REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

OMEGA SIX GLOBAL CORPORATION & MA. DOLORES F. BANAAG/Z3 TRUCKING,
Petitioners,

- versus -

COMMISSIONER OF CUSTOMS,
Respondent.

CTA Case No. 10692

Present:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:

~~JUN 22 2023~~ 9:28 p.m.

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DECISION

BACORRO-VILLENA, J.:

Before the Court is a Joint Petition for Review[1] filed on 02 December 2021, pursuant to Sections 3 and 4[2], Rule 8 of the Revised Rules of the

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1 Division Docket, pp. 17-44.

2 **SEC. 3.** *Who may appeal; period to file petition. –*
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.
...
SEC. 4. *Where to appeal; mode of appeal. –*
(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of

Court of Tax Appeals (**RRCTA**), filed by petitioners Omega Six Global Corporation (**OSGC**) and Ma. Dolores F. Banaag (**Banaag**), doing business under the name of Z3 Trucking (**Z3**). The petition seeks the reversal of respondent Commissioner of Customs' (**respondent/COC**'s) undated Resolution (**assailed Resolution**), and which petitioners received on 22 September 2021.

Petitioner OSGC is a domestic corporation duly organized and existing by virtue of the laws of the Republic of the Philippines, with business address at Barangay San Nicolas, Oton, Iloilo City. Co-petitioner Banaag is the sole proprietor and operator of Z3 engaged in trucking services for goods of any locations inside the Clark Freeport Zone (**CFZ**), with business address at 4-2 Rue De Paree St., L&S Subdivision, Sto. Domingo, Angeles City, Pampanga.

Respondent COC, on the other hand, is the duly appointed head of the Bureau of Customs (**BOC**) empowered, among others, to assess and collect duties on imported goods.

The antecedent facts follow.

At the onset, it must be noted that when the parties appeared in Court, they have manifested their willingness to submit the case for decision or resolution (citing their lack of objection to the facts obtaining in this case and that the case presents purely legal issues). However, a perusal of the Joint Petition, Answer, the parties' respective Pre-Trial Briefs (**PTBs**), and their respective Memoranda would show that respondent denied certain factual allegations of petitioners. Considering further that they did not submit a Joint Stipulation of Facts and Issues (**JSFI**), the Court is constrained to consider only such allegations which remain actually undisputed and are shown in the subsequent paragraphs below.

Petitioner OSGC imported a certain shipment declared as "89 packages of Computer Casing Table Define S ATX Casing with Window (black)" (**computer casings**) filed under Entry No. C-3417. The said

Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

shipment was loaded unto a Hino Aluminum Van with plate number CAQ 9533 (**subject vehicle**) belonging to petitioner Z3.

While still inside the CFZ, elements of the Clark Development Corporation's (**CDC**'s) Business Research Unit (**BRU**) flagged down the subject vehicle. On 04 March 2021, Alert Order A/DC/DCO/2021-03-04-001 was issued against petitioner OSGC's shipment. As found during the BRU's and the BOC's joint inventory on 05 March 2021, OSGC's shipment (**subject shipment**) contained: (1) 88 boxes x 4 small boxes/box x 10 units/small boxes (3,520 units of Realme c15) (**cellphones**); and, (2) One (1) box Nike Air Force 1 shoes. As a result, Warrant of Seizure and Detention No. CFZ 007-2021 was issued against the foregoing shipment and the subject vehicle.

During the proceedings before the District Collector, petitioners submitted their respective position papers asserting, among others, that the foreign supplier made an error in the shipment and that the shipment itself was to be deemed as free importation pursuant to Section 1116[3] of the Customs Modernization Tariff Act (**CMTA**). As for petitioner Z3, it claims that it is a common carrier and the subject vehicle should not have been seized.

Later, the District Collector rendered a Decision dated 03 June 2021, ordering the forfeiture of the subject shipment and the seizure of the subject vehicle for violation of Sections 117[4], 1113(a), (f), (i), and

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[3] SEC. 1116. *Seizure or Release of Goods.* – The District Collector shall issue an order of release or a warrant of seizure within five (5) days, or two (2) days in case of perishable goods, upon the recommendation of the alerting officer or any other customs officer. The District Collector shall immediately make a report of such seizure or release to the Commissioner.

[4] SEC. 117. *Regulated Importation and Exportation.* – Goods which are subject to regulation shall be imported or exported only after securing the necessary goods declaration or export declaration, clearances, licenses, and any other requirements, prior to importation or exportation. In case of importation, submission of requirements after arrival of the goods but prior to release from customs custody shall be allowed but only in cases provided for by governing laws or regulations.

(k)[5], and 1400[6] of the CMTA, in relation to National Telecommunication Commission (NTC) Memorandum Circular No. 08-08-0224A.[7]

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5 SEC. 1113. *Property Subject to Seizure and Forfeiture.* – Property that shall be subject to seizure and forfeiture include:

(a) Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of goods or in conveying or transporting smuggled goods in commercial quantities into or from any Philippine port or place. The mere carrying or holding on board of smuggled goods in commercial quantities shall subject such vehicle, vessel, aircraft, or any other craft to forfeiture: *Provided*, That the vehicle, vessel, aircraft or any other craft is not used as a common carrier which has been chartered or leased for purposes of conveying or transporting persons or cargo;
...

(f) Goods, the importation or exportation of which are effected or attempted contrary to law, or any goods of prohibited importation or exportation, and all other goods which, in the opinion of the District Collector, have been used, are or were entered to be used as instruments in the importation or the exportation of the former;
...

(i) Any package of imported goods which is found upon examination to contain goods not specified in the invoice or goods declaration including all other packages purportedly containing imported goods similar to those declared in the invoice or goods declaration to be the contents of the misdeclared package;
...

(k) Any conveyance actually used for the transport of goods subject to forfeiture under this Act, with its equipage or trappings, and any vehicle similarly used, together with its equipment and appurtenances. The mere conveyance of smuggled goods by such transport vehicle shall be sufficient cause for the outright seizure and confiscation of such transport vehicle but the forfeiture shall not be effected if it is established that the owner of the means of conveyance used as aforesaid, is engaged as common carrier and not chartered or leased, or that the agent in charge thereof at the time, has no knowledge of the unlawful act; and

(l) Goods sought to be imported or exported:
(1) Without going through a customs office, whether the act was consummated, frustrated, or attempted;
(2) Found in the baggage of a person arriving from abroad and undeclared by such person;
(3) Through a false declaration or affidavit executed by the owner, importer, exporter, or consignee concerning the importation of such, goods;
(4) On the strength of a false invoice or other document executed by the owner, importer, exporter, or consignee concerning the importation or exportation of such goods; or
(5) Through any other practice or device contrary to law by means of which such goods entered through a customs office to the prejudice of the government.

6 SEC. 1400. *Misdeclaration, Misclassification, Undervaluation, in Goods Declaration.* – Misdeclaration as to quantity, quality, description, weight, or measurement of the goods, or misclassification through insufficient or wrong description of the goods or use of wrong tariff heading resulting to a discrepancy in duty and tax to be paid between what is legally determined upon assessment and what is declared, shall be subject to a surcharge equivalent to two hundred fifty percent (250%) of the duty and tax due. No surcharge shall be imposed when the discrepancy in duty is less than ten percent (10%), or when the declared tariff heading is rejected in a formal customs dispute settlement process involving difficult or highly technical question of tariff classification, or when the tariff classification declaration relied on an official government ruling.

There is undervaluation when: (a) the declared value fails to disclose in full the price actually paid or payable or any dutiable adjustment to the price actually paid or payable; or (b) when an incorrect valuation method is used or the valuation rules are not properly observed, resulting in a discrepancy in duty and tax to be paid between what is legally determined as the correct value against the declared value. When the undervaluation is established without the need to go through the formal dispute settlement process provided for in this Act, a surcharge shall be imposed equivalent to two hundred fifty percent (250%) of the duty and tax due. No surcharge shall be imposed when the discrepancy in duly is less than ten percent (10%); or the declared value is rejected as a result of an official ruling

On appeal, respondent denied petitioners' plea for reversal of the District Collector's Decision in the undated assailed Resolution received by petitioners on 22 September 2021 (reiterating the alleged violations of petitioners).

Hence, the present petition.

In this petition, petitioners prayed for this Court (1) to give due course to their petition; (2) to reverse the assailed Resolution; and, (3) to order respondent to enter into a compromise with petitioners allowing the latter to pay thirty percent (30%) fine without imposition of a 500% surcharge, and to recover the subject vehicle.

On 06 December 2021, the Court issued Summons[8] directing respondent to file his or her Answer within thirty (30) days from receipt thereof.

On 04 February 2022, respondent filed the Answer[9] to petitioners' petition, stating that the seizure and forfeiture of the subject shipment were legal since the shipment was misdeclared and likewise, not accompanied by the required import permits. Moreover, the forfeiture of the subject vehicle was likewise legal as it transported the misdeclared shipment.

Still later, on 08 March 2022, the Court issued a Notice of Pre-trial Conference[10] setting the case for pre-trial on 18 May 2022. On 10 May

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or decision under the customs dispute settlement process involving difficult or highly technical question relating to the application of customs valuation rules.

A discrepancy in duty and tax to be paid between what is legally determined and what is declared amounting to more than thirty percent (30%) shall constitute a *prima facie* evidence of fraud.

When the misdeclaration, misclassification or undervaluation is intentional or fraudulent, such as when a false or altered document is submitted or when false statements or information are knowingly made, a surcharge shall be imposed equivalent to five hundred percent (500%) of the duty and tax due and that the goods shall be subject to seizure regardless of the amount of the discrepancy without prejudice to the application of fines or penalties provided under Section 1401 of this Act against the importer and other person or persons who willfully participated in the fraudulent act.

7 ADDITIONAL RULES AND REGULATIONS ON THE PURCHASE, SALE, LEASE AND/OR RETAIL OF MOBILE PHONES.

8 Division Docket, p. 64.

9 Id., pp. 66-80.

10 Id., pp. 83-84.

2022, respondent submitted his or her PTB[11] while petitioners filed their Joint PTB[12] on 13 May 2022.

During the pre-trial proceeding, on 18 May 2022, the parties manifested that there are no disputed facts and that there exist only purely legal issues. As a result, the Court ordered[13] the parties to submit their respective memoranda within 30 days from such order. Respondent filed his or her Memorandum[14] on 08 June 2022 while petitioners filed their Joint Memorandum[15] on 20 June 2022.

On 22 June 2022, following the parties' submission of their respective memoranda, the Court submitted the case for decision.[16]

ISSUES

The issues, as can be extracted from the submissions of the parties, may summarized as follows:

I.
WHETHER THE SEIZURE AND FORFEITURE OF THE SUBJECT SHIPMENT AND IMPOSITION OF A 500% SURCHARGE ON THE DUTIES DUE THEREON ARE VALID; AND,

II.
WHETHER THE SEIZURE AND FORFEITURE OF THE SUBJECT VEHICLE BELONGING TO Z3 TRUCKING IS SUPPORTED BY LAW.

ARGUMENTS

Petitioners challenge the legality of the OSGC's shipment's forfeiture and the further imposition of a 500% surcharge on its liabilities. They argue respondent's action has no basis in law considering that the seizure meets the conditions for settlement under Section 1124[17]

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11 Id., pp. 85-91.
12 Id., pp. 125-132.
13 See Order dated 18 May 2022, id., p. 170.
14 Id., pp. 178-196.
15 Id., pp. 206-231.
16 See Resolution dated 22 June 2022, id., p. 257.
17 SEC. 1124. *Settlement of Pending Seizure Case by Payment of Fine or Redemption of Forfeited Goods.* – Subject to the approval of the Commissioner, the District Collector may allow the settlement by payment of fine or the redemption of forfeited goods, during the course of the

of the CMTA. Petitioners further contend that the forfeiture of petitioner Z3's vehicle was improper, the same being a common carrier in accordance with paragraph 4.2.3 of Customs Administrative Order (CAO) No. 10-2020.[18]

Respondent, on the other hand, argues that the subject shipment's seizure was proper since it was imported without the necessary NTC import permit, in violation of NTC Memorandum Circular No. 08-08-0224A. Respondent also claims that the seizure of the subject vehicle was warranted under Section 1113 of the CMTA since it was inside the said vehicle that the illegally imported goods were being transported.

The Court's ruling follows.

After a careful review of the records, the Court finds the present petition partly meritorious.

While questions of law are involved herein as the parties so claimed, the records will also reveal that the issues would have been more properly settled had the case proceeded to a full-blown trial. Despite their stipulations that the questions to be resolved are purely legal, the Court finds that the settlement of the issues would rely mostly in establishing certain factual circumstances such as the presence of intentional fraud or the nature of petitioners' contractual relationship with one another.

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forfeiture proceeding. However, the Commissioner may accept the settlement by redemption of any forfeiture case on appeal. **No settlement by payment of fine shall be allowed when there is fraud or when the discrepancy in duties and taxes to be paid between what is determined and what is declared amounts to more than thirty percent (30%).** (Emphasis supplied)

18 **4.2. Conditions for Forfeiture.**

...

4.2.3. Vehicles, vessels or aircrafts used in carrying smuggled goods in commercial quantity shall be forfeited except if all of the following conditions are present:

a. It is a common carrier;
b. It has not been chartered for purposes of conveying and transporting persons or cargo. ...; and
c. The owner or agent at that time of Seizure has no knowledge of and participation in the unlawful act.

However, a prima facie presumption against such vehicles, vessel or aircraft shall exist under any of the following circumstances:

a. If 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.

For one, petitioner OSGC mainly posits that there was no willful misdeclaration but rather an erroneous delivery on the part of its international supplier which could have been best proven by the presentation of its order form or invoice from the said supplier. Additionally, petitioner Z3's contention that it is a common carrier could have been proven by pertinent documents relating to its business and the contract it entered with petitioner OSGC.

Although the parties attached documents to their respective submissions to this Court (in support of their claims), the Court could not give them probative weight as they were not formally offered as evidence. Section 34, Rule 132 of the Rules of Court categorically states that "[t]he court shall consider no evidence which has not been formally offered."

Jurisprudence, however, have carved out a single exception to the above rule. The Court may still consider a piece of evidence despite the lack of a formal offer when (*a*) the same was duly identified by testimony duly recorded; and, (*b*) the same was incorporated in the records of the case.[19] Yet again, despite the parties' supposed documentary evidence being found in the case records, they have not properly identified (the evidence) in open court leaving this Court to rely on what appears as undisputed assertions in the records.

On the issue of misdeclaration, the Court finds that intentional misdeclaration was not established aptly to warrant the imposition of a 500% surcharge, pursuant to Section 1400 of the CMTA. The said Section on this note states:

> ...
> When the misdeclaration, misclassification or undervaluation is **intentional or fraudulent**, such as when a false or altered document is submitted or when false statements or information are knowingly made, a surcharge shall be imposed equivalent to five hundred percent (500%) of the duty and tax due and that the goods shall be subject to seizure regardless of the amount of the discrepancy without prejudice to the application of fines or penalties provided under Section 1401 of this Act against the importer and other person or persons who willfully participated in the fraudulent act.[20]
> ...

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19 *Bank of Commerce v. Heirs of Rodolfo Dela Cruz*, G.R. No. 211519, 14 August 2017.
20 Emphasis supplied.

Clearly, misdeclaration in the above provision must be qualified by the fact that the same is either intentional or fraudulent. There, although it is incumbent on petitioners to prove their allegations such as the supplier's alleged mistake, so must the existence of fraud be proven as a matter of law to justify such an onerous penalty. In *Bureau of Customs v. The Honorable Agnes VST Devanadera, Acting Secretary, Department of Justice, et al.*[21], the Supreme Court held that:

> ...
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> The provision enumerates the various fraudulent practices against customs revenue, such as the entry of imported or exported articles by means of any false or fraudulent invoice, statement or practice; the entry of goods at less than the true weight or measure; or the filing of any false or fraudulent entry for the payment of drawback or refund of duties.
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> The fraud contemplated by law must be intentional fraud, consisting of deception, willfully and deliberately dared or resorted to in order to give up some right. The offender must have acted knowingly and with the specific intent to deceive for the purpose of causing financial loss to another; even false representations or statements or omissions of material facts come within fraudulent intent. The fraud envisaged in the law includes the suppression of a material fact which a party is bound in good faith to disclose. Fraudulent nondisclosure and fraudulent concealment are of the same genre.
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> Fraudulent concealment presupposes a duty to disclose the truth and that disclosure was not made when opportunity to speak and inform was present, and that the party to whom the duty of disclosure as to a material fact was due was thereby induced to act to his injury. Fraud is not confined to words or positive assertions; it may consist as well of deeds, acts or artifice of a nature calculated to mislead another and thus allow one to obtain an undue advantage.
>
> ...

Moreover, the same provision declares that "[a] discrepancy in duty and tax to be paid between what is legally determined and what is declared amounting to more than thirty percent (30%) shall constitute a *prima facie* evidence of fraud".[22] Considering that fraud has not been proved, neither is there a 30% discrepancy alleged between the duties

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21 G.R. No. 193253, 08 September 2015.

22 Supra at note 6.

determined and that declared to give rise to a presumption thereof, the Court finds no reason to maintain the imposition of the 500% surcharge.

With the above, the fact remains that the subject shipment's importation was still not accompanied by the required permits from the NTC, making the seizure thereof proper under the circumstances. Although petitioners are correct that they may still procure import permits from the NTC to legitimize the importation of the subject shipment; the facts, however, do not disclose that they procured or attempted to procure the same to cause the subject shipment's release.

At any rate, it is noted that petitioners no longer pray for the shipment's release after respondent had forfeited the same in Department of Education's favor (although the veracity thereof cannot be ascertained by the Court). In lieu of the subject shipment's release, petitioners merely pray that this Court compel respondent to enter into an amicable settlement with them to allow them to pay a compromise amount equivalent to 30% of the duties due on the subject shipment. Unfortunately, this is a remedy that this Court cannot simply grant.

Article 2028 of the New Civil Code of the Philippines provides that, "[a] compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced." As a contract, a compromise agreement is perfected by mutual consent[23], to wit:

> ...
> Art. 1315. Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.[24]
> ...

Therefore, the Court cannot legally compel respondent to enter into a compromise with petitioners against the former's will for doing such would subject respondent to suffer involuntary servitude against Section 18, Article III of 1987 Constitution which provides:

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[23] *Tranquilino Rovero v. Rafael Amparo as Judge of the Court of First Instance of Manila, Branch III, et al.*, G.R. No. L-5482, 05 May 1952.

[24] New Civil Code of the Philippines, Art. 1315.

> ...
>
> Sec. 18. ...
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> (2) No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted.
>
> ...

Furthermore, even assuming that the Court may somehow promulgate such an order, the resulting compromise agreement will be inevitably flawed as "[a] contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable"[25] leaving the same susceptible to recission.

Now, on the matter of the subject vehicle's seizure and forfeiture, Section 4.2.3 of CAO 10-2020 provides:

> ...
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> **4.2. Conditions for Forfeiture.**
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> ...
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> 4.2.3. Vehicles, vessels or aircrafts used in carrying smuggled goods in Commercial Quantity shall be forfeited except if all of the following conditions are present:
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> a. It is a Common Carrier;
> b. It has not been chartered for purposes of conveying or transporting persons or cargo...; and
> c. The owner or agent at that time of Seizure has no knowledge of and participation in the unlawful act.
>
> However, a prima facie presumption against such vehicles, vessel or aircraft shall exist under any of the following circumstances:
>
> a. If 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.
>
> ...

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25 New Civil Code of the Philippines, Article 1330.

Again, the Court is unable to make any evidence-based finding that petitioner Z3 is a common carrier. Article 1732 of the New Civil Code of the Philippines merely defines a common carrier as follows:

> ...
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> Art. 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.
>
> ...

This exact definition has been adopted by Section 3.4[26] of CAO-10-2020. Given the lack of any evidence supporting the parties' opposing arguments, the Court is constrained to exercise equity jurisdiction as regards this issue. In *Regulus Development, Inc. v. Antonio Dela Cruz*[27], the Supreme Court held that:

> ...
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> ... [E]quity jurisdiction aims to provide complete justice in cases where a court of law is unable to adapt its judgments to the special circumstances of a case because of a resulting legal inflexibility when the law is applied to a given situation. The purpose of the exercise of equity jurisdiction, among others, is to prevent unjust enrichment and to ensure restitution.
>
> ...

Even with the absence of a factual finding that petitioner Z3 is a common carrier, since there is likewise no proof of fraud on petitioner OSGC's part, a further seizure of the property of petitioner Z3 (who may be an innocent party to the misdeclaration) does not sit well with the Court. It is noted that the records do not show that petitioner Z3 was aware of petitioner OSGC's business dealings beyond what its services were contracted for. Moreover, there is no evidence that petitioner Z3 was privy to the misdeclaration or discrepancy between the goods declared and actually delivered. A perusal of the facts would lead to no other logical inference as regards the relationship between petitioners other than that OSGC hired Z3 to carry the subject shipment from the port to an unspecified location.

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26 Common Carrier – shall refer to 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.

27 G.R. No. 198172, 25 January 2016; Citation omitted.

WHEREFORE, the foregoing premises considered, the Joint Petition for Review of petitioners Omega Six Global Corporation and Ma. Dolores F. Banaag/Z3 Trucking is hereby **PARTIALLY GRANTED**. Accordingly, petitioner Omega Six Global Corporation is **ORDERED** to pay the assessed duties and other costs, without the 500% surcharge provided under Section 1400 of the Customs Modernization Tariff Act, on the subject shipment consisting of (1) 88 boxes x 4 small boxes/box x 10 units/small boxes (3,520 units of Realme c15) (cellphones); and, (2) One (1) box Nike Air Force 1 shoes.

Respondent Commissioner of Customs, on the other hand is **ORDERED** to **RELEASE** the Hino Aluminum Van with plate number CAQ 9533 to petitioner Dolores F. Banaag/Z3 Trucking, without further costs.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice