REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

PRIMELINE PRODUCTS PHILIPPINES, INC., As represented by LCB LEO B. PILAPIL by Virtue of a Special Power of Authority duly Executed by the company thru their Board of Directors, Petitioner,	**CTA CASE NO. 9281**
	Members:
- versus -	**UY,** *Chairperson* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
Hon. ALBERTO D. LINA COMMISSIONER OF CUSTOMS, Respondent.	Promulgated: SEP 26 2019 8:32 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

This Petition for Review, filed by Primeline Products Philippines, Inc., prays that judgment be rendered ordering the release of the subject motor vehicle after the Bureau of Customs ("BOC") have determined the correct duties and taxes due on the said vehicle and allow petitioner to pay the same.

The Facts

Petitioner is a domestic corporation duly organized and exiting under the laws of the Philippines and duly represented by licensed customs broker ("LCB")

Leo B. Pilapil as attorney-in-fact by virtue of a Special Power of Attorney duly executed by the Board of Directors of petitioner.[1]

On the other hand, respondent Alberto D. Lina is the former Commissioner of the BOC, with office address at the Ground Floor of the BOC Commissioner's Building, Port Area, Manila.

Petitioner bought one (1) unit brand new 2014 Model Ford F150 Supercab SVT Raptor 4x4 SS with VIN#1FTFX1R63EFD13485 from Galpin Ford, an authorized Ford Motor Dealer, located at 15505 Roscoe Blvd., North Hills CA 91343 USA as could be gleaned from a copy of the Invoice No. 16325 dated September 17[2], 2014.[3]

The value/cost of the said motor vehicle is US$46,444.83 and was paid by way of telegraphic transfer.[4]

The motor vehicle was loaded on board the vessel S/S Cosco Beijing 053W in Long Beach, California and shipped to the Philippines on June 24, 2015 under Bill of Lading No. COSU8011860679[5] duly issued by Cosco Container Lines Company, Ltd., and arrived at the Manila International Container Port ("MICP") on August 13, 2015.[6]

A Consumption Entry with complete shipping documents was lodged with the BOC, MICP and docketed as Import Entry & Internal Revenue Declaration ("IEIRD") No. C-181121-15.[7]

An Alert Order was issued on the shipment for suspected violation of Executive Order ("EO") No. 156.[8]

On August 28, 2015, COOIII Nenita D. Delos Reyes, Section 5, Formal Entry Division ("FED")-MICP issued a Memorandum for M/Gen. Elmir Dela Cruz (Ret.), MICP District Collector, regarding the physical examination of the

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1 Docket, vol. 1, Petition for Review, The Parties, Par. 2, p. 11; Petition for Review, Annexes "B" and "B-1", pp. 28-29; Joint Admission and Stipulation of Facts (JASF), Summary of Admitted Facts, par. 1, p. 317.

2 Per par. 3, Summary of Admitted Facts, JASF, the invoice date was stated as September 17, 2014, Docket, vol. 1, p. 318. However, the date stated on the invoice is actually September **7**, 2014, BOC Records, p. 26.

3 *Id.*, vol. 1, JASF, Summary of Admitted Facts, Pars. 2 and 3, p. 318.

4 *Id.*, vol. 1, JASF, Summary of Admitted Facts, Par. 4, p. 318.

5 Exhibit "P-6", BOC Records, p. 28.

6 Docket, vol. 1, JASF, Summary of Admitted Facts, Par. 5, p. 318.

7 *Id.*, vol. 1, JASF, Summary of Admitted Facts, Par. 7, p. 318; Exhibit "P-5", BOC Records, p. 41.

8 *Id.*, vol. 1, JASF, Summary of Admitted Facts, Pars. 8 and 9, p. 318.

subject vehicle,[9] which revealed that the odometer of the subject vehicle had a reading of 1,064[10] miles or 1,713 kilometers.[11]

The physical examination was conducted in the presence of the representative of petitioner's broker and officers of the Enforcement and Security Service, Motor Vehicle Monitoring and Clearance Office (EMVMCO).[12]

On September 01, 2015, Atty. Richard S. Flores, counsel of the petitioner, wrote a letter to the MICP District Collector manifesting that petitioner bought the subject vehicle as brand new directly from the manufacturer of the motor vehicle, hence, questioning the legality of the Warrant of Seizure and Detention ("WSD") issued against the subject shipment.[13]

A WSD was issued on September 4, 2015 by M/Gen. Elmir S. Dela Cruz (Ret.), the District Collector, MICP, docketed as Seizure Identification Case No. 208-2015.[14] The WSD was served upon petitioner on September 10, 2015.[15]

Petitioner filed a Position Paper with the MICP Law Division invoking par. (A), Section 2.1 of EO No. 156 and Revenue Memorandum Circular No. 52-2010 and insisted that the subject motor vehicle is brand new.[16]

Atty. Marlon M. Agaceta, as prosecutor, filed his Comment/Opposition to petitioner's Position Paper.[17]

After the hearing conducted by the MCIP Law Division, the MCIP District Collector rendered an Order[18] dated November 05, 2015 forfeiting the subject vehicle in favor of the government,[19] the dispositve portion of the Order reads as follows:

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[9] *Id.*, vol. 1, JASF, Summary of Admitted Facts, Par. 15, p. 319.
[10] Per par. 6, Summary of Admitted Facts, JASF, the odometer reading was stated as 1,064 miles, Docket, vol. 1, p. 318. However, per Memorandum dated August 28, 2015, the odometer reading is actually 1,064.**5** miles, BOC Records, p. 15.
[11] Docket, vol. 1, JASF, Summary of Admitted Facts, Par. 6, p. 318.
[12] *Id.*, vol. 1, JASF, Summary of Admitted Facts, Par. 16, p. 319.
[13] *Id.*, vol. 1, JASF, Summary of Admitted Facts, Par. 18, p. 320; The said letter was filed on September 04, 2015 and stated that petitioner was informed that the subject shipment was about to be issued, or has been issued a WSD, Exhibit "P-13", BOC Records, pp. 152-153.
[14] Exhibit "P-12", BOC Records, pp. 61-62.
[15] Docket, vol. 1, JASF, Summary of Admitted Facts, Par. 19, p. 320.
[16] *Id.*, vol. 1, JASF, Summary of Admitted Facts, Par. 20, p. 320.
[17] *Id.*, vol. 1, JASF, Summary of Admitted Facts, Par. 21, p. 320.
[18] Exhibit "P-14", BOC Records, pp. 220-227.
[19] *Id.*, vol. 1, JASF, Summary of Admitted Facts, Pars. 11 and 12, p. 319.

"**WHEREFORE**, premises considered, pursuant to the authority vested in me by law, it is hereby ordered and decreed that the subject shipment of 1x40' Container No. FSCU8660653 STC: One (1) Unit Ford F150 Super Cab SVT Raptor Pick Up, which arrived at this Port on August 13, 2015 [on] board the vessel COSCO BEIJING under Voyage No. 053W with Registry No. CCL-020, covered by Bill of Lading No. COSU8011860679 consigned to Claimant **PRIMELINE PRODUCTS PHIL., INC.** and declared under Entry No. C-181121-15 is hereby Ordered **FORFEITED** in favor of the Government, the same to be disposed of in a manner provided by law.

Let a copy of this Order be furnished all parties and Offices concerned for their information and guidance.

SO ORDERED."[20]

Petitioner appealed from the said Order of the MICP District Collector to respondent Commissioner.[21]

On November 25, 2015, the MICP District Collector issued an Order denying due course petitioner's Letter dated November 10, 2015 anent its request for the release of the subject vehicle under bond, and ordering the transmittal of the case to respondent in light of petitioner's Notice of Appeal/Notice to Elevate the Case to the Office of the Commissioner.[22]

In a 2nd Indorsement dated November 25, 2015, the MICP District Collector forwarded to respondent petitioner's appeal, for Clearance/Approval of the Orders dated November 05 and 25, 2015.[23]

Petitioner received a copy of the Decision of the Commissioner of Customs ("COC") on the appeal, affirming *in toto* the Decision rendered by the District Collector of Customs, MICP.[24]

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[20] Exhibit "P-14", BOC Records, p. 220.
[21] Docket, vol. 1, JASF, Summary of Admitted Facts, p. 319.
[22] *Id.*, vol. 1, JASF, Summary of Admitted Facts, Par. 22, p. 320.
[23] *Id.*, vol. 1, JASF, Summary of Admitted Facts, Par. 23, p. 320.
[24] *Id.*, vol. 1, Petition for Review, Brief Statement of Facts, Par. 9, p. 12; existence of the Decision was admitted in par. 4 of respondent's Answer, p. 120.

Petitioner alleges that the said Decision of the COC was sent by registered mail on January 26, 2016 and was received by petitioner's counsel on February 9, 2016.[25]

Hence, on March 03, 2016, petitioner filed the instant Petition for Review with Urgent Motion to Release Vehicle Under Cash Bond.

Respondent filed his Answer[26] on July 28, 2016, alleging the following special and affirmative defenses:

> "6. Petitioner has no cause of action against respondent since the subject motor vehicle is not brand new.
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> 7. Under paragraph 2.1, Section 2 of Article 2 of E.O. No. 156, a vehicle is considered brand new if the following conditions are present:
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>> 2.1 xxx To be considered brand new, the motor vehicles shall be (a) of current or advance year model in the country of origin and/or manufacture, or (b) of year model immediately preceding year in the country of origin and/or manufacture provided that:
>>
>>> 2.1.1 The motor vehicle has a mileage of not more than 200 kilometers; and
>>>
>>> 2.1.2 The motor vehicle has been acquired by the importer from the dealer as first owner.
>
> [8]. The foregoing conditions are also stated in paragraph C, Article II of Revenue Memorandum Circular No. 52-2010 dated 22 June 2010 and in paragraph 3.3, Article 3 of Customs Memorandum Order (CMO) No. 13-2014 dated 17 June 2014.
>
> [9]. The subject motor vehicle cannot be considered as brand new because it arrived in the Philippines on August 13, 2015, and is undeniably a 2014 model. The current model at the time of its importation is a 2015 model, while the advance model is 2016 or 2017 model.

[25] *Id.*, vol. 1, Petition for Review, Timeliness of the Petition, Par. 3, p. 11.
[26] *Id.*, vol. 1, pp. 119-124.

[10]. Moreover, the motor vehicle's Odometer reads 1,064.5 Miles or 1,713 Kilometers. Since its mileage is more than 200 kilometers or 125 Miles, the subject motor vehicle cannot be considered brand new.

[11]. Furthermore, the importation of the subject motor vehicle does not fall under the exceptions provided in Section 3, Art. 2 of E.O. No. 156:

xxx xxx xxx

[12]. In sum, the subject shipment is subject to seizure without redemption pursuant to Subsection 5.1, Section 5, Article 2 of EO No. 156, to wit:

Section 5. Penalty

> 5.1 All imported vehicles found to be in violation of any provision in this EO shall be subject to **seizure without redemption by the BOC** and will not be subject to registration by the LTO unless disposed of in accordance with the [T]ariff and Customs Code."

Meanwhile, the hearing on petitioner's Urgent Motion to Release Vehicle Under Cash Bond was set on August 09, 2016.[27] During the said hearing, petitioner presented the Head of its Shipping and Logistics Department, LCB Leo P. Pilapil.[28]

Thereafter, the pre-trial conference was set on November 15, 2016,[29] but later reset to January 24, 2017, in view of the failure of both parties to file their pre-trial briefs and the failure of respondent's counsel to appear despite notice.[30] The Pre-Trial Brief of Petitioners [*sic*][31] was filed on November 15, 2016, while respondent's Pre-Trial Brief[32] was filed on January 12, 2017.

[27] *Id.*, vol. 1, Resolution dated July 12, 2016, pp. 117-118.
[28] *Id.*, vol. 1, Minutes of the Hearing dated August 9, 2016, p. 170; Exhibits "P-1" to "P-4", pp. 183-196.
[29] *Id.*, vol. 1, Notice of Pre-Trial Conference, pp. 172-173.
[30] *Id.*, vol. 1, Minutes of the Hearing dated November 15, 2016, p. 214.
[31] *Id.*, vol. 1, pp. 216-220.
[32] *Id.*, vol. 1, pp. 272-278.

Pre-trial conference ensued. During the said conference, respondent manifested that he would adopt the documents to be presented by petitioner relative to the importation, seizure and detention of the subject vehicle.[33]

The parties submitted their Joint Admission and Stipulation of Facts ("JASF")[34] on April 26, 2017. Thereafter, on May 10, 2017, the Court issued a Pre-Trial Order[35] adopting the parties' JASF and the pre-trial was deemed terminated.

During trial, petitioner manifested that considering that its witness, Mr. Leo P. Pilapil, was previously presented in support of its Motion to Release Vehicle, the Judicial Affidavit of Mr. Pilapil filed on April 01, 2016 and Addendum to his Judicial Affidavit filed on August 05, 2016 constituted as his direct testimony for the main case and adopted his previous testimony.[36] Moreover, petitioner presented Atty. Richard S. Flores[37], its counsel of record and counsel before the MICP, Law Division where the seizure proceedings of the subject motor vehicle originated.

Petitioner formally offered its documentary exhibits[38]. In the Resolution[39] dated November 10, 2017, the Court admitted Exhibits "P-5", "P-6", "P-12", "P-13", "P-14" and "P-15" while Exhibits "P-7", "P-8", "P-9", "P-10" and "P-11" were denied admission.

Meanwhile, in the Resolution[40] dated September 13, 2017, the Court denied petitioner's Urgent Motion to Release Vehicle Under Cash Bond. Petitioner filed a Motion for Reconsideration[41] thereto on October 03, 2017, but the same was likewise denied in the Resolution[42] dated February 01, 2018.

This case was deemed submitted for decision on December 11, 2018[43], considering the Memorandum of Petitioner[44], filed on May 02, 2018, and

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[33] *Id.*, vol. 1, Minutes of the Hearing dated January 24, 2017, p. 286.
[34] *Id.*, vol. 1, pp. 317-321.
[35] *Id.*, vol. 1, pp. 337-343.
[36] *Id.*, vol. 1, Minutes of the Hearing dated May 16, 2017, p. 344.
[37] *Id.*, vol. 1, Minutes of the Hearing dated June 13, 2017, p. 363; Exhibit "P-9", pp. 355-362.
[38] *Id.*, vol. 1, Formal Offer of Evidence (Re: Order of September 4, 2017), pp. 380-383.
[39] *Id.*, vol. 1, pp. 479-480.
[40] *Id.*, vol. 1, pp. 385-391.
[41] *Id.*, vol. 1, pp. 399-403.
[42] *Id.*, vol. 1, pp. 498-502.
[43] *Id.*, vol. 2, Resolution dated December 11, 2018, pp. 551-553.
[44] *Id.*, vol. 2, pp. 518-525.

respondent's failure to file his memorandum per Records Verification Reports dated April 26, 2018[45] and May 22, 2018[46].

The Issue

The lone issue[47] for this Court's resolution is:

> Whether or not respondent erred in rendering the assailed Decision declaring the subject imported vehicle as a used motor vehicle requiring the submission of DTI-BIS Import Clearance for its importation.

Discussion/Ruling

Petitioner avers that EO No. 156 is exclusively addressed to the car manufacturing business sector and a minute perusal of the said law would clearly reveal that the concern of the national government then is to stop the proliferation of used imported automobiles imports by way of the Subic Bay and Cagayan Valley Special Economic Zone, thus, the solution arrived at was EO No. 156. Petitioner claims that it was unfair for the Court to remark in the last Resolution that "it does not matter if petitioner is not in the car manufacturing business..." since it placed petitioner's imported vehicle in the category of the used car importers operating in Subic and Cagayan, when in truth and in fact, petitioner merely bought the vehicle to be used in their business endeavors.

Petitioner points out the existence of EO No. 877-A, which was issued on June 03, 2010, entitled "The Comprehensive Motor Vehicle Development Program" and the third whereas of said EO, which prominently mentioned EO No. 156 series of 2002 and states that "a comprehensive industrial policy and directions for the Motor Vehicle Development Program to accelerate the sound development of the Philippine Motor Vehicle Industry". According to petitioner, the pronouncement in the said EO is a clear manifestation that the subject matter of EO Nos. 156 and 877-A is the Philippine Motor Industry and that petitioner is excluded therefrom, and therefore, there is no violation of Section 2 of EO No. 156.

Respondent, in his Answer, argues that the subject motor vehicle is not brand new as provided in paragraph 2.1, Section 2, Article 2 of EO No. 156 because it arrived in the Philippines on August 13, 2015, and is undeniably a 2014

[45] *Id.*, vol. 2, p. 517.
[46] *Id.*, vol. 2, p. 526.
[47] *Id.*, vol. 1, JASF, Legal Issue, Par. 24, p. 320.

model and the motor vehicle's Odometer reads 1,064.5 Milers or 1,713 Kilometers, which is more than 200 kilometers or 125 Miles. Moreover, respondent contends that the importation of the subject motor vehicle does not fall under the exceptions provided in Section 3, Article 2 of EO No. 156. Respondent claims that the subject shipment is subject to seizure without redemption pursuant to Subsection 5.1, Section 5, Article 2 of EO No. 156.

Although both parties invoke EO No. 156[48] as basis for their arguments, considering that the importation was made in 2015, the Court finds that EO No. 877-A[49] should be applied, in case of inconsistency[50], considering that the latter was issued in 2010 while the former was issued in 2002.

Contrary to petitioner's argument, the prohibition of used vehicle importation under EO Nos. 156 and 877-A applies to importation of all types of used motor vehicles and not only limited to importation made by those in the car manufacturing business. In fact, one of the whereas clauses of EO No. 156 states that declared policy of the government is "to ban importation of all types of used motor vehicles and parts and components, except those that may be allowed under certain conditions" in order "to accelerate the sound development of the motor vehicle industry in the Philippines", while one of the whereas clauses of EO No. 877-A provides that "there is a need to strengthen the used vehicle importation prohibition under EO 156". Hence, the prohibition of used vehicles importation applies to petitioner's importation of the subject vehicle. Both EOs were issued precisely to protect the domestic motor vehicle industry and limiting the used vehicle importation prohibition to those in the car manufacturing business would defeat the purpose of EO Nos. 156 and 877-A. As held by the Supreme Court in the case of *Hon. Executive Secretary, et al. vs. Southwing Heavy Industries, Inc., et al.*[51], there is no doubt that the issuance of the ban to protect the domestic industry is a reasonable exercise of police power. The deterioration of the local motor manufacturing firms due to the influx of imported used motor vehicles is an urgent national concern that needs to be swiftly addressed by the President. In the exercise of delegated police power, the executive can therefore validly proscribe the importation of these vebicles.

As to whether the subject motor vehicle is considered brand new or a used motor vehicle, Section 2, Article 2 of EO No. 877-A, defines brand new vehicles as follows:

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[48] Providing for a Comprehensive Industrial Policy and Directions for the Motor Vehicle Development Program and its Implementing Guidelines, December 12, 2002.

[49] The Comprehensive Motor Vehicle Development Program, June 03, 2010.

[50] Section 1, Article 12 of EO No. 877-A provides:

SECTION 1. *Repealing Clause.* — All other orders, rules and regulations or parts thereof, which are inconsistent with the provisions of this Executive Order, are hereby repealed, amended or modified accordingly.

[51] G.R. Nos. 164171, 164172 & 168741, February 20, 2006.

> "Section 2. *Brand New Vehicles.* – The importation of brand new motor vehicles shall be allowed pursuant to Executive Order No. 264, series of 1995 and Monetary Board Circular No. 92, series of 1995. To be considered brand new, the motor vehicles shall be (a) of current or advance year model in the country of origin and/or manufacture, or (b) of year model immediately preceding year in the country of origin and/or manufacture, provided that:
>
> a. The motor vehicle has a mileage of not more than 200 kilometers; and
>
> b. The motor vehicle has been acquired by the importer from the dealer as first owner."[52]

In this case, there is no question that the subject motor vehicle is a 2014 model that arrived in the Philippines on August 13, 2015 and that the subject motor vehicle was acquired by the importer from the dealer as first owner. Hence, the subject motor vehicle cannot qualify as a brand new vehicle under Section 2(a), Article 2 of EO No. 877-A quoted above as it is not the current or advance year model in the country of origin and/or manufacture when it arrived in the Philippines. Although the subject motor vehicle may fall under Section 2(b), Article 2 of EO No. 877-A quoted above, since the year model of the subject motor vehicle is of the immediately preceding year in the country of origin and/or manufacture, still, the odometer of the subject motor vehicle had a reading of 1,064[.5] miles or 1,713 kilometers, hence, the condition that motor vehicle has a mileage of not more than 200 kilometers was not met. Consequently, the subject motor vehicle cannot likewise qualify as a brand new vehicle under Section 2(b), Article 2 of EO No. 877-A quoted above.

Considering that the subject motor vehicle is not considered a brand new vehicle, then, the prohibition against the importation of used motor vehicles under Section 3, Article 2 of EO No. 877-A is applicable. Nevertheless, the same section provides for exceptions to the used vehicle importation prohibition and

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[52] This provision is basically the same as Section 2, Article 2 of EO No. 156, to wit:
Section 2. *Brand new vehicles*
2.1 The importation of brand new motor vehicles shall be allowed pursuant to Executive Order No. 264, series of 1995 and Monetary Board Circular No. 92, series of 1995. To be considered brand new, the motor vehicle shall be (a) of current or advance year model in the country of origin and/or manufacture, or (b) of year model immediately preceding year in the country of origin and/or manufacture provided that:
2.1.1 The motor vehicle has a mileage of not more than 200 kilometers; and
2.1.2 The motor vehicle has been acquired by the importer from the dealer as first owner.

such importation will require an authority to import from the Department of Trade and Industry (DTI) - Bureau of Import Services (BIS).

For easy reference, Sections 3 and 4, Article 2 of EO No. 877-A are quoted below:

> "SECTION 3. *Used Motor Vehicles.* — The importation into the customs territory or the Philippine territory outside the secured fenced-in Freeport zones of all types of used motor vehicles is prohibited except for the following:
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> a. A vehicle that is owned and for the personal use of a returning resident or immigrant and covered by an authority to import issued under the No-Dollar Importation Program. Such vehicles cannot be resold for at least three (3) years;
>
> b. A vehicle for the use of an official of the Diplomatic Corps and authorized to be imported by the Department of Foreign Affairs;
>
> c. Trucks[53] with GVW[54] of 2.5 tons and above covered by an authority to import issued by the Department of Trade and Industry (DTI);
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> d. Buses with GVW of 6 tons and above covered by an authority to import by the DTI;
>
> e. Special purpose vehicles:
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> xxx xxx xxx

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[53] Section 1(b) and (m), Article 2 of EO No. 877-A define truck and pickup as follows:
b. *Truck* — any motor vehicle whose body configuration is designed to carry heavy loads, general freight, or for special purpose regardless of gross vehicle weight, provided that pick-ups are not considered as trucks.
m. *Pickup truck* — a light truck having an enclosed cab and an open body with low sides and tailgate. For purposes of this EO, pickup truck is a vehicle with gross weight of up to 3 tons.

[54] Gross Vehicle Weight.

f. Motorcycles covered by an authority to import issued by the DTI.[55]

SECTION 4. *Exempted Used Vehicles.* — Used vehicles exempted from the prohibition on importation shall require an authority to import from the DTI."

In this case, no evidence was presented that the importation of the subject motor vehicle falls under any of the exceptions above-mentioned. Likewise, no authority to import from the DTI-BIS was presented in evidence. Since the subject motor vehicle is not considered a brand new vehicle as defined in Section 2, Article 2 of EO No. 877-A, petitioner's importation of a used motor vehicle is prohibited. Hence, the seizure of petitioner's motor vehicle was valid as vehicles imported in violation of EO No. 877-A are subject to seizure as provided in Section 7[56], Article 2 of EO No. 877-A, to wit:

"Section 7. *Penalty.* – All vehicles imported found to be in violation of this Executive Order shall be **subject to seizure and re-exported at the expense of the importer/consignee immediately.**"[57]

In relation thereto, Section 2530(f) of the Tariff and Customs Code of the Philippines ("TCCP") provides:

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[55] Section 3 of EO No. 156 provides:
Section 3. *Used motor vehicles.*
3.1 The importation into the country, [inclusive of the Freeport], of all types of used motor vehicles is prohibited, except for the following:
3.1.1 A vehicle that is owned and for the personal use of a returning resident or immigrant and covered by an authority to import issued under the No-Dollar Importation Program. Such vehicles cannot be resold for at least three (3) years;
3.1.2 A vehicle for the use of an official of the Diplomatic Corps and authorized to be imported by the Department of Foreign Affairs;
3.1.3 Trucks excluding pick-up trucks;
1. with GVW of 2.5–6.0 tons covered by an authority to import issued by DTI.
2. With GVW above 6.0 tons.
3.1.4 Buses:
xxx xxx xxx
3.1.5 Special purpose vehicles:
xxx xxx xxx

[56] The provision of EO No. 877-A will be applied considering that Section 5.1, Article 2 of EO No. 156 was partly amended by the former. Section 5.1 of EO No. 156 provides:
Section 5. *Penalty*
5.1 All imported vehicles found to be in violation of any provision in this EO shall be subject to seizure without redemption by the BOC and will not be subject to registration by the LTO unless disposed of in accordance with the Tariff and Customs Code.

[57] *Emphasis supplied.*

> "SECTION 2530. *Property Subject to Forfeiture Under Tariff and Customs Laws.* — Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be **subjected to forfeiture**:
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> xxx xxx xxx
>
> f. Any article the importation or exportation of which is effected or attempted contrary to law, or **any article of prohibited importation** or exportation, and all other articles which, in the opinion of the Collector, have been used, are or were entered to be used as instruments in the importation or the exportation of the former."[58]

In view of the foregoing, the subject motor vehicle shall be subject to seizure and forfeiture, to be disposed of in accordance with law.

Petitioner also claims that the subject motor vehicle has a GVW of 3,204.55kgs/3.20 tons, which is more than 3 tons defined and included as liberalized and regulated vehicle under the guidelines of EO No. 156 which is allowed to be imported and not prohibited and thus, not subject to forfeiture. Hence, petitioner argues that it can redeem the subject motor vehicle since it complied with the three (3) conditions in order that an offer of settlement upon payment of redemption value may be accepted as provided under Section 2307 of the TCCP. Moreover, petitioner avers that it is willing to pay the corresponding duties, taxes, and fines or penalties due to the government.

Section 2307 of the TCCP provides:

> "SECTION 2307. *Settlement of Case by Payment of Fine or Redemption of Forfeited Property.* — Subject to approval of the Commissioner, the district collector may, while the case is still pending, except when there is fraud, accept the settlement of any seizure case provided that the owner, importer, exporter, or consignee or his agent shall offer to pay to the collector a fine imposed by him upon the property, or in case of forfeiture, the owner, exporter, importer or consignee or his agent shall offer to pay for the domestic market value of the seized article. The Commissioner may accept the settlement of any seizure case on appeal in the same manner.

[58] *Emphasis supplied.*

Upon payment of the fine as determined by the district collector which shall be in amount not less than twenty percentum (20%) nor more than eighty percentum (80%) of the landed cost of the seized imported article or the F.O.B. value of the seized article for export, or payment of the domestic market value, the property shall be forthwith released and all liabilities which may or might attach to the property by virtue of the offence which was the occasion of the seizure and all liability which might have been incurred under any cash deposit or bond given by the owner or agent in respect to such property shall thereupon be deemed to be discharged.

Settlement of any seizure case by payment of the fine or redemption of forfeited property shall not be allowed in any case where the importation is absolutely prohibited or where the release of the property would be contrary to law."[59]

The Guidelines to Implement Executive Order No. 156, providing a Comprehensive Industrial Policy and Directions for the Motor Vehicle Development Program, copy of which was attached to Customs Memorandum Circular No. 172-12[60], provides as follows:

"Part II

Prohibition of Used Vehicle Importation

Section 1. *Definition of Terms.* —

xxx xxx xxx

4) *Truck* shall refer to any motor vehicle whose body configuration is *designed* to carry heavy loads, general freight, or for special purpose regardless of gross vehicle weight. For purposes of the EO, pick-ups are not considered trucks.

xxx xxx xxx

[59] *Emphasis supplied.*
[60] SUBJECT: Compliance to the Provisions of Executive Order No. 156 Entitled, "Providing for a Comprehensive Industrial Policy and Directions for the Motor Vehicle Development Program and Its Implementing Guidelines".

6) *Pickup truck* shall refer to a light truck having an enclosed cab and an open body with low sides and tailgate. **For purposes of this EO, pick up truck is a vehicle with gross weight up to 3 tons. (Pick-up trucks with GVW exceeding 3 tons fall under the classification of trucks.)** The BOI shall determine allowable vehicles that can be considered as pick-up based on its listing. BOI may revise said list upon consultation with the industry and concerned agencies.

xxx xxx xxx

Section 2. *Coverage.* —

a. The importation into the country, [inclusive of all Freeports][61], of all types of used motor vehicles is prohibited, except used motor vehicles that are liberalized and those which importation is regulated, as provided for under Section 3.1, Article 2 of the EO.

b. The provisions of these guidelines shall apply to the importation of used motor vehicles that are liberalized and those which importation is regulated, subject to compliance with roadworthiness and emission standards in the country of origin and with the Philippine roadworthiness and emission regulations prior to registration and use on the roads and highways of the Philippines.

c. The importation of the following used motor vehicles or parts and components require prior authorization from the BIS:

i. A vehicle that is owned and for the personal use of a returning resident or immigrant;

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[61] In *Hon. Executive Secretary, et al. vs. Southwing Heavy Industries, Inc., et al.*, G.R. Nos. 164171, 164172 & 168741, February 20, 2006, the Supreme Court held that Article 2, Section 3.1 of EO No. 156 is void with respect to its application to the secured fenced-in former Subic Naval Base area. Hence, used motor vehicles that come into the Philippine territory via the secured fenced-in former Subic Naval Base area may be stored, used or traded therein, or exported out of the Philippine territory, but they cannot be imported into the Philippine territory outside of the secured fenced-in former Subic Naval Base area.

ii. A vehicle for the use of an official of the Diplomatic Corps and authorized to be imported by the Department of Foreign Affairs;

iii. Trucks, **excluding pick-up trucks**, with GVW of 2.5-6.0 tons;

iv. Buses, with GVW of 6-12 tons; and

v. Used motor vehicle engines, transmissions/drivelines, axles (front and rear) or steering system for rebuilding/remanufacturing purposes. Importation of used replacement motor vehicle parts and components shall be covered by the existing Guidelines of Central Bank Circular No. 1389.

d. The following motor vehicles are liberalized for importation and require no prior authorization from the BIS:

i. Trucks, **excluding pick-ups**, with GVW above 6 tons;

ii. Buses, with GVW above 12 tons; and

iii. Special purpose vehicles enumerated under Section 2, Article 2 of the EO.

All motor vehicles falling below the abovementioned Gross Vehicle Weight (GVW) limits shall be prohibited from being imported.

xxx xxx xxx

Section 5. *General Provisions.* —

xxx xxx xxx

b. Penalty

The following penalties shall be imposed as provided for under Section 5 of the EO:

1). All imported used motor vehicles and parts and components found to be in violation of any provision of the EO and provisions of these guidelines shall be subject to the following:

i. **For prohibited vehicles — seizure without redemption by BOC;**

ii. **For regulated and liberalized vehicles — Seizure with redemption by BOC**"[62]

There is no question that the subject motor vehicle is a pick-up truck. Although petitioner claims that the GVW of the subject vehicle is 3,204.55 kgs/3.20 tons, the gross weight indicated on the Bill of Lading[63] and IEIRD[64] is actually 2,650.82 kgs./5,844 lbs., hence, for purposes of EO No. 156, the subject motor vehicle is a pick-up truck, having a GVW not exceeding 3 tons. Therefore, the subject motor vehicle cannot be classified as a regulated and liberalized vehicle which may be subject to redemption pursuant to the guidelines to implement EO No. 156. Consequently, Section 2307 of the TCCP on the settlement of a case by payment of fine or redemption of forfeited property cannot likewise apply.

From all the foregoing, the Court finds that there is no cogent reason to reverse or modify the assailed Decision of the COC.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. Accordingly, the Decision of the Commissioner of Customs, affirming the Order dated November 05, 2015 issued by the District Collector, Manila International Container Port, forfeiting the subject motor vehicle to be disposed of in a manner provided by law, is likewise **AFFIRMED**.

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62 *Emphasis supplied.*
63 Exhibit "P-6", BOC Records, p. 28.
64 Exhibit "P-5", BOC Records, p. 41.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest 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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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