CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH
COURT NO. – IV

Customs Appeal No. 203 of 2011

[Arising out of Order-in-Original No. 16/2010-Commr dated 31.12.2010 passed by the Commissioner of Customs, Jaipur]

Shri Hargun Das Nebhani
M/s. Rajasthan Watch Manufacturers **... Appellant**
A-21, Shri ji ki Mori, Tripolia Bazar
Jaipur

VERSUS

Commissioner of Customs **.. Respondent**
NCR Building, Statue Circle
Jaipur

with
Customs Appeal No. 204 of 2011

[Arising out of Order-in-Original no. 16/2010-Commr dated 31.12.2010 passed by the Commissioner of Customs, Jaipur]

Shri Mirchoomal Chandani
M/s. Rajasthan Watch Manufacturers **... Appellant**
A-21, Shri ji ki Mori, Tripolia Bazar
Jaipur

VERSUS

Commissioner of Customs **.. Respondent**
NCR Building, Statue Circle
Jaipur

with
Customs Appeal No. 205 of 2011

[Arising out of Order-in-Original no. 16/2010-Commr dated 31.12.2010 passed by the Commissioner of Customs, Jaipur]

Shri Om Prakash Pareek
M/s. Rajasthan Watch Manufacturers **... Appellant**
A-21, Shri ji ki Mori, Tripolia Bazar
Jaipur

VERSUS

Commissioner of Customs **.. Respondent**
NCR Building, Statue Circle
Jaipur

with
Customs Appeal No. 206 of 2011

[Arising out of Order-in-Original no. 16/2010-Commr dated 31.12.2010 passed by the Commissioner of Customs, Jaipur]

Shri Ishwar Das Moolrajani
M/s. Rajasthan Watch Manufacturers **... Appellant**

A-21, Shri ji ki Mori, Tripolia Bazar
Jaipur

VERSUS

Commissioner of Customs **.. Respondent**
NCR Building, Statue Circle
Jaipur

with
Customs Appeal No. 207 of 2011

[Arising out of Order-in-Original no. 16/2010-Commr dated 31.12.2010 passed by the Commissioner of Customs, Jaipur]

Shri NareshMoolrajani
M/s. Rajasthan Watch Manufacturers **... Appellant**
A-21, Shri ji ki Mori, Tripolia Bazar
Jaipur

VERSUS

Commissioner of Customs **.. Respondent**
NCR Building, Statue Circle
Jaipur

with
Customs Appeal No. 208 of 2011

[Arising out of Order-in-Original no. 16/2010-Commr dated 31.12.2010 passed by the Commissioner of Customs, Jaipur]

Shri Nanak Das Moolrajani
M/s. Rajasthan Watch Manufacturers **... Appellant**
A-21, Shri ji ki Mori, Tripolia Bazar
Jaipur

VERSUS

Commissioner of Customs **.. Respondent**
NCR Building, Statue Circle
Jaipur

APPEARANCE:

None for the appellant (Shri Keshav Krishnan, Advocate appeared proxy and sought adjournment)
Shri R P Sharma, Special Counsel for the Revenue

CORAM:
HON'BLE Dr. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 23.04.2026
DATE OF DECISION: 23.06.2026

FINAL ORDER NO. 51058-51063/2026

P V SUBBA RAO

These six appeals have been filed by the appellants to assail the order dated 31.12.2010[1] passed by the Commissioner of Customs, Jaipur insofar as it pertains to each of the appellants. The Commissioner had, in the impugned order, decided the proposals made in the show cause notice dated 19.6.2007[2] and the corrigendum dated 13.7.2007[3] issued by the Additional Director General[4], Directorate of Revenue Intelligence[5], Delhi Zonal Unit[6], Delhi. In the impugned order, the Commissioner rejected the declared values of the watches imported by M/s. Rajasthan Watch Manufacturers[7] through three ports, re-determined the values, confirmed demand of differential duty amounting to Rs. 2,44,58,162 under the proviso to section 28(1) of the Customs Act, 1962[8], confiscated the imported watches under section 111 of the Act and imposed redemption fine in lieu of confiscation under section 125 of the Act and imposed penalties on Rajasthan Watch under sections 112 and 114A of the Act. He also imposed personal penalties on the appellants as follows:

Appeal	**Appellant**	**Penalty (Rs.)**	**Sections**
C/203/2011	Hargun Das Nebhani	7,00,000/-	112(b)
C/204/2011	Mirchoomal Chandani	7,00,000/-	112(b)
C/205/2011	Om Prakash Pareek	13,00,000/-	112(a)&(b)
C/206/2011	Ishwar Das Moolrajani	90,00,000/-	112(a)&(b)

1. **Impugned order**
2. **SCN**
3. **Corrigendum**
4. **ADG**
5. **DRI**
6. **DZU**
7. **Rajasthan Watch**
8. **Act**

C/207/2011	Naresh Moolrajani	13,00,000/-	112(b)
C/208/2011	Nanak Das Moolrajani	13,00,000/-	112(b)

2. In these six appeals before us, no specific grounds of appeal have been taken. Instead, the appellants adopted the grounds in the appeal filed by Rajasthan Watch. The relevant portion of the appeal C/203/2011 is reproduced below. Other appeals are identically worded.

> "….
>
> 4. The appellant says and submits that the said company is also filing an appeal against the impugned order dated 31.12.2010 on the facts and grounds set out in its memorandum of appeal which the appellant craves leave to refer to and rely upon as if the same were specifically set out herein and form a part of this appeal….."

3. All these six appeals as well as the appeal filed by Rajasthan Watch along with some other appeals were disposed of by Final Order No 54724-54769/2017 dated 27.6.2017 remanding all appeals to the Commissioner with a direction to decide the matter after the decision of the Supreme Court in the appeal against the judgment of Delhi High Court in **Mangli Impex** versus **UOI**[9] in which it was held that the officers of DRI were not competent to issue SCNs demanding duty. This order of the Delhi High Court was stayed by the Supreme Court[10].

4. Revenue assailed the Final Order of this Tribunal dated 27.6.2017 before Rajasthan High Court in these six appeals but not in all other appeals. Rajasthan High Court, by judgment dated 22.8.2019, set aside the Final Order of this Tribunal in these six appeals and remanded the matter back to

9 2016 (335) ELT 605 (Del.)
10 2016(339) ELT A 49

this Tribunal to decide. Other matters including Appeal No. C/201/2011 filed by Rajasthan Watch are pending with the Commissioner after remand by this Tribunal.

5. The question of power of DRI to issue SCNs demanding duty has been finally decided by the Supreme Court in Review Petition no. 400 of 2021 in Civil Appeal No. 1827 of 2018 **Commissioner of Customs vs M/s. Canon India Pvt. Ltd.** and it has been held that DRI was competent to issue SCNs demanding duty.

6. These six appeals were thereafter listed on several dates. Today, when the matter was called Shri Keshav Krishnan, learned counsel appearing proxy for the counsel sought another adjournment. As the matter is over 15 years old, we have declined adjournment. The question as to how this Tribunal should proceed if the appellant does not appear on the dates fixed for hearing has been decided by the Supreme Court in **Shri Balaji Steel Re-rolling Mills** *Versus* **Commissioner of Central Excise& Customs**[11] the relevant portion of which is reproduced below:

> **12.** A similar question came up for consideration before this Court in *The Commissioner of Income-Tax, Madras* v. *S. Chenniappa Mudaliar, Madurai* - 1969 (1) SCC 591 wherein this Court considered the provisions of Section 33 of the Income-tax Act, 1922 and Rule 24 of the Appellate Tribunal Rules, 1946 which gave power to the Tribunal to dismiss the appeal for want of prosecution. For ready reference, Section 33(4) of the Income Tax Act, 1922 and Rule 24 of the Appellate Tribunal Rules, 1946 are reproduced below :-
>
> **Section 33(4) of the Income Tax Act, 1922**
>
> "**33(4).** The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner."
>
> **Rule 24 of the Appellate Tribunal Rules, 1946**
>
> "**24.** Where on the day fixed for hearing or any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Tribunal may dismiss the appeal for default or may hear it *ex parte*."
>
> Considering the aforesaid provisions, this Court held as under :-
>
> "7. The scheme of the provisions of the Act relating to the Appellate Tribunal apparently is that it has to dispose of an appeal by making such orders as it thinks fit on the merits. It follows from the language of Section 33(4) and in particular the use of the word "thereon" that the Tribunal has to go into the correctness or otherwise of the points decided by the departmental authorities in

11 2014 (36) S.T.R. 1201 (S.C.)

the light of the submissions made by the appellant. This can only be done by giving a decision on the merits on questions of fact and law and not by merely disposing of the appeal on the ground that the party concerned has failed to appear. As observed in *Hukumchand Mills Ltd.* v. *CIT,* the word "thereon" in Section 33(4) restricts the jurisdiction of the Tribunal to the subject-matter of the appeal and the words "pass such orders as the Tribunal thinks fit" include all the powers (except possibly the power of enhancement) which are conferred upon the Appellate Assistant Commissioner by Section 31 of the Act. The provisions contained in Section 66 about making a reference on questions of law to the High Court will be rendered nugatory if any such power is attributed to the Appellate Tribunal by which it can dismiss an appeal, which has otherwise been properly filed, for default without making any order thereon in accordance with Section 33(4). The position becomes quite simple when it is remembered that the assessee or the CIT, if aggrieved by the orders of the Appellate Tribunal, can have resort only to the provisions of Section 66. So far as the questions of fact are concerned the decision of the Tribunal is final and reference can be sought to the High Court only on questions of law. The High Court exercises purely advisory jurisdiction and has no appellate or revisional powers. The advisory jurisdiction can be exercised on a proper reference being made and that cannot be done unless the Tribunal itself has passed proper order under Section 33(4). It follows from all this that the Appellate Tribunal is bound to give a proper decision on questions of fact as well as law which can only be done if the appeal is disposed of on the merits and not dismissed owing to the absence of the appellant. It was laid down as far back as the year 1953 by S.R. Das, J. (as he then was) in *CIT,* v. *Mtt. Ar. S. Ar. Arunachalam Chettiar* that the jurisdiction of the Tribunal and of the High Court is conditional on there being an order by the Appellate Tribunal which may be said to be one under Section 33(4) and a question of law arising out of such an order. The Special Bench, in the present case, while examining this aspect quite appositely referred to the observations of Venkatarama Aiyar, J. in *CIT* v. *Scindia Steam Navigation Co. Ltd.* indicating the necessity of the disposal of the appeal on the merits by the Appellate Tribunal. This is how the learned judge had put the matter in the form of interrogation :

> "How can it be said that the Tribunal should seek for advice on a question which it was not called upon to consider and in respect of which it had no opportunity of deciding whether the decision of the Court should be sought."

Thus looking at the substantive provisions of the Act there is no escape from the conclusion that under Section 33(4) the Appellate Tribunal has to dispose of the appeal on the merits and cannot short-circuit the same by dismissing it for default of appearance."

13. Applying the principles laid down in the aforesaid case to the facts of the present case, as the two provisions are similar, we are of the considered opinion that the Tribunal could not have dismissed the appeal filed by the appellant for want of prosecution and it ought to have decided the appeal on merits even if the appellant or its counsel was not present when the appeal was taken up for hearing. The High Court also erred in law in upholding the order of the Tribunal.

14. We, therefore, set aside the order, dated 18-1-2014 passed by the High Court of Judicature of Bombay, Bench at Aurangabad and also the order, dated 22-8-2012 passed by the Tribunal and direct the Tribunal to decide the appeal on merits.

15. Accordingly, the appeal is allowed with a cost of Rs. 25,000/- to be payable by the Respondent.

(emphasis supplied)

7. Following the law laid down by Supreme Court, we have heard learned special counsel for the Revenue and perused the appeals and proceed to decide the matter.

8. Learned special counsel for the Revenue submitted that no grounds have been taken in any of these appeals but only the grounds taken by Rajasthan Watch in its appeal no. C/201/2011 were adopted which appeal does not exist as it has been disposed by this Tribunal by Final Order dated 27.6.2017 by way of remand. Neither side assailed the Final order before High Court in that appeal. Therefore, the matter stands remanded to the Commissioner.

9. Learned special counsel submitted that all these appeals are entirely linked with the success or failure of the appeal of Rajasthan watch and since that appeal is not before this bench, these six appeals are not maintainable.

10. We have considered the submissions of the learned special counsel and have perused all these six appeals. It is true that no grounds were taken in these appeals but the grounds in appeal No. C/201/2011 of Rajasthan Watch were adopted. Although this Tribunal had remanded that appeal to the Commissioner, the department did not appeal to the High Court against this Tribunal's order in that appeal. The matter stands remanded to the Commissioner. Nothing is brought to our attention to indicate that the Commissioner has decided the matter till date although the question of competence of DRI to issue SCN was decided finally by the Supreme Court on 7th November 2024.

11. However, it also needs to be noted that not only are there no independent grounds in these appeals, but the penalties imposed on the appellants in these appeals are also consequent upon the confirmation of demands and confiscation of goods against Rajasthan Watch in the impugned order. The impugned order qua Rajasthan Watch does not exist after the matter was remanded by this Tribunal to the Commissioner. Thus,

neither Appeal No. C/201/2011 filed in Rajasthan Watch nor the impugned order insofar as it pertains to Rajasthan Watch exist today. Thus, as on today, there is no confirmation of demand or confiscation against Rajasthan Watch. All the penalties imposed in these six appeals are consequent upon the confirmation of demand and confiscation of goods against Rajasthan Watch. Therefore, the penalties imposed on the appellants in the impugned order cannot sustain.

12. In view of the above, we allow all six appeals and set aside the penalties imposed on them in the impugned order.

(Order pronounced in open court on 23/06/2026.)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

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