REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

*Second Division*

**MARVIN RULONA REYES,**
Petitioner,

**CTA CASE NO. 10340**

- versus -

**COMMISSIONER OF CUSTOMS, BUREAU OF CUSTOMS,**
Respondent.

Members:
**RINGPIS-LIBAN,** *Chairperson*
**MODESTO-SAN PEDRO,** *and*
**FERRER-FLORES,** *JJ.*

Promulgated:

AUG 07 2024 3:55 p.m.

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# DECISION

***RINGPIS-LIBAN, J.:***

## The Case

Before the Court is the instant *Petition for Review*[1] filed on September 04, 2020 by petitioner Marvin Rulona Reyes against respondent Commissioner of Customs ("COC"), seeking to annul and reverse respondent's Decision dated July 21, 2020, which affirmed the Decision of the Acting District Collector of the Port of Clark ordering the forfeiture of two (2) aluminum closed vans with plate numbers CAP 6868 and CAK 7736 ("subject vans") in favor of the government.

## The Parties

Petitioner is of legal age with address at 27 Marathon St., Kamuning, Quezon City.[2]

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[1] Docket, pp. 6-16; Originally captioned as "Petitioner for Review," but for purposes of this Decision, the correct caption "Petition for Review" will be used throughout.

[2] *Id.*, *Petition for* Review, Parties to the Case, Par. 5, p. 6.

Respondent is the head of the Bureau of Customs ("BOC"), an attached agency of the Department of Finance with address at G/F OCOM Building, Port of Manila, South Harbor, Manila.[3]

## **The Facts**

On July 12, 2019, the shipment of Terratech Trading arrived at the Port of Clark, Pampanga, and was stored at a UPS Delbros International Express warehouse in Clark, Pampanga. The shipment was released and allowed to be loaded into the subject vans [4] On the same day, the subject vans were apprehended by Task Force Aguila and the shipment was thoroughly examined.[5]

It was discovered that the shipment contained the following: 7,600 units Vivo V15, 800 units Leagoo M13 Model, 1,300 units Xiaomi Redmi 7s, 400 units Xiaomi Note 7,800 units Xiaomi Honor 7s, 250 units Honor 8c, 1,620 units Xiaomi Mi 6A, 80 units Xiaomi Mi 4 Tablet, 30 units Smart Watch, 40 units Xiaomi Air Wireless Earphones, 200 units smart watch, 99 units Oppo, 20 units Xiaomi Mi 90T, 1 carton containing 1 unit Iphone, 8 pieces HDMI Cable and 1 piece Speaker, 6,000 units USB, 345 pieces Sports Watch, 20 units Iphone 6, 25 units Cellphone White casing and PG06 marking at the back.[6]

On July 15, 2019, a Warrant of Seizure and Detention ("WSD"), docketed as SI No. CFZ 020-2019, was issued by the Acting District Collector of the Port of Clark. The shipment and the subject vans were seized by the BOC for violations of the Customs Modernization and Tariff Act ("CMTA").[7]

Petitioner filed a *Motion for Intervention*[8] on August 08, 2019 alleging that he is the rightful owner of the closed vans seized. Finding that he has a legal interest in the proceeding, he was allowed to intervene. Petitioner consequently filed his *Position Paper* on September 10, 2019, attaching therewith copies of the Deeds of Sale, with an Offer of Settlement by Payment of Fine, for the release of the seized subject vans, pursuant to Section 1124 of the CMTA. Notably, the Acknowledgement Receipt (marked and attached as Exhibit "P-2") was not submitted in the proceedings before the BOC.[9]

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3 *Id.*, *Joint Stipulation of Facts and Issues* (JSFI), Stipulated Facts, Par. 1, p. 121.
4 *Id.*, JSFI, Stipulated Facts, Par. 2, p. 121.
5 *Id.*, JSFI, Stipulated Facts, Par. 3, p. 121.
6 *Id.*, JSFI, Stipulated Facts, Par. 4p. 122.
7 Republic Act No. 10863 – *An Act Modernizing the Customs and Tariff Administration*; Docket, JSFI, Stipulated Facts, Par. 5, p. 122.
8 BOC Records, pp. 144-146.
9 Docket, JSFI, Stipulated Facts, Par. 6, p. 122.

The Acting District Collector of the Port of Clark issued a Decision on February 20, 2020 forfeiting the subject vans in favor of the government.[10]

On March 13, 2020, petitioner filed his *Notice of Appeal* with *Memorandum on Appeal*, praying for the reversal and annulment of the Decision dated February 20, 2020.[11]

Petitioner received on August 06, 2020[12] respondent's denial of his appeal in the Decision dated July 21, 2020 (Seizure Identification No. CFZ 020-2019),[13] the dispositive portion of which, states:

> "**WHEREFORE**, finding no reversible error, the Decision dated 20 February 2020 of the Acting District Collector, Port of Clark, which ordered the forfeiture of the Two Aluminum Closed Vans with Plate Numbers CAP 6868 and CAK 7736 in favor of the government is hereby **AFFIRMED**.
>
> Let this case be forwarded to the Bureau's Action Team Against Smugglers (BATAS) and Intelligence Group (IG) to form part of the records of the case and continue the conduct of the necessary proceedings as may be required.
>
> **SO ORDERED**."

Aggrieved by the COC's ruling, petitioner filed the present *Petition for Review* on September 04, 2020 with this Court,[14] and the case was initially raffled to the Second Division.

On November 19, 2020, respondent filed his *Answer*[15] and transmitted the BOC Records.[16]

The Pre-Trial Conference was initially set on March 17, 2021.[17] However, considering the non-appearance of petitioner's counsel on the said date, the

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[10] *Id.*, JSFI, Stipulated Facts, Par. 7, p. 122.
[11] *Id.*, JSFI, Stipulated Facts, Par. 8, p. 122.
[12] *Id.*, Petition for Review, Par. 2, p. 6.
[13] BOC Records, Exhibit "P-1", pp. 2-8.
[14] Docket, pp. 6-16.
[15] *Id.*, at 52-59.
[16] *Id.*, Transmittal letter dated November 18, 2020, p. 50.
[17] *Id.*, Notice of Pre-Trial Conference dated January 21, 2021, pp. 63-64.

Court rescheduled to May 03, 2021.[18] Upon petitioner's *Motion* filed on May 17, 2021,[19] the Pre-Trial Conference was reset to,[20] and held on, July 26, 2021.[21] Prior thereto, on March 10, 2021, petitioner filed his *Pre-Trial Brief*, while respondent posted his *Pre-Trial Brief*.[22] Notably, in his *Pre-Trial Brief*, respondent manifested that, considering that the entire case docket has already been elevated to this Court, he will no longer present the same and that no witnesses will be presented.

On November 29, 2021, the parties posted their *Joint Stipulation of Facts and Issues*,[23] which was approved and adopted by the Court in the Pre-Trial Order dated February 17, 2022,[24] thereby deeming the termination of the Pre-Trial.

At the hearing held on April 25, 2022, petitioner testified on direct examination by way of his Judicial Affidavit,[25] and was also subjected to cross-examination. The pertinent portions of his testimony are as follows:

*Petitioner's Direct Testimony*

Petitioner testified that he is the owner of the two (2) closed vans seized with plate numbers CAP 6868 and CAK 7736. He is the manager of Noblesse KTV in Pampanga and has a small-time trucking/hauling business on the side. He started advertising to friends and asked for referrals. He was contracted by a certain Chris Pablo to deliver the shipment of mobile phones of Terratech trading to Manila for a total of Php17,000, fifty percent (50%) of which, or Php8,500, was paid as downpayment, and the balance to be paid upon delivery. He was later informed by his drivers, on July 12, 2019, that the BOC seized the mobile phones and the vans. As he went to the BOC to verify, he was told that the vans were being seized for smuggling.

Reyes tried to reach out to Chris Pablo at the address of Terratech Trading stated in the Airway Bill, but the address was not existing. He did not see or talk to Chris Pablo after the incident.

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18 *Id.*, Minutes of the hearing held on, and Order dated, March 17, 2021, pp. 69-70.
19 *Id.*, pp. 71-72.
20 *Id.*, Resolution dated June 07, 2021, pp. 89-90.
21 *Id.*, Minutes of the hearing held on, and Order dated, July 26, 2021, pp. 95-96.
22 *Id.*, pp. 65-68, and 80-86, respectively.
23 *Id.*, pp. 121-126.
24 *Id.*, pp. 151-153.
25 *Id.*, Exhibit "P-8", pp. 34-40; Minutes of the hearing held on, and Order dated, April 25, 2022, pp. 161 to 162.

Finally, Reyes testified that he does not have any interest over the seized shipment as he was not the importer or owner of the goods. His interest is only limited to the two (2) seized aluminum vans.

*Petitioner's Cross-examination*

On cross-examination, Reyes was asked whether he acquired the necessary permits and/or licenses for a trucking business, to which he answered in the negative. He went on to explain that he was just starting to try it out. While he is aware that permits and licenses are required to operate a trucking business, he mentioned that, at that time, he was only servicing friends. Although he admitted to operating the trucks without permit as trial, he mentioned that there was a pending application at that time.

Also, in the same hearing on April 25, 2022, respondent's counsel manifested that he will no longer present evidence.

On May 05, 2022, petitioner posted a *Motion for Leave (To Recall Marvin Reyes to Testify)*,[26] for purposes of identifying the additional documentary evidence attached therein. Respondent filed his *Comment* on May 24, 2022,[27] praying that the said *Motion for Leave* be denied.

In the meantime, on May 06, 2022, petitioner filed his *Formal Offer of Evidence*,[28] to which respondent filed his *Comment/Opposition (re Formal Offer of Evidence)* on June 02, 2022.[29] In the Resolution dated June 22, 2022,[30] petitioner's *Motion for Leave* was granted, and the resolution of petitioner's *Formal Offer of Evidence* was held in abeyance. Petitioner was then recalled to the witness stand to identify the above additional evidence.[31]

The case was transferred to this Court's Third Division pursuant to the Order dated June 29, 2022.[32]

Petitioner filed his *Supplemental Formal Offer of Evidence* on December 05, 2022,[33] while respondent filed his *Comment/Opposition (re Supplemental Formal Offer*

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26 *Id.,* pp. 163- 165.
27 *Id.,* pp. 173-176.
28 *Id.,* pp. 168-170.
29 *Id.,* pp. 180-183.
30 *Id.,* pp. 187-189.
31 *Id., Judicial Affidavit* dated September 09, 2022, pp. 197-201; Minutes of the hearing held on, and Order dated, November 29, 2022, pp. 216 and 220, respectively.
32 *Id.,* p. 190.
33 *Id.,* pp. 221-222.

*of Evidence)* on December 20, 2022.[34] In the Resolution dated February 16, 2023,[35] the Court admitted all of petitioner's offered exhibits, and gave the parties thirty (30) days from receipt thereof to file their respective memorandum.

On March 21, 2023, respondent filed a *Manifestation and Motion*,[36] stating that he is adopting the arguments in his *Answer* dated November 06, 2020 as his *Memorandum*; whereas petitioner filed his *Memorandum* on June 01, 2023.[37]

The case was transferred back to the Second Division on June 01, 2023, pursuant to Administrative Circular No. 01-2023;[38] and was considered submitted for decision on June 20, 2023.[39]

## The Issues

The parties stipulated the following issues to be resolved in this case:[40]

1. Whether or not petitioner is the owner of the seized motor vehicles;

2. Whether or not petitioner is a common carrier;

3. Whether or not the forfeiture of the two (2) aluminum closed vans pursuant to Section 1113, paragraphs A and K of the CMTA is proper;

4. Whether or not the respondent erred in seizing, and forfeiting the motor vehicles in question; and

5. Whether or not the said motor vehicles should be released in favor of petitioner.

## The Arguments of Parties

***Petitioner's Arguments***

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[34] *Id.*, pp. 223- 225.
[35] *Id.*, pp. 231- 232.
[36] *Id.*, pp. 233-234.
[37] *Id.*, pp. 239-250.
[38] *Id.*, Docket, p. 251.
[39] *Id.*, Resolution dated June 20, 2023, p. 253.
[40] *Id.*, JSFI, Issues To Be Resolved, p. 123.

Petitioner argues that the closed vans are not forfeitable; that he is a common carrier that has not been chartered or leased; that he has no knowledge or participation in the unlawful act; and that no *prima facie* presumption exists against the vans.

***Respondents' Counter-Arguments***

Respondents contend that the two (2) aluminum closed vans were validly forfeited pursuant to Section 1113(k) of the CMTA for being apprehended *in flagrante* while transporting and conveying smuggled electronic gadgets. Respondents counter petitioner's claim that he is a common carrier, and that he has no knowledge or participation in the unlawful act. Finally, the burden of proof in forfeiture proceedings shall be borne by the claimant.

**<u>The Ruling of the Court</u>**

***Jurisdiction of the Court of Tax Appeals***

We first resolve the issue on jurisdiction.

Section 7(a)(4) of Republic Act ("RA") No. 1125,[41] as amended by RA No. 9282[42] states that decisions of the COC are appealable to this Court, to wit:

> "SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) **Exclusive appellate jurisdiction to review by appeal,** as herein provided:
>
> xxx xxx 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,

41 An Act Creating The Court Of Tax Appeals.
42 An Act Expanding The Jurisdiction Of The Court Of Tax Appeals (CTA), Elevating Its Rank To The Level Of A Collegiate Court With Special Jurisdiction And Enlarging Its Membership, Amending For The Purpose Certain Sections Or Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes.

> forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs"[43]

On the other hand, under Section 11, a person aggrieved by a decision of the COC may file an appeal with the Court of Tax Appeals within thirty (30) days from the receipt thereof:

> "SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **<u>may file an appeal with the CTA within thirty (30) days after the receipt of such decision</u>** or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein."[44]

Petitioner allegedly received Respondent's Decision dated July 21, 2020 on August 06, 2020.[45] This was not refuted or controverted by Respondent. Thus, we shall start counting the 30-day period from August 06, 2020. Therefore, pursuant to the afore-quoted rule, Petitioner had until September 05, 2020 within which to file its petition.

On September 04, 2020, Petitioner timely filed the present Petition for *Certiorari*. Hence, the Court validly acquired jurisdiction over the case.

We now proceed to the merits.

***Petitioner's ownership of the seized subject vans***

After a careful review of the records, the Court finds that petitioner is the owner of the subject vans.

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[43] *Emphasis supplied.*
[44] *Emphasis and underscoring supplied.*
[45] Docket, *Petition for Review*, Timeliness of the Petition, par. 2, p. 6; Decision dated July 21, 2020 (Exhibit P-1"), pp.17-23.

With respect to the Isuzu van with plate number CAK 7736, petitioner presented the certificate of registration with official receipt[46] issued by the Land Transportation Office (LTO) in his name, and corroborated by the Deed of Sale executed on June 04, 2019.[47] A certificate of registration of a motor vehicle creates a strong presumption of ownership in favor of one in whose name it is issued, unless proven otherwise.[48] Respondent did not dispute petitioner's ownership claim.

In a similar vein, petitioner presented the notarized Deed of Sale dated May 15, 2019[49] between him (as buyer) and a certain Jefferson Gan (as seller) for the Hino closed van with plate number CAP 6868. Although Mr. Gan did not testify in court to identify said document, the act of notarization converts a private document to a public document making it admissible in evidence without proof of its authenticity.[50] A notarized document is presumed valid, regular, and genuine. It carries evidentiary weight with respect to its due execution.[51]

In *Noel M. Odrada v. Lazaro*,[52] the Supreme Court, citing *Almeda v. Heirs of Ponciano Almeda*,[53] explained that a notarized document enjoys a presumption that it was duly executed by the parties, to wit:

> "A notarized Deed of Absolute Sale has in its favor the presumption of regularity, and it carries the evidentiary weight conferred upon it with respect to its due execution. It is admissible in evidence without further proof of its authenticity and is entitled to full faith and credit upon its face. Thus, a notarial document must be sustained in full force and effect so long as he who impugns it does not present strong, complete and conclusive proof of its falsity or nullity on account of some flaws or defects.
>
> Absent evidence of falsity so clear, strong and convincing, and not merely preponderant, the presumption of regularity must be upheld. The burden of proof to overcome the presumption of due execution of a notarial document lies on the party contesting the same."

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46 *Id.*, Exhibit "P-6", p. 202.
47 *Id.*, Exhibit "P-5", pp. 28-29.
48 *Gregorio "George" Amante and Vicente Amante v. Bibiano Serwelas*, G.R. No. 143572, September 30, 2005.
49 Docket, Exhibit "P-4", pp. 26-27.
50 *Heirs of Spouses Liwagon v. Heirs of Spouses Liwagon*, G.R. No. 193117, November 26, 2014.
51 *Dionisio C. Ladignon v. Court of Appeals and Luzviminda C. Dimaun*, G.R. No. 122973, July 18, 2000.
52 G.R. No. 205515, January 20, 2020.
53 G.R. No. 194189, September 14, 2017.

As regards the notarized Deed of Sale between petitioner and Mr. Gan, there was no evidence presented to overcome the presumption of regularity. Hence, although the registration of the Hino van with plate number CAP 6868 was not yet transferred in petitioner's name, there was sufficient proof of transfer of ownership from the seller, Mr. Gan.

Accordingly, petitioner had satisfactorily shown that he already acquired valid ownership and possession over the subject vans at the time these were seized by the BOC.

***The subject vans are exempt from forfeiture***

To recall, the two (2) closed aluminum vans owned by Petitioner were seized and apprehended *in flagrante* while transporting and conveying smuggled electronic goods imported by consignee Terratech Trading.[54] While it is clear that the shipment loaded on the said vans were deemed smuggled for failure to secure the necessary import permits and payment of correct duties and taxes, the determination whether forfeiture is warranted as to the vans used in transporting the goods is another story.

In deciding whether the (2) vans were lawfully forfeited, the provisions of the CMTA must be applied. Section 1113(a) states:

> **"CHAPTER 4**
>
> *Seizure and Forfeiture*
>
> 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**

54 *See* Docket, Decision dated July 21, 2020 (Exhibit P-1") and Joint Stipulation of Facts and Issues and, pp. 17-23 and 108-112.

> **<u>has been chartered or leased for purposes of conveying or transporting persons or cargo</u>**[.]"[55]

Any vehicle or conveyance used in conveying or transporting smuggled goods shall be subjected to forfeiture. But the provision above provides an exception. To be exempt from forfeiture, Section 1113(a) of the CMTA explicitly requires that the vehicle be a common carrier, not chartered or leased.

Further, Section 1123 of the CMTA specifically states that the burden of proof rests on the claimant, to wit:

> "Section 1123. *Burden of Proof in Forfeiture Proceedings.* – **In all proceedings for the forfeiture of any vehicle, vessel, aircraft, or goods** under this Act, **<u>the burden of proof shall be borne by the claimant</u>.**[56]

It is, thus, incumbent upon petitioner to prove that he is engaged as a common carrier, which has not been chartered or leased.

In supporting his position that he is a common carrier, petitioner contends in his Memorandum[57] that –

> "Here, substantial evidence was already presented to show that Petitioner is indeed engaged in common carriage. ***Firstly***, Petitioner presented OR/CR for the Isuzu closed van to establish that petitioner is the registered owner and OR/CR for Hino closed van to establish that petitioner purchased the said motor vehicle from the registered owner. ***Secondly***, Petitioner presented the notarized deeds of sale of subject vehicle to further prove his ownership over those vehicles. ***Thirdly***, the Acknowledgment Receipt was presented as proof of payment of carrier's fee. ***Finally***, the testimony of Petitioner that he is holding out to the general public his transportation service, among others, are sufficient enough to constitute substantial evidence to prove that the subject vehicles are common carrier."[58]

The said *first* and *second* points refer only to the fact of his ownership over the subject vans, which has been established as previously discussed.

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[55] *Emphasis and underscoring supplied.*
[56] *Emphasis supplied.*
[57] Petitioner's *Memorandum*, Docket, pp. 246 to 247.
[58] *Emphasis and underscoring supplied.*

On the other hand, the *third* and *fourth* contentions espouses petitioner's claim that he is operating as a common carrier. He likewise relies on the ruling of the Supreme Court in *De Guzman v. Court of Appeals, et al.*,[59] wherein it was held that Article 1732 of the Civil Code[60] avoided a distinction between a person or enterprise offering transportation on a regular or scheduled basis and one offering such service on an occasional, episodic or unscheduled basis.

In *Spouses Pereña v. Spouses Zarate, et al.*,[61] the Supreme Court further explained the true test for a common carrier, *viz*:

> "A carrier is a person or corporation who undertakes to transport or convey goods or persons from one place to another, gratuitously or for hire. The carrier is classified either as a private/special carrier or as a common/public carrier. **A <u>private carrier</u> is one who, without making the activity a vocation, or without holding himself or itself out to the public as ready to act for all who may desire his or its services, undertakes, *by special agreement in a particular instance only*, to transport goods or persons from one place to another either gratuitously or for hire.** The provisions on ordinary contracts of the Civil Code govern the contract of private carriage. The diligence required of a private carrier is only ordinary, that is, the diligence of a good father of the family. In contrast, **a <u>common carrier</u> is a person, corporation, firm or association engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, *offering such services to the public*. Contracts of common carriage are governed by the provisions on common carriers of the *Civil Code, the Public Service Act*, and other special laws relating to transportation.** A common carrier is required to observe extraordinary diligence, and is presumed to be at fault or to have acted negligently in case of the loss of the effects of passengers, or the death or injuries to passengers.
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> In relation to common carriers, the Court defined public use in the following terms in *United States v. Tan Piaco*, *viz*:

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59 G.R. No. L-47822, December 22, 1988.

60 Republic Act No. 386 - *Civil Code of the Philippines*.
*Article 1732.* Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public.

61 G.R. No. 157917, August 29, 2012.

> 'Public use' is the same as 'use by the public'. The essential feature of the public use is not confined to privileged individuals, but is open to the indefinite public. It is this indefinite or unrestricted quality that gives it its public character. In determining whether a use is public, we must look not only to the character of the business to be done, but also to the proposed mode of doing it. If the use is merely optional with the owners, or the public benefit is merely incidental, it is not a public use, authorizing the exercise of the jurisdiction of the public utility commission. There must be, in general, a right which the law compels the owner to give to the general public. It is not enough that the general prosperity of the public is promoted. Public use is not synonymous with public interest. The true criterion by which to judge the character of the use is whether the public may enjoy it *by right* or only by permission.

**In *De Guzman vs. Court of Appeals,* the Court noted that Article 1732 of the *Civil Code* avoided any distinction between a person or an enterprise offering transportation on a regular or an isolated basis; and has not distinguished a carrier offering his services to the general public, that is, the general community or population, from one offering his services only to a narrow segment of the general population.**

**<u>Nonetheless</u>, the concept of a common carrier embodied in Article 1732 of the *Civil Code* coincides neatly with the notion of *public service* under the *Public Service Act,* which supplements the law on common carriers found in the *Civil Code.*** Public service, according to Section 13, paragraph (b) of the *Public Service Act*, includes:

> x x x every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, **with general or limited clientèle, whether permanent or occasional, and done for the general business purposes**, any common carrier, railroad, street railway, traction railway, subway motor vehicle, either for freight or passenger, or both, with or without fixed route and whatever may be its classification, freight or carrier service of any class, express service, steamboat, or

> steamship line, pontines, ferries and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine repair shop, ice-refrigeration plant, canal, irrigation system, gas, electric light, heat and power, water supply and power petroleum, sewerage system, wire or wireless communications systems, wire or wireless broadcasting stations and other similar public services. x x x.

Given the breadth of the aforequoted characterization of a common carrier, the Court has considered as common carriers pipeline operators, custom brokers and warehousemen, and barge operators even if they had limited clientèle.

As all the foregoing indicate, **the <u>true test</u> for a common carrier is <u>not</u> the quantity or extent of the business actually transacted, or the number and character of the conveyances used in the activity, <u>but whether the undertaking is a part of the activity engaged in by the carrier that he has held out to the general public as his business or occupation</u>. If the undertaking is a single transaction, not a part of the general business or occupation engaged in, as advertised and held out to the general public, the individual or the entity rendering such service is a private, not a common, carrier. The question must be determined by the character of the business actually carried on by the carrier, not by any secret intention or mental reservation it may entertain or assert when charged with the duties and obligations that the law imposes.**"[62]

From the foregoing, the true test for a common carrier is whether the undertaking is a part of the activity engaged in by the carrier that he or she has held out to the general public as his or her business or occupation. If the undertaking is a single transaction, not a part of the general business or occupation engaged in, as advertised and held out to the general public, the subject individual or entity rendering the service is a private carrier, and not a common carrier.

During cross-examination, petitioner admitted that he is just starting to try out the trucking business, sans any permit or license, and advertising it to friends. Pertinent portions of the Transcript of Stenographic Notes during the hearing on April 25, 2022 are reproduced hereunder:

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62 *Emphasis and underscoring supplied.*

"ASSOC. SOL YAP:
Q: Mr. Reyes, in Question No. 18, you answered that you started to advertise your business to people, mostly friends and co-workers that you have started a tracking *(sic)* business and requested for referrals?

MR. RULONA:
A: Yes *po.*

ASSOC. SOL YAP:
Q: In this regard Mr. Reyes, did you acquire the necessary permits and/or licenses for your tracking *(sic)* business?

MR. RULONA:
A: Ma'am, actually, trial *pa lang po ang aking business kasi bago pa lang po, almost one month pa lang po noong nakuha ko yung truck. So tinatry ko pa lang po yung truck. Actually, pangatlong biyahe ko palang o pang-apat, hindi ko na po matangaan kung gaano katagal. Pagkatapos po noon, nangyari na ito so hindi ko na po siguro maano yung trucking.*

ASSOC. SOL YAP:
Q: So Mr. Reyes, you are aware that for the operation of a trucking business, permits and licenses are needed to operate or a temporary permit is necessary?

MR. RULONA:
A: Yes *po.* As of now, *kasi, noong time na iyon, puro friends lang po kasi so yung paglipat lang po ng mga gamit or bahay or mga ano. So yung time lang po na iyon kasi nirefer lang po talaga sa akin.*

ASSOC. SOL. YAP:
Q: Mr. Witness, just to clarify, no permits or licenses acquired by you?

MR. RULONA:
A: Yes *po.*

ASSOC. SOL YAP:
Q: There are no applications submitted?

MR. RULONA:
A: Actually, *may* application *na ako*, on-going *na po noong* time *na iyon.*

ASSOC. SOL YAP:
Q: But you operated without the required permits and/or licenses?

MR. RULONA:
A: Yes *po,* for trial *po.*" (TSN dated April 25, 2022, pp. 8-10)

Based on petitioner's answers, it can hardly be said that he holds himself out to the public as ready to act indiscriminately for all who may desire his services to transport goods from one place to another either gratuitously or for hire. At that time, petitioner admitted that his services are limited to friends and referrals. Although he mentioned that he had ongoing application, petitioner failed to substantiate the same. In fact, the vehicle registration classification of the Isuzu van with plate number CAK 7736 that was eventually transferred in his name on July 26, 2021 is still private.[63]

Petitioner only has his testimony[64] and the Acknowledgment Receipt[65] he executed to prove his claim that he is engaged as a common carrier. Notably, and as pointed out by respondent, the Acknowledgment Receipt was not introduced at the administrative level, even though such should have been available at that time. This piece of evidence only came to light when petitioner filed this present petition. There was no explanation from petitioner as to why the Acknowledgment Receipt was offered belatedly on appeal. More so, the Acknowledgment Receipt does not bear any indication that it is registered with the Bureau of Internal Revenue. This raises grave doubt as to the probative value considering that this is the only document that would corroborate petitioner's claims and he even executed the same. The execution and authenticity of the Acknowledgment Receipt was also not attested to by petitioner.

From the foregoing, Petitioner failed to discharge the burden of proving that he is engaged in the business or occupation of a common carrier. Petitioner can therefore only be deemed a private carrier. There is, thus, no need to delve whether the contract of carriage was not chartered or leased.

This does not mean however that the forfeiture of the subject vans was justified for the law mentions another exception.

Section 1114 of the CMTA also provides that forfeiture of vehicles is not allowed if it is established that the owner thereof has no knowledge of or participation in the conveyance or transportation of smuggled goods, to wit:

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63 Docket, Exhibit P-6, p. 202.
64 *Id.*, Exhibit P-8, pp. 34-40.
65 *Id.*, Exhibit P-2, p. 24.

"Section 1114. *Properties not Subject to Forfeiture in the Absence of Prima Facie Evidence.* — **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**: *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."[66]

*Ut magis valeat quam pereat.* A statute is to be interpreted as a whole. The provisions of a specific law should be read, considered, and interpreted together as a whole to effectuate the whole purpose of which it was legislated. A section of the law is not to be allowed to defeat another, if by any reasonable construction, the two can be made to stand together. In other words, the court must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make the words idle and nugatory.[67]

Interpreting and applying together the provisions of Section 1113 and Section 1114 of CMTA, it is evident that even if the vehicle does not fall under Section 113 (*i.e.,* a private carrier), it should not be forfeited if there is proof that the owner or the agent has no knowledge of or participation in the unlawful act.

The CMTA considers vehicles used in smuggling as effects and instruments of the crime, inasmuch the same way that Article 45[68] of the Revised

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[66] *Emphasis supplied.*

[67] Commissioner of Customs et al. v. New Frontier Sugar Corporation, G.R. No. 163055, June 11, 2014 *citing* Civil Liberties Union v. Executive Secretary, G.R. No. 83896, February 22, 1991.

[68] ARTICLE 45. Confiscation and Forfeiture of the Proceeds or Instruments of the Crime. — Every penalty imposed for the commission of a felony shall carry with it the forfeiture of the proceeds of the crime and the instruments or tools with which it was committed.

Penal Code[69] ("RPC") and Section 20[70] of the Comprehensive Dangerous Drugs Act of 2002[71] ("CDDA") pronounces that the instruments or tools with which a crime was committed shall be confiscated and forfeited in favor of the Government.

Thus, the general rule is that any vehicle used in transporting smuggled goods shall be subjected to forfeiture.

Nonetheless, the forfeiture of the vehicle is akin to that of penalizing an accessory to the crime, and should not unduly damage or injure persons who did not participate in the crime.[72] That is why both Article 45 of the RPC and Section 20 of the CDDA prohibits the confiscation of a "property of a third person not liable for the offense".

It is also for this same reason that the CMTA provides two (2) exceptions to the general rule. *First*, when the vehicle is used as a common carrier which has not been chartered or leased for purposes of conveying or transporting persons or cargo, and *second*, when the owner thereof or the agent in charge of the means of conveyance used has no knowledge of or participation in the unlawful act.

In her Concurring Opinion in *Commissioner of Customs and the Undersecretary of the Department of Finance v. Gold Mark Sea Carriers, Inc.*[73], Justice Estela M. Perlas-Bernabe explained the rationale of the first exception (*i.e.*, common carrier) in this wise:

> "At the onset, it should be borne in mind that the rationale behind the proviso '*Provided, That the vessel, aircraft or any other craft is*

Such proceeds and instruments or tools shall be confiscated and forfeited in favor of the Government, unless they be the property of a third person not liable for the offense, but those articles which are not subject of lawful commerce shall be destroyed.

69 Act No. 3815, December 08, 1930.

70 SECTION 20. Confiscation and Forfeiture of the Proceeds or Instruments of the Unlawful Act, Including the Properties or Proceeds Derived from the Illegal Trafficking of Dangerous Drugs and/or Precursors and Essential Chemicals. — Every penalty imposed for the unlawful importation, sale, trading, administration, dispensation, delivery, distribution, transportation or manufacture of any dangerous drug and/or controlled precursor and essential chemical, the cultivation or culture of plants which are sources of dangerous drugs, and the possession of any equipment, instrument, apparatus and other paraphernalia for dangerous drugs including other laboratory equipment, shall carry with it the confiscation and forfeiture, in favor of the government, of all the proceeds and properties derived from the unlawful act, including, but not limited to, money and other assets obtained thereby, and the instruments or tools with which the particular unlawful act was committed, unless they are the property of a third person not liable for the unlawful act, but those which are not of lawful commerce shall be ordered destroyed without delay pursuant to the provisions of Section 21 of this Act..

71 Republic Act No. 9165, June 07, 2002.

72 *See* Philippine Drug Enforcement AGENCY (PDEA) v. Richard Brodett and Jorge Joseph, G.R. No. 196390, September 28, 2011.

73 G.R. No. 208318, June 30, 2021.

> *not used as duly authorized common carrier and as such a carrier it is not chartered or leased*' stems from the recognition that common carriers are, by the very nature of their business, imbued with public interest. Since common carriers are expected to offer their services to the general public indiscriminately, it would have lesser control over sneaked-in goods/articles brought by the multitude of incoming and outgoing passengers that are able to board the vessel. Thus, as embodied in the limiting proviso, it is reasonable to not 'subject such vessel, vehicle, aircraft or any other craft to forfeiture' by the '[t]he mere carrying or holding on board of contraband or smuggled articles in commercial quantities. To my mind, this situation (*i.e.*, being a common carrier that is not chartered or leased) is in stark contrast to the situation of private carriers, or common carriers which are chartered or leased, which, because of their private nature or the limitations brought about by the chartering or lease, are expected to have greater control over the goods/articles onboard the vessel."[74]

Simply put, if the vehicle, vessel, or aircraft is a common carrier, then the law already acknowledges that the conveyance used in transporting smuggled goods is a third party who did not participate in the crime. A carrier who offers services to the public at large cannot control the acts of its passengers or customers.

On the other hand, in the case of a private carrier (*i.e.*, one who is chartered or leased), there is a possibility that the carrier has knowledge or is privy to the unlawful acts committed by its passengers or customers. Thus, the first exception was qualified by the phrase "not used as a common carrier which has been chartered or leased".

And yet, this is just a mere possibility.

Regardless, a carrier whose owner or agent has no knowledge of the crime is still "a third person not liable for the offense". A further seizure of the vehicle, vessel, or aircraft of the owner who is an innocent party to the crime would be inequitable and unjust. Thus, the need for the second exception which is found in Section 1114 of the CMTA.

The question now is whether petitioner falls under the exception in Section 1114.

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[74] *Underscoring supplied.*

In the case at bar, petitioner was able to prove that he did not know of the unlawful act. Petitioner's testimony[75] and the Acknowledgment Receipt[76] submitted reveals that he was not aware of the business dealings of Chris Pablo, the person who contracted his vans, beyond the renting thereof, to wit:

> "18. What happened after you bought these two (2) vehicles?
>
> A: I started to advertise to people I know mostly friends and co-workers that I have started a trucking business and requested for referrals.
>
> 19.Q: Did you get some referrals?
>
> A: I did. One of which is the hauling/trucking of the shipment of mobile phones of Terratech Trading.
>
> 20.Q: Who engaged your services concerning the shipment of Terratech Trading?
>
> A: Mr. Chris Pablo, a regular client of Noblesse KTB.
>
> 21.Q: Where did you meet Mr. Chris Pablo?
>
> A: At Noblesse KTB.
>
> 22. Q: When was this?
>
> A: In the evening of July 11, 2019.
>
> 23.Q: What transpired during that evening?
>
> A: Mr. Chris Pablo asked me if I own the vans that were parked near the KTB because he wanted to contract them for the hauling/trucking of a shipment of 250 boxes of mobile phones from Clark to Manila.
>
> 24.Q: What did you say?
>
> A: I said yes.
>
> 25.Q: What happened next, if any?
>
> A: I asked him where exactly in Manila.

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[75] Docket, Judicial Affidavit (Marvin Rulona Reyes) (Exhibit "P-8"), pp. 34-40.
[76] *Id.*, Acknowledgment Receipt (Exhibit "P-8"), p. 24.

25.Q: What did Mr. Pablo answer?

A: He said at 2240 Singalong St., Malate, Manila,

26.Q: What happened next, if any?

A: Mr. Pablo asked me for my rate.

27.Q: How much did you charge him?

A: I charged him a fee of Php17,000.00 for two (2) closed vans. 50% down-payment and the remaining balance of 50% upon delivery.

28.Q: Did he accede?

A: Yes. In fact, he paid me the amount of Php8,500.00 as down-payment.

29.Q: What proof do you have that you were paid the down-payment?

A: I have a receipt for Php8,500.00.

30.Q: I am showing you a copy of an Acknowledgement Receipt, marked as P-2, what relation does this receipt have to the receipt you have just mentioned?

A: This is the same receipt.

31.Q: What happened next, if any?

A: He told me that the two (2) vans should be at the UPS Delbros Warehouse in Clark at around 9:00 am on July 12, 2019,

32. Q: What else did Mr. Pablo tell you, if any?

A: He gave me a photocopy of the Airway Bill No. 558Y75FW9XN.

33.Q: I am showing to you a copy of the Airway Bill No. 558Y75FW9XN, marked as P-3 what relation does this airway bill have to the airway bill you just mentioned?

A: This is the same Airway bill

34.Q: What were your instructions to your drivers on July 12, 2019?

A: To go to UPS Delbros Warehouse in Clark around 9:00am and to pick up the shipment consigned to Terratech Trading.

35.Q: What happened when your vans arrived at the UPS Delbros in Clark?

A UPS Delbros released the shipment consigned to Terratech and allowed it to be loaded into my vans.

36.Q: Where [*sic*] you able to deliver the shipment from Clark to Manila? Why is that so?

A: No, because the Bureau of Customs seized the mobile phones and the vans.

37. Q: Who informed you?

A: My drivers.

38. Q: What did you do, if any?

A: I went to the Bureau of Customs to verify.

39. Q: What did you find?

A: I was told that the vans were being seized for conveying smuggled goods and that a notice of hearing would be sent to me.

40. Q: What was your initial reaction?

A: I was shocked because the shipment entered at the Port of Clark and released from UPS Delbros Warehouse and loaded into the vans.

41. Q: What else did you do, if any?

A: I tried to look for Mr. Pablo at the address of Terratech Trading stated in the Aiway [*sic*] Bill at Fil-Am Highway Telebasatgen [*sic*] City, Pampanga.

42. Q: Were you able to find him?

A: No. The address was not existing.

43. Q: Did you ever see or talk to Mr. Pablo after the incident?

A: No."

Petitioner's offered testimony and evidence clearly show that he had no knowledge of or real participation in the unlawful act. A perusal of the evidence presented would lead to no other logical inference as regards the relationship between petitioner and Terratech Trading other than that a certain Chris Pablo hired petitioner's vans to carry the subject shipment from the UPS Delbros Warehouse in the Port of Clark to Malate, Manila. Further, none of the three (3) enumerated circumstances that would serve as *prima facie* evidence against the two subject vans are present in this case.

With petitioner having established that he had no knowledge of the unlawful act, the burden of proof shifted to respondent.

Petitioner's testimony which categorically denied any knowledge or participation in the unlawful conveyance stands unrefuted by respondent. No evidence was presented before the Court during the trial to support the conclusion that petitioner had any knowledge or participation in the unlawful conveyance of the electronic gadgets.

Significantly, in the July 21, 2020 Decision of the COC, there is failure to state or describe in detail any facts or circumstances that would prove the knowledge or participation of the petitioner in the alleged smuggling of the electronic gadgets. Respondent relied solely upon the provision in Section 1113(k) that the "mere conveyance of smuggled goods by such transport vehicle shall be sufficient cause for the outright seizure and confiscation of such transport vehicle". Respondent failed to consider the qualifying and limiting provision of the law which clearly states that forfeiture of the vehicles cannot 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".

As respondent was unable to refute Petitioner's versions of events, the Court must accept that he indeed had no knowledge of or participation in the unlawful act.

All told, without any evidence presented during trial, there is no basis to sustain the forfeiture of the subject vans.

**WHEREFORE**, premises considered, the Petition for Review filed on September 04, 2020 is **GRANTED**. The assailed Decision dated July 21, 2020 of the Commissioner of Customs is **REVERSED, ANNULLED and SET ASIDE.** The Warrant of Seizure and Detention issued against the two (2) aluminum closed vans with plate numbers CAP 6868 and CAK 7736 is **LIFTED** and the vans are ordered **RELEASED** to Petitioner.

**SO ORDERED.**

**MA. BELEN M. RINGPIS-LIBAN**
*Associate Justice*

**WE CONCUR:**

**MARIA ROWENA MODESTO-SAN PEDRO**
*Associate Justice*

*(With Concurring and Dissenting Opinion)*
**CORAZON G. FERRER-FLORES**
*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.

**MA. BELEN M. RINGPIS-LIBAN**
*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*

**REPUBLIC OF THE PHILIPPINES**
***Court of Tax Appeals***
QUEZON CITY

**SECOND DIVISION**

**MARVIN RULONA REYES,**
Petitioner,

vs.

**COMMISSIONER OF CUSTOMS, BUREAU OF CUSTOMS,**
Respondent.

**CTA CASE NO. 10340**

*Present:*

**RINGPIS-LIBAN**, *Chairperson*,
**MODESTO-SAN PEDRO**, and
**FERRER-FLORES**, *JJ.*

Promulgated:

AUG 07 2024
3:15 pm

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# CONCURRING AND DISSENTING OPINION

***FERRER-FLORES, J.:***

Prefatorily, I concur with the *ponencia* that the Court has jurisdiction over the case. As to the merits, I likewise concur with respect to petitioner's ownership of the subject vans and the fact that he is not engaged as a common carrier.

I do, however, express my dissent to the conclusion reached that the subject vans are exempt from forfeiture.

In exempting the subject vans from forfeiture, the *ponencia* relied on Section 1114 of the Customs Modernization and Tariff Act (CMTA),[1] to wit:

> SECTION 1114. *Properties not Subject to Forfeiture in the Absence of Prima Facie Evidence.* — 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

[1] Republic Act No. 10863, *An Act Modernizing the Customs and Tariff Administration*; May 30, 2016 (CMTA).

> knowledge of or participation in the unlawful act: *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.

To quote the *ponencia* – "it is evident that even if the vehicle does not fall under Section 113 *(sic)* (*i.e.,* a private carrier), it should not be forfeited if there is proof that the owner or the agent has no knowledge of or participation in the unlawful act."

In concluding that petitioner had no knowledge of or participation in the unlawful act, the *ponencia* stated in this wise:

> Petitioner's **offered testimony and evidence** clearly show that he had no knowledge of or real participation in the unlawful act. A perusal of the evidence presented would lead to no other logical inference as regards the relationship between petitioner and Terratech Trading other than that a certain Chris Pablo hired petitioner's vans to carry the subject shipment from the UPS Delbros Warehouse in the Port of Clark to Malate, Manila. Further, none of the three (3) enumerated circumstances that would serve as *prima facie* evidence against the two subject vans are present in this case. (Emphasis supplied)

From the foregoing, it is my interpretation that my esteemed colleague considered petitioner's testimony and the Acknowledgment Receipt (it being the only documentary evidence) in reaching the conclusion. Yet, it was also discussed in the Decision that there is **grave doubt** as to the probative value of the Acknowledgment Receipt, to wit:

> Petitioner only has his testimony and the Acknowledgment Receipt he executed to prove his claim that he is engaged as a common carrier. Notably, and as pointed out by respondent, the Acknowledgment Receipt was not introduced at the administrative level, even though such should have been available at that time. This piece of evidence only came to light when petitioner filed this present petition. There was no explanation from petitioner as to why the Acknowledgment Receipt was offered belatedly on appeal. More so, the Acknowledgment Receipt does not bear any indication that it is registered with the Bureau of Internal Revenue. **This raises grave doubt as to the probative value considering that this is the only document that would corroborate petitioner's claims and he even executed the same. The execution and authenticity of the Acknowledgment Receipt was also not attested to by petitioner.** (Emphasis supplied)

To my mind, the Acknowledgment Receipt is bereft of probative value and deserves scant consideration. It is my humble view that petitioner's testimony alone, denying knowledge and participation in the unlawful act, is insufficient to establish by preponderant evidence that the subject vans are exempt from forfeiture, bearing in mind that in forfeiture proceedings, the burden of proof shall be borne by the claimant.[2]

Further, the proviso in Section 1114 enumerated the instances of a *prima facie* presumption against the vehicle, vessel, or aircraft, namely: 1) if the conveyance has been used for smuggling before; 2) if the owner is not in the business for which the conveyance is generally used; and 3) if the owner is not financially in a position to own such conveyance. The existence of <u>any</u> of the circumstances would create a *prima facie* presumption against the conveyance. The *ponencia* mentioned that none of the three (3) instances are present in this case.

I respectfully beg to differ.

In my view, there exists a *prima facie* presumption against the subject vans under the second (2$^{nd}$) circumstance enumerated above – *the owner is not in the business for which the conveyance is generally used.*

To recall, it was established that petitioner is not a common carrier, has no license to operate as such, and has no registered trucking business for which are subject vans are (or could be) generally used. Petitioner's occupation is a manager at Noblesse KTV in CHHD Bldg., Volga St., Philam Friendship Road, Angeles, Pampanga.[3] According to petitioner, he also owns a small-time trucking/hauling business on the side, and the vans were purchased for that purpose, to wit:

> 3. Q: What other sources of income do you have, if an?
> A: I own a small-time trucking/hauling business on the side.
>
> 4. Q: When did you start this trucking/hauling business?
> A: Sometime in May 2019.
>
> 5. Q: What made you decide to go into this business?
> A: I used to be in the business of buy and sell of motor vehicles before I accepted my present job. It has always been my dream to engage in the trucking/hauling business so that when these two (2) aluminum closed vans were offered for sale to me at a reasonable price, I immediately seized the opportunity.
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> xxx xxx xxx

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[2] CMTA
Section 1123 – *Burden of Proof in Forfeiture Proceedings.* – In all proceedings for the forfeiture of any vehicle, vessel, aircraft, or goods under this Act, the burden of proof shall be borne by the claimant.

[3] Judicial Affidavit of Marvin Rulona Reyes (Answer to question no. 2), Docket., p. 35.

Petitioner's assertion that he owns a trucking/hauling business was debunked by his later admission that he operated without permit or licenses, while being aware of the necessity of securing permits and licenses. Additionally, no business registration was shown to prove the existence of a legitimate business under petitioner's name. Below is an excerpt of his testimony during cross-examination:[4]

xxx xxx xxx

ASSOC. SOL YAP:
Q: Mr. Reyes, in Question No. 18, you answered that you started to advertise your business to people, mostly friends and co-workers that you have started a tracking *(sic)* business and requested for referrals?

MR. RULONA:
A: Yes *po.*

ASSOC. SOL YAP:
Q: In this regard Mr. Reyes, did you acquire the necessary permits and/or licenses for your tracking *(sic)* business?

MR. RULONA:
A: Ma'am, actually, trial *pa lang po ang aking business kasi bago pa lang po, almost one month pa lang po noong nakuha ko yung truck. So tinatry ko pa lang po yung truck. Actually, pangatlong biyahe ko palang o pang-apat, hindi ko na po matangaan kung gaano katagal. Pagkatapos po noon, nangyari na ito so hindi ko na po siguro maano yung trucking.*

ASSOC. SOL YAP:
Q: So Mr. Reyes, you are aware that for the operation of a trucking business, permits and licenses are needed to operate or a temporary permit is necessary?

MR. RULONA:
A: Yes *po*. As of now, *kasi, noong time na iyon, puro friends lang po kasi so yung paglipat lang po ng mga gamit or bahay or mga ano. So yung time lang po na iyon kasi nirefer lang po talaga sa akin.*

**ASSOC. SOL. YAP:**
**Q: Mr. Witness, just to clarify, no permits or licenses acquired by you?**

**MR. RULONA:**
**A: Yes *po.***

ASSOC. SOL YAP:
Q: There are no applications submitted?

MR. RULONA:
A: Actually, *may* application *na ako*, on-going *na po noong* time *na iyon.*

4 TSN for the hearing dated April 25, 2022, pp. 8-10.

**ASSOC. SOL YAP:**
**Q: But you operated without the required permits and/or licenses?**

**MR. RULONA:**
**A: Yes *po*, for trial *po*.**

xxx xxx xxx

It is my position that the factual circumstances in this case is constitutive of *prima facie* evidence against the subject vans pursuant to Section 1114 of the CMTA. Petitioner, then, must forward contradictory evidence to rebut such presumption and to justify that the forfeiture of the vans is not warranted. Again, the Acknowledgment Receipt lacks probative value and petitioner's testimony - that he had no knowledge of or participation in the unlawful activity - is not sufficient to overcome such presumption.

In sum, I believe that the forfeiture of the subject vans is justified under the circumstances. Petitioner fell short in adducing evidence to support its claim. Correspondingly, respondent's Decision dated July 21, 2020 must stand.

Accordingly, I vote to DENY the instant *Petitioner* (sic) *for Review* for lack of merit and AFFIRM *in toto* the Decision dated July 21, 2020 issued by respondent Commissioner of Customs in Seizure Identification No. CFZ 020-2019.

**CORAZON G. FERRER-FLORES**
Associate Justice