




MEMORANDUM

TO : **KARREN APRIL A. NOROÑO-GABION**
Officer-in-Charge
Public Information and Assistance Division (PIAD)

THRU : **ATTY. MARIA YASMIN M. OBILLOS-MAPA**
Acting District Collector

FROM : 
ATTY. WALLY ANN D. YUMUL
Acting Chief, Law Division

SUBJECT : **PUBLICATION IN THE BOC WEBSITE OF THE ISSUED
DECISION AND WARRANT OF SEIZURE AND DETENTION**

DATE : **22 SEPTEMBER 2023**

This refers to the herein attached Decision of Forfeiture and Warrant of Seizure and Detention (WSD):

1. **SEIZURE IDENTIFICATION NO. 086-2023 (NAIA):** One (1) yellow plastic bag of Assorted Medicines brought in by Vietnamese passenger **PHAM DUC DUY**;
2. **SEIZURE IDENTIFICATION NO. 087-2023 (NAIA):** Seventy (70) boxes of Phenokinon "F" injection (3 ampoules per box), Twenty-Five (25) BOXES OF Diane-35, Fifteen (15) boxes of Progynon Depot, Twenty (20) bottles of Hair Tonic (20) and Ninety-Three (93) bottles of Quara Botanical brought in by incoming passenger **IVERN DEIL DOROTEO**;
3. **SEIZURE IDENTIFICATION NO. 090-2023 (NAIA):** Twenty Seven (27) pieces FDA Regulated toys brought in by passenger **WILFREDO R. SALVADOR**;
4. **SEIZURE IDENTIFICATION NO. 091-2023 (NAIA):** Forty Four (44) Boxes of Prograf 1 Mg. Eighteen (18)Boxes of Myfortic 360 Mg. Two Hundred Fifty Five (255) Boxes of Androcur 100Mg, Sixty Three (63) Boxes of Androcur 50Mg, Two Hundred Six (206) Boxes of Ozempic .25 Mg, Twenty Five (25) Boxes of Ozempic 1 Mg. and Twenty Boxes of Saxenda brought in by incoming passenger **AYKUY CALIKUSU**;

As the aforementioned passengers/claimants have indicated insufficient addresses in the Philippines, the Decisions must be served by posting in the bulletin board of this Port and by electronic posting in the BOC website for fifteen days, as provided under Section 6.5.2 of CAO No. 10-2020, to wit:

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6.5.2. To the owner of the goods or his authorized representative.

For the purpose of serving the WSD, the importer, consignee, named in the bill of lading or airway bill, or possessor shall be deemed the owner of the goods.

If the owner is unknown, with insufficient address, or a foreign entity or individual, service shall be effected by posting of the WSD by the ESS in the bulletin board of the concerned collection district office, **and by electronic posting through the BOC website, or printed publication, for fifteen (15) days.**

In view of the foregoing, this Office respectfully request that the copies of the Warrant of Seizure and Detention be electronically posted with the BOC website for fifteen (15) days. A copy of said warrant is herein attached. Furthermore, scanned copies thereof were also forwarded to Piad@customs.gov.ph and Jessil.garlando@customs.gov.ph.

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PROFESSIONALISM INTEGRITY ACCOUNTABILITY

REPUBLIC OF THE PHILIPPINES

SEIZURE IDENTIFICATION

NO. 091-2023 (NAIA)

-versus-

Forty Four (44) Boxes of Prograf 1 Mg, Eighteen (18) Boxes of Myfortic 360 Mg, Two Hundred Fifty Five (255) Boxes of Androcur 100Mg, Sixty Three (63) Boxes of Androcur 50Mg, Two Hundred Six (206) Boxes of Ozempic .25 Mg, Twenty Five (25) Boxes of Ozempic 1 Mg, and Twenty (20) Boxes of Saxenda brought in by incoming passenger, **AYKUT CALIKUSU**, who arrived on 20 July 2023 at NAIA Terminal 1 and held in custody under Held Baggage Receipt No. 00100003408.

X-----X

DECISION

This resolves the seizure and forfeiture proceedings instituted against the above-described Forty Four (44) Boxes of Prograf 1 Mg, Eighteen (18) Boxes of Myfortic 360 Mg, Two Hundred Fifty Five (255) Boxes of Androcur 100Mg, Sixty Three (63) Boxes of Androcur 50Mg, Two Hundred Six (206) Boxes of Ozempic .25 Mg, Twenty Five (25) Boxes of Ozempic 1 Mg, and Twenty (20) Boxes of Saxenda for violation of Section 118 (g) and 1113 (f) of the Customs Modernization and Tariff Act (CMTA) and Paragraph 9.3 of Customs Administrative Order No. 10-2020, in relation to Republic Act No. 9711 or the Food and Drug Administration (FDA) Act of 2009 and Article I (Licensing of Establishments and Registration of Health Products), Book II of The Rules and Regulations Implementing Republic Act No. 9711.

A cursory review of the entire records of the instant seizure and forfeiture case reveals the following antecedents, to wit:

1. On 20 July 2023, a Turkish passenger named Aykut Calikusu with Passport No. U25058113, arrived at the Ninoy Aquino International Airport Terminal 1 on board Flight SV 870.
2. At around 2130H, his checked-in baggage was marked "X" by X-ray Inspection Project (XIP) Operator Mohamad Jonaid Udasan during the routine X-ray inspection and was referred to Acting Customs Examiner Jewel Iris G. Abuejela for physical examination.
3. Before conducting the actual physical examination, Customs Examiner Abuejela asked for the accomplished Customs Baggage Declaration Form (CBDF) of Passenger Calikusu. In the submitted CBDF, Customs examiner Abuejela noted that the passenger ticked "No" to all items pertaining to page 3 except for item No. 4 of the said Form. Passenger Calikusu was then asked if he had anything to declare to which he replied in the affirmative.
4. Subsequently, Customs Examiner Abuejela conducted the physical examination of his checked-in baggage and yielded Forty-Four (44) Boxes of Prograf 1 Mg, Eighteen (18) Boxes of Myfortic 360 Mg, Two Hundred Fifty Five

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(255) Boxes of Androcur 100Mg, Sixty Three (63) Boxes of Androcur 50Mg, Two Hundred Six (206) Boxes of Ozempic .25 Mg, Twenty Five (25) Boxes of Ozempic 1 Mg, and Twenty (20) Boxes of Saxenda.

5. During the actual examination of his checked-in baggage in the exclusion room, Customs Examiner Abuejela asked the passenger if the latter has an FDA permit for the said items found in his checked-in baggage to which Passenger Calikusu replied that he has not secured any Import permit on the said items.
6. For failure to present the necessary permit/clearance, the subject articles were held in-bond for safekeeping and passenger Calikusu was issued Held Baggage Receipt No. 00100003408. The subject items were received by Ms. Annaliza Reyes of the In-Bond Section, Baggage Assistance Division, this Port.
7. In a Memorandum dated 30 June 2023 for the District Collector, Jewel Iris G. Abuejela, Acting Customs Examiner and Princess Tanya R. Atienza, Acting Flight Supervisor, thru Deputy Collector for Passenger Service, Norsalem Raymond O. Mama-o submitted their Incident Report and recommended for the presentation of Food and Drug Administration Import Permit on the subject articles.
8. In a Memorandum dated 8 September 2023, Mr. Roberto A. Quintana, Chief of the Baggage Assistance Division, thru Mr. Norsalem Raymond M. Mama-O, Acting Deputy Collector for Passenger Service, recommended for the issuance of Warrant of Seizure and Detention against the subject articles for lack of FDA Import Permit/Clearance.

DISCUSSION:

As culled from the records of the instant case, passenger Aykut Calikusu brought into the country the Forty Four (44) Boxes of Prograf 1 Mg, Eighteen (18) Boxes of Myfortic 360 Mg, Two Hundred Fifty Five (255) Boxes of Androcur 100Mg, Sixty Three (63) Boxes of Androcur 50Mg, Two Hundred Six (206) Boxes of Ozempic .25 Mg, Twenty Five (25) Boxes of Ozempic 1 Mg, and Twenty (20) Boxes of Saxenda without license, permit/clearance nor authorization from the FDA as required in Section 10 of RA No. 9711 or the Food and Drug Administration (FDA) Act of 2009 which states that:

"Section 10. Section 11, subsections (a), (b), (d), (g), (j), (k) and (l) of Republic Act No. 3720, as amended, are hereby further amended to read as follows:

"SEC. 11. The following acts and the causing thereof are hereby prohibited:

xxx

- (k) The manufacture, **importation**, exportation, sale, offering for sale, distribution, transfer, or retail of any drug, device or in-vitro diagnostic reagent; the manufacture, importation, exportation, transfer or distribution of any food, cosmetic or household/urban hazardous substance; or the operation of a radiation or pest control establishment by any natural or juridical person **without the license to operate from the FDA required under this Act.**

Relatively, Article I (Licensing of Establishments and Registration of Health Products), Book II of The Rules and Regulations Implementing Republic Act No. 9711 -

The Food and Drug Administration Act of 2009 expressly prohibits such importation, to wit:

“Section 1. General Provisions.

1. The manufacture, **importation**, exportation, sale, offering for sale, distribution, transfer, non-consumer use, promotion, advertising, or sponsorship **of any health product without the proper authorization from the FDA is prohibited.**
2. The manufacture, **importation**, exportation sale, offering for sale, distribution transfer, or retail of any drug or device; the manufacture, importation, exportation transfer or distribution of any food, cosmetics, household hazardous substances or urban pesticides; or the operation of a radiation facility or pest control establishment **without the appropriate authorization from the FDA is prohibited.**”

On this score, Paragraph 9.3 of Customs Administrative Order No. 10-2020 in relation to Section 118 (g) of the Customs Modernization and Tariff Act (CMTA), are instructive and authoritative, to wit:

“9.3 If the subject shipment involved has been sufficiently established to be **prohibited**, the same shall be **ipso facto forfeited** in favor of the government.”

“Section 118. Prohibited Importation and Exportation- The importation and exportation of the following goods are prohibited:

(g) All other goods or parts thereof which importation and exportation are explicitly prohibited by law or rules and regulations issued by the competent authority.

WHEREAS, Section 1113 of the Customs Modernization and Tariff Act (CMTA) provides that:

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

X X X X X X

- (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;” (Underline for emphasis)

WHEREFORE, premised considered, the Forty Four (44) Boxes of Prograf 1 Mg, Eighteen (18) Boxes of Myfortic 360 Mg, Two Hundred Fifty Five (255) Boxes of Androcur 100Mg, Sixty Three (63) Boxes of Androcur 50Mg, Two Hundred Six (206) Boxes of Ozempic .25 Mg, Twenty Five (25) Boxes of Ozempic 1 Mg, and Twenty (20) Boxes of Saxenda brought in by Passenger **AYKUT CALIKUSU** is hereby declared *ipso facto* **FORFEITED**, for violation of Section 118 (g) and Section 1113 (f) of the Customs Modernization and Tariff Act (CMTA), in relation to Section 10 of Republic Act No. 9711 or the Food and Drug Administration (FDA) Act of 2009 and Article I (Licensing of Establishments and Registration of Health Products), Book II of The Rules and Regulations Implementing Republic Act No. 9711 - The Food and Drug Administration Act of 2009, to be turned over the same to the Auction and Cargo Disposal Division (ACDD) for custody and safekeeping and for final disposition thereof CAO No. 10-2020 bearing the subject "Seizure and Forfeiture and Appeals Process".

Let copies of this Decision be furnished to all offices and parties concerned for their information, and a copy thereof to be posted on the Bulletin Board of the Law Division and the arrival Operations Division, this Port, for information of all concerned.

SO ORDERED.

BOC-NAIA, Pasay City, 25 September 2023.


ATTY. MARIA YASMIN M. OBILLOS MAPA,
District Collector, BOC-NAIA

Wdy/law/ham



REPUBLIC OF THE PHILIPPINES

SEIZURE IDENTIFICATION

NO. 090-2023 (NAIA)

-versus-

Twenty-seven (27) pieces FDA Regulated toys brought in by passenger **WILFREDO R. SALVADOR** who arrived on 03 September 2023 at NAIA Terminal 3 and held in custody at the In Bond Section, Baggage Assistance Division under Held Baggage Receipt No. 00100004454.

X-----X

WARRANT OF SEIZURE AND DETENTION

TO: The District Commander
ESS-CPD, NAIA District Office

WHEREAS, on 03 September 2023, Wilfredo R. Salvador, a Filipino and holder of a Philippine Passport with Serial Number P56537348 arrived at NAIA Terminal 3 on board Cebu Pacific flight 5J113 from Hongkong.

WHEREAS, his two pieces of baggage underwent non-intrusive examination and were marked with "X" by XIP Personnel Christopher Asuncion. Thereafter, he was referred to Customs Examiner Kimberly A. Sangalang, for physical examination of his pieces of luggage.

WHEREAS, Customs Examiner Sangalang approached passenger Salvador and informed him that his pieces of luggage are subject to 100% physical examination. She also asked him if he had accomplished a Customs Baggage Declaration Form to which the passenger replied in the negative. Customs Examiner Sangalang gave her a black form to fill out, and thereafter asked him what those two boxes contained.

WHEREAS, in the presence of passenger Salvador, Customs Examiner Sangalang conducted a 100% physical examination of the two pieces of luggage, which yielded twenty-seven (27) assorted toys and seven (7) boxes of playing cards.

WHEREAS, passenger Salvador could not present an Import Permit from the Food and Drug Administration (FDA). Thus, Customs Examiner Sangalang issued Held Baggage Receipt No. 00100004454 for the 27 pieces assorted toys and were turned over to the In Bond Section, Baggage Assistance Division for custody. Passenger Salvador paid customs duty and tax assessed on the 7 boxes of Playing Cards in the amount of P19,162.00 as shown in Bureau of Customs Official Receipt No. 01930715871 and were released to passenger Salvador.

WHEREAS, in a Memorandum dated 03 September 2023, Customs Examiner Kimberly A. Sangalang and Acting Flight Supervisor Dianne Karen V. Caceres. Thru Atty. Danilo M. Campos, Jr., Chief, Arrival Operations Division, and Mr. Norsalem Raymond M. Mama-o, Deputy Collector for Passenger Service, reported their findings and recommended the issuance of Warrant of Seizure and Detention against the 27 assorted toys for failure to present the required Import Permit/Clearance from the Food and Drug Administration which is a clear violation of Section 117 of the Customs Modernization and Tariff Act (CMTA) for bringing in regulated goods without the required Import Permit, in

relation to Joint Circular No. 1 dated June 25, 2015 relating to the importation of FDA-DOH Regulated Products for Personal Use.

WHEREAS, after a careful evaluation of the documents submitted and applicable customs laws, rules and regulations, the NAIA District Collector found probable cause for the issuance of Warrant of Seizure and Detention against the subject package for violation of Section 117 (Regulated Importation and Exportation) and Paragraph (f) of Section 1113 (Property Subject to Seizure and Forfeiture) of the Customs Modernization and Tariff Act (CMTA), in relation to Joint Circular No. 1 dated 25 June 2015 relating to the importation of FDA-DOH Regulated Products for Personal Use.

WHEREFORE, by virtue of the authority vested by law in this Office, and in compliance with applicable customs laws, rules and regulations, you, together with the representatives of the concerned offices, are hereby ordered to seize the twenty seven (27) assorted FDA-regulated toys for violation of Section 117 (Regulated Importation and Exportation) and Paragraph (f) of Section 1113 (Property Subject to Seizure and Forfeiture) of the Customs Modernization and Tariff Act (CMTA), in relation to Joint Circular No. 1 dated June 25, 2015 relating to the importation of FDA-DOH Regulated Products for Personal Use, to be turned over to the Auction and Cargo Disposal Division (ACDD), this Port, for inventory, classification and valuation of goods pursuant to Section 1120 of the CMTA, custody and safekeeping pursuant to CAO No. 10-2020 pending the resolution of the seizure case by the Law Division, and/or until ordered by the District Collector, this Port.

Strict compliance with Customs Administrative Order (CAO) No. 10-2020, particularly on the matter of making a return of service and the submission of the Inventory Report or list of the articles seized within the period indicated therein, is likewise directed. Failure to do so shall render this Warrant of Seizure and Detention *ipso facto* considered null and void and shall subject the defaulting officer to the appropriate administrative charges and penalties in accordance with existing laws, rules and regulations.

SO ORDERED.

BOC-NAIA, Pasay City, Metro Manila, 25 September 2023.


ATTY. MARIA YASMIN M. OBILLOS-MAPA
Acting District Collector BOC-NAIA

Law/wady/moz



REPUBLIC OF THE PHILIPPINES

SEIZURE IDENTIFICATION

NO. 087-2023 (NAIA)

-versus-

Seventy (70) boxes of Phenokinon "F" Injection (3 ampoules per box), Twenty-Five (25) boxes of Diane-35, Fifteen (15) boxes of Progynon Depot, Twenty (20) bottles of Hair Tonic 20 and Ninety-Three (93) bottles of Quara Botanical brought in by incoming passenger, **IVERN DEIL DOROTEO**, from Thailand who arrived on 29 June 2023 at NAIA Terminal 3

X-----X

DECISION

This resolves the seizure and forfeiture proceedings instituted against the above-described Seventy (70) boxes of Phenokinon "F" Injection (3 ampoules per box), Twenty-Five (25) boxes of Diane-35, Fifteen (15) boxes of Progynon Depot, Twenty (20) bottles of Hair Tonic 20 and Ninety-Three (93) bottles of Quara Botanical for violation of Section 118 (g) and 1113 (f) of the Customs Modernization and Tariff Act (CMTA) and Paragraph 9.3 of Customs Administrative Order No. 10-2020, in relation to Republic Act No. 9711 or the Food and Drug Administration (FDA) Act of 2009 and Article I (Licensing of Establishments and Registration of Health Products), Book II of The Rules and Regulations Implementing Republic Act No. 9711.

A cursory review of the entire records of the instant seizure and forfeiture case reveals the following antecedents, to wit:

1. On 29 June 2023, a Filipino passenger named Ivern Deil Doroteo with Passport No. P2371031C, arrived at the Ninoy Aquino International Airport Terminal 3 on board Flight TG 624 from Thailand.
2. His baggage was marked "X" by XIP Operator Paul Joseph Lodea during a routine x-ray inspection and was referred to Acting Customs Examiner Jewel Iris G. Abuejela for physical examination.
3. Before conducting the actual physical examination, Customs Examiner Abuejela asked for the accomplished Customs Baggage Declaration Form (CBDF) of Mr. Doroteo. In the submitted CBDF, examiner Abuejela noted that the passenger ticked "No" to all items pertaining to page 3 except item No. 4 thereof. Said passenger was then asked if he had anything to declare to which he replied in the affirmative.
4. Thereafter, Customs Examiner Abuejela conducted the actual examination of the subject baggage and yielded Seventy (70) boxes of Phenokinon "F" Injection (3 ampoules per box), Twenty-Five (25) boxes of Diane-35, Fifteen (15) boxes of Progynon Depot, Twenty (20) bottles of Hair Tonic 20 and Ninety-Three (93) bottles of Quara Botanical.
5. For failure to present the necessary permit/clearance, the subject items were held in-bond for safekeeping and passenger Doroteo was issued Held Baggage Receipt No. 00100003633. The subject items were received by Mr. Jonathan Mesa of the In-Bond Section, Baggage Assistance Division, this Port.
6. In a Memorandum dated 30 June 2023 for the District Collector, Jewel Iris G. Abuejela, Acting Customs Examiner and Princess Tanya R. Atienza, Acting Flight Supervisor, thru Deputy Collector for Passenger Service, Norsalem Raymond O.

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Mama-o submitted their Incident Report and recommended for the presentation of Food and Drug Administration Import Permit on the subject articles.

7. In a Memorandum dated 30 August 2023, the Chief, Baggage Assistance Division, thru then Acting Deputy Collector for Passenger Service, recommended for the issuance of Warrant of Seizure and Detention against the subject articles for lack of Import Permit/Clearance.

DISCUSSION:

As culled from the records of the instant case, passenger Ivern Deil Doroteo brought into the country the subject Seventy (70) boxes of Phenokinon "F" Injection (3 ampoules per box), Twenty-Five (25) boxes of Diane-35, Fifteen (15) boxes of Progynon Depot, Twenty (20) bottles of Hair Tonic 20 and Ninety-Three (93) bottles of Quara Botanical without license, permit/clearance nor authorization from the FDA as required in Section 10 of RA No. 9711 or the Food and Drug Administration (FDA) Act of 2009 which states that:

"Section 10. Section 11, subsections (a), (b), (d), (g), (j), (k) and (l) of Republic Act No. 3720, as amended, are hereby further amended to read as follows:

"SEC. 11. The following acts and the causing thereof are hereby prohibited:

xxx

- (k) The manufacture, **importation**, exportation, sale, offering for sale, distribution, transfer, or retail of any drug, device or in-vitro diagnostic reagent; the manufacture, importation, exportation, transfer or distribution of any food, cosmetic or household/urban hazardous substance; or the operation of a radiation or pest control establishment by any natural or juridical person **without the license to operate from the FDA required under this Act.**"

Relatively, Article I (Licensing of Establishments and Registration of Health Products), Book II of The Rules and Regulations Implementing Republic Act No. 9711 - The Food and Drug Administration Act of 2009 expressly prohibits such importation, to wit:

"Section 1. General Provisions.

1. The manufacture, **importation**, exportation, sale, offering for sale, distribution, transfer, non-consumer use, promotion, advertising, or sponsorship **of any health product without the proper authorization from the FDA is prohibited.**
2. The manufacture, **importation**, exportation sale, offering for sale, distribution transfer, or retail of any drug or device; the manufacture, importation, exportation transfer or distribution of any food, cosmetics, household hazardous substances or urban pesticides; or the operation of a radiation facility or pest control establishment **without the appropriate authorization from the FDA is prohibited.**"

On this score, Paragraph 9.3 of Customs Administrative Order No. 10-2020 in relation to Section 118 (g) of the Customs Modernization and Tariff Act (CMTA), are instructive and authoritative, to wit:

"9.3 If the subject shipment involved has been sufficiently established to be **prohibited**, the same shall be **ipso facto forfeited** in favor of the government."

"Section 118. Prohibited Importation and Exportation.- The importation and exportation of the following goods are prohibited:

(g) All other goods or parts thereof which importation and exportation are explicitly prohibited by law or rules and regulations issued by the competent authority.

WHEREAS, Section 1113 of the Customs Modernization and Tariff Act (CMTA) provides that:

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

X X X X X X

(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;" (Underline for emphasis)

WHEREFORE, the Seventy (70) boxes of Phenokinon "F" Injection (3 ampoules per box), Twenty-Five (25) boxes of Diane-35, Fifteen (15) boxes of Progynon Depot, Twenty (20) bottles of Hair Tonic 20 and Ninety-Three (93) bottles of Quara Botanical brought in by Passenger **IVERN DEIL DOROTEO** is hereby declared *ipso facto* **FORFEITED** for violation of Section 118 (g) and Section 1113 (f) of the Customs Modernization and Tariff Act (CMTA), in relation to Section 10 of Republic Act No. 9711 or the Food and Drug Administration (FDA) Act of 2009 and Article I (Licensing of Establishments and Registration of Health Products), Book II of The Rules and Regulations Implementing Republic Act No. 9711 - The Food and Drug Administration Act of 2009, to be turned over the same to the Auction and Cargo Disposal Division (ACDD) for custody and safekeeping and for final disposition thereof CAO No. 10-2020 bearing the subject "Seizure and Forfeiture and Appeals Process".

Let copies of this Decision be furnished to all offices and parties concerned for their information, and a copy thereof to be posted in the Bulletin Board of the Law Division and the arrival Operations Division, this Port, for information of all concerned.

SO ORDERED.

BOC-NAIA, Pasay City, 22 September 2023.


ATTY. MARIA YASMIN M. OBILLOS-MAPA
Acting District Collector, BOC-NAIA

Wdy/law/ham



REPUBLIC OF THE PHILIPPINES

SEIZURE IDENTIFICATION
NO. 086-2023 (NAIA)

-versus-

One (1) yellow plastic bag of Assorted Medicines brought in by Vietnamese passenger, **PHAM DUC DUY**

X-----X

DECISION

This resolves the seizure and forfeiture proceedings instituted against the above-described One (1) yellow plastic bag of Assorted Medicines for violation of Section 118 (g) and 1113 (f) of the Customs Modernization and Tariff Act (CMTA) and Paragraph 9.3 of Customs Administrative Order No. 10-2020, in relation to Republic Act No. 9711 or the Food and Drug Administration (FDA) Act of 2009 and Article I (Licensing of Establishments and Registration of Health Products), Book II of The Rules and Regulations Implementing Republic Act No. 9711.

A cursory review of the entire records of the instant seizure and forfeiture case reveals the following antecedents, to wit:

1. On 21 November 2022, a Vietnamese passenger named Pham Duc Duy with Passport No. K0212060, arrived at the Ninoy Aquino International Airport Terminal 3 on board Flight 5J 745 from Vietnam.
2. His baggage was marked "X" by XIP Operator Christopher Asuncion during routine X-ray inspection and was referred to Customs Examiner Feljun M. Roxas for physical examination.
3. Before conducting the actual physical examination, Customs Examiner Roxas asked for the accomplished Customs Baggage Declaration Form (CBDF) of Mr. Pham Duc Duy. In the submitted CBDF, examiner Roxas noted that the passenger ticked "No" to all items pertaining to page 3 of the said Form. Said passenger was then asked if he had anything to declare to which he replied in the negative.
4. Thereafter, Customs Examiner Roxas conducted the actual examination of the subject baggage and yielded One (1) yellow plastic bag containing assorted medicines with an estimated value of One Hundred Fifty US Dollars (\$150).
5. For failure to present the necessary permit/clearance, the subject items were held in-bond for safekeeping and passenger Pham Duc Duy was issued Held Baggage Receipt No. 00100002531. The subject items were received by Mr. Jonathan Mesa of the In-Bond Section, Baggage Assistance Division, this Port.
6. In a Memorandum dated 22 November 2023 for then District Collector, Feljun M. Roxas, Customs Examiner and Marlyn O. Edillor, Acting Flight Supervisor, thru then Deputy Collector for Passenger Service, Atty. Ma. Lourdes V. Mangaoang submitted their Incident Report and recommended the confiscation of the goods for failure to present the necessary Food and Drug Administration Import Permit on the subject articles.
7. In a Memorandum dated 30 August 2023, the Chief, Baggage Assistance Division, thru then Acting Deputy Collector for Passenger Service, recommended for the issuance of Warrant of Seizure and Detention against the subject articles for lack of Import Permit/Clearance.

DISCUSSION:

As culled from the records of the instant case, Vietnamese passenger Pham Duc Duy, brought into the country One (1) yellow plastic bag of Assorted Medicines without license, permit/clearance nor authorization from the FDA as required in Section 10 of RA No. 9711 or the Food and Drug Administration (FDA) Act of 2009 which states that:

“Section 10. Section 11, subsections (a), (b), (d), (g), (j), (k) and (l) of Republic Act No. 3720, as amended, are hereby further amended to read as follows:

“SEC. 11. The following acts and the causing thereof are hereby prohibited:

xxx

- (k) The manufacture, **importation**, exportation, sale, offering for sale, distribution, transfer, or retail of any drug, device or in-vitro diagnostic reagent; the manufacture, importation, exportation, transfer or distribution of any food, cosmetic or household/urban hazardous substance; or the operation of a radiation or pest control establishment by any natural or juridical person **without the license to operate from the FDA required under this Act.**”

Relatively, Article I (Licensing of Establishments and Registration of Health Products), Book II of The Rules and Regulations Implementing Republic Act No. 9711 - The Food and Drug Administration Act of 2009 expressly prohibits such importation, to wit:

“Section 1. General Provisions.

1. The manufacture, **importation**, exportation, sale, offering for sale, distribution, transfer, non-consumer use, promotion, advertising, or sponsorship **of any health product without the proper authorization from the FDA is prohibited.**
2. The manufacture, **importation**, exportation sale, offering for sale, distribution transfer, or retail of any drug or device; the manufacture, importation, exportation transfer or distribution of any food, cosmetics, household hazardous substances or urban pesticides; or the operation of a radiation facility or pest control establishment **without the appropriate authorization from the FDA is prohibited.**”

On this score, Paragraph 9.3 of Customs Administrative Order No. 10-2020 in relation to Section 118 (g) of the Customs Modernization and Tariff Act (CMTA), are instructive and authoritative, to wit:

“9.3 If the subject shipment involved has been sufficiently established to be **prohibited**, the same shall be **ipso facto forfeited** in favor of the government.”

“**Section 118. Prohibited Importation and Exportation.**- The importation and exportation of the following goods are prohibited:

(g) All other goods or parts thereof which importation and exportation are explicitly prohibited by law or rules and regulations issued by the competent authority.

WHEREAS, Section 1113 of the Customs Modernization and Tariff Act (CMTA) provides that:

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

X X X

X X X

(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;" (Underline for emphasis).

WHEREFORE, One (1) yellow plastic bag of Assorted Medicines brought in by Vietnamese passenger **PHAM DUC DUY** is hereby declared *ipso facto* **FORFEITED** for violation of Section 118 (g) and Section 1113 (f) of the Customs Modernization and Tariff Act (CMTA), in relation to Section 10 of Republic Act No. 9711 or the Food and Drug Administration (FDA) Act of 2009 and Article I (Licensing of Establishments and Registration of Health Products), Book II of The Rules and Regulations Implementing Republic Act No. 9711 - The Food and Drug Administration Act of 2009, to be turned over the same to the Auction and Cargo Disposal Division (ACDD) for custody and safekeeping and for final disposition thereof CAO No. 10-2020 bearing the subject "Seizure and Forfeiture and Appeals Process".

Let copies of this Decision be furnished to all offices and parties concerned for their information, and a copy thereof to be posted in the Bulletin Board of the Law Division and the Arrival Operations Division, this Port, for information of all concerned.

SO ORDERED.

BOC-NAIA, Pasay City, 22 September 2023.


ATTY. MARIA YASMIN M. OBILLOS-MAPA
Acting District Collector

Wdy/law/ham