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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. 373/02/B/17-RA	2989	Date of Issue	02/06/21
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ORDER NO. 136/2021-CUS (SZ)/ASRA/MUMBAI DATED 27.05.2021 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 : Shri Ataur Rahaman Askari

Respondent : Commissioner of Customs(Airport), Mangalore

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 204/2016 dated 16.03.2016 passed by the Commissioner of Customs (Appeals), Bangalore.



ORDER

This revision application has been filed by Shri Ataur Rahman Askari (herein after referred to as the Applicant) against the Order in appeal No. 204/2016 dated 16.03.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

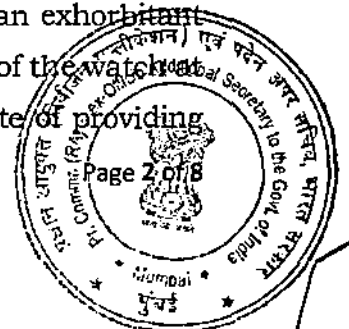
2. Briefly stated the facts of the case are that the officers of Customs at the Mangalore International Airport intercepted the Applicant, who had arrived from Dubai on 16.02.2014, while he was attempting to leave the Customs area through the green channel. The Customs disembarkation slip indicated that he did not carry any dutiable goods. The scanning machine indicated a the presence of a watch, on examination the officers recovered a "Rolex" brand watch model 'Yatch Master II' with the wordings 'Oyster Perpetual' embossed on the dial. On enquiry with the Applicant he replied he did not have the bill readily with him. The online value of the watch was ascertained to be Rs. 12,14,044/- (Rupees Twelve lakhs Fourteen thousand and Forty four).

3. The Original Adjudicating Authority vide Order-In-Original No. 92/2014-JC dated 31.12.2014 ordered confiscation of the impugned goods, but allowed redemption on payment of Rs. 2,50,000/- (Rupees Two lakhs Fifty thousand) as redemption fine and imposed penalty of Rs. 4,00,000/- (Rupees Four lakhs) on the Applicant under Section 112 (a) of the Customs Act, 1962. A penalty of Rs. 2,00,000/- (Rupees Two thousand) was also imposed under section 114AA of the Customs Act, 1962 on Applicant.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 204/2016 dated 16.03.2016 rejected the appeal of the Applicant.

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

5.1 The order of the Joint Commissioner of Customs, has not applied its mind while passing the order and is not justified imposing an exorbitant redemption fine of Rs.2,50,000/- and determining the value of the watch at Rs 12,14,044/-(Rupees Twelve Lakhs Forty four only) inspite of providing

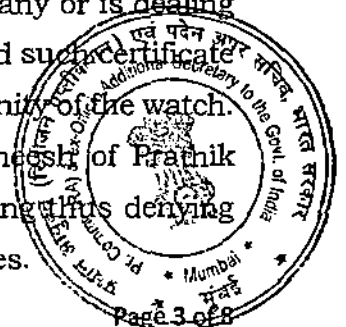


the bill of purchase for 22,000/- AED(Dirhams) dated 30-04-2013 which was nearly 10 months prior to the seizure.

5.2 The Respondent has lost sight of the fact that the appellant is a bonafide passenger with valid passport who has returned to India after a period of about 2 months and was legally entitled to bring his used wrist watch along with him, as the same is his personal effect. The legal provision enumerated by the respondent that the Baggage Rules 1998 as amended, provides that all passengers of and above 10 years of age and returning to India after stay abroad of more than three days shall be allowed clearance free of duty of articles in his bonafide baggage upto a value of Rupees 35000/- if these are carried on the person or in the accompanied baggage of the passenger is applicable to only those articles other than personal effects necessary for daily use.

5.3 In the present case the wrist watch seized is a second hand used watch which was in his personal use which is also substantiated by providing a purchase bill which clearly shows the said watch being purchased by the Appellant one year prior to the seizure. The copy of the said invoice is enclosed. Now the point for consideration is whether the seized watch is brand new watch or a used second hand watch. To prove that it is a second hand used watch the appellant has provided a purchase bill as mentioned in the statement of facts above. Whereas the respondent has not proved that the seized watch is a new watch.

5.4 The Respondent has further to build up the case against the Appellant has stated that the said watch had a plastic wrapping on the wrist strap which is absolutely false and if at all there is any such plastic wrapping on the wrist strap it has been done at the behest of the department with connivance of Mr. Latheesh of Prathik Square, who allegedly gave a genuinity report. However he has not mentioned in his report that it is a new watch nor has he mentioned in his report about any plastic wrapping. From the said report it cannot be found that the said "Prathik Square Rodeo drive Holdings Pvt Ltd" is any watch authenticating company or is dealing in such watches, so the credibility of the person who issued such certificate is doubtful, though there is no dispute regarding the genuinity of the watch. Further the respondent has failed to summon Mr. Latheesh of Prathik Square or any other witnesses during the personal hearing thus denying opportunity to the appellant to cross examine the witnesses.



5.5 The observation made by the Commissioner of Customs (Appeals) in para 5 of its order stating that the said watch cannot be considered as his personal effects because the Appellant was returning to India from Dubai where he was working as a blood sample collector with Dubai authorities and this job cannot give him a financial status to buy this watch is not correct. Infact the honorable Appellate authority has failed to observe that the Applicant had worked for 17 years in Dubai, which can easily give him the financial status to purchase a second hand watch worth 22000/ Dirhams.

5.6 The contention that the Appellant did not declare the watch is not correct as there is no requirement to declare used personal effects which is not dutiable, also the contention of the respondent that the watch was not discovered from the wrist of the passenger and was found in his bag makes no difference as the articles allowed free of duty as mentioned in the Baggage Rules 1998, Appendix A column (2) if these are carried on the person or in the accompanied baggage.

5.7 There is no requirement for such declaration as per baggage rules 1998 for used personal effects, and thereby holding the confiscation of watch by the adjudicating authority as legally sustainable is not correct.

5.8 The appellate authority has failed to look into the list of documents provided along with the appeal. The Appellant had already provided a copy of purchase bill with date and invoice number along with appeal before the adjudicating authority and also with the Commissioner of customs (Appeals). It is evident from the purchase bill come to a conclusion that the said watch is a second hand watch. There cannot be a more relevant proof than the purchase bill itself. Copy of the said bill is enclosed with this appeal for perusal. On the other hand the respondent has made no efforts to prove that the watch is a new one. The respondent has not recovered nor produced the packing box of the watch with seal to confirm that the said seized watch is a new unused watch.

5.9 The respondent has not stated any where as to on what basis or how it came to a conclusion that the said watch is a new one, inspite of producing the purchase bill for the same Thus the observation made in Para 7 of order- in- Appeal is not correct and deserves to be rejected.

5.10 With regard to competency of Shri Latheesh of M/s Prathik Square Mangalore, no opportunity was given to the Appellant to cross examine him.



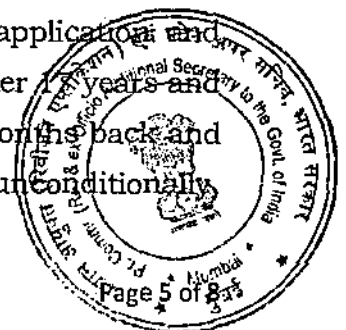
As already stated he has only given the genuineness report saying the said watch is genuine, the fact which even the appellant does not dispute. But he has nowhere in his report mentioned that it is a new watch.

5.11 Even though a bill of purchase is provided by the appellant, issued by M/s AL MANAR Diamonds, Dubai dated 13-04-2013 who deal in gold, watches and diamond jewellery its credibility is rejected for the vague reason that it is doubtful that a shop dealing in gold, watches and diamond jewellery would be selling second hand or used Rolex watches and the telephone numbers also do not tally which is utter false, and the respondent has deliberately rejected the credibility of the bill. It may be noted that AL MANAR Diamond, is not a Rolex Showroom or an exclusive dealer in particular brand of watches to sell only brand new watches. Therefore the contention of the Respondent cannot be justified.

5.12 In all the relied cases the Respondent has made wrong observation and has lost sight that in all those cases the watches seized and Confiscated were more than one or were in multiple quantity. So admittedly there is no case where a single watch is seized and confiscated. Further the customs at Mangalore has provided information under RTI Act 2005 that except this present case there is no other case of seizure and confiscation of single watch worth more than Rs.35000/- registered at Mangalore customs.

5.13 Hence It is humbly prayed that this Honorable Authority may be pleased to pass necessary order and so set aside the Order-in-Appeal and the Order passed by Joint Commissioner of Customs for determining the value of the seized Rolex watch at 12,14,044/- (Rupees Twelve lakhs fourteen thousand forty four only) price which was obtained from Internet for a new watch when there is a proper bill in that regard and for having imposed a) Redemption fine of Rs 2,50,000/- (Two lakhs fifty thousand only).

6. Personal hearings in the case was scheduled in the case on 26.03.2021. Shri Sameer Khashamji, Advocate attended the hearing on behalf of the Applicant. He reiterated the submissions already made in the revision application and submitted that his client came to India on permanent transfer after 17 years and the seized watch was his personal effect. It was purchased 10 months back and was worn by the Applicant. He requested to release the watch unconditionally. Nobody attended the hearing on behalf of the department.

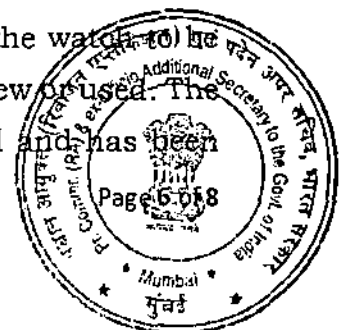


8. The Government has perused the case records carefully. It is observed that the Applicant had wrongly approached the Tribunal and the Tribunal vide its final order 21024/2016 dated 26.10.2016 has dismissed the case as not maintainable, and allowed the Applicant to approach the appropriate authority for seeking redressal. The delay in filing of this Revision Application is therefore condoned.

9. It is observed that the Applicant was intercepted by the officers after he had passed through the green channel. He had declared that he did not carry any dutiable goods. He was intercepted and his baggage examined which led to the recovery of a "Rolex" brand watch model 'Yatch Master II'. Though Government agrees with the Applicants contention that one wrist watch can be considered as personal effects, its value exceeds "free baggage allowance". A proper declaration as required under section 77 of the Customs Act, 1962 was therefore required to be submitted and therefore confiscation of the watch is sustained, and the Applicant is liable for penal action.

10. Government however notes that a single watch is under import, import of watches is not restricted or prohibited, and as per baggage rules can be considered as personal effects and can be considered as bonafide baggage. Further the watch was recovered from the Applicants baggage and it was not alleged to be ingeniously concealed. The ownership of the watch is not disputed and the Applicant is not a habitual offender and he has come to India on permanent transfer of residence after working in Dubai for the last 17 years. The Government therefore is inclined to agree with the Order-in-Original in allowing the watches on redemption fine and penalty.

11. The department has claimed that the impugned watch is new, which has been disputed by the Applicant. Government also observes that the Respondents have not recovered any original packing from the baggage of the Applicant. The order of the Original adjudicating authority in para 3 clearly states "*on examination the officers recovered a "Rolex" brand watch model "Yatch Master II with the wordings "Oyster Perpetual" embossed on the dial with a plastic wrapping on the wrist strap*" thus indicating that the impugned watch may not have been new as considered. The respondent have taken the services of Shri Lateesh of M/s Prathik Square, Mangaluru who has certified the watch to be genuine but he has not been tapped to ascertain whether it is new or used. The Applicant has consistently maintained that the watch is used and has been

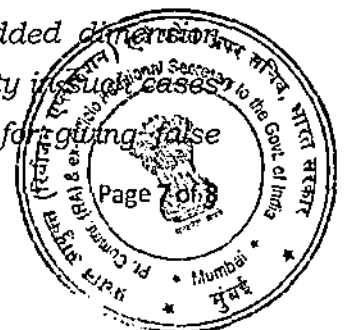


purchased as a used one. In defence of his claim he has submitted a bill for its purchase as a secondhand watch, but the authenticity of the bill is disputed without any investigations on the same. In view of the above facts, the Government would like to extend the benefit of doubt to the Applicants contention that the impugned watch is used and is therefore of the opinion that a more reasonable view can be taken in the matter.

12. However, the facts of the case state that the adjudication authority has relied upon internet prices for arriving at the value of the watch. Government notes that the Hon'ble Supreme Court in the case of M/s Aggarwal Distributors (P) Ltd. Vs Commissioner of Customs New Delhi reported in 2000(117) ELT 49 (Tribunal) has categorically stated that " Documents displayed on internet, being unsigned are not reliable and cannot be relied upon to calculate value". It is also observed that the higher valuation of the goods by the adjudication authority has led to imposition of higher redemption fine and penalty. The total of Redemption fine, Penalty under 112(a), 114AA and customs duties almost equals the value of the watch. In the case Hargovind Das K. Joshi v/s Collector of Customs reported in 1992 (61) E.L.T. 172 (S.C.),The Apex Court has pronounced that a quasi judicial authority must exercise discretionary powers in judicial and not arbitrary manner and remanded the case back for consideration.

13. In addressing the issue of penalty under section 114AA the observations of the Hon'ble High Court of Karnataka in the case of Khoday Industries Ltd. Vs UOI reported in 1986(23)ELT 337 (Kar), has held that "*Interpretation of taxing statutes - one of the accepted canons of Interpretation of taxing statutes is that the intention of the amendment be gathered from the objects and reasons which is a part of the amending Bill to the Finance Minister's speech*". The objective of introduction of Section 114AA in Customs Act as explained in para 63 of the report of the Standing Committee of Finance (2005-06) of the 14th Lok Sabha which states.....

"Section 114 provides for penalty for improper exports of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulations could escape penal action even when no goods were actually exported The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and forgoing false



statements, declaration, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to five times the value of the goods. A new Section 114AA is proposed to be inserted after Section 114A."

Thus, Penalty under Section 112 is imposable on a person who has made the goods liable for confiscation. But there could be situation where no goods ever cross the border. Since such situations were not covered for penalty under Section 112/114 of the Customs Act, 1962, Section 114AA was incorporated in the Customs Act by the Taxation Laws (Amendment) Act, 2006. Hence, once the penalty is imposed under Section 112(a), then there is no necessity for a separate penalty under section 114AA for the same act.

14. In view of the above, the redemption fine of Rs. 2,50,000/- (Rupees Two Lakhs Fifty thousand) is reduced to Rs. 1,00,000/- (Rupees One lakh.). The penalty of Rs. 4,00,000/- (Rupees Four lakhs) imposed under section 112(a) of the Customs Act, 1962 is reduced to Rs. 75,000/- (Rupees Seventy Five thousand). Government however observes that once penalty has been imposed under section 112(a) and (b) there is no necessity of imposing penalty under section 114AA, the penalty of Rs. 2,00,000/- (Rupees Two lakhs) imposed under section 114AA of the Customs Act,1962 is set aside.

15. The impugned Order is modified as above. Revision Application is partly allowed on above terms.

Shrawan
27/5/21
(SHRAWAN KUMAR)

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

ORDER No. 136/2021-CUS (WZ) /ASRA/

DATED 27.05.2021

To,

1. Shri Ataur Rahaman Askari, S/o Mohamed Hasan, 24, Shamiyana, Usman Nagar, Bhatkal, Karnataka-581 320.
2. The Commissioner of Customs (Airport),Mangalore International Airport, Kenjar Bajpe, Mangalore 574142.

ATTESTED

Copy to:

3. Shri Sameer Kashinji, Advocate, C-1, IInd Floor, Maximus Comercial Complex, Opp KMC, Lighthouse Hill Road, Hampan Katta, Mangalore 575 001. **अधीक्षक**
4. Sr. P.S. to AS (RA), Mumbai. **Superintendent**
5. Guard File. , **रिवीजन एप्लीकेशन**

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