

	<p>कायालिय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा, सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT-370421 PHONE:02838-271426/271423 FAX:02838-271425 Email: adj-mundra@gov.in</p>	
A. File No.	:	F. No. GEN/ADJ/COMM/50/2024-Adjn-O/o Pr Commr-Cus-Mundra
B. Order-in-Original No.	:	MUN-CUSTM-000-COM-015- 25-26
C. Passed by	:	Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue:	:	22.07.2025 22.07.2025
E. SCN No. & Date	:	SCN F. No. S/43-26/INV/CHM/2015-16/Pt-1, dated 12.02.2016 which was earlier adjudicated vide OIO No. MUN-CUSTM-000-COM-01-17-18 dated 23.05.2017 and subsequently remanded back by the CESTAT Final Order No. 12284-12286/2023 dated 17.10.2023.
F. Noticee(s) / Party / Importer	:	(1) Shri Vishal Punjabi, Proprietor of M/s Vishal Impex, Resident of House No. B-1207, Suryaprakash Residency, City lite, Surat - 395 001. (2) Shri Sumit Valecha, Proprietor of M/s Ashirwad Projects, Gandhidham Present Address: 1102, 11th Floor, Sai Prasad Apartments, Behind Pandav Bungalows, Opposite Lal Bungalows, Athwa Lines, Surat 395007. (3) Shri Nitesh Gangwani, 'H' card holder of M/s DP Logistics, Present Address: House No. 43, Plot No.3/11, Senior Citizen Society, Ward 4B, Adipur, Gandhidham; and Office no. 207, 2 nd Floor, Ratnakar Arcade, Sector-8, Gandhidham.
G. DIN	:	20250771MO000001060A

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए-3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजूश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”

"Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004."

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ - / 1000 रुपये का शुल्क टिकट लगा होना चाहिए, जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए, जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक विंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए, जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बैंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदर्स-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प बहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ डूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

8. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समझ मांग शुल्क का 7.5% भुगतान करना होगा।

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

(A) INTRODUCTION:

The present remand proceedings are being carried out in terms of CESTAT's Final Order No. FO/CA/12284-12286/2023-CU(DB) dated 17.10.2023 received vide letter 11.12.2023 in Custom House, Mundra Commissionerate, in reference to the (i) Appeal No. C/11613/2017 filed by Sh. Vishal Punjabi, Resident at House No. B-1207, Suryaprakash Residency, City Lite, Surat Gujarat (ii) Appeal No. C/11544/2017 filed by Sh. Sumit Valecha, Resident at 1102, 11th Floor, Sai Prasad Apartments, Behind Pandav Bunglows, Opposite Lal Bunglows, Athwa Lines, Surat, Gujarat 395007 (iii) Appeal No. C/11605/2017 filed by Nitesh Gangwani, Resident at House No 43, Plot No. 3/11, Senior Citizen Society Ward 4 B, Adipur, Gandhidham, Gujarat, against the Order in- Original No. **MUN-CUSTM-000-COM-01-17-18 dated 28.04.2017** issued by Hon'ble Pr. Commissioner, Custom House, Mundra, before CESTAT Ahmedabad, wherein Hon'ble CESTAT has remanded the matter in following words :

"...we set aside the impugned order-in-original and remand the matter back to the Adjudicating Authority with directions that the matter be re-adjudicated after allowing cross-examination of the persons whose statements have been used as evidence against the above appellants."

(B) FACTS OF THE CASE LEADING TO ABOVE CESTAT ORDER:

2.1 An intelligence was gathered by Special Intelligence & Investigation Branch, Custom House, Mundra to the effect that M/s Dynamic international, Surat (IEC No. 5206014206) are trying to export waste clothes (Chindi) in the guise of Ladies Fancy Scarves in seven containers to avail the benefit of duty drawback sought to be cleared at Exim Yard CFS under 36 Shipping Bills filed by Custom Broker M/s D.P. Logistics for export goods valued at Rs 19.60 Crores and attempting to avail Duty Drawback of Rs 1.85 Crores (approx.)

2.2 In addition to other persons mentioned in the **OIO no. MUN-CUSTM-000-COM-01-17-18 dated 28.04.2017** issued by Hon'ble Pr. Commissioner, Custom House, Mundra, Sh. Vishal Punjabi (Proprietor of M/s. Vishal Impex) (hereinafter referred to as "the Noticee 1" for the sake of brevity) Resident at House No. B-1207, Suryaprakash Residency, City Lite, Surat Gujarat, Sh. Sumit Valecha (Mediator) (hereinafter referred to as "the Noticee 2" for the sake of brevity) Resident at 1102, 11th Floor, Sai Prasad Apartments, Behind Pandav Bunglows, Opposite Lal Bunglows, Athwa Lines, Surat, Gujarat 395007 and Sh. Nitesh Gangwani (H Card Holder of M/s. D P Logistics) (hereinafter referred to as "the Noticee 3" for the sake of brevity) Resident at House No 43, Plot No. 3/11, Senior Citizen Society Ward 4 B, Adipur, Gandhidham, Gujarat were actively involved for fraudulent export of waste clothes ("Chindi") declared as "Ladies Fancy Scarves" to claim undue duty drawback of ₹1.85 crores.

2.3 In view of above a show cause notice F.No. S/43-26/INV/CHM/2015-16/Pt.1 dated 12.02.2016 was issued to Shri Vishal Punjabi, asking him to show cause to the Commissioner of Customs, Mundra port, as to why:

- (i) penalty under Section 114 (iii) and Section 114AA of the Customs Act, 1962 should not be imposed upon him.

2.3.1 Shri Sumit Valecha was called upon to show cause to the Commissioner of Customs, Mundra port, as to why:

(i) penalty under Section 114 (iii) of the Customs Act, 1962 should not be imposed upon him.

2.3.2 Shri Nitesh Gangwani (H Card holder of CB firm M/s DP Logistics) was called upon to show cause to the Commissioner of Customs, Mundra port, as to why:

(i) penalty under Section 114 (iii) and Section 114AA of the Customs Act, 1962 should not be imposed upon him.

3. A brief chronology and the grounds raised for the above show cause notice are as under:

3.1 In pursuance of the intelligence gathered, the SIIB Section, Mundra Customs, started investigation in the case and the goods were examined under Panchnama dated 20.08.2015 at M/s Exim Yard CFS, Mundra. On examination, goods were found to be waste clothes / "Chindis" instead of declared Ladies Fancy Scarves. The goods were seized under section 110 (1) of the Customs Act, 1962 under a reasonable belief that same are liable for confiscation under the provision of Section 113(h) and (i) of the Customs Act, 1962, vide seizure memo dated 20.08.2015.

3.2 During investigation summons dated 20.08.2015 was issued to Shri Nitesh Gangwani (H Card holder of CB M/s DP Logistics). Statements of Shri Nitesh Gangwani (H Card holder of CB M/s DP Logistics), Shri Arun Kumar (Superintendent, Audit Section, Customs Mundra), Shri Vishal Punjabi (Proprietor of M/s Vishal Impex, Surat) and Shri Sumit Valecha (Mediator), were recorded, under Section 108 of the Customs Act, 1962. In his statement dated 20.08.2015 Shri Nitesh Gangwani inter alia stated:

- that he is working as executive since 2006 in M/s D. P. Logistic (P) Ltd (Custom Broker) (CB No. R/11/86), Gandhidham and has 'H' card numbered CHA/H/80/2010 valid up to 30.06.2015;
- that he is also doing his own clearing works for Custom Broker M/s Leo Forwarders; that he looks after the assessment related work of shipping bill, dock examination of goods, obtaining stuffing permission from Docks Preventive section;
- that he has filed 36 Shipping Bills on 17.08.2015 and 18.08.2015 through CMC Centre located in Custom House Mundra on behalf of M/s Dynamic International, Surat;
- that normally all the shipping Bills of M/s. D P logistics are filed in Ahmedabad office through ICEGATE only, but in this case he was told and insisted by Shri Arun Kumar, Superintendent Customs, Mundra (Mobile Nos. 9898981484 & 7878781484); that second Mobile No. is of wife of Shri Arun Kumar to file the Shipping Bills using D P Logistics license through CMC Centre, PUB, Custom House, Mundra;
- that he knew Shri Arun Kumar, Superintendent from the year 2010-11 when he was posted as Preventive Officer, DP, Mundra and Shri Arun Kumar used to give him ideas of customs work and teach how to take benefit of it;
- that on 1st August, 2015, Shri Arun Kumar told him about some export consignment of Ladies Fancy Scarves from Mundra Port and helped him in getting the business;

- that Shri Arun Kumar also told him to file shipping bills using the license of M/s D P Logistics; that Shri Arun Kumar gave him the number of one person Shri Vishal Punjabi (9924086516) through text message and told him that Shri Vishal Punjabi is the exporter;
- that Shri Vishal Punjabi gave him IEC details and bank details of the exporter and he has not checked the KYC of M/s Dynamic International; that Shri Arun Kumar informed him that the export goods i.e. Ladies Scarves will be of worth Rs. 100/- to Rs.150/- piece and the same will be declared at Rs.240/- piece in the shipping bill and Shri Arun Kumar showed him the sample of goods at KPT colony, Gandhidham;
- that the export consignment stuffed in four containers reached on 18.08.2015, two containers reached on 19.08.2015 and one container reached on 20.08.2015 at Exim Yard CFS, Mundra;
- that he has seen the goods before examination and shocked to see the quality of goods as it was mostly of waste cloths and informed the same to Shri Arun Kumar immediately;
- that Shri Arun Kumar told him that he will speak to the exporter and he met Shri Arun Kumar at Gandhidham KPT colony in the night at 9:30 P.M. on 19.08.2015;
- that Shri Arun Kumar asked him to contact the in-charge Preventive Officer of Exim yard CFS by offering Rs. 1 Lakh per container;
- that Shri Arun Kumar offered him(Shri Nitesh Gangwani) Rs. 1 Lakh per container which he could not refuse, as money has corrupted his mind;
- that in support of above claims he submits his WhatsApp conversation and call details with Shri Arun Kumar since July 26th 2015;

3.3 SIIIB vide letter dated 21.08.2015 requested the Central Excise & Customs, Surat- I to conduct search at the office premises of M/s Dynamic International, Surat and residential premises of Shri Shashikant Chinchavale, proprietor of M/s Dynamic International, Surat, as given in IEC of the exporter. Officers of Central Excise (Prev), Surat I & Surat II conducted search operation on 24.08.2015 at the office premises of M/s Dynamic International, Surat at plot No. 9, Marghiwala compound, Bamroli Road, Surat and found that the ground floor, given on rent to one person Shri Shashikant Chinchavale, who is proprietor of M/s Dynamic International, found locked. Shri Vishal Punjabi was having the keys of premises and opened the said lock. A copy of rent agreement for said premises was also recovered which was executed between Shri Vishal Punjabi and Shri Shashikant Chinchavale. In the said premises several takas of grey fabrics were found and Shri Vishal Punjabi informed that it belongs to M/s Mark Exim and M/s Corona Exim owned by him and Shri Chirag Punjabi and they use the said premise as store. The bales containing packed readymade garments were also found and Shri Vishal Punjabi informed that it belongs to M/s Dynamic International Surat. As per details in IEC of M/s Dynamic International, residential premises of Shashikant Chinchavale, in Surat could not be traced.

3.4 Statement of Shri Arun Kumar Superintendent (Audit), Custom House, Mundra was recorded under Section 108 of Custom Act, 1962 on 21.08.2015 wherein he inter alia stated;

- that he knew Nitesh Gangwani who is working for M/s D. P. Logistics (Customs Broker) since 2010-11, when he was posted at Customs Mundra as a Preventive Officer;
- that one of his friends Shri Sumit Valecha from Aashirvad Shipping asked him for export of scarves consignments of his known friends, and Shri Sumit Valecha gave him the number of exporter and he passed the number to Shri Nitesh Gangwani as Nitesh Gangwani used to ask him for reference regarding export related work;
- that he doesn't know the name and genuineness of the Exporter and has not arranged meeting of exporter with Shri Nitesh Gangwani and exporter was supposed to pay the clearing charge, transportation charges related to the Export Cargo;
- that he gave Shri Nitesh Gangwani assurance that money will be given in proper time because the job of export has come through Shri Sumit Valecha;
- that Shri Nitesh Gangwani told him that goods are not proper and he told Shri Nitesh to talk with the exporter and return back the goods;
- that he has not seen the samples of export goods or shown any of the samples of Export Goods to Nitesh Gangwani before filing shipping bills;
- that he had no knowledge about filing of 36 Shipping Bills of M/s Dynamic International and he has not suggested Nitesh Gangwani to file the Shipping Bills related with export of scarves through M/s D.P. Logistics but he knew that Nitesh Gangwani is doing the work as Customs Broker related to the Ladies Fancy Scarves;
- that he is not aware about the drawback amount to be claimed in above mentioned 36 Shipping bills, and he met Shri Nitesh Gangwani two to three times on 18.08.2015 and 19.08.2015 in Gandhidham & Mundra casually and he has not taken interest in clearing of these shipping Bills pertaining to export of scarves;
- that Shri Nitesh Gangwani rang him probably on 19.08.2015 around in evening and said that the goods are not proper and he told Shri Nitesh Gangwani to talk to the exporter and return back the goods;
- that he did not play any role in selecting the particular CFS (EXIM Yard) for clearance of export goods and has not discussed with Nitesh Gangwani about the Customs Officer Posted in Exim Yard CFS;
- that he has no idea about drawback rates admissible to the exported goods;
- that he never said to give any amount to any officer for clearance of export goods.

3.5 Statement of Shri Sumit Valecha was recorded on 24.08.2015 under Section 108 of the Custom Act, 1962 and in his statement he inter alia stated;

- that he was partner in M/s Aashirvad Projects, Gandhidham only for engaging vessel chartering and broking. The firm was dissolved recently;
- that he does not know the owners or partners of M/s Dynamic International and never made any correspondence with them;

- that he knew Shri Vishal Punjabi since last two to three years but is unaware if he is a partner or owner of M/s Dynamic International but he knew that Shri Vishal Punjabi is associated with JD Institute of Fashion Technology, Surat.
- that he knew Shri Arun Kumar since last 7 to 8 years as a Preventive Officer and as Superintendent and he has discussed the matter of export of fancy ladies scarves with Shri Arun Kumar;
- that Shri Vishal Punjabi enquired from him about Custom Broker in Mundra for export of scarves, he in turn enquired from Shri Arun Kumar and gave Shri Arun Kumar the number of Shri Vishal Punjabi;
- that he communicated with Shri Arun Kumar and Shri Vishal Punjabi by WhatsApp and mobile to discuss the matter of export of scarves and he liaison between Shri Arun Kumar and Shri Vishal Punjabi to pass on documents and other details to Shri Nitesh Gangwani through mobile and WhatsApp;
- that he deleted contact numbers and WhatsApp conversation with Shri Arun Kumar and Shri Vishal Punjabi;
- that he knew that scarves were to be exported to UAE and also knew that export goods were different from Lady Fancy Scarves.

3.6 Meanwhile summons were issued to Shri Vishal Punjabi and Shri Shashikant Chinchavale proprietor of M/s Dynamic International but they did not turn up. Summons issued to Shri Chirag Punjabi because his firm's e-mail Id markexportsindia@gmail.com was used for communication with Shri Nitesh Gangwani regarding export of Ladies Fancy Scarves.

3.7 Another statement of Shri Arun Kumar, Superintendent was recorded again on 25.08.2015 under Section 108 of the Customs Act, 1962 wherein he inter alia stated:

- that he don't know Shri Vishal Punjabi;
- that Shri Sumit Valecha of Ashirvad Shipping, Gandhidham approached him to help for the export consignment of scarves and he gave name and contact no. of Shri Nitesh Gangwani;
- that he had WhatsApp conversation with Shri Nitesh Gangwani regarding export of ladies fancy scarves and signed the copy of WhatsApp conversation between him and Shri Nitesh Gangwani, taken from mobile of Nitesh Gangwani in token of acknowledging the same;
- that he has sent the photo image of DBK schedule through WhatsApp to Nitesh Gangwani on 27.07.2015 which he received from Shri Sumit Valecha of M/s. Aashirvad Shipping;
- that he did not talk with the in-charge Preventive Officer, Superintendent of CFS where export goods were received.
- that he don't know anything about the exporter, and he came to know the goods are of bad quality from Shri Nitesh Gangwani on 19/08/2015 after the arrival of goods.

3.8 Statement of Shri Nitesh Gangwani again recorded under Section 108 of Customs Act, 1962 on 26.08.2015 wherein he inter alia stated;

- that he has filed total 36 shipping bills through CMC Mundra, however error occurred in one shipping bill therefore shipping bill no. not generated;
- that total 28 Shipping Bills went through RMS and 7 Shipping Bills went through Assessment Group.
- that total 9x20'containers were supposed to be exported but only 7 containers reached the CFS as Shri Vishal Punjabi informed him on mobile that cargo is not ready for rest of the two containers and asked to return two empty containers;
- that he prepared the checklist and invoice cum packing list as per details such as buyer's name, cargo description etc provided by Shri Vishal Punjabi over mobile and through e-mail in the office of D.P. Logistic located at Mundhra Container Freight Station Pvt. Ltd., Bharat CFS Zone-I, Mundra.
- that he received the bank account details and IEC copy of M/s Dynamic International from mail id kasshishoverseas@yahoo.co.in and Packing Details of all containers from the mail markexportsindia@gmail.com (total 7 mails in which 3 mails on 14/08/15 and 4 mails on 18/08/2015)
- that in the mail id markexportsindia@gmail.com the name comes as Chirag Punjabi and in the mail id kasshishoverseas@yahoo.co.in the name comes as Kashish Punjabi and he don't know both of them but all mails were sent after mobile conversation with Shri Vishal Punjabi and also Vishal Punjabi confirmed with him on mobile regarding receipt of mails.
- that he received mail from Vishal Punjabi on 14.08.2015 regarding the rate USD 5.76 per piece, then he informed Shri Arun Kumar on 15.08.2015 that the rate is too high and Shri Arun Kumar told him to make the invoice around Rs 240 per piece or USD 3.79 per piece.

3.9 Shri Vishal Punjabi was again summoned in person on 31.08.2015 under Section 108 of the Customs Act, 1962 to record his statement. Shri Vishal Punjabi appeared before SIIB on 02.09.2015 to record his statement and in his statement he inter alia stated:

- that he knew Shri Shashikant Chinchavale, proprietor of M/s. Dynamic International, Surat. He rented his Unit No. 09, Marghiwala Compound, Bamroli Road, Surat-394210, premises to Shri Shashikant Chinchavale;
- that Shri Shashikant Chinchavale asked him to help in export of some Ladies Scarves from Mundra Port and he helped Shri Shashikant Chinchavale in sending e-mails, contacted to the CHA & did all the works related to stuffing of goods;
- that Shri Nitesh Gangwani informed him that the export goods which reached at Mundra Port, are waste clothes instead of the Ladies Fancy Scarves and he in turn informed to Shri Sumit Valecha as Shri Sumit Valecha introduced Shri Nitesh Gangwani through Customs Officer to him, and also, he thought that Shri Sumit Valecha can manage this issue through Customs Officer;
- that he has done all the communications related to Exports of Ladies Fancy Scarves with Shri Nitesh Gangwani through Email

kasshishoverseas@yahoo.co.in which belongs to his wife Kashish Punjabi, and markexportsindia@gmail.com which belongs to his nephew Shri Chirag Punjabi;

- that he used email ids of his wife and nephew because he did not want to use his e-mail id and his wife and nephew were aware that he is using their e-mail ids;
- that he knew the drawback of Rs. 1.85 crores is being claimed on the export of Ladies Fancy Scarves. He got the copy of drawback schedule from the exporter Shri Shashikant Chinchavale and forwarded the same to Shri Sumit Valecha;
- that he was in touch with transporter/Driver and supervised the stuffing of goods in Surat;

3.10 Statement of Ms. Kashish Punjabi, wife of Shri Vishal Punjabi recorded under Section 108 of the Customs Act, 1962 on 02.09.2015 wherein she inter alia stated:

- that she is a partner of M/s J.D. Institute of Fashion Technology, Surat;
- that she don't know anything about export of Ladies Fancy Scarves by M/s Dynamic International, Surat;
- that the e-mail id kasshishoverseas@yahoo.co.in is operated by her husband Shri Vishal Punjabi and she never used it for any correspondence;

3.11 From the statements of the various persons, evidence collected and investigations carried out, it is evident that Shri Vishal Punjabi, Shri Nitesh Gangwani, Shri Sumit Valecha and Shri Arun Kumar have wilfully indulged in attempted export of waste clothes instead of declared Ladies Fancy Scarves to avail drawback of Rs. 1.85 crores. Looking into the gravity of the offence, Shri Vishal Punjabi, Shri Nitesh Gangwani, and Shri Sumit Valecha were arrested on 02.09.2015. Subsequently, Shri Sumit Valecha was granted bail on 07.11.2015 by Sessions Court, Bhuj. Shri Vishal was granted bail on 26.10.2015 By the High Court of Gujarat and Shri Nitesh Gangwani was granted bail on 02.11.2015, by the Chief Judicial Magistrate Court, Bhuj.

3.12 Mobile phones of Shri Vishal Punjabi, Shri Nitesh Gangwani and Shri Arun Kumar were seized under Section 110 (1) of the Customs Act, 1962 under reasonable belief that they are important evidence in the matter. SIIB has sent the seized mobiles of Shri Vishal Punjabi, Shri Arun Kumar, Superintendent and Shri Nitesh Gangwani to Forensic Science Laboratory, Gandhinagar for retrieval of data.

3.13 Meanwhile various summons were issued to Shri Shashikant Chinchavale and Shri Chirag Punjabi but they did not turn up. SIIB requested the PMC Bank, Surat to provide account details of M/s Dynamic International. In the bank account opening form received from PMC bank, it was found that e-mail id kasshishoverseas@yahoo.co.in and mobile no. 9924086516, both belong to Shri Vishal Punjabi, is given in contact details of M/s Dynamic International, Surat. PMC bank also provided CCTV footage dated 14.08.2015 wherein Shri Shashikant Chinchavale visited the branch.

3.14 A team of SIIB officers visited residential premises of Shri Shashikant Chinchavale located at Room No. 6, 1st Floor, Laxmi Villa Complex, Rameshwar

Nagar Society, Anjana, Surat but he was found absconding and nothing incriminating found from his house. A team of SIIB officers again visited residential premises of in laws of Shri Shashikant Chinchavale and served him the summons in person on 28.09.2015. Statement of Shri Shashikant Chinchavale was recorded under Section 108 of the Customs Act, 1962 on 29.09.2015 wherein he inter alia stated:

- that he is proprietor of M/s Dynamic International, Surat and working as a salesman cum driver in Atop Namkeen, Surat;
- that he did not respond or attended previous summons dated 24.08.15, 27.08.15, 10.09.15 because he was afraid and also two persons claiming to be sent by Shri Chirag Punjabi told him to leave Surat till the matter gets settled down.
- that he knows Shri Vishal Punjabi since 2006 when he was working for Shri Nibu Varghese as helper cum peon and used to visit Shri Vishal Punjabi for getting the documents signed related to DGFT, given by Nibu Varghese.
- that Shri Nibu Varghese has helped him to get the IEC of M/s Dynamic International in 2006 by at shop no.115, Tulsi Market, Near Trade House, Ring Road, Surat. In 2015 Shri Vishal Punjabi and Nibu Varghese asked him to change the address of IEC of M/s Dynamic International, Surat to Unit no.9 Marghiwala compound, Bamroli Road, Surat, which was owned by Shri Vishal Punjabi and Shri Chirag Punjabi and also helped him in opening new bank account in the name of M/s Dynamic International in PMC bank, Surat for starting new work of exporting scarves. Also the IEC and seal of M/s Dynamic International was with Shri Vishal Punjabi and Nibu Varghese.
- that Shri Vishal Punjabi and Nibu Varghese offered him Rs.15,000/- to 20,000/- per month for this act and he accepted it because of money offered by them.
- that he has not done any import or export in the name of M/s. Dynamic International since 2006 as the IEC and seal of M/s. Dynamic International, Surat was with Shri Nibu Varghese.
- that he has no role in export of Waste Clothes (Chindi) in guise of Ladies Fancy Scarves through M/s. Dynamic International, Surat and he has done signatures only, during opening of the IEC and bank account.
- that the export of Ladies Fancy Scarves was done by Shri Vishal Punjabi, Nibu Varghese & Chirag Punjabi.
- that he knew that waste clothes (chindi) will be exported in the name of M/s Dynamic International but he did not know that waste clothes will be exported in guise of ladies fancy scarves but he knows that Shri Vishal purchased waste clothes from textiles mills/factory & waste clothes traders from Surat at Rs. 2 per kg.
- that he knew Shri Chirag Punjabi and when he got summons from the department he contacted Shri Chirag Punjabi. Shri Chirag Punjabi asked him to get out of Surat and not to get in the hands of Customs. Shri Chirag Punjabi also told him to collect Rs.50,000/- from Shri Nibu Varghese which is given by Shri Chirag Punjabi.
- that after the case was booked by Customs Shri Vishal Punjabi and Shri Nibu Varghese met him near Athwa gate in Surat and handed over

Rs.20,000/- and asked him to leave Surat. Also Shri Nibu Varghese asked him to break the SIM card & throw the mobile phone with no. 9228223135. The sim card of mobile no. 9723509891, was broken by Shri Nibu Varghese.

- that he has no idea about e-mail id kasshishoverseas@yahoo.co.in given in the bank account opening form of PMC Bank, Surat but contact number given as 9924086516 belongs to Shri Vishal Punjabi.
- that he has some idea regarding the availment of drawback from the export of ladies fancy scarves.

3.15 Looking into the gravity of the offence, Shri Shashikant Chinchavale was arrested on 30.09.2015 and, subsequently, he was granted bail by the Chief Judicial Magistrate, Bhuj.

3.16 As per High Court of Gujarat Oral Order dtd.26.10.2015, Shri Chirag Punjabi Presented himself before SIIB on 29.09.2015. Statement of Shri Chirag Punjabi, Proprietor of M/s. Mark Exim was recorded on 29.09.2015 under Section 108 of Customs Act,1962 wherein he inter alia stated:

- that he is partner in M/s. Ashiana Exim and M/s Mark Exim, Unit No. 09, Marghiwala Compound, Bamroli Road, Surat-394210 looking after work related to work of domestic supply to Fashion designers and Garment Manufacturers based in New Delhi, Gurgaon, Noida. He is also proprietor of M/s Mark Exim situated at the above said address and have exported printed, dyed, embroidered fabrics two and half years ago;
- that he came to know about M/s Dynamic International, Surat only when Excise officers conducted search at his office premises located at Unit No. 09, Marghiwala Compound, Bamroli Road, Surat-394210 in the month of August.
- That Shri Vishal Punjabi is his uncle, looking after banking, finance and export related matters in his firm unofficially and Shri Vishal Punjabi don't have any share in Mark Exim.
- That the e-mail id is markexportsindia@gmail.com belongs to his firm M/s Mark Exim and the password is known to him, his father and uncle Shri Vishal Punjabi;
- that his uncle Shri Vishal Punjabi had used his firms e-mail id to correspond with vlogistics12@gmail.com, which belongs to Shri Nitesh Gangwani and he has no idea about these e-mails;
- that he knew Shri Nibu Varghese, an export consultant in Surat, since last three to four years through his uncle Shri Vishal Punjabi. Shri Nibu Varghese has helped him in getting IEC of M/s Mark Exim and also helped regarding documentation related to export of M/s Mark Exim.
- that he came to know Shri Shashikant Chinchavale only when the Excise officers searched his office premises located at Unit No. 09, Marghiwala Compound, Bamroli Road, Surat-394210 in the month of August 2015.
- that the ground floor of premises located at Unit No. 09, Marghiwala Compound, Bamroli Road, Surat-394210 which is co-owned by him and his uncle Shri Vishal Punjabi. As per his knowledge this premises was not in use therefore his employee used to keep fabrics of M/s Mark Exim

in the said premises. Also he was unaware that the premises was given on rent to M/s Dynamic International.

- that he never talked to Shri Shashikant Chinchavale. His father Shri Raju Punjabi was insisting Shashikant to appear before Customs Mundra after arrest of Shri Vishal Punjabi. Shri Shashikant Chinchavale was demanding money from his father. Also Shri Nibu Varghese was threatening his father for Rs.50,000/- for giving to Shri Shashikant Chinchavale.

3.17 Summons dated 28.10.2015 and 09.11.2015 issued to Shri Nibu Varghese. Statement of Shri Nibu Varghese was recorded under Section 108 of the Customs Act, 1962 on 16.11.2015 wherein he inter alia stated:

- that he works as a consultant and help the party/ firm in getting IEC from DGFT. He also assists them in getting various government benefits like EPCG, FPS, and FMS etc from DGFT.
- that he has no role in the attempted export of waste clothes (chindi) fraudulently in guise of Ladies fancy Scarves by M/s Dynamic International, Surat. Shashikant Chinchavale, proprietor of M/s Dynamic International alongwith Shri Vishal Punjabi had come to him 7 to 8 month ago for getting the IEC address of M/s Dynamic international changed to Unit No. 09, Marghiwala Compound, Bamroli Road, Surat-394210;
- that he knew Shri Vishal Punjabi since 10 years approx. As per his knowledge Shri Vishal Punjabi is completely involved in exporting waste clothes (chindi) in guise of Ladies Fancy Scarves;
- that Shri Vishal Punjabi in his presence told Shri Shashikant Chinchavale at Athwa gate road, Surat in the last week of August 2015 that the supplier had changed the export goods i.e. Ladies Fancy Scarves in 7 containers, being exported from Mundra port and gave Shashikant Chinchavale Rs.25000/- to run away from Surat and not to get into hands of department.
- that Shri Vishal Punjabi in his presence told Shri Shashikant Chinchavale to take whole responsibility of this scam and in return he offered Rs. 10 lacs to 15 lacs.
- that he knew Shri Shashikant Chinchavale since 10-12 years; he introduced Shashikant Chinchavale to Shri Vishal Punjabi; Shri Shashikant Chinchavale and Shri Vishal Punjabi came to him to get the IEC address of M/s Dynamic International changed to Unit No. 09, Marghiwala Compound, Bamroli Road, Surat-394210.
- that he broke the SIM card of Shashikant Chinchvale mobile no. 9722509891; that he gave Rs.50000/- to Shri Shashikant Chinchavale around 22nd to 23rd, September 2015, received from Shri Raju Punjabi who is father of Shri Chirag Punjabi;
- that he knew that Shri Shashikant Chinchvale and Vishal Punjabi had done wrong by attempting to export waste clothes (chindi) in guise Ladies Fancy Scarves by violating provisions of Customs Act; he accepts that he committed mistake by giving money to Shashikant Chinchavale; that he wanted to help Shri Shashikant Chinchavale due to his poor

condition, by giving him money; that he did not inform the Customs as he was afraid of Shri Vishal Punjabi, Raju Punjabi and Chirag Punjabi;

- that he was in possession of seal of M/s Dynamic International, Surat but only for amendment in the IEC of M/s Dynamic International amendment from DGFT;
- that one day Shri Chirag Punjabi and Raju Punjabi called and informed him at their office premises of M/s Mark Exim that Shri Vishal Punjabi was arrested by Customs; that after few days Shri Raju Punjabi gave him Rs. 50,000/- to give it to Shashikant Chinchavale and he gave the entire money to Shashikant Chinchavale;

3.18 Again a statement of Shri Chirag Punjabi dated 08.02.2016 was recorded and in his statement he clearly told that as per his knowledge M/s. Dynamic International was not functioning from the premise of Unit No. 09, Marghiwala Compound, Bamroli Road, Surat-394210 which clearly proves that Shri Vishal Punjabi has manipulated the entire facts to hide the truth from the department.

3.19 A statement of Shri Jyoti Prakash, Inspector, Docks Examination was recorded on 09/02/2016 wherein he interalia stated that he had been approached by Shri Nitesh Gangwani for getting the goods cleared from examination: that he had informed his Deputy Commissioner (Docks Examination) immediately after he came to know that the goods waste clothes were to be exported in the guise of ladies fancy scarves.

3.20 From the investigation and the statements of Shri Nitesh Gangwani ("H" card holder of M/s. D.P. Logistics Pvt. Ltd), Shri Mohammed Salim Sama, Branch Manager of M/s. D.P. Logistic Pvt. Ltd., Gandhidham, Shri Vipin Pujara, Chairman of M/s. D.P. Logistics Pvt. Ltd. and Shri Krishna Kumar Sarashwat, Branch Manager Ahmedabad of M/s. D.P. Logistic Pvt. Ltd, it reveals that the Shipping Bills related to M/s. D.P. Logistics Pvt. Ltd are filed only through using ICEGATE ID from Ahmedabad and Gandhidham office. However, In this case, Shri Nitesh Gangwani filed all the shipping bills through CMC Custom House, Mundra. There are 36 Shipping Bills (one Shipping Bill number was not generated due to some technical error) filed for export of Ladies Fancy Scarves through CMC at Custom House, Mundra, but during investigation it was found that the goods were found to be waste clothes (chindi) instead of Ladies Fancy Scarves for fraudulently availing drawback benefit of approximately 1.85 Crores. Shri Nitesh Gangwani confessed in his statement that he has committed this mistake due to the huge amount of money offer to him. He had used the CHA license no. of M/s. D. P. Logistics Pvt. Ltd without the knowledge of the Customs Broker M/s. D.P Logistics Pvt. Ltd. However, it may be noted that whenever, check list of Shipping Bill filed by using PAN based CHA no. and when Shipping Bills are generated a report of filing of total number of Shipping Bills filed and cleared, by the Customs Broker is sent to the Customs Broker ICEGATE ID. Being, a Customs Broker they must have a proper system to monitor the Shipping Bills filed by using their own CHA license so that nobody can misuse it for fraudulent activities and misappropriate the government money. The CHA License of M/s D.P. Logistics Pvt. Ltd was used in a manner that could harm the very purpose of the government to promote the exports. In the present case, investigation conducted clearly proves the negligence of CHA in conducting their business which could have cost loss of Rs1.85 Crores of government exchequer. The license of CHA was suspended on 09.10.2015 by the Principal Commissioner of

Customs (General), Mumbai and its suspension was revoked on 05.11.2015 pending final inquiry as contemplated in CBLR, 2013.

3.21 From the statements recorded, data recovered from the mobile phones, call details and the records available, it is clearly evident that S/Shri Nitesh Gangwani, Vishal Punjabi, Sumit Valecha and Arun Kumar played very active role in the export of waste clothes in guise of ladies fancy scarves to avail the duty drawback benefit of approximately 1.85 Crores from the government. Shri Nitesh Gangwani has confessed in his statement that he committed this offence because of huge money offered by Shri Arun Kumar, Superintendent, Customs Mundra.

3.22 Shri Vishal Punjabi played crucial role in gathering waste clothes and stuffing of goods in the container and provided all related documents of export to Shri Nitesh Gangwani for filing Shipping Bills and doing all Customs related work through mail ids markexportsindia@gmail.com, kasshishoverseas@yahoo.co.in, WhatsApp and text messages. He has used the IEC of M/s Dynamic International owned by Shri Shashikant Chinchavale for doing these activities. His mobile number and the mail id was also found in the bank opening statements of dynamic international which proves he is the main person who operated dynamic international for doing export of waste clothes in guise of ladies fancy scarves for availing export benefits. The address of the firm M/s Dynamic International also jointly owned by him and his nephew Chirag Punjabi. During the investigation and the statements of Shri Chirag Punjabi, it was found that dynamic international was not operating from that address and it was the namesake address given in the IEC and all related works were handled by Shri Vishal Punjabi. Shri Vishal Punjabi has misguided the department by saying that Shri Shashikant Chinchavale operated the firm M/s. dynamic international from the said address. He has also supervised the stuffing of the goods in Surat, which he has admitted in his statement and Shri Chinchavale also has confirmed the same in his statement. Also he was in constant touch with the drivers of trailers on which containers were loaded and his mobile no. 9924086516 was mentioned on the bility given to the drivers. Thus it is evident that he has acted as actual exporter.

3.23 From the investigation and the statements of Shri Shashikant Chinchavale it was revealed that he is the namesake owner of the IEC in the name of M/s Dynamic International and M/s Dynamic International was totally operated by Shri Vishal Punjabi. He has accepted to use his IEC because of the money offered to him. Due to his poor condition he has accepted this offer. It is evident from the above that Shri Vishal Punjabi has cleverly played his role as an exporter in the export of waste clothes in guise of Ladies Fancy Scarves for availing undue export benefits and to defraud the government revenue.

3.24 Shri Nitesh Gangwani has filed all 36 Shipping Bills from CMC Centre located in Mundra port without the knowledge of the Customs Broker M/s D.P. Logistics. Shri Nitesh Gangwani was actively involved in clearing the goods from docks examination by offering huge amount to the Docks Inspector Shri Jyoti Prakash on the insistence of Shri Arun Kumar. Shri Nitesh Gangwani was offered Rs. 1 lakh per container by Shri Arun Kumar for getting the work done from the docks inspector. He has accepted everything in his statement recorded on dated 20.08.2015 & 26.08.2015. Shri Nitesh Gangwani has accepted that he had committed this mistake due to the money offered to him by Shri Arun Kumar.

3.25 From the call records and the WhatsApp conversations made with Shri Nitesh Gangwani it is evident that Shri Arun Kumar was constantly in touch with Shri Nitesh Gangwani for clearing the waste clothes from the planning stage to examination stage where it was caught by the department. In his statement dated 21.08.2015 he categorically denied having knowledge of filing Shipping Bills for the export of Ladies Fancy Scarves and drawback applicable to the said export. But during the investigation it was found that he was monitoring and guiding the entire proceedings through Shri Nitesh Gangwani. Shri Arun Kumar had passed on the drawback schedule which he had received from Shri Sumit Valecha through WhatsApp to Shri Nitesh Gangwani on 27.07.2015.

3.26 Shri Sumit Valecha actively participated in passing information from Shri Vishal Punjabi to Arun Kumar. He had all the knowledge that the goods to be exported were other than the declared Ladies Fancy Scarves. He was passing information between Shri Arun Kumar and Vishal Punjabi. From the mobile conversation dated July 13, 2015 between him and Shri Vishal Punjabi it is evident that Shri Sumit Valecha got the green signal from Shri Arun Kumar and informed to Vishal Punjabi. He had then communicated the drawback schedule regarding Ladies Scarves which he obtained from Vishal Punjabi, to Shri Arun Kumar. He remained a single point contact between Arun Kumar and Vishal Punjabi in passing the crucial documents whenever needed. He has deliberately deleted his WhatsApp and text messages with Shri Arun Kumar and Shri Vishal Punjabi with the aim to thwart and mislead the investigation and has not cooperated with the department. It is evident from the investigation that communication from Shri Arun Kumar was passed to Vishal Punjabi through Sumit Valecha only. Due to his (Shri Sumit Valecha) relationship with Shri Arun Kumar he, Vishal Punjabi and Arun Kumar made the entire plan of export of waste clothes in guise of Ladies Fancy Scarves for availing undue benefit of export. Though S/Shri Sumit Valecha, Arun Kumar and Vishal Punjabi in their statements said that they told Shri Nitish Gangwani to take the goods back to town but no one is actually found taking any initiative to send the goods back to town. Their motive is to clear the goods by offering money to Customs Officers and clearing the goods for export so that they can avail huge export benefit in the form of drawback.

3.27 Shri Shashikant Chinchavale, Proprietor of M/s Dynamic International, Surat had knowingly allowed Vishal Punjabi to use his IEC for the sake of money. Though he had knowledge that they are planning to export waste clothes using his IEC he remained silent due to the expectation of money. By doing such an act he himself consciously involved in the said anti national activity.

3.28 Shri Nibu Varghese has helped Shri Shashikant Chinchavale in getting the IEC. He had the knowledge that Vishal Punjabi had attempted to export waste clothes in guise of Ladies Fancy Scarves. He instead of informing the department, broke the SIM card of Shashikant Chinchavale mobile no. 9722509891 and gave Rs.50,000/- to Shri Shashikant Chinchavale around 22nd to 23rd, September 2015, received from Shri Raju Punjabi, father of Shri Chirag Punjabi to run away from the department. He accepted that he committed mistake by giving money to Shashikant Chinchavale. He wanted to help Shri Shashikant Chinchavale due to his poor condition, by giving him money; he did not inform the Customs because he was afraid of Shri Vishal Punjabi, Raju Punjabi and Chirag Punjabi. When department was searching for Shri Shashikant Chinchavale, Nibu Varghese helped him to run away from the department which caused undue delay in investigation.

3.29 Shri Chirag Punjabi had the knowledge about the export since his mail id was used for communication between Shri Vishal Punjabi and Nitesh Gangwani. Though he has claimed that he has not noticed the communications sent from his mail id, it is highly impossible that someone is allowing his mail id to be used for business purposes without the knowledge of the person concerned. Shri Chirag Punjabi and his father Shri Raju Punjabi also found guilty of giving money to Shri Shashikant Chinchavale to run away from Surat without getting caught from the Customs. They were in knowledge of the illegal export by Shri Vishal Punjabi while Customs was searching Shashikant Chinchavale; they have taken measures to keep him away from the department which has caused undue delay in finding Shri Shashikant Chinchavale and further investigation.

3.30 It is pertinent to mention here that the government introduced the scheme of drawback to the exporters as an incentive to increase the export activities of the country. It stimulates the economic activity of the country as well as brings foreign exchange for the country. By doing such fraudulent activities for availing those undue benefits by fraudulent means really spoils the spirit of the government.

4. Accordingly, the show cause notice as detailed in para 3 and its sub-para above was issued to them.

5. The above show cause notice was adjudicated vide OIO No. **MUN-CUSTM-000-COM-01-17-18 dated 28.04.2017** passed by the then Hon'ble Pr. Commissioner, Custom House, Mundra wherein the above show cause notice was confirmed.

6. Being aggrieved by the above OIO dated 28.04.2017, the noticees filed Appeal before CESTAT Ahmedabad which was decided vide Final Order No. FO/CA/12284-12286/2023-CU(DB) dated 17.10.2023 wherein the appeal was allowed by way of remand to the adjudicating authority for passing a fresh order as detailed in para 1 above. As the matter has been remanded back for want of cross examination, the opportunity for the same was duly provided to the noticees, as per the CESTAT order.

(C) CROSS - EXAMINATION

7. As per the records available, it was observed that Sh. Vishal Punjabi (Noticee No. 1) has requested for cross-examination of Sh. Shashikant Chinchavale, Sh. Nibu Varghese and Sh. Nitesh Gangwani; Sh. Sumit Valecha (Noticee No. 2) has requested for cross-examination of Sh. Shashikant Chinchavale, Sh. Nitesh Gangwani and Sh. Arun Kumar.

7.1 Consequently, as directed by Hon'ble CESTAT in their order dated 17.10.2023, Cross examination of the said persons as mentioned at para 7 above was allowed.

(D) DISCUSSION AND FINDINGS

8. I have carefully gone through the records of the case, defense reply filed by each of the noticee and records of personal hearings held before me on various dates.

8.1 In pursuance of Hon'ble CESTAT order dated 17.10.2023, several opportunities for cross examination were given to the examiners as well as the examinees as detailed below.

Date	Examiner	Response	Examinees	Response
04.02.2025	Sh. Vishal Punjabi	Requested for Adjournment	1. Sh. Shashikant Chinchavale	No one appeared
			2. Sh. Nibu Varghese	
			3. Sh. Nitesh Gangwani	
	Sh. Sumit Valecha	Did not appeared himself	1. Sh. Shashikant Chinchavale	No one appeared
			2. Sh. Arun Kumar	
			3. Sh. Nitesh Gangwani	
18.02.2025	Sh. Vishal Punjabi	Requested for Adjournment	1. Sh. Shashikant Chinchavale	No one appeared
			2. Sh. Nibu Varghese	
			3. Sh. Nitesh Gangwani	
	Sh. Sumit Valecha	Did not appeared himself	1. Sh. Shashikant Chinchavale	No one appeared
			2. Sh. Arun Kumar	
			3. Sh. Nitesh Gangwani	
27.02.2025	Sh. Vishal Punjabi	Did not appeared himself	1. Sh. Shashikant Chinchavale	No one appeared
			2. Sh. Nibu Varghese	
			3. Sh. Nitesh Gangwani	
	Sh. Sumit Valecha	Did not appeared himself	1. Sh. Shashikant Chinchavale	No one appeared
			2. Sh. Arun Kumar	
			3. Sh. Nitesh Gangwani	
23.05.2025	Sh. Vishal Punjabi	Did not appeared himself	1. Sh. Shashikant Chinchavale	No response Unable to appear for cross-examination on 23.05.2025
			2. Sh. Nibu Varghese	
			3. Sh. Nitesh Gangwani	
	Sh. Sumit Valecha	Did not appeared himself	1. Sh. Shashikant Chinchavale	No response Unable to appear for cross-examination on 23.05.2025
			2. Sh. Arun Kumar	
			3. Sh. Nitesh Gangwani	
02.06.2025	Sh. Vishal Punjabi	Did not appeared himself	1. Sh. Shashikant Chinchavale	No one appeared
			2. Sh. Nibu Varghese	
			3. Sh. Nitesh Gangwani	
	Sh. Sumit Valecha	via email dated 02.06.2025, requested 2 months extra time for his advocate to prepare for cross examination and other arrangements	1. Sh. Shashikant Chinchavale	No one appeared
			2. Sh. Arun Kumar	
			3. Sh. Nitesh Gangwani	
21.07.2025	Sh. Vishal Punjabi	Did not appeared himself	1. Sh. Shashikant Chinchavale	No one appeared
			2. Sh. Nibu Varghese	
			3. Sh. Nitesh Gangwani	
	Sh. Sumit Valecha	Did not appeared himself	1. Sh. Shashikant Chinchavale	No one appeared
			2. Sh. Arun Kumar	
			3. Sh. Nitesh Gangwani	

I observe that the Noticees in the present matter are not entitled to unlimited or indefinite opportunities for cross-examination, as held in **M/s India Sales v. Collector (Madras HC/Supreme Court, 2003)**. Despite being afforded multiple chances, the Noticees have failed to offer any reasonable justification for their absence during the scheduled cross-examination proceedings. It is on record that as many as six opportunities were granted to the Examiners for conducting cross-examination, which were not availed due to the inaction and non-cooperation of the Noticees themselves. In particular, although the Noticees sought to cross-examine their co-accused, they did not appear on the communicated dates, despite advance intimation. More than three dates were conveyed to both the Examiners/Noticees and the proposed examinees; however, none appeared before the adjudicating authority. It is a settled position of law, as held in **Jagdish Shankar Trivedi v. Commissioner of Customs (CESTAT, Delhi)**, that when a party fails to avail of a fair opportunity afforded to them, the proceedings do not get vitiated and remain valid in law. Under such circumstances, allowing further opportunities for cross-examination would only serve to cause undue delay in the adjudication process. Therefore, I am constrained to proceed with the adjudication based on the materials and evidence available on record.

8.2 Now, the moot point to be decided is whether, in the absence of cross examination, the confessional statements of noticees and co-noticees can be relied upon as valid evidence.

8.2.1 In this regard, I observe that Section 138B of the Customs Act, 1962, governs the admissibility of statements made during the course of customs inquiries or proceedings. This provision specifically lays down the conditions under which such statements may be considered relevant and admissible as evidence, particularly in circumstances where the person who made the statement is either unavailable or when the court or adjudicating authority is satisfied that its admission is necessary in the interest of justice. The relevant portion of the Section 138B is reproduced as under:

Sec. 138B. Relevancy of statements under certain circumstances. –

- (1) A statement made and signed by a person before any Gazetted Officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, –
 - (a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or
 - (b)
- (2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceedings under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court.

8.2.2 I find that there were sufficient guidelines inherent in Section 138B of the Act itself. Such a provision was not unique in the Customs Act, but existed in number of other enactments. The provision of Section 138B was pari materia with Section 32 of the Indian Evidence Act. Relevancy of statement of relevant fact by a person who is dead or cannot be found etc. has also been provided under Section 32 of the Evidence Act, as an exception to the rule of 'exclusion of hearsay evidence' under

certain circumstances. Under these provisions, even a statement made before a police officer, under certain circumstances, which otherwise is not admissible in evidence, can be treated as relevant without examination of the witness. On the contrary, the statements recorded under Section 108 of the Act, referred to under Section 138B are *ex facie* admissible in evidence as has been held by the Hon'ble Supreme Court in the case of **Duncan Agro Industries (supra)** and, therefore, such statements are not covered by the principle of exclusion of hearsay evidence. These statements, relied upon in the impugned case, are primarily based on documentary evidences collected/seized during investigations and, therefore, are relevant also in terms of provisions under Section 32(2) of the Evidence Act.

From the above reading of Section 138B, I observe that, this section allows statements made before a Customs officer to be used as evidence in proceedings, provided certain conditions are met, such as the person must be unavailable, cannot be found etc. during any proceedings. In **Naresh J. Sukhawani v. Union of India (1996) 83 ELT 258 (SC)**, it was held that -

- A confessional statement of a co-accused can be relied upon if not retracted.
- It is admissible even without cross-examination if it is voluntary and corroborated by other evidence.

Further, in **Silicone Concepts International Pvt. Ltd. Vs. Pr Commr. Of Cus., ICD, TKD (Import), New Delhi**, it was held by Hon'ble CESTAT, New Delhi, that non-examination of co-noticee in confessional statement does not vitiate proceedings. The Hon'ble CESTAT observed in their order, that though ample opportunity with the proceeding/assessee has to be granted to put forth his defence, the assessee cannot be compelled to self-implicate himself. It was thus held that non-examination of certain persons (co-accused) is neither violative of Section 9D (of Central Excise Act) (Section 138B of the Customs Act) nor of principles of natural justice.

In **J & K CIGARETTES LTD. Versus COLLECTOR OF CENTRAL EXCISE 2011(22) S.T.R. 225 (Del.)**, following was held by Hon'ble Delhi High Court, regarding relevancy of Statements - "Only those statements of such persons, which are made and signed before the Central Excise Officer of a gazetted rank, are treated as admissible. Thus, protection is taken to treat the statements relevant only if they are made before an officer enjoying a higher rank/status. Secondly, (and that has already been taken note of) such statements are made relevant only under certain specified circumstances, and these are the ones which are beyond anybody's control. Thirdly (and this is most important), the quasi-judicial authority can rely upon the statement of such a person only when the stated ground is proved. For example, in those cases where the person who made the statement is dead, there should be sufficient proof that he is dead. In case, where a person cannot be found, the authority would have to form an opinion, based on some material on record, that such a person cannot be found".

8.2.3 From the provisions of Section 138B as well as case law referred above, I observe that when a person, desired to be cross examined cannot be found or whose presence cannot be obtained during cross-examination opportunities granted six times, then the statement made by a person especially who is a co-noticee, shall be relevant to the present proceedings in proving the truth of its contents. In other words, such statements is held admissible in evidence under the provisions of Section 138B.

8.3 Proceeding with the adjudication, I note that as per the facts of the panchnama dated 20.08.2015, I observe that a syndicate of some conspirators have

hatched a collusive scheme and attempted to export the waste fabrics/'chindi' in the guise of Ladies Fancy Scarves stuffed in seven containers and transported from Surat to EXIM Yard, CFS, Mundra valued at Rs.19.60 Crores. For this purpose, the said syndicate has arranged for rental premises for M/s Dynamic International at Plot No.9, Margiwala Compound, Bamroli Road, Surat. Consequently, they made required changes in the address of IEC of M/s Dynamic International and opened bank account. They also arranged for CHA to look after the work at port through one Senior Customs Officer who was also involved in the said collusive scheme. They also arranged for waste clothes in Surat, stuffed in the containers and, transported the same to Mundra Port. The CHA so arranged, prepared the documents on the basis of details received from the said syndicate and filed 36 Shipping Bills on 17.08.2015 and 18.08.2015 through CMC Centre, Mundra in the name of M/s Dynamic International as exporter. When the employee of said CHA came to know about the illegal export, he informed about the same to Shri Arun Kumar, the then Customs Superintendent of Customs at Mundra Port. Shri Arun Kumar allegedly offered him a bribe of Rs. One Lakh and also advised him to ask for same amount of offer of bribe to the In-charge Customs Officers for getting the goods cleared for export. The said In-charge Customs Officer refused to do so and brought the matter in the knowledge of Senior Officers and, accordingly an immediate action was taken for interception of the goods under export and foiled the attempt of illegal export and saved Rs.1.85 Crore of fraudulent claim of duty drawback. Therefore as per the undisputed facts of the panchnama it is clear that goods stuffed in the said containers i.e. waste clothes/'Chindi' were placed under seizure as per panchnama dated 20.08.2015 as the same were being exported in the guise of Ladies Fancy Scarves valued at Rs. 19.50 Crores against the present market value of waste clothes Rs. 70,000/- . Therefore, It is found that this is a clear case of wilful mis-declaration and, accordingly, the said goods valued at Rs. 70,000/- are liable to confiscation under the provision of Section 113 (h) and (l) of the Customs Act, 1962. Detailed investigation of the case has revealed that such an attempt of mis-declaration of goods was made in order to claim the illegal and inadmissible drawback to the tune of Rs. 1.85 Crores approximately.

8.4 Therefore, the issue which remains to be examined, is the role played by each of the noticees in the collusive scheme of attempted export of waste clothes in the guise of Ladies Fancy Scarves and, thereafter, to take appropriate action against them under Customs Act, 1962, after taking into account the allegations made against them in the Show Cause Notice, their written defense submission and records of personal hearing as under.

9. Examination of role played by Shri Vishal Punjabi, Proprietor of M/s Vishal Impex, Surat

9.1 It was alleged in the Show Cause Notice that Shri Vishal Punjabi arranged for waste clothes meant for export in containers and provided all related export documents to the concerned CHA for filing Shipping Bills and also provided details required for custom clearance through e-mail, WhatsApp and text messages. He has used the IEC of M/s Dynamic International owned by Shri Shashikant Chinchavale for operating illegal activities. He has also used his Mobile Number and mail id in the operation of Bank Account. The address of M/s Dynamic International was also jointly owned by him and his Nephew Shri Chirag Punjabi, which, in fact was used only for name sake. He has supervised the work of stuffing of containers in Surat meant for an alleged bogus export. He was in constant touch with the drivers of trailers on which containers were loaded. His Mobile No. 992408656 was

also appearing on the 'Bilty' given to the drivers. Therefore, the said Noticee was proposed for penal action under Section 114(iii) and Section 114AA of Customs Act, 1962.

9.2 Hon'ble Pr. Commissioner, Custom House, vide Order in Original MUNCUSTM-000-COM-01-17-18 dated 28.04.2017 confirmed the Show Cause Notice and imposed penalty amounting to Rs.50,00,000/- (Rupees Fifty Lakhs only) under section 114(iii) of Customs Act, 1962 and Rs. 5,00,000/- (Rupees Five Lakhs Only) under Section 114AA of the Customs Act, 1962 on Shri Vishal Punjabi, Proprietor of M/s Vishal Impex, Surat. Aggrieved from the OIO dated 28.04.2017, Shri Vishal Punjabi filed an appeal before Hon'ble CESTAT Ahmedabad. In this regard, Hon'ble CESTAT Ahmedabad vide their Order No. FO/CA/12284-12286/2023-CU(DB) dated 17.10.2023 has remanded the matter in following words:

"...we set aside the impugned order-in-original and remand the matter back to the Adjudicating Authority with directions that the matter be re-adjudicated after allowing cross-examination of the persons whose statements have been used as evidence against the above appellants."

9.3 In pursuance of Hon'ble CESTAT order dated 17.10.2023, cross examination of all three persons i.e. Shri Shashikant Chinchavale, Nibu Varghese and Nitesh Gangwani as requested by Sh. Vishal Punjabi, was allowed and all were issued notice to appear on 04.02.2025, however, no one appeared on the appointed day of the Cross examination, including Shri Vishal Punjabi. To abide by natural justice, another opportunity for cross-examination was given to Shri Vishal Punjabi and others on 18.02.2025. This time, Shri. Vishal Punjabi requested for adjournment. Thereafter, several opportunities for cross-examination were given to Shri Vishal Punjabi and others on 27.02.2025, 23.05.2025 & 02.06.2025. However, none of the persons, including Shri Vishal Punjabi, attended any of the personal hearings for cross-examination.

9.4 In his reply dated 07.06.2016, Shri Vishal Punjabi, Proprietor of M/s Vishal Impex has denied all the allegations of export of waste clothes in the guise of Ladies Fancy Scarves. In this regard I have gone through the statement dated 02.09.2015 of Shri Vishal Punjabi wherein he has stated that he had given ground floor of Plot No. 9, Marghiwala Compound, Bamroli Road, Surat, on rental basis to Shri Shashikant Chinchavale for storing textile materials trading in local market or for export purpose; that Shri Shashikant Chinchavale was known to him for the last several years and requested him to help in purchase of fancy scarves and, therefore, he had introduced him with several traders dealing in fancy scarves as well as other textile materials but did not arrange the goods from market; that he guided Shri Shashikant Chinchavale about the preparation of export documents; that he neither prepared export related documents nor sent the same to Shri Nitesh Gangwani. Since Shashikant Chinchavale was known to him since long and as having good relation he had given the e-mails id of his family members to him for his business purpose with a bonafide belief that he will not misuse it. But after detection of the case he came to know that Shri Chinchavale had used e-mail id of his wife and nephew for preparing export related documents and sent to Shri Nitesh Gangwani; that in case of delay in sending the invoice, Shri Sumit Valecha was aware that Shri Shashikant Chinchavale was functioning his firm, and the rented premises belonged to him, and therefore, when Shri Chinchavale was not contactable, Shri Sumit Valecha was contacting Shri Vishal Punjabi to convey messages to Shri Chinchavale. Therefore, he was just a messenger between Shri

Valecha and Shri Chinchavale. In fact, there was no question of sending documents because the export firm M/s Dynamic International belonged to Shri Chinchavale and he was least concerned with the said firm. As regards the arrangement of vehicles from Mundra for stuffing the goods at Surat he stated that the said firm - M/s Dynamic International belonged to Shri Chinchavale and it was not he to decide about the stuffing of goods. But many a times, Shri Chinchavale had conveyed message through him to the CHA- Shri Nitesh Gangwani, and, accordingly his name was wrongly projected. In fact Shri Chinchavale and Shri Gangwani, CHA had taken decision for sending vehicle for stuffing the goods. Further, he was not aware about the contents of goods stuffed, meant for export; that certain matters have been wrongly typed out in his statement which he retracted immediately by filing an affidavit, and, therefore such statements have no evidential value. As regard the data recovered from his Mobile, he had specifically clarified in his statement that he was sending messages as per the instruction of Shri Chinchavale, operating business from the same premises. Therefore, the messages recovered from his Mobile Phone with regard to such bogus exports, conveying the details to Shri Gangwani, Shri Valecha, Mediator and Shri Arunkumar, Supdt were only on behalf and as per the instruction of Shri Chinchavale and he had nothing to do with the said messages. The data whatever recovered from his Mobile, was pertaining to Shri Chinchavale to which he was least concerned.

9.5 Shri Vishal Punjabi in his affidavit dated 28.10.2015, retracted his statement dated 02.09.2015 as the same was said to be recorded against his will. It is found that, as far the contention of retraction of statement by Shri Vishal Punjabi recorded under Section 108 of the Customs Act, 1962, is concerned, the same has no weightage, in view of the decision of Hon'ble High court of Delhi in the matter of CCE, Delhi-I Vs. Vishnu & Co Pvt. Ltd., 2016 (332) ELT 793 (Del.) as in the instant case there is no corroboration of retracted statements by any other reliable independent material. Hon'ble Supreme Court in the case of M/s Naresh J. Sukhawani V. Union Of India -1995 TMI 106 - SUPREME COURT OF INDIA, have held that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. It is a material piece of evidence collected by Customs Officials under Section 108 of the Customs Act. Hence, the same is admissible as evidence. Retraction of the statement by Shri Vishal Punjabi is only an afterthought and to escape from the clutches of law.

9.6 Now coming to the role played by Shri Vishal Punjabi, as per the records available, it is found that in his entire statement while admitting the facts of having arranged for waste fabrics, its transportation to Mundra Port and making availability of export related documents etc., he has mostly attempted to shift his responsibility on the shoulder of Shri Shashikant Chinchavale by twisting the facts and repeatedly stated that he was simply acting on his behalf. For such a contention, I appreciate that one can understand the help, but the help as evident from available records as Shri Vishal Punjabi has made in the instant case, viz. opening of bank account of Shashikant Chinchavale in PMC Bank, Surat, but putting his mobile number and email id of his wife on the Bank Account Opening Form, sending all the required details through the mail id of his wife and his nephew- Shri Chirag Punjabi for preparation of bogus customs documents, purchasing waste cloth from the market, supervising the stuffing process and making transportation arrangements thereof from Surat to Mundra and putting his own mobile number on bilty etc. all are very uncommon and, more so when he himself has admitted that he has also attended the phone calls of Shri Sumit Valecha and Shri Nitesh Gangwani on behalf of Shri Shashikant. To a man of

prudence, all these activities of Shri Vishal Punjabi, go on to prove his deep and direct involvement in the said fraudulent export. As per the statement dated 24.08.2015 of Shri Sumit Valecha and statement dated 20.08.2015 of Shri Nitesh Gangwani, both have clearly denied the identity of Shri Shashikant Chinchavale, however, Shri Sumit Valecha admitted to know only Shri Vishal Punjabi and vice versa. Hence, attending to the phone calls of Shri Sumit Valecha and Shri Nitesh Gangwani by Shri Vishal Punjabi on behalf of Shri Shashikant is merely a bluff. Shri Nibu Varghese was the close associate of Shri Vishal Punjabi and in his recorded statement dated 16.11.2015, he has categorically stated that Shri Vishal Punjabi was the exporter of the said goods, which is also corroborated by the statement dated 29.09.2015 of Shri Shashikant Chinchavale. Similarly, the payment of Rs.25,000/- and Rs.50,000/- through Shri Nibu Varghese to Shri Shashikant Chinchavale on two different occasions, once when Shri Vishal Punjabi, Shri Nibu Varghese and Shri Shashikant Chinchavale met at Athwa Gate, Surat, and second at around 22nd to 23rd of September, 2015, received from Shri Raju Punjabi and Shri Chirag Punjabi respectively was nothing but to make him to go underground and not to come in the hands of Customs. Both the said payments evidently proved that Shri Vishal Punjabi is the actual exporter and mastermind behind the scam as per the statement of Shri Shashikant Chinchavale, Shri Chirag Punjabi and Shri Raju Punjabi as well. As per the revelation of Shri Nibu Varghese, in their said meeting dated 16.11.2015, Shri Vishal Punjabi also offered an amount of rupees ten to fifteen lakhs to Shri Shashikant Chinchavale to shoulder the entire responsibility of the said scam. Therefore, the role of Shri Shashikant Chinchavale was very clear and his name was used by Shri Vishal Punjabi for his nefarious activities and his status is only a peon or helper at different points of time and his company name was used with a specific purpose in a calculated manner as he was having IEC in the name of his firm- M/s Dynamic International so that in case of any trouble, Shri Shashikant would face the consequences and Shri Vishal Punjabi could go scot-free. Shri Vishal Punjabi has purposely made a paper document of rent agreement against his own premises for name-sake only and, went on for getting the change in the address of IEC through Shri Nibu Varghese, opened bank account for Shri Shashikant etc. Shri Vishal Punjabi also used Shri Sumit Valecha for the very specific purpose of exploring further link with Shri Arun Kumar being Customs Officer, Posted at Mundra Port and so on. Therefore, I find that Shri Vishal Punjabi was the mastermind behind hatching the collusive scheme by influencing his contacts which he had with Shri Sumit Valecha and Shri Nibu Varghese and explored the contacts with Shri Arun Kumar and Shri Nitesh Gangwani and formed a syndicate for bogus export of waste cloth in the guise of Ladies Fancies Scarves, in order to claim fraudulent drawback. Hence, I do not find any force in the argument of Shri Vishal Punjabi. Therefore, I hold that, Shri Vishal Punjabi was the mastermind of the collusive scheme of bogus export of goods i.e. waste cloth as in the guise of Ladies Fancy Scarves and, thereby committed an act which made the goods liable to confiscation under Section 113 of Customs Act, 1962 and, rendered himself liable to penalty under Section 114(iii) of the Customs Act, 1962. It is found that, in the instant case, Shri Vishal Punjabi has knowingly and intentionally made and caused to be made false and incorrect export documents, with an attempt to export the misdeclared goods for the purpose of claiming fraudulent drawback under the Customs Act, 1962 and therefore, he has also rendered himself liable to penalty under Section 114AA of Customs Act, 1962.

10. Examination of role played by Shri Sumit Valecha

10.1 It was alleged in the Show Cause Notice that Shri Sumit Valecha has actively participated in passing on the information, collected from Shri Vishal Punjabi, Proprietor of M/s. Vishal Impex to Shri Arun Kumar, Superintendent. He had all the knowledge of the goods being attempted to be exported, which were other than that of the declared goods viz. Ladies Fancy Scarves. From the whatsapp / mobile conversation dated 30.07.2015 with Shri Vishal Punjabi, it is evident that after receiving green signal from Shri Arun Kumar, Shri Sumit Valecha informed about the same to Shri Vishal Punjabi. He had also communicated the drawback schedule regarding Ladies Scarves to Shri Arun Kumar. He has deliberately deleted his WhatsApp and text messages with Shri Arun Kumar and Shri Vishal Punjabi with the aim to thwart and mislead the investigation and has not cooperated with the department. It is evident from the investigation that communication from Shri Arun Kumar was passed on to Shri Vishal Punjabi through Shri Sumit Valecha only. From the WhatsApp conversation of Shri Sumit Valecha, Shri Vishal Punjabi and Shri Arun Kumar, it is evident that all three of them made the entire plan of export of waste clothes in guise of Ladies Fancy Scarves for availing duty drawback benefit. Though Shri Sumit Valecha, Arun Kumar and Vishal Punjabi in their statements stated that they told Shri Nitesh Gangwani, CHA to send the goods back to town but no one was actually found taken initiative to send the goods back to town. Their motive was to clear the goods by offering money to Customs Officers and clearing the goods for export so that they can avail huge export benefit in the form of drawback.

10.2 Hon'ble Pr. Commissioner, Custom House, vide Order in Original MUNCUSTM-000-COM-01-17-18 dated 28.04.2017 confirmed the Show Cause Notice and imposed penalty amounting to Rs.10,00,000/- (Rupees Ten Lakhs only) under section 114(iii) of Customs Act, 1962 and Rs. 5,00,000/- (Rupees Five Lakhs Only) under Section 114AA of the Customs Act, 1962 on Shri Sumit Valecha, Proprietor of M/s Ashirvad Projects, Gandhidham. Aggrieved from the OIO dated 28.04.2017, Shri Sumit Valecha filed an appeal before CESTAT Ahmedabad. In this regard, CESTAT Ahmedabad vide their Order No. FO/CA/12284-12286/2023-CU(DB) dated 17.10.2023 has remanded the matter in following words:

“...we set aside the impugned order-in-original and remand the matter back to the Adjudicating Authority with directions that the matter be re-adjudicated after allowing cross-examination of the persons whose statements have been used as evidence against the above appellants.”

10.3 In pursuance of CESTAT order dated 17.10.2023, Cross examination of all three persons i.e. Shri Shashikant Chinchavale, Arun Kumar and Nitesh Gangwani as requested by Sh. Sumit Valecha, was allowed and all were issued notices to appear on 04.02.2025, however, no one appeared on the appointed day of the Cross examination, including Shri Sumit Valecha himself. To abide by natural justice, another opportunity for cross-examination was given to Shri Sumit Valecha and others on 18.02.2025. Thereafter, several opportunities for cross-examination were given to Shri Sumit Valecha and others on 27.02.2025, 23.05.2025 & 02.06.2025. However, none of the persons, including Shri Sumit Valecha failed to attend any of the personal hearings for cross-examination. However, Shri Sumit Valecha vide his email id- <blessing.sumit@gmail.com> dated 02.06.2025 at 9.26 PM, has replied as under –

I respectfully acknowledge receipt of your letter dated 21.05.2025, addressed to my permanent residence in Surat.

Although the said letter was received by my parents last week, I was away from Surat due to ongoing professional commitments and only returned this morning. Upon reviewing the letter today after receiving it from my parents, I came to know about the cross-examination that was scheduled for 12:30 AM today. Unfortunately, owing to the last-minute knowledge of the same, I was unable to be present for the hearing. This is the first instance of such an absence on my part, and I sincerely regret the inconvenience caused.

Sir, I would like to categorically state that I have never received any prior communication in this regard until this letter dated 21.05.2025. I also respectfully deny receiving any letters dated 22.01.2025, 11.02.2025, 21.02.2025, and 13.05.2025, as mentioned therein.

Further, I would like to clarify that we have not communicated with your office via emails dated 03.02.2025 and 24.02.2025, as referenced in your letter. The letter dated 21.05.2025 is, to the best of my knowledge, the first and only communication I have received on this matter, and this correspondence is my first response accordingly.'

Accordingly, Shri Sumit Valecha again sought 2 months extra time for his advocate to prepare for cross examination and other arrangements.

10.3.1 I observe that Shri Sumit Valecha has alleged in his reply that he has not received any of the previous communication of notices for Cross Examination. However, I find that along with Personal Hearing notices sent to his addresses via speed post, the same were also communicated to him on his email id - blessing.sumit@gmail.com on dates 03.04.2025, 13.05.2025, 22.05.2025 & 23.05.2025. Incidentally, this is the same email id from whom Shri Sumit Valecha sent his reply dated 02.06.2025 at 9.26 PM, on the email id adj-mundra@gov.in of the Adjudicating authority. The screenshot of the sent emails is attached below for reference -



From the above record of E-mails sent to Shri Sumit Valecha, it is clear that several emails have been sent to him to appear for cross-examination, however, he failed to respond to any of them. Hence, the argument of the noticee, that he has not received any of the communication of Cross examination, is not tenable, and it is clearly evident that he has intentionally ignored the previous communication for cross-examination, with the sole purpose of delaying the adjudication process.

10.4 I have gone through the defense reply of the said noticee wherein he has shown his complete ignorance about the export of waste fabrics/chindi and, accordingly, non-involvement in the conspiracy. During the course of personal

hearing, he stated that he was not involved in the conspiracy. I have also noted his further additional submission dated 08.02.2017.

10.5 As per the statement of Shri Sumit Valecha dated 24.08.2015, he knew Shri Vishal Punjabi for a long time. He also knew Shri Arun Kumar, Superintendent for 7 to 8 years. The contact between Shri Sumit Valecha and Shri Arun Kumar has been cleverly and intentionally manipulated by Shri Vishal Punjabi through Shri Sumit Valecha, resulting in both parties not only achieving their objectives but also establishing a further connection with Shri Nitesh Gangwani, CHA for the purpose of processing Shipping Bills. Shri Sumit Valecha was in constant touch with Sh. Arun Kumar on mobile/whatsapp for documents and transportation of containers from Surat to Mundra port as well.

10.6 As per the details of conversation on 23.07.2015, Shri Sumit Valecha sent one attachment to Shri Arun Kumar asking him to go through the highlighted portion. On 11.08.2015, Shri Arun Kumar expressed his dissatisfaction to Shri Sumit Valecha regarding the failure of his friend (Shri Vishal Punjabi) to send the documents. In response, on the same day, Shri Valecha said that he would look into the matter. Shri Arun Kumar asked him to send the documents on that same day only. On 12.08.2015 Shri Arun Kumar also asked him for documents stating that CHA was waiting for and on 13.08.2015 again asked for documents. On 14.08.2015 Shri Arun Kumar was again asking for the documents and invoice. In reply, every time Shri Valecha replies as being managing the documents. On 18.08.2015, Shri Valecha informed that five containers had already reached Mundra and two more left at 1 p.m. on the same day and one more would be reaching at any moment. The conspiracy was thoroughly exposed with the conversation on 20.08.2015. On the very same day Shri Valecha on whatsapp asked Shri Arun Kumar about what was happened. Shri Valecha also requested Shri Arun Kumar to help his friend (Shri Vishal Punjabi) to clear safely from the controversy; that the position of his friend was becoming very tight (due to expose of conspiracy) and thus reiterating the request to clear him (from the controversy) anyhow. The said whatsapp conversation of Shri Sumit Valecha with Shri Arun Kumar clearly indicates that he was taking keen interest in the arrangement of documents from Shri Vishal Punjabi and giving all the required feedbacks of containers to Shri Arun Kumar being transported to Mundra Port. Shri Sumit Valecha also mentioned in his conversation dated 30.08.2015 with Shri. Vishal Punjabi that whether invoice will be prepared. Thus, it clearly shows his complicity in the alleged fraudulent export. Thus in light of such evidence I find that there is no force in the arguments of Shri Sumit Valecha made in his defense which itself goes on to prove that he was involved in the bogus export of waste cloths in the guise of Ladies Fancy Scarves in order to claim unauthorized drawback and, thereby abetted in the omission of an act which made the goods liable to confiscation under Section 113 of Customs Act,1964 and, rendered himself liable to penalty under Section 114(iii) of the Customs act,1962. In the instant case, Shri Sumit Valecha has attempted to export the goods by way of preparing false and incorrect documents and therefore, rendered himself also liable to penalty under Section 114AA of Customs Act,1962.

11. Examination of role played by Shri Nitesh Gangwani

11.1 It was alleged in the Show Cause Noticee that the said noticee has filed all 36 Shipping Bills through CMC Centre, located in Mundra Port without the knowledge of the Customs Broker M/s D.P. Logistics; that he was offered an amount of Rs. One lakhs for getting the work done from dock Inspector and, accordingly, he

had accepted the said offer and, he attempted to do so. Therefore, he was proposed for penal action under Section 114(iii) and Section 114AA of Customs Act, 1962.

11.2 Hon'ble Pr. Commissioner, Custom House, vide Order in Original **MUN-CUSTM-000-COM-01-17-18 dated 28.04.2017** confirmed the Show Cause Notice and imposed penalty amounting to Rs.10,00,000/- (Rupees Ten Lakhs only) under section 114(iii) of Customs Act, 1962 and Rs. 5,00,000/- (Rupees Five Lakhs Only) under Section 114AA of the Customs Act, 1962 on Shri Nitesh Gangwani, H-Card Holder of M/s D.P. Logistics. Aggrieved from the OIO dated 28.04.2017, Shri Nitesh Gangwani filed an appeal before CESTAT Ahmedabad. In this regard, CESTAT Ahmedabad vide their Order No. FO/CA/12284-12286/2023-CU(DB) dated 17.10.2023 has remanded the matter in following words:

"...we set aside the impugned order-in-original and remand the matter back to the Adjudicating Authority with directions that the matter be re-adjudicated after allowing cross-examination of the persons whose statements have been used as evidence against the above appellants."

11.3 I find that Shri. Nitesh Gangwani has not requested cross examination for any person. However, in pursuance of CESTAT order dated 17.10.2023, his cross examination was allowed and notice was issued to appear on 04.02.2025, however, he was not appeared on the appointed day of the Cross examination. To abide by natural justice, another opportunity for cross examination was given to Shri Nitesh Gangwani and others on 18.02.2025. Thereafter, several opportunities for cross examination were given to Shri Nitesh Gangwani and others on 27.02.2025, 23.05.2025 & 02.06.2025. However, none of the persons, including Shri Nitesh Gangwani attended any of the personal hearings for cross examination. Shri. Nitesh Gangwani vide his letter dated 16.05.2025 informed that he will be unable to appear for cross examination due to personal reasons. Contents of his letter are reproduced below –

"Kindly refer to your letter DIN 20250571M0000000A2F2 dated 13.05.2025, addressed to Shri Vishal Punjabi of Surat and copy endorsed to me asking to appear for cross-examination on 23.05.2025 at 11.30 AM.

I wish to submit that I am proceeding along with my family for Char Dham Yatra today, ie., 16.05.2025 for which train ticket upto Delhi was booked much earlier, i.e., on 17.03.2025. We shall be returning from Delhi on 31.05.2025 for which also ticket was booked earlier, i.e., on 05.04.2025. Printouts of both the tickets are attached for ready reference.

In view of above, I shall be unable to appear for cross-examination on 23.05.2025 at 11.30 AM."

11.3.1 After receipt of this reply, another opportunity for cross examination was provided to all Noticees on 02.06.2025. However, Shri Nitesh Gangwani again failed to appear without giving any reason whatsoever. From the above facts and circumstances, it is clearly evident that he has intentionally ignored all except one communication for cross examination, with the sole purpose of delaying the adjudication process. Therefore, I proceed to decide the case on the basis of evidence available on record.

11.4 I observe that, in his reply Shri Nitesh Gangwani has denied the entire allegation and called for several documents to prepare his defence. The said

documents were provided to him vide letter dated 24.01.2017. After Denovo proceedings, no further reply was received from Shri Nitesh Gangwani.

11.5 I have gone through the statement of the Shri Nitesh Gangwani recorded on the day on which the instant case was booked on 20.08.2015. In his statement, he has accepted the responsibility of filing of 36 Shipping Bills on 17.08.2015 and 18.08.2015 and before examination of goods he also admitted to have the knowledge of goods i.e. waste cloth meant for export in the guise of Ladies Fancy Scarves. When he noticed the said fact, he got surprised and immediately informed to Shri Arun Kumar and on the night of 19.08.2015, he also personally met him at KPT Colony, Gandhidham. Shri Arun Kumar offered him an amount of rupees One lakh for a container which he agreed to. Nitesh Gangwani was the employee of M/s D.P. Logistics. M/s D.P. Logistics as a routine practice were always filing Shipping Bills at Ahmedabad office only. But in this particular case, Shri Nitesh Gangwani without the knowledge of M/s D. P. Logistics has used their license for filing Shipping Bills at Mundra Port. Such hiding of the facts from the license holder M/s D. P. Logistics itself suggests that he was aware about the fraudulent export of goods and proves his complicity in the case. Thus, I find that Shri Nitesh Gangwani was involved in the conspiracy of bogus export of goods i.e. waste cloth/Chindi, in the guise of Ladies Fancy Scarves in order to claim unauthorized drawback and, thereby, abetted in the commission of an act, which made the goods liable to confiscation under Section 113 of Customs Act, 1962 and, rendering himself liable to penalty under Section 114(iii) of the Customs act, 1962. In the instant case, Shri Nitesh Gangwani has falsely and incorrectly made the Shipping Bills and attempted to export the goods and therefore, he is also liable to penalty under Section 114AA of Customs Act, 1962.

12. In view of above, I pass the following order –

ORDER

- (i) I impose a penalty of Rs. 50,00,000/- (Rs. Fifty Lakhs Only) under Section 114(iii) of Customs Act, 1962 on Shri Vishal Punjabi, Proprietor of M/s Vishal Impex, Surat and Rs. 5,00,000/- (Rs. Five Lakhs Only) under Section 114AA of the Customs Act, 1962.
- (ii) I impose a penalty of Rs. 10,00,000/- (Rs. Ten Lakhs Only) under Section 114(iii) of Customs Act, 1962 on Shri Sumit Valecha, Proprietor of M/s Ashirvad Projects, Gandhidham.
- (iii) I impose a penalty of Rs. 10,00,000/- (Rs. Ten Lakhs Only) under Section 114(iii) of Customs Act, 1962 on Shri Nitesh Gangwani, H Card Holder of M/s D. P. Logistics and Rs. 5,00,000/- (Rs. Five Lakhs Only) under Section 114AA of the Customs Act, 1962.

13. The O-i-O is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or any other law for the time being in force.



(Nitin Saini)
Commissioner of Customs
Custom House, Mundra

To,

(1) Shri Vishal Punjabi, Proprietor of M/s Vishal Impex, Resident of House No. B-1207, Suryaprakash Residency, City lite, Surat - 395 001.

(2) Shri Sumit Valecha, Proprietor of M/s Ashirwad Projects, Gandhidham Resident of A-73 Bhai Pratap Nagar, NU 10 B Gandhidham, Kutch.

Present Address: 1102, 11th Floor, Sai Prasad Apartments, Behind Pandav Bungalows, Opposite Lal Bungalows, Athwa Lines, Surat 395007.

(3) Shri Nitesh Gangwani, 'H' card holder of M/s DP Logistics, Resident of House No. 12, Purshottam Nagar, 4 B, Adipur, Gandhidham, Kutch.

Present Address: House No. 43, Plot No.3/11, Senior Citizen Society, Ward 4B, Adipur, Gandhidham; and Office no. 207, 2nd Floor, Ratnakar Arcade, Sector-8, Gandhidham.

Copy to:-

1. The Assistant/Deputy Commissioner (RRA), CCO, Ahmedabad.
2. The Assistant/Deputy Commissioner (TRC), Custom House, Mundra.
3. The Assistant/Deputy Commissioner (EDI), Custom House, Mundra.
4. Notice board.
5. Guard file.