



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
 OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
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DIN – 20251171MN0000555C06

क	फ़ाइल संख्या FILE NO.	S/49-438/CUS/AHD/2023-24
ख	अपील आदेश संख्या ORDER-IN- APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	AHD-CUSTOM-000-APP-462-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	28.11.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order-in-Original No. 182/ADC/VM/O&A/23-24 dated 05.12.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	28.11.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	Shri Gunvant Kanubhai Nakrani, Godown Owner, Plot No.: 17, Uma Industrial Estate, Behind Bhagyoday Hotel, Vasna, Sanand- 382 170.



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	वैगेज़ 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 दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु.1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां। यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रुपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं



	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार रूपए	
(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 ;	
(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 रूपए.	
(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	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।	
(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.	
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	



ORDER-IN-APPEAL

Shri Gunvant Kanubhai Nakrani, Godown Owner, Plot No.: 17, Uma Industrial Estate, Behind Bhagyoday Hotel, Vasna , Sanand- 382 170 (hereinafter referred to as 'the Appellant') has filed the present appeal in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No.: 182/ADC/VM/O&A/23-24, dated 05.12.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs Ahmedabad (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that a specific intelligence was received by the Directorate of Revenue Intelligence (Hereinafter referred to as "DRI"), which indicated that Red Sanders was being smuggled out through a container bearing No. BSIU 3151184 covered under Shipping Bill No. 1578745, dated 23.05.2022 filed at ICD Sabarmati, Ahmedabad by M/s. Kusum Industries, 401 Krishnashary Flats1, Arya Kanya Road, Karelibaug, Vadodara (IEC No. DJMPB3863E) (For the sake of brevity herein after also referred as "M/s. Kusum Industries" or "the Exporter"). The intelligence further suggested that the Red Sander Logs was being exported in the guise of declared cargo "Prestine Assorted Toiletries 4*5 LTR (White & Blue) HS Code 34025000" of M/s. Kusum Industries. The said consignment got Let Export Order (LEO) on 24.05.2022 from ICD, Sabarmati, Kaligam, Ahmedabad. The suspected container was lying at Mundra Port. Hence, on 25.05.2022, the container was put on hold by DRI for further examination. The particulars of the Container and the Shipping Bill is as under:

Shipping Bill No. and Date	1578745 dated 23.05.2022
Name of the Exporter	M/s. Kusum Industries
IEC No. of the exporter	DJMPB3863E
GST IN No. of Exporter	24DJMPB3863E12D
BIN No./IT PAN No.	DJMPB3863E
Name of the Customs broker, who filed Shipping Bill	M/s. Right Ship Agency
Name and address of the Consignee	Khaqan General Trading LLC, 104, Brothers Tower AL Taawun Street, Sharjah, UAE, PO Box -22165
Buyers Name and Address	Khaqan General Trading LLC, 104, Brothers Tower AL Taawun Street, Sharjah, UAE, PO Box -22165
Port of Loading	INSBI6 (ICD Sabarmati)
Port of Discharge	AEMKH (Mina Khalid)
No. of Packages	675
Gross Weight (Kgs)	14519
Net Weight (Kgs)	13433.5
Quantity	13500 LTR
Invoice Value	9985.95 USD
FOB Value	9475.95 USD



Invoice No. and Date	KI/105/2022-2023 dated 23.05.2022
Drawback Claimed (Rs.)	9473.11
Remarks	Intention to claim MEIS reflected in Shipping Bill
Description of Export Goods	Prestine Assorted Toiletries 4x5 LTR (white & Blue)
CTH No.	34025000
Whether against LUT?	Yes, against the LUT- ARN - No. AD2402220037720 dated 08.02.2022.
Container No.	BSIU 3151184
Size of Container	20 feet
Seal No.	139620
Particulars of Payment	100% advance payment
Seal Type	Warehouse sealed
Vehicle No., through which the container was removed from the factory of the exporter to ICD to Mundra Port	GJ-12Z-1209
LEO Date	-

2.1 Based on the above intelligence, the cargo covered under Shipping Bill No. 1578745, dated 23.05.2022 in Container No. BSIU 3151184 was put on hold and placed in MICT, CFS, Mundra. The consignment was scanned at Container Scanning Division, Mundra on 26.05.2022 wherein it was reported as mismatched. Then the consignment was examined thoroughly by the officers of DRI under Panchnama dated 26.05.2022 drawn at MICT, CFS, Mundra. During examination of the goods, the container was found stuffed with 840 Logs of wood - total weighing 14.634 MTs, instead of declared cargo "Prestine Assorted Toiletries 45 LTR (White & Blue) HS Code 34025000". Officers of Forest Department were called on the spot and after examining the logs, the officers of Forest Department opined that the wooden logs appear to be Red Sander Logs. Nothing except Red Sander Logs were found stuffed in the said container. Thus, the consignment for export through Mundra Port of M/s Kusum Industries, Vadodara was found to be misdeclared and prohibited cargo of Red Sanders, was found attempted to be exported in guise of export of "Prestine Assorted Toiletries 45 LTR (White & Blue) HS Code 34025000". The inventory of the wooden logs was prepared and it was noticed that there were 840 numbers of Red Sander Logs weighing 14.634 MTs stuffed in the said container in place of declared goods i.e. "Prestine Assorted Toiletries 4*5 LTR (White & Blue) HS Code 34025000", as per the following particulars:

Shipping Bill No. and Date	1578745 dated 23.05.2022
Container No.	BSIU 3151184
Weight as declared in Shipping Bill	14519 Kgs Gross, 13433.50 Kgs Net
Weight noticed during examination on 26.05.2022	14634.09 Kgs
Goods found actually contained in the Container	840 Logs of Red Sander with weight of 14.634 MTs

Value of the Goods @ Rs.80 Lakhs/MT for Red Sander	Red Sander Rs.11.70 Crores
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2.2 As per Sr. No. 188 of Chapter 44 of Schedule 2 of the ITC (HS) Export Policy 2015-2020, export of Red Sander Wood (RSW) in any form, which is classifiable under HS Code 44039918, is prohibited. Further, in terms of Notification No. 56/2015-2020, dtd.18.02.2019 issued by the Central Government under Section 3 of the FTDR Act, 1992, export of Red Sander Wood (RSW) in any form, falling under HS Code 44039918 has been made prohibited again in the Amended Export Policy also. As per Section 3(3) of the FTDR Act, 1992, the goods to which an order issued under Section 3(2) of the FTDR Act, 1992 applies, shall be deemed to be the goods, the export of which has been prohibited under Section 11 of the Customs Act, 1962 and all the provisions of the Customs Act, 1962 shall have effect accordingly. Therefore, the attempt made for export of Red Sander logs was in violation of the prohibition imposed under Section 11 of the Customs Act, 1962 as well as the Foreign Trade Policy 2015-2020 and the provisions of FTDR Act, 1992. Red Sanders, which is known as "Pterocarpus santalinus" has also been declared as "endangered species" covered under Appendix II of CITES (Convention on International Trade in Endangered Species), hence the export of the Red Sanders out of India is restricted by virtue of the said Treaty/Convention. Hence, the said undeclared and concealed 840 number of Red Sander Logs weighing 14.634 MTs, which were recovered from abovementioned container, having value of Rs. 11,70,72,000/-, which were attempted to be illegally exported by circumventing export prohibition, which were liable for confiscation under the provisions of Section 113 of the Customs Act, 1962, were placed under seizure under Section 110 (1) of the Customs Act, 1962 vide Panchnama dtd.26.05.2022 and representative samples of the Red Sander wood attempted for export were also drawn. In this regard a separate Seizure Memo dated 26.05.2022 was also issued. The seized consignment was handed over to the custodian M/s. MICT, CFS, M98 SEZ a Container Freight Station of M/s. Adani Port and SEZ, Mundra under Supratnama dated 26.05.2022. During the Panchnama dated 26.05.2022 the container was also inspected by a surveyor, who opined that there is possibility that the container has been tampered as the screws and bolts at the latch portion of the front door where the bottle seals are locked appear to have been mishandled recently.

2.3 Pursuant to the above, searches /examination were conducted by the officers of DRI at following premises: -

2.3.1 Principal Place of Business of the exporter i.e. M/s Kusum Industries (GST No. 24DJMPB3863E1ZD) at 401 Krishnashary Flats-1, Arya Kanya Road, Karelibaug, Vadodara was searched on 27.05.2022 by the team of DRI Officers wherein Shri Manish P. Barot informed that M/s Kusum Industries was a proprietorship firm in the name of his daughter Ms. Mahima Manish Barot and he was looking after all the activities of the firm




and his daughter was not indulged in any work of the firm. Further Shri Manish P. Barot informs that M/s Kusum Industries was engaged in manufacturing of Prestine brand toiletries and also informed that the manufacturing unit is situated at beside Randhava Transport, Savali Road, Dumad Village, Distt. Vadodara and accordingly the said premises was searched and a running Panchnama dated 27.05.2022 was drawn; during the Panchnama dated 27.05.2022 various incriminating documents were recovered.

2.3.2 M/s Transmarine Shipping & Logistics, 1019, City Centre 2, Nr. CIMS Hospital, Science City Road, Sola, Ahmedabad was searched on 27.05.2022 by the team of DRI Officers in the presence of Shri Amit Bellani, Partner in M/s Transmarine Shipping & Logistics (Appellant) and a Panchnama dated 27.05.2022 was drawn; during the Panchnama dated 27.05.2022 various incriminating documents relating to the export were recovered.

2.3.3 Godown at Plot No. 17, Uma Industrial Estate, Behind Bhagyodaya Hotel, Vasana, Sanand, Ahmedabad - 382170 was searched on 09.07.2022 & 10.07.2022. The owner of the godown, Shri Gunvant Kanubhai Nakrani, informed that he had rented the said godown to Shri Sameer Khan on a monthly rent of Rs. 20,000/- and the agreement was made in the name of his wife Ms. Hasina Samir Shaikh. During the search, 03 liquid bottles of "Prestine Cleaner" were found in labour / care taker room named Shri Sukhdev Rajak. Shri Sukhdev Rajak told that he had done work of loading of goods and had loaded the Prestine brand cleaner in boxes in the truck of Shri Sammer Khan in another premise near Natraj Estate and had taken out the said 03 cans of cleaner from there. Therefore the Panchnama was closed for the day and the DRI team went to another godown for search. Again on 10.07.22, the godown was searched and all the 50 kg cattle feed bags were stacked systematically. Beneath those bags were found concealed 164 Red Sander wood logs weighing 4.229 MT. The identity of the wooden logs was confirmed by the Range Forest Officer, Sanand. During the course of Panchnama dated 10.07.2022 the 164 logs of Red Sanders weighing 4.229 MT were seized along with other covering materials viz. Cattle feed, Iron Bars, Toilet cleaner vide Seizure Memo dated 10.07.2022. Thereafter, the seized 164 logs weighing 4.229 MT were taken to the Thar Dry Port, ICD Sanand and handed over to Shri Parvesh Tripathi Sr. Executive, Thar Dry Port vide Supratnama dated 10.07.2022 and the covering goods of Red Sanders were handed over to the godown owner for safe custody vide Supratnama dated 10.07.22 which were later transferred to ICD, Viramgam for safe custody under Panchnama dated 14.10.2022 and handed over to Shri Bharat Gupta, Assistant Manager, ICD Viramgam vide Supratnama dated 14.10.2022.

2.3.4 Godown at Plot No. 198, Natraj Estate, Vasana(E), Sanand, Viramgam Road, Distt. Ahmedabad was searched on 09.07.2022, the godown was identified by Shri



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Sukhdev Rajak who does work of labour and had informed that he had loaded the toilet cleaner with the brand name of "Prestine" in the truck and from that consignment had taken out 03 loose cans from the goods. The godown was found empty and the owner of the godown informed that this godown has been given on rent to Shri Sameer Khan.

2.3.5 Residence of Shri Firoz Chichwelkar @ Sameer Khan, Jafir Apartment, A-Wing, Room No. 303, Near Jumma Masjid, Kalwa Naka, Thane West, Maharashtra-400605 was searched on 08.07.2022 and a Panchnama dated 08.07.2022 was drawn; during the Panchnama dated 08.07.2022, various incriminating documents and 03 mobile phones were recovered.

2.3.6 Search at office of M/s Sai Transport and Logistics, 22, Hilton Tower, Jijamata Road, Sher-e-Punjab Colony, Andheri (E) - 400093 was conducted on 08.07.2022 and Panchnama dated 08.07.2022 was drawn. During the search, invoice raised by Shri Rohan Kumar in the name of M/s. Sai Transport & logistics at the given address was shown to the Branch head of M/s Sai Logistic, to identify whether they have issued such invoice which they replied in negative. Further, they failed to identify from the photograph of Shri Rohan Kumar, driver Vishal / Majhark Firoz Abdul Rehman Chinchwelkar. Therefore, it appeared that Shri Rohan Kumar had issued the fake invoice of M/s. Sai Transport & Logistics using address of M/s Sai Transport and Logistics at 22, Hilton Tower, Jijamata Road, Sher-e-Punjab Colony, Andheri (E)-400093.

2.3.7 The GSTIN number used in the invoice raised by Shri Rohan Kumar 27APOPA5522N1ZM pertained to M/s Sai Transport, 001, Lalji Compound, Janata Colony, Gilbert Hill Road, Andheri West, Mumbai, Maharashtra - 400058. Hence, office of M/s Sai Transport, 001, Lalji Compound, Janata Colony, Gilbert Hill Road, Andheri West, Mumbai, Maharashtra-400058 was searched on 08.07.2022 but the said address was not traced out and it was found that the said Lalji Compound had gone into redevelopment and the same was under construction.

2.3.8 Address of M/s Aryan Logistics, Shop No. 45/46, Suyash Park, Shop No. 11, Sector 23, Ulwe - 410218 was searched on 12.07.2022. During the visit by DRI at Suyash park, it was found that there were only 34 shops having Shop No. 1 to 34 and the Shop No. 45/46 does not exist.

2.3.9 Search at residence of Shri Rohan Kumar @ Aryan Ganesh Thorat @ Ganesh Laxman Ujhagrae at M/s Om Sai Transport, B-403, Radhesham Complex, Plot No. 28, Sector No. 08, Kamothe-410209 was conducted vide Visit Note dated 09.09.2022 and found that the said flat was recently occupied by some other person in the month of June-2022 and Shri Rohan Kumar @ Aryan Ganesh Thorat @ Ganesh Laxman Ujhagrae



was not found at that address.

2.4 Therefore a Show Cause Notice F. No. VIII/10-123/DRI-RU-Gandhidham/O&A/HQ/202223 dated 23.11.2022 was issued to M/s. Kusum Industries, Vadodara, M/s. Khaqan General Trading LLC, Sharjah, Dubai and / or any other person or persons having claim over the seized quantities of Red Sander logs, including the appellant calling upon them to show cause to the Additional Commissioner of Customs, Custom House, Ahmedabad as to why:-

- (a) 1004 Nos. of Red Sander logs, weighing 18.863 MT having market value of about Rs. 15,09,04,000/- @ Rs. 80 Lakhs/MT, which were attempted for export in violation of the prohibition imposed on the same, and which were seized from the Container No. BSIU3151184 covered under the Shipping Bill No. 1578745, dated 23.05.2022 filed at Mundra Port by the Customs Brokers M/s. Right Shipping Agency in the name of the exporter as M/s. Kusum Industries, Vadodara and from the Godown No. 17, Uma Industrial Estate, Behind Bhagyodaya Hotel, Vasana, Sanand Ahmedabad should not be confiscated under Sections 113(d), 113(h), 113(e) and 113(i) of the Customs Act, 1962; and
- (b) 312 bags of 50 kg of Animal feed, 204 bags of 32 Kgs of Powder for animal feed, 220 Nos. Solid Iron Rods, which were used for concealing the 164 Red Sander logs in the godown No. 17, Uma Industrial Estate, Behind Bhagyodaya Hotel, Vasana, Sanand Ahmedabad, which were attempted for export in violation of the prohibition imposed on the same, and which were seized on 10.07.2022, should not be confiscated under Section 119 of the Customs Act, 1962; and
- (c) One 20 feet Container No. BSIU 3151184 which was used for the smuggling of 840 Red Sanders logs seized on 26.05.2022, should not be confiscated under Section 118 of the Customs Act, 1962; and
- (d) The Let Export order issued under Section 51 of the Customs Act, 1962 for the Shipping Bill No. 1578745 dated 23.05.2022 on the basis of wrong declarations should not be cancelled, being obtained fraudulently; and
- (e) The claims for drawback of Rs. 9473/- electronically filed by M/s. Kusum Industries, Vadodara while filing the Shipping Bill No. 1578745 dated 23.05.2022 filed by them at ICD Khodiar are not permissible for sanction in favour of the exporter in view of the apparent discrepancies noticed during the examination, and hence the same should not be rejected under the provisions of Section 75A (2) of the Customs Act, 1962 read with Rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995/ Rule 17 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 2017; and
- (f) Penalty should not be imposed on each of them individually, including appellant under Section 114(i) and 114AA of the Customs Act, 1962; and



- (g) Any other person claiming ownership of the seized goods are further and specifically directed to produce the evidence of legal possession and ownership of the seized goods along with their reply to the Notice. In case of failure in submission of such evidence, their claim may not be entertained and the matter may be proceeded ahead accordingly.

2.4.1 Shri Shrikant Rayshibhai Maheshwari who was the registered owner made the Vehicle no. GJ-12-Z-1209 liable for confiscation under the provisions of Section 115 (2) of the Customs Act, 1962 in light of his allowing usage of the said conveyance as a means of transport in the smuggling of Red Sander logs. Therefore, vide the aforementioned show cause notice, Shri Shrikant Rayshibhai Maheshwari was called upon to show cause to the Additional Commissioner of Customs, Custom House, Ahmedabad as to why the Vehicle No. GJ-12-Z-1209, which was used for transportation of the Red Sander logs, should not be ordered for confiscation under Section 115(2) of the Customs Act, 1962.

2.4.2 Vide the aforementioned show cause notice, the following further persons/ companies/firms/ concerns as appearing in Column 2 of the following table, were individually and separately called upon to show cause in writing to the competent authority, Additional Commissioner of Customs, Custom House, Ahmedabad, as to why Penalty should not be imposed on each of them individually under below mentioned penal provisions, separately, for the acts of omissions and commissions in the smuggling of the red sander logs out of India in violation of the prohibition imposed on the same under the Customs Act, 1962: -

S. No.	Name (S / Shri/ Ms. / Smt. / M/s)	Penal provisions under Customs Act, 1962		
(1)	(2)	(3)	(4)	(5)
1	Shri Manish Pravinchand Barot, Authorized person of M/s Kusum Industries, Vadodara	114 (i),	114AA,	117
2	Ms. Mahima M. Barot, Prop. M/s Kusum Industries, Vadodara	114 (i),	114AA,	
3	Shri Firoz Abdul Rehman Chinchwelkar @Sameer Khan	114 (i),	114AA,	
4	Shri Ganesh Laxman Ujhagare @Rohan Kumar @Aryan Ganesh Thorat	114 (i),	114AA,	
5	Shri Amit Belani, partner of M/s Transmarine Shipping & Logistics, Ahmedabad (Appellant)	114 (i),	114AA,	
6	Shri Anwar Sheikh, Gowandi, Alumbal, Mumbai	114 (i)		
7	Shri Pathan Mazhar Khan s/o Sher Khan Pathan, Iliyas colony, Near Jameel Masjid, Harsool, Aurangabad-431001	114 (i)		



8	Shri Gunvant Kanubhai Nakrani, Godown owner Plot No. 17, Uma Industrial Estate, Behind Bhagyodaya Hotel, Vasana, Sanand, Distt. Ahmedabad, Gujarat-382170	114 (i),	114AA,	
9	Shri Shrikant Rayshibhai Maheshwari, Bhuj (Owner of Trailer No. GJ-12-Z-1209)	114 (i),	114AA,	
10	M/s. Khaqan General Trading LLC, 104, Brothers Tower Al Taawun Street, Sharjah, UAE P.O. Box No. 22165	114 (i),	114AA,	
11	M/s. Right Ship Agency at Ahmedabad	114(i)		

2.5 The adjudicating authority vide the impugned order has passed the order as detailed below:-

- i. He ordered absolute confiscation of the goods i.e. 1004 logs of Red Sanders weighing 18.863 MT and having market value of Rs. 15,09,04,000/- seized from Container bearing No. BSIU3151184 covered under Shipping Bill no. 1578745 dated 23.05.2022 and from Godown no. 17, Uma Industrial Estate, behind Bhagyodaya Hotel, Vasana, Sanand, Ahmedabad under Section 113(d), 113(e), 113 (h) and 113 (i) of the Customs Act, 1962;
- ii. He ordered absolute confiscation of 312 bags of 50 kg of Animal feed, 204 bags of 32 Kgs of Powder for animal feed, 220 Nos. Solid Iron Rods, which were used for concealing the 164 Red Sander logs in the godown No. 17, Uma Industrial Estate, Behind Bhagyodaya Hotel, Vasana, Sanand Ahmedabad, which were attempted for export in violation of the prohibition imposed on the same, and which were seized on 10.07.2022, under Section 119 of the Customs Act, 1962;
- iii. He refrained from confiscating the Container Nos. BSIU 3151184 under the provisions of Section 118 (a) of the Customs Act, 1962, in view of the reasons mentioned at para 15.C of the impugned order;
- iv. He ordered cancellation of the Let Export order issued under Section 51 of the Customs Act, 1962 for the Shipping Bill No. 1578745 dated 23.05.2022 on the basis of wrong declarations and on being obtained fraudulently;
- v. He rejected the claims for drawback of Rs. 9473/- electronically filed by M/s. Kusum Industries, Vadodara while filing the Shipping Bill No. 1578745, dated 23.05.2022 filed by them at ICD Khodiyar being not permissible for sanction in favour of the exporter in view of the apparent discrepancies noticed during the examination under the provisions of the 75A (2) of the Customs Act, 1962 read with Rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995/ Rule 17 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 2017;
- vi. He imposed a penalty of Rs. 25,00,000/- on Shri Manish P. Barot, authorized person of M/s Kusum Industries, Vadodara under section 114 (i) of the Customs



- Act, 1962;
- vii. He imposed a penalty of Rs. 25,00,000/- on Shri Manish P. Barot, authorized person of M/s Kusum Industries, Vadodara under section 114 AA of the Customs Act, 1962;
 - viii. He imposed a penalty of Rs. 25,00,000/- on Shri Manish P. Barot, authorized person of M/s Kusum Industries, Vadodara under section 117 of the Customs Act, 1962;
 - ix. He imposed a penalty of Rs. 25,00,000/- on Ms Mahima M. Barot, Proprietor of M/s Kusum Industries, Vadodara under section 114 (i) of the Customs Act, 1962;
 - x. He imposed a penalty of Rs. 25,00,000/- on Ms Mahima M. Barot, Proprietor of M/s Kusum Industries, Vadodara under section 114 AA of the Customs Act, 1962;
 - xi. He imposed a penalty of Rs. 1,00,00,000/- on Shri Firoz Abdul Rehman Chinchwelkar @ Sameer Khan, who planned, monitored and executed the consignments of smuggling of Red Sanders in guise of "Prestine Assorted Toiletries 4*5 Ltrs." under 114 (i) of the Customs Act, 1962;
 - xii. He imposed a penalty of Rs. 1,00,00,000/- on Shri Firoz Abdul Rehman Chinchwelkar @ Sameer Khan, who planned, monitored and executed the consignments of smuggling of Red Sanders in guise of "Prestine Assorted Toiletries 4*5 Ltrs." under section 114 AA of the Customs Act, 1962;
 - xiii. He imposed a penalty of Rs. 1,00,00,000/- on Shri Ganesh Laxman Ujhagare @ Rohan Kumar @ Aryan Ganesh Thorat, who planned, monitored and executed the consignments of smuggling of Red Sanders in guise of "Prestine Assorted Toiletries 4*5 Ltrs." under 114 (i) of the Customs Act, 1962;
 - xiv. He imposed a penalty of Rs. 1,00,00,000/- on Shri Ganesh Laxman Ujhagare @ Rohan Kumar @ Aryan Ganesh Thorat, who planned, monitored and executed the consignments of smuggling of Red Sanders in guise of "Prestine Assorted Toiletries 4*5 Ltrs." under section 114 AA of the Customs Act, 1962;
 - xv. He imposed a penalty of Rs. 10,00,000/- on Shri Amit Belani Partner in M/s Transmarine Shipping and Logistics (Appellant), who in connivance with Shri Ganesh Laxman Ujhagare @ Rohan Kumar @ Aryan Ganesh Thorat arranged for container used for smuggling of Red Sanders under section 114 (i) of the Customs Act, 1962;
 - xvi. He imposed a penalty of Rs. 10,00,000/- on Shri Amit Belani Partner in M/s Transmarine Shipping and Logistics (Appellant), who in connivance with Shri Ganesh Laxman Ujhagare @ Rohan Kumar @ Aryan Ganesh Thorat arranged for container used for smuggling of Red Sanders under section 114 AA of the Customs Act, 1962;
 - xvii. He imposed a penalty of Rs. 1,00,00,000/- on Shri Anwar Sheikh, Gowandi, Alumbal, Mumbai, who financed the smuggling of goods and in connivance with Shri Ganesh Laxman Ujhagare @ Rohan Kumar @ Aryan Ganesh Thorat and




- Shri Firoz Abdul Rehman Chinchwelkar @ Sameer Khan planned, monitored and executed the consignments of smuggling of Red Sanders under 114 (i) of the Customs Act, 1962;
- xviii. He imposed a penalty of Rs. 1,00,00,000/- on Shri Anwar Sheikh, Gowandi, Alumbal, Mumbai, who financed the smuggling of goods and in connivance with Shri Ganesh Laxman Ujhagare @ Rohan Kumar @ Aryan Ganesh Thorat and Shri Firoz Abdul Rehman Chinchwelkar @ Sameer Khan planned, monitored and executed the consignments of smuggling of Red Sanders under section 114 AA of the Customs Act, 1962;
- xix. He imposed a penalty of Rs. 5,00,000/- on Shri Pathan Mazhar Khan s/o Sher Khan Pathan, Iliyas colony, Near Jameel Masjid, Harsool, Aurangabad-431001, who in connivance with Shri Ganesh Laxman Ujhagare @ Rohan Kumar @ Aryan Ganesh Thorat and Shri Firoz Abdul Rehman Chinchwelkar @ Sameer Khan and Shri Anwar Sheikh monitored and transported the consignments of smuggling of Red Sanders under 114 (i) of the Customs Act, 1962;
- xx. He imposed a penalty of Rs. 5,00,000/- on Shri Pathan Mazhar Khan s/o Sher Khan Pathan, Iliyas colony, Near Jameel Masjid, Harsool, Aurangabad-431001, who in connivance with Shri Ganesh Laxman Ujhagare @ Rohan Kumar @ Aryan Ganesh Thorat and Shri Firoz Abdul Rehman Chinchwelkar @ Sameer Khan and Shri Anwar Sheikh monitored and transported the consignments of smuggling of Red Sanders under 114 AA of the Customs Act, 1962;
- xxi. He imposed a penalty of Rs. 5,00,000/- on Shri Gunvant Kanubhai Nakrani, Godown owner Plot No. 17, Uma Industrial Estate, Behind Bhagyodaya Hotel, Vasana, Sanand, Distt. Ahmedabad, Gujarat-382170 who provided his godown to Shri Firoz Abdul Rehman Chinchwelkar @ Sameer Khan and connived with him to execute the smuggling of Red Sanders under Section 114 (i) of the Customs Act, 1962;
- xxii. He imposed a penalty of Rs. 5,00,000/- on Shri Gunvant Kanubhai Nakrani, Godown owner Plot No. 17, Uma Industrial Estate, Behind Bhagyodaya Hotel, Vasana, Sanand, Distt. Ahmedabad, Gujarat-382170 who provided his godown to Shri Firoz Abdul Rehman Chinchwelkar @ Sameer Khan and connived with him to execute the smuggling of Red Sanders under section 114 AA of the Customs Act, 1962;
- xxiii. He imposed a penalty of Rs. 2,50,000/- on Shri Shrikant Rayshibhai Maheshwari, Bhuj, the owner of Trailer No. GJ-12-Z-1209, who provided his said Vehicle to Shri Firoz Abdul Rehman Chinchwelkar @ Sameer Khan and connived with him to execute the smuggling of Red Sanders under Section 114 (i) of the Customs Act, 1962;
- xxiv. He imposed a penalty of Rs. 2,50,000/- on Shri Shrikant Rayshibhai Maheshwari, Bhuj, the owner of Trailer No. GJ-12-Z-1209, who provided his said Vehicle to



Shri Firoz Abdul Rehman Chinchwelkar @ Sameer Khan and connived with him to execute the smuggling of Red Sanders under section 114 AA of the Customs Act, 1962;

- xxv. He imposed a penalty of Rs. 50,00,000/- on M/s. Khaqan General Trading LLC, 104, Brothers Tower Al Taawun Street, Sharjah, UAE P.O. Box No. 221654 for importing and attempting to import, for consideration, Red Sanders from India under Section 114 (i) of the Customs Act, 1962;
- xxvi. He imposed a penalty of Rs. 50,00,000/- on M/s. Khaqan General Trading LLC, 104, Brothers Tower Al Taawun Street, Sharjah, UAE P.O. Box No. 221654 for importing and attempting to import, for consideration, Red Sanders from India under section 114 AA of the Customs Act, 1962;
- xxvii. He imposed a penalty of Rs. 1,00,000/- on M/s. Right Ship Agency at Ahmedabad, the Customs Broker for failing to discharge his obligation as customs broker and aiding in export of illegal export of Red Sanders from India under Section 114 (i) of the Customs Act, 1962;
- xxviii. He imposed a penalty of Rs. 1,00,000/- on M/s. Right Ship Agency at Ahmedabad, the customs broker for failing to discharge his obligation as customs broker and aiding in illegal export of Red Sanders from India under section 114 AA of the Customs Act, 1962;
- xxix. He ordered denial of any further claim by any other person over seized goods mentioned in para supra, as no one has claimed ownership of the seized goods and has not presented any documentary evidence to support their claim during the course of investigation and adjudication proceedings;
- xxx. He ordered confiscation of Vehicle bearing No. GJ-12-Z-1209 that was used for smuggling of 840 logs of Red Sanders under Section 115(2) of the Customs Act, 1962. He gave an option to Shrikant Rayshibhai Maheshwari, Bhuj, the legal owner of the said Vehicle, to redeem the truck bearing no. GJ-12-Z-1209 on payment of redemption fine of Rs. 50,000/- under Section 125 (1) of the Customs Act, 1962.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the Appellant have filed the present appeal. The Appellant have, inter-alia, raised various contentions and filed detailed submissions in their Appeal memorandum dt. 08.02.2024, as given below in support of their claims:

- That the role of the appellant recorded in the SCN is just for the purpose of implicating the appellant wrongly and without proper understanding of the law provisions. It is alleged that the appellant did not bother to inquire the reason of changing of godown by Sameer Khan. First and foremost thing is that godown was not changed but one more godown was taken on rent by Sameer Khan. The fact



is crystal clear that one Mr. Narendra, who was knowing the appellant had shown the godown to Sameer Khan. Mr. Narendra and the appellant are known to each other for almost last 8 years. The appellant was simply informed by Narendra that one party is having godown in Ajanta Estate and wants to have other godown on rent. It is also on record that the godown in the Ajanta Estate was vacated by Sameer Khan in the month of June 2022. How can there be such false allegation that the appellant was required to check and verify the reason of changing of godown when there was no change? Even otherwise, which provision of law mandates the appellant to bother or to inquire about the reason of changing godown? Renting of godown is the business of the appellant and the right to do lawful business is fundamental right under the Constitution of India.

- That the next allegation is that the appellant rented the godown for three months without any agreement. Renting of godown or any business premises without any agreement is not crime in any law. Sameer Khan was not sure for how long they required the godown on rent and therefore no rent agreement was made initially for three months. How can the non-execution of rent agreement be viewed as connivance of the appellant in the export/smuggling of red sanders? The appellant is in the business of renting of the godown since 2015 and till date no case has been registered against the appellant, neither under the income tax law provisions nor under any other criminal law provisions.
 - That it is further alleged that the appellant received the payment of rent in the account of the appellant's friend and such allegation has been made as the basis that the appellant had connived in the alleged smuggling of red sanders. It was purely for personal reasons the appellant wanted that initial payment be received by the appellant in the account of the appellant's friend for the purpose of build-up capital base. This was done at the request of the said friend. Such an act cannot be viewed as connivance or even knowledge of something happening wrong. Had it been so, the appellant would not have preferred to enter into any kind of rent agreement even at later stage. The fact is that the appellant never thought of any unlawful activity on the part of Sameer Khan and the appellant was not aware of the actual activities of Sameer Khan.
 - That it is a matter of fact that the appellant made low-cost rent agreement in the name of Hasina Samir Shaikh (wife of Sameer Khan) as desired by Sameer Khan. It is on record that the rent was received accordingly by cheque. It was only a commercial decision to make low-cost rent agreement and can never be construed as connivance in the crime. The godown is the property owned by the appellant and the appellant could have offered it for usage thereof without any consideration.
- How a rent agreement or for that reason a low-cost rent agreement be equated



with the knowledge of some unlawful activity? Therefore, presumption on the basis of low-cost rent agreement that the appellant was knowing about any illegal activity is totally irrelevant and incorrect. Had there been in the knowledge of the appellant that there was something wrong, believe hypothetically that the appellant would have charged more amount of rent from Sameer Khan. It is recorded in the statement of Ravi Kapoor, godown owner of the godown located at Natraj Estate (under para 5.25 of the SCN) that Ravi Kapoor rented the godown to Sameer Khan from the month of March 2022 for Rs. 1,15,000/- per month and in that case also the rent agreement was made at the fag end of the month of May 2022. It is also on record that the appellant agreed to rent the godown for Rs. 60,000/- per month which is lesser than the amount charged by Ravi Kapoor. Surprisingly, the role of Ravi Kapoor has been viewed positively and in tune with the law provisions and Ravi Kapoor has not been made co-appellant in the present case. The reason for such differential treatment is best known to the investigating agency. Accordingly, low-cost agreement made by the appellant cannot in any manner be viewed as connivance in the crime and the proposal of imposition of any penalty under the Act is unjust and unfair.

- That it is further recorded/alleged that the appellant's carelessness is not purely innocent. At the, the appellant would like to state and submit that the appellant was never careless. The appellant is in the business for more than 10 years and is fully aware about the responsibilities linked with the business. Any decision taken for commercial purpose cannot be a reason to view the decision as carelessness on the part of the appellant neither can it be viewed as connivance in the crime? The appellant was not aware of any unlawful activity being done by the person (Sameer Khan) who had taken the godown on rental basis. None of the statements, including statements of Sameer Khan, recorded by the DRI officers implicate the appellant in the act of smuggling of the red sanders. Therefore, the allegation of carelessness or innocence on the part of the appellant is totally baseless. FURTHER, WHEN CARELESSNESS IS ALLEGED, IT AUTOMATICALLY ESTABLISH NON-INVOLVEMNT. THIS IS BECAUSE INVOLVMENT MAKES THE OFFENDER MORE CAREFUL.
- That the next observation in the SCN is that the appellant has seen unloading of Cattle Feed in the godown. It is a matter of fact that the appellant was informed by Sameer Khan that they are in the business of transport and import/export of the goods and require the godown on rent for warehousing of the goods. It is undisputed fact that the godown rented by the appellant was locked by Sameer Khan and keys of the locks were kept by Sameer Khan only. The appellant used to visit the godown hardly for some time on random days. It was incidental that the



appellant had observed the unloading of Cattle Feed in the godown on two occasions. The seeing of unloading of Cattle Feed in the godown is no crime, neither can it be linked to having knowledge of any unlawful activity. Rather, it imparts a sense of the things are going on normal basis and nothing abnormal is happening in the godown. Similarly, seeing of unloading of Cattle Feed is not a reason to raise any doubts about the other activities of Sameer Khan. The appellant had never seen any abnormal thing as happening in the godown.

- It is alleged that the appellant never cared to ensure the usage of the godown for legal purpose. It is absolutely incorrect that the appellant was careless on the part of the responsibilities linked with the business of renting of the godown. Rather, the appellant understood the responsibilities and for that specific reason the appellant included a specific clause in the rent agreement about use of the godown. Under Clause 5.2/5.3 of the Rent Agreement, it is clearly mentioned that the tenant shall not use the premises for any illegal, objectionable trade or business and the tenant shall not do any activity in the premises which is prohibited by the law. How else the appellant could have ensured the usage of the godown? Thus, the godown was rented for lawful activity/legal purpose only.
- That it is matter of fact that Red Sanders has been recovered from the godown owned by the appellant. However, it is also a fact that the appellant was not involved in any manner in dealing/handling of the said red sanders. The appellant had never observed loading/unloading of red sanders. It is worth to record that in the Panchnama dated 09.07.2022 drawn at the godown of the appellant, the lock was broken/removed forcefully and at that time as nothing objectionable was found, the godown was locked with the help of a new lock brought by the appellant and the keys of the new lock were kept with the appellant. The Panchnama dated 09.07.2022 (search authorization was dated 09.07.2022) was concluded at 14:30 hrs. on that day. The Panchnama dated 10.07.2022 drawn at the godown of the appellant was initiated at 08:30 hrs. on 10.07.2022 in terms of the search authorization dated 09.07.2022. In these circumstances, it is not understood that in the Panchnama dated 10.07.2022 drawn at the same godown of the appellant why the lock was broken/removed. It is also not convincing that one and the same officer issues two different search authorisations on 09.07.2022 for a single premises. Technically and lawfully, such a blunder makes the Panchnama dated 10.07.2022 invalid. Further, recovery of red sanders from the godown is in no manner an offence on the part of the appellant. The red sanders recovered from the godown rented by the appellant were not the red sanders which were attempted to be exported illegally. The appellant had observed many other flaws in the SCN which are eye-catching and may hamper the interest of the exchequer



in furtherance of the case. Glaring contradictions made in the SCN, makes the appellant to believe that the appellant has unnecessarily been dragged into the litigation just with a pre-conceived notion that the appellant has been part of the conspiracy in smuggling of red sanders.

- That the SCN had failed to prove that the appellant has acted in any manner in dealing/handling of red sanders seized by the DRI officers. Renting of the premises for legal business is not any kind of omission neither abetment of any illegal act. The appellant was not having any knowledge of the illegal export of red sanders by Sameer Khan. Knowledge with regard to the storage of red sanders in the rented godown, on the part of the appellant has not been established. There is no evidence to establish the involvement of the appellant in any manner or to show that the appellant was aware that he (the appellant) was aiding/abetting illegal export of red sanders. Mere allegation or presumption that the appellant has omitted/abetted is not sufficient for imposition of any penalty under Section 114(i) of the Act and therefore no penalty under Section 114(i) of the Act is imposable upon the appellant. The appellant referred the following decisions in this regard in their support (i) Nirmal Transports 2014 (312) ELT 803, (ii) Hitesh Maheshbhai Mehta 2008 (230) ELT 43 & (iii) Ramesh Prabhudas Modi 1989 (44) ELT 791.

PERSONAL HEARING:

4. Personal hearing in the matter was held on 13.11.2025, following the principles of natural justice in physical mode. Shri K.J. Kinarivala, Consultant appeared for the hearing on behalf of the Appellant and re-iterated the submission made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. The Appellant has filed the present appeal on 08.02.2024. In the Form C.A.-1, the date of communication of the Order-In-Original dated 05.12.2023 has been shown as 13.12.2023. Therefore, as per the appellant submission, the appeal has been filed within normal period of 60 days, as stipulated under Section 128 (1) of the Customs Act, 1962.

- 5.1 The Appellant has submitted copy of the T.R.6 Challan No. 7147, dated 03.02.2024 for Rs. 75,000/- towards payment of pre-deposit calculated @ 7.5% of the disputed amount of penalty of Rs. 10,00,000/- under the provisions of Section 129E of




the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit and complies with the requirement of Section 129E of the Customs Act, 1962, the appeals has been admitted and being taken up for disposal on merits.

5.2 Copy of appeal memorandum and its enclosures received from the appellant have been forwarded to the adjudicating authority i.e the Additional Commissioner, Customs, Ahmedabad vide letter dt. 21.05.2024 calling comments and necessary information/ details. However, till date no reply have been received in the matter.

6. I have carefully gone through the appeal memorandum as well as records of the case and the submissions made on behalf of the Appellant during the course of hearing. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority imposing penalty on the appellant under Section 114(i) and 114AA of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

6.1 It is observed that DRI officers received specific intelligence that Red Sanders logs were being exported by misdeclaring them as "*Prestine Assorted Toiletries 4x5 LTR (White & Blue), HS Code 34025000*" by M/s Kusum Industries. The consignment had already been given Let Export Order (LEO) on 24.05.2022 at ICD Sabarmati, Kaligam, Ahmedabad, and the container had reached Mundra Port. Acting on the intelligence, DRI placed the container on hold on 25.05.2022 for detailed examination. The cargo covered under Shipping Bill No. 1578745 dated 23.05.2022, packed in Container No. BSIU 3151184, was shifted to MICT CFS, Mundra. On 26.05.2022, the container was scanned by the Container Scanning Division, Mundra, and the scan indicated a mismatch with the declared cargo. Thereafter, a detailed physical examination was carried out under a Panchanama dated 26.05.2022 at MICT CFS, Mundra. During the examination, the container was found to contain 840 wooden logs weighing 14.634 MT, instead of the declared toiletries. No toiletries were found. Officers of the Forest Department were called to the spot, and upon inspection, they opined that the wooden logs appeared to be Red Sanders logs. Thus, the export consignment of M/s Kusum Industries, Vadodara was found to be misdeclared, and the cargo actually consisted of prohibited Red Sanders logs, attempted to be exported under the false declaration of "*Prestine Assorted Toiletries 4x5 LTR (White & Blue), HS Code 34025000.*"

6.1.1 Further investigation led to the search of a godown located at Plot No. 17, Uma Industrial Estate, Behind Bhagyodaya Hotel, Vasana, Sanand, Ahmedabad-382170,



on 09.07.2022 and 10.07.2022. The owner of the godown Shri Gunvant Kanubhai Nakrani stated that it had been rented to Shri Sameer Khan, and the rental agreement was executed in the name of his wife, Ms. Hasina Samir Shaikh. During the search, three liquid bottles of "Prestine Cleaner" were found in the room used by the labourer/caretaker, Shri Sukhdev Rajak. Shri Sukhdev Rajak informed that he had previously loaded goods for Shri Sameer Khan and had packed Prestine brand cleaner into boxes in a different premises near Natraj Estate, and that he had taken the said three cans from there. Upon conducting a further search on 10.07.2022, it was observed that 50 kg cattle-feed bags were neatly stacked inside the godown. Underneath these bags, 164 Red Sanders wood logs weighing 4.229 MT were found concealed. The identity of the wooden logs as Red Sanders was confirmed by the Range Forest Officer, Sanand. During the panchanama dated 10.07.2022, the 164 Red Sanders logs weighing 4.229 MT were seized along with the covering materials, namely cattle-feed, iron bars and toilet cleaner, under a seizure memo dated 10.07.2022. Subsequently, the seized 164 logs were transported to Thar Dry Port, ICD Sanand, and handed over to Shri Parvesh Tripathi, Sr. Executive, under a supratnama dated 10.07.2022. The covering materials were handed back to the godown owner for safe custody via supratnama dated 10.07.2022, and were later shifted to ICD Viramgam.

6.2 It is observed that the statement of Shri Gunvant Kanubhai Nakrani, owner of the godown at *Plot No. 17, Uma Industrial Estate, Behind Bhagyodaya Hotel, Vasana, Sanand, Ahmedabad-382170*, was recorded on 11.07.2022. He stated that he purchased this plot in 2010 for Rs. 5.5 lakhs and constructed the warehouse and rooms around 2012–13. Since 2015, he has been renting this godown. He explained that in October–November 2021, two persons—Sameer Khan and Aryan (Ganesh) Thorat—approached him after Diwali to rent the godown. The rent was finally given in the name of Sameer Khan, but he requested that the rent agreement be made in the name of his wife, Ms. Hasina Sameer Shaikh.

6.2.1 It is further observed that in early **November 2021**, Aryan and Sameer told him that they were in the import-export and transport business and needed wider shutters so trucks and containers could enter the godown. They agreed to pay **Rs. 60,000 per month**, and Aryan agreed to bear the shutter-widening cost. When Aryan wanted to transfer money, Nakrani gave him the bank details of his friend **Jaipal Singh Chavda**, who received **Rs. 1.10 lakh**. Jaipal, who works in Eagle Company and helps him with share trading, He stated that since no formal agreement was initially made and Aryan and Sameer wanted to use the godown for three months without paperwork, he did not



want the transactions reflected in his own account. Payments were made through Jaipal Singh Chavda's account—Rs. 1.10 lakh from Aryan and Rs. 80,000 from Sameer—along with a Rs. 40,000 cheque signed by Hasina in February, and Rs. 1.60 lakh in cash in installments of Rs. 50,000 + Rs. 50,000 + Rs. 60,000. A low-cost rent agreement was ultimately notarized on 12.05.2022.

6.2.2 It is further observed that Aryan had earlier told him that goods would be sent to Gandhidham-Kandla and that they also arranged transport. He saw cattle-feed bags being unloaded twice at the godown and confirmed that the same white 50-kg cattle-feed bags, which were later found concealing Red Sanders during the panchanama dated 10.07.2022, were the same bags he had seen being unloaded. At the time of unloading, around 5 labourers were present, but Aryan and Sameer were not present physically; however, they used to bring labourers for such work.

6.2.3 It is further observed that the appellant has been engaged in the business of renting godowns for several years. Despite his experience in this line of business, he permitted Shri Sameer Khan and Shri Ganesh Laxman Ujhagare @ Rohan Kumar @ Aryan Ganesh Thorat to occupy his godown for a period of three months without executing any proper rent agreement. Even assuming, for the sake of argument, that he had no prior knowledge of the smuggling of Red Sanders, the undeniable fact remains that his premises were used for the concealment and storage of the prohibited goods. The conduct of the appellant exhibits **gross negligence and a reckless disregard of due diligence** expected from a person in the business of renting commercial premises. His decision to rely solely on verbal assurances and to create a **low-value rent agreement at a later stage** indicates conscious laxity. Further, his act of providing the bank account number of his friend for receipt of rental payments from the said persons, instead of receiving payments directly in his own account, reflects **deliberate concealment and irregularity in financial dealings**. Under these circumstances, the appellant cannot claim innocence or distance himself from the illegal activities carried out in his own premises. The fact that **no previous case has been registered against him** does not absolve him of responsibility for the acts and omissions committed in the present matter. His conduct, viewed cumulatively, amounts to **wilful acts of commission and omission**, which materially facilitated the use of his premises for illegal activities. Accordingly, the appellant's plea of innocence is untenable and unsustainable in law.

6.3 It is also on record that when Shri Aryan Ganesh Thorat and Shri Sameer Khan approached him to hire the godown for storing cattle feed, and he learned that they already had a warehouse in the Ajanta area of Sanand, he did not inquire into the reason for shifting to a new godown. Further, when they requested the use of the warehouse for



three months without any written agreement, he agreed to it and, in order to conceal the transaction on behalf of Shri Aryan Ganesh Thorat, he provided the bank account details of his friend for receiving the payments. He also stated that, on the instructions of Shri Aryan Ganesh Thorat and Shri Sameer Khan, he arranged for a low-value rent agreement, which was notarized on 12.05.2022. His conduct shows that his negligence was not entirely innocent, as evident from his awareness of the storage and loading/unloading activities taking place in the premises. He admitted that he had seen cattle-feed bags being unloaded from trucks at his godown, and subsequently, a large quantity of Red Sanders was recovered from the same premises. However, he never took steps to ensure that his property was being used for lawful purposes. By his connivance and deliberate inaction, he has rendered himself liable to penal action under Sections 114(i) and 114AA of the Customs Act, 1962.

7. Based on the foregoing facts, circumstances, and the evidence available on record, the conduct of Shri Gunvant Kanubhai Nakrani, owner of the godown situated at Plot No. 17, Uma Industrial Estate, Behind Bhagyodaya Hotel, Vasana, Sanand, District Ahmedabad, Gujarat-382170, clearly establishes his carelessness, negligence, and connivance. The specific instances thereof are enumerated below:

- (i). Failure to Exercise Due Diligence While Renting the Godown : The appellant rented the godown to Shri Sameer Khan and Shri Aryan Ganesh Thorat without carrying out any verification of their background or business activities. He knew they already operated a warehouse in Ajanta area, Sanand, yet made no inquiry into the need for an additional godown. He accepted their explanation at face value, demonstrating reckless indifference.
- (ii). Allowing godown on rent without a Written Agreement : The appellant permitted Aryan and Sameer to use the godown for three months without any rent agreement, contrary to normal commercial practice. This facilitated unrecorded and unregulated use of his premises, enabling illegal storage activities.
- (iii). Concealment of Rental Transactions : The appellant deliberately avoid reflecting rental receipts in his own account, he provided the bank account of his friend Jaipal Singh Chavda for receiving payments. Aryan and Sameer transferred Rs. 1.10 lakh + Rs. 80,000 to Jaipal's account and also paid Rs. 40,000 by cheque and Rs. 1.60 lakh in cash, all outside formal documentation. Such conduct shows conscious concealment of the arrangement.




(vi). Allowing Unrestricted Access to Unknown Labourers: The appellant permitted Aryan and Sameer to bring their own labourers for unloading, without maintaining any record or supervision. This facilitated unrestricted movement of goods, including prohibited Red Sanders, into the premises.

(viii). Conduct Amounting to Connivance and Facilitation: The appellant's acceptance of undisclosed payments, lack of documentation, and deliberate avoidance of scrutiny show wilful blindness and tacit cooperation. His acts materially assisted in the storage and attempted export of prohibited Red Sanders.



7.1 The appellant has relied upon the decisions in (i) Nirmal Transports – 2014 (312) ELT 803, (ii) Hitesh Maheshbhai Mehta – 2008 (230) ELT 43, and (iii) Ramesh Prabhudas Modi – 1989 (44) ELT 791 in support of his defence. However, each of these judgments is clearly distinguishable on facts and does not apply to the present case. The appellant's own conduct—characterized by deliberate concealment, non-documentation, and facilitation—places him in an entirely different category from the innocent intermediaries in the cited cases.

7.1.1 The case of M/s Nirmal Transports – 2014 (312) ELT 803 (Tri. Bang.) is distinguishable from the present case. In Nirmal Transports, the transporter had no knowledge of the nature of the goods being moved. There was no evidence of involvement, benefit, or concealment. In contrast, the appellant knowingly allowed use of his godown without verification, without documents, and with concealed cash transactions. Here, the appellant's conduct goes far beyond "mere renting": he facilitated the access, concealed payments, created a backdated/low-value agreement, and failed to verify cargo despite witnessing repeated unloading. In the present case, the appellant deliberately avoided documentation, routed rent through a friend's account, accepted cash, and enabled unregulated use of the premises. Hence, Nirmal Transports has no application where there is clear evidence of connivance, wilful blindness, concealment, and facilitation on the part of the appellant.

7.1.2 The case of Shri Ramesh Prabhudas Modi – 1989 (44) ELT 791 (Tri.) is clearly distinguishable from the facts of the present case. Distinguished on Facts. In Ramesh P. Modi, the Tribunal exonerated the person because no link could be established between him and the seized smuggled goods. In the present case, the direct link is undeniable. 164 Red Sanders logs were found inside the appellant's premises. The same offenders used the godown and export container. The appellant permitted entry, occupation, and operations without verification of the person. Here, the appellant facilitated storage and concealment by not maintaining a rent agreement, using a friend's bank account to receive rent, accepting cash outside formal channels, creating misleading documentation and allowing unrestricted loading/unloading. The present case involves both deliberate acts (concealment of payments, false documentation) and reckless omissions (failure to verify identity, business, or goods). Thus, the judgment is irrelevant, as the appellant is directly connected both physically and financially with the concealment of prohibited goods.




7.2 The appellant requested for cross-examination of the panch witness who witnessed drawl of Panchnama. However, the appellant have not shown any reason as to why they want to cross examine these panchas. It is observed that the panch witness is merely an witness to the panchnama drawn by the DRI officers and does not constitute the basis of the demand or the allegations. The appellant has neither alleged bias nor established any circumstance that would justify cross-examination. Established jurisprudence holds that cross-examination is not an automatic or absolute right, particularly when the witness is not relied upon for establishing the core facts. The Tribunal in G-Tech Industries v. CCE, Chandigarh, 2016 (339) ELT 209 (Tri.-LB) also held that panch witnesses are not required to be cross-examined when their role is limited to witnessing the search or seizure. Similarly, in Kishan Chand v. State of Haryana, (2013) 2 SCC 502, the Hon'ble Supreme Court affirmed that the panchnama is a contemporaneous official record and carries evidentiary value unless specifically rebutted through cogent evidence.

7.2.1 In the present case, the material findings are based on documentary evidence, seizure records, statements of the main persons involved, and physical recovery of prohibited goods, all of which remain uncontroverted. The appellant has not demonstrated how the absence of cross-examination of the panch witness would cause any prejudice to his defence. On the contrary, the request appears to be only an attempt to delay and protract the legal proceedings without any substantive justification. In view of the above settled legal position, the request for cross-examination of the panch witness is devoid of merit and is accordingly rejected.

8. After careful examination of the records, submissions, and investigation findings, I find that the conduct of the appellant Shri Gunvant Kanubhai Nakrani clearly contributed to the attempted smuggling of Red Sanders. The appellant, despite being in the business of renting godowns for several years, permitted the use of his premises for three months without any proper rent agreement, received payments through the bank account of his friend, and later executed a low-value agreement that did not reflect the actual arrangement. His admissions confirm that he witnessed loading and unloading activities in his godown and observed cattle-feed bags that were subsequently found to conceal Red Sanders logs stored within his premises. Even if it is assumed that he was not directly aware of the smuggling, his negligent, irregular, and evasive conduct—including failure to verify the occupants, permitting unrestricted access, and concealing financial transactions—amounts to wilful omission and facilitation. The appellant's reliance on case law does not assist him, as those decisions pertain to factually distinguishable circumstances involving innocent intermediaries. The findings of the



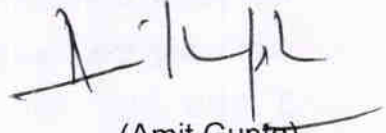
Adjudicating Authority are supported by the evidence on record, and the appellant has failed to rebut the established chain of events linking his premises and conduct to the attempted export of prohibited goods. Accordingly, the penalties imposed under Sections 114(i) and 114AA of the Customs Act, 1962 are fully justified.

9. Therefore, the impugned Order-in-Original No. 182/ADC/VM/O&A/2023-24, dated 05.12.2023 is found to be legally sustainable on its merits. Accordingly, the appeal filed by the Appellant is hereby rejected.



सत्यापित/ATTESTED

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


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

F. No. S/49-438/CUS/AHD/2023-24

Date: 28.11.2025

By Registered Post A.D/E-Mail

To,

Shri Gunvant Kanubhai Nakrani,
 Godown Owner, Plot No.: 17,
 Uma Industrial Estate,
 Behind Bhagyoday Hotel,
 Vasna, Sanand- 382 170..

(goodmanslaw11@gmail.com)

Copy to:

1. The Chief Commissioner of Customs Gujarat, Custom House, Ahmedabad. (email: ccoahm-guj@nic.in)
2. The Principal Commissioner of Customs, Custom House, Ahmedabad. (email: cus-ahmd-guj@nic.in rra-customsahd@gov.in)
3. The Additional Commissioner of Customs, Custom, Ahmedabad (cus-ahmd-guj@gov.in)
4. Shri K J Kinariwala, Consultant. (goodmanslaw11@gmail.com)
5. Guard File