REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

GAMMA GRAY MARKETING,
Petitioner,

-*versus*-

BUREAU OF CUSTOMS, REPRESENTED BY ITS COMMISSIONER, ISIDRO S. LAPEÑA,
Respondent.

CTA EB NO. 2738
(CTA Case No. 9855)

Present:

DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:

JAN 17 2025 10:08 am

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RESOLUTION

ANGELES, J.:

Before the Court *En Banc* is a Motion for Reconsideration[1] filed by petitioner Gamma Gray Marketing on September 10, 2024, with Comment[2] filed by respondent Bureau of Customs on September 16, 2024. Petitioner prays for the reversal of the Court En Banc's *Decision*[3] dated August 15, 2024 (assailed Decision), the dispositive portion of which reads as follows:

> **WHEREFORE**, the instant Petition for Review is **DENIED** for lack of merit. The Decision and Resolution, dated July 27, 2022 and January 26, 2023, respectively, in CTA Case No. 9855 are **AFFIRMED**.[4]

[1] En Banc (EB) Docket, pp. 165–183.
[2] EB Docket, pp. 187 – 190.
[3] EB Docket, pp. 142 – 164.
[4] EB Docket, p. 162.

In its Motion for Reconsideration, petitioner claims that the Court *En Banc* erred in affirming the findings of the Court of Tax Appeals (CTA) Special Second Division (Court in Division) and argues that:

(i) the non-submission of the Importer's Sworn Statement (ISS) at the time of filing of the Import Entry / Single Administrative Document (SAD) does not render an importation contrary to law;

(ii) the absence of a Bureau of Internal Revenue (BIR) Permit to Operate at the time of importation does not render the importation contrary to law; and

(iii) there was no deliberate undervaluation of the subject importations.[5]

After a careful perusal of the instant Motion for Reconsideration and the arguments raised therein, the Court *En Banc* finds it bereft of merit. The Court *En Banc* finds no new matters or arguments that were not considered in the assailed Decision. Petitioner essentially reiterated the same arguments earlier passed upon and rejected by this Court.

The importations are illegal or contrary to law for failure of petitioner to submit the Importer's Sworn Statement (ISS) upon filing of the Import Entry / Single Administrative Document (SAD).

Petitioner continues to insist that the non-submission of the ISS does not render an importation illegal *per se* once it arrives at the port of entry. It claims that the ISS is merely a supporting document for the issuance of an Authority to Release Imported Goods (ATRIG), which can be secured by an importer prior to the release of the importation from customs custody.[6]

Contrary to petitioner's contention, the ISS is an integral import or shipping document submitted at the port of entry. As explained in the assailed Decision, Customs Memorandum Order (CMO) No. 29-2014 states that a certified true copy of the ISS, duly filed with the

[5] EB Docket, p. 166.
[6] EB Docket, pp. 166 – 168.

Bureau of Internal Revenue (BIR), must be submitted to the Bureau of Customs (BOC) upon filing of the Import Entry and Internal Revenue Declaration (IEIRD), which is now the Single Administrative Document (SAD). Paragraph 5 of CMO No. 29-2014 reads as follows:

> 5. OPERATIONAL PROVISIONS
>
> 5.1 Computation of duties, taxes and other charges for brand new automobiles consigned to car manufacturers and dealers shall follow the format in Annex "A" of this Order.
>
> 5.1.1 Importers under this category shall submit to the Bureau of Customs a certified true copy of the Importer's Sworn Statement (ISS) duly filed with the Bureau of Internal Revenue. Said **ISS shall form an integral part of the import/shipping documents submitted to the Entry Processing Division of each Port upon filing of the IEIRD** and a copy of which shall be submitted to the Valuation and Classification Division (VCD) through the Import Assessment Service (IAS) for validation and clearance purposes. (Emphasis supplied)

Evidently, the ISS is not merely a supporting document for the issuance of the ATRIG. The ISS is necessary to obtain an accurate valuation of the imported goods and to ensure that all duties, taxes, and other charges due on the imported goods are properly collected. The ISS, together with the SAD, must be submitted for each shipment to the BOC's Valuation and Classification Division for validation and clearance purposes. The ISS is necessary upon filing of the SAD and not simply any time prior to the release of the shipment.

Since petitioner did not submit to the BOC the required certified true copy of the ISS that was duly filed with the BIR for each of the subject imported motor vehicles, there is basis to declare the subject importations as illegal or contrary to law.

The importations are illegal or contrary to law for failure of petitioner to secure a Permit to Operate as Importer of Automobiles from the BIR.

Petitioner again argues that its failure to secure from the BIR a Permit to Operate as Importer of Automobiles does not render the importations illegal *per se* since it can be secured prior to the release of the importations and upon payment of penalties.[7]

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[7] EB Docket, pp. 169 – 173.

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The Court is not convinced. As already discussed in the Decision, the Permit to Operate is a condition *sine qua non* before engaging in business as an importer of automobiles. Section 11, BIR Revenue Regulation No. 25-2003 states that any person who desires to engage in business as an importer of automobiles shall register with the BIR *before* the start of business operations, to wit:

> SEC. 11. REGISTRATION OF THE BUSINESS OF ASSEMBLY/MANUFACTURE, IMPORTATION OR SALE AS DEALER OF AUTOMOBILES. – For excise tax purposes, **any person who desires to engage in business as an assembler/manufacturer, importer or dealer of automobiles shall, before the start of the business operations, be required to register with the BIR Office having jurisdiction over his intended place of business and/or place of assembly/production or warehouse.**
>
> a. Application for a Permit to Engage in Business as Assembler, Manufacturer, Importer or Dealer of Automobiles – Every applicant shall file a written application for the Permit, together with the following supporting documents:
>
> xxx
>
> b. Processing of Application for Registration to Engage in Business
>
> xxx
>
> **No person shall engage in business as manufacturer, assembler, producer or importer or dealer of automobiles unless the premises upon which the business is to be conducted shall have been approved by the Commissioner or his duly authorized representative.** (Emphasis supplied)

Petitioner does not deny that it lacked the necessary permit. Despite clear prohibition by the cited rule, petitioner proceeded with the importation while in the process of securing the permit. Such failure does not only warrant the imposition of penalties but also the seizure and forfeiture of the subject importations, pursuant to Section 1113(f) of the Customs Modernization and Tariff Act (CMTA).[8]

Petitioner deliberately underdeclared the value of its importations.

Petitioner again insists that it did not deliberately under declare the value of its importations. It faults the respondent for deviating from the valuation method prescribed in the CMTA in determining the

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[8] Republic Act No. 10863, An Act Modernizing the Customs and Tariff Administration

transaction value of the subject importations. It insists that Transaction Value System or Method One[9] should have been used instead of Transaction Value of Identical Goods or Method Two[10], which was used by respondent.[11]

The Court finds no merit in petitioner's claim. The accuracy of the goods declaration, including the declared value of imported goods, is the responsibility of the petitioner as the declarant.[12] In case of doubt as to the valuation of the imported goods, the CMTA provides for the sequential application of valuation method, namely (i) the Transactional Value System or Method One and (ii) the Transaction Value of Identical Goods or Method Two.

As previously discussed in the assailed Decision, respondent considered the circumstances surrounding the importation of the motor vehicles and the information contained in the relevant commercial documents. The following circumstances were found relevant by the Court: First, petitioner failed to explain why the telegraphic transfers for the first (6) shipments were made by TPN Trading, an accredited importer and supposedly a competitor of petitioner; and Second, the authentication of invoices allegedly issued by DTI did not state that the commercial invoices presented by petitioner were genuine and authentic.[13] Such circumstances cast doubt on the transactional value of the importations. The use by respondent of the Transaction Value of Identical Goods or Method 2, therefore, is justified.

The Court finds no reason to warrant a reconsideration or a modification of the assailed Decision.

WHEREFORE, the instant Motion for Reconsideration filed on September 10, 2024 is hereby **DENIED** for lack of merit.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

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[9] Section 701, CMTA.
[10] Section 702, CMTA.
[11] EB Docket, pp. 174 – 180.
[12] Section 107, CMTA
[13] EB Docket, pp. 160 – 161.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice