REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

KINGSON INTERNATIONAL TRADING CORPORATION,
Petitioner,

CTA EB NO. 1800
(CTA Case No. 7819)

Present:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN , *and*
MANAHAN, *JJ.*

- versus -

HON. COMMISSIONER OF CUSTOMS, BUREAU OF CUSTOMS AND THE DISTRICT COLLECTOR OF CUSTOMS, PORT OF MANILA,
Respondents.

Promulgated:

JUN 13 2019 2:03 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *en banc* is a Petition for Review[1] filed by petitioner Kingson International Trading Corporation against respondents Hon. Commissioner of Customs, Bureau of Customs and the District Collector of Customs, Port of Manila seeking the reversal of the Decision dated September 20, 2017[2] (Assailed Decision) rendered by the First Division of this Court in CTA Case No. 7819, as well as the Resolution dated February 19, 2018[3] (Assailed Resolution) denying its motion for reconsideration.

[1] *Rollo*, pp. 6-35.
[2] *Id.*, pp. 38-89.
[3] *Id.*, pp. 90-96.

The dispositive portion of the Assailed Decision reads, as follows:

> "**WHEREFORE,** in light of the foregoing, accused **Alicia O. Fernandez, Anthony Joey S. Tan, Reynaldo V. Cesa, and Edgardo V. Martinez,** however, are hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 3602, in relation to Section 2503 of the TCCP. They are hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of eight (8) years and one (1) day, as minimum, to ten (10) years, as maximum, for violating Section 3602, in relation to Section 2503 of the TCCP; and are **ORDERED** to each pay a fine of Eight Thousand Pesos (₱8,000.00) for violating Section 3602, in relation to Section 2503 of the TCCP.
>
> As regards accused **Jeffrey King and Roger M. Permejo,** they are hereby **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt.
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> Furthermore, pursuant to Section 2530, paragraphs (l) (3) and (4) of the Tariff and Customs Code of the Philippines, as amended, the subject shipment of 1,436 bundles of 10MM x 6M and 970 bundles of 12MM x 6M, or a total of 2,406 bundles of steel products subject of these consolidated criminal and civil cases are hereby **FORFEITED** in favor of the government to be disposed of in the manner prescribed by law.
>
> **SO ORDERED."**[4]

The Assailed Resolution, on the other hand, in its dispositive portion, provides the following:

> "**WHEREFORE,** in the light of the foregoing considerations, the following Motions, namely: 1) ***Motion for Reconsideration*** filed by accused Alicia O. Fernandez, Anthony Joey S. Tan, Reynaldo Casa, and Edgardo Martinez; 2) ***Motion for Reconsideration*** filed by petitioner Kingson International Trading Corporation; and 3) ***Partial Motion for Reconsideration*** filed by the BOC, are hereby **DENIED** for lack of merit.
>
> **SO ORDERED."**[5]

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[4] *Id.*, p. 88.
[5] *Id.*, p. 96.

The Parties

Petitioner Kingson International Trading Corporation (Kingson) is a domestic corporation duly organized and existing by virtue of the laws of the Republic of the Philippine with address at 876 Apacible cor. L. Guinto St., Ermita, Manila.[6]

On the other hand, respondents Commissioner of Customs (COC), Bureau of Customs (BOC), and the District Collector of Customs, Port of Manila, are the chief officials of the Bureau of Customs and the Port of Manila, empowered to perform the functions and duties of their respective offices, among which is to effect seizure and forfeiture of imported articles, may be served with summons at the BOC, Port Area, Manila.

The Facts[7]

On May 6, 2006, a shipment of 2,406 steel products on board the vessel S/S "Rich Ocean" with Registry No. PSI-001 arrived at the Port of Manila from the People's Republic of China.[8]

While the import entry was being processed at the Formal Entry Division (FED) of the BOC, the assigned customs examiner readjusted the declared customs value of subject shipment and imposed the additional duties and taxes in the amount of ₱544,264.00; hence, the total duties and taxes paid by Kingson amounted to ₱5,795,304.00.[9]

Before the shipment could be released from customs' custody, agents of the Customs Intelligence and Investigation Service (CIIS) received instruction to proceed to Pier 9 to verify the alleged derogatory information that there was a huge discrepancy between the actual value of the subject shipment and the declared customs value as appearing on the import entry.[10]

On May 11, 2006, the officer-on-case issued a memorandum to the CIIS Director stating that: "perusal of the entry reveals that the shipment was declared as 2,406 bundles round bars with the rate of 1%; however, it turns out that shipment were consist (sic) of rebars and carries a rate of 7%. Likewise, it was noted that the value utilized was only $0.26/kg, but should be $0.48/kg."[11]

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[6] *Id.*, p. 8.
[7] As found by the First Division and as culled from the records of the case.
[8] *Docket*, CTA Case No. 7819, pp. 199 to 206, 199, Joint Stipulation of Facts and Issues (JFSI), par. 1.
[9] *Id.*, pp. 199 to 206, 199 to 200, JFSI, par. 2.
[10] *Id.*, par. 3.
[11] *Id.*, par. 4.

Accordingly, the Director of the CIIS recommended the issuance of a Warrant of Seizure and Detention (WSD) against the entire shipment for alleged violation of Section 2503 of the TCCP in relation to Section 2503 thereof.[12]

On May 12, 2006, the District Collector, Port of Manila issued a WSD against the entire shipment, docketed as Seizure Identification No. 2006-747, with a directive to seize the articles.[13]

On May 24, 2006, Jeffrey N. Co filed a motion for intervention through his counsel, Atty. Armando S. Padilla. Movant averred that he is the owner of 1,000 tons of steel shipment subject of the aforesaid seizure proceedings as allegedly evidenced by a memorandum of agreement to sell executed by and between Kingson and the same movant.[14]

On May 24, 2006, said movant manifested that seven hundred (700) bundles of the seized steel bars had already been delivered to his warehouse; hence, the same should be excluded from the coverage of the WSD order.[15]

On June 14, 2006, Kingson filed a motion to quash/recall the WSD averring that there is no probable cause for its issuance. Kingson cited the alleged failure of the officer-on-case to state the tariff classification of subject shipment and the failure to cite the specific subsection of Section 2530 of the TCCP allegedly violated. Further, Kingson advanced that if there were a misclassification, the same does not merit seizure of the shipment and that misclassification is not included in the violations cited under Section 2503 of the TCCP.[16]

During the hearing on the seizure case, the government prosecutor requested for a chemical analysis of the seized articles to be conducted by the MIRDC and that the results thereof be submitted to the Tariff Commission for proper classification of the seized articles.[17]

On July 20, 2006, District Collector Horacio P. Suansing, Jr. sent a letter to Dr. Agustin M. Fudolig, Chief, Analysis and Testing Division of the MIRDC, requesting assistance on the product testing and analysis for the purpose of determining the chemical composition of the aforesaid seized metal products as well as the proper tariff classification and rate of duty.[18]

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[12] *Id.*, par. 5.
[13] *Id.*, par. 6.
[14] *Id.*, pp. 199 to 206, 200 to 201, JFSI, par. 7.
[15] *Id.*, par. 8.
[16] *Id.*, par. 9.
[17] *Id.*, par. 10.
[18] *Id.*, pp. 199 to 206, 201 to 202, JFSI, par. 11.

On August 1, 2006, the Office of the District Collector received a letter dated July 28, 2006, allegedly coming from the Officer-in-Charge (OIC) of the MIRDC purportedly containing the chemical analysis report on the samples taken from the seized articles. However, Dr. Rio Pagtalunan, OIC of the MIRDC wrote a letter to the BOC stating that the certificate of chemical analysis on subject metal product which was attached in the aforesaid letter dated July 28, 2006 are not authentic and were not issued by the MIRDC.[19]

On February 12, 2007, Chairman Edgardo Abon of the Tariff Commission requested for samples of the seized articles aside from the chemical analysis report furnished them.[20]

During the hearing on February 13, 2007 on the seizure case, the government prosecutor manifested in open court that he had informal discussion with Kingson's counsel who signified that he will not object to the result of the chemical analysis submitted by the MIRDC. Kingson confirmed the manifestation of the government prosecutor and manifested that the previous chemical analysis and the subsequent report furnished by the MIRDC were not requested by Kingson.[21]

In the course of the trial, the government prosecutor manifested that they sought the assistance of the Philippine Embassy in Beijing and that on November 29, 2006, the Philippine Embassy in Beijing wrote China's General Administration of Customs, International Cooperation Department in Beijing Note Verbale No. S-36-0 to obtain certified true copies of the counterpart export documents used by the Chinese exporter.[22]

On December 13, 2006, the General Administration of Customs, the People's Republic of China sent a response letter to the Philippine Embassy's request for investigative assistance relative to the aforesaid shipment of metal product coming from China.[23]

Meanwhile, on April 19, 2007, Atty. Nick Earle L. Hortillas, Chief Law Division of the BOC, received a letter dated April 18, 2007 from Acting Commissioner Marilou P. Mendoza of the Tariff Commission informing him that subject articles are classified in subheading 7213.10.10 (if in coils) or under subheading 7214.20.00 (if not in coils), both subheadings are with MFN rate of duty of 7% ad valorem and CEPT rate of duty of 3% ad valorem.[24]

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[19] *Id.,* par. 12.
[20] *Id.,* par. 13.
[21] *Id.,* par. 14.
[22] *Id.,* pp. 199 to 206, 202 to 203, JFSI, par. 15
[23] *Id.,* par. 16.
[24] *Id.,* par. 17.

Thus, on October 10, 2007, respondent District Collector issued his assailed Order, the dispositive portion of which reads:

> "WHEREFORE, in view of the foregoing, it is hereby ordered and decreed the 2,406 pieces of steel products be FORFEITED in favor of the government to be disposed in the manner provided for by law.
>
> Let copies of this Decision be furnished all parties and offices concerned for their information and guidance.
>
> SO ORDERED."[25]

On October 24, 2007, Kingson appealed the aforesaid Decision dated October 10, 2007 to respondent COC.[26] Two (2) days later, or on October 26, 2007, the government prosecutor filed a motion to correct typographical error in the Decision dated October 10, 2007 of the District Collector, Port of Manila to amend the decision to read, "2,406 Bundles of Steel Products" instead of "2,406 pieces of steel products."[27]

On November 21, 2007, the Legal Service of the BOC issued an order requiring Kingson to file comment on the motion to correct typographical error. On February 18, 2008, Kingson filed its comment interposing no objection to the said motion.[28]

Thereafter, respondent COC issued his assailed Decision, the dispositive portion of which reads:

> "WHEREFORE , premises considered, by virtue of the authority vested in me by law, it is hereby ordered and decreed that the subject importations be FORFEITED in favor of the government for violation of Section 2530 paragraph (f) and (1-3,4,5) of the Tariff and Customs Code of the Philippines, as amended to be disposed of in the manner provided by existing customs laws, rules and regulations pertinent thereto.
>
> Let copies of this Order be furnished all parties and offices concerned for their information and guidance.

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[25] *Id.*, par. 18.
[26] *Id.*, par. 19.
[27] *Id.*, pp. 199 to 206, 203 to 204, JFSI, par. 20.
[28] *Id.*, par. 21.

SO ORDERED."[29]

On August 7, 2008, Kingson filed its Petition for Review[30] before the Court in Division, docketed as CTA Case No. 7819 (civil case) which was later consolidated with the criminal case filed against the responsible officers of the corporation, docketed as CTA Crim. Case No. O-133 (criminal case). Respondents filed their Answer[31] on October 6, 2008.

Kingson then filed a Motion to Release Imported Articles or Goods Under Bond[32] on October 10, 2008, while respondents filed their Opposition[33] on November 3, 2008. Kingson filed its Comment or Rejoinder to Opposition[34] thereto.

In the Resolution[35] dated February 6, 2009, this Court denied the subject motion for lack of merit.

The pre-trial conference was held on December 4, 2008, and on February 2, 2009, the parties filed their Joint Stipulation of Facts and Issues (JFSI).[36] This was approved by the Court in Division in the Resolution[37] dated February 9, 2009, and pre-trial was deemed terminated.

On February 23, 2009, Kingson filed its Motion for Reconsideration and for Correction[38] to which respondents filed their Comment[39] on March 9, 2009. In the Resolution[40] dated April 20, 2009, the Court in Division denied Kingson's Motion for Reconsideration for lack of merit, but granted the Motion for Correction.

Trial ensued thereafter and Kingson presented three (3) witnesses, namely: 1) Roger M. Permejo, 2) Louella D. Quevedo, and 3) Rogelio Caamic.

On September 14, 2009, Kingson filed its Formal Offer of Evidence,[41] to which respondents filed their Comment (On Petitioner's Formal Offer of

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[29] *Id.*, par. 22.
[30] *Id.*, pp. 1 to 23.
[31] *Id.*, pp. 70 to 97.
[32] *Id.*, pp. 119 to 125.
[33] *Id.*, pp. 173 to 180.
[34] *Id.*, pp. 183 to 188.
[35] *Id.*, pp. 232 to 235.
[36] *Id.*, pp. 199 to 206.
[37] *Id.*, p. 238.
[38] *Id.*, pp. 239 to 248.
[39] *Id.*, pp. 254 to 259.
[40] *Id.*, pp. 261 to 262.
[41] *Id.*, pp. 294 to 299.

Evidence)[42] on October 26, 2009. In a Resolution[43] dated November 16, 2009, the Court in Division resolved to admit Exhibits "A" to "F-1," "J" to "N," and "P."

Kingson filed a Motion for Reconsideration and To Admit[44] on December 1, 2009, which was granted by the Court in Division in a Resolution[45] dated December 9, 2009.

On May 31, 2010, the criminal and the civil cases were consolidated by virtue of Section 11 of Rule 9 of the Revised Rules of the Court of Tax Appeals (A.M. No. 05-11-07-CTA).[46]

On August 15, 2012, respondents in the civil case filed a Manifestation and Motion[47] which was noted by the Court in Division in the Resolution[48] dated August 31, 2012. In the said pleading, the Office of the Solicitor General stated that they will be adopting all the documentary evidence that the prosecution will offer in the criminal case.

To establish the culpability of all the accused in the criminal case, the prosecution presented thirteen (13) witnesses, namely: Marissa V. Curay, Welsie P. Lopez, Camilo Jolejole, Sambitore Lucman II, Edgar Alpano, Teodoro Sagaral, Bernardo Evangelista, William Ranaga, Roberto Malinao Cola, Assistant Secretary Jaime Victor B. Ledda, Wellington Yang Tong, Atty. Jenny Puno Diokno, and Rio S. Pagtalunan.

Upon completion of the oral testimonies of the foregoing witnesses, the prosecution in the criminal case filed its Formal Offer of Evidence[49] on August 31, 2012, proffering Exhibits "A" to "HHHHH". Meanwhile, the respondents in the civil case filed their Formal Offer of Evidence[50] through registered mail on August 31, 2012, a copy of which was received by the Court in Division on September 5, 2012.

In the Resolution[51] dated November 21, 2012, the Court in Division admitted Prosecution Exhibits "A" to "E3", "G" to "J", "N" to "V", "BBB" to "BBB-2", "EEE", "EEE-1", "EEE-3", "EEE-9", "FFF-1", "FFF-2", "FFF-2-a", "GGG", "GGG-1", "HHH", "HHH-1", "III-1", "KKK", "LLL", "MMM",

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[42] *Id.*, pp. 355 to 360.
[43] *Id.*, pp. 362 to 363.
[44] *Id.*, pp. 367 to 370.
[45] *Id.*, p. 379.
[46] *Id.*, Vol. II, pp. 628 to 629.
[47] *Id.*, Vol. IV, pp. 2327 to 2332.
[48] *Id.*, p. 2334.
[49] *Id.*, pp. 2335 to 2423.
[50] *Id.*, Vol. V, pp. 2827 to 2868.
[51] Criminal Docket, Vol. VI, pp. 3327 to 3337.

"NNN", "OOO" to "OOO-3-a", "PPP" to "SSS-8", "TTT-1" to "TTT-12", "TTT-15", "TTT-16", "TTT-18" to "TTT-20", "TTT-22" to "TTT-25", "TTT-27" to "TTT-42", "TTT-44", "UUU" to "UUU-4", "UUU-7" to "UUU-9", "VVV" to "VVV-2-b " "WWW" to "ZZZ-2", "AAAA" to "GGGG", "HHHH-1", "HHHH-2", "JJJJ" to "LLLL-2", "NNNN" to "NNNN-11", "NNNN-13" to "NNNN-36", "OOOO" to "RRRR-1", "TTTT" to "TTTT-2", " XXXX" to "ZZZZ", "AAAAA" to "CCCCC-3" and "EEEE E."[52]

On November 22, 2012, respondents in the civil case filed a Manifestation and Motion[53] praying that the exhibits formally offered by respondents in the criminal case be admitted.

Meanwhile, all the six (6) above-named accused filed a Motion for Leave of Court to File Demurrer to Evidence[54] on November 28, 2012, to which the prosecution filed its Opposition to File Demurrer to Evidence[55] on December 11, 2012. In the Resolution[56] dated December 12, 2012, the Court in Division granted the said motion.

The accused in the criminal case filed their Demurrer to Evidence (With Leave of Court)[57] on December 27, 2012, to which the prosecution filed its Opposition/Comments (To the Demurrer to Evidence)[58] on February 21, 2013. Thereafter, accused filed their Reply to Opposition/Comments[59] on April 1, 2013, and accused's "Demurrer to Evidence (With Leave of Court)" was submitted for decision on May 17, 2013.[60] However, in the Resolution[61] dated August 14, 2013, the Court in Division denied the Demurrer to Evidence for lack of merit.

On September 18, 2013, the accused filed their Motion for Reconsideration.[62] The prosecution filed its Comment/Opposition to Motion for Reconsideration[63] on October 16, 2013, as well as a Supplement to

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[52] Respondents' Exhibits "1" to "5-c", "7" to "10", "14" to "22", "54" to "54-b", "57", "57-a", "57-c", "57-i", "58-a", "58-b", "58-b-1", "59", "59-a", "60", "60-a", "61-a", "63", "64", "65", "66", "67" to "67-c-1", "68" to 71-h", "72-a" to "71-1", "72-o", "72-p", "72-r" to "72-t", "72-v" to "72-y", "72-aa" to "72-pp-1", "72-rr", "73" to "73-d", "73-g" to "73-i", "74" to "74-b-2", "75" to "78-b", "79" to "85", "86-a", "86-b", "88" to "90-b", "92" to "92-k", "92-m" to "92-jj", "93" to "96-a", "98" to "98-b", "101" to "103", "104" to "106-c" and "108".
[53] Criminal Docket, Vol. VI, pp. 3338 to 3346.
[54] *Id.,* pp. 3347 to 3353.
[55] *Id.,* pp. 3356 to 3357.
[56] *Id.,* p. 3355.
[57] *Id.,* pp. 3358 to 3369.
[58] *Id.,* pp. 3422 to 3453.
[59] *Id.,* pp. 3464 to 3472.
[60] *Id.,* p. 3479.
[61] *Id.,* pp. 3482 to 3503.
[62] *Id.,* pp. 3504 to 3512.
[63] *Id.,* pp. 3521 to 3523.

Comments/Opposition to Motion for Reconsideration (dated September 16, 2013)[64] filed on October 17, 2013. Thereafter, accused filed their Reply to Comments/Opposition and to Supplement to Comments/Opposition[65] on November 4, 2013, while the prosecution filed its Rejoinder to Reply[66] on November 15, 2013.

In the Resolution[67] dated January 24, 2014, the Court in Division denied the Motion for Reconsideration filed by the accused for lack of merit.

Pursuant to the Resolution[68] dated January 29, 2014, counsel for the accused and Kingson filed a Joint Manifestation/Compliance[69] on February 10, 2014, stating that: 1) Kingson will present rebuttal evidence and would also adopt the evidence to be presented by the defense; 2) the defense is adopting the testimonies of Rogelio Caamic, who testified on August 24, 2009, and Roger Permejo, who testified on April 27, 2009 and May 25, 2009; and 3) the documentary exhibits identified by Rogelio Caamic and Roger Permejo are likewise adopted.

On February 26, 2014, defense counsel presented Roger Permejo, whose testimonies on April 27, 2009 and May 25, 2009 were adopted *in toto* as his direct testimony for the defense.[70]

On March 17, 2014, Kingson filed a Motion to Admit (Attached Motion to Adopt)[71] with attached Motion to Adopt[72] in the civil case. Respondents then filed their Comment[73] thereto on April 22, 2014. In the Resolution[74] dated May 30, 2014, petitioner's Motion to Adopt was granted, and was allowed to formally offer additional evidence in chief at a time coinciding with the filing of the Formal Offer of Evidence of all the accused in the criminal case.

To counter the prosecution's evidence, accused presented two (2) additional witnesses, namely: 1) Roger Caamic; and 2) Alicia O. Fernandez.

Kingson filed its Formal Offer (of Rebuttal Evidence)[75] on April 24, 2015 as well as an Amended Formal Offer (of Additional Evidence in Chief)[76] on May

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[64] *Id.*, pp. 3525 to 3532.
[65] *Id.*, pp. 3542 to 3548.
[66] *Id.*, pp. 3557 to 3559.
[67] *Id.*, pp. 3575 to 3576.
[68] *Id.*, pp. 3583 to 3584.
[69] *Id.*, pp. 3585 to 3587.
[70] *Id.*, pp. 3616 to 3617.
[71] *Id.*, pp. 3624 to 3627.
[72] *Id.*, pp. 3628 to 3632.
[73] *Id.*, pp. 3652 to 3658.
[74] *Id.*, pp. 3676 to 3678.
[75] *Id.*, pp. 3834 to 3839.
[76] *Id.*, pp. 3872 to 3878.

25, 2015 in the civil case.

For its part, accused filed their Motion to Admit Formal Offer of Exhibits/Evidence with Request for Re-Marking/Marking,[77] with attached Formal Offer of Evidence/Exhibits with Request for Re-Marking/Marking[78] on June 15, 2015.

Respondents in the civil case filed their Comment[79] on June 15, 2015, while the prosecution in the criminal case filed their Comment/Opposition (Re: Accused Formal Offer of Rebuttal Evidence dated April 20, 2015)[80] on November 5, 2015.

In the Resolution dated June 10, 2016,[81] the Court in Division admitted Exhibits "Q", "R", "S", "T", "U", "U-1", "V", "V-1", "V-2", "W", "X", "Y", "Z", "Z-1", "AA" and "BB", for Kingson in the civil case.

Kingson filed its Memorandum[82] on August 25, 2016, while respondents posted their "Memorandum"[83] on August 22, 2016 in the civil case. The consolidated cases were submitted for decision on October 26, 2016.[84]

On September 20, 2017, the Court in Division issued the assailed Decision[85].

Kingson filed its Motion for Reconsideration on October 5, 2017, assailing the portion of the assailed Decision ordering the forfeiture the subject shipment of 1,436 bundles of 10MM x 6M and 970 bundles of 12MM x 6M, or a total of 2,406 bundles of steel products subject of the consolidated criminal and civil cases, which the Court in Division denied in a Resolution dated February 19, 2018.[86]

Within the extended period granted by the Court *en banc*,[87] on March 16, 2018, Kingson timely posted its Petition for Review which was docketed as CTA EB No. 1800.[88]

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[77] *Id.*, pp. 3892 to 3895.
[78] *Id.*, pp. 3896 to 3907.
[79] *Id.*, pp. 4012 to 4015.
[80] *Id.*, pp. 4072 to 4077.
[81] *Id.*, pp. 4098 to 4100.
[82] *Id.*, Vol. VII, pp. 4129 to 4148.
[83] *Id.*, pp. 4149 to 4168.
[84] *Id.*, pp. 4215 to 4216.
[85] *Id.* at Note 2.
[86] *Id.* at Note 3.
[87] *Id.* at Note 1, p. 5.
[88] *Id.*

In a Resolution dated April 10, 2018,[89] respondents were ordered to file their Comment to the Petition.

After being granted an extended period within which to file their Comment[90], respondents timely posted their Comment on May 31, 2018, which the Court received on June 8, 2018.[91]

On July 12, 2018, the Court *en banc* issued a Resolution[92] giving due course to the Petition for Review and submitting the case for decision.

The Assignments of Errors

In its Petition for Review, petitioner assigns the following errors to the Court in Division's assailed Decision and Resolution:

1) In ruling that the subject shipment was imported into the country through the use of false and spurious documents; and

2) In ruling that the subject shipment of 2,406 bundles of steel products was misdeclared as to its value and tariff classification.

The Arguments of the Parties

Kingson argues that it declared and entered in the Import Entry its cargo on the basis of the authentic commercial invoice and other commercial documents provided by its foreign supplier/exporter/shipper, Tianjin Mai Jia Hua Trade Co Ltd.[93] (foreign supplier). The data and information contained in these commercial and shipping documents, particularly its declared customs value, was merely copied and restated in the Import Entry. These documents were found to be authentic by the Customs Operation Officer III (COO3) who was charged to examine and appraise the imported shipment pursuant to Section 1403 of the TCCP, as amended, and his determination must be upheld. Also, since Kingson had no hand in the preparation and making of the commercial and shipping documents, it had no knowledge that the documents appended to its import entry were spurious or falsified as the commercial and shipping documents came directly from its foreign supplier.

As regards the misdeclaration of the value and tariff classification of the

[89] *Id.*, pp. 98-99.
[90] *Id.*, p. 104.
[91] *Id.*, pp. 105-126.
[92] *Id.*, pp. 128-129.
[93] Exhibit " C".

shipment of 2,406 bundles of steel products, Kingson argues that the finding of COO3 Rogelio Caamic is binding on the government.

According to Kingson, it did not falsely misrepresent the correct, true and lawful transaction value of the shipment of Steel Products at US$692,254.00 or US$230.00/metric ton as adjusted upwards or upgraded to US$782,548.00 or US$260.00/metric ton by the COO3 tasked to examine, appraise and assess the dutiable value for customs purposes and compute duties and taxes legally due the government from this importation.[94]

The invoice value at US$230.00/metric ton or the total amount of US$692,254.00 indicated in Invoice No. 00007020 dated April 24, 2006 issued by the foreign supplier is the correct and lawful transaction value. The value claimed by respondents in the amount of US$1,281,271.86 or US$425.70/metric ton as the alleged true customs value is only a reference value. As such, it cannot be a substitute for the transaction value, for the following reasons:

a) It is based on alleged counterpart export documents[95] with Solid Sea Products with address at Rm. 5 2/F Blk. A Hong Way Garden 8 New Market Street, Wan, Hongkong, as importer, a company or firm different from petitioner Kingson International Trading Corp.

b) The Purchase Order or Sales Contract Order of Kingson from the foreign supplier is clearly indicated in the covering Sales Contract was 06JY/2-102 while that of Solid Sea Products carried or showed a distinct and different No. 06JY/2-042.[96]

c) The reference value at US$425.70/metric ton based on the alleged counterpart export documents, as claimed by respondents, is a departure from the value at US$480.00/metric ton utilized by RATS and witness Marissa Curay in the determination of the difference in customs duties and taxes, which was made the basis for the seizure and forfeiture of the subject shipment of Steel Products. In any case, this reference value at US$480.00/metric ton cannot legally be utilized in the appraisal and assessment of the dutiable value for customs purposes as the same was for "personal consumption" purposes only.[97]

d) The reference values shown by respondents at US$425.70 metric

[94] Exhibits "N" and " P".
[95] Exhibits "VVV-2", "XXX-4", "YYY-2", and " ZZZ-4".
[96] Exhibit "YYV-2".
[97] TSN dated April 19, 2010, pp. 12, 21 to 22, 25, 36 to 37, and 53.

ton and/or US$480.00/metric ton cannot be used as substitute value for customs valuation purposes. Section III-A of CAO 4-2004 provides as follows:

a. A-reference value as risk management tool - "published or established value, or any other value reference from whatever source, cannot be used as substitute value for customs valuation"[98]

e) The transaction value of the subject importation of Steel Products of petitioner is evidenced or shown in the commercial invoice No. 00007020 dated April 24, 2006. Therefore, there was no intentional undervaluation in Violation of Section 3602 in relation to Section 2503 of the TCCP, as amended.

Kingson likewise contends that the description of the imported steel products in this case appearing in its import entry and all other shipping documents indubitably showed "Steel Products" (SCM 440 Round Bar).[99] Respondents' exhibits[100] showed the same description, "Steel Products," but with sizes 10mmx6m and 12mmx6m. These respondents' exhibits were the claimed counterpart export documents covering petitioner's shipment which it disputed for the following reasons:

a) The counterpart export documents do not describe the Steel Products as "deformed bar" or "concrete reinforcing bar" or "re-bars" as claimed by respondents.

b) Kingson's documents and the respondents' counterpart export documents both showed or carried same general description "Steel Products" only.

On the other hand, respondents contend that, under paragraph l(3)and (4), Section 2530 of the TCCP, as amended, any article or item, the importation of which is effected on the strength of false declaration or false invoice or other documents executed by the owner or importer shall be forfeited in favor of the Government. They argue that the word "shall" connotes the mandatory forfeiture of the item or article the importation of which is effected in violation of the said provision of law.

Kingson intentionally misdeclared the classification of the subject shipment, through its authorized customs broker, as falling under Tariff

[98] Exhibit "L".
[99] Exhibits "A", "B", "C", "D", and "E".
[100] Exhibits "VVV-2", "XXX-2", "YYY-2", and "ZZZ-4".

Classification at heading No. 7228.60 at 1% rate of duty because the actual classification of the same shipment based on the chemical analysis of the same steel product shows that it falls under TH 7214.2000 at 7% rate of duty. The findings of the Tariff Commission relative to the proper classification of the same shipment remains unrebutted by Kingson.

Furthermore, respondents contend that a comparison between the invoice and commercial documents submitted by Kingson to the BOC in support of the Import Entry Declaration for subject shipment and the counterpart export documents provided by the General Administration of Customs of the People's Republic of China, as certified by the Philippine Embassy in Beijing, China show significant differences. Kingson likewise failed to present any evidence to belie the counterpart export commercial documents provided by China relating to the said importation.

Since the importation of subject shipment was clearly effected on the strength of false declaration and fake commercial documents to justify its intentional undervaluation and misdeclaration for the purpose of evading the payment of correct duties and taxes, the Court in Division did not err in upholding the Decision of the Commissioner of Customs forfeiting subject shipment for violation of Sections 2503 and 2530 of the TCCP, as amended.

The Ruling of the Court

We deny the Petition for lack of compelling ground to merit the reversal of the assailed Decision and Resolution.

After a careful examination and consideration of Kingson's Petition for Review; this Court notes that the arguments raised therein are mere reiterations of matters which have already been considered, weighed and resolved in the assailed Decision and Resolution. Nonetheless, the Court *en banc* shall discuss several matters that deserve emphasis.

The Entry of the Importation was Made on the Basis of False Declarations and Fake Commercial Documents to Justify its Intentional Undervaluation and Misdeclaration

Kingson's claim that there was no undervaluation and misdeclaration of the forfeited 2,406 bundles of steel products because it merely entered and declared the value of the subject shipment based on the value as reflected in the commercial invoice supplied by the foreign supplier conformably with Section 201 of the TCCP does not hold water.

Section 2530, paragraph 1 (3 and 4) of the TCCP, as amended provides:

> "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 subject to forfeiture. . .
>
> x x x x x x x x x
>
> 1. Any article sought to be imported or exported:
>
> (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
>
> x x x x x x x x x" *(Emphasis supplied)*

Under paragraph 1(3)and (4), Section 2530 of the TCCP, as amended, any article or item, the importation of which is effected on the strength of false declaration or false invoice or other documents executed by the owner, importer, exporter or consignee shall be forfeited in favor of the Government.

The exhibits presented by the prosecution which were adopted by respondents as their own exhibits during the trial in the Court in Division were thoroughly reviewed by the Court *en banc.* To this day, they remain unrebutted by Kingson.

Among the exhibits adopted by respondents were counterpart export documents from the General Administration of Customs of the People's Republic of China, which were secured by the BOC, through the assistance of the Philippine Embassy in Beijing, China, namely: (a) Invoice;[101] (b) Customs Clearance Bill;[102] (c) Packing List;[103] and (d) Sales Contract.[104]

Close scrutiny of the invoice and commercial documents submitted by Kingson to the BOC in support of the Import Entry Declaration for subject shipment and the counterpart export documents provided by the General Administration of Customs of the People's Republic of China, as certified by the Philippine Embassy in Beijing, China, shows the following:[105]

Description	**Import Entry & Internal Revenue Declaration and attached documents filed with the Bureau of Customs**	**Counterpart Export Documents provided by the General Administration of Customs of the People's Republic of China as certified by the Philippine Embassy in Beijing, China**
Bill of Lading No.	**B/L No. ST001** [Import Entry and Bill of Lading]	**ST001** [Customs Clearance Bill]
Name of Vessel	**RICH OCEAN** [Import Entry and Bill of LadinQ]	**RICH OCEAN** [Customs Clearance Bill]
Shipper's Name	**Tianjin Mei Hua Trade Co., Ltd.** [Import Entry, Packing List, and Bill of Lading]	**Tianjin Mei Hua Trade Co., Ltd.** [Sales Contract, Invoice, Packing List and Customs Clearance Bill]
Consignee	**Kingson International Trading Corporation** [Import Entry, Invoice, Packing List, Sales Contract, and Bill of Lading]	**Solid Sea Products H.K.** [Sales Contract, Invoice, and Packing List]
Transport Details	**From Xingang, China to Manila, Philippines** [Import Entry, Packing List, and Bill of Lading]	**From Xingang, China to Manila, Philippines** [Sales Contract, Invoice, Packing List and Customs Clearance Bill]
Total Weight of Cargo	**3,009,800 kilograms** [Import Entry, Packing List, and Bill of Lading]	**3,009,800 kilograms** [Sales Contract, Invoice, Packing List and Customs Clearance Bill]
Description of the Imported Shipment	**2,406 Bundles of STEEL PRODUCTS (SCM 440 ROUND BAR)** [Import Entry, Invoice, Packing List and Bill of Lading]	**1,436 bundles of 10MM x 6M and 970 bundles of 12MM x SM, or a total of 2,406 bundles.** [Packing List]

[101] Exhibits "YYY" to "YYY-2".
[102] Exhibits "AAAA" to "AAAA-2".
[103] Exhibits "ZZZ" and "ZZZ-2".
[104] Exhibits "XXX" to "XXX-2".
[105] *Id.* at Note 8, pp. 16-17, Resolution promulgated on August 14, 2013.

Value of Shipment	**US$692,254.00** [Import Entry, Invoice, and Sales Contract]	**US$1,281,271.86** [Sales Contract, Invoice, Customs Clearance Bill]

We agree and concur with the observations made by the Court in Division in perusing both sets of documents, that:

> 1. The counterpart export documents provided by the Chinese Government and the commercial documents submitted by Kingson in support of the Import Entry it filed relating to the said shipment reveals that they refer to the same shipment of 2,406 bundles of steel products;
>
> 2. The export documents provided by the Government of China, the country of origin of subject shipment confirmed that bundles steel products were shipped on board the vessel "Rich Ocean" under Bill of Lading No. ST001 from Xingang, China to South Harbor, Manila under Sales Contract dated April 5, 2006 from Tianjin Mel Jia Hua Trade Company, Ltd.;
>
> 3. The Bill of Lading Number tallies with what Kingson declared in its import declaration. The total weight of the shipment as confirmed by China is 3,009.80 metric tons, which matches with the import declaration and import documents of Kingson; and
>
> 4. While the packing list, contract and invoice provided by China showed the description of the shipment as "Steel Products 10MMx6M and 12MMx6M," this description was altered and changed to "SCM 440 Round Bars" by Kingson in the Import Entry precisely to secure a lower rate of duty of 1% instead of 7%.[106]

It appears that the total selling price or consideration of the shipment as appearing in the packing list, contract and invoice provided by China was purposely altered from US$ 1,281,271.86 to US$ 692,254.00 to reduce the amount of duty that Kingson should have paid for subject shipment. As previously observed, no evidence has been adduced by Kingson to explain this alteration on the documents provided by the foreign supplier.

Indubitably, the importation of subject shipment was effected on the strength of false declaration and fake commercial documents in gross violation of Section 2530, paragraph l (3 and 4) of the TCCP, as amended. The intention

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[106] Exhibit "88", supra.

to undervalue and misdeclare the subject shipment on the basis of these false or fictitious documents is as plain as day.

We agree with the Court in Division's disquisition on the probative value given to these two sets of documents, thus:[107]

> "When confronted by two sets of documents, more credence is given to that acquired from official sources, and duly authenticated by the respective authorities from both the foreign and local government.
>
> In contrast to the documents presented by the prosecution, the accused failed to present any evidence to prove the authenticity of the documents appended to the Import Entry, aside from their bare assertions that these documents came from their foreign supplier. If it were true, that the documents they filed before the BOC were authentic, and came directly from Tianjin Mei Hua Trade Co., Ltd, accused should have secured a certification from the said supplier, attesting that it made a mistake in the initial documents sent to Kingson. This is especially true, considering that accused Alicia O. Fernandez herself testified that they have already had previous transactions with Tianjin Mei Hua Trade Co., Ltd.[108]
>
> The failure of accused to rebut the official and authenticated documents presented by the prosecution belies their claim of good faith in their reliance on the documents allegedly sent by their foreign supplier. They should have presented evidence to support their claim.[109]
>
> In addition, this Court notes that in the Memorandum of Agreement to Sell dated April 7, 2006,[110] as well as the receipt dated May 9, 2006,[111] the Agreement does ***not*** involve "Steel Products (SCM 440 Round Bar)." Instead, the coverage of the said Memorandum are: *"(a) 700.00 Metric Tons or 200,000 pieces, more or less of Grade 230 (Structural Grade) 10mm/3.5 kilos more or less at Php91.66/piece; and (b) 300.00 Metric Tons or 60,000 pieces, more or less of Grade 230 (Structural Grade) 12mm/5.0 kilos more or less at Php132.13/piece."*[112] This further bolsters the fact that the subject

[107] *Id.* at Note 1, p. 77.
[108] Exhibit "30" for the accused, Exhibit "AA" for the petitioner, Criminal Docket, Vol. VI, pp. 3732 to 3739, p. 3734.
[109] *Angel O. Rodriguez vs. Court of Appeals*, G.R. No. 115218, September 18, 1995.
[110] Exhibits "OOO" to "OOO-1-a."
[111] Exhibit "OOO-2" to "OOO-2-a."
[112] Exhibit "OOO" and "OOO-2".

> shipment definitely involves the importation of 10mmx6m and 12mmx6m bars, contrary to the claim of the accused that the shipment was supposed to contain SCM 440 Round Bars.
>
> Undoubtedly, there is a clear case of willful misdeclaration, misclassification and undervaluation of the subject shipment of steel bars on the part of the accused."

As such, the Court in Division's finding on this matter must be upheld.

Forfeiture of the Shipment Consisting of 2,406 Bundles of Steel Products is Warranted Due to Misdeclaration as to its Value and Tariff Classification

Section 2503 of the TCCP, as amended, categorically provides that any misdeclared or underdeclared imported articles/items found upon examination shall *ipso facto* be forfeited in favor of the Government.

> "**Section 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 articles/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." *(Emphasis supplied)*

Moreover, as discussed earlier, under Section 2530 of the TCCP, any article sought to be imported on the strength of a false declaration or invoice concerning the importation of such article is subject to forfeiture.

We find no error in the factual findings of the Court in Division that the shipment consisting of "2,406 steel products" was intentionally undervalued and misdeclared to evade payment of the correct duties and taxes, to wit:[113]

> "Corollary thereto, Section 2503 provides 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 the TCCP. Moreover, any misdeclared or undeclared imported articles/items found upon examination shall *ipso facto* be forfeited in favor of the Government to be disposed of pursuant to the provisions of the TCCP.
>
> In this case, the prosecution has sufficiently established that there was **an undervaluation in the amount declared in the Import Entry (US$692,254.00) by more than 30% of the actual value based on the amount stated in the counterpart documents (US$1,281,271.86)** presented by the prosecution. This, in turn, constitutes *prima facie* evidence of fraud penalized under Section 2503 of the TCCP." *(Emphasis supplied)*

It is apparent that Kingson intentionally misdeclared the classification of the subject shipment, through its authorized customs broker, as falling under Tariff Classification at heading No. 7228.60 at 1% rate of duty. A chemical analysis of the same steel product by the Tariff Commission, the samples of which were taken in the presence of both parties, shows that the actual classification of the same shipment falls under TH 7214.2000 at 7% rate of duty.

This is evident in the letter of Marilou P. Mendoza, Acting Commissioner of the Tariff Commission, dated April 18, 2007,[114] wherein she opined that subject articles are classified in sub-heading 7213.10.10 (if in coils) or under sub-

[113] *Id.* at Note 1, p. 78.
[114] Exhibit "88".

heading 7214.20.00 (if not in coils), and that both sub-headings are with MFN rate of duty of 7% and CEPT rate of duty of 3% *ad valorem.*

The full text of the letter, addressed to Atty. Nick Earle L. Hortillas, Chief Law Divisioin of the BOC[115], reads, as follows:

> Atty. Nick Earle L. Hortillas
> Chief Law Division
> Bureau of Customs
> Port of Manila, Customs District 11-A
> South Harbor, Manila
>
> Dear Atty. Hortillas,
>
> This refers to your letter of 25 January 2007 requesting assistance for the proper tariff classification of articles described as "REBARS" consigned to Kingston *(sic)* International.
>
> On February 12, 2007, we requested you to furnish this Commission with information on the chemical composition of subject articles plus relevant supporting documents.
>
> Based on the submitted sample and chemical analysis conducted by the Metals Industry Research and Development Center (MIRDC), subject articles are reinforcing steel bars measuring 12 mm and 10 mm in diameter with the following chemical composition.

	%C	%S	%Si	%P	%Mn	%N	%Cu	%Cr	%Mo
10mm	0.17	0.022	0.49	0.013	1.19	<0.0005	0.003	0.003	0.001
12mm	0.23	0.023	0.54	0.015	0.09	<0.0005	0.005	0.005	0.001

> Subject articles have a sold cross-section in the shape of circles with indentations. They are considered as non-alloy steel because they do not conform to the definition of "other alloy steel" in accordance to Note 1(f) of Chapter 72 of the ASEAN Harmonized Tariff Nomenclature (AHTN) Tariff and Customs Code.
>
> Heading 72.13 covers bars and rods, rolled in irregularly round coils, of iron or non-alloy steel. The HS Explanatory Notes state that this heading also includes bars and rods for concrete

[115] *Id.* at Note 24.

> reinforcement: such products that are rolled with protuberances or indentations (e.g. Teeth, grooves, flanges), provided their general cross-sectional shape corresponds to one of the geometrical shapes defined in Chapter No. 1(l). These protuberances or indentations must be designed solely to improve the bond with concrete, etc.
>
> On the other hand, heading 72.14 covers other bars and rods of iron or non-alloy steel.
>
> In view thereof, subject articles are classified in subheading 7213.10.10 (if not in coils) or under subheading 7214.20.00 (if not in coils), both subheadings are with MFN rate of duty of 7% ad valorem and CEPT rate of duty of 3% ad valorem."[116]

The record is bereft of any evidence adduced by Kingson to contravene the findings of the Tariff Commission relative to the proper classification of the same shipment.

The Court in Division, therefore, correctly upheld the Decision of the Collector of Customs, thus:

> "After due consideration of the parties' arguments vis-à-vis the tariff commission opinion, it cannot be denied that there was misclassification of the articles in question when the Claimant thru its licensed customs broker declared the said articles under TH7228.6000 at 1% rate of duty as against the actual classification of the same which should fall under TH 7214.2000 at 7% rate of duty.
>
> x x x x x x x x x
>
> It is rudimentary in law that the name of the consignee appearing in the coupon Entry and Internal Revenue Declaration should likewise reflect in the accompanying commercial documents i.e. bill of lading, packing list and commercial invoice, among others. **Nevertheless, the seized steel products stand to be forfeited in favor of the government for failure of the Claimant to discharge the burden that its importation was grossly undervalued.**
>
> In fine, this Office finds after due consideration, that the seized articles were misclassified and the declared value appears to

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[116] *Id.*

> be low which leads to a conclusion that the same was grossly undervalued inasmuch as the declared customs value at USD 0.26/kg was way below USD 0.48/kg which the apprehending office has asserted to be the correct value for the steel products.[117]"

It is a well-settled rule that factual findings of administrative agencies are generally respected and even accorded finality because of the special knowledge and expertise gained by these agencies from handling matters falling under their specialized jurisdiction.[118]

Hence, there being no reversible error committed by the Court in Division, the Court *en banc* finds no cogent reason to disturb the assailed Decision and Resolution.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The assailed Decision dated September 20, 2017 and the assailed Resolution dated February 19, 2018 are **AFFIRMED *in toto*.**

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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[117] *Id.* at Note 8, Annex G of Petition.
[118] Lim v. Commission on Audit, 399 SCRA 50 (2003).

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 this Court.

ROMAN G. DEL ROSARIO
Presiding Justice