



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,  
OFFICE OF THE COMMISSIONER OF CUSTOMS(APPEALS),अहमदाबाद AHMEDABAD,  
चौधीमंज़िल 4th Floor, हडको बिल्डिंगHUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009  
दूरभाषक्रमांक Tel. No. 079-26589281  
DIN- 20250971MN000000FF9D

क	फ़ाइलसंख्या FILE NO.	(i) F. No. S/49-41/CUS/MUN/2024-25 (ii) F. No. S/49-40/CUS/MUN/2024-25
ख	अपीलआदेश संख्या ORDER-IN- APPEAL NO. (सीमाशुल्कअधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	MUN-CUSTM-000-APP-176 to 177-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	01.09.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	OIO No. MCH/ADC/MK/274/2023-24, dated 01.03.2024 passed by the Additional Commissioner of Customs, Mundra.
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	01.09.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	(i) M/s. Geobath Sanitaryware LLP, S.No.156,Unchi Mandal Sanala Road, Near Power House, Halvad Road, Morbi-363642.  (ii) Shri Hiteshkumar Valjibhai Kaila, Partner, M/s. Geobath Sanitaryware LLP, S.No.156,Unchi Mandal Sanala Road, Near Power House, Halvad Road, Morbi-363642

1. यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.

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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.
	खेत सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल.
(a)	any goods imported on baggage.
(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 ओर की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए : The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षक 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 रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.



4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केन्द्रीय 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	2 <sup>nd</sup> 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; पांच 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**

Two appeals have been filed by the Appellants, as per details given in the Table below, under Section 128 of the Customs Act, 1962 challenging the Order – in – Original (OIO) No. MCH/ADC/MK/274/2023-24, dated 01.03.2024 (hereinafter referred to as the “impugned order”) passed by the Additional Commissioner of Customs, Custom House, Mundra (hereinafter referred to as the “adjudicating authority”):

Sl. No.	Name of the Appellant	Hereinafter referred to as
1.	M/s. Geobath Sanitaryware LLP, S.No.156,Unchi Mandal Sanala Road, Near Power House, Halvad Road, Morbi-363642.	Appellant No. 1
2.	Shri Hiteshkumar Valjibhai Kaila, Partner, M/s. Geobath Sanitaryware LLP, S.No.156,Unchi Mandal Sanala Road, Near Power House, Halvad Road, Morbi-363642	Appellant No. 2

2. Facts of the case, in brief, are that a specific intelligence was received by the officers of Directorate General of Revenue Intelligence (DGRI) which indicated that Red Sander Logs were being attempted to be illegally exported by concealing the same behind an export consignment of Ceramic Sanitary Wares in a container. The intelligence also suggested name of Appellant No. 1 as the exporter and the export consignment was covered under Shipping Bill No. 9632005 dated 14.01.2020 contained in the Container No. TGHU3478747. As per the intelligence, the Container No. TGHU3478747 was to be loaded on vessel for Sharjah from Mundra Port. Acting upon the intelligence, the said Container No. TGHU3478747 mounted on a truck trailer No. MH46AR0294 was located inside the Mundra Port, and was examined at M/s Adani Exim Yard CFS, Mundra by officers of the DGRI under Panchnama dated 14.01 2020. During the examination of the Container, it was found that the container was stacked with Red Sander Logs in the front portion. During de-stuffing of Red Sander Logs, it was found that number of brown coloured corrugated boxes having marks 'Gres, the perfect surface' were placed inside the container. The Boxes were having the details/address of Appellant No. 1. On opening the boxes, washbasins/sanitary-wares were found kept inside those boxes. There were total 666 Red Sander logs found on de-stuffing from the container. The forest officer also opined after examination of the wooden logs that the same were of red sanders. There were total 160 Boxes found on de-stuffing from the container containing one wash Basin/Sanitary-ware




each. The weight of the red sander logs was ascertained as 9.64MT. The value of the said undeclared and concealed 666 numbers of Red Sander Logs was estimated as Rs 4,82,00,000/- The value of the 160 pcs. of the sanitary ware was also ascertained on the basis of export invoice as Rs 42,560/-. The Red Sander Logs valued at Rs. 4,82,00,000/-, 160 pieces of Sanitary ware valued at Rs. 42,560/ and Truck/Trailer bearing Reg. No. MH46 AR 0294 valued at Rs. 7,00,000/- approximately used for export of prohibited goods (Red Sander Logs) illegally was placed under seizure under Provisions of the Customs Act, 1962 vide seizure memo dated 14.01.2020 and was handed over to Adani Exim Yard CFS, Mundra for safe custody vide Supratnama dated 14.01.2020.

2.1 The export of Red Sender wood in any form, whether raw, processed or unprocessed, which is falling under Tariff Item/HS Code No. 44039918/44079990 is prohibited for export out of India by virtue of Sr No. 188 of Schedule 2 of the Indian Trade Classification (Harmonised System) of Exports and Imports, pertaining to the Export Policy, notified under Notification No. 47/2015-2020, dtd. 31.01.2018 issued by the Central Government under the provisions of Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 as amended from time to time read with Para 2.01 of the Foreign Trade Policy 2015-2010. Red Sanders, which is known as "Pterocarpus Santalinus" has also been declared as "Prohibited Species" covered under Appendix I of CITES (Convention on International Trade in Endangered Species.), hence the export of the Red Senders out of India is restricted by virtue of the said treaty. Hence, the said undeclared and concealed 666 number of Red Sander Logs weighing 9.64 MTS, which were recovered from aforesaid container valued at Rs. 4,82,00,000/, 160 pieces of Sanitary ware valued at Rs. 42,560/- and Truck/Trailer bearing Reg. No. MH46 AR 0294 valued at Rs. 7,00,000/approximately were found liable for confiscation as per provisions of the Customs Act, 1962 and were placed under seizure under the provisions of the Section 110 (i) of the Customs Act, 1962.

2.2 The premises of Appellant No. 1 was searched under Panchnama dated 15.01.2020. During the search, some incriminating documents were recovered under Panchnama. Investigation revealed that M/s. Geobath Sanitaryware LLP played a vital role as a host in this planned strategy in illegal export of the prohibited goods of Red Sender logs, by way of facilitating the smugglers in smuggling of Red Sanders logs. They have allowed clear misuse of the Self-sealing permission No. 1878/CCP/JMR/2019-20 dated 28.11.2019 issued to them by the Assistant Commissioner of Customs (Prev.), Jamnagar in as much as they without verification of credentials of the gang of conspirators, accepted the export order, extended undue co-operation with the Red Sanders smugglers and facilitated them. It is evident that in a



past Red Sanders smuggling cases the similar gang was active and executed export of Red Sanders in the case of M/s Sanyo Ceramic and in the case of M/s Nitco Traders. Appellant No. 1 provided the platform to the smugglers to utilize their self sealing permission to export the prohibited item. Shri Ramesh Sharma alias Ramesh alias Parvez personally met Shri Bijal of M/s Geobath to explain the procedure for obtaining the Stuffing & Self Sealing permission from the Custom authority. Appellant No. 1 obtained the Stuffing and Self Sealing permission just to facilitate the cartel of the smuggler to smuggle the prohibited species of Red Sanders logs. The partner of the exporter Arm looking after the affairs had also not taken due care to supervise the loading and stulling operation of goods, which took place in their premises, contrary to their obligation under the self-sealing permission issued to them. None of the partners of the exporter took care at any stage to monitor the cargo being transported for export in their name. Being an exporter it became the responsibility/accountability of Appellant No. 1 to track the container stuffed in their premises. Appellant No. 1 never tried to watch the movement and the whereabouts of the container No. TGHU3478747 which did not follow the proper path destined to Mundra port on time. Appellant No. 1 showed their ignorance and Innocence to DRI official by saying that they were not aware of the illegal export of Red Sanders, and that they cleared export of Wash Basins which were manufactured and stuffed in their factory, that Appellant No. 1 came to know about smuggling of Red Sanders only after DRI officials visited their factory on 15.01.2020. The fact that the container was stuffed at their factory on 13.01.2020 and till 15.01.2020 they were not aware about the whereabouts of the container TGHU3478747 which was stuffed at their factory. Appellant No. 1 claimed to have been known to this development only when the DRI officers visited their factory. It is not the fact that Appellant No. 1 were not fully aware of the responsibility they had to bear with the container no. TGHU3478747 stuffed at their premises. The responsibility to verify the antecedent of the consignee and transporter lies with the exporter. From the investigation, it never appears anywhere that the Appellant No. 1 had made any effort to check the authenticity/genuineness of the consignee M/s. AL-Nayem Sanitaryware Trading LLC. Office No. 103, FGD Plaza, Al-Lttihad Raod, P.O.Box-70963 Sharjah-UAE. Appellant No. 1 fully ignored otherwise the sensitivity and susceptibility of the export and agreed to have a business with strangers who persuaded them to export on their behalf. Similarly, they never tried to verify the genuineness of the logistics company M/s D.S Logistics owned by Shri Dwijendra Shirish Manek. Earlier, Appellant No. 1 gave a confirmation to Shri Nazim for forwarding the Bill of Lading and other relevant document of the cargo exported on 13.12.20 to address "Madhusudan Villa, 9AL Rashid Road, 26C, Street, Deira, Dubai, UAE" which was not the same address of the consignee mentioned on invoice. The forwarding of relevant documents of export to other address with the confirmation of exporter clearly shows that the Appellant No. 1 were fully aware of the suspicious activity




going on and they deliberately kept silence and willingly ignored otherwise the facts and circumstances and caused the offence inevitable. For the subject goods, the domestic average rate was Rs. 100/- to Rs. 120/ per piece while for export, price was fixed with Shri Manek at Rs. 266/- per piece i.e. at the rate of more than twice of the same. Appellant No. 1 were in greed of money which was paid to them in advance and a higher rate than normal one and specifically when the goods were of old stock and obsolete and hence; they willingly avoided and neglected the mandatory checks and balances on their count. It is also evident from the facts that the exporter had self-assessed the Shipping Bill No. 9632005 dtd. 14.01. 2020, against the different factual details. Hence, it is evident that Appellant No. 1 knowingly and clearly rendered the goods liable for confiscation under section 113 of the Customs Act, 1962. Further they have knowingly or intentionally made, signed or used or caused to be made, signed or used the declaration/statement, document which was false or incorrect in the material particular of the case in transaction of their business under the Customs Act, 1962. By such act of commission and omission, the Appellant No. 1 rendered themselves liable to penal action under Section 114(i), Section 114(iii) and Section 114AA of the Customs Act, 1962.

2.3 Investigation revealed that Appellant No. 2 being an active conversant and responsible partner of the exporter, remained careless and casual in dealing in such business transaction and monitoring the movement of the export consignment, which enabled way to the scam of smuggling of such a sensitive and prohibited cargo of Red Sender Logs. Being an overall in-charge including in-charge of exports, Appellant No. 2 provided the platform to the smuggler without checking the antecedent of the buyers and importers. He never took care in this regard and deliberately allowed the smugglers to use the self-sealing permission number 1878/CCP/JMR/2019-20 dated 28.11.2019 issued to them (exporter) by the Assistant Commissioner of Customs (Prev), Jamnagar Hence, it appeared that Appellant No. 2 knowingly and clearly rendered the goods liable for confiscation under section 113 of the Customs Act, 1962. Further, they have knowingly or intentionally made, signed or used or caused to be made, signed or used the declaration/statement, document which was false or incorrect in the material particular of the case in transaction of their business under the Customs Act, 1962. By such act of commission and omission, Appellant No. 2, Partner of Appellant No. 1 rendered himself liable to penal action under Section 114(i), 114(iii) and Section 114AA of the Customs Act, 1962.



2.4 On conclusion of investigation, the Additional Commissioner of Customs, Mundra had issued a Show Cause Notice Show Cause Notice No. DRI/AZU/GRU/Geobath-RS/INT-1/2020 dated 09.07.2020 to the Appellant No. 1, Appellant No. 2 and other noticees proposing as under:

(a) Confiscation of 666 Nos. of Red Sander logs, weighing 9.64 MT having market value of about Rs. 4,82,00,000/- @ Rs. 45 Lakhs/MT, under Sections 113(d), 113(h), 113 (c), 113(i) and 113(ia) of the Customs Act, 1962, which were seized from the Container No. TGHU3478747 covered under the Shipping bill 9632005 dtd. 14.01.2020.

(b) Confiscation of 160 pieces of Wash Basins having value of Rs. 42,560/-, under Section 119 of the Customs Act, 1962 which were used for concealing the 666 Nos. of Red Sander logs and which were seized from the Container No. TGHU3478747 covered under the Shipping Bills No. 9632005 dtd 14.01.2020.

(c) Rejection of claims for drawback of Rs. 4376/- electronically filed by Appellant No. 1 while filing the Shipping Bill No 9632005 dtd 14.01.2020 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.

(d) Denial of the benefits of MEIS Scheme claimed by the Appellant No. 1 in light of the apparent discrepancies noticed in respect of goods meant for exportation vide Shipping Bills No. 9632005 dtd 14.01 2020.

(e) Imposition of Penalty on Appellant No. 1 under Section 114(i), Section 114(iii) and 114AA of the Customs Act, 1962.

(f) Imposition of Penalty under Section 114(i) and Section 114AA of the Customs Act, 1962 respectively on Appellant No. 2 and other noticees viz. Shri Dwijendra Shirish Manek, Shri Ramesh Sharma alias Ramesh alias Parvez, Shri Ganesh, M/s AL Narayan Sanitaryware Trading LLC and Shri Nazim Khan Joya, General Manager of M/s Indian Ocean Shipping and Logistics, 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.

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




(a) Ordered for absolute confiscation of the 666 Nos. of Red Sander Logs having market value of Rs. 4,82,00,000/- under Sections 113(d), 113(h), 113(e), 113(i) and 113(ia) of the Customs Act, 1962 which were seized from the Container No. TGHU3478747 covered under the Shipping bill 9632005 dtd. 14.01.2020.

(b) Ordered for confiscation of 160 pieces of Wash Basins having value of Rs 42,560/- which were used for concealing the 666 Nos. of Red Sander Logs, under Section 119 of the Customs Act, 1962. He gave an option to Appellant No. 1 to get these 160 pieces of Wash basins redeemed by paying redemption fine of Rs. 40,000/- in lieu of confiscation under Section 125 of the Customs Act, 1962.

(c) Rejected the claim of Drawback of Rs. 4,376/- filed by Appellant No. 1 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.

(d) Denied the claim for benefits of MEIS Scheme claimed by Appellant No. 1 in light of the apparent discrepancies noticed in respect of goods meant for exportation vide Shipping Bill No. 9632005 dated 14.01.2020.

(e) Imposed penalty of Rs. 80,00,000/-, Rs. 40,000/- and 40, 00,000/- on Appellant No. 1 under Section 114(i), 114(iii) and 114AA of the Customs Act, 1962 respectively.

(f) Ordered for confiscation of the Motor Vehicle No. MH46 AR 0294, having estimated value of Rs. 7,00,000/- which was used for conveyance as a means of transportation in the smuggling of Red Sanders Logs under Section 115(2) of the Customs Act, 1962 redeemed by paying redemption fine of Rs. 2,00,000/- (Rupees Two Lakh Only) in lieu of confiscation under Section 125 of the Customs Act, 1962

(g) Imposed penalties of Rs. 80,00,000/- and Rs. 40,00,000/ under Section 114(i) and 114AA of the Customs Act, 1962 respectively on Appellant No. 2 and other noticees viz. Shri Dwijendra Shirish Manek, Shri Ramesh Sharma alias Ramesh alias Parvez, Shri Ganesh, M/s AL Narayan Sanitaryware Trading LLC and Shri Nazim Khan Joya, General Manager of M/s Indian Ocean Shipping and Logistics.



(h) She refrained from imposing penalty on one of the noticee viz. Shri Bhushan L Wadhvani, under Section 114(i), Section 114AA and Section 117 of the Customs Act, 1962.

### **SUBMISSIONS OF THE APPELLANTS**

3. Being aggrieved with the impugned order passed by the adjudicating authority, Appellant No. 1 and Appellant No. 2 have filed the present appeals on similar grounds as under:-

3.1 The learned Additional Commissioner has completely ignored the facts, submissions made before her and travelled beyond the allegations made in the SCN (while giving her findings at para 14.2. and 14.3 of the impugned order), provisions of the Customs Act, 1962 and settled position of law therefore, impugned order is liable to be set aside. The appellant disagrees with the finding of the learned Additional Commissioner at the said two paragraphs on the following grounds. At the very outset, it denies all the allegations made against it in the SCN and impugned order as same are totally baseless and contrary to the facts revealed during the course of investigation. The statements discussed in para supra (statement of facts) are exculpatory and neither any of the partners nor any staff of Appellant were aware about smuggling activity by the said gang. It has taken utmost care in the transactions which a business man can take in normal business practices. It is very much surprised to receive the show cause notice and impugned order evenafter it clearly reveals from the investigation that no one was involved or aware about smuggling of goods in the container loaded from its factory premise that too by following unique modus operandi. Even DRI so called apex agency also not able to catch the Ramesh Sharma alias Ramesh alias Parvez and Ganesh, nor able to find out the place near Samkhiyali where replacement of Sanitarywares by Red Sanders even after the gang of smugglers had made similar attempt in case of export from M/s. Sanyo Ceramic and M/s. Nitco Traders. How common man can able to understand and prevent such smuggling activities while doing business in normal course?

3.2 The DRI has not issued SCN to both the drivers who had drove the vehicle and Customer Broker as they are also not knowing anything about smuggling of prohibited goods like appellant. The DRI failed to cite a single provision of the Customs Act, 1962 or rules made thereunder or any law of the land for alleged failure etc. while making baseless allegations contrary to facts available on record.




3.3 Appellants submits that though it clearly reveals by reading the impugned show cause notice and submissions made in para supra that allegations made at para 9.1 & 9.2 of the SCN are totally baseless in facts and in law, however, without admitting anything it submits on each allegation separately as under which may please be considered independent and without prejudice to one another.

3.3.1 It may please be appreciated that it clearly reveals from the investigation especially panchnama drawn at its factory premises, various statements of employees and partners of Appellant and two drivers including relevant portions discussed in para supra that there is no role of it in smuggling in any manner where is the question of vital role as host in the planned strategy in illegal export of prohibited goods of Red Sanders logs and facilitating the smugglers in smuggling of Red Sanders Logs. The DRI failed to define the manner of facilitating. It clearly reveals from the statements that before loading and stuffing of the sanitarywares it was checked about its emptiness and loading and stuffing of only sanitaryware in the said container under the supervision of its authorized persons two clerks; that it was properly sealed and the said seal was also intake and not opened for loading the Red Sanders Logs at some unknown place till DRI had opened under panchnama.

3.3.2 Appellants strongly object and submits that how it can be alleged and considered that it has allowed clear misuse of the self-sealing permission No. 1878/CCP/JMR/2019-20 dated 28.11.2019 issued to them by the Assistant Commissioner of Customs (Prev.), Jamnagar in as much as they without verification of credentials of the gang of conspirators, accepted the export order, extended undue co-operation with Red sanders smugglers and facilitated them.

3.3.2.1 There was no misuse of self-sealing permission as it is not matter of dispute that goods as per export invoice and check list for shipping bill were loaded and stuffed from its factory premises. It has trusted the buyers in its normal course of business. Since, Morbi and its surrounding area is one of the biggest hubs of the world for manufacture of tiles and sanitaryware, many people from all over India visits the factory premises and buy the goods from the factory and also arrange transportations of the goods. In most of the cases, the buyers pay the amount either in cash or through banking channel before delivery of goods. When goods are sold at factory gate against the payment no business man verify the credential of buyers and even no need to verify the credential in such transactions. It is common phenomenon that when one visit for buying or purchasing the goods at particular factory or shop and making payment across the counter who verifies the credential of the buyers and why verify?



It failed to understand what more undue co-operation was extended to the buyers as same is not defined while making such baseless allegations. Nothing more than normal business transactions was done with the buyer of the goods.

3.4 It may also please be appreciated that it is nowhere alleged or revealed that it was aware about past Red Sanders smuggling cases by the similar gang in the case of M/s. Sanyo Ceramic and M/s.Nitco Traders. If it had slightest knowledge of gang or such modus operandi it would have definitely taken all the precautions.

3.5 Appellant most respectfully submits that it has not provided the platform to the smugglers to utilize its self-sealing permission to export the prohibited item as discussed in para supra. Appellant has obtained the stuffing and self-sealing permission for export of sanitaryware only and not to to facilitate the cartel of the smuggler to smuggle the prohibited species of Red sanders Logs. It is admitted facts on record that it is already having Importer Exporter Code (IEC). It had agreed for export of sanitarywares and not for any other goods. On the contrary it also being dragged unduly in the matter by the said gang as well as DRI.

3.6 It is also admitted facts on record that not only one employee but two employees had supervised loading and stuffing of goods in its factory premises and it is not necessary that the partner of the exporter firm looking after the affairs had to supervise the loading and stuffing operation of goods. The factory stuffing and self-sealing permission No. 1878/CCP/JMR/2019-20 dated 28.11.2019 nowhere provides that such loading and stuffing operation of goods have to be supervised by the partner of the firm only. It may also be appreciated that all the activities in business and even government offices including Customs offices work are being delegated to others.

3.7 It is admitted facts on record that goods were sold at factory gate only and one consignment of export already reached to the buyers of the goods, there was no need to track, monitor or watch the container. Neither it nor any other factory owner or businessman track, monitor or watch the movement of transport vehicle in normal course of business. Practically it is not feasible to do so. It is baselessly alleged that it is responsibility / accountability of appellant but has not cited any authority under the law of the land for the same.




3.8 It is also admitted facts and also reveals from the investigation that appellant was not knowing about smuggling of Red Sanders Logs by replacing sanitarywares till DRI official visited its factory premises on 15.01.2020.

3.9 It is also admitted facts on records that the container was stuffed at their factory on 13.01.2020 and left around 1800 hours for Mundra and as stated in statement dated 04.06.2020 of Shri Hitesh Kumar V. Kaila, one of the partners of the firm that he had received a call from the driver of the trailer in the morning of 14.01.2020 and asked him where he had to take the trailer and he gave mobile number of Shri Nizam (of M/s. Indian Ocean Shipping). The officer of the DRI had visited its factory premises around 10.30 am of 15.01.2020, therefore, there was no scope of any doubt and also need to track the movement etc. In any case if one look at the time gap there cannot be any doubt and need to track the vehicle especially it reaches to the port of export.

3.10 As submitted earlier that goods were sold at factory gate and entire payment for the goods was received in advance, what is the need for the exporter to verify about consignee and transporter. In day to day business many people visit factory premises of manufacturer and buy the goods and goods are also being transported with number of vehicles. No businessman check about any buyer or transporter in the normal course of business especially when payment towards the goods are received in advance.

3.11 It is also admitted facts on record that Shri Dwijendra Shirish Manek is buyer of the goods and also owned the logistic company M/s D.S. Logistics who had arranged the transportation and also issued LR /Consignment No. 2120 where is the question of making doubt in genuineness of the said company. Their activities came only when DRI had made detailed investigation, how a common businessman can visualize about if any malpractice in the transaction after buying goods in normal business transaction.

3.12 It is also on record that goods were sold at factory gate with full advance payment through banking channel, why it should have any objection in sending Bill of Lading and other relevant documents of the cargo exported on 13.12.2019 to address "Madhusudan Villa, 9AL Rashid Road, 26C, Street, Deira, Dubai, UAE" which was not the same address of the consignee mentioned on invoice by M/s. Indian Ocean Shipping & Logistic, Gandhidham, especially when new address is given by the man viz. Ramesh Sharma of M/s. D. S. Logistic who had placed the



purchase order through Dwijendra S. Manek. It is also not revealed from the investigation that it was delivered to the person other than importer of the goods.

3.13 It is felt that investigation for the reason best known to them, even after clearly revealing from the investigation that Appellant nowhere involved in any manner in smuggling except the container in which sanitarywares was loaded for export was used by the gang of smugglers that too without it's knowledge and maximum precaution which can be taken by the businessman in normal business transaction are taken, it is implicated and baseless allegations are made against it.

It is also on record that price quoted to the buyer of the goods are CIF (Cost, Insurance and Freight) as mentioned in export invoice and the domestic average rate was at factory gate sale. Apart from that investigation had got confessed from one of the employees Shri Bijal C Bhunbhriya, clerk in his statement dated 20.01.2020 about average price for same name and description is Rs. 100/- to Rs. 120/- per piece is also not correct and contrary to documentary evidence available on records. Goods exported under both the shipping bills EVITA WB White Prem and Ruby WB While Prem were sold between price of Rs.212 to Rs.270 as per specimen invoices No. GSTT/690 dated 04.10.2019, GSTT/651 dated 09.09.2018 and GSTT/748 dated 19.10.2019. If the price quoted and charged to exporter is Rs. 266/- CIF is not excess or higher by any means but reasonable one for the goods supplied for export. Thus, allegations made in the SCN that the rate was more than twice etc. are far from the truth. Even similar goods were sold in October, 2019 as per the said invoices so allegation that the goods were of old stock and obsolete is also imagination of investigation with sole intention to implicate it. In any goods if it is presumed that goods may be supplied from old stock even then price was not double or higher than price charged for similar goods for domestic supply.

3.14 It is ridiculous to allege that it is also evident from the facts that the exporter had self-assessed the shipping Bill No. 9632005 dated 14.01.2020, against the different factual details. Actually, check list for shipping bill was filed and there is no difference in the details mentioned in the check list for said shipping bill and details mentioned in the invoices, packing list and goods loaded and stuffed in the container from its factory premises. It is also clearly revealing that while stuffing the said container in factory premises of Appellant only sanitarwares were loaded and container was properly sealed and Red Sanders Logs were loaded in transit by unloading equal weight sanitarywares. Even bottle seal affixed on the container was intact till DRI had cut opened the same. Therefore, question of different factual details does not



arise at all at least from the side of appellant. How, one can expect that said prohibited goods found in the container loaded by others in transit was required to be declared in the check list for shipping bill?

Thus, it is evident from the above as well as investigations that appellant has not rendered the goods liable for confiscation under section 113 of Customs Act, 1962 nor made, signed or used or caused to be made, signed or used the declaration/statement, document which was false or incorrect in the material particular of the case in transaction in its business under the Customs Act, 1962. Therefore, question of doing anything knowingly, clearly or intentionally does not arise at all. Therefore, no penalty is imposable under Section 114(i), Section 114(iii) and Section 114AA of the Customs Act, 1962 upon it.

3.15 Appellant most respectfully further submits that allegation made in the SCN that Shri Ramesh Sharma alias Ramesh alias Parvez personally met Shri Bijal of appellant to explain the procedure for obtaining the stuffing & self-sealing permission from the customs authority based on the statement date 15.01.2020 of Shri Dwijendra S. Manek is totally incorrect. Shri Ramesh Sharma alias Ramesh alias Parvez never visited its factory nor met anyone from the factory not to speak of Shri Bijal. He had talked on mobile only.

3.16 Appellants without admitting anything and without prejudice to above most respectfully further submits that though no specific show cause notice is issued to it but it is alongwith other noticees jointly asked to show cause to the Additional Commissioner. It means it is not put to the proper notice. The Customs Act, 1962 clearly provides that before confiscation of any goods and/or imposition of any penalty, a proper show cause notice is required to be issued on such person. It is also settled position of law that without any specific notice, no action can be taken on such person. Thus, show cause notice is liable to be quashed on this ground alone so far it relates to it.

3.16.1 Appellants further submit that it is admitted facts on records that seized goods including "Sanitarywares" and "Red Senders Logs" are neither owned by it nor same were recovered from its possession or custody. As per admitted facts on records goods were sold at factory gate on cash payment to M/s. AL-Nayem Sanitaryware Trading LLC, Sharjah-UAE, therefore, sale within the meaning of Sale of Goods Act, 1930 is completed. Therefore, ownership of the goods lies with the buyer of the goods and not of appellant. The goods were in the possession or custody of transporter and/or Adani Exim Yard CFS, Mundra.



As per provisions of Section 124 and Section 125(1) of the Customs Act, 1962, notice in writing is required to be issued to the owner of the goods and option to pay fine in lieu of confiscation to the owner of the goods or where such owner is not known, the person from whose possession or custody such goods have been seized. It is admitted facts on record that M/s. Al-Nayem Sanitaryware Trading LLC, Office No. 103, FGD Plaza, Al-Littihad Road, P. O. Box – 70963 Sharjah-UAE is the owner of the goods and transporter was in possession and custody of the goods. Therefore, notice upto the extent proposing confiscation of 666 Nos. of Red Sanders Logs and 160 pieces of Wash Basins were not required to be issued to it.

3.16.2 Appellants in view of the above submission cannot have any objection if the said prohibited goods are absolutely confiscated with other goods in view of the above submissions.

3.16.3 Appellants without admitting anything it is further submitted that penalty under Section 114(i) and (iii) of the Customs Act, 1962 can be imposed only when any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 113, or abets the doing or omission of such an act, then he is liable to penalty as per one of the clauses of said section. The instant case show cause notice nowhere specifically alleges except bald allegations at para 9.1 of the SCN that it had rendered the goods liable to confiscation.

As submitted in para supra that all the allegations made in the said para 9.1 of the SCN are totally baseless in facts and law also. It clearly reveals from the investigation as well as submissions made in para supra that it has not done or omits to do any act which act or omission in relation to the said goods, which render the goods liable for confiscation under Section 113 nor it has abetted the doing or omission of such an act, therefore, no penalty is imposed upon it not to speak under Section 114(i) and 114(iii) of the Customs Act, 1962.

3.16.3.1 Without admitting anything it is most respectfully submitted that leave aside Section 114, there is no section under the Customs Act, 1962 which may provide imposition of penalty on any person for negligence and failure to observe due diligence while exporting lawful cargo in lawful manner. Hence none of its or omission had rendered the goods liable to confiscation under Section 113. Similarly, it is neither admitted nor alleged in the notice that it has abetted in smuggling of red sander logs from India. Therefore, question of abetment or aiding in illegal export does not arise at all. It requests to consider above stated facts and submission, independently without prejudice to each other, which in no uncertain terms prove that it is not liable to penalty under Section 114 of the Act.




The container was stuffed with sanitary wares from its premises under physical supervision of its employee and even truck drivers had also seen that only sanitarywares stuffed from the factory premises. The container was locked with one-time bottle seals by it after stuffing of the goods for export viz. Sanitarywares only. It had correctly declared export cargo in all relevant documents including shipping bills. It is not alleged that Appellant had stuffed red sander logs in the container or that it had arranged the same. The investigation itself has established in the impugned notice that red sander logs were arranged and stuffed in the container by Shri Ramesh Sharma Mumbai in association with Shri Ganesh and Shri Dwijendra Shirish Manes alias Deepak Shantilal Kotak. It has also been established that original one-time bottle seal was intact till DRI had opened the container under panchanama. Sanitary wares were replaced with red sander logs by the said persons somewhere on way to Mundra port without breaking or tempering the said seal. It, therefore, submits that it cannot be held responsible for any attempt of smuggling of red sander logs from Mundra in the name of M/s. Geobath. In other words, none of its act or omission had rendered the red sander logs liable to confiscation. Consequently, no penalty is imposable upon it under Section 114 of the Customs Act, 1962.

3.16.4 Appellants further submits that Check list for shipping bill was filed through Customs Broker was also as per the documents viz. invoice, packing list etc. and there were no other documents, declaration, statement was false or incorrect in the transaction of any business. It is admitted facts on record by way of detailed investigation that it has loaded and stuffed sanitarywares only and red sanders logs were loaded and stuffed without his knowledge in transit by the said smugglers. Even shipping bill was not generated and check list is relied upon in the SCN at Sr. No. 1 of Annexure – R to the SCN. As per Para 27 of Chapter – 3 of the CBEC's Customs Manual, after the "Let Export" order is given on the EDI system by the Appraiser, the Shipping Bill is generated in two copies. Therefore, no penalty under Section 114AA of the Customs Act, 1962 can be imposed upon it.

3.16.4.1 Appellants without admitting anything further submits that proposal and order imposing penalty under Section 114AA of the Customs Act, 1962 upon it is also without understanding the provisions as well as legislative intention to insert the said section. Even otherwise said proposal to impose penalty is devoid of merits. Plain reading of Section 114AA makes it very much clear that it can be imposed only when somebody intentionally uses false and incorrect material. For ease of reference section 114AA is reproduced hereunder:

**SECTION 114AA. Penalty for use of false and incorrect material.** - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect



in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

Thus, the first and foremost requirement to bring any person under domain of Section 114AA is that the person must be **knowingly or intentionally** using the declaration, statement or document and such declaration, statement or document should be for transaction under provisions of Customs Act, 1962. It most respectfully submits that none of the above element applies to it. As already discussed in para supra there was no declaration etc. giving false or incorrect particular in any material. Hence question of imposing penalty under Section 114AA does not arise.

3.16.4.1.1 Appellants without admitting anything, would further like to draw kind attention towards the fact that penalty under Section 114AA can be imposed only in the situation of export on paper without physical export of goods.

For the above submission attention is further invited towards paragraph 62 to 66 of Standing Committee on Finance 27<sup>th</sup> Report - (2005-2006) – The Taxation Laws (Amendment) Bill, 2005 which clearly confirms that intention of legislature was to impose penalty under said Section 114AA only on exporters who were claiming export on paper intentionally and claiming illicit benefit of export incentives as is evident from following:

*“Section 114 provides for penalty for improper exportation of goods. However, there have been instance where export was **on paper only** and no goods had ever crossed the border. Such serious manipulators could escape penal action when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114AA is proposed to be inserted after Section 114AA.”*

Based on above, it is submitted that instant case is not of export of goods only on paper but attempt export prohibited goods by the smugglers and not by appellant. It has filed check list for shipping bill through Customs Broker as per the details of goods in export invoice and goods stuffed and loaded in container at its factory premises only. Therefore, no penalty is imposable upon it under Section 114AA of the Customs Act, 1962.

3.16.5 Appellants in supports of its submission further refers and relies upon the following case laws :-

MAHESHWARI ROCKS (I) PVT. LTD. Versus COMMISSIONER OF CUSTOMS, CHENNAI: 2010 (262) E.L.T. 574 (Tri. - Chennai)



NANDA INCORPORATED Versus COMMISSIONER OF CUSTOMS (EOU), CHENNAI-IV - 2018 (363) E.L.T. 673 (Tri. - Chennai)

SEKAR & SEKAR PROCESS Versus COMMISSIONER OF CUSTOMS, CHENNAI - 2010 (262) E.L.T. 385 (Tri. - Chennai)

The appeal of the department against the said decision was dismissed by Hon'ble High Court of Madras as under:

The Madras High Court Bench comprising Hon'ble Mr. Justice M. Jaichandren on 29-10-2012 dismissed the C.M.A. No. 1510 of 2010 filed by Commissioner of Customs (Exports), Chennai against the CESTAT Final Order No. 1936/2009, dated 11-12-2009 as reported in 2010 (262) E.L.T. 385 (Tri. - Chennai) (*Sekar & Sekar Process v. Commissioner*). While dismissing the appeal, the High Court passed the following order:

*"This Appeal having been posted for orders on this day, for not having represented the batta with petition along with affidavit in the presence of Mr. P. Mahaadevan, Advocate for the Appellant/Petitioner and this Court having granted time on or before 12-11-2012 as a condition precedent and the said Advocate not having complied with the said direction of this Court it is ordered that this Appeal do stand dismissed against the respondent.*

*The Appellate Tribunal in its impugned order had held that penalty on export of prohibited goods, could not be sustained. Goods were stuffed and sealed under the supervision of Revenue Officers. On interception of consignment en route to port, it was found to contain prohibited goods. However, seals were found to be intact and no finding on record that exporter knew the goods were liable to confiscation or committed/omitted to do something to render goods liable to confiscation."*

[*Commissioner v. Sekar & Sekar Process - 2014 (303) E.L.T. A51 (Mad.)*]

KAVIA CARBONS Versus COMMISSIONER OF CUSTOMS, TUTICORIN - 2009 (243) E.L.T. 547 (Tri. - Chennai)

Ratio of the above decisions is squarely applicable in the facts and circumstance of the case.

3.17 Appellants most respectfully submit that any exporter of goods cannot be expected to physically follow each and every container from the place of stuffing to the port of export. As regards documentation of export cargo, it is submitted that it had truly declared export items in the commercial invoice, Annexure, packing list etc. and the CHA had, therefore, filed check list for shipping bills accordingly on its behalf at the port of export. The notice does not allege that appellant had mis-declared the export cargo. The notice only alleges that negligence on its part rendered it liable to penal action. It clearly reveals from investigation and above submission that there was no negligence on its part.



Even if for sake of argument, it is assumed that there was negligence, in that case also there is no provision to impose penalty under Section 114 of the Act as discussed supra. In this regard it refers and relies upon following decision in the case of

NEPTUNE'S CARGO MOVERS PVT. LTD. Versus COMM. OF CUS. (EXPORT), CHENNAI: 2007 (219) E.L.T. 673 (Tri. - Chennai)

FAST CARGO MOVERS Versus COMMISSIONER OF CUSTOMS, JODHPUR - 2018 (362) E.L.T. 184 (Tri. - Del.)

Although, the above decision was rendered in appeal filed by a CHA, ratio laid down therein is equally applicable to the present case. This apart, while delivering the above judgment, Hon'ble Tribunal had taken into consideration decision of Hon'ble Supreme Court rendered in the case of Hindustan Steel Ltd. v. State of Orissa - 1978 (2) E.L.T. (J 159) (S.C.) = 1970 (1) SCR 753 – wherein the Hon'ble Apex Court held as follows :-

*"The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard of its obligation; but not, in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."*

3.18 Appellants submit that since goods are not exported and it had filed only check list for shipping and goods even not reached before the proper office of the Customs for making order of let export as provided under the Customs Act, 1962. As per para 26.1 of Chapter 3 of CBEC's Customs Manual that after actual export of the goods, the Drawback claim is automatically processed through EDI system by the officers of Drawback Branch on first-come-first served basis. Therefore, it is not entitled nor in a position to claim drawback and/or MEIS.

3.19 In addition to the similar grounds as mentioned above, Appellant No. 2 has further contended that there is no difference in allegations made against him as well as its firm. It is settled position of law that once penalty is imposed upon firm no separate penalty can be imposed upon partner of the firm. In support the same appellant No. 2 refers and relies upon following decisions:

- PRAVIN N. SHAH Versus CESTAT - 2014 (305) E.L.T. 480 (Guj.)
- C.C.E. & C., SURAT-II Versus MOHAMMED FAROOKH MOHAMMED GHANI - 2010 (259) E.L.T. 179 (Guj.)



- B.V. JEWELS Versus COMMISSIONER OF CUSTOMS (AIRPORT), MUMBAI: 2007 (210) E.L.T. 245 (Tri. - Mumbai) affirmed by Hon'ble Supreme Court as reported at 2014 (302) E.L.T. A109 (S.C.)]
- M.K. JAIN Versus COMMISSIONER OF CENTRAL EXCISE, INDORE: 2013 (291) E.L.T. 217 (Tri. - Del.)
- G.M. ENTERPRISES Versus COMMISSIONER OF CUS. (EXPORT), NHAVA SHEVA: 2010 (262) E.L.T. 796 (Tri. - Mumbai)
- COMMISSIONER OF CENTRAL EXCISE, MUMBAI – V Versus METAL PRESS INDIA: 2009 (246) E.L.T. 303 (Tri. - Mumbai)
- AMRITLAKSHMI MACHINE WORKS Versus COMMR. OF CUS. (IMPORT), MUMBAI - 2016 (335) E.L.T. 225 (Bom.)

#### **PERSONAL HEARING**

4. Personal hearing in the matter was held on 25.11.2024. Shri P.D Rachchh, Advocate appeared for hearing on behalf of the Appellant No. 1 and Appellant No. 2. He re-iterated the submissions made in the Appeal Memorandum. He also submitted a compilation containing the synopsis and judgements of various Courts in support of their contentions. Due to change in Appellate authority, fresh Personal hearing was held on 29.05.2025. Shri P.D Rachchh, Advocate appeared for hearing on behalf of the Appellant No. 1 and Appellant No. 2. He re-iterated the submissions made in the Appeal Memorandum.

#### **DISCUSSION AND FINDINGS**

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

5.1 On going through the material on record, I find that following issues required to be decided in the present appeals which are as follows:

- (i) Whether impugned order for absolute confiscation of the 666 Nos. of Red Sander Logs having market value of Rs. 4,82,00,000/- under Sections 113(d), 113(h), 113(e), 113(i) and 113(ia) of the Customs Act, 1962 seized from the Container



No. TGHU3478747 covered under the Shipping bill 9632005 dtd. 14.01.2020 is legal and proper in the facts and circumstances of the case.

(ii) Whether impugned order for confiscation of 160 pieces of Wash Basins having value of Rs 42,560/- which were used for concealing the 666 Nos. of Red Sander Logs, under Section 119 of the Customs Act, 1962 is legal and proper in the facts and circumstances of the case.

(iii) Whether the impugned order imposing penalty of Rs. 80,00,000/-, Rs. 40,000/- and 40,00,000/- on Appellant No. 1 under Section 114(i), 114(iii) and 114AA of the Customs Act, 1962 respectively is legal and proper in the facts and circumstances of the case.

(iv) Whether the impugned order imposing penalties of Rs. 80,00,000/- and Rs. 40,00,000/- under Section 114(i) and 114AA of the Customs Act, 1962 respectively on Appellant No. 2 is legal and proper in the facts and circumstances of the case.

5.2 It is observed that an intelligence was gathered by officers of DRI which indicated that Red Sanders Logs were being attempt to be illegally exported by concealing the same behind an export consignment of Ceramic Sanitarywares covered under Shipping Bill No. 9632005 dated 14.01.2020 in a container No. TGHU3478747 by Appellant No. 1. Examination of the cargo revealed that the said container was stuffed with 666 numbers of undeclared Red Sander Logs whose value has been estimated to be Rs. 4,82,00,000/-. The said container was also stuffed with declared cargo of 160 pieces of sanitary wares valued at Rs. 42,560/-. It is observed that the export of Red Sender wood in any form, whether raw, processed or unprocessed, which is falling under Tariff Item/ HS Code No. 44039918/44079990 is prohibited for export out of India as per Sr No. 188 of Schedule 2 of the Indian Trade Classification (Harmonised System) of Exports and Imports, pertaining to the Export Policy, notified under Notification No. 47/2015-2020, dtd.31.01.2018 issued by the Central Government under the provisions of Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 as amended from time to time read with Para 2.01 of the Foreign Trade Policy 2015-2010. Red Sanders, which is known as "Pterocarpus santalinus" has also been declared as "Prohibited Species" covered under Appendix I of CITES (Convention on International Trade in Endangered Species.), hence the export of the Red Senders out of India is restricted by virtue of the said treaty. Thus, the said undeclared and



concealed 666 number of Red Sander Logs weighing 9.64 MTS, which were recovered from the container No. TGHU3478747, valued at Rs. 4,82,00,000/-, 160 pieces of Sanitary ware valued at Rs. 42,560/- were liable for confiscation as per provisions of the Customs Act, 1962 and were placed under seizure under the provisions of the Section 110 (i) of the Customs Act, 1962.

5.3 During the investigation, it was found that that Shri Dwijendra S Manek, Shri Ramesh Sharma alias Parvez and Shri Ganesh , made up a plan to illegally export Red Sander Logs by concealing the said Logs in the guise of sanitary wares. The investigation has further revealed that the Appellant No.1 facilitated the illegal export of prohibited goods of Red Sender logs by providing the platform as the host in such activity. The Appellant No. 1 not only allowed the misuse of the Self sealing permission dtd. 28.11.2019 issued to them by the Asstt Commissioner of Customs( Prev), Jamnagar but also as accepted the export order without verification of credentials of the conspirators and extended co-operation by facilitating the illegal export .

5.4 From the investigation, it was observed that an empty container was taken from the port to rented premises near Samakhiyali where the cartel of the smugglers loosened the screw/nuts/bolts of the containers. Then container with loose screw/nuts/bolts was taken to the factory of Appellant No. 1 where one of the employee of Appellant No. 1 checked the container bearing No. TGHU3478747 but did not notice the loosened screw/alteration at door/variation. Thereafter, stuffing of the container with Sanitaryware started for the consignee M/s. AL-Nayem Sanitaryware Trading LLC. Office No. 103, FGD Plaza, Al-Ltihad Raod, P.O.Box-70963 Sharjah-UAE. The container loaded with sanitary ware started its journey for gateway port i.e. Mundra from factory premises of Appellant No.1 howwver, the said container was brought mid way at rented premises near Samakhiyali where replacement of Sanitaryware with Red Sanders logs took place. It was responsibility/accountability of Appellant No. 1 to take care that the container stuffed at their premises reaches destined port as such. However, the Appellant No. 1 failed to perform its statutory liability/accountability as a responsible exporter. The responsibility to verify the antecedent of the consignee and transporter lies with the exporter. From the investigation, it is not forthcoming anywhere that the Appellant No. 1 ever tried to check the authenticity/genuineness of the consignee M/s. AL-Nayem Sanitaryware Trading LLC. Office No. 103, FGD Plaza, Al-Ltihad Raod, P.O.Box-70963 Sharjah-UAE. Similarly, they never tried to verify the genuineness of the logistics company M/s D.S Logistics owned by Shri Dwijendra Shirish Manek. Earlier, the Appellant No. 1 gave a confirmation to Shri Nazim for forwarding the Bill of Lading and other relevant document of the cargo exported on 13.12.20 to address



"Madhusudan Villa, 9AL Rashid Road, 26C, Street, Deira, Dubai, UAE which was not the same address of the consignee mentioned on invoice. The forwarding of relevant documents of export to other address with the confirmation of exporter clearly shows that the Appellant No. 1 were fully aware of the suspicious activity going on and they deliberately kept silence and willingly ignored otherwise the facts and circumstances and caused the offence inevitable. The said container No TGHU3478747 stuffed with 666 number of Red Sanders Logs weighing 9.64 MTS having value of Rs. 4,82,00,000/- from the said premises at Samakhiyali, subsequently routed to Mundra Port for export by circumventing and defying export prohibition. In view of the aforesaid violations, the prohibited goods i.e Red Sanders Logs were correctly held liable for confiscation under the provisions of Sections 113(d), 113(h), 113 (e) and 113(i) of the Customs Act, 1962. Since drawback was claimed under Section 75 of the Customs Act, 1962 against the export of said sanitary ware as offended goods, the said offended goods were also liable to confiscation under section 113(ia) of the Customs Act, 1962. I therefore, agree with the findings of the adjudicating authority in this regard, and uphold the absolute confiscation under sections 113(d), 113(h), 113 (e), 113(i) and 113(ia) of the Customs Act, 1962 ordered in the impugned order.

5.5 Further, during the examination, the above Container No. TGHU 3478747 was found stuffed with the Red Sanders Logs and noticed that there were a number of brown coloured corrugated box having marks 'Gres, the perfect surface' also placed inside the said container. These boxes were having the details/address of Appellant No. 1 i.e. M/s Geobath Sanitary ware LLP, Survey No. 156. Unchi mandal, Near Power House, Halwad Road, Morbi-2 (Gujarat-363642) and other marking of Geobath. After de-stuffing of the said container, 666 numbers of Red Sanders Logs were recovered along with 160 pieces of Wash Basin/Sanitaryware. The value of washbasin was ascertained as Rs. 42,560/-. It has been clearly observed during examination that the 160 pieces of Wash Basins/Sanitary wares were used for concealment of prohibited Red Sanders Logs, hence the same were correctly held liable for confiscation under the provisions of Section 119 of the Customs Act, 1962 by the adjudicating authority. Accordingly the confiscation of these goods under Section 119 of the Customs Act, 1962 is upheld.

5.6 From the outcome of investigation, it has been established that the Appellant No. 1 knowingly and clearly rendered the goods liable for confiscation under section 113 of the Customs Act, 1962. The investigations have also concluded that the Appellant No. 1 has knowingly or intentionally made, signed or used or caused to be made, signed or used the




declaration/statement, document which was false or incorrect in the material particular of the case in transaction of their business under the Customs Act, 1962. I find that only after examining the above violations on the part of the Appellant No. 1 as above, the adjudicating authority has come to a conclusion that the Appellant No. 1 have rendered themselves liable to penal action under Section 114(i), Section 114(iii) and Section 114AA of the Customs Act, 1962.

5.7 The investigations have also pointed out that the Appellant No. 2 i.e Shri Hiteshkumar Valjibhai Kaila, Partner of Appellant No. 1 was an active, conversant and responsible partner of the exporter, but has even remained careless and casual in dealing in such business transaction, monitoring the movement of the export consignment, which enabled way to the scam of smuggling of such a sensitive and prohibited cargo of Red Sender Logs. Being an overall in-charge including in-charge of exports, the Appellant No. 2 provided the platform to the smuggler without checking the antecedent of the buyers and importers. He deliberately allowed the smugglers to misuse the self-sealing permission number 1878/CCP/JMR/2019-20 dated 28.11.2019 issued to them (exporter) by the Assistant Commissioner of Customs (Prev.), Jamnagar. Hence, the Appellant No. 2 knowingly and clearly rendered the goods liable for confiscation under section 113 of the Customs Act, 1962. Further, he also knowingly or intentionally made, signed or used or caused to be made, signed or used the declaration/statement, document which was false or incorrect in the material particular of the case in transaction of their business under the Customs Act, 1962. Hence in view of the said act of commission and omission, Appellant No. 2 has rendered himself liable to penal action under Section 114(i) and Section 114AA of the Customs Act, 1962.

5.7.1 The Appellant No. 2 has submitted that once penalty is imposed upon firm no separate penalty can be imposed upon partner of the firm. However, it is a settled issue that imposition of penalty on the Partnership firm as well as Partner depends on the facts and circumstances of the case. I find that penalty on Appellant No. 1 has been imposed after finding his involvement in the contravention of provisions of the Customs Act, 1962 as discussed above. The investigation as well as the adjudicating authority has categorically pointed out the violations committed by the Appellant No. 2 for which penal provisions under Section 114(i) and 114AA of the Customs Act, 1962 are attracted. I place reliance on the following case laws in support of my view:-

- (i) Textoplast Industries Vs. Additional Commissioner of Customs reported at 2011(272) ELT 513 (Bom) wherein the Hon'ble High Court has held as under :-



*[Handwritten signature]*

*" 18. For these reasons, we dispose of the appeal by holding that for the purpose of imposing penalty, the adjudicating authority under Customs Act, 1962 may in an appropriate case impose a penalty both upon a partnership firm as well as on its partners. Whether the facts and circumstances of a case warrant the imposition of a penalty both on a firm and its partners should be decided upon the facts of each case. On this factual issue, we would remand the proceedings back to the tribunal for a fresh determination. The appeal shall accordingly stand disposed of in the aforesaid terms. There shall be no order as to costs."*

- (ii) N Chittaranjan Vs. CESTAT, CHENNAI reported at 2017 (350) ELT 78 (Mad.) wherein the Hon'ble High Court held as below-

*" --- 9. In the considered opinion of the Court, in the light of the above cited judgments, penalty on the partner as well as the partnership Firm can be simultaneously imposed and of course, imposition of penalty both on the Firm and its partners, depends upon the facts of each case."*

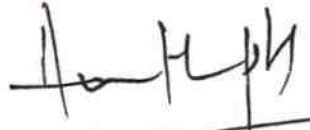
In view of the same, the penalty imposed on the Appellant No. 2 under Section 114(i) and 114AA of the Customs Act, 1962 in the impugned order is justified and accordingly I uphold the same.

6. In light of discussions made above and judicial pronouncements cited above, the impugned order dated 01.03.2024 is upheld and warrants no interference. The appeals filed by the Appellant No 1 and Appellant No. 2 are hereby rejected.



सत्यापित/ATTESTED

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

  
(AMIT GUPTA)  
Commissioner (Appeals)  
Customs, Ahmedabad

Date:01.09.2025

(i) F. No. S/49-41/CUS/MUN/2024-25

(ii) F. No. S/49-40/CUS/MUN/2024-25

3129

By Registered Post A.D/Mail.

To,

- (i) M/s. Geobath Sanitaryware LLP,  
S.No.156,Unchi Mandal Sanala Road, Near Power House,  
Halvad Road, Morbi-363642.
- (ii) Shri Hiteshkumar Valjibhai Kaila,  
Partner, M/s. Geobath Sanitaryware LLP,  
S.No.156,Unchi Mandal Sanala Road, Near Power House,  
Halvad Road, Morbi-363642



Copy to :-

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