



TAX LAW FOR BUSINESS
Atty. Pamela P. Palad

*(BDB Law's "Tax Law For Business" appears in the opinion section of **BusinessMirror** every second and fourth Thursday of the month. BDB Law is an affiliate of Punongbayan & Araullo (P&A).*

Battling Smuggling

EACH year the government loses billions of pesos in lost revenues due to smuggling. This has resulted in massive layoffs and bankruptcies in various sectors that relatively cannot compete with smuggled goods. The impact of smuggling affects almost every industry in the country and, in most cases, it is the legitimate importers and businessmen who suffer despite diligently paying the proper duties and taxes.

Smuggling, or the act of fraudulently importing into the Philippines any article in a manner contrary to law, is of two kinds. The more common is technical smuggling, which involves the misdeclaration, undervaluation, misclassification of goods and other kinds of importation fraud. The second is outright smuggling, where goods are slipped in without going through the Bureau of Customs (BOC).

The BOC is charged with the assessment and collection of revenues from imported articles, as well as the control of smuggling and related fraud. Thus, there are two kinds of proceedings before the BOC. First is the filing of a customs protest on cases which deal solely with liability for customs duties, fees, and other charges being disputed by the taxpayer. The second proceeding cognizable before the BOC are the seizure and forfeiture cases which refer to matters involving smuggling. It is administrative and civil in nature and directed against the res or imported articles and entails a determination of the legality of their importation.

The collector of Customs has exclusive jurisdiction over all questions concerning the seizure and forfeiture of dutiable goods, subject only to an appeal to the commissioner of Customs, whose decisions are appealable to the Court of Tax Appeals and to final review by the Supreme Court (SC).

Anything that was used for smuggling is subject to confiscation, like the vessel, plane, cargo or articles. Furthermore, search and seizure in the exercise of police authority under the customs law may lawfully be effected sans a search warrant (*People v. Canton*, G.R. No. 148825, December 27, 2002).

In *Papa v. Mago* (G.R. No. 27360, February 28, 1968) which involved a customs search, the SC held that law enforcers who are tasked to effect the enforcement of the customs and tariff laws are authorized to search and seize, without a search warrant, any article, cargo or other movable property when there is reasonable cause to suspect that the said items have been introduced into the Philippines in violation of the tariff and customs law. They may, likewise, conduct a warrantless search of any vehicle or person suspected of holding or conveying the said articles.

In short, the SC clearly recognizes the power of the State to foil any fraudulent schemes resorted to by importers who evade payment of customs duties. The government's policy to combat the serious malady of smuggling cannot be reduced to futility and impotence on the ground that dutiable articles on which the duty has not been paid are entitled to the same constitutional protection as an individual's private papers and effects. (*Salvador v. People*, G.R. No. 146706, July 15, 2005)

In criminal proceedings, the evidence for conviction in smuggling cases involve mere possession of the article in question, unless the defendant could explain that his possession is lawful to the satisfaction of the court. And payment of the tax due after apprehension shall not constitute a valid defense in any prosecution. (*Rodriguez v. Court of Appeals*, G.R. No. 115218, September 18, 1995)

Aside from the BOC, the Presidential Antismuggling Group (PASG) was created through Executive Order 624 dated May 21, 2007, under the Office of the President, which is composed of representatives from the BOC, the Philippine National Police, Philippine Coast Guard, the Philippine Navy, the Philippine Maritime Authority, the Philippine Ports Authority the National Food Authority, and the Bureau of Food and Drugs. It is tasked to apprehend, investigate and prosecute smugglers and propose measures to deter smuggling and speed up seizure proceedings.

The PASG has become the enforcement arm in the campaign against smuggling to protect the interest of the local industry. Barely four months in operation, the PASG has been actively running after smugglers, and even government officials suspected to be involved therein, and it has been keeping a tight watch on Philippine ports.

Although working for the same objectives in curtailing smuggling in the country and in raising revenues for the government, the PASG deals more with antismuggling activities while the BOC focuses on revenue collection. With these two agencies working hand in hand, we look forward to a more effective enforcement of our tariff and customs law to curb smuggling in the country.