REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

*Third Division*

**LYNARD ALLAN BIGCAS,**
*Petitioner,*

-versus-

**COMMISSIONER OF CUSTOMS, MANILA,**
*Respondent.*

**CTA Case No. 8717**

Members:
**UY,** *Chairperson,*
**RINGPIS-LIBAN,** *and*
**MODESTO-SAN PEDRO,** *JJ.*

Promulgated:

JAN 16 2020
3:20 p.m.

X-----------------------------------------------------------------------------------------------X

# DECISION

**RINGPIS-LIBAN, *J.*:**

This is a *Petition for Review* filed by Mr. Lynard Allan Bigcas against the Commissioner of Customs, praying that the *Decision* dated March 7, 2013 rendered by the latter be reversed and set aside, and a new decision be rendered dismissing Seizure S.I. No. 01-2011 in Customs Case No. 2013-001.[1] The said *Decision* dismissed Mr. Bigcas' appeal for the non-perfection thereof, and affirmed the *Decision* dated June 4, 2012 of the District Collector, Port of Cagayan de Oro, relative to the release of one (1) unit Martin Bros. motorcycle in favor of Mr. Skip Woods upon proper identification and compliance with pertinent customs laws, rules, and regulations.

## THE FACTS

On April 26, 2011, the National Bureau of Investigation (NBI) – Region X received a fax transmission from the United States Legal Attaché, seeking

[1] Statement of the Case, Pre-Trial Order dated January 30, 2015, Docket – Vol. II, p. 762.

assistance to verify the vehicles stored in the premises allegedly owned by Petitioner.[2]

The NBI – Region X conducted surveillance on the house owned by a certain Mr. Arribal in Kauswagan, Cagayan de Oro City, and the house of petitioner's parents in Talakag, Bukidnon precisely for the purpose of verifying the vehicles stored therein.[3] The conduct of the said surveillance was without coordination with the Bureau of Customs (BOC).[4]

On April 28, 2011, the NBI – Region X separately filed applications for *Search Warrant* before the respective Executive Judge of Cagayan de Oro City, and Manolo Fortich, Bukidnon, specifically to seize the alleged "unlicensed firearms" of petitioner, but nothing with respect to the vehicles subject of their surveillance.[5]

The search and seizure of the subject motor vehicles and motorcycles were conducted outside the port area of the BOC, Port of Cagayan de Oro City.[6]

Relative to the said seizure of the subject motor vehicles and motorcycles, then Commissioner of Customs (COC) Rozzano Rufino B. Biazon rendered the assailed *Decision* in Customs Case No. 2013-001 [S.I. No. 01-2011 (Port of Cagayan de Oro)],[7] pertinent portions of which read:

> "For resolution is the Notice of Appeal of claimant Lynard Allan Bigcas dated 22 June 2012 appealing the Decision dated 04 June 2012 of the District Collector, Port of Cagayan De Oro, forfeiting the above-captioned vehicles and for automatic review on the release of one (1) motorcycle to claimant Skip Woods, the dispositive portion of which, reads as follows:
>
> > '**WHEREFORE,** PREMISES CONSIDERED, and by virtue of the authority vested in this Office pursuant to Section 2312 of the Tariff and Customs Code of the Philippines, as amended, it is hereby ordered that the seven (7) motor vehicles and twenty two (22) motorcycles, including the Martin Bros. motorcycle, be

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[2] Par. 3, Facts, Pre-Trial Order dated January 30, 2015, Docket – Vol. II, p. 763.
[3] Par. 4, Facts, Pre-Trial Order dated January 30, 2015, Docket – Vol. II, p. 763.
[4] Par. 5, Facts, Pre-Trial Order dated January 30, 2015, Docket – Vol. II, p. 763.
[5] Par. 6, Facts, Pre-Trial Order dated January 30, 2015, Docket – Vol. II, p. 763.
[6] Par. 7, Facts, Pre-Trial Order dated January 30, 2015, Docket – Vol. II, p. 763.
[7] Docket – Vol. I, pp. 51 to 58.

FORFEITED in favor of the government. Further, it is ordered that the Martin Bros. motorcycle be RELEASED in favor of SKIP WOODS since in contemplation of the law, he cannot be considered as the importer of this motorcycle who failed to pay the duties and taxes thereon.

SO ORDERED.'

The antecedent facts of the case are as follows:

1. On 03 May 2011, a joint team from the Federal Bureau of Investigation (FBI) of the United States of America, National Bureau of Investigation (NBI) Cagayan de Oro City, and the Philippine National Police (PNP) raided a warehouse located in Barangay Santiago, Talakag, Bukidnon, registered in the name of Gilbert Omulon, alleged half-brother of Lynard Allan Bigcas, and a house garage rented by the latter (Allan Bigcas) in Barangay Kauswagan, Cagayan de Oro City.

2. On the said occasions, the joint team recovered from these places twenty nine (29) motor vehicles and motorcycles which appear to be imported in nature.

3. Reports of the said incident in major national newspapers and television stations prompted the District Collector, Port of Cagayan de Oro, to issue a Warrant of Seizure and Detention against these twenty nine (29) motor vehicles and motorcycles.

xxx xxx xxx

7. On 04 June 2012, the District Collector, Port of Cagayan de Oro, issued a Decision ordering the forfeiture of the above-captioned vehicles save the Martin Bros. motorcycle, which was ordered to be released to Mr. Skip Woods.

8. On 22 June 2012, claimant Bigcas filed a Notice of Appeal with the District Collector, Port of Cagayan de Oro which is hereunder quoted as follows:

'**COMES NOW**, Defendant 'LYNARD ALLAN BIGCAS, through undersigned counsel,

> and within the reglementary period prescribed by the Rules, hereby files his Notice of Appeal from the resolution promulgated by the Bureau of Customs, Collection District X, Port of Cagayan de Oro, Cagayan de Oro City on 04 June 2012, received by the defendant, through counsel last 14 June 2012, and appeal the same to the Office of the Commissioner, Bureau of Customs, Manila.
>
> RESPECTFULLY SUBMITTED.'
>
> 9. Hence this review.
>
> xxx xxx xxx
>
> **WHEREFORE**, premises considered, the instant appeal is **DISMISSED** for non-perfection thereof while the Decision of the District Collector, Port of Cagayan de Oro, dated 04 June 2012, with respect to the release of one (1) unit Martin Bros. motorcycle in favor of claimant SKIP WOODS is **AFFIRMED** upon proper identification and compliance with pertinent customs laws, rules and regulations.
>
> **SO ORDERED**."

On May 10, 2013, Petitioner filed a *Manifestation with a Prayer*,[8] attaching copies of his *Petition for Review*[9] and praying that his *Manifestation with a Prayer* be noted and admitted on record and that he be given thirty (30) days within which to submit additional annexes.

On August 12, 2013, Petitioner filed a *Manifestation of Compliance* with attached annexes.[10]

On February 7, 2014, Respondent filed his *Answer/Comment*,[11] arguing the following:

"**ARGUMENTS**

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[8] Docket – Vol. I, pp. 7 to 8.
[9] Docket – Vol. I, pp. 9 to 38.
[10] Docket – Vol. I, pp. 71 to 72.
[11] Docket – Vol. I, pp. 85 to 95.

I

**THE SUBJECT MOTOR VEHICLES AND MOTORCYCLES WERE VALIDLY SEIZED AND FORFEITED BY THE BUREAU OF CUSTOMS IN FAVOR OF THE GOVERNMENT.**

II

**THE DECISION OF THE DISTRICT COLLECTOR OF CUSTOMS BECAME FINAL AND EXECUTORY FOR FAILURE OF PETITIONER TO PROPERLY FILE A NOTICE OF APPEAL.**

## DISCUSSION

**I. The subject motor vehicles and motorcycles were validly seized and forfeited by the Bureau of Customs.**

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Petitioner claims that the forfeiture of the subject vehicles and motorcycles is only based on hearsay evidence. According to him, the issuances of ORs and CRs covering the subject vehicles and motorcycles show that the same were validly and legally acquired. Petitioner also opines that the absence of the Certificate of Payment from the Bureau of Customs in the registrations of the subject vehicles proves that the vehicles were not imported but locally acquired.

The claim is misleading.

Section 2535 of the Tariff and Customs Code of the Philippines provides:

> Section 2535. *Burden of Proof in Seizure and/or Forfeiture.* – In all proceedings taken for the seizure and/or forfeiture of any vessel, vehicle, aircraft, beast or articles under the provisions of the tariff and customs laws, the burden of proof shall lie upon the claimant: Provided, That probable cause shall be

> first shown for the institution of such proceedings and that seizure and/or forfeiture was made under the circumstances and in the manner described in the preceding sections of this Code.

At the outset, it must be stressed that the burden of proof in seizure and forfeiture cases rests upon the claimant. However, before such rule of evidence would apply, probable cause for Violation of the TCCP must be shown prior to the institution of such proceedings. As held by the Supreme Court in **Acting Commissioner of Customs vs. Court of Tax Appeals, *et al.***:

> Upon the facts of the case, the requirement of the law that the existence of probable cause should first be shown before the filing of forfeiture proceedings, had been fully met. **When Andrulis was apprehended at the MIA and was found to have in his possession the various foreign currencies, he could not produce the required Central Bank authorization allowing him to bring them out of the country. This constituted *prima facie* evidence of infringement of the provisions of CB Circular No. 534 and provided sufficient basis for the seizure of the said foreign exchange.** Probable cause having been shown, the burden of proof was upon Andrulis to establish that he fell within the purview of the exception prescribed in the second paragraph of the aforequoted Section 3 of CB Circular No. 354 in that he actually brought into the country the foreign currencies and was just taking them out. This burden, Andrulis had failed to satisfactorily discharge. The legal presumption in Section 5(j), Rule 131 of the Rules of Court and Article 541 of the Civil Code, relied upon by respondent Court, are of a general character and cannot prevail over the specific provisions of the Tariff and Customs Code.

In this case, the subject properties were seized pursuant to a joint operation conducted by the FBI, NBI and PNP based on reports that the same have been stolen from Houston, Texas. Said operation then yielded the discovery of twenty-nine (29) motor vehicles and motorcycles which are readily identifiable as sourced abroad and not manufactured locally, such as a Mitsubishi Lancer Evolution, Chevrolet Tahoe, Chevrolet Corvette, Dodge

Charger, and Toyota Seqouia, among others. During the apprehension and course of the proceedings, no import document covering said vehicles or evidence showing payment of the proper duties and taxes were presented to substantiate petitioner's denial that no illegal importation or smuggling took place concerning said vehicles.

Further, the character of the vehicles as being smuggled or contraband is bolstered by the fact that no corresponding Certificate of Payment from the Bureau of Customs appeared on the Land Transportation Office database, negating any valid importation and even documentation of the entry of said vehicles into the Philippines. Neither was there any Authority to Import from the Bureau of Import Service of the Department of Trade and Industry submitted by petitioner as required under Executive Order No. 156, Series of 2002, which generally prohibits the importation of used motor vehicles in the Philippines. Worse, none of the vehicles entered the Philippines through the Mindanao Container Terminal, Port of Ilagan, Port of Ozamis, or Port of Cagayan de Oro customs house.

Plainly, the undocumented entry of the subject vehicles into the Philippines constitutes probable cause that these vehicles were smuggled or unlawfully imported into the country. As provided under Section 3601 of the TCCP:

> Section 3601. *Unlawful Importation.* – Any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law, shall be guilty of smuggling and shall be punished with:
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> ... ... ...

In seizure and forfeiture proceedings, the Bureau of Customs is not bound to set forth the details as to how the smuggling was effected, considering that these activities are usually concealed or undetected. Thus, Section 3601 of the TCCP also provides a rule of presumption whereby persons found to be in possession of smuggled gems are presumed to be engaged in smuggling.

Consequently, in view of the unlawful importation of the subject vehicles and the utter absence of documentation to show the valid entry of said vehicles into the Philippines, the same are clearly subject to forfeiture under Section 2530 of the TCCP, which states:

> Section 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:
>
> ... ... ...
>
> 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 exportation of the former;
>
> ... ... ...
>
> l. Any article sought to be imported or exported.
>
> a. Without going through a customshouse, whether the act was consummated, frustrated or attempted;
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> ... ... ...
>
> e. Through any other practice or device contrary to law by means of which such articles was entered through a customshouse to the prejudice of the government.

Parenthetically, Petitioner's contentions that the seizure of the subject vehicles was not by virtue of customs search and that the seized vehicles are fruits of a poisonous tree are misplaced.

The search and seizure of goods, suspected to have been introduced into the county in violation of customs laws, is one of the seven doctrinally accepted exceptions to the constitutional provision. Such provision mandates that no search or seizure shall be made except by virtue of a warrant issued by a judge who has personally determined the existence of probable cause.

Under the Tariff and Customs Code, a search, seizure and arrest may be made even without a warrant for purposes of enforcing customs and tariff laws. Without mention of the need to priorly obtain a judicial warrant, the Code specifically allows police authorities to enter, pass through or search any land, enclosure, warehouse, store or building that is not a dwelling house; and also to inspect, search and examine any vessel or aircraft and any trunk, package, box or envelope or any person on board; or to stop and search and examine any vehicle, beast or person suspected of holding or conveying any dutiable or prohibited article introduced into the Philippines contrary to law.

In the case at bar, the joint operation conducted by the FBI, NBI and PNP were based on reports that the subject vehicles have been stolen from Houston, Texas. Moreover, the search was only conducted in a warehouse and rented garage which are sanctioned under Section 2208 of the TCCP:

> Section 2208. *Right of Police Officer to Enter Inclosure.* – For the more effective discharge of his official duties, any person exercising the powers herein conferred, may, at anytime enter, pass through, or search any land or inclosure or any warehouse, store or other building, not being a dwelling house.
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> A warehouse, store or other building or inclosure used for the keeping of storage of articles does not become a dwelling house within the meaning hereof merely by reason of the fact that a person employed as watchman lives in the place, nor will the fact that his family stays there with him alter the case.

**II. The decision of the District Collector of Customs became final and executory for failure of petitioner to properly file a notice of appeal.**

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Indisputably, petitioner failed to comply with the requirements for filing a notice of appeal. As pointed out by the Commissioner of Customs, the notice of appeal filed by petitioner is not accompanied with the proof of payment of appeal fee mandated under Section 3301 of the TCCP:

> Section 3301. *Customs Fees and Charges.* – For services rendered and documents issued by the Bureau of Customs, the following fees shall be charged and collected, by affixing documentary customs stamps in the correct amount upon the document or any other paper which is the subject of the charge and by the cancellation of such stamps in the manner prescribed by the Commissioner, and no such document or any other paper shall be issued or granted by any customs official until the correct amount of stamps shall have been affixed and cancelled: Provided, however, That fees of twenty pesos or over may be paid in cash.
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> ... ... ...
>
> For each appeal in protest and seizure cases 50.00
>
> ... ... ...

Pertinent thereto, Customs Administrative Order (CAO) No. 2-2001 dated May 21, 2001 upgraded the appeal/docket fee to Three Thousand Pesos (Php3,000.00) for claims over One Million Pesos (Php1,000,000.00).

Under Section 3303 of the TCCP, the notice of appeal filed by petitioner can be deemed a mere scrap of paper which cannot bind the respondent Commissioner of Customs. Thus:

> Section 3303. *Effect of Failure to Affix Stamp upon Document.* – No document or any other paper upon which no documentary customs stamps have been affixed and cancelled shall be received or recognized by any customs official.

> Appeal is not a right but a statutory privilege, thus, appeal must be made strictly in accordance with the provision set by law. The payment of docket fees within the prescribed period is not merely a technicality but a condition *sine qua non* for the perfection of an appeal. The payment of the full amount of the docket fees within the reglementary period is an indispensable step for the perfection of an appeal, absent which will result to the court not acquiring jurisdiction over the appealed case.
>
> Plainly, in this case, respondent Commissioner correctly affirmed the decision of the District Collector of Customs in view of the failure of petitioner to properly file a notice of appeal in accordance with the provisions of the TCCP."

The pre-trial conference was initially set on March 28, 2014,[12] but was eventually held on July 11, 2014[13] after resetting.[14] The *Pre-Trial Brief For Petitioner* was filed on March 19, 2014,[15] while Respondent filed his *Pre-Trial Brief* on March 24, 2014.[16] Thereafter, the *Amended Pre-Trial Brief for Petitioner (with Motion for Extension of Time to submit Judicial Affidavits)* was filed on May 13, 2014,[17] while Respondent filed his *Amended Pre-Trial Brief* on June 3, 2014.[18]

On July 28, 2014, Petitioner's counsel filed her *Reply* incorporated in her *Motion to File Reply*, stating, among others, that the Notice of Appeal was filed pursuant to Section 2313 of the Tariff and Customs Code.[19]

On September 5, 2014, Respondent filed his *Supplemental Pre-Trial Brief*.[20]

On January 30, 2015, the Court issued the Pre-Trial Order for the instant case.[21]

Trial ensued.

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[12] *Notice of Pre-Trial Conference* dated February 11, 2014, Docket – Vol. I, p. 329.

[13] Minutes of the hearing held on, and Resolution dated, July 11, 2014, Docket – Vol. II, pp. 502 to 506 and 513 to 514, respectively.

[14] Resolution dated March 28, 2014, Docket – Vol. I, pp. 365 to 366; Order dated June 2, 2014, Docket – Vol. II, p. 467.

[15] Docket – Vol. I, pp. 332 to 340.

[16] Docket – Vol. I, pp. 345 to 349.

[17] Docket – Vol. II, pp. 396 to 408.

[18] Docket – Vol. II, pp. 468 to 473.

[19] Docket – Vol. II, pp. 531 to 548; Resolution dated September 11, 2014, Docket – Vol. II, pp. 663 to 665

[20] Docket – Vol. II, pp. 653 to 659.

[21] Docket – Vol. II, pp. 762 to 772.

During trial, Petitioner presented documentary and testimonial evidence. As for its testimonial evidence, Petitioner offered the testimonies of the following individuals: (1) Ms. Lineth C. Acala,[22] Petitioner's cousin-in-law; (2) Mr. Noeh B. Acala,[23] Petitioner's cousin; (3) Mr. Lyndon R. Baillo,[24] Petitioner's relative; (4) Mr. Gilbert M. Omolon,[25] Petitioner's stepfather; (5) Mr. Nicasio S. Reyes, a retired military from the Philippine Army and a former Barangay Kagawad of Kauswagan, Chairman of Peace and Order, and Public Safety in May 2011; (6) Mr. Joel H. De Veza,[26] former Barangay Kagawad of Barangay 2, Talakag Bukidnon; (7) Mr. Kristoferson Yu,[27] the nephew of Petitioner's landlord; and (8) Petitioner himself.[28]

On November 2, 2015 Petitioner filed his *Formal Offer of Evidence [With Manifestation and a Prayer]*.[29] On December 2, 2015, Respondent filed his *Comment (On Petitioner's Formal Offer of Evidence)*.[30] In the Resolution dated April 8, 2016,[31] the Court admitted Petitioner's Exhibits, but denied the admission of the following:

1. Exhibits "P-1", "P-2", "P-3", "P-8-u to P-8-hh", "P-10", "P-11", "P-26", "P-27", "P-28" and "P-30", for failure to submit the originals for comparison;

2. Exhibit "P-4", for failure to have the said exhibit identified;

3. Exhibits "P-9" and "P-16", for failure to submit the originals for comparison and for failure to have the said exhibits identified;

4. Exhibit "P-20", for failure of the said exhibit to correspond with the document marked; and

[22] Exhibit "P-32", Docket – Vol. II, pp. 631 to 641; Minutes of the hearing held on August 4 and 6, 2015, Docket – Vol. II, pp. 866 to 878 and 879 to 896, respectively.
[23] Exhibit "P-33", Docket – Vol. II, pp. 621 to 626; Minutes of the hearing held on August 4 and 6, 2015, Docket – Vol. II, pp. 866 to 878 and 879 to 896, respectively.
[24] Exhibit "P-34", Docket – Vol. II, pp. 642 to 647; Minutes of the hearing held on August 4 and 6, 2015, Docket – Vol. II, pp. 866 to 878 and 879 to 896, respectively.
[25] Exhibit "P-35", Docket – Vol. II, pp. 485 to 488; Minutes of the hearing held on August 4 and 6, 2015, Docket – Vol. II, pp. 866 to 878 and 879 to 896, respectively.
[26] Minutes of the hearing held on August 6, 2015, Docket – Vol. II, pp. 879 to 896.
[27] Exhibit "P-50", Docket – Vol. II, pp. 1066 to 1071; Minutes of the hearing held on September 9, 2015, Docket – Vol. II, pp. 1074 to 1082.
[28] Exhibit "P-51", Docket – Vol. II, pp. 993 to 1000; Minutes of the hearing held on September 9, 2015, Docket – Vol. II, pp. 1074 to 1082.
[29] Docket – Vol. III, pp. 1194 to 1211.
[30] Docket – Vol. III, pp. 1488 to 1507.
[31] Docket – Vol. III, pp. 1603 to 1605.

5. Exhibit "P-22", for not being found in the records.

Respondent likewise presented documentary and testimonial evidence. As for its testimonial evidence, Respondent presented the testimonies of Atty. Vincent Philip C. Maronilla[32] an Attorney III of the BOC, Ms. Arabelle O. Petilla,[33] an Info Tech Officer II of the Land Transportation (LTO) of the Philippines Main Office, Mr. Malic A. Sultan,[34] Officer-in-Charge of the LTO Tubod District Office, and Ms. Mildred D. Cervantes,[35] an Admin. Aide IV of LTO-Region No. 10, Iligan City.

On October 19, 2017, Respondent filed his *Formal Offer of Evidence.*[36] In the Resolution dated January 29, 2018,[37] the Court admitted Respondent's Exhibits, but denied the admission of Exhibits "R-1", "R-3", "R-4", "R-22-c", "R-22-d", "R-22-e", "R-22-f", "R-22-g", "R-22-h", "R-22-i", "R-22-j", "R-22-k", "R-22-l", "R-22-m", "R-22-n", "R-22-o", and "R-22-p", for failure of Respondent to present their originals for comparison.

Consequently, Respondent filed on February 15, 2018 a *Motion for Partial Reconsideration (Re: Resolution promulgated on January 29, 2018),* wherein Respondent prayed that the Resolution promulgated on January 29, 2018 be partially reconsidered and that Exhibits "R-3", "R-4", "R-22-c", "R-22-d", "R-22-e", "R-22-f", "R-22-g", "R-22-h", "R-22-i", "R-22-j", "R-22-k", "R-22-l", "R-22-m", "R-22-n", "R-22-o" and "R-22-p", be admitted in evidence and only for the purposes for which they are offered by Respondent and that the period to file memorandum be suspended pending resolution of his motion.[38]

In the Resolution dated August 20, 2018,[39] the Court denied Respondent's *Motion for Partial Reconsideration (Re: Resolution promulgated on January 29, 2018),* and gave the parties a period of thirty (30) days from notice within which to file their respective memorandum.

[32] Exhibit "R-5", Docket – Vol. III, pp. 1534 to 1540; Minutes of the hearing held on, and Order dated, May 25, 2016, Docket – Vol. III, pp. 1628 to 1629 and 1630 to 1631, respectively; Minutes of the hearing held on, and Order dated, August 25, 2016, Docket – Vol. III, pp. 1663 to 1664 and 1665 to 1666, respectively.

[33] Minutes of the hearing held on, and Order dated, October 20, 2016, Docket – Vol. III, pp. 1684 to 1686 and 1687 to 1688, respectively.

[34] Exhibit "R-23", Docket – Vol. IV, pp. 1803 to 1814; Minutes of the hearing held on, and Order dated, March 23, 2017, Docket – Vol. IV, pp. 1759 to 1763 and 1764 to 1765, respectively; Minutes of the hearing held on, and Order, dated September 7, 2017, Docket – Vol. IV, pp. 2000 to 2004 and 2005 to 2006, respectively.

[35] Minutes of the hearing held on March 23, 2017, Docket – Vol. IV, pp. 1759 to 1763.

[36] Docket – Vol. IV, pp. 2104 to 2121.

[37] Docket – Vol. V, pp. 2207 to 2208.

[38] Docket – Vol. V, pp. 2218 to 2223.

[39] Docket – Vol. V, pp. 2238 to 2241.

Thereafter, Respondent filed his *Memorandum* on October 29, 2018,[40] while Petitioner failed to file his memorandum.[41]

The case was submitted for decision on January 18, 2019.[42]

## THE ISSUES

The issues of the parties[43], as approved and adopted by the Court for its resolution, are as follows:

> "1. Whether the subject motor vehicles and motorcycles were validly seized and forfeited by the Bureau of Customs in favor of the government; and
>
> 2. Whether the Decision of the District Collector of Customs became final and executory for failure of petitioner to properly file a Notice of Appeal."

## THE ARGUMENTS OF THE PARTIES

In his *Petition for Review*, Petitioner argues that the seizure of the subject vehicles was not by virtue of customs search; that the subject seized vehicles are fruits of a poisonous tree; and that the evidence showing illegal importation justifying seizure of the vehicles are complete hearsay.

On the other hand, Respondent argues that the subject motor vehicles and motorcycles were validly seized and forfeited by the BOC; and that the *Decision* of the District Collector of Customs became final and executory for failure of petitioner to properly file a notice of appeal.

## THE RULING OF THE COURT

We affirm Respondent's dismissal of Petitioner's appeal.

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[40] Docket – Vol. V, pp. 2261 to 2288.

[41] Records Verification dated January 15, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. V, p. 2314.

[42] Resolution dated January 18, 2019, Docket – Vol. V, p. 2316.

[43] Issues, Pre-Trial Order dated January 30, 2015, Docket – Vol. II, pp. 763 to 764.

Regarding the issue of whether the *Decision* of the District Collector of Customs became final and executory for failure of Petitioner to properly file a *Notice of Appeal*, it must be noted that in the appealed Decision, Respondent held that no appeal fee was paid within the reglementary period by therein claimant, thus, his office could not act on the said appeal, the same being not perfected, for failure to comply with the provisions of Sections 3301 and 3303 of the Tariff and Customs Code of the Philippines (TCCP), as amended.

At this juncture, it must already be stated that based on a careful reading of the arguments interposed by Petitioner, it can be concluded that it is undisputed that Petitioner failed to attach the required customs documentary stamps on his *Notice of Appeal* from the Decision of the District Collector of Customs in the Seizure Identification Case No. 01-2011. Specifically, Petitioner does ***not*** argue against the dismissal of its appeal by Respondent on the basis of the *"non-perfection thereof"* for failure to attach the required customs documentary stamps. In fact, Petitioner failed to present any evidence to show that the said appeal to Respondent was perfected by paying the prescribed fee.

Nevertheless, to resolve the above-stated issue, the Court finds instructive Sections 2313 and 3301 of the TCCP, as amended, to wit:

> "Section 2313. *Review by Commissioner.* – The person aggrieved by the decision or action of the Collector in any matter presented upon protest or by his action in any case of seizure may, **within fifteen (15) days after notification in writing by the Collector of his action or decision, file a written notice to the Collector with a copy furnished to the Commissioner of his intention to appeal the action or decision of the Collector to the Commissioner**. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision.
>
> xxx xxx xxx." *(Emphasis ours)*
>
> "SECTION 3301. *Customs Fees and Charges.* — For services rendered and documents issued by the Bureau of Customs, **the following fees shall be charged and collected, by affixing the documentary customs stamps in the correct amount upon the document or any other paper which is the subject of the charge and by the cancellation of such stamps in the manner prescribed by the Commissioner, and no such document or any other paper shall be issued or granted by any customs**

**official until the correct amount of stamps shall have been affixed and cancelled**: Provided, however, That fees of twenty pesos or over may be paid in cash." (*Emphasis ours*)

Relative thereto, Customs Administrative Order (CAO) No. 2-2001 increased the rates of custom fees and charges, including the docket fees to be paid for appeals from the decision of the District Collector of Customs, to wit:

"CUSTOMS ADMINISTRATIVE ORDER NO. 2-2001

SUBJECT: Rates of Customs Fees and Charges

Pursuant to Sections 608 and Section 3301 to 3304, Tariff and Customs Code of the Philippines, in relation to Section 36, Administrative Code of 1987 and Executive Orders Nos. 197 and 218, both series of year 2000 as implemented by DOF and DBM Joint Circular No. 2000-2 dated April 3, 2000, the rates of customs fees and charges in all ports of the Philippines shall be as follows:

xxx xxx xxx

1. Refund Processing Fees/**Docket Fees**

On ordinary claims for refund of tax and duty payments, including cash bonds; and **for each formal protest/appeal from the decision of the District Collector**/Valuation & Classification Review Committee (VCRC)

| AMOUNT OF CLAIM/ PROTESTED AMOUNT | PROCESSING FEES/ DOCKET FEE |
|---|---|
| Up to P50,000 | P500 |
| Over P50,000 to 100,000 | 600 |
| Over P100,000 to 200,000 | 700 |
| Over P200,000 to 300,000 | 800 |
| Over P300,000 to 400,000 | 900 |
| Over P400,000 to 500,000 | 1,000 |
| Over P500,000 to 750,000 | 1,500 |
| Over P750,000 to 1,000,000 | 2,000 |
| Over P1,000,000 | 3,000" *(Emphasis ours)* |

Based on the foregoing, an appeal to Respondent shall only be perfected upon (1) filing of a written notice of appeal within fifteen (15) days from notification, as mentioned in Section 2313 of the TCCP, as amended; and (2) payment of pertinent fee in accordance with the prescribed rates, as required under Section 3301 of the TCCP, as amended, in relation to CAO No. 2-2001.

However, as found by Respondent in the assailed Decision, Petitioner failed to comply with the second requisite for perfecting the appeal before respondent.

Being in the nature of a docket fee, failure to pay the customs fees by affixing the documentary customs stamp, did not confer jurisdiction on Respondent to take cognizance of the appeal made by Petitioner. Since there was no valid appeal from the Decision of the Collector of Customs issued on June 4, 2012, the same already became final and executory. Thus, this Court has no jurisdiction to take cognizance of the instant case.

Significantly, the mandatory nature of the customs stamp requirement is apparent when the law further mentions the effect of failure to affix the documentary customs stamp upon a document or any other paper, such as a *Notice of Appeal*, in Section 3303 of the TCCP, as amended, to wit:

> "SECTION 3303. *Effect of Failure to Affix Stamp upon Document.* – No document or any other paper upon which no documentary customs stamps have been affixed and cancelled shall be received or recognized by any customs official."

Thus, upon the clear mandate of the foregoing provision vis-à-vis the failure on the part of Petitioner to affix the corresponding documentary customs stamps, Respondent's refusal to recognize Petitioner's *Notice of Appeal* was justified.

In this regard, it must be stressed that the first and fundamental duty of the Court is to apply the law. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. Where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.[44]

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44 *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 196907, March 13, 2013, citing the case of *Rizal Commercial Banking Corporation vs. Intermediate Appellate Court and BF Homes, Inc.*, G.R. No. 74851, December 9, 1999.

Furthermore, it must be emphasized that the provisions of the customs law, like those of the internal revenue code, are not directory merely but mandatory.[45]

The mandatory provisions of law mentioned above are clear that failure to affix on any paper documentary customs stamps would divest any customs official, such as the respondent, from recognizing or acting on the document, which in this case is the *Notice of Appeal.*

It must be further stressed that the right to appeal is a statutory right and the one who seeks to avail that right **must comply with the statute or rules**. The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays. Moreover, the perfection of appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well, hence, failure to perfect the same renders the judgment final and executory.[46]

In view of the foregoing, there is no cogent reason to disturb Respondent's ruling that the Decision dated June 4, 2012 of the District Collector, Port of Cagayan de Oro, forfeiting the subject motor vehicles in favor of the government, became final and executory, because of Petitioner's failure to perfect his appeal in accordance with Section 2313 of the TCCP, as amended, in relation to Sections 3301 and 3303 of the same law.

**WHEREFORE**, premises considered, the instant *Petition for Review* is **DISMISSED** for this Court's lack of jurisdiction.

**SO ORDERED.**

Ma. Belen M. R.-L.

**MA. BELEN M. RINGPIS-LIBAN**
*Associate Justice*

**WE CONCUR:**

*(on leave)*
**ERLINDA P. UY**
Associate Justice

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[45] *Chan Kian vs. The Court of Tax Appeals*, G.R. No. L-12184, May 29, 1959.
[46] *De Leon vs. Hercules Agro Industrial Corporation, et al.*, G.R. No. 183239, June 2, 2014.

**MARIA ROWENA MODESTO- SAN PEDRO**
Associate Justice

## ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MA. BELEN M. RINGPIS-LIBAN**
*Associate Justice*
*Acting Chairperson*

## CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

**ROMAN G. DEL ROSARIO**
*Presiding Justice*

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