REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ROSEMARIE G. CLEMENTE, Petitioner,	CTA CASE NO. 9545
	Members:
-versus-	DEL ROSARIO, *P.J., Chairperson,* FABON-VICTORINO, *and* MANAHAN, *JJ.*
REPUBLIC OF THE PHILIPPINES as represented by the Honorable Commissioner of Customs, Respondent.	Promulgated: JAN 15 2020 9:30 am

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DECISION

***Fabon-Victorino, J.*:**

In this *Petition for Review* filed on February 27, 2017, petitioner Rosemarie G. Clemente seeks to vacate and set aside the Decision dated January 19, 2017 rendered by the Commissioner of Customs, which affirmed the order issued by the District Collector Edgar Z. Macabeo, to forfeit in favor of the Government the alleged undeclared 259 pieces of jewelry[1] found in her possession when she returned to the Philippines from Hong Kong.

The record shows that petitioner is the holder of Philippine Passport No. EC702447.[2]

On September 19, 2015, at around 10:30 pm., the Customs Intelligence & Investigation Service (CIIS)/Intelligence Group led by Joel Pinawin informed BOC Flight Supervisor on duty, Anthony C. Relucio, that an operation would be conducted against an incoming

[1] Summary of the Case, Pre-Trial Order dated June 27, 2017, Docket, Volume - I, p. 211.
[2] Pars. 1.1 and 1.2, *Joint Stipulation* (JS), Docket - Vol. I, p. 208 [cc: Section II(a), respondent's *Pre-Trial Brief*, Docket - Vol. I, pp. 119 to 120]; Exhibit "R-2", Docket - Vol. II, p. 482.

passenger on board Flight DG7833[3], later identified as Rosemarie G. Clemente[4], the herein petitioner, who would allegedly bring into the country pieces of jewelry from Hong Kong[5] through NAIA Terminal 3.

Customs Examiners on duty Paulo Parong, Sheilla Fausto, Meliza Espiritu and Ma. Lourdes Calzada were informed about the operation. The first two were assigned to man the Red Lane, while the last two, the Green Lane.[6]

Not long after, BOC Intelligence Group leader, Joel Pinawin,[7] identified petitioner who was then waiting for her luggage at the carousel area. After getting her checked-in luggage, petitioner immediately proceeded to the customs area, passing through the Green Lane[8] without submitting an accomplished Customs Declaration Form[9], despite the visible notice relative thereto at the NAIA arrival area.

This prompted Customs Examiner Ma. Lourdes Calzada to ask petitioner if she had anything to declare[10]. Petitioner did not reply and walked towards the exit area[11] but was stopped by BOC Flight Supervisor on duty, Anthony C. Relucio. The latter asked petitioner if she had anything to declare but petitioner continued to keep mum[12]. Hence, Supervisor on duty, Anthony C. Relucio advised petitioner open her luggage to place on the examination counter[13]. During this examination, the Customs Examiner found inside petitioner's carry-on luggage 259 pieces of jewelry, consisting of 116 pieces of earrings, 18 pieces of bracelets, 55 pieces of rings, 30 pieces of pendants and 40 pieces of necklaces.[14]

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[3] *Id.*
[4] Exhibit "R-8", Docket - Vol. II, pp. 513 to 515.
[5] Par. 22, *Petition for Review*, vis-à-vis Par. 2, *Answer*, Docket - Vol. I, pp. 16 and 85, respectively.
[6] *Id.*
[7] Exhibit "R-8", Docket - Vol. II, p. 513; and Exhibit "R-7", Docket - Vol. II, pp. 511 to 512.
[8] Exhibit "R-8", Docket - Vol. II, pp. 513 to 515.
[9] Par. 1.2, JS, Docket - Vol. I, p. 208 [cc: Section II(c), respondent's *Pre-Trial Brief*, Docket - Vol. I, p. 120].
[10] Par. 1.2, JS, Docket - Vol. I, p. 208 [cc: Section II(d), respondent's *Pre-Trial Brief*, Docket - Vol. I, p. 120]; Exhibit "R-8", Docket - Vol. II, pp. 513 to 515.
[11] Exhibit "R-8", Docket - Vol. II, p. 513; Exhibit "P-9", (Q12/A12), Docket - Vol. I, p. 234.
[12] Exhibit "R-8-1", Docket - Vol. II, p. 514; Exhibit "P-9", (Q14/A14 and Q15/A15), Docket - Vol. I, p. 234.
[13] Exhibit "R-8-1", Docket - Vol. II, p. 514; Exhibit "P-9", (Q17/A17), Docket - Vol. I, p. 234.
[14] Exhibit "R-8-1", Docket - Vol. II, p. 514; Exhibit "P-9", (Q20/A20), Docket - Vol. I, p. 235.

For petitioner's failure to inform the Customs Officers of her possession of the said pieces of jewelry in commercial quantity[15], or even to offer any explanation therefor, the 259 pieces of jewelry were confiscated under Held Baggage Receipt No. 00342185.[16]

Subsequently, the Office of the District Collector, NAIA, BOC filed forfeiture proceedings against petitioner docketed as Seizure Identification No. 055-2015 (NAIA).[17]

With the recommendation of the BOC CIIS,[18] District Collector Edgar Z. Macabeo[19] issued a Warrant of Seizure and Detention dated September 25, 2015 decreeing the seizure of the subject 259 pieces of assorted jewelry for violation of Section 2505, in relation to Section 2530(l)(2), of the Tariff and Customs Code of the Philippines (TCCP), as amended.

In the Decision[20] dated June 9, 2016, District Collector Edgar Z. Macabeo declared the subject pieces of jewelry forfeited in favor of the Government, in the following manner:

> IN LIGHT OF ALL THE FOREGOING, it is hereby Ordered and Decreed that the above-mentioned undeclared shipment composed of 40 pieces *[of]* necklaces; 30 pieces *[of]* pendants; 18 pieces *[of]* bracelets; 116 pieces *[of]* earrings; and, 55 pieces *[of]* rings[,] totaling 259 pieces of jewelry and owned by ROSEMARIE G. CLEMENTE are hereby declared FORFEITED in favor of the government, the same to be disposed of in accordance with law.
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> Let copies of this Decision be furnished to all offices and parties concerned for their information.
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> S O O R D E R E D.

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[15] Par. 1.2, JS, Docket – Vol. I, p. 208 [cc: Section II(l), respondent's *Pre-Trial Brief*, Docket – Vol. I, p. 120].
[16] Exhibit "R-5", Docket – Vol. II, p. 509.
[17] Par. 1.1, JS, Docket – Vol. I, p. 208 [cc: Par. 2.9, *Petitioner's Pre-Trial Brief*, Docket – Vol. I, p. 110].
[18] Exhibits "R-9" and "R-10", Docket – Vol. II, pp. 516 to 518.
[19] Exhibit "R-12", Docket – Vol. II, pp. 520 to 522.
[20] Exhibit "P-2", Docket – Vol. I, pp. 248 to 280.

Petitioner appealed the said Decision to respondent COC,[21] who sustained[22] the ruling of District Collector Edgar Z. Macabeo, in this wise:

> **WHEREFORE**, premises considered, the Decision dated 09 January 2016[23] issued by the District Collector, NAIA, in Seizure Identification (S.I.) No. 320-2014 (sic)[24] is **AFFIRMED *in toto***. Accordingly, the above-mentioned undeclared shipment composed of 40 pieces necklaces, 30 pieces pendants, 18 pieces bracelets, 116 pieces earrings and 55 pieces rings[,] totaling 259 pieces of assorted jewelry that are owned by ROSEMARIE G. CLEMENTE are all **FORFEITED** in favor of the government, the same to be disposed in accordance with law.
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> **SO ORDERED.**

Hence, the instant Petition for Review filed on February 27, 2017.[25]

On April 21, 2017, respondent filed his *Answer*,[26] alleging that petitioner was guilty of fraud, as she failed to declare the subject pieces of jewelry to the customs official upon entry into the country, for the determination and payment of the proper custom duties on the said imported goods as provided by law.

Petitioner could not take refuge on the claim that she was not provided with a Customs Declaration Form, hence, was unable to declare the subject pieces of jewelry given that she was twice asked if she had dutiable items to declare and gave negative answers. Besides, there are notices in the NAIA Arrival area advising arriving passengers to "Please fill out the Customs and Declaration Form available at the Customs Arrival Area". This notwithstanding, petitioner failed.

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[21] Par. 27, *Petition for Review*, vis-à-vis Par. 2, *Answer*, Docket – Vol. I, pp. 18 and 85, respectively.
[22] Par. 28, *Petition for Review*, vis-à-vis Par. 2, *Answer*, Docket – Vol. I, pp. 18 and 85, respectively; Exhibit "P-1", Docket – Vol. I, pp. 30 to 37.
[23] This is an erroneous date. The actual date is June 9, 2016, not "09 January 2016".
[24] This is an erroneous case number. The facts, as stated in the Decision of the COC, are to the effect that what has been appealed to his Office is the Decision by the District Collector in Seizure Identification No. "055-2015" (Refer to Exhibit "P-1", Docket – Vol. I, p. 30).
[25] Docket – Vol. I, pp. 10 to 29.
[26] Docket – Vol. I, pp. 85 to 95.

Under the TCCP, as amended, "all articles, when imported from any foreign country into the Philippines, shall be subject to duty upon each importation, even though previously exported from the Philippines, except as otherwise specifically provided for in this Code and in other laws". Given that the items found in the possession of petitioner were not exempt from importation duties, they must accordingly be declared for assessment and payment.

Further, pursuant to Section 2505 and 2530 of the TCCP, liability attaches when a person fails to declare dutiable items. The two provisions are clear and must not be taken in isolation with other sections of the code. It has been ruled that when the law is clear and free from any doubt or ambiguity there is no room for interpretation but only application, argues respondent.

On petitioner's contention that she simply kept mum when asked if she had anything to declare, the same, to the mind of respondent, was a mere afterthought, and will not change the fact that she committed fraud and failed to declare the dutiable items found in her possession. Even her alleged silence was an indication of fraud as it showed that she was aware of the dutiable items in her possession thus she tried to avoid any confrontation with the customs officials.

Contrary to petitioner's claim, she was accorded due process as she was allowed ample opportunity to respond to the accusation or explain her side but failed. The forfeiture of the subject items was based on the factual findings of the District Collector of the BOC, whose findings were entitled to great weight and must be accorded not only respect but even finality when supported by substantial evidence.

Finally, the defense of presumption of innocence invoked by petitioner would not apply in administrative proceedings.

After the parties filed their respective *Pre-Trial Briefs,* they submitted their *Joint Stipulation* on June 9, 2017[27],

[27] Docket - Vol. I, pp. 208 to 209.

which the Court approved on June 27, 2017, thereby terminating the Pre-Trial proceeding.

During the trial, petitioner presented only herself in support of the instant Petition.[28] She testified that on September 19, 2015, she arrived from Hongkong and deplaned at the NAIA Terminal 3. While passing at the Green Lane of the Terminal, the customs examiner asked if she had anything to declare to which she did not reply on the belief that her luggage and the package entrusted to her by an acquaintance named Auntie Linda contained only personal belongings which were not dutiable.

As she was exiting the Green Lane, she was again asked by a customs officer if she had anything to declare. She again did not answer the query for the same reason.

At this point, she was asked to return to the Green Lane and instructed to place her luggage on the examination counter and to open it for inspection. Thereupon, the Customs Officers found the package containing the subject pieces of jewelry. After taking the inventory, the pieces of jewelry were taken by the Customs Officers for safekeeping.

Petitioner further testified that she did not check the content of the package before leaving Hong Kong as she was assured by her acquaintance that they were mere personal belongings. Auntie Linda was introduced to her by a friend who invited her for coffee before going to the airport.

Petitioner signified her willingness to settle the case under Section 2307 of the TCCP, which however, did not materialize.

Petitioner also declared that she filed a Position Paper in the administrative proceedings despite belief that it was already futile considering the prior news report that cases would be filed against her by the BOC for smuggling.

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[28] Exhibit "P-9", Docket - Vol. I, pp. 233 to 238; Minutes of the hearing held on, and Order dated, September 13, 2017, Docket - Vol. I, pp. 299 and 300, respectively.

Thereafter, she received the Decision dated June 9, 2016 of the District Collector of the BOC, indicating that the jewelry seized would be forfeited in favor of the government.

She elevated the adverse ruling to respondent COC via a Notice of Appeal dated June 28, 2016. Respondent COC, however, sustained the ruling of the District Collector in the assailed Decision of January 19, 2017, hence, the present case.

On September 18, 2017 petitioner filed her *Formal Offer of Evidence,*[29] which was resolved in the Resolutions dated November 2, 2017,[30] and May 25, 2018[31].

Respondent, on the other hand, presented BOC Customs Operations Officers Ma. Lourdes Calzada,[32] Anthony Relucio,[33] and Elizabeth E. Pableo[34].

Custom Operations Officer III **Ma. Lourdes Calzada,**[35] assigned at the NAIA Collection District III, testified that her duties include the examination of the luggage of incoming passengers, computation of the corresponding duties for taxable articles, and reporting of incidents which occur while on duty.

On September 19, 2015, at the Arrival Area of NAIA Terminal 3, they were informed that an operation would be conducted in response to a report that a passenger arriving from Hong Kong would bring into the country various pieces of jewelry.

CIIS Intelligence Officer Joel Pinawin identified the passenger as Rosemarie G. Clemante, herein petitioner. As petitioner was passing through the Green Lane where she

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[29] Docket - Vol. I, pp. 301 to 305.
[30] Docket - Vol. I, pp. 388 to 389.
[31] Docket - Vol. II, pp. 446 to 448.
[32] Exhibit "R-15", Docket - Vol. II, pp. 525 to 531; Minutes of the hearing held on, and Order dated, June 20, 2018, Docket - Vol. II, pp. 449 and 450, respectively.
[33] Exhibit "R-16", Docket - Vol. I, pp. 185 to 189; Minutes of the hearing held on, and Order dated, July 16, 2018, Docket - Vol. II, pp. 461 to 464.
[34] Exhibit "R-17", Docket - Vol. I, pp. 192 to 195; Minutes of the hearing held on, and Order dated, July 16, 2018, Docket - Vol. II, pp. 461 to 464.
[35] Cross examination deemed waived for failure of petitioner's counsel to appear during the hearing, despite notice, Minutes of the hearing dated June 20, 2018, docket vol. II p. 449.

was assigned, she asked petitioner if she had anything to declare. The latter replied "None". She repeated the question and petitioner gave the same answer and sprinted toward the exit area. On her way out, BOC Flight Supervisor on duty, Anthony C. Relucio, again asked petitioner if she had anything to declare, to which she again replied in the negative. This prompted BOC Flight Supervisor on duty Relucio to request petitioner to return to the Green Lane where she conducted a rigid examination of petitioner's luggage.

Compliant with his instruction, petitioner placed her checked-in luggage and one carry-on bag on the examination counter and opened them for inspection. The inspection revealed various pieces of jewelry. BOC Flight Supervisor on duty Anthony C. Relucio instructed her and another BOC personnel to bring petitioner to the Exclusion Room for further examination.

After the confiscation proceeding, the subject pieces of jewelry were turned over to the Chief of the Collection Division for custody and safekeeping. She accomplished the required Held Baggage Receipt (HBR) No. 0342185 and gave the original copy thereof to petitioner. Thereafter, she prepared and submitted to the Chief, Arrival Operations Division a Memorandum dated September 21, 2015 recommending the issuance of a warrant of seizure and detention against the subject pieces of jewelry for violation of Section 2505, in relation to Section 2530 of the TCCP, as amended.

Witness BOC Flight Supervisor, **Anthony C. Relucio**, testified that he knows the subject incident involving the seizure of the various pieces of jewelry from incoming passenger petitioner Rosemarie G. Clemente. He was on duty at the NAIA Terminal 3 when petitioner arrived from Hong Kong on September 19, 2015.

BOC Customs Officers on duty were informed about the operation to be conducted against the incoming passenger who was reported to be carrying taxable articles. The incoming passenger was identified when she was proceeding to the carousel area for her luggage. He intercepted petitioner on her way out and advised her to return to the examination counter manned by Customs Examiner Ma. Lourdes Calzada for the inspection of her luggage.

Petitioner opened her luggage revealing the subject undeclared jewelry. He instructed Customs Examiner Calzada to bring petitioner to the Exclusion Room for a thorough examination and inventory of the undeclared taxable items.

After the inventory, the Customs Examiners submitted to him their Inventory Report on which he affixed his signature. He prepared a Memorandum dated September 21, 2015 and submitted it to the District Collector recommending the seizure of the undeclared items.

Customs Appraiser and Flight Supervisor at the Arrival Operations Division of the BOC, **Elizabeth E. Pableo**, testified that her duties include assessment of dutiable items brought into the country and supervision of the examination of baggage of incoming passengers to determine the presence of taxable items.

On September 19, 2015, while she was on duty as Flight Supervisor at the Arrival Area of NAIA Terminal 3, a passenger from Hong Kong whose baggage contained undeclared pieces of jewelry was intercepted. However, the actual examination and inventory of the undeclared items were conducted at the passengers' Exclusion Room in the presence of petitioner, an intercepted passenger from Hong Kong whose baggage contained undeclared pieces of jewelry. The BOC Customs Officers executed a Memorandum dated September 21, 2015, narrating the incident and recommending that the undeclared items be seized.

After respondent rested,[36] the case was submitted for decision on January 15, 2019.[37]

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[36] Docket - Vol. II, pp. 624 to 625.
[37] Resolution dated January 15, 2019, Docket - Vol. II, p. 694.

THE ISSUES

Petitioner raised the following issues:

"29.1 On the one hand, the Customs Declaration Form enumerated the items that an incoming passenger must declare. The BOC did not furnish petitioner a copy hereof. On the other hand, Sections 2505 and 2530 of the Tariff and Customs Code of the Philippines [TCCP] mandated the declaration of dutiable items but did not enumerate what these items are. Did the BOC Commissioner commit reversible error when he ordered forfeiture of the items on the basis of a law that, on its face, was not self-executory? Petitioner submits he did.

29.2 Petitioner appealed the Macabeo Decision *inter alia* on the ground that it did not comply with the *Ang Tibay* requirements. In the main, the conclusions therein were not supported by substantial evidence. The BOC Commissioner's Decision did not address the issue; it totally avoided the same. Does the BOC Commissioner's refusal to address the same mean that miraculously there was now substantial evidence to support the decision that he affirmed? Petitioner submits that he does not."

Respondent, on the other hand, raised this lone issue:

"WHETHER OR NOT THE JEWELRIES FOUND AND SEIZED FROM PETITIONER SHOULD BE FORFEITED FOR VIOLATION OF THE PERTINENT PROVISIONS OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES."[38]

The foregoing issues may however be simplified as follows:

1. Whether respondent COC erred when he sustained the seizure and forfeiture order issued by the District Collector against the 259 undeclared pieces of jewelry brought into the country by petitioner from abroad; and

2. Whether the subject pieces of jewelry declared seized and forfeited in favor of

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[38] Respondent's *Pre-Trial Brief*, Docket – Vol. I, p. 121.

government could still be redeemed under Section 2307 of the TCCP, as amended.

Petitioner's arguments:

Petitioner claims that the respondent COC erred in ruling that the seized pieces of jewelry should be forfeited in favor of the government on mere presumption of fraud on her part. There being no fraud on her part, respondent COC committed a reversible error when it affirmed the District Collector's denial of her offer to settle the tax obligation to redeem the undeclared taxable items.

Respondent's counter-arguments:

Respondent, on the other hand, argues that petitioner committed fraud when she did not declare the subject pieces of jewelry found in her possession for the purpose of frustrating the collection of duties and taxes. Also contrary to petitioner's protestation, she was accorded due process during the seizure and forfeiture proceedings of the smuggled items.

THE RULING OF THE COURT

Section 2530(l)(2) of the TCCP, as amended, pertinently provides, thus:

> SEC. 2530. *Property Subject to Forfeiture Under Tariff and Customs Laws.* – **Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subjected to forfeiture**:
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> xxx xxx xxx
>
> l. **Any article sought to be imported** or exported.
>
> xxx xxx xxx
>
> (2) **By failure to mention to a customs official, articles found in the baggage of a person arriving from abroad**;" *(Emphases ours)*

Corollarily, Section 2535 of the TCCP, as amended, provides as follows:

> SEC. 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.

Clear from Section 2530(l)(2) of the TCCP, as amended, that any article sought to be imported found in the baggage or possession of a person arriving from abroad is subject to forfeiture if the said person failed to inform the customs official about it. In any event, probable cause must first be established before authorities may institute the seizure and forfeiture proceedings.

Evidence show petitioner arrived at the NAIA Terminal 3 on board Flight Number DG7833 from Hong Kong on September 19, 2015 bringing in various pieces of jewelry in commercial quantity which were found in her luggage upon inspection by the BOC Customs Examiners. Petitioner was asked not once but three times if she had anything to declare as she was passing the Green Lane of the Customs Area. Despite these opportunities given to her by the BOC Customs Examiners, petitioner denied having anything to declare.

Note that the BOC Customs Examiners were already aware of the shipment having been informed by some elements of the CIIS, led by Joel Pinawin, who in turn received[39] the alert report about the possible smuggling of jewelry by a passenger on board Flight DG3833 from Hongkong.

CIIS Intelligence Officer Joel Pinawin identified[40] the said passenger as Rosemarie G. Clemente, the herein

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[39] Par. 22, *Petition for Review*, vis-à-vis Par. 2, *Answer*, Docket - Vol. I, pp. 16 and 85, respectively

[40] Exhibit "R-8", Docket - Vol. II, pp. 513 to 515.

petitioner, who was then waiting for her luggage at the assigned carrousel. After getting her baggage composed of a checked-in luggage and a carry-on bag, petitioner proceeded to the Customs Area passing through the Green Lane, manned by Customs Examiner Ma. Lourdes Calzada. The latter asked petitioner if she had something to declare. Petitioner readily replied "none" then walked toward the exit area. Customs Examiner Calzada repeated the question and petitioner gave the same answer as she sprinted away.

On petitioner's way out, BOC Flight Supervisor on duty, Anthony C. Relucio, again asked petitioner if she had anything to declare, to which she again replied in the negative. Thereupon BOC Flight Supervisor Relucio requested petitioner to return to the Green Lane where she was asked to open her carry-on bag revealing the various undeclared pieces of jewelry. Petitioner was then escorted to the passengers' Exclusion Room where she categorically denied ownership of the said shipment, pointing to a mere acquaintance only known to her as Auntie Linda as the real owner. She allegedly met Auntie Linda for the first time before she boarded the plane. It was during this first encounter that Auntie Linda gave her the package containing the undeclared pieces of jewelry which she placed in her luggage without inspecting the same.

Pursuant to Section 2530(l)(2) of the TCCP, as amended, the undeclared dutiable items were confiscated. Customs Examiner Calzada accomplished Held Baggage Receipt No. 0342185 and gave the original thereof to petitioner. Finding the required probable cause against petitioner, the Customs Examiners prepared all the required documents for the purpose of instituting seizure and forfeiture proceedings of the undeclared items.

As provided in Section 2535 of the TCCP, as amended, once probable cause is established, the burden of proof is shifted to the claimant,[41] the petitioner in this case who utterly failed to inform the Customs Officers about the pieces of jewelry in commercial quantity and satisfactorily identify the owner or explain her possession thereof. The

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[41] Refer to *Commissioner of Customs vs. Singson, et al.*, G.R. No. 181007, November 21, 2016.

sequence of events evidently clearly manifests the existence of probable cause justifying the confiscation and seizure proceeding initiated by the BOC Customs Examiners against the undeclared items.

Probable cause may be defined as such reasons, supported by the facts and circumstances, as will warrant a cautious man in the belief that his action and means taken in prosecuting it are legally just and proper.[42]

For the purpose of issuance of a search warrant, probable cause is defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the suspect. Probable cause demands more than bare suspicion; it requires less than evidence which would justify conviction.[43] It need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt and definitely, not on evidence establishing absolute certainty of guilt. A probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.[44]

In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense.[45]

Our jurisprudence is replete with instances where tipped information, as in the instant case, has become a sufficient probable cause to effect a warrantless search and seizure.[46]

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[42] U.S. v. Adrian, 28 Phil. 570.
[43] *Retired SPO4 Bienvenido Laud vs. People of the Philippines*, G.R. No. 199032, November 19, 2014.
[44] Senator Jinggoy Ejercito Estrada vs. office of the Ombudsman, et. Al., G.R. No. 212140-41, January 21, 2015.
[45] Teresita Tanghal Okabe vs. Hon. Pedro De Leon Gutierrez and Cecilia Maruyama, G.R. No. 150185, May 27, 2004.
[46] *People of the Philippines vs. Valdez*, G.R. No. 127801, March 3, 1999, citing *People of the Philippines vs. Tangliben*, 184 SCRA 220 (1990), *People of the Philippines vs. Maspil*, 188

Petitioner also argues that respondent COC gravely erred in not allowing her to settle the case under Section 2307 of the TCCP, as amended. Allegedly, respondent COC refused her offer of settlement on the ground that she committed fraud. Petitioner, however, insists that respondent COC merely presumed that she committed fraud, there being no clear and convincing evidence in support thereof.

Section 2307 of the TCCP, as amended by Executive Order No. 38 dated August 6, 1986, is instructive, thus:

> SEC. 2307. *Settlement of Case by Payment of Fine or Redemption of Forfeited Property.* – Subject to approval of the Commissioner, **the district collector may, while the case is still pending, except when there is fraud, accept the settlement of any seizure case provided that the owner, importer, exporter, or consignee or his agent shall offer to pay to the collector a fine imposed by him upon the property, or in case of forfeiture, the owner, exporter, importer or consignee or his agent shall offer to pay for the domestic market value of the seized article.** The Commissioner may accept the settlement of any seizure case on appeal in the same manner.
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> xxx xxx xxx
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> Settlement of any seizure case by payment of the fine or redemption of forfeited property shall not be allowed in any case **where the importation is absolutely prohibited or where the release of the property would be contrary to law.** *(Emphases supplied)*

Based on the foregoing provision, subject to the approval of the COC, the District Collector may accept the settlement of a *forfeiture* case, when the owner, exporter, importer or consignee or his agent offer to pay for the domestic market value of the seized article. However, the said offer of settlement may be refused when there is fraud.

As earlier observed by the Court, petitioner committed fraud to frustrate collection of proper duties and taxes for

SCRA 751 (1990), *People of the Philippines vs. Malmstedt*, 198 SCRA 401 (1991), *People of the Philippines vs. Bagista*, 214 SCRA 63 (1992), and *Manalili vs. Court of Appeals*, 280 SCRA 400 (1997).

the undeclared pieces of jewelry, as shown in the continuous events and circumstances that occurred in the arrival area of NAIA Terminal 3 indicating deceit and dishonesty on the part of petitioner, who utterly failed to controvert the evidence of respondent showing that she failed to declare via an accomplished document for that purpose, or mention that she was carrying dutiable items, justifying rejection of her offer of settlement. Interestingly, petitioner admitted without giving any details that her offer of settlement failed to materialize.

While fraud cannot be presumed, it need not be proved by direct evidence and it can well be inferred from attendant circumstances,[47] which is abundant in the present case.

In his Decision dated June 9, 2016 in Seizure Identification No. 055-2015,[48] District Collector Macabeo found fraud on the part of petitioner, as follows:

> G. Claimant Clemente did not declare and submit a Customs declaration regarding the said jewelry upon inquiry by the customs examiner while she was inside the customs area and when she was already at the exit of said customs area. Ms. Clemente did not even mention to the customs officers that some pieces of jewelry are contained in her baggage. The failure to declare and submit a Customs Declaration or otherwise mention to a customs official by Ms. Clemente as regards the jewelry which are dutiable articles was attended with fraud. **Ms. Clemente committed fraud because when she was asked twice by the customs officials if she had anything to declare, she answered none or 'WALA' in the vernacular. Such act or denial exhibited by Ms. Clemente is considered deceit and a dishonest trick employed by her against the customs officials who were made to believe that she had no dutiable article inside her baggage. She knew fully well the implication of such act or denial which meant that if she was successful in her deceit, she could have evaded the payment of customs duties and taxes on the said jewelry. Indeed, a clear intent**

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[47] Republic of the Philippines vs. Estate of Alfonso Lim, Sr., et al., G.R. No. 164800, July 22, 2009

[48] Exhibit "P-2", Docket - Vol. I, pp. 248 to 280.

> **on Claimant Clemente to evade the payment of duties and taxes on the same.**"[49] *(Emphasis ours)*

The foregoing finding of fraud was affirmed by the COC as follows:

> In the instant case, **there is no mistaking the intentional deception committed by claimant upon her arrival at the passenger air terminal immediately prior to her apprehension by intentionally failing to declare subject highly dutiable pieces of jewelry in her possession.**
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> While fraud is a state of the mind which cannot be presumed, this Office cannot turn a blind eye on the stubborn refusal of appellant to make the necessary declarations of the highly dutiable items in her possession as shown in the following uncontroverted and settled facts that were duly established by the prosecution, to wit: (1) Claimant arrived in the country on September 19, 2015; (2) dutiable assorted pieces of jewelry were found in her baggage after the same was opened and thoroughly examined in her presence; (3) claimant Clemente did not declare and submit a Customs Declaration form regarding the said jewelry upon inquiry by the customs examiner while she was inside the customs area and while at the exit of said customs area; (4) Ms. Clemente did not mention to the customs officers that high value jewelry were in her baggage nor offered any plausible explanation why said pieces of jewelry in commercial quantity were in her possession which truly constitutes fraud that amounts to unlawful importation.
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> Inarguably, fraud, as defined by the Oxford American Dictionary, is a criminal deception, a dishonest trick. Thus, **appellant committed fraud because when she was asked twice by the customs officials if she had anything to declare, she answered none or 'WALA' in the vernacular.**
>
> Verily, **such act of denial by appellant constitutes deceit and a dishonest trick employed by her against the customs officials who were made to believe that she had no dutiable article inside her baggage which if successful, she could have evaded payment of rightful customs duties and taxes on the said jewelry.**

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[49] *Id.*, at p. 280.

> All these uncontroverted facts points *(sic)* to a single conclusion that she is guilty of fraud based on more than substantial pieces of testimonial evidence from no less than the apprehending Customs officers who enjoy the presumption of validity and regularity while in the performance of their assigned task as in this case. Thus, unless the presumption is rebutted, it becomes conclusive. Every reasonable intendment will be made in support of the presumption and in case of doubt as to an officer's act being lawful or unlawful, construction should be in favor of its lawfulness. Thus, absence of proof that these personnel acted beyond the scope of their authority, it is presumed that the operations was conducted above board.[50] *(Emphases ours)*

There is no dispute that the subject pieces of jewelry were found in the baggage of petitioner. To escape criminal liability, petitioner feigned ignorance about the content of the package allegedly entrusted to her by a mere acquaintance before she boarded the plane. Such denial without more is self-serving and weak as it could easily be fabricated as what petitioner apparently did.

Jurisprudence has it that the things in possession of a person are presumed by law to be owned by him. To overcome this presumption, it is necessary to present clear and convincing evidence to the contrary.[51]

To repeat, petitioner failed to present even a piece of evidence to prove that ownership of the jewelry pertained to another person. Petitioner's act of naming the owner of the shipment as mere Auntie Linda is certainly insufficient to shift the liability to the said incompletely identified person.

Section 3(j), Rule 131[52] of the Revised Rules of Court provides that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the

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[50] Exhibit "P-1", Docket - Vol. I, pp. 33 to 34.

[51] The People of the Philippines vs. Basher Bongcarawan Y Macarambon, G.R. No. 143944, July 11, 2002.

[52] Rule 131 Burden of Proof and Presumptions x x x Sec. 3. Disputable presumptions. - The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence: x x x (j) That a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, that things which a person possesses, or exercises acts of ownership over, are owned by him; x x x.

doer of the whole act; otherwise, **that thing which a person possesses, or exercises acts of ownership over, is owned by him.**[53]

Since the pieces of jewelry were in the possession of petitioner at the time that they were found, such are deemed to belong to her. Without evidence to the contrary, as in this case, mere denial will not suffice.

Further, petitioner's allegation that the package containing the 259 pieces of jewelry belonged to an "acquaintance" or a total stranger whom she met for the first time shortly before her departure from Hong Kong is simply incredible, stretching human imagination to the point of breakage. Also amazing and unbelievable, is petitioner's declaration that Auntie Linda did not identify or provide her with the details as to the recipient in the Philippines of the dutiable items.

Also, the fact that petitioner readily offered settlement to redeem the undeclared items indicates that she is the owner thereof.

Jurisprudence also provides that in the absence of more convincing evidence, the presumption of regularity in favor of the BOC Customs Examiner must be sustained.

As a general rule, "official acts" enjoy the presumption of regularity, and the presumption may be overthrown only by evidence to the contrary. When an act is official, a presumption of regularity exists because of the assumption that the law tells the official what his duties are and that he discharged these duties accordingly.[54]

WHEREFORE, the Petition for Review dated February 24, 2017 filed by petitioner Rosemarie G. Clemente, is **DENIED**, for lack of merit.

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[53] Eduardo Celedonio vs. People of the Philippines, G.R. No. 209137, July 1, 2015, (boldfacing ours).
[54] Reyes, Jr. vs. Belisario, G.R. No. 154652, August 14, 2009

Consequently, the Decision dated January 19, 2017 rendered by the COC in Seizure Identification No. 055-2015 (NAIA) is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII 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 the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice