

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

GAMMA GRAY MARKETING, CTA EB NO. 2738
Petitioner, (CTA Case No. 9855)

Present:

-versus-

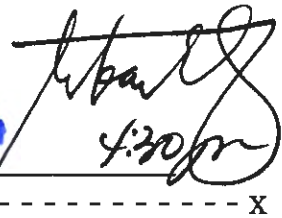
DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.

BUREAU OF CUSTOMS,
REPRESENTED BY ITS
COMMISSIONER, ISIDRO S.
LAPEÑA,

Respondent.

Promulgated:

AUG 15 2024

A handwritten signature in black ink is written over a blue date stamp that reads 'AUG 15 2024'. The signature appears to be 'L. Angeles'.

X-----X

DECISION

ANGELES, J.:

Before the Court *En Banc* is a *Petition for Review*,¹ filed by Gamma Gray Marketing (GGM) seeking to nullify, reverse and set aside the Decision and Resolution, dated July 27, 2022 and January 26, 2023, respectively, in CTA Case No. 9855, and praying for, among others, the quashing of the Warrants of Seizure and Detention (WSDs) against the subject imported motor vehicles.

FACTS

The CTA Special 2nd Division narrated the facts, as follows:

Petitioner GGM is a duly registered sole proprietorship owned by Arthur A. Villalba (Villalba), with business address a[t] #501, 5th Floor Champ Building, Bonifacio Drive, Dr. Anda Circle, Port Area, Manila.

¹ EB Docket, pp. 1-30.

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On the other hand, respondent [Bureau of Customs] BOC is a government agency under the Department of Finance (DOF) and is represented herein by Customs Commissioner Lapeña, through its counsel, the Office of the Solicitor General (OSG).

ADMINISTRATIVE PROCEEDINGS

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S.I. NO. 107-2017 (MICP) [IMPORTATION
OF TWELVE (12) UNITS OF BRAND NEW
2017 TOYOTA LAND CRUISER]

On 05 September 2017, petitioner and Sahara Motors entered into a Sales Contract for the purchase of twelve (12) units of 2017 Toyota Land Cruiser GXR with a total contract value of \$411,800.00, broken down as follows: Total "Free On Board" (FOB) Value of \$409,800.00 plus Total Insurance of \$2,000.00. On even date, petitioner paid \$40,980, representing the 10% down payment on the FOB value *per* Statement of Account (SOA). Petitioner paid the remaining balance of \$370,800.00 through telegraphic transfers made on 15 September 2017 and 22 September 2017.

On 13 October 2017 and 18 October 2017, the above shipments from the United Arab Emirates (UAE) arrived at the Manila International Container Port (MICP). Immediately thereafter, petitioner filed six (6) Import Entries/Single Administrative Documents (SADs) for such shipments. The declared value for each unit was ~~\$34,150.00~~, exclusive of insurance and freight, which amount was simply based on the unit selling price *per* Sales Contract.

On 23 October 2017, pursuant to Customs Memorandum Circular (CMC) No. 70-2014, the Collector of Customs then forwarded said SADs to respondent BOC's Import Assessment Service (IAS) Director for value verification and clearance.

On 24 October 2017, the Officer-in-Charge Director of IAS, Jeffrey C. Tacio (IAS-OIC Director Tacio), issued his Memorandum recommending the amount of \$34,150.00 as the automobiles' value *per* unit.

Thereafter, respondent BOC's Formal Entry Division at the MICP (BOC-MICP-Formal Entry Division) likewise accepted the FOB value of \$34,150.00 *per* unit, exclusive of insurance and freight.

On 30 October 2017, then Officer-in Charge District Collector of the MICP, Atty. Ruby Claudia M. Alameda (MICP OIC-District Collector Alameda), issued six (6) separate AOs [Alert Orders], covering the twelve (12) units of 2017 Toyota Land Cruiser GXR, for violation of Bureau of Internal Revenue (BIR) Revenue Regulations (RR) Nos. 2-2016 and 25-2003 (resulting in the possible violation of Section 1400, in relation to Section 1113, of Republic Act [RA] No. 10863 or the Customs Modernization and Tariff Act of 2016 [CMTA]), there being no Authority to Release Imported Goods (ATRIG) and Importer's Sworn Statement (ISS).

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On 06 November 2017, Customs Officers from the BOC-MICP-Formal Entry Division seized the above shipments and filed the respective Reports of Seizure for alleged undervaluation or violation of Section 1400 of the CMTA.

Meanwhile, then MICP OIC-District Collector Alameda also issued a Memorandum to IAS-OIC Director Tacio, indorsing the subject shipments for further value verification. In reply thereto, IAS-OIC Director Tacio cited in his Memorandum dated 08 November 2017, the amount of \$42,151.23 as the new "Reference Value" for each unit of brand new 2017 Toyota Land Cruiser GXR.

Likewise, on 06 November 2017, petitioner filed with the BIR its application for ATRIG.

On even date, Eastwest Bank issued a Certification that petitioner, through TPN Trading, has made a telegraphic transfer amounting to \$370,800.00 to Sahara Motors, as payment for the remaining balance.

On 08 November 2017, petitioner, through its counsel, wrote a letter addressed to then MICP OIC-District Collector Alameda, requesting for a hearing to determine the question of probable cause.

On 09 November 2017, MICP Hearing Officer, Atty. Chika E. Bugtas (MICP-Hearing Officer Bugtas) scheduled a hearing on 16 November 2017 to determine whether or not probable cause exists to warrant the issuance of a WSD on the subject shipments.

On the 16th and 22nd of November 2017, MICP-Hearing Officer Bugtas conducted hearings in connection with the determination of probable cause.

On 18 November 2017, petitioner requested the assistance of the Department of Trade and Industry's Bureau of Import Services (DTI-BIS) for verification of its Commercial Invoices, covering the importations, as well as the Packing List. On 23 November 2017, BIS' OIC, Maria Guiza Lim (BIS-OIC Lim) forwarded said request to Commercial Attaché of the Philippine Trade and Investment Center, Dubai UAE, Eric C. Elnar (Commercial Attaché Elnar).

On 24 November 2017, DTI-BIS wrote a letter to Customs Commissioner Lapeña, informing him that petitioner's supplier from abroad (i.e., Dubai, UAE), Sahara Motors, itself has confirmed (to the DTI) the authenticity of the commercial documents (i.e., Commercial Invoices and Shipment Details) it issued to petitioner and previously submitted by petitioner to respondent BOC, showing the amount of \$34,150.00 *per* unit as the FOB value of the 2017 Toyota Land Cruiser GXR.

Thereafter, petitioner submitted its Position Paper on 27 November 2017, while respondent BOC's Legal Service-Revenue Collection and Monitoring Group (RCMG) submitted its Position Paper on 28 November 2017.

On 01 December 2017, MICP Hearing Officer, Atty. Marlon Agaceta (MICP-Hearing Officer Agaceta), issued a Memorandum

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addressed to then MICP OIC-District Collector Alameda, requesting for clarification on the correct values of the imported vehicles based on the alleged Discrepancy Reports of Custom Examiners Mark Anthony Dabon (Dabon) and Renato Mauricio (Mauricio), where a discrepancy of 33% between the declared value and the IAS reference value was reflected.

On 12 December 2017, IAS-OIC Director Tacio issued another Memorandum to then MICP OIC-District Collector Alameda, clarifying that the Reference Value previously provided by his office (*per* Memorandum dated 08 November 2017) was not intended to substitute the value provided by the port nor reverse its findings, but only serves as reference and risk management tool.

On 15 December 2017, then MICP OIC-District Collector Alameda issued an Order, finding probable cause against the following imported motor vehicles, and a WSD (of even date) therefore, *viz.*:

No.	IERD No.	BL No.	Container No.	Description	Declared Value	Duties and Taxes
1	C-278724	DXBCB17001759	TEMU7343579	2 Units Brand new 2017 Toyota Land Cruiser	\$68,300.00	P1,637,077.00
2	C-278740	DXBCB1700164301	TGHU6263254	2 Units Brand new 2017 Toyota Land Cruiser	\$68,300.00	P1,637,077.00
3	C-278805	DXBCB1700170502	REGU5070858	2 Units Brand new 2017 Toyota Land Cruiser	\$68,300.00	P1,637,077.00
4	C-278798	DXBCB1700170504	DRYU9861912	2 Units Brand new 2017 Toyota Land Cruiser	\$68,300.00	P1,637,077.00
5	C-27808	DXBCB1700170503	CAIU9660440	2 Units Brand new 2017 Toyota Land Cruiser	\$68,300.00	P1,637,077.00
6	C-279441	DXBCB17001643	REGU5048448	2 Units Brand new 2017 Toyota Land Cruiser	\$68,300.00	P1,637,077.00

S.I. NO. 115-2017 (MICP) [IMPORTATION OF ONE (1) UNIT OF BRAND NEW 2017 RANGE ROVER EVOQUE AND ONE (1) UNIT OF McLAREN 720S COUPE]

Petitioner imported from Tai Hing Motors (International) Limited of Hong Kong one (1) unit of brand new 2017 Range Rover Evoque and one (1) unit of McLaren 720S Coupe.

On 18 October 2017, the shipment arrived at the MICP. The following day, or on 20 October 2017, petitioner filed the corresponding Import Entry/SAD, together with the Commercial Invoices, Bill of Lading (BL) and ISS, wherein it declared \$29,964.00 as the FOB value of the 2017 Range Rover Evoque, while \$83,910.00 as the FOB value of the McLaren 720S Coupe.

On 20 October 2017, the BOC-MICP-Formal Entry Division assessed the shipment based on the total declared FOB value for the two (2) imported motor vehicles of \$113,874.00.

On 23 October 2017, then MICP OIC-District Collector Alameda endorsed the Import Entry/SAD to respondent BOC's IAS Director for value verification and clearance.

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On 27 October 2017, then IAS-OIC Director Tacio recommended the value of \$32,578.00 for the 2017 Range Rover Evoque, and the value of \$314,278.80 for the McLaren 720S Coupe.

On 30 October 2017, then MICP OIC-District Collector Alameda issued an AO against the aforesaid shipment for violation of RR Nos. 2-2016 and 25-2003, resulting in the possible violation of Section 1400, in relation to Section 1113, of the CMTA, there being no ATRIG and ISS.

On 07 November 2017, a Report of Seizure was issued against the subject imported motor vehicles for alleged undervaluation under Section 1400 of the CMTA based on the Discrepancy Report.

On 10 November 2017, petitioner, through its counsel, wrote a letter addressed to then MICP OIC-District Collector Alameda, requesting for a hearing to determine the question of probable cause.

On 14 December 2017, then IAS-OIC Director Tacio recommended the Reference Value of \$192,000.00 per unit for the McLaren 720S Coupe.

On 11 January 2018, then MICP OIC-District Collector Alameda issued a WSD for the two (2) imported motor vehicles.

On 22 January 2018, MICP-Hearing Officer Bugtas conducted the hearing on the determination of probable cause.

Thereafter, petitioner filed its "Memorandum with Offer of Settlement" on 06 February 2018.

S.I. NO. 005-2018 (MICP) [IMPORTATION
OF TWO (2) UNITS OF BRAND NEW 2017
RANGE ROVER]

Petitioner imported from Tai Hing Motors (International) Limited of Hong Kong two (2) units of brand new 2017 Range Rover.

On 18 October 2017, petitioner filed with the BIR its application for ATRIG, covering the aforesaid imported motor vehicles.

On 19 October 2017, the shipment arrived at the MICP. The following day, or on 20 October 2017, petitioner filed the corresponding Import Entry/SAD, together with the Commercial Invoices, BL and ISS, wherein it declared \$29,964.00 as the FOB value of the 2017 Range Rover Evoque. Respondent BOC likewise issued an Assessment Notice therefore (*sic*).

On 30 October 2017, then MICP OIC-District Collector Alameda issued an AO against the aforesaid shipment for violation of RR Nos. 2-2016 and 25-2003, resulting in the possible violation of Section 1400, in relation to Section 1113, of the CMTA, there being no ATRIG and ISS.

On 07 November 2017, a Report of Seizure, together with a computation of alleged discrepancy, as well as a three (3)-page

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printout of the internet website where the Customs Examiner obtained her valuation, was issued against the subject imported motor vehicles for alleged undervaluation under Section 1400 of the CMTA based on the Discrepancy Report.

On 10 November 2017, petitioner, through its counsel, wrote a letter addressed to then MICP OIC-District Collector Alameda, requesting for a hearing to determine the question of probable cause.

On 08 January 2018, then MICP OIC-District Collector Alameda issued a Memorandum submitting the subject shipment to respondent BOC's IAS for clearance.

On 24 January 2018, then MICP Acting District Collector, Atty. Balmyrson M. Valdez (MICP Acting District Collector Valdez) issued an Order, finding probable cause for the issuance of a WSD. On even date, a WSD was issued for the subject imported motor vehicles.

Thereafter, petitioner filed an "Urgent Motion to Quash the Warrant of Seizure and Detention", as well as a "motion for the Remarketing of Exhibits with Formal Offer of Exhibits", on 05 February 2018.

S.I. NO. 004-2018 (MICP) [IMPORTATION
OF TWO (2) UNITS OF BRAND NEW 2017
CHEVROLET CAMARO]

Petitioner imported from GNP Auto Origin LLC USA two (2) units of brand new 2017 Chevrolet Camaro. The Commercial Invoice issued by GNP Auto Origin LLC USA showed its value of \$20,333.60 per unit.

On 13 October 2017, the shipment arrived at the MICP. Then, on 20 October 2017, petitioner filed the corresponding Import Entry/SAD for the shipment, wherein it declared \$20,333.60 as the FOB value of the 2017 Chevrolet Camaro. Respondent BOC likewise issued an Assessment Notice therefor.

On the same date of filing of the Import Entry/SAD for the shipment, or on 20 October 2017, petitioner filed with the BIR its application for ATRIG, covering the aforesaid imported motor vehicles.

On 30 October 2017, then MICP OIC-District Collector Alameda issued an AO against the aforesaid shipment for violation of RR Nos. 2-2016 and 25-2003, resulting in the possible violation of Section 1400, in relation to Section 1113, of the CMTA, there being no ATRIG and ISS.

On 07 November 2017, a Report of Seizure was issued against the subject imported motor vehicles for alleged undervaluation under Section 1400 of the CMTA based on the Discrepancy Report prepared by Customs Examiner Rita Jacinto (Jacinto), who used an internet value as the dutiable value.

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On 10 November 2017, petitioner, through its counsel, wrote a letter addressed to then MICP OIC-District Collector Alameda, requesting for a hearing to determine the question of probable cause.

On 08 January 2018, then MICP OIC-District Collector Alameda issued a Memorandum submitting the subject shipment to respondent BOC's IAS for clearance.

On 11 January 2018, then IAS-OIC Director Tacio recommended the Reference Value of \$22,076.00 per unit for the 2017 Chevrolet Camaro.

On 18 January 2018, then MICP Acting District Collector Valdez issued an Order, finding probable cause for the issuance of a WSD. Thus, the following day, or on 19 January 2018, then MICP Acting District Collector Valdez issued a WSD against the two (2) imported motor vehicles.

On 22 January 2018, a joint hearing on S.I. Nos. 004-2018 (MICP) and 005-2018 (MICP) was conducted for the determination of probable cause.

Thereafter, petitioner filed an "Urgent Motion to Quash the Warrant of Seizure and Detention", as well as a "Motion for the Remark of Exhibits with Formal Offer of Exhibits", on 05 February 2018.

CONSOLIDATION OF THE FOUR (4)
SEIZURE PROCEEDINGS

As the cases involved the same importer (*i.e.*, petitioner GGM) and the same issues, the four (4) seizure proceedings, *i.e.*, S.I. Nos. 107-2017 (MICP), 115-2017 (MICP), 005-2018 (MICP) and 004-2018 (MICP), were eventually consolidated.

On 08 February 2018, then MICP Acting District Collector Valdez issued the Consolidated Order, decreeing the forfeiture of all eighteen (18) imported vehicles of herein petitioner in favor of the government.

On 12 February 2018, petitioner appealed MICP Acting District Collector Valdez's (*sic*) Consolidated Order to Customs Commissioner Lapeña.

On 09 March 2018, Customs Commissioner Lapeña issued the assailed Consolidated Decision, denying petitioner's appeal and affirming MICP Acting District Collector Valdez's Consolidated Order.

Petitioner allegedly received a copy of the assailed Consolidated Decision on 26 March 2018.²

² Division Decision dated July 27, 2022, EB Docket, pp. 37-50.

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On April 25, 2018, petitioner filed its Petition for Review, which was subsequently docketed as CTA Case No. 9855.

After trial, the CTA Special 2nd Division rendered the assailed Decision on July 27, 2022, as follows:

Finally, taking into consideration the discrepancies discovered during value verification that evince intent to under-declare the subject shipments' value, plus the fact that petitioner imported the subject motor vehicles without securing the requisite BIR Permit to Operate as Importer of Automobiles (contrary to law and existing rules and regulations), this Court is inclined to rule that there exists probable cause for the issuance of WSDs against the subject imported motor vehicles for possible violation of Section 1400 of the CMTA.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review filed by petitioner Gamma Gray Marketing on 25 April 2018 is hereby **DENIED** for lack of merit. Accordingly, respondent Bureau of Customs Commissioner Isidro S. Lapeña's assailed Consolidated Decision dated 09 March 2018 is hereby **AFFIRMED**.

SO ORDERED.³

Petitioner GGM's *Motion for Reconsideration (Re: Decision dated 27 July 2022)* was likewise denied in the Resolution dated January 26, 2023.⁴

On March 15, 2023, petitioner GGM filed the instant *Petition for Review* praying that the Court render a new judgment:

1. Granting this Petition;
2. Reversing and setting aside the Decision dated 27 July 2022;
3. Reversing and setting aside the Resolution dated 26 January 2023;
4. Ordering the lifting of the Alert Orders and the quashing of the Warrants of Seizure and Detention against petitioner's motor vehicles in connection with Seizure Identification Nos. 107-2017 (MICP), 115-2017 (MICP), 005-2018 (MICP) and 004-2018 (MICP);
5. Directing respondent's Customs Examiners to compute the corresponding duties and taxes of the motor vehicles based on the declared values of the shipments; and

³ EB Docket, pp. 86-87.

⁴ EB Docket, pp. 90-100.



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6. Ordering the release of all motor vehicles/subject importations to the consignee upon payment of the duties and taxes.⁵

On May 18, 2023, the Court *En Banc* issued a Resolution directing respondent to file a comment on petitioner's *Petition for Review*. Said resolution was received by the Office of the Solicitor General (OSG) on June 14, 2023.⁶

On June 20, 2023, respondent BOC filed a *Motion for Extension to File Comment*,⁷ praying for an additional sixty (60) days from June 24, 2023, or until August 23, 2023, within which to file its comment.

On July 5, 2023, the Court *En Banc* issued a Minute Resolution partially granting respondent a final and non-extendible period of ten (10) days from June 24, 2023, or until July 4, 2023, to file his *Comment* on the *Petition for Review*.⁸

On August 10, 2023, respondent filed an *Omnibus Motion*,⁹ with attached *Comment*.¹⁰

On October 24, 2023, the Court *En Banc* issued a Resolution granting the *Omnibus Motion* thereby admitting respondent's *Comment* despite being belatedly filed, and also submitting the case for decision.

ISSUES

Petitioner submits the following grounds in support of the *Petition*:

- I. The CTA Special 2nd Division erred in ruling that petitioner's importations were contrary to law for failure of petitioner to submit the Importer's Sworn Statement (ISS) upon filing of the Import Entry/Single Administrative Document (SAD).
- II. The CTA Special 2nd Division erred in ruling that petitioner's importations were contrary to law as

⁵ EB Docket, p. 27.

⁶ Paragraph 1, *Motion for Extension to File Comment*, EB Docket, pp. 101.

⁷ EB Docket, pp. 101-105.

⁸ EB Docket, p. 106.

⁹ EB Docket, pp. 107-111.

¹⁰ EB Docket, pp. 112-136.

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petitioner has not secured a BIR Permit to Operate at the time of importation.

- III. The CTA Special 2nd Division erred in ruling that petitioner deliberately undervalued the value of its importations and that respondent's departure from the Transaction Value System or method was unjustified.
- IV. The CTA Special 2nd Division erred in ruling that there was probable cause for the issuance of the Warrants of Seizure and Detention (WSDs) against the subject importations.¹¹

Petitioner's arguments

Petitioner states that the non-submission of the Importer's Sworn Statement (ISS) does not render the importation illegal or contrary *per se*, since it is a mere supporting document for the issuance of the Authority to Release Imported Goods (ATRIG). Petitioner also argues that even assuming that it did not have the notarized ISS at the time of arrival of the shipments, such absence does not render its importation in violation of any laws, since petitioner has not removed the imported vehicles from customs custody.

As to the requirement for a *Permit to Operate as Importer*, petitioner argues that it is only required to be attached upon application for an ATRIG. In the absence thereof, the importation is not rendered contrary to law or illegal *per se*, since the importer can still secure the same prior to the release of its importation, and upon payment of the applicable penalties.

Petitioner also argues against the finding that it deliberately undervalued its importations. Petitioner states that the CTA Division mistakenly relied on the doctrine of presumption of regularity in the performance of official duty, since petitioner was allegedly able to show that respondents departed from the sequential application of valuation methods as provided under Section 700 of the Customs Modernization and Tariff Act of 2016 (CMTA). Petitioner also questions the use of the IAS Reference Value in determining the alleged undervaluation of the imported vehicles. According to petitioner the IAS Reference Value does not fall under any of the valuation methods provided in the CMTA. Petitioner also states that while some of its payments were coursed

¹¹ Petition for Review, EB Docket, p. 12.

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through another entity, the *Transaction Value Method* can still be applied.

Finally, petitioner states that there was no probable cause for the seizure and detention of its imported vehicles simply because of petitioner's alleged failure to provide a copy of the ISS.

The BOC's counter-arguments

Respondent states that the forfeiture of the subject shipments is valid and legal because petitioner lacked the necessary Permit to Operate, which is a requirement for the issuance of the ATRIG. In turn, the ATRIG is necessary for the release of the imported vehicles from customs custody. Thus, when petitioner imported the subject vehicles without the required Permit to Operate, it did so despite the attendant risks.

Respondent also states that petitioner deliberately omitted to declare the *ad valorem* tax in the Free Disposal portion of the SADs/IEIRDs of the subject shipments. By such omission, petitioner effectively deprived the assigned examiner of valuable information in determining the correct dutiable value of the shipments. It is the duty of the importer to adequately state the selling price of the imported articles. In the instant case, petitioner failed to submit the certified true copies of the ISS; the invoices contain a mere general description of the shipments; and, petitioner failed to sufficiently explain why the payment for the subject importations were through another importer, TPN Trading. Thus, respondent alleges that the foregoing circumstances create reasonable doubt on the real transaction value of the shipments, and the use of the *Transaction Value of Identical Goods* is justified as basis for valuation of the subject importations.

RULING OF THE COURT

The Court *En Banc* finds the Petition for Review bereft of merit.

The Petition for Review was timely filed.

Petitioner received a copy of the assailed Resolution, dated January 26, 2023, on February 28, 2023. Thus, petitioner had fifteen (15) days from such receipt, or until March 15, 2023 within which to

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file the subject Petition for Review, pursuant to the Revised Rules of the Court of Tax Appeals (RRCTA), Rule 8, Section 3(b).¹²

On March 15, 2023, petitioner timely filed the instant Petition for Review.

There is no compelling reason to reverse or modify the findings of the CTA Division.

The seizure and forfeiture of the subject imported vehicles was premised on Section 1113(f) of the CMTA, which provides:

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

xxx

(f) Goods, the importation or exportation of which are effected or attempted **contrary to law**, or any goods of prohibited importation or 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 ours*)

In finding that there was probable cause for the seizure and forfeiture of the subject imported vehicles, the CTA Division found that petitioner violated several provisions of the CMTA and existing rules and regulations, to wit: (1) petitioner failed to submit the ISS together with the import entry or single administrative document (SAD), contrary to Section 5.1.1 of Customs Memorandum Order (CMO) No. 29-2014¹³; (2) petitioner imported the subject vehicles without the requisite Permit to Operate as an importer of automobiles, in violation of Section 11 of Revenue Regulations (RR) No. 25-2003¹⁴; and, (3)

¹² Rule 8 Procedure in Civil Cases

Sec. 3. *Who may appeal; period to file petition.*

xxx xxx xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

¹³ Revised Computation of Duties, Taxes and Other Charges for Automobiles.

¹⁴ Amended Revenue Regulations Governing the Imposition of Excise Taxes on Automobiles Pursuant to the Provisions of Republic Act No. 9224, An Act Rationalizing the Excise Tax on Automobiles, Amending for the Purpose the National Internal Revenue Code of 1997, and for Other Purposes.

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petitioner deliberately underdeclared the value of the subject importations, in violation of Sections 107 and 1400 of the CMTA.

After a careful review of the records and the arguments raised by the parties, the Court finds no compelling reason to reverse or modify the CTA Division's findings.

Petitioner failed to submit the certified true copy of the ISS, duly filed with the BIR, upon filing of the import entry/SAD with the Bureau of Customs.

Pursuant to Section 13 of RR No. 25-2003, the ISS contains the following information:

- a. Name, address, TIN, and Assessment Number of the manufacturer/assembler or importer;
- b. The names and variants of the different models manufactured/assembled or imported;
- c. Wholesale price of each model and variants to dealers;
- d. Suggested retail price of each model and variants;
- e. Production/assembly/importation costs and all other expenses incurred or to be incurred until the automobile is finally sold (e.g., materials, labor, overhead, selling and administrative expenses, etc.) per brand or model; and
- f. Value of car airconditioners, radio and mag wheels including the cost of their installation.

The information contained in the ISS are relevant in computing the excise tax due on imported brand new automobiles. Aside from the computation of excise tax, a certified true copy of the ISS, duly filed with the BIR, is required to be submitted to the BOC for validation and clearance purposes, pursuant to CMO No. 29-2014, which states:

5. OPERATIONAL PROVISIONS

5.1 Computation of duties, taxes and other charges for brand new automobiles consigned to car manufacturers and dealers shall follow the format in Annex "A" of this Order.

5.1.1 Importers under this category shall submit to the Bureau of Customs a certified true copy of the Importer's Sworn Statement (ISS) duly filed with the Bureau of Internal Revenue. Said ISS shall form an integral part of the import/shipping documents submitted to the Entry Processing Division of each Port upon filing of the IEIRD and a copy of which shall be submitted to the Valuation

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and Classification Division (VCD) through the Import Assessment Service (IAS) for validation and clearance purposes.

As clearly stated in the above provision, the ISS is an integral part of the import/shipping documents, and a certified true copy of the ISS filed with the BIR should be submitted upon the filing of the SAD¹⁵.

Unfortunately, petitioner failed to submit the certified true copies of the ISS, duly filed with the BIR, for the subject importations. As found by the CTA Division:

Following the foregoing BOC regulation, a certified true copy of the ISS duly filed with the BIR must be submitted to the BOC upon filing of the IEIRD (now, SAD) as said ISS forms an integral part of the import/shipping documents submitted at the port of entry.

However, in this case, petitioner did not submit to respondent the required ISS for the subject imported motor vehicles. While copies of the ISS for some of petitioner's shipments may have been submitted/attached to the SADs, the same do not show that these were certified true copies of the ISS duly filed with the BIR. In fact, there was no mention in the case records whether petitioner filed with the BIR the required ISS for the subject imported motor vehicles.

It bears noting that the ISS refers to the duly notarized document executed by the importer showing information on the imported brand new automobile such as (a) the Importer's Selling Price, (b) the Dealer's Suggested Selling Price, and (c) the Total Cost of Importation and Expenses, which are the three (3) primary taxable bases used in computing the excise tax due on brand new automobiles under Section 5 of RR No. 25-2003. Thus, it is imperative that a certified true copy of the ISS be submitted, together with the SAD for each shipment, to the BOC's Valuation and Classification Division (through the IAS) for validation and clearance purposes.

The purpose of such ISS requirement is to obtain an accurate valuation of the imported goods and to ensure that all duties, taxes and other charges due on the imported goods are properly collected.¹⁶

Aside from petitioner's failure to submit the certified true copy of the ISS duly filed with the BIR, petitioner also failed to secure a BIR Permit to Operate.

¹⁵ Under CMO No. 29-2015, the BOC Single Administrative Document (SAD) replaced the IEIRD.

¹⁶ Division Decision dated July 27, 2022, EB Docket, pp. 74-75.

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Petitioner failed to secure a BIR Permit to Operate as an importer of automobiles before importing the subject motor vehicles.

Under Section 11, RR No. 25-2003, any person who desires to engage in business as an importer of automobiles shall register with the BIR *before* the start of business operations. The provision states:

SEC. 11. REGISTRATION OF THE BUSINESS OF ASSEMBLY/MANUFACTURE, IMPORTATION OR SALE AS DEALER OF AUTOMOBILES. – For excise tax purposes, any person who desires to engage in business as an assembler/manufacturer, importer or dealer of automobiles shall, before the start of the business operations, be required to register with the BIR Office having jurisdiction over his intended place of business and/or place of assembly/production or warehouse.

- a. Application for a Permit to Engage in Business as Assembler, Manufacturer, Importer or Dealer of Automobiles – Every applicant shall file a written application for the Permit, together with the following supporting documents:

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- b. Processing of Application for Registration to Engage in Business

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No person shall engage in business as manufacturer, assembler, producer or importer or dealer of automobiles unless the premises upon which the business is to be conducted shall have been approved by the Commissioner or his duly authorized representative.

The importance of the BIR Permit to Operate is likewise emphasized in BIR Revenue Memorandum Order (RMO) No. 35-2002, which states that the BIR shall not accept an application for ATRIG if the importer-applicant does not have a Permit to Operate as an Importer. The provision states:

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2. No application shall be accepted if the importer-applicant and/or broker representative is/are not duly registered taxpayer(s) with the BIR. In cases where the intended importation consists of excisable articles, raw materials, machineries, equipment, apparatus or any mechanical contrivances especially used for the production of excisable articles, the application for ATRIG shall likewise not be

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accepted if the importer-applicant does not have a separate Permit to Operate as an Importer for excise tax purposes.

As admitted by petitioner's sole proprietor,¹⁷ petitioner failed to first secure a Permit to Operate as an Importer of Automobiles before the importations of the subject motor vehicles. Thus, the importation of the subject motor vehicles without the requisite BIR Permit to Operate as Importer of Automobiles is contrary to law and existing rules and regulations, specifically, a violation of Section 11 of RR No. 25-2003.

Petitioner deliberately under-declared the value of its importations.

The Court also finds no merit in petitioner's arguments that it did not under-declare the value of the subject importations, and, that respondent deviated from the valuation method provided in the CMTA, in determining the transaction value of the subject importations of motor vehicles.

Section 107 of the CMTA states that "[t]he declarant shall be responsible for the accuracy of the goods declaration and for the payment of all duties, taxes and other charges due on the imported goods." Section 1400 of the same law defines undervaluation, as follows:

SECTION 1400. *Misdeclaration, Misclassification, Undervaluation in Goods Declaration.* – Misdeclaration as to quantity, quality, description, weight, or measurement of the goods, or misclassification through insufficient or wrong description of the goods or use of wrong tariff heading resulting to a discrepancy in duty and tax to be paid between what is legally determined upon assessment and what is declared, shall be subject to a surcharge equivalent to two hundred fifty percent (250%) of the duty and tax due. No surcharge shall be imposed when the discrepancy in duty is less than ten percent (10%), or when the declared tariff heading is rejected in a formal customs dispute settlement process involving difficult or highly technical question of tariff classification, or when the tariff classification declaration relied on an official government ruling.

There is undervaluation when: (a) the declared value fails to disclose in full the price actually paid or payable or any dutiable adjustment to the price actually paid or payable; or (b) when an incorrect valuation method is used or the valuation rules are not properly observed, resulting in a discrepancy in duty and tax to be paid between what is legally determined as the correct value against

¹⁷ Transcript of Stenographic Notes (TSN) dated October 7, 2019, pp. 17-18.

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the declared value. When the undervaluation is established without the need to go through the formal dispute settlement process provided for in this Act, a surcharge shall be imposed equivalent to two hundred fifty percent (250%) of the duty and tax due. No surcharge shall be imposed when the discrepancy in duty is less than ten percent (10%), or the declared value is rejected as a result of an official ruling or decision under the customs dispute settlement process involving difficult or highly technical question relating to the application of customs valuation rules.

A discrepancy in duty and tax to be paid between what is legally determined and what is declared amounting to more than thirty percent (30%) shall constitute a *prima facie* evidence of fraud.

When the misdeclaration, misclassification or undervaluation is intentional or fraudulent, such as when a false or altered document is submitted or when false statements or information are knowingly made, a surcharge shall be imposed equivalent to five hundred percent (500%) of the duty and tax due and that the goods shall be subject to seizure regardless of the amount of the discrepancy without prejudice to the application of fines or penalties provided under Section 1401 of this Act against the importer and other person or persons who willfully participated in the fraudulent act.

It is the responsibility of the importer to ensure the accuracy of the information contained in the goods declaration which includes the declared value of the imported goods. In case of doubt as to the valuation of the imported goods, and to aid in the of valuation of imported goods, the CMTA provides for the sequential application of valuation methods, as follows:

SECTION 700. Sequential Application of Valuation Methods.

– Imported goods shall be valued in accordance with the provisions of Section 701 of this Act whenever the conditions prescribed therein are fulfilled.

Where the customs value cannot be determined under the provisions of Section 701 of this Act, it is to be determined by proceeding sequentially through the succeeding sections hereof to the first such section under which the customs value can be determined. Except as provided in Section 704 of this Act, it is only when the customs value cannot be determined under the provisions of a particular section that the provisions of the next section in the sequence can be used.

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In the instant case, petitioner argues that *Transaction Value System or Method 1*, should have been used instead of *Transaction Value of Identical Goods or Method 2*, which was used by respondent in determining the value of the subject importations. These valuation methods are provided for in the CMTA, as follows:

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SECTION 701. *Transaction Value System – Method One.* – The transaction value shall be the price actually paid or payable for the goods sold when sold for export to the Philippines adjusted in accordance with the provisions of this Section: *Provided*, That:

- (a) There are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which:
 - (i) Are imposed or required by law or by Philippine authorities;
 - (ii) Limit the geographical area in which the goods may be resold; or
 - (iii) Do not substantially affect the value of the goods;
- (b) The sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued; and
- (c) The buyer and the seller are not related, or where the buyer and the seller are related, that the transaction value is acceptable for customs purposes under the provisions hereof.

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In determining the transaction value, the following shall be added to the price actually paid or payable for the imported goods:

- (1) To the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods:
 - (a) Commissions and brokerage fees except buying commissions;
 - (b) Cost of containers;
 - (c) Cost of packing, whether for labor or materials;
 - (d) Value, apportioned or appropriate, of the following goods and services: materials, components, parts and similar items incorporated in the imported goods; tools, dies, moulds and similar items used in the production of the imported goods; and engineering, development, artwork, design work and plans and sketches undertaken elsewhere than in the Philippines and necessary for the production of the imported goods, where such goods and services are supplied directly or indirectly by the buyer free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods; and
 - (e) Amount of royalties and license fees related to the goods being valued that the buyer must pay either directly or indirectly, as a condition of sale of the goods to the buyer.
- (2) Value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;
- (3) Cost of transport of the imported goods from the port of exportation to the port of entry in the Philippines;

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- (4) Loading, unloading and handling charges associated with the transport of the imported goods from the country of exportation to the port of entry in the Philippines; and
- (5) Cost of insurance.

All additions to the price actually paid or payable shall be made only on the basis of object and quantifiable data.

SECTION 702. *Transaction Value of Identical Goods – Method Two.* – Where the dutiable value cannot be determined under method one, the dutiable value shall be the transaction value of identical goods sold for export to the Philippines and exported at or about the same time as the goods being valued. For purposes of this section, “Identical goods” refer to goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearances shall not preclude goods otherwise conforming to the definition from being regarded as identical.

If, in applying this section, more than one transaction value of identical goods are found, the lowest value shall be used to determine the customs value.

In performing the value verification, respondent looked at the circumstances involving the subject imported motor vehicles, specifically the information contained in the commercial documents and alleged supporting documents. Specifically, the CTA Division noted the following:

As aptly pointed out in then MICP Acting District Collector Valdez’ Consolidated Order, which is one (1) of the only two (2) pieces of documentary evidence adduced by petitioner that this Court admitted, petitioner did not satisfactorily disprove the allegation of undervaluation. *First*, it failed to explain why the telegraphic transfers for the first six (6) shipments above were made by TPN Trading, which is an accredited importer and supposedly a competitor of petitioner. This created a cloud of doubt as to the veracity of petitioner’s declared values given that the arrangement between petitioner and TPN Trading, wherein the former transferred to the latter the payment for the shipments to be transferred further by the latter to the seller, conveys the impression that petitioner is a dummy entity or a “consignee for hire” in behalf of TPN Trading. *Second*, the purported authentication of invoices issued by DTI did not actually state that the commercial invoices presented by petitioner are genuine and authentic. Regrettably, none of the commercial invoices or any other evidence for that matter presented by petitioner were admitted into evidence for failure to present the original for comparison and for failure to submit the pre-marked exhibit.¹⁸

¹⁸ Decision dated July 27, 2022, EB Docket, p. 86.

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The foregoing defects cast doubt on the actual transaction value of the subject importations, and justifies respondent's use of the IAS Reference Values, or *Transaction Value of Identical Goods or Method 2*, as provided in the CMTA.

We quote with approval, the CTA Division's discussion in affirming respondent's use of the *Transaction Value of Identical Goods or Method 2*; finding that there was under-declaration of the value of the subject imported motor vehicles; and, finding that there was probable cause for the seizure and forfeiture of the subject imported motor vehicles, as follows:

Here, as confirmed from the records and stipulated by the parties, respondent used IAS reference values, instead of the transaction values, in assessing the import duties and taxes of petitioner's imported motor vehicles. In justifying the departure from the *Transaction Value System or Method One* to the *Transaction Value of Identical Goods or Method Two*, respondent had reasonable doubt on the truthfulness or accuracy of the shipments' declared values because: (1) petitioner did not submit the required ATRIG and ISS, thereby, precluding respondent from determining the excise or *ad valorem* taxes due on the imported motor vehicles with accuracy; and, (2) the documents filed in support of the subject shipments were allegedly replete with inaccurate and dubious information.

It is worth noting that as regards respondent's perceived inaccuracies in the declared values of the subject imported motor vehicles, petitioner has not shown any motive on the IAS-OIC Director Tacio's part to falsify the results of his value verification pursuant to CMC No. 70-2014 that prompted him to recommend IAS reference values; hence, said results have in their favor the presumption of regularity. Well settled is the rule that the burden of proof in seizure and forfeiture cases shall lie upon the claimant who, in this case, is petitioner (as importer of the motor vehicles subject of the present consolidated seizure and forfeiture cases).

Having established that respondent's departure from the *Transaction Value System or Method One* to the *Transaction Value of Identical Goods or Method Two* is valid, the next logical step would then be to ascertain whether there is probable cause for the seizure and forfeiture of the subject imported motor vehicles for "undervaluation" by comparing the subject imported motor vehicles' declared values and IAS reference values.

Below is a table comparison of petitioner's declared values and the IAS reference values used as basis by the officials and assigned Customs Examiners from BOC-MICP-Formal Entry Division in issuing the corresponding Reports of Seizure against the subject imported motor vehicles for gross undervaluation pursuant to Section 1400 of the CMTA.

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IEIRD No.	Imported Motor Vehicle	As Declared	IAS Reference Value
1 C-278724	2 Units Brand New 2017 Toyota Land Cruiser	\$34,150.00/unit	\$42,151.23/unit
2 C-278740	2 Units Brand New 2017 Toyota Land Cruiser	\$34,150.00/unit	\$42,151.23/unit
3 C-278805	2 Units Brand New 2017 Toyota Land Cruiser	\$34,150.00/unit	\$42,151.23/unit
4 C-278798	2 Units Brand New 2017 Toyota Land Cruiser	\$34,150.00/unit	\$42,151.23/unit
5 C-27808	2 Units Brand New 2017 Toyota Land Cruiser	\$34,150.00/unit	\$42,151.23/unit
6 C-279441	2 Units Brand New 2017 Toyota Land Cruiser	\$34,150.00/unit	\$42,151.23/unit
7 C-279866	1 Unit Range Rover Evoque	\$29,964.00/unit	\$32,578.00/unit
	1 Unit McLaren 720S Coupe	\$83,910.00/unit	\$314,278.80/unit
8 C-2809-6717	2 Units Brand New 2017 Range Rover	\$29,964.00/unit	\$51,000.00/unit
9 C-2809-717	2 Units Brand New 2017 Chevrolet Camaro	\$20,333.60/unit	\$22,076.00/unit

Ostensibly, petitioner’s declared values for the subject imported motor vehicles are lower than the IAS reference values determined using the *Transaction Value of Identical Goods or Method Two*. In particular, gross undervaluation is manifest based on the percentage (%) of discrepancy for the McLaren 720S Coupe (included in the 7th shipment with IERD No. C-279866) at **73.30%** and for the brand new 2017 Range Rover (included in the 8th shipment with IERD No. C-2809-6717) at **41.25%**. This goes to show that petitioner’s declared values failed to disclose the full value of the subject imported motor vehicles as legally determined by respondent and this qualifies as “undervaluation”, as defined in Section 1400 of the CMTA, and thus, may be appreciated as probable cause to warrant the issuance of a WSD for each of the aforementioned shipments.¹⁹

Clearly, all the subject motor vehicles were undervalued, with the McLaren 720S Coupe and the brand new 2017 Range Rover showing the largest percentage of undervaluation.

The totality of the circumstances: (1) undervaluation of the subject imported motor vehicles; (2) petitioner’s importation of the subject motor vehicles without a BIR Permit to Operate as Importer of Automobiles at the time of importation; and, (3) petitioner’s failure to submit the required ISS and ATRIG, provides probable cause for the issuance of the Warrants of Seizure and Detention.

WHEREFORE, the instant Petition for Review is **DENIED** for lack of merit. The Decision and Resolution, dated July 27, 2022 and January 26, 2023, respectively, in CTA Case No. 9855 are **AFFIRMED**.

SO ORDERED.


HENRY S. ANGELES
Associate Justice

¹⁹ Division Decision dated July 27, 2022, EB Docket, pp. 84-86.

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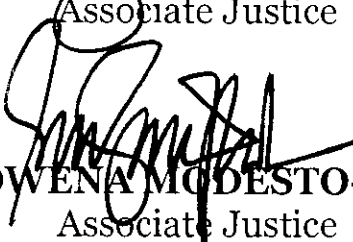
WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice



CATHERINE T. MANAHAN
Associate Justice



JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(ON OFFICIAL BUSINESS)

MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice

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CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ROMAN G. DEL ROSARIO
Presiding Justice