



Republic of the Philippines,

Seizure Identification
No. CFZ **124-2022**

-versus-

Shipment said to contain “**CRYSTAL BALL FOR DECORATION**” destined to Kirribilli, Australia which will be shipped thru Federal Express (FedEx) Clark on 07 November 2022 under House Airway Bill No. 770414155182 but found to contain **fifty (50) reams Marlboro Red Cigarettes**

Exporter/Shipper:
MARK RAMONE

Erlark Lpodek Co.
675 Wisconsin,
Mandaluyong 1550

Kalakhang Maynila,
Claimant.

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DECISION

This resolves the seizure and forfeiture proceedings instituted against the above-captioned shipment for violation of Sections 117 and 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) in relation to National Tobacco Administration (NTA) Memorandum Circular No. 002, Series of 2020.

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

On 07 November 2022, an export shipment destined to Kirribilli, Australia said to contain “**SILVER PLATED PAINTING FRAME**” exported by **MARK RAMONE** consigned to Mani Fawcett arrived at the Federal Express (FedEx) gateway facility under House Airway Bill No. 770414155182. The same was marked for verification/physical examination by the X-ray Inspector on duty.

On 18 November 2022, Trade Control Examiner Julius Ceasar Asuncion 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
One (1) pc. Crystal Ball for Decoration	Fifty (50) reams Marlboro Red Cigarettes
Value: USD 153.00 Weight: 1.10 kg.	Weight: 16 kgs.

Further verification of the importation documents submitted revealed that said cigarettes lacked the necessary Export Commodity Clearance (ECC) from the NTA.

On 01 December 2022, said shipment was inspected by Ms. Madel Jovellanos from Phillip Morris Fortune Tobacco Company (PMFTC) which revealed that said cigarettes are counterfeited.

On 09 December 2022, the Office of the District Collector received a Memorandum dated 05 December 2022 from Ms. Maricar N. Go and Mr. Asuncion, Officer-In-Charge (OIC) 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 Sections 117 and 1113 paragraphs (i) and (l) (3) and (4) of R.A. No. 10863 otherwise known as the CMTA in relation to NTA Memorandum Circular No. 002, Series of 2020.

On even date, a WSD docketed as Seizure Identification (S.I.) No. CFZ 124-2022 was issued by the Officer-In-Charge, this Port, against the subject shipment for violation of Sections 117 and 1113 paragraphs (f) and (l) (3) and (4) of R.A. No. 10863 otherwise known as the CMTA in relation to NTA Memorandum Circular No. 002, Series of 2020.

Thereafter, hearings were scheduled on 05 and 06 January 2023, however on 09 January 2023, the Office of the District Collector, this Port, received a Memorandum dated 06 January 2023 from SA I Fitzgerald T. Borja, noted by SP/Capt. Arnel A. Baylosis, returning the unserved 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 of the latter 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 117 of the CMTA is explicit:

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, clearance, licenses, and

any other requirements, prior to importation or exportation.
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Relative thereto, NTA Memorandum Circular No. 002, Series of 2020 defines the following, to wit:

1. **License to Export** is a written License issued by the NTA to a qualified exporter of tobacco leaf, tobacco products and other tobacco related supplies, materials and ingredients.
4. **Export Commodity Clearance** is a written declaration issued by the NTA allowing the exportation of the specific commodity, class/grade and quantity in terms of kilos/cases and FOB Value (US\$)
7. **Exporter** refers to a person, natural or juridical, duly authorized by the NTA to bring out from the country unmanufactured tobacco/manufactured tobacco products other tobacco related supplies, materials and ingredients.

Moreover, Section 5 thereof states:

1. **Application for ICC/ECC/TCC.** – For every shipment, importers/exporters of tobacco leaf, tobacco products, heated tobacco products and other tobacco related materials and ingredients shall secure from the NTA an ICC/ECC/TCC (NTA-RD-F-017 rev 02/018 rev 02) at least three working days prior to the date of unloading/loading of the commodity. xxx

In the case at hand, the subject shipment contained fifty (50) reams Marlboro Red Cigarettes which requires an ECC from the NTA. Unfortunately, claimant failed to submit the same prior to exportation of the said shipment.

Furthermore, Section 1113 paragraphs f and l (3) and (4) of the same Act is clear:

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 “CRYSTAL BALL FOR DECORATION” contrary to the findings of the Trade Control Examiner that the same contained **fifty (50) reams Marlboro Red Cigarettes**.

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 Sections 117 and 1113 paragraphs (f) and (l) (3) and (4) of R.A. No. 10863 otherwise known as the CMTA in relation to NTA Memorandum Circular No. 002, Series of 2020.

WHEREFORE, by virtue of the authority vested in me by law, it is hereby ordered and decreed that **shipment said to contain “CRYSTAL BALL FOR DECORATION” destined to Kirribilli, Australia which will be shipped thru Federal Express (FedEx) Clark on 07 November 2022 under House Airway Bill No. 770414155182 but found to contain fifty (50) reams Marlboro Red Cigarettes**, 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.

Copy furnish:

Mark Ramone
Erlark Lpodek Co.
675 Wisconsin, Kalakhang Maynila, Mandaluyong 1550

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

Julius Ceasar D. Asuncion
Trade Control Examiner, FedEx

ESS-Port of Clark

CIIS-Port of Clark

JOHN M. SIMON

Officer-In-Charge, Port of Clark