

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH – COURT NO. 01

CUSTOM Appeal No. 10704 of 2023

[Arising Out Of OIO-KND-CUSTOM-000-COM-04-2023-24 Dated-08.08.2023 Passed By Commissioner of CUSTOMS, KANDLA]

FASHION ACCESSORIES

Plot No. 408 Udyog Vihar
Phase-6, Sector 37, Gurugram
Haryana-122015

.....Appellant

VERSUS

Commissioner of Customs- Kandla

Office of The Commissioner of Customs,
Near Balaji Temple, Kandla
Kuchchh, Gujarat-3700210

.....Respondent

WITH

- **Customs Appeal No. 10705 of 2023 (ANOOP THATAI)**
- **Customs Appeal No. 10706 of 2023 (SHRI JILE SINGH)**
- **Customs Appeal No. 10707 of 2023 (PRADEEP ARORA)**

APPEARANCE:

Shri. Tejveer Singh, Advocate for the Appellant
Shri. G Nair, Assistant Commissioner (AR) for the Respondent

**CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA**

FINAL ORDER NO.A / 10414-10417 /2024

DATE OF HEARING:05.02.2024

DATE OF DECISION:15.02.2024

SOMESH ARORA

The matter in this case pertains to alleged exports of quilts containing cotton. Polyester by claiming admittedly wrong classification and

consequently wrong MEIS benefits. During the course of investigation, the Additional Director General Foreign Trade, DGFT, New Delhi vide letter F. No. DRI/AZU/CI/ENQ-55(INT-09)/2020 dated 15/7/2021 was requested to cancel/suspend/restrict the MEIS Scrips/licenses issued to M/s. FASHION ACCESSORIES (FA for short hereinafter) by the department to the extent of misuse of such MEIS Scrips/licenses by mis-classification of their export goods in contravention of the relevant provisions of Foreign Trade Policy and the Customs Act, 1962. Accordingly, the Deputy Director General of Foreign Trade, DGFT, New Delhi too issued Show Cause Notice bearing F. No. 5/MISC-1/ AM22/EPS-I/LA dated 25/8 / 2021 under Section, 9, 11(2), 11(3) read with Section 13, 14 and 17 of Foreign Trade (Development & Regulation) Act, 1992 to M/s. FASHION ACCESSORIES which was adjudicated vide DGFT order dated 12.04.2023 against the party, but it is stated to have been reversed in appeal under that Act.

2. In the instant case, it is not disputed that the exporter M/s. FASHION ACCESSORIES had themselves classified the same goods i.e., Quilts fitted with cotton/polyester exported by them under two different eight digit HS codes "94049019" & "94049099". It is pertinent to mention that the Shipping Bills filed by the said exporter are self-assessed and therefore, the classification of the goods exported had also been assessed by them under two different HS codes, "94049019" & "94049099". The contention of the exporter that they had inadvertently classified the goods under wrong CTH 94049099 in respect of Quilts fitted with cotton/ polyester did not appear to be proper to the department, as M/s. FASHION ACCESSORIES they were well aware about the correct classification of their product "Quilts" which were already being exported by them under correct CTH 94049019 from Nhava Sheva Sea Port at about the same time. M/s. FASHION ACCESSORIES also mentioned two different CTH i.e., 94049019 and

94099099 for the same products Quilts in their export invoices filed with the respective shipping bills and presented to the Customs Authorities. Further, Shri Jile Singh, Manager (Export) in his statement dated 15.09.2020, admitted that as per instruction from the management (Shri Anoop Thatai), the export product Quilts was classified under two different CTHs, as also informed by Shri Pradeep Arora Manager (Shipping & Logistics). Shri Pradeep Arora in his statement dated 15.09.2020 also agreed with the facts stated by Shri Jile Singh. It therefore appeared to the department that Shri Anoop Thatai, partner of M/s. FASHION ACCESSORIES were aware that their firm had exported Quilts fitted with cotton/ polyester and had knowingly and consistently misclassified their products under CTH 94049099 from ports other than Nhava Sheva to fraudulently avail higher rate of MEIS benefits. Therefore, department proposed even penal action against both the managers.

3. Shri Anoop Thatai, partner of M/s FA in his statement recorded under Section 108 of the Customs Act, 1962 on 15/16.09.2020 and 06.07.2021 agreed and accepted that the classification of the export product, Quilts fitted with Cotton, polyester, in their export documents under HS code "94049099" was not correct as the same were to be classified under CTH 94049019. He also agreed that based on the wrong classification, they had wrongly claimed higher rate of incentives under MEIS Scheme. Shri Anoop Thatai, in his statement dtd.6.7.2021 also produced the details of voluntary payment made by them against excess availment of MEIS benefit on account of mis- classification.

4. Further, in the MEIS application, the Exporter was required to make a declaration in form ANF-3A that, "I hereby declare that the Exported Product/goods and markets are covered under Appendix 3B and the exports, for which this application is being filed, are made on or after the respective

admissible date of export, as indicated in relevant Appendix". But, the declaration made by the Exporter in the MEIS application was apparently false, as per the department which amounted to wilful misstatement since the exported goods were correctly classifiable under CTH 94049019, where MEIS benefit is less as compared to CTH 94049099 (mis-declared), as per Appendix 3B of Handbook of Procedures. Therefore, it appeared that the Exporter availed MEIS Scrip by way of wilful misstatement in the documents submitted to both, Customs and DGFT authorities in contravention to the provisions of Customs Act, 1962 and the Foreign Trade (Development and Regulation) Act, 1992.

5. A wilful "decision" to misclassify the goods with intent to wrongfully avail undue MEIS benefit was as per the department a wilful misstatement for invoking provisions of Section 28AAA of the Customs Act, 1962.

6. Vide Finance Act, 2011 with effect from 08.04.2011 "Self-Assessment has been introduced under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of duty on import and export goods by the importer or the exporter by filing a bill of entry or shipping bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the importer or exporter who will ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. In the present case, M / s FA have deliberately contravened the above said provisions with an intention to wrongfully avail excess MEIS benefit fraudulently.

7. Whereas in the inquiry conducted, by the department it was revealed that the M/s. FA, Gurgaon by way of willful mis-statement, mis-

representation and suppression of facts as regards the classification of goods, presented the subject goods for export before the designated authority of Customs with intent to avail fraudulent benefit of MEIS subsequently. In view of the above, it appeared to the department that the Exporter having indulged in fraudulent export of goods by mis-declaring the actual classification of goods so exported, which as per department fall within the ambit of 'illegal export' as defined in section 11H(a) of the Customs Act, 1962 in as much as the same was in contravention of various provisions of Customs Act, 1962, Foreign Trade (Development and Regulation) Act, 1992, Foreign Trade (Regulation) Rules 1993 and Foreign Trade Policy.

8. Further as admitted in his statement dated 15.09.2021, Shri Jile Singh, Manager (Export) and Shri Pradeep Arora, Manager (Shipping & Logistic) of M / s Fashion Accessories willfully mis-declared the classification of goods in the export documents viz. Shipping Bills, invoices, packing list, presented by M / s Fashion Accessories before the Customs authorities as per direction and guidance of Shri AnoopThatai, partner of M / s Fashion Accessories, with an intent to avail undue benefit of MEIS scheme and on account of such mis-classification of exported goods, excess export benefits under MEIS Scheme had been availed by/s. Fashion Accessories, Gurgaon. Therefore, it appears to the department that Shri AnoopThatai, partner, Shri Jile Singh, Manager (Export) and Shri Pradeep Arora, Manager (Shipping & Logistic) of M/s. Fashion Accessories, Gurgaon had knowingly made, signed or used the declaration, statements and/or documents and presented the same to the Customs authorities, which were incorrect in as much as they were not representing the true & correct classification of the exported goods, and have therefore rendered themselves liable for penalty under section 114AA of the Customs Act, 1962. It further appeared to the department that Shri

Anoop Thatai, partner, Shri Jile Singh, Manager (Export) and Shri Pradeep Arora, Manager (Shipping & Logistic) of M/s. Fashion Accessories, Gurgaon had consciously and deliberately dealt with the goods which they knew or had reasons to believe were liable to confiscation under the provisions of Section 113(i) of the Customs Act, 1962 in respect of the exported goods and Section 111(m) and 111(o) of the Customs Act, 1962 in respect of the goods imported by availing the exemption under MEIS Scheme and such acts & omissions on the part of Shri Anoop Thatai, partner, Shri Jile Singh, Manager (Export) and Shri Pradeep Arora, Manager (Shipping & Logistic) of M / s Fashion Accessories, Gurgaon rendered themselves liable for penal action under the provisions of Section 112(a) & (b), 114(iii) and 114AA of the Customs Act, 1962. Since Shri Anoop Thatai, partner, Shri Jile Singh, Manager (Export) and Shri Pradeep Arora, Manager (Shipping & Logistic) of M/s. Fashion Accessories, Gurgaon had allegedly also violated the provisions of Section 17, 46 and 50 of the Customs Act, 1962 which was their duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, they were also alleged to be liable to penalty under Section 117 of Customs Act, 1962.

8.1 It was also alleged that M / s Fashion Accessories, Gurgaon have transferred/sold the MEIS credit Scrips to other importers. The said importers (a person other than the person to whom the instrument (MEIS Scrips) were issued) had imported the goods by utilizing the said transferred MEIS duty credit scrips, which were fraudulently obtained by deliberate suppression of facts by M / s Fashion Accessories, Gurgaon. The excess/ineligible/wrongly availed duty credit MEIS amount which was transferred to other importers by M / s Fashion Accessories, Gurgaon and subsequently utilized by the said importers, to the tune of Rs.3,77,53,455 was required to be recovered from M/s. Fashion Accessories, Gurgaon under

Section 28AAA of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962. Through common adjudication order Commissioner of Customs, Kandla disposed of the show cause notice by giving following findings:

"I have through all the Show Cause Notices issued to M/s Fashion Accessories & others, their defense submission and record of personal hearing. The main issue to be decided in the present case is whether M/s Fashion Accessories obtained the MEIS licenses by mis-classifying the goods at the time of export to avail/made the other persons avail duty exemption at higher rate or otherwise, at the time of import. In the present case, it is alleged in the show cause notice that first goods were exported by mis-classifying the goods and M / s FA availed License / Scrips from DGFT fraudulently, second the scrips were utilized by themselves and availed duty exemption which is required to be recovered under Section 28(4) of the Customs Act, 1962 and third where scrips fraudulently obtained by M/s. FASHION ACCESSORIES were sold to others and duty under Section 28AAA is required to be recovered from M / s FA. Therefore, for the sake of simplicity, I will discuss in three segments.

Export of Quilt by M / s Fashion Accessories with mis-classifying the goods and fraudulently availment of License / Scrips:

(i) I find that DRI in their investigation alleged that when Quilts fitted with Cotton /Polyester were exported from Nhava Sheva Port, M / s FA correctly classified the Quilts under Customs Tariff Sub-Heading 94049019. Whereas, when the same product Quilts fitted with Cotton/Polyester were exported from the ports other than Nhava Sheva Sea Port, they mis-classified the same product under Customs Tariff Sub-Heading 94049099. Hence, M/s. FASHION ACCESSORIES deliberately utilized two different CTH for export of the same product Quilts for different ports of export. In their statement,

they have also admitted this fact of classifying same product i.e., Quilts fitted with Cotton, polyester under two different CTH from different ports, for exports. Hence, M/s. FASHION ACCESSORIES at the time of exports had mis-classified the product i.e., Quilts fitted with cotton/polyester under CTH 9404 9099 to avail higher MEIS @ 5% & 7% of the FOB value as against actual entitlement @ 3% under correct CTH 94049019, by deliberate misrepresentation and willful mis-statement.

(ii) The Noticee submits that they had bonafidely classified the Quilts and believed and still believe that the same are classifiable under Tariff Item 94049099 of the Customs Tariff based on their understanding of the entries of the Customs Tariff and ITC(HS) and the legal advice received. I find that during the investigation it was noticed that M/s. FASHION ACCESSORIES used two different CTH for the same product they exported; while exporting from Nhava Sheva Port, they used CTH 94049019 and for the ports other than Nhava Sheva Port, they used the classification 94049099. In this scenario, how the claim that they bonafidely classified the quilts under 94049099 CTH cannot be taken fully into consideration. Therefore, I find the contention raised by M/s. FASHION ACCESSORIES not sustainable.

(iii) The Noticee submits that while declaring goods during export, the department did not question about the classification and if they were not correct, why their export was allowed. I find that Noticee is not aware about Section 17 of the Customs Act, 1962. In the show cause notice, it is also clearly put forth that under the self-assessment era, they have to declare the true facts before the Customs. As soon as it came into knowledge of the department, DRI investigated the matter and found that they have mis-declared the description of goods while exporting goods and availed scrips and wrongly claimed higher rate of MEIS Incentive @5% & @7% against the

applicable rate @3%. Thus, I do not find any veracity in taking shield under the custom department for the mistake done on their part.

(iv) The Noticee submits that DGFT after perusing the ANF 3A form wherein the full facts have been disclosed and all the documents enclosed therein, granted the MEIS benefit to them. No material fact has been hidden from the competent authorities. I find that the said contention is related to DGFT. Regarding obtaining of scrips, DGFT has already issued Show Cause Notice and same has also been adjudicated wherein scrips have been cancelled. As per the records available, M/s. FASHION ACCESSORIES has not filed any appeal against the said OIO issued by DGFT which clearly infers that they fraudulently availed the scrips (MEIS License) by mis-declaring the export products for claiming higher incentives.

(v) The Noticee M/s. FASHION ACCESSORIES placed reliance on the judgment of the Hon'ble Supreme Court in the case of Northern Plastic Ltd. v Collector of Customs & Central Excise, 1998 (101) ELT 549 (SC), wherein the Hon'ble Apex Court held "that description of goods given correctly and fully in Bill of Entry/classification declaration and the appellant laying claim to some exemption, whether admissible or not, is a matter of belief of assessee and does not amount to mis-declaration". On going through the said judgment, I found that the said case was actually not of any mis-declaration and at the initial stage, it was found that the importer of the said case correctly classified the goods. Thus, facts of the said case is different from the facts of the present case. In view of this, I find the said judgment not relevant for the present case.

(vi) Further, M/s. FASHION ACCESSORIES relied upon the case of CCE Vs Pioneer Scientific Glass Works 2006 (197) ELT 308 (SC), wherein the Hon'ble Supreme Court noted that while exporting the goods, all the relevant facts are known both to the exporter and the department regarding the

classification of the exported goods unless and until proved contrary. The Hon'ble Court held that "when assessee disclosed all relevant facts and where facts are already known to both parties, omission by one to do what he might have done by itself does not render or amount to suppression of facts." On going through the said judgment, I find that the said case law defines suppression, however, in the present case, M/s. FASHION ACCESSORIES has willfully mis-stated the classification of the goods exported by them to avail the higher amount of incentive. Hence, I find the cited case law not applicable for the present case.

(vii) The Noticee further relied upon the decision of Hon'ble Supreme Court in the case of Hindustan Steel Ltd Vs State of Orissa reported in 1978 ELT 159, wherein it was held that:-

"Penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law and was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation."

The above judgment will not apply for the present case as the Manager (Shipping & Logistics) of M/s. FASHION ACCESSORIES and Shri Anoop Thatai, one of the Partner of M/s. FA, during the course of recording of statement at the time of inquiry, have accepted their mistake and agreed that classification adopted by them was wrong. The relevant part of the statement recorded of the Manager (Shipping & Logistics) of M/s .FA and Shri Anoop Thatai, one of the partners of M/s. FASHION ACCESSORIES is produced hereunder:

Statement of Shri Pradeep Arora, Manager (Shipping & Logistic) of M/s. Fashion Accessories, recorded under Section 108 of the Customs Act. 1962 on 15.09.2020:

"On being further asked as to why quilt was classified under CTH 94049099 in shipping Bill No.3848073 dtd. 29.03.2018, he stated that it was a mistake. On being asked that the correct classification of quilt was 94049011 or 94049019, he stated that he agreed that quilt should be classified under CTH 94049011 or 94049019."

Statement of Shri Anoop Thatai, Partner of M/s. Fashion Accessories. recorded under Section 108 of the Customs Act, 1962 on 15.09.2020 and 06.07.2021:

(viii) On being asked whether he agreed that they were mis-classifying of their export products ie. Quilt under CTH 94049099 to get the higher rate of incentive i.e. MEIS, he stated that he was not aware of the said error, when DRI initiated inquiry against his firm in respect of classification of quilt, he reviewed the classification of his product and found that the export of quilt under CTH 94049099 was incorrect and he immediately changed their classification and paid the excess amount availed due to the mis-classification.

(ix) As per the export documents, M / s FA defined their goods as:

"Quilt: two layers of cloth filled with padding/filling- cotton fill, polyester fill, etc. held in place by functioned stitched. It does not have any opening."

(x) Further, the Customs Tariff Heading 9404 reads as under:

TABLE-A

Tariff Item	Description of Goods	Unit	Rate of duty	
			Standard	Preferential Area
9404	Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, puffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered			
94041000	-Mattress supports	Kg	20%	-
	-Mattresses:			
940421	-- Of cellular rubber or plastics, whether or not covered Of rubber			
94042110	--- Of rubber	U	20%	-
94042190	----Of plastic	U	20%	
940429	-- Of other materials			-
94042910	--- Springe interior	U	20%	-
94042920	--- Of Rubberized coir with or U without combination of other materials, whether or not with Metallic springs	U	20%	-
94042990	---other	U	20%	-
940430	-Sleeping bags:			
94043010	--- Filled with feathers or down	U	20%	-
94043090	--- Other	U	20%	-
940490	-Other			
	--- Quilts			
94049011	----Fitted with feathers or down	Kg	20%	-
94049019	----Other	Kg	20%	-
	--- Other			
94049091	--- Fitted with feathers or down	Kg	20%	-
94049099	---- Other	Kg	20%	-

(xi) It is alleged in the show cause notice that the quilts "other than fitted with feather or down" should be classified under CTH 94049019. However, on going through the defense submission of the noticee, I find that the noticee still believe in the classification adopted by them but they are silent

on the method used by them for classification of the goods exported by them. They are also silent for the different classification adopted by them for the same goods on the different ports. I find that they failed to justify their classification of the goods under CTH 94049099 in place of CTH 94049019. I find that the noticee rather than to justify the correct classification, are only relying on the different judgments, which shows that they have no concrete evidence in respect of their version of classification. Therefore, I have no reason but to accept the classification CTH 94049019 for the goods "Quilts: a two layers of cloth filled with padding/filling - cotton fill, polyester fill, etc. held in place by functioned stitched. It does not have any opening."

(xii) So, it is alleged in the SCN that goods exported by M/s. FASHION ACCESSORIES having FOB value of Rs. 137,90,91,776/- as detailed in Table-D of the show cause notice, are liable for confiscation under Section 113(i) and accordingly liable for penalty under Section 114(iii) of the Customs Act, 1962. As already established in the para supra, M/s. FASHION ACCESSORIES mis-classified the goods under CTH 9404 9099, in order to avail incentive at higher rate, at the time of export of goods. Also, M/s. FASHION ACCESSORIES have indulged in fraudulent export of goods by mis-declaring the actual classification of goods so exported, squarely falls within the ambit of illegal export' as defined in section 11(H)(a) of the Customs Act, 1962 in as much as the same was done in contravention of various provisions of Customs Act, 1962, Foreign Trade (Development and Regulation) Act, 1992, Foreign Trade (Regulation) Rules 1993 and Foreign Trade Policy. The goods have been exported to various countries by mis-classifying the products exported in Shipping Bills by way of willful mis-statement and suppression of facts with an intent to avail fraudulent benefit of MEIS at higher rates, whereas Rule 14 (2) of Foreign Trade (Regulation) Rules, 1993 clearly prohibits for employing any corrupt or fraudulent practice

for the purpose of exporting any goods for obtaining any license. Hence, the said goods fall within the definition of 'illegal legal export' as per section 11(H)(a) of the Customs Act, 1962. Since, M/s. FASHION ACCESSORIES entered into improper exportation, I hold the exported goods as detailed in Table-D liable for confiscation under Section 113(i) of the Customs Act, 1962. As the goods are not available for confiscation, relying on the decision of CESTAT Mumbai (Larger Bench) in the matter of Shiv Kripa Ispat Private Limited V / s Commissioner of Central Excise, 2009 (235) ELT 623 (Tri-LB), I am not going to impose redemption fine upon M / s . FA.

(xiii) With regard to penalty under Section 114 (iii) of the Customs Act, 1962, the noticee relied upon the recent judgement pronounced in M / s Vedika Metals Pvt. Ltd. vs Commissioner of Customs (Port), Kolkata [Customs Appeal No. 75085 of 2017] on 26 June 2023, wherein it was held that the penalties under Section 114 and 114AA cannot be imposed on the appellant company and its Director separately for the same offence where DGFT has already initiated action and imposed a penalty for the same offence. I find that DGFT initiated action for cancellation of License / Scrips issued by them, however, the present case is related to mis-classification of exported goods and recovery of Customs Duty under Section 28 and Section 28AAA of the Customs Act, 1962. Therefore, both DGFT and Customs being different entities adjudicating for differing violations, the judgment cited is not applicable for the present case.

(xiv) I find that penalty under Section 114 (iii) is imposable when any person who, in relation to any goods, does or omits to do any act which act or omission would render the goods liable to confiscation under section 113, or abets the doing or omission of such an act. As goods have already been held liable for confiscation under Section 113, penalty under section 114(iii) has been correctly imposed upon M / s .FA .

(xv) M/s. FASHION ACCESSORIES has also been charged under Section 114AA and 117 of the Customs Act, 1962. I find that penalty under Section 114AA is imposable when a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act. In the present case, M/s. FASHION ACCESSORIES knowingly and intentionally mis-declared their goods in the shipping bills filed at the time of export in order to get higher rate of incentive. Therefore, penalty under Section 114AA of the Customs Act, 1962 has been correctly invoked upon them. Further, penalty section 117 is invoked where there is no separate penal provision is provided for violation of the Customs Act, 1962. Since M / s FA stands liable for penalty under Section 114(iii) and Section 114AA, I will not impose penalty under Section 117 of the Customs Act, 1962.

Duty demand against the duty exemption availed on import made by M/s FA:

(i) It is alleged in the Show Cause Notice that M / s FA had imported goods availing duty exemption Notification No. 24/2015 Customs dated 08/04/2015, as amended, by debiting scrips fraudulently availed by themselves, which is required to be recovered under section 28(4) of the Customs Act, 1962. Further, the scrips which are utilized by themselves by importing goods having assessable value of Rs. 52,09,020/- are required to held liable for confiscation under Section 111(m) and 111(0) of the Customs Act, 1962. Therefore, also liable for penalty under Section 112,114A, 114AA, 114AB and 117 of the Customs Act, 1962.

(ii) As regards the duty demand of Rs. 7 ,66,729/ under Section 28(4) of the Customs Act, 1962, the noticee M/s. FASHION ACCESSORIES objected the same relying upon the judgment of Sirthai Superware India Ltd Vs Commissioner of Customs, Nhava Sheva-III, reported in 2020 (371) ELT 324 (Tri.-Mumbai), wherein the Hon'ble Tribunal held as under:

"....we are of the view that by giving the correct description on the documents relating to import clearance appellants have discharge the burden of making correct declaration on the Bill of Entry. Hence any error in classification or the exemption claimed on Bill of Entry cannot be mis-declaration with the intention to evade payment of duty for the purpose of invoking extended period of limitation. Hence demand made by invoking extended period of limitation needs to be set aside."

The above judgment does not apply in the present case as it is evident that M/s. FASHION ACCESSORIES classified the same goods under different CTH for different ports while exporting the goods. If anyhow M / s .FA would have declared the same classification for the goods exported by them through different ports, the above judgment may be relied but this is not the case. They chose correct classification at Nhava Sheva Port and wrong classification for the ports other than Nhava Sheva Port. The only thing they wanted to do is to avail higher amount of incentive. They mis-classified the goods and availed higher incentive by debiting the scrips they fraudulently availed. This dubious classification was never informed by M / s .FA to the department. As soon as the facts regarding double classification of the goods came into knowledge of the department, DRI investigated the matter and broke their conspiracy. Further, it has already been held in para supra that

they intentionally and wilfully stated the false information in the shipping bills filed by them at the time of export. Therefore, I find that department has every right to protect the government revenue and I completely agree with the duty demand of Rs. 7, 66, 729/- 1 as excess ineligible amount availed in MEIS Scrips/Licenses) invoking extended period.

(iii) As regards confiscation of goods having assessable value of Rs. 52,09,020/-, imported by M/s. FASHION ACCESSORIES themselves through utilizing the scrips, under Section 111(m) and 111(o) of the Customs Act, 1962, it is alleged in the Show Cause notice that M / s FA wrongly availed benefit of exemption Notification No. 24/2015-Customs dated 8/4 / 2015 as amended. The noticee M / s .FA relied upon the decisions of Hindustan Ferodo Ltd. v. CCE Bombay 1997 (89) ELT 16 (S.C.) & CCE v. Calcutta Steel Industries 1989 (39) ELT 175 (S.C.), where it is held that classification under a particular tariff entry is the responsibility of the Revenue. Therefore, if Department does not find the classification given by the appellant appropriate, no fine and penalty can be imposed on it. I find that as per the said judgment party should have asked the department to provide the correct classification for the goods. Rather than asking from the department they used two different CTH for the same products at the time of exports to obtain license having higher amount of incentive. Further, after fraudulently obtaining of scrips, they utilized the same for the import availing duty exemption by way of Notification No. 24/2015 Customs dated 08.04.2015, as amended. As they tried to evade customs duty by wrongly availment of benefit through the said notification and made the import improper, M / s FA rendered the goods having assessable value of Rs. 52 ,09,020/- liable for confiscation. Accordingly, I hold the goods imported by M / s FA by utilizing scrips they fraudulently availed, liable for confiscation under Section 111(m)

and 111(0) of the Customs Act, 1962. Since the goods are not available for confiscation, redemption cannot be imposed upon them.

(iv) As the goods imported by M / s FA by utilizing scrips they fraudulently availed have already held for confiscation, M / s FA are liable for penalty under section 112(a) and 112(b) of the Customs Act, 1962. Further, by debiting scrips in excess against import, they have ultimately short paid the Custom duty, therefore, I find them liable for penalty under section 114A of the Finance Act, 1962 also. However, in terms of proviso to Section 114A of the Customs Act, 1962, penalty under Section 112 and Section 114A are mutually exclusive and I cannot impose both at the same time. Therefore, I am going to impose penalty under Section 114A of the Customs Act, 1962 only.

(v) Further, M/s. FASHION ACCESSORIES obtained MEIS Scrips fraudulently by way of willful mis-statement and suppression of facts. I find that M / s .FA had willfully mis- declared the description of goods exported, in Form ANF-3B submitted before the DGFT, whereas they were aware of the true classification of the goods. Further, they suppressed the dubious classification adopted by the mselves and tried to evade custom duty. By way of mis-classification of the goods, they obtained MEIS scrips to avail higher amount of incentive which were utilized by them for discharging liability; therefore, I find M / s FA liable for penalty under Section 114AB of the Customs Act, 1962 and has been correctly imposed upon them.

(vi) M/s. FASHION ACCESSORIES has also been charged under Section 114AA and 117 of the Customs Act, 1962 for the goods imported by themselves by utilizing scrips. I find that penalty under Section 114AA is imposable when a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any

business for the purposes of this Act. In the present case M / s FA knowingly and intentionally mis-declared their goods in the shipping bills filed at the time of export in order to get higher rate of incentive and ultimately at the time of import, tried to get exemption from Custom duty by wrongly claiming of notification No. 24/2015 dated 08.04.2015. Therefore, penalty under Section 114AA of the Customs Act, 1962 has been correctly imposed upon them. Further, penalty section 117 is imposed where there is no separate penal provision is provided for violation of the Customs Act, 1962. Accordingly, I will not impose penalty under Section 117 of the Customs Act, 1962,

Demand of Custom Duty in respect of scrips utilized by others who purchased the scrips obtained fraudulently by M/s. FA

(i) It is alleged in the show cause notice that M / s Fashion Accessories obtained the MEIS scrips fraudulently by way of mis-classification of their goods at the time of export in order to avail higher amount of incentive. The scrips so obtained were further sold/transferred to others and utilized by them by debiting such scrips at the time of import. I find that the allegation made against M / s FA have already been proved and discussed in para supra and as per Section 28AAA of the Customs Act, 1962, custom duty to the tune of Rs. 3, 77 ,53,455/ is required to be recovered from them along with interest.

(ii) As regards the confiscability of goods having assessable value of Rs. 820,92,30,497/-, imported by the others who purchased the above said scrips from M / s FA, I find that confiscation of the said goods has been proposed under Section 111(m) and 111(o) of the Customs Act, 1962 upon

m / s .FA as well as upon the other importer individually. I find that these imports were actually improper as the Notification No. 24/2015 -Customs dated 8/4 / 2015 was wrongly availed by these importers (others). Since I have already discussed the issue of confiscability under para 56 for similar contravention, I am going to hold the said goods liable for confiscation under Section 111(m) and Section 111(0) of the Customs Act, 1962. As the same goods cannot be held liable again for confiscation, I do not find any merit on the confiscation proposed upon the other importers who purchased the scrips from M/s. FASHION ACCESSORIES and got their goods imported. Further, as there is involvement of improper importation, penalty is liable under Section 112 of the Customs Act, 1962 on the persons who fit in role mentioned in section 112(a) and 112(b) of the Customs Act, 1962.

In view of the above, I find M / s FA has acted in a manner which made the goods liable for confiscation and accordingly, I am going to impose penalty upon M/s. FASHION ACCESSORIES under Section 112(a)(ii) of the Customs Act, 1962.

(iii) Further, as regards penalty under Section 114AB, 114AA and Section 117 of the Customs Act, 1962, I am going to take the similar view as taken in para supra (para 57 & 58).

(iv) I further find that penalty upon Shri Anoop Thatai, partner, Shri Jile Singh, Manager (Export) and Shri Pradeep Arora, Manager (Shipping & Logistic) of M/s. Fashion Accessories, Gurgaon, has been proposed under Section 114(iii), 112(a) & (b), 114AA and 117 of the Customs Act, 1962 in respect of export of goods having assessable value of Rs. 74,52,46,978/-and in respect of import of goods having assessable value of Rs. 141,10,91,870/-

(v) To impose any penalty, I have to go through their role in the present case and the only data/information available with this case is their statement recorded under section 108 of the Customs Act, 1962.

(vi) I find that Shri Jile Singh, Manager (Export) in his statement dated 15.09.2020, admitted that as per instruction from management and Shri Anoop Thatai, the export product Quilts were classified under two different CTHS. Shri Pradeep Arora, Manager (Shipping & Logistics) in his statement dated 15.09.2020 also agreed with the facts stated by Shri Jile Singh in his statement. This shows that decision regarding classifying the export product under wrong CTH was taken by the Partner of the firm to avail higher MEIS benefit, which clearly indicates that it is not due to lack of knowledge or unintentional mistake, but was a willful "decision to misclassify the goods with intent to wrongfully avail undue MEIS benefit. I find that both Shri Jile Singh, Manager (Export) and Shri Pradeep Arora, Manager (Shipping & Logistics) accepted the fact that Shri Anoop Thatai, Partner of M/s. FASHION ACCESSORIES knowingly and intentionally adopted the method of dubious and incorrect classification in order to get higher incentive amount scrips, hence, I agree with the proposal made in the show cause notice regarding penalty under section 114(iii), 112(a) and 114AA of the Customs Act, 1962, for their active involvement in improper exportation and improper importation and also producing/signing the documents which were false or incorrect. Accordingly, I am imposing the penalty under Section 114 and Section 112, I am not going to impose penalty under Section 117 of the Customs Act, 1962.

(vii) As regards penalty upon managers Shri Jile Singh and Shri Pradeep Arora, I find that no concrete evidences have been produced in the Show Cause Notice which proves that these two persons has connived with the partner of M/s. FASHION ACCESSORIES and tried / made anyone tried to

evade customs duty. However, I do find their role in improper exportation and improper exportation. Thus, without any reason, I cannot impose penalty under section 114(iii), 112 or 114AA of the Customs Act, 1962. As they were following the instruction of their employer, I will impose penalty under section 117 of the Customs Act, 1962 for their passive role in the case.

(viii) I also find that M/s. FASHION ACCESSORIES during investigation, paid the Customs duty to the tune of Rs, 3,90,40,394/- along with interest of Rs. 1,14,56,140/-, totally amounting to Rs. 5,04,96,534/- as detailed in Table-C of the Show Cause Notice. While this does not absolve them of the violations committed by them, their intention to make good their duty liability during the investigation is a factor that will be taken into account. During the personal hearings, they have also sought to put forth their credentials as a 3 Star Export house with a good track record. Taking these factors into consideration as also the nature and quantum of evasion in this case and as they paid the entire duty amount along with interest, I am going to factor the same while imposing penalty upon them,

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

A. Goods Exported by M/s. FA

(i) I reject the declared classification CTH 94049099 of the exported goods (Quilts filled with Cotton/polyester) in the Shipping Bills as detailed in Annexure-A (attached with all the SCN's), and order to re-assess the Shipping Bills by re-classifying the goods under CTH 94049019 of the First Schedule to the Customs Tariff Act, 1975;

(ii) I hold the exported goods, having total declared FOB value of Rs. 137,90,91,776/-exported under Shipping Bills as mentioned in Annexure-A

(attached with all the SCN's) and summarized in Column 3 of TABLE-D mentioned in para 34 above, liable for confiscation under Section 113 (i) of Customs Act, 1962. As the same are not available for confiscation, I do not impose any redemption fine.

(iii) I impose penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) upon M / s Fashion Accessories, Gurgaon under Section 114 (iii) of the Customs Act, 1962 for goods mentioned at (ii) above.

(iv) I impose penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) upon M / s Fashion Accessories, Gurgaon under Section 114AA of the Customs Act, 1962 for goods mentioned at (ii) above.

(v) I do not impose penalty under section 117 of the Customs Act, 1962 upon M / s Fashion Accessories, Gurgaon.

B. Import by M / s FA against MEIS

(i) I order to recover Customs duty (equal to ineligible MEIS benefits availed and utilized for discharged of customs duty) of Rs * 0.7 ,66,729/. as mentioned in column 4 of Table -E above, under Section 28(8) of the Customs Act, 1962 along with applicable interest u/s 28AA of the Customs Act, 1962.

(ii) I hold the goods having total Assessable value of Rs. 52 ,09,020/- as mentioned in column 3 of Table -E above, imported against Bills of Entry

mentioned in Annexure - B and summarized at TABLE-E above, imported by them by wrongly availing Customs duty exemption, liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962. As the same are not available for confiscation, I do not impose any redemption fine.

(iii) I impose penalty equal to duty confirmed at para B(i) above plus interest thereon, under Section 114A of the Customs Act, 1962. If the duty and interest as confirmed above is paid within 30 days of communication of this order, the amount of penalty imposed would be 25% of the duty and interest as per the first proviso to Section 114A ibid subject to the condition that the amount of penalty so determined is also paid within said period of 30 days.

(iv) I impose penalty of Rs. 2,00,000/- (Rupees Two Lakhs Only) upon M/s. Fashion Accessories, Gurgaon under Section 114AA of the Customs Act, 1962 for goods mentioned above.

(v) I impose penalty of Rs. 2,00,000/- (Rupees Two Lakhs Only) upon M/s. Fashion Accessories, Gurgaon under Section 114AB of the Customs Act, 1962 for goods mentioned at above.

(vi) I do not impose penalty under section 117 of the Customs Act, 1962 upon M/s. Fashion Accessories, Gurgaon.

(vii) I order to appropriate / adjust the duty liability confirmed at B(i) above along with interest, from the total amount of Customs duty of Rs. 40

,394/- along with interest of Rs. 1,14,56,140/- already paid by them as discussed in Para 61 above.

C. Import by other importers against MEIS issued to M/s. FA

(i) I order to recover the Customs duty to the tune of Rs. 3,77,53,455/- as mentioned in Column 4 of Table F and as detailed in Annexure-C attached with the SCN's issued, relating to excess/ineligible/wrongly availed duty credit/MEIS amount utilized by a person other than the person to whom the instrument (MEIS Scrips) were issued, from M / s Fashion Accessories under Section 28AAA of the Customs Act, 1962 along with interest in terms of Section 28AA of the Customs Act, 1962.

(ii) I hold the goods totally valued at Rs. 820,92,30,497/- as mentioned in Column 3 of Table - F above as detailed in Annexure-C (having Bills of Entry wise declared assessable value as mentioned in Column 13 in Annexure - C attached with SCN issued), imported by wrongly availing exemption under Notification No. 24/2015-Cus dated 8/4 / 2015 as amended, liable for confiscation under Section 111(m) and 111 (o) of the Customs Act, 1962; As the goods are not available for confiscation, I do not impose any redemption fine.

(iii) I impose penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) upon M / s Fashion Accessories, Gurgaon under Section 112 of the Customs Act, 1962

(iv) I impose penalty of Rs. 25 ,00,000/ (Rupees Twenty Five Lakhs Only) upon M / s Fashion Accessories, Gurgaon under Section 114AA of the Customs Act, 1962 for goods mentioned above at (ii).

(v) I impose penalty of Rs. 10,00,000/- (Rupees Ten Lakhs Only) upon M/ s. Fashion Accessories, Gurgaon under Section 114AB of the Customs Act, 1962 for goods mentioned at above (ii).

(vi) I do not impose penalty under section 117 of the Customs Act, 1962 upon M / s Fashion Accessories, Gurgaon.

(vii) I order to appropriate / adjust the duty liability confirmed at C(i) above along with interest, from the total amount of Customs duty of Rs. 3,90,40,394/- along with interest of Rs. 1,14,56,140/- already paid by them as discussed in Para 61 above.

D. Goods imported by other importers who purchased the scrips from M/ s. Fashion Accessories, Gurgaon:

(i) I do not hold the goods pertaining to importers who filed Bills of Entry/ MEIS Scrips referred in Annexure - C attached to the notices, liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962.

E. Penalty on associates:

(i) I impose penalty of Rs. 10 ,00,000/- Rupees Ten Lakhs Only) upon Shri Anoop Thatai, Partner of M / s Fashion Accessories, Gurgaon under Section 114 (m) of the Customs Act, 1962 for goods exported improperly as mentioned at para 60 above.

(ii) I impose penalty of Rs. 10 ,00,000/ (Rupees Ten Lakhs Only) upon Shri Anoop Thatai, Partner of M / s Fashion Accessories, Gurgaon under Section 114AA of the Customs Act, 1962 for goods exported improperly as well as the goods imported improperly as mentioned at para 60 above.

(iii) I impose penalty of Rs. 5 ,00,000/- (Rupees Five Lakhs Only) upon Shri Anoop Thatai, Partner of M / s Fashion Accessories, Gurgaon under Section 112(a)(u) of the Customs Act, 1962 for goods imported improperly as mentioned at para 60 above.

(iv) I impose penalty of Rs. 2 ,00,000/. (Rupees Two Lakhs Only) upon Shri Jile Singh, Manager (Export), of M / s Fashion Accessories, Gurgaon, under Section 117 of the Customs Act, 1962.

(v) I impose penalty of Rs. 2 ,00,000/- (Rupees Two Lakhs Only) upon Shri Pradeep Arora, Manager (Shipping & Logistic) of M/s. Fashion Accessories, Gurgaon, under Section 117 of the Customs Act, 1962.

(vi) I do not impose penalty under section 117 of the Customs Act, 1962 upon Shri Anoop Thatai, Partner of M / s Fashion Accessories, Gurgaon.

(vii) I do not impose any penalty under section 112, 114 (iii) and Section 114AA of the Customs Act, 1962 upon Shri Jile Singh, Manager (Export), of M / s Fashion Accessories and Shri Pradeep Arora, Manager (Shipping & Logistic) of M / s Fashion Accessories in respect of improper importation or/and improper exportation.

9. Aggrieved by the aforesaid order, appellants have filed the present appeal. The appellants submit as follows:

- The excess MEIS benefit as alleged to be claimed was immediately and voluntarily deposited along with due interest. The Appellant has paid the differential amount immediately on raising objection by DRI on its own before issuance of SCN along with interest as it have absolute respect for the process of law and to avoid litigation. This validates their intentions of good faith and respect for the law of the nation. Moreover, penalty was imposed by the DGFT for the same cause of action, against which an appeal was filed before Additional Director General of Foreign Trade on 26.06.2023 and is pending for adjudication. However, the Commissioner, Customs has mentioned in the Order that the Appellant has not filed any appeal for the penalty imposed by DGFT. At the stage of hearing it was mentioned that appeal against order of Additional DGFT has been allowed.
- Reliance was also placed on the judgement of M / s Vedika Metals Pvt. Ltd. passed by the CESTAT, Kolkata in Customs Appeal No. 75085 of 2017 on 26th June 2023, wherein it was held that the penalties cannot be levied on the Appellant and its Directors separately for the same offence where DOPT has already initiated action and imposed a penalty for the same offence.

"14.....

(c) Penalties under Section 114 and 114AA cannot be imposed on the Appellant and its Director separately for the same offence, since DGFT has already initiated action and imposed penalty for the same offence. 15. In view of the above discussion, we modify the order to the extent of setting aside the penalties imposed on the Appellant and its Director under section 114 and 114AA of the Customs Act, 1962.....
."

- Reliance is also placed on the judgment passed in case of Gayson & Company (P) Ltd. Vs. Commissioner of Cus. (Port), Kolkata 2019(370)ELT1026(Tri. - Kolkata)

".....

9. However, taking into consideration of the fact that the DGFT authorities had already imposed penalty upon the appellant, the penalty imposed on the appellant company is not warranted. Regarding imposition of penalty on the Appellant No. 2, Director of the appellant company the adjudicating authority observed that Shri Chetan Aggarwala was aware of the fact that no export incentive was availed on FeSi of Bhutanese origin and returned the entire amount of the incentive therefore imposition of penalty is not warranted.

10. In view of the above discussions, the impugned order is modified to the extent and the penalty imposed under Section 114(ii) on the appellant company and Appellant No. 2, Director of the appellant company are set aside. The penalties imposed under Section 114AA on Appellant No. 2 are also set aside.

- It is pertinent to note that it is the same cause of action which led to the imposition of penalties by the Customs and the DGFT. Thereby, on the basis of the above-mentioned judgement penalty should not be imposed by the Customs.

Classification of exported quilts was bonafide and there is no misclassification and misdeclaration.

- Classification was made on the basis of the ingredients, nomenclature, rules of interpretation etc. the classification was made as per the

interpretation deduced thereby. On mere basis of that the Appellant claimed higher MEIS benefit cannot become a basis to allege that the goods are misclassified.

- The Customs Officer did not carry out any testing and just on the basis of claiming of higher MEIS benefit made the allegation of misclassification.
- No objection was raised by the Customs Authorities with regards to the classification adopted by the Appellant at the of exporting the goods.
- Reliance was also placed on the judgment passed by the Hon Supreme Court in the case of Northern Plastic Limited Vs. Collector of Customs, 1998 (101) ELT 549 (SC), wherein it was held that where the complete description of the goods was given correctly in the Bill of Entry/ classification and the Company claims exemption, it does not amount to misdeclaration.

The Appellant cannot be said to have mis-declared their goods as full disclosure has been made to the authorities.

- All the necessary requirements were declared in Form ANF-3A for the MEIS application as per the bonafide understanding of the Appellant and the mis- declaration was not intentional and as soon as the mis-declaration was pointed out, the excess availment of MEIS benefit was paid and thereby, it is the case of mis-classification and not mis-declaration thereby making the penalty imposed u/s 114 AA of the Customs Act, 1962 is unreasonable. It was therefore prayed to set aside the impugned order.
- Shri. Anoop Thatai was the partner in the enterprise and Shri. Jile Singh and Pardeep Arora, were the employer have also appealed against the penalties.

Discussion and Findings:

10. Considered, we find that in the instant case, penalties have been imposed against M/s FASHION ACCESSORIES and other appellants on the ground that export of quilt by M/s FASHION ACCESSORIES was done by mis-classifying the goods and fraudulently availing benefit of licence/scrips and therefore reversal of benefit was done and penalties thereof were imposed on persons involved.. The penalties on M/s FASHION ACCESSORIES as well as his partner Shri. Anoop Thatai were imposed. Manager Shri. Jile Singh and Pardeep Arora Manager shipping and logistic were also subjected to the penalties to the extent of Rs. 2 Lakh each under Section 117. The appellant M/s. FASHION ACCESSORIES has already deposited the duty/credit availed demanded by the department and is contesting various penalties in appeals before us. The department has contended that working under self-assessment procedures under Section 17 of the Customs Act, 1962, appellant chose to declare Customs Tariff Head 94049019 while exporting from Nhava Sheva port and declared deliberately Tariff Head 94049099 while exporting the same goods from other ports. As per the department, the appellant M/s. FASHION ACCESSORIES mis-classified the export product i.e. quilts fitted with cotton/Polyester under CTH 94049099 to avail MEIS benefit at higher rate. As per testimonial evidence recorded by the department Shri. Anoop Thatia partner in M/s FASHION ACCESSORIES vide his statement dated 15/16/09-2020 on 6th July, 2021, this position was agreed and accepted that the classification of export product i.e. quilt fitted with cotton/polyester in their export document under HS code 94049099 was not correct, as the same was to be classified under CTH 94049019. It was also agreed in the above testimonial evidence recorded under Section 108 of the Customs Act, 1962 that the wrong classification was resorted to claim higher incentives under MEIS Scheme. Thereafter, the partner also

made voluntary payment as per his stated 06.07.2021 against excess availment of MEIS benefit on account of mis-classification. All the above statements recorded under Section 108 are admissible evidence and are sufficient evidence too, in overall facts of the matter. Department in these circumstances including that the appellant had in some other ports classified the goods correctly, (thereby giving impetus to the notion of the department that as found out in their intelligence and investigation), has submitted that the same was done with deliberate intent to avail excess benefit of MEIS Scheme. In the light of above, we find that the benefit having been reversed indicates wrongful use of MEIS Scheme and the conduct of differential treatment to same exports at different ports justifies the penalty as has been imposed by the department through well reasoned order of the Commissioner of Customs, Kandla, which is impugned before us. Proceedings by DGFT authorities under a different statute, cannot absolve appellant of penal consequences to be visited for their acts under Customs Act, 1962.

10.1 We therefore, find the order is maintainable as far as the penalty of M/s. FASHION ACCESSORIES is concerned. The role of Jile Singh Manager export and Pardeep Arora Manager Shipping has been found to be not showing any knowledge and connivance, so as to warrant penalty under Section 114 (iii), 112 or 114AA of the Customs Act, 1962. It has been stated that their role in improper importation and exportation was not found. For the same reasons penalty under Section 117 cannot be imposed on them for stated passive role in the case as Section 117 being residuary penal provision requires "existence of provision" as well as no specific penalty for the same. We find that "remaining passive" has not been shown to be violation of any specific provision. Even otherwise it is not alleged that they drew any benefit for themselves by obeying directions of their master.

11. In view of the foregoing, the penalties on these appellants are dispensed with. We also find that mitigating circumstances like considering the post investigation conduct of M/s. FASHION ACCESSORIES and their paying duty with interest totally amounting to Rs. 5,04,96,534/- and their credentials as three star export house with goods track record have already been factored by the lower authority. Therefore, no further reduction in penalty as far as M/s. FASHION ACCESSORIES is concerned is warranted. We also consider that in the instant case, the deliberate conduct is writ large on the face of factual matrix. However, since penalty has been imposed on the firm, we do not consider it justified to impose separate penalty on the partner, same, therefore against the partner Shri. Anoop Thatia is dispensed with in the facts and circumstances of this matter. Ordered accordingly. Penalty on the firm is maintained. Appeals of individuals are allowed.

12. Appeals are partly allowed.

(Pronounced in the open Court on 15.02.2024)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi