REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

MONACAT TRADING,
Petitioner,

- versus -

COMMISSIONER OF CUSTOMS, BUREAU OF CUSTOMS,
Respondents.

CTA Case No. 9851

Members:

BACORRO-VILLENA, *Acting Chairperson,* and
CUI-DAVID, *JJ.*

Promulgated:
DEC 05 2022 1:00 PM

x - x

RESOLUTION

***BACORRO-VILLENA, J.*:**

For the Court's resolution is petitioner Monacat Trading's (**petitioner**'s/**Monacat**'s) "Motion for Reconsideration"[1] (**MR**) filed on 23 August 2022, with respondents Commissioner of Customs and Bureau of Customs' (**respondents'/COC** and **BOC**'s) "Comment/Opposition (re: Motion for Reconsideration dated August 22, 2022)"[2] (**Comment**) filed on 14 September 2022.

The MR assails the Decision[3] promulgated on 04 August 2022 (**assailed Decision**). The dispositive portion of which reads:

> ...
>
> **WHEREFORE**, the foregoing considered, petitioner Monacat Trading's Petition for Review filed on 04 June 2018 is hereby **DISMISSED** for lack of jurisdiction. Assuming the Court has been

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1 Division Docket, Volume IV, pp. 1275-1287.
2 Id., pp. 1291-1313.
3 Id., pp. 1226-1272.

solidly vested with jurisdiction, the petition will still fail for utter lack of merit.

SO ORDERED.

...

In the MR, petitioner insists that the Court has jurisdiction over the case for the following reasons:

1. When the Department of Finance Port of Batangas (DOF-POB) received the Order dated 19 April 2018 (**assailed Order**) on 03 May 2018, petitioner was immediately furnished a copy thereof. Thus, petitioner's actual receipt of the assailed Order is on 03 May 2018, the earliest possible time to start counting the thirty (30) day reglementary period to file this case before the Court;

2. Petitioner's verified assertions in its Petition for Review that it received the assailed Order on 03 May 2018 is already a sufficient basis for the Court's determination of its jurisdiction;

3. Petitioner's Exhibit "**P-1**"[4] was contained in the Joint Stipulation of Facts (**JSF**)[5] dated 15 February 2019 and was subsequently adopted in the Pre-Trial Order.[6] Hence, its admission alone is sufficient for it to be admitted in evidence;

4. Assuming it was not admitted in evidence, Section 1[7], Rule 129 of the Revised Rules of Evidence[8], as amended, mandates the Court to take judicial notice of official acts of the executive department, even without introduction of evidence. Thus, the DOF POB's receipt of the assailed Order already constitutes judicial notice; and,

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4 Order issued by Isidro S. Lapeña dated 19 April 2018.

5 Division Docket, Volume I, pp. 236-246.

6 Id., pp. 251-259.

7 **Sec. 1**. *Judicial notice, when mandatory*. - A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, official acts of the legislative, executive and judicial departments of the National Government of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

8 A.M. No. 19-08-15-SC.

5. Petitioner's mark or stamp in the assailed Order to prove its actual receipt is not required since it had already validly stated in its Petition for Review the date of its receipt thereof.

As for the substantive issues, petitioner admits that it did not strictly follow the relevant Customs Administrative Order (**CAO**) because it failed to indicate the correct models and/or series of the seven (7) subject vehicles; however, it cannot be charged of deliberately misdeclaring the same. Although it is clear in the Import Entry and Internal Revenue Declarations (**IEIRDs**) that the subject vehicles were described in a general manner, petitioner claims that it nevertheless declared the correct chassis numbers or the Vehicle Identification Number (**VINs**) of each vehicle. Petitioner argues further that the chassis numbers or VINs are used to identify the motor vehicles for tariff classification, and having correctly declared the same in the IEIRDs, there can be no misdeclaration to speak of. Petitioner adds that while the declarations are general in nature, the brand of the subject vehicles are accurately declared in the IEIRDs and thus, they are still correct declarations.

Likewise, petitioner alleges that the Court erred in ruling that the subject vehicles were undervalued. It faulted the Court in relying on the reference values of the respondents' Enforcement Group (**EG**) and Import and Assessment Service (**IAS**) to determine *prima facie* evidence of fraud. According to it, the six (6) basis for dutiable values under Section 201[9] of the Tariff and Customs Code of the Philippines (**TCCP**) as amended, must be applied in sequential order. Moreover, Customs Memorandum Order (**CMO**) No. 16-2010[10] only allows the use of reference values if these are previously accepted transaction values of identical/similar articles in the enhanced Value Reference

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9 SEC. 201. Basis of Dutiable Value.
(A) Method One. - Transaction Value. - ...
...
(B) Method Two. - Transaction Value of Identical Goods. - ...
...
(C) Method Three. - Transaction Value of Similar Goods. - ...
...
(D) Method Four. - Deductive Value. - ...
...
(E) Method Five. - Computed Value. - ...
...
(F) Method Six. - Fallback Value. - ...

10 Rules and Regulations to Implement Customs Administrative Order (CAO) No. 4-2004, more particularly on Dutiable Value.

Information System (**e-VRIS**) and there is valid reason to reject the declared values under *Method One*.[11]

Petitioner contends that the Court's conclusion in treating the IAS values as the transaction values of identical motor vehicles under *Method Two*[12] is devoid of evidence to prove that the said values were previously accepted transaction values of identical goods. Moreover, during the seizure proceedings, it was allegedly admitted that the said values were derived from the internet, red book and blue book.

Lastly, petitioner avers that Section 1117[13] of the Customs Modernization and Tariff Act (**CMTA**) is applicable in the instant case. The **Consolidated** Decision of POB Officer-in-Charge District Collector of Customs Reynaldo M. Galeno (**POB OIC-District Collector Galeno**), ordering the quashal of the warrants of seizure and detention (**WSDs**), is an order of release. Thus, the failure of respondents to act within the prescriptive period of forty-eight (48) hours from the receipt of the consolidated decision should have prompted the subject vehicles as to be "deemed release[d]".

On the other hand, respondents claim that the Court correctly ruled that it has no jurisdiction over the instant case for the following reasons:

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11 (A) Method One. - Transaction Value. - The dutiable value of an imported article subject to an *ad valorem* rate of duty shall be the transaction value, which shall be the price actually paid or payable for the goods when sold for export to the Philippines[.] ...

...

12 (B) Method Two. - Transaction Value of Identical Goods. - Where the dutiable value cannot be determined under method one, the dutiable value shall be the transaction value of identical goods sold for export to the Philippines and exported at or about the same time as the goods being valued. "Identical goods" shall mean goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearances shall not preclude goods otherwise conforming to the definition from being regarded as identical.

13 SEC. 1117. *Warrant of Seizure or Order of Release.* – The District Collector shall have the authority to issue a warrant of seizure of the goods upon determination of the existence of probable cause and in case of nonexistence thereof, the issuance of order of release. In case the District Collector issued an order of release, the District Collector shall immediately transmit all the records to the Commissioner who shall automatically review within forty-eight (48) hours, or within twenty-four (24) hours in case of perishable goods. When no decision is made by the Commissioner within the prescribed period, the imported goods shall be deemed released.

The lifting of the alert order shall be issued by the District Collector only upon the affirmation of the decision of the District Collector by the Commissioner, or after the lapse of the period of review by the Commissioner, whichever is earlier.

1. Petitioner failed to state the material dates in its petition, specifically the date of receipt of respondent COC's assailed Order. Since the period to appeal is jurisdictional and petitioner failed to comply and/or establish that it timely filed its Petition for Review before this Court, the assailed Order already became final and unappealable. Hence, the Court has no jurisdiction over the case;

2. Nothing in the JSF would show that respondents stipulated on petitioner's date of receipt of the assailed Order. The mere fact that they consented to Exhibit "**P-1**" as among petitioner's documentary exhibits cannot be equated as their admission of petitioner's receipt of the assailed Order;

3. Nothing in the said exhibit would show petitioner's actual receipt of the assailed Order as what is prevalent are the dates of receipt of the different government offices; and,

4. Assuming the Court takes judicial notice of the assailed Order, it would only prove its existence and content, but not petitioner's actual receipt thereof.

For the substantive part, respondents maintain that the Court also ruled correctly that petitioner misdeclared and undervalued the subject vehicles. Evidence on record established that there were discrepancies in petitioner's declarations in the IEIRDs and those actually imported and inspected. Moreover, petitioner's own witnesses admitted that the subject vehicles were generally described and what were physically examined are different from those declared in the import entries. Additionally, respondents assert that a month prior to the importation of the subject vehicles, BOC issued a *Memorandum*[14] dated 26 June 2015 mandating strict compliance with the relevant CAO No. 8-2007[15] and CMO No. 28-2007[16] for the proper description of the imported goods and/or articles. Hence, petitioner's failure to indicate the correct descriptions (as to the model and/or series, and the accessories) of the subject vehicles clearly constitutes misdeclaration.

Respondents add that, due to the wrongful descriptions of the subject vehicles, the attached invoices in the IEIRDs are also false.

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14 Mandatory Compliance with CAO No. 8-2007 as Implemented by CMO No. 28-2007.
15 Description of Imported Articles in Tariff Terms.
16 Implementing CAO No. 8-2007 entitled Description of Imported Articles in Tariff Terms.

They, in effect, were undervalued. Respondents further aver that petitioner failed to consider the applicability of Customs Memorandum Circular (**CMC**) No. 70-2014[17] on the subject vehicles. The said CMC provides that IAS shall issue value recommendations for imported vehicles under tariff heading 87.03 and with cylinder capacities of 2500 cc, and that no release of shipments of automobiles shall be made without the prior IAS clearance. Petitioner's witnesses testified that they were aware of the said CMC and that is why they recommended that the IEIRDs be processed subject to tentative liquidation pending the issuance of the IAS clearance, and without prejudice to the payment of additional duties and taxes should the IAS values be higher than the declared values. Respondents also argue that the declared values were based solely on the commercial invoices, which are private documents. As between the IAS value recommendation (which is accorded the presumption of regularity) and the unauthenticated commercial invoices, the former deserves evidentiary value.

Lastly, respondents declare that Section 1117 of the CMTA is inapplicable in the instant case because the assailed Decision is not an order of release. Nowhere in the dispositive part directs the release of the subject vehicles, rather it instructed or ordered petitioner to pay the additional duties and taxes.

We resolve.

After a thorough and careful review of the parties' arguments, petitioner's MR still fails to convince this Court that it has jurisdiction over the instant case. *Assuming* it has jurisdiction over it, We still find that the subject vehicles were misdeclared and undervalued. Unfortunately for petitioner We also fail to find that it raised substantial arguments in its MR that would warrant a deviation from our earlier ruling. At any rate, for emphasis, the Court will elaborate further the reasons for upholding the assailed Decision, as will be essayed below.

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[17] Value Verification of Automobiles.

THERE IS NO CLEAR AND CONVINCING EVIDENCE TO PROVE PETITIONER'S RECEIPT OF THE ASSAILED ORDER.

Petitioner alleges that the day the DOF POB received the assailed Order (on 03 May 2018) is also the same day that petitioner received it. However, such is devoid of any documentary proof.

Firstly, the records of the case fails to evince proof of petitioner's alleged receipt of the assailed Order. Exhibit "**P-1**", the document purportedly proving petitioner's receipt, was denied admission for failure of identification by a competent witness. Although this Court may take judicial notice of the said assailed Order because it is an official act of the executive department, the same would still be insufficient for the Court to determine petitioner's actual receipt thereof. As stated in the assailed Decision:

> ...
>
> Incidentally, a further scrutiny of Exhibit "P-1" would reveal that it does not indicate petitioner's actual receipt of respondent COC's assailed Order. Instead, it shows various receiving stamps from the different offices of respondent BOC and the Department of Finance (**DOF**), detailed below:

Office	Date	Time
Internal Admin Group	17 April 2018	04:35
BOC Office of the Commissioner	18 April 2018	10:12
BOC Revenue Collection Monitoring Group	20 April 2018	1:26
Office of the Director Legal Service	20 April 2018	3:33 p.m.
DOF POB	03 May 2018	12:00 p.m.
POB OIC-District Collector Galeno	04 [May] 2018	-

> **Thus, as it stands, the copy of the assailed Order (Exhibit "P-1") is devoid of any proof of petitioner's or its counsel's (The Law Firm of Bartolome Salazar & Partners, formerly Bartolome Salazar Palomar & Associates') actual receipt.**
>
> It is settled that the timeliness of an appeal is a factual issue that requires a review of the evidence presented on when the appeal was actually filed. The basic evidentiary rule is that the party who asserts a fact or the affirmative of an issue has the burden of proving it.

> Additionally, the right to appeal is not a natural right or a part of due process, but merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirements of the rules, failing in which the right to appeal is lost.
>
> As petitioner failed to clearly establish the timely filing of its Petition for Review, it must perforce fail.[18]
>
> ...

Wanting of any clear and convincing proof of petitioner's actual receipt of the assailed Order, along with the circumstances above, the Court maintains that it has no jurisdiction over the instant case.

THERE IS MISDECLARATION AS TO THE DESCRIPTIONS OF THE SUBJECT VEHICLES.

Petitioner's claim that the subject vehicles were not misdeclared since the correct chassis numbers or VINs in each vehicle were nevertheless disclosed is again untenable.

As found in the assailed Decision, below are the discovered discrepancies between the IEIRDs and the result of the 100% physical examination:

> ...
>
> The Court notes the discrepancies in the subject vehicles' descriptions both in the IEIRDs and the result of the spot check or 100% physical examination (conducted on 05 August 2015) as detailed in the "Spotcheck Reports" prepared by the assigned Officers-on-Case, De Castro and Ugay. Their findings are summarized below:
>
> ...

Alert Order	**IEIRD No.**	**As Declared (Description) *Per* IEIRDs**	**As Found (Description) *Per* "Spotcheck Reports" of assigned Officers-on-Case Ugay and De Castro**
A/EG/20150724-101	C-6372	**Ferrari California Coupe** Brand New 2015	Brand New **Ferrari 458 Speciale** 2015
A/EG/20150724-102	C-6373	2015 Brand New **Mercedes Benz GLK350**, SUV	2015 **Mercedes Benz G63 AMG**

[18] Citations omitted and emphasis supplied.

A/EG/20150724-104	C-6374	2015 Brand New **Mercedes Benz C200**, Sedan	2015 **Mercedes Benz C63 AMG**
A/EG/20150724-108	C-6375	Land Rover Defender 90 SUV Brand New 2015	Land Rover Defender 90 SUV Brand New 2015
A/EG/20150724-107	C-6380	**Land Rover LR2** SUV Brand New 2015	Brand New **Land Rover Range Rover** 2015
A/EG/20150724-106	C-6381	2015 Brand New **Mercedes Benz C200**, Sedan, Silver	2015 **Mercedes Benz CLK DTM AMG**
A/EG/20150724-109	C-6395	Toyota **Land Cruiser GX** SUV Brand New 2015	Brand New Toyota **Landcruiser GXR Bulletproof** 2015
A/EG/20150724-103	C-6398	2015 Brand New Toyota Prado SUV, Silver, gas, 6 cyl	2015 Brand New Toyota Prado SUV, Silver, gas, 6 cyl
A/EG/20150724-110	C-6403	**Mclaren 540C** Brand New 2015	Brand **New Mclaren MP4-12C OR 650S**

Clearly from the foregoing, petitioner misdeclared the importation of subject vehicles as there are discrepancies in seven (7) IEIRDs, specifically **C-6372, C-6373, C-6374, C-6380, C-6381, C-6395** and **C-6403**; particularly, as regards the vehicles' model and/or series.[19]

...

As it is, petitioner did not forward any valid reason or explanation as regards the foregoing discovered discrepancies in the models and/or series of the subject vehicles. It merely relied on its reiterative argument that general descriptions of the vehicle, coupled with the correct chassis numbers or VINs, is not tantamount to the misdeclaration contemplated under the law.

To shed light on this issue, an extended definition of misdeclaration as to the description of goods was provided under Section 3.18 of the CAO No. 10-2020[20], *viz*:

...

There is **Misdeclaration as to Description of Goods** when there is a difference in the descriptive nature and identity of the Goods as declared in the Goods Declaration and the description as found after physical examination of the Goods *(e.g. product code, item code, make, model, series, displacement, version, among other)*.[21]

...

Applying the foregoing provision, there is clearly a misdeclaration in the description of the imported goods due to the

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[19] Citation omitted and emphasis in the original text.
[20] Seizure and Forfeiture Proceedings and Appeals Process.
[21] Emphasis in the original text and underscoring supplied.

glaring variance in the model and/or series of the subject vehicles. Without any evidence to refute the said fact, the Court has no basis to rule otherwise.

THE IMPORT AND ASSESSMENT SERVICE (IAS) VALUE RECOMMENDATION IS THE TRANSACTIONAL VALUE OF IDENTICAL GOODS UNDER METHOD TWO.

Petitioner also argues that the EG and IAS reference values can only be used as risk assessment tool and not for valuation of the subject vehicles. Unfortunately, it failed to consider that the IAS values were the equivalent values of the identical goods of the subject vehicles. Contrary to the presented commercial invoices, packing lists and bills of lading which reflect different models and/or series of the subject vehicles, the IAS values were based on the correct descriptions of the subject vehicles as found in the 100% physical examination. As held in the assailed Decision, the relevant parts state:

> ...
>
> A perusal of the IAS Values would reveal that the subject vehicles were valued based on the model and/or series as found during the spot check or 100% physical examination. Below is a table comparison of the model and/or series of the subject vehicles (as found) *per* "Spotcheck Reports" of the assigned Officers-on-Case, Ugay and De Castro, and *per* IAS Values.

IEIRD No.	As Found (Description) *Per* "Spotcheck Reports" of assigned Officers-on-Case Ugay and De Castro	As Found (Description) *Per* IAS Values
C-6372	Brand New Ferrari 458 Speciale 2015	Brand New Ferrari 458 Speciale
C-6373	2015 Mercedes Benz G63 AMG	2015 Brand New Mercedes Benz G63 AMG
C-6374	2015 Mercedes Benz C63 AMG	2015 Brand New Mercedes Benz C63 AMG
C-6375	Land Rover Defender 90 SUV Brand New 2015	Brand New Landrover Defender 90
C-6380	Brand New Land Rover Range Rover 2015	Brand New Land Rover Range Rover
C-6381	2015 Mercedes Benz CLK DTM AMG	2015 Brand New Mercedes Benz CLK DTM AMG
C-6395	Brand New Toyota Landcruiser GXR Bulletproof	Brand New Toyota Landcruiser GXR

IEIRD No.	As Found (Description) *Per* "Spotcheck Reports" of assigned Officers-on-Case Ugay and De Castro	As Found (Description) *Per* IAS Values
	2015	Bulletproof
C-6398	2015 Brand New Toyota Prado SUV, Silver, gas, 6 CYL	2015 Brand New Toyota Prado
C-6403	Brand New Mclaren MP4-12C OR 650S	Brand New McLaren MP4-12C or 650S

Section 201 of the TCCP, as amended, defined "identical goods" as goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearances shall not preclude goods otherwise conforming to the definition from being regarded as identical. On that note, the summary above shows that the IAS Values were derived from identical goods of the subject vehicles (because the values were determined in reference to the model and/or series of the said vehicles as they were found). Thus, there is reasonable basis for the Court to conclude that the amounts *per* IAS Values were arrived at using the next sanctioned valuation method, *i.e.*, the *Transaction Value of Identical Goods or Method Two* for purposes of determining the dutiable value of the subject vehicles.[22]

...

Even after the extensive discussion in the assailed Decision, petitioner still failed to adduce supporting documentary evidence to prove the alleged transactional values of the subject vehicles under *Method One*. Thus, We uphold our findings on the use of IAS values under *Method Two*.

THE CONSOLIDATED DECISION IS NOT AN ORDER OF RELEASE.

Lastly, petitioner asserts that the subject vehicles should be deemed as released pursuant to Section 1117 of the CMTA. This argument deserves scant consideration.

It is noted that nowhere in the Consolidated Decision of POB OIC-District Collector Galeno can it be concluded that he ordered the release of vehicles. Instead, he directed the payment of additional duties, taxes and surcharges for the subject vehicles.

22 Citation omitted and emphasis in the original text.

WHEREFORE, in view of the foregoing, petitioner Monacat Trading's "Motion for Reconsideration" filed on 23 August 2022 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice