REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

RS DE VERA TRUCKING, represented by ROGELIO S. DE VERA, owner of Two (2) units Fuso and One (1) unit Isuzu dump trucks with Plate Nos. ABB 5611, ABJ 8667 and RNL 846,
Petitioner,

-versus-

COMMISSIONER OF CUSTOMS,
Respondent.

CTA CASE NO. 9521

Members:

Castañeda, Jr., *Chairperson, and*
Manahan, *JJ.*

Promulgated:
DEC 14 2018 9:05 Am

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution is the September 25, 2018 Motion for Reconsideration of public respondent Commissioner of Customs (COC), with petitioner's October 16, 2018 Comment [To Respondent's Motion for Reconsideration], praying that the September 6, 2018 Decision of the Court be reconsidered and set aside. The dispositive portion of the decision reads:

> "**WHEREFORE**, premises considered, the Petition for Review is **GRANTED**. The assailed November 23, 2016 Decision of the Commissioner of Customs is **PARTIALLY REVERSED**.

Accordingly, the Warrant of Seizure and Detention issued against the two (2) units of Fuso and one (1) unit of Isuzu trucks is hereby **LIFTED** and the trucks are ordered **RELEASED** to the petitioner.

SO ORDERED."

Respondent COC moves for the reversal of the decision on the grounds that:

- Because petitioner violated a special law, lack of knowledge of the smuggling is not a defense[1] and, furthermore,

- The stipulated facts show active participation of petitioner in the violation of the customs law.[2]

We resolve to deny the motion for lack of merit.

Counsels for respondent argues that lack of knowledge is not a defense and should not have been considered by the Court in ordering the release of the vehicles.

First, counsels for respondent COC *contradict* the position taken in the appealed COC decision which, to quote in part, specifically stated that a finding on the knowledge of the owner of the trucks is essential to the determination of whether the vehicles can be forfeited under the law:

"II.

Anent the second issue, we rule in the negative.

Before touching on the issue of whether the involvement of the subject trucks violate Section 1113(a) of the CMTA, it is worth noting that the cargoes loaded on the said trucks were deemed smuggled for failure of its claimant to pay duties and taxes thereon.

In deciding whether the forfeiture is warranted for the trucks, Section 1113(a) of the CMTA must be applied, to wit:

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[1] Motion for Reconsideration, Docket, p. 294.
[2] Motion for Reconsideration, Docket, pp. 294-295.

> *'**Section 1113. Property Subject to Seizure and Forfeiture.** — Property that shall be subject to seizure and forfeiture include:*
>
> > *(a) Any vehicle, vessel or aircraft, including **cargo**, which shall be used unlawfully in the importation or exportation of goods or in conveying or transporting smuggled goods in commercial quantities into or from any Philippine port or place. The **mere carrying or holding** on board of **smuggled goods** in commercial quantities shall subject such **vehicle**, vessel, aircraft, or any other craft to forfeiture: Provided, That the vehicle, vessel, aircraft or any other craft is not used as a **common carrier** which has been **chartered** or **leased** for purposes of conveying or transporting persons or cargo; (Underscoring and emphases provided)*
> >
> > *xxx'*
>
> It can be gleaned from the foregoing provision that the trucks should be forfeited unless it is shown that the same (1) **are common carriers,** (2) **not chartered or leased,** and (3) **the owner or its agents had no knowledge of the unlawful act.**
>
> Thus, it becomes imperative to determine whether the claimant has satisfied all the requirements for its exemption from forfeiture given the surrounding circumstances. While it is clear from the evidence adduced that the claimant for the metal grits (Reynaldo Medestomas/AWAL Junkshop) violated the provisions of Republic Act No. 10863 and SBMA laws/rules/regulations, the determination whether forfeiture is warranted as to the trucks used in transporting the goods is another story. Such should be anchored primarily on the afore-quoted Section 1113(a) of the new CMTA." (*underscoring supplied*)

Second, the counsels for respondent cannot ignore the express provisions of law in Sections 1113(k) and 1114 of the Customs Modernization and Tariff Act (CMTA) which set clearly the conditions for the forfeiture of properties. Aside from the fact the petitioner owns and operates a legitimate business as a common carrier, as required in Section 1113(a), Sections 1113(k) and 1114 stipulate that the forfeiture of vehicles is *not* allowed if it is established that the owner thereof has no knowledge of the conveyance of the smuggled goods, thus: jr

"**Section 1113.** *Property Subject to Seizure and Forfeiture.*— Property that shall be subject to seizure and forfeiture include:

xxx xxx xxx

(k) Any conveyance actually used for the transport of goods subject to forfeiture under this Act, with its equipage or trappings, and any vehicle similarly used, together with its equipment and appurtenances. The mere conveyance of smuggled goods by such transport vehicle shall be sufficient cause for the outright seizure and confiscation of such transport vehicle <u>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 that the agent in charge thereof at the time, has no knowledge of the unlawful act</u>; and

xxx xxx xxx"
(*underscoring supplied*)

"**Section 1114.** *Properties not Subject to Forfeiture in the Absence of Prima Facie Evidence.* — <u>The forfeiture of the vehicle, vessel, or aircraft shall not be effected if it is established that the owner thereof or the agent in charge of the means of conveyance used as aforesaid has no knowledge of or participation in the unlawful act</u>: Provided, That a *prima facie* presumption shall exist against the vehicle, vessel, or aircraft under any of the following circumstances:

(a) If the conveyance has been used for smuggling before;
(b) If the owner is not in the business for which the conveyance is generally used; and
(c) If the owner is not financially in a position to own such conveyance." (*underscoring supplied*)

Accordingly, respondent's reliance on *Fajardo v. People*,[3] where the Supreme Court acquitted Fajardo of the crime of illegal possession of firearms under Presidential Decree No. 1866, and on *Mendoza v. People*,[4] where the Supreme Court affirmed the conviction of Mendoza for failure to remit SSS contributions under R.A. No. 8282 or the Social Security Act of 1997, is misplaced. The laws involved in those cases did not have provisions similar to Sections 1113(k) and 1114.

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[3] G.R. No. 190889, January 10, 2011.
[4] G.R. No. 183891, August 3, 2010.

Third, respondent's declaration that petitioner Rogelio S. De Vera had knowledge in the smuggling of metal grits is essentially an allegation of fact that the petitioner successfully *disproved* during trial.

Based on petitioner's own testimony himself, on the terms of the contract of carriage and on the absence of any concrete findings to support the conclusion that petitioner had knowledge of the illegal acts both in the August 22, 2016 Decision of the District Collector and in the November 23, 2016 COC Decision,[5] the Court remains convinced that indeed petitioner had *no* knowledge *much less* any participation in the illegal conveyance of the metal grits from Hanjin. These facts were unrebutted by respondent COC because he elected not to present evidence during trial.[6] The stipulations on the discrepancies noted in the gate passes when the trucks were apprehended hardly prove petitioner's knowledge of the illegal conveyance especially against his categorical and unrefuted denial thereof.

The CTA is a court of record, thus, the cases filed before it are litigated *de novo* and party litigants should prove every minute aspect of their cases.[7] Otherwise stated, cases are decided based on what has been presented and formally offered by party litigants during the trial of the case before the Court and not on mere allegations.

WHEREFORE, premises considered, the respondent's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[5] September 6, 2018 Decision, pp. 283-287.
[6] May 15, 2017 Order, Docket, p. 162.
[7] *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.