

## **C.C./3751/2017 on 11 January, 2023**

IN THE COURT OF THE XVII ADDITIONAL  
CHIEF METROPOLITAN MAGISTRATE : BANGALORE.

-: Present :-

SRI.R. B. Kattimani, B.A., LL.B., (Spl)  
XVII Addl.Chief Metropolitan Magistrate,  
(Spl. Court for CBI Cases) Bangalore.

C.C.No. 3751/2017  
11th day of January, 2023

COMPLAINANT :

Central Bureau of Investigation,  
Anti Corruption Branch, Bangalore.

[By learned Sr. Public Prosecutor,  
Bangalore Sri. Shivananda Perla]

// Versus //

ACCUSED :

A1. Syed Ibrahim S/o. Assan Ali,  
Major,  
R/at.No.P.90/1, 3rd cross,  
Nagappa Block, Srirampuram,  
Bengaluru - 21.

A2. Arul Muniswamy S/o.  
Muniswamy K.S., aged about  
major, R/at. No.6, 8th Cross  
Road, Dayananda Nagar,  
Srirampuram, Bangalore -21

[By Sri. T.A.B., Advocate]

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C.C.No.3751/2017

### **JUDGMENT**

This is the charge sheet submitted by the Sub Inspector of Police, CBI, ACB, Bangalore, against the accused No.1 and 2, for the offences punishable under Section 120(B) r/w.sec.420, 468 and 471 of Indian Penal Code and under Section 132, 135 of the Customs Act, 1962.

2. Brief facts of the prosecution case is that, Shri Syed Ibrahim (Accused No.1) conspired with Shri Arul Muniswamy (Accused No.2) and in pursuance of the conspiracy they got it registered a firm in the name and style M/s. Jayam Impex with accused No.2 as a proprietor. In furtherance of the conspiracy, accused No.1 got the registration of M/s. Jayam Impex with the commercial Tax Department with the accused No.2 as the sole proprietor and accused No.2 willingly agreed to the same and signed on the requisite documents. Accused No.1 prepared a forged Rental Agreement, agreement to lease and the bank certificate issued by ICICI bank as KYC documents for the purpose of obtaining IEC Code in the name of M/s. Jayam Impex. Further, it is alleged that, they took the godown at Avalahalli and Singanayakanalli on rent for the purpose of stocking of red sanders. Accused No.1 after getting signatures of the owners of the godown forged the signature of tenant and thereafter used the said forged rental agreement for the purpose of getting his firm M/s. Jayam Impex registered with the commercial tax department by using the said forged KYC documents.

3. Further it is alleged that, accused No.1 had applied for Import Export Code (IEC) by submitting the forged application form and other fake documents and accused No.1 had filed shipping documents in the name of M/s. Jayam Impex with the customs authorities at ICD, Whitefield, Bengaluru by falsely declaring the goods in consignment as Granite Slabs whereas, actually it contained the prohibited Red Sanders Wooden Logs. The shipping documents like, packing lists, commercial invoices, self declaration etc., submitted by the accused No.1 are forged documents. Red Sanders are prohibited for Export by the Government of India. Accused No.1 filed shipping documents for Export of Granite Slabs but, it has been revealed that, he concealed Red Sanders inside the container No.BSIU2756041 meant for Export of Granite Slabs and therefore accused No.1 and 2 have concealed Red Sanders knowingly fully well that, it is prohibited for Export and Exported the same under the guise of granite slabs. After the completion of the investigation, since the investigating agency made out a case against the accused, the I.O. has filed the charge sheet against the accused for the above said offences.

4. After receipt of the charge sheet, this court took the cognizance of the offences alleged against the accused No.1 and 2 and the accused were secured by issuing summons and they were enlarged on bail. The charge sheet copies were furnished to them as required u/Sec.207 of Cr.P.C.

5. Heard both sides, on framing of charge since there was prima facie material available on record charge was framed and it was read over to the accused and they have pleaded not guilty and claimed to be tried.

6. In order to prove the case, prosecution has examined PW. 1 to 46 and got marked the documents Ex.P.1 to 114 and closed their side evidence.

7. The incriminating evidence available against the accused persons was read over to the accused through the statement U/sec.313 of the Cr.P.C. and the same was recorded. The accused denied the same as false and they have not chosen to adduce any evidence on their behalf.

8. I have heard the arguments of the Ld. Sr. Public Prosecutor and Sri. T.A.B. Advocate for the accused No.1 and 2 and perused the materials available on record.

9. On the materials available on record and also on the arguments advanced by both the parties, the points that arised for my consideration are as under;

1) Whether the prosecution proves beyond reasonable doubt that, the accused No.2 is the Proprietor of M/s.

Jayam Impex Srirampuram, Bengaluru entered into a criminal conspiracy to export Red sanders in the guise of granite slabs and in pursuance of their criminal conspiracy, registered the firm M/s. Jayam Impex in the name of the accused No.2 as its Proprietor and without actual having taken any shop in the name of M/s. Jayam Impex forged a rental agreement and used it as KYC document for registration of M/s. Jayam Impex with the commercial Tax department and on submitting the forged documents obtained IEC code and thereafter, forged the documents with misdescription and misdeclaration and submitted them that, the exported cargo is granite slabs and thereby tried to cheat the customs department in exporting red sanders in the guise of granite slabs and the officials of the Directorate of Revenue Intilligence caught red hand and seized the red sandors at Chennai and thereby committed the offences punishable U/sec.120(B) r/w Sec.420, 468 and 471 of IPC and the substantive offences thereof and U/sec.132 and 135 of the Customs Act ?.

2) Whether the prosecution proves beyond reasonable doubt that, the accused No.1 and 2 registered the firm M/s. Jayam Impex in the name of the accused No.2 as its Proprietor and without actual having taken any shop in the name of M/s. Jayam Impex forged a rental agreement and used it as KYC document for registration of M/s. Jayam Impex with the commercial tax department and on submitting the forged documents obtained IEC Code and thereafter, submitted the export documents with misdescription and misdeclaration that, the exporting cargo is granite slabs and thereby tried to cheat the customs department in exporting red sanders in the guise of granite slabs and on 24.03.2016 and 29.03.2016 the officials of the Directorate of Revenue Intelligence seized the red sanders at Chennai and thereby committed the offences punishable u/Sec.420 of IPC?

3) Whether the prosecution proves beyond reasonable doubt that, the accused No.1 and 2 registered the firm M/s. Jayam Impex in the name of the accused No.2 as its Proprietor and without actually having taken any shop in the name of M/s. Jayam Impex forged a rental agreement and used it as KYC document for registration of M/s. Jayam Impex with the commercial tax department and on submitting forged documents obtained IEC code and thereafter, forged the export documents with misdescription and misdeclaration that the exporting cargo is granite slabs and submitted them while exporting and thereby forged the documents and used them as genuine while exporting red sandors in the guise of granite slabs, on 24.03.2016 and 29.03.2016, the officials of the Directorate of Revenue Intelligence caught and seized the red sanders at ICD, Bengaluru and thereby committed the offence punishable U/sec.468 and 471 of the IPC?

4) Whether the prosecution proves beyond reasonable doubt that, the accused No.1 and 2 forged and submitted export documents with misdescription and misdeclaration and that the exporting cargo is granite slabs and thereby made false documents and made false declaration knowingly are false in material particulars and knowingly red sanders are prohibited for export and liable for confiscation, on 24.03.2016 and 29.03.2016 the officials of the Directorate of Revenue Intelligence

caught red hand and seized the red sanders at ICD, Bengaluru and thereby the accused committed the offence punishable U/sec.132 and 135 of the Customs Act?.

5) What order or sentence?

10. My findings to the above points are as under;

|            |   |  |
|------------|---|--|
| POINT NO.1 | : | In the Affirmative                           |
| POINT NO.2 | : | In the Affirmative                           |
| POINT NO.3 | : | In the Affirmative                           |
| POINT NO.4 | : | In the Affirmative                           |
| POINT NO.5 | : | As per the final order<br>for the following; |

#### REASONS

11. POINT NOS.1 TO 4: The Prosecution in order to substantiate these points has relied on the same set of facts. As such, those points are taken together for common discussion and also to avoid the repetition of facts.

12. The allegation of the prosecution is that, Shri Syed Ibrahim (Accused No.1) conspired with Shri Arul Muniswamy (Accused No.2) and in pursuance of the conspiracy they got a registered firm M/s. Jayam Impex with accused No.2 as proprietor. In furtherance of the conspiracy, accused No.1 got the registration of the M/s. Jayam Impex with the commercial Tax Department with the accused No.2 as the sole proprietor and accused No.2 willingly agreed to the same and signed on the requisite documents. Accused No.1 prepared a forged Rental Agreement, agreement of lease and the bank certificate issued by ICICI bank as KYC document for the purpose of obtaining IEC Code in the name M/s. Jayam Impex. Further, it is alleged that, they took the godown at Avalahalli and Singanayakanalli on rent for the purpose of stocking of red sanders. Accused No.1 after getting signatures of the owners of the godown forged the signature of tenant and thereafter used the said forged rental agreement for the purpose of getting the firm M/s. Jayam Impex registered with the commercial tax department by using the said forged KYC documents.

13. Further it is alleged that, accused No.1 had applied for Import Export Code (IEC) by submitting the forged application form and other fake documents and accused No.1 had filed shipping documents in the name of M/s. Jayam Impex with the customs authorities at ICD, Whitefield, Bengaluru by falsely declaring the goods in consignment as Granite Slabs whereas, actually it contained the prohibited Red Sanders Wooden Logs. The shipping documents like, packing lists, commercial invoices, self declaration etc., submitted by the accused No.1 are forged documents. Red Sanders are prohibited for Export by the Government of India. Accused No.1 filed shipping documents for Export of Granite Slabs but it has been revealed that, he concealed Red Sanders in

the container No.BSIU2756041 meant for Export of Granite Slabs therefore, accused No.1 and 2 have concealed Red Sanders knowingly fully well that, it is prohibited for Export and Exported the same under the guise of granite slabs. After the completion of the investigation, since the prosecution has made out a case against the accused, the I.O. has filed the charge sheet against the accused for the above said offences.

14. In order to prove the guilt of the accused, the Prosecution has examined the officers from Customs and Central Excise, DRI, CONCOR Whitefield, shipping agencies, godown owners and transporters and got it exhibited the documents as per Ex.P.1 to 114.

15. The Ld. Public prosecutor has vehemently argued that, the evidence of P.W.1 to 46 have clearly established that, the accused No.1 and 2 have exported the red sanders through different shipping bills and out of that, two were caught by the DRI officials on suspicion. Thereafter, the DRI officials have seized one container at ICD, Bangalore and another container at Sattwa Hitech, Chennai which contained the wooden logs appears to be red sanders. They have also seized the red sanders from the godown at Singanayakanahalli through the mahazar in the presence of independent witnesses. From all the seized wooden logs they took the samples and sent to the expert i.e. Institute of Wood Science and Technology, Malleshwaram, Bangalore for the purpose of getting expert opinion. The expert after examination had opined that the seized wooden logs is that of red sanders and its botanical name is "pterocarpus Santalinus". The export policy Schedule 2 documents issued by Customs Department clearly shows that through different notifications the Government of India have restricted the export of red sanders to the foreign country in any mode by an person. The shipping bill documents collected by the IO and the customs officers have clearly stated that the 2 shipping bills are pertaining to M/s Jayam Impex owned by accused No.2 Arul Muniswamy and accused No.1 is the key person behind the export of the red sanders to the foreign country in the guise of granite slabs. Therefore, the prosecution has proved the chain of circumstances right from filing of the shipping bills by the accused, till the seizure of containers from ICD and godowns of accused by DRI which contained the red sanders. Hence the accused have caused approximately Rs.3,37,05,000/- financial loss to the Government of India by way of Transport of Red sanders weighing 7.490 Metric tonnes to the foreign countries and corresponding gain to themselves. Hence, the accused No.1 and 2 are liable to be convicted for the offence of cheating, forgery and misdeclaration of goods mentioned in IPC and Customs Act.

16. Per contra, Ld. Counsel for the accused vehemently argued that, the P.W.1 is not competent person and he do not know anything about contents of the documents and also he is not spell out any information about the contents of documents, and he had not issued 65 (b) certificate. Further, in the F.I.R. there are allegation against customs officials and prosecution not inducted them as an accused in the charge sheet and the said fact hampers the prosecution case. Therefore, mere arraigning accused No.1 and 2 in the charge sheet will not helpful to the prosecution and prosecution failed to establish the charge against them. Further, it is argued that, P.W.2 do not know anything about the Ex.P.30 (a) unless, he knows anything about the documents how he can issue certificate u/Sec.65 (b) of Evidence Act. This is totally contrary to the basic requirements and contrary to the ingredients of Sec.65

(b) of Evidence Act. The accused No.2 had not aware about the transaction of M/s Jayam Impex and Raj trades. The Avalahalli godown was stands in the name of Shiva Enterprises and Mr. Shivakumar is the proprietor. There is no connection between the present accused and Jayam Impex. His evidence is contrary to the facts of the case and suspicious in nature with respect to the ownership and possession of the godown by the accused. Mr. Ravichandran who is a custom officer, named in the FIR and he is the responsible officer who examined the goods, sealed and put the one time lock (OTL) to the container. The prosecution has neither inducted him as an accused nor cited him as a witness in this case. He was not examined by the I.O. of C.B.I. or by other investigatig agency like DRI. His statement also not recorded and produced before the Court. Non production of his statement causes serious prejudice to the defence and which is a major lacuna on the part of prosecution. Therefore, an important chain circumstances to link the accused in this was broken. P.W.14 V. Rajappa is partly turned hostile and therefore his evidence cannot be believed. He did not iidentify the accused persons who had sent the documents and the persons who moved the container in the name of Raj Traders and Jayem Impex. During the investigation, the CBI has not identified one boy who used to carry the original documents to the CHA. Further, P.W.14 also admitted in his cross examination that, they had exported and imported even the goods of friends and relatives of the customs officials Therefore, his evidence suffers from so much of infirmities and therefore cannot be believed.

17. The P.W.15 is not identified the accused persons of this case and he only filled up all forms and submitted the same to Commercial Tax Department. Thereafter, the department had issued VAT certificate and he collected the same and handed over it to a boy who had visited their office on behalf of accused persons. Therefore, the evidence of this witness is not linked either with the accused persons or with their firms. The Bolero vehicle belonging to one Mr. Praveen kumar. But, the investigation officer had not examined the said Praveen kumar and not made him as a witness in this case so as to link the firms of accused and also there is no evidence regarding the ownership of the said vehicle. Therefore, the said vehicles is totally unconnected to this case. The P.W.27 stated in his evidence that, the godown belongs to M/s Jayam Impex, but one person Tharakesh is the said to have been exectued an agreement and handed over to Tharakesh and a person by name Nagabhushan is paid the advance amount and therefore this agreement and godown is totally planted to connect the firm in this case. Further it is argued that the sanction is not in accordance with law and Ex.P.81 is not indicates reasons and grounds for arriving conclusion as to how prosecution has made out a prima facie case to prosecute the accused under the provisions of Customs Act. The prosection has not placed any documentary evidence against accused No.1 Syed Ibrahim to connect him in this case. Further, Avalahalli godown and Medahalli godown are given to one Shivakumar and he had paid the amount and he did all transactions with the owner and therefore there is no link with the accused No.2 or Jayam Impex pertaining to this godown. The said godown was stands in the name of Shiva Enterprises and Shivakumar is the proprietor, and there is no connection to the present accused. Raj Traders and Jayam impex with this godown. The evidence of P.W.41 expert is not reliable and his admissions during the cross□examination would clearly indicates that, he gave the opinion in a mechanical manner without properly anlysing the documents. He did not come to the conclusion that which are forged and which are genuine documents and he did not stated about which are forged signatures. Further, his opinion is not conclusive in nature, since he did not examine the reproduced documents and he never stated about

reproduced documents in his opinion. Therefore, expert opinion cannot be considered in evidence at all. Hence, the prosecution could not prove the forgery and false documents in this case. The I.O had not collected the call detail records (CDR) to nail the accused to prove the criminal conspiracy under Section 120 (B) of IPC. Further, one tall Tamilian person who was said to be the owner of the godown was not examined by CBI. The labourers and the carpenter Mr.Pandian has not examined by prosecution. Likewise, the boy who is said to have been worked under Jayam Impex and G. Jayraj was not examined and the tall Tamilian person purchased the granite slabs from P.W.29 and I.O. had not made him as a witness in this case. The DRI officers by name Ravichandran and Rajesh Shastri also not made as an accused and their statements also not produced before the Court. Therefore the evidence of prosecution is not at all inspired the confidence of the Court to come to the conclusion that they committed the offence as alleged by the prosecution.

18. Coupled with the other legal grounds the prosecution is not proved the case against the accused beyond reasonable doubt. Therefore, prayed to acquit the accused to meet the ends of justice and relied the judgments as follows □

1. AIR 1973 SC 2773 between Kali Ram Vs. State of H.P.
2. AIR 2012 SC 2488 between Jitender Kumar Vs. State of Haryana Sunil Kumar and Anr. Vs. State of Haryana.
3. AIR 2002 SC 3206 between Ashish Batham Vs. State of Madhaya Pradesh.
4. 1976 CRI.L.J.706 between Bhagirath Vs. State of Madya Pradesh.
- 5.1962 (2) CRI.L.J.805 between R.K.Dalmia and other Vs. The Delhi Administration.
6. (2005) 11 SCC 600 between Stae Vs. Navjot Sandhu@ Afsan Guru and Syed Abdul Rehman Gilani and Shaukat Husain Guru and Mohd. Afzal,
7. (2020) 7 SCC between Arjun jPanditrao Khotkar Vs. Kailash KushanRao Gorantyal and others.
8. CRR 3523 of 2010 between Quasim Ali Vs. Sajal Baran Das and Another.
9. (2021) 4 SCC 345 between Hari Om @ Hero.
10. AIR 1977 SC 1091 between Magan Bihari Lal Vs. State of Punjab.
11. AIR 1967 SC 1326 between Fakhruddin Vs. State of M.P.
12. AIR 1979 SC 1011 between Kanchansingh Dholaksingh Thakur Vs. State of Gujarath.
13. 1963 (2) CRI.L.J. 546 between Gutta Sriramulu Naidu and Another Vs. State.

14. 1988 SCC online Kar 498 between State of Karnatak Vs. E. Maruthi Rao Pawar and another.

15. (1994) 5 SCC 152 between Sukhvinder Singh and others Vs. State of Punjab.

19. To prove the case of the prosecution, the prosecution has examined the officers from customs and central excise, DRI, CONCOR Whitefield, Shipping Agencies, godown owners and transporters. The evidence of those witnesses are discussed as under ☐Witnesses from Customs Department

20. P.W.1 - Sri Alok Kumar Singh who was working as Inspector of Customs and Central Excise in HAL Cargo Complex, ICD, Bangalore deposed that, during investigation the investigating officer of the C.B.I. had asked their Spl. Intelligence and investigation branch, ICD, Bengaluru seeking some documents pertaining to export documents of M/s Raj Traders. Then as per instructions of their higher officer assistant, Commissioner of Customs (SIIB) ICD, he furnished the documents as sought by the investigating officer with a receipt memo. The instruction given in writing by the higher officer is marked as Ex.P.1. The witness identified the signature of the Assistant Commissioner and the same is marked as Ex.P.1 (a). The receipt memo and the signature of the witness are marked as Ex.P.2 & Ex.P.2 (a). Vide Ex.P.2, He furnished the following documents;

| Sl. No. | Description of documents  | of the Documents marked. |
|---------|---|--------------------------|
| 1.      | Check list pertaining to shipping bill No.5200926 dt.11.01.2016.        | Ex.P.3                   |
| 2.      | Export check list pertaining to shipping bill No.5200926 dt.11.01.2016. | Ex.P.4                   |
| 3.      | Commercial invoice  | Ex.P.5                   |
| 4.      | Packing list  | Ex.P.6                   |
| 5.      | Self declaration form   | Ex.P.7                   |
| 6.      | Original export value declaration                                       | Ex.P.8                   |
| 7.      | Declaration   | Ex.P.9                   |
| 8.      | Check list of EDI   | Ex.P.10                  |
| 9.      | System Generated Shipping Bill  | Ex.P.11                  |
| 10.     | Examination report of the inspector                                     | Ex.P.12                  |
| 11.     | Bill of lading  | Ex.P.13                  |



|  |         |
|--|---------|
| 12. Invoice  | Ex.P.14 |
| 13. Screen Shots   | Ex.P.15 |
| 14. Export Check list of shipping bill<br>No.5261073<br>dt13.01.2016       | Ex.P.16 |
| 15. Commercial invoice   | Ex.P.17 |
| 16. Packing list   | Ex.P.18 |
| 17. FEMA declaration   | Ex.P.19 |
| 18. Self declaration   | Ex.P.20 |
| 19. Export Value declaration   | Ex.P.21 |
| 20. Computer generated check list for Export pertaining to M/s Jayam Impex | Ex.P.22 |
| 21. Computer generated examination report                                  | Ex.P.23 |
| 22. Bill of lading   | Ex.P.24 |
| 23. Copy of invoice  | Ex.P.25 |
| 24. Screen Shots   | Ex.P.26 |
| 25. Circular No.6/02   | Ex.P.27 |
| 26. Copy of regular license  | Ex.P.28 |

21. In the cross examination of P.W.1, it is stated that, there were allegation against Rajesh Shastri Superintendent of Customs and J. Ravichandran Inspector of Customs, I do not know what happened to them. Some documents are furnished here are computer generated copies, any officer having SSO, ID and password can take the computer generated copies. It is false to suggest that, I am not competent officer to take the computer copies and issue the same.

22. PW D.Xavier was working as Superintendent of Customs, Spl.Intelligence Brnach, ICD Bangalore has deposed that during investigation the investigating officer of the C.B.I. had asked their Spl. Intelligence and investigation branch, ICD, Bengaluru seeking some documents pertaining to export documents of M/s Raj Traders. Then as per the instructions of their Assistant Commissioner of Customs (SIIB) ICD, he furnished the documents as sought by the investigating officer with a receipt memo. The instruction given in writing by the higher officer is marked as Ex.P.26. The witness identified the signature of the Assistant Commissioner and the same is marked as Ex.P.26 (a). The receipt memo and the signature of the witness are marked as Ex.P.27 & Ex.P.27 (a). Vide Ex.P.27, he furnished the following documents;

Sl.No. Description of the documents Documents marked 1 Screen shots pertaining to Ex.P.31 Shipping Bill No.6034786 2 Screen shots pertaining to Ex.P.32 Shipping Bill No.5261073.

|   |   |
|---|---|
| 3 | Certificate issued u/Sec.65 Ex.P.33 & Ex.P.33<br>(B) of (a)<br>Evidence Act & signature of<br>the witness |
|---|---|

He also handed over Ex.P.34 to 36 which are the licensing, regulation rules and other documents.

23. In the cross-examination of P.W.2, it is stated that, in this case, I do not have any personal knowledge as to transaction and I have given only the documents to the CBI.

24. PW.3 Smt.G.Anitha was working as Superintendent of Customs in ICD, Bengaluru she was working as superintendent of customs in export shed and thereafter she had been posted to draw back section therein. She knew the export procedure for exporting goods through CONCOR. The customs house agent is a licensed agent to act for the exporters and he mediates between the exporter and the customs department. The exporter without taking the aid of the customs house agent can file export bills by himself directly on the online ICEGATE SYSTEM and thereafter, the so filed Shipping Bill documents move through risk management system shortly called RMS. The RMS itself scrutinizes the bills taking all the risk parameters including rules and it also checks who are the exporter, what is the destination of export and the product of export. Generally, the exporters file the shipping bills through CHA. After filing online Shipping Bills they would get a Shipping Bill number through online only and then with that number they submitted the check list which was in a printed format along with the original documents to the export shed of the customs office with the endorsement of CONCOR that the export goods had been received in the custom bonded area. Generally, the check list along with original documents are submitted before the Inspectors for registration.

25. P.W.3 further deposed that thereafter the inspector verifies all the original documents and endorsement issued by the CONCOR. After verification of the original documents the shipping bill moves to examination officer usually an inspector. Then the examination inspector checks the RMS instructions and acts accordingly. The RMS system directly gives instructions in some cases to open and examine the goods of specific package numbers pertaining to the particular Shipping Bill. In some cases the RMS don't instruct for physical examinations by opening and instead instructs to verify marks and numbers over the packages or containers. The examining inspector examines according to the instruction issued by RMS and he verified the descriptions of the product as declared in the export documents and the online check list filed by the CHA/exporter and on being satisfied, he gets the container closed and put the one time seal to the container in the presence of CHA/exporter. After completion of examination and putting of OTL he gives the examination report by entering the data into the system. Thereafter, the bill automatically goes to the Superintendent of Customs Export Shed for his supervision. When the Shipping Bills come to Superintendent of Customs they would peruse the bill in the system and verify the same along with the original documents and examination report. Thereafter, on being satisfied they issue the let export order.

26. From the evidence of P.W.1 to 3 who are the custom officials, the prosecution has proved Ex.P.3 shipping bill and Ex.P.16 shipping bill and its connected documents like Ex.P.4 to 15 and 17 to 26. Thereby, the prosecution has proved that, the accused No.1 and 2 had exported the red sander wooden logs in the guise of granite slabs through ICD Whitefield, Bangalore through the above shipping bills.

Witness from DRI who proves the seizure of red sanders.

27. PW 4 P.S.G.V. Subramanian who was working as Sr.Intelligence Officer at Directorate of Revenue Intelligence, Zonal Unit, Bangalore has deposed that, he had been working as Sr. Intelligence officer at Directorate of Revenue Intelligence, Zonal Unit, Bengaluru. From DRI office a case had been registered as to transporting of red sanders from ICD Bengaluru. After registration of the case, the case was handed over to him for further investigation. During investigation he came to know that one Jayaraj Proprietor of M/s Raj Traders and another Arul Muniswamy the Proprietor of M/s Jayam Impex were used by one Syed Ibrahim. Then he visited the premises of M/s. Raj Traders and there they could not find any incriminating material. Meanwhile, their another team searched the residential premises of Arul Muniswamy and they could not find any incriminating material.

28. Thereafter, he summoned one Rajappa the CHA for M/s Raj Traders and M/s Jayam Impex and on his inquiry he revealed that he did not meet either Jayaraj or Arul Muniswamy and only on the instance of Syed Ibrahim he had filed Shipping Bills for the purpose of exporting purported granites. Then he handed over 4 Shipping Bills contending in the month of January 2016 he had filed 2 Shipping Bills one in favor of M/s Raj Traders and another in favor of M/s Jayam Impex for the purpose of exporting granites on the instance of Syed Ibrahim and as per two Shipping Bills the goods had already been exported. He revealed that in respect of one Shipping Bill the goods of M/s Raj Traders was lying in the ICD, Bengaluru and in respect of the other Shipping Bill the goods of M/s Jayam Impex had already been left the Indian Shore. Immediately their office intimated to the Chennai customs office and the said container was called back and kept in the ICD of Chennai. Thereafter, he issued summons to Syed Ibrahim but he did not turn up. He issued show cause notices to M/s Raj Traders and M/s Jayam Impex. He also issued show cause notices to Syed Ibrahim and Rajappa. After issuing show cause notices, he forwarded the show cause notices along with the relied upon documents to the adjudicating authority i.e., the Addl. Commissioner of Customs, Bengaluru to take action as per the customs act.

29. Further P.W.4 deposed that, the C.B.I. investigating officer asked their office seeking relevant documents of their investigation. Thereafter, on the instruction of the higher officer he handed over the certified copies of the show cause notice and relied upon documents to them along with his covering letter. The witness identified the entire file and the same was marked as Ex.P.37. The covering letter was marked as Ex.P.37 (a). The signature of the witness was marked as Ex.P.37 (a) (I). The investigating officer had also sought one more set of certified copies and then he issued the same. The witness identified the file containing the certified copies and the same was marked as Ex.P.38.

30. On careful perusal of the evidence of PW 4 it is proved that during January 2016 the accused have filed two shipping bills in the name of Raj Traders and Jayam Impex for the purpose for exporting granites. It is further proved that the consignment in respect of one shipping bill was lying in ICD Bangalore and consignment in respect of other shipping bill the goods has already left Indian shore and subsequently their office intimated the matter to Chennai Custom office and after the said container was called back and kept in the ICD of Chennai.

31. In the cross examination of P.W.4 stated in page No.4 that, the witness deposed that, the enquiry before me, they revealed that, they did not know anything about the business of M/s Jayam Impex and M/s Raj Traders, when it is suggested that, I did not record any of statement of the witness, voluntarily deposes that, he recorded statement of V. Rajappa, Arul Muniswamy and Jayaraj.

32. PW 5 Shri.Vijay Kumar who was working as Intelligence officer at Directorate of Revenue Intelligence, Zonal Unit, Bengaluru he deposed that he knew Raghunandan C.W.6. That on 02.03.2016 he accompanied C.W.6 and they had gone to ICD, Bengaluru for the purpose of examination of one container. Then they searched and seized 241 red colored wooden logs seems to be red sanders. Then C.W.6 prepared the mahazar. The witnesses identified the mahazar Ex.P.37. The witness identified his signature therein and the same was already marked as Ex.P.37 (e). In this case on the direction of their Addl. Director, DRI, Zonal unit, Bengaluru that on 04.03.2016 he examined the accused Jayaraj then before the court and one more Arul Muniswamy the accused of the other case. Then he recorded their statements. The statement of the accused Jayaraj was marked as Ex.P.39. The witness identified his signature and also the signature of the accused. The signature of the witness was marked as Ex.P.39 (a) and the signature of the accused was marked as Ex.P.39 (b). His Sr. officer P.S.G.V. Subramanyam was also present and in his presence he examined and recorded the statement of the accused. The signature of the Sr. officer was marked as Ex.P.39 (c). Again on 03.05.2016 and 19.08.2016 he examined the accused Arul Muniswamy then before the court and recorded his statements. The statements of the accused dated 03.05.2016 and 19.08.2016 were marked as Ex.P.40 and 41. The witness identified his signatures and also the signatures of the accused found on Ex.P.40 & 41. The signatures of the witness were marked as Ex.P.40

(a) and 41 (a). The signatures of the accused were marked as Ex.P.40 (b) and 41 (b). The signatures of the higher officer were marked as Ex.P.40 (c) and 41 (c). The accused at the time of examination stated that his friend Syed Ibrahim was looking after the export transactions in the name M/s Jayam Impex. That on 27.06.2016 he also examined Shamaiah and recorded his statement. The statement of Shamaiah was marked as Ex.P.42. The witness identified his signature and also the signature of Shamaiah. The signature of the witness was marked as Ex.P.42 (a) and the signature of Shamaiah was marked as Ex.P.42 (b). The signature of the higher officer was marked as Ex.P.42 (c).

33. In the cross examination, P.W.5 deposed that on 02.03.2016 the red sanders were recovered under mahazar Ex.P.36 and recorded the statements of Jayaraj as per Ex.P.41 to 43. In page No.5 of cross examination of P.W.5, it is stated that I am aware of the case registered against custom officials.

34. PW□6, Shri. K.S.Vijay Kumar who was working as Sr. Intelligence officer at Directorate of Revenue Intelligence, Zonal Unit, Bengaluru deposed that on 03.03.2016 he accompanied their officer C.W.8 Sri Ivin K. George and then they searched the godown as shown by CHA Sri Rajappa and in the presence of the independent witnesses seized 12 red colored wooden logs supposed to be red sanders and also then seized some small pieces of red colored wooden pieces supposed to be red sanders and other materials. Then they prepared the mahazar in the presence of the witnesses and then the others and he put their signatures to the mahazar. That on 04.03.2016 he examined CHA Rajappa and recorded his statement. The statement of Rajappa was marked as Ex.P.43 and the signatures of the witness and of Rajappa are marked as Ex.P.43 (a) and Ex.P.43 (b).

35. Further, he deposed that on 03.03.2016 along with his officer Sri. Ivin K. George. He went to the wear house of the accused situated Singanahakanahalli and after opening the said wear house they found 12 lakhs of red sanders and also some small pieces of red sanders. The above said 12 lakhs weighed totally 400 and odd kgs. The CHA Rajappa informed them that the said logs were supposed to be exported to foreign country. Therefore, which is the said wooden logs. At the time they prepared one mahazar and identified the same and that was marked as Ex.P.37. After that, they have seized the above 12 pieces of logs and took their possession.

36. In the cross□examination of P.W.6 stated that, on 04.03.2016 he visited the godown situated at Singnayakanahalli and recorded the statement of Rajappa. In page No.2 suggestion was put by the counsel for the accused that, it is false to suggest that on making threat to register the case against him.

Witness from shipping Agencies.

37. In order to prove the fact that the accused have exported the consignment containing the Red Sanders two different countries through shipment, the prosecution has examined different agents. They are as follows;

38. PW□7 Shri. Navashakthi who was working in M/s Glottis a partnership firm as Executive and later on as Dy. Manager. M/s Glottis is a freight forwarding agency and he deposed that the client or the CHA for the purpose of exporting their consignment first approach them for quotation for containers and after completion of formalities if the client or CHA agreed, they asked the carrier to release the containers to them. First the carrier issued booking copy to freight forwarding agency and in turn passed it to the CHA and the CHA on presenting the same at ICD taken the containers. He knew CHA Rajappa. He approached them for quotations for containers for the purpose of export of their granites to Singapore and Malaysia. After negotiation the freight they confirmed the business and they asked their carrier M/s.Maxicon. Containers to provide containers to Rajappa as asked for. They had taken 3 orders from CHA Rajappa. CHA Rajappa had paid the freight charges to M/s Glotties. The CHA Rajappa had made correspondences to M/s Glottis at the time of availing containers and he had furnished the same correspondences to the CBI officer. The witness identified the production memo and the correspondences furnished along with it. The production memo along with correspondences containing 5 sheets was marked as Ex.P.44.

39. PW.8 Shri.Paul Pandian who was working at M/s Maxicon Shipping Agencies and was working as branch in charge of Bengaluru office has deposed that, M/s.Maxicon Shipping Agencies was a liner and it provides containers to freight forwarding agencies on their request. They were having offices at Singapore, Malaysia and various parts of the world. M/s Glottis a freight forwarding agency requested them for providing container pertaining to export granite slabs to Malaysia. Then they furnished KYC documents, shipping bill No.6034786 dated 23.02.2016 and other documents which were already marked as Ex.P.44. Thereafter, they released the delivery order to M/s Glottis. The CBI official asked their office, Bengaluru seeking documents pertaining to giving containers to M/s Glottis. Then he handed over the relevant documents along with the production memo. The production memo was marked as Ex.P.45 and the signature of the witness was marked as Ex.P.45 (a). The witness identified the other documents containing 20 sheets along with certificate and the same were marked as Ex.P.46. The witness identified the container delivery order and the same was marked as Ex.P.46 (a). M/s Jayam Impex was the ultimate exporter for whom M/s Glottis had taken the present container from M/s Maxicon Shipping Agencies.

40. PW.11 Sri Rakesh G.S., in his evidence deposed that, in the year 2014 & 2015, he had worked as clerk at M/s Moriks Shipping and Trading Pvt. Ltd. As a clerk his nature of duties were to receive documents from their office situated at Madappanahalli village, Anekal taluk and submitting the same to the customs department. He was working at ICD. After receiving documents from their office first he was confirming whether the goods had come to ICD customs area and after confirmation of its arrival he used to submit the invoice, packing list, SDF form, export value declaration and annexure - C to the inspector of customs who was registering the documents. The inspector of customs then was processing the documents and if necessary he was asked the other inspector customs for physical examination of the goods. He knew M/s Raj Traders and M/s Jayam Impex. The witness identified invoice, packing list, importer & exporter code and other documents which were already marked as Ex.P.5 to 9 and after receiving those documents he prepared annexure - C which was marked as Ex.P.3 and submitted the same to the inspector of customs for goods registration. The witness deposed his handwriting and signature on Ex.P.3 and the signature was marked as Ex.P.3 (a). he was present at physical examination of cargo ones pertaining to M/s Raj Traders and ones pertaining to M/s Jayam Impex. The inspector of customs Ravichandran had come for physical examination of cargo. At the time of physical examination of cargo of M/s Jayam Impex and M/s Raj Traders he was present and then as per the instructions of the inspector of customs examining the cargo he opened two pallets each time and they opened only little portion in the door side. The pallets were made up of wooden. The thermocol and plastic were used to cover inner goods. When they torn the little portion of thermocol they found polished granites slabs on both occasion. Thereafter, the containers were locked with one time locker and with customs seal. Then the examination reports were submitted and the Superintendent of Customs issued the let export orders.

41. In the cross-examination of P.W.11 it is stated in page No.3 that, when it is suggested that, when the physical examination conducted by the inspector of customs Ravichandran the other officials were also present. The witness deposes that, only Ravichandran was authorized to inspect goods. It is true that, the inspector Ravichandran asked me to open two pallets and asked me not to open other pallets. Annexure C Ex.P.3 it is true that after this incident as I was not interested in

continuing in that job.

42. PW.12 Sri V.Rajappa, in his evidence he has deposed that from 2014 to 2016, he worked as a Manager at M/s Moriks Shipping and Trading Pvt. Ltd. M/s. Moriks Shipping and Trading Pvt. Ltd., is a clearing agent for export & import. M/s Moriks Shipping and Trading Pvt. Ltd., was having its office both at Madappanahalli, Anekal taluk and ICD, Bengaluru. While documentation for exporting goods they were receiving documents such as invoice, packing list, SDF form, value added declaration form and others from exporters or from their representatives. First they were submitting those documents to the EDI system of the Customs office. First in the EDI system they used to issue the check list and then they were correcting the check list and thereafter, they were submitting once again them to the EDI system. The shipping bill number was generated in the EDI system and then the officials working in the EDI system were returning the submitted documents along with the check list writing the shipping bill number on the check list. Thereafter, they were verifying the RMS system. The RMS system was showing the particular status of shipping bill if the shipping bill was of free shipping bill then it was showing the status of filing would be in the goods registration and if the shipping bill was of receiving of any incentives then it was showing it should be filed in the assessment counter. Once the documents were submitted to the goods registration if necessary they were asking for physical examination. The Inspector of Customs was visiting the container and was examining in the presence of CHA and reporting it back. Thereafter, the Superintendent of Customs was issuing let export order. The let export order was issued in 6 copies and at the time of its issuance they were retaining the original and were giving the remaining 5 copies to them. Out of 5 copies they were giving let export order copies TR - 1 and TR - 2 to shipping liner and based on them the shipping liner was transporting the goods. He knew M/s Raj Traders and M/s Jayam Impex. Those were exporters and their M/s Moriks Shipping and Trading Pvt. Ltd., was their CHA. One Syed first sent IEC code and Bank AD code by way of E-mail to them. Thereafter, by taking the IEC code and Bank AD of M/s Raj Traders and M/s Jayam Impex, he registered their names in the Customs department. The said Syed used to call them, by saying that he was the Manager of M/s Raj Traders and M/s Jayam Impex and initially he was sending the documents in the E-mail and later he was sending the originals with their boys. He submitted the documents both for M/s Raj Traders and M/s Jayam Impex to the Customs department for the purpose of export of their goods. The witness identified documents connected to shipping bills and its enclosures as per Ex.P.5 to 9 and Ex.P.17 to 20 belonging to the the exporter M/s Raj Traders and M/s Jayam Impex.

43. PW□2 has further deposed that in the month of March 2016 they received documents from both M/s Raj Traders and M/s Jayam Impex for export of goods and then their goods pallets containing granites were stuffed in two separate containers one pertaining to M/s Jayam Impex and another pertaining to M/s Raj Traders. Out of it one container was already transported from ICD Bengaluru to Chennai first by way of train and thereafter even it was moved from Chennai port to the consignee country. The other container was in ICD Bengaluru. Then the DRI officials came and examined by opening all the 12 pallets that were in the container. Then he was present. First in 2 pallets there were granites and in the remaining 10 pallets surrounding outer side there were granites and between granites red sander logs were hidden. Thereafter, they seized the red sanders pallets and such others along with the container. Then they prepared the mahazar. The witness identified the mahazar and it was already marked as Ex.P.37. The signature of the witness was

already marked as Ex.P.37

(d). On the next morning the DRI officials along with them went to warehouse of M/s Raj Traders and M/s Jayam Impex situated at Singanayakanahalli. The warehouse was locked and the owner of warehouse was present. Then the key was not available and as such it was break opened. There were 12 red sander logs and there were also some granites. After completion of inspection they prepared the mahazar. The witness identified the mahazar which was already marked as Ex.P.45. The witness identified his signature therein and the same was already marked as Ex.P.45 (e).

44. Further PW□2 deposed that, in the DRI office one officer examined him and recorded his statement. The witness identified his statement and his signature therein. The statement was already marked as Ex.P.46 and the signature of the witness in the last page was already marked as Ex.P.46 (b). The witness identified the signature in one of the statements given before the officer Subramanyam and the statement was marked as Ex.P.50 and the signature of the witness was marked as Ex.P.50 (a). While taking samples at ICD he was also present. Then the DRI officials took the samples from seized red sanders and then they prepared the mahazar. The witness identified the mahazar and the same was already marked as Ex.P.40. The witness identified the signature in the last page and the same was already marked as Ex.P.40 (d). The DRI officials once again took samples from red sanders in the DRI office and then he was present. Then they prepared the mahazar. The witness identified the mahazar which was already marked as Ex.P.39 and the signature of the witness was already marked as Ex.P.39 (f). The DRI officials took the photos of seized red sanders at ICD. The witness identified one set of 6 photos with red sanders seized and they were together marked as Ex.P.51. The witness also identified one set of 8 photos containing red sanders belonging to this case and they were together marked as Ex.P.52.

45. The defence has cross examined the above witnesses and in their cross examination nothing crucial facts have been brought out to negate the prosecution case. The defence has put many suggestion to the above witnesses and the witnesses have denied the same. However, from the cross examination by the accused, the evidences adduced by the prosecution regarding the seizure of red sanders from the containers belongs to Raj Traders and Jaym Impex have not been strucked down to unbelieve the evidence of prosecution.

Witness who speaks about lending of the godown to the accused:

46. PW.9 Sri K. Mallesh, who is the owner of godowns at Avalahalli Village and speaks about the letting out of his godowns to the accused No.1. PW□9 in his evidence had stated that he knew the accused Syed Ibrahim. They were having godowns at Avalahalli village. In the month of December 2014 the accused Syed Ibrahim and his father came and asked him to give one of their godowns based on rent to them. Then they told that they were having granite business and they wanted one godown for storage purpose in order to export. Then they told that they were the workers and they would call their owner after few days for executing rental agreement. After few days Syed Ibrahim, his father and one fat Tamilian said to be the owner and not the present accused went to their house and then they took advance amount of Rs.2 lakhs from Tamilian person. After two days he prepared the agreement and his father put his signature as the godown was in his name and he handed over it



to Syed Ibrahim. Later Syed Ibrahim and his father came with signed agreement. One Shivakumar had put his signature at the place of owner. Then they made payment of remaining of Rs.4 lakhs and they handed over the procession of the godown to them.

47. PW 9 further deposed that Syed Ibrahim regularly for 3 months paid the monthly rent but later he was saying that their owner was in Chennai or Abroad and by saying he was postponing the payment. Meanwhile, they were constructing another godown besides one given to them. They asked even that godown and for that they gave Rs.2 lakhs as advance. Since they had not completed it they did not give it to them. They told that to one Arul the godown was required. After receiving advance amount he made an agreement and got the signature of his father and handed over even that agreement to Syed Ibrahim. It was agreed that after payment of the remaining amount of Rs.4 lakhs the second godown had to be handed over to them but they did not give the remaining amount and as such, they could not hand over the possession of it to them. There were nearly 15 to 20 north Indian workers and they used to stay in the godown itself. In that godown all the workers were doing carpentry work and they were doing wooden crates in order to keep granite slabs. One Pandian a carpenter was in charge of all the labors. The accused Syed Ibrahim used to visit once in 2 or 3 days. After packing of crates, the containers used to go to godown and then Syed Ibrahim, his father and their owner that Tamilian person were present. They were having one commercial building attached to NH4 old Madras road nearly 2 kms., away from their Avalahalli godown. Syed Ibrahim enquired them regarding its ownership and he told that it was standing in his mother name. Then he asked to give one room therein for retail purpose. He told that after the approval from the government they would make the rental agreement. Then they allowed him to put the board. He displayed the board in the name of one M/s Raj Traders. They were not handed over that room to them.

48. P.W.9 further deposed that on 03.03.2016 the customs officials called him and asked him to come near godowns. He went there. There were customs officials. The godowns were locked and the labors had vacated before that. Then the customs officials broke open the lock. When they observed there were wooden planks, granite pieces and other things. Even inside the godown there was one Bolero new vehicle. There was one old canter outside the shed. Thereafter, the customs officials conducted the mahazar and they got his signature to it. Then the customs officials did not find any red sanders therein. Thereafter, they handed over the godowns to him. Thereafter, the customs officials and he went to the room where the name of M/s Raj Traders was displayed. Earlier they had given the key of that room to the person doing cement business and then they took the key from him. Thereafter, they opened the room then it was empty. Thereafter, the customs officials asked to come to DRI office. He had gone to DRI office and then they had taken his statement. The witness identified the statement given by him and the same was already marked as Ex.P.47. The signature of the witness was already marked as Ex.P.47 (a). The investigating officer had inquired him and he had given his statement to him. While enquiry the CBI official showed him one agreement said to be executed in the name of his mother Jayamma but the same was not the signature of his mother and they had created the agreement in the name of his mother. In that agreement the other party was Jayaraj.

49. In the cross examination of P.W.9 it is stated in page No.1 that one fat Tamilian said to be owner and not present accused came to the house, we took Rs.2.00 lakh from Tamilian and handed

over the godown at Avalahalli village. Further it is stated in cross-examination in page No.2 that, one Shivakumar has put signature at the place of owner Syed visited the godown and Tamilian were used to present customs official did not find any red sanders. In page No.5 it is stated that, the first godown was taken in the name of Shivakumar and it was taken to run the, business of M/s Shiva Enterprises and Pandian was the Carpenter.

50. PW-40 Kodandaramaiah in his evidence deposed that he was having 3 godowns at Avalahalli Village and he had let out one of his godowns to one Mr.Syed Ibrahim through Mr.Shivakumar. He has also executed the lease agreement with Shivakumar as per Ex.P-82. Mr.Shivakumar also requested him to let out his another godown in Medahalli Village but the said request was not finalised and said transaction was dropped. However, the accused No.1 had put both in the said godown. He also identified a lease deed entered into him with accused No.2 Arul and identified the same as Ex.P-83. The said godown was given to the accused for the purpose of doing business. Therefore the prosecution has proved that the accused took possession of the godowns at Singanayakanahalli and Avalahalli for doing Red Sander business in the guise of granite slab business.

51. Therefore the evidence of PW-9 is crystal clear that he had let out his godown at Avalahalli to accused no.1 and they were doing the business of Red Sanders in the guise of granite slabs. He also proved that one agreement said to be executed in the name of his mother Jayamma was forged by the accused and the signature of his mother had been forged in the said agreement. He also identified the forged rental agreement created by accused and the same was marked as Ex.P.82 and stated that the signature affixed in it does not belongs to his mother. Therefore, it is proved that the said rental agreement was forged by the accused persons. Witnesses from ADGFT:

52. The prosecution has examined following witnesses from ADGFT to prove the allotment of import export code to M/s.Raj Traders and Jayam Impex;

53. PW.13 Smt. Nita Nair, in her evidence has stated that while working in ADGFT as FTDO her nature of works were issuance of IEC online and Public Relation Officer. First the applications with concerned documents were receiving in the office seeking IEC and then they were processed and thereafter, they were coming to her for issuance of IEC. Pertaining to this case, when she was promoted as FTDO, the IEC in respect of M/s Raj Traders and M/s Jayam Impex were already issued. While working as FTDO, their office received a letter from DRI asking to suspend the IEC issued in favor of M/s Raj Traders and M/s Jayam Impex. After receiving the said letters show cause notices were issued by Smt. Shakuntala Naik DDGFT to both the firms. The witness identified the notice issued by Smt. Shakuntala Naik to M/s Jayam Impex and the same was marked as Ex.P.53. The witness identified the signature of Smt. Shakuntala Naik and the same was marked as Ex.P.53 (a). But they did not receive the show cause notices issued to them and they did not reply. Thereafter, their IEC were first suspended and later they were cancelled. The witness identified Chapter - II general provisions regarding imports and exports and part of chapter regarding ITC (HS) classification schedule and the same were marked as Ex.P.54 & 55 respectively. As per Ex.P.55 the export of processed and unprocessed red sanders were prohibited. The witness identified the file as to application receive processed and issuance of IEC to M/s Jayam Impex and the same was

marked as Ex.P.56. Witnesses from Commercial Tax office who proves VAT registration:

54. The prosecution have examined the following witnesses from Commercial Tax office in order to prove the VAT registration of M/s.Raj Traders and Jayam Impex.

55. PW.16 Sri Smt. G. Prabhavathi, in her evidence deposed that while working as Commercial Tax Inspector her nature of works were to visit the business premises and verify whether the business was existing, the name board was displaced and the proprietor/applicant was present. That was the mandatory procedure to be followed while issuing VAT Registration Certificate. The photos of the applicants were affixed on the applications and based on that at the time of visit they identify the applicants. After visiting they report the same to the Assistant Commissioner, Commercial Taxes.

56. Further P.W.16 deposed that he knew the accused Nos.1 & 2 then before the court. In this case, she was assigned to visit the business premises of M/s Raj Traders and M/s Jayam Impex by the Assistant Commissioner. The witness identified 2 files pertaining to VAT registration and the same was already marked as Ex.P.62 & 63. That on 20.12.2015 the authorized representative of the applicants Umar Farooq, 2 applicants of the business premises the accused then before the court and one Syed Ibrahim the accused then before the court had gone to their office and thereafter, all of them proceeded first to the business premises of M/s Raj Traders situated at Avalahalli. Then she inspected the place of business. The Proprietor Jayaraj told that he was trading in packing wood, Machinery and granites. Then she showed documents and she recorded his statement. The witness identified the statement of Jayaraj and her signature. The statement of Jayaraj was marked as Ex.P.62 (a) and signature of Jayaraj was marked as Ex.P.62 (b). The signature of the witness was marked as Ex.P.62 (c). The witness identified the VAT registration certificate and the signature of Sri Amjad Pasha. The same were marked as Ex.P.62 (d) and the signature of Amjad Pasha as Ex.P.62 (d) (I). At the time inspection the applicant furnished the originals of ID proof and address proof and then she took the self attestation to the copies.

57. Further P.W.16 deposed that, thereafter, with the same persons they proceeded to the premises of M/s Jayam Impex. Then she inspected the place of business. The Proprietor Arul then before the court told that he was trading in packing wood, Machinery and granite. Then she showed documents and she recorded his statement. The witness identified the VAT registration file. The same was marked as Ex.P.61. The witness identified the statement of Arul Muniswamy but it was a photocopy. At the time of inspection the applicant furnished the originals of ID proof and address proof and then she took the self attestation to the copies. The witness identified the VAT registration certificate and the signature of the Amjad Pasha. The same were marked as Ex.P.61 (a) and the signature of Amjad Pasha as Ex.P.61

(a) (i). In both the cases, they had furnished the originals of rent agreements. After completion of inspection, he reported the same online to the Assistant Commissioner, Commercial taxes.

58. P.W.15 □Umar Farooq who was working as an assistant in M/s Zabiullah & Associates, Bengaluru. M/s. Zabiullah & Associates is an auditing office and there they are doing documentation for the purpose of registration with sales tax, income tax, service tax, import & export code etc.

There as an assistant his nature of work was to collection of documents from clients and submitting the same to various offices. He did not know the accused then before the court. He knew M/s. Raj Traders and M/s Jayam Impex. Pertaining this case, he collected the documents submitted on behalf of M/s.Raj Traders and M/s.Jayam Impex from their M/s. Zabiullah & Associates office and thereafter, he filled up all the forms. After that he called one Mohammed and told him that all the forms had been filled up and the signatures of the proprietors were required. One boy had came from their side and he handed over all the documents pertaining to M/s Raj Traders and M/s Jayam Impex to him and he received the same after making signatures of the proprietors. Thereafter, he submitted the same to the Commercial Tax department seeking TIN number in respect of those two firms. Thereafter, one boy came and gave the cash and he deposited the same to the Commercial Tax Department. Thereafter, one Prabhavathi, a Commercial Tax inspector visited the premises of the said two firms and thereafter, she reported the same to the office. Thereafter, they issued the VAT certificate and after collecting the same, he handed over the same to the boy who had come from their side. The witness identified the documents submitted to the Commercial Tax department and two file containing the entire documents are marked as Ex.P.59 & Ex.P.60. The witness also identified the file containing documents submitted to Commercial Tax Department pertaining to M/s Jayam Impex and the said file was marked as Ex.P.61.

The transporters, who proves the transport of red sanders from the godown of accused.

59. The prosecution examined the following witnesses to prove the transport of goods for the purpose of shipment from the godown of accused and to transport the containers from CONCOR to shipyard. The following witnesses speaks about the said fact.

60. PW.19 Sri Srikantha, in his evidence has deposed that while working as transport in charge at Sri Lakshmi Ranganatha Swamy transport, he used to allot the Lorries to the drivers. The CHA or freight forwarding agencies were asking Lorries for loading their side goods for the purpose of shipment and then as per their request he used to allot Lorries. He knew Sri Rajappa the Proprietor of Sri Nidhi Shipping. The said Rajappa had asked their transport for supply of Lorries and accordingly he allotted Lorries and also the drivers to them. For receiving orders and allotment of Lorries they were maintaining the register. The witness identified the register and the same along with the production memo is marked as Ex.P.65 and the signature of the witness in the production memo is marked as Ex.P.65 (a). In the said register they were mentioning the details i.e., Vehicle Number, the booking given, container number and the place of destination. The witness identified page Nos.154 & 155 of Ex.P.65 wherein the Lorry had been allotted to M/s Raj Traders. The witness also identified page No.26 & 27 of Ex.P.65 wherein the Lorry had been allotted to M/s Raj Traders. The Lorries from their transport were allotted to M/s Raj Traders for two times. The witness also identified page No.132 and 133 of Ex.P.65. Wherein vehicle was allotted on the request of Sri Nidhi Shipping for transportation of granties. He knew B. Vittal and Gurunatha Harlapura and they were working as drivers in their transport. Then they also used to get the gate passes from CONCOR authorizing their Lorries to move in side and load the empty containers from CONCOR and return the same after loading.

61. P.W.20 Sri Gurunatha Harlapura, in his evidence had stated that the Lorries were supplied from their transport side to the required persons. Then the writer of their transport used to allot the Lorries and asked the drivers to go to that particular place with lorry. About 2 years back the writer asked him to go to Doddaballapura with lorry and he was given a mobile number to whom he should contact. Thereafter, he took the lorry to the industrial area of Doddaballapura and then he called the person as given. But, he told that the godown was not in Doddaballapura and it was even prior to Doddaballapura and he asked him to go back. Accordingly, he came back and asked that person to go to Rajanakunte police station. When he was waiting near Rajanakunte police station the accused Syed Ibrahim then before the court came in a car and took him to a godown at Chikkanayakanahalli. There he waited for 10 minutes and then a crane came and the container was unloaded. Thereafter, he waited for an hour and during that time the container was loaded and the container was loaded to his lorry with the help of the crane. The accused Syed Ibrahim thereafter gave him invoice, E - Sugam and other documents. Thereafter, he came back with the lorry and container and unloaded the container in the CONCOR yard. The lorry number which he took for the purpose of loading was KA - 53 A 6712.

62. The prosecution has examined the following the witnesses to prove the mahazar of DRI for opening the container and taking of sample by DRI and CBI.

63. PW.12 Sri V.Rajappa, in his evidence he has deposed that from 2014 to 2016, he worked as a Manager at M/s Moriks Shipping and Trading Pvt. Ltd. M/s. Moriks Shipping and Trading Pvt. Ltd., is a clearing agent for export & import. M/s Moriks Shipping and Trading Pvt. Ltd., was having its office both at Madappanahalli, Anekal taluk and ICD, Bengaluru. While documentation for exporting goods they were receiving documents such as invoice, packing list, SDF form, value added declaration form and others from exporters or from their representatives. First they were submitting those documents to the EDI system of the Customs office. First in the EDI system they used to issue the check list and then they were correcting the check list and thereafter, they were submitting once again them to the EDI system. The shipping bill number was generated in the EDI system and then the officials working in the EDI system were returning the submitted documents along with the check list writing the shipping bill number on the check list. Thereafter, they were verifying the RMS system. The RMS system was showing the particular status of shipping bill if the shipping bill was of free shipping bill then it was showing the status of filing would be in the goods registration and if the shipping bill was of receiving of any incentives then it was showing it should be filed in the assessment counter. Once the documents were submitted to the goods registration if necessary they were asking for physical examination. The Inspector of Customs was visiting the container and was examining in the presence of CHA and reporting it back. Thereafter, the Superintendent of Customs was issuing let export order. The let export order was issued in 6 copies and at the time of its issuance they were retaining the original and were giving the remaining 5 copies to them. Out of 5 copies they were giving let export order copies TR - 1 and TR - 2 to shipping liner and based on them the shipping liner was transporting the goods. He knew M/s Raj Traders and M/s Jayam Impex. Those were exporters and their M/s Moriks Shipping and Trading Pvt. Ltd., was their CHA. One Syed first sent IEC code and Bank AD code by way of E-mail to them. Thereafter, by taking the IEC code and Bank AD of M/s Raj Traders and M/s Jayam Impex, he registered their names in the Customs department. The said Syed used to call them, by saying that he was the Manager of M/s Raj

Traders and M/s Jayam Impex and initially he was sending the documents in the E-mail and later he was sending the originals with their boys. He submitted the documents both for M/s Raj Traders and M/s Jayam Impex to the Customs department for the purpose of export of their goods. The witness identified documents connected to shipping bills and its enclosures as per Ex.P.5 to 9 and Ex.P.17 to 20 belonging to the the exporter M/s Raj Traders and M/s Jayam Impex.

64. PW□2 has further deposed that in the month of March 2016 they received documents from both M/s Raj Traders and M/s Jayam Impex for export of goods and then their goods pallets containing granites were stuffed in two separate containers one pertaining to M/s Jayam Impex and another pertaining to M/s Raj Traders. Out of it one container was already transported from ICD Bengaluru to Chennai first by way of train and thereafter even it was moved from Chennai port to the consignee country. The other container was in ICD Bengaluru. Then the DRI officials came and examined by opening all the 12 pallets that were in the container. Then he was present. First in 2 pallets there were granites and in the remaining 10 pallets surrounding outer side there were granites and between granites red sander logs were hidden. Thereafter, they seized the red sanders pallets and such others along with the container. Then they prepared the mahazar. The witness identified the mahazar and it was already marked as Ex.P.37. The signature of the witness was already marked as Ex.P.37

(d). On the next morning the DRI officials along with them went to warehouse of M/s Raj Traders and M/s Jayam Impex situated at Singanayakanahalli. The warehouse was locked and the owner of warehouse was present. Then the key was not available and as such it was break opened. There were 12 red sander logs and there were also some granites. After completion of inspection they prepared the mahazar. The witness identified the mahazar which was already marked as Ex.P.45. The witness identified his signature therein and the same was already marked as Ex.P.45 (e).

65. Further PW□2 deposed that, in the DRI office one officer examined him and recorded his statement. The witness identified his statement and his signature therein. The statement was already marked as Ex.P.46 and the signature of the witness in the last page was already marked as Ex.P.46 (b). The witness identified the signature in one of the statements given before the officer Subramanyam and the statement was marked as Ex.P.50 and the signature of the witness was marked as Ex.P.50 (a). While taking samples at ICD he was also present. Then the DRI officials took the samples from seized red sanders and then they prepared the mahazar. The witness identified the mahazar and the same was already marked as Ex.P.40. The witness identified the signature in the last page and the same was already marked as Ex.P.40 (d). The DRI officials once again took samples from red sanders in the DRI office and then he was present. Then they prepared the mahazar. The witness identified the mahazar which was already marked as Ex.P.39 and the signature of the witness was already marked as Ex.P.39 (f). The DRI officials took the photos of seized red sanders at ICD. The witness identified one set of 6 photos with red sanders seized and they were together marked as Ex.P.51. The witness also identified one set of 8 photos containing red sanders belonging to this case and they were together marked as Ex.P.52.

66. In the cross□examination P.W.12 in page No.2 it is stated that, he do not know the accused No.1 and 2 before the Court. One Syed used to called him over phone and send the documents with their

boy.

67. PW.25 Sri M. Annamalai, in his evidence he deposed that in the year 2016 the DRI officials asked their office seeking their service in order to survey the container in their presence situated at Sattwa Hitech Conware CFS, Chennai. Thereafter, their office deputed him. Then he went to Sattwa Hitech Conware CFS, Chennai along with the DRI officials and CFS officials. The forest officials were also present. Then they were nearly 8 to 9 people. There they took him to a container. The container was locked with two locks and both were sealed. First on the direction of the DRI officials he noted down the seal numbers and container number and thereafter, the container was opened and in the container there were some wooden boxes. Then they were unloaded from the container. Thereafter, the wooden boxes were opened and in the wooden boxes red sanders were present. First the container was weighed along with the boxes and after destuffing once again the empty container was weighed. There the DRI officials put the numbers to the logs. Thereafter, he was asked to check the container if the container was tampered or not. He checked the container thoroughly and there was no tampering in the container. During the proceedings the DRI officials took the photos of the logs and container. The witness identified the logs and the container in the photos. The photos were already marked as Ex.P.51 & 52. Then the forest officials were also present. After completion of inspection both of logs and the container, the DRI officials prepared the proceedings and they put their signatures to it. The witness identified the proceedings and the same was marked as Ex.P.68. The signature of the witness was marked as Ex.P.68 (a). The witness identified two weightment slips and they were together marked as Ex.P.69. He had gone to the Sattwa Hi tech Conware twice in this case. First time when he had gone, the forest officials were also present.

68. PW.26 Sri Vadamalai M., in his evidence he deposed that Excellmax Surveyors International was a Proprietorship concern recognized by IRDAI and they were independent surveyors authorized to make survey and loss assessment for Engineering Division, Motor and Miscellaneous insurance services. The inspection of various types of containers comes under Engineering Division. The DRI officials asked their service to inspect the container situated at Sattwa Hitech Conware CFS, Chennai. Thereafter, that on 29.03.2016 he deputed their surveyor C.W.36 M. Annamalai for the purpose of the inspection of the container as asked by the DRI officials. Accordingly, the said official inspected the container and reported them that there was no tampering in the container. Thereafter, again on 27.10.2016 on the request of the DRI officials their surveyor M. Annamalai attended the said container. Even then he did not find any tampering in the container. At the time of survey their official had taken the photos in his Digital Camera and on the request of the CBI he had handed over the same photos to them. The witness identified the photos taken at the time of the inspection and they were already marked as Ex.P.51 &

52.

69. P.W.30 Sri P.E. Sudhirkumar in his evidence he deposed that in the month of October 2016, he was working as Administrative officer at regional office, New India Assurance company Ltd., Chennai. In the month of October 2016, his vigilance department asked him to contact one Mr. Satya Sai the investigating officer of the CBI and on his contact, he informed him to come to Sastri Bhavan, Nungambakkam, Chennai. Thereafter, on 27.10.2016, he went there and met Mr. Satya Sai.

Thereafter, they and others proceeded in the car and then he informed that they were going for such operation to Sattva container freight station. They reached Sattva container freight station and the freight station administrative people brought the container using Crain. Thereafter, on the request of the CBI officer he inspected whether the locks were intact or not. There was one lock and it was sealed. The CBI people took the photos and later the lock was break opened using cutter. In the container there were wooden pallets with granite slabs in the front side. Then with the Crain the container was taken for weighment and the container along with the inside goods was weighed. The container was brought back to the same place. Thereafter, it was opened in our presence and the wooden pallets, granites, packing materials and wooden logs, wooden pieces were there in the container and there were removed outside. Thereafter, except the wooden logs and wooden pieces all were again re-stuffed into the container and once again it was weighed. Thereafter, once again the wooden logs and wooden pieces were kept in the container. The CBI officer note down the serial numbers given to the wooden logs and wooden pieces. The photos were taken and entire process was video graphed. He identified the photos containing wooden logs, container and other things and they are already marked as Ex.P.52. Thereafter, the container was closed with 2 locks one from the CBI and another from Sattva and both were OTLs. Thereafter, the CBI officer prepared the entire proceedings i.e., mahazar in his Laptop and the printout of it was taken out. He identified the mahazar which is already marked as Ex.P.68, he identified his signature and the same is marked as Ex.P.68 (b).

70. PW-6, Shri. K.S.Vijay Kumar who was working as Sr. Intelligence officer at Directorate of Revenue Intelligence, Zonal Unit, Bengaluru deposed that on 03.03.2016 he accompanied their officer C.W.8 Sri Ivin K. George and then they searched the godown as shown by CHA Sri Rajappa and in the presence of the independent witnesses seized 12 red colored wooden logs supposed to be red sanders and also then seized some small pieces of red colored wooden pieces supposed to be red sanders and other materials. Then they prepared the mahazar in the presence of the witnesses and then the others and he put their signatures to the mahazar. That on 04.03.2016 he examined CHA Rajappa and recorded his statement. The statement of Rajappa was marked as Ex.P.43 and the signatures of the witness and of Rajappa are marked as Ex.P.43 (a) and Ex.P.43 (b).

71. Further, he deposed that on 03.03.2016 along with his officer Sri. Ivin K. George. He went to the wear house of the accused situated Singanahakanahalli and after opening the said wear house they found 12 lakhs of red sanders and also some small pieces of red sanders. The above said 12 lakhs weighed totally 400 and odd kgs . The CHA Rajappa informed them that the said logs were supposed to be exported to foreign country. Therefore, which is the said wooden logs. At the time they prepared one mahazar and identified the same and that was marked as Ex.P.37. After that, they have seized the above 12 pieces of logs and took their possession.

72. In the cross-examination of P.W.6 stated that, on 04.03.2016 he visited the godown situated at Singnayakanahalli and recorded the statement of Rajappa. In page No.2 suggestion was put by the counsel for the accused that, it is false to suggest that on making threat to register the case against him.



73. PW.34 Sri G. Jayaprakash, in his evidence he deposed that he is an Intelligence officer at DRI, his nature of work was to intercept passengers at Airport, see port and also drug cases on the instructions of their Senior Dy. Director. That on 29.03.2016 their Dy. Director DRI, Chennai called him and the other officer S. Niranjan Kumar Sr. Intelligence officer and directed them to do detail examination of container No.BSIU 2756041 was being exported vide shipping bill No.6034786 dated 23.02.2016 in the name of M/s Jayam Impex laying at Sattwa Hitech and Convare Pvt. Ltd., CFS, Chennai. Thereafter, on the same day he himself and the Sr. Intelligence officer S. Niranjan Kumar proceeded to Sattwa Hitech and Convare Pvt. Ltd., along with 2 independent witnesses K. Jayaraman and K. Janakhi Raman and reached CFS at 11.00 a.m. Then first they met Kumar Devaraj Asst. General Manager Sattwa Hitech and Convare Pvt. Ltd. Then Sri N. Natarajan ACF, Chennai and Anna Malai surveyor were already present there on the directions of their office. They requested Sri Kumar Devaraj to identify the container and placed it in a secured place for examination. Thereafter, they went along with him and he identified the container and thereafter it was placed in the secured place. Then the surveyor Anna Malai present with them inspected bolts and nuts where seals were affixed to the container. The surveyor told that bolts and nuts were intact. There were 2 OTLs one from customs and another from Sattwa CFS. Thereafter, they cut opened both OTLs and on opening the container they found the wooden pallets in the container. Then they de-stuffed the pallets from the container and there were total 12 pallets. On examination of first 2 pallets which were placed in the first row they found marble slabs wrapped with thermocol. Thereafter, they started examination of the remaining pallets. In those pallets on all 6 sides marbles were placed and on removal of top 2 marbles, they found cavity filled with red coloured wooden logs. Thereafter, they took all the wooden logs outside of the pallets and on counting they found there were 225 wooden logs and 26 red coloured wooden pieces. Thereafter, they gave number to all the wooden logs and also to wooden pieces. In all the 12 pallets there were 181 marble slabs. Thereafter, they stuffed the wooden pallets and marbles into the container and weighed the container in the near by weighbridge situated in the Sattwa CFS. Earlier, that on 24.03.2016 the DRI officers had taken the container weight along with the goods. With that weighment slips they arrived the total weight of the red coloured wooden logs and pieces came to be 7.490 MTs. Then Sri N. Natarajan ACF present with them examined the red coloured wooden logs and wooden pieces and told that the red coloured wooden logs and wooden pieces were of red sanders and informed that they were prohibited for exporting under export trade policy. Thereafter, they seized all the wooden logs, wooden pieces and marbles under customs act. Sri Anna Malai the surveyor again inspected the doors, bolts and nuts where rods were fixed of the container and he informed that they were intact and no tampering was taken. Sri Anna Malai then took the photographs of the proceedings. Thereafter, again they stuffed the red sanders into the container and the container along with red sanders, pallets and marbles was handed over to Sri Kumar Devaraj for safe custody and they informed him not to tamper with and not to dispose off the goods without the further instructions from the DRI. They completed the proceedings at 8.00 p.m., and thereafter, they drew the mahazar and took the signatures of the independent witnesses present there. The witness identified the mahazar and the same was marked as Ex.P.75 and the signature of the witness was marked as Ex.P.75 (a). The witness identified the signatures of the independent witnesses namely Jayaraman and Janakhi Raman and the same were marked as Ex.P.75 (b) & (c). The witness also identified the signatures of ACF Natarajan, surveyor Anna Malai, AGM Kumar Devaraj and Sr. Intelligence officer S. Niranjan Kumar and the same were marked as Ex.P.75 (d) to (g). The witness identified the

weighment slip and the same was marked as Ex.P.76. The witness identified the photos taken at the time of conducting proceedings and the same were already marked as Ex.P.51.

74. Further, P.W.34 deposed that on 27.10.2016 their Dy. Director called him and Sri S.Niranjan Kumar and instructed them to proceed to Sattwa CFS to accompany the CBI officials in examination of the cargo. They proceeded to the CFS at 11.30 a.m., and one Sai the Inspector of the CBI, Bengaluru was already present there and the independent witnesses and 3 more CBI officers were present with him. Sri Natarajan ACF and Anna Malai Surveyor were also present. The CBI officer asked Sri Kumar Devaraj to show the container and thereafter, they went to the place where the container was placed. First the surveyor Anna Malai inspected bolts and nuts of the seal and informed that they were intact. There were only one seal and it was cut opened. In the container they found red coloured wooden logs, wooden pieces, marbles and pallets. Thereafter, the container was closed and it was taken for weighment to the near by weigh bridge. The container was weighed and it was taken back. Thereafter, only the wooden logs and wooden pieces de-stuffed from the container and again the container was weighed in the near by weighbridge. Then came to know the net weight of the total red coloured wooden logs and wooden pieces and then the net weight of red coloured wooden logs and wooden pieces was 7.350 MTs. There was 140 kgs of difference from the earlier weighment and it was due to drying of moisture and it was admissible error when weighed in the same weighbridge. The CBI officers counted the red coloured wooden logs and wooden pieces then there were 227 red coloured wooden logs and 26 red coloured wooden pieces. There was difference in numbers and as such on examination they came to know that Sl.Nos.176 and 202 were given twice to the red coloured wooden logs and even though there were 227 wooden logs earlier, they were counted as 225. Sri Natarajan ACF examined the red coloured wooden logs and wooden pieces and he told that they were red sanders. Thereafter, 227 wooden logs and 26 wooden pieces stuffed into the container and the container was sealed with customs OTL and OTL of Sattwa CFS and it was handed over to Kumar Devaraj. The CBI officer took the photos and videos of the proceedings. Thereafter, the mahazar was drawn by the CBI officers and they along with other witnesses put their signatures to it. The witness identified the mahazar which was already marked as Ex.P.68 and the signature of the witness was marked as Ex.P.68 (c). The witness identified 2 weighment slips and photos which were already marked as Ex.P.69 and Ex.P.52 respectively.

75. PW.35 Sri N. Natarajan, in his evidence he deposed that from 2014 to 30.03.2016, he worked as ACF, Forest protection and Vigilance Squad, Chennai and thereafter, he was transferred to ACF, Vellore Forest Division and till 31.07.2017 he worked there till his retirement. That on 29.03.2016 the DRI officials asked him to go to Sattwa CFS and thereafter, he proceeded to Sattwa CFS and accompanied the DRI officials. They had already opened the container and wooden logs and wooden pieces were placed serially and when he reached and accompanied them, they were giving numbers to wooden logs and wooden pieces. The DRI officials asked him to examine the wooden logs and wooden pieces as to find out whether they were red sanders or not. He examined the wooden logs and wooden pieces and on examination he confirmed that they were red sanders. Since several years he had worked in the forest department and he had undergone training in their department to find out the species of trees and woods and as such, he came to conclusion that they were red sanders. After, completion of proceedings there, they prepared the mahazar and then he put his signature to it by certifying that the wooden logs and wooden pieces which he examined were of red sanders. The

witness identified the mahazar which was already marked as Ex.P.75 and the signature of the witness was marked as Ex.P.75 (d). Again on 27.10.2016 the CBI officials asked him to go to Sattwa CFS and on that day he proceeded and accompanied the CBI officials. Thereafter, he along with CBI officials and others present there proceeded to the place where the container was laid and then it was cut opened. Then in order to find out the weight of wooden logs and wooden pieces first they weighed the container in the near by weighbridge with the entire cargo and again on second time without wooden logs and wooden pieces. Thereafter, the wooden logs and wooden pieces arranged serially on the ground and then on the request of the CBI officers, he examined both the wooden logs and wooden pieces and he confirmed that they were of red sanders. Since several years he had worked in the forest department and he had undergone training in their department to find out the species of trees and woods and as such, he came to conclusion that they were red sanders. After, completion of proceedings there they prepared the mahazar and then he put his signature to it by certifying that the wooden logs and wooden pieces which he examined were of red sanders. The witness identified the mahazar which was already marked as Ex.P.68 and the signature of the witness was marked as Ex.P.68 (d).

76. PW.36 Sri Kumar Devaraj, in his evidence he deposed that as Asst. General Manager (Logistics Delivery) his nature of work was to look after the entire operational activities within Sattwa CFS. That on 22.03.2016 the DRI officials informed him that one container No.BSIU 2756041 20 feet container would be coming to Sattwa CFS and thereafter, the said container came to CFS and he received it and kept in their custody. That on 24.03.2016 the DRI officials came to Sattwa CFS for inspection of the said cargo. On that day the DRI officials first came and met him and asked him to show the container. He along with the DRI officials proceeded where the said container was kept. Then the DRI officials were present and along with them he and some other customs officials within their Sattwa Hitech were present. There were 3 OTLs to the said container and on the direction of the DRI officials all the OTLs were cut opened. There were wooden pallets in the container. Thereafter, first all the pallets were removed from the container and there were nearly 12 pallets. Then they opened the pallets and in 2 pallets there were fully marble slabs and in other pallets outside there were marble slabs and in the inside red coloured wooden logs were stored. They examined wooden logs and again the wooden logs with their pallets were stuffed into the container. Then the container along with the cargo was weighed in the nearby weighbridge. Thereafter, the container was locked with 2 OTLs one from customs and another from Sattwa Hitech. Then they prepared the mahazar and he put his signature to it. The witness identified the mahazar and the same was marked as Ex.P.77 and the signature of the witness was marked as Ex.P.77 (a). On that day 2 DRI officials namely Venkata Suresh and Nagendra had come. The witness identified the signatures of Venkata Suresh and Nagendra and the same were marked as Ex.P.77(b) & (c). The witness identified the weighment slip and the same was marked as Ex.P.78. That on 29.03.2016 the DRI officials along with the surveyor, forest official and independent witnesses came and met him and they asked him to show the container. Accordingly, he showed the container to them. Before cut opening the OTLs, the container along with the cargo was weighed. Then the OTLs were cut opened and all the pallets were taken out from the container. First they separated slabs and wooden logs and they were counted and there were 225 long wooden logs and 26 small wooden logs. The forest official present examined them and told that they were of red sanders. Except the wooden logs and wooden pieces the remaining materials were stuffed into the container and the container was weighed. Thereafter,

the wooden logs and wooden pieces were stuffed into the container and the container was locked with 2 OTLs one from customs and another from Sattwa Hitech. Then they took the photos of the proceedings. Thereafter, the mahazar was prepared and he put his signature to it. The witness identified the mahazar which was already marked as Ex.P.75 and the signature of the witness was already marked as Ex.P.75 (f). The witness identified weighment slips and photos and they were already marked as Ex.P.76 & 51. Again that on 27.10.2016 the DRI officials, the other officials along with the independent witnesses came and on their direction he showed them the container. There were 2 seals and both were cut opened. On examination of the container the officials found the wooden pallets, wooden logs, wooden pieces and marbles. Then they de-stuffed all the cargo from the container and counted the wooden logs and wooden pieces and then there were 227 wooden logs and 26 wooden pieces. As earlier there was misnumbering and then the same 2 numbers were given twice and as such, they were counted as 225. On that day the whole container along with the cargo was first weighed in the weighbridge and again the container along with the other materials except the wooden logs and wooden pieces were weighed in the weighbridge. Thereafter, the wooden logs and wooden pieces were stuffed into the container and the container was locked with 2 OTLs one from customs and another from Sattwa Hitech. Then they took the photos of the entire proceedings. Thereafter, they prepared the mahazar and they put their signatures to it. The witness identified the mahazar which was already marked as Ex.P.68 and the signature of the witness was marked as Ex.P.68 (e). The witness identified the weighment slips and photos which were already marked as Ex.P.69 & 52.

77. PW 42 R.V.Raghuandan who was Sr.Intelligence Officer of DRI Zonal office, Bangalore has spoken as to the inspection of container and seizure of Red Sanders. He has deposed that on 02.03.2016 he along with independent witness and other officers of DRI and Shri.Rajappa, CHA went to the suspected place and broke open the seal of the container, which containing wooden pallets without numbers. They have uploaded the pallets contained in the container and found total 12 pallets and opening the same, they found in total 241 logs of wooden logs weighing about 7.45 tonnes. Thereafter they secured the custodian of that container yard i.e. Abbas Rizvi, Asst. Manager, CONCOR, Whitefield and his presence and in the presence of witnesses mahazar has been conducted. Thereafter they again reloaded the entire 241 logs in the same container and put one time seal. The mahazar prepared is identified by him as Ex.P 97 and his signature is Ex.P 97(a). He also identified the form of undertaking for safe custody of seized goods as Ex.P 98.

78. PW 42 further deposed that he again visited Inland Container Depot along with witnesses where they already seized and sealed the goods on 02.03.2016 for the purpose of taking samples from the wood logs seized by them. With the help of his staff he took sample of 5 1/2 inches length in 3 different logs and in 3 numbers and same are put in a sealed green cloth lined cover and drawn the mahazar. Out of 3 sealed cover 1 sample cover has been handed over to Asst. Manager Abbas Rizvi and remaining 2 covers retained with them for the purpose of sending to FSL and 1 sample to retain for them. Then again they sealed the container and conducted the mahazar on 09.03.2016 as per Ex.P 99 and his signature is identified as Ex.P 99(a). He also deposed that on 10.03.2016 they conducted another mahazar regarding collecting of samples pertaining to another search and seizure conducted by their other officials at private godown near Yelahanka on 03.03.2016 and seizure of wooden logs by them and which were brought to the office of DRI and kept in the strong

room. While taking the samples from the said wooden logs they have drawn the mahazar and he identified the same as Ex.P□00 and his signature is Ex.P□00(a).

79. P.W.44 Sri Ivin K.George who was working as Asst. Director in DRI, Bangalore. He corroborated the evidence of other DRI officers and he has deposed that he had accompanied them to the inspection of godown of Raj Traders situated at Singanayakanahalli. In the said godown they found Red coloured 12 wooden logs appears to be Red Sanders and also found 29 small pieces of Red colour wooden pieces appears to be Red Sanders. They have weighed the said wooden logs and found that it was weighing 408.17 Kgs. Therefore they seized the said wooden logs and drawn a mahazar as per Ex.P□37(b) and he identified his signature as Ex.P□37(b).

80. The prosecution has examined the witnesses from CONCOR Whitefield, ICD, Bengaluru to prove the allotment of containers to the accused.

81. PW.31 D.Satish Kumar, in his evidence he deposed that, as Manager (Commercial & operations) his nature of work was to look after terminal operations and marketing. The container Corporation was a Central Public Sector working under Ministry of Railways, Union of India. The CONCOR acts as facilitator of containers and moves containers by rail. The CONCOR was having custody of containers owned by different companies mostly of multinational companies and on the request of the owners/shipping liners of the containers namely container nomination form they allot containers to CHAs and issue Exit permit and Entry permit for container to CHAs. Based on the exit permit container the empty container was taking out of the ICD premises through their own transport and after loading them once again bring back the container to the ICD. While taking the container from the ICD and while bringing back with loaded container to ICD on both occasions they were maintaining exit register and entry register and all these things happen through online. There were manual registers also. On the request of the CBI he had handed over the details of allotment of container, exit and entry registers to the CBI. The witness identified the exit register dated 01.02.2016 to 14.03.2016 and the same was marked as Ex.P.72. The page No.101 Sl.No.193 of Ex.P.72 was marked as Ex.P.72 (a). As per Ex.P.72 (a) the container No.BSIU - 2756041 had been moved from ICD through vehicle No. KA - 53 A 6712 on 22.02.2016. The witness identified the entry register dated 12.02.2016 to 26.02.2016 and the same was marked as Ex.P.73. The page No.133 Sl.No.85 of Ex.P.73 was marked as Ex.P.73 (a). As per Ex.P.73 (a) the container No.BSIU - 2756041 had come back to ICD through vehicle No. KA - 53 A 6712 on 23.02.2016. Expert witnesses:

82. PW.43 Smt.Sujatha.M in her evidence had stated that she secured her post graduation degree in Botony and secured Phd in Forest Botony. Thereafter, she joined to IPIRTI, Bengaluru as Scientist in the year 1991. She had undergone a Special training with respect to Wood Anatomy in the same institution. On 20/04/2016 her office had received the wood for examination and for issuance of opinion thereon.

Accordingly she examined and formed the opinion that the said samples are pertaining to Botanical name was "Pterocarpus Santalinus" popularly known as Red Sanders. Accordingly she issued her opinion dated 12.05.2016 and the same is identified by her as Ex.P□

101.

83. PW.41 Sri A. Balsami, in his evidence has stated that he had compared the questioned writings and signatures and corresponding standard writings and signatures of Syed Ibrahim, Arul Muniswamy by using the handwriting principles i.e., size by size comparison and like method matter was to be compared with like by using the scientific instruments such as microscope and magnifying lenses and different kinds of magnifying lenses and he arrived at a conclusion that:

(1) The person who wrote the blue enclosed writings stamp and marked S□ to S□35, and A□1 and also wrote the red enclosed writings similarly stamped and marked Q□63 and 68.

(2) The person who wrote the specimen and admitted signatures are stamped and marked S□99 to S□09 and A□1 to A□0 also wrote the red enclosed disputed signatures similarly stamped and marked Q□22 to Q□35 and Q□44 to 49.

After analysing the same he had submitted his opinion as per Ex.P□09 and forwarded to CBI.

The witnesses of the investigation:

84. PW□46 A.V.Satya Sai, Inspector of Police, CBI has deposed as to the investigation carried out by him in this case. He has deposed that on 31.08.2016 he took up the investigation and thereafter conducted searches on 29.08.2016. On 07.10.2016 he received the documents from Shri.Alok Kumar.C (CW□) and examined him and recorded his statement. On 10.10.2016 he received the documents from CW□25 and recorded his statement. He also recorded the statement of all other witnesses and received the documents from them. He further deposed that on 27.10.2016 he conducted proceedings with regard to the container seized by DRI and kept at Sattwa Hitech, Chennai. On 23.01.2017 based upon the evidence collected during investigation he filed charge sheets against the accused persons. He also identified the FIR in Ex.P□11 registered by SP, CBI. Therefore he proved the investigation conducted by CBI in this case.

85. On perusal of the materials available on record, in the instant case initially the case was registered against the accused No.1 to 4. Accused No.1 by name Rajesh Shastri the then Superintendent of customs and accused No.2 by name J. Ravichandran the then Inspector of Customs, ICD Bengaluru, accused No.3 by name Arul Muniswamy proprietor of M/s Jayam Impex, Avalahalli, Bengaluru and accused No.4 by name V. Rajappa Manager, M/s Moris Shipping and Trading Company and other unknown persons. Further, it is reveal that, during the month of February - March 2016, they have entered into a criminal conspiracy with accused No.3 Arul Muniswamy Proprietor of M/s Jayam Impex, Bengaluru to get the Import Export Code (IEC No.0715023837) for the purpose of export of red sanders in the guise of granite slabs at Bangalore and other places and in pursuance of the criminal conspiracy accused No.3 produced contraband item of red sanders, concealed the same in the container boxes meant for export of granites slabs and illegally exported to the foreign countries with the connivance of accused No.1 and accused No.2.

86. On perusal of the final report submitted by the investigation officer, it is alleged that, Sri Syed Ibrahim accused No.1 conspired with Sri Arul Muniswamy accused No.2 and in pursuance of the conspiracy they got it registered a firm namely M/s Jayam Impex with the Commercial Tax Department by showing Arul Muniswamy as the sole proprietor and accused No.2 willingly agreed to the same and signed on the requisite documents. In furtherance of criminal conspiracy Syed Ibrahim made Sri Arul Muniswamy as proprietor of M/s Jayam Impex to open a bank account in the name of M/s Jayam Impex and accused No.1 and 2 got it issued a certificate from the bank and accused No.1 used the same as KYC documents for applying for IEC code in the of M/s Jayam Impex even before the said bank account became operative.

87. Further, accused No.1 had got the IEC code in the name of M/s Jayam Impex by submitting forged documents and obtained IEC code. He knowing very well that red sanders are prohibited for export and submitted forged shipping documents before the Customs Authorities for export of red sanders by falsely declaring the same as granites slabs. The said consignment was confiscated by DRI while being exported. During the course of investigation, it is revealed that, the role of public servant was not forthcoming and therefore prosecution submitted that, they have not filed charge sheet against the officers of Customs Department. Even the perusal oral and documentary evidence placed by the prosecution, the role of customs officials was not forthcoming anywhere to fasten criminal liability on them. Hence, non prosecution of public servants/custms officials will not vitiate the prosecution case. The careful perusal of the papers reveals that, there is no material evidence against the accused No.1 by name Rajesh Shastry, accused No.2 J. Ravichandran and accused No.4 V. Rajappa whose names were mentioned in the FIR registered by the C.B.I. in R.C.No.14 (A)/2016 and therefore, they were not charge sheeted.

88. On perusal of the oral evidence of the P.W.1 to 3 it is clearly goes to show that, the accused No.1 and 2 by name Syed Ibrahim and Arul Muniswamy with an intension to export the red sanders entered into criminal conspiracy and created a shipping bill No.5200926 dated 11.01.2016 as per Ex.P.3 and shipping bill No.5261073 dated 13.01.2016 as per Ex.P.16. These documents clearly shows that, the accused No.1 and 2 had exported the red sander wooden logs in the guise of granite slabs through ICD, Whitefield, Bengaluru. In the cross examination advocate for the accused not elicited from the mouth of P.W.1 to 3 that the accused No.1 and 2 have not created any shipping bills having intention to export the red sanders. The advocate for the accused denied the entire examination in chief of the P.W.1 to 3. This denial of chief examination and simply putting suggestion to the witnesses will not helpful to the defence of the accused to rebut the prosecution case.

89. Therefore, from the evidence of P.W.1 to 3, the prosecution has proved that shipping bill No.5200926 dated 11.01.2016 as per Ex.P.3 and shipping bill No.5261073 dated 13.01.2016 and its connected documents through which the accused No.1 and 2 had exported the Red Sanders wooden logs in the guise of granite slabs through ICD Chennai.

90. On perusal of the evidence of P.W.5 it is clearly goes to show that, that on 02.03.2016 he accompanied C.W.6 and they had gone to ICD, Bengaluru for the purpose of examination of one container and they searched and seized 241 red coloured wooden logs seemed to be red sanders.

Then C.W.6 prepared the mahazar and on 04.03.2016 he examined the accused Arul Muniswamy and recorded his statement as per Ex.P.39 and again on 03.05.2016 and 19.08.2016 he examined the accused Arul Muniswamy and recorded his statement as per Ex.P.40 and Ex.P.41. At the time of examination of the accused he stated that, his friend Syed Ibrahim was looking after the export transaction in the name of M/s Jayam Impex. Therefore, the prosecution established that, the accused No.1 and 2 having intension to export the red sanders to the foreign country and they have created forged documents and cheated the Government of India.

91. On perusal of the evidence of P.W.6 it is clearly goes to show that, the prosecution has proved that the DRI officers had visited the godown of M/s Jayam Impex at Singanahakanahalli on 03.03.2016. It is also established that from the said godown they had seized 12 pieces of red coloured wooden logs weighing in total 400.17 Kgs. On perusal of Ex.P.37 mahazar it is clear that, it was prepared by the DRI officers in the presence of independent witnesses and customs house agent and therefore prosecution has proved the seizure of the above Red Sanders from the godown of accused in the presence of independent witnesses. To disbelieve the evidence of P.W.6 the defence has not elicited any crucial facts from the mouth of this witness in the cross examination. Therefore, the prosecution has proved that, the DRI officers had seized the red sanders as per Ex.P.37.

92. On perusal of the evidence of PW 8 who is the branch in charge of M/s Maxicon Shipping Agencies, it is clear that he had furnished Ex.P.44 i.e. Shipping Bill No.6034786 dated 23.02.2016 and other connected documents to the CBI as per Ex.P.45 Production Memo. He also identified Ex.P.46 and Ex.P.46. Ex.P.46(a) is Container Delivery Order and through which the prosecution has established that M/s.Jayam Impex is the ultimate Exporter of the consignments. From the evidence of PW 2 V. Rajappa the prosecution has established that the documents such as invoice, packing list, Form SDF, Export valuation declaration and declaration in Ex.P.5 to 9 were pertaining to M/s.Raj Traders and Jayam Impex. It is also established from his evidence that the container pertaining to Raj Traders was opened by the Inspector of Customs and at the time he had noticed that the container was covered with thermal coal and there were polished granite slabs on the side of the box. It is also proved from the evidence of PW 2 that he is the custom house agent and handled the shipping bills pertaining to M/s.Raj Traders and Jayam Impex. It is clear from his evidence that two shipping bills in Ex.P.3 and 16 and Ex.P.4 to 15 and 17 to 26 which are connected documents of shipping bill were belonging to Exporters M/s Raj Traders and Jayam Impex and the consignment were exported to Malaysia. It is also proved from his evidence that out of the two containers meant for Shipment one container was already transported from ICD Bangalore to Chennai Port and thereafter to the consignee country. The other container was in ICD Bangalore. The said container was examined by DRI officers and they have seized the Red Sander pallets from the said container and prepared the mahazar as per Ex.P.37. He also identified the seizure of Red Sanders from the Warehouse of Raj Traders and Jayam Impex at Singanayakanahalli as per Ex.P.45 mahazar. Further he is also a witness for taking the samples from the Red Sanders seized by the DRI as per Ex.P.40 mahazar. Therefore, through the above witness prosecution has clearly proved the shipment of Red Sanders and seizure of the same from the possession of accused. The defence has put many questions to this witness in the cross examination so as to establish that P.W.12 was not at all present while drawing the mahazar. However, the witness has categorically denied the suggest that he was not present at the time of preparing mahazar and his signature was taken after



that. This witness was questioned by the defence by putting many suggestions and same were denied by him and therefore nothing crucial facts were elicited from the evidence of this witness. Hence, I am constrained to believe the evidence of this witness and the seizure of red sanders from the containers and warehouse of the accused persons.

93. On perusal of the evidence of PW□9 it is crystal clear that, he had let out his godown at Avalahalli to accused No.1 and they were doing the business of Red Sanders in the guise of granite slabs. He also proved that one agreement said to be executed in the name of his mother Jayamma was forged by the accused and the signature of his mother had been forged in the said agreement. He also identified the forged lease agreement created by accused and the same was marked as Ex.P.82 and deposed that the signature affixed in it does not belong to his mother. Therefore, it is proved that the said rental agreement was forged by the accused persons. When this witness categorically states that the signature of mother of this witness was forged by someone else in the lease agreement, this Court has to believe that the said Ex.P.82 lease agreement was forged by the accused so as to produce before the competent authority for their own benefit.

94. In the cross□examination of P.W.15 and 16 nothing important facts were elicited from their mouths. Therefore, from the evidence of PW□15 and 16 the prosecution has proved the VAT registration of M/s Raj Traders and M/s Jayam Impex which were belonging to the accused persons and through which they have exported the prohibited Red Sanders to the Foreign countries.

95. On perusal of evidence of P.W.34, 35, 36, 42 and 44, it is quite clear that, the DRI officers have seized the containers consisting of Red Sanders which were belonging to the accused No.1 and 2 from ICD Chennai. They have seized the Red Sanders Pallets and at that time they have prepared Ex.P□37 mahazar in the presence independent witnesses. It is further proved that the DRI officials also seized the Red Sander logs from the godown of Raj Traders and Jayam Impex at Singanayakanahalli and at that time also they have prepared the mahazar and the same was marked as Ex.P□45. Further DRI officials took the Red Sanders for sample from the seized items and prepared the mahazar as per Ex.P□40. They also took the samples from the Red Sanders in the DRI office and prepared the mahazar and the same was marked as Ex.P□39. All the mahazars were prepared by the DRI officials in the presence of independent witnesses. Hence the prosecution has proved the seizure of Red Sanders from the containers which were being exported by the accused No.1 and 2 to foreign country in the guise of granite slabs. The prosecution also proved the fact that the CBI officials also took the samples of Red Sanders wooden logs which were stuffed in the container for the purpose of sending the same to expert opinion in order to prove that they are Red Sanders through the evidence of P.W.6, 12 and 34.

96. It is also established from the evidence of P.W.34 that the container No.VSIU2756041 being exported vide shipping bill No.6034786 dated 23.02.2016 in the name of M/s Jayam Impex was laying at Sattwa Hitech and Convare Pvt. Ltd., CFS, Chennai. The said container was opened in the presence of independent witnesses by the DRI officials and total 12 pallets of red sanders were removed from the said container. In the said pallets there were 225 wooden logs and 26 red coloured wooden pieces in total weighing 7.490 Metric tonnes. The said red sanders were seized by DRI officer at Chennai as per Ex.P.75 and 76. On 27.10.2016 the CBI officers again opened the said

container and examined the wooden logs and prepared mahzar as per Ex.P.68. It is also established from the evidence of P.W.42 that they have seized the red sanders from ICD Bangalore as per Ex.P.97 and took samples from the above sanders as per Ex.99. It is also established from Ex.P.100 mahzar, upon which the samples were taken from the Red sanders seized from the godown of accused at Yalahanka.

97. Ex.P.54 speaks about Chapter II General Provisions regarding imports and exports and Ex.P.55 speaks about ITC (HS) 2012 - Schedule II Export Policy issued by customs in S.No.188 says that "Red sanders wood in any form, whether raw processed or unprocessed are prohibited to export". Likewise S.No.189 says value added products of Red Sanders wood such as extracts, dyes musical instruments and parts of musical instruments made from Red Sanders wood procured from legal source also restricted for export". The opinion of PW43 Smt. Sujatha M. in Ex.P.54 also clearly proved that the wood samples sent to her is Red Sanders and its botanical name is "pterocarpus Santalinus". Therefore from the above evidence the prosecution has proved that wooden logs seized by the DRI officers at ICD Whitefield and at the godown at Singanayakanahalli is that of Red Sanders which is prohibited for export. Hence, the accused No.1 and 2 are committed the offence as alleged by the prosecution.

98. Further, on perusal of evidence of PW42 and 45 it is clearly goes to show that the goods being exported by the accused No.1 and 2 were Red Sanders and its botanical name as "Pterocarpus Santalinus"

which is prohibited for export and regarding the forgery of the document committed by the accused No.1 and 2.

99. On careful scrutinize of the evidence of P.W.1 to 46 and documentary evidence as per Ex.P.1 to 114 are clearly goes to show that, accused No.2 is the proprietor of M/s Jayam Impex and accused No.1 entered into a criminal conspiracy to export red sanders in the guise of granite slabs and in pursuance of criminal conspiracy, registered the firm in the name of accused No.2 as it is proprietor and without actually having taken any shop in the name of M/s Jayam Impex, they have forged a rental agreement and used it as KYC documents for registration of M/s Jaym Impex with Commercial Department and they have submitted forged documents and obtained IEC code and thereafter forged the documents with misdescription and misdeclaration and submitted them that the exporting cargo is granite slabs and thereby cheated the Customs Department in exporting red sanders in the guise of granite slabs. Hence, prosecution has proved that the accused have committed the offence of cheating, forgery, false declaration of goods before custom authorities and attempted to export the prohibited item i.e. red sanders to the foreign country. Therefore, the prosecution has proved the guilt against the accused No.1 and 2 for offences punishable u/Sec.120(B) r/w 420, 468 and 471 of IPC.

100. Further, it reveals that, on 24.03.2016 the officials of the DRI had seized the red sanders at ICD, Chennai. Accused No.1 and 2 had made false declaration to the

Custom Authority that the item they are exporting was granite slabs knowing fully well that they are exporting prohibited red sanders and their declaration was false in material particular. They also were that, the red sanders were prohibited to export the foreign country and it was liable for confiscation and therefore intentionally they have declared the goods as granite slabs instead of red sanders. Hence, the prosecution has proved the guilt of the accused No.1 and 2 for the offences punishable u/Sec.132 and 135 of Customs Act.

101. Further, the evidence of P.W.1 to 46 has clearly goes to show that, the accused No.1 and 2 have exported the red sanders through shipping bills and out of that, 2 were caught by the DRI officials on suspicion. Thereafter, the DRI officials have seized one container at ICD Bangalore and another container at Sattwa Hitech, Chennai which contained the wooden logs appears to be red sanders. They have also seized the red sanders from the godown at Singanahakanahalli through the mahazar in the presence of independent witnesses. From all the seized wooden logs they took the samples and sent to the expert i.e. Institute of Wood Science and Technology, Malleshwaram, Bangalore for the purpose of getting export opinion. The expert after examination and had opined that the seized wooden logs are that of red sanders and its botanical name is "Pterocarpus Santalinus". The export policy Schedule 2 documents issued by Customs Department clearly shows that through different notifications the Government of India have restricted the export of red sanders to the foreign country in any mode by any person. The shipping bill documents collected by the I.O. and the Customs officers have clearly stated that the 2 shipping bills are pertaining to M/s Jayam Impex owned by accused No.2 and accused No.1 is the key person behind the export of the red sanders to the foreign country in the guise of granite slabs. Therefore, the prosecution has proved the chain of circumstances right from the shipping bills to the seizure of containers from ICD and godowns of accused which contained the red sanders. Hence, the accused have caused approximately Rs.3,37,05,000/- (Rupees Three Crores Thirty Seven Lakhs Five Thousand only) of financial loss to the Government of India by way of transport of red sanders weighing 7.490 Metric tonnes to the foreign countries and corresponding gain to themselves. The prosecution successfully proved the guilt of the accused No.1 and 2 as alleged against them.

102. I am of the opinion that, the red sanders wooden logs are the valuable natural resource of India and therefore the Government of India expressly prohibited their export to the foreign country vide the circular in Ex.P.54 and 55. The flora and fauna of the country has to be protected to balance the biodiversity of the nation and red sanders was one among the important plants especially of Karnataka State. The accused have removed the red sanders from the forest area either directly or through the persons and stored in their godown at Singanayakanahalli and subsequently tried to export the same to the foreign country. The sole intention of the accused persons were to gain unlawfully by selling the valuable resource of country to the foreign country for the purpose of profit. It is evident from the fact that the DRI officials have

seized the a huge quantity of red sandors from the godown of accused persons.

Therefore, this court has to consider the above aspect of loss of our natural resource and important plants like red sandors from our country and damage to the nature as well as financial loss to the nation and Government of India. The red sandors seized from the containers and godown of the accused values crores of rupees and loss to the natural resource of the country can not be compensated in any way. Therefore, I find that the prosecution has sufficiently proved the guilt of the accused by cogent and reliable evidence.

103. The Rulings relied by the advocate for the accused are not applicable to the defence of the accused. Because, the facts narrated in the said Rulings and the facts of the present case are distinct and different. Moreover, the defence has not cracked the prosecution evidence by way of eliciting important factors from the mouth of witnesses. Therefore, I am of the collective opinion that, the accused No.1 and 2 have committed the offence punishable u/Sec.120 (B) r/w Sec.420, 468 and 471 of IPC and Section 132 and 135 of Customs Act. Accordingly, I answered point No.1 to 4 in the Affirmative.

104. Point No.5 :□In view of the foregoing reasons and in the result, I proceed to pass the following order.

ORDER The accused Nos.1 and 2 are found guilty and they are convicted under Section 248(2) of the Cr.P.C. for the offences punishable u/Sec.120(B) r/w Sec.420, 468 and 471 of Indian Penal Code and under Section 132 and 135 of the Customs Act, 1962.

The bail bonds of the accused No.1 and 2 and surety bonds stand cancelled. [Dictated to the Stenographer directly on the computer, computerized by her, corrected and pronounced by me in the open Court on this the 11th day of January, 2023.] [R.B. KATTIMANI] XVII ADDL.CHIEF METROPOLITAN MAGISTRATE, BANGALORE.

Heard both the learned public prosecutor and the learned advocate for the accused on passing of sentence.

ORDER ON SENTENCE The case was called again to hear regarding the sentence of the accused. Advocate Sri. T.A.B. for accused No.1 and 2 is present. Ld. Public Prosecutor is present. Accused No.1 and 2 are also present and submitted that, they are the bread earner of their family and having old aged parents and small children.

2. Learned advocate Sri T.A.B., submits that, accused No.1 was in Judicial Custody during crime stage for 2 months and considering the same, that period may be set off and a lessor sentence may be imposed as the accused faced a long trail of 7 years.

3. Per contra, Learned Pubilc Prosecutor for the CBI has submitted that, the offences alleged against the accused are grave offences and they have cheated the Government of India and tried to export the Red sandors to foreign country. The red sanders wooden logs are the valuable natural resources

of India and therefore Government of India expressly prohibited their export to the foreign country. The accused No.1 and 2 had damaged to the nature as well as financial loss to the Government of India. The red sanders seized from the containers and godown of the accused values crores of rupees and loss of the natural resource of the country. If leniency is shown to the accused, it would have a serious impact on the society and therefore, severe sentence should be imposed for all the offences in this case.

4. In view of the foregoing discussion and the submissions made during hearing on the sentence of the accused, I hold that, the prosecution has established its case against the accused for the offence punishable u/Sec.120B, r/w.Sec.420, 468 and 471 of Indian Penal Code and Sec.132 and 135 of Customs Act. Further, I would like to mention that, the offences which were committed by the accused damage to the nature as well as financial loss to the Government of India. The gravity of the offences as well as conduct of the accused clearly noticed that, they have not entitled any leniency or mercy of the Court.

5. I have also perused the section 3 and 4 of the P.O. Act. In my opinion, when the accused is found guilty for the offence punishable u/Sec.120 B, r/w Sec.420, 468 and 471 of Indian Penal Code and Sec.132 and 135 of Customs Act which are all the offences touching the economy of the State which has to be dealt as provided under Law. Therefore, in my opinion in such a case the benefit under P.O. Act can not be extended. But, on considering the prayer of the Sri. T.A.B. advocate for accused. I have perused the Sec.428 of the Cr.P.C. which provides for a set off against the sentence of imprisonment. It reads that, the period of detention if any undergone by the accused during the investigation enquiry or trial of the same case before the date of such conviction shall be set off against the term of imprisonment imposed on him on such conviction. By reading the above lines make it clear that, the set off if any can be given to the accused for the period that, he was in Judicial Custody of this case alone. The order sheet and the submission made by the counsel go to show that, the accused was in Judicial Custody during the crime stage from 09.11.2016 to 09.01.2017 therefore, the benefit provided u/sec.428 of CR.P.C. is available to accused in this case.

6. Therefore, I pass the following order, regarding the sentenced for the offences punishable u/Sec.120B, r/w Sec.420, 468 and 471 of Indian Penal Code and sec.132 and 135 of Customs Act as following;

#### SENTENCE

1. The accused No.1 and 2 are sentenced to undergo R.I. for a period of 1 year for the offence punishable u/Sec.120(B) r/w 420 of the IPC and they shall pay fine amount of Rs.5,000/□each. In default of payment of fine amount, they shall undergo R.I. further for a period of three months.

2. The accused No.1 and 2 are sentenced to undergo R.I. for a period of 3 years for the offence punishable u/Sec.420 of the IPC and they shall pay fine amount of Rs.10,000/□each. In default of payment of fine amount, they shall undergo R.I. further for a period of six months.

3. The accused No.1 and 2 are sentenced to undergo R.I. for a period of 2 years for the offence punishable u/Sec.468 of the IPC and they shall pay fine amount of Rs.10,000/□each. In default of payment of fine amount, they shall undergo R.I. further for a period of six months.
4. The accused No.1 and 2 are sentenced to undergo R.I. for a period of 2 years for the offence punishable u/Sec.471 of the IPC and they shall pay fine amount of Rs.10,000/□each. In default of payment of fine amount, they shall undergo R.I. further for a period of six months.
5. The accused No.1 and 2 are sentenced to undergo R.I. for a period of 1 year for the offence punishable u/Sec.132 of the Customs Act and they shall pay fine amount of Rs.5,000/□each. In default of payment of fine amount, they shall undergo R.I. further for a period of three months.
6. The accused No.1 and 2 are sentenced to undergo R.I. for a period of 2 years for the offence punishable u/Sec.135 of the Customs Act and they shall pay fine amount of Rs.10,000/□each. In default of payment of fine amount, they shall undergo R.I. further for a period of three months.
7. The accused Nos.1 and 2 in total shall pay fine amount of Rs.50,000/□each.
8. The sentences of imprisonment herein shall run concurrently.
9. The imprisonment awarded in default of payment of fine amount against the accused No.1 and 2 shall be in addition to the substantive sentences of imprisonment.
10. The period of Judicial Custody of the accused No.1 from 09.11.2016 to 09.01.2017 i.e., a period of 2 months shall be set off.
11. Free copy of judgment shall supply to the accused No.1 and 2 forthwith as required u/Sec.363 (1) of Cr.P.C.

[Dictated to the Stenographer directly on the computer, computerized by her, corrected and pronounced by me in the open Court on this the 11th day of January, 2023.] [R.B. KATTIMANI]  
XVII ADDL.CHIEF METROPOLITAN MAGISTRATE, BANGALORE.

-: ANNEXURE :-

- I. List of witnesses examined for the prosecution  
:-
- |        |                     |
|--------|---------------------|
| PW 1 : | Alokkumar Singh     |
| PW 2 : | D.Xavier            |
| PW 3 : | Smt. G. Anitha      |
| PW 4 : | P.S.G.V.Subramanyam |
| PW 5 : | Vijay Kumar         |
| PW 6 : | K. S. Vijay Kumar   |
| PW 7 : | Navashakthi         |

PW 8 : Paul Pandian  
PW 9 : K. Mallesh  
PW 10: Babu Narayan  
PW 11: Rakesh G.S.  
PW 12: V. Rajappa  
PW 13: Nita Nair  
PW 14: G. Narahari  
PW 15: Umar Farooq  
PW 16: G. Prabhavathi  
PW 17: Shashikumar  
PW 18: Leeman Chandrashekar  
PW 19: Srikanth  
PW 20: Gurunatha Harlapura  
PW 21: R. Lazar  
PW 22: Girsh M.R.  
PW 23: Mahesh Ugile

PW 24: Shashidar Sudakar  
PW 25: M. Annamalai  
PW 26: Vadamalai M.  
PW 27: A. Lokesh Krishna  
PW 28: V. Lokesh  
PW 29: Kalai Selvan  
PW 30: P.E. Sudhir Kumar  
PW 31: D. Sathish Kumar  
PW 32: Munisama M.  
PW 33: Stanley  
PW 34: G. Jayaprakash  
PW 35: Natarajan N.  
PW 36: Kumar Devaraj  
PW 37: Suresh S.  
PW 38: K. Shamaiah  
PW 39: M. Subramanyam  
PW 40: M.P. Kodandaramaiah  
PW 41: A. Balsami  
PW 42: R.V. Raghunandan  
PW 43: Sujatha M.  
PW 44: Ivin K. George  
PW 45: Anup Kumar Kujur  
PW 46: A.V.Satya Sai

II. List of witnesses examined for the defence : ☐NIL☐III. Documents exhibited on behalf of the prosecution:

Ex.P.1 : Instruction  
Ex.P.1(a) : Signature of Assistant Commissioner  
  
Ex.P.2 : Reciept Memo

- Ex.P.2(a) : Siganture of P.W.1
- Ex.P.3 : Check list  
Ex.P.3(a) : Signature of P.W.11
- Ex.P.4 : Export Check list
- Ex.P.5 : Commercial invoices
- Ex.P.6 : Packing list
- Ex.P.7 : Self declaration form
- Ex.P.8 : Original export value declaration
- Ex.P.9 : Declaration
- Ex.P.10 : Check list of EDI
- Ex.P.11 : System generated shipping bill
- Ex.P.12 : Examination report of inspector
- Ex.P.13 : Bill of ladding
- Ex.P.14 : Invoice
- Ex.P.15 : Screen Shots
- Ex.P.16 : Export Check list
- Ex.P.17 : Commercial Invoice
- Ex.P.18 : Packing list
- Ex.P.19 : FEMA declaration
- Ex.P.20 : Selft declaration
- Ex.P.21 : Export value declaration

Ex.P.22 : Computer generated check list Ex.P.23 : Computer generated examination report Ex.P.24 : Bill of lading Ex.P.25 : Copy of invoice Ex.P.26 : Screen shorts Ex.P.27 : Circular No.5/2022 Ex.P.28 : Copy of regular license Ex.P.29 : Instruction Ex.P.29(a): Signature of P.W.2 Ex.P.30 : Receipt Memo Ex.p.30(a): Signature of P.W.2 Ex.P.31 : Screen Shorts of Shipping bills Ex.P.32 : Screen shots of shipping bills Ex.P.33 : Certificate u/Sec.65 of Evidence Act Ex.p.33(a): Signature of P.W.2 Ex.P.34 : Public notice Ex.P.35 : Standing order Ex.P.36 : Licensing regulation rules Ex.P.37 : File



Ex.P.37(a) : Covering letter Ex.P.37(i) : Signature of P.W.4 Ex.P.37(b) : Mahazar dated 03.03.2016  
 Ex.P.37(c) : Signature of P.W.6 Ex.P.37(d) : Signature of Ivin K. George Ex.P.37(e) : Signature of  
 Ramesh Ex.P.37(f) : Signature of Jayadev Ex.P.37(g) : Signature of Rajappa Ex.P.38 : File Ex.P.39 :  
 Statement of accused No.2 Ex.P.39(a) : Signature of P.W.5 Ex.P.39(b) : Signature of accused No.2  
 Ex.P.39(c) : Signature of Sr. Officer Ex.P.40 : Statement of accused No.2 Ex.P.40(a) : Signature of  
 P.W.5 Ex.P.40(b) : Signature of accused No.2 Ex.P.40(c) : Signature of Sr. Officer Ex.P.41 :  
 Statement of accused No.2 Ex.P.41(a) : Signature of P.W.5 Ex.P.41(b) : Signature of accused No.2  
 Ex.P.41(c) : Signature of Sr. Officer Ex.P.42 : Statement of Shamaiah Ex.P.42(a) : Signature of P.W.5  
 Ex.P.42(b) : Signature of Shamaiah Ex.P.42(c) : Signature of Sr. Officer Ex.P.43 : Statement of  
 Rajappa Ex.P.43(a) : Signature of P.W.6 Ex.P.43(b) : Signature of Rajappa Ex.P.44 : Production  
 Memo Ex.P.45 : Production Memo Ex.P.45(a) : Signature of P.W.8 Ex.P.46 : Documents Ex.P.46(a)  
 : Container Delivery Ex.P.47 : Statement of P.W.9 Ex.P.47(a) : Signature of P.W.9 Ex.P.48 : Receipt  
 Memo Ex.P.48(a) : Signature of P.W.10 Ex.P.49 : Statement of account Ex.P.50 : Statement  
 Ex.P.50(a) : Signature of P.W.12 Ex.P.51 & :

Ex.P.52 : Photos

Ex.P.53 : Notice

Ex.P.53(a) : Signature of Smt. Shakuntala Naik Ex.P.54 : Chapter II general Provisions Ex.P.55 :  
 Chapter regarding ITC classification schedule Ex.P.56 : File Ex.P.57 : Seized documents Ex.P.58 :  
 Search list Ex.P.58(a) : Signature of P.W.14 Ex.P.59 : Documents Ex.P.60 : File documents Ex.P.61 :  
 VAT registration file Ex.P.61(a) : VAT registration certificate Ex.P.61(a) (i) : Signature of Amjad  
 Pasha Ex.P.62 : File Ex.P.62(a) : Statement of Jayaraj Ex.P.62(b) : Signature of Jayaraj Ex.P.62(c) :  
 Signature of P.W.16 Ex.P.62(d) : VAT registration certificate Ex.P.62(d) (i) : Signature of Amjad  
 Pasha Ex.P.63 : Certificate u/Sec.65(b) of Evidence Act Ex.P.63(a) : Signature of Leeman  
 Chandrashekar Ex.P.63(b) : Certificate u/Sec.65 (b) of Evidence Act Ex.P.63(b) (i) : Signature of  
 P.W.18 Ex.P.64 : Copy of Register Ex.P.65 : Register along with production memo Ex.P.65(a) :  
 Signature of P.W.19 Ex.P.66 : File of registration of Bolero vehicle Ex.P.66(a) : Application  
 Ex.P.66(b) : Production memo Ex.P.66(b) (i) : Signature of P.W.22 Ex.P.67 : Production memo file  
 Ex.P.67(a) : Signature of P.W.24 Ex.P.67(b) and (c) : Certificates u/Sec.56 (b) of Evidence Act  
 Ex.P.67(b) (i) and 67 (c) (i) : Signatures of P.W.24 Ex.P.68 : Proceedings Ex.P.68(a) : Signature of  
 P.W.25 Ex.P.69 : 2 weightment slips Ex.P.70 : Production memo Ex.P.70(a) : Signature of P.W.28  
 Ex.P.70(b) : Copy of Bill Ex.P.71 : Delivery Slips along with covering letter Ex.P.71(a) : Delivery slip  
 containing seal and sig.

Ex.P.71(b) : Article tracking list Ex.P.72 : Exit Register Ex.P.72(a) : Page No.101 Sl.No.193 of Ex.P.72  
 Ex.P.73 : Entry Register Ex.P.73(a) : Page No.133 Sl.No.85 of Ex.P.73 Ex.P.74 : Certificate u/Sec.65  
 of Evidence Act Ex.P.74(a) : Signature of P.W.33 Ex.P.75 : Mahazar Ex.P.75(a) : Signature of P.W.34  
 Ex.P.75(b) : Signature of Jayaraman Ex.P.75(c) : Signature of Janakhi Ex.P.75(d) : Signature of ACF  
 Natarajan Ex.P.75(e) : Signature of Surveyor Annamalai Ex.P.75(f) : Signature of AGM Kumar  
 Devaraj Ex.P.75(g) : Signature of S. Niranjana Kumar Ex.P.76 : Weightment Slip Ex.P.77 : Mahazar  
 Ex.P.77(a) : Signature of P.W.36 Ex.P.77(b) : Signature of Venkata Suresh Ex.P.77(c) : Signature of  
 Nagendra Ex.P.78 : Weightment Slip Ex.P.79 : Lease Agreement Ex.P.79(a) : Signature of  
 P.W.37's father Ex.P.79(b) : Signature of Tharakesh Ex.P.79(c) : Signature of P.W.37 Ex.P.80 :

Receipt memo Ex.P.81 : Sanction Letter Ex.P.81(a) : Signature of P.W.39 Ex.P.82 : Lease Agreement Ex.P.82(a) : Signature of P.W.40 Ex.P.82(b) : Signature of Shivakumar Ex.P.82(c) : Signature of Syed Ex.P.83 : Lease agreement Ex.P.83(a) : Signature of P.W.40 Ex.P.83(b) : Signature of accused No.2 Ex.P.84 to Ex.P.96 : Q1 to Q11 documents Ex.P.97 : Mahazar Ex.P.97(a) : Signature of P.W.42 Ex.P.97(b) : Signature of Vijay kumar Ex.P.97(c) : Signature of Harish Ex.P.97(d) : Signature of Muniraju Ex.P.97(f) : Signature of Abbas Rizvi Ex.P.97(g) : Signature of Rajappa Ex.P.98 : undertaking for Seized goods Ex.P.98(a) : Signature of P.W.42 Ex.P.98(b) : Signature of Abbas Rizvi Ex.P.98(c) : Signature of Harish Ex.P.98(d) : Signature of Muniraju Ex.P.99 : Mahazar Ex.P.99(a) : Signature of P.W.42 Ex.P.99(b) : Signature of Munirajachar Ex.P.99(c) : Signature of V. Raghunath Ex.P.99(d) : Signature of Somachndran Ex.P.99(e) : Signature of Abbas Rizvi Ex.P.99(f) : Signature of Rajappa Ex.P.100 : Mahazar Ex.P.100(a) : Signature of P.W.42 Ex.P.100(b) : Signature of Raju Dorai Ex.P.100(c) : Signature of Harish Ex.P.100(d) : Signature of Rajappa Ex.P.100(e) : Signature of Somachndran Ex.P.101 : Opinion Ex.P.101(a) : Signature of P.W.43 Ex.P.101(b) : Signature of S.R. Shukla Ex.P.102 : Register Ex.P.103 : Specimen Signature and writings of A1 Ex.P.104 : Account opening form Ex.P.104(a) : Signature of A2 Ex.P.105 : Information of application of A2 Ex.P.105(a) : Signature of A2 Ex.P.106 : Additional mandatory details of A2 Ex.P.106(a) : Signature of A2 Ex.P.107 : Copy of PAN card and Voter ID of A2 Ex.P.107(a) Signature of A2 Ex.P.108 : Specimen handwriting and sig. of A2 Ex.P.109 : Opinion Ex.P.109(a) : Signature of P.W.41 Ex.P.110 : Mahazar Ex.P.110(a) : Signature of P.W.45 Ex.P.111 : FIR Ex.P.111(a) : Signature of S.P. Ex.P.112 : Production cum receipt memo Ex.P.112(a) : Signature of P.W.46 Ex.P.113 : Documents collected from RTO Ex.P.114 : Production cum Receipt memo Ex.P.114(a) : Signature of P.W.46.

IV. LIST OF DOCUMENTS EXHIBITED FOR DEFENCE: ☐ ☐ NIL ☐ V. LIST OF MATERIAL OBJECTS MARKED FOR THE PROSECUTION: ☐ ☐ NIL ☐ VI. LIST OF MATERIAL OBJECTS MARKED FOR THE DEFENCE: ☐ ☐ NIL ☐ [R.B. KATTIMANI] XVII ADDL.CHIEF METROPOLITAN MAGISTRATE, BANGALORE.