

SPEED POST  
REGISTERED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. No. 380/02/WZ/2022-RA  
F. No. 371/45/B/2022

Date of Issue: 10.03.2022

ORDER NO. <sup>112-113</sup> /2022-CUS (WZ) /ASRA/Mumbai DATED 09.03.2022 OF  
THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO  
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE  
CUSTOMS ACT, 1962.

**Applicants** : 1. Shri Hardik Pandya,  
E 1702, Rustomjee Paramount,  
18<sup>th</sup> Road, Khar West, Mumbai.

2. The Principal Commissioner of Customs,  
T-2, C.S.M.I. Airport, Mumbai - 400 099.

**Respondents** : 1. The Principal Commissioner of Customs,  
T-2, C.S.M.I. Airport, Mumbai - 400 099.

2. Shri Hardik Pandya,  
E 1702, Rustomjee Paramount,  
18<sup>th</sup> Road, Khar West, Mumbai.

**Subject** : Revision Applications filed under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTM-PAX-APP-1427/2021-22 dated 03.01.2022  
passed by the Commissioner of Customs (Appeals),  
Mumbai Customs, Zone - III.

## ORDER

The subject Revision Applications have been filed by Shri Hardik Pandya (here-in-after referred to as 'the passenger') and the Principal Commissioner of Customs, T-2, C.S.M.I. Airport, Mumbai (here-in-after referred to as 'the Department') against the Order-in-Appeal No.MUM-CUSTOM-PAX-APP-1427/2021-22 dated 03.01.2022 passed by the Commissioner of Customs (Appeals), Mumbai Customs, Zone - III.

2. Brief facts of the case are that the passenger, Shri Hardik Pandya, arrived from Dubai to Mumbai by Flight No.FZ-445 on 15.11.2021. He declared two wrist watches at the Customs Baggage Declaration Counter. One of the watches was of the brand 'Patek Philippe Nautilus Model No.5711/113P-001' and the other was of the brand 'Patek Philippe Model No.5711/11R-001'. During examination by Customs, it was noticed that the serial number of one of the said wrist watches did not match with that mentioned in the Invoice of the seller, produced by the passenger. The discrepancy prompted the Customs authorities to detain the said wrist watches vide Detention Receipt No. DR/INBOM4/15-11-2021/0037 dated 15.11.2021, for ascertaining their proper value. In response to the several requests made by the passenger and his Advocate for release of the wrist watches, the Superintendent of Customs, C.S.M.I. Airport vide letter dated 15.12.2021 informed the Advocate that the investigation would take some more time as the detained watches were purchased from Dubai and the brand 'Patek Philippe' did not have authorized dealers in India. The Superintendent further conveyed that they would be informed about the progress of the investigation in due course.

3. The passenger, aggrieved by the said letter dated 15.12.2021 of the Superintendent, filed an appeal against the same before the Commissioner (Appeals). The Commissioner (Appeals) vide the impugned Order-in-Appeal

dated 03.01.2022 found that the matter was still under investigation and since no speaking order was issued it would be premature to decide on the valuation of the said watches at this stage. Further, the Commissioner (Appeals) held that it was not necessary to detain the said wrist watches as the passenger had declared the same at the Red Channel along with its invoices. The Commissioner (Appeals) also noted that it was not alleged that the passenger had violated any law and hence the said watches could be provisionally released in terms of Section 18 of the Customs Act, 1962. In light of these observations the Commissioner (Appeals) directed the proper officer to provisionally release the detained watches within one week after securing appropriate Bond and Bank Guarantee.

4. Aggrieved, the passenger and the Department, both have filed Revision Applications against the impugned Order-in-Appeal dated 03.01.2022.

(a) The passenger has filed the Revision Application on the following grounds:-

(i) There was no power of detention under the Customs Act and hence the detention of goods was without any authority of law; that detention for such a long period was not justified;

(ii) There is no cogent material available with the Department on the basis of which it could be claimed that the duty finally assessed would be higher than the one declared by them; there was no material to reject the declared transaction value in terms of the Customs (Valuation of Imported Goods) Rules, 2007 read with GATT and hence the detention itself was perverse;

(iii) In the absence of any evidence to the contrary, the declared transaction value ought to have been accepted; and hence the direction to the proper officer to affix the quantum of security should not arise; that given the circumstances the question of securing the revenue did not arise

and the direction given by the Commissioner (Appeals) was not proper; reliance was placed on the judgment of the Hon'ble Supreme Court in the case of Century Metal Recycling Pvt. Limited and Another Vs. Union of India and Others [2019 (367) ELT 3] in support of their argument;

(iv) It was submitted that the Apex Court in the above case had held that provisional assessment may be done in case where the proper officer is unable to final assess the goods; that it was further held that purport of Section 18 was expediting clearance of goods and that in case of any dispute between the Customs authority and the importer, the authorities should make provisional assessment of Customs duty under Section 18 of the Act; that in view of the aforesaid binding precedent, the Appellate Authority ought to have allowed unconditional release of the detained watches as they had submitted all the necessary documents justifying the transaction value; and that they had indicated to the Appellate Authority their willingness to furnish Bank Guarantee of 25% and hence the Appellate Authority ought to have directed release of the detained watches by affixing the condition of security on his own, as an appeal was a continuation of the original proceedings;

(v) The Superintendent while passing the Order dated 15.12.2021 and the Commissioner (Appeal) while passing the impugned Order, had not performed their obligation imposed under Section 17 and/or 18(1) of the Customs Act, 1962;

(vi) The watches were in the custody of the Department without any seizure or provisional assessment and the Appellate Authority instead of directing forthwith release of the detained watches had erroneously given one week to the proper officer/adjudicating authority to provisionally release the said watches, while leaving it to their discretion to secure appropriate Bond and Bank Guarantee;



(vii) The Department only had doubts regarding the correct valuation of the detained watches; that as far as the inadvertent error in writing of the serial number was concerned the same had already been rectified by the foreign supplier by issuing corrected invoice and seeking apology for inadvertent error on their part; that he had declared the correct transaction values by furnishing the two Invoices issued by the respective sellers, details of payment made by him through credit cards, and e-mail from an authorized dealer of the said watches in UAE regarding the price of a new watch; thus every material necessary for assessment under Section 17 of the Customs Act, 1962 was made available by him with a specific written request to do spot assessment for payment of appropriate duty; that he had also expressed his willingness to pay duty on the provisional value arrived at along with Bond thus showing his willingness to secure any revenue, between the duty finally assessed and the duty which would be provisionally assessed;

(viii) The Superintendent, instead of provisionally assessing the detained goods had erroneously taken a decision contrary to Section 18 of the Act and that even the appellate authority did not provisionally assess the goods and had left it to the discretion of the proper officer/ adjudicating authority;

(ix) As per the Customs (Finalisation of Provisional Assessment) Regulations, 2018, provisional assessment ought to be finalized in a time bound manner; that the Department, so as to not adhere to the timeline for finalization of assessment, decided not to even provisionally assess the goods so that he would then not be bound to finalize the same in the time bound manner prescribed by the regulations;

(x) He had not violated any provisions of the Customs Act as he had duly declared the detained goods upon arrival in India by producing the invoices issues by the sellers; that even after detention he had duly furnished additional information to the Department; and that the watches of the

applicant could not be detained for such a long period of time without provisional assessment.

In light of the above submissions, he prayed that the impugned Order-in-Appeal dated 03.01.2022 be set aside to the limited extent as stated above and the directions may be given to release the detained watches provisionally or finally.

(b) The Department filed Revision Application against the impugned Order-in-Appeal dated 03.01.2022 on the following grounds:-

(i) The Order-in-Appeal was not legal and proper as the Department was yet to issue an Order -in- Original under Section 128 of the Customs Act, 1962 and that the matter was still under investigation;

(ii) The passenger was only served with a detention letter and the same could not be treated as decision or order and thus Commissioner (Appeals) erred in admitting the appeal; and

(iii) The Circular quoted by Commissioner (Appeal) viz., Board Circular No. 38/2016 dated 22.08.2016 pertained to assessment of Bills of entry and was not applicable to Baggage cases and that the direction to proper officer/ adjudicating authority to provisionally release the detained watch was excessive and would severely impact the case under investigation.

In light of the above, it was prayed that the impugned Order-in-Appeal be set aside.

(c) The Department also filed a Stay Application seeking to stay the operation of the impugned Order-in-Appeal in light of the submissions made in their Revision Application.

(d) The passenger filed a rejoinder to the submissions made by the Department; apart from reiterating the grounds made in the Revision Application filed by them, they also made the following points:-

(i) The challenge in his Revision Application was to the Order dated 03.01.2022 passed by the Commissioner of Customs (Appeal);

(ii) that his appeal before the Commissioner of Customs (Appeal) was against the decision dated 15.12.2021 by the Superintendent of Customs, CSMI Airport, Mumbai to not to assess the declared two detained watches either provisionally or finally for payment of appropriate duty and release thereof;

(iii) The Revision Application filed by the Department is premised on the erroneous assumption that the challenge before the Commissioner (Appeal) was against the Order dated 15.11.2021 by the Superintendent of Customs detaining the watches; the Revision Application filed by the Department was patently wrong and the same deserved to be dismissed on this ground alone;

(iv) There have been instances, where the Courts/ Authorities have directed Departmental action against the erring officers for delaying assessment of goods and that in the instant case, despite lapse of over two and a half months, the Department was still not willing to assess the goods and had filed the subject frivolous Revision Application so as to perpetuate their illegal acts which were totally contrary to the procedure prescribed under the Customs Act, thereby continuing to abdicate their duties;

(v) In terms of Section 128 of the Customs Act, 1962, any decision or order passed under the Act by an officer of customs lower in rank than a Principal Commissioner of Customs or Commissioner of Customs is appealable before the Commissioner (Appeal) and that in the instant case, vide the decision dated 15.12.2021, the Superintendent of Customs took a decision to not assess the detained watches either provisionally or finally for

payment of appropriate duty and release thereof accordingly and hence the said decision was appealable before the Commissioner of Customs (Appeal);

(vi) The Commissioner (Appeals) while deciding the appeal had followed the procedure prescribed under Section 128A of the Customs Act, and therefore the ground that the principle of natural justice was not followed also deserve to be rejected;

(vii) On the basis of the above made submissions, it was prayed that the Revision Application filed by the Department be rejected and consequential directions be issued for to release the detained watches.

5. Personal hearing in the matter was held on 10.02.2022 and 17.02.2022 which was attended by Shri Prakash Shah, Advocate and Shri Vaibhav Pandya on behalf of Shri Hardik Pandya; the Department was represented on 17.02.2022 by Ms Suja C.T., Assistant Commissioner, Airport, Mumbai.

(a) The counsels for Shri Pandya reiterated their written submissions and submitted that the Departmental Review order had mentioned that the passenger approached the Commissioner (Appeals) against the Detention Order dated 15.11.2021, whereas, he had approached the Commissioner (Appeals) against the letter/order dated 15.12.2021. Thus, they submitted that the Review Order and the Revision Application were abinitio void and become non-existent. They further submitted that they had declared goods with correct value and wanted to pay applicable duty. They further added that under Section 47 & 18 of the Customs Act, the Department had to assess the declared goods and that they could not be deprived of the goods; they relied upon the Supreme Court judgment in the case of Century Metal Recycling; they also submitted that goods could not be kept detained without assessment; that the passenger had deep roots in society and is a renowned cricketer; and that Department could recover the differential duty if any demand was raised subsequently.



(b) The Assistant Commissioner, Airport submitted that the watches are costly, the invoice submitted was hand written; the value appeared to be quite low and that they had taken up the issue with the manufacturer to ascertain the correct value; and she requested time for making additional submissions and submitted that letter dated 15.12.2021 was not an appealable decision or order.

6. The Department thereafter, vide letter dated 24.02.2022 made the following submissions:

(i) The Commissioner of Customs (Appeals) has erred in evaluating the appeal as per Section 128 of the Customs Act 1962; that as per the statute an appeal could be filed on the basis of a decision or order passed under this Act; that there was no decision or order conveyed in the subject matter;

(ii) The letter dated 15.12.2021, issued to the passenger was merely an intimation. In the instant case, the Department was yet to issue an Order-in-Original which is mandatorily required under Section 128 of the Customs Act, 1962; that the matter was still under investigation and the passenger was given only the detention letter and the intimation dated 15.12.2021 and the same could not be treated as decision or order;

(iii) The Commissioner (Appeal) appeared to have erred in admitting the present appeal of the appellant and hence the direction to proper officer/ adjudicating authority to provisionally release the detained watch was infructuous and in the given facts & circumstances, the impugned Order-in-Appeal appeared to be not legal and proper;

(iv) The impugned wrist watches had been detained with the reason to believe that they are customized pieces of very high value and that the values declared by the passenger were not the correct and true value of the goods;

(v) As the watches are customized and unique pieces, these watches were required for valuation by expert valuer/showroom personnel and hence could not be released to the passenger at this point; that the crux of investigation was regarding valuation of these unique watches; and that if these exclusive pieces were released there were chances of them being switched thereby hampering the investigation and leading to loss of revenue to the Government and hence the plea for release of the watches at this stage may be rejected.

7. Government has carefully gone through the relevant case records, the written and oral submissions made by both the appellants and has also perused the impugned Order-in-Appeal dated 03.01.2022.

8. Government finds that the issue involved stems from the fact that the serial number of one of the watches, amongst two, which were declared by the passenger at the Customs counter at Mumbai Airport on his arrival from Dubai, did not match with that indicated in the Invoice produced by him, and the Invoice produced was hand written, issued purportedly by the seller stationed at Dubai. The Customs authorities, in light of the said mismatch and in the absence of authentic support for value, detained the two watches for ascertaining its proper value. The passenger made several requests for release of the detained watches and the same was replied to vide letter dated 15.12.2021 issued by the Superintendent, Customs, CSMI Airport, Mumbai to the advocate representing the passenger. The passenger filed an appeal with the Commissioner (Appeals) against the said letter resulting in the impugned Order-in-Appeal dated 03.01.2022, wherein the Commissioner (Appeals) ordered for the detained watches to be provisionally released to the passenger within a week on securing appropriate Bond and Bank Guarantee. The subject Revision Applications filed by both, the passenger and the Department, are against the said Order-in-Appeal dated 03.01.2022.

9. Government notes that the passenger has contended that the Commissioner (Appeals) should have either unconditionally released the detained goods or fixed the conditions of security for its release, without leaving it to the Adjudicating Authority to decide on the quantum of Bond and Bank Guarantee to be executed by the passenger for such release. The Department in their submissions, amongst others, have contended that the letter dated 15.12.2021 was merely an intimation and did not convey any decision or order and an appeal under Section 128 of the Customs Act, 1962 could only be filed against a decision or order and hence the Commissioner (Appeals) erred in admitting the appeal of the passenger.

10. Government finds that impugned Order-in-Appeal dated 03.01.2022 is in response to an appeal filed by the passenger against the said letter dated 15.12.2021 of the Superintendent of Customs; a fact which the passenger has reiterated in the submissions during these proceedings. Before proceeding any further, Government finds that it is pertinent to examine the contents of the said letter dated 15.12.2021. The relevant portion of the same is reproduced below:-

*" Sub: Request for provisional release of detained watches of Shri Hardik Pandya-reg.*

*With reference to your letter dated 02.12.2021 and email dated 11/12/2021 regarding your request for provisional release of detained watches it is to inform that the passenger Shri Hardik Pandya arrived from Dubai to Mumbai by Flight No. F7-445 on 15-12-2021. He declared two wrist watches at the Customs Baggage Declaration Counter. Both the watches are of Brand Patek Philippe. One of the two watches is of Brand Patek Philippe Nautilus Model No. 5711/113-001 and second is of Brand Patek Philippe Model No. 5711/11R-001. In respect of one of the watch with Model No. 5711/113P-001 has Sr. No. 7333179 mentioned on the watch whereas on the corresponding Invoice bearing No.5372 dated 09.10.2021 of New Mashoom Jewellery LLC. is mentioned as Sr. No.733179. Therefore the Sr. No. of the watch on the Invoice does not match with the Sr. No. on the said watch. Further the said watches are high value goods and valuation aspects need to be ascertained alongwith the above said discrepancies.*

*Accordingly both the watches were detained vide DR No*



*DR/INBOM4/15-11-2021/000037 dated 15.11.2021 on account of the above mentioned reasons under section 77 of the Customs Act, 1962. Since the Patek Philippe has no authorized retailer in India and detained watches have been purchased from Dubai (UAE). Investigation is underway in relation to the said watches and it will take some more time. The progress in investigation will be intimated to you and Shri Hardik Pandya in due course.*

*(Dhanraj)  
Superintendent of Customs  
CSMI Airport, Mumbai \**

A plain reading of the above letter indicates that the same is in response to the requests made by the passenger seeking provisional release of the detained watches. The said letter narrates the facts of the case and informs that the brand 'Patek Philipe' did not have any authorized dealers in India; and the watches having been purchased at Dubai, the investigation which was in progress, would take some more time. The letter ends with the passenger being informed that he will be intimated of the progress in the investigation in due course. Government finds that the said letter merely conveyed the facts of the case and informed the passenger of the status of the investigation being carried out. Government notes that there is no content in the letter which either indicates that any decision had been taken or an order had been passed in the matter. Government notes that the said letter is neither a decision/order by itself, nor does it convey that any decision or order had been taken in the matter. The submission of the passenger that the Superintendent took a decision to not assess the watches either provisionally or finally is incorrect, as no such decision was conveyed in the said letter.

11. Government notes that Section 128 of the Customs Act, 1962 specifies the nature of cases against which the appeal would lie before the Commissioner (Appeals). Relevant portion of the same is reproduced below:-

***"Section 128. Appeals to Commissioner (Appeals)***

*(1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a<sup>2</sup>/Principal*



*Commissioner of Customs or Commissioner of Customs] may appeal to the [Commissioner (Appeals)]<sup>3</sup> [within sixty days] from the date of the communication to him of such decision or order."*

*[emphasis supplied]*

A reading of the above indicates that an appeal to the Commissioner (Appeals) can be preferred by a person who is aggrieved by any 'decision or order' passed by a lower authority. Government finds that the law is very clear inasmuch Section 128 of the Customs Act, 1962 does not provide for an appeal to be filed before the Commissioner (Appeals) in any case other than that involving a 'decision' or an 'order'. In the instant case, as discussed above, the letter dated 15.12.2021 of the Superintendent, Customs, against which the passenger preferred the appeal before Commissioner (Appeals), was not a decision or order by itself and also did not convey any decision or order taken by any authority; it merely conveyed facts and informed the passenger that the investigation was under progress and by no stretch of imagination can the said letter be read to be an appealable order. Government finds that the said letter dated 15.12.2021 does not have the ingredients necessary for taking on the shape of either a 'decision' or an 'order' and will not afford the passenger enough cause of action to file an appeal against the said letter. Government finds merit in the submissions of the Department that the letter dated 15.12.2021 was not an appealable decision/order in terms of Section 128 of the Customs Act, 1962. Government holds that the letter dated 15.12.2021 of the Superintendent Customs is not an appealable decision/order and hence no appeal against the same could be filed before the Commissioner (Appeals) in light of statutory limitation discussed above.

12. Government finds that in a similar case the Principal Bench of the Hon'ble Tribunal, New Delhi, in the case of Haryana Plywood Industries vs Commissioner of Customs, Kolkatta [2006(206) ELT 289 (Tri-Del)], had held that a letter from the Department to the party, clarifying the interest calculation, was not a speaking order or decision under the provisions of the

Customs Act, 1962 against which an appeal could be preferred. The ratio of this judgment squarely applies to the facts of the present case as the letter of the Superintendent is not a speaking order and no decision has been taken by him vide the said letter.

12.1 Government further refers to the judgment of the Hon'ble High Court of Bombay in the case of Commissioner of Customs (Import -I) vs S.S. Offshore P. Limited [2018 (361) ELT 51 (Bom)] wherein the issue involved an appeal by the party, against the communication of the Deputy Commissioner conveying the decision of the Commissioner of Customs (Import) to grant provisional release of seized goods at a value higher than the declared value, before the Hon'ble Tribunal. In this case the Hon'ble High Court while holding that the order/decision given by the Commissioner is an appealable order inter alia made the following observation:-

*".. The power when exercised could lead to either the State being left without security by the time the adjudication order is passed or the conditions for provisional release could be so onerous that it would be impossible for the importer to comply with them and use the goods till adjudication is over. The person vested with the power to allow provisional release of the seized goods is the adjudicating authority under the Act. The Act itself deals with import of goods into the country. All of the above, would suggest that the order/decision given for provisional release would be in the nature of quasi judicial decision/order. ..."*

A reading of the above observation made by the Hon'ble Court indicates that an order passed by the adjudicating authority, which either puts the Department in a position wherein they cannot secure the revenue involved or infringes on the rights of the party, which in this case was contesting the value arrived at provisionally, would be an appealable order. Government notes that in this case the letter of the Superintendent did not have an element of a *(is)*, as it did not convey any decision or order of the adjudicating authority, or any other officer, leading to the interest of either the Department or the passenger being affected. Government also notes that in the present case Superintendent is not the proper Adjudicating Authority,

and as stated above, the said letter does not communicate an order/decision passed by the Adjudicating Authority, and hence the letter of the Superintendent will not qualify as an appealable order. Thus, by applying the ratio of the above judgment of the Hon'ble High Court, Government finds that the letter dated 15.12.2021 of the Superintendent cannot be construed to be an appealable order.

12.2 Government refers to the judgment of the Hon'ble Supreme Court in the case of Automotive Tyre Manufacturers Association vs Designated Authority [2011 (263) E.L.T. 481 (S.C.)] wherein the Hon'ble Court had deliberated and laid down the principles for ascertaining the true character of a decision. The Apex Court in turn had referred to the judgment passed by its Constitution Bench in the case of Jaswant Sugar Mills Ltd., Meerut v. Lakshmi Chand & Ors. [1963 Supp (1) SCR 242], wherein the Hon'ble Court had observed as under:-

*...“Often the line of distinction between decisions judicial and administrative is thin : but the principles for ascertaining the true character of the decisions are well-settled. A judicial decision is not always the act of a judge or a tribunal invested with power to determine questions of law or fact : it must however be the act of a body or authority invested by law with authority to determine questions or disputes affecting the rights of citizens and under a duty to act judicially. A judicial decision always postulates the existence of a duty laid upon the authority to act judicially. Administrative authorities are often invested with authority or power to determine questions, which affect the rights of citizens. The authority may have to invite objections to the course of action proposed by him, he may be under a duty to hear the objectors, and his decision may seriously affect the rights of citizens but unless in arriving at his decision he is required to act judicially, his decision will be executive or administrative. Legal authority to determine questions affecting the rights of citizens, does not make the determination judicial : it is the duty to act judicially which invests it with that character*

.....  
.....  
.....  
*To make a decision or an act judicial, the following criteria must be satisfied :*



*(1) it is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rule;*

*(2) it declares rights or imposes upon parties obligations affecting their civil rights; and*

*(3) that the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of evidence if a dispute be on questions of fact, and if the dispute be on question of law on the presentation of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact."...*

A reading of the above extract indicates that in the case of a judicial (including quasi-judicial) decision, the authority taking such decision has to be vested with the authority or power to take such decision. As stated earlier, the Superintendent of Customs in this case was not vested with the power to decide on the provisional release of the detained goods. Thus, he could not, and, as evident by the contents of the letter, has not, taken any decision or passed an order vide the said letter dated 15.12.2021 to the passenger. Further, on examining the letter of the Superintendent vis-à-vis the principles laid down by the Hon'ble Court for a decision to be termed as judicial, Government finds that the said letter does not convey the results of an investigation; neither does it declare or impose any condition, on the passenger or the Department, which affected their interests or rights in the instant issue; nor does it decide a dispute on the basis of facts or question of law. Thus, Government finds that the letter dated 15.12.2021 of the Superintendent of Customs does not qualify to be a quasi-judicial decision/order, as it does not pass the test laid down by the Apex Court, as discussed above, for the same. In view of the above, Government holds that the appeal filed by the passenger was not maintainable before the Commissioner (Appeals) as the provisions of Section 128 of the Customs Act, 1962 did not provide the Commissioner (Appeals) with the jurisdiction to entertain the same.



13. The passenger has placed reliance on the judgment of the Hon'ble Supreme Court in the case of Century Metal Recycling Pvt. Limited and Another Vs. Union of India and Others [2019 (367) ELT 3] in support of their claim for resorting to provisional assessment of the detained watches and their subsequent release. However, Government finds that these arguments have been rendered redundant as the appeal before the Commissioner (Appeals) itself has been found to be non-maintainable and hence the question of deliberating the issue of provisional assessment or the other arguments put forth by both the applicants does not arise at this stage.

14. Government further notes that the passenger has pointed out that the Review Order of the Commissioner and the Revision Application filed by Department, both have incorrectly mentioned that the appeal filed by him before the Commissioner (Appeals) was against the Detention Order dated 15.11.2021, whereas his appeal was against the letter dated 15.12.2021 of the Superintendent of Customs; and has sought dismissal of the Revision Application filed by the Department for this reason. Government notes that the fact of the case stand recorded in the impugned Order-in-Appeal dated 03.01.2022, wherein it is clearly recorded that the appeal filed by the passenger was against the letter dated 15.12.2021. The contention/pleading of the Department, during the instant proceeding that the letter dated 15.12.2021 was not a decision or order, clearly indicate that the challenge of the Department against the impugned Order-in-Appeal was on the basis of the Commissioner (Appeals) accepting the letter dated 15.12.2021 to be an appealable order; there is no reference made to the Detention Order dated 15.11.2021. Government finds that the error pointed out by the passenger is in the nature of a clerical error and will not have a bearing on the merits of the case on hand. Government finds that this argument put forth by the passenger will not find any purchase in these proceedings.

15. In view of the above, Government annuls the impugned Order-in-Appeal dated 03.01.2022 as the appeal decided by it was not maintainable before the Commissioner (Appeals). Consequentially, Government rejects the Revision Application filed by the passenger and allows the Revision Application filed by the Department. The impugned Order-in-Appeal having being annulled, Government finds that there is no cause to discuss the Stay Application filed by the Department.

16. The subject Revision Applications stand disposed of in the above terms.

  
(SHRAWAN KUMAR)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

112-113  
ORDER No. /2022-CUS (WZ) /ASRA/Mumbai dated 09.03.2022

To

1. Shri Hardik Pandya,  
E 1702, Rustomjee Paramount,  
18<sup>th</sup> Road, Khar West, Mumbai.
2. Principal Commissioner of Customs,  
T-2, C.S.M.I. Airport, 1<sup>st</sup> floor,  
Avas Corporate Point, Mumbai - 400 099

Copy to:

1. The Commissioner of Customs (Appeals), C.S.M.I. Airport, Avas Corporate Point, Makwana Lane, Andheri (E), Mumbai 400 059.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.