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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 380/22/B/WZ/2019/106

Date of Issue 11/10/19

ORDER NO. 380/22/B/WZ/2019-CUS (WZ) / ASRA / MUMBAI/ DATED 20.09.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Principal Commissioner of Customs (Airport), Mumbai.

Respondent : Shri Mohd. Ali Shakil Kochra

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-850/18-19 Dated 17.12.2018 passed by the Commissioner of Customs (Appeals), Mumbai – III.



ORDER

This revision application has been filed by Principal Commissioner of Customs (Airport), Mumbai, (herein referred to as Applicant) against the Order in Appeal No. MUM-CUSTM-PAX-APP-850/18-19 Dated 17.12.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. On 06.01.2017 the Applicant arrived at the CSI Airport from Hong Kong. He was intercepted after he had crossed the green channel. Examination of his person resulted in the recovery of "Harry Winston" Watch studded with diamonds worn by him. In his statement the respondent stated that he did not have any purchase invoice with him. That when leaving the country he had approached the Customs officers, to declare the watch, but was informed that the declaration was supposed to be made at BKC and not at the airport. As he had to leave for an important meeting he proceeded with the travel. That he had been wearing the watch for the past five years. In the valuation report given by M/s Times Avenue the watch was valued at Rs. 40,00,000/- (Rupees Forty lacs), is 5-6 years old and the diamonds setting has not been done by the manufacturers. The diamonds were valued at Rs. 4,67,750/- (Rupees Four lacs Sixty seven thousand seven hundred and fifty).

3. After due process of the law vide Order-In-Original No. ADC/AK/ADJN/136/2016-17 dated 31.01.2018 the Original Adjudicating Authority ordered confiscation of the watch valued at Rs. 44,62,750/- (Rupees Forty four lakhs Sixty two thousand Seven hundred and fifty) under Section 111 (d) (l) and (m) of the Customs Act, 1962, but allowed redemption on payment of Rs. 6,50,000/- under section 125 of the Customs Act, 1962 and imposed penalty of Rs. 4,50,000/- under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the respondent filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. MUM-CUSTM-PAX-APP-850/18-19 Dated 17.12.2018, observed that the watch is old and used. The statement of the Respondent has not been negated with any credible evidence, and as the watch was not purchased abroad there was no intention to evade duty. Therefore, imposed a token redemption fine of Rs. 50,000/- (Rupees Fifty

thousand) and reduced the penalty imposed to Rs. 50,000/- (Rupees Fifty thousand) and modified the appeal accordingly.

5. Aggrieved with the above order the Applicant has filed this revision application inter alia on the grounds that;

5.1 The Respondent on arrival from Hong Kong was found wearing a " Harry Winston" Watch studded with diamonds valued at Rs. 4,67,750/- (Rupees Four lacs Sixty seven thousand seven hundred and fifty).; In his statement he stated that he had approached the Customs officers after emigration to declare the watch when leaving the country, but was informed that the declaration was supposed to be made at BKC and not at the airport. As he had to leave for an important meeting he proceeded with his travels abroad; That he had been wearing the watch for the past five years and it was gifted to him by his grandfather.; that his grandfather had the diamonds fixed in Mumbai and he will produce the purchase voucher later; However he failed to produce the purchase voucher during his subsequent meeting; The respondent had not declared the goods and had opted to clear himself without declaration as required under section 77 of the Customs Act; The manner of recovery of the watch indicates premediated and deliberate act to evade customs duty. The circumstances of the case and the intention of the passenger were not at all considered by the Appellate authority while drastically reducing redemption fine and penalty. The redemption fine and penalty imposed should be commensurate to the offence committed so as to dissuade such acts in the future.

5.2 The Revision Applicant prayed for setting aside the order of the Appellate authority or any other order as deemed fit and proper.

6. A personal hearing in the case was held on 29.08.2019. Shri Mohd. Ali Kochra the respondent and Shri R. P. Gajwani, Supdt., attended the hearing, The respondent reiterated that efforts were made to declare the watch during the outward journey and that the watch is about 7 years old and used and pleaded for release of the watch.

7. The Government has gone through the facts of the case. A proper written declaration of the impugned watch was not made by the Respondent as required under Section 77 of the Customs Act, 1962 and he preferred to use the facility of the green channel inspite of having dutiable goods, under the circumstances confiscation of the goods are justified.

8. However, the facts of the case state that the Applicant was wearing the wrist watch and it was not indigenously concealed. The watch is 5 to 6 years old as informed by the valuer. The Respondent has claimed that the diamonds were set in the watch in Mumbai, but has not produced the purchase voucher; Also the Applicant department has not made any efforts to ascertain the same and there are no investigations countering this aspect. The Respondent has also stated that he approached the Customs officers for obtaining the export certificate before his journey abroad, this shows that he was aware of the procedures to be followed but still went ahead with the journey. Government observes that the Appellate authority has held that as the watch is old and used and has not been brought by the respondent with the intention to evade duty, and hence there is no malafide intention on part of the respondent. Therefore, the lapse on part of the respondent is limited to the failure to declare the same to the Customs authorities as required under Section 77 of the Customs Act, 1962. Accordingly, since the incident is without any mensrea there are no revenue implications.

9. Government, notes that the department case hangs solely on the statements recorded by the department. To conclusively prove that the watch has been purchased abroad, the statements recorded should have been corroborated with evidences which are sorely lacking in this case. The Commissioner Appeals has concluded that the if the department suspects this to be the modus operandi, a minimal investigation is needed. The department has not conducted any investigations to conclusively prove that the watch was purchased abroad. On the other hand the respondent has not been able to substantiate any of his claims with any documentary evidence. A declaration as required under Section 77 of the Customs Act, 1962 was not made is also a fact.

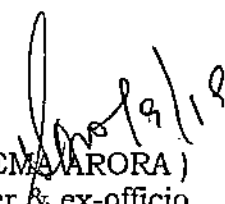
9. Government, therefore agrees with the conclusions arrived at by the Appellate authority that the lapse on part of the respondent is limited to the

77 of the Customs Act, 1962. The Appellate order has not given any cogent reason for imposing token redemption fine and penalty. There is no finding or discussion on how the ownership of the watch was accepted. The Appellate order has merely accepted the explanation and disregarded the lapses of non-declaration of the expensive watch. The Appellate order has wrongly deduced that the lapse deserves a token redemption fine and penalty which is not proper. The redemption fine and penalty imposed should be commensurate to the offence committed so as to dissuade such acts in the future. The impugned Order in Appeal therefore needs to be modified to that extent.

10. The redemption fine of Rs. 50,000/- (Fifty thousand) is increased to Rs. 5,00,000/- (Rupees Five Lacs) under section 125 of the Customs Act, 1962. The facts of the case justify an increase in penalty, the penalty of Rs. 50,000/- (Rupees Fifty thousand) imposed is increased to 2,50,000/- (Rupees Two lacs Fifty thousand) under section 112(a) of the Customs Act, 1962.

11. Revision application is allowed on above terms.

12. So, ordered.


 (SEEMA ARORA)
 Principal Commissioner & ex-officio
 Additional Secretary to Government of India

ORDER No. 56/2019-CUS (WZ) /ASRA/

DATED 20.09.2019

To,

1. The Principal Commissioner of Customs (Airport),
Chatrapati Shivaji International Airport, Terminal -2, Mumbai.
2. Shri Mohd. Ali Shakil Kochra
C/o M/s Time keepers the watch Boutique Pvt. Ltd.,
75, Oriental Building, Mahatma Gandhi Road,
Flora Fountain, Mumbai - 400 001.

Copy to:

1. The Commissioner of Customs (Appeals), Mumbai-III
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.