REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

CHANG L. MOHAMMAD, SHARALYN S. PEDRENA, JOHNNY S. YUSUP, FERDAUS A. OMAR, and ARMAND P. DAUD,
Petitioners,

- versus -

COMMISSIONER OF CUSTOMS,
Respondent.

CTA CASE NO. 10346

Members:

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

Promulgated:

NOV 04 2022

11:00 a.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Before this Court is a Petition for Review[1] filed by petitioners Chang L. Mohammad (**Mohammad**), Sharalyn S. Pedrena (**Pedrena**), Johnny S. Yusup (**Yusup**), Ferdaus A. Omar (**Omar**), and Armand P. Daud (**Daud**) (collectively, **petitioners**) against respondent Commissioner of Customs (**respondent/COC**), under Section 3(a)[2], Rule 8 in relation to Section 3(a)(4)[3], Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**).

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1 Filed on 10 September 2020, Division Docket, pp. 6-37, with annexes.

2 **SEC. 3**. *Who may appeal; period to file petition.* — (a) A party adversely affected ... by a decision or ruling of the Commissioner of Customs ... may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling...[.]

3 **SEC. 3**. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

...

Petitioners ask this Court (1) to set aside respondent's Decision rendered on 29 July 2020[4] (**Assailed Decision**), which affirmed the 04 March 2020 Decision[5] of Ninoy Aquino International Airport (**NAIA**) District Collector, Carmelita M. Talusan (**District Collector Talusan**), ordering the forfeiture of the entire amount in issue (**Forfeiture Order**) and (2) to render a decision granting the offer of settlement pursuant to Section 1124[6] of Republic Act (**RA**) No. 10863 or the Customs Modernization and Tariff Act of 2016 (**CMTA**). Accordingly, petitioners pray that seventy percent (70%) of the amount intercepted, equivalent to **USD $344,120.00**, be released.

PARTIES OF THE CASE

Petitioners Mohammad, Yusup, Ferdaus and Daud are employees of Sharalyn S. Pedrena Money Changer (**SSP Money Changer**), a business enterprise primarily engaged in currency exchange with a branch at the City of Dreams Manila in Parañaque City. SSP Money Changer opened in June 2019 and Pedrena is its sole proprietor.[7]

Respondent COC, on the other hand, is the head of the Bureau of Customs (**BOC**), which is a government instrumentality under the Department of Finance (**DOF**) tasked with the assessment and collection of the lawful revenues from imported articles and all other dues, taxes, fees and charges, fines and penalties accruing under the tariff and customs laws.

FACTS OF THE CASE

Petitioner Yusup instructed petitioner Omar to travel to Hong Kong to purchase watches and pieces of jewelry at the Jewellery and Gem Fair scheduled in the 3rd week of September 2019. He also ordered

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(4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs[.]

4 Certified True Copy of Respondent's 29 July 2020 Decision (Assailed Decision), BOC Records.

5 Certified True Copy of NAIA District Collector Talusan's 04 March 2020 Decision (Forfeiture Order), BOC Records.

6 **SEC. 1124**. *Settlement of Pending Seizure Case by Payment of Fine or Redemption of Forfeited Goods*. — ...

7 Par. 9, Parties, Petition for Review, supra at note 1, p. 8.

petitioner Omar to book flights for petitioners Daud and Mohammad, her companions on the said business trip.

On 20 September 2019, petitioners Omar, Daud and Mohammad traveled to and arrived in Hong Kong. Since the watches and pieces of jewelry were expensive, petitioner Omar decided to buy only a few stocks. Upon her instruction, Daud and Mohammad returned to Manila the next day, carrying unspent foreign currency in cash amounting to USD $649,600.00 (divided between Daud and Mohammad's bags: USD $501,600.00 in Daud's black cabin luggage and USD $148,000.00 in Mohammad's black backpack).

On 21 September 2019, petitioners Daud and Mohammad arrived at NAIA Terminal 3 on-board Cebu Pacific Flight No. 5J 273 from Hong Kong.[8] During their trip, Daud allegedly gave Mohammad a Customs Baggage Declaration Form (**CBDF**) to fill out for the foreign currency he was carrying in his backpack. Mohammad, however, did not accomplish the said form as it was allegedly difficult for him to write while in transit and he also wanted to rest. Daud, on the other hand, filled out his CBDF for the foreign currency contained in his luggage.

Petitioner Daud allegedly requested petitioner Mohammad's help in hand-carrying his black cabin luggage, which is why, upon arrival at NAIA Terminal 3 at around 12:00 noon, the latter was already carrying two (2) bags.

Petitioner Mohammad headed to the comfort room and thereafter proceeded to the Bureau of Immigration (**BI**) E-Gates for the routine clearing process for arriving travelers. He placed his passport for scanning on the E-Gate machine and proceeded with biometrics. Unfortunately, no receipt sticker came out. Hence, a female BI employee approached him and the other passengers who encountered the same E-Gate malfunction and directed them to fall in line before an Immigrations counter.

On the other hand, petitioner Daud went ahead of petitioner Mohammad because he encountered no problem at the Immigration

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[8] Par. 1, Stipulated Facts, Joint Stipulation of Facts and Legal Issues (JSFLI), Division Docket, p. 178.

clearance. After claiming his checked-in baggage, Daud allegedly looked for Mohammad to get his hand-carried luggage. Unfortunately, he could not contact Mohammad at the time because the battery of his mobile phone had gone empty. After being cleared at the Immigrations counter, he tried to call Mohammad, but to no avail.

Believing that petitioner Mohammad had already declared the foreign currency, petitioner Daud left the airport without his luggage. He did not submit the CBDF that he had accomplished as he was not in possession of his luggage.

Meanwhile, at the Customs area, petitioner Mohammad was ordered to place his two (2) bags in the X-ray machine and instructed to proceed to the Customs lane. He filled out a CBDF and a Foreign Currency Declaration Form[9] (**FCDF**), wherein he declared that he was carrying foreign currency in the amount of USD $148,000.[10]

Upon inspection, however, it was discovered that petitioner Mohammad was, in fact, carrying a total of USD $649,600.00 in the two (2) bags found in his possession.[11] He then informed the Customs Examiner that he had a companion (the owner of the black luggage) during the trip back to Manila and that he only declared the amount of foreign currency he was carrying in his backpack.

Petitioner Mohammad then informed petitioner Yusup by phone about the incident. When Yusup was finally able to contact petitioner Daud at around 3:00 p.m., he ordered the latter to go immediately to NAIA Terminal 3.

Since no counting machine was available, petitioner Mohammad was brought to the Customs Office at NAIA Terminal 2. Then, when he was finally able to speak to petitioner Daud by phone, he told the latter to proceed to NAIA Terminal 2.

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9 Annex "1" to Respondent's "Answer/Comment", Division Docket, p. 72; Stipulated Document, JSFLI, id., p. 180.

10 Par. 2, Stipulated Facts, id., p. 178.

11 Par. 3, id.

Meanwhile, petitioner Yusup found out that his cousin, Atty. Jhenilyn Yusup (**Atty. Yusup**) was in Manila. He then informed petitioner Daud that Atty. Yusup would accompany him.

In the course of counting, petitioner Daud, accompanied by Atty. Yusup, returned to NAIA Terminal 2 at past 6:00 p.m. They were not immediately allowed to enter the room, where the manual counting was being done, because they were required to present a consent or clearance from the Customs police. When they were finally allowed to enter, petitioner Mohammad introduced them as his companion and lawyer, respectively. Daud allegedly showed his unsubmitted CBDF to the Customs Officers to explain his side of the story but was ignored.

The Customs Officers then issued a Held Baggage Receipt (**HBR**) No. 00376695[12] against the USD $649,600.00 intercepted from petitioner Mohammad, for the reason that the amount was in excess of what was declared by the passenger.[13]

The amount of USD $148,000.00, which petitioner Mohammad declared in his CBDF and FCDF, as well as the USD $10,000.00, which under Bangko Sentral ng Pilipinas (**BSP**) Circular No. 308, Series of 2001, as amended[14], and the Manual of Regulations on Foreign Exchange Transactions (**MORFXT**) may be brought into the country without declaration, was not released to him that night. Instead, the Customs Officer told Mohammad to return the next working day, *i.e.*, 23 September 2019, because the serial numbers of all the currencies shall be taken and recorded. The total amount of the intercepted foreign currency was placed in the black backpack and the black cabin luggage was returned to him empty.

After sealing and securing the black backpack, the foreign currency was handed over to the appropriate officer for custodial deposit. Petitioner Mohammad, on the other hand, was turned over to the Customs Police Division. He was held there until the following day of 23 September 2019, when he was released from custodial

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12 Annex "2" to Respondent's "Answer/Comment", id., p. 73; Stipulated Documents, id., p. 180.

13 Par. 4, Stipulated Facts, id., pp. 178-179.

14 Bangko Sentral ng Pilipinas (BSP) Circular No. 308 dated 15 November 2001, as amended, requires any person who brings in or out of the Philippines in excess of USD $10,000.00 or its equivalent to declare the same in writing using the prescribed foreign currency declaration form.

investigation (with the corresponding Release Order but without undergoing inquest proceedings).

On 02 October 2019, a preliminary hearing was held and attended by representatives from the BSP and the Anti-Money Laundering Council (**AMLC**), among others. Then, on 08 October 2019, petitioner Mohammad, through his counsel, sought the release of the total amount not in issue, *i.e.*, USD $158,000.00.

On 11 October 2019, following the advice of BSP Senior Director Thomas Benjamin B. Marcelo (**Senior Director Marcelo**), the total amount of USD $158,000.00 (*i.e.*, the declared amount of USD $148,0000.00, plus USD $10,000.00 representing the maximum amount that need not be declared under the BSP's MORFXT) was released to petitioner Mohammad, leaving a balance of USD $491,600.00 in issue.[15]

On 04 November 2019, petitioners submitted their Position Paper.

On 26 November 2019, Customs Intelligence and Investigation Service (**CIIS**) representative, Atty. Mario Narag, Jr. (**Atty. Narag**), and petitioner Mohammad appeared before the NAIA Customs Law Division for a clarificatory hearing. The parties were ordered to furnish each other copies of their respective Position Papers and, if necessary, to submit their Memoranda rebutting each other's positions.

On 16 January 2020, the Law Division recommended the issuance of a Warrant of Seizure and Detention (**WSD**) against the subject undeclared foreign currency of USD $491,600.00. Thus, on 28 January 2020, NAIA District Collector Talusan issued the said WSD.[16]

During the Preliminary Conference held on 05 February 2020, the possibility of settlement by payment of fine prescribed under pertinent laws was discussed. Subsequently, on 11 February 2020,

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15 Par. 5, id., p. 179.

16 Annex "3" to Respondent's "Answer/Comment", Division Docket, pp. 74-76; Stipulated Documents, id., p. 180.

petitioners filed a "Motion to Enter into a Compromise Settlement"[17] (**Motion for Compromise Settlement**).

On 28 February 2020, the Government Prosecutor from the BOC Legal Service filed a Comment[18] on petitioners' Motion for Compromise Settlement. Thereafter, the case was submitted for resolution.

Four (4) days later, or on 04 March 2020, NAIA District Collector Talusan issued the Forfeiture Order[19], denying petitioners' Motion for Compromise Settlement and forfeiting the amount in issue, *i.e.*, USD $491,600.00, in favor of the government for violation of Section 1113(l)(2)[20] of the CMTA, in relation to Section 4(2)[21] of the BSP's MORFXT, in relation to BSP Circular No. 308, Series of 2001, as amended.[22]

In denying the offer of settlement, NAIA District Collector Talusan explained that petitioner Mohammad failed to establish by substantial evidence that the release of the subject foreign currency will not be contrary to law. Mohammad neither alleged nor presented evidence to support the legitimacy and legality of the source and purpose of the foreign currency to establish that the release thereof is not contrary to law. Conversely, there was clear violation of Section 1113(l)(2)[23] of the CMTA, in relation to Section 4(2)[24] of the BSP's MORFXT, as it is undisputed that the subject undeclared foreign currency of USD $491,600.00 (USD $501,600.00 less the USD $10,000.00

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17 Annex "4" to Respondent's "Answer/Comment", id., pp. 77-79; Stipulated Documents, id.

18 Annex "5" to Respondent's "Answer/Comment", id., pp. 80-82; Stipulated Documents, id., p. 181.

19 Supra at note 5.

20 **SEC. 1113**. *Property Subject to Seizure and Forfeiture.* — Property that shall be subject to seizure and forfeiture include:

...

(1) Goods sought to be imported or exported:

...

(2) Found in the baggage of a person arriving from abroad and **undeclared** by such person[.] (Emphasis and underscoring supplied.)

21 **Sec. 4. Cross-Border Transfer of Local and Foreign Currencies**

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2. Foreign Currency. Any person, who brings into or takes out of the Philippines foreign currency, as well as other foreign currency-denominated bearer monetary instruments, in excess of USD10,000 or its equivalent is required to declare the same in writing and to furnish information on the source and purpose of the transport of such currency or monetary instrument. (Underscoring supplied.)

22 Supra at note 14.

23 Supra at note 20.

24 Supra at note 21.

threshold) found in the luggage of Mohammad was not duly declared in writing. NAIA District Collector Talusan likewise underscored the application of the legal maxim *dura lex sed lex*, the law may be harsh but it is the law.

Subsequently, petitioners appealed NAIA District Collector Talusan's Forfeiture Order[25] before respondent.[26]

On 29 July 2020, respondent issued the Assailed Decision[27], denying petitioners' appeal and affirming NAIA District Collector Talusan's Forfeiture Order.[28]

PROCEEDINGS BEFORE THE COURT

On 10 September 2020, petitioners filed the present Petition for Review[29] within thirty (30) days from their alleged receipt of respondent's Assailed Decision.[30] The same was raffled to the Second Division[31] and docketed as CTA Case No. 10346.

On 14 September 2020, the Second Division issued Summons[32] to respondent.

On 12 January 2021, after the Second Division granted respondent an extension of time[33], respondent filed *via* registered mail his motion to admit attached "Answer/Comment"[34], interposing the following arguments:

(1) Petitioner failed to attach copies of material portions of the record in support of the Petition for Review, as required by

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25 Supra at note 5.
26 *See* Notice of Appeal and Memorandum of Appeal, Annex "6" to Respondent's "Answer/Comment", id., pp. 83-99; Stipulated Document, JSFLI, Division Docket, p. 181.
27 Supra at note 4.
28 Supra at note 5.
29 Supra at note 1.
30 Supra at note 4.
31 The Second Division is composed of Associate Justice Juanito C. Castañeda, R. (Ret.), as Chairperson, and Associate Justice Jean Marie A. Bacorro-Villena, as Member.
32 Division Docket, p. 38.
33 *See* Resolution dated 06 November 2020, id., p. 46.
34 Id., pp. 54-131, with annexes.

Section 2[35], Rule 42 of the Rules of Court (**ROC**), as amended;

(2) The subject undeclared foreign currency of USD $491,600.00 (USD $501,600.00 less the USD $10,000.00 threshold) intercepted from Mohammad is forfeitable pursuant to Section 1113(l)(2)[36] of the CMTA; and,

(3) Respondent acted within the bounds of his discretion in affirming the denial of the offer of settlement in relation to the undeclared foreign currency of USD $491,600.00.

In the Resolution dated 25 January 2021[37], the Second Division admitted respondent's "Answer/Comment".[38]

On 26 January 2021, the Court issued a Notice of Pre-Trial Conference[39] and set the case for pre-trial conference on 15 March 2021. In compliance with the Court's order therein, the parties filed their respective Pre-Trial Briefs[40] on 10 March 2021.

On 15 March 2021, the Pre-Trial Conference proceeded where the parties were granted 30 days within which to file their Joint Stipulation of Facts and Issues.[41] On 27 May 2021, the parties submitted their "Joint Stipulation of Facts and Legal Issues" (**JSFLI**).[42]

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35 SEC. 2. *Form and Contents.* – The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the specific material dates showing that it was filed on time; (c) set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) **be accompanied by clearly legible duplicate originals or true copies of** the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and **other material portions of the record as would support the allegations of the petition**. (Emphasis supplied.)

36 Supra at note 20.

37 Division Docket, p. 137.

38 Supra at note 34.

39 Division Docket, pp. 138-139.

40 Petitioners' Pre-Trial Brief and Respondent's Pre-Trial Brief, id., pp. 140-151 and 152-167 (with attached Special Power of Attorney), respectively.

41 *See* Order dated 15 March 2021, id., p. 170.

42 Id., pp. 178-182.

In the Resolution dated 08 June 2021[43], the Second Division approved the parties' JSFLI and granted the parties 30 days from receipt thereof to file their memoranda.

In compliance with the Court's directive, petitioners filed their Memorandum[44] on 26 July 2021 while respondent filed *via* registered mail on 19 July 2021 his "Manifestation [In Lieu of Memorandum]"[45], adopting his "Answer/Comment" dated 21 December 2020[46] as his Memorandum. Accordingly, on 16 November 2021, the Court considered the case submitted for decision.[47]

ISSUES

As the parties so stipulated[48], the issues for this Court's resolution are —

I.

WHETHER THE INSTANT APPEAL SHOULD BE DISMISSED OUTRIGHT FOR PETITIONERS CHANG L. MOHAMMAD, SHARALYN S. PEDRENA, JOHNNY S. YUSUP, FERDAUS A. OMAR, AND ARMAND P. DAUD'S NON-COMPLIANCE WITH SECTION 2, RULE 42 OF THE RULES OF COURT (ROC), AS AMENDED; AND,

II.

WHETHER RESPONDENT COMMISSIONER OF CUSTOMS CORRECTLY AFFIRMED NINOY AQUINO INTERNATIONAL AIRPORT (NAIA) DISTRICT COLLECTOR, CARMELITA M. TALUSAN'S DENIAL OF THE OFFER OF SETTLEMENT THROUGH PAYMENT OF FINE IN RELATION TO THE UNDECLARED FOREIGN CURRENCY AMOUNTING TO USD $491,600.00 INTERCEPTED FROM PETITIONER MOHAMMAD, THEREBY DECLARING SUCH AMOUNT FORFEITED IN FAVOR OF THE GOVERNMENT.

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43 Id., p. 184.
44 Id., pp. 185-200.
45 Id., pp. 202-203, Received by the Court on 30 September 2021.
46 Supra at note 34.
47 *See* Resolution dated 16 November 2021, Division Docket, p. 207.
48 Legal Issues, JSFLI, supra at note 42, p. 180.

ARGUMENTS

In support of the above issues, petitioners advance the following arguments:

First, petitioners contend that the present petition is not dismissible for their alleged non-compliance with Section 2[49], Rule 42 of the ROC, as amended. According to petitioners, they are mindful of the rule that the petition should be accompanied by a clearly legible duplicate or certified true copy of the decision appealed from and it was never their intention not to comply with the said rule. However, despite several telephone call attempts to request for a certified true copy of the Assailed Decision[50], their counsel could not reach respondent's office.

Petitioners' counsel also submitted a Letter-Request dated 04 September 2020[51] addressed to the Chief of the Appellate Division, Legal Service of the BOC, requesting for a certified true copy of the Assailed Decision.[52] The said Letter-Request was then submitted to the BOC's Central Office. But, due to the BOC's "no-contact policy", the said Letter-Request was only received by the BOC's representatives, who allegedly assured petitioners' counsel that it will be acted upon "as soon as possible". Follow-ups on such request may be done only through the BOC's Customer Care Portal.

Unfortunately, as of the last day for filing of the Petition for Review, *i.e.*, 10 September 2020 (counting 30 days from petitioners' receipt of the Assailed Decision[53] on 11 August 2020), petitioner's counsel, despite all efforts to secure a certified true copy of the Assailed Decision, did not receive any response from the BOC. Hence, petitioners were constrained to file the present petition without attaching a certified true copy of the Assailed Decision. To substantially comply with the rules, petitioners attached the original copy of the Notice of Decision from the NAIA Customhouse Law

49 Supra at note 35.
50 Supra at note 4.
51 Annex "A" to the Petition for Review, supra at note 1, p. 25.
52 Supra at note 4.
53 Supra at note 4.

Division signed by the Law Division Chief, Atty. Marlon M. Agaceta (**Chief Agaceta**).[54]

Petitioners thus insist that they have substantially complied with the rules requiring the attachment of a certified true copy of the Assailed Decision[55] to the Petition for Review and such rule should not be strictly applied to them given that it was respondent's failure to timely provide the same, despite the numerous requests, that caused such failure to attach.

Second, petitioners claim that respondent erred in affirming NAIA District Collector Talusan's denial of their offer of settlement through payment of fine, in relation to the undeclared foreign currency of USD $491,600.00 (USD $501,600.00 less the USD $10,000.00 threshold) intercepted from petitioner Mohammad, thereby declaring such amount forfeited in favor of the government.

Citing Section 1124[56] of the CMTA, petitioners argue that their offer of settlement by payment of fine is allowed by law and is now fixed at 30% of the landed cost of the seized goods, subject only to the following exceptions, namely: (1) there is fraud; (2) where the importation is prohibited; or (3) the release of the goods is contrary to law. Petitioners thus contend that, since none of the said exceptions are present in the present case, their offer of settlement by payment of fine should be granted.

As to the ***first exception***, petitioners maintain that they did not commit fraud in the importation of the subject foreign currency because they declared the same. According to them, such declaration was first made by petitioner Mohammad, who was unable to disclose the exact amount as he was not the one who prepared the CBDF, and second, by petitioner Daud, when he proceeded to the BOC's counting area later in the day and brought with him the CBDF, which indicated the correct amount as counted, *i.e.*, USD $501,600.00. Daud knew the exact amount of foreign currency because he owned the luggage containing the same, which was allegedly found in Mohammad's possession by accident during inspection.

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54 Annex "B 1/12" to the Petition for Review, supra at note 1, p. 26.
55 Supra at note 4.
56 Supra at note 6.

As to the ***second exception***, petitioners claim that the importation of the subject undeclared foreign currency is not absolutely prohibited. Upon scrutiny of Section 118[57] of the CMTA, the importation of foreign currency is not prohibited. While paragraph (g) thereof states "[a]ll other goods or parts thereof, which importation and exportation are explicitly prohibited by law or rules and regulations issued by the competent authority", the same does not apply to currencies since they are not considered as goods.

Even assuming that currencies are to be considered as goods, petitioners further claim that no law, rule or regulation issued by a competent authority prohibits the importation of foreign currency. Petitioners also pointed out that BSP Circular No. 308, Series of 2001, as amended[58], does not prohibit the importation of foreign currency; it merely requires any person who brings in or out of the Philippines in excess of USD $10,000.00 or its equivalent to declare the same in writing using the prescribed foreign currency declaration form and such declaration is intended for monitoring fund transfer outside of the financial system.

As to the ***third exception***, petitioners contend that the release of the subject foreign currency is not contrary to law. They explained that the subject foreign currency was intended for the purchase of watches and pieces of jewelry by SSP Money Changer at the Jewellery and Gem Fair in Hong Kong. Petitioner Pedrena was set to open a jewelry retail shop in the same leased premises where her money

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[57] SEC. 118. *Prohibited Importation and Exportation.* — The importation and exportation of the following goods are prohibited:
(a) Written or printed goods in any form containing any matter advocating or inciting treason, rebellion, insurrection, sedition against the government of the Philippines, or forcible resistance to any law of the Philippines, or written or printed goods containing any threat to take the life of, or inflict bodily harm upon any person in the Philippines;
(b) Goods, instruments, drugs and substances designed, intended or adapted for producing unlawful abortion, or any printed matter which advertises, describes or gives direct or indirect information where, how or by whom unlawful abortion is committed;
(c) Written or printed goods, negatives or cinematographic films, photographs, engravings, lithographs, objects, paintings, drawings or other representation of an obscene or immoral character;
(d) Any goods manufactured in whole or in part of gold, silver or other precious metals or alloys and the stamp, brand or mark does not indicate the actual fineness of quality of the metals or alloys;
(e) Any adulterated or misbranded food or goods for human consumption or any adulterated or misbranded drug in violation of relevant laws and regulations;
(f) Infringing goods as defined under the Intellectual Property Code and related laws; and
(g) All other goods or parts thereof, which importation and exportation are explicitly prohibited by law or rules and regulations issued by the competent authority.

[58] Supra at note 14.

changer was situated. However, since petitioner Omar bought only a few stocks, petitioners Omar, Daud and Mohammad had to carry back to the Philippines the subject unspent foreign currency. On this note, petitioners claim that the release of the subject foreign currency to Pedrena, who is the rightful owner thereof, is not contrary to law.

On the other hand, in his "Answer/Comment"[59] (in lieu of Memorandum), respondent firmly avers that the present Petition for Review should be dismissed on the following grounds:

First, respondent maintains that for petitioners' failure to attach copies of material portions of the record, in violation of Section 2[60], Rule 42 of the ROC, as amended, the present Petition for Review must be dismissed, and, accordingly, the Assailed Decision[61] be declared to have become final and executory.

Second, the undeclared foreign currency of USD $491,600.00 (USD $501,600.00 less the USD $10,000.00 threshold) intercepted from petitioner Mohammad is forfeitable under Section 1113(l)(2)[62] of the CMTA as undeclared foreign currency.

Respondent submits that petitioners admitted in the present Petition for Review that petitioner Mohammad carried in his two (2) bags foreign currency totalling USD $649,600.00, but only declared in his FCDF the amount of USD $148,000.00, leaving the undeclared balance of USD $491,600.00 (USD $501,600.00 less the USD $10,000.00 threshold), which was then forfeited in favor of the government.

Citing Customs Administrative Order (**CAO**) No. 1-2017[63] and Section 4(2)[64] of the BSP's MORFXT, respondent argues that petitioner Mohammad is required to accomplish the FCDF, in addition to the CBDF, for the foreign currency he was carrying in his hand-carried luggage, *i.e.*, USD $501,600.00. However, Mohammad failed to do so and this justifies the forfeiture of the subject USD $491,600.00 (USD

59 Supra at note 34.
60 Supra at note 35.
61 Supra at note 4.
62 Supra at note 20.
63 CUSTOMS CLEARANCE OF ACCOMPANIED AND UNACCOMPANIED BAGGAGE OF TRAVELERS AND CREW.
64 Supra at note 21.

$501,600.00 less the USD $10,000.00 threshold) for being undeclared foreign currency.

Third, respondent contends that he acted within the bounds of his discretion in affirming the denial of petitioners' offer of settlement by fine in relation to the subject undeclared foreign currency.

Respondent also notes that the first paragraph of Section 1124[65] of the CMTA uses the word "may", which denotes a discretionary authority on the part of the District Collector to accept an offer of compromise or settlement of a seizure and forfeiture case. According to respondent, whether such an offer will be accepted or approved by the District Collector is a matter of quasi-judicial discretion that may not be intruded into, save perhaps when it amounts to grave abuse of discretion. Respondent further notes that Section 1124 of the CMTA is clear that an offer of settlement "may" be accepted, but "shall" not be allowed in case there is fraud.

Contrary to petitioners' position, even assuming that fraud did not attend petitioner Mohammad's undisputed failure to declare the subject USD $491,600.00 (USD $501,600.00 less the USD $10,000.00 threshold) in his FCDF, respondent insists that he is not bound to accept petitioners' offer of compromise or settlement as this is a matter of pure administrative discretion on his part as the BOC head.

Lastly, respondent concludes that NAIA District Collector Talusan and himself exercised their sound discretion under the first paragraph of Section 1124[66] of the CMTA in rejecting petitioners' settlement offer. With or without fraud, the denial of petitioners' offer of settlement is not a reversible error. As such, there is no basis to grant petitioners' plea to direct respondent to grant their offer of settlement by payment of fine, given that respondent deemed petitioner Mohammad's failure to declare the subject USD $491,600.00 (USD $501,600.00 less the USD $10,000.00 threshold) as fraudulent.

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[65] Supra at note 6.
[66] Supra at note 6.

RULING OF THE COURT

Before the Court proceeds to address the above issues, it deems propitious to first determine the timeliness of petitioner's appeal as this is determinative of this Court's jurisdiction.

THE PRESENT PETITION FOR REVIEW
WAS TIMELY FILED.

Sections 7(a)(4) and 11 of RA 1125[67], as amended by RA 9282[68], provide:

> ...
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> SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (1) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> ...
>
> (4) **Decisions of the Commissioner of Customs** in cases involving liability for customs duties, fees or other money charges, **seizure,** detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs[.][69]
>
> ...
>
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.*— Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the **Commissioner of Customs**, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA **within thirty (30) days after** the receipt of such decision or ruling or after the expiration of **the period fixed by law** for action as referred to in Section 7(a)(2) herein.

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67 AN ACT CREATING THE COURT OF TAX APPEALS.

68 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

69 Italics in the original text and emphasis supplied.

> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon.** A Division of the CTA shall hear the appeal: Provided, however, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc*.[70]
>
> ...

Before filing an appeal to this Court under the foregoing provisions, Section 1126 of the CMTA sanctions the filing of a notice of appeal with the Customs Commissioner within 15 days from receipt of the District Collector's Decision and the concerned District Collector shall immediately transmit all the records of the proceedings to the Customs Commissioner, who has 30 days from receipt thereof within which to render a decision, else the District Collector's Decision is deemed affirmed, *viz*:

> ...
>
> Sec. 1126. *Appeal to the Commissioner.* — **In forfeiture cases, the person aggrieved by the decision of a District Collector may, within fifteen (15) days** or five (5) days in case of perishable goods, **from receipt of the decision, file a written notice of appeal,** together with the required appeal fee to the District Collector, furnishing a copy to the Commissioner. The District Collector shall immediately transmit all the records of the proceedings to **the Commissioner, who shall review and decide on the appeal within thirty (30) days from receipt of the records,** or fifteen (15) days in the case of perishable goods: *Provided,* **That if within thirty (30) days, no decision is rendered, the decision of the District Collector under appeal shall be deemed affirmed.** An appeal filed beyond the period herein prescribed shall be dismissed.[71]
>
> ...

It is undisputed that petitioners received a copy of NAIA District Collector Talusan's Forfeiture Order[72] on 06 March 2020.[73] Counting 15

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[70] Emphasis supplied.
[71] Emphasis supplied.
[72] Supra at note 5.

days therefrom, petitioner supposedly had only until **27 March 2020** to file a written notice of appeal to the District Collector. However, since the last day fell within the implementation of the Luzon-wide Enhanced Community Quarantine (**ECQ**) and the consequent suspension of seizure and forfeiture proceedings, the aforesaid deadline was deemed extended until the formal lifting of the ECQ pursuant to Office of the Commissioner (**OCOM**) Memorandum Nos. 54-2020[74] and 89-2020.[75]

Guided by respondent's memoranda, Administrative Order (**AO**) No. 30, series of 2020, issued by then President Rodrigo R. Duterte (directing all heads of departments, agencies, offices, and instrumentalities of the government to issue guidelines for the "interruption of reglementary periods" for the filing of pleadings, motion, notices, and all other papers "for the duration of the community quarantine" and for "acceptable justifications for failure of litigants or their counsel , as well as claimants, to comply with the reglementary periods", "if they are coming from jurisdictions where quarantine protocols restrict their movements"), and applying by analogy the Supreme Court's Administrative Circulars[76] (extending the deadline for the filing of appeals and other submissions for 30 calendar days, counted from 01 June 2020), petitioners beseeched for respondent's consideration in the higher interest of substantial justice, which was granted presumably since respondent subsequently acted on their appeal.

The records of this case reveal that, on 29 June 2020, petitioners filed their "Notice of Appeal (with Memorandum of Appeal)" dated 15 June 2020[77] (**Notice of Appeal**) on NAIA District Collector Talusan's Forfeiture Order dated 04 March 2020.[78] Applying Section 1126[79] of the CMTA above, respondent had 30 days from 29 June 2020, or **until 29 July 2020** to decide on petitioners' appeal.

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73 Timeliness of the Filing of the Notice of Appeal, "Notice of Appeal (with Memorandum of Appeal)", BOC Records.

74 CONDUCT OF HEARINGS IN ALL FORFEITURE PROCEEDINGS UNDER CUSTOMS MEMORANDUM ORDER (CMO) NO. 4-2018 (A) IN LIGHT OF COVID-19 TRAVEL RESTRICTIONS.

75 EXTENDING THE SUSPENSION OF ACTUAL AND FACE-TO-FACE SEIZURE AND FORFEITURE PROCEEDINGS.

76 Supreme Court Administrative Circular (AC) Nos. 31-2020, 34-2020, 35-2020, and 39-2020.

77 Supra at note 26.

78 BOC Law Division NAIA Customhouse's receiving stamp dated 29 June 2020, "Notice of Appeal (with Memorandum of Appeal)", BOC Records.

79 Supra at p. 17.

On 29 July 2020, respondent rendered herein Assailed Decision[80], denying petitioner's appeal and affirming NAIA District Collector Talusan's Forfeiture Order.[81] Considering that petitioner received a copy of the Assailed Decision on 11 August 2020, as evidenced by the receiving stamp appearing thereon[82], petitioner thus had 30 days from 11 August 2020, or **until 10 September 2020**, to file an appeal before this Court.

Given that the present Petition for Review was timely filed on 10 September 2020, this Court has jurisdiction over the case.

PETITIONERS SUBSTANTIALLY COMPLIED WITH SECTION 2, RULE 42 OF THE RULES OF COURT (ROC), AS AMENDED.

Petitioners argue that they have substantially complied with Section 2[83], Rule 42 of the ROC, as amended, when they attached the original copy of the Notice of Decision signed by NAIA Customhouse Law Division Chief Agaceta. Such rule should not be strictly applied to them because, in the first place, respondent failed to timely provide the certified true copy of the Assailed Decision[84], despite their numerous requests.

Respondent counter-argues that since the only relevant document attached to the present Petition for Review is a copy of the Assailed Decision[85], petitioners failed to attach copies of the material portions of the record and this is a sufficient ground for the dismissal of the petition pursuant to Section 3[86], Rule 42 of the ROC, as amended.

We agree with petitioner.

80 Supra at note 4.
81 Supra at note 5.
82 Supra at note 4.
83 Supra at note 35.
84 Supra at note 4.
85 Supra at note 4.
86 SEC. 3. *Effect of failure to comply with requirements.* – …

Pursuant to Section 4(a)[87], Rule 8 of the RRCTA, an appeal from a decision or ruling of the COC shall be taken to the Court by filing before it a petition for review as provided in Section 2, Rule 42 of the ROC, as amended, *viz*:

> ...
> Section 2. *Form and contents.* — **The petition** shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and **shall** (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the specific material dates showing that it was filed on time; (c) set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) **be accompanied** by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and **of the pleadings and other material portions of the record as would support the allegations of the petition.**[88]
> ...

Non-compliance with any of the foregoing requisites is a ground for the dismissal of a petition based on Section 3 of the ROC, as amended, *viz*:

> ...
> Sec. 3. *Effect of Failure to Comply with Requirements.* — **The failure of the petitioner to comply with any of the foregoing requirements regarding** the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and **the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.**[89]
> ...

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[87] SEC. 4. *Where to appeal; mode of appeal.* – (a) An appeal from ... the decision or ruling of the Commissioner of Customs, ... shall be taken to the Court by filing before it a petition for review as provided in **Rule 42 of the Rules of Court**. The Court in Division shall act on the appeal. (Emphasis supplied)

[88] Emphasis and underscoring supplied.

[89] Emphasis and underscoring supplied.

The case of *Nelia Atillo v. Buenaventura Bombay*[90] is instructive. There, the Supreme Court, in interpreting Section 2, Rule 42 of the ROC, as amended[91], gave the following observations:

> ...
> The phrase "**of the pleadings and other material portions of the record**" in Section 2(d), Rule 42 is followed by the phrase "**as would support the allegations of the petition**" clearly contemplates the exercise of discretion on the part of the petitioner in the selection of documents that are deemed to be relevant to the petition. ... **The crucial issue to consider then is whether or not the documents accompanying the petition before the CA sufficiently supported the allegations therein.**
> ...

Based on the foregoing, this Court finds that the documents attached to the Petition for Review [*i.e.*, original receiving copy of the Letter-Request (for a certified true copy of the Assailed Decision[92]) dated 04 September 2020 and original copy of the Notice of Decision, signed by NAIA Customhouse Law Division Chief Agaceta, with attached copy of the Assailed Decision] sufficiently supported the allegations therein. The attached copy of the Assailed Decision made reference to the factual antecedents of the case, as culled from the records. Likewise, the Assailed Decision embodied the cause of action of petitioners as well as the arguments of both parties.

Additionally, the parties have already stipulated on the factual antecedents and on the documents in support thereof.[93] Notably, the parties stipulated on the existence and due execution of petitioners' Notice of Appeal with Memorandum of Appeal, which contains a discussion of the grounds of their appeal and the arguments raised therein. Thus, with the aforesaid documents attached to the Petition for Review, the stipulated facts and documents, the Court has factual basis upon which it could actually and completely dispose of the case.

The Court likewise takes into consideration that the pleadings and other material portions of the record are in the possession of the

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[90] G.R. No. 136096, 07 February 2001; Emphasis supplied.
[91] Supra at p. 20.
[92] Supra at note 4.
[93] JSFLI, supra at note 42.

BOC. Indeed, with their requests unheeded and the limitations owing to the BOC's "no-contact policy", petitioners were constrained to file their Petition for Review without attaching a certified true copy of the Assailed Decision[94] or any other document in the BOC's possession, in view of the impending lapse of the 30-day reglementary period for appeal.

Accordingly, given that petitioners attempted to substantially comply with the attachment requirement and their failure to so comply was only due to respondent's inaction on their numerous requests, this Court finds compelling reasons to forego technicality to be able to serve the broader interests of justice.

We will now proceed to discuss the merits of the case.

After an assiduous review of the case records and the parties' arguments, this Court finds the present petition bereft of merit.

RESPONDENT ACTED WITHIN THE BOUNDS OF HIS DISCRETION IN AFFIRMING THE DENIAL OF PETITIONERS' OFFER OF SETTLEMENT BY PAYMENT OF FINE.

Petitioners essentially argue that respondent erred in finding fraudulent intent on the part of petitioner Mohammad and, consequently, in affirming NAIA District Collector Talusan's denial of their offer of settlement through payment of fine, in relation to the undeclared foreign currency of USD $491,600.00 (USD $501,600.00 less the USD $10,000.00 threshold) intercepted from Mohammad, pursuant to the ***first exception*** under Section 1124[95] of the CMTA.

On the contrary, respondent points out that even without the finding of fraud, Section 1124[96] of the CMTA does not automatically grant a right upon any claimant to demand the settlement of a pending seizure and forfeiture case. Such decision to accept an offer of settlement, notwithstanding the absence of fraud, remains solely

94 Supra at note 4.
95 Supra at note 6.
96 Supra at note 6.

within the discretion of the District Collector or respondent, as the case may be. Respondent thus maintains that he acted within the bounds of his discretion in affirming the denial of petitioners' settlement offer.

We rule for respondent.

Respondent hinges the validity of the seizure and forfeiture of the subject undeclared foreign currency in favor of the government on Section 1113(l)(2) of the CMTA, in relation to Section 4(2) of the BSP's MORFXT, which provide:

> ...
> CMTA
>
> **SEC. 1113.** *Property Subject to Seizure and Forfeiture.* — Property that shall be subject to seizure and forfeiture include:
> ...
>
> (l) Goods sought to be imported or exported:
> ...
>
> (2) Found in the baggage of a person arriving from abroad and undeclared by such person[.][97]
>
> BSP's MORFXT
>
> **Section 4. Cross-Border Transfer of Local and Foreign Currencies**
> ...
>
> 2. Foreign Currency. Any person, who brings into or takes out of the Philippines foreign currency, as well as other foreign currency-denominated bearer monetary instruments, in excess of USD10,000 or its equivalent is required to declare the same in writing and to furnish information on the source and purpose of the transport of such currency or monetary instrument.
> ...

[97] Underscoring supplied.

Relatedly, Section 4.1, CAO No. 1-2017[98] pertinently states in part:

...
Sec. 4. <u>General Provisions</u>.

4.1 All arriving Travelers and Crew shall accomplish a Customs Baggage Declaration Form (CBDF) to be prescribed by the Bureau which will be submitted to the assigned Customs Officer at the Customs arrival area for clearance. *In addition to the CBDF,* the following additional documents *must also be presented during the clearance process*:

...

4.1.2 *A duly filled-out Foreign Currency Declaration for travelers carrying foreign currency in excess of US$10,000* or its equivalent in other foreign currency and other foreign currency denominated bearer monetary instruments[.][99]

...

Clearly from the foregoing, any article sought to be imported found in the baggage or possession of a person arriving from abroad, such as, in this case, foreign currency in excess of the USD $10,000.00 threshold, is subject to forfeiture if the said person failed to declare the same to the Customs Officer by presenting a duly accomplished FCDF, in addition to the CBDF.

Records show that petitioner Mohammad arrived at NAIA Terminal 3 on board Cebu Pacific Flight No. 5J 273 from Hong Kong on 21 September 2019 bringing in foreign currency amounting to **USD $649,600.00** found in the backpack and luggage in his possession upon inspection by the Customs Examiner. While he declared to the Customs Examiner that he was carrying foreign currency and filled out the CBDF and the FCDF, he did so only for the **USD $148,000.00** in his black backpack. As for the **USD $501,600.00** found in the black luggage, Mohammad explained to the Customs Examiner that the contents thereof will be declared by his companion, petitioner Daud, the alleged owner of such luggage.

There is no dispute that the foreign currency amounting to USD $501,600.00 was found in the black luggage carried by petitioner

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98 Supra at note 63.
99 Emphasis and underscoring in the original text and italics supplied.

Mohammad. While he may have informed the Customs Examiner during inspection that he merely carried the said luggage for petitioner Daud and that he is not aware of the exact amount contained therein, such denial without more is self-serving and weak as it could easily be fabricated. 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.[100]

Apart from their bare allegation, petitioners failed to offer any piece of evidence to prove that petitioner Daud is the owner of the black luggage found in petitioner Mohammad's possession. Mohammad's act of naming the owner of the said luggage as Daud, who had been cleared at the Immigrations counter and already left the airport, is insufficient to shift accountability to the latter. It is also worth noting that petitioners did not submit a copy of the CBDF that Daud allegedly accomplished and presented to the Customs Examiner to support their claim.

Section 3(j)[101], Rule 131 of the Revised Rules on Evidence, as amended[102], provides 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 thing which a person possesses, or exercises acts of ownership over, is owned by him.

Since the subject luggage containing foreign currency was in the possession of petitioner Mohammad at the time that it was found, such is deemed to belong to him. Without evidence to the contrary, as in this case, mere denial will not suffice.

Furthermore, as respondent correctly observed in his Assailed Decision[103], petitioners' actions, explanation and excuses are unusual in

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100 *The People of the Philippines v. Basher Bongcarawan y Macarambon*, G.R. No. 143944, 11 July 2002.

101 Sec. 3. *Disputable presumptions.* – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

...

(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 <u>or her</u>**[.] (Emphasis supplied and underscoring in the original text)

102 2019 Amendments to the 1989 Revised Rules on Evidence (A.M. No. 19-08-15-SC).

103 Supra at note 4.

nature or vary from what is considered or accepted as normal activity that may be deemed red flags for fraud, *viz*: (1) no reason was given as to why petitioner Mohammad asked petitioner Daud to carry his luggage that contained a huge amount of foreign currency in USD; (2) there is no allegation of Mohammad's relationship with Daud or SSP Money Changer, the alleged owner of the seized foreign currency, nor his role in the said trip; (3) Mohammad had not presented evidence to support the legitimacy and legality of the source and purpose of the subject foreign currency; and, (4) Mohammad admitted that Daud, purportedly the owner of the luggage containing the subject foreign currency, left the airport and went home without being concerned of the whereabouts of the huge amount of money supposedly entrusted to him by SSP Money Changer. Indeed, these circumstances are strikingly suspect to ignore.

Respondent further noted that at the time of importation, reports and news had been circulating on large-scale smuggling of foreign currency into the country by suspected syndicates using travelers arriving at NAIA, and this prompted the BOC, in coordination with the AMLC, to probe attempts by suspected syndicates to bring in large sums of foreign currency into the country.[104]

Respondent is likewise correct in saying that even if petitioners' representations were true, the fact remains that the subject foreign currency of USD $491,600.00 (USD $501,600.00 less the USD $10,000.00 threshold) found in the black luggage hand-carried by petitioner Mohammad, was not declared in writing in clear violation of existing laws, rules and regulations.

Furthermore, despite petitioners' claim that Mohammad did not intend to conceal the subject foreign currency when he inadvertently failed to declare the USD $501,600.00 contained in his hand-carried luggage, such is not a valid excuse to exempt the subject importation from the consequences of such violation.

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[104] https://www.benarnews.org/english/news/philippine/cash-smuggling-03032020160909.html (Last accessed on 25 October 2022).

Settled is the rule that forfeiture proceedings are in the nature of proceedings *in rem, i.e.*, directed against the *res* or imported articles and entails a determination of the legality of their importation. In *Transglobe International, Inc. v. Court of Appeals, et al.*[105], the Supreme Court ruled that forfeiture of seized goods is a proceeding against the goods and not against the owner. In this proceeding, it is in legal contemplation the property itself which commits the violation and is treated as the offender, without reference whatsoever to the character or conduct of the owner.

Having established that petitioner Mohammad failed to the declare the USD $501,600.00 contained in his hand-carried luggage in violation of Section 1113(l)(2)[106] of the CMTA, in relation to Section 4(2)[107] of the BSP's MORFXT (which sets the rules and requirements for declaration of foreign currency in excess of the USD $10,000.00 threshold upon departure or arrival in the Philippines), this Court must uphold the forfeiture of the subject undeclared foreign currency to the extent of USD $491,600.00 in favor of the government.

In fact, in offering settlement by payment of fine in lieu of forfeiture, as allowed under Section 1124 of the CMTA, petitioners have already admitted that the subject undeclared foreign currency of USD $491,600.00 is liable for forfeiture and the issue left to be resolved is whether respondent erred denying their settlement offer based on *prima facie* evidence of fraud.

Section 1124 of the CMTA pertinently provides:

> ...
> SEC. 1124. *Settlement of Pending Seizure Case by Payment of Fine or Redemption of Forfeited Goods.* — **Subject to the approval of the Commissioner, the District Collector <u>may</u> allow the settlement by payment of fine** or the redemption **of forfeited goods, during the course of the forfeiture proceeding**. However, the Commissioner may accept the settlement by redemption of any forfeiture case on appeal. No settlement by payment of fine shall be allowed when there is fraud or when the discrepancy in duties and

[105] G.R. 126634, 25 January 1999.
[106] Supra at p. 23.
[107] Supra at p. 23.

> taxes to be paid between what is determined and what is declared amounts to more than thirty percent (30%).
>
> In case of settlement by payment of fine, the owner, importer, exporter, or consignee or agent shall offer to pay a fine equivalent to thirty percent (30%) of the landed cost of the seized goods. In case of settlement by redemption, the owner, importer, exporter, or consignee or agent shall offer to pay the redeemed value equivalent to one hundred percent (100%) of the landed cost.
>
> Upon payment of the fine or payment of the redeemed value, the goods shall be released and all liabilities which may attach to the goods shall be discharged without prejudice to the filing of administrative or criminal case.
>
> **Settlement of any seizure case by payment of the fine** or redemption of forfeited goods **shall not be allowed when there is fraud**, or where the importation is prohibited or the release of the goods is contrary to law.[108]
>
> ...

The use of the word "may" is ordinarily construed as permissive or directory, indicating that a matter of discretion is involved. Thus, the word "may", when used in a statute, does not generally suggest compulsion.[109] As respondent aptly pointed out, the use of the word "may" in the first paragraph of Section 1124 of the CMTA above indicates that it is within the discretion of the District Collector or the COC, as the case may be, whether to accept an offer of settlement in a seizure and forfeiture case.

Respondent thus argued correctly that the decision to accept petitioners' offer of settlement by payment of fine, notwithstanding the absence of fraud, remains solely within the discretion of the District Collector (subject to the COC's approval). However, such discretion is not without limitations. Section 1124 of the CMTA above also provides for the limitations in the exercise of such discretion and uses the word "shall" in not allowing settlement of any seizure case by payment of the fine "when there is fraud, or where the importation is prohibited or the release of the goods is contrary to law."

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108 Italics in the original text, emphasis and underscoring supplied.

109 *Office of the Ombudsman v. Court of Appeals, et al.*, G.R. No. 159395, 07 May 2008.

Indeed, the determination of the existence of fraud becomes relevant only when the District Collector or the COC exercises its discretion to accept the settlement offer because there can be no settlement if there is evidence of fraud. Certainly, fraud is not an element or requirement for forfeiture under Section 1113(l)(2)[110] of the CMTA and the District Collector or the COC is *not* bound to grant a settlement offer in lieu of forfeiture under Section 1124 of the CMTA above when there is no finding of fraud.

Here, respondent has exercised prudently his discretion to deny petitioners' settlement offer considering the abovementioned strikingly suspect circumstances that attended the importation of the subject undeclared foreign currency and as a measure to deter attempts to bring in large sums of foreign currency into the country for illegal activities. For this reason, the Court finds that respondent acted within the bounds of his discretion under the circumstances in proceeding with the forfeiture of the subject undeclared foreign currency.

Well-settled is the rule in our jurisdiction that the findings of fact of an administrative agency must be respected, as long as such findings are supported by substantial evidence even if such evidence might not be overwhelming or preponderant. It is not the task of an appellate court to weigh once more the evidence submitted before the administrative body and to substitute its own judgment for that of the administrative agency in respect of sufficiency of evidence.[111]

Courts of justice will not generally interfere with purely administrative matters which are addressed to the sound discretion of government agencies unless there is a clear showing that the latter acted arbitrarily or with grave abuse of discretion or when they have acted in a capricious and whimsical manner such that their action may amount to an excess of jurisdiction.[112]

In fine, petitioners failed to show that respondent committed a reversible error when he affirmed the denial of petitioners' offer of

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110 Supra at p. 22.

111 *Department of Justice v. Ramonsito G. Nuqui*, G.R. No. 237521, 10 November 2021, citing *Benjamin D. Ynson v. The Hon. Court of Appeals, et al.*, G.R. Nos. 117018-19, 17 June 1996.

112 *Spl. Pol. Lt. Ramon C. Torredes v. Carlos Villamor*, G.R. No. 151110, 11 September 2008, citing *Estelito V. Remolona v. Civil Service Commission*, G.R. No. 137473, 02 August 2001.

settlement and the forfeiture of the undeclared foreign currency of USD $491,600.00. The rule must stand no matter how harsh it may seem. *Dura lex sed lex.*

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review filed by petitioners Chang L. Mohammad, Sharalyn S. Pedrena, Johnny S. Yusup, Ferdaus A. Omar, and Armand P. Daud on 10 September 2020 is hereby **DENIED** for lack of merit. Accordingly, respondent Commissioner of Customs' Assailed Decision dated 29 July 2020 is hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting 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