प्रधान आयुक्त का कार्यालय,सीमा शुल्क ,अहमदाबाद

"सीमाशुल्कभवन ,"पहलीमंजिल ,पुरानेहाईकोर्टकेसामने ,नवरंगपुरा ,अहमदाबाद – 380009.

दूरभाष :(079) 2754 4630 **E-mail:** patoadc-srtcust@gov.in फैक्स :0261-2260113

PREAMBLE

A	फाइलसंख्या /File No.	:	F. No. GEN/ADJ/ADC/336/2024-DIV-SRT-CUST-COMMRTE-AHMEDABAD
B	कारणबताओनोटिसनं .औरतारीख Show Cause Notice no. and date	:	F. No. GEN/ADJ/ADC/336 /2024-DIV-SRT-CUST-COMMRTE-AHMEDABAD Dated 26.02.2024
C	मुलआदेशसंख्या / Order-In-Original No.	:	03/LD/ADC/SRT/2025-26
D	द्वारापारित आदेश /ORDER PASSED BY	:	Lokesh Damor अपरआयुक्त/Additional Commissioner सीमा शुल्क/Customs सूरत/Surat
E	आदेशतिथि / Date of Order	:	25.07.2025
F	जारीकरनेकीतारीख /Date of Issue	:	25.07.2025
G	DIN		**20250771MN000000EC40**

1. जिसव्यक्तिकेलिएआदेशजारीकियागयाहै, उसकेव्यक्तिगतउपयोगकेलिएप्रतिनिशुल्कप्रदानकीहै|

1. This copy is granted free of charge for the private use of the person to whom it is issued.

२. इस आदेशसे अपनेको व्यथित महसुस करनेवाला कोईभीव्यक्तिआयुक्त (अपील), सीमाशुल्क, 4th मंजिल, हुडकोबिल्डिंग, ईश्वरभुवनरोड, नवरंगपुरा,अहमदाबाद- ३८०००९केयहाँअपीलकरसकताहै| इसतरहकीअपील, पार्टीकोइसआदेशकेसौंपेजानेअथवाडाककेप्राप्तहोनेकेसाठदिनकेअन्दरसीमाशुल्क (अपील) नियम, १९६२केअंतर्गतफार्मससी. ए. १और२दीजानीचाहिए| इसअपीलपरनियमानुसारकोटकीस्टाम्पलगाहोनाचाहिए|

2. Any person deeming himself aggrieved by this order, may prefer an appeal against the order to the Commissioner of Customs (Appeal), 4th Floor, Hudco Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009, in Form C. A. 1 & 2 as prescribed under Customs (Appeal), Rules, 1962. The appeal must be filed within sixty days from the date of receipt of this order either by the post or by the person. It should bear a court fee stamp of appropriate value.

३. अपीलकेसाथनिम्नलिखितचीजेसंलग्नजाए|

3. The following documents must be enclosed along with the appeal.

(क) अपीलकीप्रति, तथा(a) A copy of the appeal and

(ख) आदेशयहप्रतियाअन्यआदेशकीप्रति, जिसनियमानुसारकोटफीस्टाम्पलगाहो|

(b) Copy of this order or another copy of the order, which must bear court fee stamp of appropriate value.

To,

1	**M/s Sagar Diamonds Limited**, Plot No 266-B, Surat Special Economic Zone, Sachin, Surat-394230 (E-mail-factory@sagardimaonds.com; accounts@sagardiamonds.com)
2	Shri Vaibhav Dipak Shah, Managing Director of M/s Sagar Diamonds Limited, 903, 9th Floor, The Embassy Centre Premises CHS Ltd, Jamnalal Bajaj Marg, Nariman Point, Mumbai, Maharashtra-400021 (Resident of Room No. 9, 1st Floor, Dadarkar House, 5/7, Vithalbhai Patel Road, Next Vimal Showroom, Girgaon, Mumbai-400004) (E-mail-vshah111@gmail.com)

3	Shri Rahil Hiteshbhai Chovatia, R/O- A-19, Jaldarshan Flats, Opp. Natraj Cinema, Ashram Road, Ahmedabad (E-mail- rhcglobal@gmail.com) **Or** 40, Sawan Society, Insanpur Road, Maninagar, Ahmedabad
4	Shri Saurin Rasiklal Shah, B-101, Shreeji Enclave, oppoiste Sajan Apartment, Near Anand Cross Road, Satellite, Ahmedabad (E-mail-saurinshah73@gmail.com)
5	Shri Hirenbhai Bipinbhai Trivedi, R/o 104, Radhe Apartment, Shardha Mandir School, Vijalpore, Navsari, -396445 (E-mail-thiren@gmail.com)
6	AADI HK LTD, 1407, 14th Floor, Hart avenue Plaza, 5-9 Hart Avenue, TST, Kowloon, Hong Kong
7	AADI IMPEX, Flat D, 14th Floor, Windsor Mansion, TST, Kowloon, Hong Kong
8	ADVANCE CENTURY INC LIMITED, Room 2002, 20 F, Hing Yip Comercial Centre, 272-284 Des Voeux Road, Central, Hong Kong (advancecenturyincltd@gmail.com)
9	ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, No. 299 Huiquan RD Linquen Country (Lin Lu Industrial Park) China (anhuiqihangsupply@gmail.com)
10	BEL DIAM LTD, Unit 701, 7th Floor, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong (hongkong@beldiamltd.com)
11	COLOR CREATIONS LIMITED, Unit Q12, 6/F, Kaiser Estate Phase 3, 11 Hok Yuen Street, Hunghom, Hong Kong
12	CROWN GEMS, Unit 504, 5/F, Hart avenue Plaza, 5-9 Hart Avenue, TST, Kowloon, HongKong
13	CRYSTAL KING LIMITED, M 9 - 2 F, kaiser, Estate, Phase 3, 9-11, HOK YUEN Street Hunghom, Hong Kong (infocrytalking@gmail.com)
14	CSY INTERNATIONAL PTE LTD, 1North Bridge Road, 18-01, High Street Centre, Singapore-179094 (info@csyinternational.com)
15	DIARECT MARKETING LIMITED, Suite D, 13th Floor, No. 8, Hart Avenue, TST, Kowloon, HongKong
16	ESTRADE INTERNATIONAL LTD, RM B2, 13/F, Kaiser Estate Phase 1, 41 Man Yue Street, Hung Hom, Hong Kong
17	EURO TECH INTERNATIONAL TRADING LIMITED, Unit K, 3 F, Central house, 270-276, Queens Road, Central Sheungwan, Hong Kong
18	FAMASIA LIMITED, 608, Hart Avenue, 5-9, TST, Kowloon, HongKong
19	FANCY COLOR DIAM (HK) LTD, RM 1715, 17F, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong
20	FU LEE HONG COMPANY LIMITED, 1108, 11/F, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong
21	GEMS STAR TRADING F.Z.E, P O Box 171641, Dubai, UAE (gemsstartrdg@gmail.com)
22	GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED, Room No. 2002, 20/F, Hing Yip Commercial Centre, 272-284 Des Voeux Road, Central Hong Kong
23	GLORY DIAMOND FZE, 17517, P2, Hamariya Free Zone, HBC-2527, Sharjah, UAE (info@glory-d.com)
24	GRAND CO, Room 907-8, Silver Cord Tower 2, 30, Canton Road, TST, Kowloon, Hong Kong
25	JIYA IMPEX DMCC, Unit No. 104, Concorde Tower 1, Plot no JLT-PH1-H2, Jumeirah Lakes Tower, Dubai, UAE (jiyaimpex24@gmail.com)
26	JUMBO LINKS (FZE) HK LTD , Room No. 2002, 20 F, Hing Yip Comercial Centre, 272-284 Des Voeux Road, Central, Hong Kong
27	K.DIAM LTD, 404A, Fu Fang Ind Bldg 1 Hok Yeun Street, Hunghom, Kowloon, Hong Kong
28	KESHAR TRADE (HK)LTD, Unit1211,12FL, Beverly Commercial Centre, 87-105, Chatham Road South, TST, Kowloon, Hong Kong

29	KJ TRADING CO., Flat/Room H block-01, -26/F baliey garden, 26 Bailey Street, Hunghon, hong kong (kjtradinghkg@outlook.com)
30	KOEMATLIFF PRIVATE LIMITED, 12 ARUMUGAM Road, #03-10A, LTC Building, Singapore-409958
31	LEE FU SHING COMPANY LIMITED, 1108, 11/F, Rise Commercial, F-11, Gran Ville Circuit, TST, Kowloon, Hong Kong (leefushing19@gmail.com)
32	LIME TRADING., RM 1715, 17/F, Rise Comm Bldg, 5-11, Granville Circuit, TST, Kowloon, Hong Kong
33	MARS IND & COMM SERVICES LIMITD, Unit A&B, 9/Fl, Champion Building, 287-291, Des Voeux Road, Central, Sheung Wan, Hong Kong
34	MIRACLE MPS LIMITED, 8B, Dorfu Court, 5-6 Hau Fook Street, TSIM SHA TSUI, KLN, Hong Kong
35	MIRACLE PRIVATE LIMITED, Flat 1006, 10/F, Rise Comm Bldg, 5-11, Granville Circuit, TSIM, SHA TSUI, Hong Kong
36	MIRACLE TRADING HK LIMITED, Room 1006, 10/F, Rise Comm Bldg, 5-11, Granville Circuit, TST, Kowloon, Hong Kong
37	NV INTERNATIONAL., Room No. 1715, 17th Floor,Rise Commercial Building, 5-11, Gran Ville Circuit, Gran Ville Road, TST, Kowloon, Hong Kong
38	PACY CORPORATION LTD., Rm B, 9/F, Hop Hing, Industrial Bldg, 704, Kastle Peak Road, Lai Chi Kok, Kln, Hong Kong (pacycorporationltd@gmail.com)
39	PINK STAR HK LTD, Room No. 22, Unit-P, 1/F, Kiaser Estate Pahse 3, 11 HOK YUEN Street, Hunghom, Hong Kong (pinkstarthkltd@gmail.com)
40	RK TRADING HK LTD, Roon B4, 13F, Block 1, Kaiser Estate, No.41 Man Yue Steet, Hung Hom, Hong Kong
41	SAIVASCULAR PTE LTD, 35, #09-14/15, Selegie Road, Park Lane Shopping mall, Singapore
42	SHIV DIAMOND, Unit 7, 11th Floor, Heng Ngai Jew CTR, 4 HOK- YUEN Street, East Hung HOM, Kowloon, Hong Kong
43	SINOVAC LIMITED, Unit 705, 7/F, Golden Draon Plaza, 38-40 Cameron Road, T.S.T., Kowloon, Hong Kong
44	SPINEL HOUSE (HK), unit 1, 10/F, Tower A, hunghom Commercial Centre, 37-39 Ma tau wai Road, Hung hom, kowloon, Hong kong
45	STALLION LIMITED, Block-A, 2nd Floor, LIP Seng, mansion, 15-19, Carnarvon Roa, TST, Kowloon, Hong Kong (stallion.ltd@aol.com)
46	SUN RAYS HK LIMITED, Flat 22, 1/F, Block 3, Kaiser Estate, 11 Hok Yuen Street, Hung Hom, Kowloon, Hong Kong
47	SUN TAI HK LTD, Unit 502, 5/F, Hart Avenue Plaza, 5-9 Hart Avenue, T.S.T. Kowloon, Hong Kong
48	T G INTERNATIONAL DMCC, Unit No Almas-12-F-01, Almas Tower, Plot No. Jlt-Ph1-A0, Jumeirah lake Tower, Dubai, UAE
49	UNIQUE DIA LIMITED, 502, Hart Avenue Plaza, 5-9 Hart Avenue, Tsim Sha Tsui Kowloon, Hong Kong
50	UNNATI GENERAL TRADING LIMITED, Flat/Room No. 11, Blk-B, 11/F, Wing Cheong, Commercial Building, 19-25, Gervois Street, Sheung Wan, Hong Kong
51	VENUS IMPEX TRADING LIMITED, Block E, 5F, haribest Industrial building, 45-47 AU PUI WAN ST FO.TAN, Shatin, Hong Kong
52	VERIOT TECHNOLOGIES PTE LTD, 8 Ubi Road 2, #08-10, Zervex, Singapore
53	VITAL ENERGY FZE, Elob Office no. E-15F-04, Hamriyah Free Zone Sharjah, UAE
54	XNOVA HK LIMITED, Unit D3, 15/F, TSIM, SHA, TSUI Mansion, 87 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong

55	XNOVA LIMITED , Unit D3, 15/F, TSIM, SHA, TSUI Mansion, 87 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong
56	ZHAN HONG TRADE HK LIMITED, Unit 31, 2nd Floor, Mirador Mansion, 58 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong (E-mail zhanhongtradehk@outlook.com)

BRIEF FACTS OF THE CASE

Whereas, an information was received from the Assistant Director (HIU-1(1)(1), Directorate of Enforcement, New Delhi vide letter dated 01.03.2023 **(RUD-1)** that Enforcement Directorate conducted a search operation in a case namely "Power Bank APP Scam" under the provisions of PMLA, 2002 on 01.03.2023 at the premises of (i) M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat, (ii) M/s Sagar Diamonds Ltd, SEZ, Surat and (iii) M/s RHCGlobal Exports Pvt Ltd, SEZ, Surat. During the search operation, the Directorate of Enforcement informed that the precious stones (declared as Ruby) which had been imported by the above said entities had been found to be synthetic and of very low value in comparison to the import price shown in their respective documentation. They informed that total stock in trade of 3 entities as on 01.03.2023 had been shown in books of account as approx. Rs. 1400 crores whereas, during search operation after valuation of stock by a Govt. approved valuer large quantity of synthetic/ duplicate precious stones (Ruby) were found in stock in trade valued at merely a few crores. It was informed that above said entities were found to be involved in exorbitant overvaluation of import & export through their units based in SEZ, Surat in sheer violation of SEZ Act, 2005 and Customs Act, 1962.

2. Acting on the above information, a team of officers of DRI Surat Regional Unit conducted search on 02.03.2023 under authorization for search issued by the Deputy Director, DRI, Surat, at the factory premises of M/s Sagar Diamonds Limited, Plot No 266-B, Surat Special Economic Zone, Sachin, Surat-394230 (hereinafter referred as *'M/s. SDL, SURSEZ'* for the sake of brevity), having IEC No. 5216502165, in the presence of independent panchas and Shri Hirenbhai Bipinbhai Trivedi, Production Manager cum Authorized Signatory of M/s. SDL, SURSEZ and the whole proceeding was recorded under panchnama dated 02.03.2023 **(RUD-2)**. During the course of search proceedings, the officers of Directorate of Enforcement informed the DRI officers that the stock-in-trade of precious stones (Ruby) imported by M/s. SDL, SURSEZ have been tested on sample basis at Indian Diamond Institute, Surat and found the same as 'Synthetic Ruby'. Further, they also informed that the valuation of stock-in-trade of precious stones (Ruby) was done by Shri Anmol Jain, Govt. approved valuer and he reported the value of said Ruby to be very low in comparison to the import value declared by M/s. SDL, SURSEZ.

2.1 On being asked, Shri Hirenbhai Bipinbhai Trivedi informed that he was working as factory cum production manager in M/s. SDL, SURSEZ since inception and he was looking after the supervision of studding of precious stones (Ruby) on pendant/ring made up of silver; that he (Hirenbhai Bipinbhai Trivedi) and Shri Prince Singh were the authorized signatory of the company; that Shri Vaibhav D Shah was the Managing Director of M/s. SDL, SURSEZ. On being asked, Shri Hirenbhai Bipinbhai Trivedi submitted the printouts of stocks and other details, as shown below:

Table 1: Details of Stock Submitted

File No. GEN/ADJ/ADC/336/2024-DIV-SRT-CUS-COMMRTE-AHMEDABAD (Computer No. 1152369)
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Made Up File No	Made Up File Name	Period	Pages
1	File containing sheet showing details regarding Import and Export of Gold, Silver and Diamond made by M/s Sagar Diamonds Limited	FY 2019-20, FY 2020-21, FY 2021-22 & FY 2022-23(up to 28.02.2023)	1 to 170
2	File containing sheet showing details regarding Import and Export of Precious Stone (Ruby) made by M/s Sagar Diamonds Limited	FY 2019-20, FY 2020-21, FY 2021-22 & FY 2022-23 (up to 28.02.2023)	1 to 257
3	File containing Stock of Silver, Gold as on 28.02.2023, Authorization etc	-	1 to 83

During the course of search, it was noticed that the stock of loose precious stone (Ruby) and cut & polished diamonds as on 28.02.2023 was NIL. It was further found that 20 consignments of silver pendants studded with "precious stone (Ruby)" (as declared by the company) where Invoices and packing lists were also prepared and 33 consignments of silver pendants studded with "Precious stone (Ruby)" where packing lists were prepared but Invoices were not yet prepared, were lying in factory premise. The details of the same were recorded in Annexure- A& B to the said panchnama. The said 20 and 33 consignments were placed in two steel boxes marked as Box-A & Box-B respectively. The summary of the same is as below:

Table 2: Details of Intercepted Consignments Ready to be Exported

Goods	Description	No of item	Actual Wt of Pendant (Gram)	Reference
Pendant	Consignments where Invoice and packing lists were also prepared	600	6477.04	**Annexure-A**
Pendant	Consignments where packing lists were prepared but Invoice was not yet prepared	1168	10711.97	**Annexure-B**

Further, as per the valuation report issued by Shri Anmol Jain, Govt. Approved Valuer, attached to the panchnama drawn by the officers of Directorate of Enforcement, the said precious stones (Ruby) imported by M/s SDL, SURSEZ appeared to be synthetic and of very low value as compared to price declared before Customs Authorities at the time of the import and therefore, the goods as detailed in Annexure-A and Annexure-B to the panchnama were placed under detention under the reasonable belief that the same were liable for confiscation under the provisions of Customs Act, 1962. The 02 steel boxes marked as Box-A and Box-B were locked with lock & key. The lock and steel box were wrapped with white cotton tape and sealed with DRI lac seal bearing Sr. No. 5 in such a way that it cannot be tampered with.

3. In terms of Notification No. S.O. 2666(e) dated 05.08.2016, the Joint Director (In-situ), DRI, Surat vide letter dated 03.03.2023 **(RUD-3)** intimated to the Development Commissioner, Surat SEZ, about the search conducted at the premises of M/s SDL, SURSEZ.

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4. During the course of the investigation, summons dated 02.03.2023 was issued to **Shri Hirenbhai Bipinbhai Trivedi,** Production Manager cum Authorized SignatoryofM/s SDL, SURSEZ and his statement dated 03.03.2023 **(RUD-4)** was recorded under the provisions of Section 108 of the Customs Act, 1962 wherein he, amongst the other things, stated that M/s Sagar Diamonds Limited was having its corporate office at Office No 9, Embassy Center Building, Nariman Point, Mumbai and its manufacturing unit was situated at Plot No 266-B, Surat Special Economic Zone, Sachin, Gujarat 394230; that the said company was into importing cut & polished diamond, precious gemstone ruby, silver & gold and then manufacturing diamond embedded gold jewellery and ruby studded silver jewellery and exporting the same from SEZ Sachin, Surat; that there were five directors in M/s Sagar Diamonds Limited viz. Shri Vaibhav Dipak Shah (Managing Director), Shri Saurin Rasiklal Shah and Shri Krishna Baburam Pandey, Shri Mahendra Pratap Singh and Ms. Bandana Singh; that he applied for the job in M/s Sagar Gems, Sachin SEZ in the year 2015 and was interviewed by Shri Vaibhav Dipak Shah and got selected as authorised representative of the said firm; that thereafter M/s Sagar Diamonds Pvt. Limited was established in the year 2017 at Unit No.101, Plot No.193, SURSEZ, Sachin Surat and he was appointed as Production Manager cum Authorized Signatory of the said company; that the said entity was converted into Limited company in the year 2019 and later on shifted at Plot no. 266/B, SURSEZ, Sachin, Surat and was functioning from the said address till date; that to the best of his knowledge, apart from the above said SEZ unit, other unit/ office address of M/s Sagar Diamonds Limited were as under:-

1. 903, 9th Floor, The Embassy Centre Premises CHS Ltd, Jamnalal Bajaj Marg, Nariman Point, Mumbai, Maharashtra-400021 (Corporate office).
2. Building No 14A, Block-14, Road-1C, Zone-Brigade International Financial , Gift City, Gandhinagar, Gujarat-382355
3. SDF-D/14, Noida SEZ, Noida-Dadri Road, Phase-II, Gautam Buddha Nagar, Noida Special Economic Zone, Uttarpradesh-201305
4. 1, Office No.126, Nodh Number-1158 to 63/65/9, Blue Diamond Building, Hat Faliyu, Mahidharpura.

4.1 On being asked, Shri Hirenbhai Bipinbhai Trivedi stated that apart from the business activities in M/s Sagar Diamonds Limited, Surat SEZ, he was not aware about the business activities at the other said premises; that he perused the panchnama dated 02.03.2023 drawn at M/s Sagar Diamonds Limited, Plot No 266-B, Surat Special Economic Zone, Sachin, Gujarat 394230 and stated that he agreed with the contents of the said panchnama as he was present at the premises during the course of search proceedings; that he put his dated signature on the said panchnama in token of having seen it and its correctness; that M/s Rekha Shipping Agency was working as CHA for his company and regarding import/export in their company, they used to communicate with Shri Pawanbhai or Shri Dilipbhai, partners of M/s Rekha Shipping Agency; that at the time of import, Ferrari Logistics Pvt Ltd used to send e-mail to M/s Sagar Diamonds Limited and M/s Rekha Shipping Agency and provided the documents such as House Air Way Bill, Master Air Way Bill, Invoice and Packing List; that on the basis of the said documents, their CHA i.e. M/s Rekha Shipping Agency used to file the Bill of Entry with the SEZ, Surat; that after completion of the

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formalities by the CHA firm, Shri Pawanbhai/ Shri Dilipbhai, Partner of M/s Rekha Shipping Agency used to call him informing regarding the completion of all formalities and that they (M/s. SDL, SURSEZ) could receive the import parcel from the Strong Room, SEZ, Surat; that after taking the parcels to their office, he used to handover the import invoice, packing list and bill of entry to Shri Sanjay Prajapati for making entries in books of accounts; that after receipt of parcel, he used to open the import parcel to verify the description and weight of the imported goods; that thereafter Shri Vaibhav Dipak Shah used to provide him the instructions regarding the production of ruby studded pendent jewellery; that as a authorised person of the said firm, he used to visit the strong room of SEZ, Surat to receive and dispatch the consignments; that till 2019 as he was alone and used to do all accounting works and after that assistant staff were appointed from 2020; that gold, silver, cut and polished diamonds were imported from Hongkong and Dubai and precious stone Ruby was imported only from Hongkong; that on being asked regarding name of Hongkong based firm he stated that they imported mainly from M/s Estrade International, M/s Unique Dia Limited, M/s Miracle Trading, M/s K J Trading, M/s Colour Creation all Hongkong based, M/s Jia Impex and M/s Glory Diamond both Dubai based etc; that they were exporting precious stone studded silver jewellery and diamond studded gold jewellery to Hongkong only; that they were exporting mainly to M/s Mars Ind & Com Services Limited, M/s Sinovac Limited, M/s Xnova Limited etc all Hongkong based; that silver and precious stone ruby was imported by his company from Hongkong; that after receipt of the said goods in their company after import, they used to enter the details in their stock register; that thereafter, they used to issue silver and precious stone ruby to production department where waxing, casting of silver, filing of silver, polishing of silver and thereafter, studding of ruby precious stone on silver and after that pre-polishing was done; that thereafter, ultrasonic process was done and the jewellery manufactured were handed over to quality control department; that thereafter weighment was done and received for preparation of invoice; that first he used to call Shri Vaibhav Dipak Shah over telephone and ascertained the name of party and country to whom export was to be done; that he (Shri Vaibhav Dipak Shah) had already instructed him to prepare the export invoices of approximately USD 7,00,000 by matching with the import consignment and showing value addition of 6% on import value; that they used to select ruby studded silver jewellery randomly in order to arrive at the invoice value of around USD 7,00,000; that after preparation of the export invoices they used to put the ruby studded silver jewellery in small tin box, and give export documents to their CHA for generating the Shipping Bill and after receipt of the Shipping Bill they used to submit the sealed box to strong room of SEZ office and after Customs process the said consignment was cleared.

4.2 Shri Hirenbhai Bipinbhai Trivedi perused the test report dated 01.03.2023 (issued by Indian Diamond Institute) of two lots of “precious stone ruby” imported by M/s Sagar Diamonds Ltd., attached with the letter dated 01.03.2023 of Directorate of Enforcement and after perusing the same he put his dated signature on the said test report and stated that as per the said report the precious stone ruby imported by his company was not natural but synthetic ruby; that the quality of Ruby imported by his company till then was similar as that of Ruby sent for testing.

4.3 On being asked, Shri Hirenbhai Bipinbhai Trivedi stated that a search was conducted by Directorate of Enforcement Officer on 01/02.03.2023 under PMLA Act, 2002; he submitted the copy of panchnama dated 01.03.2023, drawn by officers of Directorate of Enforcement, along with valuation report; that since the ruby turned out to be synthetic ruby in testing, the value arrived at was correct; that regarding the issuance of ruby to production department, he stated that as per the directions of Shri Vaibhav Shah they used to follow the FIFO method to issue the ruby to the production department; that he was the authorized person of the company and was looking after admin, production, factory maintenance; that he used to apply for the gate pass for employees of M/s Sagar Diamonds Limited, SEZ, Surat; that on being asked regarding visit of Directors of M/s Sagar Diamonds Limited, he stated that Shri Vaibhav Dipak Shah used to visit factory every month, however, from last 8 months he (Shri Vaibhav Dipak Shah) had gone to Dubai and was not visiting the factory; that Shri Saurin Rasiklal Shah used to visit factory once in 3-4 months but he (Shri Saurin Rasiklal Shah) had not visited the factory for the last 6 months; that besides them, no other directors had visited the factory.

4.4 On being asked, Shri Hirenbhai Bipinbhai Trivedi stated that all instructions related to import/export, invoicing, admin, factory maintenance were given by Shri Vaibhav Dipak Shah only; that Shri Vaibhav Dipak Shah was personally looking after the payment to overseas supplier and buyer; that he (Shri Vaibhav Dipak Shah) instructed them to contact Shri Ajit Shah, Chartered Accountant (+91-9820825209) (who sits in the corporate office mentioned above) for any kind of factory expenses such as stationaries/furniture/repairing work and also gave directions to them in case of payment for scanning and uploading all documents in a google drive (shared with the corporate office); that he used to scan and upload all import documents, export documents, misc bills related to the office work; that as per his knowledge the bank accounts of M/s Sagar Diamonds Ltd are as under:

Table 3: Bank Accounts of M/s Sagar Diamonds Limited (provided by Shri Hirenbhai Bipinbhai Trivedi in his statement)

Sr. No.	Name of Bank	Branch	A/c No.
1	State Bank of India	Special Commercial Branch, Ring Road, Surat	39392347980
2	IDFC First Bank	Vesu Surat	10055946721

5. Summons dated 04.03.2023 were issued to **Shri Ajit Khushal Shah**, Chartered Accountant and his statement dated 06.03.2023 **(RUD-5)** was recorded under the provisions of Section 108 of the Customs Act 1962 wherein he, amongst other things, stated that apart from the chartered accounting work he also file ITR for client and for that he had around 200 clients; that he perused (i) panchnama(s) all dated 02.03.2023 drawn at M/s Sagar Empire Jewels Pvt Lts, SEZ, Surat, (ii) M/s Sagar Diamonds Limited, SEZ, Surat and (iii) M/s RHC Global Exports Pvt Ltd, SEZ, Surat and put his dated signature on the last page of the same; that he was aware that the officers of Directorate of Enforcement and Directorate of Revenue Intelligence, Surat had searched the SEZ premises of the above said companies; that he was working as income tax litigations consultant, tech support and for making the google

dashboards for the above said three companies; that in the month of July-2021, he met Shri Rahil Hiteshbhai Chovatia through one of his friends- Shri Rahul Visariya; that Shri Rahul Visariya was a friend of Shri Vaibhav Dipak Shah, Director of M/s Sagar Diamonds Ltd, SEZ Surat; that in March-2021 GST department searched the premises of M/s Sagar Diamonds Limited, Mumbai and due to mis-management of data by the CA of the firm at that time, they were looking for a CA and Shri Rahul Visariya knew that Shri Vaibhav Dipak Shah was looking for CA so he (Shri Rahul Visariya) asked him to meet Shri Rahil Hiteshbhai Chovatia; that he met Shri Rahil Hiteshbhai Chovatia in July-2021 at M/s Sagar Diamonds Ltd, 903, 9th floor, the Embassy Center Premises CHS Ltd, Jamnalal Bajaj Marg, Nariman Point, Mumbai, Maharashtra-400021; that in July-2021, at the time of meeting, Shri Rahil Hiteshbhai Chovatia informed him that he (Shri Rahil Hiteshbhai Chovatia) was planning to change the accounting staff for corporate offices of (i) M/s Sagar Empire Jewels Pvt Ltd, (ii) M/s Sagar Diamonds Ltd and (iii) M/s RHC Global Exports Pvt Ltd., situated in Mumbai; that after negotiation, they offered him Rs.40,000/- per month for the initial recruitment work; that he started taking interviews with suitable profile; that in the month of September-2021, he recommended the following persons to Shri Rahil Hiteshbhai Chovatia for appointment:

Table 4: Persons Recommended by Shri Ajit Khushal Shah for Appointment to Sagar Diamonds Limited

S. No.	Name of the Person	Designation	Month of appointment
1	Shri Vijaya Prajapati	Senior Accountant	Sep-2021
2	Ms Sanjana	Junior Accountant	Sep-2021 (approx.)

That apart from the recruitment of the above persons, he also helped Shri Rahil Hiteshbhai Chovatia in recruitment of other accounting staff from time to time; that in the month of March-2022, he met Shri Vaibhav Dipak Shah at M/s Sagar Diamonds Ltd, 903, 9th floor, The Embassy Center Premises CHS Ltd, Jamnalal Bajaj Marg, Nariman Point, Mumbai, Maharashtra-400021 and for enhancement of his work, he showed Shri Vaibhav Dipak Shah a sample dashboard of a firm (which he had prepared for another firm) and informed that he could prepare a dashboard application for their companies and they could access the same from anywhere in the world; that Shri Vaibhav Dipak Shah agreed to it; that in the month of June-2022, he prepared the first dashboard application for M/s Sagar Diamonds Ltd and after many changes, final dashboard was prepared in Aug-2022; that in Aug-2022, he finalised the dashboard for (i) M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat and (ii) M/s RHCGlobal Exports Pvt Ltd, SEZ; that he prepared the said dashboard application on the basis of the scanned and uploaded data of the respective companies on google drive; that for managing such dashboard for (i) M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat, (ii) M/s Sagar Diamonds Ltd, SEZ, Surat and (iii) M/s RHC Global Exports Pvt Ltd, SEZ, Surat, he started charging Rs.3,00,000/- per month from Shri Vaibhav Dipak Shah; that although he was doing the above said work for above said three firms but they were paying him Rs.3,00,000/- per month from M/s Sagar Diamonds Limited; that he further stated that he was also looking after the Income Tax litigation matters of M/s Sagar Diamonds Limited; that to the best of his knowledge, Shri Vaibhav Dipak

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Shah resided in Dubai with his family and Shri Rahil Hiteshbhai Chovatia resided somewhere in Lower Parel, Mumbai and his parents resided somewhere at Ashram Road, Ahmedabad; that regarding the director of (i) M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat, (ii) M/s Sagar Diamonds Ltd, SEZ, Surat and (iii) M/s RHC Global Exports Pvt Ltd, SEZ, Surat, he stated that as there were changes in the directors of the firms, so he did not exactly remember the name of all directors of the above said three firms but initially, Shri Vaibhav Dipak Shah and Shri Rahil Hiteshbhai Chovatia were looking after the overall business of the above said three firms; that Shri Rahil Hiteshbhai Chovatia was arrested by the Directorate of Enforcement, New Delhi in October-2022 in the crime of "PoC" (Proceeds of Crime) for some mischievous financial transactions and after Octobor-2022, Shri Vaibhav Dipak Shah started looking after overall operations of (i) M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat, (ii) M/s Sagar Diamonds Ltd, SEZ, Surat and Shri Rahil Hiteshbhai Chovatia started looking after the overall operations of M/s RHC Global Exports Pvt Ltd only; that at present, following persons were looking after the work of (i) M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat, (ii) M/s Sagar Diamonds Ltd, SEZ, Surat and (iii) M/s RHC Global Exports Pvt Ltd, SEZ, Surat, from the corporate office Mumbai but their salaries were paid by Sagar Diamonds Ltd only:

Table 5: Persons looking after the Work of the 3 Companies

S No.	Name	Responsibilities
1	Shri Santosh Sonar (Senior Accountant)	Data entry works for misc work and scrutiny and co-ordination with auditor
2	Shri Chirag Dave (CFO)	Data entry works for misc work and scrutiny and co-ordination with auditor and Communication with bank (only for M/s Sagar Diamonds Limited)
3	Shri Tejas (Junior Accountant)	Data entries related to bank i.e. maintenance of bank statement entries in tally (for all three firms)
4	Ms. Priti Rathi (Junior Accountant)	Use to communicate with the concerned persons of all three firms to ensure the uploading of all documents related to Import/Export so that she can make entries in tally (for all three firms)
5	Ms Sanjana (Junior Accountant)	She used to do all the banking transactions and for the same she used to co-ordinate with Shri Rahil Hiteshbhai Chovatia, Shri Hiren Bipinbhai Trivedi and Shri Vaibhav Dipak Shah. (for all three firms)
6	Smt Priya (Admin)	Looking after admin work

He further stated that he would produce the details regarding the import/export and payment against the same, bank statement of all bank accounts for all three companies, local sale/purchase within 03 days.

6. The goods detained from the factory premises situated at the Surat SEZ, as mentioned in the table below were deposited with the Custodian, DGDC Limited, Surat SEZ for safe custody vide letter F. No. DRI/AZU/SRU/B/INV-01/2023 (DRI/AZU/SRU/B/INV-02/2023 & DRI/AZU/SRU/C/INV-03/2023) dated 06.03.2023 **(RUD-6)**.

Table 6: List of Detained Goods Deposited with the Custodian, SEZ Surat

S. No	Goods Detained from	No. of box	Description	No. of pieces / weight
1	M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat on 02.03.2023	2	Box-A, B containing Silver Pendant studded with Ruby Stone	2649 (20322.17 Gram)
2		1	Box-C containing Ruby Stone	403 (7361.63 Carat)
3	M/s Sagar Diamonds Ltd, SEZ, Surat on 02.03.2023	2	Box-A, B containing Silver Pendant studded with Ruby Stone	1768 (17189.01 Gram)
4	M/s RHCGlobal Exports Pvt Ltd, SEZ, Surat on 02/03.03.2023	2	Box-A, B containing Silver Pendant studded with Ruby Stone	2216 (19075.46 Gram)
5		2	Box-C, D containing Ruby Stone	3328 (62632.10 Carat)

7. Summons dated 10.03.2023 were issued to **Shri Santosh Nimbaji Sonar**, Senior Accountant, M/s Sagar Diamonds Limited, M/s RHC Global Exports Private Limited and M/s Sagar Empire Jewels Private Limited and his statement dated 10.03.2023 **(RUD- 7)** was recorded under the provisions of Section 108 of the Customs Act 1962 wherein he amongst other things stated that he joined as Senior Accountant in M/s Sagar Diamonds Limited, M/s RHC Global Exports Private Limited and M/s Sagar Empire Jewels Private Limited in the month of Oct-2022; that he was getting monthly salary of Rs.35,000/- from M/s Sagar Diamonds Limited; that he was hired by M/s Sagar Diamonds Limited, M/s RHC Global Exports Private Limited and M/s Sagar Empire Jewels Private Limited through Shri Ajit Shah, Chartered Accountant; that he was reporting to Shri Ajit Shah, Chartered Accountant; that M/s Sagar Diamonds Ltd was having registered office premises at 903, 9th floor, Embassy Center Premises CHS Ltd, Jamnalal Bajaj Marg, Nariman Point, Mumbai, and M/s RHC Global Exports Pvt Ltd was having registered office premises at 604, 6th floor, The Embassy Center Premises CHS Ltd, Jamnalal Bajaj Marg, Nariman Point, Mumbai; that he used to sit on 903, 9th floor, Embassy Center Premises CHS Ltd for the period from Oct-2022 to Jan-2023 and at that time he was sitting at 604, 6th floor, The Embassy Center Premises CHS Ltd from Jan-2023; that he was managing entries in Tally related to local sales/purchases and

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import/export of all 3 companies with the help of junior accountants; that Ms. Sanjana, Junior Accountant used to make entry of local purchase invoice as per invoice received at Mumbai office; that Ms. Sanjana, Junior Accountant and Ms. Priti Rathi, Junior Accountant used to make local sales invoice as instructed by Shri Rahil Hiteshbhai Chovatia; that Ms. Sanjana, Junior Accountant used to make entry of import/export of all 3 companies in Tally as per the data provided by factory staff; that Shri Tejas, Junior Accountant used to make entry in Tally related to inward and outward remittances regarding import/export from Surat SEZ, Sachin; that he also helped all Junior Accountants in making entry in tally whenever they were overburdened with work; that he also used to co-ordinate with Auditors for auditing of all 3 companies; that he would produce the copy of sales ledger, purchase ledger, bank ledger of all 3 companies within 3-4 days; that the details of active GSTIN obtained by all 3 companies are as below:-

Table 7: Details of GSTIN of the 03 Companies Entities

Sr No	Name Of company	GSTIN	Address
1	M/s Sagar Diamonds Limited	27AAWCS0068B1Z8	903, Floor-9, plot-207, Embassy Chamber, Nariman Point, Mumbai, Maharashtra, 400021
2		24AAWCS0068B3ZC	Office-126, Nodh No. -1158 To 63/65/9, 1, Blue Diamond Building, Hat Faliyu, Surat, Gujarat, 395003
3		24AAWCS0068B2ZD	Building No 14 A, Block-14, Brigade International Financial Center, Road 1c, Zone-1, Gift SEZ, Gandhinagar, Gujarat, 382355
4		24AAWCS0068B1ZE	Plot No 266-B, SEZ Diamond Park, Sachin, Surat, Gujarat, 394230
5		09AAWCS0068B1Z6	SDF-D/14, Noida SEZ Phase-II, Dadri Road, Noida, Gautam Buddha Nagar, Uttar Pradesh, 201305
6	M/s Sagar Empire Jewels Private Limited	24ABFCS6904A2ZP	Plot No-219 And 220 Block 340,341/P, SEZ Diamond Park, Sachin, Surat, Gujarat, 394230
7		24ABFCS6904A1ZQ	Building No 14 A, Block-14, Brigade International Financial Center, Road 1c, Zone-1, Gift SEZ Gandhinagar, Gujarat, 382355
8		24ABFCS6904A3ZO	Office-126, Nodh No.-1158 To 63/65/9, 1, Blue Diamond Building, Hat Faliyu, Surat, Gujarat, 395003
9	M/s RHC Global Exports Private Limited	27AAJCR3808D1ZG	604, 6th Floor, The Embassy Center Premises CHS Ltd, Nariman Point, Mumbai, Maharashtra, 400021
10		24AAJCR3808D1ZM	Unit No. 146, Plot No. 255, Surat Special Economic Zone, Sachin, Surat, Gujarat, 394230
11		24AAJCR3808D3ZK	409A Building No 14A, 4th Floor, Brigade International Financial

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			Center, Block 14 Zone 1, Gift SEZ, Gandhinagar, Gujarat, 382355
12		09AAJCR3808D1ZE	SDF-D/04, Phase II, Noida Special Economy Zone, Gautanbudha Nagar, Noida, Uttar Pradesh, 201305

8. Summons dated 06.03.2023 was issued to **Ms. Sanjana Kalambe,** Junior Accountant of M/s Sagar Diamonds Limited, M/s RHC Global Exports Private Limited and M/s Sagar Empire Jewels Private Limited and her statement dated 10.03.2023 **(RUD- 8)** was recorded under the provisions of Section 108 of the Customs Act 1962 wherein she, amongst other things, stated that she started working as junior accountant in M/s Sagar Diamonds Limited, Mumbai; that in the month of Aug-2021, Shri Ajit Shah, Chartered Accountant interviewed her and hired her as Junior Accountant and informed that she would have to work as Junior Accountant for M/s Sagar Diamonds Limited, M/s RHC Global Exports Private Limited and M/s Sagar Empire Jewels Private Limited; that she was getting monthly salary of Rs15,000/- from M/s Sagar Diamonds Limited; that M/s Sagar Diamonds Ltd and M/s Sagar Empire Jewels Pvt Ltd were having registered office premises at 903, 9th floor, Embassy Center Premises CHS Ltd, Jamnalal Bajaj Marg, Nariman Point, Mumbai and M/s RHC Global Exports Pvt Ltd was having registered office premises at 604, 6th floor, The Embassy Center Premises CHS Ltd, Jamnalal Bajaj Marg, Nariman Point, Mumbai and further stated that she used to sit at 903, 9th floor, Embassy Center Premises CHS Ltd for the period from Aug-2021 to Jan-2023 and at 604, 6th floor, the Embassy Center Premises CHS Ltd from Jan-2023 as some renovation work of the office premises of 903, 9th floor, Embassy Center Premises CHS Ltd, Jamnalal Bajaj Marg, Nariman Point, Mumbai was going on; that she was managing entry in Tally related to local sales and purchases of all 3 companies; that apart from her, Ms Priti Rathi, Junior Accountant use to make local sales invoice and entries of import/export of all 3 companies in Tally as per the data provided by factory staff and as instructed by Shri Rahil Hiteshbhai Chovatia and Shri Vaibhav Shah; that Shri Tejas, Junior Accountant used to make entry in Tally related to inward and outward remittances regarding import/export from Surat SEZ, Sachin; that apart from the above, she also used to send the e-mail regarding rate booking to the SBI bank and the details of the rate booking were provided by Shri Hirenbhai since the last 1-2 months and before that Shri Rahil Hiteshbhai Chovatia used to provide the same at the office mobile no (+91-8450925084) of M/s Sagar Diamonds Limited, Mumbai; that she would submit the details regarding import/export of all three companies within two weeks; that she used to report to Shri Vaibhav Shah and Shri Rahil Hiteshbhai Chovatia; that regarding the director of (i) M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat, (ii) M/s Sagar Diamonds Ltd, SEZ, Surat and (iii) M/s RHCGlobal Exports Pvt Ltd, SEZ, Surat, she stated that as the directors of the companies had changed several times so she did not remember the name of all directors of the above said three firms but initially, Shri Vaibhav Dipak Shah and Shri Rahil Hiteshbhai Chovatia were looking after the overall business of the above said three firms.

9. Vide letter F. No. DRI/AZU/SRU/B/INV-01/2023 (DRI/AZU/SRU/B/INV-02/2023 & DRI/AZU/SRU/C/INV-03/2023) dated 14.03.2023 **(RUD-9)**, M/s. Rekha Shipping Agency, Sachin, Surat

was requested to provide the details of import/export made by (i) M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat, (ii) M/s Sagar Diamonds Ltd, SEZ, Surat and (iii) M/s RHC Global Exports Pvt Ltd, SEZ, Surat. M/s. Rekha Shipping Agency, Sachin, Surat provided the details called for vide e-mail dated 18.03.2023 **(RUD-10)**. Further, M/s Rekha Shipping Agency vide letter dated 23.01.2024 **(RUD-10A)** provided copies of Import and Export documents pertaining to M/s Sagar Diamonds Limited for the period from April 2018 to 01.03.2023. On scrutiny of the same it appears that M/s Sagar Diamonds Limited imported Ruby, Emerald, precious stone/cut & polished diamonds/ gold/ silver from overseas firms and exported the gold/silver jewellery studded with Ruby/Emerald/precious stone/cut & polished diamonds. The information from the above said docments has been used for preparing the annexures for import and export relating to M/s Sagar Diamonds Limited.

10. Summons dated 10.03.2023were issued to Shri Saurin Rasiklal Shah to appear before the DRI. Shri Saurin Rasiklal Shah vide e-mail dated 13.03.2023 forwarded a letter dated 13.03.2023 **(RUD-11)** wherein he informed that he was suffering from retina detachment problem; that he had almost lost vision in the left eye, he had only 20% vision in left eye; that he was not associated with any day to day business of the company; that he was not making day to day activities and decision in M/s Sagar Diamonds Ltd, SEZ, Surat as well as M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat; that he had no knowledge of any type of import of diamond/ruby; that the CMD i.e. Shri Vaibhav Dipak Shah was looking after day to day business of the company; he was looking after work related to diamond, ruby; he was looking after the terms and conditions associated with sale and purchase and other information and other details and was also the one making decisions regarding day to day activities and decision of business of M/s Sagar Diamonds Ltd, SEZ, Surat and M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat; that he had resigned from the post of Director in M/s Sagar Diamonds Ltd, SEZ, Surat on 10.12.2022 and in M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat on 02.11.2022.

10.1 Summons dated 20.03.2023 was again issued to Shri Saurin Rasiklal Shah for recording his statement under Section 108 of the Customs Act, 1962. Shri Saurin Rasiklal Shah vide e-mail dated 23.03.2023 forwarded a letter dated 23.03.2023 **(RUD-12)** wherein he informed that his health did not allow him to travel and therefore he was unable to join investigation at the office of DRI and futher requested to record his statement through VC.

10.2 A search was conducted at the residence of Shri Saurin Rasiklal Shah situated at B-101, Shreeji Enclave, oppoiste Sajan Apartment, Near Anand Cross Road, Satellite, Ahmedabad and panchnama dated 18.05.2023 **(RUD-13)** wasdrawn in the presence of independent panchas and Shri Saurin Rasiklal Shah. During the search no incriminating documents related to overvaluation in import and export of precious stones (Ruby) by Sagar Diamonds Limited and Sagar Empire Jewels Pvt Ltd were found.

10.3 Summons dated 18.05.2023 was again issued to **Shri Saurin Rasiklal Shah** and his statement u/s 108 of Customs Act, 1962 was recorded on 18.05.2023 **(RUD-14)** at DRI office, Ahmedabad where he *inter-alia* stated that he was the proprietor of Shah & Associates engaged in providing services of land conversion i.e. to convert the agriculture land into non agriculture land on behalf of builders/developers; that he was

also one of the Directors of M/s Sourin Autosole Energy Pvt Ltd, engaged in manufacturing of Solar Tractors; that in December-2020, he became the Director of M/s Sagar Diamonds Limited, Surat SEZ and in August-2021, he became Director of M/s Sagar Empire Jewels Pvt Ltd, Surat, SEZ; that he resigned on 10.12.2022 from the post of Director in M/s Sagar Diamonds Limited, Surat SEZ and he resigned on 02.11.2022 from the post of Director in M/s Sagar Empire Jewels Pvt Ltd, Surat, SEZ and in support of the same, he submitted copy of Form No. DIR-11/ DIR-12; that he was shown and explained the panchnama dated 18.05.2023 drawn at his residence and on being asked, he stated that he agreed with the contents of the said panchnama and in token of the same, he put his dated signature on the last page of the same.

10.3.1 On being asked, Shri Saurin Rasiklal Shah stated that M/s Sagar Diamonds Limited had its manufacturing unit at Plot No 266-B, Surat Special Economic Zone, Sachin, Gujarat 394230 and M/s Sagar Empire Jewels Private Limited had its manufacturing unit at Plot No.-219 86 220, Block 340,341/P, SEZ Diamond Park, Sachin, Surat, Gujarat, 394230; that both the said companies had indulged in imports of cut & polished diamonds, precious gemstone (Ruby), silver and gold, then manufactured diamond embedded gold jewellery and Ruby studded silver jewellery and exported the same from SEZ Sachin; that at the time of his joining as Director in the above said firm, the other Directors of the firms were as below:

Table 8: Directors of the 3 Companies during the tenure of Saurin Rasiklal Shah

Name of the Firm	Directors
M/s Sagar Diamonds Limited, Surat, SEZ	Shri Vaibhav Dipak Shah (Managing Director); Shri Saurin RasiklalShah; Shri Krishna Baburam Pandey; Shri Mahendra Pratap Singh; Ms. Bandana Singh
M/s Sagar Empire Jewels Pvt Ltd, Surat, SEZ	Shri Vaibhav Dipak Shah (Managing Director); Shri Dhaval Dipak Shah; Shri Saurin RasiklalShah

10.3.2 On being asked, Shri Saurin Rasiklal Shah stated that though there were many directors in the above said 2 firms but the overall control of the above said 2 firms was with Shri Vaibhav Dipak Shah; that in case of M/s Sagar Diamonds Limited, Surat SEZ, Shri Vaibhav Dipak Shah used to instruct Shri Hiren (Hirenbhai Bipinbhai Trivedi) regarding day to day work and in case of M/s Sagar Empire Jewels Private Limited, Shri Vaibhav Dipak Shah used to instruct Shri Nilesh Bipinbhai Trivedi regarding day to day work.

10.3.3 On being specifically asked regarding Shri Vaibhav Dipak Shah, Shri Saurin Rasiklal Shah stated that around December-2020, Shri Anil Kumar Runthala (who he had met in a religious function via his nephew Priyank) informed that his friend Shri Vaibhav Dipak Shah was in the business of import and export of jewellery items from Surat SEZ and one import consignment of his company M/s Sagar Diamonds Limited, Surat SEZ had been put on hold by the Surat SEZ officer; that

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Shri Vaibhav Dipak Shah had asked if he could help release the said import consignment; that in December-2020, Shri Vaibhav Dipak Shah met him in Ahmedabad and offered the position of Director in M/s Sagar Diamonds Limited, Surat SEZ on a monthly salary of Rs.5,00,000/- per month for liaison with Government offices to which he agreed; that after becoming a Director in Sagar Diamonds Limited, he used his connections to release the consignments held by SEZ authorities; that the said consignments were held by SEZ authority due to pendency of BRC against exports by Sagar Diamonds; that later on, in the month of August-2021, Shri Vaibhav Dipak Shah created a new company in the name of Sagar Empire Jewels Pvt Ltd, Surat and made him one of the Directors of M/s Sagar Empire Jewels Private Limited for liaison; that he had represented Sagar Empire Jewels Pvt Ltd, Surat before Development Commissioner, Surat SEZ at the time of establishment of the unit in SEZ.

10.3.4 Shri Saurin Rasiklal Shah was shown and explained panchnama dated 02.03.2023 drawn at M/s Sagar Diamonds Limited, Plot No 266-B, Surat Special Economic Zone, Sachin, Gujarat 394230 and panchnama dated 02.03.2023 drawn at M/s Sagar Empire Jewels Private Limited, Plot No-219 and 220 Block 340,341/P, SEZ, Diamond Park, Sachin, Surat, Gujarat, 394230 in vernacular language and on being asked, he stated that he agreed with the contents of the said panchnamas and put his dated signature on the said panchnamas in token of having seen it and agreed to it contents.

10.3.5 On being asked regarding the production of precious stone studded silver jewellery i.e. pendant, Shri Saurin Rasiklal Shah stated that he did not have any knowledge of the business conducted/production activities of the above said firms as he became Director only for the purpose of liaisoning as per the instruction of Shri Vaibhav Dipak Shah.

10.3.6 On being shown and explained panchnama dated 02.03.2023 drawn at M/s Sagar Diamonds Limited, Plot No 266-B, Surat Special Economic Zone, Sachin, Gujarat 394230 and panchnama dated 02.03.2023 drawn at M/s Sagar Empire Jewels Private Limited, Plot No-219 86 220 Block 340,341/P, SEZ, Diamond Park, Sachin, Surat, Gujarat, 394230, drawn by the officers of Enforcement Directorate, in vernacular language, Shri Saurin Rasiklal Shah stated that he understood the contents of both panchnama and put his dated signature on the last page of the same in token of having seen it and agreed to it contents. He was shown and explained the test report dated 01.03.2023 of two lots of “precious stone ruby” imported by M/s Sagar Diamonds Ltd. issued by Indian Diamond Institute attached with the letter dated 01.03.2023 of Enforcement Directorate in vernacular language. After understanding the same, he put his dated signature on the said Test Report dated 01.03.2023 and stated that as per the said report, the “precious stone ruby” imported by M/s Sagar Diamonds Limited, Surat SEZ, was not natural but synthetic ruby. He was shown and explained the test report IDI-ED-02 dated 01.03.2023 of two lots of pendants studded with “precious stone ruby” in case of by M/s Sagar Empire Jewels Private Limited issued by Indian Diamond Institute attached with the letter dated 01.03.2023 of Enforcement Directorate in vernacular language; that after understanding the same, he put his dated signature on the said test report dated 01.03.2023 and stated that as per the said report, the precious stone ruby imported by M/s Sagar Empire Jewels Private Limited was not natural but synthetic ruby; that after

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understanding the above said panchnamas of Enforcement Directorate, test report and valuation report attached to the said panchnamas, he stated that the "precious stone i.e. Ruby", imported by the above said 2 firms were not natural but they were synthetic; that he also agreed with the valuation report of the "precious stone i.e. ruby", imported by the above said 02 firms as the said ruby turned out to be synthetic.

10.3.7 On being asked regarding the visit of Directors of M/s Sagar Diamonds Limited, Shri Saurin Rasiklal Shah stated that Shri Vaibhav Dipak Shah used to visit the factory regularly; that he had visited factory premises of Sagar Diamonds in SEZ once in Jan' 2022; that thereafter, whenever he had visited SEZ Surat, he returned from the DC's office (Development Commissioner's office) and never visited the factory in SEZ; that whenever the import consignments were held by SEZ authority due to BRC, he visited the office of the Development Commissioner/ Specified Officer and conveyed their decision to Shri Vaibhav Shah; that after that Shri Vaibhav Shah would arrange BRC for a part amount, around 20-25% of the pending amount; that during his statement before ED on 08/09.12.2022 he came to know that BRC of Rs.7,000 crores was pending in respect of Sagar Diamonds Limited; that he had discussed about pending BRC with Shri Vaibhav Shah and Shri Vaibhav Shah informed that he was trying to set-off the pending BRC against export with same overseas party.

10.3.8 On being asked, Shri Saurin Rasiklal Shah stated that he had no contact with Shri Vaibhav Shah after 15.12.2022 after his appearance before the Enforcement Directorate, New Delhi in a case against Sagar Diamonds Limited; that as per his knowledge, Shri Vaibhav Shah had gone to Dubai and had not visited the factory; that he had never received any direction from Shri Dhaval Shah for work related to import/export in Sagar Diamonds Limited & Sagar Empire Jewels Private Limited.

10.3.9 On being asked regarding the payment against the import and export of Sagar Diamonds Limited & Sagar Empire Jewels Private Limited, Shri Saurin Rasiklal Shah stated that Shri Vaibhav Dipak Shah was personally looking after payment to overseas suppliers and buyers for both the firms; that Shri Vaibhav Dipak Shah instructed Shri Rahil Hiteshbhai Chovatia (brother-in-law of Shri Vaibhav Shah) for transfer of funds to overseas supplier; that Shri Rahil Hiteshbhai Chovatia arranged the fund from the companies of Shri Harikesh Patel, Ahmedabad (Mob-7285058064) (engaged in bullion trading & construction), Shri Kishan Patel, Ahmedabad (Mob- 9998939230), (engaged in bullion trading), Shri Anil Kumar, Ahmedabad (Mob-+221774685664) (engaged in textile business), Shri Rahul, Mumbai (Mob-9892208844, 7738554444) (engaged in bullion & share trading) and transferred the same through Sagar Diamonds Limited; that he had never contacted any of the overseas or Indian buyers or suppliers.

10.3.10 On being specifically asked, Shri Saurin Rasiklal Shah stated that he had attended ED office, New Delhi and tendered his statement for the first time on 05.09.2022 in connection with a case booked against Aakash Corporation (Prop. Aakash Panchal) and further statement was recorded by ED on various occasions and most recently on 12.04.2023; that his mobile with SIM no. 9825370794 had been seized by ED, New Delhi on 05.09.2022; that a search had been conducted by Enforcement Directorate on 01.03.2023 at his residence at B-101, Shreeji Enclave and office at FF-3, Palak 2 Complex, Opp. Vishal Tower, Satellite, Ahmedabad

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and he submitted copies of panchnama drawn by ED; that prior to the raid by the Enforcement Directorate, he had no idea about the nature of precious stones imported by those two firms in Surat SEZ as he was not involved in import, export, production and sale of those goods; that he had never received any type of OTP (One Time Password) in relation to transactions of those two firms; that all the OTP related to banking transactions of both firms were received on the mobile of Shri Rahil Hiteshbhai Chovatia and Shri Hiren Trivedi, Production Manager of Sagar Diamonds Limited & Sagar Empire Jewels Private Limited.

10.3.11 On being asked regarding meetings of the Board of Directors of Sagar Diamonds Limited, Shri Saurin Rasiklal Shah stated that he had attended meetings of Board of Directors of Sagar Diamonds Limited in virtual mode many times and each time only Shri Prashant Jain, Surat (Mob No. 9898033760), Company Secretary and Shri Vaibhav Shah had spoken in such meetings. On being asked, he stated that he had been instructed by Shri Vaibhav Shah to raise his hand only in his favor during voting/meeting.

11. From the investigation conducted, it appears that the overall control of the company was with Shri Vaibhav Dipak Shah, Director of M/s Sagar Diamonds Ltd, SEZ, Surat and M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat, therefore summons dated 10.03.2023 **(RUD-15)** was issued to Shri Vaibhav Dipak Shah to appear before the DRI on 15.03.2023. Shri Vaibhav Dipak Shah did not appear before the DRI against the summons. Another summons dated 20.03.2023 **(RUD-16)** was issued to Shri Vaibhav Dipak Shah to appear before the DRI on 23.03.2023. In response to the summons dated 20.03.2023, Shri Vaibhav Dipak Shah, vide e-mail dated 21.03.2023 **(RUD-17)** informed that he would not be able to attend the summouns due to travel ban on him in UAE and further provided the case summary no. 253/2022/19972 booked against him in Dubai. A summons dated 05.04.2023 **(RUD-17A)** was again issued to Shri Vaibhav Dipak Shah for recording his statement in this case but he did not comply with the summons and did not join the investigation.

12 Summons dated 10.03.2023 **(RUD-18)** was issued to **Shri Rahil Hiteshbhai Chovatia,** Director of M/s RHC Global Exports Pvt Ltd to appear on 15.03.2023 for recording his statement under section 108 of Customs Act, 1962. Shri Rahil Hiteshbhai Chovatia vide letter dated 14.03.2023 **(RUD-19)** sent through email accounts@rhcglobalexports.com stated that "*I would like to draw your attention that my investigation is also going on before Enforcement Directorate under Prevention of Money Laundering Act, 2002 and for which I am on a regular bail. As per the direction of Hon'ble High Court of Delhi, I am allowed to travel between Delhi, Ahmedabad and Mumbai and therefore kindly dispense my presence before you on 15/03/2023.*"

12.1. Further, summons dated 23.03.2023 **(RUD-20)** was issued to Shri Rahil Hiteshbhai Chovatia, Director of M/s RHCG SURSEZ to appear on 10.04.2023 for recording his statement u/s 108 of Customs Act, 1962 but he did not appear for recording his statement. Shri Rahil Hiteshbhai Chovatia filed anticipatory bail before Hon'ble Sessions and District Judge at Surat vide CRMA 2426/2023 dated 27.03.2023. The Hon'ble 11th Sessions Judge, District and Sessions Court, Surat rejected the anticipatory bail vide order dated 24.04.2023.

12.2 A visit was conducted by the officers of DRI for search on 18.05.2023 at the address A-19, Jaldarshan Flats, Opp. Natraj Cinema, Ashram Road, Ahmedabad, which was mentioned in the bail application filed before Hon'ble Sessions and District Judge, Surat by Shri Rahil Hiteshbhai Chovatia, and it was found that the said premises was locked. Enquiry from the neighbor and security guard of the society revealed that neither the applicant nor any of his family members were residing there for the past 3 months. Thus, a visit note dated 18.05.2023 **(RUD-21)** at A-19, Jaldarshan Flats, Opp. Natraj Cinema, Ashram Road, Ahmedabad was submitted.

12.3 A search was also conducted at the premises 40, Sawan Society, Insanpur Road, Maninagar, Ahmedabad (residence of the person's father-in-Law) which was the given address at the time of bail in the case booked by Enforcement Department, and panchnama dated 18.05.2023 **(RUD-22)** was drawn in presence of independent panchas and Shri Raju Raisinghani, owner of the premises. During the panchnama Shri Raju Raisinghani informed that Shri Rahil Hiteshbhai Chovatia did not stay in the said house and visited there occasionally; that he (Shri Raju Raisinghani) alongwith his wife stay in the said house; that on being specifically asked regarding whereabouts of Shri Rahil Hiteshbhai Chovatia, Shri Raju Raisinghani informed the DRI officers that Shri Rahil Hiteshbhai Chovatia visited that house on 16.05.2023 and he did not know about his current whereabouts as Shri Raju Rajsinghani was in his office when Shri Rahil Hiteshbhai Chovatia visited his house. During the search no incriminating documents were found.

12.4 Further, vide Criminal Misc Application (For Anticipatory Bail) No. 14113 of 2023 **(RUD-23),** Shri Rahil Hiteshbhai Chovatia applied for the Anticipatory Bailbefore the Hon'ble High Court of Gujarat. The said application is pending before Hon'ble Gujarat High Court.

13. REFERANCE TO GOVERNMENT DEPARTMENT

13.1 It appears that during the course of search proceedings dated 01.03.2023, the officers of the Directorate of Enforcement seized relevant data in soft copies from the premises of M/s SDL, SURSEZ, M/s Sagar Empire Jewels Pvt Ltd & M/s RHC Global Exports Pvt Ltd. Thus, vide letters dated 06.03.2023, 26.06.2023, 31.07.2023, 11.09.2023 **(RUD-24),** the Assistant Director [HIU-1(1)(1)], ED, New Delhi was requested to share the data seized by them, along with the Investigation Report. Vide letter F. No. ECIR/20/HIU/2023 dated 16.10.2023 **(RUD-25)**, the Assistant Director [HIU-1(1)(1)], ED, New Delhi provided the relevant data in hard disk. The Assistant Director [HIU-1(1)(1)], ED, New Delhi vide letter dated 09.02.2024 **(RUD-25A)** was also requested to share the details of the financial trails that lead from "Power Bank APP Scam" to the M/s Sagar Diamonds Limited, M/s RHCGlobal Exports Pvt Ltd, M/s Sagar Empire Jewels Pvt Ltd. The reply on the same is awaited.

13.2 The Specified Officer, Surat SEZ, Sachin vide letter dated 20.03.2023 **(RUD-26)** was requested to provide the details of import/export made by M/s SDL SURSEZ and two other SEZ units for the period from 1st April, 2019 onwards. The Specified Officer, Surat SEZ, Sachin, vide letter F. No. SSEZ/DDRI//042/2022-23 dated .04.2023 **(RUD-27)**, provided the details called for in soft copy vide e-mail dated 18.04.2023.

WRIT PETITION FILED BY M/S SAGAR DIAMONDS LIMITED

14. M/s SDL SURSEZ and M/s Sagar Empire Jewels Pvt Ltd. (through its Authorized representative Mr. Abhishek Kumar Malvi) had filed a Writ Petition (Civil) No.4808 of 2023 **(RUD-28)** before the Hon'ble High Court of Delhi challenging the action under PMLA and prayed to set aside and quash the entire searches and seizures made at their premises located in SEZ, Diamond Park, Sachin, Surat. The Hon'ble High Court of Delhi vide order dated 15.09.2023 **(RUD-29)** dismissed thesaid Writ Petition as withdrawn by the petitioner.

15. TESTING AND VALUATION OF DETAINED GOODS:

15.1 Whereas the Assistant Director, HIU-1(1)(1), Directorate of Enforcement vide letter dated 01.03.2023 informed that during the course of valuation and Govt Lab testing of sample of Stock-in-Trade during search operation, it had been noticed that the precious stones (Ruby) which were imported by Sagar Diamonds Ltd have been found to be synthetic and of very low value in comparison to the import price shown in their respective import documentation. They provided the Gem Stone Identification Report No. IDI-ED-01 dated 01.03.2023 issued by Indian Diamond Institute, Surat. From the above said letter dated 01.03.2023 of the Assistant Director, HIU-1(1)(1), Directorate of Enforcement and from the Gem Stone Identification Report No. IDI-ED-01 dated 01.03.2023, it was learnt that the testing of the ruby was done on sample basis**.**

15.2. Further, during the statement dated 03.03.2023 of the Authorized persons of the concerned companies it was revealed by them that the quality of Ruby imported by their company till now was similar to that of Ruby sent for testing by the officers of Enforcement Directorate.

15.3. In view of the above, in order to verify the nature of goods detained from the factory premises under panchnama dated 02/03.03.2023, lab testing of the same was required. Therefore after approval from competent authority, the said goods were lab tested in the testing facility of the Indian Diamond Institute, Katargam, Surat (A Project of GJEPC, sponsored by Ministry of Commerce & Industry, Govt. of India) under panchnama dated 13.10.2023 and 17.10.2023 **(RUD-30)** in the presence of independent panchas and Shri Subhash Pareek, Senior Faculty cum Research Gemologist, IDI. After completing the lab testing of the above goods, Shri Subhash Pareek informed that all the rubies studded on the silver pendants were synthetic, not natural and they were of inferior quality. The details of the lab testing results are as under:

Table 9: Details of Lab Results of the Detained Stones

Box No. as per panchnama	Description used by the firm	No. of Piece	Actual gross weight (gm)	Lab Test Result provided by IDI	Remarks
Box-A	Pendant	600	6476.90	**Synthetic Ruby**	• Silver Pendent studded with ruby were ready to be exported for which invoice and packing list were prepared;

					• Goods detained under panchnama dated 02/03.03.2023were lab tested under panchnama dated 13.10.2023. • **Report IDI-DRI-03 dated 13.10.2023**
Box-B	Pendant	1168	10725.42	**Synthetic Ruby**	• Silver Pendent studded with ruby were ready to be exported for which packing list were prepared and invoice was not prepared; • Goods detained under panchnama dated 02/03.03.2023 were lab tested under panchnama dated 17.10.2023. • **Report IDI-DRI-04 dated 17.10.2023**

15.3 After completion of testing, the said 1768 pieces of Silver pendant studded with synthetic Ruby were evaluated by the GJEPC panel of experts for valuation of studded jewellery and coloured gems stones, under the panchnama dated 08.12.2023 **(RUD-31)** drawn at DRI Office, Surat, in presence of two independent panchas. During the course of panchnama, Shri Salim J Daginawala, C/o M/s Salim Exports, Surat and Shri Suleman Zaveri, C/o M/s Ashrafi Gems & Jewels, Surat, both GJEPC Panel of experts for valuation of Silver pendant studded with Ruby, after examination of the above said goods, provided opinion regarding the value of the Silver pendant studded with synthetic Ruby and the value of the same came out to be Rs. 18,92,663/- (as per the Annexure-A & B of the panchnama dated 08.12.2023). Summary of the said annexures is as below:

Table 10: Valuation of Detained Goods

S. No.	Annexure of the panchnama dated 08.12.2023	Description	No. of Pieces	Synthetic Ruby (carat)	Silver (Gram)	Average Value (as determined by GJEPC panel of expert) (Rs.)
1	A	**Pendent**	600	13337.87	3809.33	7,12,144
2	B	**Pendent**	1168	22220.18	6281.38	11,80,519
TOTAL			**1768**	**35558.05**	**10090.71**	**18,92,663**

16. Whereas from documents resumed from the factory premises of the firm and from the Gem Stone Identification Report, as discussed above, and from the investigation conducted, it appears that the said Silver pendant studded with synthetic ruby were not only mis-declared in terms of the description of the goods but also highly overvalued by M/s Sagar Diamonds Limited, therefore, vide Seizure Memo dated 13.12.2023 **(RUD-32)** the said 1768 pieces of Silver pendant studded with Ruby, valued at Rs.18,92,663/-, were placed under seizure under the provisions of Section 110 of Customs Act, 1962 under reasonable belief that the same were liable to confiscation under Customs Act, 1962. The said 1768 pieces of Silver pendant studded with Ruby were placed in their respective boxes A & B, as detailed in panchnama dated 08.12.2023, the said boxes were then wrapped with pasting tape and sealed with the DRI lac seal no. 5 and deposited with the Custodian, DGDC Ltd, Surat SEZ, for safe custody vide letter dated 08.12.2023 **(RUD-33).**

17. On the basis of the documents seized from the factory premises of M/s Sagar Diamonds Limited, documents submitted by M/s Rekha Shipping Agency, details of import and export provided by the Specified Officer, Surat SEZ and by the companies, the total details of the import of synthetic ruby and export of synthetic ruby studded jewellery for the period from 01.04.2019 to 01.03.2023 by M/s Sagar Diamonds Limited have been prepared and attached as Annexure-A and B to this Investigation Report. The summary of the same is as under:-

Table 11: Import made by M/s Sagar Diamonds Limited

Sl No.	Name of the Overseas Suppliers	Quantity of Synthetic Ruby Imported (Carat)	Total Declared CIF Value of the goods (Rs.)	Actual value of synthetic ruby (refer Annexure-A)
1.	MARS IND & COMM SERVICES LTD	2,74,119	20,73,95,95,996	30,15,308
2.	SUN TAI HK LTD	1,23,070	9,10,96,89,558	13,53,766
3.	MIRACLE MPS LIMITED	12,95,442	6,27,79,49,907	1,42,49,861
4.	SUN RAYS HK LIMITED	78,796	6,22,64,30,568	8,66,757
5.	GEMS STAR TRADING F.Z.E	80,660	5,53,65,75,009	8,87,255
6.	CROWN GEMS	6,01,511	5,09,09,47,863	66,16,619
7.	ZHAN HONG TRADE (HK) LIMITED	1,10,643	4,87,58,92,180	12,17,076

8.	KESHAR TRADE (HK)LTD	51,730	4,27,08,30,881	5,69,026
9.	UNIQUE DIA LIMITED	50,889	4,13,16,42,948	5,59,775
10.	ESTRADE INTERNATIONAL LTD	26,902	2,33,78,76,567	2,95,921
11.	GLORY DIAMOND FZE	30,948	2,25,51,42,589	3,40,428
12.	LEE FU SHING COMPANY LIMITED	29,105	2,24,39,50,073	3,20,150
13.	COLOR CREATIONS LIMITED	23,972	2,10,45,71,798	2,63,694
14.	ADVANCE CENTURY INC LIMITED	36,021	2,04,71,33,435	3,96,227
15.	KJ TRADING CO.	20,094	1,74,59,20,032	2,21,037
16.	FU LEE HONG COMPANY LIMITED	20,048	1,54,41,93,304	2,20,525
17.	JIYA IMPEX DMCC	21,413	1,54,41,68,650	2,35,538
18.	VENUS IMPEX TRADING LIMITED	6,42,896	1,51,46,12,317	70,71,856
19.	PINK STAR HK LTD	13,373	1,12,19,08,539	1,47,105
20.	EURO TECH INTERNATIONAL TRADING LIMITED	44,253	1,03,57,40,652	4,86,783
21.	MIRACLE TRADING HK LIMITED	11,371	95,39,75,079	1,25,084
22.	MIRACLE PRIVATE LIMITED	11,334	95,08,25,660	1,24,671
23.	CSY INTERNATIONAL PTE LTD	30,779	76,97,28,547	3,38,565
24.	GRAND CO	12,72,866	75,56,31,570	1,40,01,524
25.	RK TRADING HK LTD	6,718	53,85,18,922	73,894
26.	ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD	19,021	51,26,44,705	2,09,229
27.	K.DIAM LTD	11,961	35,58,35,206	1,31,574
28.	AADI IMPEX	1,34,894	28,88,09,963	14,83,834
29.	CRYSTAL KING LIMITED	3,375	26,86,31,372	37,128
30.	UNNATI GENERAL TRADING LIMITED	3,742	26,59,58,436	41,157
31.	PACY CORPORATION LTD.	9,041	22,24,76,415	99,451
32.	DIARECT MARKETING LIMITED	4,974	22,01,05,872	54,715
33.	BEL DIAM LTD	4,842	20,44,22,561	53,257
34.	STALLION LIMITED	6,260	14,84,55,900	68,860
35.	SHIV DIAMOND	4,220	10,00,77,300	46,420
36.	NV INTERNATIONAL.	3,170	7,44,30,015	34,870
37.	VERIOT TECHNOLOGIES PTE LTD	688	5,77,00,464	7,566
38.	FAMASIA LIMITED	970	5,29,11,981	10,672
39.	AADI HK LTD	966	5,26,90,003	10,627
40.	KOEMATLIFF PRIVATE LIMITED	767	5,22,54,832	8,438
41.	VITAL ENERGY FZE	1,920	4,95,24,480	21,120
42.	SPINEL HOUSE (HK)	1,970	4,94,44,538	21,670
43.	FANCY COLOR DIAM (HK) LTD	1,575	3,69,80,213	17,325

44.	LIME TRADING.	56,604	2,13,45,000	6,22,642
	Total	**51,79,909**	**92,75,81,51,898**	**5,69,78,996**

Table 12: Export made by M/s Sagar Diamonds Limited

S. No.	Name of the overseas Consignee and buyer	FOB Value of goods (in Rs.)	Actual Value; as determined by GJEPC Panel of Expert (in Rs.)
1	**2**	**4**	**5**
1	MARS IND & COMM SERVICES LIMITD	65,03,35,28,752	15,08,88,988
2	SINOVAC LIMITED	14,63,40,02,239	97,10,771
3	ZHAN HONG TRADE HK LIMITED	7,30,86,35,898	52,06,823
4	XNOVA HK LIMITED	4,39,33,00,031	27,07,912
5	XNOVA LIMITED	1,73,76,31,603	11,01,528
6	GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED	98,34,06,384	18,26,662
7	JUMBO LINKS (FZE) HK LTD	78,60,31,393	14,54,177
8	CSY INTERNATIONAL PTE LTD	9,78,04,081	1,70,317
9	T G INTERNATIONAL DMCC	7,81,15,980	61,641
10	SAIVASCULAR PTE LTD	2,05,12,594	35,638
	Total	**95,07,29,68,954**	**17,31,64,457**

18. A reference was made to the Consul (Economic), Consulate General of India, Hong Kong, vide letter F.No. DRI/AZU/SRU-13/2023 dated 09.02.2024 **(RUD-34)** requesting to provide details of import, export and profile of the Hong Kong based firms. Reply of the same is awaited.

19. ENQUIRY WITH THE SUPPLIERS AND BUYERS OF M/S SAGAR DIAMONDS LIMITED AS PER GSTR-1 & GSTR-2A RETURNS:

19.1 During the course of investigation, it came to be known that apart from one manufacturing unit in SEZ Surat, M/s Sagar Diamonds Limited had two SEZ unit and two DTA units, the details of the same is as under:

Table 13: Details of Units of Sagar Diamonds Limited

Sl No	GSTIN	Address
1	27AAWCS0068B1Z8	903, floor-9, plot-207, Embassy Chamber, Nariman Point, Mumbai, Maharashtra, 400021
2	24AAWCS0068B3ZC	Office-126, Nodh No. -1158 To 63/65/9, 1, Blue Diamond Building, Hat Faliyu, Surat, Gujarat, 395003
3	24AAWCS0068B2ZD	Building No 14 A, Block-14, Brigade International Financial Center, Road 1c, Zone-1, Gift SEZ, Gandhinagar, Gujarat, 382355
4	24AAWCS0068B1ZE	Plot No 266-B, SEZ Diamond Park,

		Sachin, Surat, Gujarat, 394230
5	09AAWCS0068B1Z6	SDF-D/14, Noida SEZ Phase-II, Dadri Road, Noida, Gautam Buddha Nagar, Uttar Pradesh, 201305

Therefore, DRI Surat vide e-mail dated 04.07.2023 and 13.07.2023 **(RUD-35)** requested the concerned firms to provide their GST returns i.e. GSTR-1, GSTR-2A and GSTR-3B. In response to the above said letter, vide e-mail dated 14.07.2023 **(RUD-36)** relevant GST returns of the above said firms were provided. On scrutiny of the said GST returns, no business activities were noticed in the units of M/s Sagar Diamond Limited situated at Gift City, Gandhinagar and Mahidharpura, Surat however minimal credit to the tune of Rs.14.81 Lakh had been received in the unit of M/s Sagar Diamond Limited situated at Noida. Further, major import/export has been observed in SEZ Surat unit of M/s Sagar Diamonds Limited and major domestic transaction such as domestic sale/purchase were noticed in the unit of M/s Sagar Diamonds Limited situated at Mumbai. Therefore, on the basis of the GSTR-1 and GSTR-2A, the investigation was extended to the top 15 domestic suppliers and top 15 domestic purchasers of M/s Sagar Diamonds Limited, Mumbai.

ENQUIRY WITH THE TOP 15 SUPPLIERS (AS PER GSTR-2A) OF M/S SAGAR DIAMONDS LIMITED SITUATED AT MUMBAI

19.2 It appears from the GSTR-2A returns of M/s Sagar Diamonds Limited, Mumbai that the firm received inward supply from various domestic firms. Out of them, top 15 were identified, the details of the same is as under:

Table 14: Top 15 Suppliers of M/s Sagar Diamonds Limited, Mumbai

Sl No.	Name of Firm from which inward supply received	GST No.	Amount Credited (In Rs.)	Address of the firm
1	Labdhi Diamonds & Jewellery	24BBLPR0517G1ZS	441,10,10,844	1st Floor, Room No-2, Cabin No 8, H.No 6/1821, Jadakhadi Naka, Opp Police Gate, Mahidharpura, Surat, Gujarat
2	Mahak Exim	27GRHPM1543N1ZA	401,06,15,459	N G East Bldg. A 1, Off 1, Kashi Mira Bhaindar Rd, Mira Rd, East Bhy Thane, Maharashtra
3	Sun Flower Multi Star	27EBQPS7849Q1Z3	401,00,11,792	Ground floor, 2, Plot-15, Vasant Bhuvan, Bhatwadi 2nd lane, off JSS road, Girgaon, Mumbai
4	JNBD Diamond Exim Private Limited	27AAECJ6176F1ZE	345,04,78,396	301, floor-3rd,, Plot-11/15, Regal Diamond Centre, Tata Road No 1, Roxy Cinema Opera House, Girgaon, Mumbai
5	Trishla Trading	27AFKPJ5239D1ZH	225,12,70,312	Ground Floor, Shop No. 17, Chandresh Villa Chsl, Sanyukt Nagar, Achole Road, Nallasopara East, Vasai Palghar, Maharashtra
6	Malamaal Trading Co.	27ADOPW1669E1Z0	220,00,00,000	First floor, Plot No. 24, Office No. B-2, Pavri House Rustom,

				Sidhwa Marg, Handloom House Fort, Mumbai
7	Radhe Krishna Trading Co.	27FTYPP0066F1Z4	209,99,99,600	Ground floor, B-5, Plot No.24 Pavri House, Rustam Sidhwa Marg Handloom House, Fort, Mumbai
8	Radha Mohan Purshottam Das Jewels Private Limited	27AAECR2919N1ZY	192,24,43,412	7th Floor, Office No. 712 Room No.1, Jewel World, Kalbadevi Road, Opposite Surti Hotel, Mumbai
9	RHC Global Exports Private Limited	27AAJCR3808D1ZG	171,05,43,356	6th floor, 604, The Embassy Center Premises CHS Ltd, Nariman Point, Mumbai
10	Kashvi Bullion	27AHYPG9074B1ZX	152,73,45,238	4th Floor, Room No. 403, Nex Plaza, Kalbadevi Road, Vithalwadi, Kalbadevi, Mumbai
11	Khushboo Diamond Pvt.Ltd.	24AADCK1753G1ZT	92,94,34,424	1st Floor, 103, Near HDC Building, Devsagar Dalgiya Street, Mahidharpura, Surat
12	Shrenik Diamond Pvt Ltd	24AATCS0646L1ZW	83,45,13,651	Ground, 15, Diamond World Tower B, Varachha Road, Varachha, Surat
13	SPN Gold India Private Limited	27AAVCS7824G1ZP	67,70,93,500	Ground Floor, 12/A, Plot No.75, Sutaria Building, Dhanji Street, Parsi Gully, Zaveri Bazar, Mandvi, Mumbai Suburban, Maharashtra
14	Uttam Gems Pvt Ltd	24AABCU5679H1Z2	55,94,24,280	Upper Ground Floor, Office 15, Diamond World Tower B, Varachha Road, Varachha, Surat
15	Aavishkar Impex Private Limited	24AAECA7330G1Z1	44,01,49,902	Second Floor, Block - D, 218, Stadium House,, Opp. Sardar Patel Swiming Pool, Navrangpura, Ahmedabad

SUMMARY OF THE OUTCOME OF THE INVESTIGATION I.R.O. THE ABOVE SUPPLIERS:

19.2.1 A visit was made by the officers of DRI for searching the premises of **M/s. Labdhi Diamonds & Jewellery** (Prop: Shri Moda Ram) situated at 1st Floor, Room No-2, Cabin No 8, H. No 6/1821, Jadakhadi Naka, Opp Police Gate, Mahidharpura, Surat, Gujarat on 16.08.2023 **(RUD-37)**. On visit of the above said premises, it was noticed that the said premises was locked but the board of two firms namely Arihant Diamonds and Aldia Gems Pvt Ltd was pasted at the main gate. Enquiry in the neighbourhood revealed that the said premises was owned by Shri Jitendra Chandravadan Patel (+91-9879192865). Therefore, Shri Jitendra Chandravadan Patel was contacted and o reaching the above said premises he (Shri Jitendra Chandravadan Patel) informed that at the relevant time the premises was given on rent to Shri Vikash Prahaldrai Toshniwal who was the director of Aldia Gems Pvt Ltd and also the proprietor of Arihant Diamonds; he produced the copy of rent agreement executed for the period 01.12.2022 to 31.10.2023 between him (Shri Jitendra Chandravadan Patel) and Shri Vikash Prahaldrai Toshniwal; that prior to 01.12.2023 the said premises was rented to M/s. Labdhi Diamonds & Jewellery (Prop: Shri Moda Ram) but after execution of the rent agreement between him and Shri Moda Ram, Shri Moda Ram sat only for 2-3 days and after that Shri Amit Bafna (+91-9326125065) used

to sit at the said premises for 20-25 days and was looking after the work related to the M/s Labdhi Diamonds & Jewellery; that when the premises was rented to M/s Labdhi Diamonds & Jewellery, he did not notice any physical movement of goods from the said premises and he did not notice any kind of machine installed at the said premises.

19.2.2 Summons dated 06.12.2023 **(RUD-38)** was were issued to **M/s. Mahak Exim**, N G Est Bldg. A 1, Off1, Kashi Mira Bhaindar Rd, Mira Rd, East Bhy Thane, Thane, Maharashtra, 401101 to appear for the statement on 13.12.2023 however ,the same was returned to this office with remark "Unclaimed" **(RUD-39).**

19.2.3. Summons dated 06.12.2023 **(RUD-40)** waswere issued to **M/s. Sun Flower Multi Star**, Ground Floor, 2, Plot-15, Vasant Bhuvan, Bhatwadi 2nd Lane, Off J.S.S. Road, Girgaon, Mumbai, Maharashtra, 400004 to appear for the statement on 14.12.2023 however the same was returned to this office with remark "Not Claimed" **(RUD-41).**

19.2.4. Summons dated 06.12.2023 **(RUD-42)** was issued to **M/s. JNBD Diamond Exim Private Limited**, 301, Floor-3rd, Plot-11/15, Regal Diamond Centre, Tata Road No 1, Roxy Cinema Opera House, Girgaon, Mumbai, Maharashtra, 400004 to appear for recording statement on 14.12.2023 however, the same was returned to this office with remark "No Home" **(RUD-43).**

19.2.5. Summons dated 06.12.2023 **(RUD-44)** was were issued to **M/s. Trishla Trading**, 301, Floor-3rd, Plot-11/15, Regal Diamond Centre, Tata Road No 1, Roxy Cinema Opera House, Girgaon, Mumbai, Maharashtra, 400004 to appear for the statement on 15.12.2023 however the same was returned to this office with remark "No Known Person" **(RUD-45).**

19.2.6. Summons dated 10.08.2023 **(RUD-46** was issued **M/s. Malamaal Trading Co.,** First Floor, Plot No. 24, Office No.B-2, Pavri House Rustom, Sidhwa Marg, Handloom House Fort, Mumbai, Maharashtra, 400001 to appear for the statement on 23.08.2023 however the same was returned to this office with remark "Not Known" **(RUD-47).**

19.2.7. Summons dated 10.08.2023 **(RUD-48)** was issued to **M/s. Radhe Krishna Trading Co.** Ground Floor, B-5, Plot No.24 Pavri House, Rustam Sidhwa Marg Handloom House, Fort, Mumbai, Maharashtra, 400001 to appear for the statement on 23.08.2023 however the same was returned to this office with remark "Not Known" **(RUD-49).**

19.2.8. Summons dated 10.08.2023 was issued to**M/s. Radha Mohan Purshottam Das Jewels Private Limited** 59/39 Birhana Road, Kanpur-208001 and in response, Shri Prasant Mishra, Taxation Head of M/s. Radha Mohan Purshottam Das Jewels Private Limited, duly authorized by the Director, appeared on 13.09.2023 on behalf of M/s. Radha Mohan Purshottam Das Jewels Private Limited and his statement dated 13.09.2023 **(RUD-50)** was recorded under the provisions of Section 108 of the Customs Act, 1962 wherein he *inter-alia* stated that he was working as Taxation Head of M/s. Radha Mohan Purshottam Das Jewels Private Limited; that M/s. Radha Mohan Purshottam Das Jewels Private Limited was a Private Limited firm having 3 directors namely (i) Shri Amar Nath Agrawal, (ii) Smt. Shashi Agrawal and (iii) Smt. Ruchi

Agrawal; that the said firm was started on 25.03.2009 and since then the firm was engaged in trading of gold/silver bullion; that its registered head office is at 59/39 Birhana Road, Kanpur-208001 and there are other offices in Delhi, Gujarat, Maharashtra, Tamilnadu and Karnataka; that the said firm was engaged in trading of gold/silver bullion from all of its offices; that he was looking after all taxation matters i.e. direct/indirect tax matter of M/s. Radha Mohan Purshottam Das Jewels Private Limited and sat in the head office at Kanpur; that he reported to Shri Amar Nath Agrawal, Director; that on being asked regarding the contact person of M/s. Sagar Diamonds Limited, he stated that Shri Rahil Hiteshbhai Chovatia used to contact Shri Ambrish Agarwal (Son of Shri Amarnath Agrawal), Special Executive, M/s. Radha Mohan Purshottam Das Jewels Private Limited for the purchase of gold bullion ; that they had sold only gold bullion to M/s. Sagar Diamonds Limited and they had not purchased any gold/silver bullion from M/s. Sagar Diamonds Limited; he produced the copy of sales invoices, delivery challans, relevant purchase proof against the said sale to M/s. Sagar Diamonds Limited for the period 2021-22 issued to M/s. Sagar Diamonds Limited, ledger confirmation of M/s. Sagar Diamonds Limited and relevant bank account statements of M/s. Radha Mohan Purshottam Das Jewels Private Limited reflecting the payment received from M/s. Sagar Diamonds Limited; that they had not sold gold bullion after November, 2021 to M/s. Sagar Diamonds Limited; that whenever they received the purchase order of gold/silver bullion from any purchaser then they would accordingly buy gold/silver bullion from MMTC Pamp India Pvt Ltd. and/or authorized Bank; that as per their purchase, MMTC Pamp India Pvt Ltd. and/or authorized Bank issued delivery order and authorised the Brinks India Pvt Ltd/Sequel Logistics Services to deliver the gold/silver bullion to them; that as soon as they received the deliver order/delivery challan from bank or respective logistics company, they issued delivery order authorising the logistics company to deliver the gold/silver bullion directly to the actual purchaser; that in case of M/s. Sagar Diamonds Limited they received the purchase requirement and accordingly they bought gold bullion from MMTC Pamp India Pvt Ltd. and/or authorized Bank and then after receiving the deliver order/delivery challan from bank or respective logistics company, they issued delivery order authorising the logistics company to deliver the gold bullion directly to M/s. Sagar Diamonds Limited; that they sometimes received the gold/silver bullion from the logistics company at Ahmedabad office, and at the time of sale of the same, the purchaser came to their office and took delivery of the same; that after handing over the gold/silver bullion to the purchaser, they took receiving (in the form of stamp/sign) on the delivery challan itself; that they had received all the payment online and never dealt in cash; that on being asked regarding sale of gold/silver bullion made to M/s Sagar Empire Jewels Private Limited (PAN: ABFCS6904A) and M/s. RHCGlobal Exports Private Limited (PAN:AAJCR3808D), he stated that they had not made sale/purchase with M/s Sagar Empire Jewels Private Limited (PAN:ABFCS6904A) and M/s. RHC Global Exports Private Limited (PAN:AAJCR3808D)

19.2.9. Regarding firm mentioned at S No. 9 i.e. **RHCGlobal Exports Private Limited** in the table above, enquiry related to mis-declaration of goods has already been initiated by DRI Surat vide F.No. DRI/AZU/SRU/B/INV-03/2023.

19.2.10. Summons dated 21.08.2023was issued to **M/s. Kashvi Bullion**, 4th Floor, Room No. 403, Next Plaza, Kalbadevi Road, Vithalwadi, Kalbadevi, Mumbai, Maharashtra-400002 and in response Shri Mahesh Mithalalji Tripathi Sale Executive/Authorized Person of M/s. Kashvi Bullion, duly authorized by the proprietor Mrs. Poonam Shah, appeared on 12.09.2023 and his statement was recorded on 12.09.2023 **(RUD-51)** under the provisions of section 108 of Customs Act, 1962 wherein he *inter-alia*stated that he was working as sales executive in M/s. Kashvi Bullion, Mumbai since 2017; that M/s. Kashvi Bullion was a proprietorship firm (Proprietor: Smt. Poonam Vaibhav Shah) started in 2017; that the firm was engaged in the trading of gold bar and having its registered address at 4th Floor, Room No. 403, Next Plaza, Kalbadevi Road, Vithalwadi, Kalbadevi, Mumbai, Maharashtra-400002; that he was also authorised by the proprietor of the firm to appear before the DRI to receive and reply to the notice, to sign and submit the documents related to the proceedings, and his explanation/statement will be bindging on M/s. Kashvi Bullion, Mumbai; that he produced the Authority Letter/Power of Attorney issued by the proprietor of the firm and he put his dated signature on the same; that on being asked regarding M/s. Sagar Diamonds Limited, he stated that there was an organisation namely 'IBJA' in Zhaveri Bazar, Mumbai and once in a year the said organisation arranged a get-together for the persons engaged in bullion business; that in 2019, in one such get together of IBJA, he met Shri Vaibhav Dipak Shah (9702750000/+971505392065), Director of M/s. Sagar Diamonds Limited; during the meeting, Shri Vaibhav Dipak Shah informed him that he was also engaged in the business of bullion trading therefore, from 2020 he started doing the bullion trading business with M/s. Sagar Diamonds Limited; that in 2021 GST department raided the premises of M/s. Sagar Diamonds Limited, Mumbai and then after 2021 he gradually reduced the bullion trading with M/s. Sagar Diamonds Limited and in 2022 stopped doing business with M/s. Sagar Diamonds Limited; that he produced the copy of sales invoices for the period 2020-21, 2021-22 and 2022-23 issued to M/s. Sagar Diamonds Limited, Mumbai, purchase invoices received from M/s. Sagar Diamonds Limited, Mumbai for the period 2020-21, 2021-22 and 2022-23, ledger confirmation of M/s. Sagar Diamonds Limited, Mumbai and relevant bank account statements of M/s. Kashvi Bullion; that he was looking after all day to day activities of M/s. Kashvi Bullion and used to talk with Shri Vaibhav Dipak Shah regarding trading of gold bullion; that on being asked regarding the delivery of the gold bullion, he stated that at the time of the sale of the gold bullion, they used to raise invoice/e-invoice (wherever applicable) and then used to inform that the gold bullion is ready for the delivery; that after confirmation, one person namely Dhaval alias Jonty, employee of M/s. Sagar Diamonds Limited, Mumbai, used to receive the gold bullion from his office; that after handing over the gold bullion to Dhaval alias Jonty, employee of M/s. Sagar Diamonds Limited, Mumbai they used to take receiving on the invoice itself; that on being asked regarding receipt of gold bullion from M/s. Sagar Diamonds Limited, Mumbai, he stated that when they purchased gold bullion from M/s. Sagar Diamonds Limited, Mumbai, Dhaval alias Jonty, employee of M/s. Sagar Diamonds Limited, Mumbai used to deliver the same along with the invoice and after receipt of the gold bullion from Dhaval alias Jonty, employee of M/s. Sagar Diamonds Limited, Mumbai, they used to give receiving (round stamp) on the sales invoice of M/s. Sagar Diamonds Limited, Mumbai itself; that on being asked regarding payment of sale/purchase of gold bullion, he stated that they have made/received all the payment online

and they had never dealt in cash; that for business of gold bullion with M/s. Sagar Diamonds Limited, Mumbai, he had contacted only Shri Vaibhav Dipak Shah.

19.2.11. Summons dated 10.08.2023**,** 15.09.2023 and 10.10.2023 **(RUD-52)** was issued to **M/s. Khushboo Diamond Pvt.Ltd.,** 1st Floor, 103, Near HDC Building, Devsagar Dalgiya Street, Mahidharpura, Surat, Gujarat, 395003 and summons dated 10.08.2023 **(RUD-53)** was issued to **M/s. Shrenik Diamond Pvt Ltd**, Ground, 15, Diamond World Tower B, Varachha Road, Varachha, Surat, Gujarat, 395006 and Shri Nemichand Mohanlal Kawadia, Director of M/s. Khushboo Diamond Pvt.Ltd and M/s. Shrenik Diamond Pvt Ltd appeared on 02.11.2023 and his statement dated 02.11.2023 **(RUD-54)** was recorded under the provisions of Section 108 of the Customs Act, 1962 wherein he *inter-alia* stated that M/s. Khushboo Diamond Pvt. Ltd. was a Pvt. Ltd. firm started in 2007 and he along with Shri Naveen Sharma were the Directors of the firms; that the said firm was engaged in the import/trading of rough diamonds and having its registered address at 333, Panchartna, Opera House,Mumbai-401101 and 103-Devsagar, Near HDC Building, Dalgiya Sheri, Mahidharpura, Surat-395003; that M/s. Shrenik Diamond Pvt Ltd. was a Pvt. Ltd. firm started in 2017 and he along with Shri Vipin Dhabaria were the Directors of the firms; that the said firm was engaged in the import/trading of rough diamonds and having its registered address at 15-Upper Ground Floor, Diamond World Tower B, Varachha Road, Surat-395006 and JE-1210, Bharat Diamond Bourse, BKC, Bandra East, Mumbai-400051; that they had made sales of rough diamond to M/s. Sagar Diamonds Limited; that in the diamond market they used to make domestic sale/purchase of the diamond through various broker available in the diamond market; that they made sale of rough diamonds to M/s Sagar Diamonds Limited from both firms through one diamond broker namely Shri Jimish Desai (+91-9819540803); that they had never contacted any person of M/s Sagar Diamonds Limited; that as Shri Jimish Desai was one of the diamond brokers in BKC, Mumbai and Panchratna, Mumbai, he used to approach them and informed that as to which firm wants to buy how much quantity of rough diamonds; that on the basis of the requirement they used to quote the price for the rough diamond to the diamond broker; that in case of M/s Sagar Diamonds Limited they had received all the payment in advance and after receipt of payment he used to handover the rough diamond along with the sales invoice to Shri Jimish Desai; that they had received all the payment from M/s Sagar Diamonds Limited in their bank account and they had not done any cash transactions; that on being asked regarding the delivery of the rough diamonds, he stated that as they received the order from broker and on the basis of the order they used to convey the total payment to the broker; that after receipt of payment they used to handover the rough diamond along with the sales invoice to Shri Jimish Desai as they had not directly dealt with any director/employee of M/s Sagar Diamonds Limited; that he submitted one made up file containing the Ledger, sample bank statement as a payment proof and all sales invoices issued to M/s Sagar Diamonds Limited in case of M/s. Khushboo Diamond Pvt. Ltd; that he submitted one made up file containing the Ledger, sample bank statement as a payment proof and all sales invoices issued to M/s Sagar Diamonds Limited in case of M/s. Shrenik Diamond Pvt Ltd.

19.2.12 Summons dated 10.08.2023 **(RUD-55)** was issued to **M/s. SPN Gold India Private Limited**, Ground Floor, 12/A, Plot No.75,

Sutaria Building, Dhanji Street, Parsi Gully, Zaveri Bazar, Mandvi, Mumbai Suburban, Maharashtra-400003 to appear for the statement on 24.08.2023
however, the same was returned to this office with remark "Left" **(RUD-56).**

19.2.13 Summons dated 10.08.2023 **(RUD-57)** was issued to **M/s. Uttam Gems Pvt Ltd**, Upper Ground Floor, Office 15, Diamond World Tower B, Varachha Road, Varachha, Surat, Gujarat, 395006 to appear for the statement on 25.08.2023 however the same was returned to this office with remark "Left" **(RUD-58).**

19.2.14. Summons dated 10.08.2023 was issued to **M/s Aaviskar Impex Pvt Ltd.,** Second floor, Block-D, 218, Stadium House, Opp. Sardar Patel Swimming Pool, Navrangpura, Ahmedabad and in response M/s Aaviskar Impex Pvt Ltd vide letter dated 21.08.2023 **(RUD-59)** submitted the copies of (i) Ledger account (Account statement) of Sagar Diamonds Limited for the period from 01.04.2021 to 31.03.2022 and 01.04.2022 to 31.03.2023 from their books; (ii) Sales invoices (e-invoice) issued to Sagar Diamonds Limited during the FY 2021-22 and 2022-23; and (iii) Form 16A (TCS deduction and payment statement) certificate as per u/s 203 of Income Tax Act, 1961 for tax deduction at source. Further, M/s Aaviskar Impex Pvt Ltd requested to keep the documents on record and consider the same as the compliance. On scrutiny of the documents submitted by **M/s Aaviskar Impex Pvt Ltd.** it appears that M/s Aaviskar Impex Pvt Ltd., Ahmedabad (GSTIN- 24AAECA7330G1Z1) had sold & delivered 'Gold' to M/s Sagar Diamonds Limited, at Floor 9, Plot No.27, 903, Embassy Centre, Jamnalal Bajaj Marg, Nariman Point, Mumbai (GSTIN-27AAWCS0068B1Z8) through various invoices totally valued to Rs. 44,01,49,902/- during the period 18.02.2022 to 26.02.2022. It also appears from the ledger submitted by M/s Aaviskar Impex Pvt Ltd that M/s Sagar Diamonds Limited had not made any payment to M/s Aaviskar Impex Pvt Ltd during the period from 18.02.2022 to 31.03.2022. Further, it appears from the ledger for the period 01.04.2022 to 31.03.2023 and Invoices submitted by M/s Aaviskar Impex Pvt Ltd that M/s Sagar Diamonds Limited, Mumbai (GSTIN-27AAWCS0068B1Z8) had sold 'Rough Diamonds' to M/s Aaviskar Impex Pvt Ltd., Ahmedabad (GSTIN- 24AAECA7330G1Z1) during the period from 15.07.2022 to 16.07.2022 totally valued to Rs. 44,01,50,188/-. It appears that M/s Aaviskar Impex Pvt Ltd., Ahmedabad (GSTIN- 24AAECA7330G1Z1) has paid TDS of Rs. 4,38,614/- and they have adjusted the sales amount of Rs. 44,01,49,902/- after discount of Rs.286/-.

19.3 It appears that most of the major suppliers of M/s Sagar Diamonds Limited, Mumbai were dummy or non-existent firms. M/s Sagar Diamonds Limited had purchased gold bullion and diamonds from some major supplier and made payment through bank accounts or adjusted through sales of rough diamond/gold.

20. ENQIRY WITH THE TOP 15 PURCHASER (AS PER GSTR-1) OF M/S SAGAR DIAMONDS LIMITED

20.1 Whereas from the GSTR-1 returns of M/s Sagar Diamonds Limited, Mumbai it appears that the firm has made outward supply to various domestic firms. Out of them, top 15 were identified, the details of the same are as under:

Table 15: Top 15 buyers of M/s Sagar Diamonds Limited, Mumbai

Sl No.	Name of Firm	GST No.	Amount Credited (In Rs.)	Address
1	Malamaal Trading Co.	27ADOPW1669E1Z0	440,30,29,976	First Floor, Plot No. 24, Office No.B-2, Pavri House Rustom, Sidhwa Marg, Handloom House Fort, Mumbai
2	Sagarempire Jewels Private Limited	27ABFCS6904A1ZK	304,90,60,795	9, Plot-207, 903, Embassy Chamber, Jamnalala Bajaj Marg, Nariman Point, Mumbai, Mumbai
3	Mahavir Gems Private Limited	24AAGCM8441E1ZL	244,54,59,252	4th Floor, H No 6/2155/A, Office 405a Gokul Appt, Devidas Pipla Sheri Mahidharpura, Surat, Gujarat
4	Khodal Sales	24ALFPD4925K1Z7	206,60,31,772	2nd Floor, Plot -99/100, Gopinath Nagar Soc-2, Katargam, Surat, Gujarat
5	Pramukh Art	24ALEPD1282A1ZX	198,59,24,584	1st Floor, 99/100, Gopinath Nagar Soc-2, Katargam, Surat, Gujarat
6	Mritunjay Bullion Private Limited	07AANCM8258Q1ZE	158,62,28,694	16/77, Near By Daya Nand Park, Back Side Subash Nagar, New Delhi
7	Kashvi Bullion	27AHYPG9074B1ZX	149,32,52,607	4th Floor, Room No. 403, Nex Plaza, Kalbadevi Road, Vithalwadi, Kalbadevi, Mumbai
8	Navkar Enterprise	24ANTPS5622C1ZV	138,07,42,007	E-503, Shripad Residency, Nr.Raj Corner, Pal Road, Adajan, Surat, Gujarat
9	Trendstar Exports Private Limited	27AAHCT0934C1ZL	128,73,73,524	1st Floor, Office B/7, 10/21, Flox Chamber,, Tata Road No. 1, Roxy Cinema, Opera House, Girgaon, Mumbai
10	Veer Gems	24AIYPG4579L1ZF	124,49,51,327	44, Govinddham Row House, Nr. Sitaram Nagar, Honeypark Road, Adajan, Surat, Gujarat
11	Pitambara Bullion Private Limited	19AALCP4441J1Z1	115,31,09,705	Fl-8, 3/182, Bl-East, 2nd-Fr, Vidya Sagar Colony, Kolkatta-700047
12	Shree Krishna Enterprise	24CBKPJ2326M1ZK	108,16,59,371	F-104, Vrundavan Appt-A,Nandanvan Soc., B/H. Kanteshwar Temple, Katargam, Surat, Gujarat

13	Shree Sai Enterprise	24AMMPG2161N1ZX	100,82,49,972	44, Govinddham Row House, Nr. Sitaram Nagar, Honey Park Road, Adajan, Surat, Gujarat
14	Aadinath Enterprise	24MRFPS6131Q1ZY	82,60,06,197	1, Soni Wad, Sojitra, Anand, Anand, Gujarat
15	Mahant Art	24CUSPD2271E1ZS	69,88,10,291	2nd Floor, Plot No. 99/100, Gopinath Nagar Society-2, Katargam, Surat, Gujarat

20.2 SUMMARY OF THE OUTCOME OF THE INVESTIGATION I.R.O. THE ABOVE BUYERS

20.2.1 Summons dated 10.08.2023 was issued to **M/s. Malamaal Trading Co.,** First Floor, Plot No. 24, Office No.B-2, Pavri House Rustom, Sidhwa Marg, Handloom House Fort, Mumbai, Maharashtra, 400001 to appear for the statement on 23.08.2023 however, the same was returned to this office with remark "Not Known". The same has been discussed in para 19.2.6.

20.2.2 Regarding the firm mentioned at S No. 2 i.e. **M/s Sagarempire Jewels Private Limited** in the table above, enquiry related to mis-declaration of goods has already been initiated by DRI Surat vide F.No. DRI/AZU/SRU/B/INV-02/2023.

20.2.3. A visit was made by the officers of DRI for search at the premises of **M/s Mahavir Gems Private Limited**, 4th Floor, H No 6/2155/A, Office 405A, Gokul Appt, Devidas Pipla Sheri Mahidharpura, Surat, Gujarat on 16.08.2023 **(RUD-60)**. On visit of the said premises, a person came forward and introduced himself as Shri Tejus. On enquiry, Shri Tejus told that the said premises 405 was further divided into two cabins with number 405A and 405B. On entering the 405 office, the officers noticed that said premises 405 was owned by Shri Dilipbhai, his brother-in-law and as he was not well so Shri Tejus was the caretaker of the said office space. On being asked regarding the renting of office 405A, Shri Tejus produced the copies of (i) Rent agreement of the said premises executed between Shri Dilipbhai Chandubhai Naik and M/s Mahavir Gems Pvt Ltd (Director: Shri Dhawal Sureshkumar Patel) for the period 20.10.2015 to 19.09.2016, 20.09.2016 to 19.08.2017, 20.08.2017 to 19.07.2018, 20.07.2018 to 19.06.2019; (ii) Rent agreement of the said premises executed between Shri Dilipbhai Chandubhai Naik and M/s Vardhman World Wide Pvt Ltd (Director: Shri Dhawal Sureshbhai Patel) for the period 20.05.2020 to 19.04.2021; and (iii) Rent agreement of the said premises executed between Shri Dilipbhai Chandubhai Naik and Mewar Diamond LLP (Partner: Shri Ahivaran Amar Singh and Shri Vikash Kumar Prem Singh) for the period from 01.02.2022 to 31.12.2022. Shri Tejus further informed that the premises 405A was vacant since 31.12.2022.

20.2.4. A visit was made by the officers of DRI for search at the premises of **M/s Khodal Sales** (Prop. Shri Bharatbhai Bhupatbhai Dhanani) situated at 2nd floor, Plot-99/100, Gopinath Nagar Soc-2, Katargam, Surat, Gujarat- 395004 on 14.09.2023 **(RUD-61)**. On visit of the above said premises, it was noticed that said premises was a 3 floor (ground+2) residential premises. One person Shri Bharatbhai Mangukiya (who refused to give his contact no.) came forward and informed that

Shri Bhupatbhai Dhanani was the owner of the premises; that as Shri Bhupatbhai Dhanani was known to him, the ground floor was taken on rent by him (Bharatbhai Mangukiya) and Shri Arun Bhupatbhai Dhanani S/o Shri Bhupatbhai Dhanani resided on the first floor of the building; that 2nd floor was also given on rent to Shri Mukesh bhai. Thereafter, the officers approached the first floor of the said residential premises and it was noticed that all the doors of the first floor were locked. Shri Bharatbhai Mangukiya informed that Shri Arun Bhupatbhai Dhanani was out of station from last 15 days. Thereafter, the officers approached the 2nd floor of the said residential premises and met Smt. Varshaben Mukeshbhai who informed that she along with her husband Shri Mukesh bhai has taken the 2nd floor of the said residential building on rent from Shri Bhupatbhai Dhanani. On being asked, Shri Bharatbhai Mangukiya informed the officers that he along with his family has been living at the ground floor for 4 years and he had not noticed any business activities from the building.

It appears from the GST registration of M/s Khodal Sales that M/s Khodal Sales has taken GST registration for the commodity Fabric & Cement which does not appear to co-relate with the business activities of M/s Sagar Diamonds Limited. Further, Summons dated 15.09.2023 **(RUD-62)** was issued to M/s Khodal Sales to appear before the investigation agency on 29.09.2023 but, no person appeared against the summons.

20.2.5. It appears that the address of the firm mentioned at S. No. 4 i.e. **M/s Khodal Sales**, S.No. 5 i.e. **M/s. Pramukh Art** and S.No. 15 i.e. **M/s. Mahant Art** in the table above are same. The said three firms appear to be situated at same address i.e. Plot-99/100, Gopinath Nagar Soc-2, Katargam, Surat, Gujarat- 395004. Therefore, the outcome of the visit by DRI officers at the said premises is discussed at the para 20.2.4 above.

20.2.6. A summons dated 10.08.2023 **(RUD-63)** was issued to **M/s. Mritunjay Bullion Private Limited**, 16/77, Near By Daya Nand Park, Back Side Subash Nagar, New Delhi, West Delhi, Delhi-110027 to appear for the statement on 21.08.2023 however the same was returned to this office with remark "Left" **(RUD-64).**

20.2.7. Summons dated 10.08.2023 was issued to **M/s. KASHVI BULLION,** 4th Floor, Room No. 403,, Nex Plaza, Kalbadevi Road, Vithalwadi,, Kalbadevi, Mumbai, Maharashtra, 400002 and the statement dated 12.09.2023 of Shri Mahesh Tripathi was recorded and the same has been discussed in the para 19.2.10 above.

20.2.8. Summons dated 10.08.2023**,** 15.09.2023 and 10.10.2023 **(RUD-65)** were issued to **M/s. Navkar Enterprise,** E-503, Shripad Residency, Nr.Raj Corner, Pal Road, Adajan, Surat, Gujarat, 395009 but no one appeared for recording the statement u/s 108 of Customs Act, 1962.

20.2.9. Summons dated 10.08.2023 **(RUD-66)** was issued to **M/s. Trendstar Exports Private Limited,** 1st Floor, Office B/7, 10/21, Flox Chamber, Tata Road No. 1, Roxy Cinema, Opera House, Girgaon, Mumbai, Maharashtra, 400004 to appear for recording statement on 21.08.2023 but, the same was returned to this office with remark "IDBL" **(RUD-67).**

20.2.10. Summons dated 10.08.2023, 15.09.2023 and 10.10.2023 were issued to **M/s Veer Gems,** 44, Govinddham Row House, Nr.Sitaram Nagar, Honey Park Road, Adajan, Surat, Gujaratand **M/s Shree Sai Enterprise,** 44, Govinddham Row House, Nr.Sitaram Nagar, Honey Park Road, Adajan, Surat, Gujarat but no one responded against he said summons Thus, a search was conducted by the officers of DRI on 11.12.2023 at the premises situated at 44, Govinddham Row House, Nr.Sitaram Nagar, Honey Park Road, Adajan, Surat, Gujarat under panchnama dated 11.12.2023 **(RUD-68)** which was drawn in the presence of independent panchas and Smt Vaishaliben Jigarbhai Golwala. During the search Smt. Vaishaliben Jigarbhai Golwala informed that her husband Shri Jigarbhai Kiritbhai Golwala resided in Mumbai and visited home only on weekend; that her husband is into car loan business; that the said premises was owned by Smt. Ilaben, her mother-in-law. On being asked regarding M/s Veer Gems and M/s Shree Sai Enterprises, Smt. Vaishaliben Jigarbhai Golwala informed that she was housewife and Shri Jigarbhai K. Golwala was looking after the above said firms so he would be in better position to explain; that she did not know about any such firm; that they have been living at the said premises from last 23 years and no business activity was being carried out from the said premises; that Shri Jigarbhai Golwala was into the business of car loan finance and he was not into any other business. During the search nothing incriminating related to the investigation was found.

20.2.11. Summons dated 10.08.2023 **(RUD-69)** was issued to **M/s. Pitambara Bullion** Private Limited, Fl-8, 3/182, Bl-East,2nd-Fr, Vidya Sagar Colony, Kolkata, West Bengal, 700047 to appear for recording statement on 22.08.2023 however, the same was returned to this office with remark "Left" **(RUD-70).**

20.2.12. Summons dated 10.08.2023 **(RUD-71)** was issued to **M/s. Shree Krishna Enterprise,** F-104, Vrundavan Appt-A,Nandanvan Soc,, B/H. Kanteshwar Temple, Katargam, Surat, Gujarat, 395004 to appear for the recording statement on 22.08.2023, however, the same was returned to this office with remark "Left" **(RUD-72).**

20.2.13. Summons dated 10.08.2023 **(RUD-73)** was issued to **M/s. Aadinath Enterprise,** 1, Soni Wad, Sojitra, Anand, Gujarat, 387240 to appear for recording the statement on 23.08.2023, however, the same was returned to this office with remark "Not Known" **(RUD-74).**

20.3 It appears from the enquiry into buyers of M/s Sagar Diamonds Limited that most of the major buyers of M/s Sagar Diamonds Limited, Mumbai were either dummy or non-existent firms. It appears that M/s Sagar Diamonds Limited had shown their sale to dummy or non-existent firms and received payment in bank accounts against such supply.

21. As the investigation could not be completed within the time line as defined in Section 110 of the Customs Act, 1962, the Additional Director, DRI, Zonal Unit Ahmedabad, vide letter dated DRI/AZU/SRU-13/2023 dated 03.08.2023 **(RUD-75)** requested the Commissioner of Customs, Ahmedabad for grant of extension of 06 months in terms of Section 110(2) of the Customs Act, 1962. The Assistant Commissioner of the Customs (Tech), Ahmedabad, vide letter dated 10.08.2023 **(RUD-76)**

informed that the Commissioner of Customs, Ahmedabad has granted extension of 06 months for issuance of Show Cause Notice in this case.

FINANCIAL INVESTIGATION:

22. Ms. Sanjana Kalambe, Junior Accountant of M/s Sagar Diamonds Limited, M/s RHC Global Exports Private Limited and M/s Sagar Empire Jewels Private Limited had stated in her statement dated 10.03.2023 that they would submit the bank book for the finalcial year 2019-20 to 2022-23 with in a week's time. Accordingly, vide e-mail dated 15.03.2023 **(RUD-77)**, M/s Sagar Diamonds Limited submitted the bank book for the above said period. On scrutiny of the same it appears that M/s Sagar Diamonds Limited maintained its bank account with (i) Canara Bank, (ii) The Karur Vysya Bank, (iii) SBM Bank, (iv) IDBI Bank, (v) ICICI Bank, (vi) IndusInd Bank, (vii) Standard Chartered Bank, (viii) State Bank of India, (ix) HDFC Bank, (x) IDFC First Bank, (xi) Laxmi Vilas Bank, (xii) Punjab National Bank, (xiii) AXIS Bank and (xiv) Yes Bank.

22.1. The above said bank book for the FY 2019-20 to FY 2022-23 were compiled and top 05 creditors who have credited the money in the bank accounts of M/s Sagar Diamonds Limited were identified for verification. It appears that M/s Sagar Diamonds Limited had received more than Rs. 3,648 crores in its several bank accounts from these 5 firms, details of the said top 5 firms are as under:

Table 16: Top 5 Creditors of M/s.Sagar Diamonds Limited

Name of Firm	GST No.	Address	Amount Credited (In Rs.)
Kalpataru Exim	24EKAPA6259M1Z2	Shri Shiv Sai Mobile Care, 3rd floor, C/301 Ganga Residency, Nr.Causeway, Singanpor, Katargam, Surat	1110,11,79,828
R M Enterprise	24DVDPM4561H1Z1	Hani Park Road, 2nd floor, B/201 Megha Complex, Besan, Rander, Surat	676,44,96,688
Trendstar Exports Private Limited	27AAHCT0934C1ZL	Flox Chamber Office No B7, Road No.1, Near Pachratna Jalebi House, Opera House Mumbai -400004	666,78,27,179
Pramukh Art	24ALEPD1282A1ZX	1st floor, 99/100, Gopinath Nagar Soc-2, Katargam, Surat	604,80,25,542
D M Enterprise	24DQSPM4043J1ZH	2nd floor, F-201, Bld No.B, Megha Complex, Hani Park Road, Rander, Adajan, Surat	590,19,76,867
		Total	**3648,35,06,104**

23. SUMMARY OF THE OUTCOME OF THE ENQUIRY I.R.O. CREDITORS FROM WHOM MONEY WAS CREDITED TO THE BANK ACCOUNTS OF M/S SAGAR DIAMONDS LIMITED

23.1 A search was conducted at the premises of **M/s.Kalpataru Exim** situated at C-301, Ganga Residency, Near Causeway, Singanpore, Katargam, Surat under panchnama dated 04.08.2023 **(RUD-78)** in presence of independent panchas and Smt. Kajalben Ketanbhai Moradia. During the search, Smt. Kajalben Ketanbhai Moradia informed the officers that she resided in that flat alongwith her husband Shri

Ketanbhai Moradia & her son, her father-in-law Sh. Bhupatbhai Moradia, mother-in-law Smt Hiraben Moradia, bother-in-law Shailesh Moradia and his wife Smt Dikshita Shailesh Moradia; that she had one more bother-in-law namely Shri Bhavesh Moradia; that one firm M/s Ghanshyam Enterprise having principal place of business at C-301, Ganga Residency, Near Causeway, Singanpore, Katargam, Surat was in her name as her bother-in-law Shri Bhavesh Moradia had taken a copy of her identity card such as Aadhar card, PAN card etc in 2022 and informed her that he had to start a firm and open a bank account; that as Shri Bhavesh Moradia was her family member, she gave the same to Shri Shri Bhavesh Moradia; on being asked she informed that she did not have any idea about the firm namely, M/s Kalpataru EXIM, having principal place of business at C-301, Ganga Residency, Near Causeway, Singanpore, Katargam, Surat; that on two instances i.e. one on 01.03.2023, SIO, DGGI, Surat and second on 03.03.2023, State Tax Officer (1), Unit-11(67), Surat had visited the said premises and had given summons to Ms. Pinalben Ashikbhai Moradia, Prop.; Ms. Pinalben Ashokbhai Moradia was her sister-in-law and she did not live there and that she did not know her whereabouts. During the search, the officers resumed few documents viz. copies of PAN card & Aadhar card, electricity bill, etc. related to ongoing investigation against M/s Sagar Diamonds Limited, Surat SEZ and M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat.

Summons dated15.09.2023 was issued to **Ms. Pinalben Ashokbhai Moradiya, Proprietor of M/s Kalptaru Exim** and her statement dated 29.09.2023 **(RUD-79)** was recorded under Section 108 of the Customs Act, 1962 wherein she, among the other things, stated that she was born in Bhavnagar in 2002; that presently, she was doing BBA from Bhagwan Mahavir University, Surat; that she perused the panchnama dated 04.08.2023 drawn at 3rd floor, C-301, Ganga Residency, Nr. Causeway, Singanpor, Katargam, Surat-395004 and in token of its perusal she put her dated signature on the last page of the same; that she perused the printout mentioning a firm in the name of M/s Kalpataru Exim registered at 3rd Floor, C-301, Ganga Residency, Nr. Causeway, Singanpor, Katargam, Surat-395004 and that she was the proprietor of the said firm and after going through the same, she put her dated signature on the same; that she never heard the name of any such company i.e. M/s Kalpataru Exim; that in the month of June-2022, her cousin, namely Shri Bhaveshbhai Moradiya, had approached her with an offer that if she gave him her documents related to her identity, he would open a bank account in her name in HDFC Bank and would give her Rs.3000/- per month for using the bank account; that as she was studying and found that offer lucrative, she gave her documents to him in June-2022 so that she could earn Rs.3000/-; that she gave her documents such as Aadhar card, PAN card, Light bill and 01 passport size photo to Shri Bhaveshbhai Moradiya; that on the instructions of Shri Bhaveshbhai Moradiya, she bought one (01) SIM card in June-2022 and handed it over to Shri Bhaveshbhai Moradiya; that she did not remember the contact number of the said SIM card as she handed over the said SIM card to Shri Bhaveshbhai Moradiya on the same day of buying the same; that in June-2022, the officials of the HDFC bank had visited the residential premises i.e. 3rd floor, C-301, Ganga Residency, Nr. Causeway, Singanpor, Katargam, Surat of her cousin to open the bank account and she was also present there at that time; that the Bank Officials took her photo and the photograph of the said house; then after 10 days, a cheque book and ATM card related to said bank account was delivered to the

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above said house through post; that as Shri Bhaveshbhai Bhupatbhai Moradiya used to live there, he collected the same; that to the best of her knowledge, the bank account bearing no. 59215550005555 was opened in her name in HDFC Bank, Surat; that she never used the said SIM Card and never used the above said bank account; that Shri Bhaveshbhai Moradiya would be in a better position to explain regarding the debit/credit in the said bank account; regarding the business activities of M/s Kalpataru Exim registered at 3rd floor, C-301, Ganga Residency, Nr. Causeway, Singanpor, Katargam, Surat, she stated that she had never heard the name of any such firm; that the said premises was a residential premises and her cousin along with his family member were living at the said premises; that the member of her family has never done any business activities from the said premises; that Shri Bhaveshbhai Moradiya gave Rs.3000/- to her from July-2022 to December-2022 in cash but after that he did not give any money to her.

23.2 On 04.08.2023, a visit was made by the officers of DRI to the premises of **M/s R M Enterprise,** B-201, Megha Complex, Honey Park Road, Adajan, Surat and M/s. **D M Enterprise,** B-201, Megha Complex, Honey Park Road, Adajan, Surat **(RUD-80)**. On visitingthe above said premises, it was learnt that the said premises was a residential premises and owned by Shri Kiritkumar Jayantilal Jariwala as per the name plate on entrance of the building; that the officers noticed that 3 letters from Directorate of Enforcement (1 letter was issued to M/s D M Enterprise and 2 letters were issued to M/s R M Enterprise) were pasted on the wall beside the main entrance gate of the said residential premises viz B-201, Megha Complex, Honey Park Road, Adajan, Surat. Upon enquiry, Smt. Teenaben Jayantibhai Modi came forward and informed that she alongwith her family was residing at the said premises from the past 2 months; that Smt. Teenaben Jayantibhai Modi w/o Shri Jayantibhai Aditram Modi provided a copy of rent agreement dated 17.06.2023 for period from 17.06.2023 to 16.05.2024 which was executed between her husband Shri Jayantibhai Aditram Modi and owner of the said premises i.e. Shri Kiritkumar Jayantilal Jariwala; that she also produced photo copy of Electricity Bill (DGVCL) for the month of April-May 2023 and Gas Bill (Gujarat Gas Limited) for the period between March and May 2023 which were in the name of Shri Kiritkumar Jayantilal Jariwala. On enquiry with Smt Teenaben Jayantibhai Modi regarding Smt Shraddhaben Kirtibhai Miyani (Prop of M/s D M Enterprise) and Shri Raghavbhai Amarshibhai Miyani (Prop of M/s R M Enterprise), she informed that she did not have any knowledge about the said persons residing at the said premises before them and informed that Shri Kiritkumar Jayantilal Jariwala would be in better position to answer the same.

Summons dated 04.08.2023 was issued to **Shri Kiritkumar Jayantilal Jariwala**, Owner of B-201, Megha Complex, Honey Park Road, Adajan, Surat and his statement dated 07.08.2023 **(RUD-81)** was recorded under Section 108 of Customs Act, 1962 wherein he *inter-alia* stated that he was the owner of flat B-201, Megha Complex, Honey Park Road, Adajan, Surat for last 3-4 years; that Shri Kirtikumar Raghavbhai Miyani and his family resided at B-201, Megha Complex, Honey Park Road, Adajan, Surat for 1.5-2 years; that he made a rent agreement with Shri Kirtikumar Raghavbhai Miyani for the period 29.8.2022 to 28.07.2023 and submitted its copy; that he had no written rent agrrement with Shri Kirtikumar Raghavbhai Miyani for the period prior to August 2022; that he received rent of Rs. 4,000/- per month from Shri

Kirtikumar Raghavbhai Miyani; that Shri Kirtikumar Raghavbhai Miyani vacated the said premises during March, 2023 and gave rent up to March, 2023; that he rented the said premises to Shri Jayantibhai Aditram Modi since June, 2023.

23.3. Summon dated 10.08.2023 was issued **M/s. Trendstar Exports Private Limited,** 1st Floor, Office B/7, 10/21, Flox Chamber, Tata Road No.1, Roxy Cinema, Opera House, Girgaon, Mumbai, Maharashtra, 400004 to appear for the statement on 21.08.2023, but the said summonwas returned back with remark "IDBL"**.**

23.4 A visit was made by the officers of DRI at the premises of **M/s Pramukh Arts** situated at 1st floor, Plot-99/100, Gopinath Nagar Soc-2, Katargam, Surat, Gujarat- 395004 on 14.09.2023 **(RUD-82)**. On visiting the above said premises, it was noticed that the said premises was a 3 floor (ground+2) residential premises. On enquiry, one person, Shri Bharatbhai Mangukiya (who refused to give his contact no.) came forward and informed that Shri Bhupatbhai Dhanani was the owner of the premises; that as Shri Bhupatbhai Dhanani was known to him, the ground floor was taken on rent by him (Bharatbhai Mangukiya) and Shri Arun Bhupatbhai Dhanani s/o Shri Bhupatbhai Dhanani resided on the first floor of the building; that 2nd floor was also given on rent to Shri Mukesh bhai. Thereafter, the officers approached the first floor of the said residential premises and it was noticed that all the doors of the first floor was locked. Shri Bharatbhai Mangukiya informed that Shri Arun Bhupatbhai Dhanani was out of station from last 15 days. Thereafter, the officers approached the 2nd floor of the said residential premises and met Smt. Varshaben Mukeshbhai who informed that she along with her husband Shri Mukesh bhai has taken the 2nd floor of the said residential building on rent from Shri Bhupatbhai Dhanani. On being asked, Shri Bharatbhai Mangukiya informed the officers that he along with his family has been living at the ground floor for 4 years and he had not noticed any business activities from the building.

23.5 From the investigation conducted, it appears that the amount credited in the bank accounts of M/s SDL SURSEZ were from the bogus/ non-existent firms or from entities that had no correlation with the business activities of M/s SDL SURSEZ and therefore, these were merely a paper transaction. Therefore, it appears that the bank accounts of said bogus crediting firms were used for Hawala transaction.

24. In order to verify the quantum of transaction in bank accounts and in order to ascertain the foreign inward and outward remittances, bank statements and details of foreign inward and outward remmitences i.r.o. M/s Sagar Diamonds Limited, (PAN:AAWCS0068B), M/s Sagar Empire Jewels Pvt Ltd, (PAN:ABFCS6904A) and M/s RHCGlobal Exports Pvt Ltd, (PAN:AAJCR3808D) were called for from the above said banks. The details of the same is as under:

24.1. TheDRI, Surat, vide e-mail dated 30.03.2023 forwarded the letter F. No. DRI/AZU/SRU/B/INV-01/2023 (DRI/AZU/SRU/B/INV-02/2023 & DRI/AZU/SRU/C/INV-03/2023) dated 30.03.2023 **(RUD-83),** tothe Chief Group Compliance Officer, **Canara Bank** to provide a copy of AOF, KYC details, bank statement for the period April-2019 to Feb-2023 and the details of foreign inward and outward remittances regarding M/s Sagar Diamonds Limited, SEZ, Surat (PAN:AAWCS0068B), M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat (PAN:ABFCS6904A) and M/s

RHCGlobal Exports Pvt Ltd, SEZ, Surat (PAN:AAJCR3808D). Vide e-mail dated 31.03.2023 **(RUD-84)** the bank informed that they had searched their data base and found 01 account bearing account no. **0204214000026** pertaining to M/s Sagar Diamonds Ltd and provided the AOF, KYC and bank account statement for the given period. Further vide e-mail dated 06.04.2023 **(RUD-85)**, the bank further informed that there was no foreign inward and outward remittances. The details of the major inward and outward transactions in the said account is tabulated below:

Table 17: Details of major Inward and Outward transaction in bank account no. 0204214000026 of Sagar Diamonds Ltd

Inward/Deposits	
Description	**Amount (Rs.)**
OPENING_BALANCE	51,99,982

Outward/Withdrawals	
Description	**Amount (Rs.)**
SAGAR DIAMONDS LIMITED	50,00,000
ARYAN INTERNATIO	19,00,000
SERVICE CHARGES DEBIT	9,982

24.2. TheDRI, Surat, vide e-mail dated 30.03.2023 forwarded the letter F. No. DRI/AZU/SRU/B/INV-01/2023 (DRI/AZU/SRU/B/INV-02/2023 & DRI/AZU/SRU/C/INV-03/2023) dated 30.03.2023 **(RUD-86)** tothe Chief Compliance Officer, **The Karur Vysya Bank Ltd** to provide the copy of AOF, KYC details, bank statement for the period April-2019 to Feb-2023 and the details of foreign inward and outward remittances regarding M/s Sagar Diamonds Limited, SEZ, Surat (PAN:AAWCS0068B), M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat (PAN:ABFCS6904A) and M/s RHCGlobal Exports Pvt Ltd, SEZ, Surat (PAN:AAJCR3808D). Vide e-mail dated 05.04.2023 **(RUD-87)** the bank informed that on verification, 01 account bearing account no. **2105135000003461** pertaining to M/s Sagar Diamonds Ltd was found and provided the AOF, KYC and bank account statement for the given period and further informed that there was no foreign inward and outward remittances found in the said account from inception till date of closure of the bank account. The details of the major inward and outward transactions in the said account is tabulated below:

Table 18: Details of major Inward and Outward transaction in bank account no. 2105135000003461 of Sagar Diamonds Ltd

Inward/Deposits	
Description	**Amount (Rs.)**
OPENING_BALANCE	5,00,000

Outward/Withdrawals	
Description	**Amount (Rs.)**
NAINA HATHISING BAROT	3,20,000
JALARAM ARTS	1,65,123
PRABHADEVI	14,823

24.3. TheDRI, Surat, vide e-mail dated 30.03.2023 forwarded the letter F. No. DRI/AZU/SRU/B/INV-01/2023 (DRI/AZU/SRU/B/INV-02/2023 & DRI/AZU/SRU/C/INV-03/2023) dated 30.03.2023 **(RUD-88)**

tothe Chief Compliance Officer, **SBM Bank (India) Limited** to provide a copy of AOF, KYC details, bank statement for the period April-2019 to Feb-2023 and the details of foreign inward and outward remittances regarding M/s Sagar Diamonds Limited, SEZ, Surat (PAN:AAWCS0068B), M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat (PAN:ABFCS6904A) and M/s RHCGlobal Exports Pvt Ltd, SEZ, Surat (PAN:AAJCR3808D). Vide e-mail dated 06.04.2023 **(RUD-89)** the bank provided copy of AOF, KYC documents and bank statement for the account no. **20012021006064** pertaining to M/s Sagar Diamonds Limited, SEZ, Surat for the period called for and further provided the details of the outward remittances made by M/s Sagar Diamonds Limited, SEZ, Surat. On scrutiny of the bank statement of the above said account, it appears that M/s Sagar Diamonds Limited had received money in this account from a number of firms and the amount so credited in the said account of M/s Sagar Diamonds Limited, SEZ, Surat was transferred to the overseas suppliers on the same day or within 1-2 days. It appears that M/s SDL SURSEZ had also made financial transactions with the other two SEZ units which are being investigated for mis-declaration of goods by the DRI. The details of the major inward and outward transaction is tabulated below:

Table 19: Details of Major Inward and Outward transaction in bank account no. 20012021006064 of Sagar Diamonds Limited

Inward/Deposits	
Description	**Amount (Rs.)**
RHCGlobal Exports Pvt Ltd	678,51,50,000
Sagar Diamonds Ltd. (from other bank account)	252,98,06,817
Foreign Remittance	46,48,01,966
Kalptaru Exim	17,62,00,000

Outward/Withdrawls	
Description	**Amount (Rs.)**
Foreign Remittance	948,18,17,463
Sagar Empire Jewels Pvt. Ltd	16,09,00,000
Sagar Diamonds Ltd. (from other bank account)	3,04,04,392
RHCGlobal Exports Pvt Ltd.	6,17,00,000

Further, it appears from the details of the outward foreign remittances from the said account that M/s Sagar Diamonds Limited, SEZ, Surat had made outward remittances to the tune of Rs.952.00 crores, to the overseas entities during the period from April-2019 to Feb-2023, as detailed below:

Table 20: Details of Outward Foreign remittances sent by M/s Sagar Diamonds Limited to the overseas firms through SBM

Name of the overseas firm	**Remitted Amount (in Rs.)**
Sun Rays HK Limited	385,30,84,404
Sun Tai HK Ltd	203,53,30,893
Unique Dia Limited	93,23,74,371
Pink Star HK Ltd	67,01,89,844

Advance Century Inc Ltd	62,48,21,458
Fu Lee Hong Company Limited	53,71,85,373
Keshar Trade HK Ltd	27,04,19,402
RK Trading HK Ltd	21,36,25,350
Miracle Trading HK Limited	16,89,80,364
Crown Gems	10,76,84,056
Crystal King Limited	10,63,31,229
TOTAL	**952,00,26,744**

24.4. DRI, Surat, vide e-mail dated 30.03.2023 forwarded the letter F. No. DRI/AZU/SRU/B/INV-01/2023 (DRI/AZU/SRU/B/INV-02/2023 & DRI/AZU/SRU/C/INV-03/2023) dated 30.03.2023 **(RUD-90)** tothe Group Chief Compliance Officer, **IDBIBank Limited** to provide the copy of AOF, KYC details, bank statement for the period April-2019 to Feb-2023 and the details of foreign inward and outward remittances regarding M/s Sagar Diamonds Limited, SEZ, Surat (PAN:AAWCS0068B), M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat (PAN:ABFCS6904A) and M/s RHCGlobal Exports Pvt Ltd, SEZ, Surat (PAN:AAJCR3808D). Vide e-mail dated 31.03.2023 and 10.04.2023 **(RUD-91)** thebank informed that as per their data base there are 03 bank accounts (0051102000121927, 0051102000124126, 0051102000122900) of M/s Sagar Diamonds Limited, SEZ, Surat and 03 bank accounts of (0051102000122856, 0051102000124195 and 0051102000122924) of M/s RHCGlobal Exports Pvt Ltd, SEZ, Surat. They further informed that as per their data base, they did not have any bank account maintained by M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat. The Bank provided the AOF, KYC and bank statement of the bank account 0051102000121927, 0051102000124126 pertaining to M/s Sagar Diamonds Limited, SEZ, Surat. Further, Bank vide e-mail dated 10.08.2023 **(RUD-92)** informed that no transaction has been noticed in bank account no. 0051102000122900 of M/s Sagar Diamonds Limited and further informed that as per their records, there is no foreign inward/outward remittances done by M/s Sagar Diamonds Limited and M/s RHCGlobal Exports Pvt Ltd. On scrutiny of the bank statement, no major inward/outward transaction was noticed in the bank account 0051102000124126 of M/s Sagar Diamonds Limited. The details of the major inward and outward transactions in bank account no. 0051102000121927 is tabulated below:

Table 21: Details of major Inward and Outward transaction in bank account no. 0051102000121927 of Sagar Diamonds Limited

Inward/Deposits	
Description	**Amount (Rs.)**
AKASH CORPORATION	15,13,00,000
BIZFLY IMPEX PVT LTD	11,59,00,000
HERONS EXIM	10,15,00,000

Outward/Withdrawls	
Description	**Amount (Rs.)**
SG DIAMONDS	612261185.9

PRIVATE LIMITED	

24.5. DRI, Surat, vide e-mail dated 30.03.2023 forwarded the letter F. No. DRI/AZU/SRU/B/INV-01/2023 (DRI/AZU/SRU/B/INV-02/2023 & DRI/AZU/SRU/C/INV-03/2023) dated 30.03.2023 **(RUD-93)** tothe Chief Compliance Officer, **HDFCBank Limited,** to provide the copy of AOF, KYC details, bank statement for the period April-2019 to Feb-2023 and the details of foreign inward and outward remittances regarding M/s Sagar Diamonds Limited, SEZ, Surat (PAN:AAWCS0068B), M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat (PAN:ABFCS6904A) and M/s RHCGlobal Exports Pvt Ltd, SEZ, Surat (PAN:AAJCR3808D). Vide e-mail dated 24.05.2023 **(RUD-94)**, HDFCBank Limited informed that as per their data base they have 03 bank accounts **(50200029078643, 50200032215287, 57500000020877)** of M/s Sagar Diamonds Limited, 01 bank accounts bearing no. **50200056688182** of M/s Sagar Empire Jewels Pvt Ltd, and 01 bank account bearing **50200040777231** of M/s RHCGlobal Exports Pvt Ltd, SEZ, Surat. Bank vide e-mail dated 24.05.2023 provided customer details and account summary of the above said accounts. Vide e-mail dated 25.08.2023 **(RUD-95)**,the bankprovided the AOF and KYC of the bank account 50200029078643, 50200032215287 and 50200056688182 and inward remittance in the bank account no. 50200029078643. Further, vide e-mail dated 03.09.2023 **(RUD-96)**, bank provided the AOF and KYC of the bank account 50200032215287 & 50200040777231 and further informed that the foreign outward remittances are NIL. On scrutiny of the above documents, it appears that bank account no. 50200029078643 of M/s Sagar Diamonds Limited was used for foreign inward remittances. The summary of the major inward and outward transaction in the above said bank accounts maintained with HDFC Bank for the period under consideration, is as below:

Table 22: Summary of the Major Inward and Outward Transaction from HDFC Accounts of M/s Sagar Diamonds Limited

Account No.	Unit Name	Total Credit	Total Debit
50200029078643	Sagar Diamonds Limited	8837,50,87,693	8836,40,59,592
50200032215287	Sagar Diamonds Limited	42,00,882	42,00,882
57500000020877	Sagar Diamonds Private Limited	18,08,48,100	18,08,48,100

Further, it appears that there were no foreign outward remittances from the accounts maintained with HDFC Bank by these 3 SEZ units. The bank account no. 50200029078643 of M/s Sagar Daimond Limited was used for foreign inward remittances. Details of the same are as under:

Table 23: Details of Inward Foreign remittances received from overseas firms through HDFC Bank by M/s Sagar Diamonds Limited

Name of overseas firm	Amount (in Rs.)
MARS IND COMM SERVICES LIMITED	3,63,64,017

24.6. DRI, Surat, vide e-mail dated 30.03.2023 forwarded letter F. No. DRI/AZU/SRU/B/INV-01/2023 (DRI/AZU/SRU/B/INV-02/2023 & DRI/AZU/SRU/C/INV-03/2023) dated 30.03.2023 **(RUD-97)** tothe Senior President and Interim Chief Compliance Officer, **YesBank Limited** to provide the copy of AOF, KYC details, bank statement for the period

April-2019 to Feb-2023 and the details of foreign inward and outward remittances regarding M/s Sagar Diamonds Limited, SEZ, Surat (PAN:AAWCS0068B), M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat (PAN:ABFCS6904A) and M/s RHCGlobal Exports Pvt Ltd, SEZ, Surat (PAN:AAJCR3808D). Vide e-mail dated 19.04.2023 **(RUD-98),** bank informed that they have searched their records for account related to above said firms, and found that PAN: AAWCS0068B of M/S Sagar Diamonds Ltd, linked with A/c no. 018961900005060, and 114063400000287. A/c no. 018961900005060 of M/S Sagar Diamonds Ltd was opened on 06/01/2018 and closed on 12/07/2019. A/c no. 114063400000287 of of M/S Sagar Diamonds Ltd is opened on 20/04/2021 and closed in our records on 05/11/2022. M/s RHC Global Exports Pvt Ltd, PAN: AAJCR3808D and M/S Sagarempire Jewels Pvt Ltd, PAN: ABFCS6904A does not hold any account/relationship with Yes bank Ltd in any of its branches as on date either singly or jointly with any other persons."

Yes Bank Limited provided the AOF, KYC and bank statement of above said accounts numbers. On scrutiny of the documents it appears that the account no 018961900005060 does not have any transaction and the details of the transaction of account no. 114063400000287 is as below:

Table 24: Transaction Details of Yes Bank Account of M/s Sagar Diamonds Limited

Account No.	Unit Name	Total Credit	Total Debit
114063400000287	Sagar Diamonds Limited	5729,92,97,153	5729,92,97,153

Yes Bank further informed that "*There is Nil foreign Inward/Outward Remittance details for the said accounts 018961900005060 and 114063400000287*".

24.7. DRI, Surat vide e-mail dated 30.03.2023 forwarded the letter F. No. DRI/AZU/SRU/B/INV-01/2023 (DRI/AZU/SRU/B/INV-02/2023 & DRI/AZU/SRU/C/INV-03/2023) dated 30.03.2023 **(RUD-99)** tothe Chief Group Compliance Officer, **Axis Bank Limited,** to provide a copy of AOF, KYC details, bank statement for the period April-2019 to Feb-2023 and the details of foreign inward and outward remittances regarding M/s Sagar Diamonds Limited, SEZ, Surat (PAN:AAWCS0068B), M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat (PAN:ABFCS6904A) and M/s RHCGlobal Exports Pvt Ltd, SEZ, Surat (PAN:AAJCR3808D). Vide e-mail dated 04.04.2023 **(RUD-100),** bank informed that as per their records, they have 02 bank accounts (**916020074041235** and **922020006187669**) of Sagar Diamonds Limited and 01 bank account no. **922020004483824** of RHCGlobal Exports Pvt Ltd and provided a copy of AOF, KYC documents and bank statement for the above said bank accounts. On scrutiny of the bank statements of the above said bank accounts of Sagar Diamonds Limited and RHCGlobal Exports Private Limited maintained with Axis Bank Limited, the total credit and debit details is shown as below:

Table 25: Details of Debit and Credit in Axis Bank Account of M/s Sagar Diamonds Limited

Account No.	Unit Name	Total Credit	Total Debit
916020074041235	Sagar Diamonds Ltd	13,30,000	13,44,791

File No. GEN/ADJ/ADC/336/2024-DIV-SRT-CUS-COMMRTE-AHMEDABAD (Computer No. 1152369)
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922020006187669	Sagar Diamonds Ltd	4,70,00,000	54,65,01,298

Further, vide e-mail dated 15.04.2023 **(RUD-101)** Axis Bank Limited provided the details of foreign inward and outward remittances for account number 916020074041235 of Sagar Diamonds Ltd. Axis Bank Limited vide e-mail dated 12.08.2023 **(RUD-102)**, informed that there was NIL foreign inward and outward remittances in case of M/s RHC Global Export Pvt Ltd. On scrutiny of the above said foreign inward and outward remittances, it appears that M/s. Sagar Diamonds Ltd had made foreign outward transaction to the tune of 24.48 crores to a number of Hong Kong based firms in lieu of the payment against their import and received Rs.64.98 Lakh from only one firm as a payment received against their exported goods. The details of such foreign inward and outward remittances is as under:

Table 26: Details of Outward Foreign remittances from Axis Bank Account of M/s Sagar Diamonds Limited

Name of overseas firm	Amount (in Rs.)
PACE GEMS MIDDLE EAST DMCC	11,06,05,181
GOLD IMAGE ASIA LIMITED	10,46,69,875
SHOSAAN ASIA PACIFIC	2,27,27,853
SHOSAAN ASIA PTE LTD	68,35,608
TOTAL	**24,48,38,518**

Table 27: Details of Inward Foreign remittances received in Axis Bank Account of M/s Sagar Diamonds Limited

Description	Amount (in Rs.)
PACE GEMS MIDDLE EAST DMCC	64,98,000

24.8. DRI, Surat vide e-mail dated 30.03.2023 forwarded letter F. No. DRI/AZU/SRU/B/INV-01/2023 (DRI/AZU/SRU/B/INV-02/2023 & DRI/AZU/SRU/C/INV-03/2023) dated 30.03.2023 to the Chief Compliance Officer, Laxmi Vilas Bank, to provide a copy of AOF, KYC details, bank statement for the period April-2019 to Feb-2023 and the details of foreign inward and outward remittances regarding M/s Sagar Diamonds Limited, SEZ, Surat (PAN:AAWCS0068B), M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat (PAN:ABFCS6904A) and M/s RHCGlobal Exports Pvt Ltd, SEZ, Surat (PAN:AAJCR3808D). Further reminder e-mails dated 30.03.2023, 08.08.2023 and 04.01.2024 **(RUD-103)** have also been sent but till date no reply has been received.

24.9. DRI, Surat vide e-mail dated 30.03.2023 forwarded the letter F. No. DRI/AZU/SRU/B/INV-01/2023 (DRI/AZU/SRU/B/INV-02/2023 & DRI/AZU/SRU/C/INV-03/2023) dated 30.03.2023 **(RUD-104)** tothe Group Chief Group Compliance Officer, **Punjab NationalBank,** to provide the copy of AOF, KYC details, bank statement for the period April-2019 to Feb-2023 and the details of foreign inward and outward remittances regarding M/s Sagar Diamonds Limited, (PAN:AAWCS0068B), M/s Sagar Empire Jewels Pvt Ltd, (PAN:ABFCS6904A) and M/s RHCGlobal Exports Pvt Ltd, (PAN:AAJCR3808D). Vide e-mail dated 23.08.2023 **(RUD-105)**, thebank provided the list of accounts linked to above said PAN. On

scrutiny of the said list, it appears that Sagar Diamonds Limited maintained 01 bank account bearing no. 4452002100008329, Sagar Empire Jewels Pvt Ltd maintained 02 bank accounts 0439002100116818 and 0439002800000138, and RHCGlobal Exports Pvt Ltd maintained 01 bank account bearing no. 4452002100008310 with PNB. The Punjab National Bank further provided the bank account statement of the account nos. 4452002100008329,0439002100116818 and 4452002100008310, however, they have not provided the bank account statement for the account 0439002800000138 and the details of the foreign inward and outward transaction related to the above said accounts. Further, vide e-mail dated 28.08.2023 **(RUD-106)**, bank provided the AOF and KYC of RHCGlobal Exports Pvt Ltd. only. Reminder e-mail to provide the remaining details was sent to Punjab National Bank on 04.01.2024 however the reply is still awaited. The details of the inward and outward transaction in the above said bank account of Sagar Diamonds Limited, Sagar Empire Jewels Pvt Ltd & RHCGlobal Exports Pvt Ltd are as under:

Table 28: Details of Inward and Outward Transaction in PNB account of M/s Sagar Diamonds Limited

Account No.	Unit Name	Total Credit	Total Debit
4452002100008329	Sagar Diamonds Limited	66,16,383	66,16,383

24.10. DRI, Surat vide e-mail dated 30.03.2023 forwarded letter F. No. DRI/AZU/SRU/B/INV-01/2023 (DRI/AZU/SRU/B/INV-02/2023 & DRI/AZU/SRU/C/INV-03/2023) dated 30.03.2023 **(RUD-107)** tothe Chief Group Compliance Officer, **Standard CharteredBank,** to provide a copy of AOF, KYC details, bank statement for the period April-2019 to Feb-2023 and the details of foreign inward and outward remittances regarding M/s Sagar Diamonds Limited, (PAN:AAWCS0068B), M/s Sagar Empire Jewels Pvt Ltd, (PAN:ABFCS6904A) and M/s RHCGlobal Exports Pvt Ltd, (PAN:AAJCR3808D). Vide e-mail dated 15.04.2023 **(RUD-108)** bank informed that as per their data base, they were maintaining 02 bank account of Sagar Diamonds Limited and 02 bank accounts of RHCGlobal Exports Pvt Ltd, and provided the AOF and KYC of both firms and bank account statement of the 03 banks (as one bank account of RHCGlobal Exports Pvt Ltd was dormant). Further, vide e-mail dated 02.11.2023 **(RUD-109)** bank further provided the details of the foreign outward remittances made by Sagar Diamonds Limited. The details of the bank account are as under:

Table 29: Details of Standard Chartered Bank Account of M/s Sagar Diamonds Limited

Sr. No.	PAN No.	Account No.	Name	Current Status	Closed On
1	AAWCS0068B	23605086685	M/S Sagar Diamonds Limited	Closed	23/05/2022
2	AAWCS0068B	USD 23605081403	M/S Sagar Diamonds Limited	Closed	23/05/2022

On scrutiny of the bank account statements of M/s Sagar Diamonds Limited, it appears that no major domestic transaction had been made. However, the summary of the foreign outward remmitences made by Sagar Diamonds Limited to the overseas firms are as under:

Table 30: Details of Outward Foreign Remittances by Sagar Diamonds Limited through Standard Chartered Bank

Name of overseas firm	Amount (in Rs.)
MIRACLE MPS LIMITED	3,79,08,943
EURO TECH INTERNATIONAL TRADING	74,14,125
K DIAM LTD	67,66,627
STALLION LIMITED	62,68,012
DHRUV INTERNATIONAL HK LIMITED	28,37,450
B S ENTERPRISES	24,04,066
EURO TECH INTERNATIONAL	22,85,640
SHIV DIAMOND	22,48,217
DIARECT MARKETING LIMITED	15,74,899
CSY INTERNATIONAL PTE LTD	12,10,755
N V INTERNATIONAL	10,46,100
TOPSTAR ONE LIMITED	8,50,000
DIVIJA IMPEX	6,64,105
FANCY COLOR DIAMOND HK LTD	5,19,750
GRAND CO	4,30,000
NAV YASH EXIM LIMITED	3,00,000
TOTAL	**7,47,28,690**

24.11. DRI, Surat, vide e-mail dated 30.03.2023 forwarded letter F. No.DRI/AZU/SRU/B/INV-01/2023 (DRI/AZU/SRU/B/INV-02/2023 & DRI/AZU/SRU/C/INV-03/2023) dated 30.03.2023 **(RUD-110)** tothe Chief Compliance Officer & Principal Officer, **IndusIndBank Ltd,** to provide the copy of AOF, KYC details, bank statement for the period April-2019 to Feb-2023 and the details of foreign inward and outward remittances regarding M/s Sagar Diamonds Limited, (PAN:AAWCS0068B), M/s Sagar Empire Jewels Pvt Ltd, (PAN:ABFCS6904A) and M/s RHCGlobal Exports Pvt Ltd, (PAN:AAJCR3808D). Vide e-mail dated 02.05.2023 **(RUD-111)** bank informed that on the basis of PAN based search of PAN AAWCS0068B and AAJCR3808D the below mentioned accounts were found maintained with them:

Table 31: Details of Bank Accounts of M/s Sagar Diamonds Limited in IndusInd Bank

Sr. No.	Account No.	Account Name	Account Type	Account Opening Date	Account Closed Date	Status
1	201001305716	Sagar Diamonds Limited	Current	16.5.2017	8.2.2019	Closed

File No. GEN/ADJ/ADC/336/2024-DIV-SRT-CUS-COMMRTE-AHMEDABAD (Computer No. 1152369)
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2	201003603339	Sagar Diamonds Limited	EEFC (USD)	3.8.2019	5.2.2021	Closed
3	201001305723	Sagar Diamonds Limited	EEFC (USD)	16.5.2017	20.3.2019	Closed
4	201003072784	Sagar Diamonds Limited	Current	14.1.2019	-	Dormant

The IndusInd Bank Ltd provided a copy of Account Opening form along with KYC documents for the Account No. 201001305716, 201003072784, 201003217697 and 259825024714. Further, the IndusInd Bank Ltdprovided the bank statement for Account No. 201003072784, 201003217697 and 259825024714 as the Account No. 201001305716, 201003603339 and 201001305723 were closed prior to April-2019. The bank further informed that no account linked with PAN ABFCS6904 was maintained by them. The summary of inward and outward transaction in the above said account is as under:

Table 32: Summary of Transactions from the IndusInd Account of M/s Sagar Diamonds Limited

Account No.	Unit Name	Total Credit	Total Debit
201003072784	Sagar Diamonds Limited	418,31,40,725	419,40,95,994

The IndusInd Bank Ltdvide e-mail dated 10.05.2023 **(RUD-112)** provided details of the foreign inward and outward transaction done by both the firms: The summary of the same is as under:

Table 33: Details of Outward Foreign Remittances of Sagar Diamonds Limited through IndusInd Bank

Name of overseas firm	Amount (in USD)
MIRACLE MPS LIMITED	12846971
GRAND CO	11778395
VAMASTAR H K LIMITED	7095982
EURO TECH INTERNATIONAL	3559605
STALLION LIMITED	1970000
MANYA GEMS HK LTD	1912402
CSY INTERNATIONAL	1427545
AADI IMPEX	1425000
GRAND CO.	1225346
ADVANCE CENTURY	1000000
VENUS IMPEX TRADING LIMITED	736900
NAV YASH EXIM LIMITED	300000
MIRACLE MPS LIIMITED	203302
SHOSAAN ASIA PACIFIC	159000
GOLD IMAGE ASIA LIMITED	89000

TOTAL	45729448

Table 34: Inward Foreign Remittances received by Sagar Diamonds Limited through IndusInd Bank Account

Description	Amount (in USD)
ZHAN HONG TRADE HK LIMITED	1,80,73,630

24.12. DRI, Surat, vide e-mail dated 30.03.2023 forwarded the letter F. No. DRI/AZU/SRU/B/INV-01/2023 (DRI/AZU/SRU/B/INV-02/2023 & DRI/AZU/SRU/C/INV-03/2023) dated 30.03.2023 **(RUD-113)** tothe Chief Compliance Officer, **IDFC FirstBank Limited,** to provide the copy of AOF, KYC details, bank statement for the period April-2019 to Feb-2023 and the details of foreign inward and outward remittances regarding M/s Sagar Diamonds Limited, SEZ, Surat (PAN:AAWCS0068B), M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat (PAN:ABFCS6904A) and M/s RHCGlobal Exports Pvt Ltd, SEZ, Surat (PAN:AAJCR3808D). IDFC First Bank Limited vide e-mail dated 01.04.2023 **(RUD-114)** informed that they have traced their data base and found below accounts linked with the given details.

Table 35: Details of Bank Accounts of M/s Sagar Diamonds Limited in IDFC Bank

Account Number / UCIC	Name of the firm	Email Address
10088676324	Sagarempire Jewels Private Limited	sagarempirejewels@gmail.com
10055588628	Rhcglobal Exports Private Limited	rahil.chovatiya@outlook.com
10055946721	Sagar Diamonds Limited	accounts@sagardiamond.com

IDFC First Bank Limited provided the AOF and KYC details only. Further vide e-mail dated 17.04.2023, 27.10.2023 and 05.01.2024, the bank was requested to provide the bank statement of the above mentioned bank accounts but no reply has been received till date.

24.13. DRI, Surat vide e-mail dated 30.03.2023 **(RUD-115)** and reminder e-mail dated 17.04.2023 and 09.08.2023 **(RUD-116)** forwarded letter F. No. DRI/AZU/SRU/B/INV-01/2023 (DRI/AZU/SRU/B/INV-02/2023 & DRI/AZU/SRU/C/INV-03/2023) dated 30.03.2023 tothe Chief General Manager (Compliance), **State Bank of India,** to provide a copy of AOF, KYC details, bank statement for the period April-2019 to Feb-2023 and the details of foreign inward and outward remittances regarding M/s Sagar Diamonds Limited, SEZ, Surat (PAN:AAWCS0068B), M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat (PAN:ABFCS6904A) and M/s RHCGlobal Exports Pvt Ltd, SEZ, Surat (PAN:AAJCR3808D). The bank vide e-mail dated 09.08.2023 **(RUD-117)** provided the AOF, KYC and Bank statement of account no. 39392347980 of Sagar Diamonds Limited, account no. 41345219298 of Sagar Empire Jewels Pvt Ltd and account no. 39583280574 of RHCGlobal Exports Pvt Ltd. On scrutiny of the said bank statements, it appears that the above said bank accounts were used for payment to the overseas firms and the amount credited in the above said bank account were transferred to the overseas firms within 1-2 days.

24.14. DRI, Surat vide e-mail dated 30.03.2023 **(RUD-118)** forwarded letter F. No. DRI/AZU/SRU/B/INV-01/2023 (DRI/AZU/SRU/B/INV-02/2023 & DRI/AZU/SRU/C/INV-03/2023) dated 30.03.2023 **(RUD-119)** tothe Group Chief Compliance Officer, **ICICI Bank Limited,** to provide a copy of AOF, KYC details, bank statement for the period April-2019 to Feb-2023 and the details of foreign inward and outward remittances regarding M/s Sagar Diamonds Limited, SEZ, Surat (PAN:AAWCS0068B), M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat (PAN:ABFCS6904A) and M/s RHCGlobal Exports Pvt Ltd, SEZ, Surat (PAN:AAJCR3808D). The Bank vide e-mail dated 21.04.2023 **(RUD-120)** informed that they reviewed their database provided the following details regarding the above said firms:

Table 36: Details of Bank Accounts with respect to Sagar Diamonds Limited in ICICI Bank

Sr No.	PAN No.	Name of account holder	Account number	Type of account	Account open date	Account close date
1	AAWCS0068B	Sagar Diamonds Limited	LASUR00043164228	Loan_Rapg	12-Feb-2021	-
2	AAWCS0068B	Sagar Diamonds Limited	123805005479	Current	02-Sep-2020	-
3	AAWCS0068B	Sagar Diamonds Limited	123813010175	Fixed Deposit	09-Sep-2021	-
4	AAWCS0068B	Sagar Diamonds Limited	698205600153	Current	04-Jun-2018	07-Sep-2021
5	AAWCS0068B	Sagar Diamonds Limited	123810006704	Fixed Deposit	31-May-2021	01-Jun-2021

ICICI Bank Limited provided the bank account statement of the above mentioned accounts, AOF and KYC of M/s Sagar Diamonds Limited and M/s RHCGlobal Exports Pvt Ltd and further informed that as per their data base they did not have any account of Sagar Empire Jewels Pvt Ltd. Out of the above said accounts, bank statement of the current accounts of the firms were scrutinized and the summary of the same is as under:

Table 37: Details of Credit and Debit in the ICICI Bank Account of M/s Sagar Diamonds Limited

Account No.	Unit Name	Total Credit	Total Debit
123805005479	Sagar Diamonds Limited	4268,82,43,866	4268,45,50,468
698205600153	Sagar Diamonds Limited	9,094	2,08,247

Further, as the bank did not provide details of foreign outward and inward remittances of Sagar Diamonds Limited and RHCGlobal Exports Pvt Ltd, therefore, a reminder e-mail dated 09.08.2023, 27.10.2023 and 05.01.2024 **(RUD-121)** was sent to the bank to provide the foreign outward and inward remittances, however, the reply is awaited.

25. As seen above, since a few banks had provided partial details even after many reminders, therefore, the details regarding the foreign inward and outward transaction made by M/s Sagar Diamonds Limited, SEZ, Surat (PAN:AAWCS0068B), M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat (PAN:ABFCS6904A) and M/s RHCGlobal Exports Pvt Ltd, SEZ, Surat (PAN:AAJCR3808D) were called for from the respective firms. Vide e-mail dated 08.01.2024 **(RUD-122)**, M/s Sagar Diamonds Limited provided the above said details of foreign inward and outward transactions, the summary of the same is tabulated below:

Table 38: Summary of the Foreign Outward Remittances of M/s Sagar Diamonds Limitedfrom April, 2019 to February, 2023

S. No	Name of the overseas firms	Amount (INR)
1	MIRACLE MPS LIMITED	1011,63,59,312
2	SUN TAI HK LTD	979,48,15,677
3	CROWN GEMS	648,04,59,308
4	GEMS STAR TRADING FZE	615,29,84,758
5	JIYA IMPEX DMCC	502,54,05,053
6	COLOR CREATIONS LIMITED	413,52,23,818
7	UNIQUE DIA LIMITED	405,51,15,340
8	ESTRADE INTERNATIONAL LTD	402,12,62,488
9	KESHAR TRADE HK LIMITED	369,22,94,960
10	GLORY DIAMOND FZE	362,98,45,975
11	SUN RAYS HK LIMITED	296,48,20,537
12	ADVANCE CENTURY INC LIMITED	207,85,39,539
13	LEE FU SHING COMPANY LIMITED	196,87,43,012
14	FU LEE HONG COMPANY LIMITED	146,81,15,479
15	VENUS IMPEX TRADING LTD	111,01,12,999
16	GRAND CO.	95,54,66,246
17	EURO TECH INTERNATIONAL TRADING LIMITED	91,54,24,729
18	MIRACLE TRADING HK LIMITED	85,86,72,694
19	MARS IND & COMM SERVICES LTD	59,39,28,133
20	STALLION LIMITED	57,39,89,342
21	K. DIAM LTD	51,53,67,267
22	VAMA STAR (H.K.) LIMITED	46,46,43,168
23	CSY INTERNATIONAL PTE LTD	32,15,52,660
24	D STAR DMCC	28,93,45,159
25	RK TRADING HK LIMITED	26,65,16,734
26	GLORY DIAMOND	23,57,22,423
27	DHRUV INTERNATIONAL (HK) LIMITED	21,71,35,189
28	BEL DIAM LTD	20,24,01,835
29	DIARECT MARKETING LIMITED	17,07,12,430
30	B.S ENTERPIRSES	17,04,12,726
31	SHIV DIAMOND	15,72,05,530
32	MANYA GEMS HK LTD	13,58,58,877
33	NV INTERNATIONAL	13,42,78,370
34	ANHUI QIHANG SUPPLY CHAIN MANAGEMENT	12,32,12,000
35	CRYSTAL KING LIMITED	10,63,37,329
36	AADI IMPEX	10,16,53,271
37	RAJH GEMS (HK)	8,78,49,000
38	LIME TRADING	5,62,68,747
39	FAMASIA LIMITED	5,13,29,860
40	AADI HK LTD	5,12,03,206
41	DIVIJA IMPEX	4,75,48,075
42	NAV YASH EXIM LIMITED	4,27,81,552
43	TOPSTAR ONE LIMITED	4,27,05,255
44	KOEMATLIFF PRIVATE LIMITED	3,70,94,090

45	FANCY COLOR DIAMOND (HK) LTD	3,59,85,856
46	FUYANG FUSON SUPPLY	2,06,91,800
47	WINNING IMPEX LTD	69,35,613
	TOTAL	**7468,43,27,419**

Table 39: Summary of Foreign Inward Remittance received by M/s Sagar Diamonds Limited

S. No	Name of the firms	Amount (INR)
1	MARS IND & COMM SERVICES LTD	134,55,23,791
2	WINNING IMPEX LTD	69,35,613
	Total	**135,24,59,404**

From the investigation carried out on the basis of bank statement of various firms/companies from which the inflow of money had taken place in bank accounts of M/s SDL SURSEZ, it appears that these firms/companies were either dummy/non-existent/bogus in which no actual business was taking place and they only indulged in paper transaction without any physical movement of goods. It appears that these firm/ companies used to transfer money from one to another and finally into the account of M/s SDL SURSEZ in order to enable it to siphon off the money to overseas suppliers.

LEGAL PROVISIONS:-

26. The provisions of law applicable in the instant case are as follows: -

26.1. As per M. C. & I. (DC), Notification NO. S.O.319 (E) dated 14.03.2006, The "Surat Special Economic Zone, Surat" has to be treated as "port" under Section 7 of Customs Act, 1962.

Thus, the SEZ area is to be treated as a territory outside the customs territory of India and Surat SEZ is to be treated as port. Further, a unit situated in SEZ is required to carry out authorised operations in SEZ and execute a Bond-cum-Legal Undertaking with regard to its obligations regarding proper utilization and accounting of goods, including capital goods, spares, raw materials, components and consumables including fuels, imported or procured duty free and regarding achievement of positive net foreign exchange earnings.

26.2. As per M. C. & I. (DC), Notification NO. S.O.2665 (E) dated 05.08.2016, issued under Section 21 of the SEZ Act,2005, offences under Section 28, 28AA, 28AAA, 74, 75, 111, 113, 115, 124, 135 and 104 of the Customs Act,1962 have been notified as offences under SEZ Act, 2005.

26.3. As per Section 53 of the SEZ Act, 2005, a Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the Customs territory of India for the purposes of undertaking the authorized operations. The Ministry of Commerce and Industry vide its Notification No.S.O. 319(E) dated 14.3.2006 had appointed Surat Special Economic Zone as a "Customs Port" under Section 7 of the Customs Act, 1962.

26.4. As per Rules 22 (1)(i) of SEZ Rules, 2006, Grant of exemption, drawbacks and concession to the entrepreneur or Developer shall be subject to the following conditions, namely:—

"the Unit shall execute a Bond-cum-Legal Undertaking in Form H, with regard to its obligations regarding proper utilization and accountal of goods, including capital goods, spares, raw materials, components and consumables including fuels, imported or procured duty free and regarding achievement of positive net foreign exchange earning."

26.5. As per Rule 27(10) of SEZ Rules, 2006, the assessment of imports by a unit, shall be on the basis of self assessment and shall not be subjected to routine examination.

26.6. As per Rule 34 of SEZ Rules, 2006, Utilization of the goods admitted into the SEZ shall be used by the unit only for carrying out the authorized operations.

26.7. As per Rule 47(4) of SEZ Rules, 2006 Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made thereunder.

26.8. As per Rule 48(1) of SEZ Rules, 2006; the DTA unit shall file Bill of Entry giving therein complete description of goods with the Authorized Officer.

26.9. As per Rule 48(2) of SEZ Rules, 2006, Valuation of the goods cleared into Domestic Tariff Area shall be determined in accordance with provisions of Customs Act and rules made thereunder as applicable to goods when imported into India.

26.10. As per Rule 75 of SEZ Rules, 2006 all inward or outward movement of goods into and from the zone by the unit shall be based on self-declaration made and no routine examination of these goods shall be made.

26.11. As per Section 2(3A) of the Customs Act, 1962 "beneficial owner" means any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported;

26.12. As per Section 2(14) of the Customs Act, 1962; "dutiable goods" means any goods which are chargeable to duty and on which duty has not been paid;

26.13. As per Section 2(20) of the Customs Act, 1962 "exporter", in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner, beneficial owner or any person holding himself out to be the exporter;

26.14. As per Section 2(26) of the Customs Act, 1962 "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer

26.15. As per Section 2(39) of the Customs Act, 1962, "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113.

26.16. Section 11A of the Customs Act, 1962 defines "illegal import" as the import of any goods in contravention of the provisions of the Customs Act or any other law for the time being in force.

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26.17. Section 11H of the Customs Act, 1962 defines "illegal export" as the export of any goods in contravention of the provisions of this Act or any other law for the time being in force.

26.18. As per section 111(m) of the Customs Act, 1962, any goods which do not correspond in respect of value or in any other particular, with the entry made under this Act or in the case of baggage with the declaration made under section 77; in respect thereof or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54 are liable to confiscation.

26.19. As per section 111(o) of the Customs Act, 1962, any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed, unless the non-observance of the condition was sanctioned by the proper officer, are liable to confiscation.

26.20. As per Section 112(a) of the Customs Act, 1962, any person, who, in relation to any goods, does or omits to do any act, the commission or omission of which would render such goods liable to confiscation under section 111 of the Act, or abets the doing, or omission of such an act shall be liable to penalty.

26.21. As per Section 112(b) of the Customs Act, 1962, any person, who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable to penalty.

26.22. As per Section 114AA of the Customs Act, 1962, 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.

26.23. As per Section 114 of the Customs Act, 1962, "Penalty for attempt to export goods improperly, etc."—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, shall be liable,—

(i) xxxxxx;

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded or five thousand rupees, whichever is the greater;

(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

26.24. As per Section 117 of the Customs Act, 1962, any person who contravenes any provision of the Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees.

26.25. As per Rule 9 of Customs Valuation (Determination of Value of Import Goods) Rules, 2007- Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these Rules.

26.26. As per Rule 6 of the Customs Valuation (Determination of Price of Exported Goods) Rules, 2007,according to which, the value shall be determined using reasonable means consistent with the principles and general provisions of these Rules.

SUMMARY AND DISCUSSION ON EVIDENCES:

27. Whereas, from the facts discussed in the foregoing paras and material evidences in the form of seized goods i.e. Silver pendant studded with synthetic ruby and deposition dated 03.03.2023 of Shri Hirenbhai Bipinbhai Trivedi, deposition dated 06.03.2023 of Shri Ajit Khushal Shah, deposition dated 10.03.2023 of Ms. Sanjana Kalambe and Shri Santosh Nimbaji Sonar, statement dated 18.05.2023 of Shri Saurin R Shah, Statement of various other persons recorded as discussed in foregoing paras, panchnama dated 13.10.2023 and 17.10.2023 drawn at IDI, Katargam, Surat for lab testing of detained goods, panchnama dated 08.12.2023 for valuation of the detained goods, Bank Statements, KYC documents, Account Opening Forms (AOF) and the documents available on record, the investigation revealed the following:-

I. There appears to be mis-declaration before the SEZ/Customs Authority on import of 'Synthetic Ruby' in guise of 'Cut and Polished Precious Stone (Ruby)' and overstatement of value of imported goods to the tune of Rs.9275,81,51,898/- instead of the actual value Rs.5,69,78,996/- during the period from 01.04.2019 to 01.03.2023.

II. There appears to be mis-declaration before the SEZ/Customs Authority on export of 'Synthetic Ruby' studded silver pendant in guise of 'Silver Jewellery studded with Ruby' and overstatement of value of exported goods to the tune of Rs.9507,29,68,954/- instead of the actual value Rs.17,31,64,457/- during 01.04.2019 to 01.03.2023.

III. There appears to be routing of money by illegal means through banking channel (without actual business) and siphoning off Rs.7468.43 crore from India to Hong Kong and other countries against import of goods in SEZ, a well created Trade based Money Laundering (TBML) system.

28. From the investigation conducted, it appears that:

(i) M/s Sagar Diamonds Limited was incorporated on 15.07.2015 in the name of M/s Sagar Diamonds Private Limited and converted to a public limited company in the name of M/s Sagar Diamonds Limited on 04.07.2017.

(ii) M/s Sagar Diamonds Limited had set up its manufacturing unit in Surat SEZ at Plot No 266-B, SEZ Diamond Park, Sachin, Sachin, Surat, Gujarat, 394230 (GSTIN: 24AAWCS0068B1ZE) under the Letter of Approval No. SSEZ/II/006/2016-17 dated

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24.10.2016 issued by the Development Commissioner, Surat SEZ, Sachin, Surat. The Approval Committee vide 96th Meeting had approved the change of constitution and share holding pattern of M/s SDL SURSEZ.

(iii) M/s SDL SURSEZ was engaged in the import of 'Synthetic Ruby' in guise of 'Cut and polished Precious Stone (Ruby)'. The said SEZ unit manufactured the silver pendant by studding the said synthetic ruby on it and exported the synthetic ruby studded pendant in guise of '92.5 percent (Ruby) precious stone studded silver jewellery'

(iv) Shri Vaibhav Dipak Shah, Managing Director of M/s SDL SURSEZ was the person who controlled overall operation of the said SEZ unit. He gave all the instructions related to receipt of the import consignment, manufacturing and export thereof. On the instruction of Shri Vaibhav Dipak Shah, Shri Hirenbhai Bipinbhai Trivedi, Manager cum Authorized signatory was managing all day-to-day activities of M/s SDL SURSEZ as corroborated with the statement dated 03.03.2023 of Shri Hirenbhai Bipinbhai Trivedi and statement dated 18.05.2023 of Shri Saurin R Shah, Ex Director of M/s SDL SURSEZ.

(v) **Trade Based Money Laundering (Modus Operandi):** M/s Sagar Diamonds Limited (GSTIN:24AAWCS0068B1ZE) was established in SEZ, Surat with the sole intention of siphoning off money from India to overseas through banking channels. Though they have taken LOA for manufacturing of various items including *"Precious & Semi Precious Stone and CZ Diamond studded silver jewellery"* and imported synthetic ruby (a cheap item) from the very first consignment. A Mumbai based branch in the name of M/s Sagar Diamonds Limited (GSTIN: 27AAWCS0068B1Z8) unit was also set up so that a common bank account for both the units can be opened (as PAN number is same for both the units).The inflow of money in bank accounts had taken place through DTA transactions (no physical movement of goods or rarely the physical movement of goods) through various bogus/dummy firms using fake invoices. It appears that when an import was done, the said amount was siphoned off from the said common bank account to overseas supplier as a payment against the import. They made payments regularly for import consignments. M/s SDL SURSEZ had exported the synthetic ruby after studding in silver pendant. M/s SDL SURSEZ had received minimal payments against export consignments of Silver jewellery studded with synthetic ruby. By adopting such modus operandi, they managed to siphon off Rs.7468.43 Crore from India to Hong Kong and UAE.

(vi) Shri Vaibhav Dipak Shah, Managing Director of M/s Sagar Diamonds Limited with the help of Shri Rahil Hiteshbhai Chovatia, Ex Director of SDL SURSEZ and Shri Saurin Shah, Ex Director of SDL SURSEZ hatched a well managed conspiracy to carry out Trade Based Money Laundering. They planned to import synthetic ruby in guise of 'Cut and Polished Precious Stone (Ruby)' and exported synthetic ruby studded silver pendant in the guise of Precious Stone Studded Silver Jewellery from/to Hong Kong & UAE based firms. They declared 'Cut &

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Polished Precious Stone (Ruby)' in their import documents in order to enable them to siphon off huge amount of money in foreign currency i.e. dollars. They used synthetic ruby as a raw material so that they do not have to invest in expensive item leading to blocking of finances in their company. By adopting such modus operandi, M/s Sagar Diamonds Limited mis-declared the description of goods as well as value of goods before the SEZ/Customs authorities. M/s Sagar Diamonds Limited not only made the false declaration regarding the description of the goods before the SEZ/Customs authority but also overstated the value of imported goods i.e. Synthetic Ruby to the tune of Rs. 9275,81,51,898/- instead of the actual value of Rs 5,69,78,996/- during the period from 01.04.2019 to 01.03.2023. Further, it appears that M/s SDL SURSEZ had overstated the values of exported goods to the tune of Rs 9507,29,68,954/- instead of the actual value of Rs.17,31,64,457/ in order to siphon off huge amount of money outside India. On scrutiny of the documents submitted by M/s SDL SURSEZ and M/s Rekha Shipping Agency, CHA, it appears that M/s Sagar Diamonds Limited had siphoned off Rs.7468.43Crores from India to Hong Kong/UAE through the banking channel. The said fact was corroborated with the seizure of the goods, lab testing of the goods and the valuation thereof and bank statements of M/s Sagar Diamonds Limited received from respective banks, bank books of the firms, panchnamas/visit note drawn at various firms with whom business was shown in GST returns.

(vii) It appears that the M/s Sagar Diamonds Limited has not conducted any business activities from its unit in DTA and the firm was having common bank accounts for its DTA unit and SEZ unit and it appears that the payment of import/export were settled through the common bank accounts. The relevant GST returns filed by DTA unit situated in Mumbai (GSTIN: 27AAWCS0068B1Z8) were scrutinized and it appears that the firm had shown inward/outward GST supplies in its relevant GST returns i.e. in GSTR-2A/GSTR-1.

(viii) From the investigation conducted at the end of buyer of M/s Sagar Diamonds Limited as shown in its GSTR-1 returnsand from the visit note/panchnama drawn during search of the premises/statements of the concerned persons of buyer firms, it appears that M/s Sagar Diamonds Limited have conducted genuine business with a few firms whereas in other cases the firms to whom M/s Sagar Diamonds Limited had shown outward supplies in their returns were non-existent/bogus firm. Therefore, it appears that M/s Sagar Diamonds Limited had shown the supplies on paper only and no physical movement of goods has taken place. It also appears that M/s Sagar Diamonds Limited had made outward supply to the firms whose profile show that they were engaged in the business of commodity which was not in co-relation with the business activities of M/s Sagar Diamonds Limited.

(ix) Similarly, it also appears from the scrutiny of GSTR-2A that M/s Sagar Diamonds Limited had received inward supplies from number of firms and investigation was extended to the firms from whom the major inward supplies had been taken place. It

appears from the visit note/panchnama drawn at the premises and statements of the concerned persons of the supplier firms that M/s Sagar Diamonds Limited had done genuine business with a few firms whereas in other case M/s Sagar Diamonds Limited had shown as received inward supplies in their returns from non-existent/bogus firms, that they had received the supplies on paper only and no physical movement of goods had been taken place.

(x) It appears from the financial investigation that M/s Sagar Diamonds Limited managed credit in the common bank account of M/s Sagar Diamonds Limited. In a few cases, those creditor firms had no co-relation with the business activities of M/s Sagar Diamonds Limited and the amount so credited in the bank accounts of M/s Sagar Diamonds Limited was transferred to Hong Kong on the same day or within 1-2 days. Therefore, it appears that M/s Sagar Diamonds Limited was used for the purpose of Trade Based Money Laundering by mis-declaration before the Customs/SEZ authority and by adopting such modus operandi, M/s Sagar Diamonds Limited (through its director), siphoned off Rs.7468.43 Crores from India to Hong Kong & other countries.

(xi) It appears thatM/s Sagar Diamonds Limited was also abetted by Hong Kong/UAE/Singapore based companies/firms who exported/supplied 'synthetic ruby' but raised commercial invoices showing overstated value by declaring the description of goods as "Cut and Polished Precious Stone (Ruby)". Thus, it appears that if those firms had not raised fake/bogus commercial invoices in terms of value, M/s Sagar Diamonds Limited would not be able to siphon off crores of rupees (in Dollar) through banking channels against the value of goods which had never been received by M/s SDL SURSEZ.

(xii) It further appears that M/s SDL SURSEZ was also abetted by Hong Kong/UAE/Singapore based consignee companies/firms who entered into transaction with the M/s SDL SURSEZ and accepted the fake/bogus invoices showing description of goods as "Precious Stone Studded Silver Jewellery" though in actuality the goods were synthetic ruby studded silver pendant. Thus, the Hong Kong / UAE based buyers have abetted M/s Sagar Diamonds Limited, Surat in completing its business cycle by accepting synthetic ruby studded jewellery (silver pendant) and made payment to M/s SDL SURSEZ against its export consignments.

CONTRAVENTION AND CHARGES:
EXTENDED PERIOD

29. In view of the facts mentioned hereinabove, Shri Hirenbhai Bipinbhai Trivedi, Production Manager cum Authorized Signatory of M/s. SDL, SURSEZ in his statement has accepted the test report of the precious stone ruby, imported by his company, during the panchnama drawn by the Directorate of Enforcement and stated that the said imported ruby was not natural but synthetic ruby. Shri Hirenbhai Bipinbhai Trivedi has also accepted in his statement that the quality of Ruby imported by his company till then was similar to that of Ruby sent

for testing. Shri Hirenbhai Bipinbhai Trivedi was working as Production Manager cum Authorized Signatory of M/s. SDL, SURSEZ since its inception. He was well aware about the real nature and value of Ruby imported by M/s SDL SURSEZ. M/s SDL SURSEZ had set up units in DTA in Surat as well as in Mumbai also along with unit in SEZ having several common bank accounts in different banks and had shown business of trading of Rough diamonds/ Diamonds/ Gold in DTA units. The inflow of money in bank account has taken place through DTA transactions through various dummy firms and when they import goods into SEZ unit, the said money was siphoned off from the said common bank accounts to overseas supplier. It also appears that similar modus was adopted during export consignments. Money was received in common bank account after exporting the consignment from the overseas supplier. Although they had exported the imported ruby after studding the same in jewellery (silver pendant) but money realization of the said transactions is minimal.

29.1 It appears from the statement of Shri Saurin Shah, the Director of M/s SDL SURSEZ at the material time that he was hired as a director especially for liason with government officials to clear the import consignments in SEZ. Shri Saurin Shah was working as per the directions of Shri Vaibhav Dipak Shah, Managing Director of M/s SDL SURSEZ and investigation has revealed that both of them were fully aware about the true value of imported ruby. M/s SDL SURSEZ, through its Managing Director and then director on record i.e. Shri Rahil Hiteshbhai Chovatia and Shri Saurin Shah, appear to have knowingly indulged in import of synthetic ruby in the guise of cut & polished precious stones (Ruby), export of synthetic ruby studded silver jewellery in guise of Silver Pendant studded with Ruby from M/s SDL SURSEZ by way of willful mis-statement and suppression of facts, and have therefore, knowingly and deliberately indulged in mis-declaration of their imported as well as the exported goods and engaged in Trade Based Money Laundering. Hence, it appears that extended period for penal action for misdeclaration of goods is invocable in terms of Customs Act, 1962.

RE-CLASSIFICATION

30. It appears that M/s SDL SURSEZ had classified synthetic ruby under CTH 71023910/71039990 at the time of import in the Bills of Entry filed before Customs/SEZ authorities. However, from the test reports issued by IDI the goods declared as 'Cut and Polished Precious stones (Ruby)' by M/S SDL SURSEZ were 'Synthetic Ruby'. Thus, it appears that the synthetic ruby imported by M/s SDL SURSEZ should be reclassified under CTH 71049900 as synthetic ruby (gemstones).

It appears that M/s SDL SURSEZ had exported 'cut & polished precious stones (ruby) studded pendant and classified the same under CTH 71131120/71131130 as Precious tone (Ruby) studded silver jewellery in the shipping bills filed before Customs/SEZ authorities and the same should be reclassified under CTH 71162000 as articles of Ruby (gemstones).

REJECTION OF DECLARED VALUE OF CUT AND POLISHED PRECIOUS STONE (RUBY):-

31. In view of the facts discussed in the foregoing paras and the material evidences available on record, it appears that M/s SDL SURSEZ

have contravened the provisions of Customs Act, 1962 & SEZ Act, 2005 read with conditions specified in LOP/LOA No. SSEZ/II/006/2016-17 dated 24.10.2016, as amended, issued by the Development Commissioner, Surat SEZ in connivance with Shri Saurin Shah and Rahil Hiteshbhai Chovatia and Hong Kong based suppliers and buyers. It appears that Shri Vaibhav Dipak Shah, Managing Director of M/s SDL SURSEZ had hatched a conspiracy to siphon off money through bank accounts of M/s Sagar Diamonds Limited. It appears that M/s SDL SURSEZ had imported synthetic ruby and exported silver pendant studded with synthetic ruby by declaring the same as "cut and polished precious stones (ruby)". It appears that M/s SDL SURSEZ had not only mis-declared the description of goods but as well as value of the goods. Shri Hirenbhai Bipinbhai Trivedi, Production Manager cum Authorized Signatory of M/s. SDL, SURSEZaccepted that the quality of Ruby imported by his company till then were similar as that of Ruby sent for testing during the panchnama drawn by the ED officers. It appears that they have overstated the value of import and export consignments as the value declared was for natural Ruby but in actuality cheap synthetic ruby have been imported.

Further, it also appears that the Ruby studded in Pendant ready for export which were seized from the factory premises of M/s SDL SURSEZ under Panchnama dated 02/03.03.2023 were also reported to be synthetic ruby after lab tests.

31.1 Therefore, the declared value on the invoices and import documents in respect of goods declared as 'Cut and polished precious stones (Ruby)' as shown in **Annexure-A** to the IR (already Customs cleared) cannot be treated as correct transaction value in terms of the provisions of Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of Value of the Imported Goods) Rules, 2007 and the same appears to be liable for rejection in terms of Rule 12 of the Customs Valuation (Determination of Price of Imported Goods) 2007 ibid.

31.2 Similarly, the value declared on the invoices and export documents in respect of goods declared as '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery' by M/s SDL SURSEZ as shown in **Annexure-B** to the IR (already Customs cleared) cannot be treated as correct transaction value in terms of the provisions of Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of Value of the Exported Goods) Rules, 2007 and the same appears to be liable for rejection in terms of Rule 8 of the Customs Valuation (Determination of Price of Exported Goods) 2007 ibid.

31.3 After the rejection of the declared assessable value for **import** consignments of synthetic Ruby declared as 'cut and polished precious stone (Ruby)' as detailed in **Annexure-A to IR** (already Customs cleared) needs to be re-determined on pro rata basis of the actual value determined by GJEPC expert panel under Panchnama dated 08.12.2023 by taking recourse to the provisions of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) & Rule 9 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007, according to which, the value shall be determined using reasonable means consistent with the principles and general provisions of this Rules.

31.4. In view of the facts discussed in foregoing Paras and material evidence available on record, it appears that M/s. SDL SURSEZ had mis-declared the total assessable value of synthetic Ruby as

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Rs.9275,81,51,898/- imported during the period from 01.04.2019 to 01.03.2023 at SEZ port, Surat as against the actual assessable value of Rs.5,69,78,996/- as re-determined and detailed in Annexure-A to the SCN. Therefore, the declared assessable value of Rs.9275,81,51,898/- is required to be re-determined under Section 14(1) of the Customs Act, 1962 read with Rule 3(1) read with Rule 9 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007**.**

31.5 After rejection of the declared assessable value for **export**consignments of Synthetic ruby studded in silver pendant as detailed in **Annexure-B** to IR(already Customs cleared) needs to be re-determined on pro rata basis of the actual value of ruby determined by GJEPC expert panel under Panchnama dated 08.12.2023 by taking recourse to the provisions of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) & Rule 6 of the Customs Valuation (Determination of Price of Exported Goods) Rules, 2007, according to which, the value shall be determined using reasonable means consistent with the principles and general provisions of these Rules.

31.6 In view of the facts discussed in foregoing Paras and material evidence available on record, it appears that M/s. SDL SURSEZ had mis-declared the total assessable value of synthetic ruby studded silver jewellery as Rs.9507,29,68,954/- before Customs/SEZ authorities for the exports during the period from 01.04.2019 to 01.03.2023 from SEZ port, Surat as against the actual assessable value of Rs.17,31,64,457/- as detailed in Annexure-B to the IR. Therefore, the declared assessable value of Rs.9507,29,68,954/- is required to be re-determined under Section 14(1) of the Customs Act, 1962 read with Rule 3(1) read with Rule 6 of the Customs Valuation (Determination of Price of Exported Goods) Rules, 2007**.**

32. CONFISCATION OF SYNTHETIC RUBY

32.1 In view of the facts discussed in the foregoing paras and the material evidences available on record, it appears that M/s SDL SURSEZ have contravened the provisions of Customs Act, 1962 & SEZ Act, 2005 read with conditions specified in LOP/LOA No. SSEZ/II/006/2016-17 dated 24.10.2016 issued by the Development Commissioner, Surat SEZ in favour of M/s. SDL SURSEZ. Further, it also appears that the import of synthetic ruby by them by wiful mis-statement and suppression of facts in a pre-determined manner to derive illegal benefits, were in contravention to the provisions of Customs Act, 1962, Foreign Trade (Development and Regulation) Act, 1992 and Foreign Trade (Regulation) Rules 1993. The import of synthetic ruby by M/s SDL SURSEZ by willfully mis-stating the description of goods, their classification and suppressing the actual value before the designated authority of Customs/SEZ authorities causes the import to fall under the category of "illegal imports" as per Section 11A (a) of the Customs Act, 1962 and the said act on their part shall be construed as "smuggling" as defined in Section 2(39) of the Customs Act, 1962. Further, it appears that all these acts on the part of M/s SDL SURSEZ have rendered the impugned goods i.e.synthetic ruby imported during the period from 01.04.2019 to 01.03.2023 totally weighing 5179909 carats valued at Rs.5,69.78,996/- (re-determined value) (as per Annexure-A to the SCN) liable to confiscation under the provisions of Section 111 (m) & (o) of the Customs Act, 1962 and M/s SDL SURSEZ is also liable for penalty under **Section 112(a) & (b)** of the Customs Act, 1962. Penalty is also liable to be

imposed on it under **Section 114AA** of Customs Act, separately, since synthetic ruby were deliberately mis-declared in Bills of Entry in terms of description and value. It appears that the **seized 1768 pieces of synthetic ruby** (studded in silver pendant) valued at **Rs.18,92,663/-** (re-detrmined value) (included in Annexure-A) were imported by M/s SDL SURSEZ through various Bills of Entry. The said seized 1768 pieces of synthetic ruby (studded in silver pendant) which were imported by willful mis-statement of the description of goods and by suppressing the actual value before the designated authority of Customs/SEZ are liable to confiscation under the provisions of Section 111 (m) & (o) of the Customs Act, 1962.

32.2 Further, M/s SDL SURSEZ have also mis-declared before the competent authority that they were exporting cut & polished ruby studded silver jewellery, whereas in fact they were exporting synthetic ruby studded silver jewelley. It appears that the export of said synthetic ruby studded jewelley by them by willfully mis-stating the description and suppressing the value of the goods in a pre-determined manner to derive illegal benefits, were in contravention of the provisions of the Customs Act, 1962, Foreign Trade (Development and Regulation) Act, 1992 and Foreign Trade (Regulation) Rules 1993. Therefore, the exports made by them on the strength of false declaration by suppressing the actual description of goods and value falls under the category of "illegal export" as defined in Section 11H of the Customs Act, 1962 and the said act on their part construes "smuggling" as defined in Section 2(39) of the Customs Act, 1962. All these acts on the part of M/s SDL SURSEZ have rendered the exported synthetic ruby studded jewellery totally weighing 1686010 gram valued at Rs.17,31,64,457/- (Rupees Seventeen Crores Thirty One Lakh Sixty Four Thousand Four Hundred Fifty Seven only) (re-determined value) as detailed in Annexure-B,liable to confiscation under the provisions of Section 113 (i) of the Customs Act, 1962 and persons involved would be liable to penalty under **Section 114** of Customs Act, 1962. Penalty is also liable to be imposed under **Section 114AA** of Customs Act, separately, since synthetic ruby studded silver jewelley were deliberately mis-declared on its behalf in terms of description and value in export documents.

33.

PERSONAL PENALTY: -

33.1 It appears that**Shri Vaibhav Dipak Shah**, Managing Director of M/s SDL SURSEZ hatched a conspiracy with Shri Rahil Hiteshbhai Chovatia, Ex Director, Shri Saurin Shah, Ex Director and Hong Kong based persons for smuggling of synthetic ruby in guise of 'cut and polished precious stone (ruby)' from Surat SEZ and Trade Based Money Laundering. It appears that Shri Vaibhav Dipak Shah was controlling the overall activities including import and export of M/s SDL SURSEZ and was in regular contact of Hong Kong based firms to control and manage the smuggling activities from M/s SDL SURSEZ and siphoned off Rs.7468,43,27,419/- from India to Hong Kong & other countries. It appears that Shri Vaibhav Dipak Shah personally interviewed and hired employees of M/s SDL SURSEZ and instructed from time to time regarding production, preparation of invoices, export documents in favour of specific overseas buyers, recording of banking transactions etc. He also managed the money credited in bank accounts without any physical movement of goods by non-existent /dummy firms with the help of Shri Rahil Hiteshbhai Chovatia.

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33.2 It appears that Shri Vaibhav Dipak Shah had digitally signed and submitted the Bills of Entry on behalf of SEZ entity, but he has not joined the investigation and has never appeared for recording his statement u/s 108 of Customs Act, 1962. Thus, his statement regarding his role in import/export and TBML could not be recorded and therefore his role was established on the basis of oral and material evidences on record gathered during the investigation. From the evidences on record, it appears that Shri Vaibhav Dipak Shah Shah was having knowledge that since the first import of ruby, M/s SDL SURSEZ had imported synthetic ruby in the guise of natural cut and polished ruby and exported the synthetic ruby studded silver jewellery in guise of cut & polished ruby studded silver jewellery. By adopting such modus operandi, he enabled Rs.7468.43 crore to be sent out of India to Hong Kong and other countries. He took benefit of Rules 14, 46 and 75 of SEZ Rules, 2006 which allowed the import of goods without examination by SEZ authorities, and defrauded the Government exchequer. It appears that the whole modus of smuggling of ruby and trade base money laundering was designed and masterminded by Shri Vaibhav Dipak Shah.

Thus, it appears that Shri Vaibhav Dipak Shah intentionally mis-declared synthetic ruby during import in the guise of 'cut and polished precious stone (Ruby)' in contravention of SEZ Act, 2005, SEZ Rules, 2006 and Customs Act, 1962 and allied Acts & Rules made thereunder which he knew were liable to confiscation under Section 111(m) and 111(o). Further, it also appears that he intentionally mis-declared Silver Pendant studded with ruby in export documents which he knew were liable to confiscation under Section 113(i) of Customs Act, 1962, thereby rendering himself liable to penal action under **Section 112(a) & 112(b), 114, and 117** of the Customs Act, 1962. Since he mis-declared the goods in terms of description and value of imported/exported good in documents to hood wink Customs and SEZ authorities, he is liable for penal action under **Section 114AA** of Customs Act, separately in his personal capacity.

It appears that **Shri Rahil Hiteshbhai Chovatia** was appointed as Director of M/s SDL SURSEZ on 29.05.2017. It appears that Shri Rahil Hiteshbhai Chovatia operated the bank accounts of M/s SDL SURSEZ jointly with Shri Vaibhav Dipak Shah and forwarded the OTP (One time Password) to the concerned persons of M/s SDL SURSEZ for financial transactions. It appears that Shri Rahil Hiteshbhai Chovatia was well aware about the modus of siphoning off the money out of India by using the bank accounts of SDL SURSEZ. It appears that Shri Rahil Hiteshbhai Chovatia was instrumental in arranging the money which have to be credited in the bank accounts of M/s Sagar Diamonds Limited from various bogus/non-existent firms. Shri Rahil Hiteshbhai Chovatia has not joined the investigation and has never appeared for recording his statement u/s 108 of Customs Act, 1962. Thus, his statement regarding his role in import/export and TBML could not be recorded and therefore his role was established on the basis of oral and material evidences gathered during the investigation. It appears that Shri Rahil Hiteshbhai Chovatia was well aware about the mis-declaration of synthetic ruby at the time of import by M/s SDL SURSEZ in contravention of SEZ Act, 2005; SEZ Rules, 2006 and Customs Act, 1962 and allied Acts & Rules made thereunder which he knew were liable to confiscation under Section 111(m) and 111(o). Further, it also appears that Shri Rahil Hiteshbhai Chovatia was well aware of the mis-declararation of synthetic

ruby studded in silver pendant which he knew were liable to confiscation under Section113(i) of Customs Act, 1962. He has thereby rendered himself liable for penal action under **Section 112(a) & 112(b), 114, and 117** of the Customs Act, 1962.

33.3. It appears that **Shri Saurin Rasiklal Shah**, Director (Retired) of M/s SDL SURSEZ was appointed as Director in SDL SURSEZ during December, 2020 on a salary of Rs.5,00,000/- per month for liaison with Government offices. He played a vital role in clearance of import consignment put on hold at Surat SEZ due to pending BRC against export by SDL SURSEZ.It appears that Shri Saurin Rasiklal Shah was well aware about the mis-declaration of synthetic ruby at the time of import by M/s SDL SURSEZ in contravention of SEZ Act, 2005, SEZ Rules, 2006 and Customs Act, 1962 and allied Acts & Rules made thereunder which he knew was liable to confiscation under Section 111(m) and 111(o) of the Customs Act. Further, it also appears that Shri Saurin Rasiklal Shah was well aware of the mis-declararation of synthetic ruby studded in silver pendant which he knew were liable to confiscation under Section113(i) of Customs Act, 1962. By his acts of commission and omission he has rendered himself liable for penal action under **Section 112(a) & 112(b), 114 and 117** of the Customs Act, 1962.

33.4 It appears that **Shri Hirenbhai Bipinbhai Trivedi** was working as Production Manager cum Authorised signatory of M/s SDL SURSEZ since its inception. He received instructions from Shri Vaibhav Dipak Shah regarding the name of consignee and country details to whom the studded jewellery had to be exported. It appears that Shri Hirenbhai Bipinbhai Trivedi was instructed to prepare the export invoices of approximately USD 7,00,000 by matching with import consignment and showing value addition of 6% on import value. It appears that for the purpose of export invoicing, Shri Hirenbhai Bipinbhai Trivedi selected the ruby studded silver jewellery randomly in order to arrive at the invoice value of around USD 7,00,000. It appears that Shri Hirenbhai Bipinbhai Trivedi was well aware about the mis-declaration of synthetic ruby at the time of import by M/s SDL SURSEZ which was in contravention of SEZ Act, 2005, SEZ Rules, 2006 and Customs Act, 1962 and allied Acts & Rules made thereunder which he knew was liable to confiscation under Section 111(m) and 111(o). Further, it also appears that Shri Hirenbhai Bipinbhai Trivedi was well aware of the mis-declararation of synthetic ruby studded in silver pendant which he knew were liable to confiscation under Section113(i) of Customs Act, 1962. By his acts of commission and omission he has rendered himself liable for penal action under **Section 112(a) & 112(b), 114, 114AA and 117** of the Customs Act, 1962.

33.5. It further appears that the exporters/suppliers based in Hong Kong, Singapore, China & UAE, as mentioned in table below, indulged in conspiracy with Shri Vaibhav Dipak Shah and exported synthetic ruby and raised invoices to M/s SDL SURSEZ showing supply of 'cut and polished precious stone (Ruby)'. It appears that all the Hong Kong based suppliers/exporters have abetted M/s SDL SURSEZ in overstating the value in their invoices and received crores of foreign exchange from M/s SDL SURSEZ though the actual value of import was very less. The details of synthetic ruby and its actual value supplied by the overseas suppliers/exporters are as under: -

Table 40: Details of Declared vis-a-vis Actual Value of Synthetic Ruby in Imports

S.	Name of the Overseas	Total Declared CIF	Actual value of

No.	Suppliers	Value of the goods (in Rs.)	synthetic ruby (as per valuation provided by the GJEPC panel of expert) @ Rs. 11/-
1	2	3	4
1.	MARS IND & COMM SERVICES LTD	2073,95,95,996	30,15,308
2.	SUN TAI HK LTD	910,96,89,558	13,53,766
3.	MIRACLE MPS LIMITED	627,79,49,907	1,42,49,861
4.	SUN RAYS HK LIMITED	622,64,30,568	8,66,757
5.	GEMS STAR TRADING F.Z.E	553,65,75,009	8,87,255
6.	CROWN GEMS	509,09,47,863	66,16,619
7.	ZHAN HONG TRADE (HK) LIMITED	487,58,92,180	12,17,076
8.	KESHAR TRADE (HK)LTD	427,08,30,881	5,69,026
9.	UNIQUE DIA LIMITED	413,16,42,948	5,59,775
10.	ESTRADE INTERNATIONAL LTD	233,78,76,567	2,95,921
11.	GLORY DIAMOND FZE	225,51,42,589	3,40,428
12.	LEE FU SHING COMPANY LIMITED	224,39,50,073	3,20,150
13.	COLOR CREATIONS LIMITED	210,45,71,798	2,63,694
14.	ADVANCE CENTURY INC LIMITED	204,71,33,435	3,96,227
15.	KJ TRADING CO.	174,59,20,032	2,21,037
16.	FU LEE HONG COMPANY LIMITED	154,41,93,304	2,20,525
17.	JIYA IMPEX DMCC	154,41,68,650	2,35,538
18.	VENUS IMPEX TRADING LIMITED	151,46,12,317	70,71,856
19.	PINK STAR HK LTD	112,19,08,539	1,47,105
20.	EURO TECH INTERNATIONAL TRADING LIMITED	103,57,40,652	4,86,783
21.	MIRACLE TRADING HK LIMITED	95,39,75,079	1,25,084
22.	MIRACLE PRIVATE LIMITED	95,08,25,660	1,24,671
23.	CSY INTERNATIONAL PTE LTD	76,97,28,547	3,38,565
24.	GRAND CO	75,56,31,570	1,40,01,524
25.	RK TRADING HK LTD	53,85,18,922	73,894
26.	ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD	51,26,44,705	2,09,229
27.	K.DIAM LTD	35,58,35,206	1,31,574
28.	AADI IMPEX	28,88,09,963	14,83,834
29.	CRYSTAL KING LIMITED	26,86,31,372	37,128
30.	UNNATI GENERAL TRADING LIMITED	26,59,58,436	41,157
31.	PACY CORPORATION LTD.	22,24,76,415	99,451
32.	DIARECT MARKETING LIMITED	22,01,05,872	54,715
33.	BEL DIAM LTD	20,44,22,561	53,257
34.	STALLION LIMITED	14,84,55,900	68,860
35.	SHIV DIAMOND	10,00,77,300	46,420
36.	NV INTERNATIONAL.	7,44,30,015	34,870
37.	VERIOT TECHNOLOGIES PTE LTD	5,77,00,464	7,566

38.	FAMASIA LIMITED	5,29,11,981	10,672
39.	AADI HK LTD	5,26,90,003	10,627
40.	KOEMATLIFF PRIVATE LIMITED	5,22,54,832	8,438
41.	VITAL ENERGY FZE	4,95,24,480	21,120
42.	SPINEL HOUSE (HK)	4,94,44,538	21,670
43.	FANCY COLOR DIAM (HK) LTD	3,69,80,213	17,325
44.	LIME TRADING.	2,13,45,000	6,22,642
	TOTAL	**9275,81,51,898**	**5,69,78,996**

Therefore, by the above said acts of omission & commission made by the overseas suppliers mentioned in Column 2 of above table, they have abetted M/s SDL SURSEZ and other persons involved in import of synthetic ruby (in carats) having declared value detailed in respective row of Column no.3 of the above table and re-determined value detailed in respective row of Column no.4 in contravention of SEZ Act, 2005; SEZ Rules, 2006 and Customs Act, 1962 and allied acts & rules, which they knew would render the said goods liable to confiscation under Section 111(m) and 111(o) and would render themselves liable for penal action under **Section 112(a), 112(b) and 117** of the Customs Act, 1962. They all raised commercial invoices to M/s SDL SURSEZ which were inflated in value as synthetic ruby was exported by them in guise of cut and polished precious stone (Ruby) and the same were produced before the Customs/SEZ authorities for assessment at the time of filing of bills of entry and by the act of issuing overstated commercial invoice they abetted M/s SDL SURSEZ in siphoning off of Rs.7468.43 crores from India and thereby rendered themselves liable for penalty under **Section 114AA** of Customs Act also.

33.6. It further appears that Hong Kong/Singapore/UAE based consignee companies/firms, as detailed in table below, indulged in conspiracy with Shri Vaibhav Dipak Shah and imported (at Hong Kong/Singapore/UAE) synthetic ruby studded jewellery in the guise of '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery' while accepting inflated invoices raised by M/s SDL SURSEZ showing receipt of '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery' but till date they have made very few payments. Thus, they all abetted M/s SDL SURSEZ in siphoning off money to the tune of Rs.7468.43 crores by helping him in showing an actual business being carried out in Surat SEZ by way of accepting synthetic ruby studded jewellery though on paper it was shown as cut and polished ruby and the value was accordingly inflated.. The details of synthetic ruby studded jewellery and its actual value received from M/s SDL SURSEZ are as under: -

Table 41: Details of the Declared vis-à-vis Actual Value of Exports from Sagar Diamonds Limited

S. No.	Name of the overseas Consignee and buyer	FOB Value of goods (in Rs.)	Actual Value; as determined by GJEPC Panel of Expert (in Rs.)
1	**2**	**3**	**4**
1	MARS IND & COMM SERVICES LIMITD	65,03,35,28,752	15,08,88,988
2	SINOVAC LIMITED	14,63,40,02,239	97,10,771
3	ZHAN HONG TRADE HK LIMITED	7,30,86,35,898	52,06,823

4	XNOVA HK LIMITED	4,39,33,00,031	27,07,912
5	XNOVA LIMITED	1,73,76,31,603	11,01,528
6	GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED	98,34,06,384	18,26,662
7	JUMBO LINKS (FZE) HK LTD	78,60,31,393	14,54,177
8	CSY INTERNATIONAL PTE LTD	9,78,04,081	1,70,317
9	T G INTERNATIONAL DMCC	7,81,15,980	61,641
10	SAIVASCULAR PTE LTD	2,05,12,594	35,638
	Total	**95,07,29,68,954**	**17,31,64,457**

Therefore, with the above said acts of omission & commission made by the overseas buyer mentioned in Column 2 of above table, they abetted M/s SDL SURSEZ and other persons involved in export of synthetic ruby studded jewellery having declared value detailed in respective row of Column no.3 and re-determined value detailed in respective row of Column no.4 in contravention of SEZ Act, 2005; SEZ Rules, 2006 and Customs Act, 1962 and allied acts & rules which they knew were liable for confiscation under Section 113(i) and rendered themselves liable for penal action under **Section 114 and 117** of the Customs Act, 1962. They all accepted mis-declared commercial invoices raised by M/s SDL SURSEZ showing description of goods as '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery' though in actuality the goods were synthetic ruby studded jewellery and they thereby abetted in mis-declaration and over-inflation of value in commercial invoices by M/s SDL SURSEZ which were produced before the Customs/SEZ authorities for assessment at the time of filing of shipping bill and by the said act of accepting overstated & mis-declared commercial invoices, they abetted M/s SDL SURSEZ in completing cycle of business and thereby, rendered themselves liable for penalty under **Section 114AA** of Customs Act also.

As per Section 46 & 50 of the Customs Act, 1962 the assessement of the imports/exports shall be on the basis of self – declaration and it is the responsibility of the importer/exporter to ensure that he declares the correct value in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. Since the noticee appears to violate the provisions of Section 46 & 50 which the noticee appears to duty – bound to comply with, but for which no express penalty is provided elsewhere for such contravention or failure, the noticee shall also be liable to penalty under Section 117 of the Customs Act, 1962.

34. Now, therefore, **M/s Sagar Diamonds Limited**, Plot No 266-B, Surat Special Economic Zone, Sachin, Surat-394230 is hereby called upon to show cause in writing to the Additional Commissioner, Customs, Surat having his office situated at 5th Floor, Customs House, Beside SMC Ward Office, Althan Bhimrad Road, Althan, Surat – 395007 within thirty days of receipt of this Notice, as to why: -

34.1 the Synthetic Ruby weighing 51,79,909 carat classified under CTH 71023910 & 71039990 declared as 'Cut & Polished Precious Stone (Ruby)' in the Bills of Entry filed before Customs/SEZ authorities (as detailed in Annexure-A) should not be rejected and re-classified under CTH 71049900 as 'Synthetic ruby'

34.2. the 16,86,010 grams of 'Synthetic ruby studded silver jewellery' classified under CTH 71131120 & 71131130 declared as '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery' in the Shipping Bills filed before Customs/SEZ authorities ((as detailed in Annexure-B) should not be rejected and reclassified under CTH 71162000 as synthetic ruby studded jewellery.

34.3 the assessable value of Synthetic Ruby weighing 51,79,909 carat, imported during the period from 01.04.2019 to 01.03.2023, to the tune of **Rs.9275,81,51,898/-** (Nine Thousand Two Hundred Seventy Crores Eighty One Lakh Fifty One Thousand Eight Hundred Ninety Eight only) should not be rejected in terms of the provisions of Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of Value of the Imported Goods) Rules, 2007 and the in terms of provisions of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) read with Rule 9 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 and the value should not be re-determined as **Rs.5,69,78,996/- (Rupees Five Crores Sixty Nine Lakh Seventy Eight Thousand Nine Hundred Ninety Six only)** in terms of provisions of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) read with Rule 9 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 as detailed in Annexure-A.

34.4 The FOB value of **16,86,010 grams**of 'Synthetic ruby studded silver jewellery', exported during the period from 01.04.2019 to 01.03.2023, to the tune of **Rs.9507,29,68,954/-** (Rs. Nine Thousand Five Hundred Seven Crores Twenty Nine Lakh Sixty Eight Thousand Nine Hundred Fifty Four only) should not be rejected in terms of the provisions of Section 14 of the Customs Act, 1962 read with Rule 8 of the Customs Valuation (Determination of Price of Exported Goods Rules) 2007 and the value should not be re-determined as **Rs.17,31,64,457/- (Rs. Seventeen Crores, Thirty One lakhs, Sixty Four Thousand, Four Hundred Fifty Seven only)** in terms of provisions of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) read with Rule 6 of the Customs Valuation (Determination of Price of Exported Goods) Rules, 2007 as detailed in Annexure-B.

34.5 The consignments of synthetic ruby of **51,79,909 carats**, imported during the period from 01.04.2019 to 01.03.2023, valued at **Rs.5,69,78,996/- (Rupees Five Crores Sixty Nine Lakh Seventy Eight Thousand Nine Hundred Ninety Six only)**(re-determined value as per Annexure-A to the SCN) **should not be held** liable to confiscation under the provisions of Section 111 (m) & (o) of the Customs Act, 1962. Out of these, the **1768 pieces** of seized synthetic ruby (35458.05 Carat) (studded in silver pendant totally weighing 17202.32 Gram) valued at **Rs.18,92,663/-** are physically available and seized during investigation.

34.6 the exported synthetic ruby studded silver jewellery totally weighing 1686010 gram valued at **Rs.17,31,64,457/- (Rs. Seventeen Crores, Thirty One lakhs, Sixty Four Thousand, Four Hundred Fifty Seven only) (re-determined value)** as detailed in Annexure-Bshould not be held liable to confiscation under the provisions of Section 113 (i) of the Customs Act, 1962.

34.7. Penalty should not be imposed upon them **separately** under Section 112(a), 112(b) and 117 of the Customs Act, 1962 for overstating the value of imported synthetic ruby in Bills of Entry.

34.8. Penalty should not be imposed on them under Section 114 of the Customs Act, 1962 for overstating the value of synthetic ruby studded jewellery exported by them.

34.9. Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962 as the imported and exported goods were deliberately mis-declared in its documents **separately**.

35. Now, therefore, **Shri Vaibhav Dipak Shah**, Managing Director of M/s Sagar Diamonds Limited, havinf corporate office at 903, 9th Floor, The Embassy Centre Premises CHS Ltd, Jamnalal Bajaj Marg, Nariman Point, Mumbai, Maharashtra-400021 (Resident of Room No. 9, 1st Floor, Dadarkar House, 5/7, Vithalbhai Patel Road, Next Vimal Showroom, Girgaon, Mumbai-400004), is hereby called upon to show cause in writing to the to the Additional Commissioner, Customs, Surat having his office situated at 5th Floor, Customs House, Beside SMC Ward Office, Althan Bhimrad Road, Althan, Surat – 395007, within thirty days of receipt of this Notice, as to why:

- Penalty should not be imposed upon on him under Section 112(a), 112 (b), 114, 117, and 114AA of the Customs Act, 1962 **separately**.

35.2 Now, therefore **Shri Rahil Hiteshbhai Chovatia, Ex. Director of M/s SDL SURSEZ** (resident of A-19, Jaldarshan Flats, Opp. Natraj Cinema, Ashram Road, Ahmedabad **or**40, Sawan Society, Insanpur Road, Maninagar, Ahmedabad), is hereby called upon to show cause in writing to the to the Additional Commissioner, Customs, Surat having his office situated at 5th Floor, Customs House, Beside SMC Ward Office, Althan Bhimrad Road, Althan, Surat – 395007, within thirty days of receipt of this Notice, as to why:-

- Penalty should not be imposed upon on him under Section 112(a), 112 (b), 114 and 117 of the Customs Act, 1962 **separately**.

35.3 Now, therefore, **Shri Saurin Rasiklal Shah, Ex. Director of M/s SDL SURSEZ** (resident of B-101, Shreeji Enclave, oppoiste Sajan Apartment, Near Anand Cross Road, Satellite, Ahmedabad), is hereby called upon to show cause in writing to the to the Additional Commissioner, Customs, Surat having his office situated at 5th Floor, Customs House, Beside SMC Ward Office, Althan Bhimrad Road, Althan, Surat – 395007, within thirty days of receipt of this Notice, as to why:-

- Penalty should not be imposed upon on him under Section 112(a), 112 (b), 114 & 117 of the Customs Act, 1962 **separately**.

35.4. Now, therefore, **Hirenbhai Bipinbhai Trivedi, Production Manager Cum Authorised Signatory of M/s SDL SURSEZ** (resident of 104, Radhe apartment, Shardha mandir School, Vijalpore, Navsari, -396445), is hereby called upon to show cause in writing to the to the Additional Commissioner, Customs, Surat having his office situated at 5th Floor, Customs House, Beside SMC Ward Office, Althan Bhimrad Road, Althan, Surat – 395007,within thirty days of receipt of this Notice, as to why**:-**

- Penalty Should not be imposed upon on him under Section 112(a), 112 (b), 114, 114AA & 117 of the Customs Act, 1962 **separately**

35.5 Now, therefore, **Overseas Suppliers of synthetic Ruby as per para 33.5**, is hereby called upon to show cause in writing to the to the Additional Commissioner, Customs, Surat having his office situated at 5th Floor, Customs House, Beside SMC Ward Office, Althan Bhimrad Road, Althan, Surat – 395007, within thirty days of receipt of this Notice, as to why

- Penalty should not be imposed upon all of them **separately** under Section 112(a), 112 (b), 117 and 114AA of the Customs Act, 1962.

35.6 Now, therefore, **Overseas Buyer of synthetic ruby studded silver jewellery as per para 33.6**, is hereby called upon to show cause in writing to the to the Additional Commissioner, Customs, Surat having his office situated at 5th Floor, Customs House, Beside SMC Ward Office, Althan Bhimrad Road, Althan, Surat – 395007, within thirty days of receipt of this Notice, as to why

- Penalty should not be imposed upon all of them **separately** under Section 114, 114AA & 117 of the Customs Act, 1962**.**

36. Defence Submission:

36.1 The noticee **M/s Sagar Diamonds Limited**, Plot No 266-B, Surat Special Economic Zone, Sachin, Surat-394230 (E-mail-factory@sagardimaonds.com;accounts@sagardiamonds.com) have not submitted any defence reply in connection with the instant SCN Dated 26.02.2024.

36.2 The noticee Shri Vaibhav Dipak Shah, Managing Director of M/s Sagar Diamonds Limited, 903, 9th Floor, The Embassy Centre Premises CHS Ltd, Jamnalal Bajaj Marg, Nariman Point, Mumbai, Maharashtra-400021 (Resident of Room No. 9, 1st Floor, Dadarkar House, 5/7, Vithalbhai Patel Road, Next Vimal Showroom, Girgaon, Mumbai-400004)(E-mail- vshah111@gmail.com) has not submitted any defence reply in connection with the instant SCN Dated 26.02.2024.

36.3 The noticee Shri Rahil Hiteshbhai Chovatia, R/O- A-19, Jaldarshan Flats, Opp. Natraj Cinema, Ashram Road, Ahmedabad (E-mail-rhcglobal@gmail.com)**Or** 40, Sawan Society, Insanpur Road, Maninagar, Ahmedabad has not submitted any defence reply in connection with the instant SCN Dated 26.02.2024.

36.4 The noticeeShri SaurinRasiklal Shah, B-101, Shreeji Enclave, oppoisteSajan Apartment, Near Anand Cross Road, Satellite, Ahmedabad (E-mail- saurinshah73@gmail.com)has not submitted any defence reply in connection with the instant SCN Dated 26.02.2024.

36.5 Shri HirenbhaiBipinbhaiTrivedi, R/o 104, Radhe Apartment, ShardhaMandir School, Vijalpore, Navsari, -396445 (E-mail-thiren@gmail.com)has not submitted any defence reply in connection with the instant SCN Dated 26.02.2024.

36.6 The noticee M/s AADI HK LTD, 1407, 14th Floor, Hart avenue Plaza, 5-9 Hart Avenue, TST, Kowloon, Hong Kong has not submitted any defence reply in connection with the instant SCN Dated 26.02.2024.

36.7 The noticee M/s AADI IMPEX, Flat D, 14th Floor, Windsor Mansion, TST, Kowloon, Hong Kong has not submitted any defence reply in connection with the instant SCN Dated 26.02.2024.

36.8 The noticee M/s ADVANCE CENTURY INC LIMITED, Room 2002, 20 F, Hing Yip Comercial Centre, 272-284 Des Voeux Road, Central, Hong Kong (advancecenturyincltd@gmail.com) has not submitted any defence reply in connection with the instant SCN Dated 26.02.2024.

36.9 The noticee M/s ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, No. 299 Huiquan RD Linquen Country (Lin Lu Industrial Park) China (anhuiqihangsupply@gmail.com) has not submitted any defence reply in connection with the instant SCN Dated 26.02.2024.

36.10 The noticee M/s BEL DIAM LTD, Unit 701, 7th Floor, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong (hongkong@beldiamltd.com) has not submitted any defence reply in connection with the instant SCN Dated 26.02.2024.

36.11 The noticee M/s COLOR CREATIONS LIMITED, Unit Q12, 6/F, Kaiser Estate Phase 3, 11 Hok Yuen Street, Hunghom, Hong Kong,through its authorized representative Shri BrijeshPathak submitted its reply vide letter dated 10.04.2024 as under:-

"At the outset, my client denies each and every allegation made in the Show Cause Notice and also that the Show Cause Notice.

Jurisdiction to issue Show Cause Notice to an entity based beyond the territorial jurisdiction of the territory of India:

1. My client states that it had exported the goods from Hong Kong, which were declared and declared with the Customs authorities in accordance with the jurisdictional statutes at Hong Kong. The Show Cause Notice does not show as to whether any inquiry was caused by the officers of the Directorate of Revenue Intelligence with the Customs House at Hong Kong or any inquiry with my client, prior to issuance of Show Cause Notice. In fact the statements recorded and relied upon in the Show Cause Notice also does not make any imputation or knowledge about the nature of the allegation made in the Show Cause Notice. The Show Cause Notice has not brought a single documentary evidence from Hong Kong to show that the description declared at Hong Kong was in any manner not correct. The documents were filed by my client and declaration was made at Hong Kong and none of the acts were done within the jurisdiction of Customs authorities in India.

2. The responsibility of filing correct declaration is upon the importer in India and the duty to assess the goods, at the time of clearance is upon the officer. In the proceedings it appears that each and every consignments were assessed and thereafter allowed clearance. The responsibility to assess and allow the goods for clearance is upon the officer of the Customs, who has been empowered to exercise such function. None of the officers of the Customs were examined during the

course of investigation, to show that the assessment and clearance allowed by them, was improper in any manner.

3. Article 245 of the Constitution of India provides that:

"245. Extent of laws made by Parliament and by the Legislatures of States.-

(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and Legislature of a State may make laws for the whole or any part of State.

(2) No law made by Parliament shall be deemed to be invalid on ground that it would have extra-territorial operation."

Article 260 of the Constitution of India provides that:

"260. Jurisdiction of the Union in relation to territories outside India.-

The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, Legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force."

4. My client submits that for exercising jurisdiction over foreign territories, the Union Government has to have an Agreement with the Government of that territory. In the present case no such agreement exist for applying any of the provisions of the Customs Act, 1962 or any other statutory provisions of laws and statutes. Hence the Show Cause Notice could not have been issued to my client, who are foreign nationals and none of the acts in the DRI was not empowered to invoke provisions of Customs Act, 1962 against my client for any acts, deeds done or committed at Hong Kong. Consequent show cause notice is bad-in-law and deserves to be dropped vis-à-vis my client in the interest of justice.

5. As per Section 1 (2) of the Customs Act: It extends to the whole of India and save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person. Further Section 151B of the Customs Act provides that:

"(1) The Central Government may enter into an agreement or any other arrangement with the Government of any country outside India or with such competent authorities of that country, as it deems fit, for facilitation of trade, enforcing the provisions of this Act and exchange of information for trade facilitation, effective risk analysis, verification of compliance and prevention, combating and investigation of offences under the provisions of this Act or under the corresponding laws in force in that country.

(2) The Central Government may, by notification, direct that the provisions of this section shall apply to the contracting State with which reciprocal agreement or arrangements have been made, subject to such conditions, exceptions or qualifications as may be specified in that notification.

(3) Subject to the provisions of sub-section (2), the information received under sub-section (1) may also be used as evidence in investigations and proceedings under this Act.

(4) Where the Central Government has entered into a multilateral agreement for exchange of information or documents for the purpose of verification of compliance in identified cases, the Board shall specify the procedure for such exchange, the conditions subject to which such exchange shall be made and designation of the person through whom such information shall be exchanged.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (2) or sub-section (3), anything done or any action taken or purported to have been done or taken, in pursuance to any agreement entered into or any other arrangement made by the Central Government prior to the date on which the Finance Bill, 2018 receives the assent of the President, shall be deemed to have been done or taken under the provisions of this section.

Explanation.—For the purposes of this section, the expressions,— (i) —contracting State means any country outside India in respect of which agreement or arrangements have been made by the Central Government with the Government or authority of such country through an agreement or otherwise; (ii) —corresponding law means any law in force in the contracting State corresponding to any of the provisions of this Act or dealing with offences in that country corresponding to any of the offences under this Act."

The provisions of the Customs Act, 1962 has to be read in consonance. It means that the provisions of Customs Act, 1962 will apply to a foreign state/country only where the Central Government has entered into an agreement or any other arrangement with the Government of any country outside India or with such competent authorities of that country, for facilitation of trade, enforcing the provisions of this Act. In the present case there is no such agreement or arrangement between Government of India and Hong Kong (Republic of China) for applicability of the provisions of Customs Act, 1962 for any act committed at Hong Kong. Hence any act committed by my client at Hong Kong while supplying the goods does not fall within the purview of the Customs Act, 1962. The proceedings under the Customs Act, 1962 initiated against my client for allegedly supplying the goods is without authority of law and hence the proceedings initiated against my client therefore deserves to be dropped.

6. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the matter. In such situation, the legal maxim "*sublatofundamentocadit opus*" meaning thereby that foundation being removed, structure/work falls, comes into play and applies in the present case. Hon'ble Supreme Court has held that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to quasi-judicial proceedings equally.

Show Cause Notice without jurisdiction:

7. Special Economic Zone (SEZ) is a geographically delineated duty-free enclave and is deemed to be a foreign territory for the purposes of trade operations and duties and tariffs. With a view to promote the business activity, the Special Economic Zone Act, 2005 received the assent of the President of India on 23.06.2005. Section 20, 21 and 22 of the said Act came into force on 13.01.2010. As per the Preamble of the SEZ Act, it is

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to provide for the establishment, development and management of the Special Economic Zone for the promotion of exports and for the matter connected therewith or incidental thereto. The SEZ Act being a special Act was specifically passed to cover all the matters pertaining to a Unit having Office/Unit within the SEZ premises.

8. Under the SEZ Act, there are no distinct offences which are enumerated. Further there are no officers specifically empowered under the Act for carrying out search, seizure etc i.e. for commencing investigation. Section 21 and 22 of the Act reads as herein below:

> *"21. Single enforcement officer or agency for notified offences.*
> *(1) The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for purposes of this Act.*
> *(2) The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offences or committed in a Special Economic Zone.*
> *(3) Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection or search or seizure as is provided under the relevant Central Act in respect of the notified offences,*
>
> *22. Investigation, inspection and search or seizure.*
> *The* ***agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation or search or seizure*** *in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone: Provided that no investigation, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or subsection of section 21 without prior approval of the Development Commissioner concerned.*
>
> *Provided further that any officer of agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner.*

9. Section 51 of the SEZ Act is clear that SEZ Act prevails over other enactments to the extent of special provisions being made under SEZ Act. Therefore, the SEZ Act would prevail over the Customs Act, 1962 in all aspects in view of the non-obstinate clause. For ready reference, section 51 of the SEZ Act if reproduced below:

> "***51. Act to have overriding effect:-*** *The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."*

10. It would also be appropriate to refer Section 53 of the Act, which is as under:-

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"***53. Special Economic Zones to be ports, airports, inland container depots, land stations, etc., in certain cases.***—
(1) A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorised operations.
(2) A Special Economic Zone shall, with effect from such date as the Central Government may notify, be deemed to be a port, airport, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act, 1962 (52 of 1962):
Provided that for the purposes of this section, the Central Government may notify different dates for different Special Economic Zones"

11. A reading of the above provisions makes it clear that the officer of the DRI does not have power or jurisdiction to inspect or seize goods in respect of units situated in SEZ area. The power to investigate in respect of any offence committed in SEZ unit is conferred on officers empowered under Section 22 of the SEZ Act. Further, section 52 of the SEZ Act also spells out that the Customs Act is not applicable in respect of units situated in SEZ unit.

12. Vide a Notification bearing No. 2665(E) dated 05.08.2016, the Central Government Notified various offence to be notified offences under the SEZ Act which includes section 28 of the Customs Act, 1962.

13. Further, vide Notification S.O. 2666(E) dated 05.08.2016, the Central Government, in exercise of the powers conferred by sub-section (2) of section 21 and second proviso to section 22 of the Act, inter alia notified the Additional Director General, Directorate of Revenue Intelligence for offences under the Customs Act, 1962 to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. For ease of reference the

"In exercise of the powers conferred by sub-section (2) of section 21 and second proviso to section 22 of the Special Economic Zones Act, 2005 (28 of 2005) (hereinafter referred as the Act), the Central Government hereby authorises the Additional Director General, Directorate of Revenue Intelligence for offences under the Customs Act, 1962 (52 of 1962) and the Additional Director General, Directorate General of Central Excise Intelligence for offences under the Central Excise Act, 1944 (1 of 1944) and the Finance Act, 1994 (32 of 1994) to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. ***The enforcement officer(s), for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit and shall intimate the details of any action initiated under sub-section (3) of section 21 of the Act to the Joint Secretary in charge of Special Economic Zones Division in the Department of Commerce immediately*** *and in any case not later than seven days of initiation of any action."*

14. My client submits that only the enforcement officers appointed in terms of the above Notification for the reasons to be recorded in writing, may

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carry out the investigation, inspection, search or seizure in the Special Economic Zone. Such powers cannot have been exercised by any other authority, then as notified.

15. My client submits that the Seizure Memo dated 13.12.2023, was issued after more than 9 months from the date of panchanama and recovery being caused. The Seizure Memo has been issued by Senior Intelligence Officer, holding that the goods is placed under seizure under the provisions of Customs Act, 1962. In terms of the Notification only the Additional Director is empowered to exercise power of seizure. The goods have been seized by an officer who did not have the authority to exercise such powers, consequently the impugned Show Cause Notice arising consequent to such search and seizure which is legally unsustainable deserves to be dropped.

16. Vide another Notification No. S.O. 2667(E) dated 05.08.2016, the ***jurisdictional Commissioner of Customs*** was also notified in respect of offences under the Customs Act.

17. Hence, as per Section 21 (2) of the Act, the Central Government was empowered to notify officer and/or agency to give them powers to search, seize etc, the Central Government specifically gave powers only to the ***Jurisdictional Commissioner or the Additional Director General of the DRI***, the power to search, seize etc.

18. My clients state that the initiation of the investigation in relation to search was authorized by Deputy Director, DRI, who was not the officer appointed by the Notification and therefore in ex-facie contravention of S.O. 2666(E)] dated 5th August 2016, and S.O.2667 (E) dated 5th August, 2016 issued by Central Government [in exercise of powers conferred by sub-section 2 of Section 21 and second proviso to Section 22 of the Special Economic Zones Act, 2005]. The Notification does not confer any power upon the Additional Director General, delegating of the powers and functions upon any other officer. The appointment of Additional Director for carry out the investigation, is with sole intention that no frivolous misuse of powers are caused by the officers, in their excitement and the officer appointed is reasonable and responsible enough to apply his mind, while exercising the powers. Any other officer of the DRI could not have exercised such powers. Hence, the Show Cause Notice being based on investigation caused by an authority not having jurisdiction to conduct the same has vitiated the investigation.

19. The guidelines provide that vide Notification S.O. 2666(E)] dated 5th August 2016, the enforcement officers for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the SEZ and shall intimate the details of any action initiated under sub-section (3) of section 21 of the SEZ Act to the Joint Secretary in charge of SEZ. Since, the investigation proceeding conducted by the officers of the DRI, was itself without jurisdiction and that there was no compliance made in relation to the notification S.O.2666 (E) was made. Therefore, the Show Cause Notice based on such investigation is improper. The Show Cause Notice deserves to be dropped on this ground alone.

20. Since the act of search and seizure of goods in respect of Sachin SEZ units, by officers of DRI, is illegal and arbitrary for want of jurisdiction, the show cause notice which propose to confiscate such goods, based on the aforesaid search and seizure, have no basis of whatsoever nature and, do not survive by virtue of the doctrine of ***sublatofundamentocadit opus***.

21. In the present case no such procedure as prescribed have been carried out and/or conducted about any such compliance of the pre-requisite condition for initiating the investigation proceedings against a Unit based in SEZ area. Show Cause Notice based on investigation being carried out by an authority not having jurisdiction, is bad-in-law and hence the Show Cause Notice deserves to be dropped.

22. In the context of show cause notices (SCNs) issued under the Customs Act, 1962, concerning SEZ units, it's generally understood that the Development Commissioner's approval or sanction may indeed be required. This requirement is often grounded in the authority vested in the Development Commissioner under the SEZ Act to oversee and regulate various activities within the SEZ, including customs-related matters.

23. The Development Commissioner plays a crucial role in SEZ administration and acts as a nodal authority for facilitating various permissions, clearances, and compliance matters. Given their oversight role, it's not uncommon for SEZ-specific procedures to mandate that any significant actions, such as the issuance of show cause notices affecting SEZ units under the Customs Act, require the approval or sanction of the Development Commissioner, which has not been obtained prior to issuance of Show Cause Notice.

24. Hon'ble Supreme Court in Management of Express Newspapers (Private) Ltd., Madras v. The Workers and Others reported in AIR 1963 SC 569 has held that jurisdiction issue must be decided first as they go to the root of the matter.

25. My client states that vide Circular No.11/2017-Cus dated 31.03.2017 has issued clarification as regards operationalization of functions of appropriate authority and time limitation and also issues relating to adjudication. Standard Operating Procedure prescribes that where demand has to be made, a draft demand / Show Cause Notice shall be prepared by the Specified Officer / Authorized Officer in the concerned office of the Development Commissioner and should be transferred to DC/AC in the office of jurisdictional Customs along with all Relied Upon Documents. The captioned Show Cause Notice has not been issued in the manner prescribed under the SOP and appears to have not been prepared in the office of the Development Commissioner. The purpose of adopting such SOP is that there remains transparency in the proceedings, which is monitored by the Development Commissioner and the assessees are not harassed un-necessarily and such a proceeding has to be compulsorily complied with. My client submits that the Show Cause Notice and documents relied up does not mention anywhere as to whether the aforesaid procedure was followed while issuance of Show Cause Notice. Hence, the Show Cause Notice deserves to be dropped.

Section 124 does not empower authority to issue Show Cause Notice:

26. My client states that, the Show Cause Notice has been issued invoking section 124 of the Act, which is without jurisdiction and/or authority of law inasmuch as the said provision do not confer any power of issuance of a '*show cause notice*', which can be exercised by any officer of customs, let alone the proper officer.

27. Section 124 of the Act provides as under:

> "***Section 124. Issue of show cause notice before confiscation of goods, etc.*** -
>
> *No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -*
>
> *(a) is given a notice in 1[writing with the prior approval of the officer of Customs not below the rank of 2[an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*
>
> *(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and*
>
> *(c) is given a reasonable opportunity of being heard in the matter :*
> *Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.*
>
> *Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.*"

28. From reading of the foregoing provision, it is clear and unambiguous, that the same clarifies the following:

a. The provision prescribes certain commandments in sub-section (1) which have to followed in letter and spirit before passing of any order of confiscation or imposition of any penalty on any person under Chapter XIV of the Act;

b. The inherent nature of the said commandments is representative of principles of natural justice particularly the doctrine of *audialterampartem* which cannot be dispelled with while passing an order of confiscation or imposition of penalty in terms of Chapter XIV of the Act;

c. The authority in whom the power to issue show cause in terms of the said provision is patently unclear;

d. The authority in whom the power to adjudicate the purportedly issued show cause notice in terms of the said provision is also patently unclear;

e. Employment of the word '*notice*' in first proviso to sub-section (1) is also not reflective/indicative of the power of issuance of a show cause notice envisaged under sub-section (1);

f. Recognition of power of issuance of show cause notice, in terms of clause (a) to sub-section (1), in the second proviso is misplaced and not a true reflection of the legislative intent embedded in the warp and woof of the said provision; and

g. Clause (a) of sub-section (1) of the said provision does not confer any power on any person to 'issue' a show cause notice inasmuch as the clear, unambiguous, and express language employed therein merely sets out the necessity to give a notice and the features/characteristics of such notice – fulfilment whereof would lend the said '*notice*' necessary validity in the eyes of law.

29. My client states that, Section 124 does not confer any power to issue Show Cause Notice upon the Additional Commissioner any authority as such, hence the entire proceeding initiated on the basis of such provision, vitiates the fundamental basis on which the same stands. It is a settled legal proposition that when action on the basis of which the primary proceeding stands vitiated, all subsequent and consequential proceeding would fall.

30. It is no more *res integra* that:

i. Taxation statutes have to be strictly interpreted; and

ii. Fealty has to be pledged to the literal meaning of the statute in cases where the language of the statute is clear and unambiguous.

31. My client states that, without an iota of doubt, it may be appreciated that the explicit language of section 124 of the Act neither confers any power to issue show cause notice nor envisages issuance of show cause notice by invocation of the provisions therein. The only reference qua show cause notice therein is limited to spotlight adherence to the principles of natural justice, bereft whereof no order of confiscation or imposition of penalty under Chapter XIV of the Act can be passed.

32. My client states that, Section 124 of the Customs Act, 1962, provides that the Show Cause Notice can be issued only with the prior approval of the officers of Customs not below rank of an Assistant Commissioner of Customs, thereby meaning that the officer above the rank of Assistant Commissioner of Customs can accord only approval for issuance of Show Cause Notice.

33. My client submits that therefore, the Show Cause Notice issued under section 124 of the Act, which does not confer any such power inasmuch is without jurisdiction and authority of law and the same deserves to be quashed and/or set-aside, in the interest of justice.

My client wishes to be heard in person before any order is passed, in the matter."

36.12 The noticee M/s CROWN GEMS, Unit 504, 5/F, Hart avenue Plaza, 5-9 Hart Avenue, TST, Kowloon, Hong Kong, through its authorized

representative Shri Shrey S Lodha, Advocate submitted its reply vide letter dated 12.05.2024 as under:-

"Upon instructions from, for and on behalf of my Client, through its Authorised Signatory who has drawn Vakalatanama, enclosed hereto as **Annexure 1**, in my favour, I hereby submit as follows:

1. At the outset my Client denies any and every allegation made in the captioned Show cause notice (hereinafter referred to as "**SCN**") for it isreplete with non-application of mind and untenable in the eyes of law.

