REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ROSEMARIE G. CLEMENTE, Petitioner,	CTA Case No. 9545
	Members:
- versus -	DEL ROSARIO, *PJ, Chairperson* FABON-VICTORINO, *and* MANAHAN, *JJ.*
REPUBLIC OF THE PHILIPPINES as represented by the Honorable Commissioner of Customs, Respondent.	Promulgated: JUN 09 2020 : 9:53 am

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RESOLUTION

Fabon-Victorino, J.:

On January 15, 2020, the Court denied the Petition for Review filed by petitioner Rosemarie G. Clemente for lack of merit thereby affirming the Decision dated January 19, 2017 rendered by the Commissioner of Customs (COC) in Seizure Identification No. 055-2015 (NAIA).

Undaunted, petitioner filed her *Motion for Reconsideration* dated February 4, 2020, claiming that respondent failed to establish probable cause mandated under Section 2535 of the Tariff and Customs Code of the Philippines (TCCP) to justify the seizure and consequent forfeiture of 259 pieces of jewelry found in her two luggages by respondent's agents. According to her: 1) she honestly thought that the pieces of jewelry could be brought into the country without need to declare them with the Bureau of Customs; 2) she did know the value, quantity, and details of the jewelry as she was not the owner thereof; and 3) the pieces of jewelry were not goods of commercial quantity since they were of different kind and quality.

There was also no fraud on her part when she did not accomplish the required custom declaration form and replied "wala" when inquired by the custom officers if she had any dutiable item to declare because upon inspection they readily saw inside her two luggages the 259 pieces of jewelry placed inside ordinary plastic bags. This, according to petitioner, suggests absence of intent to conceal the subject articles negating the allegation that she committed fraud against the government.

Having acted in good faith, albeit with negligence, her offer to settle the duties and taxes due in order for her to redeem the seized articles pursuant to Section 2307 of the TCCP, should be allowed.

By way of Opposition,[1] respondent strongly denies that 259 pieces of jewelry were readily visible upon inspection as they found them scattered and clandestinely placed in different pockets or compartments of petitioner's two luggages, a clear manifestation of petitioner's intention to bring them in without paying taxes and duties due thereon. Further, her conflicting statements when asked by customs officers on whether she had dutiable articles in her possession negate her claim that she acted in good faith at that particular moment without any intention to evade taxes. Petitioner's actions and the subsequent discovery by customs agents of the undeclared dutiable articles in her possession were more than sufficient to establish probable cause against her for purposes of seizure and forfeiture of the smuggled articles. Moreover, by sheer number, the 259 pieces of jewellery were obviously of commercial quantity. Finally, petitioner should not also be allowed to avoid the legal consequences of her act by simply disclaiming ownership and pointing to a certain Auntie Linda as the real owner of the smuggled items.

The instant Motion must be denied.

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[1] Respondent's Opposition (to Petitioner's Motion for Reconsideration dated February 4, 2020).

To be sure, petitioner's arguments have already been discussed and determined by the Court in the assailed Decision of January 15, 2020. Obviously, petitioner overlooked the significance of the fact that from the start she admitted that she did not accomplish the required customs declaration form given to incoming passengers to be submitted to the customs officer before exiting the customs' area. There was also no denying that when inquired by the customs officers on duty she readily replied that she had nothing to declare. This occurred not once but several times as she was hurriedly traversing the customs area. Subsequent inspection however revealed the 259 pieces of jewelry inside plastic bags clandestinely placed in the pockets of her two luggages. Analyzing the series of subsidiary acts, they irrefragably veered towards petitioner's intention or furtive design to smuggle the articles and defraud the government of its lawful revenue.

Significantly, petitioner denied ownership of the seized jewelry and point to a certain Auntie Linda as the real owner thereof. Notably, she could not even give the real name or address of Auntie Linda, who according to her she met for the first time at the airport shortly before the take off. Her disclaimer is definitely incompatible, if not illogical with her offer to settle and pay the taxes due in order for her to redeem the smuggled items. On this point, Section 2307 of the TCCP provides:

> SEC. 2307. Settlement of Case by Payment of Fine or Redemption of Forfeited Property. - Subject to approval of the Commissioner, the district collector may, while the case is still pending, **except when there is fraud**, accept the settlement of any seizure case provided that the owner, importer, exporter, or consignee or his agent shall offer to pay to the collector a fine imposed by him upon the property, or in case of forfeiture, the owner, exporter, importer or consignee or his agent shall offer to pay for the domestic market value of the seized article. The Commissioner may accept the settlement of any seizure case on appeal in the same manner.
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> **Settlement of any seizure case** by payment of the fine or redemption of forfeited property **shall not be allowed** in any case where the importation is absolutely prohibited

> or **where the release of the property would be contrary to law**. (emphasis supplied)

In *Transglobe International, Inc. vs. Court of Appeals,*[2] the Supreme Court ruled that in customs cases, redemption of forfeited property is unavailing in three (3) instances, namely, when there is fraud, as obtaining in the present case, where the importation is absolutely prohibited, or where the release of the property would be contrary to law.

WHEREFORE, petitioner's *Motion for Reconsideration* dated February 4, 2020 is **DENIED**. The impugned Decision dated January 15, 2020 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate justice

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[2] G.R. No. 126634, January 25, 1999.