

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. I

CUSTOMS APPEAL NO. 50706 OF 2020

(Arising out of Order-in-Original No. DLI/CUS-PREV/GS/PR.COMMR/02/2019-20 dated 12.12.2019 passed by the Principal Commissioner (Preventive), New Customs House, New Delhi)

M/s. Kapoor Watch Co. Pvt. Ltd.,
G-7, South Extension-I,
New Delhi - 110049

.....Appellant

VERSUS

**Principal Commissioner of Respondent
Customs (Preventive)**

New Customs House,
Near IGI Airport,
New Delhi - 110037

WITH

CUSTOMS APPEAL NO. 50707 OF 2020

(Arising out of Order-in-Original No. DLI/CUS-PREV/GS/PR.COMMR/02/2019-20 dated 12.12.2019 passed by the Principal Commissioner (Preventive), New Customs House, New Delhi)

Raunaq Kapoor,Appellant
Director, M/s. Kapoor Watch Co. Pvt. Ltd.,
C-60, Panchsheel Enclave, New Delhi

VERSUS

**Principal Commissioner of Respondent
Customs (Preventive)**

New Customs House,
Near IGI Airport,
New Delhi - 110037

WITH

CUSTOMS APPEAL NO. 50708 OF 2020

(Arising out of Order-in-Original No. DLI/CUS-PREV/GS/PR.COMMR/02/2019-20 dated 12.12.2019 passed by the Principal Commissioner (Preventive), New Customs House, New Delhi)

Amarjeet Kapoor,Appellant
Director, M/s. Kapoor Watch Co. Pvt. Ltd.,
C-60, Panchsheel Enclave, New Delhi

VERSUS

**Principal Commissioner of Respondent
Customs (Preventive)**

New Customs House,
Near IGI Airport,
New Delhi - 110037

WITH

CUSTOMS APPEAL NO. 50709 OF 2020

(Arising out of Order-in-Original No. DLI/CUS-PREV/GS/PR.COMMR/02/2019-20 dated 12.12.2019 passed by the Principal Commissioner (Preventive), New Customs House, New Delhi)

Sandeep Kapoor,
Director, M/s. Kapoor Watch Co. Pvt. Ltd.,
D-4B/8, DLF Phase-I,
Gurugram (Haryana)

.....Appellant

VERSUS

**Principal Commissioner of Respondent
Customs (Preventive)**

New Customs House,
Near IGI Airport,
New Delhi - 110037

WITH

CUSTOMS APPEAL NO. 50710 OF 2020

(Arising out of Order-in-Original No. DLI/CUS-PREV/GS/PR.COMMR/02/2019-20 dated 12.12.2019 passed by the Principal Commissioner (Preventive), New Customs House, New Delhi)

M/s. Kapoor N Company,
J-34, South Extension-I,
New Delhi

Appellant

VERSUS

**Principal Commissioner of Respondent
Customs (Preventive)**

New Customs House,
Near IGI Airport,
New Delhi - 110037

AND

CUSTOMS APPEAL NO. 50728 OF 2020

(Arising out of Order-in-Original No. DLI/CUS-PREV/GS/PR.COMMR/02/2019-20 dated 12.12.2019 passed by the Principal Commissioner (Preventive), New Customs House, New Delhi)

Amit Kumar,
258, 2nd Floor, Kailash Hills,
East of Kailash,
Delhi-110065

Appellant

VERSUS

**Principal Commissioner of Respondent
Customs (Preventive)**

New Customs House,
Near IGI Airport,
New Delhi - 110037

APPEARANCE:

Shri Piyush Kumar, Shri Sharad Chandra Srivastava and Ms. Gunjan Tanwar,
Advocates for the Appellant

Shri Devesh Tripathi and Shri Ajay Kumar, Advocates for Amit Kumar

Shri Nikhil Mohan Goyal, Authorized Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)

DATE OF HEARING: 09.12.2025

DATE OF DECISION: 19.01.2026

FINAL ORDER NO's. 50075-50080/2026

JUSTICE DILIP GUPTA:

Customs Appeal No. 50706 of 2020 has been filed by M/s. Kapoor Watch Co. Pvt. Ltd.¹ to assail that portion of the order dated 12.12.2019 passed by the Principal Commissioner (Preventive), New Customs House, New Delhi² that confiscates 837 watches under section 111 of the Customs Act, 1962³ with option to release the same on payment of redemption fine; confirms the customs duty under section 28(4) of the Customs Act; and imposes a penalty upon the appellant under section 114A of the Customs Act.

2. **Customs Appeal No. 50707 of 2020** has been filed by Raunaq Kapoor, Director of the appellant, to assail that part of the order dated 12.12.2019 passed by the Principal Commissioner that imposes a penalty upon him under section 112 of the Customs Act.

3. **Customs Appeal No. 50708 of 2020** has been filed by Amarjeet Kapoor, Director of the appellant, and Partner of M/s. Kapoor N Company⁴ to assail that part of the order dated 12.12.2019 passed by the Principal

-
1. **the appellant**
 2. **the Principal Commissioner**
 3. **the Customs Act**
 4. **Kapoor N Company**

Commissioner that imposes penalties upon him under section 112 of the Customs Act.

4. **Customs Appeal No. 50709 of 2020** has been filed by Sandeep Kapoor, Director of the appellant, and Partner of Kapoor N Company to assail that part of the order dated 12.12.2019 passed by the Principal Commissioner that imposes penalties upon him under section 112 of the Customs Act.

5. **Customs Appeal No. 50710 of 2020** has been filed by Kapoor N Company to assail that portion of the order dated 12.12.2019 passed by the Principal Commissioner that confiscates the smuggled watch under section 111 of the Customs Act with an option to release the same on payment of redemption fine; confirms the demand of customs duty under section 28(4) of the Customs Act; and imposes a penalty under section 114A of the Customs Act.

6. **Customs Appeal No. 50728 of 2020** has been filed by Amit Kumar to assail that portion of the order dated 12.12.2019 passed by the Principal Commissioner that imposes a penalty upon him under section 112 of the Customs Act.

7. It transpires from the record that on the basis of information, the Directorate Revenue of Intelligence⁵ officers intercepted a foreign national Nigel Nicholas Bright on 08.10.2012 outside the arrival hall of the Terminal-3 of the IGI Airport while handing over a small package to Amit Kumar. On examination, the said package was found to contain 2 high end Frank Muller watches and on being asked Nigel Nicholas Bright stated that he had brought the said watches illicitly without declaration to customs to hand those over to Amit Kumar.

8. Amit Kumar, in his statement dated 08/09.10.2012, stated that he was an employee of the appellant and he had taken the delivery of the said watches on behalf of Sandeep Kapoor, Director of the appellant. In the follow up search at the residence of Amit Kumar, DRI officers recovered 8 new Frank Muller watches, 4 old watches and cash amounting to Rs. 63,00,000/-.

9. On the basis of statement made by Amit Kumar, DRI searched 7 showrooms of the appellant, a showroom of Kapoor N Company, service centre of sister concern of the appellant, Kapoor Time Crafter and residences of Directors/Partners/Employees of the appellant. In these searches, the officers detained 4424 watches and 428 other merchandises of foreign origin. After search, the officers handed over the detained goods to representatives of the appellant but resumed cash amounting to Rs. 1,85,62,500/- and 115 watches.

10. It is stated that later when the appellant furnished documents pertaining to the import/local procurement of these watches (except the 7 watches which were lying in the stock for a very long time) and after due scrutiny of these documents, the investigating officer vacated the detention of watches/goods by orders dated 07.11.2012, 08.11.2012 and 09.11.2012 and released the cash unconditionally by order dated 16.11.2012.

11. However, the DRI issued a show cause notice dated 06.10.2017 after 4 years 363 days from the date of search. In the show cause notice, as against 4424 watches that were initially detained at the time of search, DRI confined its case only to 838 watches on the ground that in respect of 807 watches serial numbers were not mentioned in the import documents; in respect of 24 watches model number and serial number mis-matched

with model number and serial number mentioned in the import documents; and in respect of 7 watches the appellant could not furnish any documents. The show cause notice proposed a demand of customs duty amounting to Rs. 4,66,79,491/- with interest by invoking the extended period of limitation under section 28(4) of the Customs Act. The show cause notice also proposed confiscation of the watches and penalty under sections 112 or 114A of the Customs Act.

12. DRI also issued a show cause notice dated 08.10.2013 to Amit Kumar proposing confiscation of the 14 watches recovered from him, besides proposing imposition of penalty upon him under section 112, section 114 and section 114AA of the Customs Act. Amit Kumar filed Writ Petition (C) No. 417 of 2014 before the Delhi High Court challenging the aforesaid show cause notice and for release of 14 watches and cash seized from him claiming to be the owner of the same. The Delhi High Court, by an order dated 24.07.2014, allowed the petition and directed the DRI to release the watches and the cash to Amit Kumar. DRI challenged the order of the Delhi High Court before the Supreme Court in SLP (C) 24489 of 2014. The Supreme Court passed an interim order directing DRI to release 50% of the cash and the watches seized from the possession of Amit Kumar to him, subject to an undertaking. It is stated that this show cause notice issued to Amit Kumar is still pending adjudication.

13. The present appeals are confined to 837 watches of the appellant and 1 watch of Kapoor N Company covered by the show cause notice dated 06.10.2017.

14. It would be appropriate to reproduce the relevant portions of this show cause notice dated 06.10.2017:

“16. Thereafter, the complete verification of watches seized/detained at Showrooms/stores of M/s Kapoor Watch Company Pvt. Ltd. and Kapoor and Company was undertaken and the summary of the said verification is as follows:

Name of Store/ category	**	**	**	**	**	**	**	**	**	Total
A	**	**	**	**	**	**	**	**	**	1692
B	**	**	**	**	**	**	**	**	**	63
C	**	**	**	**	**	**	**	**	**	807
D	**	**	**	**	**	**	**	**	**	1205
Y	**	**	**	**	**	**	**	**	**	7
BM	**	**	**	**	**	**	**	**	**	24
Total	**	**	**	**	**	**	**	**	**	3798

A	BOTH, MODEL AND SI. NO. MATCHED as given in Panchnama and as given in Import Docu./Invoice
B	SL. NO. / MODEL NO. MISMATCHED Minor (manual error) as given in Panchnama and as given an Import Docu./Invoice
C	SL. NO. NOT AVAILABLE ON SUPPLIER INVOICE, Model No. matched as given in Panchnama and as given in Import Document./Invoice
D	SL. NO. NOT AVAILABLE ON PANCHNAMA, Model No. matched as given in Panchnama and as given in Import Document./Invoice
Y	No documents submitted
BM	Major Mismatch in the SI. No. or Model No. or SI. No. and Model No. of the watch as given in the Panchnama and as given in the Import Document./Invoice

17. As the details of SI. No. or Model No. or SI. No. and Model No. of the watch as given in the Panchnama and as given in the Import Document/Invoice in respect of 24 watches (Marked as BM in the verification charts) as detailed below do not match, it appears that the documents submitted do not pertain to the detained watches which leads to the conclusion that these watches have been illegally imported into India by resorting to smuggling.

17.1 Further, no documents relating to purchase/import in respect of 7 watches, as mentioned below (Marked as Y in the verification chart) have been produced, hence, it appears that

these watches have been illegally imported into India by resorting to smuggling.

17.3 Further for 807 watches (as per Annexure - A), the details of Serial No. of the watches were not available on the import documents / supplier invoice, hence, it appears that these watches have been illegally imported into India by resorting to smuggling.*****

21.1 Whereas, it appears that M/s Kapoor Watch Company Pvt. Ltd. and M/s Kapoor N Company, controlled by Shri Sandeep Kapoor (Director in M/s Kapoor Watch Company Pvt. Ltd. and Partner in M/s Kapoor N Company) were dealing in watches smuggled into India, as evident from Statement dated 08/09.10.2012 and 10.10.2012 of Shri Amit Kumar under Section 108 of the Customs Act, 1962 and Statement dated 09.10.12 of Shri Nicholas Nigel Bright under Section 108 of the Customs Act, 1962. During verification of the records of watches which were detained at the Showrooms of M/s Kapoor Watch Company Pvt. Ltd. and M/s Kapoor N Company vide Panchnamas dated 09.10.12 and 10.10.12, as discussed in Para 17 and 18 above, it is found that for 838 watches collectively valued at Rs. 16,22,77,728/-, as given in the respective Panchnamas (as detailed in Annexure - A to this Notice) no import documents were produced or the documents produced do not appear to pertain for these detained watches and therefore it appears that these imported watches were procured by M/s Kapoor Watch Company Pvt. Ltd. and M/s Kapoor N Company by resorting to smuggling. **Further, the watches are covered under Section 123 of the Customs Act, 1962, and the burden of proof for licit possession of the above-said 838 imported watches was on M/s Kapoor Watch Company Pvt. Ltd. and M/s Kapoor N Company and they have failed to produce documents relating to licit import and possession of these watches. Therefore, the above said 838 watches (807 in category C, 24 in category BM and 7 in category**

Y) are liable for confiscation under Section 111(l) and 111(p) of the Customs Act, 1962.

22. The value of these 838 watches in the stock register maintained by M/s Kapoor Watch Company and M/s Kapoor N Company in whose possession these watches are found, has been mentioned as Rs. 16,22,77,728/- in the respective Panchnamas. Since, these watches are smuggled goods and no appropriate Customs Duty has been paid thereon, the value of these watches in the stock registers is the cost of these watches while procuring these goods from outside India and hence therefore this value has been taken as the assessable value for the purpose of calculating Customs Duty as per Section 12 read with Section 14 of the Customs Act, 1962."

(emphasis supplied)

15. The appellant submitted a reply dated 08.08.2019 to the show cause notice. In respect of the 807 watches falling under category C, the appellant submitted:

"8.1 Qua the allegation in respect of 807 watches falling under C category, that though at the time of Search, Serial Numbers were found on the watches and mentioned in the Panchnamas drawn at the spot but the Serial Numbers were not found mentioned in the procurement / purchase documents, Noticee submits that neither under the Customs Act, 1962 or Rules made thereunder, nor under Foreign Trade (Development & Regulation) Act, 1992 or Rules thereunder, nor under the Central Sales Tax Act, 1956 and Delhi VAT Act, 2004 there is any requirement to maintain records with reference to Serial Number. At all the Customs ports throughout India, watches were imported by various importers and

cleared by the Customs Officers with reference to Model Numbers only.

8.2 **It was only with effect from March, 2015 in compliance to DRI's Alert Circular that the Custom Officers started insisting upon inclusion of Serial Number of the watches exceeding the price of Rs. 5,00,000/-** in the invoices and accordingly Noticee also started insisting the supplier to mention the Serial Numbers in the invoices and started entering the same in the Bills of Entry. Prior to March, 2015 there was no practice of mentioning the Serial Number on the Bills of Entry or Invoices and the Customs Officers were also examining the goods vis-a-vis the import documents with reference to Model Number only. The Bills of Entry or import documents prior to March 2015 did not bear the Serial Numbers. The aforesaid Alert Circular dated 05.03.2015 issued in respect of the procedure to be adopted for import of expensive watches also clearly indicates that until then there was no practice in place to mention Serial Numbers of the watches on the Invoices or in the Bills of Entry. A copy of said Circular is placed at Annexure D-1 for Hon'ble Pr. Commissioner's ready reference."

(emphasis supplied)

16. In respect of 7 watches falling under category Y, the appellant submitted that:

"8.4 **As regards the 7 watches falling in 'Y', Noticee respectfully submits that these watches are very old and lying in the stock for past many years Noticee respectfully invite Hon'ble Pr. Commissioner to Shri Sandeep Kapoor's statement dated 25.02.2016 wherein he categorically stated as under:**

"(i) For two watches of Longines make at MGF Metropolitan Mall, we have mentioned invoice numbers, which pertains to year 2005 and 2007. These invoices are very old and it is not possible to trace the records now.

(ii) For one watch of Corum make detained / seized at M-48, G.K.-1, New Delhi, only serial number of the watch is mentioned in the Panchnama and no model number is given. It is not possible to trace documents without the details of model numbers in our records as serial number is not available on the supplier documents for this brand and therefore we are not in a position to match the same with the relevant document.

(iii) For other 4 watches, it is submitted that we are processing a very large number of documents and there may be some mistake in recording of model number and serial number, either in our records or in the Panchnama drawn, thus we are not in a position to identify the same with the relevant supplier documents.

DRI has not adduced any evidence to dislodge Noticee's aforesaid contentions. Moreover, the fact that these watches were lying in the stock for past many years, is also clearly manifest from statement of closing stock as on 31.03.2011 and 31.03.2012, copies whereof though available on record are enclosed again for Hon'ble Pr. Commissioner's kind perusal marked as Annexure D-2 (colly)."

(emphasis supplied)

17. In respect of 24 watches falling under category BM, the appellant submitted that:

"8.5 As regard the watches categorized by DRI in category B.M. Noticee submits that discrepancies pointed out by DRI are ex-facie frivolous and were duly explained by the Accountant and Shri Sandeep Kapoor in his statement dated 25.02.2016 *****

8.6 **Noticee categorically states that the documents furnished in respect of these 24 watches pertained to these watches only and any mismatches pointed out by DRI cannot negate this fact."**

(emphasis supplied)

18. In regard to the invocation of the extended period of limitation under section 28(4) of the Customs Act, the appellant submitted:

"9.3 It is undisputed that on 09.10.2012 when the searches were conducted all the 838 watches impugned in the Show Cause Notice were available in the show rooms and duly entered in the Stock Registers along with the date of procurement of respective watches and as per Stock Register, all these watches were received and entered into Stock Register much before the date of search. Therefore, the watches having been imported or purchased more than 5 years prior to the date of issuance of Show Cause Notice i.e. 06.10.2017, impugned demand having been issued even beyond extended period of limitation of 5 years, the same is ex-facie time barred."

(emphasis supplied)

19. In respect of section 123 of the Customs Act, the appellant submitted:

"10.3 The inference that the impugned 838 watches were smuggled ones has not been drawn on the basis of any positive evidence to even remotely suggest that the same were brought into India in contravention of any of the provisions of Section 111 of Customs Act, 1962, to bring them within the ambit of smuggled goods as defined in Section 2(39) of Customs Act, 1962. The only allegation of the DRI in respect of these watches as recorded in para 17 of the Show Cause Notice is that in respect of 807 watches the supplier's invoice furnished by Noticee do not bear the serial number; in respect of 24 watches there are mismatches between the particulars as entered in Panchnama and the documents furnished by the Noticee; and in respect of 7 watches which were lying in the Noticee's stock for past many years, the allegation is that Noticee has not been able to adduce any document. **In the entire Show Cause Notice, there is no allegation much**

less any evidence that the Noticee clandestinely imported or procured these watches from abroad."

(emphasis supplied)

20. The Principal Commissioner, by order dated 12.12.2019, confiscated the 838 watches with option for release of the same on payment of redemption fine and also imposed penalties. The relevant observation is as follows:

"40. **I find that it is now an established fact that M/s Kapoor Watch Company Pvt. Ltd. and M/s Kapoor N Company, controlled by Shri Sandeep Kapoor (Director in M/s Kapoor Watch Company Pvt. Ltd. and Partner in M/s Kapoor N Company) were dealing in watches smuggled into India, as evident from Statement dated 08/09.10.2012 and 10.10.2012 of Shri Amit Kumar under Section 108 of the Customs Act, 1962 and Statement dated 09.10.12 of Shri Nigel Nicholas Bright under Section 108 of the Customs Act, 1962. During verification of the records of watches which were detained at the Showrooms of M/s Kapoor Watch Company Pvt. Ltd. and M/s Kapoor N Company vide Panchnamas dated 09.10.12 and 10.10.12, as discussed above, it is found that for 838 watches collectively valued at Rs. 16,22,77,728/-, as given in the respective Panchnamas (as detailed in Annexure -A to this SCN) no import documents were produced or the documents produced did not pertain to these detained watches and therefore these imported watches were procured by M/s Kapoor Watch Company Pvt. Ltd. and M/s Kapoor N Company by resorting to smuggling. Further. the watches are covered under Section 123 of the Customs Act, 1962, and the burden of proof for licit possession of the above-said 838 imported watches was on M/s Kapoor Watch Company Pvt. Ltd. and M/s Kapoor N Company and they have failed to produce documents relating to licit**

import and possession of these watches. As explained in the Show Cause Notice, no documents could be submitted by Noticees in respect of 07 watches, documents submitted did not match with the details of the goods in respect of 24 watches in major mismatch and in 807 case Sl. No. were not given in import document viz supplier invoice. The contention of noticee company that there was no requirement to mention Sl. No. in import document before DRI issued alert circular in March 2015, does not stand against Section 123 of the Customs Act, 1962. In terms of the said section, the onus to prove the licit import of these goods is on noticees and it is for them to establish the same. It is an accepted fact that the watches were foreign made and brought into India. **Documents provided by noticees did not establish connection between goods and documents and hence legal import of such goods was not established.** Wherever the documents could establish the same, no confiscation of such goods has been proposed. **It is essential for noticees to prove legal import of watches in terms of section 123 of the Customs Act, 1962 whether or not DRI circular was issued.** Noticees have also not explained why serial numbers were mentioned in some cases and not in other cases when it was not required, as per notices themselves. Similarly, the decision in the issue related to seizure of watches from Shri Amit Kumar at IGI Airport or at his residence does not have any impact on the facts of foreign watches recovered from the Showrooms of M/s Kapoor Watch Company Pvt. Ltd. and M/s Kapoor N Company for which onus to discharge liability under section 123 of the Customs Act, 1962 is independent of the case of seizure from Shri Amit Kumar. The impact of said seizure in bringing out culpability of noticees in respect of goods covered by impugned proceedings however is positive. Similarly, the contention that Section 123 of the Customs Act 1962 applies only to seized goods is not correct. Section 123 of the Customs Act, 1962 enumerates the persons who are required to prove licit import of such goods and provides that the person from whom goods are seized is required to prove that goods are not smuggled and in other case,

the person claiming to be owner of goods is required to prove that goods are not smuggled. Noticee companies have claimed to be the owner of these goods and they are required to prove that these goods are not smuggled irrespective of the fact whether the goods were detained or seized. **Therefore, the above said 838 watches (807 in category C, 24 in category BM and 7 in category Y) are liable for confiscation under Section 111(d), 111(l) and 111(p) of the Customs Act, 1962.**"

(emphasis supplied)

21. Shri Piyush Kumar, learned counsel appearing for the appellant assisted by Shri Sharad Chandra Srivastava and Ms. Gunjan Tanwar made the following submissions:

- (i)** The Principal Commissioner committed an error in rejecting the documents furnished by the appellant in respect of 807 watches falling under category C on the ground that serial numbers were not mentioned in the import documents. All the Bills of Entry were assessed by the custom officers after scrutiny of the documents and the watches were released after due examination and no objection was raised that serial numbers of the watches should have been mentioned in the Bills of Entry;
- (ii)** There was no requirement of mentioning the serial numbers of the watches in the Bills of Entry at that time and it was only on 05.03.2015 that the DRI issued an Alert Circular that serial numbers should be mentioned in the Bills of Entry;
- (iii)** The findings recorded by the Principal Commissioner in respect of 24 watches falling under category BM and 7 watches falling under category Y are also erroneous;

- (iv)** The show cause notice was issued even after the expiry of five years from the date of submissions of Bills of Entry and, therefore, the demand could not have been confirmed;
- (v)** The findings have been recorded on the basis of the statement made by co-noticee, Amit Kumar, under section 108 of the Customs Act. This statement cannot be considered as relevant as the procedure contemplated in section 138B of the Customs Act was not followed;
- (vi)** Reliance placed on section 123 by the Principal Commissioner in the impugned order is bad in law because the appellant had discharged his onus by producing the relevant documents and, therefore, it was for the department to allege and substantiate that the watches were smuggled; and
- (vii)** Penalties could not have been imposed upon the appellant and the Directors of the appellant nor upon Sandeep Kapoor and Kapoor N Company.

22. Shri Devesh Tripathi, learned counsel appearing for Amit Kumar assisted by Shri Ajay Kumar also submitted that penalty could not have been imposed upon Amit Kumar.

23. Shri Nikhil Mohan Goyal, learned authorized representative appearing for the department, however, supported the impugned order and made the following submissions:

- (i)** The watches, being "notified goods" (watches) covered under section 123 of the Customs Act, the burden of proof for licit possession was squarely on the appellant, but it failed to discharge this liability;

- (ii) In the case of 807 watches falling under category C, the serial numbers were not available on the import documents/supplier invoices. For 24 watches falling under category BM, the details of the serial number or model number did not match the import documents. For 7 watches falling under category Y, no purchase/import documents were produced;
- (iii) Due to the clear involvement in illegal procurement activities, duty was demanded under section 28(4) and mandatory penalties were imposed under section 114A upon the appellant and Kapoor N Company and under section 112 on the Directors and co-noticee Amit Kumar; and
- (iv) The stock register value was appropriate as it reflected the cost of procuring the smuggled goods from outside India and, therefore, it was correctly treated as the assessable value under section 12 read with section 14 of the Customs Act.

24. The submissions advanced by the learned counsel for the appellant, the learned counsel for Amit Kumar and the learned authorized representative appearing for the department have been considered.

25. The dispute in the present appeal relates to 807 watches in category **C** which have been recovered from the appellant and Kapoor N Company; 24 watches in category **BM** recovered from the appellant; and 7 watches in category **Y** recovered from the appellant.

26. According to the appellant, all these watches had been imported prior to 2012 and the proper officers had cleared the goods after examination of the relevant import documents. It is only when the DRI intercepted a foreign national on 08.10.2012 with 2 watches that

investigation started. The foreign national stated in the statement made under section 108 of the Customs Act that he had brought these 2 watches illicitly without declaration to customs to handover those to Amit Kumar. Amit Kumar, in his statement recorded on 08.10.2012, stated that he was an employee of the appellant and had taken the delivery of the said 2 watches on behalf of the Director of the appellant.

27. A search was carried out by the DRI at 7 showrooms of the appellant, service center of sister concern and showroom of Kapoor N Company and the residence of the Directors of the appellant on 09/10.10.2012. The show cause notice was, however, issued to the appellant and others on 06.10.2012 in respect of 838 watches (807 + 24 + 7).

28. The allegation against the appellant in respect of 807 watches is that the serial numbers were not mentioned in the Bills of Entry and, therefore, there was nothing to relate these watches to the watches that had been imported through the Bills of Entry. According to the appellant, the model numbers were mentioned and at the relevant time when these watches were imported there was no requirement of mentioning the serial number of the watches in the Bills of Entry. The department did not produce any evidence to substantiate that at the relevant time it was mandatory for importers to mention the serial numbers of the watches in the Bills of Entry. On the other hand, the appellant brought on record the DRI Alert Circular dated 05.03.2015 which notified that the customs officers should start insisting upon inclusion of serial number of the watches and it is, thereafter, that all the importers started mentioning the serial number. The appellant has also pointed out that the customs officers had examined the watches and the import documents with reference to the model

numbers mentioned in the import documents and, thereafter, cleared the watches.

29. The Alert Circular dated 05.03.2015 relied upon by the appellant is reproduced below:

“Subject:- Smuggling of High end luxury wrist watched
Non-availability of serial nos. of Imported High end
luxury wrist watches on import documents-reg.

In an investigation undertaken by DRI, it has been observed that Bills of Entry filed for assessment of expensive watches do not indicate the unique serial number affixed on such watches. As a result, when verification of legal import of suspect watches was undertaken, it was found that, import documents i.e. Bill of Entry, Invoice, Packing List, produced were not containing the unique serial number. Without the serial number, it is not feasible to establish the genuineness of the legal import of watches, in question. Therefore, it becomes impossible to ascertain the fact of legal import under proper declaration and assessment, and this deficiency can be used to cover/disguise the smuggled watches.

2. Being prone to smuggling, watches are one of the items specified in Section 123 of the Customs Act, 1962. Further, the number of expensive watches being imported into the country is also going up. **In view of the above, it is requested that at the time of import of high-end luxury wrist watches having value of more than Rs. 5 lakh per piece, it may be ensured that make, serial no. and model no. of the wrist watch is invariably mentioned in the bill of entry as well as invoice/packing list.**

3. **In view of the above, it is requested that field formations under your charge may be suitably alerted with direction for taking necessary action in the matter.** Action taken by the field formations and results achieved in this regard may be communicated to this Directorate in due course.”

(emphasis supplied)

30. The contention of the appellant that there was no necessity of mentioning the serial numbers in Bills of Entry at the relevant time when these 807 watches were imported, therefore, deserves to be accepted. This apart, at the time of import of these watches, the customs officers had cleared the goods after examination and if there was any necessity of mentioning the serial number of the watches, the customs officers would have noticed this fact at that point of time.

31. In respect of 24 watches in category BM, the show cause notice alleges that the serial number or model number of the watches as mentioned in the Panchnama does not match with the import documents/invoice and, therefore, the documents submitted by the appellant do not pertain to these watches.

32. The contention of the appellant is that such minor discrepancies were explained by Sandeep Kapoor in his statement recorded on 25.02.2016 but they had not been considered by the Principal Commissioner in the impugned order.

33. As pointed out above, these watches were imported prior to 2012 and were duly entered in the stock register of the appellant. The DRI also examined the stock register when the premises were searched. This stock register has also been relied upon by the department for the purpose of determining the assessable value of the watches. When out of the two, either the serial number or the model number matched, it cannot be said that these 24 watches were not imported through the documents. These watches were cleared prior to 2012 by the customs officers after examination of the watches and the documents produced by the appellant. These documents were also produced by the appellant before the

adjudicating authority. The Principal Commissioner, therefore, committed an error in holding that these 24 watches were smuggled by the appellant.

34. Regarding 7 watches, the appellant had stated that these watches were very old and were lying in the stock for the past many years which fact is evident from the statement of Sandeep Kapoor made on 25.02.2016. This is also evident from the closing stock in the stock register as on 31.03.2011 and 31.03.2012, copies of which were available with the department. Once these watches were entered in the stock register of the appellant, it was necessary for the Principal Commissioner to examine this aspect but that has not been done and only an inference has been drawn that these watches were smuggled. It again needs to be noted that this stock register was relied upon by the department to ascertain the assessable value of the watches.

35. The next issue that arises for consideration is whether show cause notice could have been issued on 06.10.2017 when all the 838 watches were imported prior to 2012.

36. Section 28(1) of the Customs Act provides that where any duty has not been levied for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts, the notice should be issue within one year from the relevant date. However, sub-section (4) of section 28 provides that where any duty has not been paid by reason of collusion or any wilful mis-statement or suppression of facts, the proper officer can issue the show cause notice within five years from the relevant date. The relevant date has been provided in Explanation 1 to mean the date on which the proper officer makes an order for clearance of the goods.

37. In the present case, it is not in dispute that all the 838 watches were imported prior to 2012 and were duly entered in the stock register of the appellant. The dates entered in the stock register would be only after the date when the watches were imported. The import documents also reveal that the watches were imported prior to 2012. There is, therefore, substance in the contention of the appellant that show cause notice could not have been issued in the present case as more than five years had elapsed from the relevant date.

38. This apart, the show cause notice has presumed the relevant date to be the date when the search was carried out on 08/09.10.2017. It has, therefore, been alleged that the extended period of limitation of five years could be invoked. In the first instance, this assumption is not justified as the relevant date cannot be the date on which the search was carried out. Secondly, the show cause notice does not give a reason for invoking the extended period of limitation nor any finding has been recorded by the Principal Commissioner in the impugned order as to why the extended period was correctly invoked.

39. The issuance of the show cause notice after five years from the relevant date is in contravention of the provisions of section 28 of the Customs Act and is a good ground for setting aside the impugned order.

40. The Principal Commissioner has also relied upon section 123 of the Customs Act. This section is reproduced below:

"123. Burden of proof in certain cases.—

(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be—

(a) in a case where such seizure is made from the possession of any person,

- (i) on the person from whose possession the goods were seized; and
 - (ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;
- (b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.
- (2) This section shall apply to gold, 6 and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify."

41. A perusal of the aforesaid section 123 of the Customs Act would show that though the initial burden is on the person from whose possession the goods were seized to show that they are not smuggled goods, but once this burden has been discharged the onus shifts to the department to establish that they were smuggled goods. In the present case, enough evidence had been led by the appellant to substantiate that the goods were not smuggled goods and, therefore, the burden shifted to the department to prove that the goods were smuggled. No evidence, however, has been led by the department which may even remotely suggest that the goods were smuggled. The Principal Commissioner has merely referred to section 123 of the Customs Act to hold that since the appellant could not substantiate licit possession of the 838 watches, they would be treated as smuggled watches. This finding of the Principal Commissioner cannot be sustained.

42. Reliance has also been placed in the impugned order by the Principal Commissioner on various statements made under section 108 of the Customs Act to hold that the watches were smuggled. These statements cannot be treated as relevant since the procedure contemplated under section 138B of the Customs Act was not followed.

43. This is what was held by the Division Bench of the Tribunal in **M/s. Surya Wires Pvt. Ltd. vs. Principal Commissioner, CGST, Raipur**⁶.

The Tribunal examined the provisions of sections 108 and 138B of the Customs Act as also the provisions of sections 14 and 9D of the Central Excise Act, 1944 and observed as follows:

"21. It would be seen section 14 of the Central Excise Act and section 108 of the Customs Act enable the concerned Officers to summon any person whose attendance they consider necessary to give evidence in any inquiry which such Officers are making. The statements of the persons so summoned are then recorded under these provisions. It is these statements which are referred to either in section 9D of the Central Excise Act or in section 138B of the Customs Act. A bare perusal of sub-section (1) of these two sections makes it evident that the statement recorded before the concerned Officer during the course of any inquiry or proceeding shall be relevant for the purpose of proving the truth of the facts which it contains only when the person who made the statement is examined as a witness before the Court and such Court is of the opinion that having regard to the circumstances of the case, the statement should be admitted in evidence, in the interests of justice, except where the person who tendered the statement is dead or cannot be found. In view of the provisions of sub-section (2) of section 9D of the Central Excise Act or sub-section (2) of section 138B of the Customs Act, the provisions of sub-section (1) of these two Acts shall apply to any proceedings under the Central Excise Act or the Customs Act as they apply in relation to proceedings before a Court. **What, therefore, follows is that a person who makes a statement during the course of an inquiry has to be first examined as a witness before the adjudicating authority and thereafter the adjudicating authority has to form an opinion whether having regard to the circumstances of the case the statement should be admitted in**

6. **Excise Appeal No. 51148 of 2020 decided on 01.04.2025**

evidence, in the interests of justice. Once this determination regarding admissibility of the statement of a witness is made by the adjudicating authority, the statement will be admitted as an evidence and an opportunity of cross-examination of the witness is then required to be given to the person against whom such statement has been made. It is only when this procedure is followed that the statements of the persons making them would be of relevance for the purpose of proving the facts which they contain."

(emphasis supplied)

44. After examining various judgments of the High Courts and the Tribunal, the Tribunal observed as follows:

"28. It, therefore, transpires from the aforesaid decisions that both section 9D(1)(b) of the Central Excise Act and section 138B(1)(b) of the Customs Act contemplate that when the provisions of clause (a) of these two sections are not applicable, then the statements made under section 14 of the Central Excise Act or under section 108 of the Customs Act during the course of an inquiry under the Acts shall be relevant for the purpose of proving the truth of the facts contained in them only when such persons are examined as witnesses before the adjudicating authority and the adjudicating authority forms an opinion that the statements should be admitted in evidence. It is thereafter that an opportunity has to be provided for cross-examination of such persons. **The provisions of section 9D of the Central Excise Act and section 138B(1)(b) of the Customs Act have been held to be mandatory and failure to comply with the procedure would mean that no reliance can be placed on the statements recorded either under section 14D of the Central Excise Act or under section 108 of the Customs Act.** The Courts have also explained the rationale behind the precautions contained in the two sections. It has been observed that the statements recorded during

inquiry/investigation by officers has every chance of being recorded under coercion or compulsion and it is in order to neutralize this possibility that statements of the witnesses have to be recorded before the adjudicating authority, after which such statements can be admitted in evidence.”

(emphasis supplied)

45. The relevant findings of the Principal Commissioner regarding the imposition of penalty upon Amit Kumar are reproduced below:

“56. I find that Shri Amit Kumar in his further statement dated 22.01.2013 accepted the facts narrated by him in his statements dated 08/09.10.2012; that he agreed with the seizure of high end luxury watches from IGI airport under panchnama dated 08/09.10.2012; that he had gone to collect the watches from IGI Airport as per the directions of Sh. Sandeep Kapoor.

57. I find that Shri Amit Kumar failed to provide any documents evidencing legal import/ acquisition/ possession of the 12 watches recovered during the search on 09.10.2012 from his residence, therefore the said 12 high end luxury wrist watches, which were detained under panchnama dated 09.10.2012, were placed under seizure vide seizure memo dated 01.04.2013. Further, the cash amounting to Rs. 63,00,000/- resumed from the residence of Shri Amit Kumar under panchnama dated 09.10.2012 was also placed under seizure vide seizure memo dated 01.04.2013, on a reasonable belief that the same were sale proceeds of illegally procured smuggled watches as Sh. Amit Kumar failed to explain the source of the cash recovered from his residential premises and Show Cause Notice vide DRI F.No.34/07/2012 dated 08.10.2013 was issued for confiscation of seized 14 watches and seized cash.

62. From the statements of Sh. Amit Kumar and Sh. Nigel Nicholas Bright, noticee number 06 and 07 respectively, it is clear that they were

regularly handling and dealing in smuggled watches. It is not only the watches seized on 09.10.2012 which these two persons dealt with but their modus operandi clearly establishes their role in dealing with and handling smuggled watches for noticees 01 and 02. I have gone through the provisions of Section 112 of the Customs Act, 1962 and I find that they had carried the smuggled and prohibited goods which were liable for confiscation under Section 111 of the Customs Act, 1962 Therefore, I find that Shri Amit Kumar and Shri Nigel Nicholas Bright are liable to penal action under Section 112 of the Customs Act, 1962.”

(emphasis supplied)

46. It would be seen that the finding against Amit Kumar is based on two facts. The first is regarding the statement made by him under section 108 of the Customs Act and the second relates to the seizure of 2 watches on 09.10.2012, when a foreigner was intercepted at the International Airport. An inference has been drawn that since Amit Kumar had a modus operandi in dealing with smuggled watches, he must also be having a role in the smuggling of 838 watches. The 2 watches seized on 09.10.2012 are the subject matter of the show cause notice dated 08.10.2013 issued to Amit Kumar. The role of Amit Kumar cannot be extended to the 838 watches which are the subject matter of the show cause notice dated 06.10.2017. This apart, the statement of Amit Kumar cannot be considered as relevant as the procedure contemplated under section 138B of the Customs Act was not followed. Thus, the imposition of penalty upon Amit Kumar cannot be sustained.

47. Thus, for all the reasons stated above, the confiscation of 838 watches and imposition of penalties upon the appellant, Raunaq Kapoor, Amarjeet Kapoor, Sandeep Kapoor, Kapoor N Company and Amit Kumar

cannot be sustained and are set aside. All the six appeals are, accordingly, allowed.

(Order Pronounced on **19.01.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(C.J. MATHEW)
MEMBER (TECHNICAL)

Shreya