REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

NATIONAL GRID CORPORATION OF THE PHILIPPINES,
Petitioner,

- versus -

COMMISSIONER OF CUSTOMS AND THE DISTRICT COLLECTOR, NAIA CUSTOMS COLLECTION DISTRICT,
Respondents.

CTA CASE NO. 8663

Members:

CASTAÑEDA, JR. *Chairperson,*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JUL 25 2016

4:10 p.m.

x- -x

DECISION

CASANOVA, *J.*:

Before us is a Petition for Review[1], filed by petitioner National Grid Corporation of the Philippines (NGCP), seeking the reversal of the Decision dated April 15, 2013 of respondent Commissioner of Customs and the Decision dated October 29, 2012 of the District Collector of NAIA Customs Collection District in Seizure Identification No. 003-2013; and the release of the "Eight (8) Boxes STC VIDEO CONFERENCING EQUIPMENT" subject of the seizure.

Petitioner National Grid Corporation of the Philippines (NGCP) is the holder of a franchise granted under Republic Act No. 9511[2] and the sole claimant-appellant in Seizure Identification No. 003-2012.

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[1] Docket (Vol. I), pp. 6-17.
[2] An Act Granting The National Grid Corporation of the Philippines a Franchise to Engage in the

Respondent Commissioner of Customs, Rozzano Rufino B. Biazon, is the government official who rendered the challenged Decision dated April 15, 2013, approving the recommendation of Atty. Simplicio N. Domingo II, Director, Legal Service, allowing the withdrawal of petitioner's appeal.[3]

Respondent District Collector of the NAIA Customs Collection District, Atty. Carlos T. So, is the government official who initiated Seizure Identification No. 003-2012 and, consequently, rendered the Decision dated October 29, 2012, ordering the forfeiture of the subject shipment in favor of the government.[4]

On January 17, 2012, the subject shipment[5] arrived at the NAIA from Bangkok, Thailand, on board Kuwait Airways Flight No. KU411 under covering AWB No. 229-BKK-4594 0775/HAWB No. MNL1201001 issued by Capital Logistic (Bangkok) Ltd.[6]

On February 6, 2012, petitioner, through Ms. Elisa B. Ordanza, Licensed Customs Broker, and Ms. Linda Forbes, filed Formal Import Entry No. C-14964 (Import Entry and Internal Revenue Declaration SN 119574743) for a shipment of goods declared as containing "Eight (8) Boxes STC VIDEO CONFERENCING EQUIPMENT with a total Customs Value of USD515,451.16".[7]

The shipping labels on the said package covered by AWB No. 229-BKK-4594 0775/HAWB No. MNL1201001 indicate the consignee to be American Technologies, Inc.[8]

The subject shipment is covered, among others, by the following import documents: AWB No. 229-BKK-4594 0775/HAWB No. MNL1201001, Celestica Invoice No. 6318-201 dated December 30, 2011, and Celestica Packing List – 6318A/2011 dated December 30, 2011.[9]

Business of Conveying or Transmitting through High Voltage Back-Bone System of Interconnected Transmission Line, Substations and Related Facilities, and for other purposes.

[3] Docket (Vol. I), p. 7.

[4] *Ibid.*

[5] Eight (8) Boxes STC Video Conferencing Equipment.

[6] Par. I, Joint Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. I), p. 309.

[7] Par. 2, *Ibid.*

[8] Par. 3, Joint Stipulation of Facts, JSFI, Docket (Vol. I), p. 310.

[9] Par. 4, *Ibid.*

On May 23, 2012, a Warrant of Seizure and Detention (WSD) No. 003-2012 was issued by then District Collector Carlos T. So for violation of Section 2530(l) 3, 4, 5 in relation to Section 2530(f) of the Tariff and Customs Code of the Philippines (TCCP).[10]

Thereafter, seizure proceedings against petitioner ensued. The said proceeding was docketed as Seizure Identification No. 003-2012.[11]

On October 29, 2012, the District Collector rendered a Decision in Seizure Identification No. 003-2012 forfeiting the subject shipment in favor of the government for violation of Section 2530(l), 3, 4 & 5 of the TCCP, as amended.[12]

On November 26, 2012, petitioner filed with the Office of the Commissioner of Customs a Notice of Appeal with attached Notice and Memorandum on Appeal dated November 14, 2012.[13]

On April 15, 2013, the Commissioner of Customs rendered a Decision in Seizure Identification No. 003-2012, approving the recommendation of then Director of BOC Legal Service, Atty. Simplicio Domingo, contained in the Disposition Form dated March 5, 2013.[14]

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

On September 2, 2013, respondents filed their Answer[15], which interposed the following special and affirmative defenses:

> "11. Petitioner contends that respondent Commissioner of Customs (COC) committed a serious error when he allowed the withdrawal of its appeal despite the latter never really authorizing such withdrawal (*p. 5, Petition*).
>
> 12. Petitioner's argument lacks merit.

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[10] Par. 5, *Ibid.*
[11] Par. 6, *Id.*
[12] Par. 9, *Id.*
[13] Par. 10, *Id.*
[14] Par. 11, *Id.*
[15] Docket (Vol. I), pp. 81-95

13. Section 1301 of the Tariff and Customs Code of the Philippines provides for persons who are authorized to make an import entry, thus:

> **SEC. 1301.** *Persons Authorized to Make Import Entry.* - Imported articles must be entered in the customhouse at the port of entry within fifteen days from date of discharge of the last package from the vessel either (a) by the importer, being holder of the bill of lading, (b) by any other holder of the bill of lading in due course, (c) by a customs broker acting under authority from a holder of the bill, or (d) by a person duly empowered to act as agent or attorney-in-fact for such holder: Provided, That the Collector may grant an extension of not more than fifteen days.

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

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

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

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

b. **Contact Name: Linda Forbes;**

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

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

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

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

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

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

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

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

22. Respondents however beg leave to disagree.

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

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

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

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

c. Sales Order Number: IN-02095A.

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

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

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

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

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

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

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

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

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

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

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

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

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

it claims, the real consignee and owner of the imported articles, became much more relevant.

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

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

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

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

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

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

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

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

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

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

48. Petitioner however posits that it should not be made liable, and was not even to blame, for the mislabeling committed through honest mistake, as it has been allegedly very specific in the shipping marks, which it required to be indicated on the packages (*p. 8, Petition*).

49. It must however be emphasized that the said alleged shipping marks were indicated only in Purchase Order No. 000118-400-EMA.

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

51. It is of import to stress the said Purchase Order was thereafter submitted by petitioner to establish its claim that both Celestica Invoice No. 6318-201 and Celestica Packing List No. 6318A-2011 both dated December 30, 2011. Which allegedly indicate petitioner as the consignee of the

subject importation, were issued pursuant to petitioner's Purchase Order No. 000118-400-EMA dated December 29, 2011.

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

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

54. Notable also is the fact that neither Celestica Invoice No. 6318-201 dated December 30, 2011 nor Celestica Packing List 6318/2011 dated December 30, 2011 indicates the said petitioner's Purchase Order No. 000118-400-EMA.

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

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

> **Sec. 2530.** *Property Subject to Forfeiture Under Tariff and Customs Laws.* – Any vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:
>
> xxx xxx xxx
>
> l. Any article sought to be imported or exported:

xxx xxx xxx

> (3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article.
>
> (4) On the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article.
>
> (5) Through any other fraudulent practice or device by means of which such articles was entered through a customhouse to the prejudice of the government.

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

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

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

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

articles on the strength of a false or otherwise tampered import documents.

61. These circumstances led one to reasonably believe that there was an attempt to cause the entry of the subject importation, under the guise of petitioner's importation, so as to avoid the payment of any taxes and duties due thereon, to the prejudice of the government.

62. Verily, petitioner has not shown its right to claim the subject importation.

On October 18, 2013, respondents filed their Pre-Trial Brief[16], while petitioner filed its Pre-Trial Brief[17] on October 22, 2013.

On October 25, 2013, respondents filed a Motion to Dismiss[18] on the ground of petitioner's belated filing of the instant Petition. The same was denied in a Resolution[19] dated November 22, 2013.

On December 27, 2013, petitioner filed its Amended Pre-Trial Brief.[20]

On April 7, 2014, the parties filed their Joint Stipulation of Facts and Issues[21], which was approved by the Court in a Pre-Trial Order promulgated on April 16, 2014.[22]

On October 8, 2014, petitioner filed its Formal Offer of Evidence[23] with respondents' Comment on Formal Offer of Evidence[24] filed on October 27, 2014.

In a Resolution[25] promulgated on November 14, 2014, the Court admitted as evidence for the petitioner Exhibits "P-11", "P-16", "P-17", the Judicial Affidavits of Marciano L. Hernandez, Josena Paz Uybarreta, Karen S. Ong and Andre Pablo G. Fausto. The Court denied Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-

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[16] Docket (Vol. I), pp. 104-118.
[17] Docket (Vol. I), pp. 119-124.
[18] Docket (Vol. I), pp. 179-191.
[19] Docket (Vol. I), pp. 199-202.
[20] Docket (Vol. I), pp. 217-223.
[21] Docket (Vol. I), pp. 309-312.
[22] Docket (Vol. I), pp. 319-323.
[23] Docket (Vol. I), pp. 370-373.
[24] Docket (Vol. I), pp. 374-380.
[25] Docket (Vol. I), pp. 384-385.

14", "P-15", "P-18" and "P-19" for failure of petitioner to submit duly marked exhibits; and Exhibits "P-12" and "P-13" for failure of the exhibit formally offered to correspond with the document actually marked.

On December 11, 2014, petitioner filed a Motion for Partial Reconsideration and To Admit Attached Documentary Exhibits.[26] Respondents filed their Comment (on the Motion for Partial Reconsideration)[27] on February 16, 2015.

Meanwhile, on January 21, 2015, respondents filed a Motion to Withdraw Judicial Affidavit of Corazon S. Rapa and To Admit Her Amended Judicial Affidavit.

In a Resolution[28] promulgated on January 29, 2015, the Court admitted as part of respondents' evidence the Amended Judicial Affidavit of Ms. Corazon S. Rapa and considered the Judicial Affidavit of Ms. Corazon S. Rapa filed on March 20, 2014 withdrawn.

In a Resolution[29] promulgated on March 6, 2015, the Court granted petitioner's Motion for Partial Reconsideration and admitted attached documentary exhibits. Accordingly, the Court admitted Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "12", "13", "P-14", "P-15", "P-18" and "P-19".

Respondents presented Corazon S. Rapa and Lyndon F. De Los Santos as their witnesses.

On June 15, 2015, respondents filed their Formal Offer of Evidence[30], submitting Exhibits "R-1" to "R-23". Save for Exhibit "R-3", the Court admitted said Exhibits in a Resolution[31] dated July 28, 2015.

On August 18, 2015, respondents filed a Motion for Partial Reconsideration (of July 28, 2015 Resolution)[32], praying for the admission of Exhibit "R-3" which was admitted by the Court in a Resolution[33] dated November 12, 2015.

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[26] Docket (Vol. I), pp. 388-390.
[27] Docket (Vol. I), pp. 512-516.
[28] Docket (Vol. II), p. 511.
[29] Docket (Vol. II), pp. 518-520.
[30] Docket (Vol. II), pp. 569-579.
[31] Docket (Vol. II), pp. 667-668.
[32] Docket (Vol. II), pp. 669-673.
[33] Docket (Vol. II), pp. 700-701.

In a Resolution[34] promulgated on February 4, 2016, the case was submitted for decision, taking into consideration of petitioner's Manifestation[35] filed on December 15, 2015, stating that it adopts the instant Petition as its Memorandum, and respondents' Memorandum[36] filed on January 29, 2016.

The parties come now before us, raising the following issues[37] for our consideration:

1. Whether or not the Commissioner of Customs erred in fact and in law in allowing the withdrawal of the appeal of petitioner.

   a. Whether or not respondents have reasonable basis to rely on the authority of Ms. Linda Forbes to represent petitioner in causing the withdrawal of the appeal; and

2. Whether or not the Commissioner of Customs erred in fact and in law in ruling that there are legal or valid grounds for the NAIA District Collector to effect the seizure and forfeiture of the subject shipment.

   a. Whether or not the Bureau of Customs (BOC) had basis to doubt who the actual and real consignee of the subject shipment is.

As to the first issue, petitioner posits that respondents committed an error in allowing the withdrawal of petitioner's appeal despite not being authorized by the latter. Petitioner further contends that Darwin Aquino Cobarubias and Linda Forbes are not its employees and that the acts of strangers cannot bind petitioner.

Respondents, on the other hand, contend that it did not err in allowing the dismissal of petitioner's appeal as there is reasonable basis to rely on the authority of Ms. Linda Forbes to represent petitioner. Respondents further contends that Ms. Linda Forbes, who filed the formal entry on behalf of petitioner, was also authorized to represent petitioner in connection with the importation.

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[34] Docket (Vol. II), p. 733.
[35] Docket (Vol. II), pp. 706-707.
[36] Docket (Vol. II), pp. 710-732.
[37] Joint Stipulation if Issue, JSFI, Docket (Vol. I), p. 311.

We rule in favor of petitioner.

Pertinent to the disposition of the first issue is Section 2313 of the Tariff and Customs Code of the Philippines (TCCP), as amended. We quote:

> "**SEC. 2313** *Review by Commissioner.* – The person aggrieved by the decision or action of the Collector in any matter presented upon protest or by his action in any case of seizure may, within fifteen (15) days after notification in writing by the Collector of his action or decision, file a written notice to the Collector with a copy furnished to the Commissioner of his intention to appeal the action or decision of the Collector to the Commissioner. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision: Provided, That when an appeal is filed beyond the period herein prescribed, the same shall be deemed dismissed."

In the abovequoted provision, there is no express power vested in the Commissioner of Customs allowing withdrawal of appeal filed before it. However, in *Gatchalian vs. Commission on Elections,*[38] the High Court discussed the Doctrine of Necessary Implication in this wise:

> "It is a cardinal rule of statutory construction that a law is understood to contain, by implication, if not by its expressed terms, all such provisions as may be necessary to effectuate its object and purpose. And that the whole and every part of the statute must be considered in fixing the meaning of its part."

Applying the foregoing provision of law and jurisprudence, we hold that the power of the Commissioner of Customs to entertain an appeal from the decision or action of the Collector of Customs involving protest, seizure or forfeiture cases carries with it the power to grant the withdrawal thereof.

[38] G.R. No. 30375, September 12, 1978.

Now, did respondent Commissioner of Customs err in granting the withdrawal of appeal allegedly filed by petitioner?

We rule in the affirmative.

Petitioner presented a Certification dated May 29, 2013, issued by Karen S. Ong, Corporate Secretary of NGCP, stating that the Board of Directors of NGCP has never authorized the withdrawal of appeal in relation to the pending case of NGCP in Seizure Identification No. 003-2012 before the Bureau of Customs.[39]

Respondents, on the other hand, presented a Secretary's Certificate issued by Darwin Aquino Cobarubias stating that the Board of Directors of NGCP authorized Ms. Linda Forbes to represent petitioner in the withdrawal of appeal dated November 26, 2012 and to authorize said agent to sign and execute any documents/pleadings in relation to the said withdrawal.[40]

It bears stressing that the Secretary's Certificate relied upon by respondents was executed by Darwin Aquino Cobarubias on November 27, 2013 as stated in paragraph 3 of the said Certificate.[41] However, on the upper right portion of the same certificate, it was received by the Bureau of Customs Legal Service Appellate Division (BOC-LSAD) on February 1, 2013 or nine (9) months prior to the date of execution of said Certificate. Interestingly, respondents never bothered to explain or elaborate such glaring irregularity. To our mind, the circumstances surrounding the execution of the Secretary's Certificate presented by respondents is highly irregular and thus, we cannot give weight to such Certificate.

On the other hand, we are inclined to give credence to the pieces of evidence presented by petitioner as will be discussed below.

First, there is a positive declaration by petitioner's Corporate Secretary that NGCP never authorized the withdrawal of appeal in connection with Seizure Identification No. 003-2012. The exchanges between Atty. Karen S. Ong and petitioner's counsel are relevant. We quote:

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[39] Exhibit "P-17", Docket (Vol. I), p. 64.
[40] Exhibit "R-20", BOC Records, p. 270.
[41] *Ibid.*

"Q1: What is your present position in NGCP?

A1: I am the Corporate Secretary of NGCP, sir.

Q2: Do you recall having executed a Certification on May 29, 2013 in connection with Seizure Identification No. 003-2012?

A2: Yes, sir.

xxx xxx xxx

Q4: The witness handed over to me a Certification dated May 29, 2013 signed by Karen S. Ong, certifying that the Board of Directors of NGCP never authorized the withdrawal of appeal in relation to the pending case of NGCP in Seizure Identification No. 003-2012. I am marking said document as Exhibit 'Q'. Do you confirm my action?

A4: Yes, sir."[42]

Second, petitioner presented a Certification issued by Atty. Josena Paz P. Uybarreta, Head of the Human Resources Department of petitioner, stating that Ms. Linda Forbes and Mr. Darwin Aquino Cobarubias are not petitioner's employees.[43] The exchanges between Atty. Josena Paz P. Uybarreta and petitioner's counsel are pertinent. Thus:

"Q4: The witness handed over to me a Certification dated May 29, 2013 signed by Josena Paz P. Uybarreta, certifying that Linda Forbes and Darwin Aquino Cobarubias are not employees of, or connected with, NGCP. I am marking said document as Exhibit 'P'. Do you confirm my action?

A4: Yes, sir."[44]

Notably, respondents herein did not dispute the foregoing declarations made by petitioner's witnesses. Neither did respondents

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[42] Judicial Affidavit of Karen S. Ong, Docket (Vol. I), p. 160.
[43] Exhibit "P-16", Docket (Vol. I), p. 63.
[44] Judicial Affidavit of Josena Paz P. Uybarreta, Docket (Vol. I), p. 156.

adduce any evidence to counter the assertions made by petitioner other than the irregularly executed Secretary's Certificate, which as earlier discussed, is devoid of any probative value. Thus, the foregoing testimonies coupled with the respective certification executed by petitioner's Corporate Secretary and Head of Human Resource Department would lead us to the conclusion that petitioner did not authorize the withdrawal of appeal before the respondent Commissioner of Customs; and that Darwin Aquino Cobarubias and Linda Forbes are not petitioner's employees.

A corporation, like a natural person who may authorize another to do certain acts for and in his behalf, through its board of directors, may legally delegate some of its functions and powers to its officers, committees or agents appointed by it.[45] Thus, contracts or acts of a corporation must be made either by the board of directors or by a corporate agent duly authorized by the board.[46] In the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation.[47] Petitioner, having sufficiently established the lack of authority of Linda Forbes to withdraw petitioner's appeal before respondent Commissioner of Customs, the act of Ms. Linda Forbes in filing a Manifestation and Motion (To Withdraw Appeal) cannot in any way bind petitioner. Consequently, the act of the respondent Commissioner of Customs of allowing the withdrawal of petitioner's appeal cannot be given any legal effect.

In view of the foregoing, we hold that respondent Commissioner of Customs erred in allowing the withdrawal of appeal filed by Linda Forbes.

We go now to the second issue. Petitioner contends that respondent Commissioner of Customs committed a serious error when he failed to rule on the appeal that respondent District Collector had no legal or valid grounds to effect the seizure and forfeiture of the subject shipment. Petitioner further contends that there was nothing illegal in the importation of the subject shipment as the mislabelling was committed by Polycom, thus, petitioner should not be prejudiced by the unauthorized acts of a stranger like Polycom. Petitioner finally contends that the TCCP does not penalize, through seizure or forfeiture, mislabelling committed through honest mistake.

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[45] *Luzviminda Visayan, et al. vs. National Labor Relations Commission (Third Division), et al.,* G.R. No. 69999, April 30, 1991.

[46] *AF Realty & Development, Inc., et al. vs. Dieselman Feright Services, Co., et al.,* G.R. No. 111448, January 16, 2002.

[47] *Violeta Tudtud Banate, et al. vs. Philippine Countryside Rural Bank (Liloan, Cebu), Inc. and Teofilo Soon, Jr.,* G.R. No. 163825, July 13, 2010.

Respondents counter that they have sufficient basis to reasonably doubt as to who is the real and actual consignee of the subject shipment. Respondents further assert that there are discrepancies in the shipping documents covering the subject importation that cast doubt on the true ownership of the subject imported equipment. Furthermore, respondents claim that when petitioner was called to explain the said discrepancies, it failed to present the original copies of the invoice covering the subject importation. Respondents posit that there was tampering of the shipping labels of the subject importation, as additional labels containing petitioner's name were placed on the boxes of the video conferencing equipment subsequent to their arrival at the Bureau of Customs, apparently to make it appear that the same belongs to petitioner. Respondents finally contend that the evidence presented by petitioner does not conclusively establish that it is the real and actual consignee of the subject importation.

We find for the respondents.

Essential to the resolution of the second issue is Section 2530 (1), paragraphs, (3), (4) and (5) of the TCCP, as amended. We quote:

> "**Sec. 2530.** *Property Subject to Forfeiture Under Tariff and Customs Laws.* – Any vehicle, vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:
>
> xxx xxx xxx
>
> 1. Any article sought to be imported or exported:
>
> xxx xxx xxx
>
> (3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article.
>
> (4) On the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article.

> (5) Through any other practice or device contrary to law, by means of which such articles was entered through a customhouse to the prejudice of the government."

The requisites for the forfeiture of goods under Section 2530(f), in relation to (1) (3-5), of the Tariff and Customs Code are: (a) the **wrongful** making by the owner, importer, exporter or consignee of any declaration or affidavit, or the **wrongful** making or delivery by the same person of any invoice, letter or paper - all touching on the importation or exportation of merchandise; (b) the falsity of such declaration, affidavit, invoice, letter or paper; and (c) an **intention** on the part of the importer/consignee to evade the payment of the duties due.[48]

We shall discuss the three requisites jointly.

It bears stressing that the false declaration relative to the importation of articles may be committed either by the purported consignee of the articles; or by the importer thereof. We have scrutinized the declarations contained in the Import Entry & Internal Revenue Declaration (IEIRD) SN No. 119574473 and have made the following observations: (1) Eliza B. Ordanza and Linda Forbes are the broker and importer/ attorney-in-fact respectively;[49] and (2) the consignee of the subject shipment is petitioner.[50] Thus, as may be gleaned from the foregoing, the importer on record, Linda Forbes declared in the said IEIRD that petitioner is the consignee of the subject shipment.

Prefatorily, we have observed that it is Nayon Kontrol Systems and NKS Global Limited, HK, through Linda Forbes, that directly coordinates with Elisa B. Ordanza with regard to the facilitation and release of the subject shipment. The following exchanges between respondents' counsel and Andre Pablo G. Fausto are pertinent. Thus:

> "Q Is there personnel of Nayon Kontrol Systems incharged of overseeing Nayon Kontrol's coordination with the customs for the release of the imported equipment?

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[48] *Republic of the Philippines, represented by the Commissioner of Customs vs. The Court of Tax Appeals and AGFHA, Incorporated*, G.R. No. 139050, October 2, 2001.
[49] Item No. 50, Exhibit "R-1".
[50] Item No. 8, Exhibit "R-1".

A Not. I think we hired a brokerage firm or freight forwarder for that, if I am not mistaken.

Q So there is nobody from your office directly?

A There is somebody who deals with the brokerage and the freight forwarder.

Q Can you name your personnel?

A That would be Linda Forbes and probably another personnel during that time, I cannot remember."[51]

Based therefrom, Nayon Kontrol Systems and NKS Global Limited, HK, through Linda Forbes, and in coordination with Elisa B. Ordanza were the ones directly involved in dealing with the facilitation and release of the subject shipment. However, as we see it, there are two circumstances that will conclude that the subject shipment is not really consigned to petitioner, but to some other person as will be discussed below.

First, we take note of the fact that the subject shipment is not intended for petitioner. Petitioner's witness, Andre Pablo G. Fausto, testified that Nayon Kontrol Systems and NKS Global Limited, HK could only commence the transaction for the supply of the subject shipment only upon receipt of the purchase order from petitioner on January 3, 2012. Pertinent portions of his testimony are hereby quoted for ready reference, to wit:

"Q In both of these purchase orders, 'P-2' and 'P-3', there is a signature across the word *conforme*, if you can just take a look, Mr. witness and please tell us who this is, who signed the *conforme*?

A The one who picked up the purchase order.

Q And his name is?

A Vicente Labarete.

Q So this means that he is your employee?

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[51] TSN dated September 29, 2014, pp. 26-27.

A Yah.

x x x x

Q Did you confirm that the date here, Janury 3, 2012 is the day that he picked up the purchase order from the NGCP?

A Well, it's stated here because I wasn't there, right?

Q OK. I mean I just want to confirm what the purchase order states. The purchase order states January 3, do you recall if you were inform of the existence of this purchase order on that date?

A Yes.

A On the same day?

A Probably not in the same day.

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

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

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

A Yes that's right. Foreign suppliers, POLECOM."[52]

x x x x

SOL. OLALIA:

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

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

A Not yet. Of course not.

Q Of course, because you have to make sure?

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

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

A Of course."[53]

However, records show that the import documents: Celestica Invoice No. 6318-201[54], Polycom Packing List-6318A/2011[55] and Polycom Proforma Invoice No. 6318-2011[56] submitted by petitioner were all dated December 30, 2011, while petitioner's Purchase Order Nos. 000118400-EMA[57] and 000118409-EMA[58], prepared on December 29, 2011, were received by Nayon Kontrol Systems and NKS Global Limited, HK only on January 3, 2012. Thus, the Court is at a loss as to how the purchase of the subject shipment could have preceded the conformity of NKS Global Limited, HK. If, indeed, the subject shipments was really intended for petitioner, the same would have been ordered or purchased, at the earliest, on January 3, 2012, the date when NKS Global Limited, HK expressed its acquiescence to petitioner's orders. The conclusion that may be reached is that the subject shipment is not intended for petitioner.

In relation to the foregoing discussion, the ruling of the Supreme Court in *The Commissioner of Customs & The District Collector of Customs for the Port of Iloilo vs. New Frontier Sugar Corporation*[59] is in point. Thus:

[53] TSN dated September 29, 2014, p. 37.
[54] Exhibit "P-12"
[55] Exhibit "P-13"
[56] Exhibit "R-6"
[57] Exhibit "P-2"
[58] Exhibit "P-3"
[59] G.R. No. 163055, June 11, 2014.

> "xxx Fraud is never presumed. It must be proved. Failure of proof of fraud is a bar to forfeiture. The reason is that forfeitures are not favored in law and equity. The fraud contemplated by law must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some right. Absent fraud, the Bureau of Customs cannot forfeit the shipment in its favor."

In consonance with the foregoing pronouncement, we find the ruling of the Supreme Court in *Archipelago Management and Marketing Corporation vs. Court of Appeals, et al.*[60] *apropos* in the case at bar, to wit:

> "x x x. The statement that fraud cannot be presumed does not mean that the presumption of fraud may not arise, and be legitimately deduced, from circumstantial evidence, but only that it is not to be assumed of a transaction that it is fraudulent, in the absence of proof afforded by intrinsic evidence of unfairness in the transaction itself, or extrinsic facts and circumstances leading to that conclusion. The general rule, therefore, must be understood only as affirming that a contract or conduct apparently honest and lawful must be treated as such until it is shown to be otherwise by either positive or circumstantial evidence. <u>Fraud may be, and often is, proved by or inferred from circumstances, and the circumstances proved may in some cases raise a presumption of its existence.</u> On the other hand it has been held that while fraud may be proved by circumstances or presumed from them, it cannot be demonstrated by construction, and hence must be prove[n] in all cases."

Applying the foregoing doctrines, We, therefore, hold that Nayon Kontrol Systems and NKS Global Limited, HK, acting through Linda Forbes, the person directly involved in the facilitation of the release of the subject shipment, through their collective acts, clearly demonstrated a wrongful intention in declaring that petitioner is the consignee, the truth being the subject shipment is consigned to some other person as discussed above. In *Aznar vs. Court of Tax Appeals,*[61] the High Court declared that the term "false" means any deviation from

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[60] G.R. No. 128850, November 20, 1998.
[61] G.R. No. L-20569, August 23, 1974.

the truth, whether intentional or not. Thus, the declaration made by Linda Forbes that petitioner is the consignee of the subject shipment is clearly false.

Now, what prompted Linda Forbes to wrongfully declare the consignee of the subject shipment? The answer: to evade the payment of duties and taxes due to the government. The constitutive acts thereof will be discussed below.

We note that Airway Bill No. MNL1201001,[62] Celestica Invoice No. 6318-201[63] and Polycom Packing List No. 6318-2011[64] were provided for by Nayon Kontrol Systems and NKS Global Limited, HK, through Elisa B. Ordanza to petitioner, as shown by the direct testimony of Marciano L. Hernandez, thus:

> "Q33: What commercial documents do you have, if any, regarding the importation of the Video Conferencing Equipment and Multi-Point Control Units?
>
> A33: I have Air Waybill No. MNL1201001, Invoice No. 6318-2011, and Packing List No. 6318A-2011. (The witness is handing over three documents.)"[65]
>
> xxx xxx xxx
>
> "Q You likewise identified, Mr. witness certain shipping documents particularly in your Answers to Question 33 particularly the airway bills, the invoice and the packing list?
>
> A Yes, ma'am.
>
> Q Who provided you this shipping document, Mr. witness?
>
> A The shipping document was provided by the Nayon Kontrol through their broker."[66]

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[62] Exhibit "R-2".
[63] Exhibit "R-3".
[64] Exhibit "R-4".
[65] Judicial Affidavit of Marciano L. Hernandez, Docket (Vol. I), p. 230.
[66] TSN dated June 23, 2014, p. 10.

Airway Bill No. MNL1201001 and Celestica Invoice No. 6318-201 were submitted to the Department of Finance for the approval of petitioner's duty and value-added tax (VAT) exemption on the importation of the subject shipment. The Secretary of Finance officially indorsed the duty and VAT exemption of petitioner to the Bureau of Customs relative to the importation of the subject shipment on the basis of the foregoing documents provided for by Nayon Kontrol Systems and NKS Global Limited, HK.[67] Thus, the tax and duty exempt privilege endorsement exclusively in favor of petitioner would be used in the subject shipment, which, as earlier discussed, is not really consigned to petitioner but to some other person. No other plausible conclusion may be reached other than the fact that Nayon Kontrol Systems and NKS Global Limited, HK would clearly usurp the tax exempt privilege exclusive to petitioner on articles not consigned to, nor intended in favor of petitioner, thereby evading the taxes and duties legally due on the government. Seemingly, petitioner accedes with the clandestine acts perpetuated by the Nayon Kontrol Systems and NKS Global Limited, HK which the Court cannot countenance.

In fine, We declare that the subject shipment in question, having been brought into the Philippines through false declarations, stating that petitioner is the ultimate consignee thereof, the truth being the subject shipment is consigned to some other person, and that the totality of the acts by the importer Nayon Kontrol Systems and NKS Global Limited, HK, through Linda Forbes, constitute fraudulent intention on the part of the said importer so as to effectively deprive the State of its lawful revenue, the subject shipment is subject to forfeiture pursuant to Section 2530 (1), paragraphs (3), (4) and (5) of the TCCP, as amended.

It is in the light of the foregoing disquisition that we resolve to affirm the Decision of the respondents in forfeiting the subject shipment in favor of the government.

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

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[67] Exhibit "P-9", Docket, Vol. I, p. 403.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division 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.

ROMAN G. DEL ROSARIO
Presiding Justice