



सत्यमेव जयते

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 373/282/B/14-RA / 3602

Date of Issue 29.02.2020

ORDER NO. 30/2020-CUS (SZ)/ASRA/MUMBAI DATED 21.04.2020 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 : Shri Lateef Mohamed Noor

Respondent : Commissioner of Customs, Bangalore.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 10/2014 CUS (B) dated 16.04.2014 passed by the Commissioner of Customs (Appeals), Bangalore.



FACTS OF THE CASE

This revision application has been filed by Shri Lateef Mohamed Noor (herein referred to as Applicant) against the order No. 10/2014 CUS (B) dated 16.04.2014 passed by the Commissioner of Customs (Appeals), Bangalore.

2. On receipt of intelligence the officers of DRI, Bangalore intercepted Shri Lateef Mohamed Noor at the Kempegowda International Airport, Bangalore on 17.04.2012. A detailed scrutiny resulted in recovery of 845 nos of watches, watch chains and watch spares totally valued at Rs. 42.25 lacs the watches were counterfeit and brought into India in violation of Intellectual property rights.

3. After due process of the law vide Order-In-Original No. 37/2013 dated 24.04.2013 the Original Adjudicating Authority ordered absolute confiscation of the impugned goods under Section 111 (d) (i) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 5,00,000/- (Rupees Five lacs) under Section 112 (a) and (b) of the Customs Act,1962. A penalty of Rs. 2,00,000/- (Rupees Two lacs) was also imposed under section 114AA of the Customs Act,1962.

4. Aggrieved by this order the applicant filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order No. 10/2014 CUS (B) dated 16.04.2014 rejected the appeal of the Applicant. Aggrieved with the above order the Applicant, has filed this revision application.

ARGUMENTS

5 The order of the Commissioner (Appeals) is opposed to facts and law and hence unsustainable; Throughout the SCN and the Order in Original the quantity of watches seized has been mentioned as 845 instead of 645; The Adjudicating authority has not considered the submissions made by the Applicant in the SCN; The actual quantity of the seized watches is 645 valued at Rs. 32.25 lacs; Out of the 11 brands seized verification of the watches have been conducted only on 6 brands and therefore the entire goods under seizure should be released; The value of imported goods cannot be fixed on the basis of similar goods in India, the Adjudicating authority has failed to take the data of contemporaneous import nor has made any market enquiry; The Order in original has been passed,

without going into the merits of the case;

mechanically accepting the value fixed by the DRI



- iii. without taking the value of contemporaneous import of similar goods.
- iv. without conducting market enquiry and find out the price of similar/identical goods in order to arrive at the nearest value of watches under seizure;
- v. without subjecting the goods for Technical opinion for valuation
- vi. without considering the decisions cited by the appellant in the reply the SCN.
- vii. without subjecting the seized watches to 100% examination by the Right holders after the seizure,
- viii. without subjecting the seized watches to thorough technical examination in order to find out the country of origin, nature of inputs used in the watches, etc.
- ix. The goods are not liable for confiscation;
- x. The Appellants are not liable for any penalty under Section 112(a, 114AA of the Customs Act 1962.

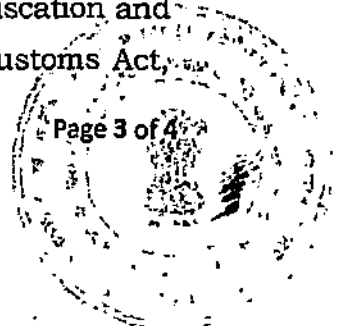
5.2 The Revision Applicants prayed for setting aside the order of penalty in the interest of justice and equity.

RECORD OF PERSONAL HEARING

6. A personal hearings in the case were scheduled on 19.06.2018, 28.08.2019 and 01.10.2019. However neither the Applicants nor the Respondents appeared for the hearing, therefore the case is being decided exparte on merits.

FINDINGS

7. The Government has gone through the facts of the case. In his Application the Applicant has dwelt on the issues of valuation and quantity. These aspects has been squarely addressed in the Appellate order and the Government does not feel the need to go into these aspects again. The discrepancies pointed out in the number of watches under seizure is also an obvious error. There is no however no dispute on the fact that the impugned watches were being smuggled in contravention of the Customs Act, 1962; There is no doubt that the watches were counterfeit and brought into India in violation of Intellectual Property Rights, the brand right holders have certified that the watches are counterfeit. The Applicant in his statement has also admitted that the watches are counterfeit and in commercial quantity; He has also admitted that he had brought watches clandestinely earlier without the payment of Customs duty. The above acts have therefore rendered the watches and the accessories for absolute confiscation and the Applicant liable for penal action under section 112 (a) of the Customs Act.



1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the goods absolutely and imposed penalty and the Appellate Authority has rightly upheld the order. The impugned Revision Application is therefore liable to be dismissed.

ORDER

9. The impugned Order in Appeal No. 10/2014 CUS (B) dated 16.04.2014 passed by the Commissioner of Customs (Appeals), Bangalore is upheld. Government however observes that once penalty has been imposed under section 112(a) there is no necessity of imposing penalty under section 114AA. The penalty of Rs. 2,00,000/- (Rupees Two lacs) imposed under section 114AA of the Customs Act,1962 is set aside.

10. Revision application is disposed of on above terms.

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

ORDER No. ~~30/2019~~ CUS (WZ) /ASRA/Mumbai DATED ~~21-04-2019~~

To,

Shri Lateef Mohammed Noor,
No. 76/1, 1st Cross, @nd Main,
Ranganatha Colony,
Jagjeevanram Colony,
Bangalore-560023.

ATTESTED

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

Copy to:

1. The Commissioner of Customs, Kempegowda International Airport, Bangalore.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.

