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|  <p>आयुक्त, सीमाशुल्क (निवारक) का कार्यालय OFFICE OF THE COMMISSIONER OF CUSTOMS (PREVENTIVE), MUMBAI द्वासरी मंजिल, नवीन सीमा शुल्क भवन, बेलार्ड इस्टेट, मुंबई-400 001 2ND FLOOR, NEW CUSTOMS HOUSE, BALLARD ESTATE, MUMBAI-400001 Email: commrprev-cusmum@gov.in</p> |  |
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DIN: 20251279OC000000F0EA

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| मूलादेश संख्या/Order-in-Original No. : | PCCP/ADJ/AH/12/2025-26 |
| आदेश की तारीख / Date of Order : | 30.12.2025 |
| जारी करने की तारीख / Date of issue : | 30.12.2025 |
| आदेश फा. सं. / Order File No. | S/10-146/2022-23/Gr.-VB/CAC/JNCH |
| द्वारा जारी / PASSED BY : | डॉ. अतुल हांडा / Dr. Atul Handa आयुक्त, सीमाशुल्क (निवारक), मुंबई / Commissioner of Customs (Preventive), Mumbai. |

मूल आदेश / Order-in-Original

- यह प्रति जिस व्यक्ति को जारी किया गया है उसके उपयोग के लिए नि: शुल्क दिया जाता है।
This copy is granted free of charge for use of the person to whom it is issued.
- इस आदेश के खिलाफ अपील क्षेत्रीय पीठ, सीमाशुल्क, उत्पाद शुल्क और सेवाकर अपीलीय न्यायाधिकरण, चौथा एवं पांचवा तल, जय सेंटर, 34, पी.डी.मेलो रोड, पूनास्ट्रीट, मस्जिद बंदर (पूर्व), मुंबई-400009 को प्रस्तुत की जा सकती है।
An appeal against this order lies with the Regional Bench, Customs, Excise, and Service Tax Appellate Tribunal, 4th and 5th Floor, Jai Centre, 34, P.D. Mello Road, Poona Street, Masjid Bunder (East), Mumbai – 400 009.
- अपील सीमा शुल्क (अपील) नियमावली, 1982 के नियम 6 के अनुसार उन नियमों के साथ संलग्न फॉर्म सी.ए. 3 में तीन माह के भीतर की जानी चाहिए। अपील चार प्रतियों में तथा निम्नांकित के साथ संलग्न होनी चाहिए:
The appeal is required to be filed **within 3 months** as provided in Rule 6 of the Customs (Appeals) Rules, 1982 in form C.A. 3 appended to said Rules. The appeal should be in quadruplicate and shall be accompanied by:
 - उस आदेश की चार प्रतियों जिसके विरुद्ध अपील हो (जिनमें से कम से कम एक प्रमाणित प्रति होना चाहिए) ;
4 copies of the order appealed against (at least one of which should be a certified copy).
 - किसी भी राष्ट्रीय कृत बैंक की शाखा पर, जहां उचित न्यायालय (बैंच) स्थित है, उपयुक्त शुल्क का (नीचे दिया गया है) क्रास किया हुआ बैंकड्रॉफ्ट अधिकरण की पीठ के सहायक रजिस्ट्रार के पक्ष में जारी किया होना चाहिए।
A crossed Bank Draft drawn in favour of the Assistant Registrar of the Tribunal on a branch of any Nationalized Bank located at a place where the Bench is situated, for appropriate fee (as given below).
 - जहां अपील से संबंधित मामले में किसी सीमा शुल्क अधिकारी द्वारा मांगे गए शुल्क एवं व्याज और लगाए गए अर्थदंड कीराशि पांचलाख या उससे कम हो, तो एक हजार रुपए का;
 - Where the amount of duty and interest demanded and penalty levied by any officer of the Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees.
 - जहां अपील से संबंधित मामले में किसी सीमा शुल्क अधिकारी द्वारा मांगे गए शुल्क एवं व्याज और लगाए गए अर्थदंड की राशि पांचलाख रुपए से अधिक हो पर पचास लाख रुपए से अधिक नहीं हो, तो पांच हजार रुपए का;
 - Where the amount of duty and interest demanded and penalty levied by any officer of the Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees.
 - जहां अपील से संबंधित मामले में किसी सीमा शुल्क अधिकारी द्वारा मांगे गए शुल्क एवं व्याज और लगाए गए अर्थदंड की राशि पचास लाख रुपए से अधिक हो, तो दस हजार रुपए का।
 - Where the amount of duty and interest demanded and penalty levied by any officer of the Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees.
- अपील अधिकरण पीठ के रजिस्ट्रार अथवा इस संबंध में उनके द्वारा अधिकृत किसी भी अधिकारी के कार्यालय में प्रस्तुत की जानी चाहिए अथवा रजिस्ट्रार या ऐसे अधिकारी के नाम पंजीकृत डाक द्वारा भेजी जानी चाहिए।
The appeal shall be presented in person to the Registrar of the Bench or an officer authorized in this behalf by him or sent by Registered Post addressed to the Registrar or such officer.
- इस निर्णय या आदेश के विरुद्ध अपील करने के इच्छुक व्यक्ति को, इस अपील के लंबित रहने तक, मांग किए गए शुल्क या लगाए गए अर्थदंड का दस प्रतिशत धनराशि जमा करना होगा और ऐसे भुगतान का साक्ष्य प्रस्तुत करना होगा। ऐसा न करने पर अपील सीमा शुल्क अधिनियम, 1962 की धारा 129E के प्रावधानों का अनुपालन न करने के आधार पर निरस्त मानी जाएगी।
Any person desirous of appealing against this decision or order shall, pending the appeal, shall deposit ten per cent of the duty demanded or the penalty levied therein and produce proof of such payment along with the appeal, failing which, the appeal is liable to be rejected for non-compliance with the provisions of Section 129 of the Customs Act, 1962.

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| विषय / Subject : | Adjudication of Show Cause Notice No. 997/2022-23/Commr/Gr.-VB/CAC/JNCH dated 22.09.2022 issued by the Commissioner of Customs, NS-V, JNCH, Nhava Sheva to Mr. Yasser AH Dahlan, First Secretary, Embassy of the State of Palestine & Others under the Customs Act, 1962- reg. |
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BRIEF FACTS OF THE CASE

Intelligence developed by the Mumbai Zonal Unit of the Directorate of Revenue Intelligence (hereinafter also referred to as DRI) indicated that a syndicate led by one Rehman Iqbal Ahmed Shaikh (hereinafter also referred to as Rehman Shaikh/ Rehman) and others were involved in smuggling of a large number of Luxury Cars by organizing imports in the name of diplomats posted in India at Nil duty by availing the benefit of the Customs exemption Notification No. 03/1957-Cus dated 08.01.1957; that after import, 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

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 rate of 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 rate of duty (duty-free) after filing the Bill of Entry by availing the benefit of the Customs Notification No.03/1957-Cus dated 08.01.1957 using the Exemption Certificate issued by MEA. Once the car is cleared from Customs, the imported car is required to be registered within one month from the

date of its clearance from Customs with special registration for diplomats at MEA and a copy of the vehicle registration is sent to the MEA, as specified in the Prior Approval.

3. During the course of investigation initiated by DRI, it was revealed that the said syndicate led by Rehman Shaikh and others, using the above mentioned modus operandi, had imported a Range Rover Car bearing Chassis No. SALGA2JE0FA198821, vide Bill of Entry No. 64 dated 11.11.2016 in the name of Mr. Yasser AH Dahlan, First Secretary, Embassy of the State of Palestine, New Delhi. After the import, the syndicate registered the said vehicle in the name of a non-privileged person by forging the documents and subsequently the said car had been made available in the open market for sale and sold to a prospective buyer. The details of the vehicle and the said import as per the said Bill of Entry are tabulated as under:

TABLE No.1

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| Bill of Entry No. & Date | 64 dated 11.11.2016 |
| IGM No. | 2148984 dated 13.10.2016 |
| Bill of Lading No. & Date | OOLU2574828890 dated 28.09.2016 |
| Invoice No. & Date | Nil |
| Description of goods | Range Rover Vogue; Model 2015; Color - Black |
| Chassis No. | SALGA2JE0FA198821 |
| Assessable Value (in Rs.) | Rs. 49,71,176/- |
| Duty | Nil, as cleared availing exemption under Notification No. 03/1957-Cus dated 08.01.1957 |
| Customs Station | INNSA1 |
| Customs Broker | Babaji Khimji & Co. (AAAFB6900GCH001) |

3.1 During the course of investigation, the said Range Rover Car bearing Chassis No. SALGA2JE0FA198821, which had been imported vide Bill of Entry No. 64 dated 11.11.2016 in the name of Mr. Yasser AH Dahlan, First Secretary, Embassy of the State of Palestine without payment of duty by availing the benefit of the Customs duty exemption Notification No. 03/1957-Cus dated 08.01.1957, was found to be in the possession of Shri Suresh Jain and registered in the name of his employee, Mr. Redemption Makan, a non-privileged person. Thus, the investigation revealed that the said car had been registered in the name of a non-privileged person in violation of the conditions of Customs Notification No. 03/1957 dated 08.01.1957.

3.2 The investigation further revealed that the said Range Rover Vogue car was never registered in the name of the privileged person Mr. Yasser AH Dahlan, First Secretary, Embassy of the State of Palestine through MEA, as per records of the MEA provided vide their letter dated 15.06.2022. The said vehicle was found registered in the name of a non-privileged person, Mr. Davinder Kumar vide registration No. MN06L 9990 at the Registration Authority, Imphal East, Manipur and later on sold to Shri Suresh Jain and transferred in the name of his employee, Mr. Redemption Makan.

Seizure of the vehicle

4. During the course of investigation, a search was carried out at the premises of Shri Suresh Jain located at B-18, Third floor, Block-B Panchsheel Enclave, New Delhi under Panchannama

dated 25.03.2022. During the search proceedings, the said Range Rover Vogue car bearing Registration No. MN06 L 9990 was found in the said premises of Shri Suresh Jain along with RC copy and insurance copy of the said car. The said Range Rover Vogue car bearing Registration no. MN 06 L 9990 was imported in the name of foreign diplomat Mr. Yasser AH Dahlan, First Secretary, Embassy of State of Palestine, New Delhi by availing the benefit of the exemption dated 08.01.1957 and was found to be registered in the name of a non-privileged person, Redemption Makan (Employee of Suresh Jain). As the said Range Rover Vogue car, 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 Suresh Jain, a non-privileged person, it appeared liable for confiscation under the provisions of the Customs Act 1962. Accordingly, the said Range Rover Vogue car bearing Registration No. MN 06 L 9990 was seized by the DRI under the Seizure Memo dated 25.03.2022. Shri Suresh Jain, from whose possession the said car was seized, has not applied for the provisional release of the said car.

Enquiry made with MEA

5. As the import of the said Range Rover Vogue car bearing Chassis No. SALGA2JE0FA198821 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. Yasser AH Dahlan, First Secretary, Embassy of State of Palestine for the import of the said Car were obtained from MEA.

5.1 On going through the said documents obtained from MEA, it was observed that Mr. Yasser AH Dahlan, First Secretary, Embassy of State of Palestine, vide Note Verbale No. 105 dated 24.09.2016 had requested the Ministry of External Affairs, New Delhi to grant Prior Approval for the import of the said vehicle Range Rover Vogue. The MEA, vide letter no. D.VI/451/2/(54)/2016/5166 dated 18.10.2016, conveyed Prior Approval to the embassy of the State of Palestine, for the import of said Range Rover Vogue car 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.

5.2 Thereafter, Mr. Yasser AH Dahlan through his embassy's letter No. 05/2016 dated 03.11.2016 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, the MEA issued the Exemption Certificate bearing Serial No.5 PAL/11/01/2016 dated 07.11.2016. On the basis of the said Exemption Certificate, the said Range Rover Vogue car bearing Chassis No. SALGA2JE0FA198821 was imported into India vide Bill of Entry No.64 dated 11.11.2016 [IGM: 2148984 dated 13.10.2016] 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 15.06.2022, it was confirmed that the said vehicle had not been registered through MEA after its import.

5.3 Considering the facts of the case and to ascertain involvement in the eventual disposal of the vehicle to a non-privileged person, a summons dated 26.07.2022 was issued under Section 108 of the Customs Act, 1962 to Mr. Yasser AH Dahlan, First Secretary, Embassy of the State of Palestine through MEA to appear on 11.08.2022 before the DRI officer. The said letter was forwarded by MEA to the Embassy of the State of Palestine on 05.08.2022. In response to the said Summons dated 26.07.2022, the Embassy of the State of Palestine, vide their reply No. ESP/WD/2/1270A dated 10.08.2022, informed that the concerned Diplomat was not in India then and would be present at the given address on his arrival in India.

5.4 Thereafter, since the vehicle was not registered in the name of Mr. Yasser AH Dahlan, First Secretary, Embassy of the State of Palestine and the same was found to be registered in the name of a non-privileged person, Mr. Yasser AH Dahlan was informed vide letter dated 15.09.2022, 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.

5.5 The investigation revealed that the manual Bill of Entry No.64 dated 11.11.2016 [IGM: 2148984 dated 13.10.2016] in the name of Mr. Yasser AH Dahlan, First Secretary, Embassy of the State of Palestine was filed at Jawaharlal Nehru Customs House (JNCH) by the Customs Broker, M/s. Babaji Khimji & Co.

Enquiry with RTO

6. The investigation revealed that the members of the smuggling syndicate had succeeded in getting the said car registered with registration certificate No. MN 06 L 9990 at Imphal East, Manipur, RTO. Therefore, enquiry was made regard with the RTO at Imphal East, who furnished the documents submitted at the time of registration of the said car such as Form-20, Form-21, Form-22, Retail Invoice No. AMP/JLR/DL/RS/2015-17 dated 06.10.2016 issued by AMP Motors, Delhi, Insurance copy etc. From the said documents, it was observed that the said car was not registered in the name of the Privileged Person through MEA but was registered in the name of a non-privileged person, Davinder Kumar, vide Registration No. MN 06 L 9990 dated 10.03.2017.

6.1 As the Invoice No. AMP/JLR/DL/RS/2015-17 dated 06.10.2016 purportedly issued by M/s. AMP Motors, Delhi was inter alia used to register the said car at Imphal East RTO, therefore, inquiry in this regard was made with M/s. AMP Motors, who vide their email dated 02.09.2022 informed that the said invoice was not issued/generated by them i.e., M/s. AMP Motors Pvt. Ltd. Hence, the investigation revealed that the documents submitted before the RTO authorities at RTO East Imphal (Manipur) were forged documents, and that the said registration no. MN 06 L 9990 had also been obtained fraudulently.

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

7. 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.

7.1 Statement of Shri Suresh Jain, from whose possession the said Range Rover Vogue car was seized, was recorded under Section 108 of the Customs Act, 1962 on 25.03.2022, wherein he *inter alia* stated that;-

- (i) He was in the construction business. He was the owner of two firms, namely S.K. Constructions and Manipur Trading Corporation.
- (ii) On being asked about the vehicle bearing No. MN 06 L 9990, he stated that in the month of March 2017, one Shri Suresh Prasad had asked for a loan amount of Rs.80 Lakhs from him.
- (iii) He met Shri Suresh Prasad in the year 2014 through a common friend.
- (iv) Shri Suresh Prasad had offered the Range Rover car bearing Registration No. MN 06 L 9990 as a mortgage for the said loan amount of Rs. 80 Lakhs.
- (v) He liked the said car and decided to keep it as a mortgage against the loan amount of Rs. 80 Lakhs.
- (vi) He checked the details of the said car bearing Registration No MN 06 L 9990 online and noticed that the said car was registered in the name of Shri Davinder Sharma.
- (vii) He requested Shri Suresh Prasad to transfer the registration of the said car in the name of his employee, Shri Redemption Makan, and provided the documents of Shri Redemption Makan required for registration of the car to Shri Suresh Prasad.
- (viii) Subsequently, the car was transferred in the name of Shri Redemption Makan by Shri Suresh Prasad and the original RC for the said registration no. MN 06L 9990 was given to him by Shri Suresh Prasad.
- (ix) Since the said car was transferred in the name of his employee (Shri Redemption Makan), he told Shri Suresh Prasad to collect the above-mentioned amount of Rs 80 lakhs from him (Suresh Jain). In March'2017, an associate of Shri Suresh Prasad collected the said amount of Rs 80 lakhs (in cash) from him.
- (x) In the month of April'2017, he received a call from Shri Davinder Sharma who told him that the said car bearing No. MN 06 L9990 belonged to him and he demanded the said car back.
- (xi) He told Shri Davinder Sharma that the said car bearing no. MN 06L9990 had been transferred in the name of Shri Redemption Makan.
- (xii) Shri Davinder Sharma told him that he had never sold the said car bearing no. MN06L9990 to anyone and the said transfer in the name of Shri Redemption Makan was done fraudulently and that Shri Davinder Sharma also threatened him with a police case if he did not return the car to him.
- (xiii) Subsequently, in the month of April'17, an officer of Delhi Police from New Friends Colony Police Station came to his house in Greater Kailash-II, New Delhi and detained the said car bearing no. MN 06L 9990 as they had received a complaint

against the said vehicle.

- (xiv) Since he was in Imphal at that time, he sent his son, Nikhil Jain, to the New Friends Colony Police station in New Delhi who informed the officer there that Shri Suresh Jain had purchased the said car by giving an amount of Rs. 80 Lakhs to Shri Suresh Prasad.
- (xv) The officer in the New Friends Colony Police station in New Delhi enquired about the payment details of the said car from his son (Nikhil) but since he had paid the whole amount of Rs 80 lakhs in cash, his son had no proof for the same.
- (xvi) As he had no payment proof for the said vehicle and Shri Davinder Sharma had claimed that he had not transferred the said car in the name of Redemption Makan, the Delhi Police officer gave the said car bearing no. MN 06L 9990 to Shri Davinder Sharma.
- (xvii) After about a month, he received a call from Shri Davinder Sharma who informed him (Suresh Jain) that he (Davinder) wanted to settle the issue of the said car.
- (xviii) He went to the house of Shri Davinder Sharma in New Friends Colony to negotiate and settle the matter. After negotiating, Shri Davinder Sharma demanded an amount of Rs 60 lakhs for the said car from him (Suresh). He transferred an amount of Rs. 29 lakhs from the account of Shri Redemption Makan to the bank account of Shri Davinder Sharma and the remaining amount of Rs 31 lakhs was given in cash to Shri Davinder Sharma by his son (Nikhil Jain).
- (xix) After payment of the whole amount to Shri Davinder Sharma, his son collected the said car bearing no. MN06L9990 from Shri Davinder Sharma.
- (xx) He requested Shri Suresh Prasad to return the above-mentioned amount of Rs 80 lakhs on many occasions. However, till date, the said amount has not been returned to him by Shri Suresh Prasad.

7.2 Statement of Shri Nikhil Jain s/o Shri Suresh Jain was recorded under Section 108 of the Customs Act, 1962 on 25.03.2022 wherein he *inter alia* stated that;-

- (i) In the month of March'2017, Shri Suresh Prasad had asked for a loan amount of Rs.80 Lakhs from his father, Shri Suresh Jain, and offered a Range Rover bearing No. MN 06 L 9990 as a mortgage for the said car.
- (ii) He was introduced to Suresh Prasad by his father.
- (iii) He had checked the details of the said car online and found it registered in Davinder Sharma's name and requested his father to transfer it in the name of Redemption Makan, their employee.
- (iv) Shri Suresh Prasad transferred the said car bearing No. MN 06 L 9990 in the name of Redemption Makan and provided to original RC to his father. After the name transfer of the said car, his father paid an amount of Rs. 80 Lakhs to Suresh Prasad in cash.
- (v) In the month of April'2017 his father received a call from Davinder Sharma demanding the car back and saying that the said car had been fraudulently transferred in the name of Redemption Makan.

- (vi) Subsequently, in the month of April'2017, an officer of Delhi Police from New Friends Colony Police Station came to his house in Greater Kailash-II, New Delhi and informed them that he had to detain the said car bearing no. MN 06L 9990 as they had received a complaint against the said vehicle and then took the said car bearing no. MN 06L 9990 along with him.
- (vii) Since his father was in Imphal at that time, he went to the New Friends Colony Police station in New Delhi and informed the officer there that his father had purchased the said car by giving an amount of Rs. 80 Lakhs to Shri Suresh Prasad.
- (viii) The officer in the New Friends Colony Police station in New Delhi enquired about the payment details of the said car, but since the whole amount of Rs 80 lakhs was paid in cash, he had no proof for the same.
- (ix) As he had no payment proof for the said vehicle and Shri Davinder Sharma had claimed that he had not transferred the said car in the name of Redemption Makan, the Delhi Police officer gave the said car bearing no. MN 06L 9990 to Shri Davinder Sharma.
- (x) After about a month, his father received a call from Shri Davinder Sharma who informed him (Suresh) that he (Davinder) wanted to settle the issue of the said car.
- (xi) After negotiating, Davinder Sharma demanded an amount of Rs 60 Lacs for the said car from his father. His father transferred an amount of Rs 29 Lacs from the account of Shri Redemption Makan to the bank account of Shri Davinder Sharma and the remaining amount of Rs. 31 lakhs was given in cash to Shri Davinder Sharma by him (Nikhil).
- (xii) After payment of the whole amount to Shri Davinder Sharma, he collected the said car bearing no. MN06L9990 from Shri Davinder Sharma.

7.3 Statement of Shri Davinder Sharma, the first owner of the said Range Rover Vogue car that has been seized, was recorded under Section 108 of the Customs Act, 1962 on 25.03.2022 wherein he *inter alia* stated that;-

- (i) He is into the business of real estate and construction and the name of his business company is Manvee Builders Pvt. Ltd.
- (ii) On being asked about his relationship with Shri Suresh Prasad, he stated that Suresh Prasad along with his mother were tenants of one of his relatives and used to take loans of small amounts (approx. 5 Lakhs to 10 Lakhs). In this way he (Suresh Prasad) owed him money to the tune of Rs. 1,00,00,000/-.
- (iii) When he asked him (Suresh Prasad) to return his money, he (Suresh Prasad) offered him a Range Rover car, for Rs.1.50 Crores. He accepted the offer and took the car and paid Shri Suresh Prasad a sum of Rs.50 Lacs in cash. The car was registered in his name in Manipur with Registration No. MN 06 L 9990 by Shri Suresh Prasad.
- (iv) He never visited Manipur for the same and had given a copy of his Aadhar Card & PAN Card and photos to Shri Suresh Prasad.
- (v) After some 3 or 4 months, Shri Suresh Prasad informed him that one Mr. Nikhil Jain

- is interested in buying the said Range Rover car bearing Registration No. MN-06 L 9990 and he (Suresh Prasad) would return his money soon after the sale of the car.
- (vi) A person, whose details he did not know, came along with Mr. Nikhil Jain and took the said car from his house.
 - (vii) After some days, upon his return to India from Dubai, he enquired with Shri Suresh Prasad about his money. He (Suresh Prasad) informed that the vehicle was with Mr. Nikhil Jain, a resident of Greater Kailash, who was refusing to make any payment as he (Shri Suresh Prasad) owed them (Nikhil) some money.
 - (viii) He came in trouble as his money got blocked and was left empty-handed.
 - (ix) He came to know that Shri Nikhil Jain got the said car registered in his name. Then he (Davinder) filed a complaint with the New Friends Colony Police against Mr. Nikhil Jain as he took the car, which was registered in his (Davinder) name without making any payment for the same and got the car registered in his name fraudulently.
 - (x) Shri Suresh Jain, a big businessman of Manipur, came for settlement and they settled for an amount of Rs.60 Lacs, and he returned the said Range Rover car bearing registration no. MN 06 L 9990 to them.
 - (xi) Suresh Prasad offered him another Range Rover car bearing Registration No. MN 06L 0702 for Rs. 1.27 Crores. In desperation, he accepted the offer, took the car, and paid Suresh Prasad a sum of Rs. 37 Lakhs in cash in part payments.
 - (xii) Later, the said car was seized by Mehrauli, New Delhi Police from AMP Motors where it was sent for service.
 - (xiii) He visited Mehrauli Police Station, New Delhi where he came to know that the said car belonged to some foreign diplomat of some embassy in New Delhi and the car was returned to the diplomat and an FIR was filed against Shri Suresh Prasad.
 - (xiv) When he asked Shri Suresh Prasad to return the amount of Rs.1.27 Crores, he (Suresh Prasad) and his mother requested for some time and gave him a Range Rover Vogue car bearing Registration No. PB-36J 7369 as security.
 - (xv) He later learnt the Range Rover PB-36J 7369 was blacklisted by the registration authorities due to some tax disputes.
 - (xvi) He immediately called Shri Suresh Prasad to take the vehicle and return his money, amounting to Rs.1.27 Crores.
 - (xvii) Shri Suresh Prasad along with one Mr. Salman Baluch, who was a driver of Mr. Rehman Shaikh (as informed by Suresh Prasad), took the said car from his home.
 - (xviii) Shri Suresh Prasad has not returned his money till date.
 - (xix) He identified the photo of Mr. Rehman Shaikh whom he met briefly in Mehrauli Police Station in the matter related to the Range Rover car bearing Registration No. MN 06 L 0702.

7.4 Statement of Suresh Prasad was recorded under Section 108 of the Customs Act, 1962 on 22.08.2022 wherein he *inter alia* stated that;-

- (i) He was in the trading business of used cars and apparel. He was the proprietor of

- KNS General Trading through which he did the trading business.
- (ii) He knew Shri NipunMiglani since 2014. He contacted the showroom of Big Boys Toys located at M.G. Road, New Delhi as he wanted to sell his car Audi Q3 and there he got connected with Shri Nipun Miglani. Subsequently, he also bought some cars from Big Boys Toys and since he was regularly contacting Shri Nipun Miglani, they became close friends.
 - (iii) He met Shri Rehman Sheikh in Dubai through Nipun in the year 2016. On a few occasions Shri Nipun Miglani had arranged money for him through Shri Rehman Sheikh.
 - (iv) On being shown, he perused the statement dated 25.03.2022 of Shri Davinder Sharma and put his dated signatures in token of having verified the same.
 - (v) He had known Davinder Sharma since 2015 and had taken his house on rent (in Delhi) and he, later on, purchased the said house from him (Davinder).
 - (vi) Shri Davinder Sharma had arranged funds for his business on many occasions and had borrowed about Rs.1.5 Crores from Shri Davinder Sharma in small amounts over a period of time which he could not repay on time.
 - (vii) In the year 2017, Shri Rehman Iqbal Sheikh had sent two Range Rover Vogue cars one Black and one Blue in colour, to his workshop in Satbari, Chattarpur, New Delhi through the reference of Nipun Miglani.
 - (viii) Since he needed some money at that time to pay the dues of Shri Davinder Sharma, he asked Shri NipunMiglani if the said two Range Rovers are for sale so that he could make some commission by selling the said cars.
 - (ix) Shri NipunMiglani informed him that the said cars were for sale and was given the time of one-month for selling the said Range Rover cars.
 - (x) On being asked about the black Range Rover Vogue car bearing no. MN06L9990, he stated that it was an unregistered car, and was offered to Shri Davinder Sharma and since he liked the said car, he (Suresh Prasad) got it registered in his (Davinder) name in Manipur RTO under the registration no. MN 06 L 9990.
 - (xi) He could not sell the Blue Range Rover within one month and got calls from Shri Rehman Iqbal Sheikh to either return the car within the given period of one month or repay his dues. Since he was under a lot of debt as he had borrowed an amount of Rs 80 lakhs from Shri Suresh Jain and Shri Davinder Sharma was also complaining about some technical issues in the black Range Rover car bearing registration no. MN06L9990, so he decided to mortgage the said Range Rover car bearing registration no. MN06 L9990 with Shri Suresh Jain in lieu of the above loan. Shri Nikhil Jain (Son of Suresh Jain) had taken the said car from the residence of Davinder Sharma while they (Davinder and Suresh Prasad) both were in Dubai. Shri Suresh Jain agreed to his proposal and requested him to get the said car transferred in the name of Shri Redemption Makan. He got the said car bearing registration no. MN06L9990 registered in the name of Shri Redemption Makan.
 - (xii) In respect of Blue Range Rover Vogue bearing no. MN06LA0702, he stated that, on

directions of Shri Rehman Sheikh, he offered the said car to Shri Davinder Sharma since the black Range Rover was given to Suresh Jain as collateral. Since Shri Davinder Sharma liked the car, he got it registered in his name under the registration no. MN 06 LA 0702. Shri Davinder Sharma paid him around Rs 18 lakhs additionally for the said car bearing no. MN06LA0702 and he sent this amount to Shri Rehman Sheikh. Since he was not able to pay the full amount for the said blue Range Rover to Shri Rehman Sheikh, he got aggravated and got an FIR registered against the said car bearing no. MN06LA0702 in Mehrauli Police Station in New Delhi through Syrian Embassy. The Delhi Police officers came to the residence of Shri Davinder Sharma and then seized the said car bearing no. MN06LA0702. Davinder Sharma filed a complaint against Suresh Jain and Nikhil Jain with Mehrauli Police Station, New Delhi regarding the theft of a black Range Rover (MN06L9990) that was earlier registered in his name. The issue was sorted when Suresh Jain paid Davinder Sharma an additional amount of Rs.60 Lakhs and the car was accordingly returned to Suresh Jain.

- (xiii) He had sent the amount of Rs.80 Lakhs (borrowed from Suresh Jain in cash) along with the amount of Rs.18 Lakhs (received from Davinder Sharma in cash) to Shri Rehman Sheikh.
- (xiv) The entire amount was sent through the Hawala channel to Rehman Sheikh.
- (xv) Since Rehman Sheikh had not realized the entire amount in respect of the black Range Rover car bearing registration no. MN06L9990, he had threatened him that he would file another complaint and get the said car also seized by the police.
- (xvi) He had arranged another 35 Lakhs and sent it to Rehman Sheikh through Hawala channel. Thus, in total Rs.1.31 crores was sent to Rehman Iqbal Sheikh as the sale proceeds of the black Range Rover car bearing registration no. MN06L9990.

7.5 Statement of Shri Nipun Miglani was recorded under Section 108 of the Customs Act, 1962 on 15.07.2021 wherein he, inter alia, stated that;-

- (i) He joined Big Boy Toys (BBT) 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 dealers' network and to later sell them to interested customers after refurbishing them.
- (ii) He also worked as a freelance broker arranging imported cars for clients who were unable to get their cars from trusted sources in the country.
- (iii) The names of his dealers were Rehman Sheikh, Jung Bhahadur Singh, Charang Jeet Singh, Heera Singh, Haji Bhai and others from Mumbai.
- (iv) The car picture and documents were shared to him on WhatsApp from the dealers which were then forwarded to the prospective clients.
- (v) He was introduced to Rehman Sheikh in year 2010 by another dealer. Rehman contacted him and asked to help him to sell imported cars.
- (vi) He agreed to Rehman Sheikh's proposal and then Rehman introduced him to

Liyakat Bachu Khan who used to take care of handing over of all the documents of imported cars.

- (vii) He used to communicate with Liyakat Bachu Khan mostly through WhatsApp calls on his (Liyakat) mobile number.
- (viii) He used to get details of cars such as Make, Model, Year of Manufacture, Engine Cubic Capacity, Fuel variant and expected price from Rehman and based on these details he looked for probable customers requiring such specifications. After getting the customer, he used to finalize the deal with Rehman Shaikh.
- (ix) The registration papers of all the imported cars were arranged by Liyakat Khan.

7.5.1 Statement of NipunMiglani was again recorded under 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* deposed 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.

7.5.2 Statement of Shri Nipun Miglani was again recorded under Section 108 of the Customs Act, 1962 on 02.08.2021 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 name money was deposited and received via Afzal on behalf of Rehman Shaikh for financial transactions, he provided the name of Shahid Katerwala, Shahbaz Memon, Fahim Surti, Surti Enterprises, World Wings Inc. (owned and managed by AfzalMemon), Wajdan Iftekhar Shaikh and Iftekhar 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.

7.5.3 Statement of Nipun Miglani was again recorded under Section 108 of the Customs Act, 1962 on 18.07.2021 wherein he *inter alia* stated that:

- (i) On being shown statement of Shri Suresh Prasad dated 26.03.2022, he perused the said statement and put his dated signature.
- (ii) Rehman Shaikh had enquired with him about a car workshop in New Delhi.
- (iii) He had informed him (Rehman) about S3C motors, Satbari, Chattarpur, New Delhi owned by Shri Suresh Prasad.
- (iv) Rehman Shaikh had sent 2 Range Rover cars to the above workshop of Suresh Prasad giving his reference for the purpose of paintwork and minor job work.

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

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

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

- (i) In 2017, Rehman offered him a business proposal that he wanted to import duty-free goods viz. furniture, cars etc. in the name of foreign diplomats and asked his help in that business as he (Rajeev Sood) had sources in various embassies due to

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

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

- (i) Once a diplomat agreed to lend the documents for the imports of cars, furniture etc. he used to procure a photocopy of his diplomatic identity card which the diplomat used to provide willingly;
- (ii) He used to forward photograph of the said document to Rehman on whatsapp and based on this document Rehman used to get the invoice prepared and the same was then forwarded to him on whatsapp which he then used to forward to Manjeet Maurya.
- (iii) Manjeet then used to prepare the Application for prior approval to be submitted in

the Ministry of External Affairs (MEA) and then Manjeet used to send back the same to him (Rajeev Sood) over WhatsApp, which he used to forward to the diplomat who was lending his/her documents;

- (iv) The diplomats used to submit the same application to the MEA for granting duty exemption for the import of cars and the MEA used to process the application and accord sanction and the same was conveyed to the diplomat by the MEA through email;
- (v) Manjeet used to keep him informed about the status of the application and would also inform him after the approval was granted;
- (vi) For Manjeet's services, he was paying Rs. 12,000/- in cash to Manjeet for each document pertaining to one consignment;
- (vii) He used to visit the concerned diplomat at his office and collect the hard copy of the Sanction documents and send the photograph of the Sanction document over WhatsApp to Rehman Shaikh;
- (viii) After that, Rehman used to ship the consignment and send him the bill of lading and Liyakat used to send him all import documents such as bill of lading, invoice, packing list etc through courier;
- (ix) The diplomat used to make the final application for duty free imports (Exemption Certificate) and the said application was made by the diplomat himself through online process after which the MEA conveyed him the grant of duty exemption through email which conveyed him the grant of exemption from duty for import;
- (x) Once final approval was granted, the same was conveyed to him by Manjeet, after which he used to visit the concerned diplomat's office and collect the hard copies of the exemption documents and forward the same to Liyakat through courier;
- (xi) On being asked about the payment to diplomats, he stated that an advance money of 50% of the decided amount would be paid during the process of Prior Approval and the balance 50% was 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 3 years;
- (xiii) He had received around Rs.60 Lakhs in cash from Afzal in the last 3 years on behalf of the Diplomats;
- (xiv) On some occasions Rehman used to deposit money in the accounts of the diplomats as instructed by them directly as well;
- (xv) He received cash in the range of Rs. 1 to Rs. 1.5 lakh from Rehman through Afzal depending upon the deal;
- (xvi) That the diplomats received amounts ranging from Rs. 8 to Rs. 10 Lakh based on the deal.

7.7 Statement of Shri Manjeet Maurya, an associate of Rajeev Sood, was recorded under Section 108 of the Customs Act, 1962 on 14.07.2021 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 had to take Prior Approval from the Ministry of External Affairs before importing the vehicle for which the diplomat has to submit a letter requesting to provide Prior Permission to import their personal/official vehicle; along with letter the diplomat has to submit proforma invoice, copy of passport and MEA identity card for getting Prior Approval.
- (v) After getting prior approval, the diplomat has to submit Form 9 along-with following documents at the time of importing the vehicle for claiming duty exemption on the imported vehicle:
 - Prior approval
 - Invoice
 - Bill of Lading
 - Identity card
 - Passport
- (vi) After submission of the above said documents, the officer/employee of the Ministry of External Affairs scrutinizes the documents and issues exemption letter, addressed to the Customs authority in the name of the diplomat for providing the exemption on import duty of the goods imported by the diplomat.
- (vii) After importing duty-free vehicle by availing exemption, the diplomat has to apply for registration of the said vehicle through MEA only within 03 months of importing the vehicle.
- (viii) Diplomats have a lock-in period for selling their duty free vehicle in the local market. This lock-in period is of 3 years, 4 years or may be more depending upon the country, the diplomat belonged.
- (ix) If the importer diplomat wanted to sell his duty free imported vehicle within lock in period, he/she needs to pay the full amount of duty as per Customs provision.
- (x) A diplomat of the rank of second secretary and below has entitlement of one duty free vehicle within two years of posting in the country; a diplomat of rank first secretary and above has entitlement of two duty free vehicles within two years of posting in the country.
- (xi) He stated that he used to put up file to his section officer for registration of vehicle

- after import or selling of vehicle if a diplomat was eligible to sale his vehicle and applied for the same.
- (xii) He met Rajeev Sood in the year 2015 for the first time along with one diplomat and enquired about the documents required for sale of vehicles on which GST/excise exemption was taken by the Diplomat.
 - (xiii) Rajeev Sood also enquired about the eligibility of one Diplomat for importing vehicles in his name. After that Shri Rajeev Sood met him after 3-4 months for the second time and enquired about the documents required for duty free import of furniture by using the exemption which is entitled to diplomat only; He again enquired about one diplomat's eligibility for duty free import by using exemption notification entitled to diplomats.
 - (xiv) After that Shri Rajeev Sood used to meet him in every 2-3 months and used to enquire about the documents required for duty free import of vehicles/furniture by using the exemption which is entitled to diplomat; every time he used to enquire about a new diplomat's eligibility for duty free import by using exemption notification entitled to diplomats and he (Manjeet) used to provide him (Rajeev Sood) the information regarding the necessary documents for duty free import by using exemption notification entitled to diplomats.
 - (xv) He used to provide him (Rajeev Sood) information about the eligibility of diplomat for duty free import by using exemption notification entitled to diplomats; He used to provide the required information to Shri Rajeev Sood in lieu of monetary benefits.
 - (xvi) Regarding the registration of vehicles (imported duty free), done in the name of diplomat, he stated that in most of the cases, registration was not done through MEA and instead the vehicles might have been sold directly into local market by brokers like Rajeev Sood.

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

- (v) 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.
- (vi) On being asked about the reason for forging the 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 amounted to forgery. Further, he admitted that duty exempted Bill of Entry was changed to dutiable Bill of Entry, on the basis of which they got the imported luxury car, imported in the name of diplomat, registered and then sold in the local market at a substantial high value.

7.8.1 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-receipt, etc. as per the instructions of Rehman Shaikh and paid Wasim amounts ranging from Rs.500/- to Rs.2,000/- for the work.
- (ii) All the editing and forgery were done by him as per the instructions of Rehman Shaikh and he used to ask Wasim 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.

7.8.2 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) On being shown the statement of Shri Aubrey Elias D'Souza dated 12.07.2022, he perused the same and put his dated signature on the same having agreed to its contents.
- (ii) On being asked about the circumstances in which the manual Bill of Entry (No.64 dated 11.11.2016) was filed, as deposed by Aubrey D'Souza, he stated that the BoE 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.
- (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.

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

- (i) Liyakat Bachu Khan had given him the work of editing the documents which he did.
- (ii) He had Carroll software on his computer on the basis of which he used to edit all the documents given to him by Liyakat Bachu Khan.
- (iii) The invoices, some letters of Ministries, etc. were forwarded to him by Liyakat khan and he edited the documents as directed by Liyakat.
- (iv) Liyakat khan used to give him Rs. 500 to Rs. 1000 as per the quantum of editing.
- (v) Sometimes Liyakat Khan gave him the Bills of Entry to edit the name of the importer or value of the goods and he did the same as per Liyakat's directions.

7.9.1 Further statement of Mohammed Wasim Abdul Gani Siddique was recorded on 29.08.2021, under Section 108 of the Customs Act, wherein he, *inter alia*, stated that;

- (i) On being shown the Invoice No. AMP/JLR/DL/RS/2015-17/304 dated 06.10.2016 and Sale Certificate in respect of Range Rover Vogue car bearing Chassis No. SALGA2JE0FA198821, he deposed that the said documents were edited/forged by him on the directions of Shri Liyakat Bachu Khan.
- (ii) The documents were provided to him by Liyakat Bachu Khan and he (Wasim) was asked to edit/forge those documents as per the details provided by Liyakat.

- (iii) he used to get monetary consideration of Rs. 500/- to Rs. 1,000/- per document from Liyakat Bachu Khan.

7.10 The impugned Range Rover Vogue car bearing Chassis No. SALGA2JE0FA198821 had been imported into India vide Bill of Entry No.64 dated 11.11.2016 in the name of Mr.Yasseh AH Dahlan which was filed at Jawaharlal Nehru Customs House (JNCH) by Customs Broker, BabajiKhimji& Co. The said Bill of Entry was filed by Mr. Aubrey Elias D'souza, representative of the Customs Broker firm namely Babaji Khimji and Co. [CHA Code: AAAFB6900GCH001] and Aubrey Elias D'souza had dealt with the entire process of clearance of the said Range Rover car. In this regard, statement of Shri Aubrey Elias D'souza was recorded under Section 108 of the Customs Act on 22.07.2021 wherein he, inter alia, stated that:-

- (i) He was in the Customs Broking and Clearing and freight Forwarding profession for the last 32 years. There was no staff working in his office at JP International and he handled all the work of Customs clearing by himself.
- (ii) He knew Rehman Shaikh for 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/consulates/embassies.
- (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) Sometimes Rehman used to send Bill of Lading on his WhatsApp number for the concerned diplomatic import. 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.
- (v) On receiving the documents on email, he used to upload the documents on ICEGATE site for the generation of Bill of Entry.
- (vi) Further, he deposed that generally Liyakat used to get delivery of imported cars from the CFS. Then he prepared bill for clearance charges and delivery challan of the imported cars and told Liyakat to provide the copy of the delivery challan duly signed by the recipient diplomats which Liyakat used to provide him within 10 to 15 days of customs clearance.
- (vii) 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.

- (viii) He was fully aware of Notification No.03/1957-Cus dated 08.01.1957.
- (ix) 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 (Navalson Logistics).
- (x) He charged Rs.25,000/- per job (for every import) from Liyakat.
- (xi) 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.

7.10.1 Statement of Shri Aubrey Elias D'souza was also 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:

| S.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 Dahlan, First Secretary, E/o State of Palestine |
| 3 | 66 dated 29.03.2016 | Toyota Vellfire | Han Jac Song, Counsellor, E/o DPR Korea |
| 4 | 94 dated 31.05.2016 | Range Rover Vogue | Ghassan Abdul Khaleek, Charge D'Allairs, E/o Lebanon |

- (iii) He received the job of clearance of the above mentioned 4 consignments under Customs Notification No. 03/1957 from Liyakat Bachu Khan.
- (iv) He used to get the 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.
- (v) Once the consignment was out of charged Liyakat used to come for receiving the said consignment on behalf of the concerned Embassy/consulate/diplomats.
- (vi) Thereafter, he (Liyakat) used to send him (Aubrey) the endorsed copy of the delivery challan once the war was delivered to the concerned diplomat.
- (vii) He never asked Liyakat for any sort of authorization to collect the vehicle on behalf of the embassy/constulate/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.
- (viii) Liyakat used to pay his cleaner charges through cash which was Rs. 25000/- per job of import.
- (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 the stated that Ship stores, Transshipment, ATA Carnet, Diplomatic mirgo etc. were allowed for manual filing of Bill of Entry after permission from DC, EDI.

8. 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. Multiple summonses were issued to Rehman Iqbal Shaikh to be present before the DRI officer and to cooperate with the investigation. However, he did not appear before the DRI officer showing his scant regard for the law of the land.

Analysis of evidence recovered and facts revealed during investigation:

9. The case emanated from the receipt of intelligence that pointed towards the smuggling of high-end luxury cars by a syndicate led by Rehman Iqbal Ahmed Shaikh. The subject Range Rover Vogue car bearing Chassis No. SALGA2JE0FA198821 was one among the said smuggled cars. The said Range Rover Vogue car was imported into India vide Bill of Entry No. 64 dated 11.11.2016 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. Yasser AH Dahlan, First Secretary, Embassy of the State of Palestine who had submitted the required documents for obtaining the Exemption Certificate from MEA. The syndicate appeared to have diverted the said imported Range Rover Vogue car into the open market for sale to a non-privileged person, instead of delivering it to Mr. Yasser AH Dahlan, First Secretary, Embassy of the State of Palestine. Since the said vehicle was not registered in the name of the privileged person, it appeared that the said vehicle was disposed of 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.

9.1 It also appeared that the said Bill of Entry No. 64 dated 11.11.2016 in the name of Mr. Yasser AH Dahlan, First Secretary, Embassy of the State of Palestine was filed by the customs broker, M/s. Babaji Khimji & Co. It was further observed from the documents submitted by Shri Aubrey D'souza, representative of M/s. Babaji Khimji & Co. during his statement dated 12.07.2022, that Mr. Yasser AH Dahlan, First Secretary, Embassy of State of Palestine had submitted letter dated 09.11.2016 to Deputy Commissioner of Customs, JNPT wherein he had mentioned that he had been working in the Embassy of Palestine as First Secretary, and that he had imported the consignment under the Bill of Lading no. OOLU2578428890 dated 28.09.2016 as personal effects. Further, the said letter also mentioned that he had authorized Babaji Khimji & Co. to clear the said consignment.

9.2 It was also observed from the documents and records obtained from the MEA that Mr. Yasser AH Dahlan, First Secretary, Embassy of State of Palestine, had followed the necessary prescribed procedures in obtaining the necessary Prior Approval and Exemption Certificate for

the import of Range Rover Vogue car bearing Chassis No. SALGA2JEOFA198821. The same are illustrated hereunder;-

- (i) Mr. Yasser AH Dahlan, vide his embassy's Note Verbale No. 105 dated 24.09.2016 had requested the MEA to grant Prior Approval for the import of the said vehicle.
- (ii) The MEA vide letter no. D.VI/451/2/(54)/2016/5166 dated 18.10.2016 conveyed its Prior Approval to the Embassy of State of Palestine, for import of said Range Rover (model 2015) car 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.
- (iii) Thereafter, Mr. Yasser AH Dahlan through his embassy's letter No. 05/2016 dated 03.11.2016 requested the MEA for an Exemption Certificate for availing exemption from payment of customs duty on the said vehicle.
- (iv) The MEA issued the Exemption Certificate bearing Serial No. PAL/11/01/2016 dated 07.11.2016, on the basis of which the said vehicle was imported into India vide Bill of Entry No. 64 dated 11.11.2016 without payment of duty.

9.2.1 The above discussed letters and correspondences indicated that all the necessary documents and permissions required for the purpose of duty-free import of the said Range Rover Vogue was arranged by Mr. Yasser AH Dahlan, First Secretary, Embassy of State of Palestine and then he appointed Babaji Khimji & co. for the Customs clearance of the said vehicle, and also to collect the Range Rover car. Further, despite the fact that Mr. Yasser AH Dahlan had explicitly mentioned in his letter dated 09.11.2016 to Deputy Commissioner of Customs and the correspondences made with the MEA, that the said consignment was his personal effects for personal use and not for sale in the open market, the said Range Rover Vogue car was found in the possession of a non-privileged person, Mr. Suresh Jain. Thus, it appeared that after import, the said Range Rover Vogue 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

9.2.2 The investigation further revealed that after the import of the said Range Rover Vogue in November 2016, the said vehicle was sold to one Davinder Sharma (a non-privileged person) for a consideration of Rs 1.5 Crores. The said car was also registered in his (Davinder Sharma's) name by Mr Suresh Prasad. Thereafter, Shri Suresh Prasad had later offered the said Range Rover car to Mr. Suresh Jain against a mortgage of Rs 80 Lakhs. Finally, the said Range Rover was registered in the name of the employee of Mr. Suresh Jain and the said registration was arranged by Mr. Suresh Prasad.

9.2.3 The investigation also revealed that the said vehicle was registered under registration No. MN 06 L 9990 using an invoice bearing no. AMP/JLR/DL/RS/2015-17 dated 06.10.2016 purportedly issued by M/s. AMP Motors. However, on enquiry made with M/s. AMP Motors, it was learnt that the said invoice was not issued/generated by M/s. AMP Motors Pvt. Ltd. Thus, it

appeared that the said documents were forged by the syndicate members to fraudulently register and sell the said Range Rover car in the name of a non-privileged person in the open market.

9.2.4 Therefore, from the above facts that the said Range Rover car was registered in the name of a non-privileged person and found in his possession, appeared to offer ample evidence of the plan of the conspirators.

9.3 Analysis of statements:

9.3.1 The analysis of statement of Shri Davinder Sharma, 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. 1.5 Crores (adjustment of Rs. 1 Crore against the loan given to Shri Suresh Prasad and an additional payment of Rs. 50 Lakhs in cash). He had purchased the said car by making payments to Shri Suresh Prasad in cash despite the fact that the said car was not in the name of Suresh Prasad. He has not shown his due diligence to verify the veracity of all the documents provided by the members of the smuggling syndicate for the reasons best known to him and he had even not bothered to make the payment to the person in whose name the vehicle was registered.

9.3.2 The analysis of the statement of Shri Suresh Jain, tendered under Section 108 of the Customs Act, 1962 revealed that he had dealt with the members of the smuggling syndicate and acquired the said vehicle as a mortgage of a loan amount of Rs. 80 Lakhs and had got it registered in the name of his employee. The said payment of Rs. 80 Lakhs to Shri Suresh Prasad was made in cash, suggesting his malafide intent. He has not shown his due diligence to verify the veracity of all the documents provided by the members of the smuggling syndicate for the reasons best known to him and he had even not bothered to make the payment to the person in whose name the vehicle was registered.

9.3.3 In the instant case it appears that the maxim of *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 Davinder Sharma and Shri Suresh Jain, being the purchaser 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 Suresh Jain without registration in the name of a Privileged person.

Further, both Davinder Sharma and Suresh Jain 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 available to them, thus evidencing that both Davinder Sharma and Suresh Jain are concerned with the said fraudulently imported Range Rover Car.

9.3.4 The analysis of the statement of Suresh Prasad tendered under Section 108 of the Customs Act, 1962 revealed that he had known Nipun Miglani since 2014 and he was introduced to Rehman Shaikh by Nipun Miglani. He was a prominent dealer in the field of sale and purchase of second-hand luxury cars and located potential customers for the cars which were illicitly imported by Rehman Shaikh into the country. He had received the said car in his workshop and had also identified a buyer for the same. He also managed to get the said Range Rover car registered in the name of a non-privileged person in a fraudulent manner. Further, he had sent the entire sale proceeds, amounting to Rs. 1.31 Crores to Rehman Shaikh through Hawala Channel.

9.3.5 The analysis of the statement of Nipun Miglani tendered under Section 108 of Customs Act, 1962 revealed that he was a prominent dealer in the field of sale and purchase of second-hand luxury cars and Rehman 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 referred the impugned Range Rover car to the workshop of Sureh Prasad for job work from where it was sold to a non-privileged person.

9.3.6 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 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.

9.3.7 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 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.

9.3.8 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 in respect of the said Range Rover car bearing Chassis No. SALGA2JE0FA198821 as per the instructions given by Liyakat. The said documents were later used by the syndicate to fraudulently register said car in the name of a non-privileged person and later sell it in the open market.

9.3.9 The analysis of the statements of Shri Aubrey Elias D'souza, the Customs Broker of M/s. Babaji Khimji & Company, tendered under Section 108 of the Customs Act, 1962, appear to suggest that the import clearance job in respect of the above-mentioned Range Rover car bearing Chassis No. SALGA2JE0FA198821 was done by him for which he had charged Rs. 25,000/- which he received from Liyakat Bachukhan in cash. As he was a Customs Broker, he was very well aware that the imported goods 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.

Financial Investigation

9.4 During the course of the financial investigation, it was revealed that Shri Suresh Prasad had borrowed an amount of Rs. 1 Crore from Shri Davinder Sharma. Later on, he offered the impugned Range Rover car bearing Chassis No. SALGA2JE0FA198821 to Davinder Sharma for an additional amount of Rs. 50 Lakhs which was paid in cash. Thus, in total, the initial monetary consideration for the said car was Rs. 1.5 Cr. Thereafter, the said Range Rover car was mortgaged for an amount of Rs. 80 Lakhs to Shri Suresh Jain (payment made in cash). Eventually, Shri Suresh Prasad had routed an amount of Rs. 1.31 Crore to the mastermind, Rehman Shaikh through Hawala route, thus indulging in unusual financial transactions of high value cash.

The Modus-Operandi

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

10.1 It appeared that Shri Rajeev Sood was one of the members of the syndicate, who was very well acquainted with the mastermind Rehman Shaikh. He used to introduce diplomats to the mastermind and facilitate their deal. Rajeev Sood used to visit Embassies at times to facilitate the deal on behalf of the Rehman Shaikh. He also collected money from Rehman Shaikh through various Hawala agents and gave the decided commissions to the diplomats in many deals. He also used to get a commission for the imported consignments as well as got commission from the mastermind for providing information on foreign diplomats and their eligibility for duty-free imports. Rajeev Sood also collected documents from various interested Diplomats such as ID cards, passports, visas etc. and used to forward them to one Liyakat Bachu Khan, a driver and a close confidant of the mastermind Rehman Shaikh. Thereafter, Liyakat prepared all the necessary papers in prescribed formats for availing the exemption under notification No. 03/1957-Cus and sent it to Rajeev Sood who then forwarded the same to the Diplomats for onward submissions to the Protocol Section, Ministry of External Affairs, Government of India for the necessary Exemption Certificate through proper channel. Rajeev Sood then used to expedite the process at the MEA through one Manjeet Maurya (a contract employee at MEA). Once the application of the Diplomats was processed at the MEA, Rajeev Sood used to collect the Exemption Certificate along with various other necessary documents from the Diplomats and used to forward them to Rehman Shaikh or Liyakat for the import of the luxury vehicles.

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

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 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.

10.3 It appeared that Shri Nipun Miglani was an active member of the syndicate and was in contact with the mastermind of the case since 2012 who had introduced him to his close confidant Liyakat Bachu Khan who used to take care of handing over all the documents of imported cars. He helped Liyakat Bachu Khan in the preparation of documents/invoices for the smuggled cars. 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, he referred the impugned Range Rover car to Suresh Prasad at the behest of Rehman Iqbal Shaikh.

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

10.5 It appeared that Shri Suresh Prasad was in contact with the mastermind of the case since he received the impugned car for some job work. The said car was received through the reference of another syndicate member, Nipun Miglani. He searched for the prospective buyer in respect of the impugned car in the instant case and did the registration of the said car in the name of Davinder Shama (a non-privileged person). He also routed the sale proceeds of the said car amounting to Rs. 1.31 Crores to Rehman Iqbal Shaikh through the Hawala channel.

10.6 Investigations caused by the DRI revealed that the syndicate led by Rehman Shaikh had smuggled more than 20 Luxury cars such as Range Rover, Toyota Land Cruiser, Bentley, Nissan

Patrol etc. using the Modus Operandi as explained above, thus evading Customs Duty and thereby robbing the exchequer to the tune of several Crores of rupees. They appeared to have misused the Diplomatic exemptions provided to the various diplomats of foreign countries when posted in India and have, thus, soured the relations between India and many other countries. There were several other private individuals who had provided their personal details to the members of the syndicate in whose names the smuggled luxury cars were fraudulently registered. There were several other car dealers who assisted the syndicate in finding prospective buyers for the smuggled cars. Further, the syndicate had also used the services of several other Hawala Agents, individuals, and firms to route the sale proceeds of the smuggled cars. The instant case, however, is limited to the Range Rover Vogue Car bearing Chassis number SALGA2JE0FA198821 smuggled and sold to a non-privileged person by the said modus operandi.

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

11. Based on various evidences which revealed that Rehman Shaikh initially identified the interested diplomats through Rajeev Sood and dealt with the diplomats for carrying out the import of cars and Rajeev Sood forwarded the details to Liyakat Bachu Khan, a close confidant of Rehman Shaikh. **Then** Liyakat Bachu Khan came into action and prepared the request letter to import the cars which were forwarded to the diplomats, which were in turn sent by diplomats to MEA for permission, and sanction orders were obtained from MEA, on the basis of which the import documents had been made which were forwarded to Customs Brokers and import of high-end luxurious cars were made by fraudulently availing the exemption benefits available to the diplomats. It was also found that after getting the clearance from customs, forged papers were prepared by Liyakat Bachu Khan through Wasim and shown to prospective buyers. Nipun 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 non- privileged persons by using forged documents. After the finalisation of the deal with the prospective buyers, the forged Bills of Entry indicating payment of duty, forged invoices, etc were shown to the buyers and high end Luxurious cars then sold to them. The investigation further revealed that Mohammed Wasim Abdul Gani Siddique prepared the forged document on the behest of Liyakat Bachu Khan and admitted in his statement recorded under the provisions of Section 108 of the Act that Liyakat Khan gave him the Bills of Entry to edit the name of the importer or value of the goods and also gave him Invoices, Customs duty payment receipt, etc to change the name of Buyer. Further, it was also revealed that the cars were being registered in RTOs in India on the basis of forged documents. The recovery of incriminating documents/records from the mobiles of Nipun Miglani, Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique and the recovery of Registration Certificates of many such illicitly imported cars along with the statements recorded under the provisions of Section 108 of the Customs Act, 1962 revealed that Liyakat Bachu Khan, Nipun Miglani and Rajeev Sood were involved in fraudulent import of luxury cars in the name of diplomats and were actively instrumental in getting the cars registered in the name of non-privileged person. Therefore, Liyakat Bachu Khan was arrested at Mumbai on 15.07.2021 under

the provisions of Section 104 of the Act and was remanded to Judicial Custody by the Hon'ble Court. Nipun Miglani was also arrested on 15.07.2021 in Delhi and under transit remand produced before the Court of Hon'ble First Class Judicial Magistrate, Uran Court and was remanded to Judicial Custody by the Hon'ble Court. Subsequently, considering the active role of Rajeev Sood and his active participation in the crime of illicit import of luxury cars, which tarnished the image of the nation, he was arrested on 18.07.2021 at Delhi and under transit remand produced before the Hon'ble Uran Court and was remanded to Judicial Custody by the Hon'ble Court. Subsequently, after completion of 60 days, the said accused were granted bail by the Hon'ble Court.

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

12. It appeared from the detailed investigations and various statements recorded that the privileged person namely, Mr. Yasser AH Dahlan, First Secretary, Embassy of State of Palestine had joined hands with Rehman Iqbal Ahmed Sheikh and facilitated all the paperwork required for importing the impugned car duty-free in his name by misusing his diplomatic status, which was later on found registered in the name of a non-privileged persons viz., Mr. Davinder Sharma and Mr. Redemption Makan. It appeared that the said car had been sold in the open market. The exemption Notification No. 03/1957-Cus dated 08.01.1957 as well as the Exemption Certificate issued by MEA clearly mandated that the vehicle could not be sold without payment of customs duty and without the concurrence of CBIC.

12.1 The investigation revealed that after import of the impugned car, a forged invoice No. AMP/JLR/DL/RS/2015-17 dated 06.10.2016 purportedly issued by M/s. AMP Motors was created by the syndicate and was used to sell the said car to an Indian buyer and eventually the syndicate got the impugned car registered with registration No. MN 06 L 9990 at RTO at Imphal East, Manipur in the name of Davinder Sharma, a non-privileged person.

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

12.3 The evidence unearthed during the course of the investigation revealed that the said Range Rover car was imported into India without payment of duty under the Customs Notification No. 03/1957-Cus dated 08.01.1957. It also appeared that the members of the syndicate had done so after a previous arrangement with the foreign diplomat Mr. Yasser AH Dahlan, First Secretary, Embassy of State of Palestine, as the said vehicle was sold and was registered on the basis of 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 said diplomat using the Customs exemption Notification No. 03/1957-Cus dated 08.01.1957 available to foreign diplomats in India. However, after import, the said car was handed over to the active member of the syndicate and it appeared that the said car had been sold and registered in the name of a non-privileged person. Thus, it appeared to have rendered the said car liable to confiscation under the Customs Act, 1962.

12.4 It appeared 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 allow for disposing of vehicles imported by foreign diplomats to non-privileged persons in the manner specified. The policy condition (4) of Schedule 1 of Import Policy also prescribes the disposal of such imported vehicles in the manner specified in the Foreign Privileged Persons (Regulations of Customs Privileges) Rules, 1957, as amended from time to time. Thus, the vehicles imported by Foreign Diplomats can be disposed off only after payment of due Customs duty, which is not so paid in the present case,

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

Contravention of provisions of the law

13. From the above, it appeared that, inter alia, the provisions of Sections 46, 47, 111 of the Customs Act, 1962; the Customs Notification No. 03/1957-Cus dated 08.01.1957; the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957, etc. had been contravened by Mr. Yasser AH Dahlan, Rehman Iqbal Ahmed Shaikh, Liyakat Bachu Khan, Mohammed Wasim Abdul Gani Siddique, Rajeev Sood, Manjeet Maurya, Nipun Miglani and Aubrey Elias D'Souza.

Liability for confiscation of the goods

14. As it appeared that the impugned goods viz. Range Rover Vogue car was imported, by using fraudulent means, into India vide Bill of Entry No. 64 dated 11.11.2016 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. Yasser AH Dahlan, First Secretary,

Embassy of the State of Palestine, New Delhi. It also appeared that the impugned car was registered in the name of a non-privileged person on the basis of forged documents and was sold to Davinder Sharma. As per Section 111(j) of the Customs Act, 1962, the goods are liable for confiscation, if dutiable or prohibited goods are removed or attempted to be removed from a Customs area or a warehouse without the permission of the Proper officer or contrary to the terms of such permission. In the instant case, the provisions of Section 111(j) appeared to be applicable since the dutiable goods viz. Range Rover Vogue car, was removed contrary to the terms of the permission of the proper officer who had granted permission for its clearance to Mr. Yasser AH Dahlan, First Secretary, Embassy of the State of Palestine, New Delhi, subject to getting it registered in his name and not selling it without prior permission and on payment of Customs duty. Further, Section 111(o) of the Customs Act, 1962 covers any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer. In the present case, the contravention of Section 111(o) of the Act appeared evident, as per the facts revealed during the investigation, since the said car was exempted from duty subject to the conditions which were not fulfilled and it was diverted and not registered in the name of a privileged person. Therefore, the impugned car appeared liable for confiscation under Section 111(j) and Section 111(o) of the Customs Act, 1962.

Quantification of Customs duty

15. In view of the foregoing, it appeared that Mr. Yasser AH Dahlan was liable to pay the due Customs duty along with applicable interest on the impugned car imported into India vide Bill of Entry No. 64 dated 11.11.2016. The Customs duty liability on the impugned Range Rover car bearing chassis No. SALGA2JE0FA198821 as per the tariff rate at the time of its import in the name of Mr. Yasser AH Dahlan appeared to be Rs.1,04,49,710/- , as detailed in the following table:-

TABLE No. 2

| Assessable value | BCD@125% | CVD @30% | Cess @3% [2% + 1%] | ACD @4% | Total Duty |
|------------------|--------------|-----------------|-----------------------|--------------------|---------------|
| (a) | (b) = a*125% | (c) = (a+b)*30% | (d) = (b+c)*3% | (e) = (a+b+c+d)*4% | (f) = b+c+d+e |
| 49,71,176/- | 62,13,970/- | 33,55,544/- | 2,87,085/- | 5,93,111/- | 1,04,49,710/- |

15.1 In the present case, Mr. Yasser AH Dahlan, First Secretary, Embassy of State of Palestine had applied to the MEA for the Prior Approval and the Exemption Certificate in respect of the import of the impugned Range Rover car bearing Chassis No. SALGA2JE0FA198821 and the impugned car was imported for his personal use. Further, the Customs Duty Exemption Certificate issued vide Serial No. PAL/11/01/2016 dated 07.11.2016 issued by MEA in respect of the impugned car specifically clarified that the vehicle would not be sold or otherwise disposed of to a person who is not entitled to import motor vehicle free of duty without the concurrence of CBIC to be obtained through MEA and without the payment of Customs duty to the Commissioner of Customs nearest to the headquarters of the privileged person concerned. In

the present case, the impugned Range Rover car having chassis No. SALGA2JE0FA198821 imported duty-free was diverted in the open market and was subsequently registered in the name of Shri Davinder Sharma, a non-privileged person. Thus, the post-import conditions as envisaged under Customs duty exemption Notification No. 03/1957-Cus. dated 08.01.1957 appeared to be willfully violated by Mr. Yasser AH Dahlan. 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.

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.”

15.2 It appeared that in the present case, the conditions laid down by the exemption certificate had been violated by Mr. Yasser AH Dahlan, First Secretary, Embassy of State of Palestine. Even the undertaking given by him in the Exemption Certificate Serial No. PAL/11/01/2016 was not duly compiled 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 appeared to have been violated in this case. Therefore, it appeared that the above said Customs duty amounting to Rs.1,04,49,710/- along with applicable interest thereon was required to be demanded and recovered from Mr. Yasser AH Dahlan as per the provisions prescribed under Exemption Certificate Serial No. PAL/11/01/2016 dated 07.11.2016 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

16. Investigation of the case and scrutiny of evidence appeared to indicate that besides Rehman Shaikh and his key associates Liyakat Bachu Khan, Mohammed Wasim Abdul GaniSiddique, NipunMiglani, Suresh Prasad and Rajeev Sood, the role of Mr. Yasser AH Dahlan, First Secretary, Embassy of the State of Palestine, New Delhi was also crucial in executing the conspiracy of smuggling of the impugned Range Rover Car bearing Chassis No. SALGA2JE0FA198821. A few other persons also appeared to have done acts of omission and commission which appeared to have rendered them liable to penalty. The same are discussed as follows:

- (i) Investigations in the case revealed that Rehman Iqbal Ahmed Shaikh was the mastermind of the syndicate which had smuggled into India a number of high-end luxury cars in the name of foreign diplomats. The impugned Range Rover car is one such car. It was consigned by Rehman Shaikh from Dubai and the entire finance for expenses including transportation was provided by Rehman Shaikh who appeared to be the principal conspirator and kingpin of the whole conspiracy of smuggling of the impugned Range Rover car undertaken by this syndicate. He was instrumental in carting the vehicle from Dubai to India, identification of the foreign diplomat Mr. Yasser AH Dahlan, 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, NipunMiglani, Suresh Prasad and Rajeev Sood. He also appeared 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 impounded car. Such evidence indicated his primary role in the conspiracy of smuggling of the impugned Range Rover car. He also managed the sale proceeds of the smuggled vehicle through Suresh Prasad. In view of the foregoing, it appeared that Rehman Shaikh was the mastermind of the syndicate and beneficiary of the smuggling of the said car, imported on his directions in the name of Mr. Yasser AH Dahlan, First Secretary, Embassy of State of Palestine 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

scenes and engaged the services of other co-conspirators to get the impugned car cleared, sold and registered, he appeared responsible for the aforesaid contraventions in importing the subject car for sale to the non-privileged person. From the above, it clearly appeared that Rehman Shaikh had acted with a malafide intent to evade customs duty which clearly establishes mensrea on his part. Thus, for his acts of omission and commission in improper importation of the impugned car, which appeared to have rendered the said car liable to confiscation under Section 111, as explained above, Rehman Shaikh appeared to be liable for penalty under Section 112(b) of the Customs Act, 1962. In addition, Rehman Shaikh also appeared liable to penalty under Section 114AA of the Customs Act, 1962, as he knowingly and intentionally caused his co-conspirator, Liyakat Bachu Khan to submit documents to clear the goods from Customs as well as submitted fabricated and forged documents for the purpose of registration in the name of a non-privileged person.

(ii) Mr. Yasser AH Dahlan, First Secretary, Embassy of the State of Palestine, the privileged person, appeared to have dealt with Rehman Shaikh and his accomplices and complied with all the necessary formalities, on his behest, for importing the impugned vehicle Range Rover Vogue car in his name. Mr. Yasser AH Dahlan had applied for Prior Approval for import of the vehicle and obtained the customs duty Exemption Certificate from MEA. In the Para 2(a) of the certificate serial No. PAL/11/01/2016 dated 07.11.2016, it was specifically mentioned that the vehicle would not be sold or otherwise disposed of to a person who is not entitled to import motor vehicle free of duty without the concurrence of CBIC and without the payment of Customs Duty to the Commissioner of Customs nearest to his headquarters in India. However, the said car was registered in the name of a privileged person and was sold and found in the possession of a non-privileged person. Thus, Mr. Yasser AH Dahlan appeared to have deliberately failed to adhere to the statutory provisions prescribed for the import of vehicle under Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1967 read with Customs Act, 1962. From the discussions above, it appeared that Mr. Yasser AH Dahlan had aided and abetted the syndicate in smuggling of the said Range Rover car by using his official privileges as a diplomat which appeared establishing malafide intent on his part. Thus, for his act of omission and commission, and collusion with the members of the syndicate led by RehmanIqbal 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. Yasser AH Dahlan, appeared to have rendered himself liable to penalty under Section 112(a) of the Customs Act, 1962. It further appeared that he had knowingly/intentionally made a false declaration to Customs Authority that the impugned car is for his personal use and gave a false receipt of Delivery Challan of the said vehicle after it was cleared from Customs Authority 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 appeared to have rendered him liable for imposition of penalty under Section 114AA of the Customs Act, 1962.

- (iii) Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique in their various submissions have, while admitting to their roles, also narrated the crucial role played by others in the entire conspiracy of smuggling of the impugned Range Rover Vogue 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 the privileged person Mr. Yasser AH Dahan, First Secretary, Embassy of the State of Palestine and for the preparation of forged documents. He paid money to Wasim for forging documents as per the directions of Rehman Iqbal Ahmed Shaikh and in this manner, played a crucial role in the smuggling of the impugned Range Rover car. Thus, it appeared that they had aided and abetted the mastermind in the smuggling and subsequent sale of the impugned Range Rover 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 luxury vehicle Range Rover which appeared to have rendered the said car liable to confiscation, it appeared that co-conspirators Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique were liable for penalty under the provisions of Section 112(b) of Customs Act 1962. Further, for the offence of knowingly or intentionally making, signing or using, or causing to be made, signed or used any declaration statement or document which was false or incorrect in material particular, in this transaction of import and for the purpose of sale of the impugned Range Rover car, co-conspirators Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique also appeared to be liable for imposition of penalty under Section 114AA of the Customs Act, 1962.
- (iv) Investigation revealed that Rajeev Sood had good contacts at various embassies. He worked in coordination with the syndicate led by the mastermind Rehman Shaikh in liaisoning with the embassy. He also took the assistance of Manjeet Maurya who was working at the Ministry of External Affairs by extracting crucial information about the eligibility of diplomats and expediting the process of Prior Approval and Exemption Certificate at MEA. Thus, it appeared 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 mensrea on his part. Therefore, for his acts of omission and commission in smuggling the luxury car, Range Rover Vogue, which he had reasons to believe was liable to confiscation, Rajeev Sood appeared liable for penalty under the provisions of Section 112 (b) of the Customs Act, 1962.
- (v) Manjeet Maurya was working in the Ministry of External Affairs as a stenographer on

temporary basis. Investigaiton revealed that he had 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 above, it appeared that he 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 mensrea on his part. Thus for his acts of omission and commission in smuggling the impugned Range Rover Vogue car, which he had reasons to believe was liable to confiscation, Manjeet Maurya appeared liable for penalty under the provisions of Section 112 (b) of the Customs Act, 1962.

- (vi) Investigation revealed that Suresh Prasad not only arranged buyer for the impugned Range Rover Vogue car but also assisted the mastermind, Rehman Shaikh in realizing the entire sale proceeds of the impugned car, by receiving the sale proceeds in large amounts of cash and routing it to the mastermind through unscrupulous means of Hawala transactions. Suresh Prasad had also managed the sale and registration of the said car to a prospective buyer who was a non-privileged person. The above mentioned acts of Suresh Prasad were indicative of his awareness and intention in aiding the smuggling of the said car. Thus, Suresh Prasad appeared to have abetted the mastermind Rehman Shaikh in the smuggling of the impugned car and sale thereof. It also appeared that he had a reason to believe that the said car was liable to confiscation and hence he appeared liable for penalty under the provisions of Section 112(b) of the Customs Act, 1962.
- (vii) Investigation revealed that Nipun Miglani was a close aide of the mastermind, Rehman 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 had referred the impugned Range Rover Vogue car to Suresh Prasad for Jobwork and subsequently the said range rover car was sold and registered in the name of a non-privileged person, thus enabling the syndicate in diversion of the said car. Nipun Miglani, having already dealt with multiple such cars smuggled by Rehman Shaikh was in the full knowledge that the said range rover car was being diverted to the open market in contravention to the Customs Notification No. 03/1957. Even after this knowledge about the impugned car, he helped Rehman in the sale of the said car to a non-privileged person. Thus, it appeared that that Nipun Miglani had abetted the mastermind Rehman Shaikh in the smuggling of the impugned Range Rover Vogue car and sale thereof. Hence, it appeared that he had a reason to believe that the said car was liable to confiscation and therefore, he appeared to be liable for penalty under the provisions of Section 112(b) of the Customs Act, 1962.
- (viii) Investigation revealed that the impugned Range Rover Vogue car having chassis

Number SALGA2JE0FA198821 was imported and cleared at JNCH, Nhava Sheva through Bill of Entry No. 64 dated 11.11.2016 which was dealt by Mr. Aubrey Elias Dsouza, a representative of Customs broker, Babaji Khimji and Co., a G-Card Holder. Aubrey Elias Dsouza was fully aware that the goods were not taken to its nominated destination i.e., to the Palestine Embassy at New Delhi. It is the fact that the said car was delivered to the syndicate. However, as he was the Customs Brokers, he was also aware that the imported goods cleared are required to be transported to the nominated place as above. Further, the investigation also indicated that he had cleared several such luxury cars that were imported in the name of Diplomats at the behest of the mastermind, Rehman Shaikh. Thus, it appeared that he was 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 appeared that Mr. Aubrey Elias D'souza was actively involved in the improper importation of the impugned goods and hence he appeared liable for penalty under the provisions of Section 112(b) of the Customs Act, 1962.

- (ix) Investigation revealed that Davinder Sharma had purchased the impugned Range Rover Vogue 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 appeared 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 Suresh Prasad who was not the actual owner of the vehicle and was not the rightful possessor of the vehicle. Further, the payments in respect of the said vehicle were involving high-value cash transactions and the same was made with the person who was not the registered owner of the said car. Further, he was provided with the forged documents prior to the purchase of the said Range Rover Vogue car but he did not do the due diligence in verifying the genuineness of the said documents before dealing in the purchase of the impugned car. It appeared that the maxim of *Caveat emptor quia ignorare non debuit quod jus alienum emit* is clearly applicable in the this case. He had made high value cash transactions in respect of the said car which appeared indicative of the fact that he had knowledge of the fraudulent nature of import of the impugned car. It appeared that this act was done in agreement with the members of the smuggling syndicate. Thus, he appeared 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 appeared to have rendered himself liable for penalty under Section 112(b) of the Customs Act, 1962.
- (x) Investigation revealed that Mr. Suresh Jain purchased the impugned Range Rover Vogue 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 appeared 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 Suresh Prasad 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 loans involving high-value cash transactions and the same were made with the person who was not the registered owner of the said car. Further, he was provided with the forged documents prior to the purchase of the said Range Rover Vogue car but he did not do the due diligence in verifying the genuineness of the said documents before dealing in the purchase of the said car. It appeared that the maxim of *Caveat emptor, quia ignorare non debuit quod jus alienum emit* was applicable in this case. He had made high-value cash transactions in respect of the impugned car which was clearly indicative that he had knowledge of the fraudulent nature of import of the said car. Thus, it appeared that this act was done in agreement with the members of the smuggling syndicate. Thus, he appeared 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 appeared to have rendered himself liable for imposition of penalty under Section 112(b) of the Customs Act, 1962. Further, since the said car was seized from his possession, he appeared to be liable to pay the applicable duty, in terms of Section 125(2) of the Customs Act, 1962, if he was allowed by the Adjudicating Authority to redeem the said car on payment of redemption fine.

17. In view of the above, the impugned Show Cause Notice (SCN) dated 22.09.2022 was issued to Mr. Yasser AH Dahlan (Noticee No.1), Shri Rehman Iqbal Ahmed Shaikh (Noticee No.2), Shri Liyakat Bachu Khan (Noticee No.3), Shri Mohammed Wasim Abdul Gani Siddique (Noticee No.4), Shri Rajeev Sood (Noticee No.5), Shri Manjeet Maurya (Noticee No.6), Shri Nipun Miglani (Noticee No.7), Shri Suresh Prasad (Noticee No.8), Shri Aubrey Elias D'Souza (Noticee No.9), Shri Davinder Sharma (Noticee No.10) and Shri Suresh Jain (Noticee No.11).

17.1 Mr. Yasser AH Dahlan was called upon to show cause as to why:-

- (i) the impugned Range Rover Vogue car bearing Chassis No. SALGA2JE0FA198821 having total assessable value of Rs. 49,71,176/-, imported vide Bill of Entry No. 64 dated 11.11.2016 in the name of Mr. Yasser AH Dahlan, First Secretary, Embassy of State of Palestine, New Delhi, seized under seizure memo dated 25.03.2022, 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. 1,04,49,710/- (Rupees 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. PAL/11/01/2016 dated 07.11.2016 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) penalty should not be imposed on Mr. Yasser AH Dahlan, First Secretary, Embassy of the State of Palestine under Sections 112(a) and 114AA of the Customs Act, 1962;

17.2 Shri Rehman Iqbal Ahmed Shaikh, Shri Liyakat Bachu Khan and Shri Mohammed Wasim Abdul Gani Siddique were called upon to show cause as to why:-

- (i) penalty should not be imposed on them under Sections 112(b) and 114AA of the Customs Act, 1962;

17.3 Shri Rajeev Sood, Shri Manjeet Maurya, Shri Nipun Miglani, Shri Suresh Prasad, Shri Aubrey D'Souza, and Shri Davinder Sharma were called upon to show cause as to why:-

- (i) penalty should not be imposed on them under Section 112(b) of the Customs Act, 1962;

17.4 Shri Suresh Jain was called upon to show cause as to why:-

- (i) penalty should not be imposed on him under Section 112(b) of the Customs Act, 1962;
- (ii) The applicable duty amounting to Rs. 1,04,49,710/- (Rupees One Crore Four Lakhs Forty-Nine Thousand Seven Hundred and Ten only) 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.

WRITTEN SUBMISSIONS

18. All the noticees were required to furnish their written reply within 30 days of receipt of the impugned SCN dated 22.09.2022. However, it is observed that out of the total 11 noticees, only 6 Noticees viz., Mr. Yasser AH Dahlan (Noticee No.1), Shri Rajeev Sood (Noticee No.4), Shri Nipun Miglani (Noticee No.7), Shri Aubrey Elias D'Souza (Noticee No.9), Shri Davinder Sharma (Noticee No.10) and Shri Suresh Jain (Noticee No.11) have furnished their written submissions. The other 5 noticees viz., Shri Rehman Iqbal Ahmed Shaikh, Shri Liyakat Bachu Khan, Shri Manjeet Maurya, Mohammed Wasim Abdul Gani Siddique and Shri Suresh Prasad have neither filed any written reply nor sought any time extension for submission of the same. In this regard, vide this office letter dated 05.06.2025, they were reminded also to submit their written reply to the impugned SCN. However, no any response is received from the said noticees who have not filed their written reply. The written submissions filed by Mr. Yasser AH Dahlan (Noticee No.1), Shri Rajeev Sood (Noticee No.4), Shri Nipun Miglani (Noticee No.7), Shri Aubrey Elias D'Souza (Noticee No.9), Shri Davinder Sharma (Noticee No.10) and Shri Suresh Jain (Noticee No.11) are enumerated hereunder.

18.1 Mr.Yasser AH Dahlan (Noticee No.1) has filed written submissions dated 15.12.2025 through his advocate and authorized representative Mr. Fuzail Ahmad Ayyubi, wherein *inter alia* the following are submitted: -

- (i) the impugned SCN is and *ergo* the proceedings initiated against Mr. Dahlan are not maintainable in view of the immunity from prosecution as provided in the Vienna

Convention on Diplomatic Relations, 1961 which has received statutory recognition in India by way of Diplomatic Relations (Vienna Convention) Act, 1972. Therefore, the present reply is divided in two parts i.e., submissions on maintainability and submissions on merits.

SUBMISSIONS ON MAINTAINABILITY OF THE PROCEEDINGS:

- (ii) Mr. Yasser Dahlan is presently working as the Counsellor in the Embassy of the State of Palestine. At the time of issuance of the impugned Show Cause Notice, Mr. Dahlan was working as the First Secretary in the same Embassy.
- (iii) It is undisputed that both the posts i.e., First Secretary and Counsellor, are '*Diplomatic Agents*' as per the Vienna Convention on Diplomatic Relations, 1961.
- (iv) Being a Diplomatic Agent, Mr. Dahlan is immune from criminal, civil as well as administrative jurisdiction of the Receiving State i.e., India, in terms of the mandate as provided under Article 31(1) of the Vienna Convention.
- (v) Moreover, as per Article 31(2) of the Vienna Convention, a diplomatic agent is not obliged to give evidence as a witness.
- (vi) While all Diplomatic Agents are immune from criminal, civil and administrative jurisdictions, such immunity can only be waived by the Sending State (in this case, the State of Palestine) as per Article 32, which requires such waiver to always be explicitly express. There has been no such waiver, or a request for a waiver, in the present case.
- (vii) Further, Article 29 of the Vienna Convention provides that the person of a diplomatic agent shall be inviolable. Article 29 further casts a duty requiring the receiving State to treat a Diplomatic Agent with due respect and to take all appropriate steps to prevent any attack on his person, freedom or dignity.
- (viii) Moreover, the only exceptions under article 31(1) of the convention are in the case of - **(a)** a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission; **(b)** An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State; and **(c)** An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.
- (ix) The allegations stated in the impugned SCN would reveal that the allegations are neither relating to any private immovable property or succession or with regard to any professional or commercial activity.
- (x) A combined reading of the aforesaid provisions, which have been made applicable by a Central enactment, would make it abundantly clear that these immunities operate *ipso jure*, and bar not only prosecution or adjudicatory proceedings, but even the initiation of coercive actions beginning from issuance of a show cause notices etc.
- (xi) Therefore, no Show Cause Notice could be issued to Mr. Dahlan in the manner as has been issued in the present case nor any proceedings threatening to impose

penalty could be maintained the department, as the same would not only be a violation of the diplomatic immunity enjoyed by Mr. Dahlan but regular communications of such notices also constituted a breach of his dignity which is inviolable in terms of the Vienna Convention.

- (xii) It is further submitted that while the impugned SCN relies on the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957 to bring forth an action against Mr. Dahlan, provisions of the said rules also indicate that no proceedings could have been undertaken against Mr. Dahlan as per the stated allegations. In this regard, it is submitted that while the SCN relies on Rules 2(b), 3, 4A(2)(c) and 5(1B) of the said rules, a perusal thereof shows that no incident arises which would attract the said rules.
- (xiii) It is submitted that while the infraction cited against Mr. Dahlan is stated to be that of Rule 5(1B), the said rule relates to a sale or otherwise disposal of a vehicle under Rule 4A(2)(c) and the impugned SCN nowhere indicates that any permission for sale or disposal of the concerned motor vehicle had ever been obtained under Rule 4A(2)(c). To the contrary, the allegations against Mr. Dahlan are that no permission had been obtained for the purported sale or disposal of the subject vehicle.
- (xiv) Without prejudice to the submission that the said vehicle was never purchased or received by Mr. Dahlan as dealt with in the reply to merits, the language of Rule 5(1B) makes it clear that the same becomes applicable only when a vehicle is "*sold or otherwise disposed of under (c) of sub-rule (2) of rule 4A*" which is not the case even as per the allegations contained in the subject SCN.
- (xv) It may also be noted that sub-rule (1B) of rule 5 envisages imposition of customs duty only in the case when a vehicle is sold or otherwise disposed of under Rule 4A(2)(c), as opposed to sub-rule (1) of Rule 5 which envisages imposition of customs duty regardless of the procedure under rule 4A having been followed or not. However, sub-rule (1) is only applicable on goods other than motor vehicles.
- (xvi) Thus, in addition to the very initiation of the proceedings being barred as per the Vienna Convention, the impugned SCN is also not maintainable under the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957 and no customs duty is recoverable under Rule 5(1B) even if the allegations as contained in the impugned SCN are to be taken in their face value.

SUBMISSIONS ON MERITS:

- (xvii) Without prejudice to the above, it is submitted that despite the diplomatic immunity enjoyed by Mr. Dahlan, the allegations contained in the impugned SCN do not make out any case for Mr. Dahlan's involvement.
- (xviii) It is submitted at the very outset that Mr. Dahlan never applied for any Prior Approval or Exemption Certificate for the vehicle as indicated in the above referred SCN and the documents attached neither bear the official stamp of the Embassy nor his actual signature. Even the serial no. of the letters included in the Relied Upon Documents (RUD), alleged to be issued by the Embassy of the State of Palestine, are wrong and do not follow the serial nos. as followed in the previous or later

- communications of the Embassy. Further, the stated vehicle, at no point of time, was ever registered in the name of Mr. Dahlan.
- (xix) That the Note Verbale dated 24.09.2016 and the communication dated 03.11.2016 are both forged and fabricated is also evident from the fact that the spelling of the name mentioned in both these communications as well as the subsequent documentation is different from the spelling used by Mr. Dahlan. The purported Note Verbale dated 24.09.2016 uses the spelling “Yaseer”, and the communication dated 03.11.2016 also uses the same erroneous spelling whereas in all his official documentations, Mr. Dahlan uses the spelling “Yasser” for his first name.
- (xx) It is further to be noted that while the Note Verbale dated 24.09.2016 carries serial number in the style of “109/16”, the communication dated 03.11.2016 carries serial number “05/16”. Not only this indicates that the serial numbers in the two letters are not in order as an earlier issued letter in September is numbered 105 while a subsequently issued letter in November carried the number 05, but the very nomenclature used for the two communications does not match with the nomenclature used by the Embassy in its communications. This may be verified by the communication date 10.08.2022 which is officially issued by the Embassy and uses the nomenclature in the style of “ESP/WD/2/1270A”.
- (xxi) What is also discernible from a comparison of the official communication issued by the Embassy (*letter dated 10.08.2022*) and the two purported letters used by the syndicate is that the stamp of the Embassy used in its official letters is larger in size than the one used on the two purported letters dated 24.09.2016 and 03.11.2016. A further indication of the forgery and fabrication is also evident upon perusal of the Form 9 which not only uses the same wrong spelling, Mr. Dahlan’s name is also partially filled.
- (xxii) It is further submitted that upon receipt of the impugned SCN, the Embassy of the State of Palestine had forwarded a preliminary reply of Mr. Dahlan on 06.10.2022 which was sent to the Ministry of External Affairs, Government of India. In this reply, Mr. Dahlan had specifically stated the two documents to have been forged, the stamp/seals not matching with the official stamp of the Embassy and even the signature being forged. It was further stated that there was no transaction or communication with any other persons in the syndicate and Mr. Dahlan and accordingly, Mr. Dahlan had sought further information with regard to the manner in which the Note Verbale dated 24.09.2016 was received by the Ministry as per the Ministry’s official record and the name of the person who collected the prior approval or to whom it was sent as per the official records of the Ministry. This assumes great significance as the period during which the Prior Approval or Exemption Certificate are stated to have been issued and the communications in that regard as alleged to have been made by Mr. Dahlan/Embassy, during such period no process of online applications for the same existed and documentation was being done by way of physical copies. Further, as per the prevalent practice,

once a prior approval is ready to be delivered, the Embassy is intimated by the Ministry and sends its official runner to collect the same. There is no record of intimation ever being sent by the Ministry to the Embassy for collection of the prior approval or the exemption certificate.

- (xxiii) As such, it was imperative for the Customs department to investigate whether even the communications of the Embassy were forged and fabricated by the same syndicate which had admittedly forged so many other documents in the process. It is surprising that while the above referred SCN admits a well coordinated syndicate of criminals having been behind the import of vehicles with persons placed inside not only the RTOs concerned but also within the Ministries of the Government of India, it directly assumes the involvement of Mr. Dahlan without properly investigating whether the Note Verbale and the request for Exemption Certificate were genuinely issued by the Embassy of the State of Palestine.
- (xxiv) Further, neither there is any allegation of monetary benefit received in this regard, nor Mr. Dahlan has ever received any shipment of the said vehicle. The record of statements of accused persons in this case amply reflect this factum.
- (xxv) The record of statements of accused persons clearly reflect that none of the persons involved took the name of Mr. Dahlan and there exists no proof whatsoever indicating any involvement of Mr. Dahlan. There is no statement which may be taken to mean that any of the persons involved had met Mr. Dahlan or received any documents from him or that Mr. Dahlan has received any money. Neither has he received the said car nor has ever authorised any import thereof.
- (xxvi) The modus followed by the syndicate also reveals that they were habitual of forging documents and even arranging importers who would be ready to import vehicles in particular names. Upon delivery as well the documents were being forged by this syndicate which spans operations and has connections with CHA firms, Ministry staff, RTOs and importers. It would not be out of place, therefore, to assume that the same syndicate would not be capable of forging the Note Verbale dated 24.09.2016 and the communication dated 03.11.2016 and issue notices to Mr. Dahlan on a mere presumption.
- (xxvii) In view of the above, Mr. Dahlan has requested to withdraw the impugned SCN.

18.2 Shri Rajeev Sood (Noticee No.4) has filed his written reply on 24.08.2023 through his Advocate Shri Navneet Panwar, wherein *inter alia* the following are submitted:-

- (i) the noticee is engaged in the business of real estate brokerage. The officers of DRI picked up the noticee from his residence on 14.07.2021. Nothing incriminating was recovered during search of his residence. He was taken to the DRI office and within the close confines of DRI office, his statement was recorded wherein he was forced and coerced to tender inculpatory statement in relation to import of cars by diplomats of various countries. The noticee was again picked up by the DRI officers on 18.07.2021 and after procuring a dictated statement, he was placed

under arrest. The noticee retraced from his statements on being produced before the Ld. CMM, New Delhi. The noticee was granted statutory bail under section 167(2) Cr. P.C. The noticee was not called upon to join investigation after his release on bail and the impugned SCN was issued to the noticee, amongst others.

- (ii) That it is alleged in the SCN that the noticee identified interested diplomats for import of cars with the help of Sh. Manjeet Maurya, an employee of MEA for import of documents. It is alleged that he forwarded the details to co-noticee Liyakat Bachu Khan who was an associate of Rehman Shaikh.
- (iii) at the outset, the allegations qua the noticee are denied in toto. The allegations germinate from the retracted statement of the noticee and the statements of the co-noticee Liyakat Bachu Khan, Ajay Dhawan and Sh. Manjeet Maurya who have cast general aspersions on the noticee. No corroborative evidence has come on record during investigation to corroborate the allegations levelled against the noticee.
- (iv) the allegations regarding contacting the importer and arranging for a buyer are unsubstantiated. As per the subject notification, any diplomat interested in the process has to file an online application for availing benefit of the notification alongwith the requisite information. Upon scrutiny of the applications, the permission is granted online. The entire process of application for permission, scrutiny of the application and grant of permission are online and there is no human interface. The applications are scrutinized and if the diplomat meets all the prescribe criterion, permission is granted. Hence noticee had no role, whatsoever in the entire process of filing of the application and permission for import of the car. The noticee had never met the importer or the CHA and therefore no knowledge about import of the impugned car can be fastened upon him.
- (v) the noticee had filed retraction of statements dated 14.07.2021 and 18.07.2021 before the Ld. CMM, New Delhi vide application dated 19.07.2021. Hence reliance on the statements of the noticee without independent corroboration is misplaced and unsustainable in law. It is added that till date no rebuttal has been made by the department which proves that the statement obtained from the Noticee was under threat and coercion.
- (vi) Apart from Sh. Liyakat Bachu Khan and Ajay Dhiman, no other person has made any allegations against the noticee so as to bring him within the fold of Section 112 of the Customs Act, 1962. Solely on the basis of statement of noticee and other persons it is alleged that the noticee is involved in misdeclaration. Apart from those statements no incriminating documents or other corroborated evidence has been relied upon in order to support the said statement which itself is bad in the eyes of law, hence cannot be relied upon. There is not even a single record or document brought on record to correlate the allegation of mis-declaration and undervaluation. In the case of CCE vs. Rawf Re-Rollers, 2015 (317) ELT 499 (T), the Hon'ble Tribunal, while dealing with the charge of clandestine removal of excisable goods, which is similarly a serious charge, has held that the charge is serious which cannot

be sustained merely on statements, in the absence of any corroborative evidence other than statements.

Cross Examination

- (vii) The entire allegations upon the Noticee are solely based upon the retracted statements of the noticee and statements of the co-noticees which are not corroborated. Reliance is placed upon the decision in Arsh Castings Pvt. Ltd. v. CCE [1996 (81) E.L.T. 276], Balbir Steel Pvt. Ltd. v. CCE [1999 (114) E.L.T. 561] and Emmtex Synthetics Ltd. v. CCE, New Delhi [2003 (151) E.L.T. 170 (T)] wherein it has been held that no presumption can be made on the basis of uncorroborated, uncross-examined evidence.
- (viii) The allegations are devoid of merit and denied in totality. It is submitted that the Noticee had never been involved in any import.
- (ix) It is a settled law that if there is any statement which the Adjudicating Authority, intend to rely upon and the same is disputed by the person against whom the said statement is likely to be used, it is necessary for the Adjudicating Authority to grant the cross examination of such witnesses in terms of section 138(B) of the Customs Act, 1962.
- (x) That section 138(B) clearly stipulates that even without asking for cross examination it is incumbent on the Adjudicating Authority to examine the witness before relying upon his statement for the Adjudication process. The Adjudicating Authority is duty bound under the statute to grant the cross examination. In absence of cross examination of the witnesses the statements given by them has no evidentiary value and same cannot be relied upon against the appellant. This issue has been considered time and again by the various courts. That in this regard reliance is placed upon the following:
 - a. J & K Cigarettes Ltd. v. Collector of Central Excise, 2009 SCC OnLine Del 2645
 - b. Basudev Garg v. Commissioner of Customs, 2013 SCC OnLine Del 1447
 - c. Ambika International v. Union of India, 2016 SCC OnLine P&H 4559
 - d. Andaman Timber Industries v. CCE, (2016) 15 SCC 785

- (xi) The ratio laid down in the above judgments is squarely applicable to the instant case. It is thus submitted that it is mandatory to follow the provisions of Section 138B of the Customs Act in order to rely upon the statements recorded during the investigation. The statutory provisions prescribed under Section 138B cannot be brushed aside. It is submitted that the procedure of examination and cross-examination of persons whose statements are to be relied upon in the proceedings, is a fundamental requirement for fair play and basic requirement of Principles of Natural Justice. Therefore, noticee requests for cross-examination of Sh. Liyakat Bachu Khan, Sh. Manjeet Maurya and Sh. Ajay Dhawan so that the truth comes out.

The Show Cause Notice is time-barred

- (xii) It is admitted fact that the Bill of Entry No. 64 was filed on 11.11.2016. Therefore, the show cause notice should have been issued within the period of 5 years from the date of filing the bill of entry. Therefore the impugned SCN is time barred.

Show Cause Issued on the basis of hearsay evidence

- (xiii) The entire investigation and allegations against the noticee are based on hearsay evidence which is contrary to the law and the SCN based on such hearsay evidence is detrimental to the principles of natural justice. That the allegations are not supported by any cogent material evidence. Therefore, without any evidence which can speak for itself, the noticee cannot be held deterrently. In this regard reliance is placed upon the Apex Court judgment in the case of Kalyan Kumar Gogoi v. Ashutosh Agnihotri & Ors. reported in 2011 (2) of SCC 532 to plead that hearsay evidence is no evidence and any decision based on such evidence shall be arbitrary.
- (xiv) That nothing was recovered from the Noticee and the Noticee is dragged into this case solely on the basis of the statement of the co-noticee. Further it is stated that conviction cannot be based solely on co-noticee's confessional statement. It is apparent on record that there is no money trail ascertained by the DRI to show acquisition and foreign remittances of the seized car.

Digital evidence

- (xv) No digital evidence is relied in the SCN qua the noticee to prove the allegations. No forensic examination of the mobile phone of the noticee has been done and the digital evidence relied in the SCN does not include any chat of the noticee.

Noticee is neither importer nor beneficiary

- (xvi) That the noticee is neither importer nor the subject car has been recovered from him. He has no concern or connection with import or the alleged sale and registration of the car post import. Hence no liability can be fastened on the noticee.

Penalty

- (xvii) Since the Noticee is nowhere concerned with the subject car and the department has failed to produce any evidence to show that the impugned goods were ordered by the Noticee, it cannot be presumed that the Noticee has ordered for supply of the subject goods. In the absence of any evidence to the contrary, the Noticee is not in any way involved in rendering the goods liable for confiscation. Hence, penalty is not imposable on the Noticee. Penalty is not imposable on the Noticee also for the reason that department has to prove that the action of the Noticee has rendered the goods liable for confiscation. Reliance for this proposition is made on the following decisions which are relied upon by the Noticee in support of his submissions:

- a. Amba Woollen Mills vs. CCE, Bombay 1998 (99) E.L.T. 353 (T)
- b. CCE v. Freight Systems (P) Ltd. - 2012 (286) E.L.T. 231 (T).

- (xviii) The Noticee further submits that since he is not the owner and has no title in the subject goods, penalty is not imposable on him in view of the following decisions:
 - a. Garima Trade Services Ltd. v. CC, Visakhapatnam 2002 (146) E.L.T. 150 (T),
 - b. Nalakath Spices Trading Co. v. CC, Cochin - 2007 (213) E.L.T. 283 (T) and
 - c. CC, New Delhi v. Sewa Ram & Bros. - 2003 (151) E.L.T. 344 (T)

- (xix) That solely on the basis of statements of co-noticee, it is alleged that the Noticee had facilitated import of goods by way of mis declaration and was a de-facto owner of the importing firms and penalty under section 112 has been proposed. That apart from the said statements, no incriminating documents or other corroborative

evidence has been relied upon in order to support the said statements which itself is bad in the eyes of law and hence cannot be relied upon. Hence, penalty under Section 112 of the Customs Act has been wrongly invoked against the noticee.

- (xx) The noticee has not done or omitted to do any act which act or omission would render such goods liable to confiscation under Section 111. Thus, penalty under Sec. 112(a) cannot be imposed upon the noticee.
- (xxi) It is trite law that penalty being quasi- criminal can be imposed only for willful infraction of statutory provisions or for contumacious conduct which are conspicuously absent in the present case.

18.3 Shri Nipun Miglani (Noticee No.7) filed his written reply dated 11.09.2024 through his Advocate Shri Hari Radhakrishnanwherein *inter alia* the following are submitted:-

- (i) 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 11.11.2016 and the impugned SCN has been issued only on 22.09.2022 and therefore, the Department has no jurisdiction to demand duty prior to 22.09.2017. 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.)
- (ii) That, the impugned SCN is dated September 22, 2022 and therefore, the adjudication ought to have been completed on or before September 22, 2023 in terms of Section 28 (9) of the 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.).
- (iii) 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, the orders have to be passed within the reasonable period. Since the 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.

- (iv) Without prejudice to the above contentions, it is submitted that the statement of our 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 Hon'ble Court that the statements were recorded under coercion and the same was noted by the Hon'ble Magistrate. It is further submitted that he had submitted a letter retracting the statement recorded on 15.07.2021, vide letter dated 22.10.2021. Copy of the said letter is enclosed as Annexure A. Subsequently, our client has sent a letter dated 11.12.2021 wherein he had retracted all his earlier statements. The Investigating Officer had refused my 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 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); and the decision of the Hon'ble Delhi High Court in the case of Moni, reported in 2010 (252) ELT 57 (Del).
- (v) It is pertinent to note that none of the persons from whom the statements have been recorded have stated anything incriminating against the noticee. In fact, Shri. Liyakat Bachu Khan in his statement dated 14.07.2021 has admitted he had forged the bill of entry to make it appear as if the vehicle had 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 Sood was recorded on 14.07.2021, 18.07.021, 20.07.2021 wherein he admitted that he worked as a Commission Agent for diplomats and got acquainted with Shri. Rehman Shaikh. He used to receive information regarding the diplomats from one Shri. Manjeet Maurya, a clerical Staff in Ministry of External Affairs and in turn provided those details to Shri. Rehman Shaikh for business purpose. Shri. Manjeet Maurya in his statement dated 14.07.2021 has admitted 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, 29.8.2022, wherein he admitted that he forged the documents such as Registration Certificate, Bills of Entry, etc as per the instructions of Shri. Liyakat Bachu Khan. The statement of Shri. Suresh prasad was recorded on

22.08.2022 wherein he admitted that Nipun Miglani had only referred his workshop to Mr.Rehman Shaikh. Therefore, all these statements lead to only one conclusion that the noticee Nipun Miglani was not aware about the alleged smuggling of the car in question or in any way involved in finding prospective buyers of the car.

- (vi) The allegation against Nipun Miglani is that he had referred the subject car to Mr. Suresh Prasad for jobwork and abetted Mr. Rehman. It is primarily submitted that he did not have any knowledge about the alleged illegal import of the car in question. It is submitted that Mr.Rehman Shaik had enquired about car workshops in New Delhi for the purpose of paintworks and minor job work. Since Nipun Miglani is in business of selling used luxury cars, he had merely suggested the workshop named S3C motors situated in Chattapur, New Delhi belonging to Mr.Suresh Prasad. 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 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 other than referring it to workshop.
- (vii) The impugned SCN does not refer to any evidence in support of their conclusion that the noticee Nipun Miglani had been aiding and abetting Shri. Rehman and others. Statements of other Noticees were recorded and none of them implicate Nipun Miglani in their alleged smuggling activity or in the disposal of the Car. Neither have they even stated that Nipun Miglani knew as to the car was illegally imported and/or registered. In the entire SCN, no reason was assigned to hold that Nipun Miglani 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 Nipun Miglani. Reliance is placed on the decision in Dinesh Ishwarlal Patel Versus Collector of Customs, Bombay (1988) 34 ELT 382.
- (viii) As per Section 112 of the Customs Act, 1962, 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 Nipun Miglani was 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 show that Nipun Miglani had knowledge regarding the fraudulent import.
- (ix) The Investigation Officer has arrived at a conclusion that the subject car is liable for confiscation under Section 111(j) and 111(o) of the Customs Act, 1962. The provisions of Section 111(j) and 111(o) of the Act relate to actions and omissions relating to events occurring prior to the import and clearance of home consumption of the car in question. It is submitted that there is not a single allegation that Nipun

Miglani had dealt with the subject car or played any role in the alleged irregular import and therefore, the situation to impose penalty under Section 112(a) of the Act, does not arise at all.

- (x) The Hon'ble High Court of Delhi in the case of Vishnu Kumar Vs. Commissioner of Customs, New Delhi reported in 2010 (260) ELT 356 (Del.) has held that for a charge of abetment to sustain the ingredients of Section 107 of the Indian Penal Code would have to be fulfilled. The High Court further held that the charge of abetment would stand substantiated if it is proved that the alleged abettor had instigated the doing of a particular thing or he had engaged with one or more persons in a conspiracy for doing of that thing or he had intentionally aided doing of that thing by an act or illegal omission. In order to constitute abetment by conspiracy, there must be a combination of two or more persons in the conspiracy and an act or illegal omission must take place in pursuance of that conspiracy. Where the parties concert together and have a common object, the act of one of the parties done in furtherance of the common object and in pursuance of the concerted plan, is the act of the whole. It is not sufficient to prove that the charged act could not have been committed without intervention of the alleged abettor. What is necessary is that the intervention should have been made with intent to facilitate the commission of that act. Intentional aiding, therefore, is the gist of abetment, as defined in clause thirdly of Section 107 of IPC. If there is a community of interest between the aiding person and the person who commits the actual act, it can be safely inferred that the dominant intention of the alleged abettor was to aid the doing of that particular act. In the present case no such evidence has been adduced by the investigating agency. In these circumstances, the allegation that Nipun Miglani had dealt with the smuggled car and thus became liable to penalty is not legally sustainable.
- (xi) In the case of Anand Desai Vs. Commissioner of Customs (Import), Mumbai reported in 2015 (326) ELT 613 (Tri-Mumbai), the Hon'ble CESTAT held that penalty is not imposable on a car broker when there is no evidence of his involvement of misdeclaration at the time of import. The Hon'ble Tribunal further held that penalty is not imposable for merely assisting in import of the car unless the positive involvement in import is established. The same view was taken in the case of S.K. Miglani Vs Commissioner of Customs (Preventive), Mumbai reported in 2014 (311) ELT 723 (Tri-Mumbai).
- (xii) In the case of Commissioner of Customs (Import), Mumbai Vs. Ashok Wadia reported in 2009 (247) ELT 504 (Tri-Mumbai), the Hon'ble Tribunal set aside the penalty on the broker of illicitly imported car on the ground that there was no evidence of his doing or omitting to do anything with the knowledge/belief that the car was liable to confiscation. The Hon'ble Tribunal set aside the penalty under Section 112(b) of the Customs Act, 1962. In the present case, Nipun Miglani stands on a better footing since he has not dealt with car in any way. He is neither the importer, nor the ultimate purchaser. Therefore, the proposal to impose penalty under

Section 112 of the Customs Act, 1962 cannot stand legal scrutiny.

- (xiii) In view of the above, the proposal contained in the Show cause notice may be dropped and thus render Justice.

18.4 Shri Aubrey Elias D'Souza (Noticee No.9) filed his written reply through his Authorised representative's letter dated 17.06.2025, wherein *inter alia* the following are submitted:-

- (i) At the outset the noticee denies all the allegations made in the SCN. Nothing that is alleged in the SCN is admitted or deemed to be admitted by the noticee either by reason of not specifically dealt with in this reply or otherwise.
- (ii) The following documents were received by the noticee on his email directly from the Diplomat email which were submitted to Customs at the time of import.
 - a) Note Verbale No.105/2016 dated 24.09.2016.
 - b) Prior Approval from MEA No. D.VI/451/2 (54)/2016 dated 18.10.2016.
 - c) Exemption Certificate No. PAL/11/01/2016 dated 02/11/2016 issued by MEA.
 - d) Self-Certificate of Mr. Yasser AH Dalhan (First Secretary).
- (iii) The above documents were received directly from the Embassy by the noticee on his email ID. The facts have been confirmed by Mr. Liyakat Khan in his statement dated 14.07.2021, Mr. Rajeev Sood dated 18.07.2021 and the noticee dated 22.07.2021 recorded by DRI under Section 108 of the Customs Act, 1962.
- (iv) Based on the above, BoE No. 64 dated 11.11.2016 was filed for home consumption. The BoE was finally assessed by the Group granting the benefit of exemption Notification no. 03/1957-Cus dated 08.01.1957 on 11.11.2016. The car was examined and OCC by Proper officer on 15.11.2016. No discrepancy was noticed by the Group at the time of assessment, nor at the time of examination of the car.
- (v) No discrepancy in respect of the declaration, eligibility of notification, or genuineness of the documents was raised at the time of clearance, nor by DRI during investigation. Accordingly, the goods were cleared after an OOC given by the proper officer, clearly establishing the goods were cleared from Customs after following due process of law prescribed under the Act, Rules and Regulations.
- (vi) Therefore, in the absence of any evidence to the contrary, provisions of Section 111(j) are not attracted, and therefore required to be dropped.
- (vii) The BoE 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 and genuine. Based on this, the BOE was assessed, and the exemption was granted by the authorities. Accordingly, the car was cleared after obtaining OOC from the Customs area.
- (viii) 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.
- (ix) It is well settled that once the goods are handed over after clearance from the Customs area to the transporter or the representative of the importer, the Customs Broker has no role to play and cannot be held responsible for post-clearance

- activities unless any evidence involving him in deliberate evasion of Customs duty.
- (x) 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.
- (xi) From the above, it is established that all the formalities for the customs clearance were complied with as per law. The SCN does not allege 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 confirmed 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.
- (xii) 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 violating the approval granted by MOE to the importer, i.e., Mr. Yasser AH Dahlan. No complaint was filed by the diplomat with MOE or the Home Ministry of non-receipt of the car imported for personal use, clearly establishing complete knowledge, involvement and ulterior motive of the importer to defraud the exchequer and earn illegitimate money by importing and diverting the car in the local market instead of for personal use.
- (xiii) From the above, it is established that post clearance the car was diverted in the local market by the importer Mr Nebras Soliman in connivance with the conspirators for undue financial gain evading duty, rendering the car liable for confiscation under Section 111(o) of the Act and not the Noticee (Shri D'Souza) as alleged in SCN.
- (xiv) Penal provisions under Section 112 are attracted against a person only in case of improper importation of goods, whereas, in the present case, the car was cleared by the Customs authorities based on valid and authenticated documents. The genuineness of the documents was never doubted by DRI during the investigation. Reliance is placed on the following case laws;
- Rajeev Khatri Vs. Commr. of Cus.(Export) – [(2023)9centax412(Del.)]
 - B.K. Manjunath Vs. Commr. of C.Ex., Customs and Service Tax, Mysore -[(2024) 15 Centax2 (Tri.-Bang)]
 - S.M. Dave Vs Commr. of Cus, Kandla - [2009(247)E.L.T.437(Tri.Ahmd.)]
 - Flora Impex Vs Commr of Cus.(Prev), New Delhi-[2018(362)ELT. 178 (Tri.Del)]
 - Banshi Badan Mondal Vs. Commissioner of Customs (Port), Kolkata [2010 (253) E.L.T. 816 (Tri. - Kolkata)]
 - Ashok Deasi Vs. Commr. of Cus, Kandla-[2010(256)E.L.T.100(Tri.Ahmd.)]
- (xv) None of the conspirators involved in the case has implicated the noticee of having played any role in the diversion of the car in the local market. No documentary evidence is forthcoming in the SCN establishing Noticee had prior knowledge about the diversion of the car in the local market, rendering the goods liable for confiscation. In the absence of this, the noticee is not liable for penal action under Section 112 (b) of the Act.
- (xvi) 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.

- (xvii) The Financial investigation did not reveal any undue financial gain to the noticee arising out of the disposal of the car. The entire case is based on the diversion of the car after clearance, in connivance with Diplomat and other syndicate members, over which the noticee had no control.
- (xviii) No evidence of acquiring possession of the car or in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing of the car, establishing improper importation of the goods by the Noticee was established in the investigation, rendering the goods liable for confiscation under Section 111 (j) & (o) of the Customs Act 1962. Therefore, penal provisions under Section 112 (b) of the Customs Act 1962 against the Noticee were not attracted and could not be imposed.
- (xix) They rely on the following cases of import of cars by the Diplomat investigated by DRI, which were cleared by the Noticee, wherein charges leveled in the SCN were dropped and penalty set aside by the Commissioner (Appeals), JNCH, Nhava Sheva, and Addl. Commissioner of Customs, CAC, NS-G, JNCH, Nhava Sheva.
 - i) Order in Appeal No. 40 (Gr. VB)/2025(JNCH)/Appeals dated 14/01/2025.
 - ii) Order in Appeal No. 484 (Gr. VB)/2025(JNCH)/Appeals dated 15/04/2025.
 - iii) Order No. 1805/2024-25/ADC/Gr.VB/NS-V/CAC/JNCH dated 27/03/2025
 - iv) Order No. 1807/2024-25/ADC/Gr.VB/NS-V/CAC/JNCH dated 27/03/2025.
- (xx) Therefore, for the act and omission post clearance on the part of the syndicate and Diplomat leading to evasion of duty, the noticee cannot be blamed and held responsible for the violations of Section 111 read with Section 112 of the Act.
- (xxi) In view of the above, it is prayed that in all fairness and justice, the charges leveled against the noticee in the SCN be dropped.

18.4.2 Further, vide their letter dated 05.08.2025, Shri Aubrey Elias D'Souza submitted compilation of the case laws relied upon by him in his reply of the impugned SCN. Further, vide their letter dated 03.11.2025, the noticee *inter alia* submitted that the orders passed by the Commissioner of Customs (Appeals), Nhava Sheva and the Additional Commissioner of Customs, JNCH, Nhava Sheva in respect of Shri Aubrey Elias D'Souza had been accepted by the concerned reviewing authorities as no appeal was filed before the Appellate authorities.

18.5 Shri Davinder Sharma (Noticee No.10) filed his written reply dated 18.01.2023 through his Authorised representative, wherein *inter alia* the following are submitted:-

- (i) That, at the outset the noticee Shri Davinder Sharma denies each and every averment contained in the subject Show Cause Notice, save for those averments which are a matter of record and/or those averments which have been specifically and expressly admitted hereinafter. Thus, there may not be deemed to be any admission on the part of our client for want of specific denial and/or traverse.
- (ii) That, he has been in complete compliance of all legal provisions and he has not acted in contravention of the Customs Act, as is being alleged or otherwise. It is

- submitted that the allegations made in the Notice against him are completely false and incorrect.
- (iii) That, he had no nexus with the alleged illegal import or evasion in payment of customs duty in respect of a Land Rover Vehicle in question bearing Chassis No. SALGA2JE0FA198821.
 - (iv) That, he is into the business of real estate and construction and runs his business in the name and style of M/s Manvee Builders Pvt. Ltd.
 - (v) That, Suresh Prasad along with his mother were tenants of his (Davinder Sharma's) relatives and used to borrow small amounts of money from him, however, the loan amount accumulated and increased to Rs. 1,00,00,000/- (Rupees One Crore only). When he asked for repayment of the loan amount, Suresh Prasad offered him a Range Rover car worth Rs. 1.50 Crores. The car was registered in the name of Suresh Prasad with Registration No. MN 06 L 9990.
 - (vi) That, he accepted the offer from Suresh Prasad to accept the Range Rover car from him which was stated to be worth Rs. 1.50 Crores and paid a further amount of Rs. 50 Lakhs in cash. He did not visit Manipur for registration of the transfer of the car in his name, however, he gave copies of his Aadhar Card, PAN Card and photographs to Sh. Suresh Prasad.
 - (vii) That, after a period of 03-04 months had lapsed, Sh. Suresh Prasad informed him that he (Suresh Prasad) would return all of his money as one Sh. Nikhil Jain was interested in purchasing the said car. Sh. Nikhil Jain and one other person came to his house to take the car bearing Registration No. MN 06 L 9990.
 - (viii) That, thereafter, when he inquired from Sh. Suresh Prasad regarding repayment of his money, Sh. Suresh Prasad informed him that the vehicle bearing Registration No. MN 06 L 9990 was with Mr. Nikhil Jain who was a resident of Greater Kailash, New Delhi, who refused to make any payment to Sh. Suresh Prasad due to outstanding amounts.
 - (ix) That, he was duped, cheated and defrauded by Sh. Suresh Prasad as he was neither being repaid the money, nor was he given the car which was promised to him.
 - (x) That, being aggrieved by all of the foregoing, and gaining knowledge of the fact that the vehicle bearing Reg. No. MN 06 L 9990 was transferred by Sh. Nikhil Jain, he filed a complaint with New Friends Colony Police Station.
 - (xi) That, the matter was ultimately resolved and settled for a payment of Rs. 60 Lakhs which was paid in 02 tranches i.e. Rs. 29 Lakhs by cheque and Rs. 29 Lakhs in cash. Rs. 2 Lakhs continue to remain unpaid by Nikhil Jain and Suresh Prasad till date. He is further suffering a loss of Rs. 90 Lakhs at the hands of Suresh Prasad.
 - (xii) That, in lieu of the above, Sh. Suresh Prasad offered him another car bearing Registration No. MN 06L 0702 for Rs. 1.27 Crores. Being exasperated with having his money stuck for a long period of time, he paid a sum of Rs. 37 Lakhs as payment. Unfortunately, even this second car i.e., MN 06L 0702 was seized by Police Authorities through the Mehrauli Police Station from the Service Centre of

- M/s AMP Motors where the car was sent for service.
- (xiii) That, upon inquiries, he was informed that the said car belonged to some foreign diplomat of some embassy in New Delhi and the second car was returned to the said diplomat and that an FIR had been registered against Suresh Prasad.
- (xiv) That, thereafter, when he again approached Sh. Suresh Prasad asking him to return the amount of Rs. 1.27 Crores which were borrowed by him, Sh. Suresh Prasad and his mother requested for some time and gave to him a Range Rover Vogue Car bearing Registration No. PB 363 7369 as security. Thereafter, he learnt that the said car which was given as security was blacklisted by the Registration Authorities due to some tax disputes.
- (xv) That, immediately upon gaining knowledge of the factum of blacklisting of the car given as security, he immediately called Sh. Suresh Prasad to take the said vehicle and return the balance amount of Rs. 1.27 Crores. Thereafter, Sh. Suresh Prasad came alongwith Sh. Salman Baluch (driver) and took the said car from his house.
- (xvi) That, he has absolutely no nexus with the alleged evasion of custom duty and has in fact been duped, cheated and defrauded by Sh. Suresh Prasad, who has not paid his borrowed amount of Rs. 1.27 Crores and has offered such controversial vehicles as security or against repayment of the said amounts.
- (xvii) That, it is denied that the statement tendered by him revealed that he had dealt with the members of the smuggling syndicate and purchased the said vehicle for a consideration amount of Rs. 1.5 Crores.
- (xviii) That, it is denied that he was aware of the fact that the said vehicle was not imported properly, for the sale in open market, as he purchased the same from Sh. Suresh Prasad who was not the actual owner of the vehicle. It is denied that he had any knowledge of the fraudulent nature of import of the said car. It is denied that this was done in agreement with the members of the smuggling syndicate. It is denied that he is concerned in intentionally dealing with smuggled goods that he had reasons to believe were liable for confiscation. It is denied that such omission and commission on his part have rendered himself liable for penalty under Section 112(b) of the Customs Act, 1962.
- (xix) In view of the above, it is requested to withdraw the impugned SCN.

18.6 Shri Suresh Jain (Noticee No.11) filed his written reply dated 02.12.2025 through his Authorised representative, wherein *inter alia* the following are submitted:-

- (i) They deny all allegations, adverse inferences, assumptions and imputations made or sought to be made in the impugned SCN, except those which are expresaly admitted herein.
- (ii) The noticee has already furnished his detailed factual statement. The said statement clearly established the noticee's non-involvement in any alleged illegal activity.
- (iii) He had acted strictly within the framework of law and there was no malafide intention nor was any malicious intent there.

- (iv) No wrongful gain had accrued to him nor any wrongful loss caused to the exchequer complainant;
- (v) The allegations are based on presumptions and third-party action, not attributable to him.
- (vi) There exists no mens rea, connivance, conspiracy or abetment on his part. In absence of criminal intent, the entire proceedings are legally unsustainable and he has been made mere a scapegoat in the present case.
- (vii) The entire burden lies upon the department/complainant to prove each and every allegation strictly as per law. He is under no obligation to disprove vague, baseless and unsubstantiated accusations as the same can be taken in reference from the statements of other alleged accused persons.
- (viii) The present SCN is issued mechanically without due application of mind and based on incomplete, selective and misconstrued facts. The SCN is bad in law for non-supply of complete RUDs, thereby violating Principles of Natural Justice under Article 14 and 21 of the Constitution of India. Hence, the proceedings initiated on such defective foundations are liable to be dropped at the threshold.
- (ix) In view of the above submissions, Mr. Suresh Jainhas requested to drop all the proceedings initiated against him.

PERSONAL HEARING

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

| Name of the Noticee | Dates on which Personal hearings were fixed | Date of PH intimation letters/emails sent to Noticee | Remarks |
|---|--|--|---|
| Mr. Yasser AH Dahlan (Noticee No.1) | 08.09.2023; 23.09.2024; 10.10.2024; 04.11.2025; 18.11.2025; 04.12.2025. | 16.08.2023; 06.09.2024; 26.09.2024; 24.10.2025; 04.11.2025; 18.11.2025. | The Authorised representative of the Noticee attended the PH held on 04.12.2025. |
| Shri Rehman Iqbal Ahmed Shaikh (Noticee No.2) | 11.09.2023; 13.09.2024; 10.10.2024; 04.11.2025; 11.11.2025; 18.11.2025 | 16.08.2023; 04.09.2024; 24.09.2024; 27.10.2025; 04.11.2025; 11.11.2025 | Neither any response was received from the Noticee nor the Noticee attended the PH. |
| Shri Liyakat Bachu Khan (Noticee No.3) | 11.09.2023; 13.09.2024; 10.10.2024; 04.11.2025; 11.11.2025 18.11.2025 | 16.08.2023; 04.09.2024; 24.09.2024; 27.10.2025; 04.11.2025; 11.11.2025 | Neither any response was received from the Noticee nor the Noticee attended the PH. |
| Shri Mohammed Wasim Abdul Gani Siddique (Noticee No.4) | 11.09.2023; 13.09.2024; 10.10.2024; 04.11.2025; 11.11.2025; 18.11.2025 | 16.08.2023; 04.09.2024; 24.09.2024; 27.10.2025; 04.11.2025; 11.11.2025 | Neither any response was received from the Noticee nor the Noticee attended the PH. |

| | | | |
|--|--|--|---|
| Shri Rajeev Sood (Noticee No.5) | 11.09.2023; 13.09.2024; 10.10.2024; 04.11.2025; 11.11.2025 18.11.2025 | 16.08.2023; 04.09.2024; 24.09.2024; 27.10.2025; 04.11.2025; 11.11.2025 | Neither any response was received from the Noticee nor the Noticee attended the PH. |
| Shri Manjeet Maurya (Noticee No.6) | 12.09.2023; 13.09.2024; 10.10.2024; 04.11.2025; 11.11.2025 18.11.2025 | 16.08.2023; 04.09.2024; 24.09.2024; 27.10.2025; 04.11.2025; 11.11.2025 | Neither any response was received from the Noticee nor the Noticee attended the PH. |
| Shri Nipun Miglani (Noticee No.7) | 12.09.2023; 10.09.2024; 04.11.2025. | 16.08.2023; 04.09.2024; 27.10.2025. | The Authorised representative/s of the Noticee attended the PH held on 10.09.2024 & 04.11.2025. |
| Shri Suresh Prasad (Noticee No.8) | 13.09.2023; 13.09.2024; 10.10.2024; 04.11.2025; 11.11.2025; 18.11.2025 | 16.08.2023; 04.09.2024; 24.09.2024; 27.10.2025; 04.11.2025 11.11.2025 | Neither any response was received from the Noticee nor the Noticee attended the PH. |
| Shri Aubrey Elias D'Souza (Noticee No.9) | 12.09.2023; 13.09.2024; 10.10.2024; 06.11.2025 | 16.08.2023; 04.09.2024; 24.09.2024; 27.10.2025 | The Authorised representative of the Noticee attended the PH on 06.11.2025. |
| Shri Davinder Sharma (Noticee No.10) | 12.09.2023; 04.11.2025; 11.11.2025. | 16.08.2023; 27.10.2025; 04.11.2025. | The Noticee/ authorized representative attended the PH held on 12.09.2023 and 11.11.2025.. |
| Shri Suresh Jain (Noticee No.11) | 13.09.2023; 10.10.2024; 04.11.2025; 18.11.2025; 25.11.2025; 04.12.2025. | 16.08.2023; 24.09.2024; 27.10.2025; 04.11.2025; 18.11.2025; 25.11.2025. | The Authorised representative of the Noticee attended the PH held on 04.12.2025. |

19.1 From the above, it is apparent that sufficient opportunities of personal hearing were granted to the noticees in the instant case. However, out of the total eleven Noticees, only five noticees viz., Mr. Yasser AH Dahlan (Noticee No.1), Shri Nipun Miglani (Noticee No.7), Shri Aubrey Elias D'Souza (Noticee No.9), Shri Davinder Sharma (Noticee No.10) and Shri Suresh Jain (Noticee No.11) attended the personal hearing(s). The other six noticees viz., Shri Rehman Iqbal Ahmed Shaikh (Noticee No.2), Shri Liyakat Bachu Khan (Noticee No.3), Shri Mohammed Wasim Abdul Gani Siddique (Noticee No.4), Shri Rajeev Sood (Noticee No.5), Shri Manjeet Maurya (Noticee No.6) and Shri Suresh Prasad (Noticee No.8), neither attended the personal hearings nor did they respond to any of the communication sent for personal hearings. They have also not sought any adjournment in the matter. Thus it is apparent that, following the principles of natural justice, enough opportunities have been granted to the said six noticees to defend their case.

19.2 During the personal hearing held on 12.09.2023 in front of the then adjudicating authority, Shri Mayank Sharma, son and authorised representative of Shri Davinder Sharma (Noticee No.10) appeared on behalf of the noticee, Shri Davinder Sharma. He reiterated their written submissions dated 18.01.2023. He stated that the noticee was in real estate business and

not in trade of vehicle. He further added that the noticee was also a victim of fraud and did not have any role in the instant case, and requested to drop the impugned SCN.

19.3 During the personal hearing held on 10.09.2024 in front of the then adjudicating authority, Shri Hari Radhakrishnan, Advocate appeared on behalf of Shri Nipun Miglani (Noticee No.7) and made the following submissions;-

- (i) SCN issued under Section 28. The extension taken under Section 28(9) is not communicated to the noticee.
- (ii) SCN has been issued beyond five years from the date of import of car.
- (iii) Statement dated 15.07.2021 of Shri Nipun Miglani has been retracted before magistrate on 19.07.2021. Subsequent statement also retracted on 22.10.2021.
- (iv) There is no statement of co-accused implicating his client of forging documents.
- (v) They rely on the case of Anand Desai Vs. Commissioner of Customs (Import), Mumbai wherein it was held that penalty is not imposable for merely engaging in subsequent sale of car unless the positive involvement in import is established.

19.4 During the personal hearing held on 04.11.2025 in virtual mode, Ms. Punnagai M., Advocate appeared on behalf of the noticee namely, Mr. Nipun Miglani. She reiterated their written submissions dated 11.09.2024. She contended that the impugned SCN dated 22.09.2022 is barred by time limit as the same has been issued beyond 5 years from the import of the car vide Bill of Entry dated 11.11.2016. She further contended that the statement dated 15.07.2021 of Mr. Nipun Miglani had been retracted by Mr. Nipun Miglani and therefore the same cannot be relied upon in this case. She further stated that the other co-noticees in the instant case have also not incriminated Mr. Nipun Miglani in their statements recorded under the Customs Act.

19.5 During the personal hearing held on 06.11.2025 in virtual mode, Shri Anirudh Nansi, Authorised representative appeared on behalf of Shri Aubrey Elias D'souza (Noticee No.9). He reiterated their written submissions made vide letter/email dated 17.06.2025 and 03.11.2025.

19.6 During the personal hearing held on 11.11.2025 in virtual mode, Shri Davinder Sharma (Noticee No.10) himself appeared for the personal hearing. He reiterated the content of his statement dated 25.03.2022 recorded under section 108 of the Customs Act, 1962 by the DRI during the course of investigation. He further stated that he had no role in the instant case.

19.7 During the personal hearing held on 04.12.2025 in virtual mode, Shri Anurag Malik, advocate and authorised representative appeared on behalf of Shri Suresh Jain (Noticee No.11). He reiterated their written submissions made vide letter dated 02.12.2025.

19.8 During the personal hearing held on 04.12.2025 in virtual mode, Mr. Fuzail Ahmad Ayyubi, advocate and authorised representative appeared on behalf of Mr. Yasser AH Dahlan (Noticee No.1). He submitted that Mr. Yasser AH Dahlan was a diplomat of the State of

Palestine and that as per Article 29, 31 & 32 of the Vienna Convention on Diplomatic Relations, 1961 read with the Diplomatic Relations (Vienna Convention) Act, 1972, a diplomatic agent enjoyed immunity from criminal, civil and administrative jurisdiction of the receiving State. Therefore, the impugned Show Cause Notice dated 22.09.2022 was not maintainable. He further stated that the impugned SCN was not maintainable on merit also. He also submitted that they would file a detailed written reply to the impugned SCN within a week time.

DISCUSSION AND FINDINGS

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

21. It is seen that the impugned SCN dated 22.09.2022 has been issued by the Commissioner of Customs (NS-V), JNCH, Nhava Sheva, Raigad, Maharashtra after a detailed and thorough investigation carried out by the DRI. The CBIC vide Notification No. 29/2025-Customs (NT) dated 24.04.2025 has appointed the Commissioner of Customs-VI (Preventive), Mumbai Customs Zone-III as the proper officer for the purpose of adjudication of the impugned SCN dated 01.11.2023. Accordingly, the instant case has been transferred to the undersigned for the purpose of adjudication of the impugned SCN.

Fulfilment of principles of natural justice

22. I find that there are a total of eleven noticees in the impugned SCN, and out of the total eleven noticees, only six noticees namely, Mr. Yasser AH Dahlal (Noticee No.1), Shri Rajeev Sood (Noticee No.4), Shri Nipun Miglani (Noticee No.7), Shri Aubrey Elias D'Souza (Noticee No.9), Shri Davinder Sharma (Noticee No.10) and Shri Suresh Jain (Noticee No.11) have filed their written reply(ies) to the impugned SCN. The remaining five noticees namely, Shri Rehman Iqbal Ahmed Shaikh (Noticee No.2), Shri Liyakat Bachu Khan (Noticee No.3), Shri Manjeet Maurya (Noticee No.5), Shri Mohammed Wasim Abdul Gani Siddique (Noticee No.6) and Shri Suresh Prasad (Noticee No.8) have not filed any written reply to the impugned SCN. I also find that in spite of six opportunities of personal hearing granted in the matter, Shri Rehman Iqbal Ahmed Shaikh (Noticee No.2), Shri Liyakat Bachu Khan (Noticee No.3), Shri Rajeev Sood (Noticee No.4), Shri Manjeet Maurya (Noticee No.5), Shri Mohammed Wasim Abdul Gani Siddique (Noticee No.6) and Shri Suresh Prasad (Noticee No.8) have neither attended any of the personal hearings nor sought any adjournment in the matter. In this context, I find that the adjudication procedure as laid down in Section 122A of the Customs Act, 1962 is as under:-

122A. Adjudication Procedure.—

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

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

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

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

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

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

“.....
.....

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

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

.....

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

.....

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

.....

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

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

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

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

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

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

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

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

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

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

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

23. I find that in the impugned SCN it is *inter alia* alleged that a car (Range Rover Vogue) was imported by a syndicate led by one Mr. Rehman Iqbal Ahmed Shaikh in the name of a diplomat/privileged person namely, Mr. Yasser AH Dahlan, the then First Secretary, Embassy of the State of Palestine at New Delhi at Nil duty by availing the benefit of the Customs duty exemption under Notification No. 03/1957-Cus dated 08.01.1957. It is further alleged that Mr. Yasser AH Dahlan 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 was sold in the open market to non-privileged person(s). The exemption Notification No. 03/1957-Cus dated 08.01.1957 as well as the provisions of the Foreign Privileged Persons (Regulation of Customs Privileged Rules, 1957 mandate that a motor vehicle cannot be sold without payment of Customs duty and without the concurrence of CBIC. It is also alleged that the other co-noticees had also colluded with Mr. Rehman Iqbal Ahmed Shaikh and aided and abetted him in importing the said car at Nil rate of duty by fraudulently availing the benefit of the Customs duty exemption under Notification No. 03/1957-Cus dated 08.01.1957 and selling/disposing of the same in the open market to some unprivileged person.

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

- (i) Whether the Customs duty amounting to Rs. 1,04,49,710/- along with the applicable interest thereon is liable to be demanded and recovered from Mr. Yasser AH Dahlan;
- (ii) Whether the impugned goods i.e., 'Range Rover car bearing Chassis No. SALGA2JE0FA198821' imported vide Bill of Entry No. 64 dated 11.11.2016 having total assessable value of Rs. 49,71,176/- is liable to be confiscated under section 111(j) and 111(o) of the Customs Act, 1962;

- (iii) Whether penalty is liable to be imposed on Mr. Yasser AH Dahlan 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, Shri Nipun Miglani, Shri Suresh Prasad, Shri Aubrey D'Souza, Shri Davinder Sharma and Shri Suresh Jain under Section 112(b) of the Customs Act, 1962;
- (vi) Whether the Customs duty amounting to Rs. 1,04,49,710/- along with interest and other liabilities is liable to be recovered from Shri Suresh Jain under the provisions of Section 125(2) of the Customs Act, 1962, in case the impugned car is allowed redemption to him in terms of Section 125(1) of the Customs Act, 1962

25. After having identified and framed the main issues to be decided, I now proceed to deal with each of the issues individually in the light of facts and circumstances of the case, provisions of the Customs Act, 1962, contentions made in the defence submissions by the Noticees and evidences available on record. I find that the primary issue to be decided in the case is as to whether Mr. Yasser AH Dahlan is liable to pay the Customs duty amounting to Rs.1,04,49,710/- as demanded vide the impugned SCN and whether the goods viz. 'Range Rover Vogue car' imported duty-free in the name of Mr. Yasser AH Dahlan 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.

26. 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.

27. From the impugned SCN and record of the case, I find that 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 duty exemption under Notification No. 03/1957-Cus dated 08.01.1957. Investigation 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 Summons 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 Shaikh. The Range Rover Vogue car having chassis Number SALGA2JE0FA198821 is one such car illegally imported duty-free by the said syndicate in the name of Mr. Yasser AH Dahlan, First Secretary, Embassy of the State of Palestine vide Bill of Entry No. 64 dated 11.11.2016 by availing the benefit of exemption under Notification No. 03/1957-Cus dated 08.01.1957.

28. I find that as the import of the impugned Range Rover Vogue 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 in the name of Mr. Yasser AH Dahlan for the import of the impugned Range Rover Vogue car were obtained from the MEA.

29. On going through the said documents, I find that Mr. Yasser AH Dahlan through his embassy viz., Embassy of the State of Palestine, vide its Note Verbale No. 105/2016 dated 24.09.2016, had requested the Ministry of External Affairs (GoI), New Delhi to grant Prior Approval for the import of a new motor vehicle viz. Range Rover car from Dubai, UAE for his personal use. I also find that after processing the said request, the MEA vide letter No. D.VI/451/2/(54)/2016/5166 dated 18.10.2016 conveyed Prior Approval to Mr. Yasser AH

Dahlan for import of impugned car for his personal use along with the instructions that the said vehicle was to be registered within one month from the date of its import and a copy of the vehicle registration certificate was to be sent to the Ministry. The said Note Verbale No. 105/2016 dated 24.09.2016 of the Embassy of the State of Palestine and the MEA letter no. D.VI/451/2/(54)/2016/5166 dated 18.10.2016 are reproduced hereunder for ready reference.

| Note Verbale No. 105/2016 dated 24.09.2016 of Palestinian Embassy requesting Prior Approval for import of impugned car | MEA Prior-Approval intimation letter No. D.VI/451/2/(54)/2016/5166 dated 18.10.2016 |
|---|---|
| <p>Embassy of the State of Palestine India</p> <p>No: No.105/2016</p> <p>Date: September 24, 2016</p> <p>The Embassy of the State of Palestine in New Delhi presents its compliments to the Ministry of External Affairs of the Government of the Republic of India and has the honour to request for prior approval for the importation of a right hand Driven Motor Vehicle, Range rover, 2015 Model, (Diesel) from Dubai, UAE through J-P Motors for the personal use of Mr. Yasser Dahlan (first secretary). Copies of the Proforma Invoice, Diplomatic Identity card are herby attached.</p> <p>Mr. Yasser Dahlan arrived in India on 24/11/2014.</p> <p>The Embassy would appreciate if the esteemed Ministry would give prior approval for the same for facilitation of clearance.</p> <p>The Embassy of the State of Palestine in New Delhi avails itself of this opportunity to renew to the Ministry of External Affairs of the Government of India the assurances of its highest consideration.</p> <p>Protocol Special Ministry of External Affairs Government of India Jawaharlal Nehru Bhawan Janpath NEW DELHI</p> <p>29-B, Diplomatic Enclave, Chanakyapuri, New Delhi-110 021, India, Email: embassy71@gmail.com, Tel: (0091-11) 24108000/24108001</p> | <p>سفارة دولة فلسطين الهند</p> <p>الرقم: 5/66</p> <p>التاريخ: 18.10.2016</p> <p>MINISTRY OF EXTERNAL AFFAIRS NEW DELHI (PROTOCOL SPECIAL)</p> <p>No. D.VI/451/2/(54)/2016/5/66</p> <p>October 18, 2016</p> <p>The Ministry of External Affairs presents its compliments to the Embassy of the State of Palestine in New Delhi and with reference to the latter's Note Verbale No. 105/2016 dated September 24, 2016 has the honour to convey its prior approval for import of a vehicle Range Rover 2015 Model (Diesel) worth AED \$ 60,000/- by Mr. Yaser Dahlan, First Secretary, (who arrived in India on 24th November, 2014) from M/s J-P Motors FZCO, (DAZ) RAS Alkhor, P.O. Box: 63420, Dubai - U.A.E, for personal use, not later than 24/11/2016 provided that the vehicle meets the relevant specifications in accordance with the rules in force and the vehicle is imported by 24/11/2016. No extention of validity of the Prior Approval and /or revision of the Prior approval beyond 24/11/2016 due to change / upgradation of the model, delay in purchase of the vehicle by the diplomat would be permitted by the Ministry. 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.</p> <p>The Ministry of External Affairs avails itself of this opportunity to renew to the Embassy of the State of Palestine in New Delhi the assurances of its highest consideration.</p> <p>The Embassy of the State of Palestine New Delhi</p> <p>Jawaharlal Nehru Bhawan 23 D Janpath, New Delhi-110011 Tel No: 49015442, Fax No: 49015450</p> |

29.1 In the above said Prior approval Note/letter No. D.VI/451/2/(54)/2016/5166 dated 18.10.2016 of the MEA, it was clearly mentioned to ensure that the impugned 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.

30. It is seen that after receipt of the Prior Approval from the MEA to import of impugned vehicle viz. Range Rover car, Mr. Yasser AH Dahlan, through his embassy viz., Embassy of the State of Palestine, vide its letter/Note No. 05/2016 dated 03.11.2016 submitted an Exemption Certificate No. PAL/11/01/2016 in respect of the impugned vehicle viz. Range Rover car requesting to attest the same. The said letter/Note No. 05/2016 dated 03.11.2016 of Embassy of the State of Palestine and the Exemption Certificate in Form 9 bearing Serial No. PAL/11/01/2016 along with its Schedule and Self-certification duly filled in and signed by Mr. Yasser AH Dahlan are reproduced hereunder for ready reference;

Note No. 05/2016 dated 03.11.2016 of Embassy of the State of Palestine

Embassy of the State of Palestine
India



سفارة دولة فلسطين
الهند

No:

الرقم:

Date: 05/2016

November 3, 2016

التاريخ:

The Embassy of the State of Palestine in New Delhi, present its compliments to the Ministry of External Affairs of the Government of the Republic of India has the honour to submit herewith an "Exemption Certificate" PAL/1/01/2016 dated 3 November 2016 in respect of a motor vehicle Range Rover, 2015, (Diesel) RHD, Chassis No. SALGA2JE0FA198821, Engine No. Nil, from Dubai, UAE for personal use of Mr. Yaseer Dahlan, First Secretary of this Embassy. The esteemed Ministry has already given prior approval for the same: No. D.VI/451/2/(54)/2016/5166, dated October 18, 2016 (original enclosed).

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



The Embassy of the State of Palestine in New Delhi avails itself of this opportunity to renew to the Ministry of External Affairs of the Government of the Republic of India the assurances of its highest consideration.

Protocol Special
Ministry of External Affairs
Government of India
Jawaharlal Nehru Bhawan
Janpath
NEW DELHI



E.P. - 29-B, Diplomatic Enclave, Chanakyapuri, New Delhi-110 021, India, Email: embassy71@gmail.com, Tel: (0091-11) 24108062/24108063, Fax: 241081

Form 9/Exemption Certificate No.PAL/11/01/2016 submitted by Mr. Yasser AH Dahlan

FORM 9

(Reference Chapter X Para A.2)

Customs Duty Exemption Certificate in respect of Motor Vehicles imported for the official use of Foreign Representations/Personal use of entitled members of FRs
(To be submitted in quadruplicate)

Serial Number* PAL/11/01/2016

Certificate

This is to certify that the motor vehicle specified in the Schedule below is intended for official use of E/0 the State of Palestine (Name of FR) for my personal use/for the personal use of the members of my family** and that the motor vehicle would not be sold or otherwise disposed of without the concurrence of the Central Board of Excise & Customs and the Ministry of External Affairs, and without payment of Customs duty, if any, payable thereon.

2. I Mr. Yaseer Dahlan (Name) in my personal capacity/my capacity as** First Secretary (Designation) of the E/0 the State of Palestine (Name of the FR) at New Delhi (Station) having been allowed to import direct from abroad through the port of Alva Seva (Mumbai) /purchase from bonded stocks at the port of _____/purchase from Mr. _____ (Name & designation) of _____ (Name of the FR/seller)/* without payment of duty, the motor vehicle, particulars of which are given in the Schedule below, for the official use of the E/0 the State of Palestine (Name of the Mission etc.)/for my personal use/for the personal use of the members of my family**, hereby undertake that:—

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

(i) without concurrence of Central Board of Excise & Customs to be obtained through Ministry of External Affairs, and

(ii) without payment to the Collector of Customs of the place nearest to the place of headquarters of my Mission/Consular Post/Trade Representation/UN/International Organisation at Alva Seva (Mumbai) (Station) the Customs duty at the rate and for the amount to be determined by him in case the said vehicle is sold before the expiry of four years from its date of registration in India.

(b) I shall obtain concurrence of the Central Board of Excise & Customs (through Ministry of External Affairs) before I sell or transfer this vehicle even to a Privileged Person entitled to import a motor vehicle free of duty and intimate the Collector of Customs of the place nearest to the place of headquarters of my Mission/Consular Post/Trade Representation, its sale price, and name and address of the Privileged Person before completion of such a transfer or sale; and

(c) I shall obtain from the buyer an Exemption Certificate (in quadruplicate) in the prescribed form and forward two copies of the Certificate to the Collector of Customs of the port of importation after getting these attested by the Protocol Special Section, Ministry of External Affairs.

*A running number should be given for each exemption Certificate issued by the FR with a separate running sub number for import for official use and for personal use of individual entitled members of the FR. The numbering should be in annual series. Example: 26/07/10/06 or 28/sk/4/06 (sk-initials of the member of FR)

**Strike out whichever is not applicable.

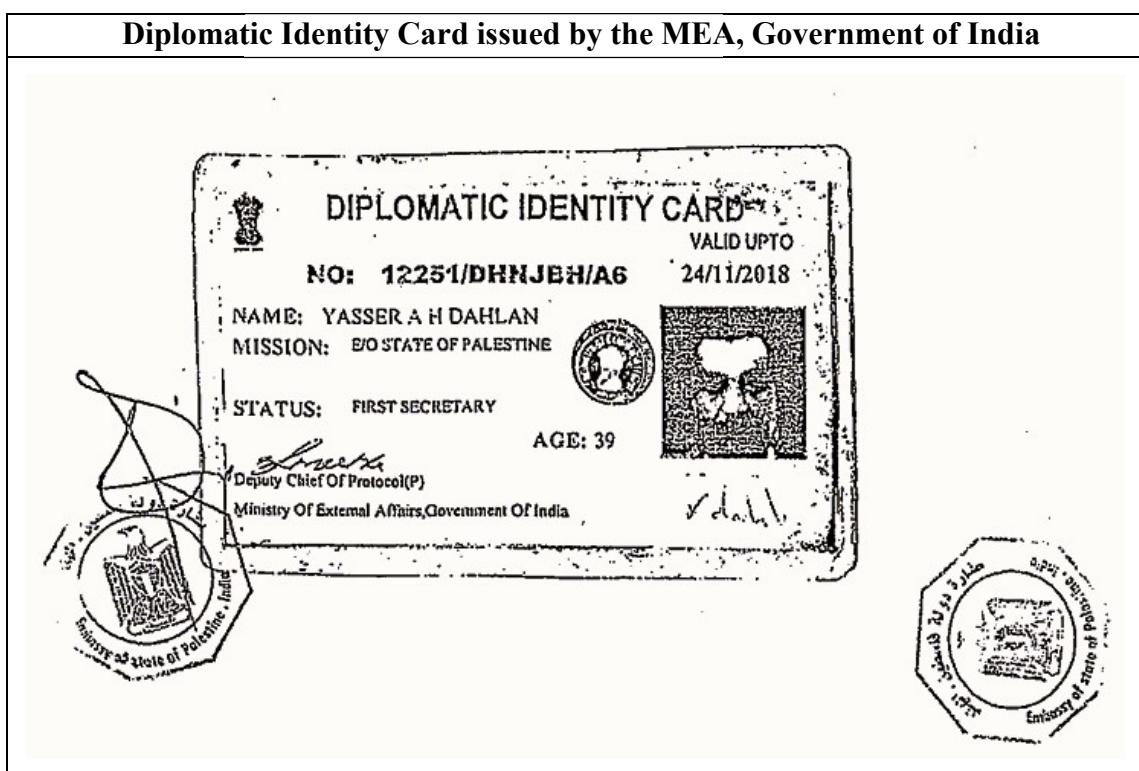


Schedule to Exemption Certificate No. PAL/11/01/2016 submitted by Mr. Yasser AH Dahlan

| | |
|---|--|
| <p style="text-align: center;"><u>Particulars</u></p> <p>(Particulars of the Motor Vehicle, which is the subject of above declaration)</p> <p>1. Make : Range Rover 2. Model : Vogue 3. Year of Manufacture : 2015 4. Registration No. (If applicable) : N.A. 5. Chassis No. : SALGA2JEOFA19821 6. Engine No. : Nil 7. Horse Power (Engine capacity) : 4400 CC 8. Cylinders : 8(Eight) 9. Country from which imported/Person from whom bought : Dubai (UAE) 10. No./date of Bill of Lading and Ship's name : OOLU2578 428990, J-P MOTORS FZCO 11. Any other particulars (RMDA/HD) : RHD</p> <p>Place : New Delhi Date : 2/11/2016</p> | <p style="text-align: right;">A/Parvati Nair Parvati Nair (Parvati Nair) Paragon Cellular (Private) Paragon Cellular (Private) Paragon Cellular (Private) Paragon Cellular (Private) Paragon Cellular (Private)</p> <p>Mr. Yasser Dahlan First Secretary (Name & Designation)</p> <p>Yasser Dahlan (Signature of Privileged Person)</p> <p>In case of emergency vehicle : Identity Card No. : 1251/DHNJBH/AB Date of arrival in India : 24/11/14</p> |
| <u>Counter Signature of FR</u> | |
| <p>The above particulars are verified.</p> <p>Place: New Delhi Date: 2/11/2016</p> <p>(Signature of Head of FR or the Officer authorised to sign for this purpose) H.E. Mr. Adnan MA Abualhayyaq, Ambassador (Name & Designation)</p> | |
| <u>(To be filled in by the Customs)</u> | |
| <p>Signature and seal verified with specimen available in the Exemption Certificate and undertaking have been signed by the officer duly authorised.</p> <p>Passed under Bill of Entry No. _____ Date : _____</p> <p style="text-align: right;">(Customs Officer)</p> | |

| | |
|---|--|
| <u>Self-Certification submitted by Mr. Yasser AH Dahlan along with the Exemption Certificate</u> | |
| <u>SELF CERTIFICATION</u> | |
| <p>1. I am aware that under the Customs Act, 1962 and Notifications of the Government of India, there are prohibitions on importation and exportation of specified goods.</p> <p>2. I am also aware that import and export of some specified goods may be restricted / prohibited under other laws such as Foreign Trade (Development & Regulation) Act, Foreign Trade Policy, Environment Protection Act, Wild Life Act, Livestock Importation Act, The Foreign Exchange Management Act, The Trade Marks Act, Arms Act, Drugs & Cosmetics Act etc. Prohibitions under those Acts will also be treated as Prohibitions under the penal provisions of the Customs Act, rendering such goods liable to confiscation under section 111(d) of the Customs Act (for import) and 113(d) of the Customs Act (for export).</p> <p>3. I am aware that some of the prohibitions and restrictions both for imports and exports are listed below:-</p> | |
| <p>Prohibited Items</p> <p>Fire Arms Import of beef in any form and products containing beef in any form. Import of unprocessed meat and meat products from all Avian species (except poultry). Import of poultry / poultry products from countries reporting notifiable Avian influenza. Import of certain kinds of telephones and telephony equipments</p> | |
| <p>Restricted Items</p> <p>Arms and ammunition Hazardous chemicals Import and installation of wireless telecommunication system / satellite earth station or other advanced communication systems.</p> | |
| <p>4. I certify the following:-</p> <p>(i) that the goods being imported by me / Embassy / UN / International Organization do not contain any of the prohibited / restricted items listed at paragraph 3 above.</p> <p>(ii) that the goods being imported by me / Embassy / UN / International Organization are strictly for official / personal use and are not for sale, donation or promotional purposes.</p> <p>(iii) that reasonable quantities of books (religious / educational), magazines and printed material including tourism promotion material are being imported strictly for official use / personal use of families of diplomats / staff members.</p> <p>(iv) that import of liquor / cigarettes / foodstuffs and provisions are in accordance with the prescribed norms of MEA.</p> <p>(v) that Prior Approval of MEA / State Government Protocol Office have been taken for import of vehicles / security related equipments / advanced communication systems / unusual consignments delivered by diplomatic bag.</p> <p>(vi) that Prior Approval of MEA / State Government Protocol Office have been taken for import of artefacts / exhibition items / concert items and that the goods would be re-exported from India on conclusion of the exhibition / concert in India.</p> <p>(vii) that Prior Approval of concerned authorities have been taken for any new construction / renovation / addition/alteration work in the premises of the Foreign Representation and building materials for such construction / renovation work would not be imported without the clearance of MEA / State Government Protocol Office.</p> | |
| <p>Mr. Yasser Dahlan First Secretary</p> <p>(Name, signature and designation of the Diplomat / Staff Member in the case of personal imports) (Authorised signatory in the case of official imports and pooled personal imports as at Sl. No. 4(iv) above)</p> | |

31. I find that in his written submissions, Mr. Yasser AH Dahlan has inter alia contended that he had not applied for the Prior Approval or Exemption Certificate for the impugned vehicle and that the same are forged. However, I find that copies of all the above said documents had been provided to the investigation agency i.e., DRI by the Ministry of Foreign Affairs (MEA), Government of India. Further, all the communication/requests of/from the Embassy of the State of Palestine with respect to the import of the impugned car were received by the MEA directly from the Embassy of the State of Palestine, and accordingly, the MEA had processed their requests and issued the Prior Approval dated 18.10.2016 and Exemption Certificate No.PAL/11/01/2016. Therefore, I find that the contention of Mr. Yasser AH Dahlan that the said documents are forged is not tenable. Further, I also find that the signatures of Mr. Yasser AH Dahlan appended on the said Exemption Certificate No.PAL/11/01/2016 and Self-Certification filed along with the said Exemption Certificate are similar/identical and matching to the signature of Mr. Yasser AH Dahlan on his Diplomatic Identity Card No.12251/DHNJBH/A6 issued by the Government of India. A photocopy of the same is reproduced hereunder for ready reference.



31.1 Further, it is also apparent that all the said documents are duly stamped by the MEA (GoI) as well as by the Embassy of the State of Palestine. I also find that the said Exemption Certificate is also duly countersigned by the Ambassador of the Embassy of the State of Palestine. Therefore, I find that the contention of Mr. Yasser AH Dahlan that he had not signed the said documents appears to be his afterthought to avoid his liability.

31.2 Further, I observe that Mr. Yasser AH Dahlan has contended that while the Note Verbale dated 24.09.2016 carries serial number in the style of "105/16", the communication dated 03.11.2016 carries serial number "05/16", which indicate that the serial numbers in the two letters are not in order as an earlier issued letter in September is numbered 105 while a subsequently issued letter in November carried the number 05. He has also contended that the

very nomenclature used for the two communications does not match with the nomenclature used by the Embassy in its communications in the style of "ESP/WD/2/1270A". In this regard, I find that it is a general practice in offices that they use different serial number and style for their communication from/of different sections/branches. Hence, I do not find any merit in this contention of Mr. Yasser AH Dahlan. Further, regarding the mistake pointed in the spelling of his name, I find that the same is mere a minor clerical mistake and nothing more can be inferred from it.

31.3 I further observe that Mr. Yasser AH Dahlan has also contended that upon receipt of the impugned SCN, he had, through his Embassy, sent a preliminary reply to the MEA wherein he had alleging to the two documents to have been forged, sought information with regard to the manner in which the Note Verbale dated 24.09.2016 was received by the MEA and the name of the person who collected the prior approval or to whom it was sent as per the records. However, I find that Mr. Yasser AH Dahlan has failed to furnish the copy of his said purported interim reply sent to MEA. He has also not furnished the copy of reply/response received from MEA in this regard. Thus, for want of any supportive documentary evidence, this contention of Mr. Yasser AH Dahlan holds no merit and hence not tenable.

31.4 Further, I find that the Embassy of the State of Palestine has never questioned or denied the authenticity of the said documents or the notes verbales issued by them to MEA with respect to the impugned vehicle viz. Range Rover Vogue car. Even when summons, letters and the impugned SCN along with all the RUDs (relied upon documents) were issued/sent to Mr. Yasser AH Dahlan, sent to the Embassy through MEA, no such contention has been made by the Embassy of the State of Palestine. Further, even Mr. Yasser AH Dahlan has not produced any certificate issued by his Embassy to the effect that the said documents/communications were not issued by the Embassy of the State of Palestine. Therefore, I find that the above said documents and communications are not forged but genuine and authentic duly issued by the MEA and the Embassy of the State of Palestine.

32. In view of the above, I find that Mr. Yasser AH Dahlan had made application for the impugned motor vehicle through his embassy i.e., the Embassy of the State of Palestine. I also find that the MEA approved and attested the above Exemption Certificate bearing Serial No. PAL/11/01/2016 filed by Mr. Yasser AH Dahlan in respect of the impugned motor vehicle viz. Range Rover Vogue car. On the basis of the said Exemption Certificate, the impugned Range Rover Vogue car, having Chassis No. SALGA2JE0FA198821 was imported into India vide Bill of Entry No. 64 dated 11.11.2016 without payment of duty by availing the benefit of the Customs duty Exemption Notification No. 03/1957-Cus dated 08.01.1957.

33. I also find that Mr. Yasser AH Dahlan had authorized M/s. Babaji Khimji & Co. (CHA No.11/180) vide his authority letter dated 09.11.2016 addressed to the Dy.Commissioner of Customs, JNPT for clearance of the impugned car arrived under the Bill of Lading

No.OOLU2578428890 dated 28.09.2016. The said authority letter dated 09.11.2016 and the Bill of Lading No.OOLU2578428890 dated 28.09.2016 have been duly signed Mr. Yasser AH Dahlan. The same are reproduced hereunder for ready reference.

Authority Letter dated 09.11.2016

From Mr. Yasser A. H. DAHLAN

(137)

To,

Date:- 09/11/2016.

The Office of Dy. Commissioner of customs,
JNPT/Mumbai/Mulund CFS/Air Cargo Complex,

Respected Madam/Sir,

Ref: Letter of Authority for clearance of Shipment of Export/Import.

I the undersigned Mr/Mrs. Yasser A. H. DAHLAN holding PALESTINE

Passport No. 00019318 hereby authorize M/S Babaji Khimji & Co. CHA 11/180, having office Ashok Chambers, Room No 27, Devji Rattansi Marg, Carnac Bunder, Mumbai 400009 operating under their Custom House Broker License No 11/180(AAAFB6900GCH001) to clear my personal effects which have arrived under the Bill of Lading OOLU2578428890 date 28/09/2016.

I Mr/Mrs. Yasser A. H. DAHLAN also hereby declare that the goods have declared under the packing list and cleared through your office are our legitimate import without any express violation of Rules & Procedures under Custom Act 1962, Foreign Exchange Regulations Act (FERA), Foreign Exchange Management Act (FEMA), and The Foreign Trade Development and Regulation Act 1992 etc.

I Mr/Mrs. Yasser A. H. DAHLAN also further declare that The goods declared by me does not contain any contraband or prohibited article's. I shall also hold my responsible for any discrepancy/mis-declaration found in our documents or goods for which We are seeking clearance through M/S. Babaji Khimji & Co. holding CHA License No. 11/180. In case of any legal discrepancy arising from my shipment in present as well as future, I shall be hold responsible and M/S. Babaji Khimji & Co, Mumbai shall be no way responsible including any less charges, short levy, dues of Customs, Port, Shipping companies, Transporters, Octroi etc, this letter of Authority is issued in terms of Notification No 21/2004 dt.23/02/2004 which is also otherwise briefly known as CHALR 2004.

I hereby also enclose self certified photocopies of Passport, KYC Form, Packing List, Bill of Lading, Marine Insurance etc., toward our request for clearance of consignment through your office. I also further declare that I shall remain present for any hearing which custom authority may grant from time to time.

Very truly,

Signature of Passenger



X. Dahlan

12/07/22

IGM No. 21181, ITEM NO. 137

33.1 From the above, it is apparent that Mr. Yasser AH Dahlan had completed all the required paper work for import of the impugned Range Rover Vogue car without payment of duty by availing the benefit of the Customs duty Exemption Notification No. 03/1957-Cus dated 08.01.1957.

34. Further, from the said Exemption Certificate No. PAL/11/01/2016, it is apparent that, while filing the said Certificate in Form-9 to MEA, Mr. Yasser AH Dahlan had *inter alia* undertaken that the vehicle would not be sold or otherwise disposed of to a person who is not entitled to import a motor vehicle free of duty:

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

(ii) Without payment to the Commissioner of Customs of the place nearest to the place of Headquarters of his Mission/Consular Post, the Customs Duty at the rate and the amount to be determined by him/her in case the said vehicle is sold before the expiry of four years from its date of registration in India.

35. From the foregoing, it is apparent that vide letter>Note Verbale No. 105/2016 dated 24.09.2016, 'Prior Approval' was sought by the Embassy of the State of Palestine on behalf of Mr. Yasser AH Dahlan, from the MEA for import of the impugned Range Rover car for his personal use, and after getting/receiving the approval for the same from MEA vide its Note/letter No. D.VI/451/2/(54)/2016/5166 dated 18.10.2016, Mr. Yasser AH Dahlan filed the Exemption Certificate with the MEA to import the impugned Range Rover car duty-free by availing the benefit of exemption as provided under Notification No.03/1957-Cus dated 08.01.1957. It is also apparent from the undertaking made by him in the said Exemption Certificate that he was very well aware that the impugned Range Rover car imported duty-free could not be sold or otherwise disposed of without the concurrence of the Ministry of External Affairs, New Delhi and the CBEC, Ministry of Finance, New Delhi, and without the payment of Customs duty. Further, in the approval Note/letter No. D.VI/451/2/(54)/2016/5166 dated 18.10.2016 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.

36. However, the investigation has revealed that the impugned vehicle i.e., Range Rover Vogue car imported in the name of Mr. Yasser AH Dahlan for his personal use as a privileged person by availing the benefit of exemption under Notification No. 03/1957-Cus dated 08.01.1957 was not registered in his name. I also find that the investigation has further revealed that after import of the impugned Range Rover car, the documents of the impugned Range Rover car was forged by the syndicate members and thereafter the impugned car was sold by the syndicate member (Mr. Suresh Prasad) to Shri Davinder Sharma (a non-privileged person) for a consideration of Rs 1.5 Crores and was registered in his (Davinder Sharma's) name by the said syndicate member (Suresh Prasad) at the RTO, Imphal East, Manipur with registration No. MN06L 9990. Later on, the impugned car was sold to Shri Suresh Jain (another non-privileged person) and the registration was transferred in the name of his employee, Mr. Redemption Makan.

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

37. I find that during the course of investigation, Summons were issued under Section 108 of the Customs Act, 1962 by the DRI to Mr. Yasser AH Dahlan, First Secretary, Embassy of the State of Palestine to appear before the investigating officer. However, in response to the said

Summons, the Embassy of the State of Palestine, vide its letter Ref.No.ESP/WD/2/1270A dated 10.08.2022 inter alia stated that Mr. Yasser AH Dahlan was not in India at that time, and that once he reached India, he would be present at the DRI office. However, Mr. Yasser AH Dahlan did not present himself before the DRI office till issuance of the impugned SCN.

37.1 In view of the above, a note was sent by the DRI to Mr. Yasser AH Dahlan, through MEA, vide DRI letter dated 15.09.2022, wherein *inter alia* provisions of Rule 4A and 5 of the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957 was mentioned which provide that in cases vehicles have been disposed of by a privileged person to a non-privileged person within three years from the date of their importation, Customs duty shall be recovered from such privileged person. Further, considering the above discussed facts that the impugned car was imported duty-free in the name of Mr. Yasser AH Dahlan vide Bill of Entry No. 64 dated 11.11.2016 by availing the benefit of exemption under Notification No. 03/1957-Cus dated 08.01.1957, however, after import the same was sold and found registered in the name of a non-privileged person. Therefore, it was specified in the said note that the privileged person viz., Mr. Yasser AH Dahlan was required to pay the due Customs duty along with applicable interest. However, no response was received from Mr. Yasser AH Dahlan with respect to the said DRI note dated 15.09.2022.

38. I find that in the written submissions dated 15.12.2025, it is also contended that the impugned SCN and the proceedings initiated against Mr. Yasser AH Dahlan, who was working as the First Secretary in the Embassy of the State of Palestine at the time of issuance of the impugned SCN, is not maintainable in view of the immunity from prosecution as provided in the Vienna Convention on Diplomatic Relations, 1961 which has received statutory recognition in India by way of Diplomatic Relations (Vienna Convention) Act, 1972. It has also *inter alia* been submitted that; -

- (i) Being a Diplomatic Agent, Mr. Dahlan is immune from criminal, civil as well as administrative jurisdiction of the Receiving State i.e., India, in terms of the mandate as provided under Article 31(1) of the Vienna Convention.
- (ii) Moreover, as per Article 31(2) of the Vienna Convention, a diplomatic agent is not obliged to give evidence as a witness.
- (iii) Further, Article 29 of the Vienna Convention provides that the person of a diplomatic agent shall be inviolable.

39. In this regard, I have gone through the provisions of the Vienna Convention on Diplomatic Relations, 1961 along with the provisions of the Diplomatic Relations (Vienna Convention) Act, 1972. I find force in the submissions of Mr. Yasser AH Dahlan that a diplomatic agent is immune from criminal, civil as well as administrative jurisdiction of the Receiving State as per the provisions of the Vienna Convention on Diplomatic Relations, 1961 read with the provisions of the Diplomatic Relations (Vienna Convention) Act, 1972. However, I find that such immunity is subject to many exceptions. I find that there is no provision under the

Vienna Convention on Diplomatic Relations, 1961 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.*

39.1 I find that the investigation has brought forth that Mr. Yasser AH Dahlan had facilitated all the required formalities/paperwork in import of the impugned vehicle duty-free by availing the benefit of exemption under Notification No. 03/1957-Cus dated 08.01.1957. Further, I find that one of the syndicate members namely, Rajeev Sood in his statement recorded on 18.07.2021 under Section 108 of the Customs Act, 1962 has admitted that he had identified diplomats who were ready to facilitate all the required formalities/paperwork in lieu of monetary consideration. I find that Rajeev Sood has deposed before the DRI on 20.07.2021 that certain diplomats received amounts ranging from Rs. 8 to Rs. 10 Lakh, and that he had received around Rs.60 Lakhs in cash from the mastermind Rehaman Shaikh on behalf of the diplomats in the last 3 years. Rajeev Sood had also deposed that he had provided contact information of embassies like Kenya, Laos, Lebanon, Senegal, Cambodia, Libya, Ethiopia etc. to Rehman Shaikh. Mr. Yasser AH Dahlan had also facilitated all the required formalities/paperwork in duty-free import of the impugned vehicle in the same manner and modus operandi as admitted by Rajeev Sood in his statement. Therefore, considering all the facts and circumstances of the instant case, I am of considered opinion that the contention of Mr. Yasser AH Dahlan does not hold merit and hence is liable to be discarded.

39.2 Further, I find that the Prior Approval letter and the Customs Duty Exemption Certificate issued by Ministry of Foreign Affairs, New Delhi, in respect of the impugned car imported duty-free by Mr. Yasser AH Dahlan, clearly point to the fact that Mr. Yasser AH Dahlan had applied for the import of the impugned 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 must be registered in the name of the diplomat after 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. Yasser AH Dahlan and the vehicle registration certificate has not been provided to the MEA. The said vehicle was sold of in open market and registered in the name of a non-privileged person which is not in consonance with the Diplomatic Relations (Vienna Convention) Act, 1972 read with the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957.

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

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

39.4 From the above provision, it is amply clear that the diplomats are not entitled to the relaxation in payment of Customs duty on the subsequent sale of the goods/vehicle, which were imported duty-free into India by the diplomat, to a non-privileged person.

40. I find that it is not a disputed fact that Mr. Yasser AH Dahlan, First Secretary, Embassy of the State of Palestine was entitled for duty-free import of the impugned car. However, the said duty-free import by the diplomat is governed by the provisions of Notification No. 3/1957-Cus. dated 08.01.1957. As per the provisions of the said Notification, the import of motor vehicles by the diplomats are subject to the provisions of the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957. I find that in the present case the provisions of the said Rules are grossly violated. In the present case, the impugned vehicle/car has been sold/ disposed of in the open market to non-privileged person after being imported duty-free by availing the benefit of exemption under Notification No. 03/1957-Cus dated 08.01.1957 in the name of the said diplomat, Mr. Yasser AH Dahlan, which is not in consonance with the Diplomatic Relations (Vienna Convention) Act, 1972 read with the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957. Therefore, I find that there is no provision in the Diplomatic Relations (Vienna Convention) Act, 1972 or/and the Vienna Convention on Diplomatic Relations, 1961 which provides immunity to the diplomat, Mr. Yasser AH Dahlan, from payment of Customs duty in the present case.

41. Further, it is seen that the Customs Duty Exemption Certificate issued by the MEA in the name of Mr. Yasser AH Dahlan explicitly specified that the vehicle would not be sold or otherwise disposed of to a person who is not entitled to import motor vehicle free of duty without the concurrence of CBIC to be obtained through MEA and without the payment Customs duty. While filing for the said Customs Duty Exemption Certificate No. PAL/11/01/2016 with the MEA, Mr. Yasser AH Dahlan had also undertaken to the said effect, as is evident from Para 30 & 34 supra. However, I find that after import of the impugned vehicle duty-free, the same was not registered in the name of Mr. Yasser AH Dahlan and instead sold in the open market to non-privileged person in contravention of the provisions of Notification No. 03/1957-Cus dated 08.01.1957 read with the Diplomatic Relations (Vienna Convention) Act, 1972 and the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957.

42. I find that in cases where vehicles imported duty-free by the diplomat/privileged person have been disposed of by him to a non-privileged person after import of such vehicles, Customs duty shall be recovered from such privileged person as per the provisions of Rule 4A(2)(c) and

5(1B) of the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957. The provisions of the said rules are reproduced hereunder: -

Rule 4A. Permission for the sale or disposal of motor vehicles.-

- (1) *No privileged person shall sell or otherwise dispose of any motor vehicle in respect of which exemption from customs duty was given at the time of its importation or clearance from bond except in accordance with sub-rule (2).*
- (2) *Any privileged person may –*
 - (c) sell or otherwise dispose of the motor vehicle to any non-privileged person, with the permission of Central Board of Excise and Customs through the Ministry of External Affairs, on payment of appropriate customs duty, on expiry of three years from the date on which such motor vehicle was imported*

Rule 5. Recovery of goods sold or disposed of to non-privileged persons -

- (1B) *The custom duty on any vehicle sold or otherwise disposed of under clause (c) of sub-rule (2) of rule 4A shall be paid to the Commissioner of Customs nearest to the headquarters in India of the privileged person concerned, the duty to be recovered for such motor vehicle, except in case of accidented or totally damaged vehicle, shall be assessed on the depreciated value arrived after providing for depreciation at the scales specified by the Central Board of Excise and Customs in case of import of second hand motor vehicles, and the rate of duty on such vehicle and the exchange rate for conversion of foreign currency into Indian currency shall be taken as applicable on the date of approval of such sale or otherwise disposal by the said Board under clause (c) of sub-rule (2) of rule 4A.*

42.1 From the above, it is apparent 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 duty-free by foreign diplomats to non-privileged persons but the same can be done only after payment of due Customs duty.

42.2 I find that Mr. Yasser AH Dahlan in his defence submissions dated 15.12.2025 has inter alia contended that the language of Rule 5(1B) makes it clear that the same becomes applicable only when a vehicle is sold or otherwise disposed of under (c) of sub-rule (2) of rule 4A, which is not the case in the instant matter. He has also contended that Rule 5(1B) envisages imposition of Customs duty only in the case when a vehicle is sold or otherwise disposed of under Rule 4A(2)(c), as opposed to sub-rule (1) of Rule 5 which envisages imposition of Customs duty regardless of the procedure under rule 4A having been followed or not.

42.3 On going through the above contention of Mr. Yasser AH Dahlan, I find that he is claiming that he is not liable to pay the Customs duty as per Rule 5(1B) ibid, since he had not followed the procedure laid down under Rule 4A ibid. I find such contention of Mr. Yasser AH Dahlan to be baffling and incomprehensible, as not following the prescribed procedures in disposing of the impugned vehicle has made the violations of the relevant provisions even greater on part of Mr. Yasser AH Dahlan. Therefore, I find that this contention of Mr. Yasser AH Dahlan is without any merit and hence liable to be discarded.

43. In view of the afore discussed legal provisions and findings, I find that Mr. Yasser AH Dahlan, the then First Secretary, Embassy of the State of Palestine is liable to pay the due Customs duty totally amounting to Rs. 1,04,49,710/- as per provisions of the Customs Act, 1962 read with Notification No. 03/1957-Cus dated 08.01.1957 & Exemption Certificate Serial No. PAL/11/01/2016 issued to Mr. Yasser AH Dahlan and further read with the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957. The details of the said Customs duty are as under:-

| (Amount in Rs.) | | | | | |
|------------------|--------------------------|-----------------------------|---------------------------|-------------------------------|-----------------------------|
| Assessable value | BCD@125% | CVD @30% | Cess @3% [2% + 1%] | ACD @4% | Total Duty |
| (a) 49,71,176/- | (b) = a*125% 62,13,970/- | (c) = (a+b)*30% 33,55,544/- | (d) = (b+c)*3% 2,87,085/- | (e) = (a+b+c+d)*4% 5,93,111/- | (f) = b+c+d+e 1,04,49,710/- |

Limitation of time period to demand duty

44. It is seen that the impugned vehicle was imported vide Bill of Entry No. 64 dated 11.11.2016 and the impugned SCN has been issued by the competent authority on 22.09.2022. Therefore, it would be pertinent to examine if the demand is sustainable on time limitation. In this regard, I find that the impugned car was imported (duty-free) in the name of the diplomat/privileged person namely, Mr. Yasser AH Dahlan for his personal use after availing the benefit of Customs duty exemption under Notification No. 03/1957-Cus dated 08.01.1957. From the said notification, it is apparent that such duty-free import of vehicle by a diplomat (privileged person) in terms of the provisions of the said Notification No. 03/1957-Cus dated 08.01.1957 is subject to various conditions as discussed in the foregoing paras of this order. Thus, I find that the duty-free import of the impugned vehicle by Mr. Yasser AH Dahlan in terms of the Notification No. 03/1957-Cus dated 08.01.1957 was conditional and the conditions were post-clearance.

44.1 From the above, it is apparent that the exemption from payment of Customs duty was subject to fulfillment of post-clearance conditions. I find that the said conditions were very much clear and known to the importing diplomat Mr. Yasser AH Dahlan and he had filed undertaking(s) to fulfill all the said post-clearance conditions. I find that these conditions created a continuous obligation on the importing diplomat i.e., Mr. Yasser AH Dahlan. However, I find that Mr. Yasser AH Dahlan has violated all the above conditions. After import, he had not got the impugned car registered in his name as required, neither used the said car for his personal purpose, and got it disposed in the open market to a non-privileged person without paying the appropriate Customs duty. He has also breached the undertaking(s) given by him while applying for the Exemption Certificate from the MEA. I find that the investigation has conclusively established that there was obvious and clear-cut violation of the conditions applicable to the impugned car after clearance. Thus, it is apparent that only after investigations the impugned car was found to have become offensive by violation of the conditions of the exemption notification. It is well-settled law that the conditions of the notifications are to be strictly construed and the Customs duty levied under Section 12 of the Customs Act, 1962 is recoverable when there is an

infringement of any of the conditions of the exemption notification. Hence, I find that time-limit would not apply to the instant case and therefore, the demand is sustainable and not barred by time.

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

- (i) Hon'ble Supreme Court in the case of Mediwell Hospital and Health Care, observed in para 12 of its judgment that "*we would like to observe that the very notification granting exemption must be construed 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..... and if on such enquiry the authorities are satisfied that the continuing obligation are not being carried out then it would be fully open to the authority to ask the person who have availed of the benefit of exemption to pay the duty payable in respect of the equipments which have been imported without payment of customs duty. ... on being satisfied that the said obligations have not been discharged they can enforce realisation of the customs duty from them.*"
- (ii) Hon'ble Supreme Court in the case of Jagdish Cancer & Research Centre has observed that *when the violation involves the conditions of a notification granting exemption, the demand/order for duty payment is not bound by any time constraints specified in Section 28 of the Act, indicating that the Department can demand for customs duty from the importer without any time limit if the conditions of the exemption are not met.* The Hon'ble Supreme Court specifically held that *in cases, where the importer was not complying with the post import conditions for the import of goods at nil rate of duty, the provisions of Section 28(1) of the Customs Act were not attracted because the said section covers cases of duty not levied, short levied or erroneously refunded etc.* The Hon'ble Supreme Court has reiterated the same in the case of Commissioner Of Customs, New Delhi vs. C.T. Scan Research Centre (P) Ltd. [2003(155)E.L.T.3 (S.C.)]
- (iii) In the case of Bombay Hospital Trust, the Five Members Bench of Hon'ble Tribunal accepted that the violation of post import condition is a continuing one and held that in a case where a post-importation condition in an exemption notification is not fulfilled demand notice issued in such a case will not be subject to any limitation of time. The Hon'ble Tribunal held that-

"12. As regards the time limits under Section 28, both sides have agreed that since the duty demand does not relate to short levy or non levy at the time of initial assessment on importation, but has arisen subsequently on account of failure to fulfil the post-importation conditions under the Notification No. 64/88, the said Section 28 has

no application to a duty demand of this kind. We do not, therefore, wish to dwell further on the inapplicability of Section 28 to such demands. However, we note that since no specific time limit is prescribed under any other provision of the statute, the notice of demand in such cases cannot be subjected to any limitation of time. This view is supported by the ratio of the following two decisions of the Hon'ble Bombay High Court and the Apex Court :-

- (i) Prakash Cotton Mills Pvt. Ltd. v. S.K. Bhardwaj, A.C.C.E. (32) E.L.T. 534 (Bombay)
 - ii) Commr v. Raghavar (India) Ltd.- 2000 (118) E.L.T. 311 (S.C.)
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21.Since the time limit prescribed under section 28 has been held to be not applicable in such cases, and since there is no other time-limit prescribed under the Customs law to cover such cases, we are of the view that the notice of demand will not be subject to any limitation of time in cases of non-fulfillment of post importation conditions casting a continuous obligation as noted by us in paragraph 12 above.”

- (iv) In the case of Bharat Charitable Cancer Hospital and Institute [2007(216) ELT 567 (Tri-Ban)], Hon'ble Tribunal held that-

“....As regards time bar, it is well settled that when there is violation of post import condition of notification, there is no time limit for demand of duty. In these circumstances the impugned order denying exemption notification and holding that the goods are liable for confiscation is in order....” *(emphasis added)*

44.3 In view of the above, I find that the demand raised by the impugned SCN is sustainable. Accordingly, I hold that Customs duty of Rs. 1,04,49,710/- is liable to be recovered from Mr. Yasser AH Dahlan, the then First Secretary, Embassy of the State of Palestine as per provisions of the Customs Act, 1962 read with Notification No. 03/1957-Cus dated 08.01.1957 and Exemption Certificate Serial No. PAL/11/01/2016 issued to Mr. Yasser AH Dahlan and further read with the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957.

Interest on demand of duty

45. It is seen that the impugned SCN has proposed to recover interest on the demanded duty under provisions of the Customs Act, 1962. In this regard, I find that any person, who has been held liable to pay not/short paid duty as per the provision of the Customs Act, is also liable to pay the applicable interest, in addition to the said duty. As already discussed hereinabove, Mr. Yasser AH Dahlan, the then First Secretary, Embassy of the State of Palestine is liable to pay the Customs duty amounting to Rs. 1,04,49,710/- under the provisions of the Customs Act, 1962, therefore, he is also liable to pay applicable interest on the said duty liability. I also find that Hon'ble Supreme Court, in the case of *Pratidha Processors Vs. Union of India reported in (1996)11 SCC 101*, has settled this issue and held that ***interest is compensatory in character and is imposed on the assessee who has withheld payment of any tax as and when it is due and payable***; that the levy of interest is levied on the delay in payment of tax due and payable on the

due date. I further find that Hon'ble Supreme Court in the case of *Commissioner of Trade Tax Lucknow Vs Kanhai Ram Tekedar, 2005(185) ELT 3(SC)* had held that ***interest liability accrues automatically from confirmation of demand of duty/tax as recoverable***. Thus, I find that payment of interest is mandatory on every person who has been held liable to pay duty as per the provisions of the Act. Therefore, I hold that Mr. Yasser AH Dahlan is liable to pay applicable interest on the duty amount of Rs. 1,04,49,710/- recoverable from him.

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

46. I find that the impugned SCN has alleged that the said goods viz., Range Rover car imported in the name of the diplomat, Mr. Yasser AH Dahlan, by availing the duty exemption under Notification No. 03/1957-Cus dated 08.01.1957 is liable for confiscation under Sections 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 Sections 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;*

46.1 It is apparent from the provisions of Section 111(j) of the Act that the goods are liable for confiscation, if dutiable or prohibited goods are removed or attempted to be removed from a Customs area or a warehouse without the permission of the Proper officer or contrary to the terms of such permission. From the detailed discussions in the foregoing paras, it is apparent that in the instant case the dutiable goods viz. Range Rover car, was removed contrary to the terms of the permission of the proper officer who had granted permission for its clearance to Mr. Yasser AH Dahlan, the then First Secretary, Embassy of the State of Palestine, subject to getting it registered in his name and adhering to the terms and conditions of Notification No. 03/1957-Cus dated 08.01.1957, and not selling it without prior permission and without payment of the due Customs duty. However, the investigation has revealed that the statutory provisions prescribed under the said Notification No. 03/1957-Cus dated 08.01.1957 read with the Customs Act, 1962 have not been adhered to in the instant case. The impugned car was found in the possession of non-privileged person and registered in the name of non-privileged person(s) on the basis of forged documents. Thus, it is evident that the impugned car was sold in the open market to non-privileged person. Therefore, I find that the provisions of Section 111(j) of the Customs Act, 1962 is squarely applicable to the instant case.

46.2 Further, it is also apparent that the confiscation of goods under section 111(o) is applicable in case of import of goods wherein conditional exemption from duty is provided under

the Customs Act, 1962 or any other law, however, the conditions prescribed thereunder has not been fulfilled. I find that in the instant case, it is proven beyond doubt that the impugned Range Rover car was imported into India vide Bill of Entry No. 64 dated 11.11.2016 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. Yasser AH Dahlan for his personal use. However, post clearance, instead of registering the said car in the name of Mr. Yasser AH Dahlan, the said car was sold/disposed of in the open market to non-privileged person/s in violation of the conditions specified under the said Notification No. 03/1957-Cus dated 08.01.1957 read with the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957. Therefore, I find that the impugned vehicle viz, Range Rover car bearing Chassis No. SALGA2JE0FA198821 is liable for confiscation under Section 111(o) of the Customs Act, 1962.

46.3 In view of above, I hold that the impugned vehicle viz, Range Rover car bearing Chassis No. SALGA2JE0FA198821 is liable for confiscation under Section 111(j) and Section 111(o) of the Customs Act, 1962.

Applicability of Redemption Fine

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

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

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

A plain reading of the above provision of Section 125 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. The adjudicating authority is bound to give an option of redemption when goods are not subjected to any prohibition.

46.5 In the instant case, the impugned vehicle i.e., Range Rover Vogue car was imported duty-free in the name of the diplomat, Mr. Yasser AH Dahlan under Notification No. 03/1957-Cus dated 08.01.1957. However, after import of the impugned vehicle in India, Mr. Yasser AH Dahlan got it disposed of in the open market. I find that the impugned vehicle is not a prohibited goods. I further find that the impugned vehicle was first purchased by Shri Davinder Sharma and then by Shri Suresh Jain and was registered in the name of his employee, Sh. Redemption Makan. Further, I also find that the impugned vehicle was seized by the DRI under the Seizure

Memo dated 25.03.2022 from the premises of Shri Suresh Jain located at B-18, 3rd Floor, Block-B, Panchsheel Enclave, New Delhi. Therefore, I find that as per the above said statutory provision of Section 125(1), an option to pay redemption fine in lieu of confiscation is required to be given to Shri Suresh Jain if he redeems the impugned vehicle i.e., Range Rover Vogue car bearing Chassis No. SALGA2JE0FA198821, which has been held to be liable for confiscation under Section 111(j) and 111(o) of the Customs Act, 1962. Further, I also find that in addition to the payment of redemption fine in lieu of confiscation of the impugned car, Shri Suresh Jain will also be liable to pay the applicable Customs duty of Rs. 1,04,49,710/- along with applicable interest and other liabilities payable in respect of the impugned vehicle in terms of Section 125(2) of the Customs Act, 1962.

Issue of imposition of penalty on Mr. Yasser AH Dahlan under Sections 112(a) and 114AA of the Act

47. It is seen that the impugned SCN has proposed penalty on Mr. Yasser AH Dahlan 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.

47.1 The impugned SCN has proposed penalty on Mr. Yasser AH Dahlan under Section 112(a) of the Act. Therefore, it would be pertinent to go through the provisions of Section 112(a) *ibid*. The same are reproduced below:-

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

Any person, -

(a) who, in relation to any goods, does or omits to do any act or omission 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) -----,

shall be liable, -

(i) -----;

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

47.1.1 From the above, it is apparent that penalty under Section 112(a) is imposable if goods are liable to confiscation under Section 111 of the Act. I have, in the foregoing para, discussed in detail and conclusively held that the impugned vehicle viz, Range Rover Vogue car bearing Chassis No. SALGA2JE0FA198821 imported in the name of Mr. Yasser AH Dahlan is liable for confiscation under Section 111(j) and Section 111(o) of the Customs Act, 1962. Therefore, I find that Mr. Yasser AH Dahlan is liable for penalty under Section 112(a)(ii) of the Customs Act, 1962.

47.2 The impugned SCN has also proposed penalty on Mr. Yasser AH Dahlan 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”.

47.2.1 As discussed in the foregoing paras, the investigation has revealed that the impugned car was imported duty-free in the name of Mr. Yasser AH Dahlan for his personal use as a privileged person, by availing the benefit of exemption under Notification No. 03/1957-Cus dated 08.01.1957. However, post clearance, instead of registering the said car in the name of Mr. Yasser AH Dahlan, the impugned car was sold/ disposed of to non-privileged person. The investigation has further revealed that Mr. Yasser AH Dahlan had facilitated all the paperwork required for importing the impugned vehicle duty-free in his name as a diplomat. I find Mr. Yasser AH Dahlan was aware from the beginning that the impugned vehicle imported duty-free in his name would not be registered in his name. However, in spite of knowing 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. **PAL/11/01/2016** 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 (now CBIC) and without payment of the Customs duty. Even he authorized M/s. Babaji Khimji & Co. for clearance of the impugned car, through his letter of authority dated 09.11.2016 addressed to the Dy.Commissioner of Customs, JNPT/Mumbai. As such, I find that Mr. Yasser AH Dahlan had consciously and knowingly made/signed documents and declarations which were incorrect as he knew that the impugned car would not be registered in his name and instead would be diverted in the open market. Therefore, I hold that Mr. Yasser AH Dahlan 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(b) & 114AA of the Act

48. 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.

48.1 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 ibid read as under:-

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

Any person, -

(a) -----

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or

purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

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

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

48.1.1 The detailed role and modus operandi of Rehman Iqbal Ahmed Sheikh has been elucidated in the earlier part of this order. The detailed investigations carried out by the DRI revealed that Rehman Iqbal Ahmed Shaikh was the mastermind and kingpin of the syndicate which had smuggled into India many high-end luxury cars in the name of foreign diplomats by availing customs duty exemption available to foreign diplomats/privileged persons under Notification No. 03/1957-Cus dated 08.01.1957. The impugned vehicle viz., Range Rover car imported in the name of Mr. Yasser AH Dahlan, First Secretary, Embassy of the State of Palestine, covered in the instant case, is one such car. Investigation has revealed that, in the instant case also, Rehman Iqbal Ahmed Shaikh was the principal conspirator and kingpin of the whole conspiracy of smuggling of the impugned Range Rover car undertaken by this syndicate. He was instrumental in identification of the foreign diplomats and colluding with them by offering monetary consideration/illegal gratification through his accomplice Rajeev Sood, carting the impugned car from foreign port to India, taking delivery of the impugned car at customs port through his another accomplice Liyakat Bachu Khan and then selling the same in the open market to unprivileged person. It was also revealed that Rehman Iqbal Ahmed Shaikh had supplied and facilitated the finance for all activities with respect to the smuggling of the impugned car. The same is very much clear from the statements of Rajeev Sood, Liyakat Bachu Khan and Suresh Prasad recorded under Section 108 of the Customs Act, 1962. The same are mentioned in the earlier part of the order.

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

impugned car i.e., Range Rover was imported in the name of the diplomat Mr. Yasser AH Dahlan. 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. Further, Suresh Prasad in his deposition under section 108 of the Customs Act has admitted that Rehman Shaikh had sent him the impugned Range Rover car through the reference of Nipun Miglani, and that he (Suresh Prasad) had sold and registered the impugned car at Manipur RTO with registration no. MN06L 9990 in the name of non-privileged persons. He also deposed that he had sent Rs.1.31 crore, through Hawala channel, to Rehman Shaikh as the sales proceeds of the impugned car.

48.1.3 From the above, I find that the evidences gathered during the course of investigation clearly show that Rehman Iqbal Ahmed Shaikh was the mastermind and the principal conspirator of the whole conspiracy and played the primary role in the smuggling of the impugned Range Rover car. He also prepared/got prepared draft of all the required documents and got them signed and completed by the concerned diplomat by colluding with them through his accomplices for import of the impugned car duty-free in the name of the diplomat. He also instructed Liyakat Bachu Khan to take the delivery of the illicitly imported impugned vehicle viz., Range Rover car from the Customs Broker and instead of delivering it to the importer diplomat, he diverted it into the open market. Thus, I find that the impugned car was removed by Rehman Iqbal Ahmed Shaikh through his accomplice contrary to the terms of the permission of the proper officer who had granted permission for its clearance subject to adhering to the terms and conditions of Notification No. 03/1957-Cus dated 08.01.1957. However, the said car was sold/disposed of by him in the open market in utter violation of the conditions specified under the said Notification. Therefore, I find that all the above mentioned acts of omission and commission on part of Rehman Iqbal Ahmed Shaikh have rendered the impugned car liable for confiscation under Sections 111(j) and 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 12(b) of the Customs Act, 1962.

48.2 Further, from the above, it is also apparent that Rehman Iqbal Ahmed Shaikh had hatched the conspiracy to fraudulently avail duty exemption available to foreign diplomats by colluding with Mr. Yasser AH Dahlan, a diplomat of Embassy of the State of Palestine 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 through his accomplice Nipun Miglani and Suresh Prasad in open market to non-privileged person. Therefore, I hold that Rehman Iqbal Ahmed Shaikh is also liable for penalty under Section 114AA of Customs Act, 1962.

Issue of imposition of penalty on Shri Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique under Sections 112(b) & 114AA of the Customs Act, 1962

49. It is seen that the impugned SCN has proposed penalty on Shri Liyakat Bachu Khan and Mohammed 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, 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 proceed to decide the case of the said noticees based on the evidences on record.

49.1 The role played by Liyakat Bachu Khan in the entire conspiracy of smuggling of the impugned Range Rover car is elucidated in the earlier part of this order. I find that Liyakat Bachu Khan played a prominent role on the ground in executing the conspiracy. He was working for Rehman Iqbal Ahmed Shaikh and was a close confidant of him. In his statements recorded under Section 108 of the Act, Liyakat Bachu Khan has admitted his role in the conspiracy. He has also admitted that he knew that the vehicles imported in the name of diplomats were imported duty-free as there was exemption available to them, and that since these vehicles could not be sold in the open market, hence the documents had to be forged so that they could be registered in the name of private individuals. To forge the documents, he used the services of Mohammed Wasim Abdul Gani Siddique. From his statements, it is apparent that Liyakat Bachu Khan worked for Rehman Shaikh when the impugned Range Rover car was imported in the name of the diplomat Mr. Yasser AH Dahlan. He has deposed that the Bill of Entry No.64 dated 11.11.2016 was filed manually on the instructions of Rehman Shaikh. The payments in respect of the Customs clearance were arranged and provided by Rehman. He paid money to Wasim for forging documents like forged invoices, etc as per the directions of Rehman Shaikh and in this manner, played a crucial role in the smuggling of the impugned Range Rover car. He further stated that his job was to hand over the documents as given to him by Rehman Shaikh and after customs clearance, he had taken the delivery of the vehicle and handed it over to unknown persons as instructed by Rehman Shaikh. Further, it is seen that Rajeev Sood in his statement recorded under Section 108 of the Act has deposed that Liyakat Bachu Khan sent him draft of all the required documents for taking signature of the diplomat on those documents. The investigation has also revealed that in most of the cases that after getting clearance from customs, forged papers were prepared by Liyakat Bachu Khan through Mohd. Wasim Abdul Gani Siddique and shown to prospective buyers. I find that Mohd. Wasim Abdul Gani Siddique has admitted in his statement recorded under the provisions of Section 108 of the Act that Liyakat Khan gave him the Bills of Entry to edit the name of the importer or value of the goods and also gave him invoices, Customs duty payment receipt, etc to change the name of buyer. Liyakat Khan used to give him Rs. 500 to Rs. 1000 as per the quantum of editing. I further find that Mohd. Wasim Abdul Gani Siddique has admitted that the Invoice No. AMP/JLR/DL/RS/2015-17/304 dated 06.10.2016 and Sale Certificate in respect of the impugned Range Rover car were forged by him on directions of Liyakat Khan. The said documents were later used by the syndicate to fraudulently register the impugned car in the name of a non-privileged person. Thus, I find that Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique played prominent role in

fraudulent import of luxury cars in the name of diplomats and were actively instrumental in getting the cars registered in the name of non-privileged person. I find that for his prominent role played in the said conspiracy, Liyakat Bachu Khan was also arrested by the DRI under Section 104 of the Customs Act and was in judicial custody for 60 days.

49.2 In view of the above, I find that all the above mentioned acts of omission and commission on part of Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique have rendered the impugned car liable for confiscation under Section 111(j) and Section 111(o) of the Customs Act, 1962. As such, I hold that Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique are liable to penalty under the provisions of Section 12(b) of the Customs Act, 1962. Further, I find that the investigation has revealed that they had forged the documents for the purpose of manifesting this well planned conspiracy to defraud the government revenue. Thus, I find that Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique had consciously and knowingly prepared/got prepared, signed/got signed the documents, as discussed in para supra, and Liyakat Bachu Khan got delivery of the illicitly imported impugned Range Rover car from the Customs Broker and instead of delivering it to the importer diplomat, handed it over to non-privileged person on instruction of Rehman Iqbal Ahmed Shaikh. Therefore, I hold that Liyakat Bachu Khan and Mohammed Wasim Abdul Gani Siddique are also liable for penalty under Section 114AA of Customs Act, 1962.

Issue of imposition of penalty on Shri Manjeet Maurya under Section 112(b) of the Act

50. It is seen that the impugned SCN has proposed penalty on Shri Manjeet Maurya under Section 112(b) 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 hearings 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.

50.1 The role played by Manjeet Maurya in the entire conspiracy of smuggling of the impugned Range Rover car is elucidated in the earlier parts of this order. I find that Rajeev Sood was a link between the diplomats and Rehman Shaikh and had played a crucial role in smuggling of the impugned car. I also find that Manjeet Maurya, who was working at the Ministry of External Affairs, had provided crucial information about the eligibility and other details of diplomats to Rajeev Sood and expedited the process of Prior Approval and Exemption Certificate at MEA in lieu of monetary gratification received from Rajeev Sood. I also find that Manjeet Maurya in his statement recorded under section 108 of the Customs Act 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 further admitted that he used to provide Rajeev Sood the required information in lieu of monetary benefits. It is apparent that he knew that the registration of the vehicle(s) imported duty-free by the syndicate in the name of the diplomat(s) was not done in the name of the diplomat. As such, I find that he had aided and abetted the syndicate in smuggling of the

impugned car for monetary consideration and thus he had reasons to believe that the impugned car was liable to confiscation.

50.2 In view of the above, I find that all the above mentioned acts of omission and commission on part of 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 Manjeet Maurya is liable to penalty under the provisions of Section 12(b) of the Customs Act, 1962.

Issue of imposition of penalty on Shri Rajeev Sood under Section 112(b) of the Act

51. It is seen that the impugned SCN has proposed penalty on Shri Rajeev Sood under Section 112(b) of the Customs Act, 1962 *inter alia* alleging that he had aided and abetted the mastermind Rehman Shaikh in smuggling of the luxury cars including the impugned Range Rover car. It is also seen that in his defence, Shri Rajeev Sood has filed written reply dated 23.05.2023. However, in spite of granting six opportunities of Personal hearing in the matter during the adjudication procedure, he failed to attend the personal hearings.

51.1 I find that in his written reply dated 23.05.2023, Shri Rajeev Sood has *inter alia* contended that the impugned SCN is time barred as the same has not been issued within 5 years from the date of filing of the BoE No.64 dated 11.11.2016. In this regard, I find that this issue has already been discussed in detail in the foregoing paras of this order and held that since the instant case is of non-fulfilment of post-import conditions by the importer of the impugned car, therefore, the time limit prescribed under Section 28 or any other provision of the Customs Act is not applicable for demand of duty from the importer. Further, it is seen that the impugned SCN has proposed only penalty under Section 112(b) of the Customs Act on Shri Rajeev Sood. In this regard, I find that as per the provisions of the Customs Act, 1962 there is no time limit prescribed for imposition of penalty under Section 112(b) of the Act. As such, I find that the contention of the said noticee that the impugned SCN is time barred is not tenable.

51.2 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 Shaikh. The role played by Rajeev Sood in the entire conspiracy of smuggling of the impugned Range Rover car is elucidated in the earlier parts of this order. I find that in his statements recorded under Section 108 of the Act, 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, preparing applications to be submitted to MEA and expediting the process of Prior Approval and Exemption Certificate at MEA. I also find that regarding the documentation of duty-free import, he has admitted that he was in contact with Liyaqat Bachu Khan and Liyaqat used to send him all the required documents for taking signature on those documents from the foreign diplomat. He has also admitted that he used to visit the concerned diplomat at his office and collect hard copy

of the sanction documents and send the photograph of the sanction document over WhatsApp to Rehman Shaikh. He has also deposed that the diplomats would receive amounts ranging from Rs. 8 to Rs. 10 Lakh, and that he had received around Rs.60 Lakhs in cash from Rehman through *Hawala* channel in the last 3 years and gave the decided commissions to the diplomats in many deals. He has also admitted of receiving his commission in the range of Rs. 1 to Rs. 1.5 lakh from Rehman through Hawala depending upon the deal. I also find that for his crucial role played in the said conspiracy of illicit import of luxury cars, Rajeev Sood was also arrested by the DRI under Section 104 of the Customs Act and was in judicial custody for 60 days.

51.3 I find that Shri Rajeev Sood in his written submission has *inter alia* contended that he was forced and coerced to tender inculpatory statement in relation to import of cars by diplomats of various countries, and that he retracted from his statements dated 14.07.2021 and 18.07.2021 before the Ld.CMM, New Delhi vide application dated 19.07.2021. Hence, reliance on his statements without independent corroboration is misplaced and unsustainable in law. In this regard, I find that Shri Rajeev Sood failed to submit any evidence to substantiate that the statements were recorded under force and coercion. I also find that it is a settled law that the statement recorded under Section 108 of the Customs Act is a material piece of evidence and can be used as substantive evidence. I also find that the statement dated 14.07.2021 and 18.07.2021 are not the only statements of Shri Rajeev Sood recorded under Section 108 of the Act and relied upon in the instant case, as further statement was also recorded on 20.07.2021 which clearly establish the fact that Shri Rajeev Sood had abetted the mastermind Rehman Shaikh in smuggling of the impugned Range Rover car. Further, I find that the role played by Shri Rajeev Sood is corroborated by documentary evidences retrieved during the course of investigation. For example, a sample email correspondence from a diplomat to Shri Rajeev Sood is reproduced hereunder: -

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| <p>Rajeev Sood <rajeev.sood1959@gmail.com> To: mkprints2@gmail.com</p> <p>----- Forwarded message ----- From: Oduor Jared <jrd.oduor@gmail.com> Date: Thu, 4 Feb 2021, 10:58 Subject: Fwd: PASSPORT FOR JARED OGUTU To: <rajeev.sood1959@gmail.com></p> <p>----- Forwarded message ----- From: Jaspreet Kaur <protocolspl@mea.gov.in> Date: Thu, 4 Feb 2021, 10:32 Subject: Re: PASSPORT FOR JARED OGUTU To: Oduor Jared <jrd.oduor@gmail.com> Cc: Deputy Chief Of Protocol Priv <dcpp@mea.gov.in></p> <p>Dear High Commission,</p> <p>Please refer esteemed High Commission's note verbale dated 03 February, 2021 forwarding Exemption Certificate No.: 05/JOO/02/2021 for Ministry's approval.</p> <p>2. It is for the kind information that Ministry, vide EC approval no. 120, has approved the above referred EC to import Toyota Land Cruiser VXR Model 2019 (Chassis no- JTMHV02J504286544 & Engine no- Nil) worth USD 45,000/- by Mr. Jared Oduor Ogutu, Counsellor, from UAE.</p> <p>3. This is issued with the approval of Deputy Chief of Protocol (Privileges).</p> <p>Regards,</p> <p>जसप्रीत कौर/ Jaspreet Kaur न्याचार अधिकारी/ Protocol Officer न्याचार (विशेष) अनुभाग / Protocol (Special) Section विदेश मंत्रालय/Ministry of External Affairs Room No : 1099, B Wing Jawaharlal Nehru Bhawan 23 D, Janpath, New Delhi - 110 011 Tel No: 49015442, Fax No : 49015450</p> | | <p>Sat, Feb 6, 2021 at 12:36 PM</p> |
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51.4 From the above, it is apparent that one of the diplomats, who had collaborated with Rahman Shaikh in the above explained modus operandi of importing duty-free luxury cars in the name of diplomats and diverting them in the open market, had forwarded the Exemption Certificate approved by the MEA to Shri Rajeev Sood at his email ID rajeev.sood1959@gmail.com. Further, I also find that the statements of Shri Rajeev Sood recorded under Section 108 of the Customs Act are consistent and even during his statement dated 20.07.2021 he has not pointed out any such thing. On the contrary, I find that at the conclusion of every statement, Shri Rajeev Sood has admitted (in writing, written in his own handwriting) that his statement was true and voluntary as per his say and that the same was recorded without any force, threat, duress and coercion. The role played by Shri Rajeev Sood has also been revealed by the other members of the syndicate viz., Shri Manjeet Maurya, Shri Liyakat Bachu Khan, etc. in their statements recorded under Section 108 of the Act. Further, Shri Nipun Miglani has also depoposed that Rajeev Sood was working for Rehman. I also find that Shri Rajeev Sood was a crucial member of the syndicate as without his liasining and coordination with the diplomats and Shri Manjeet Maurya, the paperwork of the smuggled cars imported duty-free in the name of diplomats was not possible. Had he not colluded with the mastermind, this whole modus operandi might not have seen the light of day and a huge amount of duty evasion could have been prevented. Therefore, the retraction of the statements has no effect. It is also clear that the retraction of the statement is an afterthought in his endeavour to save himself from the clutches of the law. In this regard, I also find that the Hon'ble Supreme Court in the case of *Surjeet Singh Chhabra v. UOI*, reported in 1997 (89) E.LT. 646 (S.C.) has held that ***confession statement made before Customs officer though retracted within six days is an admission and binding since Customs Officers are not Police Officers***. Therefore, I do not find any merit in the contention of Shri Rajeev Sood.

51.5 Further, I find that Shri Rajeev Sood in his written submission has inter alia sought cross examination of the co-noticees Shri Liyakat Bachu Khan, Shri Manjeet Maurya and Shri Ajay Dhawan. However, I observe that there is no co-noticee by the name Shri Ajay Dhawan in the impugned SCN. Further, I find that the instant case is primarily based on documentary evidence, and during the course of investigation, voluntary statements of responsible persons of other importing entities/concerned entities were recorded wherein they have corroborated the documentary evidences produced before them. With respect to statements of Shri Liyakat Bachu Khan, Shri Manjeet Maurya recorded under Section 108 of the Act, I find that neither of them has raised any objection to the content of their statements or retracted from their statements. Further, I find that Shri Rajeev Sood has sought cross-examination of the said 2 co-noticees without indicating any specific reason. In this regard, I rely upon the case of *Fortune Impex Vs. Commissioner of Customs, Calcutta* [2001(138) E.L.T.556 (Tri. -Kolkata)], wherein Hon'ble Tribunal has *inter alia* observed that:

“...it is not required that in each and every case, cross-examination should necessarily be allowed. There is no absolute right of cross-examination provided in the Customs Act. The Advocate had given a list of 26 persons for cross-examination without indicating the specific reasons for cross-

examining the...it cannot be said that there was violation of principles of natural justice by not allowing the cross-examination of the persons sought by him."

51.5.1 The above view taken by the Tribunal has been affirmed by Hon'ble Supreme Court – [2004 (164) E.L.T. 4 (S.C.) & 2004 (167) E.L.T.A. 134 (S.C.)].

51.5.2 Similarly, I rely on the decision of the Hon'ble CESTAT Kolkata in the case of Dipu Das v/s Commissioner of Customs Kolkata reported as 2010(261)ELT408 (Tri-Del), wherein it has been interalia held that;

".....In adjudication proceedings, cross-examination cannot be claimed as a matter of right on mere asking for it, without furnishing reasons for the same".

51.5.3 In view of the above case laws, I find that in the instant case, the request of Shri Rajeev Sood is not admissible, since they have not specified any valid reason for seeking the cross-examination of their job workers. Further, I rely upon the following case laws, which are relevant in the instant case : -

- (i) In the case of Union of India vs. Bhagwati Steel Rolling Mills (2012) 285 ELT 481 (Tri-Del), the Hon'ble Tribunal held that :-

"the request for cross-examination of witnesses and inspection of documents cannot be allowed as a matter of right -----"

- (ii) In the case of Commissioner of Central Excise vs. Hindustan Sanitaryware & Industries Ltd. (2014) 303 ELT 209 (SC), the Supreme Court held that:-

"the adjudicating authority has the discretion to allow or reject the request for cross-examination of witnesses -----"

- (iii) In the case of CCE vs. Venus Castings (P) Ltd. (2016) 332 ELT 577 (Tri-Ahmd), the Hon'ble Tribunal held that:-

"the request for relied upon documents and cross-examination of witnesses was not allowed as it was made at a belated stage -----"

51.5.4 Further, I also find that the right to cross-examine flows from the principles of Natural Justice. However, it needs to be examined whether cross-examination is necessary in taxation matters, where facts are visible on the face of the record. Here, I take note of Section 56 of the Indian Evidence Act, of 1872, which prescribes that facts judicially noticeable need not be proved. In this connection, I rely upon the decision of the Supreme Court in the case of *State of Mysore v. Shivabasappa* [report in AIR 1963 SC 375], wherein it was held that *decision in quasi-judicial proceedings the authorities are not bound by the strict rules of evidence and procedure. They can get information through their sources, which could be acted upon provided the result of the inquiry, on which they are acting, was made available to the accused person, to give him an opportunity to rebut the same.*

51.6 Based on the above-discussed judgments of higher judicial forums and documentary evidence, I find that Shri Rajeev Sood's request for cross-examination of the persons whose statements were recorded under Section 108ibid were just a dilatory tactics. They have not specified any valid reason for seeking the cross-examination. I find that they have already been given sufficient opportunity to present their case during the course of investigation, as well as during the adjudication proceedings. It is worth mention here that in spite of granting six opportunities of Personal hearing to present their case on merit and submit documentary evidence, if any, in their defense, he failed to attend the personal hearings. Hence, I find that the case laws cited by Shri Rajeev Sood can be differentiated from the present facts of the case, and therefore, not applicable in the instant case. Further, I also find that during the course of investigation also, he had not fully cooperated with the investigation. He did not submit his mobile phone (no.9810906778) to the investigation agency claiming that the same was stolen on 12.07.2021, however, he failed to produce any complaint filed with the Police. In view of the foregoing, I observe that there is no need for any cross-examination in the instant case.

51.7 In view of the above, I find that all the above mentioned acts of omission and commission on part of Sri Rajeev Sood have rendered the impugned car liable for confiscation under Section 111(j) and Section 111(o) of the Customs Act, 1962. As such, I hold that Sri Rajeev Sood is liable to penalty under the provisions of Section 12(b) of the Customs Act, 1962.

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

52. It is seen that the impugned SCN has proposed penalty on Shri Nipun Miglani under Section 112(b) of the Customs Act, 1962 *inter alia* alleging that they abetted the mastermind Rehman Iqbal Ahmed Shaikh in smuggling of the luxury cars including the impugned Range Rover car.

52.1 I observe that Shri Nipun Miglani has filed written submissions dated 11.09.2024 through a legal firm namely, Agol Associates, Chennai. The same was also reiterated by them during the personal hearings held on 04.11.2025. On going through their written submissions dated 11.09.2024, I observe that he has *inter alia* contended that the adjudication proceedings are time-barred. In this regard, I find that this issue has already been discussed in detail in the foregoing paras of this order and held that since the instant case is of non-fulfilment of post-import conditions by the importer of the impugned car, therefore, the time limit prescribed under Section 28 or any other provision of the Customs Act is not applicable for demand of duty from the importer. Further, it is seen that the impugned SCN has proposed only penalty under Section 112(b) of the Customs Act on Shri Nipun Miglani. In this regard, I find that as per the provisions of the Customs Act, 1962 there is no time limit prescribed for imposition of penalty under Section 112(b) of the Act. As such, I find that the contention of Shri Nipun Miglani that the impugned SCN is time barred is without merit and hence not tenable.

52.2 From the records of the case, I find that Shri Nipun Miglani was a close aide of the mastermind Rehman 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. Shri Nipun Miglani had also played a major role in preparation of forged documents related to the smuggled car. He had guided Liyakat Bachu Khan to prepare forged documents of such cars with the intention to use them in getting the registration done at RTOs and use them for selling such smuggled car. I find that the WhatsApp chats/conversations and documents held/shared between Nipun Miglani and Liyakat Bachu Khan has clearly established Shri Nipun Miglani's role in smuggling of such cars imported in the name of diplomats. In the instant case, he had referred two such cars including the impugned Range Rover Vogue car to one of his friends Shri Suresh Prasad for jobwork and also permitted Shri Suresh Prasad to sell the impugned car to non-privileged person. Subsequently the said range rover car was sold and registered in the name of a non-privileged person, thus enabling the syndicate in diversion of the impugned car. Nipun Miglani, having already dealt with multiple such cars smuggled by Rehman Shaikh was in the full knowledge that the impugned Range Rover Vogue car was being diverted to the open market in contravention to the Customs Notification No. 03/1957.

52.3 I find that Nipun Miglani has also admitted that he was not verifying the genuineness of the documents against the imported cars supplied to him by Rehman as he was aware that Rehman used to arrange dummy importers who agreed to import cars on their name for monetary consideration. He has also accepted that he used to tell/instruct Liyakat to modify/edit the documents/ invoices being prepared/fabricated by Liyakat. He has also admitted that the impugned Range Rover Vogue car was provided to his friend Suresh Prasad by Rehman, and Suresh sold the impugned car to his friend Nikhil from Manipur for Rs.1.50 crores. Shri Suresh Prasad has deposed that he met Shri Rehman Sheikh in Dubai through Nipun in the year 2016. Shri Suresh Prasad has further deposed that through reference of Nipun Miglani only, Shri Rehman Shaikh had sent two Range Rover Vogue cars, which included the impugned car, to his workshop. Shri Nipun Miglani had informed him that the said cars were for sale and gave him (Suresh Prasad) one-month for selling the said Range Rover cars. I also find that for his prominent role played in the said conspiracy, Shri Nipun Miglani was also arrested by the DRI under Section 104 of the Customs Act and was in judicial custody for 60 days.

52.4 I find that Nipun Miglani in his written submissions dated 11.09.2024 has contended that his statement dated 15.07.2021 recorded under Section 108 of the Act was recorded under coercion and the same was retracted before the Hon'ble Magistrate, Uran on 19.07.2021 as well as vide his letter dated 22.10.2021 and that the retracted statement cannot be the sole basis for conviction when not corroborated with any evidence. In this regard, I find that Shri Nipun Miglani has not submitted any evidence to substantiate that his statement was recorded under coercion. I also find that the statement dated 15.07.2021 of Shri Nipun Miglani is based on corroborative documentary evidence retrieved/ procured during the course of investigation. It is a settled law that, the statement recorded under Section 108 of the Customs Act is a material piece

of evidence and can be used as substantive evidence. I also find that the statement dated 15.07.2021 is not the only statement of Shri Nipun Miglani recorded and relied upon in the instant case, as further statements were recorded on 17.07.2021, 02.08.2021 & 16.10.2023 which clearly establish the fact that Nipun Miglani had abetted the mastermind Rehman Shaikh in smuggling of cars in the name of diplomats and registration of the same in the name of non-privileged person as discussed in paras supra. I find that the statements recorded under Section 108 of the Customs Act in this case are consistent and based on corroborative documentary evidence. I also find that Nipun Miglani was a crucial member of the syndicate as without his expertise in the field of sale and purchase of the high-end luxury cars, it would have been a herculean task for the syndicate to sell the cars smuggled by the mastermind. Had he not colluded with the mastermind, this whole modus operandi might not have seen the light of day and a huge amount of duty evasion could have been prevented. Therefore, the said retraction of statement dated 15.07.2021 has no effect. It is clear that the retraction of the statements is an afterthought to save himself from the clutches of the law. In this regard, I also find that the Hon'ble Supreme Court in the case of Surjeet Singh Chhabra v. UOI, reported in 1997 (89) E.LT. 646 (S.C.) has held that ***confession statement made before Customs officer though retracted within six days is an admission and binding since Customs Officers are not Police Officers***. Therefore, I do not find any merit in the contention of Shri Nipun Miglani.

52.5 In view of the foregoing, I find that Shri Nipun Miglani has aided and abetted the mastermind in smuggling the luxury cars including the impugned Range Rover Vogue car and diverting the same in the open market to non-privileged person. I also find that he had the knowledge that the impugned car was smuggled by Rehman Shaikh by claiming benefit of Customs duty exemption. However, even after this knowledge, he helped Rehman Shaikh in the sale of the impugned car to a non-privileged person. Thus, I find that Shri Nipun Miglani had a reason to believe that the impugned car was liable to confiscation. Therefore, I find that all the above mentioned acts of omission and commission on part of Shri Nipun Miglani have rendered the impugned car liable for confiscation under Section 111(j) and Section 111(o) of the Customs Act, 1962. As such, I hold that Shri Nipun Miglani is liable to penalty under the provisions of Section 12(b) of the Customs Act, 1962.

Issue of imposition of penalty on Shri Suresh Prasad under Section 112(b) of the Customs Act, 1962

53. It is seen that the impugned SCN has proposed penalty on Shri Suresh Prasad under Section 112(b) of the Customs Act, 1962. It is also seen that inspite of providing ample opportunities, Shri Suresh Prasad has neither submitted any defence reply nor appeared for personal hearings during the adjudication procedure. It thus appears that he has nothing to say in his defence. Therefore, I proceed to decide the case of Shri Suresh Prasad based on the evidences on record.

53.1 The role played by Shri Suresh Prasad in the entire conspiracy of smuggling of the impugned Range Rover Vogue car has been elucidated in details in earlier part of this order. I find that Shri Suresh Prasad had played a crucial role in registration of the impugned car as well

as selling the same to a non-privileged person. I also find that he has admitted to have met the mastermind Rehman Sheikh in Dubai through Nipun Miglani in the year 2016 i.e., before import of the impugned car. Shri Suresh Prasad has deposed that Rehman Sheikh had sent two Range Rover Vogue cars, including the impugned car, to his workshop through reference of Nipun Miglani, and that after asking Nipun Miglani, he managed to sell the impugned car to Shri Davinder Sharma and got it registered in his (Davinder) name at RTO, Imphal (East), Manipur under the registration no. MN 06 L 9990. I find that the DRI investigation has revealed that Shri Suresh Prasad had forged/got forged documents like invoice, etc. to get the impugned vehicle registered at RTO, Imphal (East). Thus, I find that the registration no. MN 06 L 9990 of the impugned car was obtained fraudulently by Shri Suresh Prasad.

53.2 I also find that Shri Suresh Prasad has also deposed that the other Range Rover Vogue car (bearing no. MN06LA0702) sent to him by the mastermind Rehman Sheikh was seized by the Delhi Police after an FIR was registered against the said car bearing no. MN06LA0702 by the Syrian Embassy. As such, it is apparent that Shri Suresh Prasad knew that both the said cars sent by Rehman Sheikh were illicitly imported into India in the name of foreign diplomats by claiming benefit of Customs duty exemption. However, in spite of having knowledge of the same, he not only arranged non-privileged buyer(s) for the impugned Range Rover Vogue car but also assisted the mastermind RehmanShaiikh in realizing the entire sale proceeds of the impugned car, by receiving the sale proceeds in large amounts of cash and routing the entire sale proceeds, amounting to Rs. 1.31 Crores to the mastermind through unscrupulous means of Hawala transactions.

53.3 I find that Shri Suresh Prasad has aided and abetted the mastermind in smuggling the impugned Range Rover Vogue car and diverting the same in the open market to non-privileged person. I also find that he had got the impugned car fraudulently registered at RTO, Imphal (East) using forged documents. Thus, I find that Shri Suresh Prasad had a reason to believe that the impugned car was liable to confiscation. Therefore, I find that all the above mentioned acts of omission and commission on part of Shri Suresh Prasad 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 Suresh Prasad is liable to penalty under the provisions of Section 12(b) of the Customs Act, 1962.

Issue of imposition of penalty on Shri Davinder Sharma and Shri Suresh Jain under Section 112(b) of the Customs Act, 1962

54. It is seen that the impugned SCN has proposed penalty on Shri Davinder Sharma and Shri Suresh Jain under Section 112(b) of the Customs Act, 1962. I find that in his defence submissions dated 18.01.2023, Shri Davinder Sharma have inter alia contended that he had been in complete compliance of all legal provisions and not acted in contravention of the Customs Act, as alleged or otherwise, and that he had no nexus with the alleged illegal import or evasion in payment of customs duty in respect of a Land Rover Vehicle in question. Similarly, Shri Suresh Jain vide written submissions dated 02.12.2025 has inter alia contended that he had acted

strictly within the framework of law and there was no malafide or malicious intention, and that no wrongful gain had accrued to him nor any wrongful loss caused to the exchequer.

54.1 The role played by Shri Davinder Sharma and Shri Suresh Jain in the instant issue of smuggling of the impugned Range Rover car has been elucidated in details in the earlier part of this order. In this regard, I find that both Shri Davinder Sharma and Shri Suresh Jain had dealt with Shri Suresh Prasad, who was a member of the smuggling syndicate, and had unscrupulously bought the impugned car from Shri Suresh Prasad even though the impugned car was not in the name of Shri Suresh Prasad. I also find that they have accepted that all the payments for the impugned car were made in cash to Shri Suresh Prasad. Shri Davinder Sharma had paid a total amount of Rs. Rs. 1.5 Crores in cash to Shri Suresh Prasad. Shri Suresh Jain had made a total payment of Rs. 80 Lakhs to Shri Suresh Prasad in cash. The said cash amount was subsequently routed to the mastermind by Shri Suresh Prasad through unscrupulous means of Hawala transactions. I find that all these acts on part of Shri Davinder Sharma and Shri Suresh Jain clearly show their collusion and connivance with Shri Suresh Prasad in the instant conspiracy.

54.2 Further, I find that despite Shri Davinder Sharma being a resident of Delhi, he allowed Shri Suresh Prasad to get the impugned car registered in Manipur and the impugned car was registered at RTO, Imphal (East), Manipur under the registration no. MN 06 L 9990 using forged documents. Further, it is also worth mentioning here that when Shri Davinder Sharma had bought the impugned car for Rs.1.50 crores, then how did he agree to give the impugned car to Shri Nikhil Jain (s/o Shri Suresh Jain) for Rs.60 Lakhs only. It is observed that even that amount of Rs.60 Lakhs was paid and received in cash only. Further, I also find that Shri Davinder Sharma had taken another Range Rover car bearing Registration No. MN 06L 0702 from Shri Suresh Prasad and the said car was seized by Delhi Police as the same belonged to the Syrian Embassy.

54.3 Further, I also find that though the impugned car was registered in the name of Shri Davinder Sharma, still Shri Suresh Jain dealt with the syndicate member Shri Suresh Prasad and purchased the impugned car from Shri Suresh Prasad. Further, after purchasing the impugned car, Shri Suresh Jain did not get it registered in his name. He got it registered at RTO Manipur in the name of his employee Shri Redemption Makan, a resident of Manipur having address at lanthungching Village Saitu, Gamph azol, Senapati, Manipur. However, during the search carried out by the DRI at the premises of Shri Suresh Jain located at B-18, Third floor, Block-B Panchsheel Enclave, New Delhi, the impugned car was found to be at his said premises located at B-18, Third floor, Block-B Panchsheel Enclave, New Delhi and was therefore seized under Seizure Memo dated 25.03.2025. It is further observed from the Insurance papers of the impugned car that though the impugned car was registered in the name of Shri Redemption Makan, the address thereon is of Shri Suresh Jain i.e., B-18, Third floor, Block-B Panchsheel Enclave, New Delhi.

54.4 Further, I also find that Shri Davinder Sharma and Shri Suresh Jain have not shown due diligence to verify the veracity of all the documents provided by the members of the smuggling syndicate i.e., Shri Suresh Prasad for the reasons best known to them and they had even not bothered to make the payment to the person in whose name the vehicle was registered.

54.5 In view of the above, I find that all the above acts and omissions on part of Shri Davinder Sharma and Shri Suresh Jain clearly show their collusion and connivance with Shri Suresh Prasad in the instant conspiracy. Thus, I find that Shri Davinder Sharma and Shri Suresh Jain had a reason to believe that the impugned car was liable to confiscation. Therefore, I find that all the above mentioned acts of omission and commission on part of Shri Davinder Sharma and Shri Suresh Jain 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 Davinder Sharma and Shri Suresh Jain are liable to penalty under the provisions of Section 12(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

55. 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, M/s. Babaji Khimji and Co. who had cleared the impugned imported vehicle. In his defence, Aubrey Elias D'Souza has inter alia contended that he had the impugned car cleared on the basis of duty exemption certificate issued by the MEA in favour of the diplomat and were received from the diplomat email to the noticee's email ID. M/s. Babaji Khimji and Co. was duly authorized by the diplomat vide authority letter dated 09.11.2016 issued by the diplomat in favour of Dy. Commissioner of Customs, JNPT. All the documents viz., Note Verbale No.105/2016 dated 24.09.2016, Prior Approval No. D.VI/451/2 (54)/2016 dated 18.10.2016 from MEA, Exemption Certificate No. PAL/11/01/2016 dated 02/11/2016 issued by MEA, Self-Certificate of Mr. Yasser AH Dalhan, Bill of Lading No. OOLU2578428890 dated 28.09.2016 attested and received from the diplomat/Embassy were submitted to Customs. Based on the said documents, Bill of Entry No. 64 dated 11.11.2016 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 15.11.2016. Thus, Section 111(j) is not applicable in the present case. Further, 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. From the above, it is established that all the formalities for the customs clearance were complied with as per law. The SCN does not allege role of the noticee in the diversion of the car post clearance. He had not committed any act rendering the goods liable for confiscation under Section 111(o) of the Act. Therefore, he was not liable for penalty under Section 112 of the Customs Act 1962. He has 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.

55.1 I find that the impugned car was imported and cleared at JNCH, Nhava Sheva through Bill of Entry No. 64 dated 11.11.2016 which was dealt by Aubrey Elias D'souza, representative of Customs Broker, M/s. 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 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 embassy/ diplomats duly signed and stamped by the diplomat/embassy. These facts have not been refuted by any of the members of the syndicate nor DRI has produced any evidence to the contrary. I find that in the present case, the documents such as Note Verbale No.105/2016 dated 24.09.2016, Prior Approval No. D.VI/451/2 (54)/2016 dated 18.10.2016 from MEA, Exemption Certificate No. PAL/11/01/2016 dated 02/11/2016 issued by MEA, Self-Certificate of Mr. Yasser AH Dalhan, Bill of Lading No.OOLU2578428890 dated 28.09.2016, Invoice, Diplomatic identity card, etc. were sought by him for import of the impugned car in the name of the diplomat. Further, I also find that M/s. Babaji Khimji and Co. was duly authorized by the diplomat vide his authority letter dated 09.11.2016. Thus, it is seen that the impugned car was duly cleared by Shri Aubrey Elias D'souza from Customs and no infirmity was noticed from filing the BoE to the out-of-charge by the proper officer. Further, no malafides are attributed against him by the co-noticees involved in the conspiracy. As such, I find that the charges leveled against Shri Aubrey Elias D'souza in the impugned SCN is not sustainable.

55.2 I also find that the Notification No 41/2018-Customs (N.T.) dated 14.05.2018 also known as CBLR 2018", stipulates that any diversion of 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 would be 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 diverting the impugned car, imported duty-free in the name of the diplomat, in the open market 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.

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

ORDER

- (i) I order to confiscate the impugned vehicle i.e., 'Range Rover Vogue car bearing Chassis No.SALGA2JE0FA198821' imported in the name of foreign diplomat Mr. Yasser AH Dahlan, the then First Secretary, Embassy of State of Palestine vide Bill of Entry No. 64 dated 11.11.2016 having declared assessable value of Rs.49,71,176/-, seized under Seizure Memo dated 25.03.2022, under Sections 111(j) and 111(o) of the Customs Act, 1962. However, since the impugned vehicle has already been disposed of by Mr. Yasser AH Dahlan, and the same was purchased by Shri Suresh Jain and from whose possession the impugned vehicle was seized, therefore, in terms of the provisions of Section 125(1) of the Customs Act, 1962, I give an option to Shri Suresh Jain to redeem the impugned vehicle on payment of fine of **Rs.15,00,000/- (Rupees Fifteen Lakh only)** in lieu of confiscation. I also order that in addition to the payment of the above redemption fine of Rs.15,00,000/-, Shri Suresh Jain will also be liable to pay the applicable Customs duty of **Rs. 1,04,49,710/- (Rupees One Crore Four Lakh Forty-nine Thousand Seven Hundred and Ten only)** along with applicable interest and other liabilities payable in respect of the impugned vehicle in terms of Section 125(2) of the Customs Act, 1962;
- (ii) I confirm the demand of Customs duty amounting to **Rs.1,04,49,710/- (Rupees One Crore Four Lakh Forty-nine Thousand Seven Hundred and Ten only)** under Section 28(8) of the Customs Act, 1962 and order to recover the same from Mr. Yasser AH Dahlan, the then First Secretary, Embassy of State of Palestine under Section 28(4) of the Customs Act, 1962 along with the applicable interest under Section 28AA of the Customs Act, 1962;
- (iii) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** on Mr. Yasser AH Dahlan, the then First Secretary, Embassy of State of Palestine under Section 112(a)(ii) of the Customs Act, 1962;
- (iv) I impose penalty of **Rs. 50,00,000/- (Rupees Fifty Lakh only)** on Mr. Yasser AH Dahlan, the then First Secretary, Embassy of State of Palestine 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)(ii) of the Customs Act, 1962.
- (vi) I impose penalty of **Rs. 50,00,000/- (Rupees Fifty Lakh only)** on Shri Rehman Iqbal Ahmed Shaikh under Section 114AA of the Customs Act, 1962.
- (vii) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** on Shri Liyakat Bachu Khan under Section 112(b)(ii) of the Customs Act, 1962.
- (viii) I impose penalty of **Rs. 50,00,000/- (Rupees Fifty Lakh only)** on Shri Liyakat Bachu Khan under Section 114AA of the Customs Act, 1962.
- (ix) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** on Shri Mohammed

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

- (x) I impose penalty of **Rs. 25,00,000/- (Rupees Twenty-five Lakh only)** on Shri Mohammed Wasim Abdul Gani Siddique under Section 114AA of the Customs Act, 1962.
- (xi) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** on Shri Rajeev Sood under Section 112(b)(ii) of the Customs Act, 1962.
- (xii) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** on Shri Manjeet Maurya under Section 112(b)(ii) of the Customs Act, 1962.
- (xiii) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** on Shri Nipun Miglani under Section 112(b)(ii) of the Customs Act, 1962.
- (xiv) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** on Shri Suresh Prasad under Section 112(b)(ii) of the Customs Act, 1962.
- (xv) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** on Shri Davinder Sharma under Section 112(b)(ii) of the Customs Act, 1962.
- (xvi) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** on Shri Suresh Jain under Section 112(b)(ii) of the Customs Act, 1962.
- (xvii) I do not impose penalty on Shri Aubrey Elias D'Souza and Shri Som Prakash Naval Bhatia under Section 112(b) of the Customs Act, 1962.

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



(Dr. Atul Handa)
Commissioner

F.No. S/10-146/2022-23/Gr-VB-V/CAC/JNCH

To,

1. Mr. Yasser AH Dahlan, (Through MEA)
The then First Secretary,
Embassy of the State of Palestine,
E.P. 29-B, Diplomatic Enclave,
Chanakyapuri, New Delhi-110021.
2. Shri Rehman Iqbal Ahmed Shaikh,
7th Floor, Arc Next,
Beside Peace Heaven Bungalow,
Pali Hill, Bandra (West), Mumbai -400050.

Email:shaikhrehman13@yahoo.com

3. Shri Liyakat Bachu Khan,
Chawl No. 45, Room No.705,
Bharat Nagar, Bandra (East), Mumbai-400051
Email: khanliyakat0011@gmail.com

4. Shri Rajeev Sood,
89, Qutub View Apartment,
Katraria Saria, New Delhi -110016.
Email: Rajeev.sood1959@gmail.com

5. Shri Manjeet Maurya,
84/256-D, Street No.3,
Sangam Vihar, New Delhi -110062.
Email: mauryamanjeet36@gmail.com

6. Shri Mohd. Wasim Abdul Gani Siddique,
Room No.1, Opp. Chawl No.46,
Near Vali Tailors, Bharat Nagar,
Bandra (East), Mumbai-400051.
Email: agsart87@gmail.com

7. Shri Nipun Miglani,
A/222, 22nd Floor, Crest, DLF Phase-5,
Sector-54, Gurugram-122001.
Email: miglani_nipun@yahoo.com, hari@agol.in

8. Shri Suresh Prasad,
House No.P-29, Second Floor,
Green Park Extension,
New Delhi - 110016.
Email: sureshprasad7500@icloud.com

9. Shri Aubrey Elias D'souza,
Prop. of M/s. J.P. International,
5, Baptist Bhavan, Carmel CHS,2nd Floor,
St. John Baptist Road, Bandra (West), Mumbai-400050.
Email: jpintl@rediffmail.com

10. Shri Davinder Sharma,
C-708, New Friends Colony,
Srinivaspuri, Nr. Mata Ka Mandir,
East of Kailash, Ph-I,
New Delhi – 110065.
Email: Dav14nov@hotmail.com

11. Shri Suresh Jain,
B-18, Third Floor,
Panchsheel Enclave,
New Delhi - 110065.
Email: suresh_1@yahoo.com

Copy to:-

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