



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,  
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DIN – 20250671MN000092499A

	फ़ाइल संख्या FILE NO.	S/49-112/CUS/AHD/2024-25 S/49-113/CUS/AHD/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-106-107-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.06.2025
	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order – In – Original No, 01/AR/ADC/SRT/2024-25, dated 15.04.2024
	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	<ol style="list-style-type: none"> <li>1. M/s. Uni Jewels (HK) Ltd. Room No. 5,9/F, Rise Commercial Building, 5-11, Gran Ville, Circuit, Tsim Sha Tsui, Kowloon, Hong Kong</li> <li>2. Shri Vishal Shrenikkumar Mehta Sole Director of Uni Jewels (HK) Ltd. Rise Commercial Building, 5-11, Gran Ville, Circuit, Tsim Sha Tsui, Kowloon, Hong Kong</li> </ol>



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल।
(a)	any goods imported on baggage
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो।
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी।
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए।
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां, यदि शुल्क, मांगा गया व्याज, लगाया गया दंड की राशि और रुपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में

	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :		
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>
	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रुपए या उससे कम हो तो एक हजार रुपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रुपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार रुपए	
(ब)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रुपए से अधिक हो तो; दस हजार रुपए.	
(घ)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(द)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के %10 अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के %10 अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।	
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-	
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or	
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	



**ORDER IN APPEAL**

Two (02) appeals, as per details given in the table below, have been filed challenging Order – In – Original No. 01/AR/ADC/SRT/2023-24, dated 15.04.2024, (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs, Surat (hereinafter referred to as 'the adjudicating authority'):

<b>Sr. No.</b>	<b>Appeal File No.</b>	<b>Name and address of the Appellant</b>	<b>Herein after referred to as</b>
1.	S/49-112/CUS/AHD/24-25	M/s. Uni Jewels (HK) Ltd. Room No. 5,9/F, Rise Commercial Building, 5-11, Gran Ville, Circuit, Tsim Sha Tsui, Kowloon, Hongkong	Appellant No. 1
2.	S/49-113/CUS/AHD/24-25	Shri Vishal Shrenikkumar Mehta Sole Director of M/s. Uni Jewels (HK) Ltd. Room No. 5,9/F, Rise Commercial Building, 5-11, Gran Ville, Circuit, Tsim Sha Tsui, Kowloon, Hongkong	Appellant No. 2

2. Facts of the case, in brief, are that the a specific information was received by the officers of Directorate of Revenue Intelligence, Regional Unit, Surat, to the effect that one unit established in Surat Special Economic Zone, Sachin, Surat viz. M/s Karolina Trading India Pvt. Ltd (for the sake of brevity "M/s Karolina"), Plot No. 255, Unit No. 149 (IEC - AAGCK9126J), was importing cut and polished diamonds and diverting the same into Domestic Tariff Area in contravention to the provisions of Special Economic Zone Act, 2005 and the Customs Act, 1962 and rules framed thereunder. Information further indicated that cut and polished diamonds were being diverted in a white colour Maruti Ertiga car bearing No. GJ-05-RN-0673 and will exit from Surat SEZ, with the said cut and polished diamond.

2.1 From the investigation conducted, it appeared that M/s Karolina had its manufacturing unit at Surat SEZ at Plot No. 255, Unit No. 149, Surat SEZ, Sachin, Surat and was engaged in the import of synthetic moissanite in guise of cut & polished diamonds, manufacture the silver jewellery by studding the said synthetic moissanite on it and export the synthetic moissanite studded jewelley in guise of cut & polished diamonds studded jewellery. The firm had its two Directors Shri Vikash Chopra and Shri Vishal Soni, both on paper only but the firm was actually managed and controlled by its De-Facto Directors viz., Shri Rakesh Rampuria and Shri Sagar Shah and few Hong Kong based persons viz., Mr Joy, Mr. Peter, Mr. Mac alias Mr. Montu alias Mr. Nishank Dagli, Mr. Vishal Mehta (Appellant No. 2).



2.2 During the course of investigations, statements of the following persons were recorded on the dates mentioned against them:

- i. Shri Rakesh Rampuria (De-facto Director of M/s Karolina) on 10/11/12/14/15.12.2021, 04.10.2022;
- ii. Shri Jaykumar D Koriya, Manager of M/s Karolina, Surat SEZ on 11.12.2021;
- iii. Smt. Kinjal Prahladbhai Thakor, Back Office Executive of M/s Karolina, Surat SEZ on 11.12.2021;
- iv. Shri Vikash Chopra, Director of M/s Karolina on 11/12.12.2021;
- v. Shri Sagar Shah, De-facto Director of M/s Karolina, Surat SEZ on 11/12/14/15.12.2021, 28/29.09.2022;
- vi. Shri Montukumar Gandhi, Partner of M/s PDP Consultancy on 20.12.2021;
- vii. Shri Prakashbhai Chorvadiya, Partner of M/s Labheshwar Diamond on 18.04.2022;

2.3 Shri Rakesh Rampuria used to visit M/s Karolina, SEZ, Surat regularly and gave all the instruction related to receipt of the import consignment, manufacturing and export thereof. Shri Rakesh Rampuria along with Shri Sagar Shah was managing all day-to-day activities of M/s Karolina, SEZ, Surat. He used to deal with foreign supplier for Import / Export, the same was corroborated with the Statements dated 11.12.2021 of Shri Jaykumar D Koriya and Smt. Kinjal P Thakor, Statement dated 11/12.12.2021 of Shri Vikash Chopra and Statement dated 20.12.2021 of Shri Montukumar Gandhi. He also used to get the commission / incentives to manage all day to day activities of the firm.



Shri Sagar Shah and Shri Rakesh Rampuria both De-Facto Director of M/s Karolina entered into conspiracy with Shri Chirag Bagadiya and Hong Kong based persons and hatched a plan of smuggling of diamonds from Surat SEZ into DTA. Officers of Customs & DRI intercepted a car driven by Shri Rakesh Rampuria at the exit gate of Surat SEZ on 09.12.2021 and when his belongings & white colour Maruti Ertiga car bearing Registration No. GJ-05-RN-0673 were searched under the Panchnama dated 09.12.2021; cut & polished diamonds (kept in green back pack) from the possession of Shri Rakesh Ramupria were recovered. Shri Rakesh Rampuria informed that he came from M/s Karolina, Surat (a unit in Surat SEZ Zone) but he did not possess SEZ gate pass and was removing the said cut & polished diamonds illegally from Surat, SEZ without the cover of documents i.e. Bill of Entry, Invoice, Packing List, Job Work Challan or transportation documents, permission of SEZ authorities etc. related to said cut and polished diamonds. Therefore, the Customs & DRI officers recovered the green colour back pack & detained the above said diamonds along with the white colour Maruti Ertiga car bearing Registration No. GJ-05-RN-0673 under the reasonable belief that the same were liable for confiscation. Shri Rakesh Rampuria in his Statement dated 10.12.2021, 11/12.12.2021, 14/15.12.2021 and 04.10.2022 had admitted that diamonds recovered from his possession on 09.12.2021 were illegally removed by him from M/s. Karolina, SEZ, Surat. For such illegal activities three whatsapp groups "CMSJT", "ABCD" and "BKC" were created by the Hong Kong based persons and on the basis of the details shared on the said groups, he personally used to visit the factory premise of M/s Karolina

Trading India Pvt Ltd, SEZ, Surat (which is evidently clear from the video clips retrieved from the DVR by the FSL, Surat) and illegally removed the cut & polished diamond from Surat SEZ in his white colour Maruti Ertiga car bearing Registration No. GJ-05-RN-0673 on 09.12.2021. The said fact was corroborated with the documentary evidences in the form of paper slips containing details of diamonds, carats and its value in USD retrieved from mobile of Shri Rakesh Rampuriya by FSL, Surat, Packing List filed with Bill of Entry which never covered such diamonds and the valuation of the seized diamonds by panel of GJEPC.

2.5 The diamonds removed from SEZ unit were natural cut and polished diamonds and the modus was of illegally removing the said diamonds to evade payment of Customs duty leviable on it. The said fact was corroborated with the Statements dated 11/12.12.2021 of both Shri Sagar Shah and Shri Rakesh Rampuriya and Lab Test Report dated 03.03.2022 and 04.03.2022 of Indian Diamond Institute, Surat which also provided GIA number (girdle inscription on diamond).

2.6 Shri Chirag Bagadiya used to receive the details of cut & polished diamond to be removed from the import consignment from Montu alias Shri Nishank Dagli of Hong Kong which in turn he used to share the said details on "CMSJT" whatsapp group through his mobile no. +85255852776. The said fact was corroborated with the Statement dated 08/09.01.2022 of Shri Chirag Bagadiya. Shri Nishank Dagli (who used to provide details of cut and polished diamonds to be removed) owner of M/s Stallion Limited, Hong Kong & other firms and Shri Vishal Mehta (Appellant No. 2) owner of M/s Uni Jewels (HK) Ltd., Hong Kong (Appellant No. 1) both based in Hong Kong, who exported the seized cut and polished diamonds from their company in Hong Kong were issued Summons but they never appear before the departments for recording of their statements



2.7 When the investigation was extended to the firms / persons who got GIA Certificate issued of the seized smuggled diamonds, in some of the cases in which the chain of custody of diamonds was completed on the basis of information supplied, it was revealed that some of the diamonds were already exported to Hong Kong and some was delivered to brokers whose details were not available. The 1534 cut & polished diamonds, detained from the possession of Shri Rakesh Rampuria on 09.12.2021 were Lab Tested in testing facility of IDI, Katargam, Surat and further evaluated by the GJEPC panel of expert and the value of the same came to be Rs. 4,52,43,030/. The said 1534 cut & polished diamonds weighing 237.99 carat were seized. The said fact was corroborated with the Panchnama dated 16.03.2022 drawn at DRI office, Surat and the Seizure Memo dated 28.03.2022.

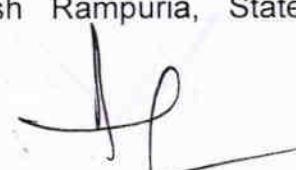
2.8 Further, from the documentary evidences viz. Stock Register (resumed from M/s Karolina, Surat SEZ) and from the physical stock available, it appeared that M/s Karolina Surat SEZ (through its Directors / De-Facto Directors) also illegally procured 246 synthetic moissanite from DTA without filing any documents with the SEZ authority. As

per Stock Register maintained at M/s Karolina, Surat they had stock of 3118 synthetic moissanite on paper but in actual 3364 diamonds in form of loose, ferromagnetic and studded in rings were found. As per the valuation of synthetic moissanite provided by the GJEPC panel of expert, the value of said 246 synthetic moissanite weighing 267.95 carat came to be Rs. 44,212/-. Shri Kinjal Thakor, Back Office Executive and Shri Jaykumar D. Koriya, Manager both in their Statement dated 11.12.2021 had stated that when there was shortage of diamonds, Shri Rakesh Rampuriya brought it from DTA into SEZ.

2.9 It appeared that Shri Sagar Shah and Shri Rakesh Rampuria De facto Director of M/s Karolina and Shri Chirag Bagadiya entered into conspiracy with Hong Kong based persons viz. Mr. Joy, Mr. Peter, Mr. Mac alias Montu alias Nishank Dagli, Shri Vishal Mehta (Appellant No. 2) hatched a plan of smuggling of cut and polished diamond from Surat SEZ and overstatement of value of imported goods. As per the version of Shri Rakesh Rampuria and Shri Sagar Shah that since the inception of the firm they imported moissanite, therefore the goods present in the factory premises were detained under Panchnama dated 09/10.12.2021, 14.12.2021 and the goods imported by the firm where Bill of Entry was not filed were also detained under Panchnama dated 28.12.2021. The said diamonds after being tested in Indian Diamond Institute revealed that the above said diamonds were not natural but they were synthetic moissanite, ferromagnetic material and synthetic moissanite studded silver rings. The said 5479 synthetic Moissanite, 07 ferromagnetic material and 1134 synthetic moissanite studded silver jewellery, were evaluated under Panchnama dated 06.09.2022 and the value was arrived at Rs.17,17,807/-. The above stated fact were corroborated with the Statement dated 11/12.12.2021 of both Shri Rakesh Rampuria and Shri Sagar Shah, Panchnama dated 09.12.2021, 14.12.2021, 28.12.2021 drawn at Surat SEZ, Panchnama dated 10.08.2022, 23.08.2022, 24.08.2022, 29.08.2022, 31.08.2022 and 02.09.2022 drawn at DRI, Katargam, Surat, Valuation Panchnama dated 06.09.2022 drawn at DRI Office, Surat, Statement dated 10.12.2021, 11/12.12.2021 and 14/15.12.2021 of Shri Rakesh Rampuria, Statement dated 11/12.12.2021 and 14/15.12.2021 of Shri Sagar Shah. The above said 246 synthetic moissanite and 6620 pieces of synthetic moissanite (in form of 5479 loose synthetic moissanite, 07 pieces of ferromagnetic material and 1134 pcs studded in silver jewellery) were seized vide Seizure Memo dated 12.09.2022.



2.10 The Directors of M/s Karolina viz., Shri Vikash Chopra and Shri Vishal Bhupat Soni were Directors merely on paper and they never looked after affairs of the said company. Shri Vikash Chopra only at the time of establishment of the said company in Surat SEZ visited Development Commissioner Office. This fact was further corroborated with the Statement dated 11/12.12.2021 of Shri Vikash Chopra wherein he informed that he provided signed copies of KYC for opening of Bank Account and for establishment of unit in SEZ, digital signature etc. to Shri Rakesh Rampuriya and Shri Sagar Shah. This fact was corroborated with the Statement dated 10.12.2021, 11/12.12.2021 and 14/15.12.2021 of Shri Rakesh Rampuria, Statement dated 11/12.12.2021 and 14/15.12.2021 of Shri Sagar Shah.



2.11 The synthetic moissanite diamonds detained under Panchnama dated 09/10.12.2021, 14.12.2021 & 28.12.2021 were exported by M/s Uni Jewels (HK) Ltd. (Appellant No. 1), (2) M/s Fortune Trading (3) Phoenix Impex (4) Stallion Limited (5) M/s Spinel House all Hong Kong Based firms / companies. Thus, it appeared that these companies / firm abetted M/s Karolina Surat in mis-declaration of goods and value before Customs / SEZ authorities. On the strength of over stated invoices raised by these firms, M/s Karolina has siphoned off excess money from India to Hong Kong and mis-declared synthetic moissanite as cut and polished diamonds.

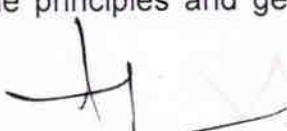
2.12 Thus, in view of the facts discussed in the foregoing paras and the material evidences available on record, it appeared that M/s Karolina (through its De-Facto Director Shri Rakesh Rampuria and Shri Sagar Shah and Director on record, i.e., Shri Vikash Chopra and Shri Vishal Soni) have contravened the provisions of Customs Act, 1962 & SEZ Act, 2005 read with conditions specified in LOP / LOA No. SSEZ/II/07/2020-21, dated 25.09.2020 issued by the Surat SEZ authority in favour of M/s. Karolina, Surat SEZ as discussed herein supra in as much as M/s Karolina (through its De-Facto Director Shri Rakesh Rampruia and Shri Sagar Shah and Director on record i.e. Shri Vikash Chopra and Shri Vishal Soni) in connivance with Hong Kong based persons viz. Mr. Joy, Mr. Peter, Mr. Mac alias Montu alias Nishank Dagli, Shri Vishal Mehta (Appellant No. 2) hatched conspiracy to siphon off money through Bank Account of M/s Karolina. They imported synthetic mossainite and exported synthetic moissanite studded silver rings by declaring "synthetic moissanite" as "cut and polished diamonds". They not only mis-declared the description of goods but also the quantity and value of the goods. They have overstated the value of imported and exported consignments as the value declared was for cut and polished diamonds but in actual cheap synthetic moissanite have been imported. Shri Sagar Shah in his Statement dated 11/12.12.2021 and Shri Rakesh Rampuriya in his Statement dated 11/12.12.2021 had accepted that from the very first consignment they were importing moissanite instead of cut and polished diamonds. Further, the diamonds seized from the factory premises under Panchnama dated 09/10.12.2022 and 14.12.2022 and from one live consignment seized under Panchnama dated 28.12.2022, which were subjected to Lab test were reported to be moissanite, ferromagnetic material. Further, they were also indulged in smuggling of natural cut and polished diamonds and synthetic moissanite from Surat SEZ (deemed foreign territory).

2.13 Therefore, the declared value of 6620 pieces of synthetic Moissanite weighing 7516.03 carats valued at Rs.17,17,807/- (in form of 5479 loose synthetic moissanite, 07 pieces of ferromagnetic material and 1134 pcs studded in silver jewellery) weighing 7516.03 carat, as shown in Annexure-A1 & A2 cannot be treated as correct transaction value in terms of the provisions of Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of value of the imported goods) Rules, 2007 and the same appeared to be liable for rejection in terms of Rule 12 of the Customs Valuation (Determination of Price of Imported Goods) 2007 ibid. Similarly, the value of 246 synthetic moissanite smuggled from DTA to SEZ was also required to be determined in terms of



the provisions of Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of value of the Exported goods) Rules, 2007. After the rejection of the declared assessable value of the 6620 pieces of synthetic Moissanite weighing 7516.03 carats valued at Rs.17,17,807/- (in form of 5479 loose synthetic moissanite, 07 pieces of ferromagnetic material and 1134 pcs studded in silver jewellery) weighing 7516.03 carat detailed in Annexure-A1 & A2 was required to be re-determined on the pro rata basis of the actual value determined by GJEPC expert panel under Panchnama dated 10.08.2022, 23.08.2022, 24.08.2022, 29.08.2022, 31.08.2022 and 02.09.2022 and accepted by Shri Sagar Shah in his Statement dated 29.09.2022, Shri Rakesh Rampuriya in his Statement dated 04.10.2022 and Statement dated 04.10.2022 of Shri Vikash Chopra, by taking recourse to provisions of Section 14 (1) of the Customs Act, 1962 read with Rule 3 (1) read with Rule 9 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007, according to which, the value shall be determined using reasonable means consistent with the principles and general provisions of this Rules. Similarly, value of 246 pieces of synthetic moissanite (procured from DTA to Surat SEZ) weighing 267.95 carat was also required to be determined by taking recourse to provisions of Section 14 (1) of the Customs Act, 1962 read with Rule 3 (1) read with Rule 6 of the Customs Valuation (Determination of Price of Exported Goods) Rules, 2007, according to which, the value shall be determined using reasonable means consistent with the principles and general provisions of these Rules. In view of the facts discussed in foregoing Paras and material evidence available on record, it appeared that M/s. Karolina, SEZ Surat had mis declared the assessable value of 6620 pieces of synthetic Moissanite (in form of 5479 loose synthetic moissanite, 07 pieces of ferromagnetic material and 1134 pcs studded in silver jewellery) weighing 7516.03 carat valued as Rs 1,06,71,45,631/- and it appeared that it should be re-determined as Rs.17,17,807/- as detailed in Annexure A1 & A2 under Section 14 (1) of the Customs Act, 1962 read with Rule 3 (1) read with Rule 9 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007. Similarly, the value of 246 pieces of synthetic moissanite (procured from DTA to Surat SEZ) weighing 267.95 carat which was smuggled into SEZ from DTA without filing of Shipping Bill or any other documents should not be determined as Rs. 44,212/- under Section 14 (1) of the Customs Act, 1962 read with Rule 3 (1) read with Rule 6 of the Customs Valuation (Determination of Price of Exported Goods) Rules, 2007.

2.14 Further, the value of seized 1534 cut & polished diamonds weighing 237.99 carats as detailed in Annexure-B was required to be re-determined as per the valuation Rs. 4,52,43,030 provided by GJEPC expert panel under Panchnama dated 16.03.2022 and accepted by Shri Sagar Shah in his Statement dated 29.09.2022, Shri Rakesh Rampuriya in his Statement dated 04.10.2022 and Statement dated 04.10.2022 of Shri Vikash Chopra, by taking recourse to provisions of Section 14 (1) of the Customs Act, 1962 read with Rule 3 (1) read with Rule 9 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007, according to which, the value shall be determined using reasonable means consistent with the principles and general provisions of this Rules.



2.15 Thus, in view of the facts discussed in the foregoing paras and the material evidences available on record, it appeared that M/s Karolina (through its De-Facto Director Shri Rakesh Rampuria and Shri Sagar Shah and Director on record, i.e., Shri Vikash Chopra and Shri Vishal Soni) has contravened the provisions of Customs Act, 1962 & SEZ Act, 2005 read with conditions specified in LOP / LOA No. SSEZ/II/07/2020-21, dated 25.09.2020 issued by the Surat SEZ authority in favour of M/s. Karolina, Surat SEZ. Further, it also appeared that the import of synthetic moissanite by them by adopting corrupt and fraudulent practices in a pre-determined manner to derive illegal benefits, were in contravention to the provisions of Customs Act, 1962, Foreign Trade (Development and Regulation) Act, 1992 and Foreign Trade (Regulation) Rules 1993. M/s Karolina, SEZ Surat by suppressing the actual value before the designated authority of Customs / SEZ authorities falls under the category of "illegal imports" as per Section 11A (a) of the Customs Act, 1962 and the said act on their part construes "smuggling" as defined in Section 2 (39) of the Customs Act, 1962. Further, it appeared that all these acts on the part of M/s Karolina, SEZ Surat have rendered the impugned goods liable to confiscation under the provisions of Section 111 of the Customs Act, 1962 and M/s Karolina, Surat was also liable for penalty under Section 114 A of the Customs Act, 1962. Penalty was also liable to be imposed on it under Section 114AA of Customs Act, separately, since synthetic moissanite were deliberately mis declared in Bills of Entry in terms of description and value in export documents. Further, M/s Karolina, Surat SEZ had smuggled synthetic moissanite from DTA to Surat SEZ. It also appeared that no documents were filed for procurement of the said goods with the proper authorities and they failed to produce any documents for its procurement. Therefore, it appeared that the said goods which were smuggled into SEZ in contravention of provisions of Customs Act, 1962, SEZ Act, 2005 and SEZ Rules, 2006, falls under the category of "illegal exports" as per Section 11 H of the Customs Act, 1962 and the said act on their part construes "smuggling" as defined in Section 2 (39) of the Customs Act, 1962. Thus, M/s Karolina by their act of smuggling of diamonds from DTA to SEZ has rendered the said goods liable to confiscation under Section 113 of Customs Act, 1962.

2.16 It appeared that Shri Rakesh Rampuria, De-facto Director and beneficial owner of Karolina, by taking the benefit of Rules 14, 46 and 75 of the SEZ Rules, 2006, as goods were not examined by SEZ authorities, defrauded the Government exchequer. Further the goods were clandestinely removed by concealing it in his car without payment of duty and without any legitimate documents outside the Surat SEZ area to evade applicable Customs Duty. It appeared that the whole modus of smuggling was designed and masterminded by the above De-Facto Directors / Beneficial Owner / Directors of the firm and executed by him. It further appeared that Shri Rakesh Rampuria, De-Facto Director of M/s. Karoline intentionally mis-declared synthetic moissanite as cut and polished diamonds by overrating the value and smuggled cut and polished diamond from Surat SEZ into DTA without carrying out authorized operations and without payment of duty in contravention to the Customs Act, 1962 and allied Acts & Rules made thereunder

which he knew were liable to confiscation under Section 111(j), 111(m), 111(o) and provision of Section 113 of the Customs Act, 1962. He thereby rendered himself liable for penal action under Section 112 (a), 112 (b) & 114 (iii) and 117 of the Customs Act, 1962. Since he mis-declared in terms of description and value of imported good in documents to hoodwink Customs and SEZ authorities, he was liable for penal action under Section 114AA of Customs Act, separately in his personal capacity.

2.17 It appeared that Shri Sagar Shah, De-Facto Director of M/s Karolina entered into conspiracy with Shri Rakesh Rampuria, Shri Chirag Bagadiya and Hong Kong based person's viz. Shri Vishal Mehta (Appellant No. 2), Shri Montu alias Shri Nishank Dagli hatched a plan of smuggling of diamond from Surat SEZ and Trade Based Money Laundering. He was also the active member of the whatsapp group created for smuggling activities and sometimes he himself used to drop the details (on CMSJT, ABCD, BKC whatsapp group) of the cut & polished diamonds to be removed from the SEZ. He was in regular contact of Hong Kong based persons viz. Mr. Mac alias Montu alias Nishank, Shri Vishal Mehta (Appellant No. 2) to control and manage the smuggling activities from M/s Karolina, SEZ, Surat. For such illegal activities, he was getting Rs.1,50,000/- per month as incentives from the Hong Kong based persons. He personally interviewed and hired few employees of M/s Karolina Surat SEZ which proved that he had control over the activities of M/s Karolina Surat SEZ. Shri Sagar Shah had knowledge that since the inception of the first import, M/s Karolina had imported synthetic moissanite in the guise of original cut and polished diamonds and exported the synthetic moissanite studded silver jewellery in guise of cut & polished studded silver jewellery. He, by taking the benefit of Rules 14, 46 and 75 of SEZ Rules 2006, as goods were not examined by SEZ authorities, had defrauded the Government exchequer. It appeared that the whole modus of smuggling of diamond was designed and masterminded by the above De-Facto Directors / Beneficial Owner / Directors of the firm and actively facilitated by him. Thus, it

appeared that Shri Sagar Shah, De-Facto Director / Beneficial Owner of M/s Karolina intentionally mis-declared synthetic moissanite as cut and polished diamonds and aided in smuggling from Surat SEZ into DTA without carrying out authorized operations and without payment of duty, in contravention of SEZ Act, 2005; SEZ Rules, 2006 and Customs Act, 1962 and allied Acts & Rules made thereunder which he knew were liable to confiscation under Section 111(j), 111(m), 111(o) and provision of Section 113 of the Customs Act, 1962. He thereby rendered himself liable for penal action under Section 112 (a), and 114 (iii) of the Customs Act, 1962. Since he mis-declared in terms of description and value of imported/exported good in documents to hoodwink Customs and SEZ authorities, he is liable for penal action under Section 114AA of Customs Act, separately in his personal capacity.

2.18 It further appears that Shri Vikash Chopra and Shri Vishal Soni were the Directors of M/s Karolina on paper, on SEZ record and as well as on the records on Banks. Shri Vikash Chopra became Director on the direction given by his cousin Shri Rakesh Rampuria and Shri Vishal Soni became Director at the direction of Shri Sagar

Shah. Shri Vikash Chopra & Shri Vishal Soni provided signed copies of his KYC documents to Shri Rakesh Rampuria and Shri Sagar Shah for incorporation of the firm in Surat SEZ, getting LOP from the SEZ authority and for opening Bank Accounts. Shri Vikash Chopra provided his digital signature to Shri Rakesh Rampuria and Shri Sagar Shah to use it whenever required. Shri Vikash Chopra in his Statements accepted that he received Rs.75000/- per month for being Director on paper, thus being benefitted in monetary terms. Further, Shri Vishal Soni inspite of Summons dated 29.03.2022, 07.04.2022 and 19.09.2022 issued to him, he never appeared before the department indicating his role in smuggling of cut & polished diamonds and Trade Based Money Laundering. Thus, by their above acts of commission & omission they abetted Shri Rakesh Rampuria, Shri Shri Sagar Shah, Shri Chirag Bagadiya and Hong Kong based persons in mis-declaration of synthetic moissanite as cut and polished diamonds by overstating the value and smuggling from Surat SEZ into DTA without carrying out authorized operations and without payment of duty, in contravention of SEZ Act, 2005; SEZ Rules, 2006 and Customs Act, 1962 and allied Acts & Rules made thereunder which he knew were liable to confiscation under Section 111(j), 111(m), 111(o), and provisions of 113 of the Customs Act, 1962. They thereby rendered themselves liable for penal action under Section 112 (a), and 114 (iii) of the Customs Act, 1962. Since M/s Karolina had mis-declared in terms of description and value of imported / exported good in documents to hoodwink Customs and SEZ authorities and they being legal Directors were also responsible for the activities of their company and they are also liable for penal action under Section 114AA of Customs Act, separately.

2.19 It further appears that, Shri Vishal Mehta (Appellant No. 2) was the owner of M/s Uni Jewels (HK) Ltd., Hong Kong (resident of India) and also the overseas supplier of M/s Karolina Trading India Pvt. Ltd, SEZ, Surat. M/s Uni Jewels (HK) Ltd., Hong Kong (Appellant No. 1) had raised the inflated Commercial Invoices to M/s Karolina, Surat SEZ. One consignment, detained from the factory premises of M/s Karolina Surat SEZ was sent by M/s Uni Jewels (HK) Ltd., Hong Kong and were mis-declared before the SEZ authority in terms of value and description. The same was further corroborated with the synthetic moissanite diamonds (after Lab Test) seized which was supplied by him under Panchnama dated 09/10.12.2021 and was declared as cut and polished diamonds. Therefore, the Appellant No. 2 in connivance with Shri Sagar Shah, Shri Rakesh Rampuria and other Hong Kong based persons, had entered in conspiracy of mis-declaration of goods supplied by him and was instrumental to carry out a well-managed smuggling racket and also involved in siphoning off the money from India to Hong Kong. Further, the cut & polished diamonds, recovered from the possession of Shri Rakesh Rampuria on 09.12.2021 were the same diamond which were sent by M/s Uni Jewels (HK) Ltd, Hong Kong [Owner: Shri Vishal Mehta (Appellant No. 2)] by concealing it in export consignment (at Hong Kong) and meant for smuggling from Surat SEZ into DTA. Therefore, with the above said act of omission & commission, he abetted M/s Karolina (through its De-Facto Director / Beneficial Owner / Director) and other person involved in import of synthetic moissanite in guise of cut and polished diamonds having mis-declared

value and smuggling cut and polished diamond into DTA without carrying out authorized operations and without payment of duty, in contravention of SEZ Act, 2005; SEZ Rules, 2006 and Customs Act, 1962 and allied acts & rules which he knew were liable for confiscation under Section 111 (j), (m) and 111(o) and rendered himself liable for penal action under Section 112 (a), of the Customs Act, 1962. Further, he through his company M/s Uni Jewels (HK) Ltd. (Appellant No. 1) had raised inflated and mis declared Commercial Invoices in terms of quantity, value and description of goods and thereby abetted M/s Karolina in submitting the same to SEZ / Customs authorities and siphoning off money to his company and thereby by his act of commission, he has rendered himself liable for penalty under Section 114AA of Customs Act also.

2.20 It appeared that Shri Chirag Bagadia, entered into conspiracy with Shri Sagar Shah and Hong Kong based persons viz., Mr. Joy, Mr Peter, Mr. Mac alias Montu alias Shri Nishank Dagli etc., hatched a plan of smuggling of cut and polished diamond from Surat SEZ and Trade Based Money Laundering inasmuch as those diamond smuggled by Shri Rakesh Rampuria from Surat SEZ were received by him and as per instructions of one Hong Kong based person viz., Shri Montu alias Nishank Dagli, handed over the same locally. It appeared that Shri Chirag Bagadia, intentionally did not reveal the identity of the person to whom the smuggled diamonds were handed over. He was the part of whatsapp group "CMSJT". "ABCD", which was exclusively created and used for smuggling from Surat SEZ and Trade Based Money Laundering activities. He was also the active member of the above said whatsapp group created for smuggling activities wherein the details of the cut & polished diamonds to be removed from the SEZ, were shared. It appeared that the whole modus of smuggling of diamond was designed and masterminded by the above De-Facto Directors / Beneficial Owner / Directors of the firm and actively facilitated by him. Thus, it appeared that Shri Chirag Bagadiya aided in smuggling of cut and polished diamonds from Surat SEZ into DTA without carrying out authorized operations and without payment of duty, in contravention of SEZ Act, 2005; SEZ Rules, 2006 and Customs Act, 1962 and allied Acts & Rules made thereunder which he knew were liable to confiscation under Section 111(j), 111(m), and 111(o) of the Customs Act, 1962. He thereby rendered himself liable for penal action under Section 112 (a) of the Customs Act, 1962. Since he aided in mis-declaration in terms of description and value of the imported goods in documents to hood wink Customs and SEZ authorities, he appeared to be liable for penal action under Section 114 AA of the Customs Act, 1962, separately in his personal capacity.

2.21 It appeared that Shri Nishank Dagli, alias Montu, owner of M/s. Stallion Limited, Hong Kong, M/s. Phoenix Impex, Hong Kong, M/s. Fortune Trading, Hong Kong and M/s. Suptnik Trading, Hong Kong was mastermind of smuggling of diamond from Surat SEZ and gave directions to Shri Chirag Bagadiya to hand over the smuggled goods to a person (whose identity had not been revealed by Shri Chirag Bagadiya). Shri Nishank Dagli alias Montu was also a part of whatsapp group "CMSJT". "ABCD", which was exclusively created and used for smuggling of diamonds from Surat SEZ. He was

the owner of the above mentioned firms and these firms were the overseas suppliers of M/s. Karoline Surat, SEZ, i.e., the firms who had supplied synthetic moissanite to M/s. Karoline and misdeclared before the Customs / SEZ authority. He was a key person to create a well-managed smuggling racket and siphoning off the money from India to Hong Kong. Thus, it appeared that Shri Nishank Dagli aided in smuggling cut and polished diamonds from Surat SEZ into DTA without carrying out authorized operations and without payment of duty, in contravention of SEZ Act, 2005; SEZ Rules, 2006 and Customs Act, 1962 and allied Acts & Rules made thereunder which he knew were liable to confiscation under Section 111 (j), 111(m), and 111(o) of the Customs Act, 1962. He thereby rendered himself liable for penal action under Section 112 (a), of the Customs Act, 1962. Further, he through his companies / firms had raised inflated and misdeclared Commercial Invoices in terms of description and value of imported goods and thereby abetted M/s. Karoline in submitting the same to SEZ / Customs authorities and siphoning off money to Hong Kong based companies including his companies / firms and thereby by his acts of commission, he had rendered himself liable for penal action under Section 114 AA of Customs Act, 1962, separately in his personal capacity.

2.22 It further appeared that all Hong Kong based companies / firms in total namely (1) M/s Uni Jewels (HK) Ltd. (Appellant No. 1), (2) M/s Fortune Trading (3) M/s. Bel Diam Limited, (4) M/s. Goldie International Limited, (5) M/s. Sputnik Trading, (6) M/s. Spinel House Limited, (7) M/s. Stallion Limited, (8) M/s. Mer Konfekt Trading, (9) M/s. Unnati General Trading LLC, (10) Phoenix Impex, (11) M/s. Zhan Hong Trade (HK) Limited, (12) Go Glitter Limited in conspiracy with Shri Sagar Shah, Shri Chirag Bagadiya exported synthetic moissanite and raised invoices to M/s Karolina showing supply of cut and polished diamonds. Thus, they all abetted M/s Karolina (through De-Facto Director Shri Sagar Shah and Shri Rakesh Rampuria and Directors on record viz. Shri Vikash Chopra and Shri Vishal Soni) in overstating the value. M/s Karolina had paid overstated values to these firms though the actual value of import was very less. Therefore, with the above said act of omission & commission made by the overseas suppliers abetted M/s Karolina (through its De-Facto Director / Beneficial Owner / Director) and other person involved in import of synthetic moissanite (in carats) in contravention of SEZ Act, 2005; SEZ Rules; 2006 and Customs Act, 1962 and allied acts & rules which they knew were liable for confiscation under Section 111 (m) and 111 (o) and rendered themselves liable for penal action under Section 112 (a), of the Customs Act, 1962. They all raised Commercial invoices to M/s Karolina Trading India Limited which were inflated as synthetic moissanite was exported by them in guise of cut and polished diamonds and the same were produced before the Customs/SEZ authorities for assessment at the time of filing of bills of entries and thereby the act of commission of issuing overstated commercial invoice they abetted M/s Karolina Trading India P. Ltd. in siphoning of overstated value and thereby rendered themselves liable for penalty under Section 114 AA of Customs Act also.

2.23 On completion of the investigation, a Show Cause Notice from F. No.

VIII/10-38/O&A/ADC/Karoline/2022-23, dated 02.12.2022 was issued to M/s. Karolina Trading India Pvt. Ltd and other noticee alleging specific roles of each noticees proposing necessary action as per the law. The Show Cause Notice proposed the Appellants as to why:

- i. penalty should not be imposed under Section 112 (a) and 114AA of the Customs Act, 1962 upon the Appellant No. 1;
- ii. penalty should not be imposed separately under Section 112 (a) and 114AA of the Customs Act, 1962 upon the Appellant No. 2;

2.23.1 The adjudicating vide the Order-In-Original No. 09/AR/ADC/SRT/2023-24, dated 08.12.2023, had confirmed all the allegations as proposed in the Show Cause Notice upon all the noticees. As regards, the allegation proposed in respect of the Appellant No. 1 & 2, the adjudicating authority passed the order as under:-

- a. He has ordered penalty of Rs. 28,17,63,111/- on the Appellant No. 1, Hong Kong under Section 112 (v) of the Customs Act, 1962 in connection with the subject 2033.90 Carats of synthetic moissanite mis-declared in guise of cut and polished diamonds having mis-declared value of Rs. 28,20,98,701/- and re-determined at value of Rs. 3,35,590/- rendered liable to confiscation;
- b. He has order penalty of Rs. 6,71,180/- on the Appellant No. 1, Hong Kong under Section 114 AA of the Customs Act, 1962 in connection in connection with the subject 2033.90 Carats of synthetic moissanite mis-declared in guise of cut and polished diamonds having mis-declared value of Rs. 28,20,98,701/- and re-determined at value of Rs. 3,35,590/-;
- c. He has ordered penalty of Rs. 5,000/- on the Appellant No. 2 under Section 112 (ii) of the Customs Act, 1962 in connection with the subject seized 1534 cut and polished diamond weighing 237.99 Carat worth Rs. 4,52,43,030/- rendered liable to confiscation;
- d. He has ordered penalty of Rs. 9,05,06,060/- on the Appellant No. 2 under Section 114 AA of the Customs Act, 1962 in connection with the subject seized 1534 cut and polished diamond weighing 237.99 Carat worth Rs. 4,52,43,030/- rendered liable to confiscation;
- e. He has ordered penalty of Rs. 28,17,63,111/- on the Appellant No. 2 under Section 112 (v) of the Customs Act, 1962 in connection with the subject 2033.90 Carats of synthetic moissanite in guise of cut and polished diamonds having mis-declared value of Rs. 28,20,98,701/- and re-determined at value of Rs. 3,35,590/- rendered liable to confiscation;
- f. He has ordered penalty of Rs. 6,71,180/- on the Appellant under Section 114 AA of the Customs Act, 1962 in connection with the subject 2033.90 Carats of synthetic moissanite in guise of cut and polished diamonds having mis-declared value of Rs. 28,20,98,701/- and re-determined at value of Rs. 3,35,590/- rendered liable to confiscation;



2.24 The Appellants had challenged the said Order-In-Original dated 08.12.2023 before the Hon'ble High Court of Gujarat in Special Civil Application No. 4254 of 2024, whereby the Appellant had sought quashing and setting aside the impugned Show Cause Notice and Order-In-Original dated 08.12.2023. The Appellants filed further affidavit submitting the documents of Shareholding of the Appellant Company. Considering the further affidavit, the Hon'ble High Court of Gujarat passed an Order dated 20.03.2024, which is as under:-

*"2. Heard learned senior advocate Mr. Mihir Joshi with learned advocate Mr. Priyank Lodha for the petitioners. It was submitted by learned senior advocate Mr. Joshi that the petitioners are one and the same persons as petitioner No. 2 is 100% shareholder of the petitioner No. 1 company and therefore, there could not have been separate penalty for each of the petitioners. In support thereof, he has referred to and relied upon Certificate Registrar of Incorporation issued by the Companies, Hong Kong and the Memorandum of Articles of Association petitioner No. 1 company, wherein petitioner No. 2 of is shown to be holding 100 numbers of shares as a Founder Member.*

*2.1 It was, therefore, submitted that the petitioner No. 2, in effect, is the Proprietor of petitioner No. 1 company, but in Hong Kong; such company is registered as Limited Company having one person share holding company.*

*2.2 It was submitted by learned senior advocate that petitioner shall approach the respondent authority to pass appropriate, order considering such facts which are placed on record of this Court, by filing an application within a period of two weeks from today.*

*2.3 It was further submitted that as the petitioners are having alternative efficacious remedy, the petitioners, after consideration of the application to be filed by the petitioners by the respondent adjudicating authority, shall prefer an appeal in accordance with challenging the impugned Order-in-Original.*

*2.4 It was further submitted by learned senior advocate that the time spent by the petitioners before this Court in pursuing this petition may be considered as bona fide by the appellate authority while considering application to condone the delay, if any.*

*3. In view of the above submissions, as and when application is preferred by the petitioners pointing out that petitioner Nos. 1 and 2 are the same and petitioner No. 1 is not a artificial juristic person in view of the fact that petitioner No. 2 is the sole shareholder of the petitioner No. 1 company, the adjudicating authority shall pass appropriate order considering such facts in accordance with law within a period of two weeks from the date of receipt of such application.*

*4. It is, however, made clear that the appellate authority shall consider the time spent by the petitioners in pursuing this matter as bona fide while deciding the application to condone the delay, if any.*

*5. Without entering into the merits of the matter, the petition is accordingly disposed of.*

2.25 In compliance to the directions contained in the Hon'ble High Court of Gujarat Order dated 20.03.2024, the adjudicating authority vide the impugned order (OIO No. 01/AR/ADC/SRT/2024-25, dated 15.04.2024) has passed the order as detailed below:-



- i. M/s. Uni Jewels (HK) Ltd., a registered Private Limited Company in Hong Kong Special Administrative Region is akin to Indian 'One Person Company' as defined at Section 2 (62) Companies Act, 2013'. M/s. Uni Jewels (HK) Ltd., and Shri Vishal Mehta cannot be likened to Indian concept of sole proprietorship and proprietor respectively. M/s. Uni Jewels (HK) Limited [unique Business Registration Number 59288403] and Shri Vishal Mehta [with unique Hong Kong Identity Card] have separate legal identities and are not the same person. As per Hong Kong Special Administrative Region, a private limited company is different from sole proprietorship, as discussed at para 9 & 10 of the impugned order;
- ii. With the fact on record that M/s. Uni Jewel (HK) Ltd. and Shri Vishal Mehta are not the one and the same person but have distinct legal identities and that M/s Uni Jewels (HK) Ltd., is akin to Indian concept of 'One Person Company' and not akin to proprietorship; thereby the penalties separately imposed on M/s. Uni Jewels (HK) Ltd. and Shri Vishal Mehta vide Order-In-Original No. 09/AR/ADC/SRT/2023-24, dated 08.12.2023 holds ground;

3. Being aggrieved with the impugned order passed by the adjudicating authority, the Appellants have filed the present appeals. On scrutiny of the appeal papers, it is observed that the Appellants have not paid amount of pre-deposit in terms of Section 129 E of the Customs Act, 1962. Accordingly, a letter under F. No. S/49-112 and 113/CUS/AHD/ 2024-25, was sent to the Appellants and the Advocate of the Appellants on 26.05.2025 and 17.06.2025 through email with a request to submit the evidence of payment of pre-deposit amount in terms of Section 129 E of the Customs Act, 1962.



Opportunities for personal hearing in the case were also given on 04.06.2025 and 25.06.2025. However, no person appeared on behalf of the Appellant nor has the Appellant submitted the evidence of payment of pre-deposit in terms of Section 129E of the Customs Act, 1962.

5. Before taking the issue on merits, it needs to be considered whether the appeals can be entertained in case of nonpayment of mandatory pre-deposit in terms of Section 129 E of the Customs Act, 1962 and whether the Commissioner (Appeals) can waive the requirement of payment of pre-deposit.

6. It is relevant to refer to law pertaining to filing of appeals before the Commissioner (Appeals) and law requiring the pre-deposit of certain amount in respect of filing an appeal before the Commissioner (Appeals) as contained under Section 128 and Section 129 E of the Customs Act, 1962 respectively. The text of relevant sections is reproduced below for ease of reference.

**"SECTION 128. Appeals to Commissioner (Appeals). — (1) Any person aggrieved by any decision or order passed under this Act by an**

officer of customs lower in rank than a Principal Commissioner of Customs or Commissioner of Customs may appeal to the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order :

**Provided** that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.

(1A) The Commissioner (Appeals) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :

**Provided** that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(2) Every appeal under this section, shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf."

**"SECTION 129E. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal.** — The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal, —

(i) under sub-section (1) of section 128, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the Principal Commissioner of Customs or Commissioner of Customs;

(ii) against the decision or order referred to in clause (a) of sub-section (1) of section 129A, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;

(iii) against the decision or order referred to in clause (b) of sub-section (1) of section 129A, unless the appellant has deposited ten per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against :

**Provided** that the amount required to be deposited under this section shall not exceed rupees ten crores :

**Provided** further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014."



6.1 On perusal of the legal provision under Section 128 and Section 129 E of the Customs Act, 1962, it is observed that any person aggrieved by any decision or order passed under the Customs Act, 1962 may appeal to the Commissioner (Appeals) within sixty days from the date of communication to him of such decision or order. However, such appeal filed by the appellant shall not be entertained unless the appellant has made pre-deposit as prescribed under Section 129 E of the Customs Act, 1962. Thus, it is mandatory for an appellant to deposit the seven and a half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute. The statutory provision pertaining to requirement of payment of pre-deposit does not grant any discretion to the Commissioner (Appeals) to waive the requirement of pre-deposit.

6.2 In this regard, I also rely upon the judgment of Hon'ble High Court of Madhya Pradesh in case of Ankit Mehta V. Commissioner of CGST, Indore, [2019 (368) E.L.T. 57 (M.P.)], wherein the Hon'ble High Court of Madhya Pradesh has observed that Section 129 E of the Customs Act, 1962 does not empower the Commissioner (Appeals) to waive the pre-deposit or to reduce the pre-deposit. The relevant para of the judgment is reproduced hereunder:

*"13. This Court after careful consideration of the aforesaid judgments is of the opinion that Section 129E does not empower the Tribunal or the Commissioner (Appeals) to waive the pre-deposit or to reduce the pre-deposit, this Court is also not inclined, keeping in view the aforesaid statutory provision of law to waive or reduce the pre-deposit and, therefore, no case for interference is made out in the matter."*

6.2.1 The Hon'ble High Court of Punjab and Haryana in case of G. D. Goenka World Institute [2019 (368) E.L.T. 67 (P&H)] had taken a similar views. The relevant para of the judgment is reproduced below:

*"19. To our minds, there would be no escape from pre-deposit as the Tribunal lacks the power to entertain the appeal without it. If we have to lend any other interpretation, it would defeat the legislative intent which is so clearly visible from the provisions of Section 35F of the Act and in fact, there would have been no necessity of amendment and Section 129E in its unamended form need not have been tinkered with. In conclusion, the said vires have already been upheld (and in fact, Learned Counsel for the petitioner also candidly concedes to it) the only question which was left for us to determine is of an inherent discretion with the Tribunal to entertain an appeal without pre-deposit which we have for the aforesaid reasons held to be a course not available to it."*

(emphasis supplied)

6.2.2 The above Judgment of Hon'ble High Court of Panjab and Haryana was affirmed by Hon'ble Supreme Court of India in case of IL & FS Rail Limited [2019 (368) E.L.T. A37 (S.C.)] in following terms :



"Heard Learned Counsel for the petitioner(s) and perused the relevant material.

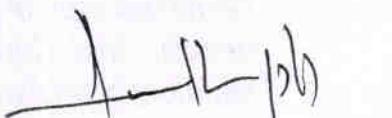
Application for exemption from filing certified copy of the impugned order is allowed.

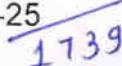
Special Leave Petitions are dismissed. However, if the petitioner(s) are in a position to pay the pre-deposit amount(s), as ordered by the Customs, Excise and Service Tax Appellate Tribunal (for short, 'the Tribunal'), within two months from today, the appeal(s) filed by the petitioner(s) before the Tribunal, if already disposed of shall stand restored, and be heard on merits."

7. In view of the above judicial pronouncements, it is a settled law that the Commissioner (Appeals) cannot entertain the appeal filed by the Appellant without payment of pre-deposit as prescribed under Section 129 E of the Customs Act, 1962 or waive the payment of pre-deposit.

8. In view of the above legal position as discussed above, as the Appellants have not made pre-deposit as required under the Section 129 E of the Customs Act, 1962, I am constrained to dismiss the appeals filed by both the Appellants, without going into the merits of the appeal.

9. In view of the above, the appeals filed by the both the Appellants are dismissed for nonpayment of an amount of pre-deposit in terms of Section 129 E of the Customs Act, 1962.

  
(Amit Gupta)  
Commissioner (Appeals),  
Customs, Ahmedabad

F. No. S/49-112/CUS/AHD/24-25  
S/49-113/CUS/AHD/24-25  


Date: 30.06.2025

By Registered post A.D

To,

1. M/s. Uni Jewels (HK) Ltd.  
Room No. 5,9/F,  
Rise Commercial Building,  
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Tsim Sha Tsui, Kowloon,  
Hong Kong
2. Shri Vishal Shrenikkumar Mehta  
Sole Director of Uni Jewels (HK) Ltd.  
Rise Commercial Building,  
5-11, Gran Ville, Circuit,  
Tsim Sha Tsui, Kowloon, Hong Kong

सत्यापित्त/ATTESTED  
A. Pillai  
अधीक्षक/SUPERINTENDENT  
सीमा शुल्क (अपेल्या), अहमदाबाद.  
CUSTOMS (APPEALS), AHMEDABAD



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1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
3. The Additional Commissioner, Customs, Surat
4. Guard File.