REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10953

ERS SURPLUS VENTURE, claimant, Shipment of 1x40 Container with No. TEMU743840 STC: Used Parts and Components for Replacement under Import Entry No. C-12566, covered by BL No. SITYKCD2114311 on board the vessel SITC KANTO/21165, which arrived at the Sub-port of Mindanao Container Terminal, Tagoloan, Misamis Oriental ,
Petitioner,

- versus -

REPUBLIC OF THE PHILIPPINES,
Respondent.

NOTICE OF DECISION

To:

ASST. SOL. GEN. GILBERT U. MEDRANO
ASSOCIATE SOLICITOR II LEANDRO MARI B. MANABAT
OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo St., Legazpi Village
Makati City

THE COMMISSIONER OF CUSTOMS
BUREAU OF CUSTOMS
Ground Floor, OCOM Bulding
16th Street, South Harbor
Port Area, Manila

DISTRICT COLLECTOR OF CUSTOMS
Port Cagayan de Oro City
Brgy. Puntod, Cagayan de Oro City

BONIEL AND BONIEL LAW OFFICES
Door No. 3 Neri Apartment, City Health Street
Barangay 40, Nazareth, Cagayan de Oro City

GREETINGS:

You are hereby notified by these presents that on **October 15, 2024,**a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **October 21, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ERS SURPLUS VENTURE, claimant, Shipment of 1x40 Container with No. TEMU743840 STC: Used Parts and Components for Replacement under Import Entry No. C-12566, covered by BL No. SITYKCD2114311 on board the vessel SITC KANTO/21165, which arrived at the Sub-port of Mindanao Container Terminal, Tagoloan, Misamis Oriental, *Petitioner,*	**CTA CASE NO. 10953** *Members:* **DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
-versus-	
REPUBLIC OF THE PHILIPPINES, *Respondent.*	Promulgated: OCT 15 2024; 3:10PM

x- x

DECISION

CUI-DAVID, J.:

Before this Court is a *Petition*[1] praying that the Court render judgment setting aside the Order dated June 7, 2022[2] (assailed Order) of the Commissioner of Customs (COC) and ordering the release of all the properly documented goods including the five (5) used chainsaws after payment of duties and taxes.

[1] Docket, pp. 11-24.
[2] Exhibit "R-6", *id.*, pp. 192-198.

THE PARTIES

Petitioner ERS Surplus Venture is a sole proprietorship registered with the Department of Trade and Industry (DTI)[3] and owned by Evelyn B. Andit, an importer of used truck parts and components for replacement[4] and seller of motor vehicle parts and accessories.[5]

Respondent Republic of the Philippines is represented by the Office of the Solicitor General with office address at 134 Amorsolo Street, Legazpi Village, Makati City.[6]

THE FACTS

On August 30, 2021, a shipment covered by Bill of Lading No. SITYKCD2114311,[7] consigned to petitioner, arrived in the Philippines, and inbounded at the Mindanao Container Terminal (MCT) Sub-Port in Tagoloan, Misamis Oriental.

On September 2, 2021, Alert Order No. A/CDO/20210902-00013[8] was issued by Atty. Elvira Cruz, Bureau of Customs (BOC) District Collector of Port of Cagayan De Oro, against said shipment for possible violation of Section 117[9] of the Customs Modernization and Tariff Act (CMTA). The Alert Order noted, in particular, the shipment's lack of permit.

After conducting a full examination of petitioner's shipment, Customs Operating Officer (COO) III Olodin Z. Balt (Balt) issued an Alert Order Report Form[10] on October 18, 2021.[11] COO Balt recommended the following actions:

> (1) issuance of a Warrant of Seizure and Detention (WSD) for a portion of the shipment, specifically, the five (5) pieces used chainsaw for lack of import permit from the DENR and the undeclared four (4) pieces used truck tires with rims and six (6) pieces used medium truck tires with

W

---

[3] Exhibit "P-1", *id.*, p. 99.
[4] Par. 1.1, 1. Stipulated Facts, *Joint Stipulation of Facts & Issues* (JSFI). Docket, p. 307.
[5] Par. 1.2, *id.*, p. 307.
[6] Par. 2.2, 2. The Parties, *Memorandum for the Petitioner*, Docket, p. 375.
[7] Exhibit "R-1", Docket, p. 180.
[8] Exhibit "R-1", *id.*, p. 181.
[9] SEC. 117. *Regulated Importation and Exportation.* – Goods which are subject to regulation shall be imported or exported only after securing the necessary goods declaration or export declaration, clearances, licenses, and any other requirements, prior to importation or exportation. In case of importation, submission of requirements after arrival of the goods but prior to release from customs custody shall be allowed but only in cases provided for by governing laws or regulations.
[10] Exhibits "P-5" and "R-3", Docket, pp. 104-106.
[11] Answers to Q8-Q16, Judicial Affidavit of Olodin Z. Balt, Docket, pp. 172-174.

rims; (collectively referred hereinafter as "**Group A items**") and

(2) continuous processing of declared items covered by the Certificate of Authority to Import (CAI)[12] issued by the DTI – Fair Trade and Enforcement Bureau (FTEB), including the declared:

- 26 pieces used wheel rims;
- 1 unit used mini excavator;
- 5 units farm tractor with 25 pcs tractor tires with rims;
- 8 pieces used bicycles;
- 10 pieces used engines; and,
- 6 pieces used grass cutters (collectively referred hereinafter as "**Group B items**").

On November 3, 2021, the District Collector, Atty. Elvira Cruz issued the WSD[13] against the entire shipment.

Meanwhile, on November 24, 2021, the Department of Environment and Natural Resources (DENR), Region 10 – Puntod, Cagayan de Oro City issued a Permit to Purchase and Import Chainsaw[14] in favor of petitioner.

On February 7, 2022, the District Collector rendered a Decision[15] ordering the release of the Group B items (used truck replacement parts) covered by the CAI[16] subject to automatic review of the COC and forfeiture of the Group A items (used chainsaws and used truck tires with rims), *viz.*:

> **WHEREFORE**, in light of the foregoing and by virtue of the authority vested in this Office, it is hereby ordered and decreed that the used truck replacement parts covered by the Certificate of Authority to Import (CAI), including the one (1) unit used mini excavator, five (5) pcs used farm tractor, eight (8) pcs used bicycle, ten (10) pcs used engines and six (6) pieces used grass cutter be **released** subject to automatic review of the Commissioner under Section 1127 of CMTA.
>
> However, the five (5) pieces used chainsaws, four (4) pieces used big truck tires with rims and six (6) pieces used medium truck tires with rims shall be **forfeited** in favor of the government and be disposed of in the manner provided for by the Customs Modernization and Tariff Act.

---

12 Per Executive Order No. 877-A, The Comprehensive Motor Vehicle Development Program, June 3, 2010, a CAI is a document that authorizes a person to import used motor vehicles and parts.

13 Exhibit "R-4", *id.*, pp. 185-186.

14 Exhibit "P-4", Docket, p. 103.

15 Exhibit "R-5", *id.*, pp. 187-191.

16 Itemized as follows: 3 pieces used cabin, 3 pieces used chassis fitted with engine; 3 pieces used radiator cowling; 3 pieces used front axle, 3 pieces used rear axle, 3 pieces used propeller; 3 pieces used gas tank; 3 pieces used cargo body; 26 pieces used wheel rim; 3 pieces used exhaust pipe assy.; 3 pieces used bumper.

SO ORDERED.

Upon review of the Decision dated February 7, 2022, of the District Collector, the COC modified the same in the assailed Order[17] and disposed of the seizure case as follows:

> **WHEREFORE**, premises considered, the Decision dated 07 February 2022 of the District Collector, Port of Cagayan De Oro, in S.I. No. 17-2021 is hereby ordered **REVERSED**. Accordingly, the used truck replacement parts covered by the Certificate of Authority to Import (CAI), along with the one (1) unit used mini excavator, five (5) pcs used farm tractor, eight (8) pcs used bicycle, ten (10) pcs used engines and six (6) pieces used grass cutter, five (5) pieces used chainsaws, four (4) pieces used big truck tires with rims and six (6) pieces used medium truck tires with rims consigned to ERS SURPLUS VENTURE are hereby **FORFEITED** in favor of the government to be disposed of in the manner provided by law.
>
> Let copies of this Decision be furnished all parties and offices for their information and appropriate action.
>
> **SO ORDERED.**

Aggrieved, petitioner posted the present *Petition* on July 29, 2022, entitled "*Republic of the Philippines, plaintiff-appellee, v. Shipment of 1x40 Container with No. TEMU743840 STC: Used Parts and Components for Replacement under Import Entry No. C-12566, covered by BL No. SITYKCD2114311 on board the vessel SITC Kanto/21165, which arrived at the Sub-port of Mindanao Container Terminal, Tagoloan, Misamis Oriental, ERS SURPLUS VENTURE, respondent-appellant.*" It was initially raffled to this Court's Second Division.

In the Resolution dated September 1, 2022,[18] the Second Division directed petitioner to correctly state the names of the parties in its petition as petitioner or respondent and to state in its petition the names of its intended witnesses, the summary of their testimonies and their Judicial Affidavits within ten (10) days from notice. The Second Division also amended the title of the case in the interest of orderly procedure.

On October 28, 2022, the Second Division dismissed the petition because petitioner failed to comply with the Resolution

[17] *Supra* note 2.
[18] Docket, pp. 73-75.

dated September 1, 2022,[19] as per the Records Verification dated September 29, 2022.[20]

On November 14, 2022, petitioner filed its *Manifestation cum Clarificatory Motion.*[21] In consideration thereof, the Second Division issued a Resolution dated January 19, 2023,[22] directing anew petitioner to submit the judicial affidavits of its intended witnesses within ten (10) days from notice. The Second Division also recalled and set aside the Resolution dated September 1, 2022, which dismissed the case.

On December 27, 2022, petitioner filed a *Motion for Reconsideration (with Compliance).*[23] Attached therewith is the Judicial Affidavit of its witness, Evangelos Andit.[24] On February 27, 2023, respondent posted its *Comment*[25] on the said motion.

On March 9, 2023, the Second Division noted petitioner's *Motion for Reconsideration (with Compliance)* and deemed it as sufficient compliance with the Resolutions dated September 1, 2022, and January 19, 2023.[26] On the same date, the Second Division issued a Summons[27] to respondent.

On April 12, 2023, respondent filed a *Motion for Extension,*[28] which the Second Division granted, thereby giving respondent a non-extendible period of 30 days to file an Answer.[29]

Within the extended period, respondent filed an *Answer*[30] where respondent put forth the following special and affirmative defenses: (a) the five pieces of used chainsaw and undeclared truck tires with rims were correctly seized in violation of Section 117, in relation to Section 1113 (f), (i) and (l) of the CMTA; and, (b) the order of seizure and forfeiture of all other articles on the shipment is correct on the ground of fraudulent concealment.

M

[19] Resolution, *id.*, pp. 78-80.
[20] *Id.*, p. 76.
[21] Docket, pp. 81-83.
[22] *Id.*, pp. 87-88.
[23] *Id.*, pp. 89-91.
[24] *Id.*, pp. 92-98.
[25] *Id.*, pp. 119-123.
[26] Resolution, *id.*, pp. 128-129.
[27] Docket, p. 130.
[28] *Id.*, pp. 132-133.
[29] Resolution dated April 20, 2023, *id.*, p. 139.
[30] Docket, pp. 140-149.

On May 23, 2023, the Second Division received the BOC Records.[31]

On May 26, 2023, the Second Division issued a Notice of Pre-Trial Conference[32] and set the case for pre-trial conference on September 28, 2023.

On May 29, 2023, the case was transferred to the First Division.[33]

Pre-trial of the case proceeded on September 28, 2023[34] with the *Pre-Trial Brief (For the Petitioner)*[35] and respondent's *Pre-Trial Brief*,[36] both filed on September 25, 2023.

The parties filed their *Joint Stipulation of Facts and Issues* (JSFI),[37] which was approved in the Resolution[38] dated November 29, 2023. Thereafter, the *Pre-Trial Order*[39] was issued on January 30, 2024.

During the presentation of petitioner's evidence, the parties, through their counsels, manifested that no factual issues were involved in this case; hence, they moved that the presentation of evidence, both testimonial and documentary, be dispensed with and that they be allowed to file their respective memoranda. Accordingly, the Court ordered the parties to submit their respective memoranda within 30 days.[40]

Respondent filed its *Memorandum*[41] on February 29, 2024, while *Memorandum for the Petitioner*[42] was filed on March 1, 2024.

On April 2, 2024, the Court submitted the case for decision.[43]

---

31 *Id.*, p. 203.
32 *Id.*, pp. 204-205.
33 *Id.*, p. 206.
34 Order, *id.*, pp. 229-231 and pp. 236-238.
35 Docket, pp. 270-275.
36 *Id.*, pp. 239-245.
37 *Id.*, pp. 307-310.
38 *Id.*, p. 316.
39 *Id.*, pp. 322-333.
40 Order dated January 31, 2024, *id.*, pp. 336-337.
41 Docket, pp. 356-369.
42 *Id.*, pp. 374-388.
43 *Id.*, p. 391.

THE ISSUES

The parties stipulated the following issues for the Court's resolution:[44]

1. Whether or not the Commissioner of Customs correctly ordered the forfeiture of all the goods in the shipment of petitioner including those properly declared and documented based on Alert Order Report dated October [18,] 2021.

2. Whether or not the Commissioner of Customs correctly ordered the forfeiture of the five (5) used chainsaws on the ground that the Permit to Import issued by the Office of Regional Director of the Department [of] Environment and Natural Resources-Regional Office No. X was only secured by the petitioner upon arrival of the shipment in the port of destination.

3. Whether or not the Commissioner of Customs is correct in finding that petitioner brought in prohibited goods consisting of ten (10) pieces of used tires, thus, holding the petitioner guilty of importation fraud.

4. Whether or not the Commissioner of Customs correctly ordered the forfeiture of the ten (10) pieces of used tires found in the container van which were not documented:

Petitioner's arguments:

Petitioner argues that the five (5) used chainsaws were declared properly and covered by a Permit to Purchase and Import Chainsaw[45] issued by the DENR Region 10 after the arrival of the goods in the MCT Sub-Port of Tagoloan, Misamis Oriental, in accordance with Republic Act (RA) No. 9175[46] and its implementing rules and regulations, *i.e.*, Section 9 of DENR Administrative Order (DAO) No. 2003-24.[47] Petitioner asserts that the DENR is the regulatory agency that governs the importation of chainsaws and that the COC cannot override the power and/or authority of the DENR in issuing the Import Permit for the five (5) used chainsaws to petitioner after the arrival of the goods at the port of entry but before their release.

hv

---

[44] 2. Stipulated Issues, JSFI, Docket, pp. 308-309.
[45] Exhibit "P-4", Docket, p. 103.
[46] AN ACT REGULATING THE OWNERSHIP, POSSESSION, SALE, IMPORTATION AND USE OF CHAIN SAWS, PENALIZING VIOLATIONS THEREOF AND FOR OTHER PURPOSES, November 7, 2002.
[47] IMPLEMENTING RULES ANO REGULATIONS OF THE CHAINSAW ACT OF 2002 (RA NO. 9175) ENTITLED "AN: ACT REGULATING THE OWNERSHIP, POSSESSION, SALE, IMPORTATION ANO USE OF CHAINSAWS, PENALIZING VIOLATIONS THEREOF ANO FOR OTHER PURPOSES, June 30, 2003.

Further, petitioner disputes the COC's conclusion that the declared goods in petitioner's shipment were merely used as a vehicle to fraudulently conceal the importation of undeclared goods and other goods without the necessary regulatory permit to evade the proper payment of duties and taxes. The undeclared four (4) pieces of used tires with rims and six (6) pieces of used medium truck tires with rims are not among the items petitioner bought from its supplier in Japan., Petitioner claims that the ten (10) used truck tires found in its shipment were just put by its supplier for no commercial value but to protect the used truck parts and engines from getting damaged due to the ship's movement during the voyage. Thus, petitioner submits that the COC erred in ordering the forfeiture of all items in petitioner's shipment, contrary to Section 6.2[48] of Customs Administrative Order (CAO) No. 10-2020.[49]

Respondent's arguments:

Respondent counters that the five (5) pieces of used chainsaws and undeclared truck tires with rims were correctly seized as these were imported in violation of Section 117, in relation to Section 1113 (f), (i), and (l) of the CMTA. Section 7 of RA No. 9175 and Sections 9 and 12 of DENR AO No. 2003-24 provide that a Permit to Import issued by the DENR is a condition precedent to the lawful importation of a chainsaw into the country. There being no Permit to Import issued by the DENR before the importation of the five (5) pieces of chainsaw, the same is subject to forfeiture.

As to the truck tires with rims, respondent posits that their importation violates Section 1113 (l) of the CMTA, which provides that any package of imported goods not specified in the goods declaration is subject to seizure and forfeiture. Also, importing the said tires is prohibited under Letter of Instructions No. 1086, series of 1980.

Respondent also avers that the COC correctly ordered the seizure and forfeiture of all other articles covered by petitioner's shipment on the ground of fraudulent concealment. Section 1123 of the CMTA places on petitioner the burden of proving that all articles covered by its shipment were not illegally imported into the country, and petitioner failed to discharge this

---

48 *Infra.*
49 Seizure and Forfeiture Proceedings and Appeals Process, May 11, 2020.

burden in the face of overwhelming evidence that fraud attended the importation of all articles.

THE COURT'S RULING

The Court has jurisdiction over the instant Petition.

Section 7 (a) (4) of RA No. 1125,[50] as amended by RA No. 9282, provides:

> SEC. 7. *Jurisdiction.* - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> . . . .
>
> 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;

In relation thereto, Section 3 (a), Rule 8[51] of the Revised Rules of the Court of Tax Appeals (RRCTA) states that a party aggrieved by the decision or ruling of the COC may appeal to the Court in Division within thirty (30) days from receipt thereof.

Records reveal that on June 29, 2022,[52] petitioner received a copy of the assailed Order, forfeiting in favor of the government petitioner's shipment. Thus, petitioner had 30 days, or until July 29, 2022, to file an appeal before this Court.

Given that the present *Petition* was timely filed on July 29, 2022, this Court has jurisdiction over the case.

---

[50] AN ACT CREATING THE COURT OF TAX APPEALS.

[51] 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[.] ...

[52] Par. 3.1, Petition for Review, vis-à-vis par. 2, Answer, Docket, pp. 13 and 141, respectively.

The COC correctly seized the five (5) pieces of used chainsaws due to a lack of prior authorization from the DENR.

Petitioner insists that the subject chainsaws were properly declared and covered by a permit to import, *i.e.*, DENR Permit to Purchase and Import Chainsaw No. RID-CHW-01-11242022[53] issued on November 24, 2021, which petitioner secured after the arrival of the goods at the MCT Sub-Port in Tagoloan, Misamis Oriental. Petitioner submits that this complied with the requirements of Section 117 of the CMTA and Section 9 of DAO No. 2003-24, implementing RA No. 9175.

Respondent contends that the clear import of RA No. 9175 and DAO No. 2003-24 is that a permit to import must first be secured from the DENR before a person may import a chainsaw into the country.

We find for respondent.

Importation begins when the carrying vessel or aircraft enters the Philippine territory with the intention to unload therein.[54] While the used chainsaws were declared by petitioner, it is undisputed that petitioner secured the required DENR Import Permit only after it imported the subject chainsaws.

The importation of chainsaws is regulated under RA No. 9175 or the Chain Saw Act of 2002, which declares that "the State shall pursue an aggressive forest protection program geared towards eliminating illegal logging and other forms of forest destruction which are being facilitated with the use of chain saws ... [by] therefore regulat[ing] the ... importation ... of chain saws to prevent them from being used in illegal logging or unauthorized clearing of forests."[55]

Generally, regulated goods shall be imported only after securing the necessary requirements before importation. Section 117 of the CMTA states:

---

53 BOC Records, p. 24.
54 CMTA, Sec. 103.
55 SEC. 2. *Declaration of Policy.* — It is the policy of the State, consistent with the Constitution, to conserve, develop and protect the forest resources under sustainable management. Toward this end, the State shall pursue an aggressive forest protection program geared towards eliminating illegal logging and other forms of forest destruction which are being facilitated with the use of chain saws. The State shall therefore regulate the ownership, possession, sale, transfer, importation and/or use of chain saws to prevent them from being used in illegal logging or unauthorized clearing of forests.

> SEC. 117. *Regulated Importation and Exportation.* — **Goods which are subject to regulation shall be imported** or exported **only *after* securing the necessary** goods declaration or export declaration, clearances, licenses, and any other **requirements, prior to importation** or exportation. In case of importation, submission of requirements after arrival of the goods but prior to release from customs custody shall be allowed, but only in cases provided for by governing laws or regulations. (*Emphasis supplied*)

In turn, RA No. 9175 only allows the importation of chainsaws upon prior authorization from the DENR. Otherwise, the importation is unlawful and is penalized under Section 7 (2) thereof:

> SEC. 7. *Penal Provisions.* -
>
> . . . .
>
> (2) *Unlawful Importation or Manufacturing of Chain Saw.* - Any person who imports or manufactures a chain saw without obtaining ***prior* authorization** from the Department shall be punished by imprisonment of not less than one (1) month nor more than six (6) months and a fine of not less than One thousand pesos (P1,000.00) for more than Four thousand pesos (P4,000.00). (*Emphasis supplied*)

To implement the provisions of RA No. 9175, the DENR issued AO No. 2003-24 on June 30, 2003, outlining the submission of the following requirements for a permit to import chainsaws:

> SEC. 9. *Requirements for permit/authority to purchase, import, manufacture and/or transfer ownership, sell/dispose, lease, rent, lend chainsaws.*
>
> Applicants for permit/authority shall submit the following requirements:
>
> 9.1. Permit to Purchase or Import
>
> 9.1.1 Duly accomplished application form together with the following details:
>
> - Number of chainsaws **to be purchased/imported** with specifications
> - Purpose for purchasing/importing
> - Name and address of seller/supplier

M

- **Expected time of arrival** at port of entry **and/or release from the Bureau of Customs**, if imported
- Import Entry Declaration from the Bangko Sentral ng Pilipinas (*Emphasis supplied*)

Further, Section 12.2 of DENR AO No. 2003-24 reiterated the penal provision under Section 7 (2) of RA No. 9175, to wit:

> SEC. 12. The following acts are punishable under this Order.
>
> . . . .
>
> 12.2 *Unlawful Importation or Manufacturing of Chainsaw.* — **Any person who imports or manufactures a chainsaw without obtaining *prior* authorization from the Department** shall be punished by imprisonment of not less than one (1) month nor more than six (6) months and a fine of not less than One Thousand Pesos (P1,000.00) nor more than Four Thousand Pesos (P4,000.00). (*Emphasis supplied*)

Also, the filing of the application for a permit to import chainsaw[56] does not confer authority to petitioner to import the subject chainsaws until the DENR issues a Permit or Certificate of Registration. The application reads:

APPLICATION

Application No. ______
Type
[ ] New
[ ] Renewal

DATE ___________

The RED/CENRO concerned
____
____

Sir:
I/We ____________________, with address at ______________________ and telephone No. ______________
hereby applies for (Please check appropriate box):

[ ] Certificate of Registration of chainsaw (new)
[ ] Permit to import chainsaw
[ ] Permit to manufacture

[56] Implementing Rules and Regulations of the Chainsaw Act of 2002 (R.A. No. 9175), DENR Administrative Order No. 2003-24, June 30, 2003.

[ ] Permit to purchase, sell, re-sell, distribute or transfer of ownership of chainsaw

The requirements called for under my/our application are attached for your evaluation.

I/We understand that **the filing of this application does <u>not</u> convey the authority to the undersigned to** purchase, **import**, assemble, manufacture, sell, re-sell, distribute or use **the chainsaw/s subject of application until such time that a Permit or Certificate of Registration is issued by DENR.** (*Emphases supplied*)

I/We further understand that any false statement, misrepresentation and/or misdeclaration stated herein shall be a ground for denial and/or revocation of registration without prejudice to the filing of appropriate legal action.

Very truly yours,

____
Signature over Printed Name of Applicant

As quoted above, the language of DENR AO No. 2003-24 confirms the State's intention to regulate the importation of chainsaws by identifying specific requirements *before* a person could import them. Neither the law nor regulations provide that the submission of requirements after the arrival of the chainsaws but prior to their release from customs custody shall be allowed.

Therefore, petitioner's importation of the subject chainsaws on August 30, 2021, without the necessary DENR import permit, is unlawful. Consequently, the COC was justified in seizing them under Section 117[57] of the CMTA, in relation to RA No. 9175.

The COC correctly seized the ten (10) pieces of used tires for being a prohibited importation.

Petitioner avers that there is no way it would declare the used tires in its Import Entry as they were not among those

[57] SEC. 117. *Regulated Importation and Exportation.* – Goods which are subject to regulation shall be imported or exported only after securing the necessary goods declaration or export declaration, clearances, licenses, and any other requirements, prior to importation or exportation. In case of importation, submission of requirements after arrival of the goods but prior to release from customs custody shall be allowed but only in cases provided for by governing laws or regulations.

purchased from its supplier in Japan. Petitioner argues that the tires found in its shipment were just put there for no commercial value but to protect the used truck parts and engines from getting damaged during the voyage. Petitioner does not contest the forfeiture of the used tires and defers to the Court's discretion regarding their disposition, as they are not part of petitioner's importation.

Respondent argues that petitioner's admission that these goods were not declared in the import documents upon entry into the country demonstrates a violation of Section 1113 (i)[58] of the CMTA. Further, respondent contends that the importation of used tires is prohibited under LOI No. 1086,[59] a presidential issuance under the 1973 Constitution, *viz.:*

> 1. Recognizing the current economic condition, which has adversely affected the local tire market, the import program established under LOI No. 389 is hereby extended at a reduced level of $9.75 Million, as follows:
>
> . . . .
>
> b) *Used Tires* —
>
> . . . .
>
> ii) Beginning January 1, 1981 to December 31, 1981, a maximum $750,000.00 final phase-out foreign exchange allocation shall be allowed for traditional importers of used tires, *pro-rata*, based on their respective imports in the 1979–1980 import period, *Provided*, that **effective January 1, 1982, the importation of used tires shall no longer be allowed.** (*Emphasis supplied*)

At present, the ban on importing used tires is enforced through the various issuances of the BOC[60] and DENR.[61] As a prohibited import under Section 1113 (f)[62] of the CMTA, the

---

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

....

(i) Any package of imported goods which is found upon examination to contain goods not specified in the invoice or goods declaration including all other packages purportedly containing imported goods similar to those declared in the invoice or goods declaration to be the contents of the misdeclared package;

59 Extension of Import Program for Tires at a Reduced Level, November 25, 1980.

60 *See* Importation of Used or Waste Shredded/Cut Rubber Tires, Assessment and Operations Coordinating Group (AOCG) Memorandum No. 252-2021, June 3, 2021; Regulated Brand New/Used Replacement Motor Vehicle Parts under Central Bank (CB) Circular No. 1389, Customs Memorandum Circular No. 043-14, March 20, 2014; Guidelines Implementing Customs Concerns Under Executive Order 156, Customs Memorandum Order No. 004-03, March 17, 2003.

61 *See* Chapter 10. Revised Procedures and Standards for the Management of Hazardous Wastes (Revising DAO 2004-36), DENR Administrative Order No. 2013-22, December 4, 2013.

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

used tires in petitioner's shipment were correctly seized by the COC.

The forfeiture of the declared goods covered by the Certificate of Authority to Import is improper in the absence of proof that they are used as instruments in the unlawful importation of the used chainsaws and used tires.

Petitioner disputes the seizure and forfeiture of the other declared goods (Group B items) that are covered by the CAI, invoking Section 6.2[63] of CAO No. 10-2020, which allows partial seizure of a shipment related to an offense.

Petitioner reiterates that it could not declare the used tires since they were not part of the goods purchased from its supplier, as evidenced by the commercial invoice.[64] Further, petitioner insists that it obtained a permit for the used chainsaws after their arrival. Thus, respondent' erred in concluding that there was fraud in the importation of the subject shipment and that the declared goods were merely used as a cover to conceal the importation of prohibited and regulated goods without a permit.

Respondent argues that the seizure and forfeiture of all other articles found in the subject shipment is proper because these articles were used as a mere subterfuge to fraudulently conceal the importation of the undeclared articles and those without the necessary regulatory permit. According to

MV

....

(f) Goods, the importation or exportation of which are effected or attempted contrary to law, or any goods of prohibited importation or exportation, and all other goods which, in the opinion of the District Collector, have been used, are or were entered to be used as instruments in the importation or the exportation of the former;

[63] SEC. 6. *Issuance & Service of Warrant of Seizure and Detention.* —

....

6.2. *Partial Seizure of the Shipment.* If the offense relates only to a part or portion of a shipment, only that part shall be seized or detained, provided that the District Collector is satisfied that the remainder of the shipment was not used, directly or indirectly, in the commission of the offense.

[64] BOC Records, p. 15.

respondent, this is consistent with the definition of fraud in Section 3.3[65] of CAO No. 01-2020.[66]

Further, the COC, in the assailed Order,[67] opined that petitioner did not refute the fact that there were undeclared items in the subject importation and that during the seizure proceedings, petitioner allegedly offered no acceptable justification for it. Instead, petitioner moved for the partial quashal of the WSD and left uncontroverted the imputed fraud in the subject importation. The COC concluded that:

> The only reasonable conclusion is that **the declared goods were merely used as a vehicle to fraudulently conceal the importation of the undeclared goods and other goods without the necessary regulatory permit, in order to evade the proper payment of duties and taxes**. Taken as a whole, **these facts indubitably establish the existence of fraud**. (*Emphasis supplied*)

Succinctly, the remaining issue is whether fraud attended the importation of all articles or whether the declared goods were used as instruments in the unlawful importation of the used chainsaws and tires under Section 1113 (f) of the CMTA, which states that:

> SEC. 1113. *Property Subject to Seizure and Forfeiture.* — Property that shall be subject to seizure and forfeiture include:
>
> ....
>
> (f) Goods, the importation or exportation of which are effected or attempted contrary to law, or any goods of prohibited importation or exportation, and **all other goods which, in the opinion of the <u>District Collector</u>, have been used, are or were entered to be used as <u>instruments</u> in the importation or the exportation of the former**; (*Emphases supplied*)

Section 1113 (f) mandates the seizure and forfeiture not only of the goods imported contrary to law, but also all other goods, which in the opinion of the District Collector, have been used as instruments in the importation of the former.

---

65 SEC. 3. *Definition of Terms.* — For purposes of this CAO, the following terms are defined accordingly:

....

3.3. *Fraud* — shall refer to the commission or omission of any act resulting in material false statements such as, but not limited to, the submission of false or altered documents in connection with any importation, knowingly, voluntarily and intentionally done, to reduce the taxes and duties paid or to avoid compliance with government regulations related to the entry of Regulated, Prohibited or Restricted goods into Philippine customs territory through Misdeclaration, Misclassification or Undervaluation.

66 Fines and Surcharges for Clerical Errors, Misdeclaration, Misclassification and Undervaluation, December 20, 2019.

67 Exhibit "R-6", Docket, pp. 192-198.

In relation thereto, the implementing regulation of Section 1113 of the CMTA, *i.e.*, CAO No. 10-2020, allows for partial seizure of a shipment if the District Collector is satisfied that the remainder of the shipment is not used in the commission of the offense, *viz.*:

> SEC. 6. *Issuance & Service of Warrant of Seizure and Detention.* —
>
> ....
>
> 6.2. *Partial Seizure of the Shipment.* **If the offense relates only to a part or portion of a shipment, only that part shall be seized or detained, provided that the District Collector is satisfied that the remainder of the shipment was *not* used, directly or indirectly, in the commission of the offense**.
>
> However, any package of imported goods which is found upon examination to contain goods not specified in the invoice or goods declaration including **all other packages purportedly containing imported goods similar to those declared in the invoice or goods declaration to be the contents of the *misdeclared* package, shall be subject to seizure and forfeiture**. (*Emphases supplied*)

Apart from the used tires, all the remaining articles in the shipment were declared by petitioner in the import entry, as examined by COO III Balt, who found no discrepancies therein.[68]

Also, the Decision of the District Collector does not reveal that the declared goods were used as instruments in the importation of the used chainsaws and tires and found that:

> **Since the examination yielded no discrepancy between the declaration and findings of the assigned Customs Examiner on the remaining declared items [Group B items], the same is found to be lawful especially so that the importation of the used replacement parts is duly covered with Certificate of Authority** No. DTI-FTEB-SP-2021-109241 as confirmed by Department of Industry-Misamis Oriental in its letter-reply dated 25 March 2022 to the verification request of the District Collector on 22 March 2022.
>
> To recapitulate, the importation of five (5) pieces used chainsaw, four (4) pieces used medium truck tires violates Section 1400 and Section 117 of the CMTA. Since the claimant

---

68 Alert Order Report Form dated September 13, 2021, BOC Records, pp. 17-19.

> failed to overcome the burden of proof required under Section 1123 of the CMTA, said articles are subject for forfeiture under Section 1113 thereof, *viz.*: ...
>
> Nevertheless, **the rest of the items were found to be properly declared and thus, may be allowed for continuous processing subject to the payment of duties and taxes due thereon**. (*Emphasis supplied*)

Thus, the District Collector ordered the release of the Group B items, subject to automatic review of the COC in accordance with Section 1127[69] of the CMTA.[70]

Upon review of the COC, however, he cited the government prosecutor's comment that the subject shipment was misdeclared under Section 1400 of the CMTA,[71] to wit:

> SEC. 1400. *Misdeclaration, Misclassification, Undervaluation, in Goods Declaration.* – Misdeclaration as to quantity, quality, description, weight, or measurement of the goods, or misclassification through insufficient or wrong description of the goods or use of wrong tariff heading resulting to a discrepancy in duty and tax to be paid between what is legally determined upon assessment and what is declared, shall be subject to a surcharge equivalent to two hundred fifty percent (250%) of the duty and tax due. No surcharge shall be imposed when the discrepancy in duty is less than ten percent (10%), or when the declared tariff heading is rejected in a formal customs dispute settlement process involving difficult or highly technical question of tariff classification, or when the tariff classification declaration relied on an official government ruling.
>
> There is undervaluation when: (a) the declared value fails to disclose in full the price actually paid or payable or any dutiable adjustment to the price actually paid or payable; or (b) when an incorrect valuation method is used or the valuation rules are not properly observed, resulting in a discrepancy in duty and tax to be paid between what is legally determined as the correct value against the declared value. When the undervaluation is established without the need to go through the formal dispute settlement process provided for in this Act, a surcharge shall be imposed equivalent to two hundred fifty percent (250%) of the duty and tax due. No surcharge shall be imposed when the discrepancy in duly is less than ten percent (10%); or the declared value is rejected as a result of an official ruling or decision under the customs dispute settlement process involving difficult or highly

---

[69] SEC. 1127. *Automatic Review in Forfeiture Cases.* — The Commissioner shall automatically review any decision by the District Collector adverse to the government.

[70] Exhibit "R-5", Docket, p. 191.

[71] Exhibit "R-6", Docket, pp. 197-198.

> technical question relating to the application of customs valuation rules.
>
> A discrepancy in duty and tax to be paid between what is legally determined and what is declared amounting to more than thirty percent (30%) shall constitute a *prima facie* evidence of fraud.
>
> **When the misdeclaration, misclassification or undervaluation is *intentional* or *fraudulent*,** such as when a false or altered document is submitted or when false statements or information are knowingly made, **a surcharge shall be imposed** equivalent to five hundred percent (500%) of the duty and tax due **and that the goods shall be subject to seizure regardless of the amount of the discrepancy without prejudice to the application of fines or penalties provided under Section 1401 of this Act against the importer** and other person or persons who willfully participated in the fraudulent act. (*Emphases supplied*)

The COC found that "the declared goods were merely used as a vehicle to *fraudulently* conceal the importation" of the Group A items (undeclared used tires and the used chainsaws without the necessary regulatory permit).[72] As such, the COC ordered the seizure and forfeiture of petitioner's entire shipment because "the other items were used to conceal, directly or indirectly, the illegally imported goods."[73]

The word "instrument" is defined as "a means whereby something is achieved, performed, or furthered;" or "one used by another as a means or aid."[74]

In view of the factual circumstances, the Court agrees with the findings of the District Collector that the importation of the Group B items was lawful for being properly declared by petitioner, absent any showing that the Group B items were used as instruments to unlawfully import the Group A items.

Records show that the used tires were not among those purchased by petitioner from its supplier as evidenced by the commercial invoice.[75]

---

[72] Exhibit "R-6", *id.*, p. 198.

[73] *Id.*

[74] Retrieved from https://www.merriam-webster.com/dictionary/instrument, cited in *Department of Environment and Natural Resources-Provincial Environment and Natural Resources Office (DENR-PENRO) of Virac, Catanduanes v. Eastern Island Shipping Lines Corp.*, G.R. No. 252423, January 16, 2023.

[75] BOC Records, p. 15.

The Supreme Court held that the misdeclaration in the documents prepared by its supplier cannot be ascribed to petitioner as consignee.[76] In *Transglobe International, Inc. v. Court of Appeals, et al.*,[77] citing the case of *Hon. Farolan, Jr. v. Court of Tax Appeals, et al.*,[78] it was explained that "the wrongful making or falsity of the documents can only be attributed to the foreign suppliers[.] Moreover, it was not shown in the forfeiture decision that petitioner had knowledge of any falsity in the shipping documents."

Here, the commercial invoice and the bill of lading were prepared by petitioner's Japanese supplier, who had the hand in preparing the said documents. Also, both the Decision of the District Collector and the assailed Order of the COC did not mention how petitioner used the Group B items to conceal the importation of the Group A items.

Further, there is a reasonable presumption that petitioner tried to comply with the regulation pertaining to the importation of used chainsaws. Petitioner was able to secure the DENR permit, although belatedly, upon its mistaken belief that it could only obtain the said permit after the arrival of the subject shipment. After petitioner's permit to import the chainsaw was not honored by respondent for being issued only after the arrival of goods, petitioner wrote a letter to the DENR Region 10 seeking clarification as to whether the Import Permit for the Importation of Chainsaw could be secured after the arrival of chainsaw,[79] to which the DENR Region 10 replied that a permit to import chainsaw can still be issued pending release from the BOC.[80]

Petitioner offered these documents to prove that it exerted effort to confirm with the DENR that the import permit could be applied upon the arrival of the goods, and negates respondent's claim that the Group B items were used to illegally import the used chainsaws.

Relative to respondent's finding of alleged fraud in the importation of the Group B items, respondent is reminded that the burden of proof rests on the party alleging fraud.[81] The

---

76 *Transglobe International, Inc. v. Court of Appeals, et al.*, G.R. No. 126634, January 25, 1999, citing *Hon. Farolan, Jr. v. Court of Tax Appeals, et al.*, G.R. No. 42204, January 21, 1993.
77 G.R. No. 126634, January 25, 1999.
78 G.R. No. 42204, January 21, 1993.
79 Answers to Questions 6-11, *Supplemental Judicial Affidavit of Witness Evangelos Andit*, Docket, p. 216; Exhibit "P-6", Docket, p. 219.
80 Exhibit "P-7", Docket, p. 220.
81 *Ganancial v. Cabugao*, G.R. No. 203348, July 6, 2020, citing *Riguer v. Mateo*, G.R. No. 222538, June 21, 2017, citing further *Tankeh v. Development Bank of the Philippines*, G.R. No. 171428, November 11, 2013.

Supreme Court has held that the BOC has the burden of proof to establish the existence of fraud in the forfeiture of the imported goods.[82] Failure to prove fraud is a bar to forfeiture since forfeitures are not favored in law and equity.[83] The law only contemplates intentional fraud, which is deception willfully and deliberately used to induce another to give up some right.[84] Absent fraud, which must be proven, the BOC cannot forfeit the shipment in its favor.[85]

Other than the COC's allegation of fraud, no clear and convincing evidence was presented to support a conclusion that petitioner employed it in its importation of the subject shipment.

To the contrary, no willful or deliberate intent to defraud the government can be attributed to petitioner. Petitioner maintains that the used tires were not among the goods purchased from its Japanese supplier for importation and has shown no interest in them. The Court notes that the used tires had insignificant value in relation to the declared articles; hence, the idea, without any proof, that the declared articles were used merely as instruments to import the less valuable used tires, seems far-fetched.

Meanwhile, petitioner's defense in disputing the forfeiture of the used chainsaws is premised on its mistaken belief that it had the authority to import from the DENR that was secured belatedly. Such mistaken belief cannot be used against petitioner because error or mistake of law is not fraud.[86] Fraud is never imputed and the Court will not sustain findings of fraud upon circumstances which, at most, create only suspicion.[87]

Given that the Group B items were found to be covered by the requisite CAI during the District Collector's examination and that no other circumstances indicated fraudulent importation, the Court rules that petitioner's importation of the declared articles was lawful and that the COC improperly forfeited them.

---

[82] *The Commissioner of Customs, et al. v. New Frontier Sugar Corporation*, G.R. No. 163055, June 11, 2014.
[83] *Id.*; *Farm Implement & Machinery Co., v. Commissioner of Customs*, G.R. No. L-22212, August 30, 1968.
[84] *Id.*
[85] *The Commissioner of Customs, et al. v. New Frontier Sugar Corporation*, G.R. No. 163055, June 11, 2014.
[86] *Commissioner of Internal Revenue v. Javier, Jr.*, G.R. No. 78953, July 31, 1991.
[87] *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.*, G.R. No. 213943, March 22, 2017, citing *id.*

In fine, an importation that does not violate any law should not result in the forfeiture of the imported goods, especially that the alleged misdeclaration is not found to be intentional or fraudulent as respondent has consistently argued.

WHEREFORE, the *Petition* is **PARTIALLY GRANTED**. The Order dated June 7, 2022, of the Commissioner of Customs is **MODIFIED**.

Accordingly, respondent is ordered to **RELEASE** to petitioner the goods covered by the Certificate of Authority to Import, to wit: three (3) pieces used cabin and three (3) pieces used chassis fitted with engine; three (3) pieces used radiator cowling; three (3) pieces used front axle, three (3) pieces used rear axle and three (3) pieces used propeller; three (3) pieces used gas tank; three (3) pieces used cargo body; 26 pieces used wheel rim; three (3) pieces used exhaust pipe assy.; three (3) pieces used bumper, including the declared one (1) unit used mini excavator; five (5) units used farm tractor with 25 pieces tractor tires with rims; eight (8) pieces used bicycles; ten (10) pieces used engines; and, six (6) pieces used grass cutters, subject to the payment of assessed customs duties, taxes, and fees.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CERTIFICATION

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice