

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, Jr.

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

Promulgated:

Respondent.

JUL 27 2022

x ----- x

DECISION

BACORRO-VILLENA, J.:

Before this Court is a Petition for Review¹ filed by Gamma Gray Marketing (**petitioner/GGM**) against the Bureau of Customs (BOC), represented by its Commissioner, Isidro S. Lapeña (**Customs Commissioner Lapeña**), under Section 3(a)², Rule 8 in relation to Section 3(a)(4)³, Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA). 

¹ Filed on 25 April 2018, Division Docket, Volume I, pp. 12-320, with annexes.
² 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[.]
³ SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
...
(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

Petitioner asks this Court to render a new judgment, particularly:

- (1) Reversing and setting aside respondent Customs Commissioner Lapeña’s Consolidated Decision dated 09 March 2018⁴ (**assailed Consolidated Decision**) in connection with Seizure Identification (S.I.) Nos. 107-2017 (MICP), 115-2017 (MICP), 005-2018 and 004-2018 (MICP);
- (2) Ordering the lifting of the Alert Orders (AOs) and the quashing of the Warrants of Seizure and Detention (WSDs) against petitioner’s motor vehicles in connection with S.I. Nos. 107-2017 (MICP), 115-2017 (MICP), 005-2018 and 004-2018 (MICP);
- (3) Directing the Customs Examiners to compute the corresponding duties and taxes of the motor vehicles based on the declared values of the shipments; and,
- (4) Ordering the release of all motor vehicles to the consignee upon payment of the duties and taxes.

PARTIES OF THE CASE

Petitioner GGM is a duly registered sole proprietorship owned by Arthur A. Villalba (**Villalba**)⁵, with business address as #501, 5th Floor Champ Building, Bonifacio Drive, Dr. Anda Circle, Port Area, Manila.⁶

On the other hand, respondent BOC is a government agency under the Department of Finance (DOF) and is represented herein by Customs Commissioner Lapeña through its counsel, the Office of the Solicitor General (OSG).>

other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs[.]

⁴ Certified true copy of Customs Commissioner Lapeña’s Consolidated Decision dated 09 March 2018, Annex “A” to the Petition for Review, supra at note 1, pp. 55-80, with 5th Indorsement and Consolidated Disposition Form.

⁵ Par. 1, A. Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume II, p. 683.

⁶ Par. 2.01, II. Parties, Petition for Review, supra at note 1, p. 14.

ADMINISTRATIVE PROCEEDINGS

The antecedent Seizure Proceedings at the BOC, prior to the filing of the instant Petition for Review, are as follows:

S.I. NO. 107-2017 (MICP) [IMPORTATION
OF TWELVE (12) UNITS OF BRAND NEW
2017 TOYOTA LAND CRUISER]

On 05 September 2017, petitioner and Sahara Motors entered into a Sales Contract for the purchase of twelve (12) units of 2017 Toyota Land Cruiser GXR with a total contract value of \$411,800.00, broken down as follows: Total “Free On Board” (FOB) Value of \$409,800.00 plus Total Insurance of \$2,000.00. On even date, petitioner paid \$40,980, representing the 10% down payment on the FOB value *per* Statement of Account (SOA). Petitioner paid the remaining balance of \$370,800.00 through telegraphic transfers made on 15 September 2017 and 22 September 2017.⁷

On 13 October 2017 and 18 October 2017, the above shipments from the United Arab Emirates (UAE) arrived at the Manila International Container Port (MICP).⁸ Immediately thereafter, petitioner filed six (6) Import Entries/Single Administrative Documents (SADs) for such shipments.⁹ The declared value for each unit was ~~\$34,150.00~~, exclusive of insurance and freight, which amount was simply based on the unit selling price *per* Sales Contract.¹⁰

On 23 October 2017, pursuant to Customs Memorandum Circular (CMC) No. 70-2014¹¹, the Collector of Customs then forwarded

⁷ As evidenced by Exhibits/Annexes “P-2”/“B” (Sales Contract), “P-3”/“C” (Statement of Account), “P-4” to “P-5”/“D” to “E” (Telegraphic Transfers), and “P-6”/“F” (Certification of East West Bank dated 06 November 2017); 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.

⁸ As evidenced by Exhibits/Annexes “P-7” to “P-7E”/“G” to “G-5” (Bills of Lading); 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, *supra* at note 7.

⁹ As evidenced by Exhibits/Annexes “P-8” to “P-8C”/“H” to “H-4” (Import Entries/Single Administrative Documents); 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, *supra* at note 7.

¹⁰ Par. 3.03, Part III. Statement of Facts and Antecedent Proceedings, Petition for Review, *supra* at note 1, p. 15.

¹¹ VALUE VERIFICATION OF AUTOMOBILES.

said SADs to respondent BOC's Import Assessment Service (IAS) Director for value verification and clearance.¹²

On 24 October 2017, the Officer-in-Charge Director of the IAS, Jeofrey C. Tacio (**IAS-OIC Director Tacio**), issued his Memorandum recommending the amount of \$34,150.00 as the automobiles' value *per unit*.¹³

Thereafter, respondent BOC's Formal Entry Division at the MICP (**BOC-MICP-Formal Entry Division**) likewise accepted the FOB value of \$34,150.00 *per unit*, exclusive of insurance and freight.

On 30 October 2017, then Officer-in-Charge District Collector of the MICP, Atty. Ruby Claudia M. Alameda (**MICP OIC-District Collector Alameda**), issued six (6) separate AOs, covering the twelve (12) units of 2017 Toyota Land Cruiser GXR, for violation of Bureau of Internal Revenue (**BIR**) Revenue Regulations (**RR**) Nos. 2-2016¹⁴ and 25-2003¹⁵ (resulting in the possible violation of Section 1400¹⁶, in relation to Section 1113¹⁷, of Republic Act [RA] No. 10863 or the Customs Modernization and Tariff Act of 2016 [**CMTA**]), there being no Authority to Release Imported Goods (**ATRIG**) and Importer's Sworn Statement (**ISS**).¹⁸

On 06 November 2017, Customs Officers from the BOC-MICP-Formal Entry Division seized the above shipments and filed the respective Reports of Seizure for alleged undervaluation or violation of Section 1400¹⁹ of the CMTA.²⁰

¹² As evidenced by Exhibits/Annexes "P-9" to "P-9D"/"I" to "I-4" (Indorsements, all dated 19 October 2017); 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, *supra* at note 7.

¹³ As evidenced by Exhibit/Annex "P-10"/"J" (Memorandum dated 24 October 2017); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, *supra* at note 7.

¹⁴ *Issuance of Authority to Release Imported Goods (ATRIGs) for Imported Automobiles Already Released from Customs Custody.*

¹⁵ *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.*

¹⁶ **SEC. 1400.** *Misdeclaration, Misclassification, Undervaluation, in Goods Declaration.* — ...

¹⁷ **SEC. 1113.** *Property Subject to Seizure and Forfeiture.* — ...

¹⁸ 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, *supra* at note 7.

¹⁹ *Supra* at note 16.

Meanwhile, then MICP OIC-District Collector Alameda also issued a Memorandum to IAS-OIC Director Tacio, indorsing the subject shipments for further value verification.²¹ In reply thereto, IAS-OIC Director Tacio cited in his Memorandum dated 08 November 2017, the amount of \$42,151.23 as the new “Reference Value” for each unit of a brand new 2017 Toyota Land Cruiser GXR.²²

Likewise, on 06 November 2017, petitioner filed with the BIR its application for ATRIG.²³

On even date, Eastwest Bank issued a Certification that petitioner, through TPN Trading, has made a telegraphic transfer amounting to \$370,800.00 to Sahara Motors, as payment for the remaining balance.²⁴

On 08 November 2017, petitioner, through its counsel, wrote a letter addressed to then MICP OIC-District Collector Alameda, requesting for a hearing to determine the question of probable cause.²⁵

On 09 November 2017, MICP Hearing Officer, Atty. Chika E. Bugtas (**MICP-Hearing Officer Bugtas**) scheduled a hearing on 16 November 2017 to determine whether or not probable cause exists to warrant the issuance of a WSD on the subject shipments.²⁶

²⁰ As evidenced by Exhibits/Annexes “P-12” to “P-12D”/“L” to “L-5” (Reports of Seizure); 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, *supra* at note 7.

²¹ As evidenced by Exhibit/Annex “P-13”/“M” (Memorandum dated 06 November 2017); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, *supra* at note 7.

²² As evidenced by Exhibit/Annex “P-16”/“P” (Memorandum dated 08 November 2017); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, *supra* at note 7.

²³ As evidenced by Exhibit/Annex “P-14”/“N” (Petitioner’s BIR Application for ATRIG dated 06 November 2017); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, *supra* at note 7.

²⁴ As evidenced by Exhibit/Annex “P-6”/“F” (Certification of East West Bank dated 06 November 2017); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, *supra* at note 7.

²⁵ As evidenced by Exhibit/Annex “P-15”/“O” (Letter-Request for determination of probable cause); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, *supra* at note 7.

²⁶ As evidenced by Exhibit/Annex “P-17”/“Q” (Notice of Hearing); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, *supra* at note 7.

On the 16th and 22nd of November 2017, MICP-Hearing Officer Bugtas conducted hearings in connection with the determination of probable cause.²⁷

On 18 November 2017, petitioner requested the assistance of the Department of Trade and Industry's Bureau of Import Services (**DTI-BIS**) for verification of its Commercial Invoices, covering the importations, as well as the Packing List. On 23 November 2017, BIS' OIC, Maria Guiza Lim (**BIS-OIC Lim**) forwarded said request to Commercial Attachè of the Philippine Trade and Investment Center, Dubai UAE, Eric C. Elnar (**Commercial Attachè Elnar**).²⁸

On 24 November 2017, DTI-BIS wrote a letter to Customs Commissioner Lapeña, informing him that petitioner's supplier from abroad (*i.e.*, Dubai, UAE), Sahara Motors, itself has confirmed (to the DTI) the authenticity of the commercial documents (*i.e.*, Commercial Invoices and Shipment Details) it issued to petitioner and previously submitted by petitioner to respondent BOC, showing the amount of \$34,150.00 per unit as the FOB value of the 2017 Toyota Land Cruiser GXR.²⁹

Thereafter, petitioner submitted its Position Paper on 27 November 2017, while respondent BOC's Legal Service-Revenue Collection and Monitoring Group (**RCMG**) submitted its Position Paper on 28 November 2017.³⁰

On 01 December 2017, MICP Hearing Officer, Atty. Marlon Agaceta (**MICP-Hearing Officer Agaceta**), issued a Memorandum addressed to then MICP OIC-District Collector Alameda, requesting for clarification on the correct values of the imported vehicles based on

²⁷ As evidenced by Exhibits/Annexes "P-18" and "P-19"/"R" and "S" (TSNs during the 16 November 2017 and 22 November 2017 hearing before MICP-Hearing Officer Bugtas); 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, *supra* at note 7.

²⁸ As evidenced by Exhibit/Annex "P-20A"/"T-1" (Letter-Request dated 18 November 2017); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, *supra* at note 7.

²⁹ As evidenced by Exhibit/Annex "P-21"/"U" (DTI Letter dated 24 November 2017); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, *supra* at note 7.

³⁰ As evidenced by Exhibits/Annexes "P-22"/"V" (Petitioner's Position Paper) and "P-23"/"W" (BOC-Legal Service-RCMG's Position Paper); 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, *supra* at note 7.

the alleged Discrepancy Reports of Custom Examiners Mark Anthony Dabon (**Dabon**) and Renato Mauricio (**Mauricio**), where a discrepancy of 33% between the declared value and the IAS reference value was reflected.³¹

On 12 December 2017, IAS-OIC Director Tacio issued another Memorandum to then MICP OIC-District Collector Alameda, clarifying that the Reference Value previously provided by his office (*per* Memorandum dated 08 November 2017) was not intended to substitute the value provided by the port nor reverse its findings, but only serves as reference and risk management tool.³²

On 15 December 2017, then MICP OIC-District Collector Alameda issued an Order, finding probable cause against the following imported motor vehicles, and a WSD (of even date) therefore, viz.³³

No.	IERD No.	BL No.	Container No.	Description	Declared Value	Duties and Taxes
1	C-278724	DXBCB17001759	TEMU7343579	2 Units Brand New 2017 Toyota Land Cruiser	\$68,300.00	₱1,637,077.00
2	C-278740	DXBCB1700164301	TGTHU6263254	2 Units Brand New 2017 Toyota Land Cruiser	\$68,300.00	₱1,637,077.00
3	C-278805	DXBCB1700170502	REGU5070858	2 Units Brand New 2017 Toyota Land Cruiser	\$68,300.00	₱1,637,077.00
4	C-278798	DXBCB1700170504	DRYU9861912	2 Units Brand New 2017 Toyota Land Cruiser	\$68,300.00	₱1,637,077.00
5	C-27808	DXBCB1700170503	CAIU9660440	2 Units Brand New 2017 Toyota Land Cruiser	\$68,300.00	₱1,637,077.00
6	C-279441	DXBCB17001643	REGU5048448	2 Units Brand New 2017 Toyota Land Cruiser	\$68,300.00	₱1,637,077.00

S.I. NO. 115-2017 (MICP) [IMPORTATION
OF ONE (1) UNIT OF BRAND NEW 2017
RANGE ROVER EVOQUE AND ONE (2)
UNIT OF MCLAREN 720S COUPE]

³¹ As evidenced by Exhibits/Annexes “P-24”/“X” (Memorandum dated 01 December 2017) and “P-24A” to “P-24C”/“X” to “X-3” (Discrepancy Reports); 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, *supra* at note 7.

³² As evidenced by Exhibit/Annex “P-25”/“Y” (Memorandum dated 12 December 2017); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, *supra* at note 7.

³³ As evidenced by Exhibits/Annexes “P-26”/“Z” (Order dated 15 December 2017) and “P-27”/“AA” [Warrant of Seizure and Detention (WSD) dated 15 December 2017]; 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, *supra* at note 7.

Petitioner imported from Tai Hing Motors (International) Limited of Hong Kong one (1) unit of brand new 2017 Range Rover Evoque and one (1) unit of McLaren 720S Coupe.³⁴

On 18 October 2017, petitioner filed with the BIR its application for ATRIG, covering the aforesaid imported motor vehicles.³⁵

On 19 October 2017, the shipment arrived at the MICP.³⁶ The following day, or on 20 October 2017, petitioner filed the corresponding Import Entry/SAD, together with the Commercial Invoices, Bill of Lading (BL) and ISS, wherein it declared \$29,964.00 as the FOB value of the 2017 Range Rover Evoque, while \$83,910.00 as the FOB value of the McLaren 720S Coupe.³⁷

On 20 October 2017, the BOC-MICP-Formal Entry Division assessed the shipment based on the total declared FOB value for the two (2) imported motor vehicles of \$113,874.00.³⁸

On 23 October 2017, then MICP OIC-District Collector Alameda endorsed the Import Entry/SAD to respondent BOC's IAS Director for value verification and clearance.³⁹

On 27 October 2017, then IAS-OIC Director Tacio recommended the value of \$32,578.00 for the 2017 Range Rover Evoque, and the value of \$314,278.80 for the McLaren 720S Coupe.⁴⁰

³⁴ Par. 3.22, Part III. Statement of Facts and Antecedent Proceedings, Petition for Review, supra at note 1, p. 20.

³⁵ As evidenced by Exhibit/Annex "P-28"/"BB" (Petitioner's BIR Application for ATRIG dated 18 October 2017); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, supra at note 7.

³⁶ Par. 3.24, Part III. Statement of Facts and Antecedent Proceedings, Petition for Review, supra at note 1, p. 20.

³⁷ As evidenced by Exhibits/Annexes "P-29"/"CC" (Import Entry/SAD), "P-29A" to "P-29B"/"CC-1" to "CC-2" [Commercial Invoices issued by Tai Hing Motors (International) Limited], "P-29C" [Bill of Lading (BL) No. 0227B19267] and "P-29D"/"CC-3" [(Importer's Sworn Statement (ISS))]; 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, supra at note 7.

³⁸ As evidenced by Exhibit/Annex "P-30"/"DD" (Temporary Assessment Notice); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, supra at note 7.

³⁹ As evidenced by Exhibit/Annex "P-31"/"EE" (1st Indorsement dated 23 October 2017); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, supra at note 7.

On 30 October 2017, then MICP OIC-District Collector Alameda issued an AO against the aforesaid shipment for violation of RR Nos. 2-2016⁴¹ and 25-2003⁴², resulting in the possible violation of Section 1400⁴³, in relation to Section 1113⁴⁴, of the CMTA, there being no ATRIG and ISS.⁴⁵

On 07 November 2017, a Report of Seizure was issued against the subject imported motor vehicles for alleged undervaluation under Section 1400⁴⁶ of the CMTA based on the Discrepancy Report.⁴⁷

On 10 November 2017, petitioner, through its counsel, wrote a letter addressed to then MICP OIC-District Collector Alameda, requesting for a hearing to determine the question of probable cause.⁴⁸

On 14 December 2017, then IAS-OIC Director Tacio recommended the Reference Value of \$192,000.00 per unit for the McLaren 720S Coupe.⁴⁹

On 11 January 2018, then MICP OIC-District Collector Alameda issued a WSD for the two (2) imported motor vehicles.⁵⁰

⁴⁰ As evidenced by Exhibit/Annex “P-32”/“FF” (IAS-OIC Director Tacio’s Recommendation); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, *supra* at note 7.

⁴¹ *Supra* at note 14.

⁴² *Supra* at note 15.

⁴³ *Supra* at note 16.

⁴⁴ *Supra* at note 17.

⁴⁵ As evidenced by Exhibit/Annex “P-33”/“GG” (Alert Order No. A/M1/20171030-065); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, *supra* at note 7.

⁴⁶ *Supra* at note 16.

⁴⁷ As evidenced by Exhibits/Annexes “P-34”/“HH” (Report of Seizure dated 07 November 2017 under BL No. 0227B19267) and “P-34A”/“HH-1” (Discrepancy Report); 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, *supra* at note 7.

⁴⁸ As evidenced by Exhibit/Annex “P-35”/“II” (Letter-Request for determination of probable cause); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, *supra* at note 7.

⁴⁹ As evidenced by Exhibit/Annex “P-36”/“JJ” (Memorandum dated 14 December 2017); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, *supra* at note 7.

⁵⁰ As evidenced by Exhibit/Annex “P-37”/“KK” (WSD dated 11 January 2018); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, *supra* at note 7.

On 22 January 2018, MICP-Hearing Officer Bugtas conducted the hearing on the determination of probable cause.⁵¹

Thereafter, petitioner filed its “Memorandum with Offer of Settlement” on 06 February 2018.⁵²

S.I. NO. 005-2018 (MICP) [IMPORTATION
OF TWO (2) UNITS OF BRAND NEW 2017
RANGE ROVER]

Petitioner imported from Tai Hing Motors (International) Limited of Hong Kong two (2) units of brand new 2017 Range Rover.⁵³

On 18 October 2017, petitioner filed with the BIR its application for ATRIG, covering the aforesaid imported motor vehicles.⁵⁴

On 19 October 2017, the shipment arrived at the MICP.⁵⁵ The following day, or on 20 October 2017, petitioner filed the corresponding Import Entry/SAD, together with the Commercial Invoices, BL and ISS, wherein it declared \$29,964.00 as the FOB value of the 2017 Range Rover Evoque. Respondent BOC likewise issued an Assessment Notice therefore.⁵⁶

On 30 October 2017, then MICP OIC-District Collector Alameda issued an AO against the aforesaid shipment for violation of RR Nos. 2-

⁵¹ As evidenced by Exhibit/Annex “P-38”/“LL” (TSN during the 22 January 2018 hearing before MICP-Hearing Officer Bugtas); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, *supra* at note 7.

⁵² As evidenced by Exhibit/Annex “P-39”/“MM” (Memorandum with Offer of Settlement); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, *supra* at note 7.

⁵³ Par. 3.36, Part III. Statement of Facts and Antecedent Proceedings, Petition for Review, *supra* at note 1, p. 22.

⁵⁴ As evidenced by Exhibit/Annex “P-40”/“NN” (Petitioner’s BIR Application for ATRIG dated 18 October 2017); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, *supra* at note 7.

⁵⁵ Par. 3.38, Part III. Statement of Facts and Antecedent Proceedings, Petition for Review, *supra* at note 1, p. 22.

⁵⁶ As evidenced by Exhibits/Annexes “P-41”/“OO” (Import Entry/SAD), “P-41A” to “P-41B”/“OO-1” to “OO-2” [Commercial Invoices issued by Tai Hing Motors (International) Limited], “P-41C”/“OO-3” (BL No. 0227B19268), “P-41D”/“OO-4” (ISS) and “P-41E”/“OO-5” (Assessment Notice); 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, *supra* at note 7.

2016⁵⁷ and 25-2003⁵⁸, resulting in the possible violation of Section 1400⁵⁹, in relation to Section 1113⁶⁰, of the CMTA, there being no ATRIG and ISS.⁶¹

On 07 November 2017, a Report of Seizure, together with a computation of alleged discrepancy, as well as a three (3)-page printout of the internet website where the Customs Examiner obtained her valuation, was issued against the subject imported motor vehicles for alleged undervaluation under Section 1400⁶² of the CMTA based on the Discrepancy Report.⁶³

On 10 November 2017, petitioner, through its counsel, wrote a letter addressed to then MICP OIC-District Collector Alameda, requesting for a hearing to determine the question of probable cause.⁶⁴

On 08 January 2018, then MICP OIC-District Collector Alameda issued a Memorandum submitting the subject shipment to respondent BOC's IAS for clearance.⁶⁵

On 24 January 2018, then MICP Acting District Collector, Atty. Balmyrson M. Valdez (**MICP Acting District Collector Valdez**) issued an Order, finding probable cause for the issuance of a WSD. On , even date, a WSD was issued for the subject imported motor vehicles.⁶⁶

⁵⁷ Supra at note 14.

⁵⁸ Supra at note 15.

⁵⁹ Supra at note 16.

⁶⁰ Supra at note 17.

⁶¹ As evidenced by Exhibit/Annex "P-42"/"PP" (Alert Order No. A/M1/20171030-065, same as Exhibit "P-33"); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, supra at note 7.

⁶² Supra at note 16.

⁶³ As evidenced by Exhibits/Annexes "P-43"/"QQ" (Report of Seizure dated 07 November 2017 under BL No. 0227B19268), "P-43A"/"QQ-1" (Discrepancy Report) and "P-43B"/"QQ-2" (Internet Website Printout); 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, supra at note 7.

⁶⁴ Supra at note 48.

⁶⁵ As evidenced by Exhibit/Annex "P-45"/"RR" (Memorandum dated 08 January 2018); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, supra at note 7.

⁶⁶ As evidenced by Exhibits/Annexes "P-46"/"SS" (Order dated 24 January 2018) and "P-47"/"TT" (WSD dated 24 January 2018); 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, supra at note 7.

Thereafter, petitioner filed an “Urgent Motion to Quash the Warrant of Seizure and Detention”, as well as a “Motion for the Remarking of Exhibits with Formal Offer of Exhibits”, on 05 February 2018.⁶⁷

S.I. NO. 004-2018 (MICP) [IMPORTATION
OF TWO (2) UNITS OF BRAND NEW 2017
CHEVROLET CAMARO]

Petitioner imported from GNP Auto Origin LLC USA two (2) units of brand new 2017 Chevrolet Camaro.⁶⁸ The Commercial Invoice issued by GNP Auto Origin LLC USA showed its value of \$20,333.60 per unit.⁶⁹

On 13 October 2017, the shipment arrived at the MICP.⁷⁰ Then, on 20 October 2017, petitioner filed the corresponding Import Entry/SAD for the shipment, wherein it declared \$20,333.60 as the FOB value of the 2017 Chevrolet Camaro. Respondent BOC likewise issued an Assessment Notice therefor.⁷¹

On the same date of filing of the Import Entry/SAD for the shipment, or on 20 October 2017, petitioner filed with the BIR its application for ATRIG, covering the aforesaid imported motor vehicles.⁷²

⁶⁷ As evidenced by Exhibits/Annexes “P-48”/“UU” (Urgent Motion to Quash the Warrant of Seizure and Detention dated 05 February 2018) and “P-49”/“VV” (Motion for the Remarking of Exhibits with Formal Offer of Exhibits); 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, *supra* at note 7.

⁶⁸ Par. 3.46, Part III. Statement of Facts and Antecedent Proceedings, Petition for Review, *supra* at note 1, p. 24.

⁶⁹ As evidenced by Exhibits/Annexes “P-50”/“WW” (Sales Contract), “P-50A” to “P-50B”/“WW-1” to “WW-2” (Commercial Invoices) and “P-50C”/“WW-3” (BL No. LGBMAN17080175); 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.

⁷⁰ Par. 3.47, Part III. Statement of Facts and Antecedent Proceedings, Petition for Review, *supra* at note 1, p. 24.

⁷¹ As evidenced by Exhibits/Annexes “P-51”/“XX” (Import Entry/SAD) and “P-52”/“YY” (Assessment Notice); 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, *supra* at note 7.

⁷² As evidenced by Exhibit/Annex “P-53”/“ZZ” (Petitioner’s BIR Application for ATRIG dated 20 October 2017); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, *supra* at note 7.

On 30 October 2017, then MICP OIC-District Collector Alameda issued an AO against the aforesaid shipment for violation of RR Nos. 2-2016⁷³ and 25-2003⁷⁴, resulting in the possible violation of Section 1400⁷⁵, in relation to Section 1113⁷⁶, of the CMTA, there being no ATRIG and ISS.⁷⁷

On 07 November 2017, a Report of Seizure was issued against the subject imported motor vehicles for alleged undervaluation under Section 1400⁷⁸ of the CMTA based on the Discrepancy Report prepared by Customs Examiner Rita Jacinto (**Jacinto**), who used an internet value as the dutiable value.⁷⁹

On 10 November 2017, petitioner, through its counsel, wrote a letter addressed to then MICP OIC-District Collector Alameda, requesting for a hearing to determine the question of probable cause.⁸⁰

On 08 January 2018, then MICP OIC-District Collector Alameda issued a Memorandum submitting the subject shipment to respondent BOC's IAS for clearance.⁸¹

On 11 January 2018, then IAS-OIC Director Tacio recommended the Reference Value of \$22,076.00 per unit for the 2017 Chevrolet Camaro.⁸²

⁷³ Supra at note 14.

⁷⁴ Supra at note 15.

⁷⁵ Supra at note 16.

⁷⁶ Supra at note 17.

⁷⁷ As evidenced by Exhibit/Annex "P-55"/"BBB" (Alert Order No. A/M1/20171030-072); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, supra at note 7.

⁷⁸ Supra at note 16.

⁷⁹ As evidenced by Exhibits/Annexes "P-56"/"CCC" (Report of Seizure dated 07 November 2017 under BL No. LGBMAN17080175), "P-56A"/"CCC-1" (Discrepancy Computation) and "P-56B"/"CCC-2" (Internet Website Printout); 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, supra at note 7.

⁸⁰ Supra at note 48.

⁸¹ As evidenced by Exhibit/Annex "P-57"/"DDD" (Memorandum dated 08 January 2018); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, supra at note 7.

⁸² As evidenced by Exhibit/Annex "P-58"/"EEE" (Memorandum dated 11 January 2018); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, supra at note 7.

On 18 January 2018, then MICP Acting District Collector Valdez issued an Order, finding probable cause for the issuance of a WSD. Thus, the following day, or on 19 January 2018, then MICP Acting District Collector Valdez issued a WSD against the two (2) imported motor vehicles.⁸³

On 22 January 2018, a joint hearing in S.I. Nos. 004-2018 (MICP) and 005-2018 (MICP) was conducted for the determination of probable cause.⁸⁴

Thereafter, petitioner filed an “Urgent Motion to Quash the Warrant of Seizure and Detention”, as well as a “Motion for the Remarking of Exhibits with Formal Offer of Exhibits”, on 05 February 2018.⁸⁵

CONSOLIDATION OF THE FOUR (4) SEIZURE PROCEEDINGS

As the cases involved the same importer (*i.e.*, petitioner GGM) and the same issues, the four (4) seizure proceedings, *i.e.*, S.I. Nos. 107-2017 (MICP), 115-2017 (MICP), 005-2018 and 004-2018 (MICP), were eventually consolidated.⁸⁶

On 08 February 2018, then MICP Acting District Collector Valdez issued the Consolidated Order⁸⁷, decreeing the forfeiture of all eighteen (18) imported vehicles of herein petitioner in favor of the government.⁸⁸

⁸³ As evidenced by Exhibits/Annexes “P-59”/“FFF” (Order dated 18 January 2018) and “P-60”/“GGG” (WSD dated 19 January 2018); 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, *supra* at note 7.

⁸⁴ As evidenced by Exhibit/Annex “P-61”/“HHH” (TSN during the 22 January 2018 hearing before MICP-Hearing Officer Bugtas); Denied admission for failure to present the original for comparison and for failure to submit pre-marked exhibit *per* Resolutions dated 30 June 2020 and 24 February 2021, *supra* at note 7.

⁸⁵ As evidenced by Exhibits/Annexes “P-62”/“III” (Urgent Motion to Quash the Warrant of Seizure and Detention dated 05 February 2018) and “P-63”/“JJJ” (Motion for the Remarking of Exhibits with Formal Offer of Exhibits); 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, *supra* at note 7.

⁸⁶ Par. 3.60, Part III. Statement of Facts and Antecedent Proceedings, Petition for Review, *supra* at note 1, p. 26.

⁸⁷ Exhibit/Annex “P-64”/“KKK”, Division Docket, Volume I, pp. 81-87.

⁸⁸ Par. 13, A. Stipulation of Facts, JSFI, *id.*, Volume II, p. 685.

On 12 February 2018, petitioner appealed MICP Acting District Collector Valdez’s Consolidated Order to Customs Commissioner Lapeña.⁸⁹

On 09 March 2018, Customs Commissioner Lapeña issued the assailed Consolidated Decision, denying petitioner’s appeal and affirming MICP Acting District Collector Valdez’s Consolidated Order.⁹⁰

Petitioner allegedly received a copy of the assailed Consolidated Decision on 26 March 2018.⁹¹

PROCEEDINGS BEFORE THE COURT

On 25 April 2018, petitioner filed the present Petition for Review⁹² within thirty (30) days from its alleged receipt of Customs Commissioner Lapeña’s assailed Consolidated Decision. The same was raffled to the First Division⁹³, initially docketed as CTA UDK-SP No. 023, and eventually re-docketed as CTA Case No. 9855 upon full payment of the correct docket fees on 13 June 2018.⁹⁴

On 02 August 2018, the First Division issued Summons⁹⁵ to respondent.

On 18 September 2018, after the First Division granted respondent an extension of time⁹⁶, respondent filed his Answer⁹⁷, interposing the following special and affirmative defenses, to wit:

⁸⁹ Par. 3.62, Part III. Statement of Facts and Antecedent Proceedings, Petition for Review, supra at note 1, p. 26; Par. 14, A. Stipulation of Facts, JSFI, id.

⁹⁰ Par. 3.63, Part III. Statement of Facts and Antecedent Proceedings, Petition for Review, supra at note 1, p. 27; Par. 15, A. Stipulation of Facts, JSFI, id.

⁹¹ Par. 1.04, Part I. Nature of the Petition and Statement of Material Dates, Petition for Review, supra at note 1, p. 27.

⁹² Supra at note 1.

⁹³ The First Division is composed of Presiding Justice Roman G. Del Rosario, as Chairperson, Associate Justice Erlinda P. Uy and Associate Justice Cielito N. Mindaro-Grulla (Ret.), as Members.

⁹⁴ See Resolution dated 31 July 2018, Division Docket, Volume I, p. 339.

⁹⁵ Id., p. 342.

⁹⁶ See Order dated 22 August 2018, id., pp. 350-351.

⁹⁷ Id., pp. 353-482, with annexes.

- (1) Petitioner deliberately committed forum-shopping that warrants the summary dismissal with prejudice of the present petition considering that it had filed four (4) separate petitions before different Divisions of the Court of Tax Appeals (CTA) to nullify the assailed Consolidated Decision, namely:
- (a) CTA Case No. 9822 – S.I. No. 107-2017 (MICP), lodged before the Second Division;
 - (b) CTA Case No. 9823 – S.I. No. 115-2017 (MICP), lodged before the First Division;
 - (c) CTA Case No. 9824 – S.I. No. 005-2018 (MICP), lodged before the First Division; and,
 - (d) CTA Case No. 9825 – S.I. No. 004-2018 (MICP), lodged before the Second Division;
- (2) The forfeiture of the subject shipments in favor of the government, as ordered by respondent Customs Commissioner Lapeña in his assailed Consolidated Decision, is valid and legal for the following reasons:
- (a) It is legally impossible for petitioner to submit the required ATRIG and ISS, covering the subject shipments, because it lacked the necessary BIR Permit to Operate; and,
 - (b) Petitioner deliberately omitted to declare the *ad valorem* tax on the subject shipments.

Pursuant to CTA Administrative Circular No. 02-2018, “Reorganizing the Three (3) Divisions of the Court,” dated 18 September 2018, the case was transferred to the Second Division (Court).⁹⁸

On 26 October 2018, the Court issued a Notice of Pre-Trial Conference⁹⁹ and set the case for pre-trial conference on 06 December 2018. In compliance with the Court’s order therein, respondent filed,

⁹⁸ See Order dated 26 September 2018, *id.*, Volume II, p. 483; The Second Division is composed of Associate Justice Juanito C. Castañeda, Jr., as Chairperson, and Associate Justice Cielito N. Mindaro-Grulla (Ret.), as Member.

⁹⁹ *Id.*, pp. 484-485.

his Pre-Trial Brief¹⁰⁰ on 14 November 2018, while petitioner filed its Pre-Trial Brief¹⁰¹ on 04 December 2018.

On 09 November 2018, respondent filed an “Urgent Motion to Reset Hearing”¹⁰², previously set on 06 December 2018 to another date, preferably in January 2019. In its Order dated 05 December 2018¹⁰³, the Court reset the Pre-Trial Conference to 17 January 2019. However, on that day, the Pre-Trial Conference was once again reset to 04 February 2019, by agreement of the parties.¹⁰⁴

During the 04 February 2019 pre-trial, the Court jointly heard CTA Case No. 9855 with CTA Case Nos. 9822, 9824 and 9825 as such cases are closely related and inextricably interwoven. There, petitioner’s sole proprietor, Villalba, testified that he only authorized Sarmiento Tamayo & Bulawan Offices, represented by Atty. Norlito P. Agunday, Jr. (**Atty. Agunday**), to file the present Petition for Review in CTA Case No. 9855 and that he did not authorize the law firm of Bartolome Salazar & Partners, represented by Atty. Jan Michael R. Jongko (**Atty. Jongko**), to file the Petitions for Review in CTA Case Nos. 9822, 9824 and 9825.¹⁰⁵

When asked to explain why he filed the aforesaid unauthorized petitions, Atty. Jongko replied that his law office was in touch with petitioner’s broker only and the documents were submitted by said broker and not by Villalba. Thus, based on Villalba’s testimony and there being no objection from Atty. Jongko, the Court granted respondent’s Omnibus Motion, filed on 12 September 2018, which prayed for the dismissal of CTA Case Nos. 9822, 9824 and 9825, for being filed without authorization from Villalba. The Court likewise granted the parties in CTA Case No. 9855 a period of fifteen (15) days therefrom, or until 19 February 2019, to submit their Joint Stipulation of Facts and Issues (including the issue of jurisdiction) (**JSFI**).¹⁰⁶

¹⁰⁰ Id., pp. 486-620, with exhibits.

¹⁰¹ Id., pp. 622-638.

¹⁰² Id., pp. 639-643, with Annex “A”.

¹⁰³ Id., p. 645.

¹⁰⁴ See Minutes of the Hearing and Order, both dated 17 January 2019, id., pp. 647 and 648, respectively.

¹⁰⁵ See Minutes of the Hearing and Order, both dated 04 February 2019, id., pp. 671 and 675-676, respectively.

¹⁰⁶ Id.

After the pre-trial held on 04 February 2019, the parties submitted their JSFI¹⁰⁷ on 22 February 2019. Pursuant thereto, the Court issued a Pre-Trial Order¹⁰⁸ on 13 March 2019, and the Pre-Trial Conference was deemed terminated.

During the 10 April 2019 hearing for the presentation of petitioner’s lone witness, i.e., Villalba, only respondent’s counsel appeared and petitioner’s counsels failed to appear despite due notice. Thus, upon respondent’s motion, the Court ordered that Villalba’s Judicial Affidavit dated 30 January 2019¹⁰⁹ be stricken off the records and that the case be dismissed for failure to prosecute.¹¹⁰

On 30 April 2019, petitioner filed a “Motion for Reconsideration (Re: Order dated 10 April 2019)”¹¹¹ (**MR on the Order dated 10 April 2019**). Respondent filed his Comment¹¹² thereto on 31 May 2019. On even date, petitioner’s counsel, Atty. Sinforoso M. Sarmiento, Jr. (**Atty. Sarmiento**), filed his “Manifestation with Motion to be Relieved of the Obligations as Counsel.”¹¹³

In the Resolution dated 26 July 2019, the Court (1) granted petitioner’s MR on the Order dated 10 April 2019, thereby reversing and setting aside its Order dated 10 April 2019, (2) set the case for initial presentation of evidence for petitioner on 02 September 2019, (3) noted Atty. Sarmiento’s *Manifestation*, and (4) granted Atty. Sarmiento a period of five (5) days within which to submit petitioner’s written conformity or consent to his *Motion to be Relieved of the Obligations as Counsel*.¹¹⁴

On 14 August 2019, petitioner filed a “Manifestation and Urgent Motion to Reset [the] September 2, 2019 Hearing”¹¹⁵ via LBC (a private courier). The Court granted the same and reset the hearing to 07 October 2019.¹¹⁶

¹⁰⁷ Division Docket, Volume II, pp. 683-686.
¹⁰⁸ Id., pp. 703-713.
¹⁰⁹ Exhibit “P-67”, id., pp. 649-670.
¹¹⁰ See Minutes of the Hearing and Order, both dated 10 April 2019, id., pp. 714 and 715, respectively.
¹¹¹ Id., pp. 716-734, with annexes and Affidavit of Merit dated 30 April 2019.
¹¹² Id., pp. 755-759.
¹¹³ Id., pp. 761-762.
¹¹⁴ Id., pp. 765-769.
¹¹⁵ Id., pp. 770-772.
¹¹⁶ See Order dated 16 August 2019, id., p. 773.

Notwithstanding Atty. Sarmiento's failure to comply with the Court's order to submit petitioner's written conformity or consent¹¹⁷, the Court, in the Resolution dated 04 October 2019¹¹⁸, granted his *Motion to be Relieved of the Obligations as Counsel* considering that he has already been elected as the Mayor of Virac, Catanduanes, and Atty. Alan R. Bulawan (**Atty. Bulawan**) of Sarmiento Tamayo & Bulawan Law Offices is already the one tasked by said law office to handle petitioner's case.

Trial thereafter ensued. Petitioner offered, during the 07 October 2019 hearing, the testimony of its lone witness, Villalba, who identified his Judicial Affidavit dated 30 January 2019¹¹⁹, and declared therein, among others, that: (1) he is the sole proprietor of petitioner; (2) petitioner is engaged in the importation of various goods and commodities, including vehicles; (3) for the year 2017, petitioner imported various vehicles, namely, (a) 12 units of brand new Toyota Land Cruiser, (b) one (1) unit of brand new 2017 Range Rover Evoque and one (1) unit of McLaren 720S, (c) two (2) units of brand new 2017 Land Range Rover, and (d) two (2) units of brand new 2017 Chevrolet Camaro; (4) the 12 units of brand new Toyota Land Cruiser arrived at the MICP in two (2) batches on 13 October 2017 and 18 October 2017, respectively, as evidenced by six (6) BLs; (5) upon arrival of the subject imported motor vehicles, petitioner immediately filed the required corresponding Import Entries/SADs, together with other documents such as the Sales Contract, Statement of Account, Telegraphic Transfers, and Certification of Bank Transfers, Commercial Invoices, BLs and ISS, etc., as applicable; (6) the declared values of the aforesaid imported motor vehicles are (a) \$34,150.00 per unit for the brand new Toyota Land Cruiser, (b) \$29,964.00 per unit for the brand new 2017 Range Rover Evoque and \$83,910.00 per unit for the McLaren 720S Coupe, (c) \$29,964.00 per unit for the brand new 2017 Land Range Rover, and (d) \$20,333.60 per unit for the brand new 2017 Chevrolet Camaro; (7) IAS-OIC Director Tacio recommended a new "Reference Value" per unit of (a) \$42,151.23 for the brand new Toyota Land Cruiser, (b) \$32,578.00 per unit for the brand new 2017 Range Rover Evoque and \$314,278.80 per unit for the McLaren 720S Coupe, and (c) \$22,076.00 per unit for the brand new 2017 Chevrolet Camaro; (8) MICP OIC-District Collector Alameda issued AOs, covering the subject

¹¹⁷ See Records Verification dated 04 September 2019, id., p. 775.

¹¹⁸ Id., pp. 778-780.

¹¹⁹ Supra at note 109.

imported motor vehicles; (9) thereafter, respondent's officers seized the subject imported motor vehicles and filed the respective Reports of Seizure for alleged undervaluation or violation of Section 1400¹²⁰ of the CMTA; and, (10) then MICP OIC-District Collector Alameda issued separate WSDs for (a) 12 units of brand new Toyota Land Cruiser and (b) one (1) unit of brand new 2017 Range Rover Evoque and one (1) unit of McLaren 720S, while then MICP Acting District Collector Valdez issued separate WSDs for (c) two (2) units of brand new 2017 Land Range Rover and (d) two (2) units of brand new 2017 Chevrolet Camaro.

On cross-examination, Villalba testified that he registered petitioner (sole proprietorship) with the DTI in December 2015. When asked to specify what type of goods and commodities petitioner is importing, he replied that petitioner started importing vehicles in 2017 and that from 2015 to 2016, petitioner was still in the process of securing a license to import computer parts and computers. He also confirmed that the subject motor vehicles were the first importations of petitioner (and no other) despite his statement that petitioner is "engaged in the importation of various goods and commodities, including vehicles."¹²¹

Still during the cross-examination, when asked if he is aware that there is a pending case lodged before the First Division involving the same importations, he answered that there are four (4) cases filed with the First Division and, during the pre-trial, the Court dismissed three (3) of those cases and, as for the remaining case, it was also dismissed sometime in May. However, he could not produce a copy of the pertinent court order or resolution to prove the same. As to the other three (3) cases, he admitted that those were filed for petitioner's broker and he did not authorize such broker to do so. Then, when confronted as to why petitioner's broker proceeded to file the cases before respondent and then initiated cases before the First Division, Villalba said that he assumed that such broker just wanted to deliver the subject vehicles to him. Further, he confirmed that it is his first time in the present case to assail Customs Commissioner Lapeña's Consolidated Decision.¹²²

¹²⁰ Supra at note 16.

¹²¹ TSN dated 07 October 2019, pp. 6-9.

¹²² Id., pp. 9-14.

In response to the Court’s clarificatory question on whether he authorized the broker to protest the seizure of the subject imported motor vehicles, Villalba answered in the negative. He further confirmed that he is aware that petitioner’s broker failed to secure a BIR Permit to Operate, but petitioner nevertheless proceeded with the importation of the subject motor vehicles on the assumption that it is already qualified based on its accreditations and permits. He also answered affirmatively to the Court’s query on whether he was aware at that time of the necessity for the BIR Permit to Operate and ATRIG. Then, he admitted that it was petitioner’s broker who applied for the ATRIG and said broker merely assured him that the subject vehicles will be delivered to him with all the necessary records.¹²³

On re-direct examination, Villalba confirmed that it was petitioner’s broker who dealt with respondent BOC and the BIR, and he merely requested such broker to deliver to him the imported vehicles subject of this case.¹²⁴

No re-cross examination was conducted.¹²⁵

Upon conclusion of its presentation of evidence, petitioner filed its Formal Offer of Exhibits (FOE) on 11 October 2019, consisting of Exhibits “P-1” to “P-67”, inclusive of sub-markings.¹²⁶ Respondent filed his Comment¹²⁷ thereto on 28 October 2019.

In the Resolution dated 23 January 2020¹²⁸, the Court granted petitioner’s prayer that its exhibits be marked as stated in its FOE and thereby set the case for commissioner’s hearing on 12 February 2020. However, said commissioner’s hearing was cancelled for failure of petitioner to appear despite due notice.¹²⁹

In the Resolution dated 30 June 2020¹³⁰, the Court only admitted Exhibits “P-64” and “P-67”¹³¹ and denied the rest of petitioner’s exhibits

¹²³ Id., pp. 14-19.
¹²⁴ Id., p. 23.
¹²⁵ Id.
¹²⁶ Division Docket, Volume II, pp. 783-797.
¹²⁷ Id., pp. 799-803.
¹²⁸ Id., pp. 807-808.
¹²⁹ See Commissioner’s Report dated 12 February 2020, id., p. 809.
¹³⁰ Id., pp. 811-813.

for failure to present the originals for comparison and for failure to submit the pre-marked exhibits. In the same Resolution, the Court noted that, while respondent mentioned in his Comment that some of petitioner’s exhibits are in the records of the proceedings in respondent BOC, a perusal of the records reveal that no BOC Records were submitted in this case.

On 05 August 2020, petitioner filed a “Motion for Reconsideration [To the Resolution dated 30 June 2020]”¹³² (**MR on the Resolution dated 30 June 2020**), with respondent’s Comment¹³³ thereto filed on 12 October 2020.

In the Resolution dated 10 November 2020¹³⁴, the Court again granted petitioner’s prayer for the setting of a new date for commissioner’s hearing for the marking of its exhibits scheduled on 02 December 2020. However, the scheduled commissioner’s hearing still did push through as both parties failed to appear despite due notice.¹³⁵

Subsequently, in the Order dated 21 December 2020¹³⁶, the Court yet again granted petitioner’s “Motion to Schedule Commissioner’s Hearing for Marking of Petitioner’s Exhibits”¹³⁷ and thereby scheduled another commissioner’s hearing on 27 January 2021, for comparison of petitioner’s documentary exhibits. Unfortunately, during the 27 January 2021 hearing, while both parties appeared, petitioner’s counsel was not ready for the marking of petitioner’s exhibits.¹³⁸

Resultantly, in the Resolution dated 24 February 2021¹³⁹, the Court was constrained to deny petitioner’s MR on the Resolution dated 30 June 2020 given that, despite several opportunities, petitioner still

131

Exhibit No.	Description
“P-64”	Consolidated Order
“P-67”	Judicial Affidavit of Arthur A. Villalba

132 Division Docket, Volume II, pp. 814-816.
133 Id., Volume III, pp. 846-849.
134 Id., pp. 852-853.
135 See Commissioner’s Report dated 02 December 2020, id., p. 854.
136 Id., p. 859.
137 Id., pp. 855-857.
138 See Commissioner’s Report dated 27 January 2021, id., p. 865.
139 Id., pp. 868-871.

failed to present the originals of the previously denied exhibits for comparison and submit the pre-marked exhibits.

On 03 March 2021, petitioner filed a “Motion for Reconsideration [To the Resolution dated 24 February 2021]”¹⁴⁰ (**MR on the Resolution dated 24 February 2021**), with respondent’s Comment¹⁴¹ thereto filed on 09 June 2021.

In the Resolution dated 04 March 2021¹⁴², the Court considered petitioner’s “Motion to Schedule Commissioner’s Hearing”¹⁴³, filed on 01 March 2021, as moot and academic. In the same Resolution, the Court noted petitioner’s Memorandum¹⁴⁴, earlier filed on 05 September 2020, and directed respondent to submit his memorandum within 30 days from notice.

Having manifested during the 07 October 2019 hearing that he will no longer present evidence¹⁴⁵ and pursuant to the Court’s directive above, respondent filed his Memorandum¹⁴⁶ on 20 May 2021.

Meanwhile, on 04 March 2021, petitioner filed a “Motion to Transfer Bureau of Customs Records”¹⁴⁷ (**Motion to Transfer BOC Records**), from CTA Case No. 9822 to the present case, with respondent’s Comment¹⁴⁸ thereto filed on 09 June 2021.

In the Resolution dated 12 July 2021¹⁴⁹, the Court (1) denied both petitioner’s MR on the Resolution dated 24 February 2021 and Motion to Transfer BOC Records, for lack of merit, and (2) with the filing of petitioner’s Memorandum¹⁵⁰ on 05 September 2020 and respondent’s Memorandum¹⁵¹ on 20 May 2021, considered the case submitted for decision.

¹⁴⁰ Id., pp. 879-888, with annexes.
¹⁴¹ Id., pp. 954-957.
¹⁴² Id., p. 891.
¹⁴³ Id., pp. 873-874.
¹⁴⁴ Id., Volume II, pp. 822-843.
¹⁴⁵ See Minutes of the Hearing and Order, both dated 07 October 2019, id., pp. 782 and 781, respectively.
¹⁴⁶ Id., Volume III, pp. 929-949.
¹⁴⁷ Id., pp. 902-903.
¹⁴⁸ Supra at note 141.
¹⁴⁹ Division Docket, Volume III, pp. 961-969.
¹⁵⁰ Supra at note 144.
¹⁵¹ Supra at note 146.

ISSUES

As the parties so stipulated¹⁵², the issues for this Court's resolution are —

I.

WHETHER THE AUTHORITY TO RELEASE IMPORTED GOODS (ATRIG) AND THE IMPORTER'S SWORN STATEMENT (ISS) ARE NECESSARY PRIOR TO IMPORTATION OR BEFORE THE RELEASE OF THE SUBJECT MOTOR VEHICLES FROM CUSTOMS CUSTODY;

II.

WHETHER PETITIONER GAMMA GRAY MARKETING DELIBERATELY OMITTED TO DECLARE THE *AD VALOREM* TAX ON THE SUBJECT SHIPMENTS;

III.

WHETHER THERE EXISTS A PROBABLE CAUSE TO JUSTIFY THE ISSUANCE OF THE WARRANTS OF SEIZURE AND DETENTION (WSDs) AGAINST THE SUBJECT IMPORTED MOTOR VEHICLES; AND,

IV.

WHETHER THE BUREAU OF INTERNAL REVENUE (BIR) ISSUED A PERMIT TO OPERATE TO THE IMPORTER (OR PETITIONER GAMMA GRAY MARKETING) OF THE SUBJECT IMPORTED MOTOR VEHICLES.

ARGUMENTS

In support of the above issues, petitioner advances the following arguments:

First, petitioner contends that the ISS and the ATRIG are not required prior to importation, but only necessary before the release of the subject motor vehicles from customs custody.

In regard to the ISS requirement, petitioner claims that, even assuming that it has not submitted a duly notarized ISS at the time of the shipments' arrival, such absence did not render its importations

¹⁵²

B. Stipulation of Issues, JSFI, *supra* at note 107, pp. 685-686.

violative of said BIR requirement as it has not yet removed or withdrawn the imported motor vehicles from customs custody.

Citing Section 13¹⁵³ of RR No. 25-2003¹⁵⁴, petitioner insists that, as an importer, it is allowed to submit, for every new importation, an ISS, provided the same is submitted before the removal of the shipments from customs custody. The precipitate issuance of AOs by then MICP OIC-District Collector Alameda actually prevented it from further proceeding with the filing of a notarized ISS pursuant to Section 1111¹⁵⁵ of the CMTA.

Similarly, with respect to the ATRIG, petitioner argues that the law and the rules simply require that the importer secure the ATRIG before the release of the imported goods from customs custody. Nowhere in the present law, rules and regulations does it state that the ATRIG must be secured before importation or immediately after the arrival of the imported goods.

¹⁵³ SEC. 13. *Manufacturer's/Assembler's or Importer's Sworn Statement.* — Every manufacturer/ assembler or **importer** of automobiles **shall file with the Commissioner of Internal Revenue or his authorized representative** on or before the end of months of June and December of every calendar year, **or for every proposed registration of a new brand of automobiles**, including its variants, a sworn statement showing, among others, the following information:

- a. Name, address, TIN, and Assessment Number of the manufacturer/assembler or importer;
- b. The names and variants of the different models manufactured/assembled or imported;
- c. Wholesale price of each model and variants to dealers;
- d. Suggested retail price of each model and variants;
- e. Production/assembly/importation costs and all other expenses incurred or to be incurred until the automobile is finally sold (e.g., materials, labor, overhead, selling and administrative expenses, etc.) per brand or model; and
- f. Value of car airconditioners, radio and mag wheels including the cost of their installation.

The manufacturer/assembler or importer shall file an amended sworn statement of the selling price of any brand/model of automobiles whenever there is a change on the actual selling price thereof. The **amended sworn statement shall be filed** before the said brand/s or model/s of automobiles may be removed from the place of production or assembly for sale to dealer or the public at the new selling price or **before removal thereof from the customs custody**. No changes in the selling price of the automobiles shall be allowed unless the corresponding amended sworn statement shall have been submitted to the Commissioner of Internal Revenue. (Emphasis and underscoring supplied.)

¹⁵⁴ Supra at note 15.

¹⁵⁵ SEC. 1111. *Alert Orders.* — Alert orders are written orders issued by customs officers as authorized by the Commissioner on the basis of derogatory information regarding possible noncompliance with this Act. **An alert order will result in the suspension of the processing of the goods declaration and the conduct of physical or nonintrusive inspection of the goods** within forty-eight (48) hours from issuance of the order. Within forty-eight (48) hours or, in the case of perishable goods, within twenty-four (24) hours from inspection, the alerting officer shall recommend the continuance of processing of goods in ease of a negative finding, or issuance of a warrant of seizure and detention if a discrepancy between the declaration and actual goods is found. The Bureau's information system shall immediately reflect the imposition or lifting of an alert order. (Emphasis and underscoring supplied.)

According to petitioner, under Section 10(b)¹⁵⁶ RR No. 25-2003¹⁵⁷ and Parts IV¹⁵⁸ and V¹⁵⁹ of RR No. 2-2016¹⁶⁰, the absence of an ATRIG alone upon arrival of the shipments at the port of entry does not justify the automatic forfeiture of an imported good as such absence becomes relevant and creates a presumption of non-payment only if the imported goods were released from customs custody without an ATRIG. Since its importations have not yet been released from customs custody, petitioner claims that it was premature and speculative on the part of respondent's District Collector to order the seizure and forfeiture of the subject imported motor vehicles for alleged absence of an ATRIG therefor. 

¹⁵⁶ SEC. 10. *Time, Place and Manner of Filing Return and Payment of Ad Valorem Tax on Automobiles.* —

...
b. *On imported automobiles*

All importation of automobiles whether for sale or not shall not be released from customs custody without payment of ad valorem tax and presentation to the Collector of Customs of the original copy of the appropriate Authority to Release Imported Goods (ATRIG) duly issued by the BIR office having jurisdiction over the importer's principal place of business. (Emphasis and underscoring supplied.)

¹⁵⁷ Supra at note 15.

¹⁵⁸ IV. *When and under What Circumstances ATRIG is Issued*

The ATRIG shall be issued for all importations of articles subject to excise tax (whether exempt or taxable), including the raw materials in the production thereof, as well as the machineries, equipment, apparatus or any mechanical contrivances especially used for its assembly/production; and on all importations of articles exempt from VAT except on those articles specifically identified and enumerated in the Circular issued jointly by the Bureau of Internal Revenue and the Bureaus of Customs, as circulated by RMC 48-2002.

The ATRIG should be issued prior to release of the excisable product from the customhouse. Revenue Memorandum Order No. 35-2002 dated October 28, 2002 details the policies, guidelines and procedures in the processing of ATRIGs. In particular, for imported automobiles, Revenue Regulations No. 25-2003 dated September 16, 2003 mandates that all importations of automobiles whether for sale or otherwise, shall not be released without payment of *ad valorem tax*. Furthermore, under the Bureau of Customs (BOC) and Bureau of Internal Revenue (BIR) Joint Order which was published on the May 1, 2004, a Certificate of Payment shall be issued only when an ATRIG covering the automobile/vehicle is presented. In the event that the articles covered by the application for ATRIG have already been released from customs custody prior to issuance thereof, no ATRIG shall be allowed to be issued just to complete the documentation of the importation for Bureau of Customs (BOC) purposes. (Citation omitted; Emphasis and underscoring supplied.)

¹⁵⁹ V. *Consequences of Not Securing ATRIG Prior to the Release of Imported Articles*

Should an excisable item be released without the requisite ATRIG, a presumption arises that the taxes due thereon were not paid or not paid properly. Thus, the excisable product, having been withdrawn from any such place or from customs custody or imported into the country without the payment or proper payment of the required taxes may be detained by any revenue officer in accordance with Section 172 of the NIRC, and if warranted, subsequently forfeited, pursuant to Section 268(C) of the NIRC. The person/s responsible for the same shall be held liable for unlawful possession or removal without payment of tax pursuant to Section 263 of the NIRC, as amended. (Emphasis and underscoring supplied.)

¹⁶⁰ Supra at note 14.

Second, petitioner insists that it did not deliberately omit to declare the *ad valorem* tax on the subject shipments.

Petitioner points out that it is clear from Customs Commissioner Lapeña's assailed Consolidated Decision that the Customs Examiners and the MICP District Collector were negligent in issuing the AOs against the subject shipments based on an incorrect 33% discrepancy in tax and duties by computing the excise or *ad valorem* tax therefore without considering the ISS. Further, the excise or *ad valorem* tax on the subject imported motor vehicles are supposed to be paid by the importer to respondent before the release thereof from the customhouse and not upon filing of the Import Entries/SADs.

Third, there was no probable cause that would warrant the issuance of the WSDs on the subject imported motor vehicles. Thus, instead of the WSDs, the concerned MICP District Collectors should have issued release orders.

Petitioner contends that the absence of both the ATRIG and the ISS while the subject imported motor vehicles are still in customs custody will not constitute probable cause for the issuance of WSDs under Section 1117¹⁶¹ of the CMTA because, at that time, there is no violation of any of the provisions of the CMTA. In this regard, it likewise notes that the pertinent provisions of RR Nos. 2-2016¹⁶² and 25-2003¹⁶³, which govern the issuance of ATRIG, were not cited in the WSD as bases for the alleged violation precisely because only a violation of the provisions of the CMTA can constitute probable cause. 

¹⁶¹ **SEC. 1117. Warrant of Seizure or Order of Release.** – The District Collector shall have the authority to issue a warrant of seizure of the goods upon determination of the existence of probable cause and in case of nonexistence thereof, the issuance of order of release. In case the District Collector issued an order of release, the District Collector shall immediately transmit all the records to the Commissioner who shall automatically review within forty-eight (48) hours, or within twenty-four (24) hours in case of perishable goods. When no decision is made by the Commissioner within the prescribed period, the imported goods shall be deemed released.

The lifting of the alert order shall be issued by the District Collector only upon the affirmation of the decision of the District Collector by the Commissioner, or after the lapse of the period of review by the Commissioner, whichever is earlier. (Emphasis and underscoring supplied.)

¹⁶² Supra at note 14.

¹⁶³ Supra at note 15.

Furthermore, petitioner argues that the claim of “undervaluation” cannot likewise serve as basis for the issuance of the WSDs because the claim of alleged “discrepancy” was founded on an erroneous computations and valuations due to the invalid use of IAS’ reference values in assessing the import duties and taxes on the subject imported motor vehicles, in clear violation of Sections 700¹⁶⁴ and 701¹⁶⁵ of the CMTA.

Fourth, petitioner claims that respondent erroneously concluded that it could not have been issued an ATRIG on the basis of then BIR Commissioner Caesar R. Dulay’s (**BIR Commissioner Dulay’s**) statement, in his Letter dated 23 November 2017, that there was a “lacking documentary requirement” in its application for a Permit to Operate as Importer of Automobiles (which is a prerequisite to the issuance of an ATRIG). Said letter cannot, in any way, be construed as BIR Commissioner Dulay’s final denial or rejection of its application. If, at all, it supports petitioner’s position that it was already in the process of securing a Permit to Operate, as well as an ATRIG, from the BIR.

Accordingly, petitioner asserts that since it was already in the process of securing the Permit to Operate and the ATRIG, as evidenced by the pending applications for ATRIG attached to its Import Entries/SADs, and there being no specific period within which to secure such requirements, *i.e.*, issued prior to the release of the imported goods, respondent’s seizure and forfeiture of its imported motor vehicles was premature.

On the other hand, in his Memorandum, respondent firmly avers that the forfeiture of the subject imported motor vehicles in favor of the government, as ordered by Customs Commissioner Lapeña’s in his assailed Consolidated Decision, was valid and legal for two (2) main reasons.

First, respondent contends that it is legally impossible for petitioner to submit the required ISS and the ATRIG covering the subject imported motor vehicles because it lacked the necessary BIR Permit to Operate as Importer of Automobiles. Aside from BIR Commissioner Dulay’s Letter dated 23 November 2017 attesting to the

¹⁶⁴ SEC. 700. *Sequential Application of Valuation Methods.* — ...
¹⁶⁵ SEC. 701. *Transaction Value System – Method One.* — ...

fact that petitioner was not yet issued the requisite Permit to Operate, petitioner even admitted during trial that it imported the subject motor vehicles despite knowing that it did not have the said Permit to Operate at the time of importation. Clearly, petitioner proceeded with the subject importations despite the attendant risk that its application for the said Permit to Operate would ultimately be denied; hence, it should bear the consequences of its actions.

Second, respondent argues that petitioner deliberately omitted to declare the *ad valorem* tax on the subject imported motor vehicles. Based on respondent’s review of petitioner’s SADs (formerly, IEIRDs), covering the subject shipments, petitioner did not declare the *ad valorem* tax in the “Free Disposal” portion thereof, in violation of Section 4.4¹⁶⁶ of Customs Memorandum Order (CMO) No. 29-2014.¹⁶⁷ By such deliberate omission, respondent asserts that petitioner effectively deprived the assigned examiner of valuable information that could have assisted the latter in computing the correct dutiable value of the shipments.

Respondent further explains that an importer is required to pay the *ad valorem* tax to the BOC before the articles can be released from the customhouse. However, to determine the *ad valorem* tax payable, it is the importer’s duty to adequately state the selling price of the articles. Now, in petitioner’s case, since it had no ISS and ATRIG to cover the subject shipments, respondent had no means of determining the excise taxes for the imported motor vehicles with accuracy.

To make matters worse, respondent notes that petitioner even failed to provide the information required under Section 414¹⁶⁸ of the

¹⁶⁶ 4.4 To facilitate assessment, the computation of the *ad valorem* tax for each variant/model covered by the Importer’s Sworn Statement (ISS) should be inscribed in the “Free Disposal” portion of the [Import Entry and Internal Revenue Declaration (IEIRD)].

¹⁶⁷ REVISED COMPUTATION OF DUTIES, TAXES AND OTHER CHARGES FOR AUTOMOBILES.

¹⁶⁸ SEC. 414. *Commercial and Noncommercial Invoice*. — Commercial invoice of imported goods shall contain the following:

...

(c) The names of the buyer, seller, and the time and place of sale;

...

(e) A sufficient description to enable the accurate identification of goods for tariff classification, customs valuation, and statistical purposes, indicating the correct commodity description, in customary term or commercial designation, the grade or quality, numbers, marks or symbols under which they are sold by the seller or manufacturer, together with the marks and number of packages in which the goods are packed[.] (Emphasis supplied.)

CMTA. Finding that the subject shipments are replete with inaccurate and dubious information, there is reasonable doubt on the real transaction value of the shipments and this justifies respondent’s use of the *Transaction Value of Identical Goods or Method Two* (under Section 702¹⁶⁹ of the CMTA) as basis in determining the dutiable value of the shipments instead of the *Transaction Value System or Method One* (under Section 701¹⁷⁰ of the CMTA).

Thus, using the *Transaction Value of Identical Goods or Method Two* as basis for the valuation, the assigned Customs Examiners and officials from BOC-MICP-Formal Entry Division reported discrepancies between petitioner’s declared value and the IAS reference value and such discrepancies evince that petitioner grossly undervalued its importations in violation of Sections 107¹⁷¹ and 1400¹⁷² of the CMTA.

Given that petitioner grossly undervalued its importations, respondent thus insists that the subject motor vehicles were illegally imported and validly subjected to seizure and forfeiture by the government under Section 1113¹⁷³ of the CMTA.

RULING OF THE COURT

Before the Court proceeds to address the above issues, it deems propitious to first determine the timeliness of petitioner’s appeal as this is determinative of this Court’s jurisdiction.

THE COURT HAS JURISDICTION
OVER THE PRESENT CASE.

Sections 7(a)(4) and 11 of RA 1125¹⁷⁴, as amended by RA 9282¹⁷⁵, provide: 

¹⁶⁹ SEC. 702. *Transaction Value of Identical Goods* – Method Two.
¹⁷⁰ Supra at note 165.
¹⁷¹ SEC. 107. *Rights and Responsibilities of the Declarant.* — ...
¹⁷² Supra at note 16.
¹⁷³ Supra at note 17.
¹⁷⁴ AN ACT CREATING THE COURT OF TAX APPEALS.
¹⁷⁵ AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE

...
SEC. 7. *Jurisdiction.* — The CTA shall exercise:

1. 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[.]¹⁷⁶

...

SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.*— Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the **Commissioner of Customs**, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA **within thirty (30) days after** the receipt of such decision or ruling or after the expiration of **the period fixed by law** for actions as referred to in Section 7(a)(2) herein.

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon.** A Division of the CTA shall hear the appeal: Provided, however, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc*.¹⁷⁷

...

¹⁷⁶ Italics in the original text and emphasis supplied.

¹⁷⁷ Italics in the original text and emphasis supplied.

Before filing an appeal to this Court under the foregoing provisions, Section 1126 of the CMTA sanctions the filing of a notice of appeal with the Customs Commissioner within 15 days from receipt of the District Collector's Decision and the concerned District Collector shall immediately transmit all the records of the proceedings to the Customs Commissioner, who has 30 days from receipt thereof within which to render a decision, else the District Collector's Decision is deemed affirmed, viz:

...

Sec. 1126. Appeal to the Commissioner. — In forfeiture cases, the person aggrieved by the decision of a District Collector may, within fifteen (15) days or five (5) days in case of perishable goods, from receipt of the decision, file a written notice of appeal, together with the required appeal fee to the District Collector, furnishing a copy to the Commissioner. The District Collector shall immediately transmit all the records of the proceedings to the Commissioner, who shall review and decide on the appeal within thirty (30) days from receipt of the records, or fifteen (15) days in the case of perishable goods: *Provided, That if within thirty (30) days, no decision is rendered, the decision of the District Collector under appeal shall be deemed affirmed.* An appeal filed beyond the period herein prescribed shall be dismissed.¹⁷⁸

...

The records of this case reveal that, on 12 February 2018, petitioner filed a "Notice of Appeal" (on then MICP Acting District Collector Valdez's Consolidated Order dated 08 February 2018) with respondent Customs Commissioner Lapeña.¹⁷⁹ Moreover, MICP Acting District Collector Valdez transmitted the case records to respondent on 14 February 2018.¹⁸⁰ Applying Section 1126 of the CMTA above, respondent had 30 days from 14 February 2018, or until 16 March 2018 to decide on petitioner's appeal.

On 09 March 2018, respondent rendered herein assailed Consolidated Decision¹⁸¹ denying petitioner's appeal and upholding the validity of the seizure and forfeiture proceedings. Considering that petitioner received a copy of the assailed Consolidated Decision on 26

¹⁷⁸ Italics in the original text and emphasis supplied.

¹⁷⁹ Par. 1[6] of Customs Commissioner Lapeña's assailed Consolidated Decision dated 09 March 2018, supra at note 4, p. 73; Par. 7, Statement of the Relevant Facts and Judicial Antecedents, Respondent's Memorandum dated 25 March 2021, supra at note 146, p. 932.

¹⁸⁰ Par. 1[7] of Customs Commissioner Lapeña's assailed Consolidated Decision dated 09 March 2018, supra at note 4, p. 73.

¹⁸¹ Supra at note 4.

March 2018, as evidenced by the receiving stamp appearing thereon¹⁸², petitioner thus had 30 days from 26 March 2018, or **until 25 April 2018**, to file an appeal before this Court.

Given that the instant Petition for Review was timely filed on 25 April 2018, this Court has jurisdiction over the case.

We will now proceed to discuss the merits of the case.

After an assiduous review of the case records and the parties' arguments, this Court finds the instant petition bereft of merit.

Respondent hinges the validity of the seizure and forfeiture of petitioner's imported motor vehicles in favor of the government on Section 1113(f) of the CMTA, which provides:

...
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 District Collector, have been used, are or were entered to be used as instruments in the importation or the exportation of the former[.]¹⁸³

Respondent cites the following alleged violations of petitioner to warrant the seizure and forfeiture of the subject imported motor vehicles:

- a. Petitioner failed to submit the ISS and the ATRIG covering the subject imported motor vehicles;
- b. Petitioner lacks the necessary BIR Permit to Operate as Importer of Automobiles;

¹⁸² Supra at note 4, p. 55.
¹⁸³ Emphasis and underscoring supplied.

- c. Petitioner grossly undervalued its importation in violation of Sections 107¹⁸⁴ and 1400¹⁸⁵ of the CMTA; and,
- d. Petitioner failed to declare the *ad valorem* tax in the “Free Disposal” portion of the SADs/Import Entry and Internal Revenue Declarations (IEIRDs).

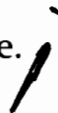
A careful reading of Section 1113(f) of the CMTA above shows that there are two (2) kinds of goods that may be subject to forfeiture, as follows:

- (1) Any goods the importation or exportation of which is effected or attempted contrary to law; or
- (2) 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.

Clearly, the instant case falls under the first classification. The Court shall now determine whether petitioner’s importations were contrary to law and existing rules and regulations.

THE AUTHORITY TO RELEASE IMPORTED GOODS (ATRIG) IS NOT NECESSARY AT THE TIME OF THE SHIPMENTS’ ARRIVAL.

Petitioner avers that it did not violate the existing rules and regulations when it failed to submit the ATRIG at the time of the arrival of its shipments considering that the ATRIG can still be processed even though the shipments have already arrived as long as such requirement is issued prior to release of the excisable product from the customhouse.

We agree. 

¹⁸⁴ Supra at note 171.
¹⁸⁵ Supra at note 16.

The pertinent provisions of RR No. 2-2016¹⁸⁶ read:

...

II. Definition of ATRIG

An ATRIG is an authority issued by the Bureau of Internal Revenue (BIR), addressed to the Commissioner of Customs, allowing the release of imported goods from customs custody upon payment of applicable taxes, or proof of exemption from payment thereof, whichever is applicable.

III. Legal Basis

The National Internal Revenue Code (NIRC) of 1997, as amended mandates that excise taxes on imported goods should be paid before the release of such articles from customhouse. It provides:

Section 131. Payment of Excise Taxes on Imported Articles. — (A) *Persons Liable.* — Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and **before the release of such articles from customhouse**, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

...

IV. When and under What Circumstances ATRIG is Issued

...

The ATRIG should be issued prior to release of the excisable product from the customhouse. Revenue Memorandum Order No. 35-2002 dated October 28, 2002 details the policies, guidelines and procedures in the processing of ATRIGs. In particular, for imported automobiles, Revenue Regulations No. 25-2003 dated September 16, 2003 mandates that all importations of automobiles whether for sale or otherwise, shall not be released without payment of *ad valorem* tax. ...

V. Consequences of Not Securing ATRIG Prior to the Released of Imported Articles

Should an excisable item be released without the requisite ATRIG, a presumption arises that the taxes due thereon were not paid or not paid properly. Thus, the excisable product, having been withdrawn from any such place or from customs custody or

¹⁸⁶

Supra at note 14.

imported into the country without the payment or proper payment of the required taxes may be detained by any revenue officer in accordance with Section 172 of the NIRC, and if warranted, subsequently forfeited, pursuant to Section 268(C) of the NIRC. ...¹⁸⁷
...

Clearly from the foregoing, the ATRIG is not necessary upon the arrival of the shipments as long as the custody thereof is still with respondent.

In this case, the relevant dates and events for each of the four (4) seizure proceedings are as follows:

Date	Event
<i>1. S.I. No. 107-2017 (Importation of 12 units of Brand New 2017 Toyota Land Cruiser)</i>	
October 13 and 18, 2017	The shipments arrived at the MICP.
October 18 and 19, 2017	Petitioner filed six (6) SADs for the shipments.
24 October 2017	IAS-OIC Director Tacio recommended the use of \$34,150.00 as the value <i>per unit</i> of the imported automobiles.
30 October 2017	MICP OIC-District Collector Alameda issued six (6) separate AOs for the shipments for failure to submit the ATRIG and the ISS.
06 November 2017	Petitioner filed its Application for ATRIG with the BIR.
<i>2. S.I. No. 115-2017 [Importation of One (1) unit of Brand New 2017 Range Rover Evoque and One (1) unit of McLaren 720S Coupe]</i>	
18 October 2017	Petitioner filed its Application for ATRIG with the BIR.
19 October 2017	The shipment arrived at the MICP.
20 October 2017	Petitioner filed the SAD and ISS for the shipment.
27 October 2017	IAS-OIC Director Tacio recommended the value of \$32,578.00 for the Range Rover Evoque, and the value of \$314,278.80 for the McLaren 720S Coupe.
30 October 2017	MICP OIC-District Collector Alameda issued an AO for the shipment for failure to submit the ATRIG and the ISS.
<i>3. S.I. No. 005-2018 [Importation of Two (2) units of Brand New 2017 Range Rover]</i>	
18 October 2017	Petitioner filed its Application for ATRIG with the BIR.
19 October 2017	The shipment arrived at the MICP.
20 October 2017	Petitioner filed the SAD and ISS for the shipment.
30 October 2017	MICP OIC-District Collector Alameda issued an AO for the shipment for failure to submit the ATRIG and the ISS.
<i>4. S.I. No. 004-2018 [Importation of Two (2) units of Brand New 2017 Chevrolet Camaro]</i>	

¹⁸⁷ Emphasis and italics and in the original text; Underscoring supplied.

Date	Event
13 October 2017	The shipment arrived at the MICP.
20 October 2017	Petitioner filed the SAD for the shipment.
20 October 2017	Petitioner filed its Application for ATRIG with the BIR, attaching the ISS thereto.
30 October 2017	MICP OIC-District Collector Alameda issued an AO for the shipment for failure to submit the ATRIG and the ISS.

As can be gleaned from the table above, the shipments containing the subject imported motor vehicles of petitioner were still in the customhouse up to the issuance of the AOs. Thus, petitioner did not violate the pertinent provisions of RR No. 2-2016¹⁸⁸ when it failed to submit the ATRIG at the time of the arrival of the subject shipments.

THE IMPORTER'S SWORN
STATEMENT (ISS) SHALL BE
SUBMITTED TOGETHER WITH THE
IMPORT ENTRY/ SINGLE
ADMINISTRATIVE DOCUMENT (SAD).

Similar to the ATRIG, petitioner argues that the ISS may be submitted at any time, as long as the shipments are still in the customhouse, citing Section 13 of RR No. 25-2003¹⁸⁹, which reads in part:

...
SEC. 13. MANUFACTURER'S/ASSEMBLER'S OR IMPORTER'S SWORN STATEMENT. — Every manufacturer/ assembler or importer of automobiles shall file with the Commissioner of Internal Revenue or his authorized representative on or before the end of months of June and December of every calendar year, or for every proposed registration of a new brand of automobiles, including its variants, a sworn statement showing, among others, the following information:

- a. Name, address, TIN, and Assessment Number of the manufacturer/assembler or importer;
- b. The names and variants of the different models manufactured/assembled or imported;
- c. Wholesale price of each model and variants to dealers;

¹⁸⁸ Supra at pp. 35-36.
¹⁸⁹ Supra at note 15.

- d. Suggested retail price of each model and variants;
- e. Production/assembly/importation costs and all other expenses incurred or to be incurred until the automobile is finally sold (e.g., materials, labor, overhead, selling and administrative expenses, etc.) per brand or model; and
- f. Value of car airconditioners, radio and mag wheels including the cost of their installation.

The manufacturer/assembler or importer shall file an amended sworn statement of the selling price of any brand/model of automobiles whenever there is a change on the actual selling price thereof. The amended sworn statement shall be filed before the said brand/s or model/s of automobiles may be removed from the place of production or assembly for sale to dealer or the public at the new selling price or before removal thereof from the customs custody. No changes in the selling price of the automobiles shall be allowed unless the corresponding amended sworn statement shall have been submitted to the Commissioner of Internal Revenue.¹⁹⁰

...

We disagree.

Based on the afore-quoted provision, what may be submitted before the removal of the shipments from the customs custody is an **amended sworn statement** and not the original sworn statement.

CMO No. 29-2014¹⁹¹ provides:

...

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

¹⁹⁰ Emphasis in the original text; Italics and underscoring supplied.
¹⁹¹ Supra at note 167.

(VCD) through the Import Assessment Service (IAS) for validation and clearance purposes.¹⁹²

...

Following the foregoing BOC regulation, a certified true copy of the ISS duly filed with the BIR must be submitted to the BOC upon filing of the IEIRD (now, SAD)¹⁹³ as said ISS forms an integral part of the import/shipping documents submitted at the port of entry.

However, in this case, petitioner did not submit to respondent the required ISS for the subject imported motor vehicles. While copies of the ISS for some of petitioner's shipments may have been submitted/attached to the SADs, the same do not show that these were certified true copies of the ISS duly filed with the BIR. In fact, there was no mention in the case records whether petitioner filed with the BIR the required ISS for the subject imported motor vehicles.

It bears noting that the ISS refers to the duly notarized document executed by the importer showing information on the imported brand new automobile such as (a) the Importer's Selling Price, (b) the Dealer's Suggested Selling Price and (c) the Total Cost of Importation and Expenses, which are the three (3) primary taxable bases used in computing the excise tax due on brand new automobiles under Section 5¹⁹⁴ of RR No. 25-2003.¹⁹⁵ Thus, it is imperative that a

¹⁹² Emphasis in the original text; Italics and underscoring supplied.

¹⁹³ Under CMO No. 29-2015, the BOC Single Administrative Document (SAD) replaced the IEIRD.

¹⁹⁴ SEC. 5. *MANUFACTURER'S OR IMPORTER'S SELLING PRICE*. — The net manufacturer's or importer's selling price shall refer to the price, net of excise and value-added taxes, at which locally manufactured/assembled or imported automobiles are offered for sale by the manufacturer/assembler or importer to the dealers, or to the public directly or through their sales agents, as reflected in the manufacturer's/assembler's or importer's sworn statement duly filed with the BIR, or in their sales invoices/official receipts, whichever is higher. Provided, that in computing the manufacturer's/assembler's or importer's selling price, it shall always include the value of car air conditioner, radio and mag wheels including the cost of installation thereof whether or not the same were actually installed in the automobile. Provided, further, that in no case shall the manufacturer's/assembler's or importer's selling price be less than the amount computed as follows:

$$80\% \times (\text{Actual Dealer's Suggested Selling Price} - \text{Excise Tax} - \text{Value-Added Tax}).$$

Provided, furthermore, that the manufacturer's/assembler's or importer's selling price shall in no case be less than the cost of manufacture/assembly/importation plus the industry profit margin of ten percent (10%) and other expenses incurred before the automobiles are sold to the market, provided, finally that the suggested retail price shall not be less than the actual selling price of the automobiles when sold to the market.

The value of other factory-installed accessory or optional equipment such as wheel covers, or any other attachment installed on the unit removed or sold, or previously removed and returned for

copy of the 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.

The purpose of such ISS requirement is 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.

A PERMIT TO OPERATE IS A
CONDITION *SINE QUA NON* BEFORE
ENGAGING IN BUSINESS AS AN
IMPORTER OF AUTOMOBILES.

Respondent contends that it is legally impossible for petitioner to submit the required ATRIG and ISS as it has not yet secured a BIR Permit to Operate or Permit to Engage as Importer of Automobiles, which is a pre-requisite in the issuance of an ATRIG.

Petitioner, on the other hand, contends that there is no specific period within which to secure a BIR Permit to Operate. Similar to the ATRIG, it further asseverates that the only requirement therefore is that it must be secured prior to the release of the imported goods.

Petitioner is mistaken.

Section 11 of RR No. 25-2003¹⁹⁶ clearly provides that:

...

**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

purposes of installation thereof, as well as the costs of installation of the accessory, shall likewise form part of the manufacturer's/assembler's or importer's selling price. In cases where accessories are installed outside the production/assembly plant or after the release from the customs custody but before the actual sale of the imported automobile, as the case may be, and the costs of such accessories and the cost of the installations shall form part of the expenses of the manufacturer/assembler or importer, all subsequent billings therefor by the manufacturer/assembler or importer to the dealer or customer shall form part of the selling price.

¹⁹⁵ Supra at note 15.

¹⁹⁶ Supra at note 15.

assembler/manufacture, 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:

- (1) Certificate of Registration issued by the BIR;
- (2) Certificate of Registration from the Department of Domestic Trade and Industry (DTI), in case of individuals;
- (3) Certificate of Registration from the Securities and Exchange Commission together with Articles of Incorporation and By-laws, in case of corporation and partnership;
- (4) Plat [sic] and Plan of the production/assembly plant or the importer's or dealer's warehouse;
- (5) Location map of the production/assembly plant or the importer's or dealer's warehouse;
- (6) Bond prescribed under Section 160 of the National Internal Revenue Code (NIRC); and
- (7) Dealership Agreement between Manufacturer/Assembler or Importer and Dealer, in the case of dealer.

b. Processing of Application for Registration to Engage in Business

...

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.¹⁹⁷

...

Moreover, Part II(2) of BIR Revenue Memorandum Order (RMO) No. 35-2002¹⁹⁸ states that the BIR shall not accept an application for ATRIG if the importer-applicant does not have a Permit to Operate, viz:

¹⁹⁷

Emphasis in the original text; Italics and underscoring supplied.

¹⁹⁸

Prescribing the Guidelines and Procedures in the Processing and Issuance of AUTHORITY TO RELEASE IMPORTED GOODS (ATRIG) for Excise and Value-Added Tax Purposes.

...
II. POLICIES AND GUIDELINES
...

2. No application shall be accepted if the importer-applicant and/or broker-representative is/are not duly registered taxpayer(s) with the BIR. In cases where the intended importation consists of excisable articles, raw materials, machineries, equipment, apparatus or any mechanical contrivances especially used for the production 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.¹⁹⁹
- ...

Based on the foregoing provisions, before engaging in the business of importing automobiles, an importer must secure a BIR Permit to Operate and such permit is a pre-requisite for the issuance of the ATRIG.

Unfortunately for petitioner, it failed to first secure a Permit to Operate as an Importer of Automobiles from the BIR before it started importing the subject motor vehicles, in clear violation of Section 11²⁰⁰ of RR No. 25-2003²⁰¹ above. Further, Villalba, petitioner's sole proprietor, admitted during cross-examination that it imported the subject motor vehicles despite knowing that it did not have a BIR Permit to Operate at the time of importation, to wit:²⁰²

...
Q: Mr. Witness, you are aware that your broker **failed to secure a Permit to Operate from the Bureau of Internal Revenue**, correct?

A: I was aware.

Q: Yet, your sole proprietorship proceeded with the **importation** of this vehicle without the necessary requirements, correct?

¹⁹⁹ Emphasis in the original text; Italics and underscoring supplied.
²⁰⁰ Supra at pp. 41-42.
²⁰¹ Supra at note 15.
²⁰² TSN dated 07 October 2019, pp. 17-18.

A:
At that time, we thought that we are already qualified
because we have all these accreditation [sic] and permits.²⁰³
...

Evidently, petitioner’s act of importing the subject motor vehicles (intended for sale in the Philippines) without securing the requisite BIR Permit to Operate as Importer of Automobiles is contrary to law and existing rules and regulations and thus, on this basis alone, warrants the seizure and forfeiture thereof in favor of the government, pursuant to Section 1113(f)²⁰⁴ of the CMTA.

PETITIONER DELIBERATELY UNDER-
DECLARED THE VALUE OF ITS
IMPORTATIONS.

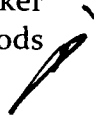
Petitioner asserts that it did not deliberately or intentionally under-declare the value of its importations because they were properly supported by commercial invoices issued by foreign exporters and respondent failed to prove that such invoices are spurious or false.

Respondent, on the other hand, argues that there was deliberate or intentional undervaluation on the part of petitioner based on the reported discrepancies between petitioner’s declared values and the IAS reference values (*per* unit and model/variant of the imported motor vehicles), in violation of Sections 107 and 1400 of the CMTA.

We agree with respondent.

Sections 107 and 1400 of the CMTA provide:

...
SEC. 107. *Rights and Responsibilities of the Declarant.* — **The declarant shall be responsible for the accuracy of the goods declaration and for the payment of all duties, taxes and other charges due on the imported goods.** The licensed customs broker shall likewise be responsible for the accuracy of the goods



²⁰³ Emphasis supplied.
²⁰⁴ Supra at p. 34.

declaration but shall not be responsible for the payment of duties, taxes and other charges due on the imported goods.

The declarant shall sign the goods declaration, even when assisted by a licensed customs broker, who shall likewise sign the goods declaration.

...
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 duty 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 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.²⁰⁵

...

Corollarily, Sections 700 and 701 of the CMTA state:

...

SEC. 700. *Sequential Application of Valuation Methods.* — Imported goods shall be valued in accordance with the provisions of Section 701 of this Act whenever the conditions prescribed therein are fulfilled.

Where the customs value cannot be determined under the provisions of Section 701 of this Act, it is to be determined by proceeding sequentially through the succeeding sections hereof to the first such section under which the customs value can be determined. Except as provided in Section 704 of this Act, it is only when the customs value cannot be determined under the provisions of a particular section that the provisions of the next section in the sequence can be used.

If the importer does not request that the order of Sections 704 and 705 of this Act be reversed, the normal order of the sequence is to be followed. If the importer so requests but it is impossible to determine the customs value under Section 705 of this Act, the customs value shall be determined under Section 704.

When the customs value cannot be determined under Sections 701 through 705, it may be determined under Section 706 of [the CMTA].

...

SEC. 701. *Transaction Value System — Method One.* — **The transaction value shall be the price actually paid or payable for the goods when sold for export to the Philippines** adjusted in accordance with the provisions of this section: *Provided, That:*

- (a) There are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which:
 - (i) Are imposed or required by law or by Philippine authorities;

²⁰⁵ Italics in the original text; Emphasis and underscoring supplied.

- (ii) Limit the geographical area in which the goods may be resold; or
 - (iii) Do not substantially affect the value of the goods;
- (b) The sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued; and
- (c) The buyer and the seller are not related, or where the buyer and the seller are related, that the transaction value is acceptable for customs purposes under the provisions hereof.

For purposes of this Act, persons shall be deemed related only if:

- (i) They are officers or directors of one another's business;
- (ii) They are legally recognized partners in business;
- (iii) There exists an employer-employee relationship between them;
- (iv) Any person directly or indirectly owns, controls or holds five percent (5%) or more of the outstanding voting stocks or shares of both seller and buyer;
- (v) One of them directly or indirectly controls the other;
- (vi) Both of them are directly or indirectly controlled by a third person;
- (vii) Together they directly or indirectly control a third person; or
- (viii) They are members of the same family, including those related by affinity or consanguinity up to the fourth civil degree.

Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Act if they fall within any of the eight (8) cases cited in the preceding paragraph.

In a sale between related persons, the transaction value shall be accepted as basis for customs valuation whenever the importer demonstrates that such value closely approximates one of the following occurring at or about the same time:

- (a) The transaction value in sales to unrelated buyers of identical or similar goods for export to the same country of importation;
 - (b) The customs value of identical or similar goods as determined under the provisions of Section 704 of this Act; or
 - (c) The customs value of identical or similar goods are determined under the provisions of Section 705 of this Act.
- 

In determining the transaction value, the following shall be added to the price actually paid or payable for the imported goods:

- (1) To the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods:
 - (a) Commissions and brokerage fees except buying commissions;
 - (b) Cost of containers;
 - (c) Cost of packing, whether for labor or materials;
 - (d) Value, apportioned as appropriate, of the following goods and services: materials, components, parts and similar items incorporated in the imported goods; tools, dies, moulds and similar items used in the production of imported goods; materials consumed in the production of the imported goods; and engineering, development, artwork, design work and plans and sketches undertaken elsewhere than in the Philippines and necessary for the production of imported goods, where such goods and services are supplied directly or indirectly by the buyer free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods; and
 - (e) Amount of royalties and license fees related to the goods being valued that the buyer must pay either directly or indirectly, as a condition of sale of the goods to the buyer.
- (2) Value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;
- (3) Cost of transport of the imported goods from the port of exportation to the port of entry in the Philippines;
- (4) Loading, unloading and handling charges associated with the transport of the imported goods from the country of exportation to the port of entry in the Philippines; and
- (5) Cost of insurance.

All additions to the price actually paid or payable shall be made only on the basis of objective and quantifiable data.²⁰⁶
...

Following the afore-quoted provisions, the dutiable value of imported articles shall be based on the valuation methods sanctioned by the CMTA, **in successive order**, with the *Transaction Value System* 

²⁰⁶ Emphasis and underscoring supplied.

or *Method One* as the first among the six (6) and takes precedence over the other methods. This follows the World Trade Organization (WTO) Customs Valuation Agreement, formally known as Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, which states that the primary basis for customs value is the transaction value. Under the *Transaction Value System or Method One*, the transaction value shall be the price actually paid or payable for the goods when sold for export to the Philippines, adjusted in accordance with Section 701 of the CMTA above.

Where the dutiable value cannot be determined under the *Transaction Value System or Method One* on account of perceived inaccuracies in the declared value, Section 702, in relation to Section 707, of the CMTA allows the use of the *Transaction Value of Identical Goods or Method Two*, viz:

...

SEC. 702. *Transaction Value of Identical Goods – Method Two.* — **Where the dutiable value cannot be determined under method one, the dutiable value shall be the transaction value of identical goods sold for export to the Philippines and exported at or about the same time as the goods being valued.** For purposes of this section, “Identical goods” refer to goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearances shall not preclude goods otherwise conforming to the definition from being regarded as identical.

If, in applying this section, more than one transaction value of identical goods are found, the lowest value shall be used to determine the customs value.

...

SEC. 707. *Ascertainment of the Accuracy of the Declared Value.* — Nothing in this section shall be construed as restricting or calling into question the right of the Bureau to ascertain the truth or accuracy of any statement, document or declaration presented for customs valuation purposes. When a declaration has been presented and when the Bureau has reason to doubt the truth or accuracy of the particulars or of documents produced in support of such declaration, it may ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the



imported goods, adjusted in accordance with the provisions of Section 701 of this Act.

...

If, after receiving further information, or in the absence of a response, the Bureau still has reasonable doubts on the truth or accuracy of the declared value, it may deem that the customs value of the imported goods cannot be determined under method one, without prejudice to an importer's right to appeal pursuant to Section 1104 of this Act. Before taking a final decision, the District Collector shall communicate to the importer, in writing if requested, the grounds for doubting the truth or accuracy of the particulars or documents produced and give the importer a reasonable opportunity to respond. When a final decision is made, the Bureau shall communicate its decision, and the grounds therefor in writing.²⁰⁷

...

Here, as confirmed from the records and stipulated by the parties, respondent used IAS reference values, instead of the transaction values, in assessing the import duties and taxes of petitioner's imported motor vehicles. In justifying the departure from the *Transaction Value System or Method One* to the *Transaction Value of Identical Goods or Method Two*, respondent had reasonable doubt on the truthfulness or accuracy of the shipments' declared values because: (1) petitioner did not submit the required ATRIG and ISS, thereby, precluding respondent from determining the excise or *ad valorem* taxes due on the imported motor vehicles with accuracy; and, (2) the documents filed in support of the subject shipments were allegedly replete with inaccurate and dubious information.

It is worth noting that as regards respondent's perceived inaccuracies in the declared values of the subject imported motor vehicles, petitioner has not shown any motive on IAS-OIC Director Tacio's part to falsify the results of his value verification pursuant to CMC No. 70-2014²⁰⁸ that prompted him to recommend IAS reference values; hence, said results have in their favor the presumption of regularity. Well settled is the rule that the burden of proof in seizure and forfeiture cases shall lie upon the claimant who, in this case, is

²⁰⁷

Italics in the original text; Emphasis and underscoring supplied.

²⁰⁸

Supra at note 11.

petitioner (as importer of the motor vehicles subject of the present consolidated seizure and forfeiture cases).²⁰⁹

Having established that respondent’s departure from the *Transaction Value System or Method One* to the *Transaction Value of Identical Goods or Method Two* is valid, the next logical step would then be to ascertain whether there is probable cause for the seizure and forfeiture of the subject imported motor vehicles for “undervaluation” by comparing the subject imported motor vehicles’ declared values and IAS reference values.

Below is a table comparison²¹⁰ of petitioner’s declared values and the IAS reference values used as basis by the officials and assigned Customs Examiners from BOC-MICP-Formal Entry Division in issuing the corresponding Reports of Seizure against the subject imported motor vehicles for gross undervaluation pursuant to Section 1400²¹¹ of the CMTA.

IEIRD No.	Imported Motor Vehicle	As Declared	IAS Reference Value
1 C-278724	2 Units Brand New 2017 Toyota Land Cruiser	\$34,150.00/unit	\$42,151.23/unit
2 C-278740	2 Units Brand New 2017 Toyota Land Cruiser	\$34,150.00/unit	\$42,151.23/unit
3 C-278805	2 Units Brand New 2017 Toyota Land Cruiser	\$34,150.00/unit	\$42,151.23/unit
4 C-278798	2 Units Brand New 2017 Toyota Land Cruiser	\$34,150.00/unit	\$42,151.23/unit
5 C-27808	2 Units Brand New 2017 Toyota Land Cruiser	\$34,150.00/unit	\$42,151.23/unit
6 C-279441	2 Units Brand New 2017 Toyota Land Cruiser	\$34,150.00/unit	\$42,151.23/unit
7 C-279866	1 Unit Range Rover Evoque	\$29,964.00/unit	\$32,578.00/unit
	1 Unit McLaren 720S Coupe	\$83,910.00/unit	\$314,278.80/unit
8 C-2809-6717	2 Units Brand New 2017 Range Rover	\$29,964.00/unit	\$51,000.00/unit
9 C-2809-717	2 Units Brand New 2017 Chevrolet Camaro	\$20,333.60/unit	\$22,076.00/unit

Ostensibly, petitioner’s declared values for the subject imported motor vehicles are lower than the IAS reference values determined using the *Transaction Value of Identical Goods or Method Two*. In particular, gross undervaluation is manifest based on the percentage,

²⁰⁹ SEC. 1123. *Burden of Proof in Forfeiture Proceedings.* — In all proceedings for the forfeiture of any vehicle, vessel, aircraft, or goods under [the CMTA], the burden of proof shall be borne by the claimant.

²¹⁰ Par. 11, A. Stipulation of Facts, JSFI, Division Docket, Volume II, p. 685.

²¹¹ Supra at pp. 44-45.

(%) of discrepancy²¹² for the McLaren 720S Coupe (included in the 7th shipment with IERD No. C-279866) at 73.30% and for the brand new 2017 Range Rover (included in the 8th shipment with IERD No. C-2809-6717) at 41.25%. This goes to show that petitioner's declared values failed to disclose the full value of the subject imported motor vehicles as legally determined by respondent and this qualifies as "undervaluation", as defined in Section 1400²¹³ of the CMTA, and thus, may be appreciated as probable cause to warrant the issuance of a WSD for each of the aforementioned shipments.

As aptly pointed out in then MICP Acting District Collector Valdez's Consolidated Order²¹⁴, which is one (1) of the only two (2) pieces of documentary evidence adduced by petitioner that this Court admitted, petitioner did not satisfactorily disprove the allegation of undervaluation. *First*, it failed to explain why the telegraphic transfers for the first six (6) shipments above were made by TPN Trading, which is an accredited importer and supposedly a competitor of petitioner. This created a cloud of doubt as to the veracity of petitioner's declared values given that the arrangement between petitioner and TPN Trading, wherein the former transferred to the latter the payment for the shipments to be transferred further by the latter to the seller²¹⁵, conveys the impression that petitioner is a dummy entity or a "consignee for hire" in behalf of TPN Trading. *Second*, the purported authentication of invoices issued by DTI did not actually state that the commercial invoices presented by petitioner are genuine and authentic. Regrettably, none of the commercial invoices or any other evidence for that matter presented by petitioner were admitted into evidence for failure to present the original for comparison and for failure to submit pre-marked exhibit.²¹⁶

Finally, taking into consideration the discrepancies discovered during value verification that evince intent to under-declare the subject shipments' value, plus the fact that petitioner imported the subject motor vehicles without securing the requisite BIR Permit to Operate as Importer of Automobiles (contrary to law and existing rules

²¹² The formula used in determining the percentage (%) discrepancy in undervaluation is as follows:

$$\frac{\text{valuation as found (i.e., IAS reference value)} - \text{valuation as declared}}{\text{valuation as found (i.e., IAS reference value)}}$$

²¹³ Supra at pp. 44-45.

²¹⁴ Supra at note 87.

²¹⁵ TSN dated 07 October 2019, pp. 21-22.

²¹⁶ See Resolutions dated 30 June 2020 and 24 February 2021, supra at note 7.

and regulations), this Court is inclined to rule that there exists probable cause for the issuance of WSDs against the subject imported motor vehicles for possible violation of Section 1400²¹⁷ of the CMTA.

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.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:


LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

I attest 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.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice
2nd Division Acting Chairperson

²¹⁷ Supra at pp. 44-45.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, 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.


ERLINDA P. UY
Acting Presiding Justice