



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

चौथी मंजिल 4th Floor, हड्को भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009
दूरभाष क्रमांक Tel. No. 079-26589281

DIN - 20250871MN0000000C16

क	फाइल संख्या FILE NO.	S/49-163/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-158-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	08.08.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/ADC/MK/70/2024-25 dated 11.06.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	08.08.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Gateway Distriparks Ltd, ICD Piyala, Faridabad - 121004



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



	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.				
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं।				
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :				
	<table border="0"> <tr> <td style="vertical-align: top;">सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td style="vertical-align: top;">Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td style="vertical-align: top;">दूसरी मण्डिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td style="vertical-align: top;">2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मण्डिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
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5.	<p>सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-</p> <p>Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -</p> <p>(क) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रुपए।</p> <p>(a) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;</p> <p>(ख) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार रुपए।</p> <p>(b) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees;</p> <p>(ग) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रुपए।</p> <p>(c) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees</p> <p>(घ) इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में है, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।</p> <p>(d) An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.</p> <p>6. उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए।</p> <p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>				
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ORDER-IN-APPEAL

The present appeal has been filed by M/s Gateway Distriparks Ltd, ICD Piyala, Faridabad - 121004, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/MK/70/2024-25 dated 11.06.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that 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.

2.1 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.

2.2 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.

2.3 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. 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 Front the above, it was 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.

2.9 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:-

Table

S. No	Shipping Bill No	Shipping Bill date	Container Number	Shipper	Booking Party
1	4004285	31.01.2020	OOLU0461144	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	OOLU0123086	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

2.10 During the investigation, trailer no. HR38R6231 which was owned by Shri 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. 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.

2.11 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

2.12 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 Systems	2
5	Transvision Shipping Services	2
6	Neptune Shipping	1
7	Econship Shipping	1

2.13 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- I

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 Exports Pvt Ltd	ColliCare Logistics India Pvt Ltd
3	4046968	06.03.2020	TGBU2060874	Bholi Hardware Exports Pvt Ltd	Forin Container Line
4	4004285	31.01.2020	OOLU0461144	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	FCIU5759622	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	OOLU3907991	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	OOLU1541331	Bholi Hardware & Exports Pvt Ltd	Win Win Logistics
14	4034946	12.02.2021	OOLU2164000	Bholi Hardware & Exports Pvt Ltd	Win Win Logistics

15	4035688	01.03.2021	CBHU5710481	Bholi Hardware & Exports Pvt Ltd	Win Win Logistics
16	4036842	15.03.2021	DFSU1373194	Bholi Hardware & Exports Pvt Ltd	Win Win Logistics
17	4037218	30.03.2021	CSLU1131651	Bholi Hardware & Exports Pvt Ltd	Win Win Logistics
18	4015562	18.10.2021	OOLU1743923	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 CelliCare Logistics India Pvt Ltd and M/s Forin Container Line.

2.14 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.

2.15 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.



2.16 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.

2.17 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 Tilid 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 Tilid 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.

2.18 Expressway Shipping: During the enquiries made with M/s.

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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 Party
1	4036886	17.10.2019	FSCU7571320	JAGAN AUTOMOTIVE PVT LTD	ONS LOGISTIC
2	4028934	28.08.2020	TCKU1836444	JAGAN AUTOMOTIVE PVT LTD	SAI LOGISTICS
3	4004392	05.02.2020	BMOU2026840	JAGAN AUTOMOTIVE PVT LTD	ONS LOGISTIC
4	4038642	14.11.2019	CRSU1160606	JAGAN AUTOMOTIVE PVT LTD	ONS LOGISTIC
5	4030527	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
12	4030381	30.09.2020	EASU9611452	JAGAN AUTOMOTIVE PVT LTD	Seaglobe Logistics Pvt. Ltd.

2.19 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, M/s. Expressway Shipping (I) Pvt. Ltd. and M/s. Expressway World Cargo Pvt. Ltd. M/s. 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 M/s. 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 M/s. 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 M/s. 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.

2.20 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 M/s. Logistics Linkage, Ghaziabad as a helper and learnt documentation work related to import and export till 2018 and thereafter joined M/s. 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 M/s. Expressway Shipping is in Kolkata and its associated firms are M/s. Expressway Cargo Mover Pvt. Ltd and M/s. Expressway Container line LLP. They have office branches at Mumbai, Kolkata, Chennai, Mundra & Delhi and the owner of the said firms/companies M/s. Expressway Shipping, M/s. Expressway Cargo Mover Pvt. Ltd and M/s. 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 M/s. 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 M/s. Expressway Shipping, Amit Sharma used to visit M/s. Expressway Shipping office in New Delhi and gave them freight forwarding work related to NSEZ companies M/s. Jagan Automotives Pvt. Ltd and M/s. 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

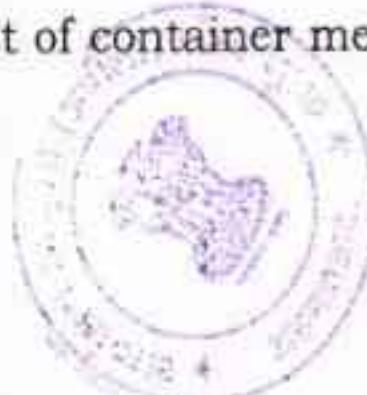


booked by his firm Indian Freight Solutions through DHCN Logistix in the name of the shipper M/s Taurus Englobe Ltd. He was aware that red sanders were recovered from container number ECNU2250524 and Shri Rajkumar of DHCN Logistix had informed him on 13.11.2021 that customs had put the said container 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.

2.21 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 Logistix 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.

2.22 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.

2.23 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.

2.24 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:-



2

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

2.25 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 h_m (dorairaj@drshipping.co.in) and Vipin Tomar (yash@indianfreightsolutions.com,



delhi@indiasfreightsolutions.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 KMTC (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 Pt Ltd, which was forwarded to him. He forwarded the notice to Vipin Tomar. V-pin 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 as under :

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 ENGLOBE 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

2.26 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 shoppers 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.

2.27 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. 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 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



2.28 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 those 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.

2.29 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.

2.30 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.

2.31 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.

2.32 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.

2.33 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.

2.34 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 scaring 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.



- 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 appeared 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 the above referred persons have been actively involved in the smuggling and export of Red Sanders in the said 44 containers.

2.33 Accordingly, a 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, 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;



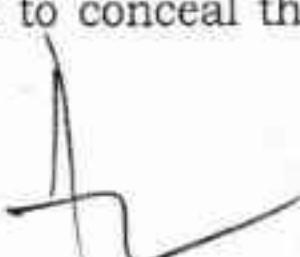

c. Penalties under Section 114(i) and Section 114AA of the Customs Act, 1962 should not be imposed on them for acts and omissions which appeared to have rendered the seized goods liable to confiscation, in respect of the goods seized vide seizure Memo dated 30.12.2021.

2.33.1 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 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.

2.33.2 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 as to why penalty under Section 117 of the Customs Act, 1962 should not be imposed on them.

2.34 Consequently, the Adjudicating Authority passed the following order:

- i. He ordered for absolute confiscation of the 379 Red Sanders logs/Blocks totally weighing 12.036 MTS and valued at Rs. 6 crore (approx.) 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. 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. He also ordered 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. He imposed 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. He imposed a penalty of Rs.30,00,000/- (Rupees Thirty Lakh Only) on Shri Vipin Tomar under Section 114AA of the Customs Act, 1962.
- v. He imposed 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. He imposed a penalty of Rs.30,00,000/- (Rupees Thirty Lakh Only) on Shri Vipin Yadav under Section 114AA of the Customs Act, 1962.
- vii. He imposed 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. He imposed 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. He imposed 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. He imposed 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. He imposed a penalty of Rs.30,00,000/- (Rupees Thirty Lakh Only) on Shri Vengalathur Dorairaj under Section 114AA of the Customs Act, 1962.
- xii. He imposed 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. He imposed a penalty of Rs 30,00,000/- (Rupees Thirty Lakh Only) on




Shri Tendu Tashi under Section 114AA of the Customs Act, 1962.

- xiv. He imposed 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. He imposed 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. He imposed 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. He imposed 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. He imposed a penalty of Rs.60,00,000/- (Rupees Sixty Lakh Only) on Shri Amit under Section 114(i) of the Customs Act, 1962.
- xix. He imposed a penalty of Rs.30,00,000/- (Rupees Thirty Lakh Only) on Shri Amit under Section 114AA of the Customs Act, 1962.
- xx. He imposed a penalty of Rs.60,00,000/- (Rupees Sixty Lakh Only) on Shri Saurav under Section 114(i) of the Customs Act, 1962.
- xxi. He imposed a penalty of Rs.30,00,000/- (Rupees Thirty Lash Only) on Shri Saurav under Section 114AA of the Customs Act, 1962.
- xxii. He imposed 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. He imposed a penalty of Rs.30,00,000/- (Rupees Thirty Lakh Only) an Shri Manish Singh under Section 114AA of the Customs Act, 1962.



SUBMISSIONS OF THE APPELLANT:

3. Being aggrieved with the impugned order, the Appellant has filed the present appeals wherein they have submitted grounds which are as under:-

3.1 The appellant has submitted that the Adjudicating Authority grossly erred in its understanding of the statutory obligations of ICD Piyala as governed by the Handling of Cargo in Customs Areas Regulations, 2009. The department has never alleged that the appellant violated the provisions of these Regulations. Regulation 6 specifically delineates the responsibilities of the customs cargo service provider. The relevant regulation emphasize that the alleged violations detailed in the show cause notice and subsequently confirmed in the adjudication order do not fall within the responsibilities of the appellant as outlined in Regulation 6.

3.2 The adjudicating authority grossly erred in assigning the responsibility of compliance with RFID e-sealing to the Appellant, who is merely a provider of logistics facilitate import and export. Such compliance must be carried out by the authorities competent to enforce the directives of the Central Board of Excise & Customs (CBIC). This authority has not been vested in the Appellant. As far as the Appellant is concerned, they are duty-bound to allow ingress into the ICD and exit once the document, i.e. the shipping bill bearing the signature of the Customs authority, is presented. In this case, the Appellant did not have any means to verify the veracity of the shipping bill produced and no such responsibility has been affixed on them by law. The CBIC, vide Circular No. 26/2017-Cus dated 01.07.2017, specifically assigned the responsibility of compliance with RFID on export consignments to Customs and not to the Appellant. Paragraph ix of this circular, which addresses this matter, is reproduced below:

"ix. All consignments in self-sealed containers shall be subject to risk-based criteria and intelligence, if any, for examination/inspection at the port of export. At the port/ICD as the case may be, the customs officer would verify the integrity of the electronic seals to check for tampering if any enroute. The Risk Management System (RMS) is being suitably revamped to improvise the interdiction/ examination norms. However, random or intelligence based selection of such containers for examination/scanning supplied/ would continue."




3.3 Further, this position has been reiterated vide Circular No.36/2017-Cus dated 28.08.2017. The relevant 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]

3.4 The aforementioned circulars 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. Since the appellant had been arraigned in the show cause on the basis of this argument, this allegation is not maintainable against the appellant. Hence, the finding of the adjudicating authority that *"regarding imposition of penalty, I find that the Appellant 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"* is on the basis of incorrect appreciation of fact and law and the order is therefore required to be set aside. The adjudicating authority erroneously held the appellant responsible for the omissions by the Customs authorities stationed at the ICD, stating that "in the instant case, container number OOLU1743923 entered the ICD Piyala based on the export documents submitted at the entry gate, and a Gate-In permit was issued. Thereafter, the said movement never came to the notice of the Customs authorities at the port as no documents were filed before the Customs authorities at the port for clearance. In passing this order, the adjudicating authority failed to recognize that at an ICD, the gate is manned by Customs officers, and the appellant's responsibility is limited to bearing the expenditure on a cost-recovery basis.

3.5 It is pertinent to note here the decision of the Hon'ble CESTAT Principal Bench, New Delhi in the case of *Radhe Shyam v. Commissione^o of Customs*, New Delhi 2017 (355) E.L.T. 467 (Tr. - De.) wherein the Hon'ble



CESTAT while adjudicating on the penalty imposed on the appellant designated as senior manager of CONCOR who was the custodian of the good in the case. The Hon'ble CESTAT observed as under:

"6. In the impugned order, the entire consignment of contraband stands confiscated absolutely and penalties had also been imposed on several persons including three employees of CONCOR. The ld. Commissioner in the impugned order has held that there is an arrangement worked out on a regular basis between the Customs authorities as well as CONCOR by which an e-mail is periodically sent giving the complete list of shipping bills where Let Export Orders have been granted by Customs. CONCOR is required to rail out only those containers, which are covered by the Let Export Orders given by Customs. What has emerged in investigation in the present case is that the container with the contraband was railed out by CONCOR on the basis of fabricated documents, wherein the Let Export Orders from Customs was shown, whereas in actual fact such a Let Export Order has never been issued by Customs. Penalties have been imposed on various functionaries of CONCOR for negligently railing out the container.

7. It has been submitted on behalf of CONCOR as well as various functionaries that they cannot be held responsible for the fraud played by some un scrupulous elements in their attempt to smuggle out contraband. They have pleaded that the documents on the basis of which the container was railed out have been proved to be fabricated. It has further been submitted that total number of containers being booked on daily basis is quite substantial and verifying the Let Export Orders on the basis of e-mail from Customs was impractical. Accordingly, it has been prayed that the penalties may be set aside.

8. We have carefully examined the plea made by CONCOR and its employees. We note that during the course of investigation undertaken by the Customs authorities, nothing has been revealed on record to indicate any part played by the employees of CONCOR in the alleged smuggling of contraband. The ld. Commissioner in the impugned order has held that the railing out of container should not have been allowed since the e-mail sent by Customs CONCOR did not mention the let export order covering the present container. However, we find a lot force in the submission of CONCOR that the no. of containers booked on daily basis is quite large and it is practically difficult to co-relate the list of let export orders sent by e-mail by Customs with the containers booked and subsequent railing out of



containers manually. In any case, it has been established that the documents indicating the let export order based on which the container was railled out were fraudulent and fabricated. Consequently, the custodian i.e. CONCOR as well as its employees cannot be faulted for allowing such let export of the container.

9. In view of the above discussions, the penalties imposed on CONCOR as well as its employees are set aside. However, we hasten to add that we are not interfering with the rest of the impugned order."

3.6 The order further stated that "instead, forged signatures of the port officers were used for endorsement on the said documents and presented to the custodian in accordance with the Handling of Cargo in Customs Area Regulations, 2009." This finding clearly indicates that the document presented to the appellant was forged, and the appellant neither had the responsibility nor the means to verify its authenticity. The adjudicating authority failed to acknowledge this fact while concluding that forged documents were presented before the appellant. It is important to note that there was never any allegation that the appellant was involved in the forgery. This clearly establishes that the forgery was perpetrated by those responsible for the violation, in order to fraudulently export goods through the appellant's ICD, which, for all Customs purposes, was physically manned by Customs officers on a cost-recovery basis. The responsibility to verify the authenticity of the documents rested with the Customs officers on duty at the appellant's ICD and cannot be imputed to the appellant.

3.7 The adjudicating authority further held that "the said container had the same seal numbers as those at the time of entry and was moved to the rail yard of the ICD Piyala based on export documents, namely the TR- 2 challan, which bore forged signatures and stamps of the officer at ICD Piyala, despite the documents never having been presented or filed before Customs." In recording these findings, the adjudicating authority failed to consider that the appellant is a provider of logistic support, with responsibilities that are specifically delineated under Regulation 6 of the Handling of Cargo in Customs Areas Regulations, 2009.

3.8 The adjudicating authority misunderstood the correct procedure and erroneously concluded that "the custodian was allowing the gate-out of the container under the forged signature of the Customs officer posted at the ICD,



Piyala." This conclusion is incorrect, as the responsibility for allowing gate-in and gate-out lies with the Customs officers posted at the ICD, while the appellant's responsibility was limited to complying with their directions. Had the Customs officers verified the RFID e-seal, as mandated by the CBIC circular mentioned above, the fraudulent nature of the shipping bill could have been detected. The successful use of the fake and forged shipping bill for illegitimate export resulted from a complete failure to adhere to the CBIC's instructions. Consequently, the ensuing actions cannot be attributed to the appellant. Therefore, this finding lacks a proper appreciation of the facts and the applicable law.

3.9 Without properly appreciating the duties and responsibilities of the appellant as outlined in Regulation 6 of the Handling of Cargo in Customs Areas Regulations, 2009, and the obligations imposed on the Customs officers by Circulars No. 26/17 and 36/17, the adjudicating authority erroneously concluded that *"it was the responsibility of the custodian to verify the genuineness of the Customs officer's signature posted at the ICD before permitting the removal of goods from the customs area, and the custodian failed to discharge this duty. In light of the above, I find that the lapses on the part of the custodian resulted in the act of smuggling of Red Sanders."*

3.10 Similarly, ignoring the mandate of CBIC's circu.ar No.26/2017-Cus & 36/2017-Cus, the adjudicating authority erroneously held against the appellant thus, *"Regarding imposition of penalty, I find that the Appellant 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."* This finding is erroneous, as it was reached by disregarding the fact that the failure of the Customs officers posted at the appellant's ICD to verify the RFID seal in accordance with the aforementioned circulars was solely responsible for this irregular export.

3.11 Any failure to verify the signature of the Customs officers on shipping documents or any other documents related to controlling ingress to the ICD and exit via rail to the gateway port cannot, under any stretch of the imagination, be attributed to the appellant. Furthermore, the processes of gate-



in and gate-out are regulated by the Customs officers posted at the ICD, and the appellant could not have independently decided to permit ingress. It was the responsibility of the Customs authorities to post an adequate number of officers at the gate to control the movement of export and import cargo. The Customs authorities cannot later fault the appellant for the acts or omissions of the Customs officers posted at the ICD. If any document was forged, it was the responsibility of the Customs officers, who are the only individuals capable of verifying the authenticity of signatures, to detect such forgeries at the points of entry and exit.

3.12 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 show cause 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 appellant contends that they cannot be held responsible for the apparent lapses within the Customs system and failure of their officers.

3.13 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 CD, Piyala and ICD, Mundra. 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 Appellant. 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, Appellant has no legal authority to verify any document associated with an export cargo.

3.14 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. The RFID instructions issued by CBIC nowhere put any responsibility on the Appellant of an ICD in terms of verification of the genuineness thereof or the complaints 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 duly authenticated by affixing the signatures of the Customs officers.

3.15 As far as the Appellant is concerned, when a document is produced before him, he has no means to verify the bonafide nature of the signature appended therein. The RFID instructions issued by CBIC nowhere put any responsibility on the Appellant 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. Non-verification of RFID is the only reason for this violation to be accomplished. Had it been verified in terms of the




governing circulars, the containers could have been stopped from export and the forged nature of shipping bill and the signatures purportedly made by the Customs officers could have been detected. No customs work can be outsourced to the Appellant 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 In-and 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 Appellant. 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 Appellant. Their liabilities are specifically confined to Regulation No. 6 of the Handling of Cargo in Customs Areas Regulations, 2009. RFID complaint is not within their job description.

3.16 The persons carrying the documents to the gate are the ones who had been issued H Card or G Card by the customs. Their accessibility is also under the control and regulations of the customs officers posted at the customs station. It cannot be, therefore, expected by the Appellant to exercise any extra jurisdiction over them and distrust any document presented by them to facilitate free flow of cargo to the gate under authenticated customs documents. The customs officers posted to ICD, Piyala keep on changing and therefore no staff of the Appellant 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 Appellant.

3.17 The RFID instructions issued by CBIC nowhere put any responsibility on the Appellant 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 Appellant. 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 Appellant. Hence, ICD, Piyala lacks the means to identify an allegedly fraudulent transaction like the present one.

3.18 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 Appellant 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 Appellant. 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 that the appellant 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 appellant 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 appellant to save their skin. The show cause notice is, therefore, required to be set aside on these grounds.

3.19 Further, penalty under section 117 of the Customs Act, 1962 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 appellant 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 appellant. 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 Pvt. Ltd Vs. Commissioner, 2003 (154) ELT 756 (Tri).

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 03.07.2025, following the principles of natural justice wherein Shri Gervasis Thomas, Advocate appeared for the hearing and he re-iterated the submission made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs House, Mundra and the defense put forth by the Appellant in their appeal.

5.1 On going through the material on record, I find that the following issues need to be decided:

- (i) Whether the Appellant, as a Customs Cargo Service Provider (Custodian), failed to comply with its statutory obligations under Regulation 6 of the Handling of Cargo in Customs Areas Regulations, 2009 (HCCAR, 2009).
- (ii) Whether the Appellant was responsible for verifying the authenticity of documents (including signatures/stamps) and the presence/integrity of RFID seals, and whether their failure to do so constitutes negligence.
- (iii) Whether the imposition of penalty under Section 117 of the Customs Act, 1962, is legally sustainable and proportionate.



5.2 Regulation 6 of HCCAR, 2009, outlines the comprehensive responsibilities of a Customs Cargo Service Provider. While the Appellant attempts to narrowly interpret these responsibilities, a holistic reading of the Regulation clearly indicates a broader duty of care and diligence.

- Regulation 6(1)(f): "not permit goods to be removed from the customs area, or otherwise dealt with, except under and in accordance with the permission in writing of the Superintendent of Customs or Appraiser." This clause implies a duty on the custodian to ensure that the "permission in writing" is not only present but also genuine. Allowing goods to move based on forged documents is a direct contravention of this.
- Regulation 6(1)(i): "be responsible for the safety and security of imported and export goods under its custody." This is a paramount responsibility. The entry and exit of goods using forged documents and non-compliant sealing mechanisms (RFID) directly compromises the "safety and security" of the goods and the integrity of the Customs area.
- Regulation 6(1)(q): "abide by all the provisions of the Act and the rules, regulations, notifications and orders issued thereunder." This is a catch-all provision that mandates compliance with all instructions, including CBIC Circulars.

5.3 The Appellant's argument that the Department never alleged a violation of Regulation 6 is misplaced. The impugned order's finding that the Appellant *"failed to comply with the provisions of Customs Act, 1962 by allowing non-RFID sealed containers... to enter into ICD and further to rail out of ICD"* directly points to a failure to abide by the rules and regulations, which are encapsulated in Regulation 6(1)(q) and other specific clauses. Therefore, the Appellant's failure to ensure that goods moved only under genuine permissions and with proper security measures (like RFID seals as mandated) constitutes a clear contravention of their statutory obligations under Regulation 6 of HCCAR, 2009.

5.4 The Appellant's primary defense is to shift the responsibility for verification to Customs officers, citing their lack of means to verify forged documents. While Customs officers certainly have a duty to verify, this does not



absolve the Custodian of its own independent duties. The Custodian is not a mere passive storage provider; it is an integral part of the Customs clearance chain. The very purpose of entrusting goods to a Custodian is to ensure their secure handling and movement in accordance with Customs law. Even if the documents were forged, a basic level of due diligence is expected from a Custodian. The fact that the container was "non-RFID sealed" when RFID sealing was mandatory for NSEZ exports (as per CBIC Circulars 26/2017-Cus and 36/2017-Cus) should have raised a red flag at the entry/exit points of the ICD. This is not a complex verification requiring specialized Customs knowledge but a check against a clear procedural mandate.

