REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

# SPECIAL SECOND DIVISION

**GAMMA GRAY MARKETING,**
Petitioner,

CTA CASE NO. **9855**

- versus -

Members:

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

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

Promulgated:
JAN 2 6 2023 4:00 pm

x - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - x

# RESOLUTION

***BACORRO-VILLENA, J.:***

For the Court's resolution is petitioner Gamma Gray Marketing (**petitioner**'s/**GGM**'s) "Motion for Reconsideration (Re: Decision dated 27 July 2022)"[1] (**MR**) filed on 15 August 2022, with respondent Bureau of Customs' (**respondent**'s/**BOC**'s), represented by its Commissioner, Isidro S. Lapeña (**Customs Commissioner Lapeña**), "Comment"[2] filed on 19 August 2022.[3]

Petitioner seeks the reversal of the Court's Decision in the above-captioned case dated 27 July 2022[4] (**assailed Decision**). The dispositive portion thereof reads:

---

1 Division Docket, Volume III, pp. 1027-1041.
2 Id., pp. 1045-1046.
3 Received by the Court on 31 August 2022.
4 Division Docket, Volume III, pp. 974-1026.

> ...
>
> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review filed by petitioner Gamma Gray Marketing on 25 April 2018 is hereby **DENIED** for lack of merit. Accordingly, respondent Bureau of Customs Commissioner Isidro S. Lapeña's assailed Consolidated Decision dated 09 March 2018 is hereby **AFFIRMED.**
>
> **SO ORDERED.**
>
> ...

In the present MR[5], petitioner insists that the non-submission of the Importer's Sworn Statement[6] (**ISS**) does not render an importation illegal or contrary to law *per se* once the importation has arrived at the port of entry. Citing Revenue Memorandum Circular (**RMC**) No. 60-2003[7], which the Bureau of Internal Revenue (**BIR**) issued to clarify certain issues raised relative to the implementation of Revenue Regulations (**RR**) No. 25-2003[8], petitioner asserts that the ISS is a mere supporting document for the issuance of the Authority to Release Imported Goods (**ATRIG**) which, as held in the assailed Decision[9], can be secured by an importer prior to release of the importation from customs custody.

Petitioner likewise disagrees with the Court's ruling that its act of importing the subject motor vehicles without first securing the BIR Permit to Operate as Importer of Automobiles is contrary to law and existing rules and regulations, which warrants the seizure and forfeiture thereof in favor of the government, pursuant to Section 1113(f)[10] of Republic Act (**RA**) No. 10863 or the Customs Modernization and Tariff Act of 2016 (**CMTA**).

---

[5] Supra at note 1.

[6] As evidenced by Exhibits/Annexes "P-11" to "P-11E"/"K" to "K-5" (Alert Orders); Denied admission for failure to present the originals for comparison and for failure to submit pre-marked exhibits *per* Resolutions dated 30 June 2020 and 24 February 2021, Division Docket, Volumes II and III, pp. 811-813 and 868-871, respectively.

[7] Clarifying Certain Issues Raised Relative to the Implementation of Revenue Regulations No. 25-2003 Governing the Imposition of Excise Tax on Automobiles Pursuant to Republic Act No. 9224.

[8] Amended Revenue Regulations Governing the Imposition of Excise Tax on Automobiles Pursuant to the Provisions of Republic Act No. 9224, An Act Rationalizing the Excise Tax on Automobiles, Amending for the Purpose the National Internal Revenue Code of 1997, and for Other Purposes.

[9] Supra at note 4.

[10] **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 **<u>contrary to law</u>**, 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. (Emphasis and underscoring supplied)

Invoking Revenue Memorandum Order (**RMO**) No. 38-2003[11], petitioner posits that an importer who has initiated its importation without the requisite Permit to Operate may still process its application for the said permit, subject only to the payment of penalties. Petitioner further argues that the absence of a BIR Permit to Operate as Importer of Automobiles does not render an importation illegal or contrary to law *per se*, as the importer can still secure the same prior to the release of its importation and upon payment of the applicable penalties.

In this context, petitioner makes a general claim that non-compliance with a BIR circular or memorandum is not a ground for forfeiture as it does not fall under Section 1113[12] of the CMTA. Instead, such non-compliance only merits a penalty as provided in the circular or memorandum itself. Thus, when respondent seized the subject motor vehicles, petitioner stresses that the former did so prematurely and illegally, while the subject motor vehicles were still in customs custody and while the latter was still in the process of securing its Permit to Operate as Importer of Automobiles and ATRIG from the BIR.

Petitioner also claims that this Court cannot use the alleged non-compliance with the pertinent BIR circular or memorandum as basis in affirming the forfeiture of its shipments for being contrary to law under Section 1113[13] of the CMTA as the said provision and the violation thereof was not stated in the Warrants of Seizure and Detention (**WSDs**). The only imputed violation stated in the WSDs against petitioner's shipments was the alleged undervaluation under Section 1400[14] of the CMTA.

Lastly, petitioner reiterates its claim that there was no deliberate "undervaluation" as the alleged "discrepancies" (relative to the declared values) was founded on erroneous computations and valuations due to the invalid use of the BOC-Import Assessment Service's (**IAS**') reference values in assessing the import duties and taxes on the subject imported motor vehicles.

---

11 Prescribing Uniform Guidelines and Procedures in the Processing of Various Permits For Excise Tax Purposes.
12 **SEC. 1113**. *Property Subject to Seizure and Forfeiture.* — ...
13 Id.
14 **SEC. 1400**. *Misdeclaration, Misclassification, Undervaluation, in Goods Declaration.* — ...

According to petitioner, this Court should not have upheld the validity of respondent's departure from the *Transaction Value System or Method One* (under Section 701[15] of the CMTA) considering that respondent violated Section 701[16] of the CMTA in doing so on the following grounds: (1) without asking or requiring petitioner to provide further explanation or additional document; (2) without communicating to petitioner its grounds for said departure; and, (3) without giving petitioner the opportunity to appeal said departure.

As to this Court's reliance on the doctrine of presumption of regularity in the performance of official duty on the part of the Officer-in-Charge Director of the IAS, Jeofrey C. Tacio (**IAS-OIC Director Tacio**) in the conduct of his value verification pursuant to Customs Memorandum Circular (**CMC**) No. 70-2014[17] that prompted him to recommend IAS reference values, petitioner claims that such is misplaced because it was able to show that respondent erroneously and illegally deviated from the sequential application of the valuation methods as sanctioned under Section 700[18] of the CMTA.

Petitioner further notes that "indirect payment" is allowed under Customs Memorandum Order (**CMO**) No. 16-2010.[19] On this basis, the telegraphic transfers to the seller made by TPN Trading on its behalf should be considered as indirect payments, and thus, cannot justify respondent's departure from the *Transaction Value System or Method One.*

In his Comment[20], respondent notes that all the matters and issues raised in petitioner's MR[21] have already been passed upon by this Court. There being no new or substantial legitimate ground to justify a modification or reversal of the assailed Decision[22], respondent submits that the present MR be denied for utter lack of merit.

---

[15] **SEC. 701**. *Transaction Value System* – Method One. — ...
[16] Id.
[17] VALUE VERIFICATION OF AUTOMOBILES.
[18] **SEC. 700**. *Sequential Application of Valuation Methods.* — ...
[19] Rules and Regulations to Implement Customs Administrative Order (CAO) No. 4-2004, more particularly on Dutiable Value.
[20] Supra at note 2.
[21] Supra at note 1.
[22] Supra at note 4.

**We rule below.**

After careful review of the petitioner's arguments and a second hard look on the records of the present case, this Court finds no compelling reason to modify, much more, to reverse the assailed Decision.

Nonetheless, to clarify further, We shall discuss and reiterate the reasons for the denial of petitioner's Petition for Review[23] and address the points raised in the present MR[24] *in seriatim*.

THE SUBJECT IMPORTATION IS CONTRARY TO LAW FOR PETITIONER'S NON-SUBMISSION OF THE IMPORTER'S SWORN STATEMENT (ISS) UPON FILING OF THE IMPORT ENTRY/SINGLE ADMINISTRATIVE DOCUMENT (SAD).

Contrary to petitioner's contention and as explained in the assailed Decision[25], CMO No. 29-2014[26] clearly provides that a certified true copy of the ISS[27] duly filed with the BIR must be submitted to the BOC upon filing of the Import Entry and Internal Revenue Declaration (**IEIRD**) (now, Single Administrative Document [**SAD**])[28] as said ISS forms an integral part of the import/shipping documents submitted at the port of entry, *viz*:

> ...
>
> 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

---

23 Division Docket, Volume I, pp. 12-320, with annexes.
24 Supra at note 1.
25 Supra at note 4.
26 REVISED COMPUTATION OF DUTIES, TAXES AND OTHER CHARGES FOR AUTOMOBILES.
27 Supra at note 6.
28 Under CMO No. 29-2015, the BOC Single Administrative Document (SAD) replaced the IEIRD.

> 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.[29]

...

To be clear, the ISS is not a mere supporting document for the issuance of the ATRIG for purposes of determining the legality of an importation. While the same may be true as regards an application for ATRIG before the BIR, such is not the case in importation of goods as the ISS serves a specific purpose, *i.e.*, to obtain an accurate valuation of the imported goods and ensure that all duties, taxes and other charges due on the imported goods are properly collected. It is precisely for this reason that a certified true copy of the ISS must be submitted, together with the SAD for each shipment, to the BOC's Valuation and Classification Division (through the IAS) for validation and clearance purposes. In short, the ISS must be upon the filing of the IEIRD (now, SAD) and not at any time prior to the release of the subject shipments.

Since petitioner did not submit to respondent the required certified true copy of the ISS duly filed with the BIR for each of the subject imported motor vehicles upon the filing of the corresponding IEIRD/SAD in violation of CMO No. 29-2014[30] itself (and not RR No. 25-2003[31] from which the definition of an ISS is lifted, as petitioner would have Us interpret in citing RMC No. 60-2003[32] on the effect of the importer's failure to submit the ISS to the BIR), there is basis to declare that the subject imported motor vehicles were imported illegally or contrary to law.

THE SUBJECT IMPORTATION IS CONTRARY TO LAW BECAUSE PETITIONER DOES NOT HAVE A BUREAU OF INTERNAL REVENUE (BIR) PERMIT TO OPERATE AS IMPORTER OF AUTOMOBILES.

---

29 Emphasis in the original text; Italics and underscoring supplied.
30 Supra at note 26.
31 Supra at note 8.
32 Supra at note 7.

Petitioner now argues that, despite not yet securing a BIR Permit to Operate as Importer of Automobiles at time of importation of the subject motor vehicles, such importation is not rendered illegal or contrary to law *per se* as it can still secure the said permit prior to the release of the subject motor vehicles and upon payment of the applicable penalties pursuant to RMO No. 38-2003.[33]

We disagree.

As already pointed out in the assailed Decision[34], a BIR Permit to Operate is a condition *sine qua non* before engaging in business as an importer of automobiles. Section 11(b) of RR No. 25-2003[35] categorically states that "[no] person shall engage in business as ... importer or dealer of automobiles unless the premises upon which the business is to be conducted shall have been approved by the [BIR] Commissioner or his duly authorized representative". Further, Part II(2) of RMO No. 35-2002[36] relevantly provides that "[i]n cases where the intended importation consists of excisable articles ..., the application for ATRIG shall likewise not be accepted if the importer-applicant does not have a *separate Permit to Operate as an Importer* for excise tax purposes."

Notably, the use of the word "shall" in the above-cited provisions underscores the mandatory character of the rules. The term "shall" is a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory.[37]

Records confirm that petitioner failed to first secure a BIR Permit to Operate as an Importer of Automobiles before it started importing the subject motor vehicles. Thus, despite the clear prohibition under the above-cited provisions, petitioner proceeded with the importation while it is still in the process of securing a BIR Permit to Operate. Unfortunately for petitioner, it failed to realize that such violation does not only merit the imposition of penalties under the pertinent BIR

---

33 Supra at note 11.
34 Supra at note 4.
35 Supra at note 8.
36 Prescribing the Guidelines and Procedures in the Processing and Issuance of AUTHORITY TO RELEASE IMPORTED GOODS (ATRIG) for Excise and Value-Added Tax Purposes.
37 *Cipriano Enriquez, et al. v. Maximo Enriquez (now deceased), et al.*, G.R. No. 139303, 25 August 2005; citing *Alfonso Lacson v. Carmen San Jose-Lacson, et al.*, G.R. No. L-23482, 30 August 1968.

rules and regulation but also warrant the seizure and forfeiture of the subject motor vehicles that were deemed imported contrary to law and existing rules and regulations pursuant to Section 1113(f)[38] of the CMTA.

We find no merit in petitioner's claim that the above-mentioned violation cannot be used as basis in affirming the forfeiture of its shipments for being contrary to law under Section 1113(f)[39] of the CMTA as the violation of such provision was not stated in the WSDs.

Well-settled is the rule that this Court is not bound strictly by the issues raised specifically by the parties and it may also rule upon related issues subject only to the requirement that the same is necessary to achieve an orderly disposition of the case.[40]

Accordingly, even assuming that the violation of Section 1113(f)[41] of the CMTA was not stated in the WSDs and the only imputed violation was undervaluation under Section 1400[42] of the CMTA, this Court, as a court of record[43], has the authority to determine issues raised by the parties even if these were not raised in the administrative level to achieve a judicious administration of justice. To stretch this ruling further, the Court may even resolve issues that were not raised by both parties both in the administrative and judicial levels to achieve an orderly disposition of the case.

At this juncture, this Court has already established two (2) grounds that warrant the seizure and forfeiture of the subject imported motor vehicles for being imported contrary to law under Section 1113(f)[44] of the CMTA: (1) non-submission of the required certified true copy of the ISS duly filed with the BIR for each of the subject imported motor vehicles upon the filing of the corresponding IEIRD/SAD in violation of CMO No. 29-2014[45]; and, (2) failure to secure a BIR Permit

---

38 Supra at note 10.
39 Id.
40 *See Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, 12 July 2017.
41 Supra at note 10.
42 Supra at note 14.
43 Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals.
44 Supra at note 10.
45 Supra at note 26.

to Operate as an Importer of Automobiles prior to importation in violation of Section 11(b) of RR No. 25-2003.[46]

RESPONDENT'S DEPARTURE FROM THE TRANSACTION VALUE SYSTEM OR METHOD ONE IS VALID.

In arguing that respondent erroneously and illegally departed from the sequential application of the valuation methods as sanctioned under Section 700[47] of the CMTA, petitioner alleges that respondent's departure from the *Transaction Value System or Method One* (under Section 701[48] of the CMTA) to the *Transaction Value of Identical Goods or Method Two* (under Section 702[49] of the CMTA) is invalid on the following grounds: (1) respondent did not ask or require petitioner to provide further explanation or additional document in support of the declared values; (2) respondent did not communicate to petitioner its grounds for the said departure; and, (3) respondent did not give petitioner the opportunity to appeal the said departure.

Petitioner's contentions are unfounded.

It must be stressed that petitioner has not shown any evidence to prove his factual allegations above. In fact, in the Resolution dated 30 June 2020[50], this Court only admitted Exhibits "P-64"[51] and "P-67"[52] and denied the rest of petitioner's exhibits for failure to present the originals for comparison and for failure to submit the pre-marked exhibits. And despite several opportunities to do so subsequently, petitioner still failed to present the originals of the previously denied exhibits for comparison and submit the pre-marked exhibits.

Jurisprudence has consistently held that the party who alleges a fact has the burden of proving it. Section 1[53], Rule 131 of the Revised

---

46 Supra at note 8.
47 Supra at note 18.
48 Supra at note 15.
49 **SEC. 702**. *Transaction Value of Identical Goods* – Method Two.
50 Division Docket, Volume II, pp. 811-813.
51 Manila International Container Port (MICP) Acting District Collector, Atty. Balmyrson M. Valdez's Consolidated Order dated 08 February 2018, id., Volume I, pp. 81-87.
52 Judicial Affidavit of Arthur A. Villalba, id., Volume II, pp. 649-670.
53 Sec. 1. *Burden of Proof and Burden of Evidence*. – Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his or her claim or defense by the

Rules on Evidence, as amended, defines "burden of proof" as the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law. Thus, without evidence to support petitioner's claims, this Court's ruling in favor of respondent stands.

To recall, this Court found respondent's departure from the *Transaction Value System or Method One* to the *Transaction Value of Identical Goods or Method Two* to be valid given that respondent had reasonable doubts on the truthfulness or accuracy of the shipments' declared values. *For one,* petitioner did not submit the required ISS and ATRIG, thereby, precluding respondent from determining the excise or *ad valorem* taxes due on the imported motor vehicles with accuracy. *For another,* the documents filed in support of the subject shipments were allegedly replete with inaccurate and dubious information.

Considering that respondent was unable to determine the 'dutiable value' of the subject imported motor vehicles on account of perceived inaccuracies in the 'declared value', respondent was justified in using the "IAS reference values", which was recommended by IAS-OIC Director Tacio in the course of his value verification pursuant to CMC No. 70-2014[54], in determining whether petitioner's 'declared value' disclosed the 'full value' of the subject imported motor vehicles.

Lastly, since petitioner failed to show evidence that respondent erroneously and illegally departed from the sequential application of the valuation methods as sanctioned under Section 700[55] of the CMTA, respondent, represented by then Customs Commissioner Lapeña, and concerned BOC officials enjoy the presumption of regularity in the performance of their duties in the conduct of the seizure and forfeiture proceedings against the subject imported motor vehicles.

In fine, petitioner failed to present sufficient basis to modify much more, reverse the assailed Decision.[56]

---

amount of evidence required by law. Burden of proof never shifts. (Italics and underscoring in the original text.)

54 Supra at note 17.

55 Supra at note 18.

56 Supra at note 4.

**WHEREFORE,** with the foregoing, petitioner's "Motion for Reconsideration (Re: Decision dated 27 July 2022)", filed on 15 August 2022, is **DENIED** for lack of merit.

**SO ORDERED.**

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**I CONCUR:**

**LANEE S. CUI-DAVID**
Associate Justice