

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MONACAT TRADING,

Petitioner,

CTA EB NO. 2728
(CTA Case No. 9851)

Present:

Del Rosario, *P.J.*,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo,
Cui-David,
Ferrer-Flores, and
Angeles, *JJ.*

- *versus* -

COMMISSIONER OF CUSTOMS,
BUREAU OF CUSTOMS,

Respondent.

Promulgated:

OCT 04 2023

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3:20pm

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DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *En Banc* is a Petition for Review¹ filed by Monacat Trading on January 31, 2023. It seeks the reversal of the Decision dated August 4, 2022² (Assailed Decision) as well as the Resolution dated December 5, 2022³ (Assailed Resolution) of the Special Second Division (Court in Division)⁴ of this Court in CTA Case No. 9851.

¹ Court *En Banc*'s Docket, pp. 1-29.

² *Id.*, pp. 32-78.

³ *Id.*, pp. 80-91.

⁴ Composed of Associate Justice Jean Maria A. Bacorro-Villena (*ponente*) and Associate Justice Lane S. Cui-David.

The respective dispositive portions of the Assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

“**WHEREFORE**, the foregoing considered, petitioner Monacat Trading’s Petition for Review filed on 04 June 2018 is hereby **DISMISSED** for lack of jurisdiction. Assuming the Court has been solidly vested with jurisdiction, the petition will still fail for utter lack of merit.

SO ORDERED.”

Assailed Resolution:

“**WHEREFORE**, in view of the foregoing, petitioner Monacat Trading’s “Motion for Reconsideration” filed on 23 August 2022 is hereby **DENIED** for lack of merit.

SO ORDERED.”

THE FACTS

The facts of the present case were laid down by the Court in Division in the Assailed Decision as follows:⁵

“Sometime in July 2015, several shipments of vehicles (**subject vehicles**) consigned to petitioner arrived at the Port of Batangas (**POB**), with the following details:

Import Entry and Internal Revenue Declaration (IEIRD) No.	Bill of Lading (BL) No.	Item Description	Tariff Heading	Value per Unit (US\$)
C-6380	MCC830419A	One (1) Unit Brand New 2015 Land Rover	8703.2324	\$29,280.00
C-6375	MCC828737A	Two (2) Units Brand New 2015 Land Rover Defender 90	8703.2324	\$21,684.00
C-6372	567278555A	One (1) Unit Brand New Ferrari California Coupe	8703.2324	\$122,153.00

⁵ Court *En Banc*’s Docket, pp. 33-43. (Citations omitted).

Import Entry and Internal Revenue Declaration (IEIRD) No.	Bill of Lading (BL) No.	Item Description	Tariff Heading	Value per Unit (US\$)
C-6373	567278562A	Two (2) Units Brand New Mercedes Benz	8703.2324	\$26,985.00
C-6381	MCC821022	One (1) Unit Brand New 2015 Mercedes Benz C200 Silver, Sedan, 4 Cylinder Gas	8703.2324	\$29,512.00
C-6403	NS1515485A	One (1) Unit Brand New McLaren 540C	8703.2324	\$60,000.00
C-6374	MCC816657A	One (1) 2015 Unit Mercedes Benz C200	8703.2324	\$29,512.00
C-6398	953754829A	One (1) Unit Brand New Toyota Prado SUV	8703.2324	\$30,000.00
C-6395	954024094A	Two (2) Units Brand New 2015 Toyota Land Cruiser GX SUV	8703.2324	\$37,000.00

The subject vehicles, as declared in the Import Entry and Internal Revenue Declarations (**IEIRDs**), were processed by Customs Examiners Maricel A. Manguiat (**Manguiat**) and Noralyn T. Asaria (**Asaria**). After examining the documents submitted in support of the subject shipments, said customs officers processed the subject vehicles and noted in the IEIRDs that these were under tentative liquidation as approved, and pending the submission of the issuance of the Import and Assessment Service (**IAS**) clearance, ESS Motor Vehicle Monitoring and Clearance Office (**EMVMCO**) clearance and Authority to Release Imported Goods (**ATRIG**) from the BIR.

On 24 July 2015, then POB's Acting District Collector of Customs, Ernesto P. Benitez, Jr. (**POB Acting District Collector Benitez**) indorsed the subject vehicles and their supporting documents to IAS for value information.

On even date, then BOC Deputy Commissioner of the Enforcement Group (**EG**), Ariel Nepomuceno (**EG Deputy Commissioner Nepomuceno**), issued Alert Orders (**AOs**) against the subject motor vehicles for alleged violation of Section 2503, in relation to Section 2530, of Presidential Decree (**PD**) No. 1464, otherwise known as the Tariff Customs and Code of the Philippines (**TCCP**), as amended. At the time of the subject vehicles' importation and the commission of the supposed violations, the TCCP was the prevailing law.

On 05 August 2015, the assigned Officers-on-Case, Alexander Ugay (**Ugay**) and Doy De Castro (**De Castro**), together with Customs Examiners Manguiat and Asaria, went to the POB for the conduct of the spot check or 100% physical examination of the subject vehicles.

On 10 August 2015, Ugay and De Castro submitted a Memorandum of even date to EG Deputy Commissioner Nepomuceno, recommending the issuance of Warrants of Seizure and Detention (**WSDs**) against the subject vehicles by reason of misdeclaration and gross undervaluation, citing Section 2503, in relation to Section 2530, of the TCCP, as amended.

On 11 August 2015, EG Deputy Commissioner Nepomuceno indorsed the aforementioned Memorandum to POB Acting District Collector Benitez, for his information and consideration.

On 26 August 2015, POB Acting District Collector Benitez issued WSDs against the subject imported motor vehicles for alleged violation of Section 2503, in relation to Section 2530, of the TCCP, as amended, viz.:

IEIRD Nos.	Item Description	Seizure Identification (S.I.) No.
C-6380	One (1) Unit Brand New 2015 Land Rover	09-15
C-6375	Two (2) Units Brand New 2015 Land Rover Defender 90	08-15
C-6372	One (1) Unit Brand New Ferrari California Coupe	05-15
C-6373	Two (2) Units Brand New Mercedes Benz	06-15
C-6381	One (1) Unit Brand New 2015 Mercedes Benz C200 Silver, Sedan, 6yl, Gas	10-15
C-6403	One (1) Unit Brand New McLaren 540C	14-15
C-6374	One (1) 2015 Unit Mercedes Benz C200	07-15
C-6398	One (1) Unit Brand New Toyota Prado SUV	12-15
C-6395	Two (2) Units Brand New 2015 Toyota Land Cruiser GX	11-15

On 08 September 2015, then BOC-IAS Deputy Commissioner of the Assessment and Operations Coordinating Group (**AOCG**), Agaton Teodoro O. Uvero (**AOCG Deputy Commissioner Uvero**) issued the IAS 2nd Indorsement (**IAS Values**), indicating the values of the subject luxury vehicles consigned to petitioner and referred to the IAS for the proper valuation based on the model and/or series as found during the spot check or 100% physical examination.

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On 03 March 2017, POB OIC-District Collector Reynaldo M. Galeno (**POB OIC-District Collector Galeno**) rendered a Consolidated Decision, ordering the quashal of the WSDs issued against the subject shipments covered by IEIRD Nos. C-6372, C-6375, C-6380, C-6373, C-6381, C-6403, C-6374, C-6398 and C-6395. He likewise ordered the continuous processing of the import entries upon payment of additional duties and taxes. He further ordered that the surcharge be doubled for IEIRD Nos. C-6398-15, C-6372-15, C-6380-15, C-6375-15, and a one-time surcharge for IEIRD No. C-6395-15.

On 04 October 2017, respondent COC rendered the assailed Decision, reversing and setting aside POB OIC-District Collector Galeno's Consolidated Decision. In the assailed Decision, he ordered the forfeiture of the subject vehicles in favor of the government, to be disposed of in accordance with customs laws, rules and regulations.

On 06 November 2017, petitioner filed before the Office of respondent COC an MR to the assailed Decision. On 19 April 2018, respondent COC issued the assailed Order, denying petitioner's MR and affirming his assailed Decision. Petitioner allegedly received a copy of the assailed Order on 03 May 2018.

PROCEEDINGS BEFORE THE SECOND DIVISION

Aggrieved by the aforesaid assailed Decision and Order, petitioner filed on 04 June 2018 the instant Petition for Review before the Court of Tax Appeals (CTA). The same was raffled to the Second Division and docketed as CTA Case No. 9851.

On 28 June 2018, respondents received the summons dated 19 June 2018, requiring them to file an answer within fifteen (15) days from the receipt thereof, or until 13 July 2018. After being granted an extension of time, respondents filed their Answer on 28 September 2018.

Later, or on 31 January 2019, the pre-trial conference proceeded. The parties filed their Joint Stipulations of Facts (**JSF**) on 04 March 2019. Still later, the Court issued the Pre-trial Order dated 05 April 2019 adopting the parties' JSF and setting the trial dates.

During the trial that thereafter ensued, petitioner presented the following witnesses, namely: (1) Mermelinda Dela Cruz (**Dela Cruz**); (2) POB OIC-District Collector Galeno; (3) Customs Examiner Manguiat; and, (4) Customs Examiner Asaria.



Through her Judicial Affidavit, Dela Cruz testified that: (1) petitioner filed the IEIRDs and correctly described each and every motor vehicle in their respective IEIRDs as appearing on their corresponding packing list and commercial invoices; (2) petitioner paid the government duties and taxes for each vehicle as assessed by the Customs Examiner; and, (3) the BIR issued the ATRIG for each vehicle after petitioner paid the assessed duties.

On cross examination, Dela Cruz stated that: (1) she was duly authorized by petitioner's Licensed Customs Broker, Flaviano Dela Cruz (**LCB Dela Cruz**), to process the application and release of freight; and, (2) she was present during the spot check or 100% physical examination of the subject vehicles.

On re-direct and re-cross examinations, Dela Cruz stated that the values appearing on the IAS Values were sourced from the internet.

POB OIC-District Collector Galeno also testified through his Judicial Affidavit and declared that: (1) he was the Collector of Customs who issued the Consolidated Decision dated 03 March 2017; (2) the subject motor vehicles were found not subject to forfeiture as there was no misdeclaration and undervaluation; and, (3) the methods of valuation of the dutiable values of the imported vehicles should be applied sequentially pursuant to the TCCP, as amended.

On cross examination, then POB OIC-District Collector Galeno admitted that he was not present when the subject vehicles were physically examined for assessment. However, when the AOs were issued, he personally and actually witnessed the opening of the containers that carried the subject vehicles. In addition, he insisted to have rendered the Consolidated Decision only after both parties were heard and their documents duly considered.

On re-direct examination, POB OIC-District Collector Galeno expounded on the supposed meaning of 'misdeclaration' based on Customs Administrative Order (CAO) No. 006-93. No re-cross examination was conducted.

For her part, Customs Examiner Manguiat testified through her Judicial Affidavit that: (1) she was the Customs Examiner who processed five (5) of the nine (9) subject motor vehicles covered by IEIRD Nos. C-6372, C-6375, C-6380, C-6395 and C-6403; (2) she examined the IEIRDs and compared them with the documents submitted by the importer/petitioner; and, (3) after examination of the documents, she noted in the IEIRDs that the



subject vehicles were being processed, subject to tentative liquidation as approved (pending the issuance of the IAS clearance and the ATRIG).

During the cross examination, Manguiat stated that the IEIRDs contained only a general description of the subject vehicles as opposed to the specific description in the commercial invoices. However, since the chassis numbers in the commercial invoices and the IEIRDs are the same, she clarified that there was no misdeclaration. In addition, she explained that respondent BOC has a Memorandum mandating that imported vehicles shall be referred to the IAS for value verification.

On re-direct examination, Manguiat reiterated that the declared chassis numbers in the IEIRDs are the same in all the subject vehicles when they were physically inspected. On re-cross examination, Manguiat confirmed that the chassis numbers only refer to the identity of the subject vehicles but not to the weight, measurement, price, brand and the model.

Customs Examiner Asaria, who also testified through her Judicial Affidavit, declared that: (1) she was the Customs Examiner who processed four (4) of the nine (9) subject vehicles covered by IEIRD Nos. C-6373, C-6374, C-6381, and C-6398; (2) she examined the IEIRDs and compared it with the documents submitted by the importer/petitioner; and, (3) after examination of the documents, she noted in the IEIRDs that the subject vehicles were being processed, subject to tentative liquidation as approved (pending the issuance of the IAS clearance and the ATRIG).

On cross examination, Customs Examiner Asaria explained that the IAS valuation may be used if the declarations in the invoice documents are unreliable. However, as the IAS clearance was issued only after the AOs on the subject vehicles were issued, she did not anymore use it as basis for the valuation. She added that the front page of the IEIRDs contained only a general description of the vehicles as opposed to the specific description in the commercial invoices.

On re-direct examination, Customs Examiner Asaria confirmed that the make, brand, color, and chassis numbers appearing in the IEIRDs and in the invoices are the same. On re-cross examination, she confirmed that she was not able to adjust the valuation of the vehicles as they were already seized at the time.



After the presentation of the last witness, petitioner filed its Formal Offer of Exhibits (FOE) on 23 November 2020. Respondents filed their Comment/Opposition, thereto on 03 December 2020.

In the Resolution dated 20 January 2021, the Court admitted petitioner's exhibits, except for Exhibits 'P-1' and 'P-25' for petitioner's failure to identify and to submit the marked documents, respectively.

Later, upon motion and after petitioner was able to present in open court the certified true copy of Exhibit 'P-25', the Court ultimately admitted the same as part of petitioner's documentary evidence.

Respondents, on the other hand, presented the assigned Officers-on-Case, De Castro and Ugay, who testified on direct examination by way of their respective Judicial Affidavits, and whose testimonies were completed after the respective cross, re-direct and re-cross examinations.

On the witness stand, De Castro identified his Judicial Affidavit dated 25 January 2021, where he declared that: (1) he was one of the assigned Officers-on-Case who investigated the subject vehicles; (2) upon examination and investigation, he discovered several violations of customs, laws, rules and regulations; (3) upon issuance of the AOs, he conducted a spot check or 100% physical examination of the subject vehicles; (4) he noted that the subject vehicles were misdeclared and grossly undervalued; and, (5) he personally served the WSDs at petitioner's address but then discovered that there was no office or warehouse at the said location,

On cross examination, De Castro admitted that petitioner processed the IEIRDs even if the IAS clearance and the ATRIG were not yet issued. In addition, respondent BOC did not use the IAS Values during the investigation since such a report resulting from the value verification was issued much later.

On re-direct examination, De Castro confirmed that the subject red-tagged vehicles were not physically examined during the assessment as the shipping seals were still intact when they conducted their investigation. Also, the subject vehicles were deliberately misdeclared, particularly as regards their respective models or series, so they will be assessed with lower taxes or charges. On re-cross examination, De Castro stated that the import documents came from various sellers based abroad.



Ugay likewise identified his Judicial Affidavit dated 25 January 2021 wherein she corroborated De Castro's declarations above. On cross examination, Ugay also stated that the declared values that respondent BOC's EG used as the basis in issuing its Memorandum was supplied by the person tasked to perform the assessment. According to him, he is unaware of the EG's actual basis for the assessed amounts.

On re-direct examination, Ugay testified that it is the customs broker who filled up, facilitated, and processed the IEIRDs. On re-cross examination, he confirmed that the subject vehicles were not released from respondent BOC's premises and that petitioner filed an application for ATRIG.

After the presentation of the last witness, on 01 March 2021, respondents filed their FOE consisting of Exhibits 'R-1' to 'R-26', inclusive of sub-markings. Petitioner filed its Comment/Opposition thereto on 16 March 2021.

In the Resolution dated 26 May 2021, the Court admitted all of respondents' documentary exhibits. In the same Resolution, the Court directed the parties to submit their respective memoranda within thirty (30) days from the receipt thereof.

On 01 July 2021, respondents filed their Memorandum, while petitioner filed its Memorandum on 27 July 2021. Subsequently, the Court submitted the instant case for decision."

On August 4, 2022, the Court in Division rendered the Assailed Decision dismissing the Petition for Review for lack of jurisdiction.

Aggrieved, petitioner filed a Motion for Reconsideration on August 23, 2022 which the Court in Division denied in the Assailed Resolution.

On January 31, 2023, petitioner filed the present Petition for Review.

In a Minute Resolution dated March 6, 2023, this Court directed respondent to file his Comment to the Petition for Review within ten (10) days from notice.⁶

On March 20, 2023, respondent filed his Motion for Extension of Time to File Comment.⁷

⁶ Court *En Banc's* Docket, p. 97.

⁷ *Id.*, pp. 98-100.

In a Minute Resolution dated March 30, 2023,⁸ the Court *En Banc* granted the respondent a period of thirty (30) days from March 25, 2023 or until April 24, 2023 within which to file his Comment.

On April 24, 2023, respondent filed another Motion for Extension of Time to File Comment which the Court *En Banc* granted in a Minute Resolution dated June 5, 2023. The Court *En Banc* granted respondent an additional period of five (5) days or until April 29, 2023 within which to file their Comment.

On May 2, 2023, respondent filed his Comment.⁹

On June 5, 2023, the present case was submitted for decision.¹⁰

THE ISSUES

Petitioner filed the present Petition for Review on the basis of the following assignment of errors:

ASSIGNMENT OF ERRORS

I

The Honorable 2nd Division erred in finding that it has no jurisdiction over the instant case because there is no clear and convincing evidence to prove petitioner's receipt of the assailed order.

II

The Honorable 2nd Division erred in finding that there is misdeclaration as to the description of the subject vehicles.

III

The Honorable 2nd Division erred in finding that the Import and Assessment Service (IAS) value recommendation is the transactional value of the identical goods under method two.

IV

The Honorable 2nd Division erred in finding that the consolidated decision is not an order of release.



⁸ *Id.*, p. 102.

⁹ *Id.*, pp. 103-160.

¹⁰ Minute Resolution dated June 5, 2023, Court *En Banc* Docket, p. 165.

THE COURT *EN BANC*'S RULING

The Petition for Review is unmeritorious.

It bears noting that petitioner merely recycled the arguments it raised in the present Petition for Review as these matters had already been thoroughly discussed and resolved by the Court in Division in the Assailed Decision and Resolution. To put it bluntly, there is nothing in the present Petition for Review that was not sufficiently passed upon by the Court in Division in the Assailed Decision and Resolution. Petitioner utterly failed to raise any compelling reason to warrant the modification much less reversal of the Court in Division's findings.

Jurisdiction of the Court

Petitioner assails as inaccurate the Court in Division's finding that it has no jurisdiction over the present case. Petitioner maintains that forfeiture proceedings are administrative in nature and thus, the evidentiary standard of "clear and convincing evidence" shall not apply therein. Petitioner faults the Court in Division in requiring clear and convincing proof of petitioner's receipt of the assailed order on May 3, 2018 in order to establish its jurisdiction over the present case. According to petitioner, its timely receipt of the assailed order on May 3, 2018 is deemed established based on the following arguments:

1. Petitioner's receipt of the assailed order on May 3, 2018 is the same exact date when the said order was received by the Bureau of Customs Port of Batangas (BOC-POB) precisely because petitioner was immediately furnished with a copy thereof.
2. May 3, 2018 is the earliest possible time that petitioner could have received the order of the Commissioner which would trigger the start of the 30-day reglementary period to file the petition for review.
3. The May 3, 2018 stamp of the BOC-POB provides a definitive timeline of when the assailed order could have been first served. Petitioner's verified assertion that May 3, 2018 is its date of receipt of the assailed order is sufficient basis since the same remains uncontroverted.
4. Exhibit "P-1" is the same exhibit that embodies one of the admissions of both parties in their Joint Stipulation of Facts dated February 15, 2019 which was adopted in the Pre-Trial Order dated April 5, 2019.
5. Section 1, Rule 129 of the Revised Rules on Evidence mandates judicial notice, without the introduction of evidence, official acts of the executive department of the National Government of the Philippines.



The assailed order, being an official act of an attached agency of the Department of Finance, is subject to mandatory judicial notice.

6. Section 8 of Republic Act (RA) No. 1125, as amended, provides that the proceedings before this Court shall not be governed strictly by technical rules of evidence.

The merit of petitioner's arguments is more apparent than real.

Basic is the rule that it is the duty of the courts to consider the question of jurisdiction before they look into other matters involved in the case, even though such question is not raised by any of the parties.¹¹ Lack of jurisdiction is one of those excepted grounds where the court may dismiss a claim or a case at any time when it appears from the pleadings or the evidence on record that any of those grounds exists, even if they were not raised in the answer or in a motion to dismiss.¹² The reason is that jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action.¹³ If the court has no jurisdiction over the nature of an action, it has no other option but to dismiss the case.

It is true that forfeiture proceedings before the Bureau of Customs (BOC) are administrative in nature. But that point is irrelevant to the Court in Division's finding that it lacks jurisdiction over the present case. The administrative nature of the forfeiture proceedings before the BOC cannot, by any stretch of imagination, be extended to the Petition for Review filed before this Court, the latter being a judicial proceeding where party-litigants are required to prove every minute aspect of their cases.¹⁴

Although the nature of the proceedings before this Court cannot be characterized as administrative, the applicable evidentiary standards with regard to this Court's factual findings is also substantial evidence. As the Supreme Court aptly stated in *Commissioner of Internal Revenue v. Manila Medical Services, Inc. (Manila Doctors Hospital)*,¹⁵ to wit:

“As to questions of fact, the Court accords the factual findings of the CTA with the highest respect. **These findings of facts can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the CTA.** In the absence of any clear and

¹¹ *Bureau of Customs v. Devanadera*, G.R. No. 193253, September 8, 2015, 770 SCRA 24.

¹² Section 1, Rule 9 of the Rules of Court; *Heirs of Jose Fernando v. De Belen*, G.R. No. 186366, July 3, 2013, 700 SCRA 562; *Geonzon Vda. De Barrera v. Heirs of Vicente Legaspi*, G.R. No. 174346, September 12, 2008, 565 SCRA 192, 198.

¹³ *Bernardo v. Heirs of Eusebio Villegas*, G.R. No. 183357, March 15, 2010, 615 SCRA 474-475; *Sales v. Barro*, G.R. No. 171678, December 10, 2008, 573 SCRA 464.

¹⁴ *Commissioner of Internal Revenue v. Philippine Bank of Communications*, G.R. No. 211348, February 23, 2022; *Commissioner of Internal Revenue v. Ocier*, G.R. No. 192023, November 21, 2018.

¹⁵ G.R. No. 255473, February 13, 2023.

convincing proof to the contrary, the Court presumes that the CTA rendered a decision which is valid in every respect.” (*Emphasis and underscoring supplied*)

After careful review of the records vis-à-vis the relevant laws, rules, and jurisprudence, the Court *En Banc* agrees with the Court in Division’s ruling that it has no jurisdiction over the present case even when the pieces of evidence presented by petitioner are weighed under the substantial evidence standard. The Court *En Banc* agrees with the Court in Division’s conclusion that with the denial of Exhibit “P-1”, petitioner has no other evidence by which to prove its alleged receipt of the Commissioner of Customs (COC)’s assailed order on May 3, 2018.

While it is true that proceedings before this Court are not governed strictly by technical rules of evidence, this rule cannot be construed as a license to disregard certain fundamental evidentiary rules. There must be sufficient amount of evidence upon which this Court shall base its factual findings. In this case, the jurisdictional facts must be duly alleged and proved and the same cannot be substituted by mere speculations, surmises, or conjectures. As these matters affect the very authority of this Court to act on the case, they cannot simply be dismissed as mere technicalities that may be dispensed with by the bare invocation of “interest of justice.”

Petitioner cannot also hide behind the rule on mandatory judicial notice under Section 1, Rule 129 of the Revised Rules on Evidence to excuse the non-admission of Exhibit “P-1” given that what is at issue before the present case is not the existence *per se* of the assailed order but the date of receipt thereof by the petitioner.

Seizure and Forfeiture of the Subject Vehicles

As to the merits, petitioner asserts that the Court in Division erred in ruling that there is misdeclaration as to the description of the subject vehicles due to the glaring variance in the model and/or series of the subject vehicles. According to petitioner, there was no misdeclaration as to description of goods because the nature and identity of the goods were sufficiently described in the Import Entry and Internal Revenue Declaration (IEIRD) as the petitioner provided therein the correct general description of the motor vehicles along with proper disclosure of the related Vehicle Identification Number (VIN) containing the specific description of the subject vehicles. While petitioner admits that it did not strictly follow Customs Administrative Order (CAO) No. 6-93 as it did not indicate the models and/or series of the seven (7) motor vehicles in the IEIRDs, it maintains that it cannot be charged with deliberately misdeclaring such motor vehicles. It posits that whatever information was lacking in the IEIRDs was supplied by the chassis numbers or the VIN.



Petitioner postulates that the fact that the motor vehicles were described in a general manner does not mean that they were misdeclared as long as the general descriptions therein are not false, untruthful, erroneous, or inaccurate. As far as petitioner is concerned, what is controlling is the VIN/chassis number for purposes of identifying the motor vehicles for tariff classification and valuation. Petitioner admits that while the 7 motor vehicles were wrongly described in the invoices and packing lists, their chassis number/VIN were accurately declared. It submits that it cannot be faulted for the wrongful making of the invoices and packing lists as these were all prepared by its suppliers abroad.

Petitioner claims that the Court in Division erred in ruling that probable cause existed justifying the seizure and forfeiture of the nine (9) motor vehicles due to undervaluation. Essentially, petitioner assails the use of reference values by the Bureau of Customs-Enforcement Group (BOC-EG) and the Bureau of Customs-Import Assessment Service (BOC-IAS) for the determination of *prima facie* evidence of fraud. Petitioner postulates that reference values cannot be used for customs valuation except when the reference values are previously accepted transaction values of identical or similar articles in the Enhanced Value Reference Information System (e-VRIS) and there is valid reason to reject the declared values under Method One.

In his Comment, respondent counters that Section 1307 of the Tariff and Customs Code (TCCP), in relation to CAO No. 8-2007 and Customs Memorandum Order (CMO) No. 28-2007, requires that imported motor vehicles be specifically described by indicating the description on make, series, body type, year model, gross weight, net weight, piston displacement, number of cylinders, engine number, chassis number, vehicle identification number, and fuel type. Respondent asserts that not only did petitioner violate Section 1307 of the TCCP, CAO No. 8-2007 and CMO 28-2007 by not specifically describing its imported motor vehicles but also misdeclared such motor vehicles as shown by the discrepancies in petitioner's declaration in the import entries from the description in the invoice and supporting documents, and the description of the vehicles imported as found during the spot check/100% physical examination conducted by the Bureau of Customs.

Respondent also insists that petitioner undervalued the subject imported motor vehicles. He maintains that while under Section 201 of the TCCP the basis of dutiable value is the transaction value, the Collector of Customs has the right to satisfy himself as to the truth or accuracy of any statement, document, or declaration presented for customs valuation purposes. In the present case, according to respondent, District Collector Benitez, upon being informed of the apparent misdeclaration and other violations committed by petitioner, deemed it necessary to issue a Warrant of Seizure and Detention (WSD) against the subject motor vehicles. The issuance of the WSD triggered the seizure proceedings where petitioner was given an ample opportunity to provide further documents to prove that the transaction value as declared



should be the basis of the dutiable value. Respondent points out that petitioner failed to submit additional documents to support its claim.

Without prejudice to the ruling that this Court has no jurisdiction over the present case, the Court *En Banc* finds no reason to deviate from the Court in Division's observation that there appears to be misdeclaration and undervaluation of the subject imported motor vehicles giving rise to probable cause for the seizure and forfeiture of the same. Notably, all of the arguments raised by petitioner in the present Petition for Review were already sufficiently discussed and passed upon by the Court in Division in its assailed Decision and Resolution. Accordingly, the Court *En Banc* quotes and adopts as part of this Decision the relevant discussion by the Court in Division in its assailed Decision, to wit:

"A review of the records discloses that probable cause existed to justify the seizure and/or forfeiture of the subject vehicles because petitioner deliberately failed to disclose the correct model and/or series of the subject vehicles in the IEIRDs and even after being notified of the BOC officials' findings, petitioner still failed to satisfactorily explain the discrepancies. It also appears that there was undervaluation of the subject vehicles.

In the assailed Decision and Order, respondent COC held that the subject vehicles are liable for forfeiture because petitioner committed misdeclaration and undervaluation, as defined in Section 2503 of the TCCP, as amended, which reads:

...

SEC. 2503. *Undervaluation, Misclassification and Misdeclaration in Entry.* - When the dutiable value of the imported articles shall be so declared and entered that the duties, based on the declaration of the importer on the face of the entry would be less by ten percent (10%) than should be legally collected, or when the imported articles shall be so described and entered that the duties based on the importer's description on the face of the entry would be less by ten percent (10%) than should be legally collected based on the tariff classification, or when the dutiable weight, measurement or quantity of imported articles is found upon examination to exceed by ten percent (10%) or more than the entered weight, measurement or quantity, a surcharge shall be collected from the importer in an amount of not less than the difference between the full duty and the estimated duty based upon the declaration of the importer, nor more than twice of such difference: Provided, That an undervaluation, misdeclaration in weight, measurement or quantity of more than thirty percent (30%) between the value, weight, measurement or quantity declared in the entry, and the actual value, weight, quantity, or measurement shall constitute a prima facie evidence of fraud penalized under Section 2530 of this Code: Provided, further, That any misdeclared or undeclared imported article/items found upon examination shall *ipso facto* be forfeited



in favor of the Government to be disposed of pursuant to the provisions of this Code.

When the undervaluation, misdescription, misclassification or misdeclaration in the import entry is intentional, the importer shall be subject to penal provision under Section 3602 of this Code.

Relative thereto, Section 2530 (l) (3) (4) (5) of the TCCP, as amended, provides:

...
SEC. 2530. *Property Subject to Forfeiture under Tariff and Customs Laws.* - Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subjected to forfeiture:

...
1. Any article sought to be imported or exported

...

(3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;

(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 article; and

(5) Through any other practice or device contrary to law by means of which such articles were entered through a customhouse to the prejudice of the government.

...

The requisites for the forfeiture of goods under Section 2530 (l) (3) (4) (5) of the TCCP, as amended, are: (a) **the wrongful making** by the owner, **importer**, exporter or consignee of any **declaration** or affidavit, or the wrongful making or delivery by the same person of any invoice, letter or paper - all touching on the importation or exportation of merchandise; (b) **the falsity of such declaration**, affidavit, invoice, letter or paper; and (c) **an intention on the part of the importer/consignee to evade the payment of the duties due.**

We shall now determine whether petitioner committed misdeclaration and undervaluation that warrants the forfeiture of the subject vehicles.

A. SEVEN (7) OF THE NINE
(9) SHIPMENTS OF THE
SUBJECT VEHICLES
WERE MISDECLARED.



CAO No. 8-2007, as implemented by Customs Memorandum Order (CMO) No. 28-2007, states the requirement for filing of the IEIRD with specific description of the motor vehicle/s in accordance with following illustrative example:

...
2.1.1. Make -----Nissan GX-4
2.1.2. Series -----Infinity
2.1.3. Body Type -----Wagon
2.1.4. Year Model -----2006
2.1.5. Gross Weight -----3,600 kilos
2.1.6. Net Weight -----1,800 kilos
2.1.7. Piston Displacement -----3,500 cc
2.1.8. No. of Cylinders -----6 cylinders
2.1.9. Engine No. -----VK 45 (DF) 4494
2.1.10. Chassis No. -----JNRBS08W25X402113
2.1.11. Vin No. -----xxxxxxxxxxxxxxxxxxxx
2.1.12. Fuel -----Gas
...

Compliance with CAO No. 8-2007 is mandated under Part IV (2.1) of the DOF Joint Order No. 1-2010, which states:

...
IV. ADMINISTRATIVE PROVISIONS:
...

2. For purposes of arriving at the total landed value, the following procedures shall be adopted:

2.1 The proper description of the automobile pursuant to CAO 8-2007 shall be mandatory.

In the instant case, petitioner’s declaration of the subject vehicles in the IEIRD are as follows:

IEIRD Description	C-6372	C-6373	C-6374	C-6375	C-6380	C-6381	C-6395	C-6398	C-6403
Make	Ferrari	2 units of Mercedes Benz	Mercedes Benz	2 units of Land Rover	Land Rover	Mercedes Benz	2 units of Toyota	Toyota	McLaren
Series	California	GLK 350	C200	Defender 90	LR2	C200	Land Cruiser	Prado	540C
Body type	Coupe	SUV	Sedan	SUV	SUV	Sedan	-	SUV	-
Year Model	2015	2015	2015	2015	2015	2015	-	2015	2015
Gross Weight	1,395 kg	6,414 kg	1,740 kg	6,100 kg	3,150 kg	1,660 kg	5,000 kg	2,140 kg	1,450 kg
Net Weight	1,395 kg	6,414 kg	1,740 kg	6,100 kg	3,150 kg	1,660 kg	5,000 kg	2,140 kg	1,450 kg
Piston Displacement	8 cyl	6 cyl	4 cyl	-	6 cyl	4 cyl	-	6 cyl	-
No. of cylinders	-	-	-	-	-	-	-	-	-
Engine No.	-	-	-	-	-	-	-	-	-

IEIRD Description	C-6372	C-6373	C-6374	C-6375	C-6380	C-6381	C-6395	C-6398	C-6403
Chassis No./VIN No.	ZFF77XJB0F0205504	WDC4G5272FX212695 WDC4G5272FX224588	WDD204377FF977896	SALJDVAT8FA765512 SALJDVMP8FA445010	SALFR21E5FA231224	WDD209342FF137940	JTMEIV09J8F4158782	JTEB113EJ705083427	SIBM11DA1E1W003703
Fuel	Gas	Gas	Gas	-	Gas	Gas	-	Gas	Gas

As can be gleaned above, petitioner failed to completely fill up or supply all the required details of the subject vehicles, particularly the ‘No. of Cylinders’ and the ‘Engine No.’ among others, in violation of the aforesaid customs regulations.

Moreover, the Court cannot subscribe to petitioner’s claim that there was no misdeclaration on the subject vehicles as the chassis number, brand and color in the IEIRDs are the same as those in the commercial invoices because the records disclose otherwise.

The Court notes the discrepancies in the subject vehicles’ descriptions both in the IEIRDs and the result of the spot check or 100% physical examination (conducted on 05 August 2015) as detailed in the ‘Spotcheck Reports’ prepared by the assigned Officers-on-Case, De Castro and Ugay. Their findings are summarized below:

Alert Order	IEIRD No.	As Declared (Description) Per IEIRDs	As Found (Description) Per "Spotcheck Reports" of assigned Officers-on-Case Ugay and De Castro
A/EG/20150724-101	C-6372	Ferrari California Coupe Brand New 2015	Brand New Ferrari 458 Speciale 2015
A/EG/20150724-102	C-6373	2015 Brand New Mercedes GLK350, SUV	2015 Mercedes Benz G63 AMG
A/EG/20150724-104	C-6374	2015 Brand New Mercedes Benz C200, Sedan	2015 Mercedes Benz G63 AMG
A/EG/20150724-108	C-6375	Land Rover Defender 90 SUV Brand New 2015	Land Rover Defender 90 SUV Brand New 2015
A/EG/20150724-107	C-6380	Land Rover LR2 SUV Brand New 2015	Brand New Land Rover Range Rover 2015
A/EG/20150724-106	C-6381	2015 Brand New Mercedes Benz C200, Sedan, Silver	2015 Mercedes Benz CLK DTM AMG
A/EG/20150724-109	C-6395	Toyota Land Cruiser GX SUV Brand New 2015	Brand New Toyota Landcruiser GXR Bulletproof 2015
A/EG/20150724-103	C-6398	2015 Brand New Toyota Prado SUV, Silver, gas, 6 cyl	2015 Brand New Toyota Prado SUV, Silver, gas, 6 cyl

Alert Order	IEIRD No.	As Declared (Description) Per IEIRDs	As Found (Description) Per "Spotcheck Reports" of assigned Officers-on-Case Ugay and De Castro
A/EG/20150724-110	C-6403	Mclaren 540C Brand New 2015	Brand New McLaren MP4-12C OR 650S

Clearly from the foregoing, petitioner misdeclared the importation of subject vehicles as there are discrepancies in seven (7) IEIRDs, specifically **C-6372, C-6373, C-6374, C-6380, C-6381, C-6395 and C-6403**; particularly, as regards the vehicles' model and/or series.

Notwithstanding the glaring discrepancies in the model and/or series, petitioner did not provide any reasons therefor. It simply argued that the Vehicle Identification Number (**VIN**) or the chassis number of the subject vehicles as declared in the IEIRDs were the same when the vehicles were physically inspected by the customs examiners; thus, insisting that there were no misdeclarations. It must be noted, however, the VIN or chassis number must be supplied only to determine the country of origin of the imported vehicle, as provided under Part IV (2.2) of the DOF Joint Order No. 1-2010, which states:

...
IV. ADMINISTRATIVE PROVISIONS:
...

2. For purposes of arriving at the total landed value, the following procedures shall be adopted:
...

2.2 In the determination of the country of origin, the first (1st) digit of the vehicle's identification number or VIN or chassis number, shall be used as the basis thereof, i.e.[:]

US Manufacture Motor Vehicles — 1, 2, etc.
European Manufactured — V, W
Japan manufactured — J
...

Hence, even if respondent BOC found the same VINs or chassis numbers on the subject vehicles, still, the discrepancies remain as regards the models and/or series (of the said vehicles).

In an attempt to justify the said discrepancies, petitioner contended that the term 'misdeclaration' has a specific technical description under CAO No. 006-93 and went on to claim that misdeclared articles are those that do not tally with the details as declared in the IEIRD, which details were used to identify the tariff classification. Petitioner thus maintained that the articles will be considered misdeclared only if they do not fall under the same tariff headings and subheadings as those of the articles declared in the IEIRD. Petitioner added that since the subject vehicles were properly



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classified under the ASEAN Harmonized Tariff Nomenclature (AHTN) tariff heading of 8703.23.24 (motor vehicles with cylinder exceeding 2500 CC) at 30% rate duty using the descriptions made in the IEIRDs, there was no misdeclaration from its end.

We disagree.

Petitioner failed to consider that CAO No. 006-93 was issued to clarify the word 'misdeclared' and 'undeclared' as used in Section 2503 of the TCCP, as amended by RA 7651. The relevant parts thereof provide:

...

I. For Information, Section 2503 of the Tariff and Customs of the Philippines as amended by R.A. No. 7651 and which pertinent, reads as follows:

'Section 2503. . . . Provided, further, That any misdeclared or undeclared imported articles/items found upon examination shall *ipso facto* be forfeited in favor of the Government to be disposed of pursuant to the provisions of the Code.'

II. Definition:

- a. The word misdeclared as used in the proviso of Sec. 2503 as amended by RA 7651 shall mean that the article(s) as found upon examination does not tally with the details of the article(s) as declared in the entry, which details identify the declared articles in the entry both for tariff classification and statistical purposes and if the misdeclared article(s) found upon examination can be specifically classified in the Tariff and Customs Code, such misdeclared article(s) does not fall under the same tariff description in the terms of the headings and subheadings in the Code as those of the articles declared in the entry.
- b. The word undeclared as used in the proviso of Sec. 2503, as amended by RA 7651, shall refer to articles not specified in the entry or invoice.

...

From the foregoing, it is clear that the word 'misdeclared' pertains to articles that when found will certainly not fall under the same tariff heading as those declared in the import entry; thus, can be *ipso facto* forfeited in favor of the government. Such definition does not limit the meaning of misdeclaration, as used in Section 2503 of the TCCP, as amended, to inaccurate declarations in the entry that will yield an incorrect tariff classification. In fact, the term 'misdeclaration' was subsequently defined under Section 1400 of the CMTA which provides in part:

...



SEC. 1400. *Misdeclaration, Misclassification, Undervaluation in Goods Declaration.* — **Misdeclaration as to quantity, quality, description, weight, or measurement of the goods, or misclassification through insufficient or wrong description of the goods or use of wrong tariff heading resulting to a discrepancy in duty and tax to be paid between what is legally determined upon assessment and what is declared,** shall be subject to a surcharge equivalent to two hundred fifty percent (250%) of the duty and tax due.

...

Misdeclaration was also given a much clearer definition under Section 3.6 of CAO No. 01-2019, which provides:

...

3.9. Misdeclaration — shall refer to a false, untruthful, erroneous or inaccurate declaration as to quantity, quality, description, weight or measurement of the goods resulting in deficiency between the duty and the tax that should have been paid and the duty and tax actually paid and/or to avoid compliance with government regulations related to the entry of Regulated, Prohibited or Restricted goods into Philippine customs territory.

...

Applying the foregoing, ‘misdeclaration’ connotes a false, untruthful, erroneous or inaccurate declaration in quantity, quality, description, weight, or measurement of goods. It is not restricted to discrepancies that will result in an incorrect tariff classification of the imported articles.

With the above disquisition, the Court could only deem that there had been misdeclarations of the subject vehicles covered by IEIRD Nos. C-6372, C-6373, C-6374, C-6380, C-6381, C-6395 and C-6403.

B. THE SUBJECT VEHICLES WERE UNDERVALUED.

Apart from the finding of misdeclaration, BOC officials also discovered that the subject vehicles were undervalued as the models and/or series thereof, as found, were higher and considerably more valuable compared to what was declared in the IEIRDs. Pending the determination of the IAS Values, respondent BOC’s EG used reference values as preliminary basis for value verification.

The table below summarizes the declared amounts in the IEIRDs *vis-à-vis* the EG reference values as used in the Memorandum submitted by the assigned Officers-on-Case, Ugay and De Castro:

IEIRD No.	As declared (Value in USD Per IEIRD)	As found (Value in USD Per EG Memorandum)	Discrepancy
C-6372	Ferrari California Coupe Brand New 2015 122,152.00 (1 unit)	Brand New Ferrari 458 Speciale 2015 298,000.00 (1 unit)	59%
C-6373	2015 Brand New Mercedes Benz GLK350, SUV 53,970.00 (2 units)	2015 Mercedes Benz G63 AMG 160,126.26 (2 units)	66%
C-6374	2015 Brand New Mercedes Benz C200, Sedan 26,985.60 (1 unit)	2015 Mercedes Benz G63 AMG 80,063.13 (1 unit)	66%
C-6375	Land Rover Defender 90 SUV Brand New 2015 43,368.00 (2 units)	Land Rover Defender 90 SUV Brand New 2015 70,668.12 (2 units)	38%
C-6380	Land Rover LR2 SUV Brand New 2015 29,780.00 (1 unit)	Brand New Land Rover Range Rover 2015 83,900.00 (1 unit)	64%
C-6381	2015 Brand New Mercedes Benz C200, Sedan, Silver 29,512.00 (1 unit)	2015 Mercedes Benz CLK DTM AMG 106,279.60 (1 unit)	72%
C-6395	Toyota Land Cruiser GX SUV Brand New 2015 74,000.00 (2 units)	Brand New Toyota Landcruiser GXR Bulletproof 2015 207,753.00 (2 units)	64%
C-6398	2015 Brand New Toyota Prado SUV, Silver, gas, 6 cyl 30,000.00 (1 unit)	2015 Brand New Toyota Prado SUV, Silver, gas, 6 cyl 45,000.00 (1 unit)	33%
C-6403	Mclaren 540C Brand New 2015 60,000.00 (1 unit)	Brand New Mclaren MP4-12C OR 650S 228,080.00 (1 unit)	73%

Section 2503 of the TCCP, as amended, provides that an undervaluation, misdeclaration in weight, measurement or quantity of more than thirty percent (30%) between the value, weight, measurement or quantity declared in the entry, and the actual value, weight, quantity, or measurement shall constitute *prima facie* evidence of fraud penalized under Section 2530 of the TCCP, as amended.

From the table above, there was an initial determination of *prima facie* evidence of fraud on the subject vehicles because they were misdeclared and, consequently, undervalued, with differences ranging from 33% to as high as 73% (see last column of the table above). Further, the findings of undervaluation were later confirmed when the IAS Values were issued.



As provided in Section 2535 of the TCCP, as amended, once probable cause is established, the burden of proof is shifted to the claimant who, in this case, is petitioner (the importer of the subject vehicles). However, petitioner failed to adduce evidence to overthrow the *prima facie* evidence of fraud in the importation of the subject vehicles.

In disputing the seizure and/or forfeiture of the subject vehicles, petitioner maintained that respondent BOC's EG improperly used reference values for customs valuation.

Again, We disagree.

Under Item 4.1 of CMO No. 16-2010, where the Collector of Customs has reasons to doubt the truth and accuracy of the declare values, he or she can use published or established dutiable value as a risk management tool to alert customs or do a value verification check. The pertinent portion thereof provides:

...
4.0 CASES WHERE THE COLLECTOR OF CUSTOMS
HAS REASONS TO DOUBT THE TRUTH OR
ACCURACY OF THE DECLARED VALUE

- 4.1 Published or established dutiable value, or any other value reference from whatever source, cannot be used as substitute value for customs valuation. **However, such value information may be used as a risk management tool to establish doubt or to alert customs to do a value verification check either upfront thru a system created for the purpose or on a post-entry basis through the Post Entry Audit infrastructure.**

...
Here, given the circumstances of the importation, where there was apparent misdeclaration, respondent BOC's EG could not be faulted for using reference values during its initial value verification. Such use of reference values was clearly done as a risk management tool to confirm any doubt on the truth or accuracy of the declared values (brought about by the finding of misdeclaration) and to prompt customs officers to do a value verification.

Petitioner likewise averred that the dutiable values of the subject vehicles were based on the declared transaction values reflected in the commercial invoices. It repeatedly cited Section 201 of the TCCP, as amended, which mandates the use of *Method One* or the *Transaction Value* in assessing the dutiable value of an imported good. The relevant provision states:

...
SEC. 201. *Basis of Dutiable Value.* —



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(A) Method One. — Transaction Value. — The dutiable value of an imported article subject to an *ad valorem* rate of duty shall be the transaction value, which shall be the price actually paid or payable for the goods when sold for export to the Philippines, adjusted by adding:

(1) The following to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods:

(a) Commissions and brokerage fees (except buying commissions);

(b) Cost of containers;

(c) The cost of packing, whether for labour or materials;

(d) The value, apportioned as appropriate, of the following goods and services: materials, components, parts and similar items incorporated in the imported goods; tools; dies; moulds and similar items used in the production of imported goods; materials consumed in the production of the imported goods; and engineering, development, artwork, design work and plans and sketches undertaken elsewhere than in the Philippines and necessary for the production of imported goods, where such goods and services are supplied directly or indirectly by the buyer free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods;

(e) The amount of royalties and license fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods to the buyer;

(2) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;

(3) The cost of transport of the imported goods from the port of exportation to the port of entry in the Philippines;

(4) Loading, unloading and handling charges associated with the transport of the imported goods from the country of exportation to the port of entry in the Philippines; and

(5) The cost of insurance.

All additions to the price actually paid or payable shall be made only on the basis of objective and quantifiable data.

No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Section. . . .

...



Also, petitioner cited Item 3.1 of CMO No. 16-2010 purportedly supporting the use *Method One* as the primary method in determining the dutiable value, viz.:

...
3.1 GENERAL PROVISIONS

The primary method in determining the dutiable value of imported goods shall be Method One: The Transaction Value, whenever the conditions prescribed for its use are fulfilled.

...
Moreover, petitioner claimed that if the dutiable value cannot be determined under *Method One*, then the methods of valuation are sequentially applied as stated in Section 201 of the TCCP, as amended, viz.:

...
(B) Method Two. — Transaction Value of Identical Goods. — **Where the dutiable value cannot be determined under method one, the dutiable value shall be the transaction value of identical goods sold for export to the Philippines and exported at or about the same time as the goods being valued.** ‘Identical goods’ shall mean goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearances shall not preclude goods otherwise conforming to the definition from being regarded as identical.

(C) Method Three. — Transaction Value of Similar Goods. — **Where the dutiable value cannot be determined under the preceding method, the dutiable value shall be the transaction value of similar goods sold for export to the Philippines and exported at or about the same time as the goods being valued.** ‘Similar goods’ shall mean goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark shall be among the factors to be considered in determining whether goods are similar.

If the dutiable value still cannot be determined through the successive application of the two immediately preceding methods, the dutiable value shall be determined under method four or, when the dutiable value still cannot be determined under that method, under method five, except that, at the request of the importer, the order of application of methods four and five shall be reversed: Provided, however, That if the Commissioner of Customs deems that he will experience real difficulties in determining the dutiable value using method five, the Commissioner of Customs may refuse such a request in which event the dutiable value shall be determined under method four, if it can be so determined.

...



(F) Method Six. — Fallback Value. — **If the dutiable value cannot be determined under the preceding methods described above, it shall be determined by using other reasonable means and on the basis of data available in the Philippines.**

...

Similarly, Items 2.6 and 2.7 in relation to 3.1 of CMO No. 16-2010 provide for the sequential application of the valuation methods, *viz.*:

...

Sequential Application of Valuation Methods

- 2.6 The methods of valuation are set out in a sequential order of application. The primary method for customs valuation is the Transaction Value and imported goods are to be valued in accordance with the provisions of this method whenever the conditions prescribed for its use are fulfilled.
- 2.7 Where the dutiable value cannot be determined under the Transaction Value method, it is to be determined by proceeding sequentially through the succeeding methods to the first such method under which the dutiable value can be determined. Except as provided under Section 3.1, paragraph 3 of this Order, it is only when the dutiable value cannot be determined under the provisions of a particular method that the provisions of the next method in the sequence can be used.

...

3.1 GENERAL PROVISIONS

The primary method in determining the dutiable value of imported goods shall be Method One: The Transaction Value, whenever the conditions prescribed for its use are fulfilled.

However, if the dutiable value cannot be determined with the use of Method One, the following valuation methods shall be applied in sequential order:

- Method Two: The Transaction Value of Identical Goods
Method Three: The Transaction Value of Similar Goods
Method Four: Deductive Value
Method Five: Computed Value
Method Six: Fallback Value

However, at the request of the importer, the order of application of Methods Four and Five



may be reversed; provided, that the Commissioner of Customs agrees to such request taking into consideration that the reversal of the sequential order will not give rise to real difficulties for the BOC in determining the dutiable value under Method Five.

If the importer does not request that the order of Method Four and Method Five be reversed, the normal order of the sequence shall be followed. If the importer does so request but it then proves impossible to determine the dutiable value under the provisions of Method Five, the dutiable value shall be determined under the provisions of Method Four, if it can be so determined.

Where the dutiable value cannot be determined under the provisions of Methods One to Five, it shall be determined under the provisions of Method Six.

...

Following the afore-quoted provisions, the dutiable value of imported articles shall be based on the valuation methods sanctioned by the TCCP, as amended, in successive order, with the Transaction Value System or Method One as the first among the six (6) and takes precedence over the other methods. Under the said method, the transaction value shall be the price actually paid or payable for the goods when sold for export to the Philippines, adjusted in accordance with Section 201 of the TCCP, as amended.

Unfortunately, petitioner failed to appreciate that Method One may not be used if there is doubt in the truth and accuracy of the documents presented by the importer. Section 201 of the TCCP, as amended, states in part:

...

Nothing in this Section shall be construed as restricting or calling into question the right of the Collector of Customs to satisfy himself as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes. **When a declaration has been presented and where the customs administration has reason to doubt the truth or accuracy of the particulars or of documents produced in support of this declaration, the customs administration may ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Subsection (A) hereof.**



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If, after receiving further information, or in the absence of a response, the customs administration still has reasonable doubts about the truth or accuracy of the declared value, it may, without prejudice to an importer's right to appeal pursuant to Article 11 of the World Trade Organization Agreement on customs valuation, be deemed that the customs value of the imported goods cannot be determined under Method One. . . . When a final decision is made, the customs administration shall communicate to the importer in writing its decision and the grounds therefor.

...

Corollarily, Items 4.2 and 4.3 of CMO No. 16-2010 provide:

...

4.2 When an import declaration has been presented and where the Collector of Customs has reason to doubt the truth or accuracy of the particulars or of documents produced in support of this declaration, the Collector of Customs may ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Section 3.2.8.

4.3 If, after receiving further information, or in the absence of a response from the importer, the Collector of Customs still has reasonable doubts about the truth or accuracy of the declared value, then it is deemed that the dutiable value of imported goods cannot be determined under Method One. The Collector of Customs shall then proceed to determine the dutiable value under alternative methods sequentially and in the order of succession as provided by this Order.

...

In the case at bar, respondent COC sought additional documents from petitioner to support the declared transaction values as he was not satisfied with the commercial invoices, packing lists and bills of lading. However, petitioner failed to comply. Petitioner's own witness, Customs Examiner Manguiat, confirmed such failure, viz.:

...

State Sol. Dato:

Q: So if the IAS clearance shows a value that is higher or lower than the transaction value, will use the IAS value, is that correct?

Ms. Manguiat:

A. *Pag mayroon pong sinabmit na proof of payment ang importer, mas susundin po naming yung proof of payment dahil sa transaction value po iyong sinusunod po natin.*



State Sol. Dato:

Q: **So in this case, did the importer submit a proof of payment other than the invoice?**

Ms. Manguiat:

A. ***Hindi pa po.***

State Sol. Data:

Q: **None as of when? Until now?**

Ms. Manguiat:

A. **Now.**

State Sol. Dato:

Q: **The importer has not submitted?**

Ms. Manguiat:

A. ***Yes po.***

...

As stated earlier, given the circumstances under which the vehicles were imported, the Court finds that respondent BOC is justified in not using the *Transaction Value System or Method One* as basis for the customs value. In other words, it was not erroneous for respondent BOC to not have used the values appearing on the commercial invoices as competent or reliable basis for valuation.

Additionally, pursuant to Customs Memorandum Circular (CMC) No. 70-2014, all vehicles under tariff headings 87.02 and 87.03 shall be referred to IAS for value recommendations. In addition, no shipments of automobiles under these tariff headings should be released without prior clearance from respondent BOC's IAS. These directives have been consolidated in respondent BOC's Memo dated 30 March 2015, the pertinent portions thereof read:

...

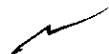
2. All import entries covering automobiles propelled by gasoline, diesel, electricity, or any other motive power with engine displacement of 2,000 cc and above, except for those listed below, must be referred to the Imports and Assessment Service (IAS) prior to the final assessment.

...

4. The Import & Assessment Service (IAS) will provide value recommendations to the Formal Entry Division (FED) or equivalent units.

...

As the records bear, the 'Spotcheck Reports' of petitioner's witnesses, Customs Examiners Asaria and Manguiat, state that the subject shipments were under tentative liquidation as approved, pending issuance of the IAS clearance. As earlier observed, the referral to the IAS appears to be a precautionary measure taken by the BOC to



prevent the undervaluation of imported goods to evade payment of proper customs duties and taxes.

A perusal of the IAS Values would reveal that the subject vehicles were valued based on the model and/or series as found during the spot check or 100% physical examination. Below is a table comparison of the model and/or series of the subject vehicles (as found) per ‘Spotcheck Reports’ of the assigned Officers-on-Case, Ugay and De Castro, and *per* IAS Values.

IEIRD No.	As Found (Description) Per "Spotcheck Reports" of assigned Officers-on-Case Ugay and De Castro	As Found (Description) Per IAS Values
C-6372	Brand New Ferrari 458 Speciale 2015	Brand New Ferrari 458 Speciale
C-6373	2015 Mercedes Benz G63 AMG	2015 Brand New Mercedes Benz G63 AMG
C-6374	2016 Mercedes Benz G63 AMG	2016 Brand New Mercedes Benz G63 AMG
C-6375	Land Rover Defender 90 SUV Brand New 2015	Brand New Landrover Defender 90
C-6380	Brand New Land Rover Range Rover 2015	Brand New Land Rover Range Rover
C-6381	2015 Mercedes Benz CLK DTM AMG	2015 Brand New Mercedes Benz CLK DTM AMG
C-6395	Brand New Toyota Landcruiser GXR Bulletproof 2015	Brand New Toyota Landcruiser GXR Bulletproof
C-6398	2015 Brand New Toyota Prado SUV, Silver, gas, 6 CYL	2015 Brand New Toyota Prado
C-6403	Brand New McLaren MP4-12C OR 650S	Brand New McLaren MP4-12C or 650S

Section 201 of the TCCP, as amended, defined ‘identical goods’ as goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearances shall not preclude goods otherwise conforming to the definition from being regarded as identical. On that note, the summary above shows that the IAS Values were derived from identical goods of the subject vehicles (because the values were determined in reference to the model and/or series of the said vehicles as they were found). Thus, there is reasonable basis for the Court to conclude that the amounts per IAS Values were arrived at using the next sanctioned valuation method, *i.e.*, the *Transaction Value of Identical Goods or Method Two* for purposes of determining the dutiable value of the subject vehicles.

The table below summarizes the declared amounts in the IEIRDs *vis-à-vis* the IAS Values and the percentages (%) of discrepancy confirm that petitioner indeed undervalued the subject vehicles.

IEIRD No.	Description and Values As Declared Per IEIRDs	Description and Values As Found Per IAS Values	Discrepancy
C-6372	2015 Brand New Ferrari California Coupe \$122,153.00	Brand New Ferrari 458 Speciale \$238,400.00	48.76%



IEIRD No.	Description and Values As Declared Per IEIRDs	Description and Values As Found Per IAS Values	Discrepancy
C-6373	Two (2) Units of 2015 Brand New Mercedes Benz GLK 350 SUV, White, Gasoline, 6cyl \$26,985.60 (1 unit) or \$43,368.00 (2 units)	2015 Brand New Mercedes Benz G63 AMG \$109,720.00 (1 unit) or \$219,440 (2 units)	75.40%
C-6374	2015 Brand New Mercedes Benz C200 \$29,512.00	2015 Brand New Mercedes Benz C63 AMG \$50,200.00	41.21%
C-6375	Two (2) Units of 2015 Brand New Land Rover Defender 90 SUV \$21,684.00 (1 unit) or \$43,368.00 (2 units)	Brand New Land Rover Defender 90 \$31,054.92 (1 unit) or \$62,109.84 (2 units)	30.18%
C-6380	2015 Brand New Land Rover LR2 \$29,280.00	Brand New Land Rover Range Rover \$149,196.00	80.37%
C-6381	2015 Brand New Mercedes Benz C200 Sedan, Silver, 4cyl, Gas \$29,512.00	2015 Brand New Mercedes Benz CLK DTM AMG \$160,317.60	81.59%
C-6395	Two (2) Units of 2015 Brand New Toyota Land Cruiser GX SUV \$37,000 (1 unit) or \$74,000 (2 units)	Brand New Toyota Landcruiser GXR Bulletproof \$85,522.84 (1 unit) or \$171,045.68 (2 units)	56.73%
C-6398	2015 Brand New Toyota Prado, SUV, Silver, Gas, 6cyl \$30,000.00	2015 Brand New Toyota Prado \$45,000.00	33.33%
C-6403	2015 Brand New McLaren 540C \$60,000.00	Brand New McLaren MP4-12C OR 650S \$212,400	71.75%

Evidently, petitioner's declared values for the subject vehicles are significantly lower than the IAS Values (determined using the *Transaction Value of Identical Goods or Method Two*) **by more than 30%**. This goes to show that petitioner's declared values failed to disclose the actual value of the subject vehicles and this qualifies as 'undervaluation,' as defined in Section 2503 of the TCCP, as amended, and, given the discrepancy of more than 30%, such undervaluation unmistakably constitutes *prima facie* evidence of fraud.

Taking everything into consideration, this Court is constrained to affirm respondent COC's finding that there exists probable cause for seizure and/or forfeiture of the subject vehicles for misdeclaration and undervaluation under Section 2503, in relation to Section 2530, of the TCCP, as amended."



Finally, with respect to the argument that the Consolidated Decision of the POB OIC-District Collector ordering the quashal of the WSDs constitutes as an order of release pursuant to Section 1117 of the Customs Modernization and Tariff Act, suffice it to say that the said statute is not applicable to the present case given that the Tariff and Customs Code of the Philippines is still the applicable law thereto.

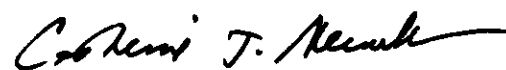
WHEREFORE, the present Petition for Review is **DENIED** for lack of merit. The Assailed Decision dated August 4, 2022 and the Assailed Resolution dated December 5, 2022 issued by the Special Second Division in CTA Case No. 9851 are both **AFFIRMED**.

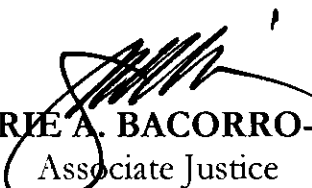
SO ORDERED.

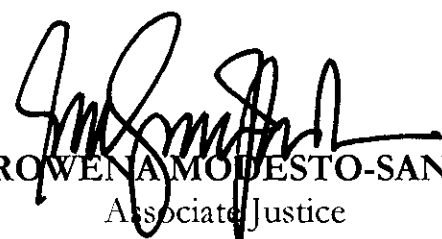

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


CATHERINE T. MANAHAN
Associate Justice

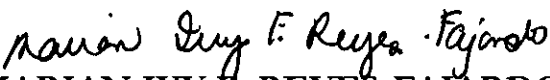

JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

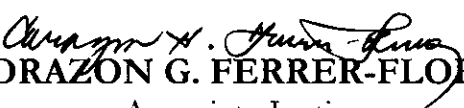
DECISION

CTA EB No. 2728 (CTA Case No. 9851)

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MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice

On Leave
HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ROMAN G. DEL ROSARIO
Presiding Justice