<u>F.Nos. 380/96/B/13-RA</u>
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 30.4.114

ORDER NO. _____ 102/14-Cus DATED __29.04.2014 OF THE GOVERNMENT OF
INDIA, PASSED BY SHRI D. P. SINGH, JOINT 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. Mum-Custom-Pax-App-130/13-14 dated 18.07.2013 passed by Commissioner of Customs (Appeals) Mumbai-III
APPLICANT	:	Commissioner of Customs(Airport), Mumbai
RESPONDENT	:	Smt. Anyanwu Marteena Uchechi, C/o Shri P.K. Shingrani, Advocate

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ORDER

This revision application is filed by Commissioner of Customs, CSI Airport, Mumbai against the order-in-appeal No. Mum-Custom-Pax-App-130/13-14 dated 18.07.2013 passed by Commissioner of Customs (Appeals) Mumbai-III with respect to order-in-original No.AC/Refund/51R/12 dated 28.12.12 passed by Deputy Commissioner of Customs (Refund) CSI Airport, Mumbai.   Smt. Anyanwu Marteena Uchechi a passenger is respondent in this case.

2.   Brief facts of the case are that the applicant was intercepted by the officers of the Air Intelligence Unit on her arrival at CSI Airport, Mumbai by flight No. EK-506 dated 29.08.2012 and clearance through the 'Green Channel'.   Examination of her baggage resulted in the recovery and seizure of US $ 40000 equivalent to Indian Rs.24,05,490/-.   The case was adjudicated by the Additional Commissioner of Customs (Airport), Mumbai ordering confiscation of the impugned currency under section 111(d) of the Customs Act, 1962 with an option, under section 125 of the ibid Act, to redeem them on payment of a fine of Rs.4,00,000/-.   Penalties of Rs.75,000/- under section 112(a) and Rs.25,000/- under section 114AA of the said Act were also imposed on the applicant.   The applicant instead of depositing the penalty and redemption fine, has approached the department with a refund application for the residual amount subtracting the penalty and redemption fine from the sum realized on disposal of the impugned foreign currency.   The said claim was rejected by the Deputy Commissioner (Refund) on the contention that since the redemption fine is not paid by the applicant the amount lying with the Government is not legally accessible for sanction of refund as claimed by the applicant.

3.   Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who held that sale proceed lying with the Government can be returned by deducting fine and penalty since the Act/Rules do not bar the same.

Commissioner (Appeals) set aside the impugned order-in-original and allowed the appeal.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 129 DD of Customs Act, 1962 before Central Government on the following grounds :

4.1 It is observed by the Appellate Authority while passing the subject order dated 18.07.2013 that these provisions do not prescribe any specific procedure to be followed in case of redemption and whether the fine needs to be deposited in advance or whether it can be adjusted while returning any sum realized upon sale of the goods preceding redemption and as such redeemable by the owner or the person referred in the sub-section (1) of section 125 of the Customs Act, 1962.

In view of the above, it is submitted that the appellate authority herself agreed that the provision do not prescribed any specific procedure to be followed in the case of redemption fine.

4.2 It is not possible to adjust redemption fine of Rs.4.00 lakhs from the refund claim for Rs.24,05,490/- for want of accessibility to refundable amount which is already lying in Government account and not redeemed, therefore redemption of refund amount is legally needed for its accessibility before sanctioning of the consequential refund claim. In other words the deposit of Rs.4.00 lakhs (redemption fine) can only redeem the relevant claimed refund amount which is lying in Government account and thus making the refund sanctioning authority freely accessible to it, without that it would not enable adjudicating authority to sanction the refund amount claimed by the claimant.

4.3 The Commissioner (Appeals) has allowed the refund to applicant seeking refund of the remainder of the sale proceeds of the foreign currency after deduction of the redemption fine and penalty ordered in adjudication of the case. Therefore the Commissioner (Appeals) has erred in appreciating the fact that in the subject case the

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seized and confiscated item is currency which is goods as defined in the section 2(22) of the Customs Act, 1962. This neither duty nor sale proceeds, hence it cannot be adjusted by deducting redemption fine and penalty imposed under section 125 of Customs Act. Therefore, the order-in-appeal No. MUM-Custm-PAX-APP-130/13-14 passed by Commissioner (Appeals) was not proper and legal.

5.   A show cause notice was issued to the respondent under Section 129 DD of Customs Act, 1962 to file their counter reply. Respondent vide letter dated 11.04.2014 requested to uphold the impugned order-in-appeal keeping in view the circumstances of case as explained in said order-in-appeal.

6.   Personal hearing scheduled in this case on 12.04.14 at Mumbai was attended by Shri P.K. Shingrani, Advocate on behalf of the respondent who stated that impugned order-in-appeal being legal and proper may be upheld. Nobody attended hearing on behalf of the applicant department.

7.   Government has carefully gone through the relevant case records, oral & written submissions and perused the impugned order-in-original and order-in-appeal.

8.   On perusal of records, Government observes that in the instant case original authority confiscated the foreign currency US $ 40000 = INR 2405490 under section 111(d) of Customs Act, 1962 but allowed the same to be redeemed on payment of redemption fine of Rs.4,00,000/-. A personal penalty of Rs.75,000/- and Rs.25,000/- was imposed under section 112(a) and 114 AA respectively. Respondent passenger requested to refund the amount after deducting fine and penalty which was denied by original authority. Commissioner (Appeals) allowed the request of respondent. Now applicant department has challenged the said order on the ground that currency being goods can be released only after redemption fine is deposited that passenger has not deposited redemption fine, the department cannot refund the amount in the absence of accessibility to said currency/amount lying in Government account in SBI.

9.   Government notes that it is not a case of refund under section 27 of Customs Act since it is not a refund of duty.   Respondent has simply requested to adjust the redemption fine / penalty from said seized currency and return the balance amount. Since the seized goods are foreign currency and it can be returned by deducting the redemption fine and personal penalty amount, there is no question of having no accessibility without deposit of redemption fine.   Government finds no merit in the contention of applicant.   Department has also not pointed out illegality / violation of provision of law in the said order-in-appeal.

10.   Government therefore find the impugned order-in-appeal legal and proper and upholds the same.

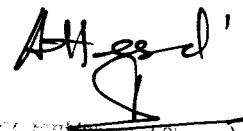11.   The revision application is thus rejected.

12.   So ordered.

(D.P. Singh)
Joint Secretary (Revision Application)

The Commissioner of Customs,
Chhatrapati Shivaji International Airport,
Avas Corporate Point, Makhwana Lane,
Andheri Kurla Road, Andheri (East),
Mumbai – 400 059.

Order No. 102/14-Cus Dated 29.04.2014

Copy to:

1. Commissioner of Customs (Appeals), Mumbai-III, Avas Corporate Point, Makhwana Lane, Andheri Kurla Road, Andheri (East), Mumbai – 400 059.

2. Deputy Commissioner of Customs (Refund), Chhatrapati Shivaji International Airport, Mumbai – 400 099

3. Smt. Anyanwu Marteena Uchechi, C/o Shri P.K. Shingrani, Advocate, 123, Himalaya House, 79, Palton Road, Next to Haj House, CST Mumbai – 400 001.

1. PA to JS(RA)

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(B.P. Sharma)
OSD(Revision Application)