REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL GRID CORPORATION OF THE PHILIPPINES, *Petitioner,*	CTA EB No. 1574 (CTA Case No. 8663)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
COMMISSIONER OF CUSTOMS AND THE DISTRICT COLLECTOR, NAIA CUSTOMS COLLECTION DISTRICT, *Respondents.*	Promulgated: MAY 07 2019 4:12 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on July 12, 2018 of this Court En Banc is a Petition for Review filed the National Grid Corporation of the Philippines (NGCP) under Section 3(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals[1], as amended, seeking the reversal of the Decision dated 25 July 2016[2] and the Resolution[3] dated 28

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[1] RULE 8, Sec 3. Who may appeal; period to file petition.- x x x

> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

[2] Penned by Associate Justice Caesar A. Casanova, concurred in by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Amelia R. Cotangco-Manalastas, En Banc Docket, pp. 19-45.

[3] Id., pp. 46-50.

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November 2016 rendered by the Second Division of this Court, the dispositive portions of which, respectively, read as follows:

Decision dated July 25, 2016:

"**WHEREFORE,** premises considered, the Petition for Review is hereby DENIED. Accordingly, the Decision dated April 15, 2013 rendered by the Commissioner of Customs and the Decision dated October 29, 2012 made by the District Collector of NAIA Customs Collection District in Seizure Identification No. 003-2012 forfeiting the Eight (8) Boxes STC VIDEO CONFERENCING EQUIPMENT in favor of the government is hereby **AFFIRMED**.

SO ORDERED."

Resolution dated November 28, 2016:

"**WHEREFORE**, respondent's Motion for Partial Reconsideration (Re: Decision Promulgated 23 February 2017) is hereby **DENIED** for lack of merit.

SO ORDERED."

The following facts of the case as recited by the Second Division in its Decision and as established by evidence on record[4], are as follows:

"Petitioner National Grid Corporation of the Philippines (NGCP) is the holder of a franchise granted under Republic Act No. 9511[5] and the sole claimant-appellant in Seizure Identification No. 003-2012.

Respondent Commissioner of Customs, Rozzano Rufino B. Biazon, is the government official who rendered the challenged Decision dated April 15, 2013, approving the recommendation of Atty. Simplicia N. Domingo II, Director, Legal Service, allowing the withdrawal of petitioner's appeal.

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[4] Division Docket, Joint Stipulation of Facts, pp. 374-380.

[5] An Act Granting The National Grid Corporation of the Philippines a Franchise to Engage in the Business of Conveying or Transmitting through High Voltage Back-Bone System of Interconnected Transmission Line, Substations and Related Facilities, and for other purposes.

Respondent District Collector of the NAIA Customs Collection District, Atty. Carlos T. So, is the government official who initiated Seizure Identification No. 003-2012 and, consequently, rendered the Decision dated October 29, 2012, ordering the forfeiture of the subject shipment in favor of the government.

On January 17, 2012, the subject shipment arrived at the NAIA from Bangkok, Thailand, on board Kuwait Airways Flight No. KU411 under covering AWB No. 229-BKK-4594 0775/HAWB No. MNL1201001 issued by Capital Logistic (Bangkok) Ltd.

On February 6, 2012, petitioner, through Ms. Elisa B. Ordanza, Licensed Customs Broker, and Ms. Linda Forbes, filed Formal Import Entry No. C-14964 (Import Entry and Internal Revenue Declaration SN 119574743) for a shipment of goods declared as containing "Eight (8) Boxes STC VIDEO CONFERENCING EQUIPMENT with a total Customs Value of USD515,451.16".

The shipping labels on the said package covered by AWB No. 229-BKK-4594 0775/HAWB No. MNL1201001 indicate the consignee to be American Technologies, Inc.

The subject shipment is covered, among others, by the following import documents: AWB No. 229-BKK-4594 0775/HAWB No. MNL1201001, Celestica Invoice No. 6318-201 dated December 30, 2011, and Celestica Packing List- 6318A/2011 dated December 30, 2011.

On May 23, 2012, a Warrant of Seizure and Detention (WSD) No. 003-2012 was issued by then District Collector Carlos T. So for violation of Section 2530 (1) (3), (4), (5) in relation to Section 2530(f) of the Tariff and Customs Code of the Philippines (TCCP).

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Thereafter, seizure proceedings against petitioner ensued. The said proceeding was docketed as Seizure Identification No. 003-2012.

On October 29, 2012, the District Collector rendered a Decision in Seizure Identification No. 003-2012 forfeiting the subject shipment in favor of the government for violation of Section 2530(I), 3, 4 & 5 of the TCCP, as amended.

On November 26, 2012, petitioner filed with the Office of the Commissioner of Customs a Notice of Appeal with attached Notice and Memorandum on Appeal dated November 14, 2012.

On April 15, 2013, the Commissioner of Customs rendered a Decision in Seizure Identification No. 003-2012, approving the recommendation of then Director of BOC Legal Service, Atty. Simplicia Domingo, contained in the Disposition Form dated March 5, 2013.

On June 21, 2013, petitioner filed the instant Petition for Review before the Court which was docketed as CTA Case No. 8663.

On September 2, 2013, respondents filed their Answer, which interposed the following special and affirmative defenses:

> '11. Petitioner contends that respondent Commissioner of Customs (COC) committed a serious error when he allowed the withdrawal of its appeal despite the latter never really authorizing such withdrawal (p. 5, Petition).
>
> 12. Petitioner's argument lacks merit.
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> 13. Section 1301 of the Tariff and Customs Code of the Philippines provides for persons who are authorized to make an import entry, thus:
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> > SEC. 1301. Persons Authorized to Make Import Entry. - Imported articles

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> must be entered in the customhouse at the port of entry within fifteen days from date of discharge of the last package from the vessel either (a) by the importer, being holder of the bill of lading, (b) by any other holder of the bill of lading in due course, (c) by a customs broker acting under authority from a holder of the bill, or (d) by a person duly empowered to act as agent or attorney-in-fact for such holder: Provided, that the Collector may grant an extension of not more than fifteen days.

14. In the instant case, a careful perusal of the records readily shows that upon arrival of the subject shipment on January 17, 2012, the required Formal Entry, with Import Entry No. C-14964 (IEIRD SN 119574763), for the said importation was filed by petitioner through Ms. Elisa B. Ordanza, as Licensed Customs Broker, and Ms. Linda Forbes, as the 'Importer/ Attorney-in-Fact'.

15. Surely, being the authorized representative of the importer, in this case, petitioner itself, in so filing the aforesaid Import Entry No. C-14964 with the Bureau of Customs as a requirement for the release thereof, respondent COC rightfully relied upon Ms. Forbes' authority and representations in filing the subject Manifestation and Motion (To Withdraw Appeal) dated December 11, 2012.

16. As will further be discussed below, the name of Ms. Forbes, aside from being the one who filed the Import Entry No. C-14964 with respect to the subject boxes in her capacity as the 'importer/attorney-in-fact' thereof, likewise appears on the Packing List found inside the eight (8) boxes, wherein the following shipping instructions appear:

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a. Ship To: American Technologies, Inc., #8 Albany St., Cubao, Barangay Silangan, District III, Metro Manila, Quezon City, Philippines;

b. Contact Name: Linda Forbes;

c. Sold To: American Technologies Inc., ATI Bldg., 5 Ideal cor. McCollough Sts., Addition Hills, Mandaluyong City 1152 Philippines; and

d. Bill To: American Technologies Inc., ATI Bldg., 5 Ideal cor. McCollough Sts., Addition Hills, Mandaluyong City 1152 Philippines.

17. Also, the said Manifestation and Motion (To Withdraw Appeal) was accompanied by the corresponding Secretary's Certificate, which, after having been notarized, is deemed to be a public document.

18. Being such public document, the due execution and authenticity thereof is presumed. Respondent COC can thus rely upon the same to be duly executed.

19. Respondent COC therefore cannot be faulted for acting upon said Manifestation and Motion (To Withdraw Appeal).

There is reasonable doubt as to who is the actual and real consignee of the subject shipment.

20. In the instant case, petitioner claims that respondents had no legal or valid grounds to effect the seizure and forfeiture of the subject articles (p. 7, Petition).

21. Petitioner insists that this was a case of mislabeling committed through honest mistake (Ibid.).

22. Respondents however beg leave to disagree.

23. Contrary to petitioner's claim, as borne from the records covering the subject importation, reasonable doubt exists as to who actually is the consignee thereof.

24. First upon actual examination of the subject boxes by Customs Examiner Corazon Rapa on February 8, 2012, it was found out that the same boxes each contain shipping label indicating the following facts:

a. Ultimate Consignee (Ship To): American Technologies Inc., ATI Bldg., 5 Ideal cor. McCollough Sts., Addition Hills, Mandaluyong City 1152;

b. Invoice No. CTH-PE 16318/2011; and

c. Sales Order Number: IN-02095A.

25. Second, the BOC NAIA Customshouse requested petitioner's representatives to explain the discrepancy in the aforesaid entries appearing on the shipping label with those declared and submitted by petitioner when it filed Import Entry No. C-14964, and to present the original copies of the Invoice covering the subject importation and the proof of the payment or remittance made for such importation. However, petitioner did not produce, and in fact, still failed to present even during the hearings conducted, such originals to support its claim that such discrepancy was merely clerical error.

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26. Third, during the ocular and physical inspection conducted on the same importation on February 17, 2012, the shipping label attached to each of the eight (8) boxes appeared to have been tampered, as they already contain an additional label, which was not existing before when the said shipment arrived at the BOC NAIA Customshouse, apparently to make it appear that the same belongs to petitioner under Purchase Order No. 000118400-EMA.

27. Respondents can only surmise that the said additional label surreptitiously attached to the subject boxes was placed therein by petitioner, being the one who stands to benefit therefrom.

28. Fourth, a perusal of the evidence presented by petitioner itself did not conclusively establish that it is the real and actual consignee of the subject importation.

29. To establish its claim, petitioner presented the following import documents, accompanying its Import Entry No. C-14964: Celestica Invoice No. 6318-201, Celestica Packing List No. 6316A/2011, and AWB No. 229- BRK-4594 0775/HAWB MNL121001.

30. However, these import documents cannot categorically establish that it is petitioner which is the real and actual consignee of the subject importation.

31. As pointed out by respondent District Collector of NAIA Customshouse in the herein assailed Decision dated October 29, 2012, Celestica Invoice No. 6318-201 dated December 30, 2009, while a certified true copy, was certified as such not by the issuer thereof, but by NKS.

32. Moreover, this was the same invoice, whose original copy Customs Examiner Rapa requested from petitioner to produce, considering that the invoice number thereof did not tally with the invoice number (Invoice No. CTH-PE 16318/2011) indicated in the shipping label of the subject eight (8) boxes. But petitioner did not however present.

33. On the other hand, Celestica Packing List remains to be a mere photocopy, which is inadmissible in evidence, and in fact, does not have any probative value.

34. It bears to stress that a mere photocopy lacks assurance of its genuineness, considering that photocopies can easily be tampered with.

35. More importantly, unlike the shipping label attached to the subject boxes wherein both the invoice number and sales order number were indicated therein, both the Celestica Invoice and Packing List submitted by petitioner did not even refer to the alleged Purchase Order No. 000118400-EMA, which supposedly cover the same importation.

36. As earlier pointed out, this same Purchase Order No. 000118400-EMA did not even appear at the shipping label of the eight (8) boxes subject of the instant case when the same arrived at the BOC NAIA Customshouse and was only thereafter added to the said boxes after the BOC had already conducted its examination.

37. With these circumstances, coupled with the fact that the same import documents submitted by petitioner did not tally with those indicated in the shipping label of the subject boxes, the presentation of the original copies of such Celestica Invoice and Packing List, which

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are presumably in the possession of petitioner had it been, as it claims, the real consignee and owner of the imported articles, became much more relevant.

38. However, petitioner had instead opted not to produce the original copies of these import documents, as well as any proof of its payment, if only to prove its claim.

39. On this point, it is worthy to note that the presentation of the originals of the said Celestica Invoice and Packing List, as well as any proof of any payment or remittance made in connection with the subject importation, would constitute the best evidence for petitioner to prove its claim.

40. Regrettably, petitioner has not seen fit to present such originals. Its continued failure to present the original copies thereof can only lead one to remember the well-settled rule that when the evidence tends to prove a material fact which imposes a liability on a party, and he has it in his power to produce evidence which from its very nature must overthrow the case made against him if it is not founded on fact, and he refuses to produce such evidence, the presumption arises that the evidence, if produced, would operate to his prejudice, and support the case of his adversary (*Leoncio Mangahas, et al., vs. The Court of Appeals, et al.,* G.R. No. 173375, prom. September 25, 2008).

41. With respect to the AWB No. 229-BRK-4594 0775/HAWB MNL121001, suffice it to state that the same was likewise tampered with, considering that the notation 'Shipping Marks: National Grid Corporation of the Philippines Purchase Order No. 000118-400-EMA' was merely added in the said AWB, as the same was not embodied in 'Copy 9 for Agent' of the AWB.

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42. Also, as certified by Skyland Brokerage, Inc., the carrier's agent, no such notation appeared in the copy of the AWB [Original 2 (For Consignee)] when it was received by them.

43. Apparently, this same information (reference to PO No. 000118-400-EMA) was the same one surreptitiously added to the shipping label in each of the eight (8) boxes after the actual examination had already been conducted by the BOC Customs Examiner.

44. Again, as already mentioned, only petitioner could have placed such additional information, but at the expense of tampering the import document supposedly covering the subject importation, being the one who stands to gain any advantage therefrom.

45. Respondents therefore cannot simply rely and take these import documents submitted by petitioner on their face value, as the same were either not originals or duly certified copies or had been tampered with.

46. With respect to the rest of petitioner's evidence, i.e., various Certifications issued by government agencies, the same do not and cannot be used as basis to establish its claim that it is the consignee of the subject importation, as the same Certifications have been issued based only on the representations made by petitioner, using the aforesaid Celestica Invoice, Packing List, and Airway Bill.

47. Verily, petitioner has committed not only misrepresentation on but also tampering with the supposed import documents covering the subject importation, in an attempt to make it appear that it is the actual and real consignee thereof.

48. Petitioner however posits that it should not be made liable, and was not even to blame, for the mislabeling committed through honest

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mistake, as it has been allegedly very specific in the shipping marks, which it required to be indicated on the packages (p. 8, Petition).

49. It must however be emphasized that the said alleged shipping marks were indicated only in Purchase Order No. 000 118-400-EMA.

50. However, similar to the aforesaid import documents, i.e., invoice, packing list, and airway bill, respondents cannot likewise reasonably rely on the said Purchase Order No. 000118-400-EMA presented by petitioner.

51. It is of import to stress the said Purchase Order was thereafter submitted by petitioner to establish its claim that both Celestica Invoice No. 6318-201 and Celestica Packing List No. 6318A-2011 both dated December 30, 2011, which allegedly indicate petitioner as the consignee of the subject importation, were issued pursuant to petitioner's Purchase Order No. 000118-400-EMA dated December 29, 2011.

52. However, as borne from the records, and as admitted by petitioner itself (*2nd par, p. 3, Petition*), the said Purchase Order No. 000118-400-EMA addressed to NKS was only received by the latter on January 3, 2012.

53. Thus, it is quite incomprehensible how Celestica, which supposedly issued the import documents covering the subject importation, such as the Celestica Invoice and Celestica Packing List, could have possibly serviced such Purchase Order No. 000118-400-EMA of petitioner on December 30, 2011, or four (4) days earlier than the date of receipt on January 3, 2012 by NKS of the same Purchase Order.

54. Notable also is the fact that neither Celestica Invoice No. 6318-201 dated December 30, 2011 nor Celestica Packing List 6318/2011 dated December 30, 2011 indicates

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the said petitioner's Purchase Order No. 000118-400-EMA.

55. Surely, had it been the case as petitioner insists, the import documents would at the very least have indicated or made reference to the petitioner's Purchase Order No. 000118-400-EMA, or rather obviously would have bear (sic) a date after the receipt of NKS, the supposed forwarder/shipper of the subject importation, of the said Purchase Order No. 000118-400-EMA on January 3, 2012.

56. Forfeiture of imported articles is provided for under Section 2530 of the Tariff and Customs Code of the Philippines, thus:

> Sec. 2530. Property Subject to Forfeiture Under Tariff and Customs Laws. - Any vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:
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> xxx xxx xxx
>
> I. Any article sought to be imported or exported:
>
> xxx xxx xxx
>
> (3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article.
>
> (4) On the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article.
>
> (5) Through any other fraudulent practice or device by means of which

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such articles was entered through a customhouse to the prejudice of the government.

57. Here, considering the various unexplained discrepancies in the import documents and the shipping label and packing list attached and found on the boxes themselves, there now exists reasonable doubt as to who is the actual and real consignee of the subject importation.

58. Also, the name of Ms. Linda Forbes, who filed the Import Entry No. C-14964, is also the name that appears on the Packing List found inside the subject boxes, as the contact person for the same importation. At the same time, Ms. Forbes, who is not only the Operations Manager of NKS but also the Manager of Nayon Kontrol Systems, is the same addressee indicated in both Purchase Order Nos. 000118400-EMA and 000118409-EM (Email:linda.forbes@nayonkontrolsystems.com)

59. These glaring facts inexorably create further doubt as to who is the actual and real importer of the subject shipment.

60. On the other hand, with the unexplained discrepancies in the import documents and irreconcilable entries in the alleged purchase order supposedly covering the subject importation, aside from the surreptitious tampering with the shipping label and Airway Bill, but constant reference to either ATI or Ms. Forbes and/or Nayon Kontrol Systems in the shipping label and packing list found on the imported boxes themselves and petitioner's alleged purchase order there now is a case of an attempt to cause importation of articles on the strength of a false or otherwise tampered import documents.

61. These circumstances led one to reasonably believe that there was an attempt to cause the entry of the subject importation,

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> under the guise of petitioner's importation, so as to avoid the payment of any taxes and duties due thereon, to the prejudice of the government.
>
> 62. Verily, petitioner has not shown its right to claim the subject importation."

After trial on the merits, the Second Division of this Court rendered the assailed Decision dated July 25, 2016 which ruled that the subject shipment, having been brought into the Philippines through false declarations, were correctly seized and forfeited in favor of the government.

Aggrieved, petitioner filed a motion for reconsideration therefrom, which was denied by the Second Division on November 28, 2016 for lack of merit. Hence, this Petition for Review was filed.

We rule to DENY the Petition.

At the outset, the arguments raised by NGCP in its Petition for Review are a mere rehash of its previous arguments raised before the Court in Division, which have been duly considered and exhaustively discussed by the Court in the assailed Decision and Resolution. Nonetheless, the Court shall pass upon the arguments to fully settle the issues in this case.

In the instant petition, petitioner contends that there was only an inadvertent error in labelling the subject shipments and not an intentional wrongful declaration by the shipper for purposes of evading payment of any tax due.

It is important to point out that in reviewing the appealed decision of the Commissioner of Customs, it became imperative for this Court to determine the question of ownership of the subject articles which we are competent to pass upon in order to determine whether the properties levied and distrained by the Collector and forfeited to the Government really belongs to the petitioner.[6]

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[6] (Carrara Marble Philippines, Inc.vs. Commissioner of Customs, CTA Case No. 5039, May 7, 1996.

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The arguments raised are without merit. After a careful reading of the facts and circumstances attendant to the case at bar, and painstaking study of the records and provisions of law applicable, this Court holds that respondent did not commit grave abuse of discretion and was justified in proceeding against the subject shipment under Section 2530 (1), paragraphs (3), (4) and (5) of the Tariff and Customs Code.

An in-depth examination of the transaction involved in this case constitute a fraudulent intention on the part of the said importer so as to effectively deprive the State of its lawful revenue. The Court revisits Section 2530 (1), paragraphs (3), (4) and (5) of the TCCP, which provides as follows:

> "Sec. 2530. Property Subject to Forfeiture Under Tariff and Customs Laws. -Any vehicle, vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:
>
> xxx xxx xxx
>
> (1) Any article sought to be imported or exported:
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> xxx xxx xxx
>
> (3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article.
>
> (4) On the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article
>
> (5) Through any other practice or device contrary to law, by means of which such articles was entered through a customhouse to the prejudice of the government."

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In sum, in order that a shipment be held liable to forfeiture, it must be proved that fraud has been committed by the importer/consignee to evade payment of the duties due. To establish the existence of fraud, the *onus probandi* is on the part of the Bureau of Customs who ordered the forfeiture of the subject shipments.

Clearly, the resolution of the issue in this case would entail a reevaluation of the attendant circumstances. Consonantly, the factual determination of the Court in Divisions, when supported by substantial evidence, will not be reversed on appeal unless it is clear that the said court has committed gross error in the process. Records reveal that this Court must sustain the conclusion of the Court in Division.

The Court submits that fraud must be proven to justify forfeiture.[7] It must be actual, amounting to intentional wrong-doing with the clear purpose of avoiding the tax.[8] Forfeiture is not favored in law nor in equity.[9] Mere negligence is not equivalent to the fraud contemplated by law.[10]

Regrettably, what is involved here is not a case of honest mistake, while the mislabeling is not directly attributable to petitioner, in effect, it deprived the government of its right to collect the proper tax from the real delinquent taxpayer. Thus, the conclusion of the Court in Division, being consistent with the evidence on record and not contrary to law and jurisprudence, hardly can be overturned by this Court.

As correctly found by the Court in Division, there are circumstances that will conclude that the subject shipment is not really consigned to petitioner, but to some other person. We reiterate:

> "First, we take note of the fact that the subject shipment is not intended for petitioner. Petitioner's witness, Andre Pablo G. Fausto,

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[7]Farm Implement and Machinery Co. vs. Com. of Customs, G.R. No. L-22212 August 30, 1968.
[8] Transglobe Int'l. Inc. vs. Court of Appeals, G.R. No. 126634. January 25, 1999.
[9] Supra, note 7.
[10] Aznar vs. Court of Tax Appeals and the Collector of Customs, G.R. No. L-20569 August 23, 1974.

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testified that Nayon Kontrol Systems and NKS Global Limited, HK could only commence the transaction for the supply of the subject shipment only upon receipt of the purchase order from petitioner on January 3, 2012. Pertinent portions of his testimony are hereby quoted for ready reference, to wit:

> 'Q In both of these purchase orders, 'P-2' and 'P-3', there is a signature across the word conforme, if you can just take a look, Mr. witness and please tell us who this is, who signed the conforme?
>
> A The one who picked up the purchase order.
>
> Q And his name is?
>
> A Vicente Labarete.
>
> Q So this means that he is your employee?
>
> A Yah.
>
> xxx xxx xxx
>
> Q Did you confirm that the date here, January 3, 2012 is the day that he picked up the purchase order from the NGCP?
>
> A Well, it's stated here because I wasn't there, right?
>
> Q OK. I mean I just want to confirm what the purchase order states. The purchase order states January 3, do you recall if you were informed of the existence of this purchase order on that date?
>
> A Yes.
>
> Q On the same day?

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A Probably not in the same day.

Q But subsequently after receiving the purchase order, what was the first thing that you did, as a company?

A We celebrated because we got the big project and then we started purchasing the equipments and prepared for the project because like I've said the project doesn't involve only the purchase of the equipments but also the installation and commissioning so we coordinated with all the suppliers involved and we coordinated with National Grid.

Q When you say suppliers, Mr. witness, you are referring to foreign suppliers?

A Yes that's right. Foreign suppliers, POLECOM."[11]

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SOL. OLALIA:

Ok, the next question is, after learning that you gonna be awarded the purchase order even you didn't have the physical document yet, did you do anything already after that?

A Not yet. Of course not.

Q Of course, because you have to make sure?

A Of course, because we have to make sure. Once we received the purchase order and once we signed it that's just going to be the start of the purchase order. If they release the purchase order and we don't sign it that means that we are not acknowledging the P.O.

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[11] TSN Dated September 29, 2016, pp. 18-20.

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Q Any transaction with POLECOM will have to be done after January 3?

A Of course.[12]'

However, records show that the import documents: Celestica Invoice No. 6318-201[13], Polycom Packing List-6318A/2011[14] and Polycom Proforma Invoice No. 6318-2011 submitted by petitioner were all dated December 30, 2011, while petitioner's Purchase Order Nos. 000118400-EMA and 000118409-EMA, prepared on December 29, 2011, were received by Nayon Kontrol Systems and NKS Global Limited, HK only on January 3, 2012. Thus, the Court is at a loss as to how the purchase of the subject shipment could have preceded the conformity of NKS Global Limited, HK. If, indeed, the subject shipments was really intended for petitioner, the same would have been ordered or purchased, at the earliest, on January 3, 2012, the date when NKS Global Limited, HK expressed its acquiescence to petitioner's orders. The conclusion that may be reached is that the subject shipment is not intended for petitioner."

On another note, the tax and duty exempt privilege endorsement made exclusively in favor of petitioner by the Secretary of Finance would only lead to the conclusion that it intended to use such privilege over the shipment of the subject video conferencing equipment. In effect, Nayon Kontrol Systems and NKS Global Limited, HK would clearly benefit from such tax-exempt privilege which is exclusive to petitioner over articles that are not really consigned to, nor really intended in favor of petitioner, thereby evading the taxes and duties legally due to the government.

Under the premises, while it is true that fraud cannot be presumed, it does not necessarily mean that fraud may not arise, and be legitimately deduced, from circumstantial evidence.

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[12]TSN dated September 29, 2014, p. 37.
[13] Exhibit "P-13"
[14] Exhibit "R-6"

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Accordingly, what is meant by such statement is that fraud is not to be assumed of a transaction, in the absence of proof afforded by intrinsic evidence of unfairness in the transaction itself, or extrinsic facts and circumstances leading to that conclusion. The general rule, therefore, must be understood only as affirming that a contract or conduct apparently honest and lawful must be treated as such until it is shown to be otherwise by either positive or circumstantial evidence. ***Fraud may be, and often is, proved by or inferred from circumstances, and the circumstances proved may in some cases raise a presumption of its existence.***[15]

Applying the foregoing, clearly from the totality of circumstances present in the case at bar, and the acts by the importer, Nayon Kontrol Systems and NKS Global Limited, HK, through Linda Forbes, constitute fraud, and not a case of mislabeling committed through honest mistake.

All told, the Court En Banc sees no reason to disturb the findings and ruling of the Court in Division.

WHEREFORE, the petition is **DENIED**. The Decision of the Second Division in CTA Case No. 8663 dated 25 July 2016, and its Resolution dated 28 November 2016 are hereby **AFFIRMED.** No pronouncement as to costs.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[15] Archipelago Management and Marketing Corporation vs. Court of Appeals, et. al., G.R. No. 128850, November 20, 1998.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS LIBAN
Associate Justice

CATHERINE T. MANAHAN
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 En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice