CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Customs Appeal No. 86995 of 2024

[Arising out of Order-in-Original No. 83/2024-25/Commr/NS-V/CAC/JNCH dated 04.07.2024 passed by the Commissioner of Customs (NS-V), JNCH, Nhava Sheva]

Mr. Aubrey Elias D'Souza ....Appellant
5,Baptist Bahvan, Carmel CHS,
2nd Floor, St John Baptist Road,
Bandra (West), Mumbai - 400 050

VERSUS

Commissioner of Customs, Nhava Sheva-V ....Respondent
Jawaharlal Nehru Customs House,
Nhava Sheva, Taluka – Uran,
Dist.-Raigad, Maharashtra – 400 707

APPERANCE:

Shri Aniruddh Nansi, Advocate for the Appellant
Shri Krishna Azad, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. 85404/2026

Date of Hearing: 09.03.2026
Date of Decision: 09.03.2026

Heard from both the sides and the appeal is taken up for order.

2. Learned Counsel for the Appellant Mr. Aniruddh Nansi submits that on the basis of intelligence gathered by DRI to the effect that one Rehman Shaikh with his other associates were misusing exemption Notification No. 03/57-Cus dated 08.01.1957 that provides for

exemption of Customs duty to goods brought by diplomatic agents and they were importing cars for the diplomatic agents, which were subsequently sold in the local market and in the process this Appellant has been implicated, undergone the entire adjudication process and consequently imposed with penalty of ₹5,00,000/- under Section 112(b)(ii) of the Customs Act, 1962 for his alleged involvement in the deal but the Bill of Entry No. 4618845 dated 09.07.2021, through which one Range Rover Vogue car was imported by availing the benefit provided in the said notification was not cleared by the Appellant, a G-Card Holder of the CHA namely M/s. Babaji Khimji and Company, whose role is only limited to the forwarding of documents received from the Kenyan Embassy, which was also noted by the Commissioner of Customs in his order as genuine documents on the basis of which clearance was effected and therefore, only for the reason that while clearing some previous consignment Appellant of the CHA had charged ₹25,000/- while in the present consignment, the CHA M/s. M/s. Navalsons Logistics had charged ₹6,500/- for such clearance can't be taken as a ground that with charging of higher price for such service, a person has got himself involved in the entire transaction that happen post-clearance of the consignment namely sale of Range Rover Vogue car after the clearance, for which the order passed by the Commissioner is unsustainable in both law and facts.

3. Learned Authorised Representative Mr. Krishna Azad objects to such submission. To him, the alleged mastermind Liyakat Bachu Khan in his statement, as noted in para 7.2.1 of the order passed by the Commissioner, had admitted that forgery was committed as per instruction of Rehman Iqbal Shaikh and there is admission also in his statement concerning payment made to Aubrey Elias D'Souza that ranges from ₹15,000/- to ₹20,000/-, which Aubrey Elias D'Souza in his statement stated to have receipt ₹25,000/- for each consignment and therefore his involvement is quite manifest in the entire transaction to escape Customs duty and the *modus operandi* was

adopted by them combinedly, for which appropriate penalty was imposed on him.

4. I have gone through the appeal paper book and taken note of the submissions. It would be worthwhile to reproduce the relevant portion of the order passed by Commissioner of Customs at para 22.7 of his order that would provide clarity to the dispute at hand. It reads as hereunder:

> *"22.7 Shri Som Prakash Naval Bhatia, a Customs broker by name of Navalson Logistics and Shri Aubrey Elias D'Souza, representative of Customs broker, Babaji Khimji and Co. a G-Card Holder: I find that the Range Rover Vogue car having Chassis No. SALGA2AE3LA578991 was imported and cleared at JNCH, Nhava Sheva through Bill of Entry No. 4618845 dated 09.07.2021 which was dealt by Som Prakash Naval Bhatia, a Customs Broker by name of Navalsons Logistics at the behest of Shri Aubrey Elias D'Souza, representative of Customs Broker, Babaji Khimji and Co., a G-Card holder. Shri Aubrey referred the job to Shri Som Prakash and the latter filed the documents for clearance and helped Ikhlaq Dabawala take de-stuff delivery from CFS. I find that the documents were sent to Som Prakash Naval Bhatia directly by the embassy. His being aware of the scheme of things is not brought out by either statements or any other evidences. He was paid Rs.6,500/- for this clearance which is approximately the amount at which the clearances are being carried out usually by Customs Brokers. As far as he was concerned, he was provided with genuine documents and he was carrying out clearances. On the other hand, Shri Aubrey Elias D'Souza was receiving Rs.25,000/- for each consignment from Liyakat Bachu Khan, clearly much higher than the usual rates. Thus, I find that Shri Aubrey Elias D'Souza was well aware that the imported goods cleared are required to be transported to the nominated place as above, and thus he has concerned himself with the imported goods on which customs duty was evaded and which*

> *was liable for confiscation under Section 111(j) and Section 111(o) of Customs Act, 1962. Thus, Shri Aubrey D'Souza was actively involved in the improper importation of the impugned goods and hence he is liable to penalty under the provisions of Section 112(b) of the Customs Act, 1962."*
>
> *(Underlined to emphasise)*

From the observation, as noted above, made by the Commissioner of Customs, one inference that can be drawn is that this Appellant had charged ₹25,000/- for clearance of consignment as CHA while similar consignments were cleared by the other CHA M/s. Navalson Logistics at ₹6,500/, that appeared to him as the appropriate price for such clearance. There is no denying of the fact by this Appellant that he had not charged the higher amount but as submitted by learned Counsel for the Appellant, such amount was received by him for the previous clearances made in respect of consignment brought to India by several other Embassy including the Kenyan Embassy. There is nothing available on record, except these presumptive allegations that charging of higher amount is linked to the subsequent illegal clearance to the local market, which in the legal parlance can be considered only as a presumption, that can never take the place of proof. Interestingly enough, as could be noticed from the order passed by the Commissioner of Customs, the owner of M/s. Navalson Logistics, CHA who cleared the disputed consignment *vide* this Bill of Entry No. 4618845 is absolved of his liabilities as a broker as the Commissioner considered his involvement in this transaction as a *bonafide* CHA activity but implicated the previous CHA namely Appellant whose only job in the entire operation was restricted to forwarding the email received from Kenyan Embassy to this CHA M/s. Navalson Logistics, which was also confirmed from his own statement and the statement of Liyakat Bachu Khan considered as a close associate of Rehman Iqbal Ahmed Shaikh, the alleged mastermind of this transaction. I am, therefore, of the considered view that there is nothing available against this Appellant to even raise a suspicion about evadement of Customs duty and subsequent sale of the imported cars of the embassy in the local market as learned Commissioner had observed in his order that those documents received from Kenyan Embassy were genuine document (para 22.7) but he misplaced his observation in the above noted para that those documents were sent to the CHA owner Som Prakash Naval Bhatia directly by the Embassy, contrary to the email copy furnished by the Appellant that it was received and forwarded by him. Therefore, I find that the penalty imposed on him under Section 112(b)(ii) as improper and without authority of law. Hence the order.

THE ORDER

5. The appeal is allowed and the order passed by the Commissioner of Customs (NS-V), JNCH, Nhava Sheva *vide* Order-in-Original No. 83/2024-25/Commr/NS-V/CAC/JNCH dated 04.07.2024 to the extent of imposing penalty on this Appellant is hereby set aside with consequential relief, if any.

(Dictated and pronounced in the open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad