



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS

A modernized and credible customs administration that upholds good governance and is among the world's best

Republic of the Philippines,

Seizure Identification
No. CFZ **289-2023**

-versus-

Shipment said to contain **“4PCS EARRINGS, 5PCS PENDANT, 15PCS BEADS, 10PCS NECLACE”** bound to Virginia Beach, Virginia, Australia which will be shipped thru Federal Express (FedEx) Clark on 28 December 2022 under House Airway Bill No. 770890556918 but found to contain **assorted gold jewelries**

Exporter/Shipper:
LEODEGARIO FERNANDO JR.
10th Ave North Signal Village, Taguig City 1630
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).

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

On 28 December 2022, a shipment bound to Virginia Beach, Virginia, Australia under House Airway Bill No. 770890556918 said to contain **“4PCS EARRINGS, 5PCS PENDANT, 15PCS BEADS, 10PCS NECLACE”** under the name of LEODEGARIO FERNANDO JR. with address at 10th Ave North Signal Village, Taguig City 1630 arrived at the Federal Express (FedEx) gateway facility and marked for verification/physical examination by the X-ray Inspector.

On 21 February 2023, a Mission Order was issued directing Trade Control Examiner Marife Foloso-Pasamonte to conduct re-examination and inventory of shipments for export.

On 22 February 2023, Trade Control Examiner Foloso-Pasamonte conducted physical examination on the subject shipment in the presence of representatives from Enforcement and Security Service (ESS), Customs Intelligence and Investigation Service (CIIS) and FedEx with the following findings:

AS DECLARED IN THE INVOICE	AS FOUND
4PCS EARRINGS, 5PCS PENDANT, 15PCS BEADS, 10PCS NECLACE	Assorted gold jewelries: <ul style="list-style-type: none"> • 10 pcs. necklace marked as “A1 to A10” • 20 pcs. Piyao pendants/beads marked as “BA1 to BA110”



Value: PHP 5,000.04 Gross Weight: 0.50 kg.	<ul style="list-style-type: none"> • 5 pcs. pendants marked as "C1 to C5" • 4 pairs of earrings marked as "D1 to D4"
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On 07 March 2023, the Office of then Deputy Collector for Operations Lilibeth Mangsal received a Memorandum dated 27 February 2023 from Officer-In-Charge (OIC) Export Unit Maricar Go and Trade Control Examiner Foloso-Pasamonte recommending the issuance of a Warrant of Seizure and Detention (WSD) against the subject shipment.

On 15 May 2023, Ms. Go, OIC Export Unit received an instruction from the new Deputy Collector for Operations, Atty. Lilibeth S. Sandag, to check the status of the subject shipment attaching the unsigned original copy of the abovementioned Memorandum. Upon verification with FedEx, said shipment is still intact in the warehouse.

Based on the discrepancy between the goods found during the physical examination and goods declared in the commercial invoice, Ms. Go, OIC Export Unit, and Trade Control Examiner Foloso-Pasamonte, through Atty. Sandag, Deputy Collector for Operations, submitted a Memorandum dated 22 May 2023 recommending the issuance of a WSD against the subject shipment for violation of Section 1113 (I) (3) and (4) of the CMTA.

On 07 July 2023, a WSD docketed as Seizure Identification (S.I.) No. CFZ 289-2023 was issued by then District Collector of this Port, Atty. Ricardo Morales II, against the subject shipment.

In a Disposition Form dated 04 October 2023 from 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 and address are fictitious/insufficient.

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 serving of the WSD and Notice of Hearing was unsuccessful considering that the exporter/shipper and address are fictitious/insufficient. 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 "WANDERER NIGHTFALL DOME TENT 10 PERSON" contrary to the findings of Trade Control Examiner Asuncion that the same contained **fifty (50) reams of Marlboro Ice Blast 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

Likewise, Section 118 (d) of the same Act is clear:



SEC. 118. Prohibited Importation and Exportation. – The importation and exportation of the following goods are prohibited:

XXX

(d) Any goods manufactured in whole or part of gold, silver, or other precious metals or alloys and the stamp, brand or mark does not indicate the actual fineness of quality of the metal or alloy;

XXX

All told, this Office finds it proper to forfeit the subject shipment for violation of Sections 118 (d) and 1113 (f) and (l) (3 & 4) of the CMTA.

WHEREFORE, by virtue of the authority vested in me by law, it is hereby ordered and decreed that **shipment said to contain “4PCS EARRINGS, 5PCS PENDANT, 15PCS BEADS, 10PCS NECLACE” bound to Virginia Beach, Virginia, Australia which will be shipped thru Federal Express (FedEx) Clark on 28 December 2022 under House Airway Bill No. 770890556918 but found to contain assorted gold jewelries**, 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



BOC-CRK-23-00599

