REGISTERED

SPEED POST

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre – I, Cuffe Parade,

Mumbai-400 005

F.No. 371/45 & 46/B/16-RA / 4022 : Date of Issue : 22.09.2022

ORDER NO. 272-273 /2022-CUS (WZ)/ASRA/MUMBAI DATED 20.09.2022 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.

(i). F.No. 371/45/B/16-RA

Applicant : Shri. Mohamad Yusuf Usmanbhai Kalva

Respondent : Pr. Commissioner of Customs, CSI Airport, Mumbai

(ii). F.No. 371/46/B/16-RA

Applicant : Smt. Femidaben Yusufbhai Kalva

Respondent : Pr. Commissioner of Customs, CSI Airport, Mumbai

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-39 & 40/15-16 dated 17.04.2015 [DOI : 20.04.2015; S/49-902 & 903/2013 AP] passed by the Commissioner of Customs (Appeals), Mumbai - III.

ORDER

These revision applications have been filed by Shri. Mohamad Yusuf Usmanbhai Kalva & Smt. Femidaben Yusufbhai Kalva (herein after referred to as the Applicants or alternately as Applicant No. 1 [A1] and Applicant No. 2 A2], resp.) against the Order-In-Appeal No. MUM-CUSTM-PAX-APP-39 & 40/15-16 dated 17.04.2015 [DOI : 20.04.2015; S/49-902 & 903/2013 AP] passed by the Commissioner of Customs (Appeals), Mumbai – III.

2(a). Briefly stated the facts of the case are that the Applicants who had arrived on 26.10.2012 at the CSI Airport, Mumbai from Dubai onboard Emirates Flight No. EK 500, were intercepted by the Customs Officers. Applicant no. 1, besides a leather hand bag was carrying 6 checked-in baggages and Applicant no. 2 had been carrying 2 checked-in baggages. A scrutiny of their travel documents revealed that they had not filed any Customs declaration. To the query whether they were carrying any contraband or dutiable goods, both had replied in the negative. As their baggages were being taken up for examination, a message was received from Immigration Section that some passenger had forgotten packets at the Immigration counter and that these packets contained some wrist watches. CCTV footage was examined which had revealed that the applicants had left these packets. Applicant No. 1 disclosed that these packets contained 13 watches of Hublot brand and also handed over from his pocket a Rolex Oyster perpetual day-date watch. Examination of the all the bags carried by the applicants was conducted from which a total of 3750 grams of saffron contained in small packets of 25 gms, valued at Rs. 2,62,500/- were recovered. The 3 packets left at the Immigration counter were taken over and the same were examined. The same contained 13 wrist watches of Hublot brand alongwith 13 watch straps and 13 warranty cards. All the recovered goods namely, one Rolex wrist watch, 13 wrist watches of Hublot brand alongwith said accessories and

3750 grams of saffron, totally valued at Rs. 1,81,11,532/- were seized in the reasonable belief that the same was attempted to be smuggled into India and were liable for confiscation under the Customs Act, 1962.

2(b). The Applicant No. 1 admitted that the 13 Hublot watches with accessories had been carried by his wife i.e. applicant no. 2, in a yellow coloured waist band / belt and fearing being apprehended, had on his direction left the same at the Immigration Counter. He informed that the 13 watches were purchased by him for Rs. 60,00,000/- after getting discount of 40% on the market price of Rs. 1 crore. The applicant no. 1 admitted that he was a frequent traveller having travelled to various countries besides Dubai.

2(c). The 14 wrist watches were appraised by an expert valuer who certified that the watches were genuine and submitted a valuation report.

Sr. No.	**Description**	**Value as per panchanama in Rs. (LMV)**	**Value as per Valuer in Rs. LMV.**
1.	HUBLOT Big Bang Ferrari. No. 935909.	16,41,500/-	14,20,200/-
2.	HUBLOT Geneva 956597	6,10,000/-	6,10,000/-
3.	HUBLOT Big Bang Geneva 917972	7,50,000/-	6,58,000/-
4.	HUBLOT Big Bang Geneva 915913	7,50,000/-	7,58,000/-
5.	HUBLOT Geneva 956092	10,50,000/-	9,78,000/-
6.	HUBLOT Geneva 927837	6,50,000/-	6,65,000/-
7.	HUBLOT Big Bang Geneva 813112	18,50,000/-	19,81,000/-
8.	HUBLOT Geneva 954915	8,00,000/-	7,95,000/-
9.	HUBLOT Ferrari 935966	16,41,500/-	14,20,200/-
10.	HUBLOT Big Bang Geneva 916880	16,50,000/-	13,75,000/-
11.	HUBLOT Geneva 916596	16,50,000/-	13,75,000/-
12.	HUBLOT Big Bang Geneva 920285	16,75,000/-	16,50,000/-

13.	HUBLOT Big Bang Geneva 920251	16,75,000/-	16,38,000/-
14.	Rolex Oyster Day Date Perpetual.	14,56,032/-	20,45,000/-
	GRAND TOTAL	**1,78,49,032/-**	**1,73,68,400/-**

3. The Original Adjudicating Authority (OAA) viz Addl. Commissoner of Customs, CSMI Airport, Mumbai vide Order-In-Original No. ADC/ML/ADJN/29/2013-14 dated 30.10.2013 [(F.No. SD/INT/AIU/146/2012 AP SU-IV) (SD/14-04-1/2013-14 Adjn)] ordered confiscation of the 3.750 Kgs saffron valued at Rs. 2,62,500/- and 13 Hublot wrist watches and one Rolex wrist watch valued at Rs. 1,73,68,400/-, (Total of saffron and watches being Rs. 1,76,30,900/-) under Section 111(d), (l) and (m) of the Customs Act, 1962 and granted an option to redeem only the wrist watches on payment of redemption fine of Rs. 30,00,000/-. Personal penalty of Rs. 20,00,000/- and Rs. 2,00,000/- were imposed on Applicant Nos. 1 & 2 resp under Section 112(a) and (b) of the Customs Act, 1962. Further, a penalty of Rs, 10,000/- and Rs. 5000/- were imposed on Applicant Nos. 1 & 2 respectively under Section 114AA of the Customs Act, 1962.

4. Aggrieved by the said order, the applicants filed appeals before the appellate authority viz Commissioner of Customs (Appeals), Mumbai – III who vide Order-In-Appeal No. MUM-CUSTM-PAX-APP-39 & 40/15-16 dated 17.04.2015 [DOI : 20.04.2015; S/49-902 & 903/2013 AP] rejected the appeals of the Applicants.

5. Aggrieved with the above order, the Applicants have filed these revision applications on the following grounds;

5.01. the impugned order passed by the Respondent is bad in law and unjust.

5.02. that the impugned orders have been passed without giving due consideration to the documents on record and facts of the case.

5.03. that the Adjudicating authority ought to have appreciated that goods brought

in by the Applicant were neither restricted nor prohibited.

5.04. the Adj. authority ought to have appreciated that the goods seized by the customs authorities were not concealed in any manner whatsoever.

5.05. the Adjudicating authority ought to have appreciated that the Applicants were not aware of the Customs Rules and violation, if any, was of a technical nature and out of ignorance.

5.06. the Adjudicating Authority ought to have appreciated that it was for the first time that the Applicants had brought in the impugned goods.

5.07. the Adjudicating authority ought to have appreciated that the Customs Dept. had not taken into account the local market value to substantiate the margin of profit earned by them Therefore, imposing heavy fine and penalty, in the absence of margin of profit, was unjustified.

5.08. the Adjudicating authority ought to have appreciated that in similar types of cases, re-export had been allowed by various authorities including the honourable Supreme Court.

5.09. the Applicants submitted that the impugned order deserved to be set aside.

5.10. the Applicant relied on various viz

(a). Collector of Customs vs. Elephanta Oil and Inds. Ltd; 2003-(152)-ELT-0257-Supreme Court. The re-export goods had been granted even the goods were not declared, the Respondent have allowed re-export the goods the same not considered the Ld.

(b). Kusum Bhai Dayabhai Patel vs. Commr. Of Customs [1995(79) ELT 292 Tri-Mum].; Re-export allowed to foreign national with lower penalty.

(c). A.K Jewellers vs Commissioner of Customs Mumbar, 2003 (155) ELT. 585 (Tri-Larger Bench); Re-export of confiscated goods Order means that

goods are first to be redeemed upon payment of fine and thereafter exported .

(d). *Patel vs Commissioner of Customs 2003 (153) ELT 226 Tr.* By re-exporting the goods, the importer can avoid the payment of duty but not the fine in lieu of confiscation

(e). *MV Marketing and Supplies vs Commr. Of Customs (Import), Chennai, 2004 (178) ELT. 1034 (Tri-Chennai).* This citation has covered all the above citations in detail and approximately 31cases of similar nature.

(f). listed below are the cases wherein re-export has been granted by the Government of India, new Delhi

(i). In Revision order no 38/2008 in case of Mrs. Majeeda Mohammed Yonus.,
(ii). In Revision order no.178 /2008 in case Mr Ravinder Sadhuram.,
(iii). In Revision order no.33/2008 in case Shri Deepak Hiralal Parekh.,
(iv). In Revision order no.34/2008 in case Shri Pradeep Kumar Bhanwarlal.,
(v). In Revision order no 392/2002 in case Shri Nasir Asgar.

Under the said circumstances, the applicants have prayed that the impugned order may be set aside and goods may be allowed to be re-exported on terms and conditions as deemed fit and proper or pass such other and further orders as deemed fit and proper.

6. Personal hearings in the case were scheduled through the online video conferencing mode for 16.09.2021 / 23.09.2021, 21.10.2021 / 28.10.2021 and 02.12.2021. However, neither the Applicants nor their representative(s) attended the hearings. Also, none appeared for the respondent. Sufficient opportunities have been accorded to the applicants as well as the respondent to put forth their case. These two cases are being taken up for a decision on the basis of the evidence available on the records.

7. The Government has gone through the facts of the case including the case laws cited. The Applicants had been carrying lots of baggage and had been

intercepted by the Customs Officers near the exit gate after having passed through the green channel. They had not declared any dutiable goods to the Customs. To query about possession of dutiable goods, they had replied in the negative. Only when they were confronted about the packages found at the Immigration counter, they revealed that it contained many Hublot watches and that the same belonged to them. Fearing being apprehended, they admitted having left the packages at the Immigration Counter. The applicants had attempted to bring high-end expensive branded wrist watches and did not harbour any intention to declare the same and pay Customs duty. The applicant no. 1 had not declared the high-end Rolex watch kept in his pocket. Even the commercial quantity of saffron found in their baggages had not been declared. The quantity of the watches indicates that they were for commercial sale. Applicant No. 1 was a frequent traveller and was aware of the law. Also, the value of the 14 watches and the saffron indicates that the same was not bonafide baggage. The Applicant had not declared the watches and saffron to the Customs as required under section 77 of the Customs Act, 1962. The confiscation of the watches and saffron is therefore justified and the Applicant has rendered himself liable for penal action for his act of omission and commission.

8(a). Government observes that the applicants fearing being apprehended had abandoned the 13 Hublot wrist watches at the Immigration counter. They had not declared the Rolex wrist watch in their possession nor the saffron in commercial quantity found in their bags. The applicants were frequent travellers and had knowledge of the law. Their actions indicated that they did not intend to pay any Customs duty. Government finds that all these aspects have been properly considered by the OAA while confiscating the goods and by imposing appropriate redemption fine of nearly 17% of the value of the impugned goods

for releasing the the impugned goods. OAA had used his discretion under Section 125 of the Customs Act, 1962, judicially.

8(b). The option to allow redemption of the seized goods is the discretionary power of the adjudicating authority depending on the facts of each case and after examining the merits. The order of release of the wrist watches on payment of a redemption fine by the OAA has been upheld by the Appellate Authority. Government notes that the OIO passed by the OAA has been accepted by the respondent. In the absence of an appeal filed by the respondent before the AA against the OIO passed by the OAA, leads to the logical conclusion that the OIO would prevail as there are umpteen case laws where the High Courts and Apex Court have stated that the appellant cannot be put in a worse of situation than his current position.

8(c). Considering the value of the high-end wrist watches, Governments finds that the redemption fine of Rs. 30,00,000/- imposed by the OAA is reasonable, legal and proper and is not inclined to interfere in the same.

8(d). The issue that remains is the prayer of the applicants to allow the impugned goods to be re-exported. Considering that the bulk of the wrist watches had been abandoned by the applicants, Government observes that the prayer for re-export of the goods made by the Applicants is an afterthought and an attempt to get a favourable order and to cut their losses. Government therefore, is not inclined to accede to the prayer of the applicants for the re-export of the impugned goods.

9. Government notes that the personal penalty of Rs. 20,00,000/- and Rs. 2,00,000/- imposed on Applicant No. 1 and 2 resp., under Section 112 (a) and (b) of the Customs Act, 1962 by the original adjudicating authority is commensurate with the omissions and commissions committed and Government is not inclined to interfere in the same.

10. For the aforesaid reasons, Government rejects the prayer of the applicants for setting aside the OIO passed by the OAA. The Government upholds the OIO passed by the OAA wherein (i). the saffron has been confiscated with no option of redemption and (ii). the wrist watches have been confiscated with an option to redeem the same on payment of redemption fine of Rs. 30,00,000/-. Government finds that the quantum of penalties imposed on the applicants under Section 112(a) and (b) of the Customs Act, 1962 is appropriate and does not find it necessary to interfere in the same.

11. For the aforesaid reason, the two Revision Applications filed by the applicants are dismissed.

Shrawan 20/9/22

(SHRAWAN KUMAR)

Principal Commissioner & ex-officio

Additional Secretary to Government of India

ORDER NO.272-273 /2022-CUS (WZ)/ASRA/MUMBAI DATED 20.09.2022

To,

1. Shri. Mohamad Yusuf Usmanbhai Kalva,
   6th Floor, Room No. 603, Crystal Tower, 198, M.T Ansari Marg, Mumbai – 400 008.
2. Smt. Femidaben Yusufbhai Kalva,
   6th Floor, Room No. 603, Crystal Tower, 198, M.T Ansari Marg, Mumbai – 400 008.
3. The Pr. Commissioner of Customs, CSI Airport, Terminal – 2, Level-2, Andheri East, Mumbai – 400 099.
4.

Copy To,

1. Sr. P.S. to AS (RA), Mumbai.
2. Guard File.
3. File Copy.
4. Notice board.