

**REGISTERED
SPEED POST**



**F.No. 372/15/B/13-RA
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...21/2/14

Order No. 35/14-cus dated 20.02.2014 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed,
under section 129 DD of the Customs Act
1962 against the Order-in-Appeal No.
15/2013-Air dated 29-08-2013 passed by the
Commissioner of Customs (Appeals),
Custom House, Kolkata.

Applicant : Ms. Amphal Thomthong,
C/o. Hotel Afreen No. 1,
Nawab Abdul Rehman Street,
Kolkata-700016.

Respondent : Commissioner of Customs,
Custom House, Kolkata.

ORDER

This revision application is filed by applicant Ms. Amphal Thomthong, C/o. Hotel Afreen No. 1, Nawab Abdul Rehman Street, Kolkata against the Order-in-Appeal No. 15/2013-Air dated 29-08-2013 passed by the Commissioner of Customs (Appeals), Kolkata with respect to Order-in-Original No. OS No. 13/2012 Air dated 19/10/2012 passed by the Commissioner of Customs, Kolkata.

2. Brief facts of the case are that the applicant a Thai national arrived at NS CBI Airport Kolkata from abroad. She was intercepted at green channel by DRI Officers. On examination of her baggage US Dollars 60,000, Thai Baht 9000 and INR 3300/- collectively valued at Rs. 27,63,000/- and good valued at Rs. 2500/- were recovered. The impugned currency was reportedly were found concealed. In her voluntary statement recorded under section 108 of Customs Act, 1962. She interalia stated that the impugned currency was given to her by one Mercy in Thailand to hand over to one Awon at Kolkata who would contact her at Kolkata. The foreign currency USD 60000/-, Thai Baht 9000/- and INR 3300 were seized under section 110 of Customs Act, 1962 on the reasonable belief that these were attempted to be imported into India in contravention of the provisions section 77, 11 of Customs Act reads with section 3 (3) of Foreign Trade (Development and Regulation) Act, 1992 and regulation 6 of Foreign Exchange Management (Export and Import of Currency) Regulations 2000 (Not. No. FEMA 6/RB-2000 date 03-05-2000) and para 7 of Baggage Rules 1998 as amend vide Baggage (amendment) Rules 2006 and rendering the same liable to confiscation under section 111 (d) (f) (l) of Customs Act, 1962. The pax was arrested under section 104 ibid. The adjudicating authority after following due process of law confiscated the said currency collectively valued at INR 2763000/- under section 111 (d) (f) & (l) of Customs Act, 1962. However, an option to redeem the same on payment of redemption fine of Rs. 50,000/- was given to the said passenger under section 125 of Customs Act, 1962. A penalty of Rs. 50,000/- was also imposed on the said passenger under section 112 (a) of Customs Act, 1962.

3. Being aggrieved by the said order-in-original, department filed appeal before Commissioner (Appeals), who modified the impugned Order-in-Original and enhanced redemption fine to Rs. 5,00,000/- and personal penalty to Rs. 1,00,000/-.

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 mainly on the following grounds:

4.1 The applicant stated that the enhancing of the redemption fine to Rs. 5,00,000/- from Rs. 50,000/- and the penalty to Rs. 1,00,000/- from Rs. 50,000/- with following the procedure laid down as per section 128A (3) of the Customs Act, 1962, even after due attention was invited to the latest Tribunal judgment/Order No. A/150/KOL/2013 dated 07-06-2013 goes to portray vagary on the part of the Commissioner (Appeals) in the absence of any specific findings or discussion as to why the Tribunal Judgment relating to section 128A (3) of the Customs Act, 1962, was not applicable in the applicant's case.

4.2 The applicant as per the admitted position was a passenger whose baggage attracted the provisions of section 77 of the Customs Act, 1962 and since baggage is defined under section 2 (3) of the Customs Act, 1962 and when currency falls under the definition of goods under section 2 (22) of the said statute which is not prohibited goods as defined under section 2 (33) of the Customs Act, 1962, the confiscation under section 111 (d) of the Customs Act, 1962 as upheld by the Commissioner of Customs (Appeals) was most uncalled for and bad in law.

4.3 The applicant in her appeal petition before the Commissioner of Customs (Appeals) had pointed out that the alleged offence said to have been committed was one of the non-declaration of the excess currency carried by both the applicant and her sister and since import of currency under the RBI Notification No. GSR 389 (E) FEMA 6/2000-RB dated 03-05-2000 did not prohibit the importation of foreign currency as such the provisions under section 111 (d) of the Customs Act, 1962 were not at all applicable.

4.4 That had the Commissioner of Customs (Appeals) cared to go into the grounds of appeal of the applicant as well as the DRI show cause notice F.No. 44/KOL/2011 dated 24-11-2011, the said Commissioner (Appeals) would have found that the absence of specific provision said to have been violated of the RBI. Notification No. GSR 389 (E) FEMA 6/2000-RB dated 03-05-2000 at the most attracted section 111 (m) of the Customs Act, 1962 and not section 111 (d) of the said statute.

4.5 The appeal of the department arising out of the adjudication order, only spoke of the redemption fine and penalty being on the lower side which the Commissioner of Customs (Appeals) should have considered at the discretionary power of the adjudicating authority who had rightly held that the non-declaration of the excess currency had to be considered as one of the technical in nature, since the import of currency was not banned nor prohibited as well as did not attract any customs duty.

