

	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271163 FAX :02838-271425 E-mail id- adj-mundra@gov.in</p>	
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A	FILE NO.	F. No. GEN/ADJ/ADC/1210/2022-Adjn-O/o Pr Commr-Cus-Mundra
B	ORDER-IN- ORIGINAL NO.	MCH/ADC/MK/70/2024-25
C	PASSED BY	MUKESH KUMARI ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, MUNDRA.
D	DATE OF ORDER	11-06-2024
E	DATE OF ISSUE	12-06-2024
F	SCN NUMBER & DATE	10/2022 dated 19.12.2022 vide F. No. DZU/34/Enq-13/2021/PtI
G	NOTICEE/ PARTY/ IMPORTER	<ol style="list-style-type: none"> 1. Shri Vipin Tomar 2. Shri Vipin Yadav 3. M/s. Gateway Distriparks Ltd., Custodian at ICD, Piyala 4. Shri Tenzi Norbu Bhutia 5. Shri Vengalathur Dorairaj 6. Shri Tendu Tashi 7. Smt Bijaya Laxmi Pandit, Director of Sea Globe Logistics 8. Shri Rajesh Kumar Singh, Director of Expressway Cargo Movers 9. Sh Saurav 10. Sh Amit 11. Sh Manish Singh
H	DIN NUMBER	20240671MO000000C174

1. यहआदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते परअपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in

Form C. A. -1 to:

“सीमाशुल्कआयुक्त (अपील),
 चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,
 नवरंगपुरा, अहमदाबाद 380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN ROAD,
NAVRANGPURA, AHMEDABAD-380 009.”

3. उक्तअपील यहआदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –

- i. उक्त अपील की एक प्रति और A copy of the appeal, and
- ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं°-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ऊटी/ व्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और सीमाशुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A)के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACT OF THE CASE:-

An intelligence received by the Directorate of Revenue Intelligence, Delhi Zonal Unit ('DRI-DZU- in short) indicated that Red Sander Logs, an item prohibited for export under the Foreign Trade Policy, were being attempted to be smuggled out of India in the guise of "Brass Builder Hardware and Iron Builder Hardware" by the exporter M/s. Taurus Englobe Ltd. [IEC: 050700757], Plot No. 136, NSEZ, Noida, Uttar Pradesh-201305 to the consignee M/s. Taeheung Line Co. Ltd, 8-F, Busan Postal Insurance Building, 63 Jungang-Daero, Jung-gu, Busan, Korea under Shipping Bill No. 4016127 dated 05.11.2021 in Container No. ECNU2250524. The said container was to be railed out of ICD Piyala, Haryana to Nhava Sheva port for onward export to Korea using forged documents of NSEZ. Upon examination of the abovementioned container on 13/14.11.2022 led to recovery of 12.163 MTs of Red Sanders logs. Scrutiny of documents available with Gateway Rail Freight Limited (GRFL), the Custodian at ICD Piyala, revealed that by adopting similar modus operandi of using fake/forged documents, one more container No. OOLU1743923 ('the said container' - in short) covered under Shipping Bill No. 4015562 dated 18.10.2021 ('the said shipping bill' - in short) of exporter M/s Bholi Hardware and Exports Pvt Ltd was railed out to Mundra port. The shipping line for the said container was Korea Marine Transport Co. Ltd (KMTC) vide email dated 15.11.2021, the shipping line M/s KMTC was requested to bring back the container to gateway export port as it had already left the country. The shipping line, vide email dated 24.12.2021, informed that the container would arrive at Mundra port on 25.12.2021. The office of DRI, Delhi Zonal Unit vide letter DRI/DZU/34/Enq/13/2021/8715 dated 27.12.2021 requested DRI, Ahmedabad Zonal Unit to examine the container No. OOLU1743923.

2. Acting on the aforesaid intelligence, the said container was examined by SIIB Officers at the Mundra Port in the presence of the officers of DRI, Gandhidham regional unit under the Panchnama dated 29/30.12.2021. Upon examination it was found that the container was stuffed with round log packed in the white colour PP sheets and brown colour gunny sheets. On further removing the wrapping, red coloured wooden logs were found. In total, 379 of such red colour wooden logs that appeared to be Red sanders were found. The samples were drawn from the said consignment for testing and sent to DRI, DZU for getting the sample tested. The wildlife Crime Control Bureau vide letter dated 24.11.2022 confirmed vide their report dated 24.11.2022 that the samples were of Red Sanders.

2.1 Red Sanders is listed in Appendix-II of Convention on International Trade in Endangered Species of Wildlife Fauna and Flora (CITES). The Appendix II CITES-listed species cannot be exported or imported without permit / license from the Directorate General of Foreign Trade (DGFT). Therefore, the subject Red Sanders logs/blocks which were already exported out of India under Shipping Bill No. 4015562 dated 18.10.2021 filed in the name of the exporter M/s Bholi Hardware and Exports Pvt Ltd [IEC:4103000112] and covered under Appendix-II of the 'Convention of International Trade in Endangered Species of Flora and Fauna' (CITES) wherein its export is prohibited/restricted under the Customs Act, 1962, appeared liable to confiscation under the Customs Act, 1962. Accordingly, the said 379 logs/Blocks of wood reported to be Red Sanders weighing 12.036 Mts along with the packing/concealing material weighing 204 kgs, were placed under seizure under Section 110 of the Customs

Act, 1962 vide seizure memo dated 30.12.2021 on the reasonable belief that the same were being exported illegally in violation of the provisions of CITES and that the export of Red Sanders being prohibited/ restricted under S.no. 188 and 188A of the Notification No. 56/2015 dated 18.02.2019, issued by DGFT and that the said Red Sanders were smuggled out of India in the guise of Brass Builder Hardware and Iron Builder Hardware and hence liable to confiscation under Section 113 of the Customs Act, 1962.

2.2 Further, on scrutiny of the documents it was found that the shipping bill was filed in the name of Customs Broker M/s Navin Kumar (CHA No. R-03/14). The goods had entered on 22.10.2021 in ICD Piyala as factory stuffed goods in container number OOLU1743923 having seal number 051470 for export under Shipping Bill Number 4015562 dated 18.10.2021 by or in the name of exporter M/s Bholi Hardware and Exports Pvt Ltd. The subject container moved out of ICD Palwal on 23.10.2021, was rail out to Mundra port for onward export to Guangzhou, China. It was further, revealed that Trailer Number HR 38R8231 was used for transporting the said container into ICD Piyala.

2.3 Further, follow-up enquiry revealed that NSEZ fixes an RFID seal on the export containers, however no such seal was found on the said container. The genuine Shipping bills and TR-2 of NSEZ contain a unique QR code. On scanning the QR Code all the details of the said shipping bills can be seen. However, no such QR code was found on the documents in respect of the subject container. The Trailer number HR38R8231 was a forged number, and the actual number of the trailer was HR38R6231 and the said trailer was driven by one Sh Shankar Kumar Yadav. Statement of Sh Shankar Kumar Yadav, driver of the trailer, was recorded under Section 108 of the Customs Act, 1962 wherein he stated that he used to carry container containing red sanders and the owner of the truck HR38R6231 was one Vipin.

2.4 Upon follow up action to locate Vipin. he was found absconding from his temporary address located at HR-113B/6, Ground Floor, Pul Prahladpur. Badarpur, Delhi. From local enquiry, the native place of Vipin was ascertained and as per information Vipin is son of Yashvantha, R/o Village-Garhwa Misra, Salempur, Deoria, Uttar Pradesh.

2.5 M/s Win Win Logistics was freight forwarder of the container no OOLU1743923. Manish Singh is proprietor of M/s Win Win Logistics having office at F-89A, Vishkarma Colony. Gf, Vishkarma Colony, MB Road, New Delhi-110044. The said office was found closed upon follow up. Manish Singh used to book containers for the exporter M/s Bholi Hardware and Exports and the payment towards freight charges was made through his account maintained at ICICI Bank, New Delhi, which was confirmed by the liner and from the bank account statement of Win Win Logistics. The phone numbers of Manish Singh available with Shipping Line- M/s Orient Overseas Container Ltd were found to be fake. The address available with the bank account was found to be fake, as the address available with the bank was incomplete.

2.6 Accordingly, in order to verify the authenticity of the said shipping bill, same was verified from the NSDL Data/SEZ portal at ICD Piyala, however, the said shipping bill number could not be found. From the documents submitted with custodian of ICD Piyala, it appeared that the said goods were booked for export to M/s. Zengchang Xingtang Trading Company, Guangzhou, China by or on behalf of the exporter M/s Bholi Hardware and Exports Pvt Ltd, NSEZ, Noida. From the past experiences of investigation into the cases of smuggling of Red Sanders, it has been observed that no export documents were filed before

customs. Export General Manifest was filed/ was to be filed on the basis of forged/fake documents of Customs Officer by the liner. The export documents bearing forged signatures of Customs Officers were mostly fake and impersonation was undertaken of some other firm. In this regard, enquiries were made by DRI-DZU vide letter dated 20.12.2021 with Noida SEZ who in response vide letter dated 21.01.2022 informed that the said shipping bill number 4015562 dated 18.10.2021 was found invalid and the said container OOLU1743923 was not sealed with a RFID seal as is the mechanism followed for export containerized cargo emanating from SEZ. Further, the documents i.e. shipping bills, corresponding TR-2 and invoice were not genuine, the same were fake and have been submitted to the custodian of the port by unscrupulous elements following the same modus operandi i.e. forged documents in the name of NSEZ units were presented for export of consignments purportedly originating from Noida SEZ.

2.7 From the above, it is apparent that the conspirators or the smuggling syndicate of Red Sanders had probably impersonated and probably fraudulently mis-used the name and IEC of M/s Bholi Hardware and Exports Pvt Ltd. Outright forgery of Customs documents such as commercial invoice, packing list, SEZ Shipping Bill was done to export the subject consignment of Red Sanders through ICD, Piyala Port. By adopting the said modus operandi of forging and impersonating as another firm, the conspirators have made a conscious effort to prevent from being tracked down by the authorities.

2.8 To further understand the modus operandi of the conspirators in smuggling and attempted export of the said container of Red Sanders, officers of DRI visited ICD Piyala to understand the movement of the subject container as well as documentation carried out at the port in this regard. During the said visit, it was observed that SEZ containers meant to be exported and which are factory sealed/ self-sealed move into the ICD based on the verification of export documents viz SEZ Shipping Bill, Invoice, packing list etc. and the container is allowed entry in the ICD by recording the above-mentioned details along with the truck number and seal number of the container. In the instant case also the container number OOLU1743923 entered the ICD Piyala based on the Export documents submitted at the entry gate and the container was let in vide Gate In permit number PYL/X/G1/21-22/19085 dated 22.10.2021 at 02.17 PM. Thereafter, the said movement never came to the notice of the Customs authorities on the port as no documents were filed before the custom authorities at the port for clearance. Instead, forged signature of the port officers was used for endorsement on the said documents and presented to the Custodian in accordance with Handling of Cargo in Customs Area Regulations, 2009. The said container had the same seal numbers (as the one at the time of entry) and moved to the rail yard of the ICD Piyala based on the export documents viz TR-2 challan which had the forged signature and stamp of the officer of ICD Piyala (when the documents were never presented / filed before Customs). By using this modus operandi of forged shipping Bill as well as forged signatures stamps of officers of ICD Piyala as well as Noida SEZ, the subject container railed out to Mundra Port for onward export to Guangzhou, China. Thereafter the said container was vessel out based on the forged signatures submitted at Mundra port.

3. ENQUIRY WITH THE SHIPPING LINE:

From scrutiny of documents available with the Shipping Line M/s Korea Marine Transport Co., Ltd, it was learnt that M/s Win Win Logistics having

office at F-89a, Vishkarma Colony, Gf, Vishkarma Colony, Mb Road, New Delhi-110044 was the freight forwarder. Upon discrete enquiry, it was learnt that the office of M/s Win Win Logistics was closed long back. Further investigation revealed that M/s Win Win logistics had exported 14 more containers as detailed below: -

S. No	Shipping Bill No	Shipping Bill date	Container Number	Shipper	Booking Party
1	4004285	31.01.2020	OOLU046 1144	Bholi Hardware & Exports Pvt Ltd	Win Win Logistics
2	4022306	01.06.2020	OOLU0603892	Bholi Hardware & Exports Pvt Ltd	Win Win Logistics
3	4023008	16.07.2020	OOLU2987842	Bholi Hardware & Exports Pvt Ltd	Win Win Logistics
4	4023842	18.08.2020	CSNU1011355	Bholi Hardware & Exports Pvt Ltd	Win Win Logistics
5	4029932	24.09.2020	FCIU5759622	Bholi Hardware & Exports Pvt Ltd	Win Win Logistics
6	4030912	20.10.2020	OOLUOI 23086	Bholi Hardware & Exports Pvt Ltd	Win Win Logistics
7	4031518	31.11.2020	OOLU2968565	Bholi Hardware & Exports Pvt Ltd	Win Win Logistics
8	4032528	27.11.2020	OOLU3907991	Bholi Hardware & Exports Pvt Ltd	Win Win Logistics
9	4034348	25.01.2021	TRHU2590728	Bholi Hardware & Exports Pvt Ltd	Win Win Logistics
10	4034577	30.01.2021	OOLU1541331	Bholi Hardware & Exports Pvt Ltd	Win Win Logistics
11	4034946	12.02.2021	OOLU2164000	Bholi Hardware & Exports Pvt Ltd	Win Win Logistics
12	4035688	03.01.2021	CBHU5710481	Bholi Hardware & Exports Pvt Ltd	Win Win Logistics
13	4036842	15.03.2021	DFSU1373194	Bholi Hardware & Exports Pvt Ltd	Win Win Logistics
14	4037218	30.03.2021	CSLU1131651	Bholi Hardware & Exports Pvt Ltd	Win Win Logistics

4. During the investigation, trailer no. HR38R6231 which was owned by Vipin Yadav for transportation of red sanders in container no. OOLU1743923, was seized vide seizure memo dated 05.05.2022 in terms of Section 110 of the Customs Act, 1962.

5. In terms of the provisions of Section 110 sub-section (2), as amended, of the

Customs Act, 1962, the Pr. Additional Director General, DRI-DZU extended the period for issuance of Show Cause Notice under Section 124 or the Act ibid in respect of the seizure of 12.036MTs of Red Sanders at Mundra Port on 30.12.2021 from container no OOLU1743923, by a further period of six (6) months which was informed to the concerned persons and to the Principal Commissioner of Customs, ICD-Patparganj, New Delhi vide letter dated 24.06.2022

6. INVESTIGATION INTO THE PAST EXPORTS

6.1 During the course of investigation, details of all the containers railed out of ICD Piyala which were emanating from NSEZ were obtained by DRI from the custodian at ICD, Piyala. The documents pertaining to the said exports were scrutinized and it has been observed that total 44 containers had already been railed out from ICD Piyala during the period 2019 to 2021 using the same modus-operandi of fake and forged documents of NSEZ based companies (Two SCNs have been issued for the container nos KMTU73695736 (Exporter-Bholi Hardware and Exports Pvt Ltd) and ECNU2250524 (Exporter-Taurus Englobe Ltd)).

Names of total 3 such NSEZ based firms were used in all the said 44 export consignments:

- i. M/S TAURUS ENGLOBE LTD.
- ii. M/S BHOLI HARDWARE & EXPORTS PVT LTD
- iii. M/S JAGAN AUTOMOTIVE PVT LTD

6.2 The said exports had been affected through 7 container lines/shipping lines as detailed below:

S No	Shipping Line	No of containers
1	Orient Overseas Container Line	18
2	Expressway Shipping	12
3	Korea Marine Transport Co. Ltd	8
4	Chartering RoRo Freight Svstems	2
5	Transvision Shipping Services	2
6	Neptune Shipping	1
7	Econship Shipping	1

6.2.1 Orient Overseas Container Line (OOCL): During the enquiries made with M/s OOCL, it was found that 18 containers had been shipped using M/S OOCL. The booking parties / freight forwarders of the said containers were identified. Details of the said freight forwarders are as below: -

TABLE-1

S. No	Shipping Bill No	Shipping Bill date	Container Number	Shipper	Booking Party
1	4045154	31.12.2019	OOLU1581838	Bholi Hardware Exports Pvt Ltd	& C.P. World Lines Pvt. Ltd
2	4031306	19.08.2019	OOLU0316608	Bholi Hardware	& ColliCare Logistics India Pvt Ltd

				Exports Pvt Ltd	
3	4046968	06.03.2020	TGBU2060874	Bholi Hardware Exports Pvt Ltd &	Forin Container Line
4	4004285	31.01.2020	OOLU0461 144	Bholi Hardware Exports Pvt Ltd &	Win Win Logistics
5	4022306	01.06.2020	OOLU0603892	Bholi Hardware Exports Pvt Ltd &	Win Win Logistics
6	4023008	16.07.2020	OOLU2987842	Bholi Hardware Exports Pvt Ltd &	Win Win Logistics
7	4023842	18.08.2020	CSNU1011355	Bholi Hardware Exports Pvt Ltd &	Win Win LogiStics
8	4029932	24.09.2020	FCIUS 59622	Bholi Hardware Exports Pvt Ltd &	Win Win Logistics
9	4030912	20.10.2020	OOLUO123086	Bholi Hardware Exports Pvt Ltd &	Win Win Logistics
10	4031518	13.11.2020	OOLU2968565	Bholi Hardware Exports Pvt Ltd &	Win Win Logistics
11	4032528	27.11.2020	OOLU390799 I	Bholi Hardware Exports Pvt Ltd &	Win Win Logistics
12	4034348	25.01.2021	TRHU2590728	Bholi Hardware Exports Pvt Ltd &	Win Win Logistics
13	4034577	30.01.2021	OOLU 154133 I	Bholi Hardware Exports Pvt Ltd &	Win Win Logistics
14	4034946	12.02.2021	OOLU2I 64000	Bholi Hardware Exports Pvt Ltd &	Win Win Logistics
15	4035688	01.03.2021	CBHU571048 I	Bholi Hardware Exports Pvt Ltd &	Win Win Logistics
16	4036842	15.03.2021	DFSU 1373194	Bholi Hardware Exports Pvt Ltd &	Win Win Logistics
17	4037218	30.03.2021	CSLU 1131651	Bholi Hardware Exports Pvt Ltd &	Win Win Logistics
18	4015562	18.10.2021	OOLU 1743923	Bholi Hardware Exports Pvt Ltd &	Win Win Logistics

Thereafter, enquiry was initiated in respect of the freight forwarders who had made the bookings in respect of the said 18 containers with M/S OOCL i.e.,

M/s Win Win Logistics, M/s C. P. World Lines Pvt. Ltd, M/s ColliCare Logistics India Pvt Ltd and M/s Forin Container Line.

6.2.1.1 The freight forwarder M/s Win Win Logistics had booked 15 containers as detailed above for the exporter M/s Bholi Hardware and Exports Pvt Ltd with the liner OOCL using forged custom documents such as invoice, packing list etc. The proprietor of the firm M/s Win Win Logistics is one Manish Singh. Investigation into the whereabouts of M/s Win Win logistics was initiated. It was found that the said firm was registered at GF, F-89A, Vishwakarma Colony, Delhi-110044. Efforts were made to identify the whereabouts of Manish Singh from the Bank accounts as well, however the same address was found. Upon discreet enquiry about the said address, it was found that the same was non-existent.

6.2.1.2 One container mentioned at S.No. 2 in Table I above was booked with M/s OOCL by freight forwarder M/s ColliCare Logistics India Pvt Ltd. Vide email M/s Collicare, stated that they had taken the booking of the said container from one Mr. Irfan of M/s Sky Barge Freight. Summons were issued to Shri Irfan of M/s Sky Barge Freight. In response to Summons statement dated 12.12.2022 was tendered by him. Shri Irfan stated that one person named Amit Kumar (Mob No 7834835511) came as a walk-in client at the office of M/s Sky Barge Ltd. As Sky Barge Ltd was not taking booking of FCL, he introduced Amit Kumar to M/s Collicare Logistics. The payment for booking the container was done in cash to M/s Collicare Logistics by Mr. Amit Kumar. Shri Irfan further stated that he had booked 2 more containers OOLU1581838 and TGBU2060874 for Bholi Hardware and Exports Pvt Ltd on the directions of Amit Kumar. No whereabouts/ documents / identity cards of Amit were available with either M/s Sky Barge Ltd or M/s Collicare Logistics as they had taken only the KYC documents of the exporter/shipper only. Shri Amit Kumar could not be located despite various efforts.

6.2.1.3 One container mentioned at S.No. 3 in Table I above was booked with M/s OOCL by freight forwarder M/s Forin Container Line. Vide email M/s Forin Container Line stated that they took booking of the above said container from sub freight forwarder M/s Trans Continental Logistics. Vide email dated 16.11.2022 Sub-Freight forwarder M/s Trans Continental Logistics further informed that they took booking through M/s AN Freight Solutions. The payment towards freight was made in cash mode to Trans Continental Logistics. Shri Irfan stated that the booking for container no TGBU2060874 was given to freight forwarder AN Freight solution, who further provided booking to Forin Container Line. For the said booking, he paid approx. Rs. 30,000/- in cash mode to AN Freight solution. He received Rs. 35,000/- from Amit Kumar including freight charges. Further, he added that he used to work as freight broker and used to book container with freight forwarder who used to provide the lowest freight. Every time, he asked for the KYC documents from the exporter, which was forwarded by him to the concerned shipping lines through freight forwarders.

6.2.1.4 One container mentioned at S.No. 1 in Table-I above was booked with M/s OOCL by freight forwarder M/s C.P World Lines Pvt. Ltd Vide letter dated 10.11.2022. M/s C.P World Lines Pvt Ltd informed that they had taken booking of the said container from one M/s Tild Logistics Pvt Ltd, Flat No. 402, Fourth Floor, Harit Tower, Sector-70, Noida. During the statement dated 29.11.2022 of Kamal Jeet Singh Rawat of M/s Tild Logistics, it was stated that they received booking from a walk-in client Mr. Shahid Iqbal, who introduced himself as

Manager of M/s Bholi Hardware and exports Pvt Ltd. It was further stated that as a part of their due diligence they had obtained the KYC documents of M/s Bholi Hardware for taking the booking. No whereabouts of any Shah Iqbal were available. Shri Irfan stated that the booking for container no OOLU1581838 was given to M/s Tilid Logistics by him. He transferred Rs. 45,629/- through his HDFC account to M/s Tilid Logistics' Account. For this transaction he received Rs. 50,000/- from Amit Kumar including freight charges which was paid to M/s Tilid Logistics. Amit Kumar provided him KYC documents for the exporter. He was informed by Amit that brassware builder and accessories were to be exported. One Shahid Iqbal, who was introduced as Manager of Bholi Hardware and Exports Pvt Ltd by Mr. Amit, provided him KYC documents of the exporter, which was forwarded to M/s Tilid Logistics.

6.2.2 Expressway Shipping: During the enquiries made with M/s. Expressway Shipping, it was found that 12 containers had been shipped using M/s. Expressway Shipping. The booking parties / freight forwarders of the said containers were identified. Details of the said freight forwarders are as below:

Table-II

S. No	Shipping Bill No	Shipping Bill date	Container Number	Shipper	Booking Part y
1	4036886	17. 10.2019	FSCU7571320	JAGAN AUTOMOTIVE PVT LTD	ONS LOG ISTIC
2	4028934	28.08.2020	TCKU1836444	JAGAN AUTOMOTIVE PVT LTD	SAI LOGISTICS
3	4004392	05.02.2020	BMOU2026840	JAGAN AUTOMOTIVE PVT LTD	ONS LOG ISTIC
4	4038642	14.11.2019	CRSU1160606	JAGAN AUTOMOTIVE PVT LTD	ONS LOG ISTIC
5	40305 27	09.10.2020	BMOU2026840	BHOLI HARDWARE & EXPORTS PVT. LTD.	Seaglobe Logistics Pvt. Ltd.
6	4029668	15.09.2020	TCKU2024487	JAGAN AUTOMOTIVE PVT LTD	Seaglobe Logistics Pvt. Ltd.
7	4031424	07.11.2020	WHLU2528699	JAGAN AUTOMOTIVE PVT LTD	Seaglobe Logistics Pvt. Ltd.
8	4032416	24.11.2020	WHLU2837980	JAGAN AUTOMOTIVE PVT LTD	Seaglobe Logistics Pvt. Ltd.
9	4033124	10.12.2020	APZU3124468	JAGAN AUTOMOTIVE PVT LTD	Seaglobe Logistics Pvt. Ltd.
10	4033469	16.12.2020	WSCU3917751	BHOLI HARDWARE & EXPORTS PVT. LTD.	Seaglobe Logistics Pvt. Ltd.
11	4033640	02.01.2021	MSCU3504260	JAGAN AUTOMOTIVE PVT LTD	Seaglobe Logistics

					Pvt. Ltd.
12	4030381	30.09.2020	EASU9611452	JAGAN AUTOMOTIVE PVT LTD	Seaglobe Logistics Pvt. Ltd.

6.2.2.1 In response to summons dated 06.12.2021 voluntary statement of Shri Rajesh Kumar Singh, Director of Expressway Cargo Movers Pvt Ltd was recorded on 13.12.2021 under Section 108 of the Customs Act, 1962, wherein he, interalia, stated that he is one of the directors of M/s Expressway Cargo Movers Pvt. Ltd., Expressway Shipping (I) Pvt. Ltd. and Expressway World Cargo Pvt. Ltd. Expressway Cargo Movers Pvt. Ltd. is a Non-Vessel Operator Common Carrier (NVOCC) and it has its own containers as well as leased containers. The Delhi branch office is situated at 24C, 1st Floor, Yusuf Sarai, Green Park Extension, Behind Union Bank of India, New Delhi – 110016. One of the customers, M/s Sai Logistics had booked containers from their Delhi Branch Office in 2019 and 2020 and one Vipin Tomar was the only employee at Delhi branch office during that period. On being asked why in the first two entries name of ONS logistics is mentioned, he stated that the booking was done by ONS Logistics, but they raised bill in the name of Sai Logistics and the shipper was M/s Jagan Automotives Pvt. Ltd.

He further stated that in connection with a container booked through them which was found to be containing Red Sanders in Malaysia they had received a notice from Malaysia Customs regarding seizure of container no. WSCU3917751. The said container pertained to them, and Red Sanders was found in it at Port Kiang, Malaysia. The said container was booked with them by M/s. Sea Globe Logistics Pvt. Ltd., a freight Forwarder. The container was detained by the Malaysian customs and thereafter, they contacted M/s. Sea Globe Logistics Pvt. Ltd. about the same as the detention and demurrage charges were adding up. Thereafter, Mrs. Bijaya Lakshmi, Director of M/s. Sea Globe Logistics Pvt. Ltd. arranged meeting with one Amit of Sai Logistics. Thereafter, Amit came to Delhi branch office and handed over USD 18000 in cash to his brother Mukesh Kumar Singh, Director Expressway Cargo Movers Pvt. Ltd. He never met Amit and no personal details of Amit are available with him. He was aware that Sai Logistics was sending Red Sanders in the containers. He stated that their services were limited only to providing container and shipment of loaded container from port to port.

6.2.2.2 In response to summons dated 07.12.2021, voluntary statement of Sh. Vipin Tomar, Indian Freight Solutions R/O Madanpura, Awagarh, Etah, Uttar Pradesh-207301 and local resident of Opposite Khan Cycle Shop, 15t Floor, Maitrka Vihar, Khoda Colony, Ghaziabad was recorded on 07/08-12.2021 under Section 108 of the Customs Act, 1962 where-in he, interalia, stated that he had shifted to Ghaziabad and worked with the firm Logistics Linkage, Ghaziabad as a helper and learnt documentation work related to import and export till 2018 and thereafter joined Expressway Shipping, New Delhi which is a NVOCC (Non-Vessel owning Common Carrier) and its operation comprises of sales, stuffing and transport of the containers to gateway ports. The head office of Expressway Shipping is in Kolkata and its associated firms are Expressway Cargo Mover Pvt. Ltd and Expressway Container line LLP. They have office branches at Mumbai, Kolkata, Chennai, Mundra & Delhi and the owner of the said firms/companies Expressway Shipping, Expressway Cargo Mover Pvt. Ltd and Expressway Container line LLP are two brothers, namely, Mukesh Kumar Singh and Rajesh Kumar Singh. He used to look after documentation related to

import and exports which includes freight billing, coordination with parties etc. in the said company. The firm Indian Freight Solutions was started by him in January 2021 on the instruction of one person namely Sh. Amit Sharma. During the period he was working with the Expressway Shipping, Amit Sharma used to visit Expressway Shipping office in New Delhi and gave them freight forwarding work related to NSEZ companies Jagan Automotives Pvt. Ltd and Bholi Hardware & Exports Pvt. Ltd and KYC documents in respect of these companies were also provided by him. Amit Sharma used to give them work related to forwarders, namely, ONS Logistics, Sai Logistics and Sea globe Logistics Pvt. Ltd. Earlier, the bookings in the name of Sai Logistics were made but later on the booking of Sai logistics were made through Sea globe Logistics Pvt. Ltd. Containers were booked in the name of shippers i.e. Jagan Automotives Pvt. Ltd and Bholi hardware & Exports Pvt. Ltd. One of the containers shipped in the name of Jagan Automotives Pvt. booked by Expressway Shipping was intercepted by Malaysian Customs in December, 2020 and Red Sanders logs were recovered from it.

He further stated that Amit Sharma also introduced him to one person, namely, Saurav who provided him the KYC documents of another NSEZ company, namely, Taurus Englobe Limited, Plot No. 136, NSEZ Noida and asked him to start booking in the name of said company. Saurav also communicated with him over WhatsApp with No. 9718039784 saved in his mobile with the name Taurus Englobe. Amit Sharma and Saurav used to meet him near Gurudwara, Yusuf Sarai, Green park, New Delhi & near EDM Mall, Ghaziabad for payment related to export shipment which was made in cash. Amit Sharma or Saurav used to tell him about the order to be booked i.e. name of the shipper, port and destination etc and further he gave booking orders to forwarders i.e. earlier DR Shipping and later on DHCN Logistix. The Container Release from Order the (CRO) in respect of the shipment booked by him was received over WhatsApp from the said forwarders and he used to share the same CRO with Amit Sharma or Saurav, after that Amit Sharma and Saurav used to pick up the container for stuffing. After handing over the loaded container at ICD Piyala, they used to send the documents i.e., Shipping Bill, TR-II, Invoice, weighment slip etc. and he used to forward the same to the forwarders.

He further stated that he used to communicate with Dorai Raj in DR shipping over email and that in June 2020, a container booked by his firm (KMTC-shipping line container) was intercepted by Haiphong, Vietnam Customs and Red sanders were recovered. The same was informed by Dorai Raj over email received from DR Shipping. Thereafter, on the request of Dorai Raj, he arranged his meeting with Amit Sharma & Saurav and one more person namely Rahul of KMTC was also present there. The meeting was held near KMTC office Jasola. All the four persons talked in private and thereafter Amit Sharma asked him to leave by saying that everything was in control and the matter would be sorted. On instructions of Amit Sharma, he did not work with DR Shipping and started working with Raj Kumar in DHCN Logistix. Amit Sharma used to make the payment for freight / container charges in cash and he used to receive Rs 10,000 per export shipment from Amit and the container number ECNU2250524 was booked by his firm Indian Freight Solutions through DHCN Logistix in the name of the shipper M/s Taurus Englobe Ltd. He was aware that red sanders were recovered from container number ECNU2250524 and Shri Rajkumar of DHCN Logistix had informed him on 13.11.2021 that customs had put the said container on hold and he informed the same to Amit Sharma and he asked him to switch off mobile for a few days. He was always aware that Red

Sanders was being exported in the container booked by/through him and Amit Sharma was the person who along with Saurav had affected the said exports and that he was not aware of the addresses of Amit or Saurav.

6.2.2.3 Investigative findings/conclusion in connection with the above statements:

- i. Vipin Tomar used to book containers for one Amit Sharma. Amit Sharma used to book containers with Expressway cargo movers for firms Jagan Automotives and Bholi Hardware. Amit Sharma introduced him to one Saurav of Taurus Englobe Ltd.
- ii. In respect of payments, Amit and Saurav used to pay in cash to Vipin Tomar. Vipin Tomar used to transfer payment to DHCN Logistx through Agent (IMPS).
- iii. After handing over the container at ICD, Amit or Saurav used to send the shipping bill, TR-2, weight slip etc on Vipin Tomar's phone and he forwarded the same to freight forwarders.
- iv. The phone numbers of Amit or Saurav available with Vipin Tomar were found to be fake. Vipin Tomar did not know the residence of Amit Sharma.

6.2.2.4 Further, in connection with the above-mentioned containers, it is pertinent to mention that during follow-up searches in another case of seizure of 11.711 MTs of Red sanders at Mundra Port from a container that had railed out from ICD Palwal, certain incriminating documents and electronic devices were recovered from the premises of two conspirators/Accused- Tenzi Norbu Bhutia and Tendu Tashi under separate panchnama dated 02.05.2022. Among the said documents, one document in respect of container mentioned at S. No 10(WSCU3917751) of Table-II above was resumed during the search at the premises of Tenzi Norbu Bhutia. The electronic devices owned by Tenzi Norbu Bhutia and recovered from his residence contained evidences which indicated that Sh Tenzi Norbu Bhutia was a habitual smuggler of Red Sanders and was involved in smuggling and illegal export of Red Sanders out of India multiple times in the past as well. During the search at the residence of Tendu Tashi on the same day, incriminating documents pertaining to 11 containers of Red Sanders exported in the past were recovered from the residential premises of Tendu Tashi (mentioned at S. No 1, 2, 3, 5, 6, 7, 9, 10 and 12 of Table II above). Apart from the said documents, certain small logs/ blocks of Red Sanders were also found from his residence which he might have been using as samples for his prospective customers.

6.2.2.5 In continuation of the investigation, voluntary statement of Sh Tenzi Norbu Bhutia was recorded on 02-03/05/2022 under Section 108 of the Customs Act, 1962 wherein he admitted to have been involved in smuggling of Red Sanders using the same modus operandi. On being shown the export documents pertaining to the consignments of Red Sanders in the name of Bholi Hardware & Exports Pvt. Ltd shown to be as a NSEZ unit which was resumed from his residential premises, he stated that the said pages are pertaining to the consignment in the name of Bholi Hardware & Exports Pvt. Ltd exported to Winter Global Resources, Malaysia. He and Tendu Tashi have been smuggling red sanders since long time and uses the documents in the name of few units of SEZ Noida like Bholi Hardware & Exports Pvt. Ltd., Jagan Automotives Pvt. Ltd. and others. The above two documents are draft shipping bills for consignment of red sanders exported to Malaysia under the guise of hardware items. These documents were left at his place by Tendu Tashi.

On being shown the panchnama dated 02.05.2022 drawn at the residence of Sh Tendu Tashi located at K-2097, ground floor CR Park New Delhi whereby certain documents pertaining to the past exports of Red Sanders (S. No 1, 2, 3, 5, 6, 7, 9, 10 and 12 of the table above) was shown to him and asked why the consignors of said export documents are the same as the ones recovered from his own residence i.e. M/s Bholi Hardware he stated that these pages are pertaining to the consignment in the name of Jagan Automotive Pvt. Ltd. , Bholi Hardware & Exports Pvt. Ltd exported to Universal Sky Trading, Malaysia. He and Tendu Tashi have been into smuggling of red sanders since long time and uses the documents in the name of a few units of SEZ Noida like Bholi Hardware & Exports Pvt. Ltd., Jagan Automotives Pvt. Ltd. and others. The above documents are Bills of lading for consignment of red sanders exported to Malaysia under the guise of hardware items. They both being business partners, in this business of red sanders smuggling, so these documents were found at his residential place.

On being asked and after being confronted with the evidences in his mobile phone such as his WhatsApp chat conversations, photographs, documents resumed from his residential premises under panchnama dated 02.05.2022, he admitted that he had been involved in the Smuggling of Red Sanders out of India. He stated that he had been involved in procuring and exporting Red Sanders out of India for the past many years. On being shown the documents resumed from his residential premises as well as from the premises of Tendu Tashi under panchnama dated 02.05.2022, he agreed and admitted to being an accomplice to smuggling of red sanders out of India in the past many containers. He also admitted that the past containers were exported out of India by forging the custom documents such as Shipping Bill, Trans-shipment documents, seal stamps etc wherein the containers were wrongly shown as stuffed from an SEZ unit and sealed in SEZ. The containers were then weighed and Railed out from one or the other port such as ICD PIYALA /ICD PALWAL by forging the customs Documents as well as seal/ stamps of custom officers so that the containers were loaded directly onto the rail by the port custodian. The documents found at the residence of Tendu Tashi wherein the names of the Consignor have been used as Bholi Hardware and presence of a similar document at his residence where the name of the consignor is same, and where the Red Sanders smuggled out of India have also been shown to him and he admitted to have planned and managed the export of multiple containers in the past from different godown and more specifically from the Chhatarpur godown in the past one year.

6.2.3 M/s Korea Marine Transport Co. Ltd: During the enquiries made with M/s Korea Marine Transport Co. Ltd, it was found that 8 containers had been shipped using M/s Korea Marine Transport Co. Ltd. The booking parties / freight forwarders of the said containers were identified. Details of the said freight forwarders are as below: -

Table-III

S. No.	Shipping Bill No.	Shipping Bill Date	Container No.	Shipper	Booking Party
1	4014218	15.09.2021	TEMU3333150	Bholi Hardware & Export Pvt Ltd	Unique Logistics International

					India Pvt Ltd
2	4010712	08.05.2021	GESU1126786	Bholi Hardware & Export Pvt Ltd	Fast Forward Logistics India Private Limited
3	4010532	14.04.2021	SEGU2530170	Jagan Automotive Pvt Ltd.	Fast Forward Logistics India Private Limited
4	4036919	25.03.2021	TEMU0407732	Taurus Englobe Ltd.	Fast Forward Logistics India Private Limited
5	4036214	10.03.2021	SEGU1866540	Taurus Englobe Ltd.	Unique International
6	4014840	04.10.2021	SEGU2274313	Bholi Hardware & Export Pvt Ltd	Unique International
7	4012776	09.08.2021	SEGU2273132	Bholi Hardware & Export Pvt Ltd	Unique International
8	4015932	26.10.2021	KMTU7369576	Bholi Hardware & Export Pvt Ltd	Unique International

6.2.3.1 In relation to the role of M/s Fast Forward Logistics, it is pertinent to mention about the role of Sh Vengalathur Dorairaj, Proprietor of M/s DR Shipping. During the investigation of seizure of Red Sanders, voluntary statement of Shri Dorai Raj, freight forwarder of M/s DR Logistics was recorded at length under section 108 of the Customs Act, 1962 on 04/05-05-2022. During the course of investigation into his role and recording of his statement certain incriminating chats were found in his mobile phone which made it evident that he was involved in the smuggling of Red Sanders. From the investigation carried out and the statement of Sh Dorai Raj, it was revealed that he had procured 3 containers from Fast Forward Logistics India Pvt Ltd. He had provided 3 containers to Jagan Automotives Pvt Ltd, SDF-H-11, NSEZ, Noida. He had procured 3 containers from Fast Forward Logistics India Pvt Ltd. He never communicated with any person from Jagan Automotives Pvt Ltd. One person namely Vipin Tomar of Expressway Cargo Movers Pvt Ltd had contacted him for booking of containers. Vipin Tomar provided the KYC documents of Jagan Automotives Pvt Ltd to him through WhatsApp. He had not received any payment from Jagan Automotives. He received cash payments from Vipin Tomar. He was shown print outs of the email delhi@indianfreightsolutions.com taken by the officers during recording of the statement of Vipin Tomar on 08.12.2021 wherein he stated that the page no 123 is the printout of the booking notice issued by Korea Marine Transport Co Ltd in respect of the container from ICD Piyala to Haiphong, Vietnam. On being shown the page nos 74 to 279 of the printouts, he stated that the print outs are of the mails between him (dorairaj@drshipping.co.in) and Vipin Tomar (yash@indianfreightsolutions.com, delhi@indianfreightsolutions.com). The contents of the pages 82 to 91 are printouts of the email sent by Dorairaj to Vipin Tomar and in the emails, Dorairaj had forwarded the emails of KMTU

(India) Pvt Ltd, in respect of the container no SEGU2530170. KMTC India Pvt Ltd had emailed to Fast Forward Logistics Pvt Ltd and they had forwarded to Dorairaj, which was forwarded by him to Vipin Tomar. Haipong Customs Vietnam, had found Red Sanders in the container no SEGU2530170. KMTC had forwarded the notice issued by Haipong Customs to Fast Forward Logistics Pvt Ltd, which was forwarded to him. He forwarded the notice to Vipin Tomar. Vipin Tomar arranged a meeting between him and another person namely Amit (Vipin told him that Amit is related to Jagan Automotives Pvt Ltd). Rs. 1.5 lakh was paid was paid by Amit to Dorairaj towards detention charges of the container. Out of Rs. 1.5 lakh, Rs. 1.2 lakh was deposited in the current account of his firm. The name of the person was Rajnish alias Rajiv (Vipin had told him that he is Amit but said person had introduced to him as Rajiv alias Rajnish). Prior to interception of the container by Hai Phong Customs i.e., on 07.06.2021, he was not aware that Red Sanders was being smuggled in the containers. In the meeting Rajnish alias Rajiv disclosed that red sanders were smuggled in the containers booked through him by Vipin. He booked the containers for Taurus Englobe Ltd and Bholi Hardware and Exports Pvt Ltd.

He submitted details of the container booked by him:

S. No	Shipping Bill No	Shipping Bill date	Container Number	Shipper	Liner
1	4010712	08.05.2021	GESU1126786	BHOLI HARDWARE & EXPORTS PVT LTD.	Korea Marine Transport Company Ltd
2	4010532	14.03.2021	SEGU2530170	JAGAN AUTOMOTIVE PVT LTD	Korea Marine Transport Company Ltd
3	4036919	25.03.2021	TEMU0407732	TAURUS ENG LOB E LTD.	Korea Marine Transport Company Ltd
4	4015935	15.10.2021	TDRU0544726	JAGAN AUTOMOTIVE PVT LTD	Neptune Shipping
5	4035712	02.03.2021	FCIU3314622	TAURUS ENGLOBE LTD.	Chartering Ro Ro LLP
6	4010976	08.06.2021	UNXU2730372	TAURUS ENGLOBE LTD.	Chartering Ro Ro LLP
7	4012893	18.08.2021	BHCU3117951	JAGAN AUTOMOTIVE PVT LTD	Transvision Shipping
8	4014397	24.09.2021	FSCU7610180	JAGAN AUTOMOTIVE PVT LTD	Transvision Shipping

He further stated that all the containers mentioned in the above table were booked by him through liner mentioned in the above table. The 3 containers BHCU3117951, FSCU7610180 and TDRU0544726 were booked after he came to know about the red sandalwood seized by Hai Pong Customs. In the meeting between him, Rajnish alias Rajiv and Vipin Tomar, they offered him more money than what they were earlier paying to him and he agreed to their offer and continued to book containers for them for smuggling of red

sandalwood. They started paying him Rs. 50,000 in addition to the other charges for containers etc. Rajish alias Rajiv had told him that he is using name of shippers Bholi Harware and Exports Pvt Ltd, Jagan Automotives Pvt Ltd and Taurus Englobe Ltd for exporting red sanders in clandestine manner. He had never received any authorisation from these shippers for booking containers from them. The documents related to these shippers were provided to him by Vipin, Rajnish alias Rajiv. He received cash payments for the services rendered by him. There were no emails after June, 2021 between him and Vipin, as Rajnis alias Rajiv started dealing directly with him for booking containers. He has deleted the messages between him and Vipin Tomar and between him and Rajnish alias Rajiv on the directions of Rajnish alias Rajiv.

6.2.3.2 Booking in respect of container mentioned at S. no. 1 of Table-III was made by freight forwarder M/s. Unique Logistics. M/s. Unique Logistics further informed that the booking of the said container was given to them by Mr. Ravi/ Manish Singh of M/s. Win Win Logistics.

6.2.3.3 Booking in respect of container mentioned at S. No 5 to 8 of table III above was made by freight forwarder M/s Unique International Logistics. M/s Unique International through email submitted that the bookings for the containers mentioned in above table were provided by M/s DHCN Logistix. In this connection Summons were issued to M/s DHCN Logistix. In response to summons dated 06.12.2021 voluntary statement of Shri Rajkumar S/o Shri Hari Chand, Proprietor- M/s DHCN Logistix, 3392, 2nd Floor, Arya Pura, Sabji Mandi, Delhi was recorded on 06.12.2021 under Section 108 of the Customs Act, 1962, wherein he, interalia, stated that he is the proprietor of DHCN Logistics which is engaged in the business of logistics services i.e., freight forwarder and this firm was started on 01.01.2020. The container No. ECNU2250524 was booked by him with the shipping line Econship Tech Pvt. Ltd and that one person, namely, Vipin Tomar of Indian Freight Solutions had contacted him for booking of the container for exporting goods of Tauras Englobe Ltd and prior to the above container, Vipin Tomar had also booked the following containers:

Container Number	Name of Shipper
SEGU1866540	Taurus Englobe Ltd, NSEZ
SEGU2273132	Bholi Hardware & Exports Pvt Ltd, NSEZ
SEGU2274313	Bholi Hardware & Exports Pvt Ltd, NSEZ
KMTU7369576	Bholi Hardware & Exports Pvt Ltd, NSEZ

In addition to the above, one more container i.e., container No. BHCU3222068 for Bholi Hardware & Exports Pvt. Ltd and the said booking was later cancelled by Vipin Tomar and Vipin Tomar had told him that the invoice is to be issued in the name of shipper / exporter and not Vipin or his company. The containers were booked by their sub-agent Unique International with the shipping line and Unique International had raised invoices to him and he had issued invoice to the shipper / exporter and the last two containers were booked by him directly with the shipping line. He used to send the

invoices via WhatsApp to Vipin Tomar and that payments were received in the bank account No. 6871134417 with Indian Bank, RP Bagh, Delhi and that most of the payments were transferred to his firm's account through IMPS through different mobile numbers. Vipin Tomar was earlier working with Expressway Cargo Movers Pvt. Ltd.. and he had met him in the office of Expressway Cargo Movers Pvt. Ltd in July 2020. Later Vipin left the said company and joined a new company namely Indian Freight Solutions. Thereafter Vipin booked first shipment of Taurus Englobe Ltd through his company in the month of March, 2021. He submitted printouts of the emails received from Indian Freight Solutions/Vipin and on 13.11.2021 (around 3PM), he received a call from Shri Sushant Kumar of Econship Tech Pvt. Ltd. on his mobile No. 9988449691 who informed him that container number ECNU2250524 has been put on hold by the customs. He contacted Vipin Tomar on his mobile phone no. 9667773647 through his mobile phone No. 9891097451 and informed him that the customs had put on hold the container No ECNU2250524.

From the above it is evident that containers dealt by DHCN Logistix were booked by Vipin Tomar and the freight charges was paid by him in cash to the freight forwarders as discussed in above para.

6.2.4 M/s Chartering Ro Ro LLP: During the enquiries made with M/s Chartering Ro Ro LLP, it was found that 2 containers had been shipped using M/s Chartering Ro Ro LLP. The booking parties/freight forwarders of the said containers were identified. Details of the said freight forwarders are as below: -

Table-IV

S. No	Shipping Bill No	Shipping Bill date	Container Number	Shipper	Freight Forwarder	Liner
1	4035712	02.03.2021	FCIU3314622	Taurus Englobe Ltd	DR Shipping	Chartering Ro Ro LLP
2	4010976	08.06.2021	UNXU2730372	Taurus Englobe Ltd	DR Shipping	Chartering Ro Ro LLP

The said containers had been booked by freight forwarder M/s DR Shipping. His detailed statement had been recorded on 04/05.05.2022.

6.2.5 M/s. Transvision Shipping: During the enquiries made with M/s Trans vision Shipping, it was found that 2 containers had been shipped using M/s Trans vision Shipping. The booking parties/freight forwarders of the said containers were identified. Details of the said freight forwarders are as below: -

Table-V

S. No	Shipping Bill No	Shipping Bill date	Container Number	Shipper	Freight Forwarder
1	4012893	18.08.2021	BHCU3117951	Jagan Automotive Pvt Ltd	DR Shipping
2	4014397	24.09.2021	FSCU7610180	Jagan Automotive Pvt Ltd	DR Shipping

The said containers had been booked by freight forwarder M/s DR Shipping. His detailed statement had been recorded on 04/05.05.2022.

6.2.6 M/s. Econship Shipping: During the enquiries made with M/s Econship Shipping, it was found that 01 container had been shipped using M/s Econship Shipping. The booking parties/freight forwarders of the said containers were identified. Details of the said freight forwarders are as below: -

Table-VI

S. No	Shipping Bill No	Shipping Bill date	Container Number	Shipper	Freight Forwarder	Liner
1	4016127	05.11.2021	ECNU2250524	Taurus Englobe Ltd	DHCN Logistix	Econship

During the investigation and various statements recorded it was revealed that the booking for the said container was made by Vipin Tomar with DHCN Logistix. The KYC and contact details of Shipper - Taurus Englobe Ltd were shared by Forwarder DHCN Logistix at the time of placing booking as they were not in direct contact with the Shipper. As the shipment was in its initial stage when held by DRI for investigation, the Bill of Lading and other documentation were not initiated or released; hence no payment was collected from DHCN Logistix.

6.2.7 M/s Neptune Shipping Private Limited: During the enquiries made with M/s Neptune Shipping Private Limited, it was found that 01 container had been shipped using M/s Neptune Shipping Private Limited. The booking party / freight forwarder of the said container was identified. Details of the said freight forwarder are as below: -

Table-VII

S. No	Shipping Bill No	Shipping Bill date	Container Number	Shipper	Freight Forwarder	Liner
1	4015135	15.10.2021	TDRU0544726	Jagan Automotive Pvt Ltd.	Transvision Shipping Pvt Ltd	Neptune

The said containers had been booked by freight forwarder M/s Trans vision Shipping who has received the bookings from M/s DR Shipping as evident from the statement of Sh Vengalathur Dorairaj.

6.3 FINANCIAL INVESTIGATION IN RESPECT OF THE SAID PAST 44 CONTAINERIZED EXPORTS OF RED SANDERS:

Efforts were also made to identify the persons involved in the said smuggling syndicate through the financial trail / payments made at different stages in respect of the said 44 containers. During the course of financial investigations, it was found that different payment mechanisms had been adapted by the conspirators and many times the payments were made in cash.

6.4. ENQUIRY WITH THE CUSTODIAN AT ICD PIYALA

In continuation to the investigation into all the exports as well as Seizures of

Red Sanders affected through/at ICD Piyala, it was necessary to investigate the Custodian at the Port. Accordingly, in response to summons dated 11.10.2022, voluntary statement of Shri Rana Kumar, Deputy Manager, Operations, M/s Gateway Distriparks Ltd, ICD, Piyala, was recorded on 13.10.2022 under Section 108 of the Customs Act, 1962, wherein he, inter-alia, stated that: -

- his roles and responsibilities include managing the entire operations starting from Gate in to Gate out of Containerized cargo at ICD Piyala. These include the operations at Rail, Inland Container Depot, including the cargo handling and regular day to day activities pertaining to the Terminal.
- he receives the report in respect of all the cargo movement i.e., in and out of the port at ICD Piyala every day since June 2022. Prior to June 2022, the said reports were received by Sh Sukhbir Singh who was now retired. He further added that the said report includes the figures/number of different types of containers/ cargo movement into and out of ICD. The said report is for information and record purposes. In these, there are two categories of in and out movement of containers, one category is of the movement of empty containers in and out of ICD and the other category is actual import i.e., containers which are railed in and actual export i.e., containers which are railed out of the port.
- the report in respect of the containers imported (railed in and through Road) and exported (railed out) is shared with the concerned Deputy Commissioner of Customs at the ICD. He further submitted copy of the submissions made by him addressed to the Customs;
- that the procedure being followed in respect of export consignments, is that the trailer with stuffed export containers (self-sealed factory stuffed containers) would come at the ICD and on arrival, entry would be made at the ICD gate viz., Truck number, Container number, DL number, Shipping bill number/date, Seal number, Container in- time and then Gate-In slip would be generated. Based on the said Gate in slip, the said truck / trailer was allowed to move inside the ICD. Further, E-seals were verified with the help of handheld scanners available at the gate of the ICD.
- that the said scanning of E-seals affixed on the containers was done by the personnel (surveyor) outsourced by M/s Gateway Distriparks Ltd (GRFL), ICD Piyala who were the staff of M/s Master Marine services and were not on the pay roll of M/s Gateway Distriparks Ltd, ICD Piyala. The said 'Handheld scanners' were supplied by customs to the custodian i.e., them and presently, 3 hand held scanners are available at the terminal.
- that if there were any issues regarding the functioning of the handheld scanners, they would bring it to the knowledge of customs authorities and the vendor & same would be rectified. After scanning the E-seal with handheld scanner, generally the display will be as "Not Tampered" and if the scanner display shows as "Tampered", then the custodian would inform the customs Preventive Officer/ custom authorities at ICD Piyala. Further action would be taken as per the directions of Custom authorities at the port. If the display in the handheld scanner shows as "Not Tampered" the concerned Customs Broker would then take the documents associated with the said container to the customs authorities at the port and get the same processed as per the customs rules. Thereafter, customs authorities would undertake the registration process of shipping bill and thereafter Let Export Order (LEO) would be given by customs

Superintendent / Appraiser; that once LEO is generated by the Custom authorities electronically on ICEGATE portal, thereafter, the said LEO is shared with them by the CHA/Exporter and the same is available on ICEGATE Portal as well. We verify the LEO from the said portal and based on the said verification, the Gate pass is issued. The said LEO is also shared with the shipping line by the Customs Broker and post verification of the same the shipping line/ representative of shipping line gives the "forwarding note" which contains the details about the shipment viz container number, port of loading, port of destination, goods etc. Based on the said forwarding note, a Gate pass for Rail out of the said container is generated by them.

- that the procedure for export of containers followed in respect of containers arriving from SEZ. units, the trailer with stuffed export containers would come at the ICD and on arrival, entry would be made at the ICD gate viz., Truck number, Container number, DL number, Shipping bill number/date, Seal number, Container in- time. Thereafter, a gate in slip is generated based on the scrutiny/scanning of the E-SEAL/RFID Seal on the said container.
- that there are two mechanisms of verification followed at the ICD by them in respect of the containers originating from the SEZ. Mechanism 1: This mechanism is followed if the e-seal / RFID seal is available on the said container. The said seal is then scanned by their personnel / outsourced personnel at the Gate of the ICD from where all the details in respect of the said export containers are extracted such as shipping bill, exporter details, goods details etc. Based on the said verification, a Gate in slip is generated for the said container wherein the seal number is recorded. Mechanism 2: This mechanism is followed when the RFID Seal/ E-seal is not available on the container.
- that in the instant case the documents pertaining to the said container were manually provided by the transporter to their personnel at the gate wherein the manual verification of the seal numbers was performed. The seal numbers mentioned on the Shipping Bill are compared with the seal number on the container. If the seal numbers were found to be same, the Gate in pass was generated and the container was allowed to be let into the ICD.
- that this was the only verification undertaken by their personnel at the gate in respect of the containers without the RFID Seal/ E-seal emanating from SEZ. The above-mentioned procedure was followed till December 2021. After the seizure of Red Sanders by DRI at ICD Piyala in November 2021, the staff was made aware about the proper shipping bills and requirement of E-Seal on the containers emanating from SEZ.
- that he was shown a sample copy of export document of a container emanating from NSEZ of a shipper registered at ICD Palwal covered under Shipping Bill No. 4018939 dt. 31.05.2022 along with the "Application cum Gate pass permission for removal of NSEZ export Cargo from NSEZ to ICD Palwal."
- that these were the types / format of shipping Bill and Gate pass permission document which were generally received with the container from NSEZ. However, the documents received in case of the said 44 containers were different. The differences such as:
- No application cum Gate pass permission for removal of NSEZ export

Cargo from NSEZ to ICD Piyala were available in the said documents i.r.o the said 44 containers.

- No document where the movement of the container / packages from NSEZ to ICD Piyala is elaborated/detailed as available in the other cases/ genuine export consignments.
- No QR code was found on the Shipping Bills of the said 44 containers whereas the QR codes were available on rest of the Shipping Bills of genuine export consignments.
- No Export declaration form duly endorsed by SEZ, and the shipper were available in the said documents i.r.o of the said 44 containers.
- that the said shipping Bills in respect of the said 44 containers were not proper. The above-mentioned differences could be seen in the documents of genuine export consignments of SEZ entities, and the documents furnished with said 44 containers /export consignments.
- that the mechanism/steps followed at ICD Piyala regarding the Cargo-In/Container-In/ Examination etc., in respect of the consignments covered under the 44 Shipping Bills as mentioned above, was that all the said 44 containers emanating from NSEZ came at the gate of ICD Piyala on their respective dates. The said export consignments were being handled by CHA M/s Navin Kumar. All the said containers did not have RFID Seal / E-seal on them and hence were not scanned. The documents such as shipping Bill, Invoice, Packing List in respect of the said containers were provided by the Drivers to their personnel at the entry gate of the ICD. As per the prevailing practice at ICD, the seal numbers mentioned on the Shipping Bills were cross checked with the actual seal numbers on the containers and same were found to be matching.
- that the movement of the said containers, (the details of which are submitted by him in his statement dated 13.10.2022) on respective dates of the gate in of the 44 containers, the representative of CHA submitted the forwarding note in respect of the exporters of Noida Special Economic Zone i.e. M/s Bholi Hardware & Exports Pvt Ltd., Taurus Englobe Ltd and M/s Jagan Automotives Pvt Ltd along with the copy of the shipping Bills in respect of 44 containers and "SELF SEALING REPORT" which had the signatures of Authorized signatory of above mentioned exporters, PO, NSEZ and Superintendent ICD, Piyala. Based on the said documents, Gate Out passes were generated for allowing the container to be railed out of the port.
- that there was no specific let export order / export permission from the port authorities in respect of the said container and as per their understanding, since the "SELF SEALING REPORT" on the back side of Shipping Bill had the signature of the superintendent of CUSTOMS, ICD Piyala, the said document was treated as an endorsement of the customs authorities at the port to allow the container to be moved out/ Railed out of the port for export.
- that at the time of generation of the gate pass for moving the said container out of ICD Piyala, once again the QR code / authenticity of the documents viz the Shipping Bill were not verified by them.
- that the export documents in respect of above mentioned 3 exporters were never submitted by the party/ representative/ CHA or anyone with them and the said verification was never undertaken in respect of the said 44 containers.

- that the stark difference in the procedure of handling / Gate In / Gate out of the 44 containers of the above mentioned 3 exporters and the other containers arriving at the ICD from SEZ/NSEZ was that there appears a difference in handling of this specific container when compared to other containers in terms of:
- The evident difference in the actual and fake shipping bills of SEZ through its format, presence/ non-presence of QR etc.
- The Gate out permission without the verification of "Application cum gate pass permission for removal of Export Cargo from NSEZ..." which has the details of movement of the said container from NSEZ and needs endorsement from them as well as Customs at the port in Part V of the said form in the instant case.
- The processing of documents by allowing the Gate out of the container by treating the "Self-Sealing Report" as the permission to export / move out the cargo just because the same had signature of any custom officer, whether posted at the Port or not.
- that they were aware of "Handling of Cargo in Customs Areas Regulations, 2009", (HCCAR) which prescribed certain regulations for the manner in which the imported goods/export goods shall be received, stored, delivered or otherwise handled in a customs area, specified under section 8 of the Customs Act, 1962.
- that M/s GRFL was an approved customs custodian and got their license to handle customs export/import long back and had other facilities at ICD Sanhewal, Ludhiana; Garhi Harsaru, ICD Payala, ICD Viramgham, Ahmedabad.
- that he was shown the seizure memo dated 14.11.2021 in respect of the container number ECNU2250524 covered under SB no. 4016127 dated 05.11.2021, from which red sanders weighing 9.98 MTS were found at ICD Piyala.
- that he was shown panchnama dated 17.11.2021 drawn in respect of examination of container no KMTU7369576 of M/s Bholi Hardware & Exports Pvt Ltd, NSEZ covered under Shipping bill no 4015932 dated 26.10.2021 from which 12.163 MTs of red sanders were recovered at Nhava Sheva port and seizure memo dated 30.12.2021 in respect of container no OOLU1743923 covered in shipping bill no 4015562 dated 18.10.2021 of M/s Bholi Hardware and Exports Pvt Ltd from which 12.03 MTs of red sanders were recovered at Mundra port during examination, which were railed out of ICD Piyala, following the mechanism as detailed above.
- that he was shown the Advisory letter dated 31.08.2017 issued by Deputy Commissioner of Customs, NSEZ vide which the verification mechanism to verify the genuineness of the documents such as Shipping bill generated on SEZ online was laid out that includes: that verification through the QR code on the back of the document such as Shipping bill generated on SEZ online and the verification of the unique "Request Id number" which is available on each document generated on SEZ online through the SEZ Online login Page and that the said mechanism at ICD Piyala was not followed by them till January 2022.

6.5. ROLE OF PERSONS

From the investigation carried out into the past 44 containerized exports of Red

Sanders as well as from the statements recorded as detailed above, it is evident that following persons have been actively involved in the smuggling and export of Red Sanders in the said 44 containers.

6.5.1 Vipin Tomar: The investigation carried out into the smuggling of Red Sanders from ICD Piyala revealed that Vipin Tomar conspired with Amit, Saurav and others and for the smuggling operation of Red Sanders on the directions of Amit and Saurav and other unknown persons/owners. He admitted to the fact that he booked containers in the name of forged NSEZ entities viz Taurus Englobe, Jagan Automotives Pvt. Ltd and Bholi Hardware & Exports which were booked by Amit Sharma and Saurav. It was also revealed, and he admitted to the fact that even after having the knowledge that Red Sanders were being smuggled in containers booked by him, he continued to book containers in lieu of extra remuneration. A specific incidence in this regard was wherein a container booked by his firm (KMTC-shipping line container) was intercepted by Haiphong, Vietnam Customs and Red Sanders were recovered. He then arranged meeting of the freight forwarder with Amit Sharma & Saurav as has already been admitted by him in his voluntary statement. During investigation, in view of his admissions and evidence gathered, it has emerged that he was one of a key accomplice in the smuggling syndicate of Red Sanders which has affected multiple illegal exports of Red Sanders. In view of the above Shri Vipin Tomar for his role in abetting the illegal exports appears liable to penalty under section 114(i) and Section 114AA (separately) of the Customs Act, 1962, as he knowingly and intentionally caused to submit fabricated/forged/false documents in transaction of illegal export of Red Sanders out of India in violation of the applicable prohibition.

6.5.2 Amit Sharma: The investigation carried out into the smuggling of Red Sanders from ICD Piyala has revealed that Amit Sharma used to visit Expressway Shipping office in New Delhi and gave them freight forwarding work related to NSEZ companies viz Jagan Automotives Pvt. Ltd and Bholi Hardware & Exports Pvt. Ltd fraudulently. Amit also gave KYC documents in respect of these companies. Multiple mobile numbers of Amit were also found saved in the mobile phone of Vipin Tomar and in some cases names of the SEZ companies were also used along with his name. Sh Vengalathur Dorairaj also stated that the KYC documents were handed over to him by Sh Amit on many occasions and his different mobile numbers were found in the mobile phone owned by Vengalathur Dorairaj of DR Shipping. Sh Vipin Tomar also revealed that Amit Sharma had also introduced to one person namely Saurav who provided him the KYC documents of another NSEZ company namely Taurus Englobe Limited, and asked him to start booking in the name of said company. It is therefore evident that Amit along with Saurav fudged the documents of the company Bholi Hardware and Exports Pvt Ltd for the purpose of smuggling of Red Sanders. It has also come to fore that Amit Sharma or Saurav used to provide the details i.e., name of the shipper, port and destination etc. and further asked Vipin Tomar to give booking orders to forwarders. It was also revealed, Amit Sharma & Saurav were the ones who used to pick up the container for stuffing. Amit Sharma used to make payment in either cash form or small IMPS transfer to the Shipping lines through freight forwarders. From the above, it is evident that Amit was one of the key conspirators who had affected the said exports of Red Sanders. Efforts were made to trace the whereabouts of both Amit and Saurav however their hideout could not be ascertained. Evidences indicates that both Amit and Saurav are absconding and have gone missing. Through a very tactfully designed modus operandi,

nowhere did they provide their actual credentials to prevent being tracked down by the authorities. They were well versed with the modus operandi to prevent their actual identity from being revealed so that they could carry out such illegal activities without being caught by the law enforcement agencies. In view of the above, Sh Amit Sharma appears liable to penalty under section 114(i) and Section 114AA (separately) of the Customs Act, 1962, as he knowingly and intentionally caused to submit fabricated/forged/false documents in transaction of illegal export of Red Sanders out of India in violation of the applicable prohibition.

6.5.3 Saurav: In the investigation carried out into the smuggling of Red Sanders from ICD Piyala, Sh Vipin Tomar also revealed that Amit Sharma had also introduced to one person namely Saurav who provided him the KYC documents of another NSEZ company namely Taurus Englobe Limited, Plot No. 136, NSEZ Noida and asked him to start booking in the name of said company. It is therefore evident that both Amit and Saurav fudged the documents of the company Taurus Englobe Limited and other NSEZ entities like Jagan Automotives and M/s Bholi Hardware and Exports Pvt Ltd for the purpose of smuggling of Red Sanders. It has also come to fore that Amit Sharma or Saurav used to provide the details i.e., name of the shipper, port and destination etc. and further asked Vipin Tomar to give booking orders to forwarders. It was also revealed, Amit Sharma & Saurav were the ones who used to pick up the container for stuffing. It also came to fore that Amit Sharma used to make the payment for freight / container charges in cash through freight forwarders in the name of the shipper M/s Bholi Hardware and Exports Pvt Ltd as instructed by Amit and Saurav. From the above, it is evident that Saurav was one of the key conspirators who had affected the said exports of Red Sanders. Efforts were made to trace the whereabouts of both Amit and Saurav however their hideout could not be ascertained. Evidences indicates that both Amit and Saurav are absconding and have gone missing. Through a very tactfully designed modus operandi, nowhere did they provide their actual credentials to prevent being tracked down by the authorities. They were well versed with the modus operandi to prevent their actual identity from being revealed so that they could carry out such illegal activities without being caught by the law enforcement agencies. In view of the above Sh Saurav appears liable to penalty under section 114(i) and Section 114AA (separately) of the Customs Act, 1962, as he knowingly and intentionally caused to submit fabricated/forged/false documents in transaction of illegal export of Red Sanders out of India in violation of the applicable prohibition.

6.5.4 Tenzi Norbu Bhutia: The evidences gathered from the residential premises of Tenzi Norbu Bhutia as well as his mobile phones indicated towards his involvement in multiple consignments of Red Sanders in the past through the same Modus Operandi. The presence of documents of M/s Bholi Hardware - the proxy firm under whose name multiple containers of Red Sanders have been exported in the past by adopting the same modus operandi as detailed out in paras supra are also evidentiary of the fact that he was either involved or managed the whole smuggling operations as was the case in the export of container no. TLHU2220698 wherein he was placed under arrest. Further, during the course of investigation, his statements were recorded on 02/03.05.2022 and 26.05.2022 wherein he was confronted with the documents pertaining to many of the above mentioned 44 containers. In his voluntary statements also, he admitted to the fact that he effected the exports of Red Sanders in the past. In view of his admissions and evidences gathered

so far, he has also emerged as the master planner and executer who manages the entire smuggling syndicate of Red Sanders which has affected multiple illegal exports of Red Sanders in the past. In view of the above Sh Tenzi Norbu Bhutia appears liable to penalty under section 114(i) and Section 114AA (separately) of the Customs Act, 1962, as he knowingly and intentionally caused to submit fabricated/forged/false documents in transaction of illegal export of Red Sanders out of India in violation of the applicable prohibition.

6.5.5. Tendu Tashi: All the evidences gathered in respect of the smuggling and attempt of export of the container of Red Sanders, prior to the searches conducted at the residence of Tendu Tashi indicated towards his involvement in the attempted export of container no. OOLU1743923 of Red Sanders which was seized by DRI. Thereafter the evidences obtained from the residential premises of Tendu Tashi further corroborated to the said indications. During the search proceedings several incriminating documents pertaining to the past exports of Red Sanders were found from the residence of Tendu Tashi. The said documents pertained to 12 out of the 44 containers of Red Sanders exported in the past. It is also pertinent to mention that during the examination/scrutiny of the documents resumed from the residence of Tendu Tashi it was found that some of the said containers had been seized by either DRI/ Customs in India or by the Customs formations overseas and Red Sanders had been found in the said containers. The details of the containers corresponding to the documents recovered from his residence are as below: -

S. No.	Container number	Shipper/ Exporter	Status of the container
1	FSCU7571320	JAGAN AUTOMOTIVE PVT LTD	Exported
2	BMOU2375991	JAGAN AUTOMOTIVE PVT LTD	Exported
3	TC KU1836444	JAGAN AUTOMOTIVE PVT LTD	Exported
4	EASU9611452	JAGAN AUTOMOTIVE PVT LTD	Exported
5	BMOU2026840	BHOLI HARDWARE & EXPORT PVT. LTD	Exported
6	W HLU2528699	JAGAN AUTOMOTIVE PVT LTD	Exported
7	WHLU2837980	JAGAN AUTOMOTIVE PVT LTD	Exported
8	APZU3124468	JAGAN AUTOMOTIVE PVT LTD	Exported
9	WSCU3917751	BHOLI HARDWARE & EXPORT PVT. LTD	Exported
10	FCIU3314622	TAURUS ENGLOBE LIMITED	Exported
11	SEGU2530170	JAGAN AUTOMOTIVE PVT LTD	Seized at destination.
12	TCKU2024487	JAGAN AUTOMOTIVE PVT LTD	Exported

Further, the documents pertaining to the above said containers also had the dispatch slips to corresponding destination of the said containers (container no SEGU2530170). The said dispatch slips were in his name and appear to have been for dispatching the original documents pertaining to the said containers, so that the same could be cleared through customs at the destination ports. The dispatch slips being in his name further confirms his involvement in managing the said export syndicate. Further, during the search proceedings, apart from the documents mentioned above, small logs of Red Sanders were also found from his residence which were resumed. The said

small logs were possibly stored as samples to be shown to the prospective customers/ clients of Red Sanders exported by him.

Apart from the above, from the voluntary statements of Tenzi Norbu Bhutia, it has emerged that Tendu Tashi is a co-conspirator and mastermind along with him in the said Smuggling syndicate of Red Sanders. It has also emerged that Tendu Tashi was the one who was dealing with the overseas clients and also all the payments related to the export of Red Sanders were received by him. He was the one who was in contact with the overseas clients of Red Sanders and dealt with them whereas the domestic procurement of Red Sanders and Payments were handled by Tenzi Norbu Bhutia. It appears that Tendu Tashi is a Habitual Offender and has been involved in the smuggling of Red Sanders for the past many years, however quite cleverly he has been able to evade the eye of the enforcement/ investigating authorities. It is also pertinent to mention that Sh Tendu Tashi was not available at his residence during the search proceedings. However, despite multiple Summons issued to him, he has never appeared before DRI and continues to be at large. He has been purposely avoiding the investigation and has neither replied to any of the summons nor appeared before the DRI. DRI therefore reserves the right to investigate Mr Tendu Tashi and others as and when he/they come out from hiding and also reserves the right to take appropriate legal action as deemed necessary based on the investigative findings. In view of the above Sh Tendu Tashi appears liable to penalty under section 114(i) and Section 114AA (separately) of the Customs Act, 1962, as he knowingly and intentionally caused to submit fabricated/forged/false documents in transaction of illegal export of Red Sanders out of India in violation of the applicable prohibition.

6.5.6. Vengalathur Dorairaj: Sh Vengalathur Dorairaj who was the proprietor of M/s DR Shipping was one of the key persons of the said Red Sanders Syndicate who was the freight forwarder and provided the containers for the purpose of smuggling and export of Red Sanders. From the evidences gathered and his voluntary statement it has emerged that he had willingly abetted in the commission of smuggling of red sanders through the containers arranged by him. In light of the evidences pertaining to 8 containers of Red Sanders, he admitted to his involvement in arranging the containers for the purpose of export even after having the knowledge that the said containers were being used for smuggling of Red Sanders. He has also admitted that he did this for extra renumeration which he received from other members of the syndicate who continue to be at large. It is also evident that he was aware about the provisions of Customs Act and rules and that the Containers arranged by him were used for clandestine export of red sanders. He also admitted that even after knowing the fact that Customs Vietnam had seized a container booked by him, he in lieu of the more money, booked further containers in connivance with the persons who are involved in the illicit export of red sanders. He was also always in contact with Amit Sharma/Rajnish/Rajiv and Saurav as admitted by him in his statement. In view of the above facts Shri Vengalathur Dorairaj also appears liable to penalty under section 114(i) and Section 114AA (separately) of the Customs Act, 1962 as he knowingly and intentionally abetted in arranging the containers for exporting the said consignment of Red Sanders out of India.

6.5.7. Bijaya Laxmi Pandit: Director of M/s Sea Globe Logistics- She had facilitated export of 8 containers containing red sanders for the fake NSEZ exporters Jagan Automotive Pvt Ltd and Bholi Hardware. One container no WSCU3917751 containing red sanders was seized by Malaysian Customs and

a notice regarding confiscation of red sanders was received by Expressway Shipping from Malaysian Customs. The said container was booked by Sea Globe Logistics. Mrs Bijaya Lakshmi of Sea Globe Logistics arranged a meeting with Amit and one Hemant (branch head of Expressway Cargo Movers). Amit paid 18000 USD to Expressway Shipping towards demurrage charges of the container detained in cash. The same was not intimated by Bijaya Laxmi Pandit to Customs or any other agency. Further, after this incident she booked one more container MSCU3504260 with Expressway Shipping. From, the above it is evident that Bijaya Laxmi Pandit was aware that red sanders were being smuggled by Sea Globe Logistics. In view of the above Bijaya Laxmi Pandit appears liable to penalty under section 114(i) and Section 114AA (separately) of the Customs Act, 1962, as she knowingly and intentionally caused to submit fabricated/forged/false documents in transaction of illegal export of Red Sanders out of India in violation of the applicable prohibition.

6.5.8 Vipin Yadav: The instant investigation carried out into the smuggling of Red Sanders from ICD Piyala revealed that Vipin Yadav who was working as a transporter was the owner of the trailer no. HR38R6231. The driver of the said trailer also revealed that he had taken the said trailer no. HR38R6231 many times to ICD Piyala. On being asked about the stuffing of the container destined for ICD Piyala, the driver informed that Vipin used to inform him about the location of picking up the empty containers which were usually picked from ICD Tughlakabad. After picking up the empty container, Vipin used to call him along with one more unknown person and on his directions the driver used to take the empty container to Ghaziabad. In Ghaziabad, the driver used to leave the empty container loaded on trailer number HR38R6231. He used to leave the trailer keys in the trailer itself as per the directions of Vipin. It was Vipin who stuffed the said containers with Red Sanders. He was the one who planned and executed the modus operandi where he never allowed the driver to see the godown from where the goods were loaded. He made sure that even if the driver gets caught at some point, the syndicate names and locations do not get revealed. Vipin Yadav was summoned multiple times by DRI for investigation but he continues to abscond. He has not joined the investigation till date. The very fact that he has been absconding and avoiding the investigation and has gone into hiding has made it evident that he has planned and executed the smuggling of Red Sanders in container number OOLU1743923 as well as multiple occasions in the past. In view of the given facts and circumstances, investigation into the role of Shri Vipin Yadav remains open in respect of the containers of Red Sanders exported in the past and he needs to be examined/interrogated by DRI and his statement recorded. In view of the above facts, he also appears liable to penalty under section 114(i) and Section 114AA (separately) of the Customs Act, 1962 as he knowingly and intentionally abetted in arranging the containers for exporting the said consignment of Red Sanders out of India.

6.5.9 Shri Rajesh Kumar Singh, Director of Expressway Cargo Movers Pvt Ltd- In his statement tendered, Shri Rajesh Kumar Singh admitted that one container no WSCU3917751 containing red sanders was seized by Malaysian Customs and a notice regarding confiscation of red sanders was received by him from Malaysian Customs. The said container was booked Sea Globe Logistics. Mrs Bijaya Lakshmi of Sea Globe Logistics arranged a meeting with Amit and one Hemant (branch head of Expressway Cargo Movers). Amit paid 18000 USD to Expressway Shipping towards demurrage charges of the container detained in cash. The same was not intimated by Rajesh Kumar Singh to Customs or any other agency. Further, after this incident he booked

one more container no MSCU3504260 of Sea Globe Logistics. From, the above it is evident that Rajesh Kumar Singh was aware that red sanders were being smuggled by Sea Globe Logistics. In view of the above Sh Rajesh Kumar Singh appears liable to penalty under section 114(i) and Section 114AA (separately) of the Customs Act, 1962, as he knowingly and intentionally caused to submit fabricated/forged/false documents in transaction of illegal export of Red Sanders out of India in violation of the applicable prohibition.

7 Role of the persons who were involved in the attempted illegal export of red sanders in container number OOLU1743923:

7.1 Vipin Tomar: The instant investigation carried out into the smuggling of Red Sanders from ICD Piyala revealed that Vipin Tomar aided the smuggling operation of Red Sanders on the directions of unknown persons/owners. In view of the above fact, he also appears liable to penalty under section 114(i) and Section 114AA (separately) of the Customs Act, 1962 as he knowingly and intentionally conspired with other members in storing, loading and transporting the subject consignment of Red Sanders as well as knowingly and intentionally caused to submit fabricated/forged/false documents in transaction of business under Customs Act, 1962 to illegally export the subject Red Sanders out of India.

7.2. Manish Singh: Manish Singh was the freight forwarder who used to book containers with the liner using forged documents. He also gave KYC documents in respect of the exporter M/s Bholi Hardware & Exports Pvt Ltd. Multiple mobile numbers of Manish were provided with liner, which on follow up were found switched off and existing in name of different persons. It is therefore evident that Manish Singh fudged the documents of the company Bholi Hardware and Exports Pvt Ltd for the purpose of smuggling of Red Sanders. It also came to fore that Manish Singh used to make the payment for freight/container charges to liner from the bank account of his firm M/s Win Win Logistics maintained at ICICI bank, New Delhi and the container number OOLU1743923 was booked by his firm Win Win Logistics in the name of the shipper M/s Bholi Hardware and Exports Pvt Ltd. From the above, it is evident that Manish Singh was one of the key conspirators who had affected the said exports of Red Sanders. Efforts were made to trace the whereabouts of Manish Singh however his hideout could not be ascertained. Evidences indicate that Manish Singh is absconding and had gone missing after the subject container was examined by DRI. Through a very tactfully designed modus operandi, nowhere did he provide his actual credentials to prevent being tracked down by the authorities. He was well versed with the modus operandi to prevent the actual identity from being revealed so that he could carry out such illegal activities without being caught by the law enforcement agencies. Further, Manish Singh also appears liable to penalty under section 114(i) and Section 114AA (separately) of the Customs Act, 1962 as he knowingly and intentionally conspired with other members in storing, loading and transporting the subject consignment of Red Sanders as well as knowingly and intentionally caused to submit fabricated/forged/false documents in transaction of business under Customs Act, 1962 to illegally export the subject Red Sanders out of India.

7.3 Vipin Yadav: The instant investigation carried out into the smuggling of Red Sanders from ICD Piyala revealed that Vipin Yadav who was working as a transporter was the owner of the trailer no. HR38R6231. The driver of the said trailer also revealed that he had taken the said trailer no. HR38R6231 many times to ICD Piyala. On being asked about the stuffing of the container

destined for ICD Piyala, the driver informed that Vipin used to inform him about the location of picking up the empty containers which were usually picked from ICD Tughlakabad. After picking up the empty container, Vipin used to call him along with one more unknown person and on his directions the driver used to take the empty container to Ghaziabad. In Ghaziabad, the driver used to leave the empty container loaded on trailer number HR38R6231. He used to leave the trailer keys in the trailer itself as per the directions of Vipin. It was Vipin who stuffed the said containers with Red Sanders. He was the one who planned and executed the modus operandi where he never allowed the driver to see the godown from where the goods were loaded. He made sure that even if the driver gets caught at some point, the syndicate names and locations do not get revealed. Vipin Yadav was summoned multiple times by DRI for investigation but he continues to abscond. He has not joined the investigation till date. The very fact that he has been absconding and avoiding the investigation and has gone into hiding has made it evident that he has planned and executed the smuggling of Red Sanders in container number OOLU1743923 as well as multiple occasions in the past. In view of the given facts and circumstances, investigation into the role of Shri Vipin Yadav remains open in respect of the containers of Red Sanders exported in the past and he needs to be examined/interrogated by DRI and his statement recorded. Further, Vipin Yadav also appears liable to penalty under section 114(i) and Section 114AA (separately) of the Customs Act, 1962 as he knowingly and intentionally conspired with other members in storing, loading and transporting the subject consignment of Red Sanders as well as knowingly and intentionally caused to submit fabricated/forged/false documents in transaction of business under Customs Act, 1962 to illegally export the subject Red Sanders out of India.

8 Lapses in Custodianship which resulted in this act of Smuggling of Red Sanders:

The custodian of ICD Piyala i.e., M/s Gateway Distriparks Ltd had given gate-in permission to the container no OOLU1743923, which was said to be commencing from NSEZ. The custodian was verifying e-seals in respect of containers of other exporters of NSEZ, while in the instant case gate-in permission was given to the said container without having e-seal. They were not able to differentiate between the actual and fake shipping bills of SEZ through its format, presence/ non-presence of QR etc. The Gate out permission was given without the verification of "Application cum gate pass permission for removal of Export Cargo from NSEZ..." which has the details of movement of the said container from NSEZ and needs endorsement from the custodian as well as Customs at the port in Part V of the said form in the instant case. They had done the processing of documents by allowing the Gate out of the container by treating the "Self-Sealing Report" as the permission to export / move out the cargo just because the same had signature of any custom officer, whether or not posted at the Port. In view of the above, it appears that the custodian M/s Gateway Distriparks Ltd at ICD Piyala, Haryana by their failure to comply with the provisions of Customs Act, 1962 by allowing non- RFID sealed containers of NSEZ to enter into ICD and further to rail out further i.e., unauthorized access was given and their negligence led to attempt in smuggling of red sanders, thereby liable for penalty under Section 117 of the Customs Act, 1962.

9 Statutory Legal Provisions under the Customs Act, 1962:

9.1 As per Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992, all goods to which Section 3(2) applies, shall be deemed to be goods, the import or export of which has been prohibited under Section 11 of the Customs Act, 1962.

9.2 As per Section 11 of the Customs Act, 1962, the Central Government may prohibit export of goods of any specified description either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification.

9.3 Under the Export Policy (Schedule 2 of ITC (HS), 2012) notified by DGFT as per Para 2.1 of Foreign Trade Policy, 2015-20 formulated under Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 read with Customs Act, 1962, the export of Red Sanders wood in any form is prohibited

9.4 SI.No.188 of Schedule 2 (Export Policy) of ITC (HS) Classification of Import and Export Items, issued under the provisions of Foreign Trade (Development & Regulation) Act, 1992, export of Red Sanders wood in any form is prohibited.

9.5 Section 2(33) of the Customs Act, 1962, prohibited goods means any goods the import or export of which is subject to any prohibition under this Act of 1962 or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be exported have been complied with.

9.6 According to Section 2(39) smuggling in relation to any goods, means any act or omission which will render such goods liable to confiscation under Section 111 or Section 113.

9.7 According to Section 113(d) of the Customs Act, 1962, any goods attempted to be exported or brought within the limits of any Customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act, or any other law for time being in force shall be liable to confiscation.

9.8 According to Section 113(f) of Customs Act, 1962, any goods which are loaded or attempted to be loaded in contravention of the provisions of section 33 or section 34 shall be liable to confiscation.

9.9 According to Section 113(h) of Customs Act, 1962, stipulates that any goods which are not included or are in excess of those included in the entry made under this act, shall be liable to confiscation.

9.10 According to Section 118 (b) of the Customs Act, 1962 where any goods are brought in a package within the limits of a customs area for the purpose of exportation and are liable to confiscation, the package and any other goods contained therein shall also be liable to confiscation.

9.11 As per Section 119 of the Customs Act, 1962, any goods used for concealing smuggled goods shall also be liable to confiscation.

10 PENAL PROVISIONS UNDER THE CUSTOMS ACT 1962 FOR RENDERING THE EXPORT GOODS LIABLE FOR CONFISCATION:

10.1 SECTION 114- *Penalty for attempt to export goods improperly, etc. - Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable, -*

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;

10.2 As per Section 114AA of the Customs Act, 1962, *if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.*

11 SPECIFIC VIOLATIONS IN RESPECT OF THE OFFENDING GOODS:

11.1 Goods mentioned "Brass Builder Hardware and Iron Builder Hardware" were sent to Mundra Port through ICD Piyala using forged Shipping Bill no. 4015562 dated 18.10.2021 by using the forged/fabricated documents and in the name of M/s. Bholi Hardware and Exports Pvt Ltd (IEC No.410300012), Plot No. 170, NSEZ, Phase-2, Noida, UP-201305. However, the subject consignment in container number OOLU1743923 was examined by the officers of Mundra Customs in the presence of officers of DRI, Gandhidham Regional Unit on the request of DRI-DZU office, wherein it was revealed that red colour wooden logs believed to be red sanders, were concealed inside jute bags packing. During examination, Red Sanders logs/blocks totally 379 wooden logs weighing 12.036 MTs were recovered from the subject container. Further, packing material with no commercial value used as cover goods to conceal the red sanders logs were also found recovered and seized. Red Sanders (botanical name "Pterocarpus Santalinus"), listed in Appendix II of CITES, are prohibited for export as per provisions discussed above.

11.2 Thus, the seized goods as mentioned above attempted to be illegally exported out of India by Shri Manish Singh and other persons, in violation of Sections 113 of Customs Act, 1962 read with Sections 50, 51 ibid read with SI.No.188 of Schedule 2 (Export Policy) of ITC (HS) Classification of Import and Export Items, issued under provisions of Foreign Trade (Development & Regulation) Act, 1992 are liable for confiscation under Sections 113(d), 113(f) and 113(h) of the Customs Act, 1962, in as much as the impugned goods have been attempted to be exported out of India without declaring to Customs, by loading without supervision of the proper officer of Customs, by concealment and by submitting fake documents of exports. The goods were also being exported in violation of the provision of CITES without mandatory export certificates from the exporting country which are not available or submitted by any person concerned with the illegal said export.

11.3 Further, the seized packing material with no commercial value, used as cover goods and packing materials to conceal the Red Sander logs, appear to be liable for confiscation under Sections 118 (b) and 119 of the Customs Act, 1962 as the same were used for concealment of the prohibited cargo i.e., Red Sanders.

12 As enquiries / investigation could not be conducted in respect of Shri. Amit and Shri Saurav and / or other persons involved in this smuggling act for want of their true particulars / whereabouts and role of other persons, the same are reserved to be taken up afresh as and when such persons are apprehended/join the investigation. On completion of such enquiry, appropriate notice proposing action against such persons, shall be issued.

1 3 Accordingly, a Show Cause notice vide Show Cause Notice No. 10/2022 dated 19.12.2022 was issued to Shri. Vipin Tomar, Shri Vipin Yadav, Shri. Tenzi Norbu Bhutia, Shri. Vengalathur Dorairaj, Shri Manish Singh, as well as any other claimants) if any, who claim to be the owner of the seized goods, was called upon to show cause in writing to The Additional /Joint Commissioner of Customs Exports), Office of the Commissioner of Customs House, Mundra, Kutch, Gujarat within 30 days from the date of receipt of this notice as to why:

- a. The 379 Red Sanders logs totally weighing 12.036 MTs having value of Rs. 6 crores (approx.) (Rupees Six Crores only) seized vide seizure Memo dated 30.12.2021 which was attempted to be illegally exported out of India under fake Shipping Bill no. 4015562 dated 18.10.2021 using the name of M/s. Bholi Hardware and Exports Pvt Ltd [IEC:4103000112], Plot No. 170, NSEZ, Phase-2, Noida, Uttar Pradesh-201305 should not be confiscated under Section 113(d), 113(f) and 113(h) of the Customs Act, 1962, for contraventions discussed above;
- b. The seized packing material with no commercial value, used to conceal the Red Sanders logs, an item prohibited for export, should not be confiscated under Section 118 (b) and Section 119 of the Customs Act, 1962;
- c. Penalties under Section 114(i) and Section 114AA of the Customs Act, 1962 should not be imposed on them for acts and omissions which appeared to have rendered the seized goods liable to confiscation, in respect of the goods seized vide seizure Memo dated 30.12.2021.

1 4 Further, vide Show Cause Notice No. 10/2022 dated 19.12.2022, Shri. Vipin Tomar, Shri. Tenzi Norbu Bhutia, Shri. Vengalathur Dorairaj, Shri Vipin Yadav, Shri Manish Singh, Sh Tendu Tashi, Smt Bijaya Laxmi Pandit, Director of Sea Globe Logistics, Sh Rajesh Kumar Singh, Director of Expressway Cargo Movers and Shri. Amit and Shri Saurav whose correct whereabouts are not known was called upon to show cause in writing to the Additional /Joint Commissioner of Customs (Exports), Office of the Commissioner of Customs, Customs House Mundra, Kutch, Gujarat as to why penalties under Section 114(i) and Section 114AA of the Customs Act, 1962 should not be imposed on them for acts and omissions in the smuggling and export of 44 containers of Red Sanders out of India through ICD Piyala.

1 5 Vide Show Cause Notice No. 10/2022 dated 19.12.2022, M/s Gateway Distriparks Ltd, Custodian at ICD, Piyala, was called upon to show cause to The Additional /Joint Commissioner of Customs (Exports), Office of the Commissioner of Customs, Customs House Mundra, Kutch, Gujarat, within 30 days from the date of receipt of this notice, as to why penalty under Section 117 of the Customs Act, 1962.

16 WRITTEN SUBMISSION

16.1 Submissions made by Shri Ashish Bhatt, Advocate, authorized representative of Shri Tendu Tashi vide their letter dated 06.02.2024:

16.1.1 The facts as enumerated in Notice show that all the 44 containers were booked by 07 shipping lines for different freight forwarders against cash payments and such booking parties were either non-existent or Mr. Vipin and Mr. Amit were instrumental in most of the bookings and they had provided KYC and forged export documents in the name of NSEZ, Noida based companies

namely M/s Bholi Harware & Exports Pvt. Ltd., Jagan Automotive Pvt. Ltd. Taurus Englobe. On requirement like seizure/ detention of any container by Indian or foreign Customs, Shri Vipin or Shri Amit provided cash against demurrage charges incurred. In none of the case, the name of answering Noticee Tendu Tashi came to fore to show his involvement as conspirator of the smuggling racket of Red Sanders.

16.1.2 The Noticee, most respectfully submits that he is not aware of anything about the purported illegal export of Red Sanders and he neither indulged in any transaction related to export of Red Sanders nor submitted or received any document related to the said exports and therefore, the documents purportedly recovered on search from his residence in his absence, in all likelihood implanted and subsequently recovered by any of the officer of visiting team and he, therefore, vehemently deny any connection with the said documents or any of his act in the said illegal export of Red Sanders.

16.1.3 Much gloss has been placed by the Department on the documents recovered from the residential premises of the Noticee on 03.05.2022. Noticee submits that firstly, the subject search was conducted in the absence of Noticee and his wife but in the presence of his 20 years old college going child who did not know about anything and was totally terrified by the acts of the officers. Secondly, the Panchnama nowhere stated that from which part of the house, DRI officers got the documents whether it was in Almira, or drawer or bed or any other place. There is a general statement that some documents recovered, which were arranged and serially numbers by the DRI officers. Even only list of documents is enclosed with the Show Cause Notice and no documents were attached / enclosed with this Show Cause Notice which clearly establishes that the said documents are either not important or not related to the subject export of goods involved in the present case. Hence, same cannot be relied. As regards small quantity of sandal logs found in the residential premises, it is submitted that quantity of the logs is not mentioned in the Panchnama which clearly shows weight of the 5 pieces of sandwood logs were very small and their presence was immaterial.

16.1.4 Vide the impugned Show Cause Notice, Department proposed penalty under Section 114 (i) and 114AA of the Customs Act, 1962. The Noticee most respectfully submits that in none of 44 containers, exported by different shipping lines or freight forwarders, the Noticee was implicated as accomplice or having any role in illegal export of Red Sanders and therefore, none of his act or omission had rendered the goods liable for confiscation, making him liable for penal action under Section 114 (i) of the Customs Act, 1962, as proposed in the Notice. Moreover, in the entire show cause notice, the answering noticee is nowhere indulged for making any declaration, document, statement etc. related to any of the purported illegal export of Red Sanders rendering him liable for penal action under Section 114AA of the Act, ibid. Therefore, his indulgence as co-conspirator and master mind of smuggling syndicate of Red Sanders merely on the basis of purported recovery of copies of certain documents pertaining to 12 export consignments of Red Sanders from his residence is highly preposterous and liable to be dropped.

16.1.5 Qua the allegation that the Tendu Tashi is a Habitual Offender and has been involved in the smuggling of Red Sanders for the past many years is patently wrong. Noticee submits that except for this case he was never been indicated in any other customs case as he does not deal in the business of import and export. It is further alleged that Noticee was not available at his

residence during the search proceedings, it is submitted that DRI has not given any prior notice to the Noticee to be available at the time of search and therefore Noticee had gone for some urgent work and he cannot be expected to be at home all the time. Other contention of the Department is that despite multiple summons issued to him, he has never appeared before DRI and continues to be at large. He has been purposely avoiding the investigation and has neither replied to any of the summons nor appeared before the DRI, Noticee submits that non-appearance in summon is not a ground to implicate anybody and propose penalty under Section 114 and 114AA of the Customs Act, 1962.

16.1.6 The Noticee most respectfully submits that his indulgence in illegal export of Red Sanders solely on the basis of statement of Shri Tenzi Norbu Bhutia without any cogent evidence and Noticee therefore most respectfully prays the Hon'ble Additional Commissioner to kindly allow the cross examination of the following persons:

- i. Shri Tenzi Norbu Bhutia, who in his statement dated 02-03.05.2022 implicated the Noticee as business partner
- ii. Shri Vipin Kumar R/o C-1169, Sangam Vihar, Deoli South Delhi - Panch Witness No. 1 in Panchnama dated 02.05.2022 drawn at residential premises of the Noticee
- iii. Shri Gajender Singh R/o Gram Kasampur Jat Post, Devori urf Hadipur, Amroha, Uttarpradesh- Pancha No. 2 in Panchnama dated 02.05.2022 drawn at residential premises of the Noticee
- iv. Shri Nakul Dev, Intelligence Officer, DRI, DZU, New Delhi.

Noticee further submits cross examination is a justifiable right and denial of the same is contrary to the provisions of Section 138B of the Customs Act as well as various judicial judgments delivered in a number of cases, some of which discussed here-as-under:

- i. M/s Laxman Exports Ltd. 2002 (143) ELT 21 (SC)
- ii. M/s Andaman Timber Industries vs. CCE, Kolkata-II- 2015 (324) ELT 641 (SC)
- iii. M/s Him Logistics Ltd.- 2016 (336) ELT 15 (Del.)
- iv. M/s Basudev Garg -2017 (48) STR 427 (Del.)
- v. M/s Sampad Narain Mukerjee -2019 (366) ELT 280 (Cal.)
- vi. CCE, Lucknow vs. M/s Shyam Traders- 2016 (333) ELT 389 (All.) (vii) M/s Hi Tech Abrasives Ltd. CCE, Raipur- 20018 (362) ELT 961(Chatisgargh).

Without prejudice to above contention, even if for argument sake it is considered that the documents pertaining to purported illegal export of 12 consignments were recovered from his residence, then also mere recovery of certain documents, subsequent to export and without signing any document or making any declaration does not render the goods liable for confiscation and without possessing, carrying, removing, depositing, harboring, keeping, concealing, selling, purchasing or in way dealing with the goods illegally exported, could arraign the Noticee as an accomplice of Importer nor did render him liable for penal action under the provisions of Section 114 (i) or 114AA of the Customs Act, 1962 and therefore the Noticee perfunctorily issued on surmises and conjectures without ascribing any misdemeanour or contumacious conduct on the part of Noticee is untenable.

16.1.7 Without prejudice to the contention that Noticee had no role in alleged

export of any of the container, it is submitted that no documents pertaining to the present Container was received from the premises of the Noticee and no evidence or statement of Shri Tenzi Norbu Bhutia is in respect of the present export covered under Container No. OOLU1743923 Shipping Bill No. 4015562 dated 18.10.2021. The Noticee further submits that though not admitted but for argument sake mere recovery of certain logs of Red Sanders in very small quantity, on search from his residential premises, is neither an offence under Customs Act nor domestic procurement or its possession is restricted under any provision of the Customs law and therefore, such recovery neither suggest any contumacious conduct on the part of Noticee nor render him liable for any penal action under the Act, *ibid*.

16.1.8 It is respectfully submitted that Noticee not proved to be beneficiary in illegal export of goods, the proposed penalty in terms of Section 114(i) and 114AA, in absence of *mala fide* intent is unsustainable and cannot be countenanced.

16.1.9 In Noticee's most respectful submissions neither any of his act or omission rendered the goods liable for confiscation nor he dealt with impugned goods in any way, and therefore in absence of any contumacious conduct on his part no penalty can be imposed upon him and for this proposition the Noticee most respectfully relies, on the following decisions;

- i. Sij Electronics Comp. Tech. Pvt. Ltd. vs. Comm. of Customs, Kochi reported in 2001 (129) ELT 528 (Tri-Bang.)
- ii. Commissioner of Customs (Import) Mumbai vs. R.A. Spinning Mills Pvt. Ltd. reported in 2004 171 ELT 54 (Tri -Mumbai).
- iii. Akbar Badruddin Jiwani vs. Collector of Customs reported in 1990 (47) ELT 161 (S.C.)

The Noticee, therefore, most respectfully submits that the allegations under the Notice being contumacious, perverse, based on wrong appreciation of facts and fallacious application of law should not be countenanced and dropped.

16.2 Submissions made by Shri Vipin Tomar vide their letter dated 10.01.2024:

16.2.1 At the outset, it is submitted that the information received or collected or upon examination by the officers of DRI in respect of the container number OOLU743923 and Shipping Bill No. 4015562 it was revealed by the Officers of the DRI is that "by adopting the similar modus operandi of using fake/forged documents, one more container number OOLU1743923 covered under Shipping Bill No. 4015562 dated 18.10.2021 and M/s Bholi Hardware and Exports Pvt. Ltd. It is doubted whether the Exporter of the present Container is in question.

16.2.2 At the outset, it is pertinent to mention here that after concealing the material facts, and also misused my Voluntary Statement dated 07/08.12.2021 this false and frivolous notice issued against me.

16.2.3 Thereafter it is further submitted that as per the investigation, even in the present container number OOLU1743923, the exporter M/s Bholi Hardware and Exports Pvt. Ltd. not related to me. It is further submitted that the not even

the present container was booked by me or not any kind of documentation/papers were provided by my side in the exportation of the present container to any of the offices.

16.2.4 At the outset, it is pertinent to submit here that in respect of container no. ECNU2250524 under shipping bill number 4016127, I already submitted my detailed reply of Show Cause notice to the offices of the DRI, and it is further also submitted that my voluntary statement also was not recorded in respect of the container no. ECNU2250524 under shipping bill number 4016127. Voluntary statement given by me dated 07/08.12.2021 is used by the officers of the DRI in different perspective.

16.2.5 It is further submitted that by using my statement dated 07/08.12.2021 I have been falsely implicated in the present case. Therefore, in response of the Show cause notice I denies each and every averment made by the present Show cause Notice under reply as the same was not related to me and not even I was a related party. Neither any of the communication/ document/ papers/ receipts etc has been provided by my side to any of the offices nor I have any kind of the information with respect to the present container number OOLU1743923. As per the investigation mentioned in the Show Cause Notice it is itself clearly revealed that I am not even directly or indirectly related with this show cause notice. Hence the issuing the present Show cause notice is an error or mistake or falsely implicating me in this case, so I request to this Court/Authority/ Department that the present Show Cause Notice issued against me is not justifiable as I was not related to this notice.

Thus in view of the above, you are requested to withdraw the present Show Cause Notice.

16.3 Submissions made by Shri H. G. Mathew, authorized representative of M/s Gateway Distriparks Limited vide their letter dated 05.02.2024:

16.3.1 The Noticee categorically denies all allegations and contentions outlined in the current Show Cause Notice No.10/2022 issued vide File No.DZU/34/Enq-13/2021/Ptl dated 19.12.2022 by the Deputy Director, Directorate of Revenue Intelligence (DRI for short), Delhi Zonal Unit.

16.3.2 The statutory obligation of ICD, Piyala is according to the Handling of Cargo in Customs Areas Regulations, 2009. Regulation No.6 lays down the responsibilities of customs cargo service provider. What is ascribed as violation in the show cause notice is not a responsibility of the custodian in terms of Regulation No.6.

16.3.3 As per the contents of the show cause notice, shipping bill No. 4015562 dated 18.10.2021 pertaining to container number OOLU1743923 is alleged to be false and fabricated. Notably, it lacks the authentic signatures of Customs Officers from NSEZ and the exporter, namely M/s. Bholi Hardware & Exports Pvt. Ltd., Noida Special Economic Zone, Noida, in whose name the shipping bill was purportedly generated. The container in question was sealed with a non-RFID bottle seal bearing No. 051470. The show cause notice asserts that Noida SEZ typically affixes an RFID seal on export containers, along with a unique QR code on shipping bills and TR2 documents. Subsequently, the container was transported to the ICD, Piyala using a trailer with a falsified registration number. Following this, the container was dispatched under the forged signature of Customs Officers stationed at ICD, Piyala. It is emphasized in the notice that, based on these fraudulent documents, the container was shipped

out from Mundra port. It is noteworthy that, prior to the vessel's departure, the container purportedly passed through Customs control points at ICD, Piyala, and the port at Mundra. Astonishingly, the Customs Officers at both locations failed to detect this extensive forgery and the falsified movement of the container, despite the presence of comprehensive paraphernalia and intelligence infrastructure. The custodian contends that they cannot be held responsible for the apparent lapses within the Customs system and failure of their officers.

16.3.4 Under the provisions of the Customs Act, the proper officer for authorizing export lies with the Customs Officer stationed at a Customs Station, whether it be an inland container depot or a sea port. The alleged failure attributed to the Noticee is, in reality, a failure that can be ascribed to the Customs Officers stationed at both ICD Piyala and, Mundra Port. It is imperative to note that ICD, Piyala is a privately operated logistics entity lacking the necessary infrastructure for law enforcement and intelligence gathering. Consequently, the expectation articulated in the impugned notice, anticipating the Noticee to discern the falsity of the shipping bill, the counterfeit nature of officers' signatures, and the fraudulent vehicle registration number, is unduly ambitious. In the context of ICD, Piyala, the onus of ensuring the authenticity of presented documents, the veracity of signatures, the accuracy of declarations, and compliance with RFID instructions squarely rests with the Customs Officers stationed there and cannot be delegated to the custodian.

16.3.5 CBIC Circular No.26/2017-Cus dated 01.07.2017 at Para No. ix very categorically state that verification of the integrity of electronic seal lies with the customs officer. Further, Circular No.36/2017-Cus dated 28.08.2017, at Para-4(d) runs as follows:

"The integrity of the RFID seal would be verified by the Customs officer at the port/ICD by using the reader-scanners which are connected to Data Retrieval System of the vendor." (emphasis supplied)

The aforementioned circular makes verification of seals the duties and responsibility of the customs officers posted at ICD, Piyala and customs port, Mundra. Hence, DRI's view in its show cause, at Para 11, that "The custodian was verifying e-seal in respect of container of other exports of NSEZ, while in the instant case gate in permission was given to the said container without having e-seal" is factually and legally erroneous. It is true that we had outsourced some personnel to help the Customs Officers for their routine work, however this does not mean that provide such facility absolve off the Customs Officers from their statutory duty and all responsibilities casted on the personnel provided by us, through outsourcing. Not the DRI had alleged that any of the outsourced person had connived.

16.3.6 Any failure to verify seal cannot be ascribed to the custodian at any stretch of imagination. Further, gate in and gate out are also regulated by the customs officers posted in ICD and a custodian could not have independently taken a decision to allow ingress. It was the responsibility of the customs to post adequate number of officers at the gate to control movement of export/import cargo. They could not have left it to the custodian and later find fault with them for the acts and omissions of the customs officers posted there.

16.3.7 In an ICD, the cargo movement is regulated according to the procedure codified by the customs and enforced by the officers posted at customs station. The cargo movement through the entry/exit gates is purely on the basis of

documents presented and there is no mechanism or instructions to stop each and every consignment at the gate and get the signature verified which is practically not possible. Moreover, custodian has no legal authority to verify any document associated with an export cargo.

16.3.8 ICD, Piyala operates on a cost-recovery basis, and it is incumbent upon customs authorities to deploy officers strategically, including at critical points such as the gate, to regulate cargo movement and ensure meticulous adherence to documentation requirements. Had this been diligently executed, the absence of an RFID seal could have been promptly identified, thereby averting the purported smuggling activities. No customs work can be outsourced to the custodian by providing RFID readers, as the responsibility to verify the genuineness of export cargo lies with customs. Customs officials, recognized as the proper officers under the Customs Act, are entrusted with this duty. The Inland Container Depot (ICD) bears the expenses for customs officers stationed at the customs stations on a cost recovery basis. Consequently, no responsibility in terms of document verification, whether it involves RFID reading of export seals or otherwise, can be attributed to the custodian. Bearing the expenditure in terms of cost recovery and additionally performing their responsibilities, such as ensuring compliance with RFID instructions, is a far-fetched expectation from the custodian. Their liabilities are specifically confined to Regulation No. 6 of the Handling of Cargo in Customs Areas Regulations, 2009. RFID complaints is not within their job description.

16.3.9 The customs officers posted to ICD, Piyala keep on changing and therefore no staff of the custodian is in a position to identify the genuineness of a document on the basis of signatures appearing thereon but would be regulated by the designation mentioned therein. Therefore, it is incumbent upon the authorities concerned to post a regular customs officer at the gate to cross check the veracity of the documents. If such an exercise is not done, or any failure in performance of the duty occurred at their end, the onus of a consignment moving out of ICD under forged signature cannot be ascribed to the custodian.

16.3.10 The RFID instructions issued by CBIC nowhere put any responsibility on the custodian of an ICD in terms of verification of the genuineness thereof. This is within the exclusive jurisdiction of the customs officers posted in the customs station. There are no instructions issued to ICD, Piyala, not to allow any export consignment ingress into the customs station if RFID sealing is not done. Since verification of RFID sealing is in the forte of the customs officers, the ICD staff is in no authority to stop a sealed container duly supported by export documents. ICD, Piyala has not been granted access to the SEZ Online portal of NSEZ for the verification of document authenticity. This capability is reserved for duly authorized customs officers. Whether accessibility has been granted to them or if they were not performing such verifications is beyond the jurisdiction of the custodian. However, a failure in the system or the absence of a system in this regard cannot be construed as a failure on the part of the custodian. Hence, ICD, Piyala lacks the means to identify an allegedly fraudulent transaction like the present one.

16.3.11 Since no failure of any of the conditions under Regulation No.6 of Handling of Cargo in Customs Area Regulations, 2009 had been alleged, there is no failure on the part of the custodian in performing their duty which made the goods in question liable for seizure under Customs Act. Had there been a specific violation, the applicable penalty would not have been definitely not

under section 117. Therefore, it was wrong to propose a penalty under section 117 in Para No.19 of the show cause notice against the custodian.

16.3.12 Penalty under section 117 can be imposed only on a person who contravenes any provisions of the Act, for abets any such contravention or who fails to comply with the provisions of this act with which it was his duty to comply where no express penalty is elsewhere provided, for such contravention or failure. The investigation has brought on record that Noticee has no complicity in the smuggling of Red Sanders. Hence, it cannot be alleged that they abetted this smuggling and there is no such allegation in the show cause notice. It is not alleged in the show cause notice that the Noticee had contravened any provisions of the Act or failed to comply with the provisions of this Act. There is no allegation that the conditions of Regulation No.6 of HCCAR, 2009 had been violated. Hence, there is no act or omission brought out in the show cause notice in terms of section 117 to propose a penalty. The omissions, if any, are of the officers posted in ICD, Piyala and port Mundra for which the onus cannot be shifted to the Noticee to save their skin. The show cause notice is, therefore, required to be set aside on these grounds.

16.3.13 Further, penalty under section 117 cannot be imposed without mens rea. The show cause notice very categorically bring out that the Noticee had no knowledge of the contents of the cargo and in manner they had collaborated with smugglers. What is alleged against the Noticee are omissions on the part of the customs officers posted at ICD, Piyala and Port Mundra. In the absence of mens rea no penalty can be imposed on the Noticee. Reliance is further placed on the following judgements wherein it has been held that no penalty can be imposed under section 117 of the Customs Act, in cases wherein there is no mens rea on the part of the assessee: (i) Hazel Mercantile Ltd. Vs. Commissioner of Customs, Kandla, 2013(297)ELT 70(Tri. Ahd), (ii) Syndicate Shipping Services Put. Ltd Vs. Commissioner, 2003 (154) ELT 756 (Tri).

In view of the aforementioned facts, circumstances, arguments, circulars and re-stated law, the proceedings initiated against the Noticee vide the aforementioned show cause notice may be dropped.

PERSONAL HEARING

17 Personal Hearing in the matter, was fixed on Dated 13.04.2023, 16.05.2023. Further, due to change in Adjudication Authority, Personal Hearing was Fixed on Dated 10.01.2024, 06.02.2024 and 30.04.2024. However, the noticee Sh Vipin Yadav, Sh Tenzi Norbu Bhutia, Smt Bijaya Laxmi Pandit, Sh Rajesh Kumar Singh, Saurav, Amit and Manish Singh have neither submitted any defence submission nor have appeared for any of the personal hearings. Shri Vipin Tomar attended the personal hearing on 10.01.2024 and submitted reply dated 23.01.2023 and requested to drop the proceedings initiated in the show cause notice. Shri Ashish Batt, Advocate, authorized representative of the noticee Sh Tendu Tashi attended the personal hearing on 06.02.2024 and submitted reply dated 06.02.2024 and requested to drop the proceedings initiated in the show cause notice. Shri H. G. Mathew, authorized representative of the noticee M/s. Gateway Distriparks Ltd. attended the personal hearing on 06.02.2024 and submitted reply dated 05.02.2024 and requested to drop the proceedings initiated in the show cause notice. Shri Prashant Srivastava, Advocate, authorized representative of the noticee Sh Vengalathur Dorairaj attended the personal hearing on 30.04.2024 and

requested to drop the proceedings initiated in the show cause notice.

DISCUSSION & FINDING

18 I have carefully gone through the Show Cause Notice dated 19.12.2022, record of the case, statement of various persons recorded and various evidence gathered during the investigation. I find that the issue to be decided in the present case proceedings is whether the Red Sanders exported are liable to confiscation or not and whether the persons alleged to be involved in export of Such Red Sanders in the guise of Brass Builder Hardware and Iron Builder Hardware are liable to penalties or otherwise. The proposals made in the impugned Show Cause Notice related to confiscation of the exported consignment and Penal Action under customs Act, 1962 are to be decided accordingly.

19 I find that the DRI has thoroughly investigated the case and unearthed the whole story, as depicted in the Show Cause Notice. In short, it is alleged in the Show Cause Notice that the Red Sanders Logs were smuggled out of India in the guise of Goods declared as " Brass Builder Hardware and Iron Builder Hardware" exported from Mundra Port through ICD Piyala using Shipping Bill no. 4015562 dated 18.10.2021 by using the forged/fabricated documents in the name of M/s. Bholi Hardware and Exports Pvt. Ltd. (IEC No. 4103000112). However, the subject consignment in container number OOLU1743923 was examined by the officers of Mundra Port Customs in the presence of officers of DRI, Gandhidham Regional Unit as per request of DRI- DZU, wherein it was revealed that red colour wooden logs believed to be red sanders were packed in the white colour PP sheets and brown colour gunny sheets. The representative samples of the said logs were drawn from the said consignment for testing and sent to DRI, DZU for getting the sample tested. The Wildlife Crime Control Bureau on testing the representative samples confirmed vide their report dated 24.11.2022 that samples were of Red Sanders.

20 I find that during the examination, 379 Red Sanders logs/blocks totally weighing 12.036 MTs and valued at Rs. 6 Crore (approx.) were found from the subject container. Further, packing/concealing materials with no commercial value weighing 204 kgs to conceal the red sanders logs were also found. I find that Red Sanders (botanical name "Pterocarpus Santalinus"), listed in Appendix II of CITES, are prohibited for export under the provisions of the Customs Act, 1962 read with the Foreign Trade Policy 2015-20.

21 I find that the DGFT vide Notification No. 56/2015-2020 dated 18.02.2019 had notified the policy related to exports of Red Sanders wood falling/classifiable under Chapter 44 of ITC(HS), 2018, Schedule-2 (Export Policy). The relevant entry no. 2 of the aforesaid notification is as below:

2. The existing entries against Sl. No. 188 in Chapter 44 of Schedule 2 of ITC (HS) Classification of Export & Import Items shall be substituted as follows: (changes made are in bold letters)

Sl. No.	Tariff Item HS Code	Unit	Item Description	Present Policy	Revised Policy	Policy Condition
188	4403 99 18 4407 99 90	Kg	Red Sanders wood (RSW) in any form, whether raw, processed or unprocessed, except at Sl. No. 188A [of cultivation origin obtained from private land (including Pattaland)] and Sl. No. 189 [specified value added products of RSW and other handicrafts made from RSW procured from legal sources] below	Prohibited	Prohibited	<p>Not Export permitted to be exported.</p> <p>However, one time relaxation has been granted to Govt. of Andhra Pradesh, Directorate of Revenue Intelligence (DRI), Govt. of Tamil Nadu, Govt. of Maharashtra and Government of Karnataka for export of 8498.095 MTs, 1200 MTs, 299.732 MTs, 83.40 MTs and 186.588 MTs respectively of Red Sanderswood (in log form) obtained out of confiscated/seized stock, either by itself or through any entity / entities so authorized by them.</p> <p>Government of Andhra Pradesh and DRI : Notification No. Notification No. 47 dated 24.10.2013 read with Noti No. 24 dated 29.08.2016 and Noti No. 08/2015-20 23.05.2017</p> <p>Govt. of Maharashtra and Tamil Nadu : Notification No. 25 /2015-20 dated 02.09.2016]</p> <p>Govt. of Karnataka: Notification No. 40 /2015-20 dated 27.11.2017]</p>

3. A new entry at Sl. No. 188A is inserted below Sl. No. 188 in Chapter 44 of Schedule 2 of ITC (HS) Classification of Export & Import Items as follows:

Sl. No.	Tariff Item HS Code	Unit	Item Description	Present Policy	Revised Policy	Policy Condition
188 A	4403 99 18 4407 99 90	Kg	Red Sanders wood in log form and roots, exclusively of cultivation origin obtained from private land (including Pattaland)	Prohibited	Restricted	<p>Export permitted under license subject to the following conditions /documentation :</p> <p>(i) Applications for export license should be accompanied by attested copies of certificate of origin issued by the Principal Chief Conservator of Forests (PCCF) of the State from where the stocks were procured / exported, giving details of the date of procurement from legal sources and quantities procured;</p> <p>(ii) A certificate of the current position of stocks so procured and available with the applicant given after physical verification of the stocks, by the authority nominated for the purpose by the PCCF, should also accompany application for export license.</p> <p>(iii) The applications shall be considered on merits for issue of export license, which shall be subject to any other conditions such as MEP, quantity ceilings requirements under CITES, etc. as may be prescribed from time to time;</p> <p>(vii) As per the recommendation of CITES Management Authority India, the MOEF&CC will fix an yearly quota, which may be reviewed based on NDF study or recommendations of the Government agencies;</p>

It is evident from the above-mentioned notification that the export of Red Sanders in any form, whether raw, processed or unprocessed, except of cultivation origin from private land, remains Prohibited, even if the Red Sanders is of Cultivation origin, same has been placed under the category of Restricted "where such wood can be exported only after obtaining a valid licence from the DGFT and that too after fulfilling the conditions laid down in the said notification."

22 Further, I find that the said shipping bill was filed in the name of Customs Broker M/s Navin Kumar (CHA No. R-03/14). The goods had entered in ICD Piyala on Trailer Number HR 38R8231 as factory stuffed goods in container number OOLU1743923 having seal number 051470 for export under Shipping

Bill Number 4015562 dated 18.10.2021 by or in the name of exporter M/s Bholi Hardware and Exports Pvt Ltd and the subject container moved out of ICD Piyala and rail out to Mundra port for onward export to Guangzhou, China. Further, it was revealed that NSEZ fixes an RFID seal on the export containers, however no such seal was found on the said container. The genuine Shipping bills and TR-2 of NSEZ contain a unique QR code. On scanning the QR Code all the details of the said shipping bills can be seen. However, no such QR code was found on the documents in respect of the subject container. The Trailer number HR38R8231 was a forged number, and the actual number of the trailer was HR38R6231 and the said trailer was driven by one Sh Shankar Kumar Yadav. Statement of Sh Shankar Kumar Yadav, driver of the trailer, was recorded under Section 108 of the Customs Act, 1962 wherein he stated that he used to carry container containing red sanders and the owner of the truck HR38R6231 was one Vipin. Further, I find that M/s Win Win Logistics was freight forwarder of the container no OOLU1743923 and Sh Manish Singh was proprietor of M/s Win Win Logistics. Manish Singh used to book containers for the exporter M/s Bholi Hardware and Exports and the payment towards freight charges was made through his account maintained at ICICI Bank, New Delhi, which was confirmed by the liner and from the bank account statement of Win Win Logistics.

2 3 I find that the Shipping Bill No. 4015562 dated 18.10.2021 was fake/forged as the authenticity of the said shipping bill was verified from the NSDL Data/SEZ portal at ICD Piyala, however, the said shipping bill number could not be found. From the documents submitted with custodian of ICD Piyala, it appeared that the said goods were booked for export to M/s. Zengchang Xingtang Trading Company, Guangzhou, China by or on behalf of the exporter M/s Bholi Hardware and Exports Pvt Ltd, NSEZ, Noida. From the past experiences of investigation into the cases of smuggling of Red Sanders, it has been observed that no export documents were filed before customs. Export General Manifest was filed/ was to be filed on the basis of forged/fake documents of Customs Officer by the liner. The export documents bearing forged signatures of Customs Officers were mostly fake and impersonation was undertaken of some other firm. In this regard, enquiries were made by DRI-DZU vide letter dated 20.12.2021 with Noida SEZ who in response vide letter dated 21.01.2022 informed that the said shipping bill number 4015562 dated 18.10.2021 was found invalid and the said container OOLU1743923 was not sealed with a RFID seal as is the mechanism followed for export containerized cargo emanating from SEZ. Further, the documents i.e. shipping bills, corresponding TR-2 and invoice were not genuine, the same were fake and have been submitted to the custodian of the port by unscrupulous elements following the same modus operandi i.e. forged documents in the name of NSEZ units were presented for export of consignments purportedly originating from Noida SEZ.

24 In the view of the above, I find that the seized 379 Red Sanders logs/Blocks totally weighing 12.036 MTS and valued at Rs. 6 Crore (approx.), illegally exported out of India through Mundra Port using Shipping Bill no 4015562 dated 18.10.2021 in the name of M/s. Bholi Hardware and Exports Pvt. Ltd., by Shri. Vipin Tomar and his known and unknown associates, in violation of Sections 113 of Customs Act, 1962 read with Sections 50, 51 ibid read with SI. No. 188 of Schedule 2 (Export Policy) of ITC (HS) Classification of Import and Export Items, issued under provisions of Foreign Trade (Development & Regulation) Act, 1992 are liable for confiscation under Sections 113(d), 113(f) and 113(h) of the Customs Act, 1962, in as much as the

impugned goods have been exported out of India without declaring to Customs, by loading without supervision of the proper officer of Customs, by concealment and mis-declaration. The goods were also exported in violation of the provision of CITES without mandatory export certificates from the exporting country which are not available or submitted by any person concerned with the illegal export of Red Sander.

25 I find that the seized packing material with no commercial value, used as cover goods and packing materials to conceal the Red Sander logs, are liable for confiscation under Sections 118 (b) and 119 of the Customs Act, 1962 as the same were used for concealment of the prohibited cargo i.e., Red Sanders.

26 Further, I find that DRI has thoroughly investigated the past exports as well in respect of all the containers railed out of ICD, Piyala which were emanating from NSEZ. It has been revealed that total 44 containers had already been railed out from ICD Piyala during the period 2019 to 2021 using the same modus-operandi of fake and forged documents of 03 NSEZ based firms namely M/s. Taurus Englobe Ltd., M/s. Bholi Hardware & Exports Pvt. Ltd. And M/s. Jagan Automotive Pvt. Ltd. The said exports had been affected through 07 container lines/shipping lines namely M/s. Orient Overseas Container Line, M/s. Expressway Shipping, M/s. Korea Marine Transport Co. Ltd., M/s. Chartering RoRo Freight Systems, M/s. Transvision Shipping Service, M/s. Neptune Shipping and M/s. Econship Shipping. DRI has also investigated in the said smuggling syndicate through the financial trail / payments made at different stages in respect of the said 44 containers. During the course of financial investigations, it was found that different payment mechanisms had been adapted by the conspirators and many times the payments were made in cash.

27 From the investigation carried out into the past 44 containerized exports of Red Sanders as well as from the statements recorded as detailed in the show cause notice, I find that Sh Vipin Tomar along with Amit, Saurav and Manish Singh conspired and aided the smuggling of Red Sanders and booked containers in the name of forged NSEZ entities viz Taurus Englobe, Jagan Automotives Pvt. Ltd and Bholi Hardware & Exports. Further, Shri Tenzi Norbu bhutia has been actively involved in the smuggling and export of Red Sanders along with his co-conspirator Sh Tendu Tashi. Tendu Tashi was the one who was dealing with the overseas clients and also all the payment related to the export of Red Sanders were received by him whereas the domestic procurement of Red Sander and Payment were handled by Tenzi Norbu bhutia. Sh. Vengalathur Dorairaj, proprietor of M/s. DR Shipping has abetted in arranging the containers for smuggling of Red Sanders. Sh. Vipin Yadav, owner of the trailer no. HR 38R6231, also actively involved in smuggling of red sanders and abetted in arranging containers for exporting the red sanders out of India. Further, Mrs Bijaya Laxmi Pandit, Director of M/s. Sea Globe Logistics and Shri Rajesh Kumar Singh, Director of M/s. Expressway Cargo Movers had facilitated export of the red sanders out of India. I also find the lapses on the part of M/s. Gateway Distriparks Ltd, custodian of ICD Piyala which resulted in this act of smuggling of Red Sanders.

28 Liability of Sh. Vipin Tomar to penalty under Section 114(i) & 114AA of the Customs Act, 1962.

28.1 It is alleged in the show cause notice that Vipin Tomar aided the smuggling operation of Red Sanders on the directions of unknown

persons/owners. Therefore, Sh Vipin Tomar rendered himself liable to penalty under section 114(i) and Section 114AA(separately) of the Customs Act, 1962, as he knowingly and intentionally conspired with other members in storing, loading and transporting the subject consignment of Red Sanders as well as knowingly and intentionally caused to submit fabricated/forged/false documents in transaction of business under Customs Act, 1962 to illegally export the subject Red Sanders out of India.

28.2 The Noticee Sh Vipin Tomar has contended that the present container number OOLU1743923 was not booked by him nor any kind of documentation/papers were provided by his side in the exportation of the present container to any of the offices. Further, he submitted that he has been falsely implicated in the present case by using his statement dated 07/08.12.2021. In this regard, I find that the statement of the noticee Shri Vipin Tomar was recorded voluntarily on 07/08.12.2021 and the noticee has not retracted from his statement before any authority. Further, it is a settled position in law that though statements recorded under Section 108 of the Customs Act are admissible as evidence. Thus, I do not find force in noticee's contention.

28.3 Further, I find that in his voluntary statement recorded on 07.12.2021, he admitted that he booked containers in the name of forged NSEZ entities viz Taurus Englobe, Jagan Automotives Pvt. Ltd and Bholi Hardware & Exports which were booked by Amit Sharma and Saurav. The investigation carried out into the smuggling of Red Sanders from ICD Piyala revealed that Vipin Tomar conspired with Amit, Saurav and others and for the smuggling operation of Red Sanders on the directions of Amit and Saurav and other unknown persons/owners. He further admitted that one of the containers shipped in the name of M/s. Jagan Automotives Pvt booked by Expressway Shipping was intercepted by Malaysian Customs and red sanders log were recovered from it. It was also revealed, and he admitted to the fact that even after having the knowledge that Red Sanders were being smuggled in containers booked by him, he continued to book containers in lieu of extra remuneration. A specific incidence in this regard was wherein a container booked by his firm (KMTC-shipping line container) was intercepted by Haiphong, Vietnam Customs and Red sanders were recovered. He then arranged meeting of the freight forwarder with Amit Sharma & Saurav as has already been admitted by him in his voluntary statement. During investigation, in view of his admissions and evidence gathered, it has emerged that he was one of a key accomplice in the smuggling syndicate of Red Sanders which has affected multiple illegal exports of Red Sanders.

In the view of the above, I find that Shri Vipin Tomar is liable to penalty under section 114(i) of the Customs Act, 1962 as he has abetted the illegal export of Red Sanders out of India through Mundra Port by concealment and mis-declaration, in violation of Sections 113 of Customs Act, 1962 read with Sections 50, 51 ibid read with SI. No. 188 of Schedule 2 (Export Policy) of ITC (HS) Classification of Import and Export Items, issued under provisions of Foreign Trade (Development & Regulation) Act, 1992 and rendered the impugned goods liable for confiscation under Sections 113(d), 113(f) and 113(h) of the Customs Act, 1962. Further, Shri Vipin Tomar is also liable to penalty under Section 114AA of the Customs Act, 1962 as he knowingly and intentionally caused his agents to submit fabricated/forged/false documents to Customs in an attempt to export the subject Red Sanders out of India in violation of the applicable prohibition.

29 Liability of Sh. Vipin Yadav to penalty under Section 114(i) & 114AA of the Customs Act, 1962.

I find that Vipin Yadav who was working as a transporter was the owner of the trailer no. HR38R6231. The driver of the said trailer, Sh Shankar Kumar Yadav revealed that he had taken the said trailer no. HR38R6231 many times to ICD Piyala. Regarding the stuffing of the container destined for ICD Piyala, the driver informed that Vipin used to inform him about the location of picking up the empty containers which were usually picked from ICD Tughlakabad. After picking up the empty container, Vipin used to call him along with one more unknown person and on his directions the driver used to take the empty container to Ghaziabad. In Ghaziabad, the driver used to leave the empty container loaded on trailer number HR38R6231. He used to leave the trailer keys in the trailer itself as per the directions of Vipin. It was Vipin who stuffed the said containers with Red Sanders. He was the one who planned and executed the modus operandi where he never allowed the driver to see the godown from where the goods were loaded. He made sure that even if the driver gets caught at some point, the syndicate names and locations do not get revealed. Vipin Yadav was summoned multiple times by DRI for investigation but he continues to abscond. He has not joined the investigation till date. The very fact that he has been absconding and avoiding the investigation and has gone into hiding has made it evident that he has planned and executed the smuggling of Red Sanders in container number OOLU1743923 as well as multiple occasions in the past.

Further, I find that Shri Vipin Yadav is liable to penalty under section 114(i) of the Customs Act, 1962 as he has abetted the illegal export of Red Sanders out of India through Mundra Port by concealment and mis-declaration, in violation of Sections 113 of Customs Act, 1962 read with Sections 50, 51 ibid read with SI. No. 188 of Schedule 2 (Export Policy) of ITC (HS) Classification of Import and Export Items, issued under provisions of Foreign Trade (Development & Regulation) Act, 1992 and rendered the impugned goods liable for confiscation under Sections 113(d), 113(f) and 113(h) of the Customs Act, 1962. Further, Shri Vipin Yadav is also liable to penalty under Section 114AA of the Customs Act, 1962 as he knowingly and intentionally conspired with other members in storing, loading and transporting the subject consignment of Red Sanders as well as knowingly and intentionally caused to submit fabricated/forged/false documents in transaction of business under Customs Act, 1962 to illegally export the subject Red Sanders out of India in violation of the applicable prohibition.

30 Liability of M/s. Gateway Distriparks Limited to penalty under Section 117 of the Customs Act, 1962.

30.1 I find that the custodian of ICD Piyala i.e., M/s Gateway Distriparks Ltd had given gate-in permission to the container no OOLU1743923, which was said to be commencing from NSEZ. The custodian was verifying e-seals in respect of containers of other exporters of NSEZ, while in the instant case gate-in permission was given to the said container without having e-seal. They were not able to differentiate between the actual and fake shipping bills of SEZ through its format, presence/ non-presence of QR etc. The Gate out permission was given without the verification of "Application cum gate pass permission for removal of Export Cargo from NSEZ..." which has the details of movement of the said container from NSEZ and needs endorsement from the custodian as well as Customs at the port in Part V of the said form in the

instant case. They had done the processing of documents by allowing the Gate out of the container by treating the "Self-Sealing Report" as the permission to export / move out the cargo just because the same had signature of any custom officer, whether or not posted at the Port.

30.2 The authorized representative of the noticee M/s. Gateway Distriparks Ltd. vide their letter dated 05.02.2024 submitted that the statutory obligation of ICD, Piyala is according to the Handling of Cargo in Customs Areas Regulations, 2009. Regulation No.6 lays down the responsibilities of customs cargo service provider. Their liabilities are specifically confined to Regulation No. 6 of the Handling of Cargo in Customs Areas Regulations, 2009. The CBIC Circular No.26/2017-Cus dated 01.07.2017 at Para No. ix very categorically state that verification of the integrity of electronic seal lies with the customs officer. Further, notice has submitted that penalty under section 117 cannot be imposed without mens rea. The show cause notice very categorically brings out that the Noticee had no knowledge of the contents of the cargo and in manner they had collaborated with smugglers. What is alleged against the Noticee are omissions on the part of the customs officers posted at ICD, Piyala and Port Mundra. In the absence of mens rea no penalty can be imposed on the Noticee.

In this regard, I find that in the instant case the container number OOLU1743923 entered the ICD Piyala based on the Export documents submitted at the entry gate and the container was given Gate In permit. Thereafter, the said movement never came to the notice of the Customs authorities on the port as no documents were filed before the custom authorities at the port for clearance. Instead, forged signature of the port officers was used for endorsement on the said documents and presented to the Custodian in accordance with Handling of Cargo in Customs Area Regulations, 2009. The said container had the same seal numbers (as the one at the time of entry) and moved to the rail yard of the ICD Piyala based on the export documents viz TR-2 challan which had the forged signature and stamp of the officer of ICD Piyala (when the documents were never presented / filed before Customs). Thus, the custodian was allowing the Gate out of the container under the forged signature of custom officer posted at the ICD, Piyala. However, it was the responsibility of the custodian to verify the genuineness of signature of the Customs Officer posted at the ICD before permitting goods to be removed from customs area and custodian has failed to discharge their duty. In the view of the above, I find that lapses on the part of custodianship resulted in this act of smuggling of Red Sanders. Regarding imposition of penalty, I find that the custodian M/s Gateway Distriparks Ltd at ICD Piyala, Haryana have failed to comply with the provisions of Customs Act, 1962 by allowing non- RFID sealed containers of NSEZ to enter into ICD and further to rail out of ICD. Thus, unauthorized access was given and their negligence led to attempt in smuggling of red sanders and therefore, I find that M/s Gateway Distriparks Ltd is liable for penalty under Section 117 of the Customs Act, 1962.

31 Liability of Sh. Tenzi Norbu Bhutia to penalty under Section 114(i) & 114AA of the Customs Act, 1962.

I find that the evidences gathered from the residential premises of Tenzi Norbu Bhutia as well as his mobile phones indicated towards his involvement in export of multiple consignments of Red Sanders in the past through the same Modus Operandi. The presence of documents of M/s Bholi Hardware - the

proxy firm under whose name multiple containers of Red Sanders have been exported in the past by adopting the same modus operandi as detailed out in the show cause notice are also evidentiary of the fact that he was either involved or managed the whole smuggling operations as was the case in the export of container no. TLHU2220698 wherein he was placed under arrest. During Forensic analysis of the mobile phones owned by Tenzi Norbu Bhutia multiple evidences have been found which have confirmed his role in the smuggling and attempt to export of Red Sanders in container number TLHU2220698. He had taken a Godown in Chhatarpur, Delhi on rent where the Red Sanders was loaded into containers. The same was confirmed by Godown Owner Shri Ishwar Singh and the property dealer Shri Gopal. I find that his identification done by the property dealer as well as owner of the godown vide their voluntary statement dated 18.04.2022. The property dealer has identified him as the person who was present in the Toyota Innova Car at the time of payment of rent for the godown. The owner of the godown has also identified his car as well as himself wherein Tenzi Norbu Bhutia has been seen multiple times at the said godown at the time of loading and unloading of goods. Same have been recorded in their voluntary statement dated 17.08.2022. Further, during the course of investigation, his statements were recorded on 02/03.05.2022 and 26.05.2022 wherein he was confronted with the documents pertaining to many of the above mentioned 44 containers. In his voluntary statements also, he admitted to the fact that he affected the exports of Red Sanders in the past. In view of his admissions and evidences gathered so far, he has also emerged as the master planner and executer who manages the entire smuggling syndicate of Red Sanders which has affected multiple illegal exports of Red Sanders in the past.

In the view of the above, I find that Shri Shri Tenzi Norbu Bhutia is liable to penalty under section 114(i) of the Customs Act, 1962 as he has been directly involved in illegal export of Red Sanders out of India through Mundra Port by concealment and mis-declaration, in violation of Sections 113 of Customs Act, 1962 read with Sections 50, 51 ibid read with SI. No. 188 of Schedule 2 (Export Policy) of ITC (HS) Classification of Import and Export Items, issued under provisions of Foreign Trade (Development & Regulation) Act, 1992 and rendered the impugned goods liable for confiscation under Sections 113(d), 113(f) and 113(h) of the Customs Act, 1962. Further, Shri Tenzi Norbu Bhutia is also liable to penalty under Section 114AA of the Customs Act, 1962 as he knowingly and intentionally caused his agents to submit fabricated/forged/false documents to Customs in an attempt to export the subject Red Sanders out of India in violation of the applicable prohibition.

32 Liability of Sh. Vengalathur Dorairaj to penalty under Section 114(i) & 114AA of the Customs Act, 1962.

I find that Sh Vengalathur Dorairaj who was the proprietor of M/s DR Shipping was one of the key persons of the said Red Sanders Syndicate who was the freight forwarder and provided the containers for the purpose of smuggling and export of Red Sanders. From the evidences gathered and his voluntary statement it has emerged that he had willingly abetted in the commission of smuggling of red sanders through the containers arranged by him. In light of the evidences pertaining to 8 containers of Red Sanders, he admitted to his involvement in arranging the containers for the purpose of export even after having the knowledge that the said containers were being used for smuggling of Red Sanders. He has also admitted that he did this for extra remuneration which he received from other members of the syndicate who

continue to be at large. It is also evident that he was aware about the provisions of Customs Act and rules and that the Containers arranged by him were used for clandestine export of red sanders. He also admitted that even after knowing the fact that Customs Vietnam had seized a container booked by him, he in lieu of the more money, booked further containers in connivance with the persons who are involved in the illicit export of red sanders. He was also always in contact with Amit Sharma/Rajnish/Rajiv and Saurav as admitted by him in his statement.

In the view of the above, I find that Shri Vengalathur Dorairaj is liable to penalty under section 114(i) of the Customs Act, 1962 as he has abetted in illegal export of Red Sanders out of India through Mundra Port by concealment and mis-declaration, in violation of Sections 113 of Customs Act, 1962 read with Sections 50, 51 ibid read with SI. No. 188 of Schedule 2 (Export Policy) of ITC (HS) Classification of Import and Export Items, issued under provisions of Foreign Trade (Development & Regulation) Act, 1992 and rendered the impugned goods liable for confiscation under Sections 113(d), 113(f) and 113(h) of the Customs Act, 1962. Further, Shri Vengalathur Dorairaj is also liable to penalty under Section 114AA of the Customs Act, 1962 as he knowingly and intentionally abetted in arranging the containers for exporting the Red Sanders out of India in violation of the applicable prohibition.

33 Liability of Sh. Tendu Tashi to penalty under Section 114(i) & 114AA of the Customs Act, 1962.

33.1 It is alleged in the show cause notice that Sh Tendu Tashi along with Sh Tenzi Norbu Bhutia has been involved in the smuggling of Red Sanders for the past many years. It has also been emerged that Tendu Tashi was the one who was dealing with the overseas clients and also all the payment related to the export of Red Sanders were received by him. He was the one who was in contact with the overseas client of Red Sanders and dealt with them whereas the domestic procurement of Red Sander and Payment were handled by Tenzi Norbu bhutia. Therefore, Sh Tendu Tashi rendered himself liable to penalty under section 114(i) and Section 114AA(separately) of the Customs Act, 1962, as he knowingly and intentionally caused his agents to submit fabricated/forged/false documents to Customs in an attempt to export Red Sanders out of India in violation of the applicable prohibition.

33.2 The authorized representative of the noticee Sh Tendu Tashi contended that department raided the Noticee's premises and conducted search in the absence of Noticee and his wife but in the presence of his 20 years old college going daughter, who did not know anything and was totally scared by the acts of the officers. Noticee has submitted that the Panchnama nowhere stated that from which part of the house, DRI officers got the documents whether it was in Almirah, or drawer or bed or any other place. There is a general statement that some documents recovered, which were arranged and serially numbers by the DRI officers. Neither the aforesaid Panchnama has been marked as RUDs nor its documents and hence in the absence of it Department cannot relied the same. The Noticee has further submitted that he is not aware of anything about the purported illegal export of Red Sanders and he neither indulged in any transaction related to export of Red Sanders nor submitted or received any document related to the said exports and therefore, the documents purportedly recovered on search from his residence in his absence, in all likelihood implanted and subsequently recovered by any of the officer of visiting team and he, therefore, vehemently deny any connection with the said documents or any

of his act in the said illegal export of Red Sanders.

In this regard, I find that search was conducted by DRI officials at noticee's premises in the presence of his daughter Pema Dechen and two independent witness Sh Vipin Kumar and Sh Gajendra Singh vide Panchnama dated 02.05.2022. Several incriminating documents pertaining to the past exports of Red Sanders were found from the residence of Tendu Tashi. The said documents pertained to atleast 10 containers of Red Sanders exported in the past. It is also pertinent to mention that during the examination/ scrutiny of the documents resumed from the residence of Tendu Tashi it was found that some of the said containers had been seized by either DRI/ Customs in India or by the Customs formations overseas and Red Sanders had been found in the said containers. During the search proceedings, apart from the documents mentioned above small logs of Red Sanders were also resumed from his residence. Further, the aforesaid panchnama has been marked as RUD-12 in the show cause notice no. 03/2022 dated 08.09.2022. I find that all the procedures have been duly followed by the DRI officials during the search at the noticee's premises. In the view of the above, I do not find force in noticee's contention.

33.3 I find that the authorized representative of the noticee Sh Tendu Tashi, in his written submission dated 06.02.2024, requested for cross examination of following person:

- i. Shri Tenzi Norbu Bhutia, who in his statement dated 02-03.05.2022 implicated the Noticee as business partner
- ii. Shri Vipin Kumar R/o C-1169, Sangam Vihar, Deoli South Delhi - Pancha Witness No. 1 in Panchnama dated 02.05.2022 drawn at residential premises of the Noticee
- iii. Shri Gajender Singh R/o Gram Kasampur Jat Post, Devori urf Hadipur, Amroha, Uttarpradesh- Pancha No. 2 in Panchnama dated 02.05.2022 drawn at residential premises of the Noticee
- iv. Shri Nakul Dev, Intelligence Officer, DRI, DZU, New Delhi.

In this regard, I find that Section 138B (2) or in any other provisions of the customs act/law has not such explicit arrangement for examination-in-chief, cross examination and re-examination. Further, it is also not mentioned in the Section 138B(2) that this provision is subject to the Evidence Act, 1872.

a . Request for cross-examination of Noticee who has made voluntary statements during investigation is not acceptable in view of following case laws:-

- i. In the case of Surjeet Singh Chhabra v. UOI, reported in 1997 (89) E.L.T. 646 (S.C.)], it was held that-“Customs Officials are not police officers and admission made before them though retracted binds the deponent. In view of voluntary statements recorded and such statements not retracted did not warrant cross-examination when other circumstantial provided reliable basis corroborating the statements. When nothing surfaced that the witnesses had any enmity with appellants, those were not liable to be discarded nor required to be put to cross-examination.”
- ii. Hon'ble Delhi Tribunal in the case of Onida Saka Ltd. v/s Commissioner of Central Excise, Noida [2011 (267) E.L.T. 101 (Tri.Del)] in para 4 of its order held

that-“..... since the statements of the persons whose cross-examination has been sought, has not been retracted, there was no necessity for permitting their cross-examination.”

b . Cross Examination sought without indicating specific reason not admissible: -

When request for cross-examination made by Noticee without indicating specific reason is not admissible in view of following case laws:

i. In the case of Fortune Impex Vs. Commissioner of Customs, Calcutta [2001(138) E.L.T.556 (Tri. -Kolkata)], Hon’ble Tribunal observed at Para 12 that:

“...it is not required that in each and every case, cross-examination should necessarily be allowed. There is no absolute right of cross-examination provided in the Customs Act. The Advocate had given a list of 26 persons for cross-examination without indicating the specific reasons for cross-examining the...it cannot be said that there was violation of principles of natural justice by not allowing the cross-examination of the persons sought by him.” This view taken by the Tribunal has been affirmed by Hon’ble Supreme Court – 2004 (164) E.L.T. 4 (S.C.) & 2004 (167) E.L.T.A. 134 (S.C.).

ii. Hon’ble CESTAT Kolkata in its decision in Dipu Das v/s Commissioner of Customs Kolkata reported as 2010(261) ELT 408 (Tri-Del), has held that;

“.....In adjudication proceedings, cross-examination cannot be claimed as a matter of right on mere asking for it, without furnishing reasons for the same”

c. Denial of cross examination of Co-Noticee does not amount to violation of principle of natural justice:

Further, the issue of cross examination of Co-Noticees/ accused is no longer res integra. When Noticee failed to provide any cogent and valid reason for the cross-examination of person, who are co-noticees, then request is not accepted. The following judicial pronouncements also supports above view.

i. The Hon’ble Principal Bench of CESTAT at New Delhi in the case of Jagdish Shankar Trivedi Vs. Commissioner of Customs, Kanpur reported as 2006 (194) ELT 290 (Tri. Delhi) has held that “denial of cross examination of co-noticees / accused does not result in violation of principles of natural justice and cannot be insisted on as a matter of right by them otherwise each of the accused can claim right against testimonial compulsions under Article 20(3) of the Constitution of India and thereby by their joint efforts bring out violation of natural justice.”(para 9).

ii. In the case of N.S. Mahesh vs CC, Cochin reported in 2016 (331) ELT 402 (Ker.) Hon’ble High Court upheld denial of “cross-examination of co-noticee. Adjudicating authority denied cross-examination of co-noticee on ground that firstly no specific reasons given for such cross-examination and secondly, co-noticee cannot be directed to be a part of proceedings that may incriminate him. It was held that there is no illegality in aforesaid reasoned order warranting interference by High Court [paras 1, 2]

iii. In the case of Laxmi v/s. Collector of Customs, Lucknow [2001 (138) ELT 1090 (Tri. Delhi)] Hon’ble Tribunal held that “Statement of co-noticees corroborated by another person- Denial of permission of cross-examination of co-noticees not violated principles of natural justice (Para 6)”.

I find that cross examination of persons can be allowed during a quasi-judicial proceeding. It is true that as per Section 138B(2) of the Customs Act, 1962, the provision regarding cross examination shall so far as may be apply in relation to any other proceedings under the Customs act. The usage of phrase 'so far as may be' in section 138B (2) shows that cross examination is not mandatory in all cases but the same may be allowed as per circumstances of the case.

Further, it is a settled position that proceedings before the quasi-judicial authority is not at the same footing as proceedings before a court of law and it is the discretion of the authority as to which request of cross examination to be allowed in the interest of natural justice. I also rely on following case-laws in reaching the above opinion: -

- a. Poddar Tyres (Pvt) Ltd. v. Commissioner - 2000 (126) E.L.T. 737:- wherein it has been observed that cross-examination not a part of natural justice but only that of procedural justice and not 4 'sine qua non'.
- b. Kamar Jagdish Ch. Sinha Vs. Collector - 2000 (124) E.L.T. 118 (Cal H.C.):- wherein it has been observed that the right to confront witnesses is not an essential requirement of natural justice where the statute is silent and the assessee has been offered an opportunity to explain allegations made against him.
- c. Shivom Ply-N-Wood Pvt. Ltd. Vs Commissioner of Customs & Central Excise Aurangabad- 2004(177) E.L.T 1150(Tri.-Mumbai):- wherein it has been observed that cross-examination not to be claimed as a matter of right.
- d. Hon Andhra Pardesh High Court in its decision in Sridhar Paints v/s Commissioner of Central Excise Hyderabad reported as 2006(198) ELT 514 (Tri-Bang) held that denial of cross-examination of witnesses/officers is not a violation of the principles of natural justice, We find that the Adjudicating Authority has reached his conclusions not only on the basis of the statements of the concerned persons but also the various incriminating records seized. We hold that the statements have been corroborated by the records seized (Para 9)
- e. Similarly in A.L Jalauddin v/s Enforcement Director reported as 2010(261)ELT 84 (mad) HC the Hon High court held that ;

".....Therefore, we do not agree that the principles of natural justice have been violated by not allowing the appellant to cross-examine these two persons: We may refer to the following paragraph in AIR 1972 SC 2136 = 1983 (13) E.L.T. 1486 (S.C.) (Kanungo 86 Co. v. Collector, Customs, Calcutta)".

In the light of the above case-law, request for cross examination of the noticee is not permitted.

33.4 I find that all the evidences gathered in respect of the smuggling and export of the container of Red Sanders, prior to the searches conducted at the residence of Tendu Tashi indicated towards his involvement in the attempted export of container no. OOLU1743923 of Red Sanders which was seized by DRI. Thereafter the evidences obtained from the residential premises of his further corroborated to the said indications. During the search proceedings several incriminating documents pertaining to the past exports of Red Sanders were found from the residence of Tendu Tashi. The said documents pertained to 12 out of the 44 containers of Red Sanders exported in the past. It is also pertinent to mention that during the examination/ scrutiny of the documents

resumed from the residence of Tendu Tashi it was found that some of the said containers had been seized by either DRI/ Customs in India or by the Customs formations overseas and Red Sanders had been found in the said containers. Further, the documents pertaining to the said containers also had the dispatch slips to corresponding destination of the said containers (container no SEGU2530170). The said dispatch slips were in his name and appear to have been for dispatching the original documents pertaining to the said containers, so that the same could be cleared through customs at the destination ports. The dispatch slips being in his name further confirms his involvement in managing the said export syndicate. Further, during the search proceedings, apart from the documents mentioned above, small logs of Red Sanders were also found from his residence which were resumed. The said small logs were possibly stored as samples to be shown to the prospective customers/ clients of Red Sanders exported by him.

Apart from the above, from the voluntary statements of Tenzi Norbu Bhutia, it has emerged that Tendu Tashi is a co-conspirator and mastermind along with him in the said Smuggling syndicate of Red Sanders. It has also emerged that Tendu Tashi was the one who was dealing with the overseas clients and also all the payments related to the export of Red Sanders were received by him. He was the one who was in contact with the overseas clients of Red Sanders and dealt with them whereas the domestic procurement of Red Sanders and Payments were handled by Tenzi Norbu Bhutia. It appears that Tendu Tashi is a Habitual Offender and has been involved in the smuggling of Red Sanders for the past many years, however quite cleverly he has been able to evade the eye of the enforcement/ investigating authorities. However, despite multiple Summons issued to him, he has never appeared before DRI and continues to be at large. He has been purposely avoiding the investigation and has neither replied to any of the summons nor appeared before the DRI.

In the view of the above, I find that Shri Tendu Tashi is liable to penalty under section 114(i) of the Customs Act, 1962 as he has actively involved in illegal export of Red Sanders out of India through Mundra Port by concealment and mis-declaration, in violation of Sections 113 of Customs Act, 1962 read with Sections 50, 51 ibid read with SI. No. 188 of Schedule 2 (Export Policy) of ITC (HS) Classification of Import and Export Items, issued under provisions of Foreign Trade (Development & Regulation) Act, 1992 and rendered the impugned goods liable for confiscation under Sections 113(d), 113(f) and 113(h) of the Customs Act, 1962. Further, Shri Tendu Tashi is also liable to penalty under Section 114AA of the Customs Act, 1962 as he knowingly and intentionally caused his agents to submit fabricated/forged/false documents to Customs in an attempt to export the subject Red Sanders out of India.

34. Liability of Mrs Bijaya Laxmi Pandit, Director of Sea Globe Logistics to penalty under Section 114(i) & 114AA of the Customs Act, 1962.

I find that Mrs. Bijaya Laxmi Pandit, Director of M/s Sea Globe Logistics had facilitated export of 8 containers containing red sanders for the fake NSEZ exporters Jagan Automotive Pvt Ltd and Bholi Hardware. One container no WSCU3917751 containing red sanders was seized by Malaysian Customs and a notice regarding confiscation of red sanders was received by Expressway Shipping from Malaysian Customs. The said container was booked by Sea Globe Logistics. Mrs Bijaya Lakshmi of Sea Globe Logistics arranged a meeting with Amit and one Hemant (branch head of Expressway Cargo Movers). Amit paid 18000 USD to Expressway Shipping towards demurrage charges of the

container detained in cash. The same was not intimated by Bijaya Laxmi Pandit to Customs or any other agency. Further, after this incident she booked one more container MSCU3504260 with Expressway Shipping. From, the above it is evident that Bijaya Laxmi Pandit was aware that red sanders were being smuggled by Sea Globe Logistics.

In the view of the above, I find that Mrs. Bijaya Laxmi Pandit is liable to penalty under section 114(i) of the Customs Act, 1962 as she has abetted the illegal export of Red Sanders out of India by concealment and mis-declaration, in violation of Sections 113 of Customs Act, 1962 read with Sections 50, 51 ibid read with SI. No. 188 of Schedule 2 (Export Policy) of ITC (HS) Classification of Import and Export Items, issued under provisions of Foreign Trade (Development & Regulation) Act, 1992 and rendered the impugned goods liable for confiscation under Sections 113(d), 113(f) and 113(h) of the Customs Act, 1962. Further, Mrs. Bijaya Laxmi Pandit is also liable to penalty under Section 114AA of the Customs Act, 1962 as she knowingly and intentionally caused to submit fabricated/forged/false documents in transaction of illegal export of Red Sanders out of India in violation of the of the applicable prohibition.

35 Liability of Shri Rajesh Kumar Singh, Director of Expressway Cargomovers Pvt Ltd to penalty under Section 114(i) & 114AA of the Customs Act, 1962.

I find that Shri Rajesh Kumar Singh, Director of Expressway Cargo Movers Pvt Ltd admitted in his statement on 13.12.2021 that one container no WSCU3917751 containing red sanders was seized by Malaysian Customs and a notice regarding confiscation of red sanders was received by him from Malaysian Customs. The said container was booked with them by Sea Globe Logistics. Mrs Bijaya Lakshmi of Sea Globe Logistics arranged a meeting with Amit of Sai Logistics and one Hemant (branch head of Expressway Cargo Movers). Amit paid 18000 USD to Expressway Shipping towards demurrage charges of the container detained in cash. The same was not intimated by Rajesh Kumar Singh to Customs or any other agency. Further, after this incident he booked one more container no MSCU3504260 of Sea Globe Logistics. From, the above it is evident that Rajesh Kumar Singh was aware that red sanders were being smuggled by Sea Globe Logistics.

In the view of the above, I find that Shri Rajesh Kumar Singh is liable to penalty under section 114(i) of the Customs Act, 1962 as he has abetted the illegal export of Red Sanders out of India by concealment and mis-declaration, in violation of Sections 113 of Customs Act, 1962 read with Sections 50, 51 ibid read with SI. No. 188 of Schedule 2 (Export Policy) of ITC (HS) Classification of Import and Export Items, issued under provisions of Foreign Trade (Development & Regulation) Act, 1992. Further, Shri Rajesh Kumar Singh is also liable to penalty under Section 114AA of the Customs Act, 1962 as he knowingly and intentionally caused to submit fabricated/forged/false documents in transaction of illegal export of Red Sanders out of India in violation of the of the applicable prohibition.

36 Liability of Sh Amit to penalty under Section 114(i) & 114AA of the Customs Act, 1962

I find that Sh Amit Sharma used to give Expressway Shipping freight forwarding work related to NSEZ companies viz Jagan Automotives Pvt. Ltd and Bholi Hardware & Exports Pvt. Ltd. Amit also gave KYC documents in respect of these companies. Multiple mobile numbers of Amit were also found

saved in the mobile phone of Vipin Tomar and in some cases names of the SEZ companies were also used along with his name. Sh Vengalathur Dorairaj also stated that the KYC documents were handed over to him by Sh Amit on many occasions and his different mobile numbers were found in the mobile phone owned by Vengalathur Dorairaj of DR Shipping. Sh Vipin Tomar also revealed that Amit Sharma had also introduced to one person namely Saurav who provided him the KYC documents of another NSEZ company namely Taurus Englobe Limited, and asked him to start booking in the name of said company. It is therefore evident that Amit along with Saurav fudged the documents of the company Bholi Hardware and Exports Pvt Ltd for the purpose of smuggling of Red Sanders. It has also come to fore that Amit Sharma or Saurav used to provide the details i.e., name of the shipper, port and destination etc. and further asked Vipin Tomar to give booking orders to forwarders. It was also revealed, Amit Sharma & Saurav were the ones who used to pick up the container for stuffing. Amit Sharma used to make payment in either cash form or small IMPS transfer to the Shipping lines through freight forwarders. From the above, it is evident that Amit was one of the key conspirators who had affected the said exports of Red Sanders. Efforts were made to trace the whereabouts of both Amit and Saurav however their hideout could not be ascertained. Evidences indicates that both Amit and Saurav are absconding and have gone missing. Through a very tactfully designed modus operandi, nowhere did they provide their actual credentials to prevent being tracked down by the authorities. They were well versed with the modus operandi to prevent their actual identity from being revealed so that they could carry out such illegal activities without being caught by the law enforcement agencies.

In the view of the above, I find that Shri Amit is liable to penalty under section 114(i) of the Customs Act, 1962 as he has abetted the illegal export of Red Sanders out of India by concealment and mis-declaration, in violation of Sections 113 of Customs Act, 1962 read with Sections 50, 51 ibid read with SI. No. 188 of Schedule 2 (Export Policy) of ITC (HS) Classification of Import and Export Items, issued under provisions of Foreign Trade (Development & Regulation) Act, 1992. Further, Shri Amit is also liable to penalty under Section 114AA of the Customs Act, 1962 as he knowingly and intentionally caused to submit fabricated/forged/false documents in transaction of illegal export of Red Sanders out of India in violation of the of the applicable prohibition.

37 Liability of Sh Saurav to penalty under Section 114(i) & 114AA of the Customs Act, 1962

I find that Sh Vipin Tomar revealed during the investigation carried out into the smuggling of Red Sanders from ICD Piyala that Amit Sharma had introduced to one person namely Saurav who provided him the KYC documents of another NSEZ company namely Taurus Englobe Limited, Plot No. 136, NSEZ Noida and asked him to start booking in the name of said company. It is therefore evident that both Amit and Saurav fudged the documents of the company Taurus Englobe Limited and other NSEZ entities like Jagan Automotives and M/s Bholi Hardware and Exports Pvt Ltd for the purpose of smuggling of Red Sanders. It has also come to fore that Amit Sharma or Saurav used to provide the details i.e., name of the shipper, port and destination etc. and further asked Vipin Tomar to give booking orders to forwarders. Further, I find that Amit Sharma & Saurav were the ones who used to pick up the container for stuffing. It also came to fore that Amit Sharma used to make the payment for freight / container charges in cash through freight forwarders in the name of the shipper M/s Bholi Hardware and

Exports Put Ltd as instructed by Amit and Saurav. From the above, it is evident that Saurav was one of the key conspirators who had affected the said exports of Red Sanders. Efforts were made to trace the whereabouts of both Amit and Saurav however their hideout could not be ascertained. Evidences indicates that both Amit and Saurav are absconding and have gone missing. Through a very tactfully designed modus operandi, nowhere did they provide their actual credentials to prevent being tracked down by the authorities. They were well versed with the modus operandi to prevent their actual identity from being revealed so that they could carry out such illegal activities without being caught by the law enforcement agencies.

In the view of the above, I find that Sh Saurav is liable to penalty under section 114(i) of the Customs Act, 1962 as he has abetted the illegal export of Red Sanders out of India by concealment and mis-declaration, in violation of Sections 113 of Customs Act, 1962 read with Sections 50, 51 ibid read with SI. No. 188 of Schedule 2 (Export Policy) of ITC (HS) Classification of Import and Export Items, issued under provisions of Foreign Trade (Development & Regulation) Act, 1992. Further, Shri Saurav is also liable to penalty under Section 114AA of the Customs Act, 1962 as he knowingly and intentionally caused to submit fabricated/forged/false documents in transaction of illegal export of Red Sanders out of India in violation of the of the applicable prohibition.

38 Liability of Sh Manish Singh to penalty under Section 114(i) & 114AA of the Customs Act, 1962

I find that Sh Manish Singh was the freight forwarder who used to book containers with the liner using forged documents. He also gave KYC documents in respect of the exporter M/s Bholi Hardware & Exports Pvt Ltd. Multiple mobile numbers of Manish were provided with liner, which on follow up were found switched off and existing in name of different persons. It is therefore evident that Manish Singh fudged the documents of the company Bholi Hardware and Exports Pvt Ltd for the purpose of smuggling of Red Sanders. It also came to fore that Manish Singh used to make the payment for freight/container charges to liner from the bank account of his firm M/s Win Win Logistics maintained at ICICI bank, New Delhi and the container number OOLU1743923 was booked by his firm Win Win Logistics in the name of the shipper M/s Bholi Hardware and Exports Pvt Ltd. From the above, it is evident that Manish Singh was one of the key conspirators who had affected the said exports of Red Sanders. Efforts were made to trace the whereabouts of Manish Singh however his hideout could not be ascertained. Evidences indicate that Manish Singh is absconding and had gone missing after the subject container was examined by DRI. Through a very tactfully designed modus operandi, nowhere did he provide his actual credentials to prevent being tracked down by the authorities. He was well versed with the modus operandi to prevent the actual identity from being revealed so that he could carry out such illegal activities without being caught by the law enforcement agencies.

In the view of the above, I find that Sh. Manish Singh is liable to penalty under section 114(i) of the Customs Act, 1962 as he has abetted the illegal export of Red Sanders out of India by concealment and mis-declaration, in violation of Sections 113 of Customs Act, 1962 read with Sections 50, 51 ibid read with SI. No. 188 of Schedule 2 (Export Policy) of ITC (HS) Classification of Import and Export Items, issued under provisions of Foreign Trade (Development & Regulation) Act, 1992. Further, Shri Manish Singh is also liable

to penalty under Section 114AA of the Customs Act, 1962 as he knowingly and intentionally conspired with other members in storing, loading and transporting the subject consignment of Red Sanders as well as knowingly and intentionally caused to submit fabricated/forged/false documents in transaction of business under Customs Act, 1962 to illegally export the subject Red Sanders out of India.

39 In view of the foregoing discussion and findings, I pass the following order:-

ORDER

- i. I order for absolute confiscation of the 379 Red Sanders logs/Blocks totally weighing **12.036 MTS** and valued at **Rs. 6 crore (approx.) (Rupees Six Crores only)** seized from the consignment/container which was attempted to be illegally exported out of India using Shipping Bill no. 4015562 dated 18.10.2021 in the name of M/s Bholi Hardware and Exports Pvt. Ltd. (IEC No. 4103000112), Plot No. 170, NSEZ, Phase- 2, Noida, UP-201305 under Section 113(d), 113(f) and 113(h) of the Customs Act, 1962 read with Sections 50, 51 of the Act *ibid read with* SI.No.188 of Schedule 2 (Export Policy) of ITC (HS) Classification of Import and Export Items, issued under the provisions of Foreign Trade (Development & Regulation) Act, 1992;
- ii. I also order for absolute confiscation of the seized packing material with no commercial value, used to conceal the Red Sanders logs, an item prohibited for export under Section 118(b) and Section 119 of the Customs Act, 1962.
- iii. I impose a penalty of **Rs.60,00,000/- (Rupees Sixty Lakh Only)** on **Shri Vipin Tomar** under Section 114(i) of the Customs Act, 1962.
- iv. I impose a penalty of **Rs.30,00,000/- (Rupees Thirty Lakh Only)** on **Shri Vipin Tomar** under Section 114AA of the Customs Act, 1962.
- v. I impose a penalty of **Rs.60,00,000/- (Rupees Sixty Lakh Only)** on **Shri Vipin Yadav** under Section 114(i) of the Customs Act, 1962.
- vi. I impose a penalty of **Rs.30,00,000/- (Rupees Thirty Lakh Only)** on **Shri Vipin Yadav** under Section 114AA of the Customs Act, 1962.
- vii. I impose a penalty of **Rs.4,00,000/- (Rupees Four Lakh Only)** on **M/s. Gateway Distriparks Ltd.** under Section 117 of the Customs Act, 1962.
- viii. I impose a penalty of **Rs.60,00,000/- (Rupees Sixty Lakh Only)** on **Shri Tenzi Norbu Bhutia** under Section 114(i) of the Customs Act, 1962.
- ix. I impose a penalty of **Rs.30,00,000/- (Rupees Thirty Lakh Only)** on **Shri Tenzi Norbu Bhutia** under Section 114AA of the Customs Act, 1962.
- x. I impose a penalty of **Rs.60,00,000/- (Rupees Sixty Lakh Only)** on **Shri Vengalathur Dorairaj** under Section 114(i) of the Customs Act, 1962.
- xi. I impose a penalty of **Rs.30,00,000/- (Rupees Thirty Lakh Only)** on **Shri Vengalathur Dorairaj** under Section 114AA of the Customs Act, 1962.
- xii. I impose a penalty of **Rs.60,00,000/- (Rupees Sixty Lakh Only)** on **Shri Tendu Tashi** under Section 114(i) of the Customs Act, 1962.
- xiii. I impose a penalty of **Rs.30,00,000/- (Rupees Thirty Lakh Only)** on **Shri Tendu Tashi** under Section 114AA of the Customs Act, 1962.
- xiv. I impose a penalty of **Rs.60,00,000/- (Rupees Sixty Lakh Only)** on **Smt Bijaya Laxmi Pandit** under Section 114(i) of the Customs Act, 1962.
- xv. I impose a penalty of **Rs.30,00,000/- (Rupees Thirty Lakh Only)** on **Smt**

Bijaya Laxmi Pandit under Section 114AA of the Customs Act, 1962.

- xvi. I impose a penalty of **Rs.60,00,000/- (Rupees Sixty Lakh Only)** on **Shri Rajesh Kumar Singh** under Section 114(i) of the Customs Act, 1962.
- xvii. I impose a penalty of **Rs.30,00,000/- (Rupees Thirty Lakh Only)** on **Shri Rajesh Kumar Singh** under Section 114AA of the Customs Act, 1962.
- xviii. I impose a penalty of **Rs.60,00,000/- (Rupees Sixty Lakh Only)** on **Shri Amit** under Section 114(i) of the Customs Act, 1962.
- xix. I impose a penalty of **Rs.30,00,000/- (Rupees Thirty Lakh Only)** on **Shri Amit** under Section 114AA of the Customs Act, 1962.
- xx. I impose a penalty of **Rs.60,00,000/- (Rupees Sixty Lakh Only)** on **Shri Saurav** under Section 114(i) of the Customs Act, 1962.
- xxi. I impose a penalty of **Rs.30,00,000/- (Rupees Thirty Lakh Only)** on **Shri Saurav** under Section 114AA of the Customs Act, 1962.
- xxii. I impose a penalty of **Rs.60,00,000/- (Rupees Sixty Lakh Only)** on **Shri Manish Singh** under Section 114(i) of the Customs Act, 1962.
- xxiii. I impose a penalty of **Rs.30,00,000/- (Rupees Thirty Lakh Only)** on **Shri Manish Singh** under Section 114AA of the Customs Act, 1962.

40 This order is issued without prejudice to any other action which may be required to be taken against any person as per the provision of the Customs Act, 1962 or any other law for the time being in force.

41 The SCN F. No. DZU/34/Enq-13/2021/PtI dated 19.12.2022 is disposed off in above terms.

**ADDITIONAL COMMISSIONER
CUSTOMS HOUSE, MUNDRA.**

F. No. GEN/ADJ/ADC/1210/2022-Adjn-O/o Pr Commr-Cus-Mundra

BY SPEED POST

To,

- 1. Shri Vipin Tomar
 - i. R/o Madanpur Awagarh Etah,
Uttar Pradesh – 207301.
 - ii. Opposite Khan Cycle Shop, 1st Floor, Maitrka Vihar
Khoda Colony, Gaziabad, Uttar Pradesh – 201309
- 2. Shri Vipin Yadav
 - i. s/o Yashwant, Village Garwa Mishra,
PO Pipra Ramdhar, PS- Salempur, Deoria, Uttar Pradesh.
 - ii. HR-118/6, Pulprahladpur, New Delhi.
- 3. M/s. Gateway Distriparks Ltd.
ICD Piyala, Faridabad- 121004.

4. Shri. Tenzi Norbu Bhutia,
2A, Harcharan Bagh, Andheria Mode,
Vasan Kunj, New Delhi-110030.
5. Shri. Vengalathur Dorairaj,
 - i. Plot No. 3, House No. 1, Convent Road,
Sagar Cantonment, Madhya Pradesh-470001
 - ii. Door No. 1-161, SBI Colony, Puttur, Chittur District,
Andhra Pradesh-517583.
6. Shri. Tendu Tashi,
K-2097, Ground Floor, CR Park,
New Delhi-110019.
7. Smt Bijaya Laxmi Pandit, Director of Sea Globe Logistics
Upper Ground Floor, B-58,
Left side portion, Vishwakarma Colony,
M.B. Road, New Delhi-110044.
8. Shri Rajesh Kumar Singh, Director of Expressway Cargomovers Pvt
Ltd
133/1/1A, SM Banerjee Road, Kolkata.
9. Shri. Saurav, Sh Amit and Sh Manish Singh.
Noticed Board of ICD Piyala, DRI DZU and Custom House, Mundra

Copy to:-

1. The Additional Director, Directorate of Revenue Intelligence, Delhi Zonal
Unit, New Delhi.
2. The Deputy/Assistant Commissioner (RRA), Customs House, Mundra
3. The Deputy/Assistant Commissioner (TRC), Customs House, Mundra
4. The Deputy/Assistant Commissioner (EDI), Customs House, Mundra for
uploading the same on the website of Customs House, Mundra
5. Guard File.