



BUREAU OF CUSTOMS

MAKABAGONG ADUANA, MATATAG NA EKONOMIYA



1570364271

PROFESSIONALISM INTEGRITY ACCOUNTABILITY

REPUBLIC OF THE PHILIPPINES

SEIZURE IDENTIFICATION
NO. 023-2023 (NAIA)

-versus-

Three Thousand Eight Hundred Nineteen Point Forty-Six Grams (3,819.46 grams) Cocaine Powder and One Thousand Five Hundred Milliliters (1,500 ml) Liquid Cocaine, with an estimated value of Twenty Six Million One Hundred Thirty Six Thousand Five Hundred Four Pesos and Eighty Centavos (Php 26,136,504.80), which were seized from incoming passenger KEMAL OZENIR, a Turkish national and holder of Passport No. U22288404.

X-----X

D E C I S I O N

This resolves the seizure and forfeiture proceedings instituted against the 3,819.46 grams of Cocaine Powder and 1,500 Milliliters (ml) found in the luggage of a certain Kemal Ozenir, a Turkish national and holder of Passport No. U22288404, for violation of Section 1113 (f) and (L-2,3 and 4) and Sections 1403 and 1404 in relation to Section 119 (d) of the Customs Modernization and Tariff Act (CMTA), and Section 4 of Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The records of the instant case show the following antecedent facts, as follows:

1. Mr. Kemal Ozenir, a Turkish national, arrived on March 21, 2023 at the Niinoy Aquino International Airport Terminal 3 on board Emirates Airways Flight EK 332 from Dubai.
2. The airline baggage tag that was attached to his luggage bore an "X" mark, which was noticed by Acting Customs Examiner on duty, Ms. Minette Elizabeth R. Bermundo, who immediately called the attention of Police Master Sergeant Noel Ambuyoc and the NAIA-IADITG operatives who were in the area conducting the routine K9 inspection and passenger profiling.
3. Passenger Ozenir proceeded to the Customs Examination Lane manned by Acting Customs Examiner Bermundo, who then asked the passenger if he filled out a Customs Baggage Declaration Form (CBDF) to which he replied in the negative. She then asked passenger Ozenir to submit his passport and thereafter handed him a blank CBDF to fill out and then asked him if he has anything to declare to which he replied in the negative. Passenger Ozenir returned the already filled out CBDF with nothing declared on it.
4. Acting Examiner Bermundo likewise asked him if the luggage with the airline baggage tag was marked with "X" belong to him and he affirmed it belong to him.
5. Immediately, PDEA K9 Handler Marlon Mofan conducted a K9 inspection of the subject luggage in the presence of passenger Ozenir using the PDEA Narcotic Detection Dog which showed a positive indication for the presence of dangerous drug inside.

6. Thereafter, Acting Examiner Bermundo conducted an actual physical examination of passenger Ozenir's luggage in the presence of Ms. Claire Ann Mojica, Acting Flight Supervisor, and the representatives of the Enforcement and Security Service (ESS), Customs X-ray Inspection Project (XIP), Customs Intelligence and Investigation Service (CIIS), PDEA Operatives and the NAIA-IADITG Operatives.
7. After removing the assorted clothes, shampoos and bath soaps from the luggage, she took open one of the bath soaps and noticed that it was broken and had a white powdery substance on it. She scrutinized further the bath soap and discovered white powdery substance wrapped in transparent plastic.
8. Acting Examiner Bermundo was suspicious of the white powdery substance from the bath soap so she requested passenger that they will transfer to the Customs Arrival Exclusion Room for further examination.
9. She then scrutinized all the bath soaps and all of them contained white powdery substance. PDEA Agent Reynante Rullan immediately conducted a field test of the white powdery substance and it was found positive for Cocaine. The pink plastic bottle labeled "Hidramais"s and the brown plastic bottle labeled "Inoar" filled with liquid likewise tested positive for Cocaine after the field test conducted thereon by PDEA Agent Rullan.
10. Immediately thereafter, using Google translation and thru a video call with Mr. Harun Dayan, the representative of the Turkish Embassy, PMS Ambuyoc introduced himself to passenger Ozenir that he is a NAIA-IADITG operative, that the procedure is being recorded and informed passenger Ozenir that he is being arrested for violation of Republic Act No. 9165. Mr. Ozenir was further apprised of his constitutional rights in a language/dialect known to him and understood by him to which he acknowledged.
11. While still inside the Exclusion Rom, and pursuant to Section 21 of RA No. 9165, as amended by RA 10640, and further reiterated in OCA Circular No. 251-2018, the pieces of evidence subject of seizure were photographed, marked and inventoried in the presence of passenger Ozenir, Baranggay Kagawad Nelson Garcia of Barangay 197, Zone 20, Pasay City, and Media Representative Raoul Esperas of the DWIZ/ABS-CBN who were already in the vicinity of the area of operation. Efforts were made to secure any NPS/DOJ representative in Pasay City Hall of Justice but no one was available.
12. Thereafter, Acting Examiner Bermundo resealed the luggage back to its presentation together with its contents. The pieces of evidence and the arrested passenger Ozenir were brought to the NAIA-IADITG Office at NAIA Terminal 3 for investigation, documentation, and for physical examination at the PNP Crime Laboratory at Camp Crame, Quezon City, and Drug Test at the PDEA Laboratory Service at the PDEA National Headquarters in Quezon City.
13. Acting Examiner Bermundo personally turned over the seized drug evidence (the entire luggage) in the presence of the passenger to the PDEA Laboratory Service for laboratory examination. Thereafter, PDEA issued Chemistry Report No. PDEA-NCR-23-0057 dated 22 March 2023 which revealed the findings: "Qualitative examinations of specimens A-1-a-1 to A-19-a-1, A-20-a to A-22-a, A-23, and A-24 gave positive result for the presence of cocaine. Qualitative examinations of specimens A-1-a to A-19-a, A-25, and A-26 gave negative results for the presence of any dangerous drugs, controlled precursors and essential chemicals."
14. In sum, after physical examination, the Acting Customs Examiner found assorted clothes and Three Thousand Eight Hundred Nineteen Point Forty Six Grams (3,819.46 grams) Cocaine Powder and One Thousand Five Hundred Milliliters (1,500 ml) Liquid Cocaine, with an estimated value of Twenty Six Million One Hundred Thirty Six Thousand Five Hundred Four Pesos and Eighty Centavos (Php 26,136,504.80).

15. Thereafter, passenger Ozenir and his belongings, together with the 3,819.46 grams of Powder Cocaine and 1500 milliliters Liquid Cocaine were turned over to PDEA for institution of inquest proceedings.
16. In a Memorandum dated March 23, 2023 for the District Collector, this Port, thru Ms. Claire Ann M. Mojica, Acting Flight Supervisor; Roberto A. Quintana, Chief, Arrival Operations Division, and Atty. Ma. Lourdes V. Mangaoang, JD, CSEE, CEO VI, Deputy Collector for Passenger Service, Acting Customs Examiner Minette Elizabeth R. Bermundo recommended for the issuance of Warrant of Seizure and Detention against the seized dangerous goods for violation of Section 4 of Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, in relation to Sections 118, 1113, 1401 and 1404 of the Customs Modernization and Tariff Act (CMTA).
17. On the basis of the records on file, it is indubitable that the white crystalline substance which was found in the luggage of incoming passenger Kemal Ozenir, with a total weight of 3,819.46 grams for the Powder Cocaine and 1,500 milliliters for the Liquid Cocaine and reportedly with a street value of Php 26,136,504.80, a dangerous drug under Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, is restricted under paragraph (d) of Section 119 (Restricted Importation and Exportation) of the Customs Modernization and Tariff Act (CMTA).

On this score, Paragraph 3.5 of Section 3 of Customs Memorandum Order No. 4-2018 (A) bearing the subject "Amendment of CMO 4-2018 re: Manual of Procedure for Forfeiture Cases", in relation to Section 119, Paragraph (d) of the Customs Modernization and Tariff Act (CMTA), are instructive and authoritative, to wit:

"3.5 If the subject shipment involves prohibited or restricted goods, the same shall **ipso facto be forfeited in favor of the government.**" (Emphasis and underscoring supplied).

"Section 119. Restricted Importation and Exportation. – Except when authorized by law or regulation, the importation and exportation of the following restricted goods are prohibited:

(d) **Marijuana, opium, poppies, coca leaves, heroin or other narcotics x x x "**

Moreover, Section 1113 of the Customs Modernization and Tariff Act (CMTA) provides:

"**SEC. 1113. Property Subject to Seizure and Forfeiture.** – Property that shall be subject to seizure and forfeiture include:

(f) Goods, the importation or exportation of which are effected or attempted contrary to law, **or any goods of prohibited importation and exportation**, and all other goods which, in the opinion of the District Collector, have been used, are or were entered to be used as instruments in the importation or the exportation of the former;" (Emphasis and bold ours).

(L) Goods sought to be imported or exported.

x x x x x x

- (2) Found in the baggage of a person arriving from abroad and undeclared by such person;
- (3) Through a false declaration or affidavit executed by the owner, importer, exporter, or consignee concerning the importation of such goods;
- (4) On the strength of a false invoice or other document executed by the owner, importer, exporter, or consignee concerning the importation or exportation of such goods; or

Furthermore, Section 1403 and 1404 of the CMTA states:

SECTION 1403. *Other Fraudulent Practices Against Customs Revenue.* — Any person who makes or attempts to make any entry of imported or exported goods by means of any false or fraudulent statement, document or practice or knowingly and willfully files any false or fraudulent claim for payment of drawback or refund of duties shall, for each act, be punished in accordance with the penalties prescribed in Section 1401 of this Act.

SECTION 1404. *Failure to Declare Baggage.* — Whenever dutiable goods are not declared by any person arriving within the Philippines, such goods shall be seized and the person may obtain release of such goods, if not imported contrary to any law, upon payment of a surcharge equivalent to thirty percent (30%) of the landed cost of such goods, in addition to all duties, taxes and other charges due. Nothing in this section shall preclude the filing of criminal action against the offender.

WHEREFORE, by virtue of the authority vested by law in this Office, and in compliance with applicable customs laws, rules and regulations, it is hereby ordered and decreed that the 3,819.46 grams of Powder Cocaine and 1,500 ml of Liquid Cocaine be, **as it is hereby declared ipso facto forfeited in favor of the government** for violation of Section 1113 (f) and (L-2,3 and 4) and Sections 1403 and 1404 in relation to Section 119 (d) of the Customs Modernization and Tariff Act (CMTA), and Section 4 of Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and Section 3.5 of Customs Memorandum Order (CMO) No. 4-2018 (A), to be turned over to the Philippine Drug Enforcement Agency (PDEA) for final disposition thereof pursuant to Customs Administrative Order (CAO) No. 10-2020 bearing the subject "Seizure and Forfeiture Proceedings and Appeals Process".

Let copies of this Decision be furnished to all offices and parties concerned for their information, and a copy thereof to be posted on the Bulletin Board of the Law Division and the Arrival Operations Division, this Port, for information of all concerned.

SO ORDERED.

NAIA Customhouse, Pasay City, Metro Manila, APR 19 2023 April 2023.


CARMELITA M. TALUSAN, CESO V
District Collector