the aforesaid EPCG License, fraudulently. Hence the said act on the part of Shri Manoj Jethanand Dhankani, Managing Director M/s Quarterfold Printabilities, renders him liable to penalty under Section 114(iii) and also under Section 114AA of the Customs Act, 1962.

78. Shri Anup Sharma, Export Document Executive, of M/s Quarterfold Printabilities, has facilitated M/s. Rajkalp Mudranalaya Pvt. Ltd by way of mentioning the name and IEC of M/s. Rajkalp Mudranalaya Pvt. Ltd as supporting manufacturer in the Customs Invoices & Packing Lists and further in the Shipping Bills filed by M/s Quarterfold Printabilities showing FOB value of Rs. 12,01,57,951.50/-. He mentioned the name & IEC of M/s. Rajkalp Mudranalaya Pvt. Ltd as supporting manufacturer in the Customs Invoices & Packing Lists on verbal directions of Shri Manoj Dhankani, Managing Director of M/s Quarterfold Printabilities without receiving any supportive documents. Further, he was aware that no printing work was done by M/s. Rajkalp Mudranalaya Pvt. Ltd. for M/s. Quarterfold Printabilities and no goods were procured by M/s. Quarterfold Printabilities from M/s. Rajkalp Mudranalaya Pvt. Ltd and also directed CHA to mention M/s Rajkalp Mudranalaya Pvt. Ltd., Ahmedabad as supporting manufacturer in Shipping Bills. In the following manner, Shri Anup Sharma had knowingly concerned himself in the act of aiding and abetting M/s. Rajkalp Mudranalaya Pvt. Ltd in afore-discussed fraudulent activity in as much as he had mis-declared the name of M/s. Rajkalp Mudranalaya Pvt Ltd. as supporting manufacturer in the Shipping Bills and other export documents showing that the said goods exported under the

Shipping Bills filed by M/s Quarterfold Printabilities were manufactured by M/s. Rajkalp Mudranalaya Pvt. Therefore, I find that Shri Anup Sharma, Export Document Executive, of M/s Quarterfold Printabilities, deliberately made, signed documents or caused to be made, signed as discussed in detail hereinabove, which he knew or had reason to believe that these documents were false, incorrect & fabricated and prepared with intention to help M/s. Rajkalp Mudranalaya Pvt. Ltd for further submission to DGFT towards fulfillment of their export obligation and to obtain EODC against the aforesaid EPCG License, fraudulently. Hence, the said act on the part of Shri Anup Sharma, Export Document Executive, of M/s Quarterfold Printabilities, renders him liable for penalty under Section 114(iii) and Section 114AA of the Customs Act, 1962.

79. Accordingly, I pass the following order:-

ORDER


- (i) I hold the goods valued at Rs. **12,01,57,951.50/- (Twelve Crore, One Lakh, Fifty Seven thousand, Nine Hundred and Fifty One Rupees only)** of M/s Quarterfold Printabilities, Cyber One IT Park, 12th Floor, Office No. 1207, Plot No. 4 & 6; Sector No. 30A, Vashi, Navi Mumbai-400703, appearing in Annexure A to the show cause notice, liable for confiscation under Section 113 (i) of Customs Act, 1962. However, I impose a fine of Rs. 2,40,00,000/- (Rupees Two Crore Forty Lakh Only) in lieu of confiscation under the provisions of Section 125 of the Customs Act, 1962.
- (ii) I impose a penalty of Rs. 2,00,00,000/- (Rupees Two Crore Only) on M/s Quarterfold Printabilities, Cyber One IT Park, 12th Floor, Office No. 1207, Plot No. 4 & 6, Sector No. 30A, Vashi, Navi Mumbai-400703 under Section 114(iii) of the Customs Act, 1962.
- (iii) I impose penalty of Rs. 50,00,000/- (Rupees Fifty Lakh Only) on Shri Manoj Jethanand Dhankani, Managing Director, M/s Quarterfold Printabilities under Section 114(iii) of the Customs Act, 1962.
- (iv) I impose penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakh Only) on Shri Manoj Jethanand Dhankani, Managing Director, M/s Quarterfold Printabilities under Section 114AA of the Customs Act, 1962.

(v) I impose penalty of Rs. 10,00,000/- (Rupees Ten Lakh Only) on Shri Anup Sharma, Export Document Executive, M/s Quarterfold Printabilities under Section 114(iii) of the Customs Act, 1962.

(vi) I impose penalty of Rs. 5,00,000/- (Rupees Five Lakh Only) on Shri Anup Sharma, Export Document Executive, of M/s Quarterfold Printabilities under Section 114AA of the Customs Act, 1962.

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

81. The Show Cause Notice issued from F.No. DRI/AZU/GI-02/ENQ-2-/2018 dated 27.02.2019 is disposed off in above terms.


(Shiv Kumar Sharma)
Principal Commissioner

F.No. DRI/AZU/GI-02/ENQ-20/2018

Date: 26.12.2024

By RPAD/ By Hand Delivery

To,

- (1) M/s Quarterfold Printabilities, Cyber One IT Park, 12th Floor, Office No. 1207, Plot No. 4 & 6, Sector No. 30A, Vashi, Navi Mumbai-400703.
- (2) Shri Manoj Jethanand Dhankani, Managing Director M/s Quarterfold Printabilities, Cyber One IT Park, 12th Floor, Office No. 1207, Plot No. 4 & 6, Sector No. 30A, Vashi, Navi Mumbai-400703.
- (3) Shri Anup Sharma, Export Document Executive, of M/s Quarterfold Printabilities, Cyber One IT Park, 12th Floor, Office No. 1207, Plot No. 4 & 6, Sector No. 30A, Vashi, Navi Mumbai-400703.

Copy to:-

1. The Chief Commissioner of Customs, Ahmedabad Zone, Ahmedabad for information please.
2. The Pr. Commissioner/Commissioner of Customs, Nhava Sheva II, Customs House, Jawahar Nehru Custom House, Uran, Raigad, Maharashtra - 400 007 for information please.
3. The Additional Commissioner of Customs (TRC), Ahmedabad for information.
4. The Superintendent of Customs (Systems), Ahmedabad in PDF format for uploading on the Website of Customs Commissionerate, Ahmedabad.
5. Guard File.

RECEIVED 4 SP	
CUSTOMS (HQ), A'BAD.	
DATE : 27-12-24	3:34
SIGN. : Jethanand	
NAME :	