2. It is pertinent to note that the present submissions are preliminary in nature insofar as objections pertaining to jurisdictional facts have been advanced herein, which as per several judicial pronouncements including ***Arun Kumar and Others v. Union of India and others, [(2007) 1 SCC 732]*** posit existence of jurisdictional fact before assumption of jurisdiction by a court, tribunal, or an authority over a matter. In ***Arun Kumar*** (supra), the Hon'ble Supreme Court held as under::

"***74. A "jurisdictional fact" is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.***

75. In Halsbury's Laws of England, it has been stated: "Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive."

76. The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction."

3. In light of the foregoing, your good self is most humbly requested to kindly adjudicate and dispose, *first*, the challenge to the jurisdictional aspects related to the captioned show cause noticewhich go to the root of the matter before passing any decision on the merits of the case. It is expressly stated that my Client reserves the right to make further submissions including on the merits of the matter subsequent to disposal of the preliminary objections by your good self.

PRELIMINARY OBJECTIONS

4. At the cost of repetition, it is categorically submitted that any and all allegations made in the captioned show cause notice are denied inasmuch as they are based on conjecture, surmises, and shaky grounds. Further, the submissions / objections herein are taken independently and without prejudice to each other.

I. EXTRA-TERRITORIAL ASSUMPTION OF JURISDICTION

5. That my Clientis an overseas supplier, based out in Hong Kong, of the goods in question i.e. Cut & Polished Precious and Semi-Precious Stones (Ruby)and the same was sold to several entities during the relevant period including the entities based out in India. It is pertinent to note that the goods in question were shipped from Hong Kong upon complying with the normative regulations and ensuring requisite and proper declaration of the material particulars of the said goodsto the Hong Kong Customs Authorities and nothing has been whispered in the captioned show cause notice to suggest otherwise.

6. From a bare perusal of the captioned show cause notice, it is understood that the gravamen therein qua my Clientis that it has allegedly abetted and indulged in conspiracy with the main noticee i.e. M/s RHC Global Exports Private Limited, an entity based in Surat Special Economic Zone, Sachin ("**Sachin SEZ**"), to:

(a) contravene the provisions of the Customs Act, 1962 (and the rules and regulations made thereunder) and the Special Economic Zones Act, 2005 (and the rules and regulations made thereunder) by issuing commercial invoices, packing lists, etc. bearing incorrect particulars of the goods, vis-à-vis the classification and value thereof, so supplied; and

(b) facilitate remission of outward foreign remittance on the strength of fake/bogus commercial invoices.

7. It is pertinent to note at this juncture that my Client neither is incorporated in India nor has any permanent establishment in India nor has its place of effective management in India nor is an importer / exporter in terms of the Customs Act, 1962, therefore, the issuance of the captioned show cause notice prima facie is beyond the legislative mandate of Customs Act, 1962***basis extrapolation of allegation on the previous imports of the main noticee from my Client***.

8. That no Municipal Law can ever be extended beyond the territorial boundaries of a country including its continental self and exclusive economic zone, whether or not there is express provision in the statute to stretch the same beyond the country's territory since the same would amount to encroachment upon the territorial authority of other State. Sovereign country asserts extra territorial jurisdiction in criminal laws though ***the principal basis of jurisdiction over crime is the territorial principle which permits a State in control of its territory to prescribe, adjudicate and enforce its law in the territory. The crime is said tobe committed even partly in a state's territory when any essential constituent element itself is consummated there***. Further, the Hon'ble Supreme Court's Constitutional Bench in ***GVK Industries Limited and Another v. Income Tax Officer and Another, [(2011) 4 SCC 36]*** while in seisin with the issue as to legislative competence of

Parliament to breathe extra-territorial jurisdiction into a statute has observed as follows:

"*124. We now turn to answering the two questions that we set with:*

(1) ***Is Parliament constitutionally restricted from enacting legislation with respect to extra-territorial aspects or causes that do not have, nor expected to have, any, direct or indirect, tangible or intangible impact(s) on, or effect(s) in, or consequences for****:*

(a) other territory of India, or any part of India; or
(b) other interests of, welfare of, well-being of, or security of inhabitants of India, and Indians?
The answer to the above would be yes. However, Parliament may exercise its legislative powers with respect to extra-territorial aspects or causes*—events, things, phenomena (howsoever commonplace they may be), resources, actions or transactions, and the like—that occur, arise or exist or may be expected to do so, naturally or on account of some human agency, in the social, political, economic, cultural, biological, environmental or physical spheres outside the territory of India, and seek to control, modulate, mitigate or transform the effects of such extra-territorial aspects or causes, or in appropriate cases, eliminate or engender such extra-territorial aspects or causes,* ***only when such extra-territorial aspects or causes have, or are expected to have, some impact on, or effect in, or consequences for: (a) the territory of India, or any part of India; or (b) the interests of, welfare of, well-being of, or security of inhabitants of India, and Indians****.*

125. It is important for us to state and hold here that the powers of legislation of Parliament with regard to all aspects or causes that are within the purview of its competence, including with respect to extra-territorial aspects or causes as delineated above, and as specified by the Constitution, or implied by its essential role in the constitutional scheme, ought not to be subjected to some a priori quantitative tests, such as 'sufficiency' or 'significance' or in any other manner requiring a predetermined degree of strength. ***All that would be required would be that the connection to India be real or expected to be real, and not illusory or fanciful****.*

126. Whether a particular law enacted by Parliament does show such a real connection, or expected real connection, between the extra-territorial aspect or cause and something in India or related to India and Indians, in terms of impact, effect or consequence, would be a mixed matter of facts and of law. Obviously, where Parliament itself posits a degree of such relationship, beyond the constitutional requirement that it be real and not fanciful, then the courts would have to enforce such a requirement in the operation of the law as a matter of that law itself, and not of the Constitution:

127. (2) ***Does Parliament have the powers to legislate 'for' any territory, other than the territory of India or any part of it?***

The answer to the above would be no*. It is obvious that Parliament is empowered to make laws with respect to aspects or causes that occur, arise or exist, or may be expected to do so, within the territory of India, and also with respect to extra-territorial aspects or causes that have an impact on or*

nexus with India as explained above in the answer to Question 1 above. Such laws would fall within the meaning, purport and ambit of the grant of powers to Parliament to make laws 'for the whole or any part of the territory of India', and they may not be invalidated on the ground that they may require extra-territorial operation. ***Any laws enacted by Parliament with respect to extra-territorial aspects or causes that have no impact on or nexus with India would be ultra vires, as answered in response to Question 1 above, and would be laws made 'for' a foreign territory.***"

In light of the foregoing, it is submitted that albeit s. 1(2) of the Customs Act, 1962 has enabled its extra-territorial jurisdiction, however, the same is subject to the essential principle that the act / omission / offence / contravention should have impact and / or nexus with the subject-matter which is sought to be regulated by the Customs Act, 1962.

9. Gravitating the aforesaid to the present facts and circumstances, it is submitted that the ***basis to allege contravention*** of the provisions of the Customs Act, 1962 and Special Economic Zones Act, 2005 i.e. mis-declaration and over-valuations of the goods in question by the main noticee ***is Bills of Entry filed by the importer,i.e. the main noticee in the instant case, during the relevant period and not the commercial invoices / packing lists issued by my Client***.

10. It is relevant to note that the nature of allegation in the captioned show cause notice wherein it has been proposed to impose penalty u/ss. 112(a), 112(b), 114AA, and / or 117 of the Customs Act, 1962 on my Client, is that by issuing the commercial invoices and packing lists qua the exports made by my Client in terms of the laws of Hong Kong, my Client has allegedly abetted the main noticee in mis-declaring and over-valuing the goods in question to the Indian Customs Authorities and has in consequence also purportedly abetted siphoning off outward foreign exchange on the strength of such allegedly fake/bogus documents. At the cost of repetition, it is submitted that the foregoing allegation is a mere extrapolation of conjectures and surmises on the past imports of the main noticee (exports by my Client) inasmuch as it has neither been alluded in the captioned show cause notice about seizure of any live consignment from the main noticee which has been sent by my Client nor it is coming out that any seizure in the instant case directly, basis preponderance of probabilities, links my Client to the alleged contraventions committed by the main noticee. Further, the contents of the captioned show cause notice do not indicate conducting of any enquiry by the Indian Customs Authorities with their Hong Kong counterparts qua any irregularity in the material particulars declared with the latter. Furthermore, the statements recorded and relied upon in the captioned show cause notice do not indicate any imputation or knowledge about the alleged abetment of my Client in the purported contraventions. Moreover, no documentary evidence has been alluded to in the contents of the captioned show cause notice indicating the ***mensrea*** in order to attract the penalty u/ss. 112, 114AA or 117 of the Customs Act, 1962. Thus, when the documents filed and declaration made by my Client have not been disputed by the jurisdictional authorities i.e. Hong Kong Customs Authorities, and there is no material evidence in support of the contention of the Indian Customs Authoritiesqua my Client, the basis to issue the captioned show cause

notice only on the ipse dixit of the Indian Customs Authorities is unfounded, arbitrary, illegal, and bad in law.

11. Without prejudice, it is submitted thatthe penalty sought to be proposed u/s. 112 of the Act is interlinked with the confiscation of goods under s. 111 of the Act. In other words, penalty u/s. 112 of the Act will apply only when the goods are liable for confiscation u/s. 111 of the Act. In the present case, the Department has alleged that the goods-in-question are liable for confiscation u/ss. 111 (m) and Section 111(o) of the Act. The relevant portions of Section 111 of the Act is extracted herein below for ready reference:

"***111. Confiscation of improperly imported goods, etc.*** *- The following goods* ***brought*** *from a place outside India shall be liable to confiscation: -*

(...)

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

(...)

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer."

12. It is submitted that s. 111(m) of the Act provides that any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 of the Act, shall be liable for confiscation.That the entry of goods on importation is dealt under s. 46 of the Act which inter alia provides that the importer of any goods, other than goods intended for transit or trans-shipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed. This form filed by the importer is the bill of entry. Further, Section 17(1) of the Act which deals with assessment of duty states that any importer entering any imported goods u/s. 46, or an exporter entering any goods-to-be-exported u/s. 50, shall self-assess the duty, if any, leviable on such goods. Furthermore, as per s. 2(26) of the Act, 'importer' in relation to any goods at any time between their importation and the time when they are cleared for home consumption includes any owner, beneficial owner or any person holding himself out to be the importer.

13. On a conjoint reading of ss. 111(m), 46, 17, and 2(26) it can be inferred that the value of the goods and other particulars declared at the time of entry of goods are furnished by the importer. Consequently, any violation of the kind mentioned in s. 111(m) of the Act can be attributed only to the

importer. In the present case, the function of my Clientas the foreign supplier was limited to supply of goods from Hong Kong to India. In other words, the responsibility of my Clientconcludes once the goods are put in a deliverable state to the customers in India. Once the goods reach the Indian Customs barrier, it is the responsibility of the concerned importers, in the present case the main noticee, to declare the classification and description of such goods and file the bill of entry and other documents for clearance of such goods.Given this, my Client cannot be held liable for any violation of the nature prescribed in Section 111(m) of the Act which renders the goods liable for confiscation. Consequently, the proposal to impose penalty u/s. 112 is bad in law and the captioned show cause notice to that extent could not have been issued to my Client.

14. Similarly, s. 111(o) of the Act provides that if any goods were exempted subject to any condition, from duty or any prohibition in respect of the import thereof under the Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer, such goods shall be liable for confiscation. In the present case, s. 111(o) of the Act is also not triggered by any of the acts of my Client since it is merely the overseas supplier of the imports-in-question and confiscation as envisaged under the said provision can only be triggered when non-observance of the condition(s) for benefit of exemption occurs on the part of the importer as such exemption is claimed by the importer alone.

15. Further, the foregoing is equally apposite in terms of s. 114AA of the Act inasmuch as my Client being the overseas supplier has neither done anything in the transaction of any business for the purposes of the Customs Act, 1962 nor hasknowingly or intentionally 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 Customs Act, 1962.

16. Therefore, the assumption of extra-territorial jurisdiction by the issuing authority of the captioned show cause notice in the instant case basis the writ large extrapolative conjecturethat the previous imports of the main noticee were also allegedly fraudulent in nature and the fact that my Client had issued commercial invoices and packing lists for the select imports made by the main noticee, is wholly erroneous, without authority of law, and arbitrary.

17. That in terms of s.151B of the Customs Act, 1962, for exercising jurisdiction over foreign territories, the Union Government has to have an Agreement with the Government of that territory. In the present case, no such agreement exists for applying any of the provisions of the Customs Act, 1962 or any other statutory provisions of laws and statutes. Hence the captionedshow cause notice could not have been issued to my Client. Thus, it is submitted that assumption of extra-territorial jurisdiction by the authority who has issued the captioned show cause notice is arbitrary and contrary to the legislative intent of s. 1 of the Customs Act, 1962.

18. It is reiterated that the responsibility of filing correct declaration is upon the importer in India and the duty to assess the goods, at the time of clearance is upon the assessing officer.In the instant proceedings, it

appears that each and everyconsignment was assessed and thereafter allowed clearance. The responsibility to assess and allow the goods for clearance is upon the officer of the Customs who has been empowered to exercise such function. None of the officers of the Customs were examined during the course of investigation to show that the assessment and clearance allowed by them, was improper in any manner. Thus, on this ground as well the assumption of extra-territorial jurisdiction by the authority who has issued the captioned show cause notice is arbitrary and contrary to the legislative intent of s. 1 of the Customs Act, 1962.

II. RE:SHOW CAUSE NOTICE NOT ISSUED BY DESIGNATED / EMPOWERED OFFICER

19. Special Economic Zone (SEZ), alikeSurat SEZ, Sachin, is a geographically delineated duty-free enclave and is deemed to be a foreign territory for the purposes of trade operations and duties and tariffs. With a view to promote the business activity, the Special Economic Zone Act, 2005 received the assent of the President of India on 23.06.2005. Section 20, 21 and 22 of the said Act came into force on 13.01.2010. As per the Preamble of the SEZ Act, it is to provide for the establishment, development and management of the Special Economic Zone for the promotion of exports and for the matter connected therewith or incidental thereto. The SEZ Act being a special Act was specifically passed to cover all the matters pertaining to a Unit having Office/Unit within the SEZ premises.

20. Under the SEZ Act, there are no distinct offences which are enumerated rather the offences under certain central acts have been subsumed as notified offences for the purposes of the SEZ Act. Sections 111, 113, and 124 amongst others of the Customs Act, 1962 are few of such notified offences under the SEZ Act and for the purposes of carrying out investigation for into such notified offences, certain officers are specifically empowered to commence and carry out the investigation in terms of ss. 21 and 22 of the said Act. For ready reference, the said provisions are reproduced as under:

"***21. Single enforcement officer or agency for notified offences***.

(1) The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for purposes of this Act.

(2) The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offences or committed in a Special Economic Zone.

(3) Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection or search or seizure as is provided under the relevant Central Act in respect of the notified offences."

"***22. Investigation, inspection and search or seizure***.

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The agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation or search or seizure in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone: Provided that no investigation, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or subsection of section 21 without prior approval of the Development Commissioner concerned.

Provided further that any officer of agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner."

21. That in terms of the afore-reproduced provisions, the Central Government vide Notification No. SO 2665(E) dated 05.08.2016, Notification No. SO 2666(E) dated 05.08.2016, and Notification No. SO 2667(E) dated 05.08.2016, all issued u/ss. 21 and 22 of the SEZ Act, as the case may be, have prescribed that either Additional Director General, Directorate of Revenue Intelligence or the jurisdictions Customs Commissioner would be the enforcement / empowered officer to carry out the investigation in relation to notified offences under the SEZ Act. Further, by virtue of s. 21(3) of the SEZ Act, the said enforcement / empowered officers would be entitled to exercise all the corresponding powers in relation to the investigation, search, and / or seizure pertaining to the notified offences including ss. 105, 108, 110, and 124 of the Customs Act, 1962.

22. A reading of the above provisions and corresponding notifications, as adverted to above, makes it clear that the officer of the DRI does not have power or jurisdiction to inspect or seize goods in respect of units situated in SEZ area. The power to investigate in respect of any offence committed in SEZ unit is conferred on officers empowered under the afore-reproduced provisions and notifications. The entire act of search, seizure, recording of statement, and issuance of show cause notice by the officers of DRI and officer of customs who are neither Additional Director General, Directorate of Revenue Intelligence or the jurisdictions Customs Commissioner, in the instant case, is rife with illegality, arbitrariness, and erroneous assumption of jurisdiction. Further, as per the provisions and notifications issued under the SEZ Act, as above, the agency or officers carrying out any investigation into a SEZ Area need the sanction of the Development Commissioner before commencement of such investigation, however, in the instant case, the same has been violated inasmuch as the prior intimation has not been given. On these grounds, no adverse order is warranted against my Client.

23. It is submitted that s. 51 of the SEZ Act is clear that SEZ Act prevails over other enactments to the extent of special provisions being made under SEZ Act. Therefore, the SEZ Act would prevail over the Customs Act, 1962 in all aspects in view of the non-obstinate clause.

24. That vide Circular No.11/2017-Cus dated 31.03.2017 a Standard Operating Procedure has been prescribed whereby a show cause noticehas

to be prepared by the Specified Officer / Authorized Officer in the concerned office of the Development Commissioner which shall be transferred to DC/AC in the office of jurisdictional Customs along with all Relied Upon Documents. The captioned show cause notice has not been issued in the manner prescribed under the SOP and appears to have not been prepared in the office of the Development Commissioner inasmuch as there is no averment thereto. The purpose of adopting such SOP is that there remains transparency in the proceedings which is monitored by the Development Commissioner and the assessees are not harassed unnecessarily. Hence, the captioned show cause notice deserves to be dropped qua my Client.

III. RE: SECTION 124 DOES NOT EMPOWER AUTHORITY TO ISSUE SHOW CAUSE NOTICE

25. That the captioned show cause notice has been issued invoking section 124 of the Act which is without jurisdiction and authority of law inasmuch as the said provision does not confer any power of issuance of a 'show cause notice' which could have been exercised by the authority which has issued the captioned show cause notice. Section 124 of the Act provides as under:

"*Section 124. Issue of show cause notice before confiscation of goods, etc. -*

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in 1[writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed."

26. From reading of the foregoing provision, it is clear and unambiguous, that the same clarifies the following:

a. The provision prescribes certain commandments in sub-section (1) which have to followed in letter and spirit before passing of any order of confiscation or imposition of any penalty on any person under Chapter XIV of the Act;

b. The inherent nature of the said commandments is representative of principles of natural justice particularly the doctrine of audialterampartem which cannot be dispelled with while passing an order of confiscation or imposition of penalty in terms of Chapter XIV of the Act; and
c. The empowerment to issue show cause in terms of the said provision is patently unclear vis-à-vis the authority which has issued the captioned show cause notice;

27. That s.124 does not confer any power to issue the captioned show cause notice upon the authority which has issued the captioned show cause notice, hence the entire proceeding initiated on the basis of such provision, vitiates the fundamental basis on which the same stands. It is a settled legal proposition that when action on the basis of which the primary proceeding stands vitiated, all subsequent and consequential proceeding would fall.

28. It is no more *res integra* that:

a. Taxation statutes have to be strictly interpreted; and

b. Fealty has to be pledged to the literal meaning of the statute in cases where the language of the statute is clear and unambiguous.

29. That the explicit language of s. 124 of the Act neither confers any power to issue show cause notice nor envisages issuance of show cause notice by invocation of the provisions therein upon the authority which has issued the captioned show cause notice. The only reference qua show cause notice therein is limited to spotlight adherence to the principles of natural justice, bereft whereof no order of confiscation or imposition of penalty under Chapter XIV of the Act can be passed.

30. That s. 124 of the Customs Act, 1962 provides that a show cause notice can be issued only with the prior approval of the officers of Customs not below rank of an Assistant Commissioner of Customs, thereby meaning that the officer above the rank of Assistant Commissioner of Customs can accord only approval for issuance of show cause notice. In the instant case, such approval is amiss.Therefore, the captioned show cause notice issued under section 124 of the Act is without jurisdiction and authority of law and the same deserves to be quashed and/or set-aside, in the interest of justice.

PRAYER

31. Therefore, it is most humbly prayed to your good self may be pleased to:

a. drop the captioned show cause notice vis-à-vis my Client; and

b. pass such other and further orders which may be fit and proper in the interest of complete justice.

32. That my Client wishes to be heard in person before any order is passed in the matter. Further, my Client reserves its right to make additional

submissions if the need so arises or situation so demands. Furthermore, it is most humbly requested that the personal hearing be scheduled through video-conferencing in line with the Hon'ble Supreme Court's consistent and continued effort to digitalise the justice dispensation system."

36.13 The noticee M/s CRYSTAL KING LIMITED, M 9 - 2 F, kaiser, Estate, Phase 3, 9-11, HOK YUEN Street Hunghom, Hong Kong (infocrytalking@gmail.com) has not submitted any defence reply in connection with the instant SCN Dated 26.02.2024.

36.14 The noticee M/s CSY INTERNATIONAL PTE LTD, 1North Bridge Road, 18-01, High Street Centre, Singapore-179094 (info@csyinternational.com) has not submitted any defence reply in connection with the instant SCN Dated 26.02.2024.

36.15 The noticee M/s DIARECT MARKETING LIMITED, Suite D, 13th Floor, No. 8, Hart Avenue, TST, Kowloon, HongKong has not submitted any defence reply in connection with the instant SCN Dated 26.02.2024.

36.16 The noticee M/s ESTRADE INTERNATIONAL LTD, RM B2, 13/F, Kaiser Estate Phase 1, 41 Man Yue Street, Hung Hom, Hong Kong, through its authorized representative Ms. Pinky Jain has submitted its defense reply vide letter dated 10.04.2024 in connection with the instant SCN Dated 26.02.2024 as under-

1. "My client at the outset, denies each and every allegation made in the Show Cause Notice and also that the Show Cause Notice is bereft of any reasoning or evidence of whatsoever nature.
2. From the perusal of the Show Cause Notice, it appears that apart from the documents furnished, there were further investigation carried out by the department, copy of which has not been furnished. My client humbly request that copies of the non-relied upon documents may also be furnished.

3. Reliance is placed on the Judgement passed by Hon'ble Madras High Court in the case of V.V. Minerals Versus CCE, reported in 2016 (332) E.L.T. 289 (Mad.), wherein it was held that no enquiry is fair and complete unless person facing it is furnished with all requisite documents, and held that plea that some of sought documents are not relied upon in show cause notice, as not acceptable. Similarly, Hon'ble CESTAT, in the case of Lauls Ltd. V/s. CCE, reported in 2009 (248) E.L.T. 747 (Tri. - Del.), has held that non-supply of non-relied upon documents amounts to violation of principles of natural justice and fair play in adjudication proceedings. Hence, all such un-relied upon documents may kindly be furnished to enable my client to file further reply.

Challenge to jurisdiction to issuance of Show Cause Notice to my client, who has never conducted any act within the territory of India:

4. My client states that the goods were exported by it from Hong Kong, which were declared and declared with the Customs authorities in accordance with the jurisdictional statutes at Hong Kong. The Show Cause Notice does not mention any detail in relation to whether any inquiry was caused by the officers of the Directorate of Revenue

Intelligence with any agency including the Customs House at Hong Kong or any inquiry with my client, prior to issuance of Show Cause Notice. My client states that no notice was issued to it, by the officers of the DRI, in relation to the subject matter of the Show Cause Notice. Without causing any enquiry from my client, as to how and on what basis, allegation has been made against my client, has not been explained. None of the statements recorded during the course of investigation and which is relied upon in the Show Cause Notice does not imputeany knowledge on the part of my client as regards the alleged breach committed by the Indian Importers. The Show Cause Notice does not rely upon any documentary evidence from Hong Kong to show that the description declared by my client at Hong Kong was in any manner not correct. The documents were filed by my client and declaration was made at Hong Kong and the goods were exported as per the declaration and which were verified by the authorities while permitting the export of the same. My client further submits that none of the acts were done by it within the jurisdiction of Customs authorities in India.

5. Be that as it may, the statutory responsibility of making correct declaration is upon the importer who files the Bill of Entry and the duty to assess the goods, at the time of clearance is upon the officer, in terms of Section 17 read with 46 and 47 of the Customs Act, 1962. The Show Cause Notice exhibits that the consignments imported were assessed and thereafter allowed clearance. The responsibility to assess and allow the goods for clearance is upon the officer of the Customs, who has been empowered to exercise such function. None of the officers of the Customs were examined during the course of investigation, to show that the assessment and clearance allowed by them, was improper in any manner.

6. Article 245 of the Constitution of India provides that:

> *"245. Extent of laws made by Parliament and by the Legislatures of States.-*
>
> *(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and Legislature of a State may make laws for the whole or any part of State.*
>
> *(2) No law made by Parliament shall be deemed to be invalid on ground that it would have extra-territorial operation."*

Article 260 of the Constitution of India provides that:

> *"260. Jurisdiction of the Union in relation to territories outside India.-*
>
> *The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, Legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force."*

7. My client submits that for exercising jurisdiction over foreign territories, the Union Government has to have an Agreement with the Government of that territory. In the present case no such agreement exist for applying any of the provisions of the Customs Act, 1962 or any other statutory provisions of laws and statutes. Hence the Show Cause Notice could not

have been issued to my client, who are foreign nationals and none of the acts in the DRI was not empowered to invoke provisions of Customs Act, 1962 against my client for any acts, deeds done or committed at Hong Kong. Consequent show cause notice is bad-in-law and deserves to be dropped vis-à-vis my client in the interest of justice.

8. As per Section 1 (2) of the Customs Act: It extends to the whole of India and save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person. Further Section 151B of the Customs Act provides that:

> *"(1) The Central Government may enter into an agreement or any other arrangement with the Government of any country outside India or with such competent authorities of that country, as it deems fit, for facilitation of trade, enforcing the provisions of this Act and exchange of information for trade facilitation, effective risk analysis, verification of compliance and prevention, combating and investigation of offences under the provisions of this Act or under the corresponding laws in force in that country.*
>
> *(2) The Central Government may, by notification, direct that the provisions of this section shall apply to the contracting State with which reciprocal agreement or arrangements have been made, subject to such conditions, exceptions or qualifications as may be specified in that notification.*
>
> *(3) Subject to the provisions of sub-section (2), the information received under sub-section (1) may also be used as evidence in investigations and proceedings under this Act.*
>
> *(4) Where the Central Government has entered into a multilateral agreement for exchange of information or documents for the purpose of verification of compliance in identified cases, the Board shall specify the procedure for such exchange, the conditions subject to which such exchange shall be made and designation of the person through whom such information shall be exchanged.*
>
> *(5) Notwithstanding anything contained in sub-section (1) or sub-section (2) or sub-section (3), anything done or any action taken or purported to have been done or taken, in pursuance to any agreement entered into or any other arrangement made by the Central Government prior to the date on which the Finance Bill, 2018 receives the assent of the President, shall be deemed to have been done or taken under the provisions of this section.*
>
> *Explanation.—For the purposes of this section, the expressions,— (i) —contracting State means any country outside India in respect of which agreement or arrangements have been made by the Central Government with the Government or authority of such country through an agreement or otherwise; (ii) —corresponding law means any law in force in the contracting State corresponding to any of the provisions of this Act or dealing with offences in that country corresponding to any of the offences under this Act."*

Each of the provisions of the Customs Act, 1962 has to be read in consonance. The provisions of Customs Act, 1962 will apply to a foreign state/country only where the Central Government has entered into an agreement or any other arrangement with the Government of any country outside India or with such competent authorities of that country, for facilitation of trade, enforcing the provisions of this Act. The Show Cause Notice has not been able to show that there is any such agreement

or arrangement between Government of India and Hong Kong (Republic of China) for applicability of the provisions of Customs Act, 1962 for any act committed at Hong Kong. Hence in absence of any such agreement or arrangement, any act committed by my client at Hong Kong while exporting the goods would not fall within the purview of the Customs Act, 1962. Hence, no Show Cause Notice could have been issued to my client under the Customs Act, 1962 for imposition of penalty and hence the proceedings initiated against my client therefore deserves to be dropped.

9. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the matter. In such situation, the legal maxim "*sublatofundamentocadit opus*" meaning thereby that foundation being removed, structure/work falls, comes into play and applies in the present case. Hon'ble Supreme Court has held that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to quasi-judicial proceedings equally.

Show Cause Notice without jurisdiction:

10. Special Economic Zone (SEZ) is a geographically delineated duty-free enclave and is deemed to be a foreign territory for the purposes of trade operations and duties and tariffs. With a view to promote the business activity, the Special Economic Zone Act, 2005 received the assent of the President of India on 23.06.2005. Section 20, 21 and 22 of the said Act came into force on 13.01.2010. As per the Preamble of the SEZ Act, it is to provide for the establishment, development and management of the Special Economic Zone for the promotion of exports and for the matter connected therewith or incidental thereto. The SEZ Act being a special Act was specifically passed to cover all the matters pertaining to a Unit having Office/Unit within the SEZ premises.

11. Under the SEZ Act, there are no distinct offences which are enumerated. Further there are no officers specifically empowered under the Act for carrying out search, seizure etc i.e. for commencing investigation. Section 21 and 22 of the Act reads as herein below:

> *"21. Single enforcement officer or agency for notified offences.*
> *(1) The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for purposes of this Act.*
> *(2) The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offences or committed in a Special Economic Zone.*
> *(3) Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection or search or seizure as is provided under the relevant Central Act in respect of the notified offences,*
>
> *22. Investigation, inspection and search or seizure.*
> *The* ***agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation or***

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search or seizure *in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone: Provided that no investigation, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or subsection of section 21 without prior approval of the Development Commissioner concerned.*

Provided further that any officer of agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner.

12. Section 51 of the SEZ Act is clear that SEZ Act prevails over other enactments to the extent of special provisions being made under SEZ Act. Therefore, the SEZ Act would prevail over the Customs Act, 1962 in all aspects in view of the non-obstinate clause. For ready reference, section 51 of the SEZ Act if reproduced below:

"***51. Act to have overriding effect:-****The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*"

13. It would also be appropriate to refer Section 53 of the Act, which is as under:-

"***53. Special Economic Zones to be ports, airports, inland container depots, land stations, etc., in certain cases.***—
(1) A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorised operations.
(2) A Special Economic Zone shall, with effect from such date as the Central Government may notify, be deemed to be a port, airport, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act, 1962 (52 of 1962):
Provided that for the purposes of this section, the Central Government may notify different dates for different Special Economic Zones"

14. A reading of the above provisions makes it clear that the officer of the DRI does not have power or jurisdiction to inspect or seize goods in respect of units situated in SEZ area. The power to investigate in respect of any offence committed in SEZ unit is conferred on officers empowered under Section 22 of the SEZ Act. Further, section 52 of the SEZ Act also spells out that the Customs Act is not applicable in respect of units situated in SEZ unit.

15. Vide a Notification bearing No. 2665(E) dated 05.08.2016, the Central Government Notified various offence to be notified offences under the SEZ Act which includes section 28 of the Customs Act, 1962.

16. Further, vide Notification S.O. 2666(E) dated 05.08.2016, the Central Government, in exercise of the powers conferred by sub-section (2) of

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section 21 and second proviso to section 22 of the Act, inter alia notified the Additional Director General, Directorate of Revenue Intelligence for offences under the Customs Act, 1962 to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. For ease of reference the

> *"In exercise of the powers conferred by sub-section (2) of section 21 and second proviso to section 22 of the Special Economic Zones Act, 2005 (28 of 2005) (hereinafter referred as the Act), the Central Government hereby authorises the Additional Director General, Directorate of Revenue Intelligence for offences under the Customs Act, 1962 (52 of 1962) and the Additional Director General, Directorate General of Central Excise Intelligence for offences under the Central Excise Act, 1944 (1 of 1944) and the Finance Act, 1994 (32 of 1994) to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone.* ***The enforcement officer(s), for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit and shall intimate the details of any action initiated under sub-section (3) of section 21 of the Act to the Joint Secretary in charge of Special Economic Zones Division in the Department of Commerce immediately*** *and in any case not later than seven days of initiation of any action."*

17. My client submits that only the enforcement officers appointed in terms of the above Notification for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the Special Economic Zone. Such powers cannot have been exercised by any other authority, then as notified.

18. My client submits that the Seizure Memo dated 13.12.2023, was issued after more than 9 months from the date of panchanama and recovery being caused. The Seizure Memo has been issued by Senior Intelligence Officer, holding that the goods is placed under seizure under the provisions of Customs Act, 1962. In terms of the Notification only the Additional Director is empowered to exercise power of seizure. The goods have been seized by an officer who did not have the authority to exercise such powers, consequently the impugned Show Cause Notice arising consequent to such search and seizure which is legally unsustainable deserves to be dropped.

19. Vide another Notification No. S.O. 2667(E) dated 05.08.2016, the ***jurisdictional Commissioner of Customs*** was also notified in respect of offences under the Customs Act.

20. Hence, as per Section 21 (2) of the Act, the Central Government was empowered to notify officer and/or agency to give them powers to search, seize etc, the Central Government specifically gave powers only to the ***Jurisdictional Commissioner or the Additional Director General of the DRI***, the power to search, seize etc.

21. My clients state that the initiation of the investigation in relation to search was authorized by Deputy Director, DRI, who was not the officer appointed by the Notification and therefore in ex-facie contravention of

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S.O. 2666(E)] dated 5th August 2016, and S.O.2667 (E) dated 5th August, 2016 issued by Central Government [in exercise of powers conferred by sub-section 2 of Section 21 and second proviso to Section 22 of the Special Economic Zones Act, 2005]. The Notification does not confer any power upon the Additional Director General, delegating of the powers and functions upon any other officer. The appointment of Additional Director for carry out the investigation, is with sole intention that no frivolous misuse of powers are caused by the officers, in their excitement and the officer appointed is reasonable and responsible enough to apply his mind, while exercising the powers. Any other officer of the DRI could not have exercised such powers. Hence, the Show Cause Notice being based on investigation caused by an authority not having jurisdiction to conduct the same has vitiated the investigation.

22. The guidelines provide that vide Notification S.O. 2666(E)] dated 5th August 2016, the enforcement officers for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the SEZ and shall intimate the details of any action initiated under sub-section (3) of section 21 of the SEZ Act to the Joint Secretary in charge of SEZ. Since, the investigation proceeding conducted by the officers of the DRI, was itself without jurisdiction and that there was no compliance made in relation to the notification S.O.2666 (E) was made. Therefore, the Show Cause Notice based on such investigation is improper. The Show Cause Notice deserves to be dropped on this ground alone.

23. Since the act of search and seizure of goods in respect of Sachin SEZ units, by officers of DRI, is illegal and arbitrary for want of jurisdiction, the show cause notice which propose to confiscate such goods, based on the aforesaid search and seizure, have no basis of whatsoever nature and, do not survive by virtue of the doctrine of ***sublatofundamentocadit opus***.

24. No such procedure as prescribed have been carried out and/or conducted about any such compliance of the pre-requisite condition for initiating the investigation proceedings against a Unit based in SEZ area. Show Cause Notice based on investigation being carried out by an authority not having jurisdiction, is bad-in-law and hence the Show Cause Notice deserves to be dropped.

25. In the context of show cause notices (SCNs) issued under the Customs Act, 1962, concerning SEZ units, it's generally understood that the Development Commissioner's approval or sanction may indeed be required. This requirement is often grounded in the authority vested in the Development Commissioner under the SEZ Act to oversee and regulate various activities within the SEZ, including customs-related matters.

26. The Development Commissioner plays a crucial role in SEZ administration and acts as a nodal authority for facilitating various permissions, clearances, and compliance matters. Given their oversight role, it's not uncommon for SEZ-specific procedures to mandate that any significant actions, such as the issuance of show cause notices affecting SEZ units under the Customs Act, require the approval or sanction of the

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Development Commissioner, which has not been obtained prior to issuance of Show Cause Notice.

27. Hon'ble Supreme Court in Management of Express Newspapers (Private) Ltd., Madras v. The Workers and Others reported in AIR 1963 SC 569 has held that jurisdiction issue must be decided first as they go to the root of the matter.

28. My client states that vide Circular No.11/2017-Cus dated 31.03.2017 has issued clarification as regards operationalization of functions of appropriate authority and time limitation and also issues relating to adjudication. Standard Operating Procedure prescribes that where demand has to be made, a draft demand / Show Cause Notice shall be prepared by the Specified Officer / Authorized Officer in the concerned office of the Development Commissioner and should be transferred to DC/AC in the office of jurisdictional Customs along with all Relied Upon Documents. The captioned Show Cause Notice has not been issued in the manner prescribed under the SOP and appears to have not been prepared in the office of the Development Commissioner. The purpose of adopting such SOP is that there remains transparency in the proceedings, which is monitored by the Development Commissioner and the assessees are not harassed un-necessarily and such a proceeding has to be compulsorily complied with. My client submits that the Show Cause Notice and documents relied up does not mention anywhere as to whether the aforesaid procedure was followed while issuance of Show Cause Notice. Hence, the Show Cause Notice deserves to be dropped.

Section 124 does not empower authority to issue Show Cause Notice:

29. The Show Cause Notice has been issued under section 124 of the Act, which is without jurisdiction and/or authority of law inasmuch as the said provision do not confer any power of issuance of a '*show cause notice*', which can be exercised by any officer of customs, let alone the proper officer.

30. Section 124 of the Act provides as under:

> "***Section 124. Issue of show cause notice before confiscation of goods, etc.*** -
>
> *No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -*
>
> *(a) is given a notice in 1[writing with the prior approval of the officer of Customs not below the rank of 2[an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*
>
> *(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and*

(c) is given a reasonable opportunity of being heard in the matter :
Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed."

31. From reading of the foregoing provision, it is clear and unambiguous, that the same clarifies the following:

a. The provision prescribes certain commandments in sub-section (1) which have to followed in letter and spirit before passing of any order of confiscation or imposition of any penalty on any person under Chapter XIV of the Act;

b. The inherent nature of the said commandments is representative of principles of natural justice particularly the doctrine of *audi alteram partem* which cannot be dispelled with while passing an order of confiscation or imposition of penalty in terms of Chapter XIV of the Act;

c. The authority in whom the power to issue show cause in terms of the said provision is patently unclear;

d. The authority in whom the power to adjudicate the purportedly issued show cause notice in terms of the said provision is also patently unclear;

e. Employment of the word '*notice*' in first proviso to sub-section (1) is also not reflective/indicative of the power of issuance of a show cause notice envisaged under sub-section (1);

f. Recognition of power of issuance of show cause notice, in terms of clause (a) to sub-section (1), in the second proviso is misplaced and not a true reflection of the legislative intent embedded in the warp and woof of the said provision; and

g. Clause (a) of sub-section (1) of the said provision does not confer any power on any person to 'issue' a show cause notice inasmuch as the clear, unambiguous, and express language employed therein merely sets out the necessity to give a notice and the features/characteristics of such notice – fulfilment whereof would lend the said '*notice*' necessary validity in the eyes of law.

32. My client submits that, Section 124 does not confer any power to issue Show Cause Notice upon the Additional Commissioner any authority as such, hence the entire proceeding initiated on the basis of such provision, vitiates the fundamental basis on which the same stands. It is a settled legal proposition that when action on the basis of which the primary proceeding stands vitiated, all subsequent and consequential proceeding would fall.

33. It is no more *res integra* that:

i. Taxation statutes have to be strictly interpreted; and
ii. Fealty has to be pledged to the literal meaning of the statute in cases where the language of the statute is clear and unambiguous.

34. My client states that, without an iota of doubt, it may be appreciated that the explicit language of section 124 of the Act neither confers any power to issue show cause notice nor envisages issuance of show cause notice by invocation of the provisions therein. The only reference qua show cause notice therein is limited to spotlight adherence to the principles of natural justice, bereft whereof no order of confiscation or imposition of penalty under Chapter XIV of the Act can be passed.

35. My client states that, Section 124 of the Customs Act, 1962, provides that the Show Cause Notice can be issued only with the prior approval of the officers of Customs not below rank of an Assistant Commissioner of Customs, thereby meaning that the officer above the rank of Assistant Commissioner of Customs can accord only approval for issuance of Show Cause Notice.

36. My client submits that therefore, the Show Cause Notice issued under section 124 of the Act, which does not confer any such power inasmuch is without jurisdiction and authority of law and the same deserves to be quashed and/or set-aside, in the interest of justice.

37. My client reiterates her requests to furnish copies of non-relied upon documents in the interest of justice.

My client wishes to be heard in person before any order is passed, in the matter."

36.17 The noticee M/s EURO TECH INTERNATIONAL TRADING LIMITED, Unit K, 3 F, Central house, 270-276, Queens Road, Central Sheungwan, Hong Kong has not submitted any defence reply in connection with the instant SCN Dated 26.02.2024.

36.18 The noticee M/s FAMASIA LIMITED, 608, Hart Avenue, 5-9, TST, Kowloon, HongKong has submitted its defense reply in connection with the instant SCN Dated 26.02.2024 vide letter dated 13.03.2025

"With reference to above SCN bearing SCN No: GEN/ADJ/ADC/336/2024-DIVSRT-CUS-COMMRTE-AHMEDABAD dated 26-02-2024, I would like to submit as under;

Facts of the Case:

Famasai Limited, a Hong Kong based entity, sold the Cut and polish precious stone- ruby to Sagar Diamonds Limited Surat with valid documentation as on 08- 08-2020. Famasai Limited had purchased the said stock from Nancy Diam Hong Kong as on 28-05-2014 (Purchase Invoice is attached herewith). This stock was recorded in the books of accounts of Famasai Limited and was duly audited, reflecting its existence from 2014 to 2020 (Audit Report is attached herewith). Payment was made through legal banking channels, and records of

such transactions are maintained as per the Hong Kong Monetary Authority (HKMA) regulations. This stock was further exported by the Sagar Diamond Limited, Surat in Aug-2020 as per the RUD documents with us. At the time of verification, this stock was no longer in existence, yet Customs authorities determined the valuation based on stock existing at time of verification.

Section 112(a) of the Customs Act, 1961:
"Any Person, -

(a) 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 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 1 [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

[(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;]

[(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty 4 [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;]

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.

For a penalty to be imposed under the provisions, the Custom Department must establish that Famasai limited was directly involved in the improper importation process or had a mens rea to evade duties or assist in such evasion.

In *Canon India Pvt. Ltd. v. Commissioner of Customs* (2021 SCC OnLine SC 200), the Supreme Court ruled that liability under the Customs Act arises only for those involved in the import process. Since Famasai Limited did not file a

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Bill of Entry or declare the goods for import, it cannot be penalized under Section 112(a).

Section 112(a) applies to importers who evade duty. Famasai Limited is an overseas supplier and was never involved in customs clearance.

Section 112(b) applies to persons abetting evasion of duty, but famasai limited only conducted a lawful sale transaction.

Section 112(a) penalizes improper importation, and section 112(b) applies to aiding such imports.

The rubies in question were legally acquired and held as part of audited stock of Famasai limited, with no evidence of misdeclaration or wrongful importation.

The sale to Sagar Diamond Pvt. Ltd was duly documented and further exported, eliminating any possible evasion of custom duties.

Section 117 of Customs Act, 1962:

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding 1[four lakh rupees].

Section 117 applies to general contraventions where no specific penalty is prescribed. However, liability under this section requires a clear breach of a statutory obligation, which is absent in this case.

Section 117 applies only when a person fails to comply with a customs provision that does not have a specific penalty.

Famasai Limited never filed any customs declaration in India, meaning there was no failure to comply with customs requirement. Famasai Limited was not an importer and had no direct role in any customs procedural violation in India. The responsibility for compliance rested entirely with Sagar Diamonds Limited Surat.

In Aafloat Textiles (I) Pvt. Ltd. v. Commissioner of Customs (2009 SCC OnLine CESTAT Mum 753), the Tribunal ruled that penalty under Section 117 cannot be imposed merely based on suspicion or procedural lapses without evidence of willful non-compliance.

The transaction was conducted with proper documentation, banking channels, and compliance with Hong Kong trade laws, ensuring that Famasai Limited was not liable for any alleged contravention of Indian customs procedures.

Since Customs authorities cleared the goods at the time of import and export without raising objections, imposing a penalty retrospectively under Section 117 contradicts the principles of natural justice.

Section 114AA of the Customs Act, 1962:

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.

Section 114AA penalizes any person who knowingly or fraudulently makes, signs, or uses any declaration, statement, or document that is false in a material particular.

Famasai Limited never submitted any document to Indian Customs; all import declarations were made by Sagar Diamond Limited.

No evidence has been provided by Customs to prove that Famasai Limited made any false statement or declaration in India.

The transaction was conducted through legitimate banking channels with proper documentation, proving no fraudulent intent or false declarations.

In Union of India v. Raj Grow Impex LLP (2021 SCC OnLine SC 429), the Supreme Court held that penalties under Section 114AA require clear evidence of fraudulent intent, which is absent in this case.

Penalties under Section 112(a), 112(b), 117 and 114AA require a deliberate intent to contravene customs laws.

Famasai Limited acted in good faith, maintaining proper records and ensuring that transactions complied with standard business practices.

In case of Ganpati Overseas v. Commissioner of Customs (I), Mumbai, the Hon'ble CESTAT, Mumbai Bench held that, "Value in the export declaration may be relied upon for ascertainment of assessable value under Customs (Valuation) Rules, 1988 and not for determining the price at which the goods are ordinarily sold at the time and place of importation, as held by Apex Court in C.C., Calcutta Vs. South India Television (P) Ltd. [2008 (81) RLT 745 (SC)=2007 (214) E.L.T. 3 (S.C.)], wherein the Apex Court has also held that the burden lies upon the department to prove under valuation by evidence or information about comparable imports, and that if the charge of under valuation is not supported by such evidence/information, the benefit of doubt is to go to the importer. This decision is all the more relevant and applicable to the present case, not only because of the absence of any evidence of contemporaneous import but also for the reason that the foreign supplier has satisfactorily explained that the price initially shown in the export declaration was incorrect and was subsequently amended and accepted by Hong Kong Customs".

We want the cross examination of the person based on whose statement your office had issued this show cause notice as we have declared the correct value and we had supplied the proper goods.

From the above submission it is clear that penalty u/s 112(a), 112(b), 117 and 114AA of Customs Act, 1962 can not be imposed on Famasai limited.

Without prejudice to above submission, under international trade principals, the responsibility of import duty compliance rests with the importer, not the overseas supplier.

The World Trade Organization (WTO) rules on valuation and trade compliance reinforce that the seller cannot be held accountable for customs declaration made by the buyer.

If your office requires any further information kindly let us know we will provide the same."

36.19 The noticee M/s FANCY COLOR DIAM (HK) LTD, RM 1715, 17F, Rise Commercial, 5-11 Granville Circuit, T.S.T, Kowloon, Hong Kong, throught its authorized representative Shri Hemant Dave, Advocate submitted its defense reply vide letter dated NIL in connection with the instant SCN Dated 26.02.2024 as under-

1. "At the Outset My clients deny each and every allegation, averments, statements and submissions of your show cause notice under reply and my client's specifically and categorically denies all the allegations made in the show cause notice.
2. My Client's states that noting shall be deem to be admitted unless it is specifically so done and shall be presumed to have been denied by my client's
3. My client's states that my client's is a Hong Kong based overseas supplier and my client's has never supplied any goods/Synthetic/duplicate precious stones (Rubies) during the period 2021,2022 and 2023 which is a very crucial fact and My Client'shave supplied cut and polish stones/rubies as mentioned on invoices.
4. My client's states that it is alleged that based on an information received from Assistant Director, Directorate of Enforcement (New Delhi), vide a letter dated 1st March, 2023 for a search operation in the name of power bank App scam, the office premises of (i) M/s Sagar Empire Jewels Pvt LTD, SEZ Surat (ii) M/s Sagar Natural Rubies Ltd, SEZ, Surat (iii) M/s RHC Global Exports Pvt Ltd, SEZ, Surat and it is alleged that the abovesaid three entities as on 1st March, 2023 had been shown in the books of accounts as approx. Rs.1400 crores whereas during search operation after valuation of stock by a government approved valuer large quantities of synthetic/duplicate precious stones (Ruby) were found in stock in trade valued at nearly few crores of rupees.
5. My Client's state that it is pertinent to note that my client's has not supplied any synthetic rubies as falsely alleged during the relevant period and there is no misdeclaration of descriptions goods in any manner or value of the goods during financial years i.e. financial year 2021,2022 and 2023 and there is no concrete and cogent evidence to show that the said stock was forming any part which is being supplied by my client's and hence on the basis of general assumptions and presumption that the other suppliers might have supplied synthetic ruby Natural Rubies (color stone) cannot be concluded that the Natural Rubies supplied by my client's in the year 2019 was forming the part of the said stock.
6. My Client's states that my client's of supplied as per the order of the importer cut and polish precious stones (Natural Rubies) as per the prevailing rate in the market Kindly find enclosed herewith the invoice date 21.05.2019 along with the shipping bill and Copy of the bill of entry as submitted by the importer **(Copies are enclosed herewith as annexure "A").**
7. My Client's states that as stated in the show cause notice Sagar Natural Rubies Ltd, was situated in SEZ which is under the control of development Commissioner and as per the rules the appraiser examines and verify the goods and if he finds that the goods and its value are as per the declaration made on the bill of entry then the goods are allowed to be cleared by the importer since as per the SEZ Act 2005, SEZ notified area itself is a port and as such after more

than 3 years it is absolutely false allegations that my client's who is a overseas supplier has supplied the synthetic Natural Rubies which is absolutely not co related with any documentary evidence.

8. My Client's states that it is well settled principal of law that the identity of the Natural Rubies cannot be established when Natural Rubies are mix up with so many other suppliers.
9. My Client's states that as far as valuations of the Natural Rubies is concerned there is quite possibility that one panel member may give different opinion than the large panel of 3 panel members and hence it is desirable to have the valuation report from different panel members.
10. My Client's states that in the show cause notice it is alleged that the statements of various persons have been recorded under section 108 of the Customs Act like **(i) Shri HirenbhaiBipinbhai Trivedi** who was working as a production manager in M/s SDL, SURSEZ than the statements of the other co notices like **(ii) Shri. Vaibhav D. Shah** who was the Managing director of M/S SDL and than the statements of other co noticees like **Shri. Ajit Khushal Shah**, who was Chartered Accountant working Sagar Natural Rubies Ltd, and than other senior accountant **Shri. Santosh Nimbaji Sonar** than the junior accountant **Ms. Sanjana Kalambe** than the statements **Shri. Saurin Rasiklal Shah** and others but none of the co noticees have implicated in any manner to my client's and as such the allegations of abetting thus not survive in view of the fact that there is no evidence at all.
11. My Client's states that as per the Customs Act 1962, My Client's have sold supplied and delivered the natural cut and polish natural rubies as per the prevailing rate in the international market and my client's have received the payments banking channels that to in the year 2019 and as such after more than 3 years any allegations of contrary nature does not survive.
12. My Client's States that as per the averments made on page no. 61 where the names of the overseas firms are mentioned which are 47 Firms and hence it cannot be jumped to a conclusion that all 47 firms have supplied the synthetic Natural Rubies as falsely alleged.
13. My Client's states that as per the SEZ rules all the SEZ units are directly under the control and supervision of development commissioner, Assistant development commissioner and more particularly when manufacturing of Silver Ornaments/Silve Jewelries studded with ruby and while exporting all the export related procedures like filing shipping bill invoice laboratory tests reports and all other related procedures for import is under the control of SEZ, who personally and physically verify the consignments and its descriptions and valuations and thereafter only goods are allowed to be exported and hence at this belated stage to term this as a trade based money laundering system (TBML) system is absolutely false and cogent without any clinching evidence.
14. My Client's states thatsince my client's had supplied the natural Rubies in the year 2019 and any seizure or any valuation report of year 2023 does not discloses that the stock was forming any kind of part or any part supplied by my client's and in the absence of any cogent documentary evidence the general presumptions cannot be drawn.

15. My Client's states that my client's is specifically and categorically denies that my client's has made any false declarations as far as the descriptions of the goods i.e. cut and polish precious stones (natural rubies) and my client's has sold, supplied and delivered the natural rubies as per the declaration on the invoices.
16. My Client's states that in the entire show cause notice or in the documents referred and relied upon in show cause notice does not specifically points out that my client's have supplied synthetic Natural Rubies and the general statements without any documentary evidence and without any specific documents only on the strength of general presumptions an averment is made which is not maintainable and tainable in law.
17. My Client'swould like to have physical hearing as well as personal hearing in the matter before any decision is taken in the matter.
18. My Client'sis filing this preliminary reply to the show cause notice and my client's deserves his right to file additional reply as and when necessary.
19. My Client'sonce again repeat, reiterate and confirm that my client's have not violated any of the provisions of the Customs Act 1962 and SEZ Act and my client's has been falsely dragged in the matter only on the base of general assumption and presumptions.
20. My Client'shereby specifically and categorically denies that he has indulged in any manner in the business of trade based money laundering as falsely alleged.
21. My Client's states that my client's have sold, supplied and delivered the natural rubies as per the declarations and the physical movements of the goods has taken place as per the international norms recognized by international trade.
22. My Client's is victimized only on the basis general assumptions and presumptions which is not permissible in law and every allegations has to be supported with independent cogent documentary evidence.

i. In the circumstances my client's most respectfully prays before your Honor that since my client's is falsely implicated and hence he may be exonerated from the proceedings and the show cause notice proceedings may kindly be dropped against my client's.

ii. My client's would like to be heard physically before any decision is taken in the matter.

Any other relief as deem fit and proper in favor of my client's."

36.20 The noticee M/s FU LEE HONG COMPANY LIMITED, 1108, 11/F, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong, through its authorized representative Shri Shrey S Lodha, Advocate submitted its reply vide letter dated 12.05.2024 as under:-

"Upon instructions from, for and on behalf of my Client, through its Authorised Signatory who has drawn Vakalatanama, enclosed hereto as **Annexure 1**, in my favour, I hereby submit as follows:

1. At the outset my Client denies any and every allegation made in the captioned Show cause notice (hereinafter referred to as "**SCN**") for it isreplete with non-application of mind and untenable in the eyes of law.

2. It is pertinent to note that the present submissions are preliminary in nature insofar as objections pertaining to jurisdictional facts have been advanced herein, which as per several judicial pronouncements including ***Arun Kumar and Others v. Union of India and others, [(2007) 1 SCC 732]*** posit existence of jurisdictional fact before assumption of jurisdiction by a court, tribunal, or an authority over a matter. In ***Arun Kumar*** (supra), the Hon'ble Supreme Court held as under::

"***74. A "jurisdictional fact" is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.***

75. In Halsbury's Laws of England, it has been stated: "Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive."

76. The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction."

3. In light of the foregoing, your good self is most humbly requested to kindly adjudicate and dispose, *first*, the challenge to the jurisdictional aspects related to the captioned show cause noticewhich go to the root of the matter before passing any decision on the merits of the case. It is expressly stated that my Client reserves the right to make further submissions including on the merits of the matter subsequent to disposal of the preliminary objections by your good self.

PRELIMINARY OBJECTIONS

4. At the cost of repetition, it is categorically submitted that any and all allegations made in the captioned show cause notice are denied inasmuch as they are based on conjecture, surmises, and shaky grounds. Further, the submissions / objections herein are taken independently and without prejudice to each other.

IV. EXTRA-TERRITORIAL ASSUMPTION OF JURISDICTION

5. That my Clientis an overseas supplier, based out in Hong Kong, of the goods in question i.e. Cut & Polished Precious and Semi-Precious Stones (Ruby)and the same was sold to several entities during the relevant period

including the entities based out in India. It is pertinent to note that the goods in question were shipped from Hong Kong upon complying with the normative regulations and ensuring requisite and proper declaration of the material particulars of the said goodsto the Hong Kong Customs Authorities and nothing has been whispered in the captioned show cause notice to suggest otherwise.

6. From a bare perusal of the captioned show cause notice, it is understood that the gravamen therein qua my Clientis that it has allegedly abetted and indulged in conspiracy with the main noticee i.e. M/s RHC Global Exports Private Limited, an entity based in Surat Special Economic Zone, Sachin ("**Sachin SEZ**"), to:

(c) contravene the provisions of the Customs Act, 1962 (and the rules and regulations made thereunder) and the Special Economic Zones Act, 2005 (and the rules and regulations made thereunder) by issuing commercial invoices, packing lists, etc. bearing incorrect particulars of the goods, vis-à-vis the classification and value thereof, so supplied; and

(d) facilitate remission of outward foreign remittance on the strength of fake/bogus commercial invoices.

7. It is pertinent to note at this juncture that my Client neither is incorporated in India nor has any permanent establishment in India nor has its place of effective management in India nor is an importer / exporter in terms of the Customs Act, 1962, therefore, the issuance of the captioned show cause notice prima facie is beyond the legislative mandate of Customs Act, 1962***basis extrapolation of allegation on the previous imports of the main noticee from my Client***.

8. That no Municipal Law can ever be extended beyond the territorial boundaries of a country including its continental self and exclusive economic zone, whether or not there is express provision in the statute to stretch the same beyond the country's territory since the same would amount to encroachment upon the territorial authority of other State. Sovereign country asserts extra territorial jurisdiction in criminal laws though ***the principal basis of jurisdiction over crime is the territorial principle which permits a State in control of its territory to prescribe, adjudicate and enforce its law in the territory. The crime is said tobe committed even partly in a state's territory when any essential constituent element itself is consummated there***. Further, the Hon'ble Supreme Court's Constitutional Bench in ***GVK Industries Limited and Another v. Income Tax Officer and Another, [(2011) 4 SCC 36]*** while in seisin with the issue as to legislative competence of Parliament to breathe extra-territorial jurisdiction into a statute has observed as follows:

"*124. We now turn to answering the two questions that we set with:*

(1) ***Is Parliament constitutionally restricted from enacting legislation with respect to extra-territorial aspects or causes that do not have, nor expected to have, any, direct or indirect, tangible or intangible impact(s) on, or effect(s) in, or consequences for****:*

(a) other territory of India, or any part of India; or

(b) other interests of, welfare of, well-being of, or security of inhabitants of India, and Indians?

The answer to the above would be yes. However, Parliament may exercise its legislative powers with respect to extra-territorial aspects or causes*—events, things, phenomena (howsoever commonplace they may be), resources, actions or transactions, and the like—that occur, arise or exist or may be expected to do so, naturally or on account of some human agency, in the social, political, economic, cultural, biological, environmental or physical spheres outside the territory of India, and seek to control, modulate, mitigate or transform the effects of such extra-territorial aspects or causes, or in appropriate cases, eliminate or engender such extra-territorial aspects or causes,* ***only when such extra-territorial aspects or causes have, or are expected to have, some impact on, or effect in, or consequences for: (a) the territory of India, or any part of India; or (b) the interests of, welfare of, well-being of, or security of inhabitants of India, and Indians****.*

125. It is important for us to state and hold here that the powers of legislation of Parliament with regard to all aspects or causes that are within the purview of its competence, including with respect to extra-territorial aspects or causes as delineated above, and as specified by the Constitution, or implied by its essential role in the constitutional scheme, ought not to be subjected to some a priori quantitative tests, such as 'sufficiency' or 'significance' or in any other manner requiring a predetermined degree of strength. ***All that would be required would be that the connection to India be real or expected to be real, and not illusory or fanciful****.*

126. Whether a particular law enacted by Parliament does show such a real connection, or expected real connection, between the extra-territorial aspect or cause and something in India or related to India and Indians, in terms of impact, effect or consequence, would be a mixed matter of facts and of law. Obviously, where Parliament itself posits a degree of such relationship, beyond the constitutional requirement that it be real and not fanciful, then the courts would have to enforce such a requirement in the operation of the law as a matter of that law itself, and not of the Constitution:

127. (2) ***Does Parliament have the powers to legislate 'for' any territory, other than the territory of India or any part of it?***

The answer to the above would be no*. It is obvious that Parliament is empowered to make laws with respect to aspects or causes that occur, arise or exist, or may be expected to do so, within the territory of India, and also with respect to extra-territorial aspects or causes that have an impact on or nexus with India as explained above in the answer to Question 1 above. Such laws would fall within the meaning, purport and ambit of the grant of powers to Parliament to make laws 'for the whole or any part of the territory of India', and they may not be invalidated on the ground that they may require extra-territorial operation.* ***Any laws enacted by Parliament with respect to extra-territorial aspects or causes that have no impact on or nexus with India would be ultra vires, as answered in response to Question 1 above, and would be laws made 'for' a foreign territory.****"*

In light of the foregoing, it is submitted that albeit s. 1(2) of the Customs Act, 1962 has enabled its extra-territorial jurisdiction, however, the same

is subject to the essential principle that the act / omission / offence / contravention should have impact and / or nexus with the subject-matter which is sought to be regulated by the Customs Act, 1962.

9. Gravitating the aforesaid to the present facts and circumstances, it is submitted that the ***basis to allege contravention*** of the provisions of the Customs Act, 1962 and Special Economic Zones Act, 2005 i.e. mis-declaration and over-valuations of the goods in question by the main noticee ***is Bills of Entry filed by the importer,i.e. the main noticee in the instant case, during the relevant period and not the commercial invoices / packing lists issued by my Client***.

10. It is relevant to note that the nature of allegation in the captioned show cause notice wherein it has been proposed to impose penalty u/ss. 112(a), 112(b), 114AA, and / or 117 of the Customs Act, 1962 on my Client, is that by issuing the commercial invoices and packing lists qua the exports made by my Client in terms of the laws of Hong Kong, my Client has allegedly abetted the main noticee in mis-declaring and over-valuing the goods in question to the Indian Customs Authorities and has in consequence also purportedly abetted siphoning off outward foreign exchange on the strength of such allegedly fake/bogus documents. At the cost of repetition, it is submitted that the foregoing allegation is a mere extrapolation of conjectures and surmises on the past imports of the main noticee (exports by my Client) inasmuch as it has neither been alluded in the captioned show cause notice about seizure of any live consignment from the main noticee which has been sent by my Client nor it is coming out that any seizure in the instant case directly, basis preponderance of probabilities, links my Client to the alleged contraventions committed by the main noticee. Further, the contents of the captioned show cause notice do not indicate conducting of any enquiry by the Indian Customs Authorities with their Hong Kong counterparts qua any irregularity in the material particulars declared with the latter. Furthermore, the statements recorded and relied upon in the captioned show cause notice do not indicate any imputation or knowledge about the alleged abetment of my Client in the purported contraventions. Moreover, no documentary evidence has been alluded to in the contents of the captioned show cause notice indicating the ***mensrea*** in order to attract the penalty u/ss. 112, 114AA or 117 of the Customs Act, 1962. Thus, when the documents filed and declaration made by my Client have not been disputed by the jurisdictional authorities i.e. Hong Kong Customs Authorities, and there is no material evidence in support of the contention of the Indian Customs Authoritiesqua my Client, the basis to issue the captioned show cause notice only on the ipse dixit of the Indian Customs Authorities is unfounded, arbitrary, illegal, and bad in law.

11. Without prejudice, it is submitted thatthe penalty sought to be proposed u/s. 112 of the Act is interlinked with the confiscation of goods under s. 111 of the Act. In other words, penalty u/s. 112 of the Act will apply only when the goods are liable for confiscation u/s. 111 of the Act. In the present case, the Department has alleged that the goods-in-question are liable for confiscation u/ss. 111 (m) and Section 111(o) of the Act. The relevant portions of Section 111 of the Act is extracted herein below for ready reference:

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"***111. <u>Confiscation of improperly imported goods</u>, etc.*** *- The following goods* ***<u>brought</u>*** *from a place outside India shall be liable to confiscation: -*

(...)

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

(...)

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer."

12. It is submitted that s. 111(m) of the Act provides that any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 of the Act, shall be liable for confiscation.That the entry of goods on importation is dealt under s. 46 of the Act which inter alia provides that the importer of any goods, other than goods intended for transit or trans-shipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed. This form filed by the importer is the bill of entry. Further, Section 17(1) of the Act which deals with assessment of duty states that any importer entering any imported goods u/s. 46, or an exporter entering any goods-to-be-exported u/s. 50, shall self-assess the duty, if any, leviable on such goods. Furthermore, as per s. 2(26) of the Act, 'importer' in relation to any goods at any time between their importation and the time when they are cleared for home consumption includes any owner, beneficial owner or any person holding himself out to be the importer.

13. On a conjoint reading of ss. 111(m), 46, 17, and 2(26) it can be inferred that the value of the goods and other particulars declared at the time of entry of goods are furnished by the importer. Consequently, any violation of the kind mentioned in s. 111(m) of the Act can be attributed only to the importer. In the present case, the function of my Clientas the foreign supplier was limited to supply of goods from Hong Kong to India. In other words, the responsibility of my Clientconcludes once the goods are put in a deliverable state to the customers in India. Once the goods reach the Indian Customs barrier, it is the responsibility of the concerned importers, in the present case the main noticee, to declare the classification and description of such goods and file the bill of entry and other documents for clearance of such goods.Given this, my Client cannot be held liable for any violation of the nature prescribed in Section 111(m) of the Act which renders the goods liable for confiscation. Consequently, the proposal to impose penalty u/s. 112 is bad in law and the captioned show cause notice to that extent could not have been issued to my Client.

14. Similarly, s. 111(o) of the Act provides that if any goods were exempted subject to any condition, from duty or any prohibition in respect of the import thereof under the Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer, such goods shall be liable for confiscation. In the present case, s. 111(o) of the Act is also not triggered by any of the acts of my Client since it is merely the overseas supplier of the imports-in-question and confiscation as envisaged under the said provision can only be triggered when non-observance of the condition(s) for benefit of exemption occurs on the part of the importer as such exemption is claimed by the importer alone.

15. Further, the foregoing is equally apposite in terms of s. 114AA of the Act inasmuch as my Client being the overseas supplier has neither done anything in the transaction of any business for the purposes of the Customs Act, 1962 nor hasknowingly or intentionally 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 Customs Act, 1962.

16. Therefore, the assumption of extra-territorial jurisdiction by the issuing authority of the captioned show cause notice in the instant case basis the writ large extrapolative conjecturethat the previous imports of the main noticee were also allegedly fraudulent in nature and the fact that my Client had issued commercial invoices and packing lists for the select imports made by the main noticee, is wholly erroneous, without authority of law, and arbitrary.

17. That in terms of s.151B of the Customs Act, 1962, for exercising jurisdiction over foreign territories, the Union Government has to have an Agreement with the Government of that territory. In the present case, no such agreement exists for applying any of the provisions of the Customs Act, 1962 or any other statutory provisions of laws and statutes. Hence the captionedshow cause notice could not have been issued to my Client. Thus, it is submitted that assumption of extra-territorial jurisdiction by the authority who has issued the captioned show cause notice is arbitrary and contrary to the legislative intent of s. 1 of the Customs Act, 1962.

18. It is reiterated that the responsibility of filing correct declaration is upon the importer in India and the duty to assess the goods, at the time of clearance is upon the assessing officer.In the instant proceedings, it appears that each and everyconsignment was assessed and thereafter allowed clearance. The responsibility to assess and allow the goods for clearance is upon the officer of the Customs who has been empowered to exercise such function. None of the officers of the Customs were examined during the course of investigation to show that the assessment and clearance allowed by them, was improper in any manner. Thus, on this ground as well the assumption of extra-territorial jurisdiction by the authority who has issued the captioned show cause notice is arbitrary and contrary to the legislative intent of s. 1 of the Customs Act, 1962.

V. RE:SHOW CAUSE NOTICE NOT ISSUED BY DESIGNATED / EMPOWERED OFFICER

19. Special Economic Zone (SEZ), alikeSurat SEZ, Sachin, is a geographically delineated duty-free enclave and is deemed to be a foreign territory for the purposes of trade operations and duties and tariffs. With a view to promote the business activity, the Special Economic Zone Act, 2005 received the assent of the President of India on 23.06.2005. Section 20, 21 and 22 of the said Act came into force on 13.01.2010. As per the Preamble of the SEZ Act, it is to provide for the establishment, development and management of the Special Economic Zone for the promotion of exports and for the matter connected therewith or incidental thereto. The SEZ Act being a special Act was specifically passed to cover all the matters pertaining to a Unit having Office/Unit within the SEZ premises.

20. Under the SEZ Act, there are no distinct offences which are enumerated rather the offences under certain central acts have been subsumed as notified offences for the purposes of the SEZ Act. Sections 111, 113, and 124 amongst others of the Customs Act, 1962 are few of such notified offences under the SEZ Act and for the purposes of carrying out investigation for into such notified offences, certain officers are specifically empowered to commence and carry out the investigation in terms of ss. 21 and 22 of the said Act. For ready reference, the said provisions are reproduced as under:

"***21. Single enforcement officer or agency for notified offences***.

(1) The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for purposes of this Act.

(2) The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offences or committed in a Special Economic Zone.

(3) Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection or search or seizure as is provided under the relevant Central Act in respect of the notified offences."

"***22. Investigation, inspection and search or seizure***.

The agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation or search or seizure in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone: Provided that no investigation, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or subsection of section 21 without prior approval of the Development Commissioner concerned.

Provided further that any officer of agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in

the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner."

21. That in terms of the afore-reproduced provisions, the Central Government vide Notification No. SO 2665(E) dated 05.08.2016, Notification No. SO 2666(E) dated 05.08.2016, and Notification No. SO 2667(E) dated 05.08.2016, all issued u/ss. 21 and 22 of the SEZ Act, as the case may be, have prescribed that either Additional Director General, Directorate of Revenue Intelligence or the jurisdictions Customs Commissioner would be the enforcement / empowered officer to carry out the investigation in relation to notified offences under the SEZ Act. Further, by virtue of s. 21(3) of the SEZ Act, the said enforcement / empowered officers would be entitled to exercise all the corresponding powers in relation to the investigation, search, and / or seizure pertaining to the notified offences including ss. 105, 108, 110, and 124 of the Customs Act, 1962.

22. A reading of the above provisions and corresponding notifications, as adverted to above, makes it clear that the officer of the DRI does not have power or jurisdiction to inspect or seize goods in respect of units situated in SEZ area. The power to investigate in respect of any offence committed in SEZ unit is conferred on officers empowered under the afore-reproduced provisions and notifications. The entire act of search, seizure, recording of statement, and issuance of show cause notice by the officers of DRI and officer of customs who are neither Additional Director General, Directorate of Revenue Intelligence or the jurisdictions Customs Commissioner, in the instant case, is rife with illegality, arbitrariness, and erroneous assumption of jurisdiction. Further, as per the provisions and notifications issued under the SEZ Act, as above, the agency or officers carrying out any investigation into a SEZ Area need the sanction of the Development Commissioner before commencement of such investigation, however, in the instant case, the same has been violated inasmuch as the prior intimation has not been given. On these grounds, no adverse order is warranted against my Client.

23. It is submitted that s. 51 of the SEZ Act is clear that SEZ Act prevails over other enactments to the extent of special provisions being made under SEZ Act. Therefore, the SEZ Act would prevail over the Customs Act, 1962 in all aspects in view of the non-obstinate clause.

24. That vide Circular No.11/2017-Cus dated 31.03.2017 a Standard Operating Procedure has been prescribed whereby a show cause noticehas to be prepared by the Specified Officer / Authorized Officer in the concerned office of the Development Commissioner which shall be transferred to DC/AC in the office of jurisdictional Customs along with all Relied Upon Documents. The captioned show cause notice has not been issued in the manner prescribed under the SOP and appears to have not been prepared in the office of the Development Commissioner inasmuch as there is no averment thereto. The purpose of adopting such SOP is that there remains transparency in the proceedings which is monitored by the Development Commissioner and the assessees are not harassed unnecessarily. Hence, the captioned show cause notice deserves to be dropped qua my Client.

VI. RE: SECTION 124 DOES NOT EMPOWER AUTHORITY TO ISSUE SHOW CAUSE NOTICE

25. That the captioned show cause notice has been issued invoking section 124 of the Act which is without jurisdiction and authority of law inasmuch as the said provision does not confer any power of issuance of a 'show cause notice' which could have been exercised by the authority which has issued the captioned show cause notice. Section 124 of the Act provides as under:

"*Section 124. Issue of show cause notice before confiscation of goods, etc. -*

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in 1[writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed."

26. From reading of the foregoing provision, it is clear and unambiguous, that the same clarifies the following:

a. The provision prescribes certain commandments in sub-section (1) which have to followed in letter and spirit before passing of any order of confiscation or imposition of any penalty on any person under Chapter XIV of the Act;

b. The inherent nature of the said commandments is representative of principles of natural justice particularly the doctrine of audialterampartem which cannot be dispelled with while passing an order of confiscation or imposition of penalty in terms of Chapter XIV of the Act; and

c. The empowerment to issue show cause in terms of the said provision is patently unclear vis-à-vis the authority which has issued the captioned show cause notice;

27. That s.124 does not confer any power to issue the captioned show cause notice upon the authority which has issued the captioned show cause notice, hence the entire proceeding initiated on the basis of such provision, vitiates the fundamental basis on which the same stands. It is a

settled legal proposition that when action on the basis of which the primary proceeding stands vitiated, all subsequent and consequential proceeding would fall.

28. It is no more *res integra* that:

    a. Taxation statutes have to be strictly interpreted; and

    b. Fealty has to be pledged to the literal meaning of the statute in cases where the language of the statute is clear and unambiguous.

29. That the explicit language of s. 124 of the Act neither confers any power to issue show cause notice nor envisages issuance of show cause notice by invocation of the provisions therein upon the authority which has issued the captioned show cause notice. The only reference qua show cause notice therein is limited to spotlight adherence to the principles of natural justice, bereft whereof no order of confiscation or imposition of penalty under Chapter XIV of the Act can be passed.

30. That s. 124 of the Customs Act, 1962 provides that a show cause notice can be issued only with the prior approval of the officers of Customs not below rank of an Assistant Commissioner of Customs, thereby meaning that the officer above the rank of Assistant Commissioner of Customs can accord only approval for issuance of show cause notice. In the instant case, such approval is amiss.Therefore, the captioned show cause notice issued under section 124 of the Act is without jurisdiction and authority of law and the same deserves to be quashed and/or set-aside, in the interest of justice.

PRAYER

31. Therefore, it is most humbly prayed to your good self may be pleased to:

    a. drop the captioned show cause notice vis-à-vis my Client; and

    b. pass such other and further orders which may be fit and proper in the interest of complete justice.

That my Client wishes to be heard in person before any order is passed in the matter. Further, my Client reserves its right to make additional submissions if the need so arises or situation so demands. Furthermore, it is most humbly requested that the personal hearing be scheduled through video-conferencing in line with the Hon'ble Supreme Court's consistent and continued effort to digitalise the justice dispensation system."

36.21 The noticee M/s GEMS STAR TRADING F.Z.E, P O Box 171641, Dubai, UAE (gemsstartrdg@gmail.com) has not submitted any defense reply in connection with the instant SCN Dated 26.02.2024.

36.22 The noticee M/s GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED, Room No. 2002, 20/F, Hing Yip Commercial Centre, 272-284

Des Voeux Road, Central Hong Kong has not submitted any defense reply in connection with the instant SCN Dated 26.02.2024.

36.23 The noticee M/s GLORY DIAMOND FZE, 17517, P2, Hamariya Free Zone, HBC-2527, Sharjah, UAE (info@glory-d.com) has not submitted any defense reply in connection with the instant SCN Dated 26.02.2024.

36.24 The noticee M/s GRAND CO, Room 907-8, Silver Cord Tower 2, 30, Canton Road, TST, Kowloon, Hong Kong ,through its authorized representative Shri Brijesh Pathak submitted its reply vide letter dated 10.04.2024 as under:-

"At the outset, my client denies each and every allegation made in the Show Cause Notice and also that the Show Cause Notice.

Jurisdiction to issue Show Cause Notice to an entity based beyond the territorial jurisdiction of the territory of India:

1. My client states that it had exported the goods from Hong Kong, which were declared and declared with the Customs authorities in accordance with the jurisdictional statutes at Hong Kong. The Show Cause Notice does not show as to whether any inquiry was caused by the officers of the Directorate of Revenue Intelligence with the Customs House at Hong Kong or any inquiry with my client, prior to issuance of Show Cause Notice. In fact the statements recorded and relied upon in the Show Cause Notice also does not make any imputation or knowledge about the nature of the allegation made in the Show Cause Notice. The Show Cause Notice has not brought a single documentary evidence from Hong Kong to show that the description declared at Hong Kong was in any manner not correct. The documents were filed by my client and declaration was made at Hong Kong and none of the acts were done within the jurisdiction of Customs authorities in India.

2. The responsibility of filing correct declaration is upon the importer in India and the duty to assess the goods, at the time of clearance is upon the officer. In the proceedings it appears that each and every consignments were assessed and thereafter allowed clearance. The responsibility to assess and allow the goods for clearance is upon the officer of the Customs, who has been empowered to exercise such function. None of the officers of the Customs were examined during the course of investigation, to show that the assessment and clearance allowed by them, was improper in any manner.

3. Article 245 of the Constitution of India provides that:

> *"245. Extent of laws made by Parliament and by the Legislatures of States.-*
> *(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and Legislature of a State may make laws for the whole or any part of State.*
> *(2) No law made by Parliament shall be deemed to be invalid on ground that it would have extra-territorial operation."*

Article 260 of the Constitution of India provides that:

"260. Jurisdiction of the Union in relation to territories outside India.-

The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, Legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force."

4. My client submits that for exercising jurisdiction over foreign territories, the Union Government has to have an Agreement with the Government of that territory. In the present case no such agreement exist for applying any of the provisions of the Customs Act, 1962 or any other statutory provisions of laws and statutes. Hence the Show Cause Notice could not have been issued to my client, who are foreign nationals and none of the acts in the DRI was not empowered to invoke provisions of Customs Act, 1962 against my client for any acts, deeds done or committed at Hong Kong. Consequent show cause notice is bad-in-law and deserves to be dropped vis-à-vis my client in the interest of justice.

5. As per Section 1 (2) of the Customs Act: It extends to the whole of India and save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person. Further Section 151B of the Customs Act provides that:

"(1) The Central Government may enter into an agreement or any other arrangement with the Government of any country outside India or with such competent authorities of that country, as it deems fit, for facilitation of trade, enforcing the provisions of this Act and exchange of information for trade facilitation, effective risk analysis, verification of compliance and prevention, combating and investigation of offences under the provisions of this Act or under the corresponding laws in force in that country.

(2) The Central Government may, by notification, direct that the provisions of this section shall apply to the contracting State with which reciprocal agreement or arrangements have been made, subject to such conditions, exceptions or qualifications as may be specified in that notification.

(3) Subject to the provisions of sub-section (2), the information received under sub-section (1) may also be used as evidence in investigations and proceedings under this Act.

(4) Where the Central Government has entered into a multilateral agreement for exchange of information or documents for the purpose of verification of compliance in identified cases, the Board shall specify the procedure for such exchange, the conditions subject to which such exchange shall be made and designation of the person through whom such information shall be exchanged.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (2) or sub-section (3), anything done or any action taken or purported to have been done or taken, in pursuance to any agreement entered into or any other arrangement made by the Central Government prior to the date on which the Finance Bill, 2018 receives the assent of the President, shall be deemed to have been done or taken under the provisions of this section.

Explanation.—For the purposes of this section, the expressions,— (i) —contracting State means any country outside India in respect of which agreement or arrangements have been made by the Central Government with the Government or authority of such country through an agreement or otherwise; (ii) —corresponding law means any law in force in the contracting State corresponding to any of the provisions of this Act or dealing with offences in that country corresponding to any of the offences under this Act."

The provisions of the Customs Act, 1962 has to be read in consonance. It means that the provisions of Customs Act, 1962 will apply to a foreign state/country only where the Central Government has entered into an agreement or any other arrangement with the Government of any country outside India or with such competent authorities of that country, for facilitation of trade, enforcing the provisions of this Act. In the present case there is no such agreement or arrangement between Government of India and Hong Kong (Republic of China) for applicability of the provisions of Customs Act, 1962 for any act committed at Hong Kong. Hence any act committed by my client at Hong Kong while supplying the goods does not fall within the purview of the Customs Act, 1962. The proceedings under the Customs Act, 1962 initiated against my client for allegedly supplying the goods is without authority of law and hence the proceedings initiated against my client therefore deserves to be dropped.

6. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the matter. In such situation, the legal maxim "*sublatofundamentocadit opus*" meaning thereby that foundation being removed, structure/work falls, comes into play and applies in the present case. Hon'ble Supreme Court has held that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to quasi-judicial proceedings equally.

Show Cause Notice without jurisdiction:

7. Special Economic Zone (SEZ) is a geographically delineated duty-free enclave and is deemed to be a foreign territory for the purposes of trade operations and duties and tariffs. With a view to promote the business activity, the Special Economic Zone Act, 2005 received the assent of the President of India on 23.06.2005. Section 20, 21 and 22 of the said Act came into force on 13.01.2010. As per the Preamble of the SEZ Act, it is to provide for the establishment, development and management of the Special Economic Zone for the promotion of exports and for the matter connected therewith or incidental thereto. The SEZ Act being a special Act was specifically passed to cover all the matters pertaining to a Unit having Office/Unit within the SEZ premises.

8. Under the SEZ Act, there are no distinct offences which are enumerated. Further there are no officers specifically empowered under the Act for carrying out search, seizure etc i.e. for commencing investigation. Section 21 and 22 of the Act reads as herein below:

"21. Single enforcement officer or agency for notified offences.

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(1) The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for purposes of this Act.

(2) The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offences or committed in a Special Economic Zone.

(3) Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection or search or seizure as is provided under the relevant Central Act in respect of the notified offences,

22. Investigation, inspection and search or seizure.

The ***agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation or search or seizure*** *in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone: Provided that no investigation, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or subsection of section 21 without prior approval of the Development Commissioner concerned.*

Provided further that any officer of agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner.

9. Section 51 of the SEZ Act is clear that SEZ Act prevails over other enactments to the extent of special provisions being made under SEZ Act. Therefore, the SEZ Act would prevail over the Customs Act, 1962 in all aspects in view of the non-obstinate clause. For ready reference, section 51 of the SEZ Act if reproduced below:

"***51. Act to have overriding effect:-*** *The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*"

10. It would also be appropriate to refer Section 53 of the Act, which is as under:-

"***53. Special Economic Zones to be ports, airports, inland container depots, land stations, etc., in certain cases.***—

(1) A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorised operations.

(2) A Special Economic Zone shall, with effect from such date as the Central Government may notify, be deemed to be a port, airport, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act, 1962 (52 of 1962):

Provided that for the purposes of this section, the Central Government may notify different dates for different Special Economic Zones"

11. A reading of the above provisions makes it clear that the officer of the DRI does not have power or jurisdiction to inspect or seize goods in respect of units situated in SEZ area. The power to investigate in respect of any offence committed in SEZ unit is conferred on officers empowered under Section 22 of the SEZ Act. Further, section 52 of the SEZ Act also spells out that the Customs Act is not applicable in respect of units situated in SEZ unit.

12. Vide a Notification bearing No. 2665(E) dated 05.08.2016, the Central Government Notified various offence to be notified offences under the SEZ Act which includes section 28 of the Customs Act, 1962.

13. Further, vide Notification S.O. 2666(E) dated 05.08.2016, the Central Government, in exercise of the powers conferred by sub-section (2) of section 21 and second proviso to section 22 of the Act, inter alia notified the Additional Director General, Directorate of Revenue Intelligence for offences under the Customs Act, 1962 to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. For ease of reference the

"In exercise of the powers conferred by sub-section (2) of section 21 and second proviso to section 22 of the Special Economic Zones Act, 2005 (28 of 2005) (hereinafter referred as the Act), the Central Government hereby authorises the Additional Director General, Directorate of Revenue Intelligence for offences under the Customs Act, 1962 (52 of 1962) and the Additional Director General, Directorate General of Central Excise Intelligence for offences under the Central Excise Act, 1944 (1 of 1944) and the Finance Act, 1994 (32 of 1994) to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. ***The enforcement officer(s), for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit and shall intimate the details of any action initiated under sub-section (3) of section 21 of the Act to the Joint Secretary in charge of Special Economic Zones Division in the Department of Commerce immediately*** *and in any case not later than seven days of initiation of any action."*

14. My client submits that only the enforcement officers appointed in terms of the above Notification for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the Special Economic Zone. Such powers cannot have been exercised by any other authority, then as notified.

15. My client submits that the Seizure Memo dated 13.12.2023, was issued after more than 9 months from the date of panchanama and recovery being caused. The Seizure Memo has been issued by Senior Intelligence Officer, holding that the goods is placed under seizure under the provisions of Customs Act, 1962. In terms of the Notification only the Additional Director is empowered to exercise power of seizure. The

goods have been seized by an officer who did not have the authority to exercise such powers, consequently the impugned Show Cause Notice arising consequent to such search and seizure which is legally unsustainable deserves to be dropped.

16. Vide another Notification No. S.O. 2667(E) dated 05.08.2016, the ***jurisdictional Commissioner of Customs*** was also notified in respect of offences under the Customs Act.

17. Hence, as per Section 21 (2) of the Act, the Central Government was empowered to notify officer and/or agency to give them powers to search, seize etc, the Central Government specifically gave powers only to the ***Jurisdictional Commissioner or the Additional Director General of the DRI***, the power to search, seize etc.

18. My clients state that the initiation of the investigation in relation to search was authorized by Deputy Director, DRI, who was not the officer appointed by the Notification and therefore in ex-facie contravention of S.O. 2666(E)] dated 5th August 2016, and S.O.2667 (E) dated 5th August, 2016 issued by Central Government [in exercise of powers conferred by sub-section 2 of Section 21 and second proviso to Section 22 of the Special Economic Zones Act, 2005]. The Notification does not confer any power upon the Additional Director General, delegating of the powers and functions upon any other officer. The appointment of Additional Director for carry out the investigation, is with sole intention that no frivolous misuse of powers are caused by the officers, in their excitement and the officer appointed is reasonable and responsible enough to apply his mind, while exercising the powers. Any other officer of the DRI could not have exercised such powers. Hence, the Show Cause Notice being based on investigation caused by an authority not having jurisdiction to conduct the same has vitiated the investigation.

19. The guidelines provide that vide Notification S.O. 2666(E)] dated 5th August 2016, the enforcement officers for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the SEZ and shall intimate the details of any action initiated under sub-section (3) of section 21 of the SEZ Act to the Joint Secretary in charge of SEZ. Since, the investigation proceeding conducted by the officers of the DRI, was itself without jurisdiction and that there was no compliance made in relation to the notification S.O.2666 (E) was made. Therefore, the Show Cause Notice based on such investigation is improper. The Show Cause Notice deserves to be dropped on this ground alone.

20. Since the act of search and seizure of goods in respect of Sachin SEZ units, by officers of DRI, is illegal and arbitrary for want of jurisdiction, the show cause notice which propose to confiscate such goods, based on the aforesaid search and seizure, have no basis of whatsoever nature and, do not survive by virtue of the doctrine of ***sublatofundamentocadit opus***.

21. In the present case no such procedure as prescribed have been carried out and/or conducted about any such compliance of the pre-requisite condition for initiating the investigation proceedings against a Unit based in SEZ area. Show Cause Notice based on investigation being carried out

by an authority not having jurisdiction, is bad-in-law and hence the Show Cause Notice deserves to be dropped.

22. In the context of show cause notices (SCNs) issued under the Customs Act, 1962, concerning SEZ units, it's generally understood that the Development Commissioner's approval or sanction may indeed be required. This requirement is often grounded in the authority vested in the Development Commissioner under the SEZ Act to oversee and regulate various activities within the SEZ, including customs-related matters.

23. The Development Commissioner plays a crucial role in SEZ administration and acts as a nodal authority for facilitating various permissions, clearances, and compliance matters. Given their oversight role, it's not uncommon for SEZ-specific procedures to mandate that any significant actions, such as the issuance of show cause notices affecting SEZ units under the Customs Act, require the approval or sanction of the Development Commissioner, which has not been obtained prior to issuance of Show Cause Notice.

24. Hon'ble Supreme Court in Management of Express Newspapers (Private) Ltd., Madras v. The Workers and Others reported in AIR 1963 SC 569 has held that jurisdiction issue must be decided first as they go to the root of the matter.

25. My client states that vide Circular No.11/2017-Cus dated 31.03.2017 has issued clarification as regards operationalization of functions of appropriate authority and time limitation and also issues relating to adjudication. Standard Operating Procedure prescribes that where demand has to be made, a draft demand / Show Cause Notice shall be prepared by the Specified Officer / Authorized Officer in the concerned office of the Development Commissioner and should be transferred to DC/AC in the office of jurisdictional Customs along with all Relied Upon Documents. The captioned Show Cause Notice has not been issued in the manner prescribed under the SOP and appears to have not been prepared in the office of the Development Commissioner. The purpose of adopting such SOP is that there remains transparency in the proceedings, which is monitored by the Development Commissioner and the assessees are not harassed un-necessarily and such a proceeding has to be compulsorily complied with. My client submits that the Show Cause Notice and documents relied up does not mention anywhere as to whether the aforesaid procedure was followed while issuance of Show Cause Notice. Hence, the Show Cause Notice deserves to be dropped.

Section 124 does not empower authority to issue Show Cause Notice:

26. My client states that, the Show Cause Notice has been issued invoking section 124 of the Act, which is without jurisdiction and/or authority of law inasmuch as the said provision do not confer any power of issuance of a '*show cause notice*', which can be exercised by any officer of customs, let alone the proper officer.

27. Section 124 of the Act provides as under:

"***Section 124. Issue of show cause notice before confiscation of goods, etc. -***

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in 1[writing with the prior approval of the officer of Customs not below the rank of 2[an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :
Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed."

28. From reading of the foregoing provision, it is clear and unambiguous, that the same clarifies the following:

a. The provision prescribes certain commandments in sub-section (1) which have to followed in letter and spirit before passing of any order of confiscation or imposition of any penalty on any person under Chapter XIV of the Act;

b. The inherent nature of the said commandments is representative of principles of natural justice particularly the doctrine of *audialterampartem* which cannot be dispelled with while passing an order of confiscation or imposition of penalty in terms of Chapter XIV of the Act;

c. The authority in whom the power to issue show cause in terms of the said provision is patently unclear;

d. The authority in whom the power to adjudicate the purportedly issued show cause notice in terms of the said provision is also patently unclear;

e. Employment of the word '*notice*' in first proviso to sub-section (1) is also not reflective/indicative of the power of issuance of a show cause notice envisaged under sub-section (1);

f. Recognition of power of issuance of show cause notice, in terms of clause (a) to sub-section (1), in the second proviso is misplaced and not a true reflection of the legislative intent embedded in the warp and woof of the said provision; and

g. Clause (a) of sub-section (1) of the said provision does not confer any power on any person to 'issue' a show cause notice inasmuch as the clear, unambiguous, and express language employed therein

merely sets out the necessity to give a notice and the features/characteristics of such notice – fulfilment whereof would lend the said '*notice*' necessary validity in the eyes of law.

29. My client states that, Section 124 does not confer any power to issue Show Cause Notice upon the Additional Commissioner any authority as such, hence the entire proceeding initiated on the basis of such provision, vitiates the fundamental basis on which the same stands. It is a settled legal proposition that when action on the basis of which the primary proceeding stands vitiated, all subsequent and consequential proceeding would fall.

30. It is no more *res integra* that:
   i. Taxation statutes have to be strictly interpreted; and
   ii. Fealty has to be pledged to the literal meaning of the statute in cases where the language of the statute is clear and unambiguous.

31. My client states that, without an iota of doubt, it may be appreciated that the explicit language of section 124 of the Act neither confers any power to issue show cause notice nor envisages issuance of show cause notice by invocation of the provisions therein. The only reference qua show cause notice therein is limited to spotlight adherence to the principles of natural justice, bereft whereof no order of confiscation or imposition of penalty under Chapter XIV of the Act can be passed.

32. My client states that, Section 124 of the Customs Act, 1962, provides that the Show Cause Notice can be issued only with the prior approval of the officers of Customs not below rank of an Assistant Commissioner of Customs, thereby meaning that the officer above the rank of Assistant Commissioner of Customs can accord only approval for issuance of Show Cause Notice.

33. My client submits that therefore, the Show Cause Notice issued under section 124 of the Act, which does not confer any such power inasmuch is without jurisdiction and authority of law and the same deserves to be quashed and/or set-aside, in the interest of justice.

My client wishes to be heard in person before any order is passed, in the matter."

36.25 The noticee M/s JIYA IMPEX DMCC, Unit No. 104, Concorde Tower 1, Plot no JLT-PH1-H2, Jumeirah Lakes Tower, Dubai, UAE (jiyaimpex24@gmail.com) has not submitted any defense reply in connection with the instant SCN Dated 26.02.2024.

36.26 The noticee M/s JUMBO LINKS (FZE) HK LTD , Room No. 2002, 20 F, Hing Yip Comercial Centre, 272-284 Des Voeux Road, Central, Hong Kong has not submitted any defense reply in connection with the instant SCN Dated 26.02.2024.

36.27 The noticee M/s K.DIAM LTD, 404A, Fu Fang Ind Bldg 1 Hok Yeun Street, Hunghom, Kowloon, Hong Kong, through its authorized

representative Shri Shrey S Lodha, Advocate submitted its reply vide letter dated 12.05.2024 as under:-

"Upon instructions from, for and on behalf of my Client, through its Authorised Signatory who has drawn Vakalatanama, enclosed hereto as **Annexure 1**, in my favour, I hereby submit as follows:

1. At the outset my Client denies any and every allegation made in the captioned Show cause notice (hereinafter referred to as "**SCN**") for it isreplete with non-application of mind and untenable in the eyes of law.

2. It is pertinent to note that the present submissions are preliminary in nature insofar as objections pertaining to jurisdictional facts have been advanced herein, which as per several judicial pronouncements including ***Arun Kumar and Others v. Union of India and others, [(2007) 1 SCC 732]*** posit existence of jurisdictional fact before assumption of jurisdiction by a court, tribunal, or an authority over a matter. In ***Arun Kumar*** (supra), the Hon'ble Supreme Court held as under::

"***74. A "jurisdictional fact" is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.***

75. In Halsbury's Laws of England, it has been stated: "Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive."

76. The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction."

3. In light of the foregoing, your good self is most humbly requested to kindly adjudicate and dispose, *first*, the challenge to the jurisdictional aspects related to the captioned show cause noticewhich go to the root of the matter before passing any decision on the merits of the case. It is expressly stated that my Client reserves the right to make further submissions including on the merits of the matter subsequent to disposal of the preliminary objections by your good self.

PRELIMINARY OBJECTIONS

4. At the cost of repetition, it is categorically submitted that any and all allegations made in the captioned show cause notice are denied inasmuch as they are based on conjecture, surmises, and shaky grounds. Further, the submissions / objections herein are taken independently and without prejudice to each other.

VII. EXTRA-TERRITORIAL ASSUMPTION OF JURISDICTION

5. That my Clientis an overseas supplier, based out in Hong Kong, of the goods in question i.e. Cut & Polished Precious and Semi-Precious Stones (Ruby)and the same was sold to several entities during the relevant period including the entities based out in India. It is pertinent to note that the goods in question were shipped from Hong Kong upon complying with the normative regulations and ensuring requisite and proper declaration of the material particulars of the said goodsto the Hong Kong Customs Authorities and nothing has been whispered in the captioned show cause notice to suggest otherwise.

6. From a bare perusal of the captioned show cause notice, it is understood that the gravamen therein qua my Clientis that it has allegedly abetted and indulged in conspiracy with the main noticee i.e. M/s RHC Global Exports Private Limited, an entity based in Surat Special Economic Zone, Sachin ("**Sachin SEZ**"), to:

(e) contravene the provisions of the Customs Act, 1962 (and the rules and regulations made thereunder) and the Special Economic Zones Act, 2005 (and the rules and regulations made thereunder) by issuing commercial invoices, packing lists, etc. bearing incorrect particulars of the goods, vis-à-vis the classification and value thereof, so supplied; and

(f) facilitate remission of outward foreign remittance on the strength of fake/bogus commercial invoices.

7. It is pertinent to note at this juncture that my Client neither is incorporated in India nor has any permanent establishment in India nor has its place of effective management in India nor is an importer / exporter in terms of the Customs Act, 1962, therefore, the issuance of the captioned show cause notice prima facie is beyond the legislative mandate of Customs Act, 1962***basis extrapolation of allegation on the previous imports of the main noticee from my Client***.

8. That no Municipal Law can ever be extended beyond the territorial boundaries of a country including its continental self and exclusive economic zone, whether or not there is express provision in the statute to stretch the same beyond the country's territory since the same would amount to encroachment upon the territorial authority of other State. Sovereign country asserts extra territorial jurisdiction in criminal laws though ***the principal basis of jurisdiction over crime is the territorial principle which permits a State in control of its territory to prescribe, adjudicate and enforce its law in the territory. The crime is said tobe committed even partly in a state's territory when any essential constituent element itself is consummated there***. Further, the Hon'ble Supreme Court's Constitutional Bench in ***GVK Industries Limited and Another v. Income Tax Officer and Another, [(2011) 4 SCC 36]*** while in seisin with the issue as to legislative competence of

Parliament to breathe extra-territorial jurisdiction into a statute has observed as follows:

"*124. We now turn to answering the two questions that we set with:*

(1) ***Is Parliament constitutionally restricted from enacting legislation with respect to extra-territorial aspects or causes that do not have, nor expected to have, any, direct or indirect, tangible or intangible impact(s) on, or effect(s) in, or consequences for****:*

(a) other territory of India, or any part of India; or
(b) other interests of, welfare of, well-being of, or security of inhabitants of India, and Indians?
The answer to the above would be yes. However, Parliament may exercise its legislative powers with respect to extra-territorial aspects or causes*—events, things, phenomena (howsoever commonplace they may be), resources, actions or transactions, and the like—that occur, arise or exist or may be expected to do so, naturally or on account of some human agency, in the social, political, economic, cultural, biological, environmental or physical spheres outside the territory of India, and seek to control, modulate, mitigate or transform the effects of such extra-territorial aspects or causes, or in appropriate cases, eliminate or engender such extra-territorial aspects or causes,* ***only when such extra-territorial aspects or causes have, or are expected to have, some impact on, or effect in, or consequences for: (a) the territory of India, or any part of India; or (b) the interests of, welfare of, well-being of, or security of inhabitants of India, and Indians****.*

125. It is important for us to state and hold here that the powers of legislation of Parliament with regard to all aspects or causes that are within the purview of its competence, including with respect to extra-territorial aspects or causes as delineated above, and as specified by the Constitution, or implied by its essential role in the constitutional scheme, ought not to be subjected to some a priori quantitative tests, such as 'sufficiency' or 'significance' or in any other manner requiring a predetermined degree of strength. ***All that would be required would be that the connection to India be real or expected to be real, and not illusory or fanciful****.*

126. Whether a particular law enacted by Parliament does show such a real connection, or expected real connection, between the extra-territorial aspect or cause and something in India or related to India and Indians, in terms of impact, effect or consequence, would be a mixed matter of facts and of law. Obviously, where Parliament itself posits a degree of such relationship, beyond the constitutional requirement that it be real and not fanciful, then the courts would have to enforce such a requirement in the operation of the law as a matter of that law itself, and not of the Constitution:

127. (2) ***Does Parliament have the powers to legislate 'for' any territory, other than the territory of India or any part of it?***

The answer to the above would be no*. It is obvious that Parliament is empowered to make laws with respect to aspects or causes that occur, arise or exist, or may be expected to do so, within the territory of India, and also with respect to extra-territorial aspects or causes that have an impact on or*

nexus with India as explained above in the answer to Question 1 above. Such laws would fall within the meaning, purport and ambit of the grant of powers to Parliament to make laws 'for the whole or any part of the territory of India', and they may not be invalidated on the ground that they may require extra-territorial operation. ***Any laws enacted by Parliament with respect to extra-territorial aspects or causes that have no impact on or nexus with India would be ultra vires, as answered in response to Question 1 above, and would be laws made 'for' a foreign territory.***"

In light of the foregoing, it is submitted that albeit s. 1(2) of the Customs Act, 1962 has enabled its extra-territorial jurisdiction, however, the same is subject to the essential principle that the act / omission / offence / contravention should have impact and / or nexus with the subject-matter which is sought to be regulated by the Customs Act, 1962.

9. Gravitating the aforesaid to the present facts and circumstances, it is submitted that the ***basis to allege contravention*** of the provisions of the Customs Act, 1962 and Special Economic Zones Act, 2005 i.e. mis-declaration and over-valuations of the goods in question by the main noticee ***is Bills of Entry filed by the importer,i.e. the main noticee in the instant case, during the relevant period and not the commercial invoices / packing lists issued by my Client***.

10. It is relevant to note that the nature of allegation in the captioned show cause notice wherein it has been proposed to impose penalty u/ss. 112(a), 112(b), 114AA, and / or 117 of the Customs Act, 1962 on my Client, is that by issuing the commercial invoices and packing lists qua the exports made by my Client in terms of the laws of Hong Kong, my Client has allegedly abetted the main noticee in mis-declaring and over-valuing the goods in question to the Indian Customs Authorities and has in consequence also purportedly abetted siphoning off outward foreign exchange on the strength of such allegedly fake/bogus documents. At the cost of repetition, it is submitted that the foregoing allegation is a mere extrapolation of conjectures and surmises on the past imports of the main noticee (exports by my Client) inasmuch as it has neither been alluded in the captioned show cause notice about seizure of any live consignment from the main noticee which has been sent by my Client nor it is coming out that any seizure in the instant case directly, basis preponderance of probabilities, links my Client to the alleged contraventions committed by the main noticee. Further, the contents of the captioned show cause notice do not indicate conducting of any enquiry by the Indian Customs Authorities with their Hong Kong counterparts qua any irregularity in the material particulars declared with the latter. Furthermore, the statements recorded and relied upon in the captioned show cause notice do not indicate any imputation or knowledge about the alleged abetment of my Client in the purported contraventions. Moreover, no documentary evidence has been alluded to in the contents of the captioned show cause notice indicating the ***mensrea*** in order to attract the penalty u/ss. 112, 114AA or 117 of the Customs Act, 1962. Thus, when the documents filed and declaration made by my Client have not been disputed by the jurisdictional authorities i.e. Hong Kong Customs Authorities, and there is no material evidence in support of the contention of the Indian Customs Authoritiesqua my Client, the basis to issue the captioned show cause

notice only on the ipse dixit of the Indian Customs Authorities is unfounded, arbitrary, illegal, and bad in law.

11. Without prejudice, it is submitted thatthe penalty sought to be proposed u/s. 112 of the Act is interlinked with the confiscation of goods under s. 111 of the Act. In other words, penalty u/s. 112 of the Act will apply only when the goods are liable for confiscation u/s. 111 of the Act. In the present case, the Department has alleged that the goods-in-question are liable for confiscation u/ss. 111 (m) and Section 111(o) of the Act. The relevant portions of Section 111 of the Act is extracted herein below for ready reference:

"***111. <u>Confiscation of improperly imported goods</u>, etc.*** *- The following goods* ***<u>brought</u>*** *from a place outside India shall be liable to confiscation: -*

(...)

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

(...)

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer."

12. It is submitted that s. 111(m) of the Act provides that any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 of the Act, shall be liable for confiscation.That the entry of goods on importation is dealt under s. 46 of the Act which inter alia provides that the importer of any goods, other than goods intended for transit or trans-shipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed. This form filed by the importer is the bill of entry. Further, Section 17(1) of the Act which deals with assessment of duty states that any importer entering any imported goods u/s. 46, or an exporter entering any goods-to-be-exported u/s. 50, shall self-assess the duty, if any, leviable on such goods. Furthermore, as per s. 2(26) of the Act, 'importer' in relation to any goods at any time between their importation and the time when they are cleared for home consumption includes any owner, beneficial owner or any person holding himself out to be the importer.

13. On a conjoint reading of ss. 111(m), 46, 17, and 2(26) it can be inferred that the value of the goods and other particulars declared at the time of entry of goods are furnished by the importer. Consequently, any violation of the kind mentioned in s. 111(m) of the Act can be attributed only to the

importer. In the present case, the function of my Clientas the foreign supplier was limited to supply of goods from Hong Kong to India. In other words, the responsibility of my Clientconcludes once the goods are put in a deliverable state to the customers in India. Once the goods reach the Indian Customs barrier, it is the responsibility of the concerned importers, in the present case the main noticee, to declare the classification and description of such goods and file the bill of entry and other documents for clearance of such goods.Given this, my Client cannot be held liable for any violation of the nature prescribed in Section 111(m) of the Act which renders the goods liable for confiscation. Consequently, the proposal to impose penalty u/s. 112 is bad in law and the captioned show cause notice to that extent could not have been issued to my Client.

14. Similarly, s. 111(o) of the Act provides that if any goods were exempted subject to any condition, from duty or any prohibition in respect of the import thereof under the Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer, such goods shall be liable for confiscation. In the present case, s. 111(o) of the Act is also not triggered by any of the acts of my Client since it is merely the overseas supplier of the imports-in-question and confiscation as envisaged under the said provision can only be triggered when non-observance of the condition(s) for benefit of exemption occurs on the part of the importer as such exemption is claimed by the importer alone.

15. Further, the foregoing is equally apposite in terms of s. 114AA of the Act inasmuch as my Client being the overseas supplier has neither done anything in the transaction of any business for the purposes of the Customs Act, 1962 nor hasknowingly or intentionally 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 Customs Act, 1962.

16. Therefore, the assumption of extra-territorial jurisdiction by the issuing authority of the captioned show cause notice in the instant case basis the writ large extrapolative conjecturethat the previous imports of the main noticee were also allegedly fraudulent in nature and the fact that my Client had issued commercial invoices and packing lists for the select imports made by the main noticee, is wholly erroneous, without authority of law, and arbitrary.

17. That in terms of s.151B of the Customs Act, 1962, for exercising jurisdiction over foreign territories, the Union Government has to have an Agreement with the Government of that territory. In the present case, no such agreement exists for applying any of the provisions of the Customs Act, 1962 or any other statutory provisions of laws and statutes. Hence the captionedshow cause notice could not have been issued to my Client. Thus, it is submitted that assumption of extra-territorial jurisdiction by the authority who has issued the captioned show cause notice is arbitrary and contrary to the legislative intent of s. 1 of the Customs Act, 1962.

18. It is reiterated that the responsibility of filing correct declaration is upon the importer in India and the duty to assess the goods, at the time of clearance is upon the assessing officer.In the instant proceedings, it

appears that each and everyconsignment was assessed and thereafter allowed clearance. The responsibility to assess and allow the goods for clearance is upon the officer of the Customs who has been empowered to exercise such function. None of the officers of the Customs were examined during the course of investigation to show that the assessment and clearance allowed by them, was improper in any manner. Thus, on this ground as well the assumption of extra-territorial jurisdiction by the authority who has issued the captioned show cause notice is arbitrary and contrary to the legislative intent of s. 1 of the Customs Act, 1962.

VIII. RE:SHOW CAUSE NOTICE NOT ISSUED BY DESIGNATED / EMPOWERED OFFICER

19. Special Economic Zone (SEZ), alikeSurat SEZ, Sachin, is a geographically delineated duty-free enclave and is deemed to be a foreign territory for the purposes of trade operations and duties and tariffs. With a view to promote the business activity, the Special Economic Zone Act, 2005 received the assent of the President of India on 23.06.2005. Section 20, 21 and 22 of the said Act came into force on 13.01.2010. As per the Preamble of the SEZ Act, it is to provide for the establishment, development and management of the Special Economic Zone for the promotion of exports and for the matter connected therewith or incidental thereto. The SEZ Act being a special Act was specifically passed to cover all the matters pertaining to a Unit having Office/Unit within the SEZ premises.

20. Under the SEZ Act, there are no distinct offences which are enumerated rather the offences under certain central acts have been subsumed as notified offences for the purposes of the SEZ Act. Sections 111, 113, and 124 amongst others of the Customs Act, 1962 are few of such notified offences under the SEZ Act and for the purposes of carrying out investigation for into such notified offences, certain officers are specifically empowered to commence and carry out the investigation in terms of ss. 21 and 22 of the said Act. For ready reference, the said provisions are reproduced as under:

"***21. Single enforcement officer or agency for notified offences***.

(1) The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for purposes of this Act.

(2) The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offences or committed in a Special Economic Zone.

(3) Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection or search or seizure as is provided under the relevant Central Act in respect of the notified offences."

"***22. Investigation, inspection and search or seizure***.

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The agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation or search or seizure in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone: Provided that no investigation, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or subsection of section 21 without prior approval of the Development Commissioner concerned.

Provided further that any officer of agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner."

21. That in terms of the afore-reproduced provisions, the Central Government vide Notification No. SO 2665(E) dated 05.08.2016, Notification No. SO 2666(E) dated 05.08.2016, and Notification No. SO 2667(E) dated 05.08.2016, all issued u/ss. 21 and 22 of the SEZ Act, as the case may be, have prescribed that either Additional Director General, Directorate of Revenue Intelligence or the jurisdictions Customs Commissioner would be the enforcement / empowered officer to carry out the investigation in relation to notified offences under the SEZ Act. Further, by virtue of s. 21(3) of the SEZ Act, the said enforcement / empowered officers would be entitled to exercise all the corresponding powers in relation to the investigation, search, and / or seizure pertaining to the notified offences including ss. 105, 108, 110, and 124 of the Customs Act, 1962.

22. A reading of the above provisions and corresponding notifications, as adverted to above, makes it clear that the officer of the DRI does not have power or jurisdiction to inspect or seize goods in respect of units situated in SEZ area. The power to investigate in respect of any offence committed in SEZ unit is conferred on officers empowered under the afore-reproduced provisions and notifications. The entire act of search, seizure, recording of statement, and issuance of show cause notice by the officers of DRI and officer of customs who are neither Additional Director General, Directorate of Revenue Intelligence or the jurisdictions Customs Commissioner, in the instant case, is rife with illegality, arbitrariness, and erroneous assumption of jurisdiction. Further, as per the provisions and notifications issued under the SEZ Act, as above, the agency or officers carrying out any investigation into a SEZ Area need the sanction of the Development Commissioner before commencement of such investigation, however, in the instant case, the same has been violated inasmuch as the prior intimation has not been given. On these grounds, no adverse order is warranted against my Client.

23. It is submitted that s. 51 of the SEZ Act is clear that SEZ Act prevails over other enactments to the extent of special provisions being made under SEZ Act. Therefore, the SEZ Act would prevail over the Customs Act, 1962 in all aspects in view of the non-obstinate clause.

24. That vide Circular No.11/2017-Cus dated 31.03.2017 a Standard Operating Procedure has been prescribed whereby a show cause noticehas

to be prepared by the Specified Officer / Authorized Officer in the concerned office of the Development Commissioner which shall be transferred to DC/AC in the office of jurisdictional Customs along with all Relied Upon Documents. The captioned show cause notice has not been issued in the manner prescribed under the SOP and appears to have not been prepared in the office of the Development Commissioner inasmuch as there is no averment thereto. The purpose of adopting such SOP is that there remains transparency in the proceedings which is monitored by the Development Commissioner and the assessees are not harassed unnecessarily. Hence, the captioned show cause notice deserves to be dropped qua my Client.

IX. RE: SECTION 124 DOES NOT EMPOWER AUTHORITY TO ISSUE SHOW CAUSE NOTICE

25. That the captioned show cause notice has been issued invoking section 124 of the Act which is without jurisdiction and authority of law inasmuch as the said provision does not confer any power of issuance of a 'show cause notice' which could have been exercised by the authority which has issued the captioned show cause notice. Section 124 of the Act provides as under:

"*Section 124. Issue of show cause notice before confiscation of goods, etc. -*

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in 1[writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed."

26. From reading of the foregoing provision, it is clear and unambiguous, that the same clarifies the following:

a. The provision prescribes certain commandments in sub-section (1) which have to followed in letter and spirit before passing of any order of confiscation or imposition of any penalty on any person under Chapter XIV of the Act;

b. The inherent nature of the said commandments is representative of principles of natural justice particularly the doctrine of audialterampartem which cannot be dispelled with while passing an order of confiscation or imposition of penalty in terms of Chapter XIV of the Act; and

c. The empowerment to issue show cause in terms of the said provision is patently unclear vis-à-vis the authority which has issued the captioned show cause notice;

27. That s.124 does not confer any power to issue the captioned show cause notice upon the authority which has issued the captioned show cause notice, hence the entire proceeding initiated on the basis of such provision, vitiates the fundamental basis on which the same stands. It is a settled legal proposition that when action on the basis of which the primary proceeding stands vitiated, all subsequent and consequential proceeding would fall.

28. It is no more *res integra* that:

a. Taxation statutes have to be strictly interpreted; and

b. Fealty has to be pledged to the literal meaning of the statute in cases where the language of the statute is clear and unambiguous.

29. That the explicit language of s. 124 of the Act neither confers any power to issue show cause notice nor envisages issuance of show cause notice by invocation of the provisions therein upon the authority which has issued the captioned show cause notice. The only reference qua show cause notice therein is limited to spotlight adherence to the principles of natural justice, bereft whereof no order of confiscation or imposition of penalty under Chapter XIV of the Act can be passed.

30. That s. 124 of the Customs Act, 1962 provides that a show cause notice can be issued only with the prior approval of the officers of Customs not below rank of an Assistant Commissioner of Customs, thereby meaning that the officer above the rank of Assistant Commissioner of Customs can accord only approval for issuance of show cause notice. In the instant case, such approval is amiss.Therefore, the captioned show cause notice issued under section 124 of the Act is without jurisdiction and authority of law and the same deserves to be quashed and/or set-aside, in the interest of justice.

PRAYER

31. Therefore, it is most humbly prayed to your good self may be pleased to:

a. drop the captioned show cause notice vis-à-vis my Client; and

b. pass such other and further orders which may be fit and proper in the interest of complete justice.

That my Client wishes to be heard in person before any order is passed in the matter. Further, my Client reserves its right to make additional submissions if the need so arises or situation so demands. Furthermore, it is

most humbly requested that the personal hearing be scheduled through video-conferencing in line with the Hon'ble Supreme Court's consistent and continued effort to digitalise the justice dispensation system."

36.28 The noticee M/s KESHAR TRADE (HK)LTD, Unit1211,12FL, Beverly Commercial Centre, 87-105, Chatham Road South, TST, Kowloon, Hong Kong has not submitted any defense reply in connection with the instant SCN Dated 26.02.2024.

36.29 The noticee M/s KJ TRADING CO., Flat/Room H block-01, -26/F baliey garden, 26 Bailey Street, Hunghon, Hong Kong (kjtradinghkg@outlook.com),through its authorized representative Shri BrijeshPathak submitted its reply vide letter dated 10.04.2024 as under:-

"At the outset, my client denies each and every allegation made in the Show Cause Notice and also that the Show Cause Notice.

Jurisdiction to issue Show Cause Notice to an entity based beyond the territorial jurisdiction of the territory of India:

1. My client states that it had exported the goods from Hong Kong, which were declared and declared with the Customs authorities in accordance with the jurisdictional statutes at Hong Kong. The Show Cause Notice does not show as to whether any inquiry was caused by the officers of the Directorate of Revenue Intelligence with the Customs House at Hong Kong or any inquiry with my client, prior to issuance of Show Cause Notice. In fact the statements recorded and relied upon in the Show Cause Notice also does not make any imputation or knowledge about the nature of the allegation made in the Show Cause Notice. The Show Cause Notice has not brought a single documentary evidence from Hong Kong to show that the description declared at Hong Kong was in any manner not correct. The documents were filed by my client and declaration was made at Hong Kong and none of the acts were done within the jurisdiction of Customs authorities in India.

2. The responsibility of filing correct declaration is upon the importer in India and the duty to assess the goods, at the time of clearance is upon the officer. In the proceedings it appears that each and every consignments were assessed and thereafter allowed clearance. The responsibility to assess and allow the goods for clearance is upon the officer of the Customs, who has been empowered to exercise such function. None of the officers of the Customs were examined during the course of investigation, to show that the assessment and clearance allowed by them, was improper in any manner.

3. Article 245 of the Constitution of India provides that:

> *"245. Extent of laws made by Parliament and by the Legislatures of States.-*
>
> *(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and Legislature of a State may make laws for the whole or any part of State.*

(2) No law made by Parliament shall be deemed to be invalid on ground that it would have extra-territorial operation."

Article 260 of the Constitution of India provides that:

"260. Jurisdiction of the Union in relation to territories outside India.-

The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, Legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force."

4. My client submits that for exercising jurisdiction over foreign territories, the Union Government has to have an Agreement with the Government of that territory. In the present case no such agreement exist for applying any of the provisions of the Customs Act, 1962 or any other statutory provisions of laws and statutes. Hence the Show Cause Notice could not have been issued to my client, who are foreign nationals and none of the acts in the DRI was not empowered to invoke provisions of Customs Act, 1962 against my client for any acts, deeds done or committed at Hong Kong. Consequent show cause notice is bad-in-law and deserves to be dropped vis-à-vis my client in the interest of justice.

5. As per Section 1 (2) of the Customs Act: It extends to the whole of India and save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person. Further Section 151B of the Customs Act provides that:

"(1) The Central Government may enter into an agreement or any other arrangement with the Government of any country outside India or with such competent authorities of that country, as it deems fit, for facilitation of trade, enforcing the provisions of this Act and exchange of information for trade facilitation, effective risk analysis, verification of compliance and prevention, combating and investigation of offences under the provisions of this Act or under the corresponding laws in force in that country.

(2) The Central Government may, by notification, direct that the provisions of this section shall apply to the contracting State with which reciprocal agreement or arrangements have been made, subject to such conditions, exceptions or qualifications as may be specified in that notification.

(3) Subject to the provisions of sub-section (2), the information received under sub-section (1) may also be used as evidence in investigations and proceedings under this Act.

(4) Where the Central Government has entered into a multilateral agreement for exchange of information or documents for the purpose of verification of compliance in identified cases, the Board shall specify the procedure for such exchange, the conditions subject to which such exchange shall be made and designation of the person through whom such information shall be exchanged.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (2) or sub-section (3), anything done or any action taken or purported to have been done or taken, in pursuance to any agreement entered into or any other arrangement made by the Central Government prior to the date on which the Finance Bill, 2018

receives the assent of the President, shall be deemed to have been done or taken under the provisions of this section.

Explanation.—For the purposes of this section, the expressions,— (i) —contracting State means any country outside India in respect of which agreement or arrangements have been made by the Central Government with the Government or authority of such country through an agreement or otherwise; (ii) —corresponding law means any law in force in the contracting State corresponding to any of the provisions of this Act or dealing with offences in that country corresponding to any of the offences under this Act."

The provisions of the Customs Act, 1962 has to be read in consonance. It means that the provisions of Customs Act, 1962 will apply to a foreign state/country only where the Central Government has entered into an agreement or any other arrangement with the Government of any country outside India or with such competent authorities of that country, for facilitation of trade, enforcing the provisions of this Act. In the present case there is no such agreement or arrangement between Government of India and Hong Kong (Republic of China) for applicability of the provisions of Customs Act, 1962 for any act committed at Hong Kong. Hence any act committed by my client at Hong Kong while supplying the goods does not fall within the purview of the Customs Act, 1962. The proceedings under the Customs Act, 1962 initiated against my client for allegedly supplying the goods is without authority of law and hence the proceedings initiated against my client therefore deserves to be dropped.

6. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the matter. In such situation, the legal maxim "*sublatofundamentocadit opus*" meaning thereby that foundation being removed, structure/work falls, comes into play and applies in the present case. Hon'ble Supreme Court has held that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to quasi-judicial proceedings equally.

Show Cause Notice without jurisdiction:

7. Special Economic Zone (SEZ) is a geographically delineated duty-free enclave and is deemed to be a foreign territory for the purposes of trade operations and duties and tariffs. With a view to promote the business activity, the Special Economic Zone Act, 2005 received the assent of the President of India on 23.06.2005. Section 20, 21 and 22 of the said Act came into force on 13.01.2010. As per the Preamble of the SEZ Act, it is to provide for the establishment, development and management of the Special Economic Zone for the promotion of exports and for the matter connected therewith or incidental thereto. The SEZ Act being a special Act was specifically passed to cover all the matters pertaining to a Unit having Office/Unit within the SEZ premises.

8. Under the SEZ Act, there are no distinct offences which are enumerated. Further there are no officers specifically empowered under the Act for carrying out search, seizure etc i.e. for commencing investigation. Section 21 and 22 of the Act reads as herein below:

"21. Single enforcement officer or agency for notified offences.

(1) The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for purposes of this Act.

(2) The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offences or committed in a Special Economic Zone.

(3) Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection or search or seizure as is provided under the relevant Central Act in respect of the notified offences,

22. Investigation, inspection and search or seizure.

The ***agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation or search or seizure*** *in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone: Provided that no investigation, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or subsection of section 21 without prior approval of the Development Commissioner concerned.*

Provided further that any officer of agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner.

9. Section 51 of the SEZ Act is clear that SEZ Act prevails over other enactments to the extent of special provisions being made under SEZ Act. Therefore, the SEZ Act would prevail over the Customs Act, 1962 in all aspects in view of the non-obstinate clause. For ready reference, section 51 of the SEZ Act if reproduced below:

"***51. Act to have overriding effect:-*** *The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*"

10. It would also be appropriate to refer Section 53 of the Act, which is as under:-

"***53. Special Economic Zones to be ports, airports, inland container depots, land stations, etc., in certain cases.***—

(1) A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorised operations.

(2) A Special Economic Zone shall, with effect from such date as the Central Government may notify, be deemed to be a port, airport, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act, 1962 (52 of 1962):

Provided that for the purposes of this section, the Central Government may notify different dates for different Special Economic Zones"

11. A reading of the above provisions makes it clear that the officer of the DRI does not have power or jurisdiction to inspect or seize goods in respect of units situated in SEZ area. The power to investigate in respect of any offence committed in SEZ unit is conferred on officers empowered under Section 22 of the SEZ Act. Further, section 52 of the SEZ Act also spells out that the Customs Act is not applicable in respect of units situated in SEZ unit.

12. Vide a Notification bearing No. 2665(E) dated 05.08.2016, the Central Government Notified various offence to be notified offences under the SEZ Act which includes section 28 of the Customs Act, 1962.

13. Further, vide Notification S.O. 2666(E) dated 05.08.2016, the Central Government, in exercise of the powers conferred by sub-section (2) of section 21 and second proviso to section 22 of the Act, inter alia notified the Additional Director General, Directorate of Revenue Intelligence for offences under the Customs Act, 1962 to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. For ease of reference the

"In exercise of the powers conferred by sub-section (2) of section 21 and second proviso to section 22 of the Special Economic Zones Act, 2005 (28 of 2005) (hereinafter referred as the Act), the Central Government hereby authorises the Additional Director General, Directorate of Revenue Intelligence for offences under the Customs Act, 1962 (52 of 1962) and the Additional Director General, Directorate General of Central Excise Intelligence for offences under the Central Excise Act, 1944 (1 of 1944) and the Finance Act, 1994 (32 of 1994) to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. ***The enforcement officer(s), for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit and shall intimate the details of any action initiated under sub-section (3) of section 21 of the Act to the Joint Secretary in charge of Special Economic Zones Division in the Department of Commerce immediately*** *and in any case not later than seven days of initiation of any action."*

14. My client submits that only the enforcement officers appointed in terms of the above Notification for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the Special Economic Zone. Such powers cannot have been exercised by any other authority, then as notified.

15. My client submits that the Seizure Memo dated 13.12.2023, was issued after more than 9 months from the date of panchanama and recovery being caused. The Seizure Memo has been issued by Senior Intelligence Officer, holding that the goods is placed under seizure under the provisions of Customs Act, 1962. In terms of the Notification only the Additional Director is empowered to exercise power of seizure. The

goods have been seized by an officer who did not have the authority to exercise such powers, consequently the impugned Show Cause Notice arising consequent to such search and seizure which is legally unsustainable deserves to be dropped.

16. Vide another Notification No. S.O. 2667(E) dated 05.08.2016, the ***jurisdictional Commissioner of Customs*** was also notified in respect of offences under the Customs Act.

17. Hence, as per Section 21 (2) of the Act, the Central Government was empowered to notify officer and/or agency to give them powers to search, seize etc, the Central Government specifically gave powers only to the ***Jurisdictional Commissioner or the Additional Director General of the DRI***, the power to search, seize etc.

18. My clients state that the initiation of the investigation in relation to search was authorized by Deputy Director, DRI, who was not the officer appointed by the Notification and therefore in ex-facie contravention of S.O. 2666(E)] dated 5th August 2016, and S.O.2667 (E) dated 5th August, 2016 issued by Central Government [in exercise of powers conferred by sub-section 2 of Section 21 and second proviso to Section 22 of the Special Economic Zones Act, 2005]. The Notification does not confer any power upon the Additional Director General, delegating of the powers and functions upon any other officer. The appointment of Additional Director for carry out the investigation, is with sole intention that no frivolous misuse of powers are caused by the officers, in their excitement and the officer appointed is reasonable and responsible enough to apply his mind, while exercising the powers. Any other officer of the DRI could not have exercised such powers. Hence, the Show Cause Notice being based on investigation caused by an authority not having jurisdiction to conduct the same has vitiated the investigation.

19. The guidelines provide that vide Notification S.O. 2666(E)] dated 5th August 2016, the enforcement officers for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the SEZ and shall intimate the details of any action initiated under sub-section (3) of section 21 of the SEZ Act to the Joint Secretary in charge of SEZ. Since, the investigation proceeding conducted by the officers of the DRI, was itself without jurisdiction and that there was no compliance made in relation to the notification S.O.2666 (E) was made. Therefore, the Show Cause Notice based on such investigation is improper. The Show Cause Notice deserves to be dropped on this ground alone.

20. Since the act of search and seizure of goods in respect of Sachin SEZ units, by officers of DRI, is illegal and arbitrary for want of jurisdiction, the show cause notice which propose to confiscate such goods, based on the aforesaid search and seizure, have no basis of whatsoever nature and, do not survive by virtue of the doctrine of ***sublatofundamentocadit opus***.

21. In the present case no such procedure as prescribed have been carried out and/or conducted about any such compliance of the pre-requisite condition for initiating the investigation proceedings against a Unit based in SEZ area. Show Cause Notice based on investigation being carried out

by an authority not having jurisdiction, is bad-in-law and hence the Show Cause Notice deserves to be dropped.

22. In the context of show cause notices (SCNs) issued under the Customs Act, 1962, concerning SEZ units, it's generally understood that the Development Commissioner's approval or sanction may indeed be required. This requirement is often grounded in the authority vested in the Development Commissioner under the SEZ Act to oversee and regulate various activities within the SEZ, including customs-related matters.

23. The Development Commissioner plays a crucial role in SEZ administration and acts as a nodal authority for facilitating various permissions, clearances, and compliance matters. Given their oversight role, it's not uncommon for SEZ-specific procedures to mandate that any significant actions, such as the issuance of show cause notices affecting SEZ units under the Customs Act, require the approval or sanction of the Development Commissioner, which has not been obtained prior to issuance of Show Cause Notice.

24. Hon'ble Supreme Court in Management of Express Newspapers (Private) Ltd., Madras v. The Workers and Others reported in AIR 1963 SC 569 has held that jurisdiction issue must be decided first as they go to the root of the matter.

25. My client states that vide Circular No.11/2017-Cus dated 31.03.2017 has issued clarification as regards operationalization of functions of appropriate authority and time limitation and also issues relating to adjudication. Standard Operating Procedure prescribes that where demand has to be made, a draft demand / Show Cause Notice shall be prepared by the Specified Officer / Authorized Officer in the concerned office of the Development Commissioner and should be transferred to DC/AC in the office of jurisdictional Customs along with all Relied Upon Documents. The captioned Show Cause Notice has not been issued in the manner prescribed under the SOP and appears to have not been prepared in the office of the Development Commissioner. The purpose of adopting such SOP is that there remains transparency in the proceedings, which is monitored by the Development Commissioner and the assessees are not harassed un-necessarily and such a proceeding has to be compulsorily complied with. My client submits that the Show Cause Notice and documents relied up does not mention anywhere as to whether the aforesaid procedure was followed while issuance of Show Cause Notice. Hence, the Show Cause Notice deserves to be dropped.

Section 124 does not empower authority to issue Show Cause Notice:

26. My client states that, the Show Cause Notice has been issued invoking section 124 of the Act, which is without jurisdiction and/or authority of law inasmuch as the said provision do not confer any power of issuance of a '*show cause notice*', which can be exercised by any officer of customs, let alone the proper officer.

27. Section 124 of the Act provides as under:

"***Section 124. Issue of show cause notice before confiscation of goods, etc. -***

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in 1[writing with the prior approval of the officer of Customs not below the rank of 2[an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :
Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed."

28. From reading of the foregoing provision, it is clear and unambiguous, that the same clarifies the following:

a. The provision prescribes certain commandments in sub-section (1) which have to followed in letter and spirit before passing of any order of confiscation or imposition of any penalty on any person under Chapter XIV of the Act;

b. The inherent nature of the said commandments is representative of principles of natural justice particularly the doctrine of *audialterampartem* which cannot be dispelled with while passing an order of confiscation or imposition of penalty in terms of Chapter XIV of the Act;

c. The authority in whom the power to issue show cause in terms of the said provision is patently unclear;

d. The authority in whom the power to adjudicate the purportedly issued show cause notice in terms of the said provision is also patently unclear;

e. Employment of the word '*notice*' in first proviso to sub-section (1) is also not reflective/indicative of the power of issuance of a show cause notice envisaged under sub-section (1);

f. Recognition of power of issuance of show cause notice, in terms of clause (a) to sub-section (1), in the second proviso is misplaced and not a true reflection of the legislative intent embedded in the warp and woof of the said provision; and

g. Clause (a) of sub-section (1) of the said provision does not confer any power on any person to 'issue' a show cause notice inasmuch as the clear, unambiguous, and express language employed therein

merely sets out the necessity to give a notice and the features/characteristics of such notice – fulfilment whereof would lend the said '*notice*' necessary validity in the eyes of law.

29. My client states that, Section 124 does not confer any power to issue Show Cause Notice upon the Additional Commissioner any authority as such, hence the entire proceeding initiated on the basis of such provision, vitiates the fundamental basis on which the same stands. It is a settled legal proposition that when action on the basis of which the primary proceeding stands vitiated, all subsequent and consequential proceeding would fall.

30. It is no more *res integra* that:
   i. Taxation statutes have to be strictly interpreted; and
   ii. Fealty has to be pledged to the literal meaning of the statute in cases where the language of the statute is clear and unambiguous.

31. My client states that, without an iota of doubt, it may be appreciated that the explicit language of section 124 of the Act neither confers any power to issue show cause notice nor envisages issuance of show cause notice by invocation of the provisions therein. The only reference qua show cause notice therein is limited to spotlight adherence to the principles of natural justice, bereft whereof no order of confiscation or imposition of penalty under Chapter XIV of the Act can be passed.

32. My client states that, Section 124 of the Customs Act, 1962, provides that the Show Cause Notice can be issued only with the prior approval of the officers of Customs not below rank of an Assistant Commissioner of Customs, thereby meaning that the officer above the rank of Assistant Commissioner of Customs can accord only approval for issuance of Show Cause Notice.

33. My client submits that therefore, the Show Cause Notice issued under section 124 of the Act, which does not confer any such power inasmuch is without jurisdiction and authority of law and the same deserves to be quashed and/or set-aside, in the interest of justice.

My client wishes to be heard in person before any order is passed, in the matter."

36.30 The noticee M/s KOEMATLIFF PRIVATE LIMITED, 12 ARUMUGAM Road, #03-10A, LTC Building, Singapore-409958 has not submitted any defense reply in connection with the instant SCN Dated 26.02.2024.

36.31 The noticee M/s LEE FU SHING COMPANY LIMITED, 1108, 11/F, Rise Commercial, F-11, Gran Ville Circuit, TST, Kowloon, Hong Kong (leefushing19@gmail.com), through its authorized representative Shri Shrey S Lodha, Advocate submitted its reply vide letter dated 12.05.2024 as under:-

"Upon instructions from, for and on behalf of my Client, through its Authorised Signatory who has drawn Vakalatanama, enclosed hereto as **Annexure 1**, in my favour, I hereby submit as follows:

1. At the outset my Client denies any and every allegation made in the captioned Show cause notice (hereinafter referred to as "**SCN**") for it isreplete with non-application of mind and untenable in the eyes of law.

2. It is pertinent to note that the present submissions are preliminary in nature insofar as objections pertaining to jurisdictional facts have been advanced herein, which as per several judicial pronouncements including ***Arun Kumar and Others v. Union of India and others, [(2007) 1 SCC 732]*** posit existence of jurisdictional fact before assumption of jurisdiction by a court, tribunal, or an authority over a matter. In ***Arun Kumar*** (supra), the Hon'ble Supreme Court held as under::

"***74. A "jurisdictional fact" is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.***

75. In Halsbury's Laws of England, it has been stated: "Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive."

76. The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction."

3. In light of the foregoing, your good self is most humbly requested to kindly adjudicate and dispose, *first*, the challenge to the jurisdictional aspects related to the captioned show cause noticewhich go to the root of the matter before passing any decision on the merits of the case. It is expressly stated that my Client reserves the right to make further submissions including on the merits of the matter subsequent to disposal of the preliminary objections by your good self.

PRELIMINARY OBJECTIONS

4. At the cost of repetition, it is categorically submitted that any and all allegations made in the captioned show cause notice are denied inasmuch as they are based on conjecture, surmises, and shaky grounds. Further, the submissions / objections herein are taken independently and without prejudice to each other.

X. EXTRA-TERRITORIAL ASSUMPTION OF JURISDICTION

5. That my Clientis an overseas supplier, based out in Hong Kong, of the goods in question i.e. Cut & Polished Precious and Semi-Precious Stones (Ruby)and the same was sold to several entities during the relevant period including the entities based out in India. It is pertinent to note that the goods in question were shipped from Hong Kong upon complying with the normative regulations and ensuring requisite and proper declaration of the material particulars of the said goodsto the Hong Kong Customs Authorities and nothing has been whispered in the captioned show cause notice to suggest otherwise.

6. From a bare perusal of the captioned show cause notice, it is understood that the gravamen therein qua my Clientis that it has allegedly abetted and indulged in conspiracy with the main noticee i.e. M/s RHC Global Exports Private Limited, an entity based in Surat Special Economic Zone, Sachin ("**Sachin SEZ**"), to:

(g) contravene the provisions of the Customs Act, 1962 (and the rules and regulations made thereunder) and the Special Economic Zones Act, 2005 (and the rules and regulations made thereunder) by issuing commercial invoices, packing lists, etc. bearing incorrect particulars of the goods, vis-à-vis the classification and value thereof, so supplied; and

(h) facilitate remission of outward foreign remittance on the strength of fake/bogus commercial invoices.

7. It is pertinent to note at this juncture that my Client neither is incorporated in India nor has any permanent establishment in India nor has its place of effective management in India nor is an importer / exporter in terms of the Customs Act, 1962, therefore, the issuance of the captioned show cause notice prima facie is beyond the legislative mandate of Customs Act, 1962***basis extrapolation of allegation on the previous imports of the main noticee from my Client***.

8. That no Municipal Law can ever be extended beyond the territorial boundaries of a country including its continental self and exclusive economic zone, whether or not there is express provision in the statute to stretch the same beyond the country's territory since the same would amount to encroachment upon the territorial authority of other State. Sovereign country asserts extra territorial jurisdiction in criminal laws though ***the principal basis of jurisdiction over crime is the territorial principle which permits a State in control of its territory to prescribe, adjudicate and enforce its law in the territory. The crime is said tobe committed even partly in a state's territory when any essential constituent element itself is consummated there***. Further, the Hon'ble Supreme Court's Constitutional Bench in ***GVK Industries Limited and Another v. Income Tax Officer and Another, [(2011) 4 SCC 36]*** while in seisin with the issue as to legislative competence of Parliament to breathe extra-territorial jurisdiction into a statute has observed as follows:

"*124. We now turn to answering the two questions that we set with:*

(1) ***Is Parliament constitutionally restricted from enacting legislation with respect to extra-territorial aspects or causes that do not have,***

nor expected to have, any, direct or indirect, tangible or intangible impact(s) on, or effect(s) in, or consequences for:

(a) other territory of India, or any part of India; or
(b) other interests of, welfare of, well-being of, or security of inhabitants of India, and Indians?
The answer to the above would be yes. However, Parliament may exercise its legislative powers with respect to extra-territorial aspects or causes—*events, things, phenomena (howsoever commonplace they may be), resources, actions or transactions, and the like—that occur, arise or exist or may be expected to do so, naturally or on account of some human agency, in the social, political, economic, cultural, biological, environmental or physical spheres outside the territory of India, and seek to control, modulate, mitigate or transform the effects of such extra-territorial aspects or causes, or in appropriate cases, eliminate or engender such extra-territorial aspects or causes,* ***only when such extra-territorial aspects or causes have, or are expected to have, some impact on, or effect in, or consequences for: (a) the territory of India, or any part of India; or (b) the interests of, welfare of, well-being of, or security of inhabitants of India, and Indians***.

125. It is important for us to state and hold here that the powers of legislation of Parliament with regard to all aspects or causes that are within the purview of its competence, including with respect to extra-territorial aspects or causes as delineated above, and as specified by the Constitution, or implied by its essential role in the constitutional scheme, ought not to be subjected to some a priori quantitative tests, such as 'sufficiency' or 'significance' or in any other manner requiring a predetermined degree of strength. ***All that would be required would be that the connection to India be real or expected to be real, and not illusory or fanciful***.

126. Whether a particular law enacted by Parliament does show such a real connection, or expected real connection, between the extra-territorial aspect or cause and something in India or related to India and Indians, in terms of impact, effect or consequence, would be a mixed matter of facts and of law. Obviously, where Parliament itself posits a degree of such relationship, beyond the constitutional requirement that it be real and not fanciful, then the courts would have to enforce such a requirement in the operation of the law as a matter of that law itself, and not of the Constitution:

127. (2) ***Does Parliament have the powers to legislate 'for' any territory, other than the territory of India or any part of it?***

The answer to the above would be no. *It is obvious that Parliament is empowered to make laws with respect to aspects or causes that occur, arise or exist, or may be expected to do so, within the territory of India, and also with respect to extra-territorial aspects or causes that have an impact on or nexus with India as explained above in the answer to Question 1 above. Such laws would fall within the meaning, purport and ambit of the grant of powers to Parliament to make laws 'for the whole or any part of the territory of India', and they may not be invalidated on the ground that they may require extra-territorial operation.* ***Any laws enacted by Parliament with respect to extra-territorial aspects or causes that have no impact on***

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or nexus with India would be ultra vires, as answered in response to Question 1 above, and would be laws made 'for' a foreign territory."

In light of the foregoing, it is submitted that albeit s. 1(2) of the Customs Act, 1962 has enabled its extra-territorial jurisdiction, however, the same is subject to the essential principle that the act / omission / offence / contravention should have impact and / or nexus with the subject-matter which is sought to be regulated by the Customs Act, 1962.

9. Gravitating the aforesaid to the present facts and circumstances, it is submitted that the ***basis to allege contravention*** of the provisions of the Customs Act, 1962 and Special Economic Zones Act, 2005 i.e. mis-declaration and over-valuations of the goods in question by the main noticee ***is Bills of Entry filed by the importer,i.e. the main noticee in the instant case, during the relevant period and not the commercial invoices / packing lists issued by my Client***.

10. It is relevant to note that the nature of allegation in the captioned show cause notice wherein it has been proposed to impose penalty u/ss. 112(a), 112(b), 114AA, and / or 117 of the Customs Act, 1962 on my Client, is that by issuing the commercial invoices and packing lists qua the exports made by my Client in terms of the laws of Hong Kong, my Client has allegedly abetted the main noticee in mis-declaring and over-valuing the goods in question to the Indian Customs Authorities and has in consequence also purportedly abetted siphoning off outward foreign exchange on the strength of such allegedly fake/bogus documents. At the cost of repetition, it is submitted that the foregoing allegation is a mere extrapolation of conjectures and surmises on the past imports of the main noticee (exports by my Client) inasmuch as it has neither been alluded in the captioned show cause notice about seizure of any live consignment from the main noticee which has been sent by my Client nor it is coming out that any seizure in the instant case directly, basis preponderance of probabilities, links my Client to the alleged contraventions committed by the main noticee. Further, the contents of the captioned show cause notice do not indicate conducting of any enquiry by the Indian Customs Authorities with their Hong Kong counterparts qua any irregularity in the material particulars declared with the latter. Furthermore, the statements recorded and relied upon in the captioned show cause notice do not indicate any imputation or knowledge about the alleged abetment of my Client in the purported contraventions. Moreover, no documentary evidence has been alluded to in the contents of the captioned show cause notice indicating the ***mensrea*** in order to attract the penalty u/ss. 112, 114AA or 117 of the Customs Act, 1962. Thus, when the documents filed and declaration made by my Client have not been disputed by the jurisdictional authorities i.e. Hong Kong Customs Authorities, and there is no material evidence in support of the contention of the Indian Customs Authoritiesqua my Client, the basis to issue the captioned show cause notice only on the ipse dixit of the Indian Customs Authorities is unfounded, arbitrary, illegal, and bad in law.

11. Without prejudice, it is submitted thatthe penalty sought to be proposed u/s. 112 of the Act is interlinked with the confiscation of goods under s. 111 of the Act. In other words, penalty u/s. 112 of the Act will apply only when the goods are liable for confiscation u/s. 111 of the Act. In the

present case, the Department has alleged that the goods-in-question are liable for confiscation u/ss. 111 (m) and Section 111(o) of the Act. The relevant portions of Section 111 of the Act is extracted herein below for ready reference:

"***111. <u>Confiscation of improperly imported goods</u>, etc.*** *- The following goods* ***<u>brought</u>*** *from a place outside India shall be liable to confiscation: -*

(...)

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

(...)

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer."

12. It is submitted that s. 111(m) of the Act provides that any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 of the Act, shall be liable for confiscation.That the entry of goods on importation is dealt under s. 46 of the Act which inter alia provides that the importer of any goods, other than goods intended for transit or trans-shipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed. This form filed by the importer is the bill of entry. Further, Section 17(1) of the Act which deals with assessment of duty states that any importer entering any imported goods u/s. 46, or an exporter entering any goods-to-be-exported u/s. 50, shall self-assess the duty, if any, leviable on such goods. Furthermore, as per s. 2(26) of the Act, 'importer' in relation to any goods at any time between their importation and the time when they are cleared for home consumption includes any owner, beneficial owner or any person holding himself out to be the importer.

13. On a conjoint reading of ss. 111(m), 46, 17, and 2(26) it can be inferred that the value of the goods and other particulars declared at the time of entry of goods are furnished by the importer. Consequently, any violation of the kind mentioned in s. 111(m) of the Act can be attributed only to the importer. In the present case, the function of my Clientas the foreign supplier was limited to supply of goods from Hong Kong to India. In other words, the responsibility of my Clientconcludes once the goods are put in a deliverable state to the customers in India. Once the goods reach the Indian Customs barrier, it is the responsibility of the concerned importers, in the present case the main noticee, to declare the classification and description of such goods and file the bill of entry and other documents for

clearance of such goods.Given this, my Client cannot be held liable for any violation of the nature prescribed in Section 111(m) of the Act which renders the goods liable for confiscation. Consequently, the proposal to impose penalty u/s. 112 is bad in law and the captioned show cause notice to that extent could not have been issued to my Client.

14. Similarly, s. 111(o) of the Act provides that if any goods were exempted subject to any condition, from duty or any prohibition in respect of the import thereof under the Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer, such goods shall be liable for confiscation. In the present case, s. 111(o) of the Act is also not triggered by any of the acts of my Client since it is merely the overseas supplier of the imports-in-question and confiscation as envisaged under the said provision can only be triggered when non-observance of the condition(s) for benefit of exemption occurs on the part of the importer as such exemption is claimed by the importer alone.

15. Further, the foregoing is equally apposite in terms of s. 114AA of the Act inasmuch as my Client being the overseas supplier has neither done anything in the transaction of any business for the purposes of the Customs Act, 1962 nor hasknowingly or intentionally 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 Customs Act, 1962.

16. Therefore, the assumption of extra-territorial jurisdiction by the issuing authority of the captioned show cause notice in the instant case basis the writ large extrapolative conjecturethat the previous imports of the main noticee were also allegedly fraudulent in nature and the fact that my Client had issued commercial invoices and packing lists for the select imports made by the main noticee, is wholly erroneous, without authority of law, and arbitrary.

17. That in terms of s.151B of the Customs Act, 1962, for exercising jurisdiction over foreign territories, the Union Government has to have an Agreement with the Government of that territory. In the present case, no such agreement exists for applying any of the provisions of the Customs Act, 1962 or any other statutory provisions of laws and statutes. Hence the captionedshow cause notice could not have been issued to my Client. Thus, it is submitted that assumption of extra-territorial jurisdiction by the authority who has issued the captioned show cause notice is arbitrary and contrary to the legislative intent of s. 1 of the Customs Act, 1962.

18. It is reiterated that the responsibility of filing correct declaration is upon the importer in India and the duty to assess the goods, at the time of clearance is upon the assessing officer.In the instant proceedings, it appears that each and everyconsignment was assessed and thereafter allowed clearance. The responsibility to assess and allow the goods for clearance is upon the officer of the Customs who has been empowered to exercise such function. None of the officers of the Customs were examined during the course of investigation to show that the assessment and clearance allowed by them, was improper in any manner. Thus, on this ground as well the assumption of extra-territorial jurisdiction by the

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authority who has issued the captioned show cause notice is arbitrary and contrary to the legislative intent of s. 1 of the Customs Act, 1962.

XI. RE:SHOW CAUSE NOTICE NOT ISSUED BY DESIGNATED / EMPOWERED OFFICER

19. Special Economic Zone (SEZ), alikeSurat SEZ, Sachin, is a geographically delineated duty-free enclave and is deemed to be a foreign territory for the purposes of trade operations and duties and tariffs. With a view to promote the business activity, the Special Economic Zone Act, 2005 received the assent of the President of India on 23.06.2005. Section 20, 21 and 22 of the said Act came into force on 13.01.2010. As per the Preamble of the SEZ Act, it is to provide for the establishment, development and management of the Special Economic Zone for the promotion of exports and for the matter connected therewith or incidental thereto. The SEZ Act being a special Act was specifically passed to cover all the matters pertaining to a Unit having Office/Unit within the SEZ premises.

20. Under the SEZ Act, there are no distinct offences which are enumerated rather the offences under certain central acts have been subsumed as notified offences for the purposes of the SEZ Act. Sections 111, 113, and 124 amongst others of the Customs Act, 1962 are few of such notified offences under the SEZ Act and for the purposes of carrying out investigation for into such notified offences, certain officers are specifically empowered to commence and carry out the investigation in terms of ss. 21 and 22 of the said Act. For ready reference, the said provisions are reproduced as under:

"***21. Single enforcement officer or agency for notified offences***.

(1) The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for purposes of this Act.

(2) The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offences or committed in a Special Economic Zone.

(3) Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection or search or seizure as is provided under the relevant Central Act in respect of the notified offences."

"***22. Investigation, inspection and search or seizure***.

The agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation or search or seizure in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone: Provided that no investigation, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or subsection

of section 21 without prior approval of the Development Commissioner concerned.

Provided further that any officer of agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner."

21. That in terms of the afore-reproduced provisions, the Central Government vide Notification No. SO 2665(E) dated 05.08.2016, Notification No. SO 2666(E) dated 05.08.2016, and Notification No. SO 2667(E) dated 05.08.2016, all issued u/ss. 21 and 22 of the SEZ Act, as the case may be, have prescribed that either Additional Director General, Directorate of Revenue Intelligence or the jurisdictions Customs Commissioner would be the enforcement / empowered officer to carry out the investigation in relation to notified offences under the SEZ Act. Further, by virtue of s. 21(3) of the SEZ Act, the said enforcement / empowered officers would be entitled to exercise all the corresponding powers in relation to the investigation, search, and / or seizure pertaining to the notified offences including ss. 105, 108, 110, and 124 of the Customs Act, 1962.

22. A reading of the above provisions and corresponding notifications, as adverted to above, makes it clear that the officer of the DRI does not have power or jurisdiction to inspect or seize goods in respect of units situated in SEZ area. The power to investigate in respect of any offence committed in SEZ unit is conferred on officers empowered under the afore-reproduced provisions and notifications. The entire act of search, seizure, recording of statement, and issuance of show cause notice by the officers of DRI and officer of customs who are neither Additional Director General, Directorate of Revenue Intelligence or the jurisdictions Customs Commissioner, in the instant case, is rife with illegality, arbitrariness, and erroneous assumption of jurisdiction. Further, as per the provisions and notifications issued under the SEZ Act, as above, the agency or officers carrying out any investigation into a SEZ Area need the sanction of the Development Commissioner before commencement of such investigation, however, in the instant case, the same has been violated inasmuch as the prior intimation has not been given. On these grounds, no adverse order is warranted against my Client.

23. It is submitted that s. 51 of the SEZ Act is clear that SEZ Act prevails over other enactments to the extent of special provisions being made under SEZ Act. Therefore, the SEZ Act would prevail over the Customs Act, 1962 in all aspects in view of the non-obstinate clause.

24. That vide Circular No.11/2017-Cus dated 31.03.2017 a Standard Operating Procedure has been prescribed whereby a show cause noticehas to be prepared by the Specified Officer / Authorized Officer in the concerned office of the Development Commissioner which shall be transferred to DC/AC in the office of jurisdictional Customs along with all Relied Upon Documents. The captioned show cause notice has not been issued in the manner prescribed under the SOP and appears to have not been prepared in the office of the Development Commissioner inasmuch as there is no averment thereto. The purpose of adopting such SOP is that there remains transparency in the proceedings which is monitored by the

Development Commissioner and the assessees are not harassed unnecessarily. Hence, the captioned show cause notice deserves to be dropped qua my Client.

XII. RE: SECTION 124 DOES NOT EMPOWER AUTHORITY TO ISSUE SHOW CAUSE NOTICE

25. That the captioned show cause notice has been issued invoking section 124 of the Act which is without jurisdiction and authority of law inasmuch as the said provision does not confer any power of issuance of a 'show cause notice' which could have been exercised by the authority which has issued the captioned show cause notice. Section 124 of the Act provides as under:

"*Section 124. Issue of show cause notice before confiscation of goods, etc. -*

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in 1[writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed."

26. From reading of the foregoing provision, it is clear and unambiguous, that the same clarifies the following:

a. The provision prescribes certain commandments in sub-section (1) which have to followed in letter and spirit before passing of any order of confiscation or imposition of any penalty on any person under Chapter XIV of the Act;

b. The inherent nature of the said commandments is representative of principles of natural justice particularly the doctrine of audialterampartem which cannot be dispelled with while passing an order of confiscation or imposition of penalty in terms of Chapter XIV of the Act; and

c. The empowerment to issue show cause in terms of the said provision is patently unclear vis-à-vis the authority which has issued the captioned show cause notice;

27. That s.124 does not confer any power to issue the captioned show cause notice upon the authority which has issued the captioned show cause notice, hence the entire proceeding initiated on the basis of such provision, vitiates the fundamental basis on which the same stands. It is a settled legal proposition that when action on the basis of which the primary proceeding stands vitiated, all subsequent and consequential proceeding would fall.

28. It is no more *res integra* that:

    a. Taxation statutes have to be strictly interpreted; and

    b. Fealty has to be pledged to the literal meaning of the statute in cases where the language of the statute is clear and unambiguous.

29. That the explicit language of s. 124 of the Act neither confers any power to issue show cause notice nor envisages issuance of show cause notice by invocation of the provisions therein upon the authority which has issued the captioned show cause notice. The only reference qua show cause notice therein is limited to spotlight adherence to the principles of natural justice, bereft whereof no order of confiscation or imposition of penalty under Chapter XIV of the Act can be passed.

30. That s. 124 of the Customs Act, 1962 provides that a show cause notice can be issued only with the prior approval of the officers of Customs not below rank of an Assistant Commissioner of Customs, thereby meaning that the officer above the rank of Assistant Commissioner of Customs can accord only approval for issuance of show cause notice. In the instant case, such approval is amiss.Therefore, the captioned show cause notice issued under section 124 of the Act is without jurisdiction and authority of law and the same deserves to be quashed and/or set-aside, in the interest of justice.

PRAYER

31. Therefore, it is most humbly prayed to your good self may be pleased to:

    a. drop the captioned show cause notice vis-à-vis my Client; and

    b. pass such other and further orders which may be fit and proper in the interest of complete justice.

That my Client wishes to be heard in person before any order is passed in the matter. Further, my Client reserves its right to make additional submissions if the need so arises or situation so demands. Furthermore, it is most humbly requested that the personal hearing be scheduled through video-conferencing in line with the Hon'ble Supreme Court's consistent and continued effort to digitalise the justice dispensation system."

36.32 The noticee M/s LIME TRADING., RM 1715, 17/F, Rise Comm Bldg, 5-11, Granville Circuit, TST, Kowloon, Hong Kong, through its authorized representative Shri Hemant Dave, Advocate submitted its defense

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reply vide letter dated NIL in connection with the instant SCN Dated 26.02.2024 as under:-

1. "At the Outset My client's denies each and every allegation, averments, statements and submissions of your show cause notice under reply and my client's specifically and categorically denies all the allegations made in the show cause notice.
2. My Client's states that noting shall be deem to be admitted unless it is specifically so done and shall be presumed to have been denied by my client's
3. My client's states that my client's is a Hong Kong based overseas supplier and my client's has never supplied any goods/Synthetic/duplicate precious stones (Rubies) during the period 2021,2022 and 2023 which is a very crucial fact and My Client'shave supplied cut and polish stones/rubies as mentioned on invoices.
4. My client's states that it is alleged that based on an information received from Assistant Director, Directorate of Enforcement (New Delhi), vide a letter dated 1st March, 2023 for a search operation in the name of power bank App scam, the office premises of (i) M/s Sagar Empire Jewels Pvt LTD, SEZ Surat (ii) M/s Sagar Natural Rubies Ltd, SEZ, Surat (iii) M/s RHC Global Exports Pvt Ltd, SEZ, Surat and it is alleged that the abovesaid three entities as on 1st March, 2023 had been shown in the books of accounts as approx. Rs.1400 crores whereas during search operation after valuation of stock by a government approved valuer large quantities of synthetic/duplicate precious stones (Ruby) were found in stock in trade valued at nearly few crores of rupees.
5. My Client's state that it is pertinent to note that my client's has not supplied any synthetic rubies as falsely alleged during the relevant period and there is no misdeclaration of descriptions goods in any manner or value of the goods during financial years i.e. financial year 2021,2022 and 2023 and there is no concrete and cogent evidence to show that the said stock was forming any part which is being supplied by my client's and hence on the basis of general assumptions and presumption that the other suppliers might have supplied synthetic ruby Natural Rubies (color stone) cannot be concluded that the Natural Rubies supplied by my client's in the year 2019 was forming the part of the said stock.
6. My Client's states that my client's of supplied as per the order of the importer cut and polish precious stones (Natural Rubies) as per the prevailing rate in the market Kindly find enclosed herewith the invoice date 21.05.2019 along with the shipping bill and Copy of the bill of entry as submitted by the importer **(Copies are enclosed herewith as annexure "A").**
7. My Client's states that as stated in the show cause notice Sagar Natural Rubies Ltd, was situated in SEZ which is under the control of development Commissioner and as per the rules the appraiser examines and verify the goods and if he finds that the goods and its value are as per the declaration made on the bill of entry then the goods are allowed to be cleared by the importer since as per the SEZ Act 2005, SEZ notified area itself is a port and as such after more than 3 years it is absolutely false allegations that my client's who is a overseas supplier has supplied the synthetic Natural Rubies which is absolutely not co related with any documentary evidence.

8. My Client's states that it is well settled principal of law that the identity of the Natural Rubies cannot be established when Natural Rubies are mix up with so many other suppliers.
9. My Client's states that as far as valuations of the Natural Rubies is concerned there is quite possibility that one panel member may give different opinion than the large panel of 3 panel members and hence it is desirable to have the valuation report from different panel members.
10. My Client's states that in the show cause notice it is alleged that the statements of various persons have been recorded under section 108 of the Customs Act like **(i) Shri HirenbhaiBipinbhai Trivedi** who was working as a production manager in M/s SDL, SURSEZ than the statements of the other co notices like **(ii) Shri. Vaibhav D. Shah** who was the Managing director of M/S SDL and than the statements of other co noticees like **Shri. Ajit Khushal Shah**, who was Chartered Accountant working Sagar Natural Rubies Ltd, and than other senior accountant **Shri. Santosh Nimbaji Sonar** than the junior accountant **Ms. Sanjana Kalambe** than the statements **Shri. Saurin Rasiklal Shah** and others but none of the co noticees have implicated in any manner to my client's and as such the allegations of abetting thus not survive in view of the fact that there is no evidence at all.
11. My Client's states that as per the Customs Act 1962, My Client's have sold supplied and delivered the natural cut and polish natural rubies as per the prevailing rate in the international market and my client's have received the payments banking channels that to in the year 2019 and as such after more than 3 years any allegations of contrary nature does not survive.
12. My Client's States that as per the averments made on page no. 61 where the names of the overseas firms are mentioned which are 47 Firms and hence it cannot be jumped to a conclusion that all 47 firms have supplied the synthetic Natural Rubies as falsely alleged.
13. My Client's states that as per the SEZ rules all the SEZ units are directly under the control and supervision of development commissioner, Assistant development commissioner and more particularly when manufacturing of Silver Ornaments/Silve Jewelries studded with ruby and while exporting all the export related procedures like filing shipping bill invoice laboratory tests reports and all other related procedures for import is under the control of SEZ, who personally and physically verify the consignments and its descriptions and valuations and thereafter only goods are allowed to be exported and hence at this belated stage to term this as a trade based money laundering system (TBML) system is absolutely false and cogent without any clinching evidence.
14. My Client's states thatsince my client's had supplied the natural Rubies in the year 2019 and any seizure or any valuation report of year 2023 does not discloses that the stock was forming any kind of part or any part supplied by my client's and in the absence of any cogent documentary evidence the general presumptions cannot be drawn.
15. My Client's states that my client's is specifically and categorically denies that my client's has made any false declarations as far as the descriptions of the goods i.e. cut and polish precious stones (natural

rubies) and my client's has sold, supplied and delivered the natural rubies as per the declaration on the invoices.

16. My Client's states that in the entire show cause notice or in the documents referred and relied upon in show cause notice does not specifically points out that my client's have supplied synthetic Natural Rubies and the general statements without any documentary evidence and without any specific documents only on the strength of general presumptions an averment is made which is not maintainable and tainable in law.
17. My Client'swould like to have physical hearing as well as personal hearing in the matter before any decision is taken in the matter.
18. My Client'sis filing this preliminary reply to the show cause notice and my client's deserves his right to file additional reply as and when necessary.
19. My Client'sonce again repeat, reiterate and confirm that my client's have not violated any of the provisions of the Customs Act 1962 and SEZ Act and my client's has been falsely dragged in the matter only on the base of general assumption and presumptions.
20. My Client'shereby specifically and categorically denies that he has indulged in any manner in the business of trade based money laundering as falsely alleged.
21. My Client's states that my client's have sold, supplied and delivered the natural rubies as per the declarations and the physical movements of the goods has taken place as per the international norms recognized by international trade.
22. My Client's is victimized only on the basis general assumptions and presumptions which is not permissible in law and every allegations has to be supported with independent cogent documentary evidence.

iii. In the circumstances my client's most respectfully prays before your Honor that since my client's is falsely implicated and hence he may be exonerated from the proceedings and the show cause notice proceedings may kindly be dropped against my client's.

iv. My client's would like to be heard physically before any decision is taken in the matter.

Any other relief as deem fit and proper in favor of my client's."

36.33 The noticee M/s MARS IND & COMM SERVICES LIMITD, Unit A&B, 9/Fl, Champion Building, 287-291, Des Voeux Road, Central, Sheung Wan, Hong Kong has not submitted any defense reply in connection with the instant SCN Dated 26.02.2024.

36.34 The noticee M/s MIRACLE MPS LIMITED, 8B, Dorfu Court, 5-6 Hau Fook Street, TSIM SHA TSUI, KLN, Hong Kong, through its authorized representative Shri Shrey S Lodha, Advocate submitted its reply vide letter dated 12.05.2024 as under:-

"Upon instructions from, for and on behalf of my Client, through its Authorised Signatory who has drawn Vakalatanama, enclosed hereto as **Annexure 1**, in my favour, I hereby submit as follows:

1. At the outset my Client denies any and every allegation made in the captioned Show cause notice (hereinafter referred to as "**SCN**") for it isreplete with non-application of mind and untenable in the eyes of law.

2. It is pertinent to note that the present submissions are preliminary in nature insofar as objections pertaining to jurisdictional facts have been advanced herein, which as per several judicial pronouncements including ***Arun Kumar and Others v. Union of India and others, [(2007) 1 SCC 732]*** posit existence of jurisdictional fact before assumption of jurisdiction by a court, tribunal, or an authority over a matter. In ***Arun Kumar*** (supra), the Hon'ble Supreme Court held as under::

"***74. A "jurisdictional fact" is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.***

75. In Halsbury's Laws of England, it has been stated: "Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive."

76. The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction."

3. In light of the foregoing, your good self is most humbly requested to kindly adjudicate and dispose, *first*, the challenge to the jurisdictional aspects related to the captioned show cause noticewhich go to the root of the matter before passing any decision on the merits of the case. It is expressly stated that my Client reserves the right to make further submissions including on the merits of the matter subsequent to disposal of the preliminary objections by your good self.

PRELIMINARY OBJECTIONS

4. At the cost of repetition, it is categorically submitted that any and all allegations made in the captioned show cause notice are denied inasmuch as they are based on conjecture, surmises, and shaky grounds. Further, the submissions / objections herein are taken independently and without prejudice to each other.

XIII. EXTRA-TERRITORIAL ASSUMPTION OF JURISDICTION

5. That my Clientis an overseas supplier, based out in Hong Kong, of the goods in question i.e. Cut & Polished Precious and Semi-Precious Stones

(Ruby)and the same was sold to several entities during the relevant period including the entities based out in India. It is pertinent to note that the goods in question were shipped from Hong Kong upon complying with the normative regulations and ensuring requisite and proper declaration of the material particulars of the said goodsto the Hong Kong Customs Authorities and nothing has been whispered in the captioned show cause notice to suggest otherwise.

6. From a bare perusal of the captioned show cause notice, it is understood that the gravamen therein qua my Clientis that it has allegedly abetted and indulged in conspiracy with the main noticee i.e. M/s RHC Global Exports Private Limited, an entity based in Surat Special Economic Zone, Sachin ("**Sachin SEZ**"), to:

(i) contravene the provisions of the Customs Act, 1962 (and the rules and regulations made thereunder) and the Special Economic Zones Act, 2005 (and the rules and regulations made thereunder) by issuing commercial invoices, packing lists, etc. bearing incorrect particulars of the goods, vis-à-vis the classification and value thereof, so supplied; and

(j) facilitate remission of outward foreign remittance on the strength of fake/bogus commercial invoices.

7. It is pertinent to note at this juncture that my Client neither is incorporated in India nor has any permanent establishment in India nor has its place of effective management in India nor is an importer / exporter in terms of the Customs Act, 1962, therefore, the issuance of the captioned show cause notice prima facie is beyond the legislative mandate of Customs Act, 1962***basis extrapolation of allegation on the previous imports of the main noticee from my Client***.

8. That no Municipal Law can ever be extended beyond the territorial boundaries of a country including its continental self and exclusive economic zone, whether or not there is express provision in the statute to stretch the same beyond the country's territory since the same would amount to encroachment upon the territorial authority of other State. Sovereign country asserts extra territorial jurisdiction in criminal laws though ***the principal basis of jurisdiction over crime is the territorial principle which permits a State in control of its territory to prescribe, adjudicate and enforce its law in the territory. The crime is said tobe committed even partly in a state's territory when any essential constituent element itself is consummated there***. Further, the Hon'ble Supreme Court's Constitutional Bench in ***GVK Industries Limited and Another v. Income Tax Officer and Another, [(2011) 4 SCC 36]*** while in seisin with the issue as to legislative competence of Parliament to breathe extra-territorial jurisdiction into a statute has observed as follows:

"*124. We now turn to answering the two questions that we set with:*

(1) ***Is Parliament constitutionally restricted from enacting legislation with respect to extra-territorial aspects or causes that do not have, nor expected to have, any, direct or indirect, tangible or intangible impact(s) on, or effect(s) in, or consequences for****:*

(a) other territory of India, or any part of India; or

(b) other interests of, welfare of, well-being of, or security of inhabitants of India, and Indians?

The answer to the above would be yes. However, Parliament may exercise its legislative powers with respect to extra-territorial aspects or causes*—events, things, phenomena (howsoever commonplace they may be), resources, actions or transactions, and the like—that occur, arise or exist or may be expected to do so, naturally or on account of some human agency, in the social, political, economic, cultural, biological, environmental or physical spheres outside the territory of India, and seek to control, modulate, mitigate or transform the effects of such extra-territorial aspects or causes, or in appropriate cases, eliminate or engender such extra-territorial aspects or causes,* ***only when such extra-territorial aspects or causes have, or are expected to have, some impact on, or effect in, or consequences for: (a) the territory of India, or any part of India; or (b) the interests of, welfare of, well-being of, or security of inhabitants of India, and Indians****.*

125. It is important for us to state and hold here that the powers of legislation of Parliament with regard to all aspects or causes that are within the purview of its competence, including with respect to extra-territorial aspects or causes as delineated above, and as specified by the Constitution, or implied by its essential role in the constitutional scheme, ought not to be subjected to some a priori quantitative tests, such as 'sufficiency' or 'significance' or in any other manner requiring a predetermined degree of strength. ***All that would be required would be that the connection to India be real or expected to be real, and not illusory or fanciful****.*

126. Whether a particular law enacted by Parliament does show such a real connection, or expected real connection, between the extra-territorial aspect or cause and something in India or related to India and Indians, in terms of impact, effect or consequence, would be a mixed matter of facts and of law. Obviously, where Parliament itself posits a degree of such relationship, beyond the constitutional requirement that it be real and not fanciful, then the courts would have to enforce such a requirement in the operation of the law as a matter of that law itself, and not of the Constitution:

127. (2) ***Does Parliament have the powers to legislate 'for' any territory, other than the territory of India or any part of it?***

The answer to the above would be no*. It is obvious that Parliament is empowered to make laws with respect to aspects or causes that occur, arise or exist, or may be expected to do so, within the territory of India, and also with respect to extra-territorial aspects or causes that have an impact on or nexus with India as explained above in the answer to Question 1 above. Such laws would fall within the meaning, purport and ambit of the grant of powers to Parliament to make laws 'for the whole or any part of the territory of India', and they may not be invalidated on the ground that they may require extra-territorial operation.* ***Any laws enacted by Parliament with respect to extra-territorial aspects or causes that have no impact on or nexus with India would be ultra vires, as answered in response to Question 1 above, and would be laws made 'for' a foreign territory.****"*

In light of the foregoing, it is submitted that albeit s. 1(2) of the Customs Act, 1962 has enabled its extra-territorial jurisdiction, however, the same

is subject to the essential principle that the act / omission / offence / contravention should have impact and / or nexus with the subject-matter which is sought to be regulated by the Customs Act, 1962.

9. Gravitating the aforesaid to the present facts and circumstances, it is submitted that the ***basis to allege contravention*** of the provisions of the Customs Act, 1962 and Special Economic Zones Act, 2005 i.e. mis-declaration and over-valuations of the goods in question by the main noticee ***is Bills of Entry filed by the importer,i.e. the main noticee in the instant case, during the relevant period and not the commercial invoices / packing lists issued by my Client***.

10. It is relevant to note that the nature of allegation in the captioned show cause notice wherein it has been proposed to impose penalty u/ss. 112(a), 112(b), 114AA, and / or 117 of the Customs Act, 1962 on my Client, is that by issuing the commercial invoices and packing lists qua the exports made by my Client in terms of the laws of Hong Kong, my Client has allegedly abetted the main noticee in mis-declaring and over-valuing the goods in question to the Indian Customs Authorities and has in consequence also purportedly abetted siphoning off outward foreign exchange on the strength of such allegedly fake/bogus documents. At the cost of repetition, it is submitted that the foregoing allegation is a mere extrapolation of conjectures and surmises on the past imports of the main noticee (exports by my Client) inasmuch as it has neither been alluded in the captioned show cause notice about seizure of any live consignment from the main noticee which has been sent by my Client nor it is coming out that any seizure in the instant case directly, basis preponderance of probabilities, links my Client to the alleged contraventions committed by the main noticee. Further, the contents of the captioned show cause notice do not indicate conducting of any enquiry by the Indian Customs Authorities with their Hong Kong counterparts qua any irregularity in the material particulars declared with the latter. Furthermore, the statements recorded and relied upon in the captioned show cause notice do not indicate any imputation or knowledge about the alleged abetment of my Client in the purported contraventions. Moreover, no documentary evidence has been alluded to in the contents of the captioned show cause notice indicating the ***mensrea*** in order to attract the penalty u/ss. 112, 114AA or 117 of the Customs Act, 1962. Thus, when the documents filed and declaration made by my Client have not been disputed by the jurisdictional authorities i.e. Hong Kong Customs Authorities, and there is no material evidence in support of the contention of the Indian Customs Authoritiesqua my Client, the basis to issue the captioned show cause notice only on the ipse dixit of the Indian Customs Authorities is unfounded, arbitrary, illegal, and bad in law.

11. Without prejudice, it is submitted thatthe penalty sought to be proposed u/s. 112 of the Act is interlinked with the confiscation of goods under s. 111 of the Act. In other words, penalty u/s. 112 of the Act will apply only when the goods are liable for confiscation u/s. 111 of the Act. In the present case, the Department has alleged that the goods-in-question are liable for confiscation u/ss. 111 (m) and Section 111(o) of the Act. The relevant portions of Section 111 of the Act is extracted herein below for ready reference:

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"***111. <u>Confiscation of improperly imported goods</u>, etc.*** *- The following goods* ***<u>brought</u>*** *from a place outside India shall be liable to confiscation: -*

(...)

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

(...)

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer."

12. It is submitted that s. 111(m) of the Act provides that any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 of the Act, shall be liable for confiscation.That the entry of goods on importation is dealt under s. 46 of the Act which inter alia provides that the importer of any goods, other than goods intended for transit or trans-shipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed. This form filed by the importer is the bill of entry. Further, Section 17(1) of the Act which deals with assessment of duty states that any importer entering any imported goods u/s. 46, or an exporter entering any goods-to-be-exported u/s. 50, shall self-assess the duty, if any, leviable on such goods. Furthermore, as per s. 2(26) of the Act, 'importer' in relation to any goods at any time between their importation and the time when they are cleared for home consumption includes any owner, beneficial owner or any person holding himself out to be the importer.

13. On a conjoint reading of ss. 111(m), 46, 17, and 2(26) it can be inferred that the value of the goods and other particulars declared at the time of entry of goods are furnished by the importer. Consequently, any violation of the kind mentioned in s. 111(m) of the Act can be attributed only to the importer. In the present case, the function of my Clientas the foreign supplier was limited to supply of goods from Hong Kong to India. In other words, the responsibility of my Clientconcludes once the goods are put in a deliverable state to the customers in India. Once the goods reach the Indian Customs barrier, it is the responsibility of the concerned importers, in the present case the main noticee, to declare the classification and description of such goods and file the bill of entry and other documents for clearance of such goods.Given this, my Client cannot be held liable for any violation of the nature prescribed in Section 111(m) of the Act which renders the goods liable for confiscation. Consequently, the proposal to impose penalty u/s. 112 is bad in law and the captioned show cause notice to that extent could not have been issued to my Client.

14. Similarly, s. 111(o) of the Act provides that if any goods were exempted subject to any condition, from duty or any prohibition in respect of the import thereof under the Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer, such goods shall be liable for confiscation. In the present case, s. 111(o) of the Act is also not triggered by any of the acts of my Client since it is merely the overseas supplier of the imports-in-question and confiscation as envisaged under the said provision can only be triggered when non-observance of the condition(s) for benefit of exemption occurs on the part of the importer as such exemption is claimed by the importer alone.

15. Further, the foregoing is equally apposite in terms of s. 114AA of the Act inasmuch as my Client being the overseas supplier has neither done anything in the transaction of any business for the purposes of the Customs Act, 1962 nor hasknowingly or intentionally 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 Customs Act, 1962.

16. Therefore, the assumption of extra-territorial jurisdiction by the issuing authority of the captioned show cause notice in the instant case basis the writ large extrapolative conjecturethat the previous imports of the main noticee were also allegedly fraudulent in nature and the fact that my Client had issued commercial invoices and packing lists for the select imports made by the main noticee, is wholly erroneous, without authority of law, and arbitrary.

17. That in terms of s.151B of the Customs Act, 1962, for exercising jurisdiction over foreign territories, the Union Government has to have an Agreement with the Government of that territory. In the present case, no such agreement exists for applying any of the provisions of the Customs Act, 1962 or any other statutory provisions of laws and statutes. Hence the captionedshow cause notice could not have been issued to my Client. Thus, it is submitted that assumption of extra-territorial jurisdiction by the authority who has issued the captioned show cause notice is arbitrary and contrary to the legislative intent of s. 1 of the Customs Act, 1962.

18. It is reiterated that the responsibility of filing correct declaration is upon the importer in India and the duty to assess the goods, at the time of clearance is upon the assessing officer.In the instant proceedings, it appears that each and everyconsignment was assessed and thereafter allowed clearance. The responsibility to assess and allow the goods for clearance is upon the officer of the Customs who has been empowered to exercise such function. None of the officers of the Customs were examined during the course of investigation to show that the assessment and clearance allowed by them, was improper in any manner. Thus, on this ground as well the assumption of extra-territorial jurisdiction by the authority who has issued the captioned show cause notice is arbitrary and contrary to the legislative intent of s. 1 of the Customs Act, 1962.

XIV. RE: SHOW CAUSE NOTICE NOT ISSUED BY DESIGNATED / EMPOWERED OFFICER

19. Special Economic Zone (SEZ), alikeSurat SEZ, Sachin, is a geographically delineated duty-free enclave and is deemed to be a foreign territory for the purposes of trade operations and duties and tariffs. With a view to promote the business activity, the Special Economic Zone Act, 2005 received the assent of the President of India on 23.06.2005. Section 20, 21 and 22 of the said Act came into force on 13.01.2010. As per the Preamble of the SEZ Act, it is to provide for the establishment, development and management of the Special Economic Zone for the promotion of exports and for the matter connected therewith or incidental thereto. The SEZ Act being a special Act was specifically passed to cover all the matters pertaining to a Unit having Office/Unit within the SEZ premises.

20. Under the SEZ Act, there are no distinct offences which are enumerated rather the offences under certain central acts have been subsumed as notified offences for the purposes of the SEZ Act. Sections 111, 113, and 124 amongst others of the Customs Act, 1962 are few of such notified offences under the SEZ Act and for the purposes of carrying out investigation for into such notified offences, certain officers are specifically empowered to commence and carry out the investigation in terms of ss. 21 and 22 of the said Act. For ready reference, the said provisions are reproduced as under:

"***21. Single enforcement officer or agency for notified offences***.

(1) The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for purposes of this Act.

(2) The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offences or committed in a Special Economic Zone.

(3) Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection or search or seizure as is provided under the relevant Central Act in respect of the notified offences."

"***22. Investigation, inspection and search or seizure***.

The agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation or search or seizure in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone: Provided that no investigation, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or subsection of section 21 without prior approval of the Development Commissioner concerned.

Provided further that any officer of agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in

the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner."

21. That in terms of the afore-reproduced provisions, the Central Government vide Notification No. SO 2665(E) dated 05.08.2016, Notification No. SO 2666(E) dated 05.08.2016, and Notification No. SO 2667(E) dated 05.08.2016, all issued u/ss. 21 and 22 of the SEZ Act, as the case may be, have prescribed that either Additional Director General, Directorate of Revenue Intelligence or the jurisdictions Customs Commissioner would be the enforcement / empowered officer to carry out the investigation in relation to notified offences under the SEZ Act. Further, by virtue of s. 21(3) of the SEZ Act, the said enforcement / empowered officers would be entitled to exercise all the corresponding powers in relation to the investigation, search, and / or seizure pertaining to the notified offences including ss. 105, 108, 110, and 124 of the Customs Act, 1962.

22. A reading of the above provisions and corresponding notifications, as adverted to above, makes it clear that the officer of the DRI does not have power or jurisdiction to inspect or seize goods in respect of units situated in SEZ area. The power to investigate in respect of any offence committed in SEZ unit is conferred on officers empowered under the afore-reproduced provisions and notifications. The entire act of search, seizure, recording of statement, and issuance of show cause notice by the officers of DRI and officer of customs who are neither Additional Director General, Directorate of Revenue Intelligence or the jurisdictions Customs Commissioner, in the instant case, is rife with illegality, arbitrariness, and erroneous assumption of jurisdiction. Further, as per the provisions and notifications issued under the SEZ Act, as above, the agency or officers carrying out any investigation into a SEZ Area need the sanction of the Development Commissioner before commencement of such investigation, however, in the instant case, the same has been violated inasmuch as the prior intimation has not been given. On these grounds, no adverse order is warranted against my Client.

23. It is submitted that s. 51 of the SEZ Act is clear that SEZ Act prevails over other enactments to the extent of special provisions being made under SEZ Act. Therefore, the SEZ Act would prevail over the Customs Act, 1962 in all aspects in view of the non-obstinate clause.

24. That vide Circular No.11/2017-Cus dated 31.03.2017 a Standard Operating Procedure has been prescribed whereby a show cause noticehas to be prepared by the Specified Officer / Authorized Officer in the concerned office of the Development Commissioner which shall be transferred to DC/AC in the office of jurisdictional Customs along with all Relied Upon Documents. The captioned show cause notice has not been issued in the manner prescribed under the SOP and appears to have not been prepared in the office of the Development Commissioner inasmuch as there is no averment thereto. The purpose of adopting such SOP is that there remains transparency in the proceedings which is monitored by the Development Commissioner and the assessees are not harassed unnecessarily. Hence, the captioned show cause notice deserves to be dropped qua my Client.

XV. RE: SECTION 124 DOES NOT EMPOWER AUTHORITY TO ISSUE SHOW CAUSE NOTICE

25. That the captioned show cause notice has been issued invoking section 124 of the Act which is without jurisdiction and authority of law inasmuch as the said provision does not confer any power of issuance of a 'show cause notice' which could have been exercised by the authority which has issued the captioned show cause notice. Section 124 of the Act provides as under:

"*Section 124. Issue of show cause notice before confiscation of goods, etc. -*

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in 1[writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed."

26. From reading of the foregoing provision, it is clear and unambiguous, that the same clarifies the following:

a. The provision prescribes certain commandments in sub-section (1) which have to followed in letter and spirit before passing of any order of confiscation or imposition of any penalty on any person under Chapter XIV of the Act;

b. The inherent nature of the said commandments is representative of principles of natural justice particularly the doctrine of audialterampartem which cannot be dispelled with while passing an order of confiscation or imposition of penalty in terms of Chapter XIV of the Act; and

c. The empowerment to issue show cause in terms of the said provision is patently unclear vis-à-vis the authority which has issued the captioned show cause notice;

27. That s.124 does not confer any power to issue the captioned show cause notice upon the authority which has issued the captioned show cause notice, hence the entire proceeding initiated on the basis of such provision, vitiates the fundamental basis on which the same stands. It is a

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settled legal proposition that when action on the basis of which the primary proceeding stands vitiated, all subsequent and consequential proceeding would fall.

28. It is no more *res integra* that:

    a. Taxation statutes have to be strictly interpreted; and

    b. Fealty has to be pledged to the literal meaning of the statute in cases where the language of the statute is clear and unambiguous.

29. That the explicit language of s. 124 of the Act neither confers any power to issue show cause notice nor envisages issuance of show cause notice by invocation of the provisions therein upon the authority which has issued the captioned show cause notice. The only reference qua show cause notice therein is limited to spotlight adherence to the principles of natural justice, bereft whereof no order of confiscation or imposition of penalty under Chapter XIV of the Act can be passed.

30. That s. 124 of the Customs Act, 1962 provides that a show cause notice can be issued only with the prior approval of the officers of Customs not below rank of an Assistant Commissioner of Customs, thereby meaning that the officer above the rank of Assistant Commissioner of Customs can accord only approval for issuance of show cause notice. In the instant case, such approval is amiss.Therefore, the captioned show cause notice issued under section 124 of the Act is without jurisdiction and authority of law and the same deserves to be quashed and/or set-aside, in the interest of justice.

PRAYER

31. Therefore, it is most humbly prayed to your good self may be pleased to:

    a. drop the captioned show cause notice vis-à-vis my Client; and

    b. pass such other and further orders which may be fit and proper in the interest of complete justice.

That my Client wishes to be heard in person before any order is passed in the matter. Further, my Client reserves its right to make additional submissions if the need so arises or situation so demands. Furthermore, it is most humbly requested that the personal hearing be scheduled through video-conferencing in line with the Hon'ble Supreme Court's consistent and continued effort to digitalise the justice dispensation system."

36.35 The noticee M/s MIRACLE PRIVATE LIMITED, Flat 1006, 10/F, Rise Comm Bldg, 5-11, Granville Circuit, TSIM, SHA TSUI, Hong Kong, through its authorized representative Shri Shrey S Lodha, Advocate submitted its reply vide letter dated 12.05.2024 as under:-

"Upon instructions from, for and on behalf of my Client, through its Authorised Signatory who has drawn Vakalatanama, enclosed hereto as **Annexure 1**, in my favour, I hereby submit as follows:

1. At the outset my Client denies any and every allegation made in the captioned Show cause notice (hereinafter referred to as "**SCN**") for it isreplete with non-application of mind and untenable in the eyes of law.

2. It is pertinent to note that the present submissions are preliminary in nature insofar as objections pertaining to jurisdictional facts have been advanced herein, which as per several judicial pronouncements including ***Arun Kumar and Others v. Union of India and others, [(2007) 1 SCC 732]*** posit existence of jurisdictional fact before assumption of jurisdiction by a court, tribunal, or an authority over a matter. In ***Arun Kumar*** (supra), the Hon'ble Supreme Court held as under::

"***74. A "jurisdictional fact" is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.***

75. In Halsbury's Laws of England, it has been stated: "Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive."

76. The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction."

3. In light of the foregoing, your good self is most humbly requested to kindly adjudicate and dispose, *first*, the challenge to the jurisdictional aspects related to the captioned show cause noticewhich go to the root of the matter before passing any decision on the merits of the case. It is expressly stated that my Client reserves the right to make further submissions including on the merits of the matter subsequent to disposal of the preliminary objections by your good self.

PRELIMINARY OBJECTIONS

4. At the cost of repetition, it is categorically submitted that any and all allegations made in the captioned show cause notice are denied inasmuch as they are based on conjecture, surmises, and shaky grounds. Further, the submissions / objections herein are taken independently and without prejudice to each other.

XVI. EXTRA-TERRITORIAL ASSUMPTION OF JURISDICTION

5. That my Clientis an overseas supplier, based out in Hong Kong, of the goods in question i.e. Cut & Polished Precious and Semi-Precious Stones (Ruby)and the same was sold to several entities during the relevant period including the entities based out in India. It is pertinent to note that the goods in question were shipped from Hong Kong upon complying with the normative regulations and ensuring requisite and proper declaration of the material particulars of the said goodsto the Hong Kong Customs Authorities and nothing has been whispered in the captioned show cause notice to suggest otherwise.

6. From a bare perusal of the captioned show cause notice, it is understood that the gravamen therein qua my Clientis that it has allegedly abetted and indulged in conspiracy with the main noticee i.e. M/s RHC Global Exports Private Limited, an entity based in Surat Special Economic Zone, Sachin ("**Sachin SEZ**"), to:

(k) contravene the provisions of the Customs Act, 1962 (and the rules and regulations made thereunder) and the Special Economic Zones Act, 2005 (and the rules and regulations made thereunder) by issuing commercial invoices, packing lists, etc. bearing incorrect particulars of the goods, vis-à-vis the classification and value thereof, so supplied; and

(l) facilitate remission of outward foreign remittance on the strength of fake/bogus commercial invoices.

7. It is pertinent to note at this juncture that my Client neither is incorporated in India nor has any permanent establishment in India nor has its place of effective management in India nor is an importer / exporter in terms of the Customs Act, 1962, therefore, the issuance of the captioned show cause notice prima facie is beyond the legislative mandate of Customs Act, 1962***basis extrapolation of allegation on the previous imports of the main noticee from my Client***.

8. That no Municipal Law can ever be extended beyond the territorial boundaries of a country including its continental self and exclusive economic zone, whether or not there is express provision in the statute to stretch the same beyond the country's territory since the same would amount to encroachment upon the territorial authority of other State. Sovereign country asserts extra territorial jurisdiction in criminal laws though ***the principal basis of jurisdiction over crime is the territorial principle which permits a State in control of its territory to prescribe, adjudicate and enforce its law in the territory. The crime is said tobe committed even partly in a state's territory when any essential constituent element itself is consummated there***. Further, the Hon'ble Supreme Court's Constitutional Bench in ***GVK Industries Limited and Another v. Income Tax Officer and Another, [(2011) 4 SCC 36]*** while in seisin with the issue as to legislative competence of Parliament to breathe extra-territorial jurisdiction into a statute has observed as follows:

"*124. We now turn to answering the two questions that we set with:*

(1) ***Is Parliament constitutionally restricted from enacting legislation with respect to extra-territorial aspects or causes that do not have,***

nor expected to have, any, direct or indirect, tangible or intangible impact(s) on, or effect(s) in, or consequences for:

(a) other territory of India, or any part of India; or
(b) other interests of, welfare of, well-being of, or security of inhabitants of India, and Indians?
The answer to the above would be yes. However, Parliament may exercise its legislative powers with respect to extra-territorial aspects or causes—*events, things, phenomena (howsoever commonplace they may be), resources, actions or transactions, and the like—that occur, arise or exist or may be expected to do so, naturally or on account of some human agency, in the social, political, economic, cultural, biological, environmental or physical spheres outside the territory of India, and seek to control, modulate, mitigate or transform the effects of such extra-territorial aspects or causes, or in appropriate cases, eliminate or engender such extra-territorial aspects or causes,* ***only when such extra-territorial aspects or causes have, or are expected to have, some impact on, or effect in, or consequences for: (a) the territory of India, or any part of India; or (b) the interests of, welfare of, well-being of, or security of inhabitants of India, and Indians***.

125. It is important for us to state and hold here that the powers of legislation of Parliament with regard to all aspects or causes that are within the purview of its competence, including with respect to extra-territorial aspects or causes as delineated above, and as specified by the Constitution, or implied by its essential role in the constitutional scheme, ought not to be subjected to some a priori quantitative tests, such as 'sufficiency' or 'significance' or in any other manner requiring a predetermined degree of strength. ***All that would be required would be that the connection to India be real or expected to be real, and not illusory or fanciful***.

126. Whether a particular law enacted by Parliament does show such a real connection, or expected real connection, between the extra-territorial aspect or cause and something in India or related to India and Indians, in terms of impact, effect or consequence, would be a mixed matter of facts and of law. Obviously, where Parliament itself posits a degree of such relationship, beyond the constitutional requirement that it be real and not fanciful, then the courts would have to enforce such a requirement in the operation of the law as a matter of that law itself, and not of the Constitution:

127. (2) ***Does Parliament have the powers to legislate 'for' any territory, other than the territory of India or any part of it?***

The answer to the above would be no. *It is obvious that Parliament is empowered to make laws with respect to aspects or causes that occur, arise or exist, or may be expected to do so, within the territory of India, and also with respect to extra-territorial aspects or causes that have an impact on or nexus with India as explained above in the answer to Question 1 above. Such laws would fall within the meaning, purport and ambit of the grant of powers to Parliament to make laws 'for the whole or any part of the territory of India', and they may not be invalidated on the ground that they may require extra-territorial operation.* ***Any laws enacted by Parliament with respect to extra-territorial aspects or causes that have no impact on***

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or nexus with India would be ultra vires, as answered in response to Question 1 above, and would be laws made 'for' a foreign territory."

In light of the foregoing, it is submitted that albeit s. 1(2) of the Customs Act, 1962 has enabled its extra-territorial jurisdiction, however, the same is subject to the essential principle that the act / omission / offence / contravention should have impact and / or nexus with the subject-matter which is sought to be regulated by the Customs Act, 1962.

9. Gravitating the aforesaid to the present facts and circumstances, it is submitted that the ***basis to allege contravention*** of the provisions of the Customs Act, 1962 and Special Economic Zones Act, 2005 i.e. mis-declaration and over-valuations of the goods in question by the main noticee ***is Bills of Entry filed by the importer,i.e. the main noticee in the instant case, during the relevant period and not the commercial invoices / packing lists issued by my Client***.

10. It is relevant to note that the nature of allegation in the captioned show cause notice wherein it has been proposed to impose penalty u/ss. 112(a), 112(b), 114AA, and / or 117 of the Customs Act, 1962 on my Client, is that by issuing the commercial invoices and packing lists qua the exports made by my Client in terms of the laws of Hong Kong, my Client has allegedly abetted the main noticee in mis-declaring and over-valuing the goods in question to the Indian Customs Authorities and has in consequence also purportedly abetted siphoning off outward foreign exchange on the strength of such allegedly fake/bogus documents. At the cost of repetition, it is submitted that the foregoing allegation is a mere extrapolation of conjectures and surmises on the past imports of the main noticee (exports by my Client) inasmuch as it has neither been alluded in the captioned show cause notice about seizure of any live consignment from the main noticee which has been sent by my Client nor it is coming out that any seizure in the instant case directly, basis preponderance of probabilities, links my Client to the alleged contraventions committed by the main noticee. Further, the contents of the captioned show cause notice do not indicate conducting of any enquiry by the Indian Customs Authorities with their Hong Kong counterparts qua any irregularity in the material particulars declared with the latter. Furthermore, the statements recorded and relied upon in the captioned show cause notice do not indicate any imputation or knowledge about the alleged abetment of my Client in the purported contraventions. Moreover, no documentary evidence has been alluded to in the contents of the captioned show cause notice indicating the ***mensrea*** in order to attract the penalty u/ss. 112, 114AA or 117 of the Customs Act, 1962. Thus, when the documents filed and declaration made by my Client have not been disputed by the jurisdictional authorities i.e. Hong Kong Customs Authorities, and there is no material evidence in support of the contention of the Indian Customs Authoritiesqua my Client, the basis to issue the captioned show cause notice only on the ipse dixit of the Indian Customs Authorities is unfounded, arbitrary, illegal, and bad in law.

11. Without prejudice, it is submitted thatthe penalty sought to be proposed u/s. 112 of the Act is interlinked with the confiscation of goods under s. 111 of the Act. In other words, penalty u/s. 112 of the Act will apply only when the goods are liable for confiscation u/s. 111 of the Act. In the

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present case, the Department has alleged that the goods-in-question are liable for confiscation u/ss. 111 (m) and Section 111(o) of the Act. The relevant portions of Section 111 of the Act is extracted herein below for ready reference:

"***111. <u>Confiscation of improperly imported goods</u>, etc.*** *- The following goods* ***<u>brought</u>*** *from a place outside India shall be liable to confiscation: -*

(...)

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

(...)

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer."

12. It is submitted that s. 111(m) of the Act provides that any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 of the Act, shall be liable for confiscation.That the entry of goods on importation is dealt under s. 46 of the Act which inter alia provides that the importer of any goods, other than goods intended for transit or trans-shipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed. This form filed by the importer is the bill of entry. Further, Section 17(1) of the Act which deals with assessment of duty states that any importer entering any imported goods u/s. 46, or an exporter entering any goods-to-be-exported u/s. 50, shall self-assess the duty, if any, leviable on such goods. Furthermore, as per s. 2(26) of the Act, 'importer' in relation to any goods at any time between their importation and the time when they are cleared for home consumption includes any owner, beneficial owner or any person holding himself out to be the importer.

13. On a conjoint reading of ss. 111(m), 46, 17, and 2(26) it can be inferred that the value of the goods and other particulars declared at the time of entry of goods are furnished by the importer. Consequently, any violation of the kind mentioned in s. 111(m) of the Act can be attributed only to the importer. In the present case, the function of my Clientas the foreign supplier was limited to supply of goods from Hong Kong to India. In other words, the responsibility of my Clientconcludes once the goods are put in a deliverable state to the customers in India. Once the goods reach the Indian Customs barrier, it is the responsibility of the concerned importers, in the present case the main noticee, to declare the classification and description of such goods and file the bill of entry and other documents for

clearance of such goods.Given this, my Client cannot be held liable for any violation of the nature prescribed in Section 111(m) of the Act which renders the goods liable for confiscation. Consequently, the proposal to impose penalty u/s. 112 is bad in law and the captioned show cause notice to that extent could not have been issued to my Client.

14. Similarly, s. 111(o) of the Act provides that if any goods were exempted subject to any condition, from duty or any prohibition in respect of the import thereof under the Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer, such goods shall be liable for confiscation. In the present case, s. 111(o) of the Act is also not triggered by any of the acts of my Client since it is merely the overseas supplier of the imports-in-question and confiscation as envisaged under the said provision can only be triggered when non-observance of the condition(s) for benefit of exemption occurs on the part of the importer as such exemption is claimed by the importer alone.

15. Further, the foregoing is equally apposite in terms of s. 114AA of the Act inasmuch as my Client being the overseas supplier has neither done anything in the transaction of any business for the purposes of the Customs Act, 1962 nor hasknowingly or intentionally 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 Customs Act, 1962.

16. Therefore, the assumption of extra-territorial jurisdiction by the issuing authority of the captioned show cause notice in the instant case basis the writ large extrapolative conjecturethat the previous imports of the main noticee were also allegedly fraudulent in nature and the fact that my Client had issued commercial invoices and packing lists for the select imports made by the main noticee, is wholly erroneous, without authority of law, and arbitrary.

17. That in terms of s.151B of the Customs Act, 1962, for exercising jurisdiction over foreign territories, the Union Government has to have an Agreement with the Government of that territory. In the present case, no such agreement exists for applying any of the provisions of the Customs Act, 1962 or any other statutory provisions of laws and statutes. Hence the captionedshow cause notice could not have been issued to my Client. Thus, it is submitted that assumption of extra-territorial jurisdiction by the authority who has issued the captioned show cause notice is arbitrary and contrary to the legislative intent of s. 1 of the Customs Act, 1962.

18. It is reiterated that the responsibility of filing correct declaration is upon the importer in India and the duty to assess the goods, at the time of clearance is upon the assessing officer.In the instant proceedings, it appears that each and everyconsignment was assessed and thereafter allowed clearance. The responsibility to assess and allow the goods for clearance is upon the officer of the Customs who has been empowered to exercise such function. None of the officers of the Customs were examined during the course of investigation to show that the assessment and clearance allowed by them, was improper in any manner. Thus, on this ground as well the assumption of extra-territorial jurisdiction by the

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authority who has issued the captioned show cause notice is arbitrary and contrary to the legislative intent of s. 1 of the Customs Act, 1962.

XVII. RE:SHOW CAUSE NOTICE NOT ISSUED BY DESIGNATED / EMPOWERED OFFICER

19. Special Economic Zone (SEZ), alikeSurat SEZ, Sachin, is a geographically delineated duty-free enclave and is deemed to be a foreign territory for the purposes of trade operations and duties and tariffs. With a view to promote the business activity, the Special Economic Zone Act, 2005 received the assent of the President of India on 23.06.2005. Section 20, 21 and 22 of the said Act came into force on 13.01.2010. As per the Preamble of the SEZ Act, it is to provide for the establishment, development and management of the Special Economic Zone for the promotion of exports and for the matter connected therewith or incidental thereto. The SEZ Act being a special Act was specifically passed to cover all the matters pertaining to a Unit having Office/Unit within the SEZ premises.

20. Under the SEZ Act, there are no distinct offences which are enumerated rather the offences under certain central acts have been subsumed as notified offences for the purposes of the SEZ Act. Sections 111, 113, and 124 amongst others of the Customs Act, 1962 are few of such notified offences under the SEZ Act and for the purposes of carrying out investigation for into such notified offences, certain officers are specifically empowered to commence and carry out the investigation in terms of ss. 21 and 22 of the said Act. For ready reference, the said provisions are reproduced as under:

"***21. Single enforcement officer or agency for notified offences***.

(1) The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for purposes of this Act.

(2) The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offences or committed in a Special Economic Zone.

(3) Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection or search or seizure as is provided under the relevant Central Act in respect of the notified offences."

"***22. Investigation, inspection and search or seizure***.

The agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation or search or seizure in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone: Provided that no investigation, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or subsection

of section 21 without prior approval of the Development Commissioner concerned.

Provided further that any officer of agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner."

21. That in terms of the afore-reproduced provisions, the Central Government vide Notification No. SO 2665(E) dated 05.08.2016, Notification No. SO 2666(E) dated 05.08.2016, and Notification No. SO 2667(E) dated 05.08.2016, all issued u/ss. 21 and 22 of the SEZ Act, as the case may be, have prescribed that either Additional Director General, Directorate of Revenue Intelligence or the jurisdictions Customs Commissioner would be the enforcement / empowered officer to carry out the investigation in relation to notified offences under the SEZ Act. Further, by virtue of s. 21(3) of the SEZ Act, the said enforcement / empowered officers would be entitled to exercise all the corresponding powers in relation to the investigation, search, and / or seizure pertaining to the notified offences including ss. 105, 108, 110, and 124 of the Customs Act, 1962.

22. A reading of the above provisions and corresponding notifications, as adverted to above, makes it clear that the officer of the DRI does not have power or jurisdiction to inspect or seize goods in respect of units situated in SEZ area. The power to investigate in respect of any offence committed in SEZ unit is conferred on officers empowered under the afore-reproduced provisions and notifications. The entire act of search, seizure, recording of statement, and issuance of show cause notice by the officers of DRI and officer of customs who are neither Additional Director General, Directorate of Revenue Intelligence or the jurisdictions Customs Commissioner, in the instant case, is rife with illegality, arbitrariness, and erroneous assumption of jurisdiction. Further, as per the provisions and notifications issued under the SEZ Act, as above, the agency or officers carrying out any investigation into a SEZ Area need the sanction of the Development Commissioner before commencement of such investigation, however, in the instant case, the same has been violated inasmuch as the prior intimation has not been given. On these grounds, no adverse order is warranted against my Client.

23. It is submitted that s. 51 of the SEZ Act is clear that SEZ Act prevails over other enactments to the extent of special provisions being made under SEZ Act. Therefore, the SEZ Act would prevail over the Customs Act, 1962 in all aspects in view of the non-obstinate clause.

24. That vide Circular No.11/2017-Cus dated 31.03.2017 a Standard Operating Procedure has been prescribed whereby a show cause noticehas to be prepared by the Specified Officer / Authorized Officer in the concerned office of the Development Commissioner which shall be transferred to DC/AC in the office of jurisdictional Customs along with all Relied Upon Documents. The captioned show cause notice has not been issued in the manner prescribed under the SOP and appears to have not been prepared in the office of the Development Commissioner inasmuch as there is no averment thereto. The purpose of adopting such SOP is that there remains transparency in the proceedings which is monitored by the

Development Commissioner and the assessees are not harassed unnecessarily. Hence, the captioned show cause notice deserves to be dropped qua my Client.

XVIII. RE: SECTION 124 DOES NOT EMPOWER AUTHORITY TO ISSUE SHOW CAUSE NOTICE

25. That the captioned show cause notice has been issued invoking section 124 of the Act which is without jurisdiction and authority of law inasmuch as the said provision does not confer any power of issuance of a 'show cause notice' which could have been exercised by the authority which has issued the captioned show cause notice. Section 124 of the Act provides as under:

"*Section 124. Issue of show cause notice before confiscation of goods, etc. -*

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in 1[writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed."

26. From reading of the foregoing provision, it is clear and unambiguous, that the same clarifies the following:

a. The provision prescribes certain commandments in sub-section (1) which have to followed in letter and spirit before passing of any order of confiscation or imposition of any penalty on any person under Chapter XIV of the Act;

b. The inherent nature of the said commandments is representative of principles of natural justice particularly the doctrine of audialterampartem which cannot be dispelled with while passing an order of confiscation or imposition of penalty in terms of Chapter XIV of the Act; and

c. The empowerment to issue show cause in terms of the said provision is patently unclear vis-à-vis the authority which has issued the captioned show cause notice;

27. That s.124 does not confer any power to issue the captioned show cause notice upon the authority which has issued the captioned show cause notice, hence the entire proceeding initiated on the basis of such provision, vitiates the fundamental basis on which the same stands. It is a settled legal proposition that when action on the basis of which the primary proceeding stands vitiated, all subsequent and consequential proceeding would fall.

28. It is no more *res integra* that:

    a. Taxation statutes have to be strictly interpreted; and

    b. Fealty has to be pledged to the literal meaning of the statute in cases where the language of the statute is clear and unambiguous.

29. That the explicit language of s. 124 of the Act neither confers any power to issue show cause notice nor envisages issuance of show cause notice by invocation of the provisions therein upon the authority which has issued the captioned show cause notice. The only reference qua show cause notice therein is limited to spotlight adherence to the principles of natural justice, bereft whereof no order of confiscation or imposition of penalty under Chapter XIV of the Act can be passed.

30. That s. 124 of the Customs Act, 1962 provides that a show cause notice can be issued only with the prior approval of the officers of Customs not below rank of an Assistant Commissioner of Customs, thereby meaning that the officer above the rank of Assistant Commissioner of Customs can accord only approval for issuance of show cause notice. In the instant case, such approval is amiss.Therefore, the captioned show cause notice issued under section 124 of the Act is without jurisdiction and authority of law and the same deserves to be quashed and/or set-aside, in the interest of justice.

PRAYER

31. Therefore, it is most humbly prayed to your good self may be pleased to:

    a. drop the captioned show cause notice vis-à-vis my Client; and

    b. pass such other and further orders which may be fit and proper in the interest of complete justice.

That my Client wishes to be heard in person before any order is passed in the matter. Further, my Client reserves its right to make additional submissions if the need so arises or situation so demands. Furthermore, it is most humbly requested that the personal hearing be scheduled through video-conferencing in line with the Hon'ble Supreme Court's consistent and continued effort to digitalise the justice dispensation system."

36.36 The noticee M/s MIRACLE TRADING HK LIMITED, Room 1006, 10/F, Rise Comm Bldg, 5-11, Granville Circuit, TST, Kowloon, Hong Kong through its authorized representative Shri Vimal Chand Bunt has not submitted it defense

reply vide letter dated 10.04.2024 in connection with the instant SCN Dated 26.02.2024 as under:-

"In furtherance to the Vakalatnama filed vide letter dated 22.03.2024, I have received copy of the relied upon documents through email, on behalf of my client. Upon perusing the same, my client wishes to submit as under:

1. My client at the outset, denies each and every allegation made in the Show Cause Notice and also that the Show Cause Notice is bereft of any reasoning or evidence of whatsoever nature.
2. From the perusal of the Show Cause Notice, it appears that apart from the documents furnished, there were further investigation carried out by the department, copy of which has not been furnished. My client humbly request that copies of the non-relied upon documents may also be furnished.

3. Reliance is placed on the Judgement passed by Hon'ble Madras High Court in the case of V.V. Minerals Versus CCE, reported in 2016 (332) E.L.T. 289 (Mad.), wherein it was held that no enquiry is fair and complete unless person facing it is furnished with all requisite documents, and held that plea that some of sought documents are not relied upon in show cause notice, as not acceptable. Similarly, Hon'ble CESTAT, in the case of Lauls Ltd. V/s. CCE, reported in 2009 (248) E.L.T. 747 (Tri. - Del.), has held that non-supply of non-relied upon documents amounts to violation of principles of natural justice and fair play in adjudication proceedings. Hence, all such un-relied upon documents may kindly be furnished to enable my client to file further reply.

Challenge to jurisdiction to issuance of Show Cause Notice to my client, who has never conducted any act within the territory of India:

4. My client states that the goods were exported by it from Hong Kong, which were declared and declared with the Customs authorities in accordance with the jurisdictional statutes at Hong Kong. The Show Cause Notice does not mention any detail in relation to whether any inquiry was caused by the officers of the Directorate of Revenue Intelligence with any agency including the Customs House at Hong Kong or any inquiry with my client, prior to issuance of Show Cause Notice. My client states that no notice was issued to it, by the officers of the DRI, in relation to the subject matter of the Show Cause Notice. Without causing any enquiry from my client, as to how and on what basis, allegation has been made against my client, has not been explained. None of the statements recorded during the course of investigation and which is relied upon in the Show Cause Notice does not imputeany knowledge on the part of my client as regards the alleged breach committed by the Indian Importers. The Show Cause Notice does not rely upon any documentary evidence from Hong Kong to show that the description declared by my client at Hong Kong was in any manner not correct. The documents were filed by my client and declaration was made at Hong Kong and the goods were exported as per the declaration and which were verified by the authorities while permitting the export of the same. My client further submits that none of the acts were done by it within the jurisdiction of Customs authorities in India.

5. Be that as it may, the statutory responsibility of making correct declaration is upon the importer who files the Bill of Entry and the duty to assess the goods, at the time of clearance is upon the officer, in terms of Section 17 read with 46 and 47 of the Customs Act, 1962. The Show Cause Notice exhibits that the consignments imported were assessed and thereafter allowed clearance. The responsibility to assess and allow the goods for clearance is upon the officer of the Customs, who has been empowered to exercise such function. None of the officers of the Customs were examined during the course of investigation, to show that the assessment and clearance allowed by them, was improper in any manner.

6. Article 245 of the Constitution of India provides that:

> *"245. Extent of laws made by Parliament and by the Legislatures of States.-*
>
> *(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and Legislature of a State may make laws for the whole or any part of State.*
>
> *(2) No law made by Parliament shall be deemed to be invalid on ground that it would have extra-territorial operation."*

Article 260 of the Constitution of India provides that:

"260. Jurisdiction of the Union in relation to territories outside India.-

> *The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, Legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force."*

7. My client submits that for exercising jurisdiction over foreign territories, the Union Government has to have an Agreement with the Government of that territory. In the present case no such agreement exist for applying any of the provisions of the Customs Act, 1962 or any other statutory provisions of laws and statutes. Hence the Show Cause Notice could not have been issued to my client, who are foreign nationals and none of the acts in the DRI was not empowered to invoke provisions of Customs Act, 1962 against my client for any acts, deeds done or committed at Hong Kong. Consequent show cause notice is bad-in-law and deserves to be dropped vis-à-vis my client in the interest of justice.

8. As per Section 1 (2) of the Customs Act: It extends to the whole of India and save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person. Further Section 151B of the Customs Act provides that:

> *"(1) The Central Government may enter into an agreement or any other arrangement with the Government of any country outside India or with such competent authorities of that country, as it deems fit, for facilitation of trade, enforcing the provisions of this Act and exchange of information for trade facilitation, effective risk analysis, verification of compliance and prevention, combating and investigation of offences under the provisions of this Act or under the corresponding laws in force in that country.*

(2) The Central Government may, by notification, direct that the provisions of this section shall apply to the contracting State with which reciprocal agreement or arrangements have been made, subject to such conditions, exceptions or qualifications as may be specified in that notification.

(3) Subject to the provisions of sub-section (2), the information received under sub-section (1) may also be used as evidence in investigations and proceedings under this Act.

(4) Where the Central Government has entered into a multilateral agreement for exchange of information or documents for the purpose of verification of compliance in identified cases, the Board shall specify the procedure for such exchange, the conditions subject to which such exchange shall be made and designation of the person through whom such information shall be exchanged.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (2) or sub-section (3), anything done or any action taken or purported to have been done or taken, in pursuance to any agreement entered into or any other arrangement made by the Central Government prior to the date on which the Finance Bill, 2018 receives the assent of the President, shall be deemed to have been done or taken under the provisions of this section.

Explanation.—For the purposes of this section, the expressions,— (i) —contracting State means any country outside India in respect of which agreement or arrangements have been made by the Central Government with the Government or authority of such country through an agreement or otherwise; (ii) —corresponding law means any law in force in the contracting State corresponding to any of the provisions of this Act or dealing with offences in that country corresponding to any of the offences under this Act."

Each of the provisions of the Customs Act, 1962 has to be read in consonance. The provisions of Customs Act, 1962 will apply to a foreign state/country only where the Central Government has entered into an agreement or any other arrangement with the Government of any country outside India or with such competent authorities of that country, for facilitation of trade, enforcing the provisions of this Act. The Show Cause Notice has not been able to show that there is any such agreement or arrangement between Government of India and Hong Kong (Republic of China) for applicability of the provisions of Customs Act, 1962 for any act committed at Hong Kong. Hence in absence of any such agreement or arrangement, any act committed by my client at Hong Kong while exporting the goods would not fall within the purview of the Customs Act, 1962. Hence, no Show Cause Notice could have been issued to my client under the Customs Act, 1962 for imposition of penalty and hence the proceedings initiated against my client therefore deserves to be dropped.

9. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the matter. In such situation, the legal maxim "*sublatofundamentocadit opus*" meaning thereby that foundation being removed, structure/work falls, comes into play and applies in the present case. Hon'ble Supreme Court has held that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to quasi-judicial proceedings equally.

Show Cause Notice without jurisdiction:

10. Special Economic Zone (SEZ) is a geographically delineated duty-free enclave and is deemed to be a foreign territory for the purposes of trade operations and duties and tariffs. With a view to promote the business activity, the Special Economic Zone Act, 2005 received the assent of the President of India on 23.06.2005. Section 20, 21 and 22 of the said Act came into force on 13.01.2010. As per the Preamble of the SEZ Act, it is to provide for the establishment, development and management of the Special Economic Zone for the promotion of exports and for the matter connected therewith or incidental thereto. The SEZ Act being a special Act was specifically passed to cover all the matters pertaining to a Unit having Office/Unit within the SEZ premises.

11. Under the SEZ Act, there are no distinct offences which are enumerated. Further there are no officers specifically empowered under the Act for carrying out search, seizure etc i.e. for commencing investigation. Section 21 and 22 of the Act reads as herein below:

> *"21. Single enforcement officer or agency for notified offences.*
> *(1) The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for purposes of this Act.*
> *(2) The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offences or committed in a Special Economic Zone.*
> *(3) Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection or search or seizure as is provided under the relevant Central Act in respect of the notified offences,*
>
> *22. Investigation, inspection and search or seizure.*
> *The* ***agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation or search or seizure*** *in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone: Provided that no investigation, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or subsection of section 21 without prior approval of the Development Commissioner concerned.*
>
> *Provided further that any officer of agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner.*

12. Section 51 of the SEZ Act is clear that SEZ Act prevails over other enactments to the extent of special provisions being made under SEZ Act. Therefore, the SEZ Act would prevail over the Customs Act, 1962 in

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all aspects in view of the non-obstinate clause. For ready reference, section 51 of the SEZ Act if reproduced below:

> "***51. Act to have overriding effect:-****The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*"

13. It would also be appropriate to refer Section 53 of the Act, which is as under:-

> "***53. Special Economic Zones to be ports, airports, inland container depots, land stations, etc., in certain cases.***—
> *(1) A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorised operations.*
> *(2) A Special Economic Zone shall, with effect from such date as the Central Government may notify, be deemed to be a port, airport, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act, 1962 (52 of 1962):*
> *Provided that for the purposes of this section, the Central Government may notify different dates for different Special Economic Zones*"

14. A reading of the above provisions makes it clear that the officer of the DRI does not have power or jurisdiction to inspect or seize goods in respect of units situated in SEZ area. The power to investigate in respect of any offence committed in SEZ unit is conferred on officers empowered under Section 22 of the SEZ Act. Further, section 52 of the SEZ Act also spells out that the Customs Act is not applicable in respect of units situated in SEZ unit.

15. Vide a Notification bearing No. 2665(E) dated 05.08.2016, the Central Government Notified various offence to be notified offences under the SEZ Act which includes section 28 of the Customs Act, 1962.

16. Further, vide Notification S.O. 2666(E) dated 05.08.2016, the Central Government, in exercise of the powers conferred by sub-section (2) of section 21 and second proviso to section 22 of the Act, inter alia notified the Additional Director General, Directorate of Revenue Intelligence for offences under the Customs Act, 1962 to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. For ease of reference the

> *"In exercise of the powers conferred by sub-section (2) of section 21 and second proviso to section 22 of the Special Economic Zones Act, 2005 (28 of 2005) (hereinafter referred as the Act), the Central Government hereby authorises the Additional Director General, Directorate of Revenue Intelligence for offences under the Customs Act, 1962 (52 of 1962) and the Additional Director General, Directorate General of Central Excise Intelligence for offences under the Central Excise Act, 1944 (1 of 1944) and the Finance Act, 1994 (32 of 1994) to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone.* ***The enforcement officer(s), for the reasons to be recorded in writing, may carry out the investigation,***

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inspection, search or seizure in the Special Economic Zone or Unit and shall intimate the details of any action initiated under sub-section (3) of section 21 of the Act to the Joint Secretary in charge of Special Economic Zones Division in the Department of Commerce immediately *and in any case not later than seven days of initiation of any action."*

17. My client submits that only the enforcement officers appointed in terms of the above Notification for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the Special Economic Zone. Such powers cannot have been exercised by any other authority, then as notified.

18. My client submits that the Seizure Memo dated 13.12.2023, was issued after more than 9 months from the date of panchanama and recovery being caused. The Seizure Memo has been issued by Senior Intelligence Officer, holding that the goods is placed under seizure under the provisions of Customs Act, 1962. In terms of the Notification only the Additional Director is empowered to exercise power of seizure. The goods have been seized by an officer who did not have the authority to exercise such powers, consequently the impugned Show Cause Notice arising consequent to such search and seizure which is legally unsustainable deserves to be dropped.

19. Vide another Notification No. S.O. 2667(E) dated 05.08.2016, the ***jurisdictional Commissioner of Customs*** was also notified in respect of offences under the Customs Act.

20. Hence, as per Section 21 (2) of the Act, the Central Government was empowered to notify officer and/or agency to give them powers to search, seize etc, the Central Government specifically gave powers only to the ***Jurisdictional Commissioner or the Additional Director General of the DRI***, the power to search, seize etc.

21. My clients state that the initiation of the investigation in relation to search was authorized by Deputy Director, DRI, who was not the officer appointed by the Notification and therefore in ex-facie contravention of S.O. 2666(E)] dated 5th August 2016, and S.O.2667 (E) dated 5th August, 2016 issued by Central Government [in exercise of powers conferred by sub-section 2 of Section 21 and second proviso to Section 22 of the Special Economic Zones Act, 2005]. The Notification does not confer any power upon the Additional Director General, delegating of the powers and functions upon any other officer. The appointment of Additional Director for carry out the investigation, is with sole intention that no frivolous misuse of powers are caused by the officers, in their excitement and the officer appointed is reasonable and responsible enough to apply his mind, while exercising the powers. Any other officer of the DRI could not have exercised such powers. Hence, the Show Cause Notice being based on investigation caused by an authority not having jurisdiction to conduct the same has vitiated the investigation.

22. The guidelines provide that vide Notification S.O. 2666(E)] dated 5th August 2016, the enforcement officers for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in

the SEZ and shall intimate the details of any action initiated under sub-section (3) of section 21 of the SEZ Act to the Joint Secretary in charge of SEZ. Since, the investigation proceeding conducted by the officers of the DRI, was itself without jurisdiction and that there was no compliance made in relation to the notification S.O.2666 (E) was made. Therefore, the Show Cause Notice based on such investigation is improper. The Show Cause Notice deserves to be dropped on this ground alone.

23. Since the act of search and seizure of goods in respect of Sachin SEZ units, by officers of DRI, is illegal and arbitrary for want of jurisdiction, the show cause notice which propose to confiscate such goods, based on the aforesaid search and seizure, have no basis of whatsoever nature and, do not survive by virtue of the doctrine of ***sublatofundamentocadit opus***.

24. No such procedure as prescribed have been carried out and/or conducted about any such compliance of the pre-requisite condition for initiating the investigation proceedings against a Unit based in SEZ area. Show Cause Notice based on investigation being carried out by an authority not having jurisdiction, is bad-in-law and hence the Show Cause Notice deserves to be dropped.

25. In the context of show cause notices (SCNs) issued under the Customs Act, 1962, concerning SEZ units, it's generally understood that the Development Commissioner's approval or sanction may indeed be required. This requirement is often grounded in the authority vested in the Development Commissioner under the SEZ Act to oversee and regulate various activities within the SEZ, including customs-related matters.

26. The Development Commissioner plays a crucial role in SEZ administration and acts as a nodal authority for facilitating various permissions, clearances, and compliance matters. Given their oversight role, it's not uncommon for SEZ-specific procedures to mandate that any significant actions, such as the issuance of show cause notices affecting SEZ units under the Customs Act, require the approval or sanction of the Development Commissioner, which has not been obtained prior to issuance of Show Cause Notice.

27. Hon'ble Supreme Court in Management of Express Newspapers (Private) Ltd., Madras v. The Workers and Others reported in AIR 1963 SC 569 has held that jurisdiction issue must be decided first as they go to the root of the matter.

28. My client states that vide Circular No.11/2017-Cus dated 31.03.2017 has issued clarification as regards operationalization of functions of appropriate authority and time limitation and also issues relating to adjudication. Standard Operating Procedure prescribes that where demand has to be made, a draft demand / Show Cause Notice shall be prepared by the Specified Officer / Authorized Officer in the concerned office of the Development Commissioner and should be transferred to DC/AC in the office of jurisdictional Customs along with all Relied Upon Documents. The captioned Show Cause Notice has not been issued in the manner prescribed under the SOP and appears to have not been

prepared in the office of the Development Commissioner. The purpose of adopting such SOP is that there remains transparency in the proceedings, which is monitored by the Development Commissioner and the assessees are not harassed un-necessarily and such a proceeding has to be compulsorily complied with. My client submits that the Show Cause Notice and documents relied up does not mention anywhere as to whether the aforesaid procedure was followed while issuance of Show Cause Notice. Hence, the Show Cause Notice deserves to be dropped.

Section 124 does not empower authority to issue Show Cause Notice:

29. The Show Cause Notice has been issued under section 124 of the Act, which is without jurisdiction and/or authority of law inasmuch as the said provision do not confer any power of issuance of a '*show cause notice*', which can be exercised by any officer of customs, let alone the proper officer.

30. Section 124 of the Act provides as under:

> "***Section 124. Issue of show cause notice before confiscation of goods, etc. -***
>
> *No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -*
>
> *(a) is given a notice in 1[writing with the prior approval of the officer of Customs not below the rank of 2[an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*
>
> *(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and*
>
> *(c) is given a reasonable opportunity of being heard in the matter :*
> *Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.*
>
> *Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.*"

31. From reading of the foregoing provision, it is clear and unambiguous, that the same clarifies the following:

a. The provision prescribes certain commandments in sub-section (1) which have to followed in letter and spirit before passing of any order of confiscation or imposition of any penalty on any person under Chapter XIV of the Act;

b. The inherent nature of the said commandments is representative of principles of natural justice particularly the doctrine of *audi*

alteram partem which cannot be dispelled with while passing an order of confiscation or imposition of penalty in terms of Chapter XIV of the Act;

c. The authority in whom the power to issue show cause in terms of the said provision is patently unclear;

d. The authority in whom the power to adjudicate the purportedly issued show cause notice in terms of the said provision is also patently unclear;

e. Employment of the word '*notice*' in first proviso to sub-section (1) is also not reflective/indicative of the power of issuance of a show cause notice envisaged under sub-section (1);

f. Recognition of power of issuance of show cause notice, in terms of clause (a) to sub-section (1), in the second proviso is misplaced and not a true reflection of the legislative intent embedded in the warp and woof of the said provision; and

g. Clause (a) of sub-section (1) of the said provision does not confer any power on any person to 'issue' a show cause notice inasmuch as the clear, unambiguous, and express language employed therein merely sets out the necessity to give a notice and the features/characteristics of such notice – fulfilment whereof would lend the said '*notice*' necessary validity in the eyes of law.

32. My client submits that, Section 124 does not confer any power to issue Show Cause Notice upon the Additional Commissioner any authority as such, hence the entire proceeding initiated on the basis of such provision, vitiates the fundamental basis on which the same stands. It is a settled legal proposition that when action on the basis of which the primary proceeding stands vitiated, all subsequent and consequential proceeding would fall.

33. It is no more *res integra* that:
   i. Taxation statutes have to be strictly interpreted; and
   ii. Fealty has to be pledged to the literal meaning of the statute in cases where the language of the statute is clear and unambiguous.

34. My client states that, without an iota of doubt, it may be appreciated that the explicit language of section 124 of the Act neither confers any power to issue show cause notice nor envisages issuance of show cause notice by invocation of the provisions therein. The only reference qua show cause notice therein is limited to spotlight adherence to the principles of natural justice, bereft whereof no order of confiscation or imposition of penalty under Chapter XIV of the Act can be passed.

35. My client states that, Section 124 of the Customs Act, 1962, provides that the Show Cause Notice can be issued only with the prior approval of the officers of Customs not below rank of an Assistant Commissioner of Customs, thereby meaning that the officer above the rank of Assistant Commissioner of Customs can accord only approval for issuance of Show Cause Notice.

36. My client submits that therefore, the Show Cause Notice issued under section 124 of the Act, which does not confer any such power inasmuch is without jurisdiction and authority of law and the same deserves to be quashed and/or set-aside, in the interest of justice.

37. My client reiterates her requests to furnish copies of non-relied upon documents in the interest of justice.

My client wishes to be heard in person before any order is passed, in the matter."

36.37 The noticee M/s NV INTERNATIONAL., Room No. 1715, 17th Floor,Rise Commercial Building, 5-11, Gran Ville Circuit, Gran Ville Road, TST, Kowloon, Hong Kong, through its authorized representative Shri Hemant Dave, Advocate submitted its defense reply vide letter dated NIL in connection with the instant SCN Dated 26.02.2024 as under:-

1. "At the Outset My client's denies each and every allegation, averments, statements and submissions of your show cause notice under reply and my client's specifically and categorically denies all the allegations made in the show cause notice.
2. My Client's states that noting shall be deem to be admitted unless it is specifically so done and shall be presumed to have been denied by my client's
3. My client's states that my client's is a Hong Kong based overseas supplier and my client's has never supplied any goods/Synthetic/duplicate precious stones (Rubies) during the period 2021,2022 and 2023 which is a very crucial fact and My Client'shave supplied cut and polish stones/rubies as mentioned on invoices.
4. My client's states that it is alleged that based on an information received from Assistant Director, Directorate of Enforcement (New Delhi), vide a letter dated 1st March, 2023 for a search operation in the name of power bank App scam, the office premises of (i) M/s Sagar Empire Jewels Pvt LTD, SEZ Surat (ii) M/s Sagar Natural Rubies Ltd, SEZ, Surat (iii) M/s RHC Global Exports Pvt Ltd, SEZ, Surat and it is alleged that the abovesaid three entities as on 1st March, 2023 had been shown in the books of accounts as approx. Rs.1400 crores whereas during search operation after valuation of stock by a government approved valuer large quantities of synthetic/duplicate precious stones (Ruby) were found in stock in trade valued at nearly few crores of rupees.
5. My Client's state that it is pertinent to note that my client's has not supplied any synthetic rubies as falsely alleged during the relevant period and there is no misdeclaration of descriptions goods in any manner or value of the goods during financial years i.e. financial year 2021,2022 and 2023 and there is no concrete and cogent evidence to show that the said stock was forming any part which is being supplied by my client's and hence on the basis of general assumptions and presumption that the other suppliers might have supplied synthetic ruby Natural Rubies (color stone) cannot be concluded that the Natural Rubies supplied by my client's in the year 2019 was forming the part of the said stock.

6. My Client's states that my client's of supplied as per the order of the importer cut and polish precious stones (Natural Rubies) as per the prevailing rate in the market Kindly find enclosed herewith the invoice date 21.05.2019 along with the shipping bill and Copy of the bill of entry as submitted by the importer **(Copies are enclosed herewith as annexure "A").**
7. My Client's states that as stated in the show cause notice Sagar Natural Rubies Ltd, was situated in SEZ which is under the control of development Commissioner and as per the rules the appraiser examines and verify the goods and if he finds that the goods and its value are as per the declaration made on the bill of entry then the goods are allowed to be cleared by the importer since as per the SEZ Act 2005, SEZ notified area itself is a port and as such after more than 3 years it is absolutely false allegations that my client's who is a overseas supplier has supplied the synthetic Natural Rubies which is absolutely not co related with any documentary evidence.
8. My Client's states that it is well settled principal of law that the identity of the Natural Rubies cannot be established when Natural Rubies are mix up with so many other suppliers.
9. My Client's states that as far as valuations of the Natural Rubies is concerned there is quite possibility that one panel member may give different opinion than the large panel of 3 panel members and hence it is desirable to have the valuation report from different panel members.
10. My Client's states that in the show cause notice it is alleged that the statements of various persons have been recorded under section 108 of the Customs Act like **(i) Shri HirenbhaiBipinbhai Trivedi** who was working as a production manager in M/s SDL, SURSEZ than the statements of the other co notices like **(ii) Shri. Vaibhav D. Shah** who was the Managing director of M/S SDL and than the statements of other co noticees like **Shri. Ajit Khushal Shah**, who was Chartered Accountant working Sagar Natural Rubies Ltd, and than other senior accountant **Shri. Santosh Nimbaji Sonar** than the junior accountant **Ms. Sanjana Kalambe** than the statements **Shri. Saurin Rasiklal Shah** and others but none of the co noticees have implicated in any manner to my client's and as such the allegations of abetting thus not survive in view of the fact that there is no evidence at all.
11. My Client's states that as per the Customs Act 1962, My Client's have sold supplied and delivered the natural cut and polish natural rubies as per the prevailing rate in the international market and my client's have received the payments banking channels that to in the year 2019 and as such after more than 3 years any allegations of contrary nature does not survive.
12. My Client's States that as per the averments made on page no. 61 where the names of the overseas firms are mentioned which are 47 Firms and hence it cannot be jumped to a conclusion that all 47 firms have supplied the synthetic Natural Rubies as falsely alleged.
13. My Client's states that as per the SEZ rules all the SEZ units are directly under the control and supervision of development commissioner, Assistant development commissioner and more particularly when manufacturing of Silver Ornaments/Silve Jewelries studded with ruby and while exporting all the export related procedures like filing shipping bill invoice laboratory tests

reports and all other related procedures for import is under the control of SEZ, who personally and physically verify the consignments and its descriptions and valuations and thereafter only goods are allowed to be exported and hence at this belated stage to term this as a trade based money laundering system (TBML) system is absolutely false and cogent without any clinching evidence.

14. My Client's states thatsince my client's had supplied the natural Rubies in the year 2019 and any seizure or any valuation report of year 2023 does not discloses that the stock was forming any kind of part or any part supplied by my client's and in the absence of any cogent documentary evidence the general presumptions cannot be drawn.
15. My Client's states that my client's is specifically and categorically denies that my client's has made any false declarations as far as the descriptions of the goods i.e. cut and polish precious stones (natural rubies) and my client's has sold, supplied and delivered the natural rubies as per the declaration on the invoices.
16. My Client's states that in the entire show cause notice or in the documents referred and relied upon in show cause notice does not specifically points out that my client's have supplied synthetic Natural Rubies and the general statements without any documentary evidence and without any specific documents only on the strength of general presumptions an averment is made which is not maintainable and tainable in law.
17. My Client'swould like to have physical hearing as well as personal hearing in the matter before any decision is taken in the matter.
18. My Client'sis filing this preliminary reply to the show cause notice and my client's deserves his right to file additional reply as and when necessary.
19. My Client'sonce again repeat, reiterate and confirm that my client's have not violated any of the provisions of the Customs Act 1962 and SEZ Act and my client's has been falsely dragged in the matter only on the base of general assumption and presumptions.
20. My Client'shereby specifically and categorically denies that he has indulged in any manner in the business of trade based money laundering as falsely alleged.
21. My Client's states that my client's have sold, supplied and delivered the natural rubies as per the declarations and the physical movements of the goods has taken place as per the international norms recognized by international trade.
22. My Client's is victimized only on the basis general assumptions and presumptions which is not permissible in law and every allegations has to be supported with independent cogent documentary evidence.

    i. In the circumstances my client's most respectfully prays before your Honor that since my client's is falsely implicated and hence he may be exonerated from the proceedings and the show cause notice proceedings may kindly be dropped against my client's.

    ii. My client's would like to be heard physically before any decision is taken in the matter.

Any other relief as deem fit and proper in favor of my client's."

36.38 The noticee M/s PACY CORPORATION LTD., Rm B, 9/F, Hop Hing, Industrial Bldg, 704, Kastle Peak Road, Lai Chi Kok, Kln, Hong Kong (pacycorporationltd@gmail.com) has not submitted any defense reply in connection with the instant SCN Dated 26.02.2024.

36.39 The noticee M/s PINK STAR HK LTD, Room No. 22, Unit-P, 1/F, Kiaser Estate Pahse 3, 11 HOK YUEN Street, Hunghom, Hong Kong (pinkstarthkltd@gmail.com),through its authorized representative Shri Brijesh Pathak submitted its reply vide letter dated 10.04.2024 as under:-

"At the outset, my client denies each and every allegation made in the Show Cause Notice and also that the Show Cause Notice.

Jurisdiction to issue Show Cause Notice to an entity based beyond the territorial jurisdiction of the territory of India:

1. My client states that it had exported the goods from Hong Kong, which were declared and declared with the Customs authorities in accordance with the jurisdictional statutes at Hong Kong. The Show Cause Notice does not show as to whether any inquiry was caused by the officers of the Directorate of Revenue Intelligence with the Customs House at Hong Kong or any inquiry with my client, prior to issuance of Show Cause Notice. In fact the statements recorded and relied upon in the Show Cause Notice also does not make any imputation or knowledge about the nature of the allegation made in the Show Cause Notice. The Show Cause Notice has not brought a single documentary evidence from Hong Kong to show that the description declared at Hong Kong was in any manner not correct. The documents were filed by my client and declaration was made at Hong Kong and none of the acts were done within the jurisdiction of Customs authorities in India.

2. The responsibility of filing correct declaration is upon the importer in India and the duty to assess the goods, at the time of clearance is upon the officer. In the proceedings it appears that each and every consignments were assessed and thereafter allowed clearance. The responsibility to assess and allow the goods for clearance is upon the officer of the Customs, who has been empowered to exercise such function. None of the officers of the Customs were examined during the course of investigation, to show that the assessment and clearance allowed by them, was improper in any manner.

3. Article 245 of the Constitution of India provides that:

"245. Extent of laws made by Parliament and by the Legislatures of States.-

(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and Legislature of a State may make laws for the whole or any part of State.

(2) No law made by Parliament shall be deemed to be invalid on ground that it would have extra-territorial operation."

Article 260 of the Constitution of India provides that:

"260. Jurisdiction of the Union in relation to territories outside India.-

The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, Legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force."

4. My client submits that for exercising jurisdiction over foreign territories, the Union Government has to have an Agreement with the Government of that territory. In the present case no such agreement exist for applying any of the provisions of the Customs Act, 1962 or any other statutory provisions of laws and statutes. Hence the Show Cause Notice could not have been issued to my client, who are foreign nationals and none of the acts in the DRI was not empowered to invoke provisions of Customs Act, 1962 against my client for any acts, deeds done or committed at Hong Kong. Consequent show cause notice is bad-in-law and deserves to be dropped vis-à-vis my client in the interest of justice.

5. As per Section 1 (2) of the Customs Act: It extends to the whole of India and save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person. Further Section 151B of the Customs Act provides that:

"(1) The Central Government may enter into an agreement or any other arrangement with the Government of any country outside India or with such competent authorities of that country, as it deems fit, for facilitation of trade, enforcing the provisions of this Act and exchange of information for trade facilitation, effective risk analysis, verification of compliance and prevention, combating and investigation of offences under the provisions of this Act or under the corresponding laws in force in that country.

(2) The Central Government may, by notification, direct that the provisions of this section shall apply to the contracting State with which reciprocal agreement or arrangements have been made, subject to such conditions, exceptions or qualifications as may be specified in that notification.

(3) Subject to the provisions of sub-section (2), the information received under sub-section (1) may also be used as evidence in investigations and proceedings under this Act.

(4) Where the Central Government has entered into a multilateral agreement for exchange of information or documents for the purpose of verification of compliance in identified cases, the Board shall specify the procedure for such exchange, the conditions subject to which such exchange shall be made and designation of the person through whom such information shall be exchanged.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (2) or sub-section (3), anything done or any action taken or purported to have been done or taken, in pursuance to any agreement entered into or any other arrangement made by the Central Government prior to the date on which the Finance Bill, 2018 receives the assent of the President, shall be deemed to have been done or taken under the provisions of this section.

Explanation.—For the purposes of this section, the expressions,— (i) —contracting State means any country outside India in respect of which agreement or arrangements have been made by the Central

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Government with the Government or authority of such country through an agreement or otherwise; (ii) —corresponding law means any law in force in the contracting State corresponding to any of the provisions of this Act or dealing with offences in that country corresponding to any of the offences under this Act."

The provisions of the Customs Act, 1962 has to be read in consonance. It means that the provisions of Customs Act, 1962 will apply to a foreign state/country only where the Central Government has entered into an agreement or any other arrangement with the Government of any country outside India or with such competent authorities of that country, for facilitation of trade, enforcing the provisions of this Act. In the present case there is no such agreement or arrangement between Government of India and Hong Kong (Republic of China) for applicability of the provisions of Customs Act, 1962 for any act committed at Hong Kong. Hence any act committed by my client at Hong Kong while supplying the goods does not fall within the purview of the Customs Act, 1962. The proceedings under the Customs Act, 1962 initiated against my client for allegedly supplying the goods is without authority of law and hence the proceedings initiated against my client therefore deserves to be dropped.

6. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the matter. In such situation, the legal maxim "*sublatofundamentocadit opus*" meaning thereby that foundation being removed, structure/work falls, comes into play and applies in the present case. Hon'ble Supreme Court has held that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to quasi-judicial proceedings equally.

Show Cause Notice without jurisdiction:

7. Special Economic Zone (SEZ) is a geographically delineated duty-free enclave and is deemed to be a foreign territory for the purposes of trade operations and duties and tariffs. With a view to promote the business activity, the Special Economic Zone Act, 2005 received the assent of the President of India on 23.06.2005. Section 20, 21 and 22 of the said Act came into force on 13.01.2010. As per the Preamble of the SEZ Act, it is to provide for the establishment, development and management of the Special Economic Zone for the promotion of exports and for the matter connected therewith or incidental thereto. The SEZ Act being a special Act was specifically passed to cover all the matters pertaining to a Unit having Office/Unit within the SEZ premises.

8. Under the SEZ Act, there are no distinct offences which are enumerated. Further there are no officers specifically empowered under the Act for carrying out search, seizure etc i.e. for commencing investigation. Section 21 and 22 of the Act reads as herein below:

"21. Single enforcement officer or agency for notified offences.

(1) The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for purposes of this Act.

(2) The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or

agency in respect of any notified offences or committed in a Special Economic Zone.

(3) Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection or search or seizure as is provided under the relevant Central Act in respect of the notified offences,

22. Investigation, inspection and search or seizure.

The ***agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation or search or seizure*** *in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone: Provided that no investigation, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or subsection of section 21 without prior approval of the Development Commissioner concerned.*

Provided further that any officer of agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner.

9. Section 51 of the SEZ Act is clear that SEZ Act prevails over other enactments to the extent of special provisions being made under SEZ Act. Therefore, the SEZ Act would prevail over the Customs Act, 1962 in all aspects in view of the non-obstinate clause. For ready reference, section 51 of the SEZ Act if reproduced below:

"***51. Act to have overriding effect:-*** *The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*"

10. It would also be appropriate to refer Section 53 of the Act, which is as under:-

"***53. Special Economic Zones to be ports, airports, inland container depots, land stations, etc., in certain cases.***—

(1) A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorised operations.

(2) A Special Economic Zone shall, with effect from such date as the Central Government may notify, be deemed to be a port, airport, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act, 1962 (52 of 1962):

Provided that for the purposes of this section, the Central Government may notify different dates for different Special Economic Zones"

11. A reading of the above provisions makes it clear that the officer of the DRI does not have power or jurisdiction to inspect or seize goods in respect of units situated in SEZ area. The power to investigate in respect

of any offence committed in SEZ unit is conferred on officers empowered under Section 22 of the SEZ Act. Further, section 52 of the SEZ Act also spells out that the Customs Act is not applicable in respect of units situated in SEZ unit.

12. Vide a Notification bearing No. 2665(E) dated 05.08.2016, the Central Government Notified various offence to be notified offences under the SEZ Act which includes section 28 of the Customs Act, 1962.

13. Further, vide Notification S.O. 2666(E) dated 05.08.2016, the Central Government, in exercise of the powers conferred by sub-section (2) of section 21 and second proviso to section 22 of the Act, inter alia notified the Additional Director General, Directorate of Revenue Intelligence for offences under the Customs Act, 1962 to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. For ease of reference the

> *"In exercise of the powers conferred by sub-section (2) of section 21 and second proviso to section 22 of the Special Economic Zones Act, 2005 (28 of 2005) (hereinafter referred as the Act), the Central Government hereby authorises the Additional Director General, Directorate of Revenue Intelligence for offences under the Customs Act, 1962 (52 of 1962) and the Additional Director General, Directorate General of Central Excise Intelligence for offences under the Central Excise Act, 1944 (1 of 1944) and the Finance Act, 1994 (32 of 1994) to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone.* ***The enforcement officer(s), for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit and shall intimate the details of any action initiated under sub-section (3) of section 21 of the Act to the Joint Secretary in charge of Special Economic Zones Division in the Department of Commerce immediately*** *and in any case not later than seven days of initiation of any action."*

14. My client submits that only the enforcement officers appointed in terms of the above Notification for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the Special Economic Zone. Such powers cannot have been exercised by any other authority, then as notified.

15. My client submits that the Seizure Memo dated 13.12.2023, was issued after more than 9 months from the date of panchanama and recovery being caused. The Seizure Memo has been issued by Senior Intelligence Officer, holding that the goods is placed under seizure under the provisions of Customs Act, 1962. In terms of the Notification only the Additional Director is empowered to exercise power of seizure. The goods have been seized by an officer who did not have the authority to exercise such powers, consequently the impugned Show Cause Notice arising consequent to such search and seizure which is legally unsustainable deserves to be dropped.

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16. Vide another Notification No. S.O. 2667(E) dated 05.08.2016, the ***jurisdictional Commissioner of Customs*** was also notified in respect of offences under the Customs Act.

17. Hence, as per Section 21 (2) of the Act, the Central Government was empowered to notify officer and/or agency to give them powers to search, seize etc, the Central Government specifically gave powers only to the ***Jurisdictional Commissioner or the Additional Director General of the DRI***, the power to search, seize etc.

18. My clients state that the initiation of the investigation in relation to search was authorized by Deputy Director, DRI, who was not the officer appointed by the Notification and therefore in ex-facie contravention of S.O. 2666(E)] dated 5th August 2016, and S.O.2667 (E) dated 5th August, 2016 issued by Central Government [in exercise of powers conferred by sub-section 2 of Section 21 and second proviso to Section 22 of the Special Economic Zones Act, 2005]. The Notification does not confer any power upon the Additional Director General, delegating of the powers and functions upon any other officer. The appointment of Additional Director for carry out the investigation, is with sole intention that no frivolous misuse of powers are caused by the officers, in their excitement and the officer appointed is reasonable and responsible enough to apply his mind, while exercising the powers. Any other officer of the DRI could not have exercised such powers. Hence, the Show Cause Notice being based on investigation caused by an authority not having jurisdiction to conduct the same has vitiated the investigation.

19. The guidelines provide that vide Notification S.O. 2666(E)] dated 5th August 2016, the enforcement officers for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the SEZ and shall intimate the details of any action initiated under sub-section (3) of section 21 of the SEZ Act to the Joint Secretary in charge of SEZ. Since, the investigation proceeding conducted by the officers of the DRI, was itself without jurisdiction and that there was no compliance made in relation to the notification S.O.2666 (E) was made. Therefore, the Show Cause Notice based on such investigation is improper. The Show Cause Notice deserves to be dropped on this ground alone.

20. Since the act of search and seizure of goods in respect of Sachin SEZ units, by officers of DRI, is illegal and arbitrary for want of jurisdiction, the show cause notice which propose to confiscate such goods, based on the aforesaid search and seizure, have no basis of whatsoever nature and, do not survive by virtue of the doctrine of ***sublatofundamentocadit opus***.

21. In the present case no such procedure as prescribed have been carried out and/or conducted about any such compliance of the pre-requisite condition for initiating the investigation proceedings against a Unit based in SEZ area. Show Cause Notice based on investigation being carried out by an authority not having jurisdiction, is bad-in-law and hence the Show Cause Notice deserves to be dropped.

22. In the context of show cause notices (SCNs) issued under the Customs Act, 1962, concerning SEZ units, it's generally understood that the

Development Commissioner's approval or sanction may indeed be required. This requirement is often grounded in the authority vested in the Development Commissioner under the SEZ Act to oversee and regulate various activities within the SEZ, including customs-related matters.

23. The Development Commissioner plays a crucial role in SEZ administration and acts as a nodal authority for facilitating various permissions, clearances, and compliance matters. Given their oversight role, it's not uncommon for SEZ-specific procedures to mandate that any significant actions, such as the issuance of show cause notices affecting SEZ units under the Customs Act, require the approval or sanction of the Development Commissioner, which has not been obtained prior to issuance of Show Cause Notice.

24. Hon'ble Supreme Court in Management of Express Newspapers (Private) Ltd., Madras v. The Workers and Others reported in AIR 1963 SC 569 has held that jurisdiction issue must be decided first as they go to the root of the matter.

25. My client states that vide Circular No.11/2017-Cus dated 31.03.2017 has issued clarification as regards operationalization of functions of appropriate authority and time limitation and also issues relating to adjudication. Standard Operating Procedure prescribes that where demand has to be made, a draft demand / Show Cause Notice shall be prepared by the Specified Officer / Authorized Officer in the concerned office of the Development Commissioner and should be transferred to DC/AC in the office of jurisdictional Customs along with all Relied Upon Documents. The captioned Show Cause Notice has not been issued in the manner prescribed under the SOP and appears to have not been prepared in the office of the Development Commissioner. The purpose of adopting such SOP is that there remains transparency in the proceedings, which is monitored by the Development Commissioner and the assessees are not harassed un-necessarily and such a proceeding has to be compulsorily complied with. My client submits that the Show Cause Notice and documents relied up does not mention anywhere as to whether the aforesaid procedure was followed while issuance of Show Cause Notice. Hence, the Show Cause Notice deserves to be dropped.

Section 124 does not empower authority to issue Show Cause Notice:

26. My client states that, the Show Cause Notice has been issued invoking section 124 of the Act, which is without jurisdiction and/or authority of law inasmuch as the said provision do not confer any power of issuance of a '*show cause notice*', which can be exercised by any officer of customs, let alone the proper officer.

27. Section 124 of the Act provides as under:

> "***Section 124. Issue of show cause notice before confiscation of goods, etc. -***

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in 1[writing with the prior approval of the officer of Customs not below the rank of 2[an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :
Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed."

28. From reading of the foregoing provision, it is clear and unambiguous, that the same clarifies the following:

a. The provision prescribes certain commandments in sub-section (1) which have to followed in letter and spirit before passing of any order of confiscation or imposition of any penalty on any person under Chapter XIV of the Act;

b. The inherent nature of the said commandments is representative of principles of natural justice particularly the doctrine of *audialterampartem* which cannot be dispelled with while passing an order of confiscation or imposition of penalty in terms of Chapter XIV of the Act;

c. The authority in whom the power to issue show cause in terms of the said provision is patently unclear;

d. The authority in whom the power to adjudicate the purportedly issued show cause notice in terms of the said provision is also patently unclear;

e. Employment of the word '*notice*' in first proviso to sub-section (1) is also not reflective/indicative of the power of issuance of a show cause notice envisaged under sub-section (1);

f. Recognition of power of issuance of show cause notice, in terms of clause (a) to sub-section (1), in the second proviso is misplaced and not a true reflection of the legislative intent embedded in the warp and woof of the said provision; and

g. Clause (a) of sub-section (1) of the said provision does not confer any power on any person to 'issue' a show cause notice inasmuch as the clear, unambiguous, and express language employed therein merely sets out the necessity to give a notice and the features/characteristics of such notice – fulfilment whereof would lend the said '*notice*' necessary validity in the eyes of law.

29. My client states that, Section 124 does not confer any power to issue Show Cause Notice upon the Additional Commissioner any authority as such, hence the entire proceeding initiated on the basis of such provision, vitiates the fundamental basis on which the same stands. It is a settled legal proposition that when action on the basis of which the primary proceeding stands vitiated, all subsequent and consequential proceeding would fall.

30. It is no more *res integra* that:
    i. Taxation statutes have to be strictly interpreted; and
    ii. Fealty has to be pledged to the literal meaning of the statute in cases where the language of the statute is clear and unambiguous.

31. My client states that, without an iota of doubt, it may be appreciated that the explicit language of section 124 of the Act neither confers any power to issue show cause notice nor envisages issuance of show cause notice by invocation of the provisions therein. The only reference qua show cause notice therein is limited to spotlight adherence to the principles of natural justice, bereft whereof no order of confiscation or imposition of penalty under Chapter XIV of the Act can be passed.

32. My client states that, Section 124 of the Customs Act, 1962, provides that the Show Cause Notice can be issued only with the prior approval of the officers of Customs not below rank of an Assistant Commissioner of Customs, thereby meaning that the officer above the rank of Assistant Commissioner of Customs can accord only approval for issuance of Show Cause Notice.

33. My client submits that therefore, the Show Cause Notice issued under section 124 of the Act, which does not confer any such power inasmuch is without jurisdiction and authority of law and the same deserves to be quashed and/or set-aside, in the interest of justice.

My client wishes to be heard in person before any order is passed, in the matter."

36.40 The noticee M/s RK TRADING HK LTD, Roon B4, 13F, Block 1, Kaiser Estate, No.41 Man Yue Steet, Hung Hom, Hong Kong, through its authorized representative Shri Shrey S Lodha, Advocate submitted its reply vide letter dated 12.05.2024 as under:-

"Upon instructions from, for and on behalf of my Client, through its Authorised Signatory who has drawn Vakalatanama, enclosed hereto as **Annexure 1**, in my favour, I hereby submit as follows:

1. At the outset my Client denies any and every allegation made in the captioned Show cause notice (hereinafter referred to as "**SCN**") for it isreplete with non-application of mind and untenable in the eyes of law.

2. It is pertinent to note that the present submissions are preliminary in nature insofar as objections pertaining to jurisdictional facts have been advanced herein, which as per several judicial pronouncements including ***Arun Kumar and Others v. Union of India and others, [(2007) 1 SCC***

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732] posit existence of jurisdictional fact before assumption of jurisdiction by a court, tribunal, or an authority over a matter. In ***Arun Kumar*** (supra), the Hon'ble Supreme Court held as under::

"***74. A "jurisdictional fact" is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.***

75. In Halsbury's Laws of England, it has been stated: "Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive."

76. The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction."

3. In light of the foregoing, your good self is most humbly requested to kindly adjudicate and dispose, *first*, the challenge to the jurisdictional aspects related to the captioned show cause noticewhich go to the root of the matter before passing any decision on the merits of the case. It is expressly stated that my Client reserves the right to make further submissions including on the merits of the matter subsequent to disposal of the preliminary objections by your good self.

PRELIMINARY OBJECTIONS

4. At the cost of repetition, it is categorically submitted that any and all allegations made in the captioned show cause notice are denied inasmuch as they are based on conjecture, surmises, and shaky grounds. Further, the submissions / objections herein are taken independently and without prejudice to each other.

XIX. EXTRA-TERRITORIAL ASSUMPTION OF JURISDICTION

5. That my Clientis an overseas supplier, based out in Hong Kong, of the goods in question i.e. Cut & Polished Precious and Semi-Precious Stones (Ruby)and the same was sold to several entities during the relevant period including the entities based out in India. It is pertinent to note that the goods in question were shipped from Hong Kong upon complying with the normative regulations and ensuring requisite and proper declaration of the material particulars of the said goodsto the Hong Kong Customs

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Authorities and nothing has been whispered in the captioned show cause notice to suggest otherwise.

6. From a bare perusal of the captioned show cause notice, it is understood that the gravamen therein qua my Clientis that it has allegedly abetted and indulged in conspiracy with the main noticee i.e. M/s RHC Global Exports Private Limited, an entity based in Surat Special Economic Zone, Sachin ("**Sachin SEZ**"), to:

(m) contravene the provisions of the Customs Act, 1962 (and the rules and regulations made thereunder) and the Special Economic Zones Act, 2005 (and the rules and regulations made thereunder) by issuing commercial invoices, packing lists, etc. bearing incorrect particulars of the goods, vis-à-vis the classification and value thereof, so supplied; and

(n) facilitate remission of outward foreign remittance on the strength of fake/bogus commercial invoices.

7. It is pertinent to note at this juncture that my Client neither is incorporated in India nor has any permanent establishment in India nor has its place of effective management in India nor is an importer / exporter in terms of the Customs Act, 1962, therefore, the issuance of the captioned show cause notice prima facie is beyond the legislative mandate of Customs Act, 1962***basis extrapolation of allegation on the previous imports of the main noticee from my Client***.

8. That no Municipal Law can ever be extended beyond the territorial boundaries of a country including its continental self and exclusive economic zone, whether or not there is express provision in the statute to stretch the same beyond the country's territory since the same would amount to encroachment upon the territorial authority of other State. Sovereign country asserts extra territorial jurisdiction in criminal laws though ***the principal basis of jurisdiction over crime is the territorial principle which permits a State in control of its territory to prescribe, adjudicate and enforce its law in the territory. The crime is said tobe committed even partly in a state's territory when any essential constituent element itself is consummated there***. Further, the Hon'ble Supreme Court's Constitutional Bench in ***GVK Industries Limited and Another v. Income Tax Officer and Another, [(2011) 4 SCC 36]*** while in seisin with the issue as to legislative competence of Parliament to breathe extra-territorial jurisdiction into a statute has observed as follows:

"*124. We now turn to answering the two questions that we set with:*

(1) ***Is Parliament constitutionally restricted from enacting legislation with respect to extra-territorial aspects or causes that do not have, nor expected to have, any, direct or indirect, tangible or intangible impact(s) on, or effect(s) in, or consequences for****:*

(a) other territory of India, or any part of India; or
(b) other interests of, welfare of, well-being of, or security of inhabitants of India, and Indians?
The answer to the above would be yes. However, Parliament may exercise its legislative powers with respect to extra-territorial aspects or causes*—events, things, phenomena (howsoever commonplace*

they may be), resources, actions or transactions, and the like—that occur, arise or exist or may be expected to do so, naturally or on account of some human agency, in the social, political, economic, cultural, biological, environmental or physical spheres outside the territory of India, and seek to control, modulate, mitigate or transform the effects of such extra-territorial aspects or causes, or in appropriate cases, eliminate or engender such extra-territorial aspects or causes, ***only when such extra-territorial aspects or causes have, or are expected to have, some impact on, or effect in, or consequences for: (a) the territory of India, or any part of India; or (b) the interests of, welfare of, well-being of, or security of inhabitants of India, and Indians****.*

125. It is important for us to state and hold here that the powers of legislation of Parliament with regard to all aspects or causes that are within the purview of its competence, including with respect to extra-territorial aspects or causes as delineated above, and as specified by the Constitution, or implied by its essential role in the constitutional scheme, ought not to be subjected to some a priori quantitative tests, such as 'sufficiency' or 'significance' or in any other manner requiring a predetermined degree of strength. ***All that would be required would be that the connection to India be real or expected to be real, and not illusory or fanciful****.*

126. Whether a particular law enacted by Parliament does show such a real connection, or expected real connection, between the extra-territorial aspect or cause and something in India or related to India and Indians, in terms of impact, effect or consequence, would be a mixed matter of facts and of law. Obviously, where Parliament itself posits a degree of such relationship, beyond the constitutional requirement that it be real and not fanciful, then the courts would have to enforce such a requirement in the operation of the law as a matter of that law itself, and not of the Constitution:

127. (2) ***Does Parliament have the powers to legislate 'for' any territory, other than the territory of India or any part of it?***

The answer to the above would be no*. It is obvious that Parliament is empowered to make laws with respect to aspects or causes that occur, arise or exist, or may be expected to do so, within the territory of India, and also with respect to extra-territorial aspects or causes that have an impact on or nexus with India as explained above in the answer to Question 1 above. Such laws would fall within the meaning, purport and ambit of the grant of powers to Parliament to make laws 'for the whole or any part of the territory of India', and they may not be invalidated on the ground that they may require extra-territorial operation.* ***Any laws enacted by Parliament with respect to extra-territorial aspects or causes that have no impact on or nexus with India would be ultra vires, as answered in response to Question 1 above, and would be laws made 'for' a foreign territory.***"

In light of the foregoing, it is submitted that albeit s. 1(2) of the Customs Act, 1962 has enabled its extra-territorial jurisdiction, however, the same is subject to the essential principle that the act / omission / offence / contravention should have impact and / or nexus with the subject-matter which is sought to be regulated by the Customs Act, 1962.

9. Gravitating the aforesaid to the present facts and circumstances, it is submitted that the ***basis to allege contravention*** of the provisions of the Customs Act, 1962 and Special Economic Zones Act, 2005 i.e. mis-declaration and over-valuations of the goods in question by the main noticee ***is Bills of Entry filed by the importer,i.e. the main noticee in the instant case, during the relevant period and not the commercial invoices / packing lists issued by my Client***.

10. It is relevant to note that the nature of allegation in the captioned show cause notice wherein it has been proposed to impose penalty u/ss. 112(a), 112(b), 114AA, and / or 117 of the Customs Act, 1962 on my Client, is that by issuing the commercial invoices and packing lists qua the exports made by my Client in terms of the laws of Hong Kong, my Client has allegedly abetted the main noticee in mis-declaring and over-valuing the goods in question to the Indian Customs Authorities and has in consequence also purportedly abetted siphoning off outward foreign exchange on the strength of such allegedly fake/bogus documents. At the cost of repetition, it is submitted that the foregoing allegation is a mere extrapolation of conjectures and surmises on the past imports of the main noticee (exports by my Client) inasmuch as it has neither been alluded in the captioned show cause notice about seizure of any live consignment from the main noticee which has been sent by my Client nor it is coming out that any seizure in the instant case directly, basis preponderance of probabilities, links my Client to the alleged contraventions committed by the main noticee. Further, the contents of the captioned show cause notice do not indicate conducting of any enquiry by the Indian Customs Authorities with their Hong Kong counterparts qua any irregularity in the material particulars declared with the latter. Furthermore, the statements recorded and relied upon in the captioned show cause notice do not indicate any imputation or knowledge about the alleged abetment of my Client in the purported contraventions. Moreover, no documentary evidence has been alluded to in the contents of the captioned show cause notice indicating the ***mensrea*** in order to attract the penalty u/ss. 112, 114AA or 117 of the Customs Act, 1962. Thus, when the documents filed and declaration made by my Client have not been disputed by the jurisdictional authorities i.e. Hong Kong Customs Authorities, and there is no material evidence in support of the contention of the Indian Customs Authoritiesqua my Client, the basis to issue the captioned show cause notice only on the ipse dixit of the Indian Customs Authorities is unfounded, arbitrary, illegal, and bad in law.

11. Without prejudice, it is submitted thatthe penalty sought to be proposed u/s. 112 of the Act is interlinked with the confiscation of goods under s. 111 of the Act. In other words, penalty u/s. 112 of the Act will apply only when the goods are liable for confiscation u/s. 111 of the Act. In the present case, the Department has alleged that the goods-in-question are liable for confiscation u/ss. 111 (m) and Section 111(o) of the Act. The relevant portions of Section 111 of the Act is extracted herein below for ready reference:

"***111. Confiscation of improperly imported goods, etc.*** *- The following goods* ***brought*** *from a place outside India shall be liable to confiscation: -*

(...)

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

(...)

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer."

12. It is submitted that s. 111(m) of the Act provides that any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 of the Act, shall be liable for confiscation.That the entry of goods on importation is dealt under s. 46 of the Act which inter alia provides that the importer of any goods, other than goods intended for transit or trans-shipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed. This form filed by the importer is the bill of entry. Further, Section 17(1) of the Act which deals with assessment of duty states that any importer entering any imported goods u/s. 46, or an exporter entering any goods-to-be-exported u/s. 50, shall self-assess the duty, if any, leviable on such goods. Furthermore, as per s. 2(26) of the Act, 'importer' in relation to any goods at any time between their importation and the time when they are cleared for home consumption includes any owner, beneficial owner or any person holding himself out to be the importer.

13. On a conjoint reading of ss. 111(m), 46, 17, and 2(26) it can be inferred that the value of the goods and other particulars declared at the time of entry of goods are furnished by the importer. Consequently, any violation of the kind mentioned in s. 111(m) of the Act can be attributed only to the importer. In the present case, the function of my Clientas the foreign supplier was limited to supply of goods from Hong Kong to India. In other words, the responsibility of my Clientconcludes once the goods are put in a deliverable state to the customers in India. Once the goods reach the Indian Customs barrier, it is the responsibility of the concerned importers, in the present case the main noticee, to declare the classification and description of such goods and file the bill of entry and other documents for clearance of such goods.Given this, my Client cannot be held liable for any violation of the nature prescribed in Section 111(m) of the Act which renders the goods liable for confiscation. Consequently, the proposal to impose penalty u/s. 112 is bad in law and the captioned show cause notice to that extent could not have been issued to my Client.

14. Similarly, s. 111(o) of the Act provides that if any goods were exempted subject to any condition, from duty or any prohibition in respect of the import thereof under the Act or any other law for the time being in force,

in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer, such goods shall be liable for confiscation. In the present case, s. 111(o) of the Act is also not triggered by any of the acts of my Client since it is merely the overseas supplier of the imports-in-question and confiscation as envisaged under the said provision can only be triggered when non-observance of the condition(s) for benefit of exemption occurs on the part of the importer as such exemption is claimed by the importer alone.

15. Further, the foregoing is equally apposite in terms of s. 114AA of the Act inasmuch as my Client being the overseas supplier has neither done anything in the transaction of any business for the purposes of the Customs Act, 1962 nor hasknowingly or intentionally 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 Customs Act, 1962.

16. Therefore, the assumption of extra-territorial jurisdiction by the issuing authority of the captioned show cause notice in the instant case basis the writ large extrapolative conjecturethat the previous imports of the main noticee were also allegedly fraudulent in nature and the fact that my Client had issued commercial invoices and packing lists for the select imports made by the main noticee, is wholly erroneous, without authority of law, and arbitrary.

17. That in terms of s.151B of the Customs Act, 1962, for exercising jurisdiction over foreign territories, the Union Government has to have an Agreement with the Government of that territory. In the present case, no such agreement exists for applying any of the provisions of the Customs Act, 1962 or any other statutory provisions of laws and statutes. Hence the captionedshow cause notice could not have been issued to my Client. Thus, it is submitted that assumption of extra-territorial jurisdiction by the authority who has issued the captioned show cause notice is arbitrary and contrary to the legislative intent of s. 1 of the Customs Act, 1962.

18. It is reiterated that the responsibility of filing correct declaration is upon the importer in India and the duty to assess the goods, at the time of clearance is upon the assessing officer.In the instant proceedings, it appears that each and everyconsignment was assessed and thereafter allowed clearance. The responsibility to assess and allow the goods for clearance is upon the officer of the Customs who has been empowered to exercise such function. None of the officers of the Customs were examined during the course of investigation to show that the assessment and clearance allowed by them, was improper in any manner. Thus, on this ground as well the assumption of extra-territorial jurisdiction by the authority who has issued the captioned show cause notice is arbitrary and contrary to the legislative intent of s. 1 of the Customs Act, 1962.

XX. RE:SHOW CAUSE NOTICE NOT ISSUED BY DESIGNATED / EMPOWERED OFFICER

19. Special Economic Zone (SEZ), alikeSurat SEZ, Sachin, is a geographically delineated duty-free enclave and is deemed to be a foreign territory for the purposes of trade operations and duties and tariffs. With a view to

promote the business activity, the Special Economic Zone Act, 2005 received the assent of the President of India on 23.06.2005. Section 20, 21 and 22 of the said Act came into force on 13.01.2010. As per the Preamble of the SEZ Act, it is to provide for the establishment, development and management of the Special Economic Zone for the promotion of exports and for the matter connected therewith or incidental thereto. The SEZ Act being a special Act was specifically passed to cover all the matters pertaining to a Unit having Office/Unit within the SEZ premises.

20. Under the SEZ Act, there are no distinct offences which are enumerated rather the offences under certain central acts have been subsumed as notified offences for the purposes of the SEZ Act. Sections 111, 113, and 124 amongst others of the Customs Act, 1962 are few of such notified offences under the SEZ Act and for the purposes of carrying out investigation for into such notified offences, certain officers are specifically empowered to commence and carry out the investigation in terms of ss. 21 and 22 of the said Act. For ready reference, the said provisions are reproduced as under:

"***21. Single enforcement officer or agency for notified offences***.

(1) The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for purposes of this Act.

(2) The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offences or committed in a Special Economic Zone.

(3) Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection or search or seizure as is provided under the relevant Central Act in respect of the notified offences."

"***22. Investigation, inspection and search or seizure***.

The agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation or search or seizure in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone: Provided that no investigation, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or subsection of section 21 without prior approval of the Development Commissioner concerned.

Provided further that any officer of agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner."

21. That in terms of the afore-reproduced provisions, the Central Government vide Notification No. SO 2665(E) dated 05.08.2016, Notification No. SO 2666(E) dated 05.08.2016, and Notification No. SO 2667(E) dated 05.08.2016, all issued u/ss. 21 and 22 of the SEZ Act, as the case may be, have prescribed that either Additional Director General, Directorate of Revenue Intelligence or the jurisdictions Customs Commissioner would be the enforcement / empowered officer to carry out the investigation in relation to notified offences under the SEZ Act. Further, by virtue of s. 21(3) of the SEZ Act, the said enforcement / empowered officers would be entitled to exercise all the corresponding powers in relation to the investigation, search, and / or seizure pertaining to the notified offences including ss. 105, 108, 110, and 124 of the Customs Act, 1962.

22. A reading of the above provisions and corresponding notifications, as adverted to above, makes it clear that the officer of the DRI does not have power or jurisdiction to inspect or seize goods in respect of units situated in SEZ area. The power to investigate in respect of any offence committed in SEZ unit is conferred on officers empowered under the afore-reproduced provisions and notifications. The entire act of search, seizure, recording of statement, and issuance of show cause notice by the officers of DRI and officer of customs who are neither Additional Director General, Directorate of Revenue Intelligence or the jurisdictions Customs Commissioner, in the instant case, is rife with illegality, arbitrariness, and erroneous assumption of jurisdiction. Further, as per the provisions and notifications issued under the SEZ Act, as above, the agency or officers carrying out any investigation into a SEZ Area need the sanction of the Development Commissioner before commencement of such investigation, however, in the instant case, the same has been violated inasmuch as the prior intimation has not been given. On these grounds, no adverse order is warranted against my Client.

23. It is submitted that s. 51 of the SEZ Act is clear that SEZ Act prevails over other enactments to the extent of special provisions being made under SEZ Act. Therefore, the SEZ Act would prevail over the Customs Act, 1962 in all aspects in view of the non-obstinate clause.

24. That vide Circular No.11/2017-Cus dated 31.03.2017 a Standard Operating Procedure has been prescribed whereby a show cause noticehas to be prepared by the Specified Officer / Authorized Officer in the concerned office of the Development Commissioner which shall be transferred to DC/AC in the office of jurisdictional Customs along with all Relied Upon Documents. The captioned show cause notice has not been issued in the manner prescribed under the SOP and appears to have not been prepared in the office of the Development Commissioner inasmuch as there is no averment thereto. The purpose of adopting such SOP is that there remains transparency in the proceedings which is monitored by the Development Commissioner and the assessees are not harassed unnecessarily. Hence, the captioned show cause notice deserves to be dropped qua my Client.

XXI. RE: SECTION 124 DOES NOT EMPOWER AUTHORITY TO ISSUE SHOW CAUSE NOTICE

25. That the captioned show cause notice has been issued invoking section 124 of the Act which is without jurisdiction and authority of law inasmuch as the said provision does not confer any power of issuance of a 'show cause notice' which could have been exercised by the authority which has issued the captioned show cause notice. Section 124 of the Act provides as under:

"*Section 124. Issue of show cause notice before confiscation of goods, etc. -*

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in 1[writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed."

26. From reading of the foregoing provision, it is clear and unambiguous, that the same clarifies the following:

a. The provision prescribes certain commandments in sub-section (1) which have to followed in letter and spirit before passing of any order of confiscation or imposition of any penalty on any person under Chapter XIV of the Act;

b. The inherent nature of the said commandments is representative of principles of natural justice particularly the doctrine of audialterampartem which cannot be dispelled with while passing an order of confiscation or imposition of penalty in terms of Chapter XIV of the Act; and
c. The empowerment to issue show cause in terms of the said provision is patently unclear vis-à-vis the authority which has issued the captioned show cause notice;

27. That s.124 does not confer any power to issue the captioned show cause notice upon the authority which has issued the captioned show cause notice, hence the entire proceeding initiated on the basis of such provision, vitiates the fundamental basis on which the same stands. It is a settled legal proposition that when action on the basis of which the primary proceeding stands vitiated, all subsequent and consequential proceeding would fall.

28. It is no more *res integra* that:

    a. Taxation statutes have to be strictly interpreted; and

    b. Fealty has to be pledged to the literal meaning of the statute in cases where the language of the statute is clear and unambiguous.

29. That the explicit language of s. 124 of the Act neither confers any power to issue show cause notice nor envisages issuance of show cause notice by invocation of the provisions therein upon the authority which has issued the captioned show cause notice. The only reference qua show cause notice therein is limited to spotlight adherence to the principles of natural justice, bereft whereof no order of confiscation or imposition of penalty under Chapter XIV of the Act can be passed.

30. That s. 124 of the Customs Act, 1962 provides that a show cause notice can be issued only with the prior approval of the officers of Customs not below rank of an Assistant Commissioner of Customs, thereby meaning that the officer above the rank of Assistant Commissioner of Customs can accord only approval for issuance of show cause notice. In the instant case, such approval is amiss.Therefore, the captioned show cause notice issued under section 124 of the Act is without jurisdiction and authority of law and the same deserves to be quashed and/or set-aside, in the interest of justice.

PRAYER

31. Therefore, it is most humbly prayed to your good self may be pleased to:

    a. drop the captioned show cause notice vis-à-vis my Client; and

    b. pass such other and further orders which may be fit and proper in the interest of complete justice.

That my Client wishes to be heard in person before any order is passed in the matter. Further, my Client reserves its right to make additional submissions if the need so arises or situation so demands. Furthermore, it is most humbly requested that the personal hearing be scheduled through video-conferencing in line with the Hon'ble Supreme Court's consistent and continued effort to digitalise the justice dispensation system."

36.41 The noticee M/s SAIVASCULAR PTE LTD, 35, #09-14/15, Selegie Road, Park Lane Shopping mall, Singapore has not submitted any defense reply in connection with the instant SCN Dated 26.02.2024.

36.42 The noticee M/s SHIV DIAMOND, Unit 7, 11th Floor, Heng Ngai Jew CTR, 4 HOK- YUEN Street, East Hung HOM, Kowloon, Hong Kong,through its authorized representative Shri BrijeshPathak submitted its reply vide letter dated 10.04.2024 as under:-

"At the outset, my client denies each and every allegation made in the Show Cause Notice and also that the Show Cause Notice.

Jurisdiction to issue Show Cause Notice to an entity based beyond the territorial jurisdiction of the territory of India:

1. My client states that it had exported the goods from Hong Kong, which were declared and declared with the Customs authorities in accordance with the jurisdictional statutes at Hong Kong. The Show Cause Notice does not show as to whether any inquiry was caused by the officers of the Directorate of Revenue Intelligence with the Customs House at Hong Kong or any inquiry with my client, prior to issuance of Show Cause Notice. In fact the statements recorded and relied upon in the Show Cause Notice also does not make any imputation or knowledge about the nature of the allegation made in the Show Cause Notice. The Show Cause Notice has not brought a single documentary evidence from Hong Kong to show that the description declared at Hong Kong was in any manner not correct. The documents were filed by my client and declaration was made at Hong Kong and none of the acts were done within the jurisdiction of Customs authorities in India.

2. The responsibility of filing correct declaration is upon the importer in India and the duty to assess the goods, at the time of clearance is upon the officer. In the proceedings it appears that each and every consignments were assessed and thereafter allowed clearance. The responsibility to assess and allow the goods for clearance is upon the officer of the Customs, who has been empowered to exercise such function. None of the officers of the Customs were examined during the course of investigation, to show that the assessment and clearance allowed by them, was improper in any manner.

3. Article 245 of the Constitution of India provides that:

"245. Extent of laws made by Parliament and by the Legislatures of States.-

(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and Legislature of a State may make laws for the whole or any part of State.

(2) No law made by Parliament shall be deemed to be invalid on ground that it would have extra-territorial operation."

Article 260 of the Constitution of India provides that:

"260. Jurisdiction of the Union in relation to territories outside India.-

The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, Legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force."

4. My client submits that for exercising jurisdiction over foreign territories, the Union Government has to have an Agreement with the Government of that territory. In the present case no such agreement exist for applying any of the provisions of the Customs Act, 1962 or any other statutory provisions of laws and statutes. Hence the Show Cause Notice could not have been issued to my client, who are foreign nationals and none of the

acts in the DRI was not empowered to invoke provisions of Customs Act, 1962 against my client for any acts, deeds done or committed at Hong Kong. Consequent show cause notice is bad-in-law and deserves to be dropped vis-à-vis my client in the interest of justice.

5. As per Section 1 (2) of the Customs Act: It extends to the whole of India and save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person. Further Section 151B of the Customs Act provides that:

> *"(1) The Central Government may enter into an agreement or any other arrangement with the Government of any country outside India or with such competent authorities of that country, as it deems fit, for facilitation of trade, enforcing the provisions of this Act and exchange of information for trade facilitation, effective risk analysis, verification of compliance and prevention, combating and investigation of offences under the provisions of this Act or under the corresponding laws in force in that country.*
>
> *(2) The Central Government may, by notification, direct that the provisions of this section shall apply to the contracting State with which reciprocal agreement or arrangements have been made, subject to such conditions, exceptions or qualifications as may be specified in that notification.*
>
> *(3) Subject to the provisions of sub-section (2), the information received under sub-section (1) may also be used as evidence in investigations and proceedings under this Act.*
>
> *(4) Where the Central Government has entered into a multilateral agreement for exchange of information or documents for the purpose of verification of compliance in identified cases, the Board shall specify the procedure for such exchange, the conditions subject to which such exchange shall be made and designation of the person through whom such information shall be exchanged.*
>
> *(5) Notwithstanding anything contained in sub-section (1) or sub-section (2) or sub-section (3), anything done or any action taken or purported to have been done or taken, in pursuance to any agreement entered into or any other arrangement made by the Central Government prior to the date on which the Finance Bill, 2018 receives the assent of the President, shall be deemed to have been done or taken under the provisions of this section.*
>
> *Explanation.—For the purposes of this section, the expressions,— (i) —contracting State means any country outside India in respect of which agreement or arrangements have been made by the Central Government with the Government or authority of such country through an agreement or otherwise; (ii) —corresponding law means any law in force in the contracting State corresponding to any of the provisions of this Act or dealing with offences in that country corresponding to any of the offences under this Act."*

The provisions of the Customs Act, 1962 has to be read in consonance. It means that the provisions of Customs Act, 1962 will apply to a foreign state/country only where the Central Government has entered into an agreement or any other arrangement with the Government of any country outside India or with such competent authorities of that country, for facilitation of trade, enforcing the provisions of this Act. In the present case there is no such agreement or arrangement between Government of India and Hong Kong (Republic of China) for applicability of the

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provisions of Customs Act, 1962 for any act committed at Hong Kong. Hence any act committed by my client at Hong Kong while supplying the goods does not fall within the purview of the Customs Act, 1962. The proceedings under the Customs Act, 1962 initiated against my client for allegedly supplying the goods is without authority of law and hence the proceedings initiated against my client therefore deserves to be dropped.

6. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the matter. In such situation, the legal maxim "*sublatofundamentocadit opus*" meaning thereby that foundation being removed, structure/work falls, comes into play and applies in the present case. Hon'ble Supreme Court has held that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to quasi-judicial proceedings equally.

Show Cause Notice without jurisdiction:

7. Special Economic Zone (SEZ) is a geographically delineated duty-free enclave and is deemed to be a foreign territory for the purposes of trade operations and duties and tariffs. With a view to promote the business activity, the Special Economic Zone Act, 2005 received the assent of the President of India on 23.06.2005. Section 20, 21 and 22 of the said Act came into force on 13.01.2010. As per the Preamble of the SEZ Act, it is to provide for the establishment, development and management of the Special Economic Zone for the promotion of exports and for the matter connected therewith or incidental thereto. The SEZ Act being a special Act was specifically passed to cover all the matters pertaining to a Unit having Office/Unit within the SEZ premises.

8. Under the SEZ Act, there are no distinct offences which are enumerated. Further there are no officers specifically empowered under the Act for carrying out search, seizure etc i.e. for commencing investigation. Section 21 and 22 of the Act reads as herein below:

> *"21. Single enforcement officer or agency for notified offences.*
> *(1) The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for purposes of this Act.*
> *(2) The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offences or committed in a Special Economic Zone.*
> *(3) Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection or search or seizure as is provided under the relevant Central Act in respect of the notified offences,*
>
> *22. Investigation, inspection and search or seizure.*
> *The* ***agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation or search or seizure*** *in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in*

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writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone: Provided that no investigation, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or subsection of section 21 without prior approval of the Development Commissioner concerned.

Provided further that any officer of agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner.

9. Section 51 of the SEZ Act is clear that SEZ Act prevails over other enactments to the extent of special provisions being made under SEZ Act. Therefore, the SEZ Act would prevail over the Customs Act, 1962 in all aspects in view of the non-obstinate clause. For ready reference, section 51 of the SEZ Act if reproduced below:

"***51. Act to have overriding effect:-*** *The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*"

10. It would also be appropriate to refer Section 53 of the Act, which is as under:-

"***53. Special Economic Zones to be ports, airports, inland container depots, land stations, etc., in certain cases.***—
(1) A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorised operations.
(2) A Special Economic Zone shall, with effect from such date as the Central Government may notify, be deemed to be a port, airport, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act, 1962 (52 of 1962):
Provided that for the purposes of this section, the Central Government may notify different dates for different Special Economic Zones"

11. A reading of the above provisions makes it clear that the officer of the DRI does not have power or jurisdiction to inspect or seize goods in respect of units situated in SEZ area. The power to investigate in respect of any offence committed in SEZ unit is conferred on officers empowered under Section 22 of the SEZ Act. Further, section 52 of the SEZ Act also spells out that the Customs Act is not applicable in respect of units situated in SEZ unit.

12. Vide a Notification bearing No. 2665(E) dated 05.08.2016, the Central Government Notified various offence to be notified offences under the SEZ Act which includes section 28 of the Customs Act, 1962.

13. Further, vide Notification S.O. 2666(E) dated 05.08.2016, the Central Government, in exercise of the powers conferred by sub-section (2) of section 21 and second proviso to section 22 of the Act, inter alia notified the Additional Director General, Directorate of Revenue Intelligence for

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offences under the Customs Act, 1962 to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. For ease of reference the

> *"In exercise of the powers conferred by sub-section (2) of section 21 and second proviso to section 22 of the Special Economic Zones Act, 2005 (28 of 2005) (hereinafter referred as the Act), the Central Government hereby authorises the Additional Director General, Directorate of Revenue Intelligence for offences under the Customs Act, 1962 (52 of 1962) and the Additional Director General, Directorate General of Central Excise Intelligence for offences under the Central Excise Act, 1944 (1 of 1944) and the Finance Act, 1994 (32 of 1994) to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone.* ***The enforcement officer(s), for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit and shall intimate the details of any action initiated under sub-section (3) of section 21 of the Act to the Joint Secretary in charge of Special Economic Zones Division in the Department of Commerce immediately*** *and in any case not later than seven days of initiation of any action."*

14. My client submits that only the enforcement officers appointed in terms of the above Notification for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the Special Economic Zone. Such powers cannot have been exercised by any other authority, then as notified.

15. My client submits that the Seizure Memo dated 13.12.2023, was issued after more than 9 months from the date of panchanama and recovery being caused. The Seizure Memo has been issued by Senior Intelligence Officer, holding that the goods is placed under seizure under the provisions of Customs Act, 1962. In terms of the Notification only the Additional Director is empowered to exercise power of seizure. The goods have been seized by an officer who did not have the authority to exercise such powers, consequently the impugned Show Cause Notice arising consequent to such search and seizure which is legally unsustainable deserves to be dropped.

16. Vide another Notification No. S.O. 2667(E) dated 05.08.2016, the ***jurisdictional Commissioner of Customs*** was also notified in respect of offences under the Customs Act.

17. Hence, as per Section 21 (2) of the Act, the Central Government was empowered to notify officer and/or agency to give them powers to search, seize etc, the Central Government specifically gave powers only to the ***Jurisdictional Commissioner or the Additional Director General of the DRI***, the power to search, seize etc.

18. My clients state that the initiation of the investigation in relation to search was authorized by Deputy Director, DRI, who was not the officer appointed by the Notification and therefore in ex-facie contravention of S.O. 2666(E)] dated 5th August 2016, and S.O.2667 (E) dated 5th August, 2016 issued by Central Government [in exercise of powers conferred by

sub-section 2 of Section 21 and second proviso to Section 22 of the Special Economic Zones Act, 2005]. The Notification does not confer any power upon the Additional Director General, delegating of the powers and functions upon any other officer. The appointment of Additional Director for carry out the investigation, is with sole intention that no frivolous misuse of powers are caused by the officers, in their excitement and the officer appointed is reasonable and responsible enough to apply his mind, while exercising the powers. Any other officer of the DRI could not have exercised such powers. Hence, the Show Cause Notice being based on investigation caused by an authority not having jurisdiction to conduct the same has vitiated the investigation.

19. The guidelines provide that vide Notification S.O. 2666(E)] dated 5th August 2016, the enforcement officers for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the SEZ and shall intimate the details of any action initiated under sub-section (3) of section 21 of the SEZ Act to the Joint Secretary in charge of SEZ. Since, the investigation proceeding conducted by the officers of the DRI, was itself without jurisdiction and that there was no compliance made in relation to the notification S.O.2666 (E) was made. Therefore, the Show Cause Notice based on such investigation is improper. The Show Cause Notice deserves to be dropped on this ground alone.

20. Since the act of search and seizure of goods in respect of Sachin SEZ units, by officers of DRI, is illegal and arbitrary for want of jurisdiction, the show cause notice which propose to confiscate such goods, based on the aforesaid search and seizure, have no basis of whatsoever nature and, do not survive by virtue of the doctrine of ***sublatofundamentocadit opus***.

21. In the present case no such procedure as prescribed have been carried out and/or conducted about any such compliance of the pre-requisite condition for initiating the investigation proceedings against a Unit based in SEZ area. Show Cause Notice based on investigation being carried out by an authority not having jurisdiction, is bad-in-law and hence the Show Cause Notice deserves to be dropped.

22. In the context of show cause notices (SCNs) issued under the Customs Act, 1962, concerning SEZ units, it's generally understood that the Development Commissioner's approval or sanction may indeed be required. This requirement is often grounded in the authority vested in the Development Commissioner under the SEZ Act to oversee and regulate various activities within the SEZ, including customs-related matters.

23. The Development Commissioner plays a crucial role in SEZ administration and acts as a nodal authority for facilitating various permissions, clearances, and compliance matters. Given their oversight role, it's not uncommon for SEZ-specific procedures to mandate that any significant actions, such as the issuance of show cause notices affecting SEZ units under the Customs Act, require the approval or sanction of the Development Commissioner, which has not been obtained prior to issuance of Show Cause Notice.

24. Hon'ble Supreme Court in Management of Express Newspapers (Private) Ltd., Madras v. The Workers and Others reported in AIR 1963 SC 569 has held that jurisdiction issue must be decided first as they go to the root of the matter.

25. My client states that vide Circular No.11/2017-Cus dated 31.03.2017 has issued clarification as regards operationalization of functions of appropriate authority and time limitation and also issues relating to adjudication. Standard Operating Procedure prescribes that where demand has to be made, a draft demand / Show Cause Notice shall be prepared by the Specified Officer / Authorized Officer in the concerned office of the Development Commissioner and should be transferred to DC/AC in the office of jurisdictional Customs along with all Relied Upon Documents. The captioned Show Cause Notice has not been issued in the manner prescribed under the SOP and appears to have not been prepared in the office of the Development Commissioner. The purpose of adopting such SOP is that there remains transparency in the proceedings, which is monitored by the Development Commissioner and the assessees are not harassed un-necessarily and such a proceeding has to be compulsorily complied with. My client submits that the Show Cause Notice and documents relied up does not mention anywhere as to whether the aforesaid procedure was followed while issuance of Show Cause Notice. Hence, the Show Cause Notice deserves to be dropped.

Section 124 does not empower authority to issue Show Cause Notice:

26. My client states that, the Show Cause Notice has been issued invoking section 124 of the Act, which is without jurisdiction and/or authority of law inasmuch as the said provision do not confer any power of issuance of a '*show cause notice*', which can be exercised by any officer of customs, let alone the proper officer.

27. Section 124 of the Act provides as under:

> "***Section 124. Issue of show cause notice before confiscation of goods, etc.*** -
>
> *No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -*
>
> *(a) is given a notice in 1[writing with the prior approval of the officer of Customs not below the rank of 2[an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*
>
> *(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and*
>
> *(c) is given a reasonable opportunity of being heard in the matter :*

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed."

28. From reading of the foregoing provision, it is clear and unambiguous, that the same clarifies the following:

a. The provision prescribes certain commandments in sub-section (1) which have to followed in letter and spirit before passing of any order of confiscation or imposition of any penalty on any person under Chapter XIV of the Act;

b. The inherent nature of the said commandments is representative of principles of natural justice particularly the doctrine of *audialterampartem* which cannot be dispelled with while passing an order of confiscation or imposition of penalty in terms of Chapter XIV of the Act;

c. The authority in whom the power to issue show cause in terms of the said provision is patently unclear;

d. The authority in whom the power to adjudicate the purportedly issued show cause notice in terms of the said provision is also patently unclear;

e. Employment of the word '*notice*' in first proviso to sub-section (1) is also not reflective/indicative of the power of issuance of a show cause notice envisaged under sub-section (1);

f. Recognition of power of issuance of show cause notice, in terms of clause (a) to sub-section (1), in the second proviso is misplaced and not a true reflection of the legislative intent embedded in the warp and woof of the said provision; and

g. Clause (a) of sub-section (1) of the said provision does not confer any power on any person to 'issue' a show cause notice inasmuch as the clear, unambiguous, and express language employed therein merely sets out the necessity to give a notice and the features/characteristics of such notice – fulfilment whereof would lend the said '*notice*' necessary validity in the eyes of law.

29. My client states that, Section 124 does not confer any power to issue Show Cause Notice upon the Additional Commissioner any authority as such, hence the entire proceeding initiated on the basis of such provision, vitiates the fundamental basis on which the same stands. It is a settled legal proposition that when action on the basis of which the primary proceeding stands vitiated, all subsequent and consequential proceeding would fall.

30. It is no more *res integra* that:

i. Taxation statutes have to be strictly interpreted; and

ii. Fealty has to be pledged to the literal meaning of the statute in cases where the language of the statute is clear and unambiguous.

31. My client states that, without an iota of doubt, it may be appreciated that the explicit language of section 124 of the Act neither confers any power to issue show cause notice nor envisages issuance of show cause notice by invocation of the provisions therein. The only reference qua show cause notice therein is limited to spotlight adherence to the principles of natural justice, bereft whereof no order of confiscation or imposition of penalty under Chapter XIV of the Act can be passed.

32. My client states that, Section 124 of the Customs Act, 1962, provides that the Show Cause Notice can be issued only with the prior approval of the officers of Customs not below rank of an Assistant Commissioner of Customs, thereby meaning that the officer above the rank of Assistant Commissioner of Customs can accord only approval for issuance of Show Cause Notice.

33. My client submits that therefore, the Show Cause Notice issued under section 124 of the Act, which does not confer any such power inasmuch is without jurisdiction and authority of law and the same deserves to be quashed and/or set-aside, in the interest of justice.

My client wishes to be heard in person before any order is passed, in the matter."

36.43 The noticee M/s SINOVAC LIMITED, Unit 705, 7/F, Golden Draon Plaza, 38-40 Cameron Road, T.S.T., Kowloon, Hong Kong, through its authorized representative Shri Shrey S Lodha, Advocate submitted its reply vide letter dated 12.05.2024 as under:-

"Upon instructions from, for and on behalf of my Client, through its Authorised Signatory who has drawn Vakalatanama, enclosed hereto as **Annexure 1**, in my favour, I hereby submit as follows:

1. At the outset my Client denies any and every allegation made in the captioned Show cause notice (hereinafter referred to as "**SCN**") for it isreplete with non-application of mind and untenable in the eyes of law.

2. It is pertinent to note that the present submissions are preliminary in nature insofar as objections pertaining to jurisdictional facts have been advanced herein, which as per several judicial pronouncements including ***Arun Kumar and Others v. Union of India and others, [(2007) 1 SCC 732]*** posit existence of jurisdictional fact before assumption of jurisdiction by a court, tribunal, or an authority over a matter. In ***Arun Kumar*** (supra), the Hon'ble Supreme Court held as under::

"***74. A "jurisdictional fact" is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.***

75. In Halsbury's Laws of England, it has been stated: "Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive."

76. The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction."

3. In light of the foregoing, your good self is most humbly requested to kindly adjudicate and dispose, *first*, the challenge to the jurisdictional aspects related to the captioned show cause noticewhich go to the root of the matter before passing any decision on the merits of the case. It is expressly stated that my Client reserves the right to make further submissions including on the merits of the matter subsequent to disposal of the preliminary objections by your good self.

PRELIMINARY OBJECTIONS

4. At the cost of repetition, it is categorically submitted that any and all allegations made in the captioned show cause notice are denied inasmuch as they are based on conjecture, surmises, and shaky grounds. Further, the submissions / objections herein are taken independently and without prejudice to each other.

XXII. EXTRA-TERRITORIAL ASSUMPTION OF JURISDICTION

5. That my Clientis an overseas supplier, based out in Hong Kong, of the goods in question i.e. Cut & Polished Precious and Semi-Precious Stones (Ruby)and the same was sold to several entities during the relevant period including the entities based out in India. It is pertinent to note that the goods in question were shipped from Hong Kong upon complying with the normative regulations and ensuring requisite and proper declaration of the material particulars of the said goodsto the Hong Kong Customs Authorities and nothing has been whispered in the captioned show cause notice to suggest otherwise.

6. From a bare perusal of the captioned show cause notice, it is understood that the gravamen therein qua my Clientis that it has allegedly abetted and indulged in conspiracy with the main noticee i.e. M/s RHC Global Exports Private Limited, an entity based in Surat Special Economic Zone, Sachin ("**Sachin SEZ**"), to:

(o) contravene the provisions of the Customs Act, 1962 (and the rules and regulations made thereunder) and the Special Economic Zones Act, 2005 (and the rules and regulations made thereunder) by issuing commercial invoices, packing lists, etc. bearing incorrect particulars of the goods, vis-à-vis the classification and value thereof, so supplied; and

(p) facilitate remission of outward foreign remittance on the strength of fake/bogus commercial invoices.

7. It is pertinent to note at this juncture that my Client neither is incorporated in India nor has any permanent establishment in India nor has its place of effective management in India nor is an importer / exporter in terms of the Customs Act, 1962, therefore, the issuance of the captioned show cause notice prima facie is beyond the legislative mandate of Customs Act, 1962***basis extrapolation of allegation on the previous imports of the main noticee from my Client***.

8. That no Municipal Law can ever be extended beyond the territorial boundaries of a country including its continental self and exclusive economic zone, whether or not there is express provision in the statute to stretch the same beyond the country's territory since the same would amount to encroachment upon the territorial authority of other State. Sovereign country asserts extra territorial jurisdiction in criminal laws though ***the principal basis of jurisdiction over crime is the territorial principle which permits a State in control of its territory to prescribe, adjudicate and enforce its law in the territory. The crime is said tobe committed even partly in a state's territory when any essential constituent element itself is consummated there***. Further, the Hon'ble Supreme Court's Constitutional Bench in ***GVK Industries Limited and Another v. Income Tax Officer and Another, [(2011) 4 SCC 36]*** while in seisin with the issue as to legislative competence of Parliament to breathe extra-territorial jurisdiction into a statute has observed as follows:

"*124. We now turn to answering the two questions that we set with:*

(1) ***Is Parliament constitutionally restricted from enacting legislation with respect to extra-territorial aspects or causes that do not have, nor expected to have, any, direct or indirect, tangible or intangible impact(s) on, or effect(s) in, or consequences for****:*

(a) other territory of India, or any part of India; or
(b) other interests of, welfare of, well-being of, or security of inhabitants of India, and Indians?
The answer to the above would be yes. However, Parliament may exercise its legislative powers with respect to extra-territorial aspects or causes*—events, things, phenomena (howsoever commonplace they may be), resources, actions or transactions, and the like—that occur, arise or exist or may be expected to do so, naturally or on account of some human agency, in the social, political, economic, cultural, biological, environmental or physical spheres outside the territory of India, and seek to control, modulate, mitigate or transform the effects of such extra-territorial aspects or causes, or in appropriate cases, eliminate or engender such extra-territorial aspects or causes,* ***only when such extra-territorial aspects or causes have, or are expected to have, some impact on, or effect in, or consequences for: (a) the territory of India, or any part of India; or (b) the interests of, welfare of, well-being of, or security of inhabitants of India, and Indians****.*

125. It is important for us to state and hold here that the powers of legislation of Parliament with regard to all aspects or causes that are within the purview of its competence, including with respect to extra-territorial

aspects or causes as delineated above, and as specified by the Constitution, or implied by its essential role in the constitutional scheme, ought not to be subjected to some a priori quantitative tests, such as 'sufficiency' or 'significance' or in any other manner requiring a predetermined degree of strength. ***All that would be required would be that the connection to India be real or expected to be real, and not illusory or fanciful****.*

126. Whether a particular law enacted by Parliament does show such a real connection, or expected real connection, between the extra-territorial aspect or cause and something in India or related to India and Indians, in terms of impact, effect or consequence, would be a mixed matter of facts and of law. Obviously, where Parliament itself posits a degree of such relationship, beyond the constitutional requirement that it be real and not fanciful, then the courts would have to enforce such a requirement in the operation of the law as a matter of that law itself, and not of the Constitution:

127. (2) ***Does Parliament have the powers to legislate 'for' any territory, other than the territory of India or any part of it?***

The answer to the above would be no*. It is obvious that Parliament is empowered to make laws with respect to aspects or causes that occur, arise or exist, or may be expected to do so, within the territory of India, and also with respect to extra-territorial aspects or causes that have an impact on or nexus with India as explained above in the answer to Question 1 above. Such laws would fall within the meaning, purport and ambit of the grant of powers to Parliament to make laws 'for the whole or any part of the territory of India', and they may not be invalidated on the ground that they may require extra-territorial operation.* ***Any laws enacted by Parliament with respect to extra-territorial aspects or causes that have no impact on or nexus with India would be ultra vires, as answered in response to Question 1 above, and would be laws made 'for' a foreign territory.***"

In light of the foregoing, it is submitted that albeit s. 1(2) of the Customs Act, 1962 has enabled its extra-territorial jurisdiction, however, the same is subject to the essential principle that the act / omission / offence / contravention should have impact and / or nexus with the subject-matter which is sought to be regulated by the Customs Act, 1962.

9. Gravitating the aforesaid to the present facts and circumstances, it is submitted that the ***basis to allege contravention*** of the provisions of the Customs Act, 1962 and Special Economic Zones Act, 2005 i.e. mis-declaration and over-valuations of the goods in question by the main noticee ***is Bills of Entry filed by the importer,i.e. the main noticee in the instant case, during the relevant period and not the commercial invoices / packing lists issued by my Client****.*

10. It is relevant to note that the nature of allegation in the captioned show cause notice wherein it has been proposed to impose penalty u/ss. 112(a), 112(b), 114AA, and / or 117 of the Customs Act, 1962 on my Client, is that by issuing the commercial invoices and packing lists qua the exports made by my Client in terms of the laws of Hong Kong, my Client has allegedly abetted the main noticee in mis-declaring and over-valuing the goods in question to the Indian Customs Authorities and has in consequence also purportedly abetted siphoning off outward foreign

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exchange on the strength of such allegedly fake/bogus documents. At the cost of repetition, it is submitted that the foregoing allegation is a mere extrapolation of conjectures and surmises on the past imports of the main noticee (exports by my Client) inasmuch as it has neither been alluded in the captioned show cause notice about seizure of any live consignment from the main noticee which has been sent by my Client nor it is coming out that any seizure in the instant case directly, basis preponderance of probabilities, links my Client to the alleged contraventions committed by the main noticee. Further, the contents of the captioned show cause notice do not indicate conducting of any enquiry by the Indian Customs Authorities with their Hong Kong counterparts qua any irregularity in the material particulars declared with the latter. Furthermore, the statements recorded and relied upon in the captioned show cause notice do not indicate any imputation or knowledge about the alleged abetment of my Client in the purported contraventions. Moreover, no documentary evidence has been alluded to in the contents of the captioned show cause notice indicating the ***mensrea*** in order to attract the penalty u/ss. 112, 114AA or 117 of the Customs Act, 1962. Thus, when the documents filed and declaration made by my Client have not been disputed by the jurisdictional authorities i.e. Hong Kong Customs Authorities, and there is no material evidence in support of the contention of the Indian Customs Authoritiesqua my Client, the basis to issue the captioned show cause notice only on the ipse dixit of the Indian Customs Authorities is unfounded, arbitrary, illegal, and bad in law.

11. Without prejudice, it is submitted thatthe penalty sought to be proposed u/s. 112 of the Act is interlinked with the confiscation of goods under s. 111 of the Act. In other words, penalty u/s. 112 of the Act will apply only when the goods are liable for confiscation u/s. 111 of the Act. In the present case, the Department has alleged that the goods-in-question are liable for confiscation u/ss. 111 (m) and Section 111(o) of the Act. The relevant portions of Section 111 of the Act is extracted herein below for ready reference:

"***111. <u>Confiscation of improperly imported goods</u>, etc.*** *- The following goods* ***<u>brought</u>*** *from a place outside India shall be liable to confiscation: -*

(...)

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

(...)

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer."

12. It is submitted that s. 111(m) of the Act provides that any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 of the Act, shall be liable for confiscation.That the entry of goods on importation is dealt under s. 46 of the Act which inter alia provides that the importer of any goods, other than goods intended for transit or trans-shipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed. This form filed by the importer is the bill of entry. Further, Section 17(1) of the Act which deals with assessment of duty states that any importer entering any imported goods u/s. 46, or an exporter entering any goods-to-be-exported u/s. 50, shall self-assess the duty, if any, leviable on such goods. Furthermore, as per s. 2(26) of the Act, 'importer' in relation to any goods at any time between their importation and the time when they are cleared for home consumption includes any owner, beneficial owner or any person holding himself out to be the importer.

13. On a conjoint reading of ss. 111(m), 46, 17, and 2(26) it can be inferred that the value of the goods and other particulars declared at the time of entry of goods are furnished by the importer. Consequently, any violation of the kind mentioned in s. 111(m) of the Act can be attributed only to the importer. In the present case, the function of my Clientas the foreign supplier was limited to supply of goods from Hong Kong to India. In other words, the responsibility of my Clientconcludes once the goods are put in a deliverable state to the customers in India. Once the goods reach the Indian Customs barrier, it is the responsibility of the concerned importers, in the present case the main noticee, to declare the classification and description of such goods and file the bill of entry and other documents for clearance of such goods.Given this, my Client cannot be held liable for any violation of the nature prescribed in Section 111(m) of the Act which renders the goods liable for confiscation. Consequently, the proposal to impose penalty u/s. 112 is bad in law and the captioned show cause notice to that extent could not have been issued to my Client.

14. Similarly, s. 111(o) of the Act provides that if any goods were exempted subject to any condition, from duty or any prohibition in respect of the import thereof under the Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer, such goods shall be liable for confiscation. In the present case, s. 111(o) of the Act is also not triggered by any of the acts of my Client since it is merely the overseas supplier of the imports-in-question and confiscation as envisaged under the said provision can only be triggered when non-observance of the condition(s) for benefit of exemption occurs on the part of the importer as such exemption is claimed by the importer alone.

15. Further, the foregoing is equally apposite in terms of s. 114AA of the Act inasmuch as my Client being the overseas supplier has neither done anything in the transaction of any business for the purposes of the Customs Act, 1962 nor hasknowingly or intentionally made, signed or used any declaration, statement or document which is false or incorrect in

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any material particular in the transaction of any business for the purposes of the Customs Act, 1962.

16. Therefore, the assumption of extra-territorial jurisdiction by the issuing authority of the captioned show cause notice in the instant case basis the writ large extrapolative conjecturethat the previous imports of the main noticee were also allegedly fraudulent in nature and the fact that my Client had issued commercial invoices and packing lists for the select imports made by the main noticee, is wholly erroneous, without authority of law, and arbitrary.

17. That in terms of s.151B of the Customs Act, 1962, for exercising jurisdiction over foreign territories, the Union Government has to have an Agreement with the Government of that territory. In the present case, no such agreement exists for applying any of the provisions of the Customs Act, 1962 or any other statutory provisions of laws and statutes. Hence the captionedshow cause notice could not have been issued to my Client. Thus, it is submitted that assumption of extra-territorial jurisdiction by the authority who has issued the captioned show cause notice is arbitrary and contrary to the legislative intent of s. 1 of the Customs Act, 1962.

18. It is reiterated that the responsibility of filing correct declaration is upon the importer in India and the duty to assess the goods, at the time of clearance is upon the assessing officer.In the instant proceedings, it appears that each and everyconsignment was assessed and thereafter allowed clearance. The responsibility to assess and allow the goods for clearance is upon the officer of the Customs who has been empowered to exercise such function. None of the officers of the Customs were examined during the course of investigation to show that the assessment and clearance allowed by them, was improper in any manner. Thus, on this ground as well the assumption of extra-territorial jurisdiction by the authority who has issued the captioned show cause notice is arbitrary and contrary to the legislative intent of s. 1 of the Customs Act, 1962.

XXIII. RE:SHOW CAUSE NOTICE NOT ISSUED BY DESIGNATED / EMPOWERED OFFICER

19. Special Economic Zone (SEZ), alikeSurat SEZ, Sachin, is a geographically delineated duty-free enclave and is deemed to be a foreign territory for the purposes of trade operations and duties and tariffs. With a view to promote the business activity, the Special Economic Zone Act, 2005 received the assent of the President of India on 23.06.2005. Section 20, 21 and 22 of the said Act came into force on 13.01.2010. As per the Preamble of the SEZ Act, it is to provide for the establishment, development and management of the Special Economic Zone for the promotion of exports and for the matter connected therewith or incidental thereto. The SEZ Act being a special Act was specifically passed to cover all the matters pertaining to a Unit having Office/Unit within the SEZ premises.

20. Under the SEZ Act, there are no distinct offences which are enumerated rather the offences under certain central acts have been subsumed as notified offences for the purposes of the SEZ Act. Sections 111, 113, and 124 amongst others of the Customs Act, 1962 are few of such notified

offences under the SEZ Act and for the purposes of carrying out investigation for into such notified offences, certain officers are specifically empowered to commence and carry out the investigation in terms of ss. 21 and 22 of the said Act. For ready reference, the said provisions are reproduced as under:

"***21. Single enforcement officer or agency for notified offences***.

(1) The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for purposes of this Act.

(2) The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offences or committed in a Special Economic Zone.

(3) Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection or search or seizure as is provided under the relevant Central Act in respect of the notified offences."

"***22. Investigation, inspection and search or seizure***.

The agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation or search or seizure in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone: Provided that no investigation, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or subsection of section 21 without prior approval of the Development Commissioner concerned.

Provided further that any officer of agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner."

21. That in terms of the afore-reproduced provisions, the Central Government vide Notification No. SO 2665(E) dated 05.08.2016, Notification No. SO 2666(E) dated 05.08.2016, and Notification No. SO 2667(E) dated 05.08.2016, all issued u/ss. 21 and 22 of the SEZ Act, as the case may be, have prescribed that either Additional Director General, Directorate of Revenue Intelligence or the jurisdictions Customs Commissioner would be the enforcement / empowered officer to carry out the investigation in relation to notified offences under the SEZ Act. Further, by virtue of s. 21(3) of the SEZ Act, the said enforcement / empowered officers would be entitled to exercise all the corresponding powers in relation to the investigation, search, and / or seizure pertaining to the notified offences including ss. 105, 108, 110, and 124 of the Customs Act, 1962.

22. A reading of the above provisions and corresponding notifications, as adverted to above, makes it clear that the officer of the DRI does not have

power or jurisdiction to inspect or seize goods in respect of units situated in SEZ area. The power to investigate in respect of any offence committed in SEZ unit is conferred on officers empowered under the afore-reproduced provisions and notifications. The entire act of search, seizure, recording of statement, and issuance of show cause notice by the officers of DRI and officer of customs who are neither Additional Director General, Directorate of Revenue Intelligence or the jurisdictions Customs Commissioner, in the instant case, is rife with illegality, arbitrariness, and erroneous assumption of jurisdiction. Further, as per the provisions and notifications issued under the SEZ Act, as above, the agency or officers carrying out any investigation into a SEZ Area need the sanction of the Development Commissioner before commencement of such investigation, however, in the instant case, the same has been violated inasmuch as the prior intimation has not been given. On these grounds, no adverse order is warranted against my Client.

23. It is submitted that s. 51 of the SEZ Act is clear that SEZ Act prevails over other enactments to the extent of special provisions being made under SEZ Act. Therefore, the SEZ Act would prevail over the Customs Act, 1962 in all aspects in view of the non-obstinate clause.

24. That vide Circular No.11/2017-Cus dated 31.03.2017 a Standard Operating Procedure has been prescribed whereby a show cause noticehas to be prepared by the Specified Officer / Authorized Officer in the concerned office of the Development Commissioner which shall be transferred to DC/AC in the office of jurisdictional Customs along with all Relied Upon Documents. The captioned show cause notice has not been issued in the manner prescribed under the SOP and appears to have not been prepared in the office of the Development Commissioner inasmuch as there is no averment thereto. The purpose of adopting such SOP is that there remains transparency in the proceedings which is monitored by the Development Commissioner and the assessees are not harassed unnecessarily. Hence, the captioned show cause notice deserves to be dropped qua my Client.

XXIV. RE: SECTION 124 DOES NOT EMPOWER AUTHORITY TO ISSUE SHOW CAUSE NOTICE

25. That the captioned show cause notice has been issued invoking section 124 of the Act which is without jurisdiction and authority of law inasmuch as the said provision does not confer any power of issuance of a 'show cause notice' which could have been exercised by the authority which has issued the captioned show cause notice. Section 124 of the Act provides as under:

"*Section 124. Issue of show cause notice before confiscation of goods, etc. -*

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in 1[writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs,

informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed."

26. From reading of the foregoing provision, it is clear and unambiguous, that the same clarifies the following:

    a. The provision prescribes certain commandments in sub-section (1) which have to followed in letter and spirit before passing of any order of confiscation or imposition of any penalty on any person under Chapter XIV of the Act;

    b. The inherent nature of the said commandments is representative of principles of natural justice particularly the doctrine of audialterampartem which cannot be dispelled with while passing an order of confiscation or imposition of penalty in terms of Chapter XIV of the Act; and
    c. The empowerment to issue show cause in terms of the said provision is patently unclear vis-à-vis the authority which has issued the captioned show cause notice;

27. That s.124 does not confer any power to issue the captioned show cause notice upon the authority which has issued the captioned show cause notice, hence the entire proceeding initiated on the basis of such provision, vitiates the fundamental basis on which the same stands. It is a settled legal proposition that when action on the basis of which the primary proceeding stands vitiated, all subsequent and consequential proceeding would fall.

28. It is no more *res integra* that:

    a. Taxation statutes have to be strictly interpreted; and

    b. Fealty has to be pledged to the literal meaning of the statute in cases where the language of the statute is clear and unambiguous.

29. That the explicit language of s. 124 of the Act neither confers any power to issue show cause notice nor envisages issuance of show cause notice by invocation of the provisions therein upon the authority which has issued the captioned show cause notice. The only reference qua show cause notice therein is limited to spotlight adherence to the principles of natural justice, bereft whereof no order of confiscation or imposition of penalty under Chapter XIV of the Act can be passed.

30. That s. 124 of the Customs Act, 1962 provides that a show cause notice can be issued only with the prior approval of the officers of Customs not below rank of an Assistant Commissioner of Customs, thereby meaning that the officer above the rank of Assistant Commissioner of Customs can accord only approval for issuance of show cause notice. In the instant case, such approval is amiss.Therefore, the captioned show cause notice issued under section 124 of the Act is without jurisdiction and authority of law and the same deserves to be quashed and/or set-aside, in the interest of justice.

PRAYER

31. Therefore, it is most humbly prayed to your good self may be pleased to:

a. drop the captioned show cause notice vis-à-vis my Client; and

b. pass such other and further orders which may be fit and proper in the interest of complete justice.

That my Client wishes to be heard in person before any order is passed in the matter. Further, my Client reserves its right to make additional submissions if the need so arises or situation so demands. Furthermore, it is most humbly requested that the personal hearing be scheduled through video-conferencing in line with the Hon'ble Supreme Court's consistent and continued effort to digitalise the justice dispensation system."

36.44 The noticee M/s SPINEL HOUSE (HK), unit 1, 10/F, Tower A, hunghom Commercial Centre, 37-39 Ma tau wai Road, Hung hom, Kowloon, Hong Kong through its authorized representative Shri Shrey S Lodha, Advocate submitted its reply vide letter dated 12.05.2024 as under:-

"Upon instructions from, for and on behalf of my Client, through its Authorised Signatory who has drawn Vakalatanama, enclosed hereto as **Annexure 1**, in my favour, I hereby submit as follows:

1. At the outset my Client denies any and every allegation made in the captioned Show cause notice (hereinafter referred to as "**SCN**") for it isreplete with non-application of mind and untenable in the eyes of law.

2. It is pertinent to note that the present submissions are preliminary in nature insofar as objections pertaining to jurisdictional facts have been advanced herein, which as per several judicial pronouncements including ***Arun Kumar and Others v. Union of India and others, [(2007) 1 SCC 732]*** posit existence of jurisdictional fact before assumption of jurisdiction by a court, tribunal, or an authority over a matter. In ***Arun Kumar*** (supra), the Hon'ble Supreme Court held as under::

"***74. A "jurisdictional fact" is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly***

assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.

75. In Halsbury's Laws of England, it has been stated: "Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive."

76. The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction."

3. In light of the foregoing, your good self is most humbly requested to kindly adjudicate and dispose, *first*, the challenge to the jurisdictional aspects related to the captioned show cause noticewhich go to the root of the matter before passing any decision on the merits of the case. It is expressly stated that my Client reserves the right to make further submissions including on the merits of the matter subsequent to disposal of the preliminary objections by your good self.

PRELIMINARY OBJECTIONS

4. At the cost of repetition, it is categorically submitted that any and all allegations made in the captioned show cause notice are denied inasmuch as they are based on conjecture, surmises, and shaky grounds. Further, the submissions / objections herein are taken independently and without prejudice to each other.

XXV. EXTRA-TERRITORIAL ASSUMPTION OF JURISDICTION

5. That my Clientis an overseas supplier, based out in Hong Kong, of the goods in question i.e. Cut & Polished Precious and Semi-Precious Stones (Ruby)and the same was sold to several entities during the relevant period including the entities based out in India. It is pertinent to note that the goods in question were shipped from Hong Kong upon complying with the normative regulations and ensuring requisite and proper declaration of the material particulars of the said goodsto the Hong Kong Customs Authorities and nothing has been whispered in the captioned show cause notice to suggest otherwise.

6. From a bare perusal of the captioned show cause notice, it is understood that the gravamen therein qua my Clientis that it has allegedly abetted and indulged in conspiracy with the main noticee i.e. M/s RHC Global Exports Private Limited, an entity based in Surat Special Economic Zone, Sachin ("**Sachin SEZ**"), to:

(q) contravene the provisions of the Customs Act, 1962 (and the rules and regulations made thereunder) and the Special Economic Zones

Act, 2005 (and the rules and regulations made thereunder) by issuing commercial invoices, packing lists, etc. bearing incorrect particulars of the goods, vis-à-vis the classification and value thereof, so supplied; and

(r) facilitate remission of outward foreign remittance on the strength of fake/bogus commercial invoices.

7. It is pertinent to note at this juncture that my Client neither is incorporated in India nor has any permanent establishment in India nor has its place of effective management in India nor is an importer / exporter in terms of the Customs Act, 1962, therefore, the issuance of the captioned show cause notice prima facie is beyond the legislative mandate of Customs Act, 1962***basis extrapolation of allegation on the previous imports of the main noticee from my Client***.

8. That no Municipal Law can ever be extended beyond the territorial boundaries of a country including its continental self and exclusive economic zone, whether or not there is express provision in the statute to stretch the same beyond the country's territory since the same would amount to encroachment upon the territorial authority of other State. Sovereign country asserts extra territorial jurisdiction in criminal laws though ***the principal basis of jurisdiction over crime is the territorial principle which permits a State in control of its territory to prescribe, adjudicate and enforce its law in the territory. The crime is said tobe committed even partly in a state's territory when any essential constituent element itself is consummated there***. Further, the Hon'ble Supreme Court's Constitutional Bench in ***GVK Industries Limited and Another v. Income Tax Officer and Another, [(2011) 4 SCC 36]*** while in seisin with the issue as to legislative competence of Parliament to breathe extra-territorial jurisdiction into a statute has observed as follows:

"*124. We now turn to answering the two questions that we set with:*

(1) ***Is Parliament constitutionally restricted from enacting legislation with respect to extra-territorial aspects or causes that do not have, nor expected to have, any, direct or indirect, tangible or intangible impact(s) on, or effect(s) in, or consequences for****:*

(a) other territory of India, or any part of India; or
(b) other interests of, welfare of, well-being of, or security of inhabitants of India, and Indians?
The answer to the above would be yes. However, Parliament may exercise its legislative powers with respect to extra-territorial aspects or causes*—events, things, phenomena (howsoever commonplace they may be), resources, actions or transactions, and the like—that occur, arise or exist or may be expected to do so, naturally or on account of some human agency, in the social, political, economic, cultural, biological, environmental or physical spheres outside the territory of India, and seek to control, modulate, mitigate or transform the effects of such extra-territorial aspects or causes, or in appropriate cases, eliminate or engender such extra-territorial aspects or causes,* ***only when such extra-territorial aspects or causes have, or are expected to have, some impact on, or effect in, or consequences for: (a) the territory of India, or any part***

of India; or (b) the interests of, welfare of, well-being of, or security of inhabitants of India, and Indians.

125. It is important for us to state and hold here that the powers of legislation of Parliament with regard to all aspects or causes that are within the purview of its competence, including with respect to extra-territorial aspects or causes as delineated above, and as specified by the Constitution, or implied by its essential role in the constitutional scheme, ought not to be subjected to some a priori quantitative tests, such as 'sufficiency' or 'significance' or in any other manner requiring a predetermined degree of strength. ***All that would be required would be that the connection to India be real or expected to be real, and not illusory or fanciful***.

126. Whether a particular law enacted by Parliament does show such a real connection, or expected real connection, between the extra-territorial aspect or cause and something in India or related to India and Indians, in terms of impact, effect or consequence, would be a mixed matter of facts and of law. Obviously, where Parliament itself posits a degree of such relationship, beyond the constitutional requirement that it be real and not fanciful, then the courts would have to enforce such a requirement in the operation of the law as a matter of that law itself, and not of the Constitution:

127. (2) ***Does Parliament have the powers to legislate 'for' any territory, other than the territory of India or any part of it?***

The answer to the above would be no. *It is obvious that Parliament is empowered to make laws with respect to aspects or causes that occur, arise or exist, or may be expected to do so, within the territory of India, and also with respect to extra-territorial aspects or causes that have an impact on or nexus with India as explained above in the answer to Question 1 above. Such laws would fall within the meaning, purport and ambit of the grant of powers to Parliament to make laws 'for the whole or any part of the territory of India', and they may not be invalidated on the ground that they may require extra-territorial operation.* ***Any laws enacted by Parliament with respect to extra-territorial aspects or causes that have no impact on or nexus with India would be ultra vires, as answered in response to Question 1 above, and would be laws made 'for' a foreign territory.***"

In light of the foregoing, it is submitted that albeit s. 1(2) of the Customs Act, 1962 has enabled its extra-territorial jurisdiction, however, the same is subject to the essential principle that the act / omission / offence / contravention should have impact and / or nexus with the subject-matter which is sought to be regulated by the Customs Act, 1962.

9. Gravitating the aforesaid to the present facts and circumstances, it is submitted that the ***basis to allege contravention*** of the provisions of the Customs Act, 1962 and Special Economic Zones Act, 2005 i.e. mis-declaration and over-valuations of the goods in question by the main noticee ***is Bills of Entry filed by the importer,i.e. the main noticee in the instant case, during the relevant period and not the commercial invoices / packing lists issued by my Client***.

10. It is relevant to note that the nature of allegation in the captioned show cause notice wherein it has been proposed to impose penalty u/ss. 112(a),

112(b), 114AA, and / or 117 of the Customs Act, 1962 on my Client, is that by issuing the commercial invoices and packing lists qua the exports made by my Client in terms of the laws of Hong Kong, my Client has allegedly abetted the main noticee in mis-declaring and over-valuing the goods in question to the Indian Customs Authorities and has in consequence also purportedly abetted siphoning off outward foreign exchange on the strength of such allegedly fake/bogus documents. At the cost of repetition, it is submitted that the foregoing allegation is a mere extrapolation of conjectures and surmises on the past imports of the main noticee (exports by my Client) inasmuch as it has neither been alluded in the captioned show cause notice about seizure of any live consignment from the main noticee which has been sent by my Client nor it is coming out that any seizure in the instant case directly, basis preponderance of probabilities, links my Client to the alleged contraventions committed by the main noticee. Further, the contents of the captioned show cause notice do not indicate conducting of any enquiry by the Indian Customs Authorities with their Hong Kong counterparts qua any irregularity in the material particulars declared with the latter. Furthermore, the statements recorded and relied upon in the captioned show cause notice do not indicate any imputation or knowledge about the alleged abetment of my Client in the purported contraventions. Moreover, no documentary evidence has been alluded to in the contents of the captioned show cause notice indicating the ***mensrea*** in order to attract the penalty u/ss. 112, 114AA or 117 of the Customs Act, 1962. Thus, when the documents filed and declaration made by my Client have not been disputed by the jurisdictional authorities i.e. Hong Kong Customs Authorities, and there is no material evidence in support of the contention of the Indian Customs Authoritiesqua my Client, the basis to issue the captioned show cause notice only on the ipse dixit of the Indian Customs Authorities is unfounded, arbitrary, illegal, and bad in law.

11. Without prejudice, it is submitted thatthe penalty sought to be proposed u/s. 112 of the Act is interlinked with the confiscation of goods under s. 111 of the Act. In other words, penalty u/s. 112 of the Act will apply only when the goods are liable for confiscation u/s. 111 of the Act. In the present case, the Department has alleged that the goods-in-question are liable for confiscation u/ss. 111 (m) and Section 111(o) of the Act. The relevant portions of Section 111 of the Act is extracted herein below for ready reference:

"***111. <u>Confiscation of improperly imported goods</u>, etc.*** *- The following goods* ***<u>brought</u>*** *from a place outside India shall be liable to confiscation: -*

(...)

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

(...)

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer."

12. It is submitted that s. 111(m) of the Act provides that any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 of the Act, shall be liable for confiscation.That the entry of goods on importation is dealt under s. 46 of the Act which inter alia provides that the importer of any goods, other than goods intended for transit or trans-shipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed. This form filed by the importer is the bill of entry. Further, Section 17(1) of the Act which deals with assessment of duty states that any importer entering any imported goods u/s. 46, or an exporter entering any goods-to-be-exported u/s. 50, shall self-assess the duty, if any, leviable on such goods. Furthermore, as per s. 2(26) of the Act, 'importer' in relation to any goods at any time between their importation and the time when they are cleared for home consumption includes any owner, beneficial owner or any person holding himself out to be the importer.

13. On a conjoint reading of ss. 111(m), 46, 17, and 2(26) it can be inferred that the value of the goods and other particulars declared at the time of entry of goods are furnished by the importer. Consequently, any violation of the kind mentioned in s. 111(m) of the Act can be attributed only to the importer. In the present case, the function of my Clientas the foreign supplier was limited to supply of goods from Hong Kong to India. In other words, the responsibility of my Clientconcludes once the goods are put in a deliverable state to the customers in India. Once the goods reach the Indian Customs barrier, it is the responsibility of the concerned importers, in the present case the main noticee, to declare the classification and description of such goods and file the bill of entry and other documents for clearance of such goods.Given this, my Client cannot be held liable for any violation of the nature prescribed in Section 111(m) of the Act which renders the goods liable for confiscation. Consequently, the proposal to impose penalty u/s. 112 is bad in law and the captioned show cause notice to that extent could not have been issued to my Client.

14. Similarly, s. 111(o) of the Act provides that if any goods were exempted subject to any condition, from duty or any prohibition in respect of the import thereof under the Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer, such goods shall be liable for confiscation. In the present case, s. 111(o) of the Act is also not triggered by any of the acts of my Client since it is merely the overseas supplier of the imports-in-question and confiscation as envisaged under the said provision can only be triggered when non-observance of the condition(s) for benefit of exemption occurs on the part of the importer as such exemption is claimed by the importer alone.

15. Further, the foregoing is equally apposite in terms of s. 114AA of the Act inasmuch as my Client being the overseas supplier has neither done anything in the transaction of any business for the purposes of the Customs Act, 1962 nor hasknowingly or intentionally 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 Customs Act, 1962.

16. Therefore, the assumption of extra-territorial jurisdiction by the issuing authority of the captioned show cause notice in the instant case basis the writ large extrapolative conjecturethat the previous imports of the main noticee were also allegedly fraudulent in nature and the fact that my Client had issued commercial invoices and packing lists for the select imports made by the main noticee, is wholly erroneous, without authority of law, and arbitrary.

17. That in terms of s.151B of the Customs Act, 1962, for exercising jurisdiction over foreign territories, the Union Government has to have an Agreement with the Government of that territory. In the present case, no such agreement exists for applying any of the provisions of the Customs Act, 1962 or any other statutory provisions of laws and statutes. Hence the captionedshow cause notice could not have been issued to my Client. Thus, it is submitted that assumption of extra-territorial jurisdiction by the authority who has issued the captioned show cause notice is arbitrary and contrary to the legislative intent of s. 1 of the Customs Act, 1962.

18. It is reiterated that the responsibility of filing correct declaration is upon the importer in India and the duty to assess the goods, at the time of clearance is upon the assessing officer.In the instant proceedings, it appears that each and everyconsignment was assessed and thereafter allowed clearance. The responsibility to assess and allow the goods for clearance is upon the officer of the Customs who has been empowered to exercise such function. None of the officers of the Customs were examined during the course of investigation to show that the assessment and clearance allowed by them, was improper in any manner. Thus, on this ground as well the assumption of extra-territorial jurisdiction by the authority who has issued the captioned show cause notice is arbitrary and contrary to the legislative intent of s. 1 of the Customs Act, 1962.

XXVI. RE:SHOW CAUSE NOTICE NOT ISSUED BY DESIGNATED / EMPOWERED OFFICER

19. Special Economic Zone (SEZ), alikeSurat SEZ, Sachin, is a geographically delineated duty-free enclave and is deemed to be a foreign territory for the purposes of trade operations and duties and tariffs. With a view to promote the business activity, the Special Economic Zone Act, 2005 received the assent of the President of India on 23.06.2005. Section 20, 21 and 22 of the said Act came into force on 13.01.2010. As per the Preamble of the SEZ Act, it is to provide for the establishment, development and management of the Special Economic Zone for the promotion of exports and for the matter connected therewith or incidental thereto. The SEZ Act being a special Act was specifically passed to cover all the matters pertaining to a Unit having Office/Unit within the SEZ premises.

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20. Under the SEZ Act, there are no distinct offences which are enumerated rather the offences under certain central acts have been subsumed as notified offences for the purposes of the SEZ Act. Sections 111, 113, and 124 amongst others of the Customs Act, 1962 are few of such notified offences under the SEZ Act and for the purposes of carrying out investigation for into such notified offences, certain officers are specifically empowered to commence and carry out the investigation in terms of ss. 21 and 22 of the said Act. For ready reference, the said provisions are reproduced as under:

"***21. Single enforcement officer or agency for notified offences***.

(1) The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for purposes of this Act.

(2) The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offences or committed in a Special Economic Zone.

(3) Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection or search or seizure as is provided under the relevant Central Act in respect of the notified offences."

"***22. Investigation, inspection and search or seizure***.

The agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation or search or seizure in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone: Provided that no investigation, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or subsection of section 21 without prior approval of the Development Commissioner concerned.

Provided further that any officer of agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner."

21. That in terms of the afore-reproduced provisions, the Central Government vide Notification No. SO 2665(E) dated 05.08.2016, Notification No. SO 2666(E) dated 05.08.2016, and Notification No. SO 2667(E) dated 05.08.2016, all issued u/ss. 21 and 22 of the SEZ Act, as the case may be, have prescribed that either Additional Director General, Directorate of Revenue Intelligence or the jurisdictions Customs Commissioner would be the enforcement / empowered officer to carry out the investigation in relation to notified offences under the SEZ Act. Further, by virtue of s. 21(3) of the SEZ Act, the said enforcement / empowered officers would be entitled to exercise all the corresponding powers in relation to the

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investigation, search, and / or seizure pertaining to the notified offences including ss. 105, 108, 110, and 124 of the Customs Act, 1962.

22. A reading of the above provisions and corresponding notifications, as adverted to above, makes it clear that the officer of the DRI does not have power or jurisdiction to inspect or seize goods in respect of units situated in SEZ area. The power to investigate in respect of any offence committed in SEZ unit is conferred on officers empowered under the afore-reproduced provisions and notifications. The entire act of search, seizure, recording of statement, and issuance of show cause notice by the officers of DRI and officer of customs who are neither Additional Director General, Directorate of Revenue Intelligence or the jurisdictions Customs Commissioner, in the instant case, is rife with illegality, arbitrariness, and erroneous assumption of jurisdiction. Further, as per the provisions and notifications issued under the SEZ Act, as above, the agency or officers carrying out any investigation into a SEZ Area need the sanction of the Development Commissioner before commencement of such investigation, however, in the instant case, the same has been violated inasmuch as the prior intimation has not been given. On these grounds, no adverse order is warranted against my Client.

23. It is submitted that s. 51 of the SEZ Act is clear that SEZ Act prevails over other enactments to the extent of special provisions being made under SEZ Act. Therefore, the SEZ Act would prevail over the Customs Act, 1962 in all aspects in view of the non-obstinate clause.

24. That vide Circular No.11/2017-Cus dated 31.03.2017 a Standard Operating Procedure has been prescribed whereby a show cause noticehas to be prepared by the Specified Officer / Authorized Officer in the concerned office of the Development Commissioner which shall be transferred to DC/AC in the office of jurisdictional Customs along with all Relied Upon Documents. The captioned show cause notice has not been issued in the manner prescribed under the SOP and appears to have not been prepared in the office of the Development Commissioner inasmuch as there is no averment thereto. The purpose of adopting such SOP is that there remains transparency in the proceedings which is monitored by the Development Commissioner and the assessees are not harassed unnecessarily. Hence, the captioned show cause notice deserves to be dropped qua my Client.

XXVII. RE: SECTION 124 DOES NOT EMPOWER AUTHORITY TO ISSUE SHOW CAUSE NOTICE

25. That the captioned show cause notice has been issued invoking section 124 of the Act which is without jurisdiction and authority of law inasmuch as the said provision does not confer any power of issuance of a 'show cause notice' which could have been exercised by the authority which has issued the captioned show cause notice. Section 124 of the Act provides as under:

"*Section 124. Issue of show cause notice before confiscation of goods, etc. -*

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No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in 1[writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed."

26. From reading of the foregoing provision, it is clear and unambiguous, that the same clarifies the following:

    a. The provision prescribes certain commandments in sub-section (1) which have to followed in letter and spirit before passing of any order of confiscation or imposition of any penalty on any person under Chapter XIV of the Act;

    b. The inherent nature of the said commandments is representative of principles of natural justice particularly the doctrine of audialterampartem which cannot be dispelled with while passing an order of confiscation or imposition of penalty in terms of Chapter XIV of the Act; and
    c. The empowerment to issue show cause in terms of the said provision is patently unclear vis-à-vis the authority which has issued the captioned show cause notice;

27. That s.124 does not confer any power to issue the captioned show cause notice upon the authority which has issued the captioned show cause notice, hence the entire proceeding initiated on the basis of such provision, vitiates the fundamental basis on which the same stands. It is a settled legal proposition that when action on the basis of which the primary proceeding stands vitiated, all subsequent and consequential proceeding would fall.

28. It is no more *res integra* that:

    a. Taxation statutes have to be strictly interpreted; and

    b. Fealty has to be pledged to the literal meaning of the statute in cases where the language of the statute is clear and unambiguous.

29. That the explicit language of s. 124 of the Act neither confers any power to issue show cause notice nor envisages issuance of show cause notice by invocation of the provisions therein upon the authority which has issued the captioned show cause notice. The only reference qua show cause notice therein is limited to spotlight adherence to the principles of natural justice, bereft whereof no order of confiscation or imposition of penalty under Chapter XIV of the Act can be passed.

30. That s. 124 of the Customs Act, 1962 provides that a show cause notice can be issued only with the prior approval of the officers of Customs not below rank of an Assistant Commissioner of Customs, thereby meaning that the officer above the rank of Assistant Commissioner of Customs can accord only approval for issuance of show cause notice. In the instant case, such approval is amiss.Therefore, the captioned show cause notice issued under section 124 of the Act is without jurisdiction and authority of law and the same deserves to be quashed and/or set-aside, in the interest of justice.

PRAYER

31. Therefore, it is most humbly prayed to your good self may be pleased to:

    a. drop the captioned show cause notice vis-à-vis my Client; and

    b. pass such other and further orders which may be fit and proper in the interest of complete justice.

That my Client wishes to be heard in person before any order is passed in the matter. Further, my Client reserves its right to make additional submissions if the need so arises or situation so demands. Furthermore, it is most humbly requested that the personal hearing be scheduled through video-conferencing in line with the Hon'ble Supreme Court's consistent and continued effort to digitalise the justice dispensation system."

36.45 The noticee M/s STALLION LIMITED, Block-A, 2nd Floor, LIP Seng, mansion, 15-19, Carnarvon Roa, TST, Kowloon, Hong Kong (stallion.ltd@aol.com) has not submitted any defense reply in connection with the instant SCN Dated 26.02.2024.

36.46 The noticee M/s SUN RAYS HK LIMITED, Flat 22, 1/F, Block 3, Kaiser Estate, 11 Hok Yuen Street, Hung Hom, Kowloon, Hong Kong, through its authorized representative Shri Brijesh Pathak submitted its reply vide letter dated 10.04.2024 as under:-

"At the outset, my client denies each and every allegation made in the Show Cause Notice and also that the Show Cause Notice.

Jurisdiction to issue Show Cause Notice to an entity based beyond the territorial jurisdiction of the territory of India:

1. My client states that it had exported the goods from Hong Kong, which were declared and declared with the Customs authorities in accordance with the jurisdictional statutes at Hong Kong. The Show Cause Notice

does not show as to whether any inquiry was caused by the officers of the Directorate of Revenue Intelligence with the Customs House at Hong Kong or any inquiry with my client, prior to issuance of Show Cause Notice. In fact the statements recorded and relied upon in the Show Cause Notice also does not make any imputation or knowledge about the nature of the allegation made in the Show Cause Notice. The Show Cause Notice has not brought a single documentary evidence from Hong Kong to show that the description declared at Hong Kong was in any manner not correct. The documents were filed by my client and declaration was made at Hong Kong and none of the acts were done within the jurisdiction of Customs authorities in India.

2. The responsibility of filing correct declaration is upon the importer in India and the duty to assess the goods, at the time of clearance is upon the officer. In the proceedings it appears that each and every consignments were assessed and thereafter allowed clearance. The responsibility to assess and allow the goods for clearance is upon the officer of the Customs, who has been empowered to exercise such function. None of the officers of the Customs were examined during the course of investigation, to show that the assessment and clearance allowed by them, was improper in any manner.

3. Article 245 of the Constitution of India provides that:

"245. Extent of laws made by Parliament and by the Legislatures of States.-

(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and Legislature of a State may make laws for the whole or any part of State.

(2) No law made by Parliament shall be deemed to be invalid on ground that it would have extra-territorial operation."

Article 260 of the Constitution of India provides that:

"260. Jurisdiction of the Union in relation to territories outside India.-

The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, Legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force."

4. My client submits that for exercising jurisdiction over foreign territories, the Union Government has to have an Agreement with the Government of that territory. In the present case no such agreement exist for applying any of the provisions of the Customs Act, 1962 or any other statutory provisions of laws and statutes. Hence the Show Cause Notice could not have been issued to my client, who are foreign nationals and none of the acts in the DRI was not empowered to invoke provisions of Customs Act, 1962 against my client for any acts, deeds done or committed at Hong Kong. Consequent show cause notice is bad-in-law and deserves to be dropped vis-à-vis my client in the interest of justice.

5. As per Section 1 (2) of the Customs Act: It extends to the whole of India and save as otherwise provided in this Act, it applies also to any offence

or contravention thereunder committed outside India by any person. Further Section 151B of the Customs Act provides that:

> *"(1) The Central Government may enter into an agreement or any other arrangement with the Government of any country outside India or with such competent authorities of that country, as it deems fit, for facilitation of trade, enforcing the provisions of this Act and exchange of information for trade facilitation, effective risk analysis, verification of compliance and prevention, combating and investigation of offences under the provisions of this Act or under the corresponding laws in force in that country.*
>
> *(2) The Central Government may, by notification, direct that the provisions of this section shall apply to the contracting State with which reciprocal agreement or arrangements have been made, subject to such conditions, exceptions or qualifications as may be specified in that notification.*
>
> *(3) Subject to the provisions of sub-section (2), the information received under sub-section (1) may also be used as evidence in investigations and proceedings under this Act.*
>
> *(4) Where the Central Government has entered into a multilateral agreement for exchange of information or documents for the purpose of verification of compliance in identified cases, the Board shall specify the procedure for such exchange, the conditions subject to which such exchange shall be made and designation of the person through whom such information shall be exchanged.*
>
> *(5) Notwithstanding anything contained in sub-section (1) or sub-section (2) or sub-section (3), anything done or any action taken or purported to have been done or taken, in pursuance to any agreement entered into or any other arrangement made by the Central Government prior to the date on which the Finance Bill, 2018 receives the assent of the President, shall be deemed to have been done or taken under the provisions of this section.*
>
> *Explanation.—For the purposes of this section, the expressions,— (i) —contracting State means any country outside India in respect of which agreement or arrangements have been made by the Central Government with the Government or authority of such country through an agreement or otherwise; (ii) —corresponding law means any law in force in the contracting State corresponding to any of the provisions of this Act or dealing with offences in that country corresponding to any of the offences under this Act."*

The provisions of the Customs Act, 1962 has to be read in consonance. It means that the provisions of Customs Act, 1962 will apply to a foreign state/country only where the Central Government has entered into an agreement or any other arrangement with the Government of any country outside India or with such competent authorities of that country, for facilitation of trade, enforcing the provisions of this Act. In the present case there is no such agreement or arrangement between Government of India and Hong Kong (Republic of China) for applicability of the provisions of Customs Act, 1962 for any act committed at Hong Kong. Hence any act committed by my client at Hong Kong while supplying the goods does not fall within the purview of the Customs Act, 1962. The proceedings under the Customs Act, 1962 initiated against my client for allegedly supplying the goods is without authority of law and hence the proceedings initiated against my client therefore deserves to be dropped.

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6. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the matter. In such situation, the legal maxim "*sublatofundamentocadit opus*" meaning thereby that foundation being removed, structure/work falls, comes into play and applies in the present case. Hon'ble Supreme Court has held that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to quasi-judicial proceedings equally.

Show Cause Notice without jurisdiction:

7. Special Economic Zone (SEZ) is a geographically delineated duty-free enclave and is deemed to be a foreign territory for the purposes of trade operations and duties and tariffs. With a view to promote the business activity, the Special Economic Zone Act, 2005 received the assent of the President of India on 23.06.2005. Section 20, 21 and 22 of the said Act came into force on 13.01.2010. As per the Preamble of the SEZ Act, it is to provide for the establishment, development and management of the Special Economic Zone for the promotion of exports and for the matter connected therewith or incidental thereto. The SEZ Act being a special Act was specifically passed to cover all the matters pertaining to a Unit having Office/Unit within the SEZ premises.

8. Under the SEZ Act, there are no distinct offences which are enumerated. Further there are no officers specifically empowered under the Act for carrying out search, seizure etc i.e. for commencing investigation. Section 21 and 22 of the Act reads as herein below:

> *"21. Single enforcement officer or agency for notified offences.*
> *(1) The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for purposes of this Act.*
> *(2) The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offences or committed in a Special Economic Zone.*
> *(3) Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection or search or seizure as is provided under the relevant Central Act in respect of the notified offences,*
>
> *22. Investigation, inspection and search or seizure.*
> *The* ***agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation or search or seizure*** *in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone: Provided that no investigation, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or subsection of section 21 without prior approval of the Development Commissioner concerned.*

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Provided further that any officer of agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner.

9. Section 51 of the SEZ Act is clear that SEZ Act prevails over other enactments to the extent of special provisions being made under SEZ Act. Therefore, the SEZ Act would prevail over the Customs Act, 1962 in all aspects in view of the non-obstinate clause. For ready reference, section 51 of the SEZ Act if reproduced below:

> "***51. Act to have overriding effect:-*** *The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*"

10. It would also be appropriate to refer Section 53 of the Act, which is as under:-

> "***53. Special Economic Zones to be ports, airports, inland container depots, land stations, etc., in certain cases.***—
> *(1) A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorised operations.*
> *(2) A Special Economic Zone shall, with effect from such date as the Central Government may notify, be deemed to be a port, airport, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act, 1962 (52 of 1962):*
> *Provided that for the purposes of this section, the Central Government may notify different dates for different Special Economic Zones*"

11. A reading of the above provisions makes it clear that the officer of the DRI does not have power or jurisdiction to inspect or seize goods in respect of units situated in SEZ area. The power to investigate in respect of any offence committed in SEZ unit is conferred on officers empowered under Section 22 of the SEZ Act. Further, section 52 of the SEZ Act also spells out that the Customs Act is not applicable in respect of units situated in SEZ unit.

12. Vide a Notification bearing No. 2665(E) dated 05.08.2016, the Central Government Notified various offence to be notified offences under the SEZ Act which includes section 28 of the Customs Act, 1962.

13. Further, vide Notification S.O. 2666(E) dated 05.08.2016, the Central Government, in exercise of the powers conferred by sub-section (2) of section 21 and second proviso to section 22 of the Act, inter alia notified the Additional Director General, Directorate of Revenue Intelligence for offences under the Customs Act, 1962 to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. For ease of reference the

> *"In exercise of the powers conferred by sub-section (2) of section 21 and second proviso to section 22 of the Special Economic Zones Act, 2005 (28 of 2005) (hereinafter referred as the Act), the Central Government hereby authorises the Additional Director General,*

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Directorate of Revenue Intelligence for offences under the Customs Act, 1962 (52 of 1962) and the Additional Director General, Directorate General of Central Excise Intelligence for offences under the Central Excise Act, 1944 (1 of 1944) and the Finance Act, 1994 (32 of 1994) to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. ***The enforcement officer(s), for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit and shall intimate the details of any action initiated under sub-section (3) of section 21 of the Act to the Joint Secretary in charge of Special Economic Zones Division in the Department of Commerce immediately*** *and in any case not later than seven days of initiation of any action."*

14. My client submits that only the enforcement officers appointed in terms of the above Notification for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the Special Economic Zone. Such powers cannot have been exercised by any other authority, then as notified.

15. My client submits that the Seizure Memo dated 13.12.2023, was issued after more than 9 months from the date of panchanama and recovery being caused. The Seizure Memo has been issued by Senior Intelligence Officer, holding that the goods is placed under seizure under the provisions of Customs Act, 1962. In terms of the Notification only the Additional Director is empowered to exercise power of seizure. The goods have been seized by an officer who did not have the authority to exercise such powers, consequently the impugned Show Cause Notice arising consequent to such search and seizure which is legally unsustainable deserves to be dropped.

16. Vide another Notification No. S.O. 2667(E) dated 05.08.2016, the ***jurisdictional Commissioner of Customs*** was also notified in respect of offences under the Customs Act.

17. Hence, as per Section 21 (2) of the Act, the Central Government was empowered to notify officer and/or agency to give them powers to search, seize etc, the Central Government specifically gave powers only to the ***Jurisdictional Commissioner or the Additional Director General of the DRI***, the power to search, seize etc.

18. My clients state that the initiation of the investigation in relation to search was authorized by Deputy Director, DRI, who was not the officer appointed by the Notification and therefore in ex-facie contravention of S.O. 2666(E)] dated 5th August 2016, and S.O.2667 (E) dated 5th August, 2016 issued by Central Government [in exercise of powers conferred by sub-section 2 of Section 21 and second proviso to Section 22 of the Special Economic Zones Act, 2005]. The Notification does not confer any power upon the Additional Director General, delegating of the powers and functions upon any other officer. The appointment of Additional Director for carry out the investigation, is with sole intention that no frivolous misuse of powers are caused by the officers, in their excitement and the officer appointed is reasonable and responsible enough to apply

his mind, while exercising the powers. Any other officer of the DRI could not have exercised such powers. Hence, the Show Cause Notice being based on investigation caused by an authority not having jurisdiction to conduct the same has vitiated the investigation.

19. The guidelines provide that vide Notification S.O. 2666(E)] dated 5th August 2016, the enforcement officers for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the SEZ and shall intimate the details of any action initiated under sub-section (3) of section 21 of the SEZ Act to the Joint Secretary in charge of SEZ. Since, the investigation proceeding conducted by the officers of the DRI, was itself without jurisdiction and that there was no compliance made in relation to the notification S.O.2666 (E) was made. Therefore, the Show Cause Notice based on such investigation is improper. The Show Cause Notice deserves to be dropped on this ground alone.

20. Since the act of search and seizure of goods in respect of Sachin SEZ units, by officers of DRI, is illegal and arbitrary for want of jurisdiction, the show cause notice which propose to confiscate such goods, based on the aforesaid search and seizure, have no basis of whatsoever nature and, do not survive by virtue of the doctrine of ***sublatofundamentocadit opus***.

21. In the present case no such procedure as prescribed have been carried out and/or conducted about any such compliance of the pre-requisite condition for initiating the investigation proceedings against a Unit based in SEZ area. Show Cause Notice based on investigation being carried out by an authority not having jurisdiction, is bad-in-law and hence the Show Cause Notice deserves to be dropped.

22. In the context of show cause notices (SCNs) issued under the Customs Act, 1962, concerning SEZ units, it's generally understood that the Development Commissioner's approval or sanction may indeed be required. This requirement is often grounded in the authority vested in the Development Commissioner under the SEZ Act to oversee and regulate various activities within the SEZ, including customs-related matters.

23. The Development Commissioner plays a crucial role in SEZ administration and acts as a nodal authority for facilitating various permissions, clearances, and compliance matters. Given their oversight role, it's not uncommon for SEZ-specific procedures to mandate that any significant actions, such as the issuance of show cause notices affecting SEZ units under the Customs Act, require the approval or sanction of the Development Commissioner, which has not been obtained prior to issuance of Show Cause Notice.

24. Hon'ble Supreme Court in Management of Express Newspapers (Private) Ltd., Madras v. The Workers and Others reported in AIR 1963 SC 569 has held that jurisdiction issue must be decided first as they go to the root of the matter.

25. My client states that vide Circular No.11/2017-Cus dated 31.03.2017 has issued clarification as regards operationalization of functions of

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appropriate authority and time limitation and also issues relating to adjudication. Standard Operating Procedure prescribes that where demand has to be made, a draft demand / Show Cause Notice shall be prepared by the Specified Officer / Authorized Officer in the concerned office of the Development Commissioner and should be transferred to DC/AC in the office of jurisdictional Customs along with all Relied Upon Documents. The captioned Show Cause Notice has not been issued in the manner prescribed under the SOP and appears to have not been prepared in the office of the Development Commissioner. The purpose of adopting such SOP is that there remains transparency in the proceedings, which is monitored by the Development Commissioner and the assessees are not harassed un-necessarily and such a proceeding has to be compulsorily complied with. My client submits that the Show Cause Notice and documents relied up does not mention anywhere as to whether the aforesaid procedure was followed while issuance of Show Cause Notice. Hence, the Show Cause Notice deserves to be dropped.

Section 124 does not empower authority to issue Show Cause Notice:

26. My client states that, the Show Cause Notice has been issued invoking section 124 of the Act, which is without jurisdiction and/or authority of law inasmuch as the said provision do not confer any power of issuance of a '*show cause notice*', which can be exercised by any officer of customs, let alone the proper officer.

27. Section 124 of the Act provides as under:

> "***Section 124. Issue of show cause notice before confiscation of goods, etc.*** -
>
> *No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -*
>
> *(a) is given a notice in 1[writing with the prior approval of the officer of Customs not below the rank of 2[an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*
>
> *(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and*
>
> *(c) is given a reasonable opportunity of being heard in the matter :*
> *Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.*
>
> *Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.*"

28. From reading of the foregoing provision, it is clear and unambiguous, that the same clarifies the following:

a. The provision prescribes certain commandments in sub-section (1) which have to followed in letter and spirit before passing of any order of confiscation or imposition of any penalty on any person under Chapter XIV of the Act;

b. The inherent nature of the said commandments is representative of principles of natural justice particularly the doctrine of *audialterampartem* which cannot be dispelled with while passing an order of confiscation or imposition of penalty in terms of Chapter XIV of the Act;

c. The authority in whom the power to issue show cause in terms of the said provision is patently unclear;

d. The authority in whom the power to adjudicate the purportedly issued show cause notice in terms of the said provision is also patently unclear;

e. Employment of the word '*notice*' in first proviso to sub-section (1) is also not reflective/indicative of the power of issuance of a show cause notice envisaged under sub-section (1);

f. Recognition of power of issuance of show cause notice, in terms of clause (a) to sub-section (1), in the second proviso is misplaced and not a true reflection of the legislative intent embedded in the warp and woof of the said provision; and

g. Clause (a) of sub-section (1) of the said provision does not confer any power on any person to 'issue' a show cause notice inasmuch as the clear, unambiguous, and express language employed therein merely sets out the necessity to give a notice and the features/characteristics of such notice – fulfilment whereof would lend the said '*notice*' necessary validity in the eyes of law.

29. My client states that, Section 124 does not confer any power to issue Show Cause Notice upon the Additional Commissioner any authority as such, hence the entire proceeding initiated on the basis of such provision, vitiates the fundamental basis on which the same stands. It is a settled legal proposition that when action on the basis of which the primary proceeding stands vitiated, all subsequent and consequential proceeding would fall.

30. It is no more *res integra* that:

i. Taxation statutes have to be strictly interpreted; and

ii. Fealty has to be pledged to the literal meaning of the statute in cases where the language of the statute is clear and unambiguous.

31. My client states that, without an iota of doubt, it may be appreciated that the explicit language of section 124 of the Act neither confers any power to issue show cause notice nor envisages issuance of show cause notice by invocation of the provisions therein. The only reference qua show cause notice therein is limited to spotlight adherence to the principles of natural justice, bereft whereof no order of confiscation or imposition of penalty under Chapter XIV of the Act can be passed.

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32. My client states that, Section 124 of the Customs Act, 1962, provides that the Show Cause Notice can be issued only with the prior approval of the officers of Customs not below rank of an Assistant Commissioner of Customs, thereby meaning that the officer above the rank of Assistant Commissioner of Customs can accord only approval for issuance of Show Cause Notice.

33. My client submits that therefore, the Show Cause Notice issued under section 124 of the Act, which does not confer any such power inasmuch is without jurisdiction and authority of law and the same deserves to be quashed and/or set-aside, in the interest of justice.

My client wishes to be heard in person before any order is passed, in the matter."

36.47 The noticee M/s SUN TAI HK LTD, Unit 502, 5/F, Hart Avenue Plaza, 5-9 Hart Avenue, T.S.T. Kowloon, Hong Kong, through its authorized representative Shri Vimal Chand Bunt has submitted its defense reply vide letter dated 10.04.2024 in connection with the instant SCN Dated 26.02.2024 as under:-

"In furtherance to the Vakalatnama filed vide letter dated 22.03.2024, I have received copy of the relied upon documents through email, on behalf of my client. Upon perusing the same, my client wishes to submit as under:

1. My client at the outset, denies each and every allegation made in the Show Cause Notice and also that the Show Cause Notice is bereft of any reasoning or evidence of whatsoever nature.
2. From the perusal of the Show Cause Notice, it appears that apart from the documents furnished, there were further investigation carried out by the department, copy of which has not been furnished. My client humbly request that copies of the non-relied upon documents may also be furnished.

3. Reliance is placed on the Judgement passed by Hon'ble Madras High Court in the case of V.V. Minerals Versus CCE, reported in 2016 (332) E.L.T. 289 (Mad.), wherein it was held that no enquiry is fair and complete unless person facing it is furnished with all requisite documents, and held that plea that some of sought documents are not relied upon in show cause notice, as not acceptable. Similarly, Hon'ble CESTAT, in the case of Lauls Ltd. V/s. CCE, reported in 2009 (248) E.L.T. 747 (Tri. - Del.), has held that non-supply of non-relied upon documents amounts to violation of principles of natural justice and fair play in adjudication proceedings. Hence, all such un-relied upon documents may kindly be furnished to enable my client to file further reply.

Challenge to jurisdiction to issuance of Show Cause Notice to my client, who has never conducted any act within the territory of India:

4. My client states that the goods were exported by it from Hong Kong, which were declared and declared with the Customs authorities in accordance with the jurisdictional statutes at Hong Kong. The Show Cause Notice does not mention any detail in relation to whether any inquiry was caused by the officers of the Directorate of Revenue

Intelligence with any agency including the Customs House at Hong Kong or any inquiry with my client, prior to issuance of Show Cause Notice. My client states that no notice was issued to it, by the officers of the DRI, in relation to the subject matter of the Show Cause Notice. Without causing any enquiry from my client, as to how and on what basis, allegation has been made against my client, has not been explained. None of the statements recorded during the course of investigation and which is relied upon in the Show Cause Notice does not imputeany knowledge on the part of my client as regards the alleged breach committed by the Indian Importers. The Show Cause Notice does not rely upon any documentary evidence from Hong Kong to show that the description declared by my client at Hong Kong was in any manner not correct. The documents were filed by my client and declaration was made at Hong Kong and the goods were exported as per the declaration and which were verified by the authorities while permitting the export of the same. My client further submits that none of the acts were done by it within the jurisdiction of Customs authorities in India.

5. Be that as it may, the statutory responsibility of making correct declaration is upon the importer who files the Bill of Entry and the duty to assess the goods, at the time of clearance is upon the officer, in terms of Section 17 read with 46 and 47 of the Customs Act, 1962. The Show Cause Notice exhibits that the consignments imported were assessed and thereafter allowed clearance. The responsibility to assess and allow the goods for clearance is upon the officer of the Customs, who has been empowered to exercise such function. None of the officers of the Customs were examined during the course of investigation, to show that the assessment and clearance allowed by them, was improper in any manner.

6. Article 245 of the Constitution of India provides that:

> *"245. Extent of laws made by Parliament and by the Legislatures of States.-*
>
> *(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and Legislature of a State may make laws for the whole or any part of State.*
>
> *(2) No law made by Parliament shall be deemed to be invalid on ground that it would have extra-territorial operation."*

Article 260 of the Constitution of India provides that:

> *"260. Jurisdiction of the Union in relation to territories outside India.-*
>
> *The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, Legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force."*

7. My client submits that for exercising jurisdiction over foreign territories, the Union Government has to have an Agreement with the Government of that territory. In the present case no such agreement exist for applying any of the provisions of the Customs Act, 1962 or any other statutory provisions of laws and statutes. Hence the Show Cause Notice could not

have been issued to my client, who are foreign nationals and none of the acts in the DRI was not empowered to invoke provisions of Customs Act, 1962 against my client for any acts, deeds done or committed at Hong Kong. Consequent show cause notice is bad-in-law and deserves to be dropped vis-à-vis my client in the interest of justice.

8. As per Section 1 (2) of the Customs Act: It extends to the whole of India and save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person. Further Section 151B of the Customs Act provides that:

> *"(1) The Central Government may enter into an agreement or any other arrangement with the Government of any country outside India or with such competent authorities of that country, as it deems fit, for facilitation of trade, enforcing the provisions of this Act and exchange of information for trade facilitation, effective risk analysis, verification of compliance and prevention, combating and investigation of offences under the provisions of this Act or under the corresponding laws in force in that country.*
>
> *(2) The Central Government may, by notification, direct that the provisions of this section shall apply to the contracting State with which reciprocal agreement or arrangements have been made, subject to such conditions, exceptions or qualifications as may be specified in that notification.*
>
> *(3) Subject to the provisions of sub-section (2), the information received under sub-section (1) may also be used as evidence in investigations and proceedings under this Act.*
>
> *(4) Where the Central Government has entered into a multilateral agreement for exchange of information or documents for the purpose of verification of compliance in identified cases, the Board shall specify the procedure for such exchange, the conditions subject to which such exchange shall be made and designation of the person through whom such information shall be exchanged.*
>
> *(5) Notwithstanding anything contained in sub-section (1) or sub-section (2) or sub-section (3), anything done or any action taken or purported to have been done or taken, in pursuance to any agreement entered into or any other arrangement made by the Central Government prior to the date on which the Finance Bill, 2018 receives the assent of the President, shall be deemed to have been done or taken under the provisions of this section.*
>
> *Explanation.—For the purposes of this section, the expressions,— (i) —contracting State means any country outside India in respect of which agreement or arrangements have been made by the Central Government with the Government or authority of such country through an agreement or otherwise; (ii) —corresponding law means any law in force in the contracting State corresponding to any of the provisions of this Act or dealing with offences in that country corresponding to any of the offences under this Act."*

Each of the provisions of the Customs Act, 1962 has to be read in consonance. The provisions of Customs Act, 1962 will apply to a foreign state/country only where the Central Government has entered into an agreement or any other arrangement with the Government of any country outside India or with such competent authorities of that country, for facilitation of trade, enforcing the provisions of this Act. The Show Cause Notice has not been able to show that there is any such agreement

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or arrangement between Government of India and Hong Kong (Republic of China) for applicability of the provisions of Customs Act, 1962 for any act committed at Hong Kong. Hence in absence of any such agreement or arrangement, any act committed by my client at Hong Kong while exporting the goods would not fall within the purview of the Customs Act, 1962. Hence, no Show Cause Notice could have been issued to my client under the Customs Act, 1962 for imposition of penalty and hence the proceedings initiated against my client therefore deserves to be dropped.

9. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the matter. In such situation, the legal maxim "*sublatofundamentocadit opus*" meaning thereby that foundation being removed, structure/work falls, comes into play and applies in the present case. Hon'ble Supreme Court has held that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to quasi-judicial proceedings equally.

Show Cause Notice without jurisdiction:

10. Special Economic Zone (SEZ) is a geographically delineated duty-free enclave and is deemed to be a foreign territory for the purposes of trade operations and duties and tariffs. With a view to promote the business activity, the Special Economic Zone Act, 2005 received the assent of the President of India on 23.06.2005. Section 20, 21 and 22 of the said Act came into force on 13.01.2010. As per the Preamble of the SEZ Act, it is to provide for the establishment, development and management of the Special Economic Zone for the promotion of exports and for the matter connected therewith or incidental thereto. The SEZ Act being a special Act was specifically passed to cover all the matters pertaining to a Unit having Office/Unit within the SEZ premises.

11. Under the SEZ Act, there are no distinct offences which are enumerated. Further there are no officers specifically empowered under the Act for carrying out search, seizure etc i.e. for commencing investigation. Section 21 and 22 of the Act reads as herein below:

> *"21. Single enforcement officer or agency for notified offences.*
> *(1) The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for purposes of this Act.*
> *(2) The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offences or committed in a Special Economic Zone.*
> *(3) Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection or search or seizure as is provided under the relevant Central Act in respect of the notified offences,*
>
> *22. Investigation, inspection and search or seizure.*
> *The* ***agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation or***

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search or seizure *in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone: Provided that no investigation, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or subsection of section 21 without prior approval of the Development Commissioner concerned.*

Provided further that any officer of agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner.

12. Section 51 of the SEZ Act is clear that SEZ Act prevails over other enactments to the extent of special provisions being made under SEZ Act. Therefore, the SEZ Act would prevail over the Customs Act, 1962 in all aspects in view of the non-obstinate clause. For ready reference, section 51 of the SEZ Act if reproduced below:

"***51. Act to have overriding effect:-****The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*"

13. It would also be appropriate to refer Section 53 of the Act, which is as under:-

"***53. Special Economic Zones to be ports, airports, inland container depots, land stations, etc., in certain cases.***—
(1) A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorised operations.
(2) A Special Economic Zone shall, with effect from such date as the Central Government may notify, be deemed to be a port, airport, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act, 1962 (52 of 1962):
Provided that for the purposes of this section, the Central Government may notify different dates for different Special Economic Zones"

14. A reading of the above provisions makes it clear that the officer of the DRI does not have power or jurisdiction to inspect or seize goods in respect of units situated in SEZ area. The power to investigate in respect of any offence committed in SEZ unit is conferred on officers empowered under Section 22 of the SEZ Act. Further, section 52 of the SEZ Act also spells out that the Customs Act is not applicable in respect of units situated in SEZ unit.

15. Vide a Notification bearing No. 2665(E) dated 05.08.2016, the Central Government Notified various offence to be notified offences under the SEZ Act which includes section 28 of the Customs Act, 1962.

16. Further, vide Notification S.O. 2666(E) dated 05.08.2016, the Central Government, in exercise of the powers conferred by sub-section (2) of

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section 21 and second proviso to section 22 of the Act, inter alia notified the Additional Director General, Directorate of Revenue Intelligence for offences under the Customs Act, 1962 to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. For ease of reference the

> *"In exercise of the powers conferred by sub-section (2) of section 21 and second proviso to section 22 of the Special Economic Zones Act, 2005 (28 of 2005) (hereinafter referred as the Act), the Central Government hereby authorises the Additional Director General, Directorate of Revenue Intelligence for offences under the Customs Act, 1962 (52 of 1962) and the Additional Director General, Directorate General of Central Excise Intelligence for offences under the Central Excise Act, 1944 (1 of 1944) and the Finance Act, 1994 (32 of 1994) to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone.* ***The enforcement officer(s), for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit and shall intimate the details of any action initiated under sub-section (3) of section 21 of the Act to the Joint Secretary in charge of Special Economic Zones Division in the Department of Commerce immediately*** *and in any case not later than seven days of initiation of any action."*

17. My client submits that only the enforcement officers appointed in terms of the above Notification for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the Special Economic Zone. Such powers cannot have been exercised by any other authority, then as notified.

18. My client submits that the Seizure Memo dated 13.12.2023, was issued after more than 9 months from the date of panchanama and recovery being caused. The Seizure Memo has been issued by Senior Intelligence Officer, holding that the goods is placed under seizure under the provisions of Customs Act, 1962. In terms of the Notification only the Additional Director is empowered to exercise power of seizure. The goods have been seized by an officer who did not have the authority to exercise such powers, consequently the impugned Show Cause Notice arising consequent to such search and seizure which is legally unsustainable deserves to be dropped.

19. Vide another Notification No. S.O. 2667(E) dated 05.08.2016, the ***jurisdictional Commissioner of Customs*** was also notified in respect of offences under the Customs Act.

20. Hence, as per Section 21 (2) of the Act, the Central Government was empowered to notify officer and/or agency to give them powers to search, seize etc, the Central Government specifically gave powers only to the ***Jurisdictional Commissioner or the Additional Director General of the DRI***, the power to search, seize etc.

21. My clients state that the initiation of the investigation in relation to search was authorized by Deputy Director, DRI, who was not the officer appointed by the Notification and therefore in ex-facie contravention of

S.O. 2666(E)] dated 5th August 2016, and S.O.2667 (E) dated 5th August, 2016 issued by Central Government [in exercise of powers conferred by sub-section 2 of Section 21 and second proviso to Section 22 of the Special Economic Zones Act, 2005]. The Notification does not confer any power upon the Additional Director General, delegating of the powers and functions upon any other officer. The appointment of Additional Director for carry out the investigation, is with sole intention that no frivolous misuse of powers are caused by the officers, in their excitement and the officer appointed is reasonable and responsible enough to apply his mind, while exercising the powers. Any other officer of the DRI could not have exercised such powers. Hence, the Show Cause Notice being based on investigation caused by an authority not having jurisdiction to conduct the same has vitiated the investigation.

22. The guidelines provide that vide Notification S.O. 2666(E)] dated 5th August 2016, the enforcement officers for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the SEZ and shall intimate the details of any action initiated under sub-section (3) of section 21 of the SEZ Act to the Joint Secretary in charge of SEZ. Since, the investigation proceeding conducted by the officers of the DRI, was itself without jurisdiction and that there was no compliance made in relation to the notification S.O.2666 (E) was made. Therefore, the Show Cause Notice based on such investigation is improper. The Show Cause Notice deserves to be dropped on this ground alone.

23. Since the act of search and seizure of goods in respect of Sachin SEZ units, by officers of DRI, is illegal and arbitrary for want of jurisdiction, the show cause notice which propose to confiscate such goods, based on the aforesaid search and seizure, have no basis of whatsoever nature and, do not survive by virtue of the doctrine of ***sublatofundamentocadit opus***.

24. No such procedure as prescribed have been carried out and/or conducted about any such compliance of the pre-requisite condition for initiating the investigation proceedings against a Unit based in SEZ area. Show Cause Notice based on investigation being carried out by an authority not having jurisdiction, is bad-in-law and hence the Show Cause Notice deserves to be dropped.

25. In the context of show cause notices (SCNs) issued under the Customs Act, 1962, concerning SEZ units, it's generally understood that the Development Commissioner's approval or sanction may indeed be required. This requirement is often grounded in the authority vested in the Development Commissioner under the SEZ Act to oversee and regulate various activities within the SEZ, including customs-related matters.

26. The Development Commissioner plays a crucial role in SEZ administration and acts as a nodal authority for facilitating various permissions, clearances, and compliance matters. Given their oversight role, it's not uncommon for SEZ-specific procedures to mandate that any significant actions, such as the issuance of show cause notices affecting SEZ units under the Customs Act, require the approval or sanction of the

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Development Commissioner, which has not been obtained prior to issuance of Show Cause Notice.

27. Hon'ble Supreme Court in Management of Express Newspapers (Private) Ltd., Madras v. The Workers and Others reported in AIR 1963 SC 569 has held that jurisdiction issue must be decided first as they go to the root of the matter.

28. My client states that vide Circular No.11/2017-Cus dated 31.03.2017 has issued clarification as regards operationalization of functions of appropriate authority and time limitation and also issues relating to adjudication. Standard Operating Procedure prescribes that where demand has to be made, a draft demand / Show Cause Notice shall be prepared by the Specified Officer / Authorized Officer in the concerned office of the Development Commissioner and should be transferred to DC/AC in the office of jurisdictional Customs along with all Relied Upon Documents. The captioned Show Cause Notice has not been issued in the manner prescribed under the SOP and appears to have not been prepared in the office of the Development Commissioner. The purpose of adopting such SOP is that there remains transparency in the proceedings, which is monitored by the Development Commissioner and the assessees are not harassed un-necessarily and such a proceeding has to be compulsorily complied with. My client submits that the Show Cause Notice and documents relied up does not mention anywhere as to whether the aforesaid procedure was followed while issuance of Show Cause Notice. Hence, the Show Cause Notice deserves to be dropped.

Section 124 does not empower authority to issue Show Cause Notice:

29. The Show Cause Notice has been issued under section 124 of the Act, which is without jurisdiction and/or authority of law inasmuch as the said provision do not confer any power of issuance of a '*show cause notice*', which can be exercised by any officer of customs, let alone the proper officer.

30. Section 124 of the Act provides as under:

> "***Section 124. Issue of show cause notice before confiscation of goods, etc.*** -
>
> *No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -*
>
> *(a) is given a notice in 1[writing with the prior approval of the officer of Customs not below the rank of 2[an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*
>
> *(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and*

(c) is given a reasonable opportunity of being heard in the matter :
Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed."

31. From reading of the foregoing provision, it is clear and unambiguous, that the same clarifies the following:

a. The provision prescribes certain commandments in sub-section (1) which have to followed in letter and spirit before passing of any order of confiscation or imposition of any penalty on any person under Chapter XIV of the Act;

b. The inherent nature of the said commandments is representative of principles of natural justice particularly the doctrine of *audi alteram partem* which cannot be dispelled with while passing an order of confiscation or imposition of penalty in terms of Chapter XIV of the Act;

c. The authority in whom the power to issue show cause in terms of the said provision is patently unclear;

d. The authority in whom the power to adjudicate the purportedly issued show cause notice in terms of the said provision is also patently unclear;

e. Employment of the word '*notice*' in first proviso to sub-section (1) is also not reflective/indicative of the power of issuance of a show cause notice envisaged under sub-section (1);

f. Recognition of power of issuance of show cause notice, in terms of clause (a) to sub-section (1), in the second proviso is misplaced and not a true reflection of the legislative intent embedded in the warp and woof of the said provision; and

g. Clause (a) of sub-section (1) of the said provision does not confer any power on any person to 'issue' a show cause notice inasmuch as the clear, unambiguous, and express language employed therein merely sets out the necessity to give a notice and the features/characteristics of such notice – fulfilment whereof would lend the said '*notice*' necessary validity in the eyes of law.

32. My client submits that, Section 124 does not confer any power to issue Show Cause Notice upon the Additional Commissioner any authority as such, hence the entire proceeding initiated on the basis of such provision, vitiates the fundamental basis on which the same stands. It is a settled legal proposition that when action on the basis of which the primary proceeding stands vitiated, all subsequent and consequential proceeding would fall.

33. It is no more *res integra* that:

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i. Taxation statutes have to be strictly interpreted; and
ii. Fealty has to be pledged to the literal meaning of the statute in cases where the language of the statute is clear and unambiguous.

34. My client states that, without an iota of doubt, it may be appreciated that the explicit language of section 124 of the Act neither confers any power to issue show cause notice nor envisages issuance of show cause notice by invocation of the provisions therein. The only reference qua show cause notice therein is limited to spotlight adherence to the principles of natural justice, bereft whereof no order of confiscation or imposition of penalty under Chapter XIV of the Act can be passed.

35. My client states that, Section 124 of the Customs Act, 1962, provides that the Show Cause Notice can be issued only with the prior approval of the officers of Customs not below rank of an Assistant Commissioner of Customs, thereby meaning that the officer above the rank of Assistant Commissioner of Customs can accord only approval for issuance of Show Cause Notice.

36. My client submits that therefore, the Show Cause Notice issued under section 124 of the Act, which does not confer any such power inasmuch is without jurisdiction and authority of law and the same deserves to be quashed and/or set-aside, in the interest of justice.

37. My client reiterates her requests to furnish copies of non-relied upon documents in the interest of justice.

My client wishes to be heard in person before any order is passed, in the matter.

36.48 The noticee M/s T G INTERNATIONAL DMCC, Unit No Almas-12-F-01, Almas Tower, Plot No. Jlt-Ph1-A0, Jumeirah lake Tower, Dubai, UAE has not submitted any defense reply in connection with the instant SCN Dated 26.02.2024. has not submitted any defense reply in connection with the instant SCN Dated 26.02.2024.

36.49 The noticee M/s UNIQUE DIA LIMITED, 502, Hart Avenue Plaza, 5-9 Hart Avenue, Tsim Sha Tsui Kowloon, Hong Kong, through its authorized representative Ms. Pinky Jain has submitted its defense reply vide letter dated 10.04.2024 in connection with the instant SCN Dated 26.02.2024 as under-

1. My client at the outset, denies each and every allegation made in the Show Cause Notice and also that the Show Cause Notice is bereft of any reasoning or evidence of whatsoever nature.
2. From the perusal of the Show Cause Notice, it appears that apart from the documents furnished, there were further investigation carried out by the department, copy of which has not been furnished. My client humbly request that copies of the non-relied upon documents may also be furnished.

3. Reliance is placed on the Judgement passed by Hon'ble Madras High Court in the case of V.V. Minerals Versus CCE, reported in 2016 (332) E.L.T. 289 (Mad.), wherein it was held that no enquiry is fair and complete unless person facing it is furnished with all requisite documents, and held that plea that some of sought documents are not

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relied upon in show cause notice, as not acceptable. Similarly, Hon'ble CESTAT, in the case of Lauls Ltd. V/s. CCE, reported in 2009 (248) E.L.T. 747 (Tri. - Del.), has held that non-supply of non-relied upon documents amounts to violation of principles of natural justice and fair play in adjudication proceedings. Hence, all such un-relied upon documents may kindly be furnished to enable my client to file further reply.

Challenge to jurisdiction to issuance of Show Cause Notice to my client, who has never conducted any act within the territory of India:

4. My client states that the goods were exported by it from Hong Kong, which were declared and declared with the Customs authorities in accordance with the jurisdictional statutes at Hong Kong. The Show Cause Notice does not mention any detail in relation to whether any inquiry was caused by the officers of the Directorate of Revenue Intelligence with any agency including the Customs House at Hong Kong or any inquiry with my client, prior to issuance of Show Cause Notice. My client states that no notice was issued to it, by the officers of the DRI, in relation to the subject matter of the Show Cause Notice. Without causing any enquiry from my client, as to how and on what basis, allegation has been made against my client, has not been explained. None of the statements recorded during the course of investigation and which is relied upon in the Show Cause Notice does not imputeany knowledge on the part of my client as regards the alleged breach committed by the Indian Importers. The Show Cause Notice does not rely upon any documentary evidence from Hong Kong to show that the description declared by my client at Hong Kong was in any manner not correct. The documents were filed by my client and declaration was made at Hong Kong and the goods were exported as per the declaration and which were verified by the authorities while permitting the export of the same. My client further submits that none of the acts were done by it within the jurisdiction of Customs authorities in India.

5. Be that as it may, the statutory responsibility of making correct declaration is upon the importer who files the Bill of Entry and the duty to assess the goods, at the time of clearance is upon the officer, in terms of Section 17 read with 46 and 47 of the Customs Act, 1962. The Show Cause Notice exhibits that the consignments imported were assessed and thereafter allowed clearance. The responsibility to assess and allow the goods for clearance is upon the officer of the Customs, who has been empowered to exercise such function. None of the officers of the Customs were examined during the course of investigation, to show that the assessment and clearance allowed by them, was improper in any manner.

6. Article 245 of the Constitution of India provides that:

> *"245. Extent of laws made by Parliament and by the Legislatures of States.-*
>
> *(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and Legislature of a State may make laws for the whole or any part of State.*

(2) No law made by Parliament shall be deemed to be invalid on ground that it would have extra-territorial operation."

Article 260 of the Constitution of India provides that:

"260. Jurisdiction of the Union in relation to territories outside India.-

The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, Legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force."

7. My client submits that for exercising jurisdiction over foreign territories, the Union Government has to have an Agreement with the Government of that territory. In the present case no such agreement exist for applying any of the provisions of the Customs Act, 1962 or any other statutory provisions of laws and statutes. Hence the Show Cause Notice could not have been issued to my client, who are foreign nationals and none of the acts in the DRI was not empowered to invoke provisions of Customs Act, 1962 against my client for any acts, deeds done or committed at Hong Kong. Consequent show cause notice is bad-in-law and deserves to be dropped vis-à-vis my client in the interest of justice.

8. As per Section 1 (2) of the Customs Act: It extends to the whole of India and save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person. Further Section 151B of the Customs Act provides that:

"(1) The Central Government may enter into an agreement or any other arrangement with the Government of any country outside India or with such competent authorities of that country, as it deems fit, for facilitation of trade, enforcing the provisions of this Act and exchange of information for trade facilitation, effective risk analysis, verification of compliance and prevention, combating and investigation of offences under the provisions of this Act or under the corresponding laws in force in that country.

(2) The Central Government may, by notification, direct that the provisions of this section shall apply to the contracting State with which reciprocal agreement or arrangements have been made, subject to such conditions, exceptions or qualifications as may be specified in that notification.

(3) Subject to the provisions of sub-section (2), the information received under sub-section (1) may also be used as evidence in investigations and proceedings under this Act.

(4) Where the Central Government has entered into a multilateral agreement for exchange of information or documents for the purpose of verification of compliance in identified cases, the Board shall specify the procedure for such exchange, the conditions subject to which such exchange shall be made and designation of the person through whom such information shall be exchanged.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (2) or sub-section (3), anything done or any action taken or purported to have been done or taken, in pursuance to any agreement entered into or any other arrangement made by the Central Government prior to the date on which the Finance Bill, 2018

receives the assent of the President, shall be deemed to have been done or taken under the provisions of this section.

Explanation.—For the purposes of this section, the expressions,— (i) —contracting State means any country outside India in respect of which agreement or arrangements have been made by the Central Government with the Government or authority of such country through an agreement or otherwise; (ii) —corresponding law means any law in force in the contracting State corresponding to any of the provisions of this Act or dealing with offences in that country corresponding to any of the offences under this Act."

Each of the provisions of the Customs Act, 1962 has to be read in consonance. The provisions of Customs Act, 1962 will apply to a foreign state/country only where the Central Government has entered into an agreement or any other arrangement with the Government of any country outside India or with such competent authorities of that country, for facilitation of trade, enforcing the provisions of this Act. The Show Cause Notice has not been able to show that there is any such agreement or arrangement between Government of India and Hong Kong (Republic of China) for applicability of the provisions of Customs Act, 1962 for any act committed at Hong Kong. Hence in absence of any such agreement or arrangement, any act committed by my client at Hong Kong while exporting the goods would not fall within the purview of the Customs Act, 1962. Hence, no Show Cause Notice could have been issued to my client under the Customs Act, 1962 for imposition of penalty and hence the proceedings initiated against my client therefore deserves to be dropped.

9. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the matter. In such situation, the legal maxim "*sublatofundamentocadit opus*" meaning thereby that foundation being removed, structure/work falls, comes into play and applies in the present case. Hon'ble Supreme Court has held that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to quasi-judicial proceedings equally.

Show Cause Notice without jurisdiction:

10. Special Economic Zone (SEZ) is a geographically delineated duty-free enclave and is deemed to be a foreign territory for the purposes of trade operations and duties and tariffs. With a view to promote the business activity, the Special Economic Zone Act, 2005 received the assent of the President of India on 23.06.2005. Section 20, 21 and 22 of the said Act came into force on 13.01.2010. As per the Preamble of the SEZ Act, it is to provide for the establishment, development and management of the Special Economic Zone for the promotion of exports and for the matter connected therewith or incidental thereto. The SEZ Act being a special Act was specifically passed to cover all the matters pertaining to a Unit having Office/Unit within the SEZ premises.

11. Under the SEZ Act, there are no distinct offences which are enumerated. Further there are no officers specifically empowered under the Act for carrying out search, seizure etc i.e. for commencing investigation. Section 21 and 22 of the Act reads as herein below:

"21. Single enforcement officer or agency for notified offences.
(1) The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for purposes of this Act.
(2) The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offences or committed in a Special Economic Zone.
(3) Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection or search or seizure as is provided under the relevant Central Act in respect of the notified offences,

22. Investigation, inspection and search or seizure.
The ***agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation or search or seizure*** *in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone: Provided that no investigation, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or subsection of section 21 without prior approval of the Development Commissioner concerned.*

Provided further that any officer of agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner.

12. Section 51 of the SEZ Act is clear that SEZ Act prevails over other enactments to the extent of special provisions being made under SEZ Act. Therefore, the SEZ Act would prevail over the Customs Act, 1962 in all aspects in view of the non-obstinate clause. For ready reference, section 51 of the SEZ Act if reproduced below:

"***51. Act to have overriding effect:-****The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*"

13. It would also be appropriate to refer Section 53 of the Act, which is as under:-

"***53. Special Economic Zones to be ports, airports, inland container depots, land stations, etc., in certain cases.***—
(1) A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorised operations.
(2) A Special Economic Zone shall, with effect from such date as the Central Government may notify, be deemed to be a port, airport, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act, 1962 (52 of 1962):

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Provided that for the purposes of this section, the Central Government may notify different dates for different Special Economic Zones"

14. A reading of the above provisions makes it clear that the officer of the DRI does not have power or jurisdiction to inspect or seize goods in respect of units situated in SEZ area. The power to investigate in respect of any offence committed in SEZ unit is conferred on officers empowered under Section 22 of the SEZ Act. Further, section 52 of the SEZ Act also spells out that the Customs Act is not applicable in respect of units situated in SEZ unit.

15. Vide a Notification bearing No. 2665(E) dated 05.08.2016, the Central Government Notified various offence to be notified offences under the SEZ Act which includes section 28 of the Customs Act, 1962.

16. Further, vide Notification S.O. 2666(E) dated 05.08.2016, the Central Government, in exercise of the powers conferred by sub-section (2) of section 21 and second proviso to section 22 of the Act, inter alia notified the Additional Director General, Directorate of Revenue Intelligence for offences under the Customs Act, 1962 to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. For ease of reference the

"In exercise of the powers conferred by sub-section (2) of section 21 and second proviso to section 22 of the Special Economic Zones Act, 2005 (28 of 2005) (hereinafter referred as the Act), the Central Government hereby authorises the Additional Director General, Directorate of Revenue Intelligence for offences under the Customs Act, 1962 (52 of 1962) and the Additional Director General, Directorate General of Central Excise Intelligence for offences under the Central Excise Act, 1944 (1 of 1944) and the Finance Act, 1994 (32 of 1994) to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. ***The enforcement officer(s), for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit and shall intimate the details of any action initiated under sub-section (3) of section 21 of the Act to the Joint Secretary in charge of Special Economic Zones Division in the Department of Commerce immediately*** *and in any case not later than seven days of initiation of any action."*

17. My client submits that only the enforcement officers appointed in terms of the above Notification for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the Special Economic Zone. Such powers cannot have been exercised by any other authority, then as notified.

18. My client submits that the Seizure Memo dated 13.12.2023, was issued after more than 9 months from the date of panchanama and recovery being caused. The Seizure Memo has been issued by Senior Intelligence Officer, holding that the goods is placed under seizure under the provisions of Customs Act, 1962. In terms of the Notification only the Additional Director is empowered to exercise power of seizure. The

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goods have been seized by an officer who did not have the authority to exercise such powers, consequently the impugned Show Cause Notice arising consequent to such search and seizure which is legally unsustainable deserves to be dropped.

19. Vide another Notification No. S.O. 2667(E) dated 05.08.2016, the ***jurisdictional Commissioner of Customs*** was also notified in respect of offences under the Customs Act.

20. Hence, as per Section 21 (2) of the Act, the Central Government was empowered to notify officer and/or agency to give them powers to search, seize etc, the Central Government specifically gave powers only to the ***Jurisdictional Commissioner or the Additional Director General of the DRI***, the power to search, seize etc.

21. My clients state that the initiation of the investigation in relation to search was authorized by Deputy Director, DRI, who was not the officer appointed by the Notification and therefore in ex-facie contravention of S.O. 2666(E)] dated 5th August 2016, and S.O.2667 (E) dated 5th August, 2016 issued by Central Government [in exercise of powers conferred by sub-section 2 of Section 21 and second proviso to Section 22 of the Special Economic Zones Act, 2005]. The Notification does not confer any power upon the Additional Director General, delegating of the powers and functions upon any other officer. The appointment of Additional Director for carry out the investigation, is with sole intention that no frivolous misuse of powers are caused by the officers, in their excitement and the officer appointed is reasonable and responsible enough to apply his mind, while exercising the powers. Any other officer of the DRI could not have exercised such powers. Hence, the Show Cause Notice being based on investigation caused by an authority not having jurisdiction to conduct the same has vitiated the investigation.

22. The guidelines provide that vide Notification S.O. 2666(E)] dated 5th August 2016, the enforcement officers for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the SEZ and shall intimate the details of any action initiated under sub-section (3) of section 21 of the SEZ Act to the Joint Secretary in charge of SEZ. Since, the investigation proceeding conducted by the officers of the DRI, was itself without jurisdiction and that there was no compliance made in relation to the notification S.O.2666 (E) was made. Therefore, the Show Cause Notice based on such investigation is improper. The Show Cause Notice deserves to be dropped on this ground alone.

23. Since the act of search and seizure of goods in respect of Sachin SEZ units, by officers of DRI, is illegal and arbitrary for want of jurisdiction, the show cause notice which propose to confiscate such goods, based on the aforesaid search and seizure, have no basis of whatsoever nature and, do not survive by virtue of the doctrine of ***sublatofundamentocadit opus***.

24. No such procedure as prescribed have been carried out and/or conducted about any such compliance of the pre-requisite condition for initiating the investigation proceedings against a Unit based in SEZ area. Show Cause Notice based on investigation being carried out by an

authority not having jurisdiction, is bad-in-law and hence the Show Cause Notice deserves to be dropped.

25. In the context of show cause notices (SCNs) issued under the Customs Act, 1962, concerning SEZ units, it's generally understood that the Development Commissioner's approval or sanction may indeed be required. This requirement is often grounded in the authority vested in the Development Commissioner under the SEZ Act to oversee and regulate various activities within the SEZ, including customs-related matters.

26. The Development Commissioner plays a crucial role in SEZ administration and acts as a nodal authority for facilitating various permissions, clearances, and compliance matters. Given their oversight role, it's not uncommon for SEZ-specific procedures to mandate that any significant actions, such as the issuance of show cause notices affecting SEZ units under the Customs Act, require the approval or sanction of the Development Commissioner, which has not been obtained prior to issuance of Show Cause Notice.

27. Hon'ble Supreme Court in Management of Express Newspapers (Private) Ltd., Madras v. The Workers and Others reported in AIR 1963 SC 569 has held that jurisdiction issue must be decided first as they go to the root of the matter.

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Section 124 does not empower authority to issue Show Cause Notice:

29. The Show Cause Notice has been issued under section 124 of the Act, which is without jurisdiction and/or authority of law inasmuch as the said provision do not confer any power of issuance of a '*show cause notice*', which can be exercised by any officer of customs, let alone the proper officer.

30. Section 124 of the Act provides as under:

"***Section 124. Issue of show cause notice before confiscation of goods, etc. -***

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in 1[writing with the prior approval of the officer of Customs not below the rank of 2[an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :
Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed."

31. From reading of the foregoing provision, it is clear and unambiguous, that the same clarifies the following:

a. The provision prescribes certain commandments in sub-section (1) which have to followed in letter and spirit before passing of any order of confiscation or imposition of any penalty on any person under Chapter XIV of the Act;

b. The inherent nature of the said commandments is representative of principles of natural justice particularly the doctrine of *audi alteram partem* which cannot be dispelled with while passing an order of confiscation or imposition of penalty in terms of Chapter XIV of the Act;

c. The authority in whom the power to issue show cause in terms of the said provision is patently unclear;

d. The authority in whom the power to adjudicate the purportedly issued show cause notice in terms of the said provision is also patently unclear;

e. Employment of the word '*notice*' in first proviso to sub-section (1) is also not reflective/indicative of the power of issuance of a show cause notice envisaged under sub-section (1);

f. Recognition of power of issuance of show cause notice, in terms of clause (a) to sub-section (1), in the second proviso is misplaced and not a true reflection of the legislative intent embedded in the warp and woof of the said provision; and

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g. Clause (a) of sub-section (1) of the said provision does not confer any power on any person to 'issue' a show cause notice inasmuch as the clear, unambiguous, and express language employed therein merely sets out the necessity to give a notice and the features/characteristics of such notice – fulfilment whereof would lend the said '*notice*' necessary validity in the eyes of law.

32. My client submits that, Section 124 does not confer any power to issue Show Cause Notice upon the Additional Commissioner any authority as such, hence the entire proceeding initiated on the basis of such provision, vitiates the fundamental basis on which the same stands. It is a settled legal proposition that when action on the basis of which the primary proceeding stands vitiated, all subsequent and consequential proceeding would fall.

33. It is no more *res integra* that:
i. Taxation statutes have to be strictly interpreted; and
ii. Fealty has to be pledged to the literal meaning of the statute in cases where the language of the statute is clear and unambiguous.

34. My client states that, without an iota of doubt, it may be appreciated that the explicit language of section 124 of the Act neither confers any power to issue show cause notice nor envisages issuance of show cause notice by invocation of the provisions therein. The only reference qua show cause notice therein is limited to spotlight adherence to the principles of natural justice, bereft whereof no order of confiscation or imposition of penalty under Chapter XIV of the Act can be passed.

35. My client states that, Section 124 of the Customs Act, 1962, provides that the Show Cause Notice can be issued only with the prior approval of the officers of Customs not below rank of an Assistant Commissioner of Customs, thereby meaning that the officer above the rank of Assistant Commissioner of Customs can accord only approval for issuance of Show Cause Notice.

36. My client submits that therefore, the Show Cause Notice issued under section 124 of the Act, which does not confer any such power inasmuch is without jurisdiction and authority of law and the same deserves to be quashed and/or set-aside, in the interest of justice.

37. My client reiterates her requests to furnish copies of non-relied upon documents in the interest of justice.

My client wishes to be heard in person before any order is passed, in the matter."

36.50 The noticee M/s UNNATI GENERAL TRADING LIMITED, Flat/Room No. 11, Blk-B, 11/F, Wing Cheong, Commercial Building, 19-25, Gervois Street, Sheung Wan, Hong Kong has not submitted any defense reply in connection with the instant SCN Dated 26.02.2024.

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36.51 The noticee M/s VENUS IMPEX TRADING LIMITED, Block E, 5F, haribest Industrial building, 45-47 AU PUI WAN ST FO.TAN, Shatin, Hong Kong has not submitted any defense reply in connection with the instant SCN Dated 26.02.2024.

36.52 The noticee M/s VERIOT TECHNOLOGIES PTE LTD, 8 Ubi Road 2, #08-10, Zervex, Singapore has not submitted any defense reply in connection with the instant SCN Dated 26.02.2024.

36.53 The noticee M/s VITAL ENERGY FZE, Elob Office no. E-15F-04, Hamriyah Free Zone Sharjah, UAE has not submitted any defense reply in connection with the instant SCN Dated 26.02.2024.

36.54 The noticee M/s XNOVA HK LIMITED, Unit D3, 15/F, TSIM, SHA, TSUI Mansion, 87 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong, through its authorized representative Shri Brijesh Pathak submitted its reply vide letter dated 10.04.2024 as under:-

"At the outset, my client denies each and every allegation made in the Show Cause Notice and also that the Show Cause Notice.

Jurisdiction to issue Show Cause Notice to an entity based beyond the territorial jurisdiction of the territory of India:

1. My client states that it had exported the goods from Hong Kong, which were declared and declared with the Customs authorities in accordance with the jurisdictional statutes at Hong Kong. The Show Cause Notice does not show as to whether any inquiry was caused by the officers of the Directorate of Revenue Intelligence with the Customs House at Hong Kong or any inquiry with my client, prior to issuance of Show Cause Notice. In fact the statements recorded and relied upon in the Show Cause Notice also does not make any imputation or knowledge about the nature of the allegation made in the Show Cause Notice. The Show Cause Notice has not brought a single documentary evidence from Hong Kong to show that the description declared at Hong Kong was in any manner not correct. The documents were filed by my client and declaration was made at Hong Kong and none of the acts were done within the jurisdiction of Customs authorities in India.

2. The responsibility of filing correct declaration is upon the importer in India and the duty to assess the goods, at the time of clearance is upon the officer. In the proceedings it appears that each and every consignments were assessed and thereafter allowed clearance. The responsibility to assess and allow the goods for clearance is upon the officer of the Customs, who has been empowered to exercise such function. None of the officers of the Customs were examined during the course of investigation, to show that the assessment and clearance allowed by them, was improper in any manner.

3. Article 245 of the Constitution of India provides that:

"245. Extent of laws made by Parliament and by the Legislatures of States.-

(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and

Legislature of a State may make laws for the whole or any part of State.

(2) No law made by Parliament shall be deemed to be invalid on ground that it would have extra-territorial operation."

Article 260 of the Constitution of India provides that:

"260. Jurisdiction of the Union in relation to territories outside India.-

The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, Legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force."

4. My client submits that for exercising jurisdiction over foreign territories, the Union Government has to have an Agreement with the Government of that territory. In the present case no such agreement exist for applying any of the provisions of the Customs Act, 1962 or any other statutory provisions of laws and statutes. Hence the Show Cause Notice could not have been issued to my client, who are foreign nationals and none of the acts in the DRI was not empowered to invoke provisions of Customs Act, 1962 against my client for any acts, deeds done or committed at Hong Kong. Consequent show cause notice is bad-in-law and deserves to be dropped vis-à-vis my client in the interest of justice.

5. As per Section 1 (2) of the Customs Act: It extends to the whole of India and save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person. Further Section 151B of the Customs Act provides that:

"(1) The Central Government may enter into an agreement or any other arrangement with the Government of any country outside India or with such competent authorities of that country, as it deems fit, for facilitation of trade, enforcing the provisions of this Act and exchange of information for trade facilitation, effective risk analysis, verification of compliance and prevention, combating and investigation of offences under the provisions of this Act or under the corresponding laws in force in that country.

(2) The Central Government may, by notification, direct that the provisions of this section shall apply to the contracting State with which reciprocal agreement or arrangements have been made, subject to such conditions, exceptions or qualifications as may be specified in that notification.

(3) Subject to the provisions of sub-section (2), the information received under sub-section (1) may also be used as evidence in investigations and proceedings under this Act.

(4) Where the Central Government has entered into a multilateral agreement for exchange of information or documents for the purpose of verification of compliance in identified cases, the Board shall specify the procedure for such exchange, the conditions subject to which such exchange shall be made and designation of the person through whom such information shall be exchanged.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (2) or sub-section (3), anything done or any action taken or purported to have been done or taken, in pursuance to any

agreement entered into or any other arrangement made by the Central Government prior to the date on which the Finance Bill, 2018 receives the assent of the President, shall be deemed to have been done or taken under the provisions of this section.

Explanation.—For the purposes of this section, the expressions,— (i) —contracting State means any country outside India in respect of which agreement or arrangements have been made by the Central Government with the Government or authority of such country through an agreement or otherwise; (ii) —corresponding law means any law in force in the contracting State corresponding to any of the provisions of this Act or dealing with offences in that country corresponding to any of the offences under this Act."

The provisions of the Customs Act, 1962 has to be read in consonance. It means that the provisions of Customs Act, 1962 will apply to a foreign state/country only where the Central Government has entered into an agreement or any other arrangement with the Government of any country outside India or with such competent authorities of that country, for facilitation of trade, enforcing the provisions of this Act. In the present case there is no such agreement or arrangement between Government of India and Hong Kong (Republic of China) for applicability of the provisions of Customs Act, 1962 for any act committed at Hong Kong. Hence any act committed by my client at Hong Kong while supplying the goods does not fall within the purview of the Customs Act, 1962. The proceedings under the Customs Act, 1962 initiated against my client for allegedly supplying the goods is without authority of law and hence the proceedings initiated against my client therefore deserves to be dropped.

6. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the matter. In such situation, the legal maxim "*sublatofundamentocadit opus*" meaning thereby that foundation being removed, structure/work falls, comes into play and applies in the present case. Hon'ble Supreme Court has held that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to quasi-judicial proceedings equally.

Show Cause Notice without jurisdiction:

7. Special Economic Zone (SEZ) is a geographically delineated duty-free enclave and is deemed to be a foreign territory for the purposes of trade operations and duties and tariffs. With a view to promote the business activity, the Special Economic Zone Act, 2005 received the assent of the President of India on 23.06.2005. Section 20, 21 and 22 of the said Act came into force on 13.01.2010. As per the Preamble of the SEZ Act, it is to provide for the establishment, development and management of the Special Economic Zone for the promotion of exports and for the matter connected therewith or incidental thereto. The SEZ Act being a special Act was specifically passed to cover all the matters pertaining to a Unit having Office/Unit within the SEZ premises.

8. Under the SEZ Act, there are no distinct offences which are enumerated. Further there are no officers specifically empowered under the Act for

carrying out search, seizure etc i.e. for commencing investigation. Section 21 and 22 of the Act reads as herein below:

> *"21. Single enforcement officer or agency for notified offences.*
> *(1) The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for purposes of this Act.*
> *(2) The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offences or committed in a Special Economic Zone.*
> *(3) Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection or search or seizure as is provided under the relevant Central Act in respect of the notified offences,*
>
> *22. Investigation, inspection and search or seizure.*
> *The* ***agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation or search or seizure*** *in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone: Provided that no investigation, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or subsection of section 21 without prior approval of the Development Commissioner concerned.*
>
> *Provided further that any officer of agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner.*

9. Section 51 of the SEZ Act is clear that SEZ Act prevails over other enactments to the extent of special provisions being made under SEZ Act. Therefore, the SEZ Act would prevail over the Customs Act, 1962 in all aspects in view of the non-obstinate clause. For ready reference, section 51 of the SEZ Act if reproduced below:

> "***51. Act to have overriding effect:-*** *The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*"

10. It would also be appropriate to refer Section 53 of the Act, which is as under:-

> "***53. Special Economic Zones to be ports, airports, inland container depots, land stations, etc., in certain cases.***—
> *(1) A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorised operations.*
> *(2) A Special Economic Zone shall, with effect from such date as the Central Government may notify, be deemed to be a port, airport, inland container depot, land station and land customs stations, as*

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the case may be, under section 7 of the Customs Act, 1962 (52 of 1962):
Provided that for the purposes of this section, the Central Government may notify different dates for different Special Economic Zones"

11. A reading of the above provisions makes it clear that the officer of the DRI does not have power or jurisdiction to inspect or seize goods in respect of units situated in SEZ area. The power to investigate in respect of any offence committed in SEZ unit is conferred on officers empowered under Section 22 of the SEZ Act. Further, section 52 of the SEZ Act also spells out that the Customs Act is not applicable in respect of units situated in SEZ unit.

12. Vide a Notification bearing No. 2665(E) dated 05.08.2016, the Central Government Notified various offence to be notified offences under the SEZ Act which includes section 28 of the Customs Act, 1962.

13. Further, vide Notification S.O. 2666(E) dated 05.08.2016, the Central Government, in exercise of the powers conferred by sub-section (2) of section 21 and second proviso to section 22 of the Act, inter alia notified the Additional Director General, Directorate of Revenue Intelligence for offences under the Customs Act, 1962 to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. For ease of reference the

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17. Hence, as per Section 21 (2) of the Act, the Central Government was empowered to notify officer and/or agency to give them powers to search, seize etc, the Central Government specifically gave powers only to the ***Jurisdictional Commissioner or the Additional Director General of the DRI***, the power to search, seize etc.

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19. The guidelines provide that vide Notification S.O. 2666(E)] dated 5th August 2016, the enforcement officers for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in the SEZ and shall intimate the details of any action initiated under sub-section (3) of section 21 of the SEZ Act to the Joint Secretary in charge of SEZ. Since, the investigation proceeding conducted by the officers of the DRI, was itself without jurisdiction and that there was no compliance made in relation to the notification S.O.2666 (E) was made. Therefore, the Show Cause Notice based on such investigation is improper. The Show Cause Notice deserves to be dropped on this ground alone.

20. Since the act of search and seizure of goods in respect of Sachin SEZ units, by officers of DRI, is illegal and arbitrary for want of jurisdiction, the show cause notice which propose to confiscate such goods, based on the aforesaid search and seizure, have no basis of whatsoever nature and, do not survive by virtue of the doctrine of ***sublatofundamentocadit opus***.

21. In the present case no such procedure as prescribed have been carried out and/or conducted about any such compliance of the pre-requisite

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condition for initiating the investigation proceedings against a Unit based in SEZ area. Show Cause Notice based on investigation being carried out by an authority not having jurisdiction, is bad-in-law and hence the Show Cause Notice deserves to be dropped.

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Section 124 does not empower authority to issue Show Cause Notice:

26. My client states that, the Show Cause Notice has been issued invoking section 124 of the Act, which is without jurisdiction and/or authority of law inasmuch as the said provision do not confer any power of issuance of a '*show cause notice*', which can be exercised by any officer of customs, let alone the proper officer.

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27. Section 124 of the Act provides as under:

> "***Section 124. Issue of show cause notice before confiscation of goods, etc. -***
>
> *No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -*
>
> *(a) is given a notice in 1[writing with the prior approval of the officer of Customs not below the rank of 2[an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*
>
> *(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and*
>
> *(c) is given a reasonable opportunity of being heard in the matter :*
> *Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.*
>
> *Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.*"

28. From reading of the foregoing provision, it is clear and unambiguous, that the same clarifies the following:

a. The provision prescribes certain commandments in sub-section (1) which have to followed in letter and spirit before passing of any order of confiscation or imposition of any penalty on any person under Chapter XIV of the Act;

b. The inherent nature of the said commandments is representative of principles of natural justice particularly the doctrine of *audialterampartem* which cannot be dispelled with while passing an order of confiscation or imposition of penalty in terms of Chapter XIV of the Act;
c. The authority in whom the power to issue show cause in terms of the said provision is patently unclear;
d. The authority in whom the power to adjudicate the purportedly issued show cause notice in terms of the said provision is also patently unclear;
e. Employment of the word '*notice*' in first proviso to sub-section (1) is also not reflective/indicative of the power of issuance of a show cause notice envisaged under sub-section (1);
f. Recognition of power of issuance of show cause notice, in terms of clause (a) to sub-section (1), in the second proviso is misplaced and not a true reflection of the legislative intent embedded in the warp and woof of the said provision; and

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g. Clause (a) of sub-section (1) of the said provision does not confer any power on any person to 'issue' a show cause notice inasmuch as the clear, unambiguous, and express language employed therein merely sets out the necessity to give a notice and the features/characteristics of such notice – fulfilment whereof would lend the said '*notice*' necessary validity in the eyes of law.

29. My client states that, Section 124 does not confer any power to issue Show Cause Notice upon the Additional Commissioner any authority as such, hence the entire proceeding initiated on the basis of such provision, vitiates the fundamental basis on which the same stands. It is a settled legal proposition that when action on the basis of which the primary proceeding stands vitiated, all subsequent and consequential proceeding would fall.

30. It is no more *res integra* that:
   i. Taxation statutes have to be strictly interpreted; and
   ii. Fealty has to be pledged to the literal meaning of the statute in cases where the language of the statute is clear and unambiguous.

31. My client states that, without an iota of doubt, it may be appreciated that the explicit language of section 124 of the Act neither confers any power to issue show cause notice nor envisages issuance of show cause notice by invocation of the provisions therein. The only reference qua show cause notice therein is limited to spotlight adherence to the principles of natural justice, bereft whereof no order of confiscation or imposition of penalty under Chapter XIV of the Act can be passed.

32. My client states that, Section 124 of the Customs Act, 1962, provides that the Show Cause Notice can be issued only with the prior approval of the officers of Customs not below rank of an Assistant Commissioner of Customs, thereby meaning that the officer above the rank of Assistant Commissioner of Customs can accord only approval for issuance of Show Cause Notice.

33. My client submits that therefore, the Show Cause Notice issued under section 124 of the Act, which does not confer any such power inasmuch is without jurisdiction and authority of law and the same deserves to be quashed and/or set-aside, in the interest of justice.

My client wishes to be heard in person before any order is passed, in the matter."

36.55 The noticee M/s XNOVA LIMITED , Unit D3, 15/F, TSIM, SHA, TSUI Mansion, 87 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong has not submitted any defense reply in connection with the instant SCN Dated 26.02.2024.

36.56 The noticee M/s ZHAN HONG TRADE HK LIMITED, Unit 31, 2nd Floor, Mirador Mansion, 58 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong (E-mail zhanhongtradehk@outlook.com) has not submitted any defense reply in connection with the instant SCN Dated 26.02.2024.

37. Personal Hearing:-

37.1 The Noticees were given **1st opportunity** of Personal hearing on virtual mode on 03.02.2025 & 04.02.2025.

37.1.1 The noticee M/s Sagar Diamonds Limited, SEZ, Surat, Shri Vaibhav Dipak Shah, Managing Director of M/s Sagar Diamonds Limited, SEZ, Surat, M/s RHCGlobal Exports Pvt Ltd, SEZ, Surat, Plot No 278-B, Surat Special Economic Zone, Sachin, Surat-394230, Shri Rahil Hiteshbhai Chobatia, Director of M/s RHCGlobal Exports Pvt Ltd, SEZ, Surat vide Email dtd. 02.02.2025, requested for adjournment of the hearing for 04 weeks. However, remaining Noticees appearing at Sr. No.04 to 56 of the SCN Dated 26.02.2024 neither attended the hearing nor submitted any request letter for adjournment.

37.2 2nd opportunity of Personal hearing was fixed on 19.02.2025,20.02.2025 & 21.02.2025 to all the Noticees on virtual mode.

37.2.1 The noticee M/s Sagar Diamonds Limited, SEZ, Surat, Shri Vaibhav Dipak Shah, Managing Director of M/s Sagar Diamonds Limited, SEZ, Surat, M/s RHCGlobal Exports Pvt Ltd, SEZ, Surat, Plot No 278-B, Surat Special Economic Zone, Sachin, Surat-394230, Shri Rahil Hiteshbhai Chobatia, Director of M/s RHCGlobal Exports Pvt Ltd, SEZ, Surat vide Email dtd. 19.02.2025, requested for adjournment of the hearing for 04 weeks.

37.2.2 The noticee M/s COLOR CREATIONS LIMITED, Unit Q12, 6/F, Kaiser Estate Phase 3, 11 Hok Yuen Street, Hunghom, Hong Kong through its authorized representative Shri Brijesh Pathak attended the hearing on 19.02.2025 on virtual mode and reiterated the submission made vide letter dated 10.04.2024.

37.2.3 The noticee M/s CROWN GEMS, Unit 504, 5/F, Hart avenue Plaza, 5-9 Hart Avenue, TST, Kowloon, Hong Kong through its authorized representative Shri Shrey S Lodha attended the hearing on 21.02.2025 on virtual mode and reiterated the submission made vide letter dated 12.05.2024.

37.2.4 The noticee M/s ESTRADE INTERNATIONAL LTD, RM B2, 13/F, Kaiser Estate Phase 1, 41 Man Yue Street, Hung Hom, Hong Kong through its authorized representative Mrs. Pinky Jain attended the hearing on 19.02.2025 on virtual mode and reiterated the submission made vide letter dated 10.04.2024.

37.2.5 The noticee M/s FU LEE HONG COMPANY LIMITED, 1108, 11/F, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong through its authorized representative Shri Shrey S Lodha attended the hearing on 21.02.2025 on virtual mode and reiterated the submission made vide letter dated 12.05.2024.

37.2.6 The noticee M/s GRAND CO, Room 907-8, Silver Cord Tower 2, 30, Canton Road, TST, Kowloon, Hong Kong through its authorized representative Shri Brijesh Pathak attended the hearing on 19.02.2025 on virtual mode and reiterated the submission made vide letter dated 10.04.2024.

37.2.7 The noticee M/s K.DIAM LTD, 404A, Fu Fang Ind Bldg 1 Hok Yeun Street, Hunghom, Kowloon, Hong Kong through its authorized representative Shri Shrey S Lodha, Advocate attended the hearing on 21.02.2025 on virtual mode and reiterated the submission made vide letter dated 12.05.2024.

37.2.8 The noticee M/s KJ TRADING CO., Flat/Room H block-01, -26/F baliey garden, 26 Bailey Street, Hunghon, Hong Kong through its authorized representative Shri Brijesh Pathak attended the hearing on 19.02.2025 on virtual mode and reiterated the submission made vide letter dated 10.04.2024.

37.2.9 The noticee M/s LEE FU SHING COMPANY LIMITED, 1108, 11/F, Rise Commercial, F-11, Gran Ville Circuit, TST, Kowloon, Hong Kong through its authorized representative Shri Shrey S Lodha attended the hearing on 21.02.2025 on virtual mode and reiterated the submission made vide letter dated 12.05.2024.

37.2.10 The noticee M/s MIRACLE MPS LIMITED, 8B, Dorfu Court, 5-6 Hau Fook Street, TSIM SHA TSUI, KLN, Hong Kong through its authorized representative Shri Shrey S Lodha attended the hearing on 21.02.2025 on virtual mode and reiterated the submission made vide letter dated 12.05.2024.

37.2.11 The noticee M/s MIRACLE PRIVATE LIMITED, Flat 1006, 10/F, Rise Comm Bldg, 5-11, Granville Circuit, TSIM, SHA TSUI, Hong Kong through its authorized representative Shri Shrey S Lodha attended the hearing on 21.02.2025 on virtual mode and reiterated the submission made vide letter dated 12.05.2024.

37.2.12 The noticee M/s MIRACLE TRADING HK LIMITED, Room 1006, 10/F, Rise Comm Bldg, 5-11, Granville Circuit, TST, Kowloon, Hong Kong through its authorized representative Shri Vimal Chand Bunt, Advocate attended the hearing on 21.02.2025 on virtual mode and reiterated the submission made vide letter dated 10.04.2024.

37.2.13 The noticee M/s PINK STAR HK LTD, Room No. 22, Unit-P, 1/F, Kiaser Estate Pahse 3, 11 HOK YUEN Street, Hunghom, Hong Kong (pinkstarthkltd@gmail.com) through its authorized representative Shri Brijesh Pathak attended the hearing on 19.02.2025 on virtual mode and reiterated the submission made vide letter dated 10.04.2024.

37.2.14 The noticee M/s RK TRADING HK LTD, Roon B4, 13F, Block 1, Kaiser Estate, No.41 Man Yue Steet, Hung Hom, Hong Kong through its authorized representative Shri Shrey S Lodha attended the hearing on 21.02.2025 on virtual mode and reiterated the submission made vide letter dated 12.05.2024.

37.2.15 The noticee M/s SHIV DIAMOND, Unit 7, 11th Floor, Heng Ngai Jew CTR, 4 HOK- YUEN Street, East Hung HOM, Kowloon, Hong Kong through its authorized representative Shri Brijesh Pathak attended the hearing on 19.02.2025 on virtual mode and reiterated the submission made vide letter dated 10.04.2024.

37.2.16 The noticee M/s SINOVAC LIMITED, Unit 705, 7/F, Golden Draon Plaza, 38-40 Cameron Road, T.S.T., Kowloon, Hong Kong through its authorized representative Shri Shrey S Lodha attended the hearing on 21.02.2025 on virtual mode and reiterated the submission made vide letter dated 12.05.2024.

37.2.17 The noticee M/s SPINEL HOUSE (HK), unit 1, 10/F, Tower A, hunghom Commercial Centre, 37-39 Ma tau wai Road, Hung hom, kowloon, Hong kong through its authorized representative Shri Shrey S Lodha attended the hearing on 21.02.2025 on virtual mode and reiterated the submission made vide letter dated 12.05.2024.

37.2.18 The noticee M/s SUN RAYS HK LIMITED, Flat 22, 1/F, Block 3, Kaiser Estate, 11 Hok Yuen Street, Hung Hom, Kowloon, Hong Kong through its authorized representative Shri Brijesh Pathak attended the hearing on 19.02.2025 on virtual mode and reiterated the submission made vide letter dated 10.04.2024.

37.2.19 The noticee M/s SUN TAI HK LTD, Unit 502, 5/F, Hart Avenue Plaza, 5-9 Hart Avenue, T.S.T. Kowloon, Hong Kong through its authorized representative Shri Vimal Chand Bunt attended the hearing on 21.02.2025 on virtual mode and reiterated the submission made vide letter dated 10.04.2024.

37.2.20 The noticee M/s UNIQUE DIA LIMITED, 502, Hart Avenue Plaza, 5-9 Hart Avenue, Tsim Sha Tsui Kowloon, Hong Kong through its authorized representative Ms Pinky Jain, Advocate attended the hearing on 19.02.2025 on virtual mode and reiterated the submission made vide letter dated 10.04.2024.

37.2.21 The noticee M/s XNOVA HK LIMITED, Unit D3, 15/F, TSIM, SHA, TSUI Mansion, 87 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong through its authorized representative Shri Brijesh Pathak attended the hearing on 19.02.2025 on virtual mode and reiterated the submission made vide letter dated 10.04.2024.

37.2.22 Remaining noticees appearing at Sr.No.01to10,13 to 15,17to19,21 to23,25,26,28,30,32,33,37,38,41,45,48,50 to 53,55 & 56 of the SCN Dated 26.02.2024 have neither attended the personal hearing nor requested for adjournment

37.3 **3rd**opportunity of Personal hearing was fixed on 05.03.2025 to remaining noticees appearing at Sr.No.01to10,13 to 15,17to19,21 to23,25,26,28,30,32,33,37,38,41,45,48,50 to 53,55 & 56 of the SCN Dated 26.02.2024 but they neither attended the hearing nor submitted any request letter for adjournment except the noticees appearing at Sr.No.19,32 & 37 of the SCN dated 26.02.2024 who attended the personal hearing on 06.03.2025.

37.3.1 The noticee M/s FANCY COLOR DIAM (HK) LTD, RM 1715, 17F, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong through its authorized representative Shri Hemant Dave attended the hearing on 06.03.2025 on virtual mode and reiterated the submission made vide letter dated 18.02.2025.

37.3.2 The noticee M/s LIME TRADING., RM 1715, 17/F, Rise Comm Bldg, 5-11, Granville Circuit, TST, Kowloon, Hong Kong through its authorized representative Shri Hemant Dave attended the hearing on 06.03.2025 on virtual mode and reiterated the submission made vide letter dated 18.02.2025.

37.3.3 The noticee M/s NV INTERNATIONAL., Room No. 1715, 17th Floor,Rise Commercial Building, 5-11, Gran Ville Circuit, Gran Ville Road, TST, Kowloon, Hong Kong through its authorized representative Shri Hemant Dave attended the hearing on 06.03.2025 on virtual mode and reiterated the submission made vide letter dated 18.02.2025.

37.4 A last opportunity of personal hearing to all remaining noticees (appearing at Sr.No.01to10,13to15,17,18,21 to23,25,26,28,30,33,38,41,45,48,50 to 53,55 & 56 of the SCN Dated 26.02.2024 who have not attended the personal hearing for any reason) was fixed on 24.03.2025 but they neither attended the hearing nor submitted any request letter for adjournment.

37.5 Thereafter, due to change in the adjudication Authority, fresh personal hearing letters dated 18.06.2025,25.06.2025,26.06.2025 & 07.07.2025 were issued to all noticees but noticees appearing at Sr.No.11,12,1619,20,24,27,29,31,32,34 to 37,39,40,42 to 44,46,47,49 & 54 of the SCN dated 26.02.2024 have attended the personal hearing on virtual mode and reiterated their written submission only and remaining noticees avoided and have not attended the personal hearing.

38. Discussions and Findings: -

38.1 I have carefully studied all the case records before me and considered the subject matter.

38.2 I find that as per Section 122A of the Customs Act, 1962, the Adjudicating Authority shall give an opportunity of being heard to the Noticee in a proceeding, if the Noticee so desires. Accordingly, in the present case ample opportunities were granted to M/s Sagar Diamonds Limited, Plot No 266-B, SEZ, Surat, Shri Vaibhav Dipak Shah, Managing Director of M/s Sagar Diamonds Limited, Shri Rahil Hiteshbhai Chovatia, Shri Saurin Rasiklal Shah, Shri Hirenbhai Bipinbhai Trivedi, M/s AADI HK LTD, Hong Kong, M/s AADI IMPEX, Hong Kong, M/s ADVANCE CENTURY INC LIMITED, Hong Kong, M/s ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, M/s BEL DIAM LTD,M/s CRYSTAL KING LIMITED, M/s CSY INTERNATIONAL PTE LTD, Singapore, M/s DIARECT MARKETING LIMITED,HongKong, M/s EURO TECH INTERNATIONAL TRADING LIMITED,Hong Kong, M/s GEMS STAR TRADING F.Z.E, Dubai, M/s GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED,M/s GLORY DIAMOND FZE, M/s JIYA IMPEX DMCC, Dubai, M/s JUMBO LINKS (FZE) HK LTD, M/s Keshar Trade (HK) LTD.,M/s KOEMATLIFF PRIVATE LIMITED, Singapore, M/s MARS IND & COMM SERVICES LIMITD,

M/s PACY CORPORATION LTD., M/s SAIVASCULAR PTE LTD, Singapore, M/s STALLION LIMITED, Hong Kong, M/s T G INTERNATIONAL DMCC, Dubai, M/s UNNATI GENERAL TRADING LIMITED, M/s VENUS IMPEX TRADING LIMITED, M/s VERIOT TECHNOLOGIES PTE LTD, M/s VITAL ENERGY FZE, Sharjah,UAE, M/s XNOVA LIMITED, Hong Kong, M/s ZHAN HONG TRADE HK LIMITED, Hong Kong, but they did not participate in the adjudication proceedings inspite of the fact that service of letters for personal hearings were done in terms of Section 153 of Customs Act, 1962. Further, I noticed that M/s Sagar Diamonds Limited, Plot No 266-B, SEZ, Surat and Shri Vaibhav Dipak Shah, Managing Director of M/s Sagar Diamonds Limited have acknowledged the receipt of personal hearing letter, but only asked for adjournment every time, which shows that they have nothing to submit in their defense. Section 153 of Customs Act, 1962 provides the medium of serving of communication to the assessee/noticee. The provisions of the same are as:-

Section 153 of the Customs Act reads as under -

(1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely:—

a) by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;

b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;

c) by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;

d) by making it available on the common portal;

e) by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or;

f) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.

(2) Every order, decision, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded in the manner provided in sub-section (1).

(3) When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.]

Therefore, in terms of Section 153 of the Customs Act, 1962, it is observed that Personal Hearing letters were duly served to the Noticees through post as well as on their provided mail id's, but they did not respond as if they did not have anything to submit in their defense.

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38.2.1. It becomes incumbent upon me to re-iterate and re-emphasize again here that letters for personal hearing had been issued on 03.02.2025, 19.02.2025,20.02.2025,05.03.2025,24.03.2025,18.06.2025,26.03.2025,07.07.2025 & 08.07.2025 and all these letters are well communicated to the said assesses in advance but they have neither bothered to attend the personal hearing nor have they filed written defence reply and have only harped on and argued for adjournment and seeking time to file their written submission. I would like to mention or rather record it here that proviso to Section 122A of the Customs Act, 1962 provides that adjournment shall not be granted more than three times to a party during the proceeding. As I have recorded hereinabove, the said noticees have not bothered to the ongoing adjudication proceedings. In light of the situation elaborated as above, I am left with no other option but to take up the case for adjudication based on records available in file as the proceedings/show cause notices cannot be kept undecided just because of the unresponsive and recalcitrated behavior of the said noticees to the adjudication process inspite of providing ample opportunity for attending the personal hearing and also provided sufficient time to submit their written submission as the Show Cause Noticee was issued on 26.02.2024 and it was specifically mentioned in the SCN that all noticees would submit their written submission with in 30 days of issuance of SCN, even after passing more than 16 months, the noticees have failed to submit their written or oral submission.

Further, I do not find it appropriate to wait perennially to fulfill the incessant demands that are thrown up by the noticees and or wait for someuncertain time in future. It has been more than 16 months, since the Show Cause Notice was issued by the competent authority. I find that ample time has lapsed for preparation of written submission by the said noticees. However, the matter remains in limbo even after providing sufficient time to file their submission or to present themselves before adjudicating authority, in as much as the noticees have not filed their final reply nor has the noticees appeared for personal hearing.

In view of the facts and circumstances and the aforementioned detailed discussion, I am constrained to hold a view that any further claim of the noticees of denial of principals of natural justice does not hold much water and as such denial can not be held to be violative of principles of natural justice.I find that M/s Sagar Diamonds Limited, Plot No 266-B, SEZ, Surat, Shri Vaibhav Dipak Shah, Managing Director of M/s Sagar Diamonds Limited, Shri Rahil Hiteshbhai Chovatia, Shri Saurin Rasiklal Shah, Shri Hirenbhai Bipinbhai Trivedi, M/s AADI HK LTD, Hong Kong, M/s AADI IMPEX, Hong Kong, M/s ADVANCE CENTURY INC LIMITED, Hong Kong, M/s ANHUI QIHANG

SUPPLY CHAIN MANAGEMENT CO.LTD, M/s BEL DIAM LTD,M/s CRYSTAL KING LIMITED, M/s CSY INTERNATIONAL PTE LTD, Singapore, M/s DIARECT MARKETING LIMITED,HongKong, M/s EURO TECH INTERNATIONAL TRADING LIMITED,Hong Kong, M/s GEMS STAR TRADING F.Z.E, Dubai, M/s GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED,M/s GLORY DIAMOND FZE, M/s JIYA IMPEX DMCC, Dubai, M/s JUMBO LINKS (FZE) HK LTD, M/s Keshar Trade (HK) LTD.,M/s KOEMATLIFF PRIVATE LIMITED, Singapore, M/s MARS IND & COMM SERVICES LIMITD, M/s PACY CORPORATION LTD., M/s SAIVASCULAR PTE LTD, Singapore, M/s STALLION LIMITED, Hong Kong, M/s T G INTERNATIONAL DMCC, Dubai, M/s UNNATI GENERAL TRADING LIMITED, M/s VENUS IMPEX TRADING LIMITED, M/s VERIOT TECHNOLOGIES PTE LTD, M/s VITAL ENERGY FZE, Sharjah,UAE, M/s XNOVA LIMITED, Hong Kong, M/s ZHAN HONG TRADE HK LIMITED, Hong Kong have failed to appear for Personal Hearing, inspite of being provided opportunity to appear in person several times as detailed in foregoing para for defending their case. Under such circumstance, there is no option left for me but to proceed with the adjudication proceedings ex-parte in terms of merit of the case.

38.2.2. With regard to the proceeding to decide the case ex-parte, support is drawn from the following case laws:

38.2.2.1. Hon'ble High Court of Kerala in the case of United Oil Mills Vs. Collector of Customs &C.Ex. Cochin reported in 2000 (124) ELT 53 (Ker.) has held that:

> *"19. No doubt hearing includes written submissions and personal hearing as well but the principle ofAudi Alteram Partem does not make it imperative for the authorities to compel physical presence of the party concerned for hearing and go on adjourning the proceeding so long the party concerned does not appear before them. What is imperative for the authorities is to afford the opportunity. It is for the party concerned to avail the opportunity or not. If the opportunity afforded is not availed of by the party concerned, there is no violation of the principles of natural justice. The fundamental principles of natural justice and fair play are safeguards for the flow of justice and not the instruments for delaying the proceedings and thereby obstructing the flow of justice. In the instant case as stated in detail in preceding paragraphs, repeated adjournments were granted to the petitioners, dates after dates were fixed for personal hearing, petitioners filed written submissions, the administrative officer of the factory appeared for personal hearing and filed written submissions, therefore, in the opinion of this Court there is sufficient compliance of the principles of natural justice as adequate opportunity of hearing was afforded to the petitioners.*
>
> *21. It may be recalled here that the requirement of natural justice varies from cases to cases and situations to situations. Courts cannot insist that under all circumstances personal hearing has to be afforded. Quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the persons concerned but it cannot be held that before dismissing such applications in all events the quasi-judicial authorities must hear the applicants personally. When principles of natural justice require an opportunity before an adverse order is*

passed, it does not in all circumstances mean a personal hearing. The requirement is complied with if the person concerned is afforded an opportunity to present his case before the authority. Any order passed after taking into consideration the points raised in such applications shall not be held to be invalid merely on the ground that no personal hearing had been afforded. This is all the more important in the context of taxation and revenue matters. SeeUnion of India and Another v. M/s. Jesus Sales Corporation [1996 (83) E.L.T. 486 (S.C.) = J.T. 1996 (3) SC 597]."

38.2.2.2. Hon'ble Tribunal of Mumbai in the case of Sumit Wool Processors v. CC, Nhava Sheva reported in 2014 (312) E.L.T. 401 (Tri. - Mumbai) has observed as under:

"8.3 We do not accept the plea of Mr. Sanjay Kumar Agarwal and Mr. Parmanand Joshi that they were not heard before passing of the impugned orders and principles of natural justice has been violated. The records show that notices were sent to the addresses given and sufficient opportunities were given. If they failed in not availing of the opportunity, the mistake lies on them. When all others who were party to the notices were heard, there is no reason why these two appellants would not have been heard by the adjudicating authority. Thus the argument taken is only an alibi to escape the consequences of law. Accordingly, we reject the plea made by them in this regard."

38.2.2.3. Hon'ble High Court of Delhi in the case of Saketh India Ltd Vs. Union of India reported in 2002 (143) ELT 274 (Del), has observed that:

"Natural justice - Ex parte order by DGFT - EXIM Policy - Proper opportunity given to appellant to reply to show cause notice issued by Addl. DGFT and to make oral submissions, if any, but opportunity not availed by appellant - Principles of natural justice not violated by Additional DGFT in passing ex parte order - Para 2.8(c) of Export-Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992. - Admittedly, the appellant herein did not respond to the show cause notice. Thereafter, the appellant was called for personal hearing on six subsequent dates. According to the Additional DGFT nobody appeared on behalf of the appellant inspite of various dates fixed for personal appearance of the appellant and in these circumstances, the Additional DGFT proceeded with the matter ex parte and passed the impugned order. The appellant had the knowledge of the proceedings but neither any reply to the show cause notice was given nor it chose to appear before the Additional DGFT to make oral submissions. Thus it is a clear case where proper opportunity was given to the appellant to reply to show cause notice and to make oral submissions, if any. However, fault lies with the appellant in not availing of these opportunities. The appellant cannot now turn around and blame the respondents by alleging that the Additional DGFT violated principles of natural justice or did not give sufficient opportunity to the appellant to present its case."

38.2.2.4. The Hon'ble CESTAT, Mumbai in the case of Gopinath Chem Tech. Ltd Vs. Commissioner of Central Excise, Ahmedabad-II reported in 2004 (171) ELT 412 (Tri. Mumbai) has held that:

"Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated."

38.2.2.5. The Hon'ble Supreme Court in the case of Jethmal Vs. Union of India reported in 1999 (110) ELT 379 (S.C.) has held as under:

"7. Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well-known principle of audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality."

38.2.2.6. Hon'ble Delhi Tribunal in the case of Commissioner of C.Ex. Vs. Pee Iron & Steel Co. (P) Ltd. reported in as 2012 (286) E.L.T. 79 (Tri. – Del) [upheld by Hon'ble Punjab & Haryana High Court reported in **2015 (316) E.L.T. A118 (P&H.)]** has observed that:

"9. Notice to the respondent has been received back undelivered with the report that address is not correct. No other address of the respondent is available on record, therefore, the respondent cannot be served with the notice without undue delay and expense. Accordingly, we are constrained to proceed ex parte order against the respondent."

In view of the discussion held in Para 38.2 to 38.2.2.6. above, in case of Noticees i.e. M/s Sagar Diamonds Limited, Plot No 266-B, SEZ, Surat, Shri Vaibhav Dipak Shah, Managing Director of M/s Sagar Diamonds Limited, Shri Rahil Hiteshbhai Chovatia, Shri Saurin Rasiklal Shah, Shri Hirenbhai Bipinbhai Trivedi, M/s AADI HK LTD, Hong Kong, M/s AADI IMPEX, Hong Kong, M/s ADVANCE CENTURY INC LIMITED, Hong Kong, M/s ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, M/s BEL DIAM LTD,M/s CRYSTAL KING LIMITED, M/s CSY INTERNATIONAL PTE LTD, Singapore, M/s DIARECT MARKETING LIMITED, Hong Kong, M/s EURO TECH INTERNATIONAL TRADING LIMITED, Hong Kong, M/s GEMS STAR TRADING F.Z.E, Dubai, M/s GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED,M/s GLORY DIAMOND FZE, M/s JIYA IMPEX DMCC, Dubai, M/s JUMBO LINKS (FZE) HK LTD, M/s Keshar Trade (HK) LTD.,M/s KOEMATLIFF PRIVATE LIMITED, Singapore, M/s MARS IND & COMM SERVICES LIMITD, M/s PACY CORPORATION LTD., M/s SAIVASCULAR PTE LTD, Singapore, M/s STALLION LIMITED, Hong Kong, M/s T G INTERNATIONAL DMCC, Dubai, M/s UNNATI GENERAL TRADING LIMITED, M/s VENUS IMPEX TRADING LIMITED, M/s VERIOT TECHNOLOGIES PTE LTD, M/s VITAL ENERGY FZE, Sharjah,UAE, M/s XNOVA LIMITED, Hong Kong, M/s ZHAN HONG TRADE HK LIMITED, Hong Kong I proceed to adjudicate the Show Cause Notice F. No. GEN/ADJ/ADC/336/2024-DIV-SRT-CUST-COMMRTE-AHMEDABAD Dated 26.02.2024 ex parte.

38.2 I have carefully studied all the Statements of the persons recorded under Section 108 Customs Act. I have carefully considered the facts of the case and I find from the subject Statements of all the cited persons recorded under Section 108 the Customs Act,1962(which is not being reiterated again for the sake of mere repetition), the fact that the said persons whose statements were

recorded under Section 108 the Customs Act,1962 wherein they agreed with the facts, as follows, and also that each of their version fitted into the others admission during the recording of their Statements, which in crescendo corroborates the subject facts on record, listed as follows:

38.3 Facts on Record

1. The fact of mis-declaration on import of 'Synthetic Ruby' in guise of 'Cut and Polished Precious Stone (Ruby)' and raising of commercial invoices by the overseas suppliers of inflated value of imported goods to the tune of **Rs.9275,81,51,898/-** as against the actual value **Rs.5,69,78,996/-** and acceptance thereof by the main noticee M/s Sagar Diamonds Ltd, SEZ, Surat during the period from 01.04.2019 to 01.03.2023. Further, the fact of mis-declaration on export of 'Synthetic Ruby' studded silver jewellery in the guise of 'Silver Jewellery studded with Ruby' and issuance of inflated value of exported goods to the tune of **Rs.9507,29,68,954/-** as against the actual value **Rs.17,31,64,457/-** during the same period of 01.06.2019 to 01.03.2023. Further, this was evidenced by the fact as witnessed vide the Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023.

2. The fact of agreement with the quality and value of the goods imported, the statement dated 03.03.2023 of Shri Hirenbhai Bipinbhai Trivedi, Production Manager cum Authorized Signatory of M/s Sagar Diamonds Limited, SEZ, Surat after perusal of the valuation report provided by Shri Anmol Jain, Govt. registered valuer for jewellery, New Delhi is also on record.

3. The fact of routing of money by illegal means through banking channel (without actual business) and siphoning off **Rs.7468.43** Crore from India to abroad against import of goods in SEZ, a well created Trade based Money Laundering (TBML) mechanism.

4. The foreign outward remittances to the tune of **Rs.7468,43,27,419/- and the foreign inward remittances to the of Rs.135,24,59,404/-which is not in relation to the transaction of export, thereby** siphoning off **Rs.7468.43** Crore.

5. The facts unearthed by the investigation carried out on the basis bank statement of various firms/companies from which the inflow of money had taken place in bank accounts of M/s Sagar Diamonds Ltd., SEZ, Surat that firms/companies were either dummy/non-existent/bogus in which no actual business was taking place or they only indulged in paper transaction without any physical movement of goods resulted into transfer of money from one to another and finally into the account of M/s Sagar Diamonds Ltd., Surat in order to enable it to siphon off the money to overseas suppliers.

6. Financials Incentives on record:

   a. **FOB value:-** As evident from the record the FOB value of Export is **Rs.9507,29,68,954/-** during the period from 1.06.2019 to 1.03.2023 and out of this no remittances/amount **has been**

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received in the account of M/s Sagar Diamonds Ltd., Surat **however** they made payments regularly for import consignments.

b. **CIF value:- Further, the CIF value of import is Rs. Rs.9275,81,51,898/-** and M/s Sagar Diamonds Ltd., Surat made payments regularly in the account of so-called overseas suppliers of the Synthetic Ruby.

c. The Seized Goods namely **1768 pieces** of seized synthetic ruby (35458.05 Carat) (studded in silver pendant totally weighing 17202.32 Gram) valued at **Rs.18,92,663/-** were physically available

d. Financial Benefits to Shri Saurin Rasiklal Shah being Director of the company was getting Rs.5,00,000/- as salary for liaison with Government offices. Shri Hirenbhai Bipinbhai Trivedi was working as Production Manager cum Authorised signatory of M/s Sagar Diamonds Limited, SEZ, Surat was looking after the day to day activities as per the direction of Shri Shri Vaibhav Dipak Shah, Managing Director of the Company. He also stated that he was asked to add 6% to the import value of the goods to arrive at the export value in the case of export consignments.

e. On consideration of these financial transactions and dealings, the fact that the money was parked abroad and the financial accounts (revenue) of M/s Sagar Diamonds Ltd., Surat was inflated is on record.

7. Networking/Relationship amongst the Directors and companies:

(a) Shri Vaibhav Dipak Shah, Managing Director of M/s Sagar Diamonds Limited and M/s Sagar Empire (wherein Shri Rahil Hiteshbhai Chovatia had also been a director at one point of time in both these companies as well) hatched a conspiracy with Shri Rahil Hiteshbhai Chovatia and Hong Kong/UAE and USA based persons for smuggling of synthetic ruby in guise of 'cut and polished precious stone (ruby)' from Surat SEZ and Trade Based Money Laundering

(b) Shri Vaibhav Dipak Shah and Shri Rahil Hiteshbhai Chovatia are the two Directors but Shri Vaibhav Dipak Shah, Director of M/s Sagar Diamonds Limited was the person who controlled overall operation of the said SEZ unit. He gave all the instructions related to receipt of the import consignment, manufacturing and export thereof.

(c) Shri Vaibhav Dipak Shah and Shri Rahil Hiteshbhai Chovatia were working in an organized pre-planned manner as they recruited the same set of employees for M/s Sagar Diamond Limited, M/s RHCGlobal Exports Pvt Ltd and M/s Sagar Empire Pvt Ltd and the salaries of these common employees was being paid from M/s Sagar Diamond Limited alone for their work in all three firms.

38.4 I note that subject SCN dated 26.02.2024 has proposed rejection of classification and re-classification thereof, rejection of the assessable value of Synthetic Ruby weighing **51,79,909** carat, imported by the noticee M/s Sagar Diamonds Limited, SEZ, Surat and re-determination of the value thereof,

rejection of the FOB value of **16,86,010 grams** of 'Synthetic ruby studded silver jewellery', exported by the said noticee and determination of the value thereof and imposition of penalty under Section 112(a),112(b),114,114AA and 117 of the Customs Act.

38.5 I also note that the noticee M/s Sagar Diamonds Limited, SEZ, Surat has neither submitted any reply to the SCN dated 26.02.2024 nor attended personal hearing which were given time and again, therefore, I proceed to decide the issue on the basis of material evidences available on record.

38.6 I find from material evidence on record that since the inception of M/s Sagar Diamonds Limited, SEZ, Surat, the import was of Synthetic Ruby in the guise of 'Cut & Polished Precious Stone (Ruby)'; that the **1768 pieces** of seized synthetic ruby (35458.05 Carat) (studded in silver pendant totally weighing 17202.32 Gram) valued at **Rs.18,92,663/-** were detained under panchnama dated 02/03.03.2023 and subsequently seized under panchnama dated 13.12.2023; that on being tested at the Indian Diamond Institute, evidenced that they were not Cut and polished Precious Stone(Ruby) as declared but in fact they were Synthetic Ruby; that the detained 1768 pieces of Pendant were evaluated by Expert valuer under Panchnama dated 08.12.2023 as Rs.18,92,663/- only i.e. very low as against the declared value at the time of importation/exportation.

38.7 I find from the Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 of the Indian Diamond Institute in respect of detained goods (subsequently seized) that the pendants were not studded with 'Cut and polished Precious Stone(Ruby)' but studded with 'Synthetic Ruby' and finally concluded as the pendants which were exported were not not '92.5 percent Precious Stone Studded Jewellery' but actually were 'Synthetic Ruby studded Jewellery'. I further find the Test Report No. IDI-ED-01 dated 01.03.2023 issued by Indian Diamond Institute, Surat received from the Assistant Director, HIU-1(1)(1), Directorate of Enforcement under cover of letter dated 01.03.2023, the precious stones (Ruby) which were imported by Sagar Diamonds Ltd have been found to be synthetic and of very low value in comparison to the import price shown in their respective import documentation. I also find from the valuation report of 1768 pieces of Pendants which was conducted by Expert valuer under panchnama dated 08.12.2023 as Rs.18,92,663/- only which also indicate that the wrongly declared ruby stone was actually ruby gems of low quality and value. I accept the test results as well as the valuation report of the issuing authority to apply the ratio in re-determination of the value of the goods imported as well as exported by M/s Sagar Diamonds Limited, SEZ, Surat. Thus I hold mis-declaration and mis-classification and mis-valuation in case of subject goods is established on record. I hold the classification and the value proposed in the SCN dated 26.02.2024 to be appropriate and correct.

38.8 I also find that this illegal importation/exportation of the said goods were corroborated with the evidentiary value brought on record vide the following, namely, statement dated 03.02.2023 of Shri Hirenbhai Bipinbhai Trivedi, Production Manager cum Authorized Signatory of M/s Sagar Diamonds Limited, SEZ, Surat, Panchnamas dated 13.10.2023 and 17.10.2023, drawn at the Indian Diamond Institute, Katargam, Surat, valuation panchnama dated

08.12.2023 drawn at DRI Office, Surat, material evidences available on record that M/s Sagar Diamonds Limited, SEZ, Surat have mis-declared on import of 'Synthetic Ruby' in guise of 'Cut and Polished Precious Stone (Ruby)' and accepted the commercial invoices raised by the overseas suppliers of inflated value of imported goods to the tune of **Rs.9275,81,51,898/-** as against the actual value **Rs.5,69,78,996/-(re-determined value)** during the period from 01.06.2019 to 01.03.2023.

38.9 I further find that M/s Sagar Diamonds Limited, SEZ, Surat have also mis-declared the goods export of Synthetic Ruby studded jewellery as Precious stone ruby studded jewellery to the tune of **Rs.9507,29,68,954/-** as against the actual value **Rs.17,31,64,457/- (re-determined value)** during the same period. This illegal omission and act of mis-declaration of the goods contravened the provisions of Customs Act, 1962 & SEZ Act, 2005 read with conditions specified in LOP/LOA No. SSEZ/II/006/2016-17 dated 24.10.2016, as amended, issued by the Development Commissioner, Surat SEZ in favour of M/s Sagar Diamonds Limited, SEZ, Surat. I find the evidences on record that the import of synthetic ruby and export of synthetic ruby studded jewellery by them was in a pre-determined manner to derive illegal benefits in contravention to the provisions of Customs Act, 1962, Foreign Trade (Development and Regulation) Act, 1992 and Foreign Trade (Regulation) Rules 1993.

38.10 Since the goods have improperly been imported by mis-declaring in terms of its description, classification and value I find the import of synthetic ruby by M/s Sagar Diamonds Limited, SEZ, Surat as "illegal imports" as per Section 11A (a) of the Customs Act, 1962 and this act construed as "smuggling" as defined in Section 2(39) of the Customs Act, 1962 which rendered the impugned goods i.e. synthetic ruby imported during the period from 01.06.2019 to 01.03.2023 totally weighing 51,79,909 carat valued at **Rs.5,69,78,996/-(re-determined value)** (as per Annexure-A to the SCN) liable for confiscation under the provisions of Section 111 (m) & (o) of the Customs Act, 1962 and thereby M/s Sagar Diamonds Limited, SEZ, Surat rendered itself to penalty under **Section 112(a) & (b)** of the Customs Act, 1962. I hold that M/s Sagar Diamonds Limited, SEZ, Surat act as illegal smuggling and its omission to follow the procedure of law with regard to import of subject goods have rendered liable to confiscation under Section 111 (m) & (o) of the Customs Act, 1962. On this count I find that as duty sought to be evaded has not been put to notice in subject SCN dated 26.02.2024 thus not demanded/ confirmed vide subject OIO, thereby as per the provisions of **Section 112(ii), penalty of Rs 5000/-** is attracted on this count.

38.11 Furthermore, I find that M/s Sagar Diamonds Limited, SEZ, Surat with respect to import of the synthetic Ruby weighing 51,79,909 carats valued at Rs.5,69,78,996/-(re-determined value); which are held liable to confiscation, as discussed at Para 38.10 herein above has rendered itself liable to penalty under Section 112(a) and 12(b) of the Customs Act. Further I find that the value stated for subject goods in the corresponding Bills of entry is **Rs.9275,81,51,898/-**, which is higher than the re-determined value of **Rs.5,69,78,996/-** as per law. I find that the difference in declared value and value determined as per the Customs Act,1962 is **Rs. 9270,11,72,902/-**. On this count, I hold the levy of penalty of **Rs.9270,11,72,902/-** is apt as per Section 112(v) Customs Act for as per the wordings of the provision of **Section**

112(v) Customs Act, 1962, I hold that the penalty equal to the difference in the declared value and the value thereof is to be rightly invoked in subject matter.

38.12 I further find that the synthetic ruby studded jewellery was exported in the guise of precious stone ruby studded jewellery for illegal benefits in contravention to the provisions of Customs Act, 1962, Foreign Trade (Development and Regulation) Act, 1992 and Foreign Trade (Regulation) Rules 1993. Since the goods have improperly been exported by mis-declaring in terms of its description, classification and value I find the export of synthetic ruby studded jewellery in the guise of precious stone studded jewellery by M/s Sagar Diamonds Limited, SEZ, Surat as "illegal exports" as per Section 11H of the Customs Act, 1962 and this act construed as "smuggling" as defined in Section 2(39) of the Customs Act, 1962 which rendered the impugned goods i.e. synthetic ruby studded jewellery exported during the period from 01.06.2019 to 01.03.2023 totally weighing **16,86,010 grams** valued at **Rs.17,31,64,457/-** (Rupees Seventeen Crore Thirty One Lakh Sixty Four Thousand Four Hundred Fifty Seven only) (re-determined value) as detailed in Annexure-B, liable for confiscation under the provisions of **Section 113 (i)** of the Customs Act, 1962 and thereby the penalty provision of **Section 114(iii)** the Customs Act, as proposed in subject SCN dated 26.02.2024 are out rightly attracted in subject matter. Act. Further I find that the value stated for subject goods in the corresponding shipping bills is **Rs.95,07,29,68,954/-**, which is higher than the re-determined value of **Rs.17,31,64,457/-** as per law. On this count, I hold the levy of penalty of **Rs.95,07,29,68,954/-** is apt as per **Section 114(iii) of the Customs Act** for as per the wordings of the provision of **Section 114(iii) of the Customs Act, 1962**, I hold that the penalty equal to the declared value is to be rightly invoked in subject matter.

38.13 I note that the SCN dated 26.02.2024 has invoked penalty provisions under Section 114AA Customs Act. On careful reading of the subject documents and material evidence on record, I find that illegally imported/exported Synthetic Ruby/Synthetic Ruby studded jewellery had actually been smuggled by the noticee M/s Sagar Diamonds Limited, SEZ, Surat by way of mis declaring the description, classification and value of the goods. I find fraud in the transactions of the business as evidenced in this case of illegal import/export. On close reading of the provisions and analysis of the wordings of Section 114AA I find that the penalty under this section is righty imposable on the person who intentionally and knowingly involved in false and incorrect declaration. In the instant case the noticee has deliberately and knowingly declared the incorrect inflated value of the goods at the time of export/import before the SEZ/Customs authority for illegal benefits and thereby has attracted itself penalty under the provisions of **Section 114AA the Customs Act, 1962** on this count. I find that M/s Sagar Diamonds Limited, SEZ, Surat have illegally imported synthetic ruby valued at **Rs.5,69,78,996/-** (re-determined value) (as per Annexure-A to the SCN) and have also illegally exported the goods i.e. synthetic ruby studded jewellery valued at **Rs.17,31,64,457/-**(re-determined value). The Penalty provisions under Section 114AA the Customs Act, 1962 is dependent on the value of the subject goods, wherein the said penalty shall not exceed five times the value of the subject goods.

38.14 I note that the SCN dated 26.02.2024 also proposes for penalty under Section 117 of the Customs Act,1962. On close reading of the wordings of Section 117 of the Act ibid, I find that the penalty of Rs.4,00,000/-(Rs.Four Lakhs only) can be imposed for contravention of any of the provisions of the Act ibid where no express penalty is elsewhere provided. In the instant case I find contravention of various provisions of the Customs Act,1962 like mis-classification and mis-declaration of the goods exported/imported By the noticee M/s Sagar Diamonds Limited, SEZ, Surat in connivance with its suppliers as well as buyers. I find that the noticee was duty bound to comply with the provisions of the Customs Act,1962 but failed in doing so as a result the noticee succeeded in siphoning off money from India to abroad illegally which caused huge loss to the exchequer thereby M/s Sagar Diamonds Limited, SEZ, Surat rendered itself to penalty under **Section 117 of the Customs Act**.

38.15 I also find that the **seized 1768 pieces** of seized synthetic ruby (35458.05 Carat) (studded in silver pendant totally weighing 17202.32 Gram) valued at **Rs.18,92,663/-(re-determined value)** (included in Annexure-A) were also illegally imported by way of smuggling by M/s Sagar Diamonds Limited, SEZ, Surat as discussed above, hence the said seized 1768 pieces of pendants (studded in silver pendant) are liable for confiscation under the provisions of Section 111 (m) & (o) of the Customs Act, 1962 and therefore I hold the proposal of confiscation of the seized **1768** pieces of pendants (studded in silver pendant) as proposed in the SCN dated 26.02.2024.

38.16.1 Further, since the aforementioned imported goods, having re-determined assessable value of **Rs.5,69,78,996/-**(re-determined value) and exported goods, having re-determined assessable value of **Rs.17,31,64,457/-** (re-determined value) are not physically available for confiscation (except seized 1768 pieces which were found physically available for seizure), and in such cases, redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad) wherein the Hon'ble High Court of Madras** has observed as under:

> *The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under*

Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. ***The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act.*** *We accordingly answer question No. (iii).*

38.16.2. Hon'ble High Court of Gujarat by relying on this judgment, in the case of **Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.),** has held interalia as under:-

" .

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174. ..... *In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;*

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)".

175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above."

38.16.3 Further, with reference to Section 125 of the Customs Act, with reference to Confiscation of subject goods under the Customs Act and that the subject import and subject export of said goods does not fall under the

category of prohibited under the Customs Act, I give an option to M/s Sagar Diamonds Limited., SEZ, Surat an option to pay Redemption fine in lieu of confiscation read with Section 125(2),125(3) of the Customs Act, whereby M/s Sagar Diamonds Limited., SEZ, Surat shall pay redemption fine, in addition to duties and charges payable in respect of the subject goods; and that if Redemption fine is not paid within a period of 120 days from the date of option given, such option shall become void, unless an appeal against Order is pending. Owing to the factual matrix of subject matter and the fraud and suppression involved, as established with the subject material evidence **on record, I find this case fit for imposition of Redemption fine equal to 50% value of the said imported and exported goods**.

Penalty on Shri Vaibhav Dipak Shah, Managing Director of M/s Sagar Diamonds Limited, SEZ, Surat

38.17 I note that the subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114,114AA & 117 of the Customs Act,1962 on Shri Vaibhav Dipak Shah, Managing Director of M/s Sagar Diamonds Limited, SEZ, Surat. I also note that the noticee Shri Vaibhav Dipak Shah, Managing Director of M/s Sagar Diamonds Limited, SEZ, Surat. has neither submitted any reply to the SCN dated 26.02.2024 nor attended personal hearing, therefore, I proceed to decide the issue on the basis of material evidences available on record.

38.18 I find from the contents of the statement dated 03.03.2023 of Shri Hirenbhai Bipinbhai Trivedi, Production Manager cum Authorized Signatory of M/s Sagar Diamonds Limited, SEZ, Surat recorded under Section 108 of the Customs Act,1962 that he supervised the day to day activities of the firm; that he used to report to Shri Rahil Hiteshbhai Chovatia, Director of the company; that all the instructions regarding the operations of M/s. Sagar Diamonds. Ltd., SEZ, Surat were provided by Shri Vaibhav Dipak Shah; that after an interview, Shri Vaibhav Dipak Shah, offered him a job in M/s. Sagar Diamonds. Ltd., SEZ, Surat; that Shri Vaibhav Dipak Shah used to provide him the instructions regarding the production of pendent/gold jewellery; that after receipt of the said goods in their company after import, he used to enter the details in their stock register; that thereafter, he used to issue silver and precious stone ruby to production department and thereafter, studding of ruby precious stone on silver and after that pre-polishing was done; that thereafter, ultrasonic process was done and the jewellery manufactured were handed over to quality control department; that thereafter weighment was done and received for preparation of invoice; that first he used to call Shri Vaibhav Dipak Shah over telephone and ascertained the name of party and country to whom export was to be done; that he (Shri Vaibhav Dipak Shah) had already instructed him to prepare the export invoices of approximately USD 7,00,000 by matching with the import consignment and showing value addition of 6% on import value; that he used to select ruby studded silver jewellery randomly in order to arrive at the invoice value of around USD7,00,000; that after preparation of the export invoices he used to put the ruby studded silver jewellery in small tin box, and give export documents to their CHA for generating the Shipping Bill and after receipt

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of the Shipping Bill they used to submit the sealed box to strong room of SEZ office and after Customs process the said consignment was cleared.

39.19 I find from the record that M/s Sagar Diamonds Ltd. was established in SEZ, Surat having LOA for manufacturing of various items including Precious & Semi Precious Stone studded silver jewellery; that a Mumbai based branch in the name of M/s Sagar Diamonds Ltd (GSTIN: 27AAWCS0068B1Z8) unit was also set up and opened a common Bank account for both the units. I find that Shri Vaibhav Dipak Shah succeeded in bringing money in bank accounts through DTA transactions (no physical movement of goods or rarely the physical movement of goods) through various bogus/dummy firms using fake invoices and sending the money to overseas suppliers against the inflated invoices of import of low value synthetic ruby. It is also evident that payment was made against imports from the said common bank account to overseas supplier as payment against the import on regular basis but not received any payments against export consignments. I find that by adopting this crafted modus Shri Vaibhav Dipak Shah, Managing Director of the company M/s Sagar Diamonds Ltd SEZ, Surat managed to siphon off of **Rs.7468.43** Crore from India to abroad against import of goods in SEZ.

39.20 I find that Shri Vaibhav Dipak Shah was working in an organized pre-planned manner with Shri Rahil Hiteshbhai Chovatia as they recruited the same set of employees for M/s Sagar Diamond Limited, RHCGlobal Exports Pvt. Ltd. and Sagar Empire Pvt. Ltd. and the salaries of these common employees was being paid from M/s Sagar Diamond Limited alone for their work in all three companies. I find the fact on record that Shri Vaibhav Dipak Shah, Managing Director of M/s Sagar Diamond Limited, SEZ, Surat was controlling the overall activities including import and export of the company and was in regular contact with the overseas firms. Since the inception of the company M/s Sagar Diamond Limited, SEZ, Surat he was well aware of the deliberate and pre-determined plan of smuggling of synthetic ruby/synthetic ruby studded jewellery in the guise of cut and polished precious stone ruby/precious stone studded jewellery as he is the person who had planned the entire conspiracy and designed the instant model of fraud of Trade Based Money Laundering(TBML) by way of siphoning off of money from India to abroad illegally through Banking channel. I find this also on record that Shri Vaibhav Dipak Shah has avoided the investigation as he neither joined the investigation nor co-operated during the investigation. This act of intentional avoidance and running away from the revealing of facts/truth further strengthen the intention of fraud and conspiracy played by him. From the material facts/evidences on record also indicate that Shri Vaibhav Dipak Shah is the mastermind and kingpin behind the entire fraud of siphoning off of money from India illegally. Therefore, I find that the role of Shri Vaibhav Dipak Shah is established as he was having full knowledge of import/export of synthetic ruby since the inception of the company M/s Sagar Diamonds Ltd., SEZ, Surat.

38.21 I find the role of Shri Vaibhav Dipak Shah in illegal smuggling activities in contravention to the Customs Act, as detailed vide the subject DRI Investigation which culminated in subject SCN dated 26.02.2024 and the material evidence on record in connection with the import of synthetic ruby by mis-declaring the description, classification and value of the goods valued at **Rs.9275,81,51,898/-** as against the actual value **Rs.5,69,78,996/-(re-**

determined value) during the period from 01.06.2019 to 01.03.2023. On this count of goods weighing 51,79,909 carats of imported Synthetic Ruby rendered liable to confiscation under Section 111 Customs Act, I hold that Shri Vaibhav Dipak Shah, Managing Director of M/s Sagar Diamonds Ltd., SEZ, Surat shall be liable to penalty under Section 112 Customs Act. On the count of export of synthetic ruby exported in the guise of precious stone ruby studded jewellery by mis-declaring the description, classification and value of the goods valued at **Rs.9507,29,68,954/-** as against the actual value **Rs.17,31,64,457/-(re-determined value)** during the period from 01.06.2019 to 01.03.2023 rendered liable to confiscation under Section 113 of the Customs Act,1962. I hold that Shri Vaibhav Dipak Shah, Managing Director of M/s Sagar Diamonds Ltd., SEZ, Surat shall be liable to penalty under Section 114(iii) of the Customs Act.

38.22 I note that the SCN dated 26.02.2024 has also invoked penalty provisions under Section 114AA Customs Act on Shri Vaibhav Dipak Shah, Managing Director of M/s Sagar Diamonds Ltd., SEZ, Surat. On careful reading of the subject documents and material evidence on record, I find that Shri Vaibhav Dipak Shah, Managing Director of M/s Sagar Diamonds Ltd., SEZ, Surat was instrumental in illegal import/export of Synthetic Ruby/Synthetic Ruby studded jewellery as he was in connivance with Shri Rahil Hiteshbhai Chovatia, Director of M/s RHCGlobal Exports Pvt. Ltd., SEZ, Surat had designed the entire fraud. He was involved and controlled the illegal activities of the noticee M/s Sagar Diamonds Ltd., SEZ, Surat by way of mis declaring the description, classification and value of the goods. Shri Vaibhav Dipak Shah had digitally signed and submitted the documents on behalf of the company. I find fraud in the transactions of the business as evidenced in this case of illegal import/export. On close reading of the provisions and analysis of the wordings of Section 114AA, I find that the penalty under this section is righty imposable on the person who intentionally and knowingly involved in false and incorrect declaration. In the instant case he has deliberately and knowingly declared the incorrect inflated value of the goods at the time of export/import before the SEZ/Customs authority for illegal benefits and thereby has attracted himself penalty under the provisions of **Section 114AA the Customs Act, 1962** on this count. I find that Shri Vaibhav Dipak Shah, Managing Director of M/s Sagar Diamonds Ltd., SEZ, Surat is deeply involved in illegal import of synthetic ruby valued at **Rs.5,69,78,996**/- (re-determined value) (as per Annexure-A to the SCN) and also involved in illegal export of the goods i.e. synthetic ruby studded jewellery valued at **Rs.17,31,64,457/-**(re-determined value). The Penalty provisions under Section 114AA the Customs Act, 1962 is dependent on the value of the subject goods, wherein the said penalty shall not exceed five times the value of the subject goods.

38.23 I note that the SCN dated 26.02.2024 also proposes for penalty under Section 117 of the Customs Act,1962. On close reading of the wordings of Section 117 of the Act ibid, I find that the penalty of Rs.4,00,000/-(Rs.Four Lakhs only) can be imposed for contravention of any of the provisions of the Act ibid where no express penalty is elsewhere provided. In the instant case I find contravention of various provisions of the Customs Act,1962 like mis-classification and mis-declaration of the goods exported/imported by the noticee M/s Sagar Diamonds Ltd.,SEZ, Surat which was controlled by Shri Vaibhav Dipak Shah being Managing Director of the noticee company in connivance with its suppliers as well as buyers. He was mastermind behind the entire incident of fraud in connivance with Shri Rahil Hiteshbhai Chovatia Director of M/s RHCGlobal Exports Pvt. Ltd., overseas suppliers as well as

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buyers. I find that the noticee was duty bound to comply with the provisions of the Customs Act,1962 but failed in doing so as a result the noticee succeeded in siphoning off money from India to abroad illegally which caused huge loss to the exchequer thereby Shri Vaibhav Dipak Shah rendered himself to penalty under **Section 117 of the Customs Act**.

Penalty on Shri Rahil Hiteshbhai Chovatia, Director of M/s RHCGlobal Exports Pvt. Ltd., SEZ, Surat, R/O- A-19, Jaldarshan Flats, Opp. Natraj Cinema, Ashram Road, Ahmedabad

38.24 I note that the subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a), 112 (b), 114 and 117 of the Customs Act, 1962 of the Customs Act,1962 on Shri Rahil Hiteshbhai Chovatia, Director of M/s RHCGlobal Exports Pvt. Ltd., SEZ, Surat. I also note that the noticee Shri Rahil Hiteshbhai Chovatia, Director of M/s RHCGlobal Exports Pvt. Ltd., SEZ, Surat has neither submitted any reply to the SCN dated 26.02.2024 nor attended personal hearing, therefore, I proceed to decide the issue on the basis of material evidences available on record.

38.25 I find from the contents of the statement dated 06.03.2023Shri Ajit Khushal Shah, Chartered Accountant recorded under Section 108 of the Customs Act,1962 was working for M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat, M/s Sagar Diamonds Ltd, SEZ, Surat and M/s. RHCGlobal Exports Pvt. Ltd.,SEZ, Surat; that Shri Vaibhav Dipak Shah and Shri Rahil Hiteshbhai Chovatia were looking after the overall business of the above said three firms; that Shri Rahil Hiteshbhai Chovatia was arrested by the Directorate of Enforcement, New Delhi in October-2022 in the crime of "PoC" (Proceeds of Crime) for some mischievous financial transaction and after October-2022, Shri Vaibhav Dipak Shah started looking after overall operations of (i) M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat, (ii) M/s Sagar Diamonds Ltd, SEZ, Surat and Shri Rahil Hiteshbhai Chovatia started looking after the overall operations of M/s RHCGlobal Exports Pvt Ltd only. I also find from the statement dated 10.03.2023 of Ms. Sanjana Kalambe, Junior Accountant recorded under Section 108 of the Customs Act,1962 that Shri Ajit Shah, Chartered Accountant interviewed her and hired her as Junior Accountant and informed her that she would have to work as Junior Accountant for M/s Sagar Diamonds Limited, M/s RHCGlobal Exports Private Limited and M/s Sagar Empire Jewels Private Limited; that she was getting monthly salary of Rs15,000/- from M/s Sagar Diamonds Limited; she was managing entry in Tally related to local sales and purchases of all 3 companies; that apart from her, Ms Priti Rathi, Junior Accountant used to make entries of local sales invoice and entries of import/export of all 3 companies in Tally as per the data provided by factory staff and as instructed by Shri Rahil Chovatiya and Shri Vaibhav Shah; that initially Shri Vaibhav Dipak Shah and Shri Rahil Hiteshbhai Chovatia were looking after the overall business of the above said three firms. On going through these oral evidences in the form of various statements recorded under Section 108 of the Customs Act,1962 and the investigation conducted I find that Shri Rahil Hiteshbhai Chovatia, Director M/s. RHCGlobal Exports Pvt. Ltd., SEZ, Surat, Shri Vaibhav Dipak Shah, Director of M/s Sagar Diamonds Ltd, SEZ, Surat and M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat, were also associated with the establishment of factory of M/s. RHCGlobal Exports Pvt. Ltd., SEZ, Surat and some employees of M/s. RHCGlobal Exports Pvt. Ltd., SEZ, Surat drew their salaries from M/s Sagar Diamonds Ltd.

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38.26 I find that Shri Vaibhav Dipak Shah, Managing Director of M/s Sagar Diamonds Limited and M/s Sagar Empire (wherein Shri Rahil Hiteshbhai Chovatia had also been a Director at one point of time in both these firms as well) hatched a conspiracy together and Hong Kong/ UAE and USA based persons for smuggling of synthetic ruby in guise of 'cut and polished precious stone (ruby)' from Surat SEZ and Trade Based Money Laundering. I further find that Shri Vaibhav Dipak Shah and Shri Rahil Chovatia were working in an organized pre-planned manner as they recruited the same set of employees for Sagar Diamond Limited, RHCGlobal Exports Pvt Ltd and Sagar Empire Pvt Ltd and the salaries of these common employees was being paid from Sagar Diamond Limited alone for their work in all three firms. Further the nature of work was similar in all the firms and moreover the firms to whom exports were done and the firms from whom imports were done were the same and overlapped. I also find that Shri Vaibhav Dipak Shah and Shri Rahil Hiteshbhai Chovatia both were controlling collectively the dummy firms from which funds were shown to be received without actual movement of goods in all the three firms including M/s Sagar Diamomds Ltd.,SEZ, Surat were the same. I find that Shri Rahil Hiteshbhai Chovatia was favoured by Shri Vaibhav Dipak Shah in controlling the sales and purchase of M/s RHCGlobal Exports Pvt Ltd till October, 2022 and abetted M/s Sagar Diamonds Ltd.,SEZ,Surat in siphoning off Rs.7468.43 from India to overseas suppliers. Shri Rahil Hiteshbhai Chovatia managed the money credited in bank accounts without any physical movement of goods by many of the dummy firms/ entities with the help of Shri Vaibhav Dipak Shah.

38.27 I find that both Shri Vaibhav Dipak Shah and Shri Rahil Hiteshbhai Chovatia were working in an organized pre-planned manner as they recruited the same set of employees for M/s Sagar Diamond Limited, RHCGlobal Exports Pvt. Ltd. and Sagar Empire Pvt. Ltd. and the salaries of these common employees was being paid from M/s Sagar Diamond Limited alone for their work in all three companies. I find the fact on record that Shri Rahil Hiteshbhai Chovatia and Shri Vaibhav Dipak Shah were controlling and managing the overall activities including import and export of all three aforesaid companies including M/s Sagar Diamonds Ltd. SEZ, Surat and were in regular contact with the overseas. Since the inception of the company M/s Sagar Diamonds Ltd., Ltd., SEZ, Surat Shri Rahil Hiteshbhai Chovatia was well aware of the deliberate and pre-determined plan of smuggling of synthetic ruby/synthetic ruby studded jewellery in the guise of cut and polished precious stone ruby/precious stone studded jewellery as he is the person who was instrumental in planning of the entire conspiracy and played active role in the instant model of fraud of Trade Based Money Laundering(TBML) and helped in siphoning off of money from India to abroad illegally through Banking channel. I find this also on record that Shri Rahil Hiteshbhai Chovatia has avoided the investigation as he neither joined the investigation nor co-operated during the investigation. This act of intentional avoidance and running away from the revealing of facts/truth further strengthen the intention of fraud and conspiracy played by M/s Sagar Diamonds Ltd., SEZ, Surat. From the material facts/evidences on record also indicate that Shri Rahil Hiteshbhai Chovatia abetted Shri Vaibhav Dipak Shah in masterminding the fraud committed by M/s Sagar Diamonds. Ltd.,SEZ, Surat. Therefore, I find that the role of Shri Rahil Hiteshbhai Chovatia is established as this fraud could not be possible without his involvement.

38.28 I find the role of Shri Rahil Hiteshbhai Chovatia in illegal smuggling activities in contravention to the Customs Act, as abettor as detailed vide the subject DRI Investigation which culminated in subject SCN dated 26.02.2024 and the material evidence on record in connection with the import of synthetic ruby by mis-declaring the description, classification and value of the goods valued at **Rs.9275,81,51,898/-** as against the actual value **Rs.5,69,78,996/- (re-determined value)** during the period from 01.06.2019 to 01.03.2023 by M/s Sagar Diamonds Ltd., SEZ, Surat. On this count of goods weighing 51,79,909 carats of imported Synthetic Ruby rendered liable to confiscation under Section 111 Customs Act, I hold that Shri Rahil Hiteshbhai Chovatia, Director of M/s RHCGlobal Exports Pvt. Ltd shall be liable to penalty under Section 112 Customs Act. On the count of export of synthetic ruby exported in the guise of precious stone ruby studded jewellery by mis-declaring the description, classification and value of the goods valued at **Rs.9507,29,68,954/-** as against the actual value **Rs.17,31,64,457/-(re-determined value)** during the period from 01.06.2019 to 01.03.2023 by M/s Sagar Diamonds Ltd., SEZ, Surat which were liable to confiscation under Section 113 of the Customs Act,1962, Shri Rahil Hiteshbhai Chovatia, Director of M/s RHCGlobal Exports Pvt. Ltd SEZ, Surat rendered himself for penalty, hence, I hold that Shri Rahil Hiteshbhai Chovatia, Director of M/s RHCGlobal Exports Pvt. Ltd SEZ, Surat is liable to penalty under Section 114(iii) of the Customs Act.

38.29 I note that the SCN dated 26.02.2024 also proposes for penalty under Section 117 of the Customs Act,1962. On close reading of the wordings of Section 117 of the Act ibid, I find that the penalty of Rs.4,00,000/-(Rs.Four Lakhs only) can be imposed for contravention of any of the provisions of the Act ibid where no express penalty is elsewhere provided. In the instant case I find contravention of various provisions of the Customs Act,1962 like mis-classification and mis-declaration of the goods exported/imported by M/s Sagar Diamond Ltd.,SEZ, Surat. Shri Rahil Hiteshbhai Chovatia, Director of M/s RHCGlobal Exports Pvt. Ltd SEZ, Surat had helped and connived with the suppliers as well the buyers of M/s Sagar Diamonds Ltd.,SEZ, Surat. He was mastermind behind the entire incident of fraud in connivance with Shri Vaibhav Dipak Shah, Managing Director of M/s Sagar Diamons Ltd., overseas suppliers as well as buyers. The fraud would have not been possible without the abator like Shri Rahil Hiteshbhai Chovatia. I find that the noticee was duty bound to comply with the provisions of the Customs Act,1962 but failed in doing so as a result the noticee company succeeded in siphoning off money from India to abroad illegally which caused huge loss to the exchequer thereby Shri Rahil Hiteshbhai Chovatia, Director of M/s RHCGlobal Exports Pvt. Ltd SEZ, Surat rendered himself to penalty under **Section 117 of the Customs Act**.

Penalty on Shri Saurin Rasiklal Shah, B-101, Shreeji Enclave, oppoiste Sajan Apartment, Near Anand Cross Road, Satellite, Ahmedabad (E-mail- saurinshah73@gmail.com)

38.30 I note that the subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114 and 117 of the Customs Act,1962 on **Shri Saurin Rasiklal Shah** Director of M/s Sagar Diamonds Limited, SEZ, Surat. I also note that the noticee **Shri Saurin Rasiklal Shah** Director

of M/s Sagar Diamonds Limited, SEZ, Surat. has neither submitted any reply to the SCN dated 26.02.2024 nor attended personal hearing, therefore, I proceed to decide the issue on the basis of material evidences available on record.

38.31 I find from the contents of the letter dated 13.03.2023 of Shri Saurin Rasiklal Shah forwarded on e-mail in response to Summons dated 10.03.2023 wherein he informed that he had no knowledge of any type of import of diamond/ruby; that Shri Vaibhav Dipak Shah was looking after day to day business of the company; that he was looking after work related to diamond, ruby; that he was looking after the terms and conditions associated with sale and purchase and other information and other details and was also the one making decisions regarding day to day activities and decision of business of M/s Sagar Diamonds Ltd, SEZ, Surat and M/s Sagar Empire Jewels Pvt Ltd, SEZ, Surat; that he had resigned from the post of Director in M/s Sagar Diamonds Ltd, SEZ, Surat on 10.12.2022 and in M/s Sagar Empire Jewels Pvt Ltd, SEZ, Suraton 02.11.2022. I also find from the statement dated 18.05.2023 of Shri Saurin Rasiklal Shah that he became the Director of M/s Sagar Diamonds Limited, Surat SEZ and in August-2021 and Director of M/s Sagar Empire Jewels Pvt Ltd, Surat, SEZ; that M/s Sagar Diamonds Limited had its manufacturing unit at Plot No 266-B, Surat Special Economic Zone, Sachin, Gujarat 394230 and M/s Sagar Empire Jewels Private Limited had its manufacturing unit at Plot No.-219 86 220, Block 340,341/P, SEZ Diamond Park, Sachin, Surat, Gujarat, 394230; that both the said companies had indulged in imports of cut & polished diamonds, precious gemstone (Ruby), silver and gold, then manufactured diamond embedded gold jewellery and Ruby studded silver jewellery and exported the same from SEZ Sachin; that Shri Vaibhav Dipak Shah met him in Ahmedabad and offered the position of Director in M/s Sagar Diamonds Limited, Surat SEZ on a monthly salary of Rs.5,00,000/- per month for liaison with Government offices to which he agreed; that after becoming a Director in Sagar Diamonds Limited, he used his connections to release the consignments held by SEZ authorities; that the said consignments were held by SEZ authority due to pendency of BRC against exports by Sagar Diamonds; that whenever the import consignments were held by SEZ authority due to BRC, he visited the office of the Development Commissioner/ Specified Officer and conveyed their decision to Shri Vaibhav Shah; that Shri Vaibhav Dipak Shah was personally looking after payment to overseas suppliers and buyers for both the firms; that Shri Vaibhav Dipak Shah instructed Shri Rahil Hiteshbhai Chovatia(brother-in-law of Shri Vaibhav Shah) for transfer of funds to overseas supplier; that Shri Rahil Hiteshbhai Chovatia arranged the fund from different companies; that he had attended the meetings of Board of Directors of Sagar Diamonds Limited in virtual mode many times but he was instructed by Shri Vaibhav Shah to raise his hand only in his favor during voting/meetings.

39.32 I find from the record that Shri Saurin Rasiklal Shah Director of M/s Sagar Diamonds Limited, SEZ, Surat being a matured businessman and being

a Director of a Public Limited Company must be aware and acquainted with the business model of M/s Sagar Diamonds Limited, SEZ, Surat. He had accepted Rs.5,00,000/- as salary from the company M/s Sagar Diamonds Ltd. for illegal help to Shri Vaibhav Dipak Shah, Managing Director of M/s Sagar Diamonds Limited, Surat even Shri Saurin Rasiklal Shah attended the board meetings and followed the illegal instructions passed by Shri Vaibhav Dipak Shah. This act of Shri Saurin Rasiklal Shah clearly establish/prove the involvement of the instant fraud committed by the company and its Managing Director. I find that Shri Saurin Rasiklal Shah was also aware that the improper transaction to the overseas suppliers was being done under the instruction of Shri Vaibhav Dipak Shah to Shri Rahil Hiteshbhai Chovatia; that Shri Vaibhav Dipak Shah succeeded in bringing money in bank accounts through DTA transactions (no physical movement of goods or rarely the physical movement of goods) through various bogus/dummy firms using fake invoices and sending the money to overseas suppliers against the inflated invoices of import of low value synthetic ruby. It is also evident that payment was made against imports from the said common bank account to overseas supplier as payment against the import on regular basis but not received any payments against export consignments. I find that Shri Saurin Rasiklal Shah was silent in adopting this crafted modus by Shri Vaibhav Dipak Shah, Managing Director of the company M/s Sagar Diamonds Ltd SEZ, Surat as he was getting a hefty salary of Rs.5,00,000/- per month, I find that with the help of Shri Saurin Rasiklal Shah Shri Vaibhav Dipak Shah managed to siphon off of **Rs.7468.43** Crore from India to abroad against import of goods in SEZ.

39.33 I find that Shri Saurin Rasiklal Shah was in association with Shri Vaibhav Dipak Shah and Shri Rahil Hiteshbhai Chovatia in an organized pre-planned manner fraud. Since the inception of the company M/s Sagar Diamond Limited, SEZ, Surat he was well aware of the deliberate and pre-determined plan of smuggling of synthetic ruby/synthetic ruby studded jewellery in the guise of cut and polished precious stone ruby/precious stone studded jewellery and became part of the well designed the instant model of fraud of Trade Based Money Laundering(TBML) by way of siphoning off of money from India to abroad illegally through Banking channel. I find this also on record that Shri Saurin Rasiklal Shah has initially avoided the investigation and not co-operated during the investigation. This act of intentional avoidance and running away from the revealing of facts/truth further strengthen the intention of fraud and conspiracy played by him. From the material facts/evidences on record also indicate that Shri Saurin Rasiklal Shah is the part of masterminding the entire fraud of siphoning off of money from India illegally. Therefore, I find that the role of Shri Saurin Rasiklal Shah is established as he was having full knowledge of import/export of synthetic ruby since the inception of the company M/s Sagar Diamonds Ltd., SEZ, Surat.

38.34 I find the role of Shri Saurin Rasiklal Shah in illegal smuggling activities in contravention to the Customs Act, as detailed vide the subject DRI Investigation which culminated in subject SCN dated 26.02.2024 and the material evidence on record in connection with the import of synthetic ruby by mis-declaring the description, classification and value of the goods valued at **Rs.9275,81,51,898/-** as against the actual value **Rs.5,69,78,996/-(re-determined value)** during the period from 01.06.2019 to 01.03.2023. On this count of goods weighing 51,79,909 carats of imported Synthetic Ruby rendered liable to confiscation under Section 111 Customs Act, I hold that Shri Saurin Rasiklal Shah, Director of M/s Sagar Diamonds Ltd., SEZ, Surat shall be liable

to penalty under Section 112 Customs Act. On the count of export of synthetic ruby exported in the guise of precious stone ruby studded jewellery by mis-declaring the description, classification and value of the goods valued at **Rs.9507,29,68,954/-** as against the actual value **Rs.17,31,64,457/-(re-determined value)** during the period from 01.06.2019 to 01.03.2023 rendered liable to confiscation under Section 113 of the Customs Act,1962. I hold that Shri Saurin Rasiklal Shah, Director of M/s Sagar Diamonds Ltd., SEZ, Surat shall be liable to penalty under Section 114(iii) of the Customs Act.

38.35 I note that the SCN dated 26.02.2024 has also invoked penalty provisions under Section 114AA Customs Act on Shri Saurin Rasiklal Shah, Director of M/s Sagar Diamonds Ltd., SEZ, Surat. On careful reading of the subject documents and material evidence on record, I find that Shri Saurin Rasiklal Shah, Director of M/s Sagar Diamonds Ltd., SEZ, Surat was instrumental in designing of this illegal import/export of Synthetic Ruby/Synthetic Ruby studded jewellery as he was in connivance with Shri Shri Vaibhav Dipak Shah, Managing Director of M/s Sagar Diamonds Limited., Surat and Shri Rahil Hiteshbhai Chovatia, Director of M/s RHCGlobal Exports Pvt. Ltd., SEZ, Surat. He was also involved in the illegal activities of the noticee M/s Sagar Diamonds Ltd., SEZ, Surat by way of mis declaring the description, classification and value of the goods. I find fraud in the transactions of the business as evidenced in this case of illegal import/export. On close reading of the provisions and analysis of the wordings of Section 114AA, I find that the penalty under this section is righty imposable on the person who intentionally and knowingly involved in false and incorrect declaration. In the instant case he has deliberately and knowingly involved in declaration of the incorrect inflated value of the goods at the time of export/import before the SEZ/Customs authority for illegal benefits and thereby has attracted himself penalty under the provisions of **Section 114AA the Customs Act, 1962** on this count. I find that Shri Saurin Rasiklal Shah, Director of M/s Sagar Diamonds Ltd., SEZ, Surat. is deeply associated in the involvement in illegal import of synthetic ruby valued at **Rs.5,69,78,996**/- (re-determined value) (as per Annexure-A to the SCN) and in illegal export of the goods i.e. synthetic ruby studded jewellery valued at **Rs.17,31,64,457/-**(re-determined value). The Penalty provisions under Section 114AA the Customs Act, 1962 is dependent on the value of the subject goods, wherein the said penalty shall not exceed five times the value of the subject goods.

38.36 I note that the SCN dated 26.02.2024 also proposes for penalty under Section 117 of the Customs Act,1962. On close reading of the wordings of Section 117 of the Act ibid, I find that the penalty of Rs.4,00,000/-(Rs.Four Lakhs only) can be imposed for contravention of any of the provisions of the Act ibid where no express penalty is elsewhere provided. In the instant case I find contravention of various provisions of the Customs Act,1962 like mis-classification and mis-declaration of the goods exported/imported by the noticee M/s Sagar Diamonds Ltd.,SEZ, Surat which was controlled by Shri Vaibhav Dipak Shah being Managing Director with the help and in association with Shri Saurin Rasiklal Shah, Director of M/s Sagar Diamonds Ltd., SEZ, Surat. I find that the noticee was duty bound to comply with the provisions of the Customs Act,1962 but failed in doing so as a result the noticee succeeded in siphoning off money from India to abroad illegally which caused huge loss to the exchequer thereby Shri Saurin Rasiklal Shah, Director of M/s Sagar Diamonds Ltd., SEZ, Surat. rendered himself to penalty under **Section 117 of the Customs Act**.

Penalty on Shri Hirenbhai Bipinbhai Trivedi, R/o 104, Radhe Apartment, Shardha Mandir School, Vijalpore, Navsari, -396445 (E-mail-thiren@gmail.com)

38.37 I note that the subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114,114AA and 117 of the Customs Act,1962 on **Shri Hirenbhai Bipinbhai Trivedi,** Production Manager cum Authorized Signatory of **M/s Sagar Diamonds Ltd., SEZ, Surat**. I also note that the noticee **Shri Hirenbhai Bipinbhai Trivedi** has neither submitted any reply to the SCN dated 26.02.2024 nor attended personal hearing, therefore, I proceed to decide the issue on the basis of material evidences available on record.

38.38 I find from the contents of voluntary statement dated 03.03.2023 of **Shri Hirenbhai Bipinbhai Trivedi,** Production Manager cum Authorized Signatory of **M/s Sagar Diamonds Ltd., SEZ, Surat**. recorded under Section 108 of the Customs Act,1962 that his designation in the firm was Production Manager and he supervised the day to day activities of the firm; that he reported to Shri Vaibhav Dipak Shah, Managing Director of the company; that all the instructions regarding the operations of M/s. Sagar Diamonds Ltd., ,SEZ, Surat were provided by Shri Vaibhav Dipak Shah, Managing Director; that after an interview, Shri Vaibhav Dipak Shah, Managing Director offered him a job in M/s. Sagar Diamonds Ltd.,SEZ, Surat; that Shri Vaibhav Dipak Shah, Managing Director used to provide him the instructions regarding the production of pendent/gold jewellery; that on the basis of the said instructions, he used to issue the goods to the production section; that after completion of production, he used to inform Shri Vaibhav Dipak Shah, Managing Director that the pendent/gold jewellery had been manufactured; that then Shri Vaibhav Dipak Shah, Managing Director used to inform him the export details on phone and on the basis of the said instructions, he used to prepare invoice, packing list and to make relevant entries in the stock register; that Shri Vaibhav Dipak Shah, Managing Director had already instructed that all the export invoices of Ruby studded silver pendent should be of approximately USD 700000.00 by matching with the import consignment and showing value addition of 6% on import value.

38.39 I find that **Shri Hirenbhai Bipinbhai Trivedi,** Production Manager cum Authorized Signatory of **M/s Sagar Diamonds Ltd., SEZ, Surat** was working on instructions Shri Vaibhav Dipak Shah regarding the name of consignee and country details to whom the studded jewellery had to be exported. I also find that Shri Hirenbhai Bipinbhai Trivedi, was instructed to prepare the export invoices of approximately USD 7,00,000 by matching with import consignment and showing value addition of 6% on import value and for the purpose of export invoicing, Shri Hirenbhai Bipinbhai Trivedi selected the ruby studded silver jewellery randomly in order to arrive at the invoice value of around USD 7,00,000, thus it construed that Shri Hirenbhai Bipinbhai Trivedi was well aware about the mis-declaration of synthetic ruby at the time of import by M/s Sagar Diamonds Ltd., SEZ, Surat which was in contravention of SEZ Act, 2005, SEZ Rules, 2006 and Customs Act, 1962 which rendered the goods synthetic ruby liable to confiscation under Section 111(m) and 111(o) of the Act ibid. I hold that the act and omission on the part of Shri Hirenbhai

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Bipinbhai Trivedi has rendered himself liable for penal action under Section 112 of the Customs Act,1962. I also find that Shri Hirenbhai Bipinbhai Trivedi had signed the export invoices and packing list and was well aware of the mis-declararation of synthetic ruby studded in silver pendant which rendered the goods liable to confiscation under Section113(i) of Customs Act, 1962. I hold that the act and omission on the part of Shri Hirenbhai Bipinbhai Trivedi has rendered himself liable for penal action under Section 114 of the Customs Act, 1962.

38.40 I find the role of Shri Hirenbhai Bipinbhai Trivedi in illegal smuggling activities in contravention to the Customs Act, as detailed vide the subject DRI Investigation which culminated in subject SCN dated 26.02.2024 and the material evidence on record in connection with the import of synthetic ruby by mis-declaring the description, classification and value of the goods valued at **Rs.9275,81,51,898/-** as against the actual value **Rs.5,69,78,996/-(re-determined value)** during the period from 01.06.2019 to 01.03.2023. On this count of goods weighing 1532910.30 carats of imported Synthetic Ruby rendered liable to confiscation under Section 111 Customs Act, I hold that Shri Hirenbhai Bipinbhai Trivedi, Production Manager cum Authorised Signatory of M/s Sagar Diamonds Ltd.,SEZ, Surat shall be liable to penalty under Section 112 Customs Act. On the count of export of synthetic ruby exported in the guise of precious stone ruby studded jewellery by mis-declaring the description, classification and value of the goods valued at **Rs.9507,29,68,954/-** as against the actual value **Rs.17,31,64,457/-(re-determined value)** during the period from 01.06.2019 to 01.03.2023 rendered liable to confiscation under Section 113 of the Customs Act,1962 I hold that Shri Hirenbhai Bipinbhai Trivedi, Production Manager cum Authorised Signatory of M/s Sagar Diamonds Ltd.,SEZ, Surat shall be liable to penalty under Section 114(iii) of the Customs Act.

38.41 I note that the SCN dated 27.02.2024 has also invoked penalty provisions under Section 114AA Customs Act on Shri Hirenbhai Bipinbhai Trivedi, Production Manager cum Authorised Signatory of M/s Sagar Diamonds Ltd.,SEZ, Surat. On careful reading of the subject documents and material evidence on record, I find that Shri Hirenbhai Bipinbhai Trivedi, Production Manager cum Authorised Signatory was aware and in association with the fraud in illegal import/export of Synthetic Ruby/Synthetic Ruby studded jewellery as he was awfully following the instructions which were contrary to the law passed by Shri Vaibhav Dipak Shah and also signed the export invoices and packing list. I find fraud in the transactions of the business as evidenced in this case of illegal import/export. On close reading of the provisions and analysis of the wordings of Section 114AA, I find that the penalty under this section is righty imposable on the person who intentionally and knowingly involved in false and incorrect declaration. In the instant case he has deliberately and knowingly declared the incorrect inflated value of the goods at the time of export/import and thereby has attracted himself penalty under the provisions of **Section 114AA the Customs Act, 1962** on this count. I find that Shri Hirenbhai Bipinbhai Trivedi, Production Manager cum Authorised Signatory of M/s Sagar Diamonds Ltd.,SEZ, Surat is involved in illegal import of synthetic ruby valued at **Rs.5,69,78,996/-(re-determined value)** during the period from 01.06.2019 to 01.03.2023 (as per Annexure-A to the SCN) and also involved in illegal export of the goods i.e. synthetic ruby studded jewellery valued at **Rs.17,31,64,457/-(re-determined value)** during the period from 01.06.2019 to 01.03.2023. The Penalty provisions under

Section **114AA the Customs Act, 1962** is dependent on the value of the subject goods, wherein the said penalty shall not exceed five times the value of the subject goods.

38.42 I note that the SCN dated 27.02.2024 also proposes for penalty under Section 117 of the Customs Act,1962 on Shri Hirenbhai Bipinbhai Trivedi, Production Manager cum Authorised Signatory of M/s Sagar Diamonds Ltd.,SEZ, Surat. On close reading of the wordings of Section 117 of the Act ibid, I find that the penalty of Rs.4,00,000/-(Rs.Four Lakhs only) can be imposed for contravention of any of the provisions of the Act ibid where no express penalty is elsewhere provided. In the instant case I find contravention of various provisions of the Customs Act,1962 like mis-classification and mis-declaration of the goods exported/imported by M/s Sagar Diamonds Ltd.,SEZ, Surat which was controlled by Shri Vaibhav Dipak Shah being Managing Director of the noticee company in connivance with its suppliers as well as buyers. Shri Hirenbhai Bipinbhai Trivedi, Production Manager cum Authorised Signatory followed and executed all illegal directions of Shri Vaibhav Dipak Shah who was mastermind behind the entire incident of fraud. The fraud would have not been possible if the directions were disobeyed by Shri Hirenbhai Bipinbhai Trivedi, Production Manager cum Authorised Signatory. I find that the noticee was duty bound to comply with the provisions of the Customs Act,1962 but failed in doing so as a result the noticee company succeeded in siphoning off money from India to abroad illegally which caused huge loss to the exchequer thereby Shri Hirenbhai Bipinbhai Trivedi, Production Manager cum Authorised Signatory rendered himself to penalty under **Section 117 of the Customs Act**.

Issue:- Proposal for penalty on overseas suppliers

Proposal for penalty on (6) M/s AADI HK LTD, 1407, 14th Floor, Hart avenue Plaza, 5-9 Hart Avenue, TST, Kowloon, Hong Kong

38.43 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act. I also note that the noticee M/s AADI HK LTD, 1407, 14th Floor, Hart avenue Plaza, 5-9 Hart Avenue, TST, Kowloon, Hong Kong has neither submitted any reply to the SCN dated 26.02.2024 nor attended personal hearing, therefore, I proceed to decide the issue on the basis of material evidences available on record.

38.44 I note the facts and evidences on record and find that M/s AADI HK LTD, 1407, 14th Floor, Hart avenue Plaza, 5-9 Hart Avenue, TST, Kowloon, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd. SEZ, Surat; that M/s AADI HK LTD, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd. SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023. that the goods were in fact Synthetic Ruby which was supplied by M/s AADI HK LTD, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.5,26,90,003/-** (Rs. Five Crore Twenty Six Lakh Ninety Thousand Three Only)and re-determined value **Rs.10,627/-**(Rs. Ten Thousand Six

Hundred Twenty Seven Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.10,627/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s AADI HK LTD, Hong Kong is on record and thereby M/s AADI HK LTD, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.45 I hold that the false inflated export invoices raised by M/s AADI HK LTD, Hong Kong to M/s Sagar Diamonds Ltd., SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd., SEZ, Surat in siphoning off money to M/s AADI HK LTD, Hong Kong. Further, M/s AADI HK LTD, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.5,26,90,003/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.10,627/-**, the goods were supplied by M/s AADI HK LTD, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s AADI HK LTD, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s AADI HK LTD, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.46 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s AADI HK LTD, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.5,26,90,003/-** is on record and M/s AADI HK LTD, Hong Kong, abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the succeeding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition.Therefore, I hold in the instant case that the noticee M/s AADI HK LTD, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (7) M/s AADI IMPEX, Flat D, 14th Floor, Windsor Mansion, TST, Kowloon, Hong Kong

38.47 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act. I also note that the noticee **M/s AADI IMPEX, Flat D, 14th Floor, Windsor Mansion, TST, Kowloon, Hong Kong** has neither submitted any reply to

the SCN dated 26.02.2024 nor attended personal hearing, therefore, I proceed to decide the issue on the basis of material evidences available on record.

38.48 I note the facts and evidences on record and find that M/s AADI IMPEX, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd. SEZ, Surat; that M/s AADI IMPEX, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd. SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by **M/s AADI IMPEX, Hong Kong**. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.28,88,09,963/-** (Rs. Twenty Eight Crore Eighty Eight Lakh Nine Thousand Nine Hundred Sixty Three Only)and re-determined value **Rs.14,83,834/-**(Rs. Fourteen Lakh Eighty Three Thousand Eight Hundred Thirty Four Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.14,83,834/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s AADI IMPEX, Hong Kong is on record and thereby M/s AADI IMPEX, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.49 I hold that the false inflated export invoices raised by M/s AADI IMPEX, Hong Kong to M/s Sagar Diamonds Ltd., SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd., SEZ, Surat in siphoning off money to M/s AADI IMPEX, Hong Kong. Further, M/s AADI IMPEX, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.28,88,09,963/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.14,83,834/-**, the goods were supplied by M/s AADI IMPEX, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s AADI IMPEX, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s AADI IMPEX, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.50 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s AADI IMPEX, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.28,88,09,963/-** is on record and M/s AADI IMPEX, Hong Kong, abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied

in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the succeeding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition.Therefore, I hold in the instant case that the noticee M/s AADI IMPEX, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (8) M/s ADVANCE CENTURY INC LIMITED, Room 2002, 20 F, Hing Yip Comercial Centre, 272-284 Des Voeux Road, Central, Hong Kong
(E-mail: advancecenturyincltd@gmail.com)

38.51 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act. I also note that the noticee M/s ADVANCE CENTURY INC LIMITED, Room 2002, 20 F, Hing Yip Comercial Centre, 272-284 Des Voeux Road, Central, Hong Kong has neither submitted any reply to the SCN dated 26.02.2024 nor attended personal hearing, therefore, I proceed to decide the issue on the basis of material evidences available on record.

38.52 I note the facts and evidences on record and find that M/s Advance Century INC Limited, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s Advance Century INC Limited, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s Advance Century INC Limited, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.204,71,33,435/-** (Rs.Two Hundred Four Crore Seventy One Lakh Thirty Three Thousand Four Hundred Thirty Five Only)and re-determined value **Rs.3,96,227/-**(Rs. Three Lakh Ninety Six Thousand Two Hundred Twenty Seven Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.3,96,227/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s Advance Century INC Limited, Hong Kong is on record and thereby M/s Advance Century INC Limited, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.53 I hold that the false inflated export invoices raised by M/s Advance Century INC Limited, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s Advance Century INC Limited, Hong Kong.Further, M/s Advance Century INC Limited, Hong Kong in the case of supply of goods namely Synthetic Rubyon record, wherein the CIF value was mis-declared as **Rs.204,71,33,435/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as

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Rs.3,96,227/-, the goods were supplied by M/s Advance Century INC Limited, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s Advance Century INC Limited, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s Advance Century INC Limited, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.54 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s Advance Century INC Limited, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.204,71,33,435/-**is on record and M/s Advance Century INC Limited, abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the succeeding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s Advance Century INC Limited, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (9) M/s ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, No. 299 Huiquan RD Linquen Country (Lin Lu Industrial Park) China (anhuiqihangsupply@gmail.com)

38.55 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act. I also note that the noticee M/s ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, No. 299 Huiquan RD Linquen Country (Lin Lu Industrial Park) China has neither submitted any reply to the SCN dated 26.02.2024 nor attended personal hearing, therefore, I proceed to decide the issue on the basis of material evidences available on record.

38.56 I note the facts and evidences on record and find that M/s ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, China is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, China. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.51,26,44,705/-** (Rs.Fifty One Crore Twenty Six Lakh Forty Four Thousand Seven Hundred Five

Only)and re-determined value **Rs.2,09,229/-**(Rs. Two Lakh Nine Thousand Two Hundred Twenty Nine Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.2,09,229/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, China is on record and thereby M/s ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, China has rendered itself to penalty under Section 114 AA Customs Act.

38.57 I hold that the false inflated export invoices raised by M/s ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, China to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, China. Further, M/s ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, China in the case of supply of goods namely Synthetic Rubyon record, wherein the CIF value was mis-declared as **Rs.51,26,44,705/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.2,09,229/-**, the goods were supplied by M/s ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, China with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, China has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, China is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.58 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, China misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.51,26,44,705/-** is on record and M/s ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, China, abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the succeeding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, China is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (10) M/s BEL DIAM LTD, Unit 701, 7th Floor, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong (hongkong@beldiamltd.com)

38.59 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act. I also note that the noticee M/s BEL DIAM LTD, Unit 701, 7th Floor, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong has neither submitted any reply to the SCN dated 26.02.2024 nor attended personal hearing, therefore, I proceed to decide the issue on the basis of material evidences available on record.

38.60 I note the facts and evidences on record and find that M/s BEL DIAM LTD, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s BEL DIAM LTD, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s BEL DIAM LTD, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.20,44,22,561/-** (Rs. Twenty Crore Forty Four Lakh Twenty Two Thousand Five Hundred Sixty One Only)and re-determined value **Rs.53,257/-** (Rs. Fifty Three Thousand Two Hundred Fifty Seven Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.53,257/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s BEL DIAM LTD, Hong Kong is on record and thereby M/s BEL DIAM LTD, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.61 I hold that the false inflated export invoices raised by M/s BEL DIAM LTD, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s BEL DIAM LTD, Hong Kong. Further, M/s BEL DIAM LTD, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.20,44,22,561/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.53,257/-**, the goods were supplied by M/s BEL DIAM LTD, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s BEL DIAM LTD, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s BEL DIAM LTD, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.62 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s BEL DIAM LTD, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.20,44,22,561/-**is on record and M/s BEL DIAM LTD, Hong Kong, abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the succeeding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s BEL DIAM LTD, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (11) M/s COLOR CREATIONS LIMITED, Unit Q12, 6/F, Kaiser Estate Phase 3, 11 Hok Yuen Street, Hunghom, Hong Kong

38.63 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act. I also note the facts and evidences on record and find that M/s COLOR CREATIONS LIMITED, Hong Kong is an overseas supplier of M/s Sagar Diamond Ltd., SEZ, Surat; that M/s COLOR CREATIONS LIMITED, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamond Ltd., SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. **Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023** that the goods were in fact **Synthetic Ruby** which was supplied by M/s COLOR CREATIONS LIMITED, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone (Ruby) having mis-declared value of **Rs. 210,45,71,798/-** (Rs. Two Hundred Ten Crore Forty Five Lakh Seventy One Thousand Seven Hundred Ninety Eight Only)and re-determined value **Rs. 2,63,694/-**(Rs. Two Lakh Sixty Three Thousand Six Hundred Ninety Four Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. Therefore, I accept the value of **Rs. 2,63,694/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s COLOR CREATIONS LIMITED, Hong Kong is on record and thereby M/s COLOR CREATIONS LIMITED, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.64 I hold that the false inflated export invoices raised by M/s COLOR CREATIONS LIMITED, Hong Kong to M/s Sagar Diamond Ltd., SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamond Ltd., SEZ, Surat in siphoning off money to M/s COLOR CREATIONS LIMITED, Hong Kong. Further, M/s COLOR CREATIONS LIMITED, Hong Kong in the case of supply of goods namely

Synthetic Rubyon record, wherein the CIF value was mis-declared as **Rs. 210,45,71,798/-**and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the valuation expert has provided the value as **Rs.2,63,694/-**, the goods were supplied by M/s COLOR CREATIONS LIMITED, Hong Kong with wrong documentation to Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s COLOR CREATIONS LIMITED, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s COLOR CREATIONS LIMITED, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat and other persons for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.65 Further for this issue of supply of the goods Synthetic Ruby which were in contravention of the Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter.

Defence Submission that Penalty not to imposed on foreign exporter:

38.66 I note that the defence submission submits that SCN dated 26.02.2024 cannot be invoked against M/s COLOR CREATIONS LIMITED, Hong Kong for the following reasons:

i. No concrete evidence in order to attract the penalty u/ss. 112, 114AA or 117 of the Customs Act, 1962

ii. M/s COLOR CREATIONS LIMITED, Hong Kong based company subject to Hong Kong jurisdiction and not an importer or exporter from India or have any offices or business premises in India. Case law Hon'ble Supreme Court in Management of Express Newspapers (Private) Ltd., Madras v. The Workers and Others reported in AIR 1963 SC 569 was cited.

iii. Show Cause Notice not issued by designated/empowered officer

38.67 I note and already deliberated in above Para at **38.63 to 38.65** regarding the evidences gathered during the investigation by the DRI and mentioned in the impugned SCN. Thus, I find no merit in the contention of the authorized representative of the noticee M/s COLOR CREATIONS LIMITED, Hong Kong that there is no concrete evidence has no merit and can not be acceptable.

38.68 I note that as per the Customs Act 1962, the Custom Act 1962 applies also to any offence or contravention thereunder committed outside India by any person, as per Section 1(2) Customs Act 1962. The period under consideration in subject SCN dated 26.02.2024 is post 29.3.2018, wherein vide Section 57 of the Finance Act 2018, the following was inserted in Section 1(2) Customs Act, 1962 as follows:

Section 1(2): It extends to the whole of India and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.

38.69 The law w.e.f. 29.3.2018 explicitly make it clear that Customs Act it applies also to any offence or contravention thereunder committed outside India by any person and in the subject matter, offence had been committed the moment forged documents were submitted before the specified officers of SEZ with an intention to smuggle and contravene the provisions of Customs Act; and thereby offence was committed in the territory of India once the forged documents of M/s COLOR CREATIONS LIMITED, Hong Kong was received by M/s Sagar Diamonds Ltd.SEZ, Surat. The false documents supplied by M/s COLOR CREATIONS LIMITED, Hong Kong abetted M/s Sagar Diamonds Ltd.SEZ, Surat in committing the said offence and contravening the provisions of Customs Act and further opened way for consequential foreign exchange transactions. Thus with the Section 1(2) Customs Act in force, the period under consideration is not covered vide the said case laws of Hon'ble Supreme Court in Management of Express Newspapers (Private) Ltd., Madras v. The Workers and Others reported in AIR 1963 SC 569 and the facts of the case coupled with the law in force as dictated vide Section 1(2) Customs Act renders M/s COLOR CREATIONS LIMITED, Hong Kong to penalty separately under Section 112(b), Section 114AA and Section 117 of the Customs Act as discussed. In light of the Section 1(2) Customs Act w.e.f. 29-3-2018 coupled with the factual matrix of subject case, the case laws cited do not cover the subject matter.

38.70 I note the contention of the noticee that the officer of the DRI does not have power or jurisdiction to inspect or seize goods in respect of units situated in SEZ area. In order to decide the issue power or jurisdiction in hand, I prefer to refer the legal provisions governing the issues ofoffences, authorities to search, seizure, investigation and issuance of Show cause Notice under Section 124 of the Customs Act,1962. Vide ***Ministry of Commerce and Industry Notification [S.O. 2665(E)] dated 5th August 2016 explicitly notifies under*** sub-section (1) of section 21 of the Special Economic Zones Act, 2005 that the offences contained in the sections 28,28AA,28AAA,74,75,111,113,115,124,135 and 104 of the Customs Act, 1962 as offences under the Special Economic Zones Act, 2005. Further, ***Ministry of Commerce and Industry Notification [S.O. 2666(E)] dated 5th August 2016 the*** authorises the Additional Director General, Directorate of Revenue Intelligence for offences under the Customs Act, 1962 to be the enforcement officer in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone to carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit. The ***Ministry of Commerce and Industry Notification [S.O. 2667(E)] dated 5th August 2016 has also authorized*** the jurisdictional Customs Commissioner, in respect of offences under the Customs Act,1962 to carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit. On artless reading of the aforesaid notifications issued, I do not find any merit in the contention of the representative of the noticee challenging the authority of power and the jurisdiction of the DRI and the jurisdictional Customs Commissioner to inspect or seize goods in respect of units situated in SEZ area. Thus I hold that the DRI and the jurisdictional Customs Commissioner are empowered and authorities authorized to carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit.

38.71 Now, I take up the issue raised by the noticee regarding power to issue the captioned show cause notice upon the authority which has issued the captioned show cause notice under section 124 of the Customs Act,1962.I find

by virtue of Section 122(a) of the Customs Act,1962 read with Circular No. 17/2018-CustomsDated 13.06.2018 issued in this regard that a Principal Commissioner of Customs or Commissioner of Customs or Joint Commissioner of Customs is empowered to issue the show Cause Notice and adjudicate the cases involving confiscation and penalty only, without any restriction of value of the goods to be confiscated. Therefore, I find that the contention of the noticee is baseless and without legal backing and hence, I hold that the impugned SCN has been issued by the competent authority.

38.72 In view of the above I hold in the instant case that the noticee M/s COLOR CREATIONS LIMITED, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (12) M/s CROWN GEMS, Unit 504, 5/F, Hart avenue Plaza, 5-9 Hart Avenue, TST, Kowloon, Hong Kong

38.73 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act. I also note the facts and evidences on record and find that M/s CROWN GEMS, Hong Kong is an overseas supplier of M/s Sagar Diamond Ltd., SEZ, Surat; that M/s CROWN GEMS, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamond Ltd., SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. **Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023** that the goods were in fact **Synthetic Ruby** which was supplied by M/s CROWN GEMS, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone (Ruby) having mis-declared value of **Rs.509,09,47,863/-** (Rs. Five Hundred Nine Crore Nine Lakh Forty Seven Thousand Eight Hundred Sixty Three Only)and re-determined value **Rs. 66,16,619/-**(Rs. Sixty Six Lakh Sixteen Thousand Six Hundred Nineteen Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. Therefore, I accept the value of **Rs.66,16,619/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s CROWN GEMS, Hong Kong is on record and thereby M/s CROWN GEMS, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.74 I hold that the false inflated export invoices raised by M/s CROWN GEMS, Hong Kong to M/s Sagar Diamond Ltd., SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamond Ltd., SEZ, Surat in siphoning off money to M/s CROWN GEMS, Hong Kong. Further, M/s CROWN GEMS, Hong Kong in the case of supply of goods namely Synthetic Rubyon record, wherein the CIF value was mis-declared as **Rs.509,09,47,863/-**and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the valuation expert has provided the value as **Rs.66,16,619/-**, the goods were supplied by M/s CROWN GEMS, Hong Kong with wrong documentation to Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s CROWN GEMS, Hong Kong has abetted with M/s Sagar

Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s CROWN GEMS, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat and other persons for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.75 Further for this issue of supply of the goods Synthetic Ruby which were in contravention of the Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter.

Defence Submission that Penalty not to imposed on foreign exporter:

38.76 I note that the defence submission submits that SCN dated 26.02.2024 cannot be invoked against M/s CROWN GEMS, Hong Kong for the following reasons:

i. No concrete evidence in order to attract the penalty u/ss. 112, 114AA or 117 of the Customs Act, 1962
ii. M/s Crown Gems is a Hong Kong based company subject to Hong Kong jurisdiction and not an importer or exporter from India or have any offices or business premises in India. Case laws of Arun Kumar and Others v. Union of India and others, [(2007) 1 SCC 732] & GVK Industries Limited and Another v. Income Tax Officer and Another, [(2011) 4 SCC 36] were cited.
iii. Show Cause Notice not issued by designated/empowered officer

38.77 I note and already deliberated in above Para at **38.73 to 38.75** regarding the evidences gathered during the investigation by the DRI and mentioned in the impugned SCN. Thus, I find no merit in the contention of the authorized representative of the noticee M/s CROWN GEMS, Hong Kong that there is no concrete evidence has no merit and can not be acceptable.

38.78 I note that as per the Customs Act 1962, the Custom Act 1962 applies also to any offence or contravention thereunder committed outside India by any person, as per Section 1(2) Customs Act 1962. The period under consideration in subject SCN dated 26.02.2024 is post 29.3.2018, wherein vide Section 57 of the Finance Act 2018, the following was inserted in Section 1(2) Customs Act, 1962 as follows:

Section 1(2): It extends to the whole of India and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.

38.79 The law w.e.f. 29.3.2018 explicitly make it clear that Customs Act it applies also to any offence or contravention thereunder committed outside India by any person and in the subject matter, offence had been committed the moment forged documents were submitted before the specified officers of SEZ with an intention to smuggle and contravene the provisions of Customs Act; and thereby offence was committed in the territory of India once the forged documents of M/s CROWN GEMS, Hong Kong was received by M/s Sagar Diamonds Ltd.SEZ, Surat. The false documents supplied by M/s CROWN

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GEMS, Hong Kong abetted M/s Sagar Diamonds Ltd.SEZ, Surat in committing the said offence and contravening the provisions of Customs Act and further opened way for consequential foreign exchange transactions. Thus with the Section 1(2) Customs Act in force, the period under consideration is not covered vide the said case laws of Case laws of Arun Kumar and Others v. Union of India and others, [(2007) 1 SCC 732] & GVK Industries Limited and Another v. Income Tax Officer and Another, [(2011) 4 SCC 36] and the facts of the case coupled with the law in force as dictated vide Section 1(2) Customs Act renders M/s CROWN GEMS, Hong Kong to penalty separately under Section 112(b), Section 114AA and Section 117 of the Customs Act as discussed. In light of the Section 1(2) Customs Act w.e.f. 29-3-2018 coupled with the factual matrix of subject case, the case laws cited do not cover the subject matter.

38.80 I note the contention of the noticee that the officer of the DRI does not have power or jurisdiction to inspect or seize goods in respect of units situated in SEZ area. In order to decide the issue power or jurisdiction in hand, I prefer to refer the legal provisions governing the issues of offences, authorities to search, seizure, investigation and issuance of Show cause Notice under Section 124 of the Customs Act,1962. Vide ***Ministry of Commerce and Industry Notification [S.O. 2665(E)] dated 5th August 2016 explicitly notifies under*** sub-section (1) of section 21 of the Special Economic Zones Act, 2005 that the offences contained in the sections 28,28AA,28AAA,74,75,111,113,115,124,135 and 104 of the Customs Act, 1962 as offences under the Special Economic Zones Act, 2005. Further, ***Ministry of Commerce and Industry Notification [S.O. 2666(E)] dated 5th August 2016 the*** authorises the Additional Director General, Directorate of Revenue Intelligence for offences under the Customs Act, 1962 to be the enforcement officer in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone to carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit. The ***Ministry of Commerce and Industry Notification [S.O. 2667(E)] dated 5th August 2016 has also authorized*** the jurisdictional Customs Commissioner, in respect of offences under the Customs Act,1962 to carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit. On artless reading of the aforesaid notifications issued, I do not find any merit in the contention of the representative of the noticee challenging the authority of power and the jurisdiction of the DRI and the jurisdictional Customs Commissioner to inspect or seize goods in respect of units situated in SEZ area. Thus I hold that the DRI and the jurisdictional Customs Commissioner are empowered and authorities authorized to carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit.

38.81 Now, I take up the issue raised by the noticee regarding power to issue the captioned show cause notice upon the authority which has issued the captioned show cause notice under section 124 of the Customs Act,1962.I find by virtue of Section 122(a) of the Customs Act,1962 read with Circular No. 17/2018-CustomsDated 13.06.2018 issued in this regard that a Principal Commissioner of Customs or Commissioner of Customs or Joint Commissioner of Customs is empowered to issue the show Cause Notice and adjudicate the cases involving confiscation and penalty only, without any restriction of value of the goods to be confiscated. Therefore, I find that the contention of the noticee is baseless and without legal backing and hence, I hold that the impugned SCN has been issued by the competent authority.

38.82 In view of the above I hold in the instant case that the noticee M/s CROWN GEMS, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962

Proposal for penalty on (13) M/s CRYSTAL KING LIMITED, M 9 - 2 F, kaiser, Estate, Phase 3, 9-11, HOK YUEN Street Hunghom, Hong Kong (infocrytalking@gmail.com)

38.83 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act. I also note that the noticee M/s CRYSTAL KING LIMITED, M 9 - 2 F, kaiser, Estate, Phase 3, 9-11, HOK YUEN Street Hunghom, Hong Kong has neither submitted any reply to the SCN dated 26.02.2024 nor attended personal hearing, therefore, I proceed to decide the issue on the basis of material evidences available on record.

38.84 I note the facts and evidences on record and find that M/s CRYSTAL KING LIMITED, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s CRYSTAL KING LIMITED, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s CRYSTAL KING LIMITED, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs. 26,86,31,372/-** (Rs. Twenty Six Crore Eighty Six Lakh Thirty One Thousand Three Hundred Seventy Two Only) and re-determined value **Rs.37,128/-**(Rs. Thirty Seven Thousand One Hundred Twenty Eight Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.37,128/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s CRYSTAL KING LIMITED, Hong Kong is on record and thereby M/s CRYSTAL KING LIMITED, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.85 I hold that the false inflated export invoices raised by M/s CRYSTAL KING LIMITED, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s CRYSTAL KING LIMITED, Hong Kong. Further, M/s CRYSTAL KING LIMITED, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs. 26,86,31,372/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.37,128/-**, the goods were supplied by M/s CRYSTAL KING LIMITED, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s CRYSTAL KING

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LIMITED, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s CRYSTAL KING LIMITED, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.86 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s CRYSTAL KING LIMITED, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs. 26,86,31,372/-**is on record and M/s CRYSTAL KING LIMITED, Hong Kong, abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceeding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s CRYSTAL KING LIMITED, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (14) M/s CSY INTERNATIONAL PTE LTD, 1North Bridge Road, 18-01, High Street Centre, Singapore-179094 (info@csyinternational.com)

38.87 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act. I also note that the noticee M/s CSY INTERNATIONAL PTE LTD, 1North Bridge Road, 18-01, High Street Centre, Singapore-179094 has neither submitted any reply to the SCN dated 26.02.2024 nor attended personal hearing, therefore, I proceed to decide the issue on the basis of material evidences available on record.

38.88 I note the facts and evidences on record and find that M/s CSY INTERNATIONAL PTE LTD, Singapore-179094 is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s CSY INTERNATIONAL PTE LTD, Singapore had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s CSY INTERNATIONAL PTE LTD, Singapore. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.76,97,28,547/-** (Rs. Seventy Six Crore Ninety Seven Lakh Twenty Eight Thousand Five Hundred Forty Seven Only) and re-determined value **Rs. 3,38,565/-**(Rs. Three Lakh Thirty Eight Thousand Five Hundred Sixty Five Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the

test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.3,38,565/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s CSY INTERNATIONAL PTE LTD, Singapore is on record and thereby M/s CSY INTERNATIONAL PTE LTD, Singapore has rendered itself to penalty under Section 114 AA Customs Act.

38.89 I hold that the false inflated export invoices raised by M/s CSY INTERNATIONAL PTE LTD, Singapore to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s CSY INTERNATIONAL PTE LTD, Singapore. Further, M/s CSY INTERNATIONAL PTE LTD, Singapore in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.76,97,28,547/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.3,38,565/-**, the goods were supplied by M/s CSY INTERNATIONAL PTE LTD, Singapore with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s CSY INTERNATIONAL PTE LTD, Singapore has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s CSY INTERNATIONAL PTE LTD, Singapore is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.90 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s CSY INTERNATIONAL PTE LTD, Singapore misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.76,97,28,547/-** is on record and M/s CSY INTERNATIONAL PTE LTD, Singapore, abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceeding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s CSY INTERNATIONAL PTE LTD, Singapore is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (15) M/s DIARECT MARKETING LIMITED, Suite D, 13th Floor, No. 8, Hart Avenue, TST, Kowloon, HongKong

38.91 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act. I

also note that the noticee M/s DIARECT MARKETING LIMITED, Suite D, 13th Floor, No. 8, Hart Avenue, TST, Kowloon, Hong Kong has neither submitted any reply to the SCN dated 26.02.2024 nor attended personal hearing, therefore, I proceed to decide the issue on the basis of material evidences available on record.

38.92 I note the facts and evidences on record and find that M/s DIARECT MARKETING LIMITED, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s DIARECT MARKETING LIMITED, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s DIARECT MARKETING LIMITED, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.22,01,05,872/-** (Rs. Twenty Two Crore One Lakh Five Thousand Eight Hundred Seventy Two Only) and re-determined value **Rs.54,715/-**(Rs. Fifty Four Thousand Seven Hundred Fifteen Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.54,715/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s DIARECT MARKETING LIMITED, Hong Kong is on record and thereby M/s DIARECT MARKETING LIMITED, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.93 I hold that the false inflated export invoices raised by M/s DIARECT MARKETING LIMITED, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s DIARECT MARKETING LIMITED, Hong Kong. Further, M/s DIARECT MARKETING LIMITED, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.22,01,05,872/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.54,175/-**, the goods were supplied by M/s DIARECT MARKETING LIMITED, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s DIARECT MARKETING LIMITED, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s DIARECT MARKETING LIMITED, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.94 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s DIARECT MARKETING LIMITED, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as

Rs.22,01,05,872/- is on record and M/s DIARECT MARKETING LIMITED, Hong Kong, abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceeding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s DIARECT MARKETING LIMITED, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (16) M/s ESTRADE INTERNATIONAL LTD, RM B2, 13/F, Kaiser Estate Phase 1, 41 Man Yue Street, Hung Hom, Hong Kong

38.95 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s ESTRADE INTERNATIONAL LTD, RM B2, 13/F, Kaiser Estate Phase 1, 41 Man Yue Street, Hung Hom, Hong Kong.

38.96 I note the facts and evidences on record and find that M/s ESTRADE INTERNATIONAL LTD, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s ESTRADE INTERNATIONAL LTD, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s ESTRADE INTERNATIONAL LTD, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.233,78,76,567/-** (Rs. Two Hundred Thirty Three Crore Seventy Eight Lakh Seventy Six Thousand Five Hundred Sixty Seven Only) and re-determined value **Rs.2,95,921 /-**(Rs. Two Lakh Ninety Five Thousand Nine Hundred Twenty One Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.2,95,921/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s ESTRADE INTERNATIONAL LTD, Hong Kong is on record and thereby M/s ESTRADE INTERNATIONAL LTD, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.97 I hold that the false inflated export invoices raised by M/s ESTRADE INTERNATIONAL LTD, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s ESTRADE INTERNATIONAL LTD, Hong Kong. Further, M/s ESTRADE INTERNATIONAL LTD, Hong Kong in the case of supply of goods

namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.233,78,76,567/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.2,95,921/-**, the goods were supplied M/s ESTRADE INTERNATIONAL LTD, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s ESTRADE INTERNATIONAL LTD, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s ESTRADE INTERNATIONAL LTD, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.98 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s ESTRADE INTERNATIONAL LTD, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.233,78,76,567/-** is on record and M/s ESTRADE INTERNATIONAL LTD, Hong Kong, abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s ESTRADE INTERNATIONAL LTD, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (17) M/s EURO TECH INTERNATIONAL TRADING LIMITED, Unit K, 3 F, Central house, 270-276, Queens Road, Central Sheungwan, Hong Kong

38.99 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act onthe noticee M/s EURO TECH INTERNATIONAL TRADING LIMITED, Unit K, 3 F, Central house, 270-276, Queens Road, Central Sheungwan, Hong Kong.

38.100 I note the facts and evidences on record and find that M/s EURO TECH INTERNATIONAL TRADING LIMITED, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s EURO TECH INTERNATIONAL TRADING LIMITED, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s EURO TECH INTERNATIONAL TRADING LIMITED, Hong

Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.103,57,40,652/-** (Rs. One Hundred Three Crore Fifty Seven Lakh Forty Thousand Six Hundred Fifty Two Only) and re-determined value **Rs.4,86,783/-**(Rs. Four Lakh Eighty Six Thousand Seven Hundred Eighty Three Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.4,86,783/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s EURO TECH INTERNATIONAL TRADING LIMITED, Hong Kong is on record and thereby M/s EURO TECH INTERNATIONAL TRADING LIMITED, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.101 I hold that the false inflated export invoices raised by M/s EURO TECH INTERNATIONAL TRADING LIMITED, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s EURO TECH INTERNATIONAL TRADING LIMITED, Hong Kong. Further, M/s EURO TECH INTERNATIONAL TRADING LIMITED in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.103,57,40,652/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.4,86,783/-**, the goods were supplied M/s EURO TECH INTERNATIONAL TRADING LIMITED, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s EURO TECH INTERNATIONAL TRADING LIMITED, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s EURO TECH INTERNATIONAL TRADING LIMITED, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.102 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s EURO TECH INTERNATIONAL TRADING LIMITED, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.103,57,40,652/-** is on record and M/s EURO TECH INTERNATIONAL TRADING LIMITED, Hong Kong, abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s

EURO TECH INTERNATIONAL TRADING LIMITED is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (18) M/s FAMASIA LIMITED, 608, Hart Avenue, 5-9, TST, Kowloon, Hong Kong

38.103 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s FAMASIA LIMITED, 608, Hart Avenue, 5-9, TST, Kowloon, Hong Kong.

38.104 I note the facts and evidences on record and find that M/s FAMASIA LIMITED, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s FAMASIA LIMITED, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s FAMASIA LIMITED, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.5,29,11,981/-** (Rs. Five Crore Twenty Nine Lakh Eleven Thousand Nine Hundred Eighty One Only) and re-determined value **Rs.10,672/-**(Rs. Ten Thousand Six Hundred Seventy Two Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.10,672/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s FAMASIA LIMITED, Hong Kong is on record and thereby M/s FAMASIA LIMITED has rendered itself to penalty under Section 114 AA Customs Act.

38.105 I hold that the false inflated export invoices raised by M/s FAMASIA LIMITED, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s FAMASIA LIMITED, Hong Kong. Further, M/s FAMASIA LIMITED in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.5,29,11,981/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.10,672/-**, the goods were supplied M/s FAMASIA LIMITED, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s FAMASIA LIMITED, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s FAMASIA LIMITED, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.106 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s FAMASIA LIMITED, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.5,29,11,981/-** is on record and M/s FAMASIA LIMITED, Hong Kong, abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s FAMASIA LIMITED is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (19) M/s FANCY COLOR DIAM (HK) LTD, RM 1715, 17F, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong

38.107 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s FANCY COLOR DIAM (HK) LTD, RM 1715, 17F, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong.

38.108 I note the facts and evidences on record and find that M/s FANCY COLOR DIAM (HK) LTD, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s FANCY COLOR DIAM (HK) LTD, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s FANCY COLOR DIAM (HK) LTD, Hong Kong Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.3,69,80,213/-** (Rs. Three Crore Sixty Nine Lakh Eighty Thousand Two Hundred Thirteen Only) and re-determined value **Rs.17,325/-**(Rs. Ten Thousand Six Hundred Seventy Two Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.17,325/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s FANCY COLOR DIAM (HK) LTD, Hong Kong is on record and thereby M/s FANCY COLOR DIAM (HK) LTD, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.109 I hold that the false inflated export invoices raised by M/s FANCY COLOR DIAM (HK) LTD, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s FANCY COLOR DIAM (HK) LTD, Hong Kong. Further, M/s

FANCY COLOR DIAM (HK) LTD, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.3,69,80,213/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.17,325/-**, the goods were supplied M/s FANCY COLOR DIAM (HK) LTD, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s FANCY COLOR DIAM (HK) LTD, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s FANCY COLOR DIAM (HK) LTD, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.110 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s FANCY COLOR DIAM (HK) LTD, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.3,69,80,213/-** is on record and M/s FANCY COLOR DIAM (HK) LTD, Hong Kong, abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s FANCY COLOR DIAM (HK) LTD, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (20) M/s FU LEE HONG COMPANY LIMITED, 1108, 11/F, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong

38.111 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s FU LEE HONG COMPANY LIMITED, 1108, 11/F, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong.

38.112 I note the facts and evidences on record and find that M/s FU LEE HONG COMPANY LIMITED, 1108, 11/F, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s FU LEE HONG COMPANY LIMITED, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s FU LEE HONG

COMPANY LIMITED, Hong Kong Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.154,41,93,304/-** (Rs. One Hundred Fifty Four Crore Forty One Lakh Ninety Three Thousand Three Hundred Four Only) and re-determined value **Rs.2,20,525/-**(Rs. Twenty Two Lakh Five Thousand Five Hundred Twenty Five Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs. 2,20,525/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s FU LEE HONG COMPANY LIMITED, Hong Kong is on record and thereby M/s FU LEE HONG COMPANY LIMITED, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.113 I hold that the false inflated export invoices raised by M/s FU LEE HONG COMPANY LIMITED, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s FU LEE HONG COMPANY LIMITED, Hong Kong. Further, M/s FU LEE HONG COMPANY LIMITED, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.154,41,93,304/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.22,05,525/-**, the goods were supplied M/s FU LEE HONG COMPANY LIMITED, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s FU LEE HONG COMPANY LIMITED, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s FU LEE HONG COMPANY LIMITED, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.114 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s FU LEE HONG COMPANY LIMITED, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.154,41,93,304/-** is on record and M/s FU LEE HONG COMPANY LIMITED, Hong Kong, abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s FU LEE HONG COMPANY LIMITED, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (21) M/s GEMS STAR TRADING F.Z.E, P O Box 171641, Dubai, UAE

38.115 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s GEMS STAR TRADING F.Z.E, P O Box 171641, Dubai, UAE.

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38.116 I note the facts and evidences on record and find that M/s GEMS STAR TRADING F.Z.E, P O Box 171641, Dubai, UAE is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s GEMS STAR TRADING F.Z.E, Dubai, UAE had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s GEMS STAR TRADING F.Z.E, Dubai, UAE Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.553,65,75,009/-** (Rs. Five Hundred Fifty Three Crore Sixty Five Lakh Seventy Five Thousand Nine Only) and re-determined value **Rs.8,87,255/-**(Rs. Eight Lakh Eighty Seven Thousand Two Hundred Fifty Five Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.8,87,255/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s GEMS STAR TRADING F.Z.E, Dubai, UAE is on record and thereby M/s GEMS STAR TRADING F.Z.E, Dubai, UAE has rendered itself to penalty under Section 114 AA Customs Act.

38.117 I hold that the false inflated export invoices raised by M/s GEMS STAR TRADING F.Z.E, Dubai, UAE to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s GEMS STAR TRADING F.Z.E, Dubai, UAE. Further, M/s GEMS STAR TRADING F.Z.E, Dubai, UAE in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.553,65,75,009/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.8,87,255/-**, the goods were supplied M/s GEMS STAR TRADING F.Z.E, Dubai, UAE with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s GEMS STAR TRADING F.Z.E, Dubai, UAE has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s GEMS STAR TRADING F.Z.E, Dubai, UAE is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.118 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s GEMS STAR TRADING F.Z.E, Dubai, UAE misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.553,65,75,009/-** is on record and M/s GEMS STAR TRADING F.Z.E, Dubai, UAE, abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s GEMS STAR TRADING F.Z.E, Dubai, UAE is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (23) M/s GLORY DIAMOND FZE, 17517, P2, Hamariya Free Zone, HBC-2527, Sharjah, UAE (info@glory-d.com)

38.119 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Acton the noticee M/s GLORY DIAMOND FZE, 17517, P2, Hamariya Free Zone, HBC-2527, Sharjah, UAE.

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38.120 I note the facts and evidences on record and find that M/s GLORY DIAMOND FZE, 17517, P2, Hamariya Free Zone, HBC-2527, Sharjah, UAE is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s GLORY DIAMOND FZE, 17517, P2, Hamariya Free Zone, HBC-2527, Sharjah, UAE had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s GLORY DIAMOND FZE, Sharjah, UAE Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.225,51,42,589/-** (Rs. Two Hundred Twenty Five Crore Fifty One Lakh Forty Two Thousand Five Hundred Eighty Nine Only) and re-determined value **Rs.3,40,428/-**(Rs. Three Lakh Forty Thousand Four Hundred Twenty Eight Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.3,40,428/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s GLORY DIAMOND FZE, Sharjah, UAE is on record and thereby M/s GLORY DIAMOND FZE, Sharjah, UAE has rendered itself to penalty under Section 114 AA Customs Act.

38.121 I hold that the false inflated export invoices raised by M/s GLORY DIAMOND FZE, Sharjah, UAE to M/s Sagar Diamonds Ltd, SEZ, Surat in

submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s GLORY DIAMOND FZE, Sharjah, UAE. Further, M/s GLORY DIAMOND FZE, Sharjah, UAE in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.225,51,42,589/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.3,40,428/-**, the goods were supplied M/s GLORY DIAMOND FZE, Sharjah, UAE with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s GLORY DIAMOND FZE, Sharjah, UAE has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s GLORY DIAMOND FZE, Sharjah, UAE is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.122 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s GLORY DIAMOND FZE, Sharjah, UAE misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.225,51,42,589/-** is on record and M/s GLORY DIAMOND FZE, Sharjah, UAE, abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s GLORY DIAMOND FZE, Sharjah, UAE is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (24) M/s GRAND CO, Room 907-8, Silver Cord Tower 2, 30, Canton Road, TST, Kowloon, Hong Kong

38.123 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s GRAND CO, Room 907-8, Silver Cord Tower 2, 30, Canton Road, TST, Kowloon, Hong Kong.

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38.124 I note the facts and evidences on record and find that M/s GRAND CO, Room 907-8, Silver Cord Tower 2, 30, Canton Road, TST, Kowloon, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s GRAND CO, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated

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17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s GRAND CO, Hong Kong Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs. 75,56,31,570/-** (Rs. Seventy Five Crore Fifty Six Lakh Thirty One Thousand Five Hundred Seventy Only) and re-determined value **Rs.1,40,01,524/-**(Rs. One Crore Forty Lakh One Thousand Five Hundred Twenty Four Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.1,40,01,524/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s GRAND CO, Hong Kong is on record and thereby M/s GRAND CO, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.125 I hold that the false inflated export invoices raised by M/s GRAND CO, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s GRAND CO, Hong Kong. Further, M/s GRAND CO, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs. 75,56,31,570/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.1,40,01,524/-**, the goods were supplied M/s GRAND CO, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s GRAND CO, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s GRAND CO, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.126 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s GRAND CO, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs. 75,56,31,570/-** is on record and M/s GRAND CO, Hong Kong abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s GRAND CO, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (25) M/s JIYA IMPEX DMCC, Unit No. 104, Concorde Tower 1, Plot no JLT-PH1-H2, Jumeirah Lakes Tower, Dubai, UAE (jiyaimpex24@gmail.com)

38.127 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s JIYA IMPEX DMCC, Unit No. 104, Concorde Tower 1, Plot no JLT-PH1-H2, Jumeirah Lakes Tower, Dubai, UAE.

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38.128 I note the facts and evidences on record and find that M/s JIYA IMPEX DMCC, Dubai,UAE is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s JIYA IMPEX DMCC, Dubai,UAE had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s JIYA IMPEX DMCC, Dubai,UAE Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.154,41,68,650/-** (Rs. One Hundred Fifty Four Crore Forty One Lakh Sixty Eight Thousand Six Hundred Fifty Only) and re-determined value **Rs.2,35,538/-**(Rs. Two Lakh Thirty Five Thousand Five Hundred Thirty Eight Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.2,35,538/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s JIYA IMPEX DMCC, Dubai,UAE is on record and thereby M/s JIYA IMPEX DMCC, Dubai,UAE has rendered itself to penalty under Section 114 AA Customs Act.

38.129 I hold that the false inflated export invoices raised by M/s JIYA IMPEX DMCC, Dubai,UAE to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s JIYA IMPEX DMCC, Dubai,UAE. Further, M/s JIYA IMPEX DMCC, Dubai,UAE in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.154,41,68,650/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.2,35,538/-**, the goods were supplied M/s JIYA IMPEX DMCC, Dubai,UAE with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s JIYA IMPEX DMCC, Dubai,UAE has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s JIYA IMPEX DMCC, Dubai,UAE is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.130 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s JIYA IMPEX DMCC, Dubai,UAE misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.154,41,68,650/-** is on record and M/s JIYA IMPEX DMCC, Dubai,UAE abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely

is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s JIYA IMPEX DMCC, Dubai,UAE is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (27) M/s K.DIAM LTD, 404A, Fu Fang Ind Bldg 1 Hok Yeun Street, Hunghom, Kowloon, Hong Kong

38.131 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s K.DIAM LTD, 404A, Fu Fang Ind Bldg 1 Hok Yeun Street, Hunghom, Kowloon, Hong Kong.

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38.132 I note the facts and evidences on record and find that M/s K.DIAM LTD, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s K.DIAM LTD, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s K.DIAM LTD, Hong Kong Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.35,58,35,206/-** (Rs. Thirty Five Crore Fifty Eight Lakh Thirty Five Thousand Two Hundred Six Only) and re-determined value **Rs.1,31,574/-**(Rs. One Lakh Thirty One Thousand Five Hundred Seventy Four Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.1,31,574/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s K.DIAM LTD, Hong Kong is on record and thereby M/s K.DIAM LTD, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.133 I hold that the false inflated export invoices raised by M/s K.DIAM LTD, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s K.DIAM LTD, Hong Kong. Further, M/s K.DIAM LTD, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.35,58,35,206/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.1,31,574/-**, the goods were supplied M/s K.DIAM LTD, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus, thereby M/s K.DIAM LTD, Hong Kong has abetted with M/s Sagar Diamonds Ltd,

SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s K.DIAM LTD, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.134 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s K.DIAM LTD, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.35,58,35,206/-** is on record and M/s K.DIAM LTD, Hong Kong abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s K.DIAM LTD, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (28) M/s KESHAR TRADE (HK)LTD, Unit1211,12FL, Beverly Commercial Centre, 87-105, Chatham Road South, TST, Kowloon, Hong Kong

38.135 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s KESHAR TRADE (HK)LTD, Unit1211,12FL, Beverly Commercial Centre, 87-105, Chatham Road South, TST, Kowloon, Hong Kong.

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38.136 I note the facts and evidences on record and find that M/s KESHAR TRADE (HK)LTD, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s KESHAR TRADE (HK)LTD, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s KESHAR TRADE (HK)LTD Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.427,08,30,881/-** (Rs. Four Hundred Twenty Seven Crore Eight Lakh Thirty Thousand Eight Hundred Eighty One Only) and re-determined value **Rs.5,69,026/-**(Rs. Five Lakh Sixty Nine Thousand Twenty Six Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.5,69,026/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s

KESHAR TRADE (HK)LTD is on record and thereby M/s KESHAR TRADE (HK)LTD has rendered itself to penalty under Section 114 AA Customs Act.

38.137 I hold that the false inflated export invoices raised by M/s KESHAR TRADE (HK)LTD to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s KESHAR TRADE (HK)LTD, Hong Kong. Further, M/s KESHAR TRADE (HK)LTD, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.427,08,30,881/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.5,69,026/-**, the goods were supplied M/s KESHAR TRADE (HK)LTD, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s KESHAR TRADE (HK)LTD, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s KESHAR TRADE (HK)LTD, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.138 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s KESHAR TRADE (HK)LTD, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.427,08,30,881/-** is on record and M/s KESHAR TRADE (HK)LTD, Hong Kong abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s KESHAR TRADE (HK)LTD, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (29) M/s KJ TRADING CO., Flat/Room H block-01, -26/F baliey garden, 26 Bailey Street, Hunghon, hong kong (kjtradinghkg@outlook.com)

38.139 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s KJ TRADING CO., Flat/Room H block-01, -26/F baliey garden, 26 Bailey Street, Hunghon, Hong Kong.

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38.140 I note the facts and evidences on record and find that M/s KJ TRADING CO., Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s KJ TRADING CO., Hong Kong had raised the

inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s KJ TRADING CO. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.174,59,20,032/-** (Rs. One Hundred Seventy Four Crore Fifty Nine Lakh Twenty Thousand Thirty Two Only) and re-determined value **Rs.2,21,037/-**(Rs. Two Lakh Twenty One Thousand Thirty Seven Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.2,21,037/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s KJ TRADING CO. is on record and thereby M/s KJ TRADING CO. has rendered itself to penalty under Section 114 AA Customs Act.

38.141 I hold that the false inflated export invoices raised by M/s KJ TRADING CO. to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s KJ TRADING CO., Hong Kong. Further, M/s KJ TRADING CO., Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.174,59,20,032/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.2,21,037/-**, the goods were supplied M/s KJ TRADING CO., Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s KJ TRADING CO., Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s KJ TRADING CO. is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.142 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s KJ TRADING CO., Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.174,59,20,032/-** is on record and M/s KJ TRADING CO., Hong Kong abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s KJ

TRADING CO., Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (30) M/s KOEMATLIFF PRIVATE LIMITED, 12 ARUMUGAM Road, #03-10A, LTC Building, Singapore-409958

38.143 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s KOEMATLIFF PRIVATE LIMITED, 12 ARUMUGAM Road, #03-10A, LTC Building, Singapore.

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38.144 I note the facts and evidences on record and find that M/s KOEMATLIFF PRIVATE LIMITED, Singapore is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s KOEMATLIFF PRIVATE LIMITED, Singapore had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s KOEMATLIFF PRIVATE LIMITED, Singapore Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.5,22,54,832/-** (Rs. Five Crore Twenty Two Lakh Fifty Four Thousand Eight Hundred Thirty Two Only) and re-determined value **Rs.8,438/-**(Rs. Eight Thousand Four Hundred Thirty Eight Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.8,438/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s KOEMATLIFF PRIVATE LIMITED, Singapore is on record and thereby M/s KOEMATLIFF PRIVATE LIMITED, Singapore has rendered itself to penalty under Section 114 AA Customs Act.

38.145 I hold that the false inflated export invoices raised by M/s KOEMATLIFF PRIVATE LIMITED, Singapore to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s KOEMATLIFF PRIVATE LIMITED, Singapore. Further, M/s KOEMATLIFF PRIVATE LIMITED, Singapore in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.5,22,54,832/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.8,438/-**, the goods were supplied M/s KOEMATLIFF PRIVATE LIMITED, Singapore with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s KOEMATLIFF PRIVATE LIMITED, Singapore has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s KOEMATLIFF PRIVATE LIMITED, Singapore is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds

Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.146 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s KOEMATLIFF PRIVATE LIMITED, Singapore misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.5,22,54,832/-** is on record and M/s KOEMATLIFF PRIVATE LIMITED, Singapore abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s KOEMATLIFF PRIVATE LIMITED, Singapore is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (31) M/s LEE FU SHING COMPANY LIMITED, 1108, 11/F, Rise Commercial, F-11, Gran Ville Circuit, TST, Kowloon, Hong Kong (leefushing19@gmail.com)

38.147 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s LEE FU SHING COMPANY LIMITED, 1108, 11/F, Rise Commercial, F-11, Gran Ville Circuit, TST, Kowloon, Hong Kong.

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38.148 I note the facts and evidences on record and find that M/s LEE FU SHING COMPANY LIMITED, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s LEE FU SHING COMPANY LIMITED, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s LEE FU SHING COMPANY LIMITED, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.224,39,50,073/-** (Rs. Two Hundred Twenty Four Crore Thirty Nine Lakh Fifty Thousand Seventy Three Only) and re-determined value **Rs.3,20,150/-**(Rs. Three Lakh Twenty Thousand One Hundred Fifty Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.3,20,150/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s LEE FU SHING COMPANY LIMITED, Hong Kong is on record and thereby M/s LEE FU SHING COMPANY LIMITED, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.149 I hold that the false inflated export invoices raised by M/s LEE FU SHING COMPANY LIMITED, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s LEE FU SHING COMPANY LIMITED, Hong Kong. Further, M/s LEE FU SHING COMPANY LIMITED, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.224,39,50,073/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.3,20,150/-**, the goods were supplied M/s LEE FU SHING COMPANY LIMITED, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s LEE FU SHING COMPANY LIMITED, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s LEE FU SHING COMPANY LIMITED, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.150 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s LEE FU SHING COMPANY LIMITED, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.224,39,50,073/-** is on record and M/s LEE FU SHING COMPANY LIMITED, Hong Kong abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s LEE FU SHING COMPANY LIMITED, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (32) M/s LIME TRADING., RM 1715, 17/F, Rise Comm Bldg, 5-11, Granville Circuit, TST, Kowloon, Hong Kong

38.151 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s LIME TRADING., RM 1715, 17/F, Rise Comm Bldg, 5-11, Granville Circuit, TST, Kowloon, Hong Kong.

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38.152 I note the facts and evidences on record and find that M/s LIME TRADING., Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s LIME TRADING., Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and

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polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s LIME TRADING., Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.2,13,45,000/-** (Rs. Two Crore Thirteen Lakh Forty Five Thousand Only) and re-determined value **Rs.6,22,642/-**(Rs. Three Lakh Twenty Thousand One Hundred Fifty Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.6,22,642/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s LIME TRADING., Hong Kong is on record and thereby M/s LIME TRADING., Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.153 I hold that the false inflated export invoices raised by M/s LIME TRADING., Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s LIME TRADING., Hong Kong. Further, M/s LIME TRADING., Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.2,13,45,000/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.6,22,642/-**, the goods were supplied M/s LIME TRADING., Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s LIME TRADING., Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s LIME TRADING., Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.154 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s LIME TRADING., Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.2,13,45,000/-** is on record and M/s LIME TRADING., Hong Kong abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s LIME TRADING., Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (33) M/s MARS IND & COMM SERVICES LIMITD, Unit A&B, 9/Fl, Champion Building, 287-291, Des Voeux Road, Central, Sheung Wan, Hong Kong

38.155 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s MARS IND & COMM SERVICES LIMITD, Unit A&B, 9/Fl, Champion Building, 287-291, Des Voeux Road, Central, Sheung Wan, Hong Kong.

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38.156 I note the facts and evidences on record and find that M/s MARS IND & COMM SERVICES LIMITD, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s MARS IND & COMM SERVICES LIMITD, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s MARS IND & COMM SERVICES LIMITD, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.2073,95,95,996/-** (Rs. Two Thousand Seventy Three Crore Ninety Five Lakh Ninety Five Thousand Nine Hundred Ninety Six Only) and re-determined value **Rs.30,15,308/-**(Rs. Thirty Lakh Fifteen Thousand Three Hundred Eight Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.30,15,308/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s MARS IND & COMM SERVICES LIMITD, Hong Kong is on record and thereby M/s MARS IND & COMM SERVICES LIMITD, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.157 I hold that the false inflated export invoices raised by M/s MARS IND & COMM SERVICES LIMITD, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s MARS IND & COMM SERVICES LIMITD, Hong Kong. Further, M/s MARS IND & COMM SERVICES LIMITD, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.2073,95,95,996/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.30,15,308/-**, the goods were supplied M/s MARS IND & COMM SERVICES LIMITD, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s MARS IND & COMM SERVICES LIMITD, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s MARS IND & COMM SERVICES LIMITD, Hong Kong is liable to penalty under Section 117 of the Customs

Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.158 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s MARS IND & COMM SERVICES LIMITD, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.2073,95,95,996/-** is on record and M/s MARS IND & COMM SERVICES LIMITD, Hong Kong abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s MARS IND & COMM SERVICES LIMITD, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (34) M/s MIRACLE MPS LIMITED, 8B, Dorfu Court, 5-6 Hau Fook Street, TSIM SHA TSUI, KLN, Hong Kong

38.159 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s MIRACLE MPS LIMITED, 8B, Dorfu Court, 5-6 Hau Fook Street, TSIM SHA TSUI, KLN, Hong Kong.

38.160 I note the facts and evidences on record and find that M/s MIRACLE MPS LIMITED, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s MIRACLE MPS LIMITED, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s MIRACLE MPS LIMITED, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.627,79,49,907/-** (Rs. Six Hundred Twenty Seven Crore Seventy Nine Lakh Forty Nine Thousand Nine Hundred Seven Only) and re-determined value **Rs.1,42,49,861/-**(Rs. One Crore Forty Two Lakh Forty Nine Thousand Eight Hundred Sixty One Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.1,42,49,861/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s MIRACLE MPS LIMITED, Hong Kong is on record and thereby M/s MIRACLE MPS LIMITED, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.161 I hold that the false inflated export invoices raised by M/s MIRACLE MPS LIMITED, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in

submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s MIRACLE MPS LIMITED, Hong Kong. Further, M/s MIRACLE MPS LIMITED, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.627,79,49,907/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.1,42,49,861/-**, the goods were supplied M/s MIRACLE MPS LIMITED, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s MIRACLE MPS LIMITED, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s MIRACLE MPS LIMITED, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.162 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s MIRACLE MPS LIMITED, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.627,79,49,907/-** is on record and M/s MIRACLE MPS LIMITED, Hong Kong abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s MIRACLE MPS LIMITED, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (35) M/s MIRACLE PRIVATE LIMITED, Flat 1006, 10/F, Rise Comm Bldg, 5-11, Granville Circuit, TSIM, SHA TSUI, Hong Kong

38.163 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s MIRACLE PRIVATE LIMITED, Flat 1006, 10/F, Rise Comm Bldg, 5-11, Granville Circuit, TSIM, SHA TSUI, Hong Kong.

38.164 I note the facts and evidences on record and find that M/s MIRACLE PRIVATE LIMITED, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s MIRACLE PRIVATE LIMITED, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods

were in fact Synthetic Ruby which was supplied by M/s MIRACLE PRIVATE LIMITED, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs. 95,08,25,660/-** (Rs. Ninety Five Crore Eight Lakh Twenty Five Thousand Six Hundred Sixty Only) and re-determined value **Rs.1,24,671/-**(Rs. One Lakh Twenty Four Thousand Six Hundred seventy One Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.1,24,671/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s MIRACLE PRIVATE LIMITED, Hong Kong is on record and thereby M/s MIRACLE PRIVATE LIMITED, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.165 I hold that the false inflated export invoices raised by M/s MIRACLE PRIVATE LIMITED, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s MIRACLE PRIVATE LIMITED, Hong Kong. Further, M/s MIRACLE PRIVATE LIMITED, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs. 95,08,25,660/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.1,24,671/-**, the goods were supplied M/s MIRACLE PRIVATE LIMITED, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s MIRACLE PRIVATE LIMITED, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s MIRACLE PRIVATE LIMITED, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.166 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s MIRACLE PRIVATE LIMITED, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs. 95,08,25,660/-** is on record and M/s MIRACLE PRIVATE LIMITED, Hong Kong abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s MIRACLE PRIVATE LIMITED, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (36) M/s MIRACLE TRADING HK LIMITED, Room 1006, 10/F, Rise Comm Bldg, 5-11, Granville Circuit, TST, Kowloon, Hong Kong

38.167 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s MIRACLE TRADING HK LIMITED, Room 1006, 10/F, Rise Comm Bldg, 5-11, Granville Circuit, TST, Kowloon, Hong Kong.

38.168 I note the facts and evidences on record and find that M/s MIRACLE TRADING HK LIMITED, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s MIRACLE TRADING HK LIMITED, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s MIRACLE TRADING HK LIMITED, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.95,39,75,079/-** (Rs. Ninety Five Crore Thirty Nine Lakh Seventy Five Thousand Seventy Nine Only) and re-determined value **Rs.1,25,084/-**(Rs. One Lakh Twenty Five Thousand eighty Four Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.1,25,084/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s MIRACLE TRADING HK LIMITED, Hong Kong is on record and thereby M/s MIRACLE TRADING HK LIMITED, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.169 I hold that the false inflated export invoices raised by M/s MIRACLE TRADING HK LIMITED, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s MIRACLE TRADING HK LIMITED, Hong Kong. Further, M/s MIRACLE TRADING HK LIMITED, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.95,39,75,079/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.1,25,084/-**, the goods were supplied M/s MIRACLE TRADING HK LIMITED, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s MIRACLE TRADING HK LIMITED, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s MIRACLE TRADING HK LIMITED, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.170 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s MIRACLE TRADING HK LIMITED, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.95,39,75,079/-** is on record and M/s MIRACLE TRADING HK LIMITED, Hong Kong abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s MIRACLE TRADING HK LIMITED, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (37) M/s NV INTERNATIONAL., Room No. 1715, 17th Floor,Rise Commercial Building, 5-11, Gran Ville Circuit, Gran Ville Road, TST, Kowloon, Hong Kong

38.171 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s NV INTERNATIONAL., Room No. 1715, 17th Floor,Rise Commercial Building, 5-11, Gran Ville Circuit, Gran Ville Road, TST, Kowloon, Hong Kong.

38.172 I note the facts and evidences on record and find that M/s NV INTERNATIONAL, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s NV INTERNATIONAL, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s NV INTERNATIONAL, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.7,44,30,015/-** (Rs. Seven Crore Forty Four Lakh Thirty Thousand Fifteen Only) and re-determined value **Rs.34,870/-**(Rs. Thirty Four Thousand Eight Hundred Seventy Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.34,870/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s NV INTERNATIONAL, Hong Kong is on record and thereby M/s NV INTERNATIONAL, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.173 I hold that the false inflated export invoices raised by M/s NV INTERNATIONAL, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to

M/s NV INTERNATIONAL, Hong Kong. Further, M/s NV INTERNATIONAL, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.7,44,30,015/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.34,870/-**, the goods were supplied M/s NV INTERNATIONAL, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s NV INTERNATIONAL, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s NV INTERNATIONAL, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.174 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s NV INTERNATIONAL, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.7,44,30,015/-** is on record and M/s NV INTERNATIONAL, Hong Kong abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s NV INTERNATIONAL, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (38) M/s PACY CORPORATION LTD., Rm B, 9/F, Hop Hing, Industrial Bldg, 704, Kastle Peak Road, Lai Chi Kok, Kln, Hong Kong (pacycorporationltd@gmail.com)

38.175 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s PACY CORPORATION LTD., Rm B, 9/F, Hop Hing, Industrial Bldg, 704, Kastle Peak Road, Lai Chi Kok, Kln, Hong Kong.

38.176 I note the facts and evidences on record and find that M/s PACY CORPORATION LTD., Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s PACY CORPORATION LTD., Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s PACY CORPORATION LTD., Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and

polished precious stone(Ruby) having mis-declared value of **Rs.22,24,76,415/-** (Rs. Twenty Two Crore Twenty Four Lakh Seventy Six Thousand Four Hundred Fifteen Only) and re-determined value **Rs.99,451/-**(Rs. Ninety Nine Thousand Four Hundred Fifty One Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.99,451/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s PACY CORPORATION LTD., Hong Kong is on record and thereby M/s PACY CORPORATION LTD., Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.177 I hold that the false inflated export invoices raised by M/s PACY CORPORATION LTD., Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s PACY CORPORATION LTD., Hong Kong. Further, M/s PACY CORPORATION LTD., Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.22,24,76,415/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.99,451/-**, the goods were supplied M/s PACY CORPORATION LTD., Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s PACY CORPORATION LTD., Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s PACY CORPORATION LTD., Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.178 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s PACY CORPORATION LTD., Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.22,24,76,415/-** is on record and M/s PACY CORPORATION LTD., Hong Kong abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s PACY CORPORATION LTD., Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (39) M/s PINK STAR HK LTD, Room No. 22, Unit-P, 1/F, Kiaser Estate Pahse 3, 11 HOK YUEN Street, Hunghom, Hong Kong (pinkstarthkltd@gmail.com)

38.179 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s PINK STAR HK LTD, Room No. 22, Unit-P, 1/F, Kiaser Estate Pahse 3, 11 HOK YUEN Street, Hunghom, Hong Kong.

38.180 I note the facts and evidences on record and find that M/s PINK STAR HK LTD, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s PINK STAR HK LTD, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s PINK STAR HK LTD, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.112,19,08,539/-** (Rs. One Hundred Twelve Crore Nineteen Lakh Eight Thousand Five Hundred Thirty Nine Only) and re-determined value **Rs.1,47,105/-**(Rs. One Lakh Forty Seven Thousand One Hundred Five Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.1,47,105/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s PINK STAR HK LTD, Hong Kong is on record and thereby M/s PINK STAR HK LTD, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.181 I hold that the false inflated export invoices raised by M/s PINK STAR HK LTD, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s PINK STAR HK LTD, Hong Kong. Further, M/s PINK STAR HK LTD, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.112,19,08,539/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.1,47,105/-**, the goods were supplied M/s PINK STAR HK LTD, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s PINK STAR HK LTD, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s PINK STAR HK LTD, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.182 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s PINK STAR HK LTD, Hong Kong misdelcared as cut and

polished Precious stones (Ruby) with misdeclared value as **Rs.112,19,08,539/-** is on record and M/s PINK STAR HK LTD, Hong Kong abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s PINK STAR HK LTD, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (40) M/s RK TRADING HK LTD, Roon B4, 13F, Block 1, Kaiser Estate, No.41 Man Yue Steet, Hung Hom, Hong Kong

38.183 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s RK TRADING HK LTD, Roon B4, 13F, Block 1, Kaiser Estate, No.41 Man Yue Steet, Hung Hom, Hong Kong.

38.184 I note the facts and evidences on record and find that M/s RK TRADING HK LTD, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s RK TRADING HK LTD, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s RK TRADING HK LTD, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.53,85,18,922/-** (Rs. Fifty Three Crore Eighty Five Lakh Eighteen Thousand Nine Hundred Twenty Two Only) and re-determined value **Rs.73,894/-**(Rs. Seventy-Three Thousand Eight Hundred Ninety Four Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.73,894/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s RK TRADING HK LTD, Hong Kong is on record and thereby M/s RK TRADING HK LTD, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.185 I hold that the false inflated export invoices raised by M/s RK TRADING HK LTD, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s RK TRADING HK LTD, Hong Kong. Further, M/s RK TRADING HK LTD, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.53,85,18,922/-**and the

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goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.73,894/-**, the goods were supplied M/s RK TRADING HK LTD, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus, thereby M/s RK TRADING HK LTD, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s RK TRADING HK LTD, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.186 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s RK TRADING HK LTD, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.53,85,18,922/-** is on record and M/s RK TRADING HK LTD, Hong Kong abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s RK TRADING HK LTD, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (41) M/s SHIV DIAMOND, Unit 7, 11th Floor, Heng Ngai Jew CTR, 4 HOK- YUEN Street, East Hung HOM, Kowloon, Hong Kong

38.187 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s SHIV DIAMOND, Unit 7, 11th Floor, Heng Ngai Jew CTR, 4 HOK- YUEN Street, East Hung HOM, Kowloon, Hong Kong.

38.188 I note the facts and evidences on record and find that M/s SHIV DIAMOND, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s SHIV DIAMOND, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s SHIV DIAMOND, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.10,00,77,300/-** (Rs. Ten Crore Seventy Seven Thousand Three Hundred Only) and re-determined value **Rs.46,420/-**(Rs. Forty Six Thousand Four Hundred Twenty Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I

accept the value re-determined of **Rs.46,420/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s SHIV DIAMOND, Hong Kong is on record and thereby M/s SHIV DIAMOND, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.189 I hold that the false inflated export invoices raised by M/s SHIV DIAMOND, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s SHIV DIAMOND, Hong Kong. Further, M/s SHIV DIAMOND, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.10,00,77,300/-**and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.46,420/-**, the goods were supplied M/s SHIV DIAMOND, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s SHIV DIAMOND, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s SHIV DIAMOND, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.190 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s SHIV DIAMOND, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.10,00,77,300/-** is on record and M/s SHIV DIAMOND, Hong Kong abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s SHIV DIAMOND, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (44) M/s SPINEL HOUSE (HK), unit 1, 10/F, Tower A, hunghom Commercial Centre, 37-39 Ma tau wai Road, Hung hom, kowloon, Hong Kong

38.191 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s SPINEL HOUSE (HK), unit 1, 10/F, Tower A, hunghom Commercial Centre, 37-39 Ma tau wai Road, Hung hom, kowloon, Hong Kong.

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38.192 I note the facts and evidences on record and find that M/s SPINEL HOUSE (HK), Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s SPINEL HOUSE (HK), Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s SPINEL HOUSE (HK), Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.4,94,44,538/-** (Rs. Four Crore Ninety Four Lakh Forty Four Thousand Five Hundred Thirty Eight Only) and re-determined value **Rs.21,670/-**(Rs. Twenty One Thousand Six Hundred Seventy Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.21,670/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s SPINEL HOUSE (HK), Hong Kong is on record and thereby M/s SPINEL HOUSE (HK), Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.193 I hold that the false inflated export invoices raised by M/s SPINEL HOUSE (HK), Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s SPINEL HOUSE (HK), Hong Kong. Further, M/s SPINEL HOUSE (HK), Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.4,94,44,538/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.21,670/-**, the goods were supplied M/s SPINEL HOUSE (HK), Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s SPINEL HOUSE (HK), Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s SPINEL HOUSE (HK), Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.194 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s SPINEL HOUSE (HK), Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.4,94,44,538/-** is on record and M/s SPINEL HOUSE (HK), Hong Kong abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the

designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s SPINEL HOUSE (HK), Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (45) M/s STALLION LIMITED, Block-A, 2nd Floor, LIP Seng, mansion, 15-19, Carnarvon Roa, TST, Kowloon, Hong Kong (stallion.ltd@aol.com)

38.195 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s STALLION LIMITED, Block-A, 2nd Floor, LIP Seng, mansion, 15-19, Carnarvon Roa, TST, Kowloon, Hong Kong.

38.196 I note the facts and evidences on record and find that M/s STALLION LIMITED, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s STALLION LIMITED, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s STALLION LIMITED, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.14,84,55,900/-** (Rs. Fourteen Crore Eighty Four Lakh Fifty Five Thousand Nine Hundred Only) and re-determined value **Rs.68,860/-**(Rs. Sixty Eight Thousand Eight Hundred Sixty Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.68,860/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s STALLION LIMITED, Hong Kong is on record and thereby M/s STALLION LIMITED, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.197 I hold that the false inflated export invoices raised by M/s STALLION LIMITED, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s STALLION LIMITED, Hong Kong. Further, M/s STALLION LIMITED, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.14,84,55,900/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.68,860/-**, the goods were supplied M/s STALLION LIMITED, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s STALLION LIMITED, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s STALLION LIMITED, Hong Kong is liable to penalty under Section 117 of the

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Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.198 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s STALLION LIMITED, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.14,84,55,900/-** is on record and M/s STALLION LIMITED, Hong Kong abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s STALLION LIMITED, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (46) M/s SUN RAYS HK LIMITED, Flat 22, 1/F, Block 3, Kaiser Estate, 11 Hok Yuen Street, Hung Hom, Kowloon, Hong Kong

38.199 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s SUN RAYS HK LIMITED, Flat 22, 1/F, Block 3, Kaiser Estate, 11 Hok Yuen Street, Hung Hom, Kowloon, Hong Kong.

38.200 I note the facts and evidences on record and find that M/s SUN RAYS HK LIMITED, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s SUN RAYS HK LIMITED, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s SUN RAYS HK LIMITED, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.622,64,30,568/-** (Rs. Six Hundred Twenty Two Crore Sixty Four Lakh Thirty Thousand Five Hundred Sixty Eight Only) and re-determined value **Rs.8,66,757/-**(Rs. Eight Lakh Sixty Six Thousand Seven Hundred Fifty Seven Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.8,66,757/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s SUN RAYS HK LIMITED, Hong Kong is on record and thereby M/s SUN RAYS HK LIMITED, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.201 I hold that the false inflated export invoices raised by M/s SUN RAYS HK LIMITED, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s SUN RAYS HK LIMITED, Hong Kong. Further, M/s SUN RAYS HK LIMITED, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.622,64,30,568/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.8,66,757/-**, the goods were supplied M/s SUN RAYS HK LIMITED, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s SUN RAYS HK LIMITED, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s SUN RAYS HK LIMITED, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.202 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s SUN RAYS HK LIMITED, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.622,64,30,568/-** is on record and M/s SUN RAYS HK LIMITED, Hong Kong abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s SUN RAYS HK LIMITED, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (47) M/s SUN TAI HK LTD, Unit 502, 5/F, Hart Avenue Plaza, 5-9 Hart Avenue, T.S.T. Kowloon, Hong Kong

38.203 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s SUN TAI HK LTD, Unit 502, 5/F, Hart Avenue Plaza, 5-9 Hart Avenue, T.S.T. Kowloon, Hong Kong.

38.204 I note the facts and evidences on record and find that M/s SUN TAI HK LTD, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s SUN TAI HK LTD, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04

dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s SUN TAI HK LTD, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.910,96,89,558/-** (Rs. Nine Hundred Ten Crore Ninety Six Lakh Eighty Nine Thousand Five Hundred Fifty Eight Only) and re-determined value **Rs.13,53,766/-**(Rs. Thirteen Lakh Fifty Three Thousand Seven Hundred Sixty Six Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.13,53,766/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s SUN TAI HK LTD, Hong Kong is on record and thereby M/s SUN TAI HK LTD, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.205 I hold that the false inflated export invoices raised by M/s SUN TAI HK LTD, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s SUN TAI HK LTD, Hong Kong. Further, M/s SUN TAI HK LTD, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.910,96,89,558/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.13,53,766/-**, the goods were supplied M/s SUN TAI HK LTD, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s SUN TAI HK LTD, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s SUN TAI HK LTD, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.206 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s SUN TAI HK LTD, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.910,96,89,558/-** is on record and M/s SUN TAI HK LTD, Hong Kong abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s SUN TAI HK LTD, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (49) M/s UNIQUE DIA LIMITED, 502, Hart Avenue Plaza, 5-9 Hart Avenue, Tsim Sha Tsui Kowloon, Hong Kong

38.207 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s UNIQUE DIA LIMITED, 502, Hart Avenue Plaza, 5-9 Hart Avenue, Tsim Sha Tsui Kowloon, Hong Kong.

38.208 I note the facts and evidences on record and find that M/s UNIQUE DIA LIMITED, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s UNIQUE DIA LIMITED, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s UNIQUE DIA LIMITED, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.413,16,42,948/-** (Rs. Four Hundred Thirteen Crore Sixteen Lakh Forty Two Thousand Nine Hundred Forty Eight Only) and re-determined value **Rs.5,59,775/-**(Rs. Five Lakh Fifty Nine Thousand Seven Hundred Seventy Five Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.5,59,775/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s UNIQUE DIA LIMITED, Hong Kong is on record and thereby M/s UNIQUE DIA LIMITED, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.209 I hold that the false inflated export invoices raised by M/s UNIQUE DIA LIMITED, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s UNIQUE DIA LIMITED, Hong Kong. Further, M/s UNIQUE DIA LIMITED, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.413,16,42,948/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.5,59,775/-**, the goods were supplied M/s UNIQUE DIA LIMITED, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s UNIQUE DIA LIMITED, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s UNIQUE DIA LIMITED, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.210 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s UNIQUE DIA LIMITED, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.413,16,42,948/-** is on record and M/s UNIQUE DIA LIMITED, Hong Kong abetted M/s Sagar

Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s UNIQUE DIA LIMITED, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (50) M/s UNNATI GENERAL TRADING LIMITED, Flat/Room No. 11, Blk-B, 11/F, Wing Cheong, Commercial Building, 19-25, Gervois Street, Sheung Wan, Hong Kong

38.211 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s UNNATI GENERAL TRADING LIMITED, Flat/Room No. 11, Blk-B, 11/F, Wing Cheong, Commercial Building, 19-25, Gervois Street, Sheung Wan, Hong Kong.

38.212 I note the facts and evidences on record and find that M/s UNNATI GENERAL TRADING LIMITED, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s UNNATI GENERAL TRADING LIMITED, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s UNNATI GENERAL TRADING LIMITED, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.26,59,58,436/-** (Rs. Twenty Six Crore Fifty Nine Lakh Fifty Eight Thousand Four Hundred Thirty Six Only) and re-determined value **Rs.41,157/-**(Rs. Forty One Thousand One Hundred Fifty Seven Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.41,157/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s UNNATI GENERAL TRADING LIMITED, Hong Kong is on record and thereby M/s UNNATI GENERAL TRADING LIMITED, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.213 I hold that the false inflated export invoices raised by M/s UNNATI GENERAL TRADING LIMITED, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s UNNATI GENERAL TRADING LIMITED, Hong Kong. Further, M/s UNIQUE DIA LIMITED, Hong Kong in the case of supply of

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goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.26,59,58,436/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.41,157/-**, the goods were supplied M/s UNNATI GENERAL TRADING LIMITED, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s UNNATI GENERAL TRADING LIMITED, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s UNNATI GENERAL TRADING LIMITED, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.214 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s UNNATI GENERAL TRADING LIMITED, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.26,59,58,436/-** is on record and M/s UNNATI GENERAL TRADING LIMITED, Hong Kong abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s UNNATI GENERAL TRADING LIMITED, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (51) M/s VENUS IMPEX TRADING LIMITED, Block E, 5F, haribest Industrial building, 45-47 AU PUI WAN ST FO.TAN, Shatin, Hong Kong

38.215 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s VENUS IMPEX TRADING LIMITED, Block E, 5F, haribest Industrial building, 45-47 AU PUI WAN ST FO.TAN, Shatin, Hong Kong.

38.216 I note the facts and evidences on record and find that M/s VENUS IMPEX TRADING LIMITED, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s VENUS IMPEX TRADING LIMITED, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s VENUS IMPEX TRADING LIMITED, Hong Kong. Thus Synthetic Ruby was mis-declared in

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guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.151,46,12,317/-** (Rs. One Hundred Fifty One Crore Forty Six Lakh Twelve Thousand Three Hundred Seventeen Only) and re-determined value **Rs. 70,71,856/-**(Rs. Seventy Lakh Seventy One Thousand Eight Hundred Fifty Six Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.70,71,856/-**as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s VENUS IMPEX TRADING LIMITED, Hong Kong is on record and thereby M/s VENUS IMPEX TRADING LIMITED, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.217 I hold that the false inflated export invoices raised by M/s VENUS IMPEX TRADING LIMITED, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s VENUS IMPEX TRADING LIMITED, Hong Kong. Further, M/s VENUS IMPEX TRADING LIMITED, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.151,46,12,317/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs. 70,71,856/-**, the goods were supplied M/s VENUS IMPEX TRADING LIMITED, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s VENUS IMPEX TRADING LIMITED, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s VENUS IMPEX TRADING LIMITED, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.218 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s VENUS IMPEX TRADING LIMITED, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.151,46,12,317/-** is on record and M/s VENUS IMPEX TRADING LIMITED, Hong Kong abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s VENUS IMPEX TRADING LIMITED, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (52) M/s VERIOT TECHNOLOGIES PTE LTD, 8 Ubi Road 2, #08-10, Zervex, Singapore

38.219 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s VERIOT TECHNOLOGIES PTE LTD, 8 Ubi Road 2, #08-10, Zervex, Singapore.

38.220 I note the facts and evidences on record and find that M/s VERIOT TECHNOLOGIES PTE LTD, Singapore is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s VERIOT TECHNOLOGIES PTE LTD, Singapore had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s VERIOT TECHNOLOGIES PTE LTD, Singapore. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.5,77,00,464/-** (Rs. Five Crore Seventy seven Lakh Four Hundred Sixty Four Only) and re-determined value **Rs.7,566/-**(Rs. Seven Thousand Five Hundred Sixty Six Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.7,566/-**as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s VERIOT TECHNOLOGIES PTE LTD, Singapore is on record and thereby M/s VERIOT TECHNOLOGIES PTE LTD, Singapore has rendered itself to penalty under Section 114 AA Customs Act.

38.221 I hold that the false inflated export invoices raised by M/s VERIOT TECHNOLOGIES PTE LTD, Singapore to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s VERIOT TECHNOLOGIES PTE LTD, Singapore. Further, M/s VERIOT TECHNOLOGIES PTE LTD, Singapore in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.5,77,00,464/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.7,566/-,** the goods were supplied by M/s VERIOT TECHNOLOGIES PTE LTD, Singapore with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s VERIOT TECHNOLOGIES PTE LTD, Singapore has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s VERIOT TECHNOLOGIES PTE LTD, Singapore is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.222 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s VERIOT TECHNOLOGIES PTE LTD, Singapore misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.5,77,00,464/-** is on record and M/s VERIOT TECHNOLOGIES PTE LTD, Singapore abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s VERIOT TECHNOLOGIES PTE LTD, Singapore is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (53) M/s VITAL ENERGY FZE, Elob Office no. E-15F-04, Hamriyah Free Zone Sharjah, UAE

38.223 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s VITAL ENERGY FZE, Elob Office no. E-15F-04, Hamriyah Free Zone Sharjah, UAE.

38.224 I note the facts and evidences on record and find that M/s VITAL ENERGY FZE, Sharjah, UAE is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s VITAL ENERGY FZE, Sharjah, UAE had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s VITAL ENERGY FZE, Sharjah, UAE. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.4,95,24,480/-** (Rs. Four Crore Ninety Five Lakh Twenty Four Thousand Four Hundred Eighty Only) and re-determined value **Rs.21,120/-**(Rs. Twenty One Thousand One Hundred Twenty Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.21,120/-**as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s VITAL ENERGY FZE, Sharjah, UAE is on record and thereby M/s VITAL ENERGY FZE, Sharjah, UAE has rendered itself to penalty under Section 114 AA Customs Act.

38.225 I hold that the false inflated export invoices raised by M/s VITAL ENERGY FZE, Sharjah, UAE to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s VITAL ENERGY FZE, Sharjah, UAE. Further, M/s VITAL ENERGY

FZE, Sharjah, UAE in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.4,95,24,480/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.21,120/-,** the goods were supplied by M/s VITAL ENERGY FZE, Sharjah, UAE with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s VITAL ENERGY FZE, Sharjah, UAE has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s VITAL ENERGY FZE, Sharjah, UAE is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.226 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s VITAL ENERGY FZE, Sharjah, UAE misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.4,95,24,480/-** is on record and M/s VITAL ENERGY FZE, Sharjah, UAE abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s VITAL ENERGY FZE, Sharjah, UAE is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (53) M/s ZHAN HONG TRADE HK LIMITED, Unit 31, 2nd Floor, Mirador Mansion, 58 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong (E-mail zhanhongtradehk@outlook.com)

38.227 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 112(a),112(b),114AA and 117 of the Customs Act on the noticee M/s ZHAN HONG TRADE HK LIMITED, Unit 31, 2nd Floor, Mirador Mansion, 58 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong.

38.228 I note the facts and evidences on record and find that M/s ZHAN HONG TRADE HK LIMITED, Hong Kong is an overseas supplier of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s ZHAN HONG TRADE HK LIMITED, Hong Kong had raised the inflated commercial invoices to M/s Sagar Diamonds Ltd, SEZ, Surat and mis declared before the SEZ authority in terms of value and description, declared as cut and polished Precious stones (Ruby); the same is further corroborated by the Expert Test Reports Nos. Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the goods were in fact Synthetic Ruby which was supplied by M/s ZHAN HONG TRADE HK LIMITED, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of cut and polished precious stone(Ruby) having mis-declared value of **Rs.487,58,92,180/-** (Rs. Four Hundred Eighty Seven Crore Fifty Eight Lakh Ninety Two Thousand One

Hundred Eighty Only) and re-determined value **Rs.12,17,076 /-**(Rs.Twelve Lakh Seventeen Thousand Seventy Six Only) as per **Table 11** of the SCN dated 26.02.2024 by applying the ratio of the test results and valuation report by Expert valuer. I accept the value re-determined of **Rs.12,17,076/-**as the value determined under Section 14 Customs Act read with the Valuation Rules thereof. I find the inflated false invoice and related material documents supplied by M/s ZHAN HONG TRADE HK LIMITED, Hong Kong is on record and thereby M/s ZHAN HONG TRADE HK LIMITED, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.229 I hold that the false inflated export invoices raised by M/s ZHAN HONG TRADE HK LIMITED, Hong Kong to M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money to M/s ZHAN HONG TRADE HK LIMITED, Hong Kong. Further, M/s ZHAN HONG TRADE HK LIMITED, Hong Kong in the case of supply of goods namely Synthetic Ruby on record, wherein the CIF value was mis-declared as **Rs.487,58,92,180/-** and the goods has been mis-decleared as cut and polished Precious stones (Ruby) whereas on testing the subject goods are Synthetic Ruby and the value as per valuation expert has evaluated as **Rs.12,17,076/-,** the goods were supplied by M/s ZHAN HONG TRADE HK LIMITED, Hong Kong with wrong documentation to M/s Sagar Diamonds Ltd, SEZ, Surat. Thus thereby M/s ZHAN HONG TRADE HK LIMITED, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty, separately under Section 112 and Section 114AA of the Customs Act, 1962. I also find that M/s ZHAN HONG TRADE HK LIMITED, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.230 Further for this issue of supply of the goods Synthetic Ruby which were supplied by M/s ZHAN HONG TRADE HK LIMITED, Hong Kong misdelcared as cut and polished Precious stones (Ruby) with misdeclared value as **Rs.487,58,92,180/-** is on record and M/s ZHAN HONG TRADE HK LIMITED, Hong Kong abetted M/s Sagar Diamonds Ltd, SEZ, Surat in rendering the subject goods liable to confiscation has attracted itself to penalty under Section 112(b) Customs Act and precisely is liable to penalty under Section 112(b)(v) of Customs Act and as per the wordings of the said Section 112(b)(v) Custom Act, I find that penalty amounting to the difference between the declared value and the value thereof is apt to be levied in subject matter. My findings with respect to penalty on foreign exporter and issuance of the SCN dated 26.02.2024 by the designated/empowered authorities may be read into the preceding Paras at Para **38.68 to 38.71** may be read into, and not reproduced for the sake of mere repetition. Therefore, I hold in the instant case that the noticee M/s ZHAN HONG TRADE HK LIMITED, Hong Kong is liable for penalty under Section 112(b),114AA and 117 of the Customs Act, 1962.

Proposal of Penalty on Foreing buyers

Proposal for penalty on (1)M/s SINOVAC LIMITED, Unit 705, 7/F, Golden Draon Plaza, 38-40 Cameron Road, T.S.T., Kowloon, Hong Kong

38.231 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 114, 114AA and 117 of the Customs Act on I also note the facts and evidences on record and find that M/s Sinovac Limited, Hong Kong is an overseas buyer of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s Sinovac Limited, Hong Kong had received and accepted the inflated commercial invoices issued by M/s Sagar Diamonds Ltd, SEZ, Surat which was declared before the SEZ authority in terms of value and description, as '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery; that the same is further corroborated by the Expert Test Reports Nos. **Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023** that the Silver Jewellery were in fact jewellery studded with **Synthetic Ruby** which was supplied by M/s Sagar Diamonds Ltd, SEZ, Surat to M/s Sinovac Limited, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery having mis-declared value of **Rs.1463,40,02,239/-(Rs.One Thousand Four Hundred Sixty Three Crore Forty Lakh Two Thousand Two Hundred Thirty Nine Only)** and re-determined value **Rs.97,10,771/-**(**Rs.Ninety Seven Lakh Ten Thousand Seven Hundred Seventy One Only**) is on record. I accept the value determined of **Rs.97,10,771/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof by applying the ratio of evaluation done by the Expert Valuer and the test results by the IDI, Katargam. I find the inflated false invoices and related material documents accepted by M/s Sinovac Limited, Hong Kong is on record and thereby M/s Sinovac Limited, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.232 I hold that the inflated invoices as false as accepted by M/s Sinovac Limited, Hong Kong raised by M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of the Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money by adopting illegal practice of Trade based Money Laundering carried out by M/s Sagar Diamonds Ltd, SEZ, Surat.

38.233 Further, M/s Sinovac Limited, Hong Kong in the case of acceptance of goods namely Synthetic Ruby is on record, wherein the FOB value was mis-declared as **Rs.1463,40,02,239/-** and the goods was mis-decleared as '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery whereas on testing the subject goods found to be Synthetic Ruby and value determined on applying the ratio of valuation report of the valuation expert as **Rs.97,10,771/-**. I find that M/s Sinovac Limited has contravened the provisions of Section 113 of the Customs Act and thereby rendered the goods liable for confiscation under the provisions of **Section 113 (i)** of the Customs Act, 1962 as the goods were supplied by M/s Sagar Diamonds Ltd, SEZ, Surat with wrong documentation to M/s Sinovac Limited, in connivance with each other. I find that M/s Sinovac Limited has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty under **Section 114 and Section 114AA of the Customs Actseparately.** As per the wordings of the provision of **Section 114(iii) of the Customs Act, 1962**, I hold that the penalty equal to the declared value is to be rightly invoked in subject matter under Section **114(iii)** and Section 114AA of the Customs Act, 1962. I also find that M/s Sinovac Limited, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat and other persons for contravention of the Act and failed to comply with the provisions of the Act ibid.

Defence Submission that Penalty not to be imposed on foreign buyers:

38.234 I note that the defence submission submits that SCN dated 26.02.2024 cannot be invoked against M/s Sinovac Limited, Hong Kong for the following reasons:

i. No concrete evidence in order to attract the penalty u/ss. 114, 114AA or 117 of the Customs Act, 1962

ii. M/s Sinovac Limited, Hong Kong is a Hong Kong based company subject to Hong Kong jurisdiction and not an importer or exporter from India or have any offices or business premises in India. Case laws of Arun Kumar and Others v. Union of India and others, [(2007) 1 SCC 732] & GVK Industries Limited and Another v. Income Tax Officer and Another, [(2011) 4 SCC 36] were cited.

iii. Show Cause Notice not issued by designated/empowered officer

38.235 I note and already deliberated in above Para at **36.227 to 36.229** regarding the evidences gathered during the investigation by the DRI and mentioned in the impugned SCN. Thus, I find no merit in the contention of the authorized representative of the noticee M/s Sinovac Limited, Hong Kong that there is no concrete evidence has no merit and can not be acceptable.

38.236 I note that as per the Customs Act 1962, the Custom Act 1962 applies also to any offence or contravention thereunder committed outside India by any person, as per Section 1(2) Customs Act 1962. The period under consideration in subject SCN dated 27.02.2024 is post 29.3.2018, wherein vide Section 57 of the Finance Act 2018, the following was inserted in Section 1(2) Customs Act, 1962 as follows:

Section 1(2): It extends to the whole of India and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.

38.237 The law w.e.f. 29.3.2018 explicitly make it clear that Customs Act it applies also to any offence or contravention thereunder committed outside India by any person and in the subject matter, offence had been committed the moment forged documents were submitted before the specified officers of SEZ with an intention to smuggle and contravene the provisions of Customs Act; and thereby offence was committed in the territory of India once the forged documents of M/s Sinovac Limited, Hong Kong was received by M/s Sagar Diamonds Ltd., SEZ, Surat. The false documents supplied to M/s Sinovac Limited, Hong Kong abetted M/s Sagar Diamonds Ltd., SEZ, Surat in committing the said offence and contravening the provisions of the Customs Act and further opened way for consequential foreign exchange transactions. Thus with the Section 1(2) Customs Act in force, the period under consideration is not covered vide the said case laws of Arun Kumar and Others v. Union of India and others, [(2007) 1 SCC 732] & GVK Industries Limited and Another v. Income Tax Officer and Another, [(2011) 4 SCC 36 and the facts of the case coupled with the law in force as dictated vide Section 1(2) Customs Act renders M/s Sinovac Limited, Hong Kong to penalty separately under Section 114, Section 114AA and Section 117 of the Customs Act as discussed. In light

of the Section 1(2) Customs Act w.e.f. 29-3-2018 coupled with the factual matrix of subject case, the case laws cited do not cover the subject matter as the case laws of **Arun Kumar and Others v. Union of India and others, [(2007) 1 SCC 732]**&**GVK Industries Limited and Another v. Income Tax Officer and Another, [(2011) 4 SCC 36** pertain to the issues related to Rule 3 of the Income Tax Rules,1962 and Section 9 of the Income Tax Act,1961.

38.238 I note the contention of the noticee that the officer of the DRI does not have power or jurisdiction to inspect or seize goods in respect of units situated in SEZ area. In order to decide the issue power or jurisdiction in hand, I prefer to refer the legal provisions governing the issues ofoffences, authorities to search, seizure, investigation and issuance of Show cause Notice under Section 124 of the Customs Act,1962. Vide ***Ministry of Commerce and Industry Notification [S.O. 2665(E)] dated 5th August 2016 explicitly notifies under*** sub-section (1) of section 21 of the Special Economic Zones Act, 2005 that the offences contained in the sections 28,28AA,28AAA,74,75,111,113,115,124,135 and 104 of the Customs Act, 1962 as offences under the Special Economic Zones Act, 2005. Further, ***Ministry of Commerce and Industry Notification [S.O. 2666(E)] dated 5th August 2016 the*** authorises the Additional Director General, Directorate of Revenue Intelligence for offences under the Customs Act, 1962 to be the enforcement officer in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone to carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit. The ***Ministry of Commerce and Industry Notification [S.O. 2667(E)] dated 5th August 2016 has also authorized*** the jurisdictional Customs Commissioner, in respect of offences under the Customs Act,1962 to carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit. On artless reading of the aforesaid notifications issued, I do not find any merit in the contention of the representative of the noticee challenging the authority of power and the jurisdiction of the DRI and the jurisdictional Customs Commissioner to inspect or seize goods in respect of units situated in SEZ area. Thus I hold that the DRI and the jurisdictional Customs Commissioner are empowered and authorities authorized to carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit.

38.239 Now, I take up the issue raised by the noticee regarding power to issue the captioned show cause notice upon the authority which has issued the captioned show cause notice under section 124 of the Customs Act,1962.I find by virtue of Section 122(a) of the Customs Act,1962 read with Circular No. 17/2018-CustomsDated 13.06.2018 issued in this regard that a Principal Commissioner of Customs or Commissioner of Customs or Joint Commissioner of Customs is empowered to issue the show Cause Notice and adjudicate the cases involving confiscation and penalty only, without any restriction of value of the goods to be confiscated. Therefore, I find that the contention of the noticee is baseless and without legal backing and hence, I hold that the impugned SCN has been issued by the competent authority.

38.240 In view of the above I hold in the instant case that the noticee M/s Sinovac Limited, Hong Kong is liable for penalty under Section 114,114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (2)M/s MARS IND & COMM SERVICES LIMITED, Unit A&B, 9/Fl, Champion Building, 287-291, Des Voeux Road, Central, Sheung Wan, Hong Kong

38.241 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 114, 114AA and 117 of the Customs Act. I also note that the noticee M/s Mars Ind & Comm Services Limited, Hong Kong has neither submitted any reply to the SCN dated 26.02.2024 nor attended personal hearing, therefore, I proceed to decide the issue on the basis of material evidences available on record.

38.242 I note the facts and evidences on record and find M/s Mars Ind & Comm Services Limited, Hong Kong is an overseas buyers of M/s Sagar Diamonds Ltd, SEZ, Surat that M/s Mars Ind & Comm Services Limited, Hong Kong had received and accepted the inflated commercial invoices issued by M/s Sagar Diamonds Ltd, SEZ, Surat which was declared before the SEZ authority in terms of value and description, as '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery; that the same is further corroborated by the Expert test report No. **Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023** that the Silver Jewellery were in fact jewellery studded with **Synthetic Ruby** which was supplied by M/s Sagar Diamonds Ltd, SEZ, Surat to M/s Mars Ind & Comm Services Limited, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery having mis-declared value of **Rs.6503,35,28,752/-(Rs. Six Thousand Five Hundred Three Crore Thirty Five Lakh Twenty Eight Thousand Seven Hundred Fifty Two Only)** and re-determined value **Rs.15,08,88,988/-**(**Rs. Fifteen Crore Eight Lakh Eighty Eight Thousand Nine Hundred Eighty Eight Only**) is on record. I accept the value determined of **Rs.15,08,88,988/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof by applying the ratio of evaluation done by the Expert Valuer and the test results by the IDI, Katargam. I find the inflated false invoices and related material documents accepted by M/s Mars Ind & Comm Services Limited, Hong Kong is on record and thereby M/s Mars Ind & Comm Services Limited, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.243 I hold that the inflated invoices as false as accepted by M/s Mars Ind & Comm Services Limited, Hong Kong raised by M/s Sagar Diamond Ltd, SEZ, Surat in submitting false documents and submission for the purposes of the Customs Act and also aided M/s Sagar Diamond Ltd, SEZ, Surat in siphoning off money by adopting illegal practice of Trade based Money Laundering carried out by M/s Sagar Diamond Ltd, SEZ, Surat.

38.244 Further, M/s Mars Ind & Comm Services Limited, Hong Kong in the case of acceptance of goods namely Synthetic Ruby is on record, wherein the FOB value was mis-declared as **Rs.6503,35,28,752/-** and the goods was mis-decleared as '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery whereas on testing the subject goods found to be Synthetic Ruby and value determined on applying the ratio of valuation report of the valuation expert as **Rs.15,08,88,988/-**. I find that M/s Mars Ind & Comm Services Limited has contravened the provisions of Section 113 of the Customs Act and thereby rendered the goods liable for confiscation under the provisions of **Section 113 (i)** of the Customs Act, 1962 as the goods were supplied by M/s Sagar Diamond Ltd, SEZ, Surat with wrong documentation to M/s Mars Ind & Comm Services Limited, in connivance with each other. I find that M/s Mars Ind & Comm Services Limited has abetted with M/s Sagar Diamond Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself

to penalty under **Section 114 and Section 114AA of the Customs Act separately.** As per the wordings of the provision of **Section 114(iii) of the Customs Act, 1962**, I hold that the penalty equal to the declared value is to be rightly invoked in subject matter under Section **114(iii)** and Section 114AA of the Customs Act, 1962. I also find that M/s Mars Ind & Comm Services Limited, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamond Ltd, SEZ, Surat and other persons for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.245 My findings with respect to penalty on foreign buyer/exporter, power & jurisdiction of DRI and competency to issue the impugned Show Cause Notice at **Para 38.236 to 38.240** may be read into, and not reproduced for the sake of mere repetition.

38.246 In view of the above I hold in the instant case that the noticee M/s Mars Ind & Comm Services Limited, Hong Kong is liable for penalty under Section 114,114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (3)M/s XNOVA HK LIMITED, Unit D3, 15/F, TSIM, SHA, TSUI Mansion, 87 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong

38.247 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 114, 114AA and 117 of the Customs Act on I also note the facts and evidences on record and find that M/s Xnova HK Limited, Hong Kong is an overseas buyer of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s Xnova HK Limited, Hong Kong had received and accepted the inflated commercial invoices issued by M/s Sagar Diamonds Ltd, SEZ, Surat, which was declared before the SEZ authority in terms of value and description, as '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery; that the same is further corroborated by the Expert test report No. **Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023** that the Silver Jewellery were in fact jewellery studded with **Synthetic Ruby** which was supplied by M/s Sagar Diamonds Ltd, SEZ, Surat to M/s Xnova HK Limited, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery having mis-declared value of **Rs.439,33,00,031/- (Rs.Four Hundred Thirty Nine Crore Thirty Three Lakh Thirty One Only)** and re-determined value **Rs.27,07,912/-** (**Rs.Twenty Seven Lakh Seven Thousand Nine Hundred Twelve Only**) is on record. I accept the value determined of **Rs.27,07,912/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof by applying the ratio of evaluation done by the Expert Valuer and the test results by the IDI, Katargam. I find the inflated false invoices and related material documents accepted by M/s Xnova HK Limited, Hong Kong is on record and thereby M/s Xnova HK Limited, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.248 I hold that the inflated invoices as false as accepted by M/s Xnova HK Limited, Hong Kong raised by M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of the Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money by adopting illegal practice of Trade based Money Laundering carried out by M/s Sagar Diamonds Ltd, SEZ, Surat.

38.249 Further, M/s Xnova HK Limited, Hong Kong in the case of acceptance of goods namely Synthetic Ruby is on record, wherein the FOB value was mis-declared as **Rs.439,33,00,031/-** and the goods was mis-decleared as '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery whereas on testing the subject goods found to be Synthetic Ruby and value determined on applying the ratio of valuation report of the valuation expert as **Rs.27,07,912/-.** I find that M/s Xnova HK Limited, Hong Kong has contravened the provisions of Section 113 of the Customs Act and thereby rendered the goods liable for confiscation under the provisions of **Section 113 (i)** of the Customs Act, 1962 as the goods were supplied by M/s Sagar Diamonds Ltd, SEZ, Surat with wrong documentation to M/s Xnova HK Limited, Hong Kong, in connivance with each other. I find that M/s Xnova HK Limited, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty under **Section 114 and Section 114AA of the Customs Actseparately.** As per the wordings of the provision of **Section 114(iii) of the Customs Act, 1962**, I hold that the penalty equal to the declared value is to be rightly invoked in subject matter under Section **114(iii)** and Section 114AA of the Customs Act, 1962. I also find that M/s Xnova HK Limited, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat and other persons for contravention of the Act and failed to comply with the provisions of the Act ibid.

Defence Submission that Penalty not to be imposed on foreign buyers:

38.250 I note that the defence submission submits that SCN dated 26.02.2024 cannot be invoked against M/s Xnova HK Limited, Hong Kong for the following reasons:

i. No concrete evidence in order to attract the penalty u/ss. 114, 114AA or 117 of the Customs Act, 1962

ii. M/s Xnova HK Limited, Hong Kong is a Hong Kong based company subject to Hong Kong jurisdiction and not an importer or exporter from India or have any offices or business premises in India. Case law of Management of Express Newspapers (Private) Ltd., Madras v. The Workers and Others reported in AIR 1963 SC 569 has was cited.

iii. Show Cause Notice not issued by designated/empowered officer

38.251 My findings with respect to penalty on foreign buyer/exporter, power & jurisdiction of DRI and competency to issue the impugned Show Cause Notice at **Para 38.236 to 38.240** may be read into, and not reproduced for the sake of mere repetition.

38.252 In view of the above I hold in the instant case that the noticee M/s Xnova HK Limited, Hong Kong is liable for penalty under Section 114,114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (4)M/s ZHAN HONG TRADE (HK) LIMITED, Unit 31, 2nd Floor, Mirador Mansion, 58 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong

38.253 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 114, 114AA and 117 of the Customs Act. I also note that the noticee M/s Zhan Hong Trade(HK) Limited, Hong Kong has neither submitted any reply to the SCN dated 26.02.2024 nor attended personal hearing, therefore, I proceed to decide the issue on the basis of material evidences available on record.

38.254 I note the facts and evidences on record and find M/s Zhan Hong Trade(HK) Limited, Hong Kong is an overseas buyers of M/s Sagar Diamonds Ltd, SEZ, Surat that M/s Zhan Hong Trade(HK) Limited, Hong Kong had received and accepted the inflated commercial invoices issued by M/s Sagar Diamonds Ltd, SEZ, Surat which was declared before the SEZ authority in terms of value and description, as '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery; that the same is further corroborated by the Expert test report No. **Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023** that the Silver Jewellery were in fact jewellery studded with **Synthetic Ruby** which was supplied by M/s Sagar Diamonds Ltd, SEZ, Surat to M/s Zhan Hong Trade(HK) Limited, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery having mis-declared value of **Rs.730,86,35,898/-(Rs. Seven Hundred Thirty Crore Eighty Six Lakhs Thirty Five Thousand Eight Hundred Ninety Eight Only)** and re-determined value **Rs.52,06,823/-(Rs. Fifty Two Lakhs Six Thousand Eight Hundred Twenty Three Only**) is on record. I accept the value determined of **Rs.52,06,823/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof by applying the ratio of evaluation done by the Expert Valuer and the test results by the IDI, Katargam. I find the inflated false invoices and related material documents accepted by M/s Zhan Hong Trade(HK) Limited, Hong Kong is on record and thereby M/s Zhan Hong Trade(HK) Limited, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.255 I hold that the inflated invoices as false as accepted by M/s Zhan Hong Trade(HK) Limited, Hong Kong raised by M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of the Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money by adopting illegal practice of Trade based Money Laundering carried out by M/s Sagar Diamonds Ltd, SEZ, Surat.

38.256 Further, M/s Zhan Hong Trade(HK) Limited, Hong Kong in the case of acceptance of goods namely Synthetic Ruby is on record, wherein the FOB value was mis-declared as **Rs.730,86,35,898/-**and the goods was mis-decleared as '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery whereas on testing the subject goods found to be Synthetic Ruby and value determined on applying the ratio of valuation report of the valuation expert as **Rs.52,06,823/-.** I find that M/s Zhan Hong Trade(HK) Limited has contravened the provisions of Section 113 of the Customs Act and thereby rendered the goods liable for confiscation under the provisions of **Section 113 (i)** of the Customs Act, 1962 as the goods were supplied by M/s Sagar Diamonds Ltd, SEZ, Surat with wrong documentation to M/s Zhan Hong Trade(HK) Limited, in connivance with each other. I find that M/s Zhan Hong Trade(HK) Limited has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty under **Section 114 and Section 114AA of the Customs Actseparately.** As per the wordings of the provision of **Section 114(iii) of the**

Customs Act, 1962, I hold that the penalty equal to the declared value is to be rightly invoked in subject matter under Section **114(iii)** and Section 114AA of the Customs Act, 1962. I also find that M/s Zhan Hong Trade(HK) Limited, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat and other persons for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.257 My findings with respect to penalty on foreign buyer/exporter, power & jurisdiction of DRI and competency to issue the impugned Show Cause Notice at **Para 38.236 to 38.240** may be read into, and not reproduced for the sake of mere repetition.

38.258 In view of the above I hold in the instant case that the noticee M/s Zhan Hong Trade(HK) Limited, Hong Kong is liable for penalty under Section 114,114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (5)M/s XNOVA LIMITED , Unit D3, 15/F, TSIM, SHA, TSUI Mansion, 87 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong

38.259 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 114, 114AA and 117 of the Customs Act. I also note that the noticee M/s Xnova Limited, Hong Kong has neither submitted any reply to the SCN dated 26.02.2024 nor attended personal hearing, therefore, I proceed to decide the issue on the basis of material evidences available on record.

38.260 I note the facts and evidences on record and find M/s Xnova Limited, Hong Kong, Hong Kong is an overseas buyers of M/s Sagar Diamonds Ltd, SEZ, Surat that M/s Xnova Limited, Hong Kong, Hong Kong had received and accepted the inflated commercial invoices issued by M/s Sagar Diamonds Ltd, SEZ, Surat which was declared before the SEZ authority in terms of value and description, as '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery; that the same is further corroborated by the Expert test report No. **Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023** that the Silver Jewellery were in fact jewellery studded with **Synthetic Ruby** which was supplied by M/s Sagar Diamonds Ltd, SEZ, Surat to M/s Xnova Limited, Hong Kong, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery having mis-declared value of **Rs.173,76,31,603/-(Rs. One Hundred Seventy Three Crore Seventy Six Lakh Thirty One Thousand Six Hundred Three Only)** and re-determined value **Rs.11,01,528/-**(**Rs. Eleven Lakh One Thousand Five Hundred Twenty Eight Only**) is on record. I accept the value determined of **Rs.11,01,528/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof by applying the ratio of evaluation done by the Expert Valuer and the test results by the IDI, Katargam. I find the inflated false invoices and related material documents accepted by M/s Xnova Limited, Hong Kong, Hong Kong is on record and thereby M/s Xnova Limited, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.261 I hold that the inflated invoices as false as accepted by M/s Xnova Limited, Hong Kong raised by M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of the Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off

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money by adopting illegal practice of Trade based Money Laundering carried out by M/s Sagar Diamonds Ltd, SEZ, Surat.

38.262 Further, M/s Xnova Limited, Hong Kong in the case of acceptance of goods namely Synthetic Ruby is on record, wherein the FOB value was mis-declared as **Rs.173,76,31,603/-**and the goods was mis-decleared as '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery whereas on testing the subject goods found to be Synthetic Ruby and value determined on applying the ratio of valuation report of the valuation expert as **Rs.11,01,528/-.** I find that M/s Xnova Limited has contravened the provisions of Section 113 of the Customs Act and thereby rendered the goods liable for confiscation under the provisions of **Section 113 (i)** of the Customs Act, 1962 as the goods were supplied by M/s Sagar Diamonds Ltd, SEZ, Surat with wrong documentation to M/s Xnova Limited, in connivance with each other. I find that M/s Xnova Limited has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty under **Section 114 and Section 114AA of the Customs Act separately.** As per the wordings of the provision of **Section 114(iii) of the Customs Act, 1962**, I hold that the penalty equal to the declared value is to be rightly invoked in subject matter under Section **114(iii)** and Section 114AA of the Customs Act, 1962. I also find that M/s Xnova Limited, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat and other persons for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.263 My findings with respect to penalty on foreign buyer/exporter, power & jurisdiction of DRI and competency to issue the impugned Show Cause Notice at **Para 38.236 to 38.240** may be read into, and not reproduced for the sake of mere repetition.

38.264 In view of the above I hold in the instant case that the noticee M/s Xnova Limited, Hong Kong is liable for penalty under Section 114,114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (6)M/s GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED, Room No. 2002, 20/F, Hing Yip Commercial Centre, 272-284 Des Voeux Road, Central Hong Kong

38.265 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 114, 114AA and 117 of the Customs Act. I also note that the noticee M/s GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED, Hong Kong has neither submitted any reply to the SCN dated 26.02.2024 nor attended personal hearing, therefore, I proceed to decide the issue on the basis of material evidences available on record.

38.266 I note the facts and evidences on record and find M/s GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED, Hong Kong is an overseas buyers of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED, Hong Kong had received and accepted the inflated commercial invoices issued by M/s Sagar Diamonds Ltd, SEZ, Surat which was declared before the SEZ authority in terms of value and description, as '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery; that the same is further corroborated by the Expert test report No.

Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023 that the Silver Jewellery were in fact jewellery studded with **Synthetic Ruby** which was supplied by M/s Sagar Diamonds Ltd, SEZ, Surat to M/s GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery having mis-declared value of **Rs.98,34,06,384/-(Rs. Ninety Eight Crore Thirty Four Lakh Six Thousand Three Hundred Eighty Four Only)** and re-determined value **Rs.18,26,662/-** (**Rs. Eighteen Lakh Twenty Six Thousand Six Hundred Sixty Two Only**) is on record. I accept the value determined of **Rs.18,26,662/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof by applying the ratio of evaluation done by the Expert Valuer and the test results by the IDI, Katargam. I find the inflated false invoices and related material documents accepted by M/s GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED, Hong Kong is on record and thereby M/s GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.267 I hold that the inflated invoices as false as accepted by M/s GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED, Hong Kong raised by M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of the Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money by adopting illegal practice of Trade based Money Laundering carried out by M/s Sagar Diamonds Ltd, SEZ, Surat.

38.268 Further, M/s GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED, Hong Kong in the case of acceptance of goods namely Synthetic Ruby is on record, wherein the FOB value was mis-declared as **Rs. 98,34,06,384/-**and the goods was mis-decleared as '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery whereas on testing the subject goods found to be Synthetic Ruby and value determined on applying the ratio of valuation report of the valuation expert as **Rs. 18,26,662/-.** I find that M/s GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED, Hong Kong has contravened the provisions of Section 113 of the Customs Act and thereby rendered the goods liable for confiscation under the provisions of **Section 113 (i)** of the Customs Act, 1962 as the goods were supplied by M/s Sagar Diamonds Ltd, SEZ, Surat with wrong documentation to M/s GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED, Hong Kong, in connivance with each other. I find that M/s GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty under **Section 114 and Section 114AA of the Customs Act separately.** As per the wordings of the provision of **Section 114(iii) of the Customs Act, 1962**, I hold that the penalty equal to the declared value is to be rightly invoked in subject matter under Section **114(iii)** and Section 114AA of the Customs Act, 1962. I also find that M/s GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat and other persons for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.269 My findings with respect to penalty on foreign buyer/exporter, power & jurisdiction of DRI and competency to issue the impugned Show Cause Notice at **Para 38.236 to 38.240** may be read into, and not reproduced for the sake of mere repetition.

38.270 In view of the above I hold in the instant case that the noticee M/s GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED, Hong Kong is liable for penalty under Section 114,114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (7) M/s JUMBO LINKS (FZE) HK LTD , Room No. 2002, 20 F, Hing Yip Comercial Centre, 272-284 Des Voeux Road, Central, Hong Kong

38.271 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 114, 114AA and 117 of the Customs Act. I also note that the noticee M/s JUMBO LINKS (FZE) HK LTD, Hong Kong has neither submitted any reply to the SCN dated 26.02.2024 nor attended personal hearing, therefore, I proceed to decide the issue on the basis of material evidences available on record.

38.272 I note the facts and evidences on record and find M/s JUMBO LINKS (FZE) HK LTD, Hong Kong is an overseas buyers of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s JUMBO LINKS (FZE) HK LTD, Hong Kong had received and accepted the inflated commercial invoices issued by M/s Sagar Diamonds Ltd, SEZ, Surat which was declared before the SEZ authority in terms of value and description, as '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery; that the same is further corroborated by the Expert test report No. **Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023** that the Silver Jewellery were in fact jewellery studded with **Synthetic Ruby** which was supplied by M/s Sagar Diamonds Ltd, SEZ, Surat to M/s JUMBO LINKS (FZE) HK LTD, Hong Kong. Thus Synthetic Ruby was mis-declared in guise of '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery having mis-declared value of **Rs.78,60,31,393/-(Rs. Seventy Eight Crore Sixty Lakh Thirty One Thousand Three Hundred Ninety Three Only)** and re-determined value **Rs.14,54,177/-**(**Rs. Fourteen Lakh Fifty Four Thousand One Hundred Seventy Seven Only**) is on record. I accept the value determined of **Rs.14,54,177/-**as the value determined under Section 14 Customs Act read with the Valuation Rules thereof by applying the ratio of evaluation done by the Expert Valuer and the test results by the IDI, Katargam. I find the inflated false invoices and related material documents accepted by M/s JUMBO LINKS (FZE) HK LTD, Hong Kong is on record and thereby M/s JUMBO LINKS (FZE) HK LTD, Hong Kong has rendered itself to penalty under Section 114 AA Customs Act.

38.273 I hold that the inflated invoices as false as accepted by M/s JUMBO LINKS (FZE) HK LTD, Hong Kong raised by M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of the Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money by adopting illegal practice of Trade based Money Laundering carried out by M/s Sagar Diamonds Ltd, SEZ, Surat.

38.274 Further, M/s JUMBO LINKS (FZE) HK LTD, Hong Kong in the case of acceptance of goods namely Synthetic Ruby is on record, wherein the FOB value was mis-declared as **Rs.78,60,31,393/-**and the goods was mis-decleared as '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery whereas on testing the subject goods found to be Synthetic Ruby and value determined on applying the ratio of valuation report of the valuation expert as **Rs.14,54,177/-**. I find that M/s JUMBO LINKS (FZE) HK LTD, Hong Kong has contravened the provisions of Section 113 of the Customs Act and thereby rendered the goods liable for confiscation under the provisions of **Section 113 (i)** of the Customs Act, 1962 as the goods were supplied by M/s Sagar Diamonds Ltd, SEZ, Surat with wrong documentation to M/s JUMBO LINKS (FZE) HK LTD, Hong Kong, in connivance with each other. I find that M/s JUMBO LINKS (FZE) HK LTD, Hong Kong has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty under **Section 114 and Section 114AA of the Customs Act separately.** As per the wordings of the provision of **Section 114(iii) of the Customs Act, 1962**, I hold that the penalty equal to the declared value is to be rightly invoked in subject matter under Section **114(iii)** and Section 114AA of the Customs Act, 1962. I also find that M/s JUMBO LINKS (FZE) HK LTD, Hong Kong is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat and other persons for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.275 My findings with respect to penalty on foreign buyer/exporter, power & jurisdiction of DRI and competency to issue the impugned Show Cause Notice at **Para 38.236 to 38.240** may be read into, and not reproduced for the sake of mere repetition.

38.276 In view of the above I hold in the instant case that the noticee M/s JUMBO LINKS (FZE) HK LTD, Hong Kong is liable for penalty under Section 114,114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (8) M/s CSY INTERNATIONAL PTE LTD, 1North Bridge Road, 18-01, High Street Centre, Singapore-179094 (info@csyinternational.com)

38.277 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 114, 114AA and 117 of the Customs Act. I also note that the noticee M/s CSY INTERNATIONAL PTE LTD, Singapore has neither submitted any reply to the SCN dated 26.02.2024 nor attended personal hearing, therefore, I proceed to decide the issue on the basis of material evidences available on record.

38.278 I note the facts and evidences on record and find M/s CSY INTERNATIONAL PTE LTD, Singapore is an overseas buyers of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s CSY INTERNATIONAL PTE LTD, Singapore had received and accepted the inflated commercial invoices issued by M/s Sagar Diamonds Ltd, SEZ, Surat which was declared before the SEZ authority in terms of value and description, as '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery; that the same is further corroborated by the Expert test report No. **Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023** that the Silver Jewellery were in fact jewellery studded

with **Synthetic Ruby** which was supplied by M/s Sagar Diamonds Ltd, SEZ, Surat to M/s CSY INTERNATIONAL PTE LTD, Singapore. Thus Synthetic Ruby was mis-declared in guise of '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery having mis-declared value of **Rs.9,78,04,081/-(Rs. Nine Crore Seventy Eight Lakh Four Thousand Eighty One Only)** and re-determined value **Rs.1,70,317/-**(**Rs. One Lakh Seventy Thousand Three Hundred Seventeen Only**) is on record. I accept the value determined of **Rs.1,70,317/-** as the value determined under Section 14 Customs Act read with the Valuation Rules thereof by applying the ratio of evaluation done by the Expert Valuer and the test results by the IDI, Katargam. I find the inflated false invoices and related material documents accepted by M/s CSY INTERNATIONAL PTE LTD, Singapore is on record and thereby M/s CSY INTERNATIONAL PTE LTD, Singapore has rendered itself to penalty under Section 114 AA Customs Act.

38.279 I hold that the inflated invoices as false as accepted by M/s CSY INTERNATIONAL PTE LTD, Singapore raised by M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of the Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money by adopting illegal practice of Trade based Money Laundering carried out by M/s Sagar Diamonds Ltd, SEZ, Surat.

38.280 Further, M/s CSY INTERNATIONAL PTE LTD, Singapore in the case of acceptance of goods namely Synthetic Ruby is on record, wherein the FOB value was mis-declared as **Rs.9,78,04,081/-**and the goods was mis-decleared as '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery whereas on testing the subject goods found to be Synthetic Ruby and value determined on applying the ratio of valuation report of the valuation expert as **Rs.1,70,317/-.** I find that M/s CSY INTERNATIONAL PTE LTD, Singapore has contravened the provisions of Section 113 of the Customs Act and thereby rendered the goods liable for confiscation under the provisions of **Section 113 (i)** of the Customs Act, 1962 as the goods were supplied by M/s Sagar Diamonds Ltd, SEZ, Surat with wrong documentation to M/s CSY INTERNATIONAL PTE LTD, Singapore, in connivance with each other. I find that M/s CSY INTERNATIONAL PTE LTD, Singapore has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty under **Section 114 and Section 114AA of the Customs Act separately.** As per the wordings of the provision of **Section 114(iii) of the Customs Act, 1962**, I hold that the penalty equal to the declared value is to be rightly invoked in subject matter under Section **114(iii)** and Section 114AA of the Customs Act, 1962. I also find that M/s CSY INTERNATIONAL PTE LTD, Singapore is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat and other persons for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.2781 My findings with respect to penalty on foreign buyer/exporter, power & jurisdiction of DRI and competency to issue the impugned Show Cause Notice at **Para 38.236 to 38.240** may be read into, and not reproduced for the sake of mere repetition.

38.282 In view of the above I hold in the instant case that the noticee M/s CSY INTERNATIONAL PTE LTD, Singapore is liable for penalty under Section 114,114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (9) M/s T G INTERNATIONAL DMCC, Unit No Almas-12-F-01, Almas Tower, Plot No. Jlt-Ph1-A0, Jumeirah lake Tower, Dubai, UAE

38.283 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 114, 114AA and 117 of the Customs Act. I also note that the noticee M/s T G INTERNATIONAL DMCC, Unit No Almas-12-F-01, Almas Tower, Plot No. Jlt-Ph1-A0, Jumeirah lake Tower, Dubai, UAE has neither submitted any reply to the SCN dated 26.02.2024 nor attended personal hearing, therefore, I proceed to decide the issue on the basis of material evidences available on record.

38.284 I note the facts and evidences on record and find M/s T G INTERNATIONAL DMCC, Dubai, UAE is an overseas buyers of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s T G INTERNATIONAL DMCC, Dubai, UAE had received and accepted the inflated commercial invoices issued by M/s Sagar Diamonds Ltd, SEZ, Surat which was declared before the SEZ authority in terms of value and description, as '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery; that the same is further corroborated by the Expert test report No. **Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023** that the Silver Jewellery were in fact jewellery studded with **Synthetic Ruby** which was supplied by M/s Sagar Diamonds Ltd, SEZ, Surat to M/s T G INTERNATIONAL DMCC, Dubai, UAE. Thus Synthetic Ruby was mis-declared in guise of '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery having mis-declared value of **Rs.7,81,15,980/-(Rs. Seven Crore Eighty One Lakh Fifteen Thousand Nine Hundred Eighty Only)** and re-determined value **Rs.61,641/-**(**Rs. Sixty One Thousand Six Hundred Forty One Only**) is on record. I accept the value determined of **Rs.61,641/-**as the value determined under Section 14 Customs Act read with the Valuation Rules thereof by applying the ratio of evaluation done by the Expert Valuer and the test results by the IDI, Katargam. I find the inflated false invoices and related material documents accepted by M/s T G INTERNATIONAL DMCC, Dubai, UAE is on record and thereby M/s T G INTERNATIONAL DMCC, Dubai, UAE has rendered itself to penalty under Section 114 AA Customs Act.

38.285 I hold that the inflated invoices as false as accepted by M/s T G INTERNATIONAL DMCC, Dubai, UAE raised by M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of the Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money by adopting illegal practice of Trade based Money Laundering carried out by M/s Sagar Diamonds Ltd, SEZ, Surat.

38.286 Further, M/s T G INTERNATIONAL DMCC, Dubai, UAE in the case of acceptance of goods namely Synthetic Ruby is on record, wherein the FOB value was mis-declared as **Rs.7,81,15,980/-**and the goods was mis-decleared as '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery whereas on testing the subject goods found to be Synthetic Ruby and value determined on applying the ratio of valuation report of the valuation expert as **Rs.61,641/-.** I

find that M/s T G INTERNATIONAL DMCC, Dubai, UAE has contravened the provisions of Section 113 of the Customs Act and thereby rendered the goods liable for confiscation under the provisions of **Section 113 (i)** of the Customs Act, 1962 as the goods were supplied by M/s Sagar Diamonds Ltd, SEZ, Surat with wrong documentation to M/s T G INTERNATIONAL DMCC, Dubai, UAE, in connivance with each other. I find that M/s T G INTERNATIONAL DMCC, Dubai, UAE has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty under **Section 114 and Section 114AA of the Customs Act separately.** As per the wordings of the provision of **Section 114(iii) of the Customs Act, 1962**, I hold that the penalty equal to the declared value is to be rightly invoked in subject matter under Section **114(iii)** and Section 114AA of the Customs Act, 1962. I also find that M/s T G INTERNATIONAL DMCC, Dubai, UAE is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat and other persons for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.287 My findings with respect to penalty on foreign buyer/exporter, power & jurisdiction of DRI and competency to issue the impugned Show Cause Notice at **Para 38.236 to 38.240** may be read into, and not reproduced for the sake of mere repetition.

38.288 In view of the above I hold in the instant case that the noticee M/s T G INTERNATIONAL DMCC, Dubai, UAE is liable for penalty under Section 114,114AA and 117 of the Customs Act, 1962.

Proposal for penalty on (10) M/s SAIVASCULAR PTE LTD, 35, #09-14/15, Selegie Road, Park Lane Shopping mall, Singapore

38.289 I note that subject SCN dated 26.02.2024 has invoked Penalty provisions under Section 114, 114AA and 117 of the Customs Act. I also note that the noticee M/s SAIVASCULAR PTE LTD, 35, #09-14/15, Selegie Road, Park Lane Shopping mall, Singapore has neither submitted any reply to the SCN dated 26.02.2024 nor attended personal hearing, therefore, I proceed to decide the issue on the basis of material evidences available on record.

38.290 I note the facts and evidences on record and find M/s SAIVASCULAR PTE LTD, Singapore is an overseas buyers of M/s Sagar Diamonds Ltd, SEZ, Surat; that M/s SAIVASCULAR PTE LTD, Singapore had received and accepted the inflated commercial invoices issued by M/s Sagar Diamonds Ltd, SEZ, Surat which was declared before the SEZ authority in terms of value and description, as '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery; that the same is further corroborated by the Expert test report No. **Report IDI-DRI-03 dated 13.10.2023, Report IDI-DRI-04 dated 17.10.2023** that the Silver Jewellery were in fact jewellery studded with **Synthetic Ruby** which was supplied by M/s Sagar Diamonds Ltd, SEZ, Surat to M/s SAIVASCULAR PTE LTD, Singapore. Thus Synthetic Ruby was mis-declared in guise of '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery having mis-declared value of **Rs.2,05,12,594/-(Rs. Two Crore Five Lakh Twelve Thousand Five Hundred Ninety Four Only)** and re-determined value **Rs.35,638/-(Rs. Thirty Five Thousand Six Hundred Thirty Eight**

Only) is on record. I accept the value determined of **Rs.35,638/-**as the value determined under Section 14 Customs Act read with the Valuation Rules thereof by applying the ratio of evaluation done by the Expert Valuer and the test results by the IDI, Katargam. I find the inflated false invoices and related material documents accepted by M/s SAIVASCULAR PTE LTD, Singapore is on record and thereby M/s SAIVASCULAR PTE LTD, Singapore has rendered itself to penalty under Section 114 AA Customs Act.

38.291 I hold that the inflated invoices as false as accepted by M/s SAIVASCULAR PTE LTD, Singapore raised by M/s Sagar Diamonds Ltd, SEZ, Surat in submitting false documents and submission for the purposes of the Customs Act and also aided M/s Sagar Diamonds Ltd, SEZ, Surat in siphoning off money by adopting illegal practice of Trade based Money Laundering carried out by M/s Sagar Diamonds Ltd, SEZ, Surat.

38.292 Further, M/s SAIVASCULAR PTE LTD, Singapore in the case of acceptance of goods namely Synthetic Ruby is on record, wherein the FOB value was mis-declared as **Rs. 2,05,12,594/-**and the goods was mis-decleared as '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery whereas on testing the subject goods found to be Synthetic Ruby and value determined on applying the ratio of valuation report of the valuation expert as **Rs. 35,638/-.** I find that M/s SAIVASCULAR PTE LTD, Singapore has contravened the provisions of Section 113 of the Customs Act and thereby rendered the goods liable for confiscation under the provisions of **Section 113 (i)** of the Customs Act, 1962 as the goods were supplied by M/s Sagar Diamonds Ltd, SEZ, Surat with wrong documentation to M/s SAIVASCULAR PTE LTD, Singapore, in connivance with each other. I find that M/s SAIVASCULAR PTE LTD, Singapore has abetted with M/s Sagar Diamonds Ltd, SEZ, Surat in contravention of the Customs Law and procedures and thereby attracted itself to penalty under **Section 114 and Section 114AA of the Customs Act separately.** As per the wordings of the provision of **Section 114(iii) of the Customs Act, 1962**, I hold that the penalty equal to the declared value is to be rightly invoked in subject matter under Section **114(iii)** and Section 114AA of the Customs Act, 1962. I also find that M/s SAIVASCULAR PTE LTD, Singapore is liable to penalty under Section 117 of the Customs Act,1962 as it has abetted M/s Sagar Diamonds Ltd, SEZ, Surat and other persons for contravention of the Act and failed to comply with the provisions of the Act ibid.

38.293 My findings with respect to penalty on foreign buyer/exporter, power & jurisdiction of DRI and competency to issue the impugned Show Cause Notice at **Para 38.236 to 38.240** may be read into, and not reproduced for the sake of mere repetition.

38.294 In view of the above I hold in the instant case that the noticee M/s SAIVASCULAR PTE LTD, Singapore is liable for penalty under Section 114,114AA and 117 of the Customs Act, 1962.

39. Quantum of Penalty:

a. In conspectus of the aforementioned Discussion and Findings, I determine the quantum of penalty in the Order keeping in view the following facts on record, to sum up in a nutshell as follows:

1. I keep in view of the conspiracy, concealment and smuggling established on record for determination of the quantum of penalty.
2. For the subject seized 1768 pieces of synthetic ruby (studded in silver pendant) valued at Rs.18,92,663/- (re-detrmined value) (included in Annexure-A) illegally imported by way of smuggling by M/s Sagar Diamonds Limited, Plot No 266-B, Surat Special Economic Zone, Sachin, Surat-394230, I keep in view this aspect of the smuggling racket.
3. I keep in view the corroborative material evidence on record: all the Test Reports and Expert Valuer Reports establishing the mis-declaration of the goods actually being Synthetic Ruby instead of cut and polished precious stone Ruby mis-declared in weightage in carat and valuation.
4. The siphoning off the money from M/s Sagar Diamonds Limited, Plot No 266-B, Surat Special Economic Zone, Sachin, Surat-394230 and parking into foreign exporters firms.
5. The false material particulars used and submitted by M/s Sagar Diamonds Limited, Plot No 266-B, Surat Special Economic Zone, Sachin, Surat-394230 in the transactions of its business for the purposes of the Customs Act
6. The abetment and aiding in subject smuggling and conspiracy to contravene the provisions of the Customs Act knowingly and intentionally.

b. Further, with reference to Section 125 of the Customs Act, with reference to Confiscation of subject goods under the Customs Act and that the subject import of seized goods does not fall under the category of prohibited under the Customs Act, I give an option to M/s Sagar Diamonds Limited, Plot No 266-B, Surat Special Economic Zone, Sachin, Surat-394230, an option to pay Redemption fine in lieu of confiscation read with Section 125(2),125(3) the Customs Act, whereby M/s Sagar Diamonds Limited, Plot No 266-B, Surat Special Economic Zone, Sachin, Surat-394230 shall pay redemption fine, in addition to duties and charges payable in respect of the subject goods; and that if Redemption fine is not paid within a period of 120 days from the date of option given, such option shall become void, unless an appeal against Order is pending. **Owing to the factual matrix of subject matter and the fraud and suppression involved, as established with the subject material evidence on record, I find this case fit for imposition of Redemption fine equal to 50% value of the subject goods**. Further, for the determination of penalty under Section 112 Customs Act, in cases where goods fall under **Section 112(b)(v) of the Customs Act wherein goods declared value is higher than the customs determined value, I impose penalty equal to the difference between the declared value and the value thereof, as per Section 112(b)(v) Customs Act. Further**, **for imposition of penalty under Section 112(ii) Customs Act, as the SCN dated 27.02.2024 has not proposed a duty demand and no duty is determined, thereby for invocation of penalties under Section 112(ii) Customs Act, I thereby impose penalty of Rs 5000/- as per the reading of the section 112(ii) of the Customs Act,1962.**

c. Owing to the conspiracy, fraud, concealment, fraudulent misdeclaration of description of goods and its material particulars including value, and subsequent contraventions of the provision of the Customs Act, peculiar factual matrix on record investigated by DRI in connection with the subject smuggling operation, thereby I find this a fit case for imposition of penalties twice the value of the goods under Section 114AA of the Customs Act.

d. Further, the imposition of penalties under Section 112 of the Customs Act shall be specific to each subject seized goods category being rendered liable to confiscation under Section 111 of the Customs Act, as the penalty under Section 112(v) is computed based on the customs value determined and declared thereof.

e. Further, the imposition of penalties under Section 114AA of the Customs Act shall be specific to each subject seized goods category as the penalty is computed based on the value of subject goods as per the reading of Section 114AA of the Customs Act.

In conspectus of aforementioned Discussion and Findings, I pass the following Order:

ORDER

40.1 I order for rejection of classification declared under CTH 71023910 & 71039990 of the goods weighing 51,79,909 carat mis-declared as 'Cut & Polished Precious Stone (Ruby)' in the Bills of Entry filed before Customs/SEZ authorities (as detailed in Annexure-A to the SCN) and order to re-classify the subject goods under CTH 71049900 as 'Synthetic Ruby';

40.2 I order for rejection of classification declared under CTH 71131120 & 71131130 of the goods weighing 16,86,010 grams mis-declared as '92.5 Percent (Ruby) Precious Stone Studded Silver Jewellery' in the Shipping Bills filed before Customs/SEZ authorities (as detailed in Annexure-B to the SCN) and order to re-classify the subject goods under CTH 71162000 as synthetic ruby studded jewellery;

40.3 I order for rejection of the assessable value of Synthetic Ruby weighing 51,79,909 carat, imported during the period from 01.04.2019 to 01.03.2023 to the tune of **Rs.9275,81,51,898/-(Nine Thousand Two Hundred Seventy Five Crore Eighty One Lakh Fifty One Thousand Eight Hundred Ninety Eight only)** in terms of the provisions of Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of Value of the Imported Goods) Rules, 2007 and in terms of provisions of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) read with Rule 9 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 and order to re-determine the value as **Rs.5,69,78,996/- (Rupees Five Crore Sixty Nine Lakh Seventy Eight Thousand Nine Hundred Ninety Six only)** in terms of provisions of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) read with Rule 9 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 as detailed in Annexure-A to the SCN;

40.4 I order for rejection of the FOB value of **16,86,010 grams** of 'Synthetic ruby studded silver jewellery', exported during the period from 01.04.2019 to 01.03.2023, to the tune of **Rs.9507,29,68,954/- (Rs.**

Nine Thousand Five Hundred Seven Crore Twenty Nine Lakh Sixty Eight Thousand Nine Hundred Fifty Four only) in terms of the provisions of Section 14 of the Customs Act, 1962 read with Rule 8 of the Customs Valuation (Determination of Price of Exported Goods Rules) 2007 and order to re-dermine as **Rs.17,31,64,457/- (Rs. Seventeen Crore, Thirty One Lakhs, Sixty Four Thousand, Four Hundred Fifty Seven only)** in terms of provisions of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) read with Rule 6 of the Customs Valuation (Determination of Price of Exported Goods) Rules, 2007as detailed in Annexure-B to the SCN;

40.5 I order for Confiscation of the consignments of synthetic ruby of **51,79,909 carats**, imported during the period from 01.04.2019 to 01.03.2023, valued at **Rs.5,69,78,996/- (Rupees Five Crores Sixty Nine Lakh Seventy Eight Thousand Nine Hundred Ninety Six only)** (re-determined at 40.3 above) under Section 111(m) , (o) of the Customs Act,1962. However, as the goods are not physically available for confiscation, I order to impose Redemption fine of **Rs. 2,75,43,167/-**(rupees Two Crore *Seventy Five Lakh Forty Three Thousand One Hundred Sixty Seven only*) under Section 125 of Customs Act, 1962 in lieu of confiscation of goods;

40.5.1 I also order for Confiscation of the **1768 pieces** of seized synthetic ruby (35458.05 Carat) (studded in silver pendant totally weighing 17202.32 Grams)valued at **Rs.18,92,663/-** under Section 111(m) , (o) of the Customs Act,1962. I give an option to **M/s Sagar Diamonds Limited**, Plot No 266-B, Surat Special Economic Zone, Sachin, Surat-394230 to redeem the goods by paying fine in lieu of confiscation at Redemption fine of **Rs. 9,46,332**(*rupees nine lakh forty six thousand three hundred thirty two only*). The Provisions of Section 125(2), (3) shall be complied with, in case of redeeming the goods by **M/s Sagar Diamonds Limited**, Plot No 266-B, Surat Special Economic Zone, Sachin, Surat-394230;

40.6 I order for Confiscation of the exported synthetic ruby studded silver jewellery totally weighing 1686010 grams valued at **Rs.17,31,64,457/- (Rs. Seventeen Crore, Thirty One Lakh, Sixty Four Thousand, Four Hundred Fifty Seven only) (re-determined value) (re-determined value at para 40.4 above)** under Section 113 (i) of the Customs Act, 1962. However, as the goods are not physically available for confiscation, I order to impose Redemption fine of Rs.**8,65,82,229/- (**Rupees *Eight Crore Sixty Five Lakh Eighty Two Thousand Two Hundred Twenty Nine only)* under Section 125 of Customs Act, 1962 in lieu of confiscation of goods;

40.7.1 I order to impose a Penalty of **Rs.9270,11,72,902/-(Rupees Nine Thousand Two Hundred Seventy Crore Eleven Lakh Seventy-Two Thousand Nine Hundred Two Only)** under Section **112(b)(v)** of the Customs Act,1962 on **M/s Sagar Diamonds Limited**, Plot No 266-B, Surat Special Economic Zone, Sachin, Surat-394230 equal to the difference of the declared value and the value as discussed at Para 38.11 herein above.

40.7.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on **M/s Sagar Diamonds Limited**, Plot No 266-B, Surat Special Economic Zone, Sachin, Surat-394230 as discussed at Para 38.10 herein above.

40.7.3 I order to impose a Penalty of **Rs.9507,29,68,954/- (Rupees Nine Thousand Five Hundred Seven Crores Twenty Nine Lakhs Sixty Eight Thousand Nine Hundred Fifty Four Only)** under Section **114(iii)** of the Customs Act,1962 on **M/s Sagar Diamonds Limited**, Plot No 266-B, Surat Special Economic Zone, Sachin, Surat-394230 equal to the declared value as discussed at Para 38.12 herein above.

40.7.4 I order to impose a Penalty of **Rs.46,02,86,906/- (Rupees Forty Six Crore Two Lakh Eighty Six Thousand Nine Hundred Six Only)** under Section **114AA** of the Customs Act,1962 on **M/s Sagar Diamonds Limited**, Plot No 266-B, Surat Special Economic Zone, Sachin, Surat-394230 equal to the Two times of the value [Rs.5,69,78,996/- on the count of Import (+) Rs.17,31,64,457/- on the count of export] as discussed at Para 38.13 herein above.

40.7.5 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on **M/s Sagar Diamonds Limited**, Plot No 266-B, Surat Special Economic Zone, Sachin, Surat-394230 as discussed at Para 38.14 herein above.

40.8.1 I order to impose a Penalty of **Rs.9270,11,72,902/-(Rupees Nine Thousand Two Hundred Seventy Crore Eleven Lakh Seventy Two Thousand Nine Hundred Two Only)** under Section **112(v)** of the Customs Act,1962 on **Shri Vaibhav Dipak Shah**, Managing Director of M/s Sagar Diamonds Limited, having corporate office at 903, 9th Floor, The Embassy Centre Premises CHS Ltd, Jamnalal Bajaj Marg, Nariman Point, Mumbai, Maharashtra-400021 (Resident of Room No. 9, 1st Floor, Dadarkar House, 5/7, Vithalbhai Patel Road, Next Vimal Showroom, Girgaon, Mumbai-400004) equal to the difference of the declared value and the value as discussed at Para 38.21 herein above.

40.8.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on **Shri Vaibhav Dipak Shah**, Managing Director of M/s Sagar Diamonds Limited, having corporate office at 903, 9th Floor, The Embassy Centre Premises CHS Ltd, Jamnalal Bajaj Marg, Nariman Point, Mumbai, Maharashtra-400021 (Resident of Room No. 9, 1st Floor, Dadarkar House, 5/7, Vithalbhai Patel Road, Next Vimal Showroom, Girgaon, Mumbai-400004) as discussed at Para 38.21 herein above.

40.8.3 I order to impose a Penalty of **Rs.9507,29,68,954/- (Rupees Nine Thousand Five Hundred Seven Crore Twenty Nine Lakh Sixty Eight Thousand Nine Hundred Fifty Four Only)** under Section **114(iii)** of the Customs Act,1962 on **Shri Vaibhav Dipak Shah**, Managing Director of M/s Sagar Diamonds Limited, having corporate office at 903, 9th Floor, The Embassy Centre Premises CHS Ltd, Jamnalal Bajaj Marg, Nariman Point, Mumbai, Maharashtra-400021 (Resident of Room No. 9, 1st Floor, Dadarkar House, 5/7, Vithalbhai Patel Road, Next Vimal Showroom, Girgaon, Mumbai-400004) equal to the declared value as discussed at Para 38.21 herein above.

40.8.4 I order to impose a Penalty of **Rs.46,02,86,906/- (Rupees Forty Six Crore Two Lakh Eighty Six Thousand Nine Hundred Six Only)** under Section **114AA** of the Customs Act,1962 on **Shri Vaibhav Dipak Shah**,

Managing Director of M/s Sagar Diamonds Limited, having corporate office at 903, 9th Floor, The Embassy Centre Premises CHS Ltd, Jamnalal Bajaj Marg, Nariman Point, Mumbai, Maharashtra-400021 (Resident of Room No. 9, 1st Floor, Dadarkar House, 5/7, Vithalbhai Patel Road, Next Vimal Showroom, Girgaon, Mumbai-400004) equal to the Two times of the value [Rs.5,69,78,996/- on the count of Import (+) Rs.17,31,64,457/- on the count of export] as discussed at Para 38.22 herein above.

40.8.5 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on **Shri Vaibhav Dipak Shah**, Managing Director of M/s Sagar Diamonds Limited, having corporate office at 903, 9th Floor, The Embassy Centre Premises CHS Ltd, Jamnalal Bajaj Marg, Nariman Point, Mumbai, Maharashtra-400021 (Resident of Room No. 9, 1st Floor, Dadarkar House, 5/7, Vithalbhai Patel Road, Next Vimal Showroom, Girgaon, Mumbai-400004) as discussed at Para 38.23 herein above.

40.9.1 I order to impose a Penalty of **Rs.9270,11,72,902/-(Rupees Nine Thousand Two Hundred Seventy Crore Eleven Lakh Seventy Two Thousand Nine Hundred Two Only)** under Section **112(b)(v)** of the Customs Act,1962 on **Shri Rahil Hiteshbhai Chovatia, Ex. Director of M/s SDL SURSEZ**(resident of A-19, Jaldarshan Flats, Opp. Natraj Cinema, Ashram Road, Ahmedabad **or** 40, Sawan Society, Insanpur Road, Maninagar, Ahmedabad) equal to the difference of the declared value and the value as discussed at Para 38.28 herein above.

40.9.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on **Shri Rahil Hiteshbhai Chovatia, Ex. Director of M/s SDL SURSEZ**(resident of A-19, Jaldarshan Flats, Opp. Natraj Cinema, Ashram Road, Ahmedabad **or** 40, Sawan Society, Insanpur Road, Maninagar, Ahmedabad) as discussed at Para 38.28 herein above.

40.9.3 I order to impose a Penalty of **Rs.9507,29,68,954/- (Rupees Nine Thousand Five Hundred Seven Crore Twenty Nine Lakh Sixty Eight Thousand Nine Hundred Fifty Four Only)** under Section **114(iii)** of the Customs Act,1962 on **Shri Rahil Hiteshbhai Chovatia, Ex. Director of M/s SDL SURSEZ**(resident of A-19, Jaldarshan Flats, Opp. Natraj Cinema, Ashram Road, Ahmedabad **or** 40, Sawan Society, Insanpur Road, Maninagar, Ahmedabad)equal to the declared value as discussed at Para 38.28 herein above.

40.9.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on **Shri Rahil Hiteshbhai Chovatia, Ex. Director of M/s SDL SURSEZ**(resident of A-19, Jaldarshan Flats, Opp. Natraj Cinema, Ashram Road, Ahmedabad **or** 40, Sawan Society, Insanpur Road, Maninagar, Ahmedabad) as discussed at Para 38.29 herein above.

40.10.1 I order to impose a Penalty of **Rs.9270,11,72,902/-(Rupees Nine Thousand Two Hundred Seventy Crore Eleven Lakh Seventy Two Thousand Nine Hundred Two Only)** under Section **112(b)(v)** of the Customs Act,1962 on **Shri Saurin Rasiklal Shah, Ex. Director of M/s SDL**

SURSEZ(resident of B-101, Shreeji Enclave, oppoiste Sajan Apartment, Near Anand Cross Road, Satellite, Ahmedabad) equal to the difference of the declared value and the value as discussed at Para 38.34 herein above.

40.10.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on **Shri Saurin Rasiklal Shah, Ex. Director of M/s SDL SURSEZ**(resident of B-101, Shreeji Enclave, oppoiste Sajan Apartment, Near Anand Cross Road, Satellite, Ahmedabad) as discussed at Para 38.34 herein above.

40.10.3 I order to impose a Penalty of **Rs.9507,29,68,954/- (Rupees Nine Thousand Five Hundred Seven Crore Twenty Nine Lakh Sixty Eight Thousand Nine Hundred Fifty Four Only)** under Section **114(iii)** of the Customs Act,1962 on **Shri Saurin Rasiklal Shah, Ex. Director of M/s SDL SURSEZ**(resident of B-101, Shreeji Enclave, oppoiste Sajan Apartment, Near Anand Cross Road, Satellite, Ahmedabad) equal to the declared value as discussed at Para 38.35 herein above.

40.10.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on **Shri Saurin Rasiklal Shah, Ex. Director of M/s SDL SURSEZ**(resident of B-101, Shreeji Enclave, oppoiste Sajan Apartment, Near Anand Cross Road, Satellite, Ahmedabad) as discussed at Para 38.36 herein above.

40.11.1 I order to impose a Penalty of **Rs.9270,11,72,902/-(Rupees Nine Thousand Two Hundred Seventy Crore Eleven Lakh Seventy Two Thousand Nine Hundred Two Only)** under Section **112(b)(v)** of the Customs Act,1962 on **Shri Hirenbhai Bipinbhai Trivedi, Production Manager Cum Authorised Signatory of M/s SDL SURSEZ**(resident of 104, Radhe apartment, Shardha mandir School, Vijalpore, Navsari, -396445) equal to the difference of the declared value and the value as discussed at Para 38.40 herein above.

40.11.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on **Shri Vaibhav Dipak Shah**, Managing Director of **Shri Hirenbhai Bipinbhai Trivedi, Production Manager Cum Authorised Signatory of M/s SDL SURSEZ** (resident of 104, Radhe apartment, Shardha mandir School, Vijalpore, Navsari, -396445) as discussed at Para 38.40 herein above.

40.11.3 I order to impose a Penalty of **Rs.9507,29,68,954/- (Rupees Nine Thousand Five Hundred Seven Crores Twenty Nine Lakhs Sixty Eight Thousand Nine Hundred Fifty Four Only)** under Section **114(iii)** of the Customs Act,1962 on **Shri Hirenbhai Bipinbhai Trivedi, Production Manager Cum Authorised Signatory of M/s SDL SURSEZ**(resident of 104, Radhe apartment, Shardha mandir School, Vijalpore, Navsari, -396445) equal to the declared value as discussed at Para 38.40 herein above.

40.11.4 I order to impose a Penalty of **Rs.46,02,86,906/- (Rupees Forty Six Crore Two Lakh Eighty Six Thousand Nine Hundred Six Only)** under Section **114AA** of the Customs Act,1962 on **Shri Hirenbhai Bipinbhai Trivedi, Production Manager Cum Authorised Signatory of M/s SDL SURSEZ**(resident of 104, Radhe apartment, Shardha mandir School, Vijalpore, Navsari, -396445) equal to the Two times of the value

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[Rs.5,69,78,996/- on the count of Import (+) Rs.17,31,64,457/- on the count of export] as discussed at Para 38.41 herein above.

40.11.5 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on **Shri Hirenbhai Bipinbhai Trivedi, Production Manager Cum Authorised Signatory of M/s SDL SURSEZ**(resident of 104, Radhe apartment, Shardha mandir School, Vijalpore, Navsari, -396445) as discussed at Para 38.42 herein above.

40.12.1 I order to impose a Penalty of **Rs.5,26,79,376/-(Rupees Five Crore Twenty Six Lakh Seventy Nine Thousand Three Hundred Seventy Six Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s AADI HK LTD, 1407, 14th Floor, Hart avenue Plaza, 5-9 Hart Avenue, TST, Kowloon, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.44 to 38.46 herein above.

40.12.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s AADI HK LTD, 1407, 14th Floor, Hart avenue Plaza, 5-9 Hart Avenue, TST, Kowloon, Hong Kong as discussed at Para 38.44 to 38.46 herein above.

40.12.3 I order to impose a Penalty of **Rs.21,254/- (Rupees Twenty One Thousand Two Hundred Fifty Four Only)** under Section **114AA** of the Customs Act,1962 on M/s AADI HK LTD, 1407, 14th Floor, Hart avenue Plaza, 5-9 Hart Avenue, TST, Kowloon, Hong Kong equal to the Two times of the declared value as discussed at Para 38.48 to 38.50 herein above.

40.12.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s AADI HK LTD, 1407, 14th Floor, Hart avenue Plaza, 5-9 Hart Avenue, TST, Kowloon, Hong Kong as discussed at Para 38.46 herein above.

40.13.1 I order to impose a Penalty of **Rs.28,73,26,129/-(Rupees Twenty Eight Crore Seventy Three Lakh Twenty Six Thousand One Hundred Twenty Nine Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s AADI IMPEX, Flat D, 14th Floor, Windsor Mansion, TST, Kowloon, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.48 to 38.50 herein above.

40.13.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s AADI IMPEX, Flat D, 14th Floor, Windsor Mansion, TST, Kowloon, Hong Kong as discussed at Para 38.48 to 38.50 herein above.

40.13.3 I order to impose a Penalty of **Rs.29,67,668/- (Rupees Twenty Nine Lakh Sixty Seven Thousand Six Hundred Sixty Eight Only)** under Section **114AA** of the Customs Act,1962 on M/s AADI IMPEX, Flat D, 14th Floor, Windsor Mansion, TST, Kowloon, Hong Kong equal to the Two times of the declared value as discussed at Para 38.48 to 38.50herein above.

40.13.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s AADI IMPEX, Flat D, 14th Floor, Windsor Mansion, TST, Kowloon, Hong Kong as discussed at Para 38.49 herein above.

40.14.1 I order to impose a Penalty of **Rs. 204,67,37,208/-(Rupees Two Hundred Four Crore Sixty Seven Lakh Thirty Seven Thousand Two Hundred Eight Only)** under Section **112(v)** of the Customs Act,1962 on M/s ADVANCE CENTURY INC LIMITED, Room 2002, 20 F, Hing Yip Comercial Centre, 272-284 Des Voeux Road, Central, Hong Kong (advancecenturyincltd@gmail.com) equal to the difference of the declared value and the value as discussed at Para 38.52 to 38.54 herein above.

40.14.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s ADVANCE CENTURY INC LIMITED, Room 2002, 20 F, Hing Yip Comercial Centre, 272-284 Des Voeux Road, Central, Hong Kong (advancecenturyincltd@gmail.com) as discussed at Para 38.52 to 38.54 herein above.

40.14.3 I order to impose a Penalty of **Rs.7,92,454/-(Rupees Seven Lakh Ninety Two Thousand Four Hundred Fifty Four Only)** under Section **114AA** of the Customs Act,1962 on M/s ADVANCE CENTURY INC LIMITED, Room 2002, 20 F, Hing Yip Comercial Centre, 272-284 Des Voeux Road, Central, Hong Kong (advancecenturyincltd@gmail.com) equal to the Two times of the value as discussed at Para 38.52 to 38.54 herein above.

40.14.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s ADVANCE CENTURY INC LIMITED, Room 2002, 20 F, Hing Yip Comercial Centre, 272-284 Des Voeux Road, Central, Hong Kong (advancecenturyincltd@gmail.com) as discussed at Para 38.52 to 38.54 herein above.

40.15.1 I order to impose a Penalty of **Rs. 51,24,35,476/-(Rupees Fifty One Crore Twenty Four Lakh Thirty Five Thousand Four Hundred Seventy Six Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, No. 299 Huiquan RD Linquen Country (Lin Lu Industrial Park) China (anhuiqihangsupply@gmail.com) equal to the difference of the declared value and the value as discussed at Para 38.56 to 38.58 herein above.

40.15.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, No. 299 Huiquan RD Linquen Country (Lin Lu Industrial Park) China (anhuiqihangsupply@gmail.com) as discussed at Para 38.56 to 38.58 herein above.

40.15.3 I order to impose a Penalty of **Rs.4,18,458/-(Rupees Four Lakh Eighteen Thousand Four Hundred Fifty Eight Only)** under Section **114AA** of the Customs Act,1962 on M/s ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, No. 299 Huiquan RD Linquen Country (Lin Lu Industrial Park) China (anhuiqihangsupply@gmail.com) equal to the Two times of the value as discussed at Para 38.56 to 38.58 herein above.

40.15.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, No. 299 Huiquan RD Linquen

Country (Lin Lu Industrial Park) China (anhuiqihangsupply@gmail.com) as discussed at Para 38.56 to 38.58 herein above.

40.16.1 I order to impose a Penalty of **Rs. 20,43,69,304/-(Rupees Twenty Crore Forty Three Lakh Sixty Nine Thousand Three Hundred Four Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s BEL DIAM LTD, Unit 701, 7th Floor, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong (hongkong@beldiamltd.com) equal to the difference of the declared value and the value as discussed at Para 38.60 to 38.62 herein above.

40.16.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s BEL DIAM LTD, Unit 701, 7th Floor, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong (hongkong@beldiamltd.com)as discussed at Para 38.60 to 38.62 herein above.

40.16.3 I order to impose a Penalty of **Rs.1,06,514/-(Rupees One Lakh Six Thousand Five Hundred Fourteen Only)** under Section **114AA** of the Customs Act,1962 on M/s BEL DIAM LTD, Unit 701, 7th Floor, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong (hongkong@beldiamltd.com) equal to the Two times of the value as discussed at Para 38.60 to 38.62 herein above.

40.16.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s BEL DIAM LTD, Unit 701, 7th Floor, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong (hongkong@beldiamltd.com) as discussed at Para 38.60 to 38.62 herein above.

40.17.1 I order to impose a Penalty of **Rs.210,43,08,104/-(Rupees Two Hundred Ten Crore Forty Three Lakh Eight Thousand One Hundred Four Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s COLOR CREATIONS LIMITED, Unit Q12, 6/F, Kaiser Estate Phase 3, 11 Hok Yuen Street, Hunghom, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.63 to 38.64 herein above.

40.17.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s COLOR CREATIONS LIMITED, Unit Q12, 6/F, Kaiser Estate Phase 3, 11 Hok Yuen Street, Hunghom, Hong Kong as discussed at Para 38.63 to 38.64 herein above.

40.17.3 I order to impose a Penalty of **Rs.5,27,388/-(Rupees Five Lakh Twenty Seven Thousand Three Hundred Eighty Eight Only)** under Section **114AA** of the Customs Act,1962 on M/s COLOR CREATIONS LIMITED, Unit Q12, 6/F, Kaiser Estate Phase 3, 11 Hok Yuen Street, Hunghom, Hong Kong equal to the Two times of the value as discussed at Para 38.63 to 38.64 herein above.

40.17.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s COLOR CREATIONS LIMITED, Unit Q12, 6/F, Kaiser Estate Phase 3, 11 Hok Yuen Street, Hunghom, Hong Kong as discussed at Para 38.63 to 38.64herein above.

40.18.1 I order to impose a Penalty of **Rs.508,43,31,244/-(Rupees Five Hundred Eight Crore Forty Three Lakh Thirty One Thousand Two Hundred Forty Four Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s CROWN GEMS, Unit 504, 5/F, Hart avenue Plaza, 5-9 Hart Avenue, TST, Kowloon, HongKong equal to the difference of the declared value and the value as discussed at Para 38.73 to 38.74 herein above.

40.18.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s CROWN GEMS, Unit 504, 5/F, Hart avenue Plaza, 5-9 Hart Avenue, TST, Kowloon, HongKong as discussed at Para 38.73 to 38.74 herein above.

40.18.3 I order to impose a Penalty of **Rs.1,32,33,238/-(Rupees One Crore Thirty Two Lakh Thirty Three Thousand Two Hundred Thirty Eight Only)** under Section **114AA** of the Customs Act,1962 on M/s CROWN GEMS, Unit 504, 5/F, Hart avenue Plaza, 5-9 Hart Avenue, TST, Kowloon, HongKong equal to the Two times of the value as discussed at Para 38.73 to 38.74 herein above.

40.18.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s CROWN GEMS, Unit 504, 5/F, Hart avenue Plaza, 5-9 Hart Avenue, TST, Kowloon, HongKong as discussed at Para 38.73 to 38.74 herein above.

40.19.1 I order to impose a Penalty of **Rs.26,85,94,244/-(Rupees Twenty Six Crore Eighty Five Lakh Ninety Four Thousand Two Hundred Forty Four Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s CRYSTAL KING LIMITED, M 9 - 2 F, kaiser, Estate, Phase 3, 9-11, HOK YUEN Street Hunghom, Hong Kong (infocrytalking@gmail.com) equal to the difference of the declared value and the value as discussed at Para 38.84 to 38.86 herein above.

40.19.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s CRYSTAL KING LIMITED, M 9 - 2 F, kaiser, Estate, Phase 3, 9-11, HOK YUEN Street Hunghom, Hong Kong (infocrytalking@gmail.com) as discussed at Para 38.84 to 38.86 herein above.

40.19.3 I order to impose a Penalty of **Rs.74,256/-(Rupees Seventy Four Thousand Two Hundred Fifty Six Only)** under Section **114AA** of the Customs Act,1962 on M/s CRYSTAL KING LIMITED, M 9 - 2 F, kaiser, Estate, Phase 3, 9-11, HOK YUEN Street Hunghom, Hong Kong (infocrytalking@gmail.com)equal to the Two times of the value as discussed at Para 38.84 to 38.86 herein above.

40.19.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s CRYSTAL KING LIMITED, M 9 - 2 F, kaiser, Estate, Phase 3, 9-11, HOK YUEN Street Hunghom, Hong Kong (infocrytalking@gmail.com) as discussed at Para 38.84 to 38.86 herein above.

40.20.1 I order to impose a Penalty of **Rs.76,93,89,982/-(Rupees Seventy Six Crore Ninety Three Lakh Eighty Nine Thousand Nine Hundred Eighty Two Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s CSY INTERNATIONAL PTE LTD, 1North Bridge Road, 18-01, High Street

Centre, Singapore-179094 (info@csyinternational.com) equal to the difference of the declared value and the value as discussed at Para 38.88 to 38.90 & 38.278 to 38.280 herein above.

40.20.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s CSY INTERNATIONAL PTE LTD, 1North Bridge Road, 18-01, High Street Centre, Singapore-179094 (info@csyinternational.com) as discussed at Para Para 38.88 to 38.90 & 38.278 to 38.280 herein above.

40.20.3 I order to impose a Penalty of **Rs.9,78,04,081/- (Rupees Nine Crore Seventy Eight Lakh Four Thousand Eighty One Only)** under Section **114(iii)** of the Customs Act,1962 on M/s CSY INTERNATIONAL PTE LTD, 1North Bridge Road, 18-01, High Street Centre, Singapore-179094 (info@csyinternational.com) equal to the declared value as discussed at Para Para 38.88 to 38.90 & 38.278 to 38.280 herein above.

40.20.4 I order to impose a Penalty of **Rs.10,17,764/- (Rupees Ten Lakh Seventeen Thousand Seven Hundred Sixty Four Only)** under Section **114AA** of the Customs Act,1962 on M/s CSY INTERNATIONAL PTE LTD, 1North Bridge Road, 18-01, High Street Centre, Singapore-179094 (info@csyinternational.com)equal to the Two times of the value[Rs.3,38,565/- on the count of Import (+) Rs.1,70,317/- on the count of export] as discussed at Para Para 38.88 to 38.90 & 38.278 to 38.280 herein above.

40.20.5 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s CSY INTERNATIONAL PTE LTD, 1North Bridge Road, 18-01, High Street Centre, Singapore-179094 (info@csyinternational.com) as discussed at Para Para 38.88 to 38.90 & 38.2787 to 38.280 herein above.

40.21.1 I order to impose a Penalty of **Rs.22,00,51,157/-(Rupees Twenty two Crore Fifty One Thousand One Hundred Fifty Seven Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s DIARECT MARKETING LIMITED, Suite D, 13th Floor, No. 8, Hart Avenue, TST, Kowloon, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.92 to 38.94 herein above.

40.21.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s DIARECT MARKETING LIMITED, Suite D, 13th Floor, No. 8, Hart Avenue, TST, Kowloon, Hong Kong as discussed at Para 38.92 to 38.94 herein above.

40.21.3 I order to impose a Penalty of **Rs.1,09,430/-(Rupees One Lakh Nine Thousand Four Hundred Thirty Only)** under Section **114AA** of the Customs Act,1962 on M/s DIARECT MARKETING LIMITED, Suite D, 13th Floor, No. 8, Hart Avenue, TST, Kowloon, Hong Kong equal to the Two times of the value as discussed at Para 38.92 to 38.94 herein above.

40.21.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s DIARECT MARKETING LIMITED, Suite D, 13th Floor, No. 8, Hart Avenue, TST, Kowloon, Hong Kong as discussed at Para 38.92 to 38.94 herein above.

40.22.1 I order to impose a Penalty of **Rs.233,75,80,646/-(Rupees Two Hundred Thirty Three Crore Seventy Five Lakh Eighty Thousand Six Hundred Forty Six Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s ESTRADE INTERNATIONAL LTD, RM B2, 13/F, Kaiser Estate Phase 1, 41 Man Yue Street, Hung Hom, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.96 to 38.98 herein above.

40.22.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s ESTRADE INTERNATIONAL LTD, RM B2, 13/F, Kaiser Estate Phase 1, 41 Man Yue Street, Hung Hom, Hong Kong as discussed at Para 38.96 to 38.98 herein above.

40.22.3 I order to impose a Penalty of **Rs.5,91,842/-(Rupees Five Lakh Ninety One Thousand Eight Hundred Forty Two Only)** under Section **114AA** of the Customs Act,1962 on M/s ESTRADE INTERNATIONAL LTD, RM B2, 13/F, Kaiser Estate Phase 1, 41 Man Yue Street, Hung Hom, Hong Kong equal to the Two times of the value as discussed at Para 38.96 to 38.98 herein above.

40.22.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s ESTRADE INTERNATIONAL LTD, RM B2, 13/F, Kaiser Estate Phase 1, 41 Man Yue Street, Hung Hom, Hong Kong as discussed at Para 38.96 to 38.98 herein above.

40.23.1 I order to impose a Penalty of **Rs.103,52,53,869/-(Rupees One Hundred Three Crore Fifty Two Lakh Fifty Three Thousand Eight Hundred Sixty Nine Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s EURO TECH INTERNATIONAL TRADING LIMITED, Unit K, 3 F, Central house, 270-276, Queens Road, Central Sheungwan, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.100 to 38.102 herein above.

40.23.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s EURO TECH INTERNATIONAL TRADING LIMITED, Unit K, 3 F, Central house, 270-276, Queens Road, Central Sheungwan, Hong Kong as discussed at Para 38.100 to 38.102 herein above.

40.23.3 I order to impose a Penalty of **Rs.9,73,566/-(Rupees Nine Lakh Seventy Three Thousand Five Hundred Sixty Six Only)** under Section **114AA** of the Customs Act,1962 on M/s EURO TECH INTERNATIONAL TRADING LIMITED, Unit K, 3 F, Central house, 270-276, Queens Road, Central Sheungwan, Hong Kong equal to the Two times of the value as discussed at Para 38.100 to 38.102 herein above.

40.23.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s EURO TECH INTERNATIONAL TRADING LIMITED, Unit K, 3 F, Central house, 270-276, Queens Road, Central Sheungwan, Hong Kong as discussed at Para 38.100 to 38.102 herein above.

40.24.1 I order to impose a Penalty of **Rs.5,29,01,309/-(Rupees Five Crore Twenty Nine Lakh One Thousand Three Hundred Nine Only)** under Section

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112(b)(v) of the Customs Act,1962 on M/s FAMASIA LIMITED, 608, Hart Avenue, 5-9, TST, Kowloon, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.104 to 38.106 herein above.

40.24.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s FAMASIA LIMITED, 608, Hart Avenue, 5-9, TST, Kowloon, Hong Kong as discussed at Para 38.104 to 38.106 herein above.

40.24.3 I order to impose a Penalty of **Rs.21,344/-(Rupees Twenty One Thousand Three Hundred Forty Four Only)** under Section **114AA** of the Customs Act,1962 on M/s FAMASIA LIMITED, 608, Hart Avenue, 5-9, TST, Kowloon, Hong Kong equal to the Two times of the value as discussed at Para 38.104 to 38.106 herein above.

40.24.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s FAMASIA LIMITED, 608, Hart Avenue, 5-9, TST, Kowloon, Hong Kong as discussed at Para 38.104 to 38.106 herein above.

40.25.1 I order to impose a Penalty of **Rs.3,69,62,888/-(Rupees Three Crore Sixty Nine Lakh Sixty Two Thousand Eight Hundred Eighty Eight Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s FANCY COLOR DIAM (HK) LTD, RM 1715, 17F, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.108 to 38.110 herein above.

40.25.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s FANCY COLOR DIAM (HK) LTD, RM 1715, 17F, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong as discussed at Para 38.108 to 38.110 herein above.

40.25.3 I order to impose a Penalty of **Rs.34,650/-(Rupees Thirty Four Thousand Six Hundred Fifty Only)** under Section **114AA** of the Customs Act,1962 on M/s FANCY COLOR DIAM (HK) LTD, RM 1715, 17F, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong equal to the Two times of the value as discussed at Para 38.108 to 38.110 herein above.

40.25.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s FANCY COLOR DIAM (HK) LTD, RM 1715, 17F, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong as discussed at Para 38.108 to 38.110 herein above.

40.26.1 I order to impose a Penalty of **Rs.154,39,72,779/-(Rupees One Hundred Fifty Four Crore Thirty Nine Lakh Seventy Two Thousand Seven Hundred Seventy Nine Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s FU LEE HONG COMPANY LIMITED, 1108, 11/F, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.112 to 38.114 herein above.

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40.26.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s FU LEE HONG COMPANY LIMITED, 1108, 11/F, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong as discussed at Para38.112 to 38.114 herein above.

40.26.3 I order to impose a Penalty of **Rs.4,41,050/-(Rupees Four Lakh Forty One Thousand Fifty Only)** under Section **114AA** of the Customs Act,1962 on M/s FU LEE HONG COMPANY LIMITED, 1108, 11/F, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong equal to the Two times of the value as discussed at Para 38.112 to 38.114 herein above.

40.26.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s FU LEE HONG COMPANY LIMITED, 1108, 11/F, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong as discussed at Para 38.112 to 38.114 herein above.

40.27.1 I order to impose a Penalty of **Rs.553,56,87,754/-(Rupees Five Hundred Fifty Three Crore Fifty Six Lakh Eighty Seven Thousand Seven Hundred Fifty Four Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s GEMS STAR TRADING F.Z.E, P O Box 171641, Dubai, UAE (gemsstartrdg@gmail.com) equal to the difference of the declared value and the value as discussed at Para 38.116 to 38.118 herein above.

40.27.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s GEMS STAR TRADING F.Z.E, P O Box 171641, Dubai, UAE (gemsstartrdg@gmail.com) as discussed at Para 38.116 to 38.118 herein above.

40.27.3 I order to impose a Penalty of **Rs.17,74,510/-(Rupees Seventeen Lakh Seventy Four Thousand Five Hundred Ten Only)** under Section **114AA** of the Customs Act,1962 on M/s GEMS STAR TRADING F.Z.E, P O Box 171641, Dubai, UAE (gemsstartrdg@gmail.com) equal to the Two times of the value as discussed at Para 38.116 to 38.118 herein above.

40.27.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s GEMS STAR TRADING F.Z.E, P O Box 171641, Dubai, UAE (gemsstartrdg@gmail.com) as discussed at Para 38.116 to 38.118 herein above.

40.28.1 I order to impose a Penalty of **Rs. 98,34,06,384/- (Rupees Ninety Eight Crore Thirty four Lakhs Six Thousand Three Hundred Eighty Four Only)** under Section **114(iii)** of the Customs Act,1962 on M/s GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED, Room No. 2002, 20/F, Hing Yip Commercial Centre, 272-284 Des Voeux Road, Central Hong Kong equal to the declared value as discussed at Para 38.266 to 38.268 herein above.

40.28.2 I order to impose a Penalty of **Rs.36,53,324/-(Rupees Thirty Six Lakh Fifty Three Thousand Three Hundred Twenty Four Only)** under Section **114AA** of the Customs Act,1962 on M/s GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED, Room No. 2002, 20/F, Hing Yip Commercial Centre, 272-284 Des Voeux Road, Central Hong Kong equal

to the Two times of the value as discussed at Para 38.266 to 38.268 herein above.

40.28.3 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED, Room No. 2002, 20/F, Hing Yip Commercial Centre, 272-284 Des Voeux Road, Central Hong Kong as discussed at Para 38.266 to 38.268 herein above.

40.29.1 I order to impose a Penalty of **Rs.225,48,02,161/-(Rupees Two Hundred Twenty Five Crors Forty Eight Lakh Two Thousand One Hundred Sixty One Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s GLORY DIAMOND FZE, 17517, P2, Hamariya Free Zone, HBC-2527, Sharjah, UAE (info@glory-d.com) equal to the difference of the declared value and the value as discussed at Para 38.120 to 38.122 herein above.

40.29.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s GLORY DIAMOND FZE, 17517, P2, Hamariya Free Zone, HBC-2527, Sharjah, UAE (info@glory-d.com) as discussed at Para 38.120 to 38.122 herein above.

40.29.3 I order to impose a Penalty of **Rs.6,80,856/-(Rupees Six Lakh Eighty Thousand Eight Hundred Fifty Six Only)** under Section **114AA** of the Customs Act,1962 on M/s GLORY DIAMOND FZE, 17517, P2, Hamariya Free Zone, HBC-2527, Sharjah, UAE (info@glory-d.com) equal to the Two times of the value as discussed at Para 38.120 to 38.122 herein above.

40.29.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s GLORY DIAMOND FZE, 17517, P2, Hamariya Free Zone, HBC-2527, Sharjah, UAE (info@glory-d.com) as discussed at Para 38.120 to 38.122 herein above.741630046

40.30.1 I order to impose a Penalty of **Rs. 74,16,30,046/-(Rupees Seventy Four Crore Sixteen Lakh Thirty Thousand Forty Six Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s GRAND CO, Room 907-8, Silver Cord Tower 2, 30, Canton Road, TST, Kowloon, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.124 to 38.126 herein above.

40.30.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s GRAND CO, Room 907-8, Silver Cord Tower 2, 30, Canton Road, TST, Kowloon, Hong Kong as discussed at Para 38.124 to 38.126 herein above.

40.30.3 I order to impose a Penalty of **Rs.2,80,03,048/-(Rupees Two Crore Eighty Lakh Three Thousand Forty Eight Only)** under Section **114AA** of the Customs Act,1962 on M/s GRAND CO, Room 907-8, Silver Cord Tower 2, 30, Canton Road, TST, Kowloon, Hong Kong equal to the Two times of the value as discussed at Para 38.124 to 38.126 herein above.

40.30.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s GRAND CO, Room 907-8, Silver Cord Tower 2, 30, Canton Road, TST, Kowloon, Hong Kong as discussed at Para 38.124 to 38.126 herein above.

40.31.1 I order to impose a Penalty of **Rs.154,39,33,112/-(Rupees One Hundred Fifty Four Crore Thirty Nine Lakh Thirty Three Thousand One Hundred Twelve Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s JIYA IMPEX DMCC, Unit No. 104, Concorde Tower 1, Plot no JLT-PH1-H2, Jumeirah Lakes Tower, Dubai, UAE (jiyaimpex24@gmail.com) equal to the difference of the declared value and the value as discussed at Para 38.128 to 38.130 herein above.

40.31.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s JIYA IMPEX DMCC, Unit No. 104, Concorde Tower 1, Plot no JLT-PH1-H2, Jumeirah Lakes Tower, Dubai, UAE (jiyaimpex24@gmail.com) as discussed at Para 38.128 to 38.130 herein above.

40.31.3 I order to impose a Penalty of **Rs.4,71,076/-(Rupees Four Lakh Seventy One Thousand Seventy Six Only)** under Section **114AA** of the Customs Act,1962 on M/s JIYA IMPEX DMCC, Unit No. 104, Concorde Tower 1, Plot no JLT-PH1-H2, Jumeirah Lakes Tower, Dubai, UAE (jiyaimpex24@gmail.com) equal to the Two times of the value as discussed at Para 38.128 to 38.130 herein above.

40.31.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s JIYA IMPEX DMCC, Unit No. 104, Concorde Tower 1, Plot no JLT-PH1-H2, Jumeirah Lakes Tower, Dubai, UAE (jiyaimpex24@gmail.com) as discussed at Para 38.128 to 38.130 herein above.

40.32.1 I order to impose a Penalty of **Rs.78,60,31,393/-(Rupees Seventy Eight Crors Sixty Lakh Thirty One Thousand Three Hundred Ninety Three Only)** under Section **114(iii)** of the Customs Act,1962 on M/s JUMBO LINKS (FZE) HK LTD, Room No. 2002, 20 F, Hing Yip Comercial Centre, 272-284 Des Voeux Road, Central, Hong Kong equal to the declared value as discussed at Para 38.272 to 38.274 herein above.

40.32.2 I order to impose a Penalty of **Rs.29,08,354/-(Rupees Twenty Nine Lakh Eight Thousand Three Hundred Fifty Four Only)** under Section **114AA** of the Customs Act,1962 on M/s JUMBO LINKS (FZE) HK LTD , Room No. 2002, 20 F, Hing Yip Comercial Centre, 272-284 Des Voeux Road, Central, Hong Kong equal to the Two times of the value as discussed at Para 38.272 to 38.274 herein above.

40.32.3 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s JUMBO LINKS (FZE) HK LTD , Room No. 2002, 20 F, Hing Yip Comercial Centre, 272-284 Des Voeux Road, Central, Hong Kong as discussed at Para 38.272 to 38.274 herein above.

40.33.1 I order to impose a Penalty of **Rs.35,57,03,632/-(Rupees Thirty Five Crore Fifty Seven Lakh Three Thousand Six Hundred Thirty Two Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s K.DIAM LTD, 404A, Fu Fang Ind Bldg 1 Hok Yeun Street, Hunghom, Kowloon, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.132 to 38.134 herein above.

40.33.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s K.DIAM LTD, 404A, Fu Fang Ind Bldg 1 Hok Yeun Street, Hunghom, Kowloon, Hong Kong as discussed at Para 38.132 to 38.134 herein above.

40.33.3 I order to impose a Penalty of **Rs.2,63,148/-(Rupees Two Lakh Sixty Three Thousand One Hundred Forty Eight Only)** under Section **114AA** of the Customs Act,1962 on M/s K.DIAM LTD, 404A, Fu Fang Ind Bldg 1 Hok Yeun Street, Hunghom, Kowloon, Hong Kong equal to the Two times of the value as discussed at Para 38.132 to 38.134 herein above.

40.33.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s K.DIAM LTD, 404A, Fu Fang Ind Bldg 1 Hok Yeun Street, Hunghom, Kowloon, Hong Kong as discussed at Para 38.132 to 38.134 herein above.

40.34.1 I order to impose a Penalty of **Rs.427,02,61,855/-(Rupees Four Hundred Twenty Seven Crore Two Lakh Sixty One Thousand Eight Hundred Fifty Five Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s KESHAR TRADE (HK)LTD, Unit1211,12FL, Beverly Commercial Centre, 87-105, Chatham Road South, TST, Kowloon, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.136 to 38.138 herein above.

40.34.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s KESHAR TRADE (HK)LTD, Unit1211,12FL, Beverly Commercial Centre, 87-105, Chatham Road South, TST, Kowloon, Hong Kong as discussed at Para 38.136 to 38.138 herein above.

40.34.3 I order to impose a Penalty of **Rs.11,38,052/-(Rupees Eleven Lakh Thirty Eight Thousand Fifty Two Only)** under Section **114AA** of the Customs Act,1962 on M/s KESHAR TRADE (HK)LTD, Unit1211,12FL, Beverly Commercial Centre, 87-105, Chatham Road South, TST, Kowloon, Hong Kong equal to the Two times of the value as discussed at Para 38.136 to 38.138 herein above.

40.34.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s KESHAR TRADE (HK)LTD, Unit1211,12FL, Beverly Commercial Centre, 87-105, Chatham Road South, TST, Kowloon, Hong Kong as discussed at Para 38.136 to 38.138 herein above.

40.35.1 I order to impose a Penalty of **Rs.174,56,98,995/-(Rupees One Hundred Seventy Four Crore Fifty Six Lakh Ninety Eight Thousand Nine Hundred Ninety Five Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s KJ TRADING CO., Flat/Room H block-01, -26/F baliey garden, 26 Bailey Street, Hunghon, Hong Kong (kjtradinghkg@outlook.com) equal to the difference of the declared value and the value as discussed at Para 38.140 to 38.142 herein above.

40.35.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s KJ TRADING CO., Flat/Room H block-01, -26/F baliey garden, 26 Bailey Street,

Hunghon, Hong Kong (kjtradinghkg@outlook.com) as discussed at Para 38.140 to 38.142 herein above.

40.35.3 I order to impose a Penalty of **Rs.4,42,074/-(Rupees Four Lakh Forty Two Thousand Seventy Four Only)** under Section **114AA** of the Customs Act,1962 on M/s KJ TRADING CO., Flat/Room H block-01, -26/F baliey garden, 26 Bailey Street, Hunghon, Hong Kong (kjtradinghkg@outlook.com) equal to the Two times of the value as discussed at Para 38.140 to 38.142 herein above.

40.35.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s KJ TRADING CO., Flat/Room H block-01, -26/F baliey garden, 26 Bailey Street, Hunghon, Hong Kong (kjtradinghkg@outlook.com) as discussed at Para 38.140 to 38.142 herein above.

40.36.1 I order to impose a Penalty of **Rs.5,22,46,394/-(Rupees Five Crore Twenty Two Lakh Forty Six Thousand Three Hundred Ninety Four Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s KOEMATLIFF PRIVATE LIMITED, 12 ARUMUGAM Road, #03-10A, LTC Building, Singapore-409958 equal to the difference of the declared value and the value as discussed at Para 38.144 to 38.146 herein above.

40.36.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s KOEMATLIFF PRIVATE LIMITED, 12 ARUMUGAM Road, #03-10A, LTC Building, Singapore-409958 as discussed at Para 38.144 to 38.146 herein above.

40.36.3 I order to impose a Penalty of **Rs.16,876/-(Rupees Sixteen Thousand Eight Hundred Seventy Six Only)** under Section **114AA** of the Customs Act,1962 on M/s KOEMATLIFF PRIVATE LIMITED, 12 ARUMUGAM Road, #03-10A, LTC Building, Singapore-409958 equal to the Two times of the value as discussed at Para 38.144 to 38.146 herein above.

40.36.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s KOEMATLIFF PRIVATE LIMITED, 12 ARUMUGAM Road, #03-10A, LTC Building, Singapore-409958 as discussed at Para 38.144 to 38.146 herein above.

40.37.1 I order to impose a Penalty of **Rs.224,36,29,923/-(Rupees Two Hundred Twenty Four Crore Thirty Six Lakh Twenty Nine Thousand Nine Hundred Twenty Three Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s LEE FU SHING COMPANY LIMITED, 1108, 11/F, Rise Commercial, F-11, Gran Ville Circuit, TST, Kowloon, Hong Kong (leefushing19@gmail.com) equal to the difference of the declared value and the value as discussed at Para 38.148 to 38.150 herein above.

40.37.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s LEE FU SHING COMPANY LIMITED, 1108, 11/F, Rise Commercial, F-11, Gran Ville Circuit, TST, Kowloon, Hong Kong (leefushing19@gmail.com)as discussed at Para 38.148 to 38.150 herein above.

40.37.3 I order to impose a Penalty of **Rs.6,40,300/-(Rupees Six Lakh Forty Thousand Three Hundred Only)** under Section **114AA** of the Customs

Act,1962 on M/s LEE FU SHING COMPANY LIMITED, 1108, 11/F, Rise Commercial, F-11, Gran Ville Circuit, TST, Kowloon, Hong Kong (leefushing19@gmail.com) equal to the Two times of the value as discussed at Para 38.148 to 38.150 herein above.

40.37.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s LEE FU SHING COMPANY LIMITED, 1108, 11/F, Rise Commercial, F-11, Gran Ville Circuit, TST, Kowloon, Hong Kong (leefushing19@gmail.com) as discussed at Para 38.148 to 38.150 herein above.

40.38.1 I order to impose a Penalty of **Rs.2,07,22,358/-(Rupees Two Crore Seven Lakh Twenty Two Thousand Three Hundred Fifty Eight Only)** under Section **112(v)** of the Customs Act,1962 on M/s LIME TRADING., RM 1715, 17/F, Rise Comm Bldg, 5-11, Granville Circuit, TST, Kowloon, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.152 to 38.154 herein above.

40.38.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s LIME TRADING., RM 1715, 17/F, Rise Comm Bldg, 5-11, Granville Circuit, TST, Kowloon, Hong Kong as discussed at Para 38.152 to 38.154 herein above.

40.38.3 I order to impose a Penalty of **Rs.12,45,284/-(Rupees Twelve Lakh Forty Five Thousand Two Hundred Eighty Four Only)** under Section **114AA** of the Customs Act,1962 on M/s LIME TRADING., RM 1715, 17/F, Rise Comm Bldg, 5-11, Granville Circuit, TST, Kowloon, Hong Kong equal to the Two times of the value as discussed at Para 38.152 to 38.154 herein above.

40.38.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s LIME TRADING., RM 1715, 17/F, Rise Comm Bldg, 5-11, Granville Circuit, TST, Kowloon, Hong Kong as discussed at Para 38.152 to 38.154 herein above.

40.39.1 I order to impose a Penalty of **Rs.2073,65,80,688/-(Rupees Two Thousand Seventy Three Crore Sixty Five Lakh Eighty Thousand Six Hundred Eighty Eight Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s MARS IND & COMM SERVICES LIMITD, Unit A&B, 9/Fl, Champion Building, 287-291, Des Voeux Road, Central, Sheung Wan, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.156 to 38.158 & 38.242 to 38.244 herein above.

40.39.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s MARS IND & COMM SERVICES LIMITD, Unit A&B, 9/Fl, Champion Building, 287-291, Des Voeux Road, Central, Sheung Wan, Hong Kong as discussed at Para 38.156 to 38.158 & 38.242 to 38.244 herein above.

40.39.3 I order to impose a Penalty of **Rs.6503,35,28,752/- (Rupees Six Thousand Five Hundred Three Crore Thirty Five Lakh Twenty Eight Thousand Seven Hundred Fifty Two Only)** under Section **114(iii)** of the Customs Act,1962 on M/s MARS IND & COMM SERVICES LIMITD, Unit A&B, 9/Fl, Champion Building, 287-291, Des Voeux Road, Central,

Sheung Wan, Hong Kong equal to the declared value as discussed at Para 38.156 to 38.158 & 38.242 to 38.244 herein above.

40.39.4 I order to impose a Penalty of **Rs.30,78,08,592/- (Rupees Thirty Crores Seventy Eight Lakhs Eight Thousand Five Hundred Ninety Two Only)** under Section **114AA** of the Customs Act,1962 on M/s MARS IND & COMM SERVICES LIMITD, Unit A&B, 9/Fl, Champion Building, 287-291, Des Voeux Road, Central, Sheung Wan, Hong Kong equal to the Two times of the value[Rs.30,15,308/- on the count of Import (+) Rs.15,08,88,988/- on the count of export] as discussed at Para 38.156 to 38.158 & 38.242 to 38.244 herein above.

40.39.5 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s MARS IND & COMM SERVICES LIMITD, Unit A&B, 9/Fl, Champion Building, 287-291, Des Voeux Road, Central, Sheung Wan, Hong Kong as discussed at Para 38.156 to 38.158 & 38.242 to 38.244 herein above.

40.40.1 I order to impose a Penalty of **Rs.626,37,00,046/-(Rupees Six Hundred Twenty Six Crore Thirty Seven Lakh Forty Six Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s MIRACLE MPS LIMITED, 8B, Dorfu Court, 5-6 Hau Fook Street, TSIM SHA TSUI, KLN, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.160 to 38.162 herein above.

40.40.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s MIRACLE MPS LIMITED, 8B, Dorfu Court, 5-6 Hau Fook Street, TSIM SHA TSUI, KLN, Hong Kong as discussed at Para 38.160 to 38.162 herein above.

40.40.3 I order to impose a Penalty of **Rs.2,84,99,722/-(Rupees Two Crore Eighty Four Lakh Ninety Nine Thousand Seven Hundred Twenty Two Only)** under Section **114AA** of the Customs Act,1962 on M/s MIRACLE MPS LIMITED, 8B, Dorfu Court, 5-6 Hau Fook Street, TSIM SHA TSUI, KLN, Hong Kong equal to the Two times of the value as discussed at Para 38.160 to 38.162herein above.

40.40.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s MIRACLE MPS LIMITED, 8B, Dorfu Court, 5-6 Hau Fook Street, TSIM SHA TSUI, KLN, Hong Kong as discussed at Para 38.160 to 38.162 herein above.

40.41.1 I order to impose a Penalty of **Rs.95,07,00,989/-(Rupees Ninety Five Crore Seven Lakh Nine Hundred Eighty Nine Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s MIRACLE PRIVATE LIMITED, Flat 1006, 10/F, Rise Comm Bldg, 5-11, Granville Circuit, TSIM, SHA TSUI, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.164 to 38.166 herein above.

40.41.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s MIRACLE PRIVATE LIMITED, Flat 1006, 10/F, Rise Comm Bldg, 5-11, Granville Circuit, TSIM, SHA TSUI, Hong Kong as discussed at Para 38.164 to 38.166 herein above.

40.41.3 I order to impose a Penalty of **Rs.2,49,342/-(Rupees Two Lakh Forty Nine Thousand Three Hundred Forty Two Only)** under Section **114AA** of the Customs Act,1962 on M/s MIRACLE PRIVATE LIMITED, Flat 1006, 10/F, Rise Comm Bldg, 5-11, Granville Circuit, TSIM, SHA TSUI, Hong Kong equal to the Two times of the value as discussed at Para 38.164 to 38.166 herein above.

40.41.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s MIRACLE PRIVATE LIMITED, Flat 1006, 10/F, Rise Comm Bldg, 5-11, Granville Circuit, TSIM, SHA TSUI, Hong Kong as discussed at Para 38.164 to 38.166 herein above.

40.42.1 I order to impose a Penalty of **Rs.95,38,49,995/-(Rupees Ninety Five Crore Thirty Eight Lakh Forty Nine Thousand Nine Hundred Ninety Five Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s MIRACLE TRADING HK LIMITED, Room 1006, 10/F, Rise Comm Bldg, 5-11, Granville Circuit, TST, Kowloon, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.168 to 38.170 herein above.

40.42.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s MIRACLE TRADING HK LIMITED, Room 1006, 10/F, Rise Comm Bldg, 5-11, Granville Circuit, TST, Kowloon, Hong Kong as discussed at Para 38.168 to 38.170herein above.

40.42.3 I order to impose a Penalty of **Rs.2,50,168/-(Rupees Two Lakh Fifty Thousand One Hundred Sixty Eight Only)** under Section **114AA** of the Customs Act,1962 on M/s MIRACLE TRADING HK LIMITED, Room 1006, 10/F, Rise Comm Bldg, 5-11, Granville Circuit, TST, Kowloon, Hong Kong equal to the Two times of the value as discussed at Para 38.168 to 38.170 herein above.

40.42.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s MIRACLE TRADING HK LIMITED, Room 1006, 10/F, Rise Comm Bldg, 5-11, Granville Circuit, TST, Kowloon, Hong Kong as discussed at Para 38.168 to 38.170 herein above.

40.43.1 I order to impose a Penalty of **Rs.7,43,95,145/-(Rupees Seven Crore Forty Three Lakh Ninety Five Thousand One Hundred Forty Five Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s NV INTERNATIONAL., Room No. 1715, 17th Floor,Rise Commercial Building, 5-11, Gran Ville Circuit, Gran Ville Road, TST, Kowloon, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.172 to 38.174 herein above.

40.43.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s NV INTERNATIONAL., Room No. 1715, 17th Floor,Rise Commercial Building, 5-11, Gran Ville Circuit, Gran Ville Road, TST, Kowloon, Hong Kong as discussed at Para 38.172 to 38.174 herein above.

40.43.3 I order to impose a Penalty of **Rs.69,740/-(Rupees Sixty Nine Thousand Seven Hundred Forty Only)** under Section **114AA** of the Customs Act,1962 on M/s NV INTERNATIONAL., Room No. 1715, 17th Floor,Rise Commercial Building, 5-11, Gran Ville Circuit, Gran Ville Road, TST, Kowloon, Hong Kong equal to the Two times of the value as discussed at Para 38.172 to 38.174 herein above.

40.43.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s NV INTERNATIONAL., Room No. 1715, 17th Floor,Rise Commercial Building, 5-11, Gran Ville Circuit, Gran Ville Road, TST, Kowloon, Hong Kong as discussed at Para 38.172 to 38.174 herein above.

40.44.1 I order to impose a Penalty of **Rs.22,23,76,964/-(Rupees Twenty Two Crore Twenty Three Lakh Seventy Six Thousand Nine Hundred Sixty Four Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s PACY CORPORATION LTD., Rm B, 9/F, Hop Hing, Industrial Bldg, 704, Kastle Peak Road, Lai Chi Kok, Kln, Hong Kong (pacycorporationltd@gmail.com) equal to the difference of the declared value and the value as discussed at Para 38.176 to 38.178 herein above.

40.44.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s PACY CORPORATION LTD., Rm B, 9/F, Hop Hing, Industrial Bldg, 704, Kastle Peak Road, Lai Chi Kok, Kln, Hong Kong (pacycorporationltd@gmail.com) as discussed at Para 38.176 to 38.178 herein above.

40.44.3 I order to impose a Penalty of **Rs.1,98,902/-(Rupees One Lakh Ninety Eight Thousand Nine Hundred Two Only)** under Section **114AA** of the Customs Act,1962 on M/s PACY CORPORATION LTD., Rm B, 9/F, Hop Hing, Industrial Bldg, 704, Kastle Peak Road, Lai Chi Kok, Kln, Hong Kong (pacycorporationltd@gmail.com) equal to the Two times of the value as discussed at Para 38.176 to 38.178 herein above.

40.44.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s PACY CORPORATION LTD., Rm B, 9/F, Hop Hing, Industrial Bldg, 704, Kastle Peak Road, Lai Chi Kok, Kln, Hong Kong (pacycorporationltd@gmail.com) as discussed at Para 38.176 to 38.178 herein above.

40.45.1 I order to impose a Penalty of **Rs.112,17,61,434/-(Rupees One Hundred Twelve Crore Seventeen Lakh Sixty One Thousand Four Hundred Thirty Four Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s PINK STAR HK LTD, Room No. 22, Unit-P, 1/F, Kiaser Estate Pahse 3, 11 HOK YUEN Street, Hunghom, Hong Kong (pinkstarthkltd@gmail.com) equal to the difference of the declared value and the value as discussed at Para 38.180 to 38.182 herein above.

40.45.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s PINK STAR HK LTD, Room No. 22, Unit-P, 1/F, Kiaser Estate Pahse 3, 11 HOK YUEN Street, Hunghom, Hong Kong (pinkstarthkltd@gmail.com) as discussed at Para 38.180 to 38.182 herein above.

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40.45.3 I order to impose a Penalty of **Rs.2,94,210/-(Rupees Two Lakh Ninety Four Thousand Two Hundred Ten Only)** under Section **114AA** of the Customs Act,1962 on M/s PINK STAR HK LTD, Room No. 22, Unit-P, 1/F, Kiaser Estate Pahse 3, 11 HOK YUEN Street, Hunghom, Hong Kong (pinkstarthkltd@gmail.com) equal to the Two times of the value as discussed at Para 38.180 to 38.182 herein above.

40.45.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s PINK STAR HK LTD, Room No. 22, Unit-P, 1/F, Kiaser Estate Pahse 3, 11 HOK YUEN Street, Hunghom, Hong Kong (pinkstarthkltd@gmail.com) as discussed at Para 38.180 to 38.182 herein above.

40.46.1 I order to impose a Penalty of **Rs.53,84,44,938/-(Rupees Fifty Three Crore Eighty Four Lakh Forty Four Thousand Nine Hundred Thirty Eight Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s RK TRADING HK LTD, Roon B4, 13F, Block 1, Kaiser Estate, No.41 Man Yue Steet, Hung Hom, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.184 to 38.186 herein above.

40.46.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s RK TRADING HK LTD, Roon B4, 13F, Block 1, Kaiser Estate, No.41 Man Yue Steet, Hung Hom, Hong Kong as discussed at Para 38.184 to 38.186 herein above.

40.46.3 I order to impose a Penalty of **Rs.1,47,968/-(Rupees One Lakh Forty Seven Thousand Nine Hundred Sixty Eight Only)** under Section **114AA** of the Customs Act,1962 on M/s RK TRADING HK LTD, Roon B4, 13F, Block 1, Kaiser Estate, No.41 Man Yue Steet, Hung Hom, Hong Kong equal to the Two times of the value as discussed at Para 38.184 to 38.186 herein above.

40.46.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s RK TRADING HK LTD, Roon B4, 13F, Block 1, Kaiser Estate, No.41 Man Yue Steet, Hung Hom, Hong Kong as discussed at Para 38.184 to 38.186 herein above.

40.47.1 I order to impose a Penalty of **Rs.2,05,12,594/- (Rupees Two Crore Five Lakh Twelve Thousand Five Hundred Ninety Four Only)** under Section **114(iii)** of the Customs Act,1962 on M/s SAIVASCULAR PTE LTD, 35, #09-14/15, Selegie Road, Park Lane Shopping mall, Singapore equal to the declared value as discussed at Para 38.290 to 38.292 herein above.

40.47.2 I order to impose a Penalty of **Rs.71,276/-(Rupees Seventy One Thousand Two Hundred Seventy Six Only)** under Section **114AA** of the Customs Act,1962 on M/s SAIVASCULAR PTE LTD, 35, #09-14/15, Selegie Road, Park Lane Shopping mall, Singapore equal to the Two times of the value as discussed at Para 38.290 to 38.292 herein above.

40.47.3 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s SAIVASCULAR PTE LTD, 35, #09-14/15, Selegie Road, Park Lane Shopping mall, Singapore as discussed at Para 38.290 to 38.292 herein above.

40.48.1 I order to impose a Penalty of **Rs.10,00,30,880/-(Rupees Ten Crore Thirty Thousand Eight Hundred Eighty Only)** under Section **112(b)(v)** of the

Customs Act,1962 on M/s SHIV DIAMOND, Unit 7, 11th Floor, Heng Ngai Jew CTR, 4 HOK- YUEN Street, East Hung HOM, Kowloon, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.188 to 38.190 herein above.

40.48.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s SHIV DIAMOND, Unit 7, 11th Floor, Heng Ngai Jew CTR, 4 HOK- YUEN Street, East Hung HOM, Kowloon, Hong Kong as discussed at Para 38.188 to 38.190 herein above.

40.48.3 I order to impose a Penalty of **Rs.92,840/-(Rupees Ninety Two Thousand Eight Hundred Forty Only)** under Section **114AA** of the Customs Act,1962 on M/s SHIV DIAMOND, Unit 7, 11th Floor, Heng Ngai Jew CTR, 4 HOK- YUEN Street, East Hung HOM, Kowloon, Hong Kong equal to the Two times of the value as discussed at Para 38.188 to 38.190 herein above.

40.48.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s SHIV DIAMOND, Unit 7, 11th Floor, Heng Ngai Jew CTR, 4 HOK- YUEN Street, East Hung HOM, Kowloon, Hong Kong as discussed at Para 38.188 to 38.190 herein above.

40.49.1 I order to impose a Penalty of **Rs.1463,40,02,239/- (Rupees One Thousand Four Hundred Sixty Three Crore Forty Lakh Two Thousand Two Hundred Thirty Nine Only)** under Section **114(iii)** of the Customs Act,1962 on M/s SINOVAC LIMITED, Unit 705, 7/F, Golden Draon Plaza, 38-40 Cameron Road, T.S.T., Kowloon, Hong Kong equal to the declared value as discussed at Para 38.231 to 38.233 herein above.

40.49.2 I order to impose a Penalty of **Rs.1,94,21,542/-(Rupees One Crore Ninety Four Lakh Twenty One Thousand Five Hundred Forty Two Only)** under Section **114AA** of the Customs Act,1962 on M/s SINOVAC LIMITED, Unit 705, 7/F, Golden Draon Plaza, 38-40 Cameron Road, T.S.T., Kowloon, Hong Kong equal to the Two times of the value as discussed at Para 38.231 to 38.233 herein above.

40.49.3 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s SINOVAC LIMITED, Unit 705, 7/F, Golden Draon Plaza, 38-40 Cameron Road, T.S.T., Kowloon, Hong Kong as discussed at Para 38.231 to 38.233 herein above.

40.50.1 I order to impose a Penalty of **Rs.4,94,22,868/-(Rupees Four Crore Ninety Four Lakh Twenty Two Thousand Eight Hundred Sixty Eight Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s SPINEL HOUSE (HK), unit 1, 10/F, Tower A, hunghom Commercial Centre, 37-39 Ma tau wai Road, Hung Hom, Kowloon, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.192 to 38.194 herein above.

40.50.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s SPINEL HOUSE (HK), unit 1, 10/F, Tower A, hunghom Commercial Centre, 37-39 Ma tau

wai Road, Hung Hom, Kowloon, Hong Kong as discussed at Para 38.192 to 38.194 herein above.

40.50.3 I order to impose a Penalty of **Rs.43,340/-(Rupees Forty Three Thousand Three Hundred Forty Only)** under Section **114AA** of the Customs Act,1962 on M/s SPINEL HOUSE (HK), unit 1, 10/F, Tower A, hunghom Commercial Centre, 37-39 Ma tau wai Road, Hung Hom, Kowloon, Hong Kong equal to the Two times of the value as discussed at Para 38.192 to 38.194 herein above.

40.50.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s SPINEL HOUSE (HK), unit 1, 10/F, Tower A, hunghom Commercial Centre, 37-39 Ma tau wai Road, Hung Hom, Kowloon, Hong Kong as discussed at Para 38.192 to 38.194 herein above.

40.51.1 I order to impose a Penalty of **Rs.14,83,87,040/-(Rupees Fourteen Crore Eighty Three Lakh Eighty Seven Thousand Forty Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s STALLION LIMITED, Block-A, 2nd Floor, LIP Seng, mansion, 15-19, Carnarvon Roa, TST, Kowloon, Hong Kong (stallion.ltd@aol.com) equal to the difference of the declared value and the value as discussed at Para 38.196 to 38.198 herein above.

40.51.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s STALLION LIMITED, Block-A, 2nd Floor, LIP Seng, mansion, 15-19, Carnarvon Roa, TST, Kowloon, Hong Kong (stallion.ltd@aol.com) as discussed at Para 38.196 to 38.198 herein above.

40.51.3 I order to impose a Penalty of **Rs.1,37,720/-(Rupees One Lakh Thirty Seven Thousand Seven Hundred Twenty Only)** under Section **114AA** of the Customs Act,1962 on M/s STALLION LIMITED, Block-A, 2nd Floor, LIP Seng, mansion, 15-19, Carnarvon Roa, TST, Kowloon, Hong Kong (stallion.ltd@aol.com) equal to the Two times of the value as discussed at Para 38.196 to 38.198 herein above.

40.51.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s STALLION LIMITED, Block-A, 2nd Floor, LIP Seng, mansion, 15-19, Carnarvon Roa, TST, Kowloon, Hong Kong (stallion.ltd@aol.com) as discussed at Para 38.196 to 38.198 herein above.

40.52.1 I order to impose a Penalty of **Rs.622,55,63,811/-(Rupees Six Hundred Twenty Two Crore Fifty Five Lakh Sixty Three Thousand Eight Hundred Eleven Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s SUN RAYS HK LIMITED, Flat 22, 1/F, Block 3, Kaiser Estate, 11 Hok Yuen Street, Hung Hom, Kowloon, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.200 to 38.202 herein above.

40.52.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s SUN RAYS HK LIMITED, Flat 22, 1/F, Block 3, Kaiser Estate, 11 Hok Yuen Street, Hung Hom, Kowloon, Hong Kong as discussed at Para 38.200 to 38.202 herein above.

40.52.3 I order to impose a Penalty of **Rs.17,33,514/-(Rupees Seventeen Lakh Thirty Three Thousand Five Hundred Fourteen Only)** under Section **114AA** of the Customs Act,1962 on M/s SUN RAYS HK LIMITED, Flat 22, 1/F, Block 3, Kaiser Estate, 11 Hok Yuen Street, Hung Hom, Kowloon, Hong Kong equal to the Two times of the value as discussed at Para 38.200 to 38.202herein above.

40.52.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s SUN RAYS HK LIMITED, Flat 22, 1/F, Block 3, Kaiser Estate, 11 Hok Yuen Street, Hung Hom, Kowloon, Hong Kong as discussed at Para 38.200 to 38.202 herein above.

40.53.1 I order to impose a Penalty of **Rs.910,83,35,792/-(Rupees Nine Hundred Ten Crore Eighty Three Lakh Thirty Five Thousand Seven Hundred Ninety Two Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s SUN TAI HK LTD, Unit 502, 5/F, Hart Avenue Plaza, 5-9 Hart Avenue, T.S.T. Kowloon, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.204 to 38.206 herein above.

40.53.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s SUN TAI HK LTD, Unit 502, 5/F, Hart Avenue Plaza, 5-9 Hart Avenue, T.S.T. Kowloon, Hong Kong as discussed at Para 38.204 to 38.206 herein above.

40.53.3 I order to impose a Penalty of **Rs.27,07,532/-(Rupees Twenty Seven Lakh Seven Thousand Five Hundred Thirty Two Only)** under Section **114AA** of the Customs Act,1962 on M/s SUN TAI HK LTD, Unit 502, 5/F, Hart Avenue Plaza, 5-9 Hart Avenue, T.S.T. Kowloon, Hong Kong equal to the Two times of the value as discussed at Para 38.204 to 38.206 herein above.

40.53.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s SUN TAI HK LTD, Unit 502, 5/F, Hart Avenue Plaza, 5-9 Hart Avenue, T.S.T. Kowloon, Hong Kong as discussed at Para 38.204 to 38.206 herein above.

40.54.1 I order to impose a Penalty of **Rs.7,81,15,980/- (Rupees Seven Crore Eighty One Lakh Fifteen Thousand Nine Hundred Eighty Only)** under Section **114(iii)** of the Customs Act,1962 on M/s T G INTERNATIONAL DMCC, Unit No Almas-12-F-01, Almas Tower, Plot No. Jlt-Ph1-A0, Jumeirah lake Tower, Dubai, UAE equal to the declared value as discussed at Para 38.284 to 38.286 herein above.

40.54.2 I order to impose a Penalty of **Rs.1,23,282/-(Rupees One Lakh Twenty Three Thousand Two Hundred Eighty Two Only)** under Section **114AA** of the Customs Act,1962 on M/s T G INTERNATIONAL DMCC, Unit No Almas-12-F-01, Almas Tower, Plot No. Jlt-Ph1-A0, Jumeirah lake Tower, Dubai, UAE equal to the Two times of the value as discussed at Para 38.284 to 38.286 herein above.

40.54.3 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s T G INTERNATIONAL DMCC, Unit No Almas-12-F-01, Almas Tower, Plot No. Jlt-Ph1-A0, Jumeirah lake Tower, Dubai, UAE as discussed at Para 38.284 to 38.286 herein above.

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40.55.1 I order to impose a Penalty of **Rs.413,10,83,173/-(Rupees Four Hundred Thirteen Crore Ten Lakh Eighty Three Thousand One Hundred Ninety Seventy Three Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s UNIQUE DIA LIMITED, 502, Hart Avenue Plaza, 5-9 Hart Avenue, Tsim Sha Tsui Kowloon, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.208 to 38.210 herein above.

40.55.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s UNIQUE DIA LIMITED, 502, Hart Avenue Plaza, 5-9 Hart Avenue, Tsim Sha Tsui Kowloon, Hong Kong as discussed at Para 38.208 to 38.210 herein above.

40.55.3 I order to impose a Penalty of **Rs.11,19,550/-(Rupees Eleven Lakh Nineteen Thousand Five Hundred Fifty Only)** under Section **114AA** of the Customs Act,1962 on M/s UNIQUE DIA LIMITED, 502, Hart Avenue Plaza, 5-9 Hart Avenue, Tsim Sha Tsui Kowloon, Hong Kong equal to the Two times of the value as discussed at Para 38.208 to 38.210 herein above.

40.55.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s UNIQUE DIA LIMITED, 502, Hart Avenue Plaza, 5-9 Hart Avenue, Tsim Sha Tsui Kowloon, Hong Kong as discussed at Para 38.208 to 38.210 herein above.

40.56.1 I order to impose a Penalty of **Rs.26,59,17,279/-(Rupees Twenty Six Crore Fifty Nine Lakh Seventeen Thousand Two Hundred Seventy Nine Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s UNNATI GENERAL TRADING LIMITED, Flat/Room No. 11, Blk-B, 11/F, Wing Cheong, Commercial Building, 19-25, Gervois Street, Sheung Wan, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.212 to 38.214 herein above.

40.56.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s UNNATI GENERAL TRADING LIMITED, Flat/Room No. 11, Blk-B, 11/F, Wing Cheong, Commercial Building, 19-25, Gervois Street, Sheung Wan, Hong Kong as discussed at Para 38.212 to 38.214 herein above.

40.56.3 I order to impose a Penalty of **Rs.82,314/-(Rupees Eighty Two Thousand Three Hundred Fourteen Only)** under Section **114AA** of the Customs Act,1962 on M/s UNNATI GENERAL TRADING LIMITED, Flat/Room No. 11, Blk-B, 11/F, Wing Cheong, Commercial Building, 19-25, Gervois Street, Sheung Wan, Hong Kong equal to the Two times of the value as discussed at Para 38.212 to 38.214 herein above.

40.56.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s UNNATI GENERAL TRADING LIMITED, Flat/Room No. 11, Blk-B, 11/F, Wing Cheong, Commercial Building, 19-25, Gervois Street, Sheung Wan, Hong Kong as discussed at Para 38.212 to 38.214 herein above.

40.57.1 I order to impose a Penalty of **Rs.150,75,40,461/-(Rupees One Hundred Fifty Crore Seventy Five Lakh Forty Thousand Four Hundred Sixty One Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s VENUS IMPEX TRADING LIMITED, Block E, 5F, haribest Industrial

building, 45-47 AU PUI WAN ST FO.TAN, Shatin, Hong Kong equal to the difference of the declared value and the value as discussed at Para 38.216 to 38.218 herein above.

40.57.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s VENUS IMPEX TRADING LIMITED, Block E, 5F, haribest Industrial building, 45-47 AU PUI WAN ST FO.TAN, Shatin, Hong Kong as discussed at Para 38.216 to 38.218 herein above.

40.57.3 I order to impose a Penalty of **Rs.1,41,43,712/-(Rupees One Crore Forty One Lakh Forty Three Thousand Seven Hundred Twelve Only)** under Section **114AA** of the Customs Act,1962 on M/s VENUS IMPEX TRADING LIMITED, Block E, 5F, haribest Industrial building, 45-47 AU PUI WAN ST FO.TAN, Shatin, Hong Kong equal to the Two times of the value as discussed at Para 38.216 to 38.218 herein above.

40.57.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s VENUS IMPEX TRADING LIMITED, Block E, 5F, haribest Industrial building, 45-47 AU PUI WAN ST FO.TAN, Shatin, Hong Kong as discussed at Para 38.216 to 38.218 herein above.

40.58.1 I order to impose a Penalty of **Rs.5,76,92,898/-(Rupees Five Crore Seventy Six Lakh Ninety Two Thousand Eight Hundred Ninety Eight Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s VERIOT TECHNOLOGIES PTE LTD, 8 Ubi Road 2, #08-10, Zervex, Singapore equal to the difference of the declared value and the value as discussed at Para 38.220 to 38.222 herein above.

40.58.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s VERIOT TECHNOLOGIES PTE LTD, 8 Ubi Road 2, #08-10, Zervex, Singapore as discussed at Para 38.220 to 38.222 herein above.

40.58.3 I order to impose a Penalty of **Rs.15,132/-(Rupees Fifteen Thousand One Hundred Thirty Two Only)** under Section **114AA** of the Customs Act,1962 on M/s VERIOT TECHNOLOGIES PTE LTD, 8 Ubi Road 2, #08-10, Zervex, Singapore equal to the Two times of the value as discussed at Para 38.220 to 38.222 herein above.

40.58.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s VERIOT TECHNOLOGIES PTE LTD, 8 Ubi Road 2, #08-10, Zervex, Singapore as discussed at Para 38.220 to 38.222 herein above.

40.59.1 I order to impose a Penalty of **Rs.4,95,03,360/-(Rupees Four Crore Ninety Five Lakh Three Thousand Three Hundred Sixty Only)** under Section **112(b)(v)** of the Customs Act,1962 on M/s VITAL ENERGY FZE, Elob Office no. E-15F-04, Hamriyah Free Zone Sharjah, UAE equal to the difference of the declared value and the value as discussed at Para 38.224 to 38.226 herein above.

40.59.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s VITAL ENERGY

FZE, Elob Office no. E-15F-04, Hamriyah Free Zone Sharjah, UAE as discussed at Para 38.224 to 38.226 herein above.

40.59.3 I order to impose a Penalty of **Rs.42,240/-(Rupees Forty Thousand Two Hundred Forty Only)** under Section **114AA** of the Customs Act,1962 on M/s VITAL ENERGY FZE, Elob Office no. E-15F-04, Hamriyah Free Zone Sharjah, UAE equal to the Two times of the value as discussed at Para 38.224 to 38.226 herein above.

40.59.4 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s VITAL ENERGY FZE, Elob Office no. E-15F-04, Hamriyah Free Zone Sharjah, UAE as discussed at Para 38.224 to 38.226 herein above.

40.60.1 I order to impose a Penalty of **Rs.439,33,00,031/- (Rupees Four Hundred Thirty Nine Crore Thirty Three Lakh Thirty One Only)** under Section **114(iii)** of the Customs Act,1962 on M/s XNOVA HK LIMITED, Unit D3, 15/F, TSIM, SHA, TSUI Mansion, 87 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong equal to the declared value as discussed at Para 38.247 to 38.249 herein above.

40.60.2 I order to impose a Penalty of **Rs.54,15,824/-(Rupees Fifty Four Lakh Fifteen Thousand Eight Hundred Twenty Four Only)** under Section **114AA** of the Customs Act,1962 on M/s XNOVA HK LIMITED, Unit D3, 15/F, TSIM, SHA, TSUI Mansion, 87 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong equal to the Two times of the value as discussed at Para 38.247 to 38.249 herein above.

40.60.3 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s XNOVA HK LIMITED, Unit D3, 15/F, TSIM, SHA, TSUI Mansion, 87 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong as discussed at Para 38.247 to 38.249 herein above.

40.61.1 I order to impose a Penalty of **Rs.173,76,31,603/- (Rupees One Hundred Seventy Three Crore Seventy Six Lakh Thirty One Thousand Six Hundred Three Only)** under Section **114(iii)** of the Customs Act,1962 on M/s XNOVA LIMITED , Unit D3, 15/F, TSIM, SHA, TSUI Mansion, 87 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong equal to the declared value as discussed at Para 38.260 to 38.262 herein above.

40.61.2 I order to impose a Penalty of **Rs.22,03,056/-(Rupees Twenty Two Lakh Three Thousand Fifty Six Only)** under Section **114AA** of the Customs Act,1962 on M/s XNOVA LIMITED , Unit D3, 15/F, TSIM, SHA, TSUI Mansion, 87 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong equal to the Two times of the value as discussed at Para 38.260 to 38.262 herein above.

40.61.3 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s XNOVA LIMITED , Unit D3, 15/F, TSIM, SHA, TSUI Mansion, 87 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong as discussed at Para 38.260 to 38.262 herein above.

40.62.1 I order to impose a Penalty of **Rs.487,46,75,104/-(Rupees Four Hundred Eighty Seven Crore Forty Six Lakh Lakhs Seventy Five Thousand One Hundred Four Only)** under Section **112(b)(v)** of the Customs Act,1962 on

M/s ZHAN HONG TRADE HK LIMITED, Unit 31, 2nd Floor, Mirador Mansion, 58 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong (E-mail zhanhongtradehk@outlook.com) equal to the difference of the declared value and the value as discussed at Para 38.228 to 38.230 & 38.254 to 38.256 herein above.

40.62.2 I order to impose a Penalty of **Rs.5,000/-(Rupees Five Thousand Only)** under Section **112(ii)** of the Customs Act,1962 on M/s ZHAN HONG TRADE HK LIMITED, Unit 31, 2nd Floor, Mirador Mansion, 58 Nathan Road, TSIM,SHA, TSUI, Kowloon, Hong Kong (E-mail zhanhongtradehk@outlook.com) as discussed at Para 38.228 to 38.230 & 38.254 to 38.256 herein above.

40.62.3 I order to impose a Penalty of **Rs.730,86,35,898/- (Rupees Seven Hundred Thirty Crore Eighty Six Lakh Thirty Five Thousand Eight Hundred Ninety Eight Only)** under Section **114(iii)** of the Customs Act,1962 on M/s ZHAN HONG TRADE HK LIMITED, Unit 31, 2nd Floor, Mirador Mansion, 58 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong (E-mail zhanhongtradehk@outlook.com) equal to the declared value as discussed at Para 38.228 to 38.230 & 38.254 to 38.256 herein above.

40.62.4 I order to impose a Penalty of **Rs.1,28,47,798/- (Rupees One Crore Twenty Eight Lakhs Forty Seven Thousand Seven Hundred Ninety Eight Only)** under Section **114AA** of the Customs Act,1962 on M/s ZHAN HONG TRADE HK LIMITED, Unit 31, 2nd Floor, Mirador Mansion, 58 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong (E-mail zhanhongtradehk@outlook.com) equal to the Two times of the value[Rs.12,17,076/- on the count of Import (+) Rs.52,06,823/- on the count of export] as discussed at Para 38.228 to 38.230 & 38.254 to 38.256 herein above.

40.62.5 I order to impose a Penalty of **Rs.4,00,000/- (Rupees Four Lakhs Only)** under Section **117** of the Customs Act,1962 on M/s ZHAN HONG TRADE HK LIMITED, Unit 31, 2nd Floor, Mirador Mansion, 58 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong (E-mail zhanhongtradehk@outlook.com) as discussed at Para 38.228 to 38.230 & 38.254 to 38.256 herein above.

Digitally signed by Lokesh Damor
Date: 25-07-2025 17:19:09

(Lokesh Damor)
Additional Commissioner
Customs, Surat

F.No.GEN/ADJ/ADC/358/2024-DIV-SRT-CUST-COMMRTE-AHMEDABAD Dated:25.07.2025
DIN- 20250771MN000000EC40

BY RPAD/E-mail/ Notice Board/ Speed Post/ other legally permissible mode:

To,

1	**M/s Sagar Diamonds Limited**, Plot No 266-B, Surat Special Economic Zone, Sachin, Surat-394230 (E-mail-factory@sagardimaonds.com; accounts@sagardiamonds.com)

2	Shri Vaibhav Dipak Shah, Managing Director of M/s Sagar Diamonds Limited, 903, 9th Floor, The Embassy Centre Premises CHS Ltd, Jamnalal Bajaj Marg, Nariman Point, Mumbai, Maharashtra-400021 (Resident of Room No. 9, 1st Floor, Dadarkar House, 5/7, Vithalbhai Patel Road, Next Vimal Showroom, Girgaon, Mumbai-400004) (E-mail-vshah111@gmail.com)
3	Shri Rahil Hiteshbhai Chovatia, R/O- A-19, Jaldarshan Flats, Opp. Natraj Cinema, Ashram Road, Ahmedabad (E-mail- rhcglobal@gmail.com) **Or** 40, Sawan Society, Insanpur Road, Maninagar, Ahmedabad
4	Shri Saurin Rasiklal Shah, B-101, Shreeji Enclave, oppoiste Sajan Apartment, Near Anand Cross Road, Satellite, Ahmedabad (E-mail-saurinshah73@gmail.com)
5	Shri Hirenbhai Bipinbhai Trivedi, R/o 104, Radhe Apartment, Shardha Mandir School, Vijalpore, Navsari, -396445 (E-mail-thiren@gmail.com)
6	AADI HK LTD, 1407, 14th Floor, Hart avenue Plaza, 5-9 Hart Avenue, TST, Kowloon, Hong Kong
7	AADI IMPEX, Flat D, 14th Floor, Windsor Mansion, TST, Kowloon, Hong Kong
8	ADVANCE CENTURY INC LIMITED, Room 2002, 20 F, Hing Yip Comercial Centre, 272-284 Des Voeux Road, Central, Hong Kong (advancecenturyincltd@gmail.com)
9	ANHUI QIHANG SUPPLY CHAIN MANAGEMENT CO.LTD, No. 299 Huiquan RD Linquen Country (Lin Lu Industrial Park) China (anhuiqihangsupply@gmail.com)
10	BEL DIAM LTD, Unit 701, 7th Floor, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong (hongkong@beldiamltd.com)
11	COLOR CREATIONS LIMITED, Unit Q12, 6/F, Kaiser Estate Phase 3, 11 Hok Yuen Street, Hunghom, Hong Kong
12	CROWN GEMS, Unit 504, 5/F, Hart avenue Plaza, 5-9 Hart Avenue, TST, Kowloon, HongKong
13	CRYSTAL KING LIMITED, M 9 - 2 F, kaiser, Estate, Phase 3, 9-11, HOK YUEN Street Hunghom, Hong Kong (infocrytalking@gmail.com)
14	CSY INTERNATIONAL PTE LTD, 1North Bridge Road, 18-01, High Street Centre, Singapore-179094 (info@csyinternational.com)
15	DIARECT MARKETING LIMITED, Suite D, 13th Floor, No. 8, Hart Avenue, TST, Kowloon, HongKong
16	ESTRADE INTERNATIONAL LTD, RM B2, 13/F, Kaiser Estate Phase 1, 41 Man Yue Street, Hung Hom, Hong Kong
17	EURO TECH INTERNATIONAL TRADING LIMITED, Unit K, 3 F, Central house, 270-276, Queens Road, Central Sheungwan, Hong Kong
18	FAMASIA LIMITED, 608, Hart Avenue, 5-9, TST, Kowloon, HongKong
19	FANCY COLOR DIAM (HK) LTD, RM 1715, 17F, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong
20	FU LEE HONG COMPANY LIMITED, 1108, 11/F, Rise Commercial, 5-11 Granville Circui, T.S.T, Kowloon, Hong Kong
21	GEMS STAR TRADING F.Z.E, P O Box 171641, Dubai, UAE (gemsstartrdg@gmail.com)
22	GLOBAL LINKERS GENERAL TRADING (LLC) HK LIMITED, Room No. 2002, 20/F, Hing Yip Commercial Centre, 272-284 Des Voeux Road, Central Hong Kong
23	GLORY DIAMOND FZE, 17517, P2, Hamariya Free Zone, HBC-2527, Sharjah, UAE (info@glory-d.com)
24	GRAND CO, Room 907-8, Silver Cord Tower 2, 30, Canton Road, TST, Kowloon, Hong Kong
25	JIYA IMPEX DMCC, Unit No. 104, Concorde Tower 1, Plot no JLT-PH1-H2, Jumeirah Lakes Tower, Dubai, UAE (jiyaimpex24@gmail.com)

26	JUMBO LINKS (FZE) HK LTD , Room No. 2002, 20 F, Hing Yip Comercial Centre, 272-284 Des Voeux Road, Central, Hong Kong
27	K.DIAM LTD, 404A, Fu Fang Ind Bldg 1 Hok Yeun Street, Hunghom, Kowloon, Hong Kong
28	KESHAR TRADE (HK)LTD, Unit1211,12FL, Beverly Commercial Centre, 87-105, Chatham Road South, TST, Kowloon, Hong Kong
29	KJ TRADING CO., Flat/Room H block-01, -26/F baliey garden, 26 Bailey Street, Hunghon, hong kong (kjtradinghkg@outlook.com)
30	KOEMATLIFF PRIVATE LIMITED, 12 ARUMUGAM Road, #03-10A, LTC Building, Singapore-409958
31	LEE FU SHING COMPANY LIMITED, 1108, 11/F, Rise Commercial, F-11, Gran Ville Circuit, TST, Kowloon, Hong Kong (leefushing19@gmail.com)
32	LIME TRADING., RM 1715, 17/F, Rise Comm Bldg, 5-11, Granville Circuit, TST, Kowloon, Hong Kong
33	MARS IND & COMM SERVICES LIMITD, Unit A&B, 9/Fl, Champion Building, 287-291, Des Voeux Road, Central, Sheung Wan, Hong Kong
34	MIRACLE MPS LIMITED, 8B, Dorfu Court, 5-6 Hau Fook Street, TSIM SHA TSUI, KLN, Hong Kong
35	MIRACLE PRIVATE LIMITED, Flat 1006, 10/F, Rise Comm Bldg, 5-11, Granville Circuit, TSIM, SHA TSUI, Hong Kong
36	MIRACLE TRADING HK LIMITED, Room 1006, 10/F, Rise Comm Bldg, 5-11, Granville Circuit, TST, Kowloon, Hong Kong
37	NV INTERNATIONAL., Room No. 1715, 17th Floor,Rise Commercial Building, 5-11, Gran Ville Circuit, Gran Ville Road, TST, Kowloon, Hong Kong
38	PACY CORPORATION LTD., Rm B, 9/F, Hop Hing, Industrial Bldg, 704, Kastle Peak Road, Lai Chi Kok, Kln, Hong Kong (pacycorporationltd@gmail.com)
39	PINK STAR HK LTD, Room No. 22, Unit-P, 1/F, Kiaser Estate Pahse 3, 11 HOK YUEN Street, Hunghom, Hong Kong (pinkstarthkltd@gmail.com)
40	RK TRADING HK LTD, Roon B4, 13F, Block 1, Kaiser Estate, No.41 Man Yue Steet, Hung Hom, Hong Kong
41	SAIVASCULAR PTE LTD, 35, #09-14/15, Selegie Road, Park Lane Shopping mall, Singapore
42	SHIV DIAMOND, Unit 7, 11th Floor, Heng Ngai Jew CTR, 4 HOK- YUEN Street, East Hung HOM, Kowloon, Hong Kong
43	SINOVAC LIMITED, Unit 705, 7/F, Golden Draon Plaza, 38-40 Cameron Road, T.S.T., Kowloon, Hong Kong
44	SPINEL HOUSE (HK), unit 1, 10/F, Tower A, hunghom Commercial Centre, 37-39 Ma tau wai Road, Hung hom, kowloon, Hong kong
45	STALLION LIMITED, Block-A, 2nd Floor, LIP Seng, mansion, 15-19, Carnarvon Roa, TST, Kowloon, Hong Kong (stallion.ltd@aol.com)
46	SUN RAYS HK LIMITED, Flat 22, 1/F, Block 3, Kaiser Estate, 11 Hok Yuen Street, Hung Hom, Kowloon, Hong Kong
47	SUN TAI HK LTD, Unit 502, 5/F, Hart Avenue Plaza, 5-9 Hart Avenue, T.S.T. Kowloon, Hong Kong
48	T G INTERNATIONAL DMCC, Unit No Almas-12-F-01, Almas Tower, Plot No. Jlt-Ph1-A0, Jumeirah lake Tower, Dubai, UAE
49	UNIQUE DIA LIMITED, 502, Hart Avenue Plaza, 5-9 Hart Avenue, Tsim Sha Tsui Kowloon, Hong Kong
50	UNNATI GENERAL TRADING LIMITED, Flat/Room No. 11, Blk-B, 11/F, Wing Cheong, Commercial Building, 19-25, Gervois Street, Sheung Wan, Hong Kong
51	VENUS IMPEX TRADING LIMITED, Block E, 5F, haribest Industrial building, 45-47 AU PUI WAN ST FO.TAN, Shatin, Hong Kong

52	VERIOT TECHNOLOGIES PTE LTD, 8 Ubi Road 2, #08-10, Zervex, Singapore
53	VITAL ENERGY FZE, Elob Office no. E-15F-04, Hamriyah Free Zone Sharjah, UAE
54	XNOVA HK LIMITED, Unit D3, 15/F, TSIM, SHA, TSUI Mansion, 87 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong
55	XNOVA LIMITED , Unit D3, 15/F, TSIM, SHA, TSUI Mansion, 87 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong
56	ZHAN HONG TRADE HK LIMITED, Unit 31, 2nd Floor, Mirador Mansion, 58 Nathan Road, TSIM, SHA, TSUI, Kowloon, Hong Kong (E-mail zhanhongtradehk@outlook.com)

Copy for information to:

1) The Principal Commissioner of Customs,Ahmedabad.
2) The Additional Director General, DRI, Ahmedabad Zonal Unit, Unit No. 15, Magnet Corporate Park, Off. Sola Over Bridge, Thaltej, Ahmedabad – 380054.
3) The Additional Director General, Central Economic Intelligence Bureau, 6th Floor, B Wing, Janpath Bhawan, Janpath, New Delhi-110001.
4) The System incharge, Customs (HQ), Ahmedabad, for uploading on the official website http://www.ahmedabadcustoms.gov.in
5) The Assistant Commissioner, Customs Division, Surat
6) The Assistant Commissioner, HQ TAR Section, Customs Ahmedabad Commissionerate, Ahmedabad.
7) The SIO, DRI Regional Unit Surat, 2ndFloor, Avalon Building, Above Indian Bank, B/h S.D.Jain School, Piplod-Vesu, Piplod, Surat-395007.
8) Guard File.