

DIN: 20240471MN000000C1E9

<p>अपर आयुक्त कार्यालय सीमा शुल्क भवन, अलथान भीमराड रोड, एसएमसी वार्ड ऑफिस के पास मे, अलथान, सूरत -395107. Phone:0261- 2260113, email: adjcus- surat@gov.in</p>	 <p>सत्यमेव जयते</p>	<p>OFFICE OF THE ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, ALTHAN BHIMRAD ROAD, NR. SMC WARD OFFICE, ALTHAN, SURAT -395107. Phone:0261-2260113 email: adjcus-surat@gov.in</p>
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Date: 15.04.2024

### PREAMBLE

A	फाइल संख्या /File No.	:	GEN/ADJ/ADC/2248/2023-DIV-SRT-CUS-COMMRTE-AHMEDABAD
B	Reference Hon'ble Gujarat High Court Order	:	Hon'ble High Court of Gujarat Oral Order dated. 20.03.2024 in R/Special Civil Application No. 4254 of 2024
C	मुल आदेश संख्या / Order-In-Original No.	:	01/AR/ADC/SRT/2024-25
D	Reference Order-in-Original	:	09/AR/ADC/SRT/2023-24 DTD. 08.12.2023 issued vide F. No. GEN/ADJ/ADC/2248/2023-DIV-SRT-CUS-COMMRTE-AHMEDABAD
E	द्वारा पारित आदेश /ORDER PASSED BY	:	Arun Richard अपर आयुक्त/ ADDITIONAL COMMISSIONER सीमा शुल्क/CUSTOMS सूरत/SURAT
F	आदेश तिथि / Date of Order	:	15.04.2024
G	जारी करने की तारीख /Date of Issue	:	15.04.2024
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1. जिस व्यक्ति के लिए आदेश जारी किया गया है, उसके व्यक्तिगत उपयोग के लिए प्रति निशुल्क प्रदान की है।

1. This copy is granted free of charge for the private use of the person to whom it is issued.

2. इस आदेश से अपने को व्यक्ति अपील कोई भी व्यक्तिआयुक्त (अपील), सीमा शुल्क, 4th मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद- 380009 के यहाँ अपील कर सकता है। इस तरह की अपील, पार्टी को इस आदेश के सौंपे जाने अथवा डाक के प्राप्त होने के साठ दिन के अन्दर सीमा शुल्क (अपील) नियम, 1962 के अंतर्गत फार्मस सी. ए. १ और २ दी जानी चाहिए। इस अपील पर नियमानुसार कोट की स्टाम्प लगा होना चाहिए।

2. Any person deeming himself aggrieved by this order, may prefer an appeal against the order to the Commissioner of Customs (Appeal), 4th Floor, Hudco Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009, in Form C. A. 1 & 2 as prescribed under Customs (Appeal), Rules, 1962. The appeal must be filed within sixty days from the date of receipt of this order, along with statutory pre-deposit, as applicable. It should bear a court fee stamp of appropriate value.

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3. अपील के साथ निम्नलिखित चीजे संलग्न जाए।  
3. The following documents must be enclosed along with the appeal.  
(क) अपील की प्रति, तथा (a) A copy of the appeal and  
(ख) आदेश यह प्रति या अन्य आदेश की प्रति, जिस नियमानुसार कोट फी स्टाम्प लगा हो।  
(b) Copy of this order or another copy of the order, which must bear court fee stamp of appropriate value.

To,

**1) M/s. Uni Jewels (HK) Ltd.**, Room 5, 9/F, Rise Commercial Buidling, 5-11, Gran Ville Circuit, Tsim Sha Tsui, Kowloon, Hongkong, Tel: +85239569604.

**2) Shri Vishal Mehta**, 501/507, Kalindi Apartment, Nr. Dayalji Ashram, Majura Gate, Surat-395002.

Other address:

**Shri Vishal Mehta**, 2/1933 F1 No 103 1<sup>st</sup> Floor, Chandanvan Apt Nr Kadampalli Soc, Kadershahnal Majuragate, Surat -2, India.

Other address:

**Shri Vishal Mehta**, Room 1221, 12/F, Block B, Shun Wai Industrial Building, 15 Yuk Yat Street, To Kwa Wan Kowloon, Hong Kong.

Other address:

**Shri Vishal Mehta**, Flat A, 2/F, Luna Court, 55 Kimberley Road, Yau Tsim Mong, Tsim Sha Tsui, Kowloon, Hong Kong.

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### **Brief Facts of the Case**

**Subject: 1. Reference is invited to the Hon'ble High Court of Gujarat Oral order dated 20.03.2024, in R/Special Civil Application No. 4254 of 2024.**

**2. Reference is invited to the Original-in-Original OIO No. 09/AR/ADC/SRT/2023-24 dated 08.12.2023.**

1. With reference to the said Order-In-Original No. 09/AR/ADC/SRT/2023-24 dated 08.12.2023, the relevant excerpts from the said reference Order-In-Original dated 08.12.2023, with regard to the two Noticees namely 1. M/s. Uni Jewels (HK) Ltd. and Shri Vishal Mehta is reproduced as follows, for the sake of ready reference:

Relevant excerpts from the Reference Order -in -Original No. 09/AR/ADC/SRT/2023-24 dtd. 08.12.2023 :

**"Issue I : Shri Vishal Mehta, 501/507, Kalindi Apratment, Near Dayalji Ashram, Majura Gate, Surat-395002; and M/s Unijewels Room 5, 9/F, Rise Commercial Buidling, 5-11, Gran Ville Circuit, Tsim Sha Tsui, Kowloon, Hongkong, Tel: +85239569604**

**Para: 83.43 (a) Shri Vishal Mehta.**

*I find that Shri Vishal Mehta, resident address, as per the subject SCN: 501/507, Kalindi Apratment, Near Dayalji Ashram, Majura Gate, Surat-395002 is the owner of M/s Unijewels Room 5, 9/F, Rise Commercial Buidling, 5-11, Gran Ville Circuit, Tsim Sha Tsui, Kowloon, Hongkong, Tel: +85239569604*

*I find it on record that 1534 natural cut & polished diamonds have been concealed and packed by M/s Uni jewels (HK) Ltd, Hong Kong in such a manner to facilitate smuggling of the subject concealed goods and it is this subject 1534 natural cut & polished diamonds which were seized vide seizure Memo dated 28.03.2022 during its clandestine removal from Surat SEZ to DTA; and the other fact forthcoming on record is that M/s Unijewels (HK) Ltd, Hong Kong had raised inflated commercial invoices to M/s Karolina SEZ in this regard.*

*Further, from the reading of the Para 4 of subject order, I, find that one consignment, detained from the factory premises of M/s Karolina Surat SEZ was sent by M/s Unijewels (HK) Ltd., Hong Kong and were mis-declared before the SEZ authority in terms of its value and description; the same corroborated with the synthetic moissanite diamonds (as per lab test, reflected at Para 54 herein above) seized under Panchnama dated 09/10.12.2021 and was declared as cut and polished diamonds.*

*I find the conspiracy amongst Shri Sagar Shah, Shri Rakesh Rampuria included Shri Vishal Mehta and it was with the connivance of Shri Vishal Mehta that the*

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smuggling and illegal operations contrary to Customs Act 1962 was effected. I hold that Shri Vishal Mehta is an abettor who in connivance with Shri Sagar Shah and Shri Rakesh Rampuria had entered in conspiracy resulting in subject contraventions of Custom law and his role in carrying out the subject smuggling operations is established on record. I have carefully studied the case records and hold that Shri Vishal Mehta owner of company, M/s Unijewels (HK) Ltd. has 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 authorities and played a major role in siphoning off money to his company and thereby by his act of commission of knowingly and intentionally making and caused to be made false and incorrect documents abetted with M/s Karolina and with his acts of commission, I hold that Shri Vishal Mehta has rendered himself liable for penalty under Section 114AA of Customs Act. Further I hold that Shri Vishal Mehta aided and abetted M/s Karolina with his involvement in the Clandestine removal operations established on record which is contrary to the provisions of Custom Act, namely, aided and abetted in the smuggling of 1534 cut and polished diamond weighing 237.99 carat worth Rs.4,52,43,030/- (Rupees Four Crore Fifty Two Lakh Forty Three Thousand and Thirty Only) by concealing the said goods in the export package sent from his company **M/s Unijewels (HK) Ltd, Hong Kong**, which with the DRI Investigation the smuggling operation was brought to light; thereby have rendered the subject goods liable to confiscation under Section 111 Customs Act; and further abetted with M/s Karolina and involved himself in the smuggling operation pertaining to the import of 2033.90 Carats of synthetic moissanite in guise of cut and polished diamonds having mis-declared value of **Rs.28,20,98,701/-** (Rupees Twenty Eight Crore Twenty Lakhs Ninety Eight Thousand Seven Hundred One Only) and re-determined value **Rs.3,35,590/-** (Rs. Three Lakhs Thirty Five Thousand Five Hundred Ninety Only). Thus I hold that Shri Vishal Mehta has rendered himself to penalty under Section 112(a) Customs Act.

### **83.43 (b) M/s Unijewels (HK) Ltd, Hong Kong**

Further, as per the material evidence on record Shri Vishal Mehta is the owner of M/s Unijewels (HK) Ltd, Hong Kong and that M/s. Unijewels is an overseas supplier of M/s Karolina Trading India Pvt Ltd, SEZ, Surat; that M/s Unijewels (HK) Ltd., Hong Kong had raised the inflated commercial invoices to M/s Karolina Surat SEZ wherein One consignment, detained under Panchnama dated 09/10.12.2021 from the factory premises of M/s Karolina Surat SEZ was sent by M/s Unijewels (HK) Ltd., Hong Kong and were mis-declared before the SEZ authority in terms of value and description, declared as cut and polished diamonds; the same is further corroborated by the Expert Test Report IDI-DRI-07 to IDI-DRI-12 that the goods were in fact synthetic moissanite seized which was supplied M/s Unijewels (HK) Ltd., Hong Kong. Thus 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/-**

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*(Rupees Twenty Eight Crore Twenty Lakhs Ninety Eight Thousand Seven Hundred One Only) and re-determined value **Rs.3,35,590/-** (Rs. Three Lakhs Thirty Five Thousand Five Hundred Ninety Only) as per Panchnama Dtd 06.09.2022 is on record. I accept the value determined by Expert Valuer of Rs 3,35,594/- as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s Unijewels (HK) Ltd., Hong Kong is on record and M/s Unijewels (HK) Ltd., Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.*

**83.44** *I hold that the false inflated export invoices raised by M/s. Unijewels abetted M/s. Karolina in submitting false documents and submission for the purpose of Customs Act and also aided M/s. Karolina in siphoning off money to M/s. Unijewels.*

**83.45** *Further, M/s Unijewels in the case on record namely 1808 synthetic moissanite pieces wherein the CIF value was mis-declared in the Bills of Entry as Rs. 28,20,98,701/- and the goods has been mis-declared as Cut & Polished Diamond whereas on testing the subject goods are synthetic moissanite and the valuation expert has provided the value as Rs. 165/carat amounting to Rs. 3,35,594/-, these goods were supplied by M/s Unijewels with wrong documentation to M/s Karolina and therefore M/s Unijewels has abetted with M/s Karolina in contravention of the Customs Law and procedures and thereby attracted to itself penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962.*

**83.46** *Further for this issue of the seized goods of 2033.90 Carats of synthetic moissanite which were supplied by M/s Unijewels mis-declared as Cut & Polished Diamonds with mis-declared value as Rs.28,20,98,701/- is on record and M/s Unijewels (HK) Ltd, Hong Kong, abetted M/s Karolina in rendering the subject goods liable to confiscation has attracted to itself penalty under Section 112(a) Customs Act and precisely is liable to penalty under Section 112(v) Customs Act and as per the wordings of the said Section 112(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter.*

**Defence Submission that Penalty not to imposed on foreign exporter:**

**83.47** *I note that the defence submission submits that SCN dated 02.12.2022 cannot be invoked against Shri Vishal Mehta And M/s Unijewel (HK) Ltd. Hong Kong for the following reasons :*

*i. No concrete evidence.*

*ii. Shri Vishal Mehta resides in Hong Kong for more than a decade, and his company is Hongkong based company subject to Hong Kong jurisdiction and that neither the noticee nor M/s UniJewel (HK) Ltd, HongKong are importer or exporter from India or have any offices or business premises in India*

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*iii. Case laws of Seville products Ild; Case law of Sitaram Agarwalla was cited.*

**83.48** *I note that as per the Customs Act 1962, the Custom Act 1962 applies also to any offence or contravention thereunder committed outside India by any person, as per Section 1(2) Customs Act 1962.*

**83.49** *The period under consideration in subject SCN dated 02.12.2022 is post 29.3.2018, wherein vide Section 57 of the Finance Act 2018, the following was inserted in Section 1(2) Customs Act, 1962 as follows:*

**Section 1(2): It extends to the whole of India and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.**

**83.50** *The law w.e.f. 29.3.2018 explicitly makes it clear that Customs Act applies also to any offence or contravention thereunder committed outside India by any person and in the subject matter, offence had been committed as forged documents were submitted before the specified officers of SEZ with an intention to smuggle and contravene the provisions of Cusotm Act; and thereby offence was committed contravening the provisions of the Custom Act, as the wrong declared documents regarding the goods description and its value exported by M/s Unijewels was used by M/s Karolina in contravening the provisions of the Custom Act. With the false documents supplied by M/s Unijewels, this act of M/s Unijewels abetted with M/s Karolina in committing the said offence and contravening the provisions of Customs Act and further opened way for consequential foreign exchange transactions. Thus with the Section 1(2) Customs Act in force, the period under consideration is not covered vide the said case law of Seville products and the facts of the case coupled with the law in force as dictated vide Section 1(2) Customs Act renders Shri Vishal Mehta and M/s Unijewels to penalty both separately under Section 112(a) and Section 114AA Customs Act As discussed. In light of the Section 1(2) Customs Act wef 29.3.2018 coupled with the factual matrix of subject case, the case laws cited do not cover the subject matter. Therefore the case law of Seville Products-2020(373) ELT554(Tri-Del)- pertains to the issue of penalty on foreign exporter under Section 112(a) Customs Act **during the period 2012-13**, is an interim order which was referred to Larger Bench due to conflicting decisions and thereby does not squarely cover the subject matter as the period of the subject matter is not 2012-13 and the Customs Act, 1962 with effect from 29.3.2018 extends to the whole of India and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.*

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Further, the Order portion of the Reference Order-In-Original No. 09/AR/ADC/SRT/2023-24 dated 08.12.2023 with reference to (1) M/s UniJewels (HK) Ltd and (2) Shri Vishal Mehta at Part-M and Part-J of the said OIO dated 08.12.2023, respectively, is reproduced herewith for ready reference:

**'Part -J Penalty on Shri Vishal Mehta 501/507, Kalindi Apartment, Near Dayaji Ashram, Majura Gate, Surat – 395002.**

- (i) *I order to impose penalty of **Rs. 5,000/-** (Rupees Five Thousand Only), on Shri Vishal Mehta 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/- (Rupees Four Crore Fifty Two Lakh Forty Three Thousand and Thirty Only) rendered liable to confiscation.*
- (ii) *I order to impose Penalty of **Rs. 9,05,06,060/-** (Rupees Nine Crore Five Lakhs Six Thousand Sixty Only) on Shri Vishal Mehta under Section **114AA** of the Customs Act, 1962 in connection with the subject seized goods 1534 cut and polished diamond weighing 237.99 carat worth Rs. 4,52,43,030/- (Rupees Four Crores Fifty Two Lakh Forty Three Thousand and Thirty Only) rendered liable to confiscation.*
- (iii) *I Order to impose Penalty of **Rs.28,17,63,111/-** (Rupees Twenty Eight Crores Seventeen Lakhs Sixty Three Thousand One Hundred Eleven Only) on Shri Vishal Mehta under Section **112 (v)** of the Customs Act, 1962 in connection with the subject seized 2033.90 Carats of synthetic moissanite in guise of cut and polished diamonds having mis-declared value of Rs.28,20,98,701/- (Rupees Twenty Eight Crore Twenty Lakhs Ninety Eight Thousand Seven Hundred One Only) and re-determined value Rs.3,35,590/- (Rs. Three Lakhs Thirty Five Thousand Five Hundred Ninety Only) rendered liable to confiscation.*
- (iv) *I Order to impose Penalty of **Rs.6,71,180/-** (Rupees Six Lakhs Seventy One Thousand One Hundred Eighty Only) on Shri Vishal Mehta under Section **114AA** of the Customs Act, 1962 in connection with the subject seized 2033.90 Carats of synthetic moissanite in guise of cut and polished diamonds having mis-declared value of Rs.28,20,98,701/- (Rupees Twenty Eight Crore Twenty Lakhs Ninety Eight Thousand Seven Hundred One Only) and re-determined value Rs.3,35,590/- (Rs. Three Lakhs Thirty Five Thousand Five Hundred Ninety Only) rendered liable to confiscation.*

**Part -M      Penalty on M/s Unijewls (HK) Ltd., Room 5, 9/F, Rise Commercial Building, 5-11, Gran Ville Circuit, Tsim Sha, Tsui, Kowloon, Hongkong, Tel: +85239569604.**

- (i) *I Order to impose Penalty of **Rs. 28,17,63,111/-** (Rupees Twenty Eight Crores Seventeen Lakhs Sixty Three Thousand One Hundred Eleven Only) on*

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*M/s Unijewls (HK) Ltd, Hong Kong under **Section 112 (v)** of the Customs Act, 1962 in connection with the subject seized 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/- (Rupees Twenty Eight Crore Twenty Lakhs Ninety Eight Thousand Seven Hundred One Only) and re-determined at value Rs.3,35,590/- (Rs. Three Lakhs Thirty Five Thousand Five Hundred Ninety Only) rendered liable to confiscation.*

(ii) *I Order to impose Penalty of Rs.6,71,180/- (Rupees Six Lakhs Seventy One Thousand One Hundred Eighty Only) on M/s Unijewls (HK) Ltd, Hong Kong under Section **114AA** of the Customs Act, 1962 in connection with the subject seized 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/- (Rupees Twenty Eight Crore Twenty Lakhs Ninety Eight Thousand Seven Hundred One Only) and re-determined at value Rs.3,35,590/- (Rs. Three Lakhs Thirty Five Thousand Five Hundred Ninety Only).'*

2. M/s. Uni Jewels (HK) ltd. and Shri Vishal Mehta have approached the Hon'ble High Court of Gujarat vide Special Civil Application No 4254 of 2024, wherein, the Hon'ble High Court of Gujarat vide Oral Order dated 20.03.2024, ordered, as per para 3, reproduced as follows:

*'3. In view of the above submissions, as and when application is preferred by the petitioners pointing out that petitioner nos1 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.'*

3. Vide email dated 03.04.2024, the Noticees namely Uni Jewels(HK) Ltd and Shri Vishal Mehta submitted the Application dated 03.04.2024, reproduced as follows:

'From :

1. Uni Jewels (HK) Ltd

Room 5, 9/F, Rise Commercial Building,  
5-11, Gran Ville, Circuit,  
Tsim Sha Tsui,

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Kowloon, Hong Kong

2. Vishal Mehta  
Sole Director of  
Uni Jewels (HK) Ltd having address at  
Room 5, 9/F, Rise Commercial Building,  
5-11, Gran Ville, Circuit,  
Tsim Sha Tsui,  
Kowloon, Hong Kong

Local Address placed in service  
By the Investigating Authority,  
501/507, Kalindi Apartment,  
Nr Dayalji Ashram, Majura Gate, Surat.

3<sup>rd</sup> April 2024

To  
The Additional Commissioner of  
Customs, Surat Custom House, Althan Bhimrad Road,  
Nr. SMC Ward Office,  
Althan, Surat-395007.

Sub: Application pursuant to the Order dated 20.03.2024 passed by the Hon'ble Gujarat High Court in Special Civil Application No. 4254 of 2024.

Ref: Order In Original No. 09/AR/ADC/SRT/2023-24 Dated 08.12.2023.

Sir,

1. We prefer the present application to consider the fact that Shri Vishal Mehta is a 100% shareholder of Uni Jewels (HK) Ltd. Therefore, Shri Vishal Mehta, in effect, is the proprietor of Uni Jewels (HK) Ltd., which is registered as limited company with a one person shareholding company. This fact came on record during the hearing of Special Civil Application No. 4254 of 2024 filed by Uni Jewels (HK) Ltd and Shri Vishal Mehta.
2. The Hon'ble Court, by its order dated 20.03.2024, while disposing of the petition records as under:

*"3. In view of the above submissions, at and when the application is preferred by the petitioners, pointing out that petitioner Nos. 1 and 2 are the same and petitioner No. 1 is not an 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.*

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*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."*

A copy of the order dated 20.03.2024 passed by the Hon'ble Gujarat High Court is annexed herewith and marked as **ANNEXURE - A** hereto;

3. We state that Uni Jewels (HK) Ltd is a company incorporated under the laws of the Hong Kong Special Administrative Region on 23.12.2011. As per the Memorandum and Articles of Association of the Company, Vishal Mehta is the only sole founding member and shareholder of the said company, Uni Jewels (HK) Ltd. It is like a proprietorship firm as per Indian Law. A copy of the Certificate of Incorporation, Memorandum and Articles of Association of Uni Jewels (HK) Ltd is annexed herewith and marked as **ANNEXURE-B** hereto.
4. We further state that as per the Annual Return in Form NARI for the relevant date being 23/12/2023, filed with the Companies Registry under the relevant laws of Hong Kong Special Administrative Region, it reflects that the total number of shares of the Uni Jewels (HK) Ltd IS 1,00,000 which are held entirely by Shri Vishal Mehta. Also, the return reflects Shri Mehta as the only director in the company. A copy of the Annual Return in Form NARI is annexed herewith and marked as **ANNEXURE-C** hereto.
5. In view of the above position, the penalty imposed on Shri Vishal Mehta under Part J (ii) and (iv) is not sustainable when the penalty under Part M (1) & (u) is already imposed against Uni Jewels (HK) Ltd. When the penalty under Section 112 (v) and 114AA, respectively, are already imposed against the Firm, the same penalty cannot be imposed against the proprietor of the said firm. These arguments of Shri Vishal Mehta had been considered by the Hon'ble Court, which allowed the Petitioners of the said petition to make an application to the Ld. Adjudicating Authority.
6. The Show Cause Notice has proposed to levy a penalty under Sections 112 and 114AA on Uni Jewels (HK) Ltd, and Shri Vishal Mehta is not permissible under the law. As stated above and as stated in the affidavit filed before the Hon'ble Gujarat High Court, Shri Vishal Mehta is the 100% shareholder of Uni Jewels (HK) Ltd, and therefore, it is deemed to be a proprietor of the said Company/Firm. The Hon'ble P & H High Court, in the case of Vinod Kumar Gupta, held that a firm in mercantile usage is a firm on its own, strictly in the eye of the law, it is not a legal entity like a natural person. Therefore, the rights and obligations of a firm are the legal rights and obligations of the individual partners of the firm. Therefore, the penalty I posed on the firm would amount to the

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imposition of a penalty on the proprietor or the partner, as the case may be. Therefore, imposition of penalty on the proprietor independently would not be legal.

7. The Hon'ble Gujarat High Court, in the Tax Appeal filed by the Revenue against Govind Agarwal, dismissed the appeal and upheld the order passed by the Tribunal. The Tribunal recorded as under:

*"After hearing the learned DR. and considering the facts and circumstances of the case, I am of the view that appellate authority should have set aside the penalty upon the proprietor also for the same reason and on the same ground on which the penalty on the trading unit was set aside. As such, I set aside the impugned order and allow the appeal with consequential relief."*

In this view, the penalty imposed against the firm and the proprietor for the same offence, as well as the penalty against the proprietor, is not sustainable.

8. That the Hon'ble Tribunal, in the case of Jai Timber Company, while considering the provision of Rule 209A and Rule 26 of the Central Excise Act, 1944, held that proprietary concern and proprietor are one and the same in the eye of the law and, therefore separate penalty on proprietor was ordered to set aside. A similar view was taken by the Hon'ble Delhi Bench of the Tribunal in the case of Kobe Suspension Co. Pvt. Ltd, which held that a separate penalty on the proprietor in addition to a penalty on the firm was not justified.
9. That the impugned Order In Original in its Part J confirmed the penalty on Shri Vishal Mehta under Section 112(ii) of the Customs Act, 1962, in connection with 1534 cut and polished diamond weighing 237.99 carat worth Rs. 4,52,43,030/- which are held liable for confiscation. The impugned order also imposed a penalty of Rs. 9,05,06,060/- under Section 114AA of the Customs Act in connection with a 1534 cut and polished diamond weighing 237.99 carat worth Rs.4,52,43,030/- which was held to be liable for confiscation. However, no justification or reasons have been recorded to impose a penalty on Shri Vishal Mehta in his individual capacity and not on the Company. There is no case or evidence available on record to impose a penalty on an individual in an individual capacity when the entire transaction was by the firm/company. The company/firm issued invoices for the goods exported from Hong Kong, and payment was received by the company only. There is no direct nexus by Shri Vishal Mehta in his individual capacity, and therefore, the penalty confirmed against Shri Vishal Mehta is not sustainable. When the company is already penalised under Section 112(v) and 114AA of the Customs Act, 1962, there are no findings as to why a penalty under Section 112 (i) and 114AA has been imposed on Shri Vishal Mehta and not on the company.

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10. We would like to state that Uni Jewels (HK) Ltd has been registered in Hong Kong for the last 12 years and has been engaged in the business of Cut and Polished Diamonds on a trading basis and also in the export of the said diamonds to various countries, including India. Except for the business deals with the Indian parties, Uni Jewels (HK) Ltd has no business interest in any of the Indian companies/firms/persons. The said company have engaged in trading business for the past 12 years, which has garnered them a good repute in the market.
11. It is an undisputed fact that Uni Jewels (HK) Ltd had sold and supplied goods being Cut and Polished Diamonds to One M/s. Karolina SEZ Unit located at Plot No. 255, Unit No. 149, Surat SEZ, Sachin-394 230 in Surat SEZ Area. Karolina's application for setting up an SEZ Unit was approved by the concerned committed under the SEZ Act, 2005, in 90th Meeting of the Approval Committee held on 24/9/2020.
12. The Cut and Polished Diamonds sold by Uni Jewels (HK) Ltd to Karolina SEZ Unit were under different invoices, being Invoice No EXP/149/2021- 22 to Invoice No. EXP/162/2021-22, all dated 6/12/2021, which were exported through six Air Waybills being HKGAE094399, HKGAE094400, HKGAE094401, HKGAE094402, HKGAE094403 and HKGAB094404, all dated 7/12/2021. It is evident from records that the said Cut and Polished Diamonds exported by Uni Jewels (HK) Ltd under the afore stated invoices reached the strong room office of Surat SEZ, and the same were received by the authorised person of Karolina SEZ Unit after producing the necessary documents like invoice, packing list, airway bill, bill of entry etc. Thus, all the steps to be taken under the SEZ Act read with the Customs Act must have been duly taken for the delivery of the imported consignment, including filing a Bill of Entry pertaining to these six Air Waybills under rule 29 of the SEZ Rules, etc.
13. Thus, Uni Jewels (HK) Ltd was involved in the export of goods from Hong Kong to Surat SEZ Unit, and once the goods reached Surat SEZ, the transaction ended. By virtue of Section 26 of the SEZ Act, all the imports in an SEZ Area are exempted from any duty of customs under the Customs Act, and therefore, the goods exported by Uni Jewels (HK) Ltd were not dutiable under the Customs Act in SEZ Area. Thus, in respect of these Cut and Polished Diamonds exported by Uni Jewels (HK) Ltd under the afore stated invoices, the company, as well as Shri Vishal Mehta, neither committed any violation of the provisions of the Customs Act nor did they file any false or incorrect declaration, statement nor any document. Thus, no penalty could have been imposed on Uni Jewels (HK) Ltd and Shri Vishal Mehta under the Customs Act in respect of the goods exported by them to Karolina SEZ Unit, and therefore, the SCN and the Impugned Order are without any jurisdiction.

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14. The proceedings pertaining to the SCN and the Impugned Order are in respect of the goods clandestinely removed from the SEZ Area to DTA without making payment of the applicable duties, etc., goods which were found during the search at the Karolina SEZ Unit and imported parcels lying with the Custodian at Surat SEZ with invoices from Spinel House Limited. Even from the material on record, there is no evidence of both the Noticee being linked/abetting the afore stated illegalities alleged to be committed by Karolina and others. The penalty is imposed on the Noticees under Section 112 and 114AA, whereas the goods exported by Uni Jewels (HK) Ltd were to be imported by Karolina SEZ Unit duty-free under the SEZ Act, and therefore, there is no applicability of any penalties under the Customs Act in respect of the goods exported by Uni Jewels (HK) Ltd and thus, the Additional Commissioner had no jurisdiction to issue the SCN and the Impugned Order imposing penalty on the Noticee alleging violation of the provisions of the Customs Act.
15. Further, sections 112 and 114AA and Section 124, under which the SCN was issued, of the Customs Act, fall under Chapter XIV pertaining to Confiscation of Goods and Conveyances and Imposition of Penalties. Thus, Sections 112, 114AA and 124 are in respect of proceedings concerning the confiscation of goods. In the present case, no such proceedings were undertaken while the goods were exported by Uni Jewels (HK) Ltd to Karolina SEZ Unit. Once the goods are exported from Hong Kong and delivered to the importer's unit, i.e. Karolina SEZ Unit, neither the company nor its sole director can be held responsible for the actions of Karolina SEZ Unit or any other person. Uni Jewels (HK) Ltd neither has any control over Karolina SEZ Unit or its personnel/associates nor is it concerned with the further activities of Karolina SEZ Unit. Therefore, neither the company nor its sole director/proprietor can be dragged/implicated in the alleged illicit activities like the removal of the goods from the SEZ Unit to DTA in contravention of applicable law. Thus, the SCN and the Impugned Order against the Noticee are without any jurisdiction and, hence, illegal.
16. That Uni Jewels (HK) Ltd had exported the goods to an SEZ Unit only, and not in India, and therefore, there cannot be any intention / any action to evade any tax, as the goods are imported in an SEZ Area duty-free. It is also pertinent to note that no inquiry/proceedings were carried out during the whole transaction of export of goods from Hong Kong till the import of the goods at Karolina SEZ Unit, which involves many stages, including filing and processing of bills of entry for import of the goods. It is only when Shri Rakesh Rampuria, who was a director of one Rampuria Exports Pvt. Ltd., allegedly tried to remove the goods from SEZ Area to DTA, the proceedings and investigation is put into action. There is no positive investigation or evidence implicating the company and its sole director/proprietor.

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17. So far as the search and seizure at the premises of Karolina SEZ Unit is concerned, the same took place pursuant to the parcels of the consignment sent by Uni Jewels (HK) Ltd were collected by Shri Jaykumar Koriya, the authorised person of Karolina to collect the consignment and further, opened by Shri Rakesh Rampuria. This fact is established from the record of Panchnama dated 9/12/2021 and from the statement of Shri Jay Kumar Koriya dated 11/12/2021. Thus, the Petitioners cannot be implicated with respect to goods that were found in those boxes/envelopes/pouches that were already opened and tampered with.
18. The revenue has failed to produce on record the role/connection of the company and its sole director in its individual capacity, which causes the confiscation of the goods. It is a fact that goods have been exported by Uni Jewels (HK) Ltd under relevant documents, and the same has been found in the possession of the importer, ie. Karolina SEZ Unit. Nothing is put on record to evidence whether the same goods have been examined and sent for the lab test, which Uni Jewels (HK) Ltd had exported.
19. Thus, in view of what is stated hereinabove, Noticee cannot be held liable for penalty on the basis of the alleged illegal activity carried out pursuant to the goods being conclusively exported from Hong Kong and delivered at the Surat SEZ Unit of Karolina. On the basis of such findings, the Additional Commissioner has no jurisdiction to impose any penalty on the Noticee.
20. In view of the above submissions and the reply dated 12.06.2023 filed by Shri Vikas Mehta, the entire proceedings against both Noticee shall drop in the interest of justice. We also humbly request the adjudicating authority to grant a personal hearing before deciding the issue on merits and oblige.'

4. Vide letter dated 09.04.2024, the Legal section, Customs Ahmedabad vide F. No. GEN/LGL/HC/PA/535/2024-LEGAL-O/o PR COMMR-CUS-AHMEDABAD, submitted that the reference Gujarat High Court Order dated 20.03.2024 passed in SCA/4254/2024, filed by M/s Uni Jewels (HK) Ltd. & ANR. has been accepted by the Hon'ble Principal Commissioner.

5. The said Noticees application dated 03.04.2024 along with the Hon'ble High Court of Gujarat Oral order in R/Special Civil Application No. 4254 of 2024, Certificate of Incorporation & Memorandum and Articles of Association of Unijewels (HK) Limited, Form NAR1, were forwarded to the Investigation Agency and comments were sought from the Investigation Agency. The comments of the Investigation Agency submitted vide Letter dated 10.04.2024 vide F. No. DRI/AZU/SRU/B/INV-11(int-10)/2021 is reproduced as follows:

'Please refer to your letter dated 04.04.2024 on the subject matter wherein the comments with regards to the Para 17 and Para 18 of the application dated 03.04.2024 of Shri Vishal Mehta, Sole Director of Uni Jewels (HK) Ltd. was called

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for, along with comments on the contention of noticee's plea for non-imposition of penalty on Shri Vishal Mehta being proprietor of M/s Uni Jewels (HK) Ltd.

2. As far as the sole ownership of Shri Vishal Mehta of Uni Jewels (HK) Ltd. is concerned, it is to bring your kind notice that Shri Vishal Mehta did not join the investigation inspite of the summons issued to him under Section 108 of the Customs Act. The said fact is incorporated in Para 19.1 of SCN dated 02.12.2023 and Para 27 of OIO dated 08.12.2023. Further, the fact of ownership of M/s Unijewels by Shri Vishal Mehta has been found by the adjudicating authority as mentioned in Para 83.43 (a) of OIO dated 08.12.2023 that "Shri Vishal Mehta, resident address, as per the subject SCN 501/307, Kalindi Apartment, Near Dayalji Ashram, Majura Gate, Surat- 395002 is the owner of M's Unijewels Room No.3, 9/F, Rise Commercial Building, 3-11, Gran Ville Circuit, Tsim Sha Taule, Kowloon, Hongkong, Tel: +85239569604.

2.1 In view of above, being a quasi-judicial authority, it is prerogative of adjudicating authority to decide on the imposition of penalty, among other things, by taking cognizance of facts during the adjudication.

3. Further, the comments on para 17 and 18 of the application dated 03.04.2024 of Shri Vishal Mehta, Sole Director of Uni Jewels (HK) Ltd is as under:

Para 17: The contention of Shri Vishal Mehta (owner of Unijewels (HK) Ltd) that the petitioner cannot be implicated with respect to goods that were found in those boxes/envelops/pouches that were already opened and tampered with is not correct. From a combined reading of Panchnama dated 09/10.12.2021 and statement dated 10.12.2021 of Shri Rakesh Rampuria (De-facto Director of M/s Karolina) and statement dated 11.12.2021 of Shri Jaykumar D Koriya, Manager of M/s Karolina, it is clear that after receiving 18 boxes of import consignment, imported vide 06 bills of entry, all dated 09.12.2021, from strong room of SEZ, Surat office, Shri Jaykumar D Koriya brought the same to factory premises of M/s. Karolina. Then, Shri Rakesh Rampuria took out few pouches containing cut and polished diamonds, from specific boxes of the import consignment and left the office at around 06:10 pm on 09.12.2021 in his Maruti Ertiga car bearing registration no. GJ 05 RN 0673. It is pertinent to mention that the details of import & description of the box that did not contain moissanite but had real diamonds, was received /circulated on WhatsApp group "BKC" at 5:15 pm on 09.12.2021 which was before the opening of the consignment by Shri Rakesh Rampuria. The WhatsApp message corresponded accurately with the details of import and the consignment number that was unique ie. contained Cut and Polished Diamonds rather than moissanite. After, Shri Rakesh Rampuria had taken the specific consignment and left in his Ertiga car, he was intercepted by the officers of DRI at 06:20 pm after which the officers of Customs and DRI

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had searched the factory premises on 09.12.2021 of M/s Karolina under panchnama and examined the 18 boxes imported by M/s Karolina, Surat SEZ vide 06 bills of entry bearing no. 1006636, 1006637, 1006640, 1006641, 1006642 & 1006643, all dated 09.12.2021. Shortage of total 506 numbers of Cut & Polished Diamonds weighing 992.03 carats were found in the said 18 boxes imported vide 06 bills of entry bearing no. 1006636, 1006637, 1006640, 1006641, 1006642 & 1006643, all dated 09.12.2021, which had been shipped by the Unijewels (HK) Limited, Hong Kong.

Further, it is evident from the panchnama dated 09/10.12.2021 drawn at the factory premises of Karolina, Surat SEZ during its search that at 20.30 hrs the said factory premises was found locked and lock was opened by Shri Jaykumar D Koriya with keys available with him. Before entering the premises the officers also offered their search to Shri Jaykumar D Koriya and Smt. Kinjal P Thakor, Back Office Executive. The 18 boxes imported by M/s Karolina, Surat SEZ vide 06 bills of entry bearing no. 1006636, 1006637, 1006640, 1006641, 1006642 & 1006643, all dated 09.12.2021 were examined in presence of independent panchas and Shri Jaykumar D Koriya and Smt. Kinjal P Thakor. During the panchnama, Shri Rakesh Rampura arrived at factory premises around 03.40 AM on 10.12.2021 and stated that he had arrived at this unit at around 17.30 hrs of 09.12.2021 and took out specific packets of diamonds as conveyed on WhatsApp from the consignments imported vide 6 Bills of Entry on 09.12.2021 and those diamonds have been detained by the department under panchnama dated 09/10.12.2021 drawn at office of Development Commissioner, Surat SEZ, Sachin Surat. Before leaving the factory premises, the officers of Customs & DRI again offered their personal search to Shri Rakesh Rampuria, Shri Jaykumar D Koriya and Smt. Kinjal P Thakor which was declined by them. During the panchnama no proof of tampering with these 6 import consignments were noticed. It appears that Shri Vishal Mehta (owner of Unijewels (HK) Ltd) was fully aware about the smuggling of 'Cut and Polished Diamonds' by way of concealing in the consignments exported by him. The 1534 diamonds weighing 237.99 carats recovered from the possession of Shri Rakesh Rampuria on 09.12.2021 were concealed in export consignments shipped by Unijewels (HK) Ltd. Evidences in the form of Panchnama, statement of Shri Rakesh Rampuria, Shri Jaykumar D Koriya and Smt. Kinjal P Thakor and WhatsApp group chat about the details of import consignment from Unijewels (HK) Ltd cannot be refuted false. Thus, the contention of Shri Vishal Mehta (owner of Unijewels (HK) Ltd) that he cannot be implicated is not correct.

Para 18: The submission of Shri Vishal Mehta (owner of Unijewels (HK) Ltd) under para 18 of application that nothing is put on record to evidence whether the same goods have been examined and sent for the lab test, which Uni Jewels (HK) Ltd. had exported, is not correct. In this regard, it is to submit that the consignments exported by Unijewels (HK) Ltd and imported by M/s

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Karolina under 6 Bills of Entry had been detained and sealed with DRI lac seal No. 5 and handed over to the custodian, DGDC, SEZ Surat for safe custody on 10.12.2021 (Ref. - RUD-5). Further the said detained goods were lab tested under panchnama dtd. 29.08.2022 (Ref. - RUD-44) wherein, it was recorded in presence of independent panchas that *"thereafter, the officers show us one box having wrapped with cloth and sealed with DRI lac seal bearing Sr No.5 and a paper slip, duly signed on 09.12.2021, pasted on the same We the panchas found that the said Box is sealed with DRI lac seal no 5 and the seal are intact."* Thus, it was clear that the goods exported by Uni Jewels (HK) Ltd to Karolina and subsequently detained from the premises of Karolina had been sent for lab testing and it was placed on record that no tampering was done with sealed Box.

4. This issues with the approval of Additional Director General, DRI, Ahmedabad.
5. This is for information and necessary action at your end please.'

### **Personal Hearing**

6. Personal hearing was fixed on 10.04.2024. Advocate Shri Dhaval K Shah appeared on behalf of the two Noticees i.e. (1) M/s. Unijewels (HK) Ltd. and (2) Shri Vishal Mehta vide virtual hearing. Shri Shah requested to conduct a common hearing for the two Noticees namely M/s. Unijewels (HK) Ltd. and Shri Vishal Mehta. Shri Shah reiterated the submissions made in the application dtd. 03.04.2024 and further submitted that M/s. Unijewels (HK) Ltd. and Shri Vishal Mehta are one and the same as proprietorship and proprietor and no separate penalty to be levied on both of them. Shri Shah submitted to examine the jurisdiction for levy of penalty on M/s. UniJewels (HK) Ltd. and Shri Vishal Mehta. He further submitted copies of three case laws.

### **Discussion and Findings :**

7. In pursuance to the direction contained in the Hon'ble High Court of Gujarat Order dtd. 20.03.2024 in R/Special Civil Application No. 4254 of 2024, I have carefully studied the Noticees application dated 03.04.2024 and the annexures to the said application.

8. On careful study and consideration of subject matter and on reading of the Certificate of incorporation issued by the Registrar of Companies, Hong Kong Special Administrative Region and the Memorandum and Articles of Association and Annual Return Form NAR1 of M/s Unijewels (HK) Limited, which were annexed with the Affidavit dated 19.03.2024 taken on record by the H'ble High Court of Gujarat vide the said Order dated 20.03.2024; I find the following facts on record:

- i. M/s Unijewels(HK) Limited is a Private Limited Company, incorporated by the Registrar of Companies Hong Kong Special Administrative Region.

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- ii. Shri Vishalkumar Shrenikkumar Mehta is Founder Member of M/s UniJewels (HK) Ltd and the number of shares taken by the Founder Member Shri Vishalkumar Shrenikkumar Mehra is 100 as per the Memorandum of Association of M/s Unijewels (HK) Ltd; and the total no. of shares of Shri Vishal Mehta as per form NAR1-Schedule 1 return (date to which the said return was made: 23.12.2023) is 100,000, which is the total number of issued shares.
- iii. The following facts on record, forthcoming from the Annual Return Form NAR1 of M/s. Unijewels (HK) Limited, are as follows:
  - a. M/s. Unijewels (HK) Limited has an 8 numeric unique Business Registration Number 59288403.
  - b. M/s. Unijewels (HK) Limited has Shri Hamid Shahid as its Company Secretary.
  - c. M/s. Unijewels (HK) Limited has as its Director Shri Vishal Shrenikkumar Mehta.
  - d. The Director Shri Vishal Mehta has his unique Hong Kong Identity Card, wherein the partial number of Shri Vishal Mehta's Hong Kong Identity Card Number is given in Form NAR1 as M 201\*\*\*\* at Identification particulars at Sr. number 13 of Form NAR1.

9. I find from the following URL: <https://www.professionalutilities.com/company-incorporation-in-hong-kong.php>; the documents required for incorporating a private limited company and sole proprietorship in HongKong are as follows:

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## Documents Required for Company Incorporation in Hong Kong

The list of documents required for Company Incorporation in Hong Kong are:

Type Of Company	Document Required
Private Limited Company	<ul style="list-style-type: none"> <li>▪ Proposed Company Name (ensure it is not already taken)</li> <li>▪ Articles of Association - Standard or Customized</li> <li>▪ Form NNC1 - Incorporation form of company limited by shares</li> <li>▪ Form IRBR1 - Notification of Commencement of Business</li> <li>▪ Identify and Address proof of directors and shareholders</li> <li>▪ Registered Office Address</li> <li>▪ Particulars of Company Secretary</li> <li>▪ Information about Share Capital</li> <li>▪ Consent to Act as a Director and Members for each director (Form D1B)</li> <li>▪ Declaration of Compliance (Form NAR1)</li> </ul>
Sole Proprietorship	<ul style="list-style-type: none"> <li>▪ Business Registration Certificate (Form 1)</li> <li>▪ Personal Identification of the Sole Proprietor</li> </ul>
Partnership	<ul style="list-style-type: none"> <li>▪ Partnership Agreement</li> <li>▪ Business Registration Certificate</li> <li>▪ Personal Identification of Partners</li> <li>▪ Details of Business Partners</li> </ul>
Branch Office	<ul style="list-style-type: none"> <li>▪ Certified Copy of Parent Company's Certificate of Incorporation</li> <li>▪ Certified Copy Of Parent Company's Articles of Association</li> <li>▪ Appointment of Authorized Representative</li> <li>▪ Certified Copy of Parent Company's Latest Audited Financial Statements</li> <li>▪ Registered Office Address in Hong Kong</li> <li>▪ Form IRBR2 - Notification of Commencement of Business by Branch</li> </ul>
Representative Office	<ul style="list-style-type: none"> <li>▪ Application for Business Registration</li> <li>▪ Certified Copy of Parent Company's Certificate of Incorporation</li> <li>▪ Registered Office Address in Hong Kong</li> <li>▪ Authorization Letter from Parent Company</li> <li>▪ Proof of Non-Trading Activities</li> </ul>

EN English (United States) 

10. I find that the document requirements in Hong Kong for incorporating a Private limited Company and a sole proprietorship differs, in so far that a Private Limited company requires a Company Name, Articles of Association, Company Secretary and further documents as listed; whereas for a sole proprietorship only personal identification of sole proprietor and a business registration certificate( Form 1) suffices. From this, I find that in Hong Kong, like in our country, there is a distinction between a sole proprietorship and a private limited company. Further, I note from the Hong Kong government website at URL: <https://www.investhk.gov.hk/en/setting-hong-kong/step-1-decide-company-type-and-name/> under the title: Company Structure, the following data is reproduced as follows:

*'Company Structure*

**Most limited companies incorporated in Hong Kong are private companies limited by shares. A private limited company in Hong Kong requires at least one director**

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**who is a natural person and one company secretary. If the company has one director only, the sole director cannot also be the company secretary at the same time. If the company secretary is a natural person, he/she should ordinarily reside in Hong Kong. If the company secretary is a body corporate, its registered office or place of business should be in Hong Kong. A non-Hong Kong resident can be appointed as a director. The registered office of the company must be situated in Hong Kong. There is no requirement for shareholders to be Hong Kong residents. The sole shareholder can be a director of the company.'**

I note that in Hong Kong, like in our country, there is a distinction between a sole proprietorship and a private limited company and that a private limited company can have a sole shareholder who can be the Director of the company.

11. At this juncture, on careful consideration of the subject matter, I find it relevant to enumerate the concept of Indian '**One Person Company**', hereinafter referred to as 'OPC' for the sake of brevity. To appreciate this concept of One Person Company, the relevant Section 2(62) of the Companies Act, 2013 is reproduced for the sake of ready reference:

**Section 2(62) Companies Act 2013: One Person Company means a company which has only one person as a member.**

The Section 2(62) of Companies Act defines a one-person company as a company that has only one person as to its member. Furthermore, members of a company are nothing but subscribers to its memorandum of association, or its shareholders. So, an OPC is a company that has only one shareholder as its member. Such companies are generally created when there is only one founder/promoter for the business.

12. I find it of relevance for the present adjudication to bring on record the Indian concept of 'One Person Company' and how it differs from 'sole proprietorship', as the Noticees, vide their application dated 03.04.2024 have likened M/s Unijewels (HK) Ltd to Indian concept of sole proprietorship and the Noticees have likened Shri Vishal Mehta as to Indian concept of proprietor.

The Institute of Companies Secretaries of India had published an article on '**One Person Company**' available at URL: <https://www.icsi.edu/media/webmodules/companiesact2013/ONE%20PERSON%20COMPANY.pdf> Further, page 5 of this article is reproduced as follows, for driving home the point that OPC is different from Proprietorship concern.

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*'...There is enormous scope for One Person Companies to leverage benefits of priority sector lending...'*

**OPC                    V/S.                    SOLE PROPRIETORSHIP**

<b>OPC</b>	<b>SOLE PROPRIETORSHIP</b>
<b>Separate Legal entity</b>	<b>Not a Separate Legal Entity</b>
<i>Limited Liability</i>	<i>unlimited liability</i>
<i>Perpetual succession</i>	<i>No perpetual succession</i>
<i>Loan not the sole responsibility of the owner</i>	<i>Loan-sole responsibility of the owner</i>
<i>Registration required</i>	<i>Registration not required</i>
<i>Finance –credit record of the OPC</i>	<i>Finance –credit record of the Owner</i>

*OPC structure would be similar to that of a proprietorship concern without the ills generally faced by the proprietors. One most important feature of OPC is that the risks mitigated are limited to the extent of the value of shares held by such person in the company. This would enable entrepreneurial minded persons to take the risks of doing business without the botheration of litigations and liabilities getting attached to the personal assets. **One Person Company has a separate legal identity from its shareholders i.e., the company and the shareholders are two different entities for all purposes. On the other hand proprietorship does not have a separate legal identity from its members.** The existence of a One Person Company is not dependent upon its members and hence, it has a perpetual succession i.e., death of a member does not affect the existence of the company and the Sole proprietorship is an entity whose existence depends on the life of its members and death or any other contingency may lead to the dissolution of such an entity.*

*In OPC the business head is the decision maker, he is not dependent on others for suggestions or implementation of suggestions etc., resulting in quicker and easier decision making. He is the sole person who runs the business and hence, the question of consensus or majority opinion etc., does not arise.'*

13. I find that as per the Indian law, with respect to One Person Company, both the OPC and its founder/ 100% Shareholder are different legal entities and the concept of OPC is different from Sole Proprietorship. **Since an OPC is a separate legal entity distinguished from its founder, it has its own assets and liabilities. The promoter is not personally liable to repay the debts of the company. On the other hand, sole proprietorships and their proprietors are the same persons. So, the law allows attachment and sale of proprietor's own assets in case of non-fulfilment of the business' liabilities of sole proprietorship. Further, the PAN Number of proprietorship and proprietor is the same.**

14. As per Companies Act, OPC (One Person Company) and their sole member have distinct legal identities. The concept of OPC was introduced by the Companies Act 2013 and it is the

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law, as per the Companies Act that both the 'One Person Company' and its 'Sole founder' have distinct legal identities. The Section 3(1)(c) of the Companies Act reads that one person can form a company for any lawful purpose. It further describes OPCs as private companies. OPCs can have only one member shareholder, unlike other private companies.

15. On studying the MoA of M/s Unijewels Pvt Ltd, it is forthcoming that M/s Unijewels of Hong Kong is akin to Indian 'One Person Company' and does not merit to be akin to Indian sole proprietorship. Further, from the facts on record, I note that there is distinction between sole proprietorship and private limited company in Hong Kong also, as discussed at para 9 & 10. From the facts on record; from the reading of the company's Memorandum and Articles of Association; from the reading of the company's Annual Return Form NAR1, I find that M/s UniJewels (HK) Limited is a private limited company and not a sole proprietorship, having a separate legal existence from its founder Shri Vishal Mehta. Further, I find that Shri Vishal Mehta with his unique Hong Kong Identity Card Number has a distinct legal identity and existence from the private limited company M/s. UniJewels (HK) Limited. I find that the subject M/s Unijewels Ltd which is Hong kong registered Private limited Company is akin to Indian 'One Person Company' and not akin to Indian Sole Proprietorship.

16. I note that vide said application dated 03.04.2024, the said Noticees have raised other issues beyond the direction contained in the said Hon'ble High Court Order dated 20.03.2024. The said Hon'ble Gujarat High Court Order dated 20.03.2024 ordered that as and when application is preferred by the petitioners pointing out that petitioner nos1 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. **As per the said Hon'ble High Court of Gujarat Order dated 20.03.2024, I note that the issue before me for adjudicating is whether, as per facts in accordance with the law, M/s Unijewels(HK) Ltd and Shri Vishal Mehta are one and the same person and whether separate penalties could be levied on the two noticees.** But for this direction contained in the Hon'ble High Court Order dated 20.03.2024, I find that other issues raised by the noticees in the application dated 03.04.2024 cannot be taken up for adjudication by the adjudicating authority. I note that this subject Order is passed in compliance to the direction contained in the said H'ble High Court of Gujarat Order dated 20.03.2024 and I am bound by the direction contained in the said Hon'ble High Court of Gujarat Order dated 20.03.2024. Now to decide on other issues, besides the direction contained in the H'ble High Court of Gujarat Order dated 20.03.2024, by the adjudicating authority would be both improper and illegal for the following reasons:

- (i) To decide on other issues besides the direction contained in the Hon'ble High Court of Gujarat Order dated 20.03.2024 would not be in compliance

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to the direction contained in the said Hon'ble High Court of Gujarat Order dated 20.03.2024.

(ii) This present Order dated 15.04.2024 is in compliance to the direction contained in the said Hon'ble High Court of Gujarat Order dated 20.03.2024 to decide on the matter as directed.

17. Further, I note that Vide Reference Order-in-original No. 09/AR/ADC/SRT/2023-24 dtd. 08.12.2023, there are total four penalties levied on Shri Vishal Mehta and there are two penalties levied on M/s. UniJewels (HK) Ltd. as reflected at para 1 of this Order; Further the two exclusive penalties levied on Shri Vishal Mehta, namely the penalty of Rs.5,000/- (Rupees Five Thousand Only) on Shri Vishal Mehta( 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/- (Rupees Four Crore Fifty Two Lakh Forty Three Thousand and Thirty Only) rendered liable to confiscation) and the imposition of Penalty of Rs.9,05,06,060/- (Rupees Nine Crore Five Lakhs Six Thousand Sixty Only) on Shri Vishal Mehta( under Section 114AA of the Customs Act, 1962 in connection with the subject seized goods 1534 cut and polished diamond weighing 237.99 carat worth Rs.4,52,43,030/- (Rupees Four Crore Fifty Two Lakh Forty Three Thousand and Thirty Only) rendered liable to confiscation) are levied exclusively on Shri Vishal Mehta and these two penalties with respect to said goods rendered liable to confiscation; have not been levied on M/s Unijewels (HK) Ltd.

18. I note that the case laws cited in the said application and the three case laws copies submitted during the personal hearing, case laws namely: Vinod Kumar Gupta Vs Commissioner – 2014 (309)E.L.T. A96 (P & H) [29-05-2012], Commissioner of C. Ex & Customs, Surat-I Vs Govind Agarwal – 2009(238) E. L. T. 745 (Guj.) [05-08-2008] and Vinod Kumar Gupta Vs Commissioner of Central Excise – 2013 (287) E.L.T. 54 (P & H) [16-03-2012] are dealing with the issue of imposition of penalty on proprietorship and proprietor and thereby the cited case laws do not cover the subject matter, as M/s Unijewels and Shri Vishal Mehta are akin to 'One Person Company' and Director of 'One person company' respectively and are not akin to proprietorship.

In conspectus of the aforementioned Discussion and Findings, I pass the Order:

## Order

1. M/s Unijewels (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 Unijewels (HK) Ltd. and Shri Vishal Mehta cannot be likened to Indian concept of sole proprietorship and proprietor respectively. M/s Unijewels (HK) Ltd. [unique Business Registration Number 59288403] and Shri Vishal Mehta[ with unique Hong Kong Identity Card] have **separate legal identities** and are **not** one and the same person. As

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per Hong Kong Special Administrative Region, a private limited company is different from sole proprietorship, as discussed at para 9 & 10.

2. With the fact on record that M/s Unijewel (HK) Ltd. and Shri Vishal Mehta are **not** the one and the same person but have **distinct legal identities** and that M/s Unijewels (HK) Ltd. is **akin to Indian concept of 'One Person Company' and not akin to proprietorship**; thereby the penalties separately imposed on M/s. Unijewels (HK) Ltd. and Shri Vishal Mehta vide Reference Order-in-Original 09/AR/ADC/SRT/2023-24 dtd. 08.12.2023 holds ground.

(Arun Richard)  
Additional Commissioner  
Customs, Surat

F. No. GEN/ADJ/ADC/2248/2023-DIV-SRT-CUS-COMMRTE-AHMEDABAD

Dated: 15.04.2024

**DIN- 20240471MN000000C1E9**BY RPAD/E-mail/ Notice Board/ Speed Post:

To,

**1) M/s. Uni Jewels (HK) Ltd.**, Room 5, 9/F, Rise Commercial Buidling, 5-11, Gran Ville Circuit, Tsim Sha Tsui, Kowloon, Hongkong, Tel: +85239569604

**2) Shri Vishal Mehta**, 501/507, Kalindi Apartment, Nr. Dayalji Ashram, Majura Gate, Surat-395002.

Other address:

**Shri Vishal Mehta**, 2/1933 F1 No 103 1<sup>st</sup> Floor, Chandanvan Apt Nr Kadampalli Soc, Kadershahnal Majuragate, Surat -2, India.

Other address:

**Shri Vishal Mehta**, Room 1221, 12/F, Block B, Shun Wai Industrial Building, 15 Yuk Yat Street, To Kwa Wan Kowloon, Hong Kong.

Other address:

**Shri Vishal Mehta**, Flat A, 2/F, Luna Court, 55 Kimberley Road, Yau Tsim Mong, Tsim Sha Tsui, Kowloon, Hong Kong.

**Copy to:**

- 1) The Principal Commissioner of Customs, Ahmedabad.
- 2) The Additional Director General, DRI, Ahmedabad Zonal Unit, Unit No. 15, Magnet Corporate Park, Off. Sola Over Bridge, Thaltej, Ahmedabad – 380054.

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- 3) The Additional Director General, Central Economic Intelligence Bureau, 6<sup>th</sup> Floor, B Wing, Janpath Bhawan, Janpath, New Delhi-110001.
- 4) The System incharge, Customs (HQ), Ahmedabad, for uploading on the official website <http://www.ahmedabadcustoms.gov.in>
- 5) The Assistant Commissioner, Customs Division, Surat
- 6) The Assistant Commissioner, HQ TAR Section, Customs Ahmedabad Commissionerate, Ahmedabad
- 7) The Deputy Director, DRI, Regional Unit Surat, 2ndFloor, Avalon Building, Above Indian Bank, B/h S.D.Jain School, Piplod-Vesu, Piplod, Surat-395007.
- 8) Guard File.