5.5 While these circulars assign duties to Customs officers, they also establish a system of compliance. The Custodian, by virtue of Regulation 6(1)(q) (abiding by all notifications and orders), is implicitly required to ensure that goods handled by them conform to such systems. Allowing non-RFID sealed containers to move when it is a known requirement for NSEZ exports is a failure of this duty. The appellant has relied on Radhe Shyam case [2017 (355) E.L.T. 467 (Tri.-Del.)]. The Appellant's reliance on Radhe Shyam is distinguishable. In that case, the Tribunal noted the practical difficulty of manually co-relating a large number of Let Export Orders with containers. The failure was largely attributed to the complexity of manual verification. In the present case, the issue is not merely manual correlation but a failure to detect a missing/fake RFID seal (a physical/systemic requirement) and to scrutinize documents that were fundamentally forged in a manner that should have been detectable by a diligent custodian, or at least should have prompted a reference to Customs. Furthermore, the Radhe Shyam case did not involve the submission of a "fake NOC" as in the present case, which indicates a higher degree of malfeasance. The facts of the present case suggest a more significant lapse in the custodian's duty of care and security. Therefore, the Appellant, as Custodian, had a responsibility to exercise due diligence in verifying documents and ensuring compliance with sealing requirements. Their failure to detect the forged documents and the non-RFID sealing constitutes negligence, directly contributing to the attempted smuggling.

5.6 Section 117 of the Customs Act, 1962, is a residuary penalty provision that applies when a person contravenes any provision of the Act or fails to comply with any provision of the Act (including rules and regulations made thereunder) where no express penalty is otherwise provided. As discussed, the



Appellant contravened Regulation 6 of HCCAR, 2009, which are regulations framed under the Customs Act. Therefore, the imposition of penalty under Section 117 is legally sustainable. The Appellant argues that Section 117 cannot be imposed without mens rea and cites cases like Hazel Mercantile Ltd. and Syndicate Shipping Services Pvt. Ltd.

5.7 While mens rea is generally a requirement for penalties, its degree can vary. For statutory violations, particularly those involving a high degree of public trust and responsibility (like a Custodian), mens rea can be inferred from gross negligence or a failure to exercise due diligence. The Hon'ble Supreme Court in *Union of India vs. Dharmendra Textile Processors* [2008 (231) E.L.T. 3 (S.C.)] clarified that mens rea is essential for imposing penalty, but it can be inferred from the circumstances. The failure of the Custodian to detect forged documents and non-compliant seals for prohibited goods, leading to an attempt at smuggling, is not a mere technical breach but a significant lapse of duty. This negligence, even if not direct complicity in smuggling, is sufficient to attract penalty under Section 117. The cases cited by the Appellant often deal with situations where there is no evidence of active involvement or gross negligence. Here, the facts indicate a clear failure to adhere to established procedures and duties.

5.8 The penalty imposed is ₹4,00,000/-, which is the maximum limit of ₹4,00,000/- prescribed under Section 117 of the Customs Act, 1962. Considering the gravity of the attempted smuggling of Red Sanders (a prohibited item) and the Custodian's critical role in preventing such illegal activities, the penalty imposed is proportionate to the lapses observed. Therefore, the imposition of penalty under Section 117 of the Customs Act, 1962, is legally sustainable and proportionate.

6. In view of the detailed discussions and findings above, this appellate authority concludes that the appeal filed by M/s Gateway Distriparks Ltd is not sustainable on merits. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

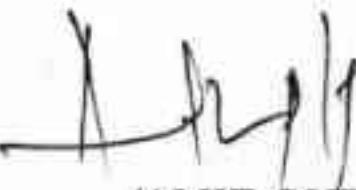
- (i) The finding that the Appellant (M/s Gateway Distriparks Ltd) failed to comply with its statutory obligations as a Customs Cargo Service Provider under Regulation 6 of the Handling of Cargo in Customs Areas Regulations, 2009, thereby contributing to the attempted smuggling of



prohibited goods, as confirmed by the impugned Order-in-Original is hereby upheld.

(ii) The imposition of penalty of ₹4,00,000/- on M/s Gateway Distriparks Ltd under Section 117 of the Customs Act, 1962, as confirmed by the impugned order, is hereby upheld.

7. The appeal filed by M/s Gateway Distriparks Ltd is hereby rejected.



(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-163/CUS/MUN/2024-25
2839

Date: 08.08.2025

By Registered post A.D/E-Mail

To,
M/s Gateway Distriparks Ltd,
ICD Piyala,
Faridabad-121004.



सत्यापित/ATTESTED
Amrit
अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD.

Copy to:

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