

REGISTERED  
SPEED 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

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F.No. 371/154/B/WZ/2022-RA | 8402 : Date of Issue : 15.12.2023

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ORDER NO. 910/2023-CUS (WZ)/ASRA/MUMBAI DATED 13.12.2023 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.

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Applicant : Mr. Ram Hemandas Punjwani

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-CUSTOM-PAX-APP-1583/2021-22 dated 31.01.2022 [Date of issue: 03.02.2022] [F. No. S/49-1169/2020] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

**ORDER**

The Revision Application has been filed by Mr. Ram Hemandas Punjwani (herein referred to as the 'Applicant') against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1583/2021-22 dated 31.01.2022 [Date of issue: 03.02.2022] [F. No. S/49-1169/2020] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. Brief facts of the case are that on 18.05.2019, the officers of Air Customs, Chatrapati Shivaji International Airport, Mumbai, intercepted the Applicant, an Indian passport holder, who had arrived from Dubai by Indigo Flight No. 6E-1342 after he had cleared himself through the Customs green channel. The officers recovered an "AUDEMARS PIGUET" brand watch from his possession and detained the same for valuation.

3. The detained watch was withdrawn and examined by Time Value, independent valuers and the said "AUDEMARS PIGUET" watch No 154510R.ZZ.12560R.01 bearing Sr. No #K10643 was valued at Rs. 37,62,000/-. Subsequently the said "AUDEMARS PIGUET" was seized under the reasonable belief that the same was smuggled into India and hence liable for confiscation under the provisions of the Customs Act, 1962.

4. The Applicant in his stated interalia submitted that the seized watch was a gift from his niece who has settled in Dubai and is in the real estate business in Dubai; that travelling was his hobby and he arranged all the expenses from his account; that he submitted the copies of the Income tax returns but failed to submit the purchase invoice of the seized watch.

5. After following the due process of law, the Original Adjudicating Authority (OAA) i.e. Additional Commissioner of Customs, Batch, CSI Airport, Mumbai, vide Order-in-Original No. ADC/SKR/ADJN/102/2020-21 dated 11.09.2020 [Date of issue: 15.09.2020] ordered the absolute confiscation of the impugned "AUDEMARS



FIGUET" watch, valued at Rs.37,62,000/- under Section 111 (d) of the Customs Act, 1962. A penalty of Rs. 3,70,000/- was imposed on the Applicant under Section 112 (a)(i) of the Customs Act, 1962.

6. Aggrieved with this Order, the Applicant filed an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai Zone-III who vide Order-in-Appeal No MUM-CUSTM-PAX-APP-1583/2021-22 dated 31.01.2022 [Date of issue: 03.02.2022] [F. No. S/49-1169/2020] upheld the order passed by the OAA.

7. Aggrieved with the above order of the Appellate Authority, the Applicant has filed this revision application on the following grounds:

7.01. That the watch was gifted to him by his niece while he was in Dubai and that when it was recovered from him it was without its original packing and he was under the bonafide belief that the watch being a gift and not for sale and therefore not dutiable and the non-declaration of the watch was not with an intention to evade payment of duty;

7.02. That the explanation given by the Applicant during investigation that he was ignorant of the provisions of the Act and he was under bonafide belief the he was not violating any provisions of the Act by carrying the watch is sustainable. The Applicant has relied on the judgement in the case of Motilal Padampat Sugar Mills Co, Ltd vs. State of Uttar Pradesh;

7.03. In order to fix criminal liability of a person it is insufficient if mens rea is not proved and in the instant case, mens rea of the Applicant is not discussed anywhere;

7.04. That even though goods bearing foreign markings were seized under the Customs Act, 1962, Section 123 of the Act is not attracted in this case in the circumstances of the case as there is no evidence sufficient to presume that the accused had smuggled or imported the goods in contravention of the law;

7.05. That the proposal for confiscation of the goods and imposition of penalty in the absence of proof of the requisite mens rea is unsustainable. The Applicant has relied on the following case laws in support of his contention

(i) Merck Spares vs. Collector of Central Excise [1983 ECR D Tri Delhi]

(ii) Order of the Hon'ble Supreme Court in the case of Gurcharan Singh vs. the State of Punjab

7.06. That the Applicant was wearing the watch and did not adopt any ingenious method for concealing the watch and was not a habitual offenders and the nature and scope of habitual offenders vary but generally they apply when a person has been convicted twice for various crimes which is not so in the instant case and thus the watch may be released on payment of reasonable fine and penalty and further proceedings against him may be dropped;

7.07. That under the doctrine of stare decisis, a lower court should honour findings of law made by the higher court that is within the appeals path of case the court hears and precedent is a legal principle or rule that is created by a court decision. This decision becomes an example, or authority for judges deciding similar issues later. That while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Applicant has relied on the following case laws in support of their contention:

- (i) CCE, Calcutta vs. Alnoori Tobacco Products [2004(170) ELT 135 (SC)]
- (ii) Escorts Ltd vs. CCE, Delhi [2004 (173) ELT 113 (SC)]
- (iii) CC (Port), Chennai vs. Toyota Kirloskar [2007 (213) ELT 4 (SC)]
- (iv) Sri Kumar Agency vs. CCE, Bangalore [2008 (232) E.L.T. 577 (S.C.)]

7.08. That there is no discussion in the impugned OIA as to how the ratio of the case of P. Sinnasamy relied upon by the AA fits in the case of the Applicant and the AA and the OAA failed to follow consistency in deciding the cases with similar facts.

7.09. That it would be inconsistent to treat persons differently and that if a legal system is morally legitimate and has authority over those subject to it, then it is inconsistent for one person to be treated less or more favorably by the law than another person whose situation is legally indistinguishable;

7.10. That a later case should be treated differently to an earlier case when the law has been changed and thus concerns of consistency provide some justification for treating earlier decisions as sources of law, rather than approaching each question anew when it arises again;



7.11. That an indistinguishable precedent must be followed unless the court has the power to overrule the earlier decision and does so. The Applicant has relied upon the following case laws in support of his contention:

- (i) Shaik Jamal Basha vs. Government of India [1992 (91) ELT 227(AP)]
- (ii) Mohamed Ahmed Manu vs. CC, Chennai [2006(205) E.L.T 383(Tri-Chennai)].
- (iii) Rajaram Bohr vs. UOI [2015(322) E.L.T 337 (Cal)]
- (iv) Mohd Zia Ul Haque vs. Addl. Commissioner of Customs, Hyderabad [2014(214) E.L.T 849 (GOI)]
- (v) UOI vs. Rahubir Singh [AIR 1989 SC 1933]
- (vi) CIT vs. M/s Sun Engineering Works Pvt Ltd [AIR 1993 SC 43]
- (vii) Megh Singh vs. State of Punjab [AIR 2003 SC 3184]
- (viii) Suganthi Suresh Kumar vs Jagdeeshan [(2002)2 SCC 420]

7.12. That in the instant case the watch was gifted by his niece and was not imported for any commercial purpose and there is a very significant distinction between a man who is importing goods for making huge profits and a man who is importing of personal use. Thus the penalty imposed on the Applicant is disproportionate to the value of the watch imported by him and the imposition of heavy penalty on the Applicant is not sustainable;

7.13. That the course of action taken by the OAA must depend on the gravity and nature of the infraction by the individual Applicant and thus punishment must be proportional to the violation. The Applicants' has relied upon the following cases:

- (i) UOI vs. Mustafa & Najibhai Trading [1998(6 SCC 79]
- (ii) Management of Coimbatore DCC Bank vs. Secretary Coimbatore District Co-op Bank Employees Association [(2007) 4 SCC 669]
- (iii) Commissioner of Customs, Tuticorin vs. Sai Copiers [2008(226) ELT 486(Mad)]
- (iv) Commissioner of Customs(Import) vs. Shankar Trading Co [2008(224) ELT 206(Bom)]
- (v) CC, Tuticorin vs. Shri Kamakshi Enterprises [2009(238) ELT 242(Mad)]
- (vi) Maa Tara Enterprises vs. CC Cochin [2009(243) ELT 730 Tri-Bang]
- (vii) Commr. of Customs, Cochin vs. Dilip Ghelani [2009(248) ELT (Tri-LB)]

- (viii) New Copier Syndicate vs. Commr. of Customs [2015(232) ELT 620(Tri-Bang)]
- (ix) Omex International vs. Commr. of Customs , new Delhi [2015(228) ELT (Tri-Del)]
- (x) Office Devices vs. Commr. of Customs, Cochin [2016-TIOL-2557-CESTAT-BANG]
- (xi) Sai International and ors vs. CC, Cochin.

7.14. That wrist watch is not an item prohibited for import and the Applicant claims ownership and redemption of the watch under absolute confiscation and it was not his intention to not declare the watch and clear it without payment of duty but he committed the mistake only out of ignorance of the customs law;

7.15. That watch is a restricted item and consequently the person from whom it is recovered or the owner of the goods is entitled for release of the seized material under Section 125 of the Customs Act, 1962 and the Applicant is entitled to an opportunity for redeeming the watch on payment of applicable duty;

7.16. That under Section 125 of the Customs Act, 1962, discretion has been conferred on the OAA to give an option to the importer/owner of the goods to pay fine in lieu of confiscation in cases of goods, the importation or exportation whereof is prohibited under the Act or under any other law for the time being in force but in respect of other goods the officer is obliged to give such an option. The Applicant has relied upon the following case laws in support of their contention:

- (i) CC (Prev) vs. Uma Shakar Verma
- (ii) Gauri Enterprises vs. CC Pune [2002(145) E.L.T 706 (Tri. Bang)]
- (iii) Commr. Of Customs (Prev) vs. India Sales International [2009 (241) E.L.T. 182(Cal)].
- (iv) Horizon Ferro Alloys Pvt Ltd vs. UOI –judgement by the Division Bench of Punjab and Haryana High Court
- (v) CC (Airport), Mumbai vs. Alfred Menezes [2009 (242) ELT 334 (Bom)]
- (vi) Yakub Ibrahim Yusuf vs. CC, Mumbai [2011 (263) E.L.T. 685 (Tri. Mumbai)]
- (vii) In Neyveli Lignite Cor Ltd vs. UOI [2009 (242) E.L.T. 487 (Mad.)]
- (viii) Global Marine Agencies vs CC (Prev) Jaipur [2012(9) TMI 679]
- (ix) UOI vs. Madras Steel Re-rollers Association [2012(8) TMI 788 (SC)]



(x) Rajaram Bohr vs UOI [2015(322) E.L.T 337(Cal)]

7.17. That under Section 125 of the Customs Act, 1962, unless the importation or exportation of goods is expressly 'prohibited', the Adjudicating Authority would be obliged to offer to the owner of the goods an option to pay fine in lieu of confiscation;

7.18. That it was a single and solitary incident of alleged act of smuggling of goods which can never be justifiable ground for absolute confiscation of the watch;

7.19. That the Applicant is a law abiding citizen/businessman and has never come under adverse remarks and is never involved in any case of smuggling and he merely committed the mistake of not declaring the watch unintentionally in a bonafide belief that the watch being a gift to him it was not dutiable;

7.20. That the watch is in the custody and storage of Customs warehouse for 2 years and 5 months and storing a watch improperly can cause damage to the watch and keeping the watch in extreme heat or cold can cause damage to the movement and gaskets and quick transfer from excessive hot and cold temperatures can cause parts to expand and contract and this can lead to water vapour entering the dial movement and causing damage and heat can dry out the lubricant or cause it to congeal, creating friction on the gears;

7.21. That Speedy justice is a recognized fundamental right of a citizen and right to speedy justice is guaranteed under Article 21 of the Constitution of India. The applicant has relied on the following case laws in support of his contention;

- (i) Animesh Chandra Sengupta vs, State of West Bengal [2004(2) CHN 217]
- (ii) Ranjit Kumar Pal vs State [1990 Cr. LJ 643]
- (iii) Decision of the Calcutta High Court in the case of Dilip Kumar Mukherjee vs. CBI
- (iv) A.R.Antulay vs R.S.Nayak [1992 SCC 225]

7.22. That as per Schedule 3 to notification No. 31/86-Customs dated 05.02.1986 as amended, wrist watches including electronic wrist watches; watch movements, parts or components thereof have been included as goods of perishable nature, depreciation in the value in the passage of time, and therefore, the same can be disposed of in such a manner as the Central Government may specify from time to time.

Under the circumstances, the Applicant prayed for the release of the watch on payment of reasonable fine, penalty and applicable duty.

8. Personal hearing in the case was scheduled for 05.10.2023 or 12.10.2023. Shri Prakash Shingrani, Advocate for the Applicant, appeared for the hearing on 05.10.2023 on behalf of the Applicant. He submitted that the Applicant brought one watch for personal purpose, which was gifted to the Applicant. He further submitted that the Applicant was wearing the same and thus there was no concealment. He requested to allow redemption of the watch unconditionally. No one appeared for the personal hearing on behalf of the Respondent.

9. The Advocate for the Applicant, vide letter dated 04.12.2023, made additional submissions claiming abatement of 35% of the value of watch as the investigating agency had valued the watch based on MRP. The gist of the additional submissions are as under:

9.1. That Section 2(41) of the Customs Act, 1962 defines 'Value' in relation to any goods to mean the value thereof determined in accordance with the provisions of sub-section (1) of Section 14 thereof. Sub-section (1) of Section 14, in turn, states that when a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale. The provisions of sub-section (1) of Section 14 follow the provisions contained in Article VII of GATT. The Customs Valuation Rules, closely follow the WTO Customs Valuation Agreement to implement Article VII of GATT. The methods of valuation prescribed therein are of a hierarchical order;

9.2. That no acceptable and valid legal procedure was followed in the matter of valuation of the watch. The watch was valued at Rs 37,62,000/- and that Customs



Valuation Law contemplates valuation of goods based on the transaction value and that position is the same irrespective of whether the goods under import are new goods or used goods and thus a valuation made based on an incorrect assumption i.e MRP cannot be accepted;

9.3. That the said wrist watch was brought for personal use and was valued on MRP which included all the taxes, freight, transportation charges, commission payable to dealer, advertisement charges, delivery and packaging charges etc which was not acceptable when the watch is assessed on the basis of MRP, abatement as specified under Appendix V of Customs Tariff is to be allowed and the Applicant was eligible for abatement of 35% on the value ie Rs 37,62,000/-;

9.4. That branded watches are universally sold on Retail Sale Price. "Retail Sale Price" means the maximum price at which goods in packaged form may be sold to the ultimate consumer and includes the taxes, local or otherwise, freight, transport charges, commission payable to dealers and all the charges towards advertisement, delivery, packing, forwarding and the like as the case may be and the price is the sole consideration for sale. If the MRP is taken into consideration for the purpose of customs valuation, it would result in loading of the value of the watch unreasonably high. Therefore, when goods are assessed on the basis of MRP, abatement as specified under Appendix-V to the Customs tariff should be allowed;

9.5. That an assessment of the watch under MRP would illegally increase the cost of the watch and squarely causes loss to the importer and if duty is levied on the basis of the MRP it would amount to double taxation which would further cause huge loss to the Applicant since any duty or penal liability would be based on the value of the goods assessed. Therefore, the Applicant prayed that they were eligible for an abatement of 35% on the MRP of the watch i.e Rs 13,16,700/-, as per Notification No. 2/2006-C.E. (N.T.), dated 01.03.2006 and after abatement, the value of the watch would be only Rs 24,45,300/- and this value should be taken into consideration for all Customs purpose i.e for payment of duty, imposition of fine and penalty;

9.6. The Applicant has relied upon the case of Hatim Khuzema Kothari and another vs. Pr. Commissioner of Customs, CSI Airport, Mumbai wherein the AA vide Order-in-Appeal no MUM-CUSTOM-PAX-APP-10 & 11/2021-22 dated 9-4-2021 passed by Commissioner of Customs (Appeals). Zone-III allowed an abatement of 35% on the MRP of a watch.

10. The Government has gone through the facts of the case and observes that the Applicant had brought a "AUDEMARS PIGUET" watch No 154510R.ZZ.12560R.01 bearing Sr. No #K10643, valued at Rs. 37,62,000/- and had failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. The Applicant had not disclosed that he was carrying dutiable goods. However, after clearing himself through the green channel of Customs and after being intercepted, the impugned "AUDEMARS PIGUET" watch No 154510R.ZZ.12560R.01 bearing Sr. No #K10643 valued at Rs. 37,62,000/- was recovered from the Applicant. The non declaration of the impugned watch by the Applicant revealed his intention not to declare the said watch and thereby evade payment of Customs Duty. The confiscation of the watch was therefore justified and thus the Applicant had rendered himself liable for penal action.

11.1. The relevant sections of the Customs Act are reproduced below :

**Section 2(33)**

*"prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with"*

**Section 125**

*"Option to pay fine in lieu of confiscation. - (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit :*

*Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions*



*of this section shall not apply :*

*Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.*

*(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.*

*(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.”*

11.2. It is undisputed that the impugned watch was neither the personal effect of the Applicant nor was the value of the impugned watch within the prescribed value of articles allowed to be carried on the person of the Applicant as per Rule 3 of the Baggage Rules, 2016 relevant notification in that regard. Thus it was mandatory on the part of the Applicant to make a declaration of the impugned watch, before the Customs, but having failed to do so, there was a violation of Section 77 of the Customs Act, 1962 as well as provisions of FTP, and hence the impugned watch was liable for confiscation under Section 111(d) of the Customs Act, 1962.

12. Be that as it may, despite the goods being held as liable for confiscation, Section 125 of the Customs Act, 1962 provides for discretion to consider release of goods on payment of redemption fine. A plain reading of the section 125 shows that the Adjudicating Authority is bound to give an option of redemption when goods are not subjected to any prohibition. In case of prohibited goods, the Adjudicating Authority has been vested with discretion to decide the issue on the basis of the facts and circumstances of the case and may allow redemption. There is no bar on the Adjudicating Authority allowing redemption of prohibited goods. This exercise of discretion will depend on the nature of the goods and the nature of the prohibition. For instance, spurious drugs, arms, ammunition, hazardous goods, contaminated flora or fauna, food which does not meet the food safety standards, etc. are harmful to the society if allowed to find their way into the domestic market. On the other hand, release of certain goods on redemption fine, even though the same becomes prohibited

as conditions of import have not been satisfied, may not be harmful to the society at large.

13. Hon'ble Supreme Court in case of M/s. Raj Grow Impex [CIVIL APPEAL NO(s). 2217-2218 of 2021 Arising out of SLP(C) Nos. 14633-14634 of 2020 – Order dated 17.06.2021] has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below.

*“71. Thus, when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.*

*71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.”*

14.1. Government further observes that there are a catena of judgements, over a period of time, of the Hon'ble Courts and other forums which have been categorical in the view that grant of the option of redemption under Section 125 of the Customs Act, 1962 can be exercised in the interest of justice. Government places reliance on some of the judgements as under:

- (i) Commissioner of Customs, Aliganj, Lucknow vs. Rajesh Jhamatmal Bhat, [2022(382) E.L.T. 345 (All)]
- (ii) Shaik Mastani Bi vs. Principal Commissioner of Customs, Chennai-I [2017(345) E.L.T. 201 (Mad)]
- (iii) R. Mohandas vs. Commissioner of Cochin [2016(336) E.L.T, 399 (Ker.)]
- (iv) Union of India vs Dhanak M Ramji [2010(252)E.L.T. A102(S.C)]



- (v) Judgement dated 17.02.2022 passed by the Hon'ble High Court, Rajasthan (Jaipur Bench) in D.B. Civil Writ Petition no. 12001 / 2020, in the case of Manoj Kumar Sharma vs. UOI and others.

14.2. Government, observing that though the above judicial pronouncements pertain to gold/gold jewellery, the application of the ratios of the above judicial pronouncements to the instant case, is appropriate to arrive at the conclusion that decision to grant the option of redemption would be an action in the interest of justice, considering the facts and circumstances of the instant case. Also Government opines that the impugned watch does not fall in the category of goods that would be harmful to the society if allowed to find their way into the domestic market.

15. In view of the foregoing paras, the Government finds that as the Applicant had not declared the impugned solitary "AUDEMARS PIGUET" watch at the time of arrival, the confiscation of the same was justified. However, the impugned watch was worn by the Applicant was not concealed in an ingenious manner. The claim of the Applicant to have been gifted to him by a financially strong close relative has not been negated by the Respondent. There are no allegations that the Applicant is a habitual offender and was involved in similar offence earlier or there is nothing on record to prove that the Applicant was part of an organized smuggling syndicate.

16. Government finds that this is a case of non-declaration rather than a case of smuggling of commercial considerations and the absolute confiscation of the impugned "AUDEMARS PIGUET" watch, leading to dispossession of the Applicant of the impugned "AUDEMARS PIGUET" watch in the instant case is therefore harsh and not reasonable. In view of the aforesaid facts the option of release of the watch on payment of redemption fine should have been allowed. Considering the above facts, Government is inclined to modify the absolute confiscation and allow the impugned "AUDEMARS PIGUET" watch to be released on payment of a redemption fine.

17. Further Government observes that the Applicant in his additional submissions has prayed that the value of the watch be arrived at after allowing for abatement of 35% on the MRP, as Section 14 the Customs Valuation Rules contemplates valuation of goods on transaction value and not on the Maximum Retail Price. Government notes that, in the instant case, the impugned watch, having been valued by a local valuer, the value of the impugned watch was the MRP and included the customs duty component, wholesale and retail margins and other related expenses like transportation charges, dealer commission, packing charges etc. Government is in agreement with the contention of the Applicant that appropriate abatement is to be allowed. The Applicant has claimed eligibility of an abatement of 35% on the MRP, in terms of Notification No. 02/2006-CE(NT) dated 01.03.2006. However Government notes that the said notification has been superceded by Notification No 14/2008-CE (N.T) dated 01.03.2008, which has been superceded by Notification No. 49/2008-CE (N.T) dated 24.12.2008, under which an abatement of 30% on RSP has been allowed on 'All goods, other than braille watches', falling under CSH 9101 or 9102. In view of the above discussion, Government is inclined to permit an abatement of 30% of the MRP, which is also the seizure value, in the instant case.

18. The Applicant, in the Revision Application has also pleaded for reduction of the penalty imposed on him. Though the seizure value of the said watch, as examined and valued by the valuer is Rs. 37,62,000/-, the abated value of the impugned watch is Rs 26,33,400/-. From the facts of the case as discussed above and pursuant to arriving of the abated value, Government finds that the penalty of Rs. 3,70,000/- imposed on the Applicant under Section 112 (b) of the Customs Act, 1962 is excessive and not commensurate to the omissions and commissions of the Applicant.

19. In view of the above, the Government modifies the Order-in-Appeal No. MUM-CUSTM-PAX-APP-1583/2021-22 dated 31.01.2022 [Date of issue: 03.02.2022] [F. No. S/49-1169/2020] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III to the extent of allowing 30% abatement from the MRP of Rs. 37,62,000/-, and also allows the Applicant to redeem the impugned "AUDEMARS PIGUET" watch No



154510R.ZZ.12560R.01 bearing Sr. No #K10643, having an arrived abated value of Rs. 26,33,400/-, on payment of a redemption fine of Rs. 3,50,000/- (Rupees Three Lakhs Fifty Thousand only). The penalty of Rs. 3,70,000/- imposed by the OAA and upheld by the Appellate Authority, being excessive, is reduced to Rs. 2,00,000/- (Rupees Two Lakhs only).

20. The Revision Application is disposed of on the above terms.

  
13/12/23  
( SHRAWAN KUMAR )

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

ORDER NO. **910** /2023-CUS (WZ)/ASRA/MUMBAI DATED **13.12.2023**

To,

1. Shri Ram Hemandas Punjwani, Block No 53/4, Hindustan Chowk, Mulund Colony, Mulund (West), Mumbai 400 082
2. The Pr. Commissioner of Customs, Terminal-2, Level-II, Chhatrapati Shivaji International Airport, Mumbai 400 099.

Copy to:

1. The Commissioner of Customs (Appeals), Mumbai Zone-III, Awas Corporate Point, 5<sup>th</sup> Floor, Makwana Lane, Behind S.M. Centre, Andheri-Kurla Road, Marol, Mumbai - 400 059.
2. Shri Prakash Shingrani, Advocate, 12/334, Vivek, New MIG Colony, Bandra (East), Mumbai 400 051.
3. Sr. P.S. to AS (RA), Mumbai.
4. File copy.
5. Notice Board.

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