



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 380/03-04/B/WZ/2022-RA /1313

Date of Issue : 06.04.22

ORDER NO. 118-119/2022-CUS (WZ)/ASRA/MUMBAI DATED 31.03.2022 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

Applicant : Pr. Commissioner of Customs, CSI, Mumbai.

Respondents : (1). Shri. Kapadia Abdullah Abdul Wahid &
(2). Shri. Jai Kishn Mahijani.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-1021 to 1023/2021-22 dated
09.11.2021 [(S/49-936, 1260, 1261/2020-21)(DIN -
20211067BB0000838E33)] passed by the Commissioner
of Customs (Appeals), Mumbai -III.

ORDER

This revision application has been filed by the Pr. Commissioner of Customs, CSI Airport, Mumbai (herein referred to as the Applicant) against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-1021 to 1023/2021-22 dated 09.11.2021 [(S/49-936, 1260, 1261/2020-21)(DIN - 20211067BB0000838E33)] passed by the Commissioner of Customs (Appeals), Mumbai -III, in respect of Shri. Kapadia Abdullah Abdul Wahid and Shri. Jai Kishn Makhijani (hereinafter referred to as the Respondents or alternately as Respondent No. 1 and Respondent No. 2, resp.).

2(a). Brief facts of the case are that on 13.03.2020, the respondent no. 1 who had arrived from Dubai onboard Emirates Flight No. EK-200 / 12.03.2020 was intercepted by the Customs Officers at the exit gate of CSI Airport, Mumbai. To the query put forth to him whether he was carrying any dutiable goods / gold or any other contraband in his baggage or person, the respondent no. 1 had replied in the negative. A search of the respondent no. 1 led to the recovery of one wrist watch of brand name 'Patek Philippe' which was worn by him.

2(b). As the respondent no. 1 was not carrying any invoice and the applicant was unable to get the valuation of the wrist watch from an authentic source, they detained the said wrist watch. Respondent No. 1 through a written communication, informed the applicant that the said wrist watch was 7 years old and had been gifted to him by respondent no. 2; that luxury watches require a cosmetic treatment once every 4-5 years and hence, he had taken it abroad to a Patek Philippe dealer for overhaul service; that he was returning back after servicing the watch when he had been intercepted. He submitted all the bills / tax invoices which were in the name of respondent no. 2.

2(c). The value shown in invoice no. 25476/14-05.2013 issued by Michael Herman, New York in the name of respondent no. 2 was for USD 24,500/- (equivalent to Rs. 13,38,925/-). The prices available in the internet were much higher hence, this price of USD 24,500/- being very low was rejected by the applicant under Rule 3 of (Transaction Value) of Customs Valuation (Determination of Valuation of Imported Goods) Rules, 2007 issued under Notification No. 94/2007-Customs (N.T) dated 13.09.2007.

2(d). Thereafter, the price quoted by Amazon of Rs. 92,78,172/- after providing for a rebate of 43.96% on value of Rs. 1,33,57,575/- to overcome effect of local taxes like BCD Cess and IGST was taken in terms of Rule 7, sub rule 3 of Customs Valuation Rules, 2007. This price of Rs. 92,78,172/- was considered as the provisional value of the detained Patek Philippe Geneve A384GAP wrist watch in terms of Rule 9 of the Customs Valuation (Determination of Valuation of Imported Goods) Rules, 2007 issued under Notification no. 94/2007 – Customs (NT) dated 13.09.2007.

2(e). The respondent no. 2 informed that the said Patek Philippe wrist watch belonged to him and that he had purchased it in 2013 from M/s. Michael Herman for USD 24,500/-; that respondent no. 1 was his employee and worked for him on retainer basis; that he deals in high end watches like Rolex, Panerai and Franck Muller and has 3 showrooms in Mumbai; that this wrist watch was taken to Dubai for refurbishing and thereafter, to Jordan. Respondent No. 2 informed that the brand Patek Philippe does not have a representation office in India and prices of their watches were not easily available.

3(a). The Original Adjudicating Authority (OAA) viz, Addl. Commissioner, Customs, CSI Airport, Mumbai vide his Order-in-Original No. ADC/VDJ/ADJN/19/2021-22 dated 20.05.2021 [(DOI : 21.05.2021) (S/14-4-04/2020-21/Adj)(SD/INT/AIU/152/2020 APD) (DIN – 20210579OB000000AFE4)] confiscated the wrist watch of make 'Patek

Philippe' after re-determining its value at Rs. 51,97,500/- under the provisions of Section 111 (d), 111 (l) & 111 (m) of the Customs Act, 1962 and allowed option to the respondents to redeem the said wrist watch under Section 125 of the Customs Act, 1962 on payment of a redemption fine of Rs. 5,00,000/-. A personal penalty of Rs. 2,00,000/- each was imposed on the respondents under Section 112 (a) and (b) ibid of the Customs Act, 1962.

3(b) The OAA rejected the value of the seized Patek Philippe wrist watch determined by the applicant in their notice and re-determined the value of the said wrist watch at Rs. 51,97,500/- based on the letter dated 01.03.2021 of Time Centre, Jordan which had been produced during the investigations by the respondent no. 2 and which stated that the watch was refurbished and that the current retail price was USD 70,000/-. The basis of rejection of the price by OAA was that the applicant had taken the current / contemporaneous price of a new watch, while the watch under seizure was an old and used watch and the said value of Rs. 51,97,500/- was determined under Rule 9 of the CVR, 2007.

4. Aggrieved, with this Order, the revenue i.e. applicant as well as both the respondents filed their appeals before the Appellate Authority viz, Commissioner of Customs (Appeals), Mumbai -III who vide Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1021 to 1023/2021-22 dated 09.11.2021 [(S/49-936, 1260, 1261/2020-21)(DIN - 20211067BB0000838E33)] agreed with the Order-in-Original dated 20.05.2021 passed by the OAA and disposed of the appeals by modifying the OIO wherein, the redemption fine was further reduced to Rs. 3,00,000/- and penalties on the respondents were reduced to Rs. 1,00,000/- each.

5. Aggrieved with the above order of the Appellate Authority, the Applicant has filed this revision application on the following grounds;

5.01. that the Appellate Authority has upheld the valuation of the impugned goods at Rs.51.97,500/- but has reduced the redemption fine from Rs.5,00,000/- to Rs3,00,000/- by holding that "watch is

old and used; was worn and had not been concealed and the valuation decided by the OAA was reasonable and rational; that the RF and penalties are on harsher side; that redemption fine has been quantified at less than 6% of the value of the confiscated goods which have been held as not bona fide and answering the description of "prohibited goods.

5.02. that the law was well settled that discretion in quasi-judicial proceedings needs to be well founded and reasonable; that the impugned order-in-appeal had failed to enumerate any reasons or basis for terming the determined amounts of fine and penalty as harsh or excessive; that the penalty amount in terms of section 112 (a) & (b) was reduced to Rs.1,00,000/- which was than 2% of the value of offending and confiscated goods; that the Appellate Authority had reduced the penalty amounts without disclosing justification for the same.

Under the circumstances, the applicant has prayed to the revision authority that the impugned Order-in-Appeal No. MUM-CUSTM-PAX-APP-1021to1023/2021-22 dated 09.11.2021 passed by the Appellate Authority was not legal and proper insofar as the redemption of confiscated goods was allowed, reducing the redemption fine and reducing the penalties.

6(a). Personal hearings in the case through the online video conferencing mode was scheduled for 11.02.2022 / 18.02.2022. (i). Shri. Prakash Shingrani, Advocate, (ii). Shri. S. Babu Gowthaman, Consultant and (iii). Shri. Jai Kishn Makhijani, Respondent No. 2 appeared for physical hearing on 18.02.2022 and submitted a written submission. They requested that watch being not prohibited should be allowed to be redeemed. They requested to uphold the order of the Commissioner (Appeals).

6(b). Since, no one appeared for the applicant, another opportunity of a personal hearing to put forth their case was granted to them through the online video conferencing mode and was scheduled for 22.03.2022 and 29.03.2022. Shri. Sagar Suryawanshi, Superintendent, appeared online on 29.03.2021 and reiterated his submissions. He submitted that reduction of RF and penalty by Commissioner (Appeals) was incorrect. He requested to allow the RA filed by the department.

7. The written submissions dated 18.02.2022 made by Respondent no. 2 through their aforesaid Advocate and Consultant are summarised as given under;

- 7.01. that the Patek Philippe was a pre-owned watch manufactured in 2013. It belonged to respondent no. 2 and had sent the watch for repair and respondent no. 1 had collected the watch after repair and brought it.
- 7.02. The watch was worn by respondent no. 1 on his person and never concealed. It was seized under the misconceived belief that the watch was being smuggled into India and had been baselessly assessed and provisionally valued at Rs. 92,78,172/-.
- 7.03. The OAA had re-determined the value of the wrist watch at Rs 51,97,500/- and had used his discretion under Section 125 of Customs Act, 1962 allowing to redeem the watch on payment of redemption fine of Rs 5,00,000/ and imposition of penalty of Rs 2,00,000/- each on the respondents.
- 7.04. This OIO was challenged by applicant as well as respondents and the Appellate Authority had reduced the redemption fine to Rs 3 lakhs and reduced the penalty on the respondents to Rs 1,00,000/- each.
- 7.05. that the applicant i.e. Pr. Commissioner of Customs, Mumbai was under a presumption that the watch had been brought for commercial purpose with an intention to sell it in India.
- 7.06. that the watch was in personal use of the respondent no. 2 since May 2013; that there was no evidence with the applicant that the same had been imported for commercial purpose with intention to evade customs duty on it.
- 7.07. that as per the provisions under Section 125 of Customs Act, 1962, the OAA had discretion for either allowing the goods to be released on payment of fine or confiscate the goods absolutely; that when the goods are prohibited, allowing redemption on payment of fine is wholly within the discretion of the adjudicating authority.
- 7.08. that there had been no jurisdictional error in the order passed by the OAA.
- 7.09. that it was an admitted fact that the wrist watch had not been concealed. The only allegation of the applicant was that there was an attempt to clear the watch without payment of duty; that it had

been held by the OAA that wearing the watch on the wrist did not amount to ingenious concealment.

- 7.10. that the purchase invoice dated 14-5-2013 produced by respondent no. 2 was never held to be bogus or not to be genuine by the applicant, that the 'old and used' character was established by the facts of the case; that it had been recorded by the OAA that the watch was refurbished and serviced.
- 7.11. that OAA had followed judicial discipline while deciding the case.
- 7.12. that in the present case, the Appellate Authority had observed that even when the goods have been held as prohibited goods, discretion is allowed to redeem the goods on payment of fine or it can be absolutely confiscated; in this case as concealment was not ingenious, same was allowed redemption in terms of letter F.No SD/ADJN/Misc-23/2013-14 Adjn wherein it cases of ingenious concealment has been clarified.
- 7.13. that the Appellate Authority had observed that once goods are held to be prohibited, Section 125 still provides discretion to consider release of goods on redemption fine and relied upon the decision in the case of M/s Raj Grow Impex wherein the Hon'ble Supreme Court in paras 71 & 72 has laid down the conditions and circumstances under which such discretion could be used.
- 7.14. that Appellate Authority further had held that the watch was old and used; it was not concealed and the valuation decided by the OAA was reasonable and rational. Considering the fine and penalty as harsh, the Appellate Authority had reasonably reduced the fine and penalty.
- 7.15. that there was no merit in the revision application filed by the applicant and prayed to dismiss the same and uphold the OIA.

8. The Government notes that the respondent no. 1 admittedly had opted for the green channel and at the time of interception at the exit gate of the arrival hall had not declared the possession of high end 'Patek Philippe' wrist watch to the Customs at the CSI Airport. A declaration as required under Section 77 of the Customs Act, 1962 had not been submitted to the Customs at the airport, therefore, confiscation of the high value wrist watch is justified.

9(a). Government however, notes that there is no dispute that the high value wrist watch had been worn by respondent no. 1 and had not been ingeniously concealed. The facts of the case indicate that it is a case of non-declaration of the wrist watch, rather than a case of smuggling for commercial considerations.

9(b). Evidently, it is recorded that the valuation of the high-end watch was done on the basis of contemporaneous data related to the time period of the seizure and not to its year of manufacture. The provisional value based on the contemporaneous date had been rejected by the OAA and the basis of arriving at the re-determined value of the wrist watch has been dealt in great detail by the OAA. The Appellate Authority too has upheld the same stating that the price pertaining to the year of the manufacture ought to have been considered and not contemporaneous price. Government finds that the same is legal and judicious and does not find it necessary to interfere in the same.

9(c). No case has been made out that the respondents are habitual offenders. Government notes that the respondent no. 2 turned up as and when called for and had assisted in the investigations.

10. Government observes that considering the aforesaid facts, especially the fact that the wrist watch had been worn by the respondent no. 1 and that the same had not been ingeniously concealed, order of redemption of the wrist watch passed by the OAA is reasonable and fair and that the OAA had used his discretionary power quite judiciously to allow redemption of the same on payment of a redemption fine. Government notes that the Appellate Authority has rightly upheld the same.

11. Government notes that the quantum of the redemption fine of Rs. 5,00,000/- has been reduced by the Appellate Authority to Rs. 3,00,000/-. Considering that watch was old and used, it was worn by the respondent no. 1, there was no attempt to conceal it, respondent not being habitual offender, and this being at best a case of misdeclaration only, Government finds the same to be proper and judicious and is in agreement with the same.

12. Government notes that the penalty of Rs. 2,00,000/- each imposed on the respondents by the OAA has been reduced by the Appellate Authority to Rs. 1,00,000/- each. Government notes that considering the facts of case and the fact that the respondents always made themselves available for the investigations, the reduced penalty of Rs. 1,00,000/- each on the respondents is commensurate with the omissions and commissions committed and would meet the ends of justice.

13. For the aforesaid reasons, the Government does not find it necessary to interfere in the order passed by the Appellate Authority.

14. Accordingly, the Revision Application does not succeed and is decided on above terms.

Shrawan
31/03/2022
(SHRAWAN KUMAR)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 18-19/2022-CUS (WZ) /ASRA/

DATED 31.03.2022

To,

1. The Principal Commissioner of Customs, Chhatrapatti Shivaji International Airport, Terminal - 2, Level - 2, Sahar, Andheri East, Mumbai - 400 099.
2. Shri. Kapadia Abdulla Abdul Wahid, Orchid Tower, Flat No. B/1201, 12th Floor, 241 / 242, Bellasis Road, Mumbai Central, Mumbai - 400 008.
3. Shri. Jay Kishn Makhijani, 2nd Floor, Villar Ville, P.J. Ramchandani Road, Colaba, Mumbai - 400 005.

Copy to:

4. Shri. Prakash Shingrani, Advocate, 123, Himalaya House, 79, Palton Road, Next to Haj House, CST, Mumbai- 400 001.
5. Sr. P.S. to AS (RA), Mumbai.
6. Guard File,
7. File Copy,
8. Notice Board.