

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

SECOND DIVISION

**UNLIMITED EXCHANGE GLOBAL CTA Case No. 9488
CORP. (UNEX) represented by
Charles Tan,**

Petitioner, Members:

-versus-

CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
MANAHAN, JJ.

COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated:

FEB 27 2018

X- - - - - X
DECISION f 10:35 a.m.

MANAHAN, J.:

This involves a Petition for Review filed by Unlimited Exchange Global Corp. (UNEX) represented by Charles Tan, in connection with the shipment of 250 bags STC: Soya Milk Powder which were seized, and subsequently forfeited, for alleged violation of Section 2530, in relation to Section 101(k) of the Tariff and Customs Code of the Philippines (TCCP).

FACTS

Petitioner UNEX is a corporation duly organized and existing under the laws of the Philippines and with principal office address at 310 Baesa Road, Caloocan City.¹

Respondent Commissioner of Customs is the head of the Bureau of Customs (BOC), the government agency officially responsible for the assessment and collection of all duties and taxes related to importation of goods.² *am*

¹ Docket, Petition for Review (PFR), p. 10.

² Docket, PFR, p. 10.

The relevant antecedents, as proposed³ by petitioner and admitted⁴ by respondent, are as follows:

3.1.1 On 01 September 2015, a shipment of 250 bags stc: Soya Milk Powder consigned to petitioner herein arrived at the Manila International Container Port (MICP) from China on board the vessel "LORRAINE V. 15002s" with Registry No. CNC0059-15, under Bill of Lading No. 75173DM002SK120, and filed under Import Entry No. C-194340-15.

3.1.2 On 04 September 2015, the Customs Appraiser from Section 13 who processed the entry of the seized cargo, Ms. Nenita Somatiza, asked from petitioner's customs broker a Certificate of Product Registration (CPR) issued by the Food and Drug Administration (FDA) which was allegedly a requirement for the release of the said cargo.

3.1.3 Due to FDA's advice, petitioner's customs broker did not submit the required CPR but because of the threat of penalty, petitioner was forced to submit the CPR for the product "POWDERED SOYA MILK DRINK" which was secured by petitioner for the soya milk product which it intended to repack/distribute in sachet packs under the brand name "VEGTAN ORGANIC SOYA GOLD MILK"...

3.1.4 Subsequently, a Memorandum dated 04 September 2015, ... was received by petitioner only on 18 September 2015. The Memorandum was prepared and signed by Sec. 13 staff Nenita Somatiza, Raymond Lloyd So and Helen Balite. The Memorandum essentially stated that subject cargo does not have a CPR and referred the subject matter to the MICP Collector.

3.1.5 The FDA staff in charge of import licenses, Ms. Nemia Getes informed Mr. Tan that there was no more need for another letter or certification. In front of Mr. Tan, Ms. Getes called and talked to Mr. So to explain the CPR. Further, Ms. Getes explained to Mr. 

³ Docket, Petitioner's Pre-Trial Brief, pp. 124-128.

⁴ Docket, Minutes of Hearing dated April 27, 2017, p. 130; Order dated April 27, 2017, p. 133.

So that Diagem is both registered and licensed to operate as manufacturer and toll packer, ... and that there should be no problem with Diagem being indicated as manufacturer in the CPR.

3.1.6 Mr. Tan and the petitioner's customs broker met Atty. Turingan and Mr. So to explain to them the alleged discrepancy. Atty. Turingan and Mr. So both agreed that they were confused with FDA procedures. Thus, Atty. Turingan asked Mr. Tan [to] put his explanations, issues, and concerns in writing which Mr. Tan did in his letter dated 23 September 2015, ... and which was further supplemented by another letter dated 29 September 2015...

3.1.7 On 02 October 2015, Atty. Langcay from MICP-Law Division issued a 1st Indorsement, ... forwarding Mr. Tan's letters addressed to Atty. Turingan, back to the Chief, Formal Entry Division (Attn: Section Chief, Sec. 13).

3.1.8 On 08 October 2015, Ms. Somatiza, Mr. So and Ms. Balite issued another Memorandum, ... essentially reiterating and maintaining their observations/findings that "upon examination, it was found out to be ORGANIC INSTANT SOYA BEAN POWDER which is not the same as SOYA MILK POWDER since SOYA MILK POWDER is more specific and SOYA BEAN POWDER is more generic compared to each other" and "that the attached FDA Certificate of Product Registration, FDA Registration No. FR114519 is for Powdered Soya Milk Drink". They maintained that "there appears discrepancies among the documents presented vis-à-vis the actual findings upon examination." Finally, they recommended "laboratory analysis to determine the actual description of the goods whether it is SOYA BEAN POWDER or SOYA MILK POWDER."

3.1.9 Previously, petitioner-consignee already submitted to Ms. Somatiza, So and Balite of Sec. 13, a Certificate of Analysis issued by the supplier of the subject cargo, confirming that the shipment consisted of soya milk powder... *am*

3.1.10 Mr. Tan immediately sought assistance from the Department of Science and Technology (DOST) which replied promptly in an email dated 16 October 2015 sent by Ms. Rose Fuentes, Senior Science Research Specialist, that they “cannot give certification as to what kind or sources (my) sample/product is made of” and it was suggested that I request for certification from my supplier that “soya milk powder and soya bean powder is the same”... Likewise, Mr. Tan sought the same assistance from another independent entity, the Philippine Institute of Pure and Applied Chemistry (PIPAC) of the Ateneo de Manila University which also replied through an email from Ms. Marietta N. Bernardino, Office Manager, that they “do not have analysis to determine whether (our) product is soya bean powder or soya milk powder”...

3.1.11 Due to the excruciatingly slow pace of the paperworks at the Bureau of Customs and with consignee’s storage charges piling up, petitioner was constrained to elevate his problem to the Commissioner, Bureau of Customs to whom he sent a letter-complaint dated 19 October 2015 (with copy furnished the Secretary of Finance)...

3.1.12 Apparently, Mr. Tan’s letter-complaint was forwarded by the Commissioner of the Bureau of Customs to Messrs. Somatiza, So and Balite for their reply/comments and the latter issued another Memorandum dated 30 October 2015...

3.1.13 This Memorandum was forwarded by the Collector Dela Cruz to the Commissioner, Bureau of Customs in a 1st Indorsement dated 05 November 2015...

3.1.14 On 05 November 2015, consignee received a copy of an Order from this Honorable Office to procure a sample of the content of the subject shipment for referral to Department of Science and Technology, for laboratory analysis and for Sec. 13 to submit its recommendations within five (5) days from receipt of the results of the laboratory analysis... 

3.1.15 Thus, on 10 November 2015, in compliance with said Order, consignee submitted to this Honorable Office a Manifestation prepared and signed by the undersigned counsel essentially rebutting the arguments of Messrs. Somatiza, So and Balite in their two Memorandums dated 08 and 30 October 2015.

3.1.16 Thus, on 10 December 2015, consignee was completely taken aback and surprised when it received a Warrant of Seizure and Detention covering the said cargo issued by Collector Dela Cruz dated 02 December 2016.

3.1.17 The said Warrant was issued for consignee's purported violation of Sec. 2530 in relation to Sec. 101(k) of the Tariff and Customs Code of the Philippines (TCCP), as amended, by R.A.7651 and FDA MC No. 2013-032...

3.1.18 On April 20, 2016, a Notice of Decision rendered by the OIC-Collector of MICP on April 7, 2016, ... was received by undersigned counsel wherein the subject cargo was forfeited.

3.1.19 On or before the expiration of the 15-day period within which to appeal the said Decision or on May 3, 2016, petitioner filed a Notice of Appeal with the OIC-Collector of MICP, ... notifying the latter that it wanted to have the decision reviewed by the Commissioner of Customs pursuant to Sec. 2313 of the Tariff and Customs Code of the Philippines.

3.1.20 On May 20, 2016, the MICP District Collector forwarded the Notice of Appeal and the case folder to the Office of the Commissioner of Customs.

3.1.21 On May 24, 2016, the case folder was routed to the Legal Service and was forwarded to the Appellate Division on May 25, 2016, for review and appropriate action.

3.1.22 On September 26, 2016, petitioner herein received a copy of the Decision rendered by 

respondent dated September 9, 2016, which essentially AFFIRMED the decision of the OIC-Collector of MICP forfeiting the subject goods...⁵

Petitioner filed the instant petition on October 26, 2016 praying that the Court reverse, cancel and annul the Decision dated September 9, 2016, and to order the immediate release of the subject cargo without payment of storage charges.

Respondent, after several extensions,⁶ filed his Answer on February 28, 2017, which was admitted on March 28, 2017.

