

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. 380/90/B/14-RA / 2013

Date of Issue 27.11.2018

ORDER NO. 719/2018-CUS (WZ) / ASRA / MUMBAI / DATED 18.09.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

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

Respondent : Shri Imran Munawar Merchant

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-666 & 667/2014-15 Dated 19.03.2014 passed by the Commissioner of Customs (Appeals), Mumbai - III.



ORDER

This revision application has been filed by Commissioner of Customs, Mumbai, (herein referred to as Applicant) against the Order in Appeal No. MUM-CUSTOM-PAX-APP-666 & 667/2014-15 Dated 19.03.2014 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. On 04.05.2012 the respondent arrived at the CSI Airport from Dubai. Examination of his person resulted in the recovery of two Rolex Oyster Perpetual Datejust Wrist watches totally valued at Rs. 10,08,900 /- (Rupees Ten lakhs Eight thousand Nine hundred). The wrist watches were worn on the right and left hand by the passenger.

3. After due process of the law vide Order-In-Original No. ADC/AS/ADJN/101/2012-13 dated 13.03.2013 the Original Adjudicating Authority ordered confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962 and allowed redemption on payment of Rs. 2,25,000/- under section 125 of the Customs Act,1962 and imposed penalty of Rs. 1,50,000/- under Section 112 (a) of the Customs Act,1962. A penalty of Rs. 25,000/- under Section 114AA was also imposed on the respondent.

4. Aggrieved by the said order, the respondent filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal MUM-CUSTOM-PAX-APP-666 & 667/2014-15 Dated 19.03.2014, allowed re-export reduced the redemption fine of Rs. 2,25,000/- to Rs. 1,50,000/- , and also reduced the penalty to Rs. 75,000/- and partly allowed the appeal of the respondent.

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

5.1 The Order of the Commissioner (Appeals) is neither legal nor proper; In the instant case the passenger was found in possession of two Rolex watches had opted for the green channel without declaring the above said items; The concealment was admitted to by the respondent in his statement recorded after the seizure; The passenger failed to make a declaration as required under section 77 of the Customs Act,1962, thus rendering the goods as prohibited goods; The Respondent did not declare the goods on his own and the subject goods were detected only after he was physically examined; These circumstances were not at all considered by the Appellate authority while ordering re-export of the goods; The same should not have been allowed without pointing out any legal infirmity in the order in original; The order of the adjudicating authority has also reduced the redemption fine and



penalty and waived customs duty by allowing re-export; This may also act as an impetus for making another attempt to smuggle these goods into India.

5.2 The Revision Applicant cited decisions in favor of their case and prayed for setting aside the order of the Appellate authority and the order to re-export may be allowed only after exercising the option to redeem the goods on payment of fine, penalty and appropriate duty.

6. In view of the above, the Respondent and his Advocate was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and accordingly a personal hearing in the case was scheduled held on 17.05.2018, 16.08.2018 and 11.09.2018. However, neither the Respondent nor his advocate attended the said hearing. The case is therefore being decided ex parte on merits.

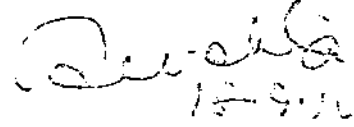
7. The Government has gone through the case records it is observed that the watches were worn by the Applicant and it does not appear to have been indigenously concealed. Import of watches restricted or prohibited. The Government therefore is inclined to agree with the Order-in-Original in allowing the watches on redemption fine and penalty. Government however notes that the Appellate authority has allowed re-export and reduced redemption fine and penalty which is contested by the applicant. The Government notes that the Appellate authority has justified the same as the valuation of the watches was based on unjustified internet prices. Secondly re-export has been allowed as the respondent is based abroad. The Government therefore does not disagree with these contentions of the Appellate order, however the redemption fine and penalty should be commensurate to the offence committed so as to dissuade such acts in future. The Respondent had concealed the watches and though it was not concealed ingeniously, he did not declare it as required under section 77 of the Customs Act, 1962 and therefore the redemption fine and penalties cannot be as low as ordered in the order in Appeal. The impugned Order in Appeal therefore needs to be modified. Government also holds that no penalty is imposable under section 114AA of the Customs Act, 1962 as this provision is not attracted in baggage cases. The penalty under 114AA of the Customs Act, 1962 therefore needs to be set aside.

9. The impugned Order in Appeal is therefore set aside. The Government allows redemption of the watches valued at Rs. 10,08,900/- (Rupees Ten lakhs Eight thousand Nine hundred) for re-export on payment of redemption fine of Rs. 1,25,000/- (Rupees One lakh Twenty Five thousand) under section 125 of the Customs Act, 1962. A penalty of Rs 50,000/- (Rupees Fifty Thousand) is imposed under section 112(a) of the Customs Act, 1962. The penalty of Rs. 25,000/- (Rupees Twenty Five thousand) imposed under



section 114AA of the Customs Act,1962 in the Order-In-Original issued by the Original Adjudicating Authority has been incorrectly imposed, the same is therefore set aside.

10. Revision application is partly allowed on above terms.
11. So, ordered.



(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 719/2018-CUS (WZ) /ASRA/MUMBAI

DATED 18.09.2018

To,

1. The Principal Commissioner of Customs (Airport),
Chatrapati Shivaji International Airport,
Terminal -2, Mumbai.
2. Shri Imran Munawar Merchant
Al-Raza Co-operative Housing Society,
14th Floor, Flat No. 1401,
60, Cyrus Avenue Road,
Agripada, Mumbai- 400 008.

ATTESTED


27.11.18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

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

