CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Customs Appeal No. 51905 of 2021

(Arising out of Order-in-Appeal No. CC(A) CUS/D-I/Import/NCH/101-102/2021-22 dated 02.07.2021 passed by the Commissioner of Customs (Appeals), New Delhi).

M/s. Richemont India Pvt. Ltd. **.....Appellant**
Unit 6B, 6th Floor, Aria Tower,
Hotel J W Marriott, Asset Area-4,
Hospitality District, New Delhi Aerocity,
New Delhi - 110037

versus

The Commissioner of Customs (Appeals), **.....Respondent**
Office of the Commissioner of Customs (Appeals),
New Customs House, Near I.G.I. Airport,
New Delhi - 110037

APPEARANCE:

Shri Harpreet Singh Ajmani, Shri Sagnik Chatterjee and Ms. Gunjan Panda, Advocates for the Appellant

Shri Shiv Shankar, Authorized Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 09.10.2025
DATE OF DECISION: 09.04.2026

FINAL ORDER NO. 50697/2026

JUSTICE DILIP GUPTA:

M/s. Richemont India Pvt. Ltd.[1] has filed this appeal to assail the order dated 02.07.2021 passed by the Commissioner of Customs (Appeals)[2] by which the appeal filed by the appellant against the order dated 17.07.2018 passed by the Joint Commissioner of Customs[3] has been dismissed. The Joint Commissioner had confirmed the demand of

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1. **the appellant**
2. **the Commissioner (Appeals)**
3. **the Joint Commissioner**

differential customs duty under section 28(4) of the Customs Act, 1962[4] with applicable interest. The Commissioner (Appeals) also held that the watches are liable to confiscation under section 111(m) of the Customs Act but option was given to the appellant to redeem the same on payment of redemption fine of Rs. 2 Lakhs. The Commissioner (Appeals) also imposed penalty upon the appellant under section 114A of the Customs Act.

2. The appellant is a company engaged in the import and sale of watches in India. The appellant is a part of the Richemont group and was appointed as the authorized distributor of watches in India by Richemont International SA, Switzerland for the brands owned by the Richemont group.

3. In respect to the disputed transaction of watches, the appellant claims that at the time of import, the Retail Sale Price[5] was affixed to the imported watches according to the prices declared by the foreign exporter (i.e. Richemont Dubai, FZE), and the appellant discharged the applicable customs duty. Such imports were duly verified, finally assessed, and cleared by customs authorities without any provisional assessment, bond, or user conditions.

4. For its operations in India, the appellant claims that it appointed authorized dealers, who are unrelated parties, to whom such imported watches were sold on a principal-to-principal basis. Thereafter, such dealers sell the said watches to the end retail customer, and upon sale of imported watches to the authorized dealers, the right, title, interest, ownership, possession, risks and returns in respect of such watches get

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4. the Customs Act
5. RSP

transferred to the authorized dealers and the appellant has no control or role in the affairs of such authorized dealers.

5. Based on intelligence developed by the Department of Revenue Intelligence[6], Mumbai Zonal Unit with respect to consignment of imported watches by Swatch Group India Private Limited, search and seizure was conducted at the premises of Timekeepers the Watch Boutique Private Limited[7] and Time Avenue Private Limited[8]. TWBPL and TAPL were also one of the authorized dealers of the appellant.

6. In the Panchnama dated 30.03.2017 drawn in the case of TWBPL, it was noticed that the following watches were purchased by it from different importers:

S. No.	Name of importer from whom watches are procured	Brands
1	M/s. Swatch Group India Private Ltd.	Omega, Longines, Rado
2.	M/s. Richemount	Roger Dubuis, Baume & Mercier, Vacheron Constantin etc.
3.	M/s. Swiss Promotion	Franck Muller & Ulysse Nardin
4.	M/s. Corum India Private Ltd.	Corum

7. Similarly, in the Panchnama dated 30.03.2017 drawn in the case of TAPL, it was noticed that imported watches were purchased from different importers.

8. In the Panchnama dated 30.03.2017 drawn on TWBPL, it is recorded that during the search it was noticed that in certain watches the MRP tags were changed, whereas in certain cases there were no MRP tags affixed to the watches. TWBPL alleged that the MRP tags on certain watches have been changed due to receipt of the revised price list from the suppliers of the watches. The DRI also found unprinted MRP tag-tolls lying in drawers

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6. DRI
7. TWBPL
8. TAPL

and MRP printing machine of Casio Brand model number KL-820. The DRI also found printed tags. The DRI then placed all such tags, MRP printing machines and tag-rolls in a box and took over the same, under a reasonable belief that the same were being used to change the MRP tags and/or to print new MRP tags.

9. The DRI also recorded statement of Amit Sinha, Director of the appellant under section 108 of the Customs Act.

10. Thereafter, the Additional Director, DRI issued a show cause notice dated 27.09.2017 to the appellant broadly alleging that:

(a) The price of watches seized from the premises of the Additional Director (imported and supplied by the appellant) was upwardly revised post their import as per the revised RSP circulated by the appellant. However, no differential CVD was paid on such revised RSP by the appellant; and

(b) Under section 4A of the Central Excise Act, 1944[9] read with the Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008[10], the upward revision of RSP would be the correct RSP for payment of CVD.

11. Accordingly, the show cause notice proposed to:

(a) Treat the upwardly revised RSP as the value for assessment of CVD and demand differential duty amount of Rs. 4,47,394/-, in terms of section 28(4) of the Customs Act along with applicable interest under section 28AA of the Customs Act;

(b) Confiscate the imported watches under section 111(m) of the Customs Act and imposes penalty under section 112(a) and (b) of the Customs Act; and

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9. the Central Excise Act
10. the 2008 Rules

(c) Impose penalty under sections 114A and 114AA of the Customs Act.

12. The show cause notice was adjudicated by the Joint Commissioner by order dated 20.11.2018 in the following manner:

(a) The upwardly revised price has been confirmed as the correct RSP for assessment of CVD in terms of section 3(2) of the Customs Tariff Act, 1975[11] read with section 4A of the Central Excise Act and the Excise Rules;

(b) Confirms the demand and recovery of differential customs duty of Rs. 4,47,394/- under section 28(4) of the Customs Act along with applicable interest under section 28AA of the Customs Act;

(c) The imported watches have been held liable to confiscation under section 111(m) of the Customs Act, but an option has been given to the appellant to redeem the same on payment of redemption fine of Rs. 2,00,000/- under section 125 of the Customs Act within 120 days of receipt of the order; and

(d) Penalty has been imposed on the appellant under section 114A of the Customs Act.

13. The order, however, refrains from imposing penalty under sections 112(a), 112(b) and 114AA of the Customs Act proposed on the appellant in the show cause notice.

14. Being aggrieved by the order to the extent it was against the appellant, the appellant filed an appeal before the Commissioner (Appeals), who by order dated 02.07.2021 upheld the order of the Joint Commissioner.

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11. the Customs Tariff Act

15. Shri Harpreet Singh Ajmani, learned counsel for the appellant assisted by Shri Sagnik Chatterjee and Ms. Gunjan Panda made the following submissions:

(i) The appellant had correctly paid applicable CVD on watches imported into India. The appellant cannot be held liable for any subsequent revision in the RSP by authorized dealers. In this connection, reliance has been placed on:

(a) **M/s. Quantum Hi-Tech Merchandising Pvt. Ltd.** vs. **Commissioner of Customs, New Delhi**[12];

(b) **M/s. Mitashi Edutainment (P) Ltd., Rakesh Devendra Kumar Dugar** vs. **Commissioner of Customs (Import), Mumbai-II, CC, JNCH, Nhava Sheva**[13];

(c) **Bluemax Impex (India) Private Ltd. and ors.** vs. **Commissioner of Customs, Chennai**[14]

(ii) The invocation of the extended period of limitation under section 28(1) of the Customs Act is not justified;

(iii) Customs authorities do not have the jurisdiction where imports have been completed;

(iv) Upward revision of RSP, if any, does not affect goods already imported/old stock;

(v) No penalty can be imposed when the demand itself is unsustainable. Even otherwise, no penalty can be imposed on the appellant on account of mistake, if any, committed by the authorized dealers;

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12. 2024 (11) TMI 844 (CESTAT, New Delhi)
13. 2018 (12) TMI 390 (CESTAT, Mumbai)
14. MANU/CC/0237/2015 (CESTAT, Chennai)

(vi) In the absence of any wilful act of suppression or intent to evade tax, no penalty can be imposed under section 114A of the Customs Act; and

(vii) No interest can be levied when the demand itself is unsustainable.

16. Shri Shiv Shankar, learned authorized representative appearing for the department made the following submissions:

(i) The Commissioner (Appeals) correctly upheld the findings of the Joint Commissioner that differential CVD was rightly demanded from the appellant under section 3(2) of the Customs Tariff Act read with section 4A of the Central Excise Act and rule 5 of the 2008 Rules as RSP of the watches were revised upward post-import;

(ii) The plea of the appellant that it had no control over the revised RSP is contradicted by it own internal communications, price lists, and circulars, which demonstrate that the revised RSP was determined by the appellant to their authorized dealers;

(iii) The RSP was revised upwards post-importation and this revised RSP was applicable even to earlier imported goods that remained unsold. Therefore, the differential CVD became payable;

(iv) The argument that rule 5 of the 2008 Rules is not applicable to customs assessment is without merit. Once section 3(2) of the Customs Tariff Act incorporates the machinery of section 4A of the Central Excise Act, the entire framework for RSP based valuation, including rule 5, becomes applicable;

(v) The appellant failed to disclose at the time of import that the RSP would be revised upwards. They continued to pay

CVD on lower RSP, while directing their dealers to sell at higher RSP. This resulted in short payment of duty. Such conduct amounts to wilful mis-statement and suppression of facts, justifying invocation of the extended period of limitation under section 28(4) of the Customs Act. Consequently, the imposition of penalty under section 114A is legally valid and mandatory, once ingredients of suppression and wilful mis-statement are established;

(vi) Documentary evidence and statements clearly indicate that the revised RSP originated from the appellant and were disseminated to dealers as part of a coordinated pricing strategy. The appellant, as importer, had both knowledge and control over the revised pricing because of the principal-agent relationship; and

(vii) Once the duty short paid is established, interest under section 28AA is automatic and follows as a statutory consequence.

17. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

18. The case of the department is that the RSP of the imported watches was revised post clearance on the basis of the revised price list circulated by the appellant. The contention of the appellant is that there is no evidence on the record to demonstrate that the appellant had altered, tampered with or had any knowledge of any alteration/upward revision of the RSP of any existing stock lying with the authorized dealers. The appellant further contends that the communication of a revised price list by the appellant, on behalf of the overseas supplier, relates to prospective imports and sale and qualifies as a routine business communication and

though the burden of proof is on the Revenue, the department did not bring on record any material evidence to demonstrate that any benefit was earned or accrued by the appellant on account of revision of RSP by the authorized dealers. The appellant has also contended that circulation of a revised price list, on behalf of the overseas supplier, was only for the purpose of information and cannot form the basis for levying additional custom duty and that RSP was correctly declared in the Bill of Entry at the time of import and the department did not bring on record any material evidence to invoke the deeming fiction under section 3(2) of the Customs Tariff Act.

19. The case of the department further is that Amit Sinha in his statement had admitted that if RSP is upward revised, differential CVD is payable and the appellant had previously paid differential CVD on upward revision of RSP of the stock available in its warehouse.

20. The contention of the appellant is that Amit Sinha is not an expert on customs laws. Further, the appellant, in its reply to the show cause notice, clarified that in the past it had only paid differential CVD when RSP of watches was revised by the appellant itself. CVD under section 3(2) of the Customs Tariff Act, can be triggered only when the importer revises the RSP and not otherwise.

21. It is seen that the appellant had declared RSP and discharged the CVD based on the RSP declared at the time of importation. There is no evidence on record to demonstrate that the appellant had altered, tampered or had knowledge of any alteration/upward revision of the RSP of any existing stock available with the authorized dealers. Once the watches were sold by the appellant to the authorized dealers, the appellant had no control over the watches and cannot be held liable for any subsequent revision in the RSP by the authorized dealers.

22. In this connection, reference can be placed upon the decision of the Tribunal in **Quantum High-tech Merchandising** wherein it has been held that rule 5 of the 2008 Rules will not be applicable to an importer. The said decision also holds that any alteration in the MRP at a later stage when the goods reached the domestic market would not mean that the appellant had altered the MRP. The relevant portion of the decision is reproduced below:

> "10. **Rule 5 of Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules 2008 has been relied upon by the department while confirming the impugned demand. We observe that the said rule is vis-a-vis a manufacturer who alters or tempers the retail sale price declared on the package of the goods after their removal from the place of manufacture resulting in increase of price and in such situation the said increase price shall be taken as retail sale price of the goods removed. However, since the appellant herein is the importer as different from the manufacturer the said rule is held to has wrongly been invoked.** The apparent and admitted fact on record remains is that the MRP sticker found present on the product examined at import shed was true as per the declaration in the import documents. **The alteration was found at a later stage when the goods were already reached the domestic market to the retailers through the distributor of the appellant. The only basis that origin of both types of MRP stickers i.e. from two different retailers is same has wrongly be held to be an evidence against appellant to have altered those stickers. Thus, we hold that there is no evidence whatsoever on record that the alleged alteration in the MRP was done by the appellant or with the consent and/or knowledge of the appellant.** *****"
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> **(emphasis supplied)**

23. The order impugned also relies upon the statement of Amit Sinha, Director of the appellant made under section 108 of the Customs Act. This

statement cannot be considered as relevant as the procedure contemplated under section 138B of the Customs Act had not been followed. In this connection, reliance can be placed on the decision of the Tribunal in **M/s Surya Wires Pvt. Ltd.** vs. **Principal Commissioner, CGST, Raipur**[15].

24. This apart, Amit Sinha in his statement only stated that if RSP is upwardly revised, differential CVD is payable. This statement has to be judged in the light of the statement made by Amit Sinha that the appellant had previously paid differential CVD on upward revision of RSP of the stock available in its warehouse. It cannot be understood to mean that the appellant would pay the differential CVD even if the RSP is upwardly revised by the authorized dealers.

25. The demand of differential duty from the appellant is, therefore, not justified. As the demand of differential duty is not sustainable, the imposition of penalty upon the appellant under section 114A of the Customs Act cannot be upheld.

26. Thus, for all the reasons stated above, the impugned order dated 02.07.2021 passed by the Commissioner (Appeals) cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Order pronounced on **09.04.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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15. Excise Appeal No. 51148 of 2020 decided on 01.04.2025 (Tri.-Del.)