आयुक्त,सीमाशुल्क (निवारक)काकार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS (PREVENTIVE), MUMBAI
दूसरी मंजिल, नवीन सीमा शुल्क भवन, बेलार्ड इस्टेट, मुंबई-400 001
2ND FLOOR, NEW CUSTOMS HOUSE, BALLARD ESTATE, MUMBAI-400001
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DIN: 20251079OC0000412941

मूलादेश संख्या/Order-in-Original No. :	**PCCP/ADJ/AH/08/2025-26**
आदेश की तारीख / Date of Order :	**10.10.2025**
जारी करने की तारीख / Date of issue :	**10.10.2025**
आदेश फा. सं. / Order File No.	**S/10-172/2023-24/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

1. यह प्रति जिस व्यक्ति को जारी किया गया है उसके उपयोग के लिए नि: शुल्क दिया जाता है।
This copy is granted free of charge for use of the person to whom it is issued.

2. 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.

3. 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 3 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:

(i) 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).

(ii) किसी भी राष्ट्रीय कृत बैंक की शाखा पर, जहां उचित न्यायालय (बेंच) स्थित है, उपयुक्त शुल्क का (नीचे दिया गया है) क्रास किया हुआ बैंकड्रॉफ्ट 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 गएअर्थदंड कीराशि 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.1815/2023-24/COMMR/NS-V/ CAC/JNCH dated 01.11.2023 issued by the Commissioner of Customs, NS-V, JNCH, Nhava Sheva to Mr. Nebras Soliman, Attache, Embassy of the Syrian Republic & others under the Customs Act, 1962- reg.

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 14.07.202l, 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 Range Rover Car bearing Chassis No SALGA3AE7KA526395 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 Range Rover Car, in the name of Mr Nebras Soliman, Embassy of the Syrian Arab Republic, New Delhi vide Bill of Entry No. 9356843 dated 28.10.2020, however, the said car was not registered in the name of the said 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	9356843 dated 28.10.2020
Bill of Lading No. & Date	HLCUANR200770040 dated 14.08.2020
Description of goods	One Unit Range Rover
Chassis No.	SALGA3AE7KA526395
Assessable Value (in Rs.)	Rs. 30,81,375/-
Duty	Nil, as cleared availing exemption under Notification No. 03/1957-Cus dated 08.01.1957
Customs Station	INNSA1
Customs Broker	Navalson Logistics

3.1 The investigation further revealed that the said Range Rover Car bearing Chassis No SALGA3AE7KA526395, which had been imported vide Bill of Entry No. 9356843 dated 28.10.2020 in the name of Mr Nebras Soliman, Embassy of the Syrian Arab Republic, New Delhi without payment of duty by availing the benefit of the Customs duty exemption Notification No. 03/1957-Cus dated 08.0l.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. 9356843 dated 28.10.2020, in the name of Mr Nebras Soliman, Embassy of the Syrian Arab Republic, New Delhi, was filed by the Customs Broker, Navalson Logistics.

3.2 The investigation further revealed that the said Range Rover Car was never registered in the name of the privileged person Mr Nebras Soliman, Embassy of the Syrian Arab Republic, New Delhi, 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 Range Rover 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 Mr Nebras Soliman for the import of the said Range Rover Car bearing Chassis No SALGA3AE7KA526395 were obtained from MEA.

4.1 On going through the said documents obtained from MEA, it was observed that the MEA vide letter no. D.VI/451/2/(62)/2020 dated 29.09.2020 conveyed Prior Approval to Mr Nebras Soliman for import of said Range Rover 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, Mr Nebras Soliman, vide document No. 10/NS/19/2020 dated 19.10.2020, 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, the MEA issued/attested the Exemption Certificate. On the basis of the said Exemption Certificate, the said Range Rover Car having Chassis No SALGA3AE7KA526395 was imported into India vide Bill of Entry No. 9356843 dated 28.10.2020 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 Mr Nebras Soliman through MEA to appear on 09.12.2021 before the DRI officer. The said letter was forwarded by MEA on 25.11.2021 to the Embassy of the Syrian Arab Republic, New Delhi. In response to the said Summons dated 11.11.2021, the Embassy of the Syrian Arab Republic in New Delhi, vide their reply No. 533/313 dated 02.12.2021, informed that according to the Vienna Convention on Diplomatic Relations, the diplomats have judicial immunity and that the embassy would investigate on the matter & punish the employee responsible for the mistake & update the Ministry of External Affairs, Government of India and inform the Syrian Ministry of Foreign Affairs. The Embassy also undertook not to repeat such action in future

4.4 Thereafter, since the vehicle was not registered in the name of Mr Nebras Soliman, Embassy of the Syrian Arab Republic, New Delhi through MEA, Mr Nebras Soliman 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.

Enquiry with RTO

5. During the course of investigation, it was observed that the members of the smuggling syndicate had applied for the registration of the said Range Rover car bearing Chassis No. SALGA3AE7KA526395 at Nurpur, Himachal Pradesh, RTO, and succeeded in getting the registration certificate number HP-38-G-3045 in the name of a non-privileged person, Bhaiyasahab Eknath Khandare.

5.1 It was also observed that, in the past, several vehicles were imported in the name of various foreign diplomats, out of which, three (03) vehicles had been registered in the name of the non-privileged person Bhaiyasaheb E. Khandare. These vehicles were registered at RTO, Himachal Pradesh. In the subject case also, the vehicle was registered in the name of the said non-privileged person Bhaiyasaheb E. Khandare at RTO, Himachal Pradesh. Thus, the modus operandi adopted by the syndicate led by Rehman Iqbal Ahmed Shaikh & other members clearly established that the vehicles were imported in the name of privileged persons and thereafter, get the same registered in the name of non-privileged persons.

5.2 As the said car was registered at Nurpur, Himachal Pradesh, RTO, necessary enquiry was made with the Registering and Licensing Authority (RLA), Nurpur. The Registering and Licensing Authority, Nurpur, vide letter no. 94/GC dated 17.10.2023, furnished the documents submitted at the time of registration. From the said documents, it was gathered that the said vehicle was not registered in the name of the Privileged person through MEA but was found registered in the name of a non-privileged person, Bhaiyasahab Eknath Khandare. It was seen from the documents that the Tax Invoice bearing No. SATPVT-1920-026 dated 04.02 2020 was, inter alia, used to register the said car at Nurpur RLA. The said invoice appeared to be issued by M/s Jaycee Automobiles Pvt. Ltd. (GSTIN 07AACCR6439D1ZG). On further enquiry, it was found that the said GSTIN 07AACCR6439D1ZG actually belonged to M/s Regent Garage Private Limited.

5.3 It was also noticed from the said documents that the syndicate members had deliberately and intentionally deleted one (01) digit of the Chassis No. viz. SALGA3AE7KA526395 to SALGA3AEKA526395 of the said vehicle by using forged Invoice No. SATPVT-1920-026 dated 04.02.2020 in order to get the fake registration done in the name of Bhaiyasahab Eknath Khandare, a non-privileged person under registration No. HP-38-G-3045 instead of getting it registered in the name of the Privileged person through MEA.

5.4 The date of the said Indian invoice was 04 02.2020, while the date of the Bill of Entry of the subject Range Rover car was 28.10.2020. The fact that the said Indian invoice no. SATPVT 1920-026 dated 04.02.2020 was of a date prior to the date of the Bill of Entry of the subject Range Rover car itself proved that the said Indian invoice was fake and forged. Nonetheless, an enquiry was conducted in this regard with M/s Regent Garage Private Limited, who, vide email dated 20.10.2023, informed that they had not issued any such invoice from their company. Consequently, the investigation revealed that documents submitted before the RTO authorities were forged and that the said registration no. HP-38-G-3045 had been obtained fraudulently. Thus, such facts indicated foul play by the members of the smuggling syndicate and that the documents submitted before the Registering and Licensing Authority authorities at Nurpur, Himachal Pradesh were forged documents. During the course of further investigation, it was revealed that the above-mentioned registration no. HP-38-G-3045 was cancelled by the transport authorities. It was further gathered that the syndicate had again registered the said car at Regional Transport Officer (RTO), Ziro, Arunachal Pradesh with registration number AR06A8459 in the name of another non-privileged person Joe Joseph. However, it was observed that the syndicate had made fake documents in the name of Joe Joseph.

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

6. 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.

6.1 The said Range Rover car having Chassis No. SALGA3AE7KA526395 was imported and cleared through Bill of Entry No. 9356843 dated 28.10.2020 filed by Customs Broker, Navalson Logistics, Mumbai. In this regard, the statement of Shri Som Prakash Naval Bhatia, proprietor of the said Customs broker firm M/s. Navalson Logistics, who dealt with the said consignment of the said car, was recorded on 06.12.2021 wherein he, inter alia, stated that;-

(i) Due to the onset of COVID-19, Shri Aubrey Elias Dsouza was not taking any documents and therefore he transferred the job of clearance of imported cars from Customs in the name of diplomats/consulates/embassies to him.

(ii) Shri Aubrey Elias Dsouza used to transfer the documents related to the import of said vehicles to him through email or WhatsApp.

(iii) On receiving the import related documents from Shri Aubrey Elias Dsouza, he checked the vessel arrival and digitally signed the documents sent by Shri Aubrey Elias Dsouza and then uploaded the same on ICEGATE website. On uploading these documents, an IRN (Image Reference Number) was generated from the ICEGATE website. Afterwards, that IRN was integrated in the checklist of the Bill of Entry and then the same was uploaded in ICEGATE for generating the Bill of Entry number.

(iv) The delivery of imported cars was taken by the representative of Shri Aubrey Elias Dsouza.

(v) He prepared the bill for his clearance charges and delivery challan of the imported cars and forwarded the same to Shri Aubrey Elias Dsouza for getting the delivery challans signed by the importers which he used to provide him (Som Bhatia) within 10 to 15 days. Then all the documents for the concerned Bill of Entry were completed from his side.

(vi) He had cleared a total 06 imported cars, in the name of embassy/ consulate/ diplomats, since the year 2020 which were imported on his CHA License, AABPB1892JCH001 (M/s Navalson Logistics, License No. 11/1987).

(vii) He charged Shri Aubrey Elias Dsouza Rs. 6500/- per job (for every import). All the bills were raised from M/s Navalson Logistics to M/s JP International, the proprietor of which is Shri Aubrey Elias Dsouza.

6.2 Statement of Shri Aubrey Dsouza was recorded under Section 108 of the Customs Act 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.

(vii) He provided the details of 13 Bills of Entry cleared by him and Bill of Entry

No.4318845 dated 09.07.2021 was also one of them which was cleared by Customs Broker, M/s Navalsons Logistics as due to Covid-19, he was not taking many documents for clearance, so he transferred this clearance work to Shri Som Bhatia, owner of M/s. Navalson Logistics.

(viii) He charged Rs.25,000/- per job (for every import) from Liyakat.

(ix) 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.

(x) 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.

6.2.1 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 No. 9356843 dated 28.10.2020, he stated that import of the car was done as diplomatic cargo on the customs broker License AABPB1892JCH001 (M/s Navalson Logistics, License number 11/1987) and the said work of clearance was provided by him to Navalson Logistics.

(ii) During the COVID-19 period, he was not taking any documents and therefore, he transferred the job of clearance of some imported cars from Customs in the name of diplomats/consulates/embassies to his friend, Shri Som Prakash Naval Bhatia, who was the proprietor of the customs broker, M/s Navalson Logistics.

(iii) He used to transfer documents received from the embassy to Shri Som Prakash Naval Bhatia for further filing the Bill of Entry.

(iv) He had received the job of clearance of the above-mentioned consignments under Customs Notification No. 03/1957-Cus dated 08.01.1957.

(v) 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.

6.3 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.

6.3.1 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.

6.3.2 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 car imported vide Bill of Entry No. 9356843 dated 28.10.2020 to be handed over, he stated that he had already stated all the facts in his previous statements recorded in the DRI office.

(ii) 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.

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

6.4 Statement of Shri Mohammed Wasim Abdul Gani Siddique was recorded on 14.07.2021, under Section 108 of the Customs Act, wherein he, inter alia, stated that;

(i) Liyakat Bachu Khan had given him the work of editing the documents which he did.

(ii) He had Carroll software on his computer on the basis of which he used to edit all the documents given to him by Liyakat Bachu Khan.

(iii) Invoices, letters of Ministries, etc. were forwarded to him by Liyakat khan and he edited the documents as directed by Liyakat.

(iv) Liyakat khan used to give him Rs. 500 to Rs. 1000 as per the quantum of editing.

(v) Sometimes Liyakat Khan gave him the Bills of Entry to edit the name of the importer or value of the goods and he did the same as per Liyakat's directions.

6.5 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, based in Mumbai 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 is 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.

6.5.1 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. 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.

6.5.2 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 would 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.

6.6 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.

6.7 Statement of Shri Nipun Miglani, one of the key members of the syndicate involved in smuggling luxury cars in the names of the diplomats, was recorded under Section 108 of the Customs Act, 1962 on 15.07.2021 wherein he, inter alia, stated that;-

(i) He joined Big Boy Toys (BBT) as Chief Executive Officer (CEO) and his responsibilities as CEO were to source cars for BBT from all over India through his dealers' network and to later sell them to interested customers after refurbishing.

(ii) He also worked as a freelance broker arranging imported cars for clients who were unable to get their cars from trusted sources in the country.

(iii) The names of his dealers were Rehman Sheikh, Jung Bhahadur Singh, Charang Jeet Singh, Heera Singh, Haji Bhai and others from Mumbai.

(iv) The car picture and documents were shared to him on WhatsApp from the dealers which were then forwarded to the prospective clients.

(v) He was introduced to Rehman Iqbal Sheikh in year 2010 by another dealer and in year 2018, Rehman contacted him and informed that he (Rehman) was back in the business of imported cars and asked to help him to sell them.

(vi) He agreed to Rehman Sheikh's proposal and then Rehman introduced him to Liyakat Bachu Khan who used to take care of handing over of all the documents of imported cars.

(vii) He used to communicate with Liyakat Bachu Khan mostly through WhatsApp calls on his (Liyakat) mobile number.

(viii) Initially he used to get details of cars such as Make, Model, Year of Manufacture, Engine Cubic Capacity, Fuel variant and expected price from Rehman and based on these details he looked for probable customers requiring such specifications After getting the customer he used to finalize the deal with Rehman Shaikh.

(ix) The registration papers of all the imported cars were arranged by Liyakat Khan.

(x) On being specifically asked he said that on two occasions he initiated dealing by demanding specific cars (Land Cruiser Diesel) from Rehman for his clients and on his request Rehman arranged dummy importers willing to import Land Cruiser Diesel in their name Thereafter, two cars were imported and registered in the name of his clients.

(xi) Registration of the said imported cars in Himachal RTOs and Manipur RTOs was arranged by Liyakat and Registration from Punjab was arranged by him through one of his friends Suriya who resides in Bangalore.

(xii) On being asked why he was not verifying the genuineness of the documents against the imported cars supplied by Rehman, he stated that he had ignored the same as he was aware that Rehman used to arrange dummy importers who agreed to import cars on their name for monetary consideration.

(xiii) He was aware that most of the cars imported by Rehman were immediately available for sale and Rehman, after importing cars in the name of a dummy importer, used to get the registration done in the name of his clients.

(xiv) He stated that PB36J9799 was sold to Krishnamurthy Tiruppur for Rs 150 Crores. The car was imported in Feb. 2021 by Rehman and unregistered car was delivered in Coimbatore to Suriyain the end of February for sale to Krishnamurthy in Tirupur.

(xv) Krishnamurthy made an advance RTGS payment of Rs. 60 lakhs to Md. Shahid Katerwala in December 2020 and balance payment of Rs.90 lakhs was done to Md Shahid Katerwala in February 2021. Subsequently, the vehicle was registered in May 2021 in Punjab by Suriya.

(xvi) RTGS of Rs 7 lakhs to Md. Shahid Katerwala was done as his commission in the deal.

6.7.1 Further statement of Shri Nipun Miglani was recorded under Section 108 of the Customs Act, 1962 on 17.07 2021 wherein he, inter alia, stated that;-

(i) He knew Rajeev Sood since 2007 or 2008 as he was a car dealerbut so farhe had not done any business with Rajeev Sood.

(ii) He saw Rajeev Sood once with Rehman when he came to Delhi and then he came to know that he was also working for Rehman.

(iii) Rajeev Sood might be doing the import documentation work with Manjeet for Rehman.

(iv) On being asked to listen to one WhatsApp conversation wherein he had been giving the instruction to Liyakat Khan about the preparation of tax Invoice No. H20200048145 dated 21 12 2020 of Uttam Toyota, he stated that there was apparently some error on the invoice which he was telling Liyakat to correct by giving some margin on the invoices as he knew that Liyakat was preparing the invoice.

(v) On being shown one Bill of Entry no. 2649079 dated 06.02.202l in respect of Diplomatic Cargo Toyota Land Cruiser bearing Chassis No JTMHV02J504286544 and asked whether the same pertains to tax Invoice No. G20200059623 dated 09 12 2020 of Uttam Toyota, he stated that the said tax invoice pertained to the same one which was imported vide Bill of Entry no 2649079 dated 06.02 2021.

(vi) On being asked to listen to one WhatsApp conversation wherein he had been giving the instruction to Liyakat Khan about the light copy of the PDF in respect of Tax Invoice No SMC/SAL/2020/169 dated 18.03 2020, he stated that since the car was imported one and the invoice was fabricated, he had instructed Liyakat Khan that the details should be too light to read but the copy of the invoice need to be there to show the same to the customer.

6.7.2 Further statement of Shri Nipun Miglani was recorded under Section 108 of the Customs Act, 1962 on 16.10.2023 wherein he, inter alia, stated that;-

(i) On being asked about the Range Rover car bearing registration no. AR06A8459 and chassis no SALGA3AE7KA526395, he stated that the said car was provided by Rehman Iqbal Ahmed Shaikh to him around November 2020 He further stated that at that time the said car was registered under registration no HP38G3045 And due to some issue in Himachal Pradesh RTO, the said registration no. HP38G3045 was cancelled He stated that thereafter, the said car was registered in Arunachal Pradesh RTO under registration no. AR06A8459.

(ii) He had shown the said Range Rover car to some prospective customers, however the deal did not go through. When he was not able to locate a buyer for the said Range Rover car, Rehman Iqbal Ahmed Shaikh asked him to return the said car to him (Rehman) In around May-2021, he returned the said Range Rover car to Rehman Iqbal Ahmed Shaikh.

(iii) WhatsApp chats regarding the Range Rover car bearing chassis no SALGA3AE7KA526395 and registration nos, HP38G3045 and AR06A8459 obtained from mobile no. 9999999964 was shown to Shri Nipun Miglani The said WhatsApp chats have been marked pages no. 1 to 12 and he (Nipun Miglani) had put his dated signature on the said WhatsApp chats as token of having seen and perused the same.

(iv) On being asked about the WhatsApp chat, he stated that the WhatsApp chats on page no. 1 & 2 were chats between him and Liyakat Bachu Khan, the WhatsApp chats on page no. 3 were chats between him and Suriya, the WhatsApp chats from page no. 4 to page no. 12 were chats between him and his brother Arjun.

(v) He reiterated that Shri Suriya was a close friend of his whom he had known for the last 17 years. On being asked he stated that in the above-said WhatsApp chats, they have shared various documents and details linked to the above-mentioned Range Rover car bearing chassis no. SALGA3AE7KA526395.

6.8 Statement of Shri Suriya, a person who appeared to be involved in the registration of the said car based on fabricated documents, was recorded under the provisions of Section 108 of the Customs Act, 1962 on 02.08.2021 wherein he, inter alia, stated that;-

(i) On being specifically asked about the WhatsApp conversation between him and Nipun Miglani, he stated that they generally discussed high-end vehicles.

(ii) Nipun Miglani sent him model No. and rates of the vehicles and he passed it on in his circle and if any of his known or friend took interest in the purchase of the said vehicle, he conveyed it to Nipun.

(iii) On being specifically asked about his role in the Registration of these vehicles, he stated that he used to get the details of the imported vehicles from Nipun for registration purpose.

(iv) He knew one person with the name Khateeb who was based in Mumbai who did registration facilitation at various RTOs across India.

(v) After getting details of vehicles and relevant documents from Nipun Miglani, he used to send those details to Khateeb.

(vi) After getting those details, Khateeb would quote a price which he would share it with Nipun and money would directly be sent to Khateeb by Nipun through Hawala.

(vii) All the registration works or correction in RCs were done by him on request of Nipun through Khateeb.

(viii) All the documents for registration purpose were shared with him by Nipun Miglanı which he had shared with Khateeb for registration purposes on Nipun's request.

6.9 Statement of Shri Arjun Miglani, brother of Nipun Miglani, was recorded under the provisions of Section 108 of the Customs Act, 1962 on 15.07 2021 wherein he, inter alia, stated that;-

(i) His elder brother Shri Nipun Miglani, was CEO in Big Boy Toys, Gurugram.

(ii) He bought pre-owned cars available for sale in the open market following various classifieds. Thereafter, the cars were serviced and polished and sold through used car dealers.

(iii) Shri Rehman was from Bandra, Mumbai and mostly operated from Dubai and Rehman was an old timer in the business of import of cars and had been importing such high end cars.

(iv) Rehman imported cars that were not readily available for sale in India, like Hummer, Chrysler of General Motors or Land Cruiser of Toyota.

(v) These cars could be imported by individuals who wanted to procure them, but still these individuals preferred to procure them through Shri Rehman 1e got them imported through Shri Rehman because of Rehman's better coordination with the foreign based authorised dealers of these cars and;

(vi) Price advantage offered by Shri Rehman as Shri Rehman could sell these cars at lower value as by managing their under-valued imports by not declaring the value of the accessories that were fitted in these cars which resulted in more than 50%

price suppression (undervaluation).

(vii) Shri Nipun had stopped dealing with Shri Rehman after the DRI case against these under-valued imported cars which were imported by Shri Rehman.

(viii) In 2017 Shri Rehman again approached Shri Nipun and suggested that he can pay the money which was due to Shri Nipun, if Shri Nipun could help him in selling the high end imported cars that Shri Rehman had again started to import.

(ix) Consequently, Shri Nipun agreed to this suggestion and started selling high end imported cars that Rehman had then started to import.

(x) In 2017-18, when he entered into the high end imported car business, Shri Nipun suggested that he too can look for clients for Rehman's high end imported cars and, in that way, he could recover from Rehman the money that he owed to Shri Nipun.

(xi) Shri Liyakat was very closely associated with Shri Rehman and Shri Liyakat basically coordinated with Customs Brokers in facilitating the Customs clearance of these high end luxury cars that were imported by Shri Rehman, arranging logistics/ transport for the above mentioned high end luxury cars from port to sellers like him or to end-use customers.

(xii) When any high-end car is imported into India by Rehman and he wanted to sell it through him, he was informed about the car's arrival either by Nipun or by Liyakat.

(xiii) He then asked Liyakat to send photos of the imported cars to him and if he got any client for such cars, he informed Liyakat about the same and asked him to bring the car to him so that the car could be shown to the client.

(xiv) Since 2017, Liyakat as well as Nipun had sent details of several high-end cars imported by Rehman for locating prospective clients through me.

(xv) On being asked about having knowledge of any other person involved in arranging clients for the purchase of high-end cars imported by Rehman, he stated that, besides him and Nipun, Rehman has also tried to sell the high-end cars imported by him through one Suriya based in Bangalore.

7. 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. Summonses were also issued to Bhaiyasaheb Eknath Khandare requiring him to appear before the DRI officer and cooperate with the investigation. However, he also 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:

8. 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 Range Rover car bearing Chassis No. SALGA3AE7KA526395 was one among the said smuggled cars.

The said Range Rover car was imported into India vide Bill of Entry No. 9356843 dated 28.10.2020 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 Mr Nebras Soliman, Embassy of the Syrian Arab Republic, New Delhi who had submitted the required documents for obtaining the Exemption Certificate from MEA. The syndicate appeared to have diverted the said imported Range Rover car into the open market for sale to a non-privileged person, instead of delivering it to Mr Nebras Soliman, Embassy of the Syrian Arab Republic, New Delhi. Since the said vehicle was not registered in the name of the privileged person, it appeared that the said vehicle was disposed of by Mr Nebras Soliman 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.

8.1 It also appeared that the said Bill of Entry No. 9356843 dated 28.10.2020 in the name of Mr Nebras Soliman, Embassy of the Syrian Arab Republic, New Delhi was filed by the customs broker, M/s. Navalson Logistics.

Analysis of statements:

9. 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.

9.1 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.

9.2 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.

9.3 Mohammed Wasım Abdul Gani Siddiqui in his statement admitted preparing forged documents on the directions of Shri Liyakat Bachu Khan in exchange for monetary consideration.

9.4 Shri Aubrey Dsouza was the person who had given the work of clearance of the said car to Shri Som Prakash Naval Bhatia who had filed the document for clearance of the said car It is also admitted by Shri Som Prakash Naval Bhatia that due to the onset of COVID-19, Shri Aubrey Ehas Dsouza was not taking any documents and therefore he transferred the job of clearance of imported cars from Customs in the name of diplomats/ consulates/embassies to him. 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.

9.5 It is apparent from the statements of Shri Nipun Miglani, Arjun Miglani and Suriya that they were dealing with the luxury cars smuggled into the country by Rehman Iqbal Ahmed Shaikh. Nipun Miglani had accepted that he had shown the said car to the prospective customer but was not able to sell the same. Further, Nipun Miglani confirmed the chats which were shown to him while recording his statement. In the said chats, Shri Nipun Miglani, Shri Arjun Miglani and Shri Liyakat Bachu Khan were seen to be involved in the preparation of fake documents in the names of Bhaiyasaheb Eknath Khandare and Shri Joe Joseph in whose names the said car was registered at Nurpur, RLA, Himachal Pradesh and at Ziro, RTO, Arunachal Pradesh.

<u>Forensic Examination</u>

10. The Mobile phones taken over from Nipun Miglani and Liyakat Bachu Khan were forensically examined. The forensic procedure of their mobile devices was completed by respective Digital Evidence Examiners and the certificates under Section 65 B of the Indian Evidence Act, 1872 were issued. The data retrieved from the mobile phone contained, inter alia, images of cars, their registration documents with several registration certificates, several WhatsApp conversations etc. pointing to the smuggling of various luxurious cars. A detailed analysis of the data extracted from the mobile devices was carried out and the same revealed multiple evidences of his active involvement in the smuggling of various luxurious cars. The relevant portion of some of the extracted data related to the Range Rover Car bearing Chassis no. SALGA3AE7KA526395 from the device has been discussed below;-

10.1 <u>Evidence from mobile phones retrieved from Shri Liyakat Bachu Khan</u>:- Forensic of the mobile phone, "*One Plus*" of Shri Liyakat Bachu Khan was found to have several images/documents and WhatsApp chats with other players of the syndicate with respect to the vehicle Range Rover bearing Chassis number SALGA3AE7KA526395. The following chat are between Liyakat Bachu Khan (Mobile Number- 9833996955) and Nipun Miglani (Mobile Number- 9999999964) ;-

(i) In WhatsApp chats dated 18.11.2020, Shri Nipun Miglani and Shri Liyakat Bachu Khan discussed about the Range Rover car bearing Chassis no. SALGA3AE7KA526395. Shri Nipun Miglani shared the registration certificate no. HP38G3045 of the said Range Rover car. He also shared a voice message at 19:44 Hrs. with Shri Liyakat Bachu Khan which transcribes as '*Bhai ko boldo apke paas RC copy aa gayi hai, wo bolenge apko kya karna hai iske baare main*'. It appeared that Shri Nipun Miglani was referring to Shri Rehman

Iqbal Ahmed Shaikh as *Bhai* in the above message and was directing Shri Liyakat to contact him with regards to the registration certificate no. HP38G3045. Shri Nipun Miglani also shared a photograph of the chassis number inscribed on the windscreen of the said Range Rover car.

(ii) In WhatsApp chats dated 20.11.2020, Shri Nipun Miglani is directing Shri Liyakat Bachu Khan to prepare fake invoices and directing him to change certain specifications like he had asked Shri Liyakat Bachu Khan to change the invoice date to March 2020. It is evident that Shri Liyakat Bachu Khan had changed the date of the said invoice from 07-Jul-2020 to 30-Mar-2020.

10.2 Evidence from mobile phone retrieved from Shri Nipun Miglani:- Forensic of the Mobile phone, "*iPhone 12 Pro*" of Shri Nipun Miglani was found to have several images/documents and WhatsApp chats with other players of the syndicate with respect to the vehicle Range Rover bearing Chassis number SALGA3AE7KA526395. The following chats are between Nipun Miglani (Mobile Number 9999999964) and Suriya (Mobile number 902666666) which is saved as Surya Banlor in Nipun's mobile;

(i) In the chats dated 15.04.2021, Shrı Suriya and Shri Nipun Miglani discussed about the Range Rover car having registration number HP38G3045. Shri Suriya shared the photograph of the said Range Rover with Shri Nipun Miglani.

(ii) In the chats dated 30.04.2021, Shri Nipun Miglani initially shared with Shrı Suriya the registration certificate of the said car bearing Chassis no. SALGA3AE7KA526395 having registration number AR06A8459. Shri Suriya had shared in reply the registration certificate bearing number HP38G3045. It is evident from the above chats that the same car was registered in two different RTOs which are in Himachal Pradesh and Arunachal Pradesh. It appeared that Shri Suriya and Shri Nipun Miglani played a major role in getting the registration of the said car in the RTOs.

(iii) In the chats dated 16.04.2021, Shri Nipun Miglani shared the Aadhar card and PAN card pics of Shri Bhaiyasaheb Eknath Khandare with Shri Arjun Miglani. Shri Bhaiyasaheb Eknath Khandare is the person in whose name the said Range Rover car was registered with registration number HP38G3045 at Registering and Licensing Authority, Nurpur, Himachal Pradesh.

(iv) In the above chats dated 16.04.2021, Shri Arjun Miglani has shared the registered vehicle details of Range Rover and he has forwarded the Chasis number as SALGA3AEKA536395 instead of SALGA3AE7KA536395 to Shri Nipun Miglani.

(v) In the above chats, Shri Nipun Miglanı pointed out that they have missed 7 in between and it clearly appeared that he was referring to the Chassis number SALGA3AEKA536395 by which the said car was registered instead of the actual Chassis number SALGA3AE7KA536395. Referring to the conversation Shri Nipun Miglani said 'Blessing in disguise'. It appears that Shri Nipun Miglani was trying to infer that it is good for them that the said car has been registered with an incomplete Chassis number SALGA3AEKA536395. Shri Arjun Miglanı shared the photograph of the vehicle with Shri Nipun Miglanı.

(vi) In the chats dated 19.04.2021, Shri Arjun Miglani shared Form 21 in the name of Joe Joseph in whose name the said car was registered at Regional Transport officer (RTO), Ziro Arunachal Pradesh and asked Shri Nipun Miglani to check the said document. Further Shri Nipun Miglani shared the invoice in the name of Bhaiyasaheb Eknath Khandare and Shri Arjun Miglani told Nipun Miglani to change the name in invoice to Joe Joseph.

(vii) In the above chat, Shri Arjun Miglani has made certain corrections in the Tax Invoice which was in the name of Shri Bhaiyasaheb Eknath Khandare and has also shared Form 21 in the name of Joe Joseph.

(viii) In the chat dated 20.04.2021, Shri Nipun Miglani shared a copy of the invoice in the name of Joe Joseph and Shri Arjun Miglani confirmed that it is OK.

(ix) In the chat dated 23.05.2021, Shri Arjun Miglani shared the documents related to the Range Rover car having Chassis number SALGA3AE7KA526395 bearing registration number AR06A8459.

(x) In the chat dated 04.06.2021, Shri Arjun Miglani shared the documents related to the car bearing registration number AR06A8459 and Shri Nipun Miglani acknowledged those documents.

(xi) In the chats dated 22.06.2021, Shri Arjun Miglani shared the tax invoice in the name of Joe Joseph Shri Nipun Miglani asked Shri Arjun Miglani to take light black n white print n give' to which Shri Arjun Miglani replied done.

10.3 From the above chats between Arjun Miglani and Nipun Miglani and chats between Nipun Mıglani and Liyakat Bachu Khan, it appeared that Liyakat Bachu Khan was preparing forged documents like tax invoice etc. which were required for the purpose of the Registration at RTO/ sales of the vehicle, and forwarded those documents to Nipun Miglani. Nipun Miglani in turn forwarded those documents to Arjun Miglani, who appeared to be well versed with the technical specifications of the vehicles and whatever changes were required to be made, Arjun Miglani forwarded those details to Nipun Miglani. It appeared that Nipun Miglani used to forward those corrections which were required to be made to Liyakat Bachu Khan and Liyakat Bachu Khan used to make necessary changes in those forged documents as per the directions received from Nipun Miglani. These forged documents were made in order to make them look genuine and to make sure that the vehicle got registered at RTOs or the car was sold with the help of those fake documents without any hurdle.

The Modus-Operandi

11. 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 under 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 said foreign diplomats posted in India.

11.1 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.

11.2 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.

11.3 Nipun Miglani, who was the CEO of Big Boy Toyz and who is in the business of dealing in luxury cars was an active member of the syndicate and was in contact with the mastermind of the case since 2012 who had introduced him to his close confidant Liyakat Bachu Khan who used to take care of all the documents of imported cars. He identifies the prospective buyers with the help of his own contacts and delivers the imported vehicles to those prospective buyers. He helped in document preparation of documents for the smuggled cars with the help of Arjun Miglani and also coordinated with Liyakat Bachu Khan for forging invoices/documents for some smuggled cars. He takes his commission/part in the successful sales of smuggled cars. Nipun Miglani also helps in obtaining the registration of some of the vehicles based on forged documents. In the present case, it appears that the registration of the Range Rover vehicle bearing Chassis number SALGA3AE7KA526395 has been obtained by Nipun Miglanı with the help of Suriya, Arjun Miglani and his other contacts.

11.4 Mohammed Wasim Abdul Gani Siddique is a Mumbai-based person who is into the job of designing and printing marriage and visiting cards. He had good knowledge of Carroll software (a software used for editing documents) He assisted Liyakat Bachu Khan in preparing all the forged documents as per the requirements given by Rehman Shaikh and others through Liyakat Bachu Khan He had prepared forged Bills of Entry, invoices, Bill of Lading copies, Payment challans, stamps, etc. in such a manner which were used in the fraudulent registration of the smuggled luxury cars at RTOs across India. The said forged documents were also used by the syndicate in price negotiations with the prospective buyers. Wasim had received monetary consideration from Liyakat Bachu Khan for the said forgery done.

11.5 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 Range Rover Car bearing Chassas number SALGA3AE7KA526395 smuggled and not registered in the name of a privileged person.

Arrest of Liyakat Bachu Khan, Nipun Miglani, Suriya and Rajeev Sood

11.6 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 that after getting the clearance from customs, forged papers were prepared by Liyakat Bachu Khan through **Wasim** and shown to prospective buyers Nipun Miglanı searched for the probable customers for the purchase of the smuggled cars Nipun Miglanı had helped the syndicate in selling several smuggled cars and even helped in getting the registration done for some of the smuggled cars in the name of non- privileged persons by using forged documents. After the finalisation of the deal with the prospective buyers, the forged Bill of Entry indicating payment of duty, forged invoices, etc were shown to the buyers and high end Luxurious cars then sold to them. The investigation further revealed that Mohammed Wasim Abdul Gani Siddique prepared the forged document on the behest of Liyakat Bachu Khan and admitted in his statement recorded under the provisions of Section 108 of the Act that Liyakat Khan gave him the Bills of Entry to edit the name of the importer or value of the goods and also gave him Invoices, Customs duty payment receipt, etc to change the name of Buyer. Further, it was also revealed that the cars were being registered in RTOs in India on the basis of forged documents, which in some cases was managed by Suriya. The recovery of incriminating documents/records from the mobiles of Nipun Miglani, Liyakat Bachu Khan and Suriya along with their statements recorded under the provisions of Section 108 of the Act revealed that Liyakat Bachu Khan, Nipun Miglani, Suriya and Rajeev Sood were involved in fraudulent import of luxury cars in the name of diplomats and were actively instrumental in getting the cars registered in the name of non-privileged person. Therefore, Liyakat Bachu Khan was arrested at Mumbai on 15.07 2021 under the provisions of Section 104 of the Act and produced before the Court of Hon'ble First Class Judicial Magistrate, Uran Court, wherein he was remanded to Judicial Custody at Taloja Central Jail. Nipun Miglani was arrested on 15.07.2021 in Delhi and under transit remand produced before the Court of Hon'ble First Class Judicial Magistrate, Uran Court and was remanded to Judicial Custody by the Hon’ble Court. Also considering the role of Suriya in the abetment of smuggling of cars and their subsequent diversion in the market, he was arrested on 15.07 2021 in Bangalore and under transit remand produced before the Court of Hon'ble First Class Judicial Magistrate, Uran Court and was remanded to Judicial Custody by the Hon’ble Court. 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 Hon'ble Uran Court and was remanded to Judicial Custody by the Hon’ble Court. Subsequently, after completion of 60 days, the said accused were released on default bail.

11.7 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 the Range Rover car having chassis No. SALGA3AE7KA526395 was affected by fraudulently availing the exemption benefits available to the diplomat Mr Nebras Soliman, Embassy of the Syrian Arab Republic, New Delhi.

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

12. It appeared from the detailed investigations and various statements recorded that the privileged person namely, Mr Nebras Soliman, Embassy of the Syrian Arab Republic, New Delhi had joined hands with Rehman Iqbal Ahmed Sheikh and facilitated all the paperwork required for importing car duty-free in his name by misusing his diplomatic status and the same was not registered in his 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 Range Rover 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 Mr Nebras Soliman, Embassy of the Syrian Arab Republic New Delhi, as the said vehicle was not registered in the name of the said diplomat. The said car was imported in the name of diplomat Mr Nebras Soliman 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 Range Rover car under diplomatic exemption provided in the Customs Notification No. 3/1957-Cusdated 08.01.1957 with the help of the diplomat Mr Nebras Soliman, Liyakat Bachu Khan, Rajeev Sood and other syndicate members. After the import was made without payment of duty in the name of Mr Nebras Soliman, Embassy of the Syrian Arab Republic New Delhi, the same was not registered in the name of the privileged person.

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

12.6 Thus, from the above facts, it appeared that Rehman Shaikh was successful in importing the said Range Rover vehicle under the diplomatic exemption provided in the Notification No. 3/1957-Cus with the help of Liyakat Bachu Khan and Rajeev Sood. The import was made without payment of duty in the name of Mr Nebras Soliman, Embassy of the Syrian Arab Republic, New Delhi and the members of the syndicate had succeeded in getting the registration initially in the name of a non-privileged person Shri Bhaiyasahab Eknath Khandare with the help of Nipun Miglani, Arjun Miglani and Suriya on the basis of the forged documents.

12.7 The crucial evidence unearthed during the forensic investigation like photos of forged invoices, etc., corroborated by the statement of various persons recorded under Section 108 of the Customs Act, 1962 also appeared to establish that the deal of the said vehicle was made at the behest of Rehman Iqbal Ahmed Shaikh and the car was registered in the Nurpur RLA, Himachal Pradesh and at Ziro RTO, Arunachal Pradesh by Nipun Miglani, Arjun Miglani and Suriya. It, therefore, appeared that Rehman Iqbal Ahmed Shaikh had hatched a conspiracy of smuggling the said Range Rover car into the country and had effected fraudulent import and registration of the said car resulting in evasion of Customs duty and rendering the said car liable to confiscation.

12.8 Shri Nipun Miglani, Arjum Miglani, Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique played a major role in the preparation of forged documents related to the said Range Rover Car bearing Chassis number SALGA3AE7KA526395 and having registration number HP-38G-3045 and AR06A8459. It appeared that these forged documents were prepared with the intention to use them in getting the registration done at RTOs or to use it for selling the said car.

12.9 Further, Som Prakash Naval Bhatia of Navalson Logistics and Aubrey Elias Dsouza as Customs Brokers knew that the said vehicle would not go to its destined location i.e., to Mr Nebras Soliman, Embassy of the Syrian Arab Republic, New Delhi and they handed over the car to the member of the syndicate and the said car was registered and appeared to have been sold in the open market.

12.10 From the chats between Arjun Miglani and Nipun Miglani and chats between Nipun Miglani and Liyakat Bachu Khan, it was revealed that Liyakat Bachu Khan was preparing forged documents like tax invoice etc. which are required for the Registration at RTO/ sales of the vehicle, and forwarded those documents to Nipun Miglani. Nipun Miglani, in turn, forwarded those documents to Arjun Miglani, who appeared to be well versed with the technical specifications of the vehicles and whatever changes were required to be made. Arjun Miglani forwarded those details to Nipun Miglani. It appeared that Nipun Miglani used to forward those corrections which were required to be made to Liyakat Bachu Khan and Layakat Bachu Khan used to make necessary changes in those forged documents as per the directions received from Nipun Miglani. These forged documents were made to make them look genuine and to make sure that the vehicle gets registered at RTOs or the car is sold with the help of those fake documents without any hurdle.

Contravention of provisions of the law

13. From the above, it appeared that, inter alia, 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 Mr Nebras Soliman, Rehman Iqbal Ahmed Shaikh, Liyakat Bachu Khan, Mohammed Wasim Abdul Gani Siddique, Rajeev Sood, Manjeet Maurya, Nipun Miglani, Arjun Miglani, Suriya, Aubrey D'Souza and Som Prakash Naval Bhatia.

Liability for confiscation of the goods

14. As it appeared that the goods viz. Range Rover car was imported into India vide Bill of Entry No. 9356843 dated 28.10.2020 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 Mr Nebras Soliman, Embassy of the Syrian Arab Republic, New Delhi, however, the same was not registered in his 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. Range Rover car, was removed contrary to the terms of the permission of the proper officer who had granted permission for its clearance to Mr Nebras Soliman, Embassy of the Syrian Arab Republic, New Delhi, subject to getting it registered in his 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) of the Act 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, Mr Nebras Soliman had applied to the MEA for the Prior Approval and the Exemption Certificate in respect of the import of the said Range Rover car bearing chassis No. SALGA3AE7KA526395 and the said car was imported for his personal use. Further, the Customs Duty Exemption Certificate issued vide Serial No. 10/NS/19/2020 dated 19 10. 2020 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 Range Rover car having chassis No. SALGA3AE7KA526395 imported duty-free was diverted in the open market and was not registered in the name of the privileged person. Therefore, it appeared that Mr Nebras Soliman was liable to pay the due Customs duty along with applicable interest on the said car imported into India vide Bill of Entry No. 9356843 dated 28.10.2020. The Customs duty liability on the said Range Rover car bearing chassis No. SALGA3AE7KA526395 as per the tariff rate at the time of its import in the name of Mr Nebras Soliman vide Bill of Entry No. 9356843 dated 28.10.2020appeared to be Rs.62,86,005/- , as detailed in the following table:-

TABLE No. 2

Assessable value	BCD@l25%	Social Welfare Surcharge (SWS)	IGST	Total Duty
(a)	(b) = a*125%	(c) = b*10%	(d) = (a+b+c)*28%	(e) = b+c+d
30,81,375/-	38,51,719/-	3,85,172/-	20,49,114/-	62,86,005/-

15.1 Therefore, it appeared that the above said Customs duty amounting to Rs. 62,86,005/- along with applicable interest thereon under Section 28AA ibid was required to be demanded and recovered from Mr Nebras Soliman 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 Mr Nebras Soliman, Embassy of the Syrian Arab Republic, New Delhi was also crucial in executing the conspiracy of smuggling of the said Range Rover Car bearing Chassis No.

SALGA3AE7KA526395. 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 Range Rover 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 Range Rover car undertaken by this syndicate. He was instrumental in carting the vehicle from Dubai to India, identification of the foreign diplomat Mr Nebras Soliman, 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 Range Rover car in the present case. Rahman Shaikh instructed Liyakat Bachu Khan to take the delivery of the illicitly imported Range Rover car from the Customs Broker 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) Mr Nebras Soliman, Embassy of the Syrian Arab Republic, New Delhi, 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 Range Rover car in his name. Mr Nebras Soliman 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. 10/NS/19/2020 dated 19 10 2020, 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 the privileged person. Thus, Mr Nebras Soliman 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 his 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, Mr Nebras Soliman appeared to have rendered himself liable to penalty under Section 112(a) or Section 114 A of the Customs Act, 1962. It further appeared that he 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 his name and instead will be diverted in the open market. The same appeared to have rendered him liable for imposition of penalty under Section 114AA of the Customs Act, 1962.

(iii) Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique in their various submissions have, while admitting to their roles, also narrated the crucial role played by others in the entire conspiracy of smuggling of the said Range Rover car. Liyakat Bachu Khan played a prominent role on the ground in executing the conspiracy. Towards this end, he used the services of Mohammed Wasım Abdul Ganı Siddique for the preparation of the necessary documents in the name of the privileged person Mr Nebras Soliman, Embassy of the Syrian Arab Republic and for the preparation of forged documents. He paid money to Wasim for forging documents like forged invoices, etc as per the directions of Rehman Iqbal Ahmed Shaikh and in this manner, played a crucial role in the smuggling of the said Range Rover car. In view of the above, for their acts of commission and omission in the smuggling of luxury vehicle Range Rover which appeared to have rendered the said car liable to confiscation, it appeared that co-conspirators Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique were liable for penalty under the provisions of Section 112(a) and 112(b) of 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 and for the purpose of sale of the said Range Rover car, co-conspirators Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique also appear to be hable 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, Range Rover, 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) Nipun Miglani, Arjun Miglani and Suriya were trying to arrange for registration of the said vehicle on the directions of Rehman Iqbal Ahmed Shaikh and were successful in obtaining the registration of the said car. Arjun Miglani guided Nipun Miglani in the preparation of forged documents. Nipun Miglani further guided Liyakat Bachu Khan in preparing of forged documents required for the registration/sale of the vehicle. Thus, Nipun Miglani, Arjun Miglani and Suriya appeared to have abetted the mastermind Rehman Iqbal Ahmed Shaikh in smuggling of the luxury car. It appeared that they had a reason to believe that the said car was liable to confiscation and hence they appeared liable for penalty under the provisions of Section 112 (a) and Section 112 (b) of the Customs Act, 1962.

(vi) The Range Rover car having chassis Number SALGA3AE7KA526395 was imported and cleared at JNCH, Nhava Sheva through Bill of Entry No. 9356843 dated 28.10.2020 which was dealt by Som Prakash Naval Bhatia, a Customs broker by name of Navalson Logistics and Aubrey Elias Dsouza, a representative of Customs broker, Babaji Khimji and Co., a G-Card Holder. Aubrey Elias Dsouza was fully aware that the goods were not taken to its nominated destination i.e., to the Syrian Embassy at New Delhi. It is the fact that the said car was delivered to the syndicate for sale in the open market However, as they were the Customs Brokers, they were also aware that the imported goods cleared are required to be transported to the nominated place as above, it appears that they have concerned themselves with the imported goods on which customs duty was evaded which was liable for confiscation under Section 111(j) and Section 111(0) of Customs Act, 1962 Thus, it appeared that Som Prakash Naval Bhatia and Aubrey Elias Dsouza were actively involved in the improper importation of the impugned goods and hence they appeared liable for penalty under the provisions of Section112 (a) and 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 Mr. Nebras Soliman (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), Shri Mohammed Wasim Abdul Gani Siddique (Noticee No.6), Shri Nipun Miglani (Noticee No.7), Shri Suriya (Noticee No.8), Shri Arjun Miglani (Noticee No.9), Shri Aubrey Elias D'Souza (Noticee No.10) and Shri Som Prakash Naval Bhatia (Noticee No.11) requiring them to show cause as to why:-

(i) the impugned goods i.e., Range Rover car imported vide Bill of Entry No. 9356843 dated 28.10.2020 having total assessable value of Rs. 30,81,375/- 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. 62,86,005/-** (Rupees Sixty Two Lakhs Eighty Six Thousand and Five only) should not be demanded and recovered from Mr. Nebras Soliman, Attache, Embassy of the Syrian Republic under Section 28(4) of the Customs Act, 1962, read with Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957 read with 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 Mr. Nebras Soliman, Attache, Embassy of the Syrian Republic under Section 112(a) and/or Section 114A of the Customs Act, 1962;

(vi) penalty should not be imposed on Mr. Nebras Soliman, Attache, Embassy of the Syrian Republic under Section 114AA of the Customs Act, 1962;

(vii) penalty should not be imposed on Shri Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique under Section 112(a) and Section 112(b) of the Customs Act, 1962;

(viii) penalty should not be imposed on Shri Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique 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 Nipun Miglani, Shri Arjun Miglani and Shri Suriya under Section 112(a) and Section 112 (b) of the Customs Act, 1962;

(xi) penalty should not be imposed on Shri Aubrey Elias D'Souza and Shri Som Prakash Naval Bhatia under Section 112(a) and 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 out of the total 11 Noticess, only 6 Noticees viz., Mr. Nebras Soliman (Noticee No.1), Shri Nipun Miglani (Noticee No.7), Shri Suriya (Noticee No.8), Shri Arjun Miglani (Noticee No.9), Shri Aubrey Elias D'Souza (Noticee No.10) and Shri Som Prakash Naval Bhatia (Noticee No.11) have furnished their written submissions. The other 5 Noticees viz., Shri Rehman Iqbal Ahmed Shaikh, Shri Liyakat Bachu Khan, Shri Rajeev Sood, Shri Manjeet Maurya and Mohammed Wasim Abdul Gani Siddique 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 Mr. Nebras Soliman (Noticee No.1), Shri Nipun Miglani (Noticee No.7), Shri Suriya (Noticee No.8), Shri Arjun Miglani (Noticee No.9), Shri Aubrey Elias D'Souza (Noticee No.10) and Shri Som

Prakash Naval Bhatia (Noticee No.11) are discussed hereunder.

18.1 Mr. Nebras Soliman (Noticee No.1) has filed his written reply, vide his email dated 15.09.2025, wherein he has *iner alia* conteded that;-

(i) He was not a party to any offence, but rather the victim of a coordinated fraud. The allegations against him were based on manipulated documents and a fundamental misunderstanding of a criminal scheme orchestrated without his knowledge or consent.

(ii) The SCN is dated 01.11.2023. He had formally departed India upon completion of his posting on 07.07.2023. The hearing letter/memo dated 18.08.2025 was the first and only official correspondence he ever received in relation to the case. This lack of timely notice had severely prejudiced his ability to defend himself.

(iii) He had no intent to illegally import or sell a vehicle. He had made a good-faith application for a vehicle, accordingly to the Indian law, through his Embassy. However, he was subsequently and explicitly informed by his then Ambassador that the said application was not approved by the MEA due to some tax issued between the Embassy and the Indian authorities, which led him to believe that the matter was concluded.

(iv) He had received no further information about his application from his Ambassador's office which was the sole official channel of communication with the MEA and they filled all the forms and applications for him regarding all his paper work, IDs or any other documents since his arrival in India.

(v) They (Ambassador's office) created an information blackout, hiding the MEA's approval, the subsequent summons, and a note he (his ambassador) secretly sent to the MEA admitting fault and invoking immunity. The hiding of the summons was a calculated act to prevent him (Mr. Nebras Soliman) from discovering the fraud.

(vi) He did not ever see, possess, pay for, or take delivery of the Vehicle in question. Without the act of possession, he cannot be held liable for any subsequent failure to register the vehicle. And the SCN mentions that the syndicate managed to divert the delivery of the car and they put it in local consumption using fraudulent acts.

(vii) He rejects the allegation of joining hands with a syndicate. He had no knowledge of, nor had he ever had contact of any kind with any such individuals. He demands to interrogate them, by the authorities, as it would prove what he was saying.

(viii) As per the information provided in the SCN, I can say that all proceedings, after the signing of the papers handed to him by the Ambassador's team addressed to MEA, happened without his knowledge or consent, and he denies any contact with the accused syndicate on any matter neither before applying to MEA nor after.

(ix) Only the Head of Mission was the sole recipient of all official communications from the MEA. He (Head of Mission) should have intercepted and hid the vehicle's approval documents, the subsequent summons from Indian authorities, and even a secret note was sent to the MEA admitting the Embassy's fault to protect himself. Otherwise why the summons never reached him (Mr. Nebras Soliman)? The moment he received the first document, he appeared at the hearing with readiness to fully cooperate.

(x) He requests the investigating authorities to trace the reported 8 to 10 lakhs payment mentioned in SCN. To whom did the syndicate pay this money? The beneficiary of this payment should be the true perpetrator. This financial audit will conclusively prove that he received no money from anyone and will expose the true culprit.

(xi) He has reviewed the copy of the delivery challan provided to him. He does not recognize that as his signature. He did not sign any document to receive the vehicle and never knew anything about it. He has grave concerns about the authenticity of this document as it could have been easily manipulated and it bears the Embassy's seal which according to his junior position was not in his hands. Most importantly, he must be unequivocally clear that he has never received the vehicle in question. He has never taken possession of it, and he had no knowledge of its whereabouts at any time.

(xii) At no point did he receive any official communication regarding this vehicle from the Ministry of External Affairs (MEA), the Embassy of The Syrian Arab Republic, or any other related authority. The arrival and alleged delivery of this vehicle occurred without his knowledge.

(xiii) He is being accused of failing to register the vehicle while it is fundamentally impossible to register a vehicle that he had never received or possessed. Para 8.1 state that the 'syndicate appears to have diverted the imported car into the open market instead of delivering it to Mr. Nebras Soliman. This finding supports his defense.

(xiv) Para 4.2 states that an MEA letter with instructions was conveyed to him, however, he categorically denies this. He never received any such communication.

(xv) Para 4.4 states that a Summons dated 11/11/2021 was forwarded to the Syrian Embassy for him to appear before the DRI. He had no knowledge of this summons. It was never given to him and was deliberately concealed from him to prevent their scheme from being exposed.

(xvi) Para 4.5 refers to a reply from the Embassy (No. 533/313, dated 2/12/2021). He did not authorize, consent to, or has any knowledge of this reply.

(xvii) Para 6.4.2 (1) alleges that diplomats agreed to lend the documents and did so willingly. He states for the record that his application documents were submitted in good faith to the MEA for a legitimate purpose and they were prepared by Ambassador's office team who always prepare all formal communications for the Embassy so he had no reason to doubt any document and signed them. They were subsequently misused without his knowledge or consent. He had never met nor had any contact with the syndicate or handed them any document. The question should be directed to the confessed syndicate members from whom within the Embassy did they receive his documents.

(xviii) The allegation that he deliberately failed to adhere to the provisions of import is unfounded. A deliberate failure requires knowledge and intent. As his entire defense shows, he was kept completely ignorant of the fact that a car had even been imported in his name. He had no knowledge of any violation being committed and therefore could not have possessed any intent to break any law.

18.2 Shri Nipun Miglani (Noticee No.7) filed his written reply through his Advocate Shri Hari Radhakrishnan's letter dated 11.09.2024 wherein it is *inter alia* contended that:-

(i) The allegations leveled against their client are denied. Our client's statement dated 15.07.2021 recorded under Section 108 of the Act, which states that he had knowledge regarding the import of cars under Concessional/Nil rate of duty under Customs Exemption Notification and that he had colluded with Shri Rehman Shaikh was obtained forcibly by the Investigation Officer. Therefore, when he was produced before the Hon'ble Magistrate, Uran on 19.07.2021, he had clearly mentioned before the Hon'ble Court that the statements were recorded under coercion and the same was noted by the Hon'ble Magistrate. It is further submitted that he had submitted a letter retracting the statement recorded on 15.07.2021, vide my letter dated 22.10.2021. Subsequently, he submitted another letter dated 11.12.2021 where he retracted all of his earlier statements. The Investigating Officer had refused his retraction, vide letter dated 01.02.2022 stating that the retraction was made belatedly and therefore, the same cannot be accepted. It is submitted that the Investigating Officer had failed to appreciate the fact that he has mentioned before the Hon'ble Magistrate, Uran on 19.07.2021 itself, that the statements recorded were under coercion. It is a settled law that the retracted statement cannot be the sole basis for conviction when not corroborated with any evidence. Therefore, it is submitted that the statements which were recorded forcibly and under coercion cannot be relied upon as evidence for arriving the conclusion. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of Vinod Solanki, reported in 2009 (223) ELT 157 (SC), the decision of the Hon'ble Delhi High Court in the case of Vikas Mohan Singhal reported in 2009 (243) ELT 507 (Del), the decision of the Hon'ble Delhi High Court in the case of Mont, reported in 2010 (252) ELT 57 (Del).

(ii) It is submitted in several paragraphs of the show cause notice, the guilt of the noticee is virtually pre-judged. A reading of the show cause notice would demonstrate that the investigation officer has effectively prejudiced the mind of the adjudicating authority. For instance, in paragraph 6.6 of the show cause notice it states as follows: "Statement of Shri Nipun Miglani, one of the key members. Further in paragraph 11.4 of the Show Cause Notice, it has been stated that he was an active member of the syndicate." This clearly indicates the bias of the author of the show cause notice. Reliance is placed on the Hon'ble Supreme Court decision in the case of Oryx Fisheries Private Limited Vs. Union of India & Ors.

(iii) It is submitted that the allegation in the present show cause notice is that he had allegedly assisted in registration of the subject car. To substantiate his involvement in the alleged illegal import, the Department had relied upon the extract of some

WhatsApp messages and recordings in paragraph 10.2 to 10.2.11 of the Show Cause Notice. It is submitted that the Hon'ble Supreme Court in the case of Anvar PV vs P.K. Basheer and Others reported in 2014 (10) SCC 473, while dealing with Section 65B of the Evidence Act, 1872 (Parimateria to Section 138C of the Act, 1962), observed that "Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B." It is submitted that Section 138C deals with the admissibility of computer printouts and various conditions have been prescribed under the statute. Admittedly, in this case, the prescribed conditions were not complied with by the department. More particularly, the required certificate in terms of sub-section (4) of Section 138C has not been furnished by the department. Though the list of relied upon documents reflect the certificate issued under Section 65B of the Evidence Act, 1872, no such document was furnished to him. Reliance is placed on the case of M/s. Jeen Bhavani International vs Commissioner of Customs Nhava Sheva-III in Customs Appeal No. 85844 of 2020 passed by the Hon'ble CESTAT, Mumbai. Therefore, the documentary evidence allegedly retrieved from his mobile phone cannot be relied to prove my alleged involvement in illegal import and registration of subject car since the department had not complied with the condition of Section 138C of The Customs Act.

(iv) Without prejudice to the submissions made herein above, the allegation that our client assisted in forging the documents and registration of the subject car based on the forged documents is without basis. It is submitted that the investigation with the RTO department reveals that the subject car was registered based on alleged forged Indian invoice bearing no. SATPVT-1920-026 dated 04.02.2020 issued by M/s Jaycee Automobiles Pvt. Ltd. The said fact can be evidenced in paragraph 4 of the present Show Cause Notice dated 01.11.2023. However, the documents relied upon in the Show Cause Notice under the head "Forensic Examination" pertains to a different invoice dated 30.03.2020 issued by different seller. The allegations made against our client with respect to the said invoice dated 30.03.2020 has no relevance to the present case and therefore, the same cannot be relied upon to implicate him. With respect to the alleged registration of the subject car with Arunachal Pradesh RTO, it is submitted that the said registration was done by Mr Rehman Shaikh and documents were shared with our client, who in turn had discussed regarding the same for finding prospective buyer and to ascertain the genuineness of the documents. It is further submitted that the conversation regarding the alleged correction in the registration documents referred by the Department in paragraph 10.2.8 to 10.2.10 are dated 23.05.2021, 04.06.2021 and 22.06.2021. However, the registration certificate has been referred in a conversation dated 30.04.2021 itself between our client and Mr Suriya. This evidences the fact that the car was registered with the Arunachal Pradesh RTO by Mr Rehman and the conversation referred to were mere discussion regarding the authenticity of the same.

(v) Without prejudice to the above made submission, it is submitted that our client do not have any knowledge about the alleged illegal import of the car in question. It is submitted that he is in the business of selling used luxury cars and with respect to the subject car, our client has not even made an attempt to find the prospective buyer. It is an admitted fact that the car was not in my client's possession or any of my acquaintances and there is not even single evidence to show that he had dealt with the import of subject car. It is submitted he was not provided with any documents relating the alleged import, except the details of the car in whatsapp. I had shared the said details with Mr Suriya for checking the possibility of finding a prospective buyer and further with Mr Arjun Miglani to ascertain whether the details shared with me are correct and genuine. Mere conversations cannot lead to a conclusion that he had knowledge regarding the alleged import. It is submitted that the alleged import of the car came into light only after the investigation. It is submitted that the above incidents does not lead to any presumption that he was aware that the vehicle in question was imported despite having knowledge that the vehicle is a smuggled one.

(vi) It is pertinent to note that none of the persons from whom the statements have been recorded have stated anything incriminating against him. In fact, statements have been recorded from Shri Liyakat Bachu Khan on 14.07.2021, 27.07.2021 and 05.10.2023, wherein he has admitted that he forged the bill of entry to make it appears as if the vehicle has been legally and correctly imported and he has stated that this was done as per the instructions of the mastermind Mr Rehman Shaikh. Further, the statement of Shri Rajeev Sood was recorded on 14.07.2021, 18.07.2021 and 20.07.2021 wherein he has admitted that he worked as a Commission Agent for Diplomats and got acquainted with Shri Rehman Shaikh. He used to receive information regarding the Diplomats from one Shri Manjeet Maurya, who was working as a Clerical Staff in Ministry of External Affairs and in turn provide these details to Shri Rehman Shaikh for business purpose. The statement of Shri Manjeet Maurya was recorded on 29.07.2021 (RUD 20), wherein he admits that he used to furnish information regarding the Diplomats to Shri Rajeev Sood. In fact, my client's wife had made a police complaint, vide complaint dated 28.07.2021 against Shri Liyakat Bachu Khan for deceiving and making me part of the alleged illegal import made by Shri Rehman Shaikh. Therefore, all these statements lead to only one conclusion that he was not aware about the alleged smuggling of the car in question.

(vii) It is a settled position that penalty should not be imposed for the sake of it. Penalty is not a source of revenue. Imposition of penalty depends upon facts and circumstances of each case. Further, it is a settled law that to establish a charge it is not only necessary to prove the existence of mens rea but also that deliberation must be proved beyond all reasonable doubt. Imposition of penalty requires deliberate action and knowledge. As can be seen from the records nothing incriminating evidence was found against me to implicate my involvement in importing the car. Nothing was brought on record to show that there was an attempt on his part either in importing the car or making payment towards its importation. Reliance is placed on the decision of K Krishnakumar vs Commr of Customs, Cochin (2001) 133 ELT 320.

(viii) In the absence of any corroborative evidence in any form, it would be miscarriage of justice, if penalty is imposed. It is a settled law that, for imposition of penalty it should be proved beyond doubt that the said persons should have done positive act by their commission or omission, to render themselves liable for imposition of penalty. In the instant case, there is no evidence suggesting, even, remotely, that I had a role in the importation of the car. In the absence of any evidence of his involvement in the alleged illegal importation of the Car, no penalty is imposable on him. Ramesh Kumar Bansal Vs Commr of C. Excise, Lucknow (2006) 197 ELT 545.

(ix) The Section 112 of the Customs Act, 1962 states that the penalty can be imposed only if it is satisfied that the person is involved in an act or omission which results in confiscation of the goods under Section 111 of the Customs Act, 1962 or if the person dealt with the goods when he has reason to believe that the goods are liable for confiscation under Section 111 of the Act. The Investigation Officer has arrived at a conclusion that the subject car is liable for confiscation under Section 111(j) and 111(o) of the Customs Act, 1962. The provisions of Section 111(j) and 111(o) of the Act relate to actions and omissions relating to events occurring prior to the import and clearance of home consumption of the car in question. It is submitted that there is not a single allegation that I have dealt with the subject car or have played any role in the alleged irregular import and therefore, the situation to impose penalty under Section 112(a) of the Act, does not arise at all. It is submitted that to attract Section 112(b) of the Act. I must have acquired possession or dealt with the goods or reason to believe that the goods are liable for confiscation. On perusal of the Show Cause Notice and the relied upon documents, there is no single incriminating material/evidence to show that I have dealt with the import of subject car or had reason to believe that the subject car is liable for confiscation. This can be inferred from the statements recorded from various persons under Section 108 of the Act and the findings of the investigation.

(x) The Hon'ble High Court of Delhi in the case of Vishnu Kumar Vs. Commissioner of Customs, New Delhi reported in 2010 (260) ELT 356 (Del.) has held that for a charge of abetment to sustain the ingredients of Section 107 of the Indian Penal Code would have to be fulfilled. The High Court further held that the charge of abetment would stand substantiated if it is proved that the alleged abettor had instigated the doing of a particular thing or he had engaged with one or more persons in a conspiracy for doing of that thing or he had intentionally aided doing of that thing by an act or illegal omission. In order to constitute abetment by conspiracy, there must be a combination of two or more persons in the conspiracy and an act or illegal omission must take place in pursuance of that conspiracy. Where the parties concert together and have a common object, the act of one of the parties done in furtherance of the common object and in pursuance of the concerted plan, is the act of the whole.

It is not sufficient to prove that the charged act could not have been committed without intervention of the alleged abettor. What is necessary is that the intervention should have been made with intent to facilitate the commission of that act. Intentional aiding, therefore, is the gist of abetment, as defined in clause thirdly of Section 107 of IPC. If there is a community of interest between the aiding person and the person who commits the actual act, it can be safely inferred that the dominant intention of the alleged abettor was to aid the doing of that particular act. In the present case no such evidence has been adduced by the Investigating agency. In these circumstances, the allegation that I had dealt with the smuggled car and thus became liable to penalty is not legally sustainable.

(xi) It is submitted that in the case of Anand Desai Vs. Commissioner of Customs (Import), Mumbai reported in 2015 (326) ELT 613 (Tri-Mumbai), The Mumbai Bench of the Hon'ble CESTAT held that penalty is not imposable on a car broker when there is no evidence of his involvement of misdeclaration at the time of import. The Hon'ble Tribunal further held that penalty is not imposable for merely assisting in import of the car unless the positive involvement in import is established. The same view was taken in the case of S.K. Miglani Vs Commissioner of Customs (Preventive), Mumbai reported in 2014 (311) ELT 723 (Tri-Mumbai).

(xii) In the case of Commissioner of Customs (Import), Mumbai Vs. Ashok Wadia reported in 2009 (247) ELT 504 (Tri-Mumbai), the Hon'ble Tribunal set aside the penalty on the broker of illicitly imported car on the ground that there was no evidence of his doing or omitting to do anything with the knowledge/belief that the car was liable to confiscation. The Hon'ble Tribunal set aside the penalty under Section 112(b) of the Customs Act, 1962. In the present case, I stand on a better footing since I have not dealt with car in any way. I am neither the importer, nor the ultimate purchaser. Therefore, the proposal to impose penalty under Section 112 of the Customs Act, 1962 cannot stand legal scrutiny.

In view of the above, it is submitted that the proposal contained in the Show cause notice may kindly be dropped and thus render Justice.

18.3 Advocate Shri Hari Radhakrishnan has filed written submissions on behalf of **Shri Suriya (Noticee No.8) and Shri Arjun Miglani (Noticee No.9),** vide his letters dated 11.09.2024, which are mostly similar. The said submissions are *inter alia* as under:

(i) the allegation in the present show cause notice is that he had allegedly involved in the registration of the subject car. To substantiate his involvement in the alleged illegal import, the Department had relied upon the extract of some WhatsApp messages and recordings in paragraph 10.2.1 and 10.2.2 of the Show Cause Notice. It is submitted that the Hon'ble Supreme Court in the case of Anvar PV vs P.K. Basheer and Others reported in 2014 (10) SCC 473, while dealing with Section 65B of the Evidence Act, 1872 (Pari materia to Section 138C of the Act, 1962), observed that "Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B." It is submitted that Section 138C deals with the admissibility of computer printouts and various conditions have been prescribed under the statute. Admittedly, in this case, the prescribed conditions were not complied with by the department. More particularly, the required certificate in terms of sub-section (4) of Section 138C has not been furnished by the department. Though the list of relied upon documents reflect the certificate issued under Section 65B of the Evidence Act, 1872, no such document was furnished to him. Reliance is placed on the case of M/s Jeen Bhavani International vs Commissioner of Customs Nhava Sheva-III in Customs Appeal No. 85844 of 2020 passed by the Hon'ble CESTAT, Mumbai.

Therefore, it is submitted that the documentary evidence allegedly retrieved from my mobile phone cannot be relied to prove my alleged involvement in illegal import and registration of subject car since the department had not complied with the condition of Section 138C of The Customs Act.

(ii) It is pertinent to note that none of the persons from whom the statements have been recorded have stated anything incriminating against me. In fact, statements have been recorded from Shri Liyakat Bachu Khan on 14.07.2021, 27.07.2021 and 05.10.2023 (RUD 13 to 16), wherein he has admitted that he forged the bill of entry to make it appear as if the vehicle has been legally and correctly imported and he has stated that this was done as per the instructions of the mastermind Mr Rehman Shaikh. Further, the statement of Shri Rajeev Sood was recorded on 14.07.2021, 18.07.2021 and 20.07.2021 (RUD 17 to 18) wherein he admits that he worked as a Commission Agent for Diplomats and got acquainted with Shri Rehman Shaikh. He used to receive information regarding the Diplomats from one Shri Manjeet Maurya, who was working as a Clerical Staff in Ministry of External Affairs and in turn provide these details to Shri Rehman Shaikh for business purpose. The statement of Shri Manjeet Maurya was recorded on 29.07.2021 (RUD 20), wherein he admits that he used to furnish information regarding the Diplomats to Shri Rajeev Sood. Therefore, all these statements lead to only one conclusion that our client was not aware about the alleged smuggling of the car in question.

(iii) It is a settled position that penalty should not be imposed for the sake of it. Penalty is not a source of revenue. Imposition of penalty depends upon facts and circumstances of each case. Further, it is a settled law that to establish a charge it is not only necessary to prove the existence of mens rea but also that deliberation must be proved beyond all reasonable doubt. Imposition of penalty requires deliberate action and knowledge. As can be seen from the records nothing incriminating evidence was found against him to implicate my involvement in importing the car. Nothing was brought on record to show that there was an attempt on my part either in importing the car or making payment towards its importation. Reliance is placed on the decision of K Krishnakumar Vs Commr of Customs, Cochin (2001) 133 ELT 320.

(iv) In the absence of any corroborative evidence in any form, it would be miscarriage of justice, if penalty is imposed. It is a settled law that, for imposition of penalty it should be proved beyond doubt that the said persons should have done positive act by their commission or omission, to render themselves liable for imposition of penalty. In the instant case, there is no evidence suggesting, even, remotely, that I had a role in the importation of the car. In the absence of any evidence of his involvement in the alleged illegal importation of the Car, no penalty is imposable on him. Ramesh Kumar Bansal Vs Commr of C. Excise, Lucknow (2006) 197 ELT 545.

(v) Section 112 of the Customs Act, 1962 states that the penalty can be imposed only if it is satisfied that the person is involved in an act or omission which results in confiscation of the goods under Section 111 of the Customs Act, 1962 or if the person dealt with the goods when he has reason to believe that the goods are liable for confiscation under Section 111 of the Act. The Investigation Officer has arrived at a conclusion that the subject car is liable for confiscation under Section 111(j) and 111(o) of the Customs Act, 1962. The provisions of Section 111(j) and 111(o) of the Customs Act relate to actions and omissions relating to events occurring prior to the import and clearance of home consumption of the car in question. It is submitted that there is not a single allegation that I have dealt with the subject car or have played any role in the alleged irregular import and therefore, the situation to impose penalty under Section 112(a) of the Act, does not arise at all. It is submitted that to attract Section 112(b) of the Act, I must have acquired possession or dealt with the goods or reason to believe that the goods are liable for confiscation. On perusal of the Show Cause Notice and the relied upon documents, there is no single incriminating material/evidence to show that I have dealt with the import of subject car or had reason to believe that the subject car is liable for confiscation. This can be inferred from the statements recorded from various persons under Section 108 of the Act and the findings of the investigation.

(vi) The Hon'ble High Court of Delhi in the case of Vishnu Kumar Vs. Commissioner of Customs, New Delhi reported in 2010 (260) ELT 356 (Del.) has held that for a charge of abetment to sustain the ingredients of Section 107 of the Indian Penal Code would have to be fulfilled. The High Court further held that the charge of abetment would stand substantiated if it is proved that the alleged abettor had instigated the doing of a particular thing or he had engaged with one or more persons in a conspiracy for doing of that thing or he had intentionally aided doing of that thing by an act or illegal omission. In order to constitute abetment by conspiracy, there must be a combination of two or more persons in the conspiracy and an act or illegal omission must take place in pursuance of that conspiracy. Where the parties concert together and have a common object, the act of one of the parties done in furtherance of the common object and in pursuance of the concerted plan, is the act of the whole. It is not sufficient to prove that the charged act could not have been committed without intervention of the alleged abettor. What is necessary is that the intervention should have been made with intent to facilitate the commission of that act. Intentional aiding, therefore, is the gist of abetment, as defined in clause thirdly of Section 107 of IPC. If there is a community of interest between the aiding person and the person who commits the actual act, it can be safely inferred that the dominant intention of the alleged abettor was to aid the doing of that particular act. In the present case no such evidence has been adduced by the Investigating agency. In these circumstances, the allegation that I had dealt with the smuggled car and thus became liable to penalty is not legally sustainable.

(vii) It is submitted that in the case of Anand Desai Vs. Commissioner of Customs (Import), Mumbai reported in 2015 (326) ELT 613 (Tri-Mumbai), The Mumbai Bench of the Hon'ble CESTAT held that penalty is not imposable on a car broker when there is no evidence of his involvement of misdeclaration at the time of import. The Hon'ble Tribunal further held that penalty is not imposable for merely assisting in import of the car unless the positive involvement in import is established. The same view was taken in the case of S.K. Miglani Vs Commissioner of Customs (Preventive), Mumbai reported in 2014 (311) ELT 723 (Tri-Mumbai).

(viii) In the case of Commissioner of Customs (Import), Mumbai Vs. Ashok Wadia reported in 2009 (247) ELT 504 (Tri-Mumbai), the Hon'ble Tribunal set aside the penalty on the broker of illicitly imported car on the ground that there was no evidence of his doing or omitting to do anything with the knowledge/belief that the car was liable to confiscation. The Hon'ble Tribunal set aside the penalty under Section 112(b) of the Customs Act, 1962. In the present case, I stand on a better footing since I have not dealt with car in any way. I am neither the importer, nor the ultimate purchaser. Therefore, the proposal to impose penalty under Section 112 of the Customs Act, 1962 cannot stand legal scrutiny.

18.3.1 Further, Advocate Shri Hari Radhakrishnan in his letter dated 11.09.2024 filed on behalf of Shri Suriya (Noticee No.8), in addition to the above submissions mentioned at Para 18.3 supra, has also contended that:-

(i) the allegation that our client assisted in forging the documents and registration of the subject car based on the forged documents is without basis. It is submitted that the investigation with the RTO department reveals that the subject car was registered based on alleged forged Indian invoice bearing no. SATPVT-1920-026 dated 04.02.2020 issued by M/s. Jaycee Automobiles Pvt. Ltd. The said fact can be evidenced in paragraph 4 of the present Show Cause Notice dated 01.11.2023. However, the documents relied upon in the Show Cause Notice under the head "Forensic Examination" pertains to a different invoice dated 30.03.2020 issued by different seller. With respect to the specific observations in paragraph 10.2.1 and 10.2.2, it is submitted that the said registration certificates were given to me for finding a prospective buyer. Apart from the registration certificate, our client was not given any other documents. From mere perusal of the certificate, it is clear that the credential therein is different and does not create any doubt in the minds of a prudent person. In any case, the documents referred in the Show Cause Notice does not prove that the our client is aware of the alleged import or registration using alleged forged documents.

18.3.2 Further, Advocate Shri Hari Radhakrishnan in his letter dated 11.09.2024filed on behalf of Shri Arjun Miglani (Noticee No.9)**,** in addition to the above submissions mentioned at Para 18.3 supra, has also contended that:-

(i) the allegation that our client assisted in forging the documents and registration of the subject car based on the forged documents is without basis. It is submitted that the investigation with the RTO department reveals that the subject car was registered based on alleged forged Indian invoice bearing no. SATPVT-1920-026 dated 04.02.2020 issued by M/s. Jaycee Automobiles Pvt. Ltd. The said fact can be evidenced in paragraph 4 of the present Show Cause Notice dated 01.11.2023. However, the documents relied upon in the Show Cause Notice under the head "Forensic Examination" pertains to a different invoice dated 30.03.2020 issued by different seller. The allegations made against our client with respect to the said invoice dated 30.03.2020 has no relevance to the present case and therefore, the same cannot be relied upon to implicate him. With respect to the alleged registration of the subject car with Arunachal Pradesh RTO, it is submitted that the said registration was done by Mr Rehman Shaikh and documents were shared with Mr Nipun, who in turn had discussed regarding the same for finding prospective buyer and to ascertain the genuineness of the documents. It is further submitted that the conversation regarding the alleged correction in the registration documents referred by the Department in paragraph 10.2.8 to 10.2.10 are dated 23.05.2021, 04.06.2021 and 22.06.2021. However, the registration certificate has been referred in a conversation dated 30.04.2021 itself between Mr Nipun and Mr Suriya. This evidences the fact that the car was registered with the Arunachal Pradesh RTO by Mr Rehman and the conversation referred were mere discussion regarding the authenticity of the same.

(ii) Without prejudice to the above made submission, it is submitted that our client do not have any knowledge about the alleged illegal import of the car in question. It is submitted that our client has not even made an attempt to find the prospective buyer. It is an admitted fact that the car was not in my client's possession or any of my acquaintances and there is not even single evidence to show that he had dealt with the import of subject car. It is submitted he was not provided with any documents relating the alleged import, except the details of the car in whatsapp. Mere conversations cannot lead to a conclusion that he had knowledge regarding the alleged import. It is submitted that the alleged import of the car came into light only after the investigation. It is submitted that the above incidents does not lead to any presumption that he was aware that the vehicle in question was imported despite having knowledge that the vehicle is a smuggled one.

18.3.3 In view of the above, it is submitted that the proposal contained in the Show cause notice may kindly be dropped and thus render Justice.

18.4 Shri Aubrey Elias D'Souza (Noticee No.10) filed his written reply vide letter dated 04.10.2024 wherein it is *inter alia* contended that:-

(i) The charges of his involvement in the improper importation of the goods as alleged in the SCN are vehemently denied inasmuch as the Bill of Entry was filed claiming the benefit of Notification No. 03/1957-Cus. dated 08/01/1957 by producing genuine and authentic documents from the Diplomats and MEA. The genuineness of the documents was neither questioned nor doubted by the customs department nor by DRI during the investigation.

(ii) The bill of entry was assessed after receiving replies to the queries raised at the time of assessment. The admissibility of exemption Notification No. 03/1957 claimed by the importer has also not been questioned by the department at the time of clearance from customs. The car was cleared after obtaining out-of-charge from the Customs Officer. No infirmity was noticed from filing the bill of entry to the out-of-charge by the DRI. In the circumstances, charges leveled in the SCN about his involvement in improper importation of the goods are not sustainable and unjust.

(iii) The investigation carried out by DRI culminating in the issuance of SCN does not allege that he had the knowledge or he was involved or he had any role to play in any manner whatsoever in the diversion of the car after clearance. Statement of co-noticees of the syndicate recorded during the investigation do not implicate him in any kind of fraudulent activities evading duty. The financial investigation does not establish that he was the beneficiary of the sale proceeds of the car or for any fraudulent activities. Thus, in the absence of any documentary or corroborative evidence, SCN alleging he had concerned and knowledge about the diversion of the car are not established and required to be dropped as unsubstantiated.

(iv) In his statement recorded under section 108 of the customs act, he had categorically stated that he used to get all the requisite documents for filing the bill of entry viz. B/L, Invoice, Exemption certificate, Prior approval, Diplomatic I-Card, Letter of authorization for CHA for import of cars, etc. from the concerned embassy by courier, on the basis of which he used to file a BoE.

(v) The above facts have not been refuted by any of the members of the syndicate nor DRI has produced any evidence to the contrary. Neither any documentary evidence nor any statement of the syndicate members establishing his active involvement in respect of cars to be delivered to non-privileged persons after clearance has been produced in the investigation.

(vi) The entire case is based on violation of condition of Notfn. No. 03/1957- Cus dated 08/01/1957 after clearance from customs, on which he had no control. Delivery Challan issued at the time of delivery used to be brought back duly signed and stamped by the Diplomat confirming receipt of the car. No evidence is adduced by the investigating agency to allege that he had knowledge regarding the diversion and disposal of the car to a non-privileged person. The statement recorded by DRI of co-notices does not implicate him to be involved in the diversion and disposal of the car to an unauthorized person rendering the car liable for confiscation to evade duty. No malafides are attributed in the SCN against him by the co-noticees involved in the conspiracy.

(vii) He had not committed any act rendering the car liable for confiscation under Section 111 (j) & (o) of the Customs Act 1962. The bill of entry was presented to the customs officers by the Customs Broker with the requisite documents. The car was assessed by the proper officer after the queries were answered. The car was examined by the officer and was given out of charge by the proper officer. No evidence of removal of the car without the permission of the customs officer by the Appellant is alleged in the SCN. Hence, provisions of section 111 (j) are not attracted and the car is not liable for confiscation attracting the above provision.

(viii) Further, the said documents were verified and found authentic & genuine. Based on this, the bill of entry was assessed and the exemption was granted by the authorities. Accordingly, the car was cleared after obtaining OOC from the Customs area. After clearance, the car was handed over to MrLiyakat Khan. The delivery challan handed over to him was brought back by him duly stamped and signed by the importer/Diplomat.

(ix) It is well settled that once the goods are handed over after clearance from the customs area to the transporter or the representative of the importer, the Customs Broker has no role to play and cannot be held responsible for post-clearance activities unless any evidence involving him/her in deliberate evasion of customs duty. The investigating agency has not produced any evidence establishing his role in diverting and disposing of the car by not taking it to the nominated destination or selling it to non-privileged persons. Hence, the provision of Section 111 (o) is not attracted and not applicable.

(x) In view of above, it is established that he had not committed any act or omission rendering the car liable for confiscation under Section 111 of the Customs Act 1962. As a result, penal provisions as laid down under Section 112 of the Customs Act are also not attracted and cannot be imposed invoking penalty.

(xi) Penal provisions under Section 112 are attracted against a person only in case of improper importation of the goods. Whereas, in the present case, the car was cleared by the customs authorities by accepting the true and correct declaration in the import documents. No discrepancies were found by the department at the time of clearance.

(xii) He has relied on the following case laws:-

- 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.)]
- Flora Impex Vs. Commissioner Of Cus. (Prev.), New Delhi – [2018 (362) E.L.T. 178 (Tri. - Del.)]
- Sanjay Dave *Vs* Commr. of Cus, Kandla-[2009(245)E.L.T.492(Tri.Ahmd.)]
- Banshi Badan Mondal Vs. Commissioner Of Customs (Port), Kolkata [2010 (253) E.L.T. 816 (Tri. - Kolkata)]

- Ashok Deasi Vs. Commr. of Cus, Kandla-[2010(256)E.L.T.100(Tri.Ahmd.)]

(xiii) In view of the above, the noticee has requested to drop the proceedings against him.

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

(i) In the present case, the Range Rover car was cleared by Customs Broker M/s. Navalson Logistics vide Bill of Entry No.9356843 dated 28.10.2020.

(ii) The following documents received via email from the Embassy were forwarded through email/WhatsApp to Shri Som Prakash Naval Bhatia of M/s. Navalson Logistics. The said facts have been admitted by the noticee in his statement dated 22.07.2021 and Shri Som Prakash Naval Bhatia in his statement dated 06.12.2021.

a) Prior Approval from MEA No. D.VI/451/2 (62)/2020 dated 20/09/2020.

c) Exemption Certificate No. 10/NS/19/2020 dated 19/10/2020.

(iii) Based on the above, coupled with the import documents, the BoE was assessed by the proper officer granting the benefit of Notification. The goods were cleared after examination and obtaining OCC on 02/11/2020.

(iv) No discrepancy was raised by the officer in respect of the genuineness and authenticity of the documents. The said documents were also accepted by DRI in the investigation as true, correct, genuine and authenticated. The goods were cleared after an OOC given by the proper officer. Therefore, in the absence of any evidence allegation of improper import and clearance leveled in the SCN against the Noticee, Section 111(j) is not attracted and established.

(v) The goods after clearance was handed over to Mr Liyakat Khan with delivery challan. The delivery challan was returned after endorsing the signature of the attaché and the stamp of the Embassy of having received the car.

(vi) The investigating agency has not produced any evidence establishing noticee's role in diverting and disposing of the car by not taking it to the nominated destination or selling it to non-privileged persons.

(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, Lebanese Embassy, DPRK Korean Diplomats, Kenyan Diplomats, and Laos Diplomats.

(viii) In the present case, neither the Diplomat nor the Embassy has produced a registration certificate to MOE even after clearance of the car in 2020, clearly violating the approval granted by MOE to the importer, i.e., Mr Nebras Soliman. No complaint was filed by the diplomat with MOE or the Home Ministry of non-receipt of the car imported for personal use, clearly establishing complete knowledge, involvement and ulterior motive of the importer to defraud the exchequer and earn illegitimate money by importing and diverting the car in the local market instead of for personal use.

(ix) Summons issued to Mr Nebras Soliman were answered by the Embassy, taking into account the Vienna Convention on Diplomatic Relations, having the judicial immunity, and stating that the Embassy would investigate the matter.

(x) Summons issued to the mastermind Rehman Shaikh were neither replied to nor appeared before DRI during the investigation.

(xi) From the above, it is established that post clearance the car was diverted in the local market by the importer Mr Nebras Soliman in connivance with the conspirators for undue financial gain evading duty, rendering the car liable for confiscation under Section 111(o) of the Act and not the Noticee (Shri D'Souza) as alleged in SCN.

(xii) None of the conspirators involved in the case had implicated Noticee 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 under Section 111 by the Noticee. Hence, penal provisions of Section 112 (a) of the Act are not attracted and cannot be imposed.

(xiii) 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. In the absence of which, penal provisions under Section 112(b) of the Act against the Noticee are not attracted and can not be imposed.

(xiv) Forensic examination of mobile phones abut Mr. Nipun Miglani and Mr. Liyakat Khan did not reveal any chats evidencing the role of the noticee in diverting the car in the local market.

(xv) The noticee has 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 in Appeal No. 485 (Gr. VB)/2025(JNCH)/Appeals dated 15/04/2025
iv) Order No. 1805/2024-25/ADC/Gr.VB/NS-V/CAC/JNCH dated 27/03/2025
v) Order No. 1807/2024-25/ADC/Gr.VB/NS-V/CAC/JNCH dated 27/03/2025.

(xvi) 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.

18.4.2 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.

18.5 Shri Som Prakash Naval Bhatia (Noticee No.11) filed his written reply dated 27.11.2023 wherein it is *inter alia* contended that:-

(i) The investigation conducted by the DRI has not doubted the genuineness of Certificate for duty exemption issued by the Ministry of External Affairs, Government of India issued in terms of Notification No. 03/1957-Cus dated 08.01.1957. The only allegation is that such Certificate has been mis-utilized by certain person or the so called syndicate operating fraudulently. It is a well settled principle that the sovereign can do no wrong and when any documents issued by the Sovereign Authority (that is, MEA) is produced before any prudent person, it would not be believed to be wrong by such person. It is humbly submitted that this is what happened in the instant case, when the duty exemption certificate was produced, there was no scope or any reason for raising any doubt about the Certificate. Similarly, there could not have been any doubt regarding the person who is importing the impugned goods as the said person was a Diplomat who was posted to India to promote the Sovereign relations of India with foreign country. It is also submitted that the investigation conducted by the DRI has also not brought any evidence to suggest that the Diplomat who has obtained the duty exemption certificate was not the person who has imported the impugned goods. In such a circumstance no prudent man could have any reason to doubt the genuineness of the import. Thus, we being the Customs Broker in the instant matter did not have any reason to doubt regarding the genuineness of the consignment and the documents received for import of Range Rover Car, thus the allegation that the noticee was aware about the illegal import is non-sustainable.

(ii) The confiscation of goods in the instant case has been proposed under Section 111(j) and 111(o) of the Customs Act, 1962, which is about removal of goods from the Customs area or the warehouse without proper permission of the proper officer and non-fulfilment of conditions as regards conditional exemption for import of any goods. It is humbly submitted that we, being Customs Broker and not the Importer have not committed or omitted to do anything which renders the goods liable for confiscation under Section 111(j) and 111(o) of the Customs Act, 1962. It is submitted that the investigation conducted by the DRI has not brought out any evidence to this effect either. It is also submitted for sustaining the charge of "abetment" as regards the act(s) of omission or commission which renders the goods liable for confiscation, there has to be "intention for commission act" and also there has to be some instigation for commission of the act, which renders the goods liable for confiscation. In the instant case the investigation conducted by DRI is silent as regards "pre-meeting of minds" between the Customs Broker and the person of syndicate involved in import of goods and also at no point the investigation has brought out any evidence as regards any motive or intention on behalf of the Customs Broker for commission of any act(s) which renders the goods liable for confiscation. Further, the entire investigation is also silent upon the aspect of instigation on behalf of the Customs Broker to cause illegal import. Thus the allegation regarding "abetment" of act of omission or commission which renders the goods liable for confiscation is absent in this case. Thus no penalty under Section 112(a) of the Customs Act, 1962 is imposable in this case.

(iii) In the instant case the circumstances of the case and the nature of documents were such that no prudent man would have even doubted the genuine nature of transactions. Further, the investigation conducted by the DRI has also not brought anything on record to suggest that the Customs Broker had prior knowledge of non-genuineness of the documents submitted with the Customs Authorities. It is submitted that having "knowledge" or "reason to believe" that the goods which have been dealt are liable for confiscation is *sine qua non* for imposition of penalty under Section 111(b) of the Act. In the instant case the very ingredient of having knowledge or reason to believe that the goods are liable for confiscation being absent, no penalty under Section 112(b) of the Act is imposable upon the noticee.

(iv) It is submitted that crux of investigation of the DRI says that as Customs Broker the noticee was well aware that the imported goods cleared are required to be transported to nominated place and hence they have concerned themselves with the imported goods on which Customs duty was evaded which was liable for confiscation and therefore, they have concerned with such goods and hence liable for penalty under Section 112 (b) of the Customs Act, 1962. It is submitted that under the Notification No. 03/1957-Cus dated 08.01.1957 there is no requirement for the goods to be delivered at a particular place as the exemption is available to the specified person subject to production of certain documents. It is submitted that a Customs Broker is not required to deliver the goods at the place of person who has imported the goods, his professional duty is over after the documentation work is complete and the "proper officer" gives an order for "out of charge" of the goods for home consumption. After "out of charge" order is given by the "proper officer" under Section 47 of the Customs Act, 1962 it is the owner of the goods or his authorized agent who has to take delivery of the goods and the Customs Broker has no role to play to deliver the goods at the destination of the importer. Thus, the imputation of conduct based upon which penalty under Section 112(a) and 112(b) of the Customs Act, 1962 is proposed in this case is not sustainable.

(v) It is also submitted that once the subject Range Rover car was delivered to the importer, the noticee had received a duly signed and stamped acknowledgement from them on the Delivery Challan also.

(vi) It is also submitted that the documentation in this case were processed by us when the menace of Covid-19 was at peak. In such circumstances it was a norm in those days to receive the documents through e-mail. Since the nature of transaction was not at all doubtful as aforesaid, the Customs Broker processed the documents in good faith on the basis of trust reposed by the importer. Thus, there was no intention on the part Customs Broker to cause evasion of duty, hence no penalty is imposable on them under Section 112(a) or 112(b) of the Customs Act, 1962.

18.5.1 Further, Shri Som Prakash Naval Bhatia filed additional written submissions dated 20.06.2024 wherein it is *inter alia* contended that:-

(i) As per the said SCN, it is alleged that as Customs Broker, they were fully aware that the imported goods (car) not taken to its nominated destination. However, from the statement of the noticee as well as the statement recorded of Mr. Aubrey D'souza as recorded by the DRI, it is very clear that the goods after custom clearance were to be delivered to the representative of the importer and under the relevant notification no. 03/1957-Cus dated 08.01.1957, there is no obligation/ requirement for the customs broker to deliver the goods at the place of the importer.

(ii) Even in regular imports, it is the importer who arranges the necessary transportation of imported goods to his place and the job of customs broker is over once out of charge is given to the imported goods by the proper officer and the CB hand over the final documents to the importer's representative.

(iii) They place on record a copy of the Delivery Challan dated 03.11.2020 duly signed and stamped by the importer (Mr. Nebras Soliman) as a proof of delivery of the imported car, and also as a proof of their innocence.

18.5.2 Further, vide their letter dated 08.08.2025, Shri Som Prakash Naval Bhatia reiterated his written submissions dated 27.11.2023 and 20.06.2024.

<u>PERSONAL HEARING</u>

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
Mr. Nebras Soliman (Noticee No.1)	19.09.2024, 09.10.2024, 14.08.2025, 28.08.2025.	06.09.2024, 26.09.2024, 28.07.2025, 18.08.2025.	The Noticee attended the PH on 28.08.2025.
Shri Rehman Iqbal Ahmed Shaikh (Noticee No.2)	11.09.2024, 04.10.2024, 13.08.2025, 28.08.2025.	04.09.2024, 24.09.2024, 29.07.2025, 18.08.2025.	Neither any response was received from the Noticee nor the Noticee attended the PH.
Shri Liyakat Bachu Khan (Noticee No.3)	11.09.2024, 04.10.2024, 13.08.2025, 28.08.2025.	04.09.2024, 24.09.2024, 29.07.2025, 18.08.2025.	Neither any response was received from the Noticee nor the Noticee attended the PH.
Shri Rajeev Sood (Noticee No.4)	11.09.2024, 04.10.2024, 13.08.2025, 28.08.2025.	04.09.2024, 24.09.2024, 29.07.2025, 18.08.2025.	Neither any response was received from the Noticee nor the Noticee attended the PH.
Shri Manjeet Maurya (Noticee No.5)	11.09.2024, 04.10.2024, 18.08.2025, 28.08.2025.	04.09.2024, 24.09.2024, 29.07.2025, 18.08.2025.	Neither any response was received from the Noticee nor the Noticee attended the PH.
Shri Mohammed Wasim Abdul Gani Siddique (Noticee No.6)	11.09.2024, 04.10.2024, 18.08.2025, 28.08.2025.	04.09.2024, 24.09.2024, 29.07.2025, 18.08.2025.	Neither any response was received from the Noticee nor the Noticee attended the PH.

Shri Nipun Miglani (Noticee No.7)	10.09.2024, 13.08.2028	04.09.2024, 29.07.2025	The Authorised representative/s of the Noticees attended the PH held on 10.09.2024 & 13.08.2025.
Shri Suriya (Noticee No.8)	11.09.2024, 13.08.2025	04.09.2024, 29.07.2025	
Shri Arjun Miglani (Noticee No.9)	11.09.2024, 13.08.2025	04.09.2024, 29.07.2025	
Shri Aubrey Elias D'Souza (Noticee No.10)	11.09.2024, 04.10.2024, 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.
Shri Som Prakash Naval Bhatia (Noticee No.11)	20.06.2024, 18.08.2025	00.06.2024 29.07.2025	The Authorised representative of the Noticee attended the PH on 20.06.2024 & 18.08.2025.

19.1 From the above, it is apparent that four opportunities of personal hearing were granted to the noticees in the instant case. However, out of the total eleven Noticees, only six noticees viz., Mr. Nebras Soliman (Noticee No.1), Shri Nipun Miglani (Noticee No.7), Shri Suriya (Noticee No.8), Shri Arjun Miglani (Noticee No.9), Shri Aubrey Elias D'Souza (Noticee No.10) and Shri Som Prakash Naval Bhatia (Noticee No.11) attended the personal hearing(s). The other five noticees viz., 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), Shri Mohammed Wasim Abdul Gani Siddique (Noticee No.6) neither 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 five 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 28.08.2025 in virtual mode, Mr. Nebras Soliman (Noticee No.1) attended the personal hearing. He inter alia stated that though he had applied for the import of the car, however, subsequently when he enquired with his embassy, he was informed that his application was not approved by the Ministry of External Affairs, Govt. of India. He had formally departed India on 07.07.2023 upon completion of his diplomatic posting.

19.3 During the personal hearing held on 10.09.2024, Shri Hari Radhakrishnan, Advocate appeared on behalf of Shri Nipun Miglani (Noticee No.7), Shri Suriya (Noticee No.8) and Shri Arjun Miglani (Noticee No.9) and made the following submissions;-

(i) In respect of Shri Nipun Miglani, he *inter alia* stated that statement dated 15.07.2021 of Shri Nipun Miglani has been retracted before magistrate on 19.07.2021. Subsequent statement also retracted on 22.10.2021. There is no evidentiary value of whatsapp chat. Certificate regarding authentication of whatsapp chat not provided. There is no statement of co-accused implementing his client of forging documents. They rely on the case of Anand Desai Vs. Commissioner of Customs (Import), Mumbai.

(ii) In respect of Shri Suriya (Noticee No.8), he contended that the only allegation in the SCN is that he forwarded details to a person whom he kenw, which will not make him liable to penalty under the provisions of Customs Act, 1962.

(iii) In respect of Shri Arjun Miglani (Noticee No.9), he contended that the allegation against Shri Arjun Miglani was very vague and general in nature and nothing related to this impugned import.

19.3.1 During the hearing held on 13.08.2025 in virtual mode, Mr. Sethu Prabhakaran, Advocate appeared on behalf of Shri Nipun Miglani (Noticee No.7), Shri Suriya (Noticee No.8) and Shri Arjun Miglani (Noticee No.9). He reiterated their written submissions dated 11.09.2024. He further stated that they were not provided with the copy of order to extend the time period of adjudication under first proviso to Section 28(9) of the Customs Act, 1962 and stated that they would be filing additional written submissions within 5 days.

19.4 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 (Noticee No.10). He reiterated their written submissions made vide letter/email dated 04.10.2024, 17.06.2025 & 05.08.2025.

19.5 During the hearing held on 20.06.2024 and 18.08.2025, Shri Pramod Kedia, Advocate appeared on behalf of Shri Som Prakash Naval Bhatia (Noticee No.11). He reiterated their written submissions. During the PH held on 18.08.2025, he also submitted that there are 3 more orders, as detailed below, on the same issue of import of cars in the name of foreign diplomats, wherein Shri Som Prakash Naval Bhatia was made Noticee, and the Ld. Adjudicating Authority (i.e., the C.C., NS-V) had dropped the charges against him.

(i) OIO No. 83/2024-25/Commr/NS-V/CAC/JNCH dated 04.07.2024;
(ii) OIO No. 87/2024-25/Commr/NS-V/CAC/JNCH dated 05.07.2024;
(iii) OIO No. 160/2024-25/Commr/NS-V/CAC/JNCH dated 23.09.2024.

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 dated 01.11.2023 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 for the purpose of adjudication of the impugned SCN.

Fulfilment of principles of natural justice

22. I find that there are a total of eleven Noticees in the impugned SCN, and out of the total eleven Noticees, only six Noticees namely, Mr. Nebras Soliman (Noticee No.1), Shri Nipun Miglani (Noticee No.7), Shri Suriya (Noticee No.8), Shri Arjun Miglani (Noticee No.9), Shri Aubrey Elias D'Souza (Noticee No.10) and Shri Som Prakash Naval Bhatia (Noticee No.11) have filed their written reply(ies) to the impugned SCN. The remaining five Noticees namely, 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), Shri Mohammed Wasim Abdul Gani Siddique (Noticee No.6) have not filed any written reply to the impugned SCN. I also find that in spite of four opportunities of personal hearing granted in the matter, 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), Shri Mohammed Wasim Abdul Gani Siddique (Noticee No.6) 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, who did not respond, to respond to the impugned notice but the said Noticees have 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 atleram 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 (Range Rover) was imported by a syndicate led by one Mr. Rehman Iqbal Ahmed Shaikh in the name of a diplomat/privileged person namely, Mr. Nebras Soliman, Attache, Embassy of the Syrian Republic at 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 Mr. Nebras Soliman had facilitated all the paperwork required for importing the said car duty-free in his name by misusing his diplomatic status and the same was not registered in his 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 and selling/disposing of the same in the open market to some unprivileged person.

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., 'Range Rover car' imported vide Bill of Entry No. 9356843 dated 28.10.2020 having total assessable value of Rs. 30,81,375/- 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. 62,86,005/- is liable to be demanded and recovered from Mr. Nebras Soliman, Attache, Embassy of the Syrian Republic 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 Mr. Nebras Soliman, Attache, Embassy of the Syrian Republic 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 and Shri Mohammed Wasim Abdul Gani Siddique 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;

(vii) Whether penalty is liable to be imposed on Shri Nipun Miglani, Shri Arjun Miglani and Shri Suriya under Section 112(a) and Section 112 (b) of the Customs Act, 1962;

(viii) Whether penalty is liable to be imposed on Shri Aubrey Elias D'Souza and Shri Som Prakash Naval Bhatia under Sections 112(a) and 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 Mr. Nebras Soliman is liable to pay the Customs duty amounting to Rs.62,86,005/- as demanded vide the impugned SCN and whether the goods viz. 'Range Rover car' imported duty-free in the name of Mr. Nebras Soliman, Attache, Embassy of the Syrian Republic 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 Range Rover car having chassis Number SALGA3AE7KA526395 is one such car illegally imported duty-free by the said syndicate in the name of Mr. Nebras Soliman, Attache, Embassy of the Syrian Republic vide Bill of Entry No. 9356843 dated 28.10.2020 by availing the benefit of exemption under Notification No. 03/1957-Cus dated 08.01.1957.

27. I find that Mr. Nebras Soliman, in his defence submissions, has inter alia contended that he had made a good-faith application for a vehicle, accordingly to the Indian law, through his Embassy. However, he was subsequently and explicitly informed by his then Ambassador that the said application was not approved by the MEA due to some tax issued between the Embassy and the Indian authorities, which led him to believe that the matter was concluded. He has further contended that he had received no further information about his application from his Ambassador's office which was the sole official channel of communication with the MEA and they filled all the forms and applications for him regarding all his paper work, IDs or any other documents since his arrival in India. They created an information blackout, hiding the MEA's approval, the subsequent summons, and a note he (his ambassador) secretly sent to the MEA admitting fault and invoking immunity. The hiding of the summons was a calculated act to prevent him (Mr. Nebras Soliman) from discovering the fraud. He had formally departed India upon completion of his posting on 07.07.2023 and the impugned SCN dated 01.11.2023 was not provided to him. He has also contended that only the Head of Mission was the sole recipient of all official communications from the MEA. The Head of Mission/ Ambassador should have intercepted and hid the vehicle's approval documents, the subsequent summons from Indian authorities, and even a secret note was sent to the MEA admitting the Embassy's fault to protect himself. Mr. Nebras Soliman has also stated that the moment he received the first document from this office, he appeared for the hearing with readiness to fully cooperate. He has also denied any contact with the said syndicate. He has further contended that the signature on the provided copy of delivery Challan was reviewed by him and he did not recognize that as his signature. He has also claimed that he did not sign any document to receive the vehicle and that he had never received and taken possession of the vehicle in question.

28. From the above, it is observed that Mr. Nebras Soliman has accepted that he had made an application for a vehicle. However, he has contended that subsequently he was informed by his then Ambassador that the said application was not approved by the MEA and that thereafter he had not signed any documents with respect to the impugned vehicle. Therefore, it would be pertinent to go through all the documents pertaining to the impugned vehicle imported duty-free in the name of Mr. Nebras Soliman by availing the benefit of exemption under Notification No. 03/1957-Cus dated 08.01.1957.

29. I find that as the import of the impugned vehicle viz., Range Rover 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 Mr. Nebras Soliman for the import of the said Range Rover car were obtained from MEA.

30. On going through the said documents, I find that Mr. Nebras Soliman through the Embassy of the Syrian Arab Republic, vide its Note Verbale No. 104/2020 dated 25.09.2020, had requested the Ministry of External Affairs, New Delhi to grant Prior Approval for the import of a new motor vehicle viz. Range Rover car. I also find that after processing the said request, the MEA vide letter No. D.VI/451/2/(62)/2020 dated 29.09.2020 conveyed Prior Approval to

Mr. Nebras Soliman for import of said vehicle for his 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 Prior Approval letter dated 29.09.2020 issued by MEA is reproduced hereunder for ready reference.

MEA Approval Letter No. D.VI/451/2/(62)/2020 dated 29.09.2020

सत्यमेव जयते

विदेश मंत्रालय, नई दिल्ली
MINISTRY OF EXTERNAL AFFAIRS
NEW DELHI

No. D.VI/451/2(62)/2020 September 29, 2020

The Ministry of External Affairs presents its compliments to the Embassy of the Syrian Arab Republic in New Delhi and with reference to the latter's Note Verbale No. 104/2020 dated September 25, 2020, has the honour to convey its **prior approval for import** of a vehicle Range Rover (Model 2018) worth **USD 41,500/-** by **Mr. Nebras Soliman, Attache** (arrived in India on 27/07/2019) from UK for personal use, within three months from the date of issue of this note provided that the vehicle is **Right Hand Drive** and 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 purchase 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 Embassy of the Syrian Arab Republic in New Delhi the assurances of its highest consideration.

The Embassy of the Syrian Arab Republic
New Delhi

30.1 In the above said Prior approval Note/letter No. D.VI/451/2/(62)/2020 dated 29.09.2020 of the 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.

31. It is seen that after receipt of the Prior Approval from the MEA to import of said vehicle viz. Range Rover car, Mr. Nebras Soliman, through the Embassy of the Syrian Arab Republic, vide its letter/Note Ref.No. 394 submitted an Exemption Certificate No.10/NS/19/2020 in respect of the said motor vehicle viz. Range Rover car requesting to attest the same. The said letter/Note Ref.No. 394 of Embassy of the Syrian Arab Republic and the Exemption Certificate in Form 9 bearing Serial No. 10/NS/19/2020 along with its Schedule and Self-certification duly filled in and signed by Mr. Nebras Soliman are reproduced hereunder for ready reference;

Note Ref.No. 394 dated 16.10.2020 of Embassy of the Syrian Arab Republic

1534/PT3/2020
26/10/2020

Embassy of the
Syrian Arab Republic
Vasant Vihar,
New Delhi-110057

سفارة
الجمهورية العربية السورية
نيودلهي

Ref No: 394

16th October, 2020

The Embassy of Syrian Arab Republic in New Delhi presents its compliments to the Ministry of External Affairs of the Government of India and has the honor to submit herewith an "Exemption Certificate" 10/NS/19/2020 dated 19th October, 2020 in respect of a motor vehicle Range Rover 2018 Model from UK for personal use of Mr. Nebras Soliman, Attache of this Embassy. The esteemed Ministry has already given approval for the same: No. D.VI/451/2/(62)/2020 dated September 29, 2020 (Copy enclosed).

The Embassy of the Syrian Arab Republic would highly appreciate if the same will be attested and return at the esteemed Ministry's earliest convenience. Kindly note that the container of the car has already arrived at ICD.

The Embassy of the Syrian Arab Republic 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.

Protocol Special
Ministry of External Affairs
Government of India
Jawaharlal Nehru Bhawan, Janpath
New Delhi

Form 9/Exemption Certificate No.10/NS/19/2020 submitted by Mr. Nebras Soliman

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 triplicate)

Serial Number 10/NS/19/2020

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 ExternalAffairs, 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, Mr Nebras Soliman ______ *(Name)* in my capacity as / in mypersonal capacity as *(strike out whichever is not applicable)* Attache ______ *(Designation)* of the E/o the Syrian Arab Republic *(Name of the FR)* at New Delhi *(Station)* having been allowed to import direct from abroad through theport of United Kingdom ______ / 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 ofwhich are given in the Schedule below, for the official use of the ______ *(Name of the FR)* / for my personaluse / for the personal use of the members of my family *(strike out whichever is not applicable)*, herebyundertake that:-

(a) The vehicle will not be sold or otherwise disposed of to a person who is not entitled to import amotor 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 Organization at Nhava Sheva ______ *(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 itsdate of registration in India.**

(b) I shall obtain the concurrence of the Central Board of Excise & Customs, Ministry of Finance, NewDelhi through the Ministry of External Affairs, New Delhi before I sell or transfer this vehicle even to aPrivileged Person entitled to import a motor vehicle free of duty and intimate the Commissioner of Customsof the place nearest to the place of Headquarters of my Mission / Consular Post / Trade Representation /UN / International Organization at Nhava Sheva *(Station)*, its sale price and the nameand 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 andforward two copies of the Certificate to the Commissioner of Customs of the port of importation after gettingthese attested by the Protocol Special Section, MEA, New Delhi / State Government Protocol / MEA BranchSecretariat.

Schedule to Exemption Certificate No.10/NS/19/2020 submitted by Mr. Nebras Soliman

Schedule

(Particulars of the Motor Vehicle which is the subject of the above declaration)

1. Make	: Range Rover
2. Model	: Range Rover (Euro VI)
3. Year of Manufacture	: 2018
4. Registration No. *(if applicable)*	: Nil
5. Chassis No.	: SALGA3AE7KA526395
6. Engine No.	: Nil
7. Horse Power (Engine capacity)	: 4000 CC
8. Cylinders	: 8 (Eight)
9. Country from which imported / Person from whom bought	: UK
10. No. / Date of Bill of Lading and Ship's name	: HLCUANR200770040. 14/8/2020 . Hapag-Lloyd
11. Any other particulars (RHD / LHD)	: RHD

Place : New Delhi

Date : 19/10/2020

Seal of FR

(Signature of the entitled member of the FR)

Mr. Nebras Soliman, Attache

(Name & Designation)

In case of personal vehicle :

Identity Card No. : 0007/EM/SYR/A9

Date of Arrival in India : 27/7/2019

Counter Signature of FR

The above particulars are verified.

Place : New Delhi

Date : 19/10/2020

Seal of FR

(Counter Signature of Head of FR or the Officer authorized to sign for this purpose)

DR. Riad ABBAS

Ambassador

(Name and Designation)

(To be filled in by the Customs)

Signature and seal verified with specimen available in the Office. Certificate andundertaking have been signed by the officer duly authorized.

Passed under Bill of Entry No. ________ and date________________.

Date :________________

(Customs Officer)

Self-Certification submitted by Mr. Nebras Soliman along with the Exemption Certificate

Form 7A

SELF CERTIFICATION

1. I am aware that under the Customs Act, 1962 and Notifications of the Government of India, there are prohibitions on importation/exportation of specified goods.

2. I am also aware that import and export of some specified goods may be restricted / prohibited under other laws such as Foreign Trade (Development & Regulation) Act, Foreign Trade Policy, Environment Protection Act, Wild Life Act, Livestock Importation Act, The Foreign Exchange Management Act, The Trade Marks Act, Arms Act, Drugs & Cosmetics Act, etc. Prohibitions under those Acts will also be treated as Prohibitions under the penal provisions of the Customs Act, rendering such goods liable to confiscation under section 111(d) of the Customs Act, (for import) and 113(d) of the Customs Act (for export)

3. I am aware that some of prohibitions and restrictions both for imports and exports are listed below:-

Prohibited items
Fire Arms
Import of beef in any from and products containing beef in any from.
Import of unprocessed meat and meat products from all Avian species (except poultry).
Import of poultry /poultry products from countries reporting notifiable Avian influenza.
Import of certain kinds of telephones and telephony equipments

Restricted items
Arms and ammunition
Hazardous chemicals
Import and installation of wireless telecommunication system / satellite earth station or other advanced communication systems.

4. I certify the following:-
   - i. that the goods being imported by me / Embassy / UN/ International organization do not contain any of the prohibited/ restricted items listed at paragraph 3 above.
   - ii. that the goods being imported by me / Embassy / UN/ International organization are strictly for official / personal use and are not for sale, donation or for promotional purposes.
   - iii. that reasonable quantities of book (religious / educational), magazines and printed material including tourism promotion material are being imported strictly for official use / personal use of families of diplomats / staff members.
   - iv. that import of liquor / cigarettes / foodstuff and provisions are in accordance with the prescribed norms of MEA.
   - v. That prior approval of MEA / State Government Protocol Office have been taken for import of vehicles / security related equipments / advanced communication systems / unusual consignments delivered by diplomatic bag.
   - vi. that Prior Approval of MEA / State Government Protocol Office have been taken for import of artifacts / exhibition items / concert items and that the goods would be re-exported from India on conclusion of the exhibition / concert in India.
   - vii. that Prior Approval of concerned authorities have been taken for any new construction / renovation / addition/alteration work in the Foreign Representation and building materials for such construction / renovation work would not be imported without the clearance of MEA / State Government Protocol Office.

Click or tap here to enter text

(Name, signature and designation of the Diplomat / Staff Member in the case of personal imports)

Round Seal (Authorised signatory in the case of official imports and pooled personal imports as at Sl. No. 4(iv) above)

Mr. Nebras Soliman

Attache

31.1 I find that Mr. Nebras Soliman, in his written submissions, has admitted that he had made application for the impugned motor vehicle through his embassy i.e., he Embassy of the Syrian Arab Republic. I also find that the MEA approved and attested the above Exemption Certificate bearing Serial No. 10/NS/19/2020 filed by Mr. Nebras Soliman in respect of the impigned motor vehicle viz. Range Rover car. On the basis of the said Exemption Certificate, the impugned Range Rover Car, having Chassis No. SALGA3AE7KA526395 was imported into India vide Bill of Entry No. 9356843 dated 28.10.2020 without payment of duty by availing the benefit of the Customs duty Exemption Notification No. 03/1957-Cus dated 08.01.1957.

31.2 I find that Mr. Nebras Soliman, in his written submissions, has also contended that post his application for the impugned vehicle, he was informed by his then Ambassador that the said application was not approved by the MEA due to some tax issued between the Embassy and the Indian authorities. He has also claimed that his Ambassador's office created an information blackout, hiding the MEA's approval, the subsequent summons, and a note he (his ambassador) secretly sent to the MEA admitting fault and invoking immunity. However, I find that he has not furnished any documentary evidence in support of his claim. I find that he has also claimed that he did not sign any document to receive the vehicle and that he had never received and taken possession of the vehicle in question. However, I find that the Delivery Challan dated 03.11.2020 issued by M/s. Navalson Logistics, the Customs Broker in the instant case w.r.t. the impuned car imported vide Bill of Entry No. 9356843 dated 28.10.2020, has been signed and stampted with the Embassy seal Mr. Nebras Soliman acknowledging receipt of the impugned Range Rover Car. The said Delivery Challan dated 03.11.2020 is reproduced hereunder for ready reference.

Delivery Challan dated 03.11.2020 issued by M/s. Navalson Logistics

Delivery Challan

Navalson Logistics

401, Balaji Sadan, 27, K. A. Subramaniam Road, Matunga, Mumbai – 400019

navalsonlogistics@gmail.com h/p : 8767775555 / 9820389687

Date : 03/11/20 E Way Bill No : NA

Delivery Party: Embassy of The Syrian Arab Republic, New Delhi, D-5/8, Vasant Vihar, New Delhi_110057

Commodity : One Unit Range Rover - VIN

Packages / Container No (1) One Pkg

Gross Wt. 2500 kgs Bill of Entry No / Dated 9356843 / 28/10/20

Truck / Trailor

Dispatched by Receivers stamp & sign

NEW DELHI

31.3 On going through the above Delivery Challan dated 03.11.2020, I find that the signature appended on it is similar/identical to the signature appended on the Exemption Certificate bearing Serial No. 10/NS/19/2020 and its Schedule and Self-certification filed by Mr. Nebras Soliman, as is apparent from their copies reproduced in the para supra. Therefore, I find that the contention of Mr. Nebras Soliman that he had not signed any document to receive the impugned vehicle is not correct.

31.4 Further, from the above Exemption Certificate, it is apparent that, while filing the said Certificate in Form-9 to MEA, Mr. Nebras Soliman 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 his 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.

32. From the foregoing, it is apparent that vide letter/Note Verbale No.104/2020 dated 25.09.2020, 'Prior Approval' was sought by the Embassy of the Syrian Republic on behalf of Mr. Nebras Soliman, from the MEA for import of the impugned Range Rover car, and after getting/receiving the approval for the same from MEA vide its Note/letter No.D.VI/451/2(62)/2020 dated 29.09.2020, Mr. Nebras Soliman filed the Exemption Certificate with the MEA to import the impugned Range Rover 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 him in the said Exemption Certificate that he was very well aware that the said Range Rover 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(62)/2020 dated 29.09.2020 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.

33. However, during the course of investigation it was revealed that the said vehicle i.e., Range Rover Car imported in the name of Mr. Nebras Soliman for his personal use as a privileged personby availing the benefit of exemption under Notification No. 03/1957-Cus dated 08.01.1957 was not registered in his 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 impugned Range Rover car imported by Mr. Nebras Soliman is not part of the record of MEA which has records of cars imported duty-free by diplomats/privileged persons and registered thereafter in their name.

33.1 I also find that the investigation has revealed that after import of the impugned Range Rover car, the documents of the impugned Range Rover car was forged by the syndicate members and thereafter the impugned car was first registered at Nurpur, RLA, Himachal Pradesh with registration number HP-38-G-3045 in the name a non-privileged person namely, Bhaiyasaheb Eknath Khandare; and thereafter it was registered at Regional Transport Officer (RTO), Ziro, Arunachal Pradesh with registration number AR06A8459 in the name of another non-privileged person Joe Joseph.

33.2 Thus, from the above, it is apparent that after import of the impugned Range Rover car duty-free in India under Notification No. 3/1957-Cus. dated 08.01.1957, which was meant for the personal use of Mr. Nebras Soliman (a privileged person), the same was sold/ disposed of to non-privileged person.

34. I find that during the course of investigation, Summons were issued under Section 108 of the Customs Act, 1962 by the DRI to Mr. Nebras Soliman, Attache, Embassy of the Syrian Republic to appear before the investigating officer. However, in response to the said Summons, the Embassy of the Syrian Republic, vide its letter Ref.No.533/313 dated 02.12.2021, stated that accordingly to the Vienna Convention on Diplomatic Relations, diplomats have judicial immunity, and that the embassy will investigate on the matter, and punish the employee responsible for the mistake. They also undertook not to repeat such action in the future.

34.1 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.

34.2 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 impugned car imported duty-free by Mr. Nebras Soliman, clearly point to the fact that Mr. Nebras Soliman had applied for the import of duty-free vehicle for his personal use and not for his 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.

34.3 However, the said vehicle was never registered in the name of Mr. Nebras Soliman and the vehicle registration certificate has not been provided to the MEA. The said vehicle was sold/disposed of in open market and registered in the name of non-privileged person which is not in consonance with the Diplomatic Relations (Vienna Convention) Act, 1972 read with the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957.

34.4 Here, 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.*

34.4.1 From the above provision, it is amply clear 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.

35. I find that it is not a disputed fact that Mr. Nebras Soliman, Attache, Embassy of the Syrian Republic was entitled for duty-free import of the impugned 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 vehicle in question has been sold/ disposed of in the open market to non-privileged person after being imported duty-free in the name of the said diplomat, Mr. Nebras Soliman, by availing the benefit of exemption under Notification No. 03/1957-Cus dated 08.01.1957, which is not in consonance with the Diplomatic Relations (Vienna Convention) Act, 1972 read with the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957. Therefore, I find that there is no provision in the Diplomatic Relations (Vienna Convention) Act, 1972 or/and the Vienna Convention on Diplomatic Relations, 1961which provides immunity to the diplomat, Mr. Nebras Soliman, from payment of Customs duty in the present case.

36. 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 No.10/NS/19/2020 dated 19.10.2020 with the MEA, Mr. Nebras Soliman had also undertaken to the said effect, as is evident from Para 31 supra. However, I find that after import of the impugned vehicle duty-free, the same was not registered in the name of Mr. Nebras Soliman and instead sold in the open market to non-privileged person 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.

37. 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.

38. In view of the afore discussed legal provisions and findings, I find that Mr. Nebras Soliman 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.

39. Therefore, I hold that the Customs duty amounting to Rs.62,86,005/- is recoverable from Mr. Nebras Soliman, the then Attache, Embassy of the Syrian Republic 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@l25%	Social Welfare Surcharge (SWS)	IGST	Total Duty
(a)	(b) = a*125%	(c) = b*10%	(d) = (a+b+c)*28%	(e) = b+c+d
30,81,375/-	38,51,719/-	3,85,172/-	20,49,114/-	62,86,005/-

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

40. 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., Range Rover car was smuggled into India in the name of Mr. Nebras Soliman, Attache, Embassy of the Syrian Republic 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 to 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. 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. 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 Courtjudgment 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.

40.1 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 theextended 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.62,86,005/- is liable to be recovered from Mr. Nebras Soliman 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 Mr. Nebras Soliman under Section 114A also exists and, therefore, Mr. Nebras Soliman is also liable for penal action under the provisions of Section 28(4) of Customs Act, 1962.

Interest under section 28AA of the Act

41. 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.'*

41.1 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, Mr. Nebras Soliman, the then Attache, Embassy of the Syrian Republic is liable to pay the Customs duty amounting to Rs. 62,86,005/- under the provisions of Section 28(4) of the Customs Act, 1962, therefore, he 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 Mr. Nebras Soliman, the then Attache, Embassy of the Syrian Republicis 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

42. I find that the impugned SCN has alleged that the said goods viz., Range Rover car imported in the name of the diplomat, Mr. Nebras Soliman, 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;*

42.1 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. Range Rover car, was removed contrary to the terms of the permission of the proper officer who had granted permission for its clearance to Mr. Nebras Soliman, Attache, Embassy of the Syrian Republic, subject to getting it registered in his 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 the statutory provisions prescribed under the said Notification No. 03/1957-Cus dated 08.01.1957 read with the Customs Act, 1962 has not been adhered to in the instant case. Therefore, I find that the provisions of Section 111(j) of the Customs Act, 1962 is squarely applicable to the instant case.

42.2 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 impugned Range Rover car was imported into India vide Bill of Entry No. 9356843 dated 28.10.2020 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, Mr. Nebras Soliman for his personal use. However, post clearance, instead of registering the said car in the name of Mr. Nebras Soliman, the said car was sold/disposed of in the open market to non-privileged person 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 impugned vehicle viz, Range Rover car bearing Chassis No. SALGA3AE7KA526395 is liable for confiscation under Section 111(o) of the Customs Act, 1962.

42.3 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.).

42.4 In view of above, I hold that the impugned vehicle viz, Range Rover car bearing Chassis No. SALGA3AE7KA526395 is liable for confiscation under Section 111(j) and Section 111(o) of the Customs Act, 1962.

Applicability of Redemption Fine

42.5 As the impugned goods viz, Range Rover 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.

42.6 In the instant case, it is seen that the subject goods, viz, Range Rover 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 Fertichem 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."*

42.7 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.

42.8 In view of the discussions, I find that redemption fine is liable to be imposed on the said impugned vehicle viz, Range Rover car bearing Chassis No. SALGA3AE7KA526395 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 Mr. Nebras Soliman under Section 112(a) and/or Section 114A and Section 114AA of the Customs Act, 1962

43. It is seen that the impugned SCN has proposed penalty on Mr. Nebras Soliman under Section 112(a) and/or Section 114A and Section 114AA of the Customs Act, 1962 for his 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 Range Rover car, including not adhering to the prescribed provisions of law.

43.1 The impugned SCN has proposed penalty on Mr. Nebras Soliman 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."*

43.1.1 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 Mr. Nebras Soliman has been established beyond doubt as discussed and concluded in the earlier part of this order. It is proved that Mr. Nebras Soliman 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 his name by availing the duty exemption under Notification No. 03/1957-Cus dated 08.01.1957, and post clearance, instead of registering the impugned car in his own name, the said car was sold/disposed of in the open market to non-privileged person in violation of the conditions of the said exemption Notification. He had complied with all the necessary formalities for importing the impugned vehicle Range Rover car in his 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 Mr. Nebras Soliman 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, he deliberately completed all the necessary formalities for importing the impugned vehicle Range Rover car in his name.

43.1.2 As it is already proved that Mr. Nebras Soliman had suppressed the material facts with respect to the import of 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 Mr. Nebras Soliman has rendered himself liable to penalty under Section114A 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)]

43.2 It is seen that the impugned SCN has proposed penalty on Mr. Nebras Soliman 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, Range Rover car bearing Chassis No. SALGA3AE7KA526395 imported in the name of Mr. Nebras Soliman is liable for confiscation under Section 111(j) and Section 111(o) of the Customs Act, 1962. Therefore, it appears that Mr. Nebras Soliman 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 Mr. Nebras Soliman 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 imposable on him and hence the same is liable to be set aside.

43.3 The impugned SCN has also proposed penalty on Mr. Nebras Soliman 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".*

43.3.1 As discussed in the foregoing paras, the investigation has revealed that the impugned car was imported duty-free in the name of Mr. Nebras Soliman for his 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, instead of registering the said car in the name of Mr. Nebras Soliman, the impugned car was sold/ disposed of to non-privileged person. The investigation has further revealed that Mr. Nebras Soliman had facilitated all the paperwork required for importing car duty-free in his name by misusing his diplomatic status. I find that Mr. Nebras Soliman was very much aware from the beginning that the impugned car imported duty-free in his name would not be registered in his name. However, in spite of fully aware about the said facts, he made application with MEA for Prior Approval for import of the impugned car for his personal use. He also signed the declaration/undertaking in the Customs Duty Exemption Certificate No. No.10/NS/19/2020 dated 19.10.2020 that the impugned car was for his 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 dated 03.11.2020 issued by M/s. Navalson Logistics w.r.t. the impuned car imported vide Bill of Entry No. 9356843 dated 28.10.2020, showing that the impugned car had been received by Mr. Nebras Soliman, has been signed acknowledging receipt of the impugned car by him. As such, I find that Mr. Nebras Soliman had consciously and knowingly made/signed documents and declarations which were false or incorrect as he knew that the impugned car would not be registered in his name and instead would be diverted in the open market. Therefore, I hold that Mr. Nebras Soliman 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

44. 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.

44.1 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 Section112 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:*

44.1.1 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., Range Rover car imported in the name of Mr. Nebras Soliman, Attache, Embassy of the Syrian Republic, 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 Range Rover car undertaken by this syndicate. He was instrumental in identification of the foreign diplomats and colluding with them by offering monetary consideration/illegal gratification through his accomplice Rajeev Sood, carting the impugned car from U.K. 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.

44.1.2 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 Mr. Nebras Soliman, Attache, Embassy of the Syrian Republic 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 30 luxury 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., Range Rover was imported in the name of the diplomat Mr. Nebras Soliman. 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.

44.1.3 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 Range Rover 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., Range Rover 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 12(b) of the Customs Act, 1962.

44.2 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 Mr. Nebras Soliman, a diplomat of Embassy of the Syrian Republic 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 and Mohammed Wasim Abdul Gani Siddique under Sections 112(a), 112(b) & 114AA of the Customs Act, 1962

45. It is seen that the impugned SCN has proposed penalty on Shri Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique under Sections 112(a), 112(b) and 114AA 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 this noticee based on the evidences on record.

45.1 The role played by Liyakat Bachu Khan in the entire conspiracy of smuggling of the impugned Range Rover 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. To forge the documents, he used the services of Mohammed Wasım Abdul Ganı Siddique. Liyakat Bachu Khan has admitted that he worked for Rehman Shaikh when the impugned Range Rover car was imported in the name of the diplomat Mr. Nebras Soliman. He paid money to Wasim for forging documents like forged invoices, etc as per the directions of Rehman Iqbal Ahmed Shaikh and in this manner, played a crucial role in the smuggling of the impugned Range Rover car. 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 Mohammed Wasım Abdul Ganı Siddique and shown to prospective buyers. I find that Mohammed Wasim Abdul Gani Siddique has admitted in his statement recorded under the provisions of Section 108 of the Act that Liyakat Khan gave him the Bills of Entry to edit the name of the importer or value of the goods and also gave him invoices, Customs duty payment receipt, etc to change the name of Buyer. Further, I find that incriminating documents/records were recovered from the mobiles of Liyakat Bachu Khan, Nipun Miglani and Suriya and their statements recorded underSection 108 of the Act have revealed that Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique played prominent role in fraudulent import of luxury cars in the name of diplomats and were actively instrumental in getting the cars registered in the name of non-privileged person. 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.

45.2 In view of the above, I find that all the above mentioned acts of omission and commission on part of Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique 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 and Mohammed Wasim Abdul Gani Siddique are liable to penalty under the provisions of Section 112(a) and 12(b) of the Customs Act, 1962. Further, I find that the investigation has revealed that they had forged the documents for the purpose of manifesting this well planned conspiracy to defraud the government revenue. I also find from the incriminating documents and WhatsApp chats retrieved from the mobile phones of Liyakat Bachu Khan and Nipun Miglani that Liyakat Bachu Khan played the primary role in preparing the forged documents which were required for registration of impugned car at RTO as well as sale to non-privileged person. Thus, I find that Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique had consciously and knowingly prepared/got prepared, signed/got signed the documents, as discussed in para supra, and Liyakat Bachu Khan got delivery of the illicitly imported impugned Range Rover car from the Customs Broker and instead of delivering it to the importer diplomat, handed it over to non-privileged person on instruction of Rehman Iqbal Ahmed Shaikh. Therefore, I hold that Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique are 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

46. 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.

46.1 The role played by Rajeev Sood and Manjeet Maurya in the entire conspiracy of smuggling of the impugned Range Rover 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 Syrian 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 Rehaman 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.

46.2 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 12(b) of the Customs Act, 1962.

Issue of imposition of penalty on Shri Nipun Miglani, Shri Arjun Miglani and Shri Suriya under Sections112(a) & 112(b) of the Customs Act, 1962

47. It is seen that the impugned SCN has proposed penalty on Shri Nipun Miglani, Shri Arjun Miglani and Shri Suriya under Sections 112(a) and 112(b) of the Customs Act, 1962 *inter alia* alleging that they abetted the mastermind Rehman Iqbal Ahmed Shaikh in smuggling of the luxury cars including the impugned Range Rover car. They also helped in preparation of forged documents and arranged for the registration and sale of the impugned car on the direction of the mastermind.

47.1 I observe that Shri Nipun Miglani, Shri Arjun Miglani and Shri Suriya have filed their written submissions dated 11.09.2024 and 13.08.2025 through a legal firm namely, Agol Associates, Chennai. I have gone through their submissions. I find that vide their letter dated 13.08.2025, they have inter alia contended that the adjudication proceedings are time-barred, and the adjudicating authority has no jurisdiction to pass any adjudication order as Section 28(9) of the Customs Act, 1962, stipulates that an adjudication order must be passed within one year from the date of issuance of a show cause notice under Section 28(4) of the Customs Act, 1962. In the present case, the show cause notice was issued on 01.11.2023, and the final order ought to have been passed on or before 01.11.2024. As no final adjudication order has been passed within the prescribed period, the show cause notice is liable to be dropped. They have also contended that the extension granted in the instant case is invalid and have cited judgment of the Hon'ble High Court of Punjab & Haryana in the case of Shri Ram Agro Chemicals Pvt. Ltd. v. Union of India.

47.1.1 In this regard, I find that the first proviso to Section 28(9) of the Customs Act, 1962 provides for extension of time limit for a further period of one year by any officer senior in rank to the proper officer, in respect of cases falling under Section 28(4) of the Act. I find that the competent authority has extended the period of adjudication by one year i.e upto 31.10.2025 under the first proviso to Section 28(9) of the Customs Act, 1962. It is also seen that the noticees have been intimated about the extension of the period for adjudication by the office of the Commissioner of Customs, NS-V, JNCH, Raigad vide letter F.No. S/10-172/2023-24/Commr/NS-V/CAC/JNCH dated 24.04.2025.

47.1.2 I also find that the extension under first proviso to Section 28(9) of the Customs Act, 1962 is an administrative/executive exercise between the proper officer and superior officer wherein an extension granted by an officer senior in rank to the proper officer, having regard to the circumstances under which the proper officer was prevented from determining the amount of duty or interest under Section 28(8) of the Customs Act, 1962. From the record of the case, I find that during the relevant period the number of cases pending adjudication at JNCH were very high especially after the issuance of Notifications No. 28/2022-Cus (NT) dated 31.03.2022 and No. 29/2022-Cus (NT) dated 31.03.2022 whereby most of the cases were transferred to JNCH by other Customs Houses, due to the fact that cases involving multiple jurisdictions have to be decided in the jurisdiction having highest amount of duty. As the JNCH is the Gateway Port of India, the highest value/duty involved in most of such cases were pertaining to JNCH. Therefore, due to a large number of cases transferred to JNCH for adjudication purpose, it was observed by the proper officer that the adjudication proceedings in the instant case could not be completed by due date as prescribed under Section 28(9) of the Act. The Chief Commissioner of Customs, JNCH, Mumbai Zone-II, after having examined the progress of adjudication and the reasons which prevented the adjudicating authority to complete the adjudication of this case, granted extension of time limit to adjudicate the case up to 31.10.2025 in exercise of powers conferred under the first proviso to Section 28(9) of the Act.

47.1.3 Further, it is seen that the impugned SCN proposes only penalty under Sections 112(a) and 112(b) of the Customs Act, 1962 on Shri Nipun Miglani, Shri Arjun Miglani and Shri Suriya. No Customs duty has been demanded from them. I also find that as per the provisions of the Customs Act, 1962 there is no time limit prescribed for imposition of penalty under Sections 112(a) and 112(b) of the Act.

47.1.4 I also find that the instant case is of non-fulfilment of post-import conditions by the importer of the impugned car. In this regard, I find that Hon'ble Supreme Court, High Courts and Tribunals have consistently held that violation of post-import conditions is not covered under time limit prescribed in Section 28 or any other provision of the Act, it is a case of continuing obligation and Department can demand for customs duty from the importer without any time limit if the conditions of the exemption are not met. I rely on the following case laws:-

(i) Hon'ble Supreme Court in the case of Mediwell Hospital and Health Care, observed in para 12 of its judgment that *"we would like to observe that the very notification granting exemption must be construed* <u>*to cast continuing obligation*</u> *on the part of all those who have obtained the certificate from the appropriate authority and on the basis of that to have imported equipments without payment of customs duty…….. and if on such enquiry the authorities are satisfied that the continuing obligation are not being carried out then it would be fully open to the authority to ask the person who have availed of the benefit of exemption to pay the duty payable in respect of the equipments which have been imported without payment of customs duty. … on being satisfied that the said obligations have not been discharged they can enforce realisation of the customs duty from them.*"

(ii) Hon'ble Supreme Court in the case of Jagdish Cancer & Research Centre has observed that *when the violation involves the conditions of a notification granting exemption, the demand/order for duty payment is not bound by any time constraints specified in Section 28 of the Act, indicating that the Department can demand for customs duty from the importer without any time limit if the conditions of the exemption are not met.*

(iii) In the case of Bombay Hospital Trust, the Five Members Bench of Hon'ble Tribunal accepted that the violation of post import condition is a continuing one and held that in a case where a post-importation condition in an exemption notification is not fulfilled demand notice issued in such a case will not be subject to any limitation of time. The Hon'ble Tribunal held that-

> **"***12. As regards the time limits under Section 28, both sides have agreed that since the duty demand does not relate to short levy or non levy at the time of initial assessment on importation, but has arisen subsequently on account of failure to fulfil the post-importation conditions under the Notification No. 64/88, the said Section 28 has no application to a duty demand of this kind. We do not, therefore, wish to dwell further on the inapplicability of Section 28 to such demands. However, we note that since no specific time limit is prescribed under any other provision of the statute, the notice of demand in such cases cannot be subjected to any limitation of time. This view is supported by the ratio of the following two decisions of the Hon'ble Bombay High Court and the Apex Court :-*
>
> (i) Prakash Cotton Mills Pvt. Ltd. v. S.K. Bhardwaj, A.C.C.E. (32) E.LT. 534 (Bombay)
> ii) Commr v. Raghuvar (India) Ltd.- 2000 (118) E.L.T. 311 (S.C.)**"**

47.1.5 In view of the above, I find that the contention of the said noticees that the adjudication proceedings are time barred is not tenable. I also find that the case laws cited by them are distinguishable and hence not applicable in the instant case. Therefore, I do not find any merit in the contention of the said noticees.

47.2 I find that Shri Nipun Miglani along with other syndicate members namely, Shri Arjum Miglani, Shri Suriya, Liyakat Bachu Khan, etc. played a major role in the preparation of forged documents related to the impugned Range Rover Car. They prepared/got prepared the forged documents with the intention to use them in getting the registration done at RTOs and use them for selling the impugned car. On going through the WhatsApp chats/conversations and documents held/shared between Nipun Miglani and Arjun Miglani as well as between Nipun Mıglani and Liyakat Bachu Khan, I find that Liyakat Bachu Khan had prepared the forged documents of the impugned Range Rover Car which were required for getting the registration done at RTOs and use them for selling the impugned car and forwarded those documents to Nipun Miglani. I also find that Nipun Miglani and Arjun Miglani guided him with technical specifications and suggested him necessary corrections in the forged documents in order to make them look genuine and to make sure that the impugned car got registered at RTOs and sold with the help of those fake/forged documents without facing any problem. I also find that using the forged documents, the syndicate members with the help of Nipun Miglani, Arjun Miglani and Suriya had succeeded in registering the impunged car (with registration no. HP-38-G-3045) in the name of a non-privileged person, Bhaiyasaheb Eknath Khandare, at Nurpur RTO, Himachal Pradesh. However, after a correspondence was made by DRI, the Nurpur RTO Authorities caused inquiry and found that the documents submitted to them were forged and the said registration no. HP-38-G-3045 was obtained fraudulently. Therefore, Nurpur RTO Authorities cancelled the said registration. However, I find that the said syndicate members viz, Nipun Miglani, Arjun Miglani, Suriya and Layakat Bachu Khan again registered the impugned car at RTO, Ziro, Arunachal Pradesh with registration number AR06A8459 in the name of another non-privileged person Joe Joseph.

47.3 I find that Nipun Miglani in his statements recorded under Section 108 of the Act has deposed that on two occasions he had initiated dealing by demanding specific cars from Rehman for his clients and on his request, Rehman arranged dummy importers willing to import the cars in their name, and thereafter, the said two cars were imported and registered in the name of his clients through Suriya and Layakat Bachu Khan. Nipun Miglani has also admitted that he was aware that Rehman used to arrange dummy importers who agreed to import cars on their name for monetary consideration. He has also accepted that he used to tell/instruct Liyakat to modify/edit the documents/ inoivices being prepared/fabricated by Liyakat. He has also admitted that the impugned Range Rover car was provided to him by Rehman Iqbal Ahmed Shaikh around November 2020 and at that time the said car was registered under registration no HP38G3045; however, due to some issue in Himachal Pradesh RTO, the saidregistration no. HP38G3045 was cancelled and thereafter, the said car was registered in Arunachal Pradesh RTO under registration no. AR06A8459. I find that he also accepted the content of the WhatsApps chats he had with Liyakat Bachu Khan, Suriya and Arjun Miglani, which were pertaining to the impugned Range Rover car and retrieved from his phone.

47.4 I find that Shri Arjun Miglani in his statement recorded under Section 108 of the Act has inter alia deposed that Nipun had stopped dealing with Shri Rehman after the DRI case against under-valued imported cars which were imported by Shri Rehman; however, in 2017 Shri Rehman again approached Nipun and he (Nipun) started selling high end imported cars that Rehman had then started to import. He has also stated that on suggestion of Nipun, he also started looking for clients for the high-end cars imported by Rehman. He has also stated that besides him and Nipun, Rehman had sold the high-end cars through Shri Suriya also. I also find that Shri Suriya in his statement recorded under Section 108 of the Act has deposed that all the registration works or correction in RCs were done by him on request of Nipun and he used to get all the documents and details of the imported vehicles from Nipun for registration purpose.

47.5 I find that Nipun Miglani in his written submission has contended that the statement dated 15.07.2021 recorded under Section 108 of the Act was recorded under coercion and the same was retracted before the Hon'ble Magistrate, Uran on 19.07.2021 as well as vide his letter dated 22.10.2021 and that the retracted statement cannot be the sole basis for conviction when not corroborated with any evidence. In his letter dated 22.10.2021, Shri Nipun Miglani has inter alia contended that the Investigation Officer had forcibly recorded his statement on 15.07.2021 to the effect that he had knowledge about the fact that the cars were imported under concessional/ NIL rate of duty in terms of Customs exemption notification and that despite knowing the said fact, he had engaged in trading of the said cars/vehicle by colluding with the mastermind. In this regard, I find that the statementdated 15.07.2021 of Shri Nipun Miglani is based on corroborative documentary evidence retrieved/ procured during the course of investigation. It is a settled law that, the statement recorded under Section 108 of the Customs Act is a material piece of evidence and can be used as substantive evidence. I also find that the statement dated 15.07.2021 is not the only statement of Shri Nipun Miglani recorded and relied upon in the instant case, as further statements were recorded on 17.07.2021 and 16.10.2023 which clearly establish the fact that Nipun Miglani had abetted the mastermind Rehman Iqbal Ahmed Shaikh in smuggling of the impugned Range Rover car and registration of the same in the name of non-privileged person as discussed in above paras. He has also accepted that he had tried to sell the impugned car, however, the deal did not go through; and therefore, he returned the impugned car to Rehman Iqbal Ahmed Shaikh. I find that the statements recorded under Section 108 of the Customs Act in this case are consistent and based on corroborative documentary evidence. I also find that Nipun Miglani was a crucial member of the syndicate as without his expertise in the field of sale and purchase of the high-end luxury cars, it would have been a herculean task for the syndicate to sell the carssmuggled by the mastermind. Had he not colluded with the mastermind, this whole modus operandi might not have seen the light of day and a huge amount of duty evasion could have been prevented. Therefore, the said retractment of statement dated 15.07.2021 has no effect. It is clear that the retractment of the statements is an afterthought to save himself from the clutches of the law. In this regard, I also find that the Hon'ble Supreme Court in the case of Surjeet Singh Chhabra v. UOI, reported in 1997 (89) E.L.T. 646 (S.C.) has held that ***Confession statement made before Customs officer though***

retracted within six days is an admission and binding since Customs Officers are not Police Officers. Therefore, I do not find any merit in the contention of Shri Nipun Miglani.

47.6 Further, I find that the said noticee's contention that the impugned Range Rover car was not in their possession is factually incorrect as Shri Nipun Miglani in his confessional statement has himself admitted that the impugned Range Rover car was provided to him by Rehman Iqbal Ahmed Shaikh around November 2020. He has also accepted that he had tried to sell the impugned car, however, the deal did not go through; and therefore, he returned the impugned car to Rehman Iqbal Ahmed Shaikh.

47.7 I further find that in their written submissions, Shri Nipun Miglani, Shri Suriya and Shri Arjun Miglani have contended that the documentary evidence allegedly retrieved from the mobile phones cannot be relied to prove my alleged involvement in illegal import and registration of subject car since the department had not complied with the condition of Section 138C of the Customs Act. In this regard, I find that the Mobile phones taken over from Nipun Miglani and Liyakat Bachu Khan were forensically examined following the due procedure of law. The forensic procedure of their mobile devices was completed by respective Digital Evidence Examiners and the certificates under Section 65B of the Indian Evidence Act, 1872 were issued certifying sufficient compliance of the law. The copy of the said certificate is reproduced hereunder for ready reference:

(i) Certificates under Section 65B of the Indian Evidence Act i.r.o. Mobile phone of Liyakat Bachu Khan

CERTIFICATE U/S 65B OF THE INDIAN EVIDENCE ACT. 1872

I, Mr. **Liyakat Bachu Khan** state the following that I am the driver of **Rehman Iqbal Ahmed Shaikh** from Chawl no. 45, Room No. 705, Bharat Nagar, Bandra East, Mumbai-400051.

I, Mr. **Liyakat Bachu Khan** state that by virtue of driver **Rehman Iqbal Ahmed Shaikh** from Chawl no. 45, Room No. 705, Bharat Nagar, Bandra East , Mumbai-400051, is using the **One Plus Nord (Serial No: 6c19a588)** (here after referred to as Mobile). Further, the **Mobile** used by me, was functioning normally all times and this phone was used for my personal and meeting various business interest of **Rehman Iqbal Ahmed**. I, Mr. **Liyakat Bachu Khan** also like to state that I was involved in entering data in the mobile.

Accordingly, I, Miss. **Aishwarya Nair** certify that the data is backed up from the mobile in the case of illicit import of Luxury cars on 14/07/2021 and is stored in the devices with the following details:

MD5 hash value: 9140c232aacb0c4942e1349370f87e48	
SHA1 hash value: 7df3a6a072c09f52c16faa7c8f58b62fc20416e9	
Other Authentication Methods: No	
Master Copy Details	Working Copy Details
Make : Seagate Model : SRD0NF1 Serial No : NAC32NGT	Make : Seagate Model : SRD0NF1 Serial No : NAC32FH8

I, Miss **Aishwarya Nair** certify that above data backup is a true and reproduction of electronic data which was regularly fed in the **Mobile.**
Therefore, this certificate is sufficient compliance of Section 65B of the Indian Evidence Act, 1872.

Signature of Assesse: 14/7/21.
Name of Assesse: Mr. Liyakat Bachu Khan
Designation of Assesse: Driver

Signature: 14/7/21
Name: Aishwarya Nair
Designation: Digital Evidence Examiner

The Indian Evidence Act, 1872

Section 65B. Admissibility of electronic records.—
(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:—
(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;
(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;
(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and
(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

14/07/21.

14/7/21

(ii) Certificates under Section 65B of the Indian Evidence Act i.r.o. Mobile phone of Shri Nipun Miglani

CERTIFICATE U/S 65B OF THE INDIAN EVIDENCE ACT, 1872

I, **Mr. Nipun Miglani** (PAN NO.: ACKPN2669L) state the following: that I reside at A-222, The DLF Crest, Gurugram (hereafter referred to as Premises).

I, **Mr. Nipun Miglani** state that, I use the following devices (here after referred to as devices) located in the premises A-222, The DLF Crest, Gurugram. Further, the devices used by me in this premises was functioning normally at all times and these devices were used for meeting various business/professional interest. I, **Nipun Miglani** would also like to state that I along with my family were involved in entering data on the devices in the Premises.

Accordingly, I, Ms. Ashmita Anna Mathew certify that the data is backed up from the following devices during the search proceedings u/s 105 of Customs Act, 1962 at A-222, The DLF Crest, Gurugram on 14/07/2021 are stored in the devices with the following details:

n@cars.co.in

MD5 hash value: 2a72786bccd77af4cac011c8cd182352	
SHA1 hash value: 3f08a0da98446438a0f611c6b356e66c420856bd	
Master Copy Details	Working Copy Details
Make: WD Elements Model: WDBHHG0010BBK-EESN Serial No: WX42AC0F0LFZ	Make: WD Elements Model: WDBHHG0010BBK-EESN Serial No: WX72AC0AS3CV

icloud-nipun@bigboytoyz.com

MD5 hash value: 482b14f8b218db0bb5798c4bdd14bcbe	
SHA1 hash value: 06ef2a8a6d790b1867df195051936b2adeb20313	
Master Copy Details	Working Copy Details
Make: WD Elements Model: WDBHHG0010BBK-EESN Serial No: WX42AC0F0LFZ	Make: WD Elements Model: WDBHHG0010BBK-EESN Serial No: WX72AC0AS3CV

Nipun 14/7/21

P-1 IRFAN 14-7-2021

14/7/21

P-2 Himanshu 14-7-2021 (Himanshu)

nipun@bigboytoyz.com

MD5 hash value: b3deb1ff40c4ab93180292bffd220408	
SHA1 hash value: b70217716fbce0aac93d964f4102be6b67ddbb23	
Master Copy Details	Working Copy Details
Make: WD Elements Model: WDBHHG0010BBK-EESN Serial No: WX42AC0F0LFZ	Make: WD Elements Model: WDBHHG0010BBK-EESN Serial No: WX72AC0AS3CV

Nipun-iPhone 12 Pro -256 GB

MD5 hash value(Advanced Logical): 992774f9af5d3f59ab4b207e0fe769c4	
SHA1 hash value(Advanced Logical): 0da93436236902cde78868e426aa8ba2008a8633	
MD5 hash value(iTunes): 59cea72c4f94316586688e75482b9628	
SHA1 hash value(iTunes): 2e9c655dfef7dee9c98fc4e521449733cdd6c6e4	
Master Copy Details	Working Copy Details
Make: WD Elements Model: WDBHHG0010BBK-EESN Serial No: WX42AC0F0LFZ	Make: WD Elements Model: WDBHHG0010BBK-EESN Serial No: WX72AC0AS3CV

Nipun-Note 20 Ultra 256 GB

MD5 hash value: 1e4af40cb3621ce4a7b838207265de16	
SHA1 hash value: 576dc8df005029b7bec9535e0b9ec335387e5a07	
Master Copy Details	Working Copy Details
Make: WD Elements Model: WDBHHG0010BBK-EESN	Make: WD Elements Model: WDBHHG0010BBK-EESN

Nipun 14/7/21

P-1 IRFAN 14-7-2021

14/7/21

P-2 Himanshu 14-7-2021 (Himanshu)

Serial No: WX42AC0F0LFZ	Serial No: WX72AC0AS3CV

I, Ms. Ashmita Anna Mathew, certify that above data backup is a true and identical copy / reproductions of electronic record, which was regularly fed in the above devices. Therefore, this certificate is sufficient compliance of Section 65B of the Indian Evidence Act, 1872.

Party Signature: Nipun 14/7/21 Authorized Officer: 14/7/21

Examiner Signature: 14/7/21

Witness-1 Signature: IRFAN 14-7-2021 Witness-2 Signature: Himanshu 14-7-2021 (Himanshu)

47.7.1 In view of above, I find that in the instant case, the procedure prescribed under Section 65Bof the Indian Evidence Act, 1872 has been followed and the certificate as required under Section 65B has been issued. I also find that all the conditions laid down in Section 138C of the Customs Act, 1962 has been duly complied with. I find that a detailed analysis of the data retrieved from the mobile devices revealed multiple evidences of their active involvement in the smuggling of various luxurious cars including the impugned Range Rover Car bearing Chassis no. SALGA3AE7KA526395. The relevant details of the extracted data have been discussed in the impugned SCN as well as in prior paras of this order.

47.8 In view of the above, I find that along with Shri Nipun Miglani, Shri Suriya and Shri Arjun Miglani were also active members of the syndicate and played a crucial and instrumental role in registering and selling the cars smuggled by the mastermind, Rehman Iqbal Ahmed Shaikh. From the statements of Shri Nipun Miglani, Shri Arjun Miglani and Shri Suriya, I find that they were dealing with the cars smuggled into the country by Rehman Iqbal Ahmed Shaikh. They have confirmed the documents and chats retrieved from the phones of Shri Nipun Miglani and Liyakat Bachu Khan. I find that in the said chats, Shri Nipun Miglani, Shri Arjun Miglani, Shri Suriya and Shri Liyakat Bachu Khan have discussed preparation of fake/ forged documents and registration of the impugned Range Rover car in the names of Bhaiyasaheb Eknath Khandare and Shri Joe Joseph in whose names the said car was registered at Nurpur, RLA, Himachal Pradesh and at Ziro, RTO, Arunachal Pradesh. They had also played a crucial role in finding the prospective customers and selling the high-end cars smuggled by the mastermind Rehman Iqbal Ahmed Shaikh. I also find that Shri Suriya himself had purchased a Range Rover Sports car from Nipun Miglani which was fraudulently imported by the mastermind Rehman Iqbal Ahmed Shaikh in the name of a diplomat of the Royal Embassy of Cambodia in New Delhi. I also find that for their prominent role played in the said conspiracy, Shri Nipun Miglani and Shri Suriya were also arrested by the DRI under Section 104 of the Customs Act and were in judicial custody for 60 days before getting bail.

47.9 In view of the foregoing, I find that Shri Nipun Miglani, Shri Suriya and Shri Arjun Miglani have aided and abetted the mastermind in smuggling the luxury cars including the impugned Range Rover car and registering/selling the same in the open market to non-privileged persons. Thus, they had a reason to believe that the impugned car was liable to confiscation. Therefore, I find that all the above mentioned acts of omission and commission on part of Shri Nipun Miglani, Shri Suriya and Shri Arjun Miglani 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 Shri Nipun Miglani, Shri Suriya and Shri Arjun Miglani areliable to penalty under the provisions of Section 112(a) and 12(b) of the Customs Act, 1962.

Issue of imposition of penalty on Shri Aubrey Elias D'Souza and Shri Som Prakash Naval Bhatia under Sections 112(a) & 112(b) of the Customs Act, 1962

48. It is seen that the impugned SCN has proposed penalty on Shri Som Prakash Naval Bhatia and Shri Aubrey Elias D'Souza under Sections 112(a) and 112(b) of the Customs Act, 1962 alleging that they were the representative of the Customs Broker who had cleared the impugned imported Range Rover car.

48.1 In his defence, Shri Som Prakash Naval Bhatia has inter alia contended that the genuineness of Certificate for duty exemption issued by the MEA in terms of Notification No. 03/1957-Cus dated 08.01.1957 has not been doubted and that it is a well settled principle that the sovereign can do no wrong and when any documents issued by the Sovereign Authority (MEA) is produced before any prudent person, it would not be believed to be wrong by such person. Similarly, there could not have been any doubt regarding the person who is importing the impugned goods as the said person was a Diplomat who was posted to India to promote the Sovereign relations of India with foreign country. They being Customs Broker and not the importer have not committed or omitted to do anything which renders the goods liable for confiscation under Section 111(j) and 111(o) of the Customs Act, 1962. It is also contended that a Customs Broker is not required to deliver the goods at the place of person who has imported the goods, his professional duty is over after the documentation work is complete and the proper officer gives an order for 'out of charge' of the goods for home consumption. After 'out of charge' order is given by the proper officer under Section 47 of the Customs Act, 1962, it is the owner of the goods or his authorized agent who has to take delivery of the goods and the Customs Broker has no role to play to deliver the goods at the destination of the importer. The subject Range Rover car was delivered to the importer, they had received a duly signed and stamped acknowledgement from them on the Delivery Challan also. Therefore, no penalty under Section 112(a) & 112(b) of the Customs Act, 1962 is imposable on them. They have also cited a couple of case laws and orders in support of their claim.

48.2 Aubrey Elias D'Souza, in his defence, has *inter alia* contended that in the present case, the Range Rover car was cleared by Customs Broker M/s. Navalson Logistics vide Bill of Entry No.9356843 dated 28.10.2020. The documents viz, Prior Approval from MEA and Exemption Certificate received via email from the Embassy were forwarded to Shri Som Prakash Naval Bhatia of M/s. Navalson Logistics. Based on the said documents, the BoE was assessed by the proper officer granting the benefit of Notification. The goods were cleared after examination and obtaining OCC on 02/11/2020. No discrepancy was raised by the officer in respect of the genuineness and authenticity of the documents. The said documents were also accepted by DRI in the investigation as true, correct, genuine and authenticated. The goods were cleared after an OOC given by the proper officer. Therefore, Section 111(j) is not applicable in the present case. The delivery challan was returned to them after endorsing the signature of the attaché and the stamp of the Embassy of having received the car. It is well settled that once the goods are handed over after clearance from the customs area to the transporter or the representative of the importer, the Customs Broker has no role to play and cannot be held responsible for post-clearance activities unless any evidence involving him/her in deliberate evasion of customs duty. Hence, the provision of Section 111(o) is not attracted and not applicable.In view of above, he has contended that he had not committed any act or omission rendering the car liable for confiscation under Section 111 of the Customs Act 1962. As a result, penal provisions as laid down under Section 112 of the Customs Act are also not attracted and cannot be imposed invoking penalty. 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.
iii) Order in Appeal No. 485 (Gr. VB)/2025(JNCH)/Appeals dated 15/04/2025

48.3 I find that the impugned car was imported and cleared at JNCH, Nhava Sheva through Bill of Entry No. 9356843 dated 28.10.2020 which was dealt by Customs Broker Shri Som Prakash Naval Bhatia of M/s. Navalson Logistics. I further find that the said job of clearance of the impugned car was assigned/transferred to Shri Som Prakash Naval Bhatia by Shri Aubrey Elias D'souza, another Customs Broker as due to the onset of COVID-19, Shri Dsouza was not taking any documents. On going through the impugned SCN and statements of Shri Som Prakash Naval Bhatia and 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 underNotification no. 03/1957-Cus, dated 08.01.1957 were received by Shri Dsouza through email from the concerned embassy. I find that the documents such as Prior Approval from MEA No. D.VI/451/2 (62)/2020 dated 20/09/2020, Exemption Certificate No. 10/NS/19/2020 dated 19/10/2020issued by MEA, Self-Certificate of the diplomat Mr. Nebras Soliman, etc. were received by them from the concerned Embassy for import of the impugned car in the name of the diplomat. Further, I also find that the genuineness of the said documents has not been disputed by the department. Further, I also find that the delivery Challan issued by Shri Som Prakash Naval Bhatia of M/s. Navalson Logistics to the diplomat Mr. Nebras Solimanwas duly signed by Mr. Nebras Soliman acknowledging the receipt of the impugned car by him. 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 the said Customs Brokers by the co-noticees involved in the conspiracy. As such, I find that the charges leveled against Shri Som Prakash Naval Bhatia and Shri Aubrey Elias D'souza in the impugned SCN are not sustainable.

48.2 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 the said Customs Brokers viz.,Shri Som Prakash Naval Bhatia and Shri Aubrey Elias D'souza were 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 their role or involvement in the diversion of the impugned car. Thus, I find that collusion on the part of Shri Som Prakash Naval Bhatia and Shri Aubrey Elias D'souzawith 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 Shri Som Prakash Naval Bhatia as per law. The impugned SCN also does not allege their role in the diversion of the car post-clearance. Further, I find that as a Customs Broker, their responsibility was restricted only upto theclearance of the car from Customs which was performed by him following due process of law. I therefore find that Shri Som Prakash Naval Bhatia and Shri Aubrey Elias D'souza are not liable for imposition of penalty under Section 112(b) of the Act. 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, OIA No.484 (Gr. VB)/2025(JNCH)/Appeals dated 15/04/2025, and OIA No. 485 (Gr. VB)/2025(JNCH)/Appeals dated 15/04/2025 has set aside the imposition of penalty on the Customs Broker. I therefore find that Shri Som Prakash Naval Bhatia and Shri Aubrey Elias D'souza are not liable for imposition of penalty under Section 112(a) and 112(b) of the Act.

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

ORDER

(i) I order to confiscate the impugned goods i.e., 'Range Rover car bearing Chassis No. SALGA3AE7KA526395' imported vide Bill of Entry No. 9356843 dated 28.10.2020 having total assessable value of Rs.30,81,375/- under section 111(j) and 111(o) of the Customs Act, 1962. However, since the said impugned goods i.e., 'Range Rover car' has already been disposed of, 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.62,86,005/- (Rupees Sixty-two Lakhs Eighty-six Thousand and Five only)** and order to recover the same from Mr. Nebras Soliman, the then Attache, Embassy of the Syrian Republic 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.62,86,005/- (Rupees Sixty-two Lakhs Eighty-six Thousand and Five only)** on Mr. Nebras Soliman, the then Attache, Embassy of the Syrian Republic under Section Section 114A of the Customs Act, 1962;

(iv) I impose penalty of **Rs. 30,00,000/-** (Rupees Thirty Lakhs only) on Mr. Nebras Soliman, the then Attache, Embassy of the Syrian Republic 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)(ii) 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)(ii) 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)(ii) 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)(ii) 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 Mohammed Wasim Abdul Gani Siddique under Section 112(a)(ii) of the Customs Act, 1962. I also impose penalty of **Rs. 6,00,000/-** (Rupees Six Lakhs only) on Shri Mohammed Wasim Abdul Gani Siddique under Section 112(b)(ii) of the Customs Act, 1962.

(x) I impose penalty of **Rs. 15,00,000/-** (Rupees Fifteen Lakhs only) on Shri Mohammed Wasim Abdul Gani Siddique under Section 114AA of the Customs Act, 1962.

(xi) I impose penalty of **Rs. 6,00,000/-** (Rupees Six Lakhs only) on Shri Rajeev Sood under Section 112(a)(ii) 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)(ii) of the Customs Act, 1962.

(xii) I impose penalty of **Rs. 6,00,000/-** (Rupees Six Lakhs only) on Shri Manjeet Maurya under Section 112(a)(ii) of the Customs Act, 1962. I also impose penalty of **Rs. 6,00,000/-** (Rupees Six Lakhs only) on Shri Manjeet Maurya under Section 112(b)(ii) of the Customs Act, 1962.

(xiii) I impose penalty of **Rs. 6,00,000/-** (Rupees Six Lakhs only) on Shri Nipun Miglani under Section 112(a)(ii) of the Customs Act, 1962. I also impose penalty of **Rs.6,00,000/-** (Rupees Six Lakhs only) on Shri Nipun Miglani under Section 112(b)(ii) of the Customs Act, 1962.

(xiv) I impose penalty of **Rs. 6,00,000/-** (Rupees Six Lakhs only) on Shri Suriya under Section 112(a)(ii) of the Customs Act, 1962. I also impose penalty of **Rs.6,00,000/-** (Rupees Six Lakhs only) on Shri Suriyaunder Section 112(b)(ii) of the Customs Act, 1962.

(xv) I impose penalty of **Rs. 6,00,000/-** (Rupees Six Lakhs only) on Shri Arjun Miglani under Section 112(a)(ii) of the Customs Act, 1962. I also impose penalty of **Rs.6,00,000/-** (Rupees Six Lakhs only) on Shri Arjun Miglani under Section 112(b)(ii) of the Customs Act, 1962.

(xvi) I do not impose penalty on Shri Aubrey Elias D'Souza and Shri Som Prakash Naval Bhatia under Sections 112(a) and 112(b) of the Customs Act, 1962.

50. 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/10-172/2023-24/CC/NS-V/CAC/JNCH

To,

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Copy to:-

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