Respondent filed his Pre-Trial Brief on April 25, 2017,⁷ while petitioner's Pre-Trial Brief was received on April 26, 2017.⁸

Respondent thereafter admitted all the facts stipulated in petitioner's Pre-Trial Brief.⁹ Furthermore, the parties stipulated that the issues involved in the case are purely legal, thus, they were granted thirty days within which to file their respective memoranda.¹⁰

On May 30, 2017, the Court received petitioner's Memorandum.¹¹ After several extensions,¹² respondent's Memorandum was admitted, and the case submitted for decision, through Resolution¹³ dated September 14, 2017.

Hence, this decision.

ISSUES

Petitioner submits the following issues:

- I. Whether or not petitioner violated Sec. 2530 in relation to Sec. 101(k) of the Tariff and Customs Code of the Philippines, as amended, by R.A. 7651 as 

⁵ Docket, Petitioner's Pre-Trial Brief, pp. 125-127.

⁶ Docket, Order dated December 5, 2016, p. 80; Order dated January 5, 2017, p. 88; and Resolution dated March 28, 2017, pp. 111-113.

⁷ Docket, pp. 116-123.

⁸ Docket, pp. 124-128.

⁹ Docket, Order dated April 27, 2017, p. 133.

¹⁰ *Id.*

¹¹ Docket, pp. 134-147.

¹² Docket, Order dated June 9, 2017, p. 154; Order dated July 5, 2017; and Resolution dated September 14, 2017, pp. 184-185.

¹³ Docket, pp. 184-185.

alleged in the Warrant of Seizure and Detention which would warrant forfeiture of the subject goods.

- II. Whether or not petitioner violated Food and Drugs Administration Memorandum Circular No. 2013-032 which would have warranted forfeiture of the subject goods.¹⁴

Petitioner's Arguments¹⁵

Petitioner argues that the allegation of petitioner violating Section 2530 of the TCCP was made in a sweeping manner and is a vague and general accusation considering that the Warrant of Seizure and Detention (WSD) did not even state the specific sub-paragraph of Section 2530 that was allegedly violated by petitioner. Petitioner also states that the WSD partakes the nature of a search warrant; that in the instant case, the WSD amounts to a scatter-shot or general warrant in the nature of a fishing expedition issued without probable cause; that such WSD should be considered *void ab initio*; that the WSD issued for violation of Section 2530 in relation to Section 101 (or 102)(k) resulted to petitioner being unsure under what particular or specific item of Section 2530 or Section 101 (102) is being alleged to have been violated.

Anent the documents required to be presented for the release of the subject importation, petitioner argues that FDA Memorandum Circular (MC) No. 2013-032 clearly provides the situations when a License to Operate (LTO) and Certificate of Product Registration (CPR) are required to be submitted for the release of imported products. Petitioner states that under the FDA MC, raw materials like the soya bean/milk subject of this seizure case, which are imported by FDA-licensed food establishments for their own use, requires only the presentation of the LTO and that the submission of the CPR is required only if the raw materials are intended for distribution or sale by the food importer. Petitioner argues that the confusion arose because the BOC officers considered the imported product as a finished product intended for distribution or sale by petitioner, however, petitioner states that its importation is for its own use and to be further processed/repacked into finished product in sachet packs for which a CPR was separately and validly issued. Petitioner stresses that there is no requirement for a separate CPR for the imported product for importers of raw materials 

¹⁴ Docket, PFR, p. 15.

¹⁵ Docket, PFR, pp. 15-21; Petitioner's Memorandum, pp. 139-146.

either for own use or for distribution or sale. Petitioner also cites Department of Health (DOH) Administrative Order No. 2014-0029, dated September 8, 2014, which provides that “local manufacturers who directly import and use raw materials, ... need not secure a CPR for the raw materials...”, to bolster its argument that only the LTO is required to be presented for the release of the subject importation.

Respondent’s Counter-Arguments¹⁶

Respondent argues that petitioner has no cause of action because the importation of the subject cargo violated the provision of the TCCP. Respondent also states that the WSD is not akin to a search warrant since it was not issued for the purpose of search, but for seizure and detention of an identified shipment being stored in the container yard under the jurisdiction of the Bureau of Customs; that searches and seizures without warrant of vessels and aircraft for violation of customs laws have been a traditional exception to the constitutional requirement because the vessel can be quickly moved out of the jurisdiction; and, that the requirements for the issuance of a search warrant are inapplicable in the issuance of a WSD.

Respondent states that based on the documents submitted by petitioner, the subject shipment falls under either “Raw materials, food ingredients, food additives for local sale/distribution” or “for packing into its final product presentation for retail”, which both require the covering LTO issued in favor of the importer and CPR specifically covering the imported product. Petitioner cannot claim that the subject shipment is for its own use since it already admitted that the subject shipment is for repacking. Respondent further states that the submitted CPR shows details that does not cover the subject shipment but refers to a final product locally repacked by Diagem and locally distributed by petitioner.

RULING OF THE COURT

The petition lacks merit. 

¹⁶ Docket, Answer, pp. 97-99; Respondent’s Memorandum, pp. 177-180.

**The Court has jurisdiction
over the petition for review.**

Under the Revised Rules of the Court of Tax Appeals (RRCTA), the Court in Division shall exercise exclusive original jurisdiction to review by appeal decisions of the Commissioner of Customs.¹⁷ Said appeal may be availed of by filing a petition for review with the CTA within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the CIR to act on the disputed assessments.¹⁸

As stipulated by the parties, petitioner received a copy of the Decision dated September 9, 2016 on September 26, 2016.¹⁹ Counting thirty days from September 26, 2016, petitioner had until October 26, 2016, within which to file the instant appeal. Thus, the Petition for Review filed on October 26, 2016 was timely filed.

**The importation was
correctly seized, detained,
and subsequently forfeited,
upon failure to present a valid
Certificate of Product
Registration (CPR).**

Petitioner questions whether there was a violation of TCCP Sec. 2530, in relation to Sec. 101(k), and FDA Memorandum Circular No. 2013-032, sufficient to warrant the seizure, detention and forfeiture of the subject goods. *amv*

¹⁷ Rule 4 Jurisdiction of the Court

Sec. 3. Cases within the jurisdiction of the Court in Divisions. –
The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

xxx

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

xxx

¹⁸ Rule 8 Procedure in Civil Cases

Sec. 3. Who may appeal; period to file petition. – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, xxx may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling xxx

¹⁹ Docket, Petitioner's Pre-Trial Brief, p. 127.

Under the TCCP, properties subject to forfeiture are enumerated, as follows:

Sec. 2530. *Property Subject to Forfeiture Under Tariff and Customs Laws.* – Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subjected to forfeiture:

- a. Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles or in conveying and/or transporting contraband or smuggled articles in commercial quantities into or from any Philippine port or place. The mere carrying or holding on board of contraband or smuggled articles in commercial quantities shall subject such vessel, vehicle, aircraft, or any other craft to forfeiture: Provided, That the vessel, or aircraft or any other craft is not used as duly authorized common carrier and as such carrier it is not chartered or leased;
- b. Any vessel engaging in the coastwise which shall have on board any article of foreign growth, produce or manufacture in excess of the amount necessary for sea stores, without such article having been properly entered or legally imported;
- c. Any vessel or aircraft into which shall be transferred cargo unladen contrary to law prior to the arrival of the importing vessel or aircraft at her port of destination;
- d. Any part of the cargo, stores or supplies of a vessel or aircraft arriving from a foreign port which is unladen before arrival at the vessel's or aircraft's port of destination and without authority from the customs officials; but such cargo, ship or aircraft stores and supplies shall not be forfeited if such unloading was due to accident, stress of weather or other necessity and is subsequently approved by the Collector;
- e. Any article which is fraudulently concealed in or removed contrary to law from any public or private warehouse, container yard or container freight station under customs supervision; 

- f. Any article the importation or exportation of which is effected or attempted contrary to law, or any article of prohibited importation or exportation, and all other articles which, in the opinion of the Collector, have been used, are or were entered to be used as instruments in the importation or the exportation of the former;
 - g. Unmanifested article found on any vessel or aircraft if manifest therefor is required;
 - h. Sea stores or aircraft stores adjudged by the Collector to be excessive, when the duties assessed by the Collector thereon are not paid or secured forthwith upon assessment of the same;
 - i. Any package of imported article which is found by the examining official to contain any article not specified in the invoice or entry, including all other packages purportedly containing imported articles similar to those declared in the invoice or entry to be the contents of the misdeclared package; Provided, That the Collector is of the opinion that the misdeclaration was contrary to law;
 - j. Boxes, cases, trunks, envelopes and other containers of whatever character used as receptacles or as device to conceal article which is itself subject to forfeiture under the tariff and customs laws or which is so designed as to conceal the character of such articles;
 - k. Any conveyance actually being used for the transport of articles subject to forfeiture under the tariff and customs laws, with its equipage or trappings, and any vehicle similarly used, together with its equipage and appurtenances including the beast, steam or other motive power drawing or propelling the same. The mere conveyance of contraband or smuggled articles by such beast or vehicle shall be sufficient cause for the outright seizure and confiscation of such beast or vehicle, but the forfeiture shall not be effected if it is established that the owner of the means of conveyance used as aforesaid, is engaged as common carrier and not chartered or leased, or his agent in charge thereof at the time, has no knowledge of the unlawful act;
1. Any article sought to be imported or exported 

- (1) Without going through a customshouse, whether the act was consummated, frustrated or attempted;
- (2) By failure to mention to a customs official, articles found in the baggage of a person arriving from abroad;
- (3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation 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; and
- (5) Through any other practice or device contrary to law by means of which such articles was entered through a customshouse to the prejudice of the government.

Thus, under Section 2530(f), the following are subject to forfeiture:

(f) Any article the importation or exportation of which is effected or attempted contrary to law, or any article of prohibited importation or exportation, and all other articles which, in the opinion of the Collector, have been used, are or were entered to be used as instruments in the importation or exportation of the former; (*Underscoring supplied*)

In relation thereto, Section 101 of the TCCP provides for the prohibited importations:

Sec. 101. Prohibited Importations

xxx xxx xxx

(k) All other articles and parts thereof, the importation of which is prohibited by law or rules and regulations issued by competent authority. (As amended by Presidential Decree No. 34) [*Underscoring supplied*]

The subject importation of alleged soya milk powder, as admitted by both parties, is covered by FDA MC No. 2013-032 which provides for the requirements for the immediate release of imported finished food products and raw materials covered by the FDA at the BOC. It states: *cm*

Effective September 15, 2013, the Food and Drug Administration (FDA) will no longer issue letters of clearance or certifications for the Bureau of Customs (BOC) in order to release imported products and raw materials under the jurisdiction of the FDA.

The FDA letter of clearance or certification will no longer be a requirement or condition for the immediate release of finished products for as long as the importer is able to present or submit valid FDA License to Operate and valid Certificate of Product Registration or Notification. However, for raw materials, including ingredients and additives that are used for producing or processing finished products, the following shall be presented or submitted to the Bureau of Customs for immediate release:

a) Food

- i. Raw materials, such as food ingredients and food additives that are imported by FDA-licensed food establishments for their own use, the License to Operate shall be presented or submitted to the Bureau of Customs.
- ii. Food ingredients and food additives, among other raw materials, that are intended for distribution or for sale, the License to Operate and the Certificate of Product Registration shall be presented or submitted to the Bureau of Customs.
(Underscored supplied)

The FDA is the competent authority promulgating the rules with respect to the conditions for release of imported finished food products, raw materials, food ingredients and food additives. Thus, following Section 2530(f) in relation to Section 101(k) of the TCCP, the BOC can withhold release and initiate seizure proceedings with respect to importations that fail to comply with the requisites contained in FDA MC No. 2013-032.

While the parties submitted the instant case for resolution on a purely legal issue, the Court finds that there is a need to determine whether the subject importation of alleged soya milk powder complied with FDA MC No. 2013-032 in order to fully 

resolve the case. This is a factual determination which the Court shall glean from the existing records.

There is probable cause for the BOC to initiate seizure and forfeiture proceedings against the subject importation of soya milk powder.

In the instant case, respondent BOC initiated seizure and forfeiture proceedings against the subject importation on the ground that petitioner failed to submit a valid CPR for the importation. Respondent’s Answer²⁰ states:

23. Furthermore, based on the documents submitted by petitioner, the subject shipment falls either under “Raw materials, food ingredients, food additives for local sale/distribution” or “for packing into its final product presentation for retail”, which both requires the covering LTO issued in favor of the importer and CPR specifically covering the subject imported product. Petitioner cannot claim that the subject shipment is for its “own” use to do away with the requirement of the CPR, as it already admitted that the subject shipment is for “repacking”.

24. While LTO No. CFRR-NCR-FI-5321 was issued to petitioner as a “Food Distributor/Importer”, the covering CPR under FDA Registration No. FR: 114519 that was submitted to and reviewed by Section 13, FED of the MICP, consists of the following details:

Product Name	Powder Soya Milk Drink
Brand Name	VEGTAN ORGANIC SOYA MILK GOLD
Manufacturer	Diagem Packaging Systems, Inc.
Distributor	Unlimited Exchange Global Corporation

25. In this regard, the foregoing FDA MC No. 2013-032 in relation to CMC 54-2014 clearly provide that raw materials intended for local sale, distribution, or packing for final distribution should be issued the covering CPR prior to release from Customs custody. While petitioner was able to submit a CPR, the details thereof unequivocally show that the same does not cover the subject shipment, but refers to a final product locally 

²⁰ Docket, Answer, pp. 94-100.

repacked by Diagem and locally distributed by petitioner.²¹

Thus, the importation of the soya milk product was not covered by a valid CPR.

Based on the foregoing, the BOC established probable cause to seize the subject importation, pursuant to Section 2535 of the TCCP, which provides:

Sec. 2535. *Burden of Proof in Seizure and/or Forfeiture.* – In all proceedings taken for the seizure and/or forfeiture of any vessel, vehicle, aircraft, beast or articles under the provisions of the tariff and customs laws, the burden of proof shall lie upon the claimant: Provided, That probable cause shall be first shown for the institution of such proceedings and that seizure and/or forfeiture was made under the circumstances and in the manner described in the preceding sections of this Code. *(Underscoring supplied)*

The term “probable cause”, which has been held synonymous with “reasonable cause”, means less than the evidence which will justify condemnation.²² It implies a seizure made under circumstances which warrant suspicion.²³

Petitioner failed to prove that its importation of soya milk powder does not require a CPR.

Probable cause having been shown, the burden of proof is now upon petitioner to prove that the seizure and forfeiture of its imported products was improper. Petitioner must prove by substantial evidence that its importation of soya milk powder is valid and legal, either by proving (1) that there is a valid CPR for 

²¹ Docket, Answer, p. 99.

²² *Casido v. Republic*, CTA EB No. 919, March 31, 2014, citing *Tri-Mark Ventures Trading Corp. v. Commissioner of Customs*, CTA Case No. 6575, September 18, 2007 (citing *Sanchez vs. Commissioner of Customs*, BTA Case No. 185, November 2, 1954, citing U.S. Vs. *One Bag of Paradise and Choura Feathers*, N.Y., 365 F. 301, 167, CCA 473; *Associated Banking Corp. vs. Commissioner of Customs, et al.*, CTA Case No. 2448, August 6, 1976; *Metropolitan Garment Corp. vs. Ramon Farolan*, CTA Case No. 3959, April 16, 1986; *Mayer Steel Pipe Corp. vs. Hon. Alfredo Pio de Roda, et al.*, CTA Case No. 2823, February 18, 1987.)

²³ *Id.*

the imported soya milk powder; or (2) that the imported soya milk powder does not require the submission of the CPR.

In its pleadings filed before the Court, petitioner admitted that the CPR it submitted was for a different product, and was not secured for the subject importation:

... petitioner was forced to submit the CPR for the product "POWDERED SOYA MILK DRINK" which was secured by petitioner for the soya milk product which it intended to repack/distribute in sachet packs under the brand name "VEGTAN ORGANIC SOYA GOLD MILK".²⁴

Thus, the said CPR with FDA Registration No. FR-114519²⁵ contained the following information:

Product Name	Powder Soya Milk Drink
Brand Name	VEGTAN ORGANIC SOYA MILK GOLD
Manufacturer	Diagem Packaging Systems, Inc.
Distributor	Unlimited Exchange Global Corporation

Clearly, petitioner failed to submit a valid CPR specifically issued for the imported soya milk powder.

Petitioner must then prove that the subject importation does not require the submission of a CPR. In order to do this, petitioner alleged that the subject importation is for its own use to be processed/repacked further into finished product in sachet packs.²⁶

In determining when the LTO and CPR are required to be submitted, Customs Memorandum Order (CMC) No. 54-2014²⁷ is helpful. It provides a matrix provided by the FDA, a portion of which is as follows:

PRODUCT CATEGORY	PRODUCT DESCRIPTION/FORM	REQUIREMENTS PRIOR TO BOC RELEASE	
		Valid LTO as Food Importer	Valid CPR
PROCESSED FOOD/	Finished Product		
	Finished Product in bulk as:		

²⁴ Docket, Petition for Review, p. 11; Petitioner's Pre-Trial Brief, p. 125; and Memorandum, p. 135.

²⁵ BOC Records, p. 176.

²⁶ Docket, Petition for Review, p. 11 and p. 19; Memorandum, p. 143.

²⁷ BOC Records, pp. 188-192.

FOOD PRODUCTS	a. Raw materials, food ingredients, food additives for own use	Valid LTO as Food Manufacturer	N/A
	b. Raw materials, food ingredients, food additives for local sale/distribution	Valid LTO as Food Importer	N/A Note: valid CPR shall required by 01 Sept. 2014
	c. for packing into its final product presentation for retail	Valid LTO as Food Importer/Wholesaler	Valid CPR

The Court will now examine petitioner's allegations vis-à-vis the requirements to be submitted prior to BOC release.

Petitioner alleged that the subject importation was for its own use to be processed/repacked further into finished product in sachet packs.²⁸

As shown in the matrix above, importations for own use and importations for packing into its final product presentation are classified differently. The conditions for release of importations of raw materials, food ingredients and food additives for own use is only a valid LTO as a food manufacturer. The CPR is not required. On the other hand, the conditions for release of importations for packing into its final product presentation requires a valid LTO as Food Importer/Wholesaler AND valid CPR.

Examining the record, petitioner is granted an LTO²⁹ as a Food Distributor/Importer, and not as a Food Manufacturer. Thus, if the Court were to accept petitioner's allegation that the importation of soya milk powder was for its own use, the release of such importation would still be withheld for failure to present the appropriate valid LTO as a Food Manufacturer.

As to the claim that the subject importation was for further processing/repacking, petitioner has the appropriate LTO as a Food Distributor/Importer, but not as a Wholesaler. Assuming that the LTO as Importer is sufficient, again the release of the subject importation would still be withheld for failure to present a valid CPR. This is because the submitted CPR was for a finished product manufactured by Diagem Packaging Systems,

²⁸ Docket, Petition for Review, p. 11 and p. 19; Memorandum, p. 143.

²⁹ BOC Records, LTO No. CFRR-NCR-FI-5321, p. 175.

Inc. and distributed by petitioner, and not the subject soya milk powder imported by petitioner.

This conclusion is further bolstered by Administrative Order No. 2014-029 dated September 8, 2014 issued by the Secretary of Health, and cited by the petitioner as follows:

6. Imported and locally manufactured raw materials, ingredients and food additives which are intended to be sold, offered for sale or for distribution to other food establishments and food business operators and consumers shall secure a CPR for each by the importer or distributor.

a. However, local food manufacturers who directly import and use raw materials, ingredients and food additives for their own use or for further processing to manufacture a processed food product, need not secure a CPR for the raw materials, ingredients and food additives.³⁰

It is clear that only food manufacturers are not required to secure/submit a CPR for importations of products for its own use. Considering that petitioner is licensed as a Food Distributor/Importer, then it does not fall under the category of Food Manufacturer.

All told, the Court finds that petitioner failed to discharge its burden to present substantial proof that the subject importation of soya milk powder was wrongfully seized and forfeited.

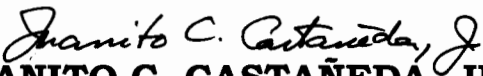
WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the Decision of the Commissioner of Customs dated September 9, 2016 is hereby **AFFIRMED**.

SO ORDERED.


CATHERINE T. MANAHAN
Associate Justice

³⁰ Docket, Petition for Review, p. 21; Memorandum, p. 145.

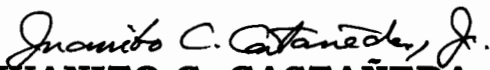
WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


CAESAR A. CASANOVA
Associate Justice

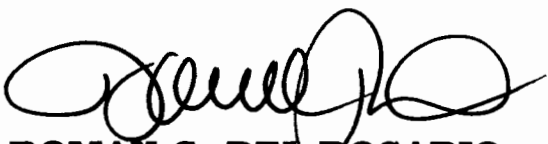
ATTESTATION

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

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's Division.


ROMAN G. DEL ROSARIO
Presiding Justice