

	आयुक्त, सीमाशुल्क (निवारक) का कार्यालय OFFICE OF THE COMMISSIONER OF CUSTOMS (PREVENTIVE), MUMBAI दूसरी मंजिल, नवीन सीमा शुल्क भवन, बेलाई इस्टेट, मुंबई-400 001 2ND FLOOR, NEW CUSTOMS HOUSE, BALLARD ESTATE, MUMBAI-400001 Email: commrprev-cusmum@nic.in	
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DIN: 20250979OC00003.8439

मूल-आदेश संख्या/Order-in-Original No. :	PCCP/ADJ/AH/07/2025-26
आदेश की तारीख / Date of Order :	16.09.2025
जारी करने की तारीख / Date of issue :	16.09.2025
आदेश फा. सं. / Order File No.	S/10-171/2023-24/CC/NS-V/CAC/JNCH
द्वारा जारी / PASSED BY :	डॉ. अतुल हांडा / Dr. Atul Handa आयुक्त, सीमाशुल्क (निवारक), मुंबई / Commissioner of Customs (Preventive), Mumbai.

मूल आदेश / Order-in-Original

- यह प्रति जिस व्यक्ति को जारी किया गया है उसके उपयोग के लिए निः शुल्क दिया जाता है।
This copy is granted free of charge for use of the person to whom it is issued.
- इस आदेश के खिलाफ अपील क्षेत्रीय पीठ, सीमाशुल्क, उत्पाद शुल्क और सेवाकर अपीलीय न्यायाधिकरण, चौथा एवं पांचवा तल, जय सेंटर, 34, पी.डी.मेलो रोड, पूनास्ट्रीट, मस्जिद बंदर (पूर्व), मुंबई -400009 को प्रस्तुत की जा सकती है।

An appeal against this order lies with the Regional Bench, Customs, Excise, and Service Tax Appellate Tribunal, 4th and 5th Floor, Jai Centre, 34, P.D. Mello Road, Poona Street, Masjid Bunder (East), Mumbai – 400 009.

- अपील सीमा शुल्क (अपील) नियमावली, 1982 के नियम 6 के अनुसार उन नियमों के साथ संलग्न फॉर्म सी.ए. 3 में तीन माह के भीतर की जानी चाहिए। अपील चार प्रतियों में तथा निम्नांकित के साथ संलग्न होनी चाहिए:

The appeal is required to be filed within three months as provided in Rule 6 of the Customs (Appeals) Rules, 1982 in form C.A. 3 appended to said Rules. The appeal should be in quadruplicate and shall be accompanied by:

- उस आदेश की चार प्रतियां जिसके विरुद्ध अपील हो (जिनमें से कम से कम एक प्रमाणित प्रति होना चाहिए);
4 copies of the order appealed against (at least one of which should be a certified copy).
- किसी भी राष्ट्रीय कृत बैंक की शाखा पर, जहां उचित न्यायालय (बेंच) स्थित है, उपयुक्त शुल्क का (नीचे दिया गया है) क्रास किया हुआ बैंक ड्राफ्ट अधिकरण की पीठ के सहायक रजिस्ट्रार के पक्ष में जारी किया होना चाहिए।

A crossed Bank Draft drawn in favour of the Assistant Registrar of the Tribunal on a branch of any Nationalized Bank located at a place where the Bench is situated, for appropriate fee (as given below).

क. जहां अपील से संबंधित मामले में किसी सीमा शुल्क अधिकारी द्वारा मांगे गए शुल्क एवं व्याज और लगाए गए अर्थदंड की राशि पांचलाख या उससे कम हो, तो एक हजार रुपए का;

a. Where the amount of duty and interest demanded and penalty levied by any officer of the Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees.

ख. जहां अपील से संबंधित मामले में किसी सीमा शुल्क अधिकारी द्वारा मांगे गए शुल्क एवं व्याज और लगाए गए अर्थदंड की राशि पांचलाख रुपए से अधिक हो पर पचास लाख रुपए से अधिक नहीं हो, तो पांच हजार रुपए का;

b. Where the amount of duty and interest demanded and penalty levied by any officer of the Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees.

ग. जहां अपील से संबंधित मामले में किसी सीमा शुल्क अधिकारी द्वारा मांगे गए शुल्क एवं व्याज और लगाए गए अर्थदंड की राशि पचास लाख रुपए से अधिक हो, तो दस हजार रुपए का ।

c. Where the amount of duty and interest demanded and penalty levied by any officer of the Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees.

4. अपील अधिकरण पीठ के रजिस्ट्रार अथवा इस संबंध में उनके द्वारा अधिकृत किसी भी अधिकारी के कार्यालय में प्रस्तुत की जानी चाहिए अथवा रजिस्ट्रार या ऐसे अधिकारी के नाम पंजीकृत डाक द्वारा भेजी जानी चाहिए।

The appeal shall be presented in person to the Registrar of the Bench or an officer authorized in this behalf by him or sent by Registered Post addressed to the Registrar or such officer.

5. इस निर्णय या आदेश के विरुद्ध अपील करने के इच्छुक व्यक्ति को, इस अपील के लंबित रहने तक, मांग किए गए शुल्क या लगाए गए अर्थदंड का दस प्रतिशत धनराशि जमा करना होगा और ऐसे भुगतान का साक्ष्य प्रस्तुत करना होगा । ऐसा न करने पर अपील सीमा शुल्क अधिनियम, 1962 की धारा 129E के प्रावधानों का अनुपालन न करने के आधार पर निरस्त मानी जाएगी।

Any person desirous of appealing against this decision or order shall, pending the appeal, shall deposit ten per cent of the duty demanded or the penalty levied therein and produce proof of such payment along with the appeal, failing which, the appeal is liable to be rejected for non-compliance with the provisions of Section 129 of the Customs Act, 1962.

विषय / Subject :	Adjudication of Show Cause Notice No. 1816/2023-24/COMMR/NS-V/CAC/JNCH dated 01.11.2023 issued by the Commissioner of Customs, NS-V, JNCH, Nhava Sheva to Ms. Fionah Ngunjiri, Ex. Counsellor, Kenya High Commission and others— Reg.
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BRIEF FACTS OF THE CASE

Intelligence developed by the Mumbai Zonal Unit of the Directorate of Revenue Intelligence (hereinafter also referred to as DRI) indicated that a syndicate led by one Rehman Iqbal Ahmed Shaikh (hereinafter also referred to as Rehman Shaikh/ Rehman) and others were involved in smuggling of a large number of Luxury Cars by organizing imports in the name of diplomats posted in India at Nil duty by availing the benefit of the Customs exemption Notification No. 03/1957-Cus dated 08.01.1957; that after importing the members of the syndicate were fraudulently making forged Indian invoice/Bills of Entry pertaining to the imported cars. Thereafter, the syndicate members registered the cars in RTOs across India in the name of non-privileged persons and identified prospective buyers for selling the imported cars to those buyers in India.

1.1 On 14.07.2021, six (6) vehicles smuggled into India by the syndicate led by Rehman Iqbal Ahmed Shaikh by adopting the above mentioned modus operandi were seized by DRI from various places in India and detailed investigations were initiated by DRI. During the course of investigations, statements of relevant persons connected to the operation of the said modus operandi were recorded. During the investigation, it was also revealed that there were many such vehicles that had been smuggled into India by the syndicate led by Rehman Iqbal Ahmed Shaikh. The Lexus LX 570 car bearing Chassis No.URJ2014199918 is one such car illegally imported by members of the said syndicate, and is subject matter of the instant case.

Process for availing exemption under Customs Notification No. 03/1957 dated 08.01.1957

2. The Customs Notification No. 03/1957 dated 08.01.1957 allows diplomats of foreign missions (privileged persons) posted in India to import goods, including motor vehicles at NIL duty (duty-free). The said benefit can be availed by the diplomats by obtaining an Exemption Certificate from the Ministry of External Affairs (MEA) of the Government of India. The diplomat initially makes a request to MEA through his/her Embassy for a grant of 'Prior Approval' in cases where the value of import consignments is more than Rs. 20 Lakhs or US \$33,000 whichever is more and in every case of Motor Vehicle irrespective of value. Except for the senior diplomats, the diplomats posted to India can import one motor vehicle for their personal use within two years from the date of their arrival in India by availing the exemption from payment of customs duty with Prior Approval from the MEA, as provided in the Protocol Handbook of MEA. Such a request normally includes the invoice of the car along with other details such as make, model etc. and also specifies that it is for personal use.

Thereafter, the application of the Prior Approval for import of the car in the name of the diplomat is processed at the MEA and the Prior Approval is conveyed to the foreign embassy of the diplomat. Once the prior approval for the duty-free import is granted, through his Embassy, the diplomat requests the MEA for Exemption Certificate in respect of customs duty declaring specific particulars like Make, Model, Engine No., Chassis No. & date of Bill of Lading etc. The request of the diplomat is then processed at the MEA and the MEA issues an Exemption Certificate in respect of Customs Notification No. 03/1957-Cus dated 08.01.1957, with an explicit condition that the vehicle will not be sold or otherwise disposed of to a person who is not entitled to import a vehicle free of duty without the concurrence of CBIC (through MEA) and without payment of the Customs duty to the Commissioner of Customs. The vehicle is then imported at Nil duty (duty-free) after filing the Bill of Entry by availing the benefit of the Customs Notification No.03/1957-Cus dated 08.01.1957 using the Exemption Certificate issued by MEA. Once the car is cleared from Customs, the imported car is required to be registered within one month from the date of its clearance from Customs with special registration for diplomats at MEA and a copy of the vehicle registration is sent to the MEA, as specified in the Prior Approval.

3. During the course of investigation initiated by DRI, it was revealed that the said syndicate led by Rehman Shaikh and others, using the modus operandi explained above, had imported a Lexus LX 570 car in the name of Ms. Fionah Ngunjiri, Counsellor, Kenya High Commission vide Bill of Entry No. 6123712 dated 18.12.2019, however, the said car was not registered in the name of privileged person. The details of the vehicle and the said import as per the said Bill of Entry are tabulated as under:

TABLE No.1

Bill of Entry No. & Date	6123712 dated 18.12.2019
Bill of Lading No. & Date	ASCOJEANSA1900410 dated 06.12.2019
Description of goods	One 2019 Lexus LX570 Car
Chassis No.	URJ2014199918
Assessable Value (in Rs.)	Rs. 30,77,000/-
Duty	Nil, as cleared availing exemption under Notification No. 03/1957-Cus dated 08.01.1957
Customs Station	INNSA1
Customs Broker	Babaji Khimji & Co.

3.1 It was further observed that the said Lexus LX 570 car bearing chassis No.URJ2014199918, which had been imported vide Bill of Entry No. 6123712 dated

18.12.2019 in the name of Ms. Fionah Ngunjiri, Counsellor, Kenya High Commission without payment of duty by availing the benefit of the Customs duty exemption Notification No. 03/1957-Cus dated 08.01.1957, was not registered in the name of the said diplomat/privileged person through MEA in violation of the conditions of Customs Notification No. 03/1957 dated 08.01.1957. It was also observed that the said Bill of Entry No. 6123712 dated 18.12.2019, in the name of Ms Fionah Ngunjiri, Counsellor, Kenya High Commission, was filed by the Customs Broker, Babaji Khimji & Co.

3.2 The investigation further revealed that the said Lexus LX570 car was never registered in the name of the privileged person Ms Fionah Ngunjiri, Counsellor, Kenya High Commission, as per records of the MEA provided vide their letter dated 27.08.2021.

Enquiry made with MEA

4. As the import of the said Lexus LX570 car was made after getting the customs duty Exemption Certificate from MEA, therefore, the relevant documents pertaining to the Prior Approval and Exemption Certificate issued to Ms Fionah Ngunjiri for the import of the said Lexus LX570 car bearing Chassis No. URJ2014199918 were obtained from MEA.

4.1 On going through the said documents obtained from MEA, it was observed that Ms Fionah Ngunjiri, Counsellor, Kenya High Commission, vide Note Verbale No. KHC/ND/PROT/4A dated 27.11.2019, had requested the Ministry of External Affairs, New Delhi to grant Prior Approval for the import of the vehicle Lexus 570 car. The MEA vide letter no. D.VI/451/2/(37)/2019/3883 dated 29.11.2019 conveyed Prior Approval to Ms Fionah Ngunjiri for import of said vehicle for personal use along with the instructions that the said vehicle was to be registered within one month from the date of its import and a copy of the vehicle registration certificate was to be sent to the Ministry.

4.2 Thereafter, Ms Fionah Ngunjiri, vide document No. 05/FN/12/2019, requested the MEA for an Exemption Certificate for availing exemption from payment of customs duty on the said vehicle and also declaring particulars like Make, Model, Engine No., Chassis No. & Bill of Lading number with date etc. therein. Thereafter, MEA attested the Exemption Certificate bearing Serial No.5/FN/12/2019 on 16.12.2019. On the basis of the said Exemption Certificate, the said Lexus 570 Car was imported into India vide Bill of Entry No. 6123712 dated 18.12.2019 without payment of duty by availing the benefit of the Customs

duty Exemption Notification No. 03/1957-Cus dated 08.01.1957. Further, as per the records obtained from MEA vide letter dated 27.08.2021, it was confirmed that the said vehicle had not been registered through MEA after its import.

4.3 Considering the facts of the case and to ascertain involvement in the eventual disposal of the vehicle to a non-privileged person, a Summons dated 11.11.2021 was issued under Section 108 of the Customs Act, 1962 to Ms Fionah Ngunjiri through MEA to appear on 29.11.2021 before the DRI officer. The said letter was forwarded by MEA on 25.11.2021 to the Kenya High Commission. In response to the said Summons dated 11.11.2021, the Kenya High Commission in New Delhi, vide their reply No. KHC/ND/ADM/5A dated 26.11.2021, informed that Ms Fiona Ngunjiri had since returned to Kenya and retired from the service. It was further informed that Article 31.C.2 of the Vienna Convention provides that a diplomatic agent is not obliged to give evidence as a witness. The High Commission also requested the esteemed Ministry of External Affairs to allow the mission to use its administrative structure to handle the issue.

4.4 Thereafter, since the vehicle was not registered in the name of Ms Fionah Ngunjiri, Counsellor, Kenya High Commission through MEA, Ms Fionah Ngunjiri was informed vide letter dated 25.01.2022 through MEA to pay the requisite Customs Duty by citing the provisions of Rule 4A and Rule 5 of the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957 read with the provisions of the Customs Act, 1962.

Statements recorded under the provisions of section 108 of the Customs Act, 1962

5. During the course of the investigation, statements of various persons were recorded under the provisions of Section 108 of the Customs Act, 1962 from which the modus operandi of this racket became clear.

5.1 The above-mentioned Lexus LX570 car having chassis Number URJ20141'99918 was imported and cleared through Bill of Entry No.6123712 dated 18.12.2019 filed by Customs Broker, M/s. Babaji Khimji & Co. In this regard, the statement of Shri Aubrey Elias D'sousa, representative of the said Customs broker firm who dealt with the said consignment of the said car, was recorded on 22.07.2021 wherein he, inter alia, stated that;

- (i) He was in the Customs Broking and Clearing and freight Forwarding profession for the last 32 years. Initially, he started working in the clearance of

unaccompanied baggage (UB).

- (ii) He knew Rehman Shaikh for the last 18 years and Rehman knew that he was in the line of clearing the unaccompanied baggage, so Rehman Contacted him 8 years ago for the job of clearance of imported cars from Customs in the name of diplomats.
- (iii) He told Rehman that documents should come from the official email ID of the embassy/consulate/ diplomats and all the documents should be signed and stamped by the embassy.
- (iv) Rehman told him about Liyakat Khan and he (Liyakat) used to get documents for import without stamp and sign to which he told Liyakat that for the proper import, he needed documents on email from embassy/diplomats with stamp and signature. On receiving the documents on email, he used to upload the documents on ICEGATE site for the generation of Bill of Entry. Generally, Liyakat Khan used to get delivery of imported cars from the CFS. Then he prepared bill for clearance charges and delivery challan of the imported cars and told Liyakat to provide the copy of the delivery challan duly signed by the recipient diplomats which Liyakat used to provide him within 10 to 15 days of customs clearance.
- (v) Following documents from the concerned embassy/consulate/diplomats were required for import of cars in the name of diplomats:-
 - i) Bill of Lading
 - ii) Proforma Invoice/Invoice
 - iii) Custom Duty Exemption Certificate with schedule having details of cars signed by diplomats
 - iv) Ministry of External Affairs letter of Prior Approval for imports of cars in the name of embassy/consulate/diplomats
 - v) Diplomatic Identity Card
 - vi) Letter of Authorisation for Customs broker for import of cars signed and stamped by embassy/consulate/diplomats.
- (vi) He stated that he was fully aware of Notification No.03/1957-Cus dated 08.01.1957 which gave exemption from Customs duty for the specific imports made by diplomats/ embassy/ consulate of foreign countries in India and imported cars are covered by this notification. He stated that he had cleared in the name of diplomats a total 13 Imported cars from the year 2017, out of which 7 cars were imported on his Customs Broker license AAAFB690OGCHO0I (M/s Babaji Khimji & Company) and 6 cars were imported on other Customs

Broker License. He provided the details of the said 13 Bills of Entry cleared by him.

- (vii) He charged Rs.25,000/- per job (for every import) from Liyakat.
- (viii) All the bills were raised from M/s JP International to the diplomats which were paid to him by Liyakat Khan in cash on behalf of the diplomats.
- (ix) He stated that he was the proprietor of M/s JP International which was involved in Freight forwarding, packing, moving etc. and he was the G-Card Holder of Babaji Khimji & Company and so he prepared the Bills in the name of his firm M/s. JP International.

5.1.1 Further statement of Shri Aubrey Dsouza was recorded under Section 108 of the Customs Act on 27.09.2023 wherein he, inter alia, stated that:-

- (i) Regarding the Bill of Entry Nos. 6123712 dated 18.12.2019, he stated that the said consignment of car was cleared on his CHA License AAAFB6900GCH001 (M/s. Babaji Khimji & Company).
- (ii) He had received the job of clearance of the above-mentioned consignments under Customs Notification No. 03/1957-Cus dated 08.01.1957.
- (iii) After the said vehicle was out of charge by the customs department, Liyakat Bachu Khan received the said vehicle on behalf of the concerned Embassy/diplomat.

5.2 Statement of Shri Liyakat Bachu Khan, one of the close confidants of Rehman Iqbal Shaikh, was recorded on 14.07.2021, under Section 108 of the Customs Act, wherein he, inter alia, stated that;

- (i) He was working as a driver for one Shri Rehman Iqbal Ahmed Shaikh on a monthly salary of Rs.30,000/-;
- (ii) Rehman Shaikh was involved in the imports of high-end luxury cars for foreign diplomats posted in India. He was aware that while importing high-end luxury cars for the diplomats, they are exempted from duty;
- (iii) He stated that whenever a consignment, which was usually high-end luxury car, was about to be imported in India, he received the copy of the Bill of Lading and invoice in respect of that consignment via WhatsApp from Shri Rehman Shaikh mostly a week before the import and forwarded the same to Shri Aubrey D'souza who was clearing staff in CHA firm namely Babaji Khimji;

- (iv) Rehman Shaikh identified consignee i.e. foreign diplomat based in India through Rajeev Sood and after the consignment arrived in India, he and Rehman Shaikh cleared the consignment through a Customs Broker. Rajeev Sood managed all the embassy-related work/documents with respect to the imports of these high-end luxury imported cars such as Range Rover, Land Cruiser, etc.

5.2.1 Further statement of Shri Liyakat Bachu Khan was recorded on 27.07.2021 under Section 108 of the Customs Act, 1962 wherein he, *inter alia*, stated that;

- (i) Such vehicles imported in the name of various embassies and diplomats were imported duty-free as there were exemption available to them and since these vehicles could not be sold in the open market, hence the documents had to be forged so that they could be registered in the name of private individuals;
- (ii) About 25 to 30 luxury cars were imported in the above manner by availing Customs duty exemptions in the name of diplomats as per his knowledge;
- (iii) Regarding obtaining the details of the diplomats, he stated that Shri Rajeev Sood based in Delhi had very good links and contacts in foreign embassies and used to approach and obtain all the documents and signatures required from the foreign diplomats that were required for the duty-free imports on their behalf.

5.2.2 Further statement of Shri Liyakat Bachu Khan was recorded on 05.10.2023 under Section 108 of the Customs Act, 1962 wherein he, *inter alia*, stated that;

- (i) Regarding the Bill of Entry No. 6123712 dated 18.12.2019 he stated that the said consignment of the car was cleared on the CHA License AAAFB6900GCH001 (M/s. Babaji Khimji & Company) and it was cleared as diplomatic cargo.
- (ii) Regarding the car imported vide Bill of Entry No. 6123712 dated 18.12.2019 to be handed over, he stated that he had already stated all the facts in his previous statements recorded in the DRI office and he had no comments to offer on this at that point of time.
- (iii) He further stated that his job was to hand over the documents as given to him by Rehman Shaikh and on Rehman's instructions the same were handed over to the CHAs, and thereafter, on customs clearance, he had to take the delivery of the vehicles and load the same on the flat bed provided or instructed by Rehman Shaikh. He was not aware as to whom the vehicles were subsequently handed over or given by Rehman Shaikh.

- (iv) He used to work for Shri Rehman Shaikh when the above-mentioned car was imported in the name of the diplomat.

5.3 Statement dated 14.07.2021 of Shri Rajeev Sood, one of the core members of the syndicate, was recorded under Section 108 of the Customs Act, 1962 wherein he, inter alia, stated that;

- (i) He started working as a Commission Agent for diplomats of various embassies since 2019 and sourced things like furniture, household items, rental houses etc. for these diplomats and also assisted diplomats (who were willing to sell their personal cars imported by them through diplomatic channel) in finding customers;
- (ii) He was acquainted with Rehman Shaikh, who sourced goods from abroad and he in turn introduced Rehman Shaikh to the Diplomats of several embassies;
- (iii) Rehman Shaikh would negotiate the price and complete the documentation required for importing those goods through diplomatic channels;
- (iv) Rehman Shaikh used to give him commission for the same and he used to get Rs.40,000/- to 50,000/- for the consignment of goods having value USD 7000 to USD 8000;
- (v) He used to provide him contact details, email id, visiting card etc. of new diplomats for business purposes i.e. sourcing of required goods such as furniture, house hold items, second hand cars etc.;
- (vi) Regarding the mode of information from the Ministry of External Affairs, he stated that he used to get information from one person named Shri Manjeet Maurya who was working as a clerical staff in the Ministry of External Affairs. After getting this information, he used to give details of those eligible Diplomats to Rahman Shaikh for business purposes and also provided details of Rehman Shaikh to those diplomats for the required import of goods;
- (vii) Whenever he got an enquiry or demand for high end cars from customers, he used to contact Shri Nipun Miglani.

5.3.1 Further statement of Shri Rajeev Sood was recorded under Section 108 of the Customs Act, 1962 on 18.07.2021 wherein he, inter alia, stated that;

- (i) In 2017 Rehman offered him a business proposal that he wanted to import duty-free goods viz. furniture, cars etc. in the name of foreign diplomats and asked

his help in that business as he (Rajeev Sood) had sources in various embassies due to his car workshop business and he agreed for the same;

- (ii) For duty-free import, Rehman required two things- (1) Name of the foreign diplomat, who was ready to give his/her consent for duty free import of goods like cars, furniture etc. and (2) Information and other approval from MEA;
- (iii) He had contact in both foreign embassies and MEA;
- (iv) Whenever Rehman asked him the details of any foreign diplomat for duty-free imports, he used to visit foreign embassy and met there with diplomats regarding the business and asked them whether they were interested in any type of business;
- (v) Regarding the meaning of the term business referred above, he stated business means if diplomats were interested in giving their permission for duty free import of goods like cars and furniture in their name and if they agreed then their contact information like name, contact number, email id, passport and diplomatic identity card was shared with Rehman;
- (vi) Then Rehman and the Foreign diplomat negotiated the terms and conditions of their arrangement and once both agreed for the business then through his contact Shri Manjeet Maurya, working as clerical staff in Ministry of External Affairs on contract basis, he used to verify details about eligibility for duty free imports by concerned diplomats;
- (vii) After getting this information, he used to give details of diplomats to Rehman Shaikh for business purposes and also details of Rahman Shaikh to diplomats for the required import of goods;
- (viii) Regarding the documentation of duty-free import, he stated that he was in contact with one of the employees of Rehman, Shri Liyaqat Bachu Khan of Mumbai and Liyaqat used to send him all the required documents through courier and asked him to take signature on those documents from the foreign diplomat;
- (ix) he used to receive draft letters that were to be printed on the embassies' letter head and he simply forwarded those draft letters to the concerned diplomat for printing those draft letters on their letter head;
- (x) He provided contact information of embassies like Kenya, Laos, Lebanon, Senegal, Cambodia, Libya, Ethiopia etc. to Rehman Shaikh.

5.3.2 Further statement of Shri Rajeev Sood was recorded under Section 108 of the Customs Act, 1962 on 20.07.2021 wherein he, inter alia, stated that;

- (i) Once a diplomat agreed to lend the documents for the imports of cars, furniture etc. he used to procure a photocopy of his diplomatic identity card which the diplomat used to provide willingly;
- (ii) He used to forward photograph of the said document to Rehman on whatsapp and based on this document Rehman used to get the invoice prepared and the same was then forwarded to him on whatsapp which he then used to forward to Manjeet Maurya.
- (iii) Manjeet then used to prepare the Application for prior approval to be submitted in the Ministry of External Affairs (MEA) and then Manjeet used to send back the same to him (Rajeev Sood) over WhatsApp, which he used to forward to the diplomat who was lending his/her documents;
- (iv) The diplomats used to submit the same application to the MEA for granting duty exemption for the import of cars and the MEA used to process the application and accord sanction and the same was conveyed to the diplomat by the MEA through email;
- (v) Manjeet used to keep him informed about the status of the application and would also inform him after the approval was granted;
- (vi) For Manjeet's services, he was paying Rs. 12,000/- in cash to Manjeet for each document pertaining to one consignment;
- (vii) He used to visit the concerned diplomat at his office and collect the hard copy of the Sanction documents and send the photograph of the Sanction document over WhatsApp to Rehman Shaikh;
- (viii) After that, Rehman used to ship the consignment and send him the bill of lading and Liyakat used to send him all import documents such as bill of lading, invoice, packing list etc through courier;
- (ix) The diplomat used to make the final application for duty free imports (Exemption Certificate) and the said application was made by the diplomat himself through online process after which the MEA conveyed him the grant of duty exemption through email which conveyed him the grant of exemption from duty for import;
- (x) Once final approval was granted, the same was conveyed to him by Manjeet, after which he used to visit the concerned diplomat's office and collect the hard

copies of the exemption documents and forward the same to Liyakat through courier;

- (xi) On being asked about the payment to diplomats, he stated that an advance money of 50% of the decided amount was to be paid during the process of Prior Approval and the balance 50% is made at the stage of making the final application to the MEA and in most cases payments were made in cash i.e., Indian Rupees, however on few occasions money was also deposited in the bank accounts given by the diplomats;
- (xii) He stated that Rehman used to send cash payment to him through one Mumbai based hawala agent by name Afzal who had been sending money to him since last 03 years;
- (xiii) He had received around Rs.60 Lakhs in cash from Afzal in the last 3 years on behalf of the Diplomats;
- (xiv) On some occasions Rehman used to deposit money in the accounts of the diplomats as instructed by them directly as well;
- (xv) He received cash in the range of Rs. 1 to Rs. 1.5 lakh from Rehman through Afzal depending upon the deal;
- (xvi) That the diplomats received amounts ranging from Rs. 8 to Rs. 10 Lakh based on the deal.

5.4 Statement of Shri Manjeet Maurya, an associate of Rajeev Sood, was recorded under Section 108 of the Customs Act, 1962 on 29.07.2021 wherein he, inter alia, stated that;

- (i) He joined the Ministry of External Affairs in July 2006 as a stenographer on temporary basis and was still working on the same post; he reported to the Section officer (Protocol), MEA.
- (ii) His job profile was to pursue and process the application of registration and sale of the vehicles received from diplomats through different embassies, these were both imported and locally procured vehicles.
- (iii) As per his knowledge the diplomats got full Custom/GST duty exemption of imported vehicles/locally procured vehicles (as per their entitlement) when they registered their vehicle through MEA.
- (iv) For claiming the Customs duty exemption on vehicle, a diplomat has to take Prior Approval from the Ministry of External Affairs before importing the vehicle for which the diplomat has to submit a letter requesting to provide Prior

Permission to import their personal/official vehicle; along with letter the diplomat has to submit proforma invoice, copy of passport and MEA identity card for getting Prior Approval.

- (v) After getting prior approval, the diplomat has to submit Form 9 along-with following documents at the time of importing the vehicle for claiming duty exemption on the imported vehicle:
- Prior approval
 - Invoice
 - Bill of Lading
 - Identity card
 - Passport
- (vi) After submission of the above said documents, the officer/employee of the Ministry of External Affairs scrutinizes the documents and issues exemption letter, addressed to the Customs authority in the name of the diplomat for providing the exemption on import duty of the goods imported by the diplomat.
- (vii) After importing duty-free vehicle by availing exemption, the diplomat has to apply for registration of the said vehicle through MEA only within 03 months of importing the vehicle.
- (viii) Diplomats have a lock-in period for selling their duty free vehicle in the local market. This lock-in period is of 3 years, 4 years or may be more depending upon the country, the diplomat belonged.
- (ix) If the importer diplomat wanted to sell his duty free imported vehicle within lock in period, he/she needs to pay the full amount of duty as per Customs provision.
- (x) A diplomat of the rank of second secretary and below has entitlement of one duty free vehicle within two years of posting in the country; a diplomat of rank first secretary and above has entitlement of two duty free vehicles within two years of posting in the country.
- (xi) He stated that he used to put up file to his section officer for registration of vehicle after import or selling of vehicle if a diplomat was eligible to sale his vehicle and applied for the same.
- (xii) He met Rajeev Sood in the year 2015 for the first time along with one diplomat and enquired about the documents required for sale of vehicles on which GST/excise exemption was taken by the Diplomat.

- (xiii) Rajeev Sood also enquired about the eligibility of one Diplomat for importing vehicles in his name. After that Shri Rajeev Sood met him after 3-4 months for the second time and enquired about the documents required for duty free import of furniture by using the exemption which is entitled to diplomat only; He again enquired about one diplomat's eligibility for duty free import by using exemption notification entitled to diplomats.
- (xiv) After that Shri Rajeev Sood used to meet him in every 2-3 months and used to enquire about the documents required for duty free import of vehicles/furniture by using the exemption which is entitled to diplomat; every time he used to enquire about a new diplomat's eligibility for duty free import by using exemption notification entitled to diplomats and he (Manjeet) used to provide him (Rajeev Sood) the information regarding the necessary documents for duty free import by using exemption notification entitled to diplomats.
- (xv) He used to provide him (Rajeev Sood) information about the eligibility of diplomat for duty free import by using exemption notification entitled to diplomats; He used to provide the required information to Shri Rajeev Sood in lieu of monetary benefits.
- (xvi) Regarding the registration of vehicles (imported duty free), done in the name of diplomat, he stated that in most of the cases, registration was not done through MEA and instead the vehicles might have been sold directly into local market by brokers like Rajeev Sood.

6. From the investigation carried out by DRI, it appeared that Rehman Iqbal Ahmed Shaikh was the mastermind of the syndicate importing luxury cars in the name of foreign diplomats that were sold in the open market thereby evading Customs duty. He took the help of various other syndicate members in carrying out the said smuggling activity. Multiple Summonses were issued to Rehman Shaikh requiring him to appear before the DRI officer and cooperate with the investigation. However, he failed to appear before the DRI officer showing his scant regard for the law of the land.

Analysis of evidence recovered and facts revealed during investigation:

7. The case emanated from the receipt of intelligence that pointed towards the smuggling of high-end luxury cars by a syndicate led by Rehman Iqbal Ahmed Shaikh. The subject Lexus LX570 car bearing Chassis No. URJ2014199918 was one among the said smuggled

cars. The said Lexus LX570 car was imported into India vide Bill of Entry No. 6123712 dated 18.12.2019 without payment of duty by availing the benefit of the Customs duty exemption Notification No. 3/1957-Cus dated 08.01.1957 in the name of the privileged person Ms Fionah Ngunjiri, Counsellor, Kenya High Commission who had submitted the required documents for obtaining the Exemption Certificate from MEA. The syndicate appeared to have diverted the said imported Lexus LX 570 car into the open market for sale to a non-privileged person, instead of delivering it to the Fionah Ngunjiri, Counsellor, Kenya High Commission. Since the said vehicle was not registered in the name of the privileged person, it appeared that the said vehicle was disposed of by Ms Fionah Ngunjiri in violation of the conditions of the Customs Notification No 3/1957-Cus dated 08.01.1957 and the Exemption Certificate issued by the MEA.

7.1 It also appeared that the said Bill of Entry No. 6123712 dated 18.12.2019 in the name of Ms Fionah Ngunjiri, Counsellor, Kenya High Commission was filed by the customs broker, M/s. Babaji Khimji & Co.

Analysis of statements:

8. The analysis of the statements of Rajeev Sood tendered under Section 108 of the Customs Act, 1962 revealed that, in 2017, Rehman had offered him the business proposal of importing duty-free goods viz. furniture, cars etc. in the name of foreign diplomats and asked Rajeev Sood to help him in that business as Rajeev Sood had sources in various embassies. Rajeev Sood used his contacts in MEA and Embassies to reach the diplomats and offered them the business proposals mooted by Rehman Shaikh for duty-free import of goods like cars and furniture in their name. When the diplomats agreed, Rajeev Sood shared their contact information with Rehman Shaikh for further negotiation. Rajeev Sood also took the help of Manjeet Maurya who was working as a clerical staff in the Ministry of External Affairs on contract basis for obtaining necessary permission and information for the import of cars in the name of diplomats. Further, Manjeet Maurya admitted that he provided the information and requisite documents of the diplomats to Shri Rajeev Sood for monetary consideration.

8.1 Rajeev Sood, with the help of Liyakat Bachu Khan, who is also an accomplice of Rehman Shaikh, obtained the necessary permission for customs clearance of the imported vehicles. He further paid the diplomats amounts ranging from Rs. 8 to Rs. 10 Lakhs for

providing their documents and permission to import the vehicles.

8.2 The analysis of the statements of Liyakat Bachu Khan revealed that he worked for Rehman Iqbal Ahmed Shaikh who is the mastermind of the subject case. He used to work on the directions of Shri Rehman Iqbal Ahmed Shaikh. He had taken the delivery of the said car and further transported it on the directions of Shri Rehman Iqbal Ahmed Shaikh.

8.3 The statement of Aubrey D'Souza showed that he had handed over the said car to Liyakat Bachu Khan who was an active member of the syndicate. It appeared that Aubrey Elias D'souza was aware that the said car was not taken to its nominated destination i.e. to the Kenyan Embassy in New Delhi.

The Modus-Operandi

9. The syndicate led by one mastermind, Rehman Iqbal Ahmed Shaikh, who appeared to be currently based in Dubai, had adopted a novel modus operandi and identified foreign diplomats posted in India who were eligible to import a luxury car at Nil rate duty by availing the Customs exemption Notification No. 03/1957-Cus dated 08.01.1957. Thereafter, a large number of high-end luxury cars were imported by the syndicate in the name of foreign diplomats posted in India.

9.1 Rajeev Sood was one of the members of the syndicate, who was very well acquainted with the mastermind Rehman Shaikh. He was earlier working as a commission agent for diplomats of various Embassies and used to source things like furniture, household items, etc. for the diplomats. He used to introduce diplomats to the mastermind and facilitate their deal thereof. Rajeev Sood used to visit Embassies at times to facilitate the deal on behalf of the Rehman Shaikh. He also collected money from Rehman Shaikh through various Hawala Agents and gave the decided commissions to the diplomats in many deals. He also used to get a commission for the imported consignments as well as got commission from the mastermind for providing information on foreign diplomats and their eligibility for duty-free imports. Rajeev Sood also collected documents from various interested Diplomats such as ID cards, passports, visas etc. and used to forward them to one Liyakat Bachu Khan, a driver and a close confidant of the mastermind Rehman Shaikh. Thereafter, Liyakat prepared all the necessary papers in prescribed formats for availing the exemption under notification No. 03/1957-Cus and sent it to Rajeev Sood who then forwarded the same to the Diplomats for

onward submissions to the Protocol Section, Ministry of External Affairs, Government of India for the necessary Exemption Certificate through proper channel. Rajeev Sood then used to expedite the process at the MEA through one Manjeet Maurya (a contract employee at MEA). Once the application of the Diplomats was processed at the MEA, Rajeev Sood used to collect the Exemption Certificate along with various other necessary documents from the Diplomats and used to forward them to Rehman Shaikh or Liyakat for the import of the luxury vehicles.

9.2 Liyakat Bachu Khan, was a close confidant and the right-hand man of Rehman Shaikh and had been working as his driver cum assistant for more than 15 years. He coordinated with various members of the syndicate and others at the behest of the mastermind, Rehman Shaikh. He used to collect the documents (including the Exemption Certificate, Diplomatic ID cards, declarations etc.) from MEA through Rajeev Sood and then used to forward the documents to the Customs Broker for filing the Bills of Entry once the luxury cars were sourced from abroad by Rehman Shaikh. Once the luxury cars were cleared duty-free, Liyakat used to take the delivery of the luxury cars imported in the name of the diplomats and used to deliver the same to the addresses/persons as per the details provided by Rehman Shaikh. Further, Liyakat Bachu Khan did all the miscellaneous work as and when required and instructed by Rehman Shaikh.

9.3 Investigations caused by the DRI revealed that the syndicate led by Rehman Shaikh had smuggled more than 20 Luxury cars such as Range Rover, Toyota Land Cruiser, Bentley, Nissan Patrol etc. using the Modus Operandi as explained above, thus evading Customs Duty and thereby robbing the exchequer to the tune of several Crores of rupees. They appeared to have misused the Diplomatic exemptions provided to the various diplomats of foreign countries when posted in India and have thus soured the relations between India and many other countries. There were several other private individuals who had provided their personal details to the members of the syndicate in whose names the smuggled luxury cars were fraudulently registered. There were several other car dealers who assisted the syndicate in finding prospective buyers for the smuggled cars. Further, the syndicate had also used the services of several other Hawala Agents, individuals, and firms to route the sale proceeds of the smuggled cars. The instant demand, however, is limited to the Lexus LX 570 Car bearing Chassis number URJ2014199918 smuggled and not registered in the name of a privileged person.

Arrest of Liyakat Bachu Khan and Rajeev Sood

10. Based on various evidences which revealed that Rehman Shaikh initially identified the interested diplomats through Rajeev Sood and dealt with the diplomats for carrying out the import of cars and Rajeev Sood forwarded the details to Liyakat Bachu Khan, a close confidant of Rehman Shaikh. Then Liyakat Bachu Khan came into action and prepared the request letter to import the cars which were forwarded to the diplomats, which were in turn sent by diplomats to MEA for permission, and sanction orders were obtained from MEA, on the basis of which the import documents had been made which were forwarded to Customs Brokers and import of high-end luxurious cars were made by fraudulently availing the exemption benefits available to the diplomats. It was also found in most of the cases that after getting clearance from customs, forged papers were prepared by Liyakat Bachu Khan through his contact and shown to prospective buyers. The recovery of incriminating documents/records from the mobiles of Liyakat Bachu Khan along with their statements recorded under the provisions of Section 108 of the Customs Act, 1962, revealed that Liyakat Bachu Khan and Rajeev Sood were involved in the fraudulent import of luxury cars in the name of diplomats. Therefore, Liyakat Bachu Khan was arrested in Mumbai on 15.07.2021 under the provisions of Section 104 of the Customs Act, 1962 and produced before the Court of Hon'ble First Class Judicial Magistrate, Uran Court, where he was remanded to Judicial Custody. Subsequently, considering the active role of Rajeev Sood and his active participation in the crime of illicit import of luxury cars, which tarnished the image of the nation, he was arrested on 18.07.2021 at Delhi and under transit remand produced before the Court of Hon'ble First Class Judicial Magistrate, Uran Court from where he was remanded to Judicial Custody. Subsequently, after completion of 60 days, the said accused were released on default bail.

11. The evidence gathered during the investigation, as described in the foregoing paras, appeared to clearly establish the above modus operandi employed by the syndicate led by Rehman Shaikh for the smuggling of luxury cars. These evidences have been accepted by Liyakat Bachu Khan as true. It was also admitted by him that this syndicate of importing luxury cars in the names of the diplomats by availing the exemption notification No. 03/1957-Cus dated 08.01.1957, was led by Rehman Shaikh. He has deposed that firstly they would identify the interested diplomats and obtained request letters from the diplomats to import the cars, which were sent to MEA for Prior Approval and finally they obtained the duty Exemption Certificate. In the present case, it appeared to have been established that after

obtaining the Prior Approval and the Exemption Certificate from MEA, the import documents were made and the import of car having chassis No. URJ2014199918 was affected by fraudulently availing the exemption benefits available to the diplomat Ms Fionah Ngunjiri, Counsellor, Kenya High Commission.

Summary of investigations and apparent legal liabilities relating to the subject car

12. It appeared from the investigations carried out and various statements recorded that the privileged person namely Ms Fionah Ngunjiri, Counsellor, Kenya High Commission, had joined hands with Rehman Iqbal Ahmed Sheikh and facilitated all the paperwork required for importing car duty-free in her name by misusing her diplomatic status and the same was not registered in her name. It appeared that the said car had been sold in the open market. The exemption Notification No. 03/1957-Cus dated 08.01.1957 as well as the Exemption Certificate issued by MEA clearly mandate that the vehicle cannot be sold without payment of customs duty and without the concurrence of CBIC.

12.1 It appeared that if dutiable goods are brought into the country without paying the Customs duty by way of availing exemption, the Customs duty is still attached to the goods though it may not have been paid at the time of clearance from Customs area for the reasons as it was meant for a foreign diplomat (privileged person). However, the duty is leviable later on when the goods pass into the hands of persons other than the privileged person. As per Rule 4A(c) of the Foreign Privileged Persons (Regulation of Customs Privileged Rules, 1957, if a diplomat wants to sell or otherwise dispose of the motor vehicle to any non-privileged person, he has to do so with the permission of Central Board of Excise and Customs through the Ministry of External Affairs, on payment of appropriate customs duty. Thus, substantiating the fact that the duty was attached to the said goods. It further appeared that the importer who smuggled the goods was guilty under the clause because he imported them in derogation of the prohibition or restriction. It also appeared that any other person who dealt with the said goods in the context of the import as explained above in any one of the connected ways with the requisite knowledge and intention would equally be guilty of the offence.

12.2 The evidence unearthed during the course of the investigation revealed that the said Lexus LX 570 car was imported into India without payment of duty under the Customs Notification No. 03/1957-Cus dated 08.01.1957. It also appeared that the members of the

syndicate had done so after a previous arrangement with the foreign diplomat Ms Fionah Ngunjiri, Counsellor, Kenya High Commission, as the said vehicle was not registered in the name of the said diplomat. The said car was imported in the name of diplomat Ms Fionah Ngunjiri using the Customs exemption Notification No 03/1957-Cus dated 08.01.1957 available to foreign diplomats in India and the said car was not registered in the name of the diplomat. After import the said car was handed over to the active member of the syndicate and it appeared that the said car had been sold in the open market. Thus, it appeared to have rendered the said car liable to confiscation under the Customs Act, 1962.

12.3 The Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957 read with DGFT Notification No. 39 (RE-2010)/2009-2014 dated 31.03.2011 allow for disposing of vehicles imported by foreign diplomats to non-privileged persons in the manner specified. The policy condition (4) of Schedule 1 of Import Policy also prescribes the disposal of such imported vehicles in the manner specified in the Foreign Privileged Persons (Regulations of Customs Privileges) Rules, 1957, as amended from time to time. Thus, the vehicles imported by Foreign Diplomats can be disposed off only after payment of due Customs duty, which is not so paid in the present case,

12.4 Thus, from the above facts, it appeared that Rehman Shaikh was successful in importing the said Lexus LX 570 car under diplomatic exemption provided in the Customs Notification No. 3/1957-Cus dated 08.01.1957 with the help of Liyakat Bachu Khan, Rajeev Sood and Customs Broker Babaji Khimji & Co. After the import was made without payment of duty in the name of Ms Fionah Ngunjiri, Counsellor, Kenya High Commission, the same was not registered in the name of the privileged person. Even a delivery challan bearing a stamped authentication by Kenya High Commission having job No. 716 dated 21.12.2019 of Babaji Khimji & Co. showing that the said car had been received was also unearthed during the investigation.

12.5 The crucial evidence unearthed during the investigation appeared to establish that the smuggling of the said Lexus LX 570 car was made on the behest of Rehman Shaikh. It therefore appears that Rehman Shaikh had hatched a conspiracy of smuggling of the said Lexus LX 570 car into the country and had effected fraudulent import resulting in evasion of Customs duty and rendering the said car liable to confiscation.

Contravention of provisions of the law

13. From the above, it appeared that the provisions of Section 46, 47, 111 of the Customs Act, 1962, the Customs Notification No. 03/1957-Cus dated 08.01.1957, the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957, etc. had been contravened by Ms Fionah Ngunjiri, Counsellor, Kenya High Commission, Rehman Iqbal Ahmed Shaikh, Liyakat Bachu Khan, Rajeev Sood, Manjeet Maurya and Aubrey D'Souza.

Liability for confiscation of the goods

14. As it appeared that the goods viz. Lexus LX 570 car was imported into India vide Bill of Entry No. 6123712 dated 18.12.2019 without payment of duty by availing the benefit of the Customs duty exemption Notification No. 03/1957-Cus dated 08.01.1957 in the name of a privileged person Ms Fionah Ngunjiri, Counsellor, Kenya High Commission, however, the same was not registered in her name. It appeared that the said car had been sold in the open market by the syndicate members. As per Section 111(j) of the Customs Act, 1962 the goods are liable for confiscation, if dutiable or prohibited goods are removed or attempted to be removed from a Customs area or a warehouse without the permission of the Proper officer or contrary to the terms of such permission. In the instant case, the provisions of Section 111(j) appeared to be applicable since the dutiable goods viz. Lexus LX 570 car, was removed contrary to the terms of the permission of the proper officer who had granted permission for its clearance to Ms Fionah Ngunjiri, Counsellor, Kenya High Commission, subject to getting it registered in her name and not selling it without prior permission and on payment of Customs duty. Further, Section 111(o) of the Customs Act, 1962 covers any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer. In the present case, the contravention of Section 111(o) appeared evident, as per the facts revealed during the investigation, since the said car was exempted from duty subject to the conditions which were not fulfilled and it was diverted and not registered in the name of a privileged person. Therefore, the said vehicle appeared liable for confiscation under Section 111(j) and Section 111(o) of the Customs Act, 1962.

Quantification of Customs duty

15. In the present case, Ms Fionah Ngunjiri had applied to the MEA for Prior Approval and the Exemption Certificate in respect of the import of the said Lexus LX 570 car bearing chassis No. URJ2014199918 and the said car was imported for her personal use. Further, the

Customs Duty Exemption Certificate issued vide Serial No. 5/FN/12/2019 on 16.12.2019 issued by MEA in respect of the said vehicle specifically clarified that the vehicle would not be sold or otherwise disposed of to a person who is not entitled to import motor vehicle free of duty without the concurrence of CBIC to be obtained through MEA and without the payment of Customs duty to the Commissioner of Customs nearest to the headquarters of the privileged person concerned. In the present case, the said Lexus LX 570 car having chassis No. URJ2014199918 imported duty-free was diverted in the open market and was not registered in the name of the privileged person. Therefore, it appeared that Ms Fionah Ngunjiri was liable to pay the due Customs duty along with applicable interest on the said car imported into India vide Bill of Entry No. 6123712 dated 18.12.2019. The Customs duty liability on the said Lexus LX 570 car bearing chassis No. URJ2014199918 as per the tariff rate at the time of its import in the name of Ms Fionah Ngunjiri vide Bill of Entry No. 6123712 dated 18.12.2019 appeared to be Rs.62,77,080/- , as detailed in the following table:-

TABLE No. 2

Assessable value	BCD@125%	Social Welfare Surcharge (SWS)	IGST	Total Duty
(a)	(b) = a*125%	(c) = b*10%	(d) = (a+b+c)*28%	(e) = b+c+d
30,77,000/-	38,46,250/-	3,84,625/-	20,46,205/-	62,77,080/-

15.1 Therefore, it appeared that the above said Customs duty amounting to Rs.62,77,080/- along with applicable interest thereon under Section 28AA ibid was required to be demanded and recovered from Ms Fionah Ngunjiri as per provisions of Section 28(4) of the Customs Act, 1962 read with Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957 read with Customs Notification No. 03/1957-Cus dated 08.01.1957.

Culpability of persons involved in the case

16. Investigation of the case and scrutiny of evidence appeared to indicate that besides Rehman Shaikh and his key associates Liyakat Bachu Khan and Rajeev Sood, the role of Ms Fionah Ngunjiri, Counsellor, Kenya High Commission Delhi was also crucial in executing the conspiracy of smuggling of the said Lexus LX 570 Car bearing Chassis No. URJ2014199918. A few other persons also appeared to have done acts of omission and commission which appeared to have rendered them liable to penalty. The same are discussed as follows:

- (i) Investigations in the case revealed that Rehman Iqbal Ahmed Shaikh was the mastermind of the syndicate which had smuggled into India a number of high-end

luxury cars in the name of foreign diplomats. The car Lexus LX 570 car covered in the instant case is one such car. It was consigned by Rehman Shaikh from Dubai and the entire finance for expenses including transportation was provided by Rehman Shaikh who appeared to be the principal conspirator and kingpin of the whole conspiracy of smuggling of the said Lexus LX 570 car undertaken by this syndicate. He was instrumental in carting the vehicle from Dubai to India, identification of the foreign diplomat Ms Fionah Ngunjiri supplied and facilitated the finance for all activities pertaining to the said acts of smuggling as stated by the co-conspirators, viz. Liyakat Bachu Khan and Rajeev Sood. Such evidence indicated his primary role in the conspiracy of smuggling of Lexus LX 570 car in the present case. Rahman Shaikh instructed Liyakat Bachu Khan to take the delivery of the illicitly imported Lexus LX 570 car from the Customs Broker Babaji Khimji & Co. and instead of delivering it to the importer diplomat, he diverted it into the open market. Though he remained behind the scenes and engaged the services of other co-conspirators to get the vehicle cleared and registered, he appeared responsible for the aforesaid contraventions in importing the subject car for sale to the non-privileged person. Further, for his acts of omission and commission in improper importation of the said car which appeared to have rendered the said car liable to confiscation under Section 111, as explained above, Rehman Shaikh appeared to be liable for penalty under Section 112(a) and Section 112(b) of the Customs Act, 1962. In addition, Rehman Shaikh also appeared liable to penalty under Section 114AA of the Customs Act, 1962, as he knowingly and intentionally caused his co-conspirator, Liyakat Bachu Khan to submit documents to clear the goods from Customs and he knew that the said car would not be registered in the name of privileged persons and instead would be diverted in open market.

- (ii) Ms Fionah Ngunjiri, Counsellor, Kenya High Commission, the privileged person, appeared to have dealt with Rehman Iqbal Ahmed Shaikh and complied with all the necessary formalities, on his behest, for importing the vehicle Lexus LX 570 car in her name. Ms Fionah Ngunjiri had applied for Prior Approval for import of the vehicle and obtained the customs duty Exemption Certificate from MEA. In the Para 2(a) of the certificate serial No 5/FN/12/2019 on 16.12.2019, it was specifically mentioned that the vehicle would not be sold or otherwise disposed of

to a person who is not entitled to import motor vehicle free of duty without the concurrence of CBIC and without the payment of Customs Duty to the Commissioner of Customs nearest to his headquarters in India. However, the said car was not registered in the name of privileged person. Thus, Ms Fionah Ngunjiri appeared to have deliberately failed to adhere to the statutory provisions prescribed for the import of vehicle under Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1967 read with Customs Act, 1962. Thus, for her act of omission and commission, and collusion with the members of the syndicate led by Rehman Iqbal Ahmed Shaikh in evasion of Customs duty and by suppression of facts in improper importation of the said car, including not adhering to the prescribed provisions of law, which appeared to have rendered the said car liable to confiscation under Section 111 of Customs Act, 1962. Therefore, Ms Fionah Ngunjiri appeared to have rendered herself liable to penalty under Section 112(a) or Section 114 A of the Customs Act, 1962. It further appeared that she had knowingly disposed of the said vehicle in violation of the statutory conditions and thus for the offence of knowingly/intentionally making/ signing or using, or causing to be made, signed or used the documents which were false or incorrect in a material particular as she knew that the said car will not be registered in her name and instead will be diverted in the open market. The same appeared to have rendered her liable for imposition of penalty under Section 114AA of the Customs Act, 1962.

- (iii) Liyakat Bachu Khan in his various submissions has, while admitting to his role, also narrated the crucial role played by others in the entire conspiracy of smuggling of the said Lexus LX 570 car. Liyakat Bachu Khan played a prominent role on the ground in executing the conspiracy. Liyakat Bachu Khan took the delivery of the said vehicle and handed it over to unknown persons on the directions of Rehman Iqbal Ahmed Shaikh. In view of the above, for his acts of commission and omission in the smuggling of luxury vehicle Lexus LX 570 car, which appeared to have rendered the said car liable to confiscation, it appeared that co-conspirator Liyakat Bachu Khan was liable for penalty under the provisions of Section 112 (a) and Section 112(b) of the Customs Act 1962. Further, for the offence of knowingly or intentionally making, signing or using, or causing to be made, signed or used any declaration statement or document which

was false or incorrect in material particular, in this transaction of import of Lexus LX 570 Car as he knew that the said car would not be registered in the name of the privileged person and instead would be diverted in open market, co-conspirator, Liyakat Bachu Khan also appeared to be liable for imposition of penalty under Section 114AA of the Customs Act, 1962.

- (iv) Rajeev Sood, based in Delhi had good contacts at various embassies. He worked in coordination with the syndicate led by the mastermind Rehman Shaikh in liaisoning with the embassy. He also took the assistance of Manjeet Maurya who was working at the Ministry of External Affairs by extracting crucial information about the eligibility of diplomats and expediting the process of Prior Approval and Exemption Certificate at MEA. Along with the members of the syndicate led by the mastermind Rehman Shaikh, for their acts of omission and commission in smuggling the said luxury car, Lexus LX 570 car, which they had reasons to believe was liable to confiscation, Rajeev Sood and Manjeet Maurya appeared liable for penalty under the provisions of Section 112 (a) and Section 112 (b) of the Customs Act, 1962.
- (v) The Lexus LX 570 car having chassis No. URJ2014199918 was imported in the name of Ms Fionah Ngunjiri vide Bill of Entry No. 6123712 dated 18.12.2019, which was dealt with by Aubrey D'Souza, representative of Customs Broker, Babaji Khimji & Co. and he was fully aware that the said car was not taken to its nominated destination i.e., to the Embassy of Kenya High Commission. It is the fact that the said car was not registered in the name of the privileged person. However, he, as a Customs Brokers, was well aware that the imported goods cleared were required to be transported to the nominated place, but instead it was diverted into the open market. Thus, it appeared that he had concerned himself with the imported goods on which Customs Duty was evaded which was liable for confiscation under Section 111(j) and Section 111(o) of the Customs Act, 1962. Thus, it appeared that Aubrey D'Souza was actively involved in the improper importation of the impugned goods and hence he appears liable for penalty under the provisions of Section 112 (b) of the Customs Act, 1962.

17. In view of the above, the impugned Show Cause Notice (SCN) dated 01.11.2023 was issued to Ms. Fionah Ngunjiri (Noticee No.1), Shri Rehman Iqbal Ahmed Shaikh (Noticee

No.2), Shri Liyakat Bachu Khan (Noticee No.3), Shri Rajeev Sood (Noticee No.4), Shri Manjeet Maurya (Noticee No.5) and Shri Aubrey Elias D'Souza (Noticee No.6) requiring them to show cause as to why:-

- (i) the impugned goods i.e., 'Lexus LX 570 car' imported vide Bill of Entry No. 6123712 dated 18.12.2019 having total assessable value of Rs. 30,77,000/- should not be held liable to confiscation under section 111(j) and 111(o) of the Customs Act, 1962;
- (ii) the differential duty thereon amounting to Rs.62,77,080/- (Rupees Sixty Two Lakhs Seventy Seven Thousand and Eighty Only) should not be demanded and recovered from Ms Fionah Ngunjiri, Counsellor, High Commission of the Republic of Kenya under Section 28(4) of the Customs Act, 1962, read with Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957 read with Customs Notification No. 03/1957-Cus dated 08.01.1957 along with the applicable interest under Section 28AA ibid;
- (iii) penalty should not be imposed on Shri Rehman Iqbal Ahmed Shaikh under Section 112(a) and Section 112(b) of the Customs Act, 1962;
- (iv) penalty should not be imposed on Shri Rehman Iqbal Ahmed Shaikh under Section 114AA of the Customs Act, 1962;
- (v) penalty should not be imposed on Ms Fionah Ngunjiri, Counsellor, High Commission of the Republic of Kenya under Section 112(a) and/or Section 114A of the Customs Act, 1962;
- (vi) penalty should not be imposed on Ms Fionah Ngunjiri, Counsellor, High Commission of the Republic of Kenya under Section 114AA of the Customs Act, 1962 ;
- (vii) penalty should not be imposed on Shri Liyakat Bachu Khan under Section 112(a) and Section 112(b) of the Customs Act, 1962;
- (viii) penalty should not be imposed on Shri Liyakat Bachu Khan under Section 114AA of the Customs Act, 1962;
- (ix) penalty should not be imposed on Shri Rajeev Sood and Shri Manjeet Maurya under Section 112(a) and Section 112(b) of the Customs Act, 1962;
- (x) penalty should not be imposed on Shri Aubrey Elias D'Souza under Section 112 (b) of the Customs Act, 1962.

WRITTEN SUBMISSIONS

18. All the Noticees were required to furnish their written reply within 30 days of receipt of the impugned SCN dated 01.11.2023. However, it is observed that only the Noticee No.6 viz, Shri Aubrey Elias D'Souza has furnished their written submissions. The other five (5) Noticees viz., Ms. Fionah Ngunjiri, Shri Rehman Iqbal Ahmed Shaikh, Shri Liyakat Bachu Khan, Shri Rajeev Sood, and Shri Manjeet Maurya have neither filed any written reply nor sought any time extension for submission of the same. In this regard, vide this office letter dated 04.06.2025, they were reminded also to submit their written reply to the impugned SCN. However, no any response is received from the said Noticees who have not filed their written reply. The written submissions filed by the Noticee No.6, Shri Aubrey Elias D'Souza through their Authorised representatives' letter dated 15.10.2024 & 17.06.2025 are discussed hereunder.

18.1 Shri Aubrey Elias D'Souza (Noticee No.6) filed his written reply through his Authorised representative/Advocate Shri Anil Balani's letter dated 15.10.2024 wherein it is contended that at the outset they deny the allegations and charges leveled against him in the Notice. In the said written reply dated 15.10.2024, it is *inter alia* further contended that:-

- (i) In his statement dated 22/07/2021, the Noticee Shri Aubrey Elias D'Souza has inter-alia stated that due to Covid-19 he had clearly stated that the import documents were received directly from the mail-id of the Diplomat;
- (ii) The car was cleared on the basis of duty exemption certificate in favour of the Diplomat. All the documents were attested by the Embassy.
- (iii) He had received a duly acknowledged delivery challan from the Diplomat. There was no complaint of non-delivery of car after clearance.
- (iv) He acted in the normal course of his business bona fide and in good faith. He did not earn anything over and above his regular nominal fees.
- (v) It is well settled that the Customs Broker is not liable for diversion of the goods after clearance.
- (vi) Section 111(j) refers to dutiable goods removed from Customs without permission of the Proper officer. In the instant case, the car was cleared only after obtaining OOC from the proper officer of customs.
- (vii) Section 111(o) refers to non-observance of the condition of the exemption. The non-observance, if any, is on the part of the importer. He (Shri D'Souza) had not aided or abetted any non-observance. The alleged sale of the car by the

Diplomat was not under his (Shri D'Souza) control or within his knowledge. None of the persons mentioned in the notice has made any allegation against him (Shri D'Souza).

- (viii) He had not committed any act rendering the goods liable for confiscation under Section 111. Therefore, he was not liable for penalty under Section 112 of the Customs Act 1962.
- (ix) As he had not physically dealt with the car in any manner post clearance, he was not liable for penalty under Section 112(b). In any case, it is well settled that *mens rea* is an essential ingredient of Section 112(b). In the instant case, he did not have any ulterior motive or any extra benefit, gain or incentive.
- (x) He relied on the following case laws:-
 - Ravindra Maruti Mansukh Vs Commissioner of Cus.(Import), Mumbai - 2013(291)E.L.T.363(Tri. - Mumbai)
 - Commissioner of Customs (General), Mumbai Vs. M.D. Shipping Agency - 2014(299) E.L.T.257(Bom.)
 - S.P. Pawar & Sons Vs. Commr. of Cus.(General), Mumbai-I - 2009(247) E.L.T.562(Tri. - Mumbai)
 - Rajeev Khatri Vs. Commr. of Cus.(Export) – [(2023)9centax412(Del.)]
 - B.K. Manjunath Vs. Commr. of C.Ex., Customs and Service Tax, Mysore -[(2024) 15 Centax2 (Tri.-Bang)]
 - S.M. Dave Vs Commr. of Cus, Kandla- [2009(247)E.L.T.437(Tri.Ahmd.)]
- (xi) In the circumstances, it is prayed that the proceedings against him may be dropped.

18.2 Further, Shri Aubrey Elias D'Souza filed additional written submissions dated 17.06.2025 through his Authorised representative Shri Anirudh Nansi wherein it is *inter alia* contended that:-

- (i) The following documents were received by the Noticee on his email jpintl@rediffmail.com directly from the Diplomat email, which were submitted to Customs at the time of import:
 - a) Note Verbale No. KHC/ND/PROT/4A dated 27/11/2019.
 - b) Prior Approval from MEA No. D.VI/451/2 (37)/2019/3883 dated 29/11/2019.
 - c) Exemption Certificate No. 05/FN/12/2019 dated 16/12/2019 issued by MEA. The certificate is endorsed by the Appraiser, Indian Customs, stating

that passed under Bill of entry No 6123712 dated 18/12/2019 at the time of clearance.

- d) Self-Certificate of Ms Fionah Ngunjiri (Counsellor).
- (ii) The above documents were received directly from the Embassy on the Noticee's email id. The facts had been confirmed by Mr. Liyakat Khan in his statement dated 14/07/2021, Mr. Rajeev Sood dated 18/07/2021, and Noticee dated 22/07/2021, recorded by DRI under Section 108 of the Customs Act 1962.
- (iii) Based on the above, Bill of Entry No. 6123712 dated 18/12/2019 was filed for home consumption. The BoE was assessed by the Group granting the benefit of exemption Notification No. 03/1957 dated 08/01/1957 at Nil duty. No discrepancy was noticed by the department at the time of assessment, nor at the time of examination of the car. Accordingly, OOC was given by the proper officer on 18/12/2019. Thus, Section 111(j) is not applicable in the present case.
- (iv) Letter dated 21/12/2019 was issued by the Noticee to Ms Fionah Ngunjiri (Counsellor) enclosing the original documents with the Delivery Challan No. 716 dated 21/12/2019. The said delivery Challan was returned by the Diplomat after endorsing the signature and the stamp of the Embassy (Kenya High Commission), evidencing that the car was received by the Diplomat.
- (v) In the prior approval No D.VI/451/2(37)/2019/3883 dated 29/12/2019 granted by MOE to import Lexus 570 Station (Petrol), MOE specified as under:
- "It may kindly be ensured that the Vehicle is registered within one month from the date of its purchase, and a copy of the vehicle registration certificate is sent to the Ministry."*
- (vi) However, in the present case, neither the Diplomat nor the Embassy has produced a registration certificate to MOE even after clearance of the car in 2019, clearly violating the approval granted by MOE to the importer, i.e., Ms Fiona Ngunjiri (Counsellor). The Diplomat filed no complaint with MOE or the HOME Ministry of non-receipt of the car imported for personal use, clearly establishing complete knowledge, involvement, ulterior motive, and mala fide intention of the Counsellor to defraud the exchequer and earn illegitimate money by importing and diverting the car in the local market instead of for personal use.
- (vii) Mr. Rajeev Sood, in his statement dated 20/07/2021, on being asked about the

payment to Diplomats, stated that advance money of 50% of the decided amount during the process of prior approval and a balance of 50% at the stage of final application to MEA. Payments were made in cash in most cases. Money was also deposited in the bank accounts given by the Diplomats. He has received around 60 lakhs in the last three years for payment to Diplomats. In some cases, Rehman used to deposit money directly into the account of the Diplomats. The Diplomats received around 8 to 10 lakhs based on the deal.

He had facilitated such deals for the Syrian Embassy (3), Lebanese Embassy (1), DPRK Korean Diplomats (3), Kenyan Diplomats (3), and Laos Diplomats (3).

- (viii) From the above, it was clear that for the diversion of the car post clearance in the local market, the importer Ms Fiona Ngunjiri (Counsellor) along with the conspirators was responsible and guilty violating provisions of Section 111(o), rendering the car liable for confiscation and not the Noticee (Shri D'Souza) as alleged in the SCN.
- (ix) Thus, it was abundantly evident that the car was diverted into the local market by the members of the syndicate in connivance with the Diplomats. The Diplomats were fully aware of the diversion of the car in the local market, for which they received money at various stages. The Summons issued to Ms. Fiona Ngunjiri was replied to by the Embassy, stating that the Counsellor was not available and would depose after his arrival. The Diplomats could not be investigated as they took the support of the Vienna Convention exemption. Summons issued to Rehman did not fetch any response. Therefore, failing to examine the importer and the role played by Mr Rehman, the charges leveled against the Noticee could not be proved and established, especially when the delivery of the car was receipted by the importer and the Delivery Challan was returned after endorsing the sign and stamp of the embassy.
- (x) None of the conspirators involved in the case had implicated Noticee (Shri D'Souza) of having played any role in the diversion of the car in the local market. No documentary evidence is forthcoming in the SCN establishing Noticee had prior knowledge about the diversion of the car in the local market, rendering the goods liable for confiscation. In the absence of this, the Noticee was not liable for penal action under Section 112 (b) of the Customs Act 1962.
- (xi) They were in the clearing business. The car was cleared based on an Authority

letter issued by the Embassy, Diplomat, in the name of M/s Babaji Khimji & Co. The clearance of the car complied with the law and CBLR 2018. The investigation carried out by DRI did not mention any lapse on the part of the Customs Broker in the clearance of the car from Customs. The entire case was based on the diversion of the car post clearance in connivance with Diplomats and other syndicate members over which the Noticee had no control.

- (xii) No evidence of acquiring possession of the car or in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing of the car, establishing improper importation of the goods by the Noticee was established in the investigation, rendering the goods liable for confiscation under Section 111 (j) & (o) of the Customs Act 1962. Therefore, penal provisions under Section 112 (b) of the Customs Act 1962 against the Noticee were not attracted and could not be imposed.
- (xiii) They relied on the following cases of import of cars by the Diplomat investigated by DRI, which were cleared by the Noticee, wherein charges leveled in the SCN were dropped and penalty set aside by the Commissioner (Appeals), JNCH, Nhava Sheva, and Additional Commissioner of Customs, CAC, NS-G, JNCH, Nhava Sheva.
 - i) Order in Appeal No. 40 (Gr. VB)/2025(JNCH)/Appeals dated 14/01/2025.
 - ii) Order in Appeal No. 484 (Gr. VB)/2025(JNCH)/Appeals dated 15/04/2025.
 - iii) Order No. 1805/2024-25/ADC/Gr.VB/NS-V/CAC/JNCH dated 27/03/2025
 - iv) Order No. 1807/2024-25/ADC/Gr.VB/NS-V/CAC/JNCH dated 27/03/2025.
- (xiv) Therefore, for the act and omission post clearance on the part of the syndicate and Diplomat leading to evasion of duty, the Noticee cannot be blamed and held responsible for the violations of Section 111 read with Section 112 of the Customs Act 1962.
- (xv) In view of the above, it is prayed that in all fairness and justice, the charges leveled against the Noticee in the SCN be dropped.
- (xvi) A personal hearing be granted before finalizing the case.

18.3 Further, vide their letter dated 05.08.2025, Shri Aubrey Elias D'Souza submitted compilation of the case laws relied upon by him in his reply of the impugned SCN.

PERSONAL HEARING

19. Following the principle of natural justice, Personal hearings in the matter were granted to all the Noticees on the following dates to present their case before the Adjudicating authority.

Name of the Noticee	Date on which Personal hearings were fixed	Date of PH intimation letters/emails sent to Noticee	Remarks
Ms. Fionah Ngunjiri (Noticee No.1)	20.09.2024, 08.10.2024, 08.08.2025, 18.08.2025.	06.09.2024, 26.09.2024, 24.07.2025, 08.08.2025.	The PH intimation letters were sent to the Noticee through Special Protocol Section, Ministry of External Affairs (MEA), New Delhi. However, neither any response was received from the Noticee nor the Noticee attended the PH.
Shri Rehman Iqbal Ahmed Shaikh (Noticee No.2)	18.09.2024, 08.10.2024, 07.08.2025, 14.08.2025.	04.09.2024, 24.09.2024, 25.07.2025, 08.08.2025.	Neither any response was received from the Noticee nor the Noticee attended the PH.
Shri Liyakat Bachu Khan (Noticee No.3)	18.09.2024, 08.10.2024, 07.08.2025, 14.08.2025.	04.09.2024, 24.09.2024, 25.07.2025, 08.08.2025.	Neither any response was received from the Noticee nor the Noticee attended the PH.
Shri Rajeev Sood (Noticee No.4)	18.09.2024, 08.10.2024, 07.08.2025, 14.08.2025.	04.09.2024, 24.09.2024, 25.07.2025, 08.08.2025.	Neither any response was received from the Noticee nor the Noticee attended the PH.
Shri Manjeet Maurya (Noticee No.5)	18.09.2024, 08.10.2024, 07.08.2025, 14.08.2025.	04.09.2024, 24.09.2024, 25.07.2025, 08.08.2025.	Neither any response was received from the Noticee nor the Noticee attended the PH.
Shri Aubrey Elias D'Souza (Noticee No.6)	18.09.2024, 08.10.2024, 07.08.2025.	04.09.2024, 24.09.2024, 25.07.2025.	The authorised representative of the Noticee attended the PH on 07.08.2025.

19.1 From the above, it is apparent that four opportunities of personal hearing were granted to the Noticees in the instant case. However, except for Shri Aubrey Elias D'Souza, none of the other Noticees, namely Ms. Fionah Ngunjiri, Shri Rehman Iqbal Ahmed Shaikh, Shri Liyakat Bachu Khan, Shri Rajeev Sood, and Shri Manjeet Maurya, attended the personal hearings, nor did they respond to any of the communication sent for personal hearings. They have also not filed their written reply to the impugned SCN nor sought any adjournment in the matter. Thus it is clear that enough opportunities have been granted to the said Noticees to defend their case, following the principles of natural justice. Further, Section 122A of the Customs Act, 1962 also mandates that no more than three adjournments can be granted to a party during adjudication proceedings.

19.2 During the hearing held on 07.08.2025 in virtual mode, Shri Anirudh Nansi, authorised representative, appeared on behalf of Shri Aubrey Elias D'souza. He reiterated their written submissions made vide their letter/email dated 15.10.2024, 17.06.2025 & 05.08.2025 in respect of the impugned SCN dated 01.11.2023.

DISCUSSION AND FINDINGS

20. I have carefully gone through the entire case records including the impugned SCN and its relied upon documents, written and oral submissions made by the Noticees, as well as all the legal provisions relevant to the instant case including the Notification No. 03/1957-Cus dated 08.01.1957, the Diplomatic relations (Vienna Convention) Act, 1972, the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957 and the Vienna Convention on Diplomatic Relations, 1961.

21. It is seen that the impugned SCN has been issued by the Commissioner of Customs (NS-V), JNCH, Nhava Sheva, Raigad, Maharashtra after a detailed and thorough investigation carried out by the DRI. However, the CBIC vide Notification No. 29/2025-Customs (NT) dated 24.04.2025 has appointed the Commissioner of Customs-VI (Preventive), Mumbai Customs Zone-III as the proper officer for the purpose of adjudication of the impugned SCN dated 01.11.2023. Accordingly, the instant case has been transferred to the undersigned by the Commissioner of Customs (NS-V), JNCH, Nhava Sheva for the purpose of adjudication of the impugned SCN.

21.1 It was also observed that at Para 17(vii) & (viii) of the impugned SCN, it is *inter alia* proposed to imposed penalty on Mohammed Wasim Abdul Gani Siddique along with Shri Liyakat Bachu Khan under Section 112(a) & 112(b) and Section 114AA of the Customs Act, 1962. However, in the body of the impugned SCN, there is no mention of anyone by the name of Mohammed Wasim Abdul Gani Siddique. Therefore, a letter dated 28.07.2025 was sent to the issuing authority i.e., the Commissioner of Customs, NS-V, JNCH, Nhava Sheva to clarify the same. In response, the office of the Commissioner of Customs, NS-V, JNCH, Nhava Sheva vide their letter dated 22.08.2025 has informed that it appears that there was no intention of the issuing authority to charge Shri Siddique and his name has inadvertently crept up at only one place i.e., where the imposition of penalty has been proposed.

In view of the above, I find that due to clerical error, the name of Mohammed Wasim Abdul Gani Siddique has inadvertently crept up at Para 17(vii) & (viii) of the impugned SCN. Therefore, the same is not required to be discussed in this order.

Fulfilment of principles of natural justice

22. I find that except for Shri Aubrey Elias D’Souza, the other Noticees, namely Ms. Fionah Ngunjiri, Shri Rehman Iqbal Ahmed Shaikh, Shri Liyakat Bachu Khan, Shri Rajeev Sood, and Shri Manjeet Maurya have not filed any written reply to the impugned SCN. I also find that in spite of four opportunities of personal hearing granted to the said Noticees, they have neither attended any of the personal hearings nor sought any adjournment in the matter. In this context, I find that the adjudication procedure as laid down in Section 122A of the Customs Act, 1962, is as under:-

122A. Adjudication Procedure.—

(1) The Adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.

(2) The Adjudicating authority may, if sufficient cause is shown at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing;

PROVIDED that no such adjournment shall be granted more than three times to a party during the proceeding.

22.1 I find that the requirement of adjudication procedure has been satisfied in this case. I find that multiple opportunities have been given to the said Noticees to respond to the impugned notice but the Noticee has failed to submit any reply/details in response to the notice. Furthermore, the Noticees were also informed every time the Personal Hearing was granted as stated above that if they or their authorized representative/s failed to appear for the Personal Hearing on scheduled date/time, then the subject matter would be adjudicated *ex-parte* on its merit and basis the available records/evidences. However, in spite of being asked repeatedly to appear for the personal hearings for defending their case, the said Noticees have failed to appear for personal hearing. They have not made themselves available for defending their case out of their own choice. Accordingly, I proceed in the matter before me.

22.2 In this connection, I find that Hon'ble Supreme Court, High Courts and Tribunals, in several judgments/decisions, have held that *ex-parte* decision will not amount to violation of principles of natural justice, when sufficient opportunities for personal hearing have been given for defending the case. In support of the same, I rely upon the following judgments/orders:-

- (a) The Constitution Bench of Hon'ble Supreme Court in the case of *Union of India v. Tulsiram Patel* [as reported in (1985) 3 SCC 398 = AIR 1985 SC 1416] and as summarized in *Satyavir Singh v. Union of India* [as reported in (1985) 4 SCC 252 = AIR 1986 SC 555], has observed that;

“.....

.....

The principles of natural justice are not the creation of Article 14 of the Constitution. Article 14 is not the begetter of the principles of natural justice but is their constitutional guardian.

The principles of natural justice consist primarily of two main Rules, namely, "nemo judex in causa sua" (no man shall be a judge in his own cause) and audi alteram partem (hear the other side). The corollary deduced from the above two Rules and particularly the audi alteram partem Rule was qui aliquid statuerit parte inaudita altera, aequum licet dixerit, haud aequum fecerit (he who shall decide anything without the other side having been heard, although he may have said what is right will not have done what is right" or as is now expressed "Justice should not only be done but should manifestly be seen to be done). These two Rules and their corollary are neither new nor were they the discovery of English judges but were recognized in many civilizations and over many centuries.

.....

.....

It is well established both in England and in India that the principles of natural justice yield to and change with the exigencies of different situations and do not apply in the same manner to situations which are not alike. They are neither cast in a rigid mould nor can they be put in a legal strait jacket. They are not immutable but flexible and can be adopted, modified or excluded by statute and statutory Rules as also by the constitution of the tribunal which has to decide a particular matter, and the Rules by which such tribunal is governed.

.....

.....

If legislation and the necessities of a situation can exclude the principles of natural justice including the audi alteram partem Rule, a fortiori so can a provision of the Constitution such as the second proviso to Article 311(2).

.....

.....

The principles of natural justice must be confined within their proper limits and not allowed to run wild. The concept of natural justice is a magnificent thoroughbred on which this nation gallops forwards towards its proclaimed and destined goal of “Justice, social, economic and political”. This thoroughbred must not be allowed to turn into a wild and unruly horse, careering off where it lists, unsaddling its rider and bursting into fields where the sign “no pasaran” is put up.”

- (b) Hon’ble High Court of Kerala in the case of United Oil Mills Vs. Collector of Customs & C.Ex., Cochin reported in 2000(124)E.L.T.53(Ker), has observed that;

“Natural justice – Petitioner given full opportunity before Collector to produce all evidence on which he intends to rely but petitioner not prayed for any opportunity to adduce further evidence – Principles of natural justice not violated.”

- (c) Hon’ble High Court of Delhi in the case of Saketh India Limited Vs. Union of India reported in 2002(143)E.L.T. 274 (Del.), has observed that:

“Natural justice –Ex parte order by DGFT- EXIM Policy- Proper opportunity given to appellant to reply to show cause notice issued by Addl.DGFT and to make oral submissions, if any, but opportunity not availed by appellant – Principles of natural justice not violated by Addl.DGFT in passing ex parte order.”

- (d) Hon’ble CESTAT, Mumbai in the case of Gopinath Chem Tech Ltd. Vs Commissioner of C.Ex., Ahmedabad-II reported in 2004(171)E.L.T.412 (Tri-Mumbai) has observed that;

“Natural justice – Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also

not explained – Appellant cannot now demand another hearing – Principles of natural justice not violated.”

- (e) Hon’ble Supreme Court in the case of F.N.Roy Vs. Collector of Customs, Calcutta reported in 1983913)E.L.T. 1296(SC), has observed that;

“Natural justice – Opportunity of personal hearing not availed of – Effect – Confiscation order cannot be held mala fide if passed without hearing.

– If the petitioner was given an opportunity of being heard before the confiscation order but did not avail of, it was not open for him to contend subsequently that he was not given an opportunity of personal hearing before an order was passed.”

22.3 In view of the above, I am of the considered opinion that sufficient opportunities have been given to the said noticees to present their defense and it is their conscious decision to abstain from entire proceedings in respect of the impugned SCN. It seems that the said noticees are deliberately delaying the proceedings by remaining incommunicado in spite of several communications during the course of the adjudication proceedings. Under these circumstances, I proceed to decide the matter on the basis of material available on records.

23. I find that in the impugned SCN it is *inter alia* alleged that a car (Lexus LX 570) was imported by a syndicate led by one Mr. Rehman Iqbal Ahmed Shaikh in the name of a diplomat/privileged person namely, Ms. Fionah Ngunjiri, Counsellor, Kenya High Commission, New Delhi at Nil duty by availing the benefit of the Customs duty exemption under Notification No. 03/1957-Cus dated 08.01.1957. It is further alleged that Ms. Fionah Ngunjiri had facilitated all the paperwork required for importing the said car duty-free in her name by misusing her diplomatic status and the same was not registered in her name as required under the relevant provisions. It appeared that the said car had been sold in the open market. The exemption Notification No. 03/1957-Cus dated 08.01.1957 as well as the provisions of the Foreign Privileged Persons (Regulation of Customs Privileged Rules, 1957 mandate that a motor vehicle cannot be sold without payment of Customs duty and without the concurrence of CBIC. It is also alleged that the other co-noticees had also colluded with Mr. Rehman Iqbal Ahmed Shaikh and aided and abetted him in importing the said car at Nil rate of duty by fraudulently availing the benefit of the Customs duty exemption under Notification No. 03/1957-Cus dated 08.01.1957

23.1 In view of the above, I find that the main issues to be decided in the instant case are:-

- (i) Whether the impugned goods i.e., 'Lexus LX 570 car' imported vide Bill of Entry No. 6123712 dated 18.12.2019 having total assessable value of Rs. 30,77,000/- is liable to be confiscated under section 111(j) and 111(o) of the Customs Act, 1962;
- (ii) Whether the Customs duty amounting to Rs.62,77,080/- (Rupees Sixty Two Lakhs Seventy Seven Thousand and Eighty only) is liable to be demanded and recovered from Ms Fionah Ngunjiri, Counsellor, High Commission of the Republic of Kenya under Section 28(4) of the Customs Act, 1962 along with the applicable interest under Section 28AA *ibid*;
- (iii) Whether penalty is liable to be imposed on Shri Rehman Iqbal Ahmed Shaikh under Section 112(a), 112(b) and 114AA of the Customs Act, 1962;
- (iv) Whether penalty is liable to be imposed on Ms Fionah Ngunjiri, Counsellor, High Commission of the Republic of Kenya under Section 112(a) and/or Section 114A and Section 114AA of the Customs Act, 1962;
- (v) Whether penalty is liable to be imposed on Shri Liyakat Bachu Khan under Section 112(a), 112(b) and 114AA of the Customs Act, 1962;
- (vi) Whether penalty is liable to be imposed on Shri Rajeev Sood and Shri Manjeet Maurya under Section 112(a) and Section 112(b) of the Customs Act, 1962; and
- (vii) Whether penalty is liable to be imposed on Shri Aubrey Elias D'Souza under Section 112 (b) of the Customs Act, 1962.

24. After having identified and framed the main issues to be decided, I now proceed to deal with each of the issues individually in the light of facts and circumstances of the case, provisions of the Customs Act, 1962, contentions made in the defence submissions by the noticees and evidences available on record. I find that the primary issue to be decided in the case is as to whether Ms Fionah Ngunjiri is liable to pay the Customs duty amounting to Rs.62,77,080/- as demanded vide the impugned SCN and whether the goods viz. 'Lexus LX 570 car' imported duty-free in the name of Ms Fionah Ngunjiri, Counsellor, High Commission of the Republic of Kenya by availing the benefit of exemption under Notification No. 03/1957-Cus dated 08.01.1957 is liable to be confiscated under section 111(j) and 111(o) of the Customs Act, 1962.

25. I find that Notification No. 03/1957-Cus dated 08.01.1957 allows diplomats of foreign missions (privileged persons) posted in India to import goods, including motor vehicles at NIL rate of duty (i.e., duty-free). The said benefit can be availed by the diplomats inter-alia by obtaining an Exemption Certificate from the Ministry of External Affairs (MEA) of the Government of India. The diplomat has to initially make a request to MEA through their Embassy for a grant of 'Prior Approval' for import of motor vehicle. The diplomats can import motor vehicle, as per their eligibility, for their personal use within two years from the date of their arrival in India by availing the exemption from payment of customs duty with Prior Approval from the MEA. Such a request normally includes the proforma invoice of the car along with other details such as make, model etc. and also specifies that it is for personal use. Thereafter, the application of the Prior Approval is processed at the MEA and the Prior Approval is conveyed to the foreign embassy of the diplomat. Once the prior approval for the duty-free import is granted, the diplomat, through their Embassy, requests the MEA for Exemption Certificate in respect of customs duty declaring specific particulars like Make, Model, Engine No., Chassis No. & date of Bill of Lading etc. The request of the diplomat is then processed at the MEA and the MEA issues an Exemption Certificate in respect of Customs Notification No. 03/1957-Cus dated 08.01.1957, with an explicit condition that the vehicle will not be sold or otherwise disposed of to a person who is not entitled to import a vehicle free of duty without the concurrence of CBIC (through MEA) and without payment of the Customs duty to the Commissioner of Customs. The vehicle is then imported at Nil rate of duty (duty-free) after filing the Bill of Entry by availing the benefit of the said Notification No.03/1957-Cus dated 08.01.1957 using the Exemption Certificate issued by MEA. Once the car is cleared from Customs, the imported car is required to be registered within one month from the date of its clearance from Customs with special registration for diplomats at MEA and a copy of the vehicle registration is sent to the MEA, as specified in the Prior Approval.

26. From the impugned SCN and record of the case, I find that based on intelligence the DRI had caused detailed investigation against a syndicate led by one Rehman Iqbal Ahmed Shaikh, which was involved in smuggling of a large number of Luxury Cars by organizing imports in the name of diplomats posted in India at Nil duty by availing the benefit of the Customs exemption Notification No. 03/1957-Cus dated 08.01.1957. It was revealed that after importing the cars, the members of the syndicate fraudulently made forged Indian invoice/Bills of Entry pertaining to the imported cars, and thereafter, the cars were registered

in RTOs across India in the name of non-privileged persons and sold to those non-privileged buyers. During the course of investigations, many vehicles smuggled into India by the said syndicate by adopting the above mentioned modus operandi were seized by DRI. During the course of investigations, statements of relevant persons connected to the operation of the said modus operandi were recorded under Section 108 of the Customs Act, 1962. It is also seen that multiple Summonses were also issued to Rehman Shaikh, the mastermind of the syndicate to appear before the DRI officer and cooperate with the investigation; however, the same were not complied with and he failed to appear before the DRI officer which shows his scant regard for the law of the land. During the investigation, it was also revealed that there were many such vehicles that had been smuggled into India by the said syndicate led by Rehman Iqbal Ahmed Shaikh. The Lexus LX 570 car bearing Chassis No.URJ2014199918 is one such car illegally imported by the members of the said syndicate, and is subject matter of the instant case.

27. I find that the said Lexus LX 570 car bearing Chassis No.URJ2014199918 is one such car illegally imported by the said syndicate duty-free in the name of Ms Fionah Ngunjiri, Counsellor, High Commission of the Republic of Kenya vide Bill of Entry No. 6123712 dated 18.12.2019 by availing the benefit of exemption under Notification No. 03/1957-Cus dated 08.01.1957. I find that as the import of the said Lexus LX570 car was made after getting the customs duty Exemption Certificate from MEA, therefore, the relevant documents pertaining to the Prior Approval, Exemption Certificate, etc. issued to Ms Fionah Ngunjiri for the import of the said Lexus LX570 car were obtained from MEA.

28. On going through the said documents, I find that Ms Fionah Ngunjiri through the Kenya High Commission, vide its Note Verbale No. KHC/ND/PROT/4A dated 27.11.2019, had requested the Ministry of External Affairs, New Delhi to grant Prior Approval for the import of a new motor vehicle viz. Lexus 570 car. After processing the said request, the MEA vide letter no. D.VI/451/2/(37)/2019/3883 dated 29.11.2019 conveyed Prior Approval to Ms Fionah Ngunjiri for import of said vehicle for personal use along with the instructions that the said vehicle was to be registered within one month from the date of its import and a copy of the vehicle registration certificate was to be sent to the Ministry. The said Note Verbale No. KHC/ND/PROT/4A dated 27.11.2019 of the Kenya High Commission and the MEA letter no. D.VI/451/2/(37)/2019/3883 dated 29.11.2019 are reproduced hereunder for ready reference.

Note Verbale No. KHC/ND/PROT/4A dated 27.11.2019 of the Kenya High Commission	MEA Approval Letter No. D.VI/451/2/(37)/2019/3883 dated 29.11.2019
KHC/ND/ PROT/4A The High Commission of the Republic of Kenya in New Delhi presents its compliments to the Ministry of External Affairs of the Government of India and has the honour to inform that Ms. Fionah Ngunjiri, Counsellor(Records) in this Mission wishes to buy a new motor vehicle Lexus 570 Station (petrol) from Emporium Cars FZCO, Dubai, UAE for her personal use as a second vehicle. She arrived in New Delhi in India along with her family on 4th July 2018. The High Commission would appreciate if the esteemed Ministry would give her prior approval to buy the above said vehicle. Please find attached herewith the copies of her Passport, Diplomatic Identity Card and Proforma Invoice. The High Commission of the Republic of Kenya in New Delhi avails itself of this opportunity to renew to the Ministry of External Affairs of the Government of India the assurances of its highest consideration. New Delhi – 27th November, 2019 Protocol Special Ministry of External Affairs Government of India NEW DELHI – 110011 Encl: a.a Telephone : 26146537 / 38, 26146540 Fax : 91-11-26146550 E-mail : info@kenyahcom-delhi.com Website : www.kenyahcom-delhi.com	No.D.VI/451/2/(37)/2019 /3883 November 29, 2019 The Ministry of External Affairs presents its compliments to the High Commission of the Republic of Kenya in New Delhi and with reference to the latter's Note Verbal No. KHC/ND/PORT/4A dated November 27, 2019 has the honour to convey its prior approval for import of a vehicle Lexus 570 Station (Petrol) worth USD. 42,500/- by Ms. Fionah Ngunjiri, Counsellor (who arrived in India on 04/07/2018) from UAE., as a second vehicle for personal use, within three months from the date of issue of this note provided that the vehicle meets the relevant specifications in accordance with the rules in force. It may kindly be ensured that the vehicle is registered within one month from the date of its import and a copy of the vehicle registration certificate is sent to the Ministry. The Ministry of External Affairs avails itself of this opportunity to renew to the High Commission of the Republic of Kenya in New Delhi the assurances of its highest consideration. The High Commission of the Republic of Kenya New Delhi. Jawaharlal Nehru Bhawan 23D Janpath, New Delhi-110011 Tel No: 49015442, Fax No: 49015450

28.1 In the above said approval Note/letter No.D.VI/451/2(37)/2019 dated 29.11.2019 of MEA, it was clearly mentioned to ensure that the vehicle be registered within one month from the date of its import and a copy of the said vehicle registration certificate be sent to the MEA.

29. It is seen that after receipt of the Prior Approval from the MEA to import of said vehicle viz. Lexus 570 car, Ms Fionah Ngunjiri, vide Form 9 bearing Serial No. 05/FN/12/2019, requested the MEA for an Exemption Certificate for availing exemption from payment of customs duty on the said vehicle. The Form 9 bearing Serial No. 05/FN/12/2019 filed by Ms Fionah Ngunjiri is reproduced hereunder for ready reference;

Form 9

Customs Duty Exemption Certificate in respect of Motor Vehicles imported for the Official Use of Foreign Representations / Personal Use of entitled members of Foreign Representations
(To be filled in quadruplicate)

Serial Number 05/FN/12/2019

Certificate

This is to certify that the motor vehicle specified in the Schedule below is intended for the official use of _____ (Name of the FR) / for my personal use / for the personal use of the members of my family (*strike out whichever is not applicable*) and that the motor vehicle would not be sold or otherwise disposed of without the concurrence of the Ministry of External Affairs, New Delhi and the Central Board of Excise & Customs, Ministry of Finance, New Delhi, and with payment of Customs duty, if any, payable thereon.

2. I, Mrs. Fionah Ngunjiri (Name) in my capacity as / in my personal capacity as Counsellor (*strike out whichever is not applicable*) (Designation) of the H/C of the Republic of Kenya (Name of the FR) at New Delhi (Station) having been allowed to import direct from abroad through the port of Dubai, UAE / purchase from the bonded stocks at the port of _____ / purchase from Mr/Ms. _____ (Name & designation) of _____ (Name of the FR / seller) (*strike out whichever is not applicable*) without payment of duty, the motor vehicle, particulars of which are given in the Schedule below, for the official use of the _____ (Name of the FR) / for my personal use / for the personal use of the members of my family (*strike out whichever is not applicable*), hereby undertake that:-

(a) The vehicle will not be sold or otherwise disposed of to a person who is not entitled to import a motor vehicle free of duty:

(i) Without the concurrence of the Central Board of Excise & Customs, Ministry of Finance, New Delhi to be obtained through the Ministry of External Affairs, New Delhi, and

(ii) Without payment to the Commissioner of Customs of the place nearest to the place of Headquarters of my Mission / Consular Post / Trade Representation / UN / International Organisation at Nhava Shewa (Station), the Customs duty at the rate and the amount to be determined by him / her in case the said vehicle is sold before the expiry of four years from its date of registration in India.

(b) I shall obtain the concurrence of the Central Board of Excise & Customs, Ministry of Finance, New Delhi through the Ministry of External Affairs, New Delhi before I sell or transfer this vehicle even to a Privileged Person entitled to import a motor vehicle free of duty and intimate the Commissioner of Customs of the place nearest to the place of Headquarters of my Mission / Consular Post / Trade Representation / UN / International Organisation at Nhava Shewa (Station), its sale price and the name and address of the Privileged Person before completion of such a transfer or sale; and

(c) I shall obtain from the buyer an Exemption Certificate (*in quadruplicate*) in the prescribed form and forward two copies of the Certificate to the Commissioner of Customs of the port of importation after getting these attested by the Protocol Special Section, MEA, New Delhi / State Government Protocol / MEA Branch Secretariat.



29.1 The MEA approved and attested the above Exemption Certificate bearing Serial No.5/FN/12/2019 on 16.12.2019. On the basis of the said Exemption Certificate, the said Lexus 570 Car, having Chassis No. URJ2014199918 was imported into India vide Bill of Entry No. 6123712 dated 18.12.2019 without payment of duty by availing the benefit of the Customs duty Exemption Notification No. 03/1957-Cus dated 08.01.1957.

29.2 From the above Exemption Certificate, it is apparent that, while filing the said Certificate in Form-9 to MEA, Ms. Fionah Ngunjiri had *inter alia* undertaken that the vehicle would not be sold or otherwise disposed of to a person who is not entitled to import a motor vehicle free of duty:

- (i) Without the concurrence of the Central Board of Excise & Customs, Ministry of Finance, New Delhi to be obtained through the Ministry of External Affairs, New Delhi, and
- (ii) Without payment to the Commissioner of Customs of the place nearest to the place of Headquarters of her Mission/Consular Post, the Customs Duty at the rate and the amount to be determined by him/her in case the said vehicle is sold before the expiry of four years from its date of registration in India.

30. From the foregoing, it is apparent that vide letter/Note No.KHC/ND/PORT/4A dated 27.11.2019, 'Prior Approval' was sought by the Kenya High Commission on behalf of Ms.Fionah Ngunjiri, from the MEA for import of the said Lexus 570 car, and after getting/receiving the approval for the same from MEA vide its Note/letter No.D.VI/451/2(37)/2019 dated 29.11.2019, Ms. Fionah Ngunjiri completed all the formalities to import the said car duty-free by availing the benefit of exemption as provided under Notification No.03/1957-Cus dated 08.01.1957. It is also apparent from the undertaking made by her in the Exemption Certificate that she was very well aware that the said car imported duty-free could not be sold or otherwise disposed of without the concurrence of the Ministry of External Affairs, New Delhi and the CBEC, Ministry of Finance, New Delhi, and without the payment of Customs duty. Further, in the approval Note/letter No.D.VI/451/2(37)/2019 dated 29.11.2019 of MEA, it was clearly mentioned that it should be ensured that the vehicle be registered within one month from the date of its import and a copy of the said vehicle registration certificate be sent to the MEA.

31. However, during the course of investigation it was revealed that the said vehicle i.e., Lexus 570 Car imported in the name of Ms. Fionah Ngunjiri for her personal use as a privileged person, vide Bill of Entry No. 6123712 dated 18.12.2019, by availing the benefit of exemption under Notification No. 03/1957-Cus dated 08.01.1957 was not registered in her name. In this regard, I have gone through the details of records/registers in respect of import of vehicles by various Embassies provided by MEA vide their letter dated 27.08.2021. I find that the said Lexus 570 car imported by Ms. Fionah Ngunjiri is not a part of the record of

MEA which has records of cars imported duty-free by diplomats/ privileged persons and registered thereafter in their name.

32. It is seen that during the course of investigation, Summons were issued under Section 108 of the Customs Act, 1962 by the DRI to Ms. Fionah Ngunjiri, Counsellor, Kenya High Commission to appear before the investigating officer. However, the said summons were not complied with by Ms. Fionah Ngunjiri.

33. It is seen that in response to the said Summons, the Kenya High Commission, vide its letter/note No. KHC/ND/ADM/5A dated 26.11.2021, informed that Ms. Fionah Ngunjiri has since returned to Kenya and retired from the service. The High Commission further stated that Article 31.C.2 of the Vienna Convention provided that a diplomatic agent was not obliged to give evidence as a witness. The High Commission also requested the Ministry of External Affairs to allow the mission to use their administrative structure to handle the issue.

33.1 In this regard, I have gone through the provisions of the Diplomatic Relations (Vienna Convention) Act, 1972 as well as the provisions of the Vienna Convention on Diplomatic Relations, 1961. I find that there is no provision under the Diplomatic Relations (Vienna Convention) Act, 1972 which provides immunity to the diplomats from non-payment of Customs duty in cases where vehicles were disposed to non-privileged person. Further, I find that Clause 1(c) of Article 31 of the Schedule of the provisions of the Vienna Convention on Diplomatic Relations, 1961 has clarified that a diplomatic agent shall enjoy immunity from criminal, civil and administrative jurisdiction *except in the case of:*

(a) ...

(b) ...

(c) *An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.*

33.2 Further, I find that the Prior Approval letter and the Customs Duty Exemption Certificate issued by Ministry of Foreign Affairs, New Delhi, in respect of the said car imported duty-free by Ms. Fionah Ngunjiri, clearly point to the fact that Ms. Fionah Ngunjiri had applied for import of duty-free vehicle for her personal use and not for her official functions. I also find that in the said Prior Approval Note/letter issued by MEA, it was clearly mentioned to ensure that the vehicle be registered within one month from the date of its

import and a copy of the said vehicle registration certificate be sent to the MEA. However, the said vehicle was never registered in the name of Ms. Fionah Ngunjiri and the vehicle registration certificate has not been provided to the MEA.

33.3 I find that it would be pertinent to mention the provisions of Section 6 of the Diplomatic Relations (Vienna Convention) Act, 1972, which reads as below:

***Section 6. Restrictions on certain exemptions from customs duty, etc.-**
Nothing contained in article 36 of the Convention set out in the Schedule shall be construed to entitle a diplomatic mission or member thereof to import into India goods free of any duty of customs without any restrictions on their subsequent sale therein.*

33.3.1 From the above provision, it is amply clear without any doubt that the diplomats are not entitled to the relaxation in payment of Customs duty on the subsequent sale of goods which were imported duty-free into India by the diplomat.

33.4 I find that it is not a disputed fact in the present case that Ms. Fionah Ngunjiri, Counsellor, Kenya High Commission was entitled for duty-free import of the said car. However, the said duty-free import by the diplomat is governed by the provisions of Notification No. 3/1957-Cus. dated 08.01.1957. As per the provisions of the said Notification the import of motor vehicles by the diplomats are subject to the provisions of the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957. I find that in the present case, the provisions of the said rules are grossly violated. In the present case, the impugned vehicle has not been registered in the name of the diplomat, Ms. Fionah Ngunjiri, as is apparent from the records received from MEA vide their letter dated 27.08.2021. Further, from the investigation it is revealed that the modus operandi of the syndicate was to import the cars duty-free in the name of foreign diplomats and thereafter dispose of the same in the open market to some unprivileged person by forging the documents. I also observe that Shri Liyakat Bachu Khan, one of the co-accused and a close confidant of the mastermind of the syndicate, in his statement dated 27.07.2021 recorded under Section 108 of the Customs Act has *inter alia* deposed that the vehicles imported in the name of various diplomats/ embassies were imported duty-free as there were exemption available to them and since these vehicles could not be sold in the open market, hence the documents had to be forged so that they could be registered in the name of private individuals. He also admitted that about 25 to 30 luxury cars were imported in the above manner by availing Customs duty exemptions in the name of diplomats.

34. Further, it is seen that the Customs Duty Exemption Certificate issued by MEA explicitly specified that the vehicle would not be sold or otherwise disposed of to a person who is not entitled to import motor vehicle free of duty without the concurrence of CBIC to be obtained through MEA and without the payment Customs duty. While filing for the said Customs Duty Exemption Certificate with the MEA, Ms. Fionah Ngunjiri had also undertaken to the said effect, as is evident from Para 29 & 29.2 above. However, I find that after import of the vehicle duty-free in the instant case, the same was not registered in the name of Ms. Fionah Ngunjiri in contravention of the provisions of Notification No. 03/1957-Cus dated 08.01.1957 read with the Diplomatic Relations (Vienna Convention) Act, 1972 and the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957.

35. Further, I find that the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957 read with DGFT Notification No. 39 (RE-2010)/2009-2014 dated 31.03.2011 allows for disposing of vehicles imported by foreign diplomats to non-privileged persons but the same can be done only after payment of due Customs duty.

36. In view of the afore discussed legal provisions and findings, I find that Ms. Fionah Ngunjiri is liable to pay the due Customs duty along with applicable interest as per the provisions of the Customs Act, 1962 and the rules made thereunder.

37. Therefore, I hold that the Customs duty amounting to Rs.62,77,080/- is recoverable from Ms. Fionah Ngunjiri, the then Counsellor of the Kenya High Commission as per provisions of Section 28(4) of the Customs Act, 1962 read with Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957 further read with Notification No. 03/1957-Cus dated 08.01.1957. The calculation of the said Customs duty is tabulated as under:-

(Amount in Rs.)				
Assessable value of the car	BCD@125%	Social Welfare Surcharge (SWS)	IGST	Total Duty
(a)	(b) = a*125%	(c) = b*10%	(d) = (a+b+c)*28%	(e) = b+c+d
30,77,000/-	38,46,250/-	3,84,625/-	20,46,205/-	62,77,080/-

Applicability of extended period under the provision of Section 28(4) of the Customs Act, 1962

38. I find that the impugned SCN covers extended period of limitation. Hence, it is required to be examined if there are sufficient grounds to invoke the same as per the provisions of Section 28(4) of the Customs Act, 1962. In this regard, from the foregoing

discussions, it is apparent that the impugned vehicle viz., Lexus LX 570 car was smuggled into India in the name of Ms. Fionah Ngunjiri, Counsellor, Kenya High Commission with the sole intention of evasion of Customs duty by availing the duty exemption under Notification No. 03/1957-Cus dated 08.01.1957. It is also apparent that post-import conditions as envisaged under the said Notification have been deliberately violated by selling/disposing of the said duty-free imported car in the open market to a non-privileged person. It is a well settled law that the conditions of an exemption notification have to be strictly construed and the Customs duty is recoverable in case of infringement of any of the conditions of the exemption notification. It is also apparent that Ms Fionah Ngunjiri had colluded with Rehman Iqbal Ahmed Shaikh and other members of his syndicate in evasion of Customs duty by suppression of facts in improper importation of the said car including not adhering to the prescribed provisions of law. The investigation has also revealed that a well planned conspiracy was hatched to import the said car duty-free in the name of the diplomat by availing the benefit of exemption under the said Notification and thereafter sale/dispose of the said imported car in open market, as is apparent from the statements dated 14.07.2021, 27.07.2021 & 05.10.2021 of the co-accused Shri Liyakat Bachu Khan recorded under Section 108 of the Customs Act. It has also been established that Ms. Fionah Ngunjiri was very much aware that the impugned car imported duty-free would not be registered in her name as a foreign diplomat. Thus, it is beyond doubt that in the instant case, the provisions of the Customs Act, 1962 read with Notification No. 03/1957-Cus dated 08.01.1957 has been intentionally and deliberately contravened to evade the Customs duty. Hence, I find that, in the instant case, the investigation has brought on record ample proof in the form of cogent and tangible documentary evidences which point to only one thing, and that is the importers have robbed the exchequer of its due revenue. I also find that the Hon'ble Supreme Court in the case of S.P. Changalvaraya Naidu Vs Jagannath [1994 (1) SCC 1] has held that *a 'fraud' is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. In this case the parties involved attempted to cheat the exchequer of its rightful tax revenues and for the company to illegally gain from it.* Thus, I find that had the investigation been not conducted by the DRI against the syndicate, the conspiracy hatched by them would never have come to light and the evasion of duty would not have been detected resulting in revenue loss to the exchequer. When material evidence establishes fraud against Revenue, white collar crimes committed under absolute secrecy shall not be exonerated as has been held by the Hon'ble Supreme Court judgment in the case

of K.L Pavunny v. AC, Cochin - 1997 (90) E.L.T. 241 (S.C.). No adjudication is barred under Section 28 of the Customs Act, 1962, if Revenue is defrauded for the reason that enactments like Customs Act, 1962, and Customs Tariff Act, 1975 are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent practices of undue claim of fiscal incentives.

38.1 In view of the above, I find that all the essential ingredients exist to invoke the extended period in the instant case. Therefore, I find that the extended period under Section 28(4) of Customs Act, 1962 has correctly been invoked in the instant case and the demand is sustainable on limitation. Accordingly, I find that the Customs duty amounting to Rs.62,77,080/- is liable to be recovered from Ms Fionah Ngunjiri under Section 28(4) of Customs Act, 1962 along with interest in terms of the provisions of Section 28AA of the Customs Act, 1962. For the same reasons, all ingredients for imposing penalty on Ms Fionah Ngunjiri under Section 114A also exists and, therefore, Ms Fionah Ngunjiri is also liable for penal action under the provisions of Section 28(4) of Customs Act, 1962.

Interest under section 28AA of the Act

39. I find that the impugned SCN has proposed to recover interest on the demanded duty, under Section 28AA of the Customs Act, 1962. The provisions for recovery of interest on delayed payment of duty as per Section 28AA of the Customs Act, 1962, read as under: -

'28AA. Interest on delayed payment of duty

(1) Notwithstanding, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.'

39.1 From the above, it is apparent that Section 28AA of the Act mandates that any person, who is liable to pay duty as per Section 28 of the Act, is also liable to pay the applicable interest, in addition to the said duty. As already discussed hereinabove, Ms. Fionah Ngunjiri, the then Counsellor of the Kenya High Commission is liable to pay the Customs duty amounting to Rs.62,77,080/- under the provisions of Section 28(4) of the Customs Act, 1962, therefore, she is also liable to pay the interest at applicable rate as per the provisions of Section 28AA of the Act. I also find that Hon'ble Supreme Court, in the case of *Pratidha Processors Vs. Union of India* reported in (1996)11 SCC 101, has settled this issue and held that interest is compensatory in character and is imposed on the assessee who has withheld payment of any tax as and when it is due and payable; that the levy of interest is levied on the

delay in payment of tax due and payable on the due date. I further find that Hon'ble Supreme Court in the case of *Commissioner of Trade Tax Lucknow Vs Kanhai Ram Tekedar, 2005(185) ELT 3(SC)* had held that interest liability accrues automatically from confirmation of demand of duty/tax as recoverable. Thus, I find that payment of interest under Section 28AA of the Act is mandatory on every person who is liable to pay duty as per Section 28 of the Act. Therefore, I hold that Ms. Fionah Ngunjiri, the then Counsellor of the Kenya High Commission is liable to pay interest under the provisions of Section 28AA of the Act.

Issue of Confiscation of the goods under Section 111(j) and 111(o) of the Customs Act, 1962

40. I find that the impugned SCN has alleged that the said goods viz., Lexus LX 570 car imported in the name of the diplomat, Ms. Fionah Ngunjiri, by availing the duty exemption under Notification No. 03/1957-Cus dated 08.01.1957 is liable for confiscation under Section 111(j) and 111(o) of the Customs Act, 1962. In this context, it would be pertinent to go through the provisions of the same. The provisions of Section 111(j) & 111(o) of the Customs Act, 1962 are reproduced below: -

Section 111. Confiscation of improperly imported goods, etc. –

The following goods brought from a place outside India shall be liable to confiscation:

(j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;

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

40.1 It is apparent from the provisions of Section 111(j) of the Act that the goods are liable for confiscation, if dutiable or prohibited goods are removed or attempted to be removed from a Customs area or a warehouse without the permission of the Proper officer or contrary to the terms of such permission. From the detailed discussions in the foregoing paras, it is apparent that in the instant case the dutiable goods viz. Lexus LX 570 car, was removed contrary to the terms of the permission of the proper officer who had granted permission for its clearance to Ms Fionah Ngunjiri, Counsellor, Kenya High Commission, subject to getting it registered in her name and adhering to the terms and conditions of Notification No. 03/1957-Cus dated 08.01.1957, and not selling it without prior permission and without payment of the due Customs duty. However, the investigation has revealed that Ms Fionah Ngunjiri has failed to adhere to the statutory provisions prescribed under the said Notification

No. 03/1957-Cus dated 08.01.1957 read with the Customs Act, 1962. Therefore, I find that the provisions of Section 111(j) of the Customs Act, 1962 is squarely applicable to the instant case.

40.2 Further, it is also apparent that the confiscation of goods under section 111(o) is applicable in case of import of goods wherein conditional exemption from duty is provided under the Customs Act, 1962 or any other law, however, the conditions prescribed thereunder has not been fulfilled. I find that in the instant case, it is proven beyond doubt that the Lexus LX 570 car was imported into India vide Bill of Entry No. 6123712 dated 18.12.2019 without payment of duty by availing the benefit of the Customs duty exemption under Notification No. 03/1957-Cus dated 08.01.1957 in the name of the diplomat, Ms. Fionah Ngunjiri for her personal use. However, post clearance, the impugned car was not registered in her name in violation of the conditions specified under the said Notification No. 03/1957-Cus dated 08.01.1957 read with the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957. Therefore, I find that the said vehicle viz, Lexus LX 570 car bearing Chassis No.URJ2014199918 is liable for confiscation under Section 111(o) of the Customs Act, 1962.

40.3 Further, I find that once the goods are found violating the relevant provisions of the Customs Act, 1962, the liability of confiscation arises as per Section 111 of the Act, and the physical availability of goods or seizure doesn't alter this position. I find that this position has already been settled by the Hon'ble Madras High Court in the case of M/s. Dadha Phama Private Limited vs. Secretary to Govt of India 2000 (126) E.L.T. 535 (Mad.).

40.4 In view of above, I hold that the impugned vehicle viz, Lexus LX 570 car bearing Chassis No.URJ2014199918 is liable for confiscation under Section 111(j) and Section 111(o) of the Customs Act, 1962.

Applicability of Redemption Fine

40.5 As the impugned goods viz, Lexus LX 570 car is found to be liable for confiscation under Section 111(j) and 111(o) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCN. The Section 125 ibid reads as under:-

125. Option to pay fine in lieu of confiscation.—

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit.

A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods, by paying redemption fine.

40.6 In the instant case, it is seen that the subject goods, viz, Lexus LX 570 car has been cleared and are not physically available for confiscation under Section 111(j) and 111(o) of the Customs Act, 1962. In this regard, I find that redemption fine is imposable even if the goods are not seized & are not available for confiscation. There is a catena of judgments wherein it has been held that the availability of the goods is not necessary for imposing the redemption fine. A couple of them are cited below and relied upon by me.

- (i) In the case of M/s.Venus Enterprises Vs. CC, Chennai [2006(199)E.L.T.66(Tri-Chennai)], it has been held that:

"We cannot accept the contention of the appellants that no fine can be imposed in respect of goods which are already cleared. Once the goods are held liable for confiscation, fine can be imposed even if the goods are not available. We uphold the finding of the mis-declaration in respect of the parallel invoices issued prior to the date of filing off the Bill of Entry. Hence, there is mis-declaration and suppression of value and the offending goods are liable for confiscation under Section 111(m) of the Customs Act. Hence the imposition of fine even after the clearance of the goods is not against the law."

- (ii) Further, in the case of M/s. Visteon Automotive Systems India Ltd. [reported in 2018(9)G.S.T.L.142(Mad)], the Hon'ble High Court of Madras has passed the landmark judgment. In the said judgment, it has been held that:

"23. The penalty directed against the import under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularized, whereas, by subjecting the goods to payment of fine under

sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorized by this Act.....", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act."

- (iii) Further, in case of Synergy Fertilchem Ltd vs. Union of India, reported in 2020(33)G.S.T.L.513(Guj.), the Hon'ble Gujrat High Court has relied on the judgment in case of C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT. Chennai [2018(9)G.S.T.L.142(Mad)] and held that:-

"Even in the absence of the physical availability of the goods or the conveyance, the authority can proceed to pass an order of confiscation and also pass an order of redemption fine in lieu of the confiscation. In other words, even if the goods or the conveyance has been released under Section 129 of the Act and, later, confiscation proceedings are initiated, then even in the absence of the goods or the conveyance, the payment of redemption fine in lieu of confiscation can be passed."

40.7 Relying on the above guiding judgments, I conclude that imposition of redemption fine under Section 125 of the Customs Act, 1962, is not contingent upon the physical availability of the goods. Redemption fine is intrinsically linked to the authorization of confiscation under Section 111 and serves to mitigate the consequences of such confiscation. Therefore, the absence of the impugned goods does not preclude the imposition of redemption fine, which remains valid and enforceable in accordance with the law. Thus, I find that the impugned car which is not available for confiscation does not prevent me to impose redemption fine.

40.8 In view of the discussions, I find that redemption fine is liable to be imposed on the said impugned vehicle viz, Lexus LX 570 car which has been held to be liable for confiscation under Section 111(j) and 111(o) of the Customs Act, 1962.

Issue of imposition of penalty on Ms Fionah Ngunjiri under Section 112(a) and/or Section 114A and Section 114AA of the Customs Act, 1962

41. It is seen that the impugned SCN has proposed penalty on Ms Fionah Ngunjiri under Section 112(a) and/or Section 114A and Section 114AA of the Customs Act, 1962 for her acts of omission and commission, and collusion with the members of syndicate in evasion of Customs duty and by willful suppression of facts in improper importation of the impugned car, including not adhering to the prescribed provisions of law.

41.1 The impugned SCN has proposed penalty on Ms Fionah Ngunjiri under Section 112(a) and/or Section 114A of the Act. Therefore, it would be pertinent to go through the provisions of the said Sections. First, I would discuss the provisions of Section 114A of the Act. The same are reproduced below:-

114A. *“Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under Sub-section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:*

...

...

PROVIDED ALSO *that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.”*

41.1.1 From the above, it is seen that the provisions of Section 114A of the Act provide for imposition of Penalty equal to hundred per cent of the amount of duty evaded by reason of collusion or wilful mis-statement or suppression of facts. I find that the suppression of facts and collusion on part of Ms. Fionah Ngunjiri has been established beyond doubt as discussed and concluded in the earlier part of this order. It is proved that Ms. Fionah Ngunjiri had suppressed the material facts and colluded and conspired with the syndicate led by Rehman Iqbal Ahmed Shaikh in fraudulently importing the impugned car duty-free in her name by availing the duty exemption under Notification No. 03/1957-Cus dated 08.01.1957, and post clearance, the impugned car was not registered in her name in violation of the conditions of the said exemption Notification. She had complied with all the necessary formalities, on Rehman Iqbal Ahmed Sheikh behest, for importing the impugned vehicle Lexus LX 570 car in her name. The investigation has also revealed that the entire scheme had the characteristics of a large, well thought-out conspiracy to smuggle high-end luxury cars in the name of the diplomats with the sole intention of evasion of Customs duty. It is also established that Ms.

Fionah Ngunjiri was very much aware about the conditions specified in the Notification No. 03/1957-Cus dated 08.01.1957, however, in spite of the same, she deliberately joined hands with Rehman Iqbal Ahmed Sheikh and his accomplices in the smuggling of the impugned car.

41.1.2 As it is already proved that Ms. Fionah Ngunjiri had suppressed the material facts and colluded in fraudulently importing the impugned car duty-free, and that the demand is maintainable under Section 28(4) of the Act, therefore, the consequences shall automatically follow. I find that when the demand is maintainable under Section 28(4) of the Act, the imposition of penalty under Section 114A of the Act is mandatory. Hon'ble Supreme Court has settled this issue in the case of *U.O.I Vs Dharmendra Textile Processors* reported in 2008 (231) ELT 3 (S.C) and further clarified in the case of *U.O.I Vs R S W M* reported in 2009 (238) ELT 3 (S.C). I therefore hold that Ms. Fionah Ngunjiri has rendered herself liable to penalty under Section 114A of the Customs Act, 1962. My above view gets support from below mentioned case laws:

- (i) Grasim Industries Ltd. V. Collector of Customs, Bombay [reported in (2002) 4 SCC 297=2002 (141) E.L.T.593 (S.C.)]
- (ii) Samay Electronics (P) Ltd. V. C.C.(Import)/(General), Mumbai [reported in 2015 (328) E.L.T. 238 (Tri. - Mumbai)]
- (iii) Chairman, SEBI v/s Shriram Mutual Fund & Anr. [reported in AIR 2006 SC 2287]
- (iv) CCE & Cus, Ahmedabad vs Padmashree V.V. Patil SSK Ltd. [reported in 2007 (215) ELT 23 (Bom.)]
- (v) Indian Aluminium Company limited v/s Thane Municipal Corp. [reported in 1991 (55) ELT 454 (SC)]

41.2 It is seen that the impugned SCN has proposed penalty on Ms Fionah Ngunjiri under Section 112(a) of the Act alongside penalty under Section 114A of the Act. I find that penalty under Section 112(a) is imposable if goods are liable to confiscation under Section 111 of the Act. In the foregoing discussions, it has been held that the impugned vehicle viz, Lexus LX 570 car bearing Chassis No.URJ2014199918 imported in the name of Ms Fionah Ngunjiri is liable for confiscation under Section 111(j) and Section 111(o) of the Customs Act, 1962. Therefore, it appears that Ms Fionah Ngunjiri is liable for penalty under Section 112(a)(ii) of the Act. However, I find that the Fifth proviso to Section 114A of the Act stipulates that “*where any penalty has been levied under this Section, no penalty shall be levied under Section 112 or Section 114*”. Thus, it is apparent that once penalty under Section 114A is imposed, penalty under Section 112 cannot be imposed simultaneously. As, in the instant

case, it has already been held by me that Ms Fionah Ngunjiri is liable for penalty under Section 114A of the Customs Act, 1962, therefore, I find that penalty under Section 112(a) of the Act is not impossible on her and hence the same is liable to be set aside.

41.3 The impugned SCN has also proposed penalty on Ms Fionah Ngunjiri under Section 114AA of the Act. I find that Section 114AA ibid deals with the penalty inter alia for making, signing or using any false or incorrect declaration, statement or document in customs transactions. The provisions of Section 114AA ibid read as under:-

“114AA. Penalty for use of false and incorrect material.

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods”.

41.3.1 As discussed in the foregoing paras, the investigation has revealed that the impugned car was imported duty-free in the name of Ms. Fionah Ngunjiri for her personal use as a privileged person, by availing the benefit of exemption under Notification No. 03/1957-Cus dated 08.01.1957. However, post clearance, the impugned car was not registered in the name of Ms. Fionah Ngunjiri. The investigations has further revealed that Ms Fionah Ngunjiri had deliberately joined hands with Rehman Iqbal Ahmed Sheikh and facilitated all the paperwork required for importing car duty-free in her name by misusing her diplomatic status. I find that Ms. Fionah Ngunjiri was very much aware from the beginning that the impugned car imported duty-free in her name would be sold in the open market to an unprivileged person. However, in spite of fully aware about the said facts, she made application with MEA for Prior Approval for import of the impugned car for her personal use. She also signed the declaration/undertaking in the Customs Duty Exemption Certificate No.5/FN/12/2019 that the impugned car was for her personal use and would not be sold or otherwise disposed of to a person who is not entitled to import a motor vehicle free of duty without the concurrence of CBEC and without payment of the Customs duty. Even the Delivery Challan bearing job No. 716 dated 21.12.2019 of Babaji Khimji & Co., showing that the impugned car had been received, was signed acknowledged by her. It was also revealed during investigation that all the paper work was signed by Ms. Fionah Ngunjiri. As such, I find that Ms. Fionah Ngunjiri had consciously and knowingly signed documents and declarations which were false or incorrect as she knew that after import, the impugned car would not be registered in her name

through MEA. Therefore, I hold that Ms. Fionah Ngunjiri is liable to penalty under the provisions of Section 114AA of the Customs Act, 1962.

Issue of imposition of penalty on Shri Rehman Iqbal Ahmed Sheikh under Sections 112(a), 112(b) & 114AA of the Customs Act, 1962

42. It is seen that the impugned SCN has proposed penalty on Shri Rehman Iqbal Ahmed Shaikh under Sections 112(a), 112(b) and 114AA of the Customs Act, 1962. It is also seen that he has neither submitted any defence reply nor appeared for Personal Hearing(s) during the adjudication procedure. Thus, it is clear that ample opportunities were granted to the Noticee following the principles of natural justice. During the course of investigation also, multiple Summons were issued to him to appear before the investigation officer and cooperate with the investigation; however, the same were not complied with and he failed to appear before the DRI officer. Therefore, it appears that he has nothing to say in his defence. Accordingly, I would decide the case of this noticee based on the evidences on record.

42.1 I find that penalty under Section 112(a) & 112(b) is imposable if goods are liable to confiscation under Section 111 *ibid*. The provisions of Section 112 *ibid* read as under:-

SECTION 112. Penalty for improper importation of goods, etc. —

Any person, -

- (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*
- (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,*

shall be liable, -

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

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

42.1.1 I have discussed in detail the role and modus operandi of Rehman Iqbal Ahmed Sheikh in the earlier parts of this order. The detailed investigations carried out by the DRI revealed that Rehman Iqbal Ahmed Shaikh was the mastermind and kingpin of the syndicate

which had smuggled into India many high-end luxury cars in the name of foreign diplomats by availing customs duty exemption available to foreign diplomats/privileged persons under Notification No. 03/1957-Cus dated 08.01.1957. The impugned vehicle viz., Lexus LX 570 car imported in the name of Ms. Fionah Ngunjiri, Counsellor, Kenya High Commission, covered in the instant case, is one such car. Investigation has revealed that in the instant case also, Rehman Iqbal Ahmed Shaikh was the principal conspirator and kingpin of the whole conspiracy of smuggling of the impugned Lexus LX 570 car undertaken by this syndicate. He was instrumental in identification of the foreign diplomats (Ms Fionah Ngunjiri in the instant case) and colluding with them by offering monetary consideration/illegal gratification through his accomplice Rajeev Sood, carting the impugned car from Dubai to India, taking delivery of the impugned car at customs port through his another accomplice Liyakat Bachu Khan and then selling the same in the open market to unprivileged person. It was also revealed that Rehman Iqbal Ahmed Shaikh had supplied and facilitated the finance for all activities with respect to the smuggling of the impugned car. The same is very much clear from the statements of Rajeev Sood and Liyakat Bachu Khan recorded under Section 108 of the Customs Act, 1962. The same are mentioned in the earlier part of the order.

42.1.2 On going through the said statements, it is evident that at the instance of Rehman, Shri Rajeev Sood identified the diplomat who was ready to share their diplomatic information and complete all the necessary paperwork/ formalities to import the car duty-free, in lieu of monetary consideration/gratification. Rajeev Sood had provided the details of Kenya Embassy diplomat to Rehman. Shri Liyaqat Bachu Khan sent him (Rajeev Sood) draft of all the required documents for taking signature of the diplomat on those documents. He collected the hard copy of the sanction documents from the diplomat and sent the photograph of the same over WhatsApp to Rehman. He has deposed that the diplomats received amounts ranging from Rs. 8 to Rs. 10 Lakh, and that he had received around Rs.60 Lakhs in cash from Rehman on behalf of the diplomats in the last 3 years. Further, Liyakat Bachu Khan has deposed that about 25 to 30luxury cars were imported using the said modus operandi by availing Customs duty exemptions in the name of diplomats and that since these vehicles could not be sold in the open market, hence the documents had to be forged so that they could be registered in the name of private individuals. He has admitted that he worked for Rehman Shaikh when the impugned car i.e., Lexus LX 570 was imported in the name of the diplomat Ms Fionah Ngunjiri. He further stated that his job was to hand over the documents as given to

him by Rehman Shaikh and after customs clearance, he had taken the delivery of the vehicle and dispatched the same as instructed by Rehman Shaikh.

42.1.3 From the above, I find that the evidences gathered during the course of investigation clearly show that Rehman Iqbal Ahmed Shaikh was the mastermind and the principal conspirator of the whole conspiracy and played the primary role in the smuggling of the impugned Lexus LX 570 car. He also prepared/got prepared draft of all the required documents and got them signed and completed by the concerned diplomat by colluding with them through his accomplices for import of the impugned car duty-free in the name of the diplomat. He also instructed Liyakat Bachu Khan to take the delivery of the illicitly imported impugned vehicle viz., Lexus LX 570 car from the Customs Broker and instead of delivering it to the importer diplomat, he diverted it into the open market. Thus, I find that the impugned car was removed by Rehman Iqbal Ahmed Shaikh through his accomplice contrary to the terms of the permission of the proper officer who had granted permission for its clearance subject to adhering to the terms and conditions of Notification No. 03/1957-Cus dated 08.01.1957; however, the said car was sold/disposed of by him in the open market in utter violation of the conditions specified under the said Notification. Therefore, I find that all the above mentioned acts of omission and commission on part of Rehman Iqbal Ahmed Shaikh have rendered the impugned car liable for confiscation under Section 111(j) and Section 111(o) of the Customs Act, 1962. As such, I hold that Rehman Iqbal Ahmed Shaikh is liable to penalty under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962.

42.2 Further, from the above, it is also apparent that Rehman Iqbal Ahmed Shaikh had hatched the conspiracy to fraudulently avail duty exemption available to foreign diplomats by colluding with Ms Fionah Ngunjiri, a diplomat of Kenya High Commission and got the required documents/paper works made or/and signed by the said diplomat with the sole purpose of evasion of Customs duty. He was very much aware that the said documents are meant for the foreign diplomats for their exclusive use, and that in the instant case the impugned car would not be registered in the diplomat's name. However, he deliberately and intentionally used the said documents through his syndicate members in smuggling the impugned car by submitting the said documents to clear the impugned car from the Customs and thereafter disposed of the impugned car in open market to unprivileged person. Therefore, I hold that Rehman Iqbal Ahmed Shaikh is also liable for penalty under Section 114AA of Customs Act, 1962.

Issue of imposition of penalty on Shri Liyakat Bachu Khan under Sections 112(a), 112(b) & 114AA of the Customs Act, 1962

43. It is seen that the impugned SCN has proposed penalty on Shri Liyakat Bachu Khan under Sections 112(a), 112(b) and 114AA of the Customs Act, 1962. It is also seen that inspite of providing ample opportunities, he has neither submitted any defence reply nor appeared for Personal Hearing(s) during the adjudication procedure. It thus appears that he has nothing to say in his defence. Therefore, I would decide the case of this noticee based on the evidences on record.

43.1 The role played by Liyakat Bachu Khan in the entire conspiracy of smuggling of the impugned Lexus LX 570 car is discussed in details in foregoing paras. I find that Liyakat Bachu Khan played a prominent role on the ground in executing the conspiracy. He was working for Rehman Iqbal Ahmed Shaikh and was a close confidant of him. In his statements recorded under Section 108 of the Act, Liyakat Bachu Khan has admitted his role in the conspiracy. He has also admitted that he knew that the vehicles imported in the name of diplomats were imported duty-free as there were exemption available to them, and that since these vehicles could not be sold in the open market, hence the documents had to be forged so that they could be registered in the name of private individuals. He has admitted that he worked for Rehman Shaikh when the impugned car i.e., Lexus LX 570 was imported in the name of the diplomat Ms Fionah Ngunjiri. He further stated that his job was to hand over the documents as given to him by Rehman Shaikh and after customs clearance, he had taken the delivery of the vehicle and handed it over to unknown persons as instructed by Rehman Shaikh. Further, it is seen that Rajeev Sood in his statement recorded under Section 108 of the Act has deposed that Liyaqat Bachu Khan sent him draft of all the required documents for taking signature of the diplomat on those documents. The investigation has also revealed that in most of the cases that after getting clearance from customs, forged papers were prepared by Liyakat Bachu Khan through his contact and shown to prospective buyers. I find that for his prominent role played in the said conspiracy, Liyakat Bachu Khan was also arrested by the DRI under Section 104 of the Customs Act and was in judicial custody for 60 days.

43.2 In view of the above, I find that all the above mentioned acts of omission and commission on part of Liyakat Bachu Khan have rendered the impugned car liable for confiscation under Section 111(j) and Section 111(o) of the Customs Act, 1962. As such, I hold that Liyakat Bachu Khan is liable to penalty under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962. Further, since he had also prepared/got prepared, signed/got

signed the documents, as discussed in para supra, and got delivery of the illicitly imported impugned vehicle viz., Lexus LX 570 car from the Customs Broker and instead of delivering it to the importer diplomat, he handed it over to unprivileged person on instruction of Rehman Iqbal Ahmed Shaikh. Therefore, I hold that Liyakat Bachu Khan is also liable for penalty under Section 114AA of Customs Act, 1962.

Issue of imposition of penalty on Shri Rajeev Sood and Sri Manjeet Maurya under Sections 112(a) & 112(b) of the Customs Act, 1962

44. It is seen that the impugned SCN has proposed penalty on Sri Rajeev Sood and Shri Manjeet Maurya under Sections 112(a) and 112(b) of the Customs Act, 1962. It is also seen that inspite of providing ample opportunities, they have neither submitted any defence reply nor appeared for Personal Hearing(s) during the adjudication procedure. It thus appears that they have nothing to say in their defence. Therefore, I would decide the case of these noticees based on the evidences on record.

44.1 The role played by Rajeev Sood and Manjeet Maurya in the entire conspiracy of smuggling of the impugned Lexus LX 570 car is discussed in details in foregoing paras. I find that Rajeev Sood had goods contacts in embassies/high commissions and played the crucial role of a handler, facilitator and link between the diplomats and Rehman Iqbal Ahmed Shaikh. He has admitted that, at the instance of Rehman, he identified the diplomat who was ready to facilitate all the required formalities/paperwork in lieu of monetary consideration/gratification. He took the assistance of Manjeet Maurya who was working at the Ministry of External Affairs in extracting crucial information about the eligibility of diplomats and expediting the process of Prior Approval and Exemption Certificate at MEA. Rajeev Sood has further admitted that he had also provided the details of Kenya Embassy diplomat to Rehman Shaikh, and that Shri Liyaqat Bachu Khan sent him draft of all the required documents for taking signature of the diplomat on those documents. He collected the hard copy of the sanction documents from the diplomat and sent the photograph of the same over WhatsApp to Rehman. He has also deposed that the diplomats received amounts ranging from Rs. 8 to Rs. 10 Lakh, and that he had received around Rs.60 Lakhs in cash from Rehman on behalf of the diplomats in the last 3 years. Shri Manjeet Maurya in his statement has admitted that he knew that the diplomats got full Customs/GST exemption of imported vehicles when they registered their vehicle through MEA. He also knew the procedure for claiming the said exemption. He used to provide Rajeev Sood the required information in lieu of monetary benefits. I find that for his crucial role played in the said conspiracy of illicit

import of luxury cars, Rajeev Sood was also arrested by the DRI under Section 104 of the Customs Act and was in judicial custody for 60 days.

44.2 In view of the above, I find that all the above mentioned acts of omission and commission on part of Sri Rajeev Sood and Shri Manjeet Maurya have rendered the impugned car liable for confiscation under Section 111(j) and Section 111(o) of the Customs Act, 1962. As such, I hold that Sri Rajeev Sood and Shri Manjeet Maurya are liable to penalty under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962.

Issue of imposition of penalty on Shri Aubrey Elias D'Souza under Section 112(b) of the Customs Act, 1962

45. It is seen that the impugned SCN has proposed penalty on Shri Aubrey Elias D'Souza under Section 112(b) of the Customs Act, 1962 alleging that he was the representative of the Customs Broker who had cleared the impugned imported Lexus LX 570 car. In his defence, Aubrey Elias D'Souza has inter alia contended that he had the impugned car was cleared on the basis of duty exemption certificate in favour of the diplomat and were directly received from the diplomat email to the noticee's email ID jpintl@rediffmail.com. All the documents were attested by the Embassy. Based on the above documents, Bill of Entry No. 6123712 dated 18/12/2019 was filed. The BoE was assessed by the Group granting the benefit of exemption Notification No. 03/1957 dated 08/01/1957 at Nil duty. No discrepancy was noticed by the department at the time of assessment, nor at the time of examination of the car. Accordingly, OOC was given by the proper officer on 18/12/2019. Thus, Section 111(j) is not applicable in the present case. He had received a duly acknowledged delivery Challan from the Diplomat. There was no complaint of non-delivery of car after clearance. It is well settled that the Customs Broker is not liable for diversion of the goods after clearance. None of the conspirators involved in the case has implicated Noticee of having played any role in the diversion of the car in the local market. He had not committed any act rendering the goods liable for confiscation under Section 111. Therefore, he was not liable for penalty under Section 112 of the Customs Act 1962. They have inter alia relied on the following cases of import of cars by the Diplomat wherein penalty on the Noticee has been set aside by the Commissioner (Appeals), JNCH, Nhava Sheva-

- i) Order in Appeal No. 40 (Gr. VB)/2025(JNCH)/Appeals dated 14/01/2025.
- ii) Order in Appeal No. 484 (Gr. VB)/2025(JNCH)/Appeals dated 15/04/2025.

45.1 I find that the impugned car was imported and cleared at JNCH, Nhava Sheva through Bill of Entry No. 6123712 dated 18/12/2019 which was dealt by Aubrey Elias D'souza, representative of Customs Broker, Babaji Khimji and Co. On going through the impugned SCN and statements of Shri Aubrey Elias D'souza recorded under Section 108 of the Act, I find that all the documents required for import of the impugned car under Notification no. 03/1957-Cus, dated 08.01.1957 were received by him directly from the email ID of the concerned embassy/diplomat. I also observed that Shri Aubrey Elias D'souza was fully aware of the duty exemption Notification No. 03/1957-Cus dated 08.01.1957 and sought documents for generation of the Bill of Entry only from the official e-mail id of the embassy/ diplomats duly signed and stamped from embassy/diplomat. These facts have not been refuted by any of the members of the syndicate nor DRI has produced any evidence to the contrary. I find that in the present case, the documents such as Note Verbale No. KHC/ND/PROT/4A dated 27.11.2019, Prior Approval from MEA No. D.VI/451/2/(37)/2019/3883 dated 29.11.2019, Exemption Certificate No. 05/FN/12/2019 dated 16.12.2019 issued by MEA, Self-Certificate of Ms Fionah Ngunjiri, Bill of Lading, Invoice, Diplomatic identity card, etc. were sought by him for import of the impugned car in the name of the diplomat. Further, I also find that the delivery Challan issued by him to the diplomat Ms Fionah Ngunjiri was duly signed by Ms Fionah Ngunjiri acknowledged receipt of the impugned car by her. Thus, it is seen that the impugned car was cleared from Customs and no infirmity was noticed from filing the BoE to the out-of-charge by proper officer. Further, no malafides are attributed against him by the co-noticees involved in the conspiracy. As such, I find that the charges leveled against Shri Aubrey Elias D'souza in the impugned SCN is not sustainable.

45.2 I also find that the Notification No 21/2004 dated 23/02/2004 also known as CHALR 2004", stipulates that any diversion the imported goods is the responsibility of the importer and not the CHA whose role was complete once the car was cleared from Customs. It is seen that no evidence has been produced by the department establishing that Aubrey D'Souza was aware that the impugned car was not to be taken to its destination and diverted to the local market. Further, none of the conspirators and beneficiaries have implicated his role or involvement in the diversion of the impugned car. Thus, I find that collusion on the part of Shri Aubrey Elias D'souza with other co-noticees of not taking the impugned car to the nominated destination cannot be established. I also find that all the formalities for the customs clearance were complied with by him as per law. The impugned SCN also does not allege his role in the diversion of the car post-clearance. Further, I find that as a Customs

Broker, the Noticee's responsibility was restricted only upto the clearance of the car from Customs which was performed by him following due process of law. I also find that, in identical cases, the Commissioner (Appeals)/JNCH, vide Orders-in-Appeal No. 40 (Gr. VB)/2025(JNCH)/Appeals dated 14/01/2025 and 484 (Gr. VB)/2025(JNCH)/Appeals dated 15/04/2025, has set aside the imposition of penalty on the noticee. I therefore find that Shri Aubrey Elias D'souza is not liable for imposition of penalty under Section 112(b) of the Act.

46. In view of the foregoing discussions and findings, I pass the following order:

ORDER

- (i) I order to confiscate the impugned goods i.e., 'Lexus LX 570 car' imported vide Bill of Entry No. 6123712 dated 18.12.2019 having total assessable value of Rs.30,77,000/- under section 111(j) and 111(o) of the Customs Act, 1962. However, since the impugned goods i.e., 'Lexus LX 570 car' has already been disposed off, I impose a redemption fine of **Rs.10,00,000/- (Rupees Ten Lakhs only)** on the buyer of the impugned car in lieu of confiscation under Section 125(1) of the Customs Act, 1962.
- (ii) I confirm the demand of Customs duty amounting to **Rs.62,77,080/- (Rupees Sixty-two Lakhs Seventy-seven Thousand and Eighty only)** and order to recover the same from Ms Fionah Ngunjiri, the then Counsellor, High Commission of the Republic of Kenya under Section 28(8) of the Customs Act, 1962 along with the applicable interest under Section 28AA of the Customs Act, 1962;
- (iii) I impose penalty of **Rs.62,77,080/- (Rupees Sixty-two Lakhs Seventy-seven Thousand and Eighty only)** on Ms Fionah Ngunjiri, the then Counsellor, High Commission of the Republic of Kenya under Section Section 114A of the Customs Act, 1962;
- (iv) I impose penalty of **Rs. 30,00,000/- (Rupees Thirty Lakhs only)** on Ms Fionah Ngunjiri, the then Counsellor, High Commission of the Republic of Kenya under Section 114AA of the Customs Act, 1962;
- (v) I impose penalty of **Rs. 6,00,000/- (Rupees Six Lakhs only)** on Shri Rehman Iqbal Ahmed Shaikh under Section 112(a) of the Customs Act, 1962. I also impose penalty of **Rs. 6,00,000/- (Rupees Six Lakhs only)** on Shri Rehman Iqbal Ahmed Shaikh under Section 112(b) of the Customs Act, 1962.

- (vi) I impose penalty of **Rs. 30,00,000/-** (Rupees Thirty Lakhs only) on Shri Rehman Iqbal Ahmed Shaikh under Section 114AA of the Customs Act, 1962.
- (vii) I impose penalty of **Rs. 6,00,000/-** (Rupees Six Lakhs only) on Shri Liyakat Bachu Khan under Section 112(a) of the Customs Act, 1962. I also impose penalty of **Rs. 6,00,000/-** (Rupees Six Lakhs only) on Shri Liyakat Bachu Khan under Section 112(b) of the Customs Act, 1962.
- (viii) I impose penalty of **Rs. 30,00,000/-** (Rupees Thirty Lakhs only) on Shri Liyakat Bachu Khan under Section 114AA of the Customs Act, 1962.
- (ix) I impose penalty of **Rs. 6,00,000/-** (Rupees Six Lakhs only) on Shri Rajeev Sood under Section 112(a) of the Customs Act, 1962. I also impose penalty of **Rs. 6,00,000/-** (Rupees Six Lakhs only) on Shri Rajeev Sood under Section 112(b) of the Customs Act, 1962.
- (x) I impose penalty of **Rs. 3,00,000/-** (Rupees Three Lakhs only) on Shri Manjeet Maurya under Section 112(a) of the Customs Act, 1962. I also impose penalty of **Rs. 3,00,000/-** (Rupees Three Lakhs only) on Shri Manjeet Maurya under Section 112(b) of the Customs Act, 1962.
- (xi) I refrain from imposing penalty on Shri Aubrey Elias D'Souza under Section 112(b) of the Customs Act, 1962.

47. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved under the provisions of the Customs Act, 1962 and/or any other law for the time being in force in India.


(Dr. Atul Handa)
Commissioner

F.No. S/10-171/2023-24/CC/NS-V/CAC/JNCH

To,

1. Ms. Fionah Ngunjiri,
Ex. Counsellor,
High Commission of the Republic of Kenya,
A-15/14, Vasant Vihar,
New Delhi-110057.

(Through MEA, New Delhi)

2. Shri Rehman Iqbal Ahmed Shaikh,
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3. Shri Liyakat Bachu Khan,
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5. Shri Manjeet Maurya,
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6. Shri Aubrey Elias D'souza,
Prop. of M/s. J.P. International,
5, Baptist Bhavan, Carmel CHS, 2nd Floor,
St. John Baptist Road, Bandra (West), Mumbai-400050.
Email: jpintl@rediffmail.com,

Copy to:-

1. The Chief Commissioner of Customs Zone-II, Mumbai for kind review please.
2. The Principal Chief Commissioner of Customs Zone-III, Mumbai for kind information please.
3. The Commissioner of Customs, NS-V, JNCH, Nhava Sheva, Raigad for kind information please.
4. EDI Section, JNCH (for upload on website).
5. Notice Board.
6. Master File.