



# BUREAU OF CUSTOMS

MAKABAGONG ADUANA, MATATAG NA EKONOMIYA



PROFESSIONALISM

INTEGRITY

ACCOUNTABILITY

Republic of the Philippines,

Seizure Identification

No. CFZ **136-2023**

-versus-

Shipment said to contain **“EMBROIDERED BATH TOWEL (100% COTTON)”** bound to Matraville, Australia which will be shipped thru Federal Express (FedEx) Clark on 04 January 2023 under House Airway Bill No. 770925902538 but found to contain **forty-eight (48) pcs. Ferna Flavery/Colors and twenty-six (26) pcs. Nanjing Cigarettes**

Exporter/Shipper:

**PETER NASH**

Oacklick Sdy, Inc.

468 S. Marcelo, Valenzuela 1440 PH

Claimant.

X-----X

## DECISION

This resolves the seizure and forfeiture proceedings instituted against the above-captioned shipment for violation of Section 1113 (f) and (l) (3 & 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 04 January 2023, a shipment bound to Matraville, Australia (Consignee: Gareth Clugston) under House Airway Bill No. 770925902538 said to contain **“EMBROIDERED BATH TOWEL (100% COTTON)”** under the name of PETER NASH with address at Oacklick Sdy, Inc. 468 S. Marcelo, Valenzuela 1440 PH arrived at the Federal Express (FedEx) gateway facility and marked for verification/physical examination by the X-ray Inspector on duty.

On 22 March 2023, a Mission Order was issued directing Trade Control Examiners to conduct inventory of various shipments for export containing cigarettes.

On 24 March 2023, Trade Control Examiner Maria Annalou Pojas conducted physical examination on the subject shipment in the presence of representatives from Phillip Morris Fortune Tobacco Company, Inc. (PMFTC), Customs Intelligence and Investigation Service (CIIS), Enforcement and Security Service (ESS) and FedEx with the following findings:

AS DECLARED IN THE INVOICE	AS FOUND
1 PC. EMBROIDERED BATH TOWEL (100% COTTON)	<ul style="list-style-type: none"> <li>Forty-eight (48) pcs. Ferna Flavery/Colors</li> <li>Twenty-six (26) pcs. Nanjing Cigarettes</li> </ul>
<b>Value: USD 131.00</b> <b>Gross Weight: 0.8 kg.</b>	

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Based on the abovementioned discrepancy between the goods found during the physical examination and goods declared in the commercial invoice, Ms. Maricar Go, Officer-In-Charge (OIC) Export Unit, and Trade Control Examiner Maria Annalou Pojas, thru Atty. Lilibeth Sandag, Deputy Collector for Operations, submitted a Memorandum dated 24 April 2023 recommending the issuance of a WSD against the subject shipment for violation of Section 1113 (f) and (l) (3 & 4) of the CMTA in relation to NTA Memorandum Circular No. 002, Series of 2020.

On 25 April 2023, a WSD docketed as Seizure Identification (S.I.) No. CFZ 136-2023 was issued by then Officer-In-Charge of this Port, Collector John Simon, against the subject shipment.

Thereafter, hearings were scheduled on 18 and 19 May 2023, however, no representative from claimant (exporter/shipper) appeared on the appointed date of hearing.

In a Memorandum dated 05 July 2023 from SA I Fitzgerald T. Borja noted by SP/Capt. Arnel A. Baylosis, District Commander, this Port, it is stated that the WSD and Notice of Hearing were not served because the exporter/shipper is not a resident in the said 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 at hand, records show that SA I Fitzgerald T. Borja tried to locate and served the WSD and Notice of Hearing, however, the same was unsuccessful considering that the exporter/shipper is not a resident in the said address. Hence, the same were posted at the FedEx, and BOC Bulletin Board and Official Website in compliance with Sections 6.5.2 and 10.13 of Customs Administrative Order (CAO) No. 10-2020, to wit:

**6.5.2.** x x x 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.

**10.13.** Notice of Hearing shall be served by personal service or, if not practicable by reason of distance and lack of personnel to effect personal service, by private courier service; or posting in the bulletin board of the Law Division or equivalent office of the concerned Collection District for unknown claimants, with insufficient address or foreign claimants. x x x



Moreover, Section 1121 of the CMTA and Section 9.4 of the same CAO provides that “If, within fifteen (15) days calendar days after service of warrant and due notice, no owner or agent can be found or appears before the District Collector, the seized goods shall be forfeited ipso facto in favor of the government to be disposed of in accordance with the CMTA.”

In this case, since no claimant appeared despite due notice and service of warrant, the seized goods should be forfeited *ipso facto* in favor of the government and disposed of in accordance with the law.

Furthermore, the subject shipment was declared in the commercial invoice as “*EMBROIDERED BATH TOWEL (100% COTTON)*” contrary to the findings of Trade Control Examiner Pojas that the same contained **forty-eight (48) pcs. Ferna Flavery/Colors and twenty-six (26) pcs. Nanjing Cigarettes**. As such, the same are considered goods subject to seizure and forfeiture under Section 1113 (f) and (l) (3 & 4) of the CMTA, to wit:

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

xxx

(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.

xxx

(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

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.

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 likewise contained twenty-six (26) pcs. Nanjing Cigarettes which requires an ECC from the NTA. Unfortunately, the exporter/shipper failed to submit the same prior to exportation of the said shipment.

All told, this Office finds it proper to forfeit the subject shipment for violation of Section 1113 (f) and (l) (3 & 4) of 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 “EMBROIDERED BATH TOWEL (100% COTTON)” bound to Matraville, Australia which will be shipped thru Federal Express (FedEx) Clark on 04 January 2023 under House Airway Bill No. 770925902538 but found to contain forty-eight (48) pcs. Ferna Flavory/Colors and twenty-six (26) pcs. Nanjing 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 to all parties and offices for their information.

**SO ORDERED.**

Port of Clark International Airport, Clark Freeport Zone, Pampanga,

  
**ATTY. ERASTUS SANDINO B. AUSTRIA, CESO V**  
District Collector, Port of Clark

**Copy furnished:**

1. Owner/Consignee/Shipper
2. Unit/Office in Custody of the Goods
3. Chief, ACDD

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BOC-CRK-23-00352