



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
 चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
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DIN – 20250671MN0000910221

क	फ़ाइल संख्या FILE NO.	S/49-417/CUS/AHD/2023-24
ख	अपील आदेश संख्या ORDER-IN- APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	AHD-CUSTM-000-APP-108-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
	दिनांक DATE	30.06.2025
	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original No. 182/ADC/VM/O&A/23-24 dated 05.12.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	Amit Bellani, Partner of M/s Transmarine Shipping and Logistics 282, Meadows, Gokuldham Shantipura, Ahmedabad - 382210



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

	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.				
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं				
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :				
	<table> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td><td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td></tr> <tr> <td>दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td><td>2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td></tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
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 nd 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

Appeal has been filed by Amit Bellani , Partner of M/s Transmarine Shipping and Logistics, 282, Meadows, Gokuldham, Shantipura, Ahmedabad - 382210, (hereinafter referred to as 'the Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. 182/ADC/VM/O&A/23-24, dated 05.12.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs Ahmedabad (hereinafter referred to as the 'adjudicating authority').

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

Shipping Bill No. and Date	1578745 dated 23.05.2022
Name of the Exporter	M/s. Kusum Industries
IEC No. of the exporter	DJMPB3863E
GST IN No. of Exporter	24DJMPB3863E12D
BIN No./IT PAN No.	DJMPB3863E
Name of the Customs broker, who filed Shipping Bill	M/s. Right Ship Agency
Name and address of the Consignee	Khaqan General Trading LLC, 104, Brothers Tower AL Taawun Street, Sharjah, UAE, PO Box -22165
Buyers Name and Address	Khaqan General Trading LLC, 104, Brothers Tower AL Taawun Street, Sharjah, UAE, PO Box -22165
Port of Loading	INSBI6 (ICD Sabarmati)
Port of Discharge	AEMKH (Mina Khalid)
No. of Packages	675
Gross Weight (Kgs)	14519
Net Weight (Kgs)	13433.5
Quantity	13500 LTR
Invoice Value	9985.95 USD
FOB Value	9475.95 USD
Invoice No. and Date	KI/105/2022-2023 dated 23.05.2022
Drawback Claimed (Rs.)	9473.11




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

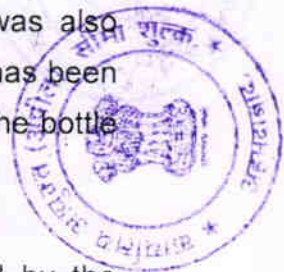
2.1 Based on the above intelligence, the cargo covered under Shipping Bill No. 1578745, dated 23.05.2022 in Container No. BSIU 3151184 was put on hold and placed in MICT, CFS, Mundra. The consignment was scanned at Container Scanning Division, Mundra on 26.05.2022 wherein it was reported as mismatched.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

Shipping Bill No. and Date	1578745 dated 23.05.2022
Container No.	BSIU 3151184
Weight as declared in Shipping Bill	14519 Kgs Gross, 13433.50 Kgs Net
Weight noticed during examination on 26.05.2022	14634.09 Kgs
Goods found actually contained in the Container	840 Logs of Red Sander with weight of 14.634 MTs
Value of the Goods @ Rs.80 Lakhs/MT for Red Sander	Red Sander Rs.11.70 Crores

2.2 As per Sr. No. 188 of Chapter 44 of Schedule 2 of the ITC (HS) Export



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



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

2.3.1 Principal Place of Business of the exporter i.e. M/s Kusum Industries (GST No. 24DJMPB3863E1ZD) at 401 Krishnashary Flats-1, Arya Kanya Road, Karelibaug, Vadodra was searched on 27.05.2022 by the team of DRI Officers wherein Shri Manish P. Barot informed that M/s Kusum Industries was a proprietorship firm in the name of his daughter Ms. Mahima Manish Barot and he was looking after all the activities of the firm and his daughter was not indulged in any work of the firm. Further Shri Manish P. Barot informs that M/s Kusum Industries was engaged in manufacturing of Prestine brand toiletries and also informed that the manufacturing unit is situated at beside Randhava Transport, Savali Road, Dumad Village, Distt. Vadodra and accordingly the said premises was searched and a running Panchnama dated 27.05.2022 was drawn; during

the Panchnama dated 27.05.2022 various incriminating documents were recovered.

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

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

2.3.4 Godown at Plot No. 198, Natraj Estate, Vasana(E), Sanand, Viramgam Road, Distt. Ahmedabad was searched on 09.07.2022, the godown was identified by Shri Sukhdev Rajak who does work of labour and had informed that he had loaded the toilet cleaner with the brand name of "Prestine" in the truck and from that consignment had taken out 03 loose cans from the goods. The godown was found empty and the owner of the godown informed that this godown has been given on rent to Shri Sameer Khan.

2.3.5 Residence of Shri Firoz Chichwelkar @ Sameer Khan, Jafir Apartment, A-Wing, Room No. 303, Near Jumma Masjid, Kalwa Naka, Thane West, Maharashtra-400605 was searched on 08.07.2022 and a Panchnama dated 08.07.2022 was drawn;

during the Panchnama dated 08.07.2022, various incriminating documents and 03 mobile phones were recovered.

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

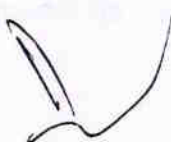
2.3.7 The GSTIN number used in the invoice raised by Shri Rohan Kumar 27APOPA5522N1ZM pertained to M/s Sai Transport, 001, Lalji Compound, Janata Colony, Gilbert Hill Road, Andheri West, Mumbai, Maharashtra - 400058. Hence, office of M/s Sai Transport, 001, Lalji Compound, Janata Colony, Gilbert Hill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

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

2.3.9 Search at residence of Shri Rohan Kumar @ Aryan Ganesh Thorat @ Ganesh Laxman Ujhagrae at M/s Om Sai Transport, B-403, Radhesham Complex, Plot No. 28, Sector No. 08, Kamothe-410209 was conducted vide Visit Note dated 09.09.2022 and found that the said flat was recently occupied by some other person in the month of June-2022 and Shri Rohan Kumar @ Aryan Ganesh Thorat @ Ganesh Laxman Ujhagrae was not found at that address.

2.4 The data stored in some mobiles phones / electronic devices voluntarily surrendered by the persons involved in this case is pending extraction from Forensics. In the course of investigation, Statements recorded and submissions of certain persons are as under:-

- Shri Bhamar Ram Bhai Wagha Bhai: Statement recorded on June 2, 2022, confirming that Shri Rohan contacted him and he provided Shri Rohan Kumar with Amit Bellani's (Appellant) contact details.



- Shri Manish P. Barot, Authorized person of M/s Kusum Industries: Statement recorded on July 28, 2022, where he stated he did not know M/s Khaqan General Trading LLC, and Shri Rohan Kumar contacted him for export. He also mentioned that his employee Dipak Yadav was informed about the proposed examination of their consignment at Mundra by Amit Bellani, but failed to inform him.
- Shri Amit Bellani, Partner of M/s. Transmarine Shipping & Logistics (Appellant): Statement recorded on June 2, 2022. He stated that his firm started in 2016 and handled three consignments for M/s. Kusum Industries destined for UAE, with "Pristine assorted Toiletries" as the main export product. He received instructions from Shri Rohan Kumar for the third shipment.
- Shri Adidraavid Rakesh Kumar, Prop. M/s Abhi Container Services: Statement recorded on July 25, 2022, regarding the delivery of Container No. BSIU315i184 to M/s Sai Transport on May 21, 2022.
- Shri Manish R. Barot and Miss Mahima M. Barot: They presented identical submissions on December 26, 2022, and February 11, 2023, regarding the export of "Prestine assorted Toiletries" which were replaced with Red Sanders during transit.
- Representative of M/s Right Ship Agency: Submissions made on October 4, 2023, stating they were unaware of Red Sanders being stuffed in the container and their role was limited to filing documents.
- Shri Pathan Mazhar Khan: His culpability was assessed, where it was found that he engaged in replacing container contents, transported prohibited Red Sander logs, and willfully did not appear during investigation and personal hearing, thus accepting his fault and rendering himself liable for penal action.



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

- 1004 Nos. of Red Sander logs, weighing 18.863 MT having market value of about Rs. 15,09,04,000/- @ Rs. 80 Lakhs/MT, which were attempted for export in violation of the prohibition imposed on the same, and which were seized from the Container No. BSIU3151184 covered under the Shipping Bill No. 1578745, dated 23.05.2022 filed at Mundra Port by the Customs Brokers M/s. Right Shipping Agency in the name of the exporter as M/s. Kusum Industries, Vadodara and from the Godown No. 17, Uma Industrial Estate, Behind Bhagyodaya Hotel, Vasana, Sanand Ahmedabad should not be confiscated under Sections 113(d), 113(h), 113(e) and 113(i) of the Customs Act, 1962; and
- 312 bags of 50 kg of Animal feed, 204 bags of 32 Kgs of Powder for animal feed,

- 220 Nos. Solid Iron Rods, which were used for concealing the 164 Red Sander logs in the godown No. 17, Uma Industrial Estate, Behind Bhagyodaya Hotel, Vasana, Sanand Ahmedabad, which were attempted for export in violation of the prohibition imposed on the same, and which were seized on 10.07.2022, should not be confiscated under Section 119 of the Customs Act, 1962; and
- (c) One 20 feet Container No. BSIU 3151184 which was used for the smuggling of 840 Red Sanders logs seized on 26.05.2022, should not be confiscated under Section 118 of the Customs Act, 1962; and
 - (d) The Let Export order issued under Section 51 of the Customs Act, 1962 for the Shipping Bill No. 1578745 dated 23.05.2022 on the basis of wrong declarations should not be cancelled, being obtained fraudulently; and
 - (e) The claims for drawback of Rs. 9473/- electronically filed by M/s. Kusum Industries, Vadodara while filing the Shipping Bill No. 1578745 dated 23.05.2022 filed by them at ICD Khodiar are not permissible for sanction in favour of the exporter in view of the apparent discrepancies noticed during the examination, and hence the same should not be rejected under the provisions of Section 75A (2) of the Customs Act, 1962 read with Rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995/ Rule 17 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 2017; and
 - (f) Penalty should not be imposed on each of them individually under Section 114(i) and 114AA of the Customs Act, 1962; and
 - (g) Any other person claiming ownership of the seized goods are further and specifically directed to produce the evidence of legal possession and ownership of the seized goods along with their reply to the Notice. In case of failure in submission of such evidence, their claim may not be entertained and the matter may be proceeded ahead accordingly.



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

2.5.2 Vide the aforementioned show cause notice, the following further persons/ companies/firms/ concerns as appearing in Column 2 of the following table, were individually and separately called upon to show cause in writing to the competent authority, Additional Commissioner of Customs, Custom House, Ahmedabad, as to why Penalty should not be imposed on each of them individually under below mentioned penal

provisions, separately, for the acts of omissions and commissions in the smuggling of the red sander logs out of India in violation of the prohibition imposed on the same under the Customs Act, 1962: -

S. No.	Name (S / Shri/ Ms. / Smt. / M/s)	Penal provisions under Customs Act, 1962		
(1)	(2)	(3)	(4)	(5)
1	Shri Manish Pravinchand Barot, Authorized person of M/s Kusum Industries, Vadodara	114 (i),	114AA,	117
2	Ms. Mahima M. Barot, Prop. M/s Kusum Industries, Vadodara	114 (i),	114AA,	
3	Shri Firoz Abdul Rehman Chinchwelkar @Sameer Khan	114 (i),	114AA,	
4	Shri Ganesh Laxman Ujhagare @Rohan Kumar @Aryan Ganesh Thorat	114 (i),	114AA,	
5	Shri Amit Belani, partner of M/s Transmarine Shipping & Logistics, Ahmedabad (Appellant)	114 (i),	114AA,	
6	Shri Anwar Sheikh, Gowandi, Alumbal, Mumbai	114 (i)		
7	Shri Pathan Mazhar Khan s/o Sher Khan Pathan, Iliyas colony, Near Jameel Masjid, Harsool, Aurangabad-431001	114 (i)		
8	Shri Gunvant Kanubhai Nakrani, Godown owner Plot No. 17, Uma Industrial Estate, Behind Bhagyodaya Hotel, Vasana, Sanand, Distt. Ahmedabad, Gujarat-382170	114 (i),	114AA,	
9	Shri Shrikant Rayshibhai Maheshwari, Bhuj (Owner of Trailer No. GJ-12-Z-1209)	114 (i),	114AA,	
10	M/s. Khaqan General Trading LLC, 104, Brothers Tower Al Taawun Street, Sharjah, UAE P.O. Box No. 22165	114 (i),	114AA,	
11	M/s. Right Ship Agency at Ahmedabad	114(i)		



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

- He ordered absolute confiscation of the goods i.e. 1004 logs of Red Sanders weighing 18.863 MT and having market value of Rs. 15,09,04,000/- seized from Container bearing No. BSIU3151184 covered under Shipping Bill no. 1578745 dated 23.05.2022 and from Godown no. 17, Uma Industrial Estate, behind Bhagyodaya Hotel, Vasana, Sanand, Ahmedabad under Section 113(d), 113(e), 113 (h) and 113 (i) of the Customs Act, 1962;
- He ordered absolute confiscation of 312 bags of 50 kg of Animal feed, 204 bags of 32 Kgs of Powder for animal feed, 220 Nos. Solid Iron Rods, which were used for concealing the 164 Red Sander logs in the godown No. 17, Uma Industrial Estate, Behind Bhagyodaya Hotel, Vasana, Sanand Ahmedabad, which were attempted for export in violation of the prohibition imposed on the same, and

- which were seized on 10.07.2022, under Section 119 of the Customs Act, 1962;
- iii. He refrained from confiscating the Container Nos. BSIU 3151184 under the provisions of Section 118 (a) of the Customs Act, 1962, in view of the reasons mentioned at para 15.C of the impugned order;
 - iv. He ordered cancellation of the Let Export order issued under Section 51 of the Customs Act, 1962 for the Shipping Bill No. 1578745 dated 23.05.2022 on the basis of wrong declarations and on being obtained fraudulently;
 - v. He rejected the claims for drawback of Rs. 9473/- electronically filed by M/s. Kusum Industries, Vadodara while filing the Shipping Bill No. 1578745, dated 23.05.2022 filed by them at ICD Khodiyar being not permissible for sanction in favour of the exporter in view of the apparent discrepancies noticed during the examination under the provisions of the 75A (2) of the Customs Act, 1962 read with Rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995/ Rule 17 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 2017;
 - vi. He imposed a penalty of Rs. 25,00,000/- on Shri Manish P. Barot, authorized person of M/s Kusum Industries, Vadodara under section 114 (i) of the Customs Act, 1962;
 - vii. He imposed a penalty of Rs. 25,00,000/- on Shri Manish P. Barot, authorized person of M/s Kusum Industries, Vadodara under section 114 AA of the Customs Act, 1962;
 - viii. He imposed a penalty of Rs. 25,00,000/- on Shri Manish P. Barot, authorized person of M/s Kusum Industries, Vadodara under section 117 of the Customs Act, 1962;
 - ix. He imposed a penalty of Rs. 25,00,000/- on Ms Mahima M. Barot, Proprietor of M/s Kusum Industries, Vadodara under section 114 (i) of the Customs Act, 1962;
 - x. He imposed a penalty of Rs. 25,00,000/- on Ms Mahima M. Barot, Proprietor of M/s Kusum Industries, Vadodara under section 114 AA of the Customs Act, 1962;
 - xi. He imposed a penalty of Rs. 1,00,00,000/- on Shri Firoz Abdul Rehman Chinchwelkar @ Sameer Khan, who planned, monitored and executed the consignments of smuggling of Red Sanders in guise of "Prestine Assorted Toiletries 4*5 Ltrs." under 114 (i) of the Customs Act, 1962;
 - xii. He imposed a penalty of Rs. 1,00,00,000/- on Shri Firoz Abdul Rehman Chinchwelkar @ Sameer Khan, who planned, monitored and executed the consignments of smuggling of Red Sanders in guise of "Prestine Assorted Toiletries 4*5 Ltrs." under section 114 AA of the Customs Act, 1962;
 - xiii. He imposed a penalty of Rs. 1,00,00,000/- on Shri Ganesh Laxman Ujhagare @ Rohan Kumar @ Aryan Ganesh Thorat, who planned, monitored and executed the consignments of smuggling of Red Sanders in guise of "Prestine Assorted Toiletries 4*5 Ltrs." under 114 (i) of the Customs Act, 1962;
 - xiv. He imposed a penalty of Rs. 1,00,00,000/- on Shri Ganesh Laxman Ujhagare @ Rohan Kumar @ Aryan Ganesh Thorat, who planned, monitored and executed



the consignments of smuggling of Red Sanders in guise of "Prestine Assorted Toiletries 4*5 Ltrs." under section 114 AA of the Customs Act, 1962;

- xv. He imposed a penalty of Rs. 10,00,000/- on Shri Amit Belani Partner in M/s Transmarine Shipping and Logistics (Appellant), who in connivance with Shri Ganesh Laxman Ujhagare @ Rohan Kumar @ Aryan Ganesh Thorat arranged for container used for smuggling of Red Sanders under section 114 (i) of the Customs Act, 1962;
- xvi. He imposed a penalty of Rs. 10,00,000/- on Shri Amit Belani Partner in M/s Transmarine Shipping and Logistics (Appellant), who in connivance with Shri Ganesh Laxman Ujhagare @ Rohan Kumar @ Aryan Ganesh Thorat arranged for container used for smuggling of Red Sanders under section 114 AA of the Customs Act, 1962;
- xvii. He imposed a penalty of Rs. 1,00,00,000/- on Shri Anwar Sheikh, Gowandi, Alumbal, Mumbai, who financed the smuggling of goods and in connivance with Shri Ganesh Laxman Ujhagare @ Rohan Kumar @ Aryan Ganesh Thorat and Shri Firoz Abdul Rehman Chinchwelkar @ Sameer Khan planned, monitored and executed the consignments of smuggling of Red Sanders under 114 (i) of the Customs Act, 1962;
- xviii. He imposed a penalty of Rs. 1,00,00,000/- on Shri Anwar Sheikh, Gowandi, Alumbal, Mumbai, who financed the smuggling of goods and in connivance with Shri Ganesh Laxman Ujhagare @ Rohan Kumar @ Aryan Ganesh Thorat and Shri Firoz Abdul Rehman Chinchwelkar @ Sameer Khan planned, monitored and executed the consignments of smuggling of Red Sanders under section 114 AA of the Customs Act, 1962;
- He imposed a penalty of Rs. 5,00,000/- on Shri Pathan Mazhar Khan s/o Sher Khan Pathan, Iliyas colony, Near Jameel Masjid, Harsool, Aurangabad-431001, who in connivance with Shri Ganesh Laxman Ujhagare @ Rohan Kumar @ Aryan Ganesh Thorat and Shri Firoz Abdul Rehman Chinchwelkar @ Sameer Khan and Shri Anwar Sheikh monitored and transported the consignments of smuggling of Red Sanders under 114 (i) of the Customs Act, 1962;
- xx. He imposed a penalty of Rs. 5,00,000/- on Shri Pathan Mazhar Khan s/o Sher Khan Pathan, Iliyas colony, Near Jameel Masjid, Harsool, Aurangabad-431001, who in connivance with Shri Ganesh Laxman Ujhagare @ Rohan Kumar @ Aryan Ganesh Thorat and Shri Firoz Abdul Rehman Chinchwelkar @ Sameer Khan and Shri Anwar Sheikh monitored and transported the consignments of smuggling of Red Sanders under 114 AA of the Customs Act, 1962;
- xxi. He imposed a penalty of Rs. 5,00,000/- on Shri Gunvant Kanubhai Nakrani, Godown owner Plot No. 17, Uma Industrial Estate, Behind Bhagyodaya Hotel, Vasana, Sanand, Distt. Ahmedabad, Gujarat-382170 who provided his godown to Shri Firoz Abdul Rehman Chinchwelkar @ Sameer Khan and connived with him to execute the smuggling of Red Sanders under Section 114 (i) of the Customs Act, 1962;



(Signature)

- xxii. He imposed a penalty of Rs. 5,00,000/- on Shri Gunvant Kanubhai Nakrani, Godown owner Plot No. 17, Uma Industrial Estate, Behind Bhagyodaya Hotel, Vasana, Sanand, Distt. Ahmedabad, Gujarat-382170 who provided his godown to Shri Firoz Abdul Rehman Chinchwelkar @ Sameer Khan and connived with him to execute the smuggling of Red Sanders under section 114 AA of the Customs Act, 1962;
- xxiii. He imposed a penalty of Rs. 2,50,000/- on Shri Shrikant Rayshibhai Maheshwari, Bhuj, the owner of Trailer No. GJ-12-Z-1209, who provided his said Vehicle to Shri Firoz Abdul Rehman Chinchwelkar @ Sameer Khan and connived with him to execute the smuggling of Red Sanders under Section 114 (i) of the Customs Act, 1962;
- xxiv. He imposed a penalty of Rs. 2,50,000/- on Shri Shrikant Rayshibhai Maheshwari, Bhuj, the owner of Trailer No. GJ-12-Z-1209, who provided his said Vehicle to Shri Firoz Abdul Rehman Chinchwelkar @ Sameer Khan and connived with him to execute the smuggling of Red Sanders under section 114 AA of the Customs Act, 1962;
- xxv. He imposed a penalty of Rs. 50,00,000/- on M/s. Khaqan General Trading LLC, 104, Brothers Tower Al Taawun Street, Sharjah, UAE P.O. Box No. 221654 for importing and attempting to import, for consideration, Red Sanders from India under Section 114 (i) of the Customs Act, 1962;
- xxvi. He imposed a penalty of Rs. 50,00,000/- on M/s. Khaqan General Trading LLC, 104, Brothers Tower Al Taawun Street, Sharjah, UAE P.O. Box No. 221654 for importing and attempting to import, for consideration, Red Sanders from India under section 114 AA of the Customs Act, 1962;
- xxvii. He imposed a penalty of Rs. 1,00,000/- on M/s. Right Ship Agency at Ahmedabad, the Customs Broker for failing to discharge his obligation as customs broker and aiding in export of illegal export of Red Sanders from India under Section 114 (i) of the Customs Act, 1962;
- xxviii. He imposed a penalty of Rs. 1,00,000/- on M/s. Right Ship Agency at Ahmedabad, the customs broker for failing to discharge his obligation as customs broker and aiding in illegal export of Red Sanders from India under section 114 AA of the Customs Act, 1962;
- xxix. He ordered denial of any further claim by any other person over seized goods mentioned in para supra, as no one has claimed ownership of the seized goods and has not presented any documentary evidence to support their claim during the course of investigation and adjudication proceedings;
- xxx. He ordered confiscation of Vehicle bearing No. GJ-12-Z-1209 that was used for smuggling of 840 logs of Red Sanders under Section 115(2) of the Customs Act, 1962. He gave an option to Shrikant Rayshibhai Maheshwari, Bhuj, the legal owner of the said Vehicle, to redeem the truck bearing no. GJ-12-Z-1209 on payment of redemption fine of Rs. 50,000/- under Section 125 (1) of the Customs Act, 1962.



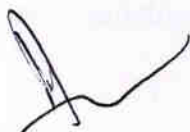
3. Being aggrieved with the impugned order, the Appellant has filed the present appeals wherein they have submitted grounds which are as under:-

3.1 The appellant has submitted that the impugned order passed by the adjudicating authority is in gross violation of the principles of natural justice in as much as the adjudicating authority has not considered and has not given any findings as regards the various decisions and case laws relied upon by the appellant during the course of adjudication. The appellant had relied upon various case laws, as is evident from paragraph 6 of the reply dated 21.12.2022, these case laws were on the point that penal action cannot be taken against agencies like Customs House Agent or a C&F agent or a shipping line only because there was a case of smuggling of prohibited goods, if such agencies were not involved in smuggling and that they had no knowledge about smuggling proposed to be done by their clients. The appellant had during the course of adjudication also pointed out that in the facts of the present case, no cogent evidence has been relied upon by the department to show that the appellant was aware of substitution of goods and mis-declaration being undertaken by M/s. Kusum Industries. The adjudicating authority has not considered the submissions made by the appellant as regards these points and has merely held that the actions of appellant indicates of willful neglect of duties resulting in attempt of export of Red Sanders and hence is liable for penal action. Therefore, the impugned order passed by the adjudicating authority, being in gross violation of the principles of natural justice is liable to be set aside on this ground alone.

3.2 It is submitted that on a perusal of paragraph F.7 of the impugned order, it is apparent that the only reason given by the adjudicating authority is that the appellant played a vital role in this planned strategy to export the prohibited goods i.e Red Sander logs, by way of concerning themselves in facilitation of smuggling of Red sander logs. Furthermore another reason canvassed by the adjudicating authority is that appellant relied upon the information and did not verify the details earlier when for the first time Shri Rohan Kumar has contacted him. On the basis of these reasons the penal liability has been fastened on the appellant, however, none of the reasons canvassed by the adjudicating authority justify or warrant the imposition of any penalty. It is submitted that the appellant's role was limited to container booking and customs clearance (out-source) and the transportation of this container was not in appellant's control during the course of shipment. The fact that the goods in the nature of Prestine Assorted Toiletries Liquid were stuffed in the container from the premises of M/s. Kusum Industries and that such goods were replaced in the godown when the container was being transported to the Port is established on record of this case. The adjudicating authority other than given reasons like carelessness and failure in due diligence has not canvassed any other reason to justify the imposition of such disproportionate penalty. The adjudicating authority while rendering its findings has also further substantiated the appellant's stand that the

appellant acted as a forwarder in this case and were involved in booking of container freight, customs clearance, etc. The adjudicating authority has also not given any such findings as regards that the appellant actually connived with M/s. Kusum Industries to get some undue advantage by exporting prohibited goods. Therefore, in absence of any of such findings in the impugned order, the adjudicating authority could not have imposed penalty to the tune of Rs. 20,00,000/- in total on the premise that the appellant did not exercise due diligence and did not verify the particulars given by M/s. Kusum Industries and Shri Rohan Kumar. The impugned order which seeks to impose disproportionate penalties on the appellant is liable to be set aside in the interest of justice.

3.3 It is an undisputed fact that in the past also the Appellant had handled shipments for M/s Kusum Industries on the directions of Shri Rohan Kumar. That after agreeing to the rate for appellant's services, one shipment of liquid cargo in the nature of toiletries was handled by appellant for export, the exporter was M/s. Kusum Industries, but all the documentation and instructions were given to appellant by Shri Rohan Kumar. The Appellant's bill for the services was raised on M/s. Kusum Industries as instructed by Shri Rohan Kumar, and payment of Rs.1,98,985/- was also received in appellant's bank account from M/s. Kusum Industries through RTGS from their Axis Bank account. Another shipment of the same type of cargo was handled by appellant for export for M/s. Kusum Industries, and invoice No.EXP/065/03/2022 was raised by appellant on 24.3.2022 on M/s. Kusum Industries, and a payment of Rs.1,05,446/- was received in appellant's bank account from M/s. Kusum Industries on 25.3.2022. In this case also, documents and instructions were given to the appellant by Shri Rohan Kumar, but the goods were exported in the name of M/s. Kusum Industries, and the payment for services was also received by appellant from M/s. Kusum Industries. Thus the appellant handled export related activities for the goods of M/s. Kusum Industries on two occasions; on both the occasions, the documents and instructions were received by the appellant from Shri Rohan Kumar, though the payment was received from the exporter M/s. Kusum Industries; and no issues or difficulties of whatsoever nature arose in this work. In the present case the appellant was instructed by Shri Rohan Kumar by WhatsApp message on 16.5.2022 for handling a third shipment, and for booking a vessel on 27.5.2022. Appellant was also instructed by Shri Rohan Kumar for booking a container on 21.5.2022, for stuffing the export cargo on 25.5.2022 and to clear the goods from Customs on 24.5.2022. In the normal course, the container loaded with the export goods from the premises of M/s. Kusum Industries was transported to the ICD, Khodiyar and were examined at ICD Khodiyar premises by the Customs and after completing the customs check and other formalities container was allowed to move for further movement to Mundra for loading. The Shipping Bill no. 1578745 dated 23.05.2022 clearly shows that the goods being transported from ICD, Khodiyar were Pristine Assorted Toiletries. The appellant was not aware that the Export cargo of pristine toiletries were switched during transit from ICD Khodiyar to Mundra port and Red Sander logs were stuffed after removing the original export cargo. The appellant only came to know about these facts



when the DRI officers seized the goods, therefore the appellant was not at fault in the present case so as to warrant imposition of penalty.

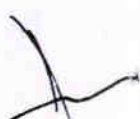
3.4 The law about imposition of penalty on the agencies like a Customs House Agent or a C&F agent or a shipping line and the like and under what circumstances penalty under Section 114 and 114AA can be imposed has come up for consideration before the Hon'ble Tribunal and various High Courts on many occasions. The Hon'ble Tribunal, Mumbai in the case of M/s. Savithri Jewellers Pvt. Ltd. reported at 2020 (374) ELT 754 has held that when the department has not produced any evidence to establish that the CHA had any knowledge about mis-declaration, and when the CHA has prepared documents in a bona-fide manner based upon the declaration made by the exporter, the CHA cannot be penalized under Sections 114(iii) and 114AA of the Customs Act, 1962. In another case of M/s. Apson Enterprises reported at 2017 (358) ELT 817, the Hon'ble Tribunal, Mumbai has again held that when the department has nothing to show that the CHA was concerned with or aware about the valuation of goods, the CHA cannot be penalized under Section 114(iii) of the Customs, Act, 1962. In the case of Nirmal Kumar Agarwal reported at 2013 (298) ELT 133 the Hon'ble Tribunal has again held that until and unless it is proven that the CHA was aware of the mis-declaration and the ingredients of Section 114(iii) are complete, no penalty can be imposed on the CHA. The Hon'ble Tribunal, Chennai in the case of M/s. Moriks Shipping and Trading Pvt. Ltd. reported at 2008 (227) ELT 577 has categorically held that the customs house agent is not required to go into the authenticity of the declaration made by the exporter in the export documents and in absence of any evidence to show that the CHA not only participated in mis-declaration, penalty under Section 114(iii) cannot be imposed. The department went in appeal against the decision of the Hon'ble CESTAT and the Madras High Court in its decision reported at 2015 (317) ELT 3 has vide a detailed order confirmed the findings given by the Hon'ble Tribunal and has held that in absence of any positive evidence that the CHA was actually involved in mis-declaration, penalty under Section 114 of the Customs Act, 1962 cannot be imposed. Thus the law about imposition of penalty on the agencies like a Custom House Agent or a C&F agent or a shipping line and the like is very clear that only when such agency was well aware and actually participated in facilitating the mis-declaration of goods or value, can the agency be held accountable. Furthermore, it is also clear that the agency is not supposed to go into and verify each and every detail provided by the exporter about description and value of goods, and therefore, the findings of the adjudicating authority that the actions of appellant indicates of willful neglect of duties resulting in attempt of export of Red Sanders and hence penal liability should be fastened is a finding which the contrary to law and perverse in nature. The impugned order is not in accordance with the judicial precedents which are on the subject matter and hence such order does not have any legs to stand. The impugned order hence is illegal in the eyes of law and liable to be set aside in the interest of justice.

3.5 The adjudicating authority has imposed penalty of Rs.10,00,000/- under



Section 114(i). It is pertinent to note that in the facts of the present case penalty under section 114(i) could not be imposed. Section 114(i) provides for penalty when an attempt to export goods improperly has been made, when the goods in respect to which some prohibition is in force. In the present case, it has been the case of the department that the appellant played a vital role in the planned strategy to export illegally the prohibited goods by way of concealing themselves in facilitation of smuggling of Red Sander logs in the instant occasion. For invoking Section 114 of the Act, the condition precedent is that act or omission of any person, or abetment for any act or omission of such act, should be such that the goods were liable to confiscation under Section 113 on account of such act or omission. In the present case, Sections 114(d), 113(h), 113(e) and 113(i) of the Act are invoked for proposing to confiscate 18.863 MTs of Red Sander logs. The export goods are liable to confiscation under Section 113(d) when the goods were attempted to be exported contrary to any prohibition imposed by or under the Customs Act or any other law for the time being in force. Since export of Red sander is prohibited under the Foreign Trade Act and also several other statutory provisions, Section 113(d) of the Customs Act is invoked for confiscation. But the prohibited goods in the nature of Red Sander logs are liable to confiscation under Section 113(d) of the Act, because the export thereof is prohibited, and not because appellant did not cause any verification of the website or other details appearing on the e-mail dated 10.2.2022 received by appellant from Shri Rohan Kumar. Appellant therefore submits that even if the allegations levelled at para 9.1(e) of the Notice are considered to be true and correct, it is not that because appellant did not cause verification about the antecedents of Shri Rohan Kumar, the export goods are liable to confiscation under Section 113(d) of the Act. It is emphasised that the export goods are liable to confiscation under Section 113 of the Act, because they were proposed to be smuggled by the owners/exporters, and not because verification about Shri Rohan Kumar's antecedents was not carried out by appellant. Therefore, the fact that appellant has not caused verification of such details is not a valid reason or legally tenable ground for which the goods are liable to confiscation under Section 113 of the Act; and consequently penal provision of Section 114 of the Act is not applicable against appellant. Therefore, the impugned order proposing to impose penalty under section 114(i) is not sustainable and hence liable to be set aside in the interest of justice.

3.6 The appellant further submits that penalty under section 114AA is also unjustified and unwarranted in the facts of the present case. It is nowhere in the show cause notice or the impugned order stated that how the appellant was having any knowledge that the goods are not declared correctly or there was any deliberate attempt to mis-declare the goods. In absence of any evidence penalty of Rs.10,00,000/- is unjustified and illegal. Section 114AA of the said Act provides for penalty 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 the Act. However, it is not established in this case that the appellant had knowingly or intentionally made, signed



or used or caused to be made, signed or used any declaration, statement or document which was false or incorrect in any material particular. Thus, it is clear that the said provision comes into play only in cases where material particulars have been found to be incorrect and false. Section 114AA could be justifiably invoked against the appellant only if it was established by the Revenue that appellant knew that the impugned cargo was Red Sander Logs, and still however, appellant made or used documents with false and incorrect description of the cargo, by intentionally mis-declaring it as "Prestine Assorted Toiletries 4-5 LTR (White & Blue)". As aforesaid, there is no evidence to show that appellant knew that the cargo in question was Red Sander logs, and there is also no evidence to show that appellant intentionally used false information about description of such cargo while transacting business for the purpose of the Customs Act. In the documents and declarations that are submitted or caused to be filed, the impugned cargo was described as Prestine Assorted Toiletries because this was the description and declaration given by the exporter while entrusting the goods for transportation, and appellant had no reason to doubt such declarations made by the exporter in the normal course of business. It is not shown in the show cause notice or in the impugned order as to how appellant had knowledge about the above referred description being incorrect and still appellant intentionally used such description for the cargo in any of the declarations, documents or the like submitted for fulfilling the obligations under the Customs Act. The mandatory condition of Section 114AA of the Act about knowledge and intention on part of the person while using false or incorrect declaration and documents is conspicuously missing in the present case, and therefore Section 114AA of the Customs Act is not attracted in the present case. This being the case, Section 114AA was not at all applicable in the facts of the present case and the impugned order for imposition of penalties under the said Section is also liable to be set aside in the interest of justice.

PERSONAL HEARING:

4. Personal hearing in the matter was held on 07.05.2025, following the principles of natural justice in virtual mode. Shri Amal Dave, Advocate appeared for the hearing on behalf of the Appellant and re-iterated the submission made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs Ahmedabad and the defense put forth by the Appellant in their appeal memorandum. Ongoing through the material on record, I find that following issues required to be decided in the present appeals which are as follows:

- i. Whether the impugned order suffers from any violation of the principles of natural justice;



- ii. Whether there is sufficient evidence on record to establish the Appellant's culpable knowledge or active involvement (*mens rea*) in the attempted illegal export of Red Sander logs.

5.1 Being aggrieved, the Appellant has filed the present appeal on 19.01.2024. In the Form C.A.-1, the date of communication of the Order-In-Original dated 05.12.2023 has been shown as 12.12.2023. Thus, the appeal has been filed within normal period of 60 days, as stipulated under Section 128 (1) of the Customs Act, 1962. The Appellant has submitted copy of the T.R.6 Challan No. 8871, dated 04.01.2024 for Rs. 1,50,000/- towards payment of pre-deposit calculated @ 7.5% of the disputed amount of penalty of Rs. 20,00,000/- under the provisions of Section 129E of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit and with the mandatory pre-deposit, it has been admitted and being taken up for disposal on merits.

6. The Appellant's contention regarding violation of natural justice, specifically non-consideration of their cited case laws, requires careful examination. A speaking order must address material contentions and rely on relied-upon documents. However, simply not explicitly mentioning every case law cited does not per se amount to a violation of natural justice, as long as the core arguments are addressed and a reasoned finding is provided. The adjudicating authority has given specific reasons for its findings regarding the Appellant's role and culpability in the impugned order. The Appellant was afforded a personal hearing and had submitted a detailed reply. Therefore, the argument of gross violation of natural justice merely on the basis of non-citation of specific case laws, without demonstrating how the core arguments were ignored or misconstrued, is not sustainable. The essence of natural justice is a fair opportunity to be heard, which was provided.

6.1 The crucial aspect here is the extent of responsibility of an intermediary like the Appellant (a forwarding agent/customs clearance firm on an outsourcing basis) in cases of smuggling. While the Appellant claims lack of knowledge and involvement in the actual substitution of goods, the impugned order correctly relies on significant circumstantial evidence:

- Direct Contact with Conspirators: The Appellant was in direct contact with Shri Rohan Kumar, who was later identified as a key conspirator (Ganesh Laxman Ujhagare / Aryan Ganesh Thorat). This fact is not disputed by the Appellant.
- Failure of Due Diligence: The adjudicating authority specifically highlights the Appellant's failure to verify basic details like the authenticity of the email ID (saitransport1002@gmail.com) and the website (www.sailogisticsindia.com) provided by Rohan Kumar, which were found to be fake/incorrect upon investigation. This amounts to a "willful neglect" of duties. A forwarding agent, entrusted with the movement and clearance of goods, has a higher degree of



responsibility to ensure the genuineness of their clients and the declarations, especially when dealing with new parties.

- **Modus Operandi and Integral Link:** The sophisticated modus operandi (initial stuffing with toiletries, transit to godown for replacement with prohibited Red Sanders, then movement to port) suggests a well-planned conspiracy requiring multiple facilitators. The Appellant's role in booking, documentation, and arranging clearance for the consignment makes him an indispensable link. The Hon'ble Supreme Court in *K.I. Pavunny v. Asst. Collector (HQ), Excise, Cochin* [1997 (90) ELT 241 (SC)] held that mens rea can be inferred from the surrounding circumstances and the role played by the individual.
- **Rebuttal to Appellant's Precedents:** While judicial precedents cited by the Appellant (e.g., *M/s. Savithri Jewellers Pvt. Ltd.*, *M/s. Apson Enterprises*, *Nirmal Kumar Agarwal*, *M/s. Moriks Shipping and Trading Pvt. Ltd.*) generally hold that mere preparation of documents based on client's declarations, without knowledge of mis-declaration, does not attract penalty, these cases also emphasize the absence of positive evidence of knowledge or involvement. In the present case, the adjudicating authority has inferred "willful neglect" and "active role" not from mere document preparation, but from the Appellant's failure to conduct basic verifications concerning the source of instructions. In plethora of judgments, the Hon'ble Court has held that where due diligence is not exercised, penalty can be imposed. The facts here, where the exporter was apparently a conduit for a larger smuggling operation, and the Appellant did not verify the critical details about the person instructing him, indicate a failure of due diligence that actively facilitated the smuggling.



Therefore, the evidence on record, particularly the Appellant's direct contact with the conspirators and his conspicuous failure to verify critical details, is sufficient to infer his culpable involvement, whether through active participation or willful neglect, which facilitated the illegal act.

6.2 The judgments cited by the Appellant (e.g., *Maruti Transports*, *R.S. Travels*, *Glory Agencies*, *Sai Shipping Services*, *Commissioner Vs. Moriks Shipping and Trading Pvt.Ltd.*, *Prime Forwarders*, *Premier Instruments and Controls Limited*) often emphasize the need for "positive evidence" of knowledge or abetment, and some state that CHAs are not required to delve into the authenticity of declarations provided by exporters. However, the present case differs significantly:

- Orchestrated Fraud:** This is not merely a case of an exporter mis-declaring goods, but a sophisticated, orchestrated fraud involving the replacement of goods after initial customs clearance, using tampered containers and fake identities.

- ii. **Active Facilitation:** The Appellant's firm was directly involved in arranging transport and handling documentation where the instructing party used demonstrably false information (fake company, fake address, fake website). This is not simply relying on exporter's declarations but facilitating transactions based on suspicious credentials that a reasonable business person would verify.
- iii. **Beyond "Mere Omission":** The Adjudicating Authority's findings go beyond "mere omission" or "negligence per se" (as argued by the Appellant citing S.L.A. Steels Pvt. Ltd. and Serco Trans Ltd.). It has found "willful neglect" and implications of aiding and abetting an illegal act. When a party "connives" or exhibits "willful neglect," the lower threshold for penalizing agents without direct knowledge of the contraband is breached.
- iv. **Precedent Distinction:** Many of the cited judgments focus on situations where the exporter's declaration was false at the point of filing, and the agent had no reason to doubt it. Here, the issue extends to the identity and bona fides of the instructing party (Shri Rohan Kumar/Ganesh Laxman Ujhagare), whose details were readily verifiable (website discrepancy) and whose instructions led to the container being diverted for illegal stuffing. This distinction is crucial.
- v. **Circumstantial Evidence:** While direct "knowledge" may be hard to prove, the sequence of events, including the fake identity, the use of the Appellant's firm's bond for road transit, and the failure to verify details that were readily available, constitute strong circumstantial evidence of "willful mis-statement" or "abetment" under Section 114, and causing false documents to be used under Section 114AA.

6.3 Section 114 (i) of the Customs Act, 1962, imposes a penalty on any person who, in relation to any goods, does or omits to do any act which would render such goods liable to confiscation. The Red Sander logs were prohibited goods, making them liable to confiscation under Section 113 (d) of the Customs Act, 1962. The Appellant's acts of booking the container, preparing documentation based on false information, and arranging for clearance, coupled with the failure to exercise due diligence in verifying the client, directly contributed to the movement of prohibited goods. Such acts and omissions are instrumental in rendering the goods liable to confiscation. The Appellant's argument that the goods were liable to confiscation due to their prohibited nature, and not his actions, is misplaced. His actions and omissions facilitated the attempt to export these prohibited goods, thereby directly contributing to their confiscation liability under Section 113 of the Customs Act, 1962.

6.4 The Adjudicating Authority's finding that the Appellant's "willful neglect of duties" resulted in the attempt to export Red Sanders is a strong basis for imposing penalty under Section 114 (i) of the Customs Act, 1962. While the Appellant did not physically conceal the goods, his actions (or inactions) as a crucial intermediary facilitated the movement of the prohibited goods through the customs process. This facilitation, even if by "willful neglect" and not active participation, can be construed as an omission that



contributed to the goods becoming liable for confiscation. The term "abets the doing or omission of such an act" in Section 114 also covers such facilitation. Thus, the penalty under Section 114(i) of the Customs Act, 1962 is appropriate.

6.5 Section 114AA imposes a penalty for knowingly or intentionally making, signing, or using a false or incorrect declaration/document. The declaration in the Shipping Bill that the goods were "Pristine Assorted Toiletries" was patently false, as they were Red Sander logs. While the Appellant claims lack of knowledge, the adjudicating authority's finding of "willful neglect" implies a state of mind where basic checks were deliberately overlooked. This facilitated the preparation and use of a false shipping bill and associated documents. If the Appellant consciously chose to disregard the need for proper verification, despite suspicious elements, then the element of "knowingly" can be reasonably inferred. The phrase "knowingly or intentionally" can cover situations where knowledge is imputed due to a deliberate avoidance of facts. By allowing a false declaration to be filed through his services without proper checks, the Appellant can be held to have facilitated the "use" of a false document.

6.6 The Appellant contends that there is no evidence to show he "knowingly or intentionally" made or used false documents or knew that the cargo was Red Sanders. He claims that he had no reason to doubt the declarations made by the exporter. However, the SCN clearly highlights that the Appellant received emails from Rohan Kumar with a fake address for "M/s. Sai Transport & Logistics" and a website (www.sailogisticsindia.com) that actually pertained to "Sai Logistics," a different entity. The Appellant admitted verifying this discrepancy only after the goods were seized. This belated verification, had it been done earlier, would have revealed the false particulars being used. The deliberate choice not to verify, despite having the means to do so, when dealing with new clients and potentially high-value international transactions, can be interpreted as a conscious disregard for the accuracy of information.

6.7 The Adjudicating Authority found that the Appellant's actions indicate "willful neglect" and that he "did not bother to visit the said website to verify the fact that the website mentioned is of M/s Sai Logistics, Mumbai and not Sai Transport & Logistics and their address is 22, Hilton Tower... and not what is mentioned by Shri Rohan Kumar." This points to a failure to verify material particulars, which can be interpreted as causing false documents (shipping bills, etc., based on this false information) to be used. While direct "knowledge" of Red Sanders might be difficult to prove, the "intentional" omission to verify details that would have exposed the fraudulent identity of the orchestrator can still attract Section 114AA. The very reliance on a demonstrably fake identity for a crucial aspect of the transaction (logistics arrangements) suggests a level of culpability.

6.8 The role played by the Appellant is more active than merely processing documents based on exporter declarations. He failed to conduct basic due diligence on

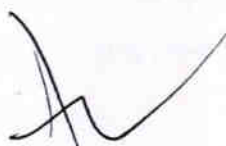
Shri Rohan Kumar, who was clearly operating under a fake identity. This failure, coupled with his firm's logistical arrangements, directly facilitated the illegal export. The argument of "bona fide belief" becomes tenuous when basic checks on new clients are ignored, especially when dealing with international trade and large consignments.

6.9 The market value of the prohibited goods (Red Sander logs) seized was approximately Rs. 15,09,04,000/-. Section 114(i) allows a penalty not exceeding three times the value of the goods (or declared value, whichever is greater, if prohibition is in force). Section 114AA allows a penalty up to five times the value of the goods. The imposed penalties of Rs. 10,00,000/- each under Section 114 (i) and Section 114AA of the Customs Act, 1962 are significantly less than the maximum permissible limits. Given the gravity of the offense (smuggling of prohibited goods), the substantial value of the goods, and the Appellant's critical facilitating role in a sophisticated smuggling operation, the imposed penalties, while substantial, are not disproportionate or arbitrary within the statutory framework.

6.10 Based on the comprehensive review of the facts, the detailed investigation findings, and the legal provisions, it is evident that the Appellant's actions and omissions constitute a culpable role in the attempted smuggling of Red Sanders. The Adjudicating Authority's findings of "willful neglect" and "facilitation of smuggling" are well-supported by the evidence on record. The Appellant's arguments, while raising valid legal principles in general, fail to address the specific circumstances and the chain of events that clearly implicate his firm in the broader conspiracy. The imposition of penalties under Sections 114 (i) and 114AA of the Customs Act, 1962 is, therefore, justified.

7. In view of the detailed discussions and findings above on each of the issues, and in exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

- i. I find that the impugned order does not suffer from any violation of the principles of natural justice, as the Appellant was afforded a personal hearing and their core arguments were considered;
- ii. I find that there is sufficient evidence on record, including the Appellant's direct contact with conspirators and his failure to exercise due diligence in verifying their credentials, to establish his culpable involvement and facilitate the attempted illegal export of Red Sander logs;
- iii. The acts of omission and commission attributed to the Appellant are indeed sufficient to warrant the imposition of penalty under Section 114(i) of the Customs Act, 1962, as his actions directly contributed to rendering the prohibited goods liable to confiscation.
- iv. The conditions for imposing penalty under Section 114AA of the Customs Act, 1962, are met, as the Appellant's "willful neglect" and failure to verify crucial

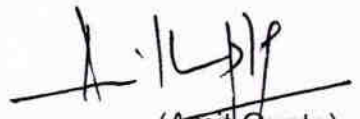


details allowed for the knowing or intentional use of a false declaration in the Shipping Bill;

- v. The quantum of penalties imposed under Section 114(i) and Section 114AA of the Customs Act, 1962, is found to be proportionate to the gravity and scale of the offense and the Appellant's role therein, and is well within the statutory limits.

8. Therefore, the impugned Order-in-Original No. 182/ADC/VM/O&A/2023-24, dated 05.12.2023 is found to be legally sustainable on its merits.

9. Accordingly, the appeal filed by the Appellant is hereby rejected.


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

F. No. S/49-417/CUS/AHD/2023-24

Date: 30.06.2025

By Registered Post A.D/E-Mail

1828

To,



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સત્યાપિત/ATTESTED

અધીક્ષક/SUPERINTENDENT
સીમા શુલ્ક (અપીલ), અહમદાવાદ.
CUSTOMS (APPEALS), AHMEDABAD.

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