Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

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HEWLETT PACKARD PHILIPPINES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF CUSTOMS,
Respondent.

CTA CASE No. 8448

Members:

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

Promulgated:
AUG 1 2 2014 2:50 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This resolves the Petition for Review filed by Hewlett-Packard Philippines Corporation on March 30, 2012, praying for this Court to reverse and set aside the Commissioner of Custom's Decision dated January 12, 2012; to reinstate the District Collector's Decision dated March 28, 2011; to accept petitioner's settlement offer in the amount of ₱1,540,682.30; and to order the Commissioner of Customs to approve immediately the release of petitioner's shipment upon payment of the settlement offer in the amount of ₱1,540,682.30.

THE FACTS

Petitioner Hewlett-Packard Philippines Corporation is a domestic corporation, incorporated under the laws of the Philippines[1], with business address at 37th Floor, Robinson's Summit Center, 6783 Ayala Avenue, Makati City.[2]

[1] Exhibits "A" to "A-13", docket, pp. 382-395.
[2] Exhibit "B-1", docket, p. 397.

On the other hand, respondent Commissioner of Customs is the head of the Bureau of Customs, the government agency responsible for the assessment and collection of lawful revenues from imported articles and all other dues, fees, charges, fines and penalties accruing under the Tariff and Customs Code of the Philippines (TCCP).

On September 3, 2009, petitioner, through its authorized Licensed Customs Broker, Delia R. Mahomoc, filed Formal Entry No. C81277[3] for a shipment of goods declared as "10 Pkgs. Computer Parts, 1 pc. 4GB WD Disk Drive," with a declared value of Forty-One Thousand Seven Hundred Seventy-Nine and 59/100 US Dollars (US$41,779.59). But when Customs Officer Edwin C. Asilo conducted an actual examination of the shipment, it was found that the shipment had a total invoice value of Seventy-Seven Thousand Three Hundred Sixty and 16/100 US Dollars (US$77,360.16).[4] Thus, the District Collector, Atty. Carlos T. So, issued Warrant of Seizure and Detention No. 023-2009 against the shipment.[5]

Thereafter, petitioner's Chief Financial Officer, Ms. Mary Grace Taeza, sent a letter dated November 10, 2009 to Atty. Agnez Dominez, Chief of Law Division of the Bureau of Customs, expressing petitioner's intention to settle the charges and further stating that the discrepancy between the declared value of the shipment and its actual value was caused by petitioner's inadvertent oversight.[6]

On November 24, 2009, petitioner received the District Collector's Notice of Hearing requiring it to show cause why the shipment should not be forfeited in favor of the government.[7]

Petitioner wrote another letter dated January 28, 2010 to the Law Division Chief, Atty. Agnez Dominez, informing her that petitioner would like to settle the charges based on the computations found in the Report on the Imposition/Non-Imposition of Surcharge/Penalty presented during the hearing held last January 15, 2010.[8]

Petitioner submitted to the District Collector its Position Paper dated February 12, 2010, while the government prosecutor did not file any comment to petitioner's Position Paper. Hence, the case was submitted for resolution.[9]

In a Decision dated March 28, 2011, the District Collector granted petitioner's offer for settlement and ordered the release of the shipment upon petitioner's

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[3] Par. 1, Joint Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, pp. 275-276.
[4] Par. 2, Joint Stipulation of Facts, JSFI, docket, p. 276.
[5] Par. 3, Joint Stipulation of Facts, JSFI, docket, p. 276.
[6] Exhibit "H", docket, p. 362.
[7] Par. 5, Joint Stipulation of Facts, JSFI, docket, p. 277.
[8] Exhibit "I", docket, p. 363.
[9] Pars. 8 and 9, Joint Stipulation of Facts, JSFI, docket, p. 277.

payment of customs duties in the amount of ₱473,318.20 and a penalty of sixty percent (60%) of its total landed cost equivalent to ₱1,076,364.00, or the total amount of ₱1,540,682.30.[10] However, on January 12, 2012, respondent Commissioner of Customs rendered a Decision, reversing the March 28, 2011 Decision of the District Collector, and accordingly forfeited petitioner's shipment.[11]

Consequently, petitioner filed the instant Petition for Review on March 30, 2012.[12]

Respondent interposed his defenses in his Answer[13] which was filed on May 31, 2012, the pertinent portions of which read:

> "13. Respondent COC repleads, reproduces and incorporates, by way of reference, all of the foregoing averments.
>
> **I. Respondent COC did not err in applying Section 2503 of the Tariff and Customs Code of the Philippines when he denied petitioner's offer of settlement under Section 2307.**
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> 14. Petitioner contends that Section 2503 of the Tariff and Customs Code of the Philippines (TCCP) does not apply. Hence, it does not need to overcome any *prima facie* finding of fraud with regard to the subject shipment. Petitioner likewise avers that only Section 2307 applies considering that the only issue involved in this case is whether its offer of settlement may be legally accepted. Thus, petitioner concludes that respondent COC erred when he decided the case concerning its settlement offer *'xxx by citing Section 2503 of the TCC(P) and the prima facie evidence of fraud as the bases for his assailed Decision xxx' (par. 20, Petition, pp. 11-12).*
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> 15. Section 2503 of the TCCP reads:
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> xxx xxx xxx
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> 16. Clearly, Section 2503 covers any case where (1) the dutiable value of the imported articles shall be declared and entered so that the duties, based on the declaration of the importer as appearing

[10] Par. 10, Joint Stipulation of Facts, JSFI, docket, pp. 277-278.
[11] Par. 11, Joint Stipulation of Facts, JSFI, docket, p. 278.
[12] Docket, pp. 7-29.
[13] Docket, pp. 87-132.

on the face of the entry, would be less than ten percent (10%) than should be legally collected; (2) the imported articles shall be declared and entered so that the duties, based on the importer's declaration as appearing on the face of the entry, would be less than ten percent (10%) than should be legally collected based on the tariff classification; and (3) the dutiable weight, measurement or quantity of imported articles exceeds by ten percent (10%) or more than the declared weight, measurement and quantity.

17. Stated otherwise, Section 2503 of the TCCP applies whenever there is (1) undervaluation, such as when the dutiable value declared and entered by the importer in the entry is less than ten percent (10%) than the actual dutiable value; (2) misclassification, such as when the dutiable value declared and entered by the importer in the entry is less than ten percent (10%) than the actual dutiable value based on the tariff classification; and (3) misdeclaration, such as when the dutiable weight, measurement or quantity declared and entered by the importer in the entry is less than ten percent (10%) than the actual weight, measurement or quantity.

18. In the instant case, the following facts remain undisputed:

a. The subject shipment was consigned to petitioner as the importer thereof.
b. **Said shipment was declared and entered by petitioner**, thru its broker, **under Formal Entry No. C81277**, on September 3, 2009.
c. **In the face of said Formal Entry No. C81277**, petitioner declared the said shipment to consist of ten (10) packages of computer parts, **with dutiable value of US$41,779.59**.
d. **Upon examination by the Bureau of Customs (BOC)**, it was found that the said shipment indeed consists of ten (10) packages of computer parts.
e. However, **the same shipment**, which was declared and entered by petitioner with a dutiable value of only US$41,779.59, **has an actual dutiable value of US$77,360.55**.

19. Indubitably, the declared dutiable value of the imported articles of petitioner, appearing on the face of Formal Entry No. C81277, is less by ten percent (10%) than the actual dutiable value found upon examination, or that which should be legally collected. Clearly, there is **undervaluation** as contemplated under Section 2503 of the TCCP. *gv*

20. In fact, it is worthy to note that petitioner did not attach in the instant petition a copy of the Import Entry & Internal Revenue Declaration (IEIRD) **(Annex '1')** it filed with the Bureau of Customs with respect to the subject importation.

21. Such failure of petitioner to include the same in its petition can only be reasonably presumed as a deliberate attempt on its part to downplay, if not conceal, the undervaluation it committed in its import entry, in violation of the aforequoted Section 2503 of the TCCP.

22. Be that as it may, petitioner itself nevertheless categorically admitted that there was a ***'xxx discrepancy between the declared value of the shipment and its actual value'*** xxx.

23. Again, petitioner, in its letter dated January 28, 2010, admitted that such discrepancy exists between the declared value of the shipment and its actual value xxx.

24. Without doubt, there is undervaluation in the petitioner's entry, as there exists a discrepancy between the declared value and the actual value of the subject shipment by at least ten percent (10%).

25. In the instant case, it is likewise apparent that such undervaluation is more than thirty percent (30%) between the value declared in the entry, and the actual value. Thus, a *prima facie* evidence of fraud exists against petitioner.

26. In fact, not only did petitioner categorically admit that a discrepancy exists between the '*invoice value found in the airway bill and the declaration made by (its) broker,*' it had also admitted that said discrepancy between the invoice value stated in the airway bill covering the subject shipment and its declaration in the Formal Entry is more than thirty percent (30%), which discrepancy '*cannot be gainsaid*' and '*provides xxx prima facie evidence of fraud.*' Thus, petitioner states:

xxx xxx xxx

27. It is thus incontrovertible that the *prima facie* evidence of fraud referred to by petitioner in its Position Paper pertains to that specifically provided for under the aforequoted Section 2503 of the TCCP. It cannot now therefore validly claim that the same Section 2503 does not apply in the instant case. *Jr*

28. Similarly, in the import entry filed, petitioner made it appear that the customs value thereof is only US$41,779.59, when in fact, the actual customs value thereof is US$77,360.15. Such falsity in the declaration constitutes **fraud** as defined in Section 1 of Customs Memorandum Order No. 87-92. Thus:

xxx xxx xxx

29. Thus, under the circumstances obtaining in this case, petitioner may not be allowed to settle the seizure case then pending before the BOC under Section 2307 of the TCCP.

30. Further, it is even ludicrous for petitioner to insist that Section 2503 finds no application in the instant case as only Section 2307 allegedly applies, considering that, as respondent COC correctly put it, and as admitted by petitioner, *'the only issue to be resolved in this case is whether or not claimant's (petitioner's) offer of settlement pursuant to Section 2307 of the (TCCP), as amended may be legally accepted'* (par. 18, Petition, pp. 10-11)

31. Again, petitioner's claim must fail.

32. At the outset, Section 2307 of the TCCP provides for the settlement of **any seizure case** by payment of fine or redemption of forfeited property. It is also a matter of fact, and even of judicial notice, that Section 2503 falls under the provisions of the TCCP on Surcharges, Fines and Forfeitures. In fact, Section 2503 expressly provides for the forfeiture of the imported articles.

33. Section 2307 of the TCCP reads:

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34. Clearly, the determination of whether petitioner's offer of settlement under Section 2307 may be legally accepted squarely depends on the matter of undervaluation and the *prima facie* evidence of fraud under Section 2503.

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40. There is also no basis for petitioner to allege that respondent wrongly interpreted and adopted his own interpretation of Section 2307, so as *'to cover even fraudulent importations' (par. 25, Petition, p. 14).*

41. On this score, it bears to stress that the case of undervaluation, as well as the *prima facie* evidence of fraud when such undervaluation exceeds 30% under Section 2503 of the TCCP, covers any seizure cases of imported articles where there is a discrepancy between the declared dutiable value appearing on the face of the entry and the actual dutiable value thereof upon examination of the BOC. Thus, it is quite logical that such *prima facie* evidence of fraud is established by the law itself because the subject importation covering the underdeclared articles is deemed to have been tainted with fraud, thereby warranting its seizure and forfeiture in favor of the government.

42. To repeat, Section 2503 of the TCCP applies when the importer commits undervaluation in its entry covering the subject importation. Thus, the *prima facie* evidence of fraud contemplated therein is necessarily attributable to such importation covered by the subject entry where the underdeclaration appears. On the other hand, Section 2307 applies to settlement of any seizure cases, which as previously discussed, includes seizure and forfeiture cases as a result of undervaluation under Section 2503.

43. Thus, when read together with Section 2503, the same seizure and forfeiture cases referred to under Section 2307 of the TCCP as well as CAO No. 4-94, which may be settled by payment of fine or redemption, contemplates a situation where the *prima facie* evidence of fraud under Section 2503 has been satisfactorily rebutted.

44. Hence, it is only in the event that the importer had sufficiently established that despite the discrepancy between the declared value and actual value of the imported articles or undervaluation under Section 2503, its importation was not however attended by fraud, can its offer of settlement be legally accepted by the BOC. Naturally then, and it is also even logical to conclude that should there be fraud, or when the *prima facie* evidence of fraud under Section 2503 was not successfully rebutted by the importer, then the subject seizure and forfeiture cases cannot be the subject of any settlement.

45. In other words, when there is *prima facie* evidence of fraud under Section 2503, such as when there is gross undervaluation of the subject importation, the imported articles covered by the importation is subject to forfeiture. In such an instance, where the *prima facie* evidence of fraud remains unrebutted, no settlement can be validly made, as contemplated under Section 2307. *Je*

46. Clearly then, respondent COC did not commit any reversible error when he ruled that the offer of settlement made by petitioner cannot be validly accepted because its importation is fraudulent.

II. Petitioner utterly failed to discharge the burden of overcoming the *prima facie* evidence of fraud.

47. It must be emphasized that the burden of proof in seizure and forfeiture cases lies upon the claimant. As provided for in Section 2535 of the TCCP, thus:

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48. It is likewise settled that before forfeiture proceedings are instituted, the law requires the presence of probable cause. Once established, the burden of proof is shifted to the claimant *(Carrara Marble Philippines, Inc., vs. Commissioner of Customs, G.R. No. 129680 September 1, 1999).*

49. Thus, in the case of *Pacasirang Batidor & MV 'Hennesy' Philippines Diamond Cruiser Corporation (PDCC) vs. Bureau of Customs, et al., CTA Case No. 6006, August 24, 2001,* this Honorable Court enunciated, thus:

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50. In the instant case, it is an undisputed fact that the importation in question had an actual dutiable value of US$77,360.55 and not US$41,779.59 as declared by petitioner in the import entry. Thus, there was indeed an apparent undervaluation of the shipment on the part of petitioner. This constituted a *prima facie* evidence of infringement of the provisions of the TCCP, specifically Section 2503 thereof, and provided sufficient basis for the seizure of the subject importation.

51. Thus, given the existence of such *prima facie* evidence of fraud against petitioner with respect to its importation, the government had already sufficiently established that there is probable cause to institute seizure and forfeiture proceedings against the subject imported articles.

52. Probable cause having been shown in this case, as underdeclaration constituted *prima facie* evidence of fraud, the burden of proof is now shifted to petitioner.

53. Thus, the requirement of the law that probable cause must first be show before the filing of the forfeiture proceedings, had been fully complied with in the case at bar. The mere fact that there was an undervaluation made by the petitioner in its import entry, already constituted a violation of the TCCP. Moreso, since the undervaluation of the subject shipment amounted to more than 30% between the value declared in the import entry and the actual value of the subject shipment, there exists a *prima facie* evidence of fraud against petitioner. It is therefore, incumbent upon petitioner to overcome this presumption by substantial evidence.

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55. Here, petitioner however failed to discharge this burden.

56. Petitioner insists that it had allegedly submitted substantial evidence to warrant the acceptance by the BOC of its offer of settlement, claiming that the discrepancy between the shipment's declared value and its actual value resulted from an inadvertent oversight on its part.

57. According to petitioner, with respect to the subject shipment, its broker allegedly used the business model for its regular trade shipments and thus, declared the value thereof at a discounted level. Thus:

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59. Assuming, *ex argument,* that its broker committed such an error in (mis)applying the corporation's business model to the subject shipment, petitioner should have endeavored to present its broker, or at least, submitted the latter's sworn statement to that effect, if only to substantiate its barefaced claim, and not merely settled to allege its supposed innocence and/or mere inadvertence. After all, if there be someone who could shed some light on the alleged error, it is no other than the petitioner's broker herself.

60. Failing which, petitioner's allegations remained to be self-serving, unfounded and unsubstantiated, which therefore do not, and

cannot, amount to substantial evidence necessary to overcome the *prima facie* evidence of fraud against it.

61. Thus, it was likewise error for petitioner to claim that the foregoing allegations on its alleged inadvertent oversight '*were neither controverted nor challenged by the government's counsel or the District Collector' (par. 31, Petition, p. 16).*

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63. Also, petitioner's reliance on the cases of *Transglobe International, Inc. vs. Court of Appeals, et al., G.R. No. 126634, January 25, 1999 and Hon. Ramon Farolan, Jr. etc. vs. Court of Tax Appeals, et al., G.R. No. L-42204, January 21, 1993,* is misplaced, as the facts therein do not completely square with those in the case at bench, and are thus, inapplicable to the instant case.

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77. Petitioner cannot likewise validly escape the resulting forfeiture of its shipment on the ground of its alleged '*utmost good faith' (see pars. 34-50, Petition, pp. 18-20).*

78. Settled is the rule that good faith cannot be invoked to avoid forfeiture, for forfeiture proceedings are *in rem* and directed against the *res,* not the *persona (COC vs. Evergood Merchandising Co., Inc., CA-G.R. SP No. 51213, July 31, 2001, citing Vide Vierneza vs. COC, 24 SCRA 394; COC vs. Manila Star Ferry, Inc., 227 SCRA 317; COC vs. Court of Tax Appeals, 138 SCRA 581).*

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80. Considering the very nature of seizure and forfeiture proceedings to be one *in rem,* petitioner's defense of alleged good faith on its part is of no moment and unavailing.

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84. Similarly, petitioner cannot conveniently escape the forfeiture of the subject shipment on the alleged ground of good faith and lack of knowledge of the error appearing in its import entry.

85. Under Section 1301 of the TCCP, the declarations and statements contained in the Import Entry made by a party other than the importer are presumed to be true and correct, and which statements constitute *prima facie* evidence of knowledge and consent of the importer of the violation against the applicable provisions of the Code should the importation turned out to be unlawful or irregular. Said provision reads:

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86. Thus, the declarations made in the subject import entry by its (petitioner's) broker are likewise presumed true and correct and shall constitute *prima facie* evidence of knowledge and consent on its part of the violation of Section 2503 of the TCCP.

87. Further, the acts of its broker, particularly the undervaluation appearing on the subject import entry, is binding on petitioner, as the principal.

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89. Similarly, in the instant case, other than its barefaced yet unsubstantiated claim of alleged good faith and lack of knowledge or participation in the underdeclaration committed in the subject import entry, petitioner did not adduce any other clear, strong and convincing evidence, sufficient to overcome the presumption of actual fraud established by law.

90. Verily, as petitioner has failed to overcome the *prima facie* evidence of fraud under Section 2503 arising from the undervaluation in its import entry, it cannot validly ask for the settlement of the instant seizure case by payment of fine under Section 2307 and CAO 4-94. In the same manner, as petitioner likewise failed to overthrow the *prima facie* evidence of knowledge under Section 1301 that the subject shipment was fraudulently undervalued, such presumed or construed knowledge has now attained a conclusive or *jure et de jure* character.

91. All told, respondent COC did not err in disallowing the offer of settlement by petitioner, on the ground of fraud."

Petitioner also filed its Reply through registered mail on June 15, 2012, averring that only Section 2307 of the TCCP applies in this case and that in any event, it provided substantial evidence to prove that its importation was not attended by any form of fraud.[14]

The case was set for pre-trial conference on July 5, 2012.[15] Respondent's Pre-Trial Brief[16] was filed on June 21, 2012; while petitioner's Pre-Trial Brief[17] was filed on July 2, 2012.

On August 2, 2012, the parties filed their Joint Stipulation of Facts and Issues.[18] Subsequently, the Court issued a Pre-Trial Order dated August 23, 2012 and considered the pre-trial of the case terminated.[19]

During trial, both parties presented their respective documentary and testimonial evidence.

Petitioner presented Mary Grace K. Taeza, petitioner's Chief Financial Officer/Country Controller as its lone witness.[20] Also, petitioner presented and formally offered Exhibits "A" to "K-1",[21] which were admitted as part of its documentary evidence with the exception of Exhibit "F-6" for petitioner's failure to submit the same to the Court, and Exhibits "F-1", "F-9", "F-10", "F-10-A", and "F-10-B" for not being identified during trial and for petitioner's failure to submit them to the Court.[22]

On the other hand, respondent presented Edwin C. Asilo[23], Customs Operations Officer III of the Bureau of Customs, and Lilibeth N. Macarambon[24], assigned as Customs Operations Officer V of the Bureau of Customs-NAIA Customshouse, as his witnesses. Respondent likewise presented and formally offered Exhibits "1" to "5-a",[25] which were admitted as part of his documentary evidence with the exception of Exhibits "3" and "3-d" for failure of respondent to present the original documents for comparison.[26] Nevertheless, respondent's "Proffer of Excluded Evidence" with respect to the excluded evidence, Exhibits "3" and "3-d", was noted by the Court and the said exhibits were made part of the records of this case.[27] *gr*

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[14] Docket, pp. 147-159.
[15] Notice of Pre-Trial Conference issued on June 4, 2012, docket, p. 136.
[16] Docket, pp. 138-145.
[17] Docket, pp. 162-174.
[18] Docket, pp. 275-280.
[19] Docket, pp. 285-290.
[20] TSN dated September 27, 2012; Exhibit "K", docket, pp. 294-298.
[21] Docket, pp. 374-381.
[22] Resolution dated December 18, 2012, docket, pp. 452-453.
[23] TSN dated January 14, 2013; Exhibit "5", docket, pp. 572-578.
[24] TSN dated March 4, 2013.
[25] Docket, pp. 580-589.
[26] Resolution dated July 29, 2013, docket, pp. 637-638; Resolution dated December 11, 2013, docket, pp. 704-705.
[27] Resolution dated December 11, 2013, docket, pp. 704-705.

The case was submitted for decision on February 27, 2014[28] after respondent submitted his Memorandum[29] on February 11, 2014 and petitioner submitted its Memorandum[30] through registered mail on February 17, 2014.

THE ISSUES

The parties submitted the following issues[31] for this Court's disposition:

> "1. Whether or not petitioner committed any fraud;
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> 2. Whether or not respondent acted in accordance with law when he overturned the District Collector's Decision dated March 28, 2011;
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> 3. Whether or not respondent erred in denying petitioner's offer of settlement;
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> 4. Whether or not petitioner committed gross undervaluation under Section 2503 of the Tariff and Customs Code of the Philippines;
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> 5. Whether or not petitioner had successfully discharged its burden of overcoming the *prima facie* evidence of fraud established by law; and
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> 6. Whether or not petitioner's offer of settlement can be validly accepted."

THE COURT'S RULING

The shipment subject of the instant case was forfeited for alleged violation of Sections 2530(f) and 2503 of the Tariff and Customs Code of the Philippines. Section 2530(f) of the TCCP provides:

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

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[28] Docket, p. 779.
[29] Docket, pp. 715-751.
[30] Docket, pp. 754-778.
[31] Joint Stipulation of Issues, docket, pp. 278-279.

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> 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.

On the other hand, Section 2503 of the TCCP reads:

> SEC. 2503. *Undervaluation, Misclassification and Misdeclaration in Entry.* – When the dutiable value of the imported articles shall be so declared and entered that the duties, based on the declaration of the importer on the face of the entry, would be less by ten percent (10%) than should be legally collected, or when the imported articles shall be so described and entered that the duties, based on the importer's description on the face of the entry would be less by ten percent (10%) than should be legally collected based on the tariff classification, or when the dutiable weight, measurement or quantity of imported articles is found upon examination to exceed by ten percent (10%) or more than the entered weight, measurement or quantity, a surcharge shall be collected from the importer in an amount of not less than the difference between the full duty and the estimated duty based upon the declaration of the importer, nor more than twice of such difference: Provided, That **an undervaluation,** misdeclaration in weight, measurement or quantity of **more than thirty percent (30%) between the value,** weight, measurement, or quantity **declared in the entry, and the actual value,** weight, quantity, or measurement, **shall constitute a prima facie evidence of fraud penalized under Section 2530 of this Code:** Provided, further, **That any** misdeclared or **undeclared imported articles/items found upon examination shall ipso facto be forfeited in favor of the Government to be disposed of pursuant to the provisions of this Code.**
>
> When the undervaluation, misdescription, misclassification or misdeclaration in the import entry is intentional, the importer shall be subject to the penal provision under Section 3602 of this Code. (Emphasis supplied)

In this case, petitioner claimed that it did not commit any fraud in its importation of goods declared as "10 Pkgs. Computer Parts, 1 pc. 4GB WD Disk Drive." According to petitioner, it had no intention whatsoever of defrauding the government of the tax and customs duties due it by virtue of the importation of the subject shipment.

Petitioner alleged that if there was discrepancy between the shipments' declared value as opposed to its inspected value, the same was only an inadvertent oversight. The oversight was a result of an error in petitioner's internal computer system; and that the error occurred while generating the customs invoice for the value of the shipment. Petitioner added that the values found in the questioned customs invoices did not originate from its systems. The invoices were entirely generated by "Hewlett-Packard International SARL," an entity located in Switzerland. Since petitioner merely accepts consignments from Hewlett-Packard International SARL, it has absolutely no control over any valuation errors that its Swiss counterpart may commit.

Petitioner also pointed out that it has spotless reputation as one of the world's most ethical companies. In fact, petitioner admitted that there was a discrepancy in the declared value and inspected value of the shipment; and it immediately offered to settle its liabilities with the District Collector at a rate beyond the minimum required amount.

Also, petitioner insisted that proof of actual fraud is still necessary for denial of petitioner's settlement offer. Petitioner stressed that respondent relied only on a *prima facie* evidence of fraud as basis for denying petitioner's settlement offer. Such reliance, according to petitioner, directly contravenes Section 2530 of the TCCP. Petitioner asserted that absent any actual concrete evidence of its willful intent to deceive the government, it must be allowed to redeem its shipment pursuant to Section 2307 of the TCCP.

Petitioner likewise alleged that Section 2503 of the TCCP does not apply in this case considering that the assailed Decision mentioned that "[t]he only issue to be resolved in this case is whether or not claimant's offer of settlement pursuant to Section 2307 of the Tariff and Customs Code of the Philippines, as amended, may legally be accepted." According to petitioner, respondent denied petitioner's settlement offer by citing Section 2503, instead of Section 2307, both of the TCCP, and based the assailed Decision on the *prima facie* evidence of fraud.

Petitioner further contended that respondent erred when he inexplicably rephrased the Supreme Court's interpretation of Section 2307 as ruled in *Transglobe International, Inc. v. Court of Appeals*[32] to cover even fraudulent importations.

Petitioner likewise averred that it provided substantial evidence to overcome the *prima facie* evidence of fraud under Section 2503 of the TCCP and that it exhibited utmost good faith in the proceedings before the Bureau of Customs. *Je*

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

Lastly, petitioner manifested that it has no objections to the District Collector's computations and only prays for the opportunity to discharge its obligation to the government.

In addressing the foregoing arguments, the Court found instructive Section 2535 of the TCCP which provides for the burden of proof in seizure and/or forfeiture, to wit:

> 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.

Simply put, the law requires the presence of probable cause before forfeiture proceedings are instituted. Once established, the burden of proof is shifted to the claimant.

In this case, the Report on the Imposition/Non-Imposition of Surcharge/Penalty prepared by Customs Officer Edwin C. Asilo shows that after actual examination, it was found that the declared value of the shipment in the Import Entry and Internal Revenue Declaration (entry) amounted to US$41,779.59, while the value of the shipment as found by the customs examiner amounted to US$77,360.15. In the same report, it was concluded that there was undervaluation of the actual value of the shipment.[33] The said undervaluation was admitted by petitioner in its letter[34] to respondent dated November 10, 2009 and in its Memorandum[35] filed on February 17, 2014. Considering the undisputed findings of respondent that there was undervaluation of the subject shipment, having a difference of more than 30% between the declared value in the entry[36] and the actual value[37], the same constituted a *prima facie* evidence of fraud penalized by forfeiture under Section 2530 of the TCCP. Since probable cause was already established, the burden of proof is now shifted to petitioner as provided under Section 2503 of the TCCP.

Records show that petitioner failed to submit sufficient and convincing evidence that will overcome the *prima facie* evidence of fraud in this case. In fact, the existence of undervaluation was never refuted but, was even admitted by petitioner. Instead of presenting evidence to rebut the *prima facie* evidence of fraud, petitioner

[33] Exhibit "2", docket, p. 245.
[34] Exhibit "H", docket, p. 362.
[35] Docket,, p. 775.
[36] Exhibit "E-4", docket, p. 270.
[37] The declared value in the airway bill amounts to USD$77,360.15, Exhibit "1", docket, p. 249.

merely insisted that the discrepancy between the shipment's values was only an unintended mistake, without any sufficient and convincing evidence to support it.

While petitioner explained that the discrepancy resulted from an inadvertent oversight; that the oversight was a result of an error in petitioner's internal computer system; and that the error occurred while generating the customs invoice for the value of the shipment, explanations which can also be found in the letters[38] of petitioner addressed to the Chief of the Law Division, Collection District III-NAIA Bureau of Customs dated November 10, 2009 and January 28, 2010, petitioner, however, failed to present evidence to substantiate them.

The Court cannot likewise give probative value to petitioner's allegations that values found in the questioned customs invoices did not originate from petitioner's systems and that it has absolutely no control over any valuation errors its Swiss counterpart may commit since no evidence was presented by petitioner to support such allegations.

Petitioner's bare allegations are far from sufficient proof for the Court to rule in its favor. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.[39] Bare allegations which are not supported by any evidence, documentary or otherwise, sufficient to support a claim, fall short to satisfy the degree of proof needed.[40]

Furthermore, *prima facie* evidence has been defined as evidence which, standing alone unexplained or uncontroverted, is sufficient to maintain the proposition affirmed. It is such as, in judgment of law, is sufficient to establish the fact, and if not rebutted, remains sufficient for that purpose. It is evidence which suffices for the proof of a particular fact until contradicted and overcome by other evidence.[41]

Considering that petitioner failed to present evidence to contradict and overcome the *prima facie* evidence of fraud in this case, such as the undervaluation of more than 30%, or almost 45.99%, between the declared value in the entry and the actual value of the shipment found by the customs examiner, the said *prima facie* evidence suffices as proof of the existence of fraud.

As to the issue on whether or not respondent erred in denying petitioner's offer of settlement, the Court found relevant Section 2307 of the TCCP, which reads:

> SEC. 2307. *Settlement of Case by Payment of Fine or Redemption of Forfeited Property.* – Subject to approval of the

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[38] Exhibits "H" and "I", docket, pp. 362-363.
[39] *Real v. Belo,* G.R. No. 146224, January 26, 2007.
[40] *LNS International Manpower Services v. Padua, Jr.,* G.R. No. 179792, March 5, 2010.
[41] *Republic v. Sandiganbayan, et al.,* G.R. Nos. 112708-09, March 29, 1996.

> 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.
>
> xxx xxx xxx
>
> 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)

From the foregoing, it is clear that settlement of any seizure case may be accepted by the District Collector, subject to approval of respondent, except when there is fraud.

Notably, the existence of fraud in the importation of the subject shipment has already been established in this case. Thus, the offer of settlement by petitioner of the forfeiture case may not be accepted.

Also, the Court cannot sustain petitioner's allegation that respondent, in denying the offer of settlement, relied merely on the *prima facie* evidence of fraud in this case. A close scrutiny of the records show that respondent not only relied on the *prima facie* evidence of fraud in ruling for the reversal of the decision of the District Collector, but further considered petitioner's failure to present evidence to support its explanation as regards the undervaluation of the declared value of the shipment, which, necessarily made the *prima facie* evidence sufficient to prove the existence of fraud.

Petitioner could have presented before this Court evidence to support its explanation as to the undervaluation found by the customs examiner. However, what petitioner did was merely to interpose arguments which were not supported by evidence.

Furthermore, petitioner's allegation that Section 2503 of the TCCP does not apply in this case simply because the applicable provision is Section 2307 of the TCCP is untenable.

To be clear, respondent, in the assailed Decision, found the *prima facie* evidence of underdeclaration of more than 30% which was sufficient to prove the existence of fraud pursuant to Section 2503 of the TCCP in view of petitioner's failure to submit evidence to overcome the said *prima facie* evidence. Consequently, it would be illogical for respondent to allow the settlement of the forfeiture case when the existence of fraud in the importation of the subject shipment was already established. Acceptance of the settlement in this case would only result in a violation of the provision under Section 2307 of the TCCP which does not allow the acceptance of settlement of a seizure/forfeiture case when there is fraud.[42]

It must also be emphasized that the determination by the proper administrative agencies and officials who have acquired expertise, specialized skills and knowledge in the performance of their functions should be accorded respect, absent any showing of grave abuse of discretion. Government officials are presumed to perform their functions with regularity and strong evidence is necessary to rebut this presumption.[43] Again, petitioner failed to present strong evidence to sufficiently counter this presumption.

Accordingly, the Court finds no reversible error in respondent's reversal of the ruling of the District Collector dated March 28, 2011 accepting petitioner's offer of settlement for the release of the subject shipment, as well as in respondent's order for the forfeiture of the subject shipment.

In sum, for failure to adduce evidence to prove that the undervaluation was indeed due to mistake or inadvertence, petitioner's prayer for the reversal of the assailed Decision of respondent and for the release of the subject shipment could not be granted.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[42] Annex "A", Petition for Review, docket, pp. 34-41.
[43] *Tatad, et al. v. Garcia, Jr., et al.,* G.R. No. 114222, April 6, 1995.

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.
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.

ROMAN G. DEL ROSARIO
Presiding Justice