REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PLASTIC CONSUMER CORP. AND POLYMAKER CORP., Petitioners,	**C.T.A. CASE NO. 7139**
- versus -	Members: **CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
HON. COMMISSIONER OF CUSTOMS, BUREAU OF CUSTOMS AND THE DISTRICT COLLECTOR OF CUSTOMS PORT OF MANILA, Respondents.	Promulgated: NOV 0 6 2009 4:15 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

Before this Court is an Amended Petition for Review filed by petitioners, praying that the Decision of forfeiture issued by respondent Commissioner of Customs be reversed and set aside, and the subject polypropylene shipment be ordered released to petitioners.

THE PARTIES

Petitioner Plastic Consumer Corporation is a corporation duly organized and existing by virtue of the laws of the Republic of the

Philippines, with address at No. 98 Mulawinan Road, Lawang Bat, Valenzuela City. It is the owner-claimant of 2,062 bags of polypropylene which arrived on August 23, 2004, covered by Bill of Lading No. OOLU22452899. Petitioner Polymaker Corporation is likewise a corporation duly organized and existing by virtue of the laws of the Republic of the Philippines, with office address at 98 C Mulawinan Road, 1440 Valenzuela City. It is the owner-claimant of 4,533 bags of polypropylene which arrived on August 23, 2004, covered by Bill of Lading No. 0674008764.[1]

Respondents are the Commissioner of the Bureau of Customs and the District Collector of Manila, with respective office address at the Bureau of Customs Building, Port Area, Manila and Office of the District Collector of Customs, Port of Manila, Port Area, Manila.

THE FACTS

The following are the facts of the case as stipulated by the parties:[2]

> "1. Pursuant to BOC Alert Order Nos. A/IE 20040824-101 and A/IE 20040823-106, a 100% examination was conducted on the shipments[3] which examination disclosed that the shipments contained 2,062 and 4,533 bags of polypropylene.
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> 2. Seizure proceedings were instituted against petitioners Plastic Consumer and Polymaker Corp., the

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[1] Par. 1.1, Amended Petition for Review, docket, pp. 73-74.
[2] Joint Stipulation of Facts and Issues, docket, pp. 174-177.
[3] Declared as "bearings" under Entry No. 63398 and 63449.

aforementioned shipments by virtue of Warrants and Seizure and Detention issued by the District Collector of the Port of Manila, upon the recommendation of the Intelligence and Enforcement Group (IEG), Bureau of Customs on the ground that the shipments were misdeclared.

3. During the joint hearing of the cases petitioners/claimants representative Miguela Santos Enciso manifested for redemption of the shipments on the ground that claimants (herein petitioners) have no knowledge of the misdeclaration committed by the broker hired by Ms. Santos without petitioners' consent.

4. Claimants/Petitioners filed a Motion for Reconsideration for the issuance of WSD on the ground of their innocence to the misdeclaration made by the broker engaged by Ms. Miguela Santos-Enciso without petitioner's knowledge and consent.

5. The case was reopened and petitioners were allowed to adduce documents to support their claim of innocence.

6. Petitioners, through its authorized representative, Ms. Elvira Castillo, submitted the following documentary evidence, to wit:

a. Memorandum of the Preliminary Investigation
b. Complaint Affidavit of Mr. Arthur Indemne, Director of Plastic Consumer products against Miguela Santos Enciso and the broker
c. Complaint-Affidavit of Rolando Sison, Corporate Secretary of Polymaker Corp., against Miguela Santos Enciso and the broker
d. Letter of Recommendation dated 23 November 2004 from Delos Reyes Law Office
e. Bill of Lading for polypropylene plastic resin
f. Packing List for polypropylene plastic resin
g. Inward Foreign Manifest
h. Commercial Invoice
i. Letter from Polymaker Corp. dated Nov. 17, 2004

j. Letter from Plastic Consumer Corp. dated November 17, 2004
k. Petty Cash Voucher for P192,000.00
l. Petty Cash Voucher for P48,000.00
m. Petty Cash Voucher for P72,000.00
n. Petty Cash Voucher for P384,000.00
o. Petty Cash Voucher for P192,000.00
p. Petty Cash Voucher for P192,000.00

7. Claimants through their representative in the seizure cases, offered to settle the case instead of redemption pursuant to the provision of Section 2307 of the TCCP as amended on the ground that petitioners have no participation in the misdeclaration committed by the broker personally hired by Miguela Santos-Enciso without the approval of the claimants/petitioners.

8. On December 10, 2004, the Office of the District Collector, Port of Manila rendered a Decision of forfeiture against the shipment in favor of the government.

9. On December 13, 2004, petitioners filed their Notice of Appeal informing the Respondent District Collector of their intention to appeal his decision to the Respondent Commissioner of Customs.

10. On January 27, 2005, a Decision was rendered by the respondent Commissioner of Customs affirming the Decision of Forfeiture issued by the Respondent District Collector, Port of Manila."

Consequently, petitioners filed before this Court a Petition for Review on February 8, 2005.[4] Then on March 28, 2005, petitioner filed an Amended Petition for Review.[5]

In their Answer[6] filed April 14, 2005, respondents interposed Special and Affirmative Defenses, the pertinent portions of which are quoted as follows:[7]

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[4] Docket, pp. 1-46, including annexes.
[5] Docket, pp. 73-83.

"xxx xxx xxx

17. Although petitioners maintain that they have no direct hand or participation in the fraudulent misdeclaration, they themselves, however, admit that Ms. Miguela Santos who hired a customs broker to deal with the BOC for their shipments, was so appointed by them as their agent, thus:

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18. Bureau of Customs Memorandum Order 92-92 of July 30, 1992 enumerates the situations demonstrating the presence of fraud, thus:

xxx xxx xxx

19. Since Ms. Santos, admittedly, was clothed with authority by the petitioners, petitioners should be bound by her actions and the consequences thereof. Therefore, any course of action which petitioners should take relative to Ms. Santos' commission of any criminal act or any act in excess of her given authority should be directed against Ms. Santos herself and her cohorts.

20. As principals whose representation is made in the course of their normal business by a customs broker/agent, petitioners are bound by the acts of their agent-broker. So far as third persons are concerned, the act(s) of petitioners' agent is deemed to have been performed within the scope of said agent's authority, even if the agent has in fact exceeded the limits of his authority.

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22. Rule has been that a corporation may be held in estoppel from denying as against third persons the authority of its officers or agents who have been clothed by it with ostensible or apparent authority. In the instant case, petitioners 'informed' the respondents of the broker-agent's lack of authority only after the misdeclared shipments were detained. Suppose the erring agent was able to pull off the misdeclaration, would petitioners not have benefited from the same? Would it have repudiated the act(s) of the broker and gone back to respondents to pay the correct taxes and duties?

23. Petitioners, are estopped from bringing the instant suit. Granting, in *gratia argumentis,* that the question of whether or not the acts of Ms. Miguela Santos is binding on the petitioners is

[6] Docket, pp. 97-114.
[7] Docket, pp. 105-113.

likewise in issue, they assert that they clothed Ms. Santos with authority to enter into a compromise agreement with the Bureau of Customs, (cf. Paragraph 3.1.8 and 3.1.13 of Petition).

24. Without intending to be repetitive, since it is admitted that petitioners clothed Ms. Santos with authority to act for and in behalf of the petitioners, they should suffer the consequences of her acts.

25. Contrary to the following petitioners submission both in the Amended Petition and in their Urgent Motion To Release Shipment Underbond that there was no valid signature in their customs entry declaration, as follows:

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suffice it to state that the law itself provides that petitioners need not affix their respective signatures in the customs entry declaration. The customs broker hired as their agent could sign the same in their behalf, thus:

xxx xxx xxx

26. Admittedly, it was very unfortunate for petitioners to have hired such an irresponsible broker, but they are not without remedies against such broker.

27. Since fraud is admittedly obtaining in the case at bar, the respondents would be remiss in their duty if the subject articles will not be forfeited in favor of the government.

28. In view of the foregoing admissions, the petitioners have no cause of action or fail to state a cause of action against respondents. The instant petition therefore fails and should peremptorily be dismissed by the Honorable Court since fraud was admittedly committed. It does not matter who committed the fraud since as stated by the petitioners themselves, 'the fact that shipments were misdeclared by the broker is not contested by the claimants' (par. 3.15, p. 7, Amended Petition).

29. The respondents reserve the right to submit a computation of the redemption value of the articles for purposes of determining the amount of bond to be posted by the petitioners in the event the Honorable Court decides to release the goods under bond. However, it should be stressed that the goods have already been forfeited and therefore are already deemed to be the property of the Government. The release of said goods may therefore be released only through redemption."

After the issues were joined, petitioners presented their testimonial and documentary evidence. Thereafter, respondents filed on September 5, 2007 a "Manifestation and Motion for Leave to File Memorandum," stating that they shall no longer present evidence other than those already submitted to this Court as part of the records of the case *a quo*; after petitioners allegedly failed to satisfactorily overturn the *prima facie* evidence of fraud, pursuant to Section 2503 of the Tariff and Customs Code of the Philippines (TCCP).[8]

Acting on respondents' Manifestation and Motion, this Court issued a Resolution dated September 9, 2008, requiring the parties to file their memoranda. On November 21, 2008, this Court issued a Resolution[9] submitting the case for decision after the parties filed their respective memorandum.

Hence, this Decision.

THE ISSUES

The parties submitted the following issues[10] for the Court's resolution:

> "1. Whether or not the misdeclaration in the entry committed by petitioners' broker is binding on the importer.
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> 2. Whether or not there is fraud attendant in the petitioners' importation."

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[8] Docket, pp. 454-456.
[9] Docket, p. 533.
[10] Docket, p. 176.

THIS COURT'S RULING

Weighing the evidence presented and the records of the case, this Court finds basis for the forfeiture and seizure of the subject importations.

Petitioners' shipments were seized and forfeited by the Bureau of Customs, pursuant to Section 2530(f) and (l), in relation to Section 2503, of the Tariff and Customs Code of the Philippines (TCCP), as amended. Said Sections read:

> "SEC. 2530. *Property Subject to Forfeiture Under Tariff and Customs Law.* – 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
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> 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.
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> xxx xxx xxx
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> l. Any article sought to be imported or exported:
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> xxx xxx xxx
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> (3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;
> (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 article; and

> (5) Through any other practice or device contrary to law by means of which such articles was entered through a customhouse to the prejudice of the government."

> "SEC. 2503. *Undervaluation, Misclassification and Misdeclaration in Entry.* - When the dutiable value of the imported articles shall be so declared and entered that the duties, based on the declaration of the importer on the face of the entry, would be less by ten percent (10%) than should be legally collected, or when the imported articles shall be so described and entered that the duties based on the importer's description on the face of the entry would be less by ten percent (10%) than should be legally collected based on the tariff classification, or when the dutiable weight, measurement or quantity of imported articles is found upon examination to exceed by ten percent (10%) or more than the entered weight, measurement or quantity, a surcharge shall be collected from the importer in an amount of not less than the difference between the full duty and the estimated duty based upon the declaration of the importer, nor more than twice of such difference: Provided, That, an undervaluation, misdeclaration in weight, measurement or quantity of more than thirty percent (30%) between the value, weight, measurement, or quantity declared in the entry, and the actual value, weight, quantity or measurement, shall constitute a prima facie evidence of fraud penalized under Section 2530 of this Code. Provided, further, That any misdeclared or undeclared imported article/items found upon examination shall ipso facto be forfeited in favor of the Government to be disposed of pursuant to the provisions of this Code.

> When the undervaluation, misdescription, misclassification or misdeclaration in the import entry is intentional the importer shall be subject to the penal provision under Section 3602 of this Code."

Records show that a 100% examination was conducted by the Officials of the Bureau of Customs (BOC) on the subject importations which examination disclosed that the shipments contained bags of polypropylene plastic resins misdeclared as "bearings" in the import entry declaration.*gc*

Under the TCCP, before forfeiture proceedings are instituted the law requires the presence of probable cause. Once established, the burden of proof is shifted to the claimant. [11] Probable cause having been shown in this case as misdeclaration constituted *prima facie* evidence of fraud, the burden of proof is now shifted to the petitioners.

Unfortunately for petitioners, they failed to submit sufficient and convincing evidence that will overcome the presumption of fraud. **In fact, the existence of misdeclaration was never refuted but was even admitted by petitioners.** They only interposed the defense that they have no knowledge nor participation in the misdeclaration of their shipments as it was their broker who committed the misdeclaration. While it may be true that petitioners filed cases against the broker but, this is not sufficient proof to convince the Court of their innocence and non-participation in the misdeclaration of entries. It is not enough for petitioner to claim good faith and lack of knowledge in the misdeclaration to rebut the presumption of fraud but, there has to be clear, strong and convincing evidence.

Furthermore, even if petitioners denied participation in the misdeclaration, they admitted their grant of authority to Miguela Santos Enciso for the declaration and filing of entries of the subject importations with the BOC. The essence of agency being the representation of another, it is evident that the act was done by the

[11] Section 2535 of TCCP.

broker-agent for and on behalf of the petitioners. A consequence of this representation is the liability of the petitioners as principals for the acts of its agent performed within the limits of his authority that is equivalent to the performance by the principal himself who should answer therefore. [12] **Even when the agent has exceeded his authority, the principal is solidarily liable with the agent if the former allowed the latter to act as though he had full powers.**[13]

As regards the third persons, the act of the petitioners' broker-agent is deemed to have been performed within the authority granted even if the broker-agent has in fact exceeded the limits of the said authority. Article 1900 of the Civil Code of the Philippines provides:

> Art. 1900. So far as third persons are concerned, an act is deemed to have been performed within the scope of the agent's authority, if such act is within the terms of the power of attorney, as written, even if the agent has in fact exceeded the limits of his authority according to an understanding between the principal and the agent.

Thus, under the circumstances, the presumption of fraud was not overturned by the petitioners. An obvious misdeclaration committed by petitioners' broker-agent is binding on the petitioners in the absence of sufficient and convincing evidence to show the latter's innocence at the time of the misdeclaration of the subject importation.

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[12] *Tan vs. G.V.T. Engineering Services*, G.R. No. 153057, August 7, 2006, 498 SCRA 93.
[13] Art. 1911 of the Civil Code of the Philippines.

The Court also affirms the findings of the respondent Commissioner of Customs in confirming the existence of fraud in his assailed Decision[14]:

> "The fact that the shipments were misdeclared by the broker is not contested by the claimants but they insisted they have no knowledge nor participation in misdeclaring their shipments.
>
> Further, when asked to comment on the memorandum of appeal filed by the counsel for claimant which was received by this Service on 15 December 2004, the government prosecutor stated that during the forfeiture proceedings of this case, claimants' representative failed to overcome the existence of fraud in the subject importation, and even failed to present any witness to substantiate its allegations of non existence of fraud. Likewise, the prosecutor prayed for the denial of the instant appeal for lack of merit.
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> This Office finds no substantial evidence to controvert the existence of gross misdeclaration as shown by the declaration in the respective entries, for which reason the subject shipments are liable to forfeiture for having been imported in violation of Section 2530(f) and (l)-3, 4 and 5 in relation to Section 2503 of the TCCP, as amended."[15]

The determination by the proper administrative agencies and officials who have acquired expertise, specialized skills and knowledge in the performance of their functions should be accorded respect, absent any showing of grave abuse of discretion. Government officials are presumed to perform their functions with regularity and strong evidence is necessary to rebut this presumption. [16] Again, the Court

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[14] Exhibit "A".
[15] Exhibit "A-3", docket, p. 363.
[16] *Tatad vs. Garcia,Jr.*, G.R. No. 114222, April 6, 1995, 243 SCRA 436, citing the cases of *Felipe Ysmael, Jr. & Co. v Deputy Executive Secretary*, 190 SCRA 673 [1990]; *Board of Medical Education v. Alfonso,* 176 SCRA 304 [1989].

stands on the holding that petitioners have failed to overcome this presumption.

Even granting that petitioners never participated in the misdeclaration of the subject importations, still **these importations are proper subject of forfeiture by reason of misdeclaration as clearly provided under Section 2503 of the TCCP which automatically forfeits the misdeclared imported articles**. The pertinent portion reads:

> "SEC. 2503. *Undervaluation, Misclassification and Misdeclaration in Entry*. - When the dutiable value of the imported articles shall be so declared and entered that the duties, based on the declaration of the importer on the face of the entry, would be less by ten percent (10%) than should be legally collected, or when the imported articles shall be so described and entered that the duties based on the importer's description on the face of the entry would be less by ten percent (10%) than should be legally collected based on the tariff classification, or when the dutiable weight, measurement or quantity of imported articles is found upon examination to exceed by ten percent (10%) or more than the entered weight, measurement or quantity, a surcharge shall be collected from the importer in an amount of not less than the difference between the full duty and the estimated duty based upon the declaration of the importer, nor more than twice of such difference: Provided, That, an undervaluation, misdeclaration in weight, measurement or quantity of more than thirty percent (30%) between the value, weight, measurement, or quantity declared in the entry, and the actual value, weight, quantity or measurement, shall constitute a prima facie evidence of fraud penalized under Section 2530 of this Code. Provided, further, That **any misdeclared or undeclared imported article/items found upon examination shall ipso facto be forfeited in favor of the Government to be disposed of pursuant to the provisions of this Code.** xxx (underscoring ours)

It should also be noted that in the case of *Transglobe International, Inc. vs. Court of Appeals*,[17] the Supreme Court ruled that

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[17] G.R. 126634, January 25, 1999, 302 SCRA 57.

forfeiture of seized goods in the BOC is a proceeding against the goods and not against the owner. It is in the nature of a proceeding *in rem*, i.e., directed against the *res* or imported articles and entails a determination of the legality of their importation. In this proceeding, it is in legal contemplation the property itself which commits the violation and is treated as the offender, *without reference whatsoever to the character or conduct of the owner*.

WHEREFORE, the Petition for Review is hereby **DENIED**. The assailed Decision dated January 27, 2005 is hereby **AFFIRMED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
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.

ERNESTO D. ACOSTA
Presiding Justice