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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre – I, Cuffe Parade,  
Mumbai-400 005

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F.No. 371/170/B/2021-RA / 888 Date of Issue 05.01.2024

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ORDER NO. 123-124 /2024-CUS (WZ) /ASRA/MUMBAI DATED 31.01.2024  
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.

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Applicants : 1. Mr. Hatim Khuzema Kothari  
2. Mr. Bharat Kapoor

Respondent : Pr. Commissioner of Customs, Airport-I, Mumbai

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. MUM-  
CUSTM-PAX-APP-10-11/2021-22 dated 09.04.2021 passed  
by the Commissioner of Customs (Appeals), Mumbai-III.

**ORDER**

This revision application has been filed by Mr. Hatim Khuzema Kothari (herein referred to as Applicant-1) and Mr. Bharat Kapoor (herein referred to as Applicant-2) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-10-11/2021-22 dated 09.04.2021 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Brief facts of the case are that, on 12.12.2018, at CSI Airport, Mumbai, Applicant-1 was intercepted by the Air Intelligence Unit for carrying two 'Audemars Piguet' Swiss watches collectively valued at Rs. 52,97,000/- concealed under his shirt. The watches were seized, and Applicant-1 admitted to bringing them from Hong Kong on his employer's instructions. After a market survey, the watches' total Maximum Retail Price (MRP) was determined. The watches were confiscated under the Customs Act, with an option for redemption on payment of a fine of Rs. 8,25,000/-. Penalties of Rs. 3,75,000/- and Rs. 1,75,000/- were imposed on Applicant-1 and his employer, Applicant-2, respectively, under relevant sections of the Customs Act, 1962.

3. The case was adjudicated and the impugned watches were confiscated under Section 111 (d), (1), & (m) of the Customs Act, 1962. However, an option for redemption of the seized watches was granted on payment of a fine Rs. 8,25,000/- was allowed under section 125(1) of the Customs Act, 1962 and the other charges, if any, should be paid by the passenger under section 125(2) of the Customs Act, 1962 of the ibid Act. A penalty of Rs. 3,75,000/- was imposed on the Applicant-1 and a further penalty of Rs. 1,75,000/- was imposed on Applicant-2 under Section 112 (a) & (b) of the Customs Act, 1962.

4. Aggrieved by this Order, the Applicant preferred an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai-III, who vide impugned Order-in-Appeal modified the OIO dated 18.10.2019 passed by the adjudicating authority to the extent of value of the goods with 35% abatement from the MRP of Rs 52,97,000/- i.e Rs 34,43,050/- for the purpose

of payment assessment/payment of duty. Appellate Authority upheld the fine and penalties.

5. Aggrieved with the above order, the Applicants have made an exhaustive submission of case laws and have submitted copies including their submissions made before the lower authorities etc They have filed revision application on the following main points.

5.1 Though, the learned Commissioner of Customs (Appeals) allowed abatement of 35% on the watches and modified the total value as Rs 34,43,050/-, he erred by upholding the fine and penalty which were imposed on Applicant-1 on the basis of the value i.e Rs 52,97,000/-. Redemption fine and penalty are disproportionate to the modified value of the watches. Imposition of heavy fine and penalty on the Applicant-1 is not sustainable.

5.2 Statements of Applicant-2 dated 25-4-19 and 22-5-19 were exculpatory and they should not have been admitted in evidence. Applicant-2 is not liable for any penal action.

5.3 Applicant-2 is not vicariously liable for the acts of omission and commission of Applicant-1 when he was not under the control and supervision of Applicant-2.

5.4 Confession of co accused cannot be relied upon other accused.

5.5 In view of above, Applicants requested:

- i. Applicant-1 submits that it was a single and solitary incident of an alleged act of smuggling of goods, which can never be justifiable ground for imposition of heavy fine and penalty on him. He prays that the redemption fine and penalty may be reduced in proportion to the modified value of the watches.

- ii. Applicant-2 submits that he is a law-abiding citizen/businessman and he has never come under any adverse remarks. He was falsely implicated in the case of smuggling. He is never involved in any case of smuggling. He prays that penalty imposed on him may be set aside.

6. Personal hearing in the case was scheduled on 17.08.2023. Shri Prakash Shingarani, Advocate for the Applicants, appeared and submitted that Redemption fine and penalty imposed on Applicant-1 is disproportionately high. He requested to substantially reduce the penalty and RF. He further submitted that Applicant-2 did not do anything to invoke section 112 of Customs Act. He requested to drop the penalty against Applicant-2.

7. The Government has gone through the facts of the case. The issues to be decided in the present case are:

- i. Whether the redemption fine and penalty imposed on Applicant-1 are appropriate or not.

- ii. Whether the penalty imposed on Applicant-2 is justified or not.

8. Government notes that Appellate Authority has granted a 35% abatement from the Maximum Retail Price (MRP) of Rs. 52,97,000/-, resulting in a revised value of Rs. 34,43,050/- for duty assessment and payment. However, it has been observed that the redemption fine and penalty imposed on Applicant-1 were not revised accordingly. This makes the redemption fine and penalty disproportionate to the modified value of the watches. The imposition of a fine and penalty on Applicant-1 is required to be revised.

9. With regard to the imposition of penalty on Applicant-2, Government notes that Lower Authorities have based their decision on the employment relationship of Applicant-1 with Applicant-2, and on the Applicant-1's incapacity to purchase and sell high-end watches. Government notes that merely being an employer does not automatically make an individual culpable for any offenses committed by

their employees. It is noticed that besides the statement which has been retracted there is no evidences against the Applicant-2 that can establish the linkage with the impugned goods. In absence of sufficient evidence establishing ingredients of violation of Section 112 of Customs Act, 1962, the imposition of penalty on Applicant-2 is not warranted.

10.1 In view of the above, the Government modifies the impugned order passed by the Appellate authority and allows the applicant to redeem the impugned watches valued at Rs.34,43,050/- on payment of redemption fine of Rs. 7,00,000/- (Rupees Seven Lakhs Only)

10.2 The penalty of Rs. 3,75,000/- imposed on Applicant-1 under Section 112 of the Customs Act, 1962 is reduced to Rs. 3,40,000/-.

10.3 The penalty of Rs. 1,75,000/- imposed on Applicant-2 under Section 112 of the Customs Act, 1962 is not warranted and therefore, the same is set aside.

11. The Revision Application is disposed off on the above terms.

  
(SHRAWAN KUMAR)

Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER NO. <sup>123-124</sup> /2024-CUS (WZ)/ASRA/MUMBAI DATED 31.01.2024

To,

1. Mr. Hatim Khuzema Kothari, 53/Saifee Court, 3<sup>rd</sup> Floor, Room No. 18, Clare Road, Nagpada, Mumbai-400008.
2. Mr. Bharat Kapoor, 91, Ajanta Apartments, 75 Colaba Road, Mumbai-400005.
3. Pr. Commissioner of Customs, Airport-I. Chhatrapati Shivaji International Airport, Terminal – 2, Level – II, Andheri(E), Mumbai – 400099.

Copy to:

1. The Commissioner of Custom Appeals, Mumbai-III, Awas Corporate Point(5th Floor), Makwana Lane, Behind S M. Centre Andheri-Kurla Road, Marol, Mumbai-400059.

- 2 Shri. P.K Shingrani, Advocate, 12/334, Vivek, New MIG Colony, Bandra (East),  
Mumbai - 400 051.
- 3 Sr. P.S. to AS (RA), Mumbai.
4. File Copy.
5. Notice Board.