

## **C.C./3750/2017 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. 3750/2017  
11th day of January, 2023

COMPLAINANT :

Central Bureau of Investigation,  
Anti Corruption Branch, Bangalore.

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

// Versus //

ACCUSED :

- A1. Syed Ibrahim S/o. Assan Ali,  
Major,  
R/at.No.P.90/1, 3rd cross,  
Nagappa Block, Srirampuram,  
Bengaluru - 21.
- A2. Jayaraj G., S/o.S.  
Gangadharan, aged about 32  
yrs, R/at.no.F-38, 3rd floor, L.N.  
Building, 4th main,  
Brahmapuram, Bengaluru 21.

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

2

C.C.No.3750/2017

### **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 Jayaraj.G (Accused No.2) and in pursuance of the conspiracy they got a registered a firm namely M/s. Raj Traders with accused No.2 as proprietor. In furtherance of the conspiracy, accused No.1 got the registration of the M/s. Raj Traders with the commercial Tax Department by inducting 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 in respect of shop in the name M/s. Raj Traders even though he had not taken the same on Rent and used the said false Rental Agreement for getting M/s. Raj Traders registered with the commercial tax department. Accused No.1 had prepared a false Rental Agreement in respect of shop in the M/s Raj Traders even though he had not taken the same on rent and used the said false rental agreement for getting registration of M/s Raj Traders with the Commercial Tax Department. He also opened the Bank account in the name of M/s. Raj Traders based upon the forged Rental Agreement.

3. Further it is alleged that, accused No.1 had applied for Import Export Court (IEC) by submitting the forged application form and other fake documents and accused No.1 had filed shipping documents in the name M/s. Raj Traders 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.CCSU2081448 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, as the case was made out, the I.O. has filed the charge sheet against No.1 and 2 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 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 and since there were prima facie materials available on record charge was framed and it was read over to the accused, they have pleaded not guilty and claimed to be tried.

6. In order to prove the case, prosecution has examined PW. 1 to 47 and got marked the documents Ex.P.1 to 113 and closed their side evidence.

7. The incriminating evidence prevailing against the accused the statement U/sec.313 of the Cr.P.C. was recorded and read over to the accused. 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. 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 Prop. Of M/s. Raj Traders No.F38, 3rd Floor, L.N. Building, 4th Main, Brahmapuram, Bengaluru entered into a criminal conspiracy to export Red sandors in the guise of granite slabs and in pursuance of their criminal conspiracy, registered the firm M/s. Raj Traders in the name of the accused No.2 as its Proprietor and without actual having taken any shop in the name of M/s. Raj Traders forged a rental agreement and used it as KYC document for registration of M/s. Raj Traders 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 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 02.03.2016 the officials of the Directorate of Revenue Intilligence caught red hand and seized the red sandors at ICD, Bengaluru and thereby committed the offences punishable U/sec.120B, r/w.511 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 prooves beyond reasonable doubt that, the accused No.1 and 2 registered the firm M/s. Raj Traders in the name of the accused No.2 as its Proprietor and without actual having taken any shop in the name of M/s. Raj Traders forged a rental agreement and used it as KYC document for registration of M/s. Raj Traders 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 sandors in the guise of granite slabs and on 02.03.2016 the officials of the Directorate of Revenue Intelligence caught red hand and seized the red sanders at ICD, Bengaluru and thereby committed the offences punishable U/sec.511 r/w.420 of IPC?

3) Whether the prosecution proves beyond reasonable doubt that, the accused No.1 and 2 registered the firm M/s. Raj Traders in the name of the accused No.2 as its Proprietor and without actually having taken any shop in the name of M/s. Raj Traders forged a rental agreement and used it as KYC document for registration of M/s. Raj Traders 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 and on 02.03.2016 the officials of the Directorate of Revenue Intelligence caught red hand and seized the red sandors 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 and on 02.03.2016 the officials of the Directorate of Revenue Intelligence caught red hand and seized the red sanders at ICD, Bengaluru and thereby 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 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, these points are taken together for common discussion and also to avoid the repetition of facts.

12. The case of the prosecution is that, Sri Syed Ibrahim (A□) conspired with Sri Jayaraj G. (A□2) and in pursuance of the conspiracy they got registered a firm namely M/s. Raj Traders with accused No.2 Jayaraj as Proprietor. In furtherance of conspiracy accused No.2 got the registration of M/s. Raj Traders with the commercial tax department by showing himself 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 in respect of shop in the name of M/s. Raj Traders even though he had not taken the same on rent and used the said false rental agreement for getting M/s. Raj Traders registered with the commercial tax department and he had prepared a false rental agreement in respect of the rental house of accused No.2 and used the same as KYC document and accused No.1 also opened the bank account in the name of M/s. Raj Traders based upon the above 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. The accused No.1 had filed shipping documents in the name M/s. Raj Traders with the customs authorities at ICD, Whitefield, Bengaluru while falsely declaring the goods in consignment as granite slabs. Whereas, actually it contained the prohibited red sanders wooden logs. The shipping documents i.e., packing list, commercial invoice, self declaration etc., submitted by the accused No.1 are forged one. The 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.CCSC 2081448 meant for export of granite slabs. Therefore, he had concealed red sanders knowing fully well that, it is prohibited for export and exported the same under the guise of granite slabs. After the completion of the investigation the CBI filed the charge sheet against accused No.1 and 2, for the offences punishable u/Sec.120B, 511, r/w.420, 468 and 471 of IPC and u/Sec.132 and 135 of Customs Act - 1962.

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 documents got marked Ex.P.1 to 113.

15. The Ld. Public prosecutor has vehemently argued that, the evidence of P.W.1 to 47 has 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 Raj Traders 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 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 R.3,35,02,500 of financial loss to the Government of India by way of Transport of Red sanders weighing 7.45 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 to depose on Ex.P.1 to 25. Because he has not aware anything about the contents of the documents and also he is not spell out any information about the contents of the Ex.P.1 to 25 and he had not issued 65 (b) certificate. Further, it is argued that, accused No.2 had not aware anything about the transaction of Jayem Impex and Raj Traders. The godown situated at Singanayakanahalli was stands in the name of Tharakesh, he had taken possession by paying rent. There is no connection between the present accused and Raj Traders and Jayem Impex. Likewise, Avalahalli godown was stands in the name of Shiva Enterprises and Shivakumar is the proprietor and there is no connection between the present accused and Raj Traders and Jayem Impex. The evidence of the P.W.11 is contrary to the facts of the case and suspicious with relating to the ownership and having possession of the godown. Mr. Ravichandran is named in the FIR and he is the responsible officer

examined the goods, sealed and put the one time lock (OTL) to the container. However, he is either not named in the charge sheet as an accution and not cited as witness on behalf of prosecution. He was not examined either by the I.O. or by any other officer of CBI. His statement recorded by I.O. also not produced before the Court. None production of the said statement before this Court caused serious prejudice to the defence and important chain of circumstances is thereby broken. P.W.14 V. Rajappa is partly turned hostile and therefore his evidence cannot be believed. He did not identify 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. Further it is argued that, the Balero vehicle belonging to one Mr. Praveen kumar. But, the investigation officer had not examined the said Praveen kumar and not cited him as a witness. There is no evidence about the ownership of the said vehicle and therefore i.e totally unconnected to the case. Apart from this, one Mr. Raghunandan is named in the FIR and he is the officer examined the goods and seized it. If he is not named in the charge sheet as an accused, what prevented the CBI to make him as a prosecution witness and he was not at all examined by the I.O. The godown stated belonging to Jayem Impex, but one person Tharakesh is the said to have been executed an agreement and handed over to Tharakesh and a person by name Nagabhushan was paid the advance amount and therefore this agreement of godown is totally planted by the investigation officer to connect the firm in this case. Further, it is argued that evidence of P.W.45 is not reliable and his admissions during the cross examination would clearly indicates that, the opinion given by him is only mechanical manner and he did not come to the conclusion pertaining to which are forged, and which are genuine documents. Moreover, he did not state about which are forged signatures and his opinion is not conclusive in nature, since he has not examined the reproduced documents. Moreover, he never stated about reproduced documents and not mentioned in detail about the above facts in his opinion and therefore, his expert opinion cannot be considered in evidence and believed by this Court. Hence, the fact of forgery and false documents is not at all proved by the prosecution. He had not collected the call details records (CDR) of accused No.1 and 2 to nail the accused under Section 120 (B) of IPC to prove the conspiracy between two accused persons. Further, one tall Tamilian person who was said to be the owner of the godown is not examined by CBI. The labour who was a carpenter by name Mr.Pandian had not examined by CBI and like wise, a boy who said to have been worked under Jayem Impex and G. Jayraj is not examined by the CBI. The tall Tamilian person who purchased the granite slabs from P.W.29 has not examined by the CBI. The I.O. had not made the DRI officers by name Ravichandran and Rajesh Shastri as witnesses and recorded their statements and produced before the Court. Therefore the evidence placed by the prosecution is not inspired the confidence of the Court to come to the conclusion that, the accused have committed the alleged offences. 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 upon the following judgments in support of defence case □

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.
18. In the light above facts and circumstances of the case and the arguments of prosecuiton as well as defence, I would like to discuss the evidnece of each witnesses so as to appreciate the facts of the case. 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
19. 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	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.	Copy of system generated of Shipping Bill No.6177219 dt.01.03.2016.	Ex.P.16
15.	Commercial invoice	Ex.P.17
16.	Packing list	Ex.P.18
17.	Copy of IEC code details	Ex.P.19
18.	Copies of Screen Shots	Ex.P.20
19.	Regular license	Ex.P.21



20. Copy of PAN Card	Ex.P.22
21. Copy of identity card	Ex.P.23
22. Copy of identity card	Ex.P.24
23. Copy of circular	Ex.P.25

20. 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.

21. 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.28 Shipping Bill No.6177219.

2 Screen shots pertaining to Ex.P.29 Shipping Bill No.5200926.

3	Certificate issued u/Sec.65	Ex.P.30 & Ex.P.30
	(B) of	(a)
	Evidence Act & signature of	
	the witness	

He also handed over Ex.P.31 to 33 which are the licensing, regulation rules and other documents. The Ex.P.28 to 30, they are the screenshots of the shipping bills were pertaining to the shipping made by the accused no.1 and 2 of Red Sanders, wooden logs, which was subsequently seized by the DRI officers.

22. 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.

23. 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.

24. 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.

25. PW□4 PSGV 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.

26. 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.

27. 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.34. The covering letter was marked as Ex.P.34 (a). The signature of the witness was marked as Ex.P.34 (a) (I). The investigating officer had also asked other documents and then as per production cum receipt memo dated 18.01.2016, he handed over documents to them. The documents so handed over were marked as Ex.P.35, the production cum receipt memo was marked as Ex.P.35 (a) and the signature of the witness was marked as Ex.P.35 (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.36.

28. On careful perusal of the evidence of PW4 it is proved that during January 2016 the accused have filed two shipping bills in the name of Raj Traders and Jayem 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.

29. In the cross-examination of P.W.4 stated in page No.2 that, I visited the premises of M/s Raj Traders and there we could not find any incriminating material, in the meanwhile, our another team searched the residential premises of Arul Muniswamy and they could not any incriminating material. I issued show cause notice to accused No.1 and Rajappa (CHA). Further, it is stated in page No.4 of his cross-examination that, the witnesses deposes that, the inquiry before me, they revealed that, they did not know anything about the business of M/s Jayem 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.

30. PW5 R.V.Raghunandan who was working as Sr.Intelligence Officer at Directorate of Revenue Intelligence, Zonal Unit, Bangalore has deposed that on 02.03.2016 on the direction of the Addl.

Director, DRI, Bengaluru he along with his another colleague by name Shri.Vijay Kumar went to ICD, Bengaluru to examine one container and thereafter, in the presence of the independent witnesses, one Rajappa CHA and the Asst. Manager of CONCOR first examined the container and confirmed the container based on the documents given by our higher officer and thereafter confirmed whether the seal of the customs put to the container was proper or not and it was shown to the witnesses present then. The container was given in the name of M/s Raj Traders. After confirmation of container and confirmation that the seal was intact, in the presence of the witnesses they broke open the OTL. In the container they found pallets said to be contained granites as per shipping bills. The pallets were not numbered. In the presence of the witnesses they unloaded the pallets and there were 12 pallets. Then they numbered them. After unloading first they opened the pallets numbered as 1 & 2 and then four sides of the pallets were covered with granite slabs and even on the top of the pallets also the granite slabs were covered and there were bubble wraps. In the pallets numbered as 1 & 2 there were only granites.

31. PW[5] further deposed that they opened the pallet numbered as 3. First they found granites covered with bubble wrap on the top of the pallet and on removing the same they found the hollow space wherein they found red coloured wooden logs of various sizes and widths. Thereafter, they opened the other pallets. In every pallet the top portion was covered with granites and bubble wrap and inside therein there were red coloured wooden logs of various sizes and widths. Thereafter, each wooden logs taken from each pallets were accordingly numbered. They found 241 wooden logs said to be Red Sanders of various sizes and widths. Then they separated the granites and wooden logs and took the container along with wooden logs to the weighbridge opposite to the ICD. They weighed all the logs and the total weight of 241 wooden logs came to be 7.445 tons. They brought back the container to the ICD and as the wooden logs seems to be red sanders which were contraband goods they seized the same and put the seal to the container. Thereafter, they prepared the mahazar describing the entire proceedings. The witness identified the mahazar prepared at the time of search and seizer. The copy of the same was already marked as Ex.P.36. The witness identified the original copy of the mahazar containing 4 sheets and the same was marked as Ex.P.37. The witness identified his signature in the last page and the same was marked as Ex.P.37 (a). The other witnesses present there were also put their signatures to the mahazar. The witness identified the signatures of the independent witnesses present there and the same were marked as Ex.P.37 (b) and (c). The witness identified the signature of CHA and the same was marked as Ex.P.37 (d). The witness identified the signature of his colleague officer and the signature of Abbash the Asst. Manager of CONCOR and the same were marked as Ex.P.37 (e) & (f).

32. PW[5] further deposed that after preparation of mahazar, they prepared one Supardhinama for handing over the seized 241 wooden logs appearing to be red sanders along with the container to the CONCOR. Before handing over the container they put their own seal and the CONCOR put their own seal to the container. The witness identified the Supardhinama containing one sheet and the same was marked as Ex.P.38 and the signature of the witness was marked as Ex.P.38 (a). C.W.7. Sri. Vijay Kumar his colleague was along with him at the time of search and seizer of wooden logs and also at the time of preparation of mahazarEx.P.38.

33. Further PW□5 deposed that, on 09.03.2016 again he proceeded to ICD along with one more staff and then in the presence of Abbash the Asst. Manager of CONCOR, Rajappa CHA and two more witnesses verified the container which was handed over on 02.03.2016 and then the seals were intact. Then they broke open the seals. In the presence of the witnesses he cut approximately 5 to 6 inches in 3 wooden logs for the purpose of samples for confirmation of the nature of the wooden logs. Then he put 3 samples of wooden logs measuring 5 to 6 inches in 3 separate green coloured cloth covers and thereafter, they were properly sealed and packed in the presence of the witnesses. They prepared the mahazar and the witness identified the mahazar containing 3 sheets and the same was marked as Ex.P.39. The signature of the witness was marked as Ex.P.39 (a). The witness identified the signatures of the other witnesses. The signatures of the independent witnesses are marked as Ex.P.39 (b) & (c). The signature of his colleague officer and the signature of Abbash and Rajappa are respectively marked as Ex.P.39 (d) to (f). Thereafter, they closed the container and fresh seals of both customs and CONCOR were put and the container along with one sample were handed over to Abbash the Asst. Manager of CONCOR. He took two samples. Thereafter, he handed over those two samples to the investigation officer.

34. PW□5 also stated that on 10.03.2016, he along with two independent witness and Rajappa the CHA assembled at their strong room which was in the first floor of their DRI, Zonal office for drawing samples of wooden logs appearing to be red sanders seized from survey No.117/8 and 115/9 of Singanayakanahalli village, Yelahanka hobali on 03.03.2016. They opened the strong room and took 3 representative samples measuring approximately 5 to 6 inches from 3 different wooden logs stored in that room. After cutting the sample logs they put each sample in each green cloth line cover and sealed them and embossed with our DRI office seal. The entire proceedings was witnessed by the witnesses and CHA Rajappa. They prepared the mahazar for drawing of samples. The witness identified the mahazar containing 2 sheets and the same was marked as Ex.P.40. The signature of the witness was marked as Ex.P.40 (a). The signatures of the independent witnesses and of Rajappa are respectively marked as Ex.P.40 (b) to (d). Then one of the colleagues was also present and his signature was marked as Ex.P.40 (e). Thereafter, he handed over all the 3 representative samples to the investigating officer.

35. PW□6 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.41. The witness identified his signature and also the signature of the accused. The signature of the witness was marked as Ex.P.41 (a) and the signature of the accused was marked as Ex.P.41 (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.41 (c). Again on 28.04.2016 and 17.08.2016 he examined the accused Jayaraj then before the court and

recorded his statements. The statements of the accused dated 28.04.2016 and 17.08.2016 were marked as Ex.P.42 and 43. The witness identified his signatures and also the signatures of the accused found on Ex.P.42 & 43. The signatures of the witness were marked as Ex.P.42 (a) and 43 (a). The signatures of the accused were marked as Ex.P.42 (b) and 43 (b). The signatures of the higher officer were marked as Ex.P.42 (c) and 43 (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 Raj Traders. That on 27.06.2016 he also examined K. Mallesh and recorded his statement. The statement of K. Mallesh was marked as Ex.P.44. The witness identified his signature and also the signature of K. Mallesh. The signature of the witness was marked as Ex.P.44 (a) and the signature of K. Mallesh was marked as Ex.P.44 (b).

36. In the cross-examination, P.W.6 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.6, it is stated that I am aware of the case registered against custom officials.

37. PW-7 Ivin K George who was working as Asst. Director, Office of Addl. Director General, Directorate of Revenue Intelligence, Zonal Unit, Bengaluru has deposed that on 02.03.2016 the officers of the DRI examined one container in the ICD, Bengaluru and then they found that some red wooden logs supposed to be red sanders were being tried to export. During examination it was revealed that M/s Raj Traders was also having godown at Singanayakanahalli Village, Yelahanka Hobali. That on 03.03.2016 on the direction of the higher officer he along with the other officer namely K. S. Vijay Kumar and Rajappa the CHA visited the premises of M/s Raj Traders situated at Singanayakanahalli Village. That was a large godown and it was locked. The CHA Rajappa told that he had a copy of rental agreement and he had keys of that godown. Then they opened the godown and the first portion of the godown was consisting of large shed and behind it there were 2 portions partitioned with pre painted galvanized steel sheets. They did not find anything in the open space. The back side 2 portions were closed. First they examined right side portion and they found packing materials. Thereafter, they examined left side portion and there they found 12 red coloured wooden logs of different sizes and girths and also of different lengths. They also found 29 small pieces of red coloured wooden pieces. Rajappa informed that same coloured wooden logs had been seized by the DRI officer at ICD, Bengaluru on the previous day. Then the logs were segregated and weighed. The total weight of logs and wooden pieces came to be 408.17 Kgs. Then they also found hand operated electric saw. Thereafter, they prepared the mahazar and seized all the wooden logs and wooden pieces. They also seized the packing materials and the saw. The witness identified the mahazar and the same was marked as Ex.P.45. The witness identified his signature therein and the same was marked as Ex.P.45

(a). Then 2 independent witnesses, their officer and Rajappa CHA were present and they put their signatures to the mahazar. The witness identified the signatures of the independent witnesses, of their officer and also of Rajappa and the same were marked as Ex.P.45 (b) to (e). Thereafter, they locked the godown and sealed it with paper seal.

38. In the cross-examination P.W.7 stated that on 03.03.2016 visited the godown situated at Singanayakanalli and inspected. In page No.2 of cross-examination it is stated that the key with Rajappa, opened, found 29 pieces of red sanders drwan the mahazar as per Ex.P.45. Likewise, in page No.3 it is stated that I did not enquired its own, I did not enquired in whose position the godown was.

39. PW-8, 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.46 and the signatures of the witness and of Rajappa are marked as Ex.P.46 (a) and Ex.P.46 (b).

40. In the cross-examination of P.W.8 stated that, on 04.03.2016 he visited the godown sitauted 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. In the cross-examination, advocate for the accused denied the entire chief examination of P.W.8. Mere denial is not sufficient to disbelieve the evidence of P.W.8.

Witnesses from Shipping Agencies:

41. 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;

42. PW-9 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 the freight forwarding agency in turn passed it to the CHA and the CHA on presenting the same at ICD took 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 8 sheets was marked as Ex.P.47.

43. PW 10 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 is 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. 6177219 dated 01.03.2016 and other documents which were already marked as Ex.P.47. 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.48 and the signature of the witness was marked as Ex.P.48(a). The witness identified the other documents containing 6 sheets along with certificate and the same were marked as Ex.P.49. The witness identified the container delivery order and the same was marked as Ex.P.49 (a). M/s Raj Traders is the ultimate exporter for whom M/s Glottis had taken the present container from M/s Maxicon Shipping Agencies.

44. In the cross examination of P.W.10 stated that, he was the freight forwarding agency. On 02.03.2016 the red sanders were recovered under mahazar Ex.P.36 and recorded the statement of Jayraj as per Ex.P.41 to 43. In the page No.5 of cross examination of P.W.10 it is stated that, I am aware that, the case registered against the custom officials.

45. PW.13 Sri Rakesh G.S., in his evidence had 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.17 to 19 and after receiving those documents he prepared annexure - C marked as Ex.P.3 and submitted the same to the inspector of customs for goods registration. The witness deposed his handwriting on Ex.P.3. 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.



46. In the cross-examination of P.W.13 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.

47. PW.14 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 2 shipping bills bearing Nos.5200926 dated 11.01.2016 marked as Ex.P.10 and 6177219 dated 01.03.2016 marked as Ex.P.16. Both Ex.P.10 & 16 were belonging to the exporter M/s Raj Traders and in both cases the consignees were of Malaysia. He also identified other documents such as invoice, packing list, form SDF, export valuation declaration and declaration Ex.P.17 to 19 and 3. During processing of export documents the customs official physically examined the goods and then their employee Rakesh was present. Finally let export orders were issued.

48. PW.14 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).

49. Further PW□4 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.54 and the signature of the witness was marked as Ex.P.54 (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.55. The witness also identified one set of 8 photos containing red sanders belonging to this case and they were together marked as Ex.P.56.

50. In the cross□examination P.W.14 in page No.2 it is stated that, I do not know the accused No.1 and 2 before the Court. One Syed used to called me over phone and send the documents with their boy.

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

51. PW.11 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□1 in his evidence had stated that he knew the accused Syed Ibrahim then before the court. 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.

52. PW□1 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.

53. P.W.11 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. The witness identified the mahazar and the same was marked as Ex.P.50. The signature of the witness was marked as Ex.P.50 (a). 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.44. The signature of the witness was already marked as Ex.P.44 (b). 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.

54. In the cross-examination of P.W.11 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. 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.

Witnesses from ADGFT:

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

56. PW.15 Smt. N. S. Beena, in her evidence has stated that since 2015, she had been working as UDC at ADGFT office, Bengaluru. She was working in the IEC section of ADGFT office. Her nature of work was to receive submitted applications seeking IEC from the counter, processing them and forwarding them to foreign trade development officer for issuance of IEC. She did not know the accused then before the court. In this case after receiving the submitted application with documents for seeking IEC for M/s Raj Traders she processed them and forwarded them to FTDO section for further processing for issuance of IEC as the documents were in proper and prescribed manner. The witness identified the application and annexed documents seeking IEC and they were together marked as Ex.P.57. The witness identified the file for processing for IEC and entire file was marked as Ex.P.58. The witness identified the IEC and the signature of their ADGFT Md. Moin Afaque. The IEC was marked as Ex.P.58 (a) and the signature of their ADGFT was marked as Ex.P.58 (b).

57. PW.16 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 Raj Traders and the same was marked as Ex.P.59. The witness identified the signature of Smt. Shakuntala Naik and the same was marked as Ex.P.59 (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.60 & 61 respectively. As per Ex.P.61 the export of processed and unprocessed red sanders were prohibited.

Witnesses from Commercial Tax office who proves VAT registration:

58. The prosecution has cited following witnesses from Commercial Tax office in order to prove the VAT registration of M/s.Raj Traders and Jayem Impex.

59. P.W.17 □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.62 & Ex.P.63.

60. PW.18 Sri Smt. G. Prabhavathi, in her evidence has stated 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.

61. Further P.W.18 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.

62. Further P.W.18 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.65. 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.65 (a) and the signature of Amjad Pasha as Ex.P.65

(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.

63. PW.19 Sri M. N. Amjad Pasha, in his evidence has stated that the Assistant commissioner of Commercial Taxes was the head of LVO - 35. He being the head of the establishment used to issue LVO registration certificates. The witness identified the VAT registration certificate issued by him in favor of M/s Raj Traders. He also identified his signature therein. The VAT registration certificate was already marked as Ex.P.62 (d) and the signature of the witness was already marked as Ex.P.62 (d) (I).

64. PW.22 Sri Srikantha, in his evidence he deposed that while working as transport in charge at Sri Lakshmi Ranghanatha 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.68 and the signature of the witness in the production memo is marked as Ex.P.68 (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.68 wherein the Lorry had been allotted to M/s Raj Traders. The witness also identified page No.26 & 27 of Ex.P.68 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. 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.

65. PW.23 Sri B. Vittal, in his evidence he deposed that the Lorries were supplied from their transport side on the request of CHA and others. After booking from the concerned, Lorries were allotted and they were asked to go to CONCOR and to take containers to bring goods to the

CONCOR. About 2 & 1/2 years back he was asked to take a container from the CONCOR and proceed with lorry to Rajanakunte. Accordingly, he took the lorry bearing registration number KA - 31 3205 and took one container of 20 feet length and proceeded towards Rajanakunte. He was also given the mobile number whom he should contact with. When he contacted that person he told him to wait at HP Petrol bunk, Rajanakunte. When he was waiting near HP petrol bunk the accused Syed Ibrahim then before the court came in a Car and took him to a godown nearby there. There they loaded the packages as they were granites. Then he was sleeping in the lorry. After completion of loading of the lorry he took the lorry to CONCOR. The accused Syed Ibrahim then before the court was present in the godown at the time of loading the container.

66. The prosecution examined the witnesses to prove the mahazar of DRI for opening the container and taking of samples by DRI and CBI:

67. PW□4 Rajappa has deposed before the court that during 2016 they received the documents pertaining to Raj Traders and Jayem exports for export of goods and then their goods pallets containing granites were stuffed in two separate containers one pertaining to M/s.Jayem Impex and another pertaining to M/s.Raj Traders. Out of it one container was already transported from ICD Bangalore to Chennai and other container was in ICD, Bangalore. 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).

68. PW□4 further deposed that 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). Thereafter, 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.54 and the signature of the witness was marked as Ex.P.54 (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.55. The witness also identified one set of 8 photos containing red sanders belonging to this case and they were together marked as Ex.P.56.

69. P.W.24 □ Sri R. R. Mugalkhod in his evidence he deposed that on the direction of their superior officer that on 26.10.2016 in the morning he reported to the investigating officer of the CBI at their CBI office, Bengaluru. Thereafter, on that day he proceeded with the CBI officers to the inland container depot, Whitefield, Bengaluru. They had gone in one vehicle. The others also came in two vehicles and total 15 members were gathered at the ICD. First they went to one godown and there they saw one container which was sealed. Thereafter, they took the container and put it on the trailer and they weighed it. First the seal was intact and in their presence it was opened. Inside the container there were red colored wooden logs said to be red sanders and all the red sanders were taken outside. Then they were counted and they came to be 241 in numbers. Again empty container was weighed so to find out the weight of the red sanders. Thereafter, once again they were loaded in the container and container was locked with two locks and it was sealed. During inspection photographs of the red sanders were taken and the entire proceedings were video graphed. Thereafter, they proceeded to one godown within the premises of the ICD and there they noticed 12 boxes/pallets and 179 granites. Then they prepared the proceedings for conducting the weighment and inspection of the red sanders and they put their signatures to it. The witness identified the proceedings and the same was marked as Ex.P.69 and the signature of the witness was marked as Ex.P.69 (a). The others present there also put their signatures to it. The witness identified two weighment slips and the photos having red sanders and other things. The weighment slips were together marked as Ex.P.70. Photos having two sheets together were marked as Ex.P.71.

70. PW□6 Vijay Kumar has deposed 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 seemed 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).

71. PW□5 Raghunandan had given evidence before the court that on 02.03.2016 on the direction of the Addl. Director, DRI, Bengaluru he along with his another colleague by name Sri Vijay Kumar went to ICD, Bengaluru to examine one container and thereafter, in the presence of the independent witnesses, one Rajappa CHA and the Asst. Manager of CONCOR first examined the container and confirmed the container based on the documents given by their higher officer and thereafter confirmed whether the seal of the customs put to the container was proper or not and it was shown to the witnesses present then. The container was given in the name of M/s. Raj Traders. After confirmation of container and confirmation that the seal was intact, in the presence of the witnesses they broke open the OTL. In the container they found pallets said to be contained granites as per shipping bills. The pallets were not numbered. In the presence of the witnesses they unloaded the pallets and there were 12 pallets. Then they numbered them. After unloading first they opened the pallets numbered as 1 & 2 and then four sides of the pallets were covered with granite slabs and even on the top of the pallets also the granite slabs were covered and there were bubble wraps. In the pallets numbered as 1 & 2 there were only granites. Thereafter, they opened the pallet numbered as 3. First they found granites covered with bubble wrap on the top of the pallet and on removing the



same they found the hollow space wherein they found red colored wooden logs of various sizes and widths. Thereafter, they opened the other pallets. In every pallet the top portion was covered with granites and bubble wrap and in side therein there were red colored wooden logs of various sizes and widths. Thereafter, each wooden logs taken from each pallets were accordingly numbered. They found 241 wooden logs said to be red sanders of various sizes and widths. Then they separated the granites and wooden logs and took the container along with wooden logs to the weighbridge opposite to the ICD. They weighed all the logs and the total weight of 241 wooden logs came to be 7.445 tons. They brought back the container to the ICD and as the wooden logs seemed to be red sanders which were contraband goods they seized the same and put the seal to the container.

72. PW□5 has further deposed that they had prepared the mahazar describing the entire proceedings. The witness identified the mahazar prepared at the time of search and seizer. The copy of the same was already marked as Ex.P.36. The witness identified the original copy of the mahazar containing 4 sheets and the same was marked as Ex.P.37. The witness identified his signature which was in the last page and the same was marked as Ex.P.37 (a). The other witnesses present then were also put their signatures to the mahazar. The witness identified the signatures of the independent witnesses present then and the same were marked as Ex.P.37 (b) and (c). The witness identified the signature of CHA and the same was marked as Ex.P.37 (d). The witness identified the signature of his colleague officer and the signature of Abbash the Asst. Manager of CONCOR and the same were marked as Ex.P.37 (e) & (f). After mahazar, they prepared one Supardhinama for handing over the seized 241 wooden logs appearing to be red sanders along with the container to the CONCOR. Before handing over the container they put their own seal and the CONCOR put their own seal to the container. The witness identified the Supardhinama containing one sheet and the same was marked as Ex.P.38 and the signature of the witness was marked as Ex.P.38 (a). C.W.7 Sri Vijay Kumar his colleague was along with him at the time of search and seizer of wooden logs and also at the time of preparation of mahazar Ex.P.38. That on 09.03.2016 again he proceeded to ICD along with one more staff and then in the presence of Abbash the Asst. Manager of CONCOR, Rajappa CHA and two more witnesses verified the container which was handed over on 02.03.2016 and then the seals were intact. Then they broke open the seals. In the presence of the witnesses he cut approximately 5 to 6 inches in 3 wooden logs for the purpose of samples for confirmation of the nature of the wooden logs. Then he put 3 samples of wooden logs measuring 5 to 6 inches in 3 separate green colored cloth covers and thereafter, they were properly sealed and packed in the presence of the witnesses. They prepared the mahazar and the witness identified the mahazar containing 3 sheets and the same was marked as Ex.P.39. The signature of the witness was marked as Ex.P.39 (a). The witness identified the signatures of the other witnesses. The signatures of the independent witnesses were marked as Ex.P.39 (b) & (c). The signature of his colleague officer and the signature of Abbash and Rajappa were respectively marked as Ex.P.39 (d) to (f). Thereafter, they closed the container and fresh seals of both customs and CONCOR were put and the container along with one sample were handed over to Abbash, the Asst. Manager of CONCOR. He took two samples. Thereafter, he handed over those two samples to the investigation officer.

73. PW□5 further deposed that that on 10.03.2016, he along with two independent witness and Rajappa the CHA assembled at their strong room which was in the first floor of thei DRI, Zonal office for drawing samples of wooden logs appearing to be red sanders seized from survey No.117/8

and 115/9 of Singanayakanahalli village, Yelahanka hobali on 03.03.2016. they opened the strong room and took 3 representative samples measuring approximately 5 to 6 inches from 3 different wooden logs stored in that room. After cutting the sample logs they put each sample in each green cloth line cover and sealed them and embossed with their DRI office seal. The entire proceedings were witnessed by the witnesses and CHA Rajappa. They prepared the mahazar for drawing of samples. The witness identified the mahazar containing 2 sheets and the same was marked as Ex.P.40. The signature of the witness was marked as Ex.P.40 (a). The signatures of the independent witnesses and of Rajappa were respectively marked as Ex.P.40 (b) to (d). Then one of the colleagues was also present and his signature was marked as Ex.P.40 (e).

74. PW 7 Ivin George has deposed that on 02.03.2016 the officers of the DRI examined one container in the ICD, Bengaluru and then they found that some red wooden logs supposed to be red sanders were being tried to export. During examination it was revealed that M/s Raj Traders was also having godown at Singanayakanahalli Village, Yelahanka Hobali. That on 03.03.2016 on the direction of the higher officer he along with the other officer namely K. S. Vijay Kumar and Rajappa the CHA visited the premises of M/s Raj Traders situated at Singanayakanahalli Village. That was a large godown and it was locked. The CHA Rajappa told that he had a copy of rental agreement and he had keys of that godown. Then they opened the godown and the first portion of the godown was consisting of large shed and behind it there were 2 portions partitioned with pre painted galvanized steel sheets. They did not find anything in the open space. The back side 2 portions were closed. First they examined right side portion and they found packing materials. Thereafter, they examined left side portion and there they found 12 red colored wooden logs of different sizes and girths and also of different lengths. They also found 29 small pieces of red colored wooden pieces. Rajappa informed that same colored wooden logs had been seized by the DRI officer at ICD, Bengaluru on the previous day. Then the logs were segregated and weighed. The total weight of logs and wooden pieces came to be 408.17 Kgs. Then they also found hand operated electric saw. Thereafter, they prepared the mahazar and seized all the wooden logs and wooden pieces. They also seized the packing materials and the saw. The witness identified the mahazar and the same was marked as Ex.P.45. The witness identified his signature therein and the same was marked as Ex.P.45

(a).

75. PW.34 Sri Harish K., has deposed that on 02.03.2016 when he was working there the DRI officials went and asked him to stand as a witness as one container was to be inspected. One Muniraju the worker of M/s Access Worldwide Cargo was also present. The DRI officials in their presence cut opened two sealed OTLs of one container and in the container there were pallets. The DRI officials opened the said pallets. In two pallets which were in front side were full of granites but in the remaining which were kept in the backside, there were granites in the outer space and there were red sanders in their center portion. Then all the pallets were destuffed and they counted the red sander logs and then they gave the numbers to them. The empty container was weighed by taking it to the weighbridge. Then after completion of the process the same were stuffed in the container and once again it was weighed. Then the container was locked & sealed and it was handed over to one officer namely Abbas of CONCOR. Thereafter, the mahazar was prepared. The witness identified the mahazar and it was already marked as Ex.P.37. The witness identified his signature

and the same was already marked as Ex.P.37 (b). The witness identified the signature of the other witness namely Muniraju and the same was already marked as Ex.P.37 (c). The witness also identified the undertaking of custody which was already marked as Ex.P.38. The witness identified his signature and the same was marked as Ex.P.38 (b).

76. PW.34 further deposed that again the DRI officials called them to their office situated at HRBR Layout, Bengaluru. There he and one Rajappa were present. The DRI officials in their presence took some red sanders from their strong room and they took two samples by cutting in the said wooden logs for the purpose of testing. Then they prepared the Mahazar. The witness identified the mahazar and the same was already marked as Ex.P.40.

77. PW.35 Sri Munirajachar, in his evidence has stated that M/s Tenacity Logistics is a forwarding company having its office at Kasturinagar, Bangalore. It was having work also at ICD. He had been working at ICD. In the month of March 2016 while he was working at ICD DRI officials had gone to ICD. The DRI officials asked him to stand as a witness for the purpose of opening a container therein. One Sri Rajappa a CHA was also present. The customs officials were also present. The one time locker of the container was opened using cutter. There were red sanders wooden logs. The officials took three pieces of red sanders by cutting the red sanders logs therein. Thereafter, they prepared the mahazar. The witness identified the mahazar which was already marked as Ex.P.39. The witness identified his signature which was in the second page and the same was already marked as Ex.P.39 (b). Thereafter, the red sanders logs stuffed in the domestic container. Since, the earlier container was international container it was not used for keeping the red sanders. Again on 26.10.2016 the CBI officials came to ICD. On that day along with the CBI officials the DRI officials and the customs officials were present and they opened the container wherein the red sanders were stored and they inspected them. Then they weighed the red sanders in the weighbridge to find out the weight of the red sanders. Then they also took red sanders pieces as samples from the logs. Then they took photos and it was video graphed. Thereafter, they prepared the mahazar. The witness identified the mahazar which was already marked as Ex.P.69. The witness identified his signature and the same was marked as Ex.P.69 (b). Thereafter, the container was locked. The witness identified weighment slip which was already marked as Ex.P.70. The witness identified the photos taken at the time of inspecting the wooden logs and the same were already marked as Ex.P.71. C.W.49 Sri V. Raghunath was also present both at the time of conducting mahazars and taking samples as per Ex.P.39 and Ex.P.69. The witness identified the signature of the C.W.49 and the same was already marked as Ex.P.39 (c). The witness further identified the signature of C.W.49 in Ex.P.69 and the same was marked as Ex.P.69 (c).

78. PW.36 Sri Yogendra Tripathi, in his evidence he deposed that on 19.01.2017 he was working in the Customs office situated at ICD. On that day the CBI officials came to ICD and as per their direction he stood as a witness for drawing of samples of red sanders. One official of State bank of India was also present. On that day the CBI officials opened the container and they took three red sanders pieces by cutting red sanders logs. After taking samples again the container was sealed with OTL. Thereafter, they prepared the mahazar for drawing of samples. The witness identified the mahazar and the same was marked as Ex.P.81. The witness identified his signature therein and the same was marked as Ex.P.81

(a). The other witnesses also put their signatures in his presence.

Witnesses from CONCOR Whitefield who proves the allotment of containers:

79. The prosecution has examined the following witnesses are from CONCOR Whitefield Bangalore to proves the allotment of containers for transport of goods to the accused.

80. PW.32 Sri D. Sathish Kumar, who was working as Manager at CONCOR Whitefield, Bangalore has deposed that as a 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 taken out of the ICD premises through their own transport and after loading, they once again brought 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 those things happens 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.78. The page No.139 Sl.No.159 of Ex.P.78 was marked as Ex.P.78 (a). As per Ex.P.78 (a) the container No.CCSU - 2081448 had been moved from ICD through vehicle No. KA-31 3205 on 29.02.2016. The witness identified the entry register dated 26.02.2016 to 11.03.2016 and the same was marked as Ex.P.79. The page No.055 Sl.No.26 of Ex.P.79 was marked as Ex.P.79 (a). As per Ex.P.79 (a) the container No.CCSU - 2081448 had come back to ICD through vehicle No. KA - 31 3205 on 01.03.2016. He had also handed over based application form dated 29.02.2016 along with container placement requisition by Maxicon Shipping agencies and the same were marked as Ex.P.80. Base application form was marked as Ex.P.80 (a) and the container placement requisition was marked as Ex.P.80 (b). Ex.P.80 revealed that the container number CCSU - 2081448 had been allotted to M/s Srinidhi Shipping. The witness identified the bill cum receipt generated from CONCOR issued in the name of exporter M/s Raj Traders for moving the container with cargo to Chennai port and the same was already marked as Ex.P.49. The way bill was marked as Ex.P.49

(b). Therefore the evidence of PW 32 proves the fact that they have arranged for the cargo in respect of the goods of M/s.Raj Traders for export through Chennai port.

Expert witnesses:

81. PW.42 Sri Dr.Narasimhamurthy, in his evidence had deposed that he secured his post graduation degree in Botony from Bengaluru University.

Thereafter, he joined to IPIRTI, Bengaluru as Scientist in the year 2008. He had undergone a Special training with respect to Wood Anatomy in the same institution. His work nature was to

identify the nature of wood and its wood species. He used to conduct test of almost 200 wood per year and issue certificates. So, he had an experience of identifying the nature and species of wood. On 31/01/2017 he received request letter from CBI/ACB/Bengaluru for wood identification and they also sent sample wood log pieces with sealed cover along with said request letter. After, process of wood identification, he found the above said 3 wood samples, pertaining to Red Sanders, its Botanical name was "Pterocarpus Santalinus" thereafter, he submitted his test report to his Joint Director namely Dr. Manoj Kumar Dube and the said Joint Director sent test report to CBI along with covering letter. The covering letter and test report sent by joint director and same were marked as Ex.P.88 and Ex.P.89 (Ex.P.89 contains 2 sheets) both documents bears signatures of his Joint Director, same were marked as Ex.P.88 (a) and Ex.P.89(a). Ex.P.89 bears his signature and the same was marked as Ex.P.89(b).

82. PW.45 Sri A. Balsami, in his evidence he has deposed that he had compared the questioned writings and signatures and corresponding standard writings and signatures of Syed Ibrahim, G. Jayaraj and Jayamma 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□46, S□52 to S□57 and S□80 to S□89 are proper signatures and the signatures written in red enclosed writings similarly stamped and marked Q□6 to Q□10, Q□5 and Q□7 to Q□9 (those were the disputed signatures) (2) The person who wrote the specimen and admitted signatures are stamped and marked S□93 to S□98 and A□ to A□9 did not write the red enclosed disputed signatures similarly stamped and marked Q□20 to Q□25 Q□28, Q□31, Q□34 to Q□41, Q□45 & Q□46.

83. In the cross□examination of P.W.45 it is stated in page No.2 of his cross□examination that, it is true that, initially I am an intelligence officer, I undergone training in the field of handwriting, identification, it is true to suggest that, I did not study in any University in respect of Expert u/Sec.45 of Indian Evidence Act. It is true that, some documents are originals, some documents are reproduced. I have not mentioned the which documents are original which documents are produced, not mentioned the same in my opinion. In page No.3 it is stated that, it is true to suggest that, there are dissimilarities are found in para No.2 of my opinion report. It is true that, I have not produced enlarged photos of signatures, superimposition test is not conducted. It is true suggest that, I have not specifically mentioned the number of all the above said strokes and characters those are capital leading stroke, middle zone, lead - ins, lower zone, lead - ins, dots - in, upper zone, dots, cross bars, T.U.V. stems, cross bars, omitted cross, bars, loops, top middle lower, right - slanting letters, left - slanting letters in my report. It is true to suggest that, reproduced documents we cannot compared. It is true to suggest that mere similarity is not a conclusive proof.

84. PW.46 Sri Mahendra Devaram Gawde is the investigation officer, in his evidence he deposed that from April 2015 to January 2018, he was working as Sub Inspector of Police at Bengaluru. He took over the investigation of this case on 22.09.2016 registered by CBI/ACB in R.C.14(A)/2016. After taking over the charge of this case, he examined Sri. B. Rajappa on 29.09.2016, Sri. Alok

Kumar Singh on 08.10.2016, Sri. Umar Farooq on 10.10.2016, Smt. G. Anitha on 18.10.2016, Sri. M.V. Nagaraja on 18.10.2016. Further he had also examined five witnesses on 20.10.2016 namely R.V. Raghunandan, Vijay Kumar, Ivin K. George, K.S. Vijay Kumar and Anup Kumar Kujur. Further on 21.10.2016 he examined Lokesh V and further examination of V. Rajappa. Further on 22.10.2016, he examined K. Shamaiah and Suresh Mryuthunjaya. Further on 25.10.2016, he examined Navashakthi. K., Vincent Vinod, Paul Pandayan and Joseh P.D. On 28.10.2016, he examined Rakesh G.S., and Mahesh Hugile. Further on 02.11.2016, he examined Shashikumar N.K., A. Lokesh Krishna and K. Mallesh. On 03.11.2016, he examined N. Shiva Kumar. On 07.11.2016, he examined Shashidhar Sudhakar. On 08.11.2016, he further examined Shamaiah and Suresh Mryuthunjaya. On 09.11.2016, he examined Leeman Chandrashekar and further examined Shashi Kumar N.K. On 10.11.2016, he examined D. Xaiver and B. Vittal and further examined Lokesh.

85. He further deposed that on 11.11.2016, he examined Srikanth. On 17.11.2016, he examined Mrs. Navaneetham, Sri. Munirajachar and B. Raghunathan. On 18.11.2016, he examined Smt. Jayamma and further examined Mallesh. On 22.11.2016, he examined G. Prabhavathi, Harish K and Muniraju M. On 23.11.2016, he examined Mohammed Mohin Afaque. On 07.12.2016, he examined Mrs. Beena. On 15.12.2016, he examined Abbas Rizvi. On 22.12.2016, he examined Revanna, Kalaiselvan and R. Lazar. On 23.12.2016, he examined B. Sathish Kumar. On 27.12.2016, he examined Raju Durai. He had recorded statement of above said witnesses. The document which was identified by him was the FIR registered by the then S.P., Dr. Subramanyeshwara Rao, which was marked as Ex.P□00 (2 sheets). Signature of Dr. Subramaneshwara Rao was marked as Ex.P□00(a). On 05.10.2016, he received letter from Assistant Commissioner of Commercial Tax, LVO□35, Bengaluru along with 20 documents. On 08.10.2016, he collected 21 documents from Sri. Alok Kumar Singh vide production cum receipt memo. On 10.10.2016, he collected one document from Umar Farooq. On 18.10.2016, he visited to ICD customs and collected three documents from D. Xavier vide production□cum□ receipt memo. On 21.10.2016, he collected three documents from Lokesh B vide production cum receipt memo. On 22.10.2016, he collected one document from K. Shamaiah vide production cum receipt memo. On 25.10.2016, he collected one document from Navashakthi K. vide production cum receipt memo. On the same day, he collected one document from Paul Pandayan vide production cum receipt memo, on the same day one document from Smt. Neetha Nair vide production cum receipt memo, on the same day, he collected two documents from Joseph P.D., vide production cum receipt memo. On 26.10.2016, he conducted proceedings for examination of contents of container No.CCSU2081448 at ICD customs and collected three documents enclosed with the proceedings. On 28.10.2016, he received letter from ICICI Bank, Malleshawaram Branch enclosing four documents. On 29.10.2016, he collected one document from K. Mallesh vide production cum receipt memo. On 07.11.2016, he collected one document from Jayaraj G., vide production cum receipt memo. On 09.11.2016, he collected ten documents from Leeman Chandrashekar vide production cum receipt memo. On 10.11.2016, he received letter from Smt. Deepthi enclosing two documents. On 11.11.2016, he collected one document from Srikanth vide production cum receipt memo. On 18.11.2016, he collected two documents from Mrs. Jayamma vide production cum receipt memo. On 19.11.2016, he collected one document from Jayaraj G., vide production cum receipt memo. On 22.11.2016, he collected two documents from Mrs. Prabhavathi vide production cum receipt memo. On 23.11.2016, he collected two documents from Mohammed Moin Afeque vide production cum receipt memo. On 29.11.2016, he received one document from Bharathi Airtel Ltd. On 01.12.2016, he collected one

document from Mahesh Hugile vide production cum receipt memo. On 19.12.2016, he received one letter from Miss. Deepa N., enclosing one document. On 22.12.2016, he received one letter from Sr. Superintendent of Police Office, Bengaluru East Division enclosing one document, on the same day, he received one letter from Deputy Commissioner for Transport and Sr. RTO, Bengaluru South. On 23.12.2016, he collected three documents from D. Sathish Kumar vide production cum receipt memo. On 18.01.2017, he collected ten documents from Subramanyam P.S.G.B., vide production cum receipt memo. On 19.01.2017, he conducted proceedings for drawing samples of the wooden logs and collected three documents enclosed with the proceedings. After completion of his investigation, he had submitted charge sheet against the accused persons.

86. PW.47 Sri K.Y. Guruprasad is also the investigation officer, in his evidence he deposed that from February 2010 to September 2016, he worked as Dy.S.P in CBI/ACB, Bengaluru. On 24.06.2016, this case was entrusted to him for investigation. After taking over the charge of this case, on 20.07.2016, he obtained search warrant from Hon'ble Addl. District and Sessions Judge, Spl. Court for CBI Cases to search premises of Rajesh Shastri, Superintendent of Customs and ICD, Bengaluru, Dayananda Swamy, Inspector of Customs ICD, Bengaluru and G. Jayaraj. On 22.07.2016, he executed the search warrant at the residential premises of Rajesh Shastri and seized incriminating documents under a search list. The witness identified the search list dated 22.07.2016 conducted at the premises of Rajesh Shastri, which was marked as Ex.P□02 (5 sheets) signature of the witness was marked as Ex.P□02(a). The witness identified another search list executed by Inspector A.V.S. Sai in the residence of Dayananda Swamy, it was marked as Ex.P□03 (4 sheets). The witness identified the search list conducted in the residential premises of accused No.1 Syed Ibrahim, as per his authorization, P. Rajashekar executed the search warrant, which was marked as Ex.P□04 (5 sheets). The signature of P. Rajashekar was marked as Ex.P□04(a). The witness identified the search list conducted in the residential premises of Jayaraj by Inspector Vivekananda Swamy, which was marked as Ex.P□05 and he could identify his signature which was marked as Ex.P□05(a). On 25.07.2016, he wrote the duly executed search warrant along with original search list and obtained court permission to retain the documents for investigation purpose. As he was under the order of transfer, he handed over all the case papers to PW□46 PSI M.D. Gawde for further investigation.

87. On perusal of the material available on record, in the instant case initially the case was registered against the accused No.1 to 3. Accused No.1 by name Rajesh Shastri the then Superintendent of customs and accused No.2 by name Dayananda swamy the then Inspector of customs while working at Inland Container Department (ICD), Whitefield Road, Bangalore. During the month of February - March 2016, they have entered into a criminal conspiracy with accused No.3 M/s Raj Traders, Bangalore Import Export Code (IEC No.07150023942) at Bangalore and other places and in pursuance of the criminal conspiracy accused No.3 produced contraband item of red sandals, concealed the same in the container boxes meant for export of granites slabs and have illegally exported to the foreign countries with the connivance of accused No.1 and accused No.2.

88. On perusal of the final report submitted by the investigation officer, it is alleged that, Sri Syed Ibrahim accused No.1 conspired with Sri Jayaraj G. accused No.2 and in pursuance of the conspiracy they got registered a firm M/s Raj Traders with Jayaraj G. as proprietor. In furtherance of the conspiracy Syed Ibrahim made Sri Jayaraj G. proprietor of M/s Raj Traders to open a bank

account in the name of M/s Raj Traders in ICICI bank, Malleshwaram branch, Bangalore. Syed Ibrahim further got M/s Raj Traders registered with the Commercial Tax Department and Sri Jayaraj G. allowed the same by signing the requisite bank documents. Sri. Syed Ibrahim also prepared a Forged Rental Agreement in respect of shop in the name of M/s Raj Traders even though he had not actually taken the same on rent and further used the said false rental agreement for getting M/s Raj Traders registered with Commercial Tax Department. He also prepared a false rental agreement in respect of the rental house of Sri Jayaraj G. used the same as KYC documents.

89. Further, Syed Ibrahim had got the IEC code used in the name of M/s Raj Traders by submitting forged documents and obtained IEC code. He knowing fully well that red sanders is 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 officials while being exported. During the course of investigation, the role of customs officials has not revealed and therefore, the criminality cannot be fastened on the customs officials for the mere reason that they have shown in the FIR as an accused by the CBI. There is no material evidence against the accused No.1 by name Rajesh Shastry and accused No.2 Dayananda Swamy as mentioned in the FIR in R.C.No.14 (A)/2016 and therefore they have not been charge sheeted by the CBI. Moreover, the Investigating Agency is not bound to file the Charge sheet against all the FIR named accused persons. It is the duty of the agency to conduct in-depth investigation and to find out who are the real culprits and to file the charge sheet against them.

90. On perusal of the oral evidence of the P.W.1 to 3 it clearly shows that, the accused NO.1 and 2 with an intention to export the red sanders having criminal conspiracy created a shipping bills i.e. Ex.P.4 and Ex.P.16 and its connected documents in Ex.P.3, 5 to 15 and Ex.P.17 and 18. These documents clearly show that, the accused No.1 and 2 had exported the goods vide shipping Bill No.5200926 dated 11.01.2016 and shipping bill no.6177219 dated 01.03.2016 to the foreign countries. Even though the item mentioned in the shipping bills are 'granite slabs' in fact they have not exported the said item and seizure of the said containers by the DRI subsequently disclosed that the item exported were red sanders wooden logs. They have exported the same in the guise of granite slabs through ICD, Whitefield, Bangalore. In the cross examination advocate for the accused nothing elicited from the mouth of P.W.1 to 3 to rebut the prosecution case and the defense as not made out a case that the accused No.1 and 2 have not created any shipping bills with an intention to export the red sanders. The advocate for the accused denied the entire chief examination of the P.W.1 to 3, and put many suggestions to the witnesses denying their evidence. However, the witnesses have denied all the suggestions and nothing crucial aspects which is favourable to defense were alleged that during the cross examination. This denial is not helpful to the defence of the accused.

91. Therefore, from the evidence of P.W.1 to 3, the prosecution has proved the Ex.P.4 shipping bill No.5200926 dated 11.01.2016 and Ex.P.16 Shipping bill bearing No.6177219 dated 01.03.2016 and its connected documents stated above through which the accused No.1 and 2 had exported the Red Sanders wooden logs in the guise of granite slabs through ICD Whitefield, Bangalore.



92. On careful perusal of the evidence of PW□5 it is clearly goes to show that the red colour wooden logs i.e. Red Sanders were put in a granite covered pallets. It was hidden in the box by putting the granites and bubble wrap so as to conceal the Red Sanders and for the purpose of export the same in the guise of Red Sanders. Ex.P□37 mahazar which was prepared by the DRI while opening the container at ICD Bangalore. It is also established that the said container was opened in the presence of independent witnesses and there were 240 wooden logs weighing 7.44 tonnes and later it was revealed that they were the Red Sanders. Therefore prosecution has proved that the DRI officials have seized the Red Sanders found in the container on 02.03.2016. It is also proved from the evidence of PW□5 that they had taken 5 to 6" of 3 wooden logs for the purpose of samples for confirmation of the nature of wooden logs through the mahazar in Ex.P□39. But, there is no evidence to disbelieve the evidence of P.W.4 and 5 and nothing has been elicited in the cross examination to disbelieve the evidence of P.W.4 and 5.

93. From the evidence of PW□7 it is clearly goes to show that, the prosecution has established that the DRI officers had visited the godown of Raj Traders at Singanayakanahalli on 03.03.2016. It is also established that from the said godown they seized 41 pieces of red coloured wooden logs weighing in total 408.17 Kgs. On perusal of Ex.P□45 mahazar prepared by the DRI officers it is clyster clear that prosection had 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 and 7 there is no evidence elicited from the mouth of these witnesses in the cross□examination. Therefore, the prosecution has proved that, the DRI officers had seized the red sanders as per Ex.P.45.

94. On perusal of the evidence of PW□10 who is the branch in charge of M/s Maxicon Shipping Agencies, it is clear that he had furnished Ex.P□47 i.e. Shipping Bill No.6177219 and connected documents to the CBI as per Ex.P□48 Production Memo. He also identified Ex.P.48 and Ex.P□49. Ex.P□49(a) Container Delivery Order and through which the prosecution has established that M/s.Raj Trader is the ultimate Exporter of the consignments. From the evidence of PW□13 the prosecution has established that the export documents in Ex.P□7 to 19 were pertaining to M/s.Raj Traders. 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□14 that he is the custom house agent and handled the shipping bills pertaining to M/s.Raj Traders and Jayem Impex. It is clear from his evidence that two shipping bills in Ex.P□4 and Ex.P□16 were belonging to Exporters M/s Raj Traders 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 Jayem 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□39 and 40. Ex.P.39 and 40 are the mahazars prepared at the spot. This witness has been cross examined by defense counsel and the cross examination he was caterogically denied the suggestion of the defense counsel and stated that "it is false to suggest that, I was not present at the time of mahazar and my

signature has been taken to it". On going through the cross examination of PW.14 it is clear that the evidence by prosecution has not rebutted by the defense by way of eliciting the crucial facts from his mouth so as to negativate the prosecution evidence. Therefore, through the above witness prosecution has clearly proved the shipment of Red Sanders and seizure of the same from the possession of accused.

95. On perusal of the evidence of P.W.14, it discloses that, P.W.14 partly turned hostile to the case of the prosecution. However, except the identification of the accused No.1 Syed Ibrahim regarding other facts he fully supported the prosecution case. Hence, the evidence of the P.W.14 is not fatal to the case of the prosecution.

96. On perusal of the evidence of PW□1 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 identified the signature of his mother in Ex.P□91 i.e., electricity bill and Ex.P□92 i.e., Aadhar Card and her signature in the same are marked as Ex.P□91(a) and 92(a). He also identified the forged rental agreement created by accused and the same was marked as Ex.P□94 and stated that the signature affixed in it does not belongs to his mother. Therefore, it is proved by the prosecution that the said rental agreement was forged by the accused persons.

97. In the cross□examination of P.W.17 to 19 nothing is elicited from their mouth so as to negativate the evidence led by the prosecution in the chief examination. Therefore, from the evidence of PW□17 to 19 the prosecution has proved the VAT registration of Raj Traders and Jayem Impex which were belonging to the accused persons and through which they have exported the prohibited Red Sanders to the Foreign country in the guise of granite slabs.

98. The prosecution has examined P.W.22 and P.W.23 to prove the transport of goods for the purpose of shipment from the godowns of accused and to transport the containers from CONCOR to shipyard.

99. In the cross examination nothing is elicited from the mouth of these witnesses. Therefore from the evidence of the P.W.22 and P.W.23, 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 Bangalore. It is pertinent to mention here that the said containers were transported by the accused to the containers with the vehicles of PW.22 and

23.

100. From the evidence of DRI officer, PW.4, 5, 6,7 and 8 the prosecution has proved that they have seized the Red Sanders Pallets and at that time they have prepared Ex.P□37 mahazar. It is further proved that the DRI officials also seized the Red Sander logs from the godown of Raj Traders and Jayem Impex at Singanayakana halli and at that time they also prepared the mahazar and the same was marked as Ex.P□35. 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 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 PW.35 and 36.

101. The documents the Ex.P.60 placed by the prosecution speaks about Chapter II General Provisions regarding imports and exports and Ex.P.61 speaks about ITC (HS) 2012 - Schedule.2 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 Sl.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 issued by PW.42 Dr. Narasimhamurthy in Ex.P.88 and 89 also clearly proved that the wood samples sent to him is Red Sanders and its botanical name is "pterocarpus Santalinus". Therefore from the above evidence the prosecution has prove 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.

102. Further, on perusal of evidence of PW.42 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 i.e., rental agreement committed by the accused No.1 and 2 in conspiracy among themselves for the purpose of unlawfull gain.

103. On careful scrutiny of the evidence of P.W.1 to 47 and documentary evidence as per Ex.P.1 to 113 which are clearly goes to show that, accused No.2 is the proprietor of M/s Raj Traders 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 Raj Traders, they have forged a rental agreement and used it as KYC documents for registration of M/s Raj Trades with Commercial Department and they have submitted forged documents and obtained IEC code. Thereafter forged the documents with misdescription and misdeclaration and submitted the same for the purpose of exporting cargo i.e., 'granite slabs' and thereby cheated the Customs Department by exporting red sanders in the guise of granite slabs.

104. Further, it is revealed that, on 02.03.2016 the officials of the DRI caught red hand and seized the red sanders at ICD, Whitefield, Bangalore. Accused No.1 and 2

made false documents and made false declaration knowing fully well that the documents are false in material particulars and knowingly well that red sanders are prohibited for export and liable for confiscation. The prosecution successfully proved the guilt of the accused No.1 and 2 as alleged against them. 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.60 and 61 in any form. 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 gaining profit. It is evident from the fact that the DRI officials have seized a huge quantity of red sanders 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 sanders from our country and damage 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 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.

105. The Rulings relied by the advocate for the accused are not applicable to the defence of the accused and facts of the present case. Because, the facts narrated in the said Rulings and the facts of the present case are distinct and different. 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.

106. 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 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 Public 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 sanders 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 : Alok Kumar Singh PW 2 : D.Xavier PW 3 : Smt. G. Anitha PW 4 : P.S.G.V.Subramanyam PW 5 : R.V. Raghunandan PW 6 : Vijay Kumar PW 7 : Ivin K. George PW 8 : K.S. Vijay Kumar PW 9 : Navasakthi PW 10: Paul Pandian PW 11: K. Mallesh PW 12: Joseph P.D. PW 13: Rakesh G.S. PW 14: V. Rajappa PW 15: N.S. Beena PW 16: Nita Nair PW 17: Umar Farooq PW 18 G. Prabhavathi PW 19: M.N. Amjad Pasha PW 20: N.K. Shashikumar PW 21: Leeman Chandrashekar PW 22: Srikant PW 23: B. Vittal PW 24: R.R. Mugalkhod PW 25: R. Lazar PW 26: Mahesh Ugile PW 27: Shashidhar Sudhakar PW 28: A. Lokesh Krishna PW 29: V. Lokesh PW 30: Kalai Selvan PW 31: Ms. Deepa N. PW 32: D. Sathish Kumar PW 33: Revanna S. PW 34: Harish K. PW 35: Munirajachar PW 36: Yogendra Tripathi PW 37: Stanley PW 38: Abbas Rizvi PW 39: Suresh S. PW 40: Shamaiah PW 41: M. Subramanya PW 42: Dr.Narasimhamurthy PW 43: Tariq Anwars PW 44: Ashwin PW 45: A. Balsami PW 46: Mahendra Devaram Gawde PW 47: K.Y. Guruprasad 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.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 lading  
Ex.P.14 : Invoice  
Ex.P.15 : Screen Shots  
Ex.P.16 : Copy of System generated shipping bill  
Ex.P.17 : Commercial Invoice

Ex.P.18 : Packing list  
Ex.P.19 : Copy of IEC code details  
Ex.P.20 : Copies of Screen Shots  
Ex.P.21 : regular License  
Ex.P.22 : Copy of PAN card  
Ex.P.23 : Copy of identity card  
Ex.P.24 : Copy of identiy card  
Ex.P.25 : Copy of circular  
Ex.P.26 : Instruction

Ex.P.26(a) : Signature of Assistant Commissioner Ex.P.27 : Reciept Memo Ex.P.27(a) : Siganture of P.W.2 Ex.P.28 : Sren shots of shipping bills Ex.P.29 : Screen shots of shipping bills Ex.P.30 : Certificate u/Sec.65 of Evidence Act Ex.p.30(a): Signature of P.W.2 Ex.P.31 to Ex.P.33 : Public notice, standing order, license regulation rule Ex.P.34 : Covering Letter Ex.P.34(a): Signatur of P.W.4 Ex.P.35 : Documents Ex.P.35(a) : Receipt memo Ex.P.35(a) (I): Siganture of P.W.4 Ex.P.36 : File contents Ex.P.37 : Mahazar Ex.P.37(a) : Signature of P.W.5 Ex.P.37(b) : Signature of independent witness Ex.P.37(c) : Signature of Independent witness Ex.P.37(d) : Signatur of CHA Ex.P.37(e) : Signature of colleague officer of P.W.5 Ex.P.37(f) : Signature of Abbash Ex.P.38 : Supardhinama Ex.P.38(a) : Signature P.W.5 Ex.P.39 : Mahazar Ex.P.39(a) : Signature of P.W.5 Ex.P.39(b) : Signature of independent



witness Ex.P.39(c) : Signature of Independent witness Ex.P.39(d) : Signatur of colleague officer of P.W.5 Ex.P.39(e) : Signature of Abbash Ex.p.39(f) : Signature of Rajappa Ex.P.40 : Mahazar Ex.P.40(a) : Signature of P.W.5 Ex.P.40(b) : Signature of independent witness Ex.P.40(c) : Signature of Independent witness Ex.P.40(d) : Signatur of Rajappa Ex.P.40(e) : Signatur of his Colleague Ex.P.41 : Statement of accused Jayaraj Ex.P.41(a) : Signature of P.W.6 Ex.P.41(b) : Signature of accused Ex.P.41(c) : Signatur of Signature of Sr. Officer Ex.P.42 and Ex.P.43 : Statements of accused Ex.P.42(a) and Ex.P.43(a) : Signatures of witness Ex.P.42(b) and Ex.P.43(b) : Signatures of accused Ex.P.43(c) : Signature of higher officer Ex.P.44 : Statement of Mallesh Ex.P.44(a) : Signature of witness Ex.P.44(b): Signature of Malleshawaram Ex.P.45 : Mahzar Ex.P.45(a) : Signature of witness Ex.P.45(b) : Siganture of independent witness Ex.p.45(c) : Siganture of independent witness Ex.P.45(d): Siganture of Officer Ex.P.45(e): Signatur of Rajappa Ex.P.46 : Statement of Rajappa Ex.P.46(a) : Siganture of witness Ex.P.46(b) : Signature of Rajappa Ex.P.47 : Documents Ex.P.48 : Producation memo Ex.P.48 (a): Signatur of P.W.10 Ex.P.49 : Documents Ex.P.49 (a): Siganture of P.W.10 Ex.P.49 (b): way bill Ex.P.50 : Mahazar Ex.P.50(a) : Signature of P.W.11 Ex.P.51 : Receipt memo Ex.P.51(a) : Siganture of P.W.12 Ex.P.52 : Account opening form Ex.P.52(a) : Signature of accused Ex.P.53 : Statement of account Ex.P.54 : Staement Ex.P.54(a): Siganture of P.W.14 Ex.P.55 : Set of 6 photos Ex.P.56 : Set of 8 photos Ex.P.57 : Application & annexed documents Ex.P.58 : IEC processing file Ex.P.58(a) : Signature of IEC Ex.P.58(b) : Siganture of ADGFT Ex.P.59 : Notice Ex.P.59(a) : Signature of Shakuntala Ex.P.60 : Chapter II general provision Ex.P.61 : Part of chapter regarding ITC (HS) Ex.P.62 & 63 : 2 Files Ex.P.62(a) : Statement of Jayaraj.

Ex.P.62(b) : Signature of Jayaraj.G  
 Ex.P.62(c) : Signature of P.W.18  
 Ex.P.62(d) : VAT registration certificate

Ex.P.62(d(1)) : Signature of Amjad Pasha Ex.P.64 :

Ex.P.65 : VAT registration file  
 Ex.P.65(a) : VAT registration certificate

Ex.P.65(a)(I) : Signature of Amjad Pasha Ex.P.66 : Producation memo Ex.P.66(a): Signature of Leeman Chandrashekar Ex.P.66(b): Certificate Ex.P.66(b) (I): Signature of P.W.21 Ex.P.67 : Copy of register Ex.P.68 : Producation memo Ex.P.68(a): Signature of P.W.22 Ex.P.69 : Proceedings Ex.P.69(a) : Signatue of P.W.24 Ex.P.70 : Wighment slips Ex.P.71 : Photos Ex.P.72 : File Ex.P.72(a) : Application Ex.P.73 : Production memo Ex.P.73(a): Signature of P.W.27 Ex.P.73(b): Certificate Ex.P.73(b)(i): Signature of P.W.27 Ex.P.73(c): Bank certificate Ex.P.73(c)(i): Signature of P.W.27 Ex.P.74 : Account opening form Ex.P.74(a) : Signatue of P.W.26 Ex.P.74(b) : Signature of P.W.28 Ex.P.75 : Producation memo Ex.P.75(a): Signature of P.W.29 Ex.P.75(b): Copy of Bills Ex.P.76 : Covering letter Ex.P.76(a) : Delivery slip Ex.P.76(b) : Article tracking list Ex.P.77 : Covering letter Ex.P.77(a) : Siganture of

P.W.31 Ex.P.77(b): Death certificate Ex.P.77(b)(i): Signature of P.W.31 Ex.P.78 : Exit Register Ex.P.78(a) : Page No.139 Sl.No.159 of Ex.P.78 Ex.P.79 : Entry Register Ex.P.79(a) : Page No.055 Sl.No.26 of Ex.P.79 Ex.P.80 : Container placement requisition Ex.P.80(a) : Based application form Ex.P.80(b) : container placement requisition Ex.P.81 : Mahazar Ex.P.81(a) : Signature of P.W.36 Ex.P.82 : Customer certificate Ex.P.82(a) : Signature of P.W.37 Ex.P.83 : Documents Ex.P.83(a) : Signature of P.W.38 Ex.P.84 : Lease agreement Ex.P.84(a) : Signature of P.W.39's father Ex.P.84(b) : Signature of Tharakesh Ex.P.84(c) : Signature of P.W.39 Ex.P.85 : Receipt memo Ex.P.86 : Statement u/Sec.108 of customs Act Ex.P.86(a) : Signature of P.W.40 Ex.P.87 : Sanction Ex.P.87(a) : Signature of P.W.41 Ex.P.88 : Covering letter Ex.P.88(a) : Signature of joint director Ex.P.89 : Test Report Ex.P.89(a) : Signature of joint director Ex.P.89(b) : Signature of P.W.42 Ex.P.90 : Mahzar Ex.P.90(a) : Signature of P.W.11 Ex.P.90(b) : Signature of Jayamma Ex.P.90(c) : Signature of Jayamma Ex.P.91 : Electricity bill Ex.P.91(a) : Signature of Jayamma Ex.P.92 : Aadhar Card Ex.P.92(a) : Signature of Jayamma Ex.P.93 : Specimen signature Ex.P.93(a) to (c) : Signature Ex.P.94 : Documents Ex.P.95 : Specimen signature sheets Ex.P.95(a) : Signature of P.W.43 Ex.P.95(b) : Signature of Jayaraj.G Ex.P.96(c) : handwriting of Jayaraj.G Ex.P.96 ; Documents Ex.P.96(a) : Signature of P.W.44 Ex.P.96(b) : handwriting of Syed Ibrahim Ex.P.96(c) : numerical number handwriting of A1 Ex.P.96(d) : Signatures of Syed Ibrahim Ex.P.97 : VAT document Ex.P.98 : Rental agreement Ex.P.99 : VAT 555 document Ex.P.100 : FIR Ex.P.100(a) : Signature of Dr.Subramanyeshwara Rao Ex.P.101 : Report Ex.P.101(a) : Signature of P.W.45 Ex.P.102 : Search list Ex.P.102(a) : Signature of P.W.47 Ex.P.103 : Search list Ex.P.104 : Search list Ex.P.104(a) : Signature of P.W.47 Ex.P.105 : Search list Ex.P.105(a) : Signature of P.W.47 Ex.P.106 : Production cum receipt memo Ex.P.106(a) : Signature of P.W.46 Ex.P.107 : Rental Agreement Ex.P.108 : Production cum receipt memo Ex.P.108(a) : Signature of P.W.46 Ex.P.109 : Copy of register extract Ex.P.110 : Production cum receipt memo Ex.P.110(a) : Signature of P.W.46 Ex.P.111 : agreement of lease Ex.P.112 : production cum receipt memo Ex.P.112(a) : Signature of P.W.46 Ex.P.113 : production cum receipt memo Ex.P.113(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.