REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY
FIRST DIVISION

GELMART INDUSTRIES PHILIPPINES, INC.
Petitioner,

C.T.A. CASE NO. 6518

-versus-

MEMBERS:

ACOSTA, PJ, Chairman
BAUTISTA,
CASANOVA, JJ

COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated:
AUG 15 2005

x - x

DECISION

BAUTISTA, J.:

This case involves the seizure by the Bureau of Customs (BOC) of three (3) shipments of imported articles consigned to petitioner, Gelmart Industries Philippines, Inc., by its supplier/buyer, covered by Warehousing Nos. 46269-99, 44780-99 and 46297-99. Consequently, the petition for review seeks for the following: (1) setting aside of the Decision of the Honorable Commissioner of Customs dated May 16, 2002 ordering the seizure of the subject articles; (2) lifting of the Warrant of Seizure and Detention ordering the seizure of the subject articles; and (3) release of the subject articles mentioned in the warehousing entries.

The facts as gathered from the records are as follows:

Petitioner is a corporation established in the year 1953 and is duly registered in accordance with Philippine laws, with office address at Km. 15 South Superhighway, Parañaque City. It is represented by its Corporate Secretary, Atty. Roberto V. Artadi.

It is primarily engaged in the manufacturing of embroidery and apparel products for the export market *(p. 10, TSN, June 19, 2003)*. It is, likewise, authorized to operate a Bonded Manufacturing Warehouse (BMW), BMW No 39, as evidenced by the Certification dated January 16, 1991, issued by the Garments and Textile Export Board (GTEB). *(Exh. "A")* It is, likewise, granted two licenses to import tax and duty-free materials and accessories for re-exportation under License to Import No. 077-99 dated May 13, 1999 and valid until February 13, 2000 *(Exh. "E")* and Import License No. 048468 dated July 7, 1999 and valid until April 7, 2000 *(Annex "W", Petition for Review)*. Under these licenses, petitioner was authorized to import "FABRICS/YARNS/LEATHERS/ SUBMATERIALS" from various foreign principals with a total value of US$4,771,308.00 *(Exh "E-1")* and $2,472,579.20, respectively, with the limitation that these licenses do not entitle the manufacturer to import finished and semi-finished goods, cut-to-panel/knit to shape materials, and cut-piece goods.

Since the start of its operations, petitioner has manufactured several product lines. It started manufacturing embroidered handkerchiefs branched out to infants' and children's wear, knitted blouse and apparel products, shirts, ladies dresses, night gown, pajama, swim wear, nylon stockings, brassieres and intimate ladies' underwear. For the year 1999, petitioner stopped manufacturing some of the lines which were not viable anymore. It, however, maintained the manufacturing of brassieres and related intimate ladies garments, children's and infants' wear products, knitted gloves, socks and the like. *(pp. 10-11, TSN, June 19, 2003)*

During the year 1999, petitioner, in the course of its operations and on three (3) different occasions in 1999, received consignments of various textile materials and accessories from its supplier, to be manufactured into finished products for subsequent exportation to principals abroad.

The three shipments of imported various textile materials and accessories were declared in the BOC Entry, Internal Declaration and the attached Bill of Lading, Commercial Invoice and/or Packing List, detailed as follows:

1. Entry No.	44780-99 PO2A Port of Manila
Date of Arrival	August 8, 1999
Number and Kind	2x40' Container S.T.C. 646 Rolls of 100% Polyester Knitted Fabrics Weight: 265-270 GM/M2 Width: 60" Usable, 62" Edge to Edge P/O#99K668
Color	Midnite - 2,253.30 lbs Royal Blue - 5,573.20 lbs. Midnite - 6,069.10 lbs. Royal Blue - 7,390.00 lbs.

Color	Royal Blue - 1,840.30 lbs. Midnite - 4,330.30 lbs. AND 100% Polyester Knitted Fabrics Weight: 130-140 GM/M2 Width: 60" Usable, 62" Edge to Edge Royal Blue - 507.70 lbs. Cardinal - 591.40 lbs. Midnite - 676.20 lbs.
2. Entry No.	46269-99, PO2A Port of Manila
Date of Arrival	August 14, 1999
Number and Kind	1x40' Container S.T.C. 276 Rolls of 100% Polyester Knitted Fabric Weight: 265-270 GM/M2 Width: 60" Usable, 62" Edge to Edge PO#99K667
Color	Midnite - 3,752.70 lbs. Cardinal - 8,625.80 lbs.
3. Entry No.	46297-99, PO2A Port of Manila
Date of Arrival	August 14, 1999
Number and Kind	1x20' Container S.T.C. 142 packages, 20 Rolls of 100% Cotton Knitted Fabric Weight 813.90 lbs Thread Cones - 4,833.00 Cones Elastic - 553.00 GR Velcro - 8,333.00 Yds. Poly Tape - 9000 Yds. Woven Tape (ST73) - 23400 Yds. Neck Tape (TCP 507)- 12020 Yds. Main Label - 6,147.50 Doz. Care Label - 2,060.00 Doz. Price Ticket - 75.00 K Carton Sticker - 3,127.00 PR

(par. 9, Petition for Review; Exhs. "J", "J-1", "J-2" to "J-13", "J-14" to "J-16", "K", "K-1", "K-2" to "K-3", "K-4" to "K-5", "L" to "L-4", "L-5", "L-6")

On August 20, 1999, then Commissioner of Customs Nelson Tan, issued a Memorandum requiring the 100% examination of all shipments consigned to petitioner on its transfer/release from the piers to CBW No. G-39. This

Memorandum was prompted by the Indorsement of the Warehouse and Assessment Monitoring Unit (WAMU) which recommended the examination of the subject shipments by the examiner of the Warehouse and Assessment Division (WAD) for alleged misdeclaration.

On August 31, 1999, Inspector Rodolfo Alfaro, submitted a report stating that the shipments under Entry Nos. 46297-99 and 46269-99 were examined at pier 3, South Harbor, Manila, while Entry No. 44780-99 was examined inside the Bonded Manufacturing Warehouse of petitioner, CBW No. G-39. After the inspection, a report was issued stating that the subject shipments contained cotton fabrics with three (3%) percent spandex for shirting and fleece textile materials. The Inspection report concluded that these articles are not normally used for the manufacture of brassieres and/or lace, for the Bra and Lace Division of petitioner, which according to the BOC, is the only operational division. In the same Inspection report, Mr. Alfaro recommended that the Import License of petitioner be verified to determine if the subject shipments should be seized for violation of existing Customs Rules and Regulations. Thereafter, respective representatives from the GTEB and the BOC conducted an ocular inspection of the Bonded Manufacturing Warehouse of petitioner.

During the ocular inspection, it was discovered that petitioner was operating the Bra and Lace Division as well as the Auxiliary Division. It was likewise found that only machineries for the two divisions exist and that there were no facilities for the other lines of products. *(page 7, Decision of Commissioner of Customs; Annex "V", Petition for Review)*

In a letter dated September 3, 1999, petitioner's Corporate Secretary and in-house counsel requested the GTEB for a Certification to clarify the description of "FABRICS/YARNS/LEATHERS/SUBMATERIALS" or the articles petitioner is authorized to import based on its License No. 077-99. *(Exh. "M")*

On September 6, 1999, a Certification *(Exh. "N")* was issued by the GTEB, certifying petitioner's license to import the following raw materials, to wit:

> "a. Polyester, acrylic, cotton and other natural or synthetic piece-goods
> b. Various types of yarns and threads, nylon, polyester, wool and other synthetic or natural piece-good
> c. All types of leather and synthetic leathers
> d. Non-woven fabrics and similar items
> e. Various types of staple fibers (synthetic and natural)
> f. Various drystuffs and chemical
> g. Various accessories and supplies"
> *(Exh. "N-1")*

On September 14, 1999, a certification *(page 52, Customs Records)* was likewise issued by the Garments/Textile Mfg. Bonded Warehouse Division-Port of Manila (GTMBWD-POM) that "Import License Nos. 48468 and 77-99 are the current licenses being utilized by GELMART INDUSTRIES PHILS., INC." which covers fabrics/yarn/leathers submaterials but "does not entitle the manufacturer to import finished and semi-finished goods, cut-to-panel/knit to shape materials, and cut-piece goods". *(par. 15, Petition for Review)*

On September 15, 1999, Atty. Tugday of the BOC presented the following observations and recommended the seizure of the subject shipments:

1. The subject shipments which actually contained cotton fabrics with 3% spandex for shirtings and 100% spun polyester polar fleece with one side anti-pilling 2 side brush are not needed in the operation of the existing divisions of GIPI, namely: the bra and lace divisions.

2. Upon the closure of the Infant's Wear Division, Children's Wear Division, Swimwear Division, Knit Glove Division, all of GIPI, the import licenses on articles not consistent in the operation of its remaining divisions for bra and lace are deemed cancelled. In short, the importations of the subject shipments was made without authority.

3. In renewing its license to operate a customs manufacturing bonded warehouse, GIPI submitted documents misrepresenting that it has machineries and operating a division capable of manufacturing the questioned shipments into finished products.

4. GIPI has no facilities to comply with Rule VIII, Section 1(d) of the GTEB Rules and Regulations, i.e., the requirement on the "production, capacity geared for export of at least 70%." With this, GIPI would be transferring 100% of these subject materials to third parties under the guise of subcontracting, a practice violative of the GTEB and Customs regulations.

5. GIPI abused the privileges given to operate a manufacturing bonded warehouse by unjustly interpreting the phrase "fabrics" in the import license issued by the GTEB to cover any kind of fabrics or textile materials even though not consistent in the operations of its existing bra and lace divisions.

6. Observations 1, 2, 3, 4 and 5 constitute prima facie evidence that without authority, GIPI is allowing third parties to utilize its import license and consequently its export quota.

7. Misrepresentations and/or use of false or fraudulent entries and details in all document applications, papers submitted to the Board for consideration and approval as well as unauthorized

importations and transfer of export quotas, all are classified as major violations of GTEB rules and regulations.

8. Importation of raw materials such as knitted or woven fabrics, yarn, leather, ribbings, interlining, pocketlining, polyfill, thread, collars, cuffs and laces with the width of more than 10 inches shall require an import license from the GTEB. In short, these are regulated raw materials that would require import license." *(page 23, Customs Records; par. 16, Petition for Review)*

Furthermore, Atty. Tugday of the WAMU questioned petitioner's authority to manufacture the particular garments for which the imported articles may be used on the ground that most of the production processes for these garments would be done outside the bonded warehouse by petitioner's subcontractors. WAMU is of the opinion that this act would contravene Rule VIII, Section 1.d of the GTEB Rules *(Exh. "U")*, which provides that:

"SECTION 1. REQUIREMENTS. The following are the requirements for application for operation of a bonded manufacturing warehouse (BMW):

xxx xxx xxx

d. Production capacity geared for export of at least 70%."

In a letter dated September 14, 1999, the BOC, through Atty. Rustom L. Pacardo requested from the GTEB an interpretation of Rule VIII, Section 1.d of the GTEB Rules *(Exh. "P")*.

On September 16, 1999, the GTEB interpreted the foregoing provision as follows:

"Please be informed that said provision requires that the production capacity of the applicant for bonded manufacturing warehouse is at least 70% for export and 30% is allowed for local

> market, subject to payment of taxes and duties. Further, said provision does not relate to the limit that the applicant for bonded warehouse may produce in-house and through subcontractors." *(Exh. "Q-1")*

On October 1, 1999, petitioner assailed the recommendation for the issuance of the Warrant of Seizure and Detention against shipments covered by Entry Nos. 46297-99, 46269-99, and 44780-99. In the same letter, petitioner requested the BOC to allow the re-shipment of the subject shipments, contending, among others, that "GELMART have subcontractors duly approved by the GTEB for the manufacture of Boy's pants and tops which requires the subject shipments (of) raw materials". *(page 10, Petition for Review)*

Meanwhile, a letter dated September 9, 1999 was received by petitioner from one of its principals for the imported articles, PADA Industrial (Far East) Co. Ltd. of Hongkong (PADA), informing the former of the latter's intention to cancel the order and instructed petitioner to return the shipment of raw materials back to PADA. *(Exh. "F")* Petitioner, thus, requested the District Collector of Customs for authority to effect the reshipment of the subject shipments back to PADA.

On October 21, 1999, Bureau of Customs Deputy Commissioner Emma M. Rosqueta upheld the favorable recommendation of the Port of Manila for the return of the shipment, declaring that:

> "We agree with your position that re-shipment may be allowed to a country other than the country of origin. We believe that it is the right of the Principal to determine where his shipment should go unless it would violate our laws or any

> rule or regulation. In fact we allow said re-shipment under CMO 85-91. It states:
>
> > 2.1 Bonded manufacturing warehouse operators may request for re-shipment of raw materials and accessories to its foreign supplier in cases where they are defective sub-standard or not in accordance with given specification. Likewise, return shipment may be allowed if the said raw materials are no longer required for production." *(Exh "H-2")*

On November 19, 1999, the BOC issued the following seizure orders, Seizure Identification No. 99-281 for Warehousing Entry No. 46269-99; Seizure Identification No. 99-280 for Warehousing Entry No. 44780-99 and Seizure Identification No. 99-279 for Warehousing Entry No. 46297-99, for alleged violation of Section 2530 paragraphs (f) and (l) subparagraphs 3, 4 and 5 of the Tariff and Customs Code of the Philippines (TCCP). *(Exhs. "I", "I-1" and "I-2")*

A Memorandum dated January 10, 2001 was filed by petitioner with the District Collector of Customs on January 12, 2001 in order to protest the seizure orders issued by the BOC. *(page 356, Customs Records)*

In a Decision dated August 9, 2001, and which was received by petitioner on August 20, 2001, the District Collector of Customs ordered that the shipments be forfeited in favor of the government for alleged violation of Section 2530 paragraphs (f) and (l) subparagraphs 3, 4, and 5 of the TCCP, as amended. *(pages 398-405, Customs records)*

Petitioner filed its Memorandum of Appeal with the Customs Commissioner on August 28, 2001, and in a Decision dated May 16, 2002 *(Exh. "V")*, a copy of which was received by petitioner on June 29, 2002, the respondent affirmed the forfeiture orders issued by the Collector of Customs.

Petitioner filed an appeal with this court through a petition for review on July 29, 2002, or within the thirty (30) day period provided for under Section 2402 in relation to Section 2315, both of the TCCP. Hence, the instant appeal was filed on time.

For failure on the part of the respondent to file his responsive pleading within the time prescribed by law, petitioner filed on October 30, 2002, a "Motion to Declare in Default" and prayed that respondent be declared in default and that petitioner be allowed to present its evidence *ex-parte. (page 119, CTA Docket)*

On January 22, 2003, respondent filed a "Motion to Admit Answer" with the Answer attached therewith. Respondent reasoned that his failure to file the answer was due to the fact that the summons and copy of the petition for review were not furnished immediately to the handling lawyer by the clerk who received it, and that respondent's counsel learned about the instant case when he was furnished a copy of the Motion to Declare in Default on November 8, 2002.

Petitioner's Opposition was filed on March 6, 2003. In a Resolution dated April 2, 2003, this Court denied respondent's "Motion to Admit Answer".

Consequently, respondent was declared in default in a Resolution dated May 21, 2003.

On June 20, 2003, respondent filed a "Motion to Lift Order of Default Against Respondent". On July 25, 2003, petitioner filed its "Opposition (To Motion to Lift Order of Default Against Respondent Dated 18 June 2003)". A Resolution dated September 17, 2003, was issued by this Court denying respondent's "Motion to Lift Order of Default Against Respondent".

Considering that respondent has already been declared as in default, he loses his standing in court, therefore, he loses his right to present his defense and examine or cross-examine witnesses. *(Garcia vs. Court of Appeals, 209 SCRA 732)* Thus, herein petitioner presented its evidence *ex-parte.*

On November 11, 2004, petitioner filed its memorandum and presented the following issues before this Court for resolution, to wit:

> "3.1.1 Whether or not GELMART imported the SUBJECT SHIPMENTS in violation of Section 2530 (f) and 1-(3), (4) and (5) of the TCCP and the Rules and Regulations of the GTEB. In relation to this are the foregoing issues:
>
> 3.1.1.1. Whether or not GELMART is authorized to import the SUBJECT SHIPMENTS under its License to Import issued by the GTEB.
>
> 3.1.1.2. Whether or not the respondent Commissioner committed a reversible error in seizing the

SUBJECT SHIPMENTS due to the alleged failure of GELMART to maintain, within its Bonded Manufacturing Warehouse, facilities for the in-house manufacture of at least seventy percent (70%) of the finished products.

3.1.1.3. Whether or not GELMART can legally engage the services of subcontractors to manufacture the SUBJECT SHIPMENTS as finished products.

3.1.1.4. Whether or not the actual goods, as examined by the BOC, correspond to the articles described in the BOC Import Entry for the SUBJECT SHIPMENTS.

3.1.2. Whether or not the respondent Commissioner committed a reversible error upholding the seizure of the SUBJECT SHIPMENTS."

We rule to grant the instant petition.

In the assailed decision, respondent Commissioner of Customs ordered the seizure of the three (3) shipments imported by petitioner on the following grounds:

(1) The shipments were not covered by an appropriate import license to be obtained by a CBW operator from the

GTEB prior to its importation in violation of existing GTEB rules and regulations;

(2) The shipments were liable to forfeiture under Section 2530 paragraphs (f) and (l) subparagraphs 3, 4, 5 of the TCCP, as amended.

(3) The shipments were imported in violation of the rules of the GTEB since it was established by clear evidence that petitioner is operating the Bra and Lace Divisions only.

Pertinent portion of respondent's decision is hereby quoted as follows:

"It was established by clear evidence that Gelmart is operating the Bra and Lace divisions only. The positive testimony of Supervising Account Officer Teresita Pawig and the admission of Atty. Roberto Artadi, Corporate Secretary of Gelmart, during the ocular inspection that Gelmart is actively operating the bra and lace/auxiliary divisions only, as well as the findings during the ocular inspection, on or before September 10, 1999, that only machineries for the two (2) divisions mentioned above actually exist and nowhere to be found are facilities for other lines of products, all of these remain undisputed. GTEB Director Philip Panlilio categorically stated that sub-contracting is allowed, however, he asserted that what is important is that items to be imported by the company will be used in the manufacture of items that are manufactured in-house, that is, the warehouse should have one line of facilities in-house. Records reveal that during the ocular inspection, Gelmart was found to have no such facilities. As to the first issue, the questioned shipments of fabrics with 3% spandex for shirting and 100% spun polyester polar fleece (with one side anti-pilling 2 side brush) were importations clearly not needed in the operation of the Bra and Lace Division of claimant-appellant GIPI. When the Infant's Wear Division and Children's Wear Division were closed, any current or existing import license of articles not consistent with the operations of the remaining Bra and Lace Division are deemed cancelled, hence, the subject importations could not be considered as covered by existing import licenses granted by GTEB, and as such, the same were imported without authority and in violation of the pertinent GTEB Rules and Regulations.

Moreover, the articles involved in the questioned shipments are classified as regulated materials under GTEB Rules and Regulations, the importations of which should be covered by an import license to be obtained by a CBW operator from GTEB prior to its importation.

Likewise, records disclose that the subject shipments were not covered by appropriate import license when the same arrived into the country, and as such, the importation was made contrary to law.

Furthermore, the Certification issued by the GTEB on September 6, 1999, certifying that GIPI (Claimant-Appellant) is licensed to import, among others, polyester, acrylic, cotton, and other natural or synthetic piece-goods and various accessories and supplies for the manufacture of gloves, socks, hats, brassieres, shirts, pajamas, dresses, bikini/panties, various infant's and children's wear and other wearing apparels can never serve as a valid defense to bar forfeiture of the subject shipments simply because the aforesaid certification was obtained after arrival of the shipments in the country and after it was held by WAMU for violation of Customs laws and regulations.

In a nutshell, the subject shipments are liable to forfeiture under Section 2530 (f) of the TCCP, as amended.

WHEREFORE, the appealed Decision of the District Collector of Customs is hereby AFFIRMED, and as a consequence thereof, the subject shipments are hereby FORFEITED in favor of the government."

Petitioner assailed the decision of the Commissioner of Customs and asserted that pursuant to its License to Import No. 077-99 issued by the GTEB on May 13, 1999, it was authorized to import fabrics, yarns, leathers and sub-materials. *(Exh. "E")*

Moreover, petitioner claims that during the year 1999, while it is operating the bra and lace division, it has complete facilities for in-house production. Aside from this division, it is also maintaining the auxiliary division which consists of several departments producing the components used in the production of its garments or products. Examples of these departments are enumerated as follows: (1) lace department, which produces the laces, nylon, spandex and other knitted materials department which produces the plastic hangers and other accessories; (2) finishing and dye department, which takes care of finishing and dyeing the knitted materials for the garments; (3) inter-stretch department, which produces elastic. In addition thereto, petitioner asserts that it continues to produce the infants' and children's wear and so with the knitted-blouse and shirts division but in these cases, the imported materials are merely cut to patterns and styles in-house and distributed to subcontractors for finishing. *(pp. 21-22, TSN, June 19, 2003)*

The Court agrees with petitioner's assertions and finds that petitioner is authorized, under its Import License Nos. 077-99 and 048468-99, to import the articles contained in the subject shipments.

A perusal of petitioner's Import License Nos. 077-99 and 048468-99 reveal that petitioner is authorized to import fabrics, yarns, leathers, sub-materials for the manufacture of its products.

Moreover, as shown in the Certification dated September 6, 1999 issued by the GTEB, petitioner is licensed by the GTEB under R.A. 3137, otherwise known as The Embroidery Law, to import polyester, acrylic, cotton and other natural or synthetic piece-goods, various types of yarns and threads, nylon, polyester, wool and other synthetic or natural piece-goods, all types of leather and synthetic leathers, non-woven fabrics and similar items, various types of staple fibers (synthetic and natural), various dyestuffs and chemicals and various accessories and supplies. *(Exh. "N")*

The import entries show that petitioner imported 100% polyester knitted fabrics and 100% cotton knitted fabric. These raw materials contained in the subject shipments are undoubtedly included in the enumeration of articles mentioned in the import licenses issued by the GTEB and the corresponding certification. Moreover, these raw materials are not among the articles which petitioner is prohibited to import, i.e., finished and semi-finished goods, cut-to-panel, knit-to-shape materials and cut-piece goods.

Furthermore, notwithstanding the fact that petitioner is operating the bra and lace divisions, it is still authorized to import the subject shipments. Petitioner alleged that it maintained a Cutting Department consisting of various types of cutting machine, the clicking machines for thicker materials and computerized cutting machines which are used for cutting of raw materials with great accuracy. The Cutting Department occupied the entire Building No. 2 with a floor area of approximately 3,700 square meters. *(par. 4.4, Petitioner's Memorandum)* To prove these allegations, petitioner presented in evidence photographs of the various cutting machineries located within the bonded manufacturing warehouse and of the cutting processes performed before the raw materials are delivered to its sub-contractor. *(Exhs. "D", "D-1", " D-2", "D-3", " D-4", "D-5", "D-6", "D-7", " D-8", "D-9", "D-10", "D-11", "D-12", " D-13", "D-14", "D-15", "D-16", "D-17", "D-18", "D-19")*

Petitioner, likewise, engaged the services of bona fide subcontractors for the purpose of completing the manufacture of its product lines, to wit: Stown Fashion Corporation and Saint John Enterprises as evidenced by Certificate of Registration Nos. 99-051202 and 98-140802, respectively, both dated September 6, 1999 and issued by the GTEB. *(Exhs. "B" and "C")*

As stated earlier, respondent ruled in the assailed decision that petitioner's engagement of subcontractors contravenes Section 1.d, Rule VIII of the GTEB Rules, to wit:

> Rule VIII
>
> BONDED MANUFACTURING WAREHOUSE
>
> SECTION 1. REQUIREMENTS. The following are the requirements for application for operations of a bonded manufacturing warehouse (BMW);
>
> a. Track record of annual FOB US$1.0 M Export Sales.
> b. Employment of at least 50 in-plant workers at all times upon operation.
> c. Confirmation of orders by principals/buyers.
> d. <u>**Production capacity geared for export of at least 70%.**</u>
> e. Debt-to-Equity ration of 75:25.
> f. Submission of plan (blueprint) of the proposed BMW showing and describing the size, layout and location of the proposed premises.

We do not agree. Petitioner's engagement of these subcontractors did not contravene Section 1.d Rule VIII of the GTEB rules and Regulations. The correct interpretation of this requirement was clearly explained by the GTEB in a letter dated September 16, 1999, portion of which is quoted as follows:

> " xxx xxx xxx
>
> Please be informed that said provision requires that the production capacity of the applicant for a bonded manufacturing warehouse is at least 70% for export and 30% is allowed for the local market, subject to payment of taxes and duties. Further, said provision does not relate to the limit that the applicant for bonded warehouse may produce in-house and through subcontractor. " (Exh. "Q")

It is a well-settled rule in statutory construction that while executive construction is not necessarily binding upon courts, it is entitled to great weight and consideration because it comes from the branch of government called upon to implement the law. ***(Salaria vs. Buenviaje No. L-45642, February 28, 1978; Ramos vs. Court of Industrial Relations, Rice and Corn Administration (RCA) and Naric Workers' Union No. L-22753, December 18, 1967)*** Therefore, the interpretation of the GTEB which is charged with implementing and enforcing the provisions of the GTEB rules and regulations is entitled to be given controlling weight, in the absence of any showing that it is plainly wrong.

During his direct testimony on June 19, 2003, petitioner's witness, Atty. Artadi testified on the following :

> "Q: In 1999, do you recall what products were Gelmart Industries Philippines, Incorporated, producing?

A: In 1999, somewhere along the way, we stopped manufacturing some of the lines which were not viable anymore and in 1999, we were manufacturing basically brassieres and related intimate ladies garments, children's and infant's wear products, knitted gloves, socks and same line of products.
(TSN, pp. 10-11)

Furthermore, he testified:

A: At that time, Gelmart Industries Philippines, Incorporated was operating its Bra and Lace Division, that is correct. For the Bra and Lace Division have a complete in-house production facilities. But, aside from the Bra Division, we also had what we called the Auxiliary Division which made up of several departments producing the components that goes to the production of our garments or products. We have, for example, the Lace Department which produces the laces, nylon, spandex and other knitted materials and we have also the Department which produces the laces, nylon, spandex and other knitted materials and we have also the Department which produces the plastic hangers and other accessories that are used in the garments productions. We have the Finishing and Dye Department which takes care of finishing and dyeing the knitted materials for the garments. We have the Inter-Stretch Department which produces elastic and aside from those Department that we have in-house operation, we continue to produce our Infants Wear and Children Wear but in this case, we were cutting the imported materials in-house and after cutting … and the same with our Knitted Blouse and shirts Division which we also cut to patterns and styles in-house and distributed to the sub-contractors for finishing.

Q: Are Bonded Manufacturing Warehouse authorized to sub-contract certain operations in the production of their products?

A: Yes, it is the tradition practice in the industry to sub-contract portion of the production of products. And these are specifically authorized by provision of Republic Act No. 3137 and by the implementing rules and regulations of the GTEB."
(TSN, pp. 21-23)

The particular provision mentioned by Atty. Artadi in his testimony is Section 4, paragraph XI of R.A. No. 3137, which provides:

> "SECTION 4. The following rules and regulations shall govern the establishment, suspension, control and operation of bonded manufacturing warehouses with respect to the importation of embroidery and apparel raw materials to be processed and re-exported:
>
> xxx xxx xxx
>
> XI. Withdrawal of Raw Materials from Storeroom. - Withdrawals of raw materials and supplies from the storeroom shall be covered by the requisitions or invoices signed by the Manager or his authorized representative and countersigned by the Customs official concerned. The requisition or invoice shall specify, among others, the materials to be withdrawn, quantities in yardage thereof, the number or numbers of import entry, Airway Bill or Parcel Post involved, and the purpose of the withdrawal. A record of the names and address of the contractors shall also be kept for inspection by the manufacturer and **in no case shall goods be released from the bonded manufacturing warehouse for embroidery unless it is previously stamped or cut in accordance with the pattern to be manufactured**. A copy of such requisition shall be kept by the said Customs Officials." *(Emphasis supplied)*

Moreover, subsection A of Section 2, Rule VIII of the GTEB Rules and Regulations, provides:

> "Rule VIII
>
> SECTION 1. REQUIREMENTS.
>
> xxx xxx xxx
>
> SECTION 2. CONDITIONS. The following are the conditions for the operation of a BMW:
>
> A. **All garment and apparel articles manufactured in whole or in part out of a bonded raw materials and intended for**

> **exportation may be manufactured in whole or in part in a bonded manufacturing warehouse**; provided that the manufacturer-exporter of such articles has secured a permit from the Board to operate such warehouse and has posted a bond in the amount of Two Hundred Thousand Pesos (P200,000.00) from a reputable bonding company acceptable to the Bureau of Customs guaranteeing faithful compliance with all laws, rules and regulations applicable thereto. " *(Emphasis supplied)*

Evidently, petitioner's operations as a bonded manufacturing warehouse which is governed by Republic Act No. 3137 authorizes it to manufacture a portion of the manufacturing process in-house and the rest to be completed through sub-contractors and/or home workers. Unlike other bonded manufacturing warehouses which are required to maintain a complete production line within the premises of the bonded manufacturing warehouse, petitioner is only required to comply with the limitation that, "in no cases the goods be released from the bonded manufacturing warehouse for embroidery unless it is previously stamped or cut in accordance with the pattern to be manufactured".

On the issue of whether or not the actual goods correspond to the articles described in the BOC import entries, the Court rules in the affirmative.

The raw materials imported by petitioner were described in the import entries as 100% polyester knitted fabric and 100% cotton knitted fabric. However, respondent claims that upon examination of the BOC, it was discovered that the shipments contained Fleece Textile Materials and 100% Spun Polyester Polar Fleece with One Side Anti-Piling 2 Side Brush and Cotton Fabrics with 3% Spandex for Shirtings, which were allegedly beyond the scope of petitioner's authority to import.

Petitioner's Import Licenses No. 077-99 and 048468-99 did not indicate the specific kind of fabric which petitioner may import. These licenses merely indicated that petitioner may import fabrics, yarns, leathers, and sub-materials.

Moreover, petitioner presented a letter issued by the Philippine Textile Research Institute (PTRI), with an attached Test Report on the fabric sample sent by petitioner to PTRI. The report showed that 100% PES Knitted Fabric and Polar Fleece Fabric are similar to 100% polyester fabric. *(Exhs. "X" and "X-1")*

Finally, the Court rules against the forfeiture of the subject shipments. Section 2530 paragraphs (f) and (l) subparagraphs 3, 4, and 5 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:
>
> xxx xxx xxx
>
> (f) Any article the importation or exportation of which is effected or attempted contrary to law, or any article of prohibited importation or exportation, and all other articles which, in the opinion of the Collector, have been used, are or were entered to be used as instruments in the importation or exportation of the former;
>
> (l) 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
>
> (5) Through any other practice or device contrary to law by means of which such articles was entered through a customhouse to the prejudice of the government."

Under Section 2530, paragraph (l) *(formerly subparagraph m)*, subparagraphs 3 and 4 of the TCCP, the requisites for forfeiture are: (1) the wrongful making by the owner, importer, exporter or consignee of any declaration or affidavit, or false declaration or affidavit, or the wrongful making or delivery by the same persons of any invoice, letter or paper, all touching on the importation or exportation of merchandise; and (2) that such declaration, affidavit, invoice, letter or paper is false. Moreover, in order that petitioner may be held liable under subparagraph (5), the fraud must be committed by an importer/consignee to evade payment of duties due. The fraud contemplated by law must be actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some right. ***(Farolan, Jr. vs. Court of Tax Appeals, G.R. No. 42204, January 21, 1993)***

In this case, respondent failed to show that fraud has been committed by petitioner in the importation of the subject shipments. Records show that the subject shipments were entered in accordance with existing customs rules and regulations and related laws and regulations. The subject shipments are not considered as prohibited importation nor one where fraud has been committed to defraud the government of revenues.

In order that forfeiture may lie against the subject shipments, there must be fraud on the part of the importer/consignee. Fraud is never presumed. It must be proved. Failure to prove the existence of fraud is a bar to forfeiture. The reason is that forfeitures are not favored in law and equity ***(Farm Implement & Machinery Co. vs. Commissioner of Customs, No. L-22212, August 30, 1968).***

The Court finds that petitioner's importation of the subject shipments were properly covered by its License to Import No. 077-99 which was issued by the GTEB on May 13, 1999 and Import License No. 048468-99 which was issued by the GTEB on July 7, 1999, both licenses were issued prior to the arrival of the subject shipments on August 8, 1999 (Entry No. 44780-99) and August 14, 1999 (Entry Nos. 46269-99 and 46297-99).

WHEREFORE, the decree of forfeiture of respondent Commissioner of Customs is hereby **REVERSED** and the Warrants of Seizure and Detention Nos. 99-279, 99-280, and 99-281 are hereby **LIFTED**. Accordingly, the subject importation covered by Import Entry Nos. 44780-99; 46269-99 and 46297-99 are hereby **RELEASED** to petitioner subject to the condition that the correct duties, taxes, fees and other charges thereon be paid to the Bureau of Customs based on the actual quantity and condition of the articles at the time of filing of the corresponding import entry in compliance with this decision.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the First Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Chairman, First Division