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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL GRID CORPORATION OF THE PHILIPPINES,
Petitioner,

-versus-

COMMISSIONER OF CUSTOMS AND THE DISTRICT COLLECTOR, NAIA CUSTOMS COLLECTION DISTRICT,
Respondents.

CTA EB No. 1574
(CTA Case No. 8663)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO,

Promulgated:
OCT 22 2019
11:53 a.m.

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RESOLUTION

MINDARO-GRULLA, J.:

Submitted for resolution on July 9, 2019, of this Court En Banc is petitioner National Grid Corporation of the Philippines' (NGCP) "Motion for Reconsideration, with respondents' "Comment (On Petitioner's Motion for Reconsideration). The Motion seeks for the reconsideration and reversal of the Decision promulgated on May 7, 2019, the dispositive portion of which reads as follows:

Decision dated May 7, 2019:

> "**WHEREFORE**, the petition is **DENIED**. The Decision of the Second Division in CTA Case No. 8663 dated 25 July 2016, and its Resolution dated 28 November 2016 are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED."

The Motion for Reconsideration must fail. The arguments in the instant Motion are a mere rehash of petitioner's arguments raised in its Petition for Review that have already been adequately and judiciously dealt with in the assailed Decision.

While it has already been settled that the totality of circumstances present in the case at bar, as well as the acts of the importer constitute fraud, and not a simple case of mislabeling committed through honest mistake, this Court will, nevertheless, discuss some points for further enlightenment.

Pertinent to this case is Section 1203 of the Tariff and Customs Code of the Philippines (TCCP) which provides:

> "Sec. 1203. Owner of Imported Articles. - All articles imported into the Philippines shall be held to be the property of the person to whom the same are consigned; and the holder of a bill of lading duly indorsed by the consignee therein named, or, if consigned to order, by the consignor, shall be deemed the consignee thereof. The underwriters of abandoned articles and the salvors of articles saved from a wreck at sea, along a coast or in any area of the Philippine may be regarded as the consignees."

Under this premise, the owner of the imported articles is the consignee, or the one who holds the bill of lading duly indorsed by the consignee or, if consigned to order, by the consignor.

In this regard, a review of the records shows that the shipping labels on the package containing "Eight (8) Boxes STC VIDEO CONFERENCING EQUIPMENT" covered by AWB No. 229-BKK-4594 0775/HAWB No. MNL1201001 indicate the consignee to be American Technologies, Inc. This has been stipulated by the parties.[1]

Notably however, after careful scrutiny of the declarations contained in the Import Entry & Internal Revenue Declaration (IEIRD) SN No.119574743, the following observations have been made:

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[1] Joint Stipulation of Facts and Issues, Division Docket, Vol. I, p. 310.

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1) Eliza B. Ordanza and Linda Forbes are the broker and importer/attorney-in-fact, respectively; and

2) The consignee of the subject shipment is NGCP.

Further, based on the pieces of evidence, this Court was led to conclude that the subject shipment is not really consigned to petitioner but to some other person, *viz:*

1) The import documents, **Celestica Invoice No. 6318-201, Polycom Packing List-6318A/2011** and **Polycom Proforma Invoice No. 6318-2011** submitted by petitioner were **all dated December 30, 2011**; and

2) Petitioner's **Purchase Order Nos. 000118400-EMA and 000118409-EMA, prepared on December 29, 2011, were received by Nayon Kontrol Systems and NKS Global Limited, HK ONLY on January 3, 2012.**

In view of the foregoing material dates, the Court is baffled that, if indeed the shipments were really intended for NGCP, how is it possible that the purchase of the subject shipment preceded the conformity of NKS Global Limited, HK? The only logical conclusion is that the subject shipment was not really intended for NGCP.

On these bases, it is clear that through the collective acts of Nayon Kontrol Systems and NKS Global Limited, HK, acting through Linda Forbes, they demonstrated a wrongful intention in declaring that NGCP is the consignee, the truth being the subject shipment is consigned to some other person as discussed above.

Proceeding therefrom, what could only be the purpose of wrongfully declaring the consignee of the subject shipment? To this Court's mind, the only obvious answer is to evade the payment of duties and taxes due to the government.

We submit that fraud is never presumed. It must be proved. Failure of proof of fraud is a bar to forfeiture. The reason is that forfeitures are not favored in law and equity. The fraud contemplated by law must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some right. Absent fraud, the Bureau of Customs cannot forfeit the

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shipment in its favor.[2] However, while it is true that fraud is never presumed, it is without exception.

As cited in the assailed Decision, the ruling of the Supreme Court in *Archipelago Management and Marketing Corporation vs. Court of Appeals, et al.*[3] is apropos in the case at bar, We reiterate:

> "xxx. The statement that fraud cannot be presumed does not mean that the presumption of fraud may not arise, and be legitimately deduced, from circumstantial evidence, but only that it is not to be assumed of a transaction that it is fraudulent, in the absence of proof afforded by intrinsic evidence of unfairness in the transaction itself, or extrinsic facts and circumstances leading to that conclusion. The general rule, therefore, must be understood only as affirming that a contract or conduct apparently honest and lawful must be treated as such until it is shown to be otherwise by either positive or circumstantial evidence. **Fraud may be, and often is, proved by or inferred from circumstances, and the circumstances proved may in some cases raise a presumption of its existence. On the other hand it has been held that while fraud may be proved by circumstances or presumed from them, it cannot be demonstrated by construction, and hence must be prove[n] in all cases**."

NGCP attempts to mislead the Court by invoking the defense of mislabeling committed through "honest mistake". Unfortunately, there is no iota of evidence which can convince this Court otherwise. As explained above, all circumstances attendant to this case as well as the pieces of evidence on record outweigh such defense. The acts/ declaration made by Linda Forbes clearly indicate intentional fraud for purposes of evading payment of taxes.

All told, the Court finds no reason to reverse or modify the assailed Decision. Accordingly, the fraudulent transaction involved in this case fall squarely under the requisites for the

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[2] The Commissioner of Customs & The District Collector of Customs for the Port of Iloilo vs. New Frontier Sugar Corporation, G.R. No. 163055, June 11, 2014.
[3] G.R. No. 128850, November 20, 1998.

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forfeiture of goods under Section 2530(f)(1), in relation to (3)(4)(5), of the Tariff and Customs Code.[4]

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

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[4]Section 2530. Property Subject to Forfeiture under Tariff and Customs Laws. - Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subject to forfeiture:

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f. Any article the importation or exportation of which is effected or attempted contrary to law, or any article of prohibited importation or exportation, and all other articles which, in the opinion of the Collector, have been used, are or were entered to be used as instruments in the importation or the exportation of the former:

1. Any article sought to be imported or exported:

xxx xxx xxx

(3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;

(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 article; and

(5) Through any other practice or device contrary to law by means of which such article was entered through a customhouse to the prejudice of the government. (Boldfacing Supplied)

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice