REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

ROSEMARIE G. CLEMENTE,
Petitioner,

-*versus*-

REPUBLIC OF THE PHILIPPINES, as represented by the Honorable Commissioner of Customs,
Respondent.

CTA *EB* NO. 2288
(CTA Case No. 9545)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, *JJ.*

Promulgated:
MAR 0 2 2022 3:20pm

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Rosemarie G. Clemente, assailing the Decision, dated 15 January 2020,[2] and Resolution, dated 9 June 2020,[3] both rendered by the Court in Division,[4] which affirmed the Decision, dated 19 January 2017,[5] of respondent Commissioner of Customs ("COC"). The Decision of the COC affirmed the Decision, dated 9 June 2016,[6] of the District Collector in Seizure Identification No. 055-2015 (NAIA) and ordered the forfeiture in favor of the

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1 *EB* Records, pp. 5-132, with annexes.
2 Division Records Vol. 2, pp. 695-715.
3 *Id.*, pp. 738-743.
4 Court of Tax Appeals- First Division.
5 Exhibit "P-1", Division Records Vol. 1, pp. 30-37.
6 Exhibit "P-2", *id.*, pp. 248-280.

Government of the alleged undeclared 259 pieces of assorted jewelry found in petitioner's possession when she returned to the Philippines from Hong Kong.

<u>The Parties</u>

Petitioner Rosemarie G. Clemente is a Filipino citizen and the holder of Philippine Passport No. EC702447 who arrived at NAIA Terminal 3 on 19 September 2015.[7]

Meanwhile, respondent Republic of the Philippines is represented by the Commissioner of the Bureau of Customs ("BOC") as the agency that rendered the Decision, dated 19 January 2017.

<u>The Facts</u>

The antecedent facts as found by the Court in Division[8] and as culled from the records of the case are as follows:

On September 19, 2015, at around 10:30 p.m., the Customs Intelligence & Investigation Service/Intelligence Group ("CIIS/IG") led by Joel Pinawin informed the BOC Flight Supervisor on duty, Anthony C. Relucio, that an operation would be conducted against an incoming passenger on board Flight DG7833.[9]

The CIIS/IG later informed Mr. Relucio that they identified the passenger to be Rosemarie G. Clemente,[10] herein petitioner, who would allegedly bring into the Philipines pieces of jewelry from Hong Kong[11] through NAIA Terminal 3. Armed with this information, Mr. Relucio then informed the Customs Examiners on duty, Paulo Parong and Sheilla Fausto, to be ready and man the Red Lane while Customs Examiners Meliza Espiritu and Ma. Lourdes Calzada were to man the Green Lane.[12]

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[7] Pars. 1.1 and 1.2, Joint Stipulation of Facts and Issues ("JSFI") as approved and adopted in the Pre-Trial Order, dated 27 June 2017, *id.*, p. 208; Exhibits "R-2" to "R-2-1-C", Division Records Vol. 2, pp. 482-483.

[8] *See* assailed Decision, dated 15 January 2020, Division Records Vol. 2, pp. 695-715.

[9] Pars. 1.1 and 1.2, JSFI as approved and adopted in the Pre-Trial Order, dated 27 June 2017, Division Records Vol. 1, p. 208; Exhibits "R-2" to "R-2-1-C", Division Records Vol. 2, pp. 482-483; Exhibit "R-8", Division Records Vol. 2, pp. 513-515.

[10] Exhibits "R-2" to "R-2-1-C", Division Records Vol. 2, pp. 482-483; Exhibit "R-8", *Id.*, pp. 513-515.

[11] Par. 22, Petition for Review, Division Records Vol. 1, p. 16 *and* Par. 2, Answer, *Id.*, p. 85.

[12] *Ibid.*

Not long after, CIIS/IG leader Pinawin, positively identified petitioner, who was then waiting for her luggage at the carousel area.[13] After picking up her checked-in luggage, petitioner immediately proceeded to the customs area, passing through the Green Lane[14] without submitting an accomplished Customs Declaration Form,[15] despite the visible notice posted at the NAIA arrival area relative thereto.[16]

This prompted Customs Examiner Calzada to ask petitioner if she had anything to declare.[17] Petitioner did not reply[18] and walked towards the exit area[19] but was stopped by BOC Flight Supervisor on duty, Mr. Relucio.[20] The latter asked petitioner if she had anything to declare but petitioner continued to keep mum.[21] He then advised petitioner to go back to the Green Lane for examination.[22] Customs Examiner Calzada asked petitioner again if she had anything to declare but petitioner answered in the negative and walked away.[23] BOC Flight Supervisor had to stop petitioner one more time and ask her if she was sure that she had nothing to declare.[24]

At this instance, petitioner was advised to place her luggage at the examination counter and to open them for examination.[25] The examination of petitioner's luggage was conducted in her presence.[26] 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.[27]

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13 Exhibit "R-8", Division Records Vol. 2, p. 513; Exhibit "R-7", *id.*, pp. 511-512.

14 Exhibit "R-8", *id.*, pp. 513-515; Exhibit "P-9", Answer No. 5 in the Judicial Affidavit of Rosemarie G. Clemente, Division Records Vol. 1, p. 234.

15 Par. 1.2, JSFI as approved and adopted in the Pre-Trial Order, dated 27 June 2017, Division Records Vol. 1, p. 208

16 Par. 1.1, JSFI as approved and adopted in the Pre-Trial Order, dated 27 June 2017, *id.*, p. 208

17 Par. 1.2, JSFI as approved and adopted in the Pre-Trial Order, dated 27 June 2017, *id.*, p. 208; Exhibit "R-8", Division Records Vol. 2, pp. 513-515; Exhibit "P-9", Answer No. 6 in the Judicial Affidavit of Rosemarie G. Clemente, Division Records Vol. 1, p. 234.

18 Exhibit "P-9", Answer No. 7 in the Judicial Affidavit of Rosemarie G. Clemente, Division Records Vol. 1, p. 234.

19 Exhibit "R-8", Division Records Vol. 2, p. 513; Exhibit "P-9", Answer No. 12 in the Judicial Affidavit of Rosemarie G. Clemente, Division Records Vol. 1, p. 234.

20 Exhibit "R-8", Division Records Vol. 2, p. 513; Exhibit "P-9", Answer No. 13 in the Judicial Affidavit of Rosemarie G. Clemente, Division Records Vol. 1, p. 234.

21 Exhibit "R-8-1", Division Records Vol. 2, p. 514; Exhibit "P-9", Answer Nos. 14 and 15 in the Judicial Affidavit of Rosemarie G. Clemente, Division Records Vol. 1, p. 234.

22 Exhibit "R-8-1", Division Records Vol. 2, p. 514; Answer No. 17 in the Judicial Affidavit of Rosemarie G. Clemente, Division Records Vol. 1, p. 234.

23 Exhibit "R-8-1", Division Records Vol. 2, p. 514.

24 *Ibid.*

25 *Ibid*; Exhibit "P-9", Answer No. 17 in the Judicial Affidavit of Rosemarie G. Clemente, Division Records Vol. 1, p. 234.

26 Par. 1.2, JSFI as approved and adopted in the Pre-Trial Order, dated 27 June 2017, Division Records Vol. 1, p. 208.

27 Exhibit "R-8-1", Division Records Vol. 2, p. 514; Answer No. 20 in the Judicial Affidavit of Rosemarie G. Clemente, Division Records Vol. 1, p. 235.

For petitioner's failure to inform the customs officers that she had high value jewelry in her luggage and for her failure to offer any plausible explanation why said pieces of jewelry in commercial quantity were in her possession,[28] the 259 pieces of jewelry were confiscated under Held Baggage Receipt No. 00342185 for violation of ***Section 2505***[29] ***in relation to Section 2530 (l)(2),***[30] ***of the Tariff and Customs Code of the Philippines ("TCCP").***[31]

The Office of the District Collector, NAIA-BOC filed forfeiture proceedings against petitioner docketed as Seizure Identification No. 055-2015 (NAIA).[32]

With the recommendation of the BOC-CIIS,[33] District Collector Edgar Z. Macabeo[34] issued a Warrant of Seizure and Detention dated 25 September 2015 ordering the seizure of the subject 259 pieces of assorted jewelry for violation of ***Section 2505, in relation to Section 2530 (l) (2), of the TCCP.***

On 9 June 2019, District Collector Macabeo rendered a Decision[35] ordering the forfeiture of the 259 pieces of jewelry in favor of the Government. The dispositive part of the decision reads:

> "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.
>
> Let copies of this Decision be furnished to all offices and parties concerned for their information.
>
> SO ORDERED."

Petitioner appealed the District Collector's Decision to respondent COC,[36] who rendered a Decision on 19 January 2017[37] affirming the appealed Decision. The dispositive part of COC's Decision reads:

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[28] Par. 1.2, JSFI as approved and adopted in the Pre-Trial Order, dated 27 June 2017, Division Records Vol. 1, p. 208.
[29] Failure to Declare Baggage.
[30] Property Subject to Forfeiture Under Tariff and Customs Law.
[31] Exhibit "R-5", Division Records Vol. 2, p. 509.
[32] Par. 1.1, JSFI as approved and adopted in the Pre-Trial Order, dated 27 June 2017, Division Records Vol. 1, p. 208.
[33] Exhibits "R-9", "R-9-1" and "R-10", Division Records Vol. 2, pp. 516-518.
[34] Exhibit "R-12", *id.*, pp. 520-522.
[35] Exhibit "P-2", Division Records Vol. 1, pp. 248-280.
[36] Par. 27, Petition for Review, Division Records Vol. 1, p. 18 as admitted in Par. 2, Answer, Division Records Vol. 1, p. 85
[37] Par. 28, Petition for Review, Division Records Vol. 1, p. 18 as admitted in Par.2, Answer, Division Records Vol. 1, p 85; Exhibit "P-1", Division Records Vol. 1, pp. 30-37.

> "**WHEREFORE**, premises considered, the Decision dated 09 January 2016[38] issued by the District Collector, NAIA, in Seizure Identification (S.I.) No. 320-2014 *(sic)*[39] 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.
>
> **SO ORDERED**."

Hence, on 27 February 2017,[40] petitioner filed a Petition for Review with the Court of Tax Appeals ("CTA"), docketed as CTA Case No. 9545.

In her Petition for Review, petitioner prayed that the COC's Decision, dated 19 January 2017, be vacated and set aside on the basis of the following errors:[41]

1. The COC erroneously based the forfeiture for violation of ***Section 2505 in relation to Section 2530 of the TCCP*** considering that the said provisions did not enumerate the dutiable items that must be declared. While the Customs Declaration Form enumerates the items that the incoming passenger must declare, such as jewelry, ***Sections 2505 and 2530*** did not enumerate which items must be declared. Considering that Customs Declaration Form is not a law and that ***Section 2505 and 2530 of the TCCP*** are not self-executory, the said provisions cannot be the basis of a forfeiture.

2. The proceedings before the District Collector, whose decision was affirmed by the COC, did not comply with the due process requirements in administrative proceedings as laid down in ***Ang Tibay v. Court of Industrial Relations***.[42] *First*, findings were not supported by substantial evidence because the decision relied on presumptions such as 'Philippine nationals should know that it is necessary to fill up the Customs Declaration Forms for dutiable articles.' Petitioner insisted that it is not her obligation to ask for a form; instead, the BOC is under obligation to give her the form to ensure that the same is accomplished. She asserts that fraud is not presumed and that there is no fraud unless the prosecution proves its existence. *Second*, the District Collection was not impartial and acted taking into consideration the news articles that allegedly stated that the COC wanted to pursue criminal charges against petitioner.

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[38] This is an erroneous date. The actual date is 9 June 2016, not "09 January 2016."

[39] This is an erroneous case number. The facts, as stated in the Decision of the COC, states that what has been appealed to his Office is the Decision by District Collector in Seizure Identification No. "055-2015". *See* Exhibit "P-1", Division Records Vol. 1, p. 30.

[40] Division Records Vol. 1, pp. 10-29.

[41] *See* Petition for Review, *id.*, pp. 19-27.

[42] G.R. No. 46496, 27 February 1940.

Third, the parties should be given reasonable opportunity to defend their rights and to introduce witnesses and relevant evidence in their favor. Petitioner claimed that the District Collector and the COC's understanding of burden of proof in ***Section 2535 of the TCCP*** is flawed. She claims that it was erroneous for her, as claimant, to prove her innocence because the presumption is in favor of innocence not guilt.

Meanwhile, in its Answer, respondent argued that:[43]

1. Petitioner was guilty of fraud when she intentionally failed to declare the pieces of jewelry to the customs officials.

    a. *First*, it is standard procedure in customs houses that an incoming passenger will be asked to declare any dutiable goods that need to be declared. It is a disputable presumption that the BOC officials regularly performed their duty. The presumption may only be rebutted by affirmative evidence of irregularity. Petitioner never refuted the regularity of procedure other than the alleged procedural blunder of not handing out the Customs Declaration Form. However, petitioner should be reminded that the mandate of customs officials is not to perfunctorily hand-out forms when, in fact, there are notices in the NAIA Arrival Area advising passengers to fill out the form and where to find them. The mandate of the customs officials to ensure that proper importation procedures and sanctions for non-compliance is mandated.

    b. *Second*, not only did petitioner fail to fill-out the form, she also denied, after being asked twice, that she had any dutiable items to declare.

    c. *Third*, the law requires declaration and payment of correspondent taxes for dutiable items which must be done by all incoming passengers. Respondent cites ***Section 2505 of the TCCP*** which provides that non-declaration of dutiable items is subject to seizure. The law is clear thus, and petitioner cannot feign ignorance of her obligation.

    d. *Fourth*, petitioner's insistence that the BOC officials are remiss in their duty of not giving her the Customs Declaration Form deserves scant consideration. Incoming passengers could easily evade their duty if petitioner's argument stands. Petitioner's argument that the customs officials "failed" to assist her on the necessary procedures for importation of jewelry is also flawed

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[43] Division Records Vol. 1, pp. 85-95.

as petitioner evaded the question when the customs officials asked her if she had anything to declare. She also did not ask for any assistance if, indeed, she needed one.

e. *Fifth*, all laws, including ***Sections 2505 and 2530 of the TCCP*** are self-executory. The provisions clearly provide that the liability attaches when a person fails to declare the dutiable items. Clear liability attaches when a person fails to declare dutiable items upon their arrival.

2. Petitioner was accorded due process as she was given ample opportunity to respond to the accusations against her but failed. The factual findings of a specialized administrative agency, such as the District Collector of the BOC in the forfeiture of the subject pieces of jewelry, is entitled to great weight and must be accorded not only with respect but even finality when supported by substantial evidence. Finally, the defense of presumption of innocence does not apply to an administrative proceeding.

During trial, petitioner testified as the sole witness[44] in support of her Petition.

Meanwhile, respondent presented three witnesses, namely: (1) Customs Operations Officer III Calzada,[45] (2) BOC Flight Supervisor Relucio,[46] and (3) Customs Appraiser and Flight Supervisor at the Arrival Operations Division of the BOC Elizabeth E. Pableo.[47]

After trial, the Court in Division rendered the assailed Decision[48] on 15 January 2020, denying the Petition for Review and affirming the COC's Decision, dated 19 January 2017. The dispositive part of the assailed Decision reads:

> "**WHEREFORE**, the Petition for Review dated February 24, 2017 filed by petitioner Rosemarie G. Clemente, is **DENIED**, for lack of merit.
>
> Consequently, the Decision dated January 19, 2017 rendered by the COC in Seizure Identification No. 055-205 (NAIA) is **AFFIRMED**.
>
> **SO ORDERED.**"

Subsequently, petitioner filed a Motion for Reconsideration[49] which the Court in Division denied in the assailed Resolution, dated 9 June 2020.

44 Exhibits "P-9" and "P-9-1", Division Records Vol. 1, pp. 233 to 238.
45 Exhibits "R-15" and "R-15-A", Division Records Vol. 2, pp. 525-531.
46 Exhibit "R-16" and "R-16-A", Division Records Vol. 1, pp. 185-189.
47 Exhibit "R-17" and "R-17-A", *id.*, pp. 192-195.
48 Division Records Vol. 2, pp. 695-715.
49 Division Records Vol. 2, pp. 716-723.

Within the extended period[50] granted by the Court *En Banc*, petitioner filed the instant Petition for Review.[51]

In the Court *En Banc's* Resolution,[52] dated 7 December 2020, respondent was ordered to file its Comment to the present Petition for Review within ten (10) days from notice.

Instead of filing a Comment, respondent filed, through registered mail on 28 December 2020, a Motion for Extension[53] which the Court received on 12 January 2021.

In a Resolution, dated 9 February 2021,[54] the Court *En Banc* denied respondent's Motion for Extension pursuant to ***Section 12(e), Rule 15 of A.M. No. 19-10-20-SC or the 2019 Amendments to the 1997 Rules of Civil Procedure*** and ***En Banc Resolution No. 9-2020 dated 7 August 2020.*** In the same Resolution, the instant Petition for Review was submitted for decision.

Hence, this Decision.

However, before the Court could resolve the instant Petition for Review, respondent filed its Comment,[55] which was ordered[56] to be stricken off the records in view of the Court *En Banc's* Resolution dated 9 February 2021. Thereafter, respondent filed Motions for Reconsideration[57] assailing the Court *En Banc's* Resolution, dated 9 February 2021 and 19 March 2021, chiefly praying for the Court to admit its Comment. The Court denied respondent's Motions for Reconsideration.

Issue[58]

The sole issue submitted for the Court *En Banc's* resolution is:

> Whether or not the Court in Division was correct in affirming the Decision of the COC dated 19 January 2017.

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[50] Motion for Extension of Time to File Petition For Review, *EB* Records, pp. 1-3; Minute Resolution dated 13 July 2020, *EB* Records, pp. 4-4-a.
[51] *EB* Records, pp. 5-132, with annexes.
[52] *Id.*, pp. 150-152.
[53] *Id.*, pp. 153-161.
[54] *Id.*, pp. 162-165.
[55] *Id.*, pp. 166-185.
[56] Resolution dated 18 March 2021, *id.*, pp. 186-188.
[57] *See* Motion for Reconsideration (Re: Resolution dated February 9, 2021) and Motion for Reconsideration (Re: Resolution dated March 18, 2021), *EB* Records, pp. 189-196 and pp. 198-213.
[58] *See* Issue, Petition for Review, *id.*, p. 11.

Arguments of Petitioner[59]

Petitioner essentially argues that the Court in Division erred in finding fraudulent intent on the part of petitioner and, consequently, in denying her offer of settlement pursuant to ***Section 2307 of the TCCP***. She points out that from the narration of the District Collector in its Decision, dated 9 June 2016, which was affirmed in the COC's Decision, dated 19 January 2017, it is clear that she was pre-judged as being guilty of fraud on the basis alone of her negative response when asked by Customs Examiners whether or not she had anything to declare while she was exiting the airport. According to petitioner, fraud was also presumed when the customs officers relied on the alleged tip from the CIIS Officers containing general instructions nowhere linking the tip to her.

Citing ***Aznar v. Court of Tax Appeals, et al.***,[60] petitioner argues that fraud should be actual, not constructive, and intentional, which consists of deception willfully and deliberately done. Petitioner asserts that her readiness to have her baggage inspected and the fact that the pieces of jewelry were contained in ordinary plastic bags, visible in plain view, are badges of good faith. These actuations show no intent to defraud, deceive, or trick the customs officers into thinking that she was not carrying any dutiable items. The two disputable presumptions pursuant to ***Section 3, Rule 131 of the Rules of Court*** are: (1) that a person is innocent of crime or wrong; or (2) that an unlawful act was done with an unlawful intent.

The Ruling of the Court *En Banc*

The present Petition for Review lacks merit.

Petitioner essentially reiterates the same arguments raised in the Court in Division which have been sufficiently addressed in the assailed Decision and assailed Resolution.

Fraud on the part of petitioner was sufficiently established by the factual findings of the Court in Division.

The Court in Division found petitioner liable for violation of ***Section 2505 in relation to 2530(l)(2) of the TCCP***. The provisions pertinently read:

[59] *See* Arguments, Petition for Review, *EB* Records., pp. 11-22.
[60] G.R. No. L-20569, 23 August 1974.

"SEC. 2505. Failure to Declare Baggage. - **Whenever any dutiable article is found in the baggage of any person arriving in the Philippines which is not included in the baggage declaration**, such **article shall be seized** and the person in whose baggage it is found may obtain release of such article, if not imported contrary to any law upon payment of treble and appraised value of such article plus all duties, taxes and other charges due thereon **unless it shall be established to the satisfaction of the Collector that the failure to mention or declare such dutiable article <u>was without fraud</u>**.

Nothing in this section shall preclude the bringing of criminal action against the offender."
(Emphasis and underscoring, Ours.)

"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**:

...

l. Any **article sought to be imported** or exported

...

(2) By **failure to mention to a customs official**, articles found in the baggage of a person arriving from abroad;

..."

(Emphasis and underscoring, Ours.)

Section 2535 of the TCCP further provides that once probable cause is established, the burden of proof shifts to the claimant, to wit:

"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."

The foregoing provisions categorically impose an obligation upon the passenger to declare, upon arrival in the Philippines, any dutiable article found in his/her baggage. Failure to declare to the customs official will subject the article to seizure unless it is established to the satisfaction of the Collector that such failure to mention or declare the dutiable article is without fraud.

Petitioner denies the existence of fraudulent intent on her part and assails the presumption of fraud which allegedly attended the seizure and forfeiture of the 259 pieces of jewelry found in her possession.

While it is true that fraud cannot be presumed, it can be inferred from attendant circumstances and need not be proven by direct evidence. In ***Dumaran v. Llamedo***,[61] the Supreme Court, citing ***Republic v. Mega Pacific eSolutions, Inc.***,[62] explained the necessity of establishing fraud through inferences from surrounding circumstances:

> "Fraud may be characterized as the **voluntary execution of a wrongful act or a willful omission, while knowing and intending the effects that naturally and necessarily arise from that act or omission**. In its general sense, fraud is deemed to comprise anything calculated to deceive — including all acts and omission and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed — resulting in damage to or in undue advantage over another. Fraud is also described as embracing all multifarious means that human ingenuity can device, and is **resorted to for the purpose of securing an advantage over another by false suggestions or by suppression of truth**; and it includes all surprise, trick, cunning, dissembling, and any other unfair way by which another is cheated.
>
> While fraud cannot be presumed, it need not be proved by direct evidence and can well be inferred from attendant circumstances. Fraud by its nature is **not a thing susceptible of ocular observation or readily demonstrable physically; it must of necessity be proved in many cases by inferences from circumstances** shown to have been involved in the transaction in question."
> (Emphasis, Ours)

Contrary to petitioner's contention, she was not pre-judged with fraud as, in fact, respondent sufficiently established the existence of fraud.

From its thorough evaluation of facts, the Court in Division determined that fraud could be inferred from the attendant circumstances in the present case. In particular, petitioner, upon arrival, immediately proceeded to the customs area passing through the Green Lane[63] without submitting an accomplished Customs Declaration Form[64] despite visible notice requiring its submission at the NAIA arrival area.[65] The notice provides: *"Please fill out the CUSTOMS DECLARATION form available at the Customs Arrival Area."*[66] When the customs officers asked petitioner several times if she had anything to declare, she answered in the negative.[67] Such act or denial is considered deceit and a dishonest trick employed against the customs officials who were made to believe that she had no dutiable article inside her baggage.[68] Petitioner acted knowing fully well the implications of such an act or denial,

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[61] G.R. No. 217583, 4 August 2021.
[62] G.R. No. 184666, 27 June 2016.
[63] Exhibit "R-8", Division Records Vol. 2, pp. 513-515.
[64] Par. 1.2, JSFI as approved and adopted in the Pre-Trial Order, dated 27 June 2017, Division Records Vol. 1, p. 208.
[65] Par. 1.1, JSFI as approved and adopted in the Pre-Trial Order dated 27 June 2017, *id.*, p. 208
[66] *Ibid.*
[67] Exhibit "P-2", Division Records Vol. 1, pp. 248-280.
[68] *Ibid.*

the success of which could have led to petitioner's evasion of payment of customs duties and taxes on the pieces of jewelry.[69]

As a rule, findings of fact of the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.[70] In the present Petition, petitioner merely claimed that she was pre-judged, citing general principles of law prohibiting presumption of fraud. Petitioner failed to show grave abuse of discretion that would warrant the reversal of the findings of the Court in Division. Thus, the findings of fact of the Court in Division and its determination of fraud on the part of petitioner cannot be disturbed by this Court.

Further, basic is the rule that mere allegation is not synonymous with proof or evidence.[71] The overwhelming evidence in the records on the acts of petitioner establishing the existence of fraud must stand, absent any controverting evidence. Petitioner's bare allegation of absence of fraud and her denial of ownership of the subject pieces of jewelry are not supported by any evidence on record.

Petitioner also claims good faith in submitting herself to inspection and the fact that the pieces of jewelry are contained in ordinary plastic bags.

We disagree.

In ***Bureau of Customs v. Devanadera***,[72] the Supreme Court held that fraud includes a suppression of material fact which a party is bound to disclose:

> "The fraud contemplated by law must be intentional fraud, consisting of deception, willfully and deliberately dared or resorted to in order to give up some right. The offender must have acted knowingly and with the specific intent to deceive for the purpose of causing financial loss to another; even false representations or statements or omissions of material facts come within fraudulent intent. **The fraud envisaged in the law <u>includes the suppression of a material fact which a party is bound in good faith to disclose</u>**. Fraudulent nondisclosure and fraudulent concealment are of the same genre.

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69 Exhibit "P-2", *id.*, pp. 248-280.

70 Republic of the Philippines v. Team (Phils.) Energy Corporation (formerly, Mirant (Phils.) Energy Corporation), G.R. No. 159471, 26 January 2011.

71 Malixi v. Mexicali Philippines, G.R. No. 205061, 8 June 2016; Belga, Jr. v. Everest Security and Investigation Agency, G.R. No. 244324, 17 June 2019; Commissioner of Internal Revenue v. CBK Power Company Limited, G.R. No. 252993, 21 September 2020.

72 G.R. No. 193253, 8 September 2015.

> **Fraudulent concealment presupposes a duty to disclose the truth** and that **disclosure was not made when opportunity to speak and inform was present,** and that the party to whom the duty of disclosure as to a material fact was due was thereby induced to act to his injury. Fraud is not confined to words or positive assertions; it may consist as well of deeds, acts or artifice of a nature calculated to mislead another and thus allow one to obtain an undue advantage."
> (Emphasis and underscoring, Ours.)

To reiterate, it is undisputed that a notice was posted in the NAIA arrival area which expressly requires the submission of the accomplished Customs Declaration Form.[73] Petitioner ignored said notice and proceeded to the exit without accomplishing the form. Indeed, petitioner was not acting in good faith when she ignored the notice and, again, when she stated that she had nothing to declare when, in fact, she had commercial quantity jewelry in her possession.

Given the foregoing, this Court finds no sufficient basis to disturb the factual findings of the Court in Division imputing fraud on the part of petitioner.

***Section 2307 of the TCCP* precludes settlement of the case when there is fraud.**

Section 2307 of the TCCP allows settlement of any seizure case, subject to approval of the COC, except when there is fraud. The provision reads:

> "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.
>
> Upon payment of the fine as determined by the district collector which shall be in amount not less than twenty percentum (20%) nor more than eighty percentum (80%) of the landed cost of the seized imported article or the F.O.B. value of the seized article for export, or payment of the domestic market value, the property shall be forthwith released and all liabilities which may or might attach to the property by virtue of the offence which was the occasion of the seizure and all liability which might have been incurred under any cash deposit or bond given by the owner or agent in respect to such property shall thereupon be deemed to be discharged.

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[73] Par. 1.1, JSFI as approved and adopted in the Pre-Trial Order, dated 27 June 2017, Division Records Vol. 1, p. 208.

> 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."
> (Emphasis, Ours.)

With the finding of fraud, the Court in Division did not err in affirming the Decision of COC which refused petitioner's offer of settlement on the ground that she committed fraud.

Given the foregoing, the Court in Division correctly affirmed the Decision, dated 19 January 2017, of the COC, which affirmed the Decision, dated 9 June 2016, of the District Collector ordering the seizure and forfeiture of the 259 pieces of jewelry in favor of the Government.

WHEREFORE, in light of the foregoing considerations, the present Petition for Review filed by Rosemarie G. Clemente is hereby **DENIED** for lack of merit. Accordingly, the Decision, dated 15 January 2020, and the Resolution, dated 9 June 2020, both rendered by the Court in Division are hereby **AFFIRMED.**

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

ON LEAVE
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

C E R T I F I C A T I O N

Pursuant to *Article VIII, Section 13 of the Constitution,* it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice