



Republic of the Philippines,

Seizure Identification
No. CFZ **099-2022**

-versus-

Shipment said to contain “**2 pcs. Customized Tumbler, 2 pcs. T-shirts, 1 pair of slipper**” destined to Kippa Ring, Australia which will be shipped thru Federal Express (FedEx) Clark on 12 November 2022 under House Airway Bill No. 770475462004 but found to contain **one (1) pair of slippers, two (2) pcs. T-shirts and two (2) boxes Wintergreen Klondike Longcut Smokeless tobacco with ten (10) small cans per box**

Exporter/Shipper:

MARILOU CLERKIN

Unit 1621, Tower D, Shell Residences, MOA Complex, Pasay 1300 PH

Claimant.

x-----x

DECISION

This resolves the seizure and forfeiture proceedings instituted against the above-captioned shipment for violation of Section 1113 paragraphs (f) and (l) (3) and (4) of Republic Act (R.A.) No. 10863 otherwise known as the Customs Modernization and Tariff Act (CMTA).

As culled from the records, the material facts of the instant case are as follows:

On 12 November 2022, an export shipment destined to Kippa Ring, Australia said to contain “**2 pcs. Customized Tumbler, 2 pcs. T-shirts, 1 pair of slipper**” exported by MARILOU CLERKIN consigned to David Andrew Clerkin arrived at the Federal Express (FedEx) gateway facility under House Airway Bill No. 770475462004. The same was marked for verification/physical examination by the X-ray Inspector on duty.

On even date, Trade Control Examiner Marife Foloso conducted physical examination on the subject shipment in the presence of representative from FedEx which led to the following findings:

AS DECLARED IN THE INVOICE	AS FOUND
2 pcs. Customized Tumbler, 2 pcs. T-shirts, 1 pair of slipper (left over upon vacation) for personal used only	<ul style="list-style-type: none"> • Two (2) pcs. T-shirts • One (1) pair of slippers • Two (2) boxes Wintergreen Klondike Longcut Smokeless tobacco containing ten (10) small cans per box
Value: PHP 2,000.00 Weight: 2.0 kgs.	Gross Weight: 2 kgs.

On 15 November 2022, the Office of the District Collector received a Memorandum dated 14 November 2022 from Ms. Maricar N. Go and Ms. Foloso, Officer-In-Charge

Export Unit and Acting Trade Control Examiner FedEx, respectively, recommending the issuance of a Warrant of Seizure and Detention (WSD) against the subject export shipment for violation of Section 1113 paragraphs (i) and (l) (3) and (4) R.A. No. 10863 otherwise known as the CMTA.

On 18 November 2022, a WSD docketed as S.I No. CFZ 099-2022 was issued by the Officer-In-Charge, this Port, against the subject shipment for violation of Section 1113 paragraphs (f) and (l) (3) and (4) of R.A. No. 10863 otherwise known as the CMTA.

Thereafter, hearings were scheduled on 01 and 02 December 2022, however, on 09 January 2023, the Office of the District Collector, this Port, received a Memorandum of even date from SP/Capt. Arnel A. Baylosis, returning the said Notice of Hearing and WSD because the exporter/shipper cannot be located in the given address.

Thus, we resolve.

ISSUE:

Whether or not the subject shipment may be forfeited in favor of the government.

DISCUSSION:

In quasi-judicial proceedings, procedural rules governing service of notices/summons are not strictly construed. Substantial compliance thereof is sufficient. The constitutional requirement of due process with respect to service of summons only exacts that the service of summons be such as may reasonably be expected to give the notice desired.

In the case of **Scenarios, Inc. and/or Rhotziv Bago V. Jelly Vinluan (2008)**, the court considered as substantial compliance the service of summons by registered mail at respondent's place of business explaining therein that technical rules of procedure are not strictly applied in quasi-judicial proceedings; only substantial compliance is required.

Similarly, in the present case at hand, records show that Enforcement and Security and Service (ESS), this Bureau, served the Notice of Hearing and WSD thru mail via JRS Express, however, the same was unsuccessful because the exporter/shipper cannot be located in the given address. Be it noted that said address and name of the exporter/shipper was taken from the exportation documents as submitted. Subsequently, Notice of Hearing and WSD were posted at the BOC Official Website and Bulletin Board.

Thus, this Office opines that the above-mentioned attempt to deliver the Notice of Hearing and WSD and posting the same at the BOC Official Website and Bulletin Board are sufficient enough to comply with the procedural due process as required by law.

Anent the issue on the forfeiture of goods, Section 1113 paragraphs f and l (3) and (4) of the CMTA is explicit:

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

- (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.

(l) Goods sought to be imported or exported:

(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

xxx

Applying the abovementioned provisions of law in the case at hand, this office ruled that exportation of subject shipment is contrary to law. Be it noted that subject shipment was declared in the airway bill and commercial invoice as “2 pcs. *Customized Tumbler*, 2 pcs. *T-shirts*, 1 pair of *slipper*” contrary to the findings of the Trade Control Examiner that the same contained **one (1) pair of slippers, two (2) pcs. T-shirts and two (2) boxes Wintergreen Klondike Longcut Smokeless tobacco with ten (10) small cans per box.**

Moreover, it is worthy to note that Section 1123 of the CMTA is unequivocal and we quote:

“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.”

All told, subject shipment is liable for forfeiture for having been exported in violation of Section 1113 paragraphs (f) and (l) (3) and (4) of R.A. No. 10863 otherwise known as the CMTA.

WHEREFORE, by virtue of the authority vested in me by law, it is hereby ordered and decreed that **shipment said to contain “2 pcs. Customized Tumbler, 2 pcs. T-shirts, 1 pair of slipper” destined to Kippa Ring, Australia which will be shipped thru Federal Express (FedEx) Clark on 12 November 2022 under House Airway Bill No. 770475462004 but found to contain one (1) pair of slippers, two (2) pcs. T-shirts and two (2) boxes Wintergreen Klondike Longcut Smokeless tobacco with ten (10) small cans per box**, subject of this seizure and forfeiture proceeding, be **FORFEITED** in favor of the Government to be disposed of in the manner provided for by law.

Let copies of the Order be furnished all parties and offices for their information.

SO ORDERED.

Port of Clark International Airport, Clark Freeport Zone, Pampanga, 09 January 2023.



JOHN M. SIMON
Officer-In-Charge, Port of Clark

Copy furnish:

*Marilou Clerkin
Unit 1621, Tower D, Shell Residences,
MOA Complex, Pasay 1300 PH*

*Maricar N. Go
Officer-In-Charge, Export Unit*

*Marife V. Foloso
Trade Control Examiner, FedEx*

ESS-Port of Clark

CIIS-Port of Clark