

SPEED POST



F. No. 380/02/B/2022-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue... 04/08/22

Order No. 257/22-Cus dated 04-8-2022 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Custom Act, 1962.

Subject : Revision Application filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. KOL/CUS(AIRPORT)/AKR/873/2021 dated 29.12.2021 passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : The Commissioner of Customs, NSCBI Airport, Kolkata.

Respondent : Sh. Rohan Sehgal, Kolkata.

ORDER

A Revision Application No. 380/02/B/2022-RA dated 20.04.2022 has been filed by the Commissioner of Customs, NSCBI Airport, Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(AIRPORT)/AKR/873/ 2021 dated 29.12.2021 passed by the Commissioner of Customs (Appeals), Kolkata. The Commissioner of Customs (Appeals) has, vide the impugned Order-in-Appeal, modified the order of the Additional Commissioner of Customs (Airport), Kolkata, bearing No. 13/2021/ADC dated 05.04.2021.

2. Brief facts of the case are that Sh. Rohan Sehgal, Kolkata (hereinafter referred to as the Respondent) arrived, on 03.01.2021 at NSCBI Airport, Kolkata from Dubai. He was intercepted by the Customs officers, while he was passing through the green channel of the arrival hall of the said airport. On being asked by the Customs officers whether he was carrying any prohibited/ restricted/ dutiable goods in his baggage or in his person, the Applicant replied in the negative. During scanning of his baggage and his person, a Blue Dial Man Wrist Watch of brand 'Vacheron Constantin' was recovered which he was wearing on his left-hand wrist. The box of the said watch was found inside his hand bag. On being asked, he handed over the Tax Invoice of the watch by himself which mentioned the price of the said watch as UAE Dirham 1,14,000 equivalent to Rs.23,59,800/-. The said watch, recovered from the Respondent, was seized under Section 110 of the Customs Act, 1962. The Respondent, in his statement dated 03.01.2021, recorded under Section 108 of the Customs Act, 1962, stated that he is a plastic manufacturer; that he went to Dubai for tourism and purchased the seized watch which was worn by him in his hand; that he did not declare the said watch before the Customs officials and was intercepted by the officers

of AIU at the green channel; that the seized watch was original and was bought from the showroom of watch brand 'Vacheron Constantin'. The Respondent requested over phone to waive off the Show Cause Notice and to adjudicate the case after giving him a chance of personal hearing. In response to the personal hearing note, the Respondent sent a written submission wherein it was stated that on being asked by the officers of AIU, he himself handed over the Tax Invoice of the watch which reflects that there was no intention to evade duty; that said watch was already used by him so it was a part of his personal effects; that he submitted a Tax Invoice for AED 1,14,000/- which shows that 5% VAT of Dubai was included in AED 1,14,000/-; that for imposing duty on watch valuation should be AED 1,08,572/- i.e. after deducting the VAT component; that the duty may be assessed under baggage rules after deducting the baggage allowance and take a lenient view by not imposing penalty as his intention was to pay duty at Airport; that payment of said watch was made from his credit card, which also confirms that he wanted to pay the duty to Customs and to show it as a purchase in his income tax returns also. The original authority, vide the aforesaid Order-in-Original dated 06.04.2021, ordered for confiscation of seized wrist watch under Section 111(l) & 111(m) of the Customs Act, 1962. However, an option was given to the Respondent to redeem the watch, on payment of redemption fine of Rs. 4,71,960/- under Section 125 of the Customs Act, 1962. A penalty of Rs 2,35,980/- was also imposed on the Respondent under Sections 112(a) and 112(b) of the Customs Act, 1962. In appeal, the Commissioner of Customs (Appeals) set aside the confiscation of the wrist watch and ordered for release of the said watch after payment of duty and interest as applicable, calculated after reducing the VAT amount from the cost of the watch (as per tax invoice submitted by the Respondent) and extending the benefit of free baggage allowance

to the Respondent. The Commissioner (Appeals) also set aside the penalty imposed upon the Respondent under Sections 112(a) and 112(b), *ibid*.

3. The revision application has been filed, mainly, on the grounds that the Respondent in his statement recorded on 03.01.2021 had accepted his mistake of opting for Green Channel; that the passenger replied in negative when asked to declare and it was only upon search that the goods were recovered; and that breach would attract penalty regardless of the fact whether contravention was intentional. Accordingly, it has been prayed that the Order-in-Appeal may be set aside and the Order-in-Original may be upheld.

4. Personal hearing, in virtual mode, was held on 29.07.2022. Sh. D.K. Ramuka, Supdt., appeared for the Applicant department and reiterated the contents of the RA. Sh. S.C. Ratho, Consultant appeared for the Respondent and submitted that written submissions emailed on 29.07.2022 may be taken on record. He reiterated the contents thereof.

5. The Government has examined the matter carefully. The original authority has recorded that the Respondent was intercepted by the Customs officer "while he was passing through the Green Channel." In other words, the Respondent had not crossed the Green Channel. As such, GC violation is not established. Further, the Respondent was carrying the invoice and the original packing box of the watch. The payment for watch is said to have been made by credit card, i.e., by a recorded means of transaction. The watch was worn by the Respondent and there is no allegation of concealment. In the totality of

Conclusively
k/s)

these facts and circumstances, the Government does not find it to be a fit case to interfere with the impugned Order-in-Appeal.

6. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

✓ The Commissioner of Customs,
Airport & Administration,
N.S.C.B. International Airport,
Kolkata-700052.

Order No. 257/22-Cus dated 04-08-2022

Copy to:

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2. The Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata-700001.
3. The Additional Commissioner of Customs (Airport), N.S.C.B. International Airport, Kolkata-700052.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy

ATTESTED

Gehata
05/8/22
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