

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

MALINGAS MULTI-PURPOSE
COOPERATIVE,

CTA Case No. 9150

Petitioner,

- versus -

COMMISSIONER OF CUSTOMS,
BUREAU OF CUSTOMS,

Respondent.

X ----- X

EVERGREEN CEREAL, INC.,
Petitioner,

CTA Case No. 9191, 9192, 9193,
9194, 9195, 9196, 9197, & 9198

Members:

- versus -

DEL ROSARIO, P.J., Chairperson
UY, and
MINDARO-GRULLA, JJ.

COMMISSIONER OF CUSTOMS,
BUREAU OF CUSTOMS,

Respondent.

Promulgated:

NOV 19 2019 ; 1159 pm

X ----- X

RESOLUTION

UY, J.:

For resolution is petitioners' "MOTION FOR PARTIAL RECONSIDERATION" filed on July 4, 2019, with respondent's "COMMENT (On the Motion for Partial Reconsideration dated July 1, 2019)" filed on August 19, 2019, praying for the partial reconsideration of this Court's Decision dated June 11, 2019, the dispositive portion of which reads:

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"WHEREFORE, in light of the foregoing considerations, the consolidated *Petitions for Review* separately filed by petitioners Malingas and Evergreen are **PARTIALLY GRANTED.** Accordingly, the respective Orders of the District Collector in seizing and forfeiting the subject shipments and the separate Decisions of respondent COC affirming the same are **REVERSED** and **SET ASIDE.**

SO ORDERED."

Petitioners' arguments:

In the *Motion*, petitioners aver that even if petitioners did not present evidence to establish that the subject shipments of the instant case were auctioned off or the amount it fetched at auction, the same could nevertheless be recognized by this Court, since it was all done under the official acts of respondent as dictated by the Tariff and Customs Code of the Philippines. According to petitioners, the said official acts of the executive department of the Philippines are subject to *mandatory judicial notice*, under Section 1 of Rule 129 of the Rules of Court.

Moreover, petitioners contend that records show that they filed an *Urgent manifestation* to dispose the subject shipment through auction and hold the proceeds of the same in escrow; and that respondent mentioned this fact in his Decision.

Lastly, petitioners point out that since this Court decided that the seizure and forfeiture of respondent was erroneous, then it follows that the subject shipments or the value it fetched at auction should be awarded to petitioners in order to give life to the Decision dated June 11, 2019 of this Court.

Respondent's counter-arguments:

In his *Comment*, respondent stresses that petitioners failed to support their claim for the award of the sums of money; and that this Court cannot take judicial notice of the amount or proceeds of the seized goods. 

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THE COURT'S RULING

Petitioners' *Motion for Partial Reconsideration* must be denied.

To be clear, in the assailed Decision, We have ruled as follows:

"...the Court finds that the subject rice shipments in the instant consolidated cases should not be considered as illegal or prohibited by law.

As for petitioner's prayer for the award of the amounts allegedly held in escrow after respondent COC had auctioned off the subject shipments, **petitioners failed to present evidence to support the award of the said amounts.**" *(Emphasis supplied)*

Clearly, what petitioners failed to present are the evidence to support the award of the alleged amounts held in escrow.

While it may be true that the *act of auctioning* by respondent of the subject imported rice may fall under the official acts of the executive department which may be the subject of *mandatory judicial notice* under Section 1, Rule 129 of the Rules of Court, the alleged amounts held in escrow may not be the subject thereof. This is for the simple and logical reason that the said amounts are not "acts", much less, can be deemed as "official".

To be sure, the said amounts held in escrow are mere allegations, which must be established as fact. The basic rule is that mere allegation is not evidence and is not equivalent to proof.¹

As a corollary, **evidence not formally offered during the trial cannot be used for or against a party litigant by the trial court in deciding the merits of the case.** Neither may it be taken into account on appeal. Since the rule on formal offer of evidence is not a trivial matter, failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it. Consequently, any evidence that has not been offered and admitted thereafter shall be excluded and rejected.²

¹ *ECE Realty and Development Inc. vs. Mandap*, G.R. No. 196182, September 1, 2014.

² *Pilipinas Shell Petroleum Corporation vs. Commissioner of Customs*, G.R. No. 195876, December 5, 2016.



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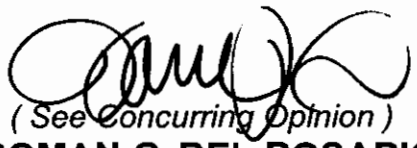
There being no evidence to prove the said alleged amounts held in escrow, We see no factual basis for the award thereof to petitioners.

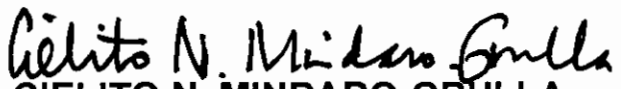
WHEREFORE, premises considered, petitioners' *Motion for Partial Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.


ERLINDA P. UY
Associate Justice

WE CONCUR:


(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice


CIELITO N. MINDARO-GRULLA
Associate Justice

Republic of the Philippines
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Uy, and
Mindaro-Grulla, JJ.

**COMMISSIONER OF
CUSTOMS, BUREAU OF
CUSTOMS,**

Respondent.

Promulgated:

NOV 19 2019

; 1:59 pm

X-----X

CONCURRING OPINION

DEL ROSARIO, PJ:

I concur in the denial of petitioners' Motion for Partial Reconsideration which implores the Court to direct respondent to give to petitioners the value of the shipment it fetched under auction.

As aptly found in the *ponencia*, in the absence of evidence proving the details and specific amounts held in escrow, the Court may not reasonably grant a monetary relief in its judgment.

Section 8(e), Rule 39 of the Rules of Court states:

“Section 8. Issuance, form and contents of a writ of execution. — The writ of execution shall: (1) issue in the name of the Republic of the Philippines from the court which granted the motion; (2) state the name of the court, the case number and title, the dispositive part of the subject judgment or order; and (3) require the sheriff or other proper officer to whom it is directed to enforce the writ according to its terms, in the manner hereinafter provided:

xxx

(e) In all cases, the writ of execution shall specifically state the amount of the interest, costs, damages, rents, or profits due as of the date of the issuance of the writ, aside from the principal obligation under the judgment. For this purpose, **the motion for execution shall specify the amounts of the foregoing reliefs sought by the movant.**” (Boldfacing supplied)

Otherwise stated, any judgment that fails to specify the amount of monetary award would be useless formality - - the same not being proper for execution.

All told, I **CONCUR** in the denial of petitioners’ Motion for Partial Reconsideration.



ROMAN G. DEL ROSARIO
Presiding Justice