 <p style="text-align: center;">OFFICE OF THE PRINCIPAL COMMISSIONER CUSTOMS COMMISSIONERATE KUTCH CUSTOM HOUSE KANDLA NEAR BALAJI TEMPLE, NEW KANDLA</p> <p style="text-align: center;">Phone : 02836-271468/469 Fax: 02836-271467</p>		
A	File No.	S/10-132/Adj/Commr/PA/2016-17
B	Order-in-Original No.	KDL/COMMR/PVRR/01 to 14/2017-18
C	Passed by	SHRI P.V.R. REDDY Principal Commissioner, Custom House, Kandla.
D	Date of order	25.04.2017
E	Date of issue	25.04.2017
F	Show Casuee Notices No. & Date	
	1	S/10-49/98 VII dated 21.7.98 M/s Trim Impex & others.
	2	S/10/50/98 VII dated 21.7.98 M/s Corum Impex & others
	3	S/10-51/98 VII dated 21.7.98 M/s Dee Gee Exports & other.
	4	S/10-1/97 SUB (Adj) dated 26.5.97 M/s Dee Gee Exports & others
	5	S/10-2/97 SUB (Adj) dated 26.5.97 M/s Orient Exports & others. M/s Dee Gee Exports & others.
	6	S/10-3/97 SIIB (Adj) dated 26.5.97 M/s Sharan Exports & others
	7	S/10-4/97 SIIB (Adj) dated 26.5.97 M/s P. A. International & others.
	8	S/16-Gen-DEEC-27/97GR.7-JCH dated March 97 M/s P.A. International & others
	9	S/16-Gen-DEEC-27A/97Gr.7-JCH dated March 97 M/s Orient Exports & others & M/s Dee Gee Exports & others
	10	S/16-Gen-DEEC-27B/97Gr.7 JCH M/s Dee Gee Exports & others dated March 97
	11	S/16-Gen-DEEC-27/C/97 Gr. 7 JCH M/s Sharan Exports & others dated March 97 &M/s Santosh Textiles & others
	12	S/10-28/97 ADJ dated 13.12.97 M/s Dee Gee Exports & others
	13	S/10- 29/97 ADJ dated 13.12.97 M/s P. A. International & others
	14	S/10-30/97 ADJ dated 13.12.97 M/s Sharan Exports & others
G	Noticee(s)/Co-Noticee(s)	<ol style="list-style-type: none"> 1. M/s. P.A. International 6/B, Jeevan Asha, Peddar Road, Mumbai - 400 026. 2. Shri Ashok B. Rajani 6/B, Jeevan Asha, Peddar Road, Mumbai - 400 026. 3. M/s. Sharan Exports 250, Gandhi Galli, Swadeshi Market, Mumbai - 400 002. 4. Shri Rajkumar A. Hasija, 71/A, Meeramar, 3, Napeansea Road Mumbai - 400 036. 5. M/s. Santosh Textiles 250, Gandhi Galli, Swadeshi Market, Mumbai - 400 002. 6. M/s.Blend Syntex 6/B, Jeevan Asha, Peddar Road, Mumbai - 400 026.

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

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

**Customs Excise & Service Tax Appellate Tribunal,
West Zonal Bench,
O-20, Meghaninagar,
New Mental Hospital Compound,
Ahmedabad-380 016.**

3. Appeal shall be filed within three months from the date of communication of this order.
4. Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.
5. The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.
6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

ORDER-IN-ORIGINAL No. KDL/COMMR/PVRR/01 to 14/2017-18

1.1 Present proceeding has arisen out of Hon'ble CESTAT Order No. A/16-37/2007WZB/C-II/CESTAT dated 20.12.2005 and 12.01.2007 (Majority Order), read with Misc Order No. M/127/11/CST-13/C-1 dated 21.03.2011, whereby remanded back the proceedings of 14 SCNs for denovo adjudication, initially adjudicated vide common Order No. CAO No. 206 to 219/2002/CAC/CC/M.D. dated 17.05.2002 passed by the Commissioner of Customs (Adjudication) Mumbai.

1.2.2 Based on intelligence gathered by the officers of the DRI, Mumbai Zonal Unit, that shipping bills had been filed and after shipment weight of export cargo in the Shipping Bills were enhanced in documents with a view to get Advance Licences for higher quantities than otherwise entitled. Such unauthorized corrections were carried out by the same exporters with regard to exports effected through the Port of Mumbai as well as Kandla.

1.2.3 Investigations were extended and searches were carried at office of CHA viz. M/s Sri Radhakrishna Shipping Pvt. Ltd. Mumbai at Kandla and also the exporter's offices and residential premises from where certain documents were recovered.

1.2.4 The Chairman of CHA Shri B. P. Kotak and the responsible persons of the CHA as well as exporters firm as also the exporter appeared before the officers of DRI and gave their statements. DRI also collected the relevant record form Kandla, Mumbai and Nhava Sheva Custom Houses.

1.2.5 The Shipping Agents, who dealt with the loading of the containers were also contacted and the concerned persons gave their statements before the DRI. Documents such as Mate Receipts, Bills of Lading and copies of Shipping Bills in the records of Shipping Agents were also resumed from them.

1.2.6 The copies of the relevant documents such as applications for Advance Licence, Shipping Bills and other documents submitted in connection with Advance Licences were also called for from the office of DGFT. Also got copies of the export documents submitted to the Maritime Collector, Jamnagar.

1.2.7 As a result of these investigations being reported to DGFT, the DEEC licences issued to the concerned exporters were cancelled ab initio.

1.3.1 On the basis of the statements recorded and other records gathered by DRI, it revealed that the copies of the shipping bills had been tampered with after the goods had passed through the Customs by altering the first digit of the Net and Gross weight so as to inflate the weight of the Fabrics exported.

1.3.2 On the basis of such manipulated export promotion copies of the shipping bills, in regard to the consignments exported through Kandla port, advance licences had been obtained with transferable endorsement and goods had been imported and cleared duty free in the names of parties who were connected with the very same exporters.

1.3.4 In the fraudulent alteration of the shipping bills, Shri Deepak Bajaj and Rajiv Bajaj and their associates were the persons behind the exports, where the shipping bills had been manipulated and they had

imported the goods through the port of Nhava Sheva and Mumbai by utilizing the DEEC licences obtained from DGFT by presenting the manipulated copies of Shipping Bills.

1.3.4 With regard to the exports made at Mumbai, no DEEC licences had been obtained on the basis of these exports effected through Mumbai and, hence, no imports had been made corresponding to the exports, where manipulation of weight figures had been noticed by DRI on the duplicate Shipping Bills.

1.4.1 Three show cause notices, were issued by Commissioner of Customs (Exports), Mumbai, with regard to the unauthorized alterations carried out on the duplicate shipping bills with regard to the exports made through the port of Mumbai.

1.4.2 Four Show Cause Notices were issued by the Commissioner of Customs, Kandla, the exporters and others with regard to the unauthorized alterations carried out in the Shipping Bills presented to the DGFT and to the Maritime Collector, Jamnagar.

1.4.3 Four Show Cause Notices were issued by Commissioner of Customs, Nhava Sheva(J.N.Port) based on the same facts and allegations as those contained in the Show Cause Notices issued by the Commissioner of Customs, Kandla. However, these show cause notices pertain to the imports made against the DEFC licence fraudulently obtained on the basis of manipulated copies of shipping bills in regard to the exports effected through Kandla, proposing to demand duty on the goods imported and for imposing penalty under section 114 A and Section 112(a) of the Customs Act, 1962.

1.4.4 Three Show Cause Notices were issued by the Commissioner of Customs, Mumbai, based on the same facts and allegations relating to unauthorized and fraudulent alterations on the copies of the shipping bills in regard to the exports effected through Kandla. These three show cause notices pertain to imports effected through the port of Mumbai against the fraudulently obtained DEEC licences. In these three show cause notices the customs duty involved on the goods cleared through the Mumbai Customs against the DEEC licences has been demanded apart from proposing penalties under sections 114A and 112 (a) of the Customs Act, 1962

1.5.1 These following fourteen Show Caused Notices were taken up for adjudication by the Commissioner of Customs (Adjudication) Mumbai.

Sr. No	SCN No. & Date	Noticee
1	S/10-49/98 VII dated 21.7.98	M/s Trim Impex & others.
2	S/10/50/98 VII dated 21.7.98	M/s Corum Impex & others
3	S/10-51/98 VII dated 21.7.98	M/s Dee Gee Exports & other.
4	S/10-1/97 SUB (Adj) dated 26.5.97	M/s Dee Gee Exports & others
5	S/10-2/97 SUB (Adj) dated 26.5.97	M/s Orient Exports & others. M/s Dee Gee Exports & others.
6	S/10-3/97 SIIB (Adj) dated 26.5.97	M/s Sharan Exports & others
7	S/10-4/97 SIIB (Adj) dated 26.5.97	M/s P. A. International & others.
8	S/16-Gen-DEEC-27/97GR.7-JCH dated March 97	M/s P.A. International & others
9	S/16-Gen-DEEC-27A/97Gr.7-JCH dated March 97	M/s Orient Exports & others & M/s Dee Gee Exports & others
10	S/16-Gen-DEEC-27B/97Gr.7 JCH dated March 97	M/s Dee Gee Exports & others

11	S/16-Gen-DEEC-27/C/97 Gr. 7 JCH dated March 97	M/s Sharan Exports & others &M/s Santosh Textiles & others
12	S/10-28/97 ADJ dated 13.12.97	M/s Dee Gee Exports & others
13	S/10- 29/97 ADJ dated 13.12.97	M/s P. A. International & others
14	S/10-30/97 ADJ dated 13.12.97	M/s Sharan Exports & others

1.5.2 Since the common features in the nature of allegations, alleged main players and also in the nature of evidences, which are to be dealt with in all the fourteen SCNs, therefore, for the sake of convenience and to avoid repetition, these SCNs were adjudicated by a common order: CAO NO. 206 to 219/2002/CAC/CC/M.D dated 17.05.2002.

1.5.3 The Commissioner of Customs (Adjudication) Mumbai vide common order dated 17.05.2002, ordered for confiscation of goods exported under Shipping Bills found manipulated/alterd after clearance; ordered for confiscation of goods imported against Advance authorization Licence (DEEC) obtained by presenting vide exported under Shipping Bills found manipulated/alterd after clearance; confirmed demand of duty involved in import of goods against such Advance authorization Licence (DEEC); imposed consequential penalties upon the exporter & importer as well as responsible persons of the exporter & importer; dropped penal proceeding upon persons of CHA and Shipping Agents.

1.6.1 Being aggrieved from the order CAO No. 206 to 219/2002/CAC/CC/M.D dated 17.05.2002 following appeals were preferred before the CESTAT:

(i) In pursuance to the Review Order No. 241-12/2002 dated 11.11.2002 issued from F. No. 389/75/02-JC(BMB) by the Member, CBEC, New Delhi, under Section 129(D) of the Customs Act, 1962 of the CAO No. 206 to 219/2002/CAC/CC/M.D dated 17.05.2002, it was observed that penalty imposed on offenders in respect of exports is not commensurate with the offence and is very much on the lower side; that no redemption fine was imposed on the goods as these were not available for confiscation, however, penalty imposed is very much on the lower side; that penalty proceeding against Shri B. P. Kotak Chairman of CHA and its employee as well as against personnel of Shipping Agent were dropped; that in respect of import penalty proceeding against CHA and other persons, and decided to prefer appeal before CESTAT for determination "whether under the facts and circumstances of the case, Shri B. P. Kotak and others are liable to penalty under Section 112 of the Customs Act, 1962. Accordingly, appeals against CAO No. 206 to 219/2002/CAC/CC/M.D dated 17.05.2002 were preferred in respect of the following persons.

1	Shri J. L Kocher;
2	Shri B P Kotak
3	Shri Sunil Hemani
4	Shri Kanthaswami
5	M/s Radhakrishna Shipping Co. P Ltd.
6	Rajeev Bajaj
7	Shri K V Gopal Krishnan
8	Shri Ashok B Rajani
9	M/s Sharan Export;
10	M/s P A International
11	Shri Sabu George

12	Shri RajkumarHasija
13	Shri Deepak Bajaj
14	M/s Tranworld Shipping Services
15	Shri Srinivas Rajappan
16	M/s Dee Gee Exports

(ii) Being aggrieved from the Order dated 17.05.2002, following persons had also preferred appeals before the CESTAT.

1	M/s Santosh Textiles
2	M/s Sharon Exports
3	Shri RajkuarHasija
4	M/s P A International
5	Shri Ashok B Rajani
6	M/s Blend Syntec

(iii) M/s Dee Gee Export also filed appeal before CESTAT against the order dated 17.05.2002, but the appeal was dismissed for non-compliance, Therefore, the order dated 17.05.2002 has attained finality.

1.6.2 In CESTAT Order No. A/16-37/2007WZB/C-II/CESTAT dated 20.12.2005, the Member (Technical) and the Member(Judicial) had expressed diverge views in the matter and therefore the matter was referred to Hon'ble President, CESTAT for appropriate order, wherein the Hon'ble President, CESTAT on 12.01.2005 decided the case by Majority Order (read with Misc Order No. M/127/11/CST-13/C-1 dated 21.03.2011). Relevant text of the CESTAT Order are as under:

“1. Heard both sides.

2.I would agree and concur with the views expressed by Id. Member (J) and order that the appeals filed by revenue are to be dismissed and the appeals filed by M/s. P.A. International, M/s. Sharan Exports, Shri. RajkumarHasija and Shri. Ashok B. Rajani be remanded back to the adjudicator for determination after applying the principle of natural justice.

3.

4.

5. Further perusal of the record in the appeals filed by the exporters, it is noticed that both the Id. Member(T) and Member (J) are silent on certain important issues, which would not make the remand order, otherwise effective. The entire case of the revenue based (a) on the copies of Mates Receipt dated 06.04.1994 and copies of documents issued thereunder (b) copies of Port Trust Shipping Bills dated 30.03.1994 recovered from office of the CHA bearing the vessel name as "Orient Challenger" (c) Examination Register. What is observed is that the impugned order ignored and do not make any appreciation in respect of RBI General Repatriation Form (GR Form) and Part "F" of the Advance Licence. The documents i.e. GR Form which after export submitted to the Custom Department and thereafter lying with the RBI would appears to be vital documents to bring home charges against the exporters/or to absolve them. There is no finding as such, about these documents. These documents have to be brought on record and a finding is to be arrived at after hearing the submissions of the exporters. The case law cited in respect of them by the exporters shall be considered by the adjudicator as to their applicability and implication.

6. With the aforesaid observations (Devengere Cotton Mills Ltd. Vs. Commissioner of Central Excise 2006 (198) E.L.T. 482 (SC)), I would concur with the findings reached by the Id. Member (J) and answer the reference accordingly.

Majority Order

The appeals of M/s. P.A. International, Ashok Rajani, Blend Syntec, Rajkumar Hasija, M/s. Sharan Exports, M/s. Santosh Textile (Appeal Nos. C/903 to 905/02, C/926 to 928/02) are allowed by way of remand and the appeals filed by the Revenue (Appeal Nos. C/247 to 262/03) are dismissed."

1.6.3. In view of the above, present proceeding are limited for denovo adjudication of the following Show Cause Notices pertaining to M/s. P.A. International, Ashok Rajani, Blend Syntec, Rajkumar Hasija, M/s. Sharan Exports, M/s. Santosh Textile.

Sr. No	SCN No. & Date	Noticee
1	S/10-3/97 SIIB (Adj) dated 26.5.97	M/s Sharan Exports & others
2	S/10-4/97 SIIB (Adj) dated 26.5.97	M/s P. A. International & others.
3	S/16-Gen-DEEC-27/97GR.7-JCH dated March 97	M/s P.A. International & others
4	S/16-Gen-DEEC-27/C/97 Gr. 7 JCH dated March 97	M/s Sharan Exports & others &M/s Santosh Textiles & others
5	S/10- 29/97 ADJ dated 13.12.97	M/s P. A. International & others
6	S/10-30/97 ADJ dated 13.12.97	M/s Sharan Exports & others

1.6.4 The SCNs mentioned at Sr. No. 1 and 2 are in respect of export of goods and remaining four SCNs mentioned at Sr. No. 4 to 6 are in respect of import of goods.

1.6.5 In view of the above, Hon'ble CESTAT passed following directions for denovo adjudication:

- (i) The appeal filed by the revenue are dismissed;
- (ii) The appeals filed by M/s. P.A. International, Shri Ashok Rajani, M/s Blend Syntec, Shri Rajkumar Hasija. M/s. Sharan Exports and M/s Santosh Textiles be remanded back to the adjudicator for determination after applying the principle of natural justice;
- (iii) The impugned order ignored and do not make any appreciation in respect of RBI General Repatriation Form (GR Form) and Part "F" of the Advance Licence. The documents i.e. GR Form which after export submitted to the Custom Department and thereafter lying with the RBI would appears to be vital documents to bring home charges against the exporters/or to absolve them. There is no finding as such, about these documents. These documents have to be brought on record and a finding is to be arrived at after hearing the submissions of the exporters. The case law cited in respect of them by the exporters shall be considered by the adjudicator as to their applicability and implication.

1.6.6 The CBEC vide letter F. No. 276/115/2012-CX.8A(CUS) dated 27.09.2012 intimated to the Commissioner of Customs (Export) Mumbai that in overall facts and circumstances of the case, it was felt that no useful purpose would be served in pursuing SLP in this case in view of the facts that the decision in appellate stages is based on findings that investigation could not substantiate the charges of connivance against CHA. It has accordingly been decided not to appeal in this case.

1.6.7 Since the revenue has accepted the CESTAT order and did not prefer any appeal against the same before higher appellate/judicial forum, accordingly, the order CAO No. 206 to 219/2002/CAC/CC/M.D dated 17.05.2002, in respect of the all Noticees, except, M/s. P.A. International, Shri Ashok Rajani, M/s Blend Syntex, Shri Rajkumar Hasija, M/s. Sharan Exports and M/s Santosh Textiles, has reached it's finality and do not require any further action, as the said part of the order is not subject matter of the present proceeding.

1.7.1 To adhere the direction of the Hon'ble CESTAT personal hearing in the matter was fixed before the Commissioner of Customs (Adjudication), Mumbai on 07.10.2013. Shri Ashok Rajani and Shri Rajkumar Hasija appeared for hearing for themselves as well as on behalf of M/s P.A. International, M/s Sharan Export, M/s Santosh Textiles. They submitted that copies of (i) RBI Gen. Repatriation Forms and (ii) Part F of the Advance Licence may first be provided to them in terms of the direction of Tribunal as contended in their order dated 05.01.2007 and thereafter they would be in position to defend their case. Further, a letter was produced from Mrs Janki Rajani to the effect that Shri B. R. Rajani Proprietor of M/s Blend Syntex has expired and forwarded a copy of death certificate. Shri Ashok Rajani, Shri Rajkumar Hasija M/s P.A. International, M/s Sharan Export, M/s Santosh Textiles have also submitted letters to provide (i) RBI Gen. Repatriation Forms and (ii) Part F of the Advance Licence and brought on record to enable them to defend their case more effectively.

1.7.2.1 The Commissioner of Customs (Adjudication) Mumbai issued a letter F. No. S/10-06/2012.Adj dated 10.10.2013 to the Additional Director General, DRI, MZU, Mumbai with a request to provide (i) Authenticated copies of GR Forms pertaining to the impugned Shipping Bills and (ii) copies of Part F of the Advance Licence issued for the impugned exports carried out the Noticees. It is also requested to provide the affidavit filed by the Noticees before tribunal as well as reply to said affidavit as filed by the department. The Additional Director General, DRI, MZU, Mumbai was further reminded vide letter of even number dated 10.11.2013.

1.7.2.2 The DRI, vide letter F. No. DRI/MZU/E/7/1995/10295 dated 02.12.2013 forwarded certain documents, however, copies of GR Forms and (ii) copies of Part F of the Advance Licence were not forwarded, which was communicated to DRI vide letter dated 16.01.2014. The DRI, vide letter F. No. DRI/MZU/E/7/1995/801 dated 21.01.2014. forwarded the copies of Part F (Blank/unendorsed) of the respective licences as obtained from Customs. It has also intimated that vide letter 02.12.2013 copies of Shipping Bills were forwarded which were inadvertently mentioned as GR Forms and no separate copies of RBI General Repatriation Forms (GR Forms) are available.

1.7.3.1 Personal hearing in the matter, before the Commissioner, of Customs (adjudication) Mumbai, was again fixed on 26.03.2014, whereby it was also informed to the Noticee that Copies of Part F of the Advance Licences will be handed over at the time of personal hearing, but on request of the Noticees, the date of hearing was adjourned to 03.04.2014. Shri R K Hasija for himself and on behalf of Sharan Export and M/s Santish Textile appeared for hearing. No PART F could be shown to him as not sent by DRI. Shri R K Hasija requested that Part F was furnished by him in the Exhibit 13 Para 14(ii) in appeal filed before the CESTAT which may be sent to DRI for cross

examination. Shri Ashok Rajani for himself and on behalf of M/s P A International appeared for personal hearing and acknowledged the receipt of copies of 3 DEEC Book No. 134131, 137173 and 094326 (Advance Licences) along with Part F and on perusal they submitted that the Part F of the DEEC Book could not be blank. The Noticees vide separate letters requested further to provide copies of GR Forms.

1.7.3.2 The DRI, MZU Mumbai, was further requested vide letter dated 25.04.2014 and further reminded on 24.06.2014 to provide exhibits/enclosures attached to the affidavit dated 27.08.2005 filed by Shri Rajkumar Hasija to verify the factual position. The DRI MZU, Mumbai vide letter F. No. DRI/MZU/E/7/1995/6002 dated 01.07.2014 intimated that the copy of affidavit dated 27.08.2005 of Shri Rajkumar Hasija was obtained from CESTAT Mumbai and exhibits/enclosures. The Part F of DEEC Book No. 122532 is not available in the said record as M/s Santosh Textiles vide letter dated 20.09.1995 had only submitted Part A to D (Import) of the said book.

1.7.3.3 In view of the above, a letter to Shri Rajkumar Hasija, M/s Saran Export and PA International was issued on 04.09.2014, whereby it was intimated that copies of DEEC Books along with Part F was provided to them, however it was also pointed that Part F cannot be blank, as copies of part F submitted by you along with the affidavit filed before the CESTAT were not blank. Therefore, it was requested them to provide copies of Part F filed by them along with the affidavit before the CESTAT.

1.7.3.4 None of the Noticees came forward to submit the copies of Part F of the Advance Licence, which were available with them, to place on record. The Part F of the Advance Licence, as available, were already made available to the Noticees. These Noticee have pleaded that the Part F of the Licence could not be blank as in the copies which they have with them are not blank, however, after request was made to them to provide the copies of Part F of the Licence, which are available with them to take the same on record, however, none of the Noticees came forward to comply.

1.7.3.5 Further, It has been observed that copies of Shipping Bill, which were mentioned as GR Form, are in-fact, the RBI General Repatriation Forms (GR Forms).

1.8 At this stage the Principal Commissioner of Customs, Customs House, Kandla is appointed as Common Adjudicating Authority in the present matter vide Notification No. 26/2016-(NT)-Customs dated 16.02.2016 and Notification No. 79/2016-(NT)-Customs dated 31.05.2016.

1.9.1 Personal hearing in the matter was fixed on 24.01.2017 and 31.01.2017, before the Principal Commissioner of Customs, Kandla, whereby the Noticees were also requested to furnish the GR Forms and Part F of the Licence, which are available with them, to take on record as per direction of the CESTAT. However, on request of the Noticees, the personal hearing was adjourned to 21.02.2017, before the Principal Commissioner of Customs, Kandla. But no one appeared for personal hearing.

1.9.2 M/s P.A. International and M/s Sharan Exports forwarded letters addressed to the Member (Customs) CBEC, New Delhi and copy endorsed to the Commissioner of Customs, Kandla, whereby, it was requested to the Member, to issue appropriate order/direction/clarification directing the

Commissioner of Customs, Kandla not to proceed with the adjudication and directing the Commissioner of Customs, Mumbai to take up the matter for disposal at the earliest. Mrs Janki Rajani vide letter dated 16.01.2017 informed that proprietor of M/s Blend Syntex has expired.

1.9.3 Further personal hearing in the matter was fixed on 15.03.2017 and 17.03.2017, before the Principal Commissioner of Customs, Kandla.

1.9.4 Shri Rajkumar Hasija, M/s Sharan Exports and Santosh Textiles and Shri Ashok Rajani & P A International vide separate email correspondence addressed by name to the Principal Commissioner of Customs Kandla submitted that they have addressed to the Principal Commissioner of Commissioner of Customs, Kandla, many letters wherein informed that the Principal Commissioner of Commissioner of Customs, Kandla lack legal jurisdiction to adjudicate their denovo matters. They informed that they had a telecon with Joint Secretary, and apprised him the matter with request of appointment, which was granted for 16.03.2017. They requested not to proceed with passing any ex-part order, until the matter of jurisdiction has been finally decided by the CBEC, meanwhile refrain from proceeding with the denovo adjudication.

1.9.5 The personal hearing which was fixed on 15.03.2017 and 17.03.2017 was re-scheduled on 16.03.2017, before the Principal Commissioner of Customs, Kandla. Neither any Noticees appeared for personal hearing nor intimated the outcome of their meeting with the Joint Secretary, CBEC, New Delhi.

1.9.6.1 From the above, it can be seen that, all sincere efforts have been made to brought documents viz. copies of GR Forms pertaining to the impugned Shipping Bills and (ii) copies of Part F of the Advance Licence issued for the impugned exports carried out the Noticees, on record. The copies available were provided to the Noticees. The Noticees claimed to have documents with them, therefore they were also requested to submit the copies of documents available with them, however they never came forward. Sufficient opportunities were granted to the Noticees for hearing, even more than as stipulated in the Customs Act, 1962. It is relevant to refer provisions of Section 122A of the Customs Act, 1962, as under:

SECTION 122A. Adjudication Procedure. - (1) The adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.

(2) The adjudicating authority may, if sufficient cause is shown at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during the proceeding.

1.9.6.2 In the present proceeding, I find that all Noticees did not come forward to file any reply in denovo adjudicating proceedings. Also, though various opportunities were granted for personal hearing, but these Noticees did not avail the same. On the contrary the Noticees challenged the jurisdiction of the Principal Commissioner of Customs, Kandla for adjudication of the present denovo proceedings. In this regard, I find that, I, the undersigned, the principal Commissioner of Customs, Kandla is appointed as Common Adjudicating Authority vide Notification No. 26/2016 Customs(NT)

dated 16.02.2016 and Notification No. 79/2016-Customs(NT) dated 31.05.2016 and therefore, the Principal Commissioner of Customs, Kandla have proper jurisdiction to adjudicate the present denovo proceeding.

1.9.6.3 In view of the above, I am of the view that sufficient opportunities have been granted to the Noticees to adhere principles of natural justice in terms of direction of the Hon'ble CESTAT, therefore, I proceed to adjudicate the case, based on the material available on record as the notices are not willing to cooperate with the adjudication proceedings and their intention appears to be drag them beyond a point.

2.1 I have gone through the entire case, Show Cause Notices, Original Order-in-Original, direction of Hon'ble CESTAT while allowing appeals and remanding the case for denovo adjudication and all the material available on records.

2.2 Present proceeding has arisen out of Hon'ble CESTAT Order No. A/16-37/2007WZB/C-II/CESTAT dated 20.12.2005 and 12.01.2005 (Majority Order), read with Misc Order No. M/127/11/CST-13/C-1 dated 21.03.2011, whereby remanded back the proceedings of 14 SCNs for denovo adjudication, initially adjudicated vide common Order No. CAO No. 206 to 219/2002/CAC/CC/M.D. dated 17.05.2002 passed by the Commissioner of Customs (Adjudication) Mumbai. The CBEC vide Notification No. 26/2016-Customs(NT) dated 16.02.2016 and Notification No. 79/2016-Customs(NT) dated 31.05.2016 appointed the principal Commissioner of Customs, Kandla is as common adjudicating authority to adjudicate the present denovo proceeding in respect of the 14 SCNs.

2.3.1 The Hon'ble CESTAT, have passed order that the appeals of M/s. P.A. International, Ashok Rajani, Blend Syntec, Rajkumar Hasija, M/s. Sharan Exports, M/s. Santosh Textile (Appeal Nos. C/903 to 905/02, C/926 to 928/02) are allowed by way of remand and the appeals filed by the Revenue (Appeal Nos. C/247 to 262/03) are dismissed. The CBEC vide letter F. No. 276/115/2012-CX.8A(CUS) dated 27.09.2012 intimated the decision that not to appeal in this case. Thus, the order CAO No. 206 to 219/2002/CAC/CC/M.D. dated 17.05.2002, in respect of the all Noticees, except, M/s. P.A. International, Shri Ashok Rajani, M/s Blend Syntex, Shri Rajkumar Hasija, M/s. Sharan Exports and M/s Santosh Textiles, have reached it's finality and do not require to be interfered. Accordingly, present proceeding is limited for denovo adjudication of the following Show Cause Notices pertaining to M/s. P.A. International, Ashok Rajani, M/s Blend Syntex, Rajkumar Hasija, M/s. Sharan Exports, M/s. Santosh Textile.

Sr. No	SCN No. & Date	Noticee
1	S/10-3/97 SIIB (Adj) dated 26.5.97	M/s Sharan Exports & others
2	S/10-4/97 SIIB (Adj) dated 26.5.97	M/s P. A. International & others.
3	S/16-Gen-DEEC-27/97GR.7-JCH dated March 97	M/s P.A. International & others
4	S/16-Gen-DEEC-27C/97 Gr.7-JCH dated March 97	M/s Sharan Exports & others &M/s Santosh Textiles & others
5	S/10- 29/97 ADJ dated 13.12.97	M/s P. A. International & others
6	S/10-30/97 ADJ dated 13.12.97	M/s Sharan Exports & others

2.3.2 The SCNs mentioned at Sr. No. 1 and 2, above are in respect export of goods by M/s P.A. International and M/s Sharan Exports issued by the Commissioner of Customs, Customs House Kandla and remaining four

SCNs mentioned at Sr. No. 4 to 6 are in respect of import of goods in the name of importers viz. M/s Blend Syntex and Santosh Textiles. The SCNs Mentioned at Sr. No. 3 & 4 were issued by the Commissioner of Customs, JN Port, Nahva Sheva and SCNs Mentioned at Sr. No. 5 & 6 were issued by the Commissioner of Customs(Export), Mumbai.

2.3.3 M/s PA International is a proprietor firm of Mrs Pinky Rajani wife of Shri Ashok Rajani, wherein all work was looked after by Shri Ashok Rajani. M/s Sharan Export is a partnership firm, wherein Shri Rajakumar Hasija is a one of the partner and looking after entire work of the firm. M/s Shantosh Textile is proprietary firm of Shri Rajkuar Hasija. M/s Blend Syntex, was also a proprietary firm controlled by Shri Ashok Rajani.

2.3.4 The issue for determination in the present case are as under:

- (i) Whether weight of the export goods in Export Promotion (EP) Copy of Shipping Bills were manipulated after shipments with an intention to get Quantity Based Advance Licence(s) for higher quantity by M/s P.A. International and M/s Sharan Exports and consequential proposal of confiscation and penal action;
- (ii) Whether M/s P.A. International and M/s Sharan Exports have obtained Quantity Based Advance Licence(s) by fraudulent means by presenting manipulated copies of Shipping Bills before the DGFT;
- (iii) Whether importer evaded duty of Customs by utilizing the Quantity Based Advance Licence(s), obtained by fraudulent means and consequent demand of customs duty and penal actions.

2.4.1 In light of the documentary as well as oral evidence available on record, undisputed facts of the case, are that M/s P.A. International and M/s Sharan Exports had filed application for Quantity Based Advance Licence before the Joint DGFT, Mumbai and registered, as details below:

Applicant	Application No.	Date
M/s PA Internationals	03/91/40/1162/AM-94	18.03.1994
M/s PA Internationals	03/91/40/1163/AM-94	18.03.1994
M/s Sharan Exports	03/88/40/1493/AM-94	15.03.1994
M/s Sharan Exports	03/88/40/1500/AM-94	15.03.1994

2.4.2 The Joint DGFT, Mumbai issued following Quantity Based Advance Licence(s) as well as DEEC Books to M/s Sharan Export,

Advance Licence No & Date	DEEC Book No.	Quantity of licence
0322457 dated 29.03.1994	122530 dated 29.03.1994	68751.200 Kgs
0322459 dated 29.03.1994	122532 dated 29.03.1994	81297.660 Kgs

2.4.3 Further, the Joint DGFT, Mumbai issued following Quantity Based Advance Licence(s) as well as DEEC Books to M/s PA International,

Advance Licence No & Date	DEEC Book No.	Quantity of licence
2147476 dated 11.08.1994	137173 dated 19.08.1994	79623.000 Kgs
2141659 dated 27.04.1994	134131 dated 29.04.1994	74439.770 Kgs

2.4.4 In terms of the Quantity Based Advance Licence (DEEC Scheme of Exim Policy 1992-97) the exporter of Polyester Dyed/Printed Fabrics was entitled for duty free import of 1.1 Kgs of PFY/POY as against per Kg POY/PFY contained in export of Polvester Fabric.

2.4.5 M/s P.A. International and M/s Sharan Exports, both had declared and got endorsed in the Quantity Based Advance Licence(s) issued to them, support manufacturer of Polyester Fabric for export as M/s Hind Silk Mills, Ankleshwar.

2.5.1 M/s P.A. International and M/s Sharan Exports had filed following Shipping Bills at Customs House Kandla for export of Polyester Dyed/Printed Fabrics, under Quantity Based Advance Licence (DEEC Scheme of Exim Policy 1992-97) based on above mentioned applications.

M/s PA International			
Shipping Bill Nos. Date	Description of goods exported	Actual Quantity exported NET/GROSS	Value declared
F-5101	Dyed Blended Polyester Viscose Fabrics	7007.5	1525200.50
30.03.1994		7414.4	
F-5102	Dyed Blended Polyester Viscose Fabrics	9186.9	2791996.60
30.03.1994		9968.5	
F-5103	Dyed/Printed Fabrics of 100% Polyester Textured Filament yarn	1350.4	515648.00
30.03.1994		1733.3	
F-5104	Dyed/Printed Fabrics of 100% Polyester Textured Filament yarn	2588.5	995859.75
30.03.1994		3214.9	
F-5105	Dyed/Printed Fabrics of 100% Polyester Textured Filament yarn	3753.5	2296124.00
30.03.1994		4975.7	
Total		23886.8	8124828.85
		27306.8	

M/s Sharan Export			
Shipping Bill Nos. & date	Description of goods exported	Actual Quantity exported NET/GROSS	Vlaue declared
F-5106	Dyed Blended Polyester Fabrics	7042.20	2505882
30.03.1994		8673.50	
F-5107	Dyed Blended Polyester Fabrics	916.30	968827
30.03.1994		1275.40	
F-5108	Dyed Blended Polyester Fabrics	2153.80	497743
30.03.1994		2764.30	
F-5109	Dyed Blended Polyester Fabrics	388.80	145586
30.03.1994		478.70	
F-5114	Dyed Blended Polyester Fabrics	1974.20	479904
30.03.1994		2462.30	
F-5115	Dyed Blended Polyester Fabrics	7396.50	1706202
30.03.1994		8907.50	
F-5116	Dyed Blended Polyester Fabrics	2260.60	515783
30.03.1994		2693.60	
F-5117	Dyed Blended Polyester Fabrics	6192.50	3072716
30.03.1994		7193.50	
Total		28324.9	9892643
		34448.8	

2.5.2 The documentation of above export shipment, were handled by CHA viz. M/s Shree Radhakrishna Shipping Pvt. Limited (hereinafter referred to M/s SRSPL) and shipment were made through Shipping Agent M/s

Transworld Shipping Services (I) Pvt. Ltd. (hereinafter referred to as M/s Transworld)

2.5.3 Shri Deepak Bajaj, played active role in these shipments of export of Polyester Dyed/Printed Fabrics made by M/s PA International and M/s Sharan Export, as these export shipments were done simultaneously, with other export of M/s DEE GEE Export and M/s Orient Exorts. Shri Deepak Bajaj came to Kandla/Gandhidham and prepared 17 Shipping Bills in their own electronic typewriter. Out of which 8 Shipping Bills were pertains to M/s Sharan Exports, 5 Shipping Bills were pertains to M/s PA International, One Shipping Bill was pertains to M/s Orient Export and 3 Shipping Bills were pertains to M/s Dee Gee Exports and after preparation of these seventeen Shipping Bills, alongwith other documents were handed over to the personnel of CHA, who in turn presented the same before the Customs Authority at Custom House, Kandla for noting and these Shipping were allotted Shipping Bill Nos. from 5101 to 5117 all dated 30.03.1994, wherein Shipping Bills Nos. 5101, 5102, 5103, 5104 and 5105 all dated 30.03.1994 were pertains to M/s PA International and Shipping Bills Nos. 5106, 5107, 5108, 5109, 5114, 5115, 5116 and 5117 all dated 30.03.1994 pertains to M/s Sharan Exports. These Shipping Bills were got passed from the competent authority of the Customs, Custom House, Kandla and the export goods viz. Polyester Dyed/Printed Fabrics in bails were presented for examination by the Customs officials where the details of examination of goods were recorded in the dock examination register.

2.5.4 The personnel of CHA booked container through M/s Transworld and stuffed these export goods in container and obtained Mate's Receipt as well as Bill of Lading, wherein the original quantity of export was mentioned. The export goods under five and eight Shipping Bills were granted Let Export Order by the Customs authority in respect of export of M/s P.A. International and M/s Sharan Exports, respectively.

2.5.5 The personnel of CHA returned original & duplicated copies of shipping bills to the Customs authority and triplicate copy of Shipping Bills were given to Shri Deepak Bajaj.

2.5.6 After clearance and order for Let Export, by the Customs, Shri Deepak Bajaj, by their electronic typewriter, altered the weight of export goods in EP Copies of shipping Bills by inserting one figure left side to the weight figure mentioned in Shipping Bills as detailed below:

M/s PA International		
Shipping Bill Nos. Date	Actual Quantity exported NET/GROSS	Quantity as per Manipulated Shipping Bills NET/GROSS
F-5101	7007.5	27007.5
30.03.1994	7414.4	27414.4
F-5102	9186.9	49186.9
30.03.1994	9968.5	49968.5
F-5103	1350.4	11350.4
30.03.1994	1733.3	11733.3
F-5104	2588.5	12588.5
30.03.1994	3214.9	13214.9
F-5105	3753.5	43753.5
30.03.1994	4975.7	44975.7
Total	23886.8	143884.8
	27306.8	147306.8

M/s Sharan Export		
Shipping Bill Nos. & date	Actual Quantity exported NET/GROSS	Quantity as per Manipulated Shipping Bills NET/GROSS
F-5106	7042.20	47042.2
30.03.1994	8673.50	48673.5
F-5107	916.30	916.3
30.03.1994	1275.40	1275.4
F-5108	2153.80	12153.8
30.03.1994	2764.30	12764.3
F-5109	388.80	2388.8
30.03.1994	478.70	2478.7
F-5114	1974.20	11974.2
30.03.1994	2462.30	12462.3
F-5115	7396.50	27396.5
30.03.1994	8907.50	28907.5
F-5116	2260.60	12260.6
30.03.1994	2693.60	12693.6
F-5117	6192.50	26192.5
30.03.1994	7193.50	27193.5
Total	28324.9	140324.9
	34448.8	146448.8

2.5.7 Shri Deepak Bajaj and Ashok Rajani again visited Kandla in the first week of May 1994 and presented DEEC Book Part F of export part, which includes DEEC Book Nos. 122530 and 122532 pertaining to Quantity Based Advance Licence Nos. 0322457, 0322459 of Sharan Export and DEEC Book No 134131 pertaining to Quantity Based Advance Licence No. 2141659 of M/s PA International, for endorsement along with triplicate copies of Shipping Bills showing enhanced figures of weight and got the DEEC book part F endorsed and audited by Customs. DEEC Book No. 137173 pertaining to Quantity Based Advance Licence No. 2147476 of PA International was got endorsed and audited by Customs Authority, Kandla, subsequently.

2.5.8 The above audited DEEC Books and manipulated triplicate (E.P.) copies of Shipping Bills along with Bank Realization Certificate(BRC) of exports were presented by M/s P.A. International and M/s Sharan Exports before the Joint DGFT, Mumbai, in terms of Para 118(a) read with Para 126(ii) of the Hand Book of Procedure of Exim Policy 1992-97 in order to show fulfillment of export obligations against the licence(s) and thereby fraudulently obtained the waiver of Bond/BG/LUT conditions as well as the endorsement of transferability of the licence(s) under para 126 of EXIM Policy 1992-97.

2.5.9 On being permitted transferability of Quantity Based Advance Licence(s), M/s P.A. International and M/s Sharan Exports got transferred the said licence(s) to M/s Santosh Textiles and Blend Syntex, from the Joint DGFT, Mumbai, as under:

Advance Licence No & Date	DEEC Book No.	Quantity of licence	Original Licence Holder	Licence Transferred to M/s
0322457 dated 29.03.1994	122530 dated 29.03.1994	68751.200 Kgs	Sharan Export	Santosh Textiles
0322459 dated 29.03.1994	122532 dated 29.03.1994	81297.660 Kgs	Sharan Export	Santosh Textiles
2147476 dated 11.08.1994	137173 dated 19.08.1994	79623.000 Kgs	P A International	Blend Syntex
2141659 dated 27.04.1994	134131 dated 29.04.1994	74439.770 Kgs	PA International	Blend Syntex

2.5.10 M/s Blend Syntex and M/s Santosh Textile have imported POY/PFY, duty free, under above said Quantity Based Advance Licence(s), got transferred from M/s P.A. International and M/s Sharan Exports, under DEEC Scheme of the EXIM Policy 1992-97, as detailed below:

M/s Santosh Textiles								
Advance Licence No & Date	DEEC Book No. & Date	Quantity of licence	Bill of Entry No.	Date	Description of goods	Quantity	Ass Value	Duty forgone
322457 dated 29.3.94	122530 dated 29.03.94	68751.2 Kgs	10498	20.10.94	PFY/POY 225/48F	5249.04	259258	463897
			1462	05.12.94	PFY/POY 125/D/1 15D	7403.7	312833	559759
			3635	28.10.94	PFY/POY 123D	56098.46	2216631	3966273
						68751.2	2788722	4989929

M/s Santosh Textiles								
Advance Licence No & Date	DEEC Book No. & Date	Quantity of licence	Bill of Entry No.	Date	Description of goods	Quantity	Ass Value	Duty forgone
322459 dated 29.3.94	122532 dated 29.03.94	81297.66 Kgs	3705	11.11.94	PFY/POY 125D	43200	2106182	3768645
			1462	05.12.94	PFY/POY 125D	38097.66	1609765	2880393
						81297.66	3715947	6649038

M/s. Blend Syntex								
Advance Licence No & Date	DEEC Book No. & Date	Quantity of licence	Bill of Entry No.	Date	Description of goods	Quantity	Ass Value	Duty forgone
2147476 dated 11.8.94	137173 dated 19.08.94	79623 Kgs	356	07.11.94	POY 80 D/36F	41760	1729914	3095378
			355	07.11.94	POY 80 D/36F	29168.23	1208298	2162038
			354	07.11.94	PFY 80D/34F	8694.77	304769	545331
								79623

M/s. Blend Syntex								
Advance Licence No & Date	DEEC Book No. & Date	Quantity of licence	Bill of Entry No.	Date	Description of goods	Quantity	Ass Value	Duty forgone
2141659 dated 27.4.94	134131 dated 29.04.94	74439.77 Kgs	10884	30.08.94	POF/POY	74439.77	2881889	5178152
			10886	30.08.94	POF/POY			

3.1 Based on information received by DRI to the effect that the Shipping Bills were filed in the names of M/s P.A. International and M/s Sharan Exports for export of Dyed/Printed polyester fabrics from Kandla and after Let Export by Customs shipment, the weigh of export cargo were enhanced so as to show export obligation under Quantity Based Advance Licences DEEC scheme (Exim Policy 1992-97) and consequently, to import of raw material for larger quantities of input. Clearing work of M/s P.A. International and M/s Sharan Exports for export of Dyed/Printed polyester fabrics from Kandla had been handled by M/s Sri Radhakrishna Shipping (P) Ltd.(CHA).

3.2 Shri Ashok Rajani, Shri Rajkumar Hasija (Representative of the exporters), Shri Deepak Bajaj, Shri Rajiv Kumar Bajaj, personnel of the CHA connected with these shipments appeared before DRI officers and their statements were recorded under Section 108 of the Customs Act, 1962, on various dates. Statements under Section 108 of the Customs Act, 1962 were also recorded from the persons concerned with shipping lines. The exporter as well as personnel of CHA have categorically admitted the above modus operandi for export of goods and enhancement of weight in Export Promotion Copy of Shipping Bills after clearances of Export. Shri Ashok Rajani, Shri Rajkkumar Hasija also admitted that and based on these manipulated Shipping Bills, they had shown fulfillment of export obligation and thus, they were able to get endorsement of transferability of Quantity Based Advance Licences and subsequently transferred the licences in favour of their connected firms viz. M/s Blend Syntex and M/s Santosh Textiles. Based on these Quantity Based Advance Licences, M/s Blend Syntex and M/s Santosh Textiles imported POY/PFY, duty free under DEEC Scheme under Exim Policy 1992-97. Thereby they evaded duty of customs by manipulating and altering weight in EP Copies of Shipping Bills and being released their mistake tendered voluntary payment toward custom duty.

3.3.1 On the basis of the information, the premises of the CHA were visited by DRI officers on 20.03.1995 and seized dockets of export shipments of four exporters including M/s P.A. International and M/s Sharan Exports, containing details of exports. Also premise of M/s P.A. International and M/s Sharan Exports were searched and certain documents were recovered.

3.3.2 Copies of Port Trust copies of the shipping bills along with EGM and Mate's receipt were also obtained from Kandla Port Trust in respect of these 13 Shipping Bills.

3.3.3 Copies of mate's receipts, Bills of Lading, Export Loading List, Freight manifest, container loading plan and announcement list were obtained from shipping agents M/s Transworlds.

3.3.4 The Original & Duplicate Shipping Bills pertaining to exports under 13 Shipments of M/s P.A. International and M/s Sharan Exports were called from the Custom House, Kandla, alongwith DEEC Register, however, it was reported by the Custom House Kandla that Original & Duplicate Shipping Bills and DEEC Register pertaining to exports under 13 Shipments of M/s P.A. International and M/s Sharan Exports were not available in Custom House, as found missing from Customs house Kandla, however, attested copies of Shipping Bills obtained from Kandla Port Trust and Dock Examination register having details of examination of these shipment were forwarded. These documents are showing actual quantity which were exported by M/s P.A. International and M/s Sharan Exports under 13 Shipments.

3.3.4 The personnel of CHA viz. Sunil Hemani, Shri Sabu George and Shri Srinivas Rajjapan in their various statements recorded under Section 108 of the Customs act, 1962, where they have categorically admitted that, after an investigation was initiated by the DRI, in respect of these exports, as per instruction of exporters and Shri Deepak Bajaj, they have removed original & Duplicate Shipping Bills and DEEC Register from the Customs House Kandla.

3.3.5 Shri Ashok Rajani and Shri Rajkuar Hasija submitted copies of applications which were made to the DGFT for obtaining Quantity Based Advance Licence(s). They also submitted set of documents present before Maritime Commissioner, Jamnagar as proof of export, including EP copies of Shipping Bills, Bill of Lading, AR4s, Central Excise Gate Passes and all these documents showing the manipulated weight of exported goods.

3.3.6 The Joint DGFT, Mumbai vide letter dated 21.04.1995 forwarded attested copies of two applications made by M/s PA Internationals along with other documents which were submitted by M/s PA International, such as Shipping Bills, which shows the manipulated weight of exported goods.

3.3.7 The Joint DGFT, Mumbai forwarded attested copies of two applications made by M/s Sharan Exports along with other documents which were submitted by M/s Sharan Exports, such as Shipping Bills, invoices and BRC, which shows the manipulated weight of exported goods.

3.3.8 Shri Deepak Bajaj has admitted under Section 108 of the Customs Act, 1962 that it was he who carried out this manipulation on the duplicate shipping bills, *inasmuch as*, in his statement dated 14.3.95, wherein he specifically confirmed that he alone was responsible for alterations of weight carried out on the Shipping Bills..

3.4.1 During investigation statement of Shri C K Modi director of M/s Hind Silk Mills, Ankleshwar was recorded under Section 108 of the Customs Act, 1962, wherein he categorically admitted that his unit was closed since 1993 and no activities of manufacturing was carried out since, 1993 and even prior to 1993 only twisting and doubling of yarn was carried out by them. NO fabric were manufactured by them ever. They never contacted for supporting manufacturer of polyester fabrics for M/s P.A. International and M/s Sharan Exports. On being asked, he has also reported the same facts to the Joint DGFT, Mumbai under letter.

3.4.2 During investigation, Shri Ashok Rajani admitted his guilt and regretted the mistake and voluntarily paid an amount of Rs. 80,00,000/- towards non paid customs duty payable by M/s Blend Syntex. Also, Shri Rajkumar Hasija admitted his guilt and regretted the mistake and voluntarily paid an amount of Rs. 60,00,000/- towards non paid customs duty payable by M/s Santosh Textile. The voluntary payment is also an admission of offence committed by them

3.5.1 On being reported the manipulation of export documents for fraudulently obtaining of Quantity Based Advance Licence by M/s P.A. International and M/s Sharan Exports to the Joint DGFT, Mumabi, separate Notices were issued by the Joint DGFT, Mumbai to M/s P.A. International and M/s Sharan Exports. After considering the representation submitted by M/s P.A. International and M/s Sharan Exports, the Joint DGFT, Mumbai cancelled the four Quantity Based Advance Licence under Rule 10 of the Foreign Trade (regulation) Rules, 1993, as under

Advance Licence No & Date	Original Licence Holder	Importer	Order No. & Date of DGFT for cancellation of Licence
0322457 dated 29.03.1994	Sharan Export	Santosh Textiles	F-3/58/95-96/ECA/BOM dated 30.10.1995

0322459 dated 29.03.1994	Sharan Export	Santosh Textiles	F-3/58/95-96/ECA/BOM dated 30.10.1995
2147476 dated 11.08.1994	P A International	Blend Syntec	F-3/53/95-96/ECA/Mumbai dated 20.10.1995
2141659 dated 27.04.1994	PA International	Blend Syntec	F-3/53/95-96/ECA/Mumbai dated 20.10.1995

3.5.2 On a perusal of the documents available on record, I find that in the documents recovered from CHA Dockets, documents furnished by Kandla Port Trust, Dock Examination Register of Customs House Kandla, Bill of Lading, EGM, Mate's Receipts showing correct/actual weight of exported goods. EP, whereas, Export promotion (EP) copies of Shipping bills provided by DGFT, Copies of Shipping Bills furnished by the Maritime Commissioner, Jamnagar showing manipulated weight of exported goods, *inasmuch as*, weight of export goods in these Shipping Bills were found altered by inserting one figure on left side of weight quantity. Based on these manipulated EP Copies of Shipping Bills, M/s P.A. International and M/s Sharan Exports were able to endorse the DEEC book of the Quantity Based Advance Licence(S). These manipulated/alterd EP Copies and endorsed DEEC Books, Shri Ashok Rajani, Shri Rajkkumar Hasija had shown fulfillment of export obligation, accordingly, got endorsement of transferability of Quantity Based Advance Licences and subsequently transferred the licences in favour of their connected firms viz. M/s Blend Syntex and M/s Santosh Textiles. Based on these Quantity Based Advance Licences, M/s Blend Syntex and M/s Santosh Textiles imported POY/PFY, duty free under DEEC Scheme under Exim Policy 1992-97. Thus, the import of POY/PFY were made under the Quantity Based Advance Licence Under DEEC Scheme of Exim Policy 1992-97 which were obtained and transferred by manipulating/altering weight in EP Copies of Shipping Bills.

3.6.1 The Hon'ble CESTAT has observed that entire case of the revenue is based on the copies of Mates Receipt dated 06.04.1994, copies of documents issued thereunder and copies of Port Trust Shipping Bills dated 30.03.1994 and Examination Register of Customs House Kandla. The impugned order ignored and do not make any appreciation in respect of RBI General Repatriation Form (GR Form) and Part "F" of the Advance Licence. The documents i.e. GR Form which after export submitted to the Custom Department and thereafter lying with the RBI would appear to be vital documents to bring home charges against the exporters / or to absolve them. There is no finding as such, about these documents. These documents have to be brought on record and a finding is to be arrived at after hearing the submissions of the exporters.

3.6.2 In this regard, all sincere efforts were made to bring these documents on records and what are available were furnished to the Noticees of the present proceeding. With regard to GR Forms the copies of Shipping Bills marked as GR Forms were placed on record, which reflect the actual/correct quantity of goods exported under these 13 Shipments by M/s P.A. International and M/s Sharan Exports. Only the EP Copies of Shipping Bills which were submitted to Joint DGFT, Mumbai for the purpose to show fulfillment of export obligation under the above discussed four Quantity Based Advance Licences were found manipulated/alterd by enhancing weight of exported goods by inserting one figure at left side of the weight figure in EP copies of Shipping Bills. The Noticees of the present proceeding have already

approached the RBI and got the copies of GR Forms and are available with them.

3.6.3 With regard to Part F of the DEEC Books, the available copies of these documents were placed on records as well as provided to the Noticees of the present proceedings. It was claimed that Part F of these DEEC Books are blank which is not possible. The Noticees also claimed that there are entries of the export endorsed in Part-F of the DEEC Book and they have submitted these documents before Hon'ble CESTAT at the time of preferring appeal. The copies of set of appeal alongwith enclosed documents were called for by DRI, from the CESTAT and it is reported that in these documents Part-F of the DEEC Books are not available. Thus, the Noticees of the present proceeding have mis-lead the adjudicating authority. The Noticees of the present proceeding have repeatedly, submitting to the adjudicating authority, to ask DRI to bring these documents on record and provide them so as to submit defence reply. As the DRI exhausted their efforts and shown inability to provide these documents. At this stage, I find that the copy of Part-F of DEEC Book is mainly remains under custody of the Advance Licence holder and possibility of misplacing these documents intentionally by the noticees in the present proceeding cannot be ruled out, in light of admissions/confirmations of the CHA Personnel that Original/Duplicate Shipping Bills and DEEC register were removed from Custom House Kandla as directed by the exporters and Shri Deepak Bajaj. It is also worth to note here, while documents provided by the Joint DGFT, Mumbai, they submitted all the documents related to these four Quantity Based Advance Licence, which include application of Advance Licences, Copies of Shipping Bills Submitted by the Advance Licence Holders, Invoices, etc. but the Part-F of the DEEC Books were not provided. Non availability of the same with DGFT also cannot be ruled out.

3.6.4 Therefore, it was requested to these Noticees of present proceedings, that since these documents are already available with them, they may provide the same to place on record, in terms of the direction of the Hon'ble CESTAT. The requests were made to these Noticees of the present proceeding all the times when the case was posted for personal hearing. However, no Noticee thereafter, appeared and provided these documents. Thus, I find that the Noticees are deliberately not providing these documents and asking to be produced by the DRI, as they know that these documents are not available at any place.

3.6.5 In light of these facts and circumstances, I find that Hon'ble CESTAT have observed that entire case of the revenue is based on the copies of Mates Receipt dated 06.04.1994, copies of documents issued thereunder and copies of Port Trust Shipping Bills dated 30.03.1994 and Examination Register of Customs House Kandla, however, the EP Copies of Shipping Bills provided by the Joint DGFT, Mumbai and the EP Copies of Shipping Bills provided by the Maritime Commissioner, Jamnagar, to whom the Noticee themselves submitted these documents were also taken into consideration.

3.6.6 Though, it is direction of the Hon'ble CESTAT that RBI General Repatriation Form (GR Form) and Part "F" of the Advance Licence to bring on record and a finding is to be arrived at after hearing the submissions of the exporters. All efforts were made to place these documents on records, as possible, supra, but no Noticee of the present proceeding appeared for hearing

when the case is posted for hearing for four times. The final order of Hon'ble CESTAT was passed in 2007 and about more than 10 years have passed. It is required to arrive at decision to dispose off the matter, based on material available on record.

3.6.7 What is required to be proved in this type of cases has been examined in number of cases by various judicial/appellate forum. Some landmark decisions are quoted herein below which are squarely applicable to the case on hand.

3.6.7.1 *In the case of Collector of Customs, Madras and Others Vs D. Bhoormull reported at 1983 (13) ELT 1546 (S.C.) The Apex Court has held that this is a fundamental rule relating to proof in all criminal or quasi-criminal proceedings, where there is no statutory provision to the contrary. But in appreciating its scope and the nature of the onus cast by it, we must pay due regard to other kindred principles, no less fundamental, or universal application. One of them is that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and as Prof. Brett felicitously puts it-"all exactness is a fake". El Dorado of absolute Proof being unattainable, the law, accepts for it, probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus legal proof is not necessarily perfect proof often it is nothing more than a prudent man's estimate as to the probabilities of the case.*

3.6.7.2 *Hon'ble Tribunal in the case of Chandan Steel Ltd. Vs Commissioner Central Excise & S.T., Vapi reported at 2014 (312) ELT 479 (Tri.-Ahmd.) has held that with regard to standard of proof in the departmental proceedings, revenue need not to establish an offence case with mathematical precision as required in a criminal case, instead preponderance of probability is also sufficient in Revenue's case.*

3.6.7.3 *Further Hon'ble Tribunal in the case of Carpenter Classic Exim Pvt. Ltd. Vs Commissioner of Customs, Bangalore reported at 2006 (200) ELT 593 (Tri.-Bang.) has also held that in a quasi-judicial like this, we are concerned more with a preponderance of probability rather than proof beyond reasonable doubt, as held by various judicial fora.*

3.6.7.4 *Hon'ble Tribunal in the case of Lark Chemicals Pvt. Ltd. Vs Commissioner of Customs., CSI Airport, Mumbai reported at 2014 (301) ELT 138 (Tri.-Mumbai) has also held that It is a settled law that admitted facts not be proved and no further evidence required.*

3.6.7 In view of the above, I find that documentary as well as oral evidence available in the preset proceeding are sufficient to lead the case in favour of revenue.

3.7.1 In view of the confessional statements, I find that it is established that the Shri Ashok Rajani, Shri Rajkumar Hasija with assistance of Shri Deepak Bajaj, the personnel of CHA and other connected persons have admittedly confirmed that they have manipulated of weight in EP copies of Shipping Bills with an intention to obtain import of higher quantity of raw material, duty free under Quantity Based Advance Licence, which they have imported and evaded duty of customs, in the manner as discussed hereinabove. These confessional statements recorded under Section 108 of the Customs Act, are in the nature of substantive evidence, and culpability of the

concerned persons can be based on the same. The scope of this provisions of law have been the subject matter of a large number of authoritative pronouncements of the Supreme Court and the High Courts, as under:

3.7.2 It has been held by the Supreme Court as follows in the judgment in *BhanaKhalpa Bhai Patel v. Asstt. Collector of Customs, Bulsar - 1997 (96) E.L.T. 211 (S.C.)*

"7. An attempt was made to contest the admissibility of the said statements in evidence. It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence vide Ramesh Chandra v. State of West Bengal, AIR 1970 SC 940, and K.I. Pavunny v. Assistant Collector (HQ), Central Excise Collectorate, Cochin, 1997 (90) E.L.T. 241 (S.C.) = (1997) 3 SCC 721."

3.7.3 The Supreme Court has observed as follows in *Naresh J. Sukhwaniv. Union of India - 1995 Supp. (4) SCC 663 = AIR 1996 SC 5 = 1996 (83) E.L.T. 258*

"4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act. That material incriminates the petitioner inculpating him in contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention inasmuch as Mr. Dudani's statement clearly inculpates not only himself but also the petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of India. Therefore, we do not think that there is any illegality in the order of confiscation of foreign currency and imposition of penalty. There is no ground warranting reduction of fine."

3.7.4 A Constitution Bench of Apex Court of India in the matter of *Ramesh Chandra Mehta v. State of W.B. - (1969) 2 SCR 461 : AIR 1970 SC 940*, has held that

"the Customs Officers are entrusted with the powers specifically relating to the collection of customs duties and prevention of smuggling and for that purpose they are invested with the power to search any person on reasonable suspicion, to summon, X-ray the body of the person for detecting secreted goods, to arrest a person against whom a reasonable suspicion exists that he has been guilty of an offence under the Act, to obtain a search warrant from a Magistrate, to collect information by summoning persons to give evidence and produce documents and to adjudge confiscation. He may exercise these powers for preventing smuggling of goods dutiable or prohibited and for adjudging confiscation of those goods. For collecting evidence the Customs Officer is entitled to serve summons to produce a document or other thing or to give evidence and the person so summoned is bound to attend either in person or by an authorised agent, as such officer may direct, is bound to state the truth upon any subject respecting which he is examined or makes a statement and to produce such documents and other things as may be required. The power to arrest, the power to detain, the power to search or obtain a search warrant and the power to collect evidence are vested in the Customs Act. He is empowered to investigate into the infringement of the provisions of the Act primarily for the purpose of adjudicating forfeiture and penalty. He has no power to investigate into an offence triable by a Magistrate, nor has he the power to submit a report under Section 173 of the Code of Criminal Procedure (for short 'the Code'). He can only make a complaint in writing before a competent magistrate. The above law was laid down under the Sea Customs Act, the predecessor of the Act. The ratio therein equally applies to the powers exercised by the Customs Officer is not a police officer nor is he empowered to file charge-sheet under Section 173 of the Code though he conducts enquiry akin to an investigation under some of the provisions of the Code. His acts are in the nature of civil proceedings for collecting evidence to take further action to adjudicate the infringement of the Act and for imposition of penalty prescribed thereunder which would be self-evident from sub-section (4) of Section 108."

3.7.5 In the present proceeding, the case is also based on confessional statements of key persons recorded under Section 108 of the Customs Act, 1962 corroborated by documentary evidences. In these statements recorded under Section 108 of the Customs Act, 1962 there are clear and repeated admissions, which are reconfirmed by Co-Noticeses. I find that it is settled law that statements made to an officer of Customs are admissible in evidence under Section 108 of the Customs Act, 1962. Apex Court of India in their judgment in case of *Gulam Hussain Shaikh Chougule vs. S. Reynolds, Supdt. of Customs, Marmgoa*, reported in 2001 (134) ELT (SC), after quoting from several other judgments, has held that such statements are admissible in evidence. Further the admitted facts need not to be proved as held by Hon'ble High Court of Madras in the case of *Govindasamy Raghupati* reported in 1998 (98) ELT 50 (Mad.). Hon'ble Supreme Court in the case of *Surjeet Singh Chhabra Vs UOI* reported in 1997 (89) ELT 646 (SC) has also pronounced that confession statement made before Customs officer under Section 108 of the Customs Act, 1962 though retracted is an admission and binding since Customs Officers are not Police Officers. Also in case of *Gulam Hussain Shaikh Chougule Vs S. Reynolds, Supdt. Of Customs, Marmgoa* reported in 2001 (134) ELT 3 (SC) relying on various judgments of Apex Court of reported at AIR 1972 SC 1224, 2000 (120) ELT 280 (S.C.); 1999 (110) ELT 324 (S.C.); 1992 (60) ELT 24 (S.C.); 1999 (110) ELT 309 (S.C.); 1983 (13) ELT 1443 (S.C.); 1983 (13) ELT 1590 (S.C.) it has further held that Confessional statement recorded by Customs officer under Section 108 of Customs Act, 1962 not required to follow safeguards provided under Section 164 of the Code of Criminal Procedure, 1973.

3.7.6 In view of the above, the confessional statements under the present proceeding are material piece of evidence to establish the case for Revenue. Apex Court in the case of *K.I. Pavunny vs. AC Chochin* reported at 1970 (90) ELT 241 (SC) has held that when the material evidence establish fraud against the revenue, white collar crimes committed under absolute secrecy shall not be exonerated from penal consequence of law. Enactment like Customs act, 1962 are not merely taxing statute but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measure is to prevent deceptive of undue claim of fiscal incentives. Preponderance of probability comes to rescue of Revenue and revenue is not required to prove its case by mathematical precision. The Supreme Court has observed in *Kanhaiyalal v. Union of India v. Union of India* (2008) 4 SCC 668, that specialized enactments like Narcotic Drugs and Psychotropic Substances Act, and the Customs Act, are meant to deal with the special situations and circumstances.

3.7.7 I find that the observation made by Hon'ble Supreme Court in the case of *State of Gujarat Vs Mohanlal Jitamalji Porwal and Anr.* reported in AIR 1987 SC 1321 is squarely applicable in the present case, *inasmuch as*, Hon'ble Apex court observed as under:

"The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarter which view white collar crime with a permissive eye unmindful of the damage done to the National Economy and National Interest "

4.1 I find that Customs Notification No.204/92 pertaining to DEEC Scheme, has been expressly stated that importer/licence holder shall make the export in terms of the said notification. It casts an important liability on the licence holder to make export specified in the licence/DEEC Book. The SCN and the facts of the case clearly bring out the discrepancies regarding the extent to which manipulation in weight of the export products was resorted to.

4.2 These are undisputed facts and are not refuted. It implies that the quantity of export as inflated in the E.P. of the Shipping Bills had not been actually made although this quantity of export was shown to have been exported as an evidence for completion of export obligation.

4.3 The exports were under DEEC Scheme and entitlement of input imports are with reference to actual contents of inputs in the resultant export product as per formula given in standard input output norms (SION) in the Handbook of Procedure of the EXIM Policy 1992-97. Therefore, in case the contents are, overstated, corresponding import of inputs against such inflated quantity would be excessive and ineligible and any import made against the excess inputs contents would be in violation of conditions of customs notification No.204/92 dated 19.5.92. As this violation has taken place at the time of exportation, hence it attracts the provisions contained in Section 113(d) of the Customs Act, 1962, the export being contrary to a prohibition imposed by or under the Customs Act, 1962 or any other law for the time being in force.

4.4 The exporters have also violated the Rule 14(2) of the Foreign Trade (Regulation) Rules 1993 as they have manipulated the weight in the shipping bills in order to show higher exports and have mis-declared the description of the goods and inputs used. As such, they have adopted fraudulent practices for obtaining the Advance Licences and exporting the goods. They have also contravened the provisions of section 18(1)(a) of Foreign Exchange Regulation Act, 1973, as the values per unit of weight declared on the EP Copies and the original copy of the shipping bill are different and, therefore the values represented on such copies do not represent the correct value of the goods. Further, the value shown by the exporter are with reference to the goods and description by the exporter which are mis-declared. Hence, I find that the value declared did not represent the correct value of the goods actually exported.

4.5 Further as the exporters have mis-declared contents of the export of goods i.e. weight on the EP copies of shipping bills, I find that they have violated the provisions of Section 50(2) of the Customs Act, 1962 which provides that the exporter of any goods while presenting a shipping bill shall at the foot thereof make or subscribe to a declaration as to the truth of its contents.

4.6 In view of the above, I hold that the goods exported under 13 various shipping bills, *inasmuch as*, 5 Shipments pertains to M/s PA International and 8 Shipments pertains to M/s Sharan Exports, are liable for confiscation under section 113(d) for contravention of Rule 11 and 14(2) of Foreign Trade (Regulation) Rules 1993 read with Sec.11(1) of Foreign Trade (Development & Regulation) Act, 1992, Section 18(1)(a) and 67 of Foreign

Exchange Regulation Act (FERA) 1973 and Section 11 and Section 50(2) of the Customs Act, 1962.

4.7 The exporting firms M/s. PA International M/s. Sharan Exports and the persons connected with those exporting firms, namely Shri Ashok Rajani and Shri Raj Kumar Hasija have committed the fraudulent acts of alternation of the EP copies of Shipping Bills without any authorisation from the concerned customs authorities and such fabricated documents have been presented to the DGFT for getting the advance licences for importing duty free input materials. In view of these alternations, in the EP Copies of Shipping Bills, they have rendered the goods liable to confiscation under Section 113(d) of the Customs Act and, thereby, rendered themselves liable to penalty under Section 114 of the Customs Act, 1962. Moreover, by unauthorised alternations in the EP copies of the shipping bills, they have violated the provisions of section 149 of the Customs Act, on account of which they are also liable to penalty under Section 117 of the Customs Act. The EP copies of the shipping bills tampered with, were presented to the DGFT, on the basis of which import licences were obtained for duty free import of input materials and imports also have taken place against these licences, resulting in evasion of customs duty. Hence, the exporter's action committing fraud has to be viewed with the seriousness while determining the quantum of penalty.

5.1 With regard to imports of duty free goods viz. POY/PFY against the Quantity Based Advance Licence under DEEC Scheme of Exim Policy 1992-97, which were obtained based on manipulated altered EP copies of Shipping Bills of export of Polyester Dyed/Printed Fabrics under 13 shipments, as discussed hereinabove. Since these Quantity Based Advance Licence(s) have been obtained fraudulently, these advance licence(s) were cancelled, by the Joint DGFT, Mumbai under Rule 10 of the Foreign Trade (Regulations) Rules 1992. Hence demand for duty have been proposed to be confirmed by invoking the proviso to Section 28(i) of the Customs Act, 1962 and also proposing mandatory penal liability under section 114A of the Customs Act, 1962, apart from demanding interest on the duty evaded under Section 28AB of the Customs Act, 1962. The imports against these advance licences, which have been obtained fraudulently, were effected through the port of Nhava Sheva and Mumbai, are proposed liability to confiscation under Section 111(d) of the Customs Act, 1962 and also proposing that the persons concerned with those imports are liable to penalty under Section 112(a)/114A of the Customs Act, 1962.

5.2 As regards the imports, I find that the exporters knowingly and intentionally submitted forged/manipulated E.P. Copies of the Shipping Bill to the Joint DGFT's office in order to show fulfillment of export obligations against the licences and thereby fraudulently obtained the waiver of Bond/BG/LUT condition as well as the endorsement of transferability of the licences under Para 126 of EXIM Policy 1992-97, with ulterior motive of evading customs duty on imports against the said licences under the DEEC scheme. These Quantity Based Advance Licence(s) were transferred to their connected firms M/s Santosh Textiles and M/s Blend Sytex, who utilised for duty free imports under DEEC Scheme in the name of their own importing firms. I further find from the records of the case that the Quantity Based Advance Licences have been cancelled ab initio by the office of the respective Joint DGFT, Mumbai under Rule 10 of Foreign Trade (Regulation) Rules, 1993

on the ground that those licences have been obtained by adopting corrupt practices and fraudulent means. Therefore, the duty free imports made against these licences are to be treated as having been made without any licence and hence the benefit of exemption availed under Customs notifications No. 204/1992-CUs *ibid*, pertaining to DEEC Scheme will not be available. The customs duty which has not been paid in respect of all the imports made against these Quantity Based Advance Licences obtained fraudulently, therefore, becomes recoverable under the proviso to Section 28 of the Customs Act, 1962, as detailed below. I find it a fit case for invoking the provision of extended period as there is a deliberate mis statement and suppression of facts regarding the un authorised manipulation/alteration of the quantity of goods in the EP Copies of Shipping Bills and also fraudulent claim of fulfillment of export obligation against the Quantity Based Advance Licences for effecting duty free imports.

SCN No. Date	Advance Licence No & Date	Importer	Quantity	Ass Value	Duty Recoverable
S/16-Gen-DEEC-27C/97 Gr. 7 JCH dated March 97	322457 dated 29.3.1994	Santosh Textiles	56098.5	2216631	3966273
S/10-30/97 ADJ dated 13.12.97	322459/ 322457 dated 29.3.1994	Santosh Textiles	93950.4	4288038	7672694
S/16-Gen-DEEC-27/97 GR.7-JCH dated March 97	2147476 dated 11.08.1994	Blend Syntec	79623	3242981	5802747
S/10- 29/97 ADJ dated 13.12.97	2141659 dated 27.04.1994	Blend Syntec	74439.8	2881889	5178152

5.3 I further find that the condition stipulated in the Notification No. 204/92 have been violated. Clause(i) of the said Notification stipulated that the material imported should be covered by the Quantity Based Advance Licence. As the Quantity Based Advance Licences were cancelled ab-initio and hence the imports made against the licences are to be treated as having been made without the cover of Quantity Based Advance Licence. Similarly, the condition stipulated in clause (v) of the notification, which among others stipulates that the export obligation is required to be discharged within the period specified, is violated as the export obligation is shown to have been fulfilled by fraudulent means, as discussed hereinabove, by manipulating the export documents. I, therefore, hold that the goods imported against these Quantity Based Advance Licences claiming the benefit of the said notification are not eligible for the exemption provided therein. Section 111(o) of the Customs Act, 1962 stipulates that if any goods exempted subject to any condition from duty or any prohibition in any respect of the export thereof under the Customs Act, 1962 or any other law in force, in respect of which the condition is not complied unless the non-observance of the condition was sanctioned by the proper officer such goods are liable for confiscation. I find that the conditions of the Notification No. 204/92 Customs dated 19.5.1992 have either not been satisfied or have been sought to be fulfilled fraudulently. Therefore I hold duty free imported goods, *supra*, liable to confiscation under Section 111(o) of the Customs Act, 1962.

5.4. In view of the aforesaid position, it is evident that the beneficiary of the alleged fraud were the exporters who had obtained the licence and also imported the goods against the fraudulently obtained licences. On account of this, extended period of demand under Section 28 of the Customs Act, 1962, is

applicable to them and the duty demands for the amounts of duty involved in duty free imports against these Quantity Based Advance Licence, are required to be confirmed. Since the imports have taken place against fraudulently obtained Quantity Based Advance Licences, which have been cancelled ab initio, they are also held liable for confiscation under Section 111(o) of the Customs Act, 1962. Consequently, the importers are also liable to penalty under Section 112/114A of Customs Act, 1962. They are also held liable to pay the interest on the aforesaid duty amounts confirmed under Section 28 of the Customs Act, 1962, under at the appropriate rates under provisions of Section 28 AB of the Customs act, 1962.

5.5 The exporting firms M/s. PA International M/s. Sharan Exports and the persons connected with those exporting firms, namely Shri Ashok Rajani and Shri Raj Kumar Hasija have committed the fraudulent acts of alternation of the EP copies of Shipping Bills without any authorization from the concerned customs authorities and such fabricated documents have been presented to the DGFT for getting the advance licences for importing duty free input materials. Further, connecting firms of the exporters, importing firms M/s Santosh Textiles and Blend Sytex have imported duty free goods against these Quantity Based Advance Licences under DEEC Scheme of Exim Policy 1992-97 and evaded duty of customs, as discussed hereinabove. Therefore, M/s. PA International M/s. Sharan Exports and the persons connected with those exporting firms, namely Shri Ashok Rajani and Shri Raj Kumar Hasija rendered themselves liable for penalty under Section 112(a) of the Customs Act, 1962, and importing firms M/s Santosh Textiles and Blend Sytex rendered themselves liable for penalty under Section 114A of the Customs act, 1962.

6.0 Since the exported goods as well as imported goods were not placed under seizure and also not physically available for confiscation, I refrain from imposition of redemption fine as the goods are not physically available for confiscation nor released under any bond and in view of the settled legal position in the case of Shiv Kripa Ispat Pvt. Ltd. vs CCE Nasik reported at 2009 (235) ELT 623 (Tri.-LB) wherein it held that redemption fine could not be imposed in the absence of the goods which had already been released by the Customs authorities to the importer without execution of any bond/undertaking by the latter. Conversely, where the goods are released under bond/undertaking, they could be confiscated as if the goods were available and consequently redemption fine in lieu of confiscation could also be imposed. The issue has been settled in the case of Commissioner of Customs, Amritsar Vs. Raja Impex (P) Ltd. (2008TIOL280HCP& HCUS) when the High Court, after considering the Apex Court's judgment in Weston Components case (2002TIOL176SCCUS) held as above. A similar view taken by the Tribunal in the case of Chinku Exports also stands upheld by the Supreme Court 2005 (184) ELT A36 (SC) as Revenue appeal was dismissed.

7.0 Mrs. Janki Rajani submitted that the proprietor of M/s Blend Sytex has expired on 01.05.1998. I find that in this case, before the death of the proprietor of M/s Blend Syntex on 01.05.1998, the Show Cause Notice was issued and consequent decision thereof with regard to revenue is to be complied by legal heir as the business property is going in their hands. Reliance is placed on citation of Jala Prints Vs Commissioner of Central Excise, Surat-I 2009 (245) ELT 203(T). Further in the case of Bhagwan Devi

Banka and Others vs. R.B. Sinha and Others 1986 (26) ELT 890 (PAT) Hon'ble High Court has held that Duty recoverable from legal representative of deceased assessee to the extent of property of deceased coming to hands of legal representative. Also in the case of Deepak Kumar Jain Vs Commissioner of Central Excise, Jaipur-I reported in 2009 (240) ELT 221, wherein Hon'ble Tribunal held and allowed continuance of proceedings after death of proprietor of applicant firm.

7.0 In view of the above I pass the following order:

ORDER

Part-I SCN No. S/10-3/97 SIIB Adj. Dtd.26.5.97

(i) I hold 28323.40 kgs. of goods exported by M/s Sharan Export under Shipping Bills No.F-5114, F-5115, F-5116, F-5117, F-5106, F-5107, F-5108, and F-5109 all dated 30.03.94 valued at Rs.98,92,643/- (Rupees Ninety Eight Lakhs Ninety Two Thousand Six Hundred And Forty Three Only) liable for confiscation under Section 113(d) of the Customs Act, 1962. Since the said goods are not available, I refrain from imposing redemption fine in lieu of confiscation.

(ii) I impose penalty of Rs. 10,00,000/- (Rupees Ten Lakhs Only) on M/s. Sharan Exports under Section 114 of the Customs Act, 1962:

(iii) I impose penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on M/s. Sharan Exports under Section 117 of the Customs Act, 1962:

(iv) I impose penalty of Rs. 2,00,000/- (Rupees Two Lakhs Only) on Shri Rajkumar Hasija under Section 114 of the Customs Act, 1962:

(v) I impose penalty of Rs. 50,000/- (Rupees Fifty Thousand Only) on Shri Rajkumar Hasija under Section 117 of the Customs Act, 1962:

(vi) Order in respect of remaining Noticees to this Show Cause Notice, as passed vide Order-in-Original CAO No. 206 to 219/2002/CAC/CC/M.D. dated 17.05.2002, remain unchanged.

Part-II SCN No.S/10-4/97 SIIB Adj. Dtd.26.5.97

(i) I hold the 23886.80 kgs. of goods exported by M/s P A International under Shipping Bills Numbers F-5103, 5104, 5105, 5101, 5102 all dated 30.3.94 valued at Rs. 81,24,828/- (Rupees Eighty One Lakhs Twenty Four Thousand Eight Hundred And Twenty Eight Only) liable for confiscation under Section 113(d) of the Customs Act, 1962. Since the said goods are not available, I refrain from imposing redemption fine in lieu of confiscation.

