**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***SECOND DIVISION***

| | |
|---|---|
| **BSJ FISHING AND TRADING, INC.,** *Petitioner,* | **CTA Case No. 8026** |
| - versus- | **Members:** |
| | **Castañeda, Jr.,** *Chairperson* **Casanova,** and **Cotangco-Manalastas,** *JJ.* |
| **HON. NAPOLEON MORALES, in his capacity as COMMISSIONER of the BUREAU OF CUSTOMS,** *Respondent.* | **Promulgated:** FEB 03 2015 |

x- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - x
10:25 a.m.

# DECISION

**COTANGCO-MANALASTAS, *J.:***

This Petition for Review filed by BSJ Fishing and Trading, Inc. seeks to annul and reverse the Decision dated December 3, 2009 of the Commissioner of the Bureau of Customs, affirming the Decision dated August 4, 2009 of the OIC-District Collector of the Port of Manila which ordered that the diesel oil and biodiesel, the vessels and the container trucks in Seizure Identification No. 2008-154 and Seizure Identification No. 2008-158 be forfeited in favor of the government to be disposed of in accordance with law.

## FACTS

Petitioner BSJ Fishing and Trading, Inc. is a domestic corporation engaged in commercial fishing operations. It has its principal office address at Lot 4, Gozon Commercial Complex, Letre Road, Tonsuya, Malabon City.[1]

[1] Par. 3.1, Petition for Review, docket, p. 4.

Respondent is the Commissioner of the Bureau of Customs (BOC), with office address at the Bureau of Customs, OCOM Bldg., Port Area, Manila.

Based on confidential intelligence information that smuggled fuel, crude oil or gasoline are stored on the vessels and at the premises of petitioner, respondent's Customs Intelligence and Investigation Service (CIIS) drew up operation plans (referred to as "OPLAN: FISHPORT" and "OPLAN: O'RELYN TRADING CORPORATION / BSJ FISHING & TRADING, INC.") to demand evidence of payment of duties and taxes on the fuel, crude oil or gasoline loaded on its vessels and later on those stored on petitioner's premises.[2]

Oplan: Fishport[3] had the following objectives:

> "1. Apprehend the container truck carrying fuel, crude oil or gasoline unloaded from M/V Buena Suerte J-106.
>
> 2. Demand evidence of payment of duties and taxes on the fuel, crude oil or gasoline carried by the container truck unloaded from M/V Buena Suerte J-106 and those stored at M/V Buena Suerte J-106.
>
> 3. Seizure of the fuel, crude oil or gasoline, container truck and M/V Buena Suerte J-106 if no evidence can be shown on the payment of duties and taxes thereon.
>
> 4. Prevention or suppression of smuggling and other frauds upon customs.
>
> 5. Enforcement of the Tariff and Customs Code of the Philippines (TCCP) and all other laws, rules and regulations relating to the tariff and customs administration.
>
> 6. Assessment and collection of the lawful revenues from imported articles and all other dues, fees, charges, fines and penalties accruing under the Tariff and Customs laws."

Likewise, Oplan: O'Relyn Trading Corporation/BSJ Fishing and Trading, Inc.[4] was created to attain the following objectives:

---

[2] Exhibit "32", docket, pp. 604 to 615.
[3] Exhibit "1", BOC Records, pp. 1820 to 1822.
[4] Exhibit "2", BOC Records, pp. 1823 to 1826.

> "1. Demand evidence of payment of duties and taxes on the fuel, crude oil or gasoline stored at O'RELYN TRADING CORPORATION, 438 C-3 Road Kaunlaran Village, Caloocan City and BSJ FISHING & TRADING, INC., Lot 4 Gozun
>
> 2. [*sic*] Compound, Letre Road, Tonsuya, Malabon City.
>
> 3. Seizure of the fuel, crude oil or gasoline stored at 438 C-3 Road Kaunlaran Village, Caloocan City and BSJ FISHING & TRADING, INC., Lot 4 Gozun Compound, Letre Road, Tonsuya, Malabon City if no evidence can be shown on the payment of duties and taxes thereon.
>
> 4. Prevention or suppression of smuggling and other frauds upon customs.
>
> 5. Enforcement of the Tariff and Customs Code of the Philippines (TCCP) and all other laws, rules and regulations relating to the tariff and customs administration.
>
> 6. Assessment and collection of the lawful revenues from imported articles and all other dues, fees, charges, fines and penalties accruing under the Tariff and Customs laws."

Accordingly, respondent issued Mission Order No. 037-2008[5] dated August 29, 2008 directing CIIS personnel mentioned therein to proceed to Pier 2, Navotas Fish Port Complex, Navotas City to carry out respondent's confidential instructions.

On August 30, 2008, petitioner was presented with an undated Letter of Authority (LOA) with Reference No. 021-2008[6] addressed to "The Owner, Possessor or In-Charge, M/V Buena Suerte J-106, Pier 2, Navotas Fish Port Complex" signed by respondent.[7]

During the implementation of the subject LOA, the CIIS found that M/V Buena Suerte J-106 seems to be empty of fuel, crude oil or gasoline considering that the same were already transferred or unloaded to the vessels beside it, namely, M/V Buena Suerte J-47, M/V Buena Suerte J-1, and Buena Suerte J-55. The CIIS also found out that a container

[5] Exhibit "6", BOC Records, p. 1065.
[6] Exhibit "3", BOC Records, p. 1402.
[7] Par. 1, Statement of Admitted Facts, Pre-Trial Order, docket, p. 222.

truck with Plate No. UHF-184, which was parked beside the vessels, had a hose siphoning fuel, crude oil or gasoline from M/V Buena Suerte J-47, and an undetermined number of barrels were being loaded with fuel, crude oil or gasoline from M/V Buena Suerte J-1 and Buena Suerte J-55.[8]

The CIIS immediately reported the situation to respondent Commissioner.[9] Consequently, respondent issued another LOA[10] dated August 30, 2008, this time, against the owner, possessor or in-charge of M/V Buena Suerte J-47, M/V Buena Suerte J-1, and M/V Buena Suerte J-55.[11] The second LOA was likewise presented to petitioner on the same day.[12]

The enforcement of the second LOA showed that the afore-stated vessels were indeed carrying the fuel, crude oil or gasoline unloaded from M/V Buena Suerte J-106; and that Ismael Santos, the supervisor of Buena Suerte Corporation, failed to present evidence of payment of customs duties and taxes on the fuel, crude oil or gasoline. As a result, the vessels, container truck and the barrels containing fuel, crude oil or gasoline were seized and sealed.

Accordingly, Mr. Eric G. Albano, Head of the Operations Section of CIIS, prepared a Memorandum dated September 1, 2008 addressed to the Director of the CIIS reporting the results of the enforcement of the above-mentioned LOAs and requesting for Customs Examiners to conduct an examination, inventory and appraisal of the seized property as well as the assignment of regular Customs Guards, Customs Police/CPRIG to guard and watch over the seized property.[13]

On September 1, 2008, petitioner presented sales invoices issued by O'Relyn Trading Corporation and certification with summary of invoices issued by Petron Corporation to prove that the diesel oil was locally purchased. However, no delivery receipts were shown to prove that the diesel oil is the same diesel oil purchased from these suppliers.[14]

---

[8] Exhibit "4", BOC Records, pp. 1403 to 1404.
[9] Exhibit "32", docket, pp. 604 to 615.
[10] Exhibit "5", BOC Records, p. 1670.
[11] Exhibit "4", BOC Records, pp.1403 to 1404.
[12] Par. 1, Statement of Admitted Facts, Pre-Trial Order, docket, p. 222.
[13] Exhibit "4", BOC Records, pp.1403 to 1404.
[14] Exhibit "9", BOC Records, pp. 1405 to 1406.

On September 2, 2008, it was reported by CIIS personnel on-duty that M/V Buena Suerte J-47, which was fully loaded with diesel oil, surreptitiously left the Navotas Port without clearance from respondent while the container truck with plate no. UHF-184 attempted to leave the port but was prevented by respondent's personnel. According to the report, there was an attempt to switch the seized container truck with plate no. UHF-184 carrying diesel oil with another container truck with plate no. WCJ-307 carrying water.[15]

Meanwhile, respondent issued another LOA dated September 2, 2008, with Reference No. 024-2008[16] and Mission Order No. 038-2008[17] dated September 2, 2008, directing CIIS personnel to proceed to 438 C-3 Road, Kaunlaran Village, Caloocan City and Lot 4, Gozun Compound, Letre Road, Tonsuya, Malabon City to carry out respondent's confidential instructions.

Thus, on September 3, 2008, the third LOA was served at petitioner's main compound.[18] Again, petitioner presented receipts as proof that the diesel oil was locally purchased from Petron Corporation and O'Relyn Trading Corporation. However, respondent noticed that no delivery receipt were shown to prove that the diesel oil came from the same diesel oil purportedly covered by the alleged receipt issued by these suppliers.[19]

On September 3, 2008, CIIS personnel recommended to the Director of the CIIS the issuance of a Warrant of Seizure and Detention (WSD) on the undetermined volume of diesel oil loaded on M/V Buena Suerte J-106, M/V Buena Suerte J-47, M/V Buena Suerte J-1, M/V Buena Suerte J-55, the vessels M/V Buena Suerte J-106, M/V Buena Suerte J-47, M/V Buena Suerte J-1, M/V Buena Suerte J-55, and the container trucks with Plate Nos. UHF-184 and WCJ-307.[20]

Samples were taken from the seized diesel fuel. The Bureau of Internal Revenue (BIR) took custody of the samples;[21] and OIC-Regional Director Cesar Charlie C. Lim of

---

[15] Exhibit "9", BOC Records, pp. 1405 to 1406; Exhibit "32", docket, pp. 604 to 615.
[16] Exhibit "7", BOC records, pp. 1407 to 1408.
[17] Exhibit "8", BOC Records, p. 1550.
[18] Par. 2, Statement of Admitted Facts, Pre-Trial Order, docket, p. 222.
[19] Exhibit "32", docket, pp. 604 to 615.
[20] Exhibit "9", BOC Records, pp. 1405 to 1406.
[21] Exhibit "34", docket, pp. 617 to 623.

the BIR Revenue Region No. 5-Valenzuela City sent a letter dated September 10, 2008 to Director Racquel Huliganga of the Energy Research Testing Laboratory Services of the Department of Energy (DOE), requesting a quality analysis of the oil samples taken from the biodiesel blending plant and the big oil tank trucks that were found inside petitioner's compound/area.[22] Thereafter, the BIR submitted the samples to the DOE for laboratory analysis, consisting of 11 bottles on September 12, 2008[23]; for which a Laboratory Analysis/Test Report[24] was issued on September 18, 2008.

There are two grades of diesel, automotive diesel oil (ADO) and industrial diesel oil (IDO), with each having specific quality specification as defined in the Philippine National Standards (PNS). Absence an actual declaration as to the grade of diesel, the samples were tested against both the quality specification of ADO and IDO by the DOE laboratory.[25] The test results indicate, among others, that all samples tested exceeded the sulfur limit of ADO at 0.05% while seven (7) samples when tested revealed that the sulfur content ranges from 0.57% and 0.61%, exceeding the IDO sulfur limit of 0.30% as required by Republic Act (RA) No. 8749 or the Philippine Clean Air Act of 1999. Also, no Fatty Acid Methyl Ester (FAME) was detected in all samples tested as required by RA No. 9367 or the Biofuels Act of 2006. [26]

Meanwhile, the CIIS issued a Memorandum dated September 12, 2008, recommending the issuance of a WSD on the petroleum products or biodiesel stored at the two tanks of petitioner as well as the container/tanker trucks used in the transportation of petroleum products located at Lot 4, Gozun Compound, Letre Road, Tonsuya, Malabon City.[27]

On September 19, 2008, a Warrant of Seizure and Detention (Seizure Identification No. 2008-154) was issued over the more or less 1,881,298 kiloliters or 1,888,298.00 liters of diesel oil found loaded on board M/V Buena Suerte J-106, Barge Buena Suerte J-1, Barge Buena Suerte J-55, the undetermined volume of diesel oil loaded at M/V Buena Suerte

[22] Exhibit "10", BOC Records, p. 1627.
[23] Exhibit "33", docket, p. 616.
[24] Exhibit "35", docket, p. 624.
[25] Exhibit "15", BOC Records, pp. 1700 to 1701.
[26] *Ibid;* Exhibit "35", docket, p. 624; Exhibit "39" docket, pp. 667 to 686.
[27] Exhibit "11", BOC Records, pp. 1411 to 1412.

J-47, and the container trucks with plate nos. UHF 184 and WCJ 307.[28]

By virtue of Special Assignment No. SA2008-09-0137[29], Nicomedes B. Aritao of the DOE-Oil Industry Management Bureau proceeded to the BOC-CIIS office and then to Pier 2, Navotas Fishport Complex, Navotas City to conduct petroleum product sampling on two (2) barges (J-1 and J-55).[30] As such, three (3) samples were collected from J-1 and eight (8) samples from J-55 or a total of eleven (11) samples and submitted to the Geoscientific Research and Testing Laboratory - Processed Fuels Section[31] on September 19, 2008.[32] Then, on September 22, 2008, the Geoscientific Research and Testing Laboratory - Processed Fuels Section released the Monitoring Laboratory Report[33].

The test results indicate, among others, that the sulfur levels for all 11 samples tested exceeded the sulfur limit of ADO at 0.05%, with results ranging from 0.17 to 0.61%, while six samples when tested failed to conform with the PNS for sulfur (0.30% maximum) for IDO. All samples do not contain the mandatory FAME content of 0.07% to 1.2% mandated under RA No. 9367.[34]

On September 23, 2008, another WSD (Seizure Identification No. 2008-158) was issued over 119,655 liters of petroleum products or biodiesel stored at depot tanks of petitioner and at Container Tankers/Trailers with Plate Nos. PUT-664 and NUU-576 located at Lot 4, Gozun Compound, Letre Road, Tonsuya, Malabon City.[35]

On September 24, 2008, Nicomedes B. Aritao submitted a report or Memorandum[36] on the samples taken on September 19, 2008 to Director Zenaida Monsada of the DOE-Oil Industry Management Bureau.

---

[28] Exhibit "18", BOC Records, p. 1413.
[29] Exhibit "20", BOC Records, p. 1687.
[30] Exhibit "19", BOC Records, pp.1683 to 1686.
[31] *Ibid*; Exhibit "21", BOC Records, p. 1688.
[32] Exhibit "19", BOC Records, pp.1683 to 1686.
[33] Exhibit "37", docket, p. 633.
[34] *Ibid;* Exhibit "39" docket, pp. 667 to 686; Exhibit "22", BOC Records, pp. 1689 to 1690.
[35] Par. 3, Summary of Admitted Facts, Pre-Trial Order, docket, p. 222.
[36] Exhibit "22", BOC Records, pp. 1689 to 1690

On February 24, 2009, Special Assignment No. SA2009-02-0049[37] was issued to Nicomedes Aritao, directing him to proceed to BOC-Auction and Cargo Disposal Division (ACDD), and to Pier 2, Navotas Fishport Complex, Navotas City on February 25, 2009 to conduct petroleum sample retaking on the two barges, J-1 and J-55, and to take sampling for the first time on a tanker (J-106).[38] No samples were taken from J-55 because all the compartments of the barge were about a foot in contents which made it impossible to conduct manual product sampling. A total of six (6) samples were taken from J-106, J-1, underground tank numbers 1 and 2 located at petitioner's compound, and PUT 665 situated at the parking ground outside the BOC office.[39] After all the samples were taken, the same were delivered on February 25, 2009 to the DOE-National Petroleum Laboratory Office, Geoscientific Research and Testing Laboratory to determine their compliance with PNS.[40] Eventually, Nicomedes Aritao submitted his report or Memorandum on the taking of the said samples on March 3, 2009.[41]

The test results indicate, among others, that all six samples conformed to the PNS on sulfur % mass of 0.30 maximum for IDO. However, all samples contained FAME but failed to conform to the PNS on FAME of 1.7% to 2.2%. [42]

The Department of Energy issued a letter[43] dated March 17, 2009 addressed to Mr. Orencio L. Baranda, OIC of the ACDD, stating, among others, that there were three sets of samples tested, and that all the samples taken failed to meet the Philippine National Standard for either ADO or IDO.

On August 4, 2009, the OIC-District Collector Arnel C. Alcaraz issued a Decision, wherein he ordered the forfeiture of the seized items.[44]

On August 11, 2009, petitioner filed its Notice of Appeal with the Commissioner of Customs. Simultaneously, an

[37] Exhibit "23", BOC Records, p. 1691.
[38] Exhibit "19", BOC Records, pp.1683 to 1686.
[39] *Ibid.*
[40] Exhibit "P", docket, p. 326; Exhibit "38", docket, p. 634; Exhibit "24", BOC Records, p. 1692.
[41] Exhibit "25", BOC Records, pp. 1695 to 1699; Exhibit "19", BOC Records, pp.1683 to 1686.
[42] Exhibit "25", BOC Records, pp. 1695 to 1699.
[43] Exhibit "15", BOC Records, pp. 1700 to 1701.
[44] Par. 4, Summary of Admitted Facts, Pre-Trial Order, docket, p. 223.

appeal fee (docket fee) of ₱400.00 was paid.[45] On November 11, 2009, petitioner paid the deficient docket fee in the amount of ₱2,600.00.[46]

On December 3, 2009, then BOC Commissioner Napoleon L. Morales issued a decision of even date, dismissing the appeal filed by petitioner.[47]

On January 18, 2010, petitioner filed the instant Petition for Review to assail the Decision dated December 3, 2009 of respondent.

Respondent filed his Comment/Answer[48] on March 16, 2010, raising two main affirmative defenses, *to wit*:

> 1. The decision of the OIC-District Collector is final and executory for failure of petitioner to pay the full amount of the required docket fee under the Tariff and Customs Code of the Philippines, as amended by Customs Administrative Order No. 2-2001.
>
> Petitioner only paid the amount of Four Hundred Pesos (₱400.00) as appeal fee upon filing of its notice of appeal, which is below the legally mandated fee of Three Thousand Pesos (₱3,000.00), pursuant to the aforesaid administrative order. Accordingly, respondent correctly declared that the assailed decision had become final and executory.
>
> Respondent refused petitioner's tender of payment of the docket fee deficiency on the ground that it was made beyond the fifteen-day reglementary period for perfecting an appeal. Thus, the subsequent tender of payment of the docket fee did not cure the fatal defect of the appeal.
>
> 2. The seizure and forfeiture of the petroleum products conformed with the Tariff and Customs

[45] Exhibits "Q", "Q-1" to "Q-4", docket, pp. 327 to 328; Par. 5, Summary of Admitted Facts, Pre-Trial Order, docket, p. 223.
[46] Exhibits "R", "R-1" to "R-4", docket, pp. 329 to 330.
[47] Par. 6, Summary of Admitted Facts, Pre-Trial Order, docket, p. 223.
[48] Docket, pp. 88 to 111.

Code of the Philippines. Upon laboratory analysis on the seized petroleum products, it showed that the same failed to comply with the Philippine National Standards, particularly the required contents of sulfur, biofuels and blending of colors as mandated by law; and the laboratory result on the seized diesel oil showed that it has not been blended with any biodiesel in violation of Republic Act (RA) No. 9367. Further, the seized diesel fuel failed to comply with the requirement on the supposed maximum contents of sulfur on diesel oil, as provided for under Section 26 of RA No. 8749, otherwise known as "The Clean Air Act."

According to Alvin Lim of the Oil Industry Management Bureau of the DOE, who conducted the analysis on the samples taken from the seized petroleum products, the said petroleum products cannot be used or sold in the Philippines. As such, respondent concludes that the seized petroleum products are smuggled or directly imported without paying the corresponding taxes and duties.

Respondent likewise points out that the seized diesel fuel, which failed to comply with the supposed maximum contents of sulfur under the Clean Air Act, was not the diesel fuel covered by sales invoices from Petron Corporation or O'relyn Trading Corporation.

Further, the investigation conducted by the CIIS of the BOC on the documents submitted by petitioner purportedly proving that the seized diesel oil was acquired locally reveals that no proof of payment of the customs duties and taxes on the invoices or receipts of petroleum products sold to O'Relyn Trading Corporation was submitted.

Respondent filed his Pre-Trial Brief[49] on April 8, 2010; while petitioner submitted its Pre-Trial Brief[50] on April 13, 2010. Subsequently, the Court issued the Pre-Trial Order[51] on June 22, 2010.

---

[49] Docket, pp. 166 to 179.
[50] Docket, pp. 190 to 199.
[51] Docket, pp. 222 to 227.

During trial, petitioner presented Osias A. Mativo, Jose I. Sagun, Velpa P. Grego, and Atty. Victoria Ann L. Ibaviosa as its witnesses. On the other hand, respondent presented Atty. Christian Flores, Carlito B. Bohol, State Solicitor Sonny Von Ruaya, and Alvin David Lim as his witnesses. The parties likewise presented and formally offered their respective documentary evidence.

On April 23, 2014, the instant Petition for Review was submitted for decision, taking into consideration respondent's Memorandum[52] filed on April 3, 2014 and the Report[53] dated April 21, 2014 of this Court's Records Division that petitioner failed to file a Memorandum.[54]

## ISSUES

The parties presented the following issues[55] for this Court's resolution:

1. Whether or not petitioner's failure to pay the full amount of the required docket fee within the appeal period renders the assailed Decision final and executory.

2. Whether or not the Bureau of Customs (BOC) can order the seizure of the subject items for violating the Clean Air Act.

3. Whether or not the BOC can order the seizure of the subject items for violating the Biofuels Act of 2006.

4. Whether or not respondent erred in disregarding the result of the third test over the seized fuel and admitting the results of the tests conducted by the BIR and BOC notwithstanding their failure to notify petitioner of the taking of samples.

---

[52] Docket, pp. 693 to 711.
[53] Docket, p. 714.
[54] Resolution, docket, p. 715.
[55] Issues to be Resolved, Pre-Trial Order, docket, p. 223.

5. Whether or not respondent erred in affirming the District Collector's Decision forfeiting the subject diesel oil, biodiesel, vessels and container trucks in favor of the government.

6. Whether or not the seized petroleum products were locally purchased and that the duties and taxes due thereon had been paid.

## DISCUSSION/RULING

The Court deems it appropriate to determine first the timeliness of the filing of the instant petition for review.

Section 7(a)(4) of RA No. 1125, as amended by RA Nos. 9282 and 9503, provides:

> "SEC. 7.*Jurisdiction*.- The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx
>
> (4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs."

In relation thereto is Section 2402 of the Tariff and Customs Code of the Philippines (TCCP), as amended, and Section 11 of RA No. 1125, as amended by RA No. 9282 and RA No. 9503, which are quoted hereunder for ready reference:

> "SEC. 2402. *Review by Court of Tax Appeals*. – The party aggrieved by the ruling of the Commissioner in any matter brought before him upon protest or by his action or ruling in any case of seizure may appeal to the Court of Tax Appeals, in the manner and within the period prescribed by law and regulations.

Unless an appeal is made to the Court of Tax Appeals in the manner and within the period prescribed by laws and regulations, the action or ruling of the Commissioner shall be final and conclusive."

"SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling** or inaction **of** the Commissioner of Internal Revenue, **the Commissioner of Customs**, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

**Appeal shall be made by filing a petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from the receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx." *(Emphasis supplied)*

Likewise, Section 3(a) of Rule 8 of the Revised Rules of the Court of Tax Appeals states:

"SEC. 3. *Who may appeal; period to file petition.* –

(a) **A party adversely affected** by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or **by a decision or ruling of the Commissioner of Customs**, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of taxes." *(Emphasis supplied)*

Based on the foregoing, the party aggrieved by a decision or ruling of the Commissioner of Customs may appeal to this

Court within thirty (30) days from receipt of the said adverse decision or ruling.

Records reveal that respondent sent to petitioner's counsel a copy of respondent's decision dated December 3, 2009 via registered mail on December 15, 2009,[56] and petitioner received the same on December 18, 2009.[57] As such, petitioner had until January 17, 2010 within which to file the Petition for Review. However, the said date fell on a Sunday. Hence, the last day to file the Petition for Review was on January 18, 2010 pursuant to Section 1 of Rule 22 of the Rules of Court.[58]

Since the instant Petition for Review was filed on January 18, 2010, the same was filed on time.

Before discussing the merits of the case, the Court deems it necessary to resolve the issue of whether the failure to pay the full amount of the required docket fees within the appeal period renders the assailed decision of the District Collector final and executory.

Respondent argues that failure to pay the docket and other lawful fees within the appeal period is a ground for the dismissal of an appeal. Hence, respondent correctly declared that the decision of the District Collector has become final and executory. The alleged subsequent tender of payment by petitioner of the docket fee deficiency does not cure the fatal defect of the appeal.

On the other hand, petitioner contends that a deficiency in the payment of the filing fees is not fatal to the filing of the appeal. The earlier rule in *Manchester Development Corporation vs. Court of Appeals*[59] that the Court acquires jurisdiction over any case only upon the payment of the prescribed docket fee, has been relaxed. Subsequent decisions now uniformly hold that when insufficient filing fees are

[56] Memorandum dated January 29, 2010, BOC Records, p. 1960; Notice of Decision dated December 14, 2009, BOC Records, p. 1984.
[57] Par. 2.1, Petition for Review, docket, p. 3.
[58] SECTION. 1. *How to compute time.* - In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.
[59] G.R. No. L-75919, May 7, 1987.

initially paid by the plaintiffs and there is no intention to defraud the government, the *Manchester* rule does not apply.

Section 2313 of the TCCP provides:

> SECTION 2313. *Review by Commissioner.* — **The person aggrieved by the decision or action of the Collector** in any matter presented upon protest **or by his action in any case of seizure may, within fifteen (15) days after notification in writing by the Collector of his action or decision, file a written notice to the Collector with a copy furnished to the Commissioner of his intention to appeal the action or decision of the Collector to the Commissioner.** Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision: Provided, That when an appeal is filed beyond the period herein prescribed, the same shall be deemed dismissed. xxx (*Emphasis supplied*)

In addition to the filing of a notice of appeal, Section 3301 of the TCCP mandates the payment of fees, *to wit*:

> SECTION 3301. *Other Fees and Charges.* — For services rendered and documents issued by the Bureau of Customs **the following fees shall be charged and collected**, by affixing the documentary customs stamps in the correct amount upon the document or any other paper which is the subject of the charge and by the cancellation of such stamps in the manner prescribed by the Commissioner; and no such document or any other paper shall be issued or granted by any customs official until the correct amount of stamps shall have been affixed and cancelled: Provided, however, That fees of twenty pesos or over may be paid in cash. (*Emphasis supplied*)

In relation thereto, Customs Administrative Order (CAO) No. 2-2001 prescribes the rates of custom fees and charges, including the docket fees to be paid for appeals from the decision of the District Collector, *to wit*:

**CUSTOMS ADMINISTRATIVE ORDER NO. 2-2001**

SUBJECT : *Rates of Customs Fees and Charges*

xxx xxx xxx

2. *Refund Processing Fees/Docket Fees*

*On ordinary claims for refund of tax and duty payments, including cash bonds; and for each formal protest/* ***appeal from the decision of the District Collector****/Valuation & Classification Review Committee (VCRC)*

| *AMOUNT OF CLAIM/ PROTESTED AMOUNT* | *PROCESSING FEES/* ***DOCKET FEE*** |
|---|---|
| Up to P 50,000 | P 500 |
| Over P 50,000 to 100,000 | 600 |
| Over P 100,000 to 200,000 | 700 |
| Over P 200,000 to 300,000 | 800 |
| Over P 300,000 to 400,000 | 900 |
| Over P 400,000 to 500,000 | 1,000 |
| Over P 500,000 to 750,000 | 1,500 |
| Over P 750,000 to 1,000,000 | 2,000 |
| **Over P1,000,000** | **3,000** |

(Emphasis supplied)

In *Colao vs. Commissioner of Customs*[60], a similar issue was addressed by this Court as follows:

"But it is respondent's theory that, even granting *arguendo* that the petitioner's appeal was filed within the reglementary period prescribed by law, nevertheless, the **failure of the petitioners to comply with the requirements of Paragraph VII of Customs Administrative Order No. 226 dated December 3, 1957**, which reads as follows:

'The **person aggrieved by the decision or action of a collector of customs** in any matter presented upon protest or **by his action in any case of seizure** pursuant to section 2312 of the Tariff and Customs Code of the Philippines **may give a written notice to the Collector of Customs of his desire to have the matter reviewed by the Commissioner of Customs.** Such **notice of appeal must be filed** in triplicate **within fifteen (15) days**, including Sundays and legal

[60] CTA Case Nos. 3106 and 3107, November 29, 1984.

> holidays, **from receipt by the aggrieved party** or his authorized representative of **written notification of the action or decision sought to be reviewed**. The **notice of appeal shall be subject to a filing fee of P10 in customs stamp**[61] and shall, together with the records of the case, be forthwith transmitted by the Collector to the Commissioner of Customs.'

made the decision of the Collector final, executory and unappealable.

From the above-quoted administrative order, it can be gathered that **in order to perfect an appeal to the Commissioner of Customs, the following requisites should be complied with, to wit: (1) filing of a written notice of appeal within fifteen days from the receipt of the Collector's decision or action in any case of seizure and (2) payment of the filing fee of P10.00 in customs stamps [now P500.00 to P3,000.00 depending on the amount of claim/protested amount per paragraph 2 of CAO No. 2-2001].** As has been shown above, the petitioner were able to file their written notice of appeal to the Commissioner of Customs within the reglementary period of fifteen days. However, they paid a filing fee of only P10.00 for all of the fifteen seizure cases covered by this case.

To our mind, this failure to comply fully with Paragraph VII of Customs Administrative Order No. 266 is fatal in the sense that we cannot take cognizance of Seizure Identification Nos. 1610, 1931, 1634, 1646, 1654, 1685, 1701, 1703, 1785, 1803, 1807, 1809 1810 and 1812. It seems already well-settled that the payment of the full amount of the docket fee is an indispensable step in the perfection of an appeal (Lazaro vs. Endencia, 57 Phil. 552), and upon failure of the appellant in a civil case to pay the said fee, the appeal is deemed abandoned (Salavaria vs. Albindo, 39 Phil. 922; Alvero vs. de la Roxas, 76 Phil. 428; Ampang Tan vs. Commissioner of Customs, C.T.A Case No. 92, April 2, 1956).

xxx xxx xxx

---

[61] Section 3301 of the TCCP previously provided:
SECTION 3301. *Customs Fees and Charges.* — For services rendered and documents issued by the Bureau of Customs the following fees shall be charged and collected, by affixing documentary customs stamps in the correct amount upon the document or any other paper which is the subject of the charge and by the cancellation of such stamps in the manner prescribed by the Commissioner, and no such document or any other paper shall be issued or granted by any customs official until the correct amount of stamps shall have been affixed and cancelled: Provided, however, That fees of twenty pesos or over may be paid in cash:

xxx xxx xxx

For each appeal in protest and seizure cases 10.00

xxx xxx xxx

> To this end, and bearing in mind that the **customs stamp requirement is in the nature of a docket fee, failure to pay such fee within the 15-day period for filing the appeal did not confer jurisdiction on the Commissioner of Customs to take cognizance of these proceedings.** (See Ampang Tan vs. Commissioner, 106 Phil. 233; Ramon Roces vs. Commissioner, 106 Phil. 233.) There **having been no valid appeal from the decision** dated March 19, 1979 **of the Collector of Customs** of the Manila International Airport **to respondent Commissioner of Customs, it follows that this Court has no jurisdiction to take cognizance of this case**. xxx." (*Emphasis supplied*)

Likewise, in CTA Case No. 4613[62], the Court held that failure to pay the docket fee for appeals on time is fatal, *to wit*:

> "While it may be true that herein petitioner filed its notice of appeal within the fifteen (15) day reglementary period, such notice of appeal can only be considered a mere 'scrap of paper' since it was not perfected for the failure of petitioner to affix to the notice of appeal the required customs stamp pursuant to Section 3301 of the Tariff and Customs Code, as amended. Such documentary customs stamps requirement 'is in the nature of a docket fee and failure to pay the docket fee for appeals on time is fatal.' (Lipat v. Commissioner of Customs, CTA Case No. 1442, Oct. 26, 1966). xxx
>
> The period of 15 days prescribed by law for an appeal in cases of forfeiture is not just a procedural matter which the courts may ignore. The provisions of the Customs Law, like those of the Internal Revenue Code, are not merely directory but mandatory. xxx"

From all the foregoing, an appeal to the Commissioner of Customs shall only be perfected upon (1) filing of a written notice of appeal (Section 2313, TCCP); and (2) payment of appeal docket fee in accordance with the prescribed rates (Section 3301, TTCP; CAO No. 2-2001; CAO No. 226) within fifteen (15) days from receipt of the notice of decision.

In this case, petitioner initially paid only P400.00 described in its letter dated August 11, 2009 to the Cash Division of the Port of Manila as "appeal fees of Two Hundred Pesos each for the Notices of Appeal we filed in the above-

---

[62] *One (1) Unit Isuzu Pick-up Motor Vehicle Bearing Plate No. CG-603, Chassis No. SK 967025, One (1) Unit Hino Truck Tractor, Plate No. CFP-430 Chassis No. HH341-10174, Consolidated Plywood Industries, Inc. vs. Commissioner of Customs*, CTA Case No. 4613, March 2, 1993. Also see *Nestle Philippines, Inc. vs. Commissioner of Customs*, CTA Case No. 4478, May 30, 1995.

mentioned cases as per Customs Administrative Order No. 2-2001 paragraph 3.6.6" and evidenced by OR No. 165828582 dated August 11, 2009.[63] Thereafter, or on November 11, 2009, petitioner paid the deficient docket fees amounting to P2,600.00 as evidenced by OR No. 169143493 as well as the "(P200.00) deficiency for the documentary stamps".[64]

However, a reading of paragraph 3.6.6 of CAO No. 2-2001 cited by petitioner shows that it refers to payment of documentary customs stamps "[f]or each appeal in protest and seizure case....P200" which is different from the appeal docket fees required under paragraph 2 of CAO No. 2-2001.

Thus, the P400.00 paid by petitioner at the time of filing its Notice of Appeal was for documentary customs stamps. Clearly, petitioner failed to pay the required appeal docket fee of P3,000.00 provided in paragraph 2 of CAO No. 2-2001 at the time of filing its Notice of Appeal.

Consequently, petitioner's appeal from the decision of the District Collector was not perfected for its failure to pay the required appeal docket fee within the appeal period, and accordingly, the present petition should be dismissed.

However, even if *We* were to disregard this procedural defect, still, the instant petition should be dismissed.

The subject cases were the result of respondent's exercise of his "visitorial power" granted pursuant to Section 2536 of the TCCP, *to wit*:

> "SECTION 2536. *Seizure of Other Articles.* — The Commissioner of Customs and Collector of Customs and/or any other customs officer, with the prior authorization in writing by the Commissioner, **may demand evidence of payment of duties and taxes on foreign articles** openly offered for sale or **kept in storage, and if no such evidence can be produced, such articles may be seized and subjected to forfeiture proceedings**: Provided, however, That during such proceedings the person or entity for whom such articles have been seized shall be **given the opportunity to prove or show the source of such articles and the payment of duties and taxes thereon.**"

[63] Exhibits "Q" to "Q-4", docket, pp. 327 to 328.
[64] Exhibits "R" to "R-4", docket, pp. 329 to 330.

With the prior written authorization of the BOC Commissioner to carry out such visitorial power, as evidenced by three LAs[65] signed by respondent, BOC officials conducted the inspection/examination of M/V Buena Suerte J-106, M/V Buena Suerte J-47, M/V Buena Suerte J-1, M/V Buena Suerte J-55 and petitioner's compound where smuggled petroleum products were suspected to be stored. Considering that indeed petroleum products were found therein, respondent may demand evidence of payment of duties and taxes on these suspected foreign articles kept in storage and if no such evidence can be produced, such articles may be seized and subjected to forfeiture proceedings.

Unfortunately, upon demand of BOC personnel, petitioner failed to present sufficient evidence of the source of the seized diesel fuel and the payment of duties and taxes thereon. Hence, respondent had a basis to seize the diesel fuel and subject it to forfeiture proceedings.

During such proceedings, petitioner was likewise given the opportunity to prove or show the source of such articles and the payment of duties and taxes thereon. Again, petitioner failed to present sufficient evidence to prove the source of such articles and the payment of duties and taxes thereon.

Petitioner argues that the seized diesel fuel was locally purchased, specifically from Petron Corporation and O'Relyn Trading Corporation, and that the duties and taxes thereon had been paid.

However, the Judicial Affidavit[66] and Certification[67] dated August 31, 2008 with the schedule of invoices[68] executed by Mr. Osias A. Mativo, then Account Sales Executive, Metro Manila Industrial of Petron Corporation stating that petitioner made diesel fuel oil purchases from Petron from May 1, 2008 to July 31, 2008 can only prove that petitioner made diesel fuel purchases from Petron Corporation within said period but does not prove that these diesel fuel purchases are the same diesel fuel that were seized from petitioner.

---

[65] Exhibit "3", BOC Records, p. 1402; Exhibit "5", BOC Records, p. 1670; Exhibit "7", BOC records, pp. 1407 to 1408.
[66] Exhibit "S", docket, pp. 331 to 333.
[67] Exhibit "F", docket, p. 309.
[68] Exhibits "G" to "G-5", docket, pp. 310 to 315.

On the other hand, the sales invoices issued by O'Relyn Trading Corporation to petitioner from August 5 to 29, 2008 for its alleged diesel fuel purchases were denied admission by the Court for failure of the petitioner to prove their due execution and authenticity.[69]

To our mind, the sales invoices or the certification as to the sales invoices alone is not sufficient evidence to prove that indeed the seized diesel fuel were locally purchased or that the diesel fuel purchases covered by these invoices are the same diesel fuel that were seized.

Overall, the evidence presented by petitioner failed to convince this Court that the seized diesel fuel was locally purchased and that the duties and taxes due thereon were paid.

There is unlawful importation or smuggling if goods are entered into the country without the proper duties and taxes having been paid.[70] Considering that petitioner failed to present evidence of payment of duties and taxes on the seized diesel fuel, it follows that petitioner failed to establish the fact of its lawful importation.

Under Section 2530 in relation to Section 3601 of the TCCP, pertinent portions of which are quoted below, the seized diesel fuel including the vessels, vehicles or any conveyances used for its transport shall be forfeited in favor of the Government:

> "SECTION 2530. *Property Subject to Forfeiture Under Tariff and Customs Law.* — Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subject to forfeiture:
>
> a. Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles or in conveying and/or transporting contraband or smuggled articles in commercial quantities into or from any Philippine port or place. The mere carrying or holding on board of contraband or smuggled articles in commercial quantities shall subject such vessel, vehicle, aircraft or any other craft to forfeiture;

[69] Resolution dated May 7, 2012, docket, pp. 372-373.
[70] *Sanly Corporation, Inc. and ERA Radio and Electrical Supply vs. Hon. Secretary of Finance*, C.T.A. Case No. 5927, October 17, 2000.

Provided, That the vessel, aircraft or any other craft is not used as duly authorized common carrier and as such a carrier it is not chartered or leased;

xxx xxx xxx

f. Any article the importation or exportation of which is effected or attempted contrary to law, or any article of prohibited importation or exportation, and all other articles which, in the opinion of the Collector, have been used, are or were entered to be used as instruments in the importation or the exportation of the former;

xxx xxx xxx

k. Any conveyance actually being used for the transport of articles subject to forfeiture under the tariff and customs laws, with its equipage or trappings, and any vehicle similarly used, together with its equipage and appurtenances including the beast, steam or other motive power drawing or propelling the same. The mere conveyance of contraband or smuggled articles by such beast or vehicle shall be sufficient cause for the outright seizure and confiscation of such beast or vehicle, but the forfeiture shall not be effected if it is established that the owner of the means of conveyance used as aforesaid, is engaged as common carrier and not chartered or leased, or his agent in charge thereof at the time, has no knowledge of the unlawful act;

SECTION 3601. *Unlawful Importation.* — Any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article, contrary to law, or shall receive, conceal, buy, sell or in any manner facilitate the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law, shall be guilty of smuggling and shall be punished with: . . ."

Therefore, *We* find no cogent reason to annul or reverse respondent's Decision dated December 3, 2009 affirming the Decision dated August 4, 2009 of the OIC-District Collector of the Port of Manila ordering the subject diesel oil and biodiesel, the vessels and the container trucks be forfeited in favor of the government to be disposed of in accordance with law.

In view of the foregoing, the Court deems it unnecessary to discuss the other issues raised by the parties.

**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for failure of petitioner to perfect its appeal before the Commissioner of Customs, thus, rendering the Decision of the District Collector final and executory. Consequently, the Court has no jurisdiction to take cognizance of this case.

**SO ORDERED**.

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

**WE CONCUR:**

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice
Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the 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