

REGISTEREDSPEED POST

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,

Mumbai-400 005

F.No. 380/46/B/14-RA

Recd

Date of Issue

20/11/2018

ORDER NO. <sup>786</sup>/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.09.2018  
 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 : Commissioner of Customs (Airport), Chennai

Respondent : Shri Ankit Narendra Vasa & Shri Narendra Vasa Maneklal

Subject : Revision Application filed, under Section 129DD of the  
 Customs Act, 1962 against the Order-in-Appeal C. Cus. No.  
 1799 & 1800/2013 dated 05.12.2013 passed by the  
 Commissioner of Customs (Appeals), Chennai.



## ORDER

This revision application has been filed by Commissioner of Customs, Chennai, (herein referred to as Applicant) against the Order in Appeal No. 1799 & 1800/2013 dated 05.12.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case is that the Respondents, arrived at the Chennai Airport on 09.04.2013. Examination of their baggage and person resulted in the recovery of three high end branded watches of "Romain Jerome" "Bvlgari" and "Hublot". The Respondents admitted that they had brought the watches for someone else and not for their personal use.

3. After due process of the law vide Order-In-Original No. 679/2013 dated 20.09.2013 the Original Adjudicating Authority ordered absolute confiscation of two of the watches of brand "Romain Jerome" and "Hublot" under Section 111 (d) (l) and (m) of the Customs Act, 1962. As the third watch of brand "Bvlgari" was purchased locally in India the same was released without any duty or fine. A penalty of Rs. 40,000/-each was also imposed under Section 112 (a) of the Customs Act, 1962 on both the respondents.

4. Aggrieved by the said order, the respondent and the Applicant filed an appeal before the Commissioner (Appeals) who vide Order-In-Appeal 1799 & 1800/2013 dated 05.12.2013 set aside the absolute confiscation and allowed redemption of the watches on payment of redemption fine of Rs. 80,000/- and personal penalty was reduced to Rs. 10,000/- on each of the Respondents.

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

5.1 The order of the Commissioner (Appeals) in granting the concession of redemption inspite of the passengers acting as carrier overlooks the law set by the Hon'ble High Court of Mumbai in UOI vs Mohamed Aijaj Ahmed in WP 1901/2003 reported in 2009(244) ELT 49(BOM); In the instant case bot the respondents had admitted that they brought the watches for someone else and the payment for both these watches were made by him; The facts of the case relied upon by the Appellate authority are different



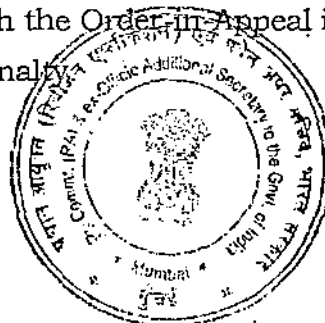
from the impugned case; Absolute confiscation is upheld in a number of similar cases; The case of UOI vs Mohamed Aijaj Ahmed was upheld by the supreme Court in its decision reported in 2010 (253) ELT E83(SC).

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 absolute confiscation or any such order as deem fit.

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 16.07.2018, 20.08.2018 and 10.09.2018. However, neither the Respondent nor his advocate replied to the Show Cause Notice or attended the said hearing. The case is therefore being decided exparte on merits

7. it is observed that though the watches were worn by the Respondents they were not declared by the Respondent and therefore the confiscation of the gold is justified. However, the watches were not indigenously concealed. Import of watches is not restricted or prohibited, There are no instances of any previous offences recorded against the Respondents. The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record to the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant. The absolute confiscation in such cases appears to be a harsh option and not justified.

8. Further, There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. In view of the above facts, the Government is of the opinion that absolute confiscation of the goods is harsh and unjustified and therefore a lenient view can be taken in the matter. The Government therefore is inclined to agree with the Order in Appeal in allowing the goods on redemption fine and reduced penalty.



8. Government is of the opinion that the redemption fine and penalties imposed by the Order in Appeal to be appropriate and therefore the impugned Order in Appeal therefore needs to be upheld and the Revision Application is liable to be dismissed .

9. The Government therefore upholds the order of the Commissioner (Appeals) 1799 & 1800/2013 dated 05.12.2013. Revision application is accordingly dismissed.

10. So, ordered.

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

ORDER No. <sup>786</sup>/2018-CUS (SZ) /ASRA/MUMBAI DATED 28.09.2018

To,

1. The Principal Commissioner of Customs (Airport),  
New Custom House,  
Menambakkam Road,  
Chennai-27.

2. Shri Ankit Narendra Vasa  
3. Shri Narendra Vasa Maneklal  
3-C, Stone Arch building,  
No. 1, Waddels Road,  
Kilpauk,  
Chennai 600 010.

**ATTESTED**

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

Copy to:

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

