REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

CHANG L. MOHAMMAD, SHARALYN S. PEDRENA, JOHNNY S. YUSUP, FERDAUS A. OMAR, and ARMAND P. DAUD,
Petitioners,

CTA CASE NO. 10346

Members:

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

- versus -

COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated:
JUL 04 2023 10:57 AM

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is the "Motion for Reconsideration"[1] (**MR**) filed by petitioners Chang L. Mohammad (**Mohammad**), Sharalyn S. Pedrena (**Pedrena**), Johnny S. Yusup (**Yusup**), Ferdaus A. Omar (**Omar**) and Armand P. Daud (**Daud**) *via* registered mail on 24 November 2022[2], with Comment[3] filed by respondent Commissioner of Customs (**respondent/COC**) filed *via* registered mail on 22 February 2023.[4]

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1 Division Docket, pp. 239-246.
2 Received by the Court on 06 December 2022.
3 Division Docket, pp. 258-266.
4 Received by the Court on 28 February 2023.

Petitioner seeks the reversal of the Court's Decision in the above-captioned case dated 04 November 2022[5] (**assailed Decision**). The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review filed by petitioners Chang L. Mohammad, Sharalyn S. Pedrena, Johnny S. Yusup, Ferdaus A. Omar, and Armand P. Daud on 10 September 2020 is hereby **DENIED** for lack of merit. Accordingly, respondent Commissioner of Customs' Assailed Decision dated 29 July 2020 is hereby **AFFIRMED.**
>
> **SO ORDERED.**
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> ...

In the present MR[6], petitioners insist that this Court erred in affirming the denial of their offer of settlement through payment of fine pursuant to Section 1124[7] of Republic Act (**RA**) No. 10863 or the Customs Modernization and Tariff Act of 2016 (**CMTA**), in relation to the subject undeclared foreign currency of USD $491,600.00 (USD $501,600.00 less the USD $10,000.00 threshold) intercepted from petitioner Mohammad and forfeited in favor of the government for violation of Section 1113(l)(2)[8] of the CMTA, in relation to Section 4(2)[9] of the Bangko Sentral ng Pilipinas (**BSP**'s) Manual of Regulations on Foreign Exchange Transactions (**MORFXT**), in relation to BSP Circular No. 308, Series of 2001, as amended.[10]

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5 Division Docket, pp. 208-238.

6 Supra at note 1.

7 **SEC. 1124**. *Settlement of Pending Seizure Case by Payment of Fine or Redemption of Forfeited Goods*. — ...

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

...

(1) Goods sought to be imported or exported:

...

(2) Found in the baggage of a person arriving from abroad and **undeclared** by such person[.] (Emphasis and underscoring supplied.)

9 **Sec. 4. Cross-Border Transfer of Local and Foreign Currencies**

...

2. Foreign Currency. Any person, who brings into or takes out of the Philippines foreign currency, as well as other foreign currency-denominated bearer monetary instruments, in excess of USD10,000 or its equivalent is required to declare the same in writing and to furnish information on the source and purpose of the transport of such currency or monetary instrument. (Underscoring supplied.)

10 Bangko Sentral ng Pilipinas (BSP) Circular No. 308 dated 15 November 2001, as amended, requires any person who brings in or out of the Philippines in excess of USD $10,000.00 or its equivalent to declare the same in writing using the prescribed foreign currency declaration form.

Petitioners disagree with this Court's ruling that the decision to accept the offer of settlement, notwithstanding the absence of fraud, remains solely within the discretion of the District Collector. According to them, if that were true, then the CMTA should not have acknowledged an offer of settlement by payment of fine as an available the remedy for the release of seized goods to its owner. The fact that such offer of settlement is provided for under Section 1124[11] of the CMTA, the decision to accept the same does not remain solely within the discretion of the District Collector.

Petitioners likewise reiterate that since respondent failed to establish actual fraud, their offer of settlement by payment of fine must be granted and the subject foreign currency should be released to them at seventy percent (70%) of the amount intercepted, equivalent to USD $344,120.00 after payment of the fine.

Moreover, in arguing that none of the exceptions precluding the grant of settlement by payment of fine are present in this case, petitioners assert that the subject importation of foreign currency in question is not among those prohibited under Section 118[12] of the CMTA. They further contend that its release is not contrary to law because it is legitimately owned by Sharalyn S. Pedrena Money Changer (**SSP Money Changer**), with petitioner Pedrena being the owner.

On the other hand, respondent, in his or her Comment[13], notes that petitioners attempt to mislead in arguing that there is no legal basis to prohibit the importation of the subject foreign currency considering that the same is not included in the list of prohibited importations under Section 118[14] of the CMTA. He or she clarified that the forfeiture in this case is not anchored on a finding that an importation of foreign currency *per se* is prohibited, as petitioners suggest, but rather on the fact that the subject foreign currency was undeclared in violation of Section 1113(l)(2)[15] of the CMTA, in relation

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11 Supra at note 7.
12 SEC. 118. *Prohibited Importation and Exportation.* — ...
13 Supra at note 3.
14 Supra at note 12.
15 Supra at note 8.

to Section 4(2)[16] of the BSP's MORFXT, in relation to BSP Circular No. 308, Series of 2001, as amended.[17]

Contrary to petitioners' position, respondent maintains that he or she acted within the bounds of his or her discretion in affirming the denial of petitioners' offer of settlement by fine in relation to the subject undeclared foreign currency. Even assuming that there was no fraud involved in petitioner Mohammad's undisputed failure to declare the subject foreign currency in his Foreign Currency Declaration Form[18] (**FCDF**), respondent is not bound to accept petitioners' offer of compromise or settlement as this is a matter of pure administrative discretion on his or her part as the Bureau of Customs (**BOC**) head.

Respondent also points out that petitioners failed to provide a convincing argument or competent proof that would justify a reconsideration of the assailed Decision.

We resolve.

A careful perusal of petitioners' MR[19] readily reveals that it contains a mere rehash or reiteration of the issues and arguments raised in its Petition for Review[20], which the Court already considered, passed upon and exhaustively discussed in the assailed Decision. There were no substantial arguments raised in the MR that would warrant this Court's reconsideration.

In *Shangri-la International Hotel Management, Ltd., et al. v. Developers Group of Companies, Inc.*[21], the Supreme Court held that it is incumbent upon petitioner-movant to raise substantially plausible matters to warrant the relief sought, thus:

> ...
> The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on

[16] Supra at note 9.
[17] Supra at note 10.
[18] Annex "1" to Respondent's "Answer/Comment", Division Docket, p. 72; Stipulated Document, JSFLI, id., p. 180.
[19] Supra at note 1.
[20] Division Docket, pp. 6-37, with annexes.
[21] G.R. No. 159938, 22 January 2007.

> issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired cause of action.
>
> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought.[22]
>
> ...

All told, We reiterate that respondent acted within the bounds of his or her discretion in affirming the denial of petitioners' offer of settlement by payment of fine. We quote the relevant portion of the assailed Decision[23]:

> ...
>
> In fact, in offering settlement by payment of fine in lieu of forfeiture, as allowed under Section 1124 of the CMTA, petitioners have already admitted that the subject undeclared foreign currency of USD $491,600.00 is liable for forfeiture and the issue left to be resolved is whether respondent erred denying their settlement offer based on *prima facie* evidence of fraud.
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> Section 1124 of the CMTA pertinently provides:
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>> ...
>>
>> 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 <u>may</u> allow the settlement by payment of fine** or the redemption **of forfeited goods, during the course of the 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%).
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>> In case of settlement by payment of fine, the owner, importer, exporter, or consignee or agent shall offer to pay a fine equivalent to thirty percent (30%) of the landed cost of

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22 Citation omitted.

23 Supra at note 5; Division Docket, pp. 234-237; Citations omitted, emphasis, italics and underscoring in the original text.

> the seized goods. In case of settlement by redemption, the owner, importer, exporter, or consignee or agent shall offer to pay the redeemed value equivalent to one hundred percent (100%) of the landed cost.
>
> Upon payment of the fine or payment of the redeemed value, the goods shall be released and all liabilities which may attach to the goods shall be discharged without prejudice to the filing of administrative or criminal case.
>
> **Settlement of any seizure case by payment of the fine** or redemption of forfeited goods **shall not be allowed when there is fraud**, or where the importation is prohibited or the release of the goods is contrary to law.
>
> ...

The use of the word "may" is ordinarily construed as permissive or directory, indicating that a matter of discretion is involved. Thus, the word "may", when used in a statute, does not generally suggest compulsion. As respondent aptly pointed out, the use of the word "may" in the first paragraph of Section 1124 of the CMTA above indicates that it is within the discretion of the District Collector or the COC, as the case may be, whether to accept an offer of settlement in a seizure and forfeiture case.

Respondent thus argued correctly that the decision to accept petitioners' offer of settlement by payment of fine, notwithstanding the absence of fraud, remains solely within the discretion of the District Collector (subject to the COC's approval). However, such discretion is not without limitations. Section 1124 of the CMTA above also provides for the limitations in the exercise of such discretion and uses the word "shall" in not allowing settlement of any seizure case by payment of the fine "when there is fraud, or where the importation is prohibited or the release of the goods is contrary to law."

Indeed, the determination of the existence of fraud becomes relevant only when the District Collector or the COC exercises its discretion to accept the settlement offer because there can be no settlement if there is evidence of fraud. Certainly, fraud is not an element or requirement for forfeiture under Section 1113(l)(2) of the CMTA and the District Collector or the COC is *not* bound to grant a settlement offer in lieu of forfeiture under Section 1124 of the CMTA above when there is no finding of fraud.

Here, respondent has exercised prudently his discretion to deny petitioners' settlement offer considering the abovementioned strikingly suspect circumstances that attended the importation of the subject undeclared foreign currency and as a measure to deter attempts to bring in large sums of foreign currency into the country for illegal activities. For this reason, the Court finds that respondent

> acted within the bounds of his discretion under the circumstances in proceeding with the forfeiture of the subject undeclared foreign currency.
>
> Well-settled is the rule in our jurisdiction that the findings of fact of an administrative agency must be respected, as long as such findings are supported by substantial evidence even if such evidence might not be overwhelming or preponderant. It is not the task of an appellate court to weigh once more the evidence submitted before the administrative body and to substitute its own judgment for that of the administrative agency in respect of sufficiency of evidence.
>
> Courts of justice will not generally interfere with purely administrative matters which are addressed to the sound discretion of government agencies unless there is a clear showing that the latter acted arbitrarily or with grave abuse of discretion or when they have acted in a capricious and whimsical manner such that their action may amount to an excess of jurisdiction.
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> In fine, petitioners failed to show that respondent committed a reversible error when he affirmed the denial of petitioners' offer of settlement and the forfeiture of the undeclared foreign currency of USD $491,600.00. The rule must stand no matter how harsh it may seem. *Dura lex sed lex.*
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> ...

WHEREFORE, premises considered, petitioners' "Motion for Reconsideration", filed on 24 November 2022, is **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice