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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. 371/60/B/2017-RA(Mum) / 3312

Date of Issue 11.09.2020

ORDER NO 33/2020-CUS (WZ) / ASRA / MUMBAI / DATED 2.08.2020 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 : Smt. Tripti Arya

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

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM- CUSTM-PAX-APP-188/2017-18 Dated 29.05.2017 passed by the Commissioner of Customs (Appeals), Mumbai - III.



ORDER

This revision application has been filed by Smt. Tripti Arya, (herein referred to as Applicant) against the Order in Appeal No. MUM-CUSTM-PAX-APP-188/2017-18 Dated 29.05.2017 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. On 27.04.2014 the Applicant arrived at the CSI Airport from Dubai and was intercepted as she was heading towards the exit gate in the arrival hall after clearing herself at the green channel. The Applicant when asked if she was carrying any valuable goods or electronic goods in her baggage replied in the negative. Examination of her hand bag resulted in the recovery of one ladies wrist watch of Roger Dubuis brand. As the value of the watch appeared to be high it was detained for valuation. During Investigations the Applicant stated that the said watch was a gift from her father and submitted an invoice through which the value of the wrist watch was ascertained to be Rs. 73,51,500/- (Rupees Seventy three lacs Fifty one thousand and five hundred).

3. After due process of the law vide Order-In-Original No. JC/RR/ADJN/300/2014-15 dated 19.03.2015 the Original Adjudicating Authority ordered confiscation of the wrist watch under Section 111 (d) (l) and (m) of the Customs Act, 1962 and allowed redemption on payment of Rs. 2,00,000/- (Rupees Two lakhs) under section 125 of the Customs Act,1962 and imposed penalty of Rs. 5,50,000/- (Rupees Five lakhs Fifty thousand) 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 MUM-CUSTM-PAX-APP-188/2017-18 Dated 29.05.2017, observed that the redemption fine and the penalty imposed to be appropriate and rejected the appeal of the respondent.

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



5.1 Appellants says and submits that the impugned Order in Appeal passed by the Ld. Commissioner Appeals in mechanical manner is ex-facie illegal, bad in law and cannot be sustained in as much as the Ld. Appellate Authority has ignored the vital and germane facts and also the law governing the issue at hand.; Appellant submits that the recovery of watch was outcome of search is bereft of any logic or evidence as no search Panchanama was drawn and/or relied in the present proceedings.; that in absence of any Panchanama evidencing recovery of watch as contended by the Notice, the basic allegation of suppression, falls flat on its face.; that value of the watch could not be ascertained and duty payable thereon could not be determined on arrival of the Appellant and in view of the fact that a DDR No. A-45894 was prepared; In these circumstances, the watch was not liable to confiscation in absence of any prohibition and no penalty could have been imposed on the Appellant.; the submissions of the Appellant in respect of Rule 3 read with Appendix 'A' of the Baggage Rules, 1998, which clearly lays down that the passengers returning from abroad form a stay of more than 3 days bringing along with them, without the payment of duty, "Used personal effects, excluding jewellery, required for satisfying daily necessities of life." Learned Commissioner has failed to give any cogent and valid findings on the above submission of the Appellant as to why the benefit under the said provisions are not applicable to the Appellant, when she was carrying along with her a watch used by her during her stay abroad which qualifies as a personal effect required for satisfying daily necessities of life, used by her during her stay.; the finding that the watch was not brought in original packing for selling and making profit, evidencing that the watch was old and used and thus should not have been subjected to the levy of Customs Baggage Duty being used personal effects excluding jewellery; that the Appellant was not acting as a courier and that the watch was a gift from the Appellants father and further was not brought into India for the purpose of selling and making a profit. Further he also records that the Appellants conduct was non evasive and was truthful. In spite of the above factual finding being arrived at by the Learned Original Authority, imposition of redemption fine of Rs.2,00,000/- and Penalty of Rs.5,50,000/- on the Appellant; It is settled position in law that redemption fine should be equivalent to profit margin as



laid down by various judicial forums including the Apex Court in this regard especially when the watch was not brought in original packing for selling and making profit.

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

6. A personal hearing in the case was held on 12.12.2019. Shri Ajay Singh, Advocate for the Applicant attended the hearing, he re-iterated the submissions filed in Revision Application and pleaded that the duty was paid willingly and therefore contested penalty. The para 7 of the Appellate order is contested as it is in cross variance with the Order in Original.

7. The Government has gone through the facts of the case. It has been established that the applicant by her own admission the Applicant entered green channel without declaring the watch for payment of duty, placed her handbag on the BSM, and was diverted by the BSM officer to red channel for duty payment. Entering into green channel is equivalent to making a statement that there is no dutiable goods in possession of the passenger, which is a mis-declaration under section 77 of the Customs Act 1962, and therefore under the circumstances confiscation of the watch is justified.

8. The Original adjudicating authority has in para 8.3 contended that the passenger has requested for her exoneration and release of watch on the ground that the watch was a gift from her father who is a businessman in UAE and she had no intention to sell it as evident from the fact that she was not carrying the original packing of the watch. The contention of the Applicant appears acceptable, However as the under section 111 (d), (l) and (m) of the Customs Act 1962 its release under section 125 (1) has to be done on imposition of appropriate redemption fine. Hence even if passenger's contention that watch is not for sale is ignored and it is presumed that she would sell the watch, there would be, in all probability, no profit after clearing it on payment of baggage rate of duty at rate of 36%. The Original adjudicating authority has therefore justified a small fine of Rs 2 lakhs just to act as a warning to the passenger to be more careful and attentive while using green channel for Customs clearance in future. Government agrees with this contention

of the Adjudicating authority.




9. In addressing the personal penalty issue it was observed that if the Applicant was not intercepted there would have been a revenue loss of almost 26 lacs being the customs duty payable on the value of the wrist watch. Considering these facts the penalty of Rs 5.5 lakhs on the Applicant is correct.

10. In view of the above the Government notes that the Original adjudicating authority has issued a well reasoned and considerate order. The Appellate Authority has also upheld the order. The Revision Application is therefore liable to be rejected.

11. Accordingly, Government therefore holds that there is no need for any interference. The impugned Order in Appeal No. MUM-CUSTOM-PAX-APP-188/2017-18 dated 29.05.2017, passed by the Commissioner of Customs (Appeals), Mumbai-III is upheld. Government therefore holds that there is no need for any interference. The Revision Application is dismissed.

12. So, ordered.


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

ORDER No. 33/2020-CUS (WZ) /ASRA/

DATED 3.08.2020

To,

1. The Principal Commissioner of Customs (Airport),
Chatrapati Shivaji International Airport, Terminal -2, Mumbai.
2. Smt. Tripti Arya, 403, Samudra Mahal, Dr. Annie Besant Road Worli, Mumbai
- 400 018.

Copy to:

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

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

