

OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-V)  
सीमाशुल्कआयुक्त (एनएस - V) कार्यालय  
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA,  
जवाहरलालनेहरुसीमाशुल्कभवन, न्हावाशेवा,  
TALUKA - URAN, DISTRICT - RAIGAD, MAHARASHTRA -400707  
तालुका - उरण, जिला - रायगढ़, महाराष्ट्र 400707

DIN -20260278NX00002227E8

Date of Order: 27.02.2026

F. No. S/10-178/2023-24/Commr./NS-V/CAC/JNCH

Date of Issue: 27.02.2026

SCN No.: 1376/2022-23/COMMR/ NS-V/CAC/JNCH

SCN Date: 16.11.2022

Passed by: Sh. Anil Ramteke

Commissioner of Customs, NS-V, JNCH

Order No: 401/2025-26/COMMR/GR.VB/NS-V/CAC/JNCH

Name of Noticees: Mr. Kye Chun Yong & Others.

**ORDER-IN-ORIGINAL**

**मूल - आदेश**

1. The copy of this order in original is granted free of charge for the use of the person to whom it is issued.

1. इस आदेश की मूल प्रति की प्रतिलिपि जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।

2. Any Person aggrieved by this order can file an Appeal against this order to CESTAT, West Regional Bench, 34, P D'Mello Road, Masjid (East), Mumbai - 400009 addressed to the Assistant Registrar of the said Tribunal under Section 129 A of the Customs Act, 1962.

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम 1962 की धारा 129 (ए) के तहत इस आदेश के विरुद्ध सी.ई.एस.टी.ए.टी., पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीजनल बेंच), 34, पी. डी.मेलो रोड, मस्जिद (पूर्व), मुंबई - 400009 को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

3. Main points in relation to filing an appeal:-

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

Form - Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy).

फार्म - सीए3, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कम से कम एक प्रति प्रमाणित होनी चाहिए).

**Time Limit** - Within 3 months from the date of communication of this order.

**समय सीमा** - इस आदेश की सूचना की तारीख से 3 महीने के भीतर

**Fee -फीस-**

(a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less.

(क) एक हजार रुपये जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख

रुपये या उस से कम है।

- (b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 Lakh.
- (ख) पाँच हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये से अधिक परंतु 50 लाख रुपये से कम है।
- (c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.
- (ग) दस हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 50 लाख रुपये से अधिक है।

**Mode of Payment** - A crossed Bank draft, in favor of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.

**भुगतान की रीति** – क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीय कृत बैंक द्वारा सहायक रजिस्ट्रार, सी.ई.एस.टी.ए.टी., मुंबई के पक्ष में जारी किया गया हो तथा मुंबई में देय हो।

**General** - For the provision of law & from as referred to above & other related matters, Customs Act, 1962, Customs (Appeal) Rules, 1982, Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 may be referred.

**सामान्य** - विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, 1962, सीमाशुल्क (अपील) नियम, 1982, सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, 1982 का संदर्भ लिया जाए।

4. Any person desirous of appealing against this order shall, pending the appeal, deposit 7.5% of duty demanded or 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 129E of the Customs Act 1962.

4. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उसमें माँगे गये शुल्क अथवा उदगृहीत शास्ति का 7.5 % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमाशुल्क अधिनियम, 1962 की धारा 129 E के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

**Subject: Adjudication of Show Cause Notice No. 1376/2022-23/COMMR/ NS-V/CAC/JNCH dtd. 16.11.2022 issued to Mr. Kye Chun Young & Others. – reg.**

## **1. BRIEF FACTS OF THE CASE**

**1.1** It is stated in the Show Cause Notice (SCN) No. **1376/2022-23/COMMR/ NS-V/CAC/JNCH dtd. 16.11.2022** that 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 said cars 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.

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

**1.2.** 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.

1.3. 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 consignment of Toyota Lexus car bearing Chassis No. URJ2014207089 vide Bill of Entry No. 62 dated 16.09.2016 in the name of **Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea**, however, the said car was not registered in the name of privileged person. The details of the vehicle and the said import as per the said Bill of Entry are tabulated as under:

**Table No-1**

<b>Bill of Entry No. &amp; Date</b>	62 dated 16.09.2016
<b>IGM No.</b>	2145621 dated 29.08.2016
<b>Bill of Lading No. &amp; Date</b>	957588503 dated 24.08.2016
<b>Invoice No. &amp; Date</b>	Nil dated 09.08.2016
<b>Description of goods</b>	Toyota Lexus; Model 2015 Colour: Black
<b>Chassis No.</b>	URJ2014207089
<b>Assessable Value (in Rs.)</b>	Rs. 54,09,374/-
<b>Duty</b>	Nil, as cleared availing exemption Notification No. 03/1957 dated 08.01.1957
<b>Customs Station</b>	INNSA1
<b>Customs Broker Name</b>	Babaji Khimji & Co.(AAAFB6900GCH001)

1.4 It was further observed that the said Toyota Lexus car bearing chassis Chassis No. URJ2014207089 which had been imported vide Bill of Entry No. 62 dated 16.09.2016 in the name of **Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea** without payment of duty by availing the benefit of the Customs duty exemption Notification No. 03/1957-Cus dated 08.01.1957, was not registered in the name of the said diplomat/ privileged person through MEA in violation of the conditions of Customs Notification No. 03/1957 dated 08.01.1957. It was also observed that the said Bill of Entry No. 62 dated 16.09.2016, in the name of **Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea**, was filed by the Customs Broker, Babaji Khimji & Co.

1.5 The investigation further revealed that the said Lexus LX570 car was never registered in the name of the privileged person **Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea**, as per records of the MEA provided vide their letter dated 27.08.2021.

## **1.6 SEIZURE AND THE SCOPE OF THIS INVESTIGATION REPORT**

**1.6.1.** Acting on the above-discussed intelligence, Shri Amer Abdullah was summoned before the Senior Intelligence Officer of DRI Hyderabad Zonal Unit on 19.05.2022, wherein he informed the officer that he was in possession of a Black Toyota Lexus car bearing chassis No. URJ2014207089 and the said car was at his home town in Kamareddy district, Telangana. Shri Amer Abdullah also submitted a copy of Registration Certificate (in the name of Effie Timothy D'silva) pertaining to the said Toyota Lexus car and undertook that he would produce it in connection with the investigation as and when required. Subsequently, the said Toyota Lexus car was produced at the DRI Hyderabad Zonal Unit office on 20.05.2022 by Shri Amer Abdullah. Thereafter, the said Toyota Lexus car bearing chassis No. URJ2014207089 was detained by the officers of DRI and the proceedings were recorded under Panchanama dated 20.05.2022. The said vehicle Toyota Lexus (chassis No. URJ2014207089), bearing Registration no. PB 65 AE 0786, was imported in the name of foreign diplomat Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea, New Delhi by availing the benefit of the exemption Notification No. 03/1957- Cus dated 08.01.1957 and was found to be registered in the name of a non-privileged person, Effie Timothy D'silva. As the vehicle Toyota Lexus, imported in the name of a foreign diplomat, had been disposed of in contravention of the conditions of Notification No. 03/1957 dated 08.01.1957 and was found in the possession of Shri Amer Abdullah, a non—privileged person, it appeared liable for confiscation under the provisions of the Customs Act 1962. Accordingly, the officer of DRI, Mumbai Zonal Unit seized the said Toyota Lexus car bearing Registration No. PB 65 AE 0786 under the Seizure Memo dated 20.05.2022. The representative photos of the said seized Toyota Lexus were mentioned in the subject SCN. The same are not reproduced in this Order-in-Original for the sake of brevity.

**1.6.2.** The scope of the present Investigation Report is limited to the seizure of the said Toyota Lexus bearing Registration no. PB 65 AE 0786 (Chassis No URJ2014207089) seized by DRI, Mumbai Zonal Unit, proposing its confiscation, imposition of penalties and demand of customs duty and interest thereon.

## **1.7 PROVISIONAL RELEASE OF THE VEHICLE**

**1.7.1.** The said Toyota Lexus car was seized from the possession of Shri Amer Abdullah. Shri Amir Abdullah, vide letter dated 06.06.2022, requested for provisional release of the seized car.

**1.7.2.** The jurisdictional Commissioner of Customs, Nhava Sheva-V, JNCH, vide Order No. 08/PR/SB/2022 provisionally released the car, imported vide Bill of Entry No. 62 dated 16.09.2016, seized vide Seizure Memo dated 20.05.2022, on fulfillment of the following conditions,

- i. Payment of differential duty amounting to Rs. 1,10,35,123/- (Rupees One Crore Ten Lakhs Thirty-Five Thousand One Hundred and Twenty-Three Only).
- ii. Execution of a Bond for Rs. 54,09,374/- (Rupees Fifty-Four Lakhs Nine Thousand Three Hundred and Seventy-Four Only).

iii. Execution of a Bank Guarantee of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs Only).

Shri Amer Abdullah, did not comply with the conditions specified in the order for provisional release. So, the said Toyota Lexus Car was not released to him.

**Enquiry made with MEA**

1.8. As the import of the said Toyota Lexus 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. Kye Chun Yong** for the import of the said Toyota Lexus car bearing Chassis No. URJ2014207089 were obtained from MEA.

1.9 On going through the said documents obtained from MEA, it was observed that **Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea**, vide Note Verbale No. 96 dated 10.08.2016, had requested the Ministry of External Affairs, New Delhi to grant Prior Approval for the import of the vehicle Toyota Lexus LX (Model-2015). The MEA vide letter no. D.VI/451/2(75)/2016/3877 dated 11.08.2016 conveyed Prior Approval to the embassy of the Democratic People's Republic of Korea for import of said vehicle for personal use along with the instructions that the said vehicle was to be registered within one month from the date of its import and a copy of the vehicle registration certificate was to be sent to the Ministry.

1.10 Thereafter, the Embassy of the Democratic People's Republic of Korea, for Mr. Kye Chun Yong, vide letter No. 116 dated 08.09.2016, requested the MEA for an Exemption Certificate for availing exemption from payment of customs duty on the said vehicle and also declaring particulars like Make, Model, Engine No., Chassis No. & Bill of Lading number with date etc. therein. Thereafter, MEA issued an Exemption Certificate, vide Serial No. KEY/08/2016 dated 08.09.2016. On the basis of the said Exemption Certificate, the said Toyota Lexus was imported into India vide Bill of Entry No. 62 dated 16.09.2016 (IGM: 2145621 dated 29.08.2016) 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.

1.11 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. Kye Chun Yong** through MEA to appear on 02.12.2021 before the DRI officer. The said letter was forwarded by MEA on 25.11.2021 to the the embassy of the Democratic People's Republic of Korea. In response to the said Summons dated 11.11.2021, the Embassy of Democratic People's Republic of Korea, vide their reply No. 104-19

dated 29.11.2021, informed that embassy will not be responsible for Mr. Kye Chun Yong who has already left India.

**1.12** Thereafter, since the vehicle was not registered in the name of **Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea**, Mr. Kye Chun Yong was informed vide letter dated 25.01.2022 through MEA to pay the requisite Customs Duty by citing the provisions of Rule 4A and Rule 5 of the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957 read with the provisions of the Customs Act, 1962.

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

**1.13.** 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. The above-mentioned Toyota Lexus car having Chassis No. URJ2014207089 was imported and cleared through Bill of Entry No. 62 dated 16.09.2016 (IGM: 2145621 dated 29.08.2016) filed by Customs Broker, M/s. Babaji Khimji & Co.

**1.14** Statement of Shri Amer Abdullah, from whose possession the said Toyota Lexus car was seized, was recorded under the provisions of Section 108 of the Customs Act, 1962 on 19.05.2022 wherein he, inter alia, stated that:

- (i) He was the Managing Partner of the firm, M/s Himaja Infrastructure and Developers, engaged in Real Estate Business i.e., Plotting of Land and Sales in the State of Telangana.
- (ii) He had purchased a second-hand Four Wheeler Vehicle i.e., One Toyota Lexus (Black) bearing Registration No. PB65AE0786 (Chassis No. URJ2014207089, Engine No.207089) from Shri Amjad, (Mobile No. 9100001786, Jubilee Hills, Hyderabad), after paying Rs.50,00,000/- as a part of total Sale Consideration of Rs.85,00,000/- and the balance amount Rs.35,00,000/- was yet to be paid.
- (iii) The Vehicle Registration Certificate was issued in the name of Effie Timothy Dsilva having address at 1786, Aman Colony, Kharar, SAS Nagar.
- (iv) Though, he paid major portion of the sale consideration and was using the vehicle since July 2021, he did not get it registered in his name till date.
- (v) He admitted that it was his responsibility as well to get the vehicle registered in his name before using the vehicle.
- (vi) He knew Mr. Amjad since three years; that though he (Amer) had been pressing him (Amjad) for transferring the vehicle, he (Amjad) did not process the documentation as he (Amer) did not pay the balance amount and there was laxity from both sides.
- (vii) There was no documentary agreement between them for the above transaction and it was only on oral agreement and after paying an amount of Rs.50,00,000/- through bank transfer to Mr. Amjad's account, he had started using the vehicle.

(viii) Presently, the vehicle i.e., Toyota Lexus (Black) having Registration No. PB65AE0786, was in his home town, Kamareddy and he would produce the same in connection with the present investigation, as and when required.

**1.15** Statement of Shri Amjad Khan, who had procured the Toyota Lexus car bearing Regn No. PB 65 AE 0786 from Nipun Miglani, was recorded under the provisions of Section 108 of the Customs Act, 1962 on 19.05.2022 wherein he, inter alia, stated that:

- (i) He was born and brought up in Hyderabad; that he did MBBS from Deccan College of Medical Sciences, Hyderabad in the year 2005-06 and emergency medicine diploma from Apollo Hospitals, Hyderabad in the year 2007.
- (ii) He was working as a director in the following companies
  - a. M/s Luminous Spaces Pvt. Ltd
  - b. M/s Urban Luminous Pvt. Ltd.
  - c. M/s Axis Avenues Pvt. Ltd.
  - d. M/s Tin Tai Asia Cafes.
- (iii) On being asked about one Toyota Lexus car bearing Registration No. PB 65 AE 0786, he stated that he had purchased the said vehicle from one Shri Nipun Miglani in January 2017.
- (iv) He knew Shri Nipun since 2003-04 as he met him (Nipun) then, as a CEO of Big Boy Toyz when he had purchased a used Range Rover car from Shri Jatin Ahuja of Big Boy Toyz and the payment was made to BBT account.
- (v) Shri Nipun regularly visited Hyderabad and approached people with Luxury cars enquiring them about their requirements of sale/purchase of luxury cars.
- (vi) He had one Gray Metallic Lamborghini Murcielago, which he earlier purchased for an amount of about Rs. 1.45 Crores as a third owner in the year 2011-12 from one Shri Moin Motiwalla (a close friend) based in Mumbai.
- (vii) He put up the said car for sale in his close circle.
- (viii) Shri Nipun Miglani somehow came to know about his Lamborghini car and approached him in the end of year 2016 with an offer of buying the same, since his offer was very low, he had declined his (Nipun) offer;
- (ix) that the very next day Shri Nipun approached him again and offered a Black Toyota Lexus (2015) in exchange of the Lamborghini car along with an additional sum of Rs. 12 Lakhs.
- (x) He informed Nipun that, he would inspect the car and then finalize the deal;
- (xi) that he visited Chennai to inspect the said Lexus car offered by Nipun;
- (xii) that Shri Nipun had sent the car with his person to Park Hotel, Chennai for inspection;
- (xiii) that on being satisfied he finalized the deal with Nipun and they had a verbal agreement of key to key exchange of both the cars (Lamborghini in exchange of Lexus);
- (xiv) that Shri Nipun had valued both the cars at Rs. 1.4 Crores which was satisfactory to him;

- (xv) that Shri Nipun had handed him the original RC (registration certificate), Complete Transfer set forms duly signed by the RC owner and set of 2 original keys along with the said car.
- (xvi) He had also asked Nipun for indemnity bond and a sale receipt in respect of the said Toyota Lexus car bearing Registration No. PB 65 AE 0786, to which Nipun informed him that he (Nipun) would first get the Lamborgini checked mechanically and if everything was proper then he will issue a sale receipt along with indemnity bond.
- (xvii) Around March 2017 Nipun informed him that the Lamborgini had major mechanical issues and asked him for an additional Rs. 10-12 Lakh for the repairs;
- (xviii) that he informed Nipun that he would only pay an additional amount after getting the sale receipt along with indemnity bond in respect of the said car (Lexus).
- (xix) After that incidence Shri Nipun never approached him, neither answered his calls.
- (xx) He had been using the said black Lexus car for about 4 and a half years and wanted to sell it off as he had used it for a considerable amount of time.
- (xxi) He sold the said car (Lexus) in May 2021 to one Shri Amer Abdullah (Mobile no. 9160266666, 9397333334) resident of Flat 404, A-Block Aditya Elite Apartments, beside Kirtilals' fine Diamond and Gold Jewellery Somajiguda, Begumpet, Hyderabad, 500016, for a consideration amount Rs 85 Lakhs; that an amount of Rs. 50 Lakhs was transferred by Shri Amer Abdullah in his personal bank account of Canara bank at the time of sale and the remaining Rs. 35 Lakhs was still pending, to be transferred once RC is registered in the name of Shri Amer Abdullah.
- (xxii) He handed over the entire set of documents, including both keys, to Shri Amer Abdullah at the time of sale and did not have any documents pertaining to the said Lexus car available with him then.
- (xxiii) He identified Nipun Miglani from whom he purchased the Black Toyota Lexus car bearing Regn No. PB 65 AE 0786.

**1.15.1** Statement of Shri Amjad Khan was again recorded under the provisions of Section 108 of the Customs Act, 1962 on 02.11.2022 (**RUD No. 14**) wherein he, inter alia, stated that:

- (i) He submitted a copy of the screenshot of transaction of Rs. 50 Lakhs dated 06.07.2021 received from Shri Amer Abdullah in respect of the sale of the Toyota Lexus car bearing Regn No. PB 65 AE 0786.
- (ii) He submitted a copy of the RTO set of documents that he received from Shri Nipun Miglani at the time of procurement of the Toyota Lexus car bearing Regn No. PB 65 AE 0786.
- (iii) He did not receive any invoice/documents other than the said submitted documents while receiving the car.
- (iv) Gray Metallic Lamborgini Murcielago, mentioned in his earlier statement (19.05.2022), was having the registration number DL 2F GX 0006, which was handed over to Shri Nipun Miglani as a consideration against the above mentioned Toyota Lexus car (PB 65 AE 0786); he did not have any other documents in respect of the said Lamborgini car.
- (v) He submitted a print out of one photo of the Lamborgini car, that was available with him.

**1.16. Statement of Nipun Miglani** (hereinafter also referred to as Nipun), recorded under the provisions of Section 108 of the Customs Act, 1962 on 15.07.2021 wherein he, inter alia, stated that:

- (i) He joined Big Boy Toys (BBT) owned by S. L. Ahuja (chairman) & Jatin Ahuja (Managing Director & promoter) in the year 2012 as Director (Sales) and was, at that time, working as Chief Executive Officer (CEO) and his responsibilities as CEO were to source cars for BBT from all over India through his dealer's network and, to later sell them to interested customers after refurbishing;
- (ii) The names of his dealers were Rehman Shaikh, Jung Bahadur Singh, Charan Jeet Singh, Heera Singh, Haji Bhai and others from Mumbai;
- (iii) The car pictures and documents were shared with him on Whatsapp from the dealers which were then forwarded to the prospective clients;
- (iv) He was introduced to Rehman Iqbal Shaikh in the year 2010 by another dealer.
- (v) Rehman Iqbal Shaikh contacted him and asked if he could help him (Rehman) to sell imported cars;
- (vi) He agreed to Rehman Shaikh's proposal and, then, Rehman introduced him to Liyaqat Bachu Khan who used to take care of handing over all the documents of imported cars.
- (vii) He used to communicate with Liyaqat Bachu Khan mostly through WhatsApp calls on his mobile number 9833996955.
- (viii) He used to get details of cars such as Make, Model, Year of Manufacture, Engine Cubic Capacity, Fuel variant and expected price from Rehman Iqbal Shaikh 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 Liyaqat Bachu Khan;

**1.16.1** Statement of **Nipun Miglani** was again recorded under the provisions of Section 108 of the Customs Act, 1962 on 17.07.2021 wherein, on being specifically asked about his association with Rajeev Sood, he, inter-*alia*, said that he had known Rajeev Sood since 2007 or 2008 as he was a car dealer but so far he had not done any business with Rajeev Sood. Later on, he saw Rajeev Sood once with Rehman when he came to Delhi and then he came to know that Rajeev Sood was also working for Rehman. On being asked about the role of Rajeev Sood, he said that Rajeev Sood might be doing the import documentation work with Manjeet for Rehman.

**1.16.2** Statement of **Nipun Miglani** was again recorded under the provisions of Section 108 of the Customs Act, 1962 on 02.08.2021 (**RUD No. 17**) wherein he, inter alia, stated that:

- (i) He was introduced to Afzal Memon by Rehman Shaikh as a money handler of Rehman Shaikh and, that, Afzal Memon would help in the financial transactions of imported cars;
- (ii) On being asked about the accounts and other details of people in whose names money was deposited and received via Afzal on behalf of Rehman Shaikh for financial transactions, he provided the names of Shahid Katerwala, Shahbaz Memon, Fahim Surti, Surti Enterprises, World Wings Inc. (owned and managed by Afzal Memon), Wajdan Iftexhar Shaikh and Iftexhar Mohammad Ishaque Shaikh;

- (iii) He used to deposit/ receive the money from the accounts of the said people as per the details provided by Afzal on the instructions of Rehman Shaikh. On being asked as to how it was decided from which person transaction would be made, he informed that Rehman Shaikh used to instruct him to speak to Afzal Memon in whose account financial transactions for imported cars would be made;
- (iv) He used to instruct and advise Liyakat for editing/modifying various documents required for the registration of the car so that they appear to be genuine and the cars could be easily registered without any legal hurdles and, that, they were forged for the sole purpose of obtaining registration of the said cars so that they could easily be sold in the open market thereafter;
- (v) In general, in all the documents, he used to instruct Liyakat about corrections/modifications for registration purposes and his chats in WhatsApp with Liyakat and attachments clearly show and infer the same.

**1.16.3** Statement of **Nipun Miglani** was again recorded under the provisions of Section 108 of the Customs Act, 1962 on 18.07.2022 (**RUD No. 18**) wherein he, inter alia, stated that:

- (i) On being shown one statement of Shri Amjad Khan dated 19.05.2022, he perused the said statement and put his dated signature.
- (ii) He had dealt with one Black Toyota Lexus bearing Regn No. PB 65 AE 0786 on the instructions of Rehman Iqbal Ahmed Shaikh.
- (iii) He had received the said car from Rehman Iqbal Ahmed Shaikh and had shown it to Mr. Amjad Khan.
- (iv) He had finalized the deal of key to key exchange of the said car (Toyota Lexus) with a Lamborgini car belonging to Amjad Khan.
- (v) After receiving the said Lamborgini car in exchange of the above mentioned Toyota Lexus, he booked it on a flat-bed trailer to be delivered to Rehman Iqbal Ahmed Shaikh from Hyderabad to Mumbai.
- (vi) He had no knowledge of what Rehman Iqbal Ahmed Shaikh had done with said the Lamborgini car.

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

- (i) He started working as a Commission Agent for diplomats of various embassies since 2019 and sourced things like furniture, household items, rental houses etc. for these diplomats and also assisted diplomats (who were willing to sell their personal cars imported by them through diplomatic channel) in finding customers;
- (ii) He was acquainted with Rehman Shaikh, who sourced goods from abroad and he in turn introduced Rehman Shaikh to the Diplomats of several embassies;
- (iii) Rehman Shaikh would negotiate the price and complete the documentation required for importing those goods through diplomatic channels;
- (iv) Rehman Shaikh used to give him commission for the same and he used to get Rs.

40,000/- to 50,000/- for the consignment of goods having value USD 7000 to USD 8000;

- (v) He used to provide him contact details, email id, visiting card etc. of new diplomats for business purposes i.e. sourcing of required goods such as furniture, house hold items, second hand cars etc.;
- (vi) Regarding the mode of information from the Ministry of External Affairs, he stated that he used to get information from one person named Shri Manjeet Maurya who was working as a clerical staff in the Ministry of External Affairs. After getting this information, he used to give details of those eligible Diplomats to Rahman Shaikh for business purposes and also provided details of Rahman 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.

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

- (i) In 2017 Rehman offered him a business proposal that he wanted to import duty-free goods viz. furniture, cars etc. in the name of foreign diplomats and asked his help in that business as he (Rajeev Sood) had sources in various embassies due to his car workshop business and he agreed for the same;
- (ii) For duty-free import, Rehman required two things- (1) Name of the foreign diplomat, who was ready to give his/her consent for duty free import of goods like cars, furniture etc. and (2) Information and other approval from MEA;
- (iii) He had contact in both foreign embassies and MEA;
- (iv) Whenever Rehman asked him the details of any foreign diplomat for duty-free imports, he used to visit foreign embassy and met 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

Liyakat 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.

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

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

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

**1.18** 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 the 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; that 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; 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.

**1.19** 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; that 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.
- (v) He used to take help of Mohammed Wasim Siddiqui for creating forged Bills of Entry in the same format and style as that of the original Bills of Entry. For example, one high-end luxury car was imported in the name of a diplomat with duty free exemption. Then, after import, he used to approach Mohammed Wasim Siddiqui for creating the new version of the same Bill of Entry with all the details almost the same except assessable value, showing duty payment instead of original duty exemption, change in name of the consignee. In the same way, a forged version of related invoices and duty challans were also created by him with the help of Mohammed Wasim Abdul Gani Siddique.
- (vi) On being asked about the reason for forging Bills of Entry, he stated that such Bills of Entry related to the import of high-end luxury imported cars were forged for the purpose of showing it to the customers of Rehman Shaikh for sale on high value. The high-end luxury cars were imported with duty free exemption available to diplomats and, then, diverted to the local market for sale, post registration of vehicles, by way of forging the original Bill of Entry by changing importer name and details, invoice details, duty paid details.
- (vii) He accepted that this re-creation/forging/changing of the original Bill of Entry amounts to forgery. Further, he admitted that Duty exempted Bill of Entry is changed to dutiable Bill of Entry, on the basis of which they get the imported luxury car, imported in the name of diplomat, registered and, then, sold in the local market at a substantial high value.

**1.19.1** 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) He used Wasim to forge various documents viz. Bills of Entry, Invoices, E-receipts etc. as per the instructions of Rehman Shaikh and paid Wasim amounts ranging from Rs. 500 to Rs. 2000 for the work.
- (ii) All the editing and forgery were done by him as per the instructions of Rehman Iqbal Shaikh and he used to ask Mohammed Wasim Abdul Gani Siddique to create duplicate documents in return for some monetary consideration.
- (iii) 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;
- (iv) 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;
- (v) 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.

**1.19.2** Further statement of Shri Liyakat Bachu Khan was recorded on 11.08.2022 under Section 108 of the Customs Act, 1962 wherein he, *inter alia*, stated that;

- (i) He was shown the statement of Shri Aubrey Elias D'Souza dated 12.07.2022. He perused the statement and put his dated signature on the same having agreed to its contents.
- (ii) On being asked about the circumstances in which the manual Bills of Entry (**B/E No. 62 dated 16.09.2016**) was filed prior to 2017 as tendered in his (Aubrey) statement, he stated that the Bill of Entry pertaining to the car imported in the name of embassy/consulate/ diplomats was filed on the instructions of Shri Rehman Iqbal Ahmed Shaikh.
- (iii) The necessary documents viz. invoice and Bill of Lading were provided by Rehman to him which he forwarded to Rajeev Sood for coordination at MEA.
- (iv) The payments in respect of the Customs Clearance were arranged and provided by Rehman.
- (v) He went to receive the imported cars after Customs Clearance at the docks on the instructions of Rehman Iqbal Ahmed Shaikh.
- (vi) On being asked about the delivery of the imported cars, he stated that the said cars were delivered to the addresses given by Rehman Iqbal Ahmed Shaikh.

**1.20** Statement of **Mohammed Wasim Abdul Gani Siddique** (hereinafter also referred to as Wasim), was recorded under the provisions of Section 108 of the Customs Act, 1962 on 14.07.2021 wherein he, *inter alia*, stated that;

- (i) Liyakat Bachu Khan had given him the work of editing documents which he did.
- (ii) He was having Carroll software on his computer on the basis of which he used to edit all the documents given by Liyakat Bachu Khan.
- (iii) The Invoices, some letters of Ministries, etc. have been forwarded to him by Liyakat Khan and he (Liyakat) used to give the direction to edit which he edited.
- (iv) Liyakat Khan gave 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 the value of the goods and he did the same as per his directions.

**1.20.1** Statement of **Mohammed Wasim Abdul Gani Siddique** was again recorded under the provisions of Section 108 of the Customs Act, 1962 on 03.11.2022 (**RUD No. 27**) wherein he, *inter alia*, stated that;

- (i) He was shown the below-mentioned documents in respect of one Toyota Lexus car bearing Chassis No URJ2014207089:
  - a. Copy of Form 22 certificate for compliance of emissions norms under the provisions of Motor Vehicles Act, 1988 by M/s Toyota Lexus Ltd. authorized dealer for Toyota Lexus Auto India, Haryana;
  - b. Copy of Sale Certificate in Form 21 by M/s G.K. Automobiles, authorised dealer for Toyota Lexus Auto India, Haryana for sale of Toyota Lexus LMV black colour Saloon Car with VIN URJ2014207089 in the name of Mrs. Effie Timothy Dsilva, #1786, Aman Colony, Kharar, Mohali, SAS Nagar, Punjab.
  - c. Copy of retail invoice No.294649 dated 28.06.2016 for sale of one Toyota Lexus-LX570 to Mrs. Effie Timothy Dsilva, #1786, Aman Colony, Kharar, Mohali, SAS Nagar, Punjab for an amount of Rs.1,40,35,668/- inclusive of VAT.
- (ii) On being asked about the above-mentioned documents, he stated that the above-mentioned were edited/forged by him on the directions of Shri Liyakat Bachu Khan.
- (iii) He was provided with the documents by Shri Liyakat Bachu Khan and he was asked to edit/ forge those documents as per the details provided by Shri Liyakat Bachu Khan.
- (iv) He used to get monetary consideration of Rs. 500/- to Rs. 1,000/- per document from Liyakat Bachu Khan

**1.21** In this regard, the statement of Shri Aubrey Elias D'sousa, representative of the said Customs broker firm who dealt with the said consignment of the said car, was recorded on 22.07.2021 wherein he, *inter alia*, stated that;

- (i) He was in the Customs Broking and Clearing and freight Forwarding profession for

the last 32 years. Initially, he started working in the clearance of unaccompanied baggage (UB).

- (ii) He knew Rehman Shaikh for the last 18 years and Rehman knew that he was in the line of clearing the unaccompanied baggage, so Rehman Contacted him 8 years ago for the job of clearance of imported cars from Customs in the name of diplomats.
- (iii) He told Rehman that documents should come from the official email ID of the embassy/consulate/ diplomats and all the documents should be signed and stamped by the embassy.
- (iv) Rehman told him about Liyakat Khan and he (Liyakat) used to get documents for import without stamp and sign to which he told Liyakat that for the proper import, he needed documents on email from embassy/diplomats with stamp and signature. On receiving the documents on email, he used to upload the documents on ICEGATE site for the generation of Bill of Entry. Generally, Liyakat Khan used to get delivery of imported cars from the CFS; that 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:-
  - Bill of Lading
  - Proforma Invoice/Invoice
  - Custom Duty Exemption Certificate with schedule having details of cars signed by diplomats
  - Ministry of External Affairs letter of Prior Approval for imports of cars in the name of embassy/consulate/diplomats
  - Diplomatic Identity Card
  - Letter of Authorisation for Customs broker for import of cars signed and stamped by embassy/consulate/diplomats.
- (vi) 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; that he had cleared in the name of diplomats a total 13 Imported cars from the year 2017, out of which 7 cars were imported on his Customs Broker license AAAFB690OGCHO0I (M/s Babaji Khimji & Company) and 6 cars were imported on other Customs Broker License. He provided the details of the said 13 Bills of Entry cleared by him.
- (vii) He charged Rs. 25,000/- per job (for every import) from Liyakat.
- (viii) All the bills were raised from M/s JP International to the diplomats which were paid to him by Liyakat Khan in cash on behalf of the diplomats.
- (ix) He 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.

**1.21.1** Further statement of Shri Aubrey Dsouza was recorded under Section 108 of the Customs Act on 12.07.2022 wherein he, inter alia, stated that:-

- (i) On being asked about the details of the cars imported in the name of embassy/consulate/ diplomats prior to the year 2017, he stated that he cleared 4 imported cars in the year 2016 on his CHA License AAAFB6900GCH001 (M/s. Babaji Khimji & Company) that were cleared as diplomatic cargo.
- (ii) The Bills of Entry in respect of the above cars were filed manually. The details of the above said 4 manual Bills of Entry are as follows:

Sl. No.	B/E and Date	Item Description	Importer/Embassy
1	62 dated 16.09.2016	Toyota Lexus	Kye Chun Yong, Ambassador, E/o DPR Korea
2	64 dated 11.11.2016	Range Rover Vogue	Yasser AH Dahaln, First Secretary, E/o State of Palestine
3	66 dated 29.03.2016	Toyota Vellfire	Han Jae Song, Counsellor, E/o DPR Korea
4	94 dated 31.05.2016	Range Rover Vogue	Ghassan Abdul Khaleek, Charge D Affairs, E/o Lebanon

- (iii) He submitted the self-certified copies of documents in respect of the above mentioned 4 Bills of Entry that were filed as diplomatic cargo by him.
- (iv) He received the job of clearance of the above mentioned 4 consignments under Customs Notification No. 03/1957 from Liyakat Bachu Khan.
- (v) He used to get all the requisite documents for filing of Bill of Entry viz. Bill of Lading, Invoice, Exemption Certificate, Prior Approval, Diplomatic identity card, Letter of Authorisation for CHA for import of cars etc. from the concerned embassy by courier, on the basis of which he used to file the Bill of Entry.
- (vi) Once the consignment was out of charged Liyakat used to come for receiving the said consignment on behalf of the concerned Embassy/consulate/diplomats.
- (vii) Thereafter, he (Liyakat) used to send him (Aubrey) the endorsed copy of the delivery challan once the car was delivered to the concerned diplomat.
- (viii) He never asked Liyakat for any sort of authorization to collect the vehicle on behalf of the embassy/consulate/diplomat since all the job was received through the reference of Liyakat and he (Liyakat) used to coordinate with him for examination and delivery on behalf of the concerned embassy.
- (ix) Since EDI filing of the Bill of Entry attracted 1% NCCD by default and the said cars were diplomatic cargo exempted from duty, the Manual Bill of Entry was filed after seeking permission from EDI, Deputy Commissioner. On being asked, he stated that Ship stores, Transshipment, ATA Carnet, Diplomatic cargo etc. were allowed for manual filing of Bill of Entry after permission from DC, EDI.

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

**Analysis of evidence recovered and facts revealed during investigation:**

1.23. 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 Toyota Lexus car bearing Chassis No. URJ2014207089 was one among the said smuggled cars. The said Toyota Lexus car was imported into India vide Bill of Entry No. 62 dated 16.09.2016 (IGM: 2145621 dated 29.08.2016) 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. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea** who had submitted the required documents for obtaining the Exemption Certificate from MEA. The syndicate appeared to have diverted the said imported Toyota Lexus car into the open market for sale to a non-privileged person, instead of delivering it to the **Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea**. 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. Kye Chun Yong** 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.

1.24 It also appeared that the said Bill of Entry No. 62 dated 16.09.2016 (IGM: 2145621 dated 29.08.2016) in the name of **Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea** was filed by the customs broker, M/s. Babaji Khimji & Co.

1.25 It was also ascertained from the documents and records obtained from the MEA that Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea, had followed the necessary prescribed procedures in obtaining the necessary Prior Approval and Exemption Certificate for the import of Toyota Lexus car bearing Chassis No. URJ2014207089:

- (i) MEA letter no. D.VI/451/2(75)/2016/3877 dated 11.08.2016, conveying its Prior Approval to the Embassy of Democratic People's Republic of Korea, for import of said Toyota Lexus Lx(Model 2015) (model 2015) car for personal use, also conveyed 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.
- (ii) Letter No. 116 dated 08.09.2016 from the Embassy of Democratic People's Republic of Korea, for Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea requesting MEA for an Exemption Certificate for 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.

- (iii) MEA Exemption Certificate, vide Serial No. KEY/08/2016 dated 08.09.2016, on the basis of which the said Toyota Lexus vehicle having the said Chassis No. URJ2014207089 had been imported into India vide Bill of Entry No. 62 dated 16.09.2016.

**1.26** The above discussed letters and correspondences clearly indicate that all the necessary documents and permissions required for the purpose of duty-free import of the said Toyota Lexus were arranged by Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea and, then, he appointed Babaji Khimji & co. for the Customs clearance of the said vehicle and, also, to collect the Toyota Lexus car. Further, despite the fact that Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea, had explicitly mentioned in his correspondences made with the MEA that the said consignment was for his personal use and not for sale in the open market, the said Toyota Lexus car was found in the possession of a non-privileged person, Mr. Amer Abdullah. Thus, it appears that, after import, the said Toyota Lexus car was diverted into the local market by the smuggling syndicate led by Rehman Iqbal Ahmed Shaikh, which is a gross violation of the conditions of Notification No 03/1957 dated 08.01.1957 and the Exemption Certificate issued by the MEA.

**1.27.** After the import of the said Toyota Lexus car bearing Chassis No URJ2014207089 in September 2016, the said car was fraudulently registered by the syndicate in the name of a non-privileged person, Ms Effie Timothy D'Silva and sold to one Shri Amjad Khan (a non-privileged person) for a consideration of Rs 1.4 Crores (The sale deal was in the form Key to Key exchange of one Lamborghini Murcielago bearing registration No. DL 2F GX 0006 belonging to Shri Amjad Khan and the said Toyota Lexus car bearing Chassis No. URJ2014207089). The said deal of the car was finalized by Shri Nipun Miglani at the behest of Rehman Shaikh.

**1.27.1.** The Toyota Lexus car bearing chassis No URJ2014207089 was registered under registration No. PB 65 AE 0786 using the Invoice bearing No. 294649 dated 28.06.2016 issued by G. K. Automobiles (Authorised dealer of Toyota Lexus Auto India) and other sale documents issued by Toyota Lexus Ltd. The verification of the said documents was done from Toyota Kirloskar Motor Pvt Ltd. Subsequently, it was learnt that 'Toyota Lexus Ltd' mentioned in the attached invoice did not exist and that vehicles sold by Lexus India, a division of Toyota Kirloskar Motor Pvt Ltd. were sold through its authorized dealers and carried VIN number comprising of 17 digits but the VIN mentioned in the said documents had only 13 digits, thus suggesting foul play by the syndicate. The above documents were reproduced in the SCN but the same are not reproduced in this Order-in-Original for the sake of brevity.

**Analysis of statements:**

1.28. The analysis of statement of Shri **Amjad Khan**, tendered under Section 108 of the Customs Act, 1962, revealed that he had dealt with the members of the smuggling syndicate and purchased the said vehicle for a consideration amount of Rs. 1.4 Crores (The sale deal was in the form Key to Key exchange of one Lamborgini Murcielago bearing registration No. DL 2F GX 0006 belonging to Shri Amjad Khan and the said Toyota Lexus car bearing Chassis No. URJ2014207089). He had purchased the said car from Shri Nipun Miglani despite the fact that the said car was not in the name of Nipun. Further, He also used the car for more than 4 years without registering it in his name. Further, the documents submitted by him in his statement (Form 28, Form 29 and Form 30) were blank documents having signature on them. Shri Amjad informed that the said documents were RTO set of documents handed over to him by Nipun at the time of the deal of the said Toyota Lexus car. He has not shown his due diligence to ensure that the said forms(documents) were properly filled and the said Toyota Lexus car bearing Chassis No URJ2014207089 transferred in his name for the reasons best known to himself.

1.29. The analysis of the statement of Shri **Amer Abdullah**, tendered under Section 108 of the Customs Act, 1962 revealed that he had dealt with Shri Amjad Khan for procuring the Toyota Lexus car bearing Chassis No. URJ2014207089 even though the said car was not in the name of Amjad Khan. Further, he also used the said Toyota Lexus car for almost one year without registering it in his name, suggesting his malafide intent. He has not shown his due diligence to verify the veracity of all the documents in respect of the said car for the reasons best known to himself.

1.30. In the instant case it appears that the maxim of *Caveat Emptor i.e., Caveat emptor, quia ignorare non debuit quod jus alienum emit* is clearly applicable. It means "Let a purchaser beware; who ought not to be ignorant that he is purchasing the rights of another". It is one of the settled maxims, applying to a purchaser who is bound by actual as well as constructive knowledge of any defect in the thing purchased, which is obvious, or which might have been known by proper diligence. The buyer, according to the maxim, has to be cautious, as the risk is of the buyer and not that of the seller. In the present case, since the documents have been established to be forged or fake, obviously fraud was involved and Shri Amjad Khan and Shri Amer Abdullah, being the purchasers, have to take all the requisite precautions to find out the genuineness of the documents of the vehicle on the basis of which they are purchasing. When fraud is involved, in the eye of the law, the forged documents had no existence. Since they had not exercised due care about the bonafide of the documents while purchasing the said vehicle, consequences due to such negligence will follow. The said fraudulently imported vehicle was found in the possession of Amer Abdullah without registration in the name of a Privileged person. Further, both Amjad Khan and Shri Amer Abdullah had not made payments to the person in whose name the vehicle was registered. They both did not verify the genuineness of the invoice documents pertaining to the said Toyota Lexus car, thus evidencing that both Amjad Khan and Shri Amer Abdullah are concerned with the said fraudulently imported Toyota Lexus car.

1.31. The analysis of the statement of **Nipun Miglani**, tendered under Section 108 of the Customs Act, 1962 revealed that he was a prominent dealer in the field of sale and purchase of second-hand luxury cars and Rehman Iqbal Shaikh had approached Nipun Miglani for locating potential customers for the cars which were being illicitly imported by Rehman Iqbal Shaikh into the country. Since Nipun Miglani was a professional second-hand car dealer, he had a thorough knowledge of the documentation required for obtaining registration of cars and, therefore, he used to guide and direct Liyakat Bachu Khan in making forged documents for the illicitly imported cars. Further, in the instant case, Nipun Miglani had identified the buyer for Rehman Shaikh and managed to sell the said Toyota Lexus car that was imported in the name of a Diplomat to Shri Amjad Khan, a non-privileged person. Further, Shri Nipun also received the sale proceeds viz. Lamborgini Murcielago bearing registration No. DL 2F GX 0006 belonging to Shri Amjad Khan and arranged for its delivery to the syndicate and, thus, played a crucial role in the scheme of smuggling of luxury cars in the name of diplomats by Rehman Iqbal Ahmed Shaikh.

1.32. The analysis of the statements of **Liyakat Bachu Khan**, tendered under Section 108 of the Customs Act, 1962, revealed that he was a close confidant of Rehman Iqbal Shaikh and, after receiving the import documents from Rehman Iqbal Shaikh, he used to arrange the forged invoices/ import documents with the help of Wasim Siddiqui and, on the basis of the same, the imported cars were sold and/or registered in India. Liyakat used to coordinate the customs clearance and used to take the delivery of the car from the docks. After the clearance of the imported car, he delivered it to the address on instructions of Rehman Iqbal Shaikh.

1.33. The analysis of the statements of **Rajeev Sood**, tendered under Section 108 of the Customs Act, 1962, revealed that 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 in that business as Rajeev Sood had sources in various embassies. Rajeev Sood used his contacts in MEA and Embassies to reach out to 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 a 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 Rajeev Sood for monetary consideration. **Rajeev Sood**, with the help of **Liyakat Bachu Khan** who was also an accomplice of Rehman Shaikh, obtained necessary permission for customs clearance of the imported vehicles and, with the help of the Hawala agent Afzal Memon, he arranged the necessary funds for carrying out the said operation. He further paid the diplomats the amount ranging from 08 lakhs to 10 lakhs for providing their documents and permission to import the vehicles.

1.34. The analysis of the statements of **Wasim Abdul Gani Siddique**, tendered under Section 108 of the Customs Act, 1962, revealed that he used to forge documents such as invoices, letters of ministries etc. as per the instructions of Liyakat Bachu Khan. The said documents were provided to him by Liyakat and, in return for the forgery done by him, Liyakat used to give him amounts ranging from Rs. 500 to 1000 as per the editing required. In the instant case, Wasim had forged the Invoice/sale certificate in respect of the said Toyota Lexus car bearing Chassis No. URJ2014207089 as per the instructions given by Liyakat. The said documents were later used by the syndicate to fraudulently register the said car in the name of a non-privileged person and, later to sell it in the open market.

1.35. The analysis of the statements of **Shri Aubrey Elias D'souza**, the Customs Broker of Babaji Khimji & Company, tendered under Section 108 of the Customs Act, 1962, suggests that the import clearance job in respect of the above-mentioned Toyota Lexus car bearing Chassis No. URJ2014207089, was done by him for which he had charged Rs. 25,000/- which he received from Liyakat Bachu Khan in cash. As he was a Customs Broker, he was very well aware that the imported goods, when cleared, are required to be transported to the nominated person but instead, it was delivered to Liyakat as per the instructions of Rehman. He had dealt with multiple such clearances of Diplomatic Luxury cars and was fully aware of the Customs Exemption Notification No. 03/1975-Cus dated 08.01.1957 and the necessary procedures required for availing the benefit under the said notification. Shri Aubrey had a vital role in the Customs clearances of fraudulently imported Luxury cars imported in the name of Diplomats.

1.36. During the course of the financial investigation, it was revealed that the Toyota Lexus car was sold to Shri Amjad Khan in exchange of his Lamborghini Murcielago (Valued at Rs. 1.4 Crore). Thereafter, the said Lamborghini Murcielago was delivered to the syndicate.

1.37. Shri Amjad Khan had then sold the said Toyota Lexus to Shri Amer Abdullah for Rs 85 Lakhs (Rs 50 Lakhs paid directly to the account of Amjad Khan vide transaction dated 06.07.2021) and the remaining 35 Lakhs was balance pending the registration of the said car, which had not been paid till date.

### **The Modus-Operandi**

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

1.39 **Rajeev Sood** is one of the members of the syndicate, who is 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 deals. 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 he got the 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, driver and a close confidant of the mastermind Rehman Shaikh. Thereafter, Liyakat used to prepare all the necessary papers in prescribed formats for availing the exemption under notification No. 03/1957 and used to send 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.

**1.40. Liyakat Bachu Khan** is 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 of 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 under their authority letters and used to deliver the same to the addresses/persons as per the details provided by Rehman Shaikh. Once the car was cleared by Customs Authorities he used to instruct one Wasim Abdul Gani Siddhique to prepare forged documents pertaining to the car including:

- i. Forged Bill of Entry, wherein the details of the importer were different from the diplomats and the duty paid amount was reflected as per the normal rates.
- ii. Forged customs duty Challan copy in respect of the import of the car, even though neither such challan existed nor duty was paid.
- iii. Forged Indian invoice, to show that the said car was procured from a car dealer in India.
- iv. Forged invoice and Bill of Lading copies.

Thereafter, using these forged documents the luxury car used to be registered in the name of a non-privileged person. Liyakat used to liaison with other members of the syndicate and their various contacts in RTOs across India to get the cars registered. Liyakat Bachu Khan also coordinated the movement of these cars across India to various car dealers for display and sale of the same. Once the car was sold to the final buyer, he also collected money on behalf of Rehman Iqbal Shaikh in many cases and also handed over the commission to various car dealers as

instructed by Rehman Shaikh. Further, Liyakat Bachu Khan transferred the amounts that were received in his bank account in respect of the said smuggled cars and later diverted it into other bank accounts on instructions of Rehman Iqbal Shaikh.

**1.41. Nipun Miglani** 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 handing over all the documents of imported cars. He helped Liyakat Bachu Khan in the preparation of documents/invoices for smuggled vehicles. He identified the prospective buyers with the help of his own contacts and delivered the imported vehicles to those prospective buyers. In the instant case Nipun Miglani had identified the buyer for Rehman Shaikh and managed to sell the said Toyota Lexus car that was imported in the name of a Diplomat to Shri Amjad Khan, a non-privileged person. Further, Shri Nipun also received the sale proceeds viz. Lamborgini Murcielago bearing registration No. DL 2F GX 0006 belonging to Shri Amjad Khan and arranged for its delivery to the syndicate, apparently played a crucial role in the scheme of smuggling of luxury cars in the name of diplomats by Rehman Iqbal Ahmed Shaikh.

**1.42. 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 (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 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 prospective buyers. Wasim had received monetary consideration from Liyakat Bachu Khan for the said forgery done.

**1.43.** Investigations have revealed that this syndicate, led by Rehman Shaikh, has smuggled more than 20 Luxury cars such as Range Rover, Range Rover Vogue, Bentley, Nissan Patrol, Toyota Vellfire etc. using the Modus Operandi as explained above, thus evading Customs Duty and robbing the exchequer to the tune of several crores of rupees. They 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 are 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 are 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. This Investigation Report, however, is limited to the Toyota Lexus car bearing Chassis number URJ2014207089 smuggled and sold to a non-privileged person by the said modus operandi.

**Arrest of Liyakat Bachu Khan and Rajeev Sood**

1.44 Based on various evidences which revealed that Rehman Shaikh, presently based in Dubai, 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. Then his close confidant Liyakat Bachu Khan came into action and prepared the request letter to import the cars which have been forwarded to the diplomats, which are in turn sent by diplomats to MEA for permission and sanction orders have been obtained from MEA, on the basis of which the import documents have 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 the customs, forged papers were prepared by Liyakat Bachu Khan through Wasim and shown to prospective buyers. Nipun Miglani searched for the probable customers for the purchase of the smuggled cars. Nipun Miglani 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 a non-privileged person by using forged documents. After the finalisation of deal with the prospective buyers, the forged Bill of Entry indicating payment of duty, forged invoices, etc. have been shown to the buyers and high-end Luxurious cars are then sold to them. The investigation further confirms that Mohammed Wasim Abdul Gani Siddique, prepared the forged document at the behest of Liyakat Bachu Khan and admitted, during his statement recorded under the provisions of Section 108 of the Customs Act, 1962, 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, the cars were being registered in RTOs in India on the basis of forged documents. The recovery of incriminating documents/records from the mobiles of S/Shri Nipun Miglani, Liyakat Bachu Khan and Mohammed Wasim Abdul Gani and the recovery of Registrations Certificates of many such illicitly imported cars along with the statements recorded under the provisions of Section 108 of the Customs Act, 1962, it appeared that Liyakat Bachu Khan, Nipun Miglani and Rajeev Sood were involved in the fraudulent import of luxury cars in the name of diplomats and, were actively instrumental in getting the cars registered in the name of a non-privileged person. Therefore, Liyakat Bachu Khan was arrested at Mumbai on 15.07.2021 under the provisions of Section 104 of the Customs Act, 1962 and produced before the Court of Hon'ble First Class Judicial Magistrate, Uran Court, where he was remanded to Judicial Custody at Taloja Central Jail. Nipun Miglani was arrested on 15.07.2021 at Delhi and, under transit remand, produced before the Court of Hon'ble First Class Judicial Magistrate, Uran Court. Subsequently, considering the active role of Rajeev Sood and his active participation in the crime of illicit import of luxury cars, which tarnish the image of the nation, he was arrested on 18.07.2021 at Delhi and, under transit remand, produced before the Court of Hon'ble First Class Judicial Magistrate, Uran Court. Subsequently Rajeev Sood and Nipun Miglani were remanded to Judicial Custody at Taloja Central Jail. Subsequently, after completion of 60 days, the said accused were released on default bail.

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

1.45 It appears from the investigations carried out and various statements recorded that the privileged person Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea, appears to have joined hands with Rehman Iqbal Ahmed Sheikh and facilitated all the paperwork required for importing Toyota Lexus car bearing chassis No URJ2014207089 duty-free in his name by misusing his diplomatic status, which was later on found registered in the name of a non-privileged person, Ms. Effie Timothy D'Silva. Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea, vide Note Verbale No. 96 dated 10.08.2016, requested the Ministry of External Affairs, New Delhi to grant Prior Approval for the import of the vehicle Toyota Lexus Lx (Model-2015). The MEA, vide letter no. D.VI/451/2(75)/2016/3877 dated 11.08.2016, had conveyed Prior Approval to the Embassy of Democratic People's Republic of Korea for the import of said Toyota Lexus Lx (Model-2015) car for personal use. Accordingly, the Embassy of Democratic People's Republic of Korea, for Mr. Kye Chun Yong, vide letter No. 116 dated 08.09.2016, requested MEA for an Exemption Certificate for 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. The MEA issued an Exemption Certificate, vide Serial No. KEY/08/2016 dated 08.09.2016, on the basis of which the said vehicle having the said Chassis No. URJ2014207089 had been imported into India vide Bill of Entry No. 62 dated 16.09.2016 without payment of duty by availing the benefit of the Customs duty exemption Notification No. 03/1957-Cus. dated 08.01.1957. The said Exemption Certificate issued by MEA clearly mandates that the vehicle cannot be sold without payment of customs duty and without the concurrence of CBIC.

1.46. On enquiry with RTO at SAS Nagar, Mohali, Punjab the said vehicle Toyota Lexus car was found registered in the name of a non-privileged person. Further, the investigation in the matter revealed that the documents used for the registration of the said car were forged by the syndicate and eventually the said car was sold to a non-privileged person, Mr Amjad Khan.

1.47. If dutiable goods have been brought into the country without paying the Customs duty by way of availing exemption, the Customs duty attaches to goods brought into the country and though it may not have been paid at the time of clearance from Customs Area for the reasons that it is meant for a foreign diplomat, the privileged person, the duty is leviable later on when the goods pass into the hands of persons other than the privileged person. In the instant case, as per Rule 4A(2)(c) of the Foreign Privileged Persons (Regulation of Customs Privileges) 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 has been attached to the goods. Further, it appears that the importer who smuggles the goods is certainly guilty under the clause, because he imports them in derogation of the prohibition or restriction but any person who deals with the 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.

**1.48.** The evidences unearthed during the course of the investigation reveal that the said Toyota Lexus car was imported into India without payment of duty as provided under Notification No. 03/1957 dated 08.01.1957. It has also been revealed that the members of the syndicate appear to have done so after a previous arrangement with the foreign diplomat Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea, New Delhi, as the said vehicle was sold and was registered on the basis of the forged documents in the name of a non-privileged person instead of being registered in the name of the said diplomat. The said car was imported in the name of the diplomat, Mr. Kue Chun Yong using the exemption Notification No. 03/1957-Cus dated 08.01.1957 available to foreign diplomats in India and found to have been registered in the name of a non-privileged person after import which appears to have rendered the said car liable to confiscation under the Customs Act, 1962.

**1.49.** 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 the 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 of only after payment of due Customs duty which is not so paid in the present case.

**1.50.** Thus, from the above facts it appears that Rehman Shaikh was successful in importing in the said Toyota Lexus car under the diplomatic exemption provided in the Notification No. 3/1957 with the help of Liyakat Bachu Khan, Rajeev Sood and Customs Broker Aubrey D'Souza of Babaji Khimji & Co. After the import was made without payment of duty in the name of Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea, New Delhi, the smuggling syndicate had succeeded in getting the registration in the name of non-privileged person, Ms. Effie Timothy D'Silva.

**1.51.** The evidences unearthed during the investigation like the forged Invoice/sale certificate corroborated by the statements of Liyakat Bachu Khan and Nipun Miglani recorded under Section 108 of the Customs Act, 1962 also appear to establish that the deal of the said vehicle was made at the behest of Rehman Shaikh. Further, the Lamborgini Murcielago that was received in exchange of the Toyota Lexus car was eventually delivered to Rehman Shaikh by the syndicate. It, therefore, appears that Rehman Shaikh had hatched a conspiracy of smuggling of the said Toyota Lexus 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.

**1.52** As per the SCN, the extracts of the following relevant provisions of the Customs Act, 1962 and other allied act for the time being in force relating to import of goods, recovery of duties, liability of the goods to confiscation and the persons concerned to penalty for improper

importation, were mentioned in the subject SCN. The same are not reproduced in this Order-in-Original for the sake of brevity:

**1.52.1 The Customs Act, 1962**

- Section 2(26)- Definition of importer
- Section 12(1)- Dutiable Goods.
- Section 28(4) - Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.
- Section 46 - Entry of goods on importation.
- Section 47 - Clearance of goods for home consumption
- Section 110 AA
- Section 111 - Confiscation of improperly imported goods, etc.
- Section 112 - Penalty for improper importation of goods etc.
- Section 114AA - Penalty for use of false and incorrect material.

**1.52.2. Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957**

- Section 2(b)- Definition of "privileged person"
- Section 2(c)- Definition of "Non-privileged person"
- Section 3- Formalities to be observed at the time of clearance of the goods.
- Section 4A- Permission for the sale or disposal of motor vehicles.
- Section 5- Recovery of goods sold or disposed of to non-privileged persons.

**1.52.3. Rule 14 of Foreign Trade (Regulations) Rules, 1993:** Prohibition regarding making, signing of any declaration, statement or documents.

**1.52.4 Notification No. 3/1957-Cus., dated 8-1-1957**

**Liability for confiscation of the goods**

**1.53.** As revealed during investigations, in the instant case, the goods viz. Toyota Lexus car was imported, as detailed above, by using fraudulent means vide Bill of Entry No. 62 dated 16.09.2016 (IGM: 2145621 dated 29.08.2016) 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. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea, New Delhi. The said car was registered in the name of a non-privileged person on the basis of forged documents and was sold to Amjad Khan. 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) appear to be applicable since the dutiable goods viz. Toyota Lexus car, was removed contrary to the terms of the permission of the proper officer who had granted

permission for its clearance to Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea, 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) appears evident, as per the facts revealed during investigation, since the said car was exempted from duty subject to the conditions which were not fulfilled and it was diverted, sold and registered in the name of a non-privileged person. Therefore, the said vehicle appears liable for confiscation under Section 111(j) and Section 111(o) of the Customs Act, 1962.

**Calculation of customs duty and its demand**

1.54 The calculation of customs duty as per the tariff rate at the time of import of the Toyota Lexus car bearing Chassis No URJ2014207089 in the name of **Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea** vide Bill of Entry No 62 dated 16.09.2016 and having declared CTH as 87032410 is explained in the following table:

**Table No-3**

(In Rs.)					
Assessable value	BCD @125%	CVD@30%	Cess@3% (2%+1%)	ACD @ 4%	Total Duty
(a)	(b)	(c)	(d)	(e)	(f)
	a * 125%	(a+b) *30%	(b+c) * 3%	(a+b+c+d)*4%	b+c+d+e
54,09,374	67,61,718	36,51,327	3,12,391	6,45,392	1,13,70,828

**BCD- Basic Customs Duty, CVD- Countervailing Duty, Cess-Education Cess@2% & Higher Education Cess@1%, ACD- Additional Customs Duty.**

In the present case, Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea had applied to the MEA for the Prior Approval and the Exemption Certificate for the duty free import of the said Toyota Lexus car bearing Chassis No. URJ2014207089. The declaration in this regard indicated that the said car was imported for his personal use. Further, Mr. Kye Chun Yong had declared in the Customs Duty Exemption Certificate issued vide Serial No. KEY/08/2016 dated 08.09.2016 by MEA in respect of the said vehicle 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 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 Toyota Lexus car having chassis No. URJ2014207089 was imported vide Bill of Entry No. 62 dated 16.09.2016 without payment of duty by availing the benefit of the Customs duty exemption Notification No. 03/1957-Cus. dated 08.01.1957 and was subsequently registered in the name of Ms. Effie Timothy D'Silva, a non-

privileged person. As discussed supra, the said vehicle was directly sold in the open market and was found registered in the name of a non-privileged person. Thus, the post-import conditions as envisaged under Customs duty exemption Notification No. 03/1957-Cus. dated 08.01.1957 appears to be willfully violated by Mr. Kye Chun Yong. It is well-settled law that the conditions of the notifications are to be strictly construed and the customs duty is recoverable when there is an infringement of any of the conditions of the exemption notifications. The power to recover duty which has escaped collection is a concomitant power arising out of the levy of customs duty under Section 12 of the Customs Act, 1962.

1.55 The Hon'ble Supreme Court in the case of Mediwell Hospital and Health Care Pvt. Ltd. v. Union of India, 1997 (89) ELT 425 (SC) has held that the liability to pay the duty in the events of non-compliance of the condition of Notification No. 64/88 is continuing one. The Hon'ble Supreme Court observed that;

*"12. While, therefore, we accept the contentions of Mr. Jaitley learned senior Counsel appearing for the appellant that the appellant was entitled to get the certificate from Respondent No. 2 which would enable the appellant to import the equipment without payment of customs duty but at the same time we would like to observe that the very notification granting exemption must be construed to cast continuing obligation 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 to give free treatment at least to 40 per cent of the outdoor patients as well as would give free treatment to all the indoor patients belonging to the families with an income of less than Rs. 500/- p.m. The competent authority, therefore, should continue to be vigilant and check whether the undertakings given by the applicants are being duly complied with after getting the benefit of the exemption notification and importing the equipment without payment of customs duty and if on such enquiry the authorities are satisfied that the continuing obligations 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. Needless to mention the Government has granted exemption from payment of customs duty with the sole object that 40% of all outdoor patients and entire indoor patients of the low-income group whose income is less than Rs. 500/- p.m. would be able to receive free treatment in the Institute. That objective must be achieved at any cost, and the very authority who have granted such certificate of exemption would ensure that the obligations imposed on the persons availing of the exemption notification are being duly carried out and on being satisfied that the said obligations have not been discharged they can enforce realisation of the customs duty from them.*

*13. It is needless to reiterate that all the persons including the appellant who had the benefit of importing the hospital equipment with an exemption of customs duty under the notification should notify in the local newspaper every month the total number of patients they have treated and the 40% of them are the indigent persons below stipulated income of Rs. 500/- per month with full particulars and address thereof which would ensure that the application to treat 40% of the patients free of cost would continuously be fulfilled. In the event of default, there should be coercive official action to perform their obligation undertaken by all such persons. This condition becomes a part of the exemption order application and strictly be enforced by all concerned including the Police personnel when complaints of non-compliance were made by the indigent persons, on denial of such treatment in the concerned hospital or diagnostic centres, as the case may be."*

In the present case, the conditions laid down by the exemption certificate have been violated by Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea. Even the undertaking given by him in the Exemption Certificate Serial No. KEY/08/2016 is not duly complied with. The obligation of non-transfer of the car imported duty free to a non-privileged person without taking approval of CBIC, through MEA and without paying appropriate customs duty, was a continuing one. However, the same has been violated in this case. Therefore, the Customs duty of (as illustrated in Table No. 3) Rs. 1,13,70,828/- is recoverable from him along with interest as per the provisions prescribed under Exemption Certificate Serial No. KEY/08/2016 dated 08.09.2016 read with the Customs Act, 1962 and Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957 read with Notification No. 03/1957-Cus dated 08.01.1957.

**Culpability of persons involved in the case:**

**1.56** Investigation of the case and scrutiny of evidences appear to indicate that besides Rehman Iqbal Ahmed Shaikh and his key associates Liyakat Bachu Khan, Mohammed Wasim Abdul Gani Siddique, Nipun Miglani and Rajeev Sood, the role of Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea, New Delhi is also crucial in executing the conspiracy of smuggling of the said Toyota Lexus car bearing Chassis No. URJ2014207089. A few other persons also appear to have done acts of omission and commission which appear to have rendered them liable to the penalty. The same is discussed as follows:

**(i) Rehman Iqbal Ahmed Shaikh:**

Investigations in the case revealed that the mastermind, Rehman Iqbal Ahmed Shaikh was the mastermind of the syndicate which had smuggled into India a number of high-end luxury cars in the names of foreign diplomats. The impugned Toyota Lexus car covered by this Investigation Report 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 and Rehman Shaikh appears to be the principal conspirator and kingpin of the whole conspiracy of smuggling of the said Toyota Lexus car undertaken by this syndicate. He was instrumental in carting the vehicle from Dubai to India, identification of the foreign diplomat, Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea and 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, Rajeev Sood and Nipun Miglani. He also appears to be the person who forwarded the specific details related to the forging of the documents to his co-conspirators to enable them to register the vehicle. Such evidences indicate his primary role in the conspiracy of smuggling of Toyota Lexus in the present case. He also received the Lamborgini in exchange of the smuggled vehicle through Nipun Miglani. In view of the foregoing, it appears that Rehman Shaikh is the mastermind of the syndicate and beneficiary of the smuggling of the said car, imported on his directions in the name of

Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea and he continued to exercise effective control over the car from the shipment at abroad till its sale in India to a non-privileged person. Though he remained behind the scene and engaged the services of other co-conspirators to get the vehicle cleared, sold and registered, he appears responsible for the aforesaid contraventions in importing the subject car for sale to the non-privileged person. From the paras discussed supra, it is clear that he had acted with a malafide intent to evade customs duty which clearly establishes *mens rea* on his part. Thus, for his acts of omission and commission in improper importation of the said car which appear to have rendered the said car liable to confiscation under section 111, as explained above, Rehman Shaikh appears liable to penalty under Section 112(b) of the Customs Act, 1962. In addition, Rehman Shaikh also appears liable to penalty under section 114AA of the Customs Act, 1962, as he knowingly and intentionally caused his co-conspirators Liyakat Bachu Khan to submit documents to clear the goods from Customs as well as submitted fabricated and forged documents for the purpose of registration in the name of a non-privileged person.

**(ii) Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea, New Delhi:**

Mr. Kye Chun Yong, the privileged person, appears to have dealt with Rehman Iqbal Ahmed Shaikh and his accomplices and complied with all the necessary formalities, at his behest, for importing the vehicle Toyota Lexus in his name. Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea, New Delhi had applied for Prior Approval for the import of the vehicle and obtained the customs duty Exemption Certificate from MEA. In Para 2(a) of the certificate serial No KEY/08/2016 dated 08.09.2016 it is specifically mentioned 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 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 registered in the name of a non-privileged person and was also sold and found in the possession of a non-privileged person. It also appears that the illicit diversion of the said vehicle imported by Mr. Kye Chun Yong was knowingly permitted by Mr. Yong for monetary consideration. Thus, Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea appears 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. From the discussions above, it is evident that he had aided and abetted the syndicate in smuggling of the said Toyota Lexus car by using his official privileges as a diplomat which clearly establishes malafide intent on his part. 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 appear to have rendered the said car liable to confiscation under section 111 of

Customs Act, 1962, as explained above, Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea appears to have rendered himself liable to penalty under Section 112(a) of the Customs Act, 1962. It further appears that he had knowingly/intentionally made a false declaration to Customs Authority that the impugned car is for his personal use thereby abetting the smuggling syndicate in importing the said car at Nil rate of duty by taking ineligible benefit of exemption Notification no. 03/1957. Hence, such acts on his part appear 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 as detailed in this Investigation Report supra, have, while admitting to their roles, also narrated the crucial role played by others in the entire conspiracy of smuggling of the said Toyota Lexus car. Liyakat Bachu Khan played a prominent role on the ground in executing the conspiracy. Towards this end, he used the services of Mohammed Wasim Abdul Gani Siddique for the preparation of the necessary documents in the name of a privileged person, Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea, New Delhi and for the preparation of forged documents. Liyakat Bachu Khan paid money to Wasim for forging the Invoice documents as per the directions of Rehman Shaikh and in this manner, played a crucial role in the smuggling of the said Toyota Lexus car. From the discussions above, it is evident that they had aided and abetted the mastermind in the smuggling and subsequent sale of the said Toyota Lexus car to a non-privileged person in contravention to the Customs Notification 03/1957. In view of the above, for their acts of commission and omission in the smuggling of the luxury vehicle Toyota Lexus car, which appear to have rendered the said car liable to confiscation, it appears that co-conspirators Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique are liable for penalty under the provisions of Section 112 (b) of the Customs Act 1962. Further, discussed in para supra, for the offence of knowingly or intentionally making, signing or using, or causing to be made, signed or used any declaration or statement or document which was false or incorrect in material particular, in this transaction of import and sale of the said Toyota Lexus car, co-conspirators Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique also appear to be liable for imposition of penalty under Section 114AA of the Customs Act, 1962.

**(iv) Rajeev Sood:**

**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 eligibilities of diplomats and expediting the process of Prior Approval and Exemption Certificate at MEA. From the discussions above, it is evident that they had aided and abetted the syndicate in the smuggling of luxury cars in the name of foreign diplomats, in lieu of

monetary consideration clearly indicating *mens rea* on his part. Thus for his acts of omission and commission in smuggling the said luxury car, Toyota Lexus, which he had reasons to believe was liable to confiscation, Rajeev Sood appears liable for penalty under the provisions of Section 112 (b) of the Customs Act, 1962.

(v) **Manjeet Maurya:**

He was working at the Ministry of External Affairs as a stenographer on temporary basis. He assisted Rajeev Sood and the syndicate by extracting crucial information about the eligibilities of diplomats and expediting the process of Prior Approval and Exemption Certificate at MEA. He knew that the registration of the vehicles (imported duty free) was not done in the name of the diplomats. From the discussions above, it is evident that they had aided and abetted the syndicate in the smuggling of luxury cars in the name of foreign diplomats, in lieu of monetary consideration clearly indicating *mens rea* on his part. Thus for his acts of omission and commission in smuggling the said luxury car, Toyota Lexus, which he had reasons to believe was liable to confiscation, Manjeet Maurya appears liable for penalty under the provisions of Section 112 (b) of the Customs Act, 1962.

(vi) **Nipun Miglani:**

He is a close aide of the mastermind, Rehman Iqbal Ahmed Shaikh and had assisted him in finding prospective buyers and realizing their sale proceeds in respect of many such luxury cars that were smuggled in the name of diplomats. In the instant case, he not only arranged buyer for the said Toyota Lexus but also arranged for the Lamborghini Murcielago, received in exchange of the said Toyota Lexus car, to be delivered to the mastermind, Rehman Iqbal Ahmed Shaikh, thus enabling the syndicate in diversion of the said car. Nipun Miglani, having already dealt with multiple such smuggled cars by Rehman Shaikh was in the full knowledge that the said Toyota Lexus car was being diverted to the open market in contravention to the Customs Notification No. 03/1957. Even after this knowledge about the said car he helped Rehman in the sale of the said car to a non-privileged person. Thus, it is clear that Nipun Miglani has abetted the mastermind Rehman Shaikh in the smuggling of the said luxury car, Toyota Lexus and sale thereof. Hence, it appears that he had a reason to believe that the said car was liable to confiscation and therefore, he appears to be liable for penalty under the provisions of Section 112(b) of the Customs Act, 1962.

(vii) **Aubrey Elias D'souza:**

The Toyota Lexus car having chassis Number as URJ2014207089 was imported and cleared at JNCH, Nhava Sheva through Bill of Entry No. 62 dated 16.09.2016 (IGM: 2145621 dated 29.08.2016) which was dealt by Aubrey Elias D'souza, representative of Customs Broker, Babaji Khimji and Co., a G-Card Holder. Aubrey D'souza was fully aware that the goods were not taken to its nominated destination i.e., to the Embassy of Democratic People's Republic of Korea, New Delhi. It is a fact that the said car was

delivered to the members of the syndicate. However, as he was the Customs Broker, he was well aware that the imported goods cleared are required to be transported to the nominated place as above. Further, the investigation also indicates that he had cleared several such luxury cars that were imported in the name of Diplomats at the behest of the mastermind, Rehman Iqbal Ahmed Shaikh. Thus, it appears that he is concerned with the imported goods on which customs duty was evaded and made it liable for confiscation under Section 111(j) and Section 111(o) of the Customs Act, 1962. Thus, it appears that Aubrey Elias D'souza was actively involved in the improper importation of the impugned goods and hence he appears liable for penalty under the provisions of Section 112(b) of the Customs Act, 1962.

**(viii) Amjad Khan:**

He purchased the impugned Toyota Lexus car which was imported duty free in the name of a foreign diplomat and was intended for the use of the privileged person only. He appears to be aware of the fact that the said vehicle was not imported properly, for sale in the open market, as he purchased the same from Nipun Miglani who was not the actual owner of the vehicle and was not the rightful possessor of the vehicle. He also used the car for more than 4 years without registering it in his name. Further, the documents handed over to him by Nipun at the time of the deal of the said Toyota Lexus car were blank documents having signature on them, provided to him as RTO set of documents (forms). He has not shown his due diligence to ensure that the said forms were properly filled and the said Toyota Lexus car bearing Chassis No URJ2014207089 transferred in his name for the reasons best known to himself. The fact that he had dealt in the car without any agreement and procured the same on the basis of dubious documents apparently indicates that he had prior knowledge of improper importation of the said Toyota Lexus car. It appears that the maxim of *Caveat emptor quia ignorare non debuit quod jus alienum emit* is clearly applicable. Thus, he appears to be concerned in intentionally dealing with smuggled goods that he had reasons to believe were liable for confiscation. For such omission and commission on his part, he appears to have rendered himself liable for imposition of penalty under the provisions of Section 112(b) of the Customs Act, 1962.

**(ix) Amer Abdullah**

He purchased the impugned Toyota Lexus car which was imported duty free in the name of a foreign diplomat and was intended for the use of the privileged person only. He appears to be aware of the fact that the said vehicle was not imported properly, for sale in the open market, as he purchased the same from Shri Amjad Khan who was not the owner of the vehicle and was not the rightful possessor of the vehicle, the payments in respect of the said vehicle were also made to Shri Amjad Khan, who was not the registered owner of the said car. Further, he also used the said Toyota Lexus car for almost one year without registering it in his name, suggesting his malafide intent. He has not shown his due diligence to verify the veracity of all the documents in respect of the

said car for the reasons best known to himself. The fact that he had dealt in the car without any agreement and procured the same on the basis of dubious documents apparently indicates that he had prior knowledge of improper importation of the said Toyota Lexus car. It appears that the maxim of *Caveat emptor, quia ignorare non debuit quod jus alienum emit* is clearly applicable. It appears that this act was done in agreement with the members of the smuggling syndicate. Thus, he appears to be concerned in intentionally dealing with smuggled goods that he had reasons to believe were liable for confiscation. For such omission and commission on his part, he appears to have rendered himself liable for imposition of penalty under the provisions of Section 112(b) of the Customs Act, 1962. Further, since the said car was seized from his possession, if he be allowed by the Adjudicating Authority to redeem the said car, he appears liable for payment of redemption fine, applicable duty and other charges, in terms of Section 125(2) of the Customs Act, 1962.

**1.57 Now, therefore, in view of the foregoing,** vide Show Cause Notice No. 1376/2022-23/COMMR/ NS-V/CAC/JNCH dtd. 16.11.2022

**1.57.1.** Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea, New Delhi was hereby called upon to show cause to the Commissioner of Customs, NS-V, JNCH, Taluka - Uran, District - Raigad, Maharashtra – 400707, as to why

- (i) The said Toyota Lexus car bearing Chassis No. URJ2014207089 having declared Assessable Value of 54,09,374/- (Rupees Fifty-Four Lakhs Nine Thousand Three Hundred and Seventy-Four Only), imported vide Bill of Entry No. 62 dated 16.09.2016 in the name of Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea, New Delhi, seized under seizure memo dated 20.05.2022, should not be confiscated under Section 111(j) and Section 111(o) of the Customs Act, 1962;
- (ii) The total duty foregone amounting to Rs. 1,13,70,828 /-(One Crore Four Lakhs Forty-Nine Thousand Seven Hundred and Ten only) as detailed in Table No-3 above should not be demanded and recovered along with interest as per the provisions prescribed under Exemption Certificate Serial No. KEY/08/2016 dated 08.09.2016 read with the Customs Act, 1962 and Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957 read with Notification No. 03/1957-Cus dated 08.01.1957.
- (iii) Penalties under Section 112(a) and under Section 114AA of the Customs Act, 1962, should not be imposed on him;

**1.57.2.** S/Shri Rehman Iqbal Ahmed Shaikh, Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique were hereby called upon to show cause, in writing, to the **Commissioner of Customs, Nhava Sheva- V (NS-V), JNCH, Nhava Sheva, Tal. Uran, Dist. Raigad, Maharashtra- 400707** within 30 days of receipt of this notice, as to why Penalties under Section

112(b) of the Customs Act,1962 and under Section 114AA of the Customs Act, 1962, should not be imposed on each one of them;

**1.57.3.** S/Shri Rajeev Sood, Manjeet Maurya, Nipun Miglani, Aubrey D'Souza, Amjad Khan and Amer Abdullah were hereby called upon to show cause, in writing, to the **Commissioner of Customs, Nhava Sheva- V (NS-V), JNCH**, Nhava Sheva, Tal. Uran, Dist. Raigad, Maharashtra- 400707 within 30 days of receipt of this notice, as to why Penalties under Section 112(b) of the Customs Act,1962, should not be imposed on each one of them;

**1.57.4** Shri Amer Abdullah was hereby called upon to show cause, in writing, to the **Commissioner of Customs, Nhava Sheva- V (NS-V), JNCH**, Nhava Sheva, Tal. Uran, Dist. Raigad, Maharashtra- 400707 within 30 days of receipt of this notice, as to why, the applicable duty, amounting to Rs. 1,13,70,828 /-(One Crore Four Lakhs Forty-Nine Thousand Seven Hundred and Ten only) as detailed in Table No-3 above should not be recovered along with interest and other liabilities under the provisions of Section 125(2) of the Customs Act, 1962, in case the said car is allowed redemption to him in terms of Section 125(1) of the Customs Act,1962.

## **2. WRITTEN SUBMISSION OF THE NOTICEE**

**2.1** The Noticee, **Sh. Aubrey Elias D'souza** vide their letter dated 09.10.2024 and 15.09.2025 gave written reply to the subject SCN. Vide the above reply, they interalia submitted as under:

i) The Noticee submits that the following documents were received by the Noticee on his email [jpintl@rediffmail.com](mailto:jpintl@rediffmail.com) directly from the Diplomat email, which were submitted to Customs at the time of import:

- a) Note Verbale No 96 dated 10/08/2016 issued by the Embassy of DPR Korea.
- b) Prior Approval from MEA No D.VI/451/2 (75)/2016/3877 dated 11/08/2016.
- c) Exemption Certificate No KEY/08/2016 dated 08/09/2016 issued by MEA. **The certificate is endorsed by the Appraiser, Indian Customs, stating that passed under Bill of entry No 62 dated 16/09/2016 at the time of clearance.**
- d) Self-Certificate of Mr. Kye Chun Yong (Ambassador), Embassy of DPR Korea, certifying at Sr No 4 (ii) that the goods being imported by me/Embassy/UN/International Organisation are strictly for official/ personal use and not for sale, donation, or promotional purpose.

ii) The above documents were received directly from the Embassy by the Noticee on his email address. Mr. Liyakat Khan has confirmed the facts in his statement dated 14/07/2021, Mr. Rajeev Sood dated 18/07/2021, and Noticee dated 22/07/2021, recorded by DRI under Section 108 of the Customs Act 1962.

iii) Based on the above, Bill of entry No **62 dated 16/09/2016** was filed for home consumption. The bill of entry was assessed by the Group granting the benefit of exemption

Notification No 03/1957 dated 08/01/1957 at Nil duty. No discrepancy was noticed by the department at the time of assessment, nor at the time of examination of the car. Accordingly, OOC was given by the proper officer on 17/09/2016 (page 1 & 2).

**The goods are not liable for confiscation under Section 111 (j) & (o) of the Customs Act 1962.**

iv) It is submitted that the bill of entry No **62 dated 16/09/2016** was filed and presented to the customs officers by the Noticee with the requisite documents. The bill of entry was finally assessed by the proper officer on 16/09/2016, granting the benefit of Notification 03/1957 dated 08/01/1957. The car was examined and given out of charge by the proper officer on 16/09/2016. No discrepancy in respect of the declaration, eligibility of notification, or genuineness of the documents was raised at the time of clearance by customs, nor by DRI during investigation. Thus, the goods which were OOC by the proper officer establish that the car was cleared from Customs based on original and authenticated documents, by following due process of law prescribed under the Act, Rules & Regulations.

v) Therefore, in the absence of any evidence to the contrary, provisions of section 111 (j) are not attracted, rendering the goods liable for confiscation. The charges leveled in the SCN against the Noticee of improperly importation and clearance, rendering the goods liable for confiscation under Section 111 (j), cannot be established and requires to be dropped.

vi) The bill of entry was filed by the Customs Broker. The mandatory documents to claim exemption were submitted to the department. 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.

vii) After clearance, the car was handed over to Mr Liyakat Khan. The delivery challan handed over to him was brought back by him, duly stamped and signed by the importer.

viii) 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.

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

x) From the above, it establishes that all the formalities for the customs clearance were complied with as per law. The SCN does not allege the role of the Noticee in the diversion of the car post clearance. The statement of co-noticees in the conspiracy has not named or implicated the Noticee in any fraudulent activities. The investigation confirms that the syndicate had diverted the car into the open market. No evidence is produced by the department about

Noticee's involvement or any role in diverting the car. Therefore, the provision of Section 111 (o) is not attracted and charges levelled in the SCN are required to be dropped.

xi) The Noticee submits that Mr. Rajeev Sood, in his statement dated 20/07/2021, on being asked about the payment to Diplomats, stated that advance money of 50% of the decided amount during the process of prior approval and a balance of 50% at the stage of final application to MEA. Payments were made in cash in most cases. Money was also deposited in the bank accounts given by the Diplomats. He has received around 60 lakhs in the last three years for payment to Diplomats. In some cases, Rehman used to deposit money directly into the account of the Diplomats. The Diplomats received around 8 to 10 lakhs based on the deal.

He had facilitated such deals for the Syrian Embassy (3), Lebanese Embassy (1), DPRK Korean Diplomats (3), Kenyan Diplomats (3), and Lao Diplomats (3). (pages 38-39).

xii) The Noticee submits that in terms of prior approval to import Toyota Lexus LX (Model-2015) granted by MOE No D.VI/451/2(75)/2016/3877 dated 11/08/2016, wherein MOE specified as under (page 8):

***“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.”***

xiii) Whereas, in the present case, neither the Diplomat nor the Embassy has produced a registration certificate to MOE even after clearance of the car in 2016, clearly violates the approval granted by MOE to the importer, Mr Kye Chun Yong (Ambassador), Embassy of DPR. The Diplomat filed no complaint with MOE or the HOME Ministry of non-receipt of the car imported for personal use, clearly establishes the 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 for personal use.

xiv) In response to the summons issued to Mr Kye Chun Yong (Ambassador), the Embassy of DPR Korea dated 29/11/2021, informed that they were not aware of the disposal of cars for three years without payment of duty. Mr Kye Chun Yong has left India the Embassy will observe the diplomatic car-related Indian laws in the future.

xv) From the above, it establishes that post clearance the car was diverted in the local market by the importer Mr Kye Chun Yong (Ambassador), of DPR Korea in connivance with the conspirators for undue financial gain evading duty, rendering the goods liable for confiscation under Section 111 (o) of the Customs Act 1962 and not the Noticee as alleged in the SCN.

xvi) From the above, it is clear that for the diversion of the car post clearance in the local market, the importer Mr Kye Chun Yong (Ambassador), along with the conspirators, is responsible and guilty of violating provisions of Section 111 (o), rendering the car liable for confiscation and not the Noticee as alleged in the SCN.

xvii) Thus, it is abundantly evident that the car was diverted into the local market by the members of the syndicate in connivance with the Diplomats. The Diplomats were fully aware of

the diversion of the car in the local market, for which they received money at various stages. The Summons issued to Mr Kye Chun Yong (Ambassador) was replied to by the Embassy, stating that the Ambassador has left India. The summons issued to Rehman did not fetch any response. Therefore, failing to examine the importer and the role played by Mr. Rehman, the charges leveled against the Noticee cannot be proven and established, especially since the delivery of the car was diverted by the importer in the local market, thereby evading duty.

xviii) None of the conspirators involved in the case has implicated Noticee of having played any role in the diversion of the car in the local market. No documentary evidence is forthcoming in the SCN establishing that the Noticee had prior knowledge about the diversion of the car in the local market, rendering the goods liable for confiscation. In the absence of this, the Noticee is not liable for penal action under Section 112 (b) of the Customs Act 1962.

xix) It is submitted that Noticee's phones and the hard disk taken over by DRI did not reveal his involvement in diverting or selling the Car with the syndicate or the diplomat post clearance in the local market. At the same time, the Noticee's name does not appear in the Financial investigation carried out by DRI. The diplomatic authority letter stated that he would be responsible and liable for all purposes regarding the documents and clearance, even if fines and penalties are imposed.

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

xxi) 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 is established in the investigation, rendering the goods liable for confiscation under Section 111 (j) & (o) of the Customs Act 1962. Therefore, penal provisions under Section 112 (b) of the Customs Act 1962 against the Noticee are not attracted and cannot be imposed.

xxii) Reliance is placed on the following cases of import of cars by the Diplomats 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 484 (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.

The above orders have been accepted by the Reviewing authority as legal and fair. The compilation of the above orders with the copy of the citations relied upon are also enclosed which may kindly be taken on record at the time of finalizing the case.

xxiii) Therefore, for the act and omission post clearance on the part of the Syndicate and Diplomat leading to evasion of duty, the Appellant cannot be blamed and held responsible for the violations of Section 111 read with Section 112 of the Customs Act 1962.

xxiv) Given the above, it is prayed that in all fairness and justice, the charges leveled against the Noticee in the SCN may kindly be dropped, for which we will be highly obliged.

**2.2** The Noticee, **Sh. Nipun Miglani** vide their letter dated 11.09.2024 gave written reply to the subject SCN. Vide the above reply, they inter alia submitted as under:

**2.2.1** It is submitted that the present Show Cause Notice has been issued under Section 28 read with section 124 of the Customs Act, 1962. It is submitted that the normal period of limitation to issue notice is two years and extended period of limitation is five years. It is submitted that the subject Bill of Entry is dated 29.08.2016 and the present Show Cause Notice has been issued only on 16.11.2022 and therefore, the Department has no jurisdiction to demand duty prior to 16.11.2017. Therefore, the present demand itself is barred by limitation and the same is liable to be dropped. Reliance is placed on the following decisions:

- Shilchar Electronics Ltd. - 2006 (205) E.L.T. 529 (Tri.-Bom)
- Haren Choksey- 2016 (337) ELT 148 (Tri- Bom.)
- Shanoob M.S.-2017 (358) ELT 538 (Tri- Bang.)

**2.2.2** It is submitted that the subject Show Cause Notice is dated November 16, before 2022 November and therefore, the adjudication ought to have been completed on or before November 16, 2023 in terms of Section 28 (9) of the Act. It is submitted was that the omitted, words vide "where it is possible to do so" used in Section 28(9) of the Act amendment made in Finance Act, 2018 and made it mandatory for determining the amount of duty or interest within six months in the cases falling under Section 28(1) of the Act and within one year in the cases falling under Section 28(4) of Act. If the said time limit has not been complied with, the proceedings shall be deemed to be concluded, as if no notice has been issued. In the present case, the proceedings ought to have completed on or before September 22, 2023 and therefore, the present proceedings are time barred. Assuming that the time period has been extended in terms of the proviso to Section 28(9) of the Act, the same ought to have been made in the circumstances stipulated in Section 28(9A) of the Act and communicated to the concerned party. Reliance on Swatch Group India Pvt. Ltd & Ors Vs. Union of India, reported in 2023 (386) E.L.T. 356 (Del.)

**2.2.3** It is submitted that in a similar case, the Hon'ble High Court of Madras in the case of J. Sheik Parith Vs. Commissioner of Customs (Seaport- Export), Chennai reported in 2020 (374) ELT 15 (Mad.) and the Hon'ble High Court of Delhi in the case of Swatch Group India Pvt. Ltd & Ors (supra) had quashed the show cause notice on the ground that it was not adjudicated within a reasonable period. The Hon'ble Court held that the adjudicating authorities are bound by the time frame stipulated under the statute and in cases, where time limit is not prescribed, period. Since the the orders have to be passed within the reasonable time frame for completion of adjudication has been prescribed under the statute, the Department is bound by it and has to be strictly adhered to. The ratio in the above judgments squarely applicable to present facts of the case.

**2.2.4** Without prejudice to the above contentions, it is submitted that the statement of their client 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 Honble 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 letter dated 22.10.2021. Copy of the said letter is enclosed as Annexure A Subsequently, their client has sent a letter dated 11.12.2021 wherein he had retracted all 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 had 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 at 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 Moni, reported in 2010 (252) ELT 57 (Del).

**2.2.5.** It is pertinent to note that none of the persons from whom statements have been recorded have stated anything incriminating against their client. In fact, statements have been recorded from Shri. Liyakat Bachu Khan on 14.07.2021, 27.07.2021 and 11.08.2022 (RUD 23 to 25), wherein he has admitted he had 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. The statement of Shri Rajeev was recorded on 14.07.2021, 18.07.021, 20.07.2021 (RUD 19) wherein he admits that he worked as a Commission and got acquainted with Shri. Rehman Shaikh. He used to receive information regarding Agent for Diplomats 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 14.07.2021 (RUD 22), wherein he admits that he used to furnish information regarding the Diplomats to Shri. Rajeev Sood. The statement of Shri. Mohammed Wasim Abdul Gani Siddique was recorded on 14.07.2021, 03.11.2022 (RUD No.26, 27), wherein he admits that he forges the documents such as Registration Certificate, Bills of Entry, etc as per the instructions of Shri. Liyakat Bachu Khan. Therefore, all these statements lead to only one conclusion that our client not aware about the alleged smuggling of the car in question or in any way involved in finding prospective buyers of the car.

**2.2.6** Without prejudice to the above submissions, it is submitted that the allegation against our client in the present show cause notice is that he had assisted in the sale of subject car from Rehman Iqbal Sheikh to Mr. Amjad Khan. It is primarily submitted that he does not have any knowledge about the alleged illegal import of the car in question. It is submitted Mr. Amjad Khan had approached our client for exchange of his Lamborghini Murcielago car bearing registration no.DL 2F GX 0006 with some other used imported cars in market and on bonafide belief, had referred him to Mr. Rehman for exchange of his car. Our client had only facilitated the exchange of cars between Rehman Iqbal Sheikh and Mr. Amjad Khan. It is an admitted fact that the car was not in his possession or any of his acquaintances and there is not even a single evidence to show that he had dealt with the import of subject car. It is submitted that the alleged import and registration of the car came into light only after the investigation. It is submitted that the above incidents do not lead to any presumption that he was aware that the vehicle in question was imported or that he had any role to play in finding prospective buyers, despite having knowledge that the vehicle is a smuggled one.

**2.2.7** On perusal of the above-captioned show cause notice, it does not refer to any evidence in support of their conclusion that our client has been aiding and abetting Shri. Rehman and others. Statements of other Noticees were recorded and none of them implicate our client in their alleged smuggling activity or in the disposal of the Car. Neither have they even stated that our client knew as to the Car was illegally imported and/ or registered. In the entire SCN, no reason was assigned to hold that my client knew or had the reason to believe that the car was liable to confiscation. Therefore, in the circumstances, it is not correct and justified in imposing penalty on me. Reliance is placed on the decision in Dinesh Ishwarlal Patel Versus Collector of Customs, Bombay - (1988) 34 ELT 382.

**2.2.8** It is submitted that 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 which results in confiscation under Section 111 or abets with the said person or such person should know or reason to believe that the goods are liable for confiscation under Section 111. It is submitted that from the statements recorded under Section 108 of the Act and the findings of the investigation clearly depicts the fact that my client were neither involved nor had knowledge regarding the fraudulent import as alleged in the impugned Show Cause Notice. It is submitted that neither a statement

nor an evidence to expression show that my client had knowledge regarding the fraudulent import. The expression "abetment" used in Section 112(a) of Customs Act has not been defined in the Act.

**2.2.9** 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 my client had dealt with the smuggled car and thus became liable to penalty is not legally sustainable.

**2.2.10** 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 Honble 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).

**2.2.11** 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, my client stand on a better footing since my client have not dealt with car in any way. Therefore, the proposal to impose penalty under Section 112 of the Customs Act, 1962 cannot stand legal scrutiny.

### **3. RECORD OF PERSONAL HEARINGS**

There are ten Noticees in the subject SCN viz. Mr. Kye Chun Yong, Shri Rehman Iqbal Ahmed Shaikh, Shri Liyakat Bachu Khan, Shri Mohammed Wasim Abdul Gani Siddique, Shri Rajeev Sood, Shri Manjeet Maurya, Shri Nipun Miglani, Shri Aubrey D'Souza, Shri Amjad Khan and Shri Amer Abdullah. In compliance of provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, the Noticee Mr. Kye Chun Yong, was granted opportunity of Personal Hearing (PH) on 04.09.2025, 15.09.2025, 29.09.2025 & 31.10.2025, the noticees Shri Aubrey D'Souza, Shri Amjad Khan and Shri Amer Abdullah were granted opportunity of Personal Hearing (PH) on 03.09.2025 & 15.09.2025, the notice Shri Nipun Miglani was granted opportunity of Personal Hearing (PH) on 03.09.2025, 15.09.2025 & 29.09.2025 and S/Shri Rehman Iqbal Ahmed Shaikh, Shri Liyakat Bachu Khan, Mohammed Wasim Abdul Gani Siddique, Shri Rajeev Sood and Shri Manjeet Maurya were granted opportunity of Personal Hearing (PH) on 03.09.2025, 15.09.2025, 29.09.2025 & 30.01.2026 and PH intimation letter was issued by speedpost.

**3.1** In response to PH notice to Noticees, Mr. Anirudh Nansi, authorised representatives, on behalf of noticee no. 8 Sh. Aubrey Elias D'souza, attended the personal hearing before me on 15.09.2025 and re-iterated their written submission dated 15.09.2025 and further submitted that

**3.1.2** The noticee being a CHA has cleared the goods on the basis of documents provided to him. He also submitted that all the documents on the basis of which the BE was filed, were received by the noticee on his email directly from the diplomat email. These documents include Note Verbale 96 issued by the Embassy of DPR Korea, Prior approval from MEA, Exemption Certification issued by the MEA and self certificate of Mr. Kye ChunYong.

**3.1.3** The, Section 111(j) of Customs Act,1962 is not applicable in the instant case, as the goods were finally assessed by the proper officer and was granted OOC by the proper officer after due examination. Hence the goods were cleared from Customs based on original authenticated documents. Hence, Section 11(j) of CA 1962 is not applicable in the instant case.

**3.1.4** Once the goods are handed over to Mr Liyakat Khan who brought the delivery challan duly signed by the importer back to the noticee. No evidence is produced by the department about noticee's involvement in diverting the car into open market. Therefore, Section 111(o) is not attracted.

**3.1.5** Since Section 111(j) and 111(o) are not applicable, penal provisions against the noticee be dropped. He produced compilation of orders of Commissioner Appeal and Joint Commissioner of Customs wherein proceeding against CHA has been dropped. The above orders have been accepted by the reviewing authority as legal and fair.

**3.1.6** He requested for the proceeding against the noticee be dropped as no evidence implicating the name of the noticee has been brought out in the SCN.

**3.2** In response to PH notice to Noticee, Mr. C.S. Srinavas, authorised representatives, on behalf of noticee Mr. Amjad Khan and Mr. Amer Abdullah attended the personal hearing before me on 15.09.2025.

**3.2.1** He argued the case and submitted that the car was sold by the ambassador to Mr. Effie Timothy D'silva and the same was registered with RTO in Punjab by him. Bill of entry for import was filed on the name of the ambassador and the car was registered in Punjab in the name of Mr. Effie Timothy D'silva.

**3.2.2** The noticees are bonafide purchaser and were unaware of the violations made during the import process. Section 111(j) of Customs Act,1962 is not applicable in the instant case, as the goods were bought outside the Customs area. He submitted that Section 111(o) is applicable on original importer only and hence not applicable to the noticees.

**3.2.3** Since Section 111(j) and 111(o) are not applicable, penal provisions against the noticees are also not applicable to these two noticees. He submitted that he will provide written submission in three days. He requested for the proceeding against the noticee be dropped.

**3.3** In response to PH notice to Noticee, Mr. Sethu Prabhakaran R., authorised representatives, on behalf of noticee Sh. Nipun Miglani, attended the personal hearing before me on 29.09.2025.

**3.3.1** He argued the case and submitted that the SCN as well as the adjudication proceedings are time barred as per section 28 of the Customs Act,1962. He further submitted that the allegations made in the SCN are on the basis of the statement only and the said statement has been retracted in front of the magistrate. And he further argued that no evidence has been presented in the SCN against Mr. Nipun Miglani.

**3.3.2** Mr. Nipun Miglani was not aware of any wrongdoing at the time of import as he was not involved in the import process of the impugned goods. He requested for the proceeding against the noticee be dropped as no evidence implicating the name of the noticee has been brought out in the SCN.

**3.4** No one appeared on behalf of Mr. Kye Chun Yong, Shri Rehman Iqbal Ahmed Shaikh, Shri Liyakat Bachu Khan, Mohammed Wasim Abdul Gani Siddique, Shri Rajeev Sood and Shri Manjeet Maurya for personal hearing.

#### 4. DISCUSSION AND FINDINGS

4.1 I have carefully gone through the subject Show Cause Notice (SCN), material on record and facts of the case, as well as written and oral submissions made by the Noticee. Accordingly, I proceed to decide the case on merit.

4.2 In compliance to provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunity for Personal Hearing (PH) was granted to the Noticee Mr. Kye Chun Yong, was granted opportunity of Personal Hearing (PH) on 04.09.2025, 15.09.2025, 29.09.2025 & 31.10.2025, the noticees Shri Aubrey D'Souza, Shri Amjad Khan and Shri Amer Abdullah were granted opportunity of Personal Hearing (PH) on 03.09.2025 & 15.09.2025, the notice Shri Nipun Miglani was granted opportunity of Personal Hearing (PH) on 03.09.2025, 15.09.2025 & 29.09.2025 and S/Shri Rehman Iqbal Ahmed Shaikh, Shri Liyakat Bachu Khan, Mohammed Wasim Abdul Gani Siddique, Shri Rajeev Sood and Shri Manjeet Maurya were granted opportunity of Personal Hearing (PH) on 03.09.2025, 15.09.2025, 29.09.2025 & 30.01.2026 and PH intimation letter was issued by speedpost.

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

*122 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.*

4.3.1 I find that the requirement of adjudication procedure has been satisfied in this case. I find that multiple opportunities have been given to the said Noticees to respond to the impugned notice but the Noticee has failed to submit any reply/details in response to the notice. Furthermore, the Noticees were also informed every time the Personal Hearing was granted as stated above that if they or their authorized representative/s failed to appear for the Personal

Hearing on scheduled date/time, then the subject matter would be adjudicated ex-parte on its merit and basis the available records/evidences. However, in spite of being asked repeatedly to appear for the personal hearings for defending their case, the said Noticees have failed to appear for personal hearing. They have not made themselves available for defending their case out of their own choice. Accordingly, I proceed in the matter before me.

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

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

“ .....

.....

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

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

.....

.....

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

.....

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

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

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

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

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

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

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

*"Natural justice Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained-Appellant cannot now demand another hearing -Principles of natural justice not violated."*

(e) Hon'ble Supreme Court in the case of F.N.Roy Vs. Collector of Customs, Calcutta reported in (1983)913E.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."*

4.3.3 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.

4.4 I find that in the impugned SCN it is inter alia alleged that a car (Toyota Lexus; Model 2015 Colour: Black) was imported by a syndicate led by one Mr. Rehman Iqbal Ahmed Shaikh in the name of a diplomat/privileged person namely, **Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea** 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. Kye Chun Yong** 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.

4.5 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., 'Toyota Lexus car bearing Chassis No. URJ2014207089' imported vide Bill of Entry No. 62 dated 16.09.2016 having total assessable value of Rs. 54,09,374/- (Rupees Fifty-Four Lakhs Nine Thousand Three Hundred Seventy Four Only), in the name of **Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea** is liable to be confiscated under section 111(j) and 111(o) of the Customs Act, 1962;
- (ii) Whether the duty foregone amounting to Rs. 1,13,70,828 /-(One Crore Four Lakhs Forty-Nine Thousand Seven Hundred and Ten only) as detailed in Table No-3 is liable to be demanded and recovered from **Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea** along with interest as per the provisions prescribed under Exemption Certificate Serial No. KEY/08/2016 dated 08.09.2016 read with the Customs Act, 1962 and Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957 read with Notification No. 03/1957-Cus dated 08.01.1957;
- (iii) Whether penalty is liable to be imposed on **Mr. Kye Chun Yong, Ambassador,**

**Embassy of Democratic People's Republic of Korea** under Section 112(a) and Section 114AA of the Customs Act, 1962;

- (iv) Whether penalty is liable to be imposed on Shri Rehman Iqbal Ahmed Shaikh, Shri Liyakat Bachu Khan and Shri Mohammed Wasim Abdul Gani Siddique under Section 112(b) and 114AA of the Customs Act, 1962;
- (v) Whether penalty is liable to be imposed on Shri Rajeev Sood, Shri Manjeet Maurya, Mr. Nipun Miglani, Mr. Aubrey D'Souza, Mr. Amjad Khan and Mr. Amer Abdullah under Section 112(b) of the Customs Act, 1962;

**4.6** 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 defense 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. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea** is liable to pay the Customs duty amounting to Rs. 1,13,70,828 /-(One Crore Four Lakhs Forty-Nine Thousand Seven Hundred and Ten only) as demanded vide the impugned SCN and whether the goods viz. Toyota Lexus car bearing Chassis No. URJ2014207089 imported duty-free in the name of **Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea** 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.

**4.7** 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.

4.8 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 Toyota Lexus car bearing Chassis No. URJ2014207089 is one such car illegally imported by the members of the said syndicate, and is subject matter of the instant case.

4.9 I find that the said Toyota Lexus car bearing Chassis No. URJ2014207089 is one such car illegally imported by the said syndicate duty-free in the name of **Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea** vide Bill of Entry No. 62 dated 16.09.2016 by availing the benefit of exemption under Notification No. 03/1957-Cus dated 08.01.1957. I find that as the import of the said Toyota Lexus 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 Toyota Lexus car bearing Chassis No. URJ2014207089 for the import of the said Toyota Lexus car were obtained from MEA.

4.10. On going through the said documents, I find that Mr. Kye Chun Yong through **Embassy of Democratic People's Republic of Korea**, had requested the Ministry of External Affairs, New Delhi to grant Prior Approval for the import of a new motor vehicle viz. Toyota Lexus LX (Model 2015). After processing the said request, the MEA vide letter no. D.VI/451/2(75)/2016/3877 dated 11.08.2016, conveyed Prior Approval to the embassy of the

Democratic People's Republic of Korea, for the import of said Toyota Lexus (model 2015) for personal use along with the instructions that the said vehicle was to be registered within one month from the date of its import and a copy of the vehicle registration certificate was to be sent to the Ministry. The MEA issued an Exemption Certificate, vide Serial No. KEY/08/2016 dated 08.09.2016, based on which the said vehicle, having the said Chassis No. URJ2014207089, was imported into India vide Bill of Entry No. 62 dated 16.09.2016 (IGM: 2145621 dated 29.08.2016) 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.

**4.11** I find that during the investigation, it was ascertained that the members of the smuggling syndicate had succeeded in getting the said car registered in the name of non-privileged persons, initially with Registration Certificate No. PB 65-AE-0786 at Mohali, Punjab RTO. Necessary enquiries were made in this regard with the RTO at Mohali. The Regional Transport Authority, Mohali, vide its letter dated 05.08.2022 (**RUD No. 10 of the SCN**), furnished the documents submitted at the time of registration such as Form-20, Form-21, Form-22, Retail Invoice number 294649 dated 28.06.2016 (issued by G.K. Automobiles, Delhi), Insurance Copy etc. It was noticed from the said documents that the said vehicle was not registered in the name of the Privileged Person through MEA but was registered in the name of a non-privileged person, Effie Timothy D'Silva, vide Registration No. PB 65 AE 0786.

**4.12** It was noticed that the said Toyota Lexus car bearing Chassis No URJ2014207089 was registered under registration No. PB 65 AE 0786 using the Invoice bearing no. 294649 dated 28.06.2016 (issued by G.K. Automobiles), Sale Certificate (issued by G.K. Automobiles) and Form 22 (issued by Toyota Lexus Ltd.). In order to verify the veracity of the said documents, the DRI office sent an email dated 01.11.2022 to Toyota Kirloskar Motors Pvt. Ltd. In response to the said email, the office of Toyota Kirloskar (Lexus: Dealer and Service Operations), vide email dated 03.11.2022 (**RUD No. 11 of the SCN**), informed that the entity 'Toyota Lexus Ltd' did not exist and that they were not aware of any such company. Further, it was informed that vehicles sold by Lexus India (a division of Toyota Kirloskar Motor Pvt Ltd.) are sold through its authorized dealers to its customers and it carries VIN number comprising 17 digits, but, the VIN, mentioned in the attached invoice contained only 13 digits. Consequently, the investigation revealed that document submitted before the RTO authorities at RTA, SAS Nagar, Mohali, Punjab were forged documents and, thus, the said registration no. PB 65 AE 0786 had been obtained fraudulently.

**4.13** From the foregoing, it is apparent that, 'Prior Approval' was sought by the **Embassy of Democratic People's Republic of Korea** on behalf of Mr. Kye Chun Yong, from the MEA for import of the said Toyota Lexus car, and after getting/receiving the approval for the same from MEA vide its Note/letter No. D.VI/451/2(75)/2016/3877 dated 11.08.2016, Mr. Kye Chun Yong completed all the formalities to import the said car duty-free by availing the benefit of exemption

as provided under Notification No.03/1957-Cus dated 08.01.1957. It is also apparent from the undertaking made by her in the Exemption Certificate that he was very well aware that the said car imported duty-free could not be sold or otherwise disposed of without the concurrence of the Ministry of External Affairs, New Delhi and the CBEC, Ministry of Finance, New Delhi, and without the payment of Customs duty. Further, in the approval Note/letter No. D.VI/451/2(75)/2016/3877 dated 11.08.2016 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.

**4.14** However, during the course of investigation it was revealed that the said vehicle i.e., Toyota Lexus LX Car imported in the name of Mr. Kye Chun Yong for his personal use as a privileged person, vide Bill of Entry No. 62 dated 16.09.2016, by 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/registeres in respect of import of vehicles by various Embassies provided by MEA vide their letter dated 27.08.2021. I find that the said Toyota Lexus LX Car imported by Mr. Kye Chun Yong is not a part of the record of MEA which has records of cars imported duty-free by diplomats/ privileged persons and registered thereafter in their name.

**4.15** It is seen that during the course of investigation, Summons were issued under Section 108 of the Customs Act, 1962 by the DRI to **Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea** through MEA to appear before the investigating officer. However, the said summons were not complied with by Mr. Kye Chun Yong . Further, in respect of the said Summons issued under Section 108 of the Customs Act, 1962 against Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea, vide their reply No. 104-19 dated 29.11.2021 (**RUD No. 8 of the SCN**), informed that embassy will not be responsible for Mr. Kye Chun Yong who has already left India.

**4.16** 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.*

4.17 Further, I find that the Prior Approval letter and the Customs Duty Exemption Certificate issued by Ministry of Foreign Affairs, New Delhi, in respect of the said car imported duty-free by Mr. Kye Chun Yong, clearly point to the fact that Mr. Kye Chun Yong had applied for 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. However, the said vehicle was never registered in the name of Mr. Kye Chun Yong and the vehicle registration certificate has not been provided to the MEA.

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

***Section 6. Restrictions on certain exemptions from customs duty, etc.-***

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

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

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

4.21 Further, it is seen that the Customs Duty Exemption Certificate issued by MEA explicitly specified that the vehicle would not be sold or otherwise disposed of to a person who is not entitled to import motor vehicle free of duty without the concurrence of CBIC to be obtained through MEA and without the payment Customs duty. While filing for the said Customs Duty Exemption Certificate with the MEA, Mr. Kye Chun Yong had also undertaken to the said effect, as is evident from Paras above. However, I find that after import of the vehicle duty-free in the instant case, the same was not registered in the name of Mr. Kye Chun Yong 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.

4.22 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. In view of the afore discussed legal provisions and findings, I find that Mr. Kye Chun Yong 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. Therefore, I hold that the Customs duty amounting to Rs.62,77,080/- is recoverable from **Mr. Kye Chun Yong**, the then Ambassador of Embassy of Democratic People's Republic of Korea as per provisions prescribed under Exemption Certificate Serial No. KEY/08/2016 dated 08.09.2016 read with the Customs Act, 1962 and Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957 read with Notification No. 03/1957-Cus dated 08.01.1957. The calculation of the said Customs duty is tabulated as under:-

(Amount in Rs.)

Assessable value of the car	BCD@125%	CVD @30%	Cess @ 3%(2%+1%)	ACD @ 4%	Total Duty
(a)	(b)	(c)	(d)	(e)	(f)
	a*125%	(a+b)*30%	3%(2%+1%)	(a+b+c+d)*4%	b+c+d+e
54,09,374/-	67,61,718/-	36,51,327/-	3,12,391/-	6,45,392/-	1,13,70,828/-

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

4.23 I find that the impugned SCN has alleged that the said goods viz., Lexus LX 570 car imported in the name of the diplomat, Mr. Kye Chun Yong, 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;*

**4.24** 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. Toyota Lexus LX Car, was removed contrary to the terms of the permission of the proper officer who had granted permission for its clearance to **Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea**, 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 Mr. Kye Chun Yong has failed to adhere to the statutory provisions prescribed under the said Notification No. 03/1957-Cus dated 08.01.1957 read with the Customs Act, 1962. Therefore, I find that the provisions of Section 111(j) of the Customs Act, 1962 is squarely applicable to the instant case.

**4.25** 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 Toyota Lexus LX Car was imported into India vide Bill of Entry No. 62 dated 16.09.2016 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. Kye Chun Yong for his personal use. However, post clearance, the impugned car was not registered in his name in violation of the conditions specified under the said Notification No. 03/1957-Cus dated 08.01.1957 read with the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957. Therefore, I find that the said vehicle viz, Toyota Lexus car bearing Chassis No. URJ2014207089 is liable for confiscation under Section 111(o) of the Customs Act, 1962.

**4.26** 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.).

4.27 In view of above, I hold that the impugned vehicle viz, Toyota Lexus car bearing Chassis No. URJ2014207089 is liable for confiscation under Section 111(j) and Section 111(o) of the Customs Act, 1962.

**Applicability of Redemption Fine**

4.28 As the impugned goods viz, Toyota Lexus LX 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.

4.29 In the instant case, it is seen that the subject goods, viz, Toyota Lexus car bearing Chassis No. URJ2014207089 has been cleared and seized vide seizure memo dated 20.05.2022. In this regard, I find that Hon'ble Supreme Court in the case of **CC Kandla vs Essar Oil Ltd** reported in 2004(172) E.L.T. 433(S.C.) held that

*"Fraud as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to be deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given*

*case a deception may not amount to fraud. fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See Ram Chandra Singh v. Savitri Devi and Ors. (2003 (8) SC 319).”*

**4.30** Relying on the above guiding judgments, I conclude that redemption fine is intrinsically linked to the authorization of confiscation under Section 111 and serves to mitigate the consequences of such confiscation. In view of the discussions, I find that redemption fine is liable to be imposed on the said impugned vehicle seized vide seizure memo dated 20.05.2022 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. Kye Chun Yong under Section 112(a) and/or Section 114A and Section 114AA of the Customs Act, 1962**

**4.31** It is seen that the impugned SCN has proposed penalty on **Mr. Kye Chun Yong** under Section 112(a) 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 car, including not adhering to the prescribed provisions of law.

**4.32** Regarding the issue of imposition of penalty, it is appropriate to reproduce the provisions of Section 112 as under:

**Section 112 (Penalty for improper importation of goods etc.) reads as:**

“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,

(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 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 percent of the duty sought to be evaded or five thousand rupees, whichever is higher.....”

**4.33** Mr. Kye Chun Yong, the privileged person, appears to have dealt with Rehman Iqbal Ahmed Shaikh and his accomplices and complied with all the necessary formalities, at his

behest, for importing the vehicle Toyota Lexus in his name. Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea, New Delhi had applied for Prior Approval for the import of the vehicle and obtained the customs duty Exemption Certificate from MEA. In Para 2(a) of the certificate serial No KEY/08/2016 dated 08.09.2016 it is specifically mentioned 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 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 registered in the name of a non-privileged person and was also sold and found in the possession of a non-privileged person. It also appears that the illicit diversion of the said vehicle imported by Mr. Kye Chun Yong was knowingly permitted by Mr. Yong for monetary consideration. Thus, Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea 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.

**4.34** From the discussions above, it is evident that he had aided and abetted the syndicate in smuggling of the said Toyota Lexus car by using his official privileges as a diplomat which clearly establishes malafide intent on his part. 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 have rendered the said car liable to confiscation under section 111 of Customs Act, 1962, as explained above, Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea have rendered himself liable to penalty under Section 112(a) of the Customs Act, 1962. Therefore, I hold that **Mr. Kye Chun Yong** is liable to penalty under the provisions of Section 112(a) of the Customs Act, 1962.

**4.35** The impugned SCN has also proposed penalty on **Mr. Kye Chun Yong** 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".*

**4.36** As discussed in the foregoing paras, the investigation has revealed that the impugned car was imported duty-free in the name of **Mr. Kye Chun Yong** 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, the impugned car was not registered in the name of **Mr.**

**Kye Chun Yong.** The investigations has further revealed that **Mr. Kye Chun Yong** had deliberately 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. I find that **Mr. Kye Chun Yong** was very much aware from the beginning that the impugned car imported duty-free in his name would be sold in the open market to an unprivileged person. 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.5/FN/12/2019 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. As such, I find that **Mr. Kye Chun Yong** had consciously and knowingly signed documents and declarations which were false or incorrect as he knew that after import, the impugned car would not be registered in his name through MEA. Therefore, I hold that **Mr. Kye Chun Yong** 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**

4.37 It is seen that the impugned SCN has proposed penalty on Shri Rehman Iqbal Ahmed Shaikh under Sections 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.

4.38 I find that penalty under Section 112(b) is imposable if goods are liable to confiscation under Section 111 ibid. The provisions of Section 112 have been reproduced above.

4.39 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., Toyota Lexus car bearing Chassis No. URJ2014207089 car imported in the name of **Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea**, 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 Toyota

Lexus car undertaken by this syndicate. He was instrumental in identification of the foreign diplomats (**Mr. Kye Chun Yong** in the instant case) and colluding with them by offering monetary consideration/illegal gratification through his accomplice Rajeev Sood, 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.

**4.40** On going through the said statements, it is evident that at the instance of Rehman, Shri Rajeev Sood identified the diplomat who was ready to share their diplomatic information and complete all the necessary paperwork/ formalities to import the car duty-free, in lieu of monetary consideration/gratification. Rajeev Sood had provided the details of Kenya Embassy diplomat to Rehman. Shri Liyaqat Bachu Khan sent him (Rajeev Sood) draft of all the required documents for taking signature of the diplomat on those documents. He collected the hard copy of the sanction documents from the diplomat and sent the photograph of the same over WhatsApp to Rehman. He has deposed that the diplomats received amounts ranging from Rs. 8 to Rs. 10 Lakh, and that he had received around Rs.60 Lakhs in cash from Rehman on behalf of the diplomats in the last 3 years. Further, Liyakat Bachu Khan has deposed that about 25 to 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., Toyota Lexus car was imported in the name of the diplomat **Mr. Kye Chun Yong**. 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.

**4.41** From the above, I find that the evidences gathered during the course of investigation clearly shows 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 Toyota Lexus car. He also prepared/got prepared draft of all the required documents and got them signed and completed by the concerned diplomat by colluding with them through his accomplices for import of the impugned car duty-free in the name of the diplomat. He also instructed Liyakat Bachu Khan to take the delivery of the illicitly imported impugned vehicle viz., Lexus LX 570 car from the Customs Broker and instead of delivering it to the importer diplomat, he diverted it into the open market. Thus, I find that the impugned car was removed by Rehman Iqbal Ahmed Shaikh through his accomplice contrary to the terms of the permission of the proper officer who had granted permission for its clearance subject to adhering to the terms and conditions of Notification No. 03/1957-Cus dated 08.01.1957; however, the said car was sold/disposed of by him in the open market in utter violation of the conditions specified under

the said Notification. Therefore, I find that all the above mentioned acts of omission and commission on part of Rehman Iqbal Ahmed Shaikh have rendered the impugned car liable for confiscation under Section 111(j) and Section 111(o) of the Customs Act, 1962. As such, I hold that Rehman Iqbal Ahmed Shaikh is liable to penalty under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962.

4.42 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. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea** 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 Shri Mohammed Wasim Abdul Gani Siddique under Sections 112(b) & 114AA of the Customs Act, 1962**

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

4.44 Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique: I find that many a co-conspirators and other persons in their various submissions and statements as detailed in the Show Cause Notice, while admitting to their respective roles, also narrated the crucial role played by others in the entire conspiracy of smuggling of the said Toyota Lexus car. Liyakat Bachu Khan played a prominent role on ground in executing the conspiracy. From the investigation and various statements given under section 108, of the Customs Act, 1962, it is established that he used the services of Mohammed Wasim Abdul Gani Siddique for preparation of the necessary forged documents. He paid money to Wasim for forging the documents like forged Invoice etc, as per the directions of Rehman Iqbal Ahmed Shaikh and in this manner, played a crucial role in the smuggling of the said Toyota Lexus car. He also played a role in coordinating with Rajeev Sood and was exchanging documents received by him from the privileged person and submitting it for clearance. Once the car was cleared from Customs Authorities he used to instruct one Wasim Abdul Gani Siddique to prepare forged documents

pertaining to the car thereafter, using these forged documents the luxury car used to be registered in the name of a non-privileged person. Liyakat used to liaison with other members of the syndicate and their various contacts in RTOs across India and get the cars registered. Liyakat Bachu Khan also coordinated the movement of these cars across India to various car dealers for display and sale of the same. Once the car was sold to the final buyer, he also collected money on behalf of Rehman Iqbal Shaikh in many cases and also handed over commission to various car dealers as instructed by Rehman Shaikh. Investigation further proved that Mohammed Wasim Abdul Gani Siddique who is into the job of designing and printing of marriage and visiting cards 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 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. In view of the above, for their acts of commission and omission in the smuggling of luxury vehicle Toyota Land Cruiser car, which have rendered the said car liable to confiscation, the co-conspirators Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique are liable for penalty under the provisions of Section 112(b) of the Customs Act 1962.

4.45 I further find that the investigation presented the forged documents created by the duo for the purpose of manifesting this fraud. The proof of the forged documents are recorded in the show cause notice as various RUDs. I find that for the offence of knowingly or intentionally making, signing or using, or causing to be made, signed or used any declaration or 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 Toyota Land Cruiser car, co-conspirators Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique are also liable for imposition of penalty under Section 114AA of the Customs Act, 1962.

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

4.46. It is seen that the impugned SCN has proposed penalty on Shri Rajeev Sood and Shri Manjeet Maurya under Sections 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.

4.47 The role played by Rajeev Sood and Manjeet Maurya in the entire conspiracy of smuggling of the impugned Toyota Lexus 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 Embassy of Democratic People's Republic of Korea diplomat to Rehman Shaikh, and that Shri Liyaqat Bachu Khan sent him draft of all the required documents for taking signature of the diplomat on those documents. He collected the hard copy of the sanction documents from the diplomat and sent the photograph of the same over WhatsApp to Rehman. He has also deposed that the diplomats received amounts ranging from Rs. 8 to Rs. 10 Lakh, and that he had received around Rs.60 Lakhs in cash from Rehman on behalf of the diplomats in the last 3 years. Shri Manjeet Maurya in his statement has admitted that he knew that the diplomats got full Customs/GST exemption of imported vehicles when they registered their vehicle through MEA. He also knew the procedure for claiming the said exemption. He used to provide Rajeev Sood the required information in lieu of monetary benefits. I find that for his crucial role played in the said conspiracy of illicit import of luxury cars.

**4.48** In view of the above, I find that all the above mentioned acts of omission and commission on part of Shri 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 Shri Rajeev Sood and Shri Manjeet Maurya are liable to penalty under the provisions of Section 112(b) of the Customs Act, 1962.

**Issue of imposition of penalty on Shri Nipun Miglani under Sections 112(b) of the Customs Act, 1962**

**4.49** It is seen that the impugned SCN has proposed penalty on Shri Nipun Miglani under Sections 112(b) of the Customs Act, 1962. In response to PH notice to Noticee, Mr. Sethu Prabhakaran R., authorised representatives, on behalf of noticee Sh. Nipun Miglani, attended the personal hearing before me on 29.09.2025 and submitted that the SCN as well as the adjudication proceedings are time barred as per section 28 of the Customs Act, 1962. He further submitted that the allegations made in the SCN are on the basis of the statement only and the said statement has been retracted in front of the magistrate. And he further argued that no evidence has been presented in the SCN against Mr. Nipun Miglani and that he was not aware of any wrongdoing at the time of import as he was not involved in the import process of the impugned goods. He requested for the proceeding against the noticee be dropped as no evidence implicating the name of the noticee has been brought out in the SCN.

**4.50** Before delving into the substantive allegations made in the SCN, I will discuss and give my findings on the above issue of retraction of statement as to whether the said retraction can be held valid.

**4.50.1** I find that Section 108 is a machinery Section to gather evidence in case of violations/offence under the Customs Act. These proceedings are deemed to be judicial in nature in terms of Section 193 and 228 of IPC, therefore, evidence collected during recording of statement is a material and admissible evidence. In the case of Naresh J. Shukawani Vs Union of India [1996 (83) ELT. 258 (SC)] it was observed by the Hon'ble Apex Court that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973 and therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act, 1962. It was further stated by the Hon'ble Court that if such a statement incriminates the accused, inculcating him in the contravention of the provisions of the Customs Act, it can be considered as substantive evidence to connect the accused with the contravention of the provisions of this Act.

**4.50.2** It is a settled law that the statements recorded under Section 108 of Customs Act, 1962 is relevant and admissible evidence as held in umpteen number of legal pronouncements till date. The person summoned under this Section is bound to state the truth thus, there is a strong presumption of truthfulness of the statements recorded under Section 108 of the Customs Act, 1962. This fairly establishes the case of the department. It has been held that Section 108 is an enabling act and an effective tool in the hands of Customs to collect evidences in the form of voluntary statements. The Hon'ble Courts in various judicial pronouncements have further strengthened the validity of this enabling provision and it has been affirmed that statement given before Customs officers is a material piece of evidence and certainly can be used as substantive evidence. Further, these Statements are not hit by bar of admissibility under either Section 25 of the Evidence Act, 1872 or Article 20(3) of the Constitution of India and is presumed to be truthful. A few of the legal citations relied upon in the support of the above are referred below:

- Asst. Collector of Central Excise, Rajamundry Vs. M/s. Duncan Agro India Ltd. reported in 2000 (120) E.L.T. 280 (S.C.): Statement recorded by a Customs Officer under Section 108 is a valid evidence.

- In 1996 (83) ELT. 258 (S.C.) in the case of Shri Naresh J. Sukawani Vs. Union of India, the Hon'ble Supreme Court observed as under:

4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act.

It was held that statement recorded by the Customs officials can certainly be used against a co-noticee when a person giving a statement is also tarnishing his image by making admission of guilt. Similar view was taken in the case of In Gulam Hussain Shaikh Chougule Vs. S. Reynolds (2002) 1 SCC 155-2001 (134) ELT. 3 (S.C.).

- State (NCT) Delhi Vs Navjot Sandhu @ Afsan Guru, 2005 (122) DLT 194 (SC): Confessions are considered highly reliable because no rational person would make admission against his interest unless prompted by his conscience to tell the truth. "Deliberate and voluntary

confessions of guilt, if clearly proved are among the most effectual proofs in law." (Vide Taylors's Treatise on the Law of Evidence, VI. I).

- There is no law which forbids the acceptance of voluntary and true admission statement if the same is later retracted on bald assertion of threat and coercion, as held by Hon'ble Supreme Court in the case of K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin, (1997) 3 SCC 721. Hon'ble Supreme Court also held that:

*"Even though the Customs officers have been invested with many of the powers which an officer in charge of a police station exercises while investigating a cognizable offence, they do not, thereby, become police officers within the meaning of Section 25 of the Evidence Act and so the confessional statements made by the accused persons to Customs officials should be admissible in evidence against them. The object of the Act is to prevent large-scale smuggling of precious metals and other dutiable goods and to facilitate detection and confiscation of smuggled goods into, or out of the country. The contraventions and offences under the Act are committed in an organised manner under absolute secrecy. They are white-collar crimes upsetting the economy of the country. Detection and confiscation of the smuggled goods are aimed to check the escapement and avoidance of customs duty and to prevent perpetration thereof. In an appropriate case when the authority thought it expedient to have the contraveners prosecuted under Section 135 etc., separate procedure of filing a complaint has been provided under the Act. By necessary implication, resort to the investigation under Chapter XII of the Code stands excluded unless during the course of the same transaction, the offences punishable under the IPC, like Section 120-B etc., are involved. Generally, the evidence in support of the violation of the provisions of the Act consists in the statement given or recorded under Section 108, the recovery panchnama (mediator's report) and the oral evidence of the witnesses in proof of the offences committed under the Act has consistently been adopting the consideration in the light of the object which the Act seeks to achieve."*

- Hon'ble Supreme Court in the case of Kanhailal Vs. UOI, 2008 (1) Scale 165 observed that:

*"The law involved in deciding this appeal has been considered by this court from as far back as in 1963 in Pyare Lal Bhargava's case (1963) Supp. 1 SCR 689. The consistent view which has been taken with regard to confessions made under provisions of section 67 of the NDPS Act and other criminal enactments, such as the Customs Act, 1962, has been that such statements may be treated as confessions for the purpose of Section 27 of the Indian Evidence Act."*

- Hon'ble High Court of Mumbai in FERA Appeal No. 44 of 2007 in the case of Kantilal M Jhala Vs Union of India vide judgment dated October 5, 2007 (reported in 2007-TIOL-613-HC-MUM-FEMA) held that "Confessional statement corroborated by the seized documents, admissible even if retracted".

- The Apex Court in the case Hazari Singh V/s Union of India reported in 110 E.L.T. 406, and case of Surjeet Singh Chhabra V/s. Union of India & Others reported in 1997 (1) S.C.C. 508 has held that the confessional statement made before the Customs Officer even though retracted, is an admissible and binding on the person.

- The Hon'ble Supreme Court in the case of Badku Joti Savant Vs. State of Mysore 1966 AIR 1746=1978 (2) ELT J 323 (SC 5 member bench) laid down that statement to a customs officer is not hit by section 25 of Indian Evidence Act, 1872 and would be admissible in evidence and in conviction based on it is correct.

- In the case of Bhanakhalpa Bhai Patel Vs. Asstt. Collt. of Cus., Bulsar [1997 (96) E.L.T. 211 (SC)], the Hon'ble Apex Court at Para 7, of the judgment held that:

Para 7: It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence vide Romesh Chandro v. State of West Bengal, AIR 1970 S.C. 940 and K.I. Pavunny v. Assistant Collector (HQ.), Central Excise Collectorate, Cochin, 1997 (90) E.L.T. 241 (S.C)=(1997) 3 S.C.C. 721."

- In the case of Raj Kumar Karwal Vs. UOI & Others (1990) 2 SCC 409, Court held that officers of the Department of Revenue Intelligence who have been vested with the powers of an Officer-in-Charge of a police station under Section 53 of the NDPS Act, 1985, are not police officers within the meaning of Section 25 of the Evidence Act. Therefore, a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible in evidence against him.

**4.50.3** Going by the ratio of the above decisions, I am of the considered view that the oral evidences in the form of statement which was documented is acceptable and credible evidence to support the allegations levelled in the SCN against the Noticee and constitutes a valid and sound proof. In view of the above pronouncements, I find that placing reliance upon statement is correct and legal and this evidence proved the offence of the Noticee and constitute material piece of evidence. In the light of the above discussed judgements, I find that the statement of Sh. Nipun Miglani recorded under Section 108 of the Customs Act, 1962 has legal evidentiary value in the present matter

**4.51** I find that Shri Nipun Miglani is a close aide of the mastermind, Rehman Iqbal Ahmed Shaikh and had assisted him in finding prospective buyers and realizing their sale proceeds in respect of many such luxury cars that were smuggled in the name of diplomats. In the instant case, he not only arranged buyer for the said Toyota Lexus but also arranged for the Lamborgini Murcielago, received in exchange of the said Toyota Lexus car, to be delivered to the mastermind, Rehman Iqbal Ahmed Shaikh, thus enabling the syndicate in diversion of the said car. Nipun Miglani, having already dealt with multiple such smuggled cars by Rehman Shaikh was in the full knowledge that the said Toyota Lexus car was being diverted to the open market in contravention to the Customs Notification No. 03/1957. Even after this knowledge about the

said car he helped Rehman in the sale of the said car to a non-privileged person. Thus, it is clear that Nipun Miglani has abetted the mastermind Rehman Shaikh in the smuggling of the said luxury car, Toyota Lexus and sale thereof.

4.52 In view of the above, I find that all the above mentioned acts of omission and commission on part of Shri Nipun 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 Rajeev Sood and Shri Manjeet Maurya are liable to penalty under the provisions of Section 112(b) of the Customs Act, 1962.

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

4.53 It is seen that the impugned SCN has proposed penalty on Shri Aubrey Elias D'Souza under Section 112(b) of the Customs Act, 1962 alleging that he was the representative of the Customs Broker who had cleared the impugned imported Toyota Lexus car. In his defence, Aubrey Elias D'Souza has inter alia contended that he had the impugned car was cleared on the basis of duty exemption certificate in favour of the diplomat and were directly received from the diplomat email to the noticee's email ID [jpintl@rediffmail.com](mailto:jpintl@rediffmail.com). All the documents were attested by the Embassy. Based on the above documents, Bill of Entry No. 62 dated 16.09.2016 was filed. The BoE was assessed by the Group granting the benefit of exemption Notification No. 03/1957 dated 08/01/1957 at Nil duty. No discrepancy was noticed by the department at the time of assessment, nor at the time of examination of the car. Accordingly, OOC was given by the proper officer on 17/09/2016. Thus, Section 111(j) is not applicable in the present case. He had received a duly acknowledged delivery Challan from the Diplomat. There was no complaint of non-delivery of car after clearance. It is well settled that the Customs Broker is not liable for diversion of the goods after clearance. None of the conspirators involved in the case has implicated Noticee of having played any role in the diversion of the car in the local market. He had not committed any act rendering the goods liable for confiscation under Section 111. Therefore, he was not liable for penalty under Section 112 of the Customs Act 1962. They have inter alia relied on the following cases of import of cars by the Diplomat wherein penalty on the Noticee has been set aside by the Commissioner (Appeals), JNCH, Nhava Sheva-

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

4.54 I find that the impugned car was imported and cleared at JNCH, Nhava Sheva through Bill of Entry No. 62 dated 16.09.2016 which was dealt by Aubrey Elias D'souza, representative of Customs Broker, Babaji Khimji and Co. On going through the impugned SCN and statements of Shri Aubrey Elias D'souza recorded under Section 108 of the Act, I find that all the documents required for import of the impugned car under Notification no. 03/1957-Cus, dated 08.01.1957 were received by him directly from the email ID of the concerned embassy/diplomat. I also

observed that Shri Aubrey Elias D'souza was fully aware of the duty exemption Notification No. 03/1957-Cus dated 08.01.1957 and sought documents for generation of the Bill of Entry only from the official e-mail id of the embassy/ diplomats duly signed and stamped from embassy/diplomat. These facts have not been refuted by any of the members of the syndicate nor DRI has produced any evidence to the contrary. I find that in the present case, the documents such as Prior Approval from MEA No. D.VI/451/2(75)/2016/3877 dated 11.08.2016, Exemption Certificate Serial No. KEY/08/2016 dated 08.09.2016 issued by MEA, Bill of Lading, Invoice, Diplomatic identity card, etc. were sought by him for import of the impugned car in the name of the diplomat. Further, Thus, it is seen that the impugned car was cleared from Customs and no infirmity was noticed from filing the BoE to the out-of-charge by proper officer. Further, no malafides are attributed against him by the co-noticees involved in the conspiracy. As such, I find that the charges levelled against Shri Aubrey Elias D'souza in the impugned SCN is not sustainable.

4.55 I also find that the Notification No 21/2004 dated 23/02/2004 also known as CHALR 2004", stipulates that any diversion the imported goods is the responsibility of the importer and not the CHA whose role was complete once the car was cleared from Customs. It is seen that no evidence has been produced by the department establishing that Aubrey D'Souza was aware that the impugned car was not to be taken to its destination and diverted to the local market. Further, none of the conspirators and beneficiaries have implicated his role or involvement in the diversion of the impugned car. Thus, I find that collusion on the part of Shri Aubrey Elias D'souza with other co-noticees of not taking the impugned car to the nominated destination cannot be established. I also find that all the formalities for the customs clearance were complied with by him as per law. The impugned SCN also does not allege his role in the diversion of the car post-clearance. Further, I find that as a Customs Broker, the Noticee's responsibility was restricted only upto the clearance of the car from Customs which was performed by him following due process of law. I also find that, in identical cases, the Commissioner (Appeals)/JNCH, vide Orders-in-Appeal No. 40 (Gr. VB)/2025(JNCH)/Appeals dated 14/01/2025 and 484 (Gr. VB)/2025(JNCH)/Appeals dated 15/04/2025, has set aside the imposition of penalty on the noticee. I therefore find that Shri Aubrey Elias D'souza is not liable for imposition of penalty under Section 112(b) of the Act.

**Issue of imposition of penalty on Shri Amjad Khan and Shri Amer Abdullah under Section 112(b) of the Customs Act, 1962**

4.56 It is seen that the impugned SCN has proposed penalty on **Shri Amjad Khan and Shri Amer Abdullah** under Section 112(b) of the Customs Act, 1962 alleging that they have purchased the impugned imported Toyota Lexus car.

4.57 I find that **Shri Amjad Khan** was aware of the fact that the said vehicle was not imported properly, for sale in the open market, as he purchased the same from Nipun Miglani who was not the actual owner of the vehicle and was not the rightful possessor of the vehicle. He

also used the car for more than 4 years without registering it in his name. Further, the documents handed over to him by Nipun at the time of the deal of the said Toyota Lexus car were blank documents having signature on them, provided to him as RTO set of documents (forms). Further, Shri Amer Abdullah purchased the said Toyota Lexus car from Shri Amjad Khan who was not the owner of the vehicle and was not the rightful possessor of the vehicle, the payments in respect of the said vehicle were also made to Shri Amjad Khan, who was not the registered owner of the said car. Further, he also used the said Toyota Lexus car for almost one year without registering it in his name, suggesting his malafide intent. They both have not shown their due diligence to verify the veracity of all the documents in respect of the said car for the reasons best known to himself. The fact that they had dealt in the car without any agreement and procured the same on the basis of dubious documents apparently indicates the they had prior knowledge of improper importation of the said Toyota Lexus car.

**4.58** I find that *caveat emptor* is clearly applicable to this case. While finding Shri Amjad Khan and Shri Amer Abdullah being accomplice knowingly or unknowingly of the consequences of his action in facilitating this duty evasion I am inclined to follow the following judicial position:

- The maxim *caveat emptor* is clearly applicable to a case of this nature. As per Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edn. 2005 at page 721: *Caveat emptor* means "Let the purchaser beware." It is one of the settled maxims, applying to a purchaser who is bound by actual as well as constructive knowledge of any defect in the thing purchased, which is obvious, or which might have been known by proper diligence.
- "*Caveat emptor* does not mean either in law or in Latin that the buyer must take chances. It means that the buyer must take care." (See *Wallis v. Russell* (1902) 21 R 585, 615).
- Applying the maxim, it was held that it is the bounden duty of the purchaser to make all such necessary enquiries and to ascertain all the facts relating to the property to be purchased prior to committing in any manner.
- It was for the buyer to establish that he had no knowledge about the genuineness or otherwise of the issue in question.

**4.59** I find that, ***Shri Amjad Khan and Shri Amer Abdullah*** lackadaisical approach in the whole deal and his failure to do the due diligence had facilitated the conspirators to attempt disposal of the said vehicle in violation of the statutory conditions. Thus, for their act of omission and commission, and collusion with the members of syndicate led by Shri Rehman Iqbal Ahmed Shaikh in evasion of Customs duty by suppression of facts in improper importation of the said car, including not adhering to the prescribed provisions of law, has rendered the said car liable to confiscation under section 111 of Customs Act, 1962, as explained above. Thus, I find that ***Shri Amjad Khan and Shri Amer Abdullah*** are concerned in dealing with smuggled goods and due to such act of omission and commission, they have rendered themselves liable for imposition of penalty under the provisions of Section 112(b) of the Customs Act, 1962.

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

**ORDER**

(i) I order to confiscate the impugned goods i.e., 'Toyota Lexus car bearing Chassis No. URJ2014207089' imported vide Bill of Entry No. 62 dated 16.09.2016 having total assessable value of Rs. 54,09,374/- (Rupees Fifty-Four Lakhs Nine Thousand Three Hundred and Seventy-Four Only) in the name of **Mr. Kye Chun Yong, Ambassador, Embassy of Democratic People's Republic of Korea**, seized under seizure memo dated 20.05.2022, under Section 111(j) and Section 111(0) of the Customs Act, 1962.

However, since the goods have already been disposed off with his consent, I give an option to redeem the same to Shri Amer Abdullah, from whose possession these were seized, on payment of fine of **Rs. 5,00,000/- (Rupees Five Lakh Only)** in lieu of confiscation in terms of Section 125(1) of the Customs Act, 1962. The redemption is being made to a person other than the importer, and Shri Amer Abdulla would be liable to pay the duty and other charges as well, under the provisions of Section 125 (2) of the Customs Act, 1962.

(ii) I confirm the demand of Customs duty amounting to **Rs. 1,13,70,828 /- (One Crore Thirteen Lakh Seventy Thousand Eight Hundred and Twenty-Eight only)** and order to recover the same from **Mr. Kye Chun Yong, the then Ambassador, Embassy of Democratic People's Republic of Korea** as per the provisions prescribed under Exemption Certificate Serial No. KEY/08/2016 dated 08.09.2016 read with the Customs Act, 1962 and Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957 read with Notification No. 03/1957-Cus dated 08.01.1957

(iii) I impose penalty of **Rs. 10,00,000/- (Rupees Ten Lakh only)** on **Mr. Kye Chun Yong, the then Ambassador, Embassy of Democratic People's Republic of Korea** under Section 112(a) of the Customs Act, 1962;

(iv) I impose penalty of **Rs. 5,00,000/- (Rupees Five Lakh Only)** on **Mr. Kye Chun Yong, the then Ambassador, Embassy of Democratic People's Republic of Korea** under Section 114AA of the Customs Act, 1962;

(v) I impose penalty of **Rs. 10,00,000/- (Rupees Ten Lakh only)** on Shri Rehman Iqbal Ahmed Shaikh under Section 112(b) of the Customs Act, 1962.

(vi) I impose penalty of **Rs. 5,00,000/- (Rupees Five Lakh Only)** on Shri Rehman Iqbal Ahmed Shaikh under Section 114AA of the Customs Act, 1962.

(vii) I impose penalty of **Rs. 5,00,000/- (Rupees Five Lakh Only)** on Shri Liyakat Bachu Khan under Section 112(b) of the Customs Act, 1962.

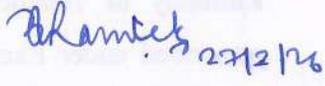
(viii) I impose penalty of **Rs. 3,00,000/- (Rupees Three Lakh Only)** on Shri Liyakat Bachu Khan under Section 114AA of the Customs Act, 1962.

(ix) I impose penalty of **Rs. 4,00,000/- (Rupees Four Lakh Only)** on Shri Mohammed

Wasim Abdul Gani Siddique under Section 112(b) of the Customs Act, 1962.

- (x) I impose penalty of **Rs. 2,00,000/- (Rupees Two Lakh Only)** on Shri Mohammed Wasim Abdul Gani Siddique under Section 114AA of the Customs Act, 1962.
- (xi) I impose penalty of **Rs. 5,00,000/- (Rupees Five Lakh Only)** on Shri Rajeev Sood under Section 112(b) of the Customs Act, 1962.
- (xii) I impose penalty of **Rs. 2,00,000/- (Rupees Two Lakh Only)** on Shri Manjeet Maurya under Section 112(b) of the Customs Act, 1962.
- (xiii) I impose penalty of **Rs. 5,00,000/- (Rupees Five Lakh Only)** on Shri Nipun Miglani under Section 112(b) of the Customs Act, 1962.
- (xiv) I refrain from imposing penalty on Shri Aubrey Elias D'Souza under Section 112(b) of the Customs Act, 1962.
- (xv) I impose penalty of **Rs. 5,00,000/- (Rupees Five Lakh Only)** on Mr. Amjad Khan under Section 112(b) of the Customs Act, 1962.
- (xvi) I impose penalty of **Rs. 5,00,000/- (Rupees Five Lakh Only)** on Mr. Amer Abdullah under Section 112(b) of the Customs Act, 1962.

6. 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.

  
(अनिल रामटेके / ANIL RAMTEKE)

सीमा शुल्क आयुक्त / Commissioner of Customs  
एनएस-V, जेएनसीएच / NS-V, JNCH

To,

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**Copy to:**

1. The Additional Director, DRI, MZU
2. The Additional Commissioner of Customs, Group VB, JNCH
3. AC/DC, Chief Commissioner's Office, JNCH
4. AC/DC, Centralized Revenue Recovery Cell, JNCH
5. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
6. EDI Section.
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