



भारत सरकार

वित्त मंत्रालय/ राजस्व विभाग

केंद्रीय अप्रत्यक्ष कर एवं सीमाशुल्क बोर्ड – मुंबई अंचल-I, भारतीय सीमाशुल्क

आयुक्त सीमाशुल्क (आयात-I) का कार्यालय

द्वितीय मंजिल, नवीन सीमाशुल्क भवन, शूरजी वल्लभदास मार्ग, बेलार्ड एस्टेट,
मुंबई-400001.

दूरध्वनि-22757401 फैक्स-22757402

ई-मेल: adjn-commr-imp1nch@gov.in

फा.सं. : CUS/AG/MISC/830/2022-GR-5(AB)

के द्वारा जारी किया गया : विवेक पाण्डेय
आयुक्त सीमाशुल्क (आयात-I)

आदेश दिनांक: 31.07.2023
जारी दिनांक: 01.08.2023

सी.ए.ओ. क्रमांक : 31 /2023-24/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)
DIN No. 2023087700000000D6D5

मूल आदेश

- 1- यह प्रति उस व्यक्ति के प्रयोग के लिए निः शुल्क है, जिसके लिए यह पारित किया है।
- 2- इस आदेश के विरुद्ध क्षेत्रीय पीठ, सीमाशुल्क, उत्पाद एवं सेवाकर अपीलीय अधिकरण, जय सेन्टर, चौथा एवं पांचवा तल, 34 पी. डी' मेलो रोड, पूना स्ट्रीट, मस्जिद बन्दर (पूर्व) मुंबई 400 009 को अपील की जा सकती है।
- 3- सीमाशुल्क (अपील) नियमों 1982 के नियम 6 के आधार पर अपील फॉर्म सी ए-3 में जैसा कि उक्त नियम में संलग्न है के आधार पर की जानी चाहिए। अपील चार प्रतियों में की जानी चाहिए एवं 90 दिनों के अन्दर दायर की जानी चाहिए एवं उसके साथ उस आदेश की चार प्रतियां संलग्न होनी चाहिए जिसके विरुद्ध अपील की गई हो (इन प्रतियों में कम से कम एक प्रति अभिप्रमाणित प्रति होनी चाहिए)। अपील के साथ सीमाशुल्क अधिनियम 1962 की धारा 129A की उपधारा (6) के अन्तर्गत लागू रु.1,000/-, रु.5,000/- अथवा रु.10,000/- का, क्रास किया हुआ बैंक ड्रॉफ्ट अधिकरण की पीठ के सहायक रजिस्ट्रार के नाम जारी किया होना चाहिए। यह बैंक ड्रॉफ्ट ऐसे राष्ट्रीय बैंक का होना चाहिए जिसकी शाखा उस जगह स्थित हो जहां अधिकरण पीठ स्थित है।
- 4- अपील अधिकरण पीठ के सहायक रजिस्ट्रार अथवा इस संबंध में उनके द्वारा अधिकृत किसी भी अधिकारी के कार्यालय में प्रस्तुत की जानी चाहिए अथवा सहायक रजिस्ट्रार या ऐसे अधिकारी के नाम पंजीकृत डाक द्वारा भेजी जानी चाहिए।
- 5- जो व्यक्ति इस आदेश के विरुद्ध अपील करना चाहता है वह इस अपील के लंबित रहने तक दंडराशि या अपेक्षित शुल्क की साढ़े सात प्रतिशत धनराशि को जमा करे और ऐसे भुगतान का साक्ष्य प्रस्तुत करे। ऐसा न करने पर यह अपील सीमाशुल्क अधिनियम, 1962 की धारा 129E के प्रावधानों के अनुपालन न करने के आधार पर निरस्त मानी जाएगी।



GOVERNMENT OF INDIA
MINISTRY OF FINANCE/ DEPARTMENT OF REVENUE
CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS, INDIAN CUSTOMS - MUMBAI ZONE - I
OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT-I)
2nd FLOOR, NEW CUSTOM HOUSE, SHOORJI VALLABHDAS ROAD, BALLARD ESTATE,
MUMBAI - 400001.

Tel. No. 22757401 Fax No. 22757402

e-mail: adjn-commr-imp1nch@gov.in

F.No. : CUS/AG/MISC/830/2022-GR-5(AB)

Passed by: VIVEK PANDEY
COMMISSIONER OF CUSTOMS (IMPORT-I)

Date of Order: 31.07.2023

Date of Issue: 01.08.2023

C.A.O. No.: 31/2023-24/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)

DIN No. 2023087700000000D6D5

ORDER-IN-ORIGINAL

1. This copy is granted free of charge for the use of the person to whom it is issued.
2. An appeal against this order lies to the Regional Bench, Customs, Excise and Service Tax Appellate Tribunal, Jai Centre, 4th & 5th Floor, 34 P. D'Mello Road, Poona Street Masjid Bunder (East), Mumbai 400 009.
3. The appeal is required to be filed 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 needs to be filed within 90 days and shall be accompanied by Four copies of the order appealed against (at least one of which should be certified copy). A crossed bank draft drawn in favour of the Asstt. Registrar of the Bench of the Tribunal on a branch of any nationalized bank located at a place where the bench is situated for Rs. 1,000/-, Rs. 5,000/- or Rs. 10,000/- as applicable under Sub Section (6) of the Section 129A of the Customs Act, 1962.
4. The appeal shall be presented in person to the Asstt. Registrar of the bench or an Officer authorized in this behalf by him or sent by registered post addressed to the Asstt. Registrar or such Officer.
5. Any person desirous of appealing against this decision or order shall pending the appeal deposit seven and a half 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 129E of the Customs Act, 1962.

Subject: Second round of adjudication of Show Cause Notice dated 13.08.2007¹ issued vide F.No. DRI/MZU/E/7/2007/6474 by ADG DRI Mumbai to Shri Goher Ali Alvi² and others, regarding evasion of customs duty of Rs. 15,53,782/- in the import of one 'Toyota Land Cruiser Prado vehicle'³ imported vide Bill of Entry No. 286413 dated 16.08.2002⁴ by under-valuation.

Brief facts of the case

This is the second round of adjudication of the said SCN after the Hon'ble Tribunal vide Order No. A/89446-89448/17/CB dated 08/08/2017 remanded back the 1st OIO dated 28.12.2007 and ordered that "*Considering that the jurisdictional issue goes to the root of the matter, all the appeals are remanded to the adjudicating authority to pass appropriate order on the basis of outcome of the judgement of the apex court in the case of Mangali Impex granting fair opportunity of hearing to the appellants*".

2. The facts of the case are that an intelligence was gathered by the officers of the Directorate of Revenue Intelligence, Mumbai Zonal Unit, indicating that luxury motor vehicles are being imported into India by misusing the provisions of the **EXIM Policy 2002-2007⁵, (Commonly known as Transfer of Residence Rules⁶)**. The intelligence also suggested that at the time of import, the importers are mis-declaring the year of manufacture and the Chassis no in order to mis-declare the value and to avail higher depreciation. By following this novel modus operandi, the importers were undervaluing the vehicle and thereby evading the payment of actual customs duty. It was further gathered that these vehicles were immediately sold after their importation and such buyers were obtaining loans from banks/financial institutions for financing the purchase of these high value luxury vehicles. M/s Kotak Mahindra Primus Ltd was identified as one such company financing the purchase of such imported vehicles. Accordingly, the details of loan sanctioned for imported luxury vehicles was called from M/s Kotak Mahindra Primus Ltd.

3. The scrutiny of the documents revealed that M/s Atlantis Corporation, 6, Hailey Road, New Delhi were in possession of one Toyota Prado. The subject vehicle was imported under the provisions of the TR Rules by a person named as Mr. Goher All Alvi vide BE No. 286413 dated 16.08.2002 at Mumbai.

4. In pursuance of the above inquiries were made with M/s Atlantis Corporation, they vide their letter dated 07.08.2006 informed that the Toyota Prado registration number DL1CH-6783, has been sold by them on 8th June 2006 to Ms. Vinita Singh, Chandan Hola, Mehrauli, New Delhi and submitted the following documents:

¹ Also referred to as the notice or the SCN

² Also referred to as the Noticee-1

³ Also referred to as the said vehicle

⁴ Also referred to as the BE

⁵ Also referred to as the policy

⁶ Also referred to as TR Rules



Vinek
31.07.23

- (a) Copy of Bill of Entry
- (b) Copy of Registration certificate
- (c) Copies of Insurance Certificate
- (d) Copy of contract payment schedule with Kotak Mahindra Primus Ltd.
- (e) Copy of Form 29/30 signed by the new owner.

5. The subject vehicle was taken to M/s Lakozy Motors Pvt. Ltd., New Delhi, authorised dealers/service agents for M/s. Toyota Kirloskar Motors Pvt. Ltd for examination on 20.09.2006. The vehicle was examined by M/s Lakozy Motors Pvt. Ltd. in the presence of Mr. Papachan, authorised representative of Ms. Vinita Singh and the officers of DRI. During the course of examination the chassis number was found to be “KZJ95 0142038”, the engine number was found to be I KZ 0705590 and there was no metal plate showing code found on the vehicle. M/s Lakozy Motors Pvt. Ltd. remarked that **“The fonts and numeric punches on chassis number appear to be tempered, it appears that nos. engraved on another plate and wielded”**. The DRI vide the letter F. No. DRI/MZU/CC/Toyota/2006/6038 dated 22.09.2006 requested M/s Toyota Kirloskar Motors Pvt. Ltd., Bangalore to provide the details of the vehicle on the basis of the chassis number and engine number found during the examination. M/s Toyota Kirloskar Motors Pvt. Ltd, Bangalore vide their letter dated 05.10.2006 provided the following data in respect of the vehicle on the basis of the above chassis number. The details are as below:

Vehicles details based on Chassis no KZJ95-0142038

Vehicle name	Land Cruiser
Vehicle model code	KZJ95W-GKMGT
Chassis number	KZJ95-0142038
Engine type	1KZ-TE
Engine number	0707805
Month and year of manufacture	18.10.1999
Manufacturing country	Japan
Country Model	Japan
Date of first registration	27.10.1999
Country of first sale	Japan
List price (JPY in million)	3.392

Vehicle details based on Engine Sr. no. 0705590

	(A)	(B)	(C)
Vehicle name	Land Cruiser	Land Cruiser	Hiace
Vehicle model code	UZJ120L-GKAZKA	FZJ100L-GNPNKV	KZH120G-HHPE T
Chassis number	UZJ120-0010792	FZ100-5150734	KZH120-2000359
Engine type	1UZ-FE	1FZ-FE	1KZ-TE
Engine number	0705590	0705590	0705590
Month and year of manufacture	27.02.2003	20.03.2006	04.10.1999
Manufacturing country	Japan	Japan	Japan
Date of first registration	14.04.2003	N/A	02.11.1999
Country of first sale	USA	Saudi Arabia	Japan
List price (JPY in million)	N/A	N/A	N/A

5.1 The scrutiny of import dockets revealed that the importer has declared the following at the time of import:

1. Chassis number : KZJ95-0142038
2. Model number : KD-KZJ 95W -GKPET
3. Year of manufacture : 1997

5.2 From the vehicle details given by M/s Toyota Kirloskar Motors Pvt. Ltd., Bangalore, it can be seen that on the basis of declared chassis number, the vehicle is a Land Cruiser manufactured in Japan on 06.09.2000 and first registered in Japan on 22.09.2000 and the engine no is 0707805 whereas the engine no. found during examination was 0705590. Due to tampering of the chassis no., there is a mismatch of engine no. and chassis number. Since the chassis number is tampered, the year of manufacture as 06.09.2000 cannot be considered as true and correct. Therefore, an attempt was also made to arrive at the manufacturing year on the basis of engine number. M/s Toyota Kirloskar Motors Pvt. Ltd., Bangalore informed that on the basis of engine no. there are three vehicles viz:

- i) Land Cruiser manufactured in Japan on 27.02.2003 and first registered in U.S.A on

14.04.2003

- ii) Land Cruiser manufactured in Japan on 20.03.2006 and first registered in Saudi Arabia.
- iii) Hiace manufactured in Japan on 04.10.1999 and first registered in Japan on 02.11.1999.

5.3 As can be seen, by engine no. the year of manufacture cannot be considered as 27.02.2003 or 20.03.2006 as the date of manufacture are after the import. The manufacturing date cannot be taken as 02.11.1999 as the model is Hiace, a totally different model than Toyota Land Cruiser Prado.

5.4 The model of the subject vehicle had been declared to M/s Kotak Mahindra Primus Ltd. as 2002 for obtaining the loan further the vehicle was also registered with the RTO authorities declaring the model as of 2002, further the vehicle was sold and purchased on this consideration only. **Thus it appears that the vehicle was actually a 2002 model and the chassis number was tampered to suppress the actual value and evade actual duty due thereon.**

5.5 Thus, it appears that the year of manufacture and model no. of the subject vehicle Toyota Land Cruiser imported in the name of Mr. Goher Ali Alvi under the TR scheme vide Bill of Entry No. 296413 dated 16.08.2002 has been mis-declared to the custom authorities in order to mis-declare the actual value and to claim higher depreciation.

6. M/s Atlantis Trading vide their letter dated 26.12.2006 informed that M/s Atlantis Trading is the owner of M/s Atlantis Corporation; that the subject vehicle was imported by one Shri Goher Ali Alvi thereafter registered in New Delhi; that they acquired the said vehicle on 07.10.2002; that Shri Alvi is not known to them and they have never met him; that the subject vehicle was acquired through Shri Ranjiv Kapoor an automobile dealer; that at the time of sale Shri Ranjiv Kapoor had shown him the bill of entry, the valuation report and the registration certificate issued to Shri Alvi; that they exchanged one Mercedes Benz car (bearing Registration No. DL-2CM-5661) for the said vehicle; that the outstanding loan was transferred as a new loan by M/s Kotak Mahindra Primus Ltd. by hypothecating the subject vehicle; that the loans were paid up by 01.09.2005; that the subject vehicle was shown in their balance sheet and they have availed depreciation on it. Shri Inderjit Singh Bawa partner of M/s Atlantis Trading further clarified that he is not the importer and he had purchased it from a dealer in New Delhi.

7. Statement of Shri Inderjit Singh Bawa recorded under Section 108 of the Customs Act, 1962 on 23.03.2007, wherein he interalia stated that he is the partner of M/s Atlantis Trading; that M/s Atlantis Trading is engaged in exports and trading business for the last 15 years; that he had purchased the subject vehicle in October 2002; that he was interested in a Toyota Prado so he approached Shri Ranjiv Kapoor for purchasing of the subject vehicle; that he requested whether it was possible to have old Toyota Prado in exchange of his Mercedes Benz (bearing Registration No. DL-2CM-5661); that after 15 days **Shri Ranjiv Kapoor informed him that the deal is possible and showed him the car at his (inderjit Singh Bawa) residence**; that he was not aware of

Import/ Export procedure and is also not aware of the TR scheme; that he paid Shri Ranjiv Kapoor Rs 15,000/- in cash for his charges to get the vehicle transferred in his name; that he has never met Shri Gohar Ali Alvi the importer of the vehicle; that the outstanding loan on his Mercedes Benz was adjusted in his new loan account on the Toyota Prado; that he has sold the subject vehicle to Ms. Vinita Singh for Rs 8,00,000/-.

8. Ms. Vinita Singh was summoned under Section 108 of the **Customs Act, 1962**⁷ vide summons dated 08.12.2006 and 28.12.2006. She expressed her inability to join the investigation but admitted vide letter dated 22.12.2006 and 03.01.2007 that she had purchased the said car from Shri Inderjit Singh Bawa in June 2006 and is in possession of the same.

9. Statement of Shri Ranjiv Kapoor was recorded under Section 108 of the Customs Act, 1962 on 16.04.2007, wherein he interalia stated that **since the year 2000 he is dealing in Indian and imported cars**; that Shri Bawa had told him that he was interested in one Toyota Prado and if he(Shri Ranjiv Kapoor) can help him source one in lieu of his used Mercedes Benz bearing Registration No. DL-2CM-5661; that he had sourced one Toyota Prado for him and sold his Mercedes Benz; that he had never met Shri Gohar Ali Alvi the importer of the vehicle and the Toyota Prado (bearing Registration No. DL-1CH-6783) was purchased by him from Shri Manjeet Singh of Mohali for Rs 2400000/-(paid vide Demand Draft No. 271561/17.11.2002 for Rs 1500000/-and Demand Draft No. 271763/ 26.12.2002 for Rs 900000/- both favouring Shri Manjit Singh); that the deal was done and payment was made considering that the Toyota Prado is 2002 Model; that the price of the said vehicle was derived on the basis of 2002 Model; that he was not involved in import of the said vehicle and so he is not aware of any tempering of the said vehicle; that the said vehicle is 2002 model and the transaction was based on this consideration; that the subject model was the best model available at that time; that he was not involved in the import of the vehicle. He further informed that by considering the year of manufacture as 2002, Ms. Vinita Singh is ready to pay the differential duty.

10. In pursuance of the investigations, summons were despatched to the declared address of Shri Goher Ali Alvi, Mohd. Ali Alvi,7147, Beriwalla Bagh, Near D.C.M, Azad Market, Delhi-6. The subject summons were returned by the postal authorities with the remark "On inquiry it was informed that there is no person by such name".

11. During the course of investigations Shri Inderjit Singh Bawa voluntarily deposited an amount of Rs. 12,46,892/- towards the customs duty liability vide Demand Draft no 621197 dtd 03.08.2007.

12. In view of the mis-declaration of value, year of manufacture and model number the aforesaid vehicle was seized by the DRI on 03.08.2007 under the provisions of Section 110 of the Act under the reasonable belief that the subject vehicle is liable for confiscation under Section 111

⁷ Also referred to as the Act

of the Act.

13. Ms. Vinita Singh the present owner of the vehicle requested for provisional release of the said vehicle. Accordingly, the subject vehicle was released provisionally on 13.08.2007, on furnishing Bank Guarantee amounting to Rs. 13,00,000. /-, Provisional Duty Bond and Indemnity bond.

14. The provisions of Foreign Trade (Development and Regulation) Act, 1992, EXIM Policy and the provisions of the Act in so far as they relate to the facts and circumstances of the subject imports are as follows:

14.1 As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992, no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the export and import policy for the time being in force.

14.2 As per Public Notice No.3 (RE-2000)/1997-2002, New Delhi dated 31st March, 2000 effective from 01.04.2000, issued by Director General of Foreign Trade Trade, Ministry of Commerce and Industry, Department of Commerce, Govt. of India, which interalia provided that passenger cars/jeeps/multi utility vehicles etc. which are in the restricted category may be imported without a license on payment of full Customs duty by the following categories of importers one of them being individuals coming to India for permanent settlement after two years continuous stay abroad and that they shall be entitled to import only one vehicle; **that all such imports shall carry a "NO SALE" condition of two years** which shall be endorsed by the Customs Authorities on the passport/registration documents at the time of import and by the Regional Transport Authorities when such vehicles are presented for registration in India; that all such imports, except by the physically handicapped persons, shall not involve any foreign exchange remittance from India directly or indirectly.

15. From the forgoing it can be seen that:

(A). In the subject case Shri Goher Ali Alvi filed the Bill of Entry No. 256413 dated 16.08.2002 for the import of one Toyota Land Cruiser at the Mumbai Custom House under the TR Rules as detailed in Public Notice No.3 dated 31.03.2000. **The importer declared the vehicle as a second hand used vehicle manufactured in 1997 and declared the Chassis No. KZJ95-0142038.** On the basis of the above declaration the value was assessed at **Rs. 504987/-** and the customs duty was assessed at Rs 9,17,515/- after allowing admissible depreciation.

(B). **Consequent to the import, the aforesaid vehicle was sold to M/s. Atlantis Corporation in October 2002, before the expiry of two years as stipulated in the Public Notice.** This sale was arranged by Shri Ranjiv Kapoor and was effected immediately after import. **Thus the purpose of the import was to sell the vehicle and not personal use.**

(C). **Ms. Vinita Singh is the present possessor of the vehicle.** Shri Inderjit Singh Bawa sold the subject vehicle to her on 08.06.2006. The subject vehicle was imported by misdeclaration of chassis no. and engine no. so as to evade the actual customs duty.

(D). During the investigation the vehicle was examined at M/s Lakozy Motors Pvt. Ltd., New Delhi. The examination revealed that the fonts and numeric punches were tampered and further to mislead, a metallic plate with numbers engraved were welded on it, so that the actual year is not revealed. In view of the tampering a request was made to M/s Toyota Kirloskar Motors Pvt. Ltd., Bangalore, to provide the details of the vehicle on the basis of the chassis and engine number found during the examination. M/s Toyota Kirloskar Motors Pvt Ltd vide their letter informed the details which are mentioned herein above at para 4.

(E). In view of the mis-declaration of the year of manufacture the value taken on the basis of the declared year of manufacture at the time of assessment of custom duty is liable to be rejected in terms of Rule 10(A) of the **Customs Valuation Rules 1988**⁸ and the same is required to be re-determined and thereby the customs duty payable is required to be reworked out. In view of the mis-declaration, the actual value has to be re-determined using reasonable means consistent with the principles and general provisions of CVR 1988 and Sub-section (1) of Section 14 of the Act. As per the said rules the value of the goods shall be the transaction value and should not be in violation of Rule 10A of the CVR 1988. As per Rule 10A, when the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the value of such imported goods cannot be determined under the provisions of Sub-rule (1) of Rule 4 of the CVR 1988.

(F). Thus, it is apparent that the declared value cannot be accepted as transaction value in terms of **Rule 4 of the CVR 1988 read with Rule 10A of the CVR 1988** and the assessable value is required to be re-determined. As the old and used Luxury Vehicles are very unique and no two old and used vehicles are identical or similar, as such the Rules 5, 6 and 7 of the CVR 1988, are also not applicable in re-determination of the value of the subject vehicle. Further Rule 7A also cannot be applied as information relating to manufacturing cost and profit of margin etc is not readily available in India. Therefore, the assessable value in the subject case is being re-determined as per the provisions of **Rule 8 of CVR 1988** by considering the vehicle as a 2002 model, which comes to **Rs 13,60,169/-** (As detailed in Annexure A to the SCN).

(G). The EXIM Policy as prevalent restricts the import of used foreign made vehicles into India. However, there is a provision which allows the import of vehicles by individuals coming to

⁸ Also referred to as CVR 1988

India for permanent settlement which is commonly known as the TR Rules. From the facts & circumstances of the case it appears that the import was made under the Transfer of Residence Rules for importing the vehicle by circumventing the EXIM policy which otherwise does not allow the import of old & used motor vehicles into India.

(H). The tampering of chassis no. is an intentional act on the part of the importer to suppress the material facts and mislead the custom authorities into believing that the subject vehicle is much older than its actual age and also of less value than the actual. Thus, the chassis no. was tampered so as to suppress the actual make, model and value and thereby evade the actual duty due thereon.

16. **As per the provisions of Section 125(2) of the Act** where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1) shall, in addition, **be liable to any duty** and charges payable in respect of such goods.

16.1 In the case of Commissioner of Customs (Import), Mumbai Versus Jagdish Cancer and Research Centre 2001 (132) ELT 257 (SC), the Supreme Court has also observed that the **duty is recoverable under Section 125(2) of the Customs Act, 1962** from the owner of such goods.

17. In view of the above it appears that:

(i) On the basis of above and as worked out in Annexure "A" to the SCN **the duty payable for subject import works out to Rs 24,71,297/- as against Rs 9,17,515/- paid at the time of clearance.** Shri Goher Ali Alvi has short-paid duty amount of Rs. 15,53,782/- by willful misdeclaration and suppression of facts. This duty is liable to be recovered under Section 28(1) of the Act and for the same reason the interest thereon is also required to be recovered in terms of Section 28AB of the Act. Since the duty has not been levied because of misstatement and mis-declaration on the part of the importer, the said differential duty is liable to be demanded within the extended period as provided under first proviso to Section 28 (1) of the Act.

(ii). Shri Goher Ali Alvi had mis-declared the subject vehicle with respect to chassis number and year of manufacture. By such mis-declarations, he had contravened the provisions of Section 46 of the Act and rendered the goods liable for confiscation under **Section 111(d) and (m)** of the Customs Act, 1962. Therefore, he is liable for penalty under Section 112(a) and 112(b) of the Customs Act, 1962. Since, he had short-paid duty amount of Rs.15,53,782/- by willful mis-statement and suppression of true facts, he is also liable to penalty under Section 114A of the Act.

(iii). Shri Goher Ali Alvi, Shri Ranjiv Kapoor, Shri Inderjit Singh Bawa and M/s Atlantis Corporation have violated the condition of Public Notice No. 3/2000 dated 31.03.2000 regarding sale / transfer of subject vehicle within the period of two years from its registration rendering the goods liable for confiscation under Section 111(o) of the Customs Act, 1962.

(iv). Shri Goher Ali Alvi and Shri Ranjiv Kapoor have by their acts of commission and omission rendered the said goods liable for confiscation under Section 111(m),111(d) & 111(o) of the Act and also sold the said goods which were imported by mis-declaring the true facts, knowing or having reason to believe that the goods are liable to confiscation under Section 111 of the Act. Therefore, Shri Goher Ali Alvi and Shri Ranjiv Kapoor are liable for penalty **under Section 112(a) and 112(b)** of the Customs Act, 1962. Since, they have short paid duty amount of Rs. 15,53,782/- by their willful mis-statement and suppression of true facts, they are also liable to penalty under Section 114A of the Customs Act, 1962.

(v). Shri Inderjit Singh Bawa and M/s Atlantis Corporation by their acts of commission and omission have rendered the goods liable for confiscation under Section 111(d) and 111(o) of the Act. Therefore, Shri Inderjit Singh Bawa and M/s Atlantis Corporation is liable for penalty under Section 112(a) and 112(b) of the Act. Since, the duty amount of Rs.15,53,782/- has been short paid by willful mis-statement and suppression of true facts, Shri Inderjit Singh Bawa and M/s Atlantis Corporation is liable to pay such short paid duty and interest thereon, he is also liable to penalty under Section 114A of the Act.

(vi). Ms. Vinita Singh had purchased and acquired the possession of the said vehicle, which was imported by mis-declaring true facts, knowing or having reason to believe that the goods are liable to confiscation under section 111 of the Customs Act, 1962. Therefore, **Ms. Vinita Singh is liable for penalty under Section 112(a) and 112(b) of the Customs Act, 1962.** Since, duty amount of Rs. 15,53,782/- has been short paid by willful mis-statement and suppression of true facts, Ms.Vinita Singh is liable to pay such short-paid duty and interest thereon, she is also liable to penalty under Section 114A of the Customs Act, 1962.

18. Accordingly a **Show Cause Notice dated 13.08.2007** vide F.No. DRI/MZU/E/7/2007 by ADG DRI Mumbai was issued to **Shri Goher Ali Alvi, Shri Ranjiv Kapoor, Shri Inderjit Singh Bawa, M/s Atlantis Corporation and Ms Vinita Singh jointly and severally** calling them to Show Cause to the Commissioner of Customs (Import), New Customs House, Mumbai within 30 days of the receipt of the notice as to why:-

i. The month and the year of manufacture of the vehicle imported vide Bill of Entry No. 286413 dated 16.08.2002 should not be taken as January 2002.

ii. The value of the vehicle should not be determined by adopting residual method under Rule 8 of CVR 1988 as per details given in Annexure "A" to the SCN which works out to **Rs.13,60,169/-**.

iii. Why the duty amount of **Rs.15,53,782/-** short paid at the time of import by willful mis-statement and suppression of facts should not be demanded and recovered under proviso to section 28 of the Customs Act, 1962 and interest as applicable should not be demanded and

recovered on the Differential Duty under the provisions of section 28AB ibid

iv. The imported Toyota Land Cruiser Prado vehicle bearing registration No. DL-1-CH-6783 having ascertained value as given in Annexure "A" to the SCN should not be confiscated under Section 111(d), 111(m) and 111(o) of the Act independently without prejudice to each other.

v. Penalty should not be imposed on them under Section 112(a) and/or and Section 114A of the Act.

vi. Why the amount of Rs. 12,46,892/- paid by M/s Atlantis Corporation should not be adjusted towards the differential duty demanded and for any fine and penalty that may be imposed on the importer.

Details of first round of adjudication

19. The said SCN dated 13.08.2007 was adjudicated in the first round vide CAO No. 154/2007/CAC/CC(I)/SP/Gr.VB dated 28.12.2007. Noticees-2, 4 and 5 preferred appeals against the said OIO before the Hon'ble CESTAT vide appeal nos. C/308/2008, C/309/2008 and C/307/2008 respectively. The Hon'ble Tribunal vide Order No. A/89446-89448/17/CB dated 08/08/2017 disposed the said appeals and ordered that:

2. Considering that the jurisdictional issue goes to the root of the matter, all the appeals are remanded to the adjudicating authority to pass appropriate order on the basis of outcome of the judgement of the apex court in the case of Mangali Impex granting fair opportunity of hearing to the appellants.

3. In the result all the 3 appeals are remanded to the adjudicating authority to re-adjudicate the matter following due process of justice.

19.1 The said order of Hon'ble CESTAT was accepted by the Commissioner of Customs on 29/11/2017 and the said case file was transferred to Call Book subsequently. Further, after certain amendments in the Act vide Finance Act, 2022, the said case file was taken out of the Call Book on 30.11.2022.

Details of personal hearing and noticees submissions

20. Personal hearings were granted to noticees to appear on 10.05.2023, 15.06.2023, 05.07.2023 and 11.07.2023. Mr. M.K. Upadhyay on behalf of Ms. Vinita Singh (Noticee-5) virtually attended PH on 05.07.2023 and Shri Inderjit Bawa (Noticee-3) virtually attended PH on 11.07.2023 and also represented M/s Atlantis Corporation (Noticee-2). Shri Goher Ali Alvi (Noticee-1) and Shri Ranjiv Kapoor (Noticee-4) did not appear for the Personal hearings.

Noticee submissions

21. Shri M.K. Upadhyay, Advocate, submitted submissions on behalf of Noticee-5 vide letter dated 06.07.2023. He submitted that Mrs. Vinita Singh is not the importer of the vehicle. She has purchased the vehicle from an Indian vendor of Delhi namely M/s. Atlantis Corporation, 6 Hailey

Road, New Delhi in good faith. So Mrs. Vinita Singh is not responsible for any customs offence.

22. Shri Inderjit Singh Bawa (Noticee-3) (Partner: M/s Atlantis Corporation-(Noticee-4)) made his submissions vide letter dated 12.07.2023 that:

i. They sold the Toyota Prado on 08th June 2006 to Mrs. Vinita Singh resident of Village Chandan Hola, Mehrauli, New Delhi.

ii. Atlantis Corporation is the second owner of this automobile and is not the importer, as per the documents shown to us and available with us the automobile was imported by one Shri Goher Ali Alvi. This automobile was imported on 08/2002 thereafter registered in New Delhi and we acquired the same on 07/10/2002. We also do not know who Shri Goher Ali Alvi is and have never met him.

iii. We acquired this automobile through Shri Ranjiv Kapoor (an automobile dealer) resident of 6-8 Sainik Farms, Mehrauli Badarpur Road, New Delhi. At the time of our purchase, we were shown by this Dealer Bill of Entry, valuation report and the registration certificate issued to the owner namely Shri Goher Ali Alvi. Based on these documents we exchanged our Mercedes Benz car (Car Number- DL 2CM 5661) for this Automobile. Thereafter on my deciding to exchange my car for this automobile our existing loan on the Mercedes Benz car was foreclosed. The outstanding amount was transferred as a new loan given to us by Kotak Mahindra Primus Limited by hypothecating this automobile in addition we gave Kotak an additional margin on this loan. This finance facility availed from Kotak Mahindra Primus Limited finished in 01/09/2005 thereafter after a few months I sold this automobile. This automobile was listed in our balance sheet at the cost we acquired and was depreciated as per standard accounting procedures. At the time of sale the automobile was not working properly, therefore I sold the same.

iv. For the record the above may be treated as my statement describing the chain of events from acquiring to the disposal of the said automobile, whereby again I would like to state that I am not the importer of the said automobile and I purchased the same from a dealer in New Delhi on good faith and on the basis of documents shown to me which were the customs documents and the valuation report and I have subsequently sold this automobile. This automobile is now not in my possession. As my due diligence was on the import documents, I request you to not penalise me in this matter as I trusted the customs papers.

DISCUSSION AND FINDINGS

23. The present SCN dated 13.08.2007 was issued to the following noticees:

- Noticee-1: Shri Goher Ali Alvi
- Noticee-2: M/s Atlantis Corporation
- Noticee-3: Shri Inderjit Singh Bawa
- Noticee-4: Shri Ranjiv Kapoor
- Noticee-5: Ms. Vinita Singh

25. I have carefully gone through the SCN, records of the case, submissions of the noticees and records of personal hearing held before me. Shri Gohar Ali Alvi neither replied to the SCN nor appeared for 3 personal hearings given to him. Shri Ranjiv Kapoor also did not appear for the 3 personal hearings given to him. Therefore, I am deciding the case instituted against them by DRI exparte on the basis of available records in the file. Other noticees have appeared and made their submissions.

26. I find that the Hon'ble Tribunal vide Order No. A/89446-89448/17/CB dated 08/08/2017 remanded the 1st OIO dated 28.12.2007 and ordered that "*Considering that the jurisdictional issue goes to the root of the matter; all the appeals are remanded to the adjudicating authority to pass appropriate order on the basis of outcome of the judgement of the Apex Court in the case of Mangali Impex granting fair opportunity of hearing to the appellants*".

27. I find that the issue in the case of *Mangali Impex* was jurisdiction of DRI officers to issue SCNs under Section 28 of the Act. Similar issue came up later before the Hon'ble Supreme Court in Canon India case, wherein the Hon'ble Court ruled that DRI officers do not have power to issue SCN under section 28 of the Act. It is clear that the remand by the Tribunal is on the limited issue of jurisdiction of DRI officers to issue SCN. So the only issue before me is the legality of the SCN with respect to **Mangali Impex**⁹ judgement of the Hon'ble Delhi High Court and **Canon India**¹⁰ judgement of the Hon'ble Supreme Court.

28. Let me deal with this issue now:

29. I find that certain amendments were made in the Customs Act, 1962 vide Finance Act, 2022. The relevant sections are reproduced below for reference:-

"87. For section 3 of the Customs Act, the following section shall be substituted, namely:—
Classes of officers of customs. "3. There shall be the following classes of officers of customs, namely:—

(a) *Principal Chief Commissioner of Customs or Principal Chief Commissioner of Customs (Preventive) or Principal Director General of Revenue Intelligence;*

(b) *Chief Commissioner of Customs or Chief Commissioner of Customs (Preventive) or Director General of Revenue Intelligence;*

(c) *Principal Commissioner of Customs or Principal Commissioner of Customs (Preventive) or Principal Additional Director General of Revenue Intelligence or Principal Commissioner of Customs (Audit);*

(d) *Commissioner of Customs or Commissioner of Customs (Preventive) or Additional Director General of Revenue Intelligence or Commissioner of Customs*

⁹ Mangali Impex vs. Union of India-2016 (335) ELT 605 (Del.)

¹⁰ Canon India Pvt. Ltd. vs Commissioner of Customs-2021 (376) E.L.T. 3 (S.C.)

- (e) *Principal Commissioner of Customs (Appeals);*
- (f) *Commissioner of Customs (Appeals); (Audit);*
- (g) *Additional Commissioner of Customs or Additional Commissioner of Customs (Preventive) or **Additional Director of Revenue Intelligence** or Additional Commissioner of Customs (Audit);*
- (h) *Joint Commissioner of Customs or Joint Commissioner of Customs (Preventive) or **Joint Director of Revenue Intelligence** or Joint Commissioner of Customs (Audit);*
- (i) *Deputy Commissioner of Customs or Deputy Commissioner of Customs (Preventive) or **Deputy Director of Revenue Intelligence** or Deputy Commissioner of Customs (Audit);*
- (j) *Assistant Commissioner of Customs or Assistant Commissioner of Customs (Preventive) or **Assistant Director of Revenue Intelligence** or Assistant Commissioner of Customs (Audit);*
- (k) *such other class of officers of customs as may be appointed for the purposes of this Act.*”. (emphasis added)

88. *In section 5 of the Customs Act,— (a) after sub-section (1), the following sub-sections shall be inserted, namely:— “(1A) Without prejudice to the provisions contained in sub-section (1), the Board may, by notification, assign such functions as it may deem fit, to an officer of customs, who shall be the proper officer in relation to such functions. (1B) Within their jurisdiction assigned by the Board, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may, by order, assign such functions, as he may deem fit, to an officer of customs, who shall be the proper officer in relation to such functions.”; (b) after sub-section (3), the following sub-sections shall be inserted, namely:— “(4) In specifying the conditions and limitations referred to in sub-section (1), and in assigning functions under sub-section (1A), the Board may consider any one or more of the following criteria, including, but not limited to— (a) territorial jurisdiction; (b) persons or class of persons; (c) goods or class of goods; (d) cases or class of cases; (e) computer assigned random assignment; (f) any other criterion as the Board may, by notification, specify.*

(5) The Board may, by notification, wherever necessary or appropriate, require two or more officers of customs (whether or not of the same class) to have concurrent powers and functions to be performed under this Act.”.

97. *Notwithstanding anything contained in any judgment, decree or order of any court, tribunal, or other authority, or in the provisions of the Customs Act, 1962 (hereinafter referred to as the Customs Act),— (i) anything done or any duty performed or any action taken or purported to have been taken or done under Chapters V, VAA, VI, IX, X, XI, XII, XIII, XIV, XVI and XVII of the Customs Act, as it stood prior to its amendment by this Act, shall be deemed to have been validly done or performed or taken;*

(ii) any notification issued under the Customs Act for appointing or assigning functions to any officer shall be deemed to have been validly issued for all purposes, including for the purposes of section 6;

(iii) for the purposes of this section, sections 2, 3 and 5 of the Customs Act, as amended by this Act, shall have and shall always be deemed to have effect for all purposes as if the provisions of the Customs Act, as amended by this Act, had been in force at all material times.

Explanation.— For the purposes of this section, it is hereby clarified that any proceeding arising out of any action taken under this section and pending on the date of commencement of this Act shall be disposed of in accordance with the provisions of the Customs Act, as amended by this Act.” (emphasis added)

30. In view of the above, I find that the Finance Act 2022 overrides the judgement of the Hon’ble Delhi High Court in Mangali Impex and Judgement of the Hon’ble Supreme Court in Canon India. The aforementioned amendments in Section 3 of the Customs Act, 1962 and the validation of action taken under the Customs Act, 1962 vide Finance Act, 2022 have not been stayed by any Court of law. I also refer to the judgement of the Hon’ble Madras High Court in the matter of **N. C. Alexander**¹¹, wherein the validity of SCNs issued by DRI was challenged through various writ petitions in the wake of Canon India(supra) Judgement and after enactment of the Finance Act, 2022. Hon’ble High Court while disposing of the said writ petitions held that pursuant to the amendment in Section 3 of the Act by Finance Act 2022, officers from the Directorate of Revenue Intelligence are explicitly recognized as Officers of Customs and Show Cause Notices issued by officers of DRI cannot be assailed in view of validation in Section 97 of the Finance Act 2022 to pending proceedings. Relevant paras of the said judgement are reproduced below:

“295. Thus, officers from Group-B who are already from the Customs Department can be appointed as “Officers of Customs”. Similarly, the Officers of Directorate of Revenue Intelligence (DRI) are appointed as “Officers of Customs” under notification issued under Section 4(i) of the Customs Act, 1962.

297. Further, show cause notices issued under various provisions cannot be stified to legitimize evasion of Customs duty on technical grounds that the Officers from Directorate of Revenue Intelligence (DRI) were incompetent to issue notices and were not officers of customs.

298. Insofar as completed proceedings i.e. where proceedings have been dropped prior to passing of Finance Act, 2022 is concerned, the proceedings cannot be revived. However, the pending proceedings have to be decided in the light of the validation in Section 97 of the Finance Act, 2022.

¹¹ N. C. Alexander vs Commissioner of Customs and others-2022 (381) E.L.T. 148 (Mad.)

299. *In the light of the above discussion, the challenges to the impugned show cause notices and the Orders-in-Original on the strength of the decision of the Hon'ble Supreme Court in Canon India Private Limited v. Commissioner of Customs, 2021 (376) E.L.T. 3 (S.C.) fail.*

308. *Rest of the writ petitions in Table-II challenging the impugned show cause notices are dismissed by directing the jurisdictional adjudicating authority to pass appropriate orders on merits and in accordance with law preferably within a period 120 days from the date of receipt of a copy of this order."*

312. *Pending proceedings are directed to be completed in the light of the validations contained in Section 97 of the Finance Act, 2022."* (emphasis added)

31. I find that the N.C. Alexander Judgement(supra) has not been dissented/stayed by the Hon'ble Supreme Court in any proceedings so far. Therefore, in view of the above, I find that the SCN issued by ADG DRI, is legal and proper.

32. On examining the issues raised in the SCN dated 13.08.2007 and the submission of noticees, I find that my predecessor Commissioner in the 1st OIO dated 28.12.2007 has discussed in detail all the issues / submissions / arguments raised by the noticees. I find her findings on the issues raised as reasonable and just and the same are reproduced below:

"23. *From the above mentioned facts, the case is related to confiscation of the imported goods and the valuation of the car. I have to decide as to whether the imported car is liable for confiscation and duty can be recovered under the provisions of the Customs Act, 1962 and as whether any action or omission on part of the noticees attracts any penal action in the subject case.*

24. *It is observed that the subject 'TOYOTA LAND CRUSIER' car was imported by Shri Goher Ali Alvi vide Bill of Entry No. 286413 dated 16.8.2002 and duty amounting to Rs. 9,17,515/- was paid on the said car on 26.8.2002 and subsequently the car was cleared. Invoice No. 0840 dated 17.7.2002 was presented along with Bill of Lading No. DXBBOM0032484 dated 08.08.2002 for import of the 'Toyota Land Cruiser Prado'. The said invoice number 0840 dated 17.7.2002 was said to be issued by 'Kampala used cars Exhibition Ltd.' UAE in the name of Shri Goher Ali Alvi. As per above said Invoice No. 0840 dated 17.7.2002, Chassis No. of the Vehicle i.e. Toyota Landcruiser Prado was declared as KZJ95-0142038 and Model No. was given 1997. No engine number was declared in the invoice. All these documents were accepted by the department as bonafide documents submitted by the importer and assessment and clearance was permitted.*

25. **Let me first decide the valuation.** The subject vehicle was examined by M/s Lakozy Motors Pvt. Ltd. and Chassis No. found was KZJ95 0142038 and Engine No. found was I KZ 0755590, M/s Lakozy Motors Pvt. Ltd. also pointed out that the font and numeric punches on Chassis No. appears tampered and opined that number engraved on another plate and welded. This remark from the company who are authorized dealers / service agents for M/s Toyota Kirloskar Motors Pvt. Ltd can be taken as an expert opinion/comment and therefore details were obtained from the company in respect of Chassis No. (found tampered) and in respect of Engine Number also. As per report of M/s Toyota Kirloskar Motors Pvt. Ltd, Bangalore, with respect to Chassis No. KZJ95 0142038 (which was found tampered) the vehicle was of 1999 model and engine number of the vehicle with respect to chassis no should be 0707805, however it is I KZ 070 5590 and so it is confirmed that the Chassis Number has been tampered, if it is not so, the engine number should match and therefore this information cannot be co-related to the vehicle that it is of 1999 model.

26. Enquiry with respect to Engine No. 0705590 revealed by M/s. Toyota Kirloskar Motors that there were three vehicles manufactured against Engine No 070550. One was made in 2003 and another was made in 2006. Possibility of import of 2003 and 2006 model vehicle is not possible as the subject vehicle has been imported in the year 2002 only. Now the third possibility is where the model was found of 1999, however it also, cannot be considered for the purpose of subject import because this relate to HIACE model of Toyota Vehicle whereas in the subject case the vehicle imported is LAND CRUISER From the above mentioned facts I observe that the importer has not only manipulated the chassis number but also engine number and that is why complete details are not tallied neither with respect to chassis number nor with respect to engine number. So the only plausible inference can be that the YOM is neither 1997 as shown in the invoice, nor 1999, 2003 or 2006 as the specifications provided by Toyota Kirloskar do not tally with the model at hand.

27. From the above mentioned facts it is established that not only engine number but also chassis number of the vehicle are manipulated and therefore the details submitted by the importer at the time of import of the vehicle are not acceptable for the purpose of assessment of duty. It appears that the importer at the time of import misrepresented the facts of the vehicle regarding YOM, Chassis No. and Engine No. Further, if the vehicle is of 1997 model, as declared by the importer, at the time of clearance/filing of B/E/Import then there was no need to manipulate the chassis number and the engine number. The importer is absconding till date, he has not responded to the investigating agency, not replied to show cause notice and not attended the personal hearing before me. This proves his guilty mind, and I have got no hesitation to conclude that he has misled the department by way of

embossing different identification numbers of the vehicle to get covered under TR facility which no ordinary person without criminal mind can do.

28. *Now the question before me as what is the year of manufacture of the vehicle imported vide B/E No. 286413 dated 16.08.2002? It is observed that the vehicle was registered by the transport department of Delhi Administration in the name of M/s. Atlantis Corporation after purchase of the vehicle. The manufacturing year was declared as 2002 for the said vehicle. It is well understood that these details must have been given by the owner of the vehicle to the transport authority. Further the said vehicle was insured by M/s. Tata AIG Insurance General Insurance Co. Ltd. for the period 19.04.2002 to 18.04.2003 and also for the period 19.04.06 to 18.04.07 and in these two insurance policy also the year of manufacture/model was shown as of 2002. I am accepting these two documents i.e. Registration with Transport Authority and Insurance Certificates, provided by the Advocate of noticees at the time of personal hearing as evidence under Section 108 of the Customs Act, 1962 and totally relied upon these documents which are obtained from the owner of the vehicle and accepting the year of manufacture as 2002 as per their own declaration to Transport Authority and also for insurance policy.*

29. *On the basis of above, it is observed that the said imported car Land Cruiser is of 2002 model and it appears that for the purpose of profiteering Shri Goher Ali Alvi mis-declared the car mode as of 1997 and submitted fake invoice and other fake documents as if he could pay less duty. On the other hand he sold the car to the next purchaser with giving the original model details of the car to recover the full value of the car and that's why the further purchaser declared the model number as 2002 on the registration certificate issued by the Transport Authority of Delhi Administration and to the insurance company. The above fact has also force in it because nobody wants to pay more as an insurance premium on a lower valued goods.*

30. *In view of the above findings, it is clear that invoice No. 840 submitted to Customs at the time of import has not stated the true YOM and so correct value of the car. Once the declaration is found not to be true and accurate disclosure on part of importer, the transaction value shown is liable to be rejected under Rule 10A of CVR, 1988. The declared value cannot be accepted as transaction value in terms of Rule 4 of the CVR and the assessable value is required to be re-determined. Since no two old and used vehicles can be identical or similar, as such the Rule 5, 6 and 7 of the CVR 1988 are not applicable in re-determination of the value of the subject car. Further Rule 7A cannot be applied in the absence of available costing. Since the value is not determinable under the provisions of preceding rules, I have to adopt Rule 8 of CVR 1988 by considering the vehicle as 2002 model. It is reasonable to apply the minimum price as per the price list of 2002 of Toyota Land Cruiser Prado submitted by M/s Toyota Kirloskar Motor Pvt Ltd because the actual*

model could not be ascertained. In my opinion all reasonable means consistent with the general principles of valuation under section 14 of Customs Act, 1962 have been used by allowing trade discount of 15% from basic list price and allowing depreciation of 8% on such discounted price. The assessable value thus determined as Rs. 13,60,169/- is correct and fair. The duty short paid is calculated to be. Rs. 15,53,782/- which is recoverable under section 28(2) of the Customs Act, 1962.

31. *Public Notice No. 3(RE-2000)/1997-02 dtd. 31.3.2000 effective from 1.4.2000 issued by DGFT under EXIM Policy 1997-2002 stipulated that passenger cars which are in the restricted category may be imported without a licence on payment of full customs duty by certain eligible categories which included individuals coming to India for permanent settlement after 2 years continuous stay abroad. Para 3 of the said PN provided that such eligible category shall be entitled to import only one vehicle. Such imports shall carry 'no sale' condition upto 2 years which shall be endorsed by the Customs Authority on the passport /registration documents at the time of import and by Regional Transport Authority when such vehicles are presented for registration in India. To avail the benefit of importation of a passenger car without import licence it appears that Shri Goher All Alvi imported the car by giving the legal affidavit dtd. 24.7.2002 that he would neither sale or otherwise dispose of the vehicle to any other person for a minimum of two years from the date of registration by the State Vehicle Department for use in India. On the basis of this legal affidavit he was permitted to import without an import licence under TR Rules the subject vehicle and the Bill of Entry was cleared by customs on the basis of documents supplied alongwith B/E endorsing 'no sale for two years' on the import documents. Now the DRI investigation has brought the truth to the light that the car which is imported under B/E dtd. 16.8.2002 was sold in October 2002 in violation of the Public Notice 3(RE-2000). Since the import of the passenger car is subject to such conditions and the condition is not complied with, the car is prohibited as per the definition of 'prohibited goods under Section 2(33) of the Customs Act, 1962. The Section 2(33) interalia defines the prohibited goods to mean the goods the import of which is subject to any prohibition under this act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported have been complied with. Shri Goher Ali Alvi has employed fraudulent means to import the car which is otherwise restricted and thus he has violated Foreign Trade (Development & Regulation) Act, 1992 read with Foreign Trade (Regulations) Rules 1993. Section 111(O) of Customs Act, 1962 provides for confiscation of imported goods which are exempted subject to any condition from any prohibition in respect of the import thereof under Customs Act or any other law for the time being in force in respect of which the condition is not observed. Since the condition of Para 3 of PN 3(RE-2000) issued by DGFT has not been observed, the car is liable to confiscation under Section 111(O) of Customs Act, 1962. Section 111(d) provides*

for confiscation of imported goods which are imported contrary to any prohibition imposed by or under Customs Act or any other law for the time being in force. Since the prohibition imposed under EXIM Policy stands lifted for the eligible categories on the basis of post importation compliance by the importer, in the event of failure to comply to such post importation condition, the import becomes illegal ab initio. The importer was supposed to have an import licence for the purpose of importing a passenger car. Because of his failure to comply with post importation condition of no sale, he becomes an ineligible importer not covered under Para 2(a) of PN 3(RE-2000). Since the importer has imported the car without import licence contrary to the prohibition imposed by the EXIM Policy, the car is liable to confiscation under Section 111(d) of the Customs Act, 1962. The car also does not correspond with the Bill of Entry and the documents supplied along with the B/E as far as the chassis no., engine no., YOM and the value are concerned, so the car is liable to confiscation under Section 111(m) of the Customs Act, 1962.

32. Now, I proceed to discuss various arguments made by the noticees:

(i) *one point raised by the noticees that the department has not tried to trace out the importer i.e. Mr. Goher Ali Alvi and his affidavit cannot be ignored for the purpose of declaration of Model No. of the car. For this point it is very much on record that all summons which were dispatched to the declared address of Shri Goher Ali Alvi i.e. as declared on the said affidavit were returned by the postal authorities with remark that there is no person by such name. He has also sold the car in complete disregard of the affidavit. The same affidavit can not be taken as genuine for one purpose and not for others. Thus the contents of the affidavit are untrue and make the document legally void.*

(ii) *Another point raised by the noticees is that in the table of para 4 of the show cause notice, YOM and date of registration is given 1999 w.r.t. chassis number and in subsequent para of SCN it was quoted as 2000. I observe that this was a typographical error and the DRI has issued corrigendum vide F No. DRI/MZU/E/7/2007/10506 dtd. 10.12.07 for this correction.*

(iii) *Noticees have pointed that report of M/s Toyota Kirloskar Motors Pvt. Ltd. where the model was found of 1999 cannot be discarded for the reason that engine no. not tallied completely because there is some model number resemblance. First of all it was clearly brought out that the chassis number is manipulated and that number plate is welded against the original one, further only resemblance of model code is not sufficient for verification of YOM. For a particular model code there may be thousands of vehicles and for every year these were in production. I find that the department has rightly rejected the YOM as 1999.*

(iv) *One point raised by them that RTO, M/s Kotak Mahindra (the financier) and M/s AIG Tata (insurance Company) failed to observe that the car imported under TR cannot be sold for two years, I want to point out that the liability of noticees cannot be shifted just because these agencies dealt with the car in the matter of registration, finance and insurance accepting the declaration of the noticees bonafide.*

(v). *Noticees contended that for ascertaining Month/YOM of the vehicle an undated examination report from M/s Lokozy Motors Pvt Ltd which has been relied on is neither signed by the authorized representative of the present owner nor by the departmental officer. I had gone through the report and it was observed that the Manager-impex signed that report and issued it on the letterhead of the company and it is an official document. Merely not signing by department or the owner does not make it unlawful when it was issued by the proper authority.*

(vi). *Noticees relied upon the judgment -Sachidanada Banerjee, ACC, Calcutta Vs Sitaram Agarwala [1999 9110) ELT 292(SC)] wherein it was observed by the Supreme Court that so long as it is proved that the goods had been imported against the restrictions imposed under Chapter IV of the Act, the goods remains liable to confiscation whenever found even if this is long after the import is over and even if they are in possession of third persons who had nothing to do with the actual import. I find that this judgement favours the department.*

33. *Now let me discuss the role of the noticees. First of all I consider the name of the importer Shri Goher Ali Alvi. As per the discussions and findings in the aforesaid paras it is clear that by his fraudulent action he has rendered the vehicle liable to confiscation under section 111(d), 111(m) and 111(o) of the Customs Act, 1962. Therefore, he is liable to penalty under section 112(a) and (b) of the Customs Act, 1962.*

34. *Shri Inderjit Bawa and M/s. Atlantis Corporation have been charged under section 111(d) and (o) of the Customs Act, 1962. They had purchased the said car just after one month of importation. All the import documents including Triplicate copy of the Bill of Entry, Invoice No: 0840 dated 17.7.2002 and Bill of Lading No. DXBBOM00324848 dated 8.8.2002 were endorsed with the remark "vehicle not to be sold or transferred upto two years from date of clearance". I observe that when the car was registered in the name of M/s Atlantis Corporation on 26.9.2002, the RTO should have ensured that such sale is not permissible as per PN 3(RE-2000). When Shri Ali would have presented the vehicle for registration in India the registration documents would have been endorsed (NO SALE) for two years by the RTO. However, during the purchase of an imported car, **it was the bounden duty of the purchaser to verify the import documents of the seller.** If they would have verified the import documents they would have seen the endorsement on the import*

documents made by customs for 'no sale". Since all these documents were with their Advocate, these must have been provided by them to their Advocate, so they had the knowledge of 'no sale' condition beforehand. Anyway, it is well settled law that ignorance of law cannot be claimed for the purpose of breach of the law. Another point raised by the noticees is that they were the buyers and 'no sale' condition has to be fulfilled by the importer / owner of the car and that the purchaser has nowhere been made liable to observe this condition in the said Public Notice. Sale means any transfer of the possession of goods by one person to another in the course of trade for valuable consideration. So the transaction of sale needs two persons for the act to be complete, one is a seller and the other a buyer. If there is an illegal transaction made by the seller, the buyer becomes a party in the transaction and is responsible for the breach of law and should face the consequences of such breach. By purchase of the vehicle before two years, they have rendered the car liable for confiscation under Section 111(d) and 111(o) of Customs Act, 1962 and therefore, they are liable for penal action under Section 112(a) of Customs Act, 1962. Since they took possession of /purchased the car knowing and/or having reasons to believe that the car is liable to confiscation, they are liable to penal action under section 112(b) of the Customs Act. I observe that imposing penalty on the company will meet the justice and therefore I am imposing penalty on M/s Atlantic corporation only and not on the partner Shri Inderjit Singh Bawa.

35. *Regarding Shri Ranjiv Kapoor it is proved that he helped Shri Inderjit Singh Bawa in the purchase of the car. Being a reputed automobile car dealer, he should be having the knowledge of the provisions of no sale of the car imported under Transfer of Residence. He must have seen all papers submitted by Shri Gohar Ali Alvi, otherwise those papers would not have made way to their Advocate. His statement that he purchased the car from Shri Manjit Singh of Mohali carry no water as he has not produced any documents signed by Manjit Singh for transfer of registration to M/s Atlantis Corporation. He has abetted in getting the car sold and purchased illegally which singular action made the car liable to confiscation under Section 111(d) and 111(o) of the Customs Act, 1962. He abetted in getting the car sold and purchased knowing and having reasons to believe that the car is liable for penal action. So he is liable for penal action under Section 112(a) and (b) of Customs Act, 1962.*

36. *As mentioned in para 31 above, the subject vehicle is liable to confiscation as it has been improperly imported into India in terms of Section 111(d), 111(m) and 111(o) of the Customs Act, 1962. According to Section 125(1) whenever any confiscation of any goods as authorized by the Customs Act in case of any goods the importation whereof is prohibited under Customs Act or any other law for the time being in force, the adjudicating officer may give to the owner of the said vehicle (if the owner is not known any person from whose*

possession/custody the goods are seized) an option to pay fine in lieu of confiscation. Since the car has been released provisionally on 13.8.2007 on furnishing of Bank Guarantee of Rs. 13 lakhs, a provisional duty bond and indemnity bond by Ms. Vinita Singh the present owner of the vehicle, redemption fine is leviable in lieu of confiscation as provided under Section 125. Reliance is placed on the Supreme Court decision in case of Weston Components - [2000(150)ELT278(SC)]. Ms. Vinita Singh had purchased the said car from M/s Atlantis Corporation on 8.6.2006. The car was seized from her possession by DRI on 3.8.2007. Shri T.P. Anil was authorized by Ms. Vinita Singh to handover the car to DRI for seizure. Under letter dtd. 20.9.2006 she authorized Shri Papachan to present the car before Lakozy Motors. Though at the time of investigation the car registration was not transferred from M/s Atlantis Corporation to Ms. Vinita Singh, she has all along claimed to be the present owner of the car. Since the car was seized from the possession/custody of Ms. Vinita Singh and as per the documents she is also the present owner of the car, the redemption fine is recoverable from her.

37. *As discussed in para 31, the car is liable to confiscation under Section 111 of the Customs Act, 1962. Since Ms. Vinita Singh has purchased the car much after two years from the date of importation by Shri Goher Ali Alvi, the act of purchase of the car by her from M/s Atlantis Corporation has not rendered the car liable to confiscation. There was no corroborative evidence to show that she knew or had reason to believe before acquiring the possession of the car by way of purchase from M/s Atlantis Corporation that the car is liable to confiscation under Section 111. **I, therefore, hold that penalty is not imposable on Ms. Vinita Singh under Section 112(a) or (b) of the Customs Act.***

38. *In the show cause notice the demand has been raised jointly and severally from Shri Goher Ali Alvi, Shri Ranjiv Kapoor, Shri Indrajit Singh Bawa, M/s Atlantis Corporation and Ms. Vinita Singh. The demand is for Rs. 15,53,782/- raised under proviso to Section 28 (1) of the Customs Act, 1962. The noticees, M/s Atlantis Corporation, Shri Indrajit Singh Bawa, Shri Ranjiv Kapoor and Ms. Vinita Singh have submitted through their Advocate that no extra duty is leviable or payable and the amount of Rs. 12,46,892/- already paid by M/s Atlantis Corporation will not be liable to be adjusted towards any demand, fine or penalty and this amount is ought to be ordered to be refunded to the payers. Section 28 of the Act provides to issue notice on the person chargeable with the duty which has not been charged or which has been short paid and sub section (2) requires on determining the amount of duty due from such person, such person shall pay the amount so determined. **It is pertinent to note here that Section 28 does not speak of the importer. It speaks of the person who is chargeable with the duty short paid.** Section 125 of the Act provides for imposition of redemption fine on owner of the goods or where such owner is not known the person from whose possession /custody such goods have been seized. Subsection (2) of Section 125*

*provides where any fine in lieu of confiscation of goods is imposed under sub section (1), the owner of such goods or the person from whose possession/custody the goods have been seized shall in addition be liable to any duty, any charges payable in respect of such goods. In the case Commissioner of Customs (Imports), Sahar Vs Wockhardt Hospital & Heart Institute [2006(200)ELT15 (Bom)], the Bombay High Court has held that **where the goods are confiscated under Section 111(o) with an option to redeem on payment of fine in lieu of confiscation imposed under Section 125(1), the duty payable on such goods becomes recoverable from the owner.** In Bombay Hospital Trust Vs Commissioner of Customs, ACC (2008(201)ELT555(Bom), Bombay High Court has held that for violation of post clearance conditions if the goods are confiscated under Section 111(o) with an option to redeem the same on imposition of fine in lieu of confiscation under Section 125 (1), the duty becomes payable on confiscation and in terms of Section 125(2), the owner of the goods is liable to discharge the duty liability on imposition of fine in lieu of confiscation. In this case the goods have been seized from the custody of the present owner Ms. Vinita Singh. The redemption fine is therefore, imposable on her as provided under Section 125(1). **Once the fine has been imposed on the goods liable for confiscation under Section 111 for violation of post importation conditions, the duty short paid has also to be recovered from the same person who is the owner or from whose custody the goods were seized.** In the present situation, the duty of Rs. 15,53,782/- is therefore recoverable from Ms. Vinita Singh under Section 28 read with Section 125 of the Customs Act, 1962. Since Section 125(2) empowers to recover any charges payable in respect of goods ordered to be redeemed, the interest leviable under Section 28AB of Customs Act, 1962 is also recoverable from Ms. Vinita Singh. Section 114A of Customs Act, 1962 provides that the person who is liable to pay the duty as determined under Section 28(2) shall also be liable to pay a penalty equal to the duty so determined. Since Ms. Vinita Singh is the person liable to pay duty, the mandatory penalty under Section 114A is imposable on her.”*

33. I agree with the above findings of my predecessor Commissioner in the OIO dated 28.12.2007. I find that the importer Sh. Gohar Ali Alvi is said to be residing at 7147, Beriwalla Bagh, Near D.C.M Azad Market, Delhi-6 but DRI could not trace that person. The summons sent to him were returned by the postal authorities with the remark “*on enquiry it was informed that there was no person by such name.*” The letters sent to Shri Gohar Ali Alvi for personal hearing have also returned undelivered. In such circumstances, it is very likely that the importer Shri Gohar Ali Alvi was a person of limited means who may have stayed abroad for long years to make him eligible for ‘transfer of residence’ scheme and his papers were used by Shri Ranjiv Kapoor to import the Toyota Prado car for the purpose of selling it to Shri Inderjit Singh Bawa. Ranjiv Kapoor has admitted that he was dealing with imported cars. He was the person who showed the said car to Shri Inderjit Singh Bawa before purchase. Being a well-educated citizen and businessman, he was the person who knew all the customs rules and the restrictions on cars

imported through transfer of residence scheme, still he has worked as a broker in this illegal deal; therefore his offence is of a greater degree. My predecessor Commissioner in the first OIO dated 28.12.2007 in Para 35 has given detailed arguments holding him (Shri Ranjiv Kapoor) liable for penalty under Section 112(a) and (b) of the Act. I also consider him as the main person in this fraud and hold him liable for penalty under Section 112(a) and (b) of the Act.

34. Accordingly, I pass the following order:

ORDER

34.1 I reject the declared assessable value of the car imported vide B/E No. 286413 dated 16.08.2002 under Rule 10A of the CVR 1988. I re-determine the value of the above car under Rule 8 of CVR 1988 as **Rs. 13,60,169/- (Rupees thirteen lakh sixty thousand one hundred and sixty nine only) (Details as per Annexure A to the SCN).**

34.2 I confirm the demand of differential duty of **Rs. 15,53,782/- (Rupees fifteen lakh fifty three thousand seven hundred and eighty two only) (Details as per Annexure A to the SCN)** under Section 28 of the Act. I order the said amount to be recovered from Ms. Vinita Singh, the present owner of the car under Section 125(2) of the Act read with Section 28 of the Act alongwith applicable interest under Section 28AB of the Act on the above confirmed demand from Ms. Vinita Singh.

34.3 I order confiscation of imported car 'Toyota Land Cruiser Prado' valued at Rs. 13,60,169/- under Section 111(d), 111(m) and 111(o) of the Act. I impose a Redemption Fine of **Rs. 2,00,000/- (Rupees two lakh only)** in lieu of confiscation as provided under section 125 (1) of the Act which should be recovered from Ms. Vinita Singh.

34.4 I impose a penalty equal to short paid duty and interest on Ms. Vinita Singh under Section 114A of the Act provided that where such duty and interest is paid within thirty days from the date of the order of the proper officer determining such duty, the amount of penalty liable to be paid under this section shall be twenty-five percent of the duty or interest, as the case may be, so determined. The benefit of reduced penalty shall be available subject to condition that the amount of penalty so determined has also been paid within the period of thirty days.

34.5 I impose a penalty of **Rs. 1,00,000/-(Rupees one lakh only)** on M/s Atlantis Corporation under Section 112(a) and (b) of the Act. I do not impose any penalty on Shri Indrajit Singh Bawa (Partner: M/s Atlantis Corporation).

34.6 I impose a penalty of **Rs. 10,00,000/-(Rupees ten lakh only)** on Shri Ranjiv Kapoor under Section 112(a) and (b) of the Act.

34.7 I impose a penalty of **Rs. 10,00,000/-(Rupees ten lakh only)** on Shri Gohar Ali Alvi under Section 112(a) and (b) of the Act.

34.8 I order to encash Bank Guarantee amounting to Rs. 13,00,000. /- and Bond submitted by Ms. Vinita Singh the present owner of the vehicle at the time of provisional release of the said vehicle, towards the above mentioned liabilities.



Vivek
31.07.2023
(Vivek Pandey)
आयुक्त सीमाशुल्क (आयात-I)
Commissioner of Customs (Import-I),
नवीन सीमाशुल्क भवन, मुंबई
New Custom House, Mumbai-01

To,

1. Shri Goher Ali Alvi, 7147, Beriwalla Bagh,
Near D.C.M Azad Market, Delhi-6.
2. M/s Atlantis Corporation, 6, Hailey Road, New Delhi.
3. Shri Inderjit Singh Bawa, 6, Hailey Road, New Delhi.
4. Shri Ranjiv Kapoor, 6, Sainik Farm, New Delhi-62.
5. Ms. Vinita Singh, 3, Shanti Farms, Vill. Sahoopur,
Chandan Hola, Mehrauli, New Delhi-110030.

Copy to:

1. The Pr. Chief Commissioner of Customs, Mumbai Zone-I, New Custom House, Mumbai.
2. The ADG, DRI, MZU, 13, Sir Vithaldas Thakersey Marg, Opp. Patkar Hall, New Marine Lines, Mumbai-400020.
3. ADG(CEIB), Central Economic Intelligence Bureau, Janpath Bhavan, B-wing, 6th Floor, New Delhi-110001.
4. The Deputy Commissioner of Customs, Group-VB, New Custom House, Mumbai.
5. The Deputy Commissioner of Customs, CHS Section, New Custom House, Mumbai. (For display on notice board)
6. Office Copy.