(ii) I impose penalty of Rs. 8,00,000/- (Rupees Eight Lakhs Only) on M/s P A International under Section 114 of the Customs Act, 1962:

(iii) I impose penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on M/s P.A. International under Section 117 of the Customs Act, 1962:

(iv) I impose penalty of Rs. 2,00,000/- (Rupees Two Lakhs Only) on Shri Ashok Rajani under Section 114 of the Customs Act, 1962:

(v) I impose penalty of Rs. 50,000/- (Rupees Fifty Thousand Only) on Shri Ashok Rajani under Section 117 of the Customs Act, 1962:

(vi) Order in respect of remaining Noticees to this Show Cause Notice, as passed vide Order-in-Original CAO No. 206 to 219/2002/CAC/CC/M.D. dated 17.05.2002, remain unchanged.

Part-III SCN No.S/16-GEN-DEEC-27/97 Gr.7 JCH

(i) I hold the 79,023 kgs of the PFY/POY valued at Rs.32,42,981/- imported by Shri Ashok Rajani in the name of M/s. Blend Syntex and cleared against Advance Licence No.2147476 dated 11.8.94 at J N Port, Nhava Sheva under Bill of Entry No. 354, 355, 356 all dated 7.11.94 (IGM No.286/35, 286/33) liable for confiscation under Section 111(o) of the Customs Act, 1962. Since the said goods are not available, I refrain from imposing any redemption fine in lieu of confiscation.

(ii) I confirm and order to recover Customs Duty of Rs. 58,02,747/- (Rupees Fifty Eight Lakhs Two Thousand Seven Hundred And Forty Seven Only) from M/s. Blend Syntex under the proviso to Section 28(1) of the Customs Act, 1962, which should be paid forth with by M/s. Blend Syntex.

(iii) I order to charge and recover interest on the confirmed amount of Customs Duty under erstwhile Section 28 AB of the Customs Act, 1962, which should be paid for the with by M/s. Blend Syntex.

(iv) I impose penalty of Rs. 58,02,747/-plus an amount equivalent to interest payable on confirmed duty upon M/s. Blend Syntex under Section 114 A of the Customs Act, 1962.

(v) I impose penalty of Rs. 3,00,000/- (Rupees Three Lakhs only) upon M/s. Blend Syntex under Section 112(a) of the Customs Act, 1962.

(vi) I impose penalty of Rs. 15,00,000/- (Rupees Fifteen Lakhs only) upon M/s. P. A. International under Section 112(a) of the Customs Act, 1962.

(vii) I impose penalty of Rs. 2,00,000/- (Rupees Two Lakhs only) upon Shri Ashok Rajani under Section 112(a) of the Customs Act, 1962.

(viii) Order in respect of remaining Noticees to this Show Cause Notice, as passed vide Order-in-Original CAO No. 206 to 219/2002/CAC/CC/M.D. dated 17.05.2002, remain unchanged.

Part-IV SCN No.S/16-Gen-DEEC-27C/97 Gr.7 JCH dated March'97.

(i) I hold the 56098.46 Kgs PFY/POY valued at Rs. 22,16,631/- (Rupees Twenty Two Lakhs Sixteen Thousand Six Hundred Thirty One Only) imported by Shri Rajkumar Hasija in the name of M/s. Santosh Textiles and cleared from J N Port, Nhava Sheva against Advance Licence No. 322457 dated 29.03.1994 under Bills of Entry No. No. 3635 dated 28.10.94 (IGM No.160/64) liable for confiscation under section 111(o) of the Customs Act, 1962. Since the said goods are not available, I refrain from imposing any redemption fine in lieu of confiscation.

(ii) I confirm and order to recover Customs Duty of Rs. 39,66,273/- (Rupees Thirty Nine Lakhs Sixty Six Thousand Two Hundred And Seventy Three Only) from M/s. Santosh Textiles under Section 28(1) of the Customs Act, 1962, which should be paid forth with by M/s. Santosh Textiles.

(iii) I order to charge and recover interest on the confirmed amount of Customs Duty under erstwhile Section 28 AB of the Customs Act, 1962, which should be paid for the with by M/s. Santosh Textiles.

(iv) I impose penalty of Rs. 39,66,273/- plus an amount equivalent to interest payable on confirmed duty upon M/s. Santosh Textiles under Section 114 A of the Customs Act, 1962.

(v) I impose penalty of Rs. 2,00,000/- (Rupees Two Lakhs only) upon M/s. Santosh Textiles under Section 112(a) of the Customs Act, 1962.

(vi) I impose penalty of Rs. 10,00,000/- (Rupees Ten Lakhs Only) upon M/s. Sharan Export under Section 112(a) of the Customs Act, 1962.

(vii) I impose penalty of Rs. 2,00,000/- (Rupees Two Lakhs only) upon Shri Rajkumar Hasija under Section 112(a) of the Customs Act, 1962.

(viii) Order in respect of remaining Noticees to this Show Cause Notice, as passed vide Order-in-Original CAO No. 206 to 219/2002/CAC/CC/M.D. dated 17.05.2002, remain unchanged.

Part-V SCN No. S/10-29/97 Adj. Dtd.13.12.97 against M/s. P.A. International & others.

(i) I hold the 74,439.77 kgs of PFY/POY valued at Rs. 28,81,889/- (Rupees Twenty Eight Lakhs Eighty One Thousand Eight Hundred And Eighty Nine Only) imported by Shri Ashok Rajani in the names of M/s. Blend Syntex and cleared against Advance Licence No.2141659 dated 27.4.94, through Mumbai Port under Bills of Entry Nos. 10884 dated 30.8.94 (IGM/Item No.2274/133) and 10886 dated 30.8.94 (IGM/Item No.2274/135) liable for confiscation under Section 111(o) of the Customs Act, 1962. Since the said goods are not available, I refrain from imposing any redemption fine in lieu of confiscation.

(ii) I confirm and order to recover Customs Duty of Rs. 51,78,152/- (Rupees Fifty One Lakhs Seventy Eight Thousand One Hundred And Fifty Two Only) from M/s. Blend Syntex under the proviso of Section 28(1) of the Customs Act, 1962, which should be paid forthwith by M/s. Blend Syntex.

(iii) I order to charge and recover interest on the confirmed amount of Customs Duty under erstwhile Section 28 AB of the Customs Act, 1962, which should be paid for the with by M/s. Blend Syntex.

(iv) I impose penalty of Rs. 51,78,152/- plus an amount equivalent to interest payable on confirmed duty upon M/s. Blend Syntex under Section 114 A of the Customs Act, 1962.

(v) I impose penalty of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand Only) upon M/s. Blend Syntex under Section 112(a) of the Customs Act, 1962.

(vi) I impose penalty of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) upon M/s. P. A. International under Section 112(a) of the Customs Act, 1962.

(vii) I impose penalty of Rs. 4,00,000/- (Rupees Four Lakhs Only) upon Shri Ashok Rajani under Section 112(a) of the Customs Act, 1962.

(viii) Order in respect of remaining Noticees to this Show Cause Notice, as passed vide Order-in-Original CAO No. 206 to 219/2002/CAC/CC/M.D. dated 17.05.2002, remain unchanged.

Part-VI SCN No. S/10-30/97 Adj. Dtd.13.12.97

(i) I hold the 93950.4 Kgs POY/PFY valued at Rs.42,88,038/- (Rupees, Forty Two Lakhs Eighty Eight Thousand And Thirty Eight Only) imported by Shri Rajkumar Hasija in the name of M/s. Santosh Textiles and cleared against Advance Licences Nos. 322457 and 322459 both dated 20.3.04

through Mumbai Port vide Bills of Entry Nos. 10498 dated 20.10.94 (IGM/Item No.2688/52), 1462 dated 05.12.1994 (IGM/Item No.2766/182), 3705 dated 11.11.94 (IGM/Item No.2766/180) liable for confiscation under Section 111(o) of the Customs Act, 1962. Since the said goods are not available, I refrain from imposing any redemption fine in lieu of confiscation.

(ii) I confirm and order to recover Customs Duty of Rs. 76,72,694/- (Rupees Seventy Six Lakhs Seventy Two Thousand Six Hundred And Fifty Six Only) from M/s. Santosh Textiles under the proviso of Section 28(1) of the Customs Act, 1962, which should be paid forthwith by M/s. Santosh Textiles.

(iii) I order to charge and recover interest on the confirmed amount of Customs Duty under erstwhile Section 28 AB of the Customs Act, 1962, which should be paid for the with by M/s. Santosh Textiles.

(iv) I impose penalty of Rs. 76,72,694/- plus an amount equivalent to interest payable on confirmed duty upon M/s. Santosh Textiles under Section 114 A of the Customs Act, 1962.

(v) I impose penalty of Rs. 4,00,000/- (Rupees Four Lakhs Only) upon M/s. Santosh Textiles under Section 112(a) of the Customs Act, 1962.

(vi) I impose penalty of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) upon M/s. Sharan Export under Section 112(a) of the Customs Act, 1962.


(vii) I impose penalty of Rs. 4,00,000/- (Rupees Four Lakhs Only) upon Shri Rajkumar Hasija under Section 112(a) of the Customs Act, 1962.

(viii) Order in respect of remaining Notices to this Show Cause Notice, as passed vide Order-in-Original CAO No. 206 to 219/2002/CAC/CC/M.D. dated 17.05.2002, remain unchanged.

Part-VII Some voluntarily deposits had been made by the exporters/importers during the course of investigation. Therefore, I further order that

(i) An amount of Rs.80,00,000/- (Rupees Eighty Lakhs Only) deposited voluntarily by Shri Ashok Rajani is hereby appropriate towards the Custom Duty confirmed in Part-III and Part-V of the order above.

(ii) An amount of Rs. 60,00,000/- (Rupees Sixty Lakhs Only) deposited voluntarily by Shri Rajkumar Hasija is hereby appropriated towards the Custom Duty confirmed in Part-IV and Part-VI of the order above.


[P.V.R.REDDY]
PRINCIPAL COMMISSIONER

BY RPAD/SPEED POST TO:

1. M/s. P.A. International
6/B, Jeevan Asha,
Peddar Road,
Mumbai - 400 026.
2. Shri Ashok B. Rajani
6/B, Jeevan Asha,
Peddar Road,
Mumbai - 400 026.
3. M/s. Sharan Exports
250, Gandhi Galli,
Swadeshi Market,
Mumbai - 400 002.

4. Shri Rajkumar A. Hasija,
71/A, Meeramar,
3, Napeansea Road,
Mumbai - 400 036.
5. M/s. Santosh Textiles
250, Gandhi Galli,
Swadeshi Market,
Mumbai - 400 002.
6. M/s.Blend Syntex
6/B, Jeevan Asha,
Peddar Road,
Mumbai - 400 026.

COPY TO:.

- (i) The Chief Commissioner of Customs, Custom House, Ahmedabad.
- (ii) The Additional Director General, DRI, 3¹/₄111 Floor, Hotel Waldorf,
16th Arthur Bunder Road, Colaba, Mumbai - 5.
- (iii) The Commissioner of Customs (Export), New Custom House, Ballard
Estate, Mumbai
- (iv) The Commissioner of Customs(Exports), JNCH, Nhava Sheva, Taluka
Uran Dist Raighdh.
- (v) Notice Board Custom House, Kandla
- (vi) The Deputy/Assistant Commissioner, (Recovery) CH, Kandla.
- (vii) The Deputy/Assistant Commissioner, (Gr.VII) CH, Kandla.
- ✓(viii) Guard File