

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**CHANG L. MOHAMMAD,
SHARALYN S. PEDREÑA,
JOHNNY S. YUSUP,
FERDAUS A. OMAR, and
ARMAND P. DAUD,**

Petitioners,

**CTA EB No. 2784
(CTA Case No. 10346)**

Present:

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

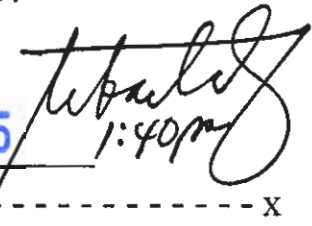
-versus-

**COMMISSIONER OF
CUSTOMS,**

Respondent.

Promulgated:

JAN 09 2025



X-----X

DECISION

ANGELES, J.:

THE CASE

Before the Court *En Banc* is a Petition for Review¹ filed by the above-named petitioners against the Commissioner of Customs, herein respondent, praying for the reversal of the Decision dated November 4, 2022 (assailed Decision) and Resolution dated July 4, 2023 (assailed Resolution) of the Second Division in CTA Case No. 10346, which affirmed respondent's Resolution dated July 29, 2020 ordering the forfeiture of USD 491,600 intercepted from Chang L. Mohammad at the Ninoy Aquino International Airport (NAIA).

Petitioners also pray for the Court to accept its offer of settlement to respondent, and to release to petitioners seventy percent (70%) of the amount intercepted or USD 344,120, pursuant to Section 1124 of the Customs Modernization and Tariff Act (CMTA).

¹ EB Docket, pp. 8-23.

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THE PARTIES

Petitioners are Chang L. Mohammad (Mohammad), Johnny S. Yusup (Yusup), Ferdaus A. Omar (Omar) and Armand P. Daud (Daud), who claim to be employees of Sharalyn S. Pedreña Money Changer (SSP Money Changer), and Sharalyn S. Pedreña (Pedreña), who claims to be the proprietress of SSP Money Changer with a branch at the City of Dreams Manila in Parañaque City.²

Respondent is the duly appointed Commissioner of the Bureau of Customs (BOC) having exclusive original jurisdiction over forfeiture cases under the CMTA.

ANTECEDENT FACTS

The facts of the case were stipulated³ upon by the parties, as follows:

On September 21, 2019, Mohammad arrived in the Philippines at the NAIA Terminal 3 from Hong Kong on-board Cebu Pacific Flight No. 5J 273.

As he was carrying two (2) bags, Mohammad filled out a Customs Baggage Declaration Form (CBDF), and Foreign Currency Declaration Form (FCDF) wherein he declared that he had foreign currency in the amount of USD 148,000.

However, upon examination of the said bags by Customs Examiner Jaquelyn A. Villamor, it was discovered that Mohammad was carrying a total amount of USD 649,600 in both bags.

As a result, a Held Baggage Receipt No. 00376695 was issued against the USD 649,600 intercepted from Mohammad for the reason that the amount was in excess of what was declared by the passenger.

After investigation and hearing conducted by elements of the BOC, with the participation of petitioners and guidance from the Bangko Sentral ng Pilipinas (BSP), the amount of USD 158,000, representing the amount declared by Mohammad plus USD 10,000 which may be brought into the country without declaration per the applicable BSP rules, was released to Mohammad.

² *Petition for Review* dated August 9, 2023, EB Docket, p. 9.

³ *Joint Stipulation of Facts and Legal Issues* dated May 21, 2021, Division Docket, pp. 178-181.

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The NAIA District Collector issued a Warrant of Seizure and Detention (WSD) against the remaining USD 491,600 (subject money).

Petitioners through counsel filed a *Motion to Enter Into Compromise Settlement*, which the NAIA District Collector denied in a Decision dated March 4, 2020. The said Decision was affirmed by respondent in the Resolution dated July 29, 2020.

Aggrieved, petitioners filed a Petition for Review with this Court on September 10, 2020, which was raffled to the Second Division and docketed as CTA Case No. 10346.

The Second Division narrated the factual backdrop⁴ in this wise, which the Court *En Banc* adopts, *viz.*:

Petitioner Yusup instructed petitioner Omar to travel to Hong Kong to purchase watches and pieces of jewelry at the Jewellery and Gem Fair scheduled in the 3rd week of September 2019. He also ordered petitioner Omar to book flights for petitioners Daud and Mohammad, her companions on the said business trip.

On 20 September 2019, petitioners Omar, Daud and Mohammad traveled to and arrived in Hong Kong. Since the watches and pieces of jewelry were expensive, petitioner Omar decided to buy only a few stocks. Upon her instruction, Daud and Mohammad returned to Manila the next day, carrying unspent foreign currency in cash amounting to USD \$649,600.00 (divided between Daud and Mohammad's bags: USD \$501,600.00 in Daud's black cabin luggage and USD \$148,000.00 in Mohammad's black backpack).

On 21 September 2019, petitioners Daud and Mohammad arrived at NAIA Terminal 3 on-board Cebu Pacific Flight No. 5J 273 from Hong Kong. During their trip, Daud allegedly gave Mohammad a Customs Baggage Declaration Form (CBDF) to fill out for the foreign currency he was carrying in his backpack. Mohammad, however, did not accomplish the said form as it was allegedly difficult for him to write while in transit and he also wanted to rest. Daud, on the other hand, filled out his CBDF for the foreign currency contained in his luggage.

Petitioner Daud allegedly requested petitioner Mohammad's help in hand-carrying his black cabin luggage, which is why, upon arrival at NAIA Terminal 3 at around 12:00 noon, the latter was already carrying two (2) bags.

Petitioner Mohammad headed to the comfort room and thereafter proceeded to the Bureau of Immigration (BI) E-Gates for the routine clearing process for arriving travelers. He placed his

⁴ *Decision* dated November 4, 2022, EB Docket, pp. 37-43.

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passport for scanning on the E-Gate machine and proceeded with biometrics. Unfortunately, no receipt sticker came out. Hence, a female BI employee approached him and the other passengers who encountered the same E-Gate malfunction and directed them to fall in line before an Immigrations counter.

On the other hand, petitioner Daud went ahead of petitioner Mohammad because he encountered no problem at the Immigration clearance. After claiming his checked-in baggage, Daud allegedly looked for Mohammad to get his hand-carried luggage. Unfortunately, he could not contact Mohammad at the time because the battery of his mobile phone had gone empty. After being cleared at the Immigrations counter, he tried to call Mohammad, but to no avail.

Believing that petitioner Mohammad had already declared the foreign currency, petitioner Daud left the airport without his luggage. He did not submit the CBDF that he had accomplished as he was not in possession of his luggage.

Meanwhile, at the Customs area, petitioner Mohammad was ordered to place his two (2) bags in the X-ray machine and instructed to proceed to the Customs lane. He filled out a CBDF and a Foreign Currency Declaration Form (FCDF), wherein he declared that he was carrying foreign currency in the amount of USD \$148,000.

Upon inspection, however, it was discovered that petitioner Mohammad was, in fact, carrying a total of USD \$649,600.00 in the two (2) bags found in his possession. He then informed the Customs Examiner that he had a companion (the owner of the black luggage) during the trip back to Manila and that he only declared the amount of foreign currency he was carrying in his backpack.

Petitioner Mohammad then informed petitioner Yusup by phone about the incident. When Yusup was finally able to contact petitioner Daud at around 3:00 p.m., he ordered the latter to go immediately to NAIA Terminal 3.

Since no counting machine was available, petitioner Mohammad was brought to the Customs Office at NAIA Terminal 2. Then, when he was finally able to speak to petitioner Daud by phone, he told the latter to proceed to NAIA Terminal 2.

Meanwhile, petitioner Yusup found out that his cousin, Atty. Jhenilyn Yusup (Atty. Yusup) was in Manila. He then informed petitioner Daud that Atty. Yusup would accompany him.

In the course of counting, petitioner Daud, accompanied by Atty. Yusup, returned to NAIA Terminal 2 at past 6:00 p.m. They were not immediately allowed to enter the room, where the manual counting was being done, because they were required to present a consent or clearance from the Customs police. When they were finally allowed to enter, petitioner Mohammad introduced them as his companion and lawyer, respectively. Daud allegedly showed his unsubmitted CBDF to the Customs Officers to explain his side of the story but was ignored.

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The Customs Officers then issued a Held Baggage Receipt (HBR) No. 00376695 against the USD \$649,600.00 intercepted from petitioner Mohammad xxx xxx xxx

[T]he Customs Officer told Mohammad to return the next working day, *i.e.*, 23 September 2019, because the serial numbers of all the currencies shall be taken and recorded. The total amount of the intercepted foreign currency was placed in the black backpack and the black cabin luggage was returned to him empty.

After sealing and securing the black backpack, the foreign currency was handed over to the appropriate officer for custodial deposit. Petitioner Mohammad, on the other hand, was turned over to the Customs Police Division. He was held there until the following day of 23 September 2019, when he was released from custodial investigation xxx xxx xxx

On 02 October 2019, a preliminary hearing was held and attended by representatives from the BSP and the Anti-Money Laundering Council (AMLC), among others. Then, on 08 October 2019, petitioner Mohammad, through his counsel, sought the release of the total amount not in issue, *i.e.*, USD \$158,000.00.

On 11 October 2019, following the advice of BSP Senior Director Thomas Benjamin B. Marcelo (Senior Director Marcelo), the total amount of USD \$158,000.00 (*i.e.*, the declared amount of USD \$148,000.00, plus USD \$10,000.00 representing the maximum amount that need not be declared under the BSP's [Manual of Regulations on Foreign Exchange Transactions] MORFXT) was released to petitioner Mohammad, leaving a balance of USD \$491,600.00 in issue.

On 04 November 2019, petitioners submitted their Position Paper.

On 26 November 2019, Customs Intelligence and Investigation Service (CIIS) representative, Atty. Mario Narag, Jr. (Atty. Narag), and petitioner Mohammad appeared before the NAIA Customs Law Division for a clarificatory hearing xxx xxx xxx

On 16 January 2020, the Law Division recommended the issuance of Warrant of Seizure and Detention (WSD) against the subject undeclared foreign currency of USD \$491,600.00. Thus, on 28 January 2020, NAIA District Collector Talusan issued the said WSD xxx xxx xxx

Subsequently, on 1 February 2020, petitioners filed a "Motion to Enter into a Compromise Settlement" (Motion for Compromise Settlement) xxx xxx xxx

[O]n 04 March 2020, NAIA District Collector Talusan issued the Forfeiture Order, denying petitioners' Motion for Compromise Settlement and forfeiting the amount in issue xxx xxx xxx

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Subsequently, petitioners appealed NAIA District Collector Talusan's Forfeiture Order before respondent.

On 29 July 2020, respondent issued the Assailed Decision, denying petitioners' appeal and affirming NAIA District Collector Talusan's Forfeiture Order. (*Emphasis and citations omitted*)

PROCEEDINGS BEFORE THE COURT IN DIVISION

After the filing of the said Petition for Review⁵, and after being granted an extension of time⁶, respondent filed his Answer/Comment⁷ thereto on January 12, 2021. The case was set for Pre-Trial Conference on March 15, 2021.⁸ The parties filed their respective Pre-Trial Briefs⁹ on March 10, 2021.

After pre-trial, the parties submitted their Joint Stipulation of Facts and Legal Issues (JSFLI)¹⁰ on May 27, 2021, with a joint prayer for the case to be submitted for decision. The Court approved the parties' JSFLI and granted them thirty (30) days from notice to file their respective memoranda.¹¹

Petitioners filed their Memorandum¹² on July 26, 2021, while respondent filed his Manifestation [In Lieu of Memorandum]¹³ on July 19, 2021, adopting the arguments stated in his Answer/Comment filed on January 12, 2021. Thereafter, the case was submitted for decision on November 16, 2021.¹⁴

The Second Division rendered the assailed Decision¹⁵ on November 4, 2022, the dispositive portion of which reads:

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review filed by petitioners Chang L. Mohammad, Sharalyn S. Pedrena, Johnny S. Yusup, Ferdaus A. Omar, and Armand P. Daud on 10 September 2020 is hereby **DENIED** for lack of merit. Accordingly, respondent Commissioner of Customs' Assailed Decision dated 29 July 2020 is hereby **AFFIRMED**.

⁵ Division Docket, pp. 6-23, with annexes.

⁶ Resolution dated November 6, 2020, Division Docket, p. 46.

⁷ Division Docket, pp. 54-71, with annexes.

⁸ Division Docket, pp. 138-139.

⁹ Division Docket, pp. 140-167.

¹⁰ Division Docket, pp. 178-182.

¹¹ Resolution dated June 8, 2021, Division Docket, p. 184.

¹² Division Docket, p. 185-200.

¹³ Division Docket, p. 202-203.

¹⁴ Division Docket, p. 207.

¹⁵ EB Docket, pp. 36-66.

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Petitioners' *Motion for Reconsideration*¹⁶ of the assailed Decision, with respondent's *Comment*¹⁷ thereon, was denied in the assailed Resolution¹⁸ dated July 4, 2023.

Still aggrieved, and after being granted an extension of time¹⁹, petitioners filed the present Petition for Review on August 11, 2023.

PROCEEDINGS BEFORE THE COURT EN BANC

In a Resolution²⁰ dated August 29, 2023, the Court directed petitioners to submit proof of receipt of the assailed Resolution. Petitioners complied with the same on September 8, 2023.²¹

In another Resolution²² dated September 29, 2023, the Court directed respondent to file his Comment to the present Petition within ten (10) days from notice. Instead, respondent filed a *Motion for Time*²³ on October 16, 2023, which the Court granted subject to the condition that it was filed on time. The Court granted respondent sixty (60) days from October 20, 2023, or until December 19, 2023, within which to file his Comment on the present Petition. Respondent filed his Comment on December 12, 2023.²⁴

After noting respondent's Comment, the Court submitted the case for decision on January 9, 2024.

ASSIGNMENT OF ERROR

Petitioners assign the following error allegedly committed by the Second Division, to wit:

THE HONORABLE COURT OF TAX APPEALS SECOND
DIVISION GRAVELY ERRED IN AFFIRMING THE
DECISION OF THE COMMISSIONER OF CUSTOMS
AFFIRMING THE NAIA DISTRICT COLLECTOR'S

¹⁶ Division Docket, pp. 239-246.

¹⁷ Division Docket, pp. 258-266.

¹⁸ EB Docket, pp. 28-34.

¹⁹ EB Docket, p. 7.

²⁰ EB Docket, p. 111.

²¹ EB Docket, pp. 113-116.

²² EB Docket, pp. 126.

²³ EB Docket, pp. 127-128.

²⁴ EB Docket, pp. 132-148, with annexes.

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DENIAL OF THE OFFER OF SETTLEMENT THROUGH PAYMENT OF FINE IN RELATION TO THE UNDECLARED USD 491,600.00 INTERCEPTED FROM CHANG, THEREBY DECLARING SUCH AMOUNTS FORFEITED IN FAVOR OF THE GOVERNMENT.²⁵

ARGUMENTS OF THE PARTIES

Petitioners' arguments

Petitioners argue that none of the circumstances provided under Section 1124 of the CMTA, which warrant a denial of an offer of settlement in a pending seizure case by payment of fine, are present in this case.²⁶

First, petitioners claim that there is an absence of fraud. Respondent allegedly failed to prove that there was actual and intentional fraud in the importation of the subject money. On the other hand, petitioners cite several instances which allegedly show their lack of intent to defraud and hide or conceal the subject money. Petitioners also cite statements of the "Intelligence Group", Customs Examiner Villamor, and representatives from the Anti-Money Laundering Council (AMLC), allegedly given during the administrative proceedings, which negate fraud on the part of petitioners. Thus, petitioners submit that there was no intentional circumvention of the requirement on written declaration, only regrettable lack of diligence in ascertaining the specific amount of money contained in the other bag.²⁷

Second, petitioners aver that importation of currency is not one of the prohibited importations and exportations found under Section 118 of the CMTA, nor is it prohibited under any law, rule and regulation issued by any competent authority. Petitioners submit that currencies are not considered as goods.²⁸

Third, petitioners argue that the release of the subject money to petitioners is not contrary to law since the same is legitimately owned by SSP Money Changer whose proprietress is Pedreña and whose employees are Yusup, Omar, and Daud. Petitioners maintain that the subject money was intended for the purchase of pieces of jewelry and watches by SSP Money Changer to be displayed at Pedreña's jewelry

²⁵ *Supra*, note 2, pp. 13-14.

²⁶ *Id.*, p. 14.

²⁷ *Id.*, pp. 14-17.

²⁸ *Id.*, pp. 17-18.

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retail shop which was allegedly set to open in the same leased premises where SSP Money Changer is situated.²⁹

Lastly, petitioners assert that the penalty of forfeiture is excessive, and that the denial of their offer of settlement by respondent is not warranted considering the foregoing discussion.³⁰

Respondent's counter-arguments

Respondent contends that the Court in Division sufficiently explained in the assailed Decision and Resolution why respondent acted well within his discretion when he affirmed the NALA District Collector's denial of petitioner's request for settlement of the subject seizure case.³¹

Respondent clarifies that the subject money was forfeited not because these were foreign currencies *per se*, but because Mohammad did not declare these to the customs authorities upon his arrival from Hong Kong. The forfeiture was thus mandated not under Section 1124 of the CMTA, but under Section 1113(1)(2) thereof.³²

In relation thereto, respondent argues that the declaration of foreign currencies must be in writing, not verbal, per Customs Administrative Order No. 1-2017 (CAO 1-2017) and the BSP Manual of Regulations on Foreign Exchange Transactions (BSP MORFXT). As Mohammad failed to declare the subject money in his FCDF, forfeiture of the same was warranted.³³

Respondent further argues that he is granted by law the discretion to accept or reject an offer of settlement; however, such discretion is limited when there is fraud, when the importation is prohibited, or when the release of the goods is contrary to law. Hence, even assuming that fraud did not attend Mohammad's failure to declare the subject money, respondent maintains that he is still not bound to accept the offer of settlement, this being a matter of pure administrative discretion on his part as head of the BOC.³⁴

²⁹ *Supra*, note 2, pp. 18-19.

³⁰ *Id.*, p. 19-21.

³¹ *Comment* dated December 7, 2023, EB Docket, p. 137.

³² *Id.*

³³ *Id.*, pp. 138-139.

³⁴ *Id.*, pp. 140-142.

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Respondent likewise alleges that based on petitioners' admissions during the administrative seizure proceedings and their Petition for Review before the Court in Division, Mohammad's failure to declare the subject money in his FCDF constituted fraud.³⁵

RULING OF THE COURT

Before we rule on the merits of the case, we shall first determine whether the present Petition for Review was timely filed.

On July 12, 2023, petitioners received a copy of the assailed Resolution.³⁶ Petitioners had fifteen (15) days from such receipt or until July 27, 2023 to file a Petition for Review with the Court *En Banc*, pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals.

On July 26, 2023, petitioners filed a *Motion for Time to File a Petition for Review*³⁷, praying for an additional fifteen (15) days from July 27, 2023 or until August 11, 2023 to file their Petition for Review. The Court granted the said *Motion*.³⁸

On August 11, 2023, petitioners filed the present Petition. Hence, the present Petition was filed on time.

We now rule on the merits. It is undisputed that petitioner Mohammad, upon arriving at NAIA from Hong Kong, was carrying a total amount of USD 649,600 in the two (2) bags that he was carrying.³⁹ Out of the said amount, Mohammad declared only USD 148,000 in the FCDF he submitted to the Customs examiner.⁴⁰ Thus, Mohammad failed to declare USD 501,600 in his FCDF.

It is also undisputed that respondent already returned to petitioners a total amount of USD 158,000⁴¹, representing the amount declared by Mohammad in his FCDF plus USD 10,000, which is the maximum amount of foreign currency that may be brought into the Philippines without written declaration per applicable BSP rules.

³⁵ *Supra*, note 31, p. 142-145.

³⁶ EB Docket, pp. 113-116.

³⁷ EB Docket, pp. 1-5.

³⁸ EB Docket, p. 7.

³⁹ *Supra*, note 3, p. 178.

⁴⁰ *Id.*

⁴¹ *Supra*, note 3, p. 179.

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Thus, the total amount seized and forfeited by respondent, and left in issue by petitioners is USD 491,600. The issue before this Court is whether the Court *a quo* erred when it affirmed respondent's decision to deny petitioners' offer of settlement with respect to the said USD 491,600.

After a full review of the parties' respective arguments and evidence, we rule to **DENY** the present Petition for lack of merit.

The subject money was correctly seized in accordance with Customs law

Section 216 of the CMTA grants the Commissioner of Customs, or any person exercising police authority under the said law, the power of seizure that may be exercised under certain conditions. Section 216 of the CMTA provides:

Section 216. Exercise of Power of Seizure. – Any person exercising police authority under this Act has the power and duty to seize any vessel, aircraft, cargo, **goods**, animal or **any other movable property when the same is subject to forfeiture or when they are subject of a fine imposed under this Act.** (*Emphasis supplied*)

In relation thereto, Section 1113 of the CMTA enumerates the properties subject to seizure and forfeiture. The pertinent portion of the said provision is quoted below:

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

xxx xxx xxx

(1) Goods sought to be imported or exported:

(1) Without going through a customs office, whether the act was consummated, frustrated, or attempted;

(2) Found in the baggage of a person arriving from abroad and undeclared by such person;

(3) Through a false declaration or affidavit executed by the owner, importer, exporter, or consignee concerning the importation of such, goods;

(4) On the strength of a false invoice or other document executed by the owner, importer, exporter, or consignee concerning the importation or exportation of such goods; or

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(5) Through any other practice or device contrary to law by means of which such goods entered through a customs office to the prejudice of the government xxx xxx xxx (*Emphasis supplied*)

Section 1404 of the CMTA reiterates that the penalty for failure to declare baggage is seizure, *viz.*:

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

Equally relevant to the above-cited provisions is Section 204 of the CMTA which grants the Commissioner of Customs, subject to the approval of the Secretary of Finance, the power to promulgate rules and regulations for the enforcement of the same law.

On March 10, 2017, the Commissioner of Customs, with the approval of the Secretary of Finance, issued Customs Administrative Order No. 1-2017 (CAO 1-2017) which expressly implements, among others, Sections 216, 1404 and other related provisions of the CMTA.⁴²

Section 4.1 of CAO 1-2017 prescribes the rules on declaring goods for persons arriving in the Philippines from abroad, to wit:

SECTION 4. General Provisions.—

4.1. All arriving Travelers and Crew shall accomplish a Customs Baggage Declaration Form (CBDF) to be prescribed by the Bureau which will be submitted to the assigned Customs Officer at the Customs arrival area for clearance. **In addition to the CBDF, the following additional documents must also be presented during the clearance process:**

4.1.1. Owner's Pre-Departure Declaration Form or Certificate of Identification (CI) for goods previously exported;

4.1.2. A duly filled-out Foreign Currency Declaration for travelers carrying foreign currency in excess of US\$10,000 or its equivalent in other foreign currency and other foreign currency denominated bearer monetary instruments;

⁴² INTRODUCTION, CAO No. 1-2017 dated March 10, 2017.

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4.1.3. Authorization duly issued by the Bangko Sentral ng Pilipinas (BSP) for travelers with more than Php50,000.00 in local currency; and

4.1.4. Necessary permits from the regulatory government agency in case of restricted and regulated goods in excess of the limits allowed by the agencies. (*Emphasis supplied*)

Section 12 of CAO 1-2017 further provides that violations of any of the provisions therein by any person shall be penalized in accordance with the CMTA.

Based on Sections 216, 1113 and 204 of the CMTA, read together with Section 4.1 of CAO 1-2017, the Commissioner of Customs or any customs officer with authority under the CMTA, particularly the District Collector, has the power and duty to seize goods, including foreign currencies, brought into the Philippines by a person arriving from abroad who fails to declare the same in accordance with the applicable rules.

Under Section 4.1 of CAO 1-2017, all arriving travelers carrying foreign currency in excess of USD 10,000 or its equivalent in other foreign currency, must accomplish, in addition to the CBDF, the FCDF, and must present the same to the relevant Customs officer during the clearance process.

Failure to comply with the abovementioned rule shall be penalized under Section 12 of CAO 1-2017, in relation to Section 1404 of the CMTA.

It is worth noting that the BSP rules on cross-border transfer of local and foreign currencies under the BSP MORFXT⁴³, as revised by Section 4.2 of BSP Circular No. 794 s. 2013, similarly provide that any person who brings into or takes out of the Philippines foreign currency in excess of USD 10,000 is required to declare the whole amount using the prescribed Currencies Declaration Form.

In this case, it is a stipulated fact⁴⁴ that Mohammad, upon arriving at NAIA from Hong Kong, was carrying a total amount of USD 649,600 in his baggage, **but only declared a portion thereof (i.e., USD 148,000) in the FCDF he submitted to the Customs examiner.** Due to the foregoing, the NAIA District Collector was

⁴³ Section 4, Chapter 1, Part Two of the BSP MORFXT (Updated as of August 2024).

⁴⁴ *Supra*, note 3, p. 178.

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correct in seizing the undeclared portion or subject money from Mohammad through the issuance of a WSD.

Respondent acted within the bounds of his discretion when he denied petitioners' offer of settlement

As the subject money was correctly seized, the question that remains is whether the same was correctly forfeited considering the NAIA District Collector's denial of petitioners' *Motion to Enter Into Compromise Settlement*, and respondent's assent to such denial.

Section 1124 of the CMTA provides the applicable rules on settlement or compromise of seizure cases pending before the BOC. The said provision is reproduced below:

SEC. 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 supplied*)

A careful examination of the foregoing provision shows that the District Collector is granted the power to allow the settlement or

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compromise of seizure cases at the administrative level, subject to several conditions and limitations.

Generally, the District Collector may, with the approval of the Commissioner of Customs, allow the settlement of a seizure case by accepting an offer from the owner, importer, exporter, consignee or agent of the subject property to either pay a fine or redeem the forfeited goods.⁴⁵

By way of exception, the District Collector shall not allow the settlement of a seizure case when any of the following elements are present:

1. There is fraud;
2. The importation is prohibited; or
3. The release of the goods is contrary to law.⁴⁶

Petitioners mainly argue that none of the aforementioned elements are present in their case; hence, the denial by respondent of their offer of settlement through payment of fine was not warranted.⁴⁷

On this matter, respondent counters that he acted within the bounds of his discretion when he affirmed the NAIA District Collector's denial of petitioners' offer of settlement, considering that Mohammad's failure to declare the USD 491,600 was attended by fraud.⁴⁸

We rule for respondent.

There is no compelling reason to reverse or modify the Court *a quo*'s finding of fraud in Mohammad's failure to declare the USD 491,600

In *Transglobe International, Inc. vs. Court of Appeals and Commissioner of Customs*⁴⁹, the Supreme Court, in resolving the issue

⁴⁵ Section 1124 of the CMTA.

⁴⁶ *Id.*

⁴⁷ *Supra*, note 2, p. 14.

⁴⁸ *Supra*, note 31, p. 137.

⁴⁹ G.R. No. 126634, January 25, 1999.

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of whether petitioner therein should be allowed to redeem the forfeited shipment, and citing the cases of *Aznar v. Court of Tax Appeals*⁵⁰ and *Farolan v. Court of Tax Appeals*⁵¹, clarified that the fraud contemplated by law must be actual and not constructive. It must be intentional, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some right.

At this juncture, it must be emphasized that Section 1123 of the CMTA expressly provides that the burden of proof in forfeiture proceedings is borne by the claimant, as such:

SEC. 1123. *Burden of Proof in Forfeiture Proceedings.* – In all proceedings for the forfeiture of any vehicle, vessel, aircraft, or goods under this Act, the burden of proof shall be borne by the claimant.

This is consistent with the presumption under Section 3, Rule 131 of the Rules of Court, which states that official duty has been regularly performed, and the rule in civil cases that the burden of proof rests upon the plaintiff who must establish his case by preponderance of evidence.⁵²

Jurisprudence has defined preponderant evidence as evidence that is of greater weight, or more convincing, than the evidence offered in opposition to it. It is proof that leads the trier of facts to find that the existence of the contested fact is more probable than its nonexistence.⁵³

Applying the foregoing legal precepts, in forfeiture proceedings, when the District Collector disallows an offer of settlement or compromise due to fraud or any of the grounds under Section 1124 of the CMTA, the burden of proof is shifted to the claimant who must then establish, by preponderance of evidence, that such ground does not exist.

In his Comment, respondent claims that Mohammad's act of not declaring the subject money in his FCDF, without any justifiable reason or excuse, constituted fraud.⁵⁴ Respondent reiterates a portion of his findings in the Resolution dated July 29, 2020⁵⁵, quoted below:

⁵⁰ G.R. No. L-20569, August 23, 1974.

⁵¹ G.R. No. L-42204, January 21, 1993.

⁵² *Spouses Ponce v. Aldanese*, G.R. No. 216587, August 4, 2021.

⁵³ *Far East Bank & Trust Co. v. Chante*, G.R. No. 170598, October 9, 2013.

⁵⁴ *Supra*, note 31, pp. 142-143.

⁵⁵ Annex "J", *Petition for Review* dated August 9, 2023, EB Docket, pp. 88-97.

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CLAIMANT argues that he had no intention to conceal the **subject USD491,600.00**. Indubitably, he, too, had no intention to declare the same even though the luggage containing the subject USD491,600.00 was in his possession. The alleged lack of intent to conceal is of no moment. In *Commissioner of the Bureau of Customs vs. Selective Timber Export Philippines, Incorporated*, the Court of Appeals explicitly ruled that “(l) Good faith cannot avoid forfeiture, as forfeiture proceedings are in the nature of proceedings in rem and, directed against the res, and not the persona, x x x.”

After clearing immigration and collecting check-in baggage, if he had one, CLAIMANT was aware that the Customs desk is the last stop at the arrival area before being allowed to exit the airport. He insists that he did not declare the **subject USD491,600.00** because DAUD was supposed to declare the same, and yet, despite that DAUD was nowhere in sight, CLAIMANT was already at the Customs area, about to exit the airport with the undeclared **subject USD491,600.00**.

CLAIMANT committed actual fraud when he brought into the country the subject USD491,600.00 without declaring the same to the Customs authorities as required by law. The Court in *Guinhawa v. People* enunciated: “The fraud envisaged in the law includes the suppression of a material fact which a party is bound in good faith to disclose. Fraudulent nondisclosure and fraudulent concealment are of the same genre.”

Fraud is not confined to words or positive assertions; it may consist as well of deeds, acts or artifice of a nature calculated to mislead another and thus allow one to obtain an undue advantage.

Respondent adds that based on the admissions of petitioners during the administrative proceedings and in the present Petition for Review, even while on board the plane, Mohammad was already aware of his responsibility to declare all the foreign currency he was carrying. Such admission belies any assertion that some other person was supposed to declare the subject money.⁵⁶ Respondent further cites the findings of the Court in Division in the assailed Decision to support his claim that Mohammad had the sole obligation to declare the foreign currencies.⁵⁷

In the present Petition, petitioners argue that fraud cannot be presumed but must be proven.⁵⁸ To support their claim that there was an absence of actual and intentional fraud in the importation of the subject money, petitioners submit the following explanations⁵⁹:

⁵⁶ *Supra*, note 31, p. 144.

⁵⁷ *Id.*

⁵⁸ *Supra*, note 2, p. 14.

⁵⁹ *Id.*, pp. 15-17.

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32. **The subject money was declared, although not in writing.** [T]he luggage that contains the subject money belongs to [Daud]. This fact was recognized both by the Warrant of Seizure and Detention, and the Forfeiture Decision of the District Collector;
33. Upon [Mohammad's] arrival at NAIA Terminal 3, he was asked to fill out a FCDC where he declared the amount of US\$148,000 he was carrying in his backpack, and submitted the same to the examiner. [Mohammad] also informed the Customs examiner that he had a companion during the trip back to Manila who owned the other bag;
34. When [Daud] and Atty. Jhenilyn arrived at the Customs office, the former immediately showed his CBDF to one of the Customs officers and informed them of the exact amount contained in the black cabin luggage;
35. Absence of fraud on the part of [Mohammad] is clear when he voluntarily placed the 2 bags, he was carrying, in the x-ray machine and verbally declared to the Customs examiner that he was carrying money before any physical examination of the 2 bags;
36. Lack of intent to defraud on the part of [Mohammad] was equally exhibited when he admitted during the accomplishment of declaration form that he did not know the amount of money contained in the black cabin luggage. Had [Mohammad] allowed to count the money in the presence of the Customs officers, he would have declared the very exact amount of money contained in the said bag;
37. Intelligence Group's statement in their Position Paper, particularly paragraph 10, corroborates [Mohammad's] lack of intent to defraud, viz:
"There were two (2) pouches visible, right upon opening Mohammad's back-pack through physical examination. When the pouches were also opened, the foreign currency in US Dollars were revealed"
38. Clearly, there was no intention to hide or conceal the subject money since the same were visible and immediately revealed upon inspection of the bag;
39. It is worth noting that on October 2, 2019 during the Panel Investigation, **Customs examiner Villamor was asked if there was an attempt to hide or conceal the money, she replied in the negative;**
40. **Even representatives from the AMLC submitted that their Office "has no legal basis to hold any further the subject foreign currency."**
41. Moreover, lack of fraud on the part of the petitioners is evident from the fact that **neither [Mohammad] nor [Daud] was ever indicted for money laundering or any criminal violation. [Mohammad] was released from the custody of the Customs Police Division, without any charges filed against him;**
42. The foregoing clearly negates any possibility of concealment on the part of [Mohammad] and other petitioners;

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44. To explain why [Daud] asked [Mohammad] to carry his cabin luggage containing the subject money and why he left the airport and went home without being concerned of the whereabouts of the huge amount of money, [Daud] executed an Affidavit on September 26, 2019, stating that he requested [Mohammad] to carry the subject money since his 2 luggage were already full of the items bought in Hong Kong;
45. He further stated that when they arrived in Manila, he looked for Chang to claim his luggage; however, he could not call the latter because his mobile phone's battery was empty. Thinking that Chang had already left the premises of the airport and declared all the money, he went out; nonetheless, he did not see the former outside the airport, so he decided to leave;

xxx xxx xxx

48. Considering the foregoing, there was no fraud present in the case at bar that would warrant the forfeiture of the subject money and denial of offer of settlement through payment of fine. There was no intentional circumvention of the requirement on written declaration, but it was **purely attributable to regrettable lack of diligence in ascertaining the specific amount of money contained in the other bag. Settled is the rule that mere mistake cannot be considered as fraudulent intent;** *(Citations omitted)*

A scrutiny of petitioners' explanations reveals that the same consist mainly of bare allegations, denial and good faith.

Petitioners allege that Mohammad verbally declared the subject money to the Customs examiner, that Mohammad informed the Customs examiner that he had a companion who owned the other bag, and that Daud and one Atty. Jhenilyn arrived at the Customs office after the incident to show Daud's CBDF to the Customs officers and to inform the latter of the exact amount contained in the black cabin luggage. Petitioners also allege that during the administrative proceedings, several statements favorable to petitioners were made by the Intelligence Group of the BOC, Customs Examiner Villamor and representatives from the AMLC.

However, petitioners' above statements are mere allegations that were not proven by any piece of evidence. Petitioners **did not present any witness** before the Court in Division to corroborate and/or substantiate the above statements. It is an age-old rule that the one who alleges a fact has the burden of proving it and the proof should be clear, positive and convincing. Mere allegation is not evidence.⁶⁰

⁶⁰ *Supra Multi-Services, Inc. v. Labitigan*, G.R. No. 192297, August 3, 2016; *Noblejas v. Italian Maritime Academy Phils., Inc.*, G.R. No. 207888, June 9, 2014.

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Neither did petitioners present any witness to testify on the contents of the documents they cited to prove their claims (*e.g.*, Intelligence Group's Position Paper, Transcript of Stenographic Notes taken during the Preliminary Hearing Conducted on October 2, 2019, at 10:00 a.m. at the NAIA Customs House, and Affidavit of Armand Daud dated September 26, 2019). As such, the Court *En Banc* finds the said documents to be **self-serving and unreliable**; hence, deserving of scant consideration.

In *People v. Villarama*⁶¹, the Supreme Court held that a self-serving statement is one that is made by a party, out of court, and in his favor. Self-serving statements are disallowed by the rules on evidence because the adverse party is denied a fair opportunity to cross-examine the declarant on such statements, and admission of the same would encourage fabrication of testimony.⁶²

Lastly, petitioners raise lack of diligence or good faith as a defense. However, in light of the circumstances obtaining in this case, such defense cannot be sustained.

Petitioners' statement that Mohammad's failure to make a written declaration of the subject money was "*purely attributable to regrettable lack of diligence in ascertaining the specific amount of money contained in the other bag,*" is **highly suspicious** for someone flying together with a co-employee from a work trip abroad for the purchase of jewelry and watches for and on behalf of the same boss.

Moreover, petitioners' statement that "*when they arrived in Manila, [Daud] looked for [Mohammad] to claim his luggage; however, he could not call the latter because his mobile phone's battery was empty. Thinking that [Mohammad] had already left the premises of the airport and declared all the money, he went out; nonetheless, he did not see the former outside the airport, so he decided to leave*" is **incredible** considering that Daud probably knew that he was carrying more than half a million US dollars into the country.

As correctly held by the Court in Division, petitioners' actions and explanations are unusual in nature and vary from what is considered or accepted as normal activity that may be deemed red flags for fraud. We reiterate the findings of the Court in Division in affirming

⁶¹ G.R. No. 139211, February 12, 2003.

⁶² *BJDC Construction v. Lanuzo*, G.R. No. 161151, March 24, 2014; *National Development Co. v. Workmen's Compensation Commission*, G.R. No. L-21724, April 27, 1967.

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respondent's Resolution dated July 29, 2020 for the denial of petitioners' offer of settlement on the ground of fraud, *viz.*:

There is no dispute that the foreign currency amounting to USD\$ 501,600.00 was found in the black luggage carried by petitioner Mohammad. While he may have informed the Customs Examiner during the inspection that he merely carried the said luggage for petitioner Daud and that he is not aware of the exact amount contained therein, such denial without more is self-serving and weak as it could easily be fabricated. Jurisprudence has it that the things in possession of a person are presumed by law to be owned by him. To overcome this presumption, it is necessary to present clear and convincing evidence to the contrary.

Apart from their bare allegation, petitioners failed to offer any piece of evidence to prove that petitioner Daud is the owner of the black luggage found in petitioner Mohammad's possession. Mohammad's act of naming the owner of the said luggage as Daud, who had been cleared at the Immigrations counter and already left the airport, is insufficient to shift accountability to the latter. It is also worth noting that petitioners did not submit a copy of the CBDF that Daud allegedly accomplished and presented to the Customs Examiner to support their claim.

Section 3(j), Rule 131 of the Revised Rules on Evidence, as amended, provides that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, that thing which a person possesses, or exercises acts of ownership over, is owned by him.

Since the subject luggage containing foreign currency was in the possession of petitioner Mohammad at the time that it was found, such is deemed to belong to him. Without evidence to the contrary, as in this case, mere denial will not suffice.

Furthermore, as respondent correctly observed in his Assailed Decision, petitioners' actions, explanation and excuses are unusual in nature or vary from what is considered or accepted as normal activity that may be deemed red flags for fraud, *viz.*: xxx xxx xxx (3) Mohammad had not presented evidence to support the legitimacy and legality of the source and purpose of the subject foreign currency; and, (4) Mohammad admitted that Daud, purportedly the owner of the luggage containing the subject foreign currency, left the airport and went home without being concerned of the whereabouts of the huge amount of money supposedly entrusted to him by SSP Money Changer. Indeed, these circumstances are strikingly suspect to ignore.

Respondent further noted that at the time of importation, reports and news had been circulating on large-scale smuggling of foreign currency into the country by suspected syndicates using travelers arriving at NAIA, and this prompted the BOC, in coordination with the AMLC, to probe attempts by suspected syndicates to bring in large sums of foreign currency into the country. (*Citations omitted*)

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Furthermore, in *Jardeleza v. People*⁶³, the Supreme Court pointed out the duty of persons arriving in the Philippines to declare any dutiable goods brought along with them. The Supreme Court pronounced:

A person arriving in the Philippines with baggages containing dutiable articles is bound to declare the same in all respects. In order to meet the convenience of the travelers, a simple and more expeditious method of customs clearance is provided for baggages occupying the passage therein for goods imported in the regular manner. Official entry forms and forms of baggage declaration are supplied to the passengers to be filled before the customs officer. **The traveler has the burden of carrying forward items that have to be declared before examination of the cargo has begun. Adequate reporting of dutiable merchandise being brought into the country is absolutely necessary to the enforcement of customs laws, and failure to comply with those requisites is as condemnable as failure to pay customs fees.** (*Emphasis supplied and citations omitted*)

On the matter of fraud, the Supreme Court ruled, thus:

The fraud envisaged in the law includes the suppression of a material fact which a party is bound in good faith to disclose. Fraudulent nondisclosure and fraudulent concealment are of the same genre.

Fraudulent concealment presupposes a duty to disclose the truth and that disclosure was not made when opportunity to speak and inform was present, and that the party to whom the duty of disclosure as to a material fact was due was thereby induced to act to his injury. Fraud is not confined to words or positive assertions; it may consist as well of deeds, acts or artifice of a nature calculated to mislead another and thus allow one to obtain an undue advantage.⁶⁴

Considering the foregoing, We agree with respondent that Mohammad committed actual and intentional fraud when he brought into the country the subject money, which he had a duty to disclose under CAO 1-2017 in relation to the provisions of the CMTA and BSP MORFXT, **but, without any convincing or justifiable reason, did not disclose the same**, and tried to make it through Customs had he not been stopped by the Customs officers on duty.

Concomitantly, petitioners failed to prove, to the satisfaction of this Court, pursuant to the quantum of evidence required for this case, that petitioners did not commit fraud when Mohammad did not

⁶³ G.R. No. 165265, February 6, 2006.

⁶⁴ *Id.*

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declare the USD 491,600 he was carrying upon his arrival in the Philippines from Hong Kong.

The penalty of forfeiture is not excessive; it is in accordance with Customs law

In a final attempt to persuade the Court, petitioners argue that the penalty of forfeiture is excessive and too harsh a penalty, considering that no fraud was proven by clear and convincing evidence and that there was a legitimate business purpose for the importation of the subject money. Petitioners insist that Mohammad informed the Customs examiner that he had money to declare, although the amount contained in the other bag that he was carrying was unknown to him as it belonged to Daud. Petitioners aver that instead of according Mohammad a chance to complete the money declaration within the period granted under Section 403 of the CMTA, or to amend such declaration pursuant to Section 408 of the CMTA, respondent immediately suspected him of fraudulent importation and turned him over to the Customs Police for investigation.⁶⁵

The Court is not convinced.

Petitioners cite Section 14.4 of CAO No. 10-2020, as follows:

“14.4 Settlement by Payment of Fine or Redemption of Forfeited Goods. Settlement by payment of fine or redemption of forfeited goods may be allowed under the following circumstances:

14.4.1. When there is no Fraud attributable to the importer, consignee or owner;

14.4.2. When the goods are not absolutely prohibited; and

14.4.3. When the release of the goods is not contrary to law.

x x x x x.”

However, it can be gleaned from the foregoing provision that the same merely reiterates Section 1124 of the CMTA. As such, the Court too reiterates its finding of fraud on the part of petitioners, particularly with respect to Mohammad as owner of the subject money, for the reasons stated above. With fraud attending the circumstances subject

⁶⁵ *Supra*, note 2, p. 20-21.

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of this case, respondent was correct in disallowing petitioners' offer of settlement on the ground of fraud.

Petitioners likewise cite Sections 403 and 408 of the CMTA, to wit:

“Sec. 403. Provisional Goods Declaration. – Where the declarant does not have all the information or supporting documents required to complete the goods declaration, the lodging of a provisional goods declaration may be allowed: Provided, That it substantially contains the necessary information required by the Bureau and the declarant undertakes to complete the information or submit the supporting documents within forty-five (45) days from the filing of the provisional goods declaration, which period may be extended by the Bureau for another forty-five (45) days for valid reasons. x x x”

“Sec. 408. Lodgement and Amendment of Goods Declaration. – The Bureau shall permit the electronic lodgement of the goods declaration at any designated customs office. The Bureau shall, for valid reason and under terms and conditions provided by regulation, **permit the declarant to amend the goods declaration that has already been lodged:** *Provided,* That the request to amend the goods declaration, together with the intended amendments, must be received prior to final assessment or examination of the goods.”

A review of Section 403 of the CMTA would reveal, however, that the lodging of a provisional goods declaration may be allowed only when declarant does not have all the information or supporting documents required to complete the goods declaration.

In the case at bar, as previously discussed, petitioners failed to convince the Court through any sufficient or justifiable reason, or any piece of evidence, that Mohammad did not know that he was carrying hundreds of thousands of US dollars into the Philippines in the bag that he was carrying, and his corresponding duty to declare the same. Similarly, there was also no sufficient or justifiable reason for the Customs Examiner to believe that Mohammad did not have all the information he needed to know the amount of foreign currency in the bag that he was personally carrying out of the airport. Consequently, the option of lodging a provisional goods declaration could not be had.

Neither could the option to amend the goods declaration under Section 408 of the CMTA be had, because aside from the fact that respondent through its concerned officers had no valid reason to deviate from their standard procedures, petitioner also failed to request to amend its goods declaration prior to the final assessment or examination of the subject goods.

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Therefore, the Court in Division was correct when it affirmed respondent's Resolution dated July 29, 2020, which, in turn, denied petitioners' offer of settlement by payment of fine on the basis of *prima facie* evidence of fraud, and forfeited the subject USD 491,600 in favor of the government.


WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The Decision and Resolution, dated November 4, 2022 and July 4, 2023, respectively, in CTA Case No. 10346 are **AFFIRMED**.


SO ORDERED.


HENRY S. ANGELES
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


(With Concurring Opinion)
CATHERINE T. MANAHAN
Associate Justice


(I join the ponencia and Concurring Opinion of
Associate Justice Catherine T. Manahan)

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(On Leave)

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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Marian Ivy F. Reyes - Fajardo
(I join the Concurring Opinion of
Associate Justice Catherine T. Manahan)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

Lanee S. Cui-David
LANEE S. CUI-DAVID
Associate Justice

Corazon G. Ferrer-Flores
(I join the Concurring Opinion of
Associate Justice Catherine T. Manahan)
CORAZON G. FERRER-FLORES
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

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**CHANG L. MOHAMMAD,
SHARALYN S. PEDREÑA,
JOHNNY S. YUSUP,
FERDAUS A. OMAR, and
ARMAND P. DAUD,**

Petitioner,

CTA EB No. 2784
(CTA Case No. 10346)

Present:

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

-versus-

**COMMISSIONER OF
CUSTOMS,**

Respondent.

Promulgated:

JAN 09 2025

X- - - - -X


CONCURRING OPINION

MANAHAN, J.:

I concur with the result of the *ponencia*. However, it is my humble view that although Section 1123 of the Customs Modernization and Tariff Act (“**CMTA**”) places the burden of proof in forfeiture proceedings on the claimant, the latter has no burden to discharge by preponderance of evidence that he or she did not commit fraud. Fraud is not an element of forfeiture under Section 1113(l)(2) of the CMTA. It must be established separately, by clear and convincing evidence,¹ by the party alleging it.²

In the context of forfeiture proceedings, the determination of the existence of fraud becomes relevant only if the District Collector or the Commissioner of Customs (“**COC**”) accepts an

¹ *Heirs of Leonarda Latoja v. Heirs of Gavino Latoja*, G.R. No. 195500, March 17, 2021 [Per J. Hernando, Third Division].

² *Kawasa Magalang and Mona Wahab v. Spouses Lucibar Heretape and Rosalina Funa*, G.R. No. 199558, August 14, 2019 [Per J. Lazaro-Javier, Second Division] 


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offer of settlement.³ If the District Collector or the COC denies an offer of settlement, the law does not impose any burden to prove the existence or non-existence of fraud simply because such denial is discretionary. The District Collector or the COC does not become bound to accept an offer of settlement once the claimant successfully establishes that the importation is not attended by fraud.

Based on the foregoing, the “red flags for fraud” in this case should be more clearly appreciated not as a yardstick of correctness of respondent’s decision, but as a mere indication that respondent prudently and did not gravely abuse his or her discretion in denying petitioner’s offer of settlement. Courts cannot interfere with the discretion of other branches of government exercised within constitutional limits.⁴


CATHERINE T. MANAHAN
Associate Justice

³ See assailed *Decision*, p. 29.

⁴ *Integrated Bar of the Philippines v. Zamora*, G.R. No. 141284, August 15, 2000 [Per J. Kapunan, En Banc].