

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF
CUSTOMS,

Petitioner,

CTA EB NO. 2782
(CTA Case No. 9883)

Present:

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

- versus -

GLOBE TELECOM, INC.,
Respondent.

Promulgated:

NOV 14 2024

JK 4:10 p.m.

x ----- x

DECISION

FERRER-FLORES, J.:

Before this Court is a **Petition for Review** filed by **Commissioner of Customs (COC/petitioner)** via registered mail on August 4, 2023 and received by the Court on August 15, 2023,¹ assailing the Decision dated March 7, 2023 (assailed Decision)² and the Resolution dated June 27, 2023 (assailed Resolution),³ whereby the First Division granted the *Petition for Review* of **Globe Telecom, Inc. (Globe/respondent)**; reversed and set aside COC's *Order* dated April 19, 2018; and, affirmed the *Order* dated September

¹ *Rollo* pp. 8 to 47.

² *Id.* at 54 to 74. Penned by Associate Justice Catherine T. Manahan and concurred by Presiding Justice Roman G. Del Rosario and Associate Justice Marian Ivy F. Reyes-Fajardo.

³ *Id.* at 76 to 79. Resolution by the Special First Division penned by Associate Justice Catherine T. Manahan and concurred by Presiding Justice Roman G. Del Rosario and Associate Justice Marian Ivy F. Reyes-Fajardo.

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26, 2017 of the District Collector of Port of Cebu ordering the release of the subject shipment after payment of the duties and taxes due and the redemption value in the total of **₱546,719.00**.

The dispositive portions of the assailed Decision and the assailed Resolution read as follows:

assailed Decision:

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED** and respondent's *Order* dated April 19, 2018 is **REVERSED** and **SET ASIDE**. Accordingly, the *Order* dated September 26, 2017 of the District Collector of Port of Cebu ordering the release of the subject shipment after the payment of the duties and taxes due, and the redemption value in the total amount of Php546,719.00 is hereby **AFFIRMED**.

SO ORDERED.

assailed Resolution:

WHEREFORE, respondent's *Motion for Reconsideration (of the Honorable Court's Decision dated March 7, 2023)* is hereby **DENIED** for lack of merit.

SO ORDERED.

THE PARTIES⁴

Petitioner COC is the government official of the Republic of the Philippines and is the head of the Bureau of Customs (BOC), which is the lead government agency in the implementation of our customs and tariffs laws. He holds office at the G/F OCOM Bldg. 16th Street, South Harbor, Port Area, Manila, and may be served with legal processes through the Office of the Solicitor General (OSG) at 134 Amorsolo Street, Legaspi Village, Makati City.

Respondent Globe is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with principal office address at The Globe Tower, 32nd Street corner 7th Avenue, Bonifacio Global City, Taguig. It may be served with Court processes through its counsel of record, Sycip Salazar Hernandez & Gatmaitan, with office address at 7th Floor, Sycip Law Center, 105 Paseo de Roxas, Makati City.

⁴ *The Parties, Petition for Review, Rollo, p. 10.*

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THE ANTECEDENT FACTS

The facts as found by the Court in Division are as follows:⁵

On February 24, 2017, the equipment subject of this case (subject shipment) was shipped from China under Airway Bill No. 4294 (MWAB 406-88896415). The shipment arrived at the Mactan Cebu International Airport on February 28, 2017 via UPS Flight No. 5X0109. The Airway Bill declares the shipment as containing “SMID Fiber Optic LC ID-FC ID DUAL FUFAG30M” and “SMOD FIBER OPTIC LC ID-LC ID DUAL FUTDJ 100M.”

At the Sub-Port of Mactan, the subject shipment was assigned with customs declaration or Import Entry No. 0878-17 through the BOC Single Administrative Document (SAD) dated March 7, 2017. Petitioner [herein respondent] declared in the SAD and in the documents attached to the SAD – that the subject shipment contains “50 pcs SMID FIBER OPTIC LC ID-FC ID DUAL FUFAG30M” and “100 pcs SMOD FIBER OPTIC LC ID-LC ID DUAL FUTDJ 100M,” with a total of 150 pcs. Thus, in the BOC Assessment Notice of even date, the amount of tax due on the declared shipment was assessed as follows.

VAT		₱38,953.00
IPF	₱500.00	
CDS	250.00	
IRS	15.00	
Total Global Taxes		765.00
Total Assessed amount for the declaration Amount currently to be paid		<u>₱39,718.00</u>

The assessed amount of ₱39,718.00 was paid by petitioner [herein respondent] as shown by the BOC Statement of Settlement of Duties and Taxes dated March 7, 2017.

On March 10, 2017, the shipment was subjected to 100% physical examination by Customs Examiner Monish Baragona (Customs Examiner Baragona). The latter issued the Memorandum dated March 10, 2017 which found the shipment to be a misdeclaration, and recommended the issuance of a Warrant of Seizure and Detention (WSD), to wit:

“MEMORANDUM

For: Port Collector GERARDO CAMPO, LCB

Thru: Ms. CORNELIA B. WILWAYCO
OIC, Assessment section

Re: Shipment consigned to GLOBE TELECOM

⁵ *Rollo*, pp. 55 to 62.

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Inc. STC: 10 packages of covered by
Entry No. C-878-17

Date: 10 March 2017

Please be informed that the undersigned conducted a physical examination on subject shipment on March 10, 2017, found the same to be misdeclaration.

AS DECLARED	AS FOUND
50 pcs SMID FIBER OPTIC LC ID-FC ID DUAL FUFAG30m	50 pcs RF INSTALLATION KITS RET CABLE 2mm
100 pcs SMOD FIBER OPTIC LC ID-LC DUAL FUTDJ 100m	20pcs MULTI CABLE ASSEMBLY 5mm
	15 pcs GPS ANTENNA CABLE ASSEMBLY 100mm
	16 pcs CABLE ASSEMBLY COAXIAL 100mm
	32 pcs ADAPTER KIT FOR FUSHAN 2IU
	40 pcs. CLAMP FOR 2 FEEDERS 7/8
	4 pcs. SIDE BRACKET
	54 pcs. FUTEY SM OD FIBER LC OD-LC OD DUAL 80mm
Total: 150pcs	TOTAL: 231 pcs

In violation of Section 1113 xxx, CMTA therefore the view of the undersigned that the shipment is eligible for the issuance of Warrant of Seizure and Detention (WSD).”

Petitioner [herein respondent] then sent a Letter dated March 15, 2017 to the Collector of the Sub-Port of Mactan, Mr. Gerardo Campo (Collector Campo). In its Letter, petitioner [herein respondent] explained that (i) any discrepancy in the subject shipment and shipping documents was not initiated by petitioner [herein respondent]; (ii) it had no intention to defraud the BOC by way of misdeclaration; and, (iii) it was willing to pay the corresponding duties, taxes, interests, and surcharges for the release of the subject shipment.

Subsequently, Collector Campo sent letter dated March 29, 2017 to petitioner [herein respondent] in response to its March 15, 2017 Letter. In his Letter, Collector Campo informed petitioner [herein respondent] that the shipment subject of this case had been recommended for the issuance of a WSD, and that petitioner [herein respondent] has the option to settle the matter by redemption under the Customs Modernization and Tariff Act (CMTA).

Petitioner submitted a Letter dated April 11, 2017 addressed to District Collector of Customs for the Port of Cebu, Atty. Elvira Cruz (District Collector Cruz), in response to Collector Campo’s Letter dated March 29, 2017. In its Letter, petitioner [herein respondent] stated that it

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was willing to pay the corresponding duties, taxes, interests, and surcharges on the subject shipment.

District Collector Cruz issued the WSD dated May 9, 2017, and docketed the case as Cebu Seizure Identification Case No. 9-2017.

On July 14, 2017, and during the pendency of the seizure proceedings, petitioner [herein respondent], through counsel, offered to settle the seizure case via redemption by paying the “duties, taxes, interest and penalty charges due [on] the subject shipment” pursuant to Section 1124 of the CMTA, and Collector Campo’s March 29, 2017 letter.

Thereafter, on September 26, 2017, District Collector Cruz rendered the Redemption Order allowing shipment to be redeemed at 100% of the landed cost, on the basis of her finding that the “discrepancy in the duty and tax to be paid between what is determined and what is declared amount to more than 30% based on the computation of customs examiner Monish Baragona” thus:

“Wherefore, foregoing premises considered and in line with claimant’s offer to settle the instant case its acceptance pursuant to Section 1124 of the Customs Modernization and Tariff Act, the release of the abovementioned [sic] shipment is hereby ORDERED after payment of the duties and taxes due, and the redemption value in the amount of FOUR HUNDRED EIGHTY-SEVEN THOUSAND FOUR HUNDRED FIFTY-NINE PESOS (PhP 487,459.00), subject to the approval of the Honorable Commissioner of Customs. This redemption value shall form part and parcel of the total amount of FIVE HUNDRED FORTY-SIX THOUSAND SEVEN HUNDRED NINETEEN PESOS (PhP 546,719.00) representing the taxes and surcharge that are legally due and still payable to the government.”

On September 29, 2017, District Collector Cruz forwarded the Redemption Order to respondent [herein petitioner] for approval.

On April 19, 2018, respondent [herein petitioner] rendered the assailed Reversal Order, the dispositive portion of which, states:

“WHEREFORE, premises considered, the Order dated 26 September 2017 of Atty. Elvira Cruz, District Collector, Port of Cebu (POC) is REVERSED. Consequently, the acceptance of claimant’s offer of settlement via redemption is DISALLOWED and the subject shipment of 50pcs. SMOD Fiber Optic LC ID and 100 pcs. SMOD Fiber Optic LC ID is FORFIETED in favor of the government to be disposed of in accordance with law.

SO ORDERED.”

Petitioner [herein Respondent] then filed the present Petition for Review on July 24, 2018, pursuant to Section 1136 of Republic Act (RA) No. 10863, otherwise known as the CMTA, appealing respondent’s [herein

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petitioner's] Order dated April 19, 2018 which reversed the Order dated September 26, 2017 of the District Collector of the Port of Cebu.

Summons dated October 17, 2018 was issued to and received by respondent [herein petitioner] on October 23, 2018.

On December 11, 2018, petitioner [herein respondent] filed a Motion to Declare Respondent Commissioner of Customs in Default, for alleged failure of respondent [herein petitioner] to file his answer within the prescribed period.

Respondent [herein petitioner], through the Office of the Solicitor General (OSG), filed his Opposition (to petitioner's Motion to Declare Respondent Commissioner of Customs in Default dated December 11, 2018) on January 23, 2019.

In the Resolution dated February 4, 2019, the Court denied petitioner's [herein respondent's] Motion to Declare Respondent Commissioner of Customs in Default, and granted respondent [herein petitioner] a period of thirty (30) days from January 22, 2019, or until February 21, 2019, to file the required Answer.

On February 15, 2019, respondent [herein petitioner] filed a Motion for Additional Period To File Answer, which was granted by the Court in the Resolution dated March 5, 2019. Thus, respondent [herein petitioner] filed his Answer (to the Petition for Review dated July 18, 2018) on March 22, 2019, interposing the following main affirmative defenses, to wit:

1. Respondent [herein petitioner] correctly disallowed the acceptance of petitioner's [herein petitioner's] offer of settlement of the seizure case via redemption of the forfeited goods considering that there was a fraudulent misdeclaration of the goods; and,

2. Respondent [herein petitioner] legally seized and forfeited the subject shipment in favor of the Government.

The OSG submitted the BOC Records for the present case on April 1, 2019.

The Pre-Trial Conference was set and held on June 13, 2019. Prior thereto, respondent [herein petitioner] filed his Pre-Trial Brief on June 7, 2019, while petitioner's [herein respondent's] Pre-Trial Brief was posted on June 10, 2019.

Thereafter, the parties filed their Joint Stipulation on July 18, 2019. In the Resolution dated July 25, 2019, the Court approved the said Joint stipulation, and deemed the termination of the Pre-Trial. The Pre-Trial dated October 2, 2019 was then subsequently issued.

In the meantime, on September 19, 2019. The parties filed their Joint Motion for Suspension of Proceedings, to give them sufficient time to come to an agreement on the terms and conditions of the possible settlement of the case. The Court granted the same, subject to the condition that should

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the parties fail to reach a settlement the order of the presentation of evidence set in the Pre-Trial Order shall be observed. However, there was no indication that the parties were able to arrive at a case settlement.

Trial then ensued.

Petitioner [herein respondent] presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Ms. Sheila A. Cantos, petitioner's [herein respondent's] Access Planning Head; (2) Mr. Jianfeng Ding, Back Office Project Manager for overseas project of Alcatel-Lucent Shanghai Bell Co., Ltd. (now known as Nokia Shanghai Bell Co., Ltd.); (3) Ms. Ma. Lida G. Velasco, employee (customs brokerage manager) of Nonpareil International Freight and Cargo Services, Inc.; (4) Ms. Marilyn L. Ereño, Team Leader, Network Section, under petitioner's [herein respondent's] Procurement Department; (5) Mr. Frederick Cruz Simbulan, petitioner's [herein respondent's] Manager of Import and Export Management; and, (6) Ms. Renzy Silva, Project Logistics Coordinator of Asia People Works, Inc.

On December 28, 2020, petitioner [herein respondent] filed its Formal Offer of Evidence. Respondent [herein petitioner] then filed his Comment (on the Formal Offer of Evidence dated December 28, 2020) on January 21, 2021 via electronic mail. In the Resolution dated March 4, 2021, the Court admitted petitioner's offered exhibits, except for Exhibits "P-4" and "P-16", for the failure to present the originals for comparison.

Respondent [herein petitioner] likewise presented his documentary and testimonial evidence. He offered the testimony of Mr. Monish P. Baragona, Customs Operation Officer III of the BOC.

On March 31, 2021, respondent [herein petitioner] posted his Formal Offer of Evidence. Petitioner [herein respondent] then filed its Comment (re: Respondent's Formal Evidence dated March 25, 2021) on July 1, 2021. In the Resolution dated November 3, 2021, the Court admitted respondent's [herein petitioner's] offered exhibits.

Petitioner's [herein respondent's] Memorandum was posted on February 2, 2022, while respondent's [herein petitioner's] Memorandum was posted on December 23, 2021.

The present case was submitted for decision on March 7, 2022.

In reversing the Order of herein petitioner, the Court in Division agreed that there is a discrepancy of more than 30% of the amount of duties to be paid by herein respondent versus the amount is declared in its shipping documents; however, the Court found the alleged fraud non-existent in the instant case. The Court ruled that there was probable cause to validly seize respondent's shipment considering that there was indeed discrepancy between the goods shipped and the declaration made by Globe. The Court in Division likewise held that herein petitioner should be mindful of the factual circumstances surrounding the subject shipment, i.e., the imported items were of small value and they are covered by the tax exemption provision under

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Section 11 of the Republic Act (R.A.) No. 7229. Hence, all the factual antecedents taken into one, belie any iota of intention for respondent to misdeclare, misclassify, or under value its importation.

On March 30, 2023, petitioner filed a *Motion for Reconsideration (of the Honorable Court's Decision dated March 7, 2023)*,⁶ which the Court in Division denied for lack of merit.⁷

Hence, the instant *Petition*.

THE PROCEEDINGS BEFORE THE COURT *EN BANC*

On July 20, 2023, petitioner filed a *Motion for Extension of Time to File Petitioner for Review*,⁸ which the Court *En Banc* granted in a Minute Resolution dated July 21, 2023.⁹ Thus, on August 14, 2023, petitioner filed the instant *Petition for Review*.¹⁰

The Court *En Banc* required respondent to file its comment/opposition to the *Petition for Review* within 10 days from notice.¹¹ Respondent filed its *Comment/Opposition (Re: Petition for Review dated August 3, 2023)* on October 2, 2023 via registered mail and was received by the Court on October 9, 2023.¹²

The instant case was submitted for decision on October 17, 2023.¹³

THE ISSUE

In the *Petition for Review*, the sole ground for the allowance of petition raised by petitioner is that the Court in Division gravely erred in allowing respondent Globe to redeem the subject shipment as there was an outright fraudulent misdeclaration of the subject shipment.

THE ARGUMENTS

⁶ *Id.* at 80 to 106.

⁷ *Id.* at 75 to 79.

⁸ *Id.* at 1 to 4.

⁹ *Id.* at 7.

¹⁰ *Id.* pp. 8 to 48.

¹¹ Minute Resolution dated September 12, 2023, *Id.* at 132.

¹² *Id.* at. 133 to 180.

¹³ Minute Resolution dated October 17, 2023, *Id.* at. 183.

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Petitioner's arguments

Petitioner insists that he correctly disallowed respondent's offer of settlement of the seizure case via redemption of the forfeited goods or shipment as there was a fraudulent misdeclaration of the goods. He claims that there is *prima facie* evidence of fraud as the discrepancy in duty and tax to be paid between what is legally determined and what is declared amounted to more than 30% and respondent has utterly failed to overthrow the *prima facie* evidence of fraud. Moreover, petitioner contends that respondent's claim of innocence or good faith regarding the misdeclaration of the imported goods or shipment and shifting the blame on the shipper or supplier is unavailing. He also posits that respondent's alleged good faith cannot avoid forfeiture, as forfeiture proceedings are proceedings *in rem* and directed against the *res* and not *in persona*. Hence, petitioner argues that it cannot simply shift the blame unto its supplier over which the Courts have no jurisdiction. Finally, petitioner maintains that he legally seized and forfeited the subject goods or shipment in favor of the government to be disposed of in accordance with law.

Respondent's arguments

Respondent avers that the instant *Petition* should be denied outright for merely rehashing the arguments that petitioner had made in its prior submission in the Court in Division. Respondent asserts that the Court in Division correctly held that there was no fraud on its part as petitioner failed to establish actual and intentional fraud as contemplated by the law in forfeiture cases; and that, it was able to overcome the *prima facie* evidence of fraud under Section 1400 of the Customs Modernization and Tariff Act (CMTA). Respondent asserts that the Court in Division correctly ruled that its offer of settlement by redemption of the subject shipment should be allowed since the 30% threshold under Section 1124 of the CMTA does not apply to settlement by way of redemption. Respondent alleges that the Court in Division correctly held that petitioner did not legally seize and forfeit the subject shipment considering that it had no participation whatsoever on the preparation of, and consequently on any discrepancy or inaccuracy on, the invoices and shipping documents in respect of the subject shipment, nor did respondent execute such shipping documents, thereby showing no fraud.

RULING OF THE COURT *EN BANC*

The *Petition for Review* is bereft of merit. ↘

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At the outset, the Court notes that the arguments raised in the instant *Petition for Review* are essentially the same as the arguments raised by petitioner in his *Memorandum* before the Court in Division; hence, the Court in Division had sufficiently discussed and passed upon in both the assailed Decision and the assailed Resolution the grounds to support the instant *Petition for Review*. Clearly, there is no compelling reason to reverse or set aside the assailed the Decision and assailed Resolution.

The instant Petition was timely filed.

Section 3(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

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. (*Emphasis supplied*)

Based on the foregoing, petitioner had 15 days from receipt of the assailed Resolution within which to file his *Petition*.

Records show that the assailed Resolution of the Court in Division was received by petitioner on July 5, 2023.¹⁴ Petitioner, thus, had fifteen (15) days from such receipt, or until July 20, 2023, to file its *Petition for Review*. On July 20, 2023, petitioner filed a *Motion for Extension of Time to File Petitioner for Review*, and was given an additional of 15 days from July 20, 2023, or until **August 4, 2023**, within which to file his *Petition for Review*.

The instant *Petition for Review* was, thus, timely filed on August 4, 2023.¹⁵ The Court shall now address the ground raised by petitioner in his *Petition for Review*.

¹⁴ *Rollo*, p. 75.

¹⁵ *Id.* at pp. 8 to 47.

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Respondent was able to present contrary evidence to show the non-existence of fraud.

Petitioner contends that respondent's misdeclaration of more than 30% of the amount of its shipment is a *prima facie* evidence of fraud pursuant to Section 1124 of the CMTA. According to petitioner, the fact that the misdeclared goods were not "shipped back" to the sender, and instead respondent simply paid the duties and taxes of such goods upon discovery by the customs examiner, proves that there is fraudulent misdeclaration and over shipment of goods with a clear intent to defraud the government. Petitioner claims that respondent's witness testified as to its active participation in the subject transaction or shipment. He avers that the presumed or construed knowledge has attained a conclusive character for the failure of respondent to overthrow the evidence of fraud.

Petitioner claims that there exists a *prima facie* evidence of fraud in view of respondent's misdeclaration of its shipment for more than 30% of the duties and taxes to be paid. Thus, petitioner maintains that the seizure of the subject shipment was proper.

Respondent, on the other hand, contends that fraud is never presumed; thus, petitioner should show actual and intentional fraud allegedly committed. Respondent asserts that petitioner's finding that the subject shipment is attended by fraud lacks evidence and is speculative as he could not determine with certainty whether the importation was attended by negligence or fraud. Citing jurisprudence, respondent maintains that a mere mistake cannot be considered as fraudulent intent and mere negligence is not equivalent to fraud contemplated by law. Respondent posits that petitioner's claim that "it is a little too far-fetched to imagine that the supplier of goods would, of its own volition, knowingly send an additional or another equipment than what was ordered" and unduly concluded that "there is negligence or a deliberate design to defraud the government" is not a definitive finding by petitioner that it committed intentional fraud. It further asserts that a *prima facie* evidence of fraud is sufficient to sustain a judgment only if its unexplained or uncontradicted, which in their case, respondent claims to have been able to do so when it presented Mr. Jianfeng Ding, a representative from Alcatel Shanghai Bell (ASB) to testify that it had no participation or whatsoever in the packing and shipment. Respondent further claims that the incident was isolated and an honest mistake by ASB and not attributable to Globe.

We agree with the respondent and affirm the ruling of the Court in Division. 

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In finding that there is no fraud, the Court in Division determined that respondent had no control over the Packing List, Pro Forma Invoice and Commercial Invoice prepared by its supplier, ASB. As found by the Court in Division, the testimonies of respondent's witnesses contradict the existence of actual and intentional fraud. The Court in Division held that the staff of ASB was negligent in counterchecking and matching the list of items contained in the purchase order of respondent against the final list of items declared in the invoices and the general packing list prepared by the shipper before making the actual shipment. The testimony of Mr. Ding revealed that there is no direct communication between respondent and ASB relative to such shipment and the documents are being sent by the latter to Nokia Shanghai Bell Philippines;¹⁶ thus, the alleged fraud is non-existent.

Customs Administrative Order (CAO) No. 001-20¹⁷ defines misdeclaration as the false, untruthful, erroneous or inaccurate declaration as to quantity, quality, description, weight or measurement of the goods resulting in deficiency between the duty and tax that should have been paid and the duty and tax actually paid; and/or to avoid compliance with government regulations related to the entry of Regulated, Prohibited or Restricted goods into Philippine customs territory, viz:¹⁸

There is Misdeclaration as to the Quantity of Goods when there is a difference in the number of the Goods as declared in the Goods Declaration and the quantity as found after physical examination of the Goods.

There is Misdeclaration as to the Quality of Goods when there is a difference in the characteristics of the Goods as declared in the Goods Declaration and the quality as found after physical examination of the Goods (e.g., declared as USED but found out as BRAND NEW or declared as off-quality, remnants fabrics but found as whole, first class, best quality fabrics, among others).

There is Misdeclaration as to Description of Goods when there is a difference in the descriptive nature and identity of the Goods as declared in the Goods Declaration and the description as found after physical examination of the Goods (e.g., product code, item code, make, model, series, displacement, version, among others).

There is Misdeclaration as to the Weight of Goods when there is a discrepancy in the actual weight as declared in the Goods Declaration and the weight as found after physical examination and weighing of the Goods.

There is Misdeclaration as to the Measurement of Goods when there is a difference in the size, length, width, height or volume of the Goods as

¹⁶ *Rollo*, p. 71.

¹⁷ SUBJECT: Fines and Surcharges for Clerical Errors, Misdeclaration, Misclassification and Undervaluation, December 20, 2019.

¹⁸ Section 3.10.

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declared in the Goods Declaration and the measurement as found after physical examination of the Goods

In relation thereto, Section 6 of CAO No. 001-20 provides that a discrepancy amounting to more than 30% of the duty and tax to be paid between what is legally determined and what is declared shall constitute a *prima facie* evidence of fraud in case of misdeclaration, misclassification or undervaluation. Moreover, such misdeclared, misclassified and undervalued goods shall be subject to seizure proceedings pursuant to Section 1113 of the CMTA.

In the instant case, it appears that respondent allegedly misdeclared the description of the goods, to wit:

AS DECLARED	AS FOUND
50 pcs SMID FIBER OPTIC LC ID-FC ID DUAL FUFAG30m	50 pcs RF INSTALLATION KITS RET CABLE 2mm
100 pcs SMOD FIBER OPTIC LC ID-LC DUAL FUTDJ 100m	20pcs MULTI CABLE ASSEMBLY 5mm
	15 pcs GPS ANTENNA CABLE ASSEMBLY 100mm
	16 pcs CABLE ASSEMBLY COAXIAL 100mm
	32 pcs ADAPTER KIT FOR FUSHAN 21U
	40 pcs. CLAMP FOR 2 FEEDERS 7/8
	4 pcs. SIDE BRACKET
	54 pcs. FUTEY SM OD FIBER LC OD-LC OD DUAL 80mm
Total: 150pcs	TOTAL: 231 pcs

Considering that the Customs Examiner found that the total amount of duties due to the government by respondent is ₱59,525.00 and the total amount of assessed taxes based on respondent's declaration is only ₱39,718.00, respondent allegedly misdeclared its shipment for more than 30% of the amount paid; and thus, there is *prima facie* evidence of fraud and the shipment may be subject of seizure proceedings.

In the same CAO, fraud is referred to as the to the commission or omission of any act resulting in material false statements such as, but not limited to, the submission of false or altered documents in connection with any importation, knowingly, voluntarily and intentionally done, to reduce the taxes and duties paid or to avoid compliance with government regulations related to the entry of Regulated, Prohibited or Restricted goods into

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Philippine customs territory through Misdeclaration, Misclassification or Undervaluation.¹⁹

In order to justify the seizure of respondent's subject shipment, petitioner must show actual and intentional fraud. In the instant case, the seizure of the subject shipment was primarily based on the existence of a *prima facie* evidence of fraud, which, however, respondent was able to refute, as ruled by the Court in Division in the assailed Decision.

During the hearing held on December 9, 2020,²⁰ Mr. Ding, Back Office Project Manager for overseas project of ASB, testified that respondent had no participation in the documentary requirements relative to the shipment, viz:

STATE SOL. ANCHETA:

Q: In answer no 12, you mentioned that you received a Purchase Order No. 454033602 from Globe telecom, correct?

MR. DING

A: Yes, **Nokia Shanghai Bell received this Purchase Order.**

STATE SOL. ANCHETA:

Q: Also in Question 14, you answered that after receiving the Purchase Order, you prepared the pro forma invoice based on the delivery plan, correct?

MR. DING

A: Yes, correct.

STATE SOL. ANCHETA:

Q: In Question 16, you mentioned that after preparing the pro forma invoice, you sent a copy to Globe Telecom, correct?

MR. DING

A: The pro forma invoice, (Paused) normally send us, (Paused) Nokia Shanghai Bell Philippine colleague named Renzy.

xxx

xxx

xxx

STATE SOL. ANCHETA:

Q: **Mr. Witness, did you send a copy of the pro forma invoice to Globe Telecom?**

MR. DING:

A: **I sent it to Ms. Renzy.**

¹⁹ Section 3.3.

²⁰ Transcript of Stenographic Notes (TSN) dated December 9, 2020, pp. 26 to 30.

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STATE SOL. ANCHETA:

Q: Who is this Renzy Silva?

MR. DING:

A: Renzy Silva is an employee of Nokia Shanghai Bell Philippines.

STATE SOL. ANCHETA:

Q: After sending the pro forma invoice to Ms. Renzy Silva, did you receive any reply form her?

MR. DING:

A: From Renzy or from (Paused) Sir, you mean we receive any response from Renzy or (Paused) What's the question?

STATE SOL. ANCHETA:

Q: You stated earlier that you send a pro forma invoice to Ms. Renzy Silva

MR. DING

A: Yes.

STATE SOL. ANCHETA:

Q: How about to Globe, did you send a copy of the pro forma invoice?

MR. DING

A: No, we don't have direct communication with Globe.

STATE SOL. ANCHETA:

Q: Okay. You mentioned an Import Permit in answer to Question 16. From whom did you receive the Import Permit?

MR. DING

A: Ms. Renzy Silva informed us that there is an Import Permit (inaudible).

STATE SOL. ANCHETA:

Q: Did you receive a copy of the Import Permit?

MR. DING

A: No, I don't remember, just the notification said that we have get an Import Permit or not.

STATE SOL. ANCHETA:

Q: But you were notified that there was an Import Permit?

MR. DING:

A: Sir, pardon?

STATE SOL. ANCHETA:

Q: Just for a clarification, was ASB notified of the Import Permit?

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MR. DING

A: They should be. If no Import Permit, we will not arrange the shipment.

STATE SOL. ANCHETA:

Q: And after you received the Import Permit, did you prepare, (Paused) you prepared the general packing list, correct, in Question 17?

MR. DING

A: Yes, our colleague will prepare the general packing list.

STATE SOL. ANCHETA:

Q: Can you repeat, Mr. Witness?

MR. DING:

A: Our colleague will prepare the general packing list after she received the Import Permit.

STATE SOL. ANCHETA:

Q: **After preparing the general packing list, did you furnish a copy of it to Globe?**

MR. DING:

A: **No.**

STATE SOL. ANCHETA:

Q: You mentioned also that you (Paused) When did you ship the equipment and materials?

MR. DING:

A: I don't remember clearly. About December or sometime in January; it's two years ago.

STATE SOL. ANCHETA:

Q: **Then in Question 22, you prepared the commercial invoice, correct?**

MR. DING

A: **Actually, not me, but my colleague.**

STATE SOL. ANCHETA:

Q: **I mean ASB.**

MR. DING

A: **Yes.**

STATE SOL. ANCHETA:

Q: **So did you send a copy of the ASB to Globe?**

MR. DING

A: **No. We always only send it to Renzy.**

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STATE SOL. ANCHETA:

Q: Renzy, okay.

You mentioned in Question 25 that ASB committed a mistake by including items number 13, 25, 26, and 27. Did you inform Globe about the mistake committed by ASB?

MR. DING

A: Actually, we did not found out this mistake during the shipment, and as I mentioned there, we don't have direct communication channel with Globe since we are back office management.

STATE SOL. ANCHETA:

That's all, your Honors.

Based on Mr. Ding's testimony, ASB communicates only with its local affiliate, Nokia Shanghai Bell Philippines, but not to respondent Globe. Furthermore, Associate Justice Manahan clarified respondent Globe's participation on the preparation of the shipping documents,²¹ to wit:

JUSTICE MANAHAN

So, just a point of clarification, does the Court understand (Paused) **You mean to say that ASB only communicates with its Nokia Philippines office care of Renzy Silva, but does not directly communicate to Globe, the buyer.**

MR. DING:

A: Yes, your Honors, from our team, we are back office project manager team, we only communicate with outside the project team.

JUSTICE MANAHAN

And that is Ms. Renzy?

MR. DING:

A: Yes, Renzy is the logistics manager on-site.

Clearly, respondent Globe did not participate in the preparation of the shipping documents. This was further elaborated during the re-direct examination of Mr. Ding, when he testified that ASB sent a letter to BOC explaining the discrepancy on the shipping documents and the actual shipping and initiated the correction of the commercial invoice,²² viz:

ATTY. ORTUA:

²¹ TSN dated December 9, 2020, p. 31.

²² *Id.* at 31 to 32.

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Q: Mr. Ding, were you aware of the issue before the Bureau of Customs with respect of the discrepancy between the shipping documents and the actual shipment?

MR. DING:

A: After the notification from I don't remember if it is from Renzy or from other colleague.

ATTY. ORTUA:

Q: So, you were notified of the issue before the Bureau of Customs by your colleagues from ASB?

MR. DING:

A: Yes, from local colleagues.

ATTY. ORTUA:

Q: Okay, thank you.

And when you were notified by your colleagues of the discrepancy, the issue raised by the Bureau of Customs, would you know what ASB did in order to remedy the situation?

MR. DING:

A: We prepared a letter to explain this issue and we corrected this commercial invoice.

ATTY. ORTUA:

Q: So, you mention that ASB prepared a letter-explanation and you corrected the commercial invoice, is that correct? Did I correctly state that?

MR. DING:

A: Yes.

The fact that it was ASB who explained to BOC the reason with regard to the discrepancies between the shipping documents and the actual shipment shows that the inadvertence was attributable to ASB and not respondent Globe.

Based on the foregoing testimonies, respondent was able to establish that it had no participation on the preparation of the shipping documents and the actual shipment. Moreover, respondent's witness manifested that the accessories were part of the set that were purchased from ASB. Finally, respondent was able to show that the difference in the shipping documents and the actual shipment was due to the inadvertence of ASB.

Clearly, respondent was able to counter the *prima facie* evidence of fraud, as affirmed by the Court in Division in the assailed Decision. In the

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absence of any contradictory evidence or new arguments, the Court finds no reason to reverse the findings of the Court in Division.

The Court in Division did not err in allowing the redemption of the subject shipment.

Under Section 1124 of the CMTA,²³ settlement of any seizure case by payment of fine or redemption of forfeited goods shall not be allowed when there is fraud, or where the importation is prohibited or the release of the goods is contrary to law. Thus, in the absence of fraud, redemption is allowed such as in the instant case.

In relation thereto, Section 14.4 of CAO No. 010-20,²⁴ settlement of forfeiture cases is allowed with the approval of the Commissioner or on appeal with his acceptance. Settlement by redemption shall be made by paying the redeemed value equivalent to 100% of the Total Landed Cost and is, however, **only** allowed under the following circumstances:

1. **When there is no fraud attributable to the importer, consignee or owner;**
2. When the goods are not absolutely prohibited; and,
3. When the release of the goods is not contrary to law.

²³ SECTION 1124. *Settlement of Pending Seizure Case by Payment of Fine or Redemption of Forfeited Goods.* — Subject to the approval of the Commissioner, the District Collector may allow the settlement by payment of fine or the redemption of forfeited goods, during the course of the forfeiture proceeding. However, the Commissioner may accept the settlement by redemption of any forfeiture case on appeal. **No settlement by payment of fine shall be allowed when there is fraud** or when the discrepancy in duties and taxes to be paid between what is determined and what is declared amounts to more than thirty percent (30%).

In case of settlement by payment of fine, the owner, importer, exporter, or consignee or agent shall offer to pay a fine equivalent to thirty percent (30%) of the landed cost of the seized goods. In case of settlement by redemption, the owner, importer, exporter, or consignee or agent shall offer to pay the redeemed value equivalent to one hundred percent (100%) of the landed cost.

Upon payment of the fine or payment of the redeemed value, the goods shall be released and all liabilities which may attach to the goods shall be discharged without prejudice to the filing of administrative or criminal case.

Settlement of any seizure case by payment of the fine or redemption of forfeited goods shall not be allowed when there is fraud, or where the importation is prohibited or the release of the goods is contrary to law. (Emphasis ours)

²⁴ Subject: Seizure and Forfeiture Proceedings and Appeals Process, May 11, 2020.

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Based on the foregoing, the importer may be able to redeem the shipment if there is no fraud attributable. As respondent was able to show proof which negates fraud, its shipment may be subject of redemption.

Accordingly, there is nothing in the arguments of petitioner that would warrant the reversal of the findings of the Court in Division.


WHEREFORE, premises considered, the instant **Petition for Review** is **DENIED** for lack of merit. The assailed *Decision* dated March 7, 2023 and the assailed *Resolution* dated June 27, 2023 rendered by the First Division of this Court in CTA Case No. 9883 are **AFFIRMED**.


SO ORDERED.


CORALON G. FERRER-FLORES
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice

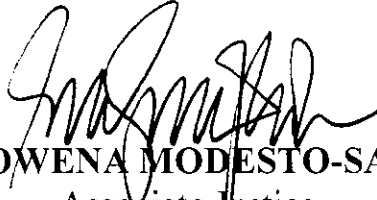

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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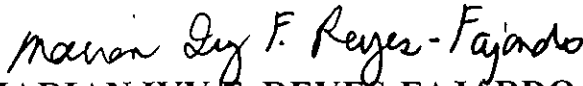
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MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



MARIAN IVY F. REYES-FAJARDO
Associate Justice



LANEE S. CUI-DAVID
Associate Justice



HENRY S. ANGELES
Associate Justice

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