4.6 The averments made in the findings of the Order-in-Appeals on page 10 paragraph 21 appears to be a schizophrenic approach taken by the Commissioner (Appeals) since import of foreign currency was not banned nor prohibited under the FEM (Export & Import of Currency Regulation) 2000 as also the provisions of Foreign Trade (Development & Regulations) Act, 2000. In view of the procedure laid down under section 128A (3) Customs Act, 1962 not being followed, the order of enhancing of the redemption fine and penalty requires to be set aside. That as the import of foreign currency under the Foreign Exchange Management (Export & Import of Currency Regulation) 2000 is neither banned nor prohibited and when foreign currency is not liable to duty the order of confiscation under section 111 (d) of the Customs Act, 1962, is bad in law and requires to be rectified accordingly.

5. Personal hearing was scheduled in this case 29-10-2013. Nobody appeared for personal hearing. However, the applicant vide her letter dated 14-09-2013 requested to decide the case on merits without any hearing.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of records, Government observes that the applicant passenger had opted for customs green channel clearance and while crossing through green channel, she was intercepted by customs DRI Officers. On examination of baggage, the foreign currency/Indian Currency as stated above was found concealed. Applicant has failed to declare the said currency before customs as required under section 77 of Customs Act, 1962. Had the vigilant customs officers not intercepted her at Green Channel, she would have managed to take out said currency without any declaration. As such the said currency is imported in contravention of provision of section 77,11 of Customs Act r/w section 3 (3) of Foreign Trade (Development and Regulation) Act, 1992 and regulation 6 of Foreign Exchange Management (Export and Import of Currency) Regulation 2000. The adjudicating authority after following due process of law confiscated the said goods under section 111 (d) (l) & (m) of Customs Act, 1962. However, an option to redeem the same on payment of redemption fine of Rs. 50,000/- was given to the said passenger under section 125 of Customs Act, 1962. A penalty of Rs. 50,000/- was also imposed on the said passenger under section 112 of Customs Act, 1962. In appeal filed by the department the Commissioner (Appeals) modified the Order-in-Original by enhancing redemption fine and personal penalty to Rs. 5,00,000/- and Rs. 1,00,000/- respectively. Now in this revision application the applicant has challenged the Order-in-Appeal passed by the Commissioner (Appeals) and pleaded to set aside the redemption fine and personal penalty imposed by the Customs authority.

8. The applicant has contended that in view of the procedure laid down under section 128 A (3) of Customs Act, 1962 not being followed the order of enhancing of redemption fine and personal penalty requires to be set aside.

9. On perusal of records Government notes that declaration of currency in case it exceeds US \$ 10,000 or its equivalent is mandatory under section para 6 (b) (3) of Foreign Management (Export and Imports of Currency) Regulation 2000. The

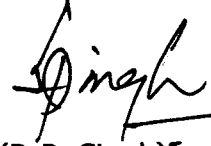
applicant did not made any declaration before Customs Officers. As such the order for confiscation of said currency for above stated contraventions and imposition of penalty cannot be assailed. As regards pleadings of the applicant w.r.t. non compliance of procedure laid down under section 128 (A) (3) of Customs Act, 1962 for enhancing of redemption fine and personal penalty it would be proper to go through Section 128 (A) (3) which reads as under:

“ The Commissioner (Appeals) shall after making such further inquiry as may be necessary pass such order as he may thinks just and proper, confirming modifying or annulling the decision or order appealed against.

Provided that an order enhancing any penalty or fine in lieu of confiscation or confiscation of goods of greater values or reducing the amount of refund shall not be passed unless the appellant has given a reasonable opportunity of showing cause against the proposed orders.

On perusal of records Government notes that the Commissioner (Appeals) has supplied the copy of appeal to the applicant and gave them time to filed counter reply. Applicant has filed counter reply and made oral submissions during personal hearing. So the applicant was given reasonable opportunity of show cause against the proposed order. However Government observes that there only a charge of mis-declaration which Commissioner (Appeals) has treated as a technical lapse. Government therefore, keeping in view the overall circumstances of the case is of the view that redemption fine imposed is quite harsh and same can be reduced. Government reduces the redemption fine to Rs. 250000/-. The penalty imposed is quite justified and same is upheld. The impugned Order-in-Appeal is modified to this extent.

10. Revision Application is disposed off in above terms.
11. So, ordered.

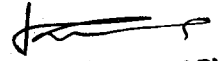


(D.P. Singh)

Joint Secretary to the Govt. of India

Ms. Amphal Thomthong,
C/o. Hotel Afreen No. 1,
Nawab Abdul Rehman Street, Kolkata-700016.

ATTESTED



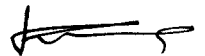
(टी. आर. आर्य / T.R. ARYA)
अधीक्षक, आर.ए / Superintendent RA
वित्त मंत्रालय, (राजस्व विभाग)
Ministry of Finance, (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

Order No. 35/14-Cus Dated 20.01.2014

Copy to:

1. The Commissioner of Customs, 15/1 Strand Road, Custom House, Kolkata-700001.
2. The Commissioner of Customs (Appeals), 15/1 Strand Road, Custom House, Kolkata 700001.
3. The Additional Commissioner of Customs (Airport), NSCBI Airport, Custom House, Kolkata.
- ~~4. PS to JS(RA)~~
5. Guard File.
6. Spare Copy

ATTESTED



(T.R.Arya)

SUPRINTENDENT (REVISION APPLICATION)