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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 02.05.2023*

+ **W.P.(C) 11754/2022**

AJAY KUMAR GUPTA

..... Petitioner

Through: Mr Shubhankar Jha and Mr Ashish
Bansal, Advocates, Advocates.

Versus

COMMISSIONER OF CUSTOMS & ANR.

..... Respondents

Through: Mr Harpreet Singh, Senior Standing
Counsel with Ms Suhani Mathur and
Mr Jatin Kumar Gaur, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J. (Oral)

1. The petitioner has filed the present petition, *inter alia*, praying as under:

- (i) To issue a writ of mandamus order direction thereby directing the respondent to release the goods i.e. Hublot Big Bang watch marking 142651 and Bvlgari Serpenti watch for the purpose of re-export of same in terms of order in appeal no. CC (A) CUS /D-I/Airport/ 300-302/2022-2023 dated 28.6.2022 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi.

2. The petitioner claims that he was employed in the United Arab Emirates for many years and had arrived on a visit to New Delhi on 06.08.2021. The petitioner was detained by the Custom Authorities and it was found that he was in possession of two wrist watches valued at

about ₹39,61,100/-. The petitioner was arrested on the allegation of smuggling and was released on bail.

3. The said goods (wrist watches) were detained and seized on 07.08.2021. The matter was adjudicated by the Additional Commissioner of Customs, IGI Airport by an order dated 28.12.2021. The operative part of the said order reads as under:

“ORDER

- i. I deny the '**Free Allowance**' to the Pax Mr. Ajay Kumar Gupta, on account of various omission and commission made by him and did not declare the seized goods at the Red Channel before the Customs Officer and violated the provisions of Section 77 of the Customs Act, 1962;
- ii. I order **confiscation** of the above said watches i.e., *One (01) Hublot Big Bang watch with Marking 1426251 and also having Marking 301.PX.130.RX & 1426251 on the Tag attached with the Watch alongwith One International Hublot Warranty Card having Marking “301.PX.130.RX & 1426251 H775”, Retailer-Luna Management Monaco on the backside of the Card and One (01) Bvlgari Serpenti Watch having Marking on backside of the Watch ‘SP 35 SPG & PO 23828’ alongwith One International Bvlgari Warranty Card having reference Code 103149 & Serial Number PO 23828 mentioning location as “Celita Espana”, with store name “Chocron Joyeros”, Date of purchase 26.04.2021, collectively valued at Rs. 39,61,100/- (Rupees Thirty-Nine Lakh Sixty-One Thousand One Hundred only) recovered from the baggage of the Pax Mr. Ajay Kumar Gupta and seized vide Panchnama dated 07.08.2021, under Section 111(d), 111(i), 111(j), 111(l), 111(m) and 111(o) of the Customs Act, 1962;*

- iii. I give an **option to redeem** the goods confiscated above, on payment of Redemption Fine of **Rs.5,94,165/-** (Rupees Five Lakh Ninety-Four Thousand One Hundred Sixty-Five only) under Section 125 of Customs Act, 1962 and *allowed the same for re-export to Dubai, UAE, only*. The redemption is to be allowed after the completion of legal formalities in this regard and also fulfillment of any regulatory clearances/ approvals required. The offer of redemption, if accepted, shall be subject to condition that the Pax shall not dispute the identity and valuation of the seized goods. *The offer of redemption shall cease after One Hundred Twenty Days' from date of the receipt of this order;*
- iv. I also impose a Penalty of **Rs.5,94,165/-** (Rupees Five Lakh Ninety- Four Thousand One Hundred Sixty-Five only) upon the Pax under Section 112(a), 112(b) and 114AA of the Customs Act, 1962,
- v. I impose a penalty of **Rs.7,92,220/-** (Rupees Seven Lakh Ninety Two Thousand Two Hundred and Twenty only) on Mr. Pankaj Jain, **Employer** of the Pax Mr. Ajay Kumar Gupta and Owner of the company M/s Prime Chatering FZ LLC, Ras-Al-Khamah, UAE under Section 112(a) & 112(b) of the Customs Act, 1962, for his various acts of omission and commission, as discussed, hereinabove.

Whereas this order, being appealable and the Pax **OR** Department has a right to file an appeal before the Appellate Authority against the subject order under Section 128/11 of the Customs Act, 1962, therefore, the Pax or his Advocate or any Authorised Representative is hereby directed to file the request for release of the seized goods for the purpose of re-export only on receipt of this order or before 15 days from the date of departure from India.

- 4. Immediately after receipt of the order-in-original dated

28.12.2021, the petitioner deposited the penalty of ₹5,94,165/- as well as the redemption fine of an equivalent amount. The co-noticee (Mr Pankaj Jain) also deposited the penalty imposed on him (₹7,92,220/-). Notwithstanding that the petitioner and the co-noticee had deposited the penalties and redemption fine, the goods in question were not released by the respondents.

5. Aggrieved by inaction on the part of the Revenue in not complying with the order-in-original, the petitioner filed a petition before this Court [W.P.(C) No.6805/2022].

6. It is stated that in the meantime, the Revenue filed an appeal against the order-in-original dated 28.12.2021 before the Commissioner of Customs (Appeals), New Delhi. The petitioner and the co-noticee also appealed against the said order-in-original dated 28.12.2021 before the Commissioner of Customs (Appeals).

7. The writ petition preferred by the petitioner [W.P.(C) No.6805/2022] was disposed of by an order dated 09.05.2022. In its order, the Court observed that, *prima facie*, there is no reason for the respondents to not release the goods in question. Nonetheless, since the appeal had been lodged, the respondents were given two weeks' time to have the appeal listed and to seek appropriate orders, failing which, it was directed that the goods would be released to the petitioner.

8. The appeals preferred by the Revenue as well as the petitioner and co-noticees were heard and disposed of by an order-in-appeal dated 28.06.2022. The appeals preferred by the petitioner and the co-noticee

(Mr Pankaj Jain) were partly allowed. The value of the goods in question were re-determined at ₹10,02,100/-. Accordingly, the redemption fine under Section 125 of the Customs Act, 1962 (hereafter 'the Customs Act') was reduced from ₹5,94,165/- to ₹1,00,000/-. The penalty imposed on the petitioner under Section 112 and 114AA of the Customs Act was reduced to ₹1,00,000/- and the penalty imposed on the co-noticee (Mr Pankaj Jain) was set aside. The order-in-original dated 28.12.2021 was modified to the aforesaid extent.

9. Notwithstanding the above, the Revenue has not released the goods to the petitioner as yet.

10. Mr Harpreet Singh, learned counsel appearing for the Revenue, submits that the Revenue has preferred a Revision Petition before the Revisional Authorities, which is pending. He submits that in view of the pendency of the said proceedings, the goods in question have not been released. However, he has been unable to point out any provision in the Customs Act, which entitles the Revenue to retain the goods after the concerned party has paid the redemption fine as well as the penalty as determined. Merely because the Revenue seeks to challenge the order passed by the Appellate Authority is no ground for non-compliance of the said orders.

11. In view of the above, the respondents are directed to handover the goods in question to the petitioner (within a period of two working days) as we find no justification for the respondent to withhold the release of the said goods.

12. Needless to state that if the Revenue succeeds in the Revision Petition, it would be entitled to take such steps as available in law.

13. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

**MAY 2, 2023
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