

SPEED POST



F. No. 375/03/B/NZ/2024-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. 21/11/24..

Order No. 234/24-Cus dated 21-11-2024 of the Government of India passed by Smt. Shubhagata Kumar, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Revision Application, filed under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. CC(A)/Cus/D-I/Air/108/2023-24 dated 09.11.2023, passed by the Commissioner of Customs (Appeals), New Delhi.

Applicant : Sh. Arjun Ahuja, Mumbai

Respondent : The Commissioner of Customs (Airport), New Delhi

ORDER

A Revision Application, bearing No. 375/03/B/NZ/2024-RA dated 08.02.2024, has been filed by Sh. Arjun Ahuja, Mumbai (hereinafter referred to as the applicant) against the Order-in-Appeal No. CC(A)/Cus/D-I/Air/108/2023-24 dated 09.11.2023 passed by the Commissioner of Customs (Appeals), New Delhi, vide which the Commissioner (Appeals) has modified the Order-in-Original No. 227/WH/2021-22 dated 27.10.2022, passed by the Joint Commissioner of Customs (Airport), New Delhi. Vide the aforementioned Order-in-Original, one Rolex Watch valued at Rs. 23,30,850/-, recovered from the Applicant, was held liable for confiscation under Section 111(d), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962, but allowed to be released on payment of redemption fine of Rs. 2,00,000/-. Besides, a penalty of Rs. 2,00,000/- was also imposed on the Applicant, under Section 112(a)&(b) of the Act, *ibid*. The Commissioner Appeals has reduced the redemption fine to Rs. 1,50,000/- and penalty under Section 112 to Rs. 1,50,000/-.

2. Brief facts of the case are that Customs Officers intercepted the Applicant, an Indian passport holder, upon his arrival at IGI Airport, New Delhi from Dubai, on 24.02.2021 after he had crossed the Customs Green Channel and a Rolex watch was recovered from him. The authorized representative of the applicant visited the Respondent's office and submitted a letter dated 23.03.2021 and requested that the said detained goods may be appraised and released. Thereafter the appraisal/physical examination of the said detained goods was done in the presence of the said authorized representative on 23.03.2021. On physical examination, the value of the Rolex watch was appraised on the basis of invoice no. 33011355 produced by the authorized representative of the applicant. The invoice was in the name of one Payal Ahuja and showing the value as 1,13,700 UAE Dirham. The value of Rolex Watch in INR worked out to Rs. 23,30,850/- by taking the exchange rate as per Notification No. 18/2021-Cus (NT) dated 18.02.2021 i.e. 1 UAE Dirham as Rs. 20.50. The applicant in his statement dated 24.02.2021, tendered under Section 108 of the Customs Act, 1962 stated inter-alia that the said goods belonged to him and the same was being brought by him from Kuwait; and that he admitted his acts of omission and commission. The matter was adjudicated by the original authority, vide aforesaid Order-in-Original dated 27.10.2022. Aggrieved, the Applicant filed

an appeal before the Commissioner (Appeals), who modified the Order-in-Original as mentioned above.

3. The revision application has been filed mainly on the grounds that the watch belonged to the applicant's father and the applicant had borrowed the said watch for the purpose of wearing the same for his bonafide personal use for a limited period; that he had not brought anything in commercial quantity and the same was worn by him on his hand; that the applicant had made the necessary declaration while crossing the Green Channel; that he was not carrying any dutiable or prohibited goods; that value of the Rolex watch at the time of its purchase on 15.04.2012 was Rs. 15,90,871/- as per the exchange rate previously at the time of purchase i.e. taking the value of 1 UAE Dirham at the rate of Rs. 13.98; that the value would have depreciated due to wear and tear with the passage of time, however, the Respondent has valued the Rolex Watch at Rs. 23,30,850/- by taking the exchange rate on the date of arrival. The prayer is that the Rolex Watch be returned to the applicant or permission be granted to him for its re-export.

4. Personal hearings in the matter were held on 14.06.2024 and 05.07.2024. On 14.06.2024, Sh. Arjun Ahuja, Sh. Shrijith Nair & Ms. Samten Doma appeared for the applicant. Ms. Doma submitted that the moot point in the case is whether or not the confiscation of the impugned watch is valid or otherwise. She submitted that the applicant wore his father's old watch when returning to India and carried no other goods except personal effects; nothing in commercial quantity and no prohibited item. She submitted that Mrs. Payal Ahuja and Ms. Purvi Atul Ahuja are one and the same person, that an affidavit to this effect has been submitted; that her name is Purvi Ahuja on official documents but she is called Payal post marriage. She submitted that the watch was bought for her husband, that the purchase is of 2012; that the item has clear signs of wear and tear; that a single watch worn on the hand and not concealed does not violate any provision of the Customs Act. She prayed for the charges of smuggling to be dropped as the applicant is a law abiding citizen and has never violated any laws; that the OIO be set aside and the OIA be modified to the extent of allowing re-export of the impugned goods. No one appeared from the Respondent's side and also no any request for

adjournment have been received. It is therefore presumed that department has nothing to add in the matter.

5. The Government has carefully examined the matter. The applicant has stated that the watch was gifted to his father by his mother. Mrs. Purvi Ahuja who bought it in Dubai as a gift for his father in 2012, which his father has used since then. It was same watch which was brought by the applicant when he arrived in India from Dubai on 24.02.2021. An invoice dated 15.04.2012 has been produced by the applicant evidencing purchase of the watch. On perusal of the same, it is observed that the invoice is issued in the name of "Payal Ahuja, Dubai". No address is mentioned on this invoice. Other than an affidavit, no other evidence has been produced to establish that Payal Ahuja is the same person as Purvi Ahuja. Upon a query regarding the same, a reply has been received vide email dated 06.11.2024 stating that other than an affidavit to this effect "there is no document to prove that Purvi Ahuja is also known as Payal Ahuja". Further, the original authority in para 5 of her order has noted that applicant in his voluntary statement recorded under Section 108 of the Customs stated that the said goods belonged to him and same was being brought by him from Kuwait and that he admitted his acts of omission and commission.

6. The original authority in para 8.1 of her order has noted that the invoice dated 15.04.2012 in respect of the said goods was in the name of Ms. Payal Ahuja, whereas the passport submitted by the applicant indicates that the name of his mother is Ms. Purvi Atul Ahuja. In this context, the applicant submitted a Notarized Affidavit dated 16.09.2021 which declared that the name of his mother is Ms. Purvi Atul Ahuja who is also commonly known as Ms. Payal Ahuja in her friends and family. Moreover, the original authority has noted in para 13.4 of her order that the applicant failed to submit any requisite documents in support of his submission. It is a fact on record that no address is mentioned on the invoice submitted by the applicant. It is also not disputed that the watch did not belong to the applicant, but to his father. The watch being a precious high value item ought to have been declared and the applicable Customs duty paid by the applicant. He has travelled abroad frequently and is well aware of the rules and regulations in this regard. The photocopy of the invoice was also not produced at the time of interception but

subsequently. The invoice establishes that the watch did not belong to him and was of a much higher value than permitted under the rules.

7. As per Section 123 of Customs Act 1962, the burden of proof that such goods are not brought in violation of the Customs Act, 1962 is on the person, from whom goods are recovered. The Applicant did not declare the impugned item, as stipulated under Section 77 of the Act, *ibid*. Even if the applicant was under a bonafide belief that his father's watch was his bonafide baggage, he ought to have declared the same to Customs voluntarily keeping in mind the precious nature and value of the article. While it is quite natural that a son may use items belonging to his parents, the fact remains that this is a precious item and ought to have been declared to Customs. In terms of baggage rules, it is abundantly clear that articles of a higher value than permissible limit can be brought only upon declaration and payment of duty. The Government therefore is in agreement with the lower authorities that the impugned item was liable to confiscation under Section 111 *ibid* along with its consequences.

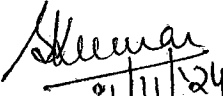
8. The applicant has contended that the value of the Rolex watch at the time of its purchase on 15.04.2012 was Rs. 15,90,871/- as per the then prevalent exchange rate of UAE Dirham i.e. Rs. 13.98, which would have depreciated due to wear and tear with the passage of time. The Respondent has however appraised the value of the Rolex Watch as Rs. 23,30,850/- by taking the exchange rate @ Rs. 20.50/- per UAE Dirham as per Notification No. 18/2021-Cus (NT) dated 18.02.2021 i.e. the exchange rate prevailing when the applicant came to India. The Government observes that the valuation has been done on the basis of Invoice No. 33011355 produced by the authorized representative of the applicant which shows the value as 1,13,700/- UAE Dirham and the exchange rate value in INR was taken as per the Notification No. 18/2021-Cus(NT) dated 18.02.2021 prevalent at that time. In para 9.5 of the said O-I-A, the Commissioner (Appeals) has also held that the valuation of the impugned goods was done/accepted by the adjudicating authority on the basis of invoice submitted/produced by the applicant and by taking the exchange rate as per Notification No. 18/2021-Cus (NT) dated 18.02.2021. This is in accordance with Section 78 of the Customs Act, 1962. As regards the applicant's contention regarding depreciation over time, it is common knowledge that the value of

precious items such as the watch in question, appreciates over time rather than declining. Therefore, the Government concurs with the findings of the appellate authority in para 9.5 of the OIA.

9. Further, as far as re-export of offending goods is concerned, the Government observes that the appellate authority has noted in para 9.4 of her order that the applicant himself resides in India and is not a resident of UAE. Since the applicant himself is a resident of India and the watch does not belong to him, the impugned goods are not permissible for re-export and therefore the option of re-export also cannot be given. The Government finds no infirmity with this finding of the appellate authority.

10. In view of the facts and circumstances of the case, however, the Government takes a lenient view and accordingly the redemption fine is reduced from 1,50,000/- to Rs. 1,00,000/-. The penalty is also reduced from 1,50,000/- to Rs. 1,00,000/-.

11. The revision application is disposed off on the above terms.


21/11/24
(Shubhagata Kumar)

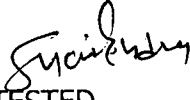
Additional Secretary to the Government of India

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Order No. 234/24-Cus dated 21-11-2024

Copy to:

1. The Commissioner of Customs (Airport & General), Terminal-3, IGI Airport, New Delhi-110037.
2. The Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi-110037.
3. Ms. Samten Doma Lachungpa, Advocate, A-207, LGF, Defence Colony, New Delhi - 110 024.
4. PPS to AS(RA)
5. Guard File
6. Spare Copy
7. Notice Board


ATTESTED

(शैलेन्द्र कुमार मीना)
(Shailendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi