REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION
****

UNIOIL PETROLEUM PHILIPPINES, INC., Petitioner,	**CTA Case No. 9583**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF CUSTOMS and REPUBLIC OF THE PHILIPPINES, Respondents.	***Promulgated:*** DEC 01 2021 12:20 p.m.

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DECISION

UY, J.:

Before this Court is the *Petition for Review*[1] filed on April 27, 2017 by petitioner, Unioil Petroleum Philippines, Inc., against respondents, Commissioner of Customs (COC) and Republic of the Philippines (RP), praying that the Court reverse and set aside the *Decision*[2] dated March 28, 2017 issued by the COC. The dispositive portion thereof reads:

> "**WHEREFORE**, premises considered, the undated Decision of the Officer-in-Charge, Port of Limay, ordering the LIFTING/QUASHAL of the Warrant of Seizure and Detention against the subject shipment is hereby **REVERSED**. Accordingly, the subject shipment is **FORFEITED** in favor of the government to be disposed of in accordance with law.
>
> **SO ORDERED**."

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[1] Docket – Vol. 1, pp. 12 to 46.
[2] Docket – Vol. 1, pp. 50 to 59.

THE PARTIES

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with address at Pres. Sergio Osmeña Highway corner Cuango Street, Pio del Pilar, Makati City, Metro Manila, Philippines.[3]

On the other hand, respondent COC is the Commissioner of the Bureau of Customs (BOC), with address at BOC, South Harbor, Gate 3, Port Area, Manila.[4]

THE FACTS

On April 26, 2007 and April 17, 2008, petitioner entered into Purchase Agreements with Yokohama Tire Philippines, Incorporated (Yokohama), whereby petitioner will supply Yokohama with certain raw materials to be used for the manufacture of tires.[5]

Pursuant to the Purchase Agreements, petitioner imported shipment covered by Bill of Lading B/L No. JH8-0619,[6] and by Import Entry Declaration No. 26672353, wherein the article is described as aromatic hydrocarbon.[7] The volume of the shipment was 2,098,450 metric tons.[8] The said shipment was on board MT Jin Hong 8,[9] and arrived at the Port of Limay, Bataan, on June 19, 2008.[10] The shipment was accompanied by a Certificate of Quality dated June 19, 2008 issued by Netherlands' Superintending and Sampling Company Ltd.[11] The contents of the subject shipment were stored at Tanks 6 and 21 located at Lucanin, Mariveles, Bataan.[12]

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[3] Par. 9, *Petition for Review*, Docket – Vol. 1, p. 14, *vis-à-vis* Par. 6, *Answer*, Docket – Vol. 2, p. 624.

[4] Par. 10, *Petition for Review*, Docket – Vol. 1, p. 14, *vis-à-vis* Par. 7, *Answer*, Docket – Vol. 2, p. 624.

[5] Exhibits "P-2" and "P-31", Docket – Vol. 4, pp. 1612 to 1620, and 1767 to 1778, respectively; *cf*: Par. 15, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1178.

[6] Exhibit "P-5", Docket – Vol. 4, p. 1638; Par. 19, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1178.

[7] Exhibit "P-6", Docket – Vol. 4, p. 1639; Par. 19, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1178.

[8] Exhibit "P-5", Docket – Vol. 4, p. 1638; Par. 17, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1178.

[9] Par. 18, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1178.

[10] Par. 16, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1178.

[11] Exhibit "P-7", Docket – Vol. 4, p. 1640; *cf*: Par. 20, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1178.

[12] Par. 21, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, pp. 1178.

Petitioner submitted the Import Entry and Internal Revenue Declaration to the BOC.[13] It fully paid the corresponding import taxes and duties in the total amount of ₱8,665,592.00, as evidenced by the BOC Official Receipt Nos. 152787704, 153199487, and 158353431.[14]

On June 27, 2008, the Bureau of Internal Revenue (BIR) issued Authority to Release Imported Goods (ATRIG) in favor of petitioner, allowing the release of its shipment of aromatic hydrocarbon from the Port of Bataan, as it is exempt from the payment of excise tax for not being among the articles enumerated under Title VI of the National Internal Revenue Code (NIRC) of 1997, as amended, and per BIR Ruling No. DA-075[15] dated March 10, 2005.[16]

Sometime in August 2008, officials of the Customs Intelligence and Investigation Services (CIIS) of the BOC set a meeting with petitioner's officers, seeking to clarify matters concerning the subject shipment of aromatic hydrocarbon.[17] During the meeting, the CIIS officials showed petitioner's representative, Kenneth C. Pundanera, Laboratory Report No. 08-118 dated July 25, 2008, on the test conducted by the University of the Philippines Natural Sciences Research Institute (UP-NSRI) on a sample of the imported product.[18]

Petitioner then engaged the services of Intertek Testing Services, Philippines, Inc. (Intertek Philippines) to analyze a sample of the imported product.[19] The laboratory personnel from Intertek Philippines took samples from Tank 6.[20] On August 29, 2008, Intertek Philippines issued a Certificate of Analysis,[21] indicating that the sample tested has 74.1% aromatics.[22]

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[13] Par. 22, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1178.

[14] Par. 16, *Petition for Review*, Docket – Vol. 1, p. 16, *vis-à-vis* Par. 13, *Answer*, Docket – Vol. 2, p. 625; Pars. 23 and 24, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, pp. 1178; Exhibits "P-49", "P-50", "P-51", Docket – Vol. 4, pp. 1822 to 1824.

[15] This is the BIR Ruling number stated in the ATRIG. The complete number is BIR Ruling [DA-075-A-05]. BIR Ruling [DA-075-A-05] states, among other things, that "[s]*ince the facts presented is very much identical to the facts that caused the issuance of the aforesaid ruling, this Office believes that the importation of Unioil Petroleum Phils., Inc. of Aromatic Hydrocarbon is also not subject to excise tax*".

[16] Exhibit "P-52", Docket – Vol. 4, pp. 1825.

[17] Par. 25, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1178.

[18] Exhibit "R-1", Docket – Vol. 5, pp. 1975 to 1976; Par. 18, *Petition for Review*, Docket – Vol. 1, p. 16, *vis-à-vis* Par. 15, *Answer*, Docket – Vol. 2, p. 625.

[19] Par. 26, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1178.

[20] Par. 12, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1177.

[21] Par. 8, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1177.

[22] Exhibit "P-12", Docket – Vol. 4, p. 1648.

On October 14, 2008, CIIS Officer Manuel Navarro took a sample from the imported product stored in Tank 6.[23]

The CIIS also submitted samples of the imported product to the United States (US) Department of Homeland Security – US Customs and Border Protection Laboratories and Scientific Services (US Customs Laboratory) for testing.[24] The US Customs Laboratory came up with Laboratory Report No. SF20081967 (US Customs Laboratory Report) dated December 5, 2008 (through Neal Byington, Ph.D., as Analyst, and Errol Chan, as Lab Director), with the following narrative, *to wit*:

> "This sample consists of a viscous greenish-brown liquid contained within four metal cans.
>
> Laboratory analysis finds that this sample has an API gravity of 9.9, an ash content of approximately 1.3 percent, an aromatic hydrocarbon content of approximately eleven percent, and a non-aromatic hydrocarbon content of approximately 89 percent.
>
> This sample is a petroleum oil classifiable under HTS HEADING 2710."[25]

The BOC relied on the UP-NSRI Laboratory Report and the US Customs Laboratory Report to support its claim that petitioner actually imported petroleum oil instead of aromatic hydrocarbon.[26]

On February 5, 2009, the District Collector issued a *Warrant of Seizure and Detention* against petitioner's shipment of imported products stored in Tanks 6 and 21. On the same day, CIIS officials went to the Oilink terminal and padlocked the said storage tanks.[27]

Hearings were conducted to determine the propriety of the seizure and detention of the subject products.[28]

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[23] Par. 33, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1179.
[24] Par. 27, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1179.
[25] Exhibit "R-3", Docket – Vol. 5, pp. 1997.
[26] Par. 45, *Petition for Review*, Docket – Vol. 1, p. 28, *vis-à-vis* Par. 39, *Answer*, Docket – Vol. 2, p. 628.
[27] Par. 28, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1179.
[28] Par. 23, *Petition for Review*, Docket – Vol. 1, p. 18, *vis-à-vis* Par. 20, *Answer*, Docket – Vol. 2, p. 626.

Petitioner filed a *Motion to Withdraw Petroleum Products from Storage Tanks Nos. 6 & 21* dated April 24, 2009,[29] requesting the BOC to allow the withdrawal of the petroleum products stored therein, subject to the posting of a cash bond in the reasonable amount as may be determined by the District Collector and approved by respondent COC.

In the BOC proceedings, petitioner presented: (1) Engineer Mary Anne Cayanan who testified on April 13 and 14, 2009;[30] and (2) Engineer Eugenio Pranada, Jr. who testified as an expert witness on April 14, 2009.[31]

For its part, the government presented the following witnesses: (1) Dr. Evangeline C. Santiago of the UP-NSRI during the hearing held on May 20, 2009;[32] (2) Mark C. Paras of the CIIS, on May 25, 2009;[33] (3) Mr. Manuel Navarro of the CIIS, on May 28, 2009;[34] (4) Johnny Martinez of the CIIS, on June 9, 2009;[35] and (5) Leonito Santiago of the CIIS, on June 25, 2009.[36]

The government's witness, CIIS Officer Mark C. Paras, testified that the US Customs Laboratory Report was received by the CIIS through electronic mail and was then printed out.[37] Relative thereto, neither Neal Byington, Ph.D., nor Errol Chan, both from the US Customs Laboratory, testified during the BOC proceedings in relation to the Laboratory Report No. SF20081967.[38]

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[29] Exhibit "P-54", Docket – Vol. 4, p. 1829; Par. 29, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1179.

[30] Pars. 9 and 30, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, pp. 1177 and 1179, respectively.

[31] Pars. 10 and 31, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, pp. 1177 and 1179, respectively.

[32] Par. 1, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1176; Par. 45, *Petition for Review*, Docket – Vol. 1, p. 28, *vis-à-vis* Par. 39, *Answer*, Docket – Vol. 2, p. 628.

[33] Pars. 2 and 32, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, pp. 1777 and 1179, respectively; Par. 27, *Petition for Review*, Docket – Vol. 1, pp. 23 to 24), *vis-à-vis* Par. 28, *Answer*, Docket – Vol. 2, p. 627.

[34] Par. 3, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1177.

[35] Par. 4, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1177.

[36] Par. 5, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1177.

[37] Par. 45, *Petition for Review*, Docket – Vol. 1, p. 28, *vis-à-vis* Par. 39, *Answer*, Docket – Vol. 2, p. 628.

[38] Par. 7, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1177.

The government witness, Delia V. Morala, the Acting Chief of the Philippine Customs Laboratory, testified that the Philippine Customs Laboratory follows the ASTM Method.[39]

The government rested its case during the hearing held on July 29, 2009, due to the failure of its witness from the US Customs Laboratory to appear despite several re-settings, and with no further witness to present.[40]

During the hearing held on August 12, 2009, petitioner presented Kenneth C. Pundanera.[41]

In light of the termination of the trial proceedings, petitioner filed its *Formal Offer of Evidence* on August 26, 2009.[42]

On September 22, 2009, the government, through the Prosecutor, Atty. Danilo P. Umacob, filed an *Urgent Manifestation of Retaking of Sample*,[43] stating the following:

> "The Government, through undersigned Prosecutor, most respectfully states, that:
>
> 1. In a previous Order issued by the Hearing Officer in the above-entitled case, a representative sample was taken from one of the Shore Tank subject of this case;
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> 2. It was observed that the sample was taken in only one portion of the tank;
>
> 3. Information gathered from the Philippine Customs Laboratory is to the effect that the

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[39] Par. 64, *Petition for Review*, Docket – Vol. 1, p. 38, *vis-à-vis* Par. 47, *Answer*, Docket – Vol. 2, p. 629; Pars. 6 and 37, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, pp. 1177 and 1180, respectively.

[40] Par. 34, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1179; Par. 31, *Petition for Review*, Docket – Vol. 1, p. 18, *vis-à-vis* Par. 20, *Answer*, Docket – Vol. 2, p. 626.

[41] Par. 35, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1179.

[42] Par. 34, *Petition for Review*, Docket – Vol. 1, p. 25, *vis-à-vis* Par. 31, *Answer*, Docket – Vol. 2, p. 627; Par. 36, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1179.

[43] Exhibit "P-14", Docket – Vol. 4, pp. 1656 to 1657.

taking of sample should have been taken from each and every quadrant of the shore tank in order to get a full and complete analysis of the same;

4. Thus, in the interest of justice and fair play, there is an urgent need for the retaking of sample from subject shore tank together with chemists assigned at the Philippine Customs Laboratory and CIIS Agents in order to finally determine the real nature and description of the same.

Other just and equitable reliefs under the circumstances are also prayed for."

On October 13, 2009, the Hearing Officer, Atty. Roberto Mario Bauson, ordered the Philippine Customs Laboratory to conduct the testing, over the objection of petitioner. Petitioner, nevertheless, acceded to the order of Atty. Bauson. However, on November 16, 2009, the government later moved that the case be submitted for decision with or without the taking of the samples. Petitioner did not object, and so Atty. Bauson submitted the case for decision.[44]

On March 16, 2010, petitioner submitted its *Position Paper.*[45]

Thereafter, sometime in July 2011, the District Collector/OIC of the Port of Limay issued the *Decision* directing the lifting of the *Warrant of Seizure and Detention* against the subject shipment,[46] the dispositive portion of which reads:

"WHEREFORE, by virtue of the authority vested in me by law, it is hereby ordered and declared that the Warrant of Seizure and Detention against the contents of Tanks 6 and 21 located at Oilink's depot at Lucanin, Mariveles, Bataan, be, as it is hereby ***LIFTED*** *for lack of legal basis, and thereafter, the release thereof to claimant UNIOIL PETROLEUM PHILIPPINES, INC. (UPPI) or its*

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[44] Par. 35, *Petition for Review*, Docket – Vol. 1, p. 25, *vis-à-vis* Par. 31, *Answer*, Docket – Vol. 2, p. 627; Par. 38, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1180.

[45] Par. 36, *Petition for Review*, Docket – Vol. 1, p. 25, *vis-à-vis* Par. 31, *Answer*, Docket – Vol. 2, p. 627; Par. 39, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1180.

[46] Par. 24, respondent COC's *Decision* dated March 28, 2017, Docket – Vol. 1, p. 57; Par. 40, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1180.

duly authorized representative, upon proper identification, clearance with the Commissioner of Customs and strict compliance with existing rules and regulations pertinent thereto.

Let Copies of this Decision[] furnished all parties and offices concerned for their information.

SO ORDERED."[47]

Petitioner then had taken possession and custody of the subject imported articles and items.[48]

Thereafter, the case folder was forwarded to respondent COC for review.[49]

Subsequently, respondent COC rendered the assailed *Decision*[50] on March 28, 2017, reversing the *Decision* of the OIC/District Collector, Port of Limay, in Seizure Identification No. 001-2009 where the latter ordered the lifting/quashal of the *Warrant of Seizure and Detention* against the subject shipment. In the same *Decision*, respondent COC also ordered the forfeiture of the subject shipment in favor of the government, to be disposed of in accordance with law.[51]

On April 27, 2017, petitioner filed the present *Petition for Review*,[52] assailing respondent COC's *Decision* dated March 28, 2017.

Respondents filed their *Answer* on June 30, 2017,[53] interposing certain affirmative defenses, *to wit*: (a) the *Petition for Review* lacks a proper verification and certification against non-forum shopping and thus, should be dismissed; (b) the strict rules of evidence are not applicable in administrative proceedings; and (c) if petitioner's reasoning were followed that the strict rules of evidence should be

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[47] Respondent COC's *Decision* dated March 28, 2017, Docket – Vol. 1, p. 50.
[48] Par. 13, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1177.
[49] Par. 25, respondent COC's *Decision* dated March 28, 2017, Docket – Vol. 1, p. 57. The date when the case folder was forwarded was not specified.
[50] Docket – Vol. 1, pp. 50 to 59.
[51] Par. 3, *Petition for Review*, Docket – Vol. 1, p. 13, *vis-à-vis* Par. 3, *Answer*, Docket – Vol. 2, p. 624.
[52] Docket – Vol. 1, pp. 12 to 46.
[53] Docket – Vol. 2, pp. 623 to 645.

strictly applied, it would render all of petitioner's documents inadmissible.

Petitioner then filed a *Motion to Admit Attached Reply* and *Reply (To: Answer dated 27 June 2017)* on July 10, 2017.[54] Respondents posted their *Comment (on petitioner's Motion to Admit Reply)* on August 4, 2017.[55] In the *Resolution* dated August 22, 2017,[56] the Court granted said *Motion to Admit*, and accordingly, admitted the attached *Reply*.

In the meantime, the Court received the BOC's Records of the instant case on July 17, 2017.[57]

The Pre-Trial Conference was initially set on September 12, 2017[58] but upon motion of respondents,[59] the same was reset to and held on, January 23, 2018.[60] Thereafter, the parties submitted their *Joint Stipulation of Facts* (*JSF*) on February 2, 2018[61] and the Court issued the *Pre-Trial Order* dated March 7, 2018[62] terminating the pre-trial proceedings and setting the case for trial.

On March 19, 2018, petitioner filed a *Motion to Amend Pre-Trial Order*.[63] Respondents posted their *Comment (on petitioner's Motion to Amend Pre-Trial Order)* on April 12, 2018.[64] Petitioner then filed its *Motion to Admit Reply -with- Reply (To: Comment dated 11 April 2018)* on April 20, 2018.[65] In the *Resolution* dated May 21, 2018,[66] the Court: (1) granted the *Motion to Admit Reply* of petitioner and thus, admitted the latter's *Reply*; and (2) partially granted petitioner's *Motion to Amend Pre-Trial Order*.

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[54] Docket – Vol. 2, pp. 682 to 699.
[55] Docket – Vol. 2, pp. 739 to 743.
[56] Docket – Vol. 2, pp. 748 to 750.
[57] *Compliance* dated July 17, 2017, Docket – Vol. 2, p. 709.
[58] *Notice of Pre-Trial Conference* dated July 3, 2017, Docket – Vol. 2, pp. 680 to 681.
[59] *Motion to Reset Pre-Trial Conference*, Docket – Vol. 2, pp. 751 to 755.
[60] *Resolution* dated September 6, 2017, Docket – Vol. 2, p. 759; *Minutes of the Hearing* held on, and *Order* dated, January 23, 2019, Docket – Vol. 2, pp. 1010, and 1013 to 1014, respectively.
[61] Docket – Vol. 2, pp. 1050 to 1052.
[62] Docket – Vol. 2, pp. 1069 to 1076.
[63] Docket – Vol. 3, pp. 1083 to 1096.
[64] Docket – Vol. 3, pp. 1104 to 1107.
[65] Docket – Vol. 3, pp. 1110 to 1115.
[66] Docket – Vol. 3, pp. 1121 to 1133.

The *Amended Pre-Trial Order* was issued by the Court on July 20, 2018.[67]

During trial, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following: (1) Kenneth C. Pundanera,[68] President of petitioner; and its expert witnesses, namely: (2) Engineer Carlos P. Palo,[69] and (3) Mando M. Magat.[70]

Petitioner filed its *Formal Offer of Evidence* on January 24, 2019.[71] Respondents submitted their *Comment (To: Formal Offer of Evidence)* on February 4, 2019.[72] In the *Resolution* dated March 29, 2019,[73] the Court admitted petitioner's exhibits, except for: (1) Exhibits "P-1", "P-17-D", "P-17-E", and "P-17-F", for failure to comply with the requisites for the admissibility as secondary evidence; and (2) Exhibit "P-53", for failure to correspond with the document actually marked.

On April 16, 2019, petitioner filed a *Partial Motion for Reconsideration (Of: Resolution dated 29 March 2019).*[74] Respondents posted their *Comment [To: Partial Motion for Reconsideration dated 16 April 2019]* on May 14, 2019.[75] In the *Resolution* dated July 1, 2019,[76] the Court denied petitioner's *Partial Motion for Reconsideration.* Petitioner then filed, on September 11, 2019, its *Tender of Excluded Evidence,*[77] which was granted by the Court in the *Resolution* dated September 16, 2019,[78] thereby making

[67] Docket – Vol. 3, pp. 1176 to 1185.
[68] Exhibit "P-19", Docket – Vol. 2, pp. 790 to 805; *Minutes of the Hearing* held on, and *Order* dated, May 21, 2018, Docket – Vol. 3, pp. 1134 to 1136; Exhibit "P-22", Docket – Vol. 3, pp. 1301 to 1314; *Minutes of the Hearing* held on, and *Order* dated, January 17, 2019, Docket – Vol. 4, pp. 1576 to 1578.
[69] Exhibit "P-20", Docket – Vol. 2, pp. 806 to 814; *Minutes of the Hearing* held on, and *Order* dated July 31, 2018, Docket – Vol. 3, pp. 1189 to 1190; Exhibit "P-55", Docket – Vol. 3, pp. 1218 to 1223; *Minutes of the Hearing* held on, and *Order* dated, January 17, 2019, Docket – Vol. 4, pp. 1576 to 1578.
[70] Exhibit "P-21", Docket – Vol. 2, pp. 1017 to 1027; *Minutes of the Hearing* held on, and *Order* dated July 31, 2018, Docket – Vol. 3, pp. 1189 to 1190.
[71] Docket – Vol. 4, pp. 1581 to 1599.
[72] Docket – Vol. 4, pp. 1846 to 1888.
[73] Docket – Vol. 4, pp. 1892 to 1897.
[74] Docket – Vol. 4, pp. 1898 to 1904.
[75] Docket – Vol. 4, pp. 1912 to 1918.
[76] Docket – Vol. 4, pp. 1924 to 1929.
[77] Docket – Vol. 4, pp. 1930 to 1932.
[78] Docket – Vol. 4, p. 1936.

Exhibits "P-1", "P-17-D", "P-17-E", and "P-17-F" part of the records of the case.

During the presentation of the respondents' evidence,[79] respondents presented their sole witness, Dr. Charita S. Kwan.[80]

Respondents filed their *Formal Offer of Evidence* on September 21, 2020,[81] whereas petitioner filed its *Comment/ Opposition (To: Respondent's Formal Offer of Evidence dated 21 September 2020)* on October 2, 2020.[82] In the *Resolution* dated October 21, 2020,[83] the Court admitted respondents' evidence, except the following:

(1) The documents included in between Exhibits "R-3" and "R-4", listed below, for failure to identify, mark, or formally offer the same, to wit:

   (a) CPC Process Oil (Aromatic Base);
   (b) CBPL Method 32-14 (ASTM E 32-14; Standard Practice for General Techniques for Obtaining Infrared Spectra for Qualitative Analysis;
   (c) CBPL Method 72-32 (Guidelines for Elemental Qualitative Analysis by X-ray Fluorescence);
   (d) CBPL Method 25-28 (JIS K 0131; General Rules for X-ray Diffractometric Analysis);
   (e) CBPL Method 27-60 (ASTM D 5292: Standard Test Method for Aromatic Carbon Contents of Hydrocarbon Oils by High Resolution Nuclear Magnetic Resonance Spectroscopy);
   (f) CBPL Method 27-01 (ASTM D 287: Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products [Hydrometer Method]); and
   (g) CBPL Method 33-08 (USP/NF <621>Chromatography); and

(2) Exhibit "R-4" and "R-5", for failure to have these identified by a witness.

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[79] *Minutes of the Hearing* held on, and *Order* dated, February 4, 2020, Docket – Vol. 4, pp. 1944 to 1946; *Minutes of the Hearing* held on, and *Order* dated, September 9, 2020, Docket – Vol. 4, pp. 1959 to 1961.
[80] Exhibit "R-8", Docket – Vol. 2, pp. 981 to 994.
[81] Docket – Vol. 5, pp. 1966 to 1973.
[82] Docket – Vol. 5, pp. 2048 to 2055.
[83] Docket – Vol. 5, pp. 2061 to 2062.

Subsequently, *Respondents' Memorandum* was filed by respondents on December 7, 2020,[84] while petitioner filed its *Memorandum* on December 16, 2020.[85] Thus, the instant case was deemed submitted for decision on January 6, 2021.[86]

Hence, this *Decision*.

THE ISSUES

The issues for the Court's resolution are:

"1. Whether the subject shipments of [petitioner] UPPI are Aromatic Hydrocarbon; and

2. Whether or not the Commissioner of Customs erred in reversing the decision of the District Collector and in ordering the forfeiture of [petitioner] UPPI's shipment in favor of the government on the ground of violation of Section 2503 and 2530 (f), (l) 3, 4 & 5 of the Tariff and Customs Code, as amended in relation to R.A. 8424."[87]

Petitioner's arguments:

Petitioner argues that its evidence sufficiently establish that the subject shipment is aromatic hydrocarbon.

According to petitioner, it proved that there is a standard of sampling procedure to be followed in taking samples from the subject shipment, and that it followed said standard sampling procedure, while respondents did not.

Moreover, petitioner alleges that the chain of custody of the samples taken by petitioner, through Intertek Philippines, was duly proven. On the other hand, petitioner claims that respondents failed to prove that the samples obtained by CIIS were the same samples submitted to the UP-NSRI Laboratory and US Customs Laboratory.

[84] Docket – Vol. 5, pp. 2112 to 2145.
[85] Docket – Vol. 5, pp. 2063 to 2109.
[86] *Resolution* dated January 6, 2021, Docket – Vol. 5, p. 2149.
[87] Issues, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1180.

Allegedly, petitioner sufficiently proved that ASTM D2007 is the appropriate method to test whether the subject shipment is aromatic hydrocarbon, and that the subject shipment is, in fact, aromatic hydrocarbon, while respondent COC relied solely on the US Customs Laboratory Report, despite absence of proof of the authenticity or reliability of the report.

Petitioner also asserts that respondent COC ignored the fact that the government failed to show an unbroken chain of custody over the samples tested by the US Customs Laboratory; and that respondent COC blatantly ignored petitioner's evidence, particularly the Certificate of Analysis issued by Intertek Philippines.

Respondents' counter-arguments:

Respondents contend that the subject shipment is not aromatic hydrocarbon and that the authenticity and due execution of the Netherlands Certificate of Quality and Intertek Certificate of Quality were not established.

Moreover, according to respondents, Mando Magat cannot be considered as an expert witness under Section 52, Rule 130 of the Revised Rules on Evidence.

Respondents insist that the findings of the UP-NSRI and US Customs Laboratory showed agreement of result that the samples taken from the subject are not aromatic hydrocarbon.

Respondents also assert that petitioner is estopped from questioning respondents' method of sampling.

Allegedly, respondent COC correctly reversed the *Decision* of the District Collector and ordered the forfeiture of petitioner's shipment in favor of the government on the ground of violation of Section 2503 and 2530(F), (M) 3, 4 & 5 of the Tariff and Customs Code of the Philippines (TCCP).

THE COURT'S RULING

For an orderly disposition of the present case, the Court finds it necessary to primarily resolve one additional issue before addressing the above-stated issues, *to wit*:

> "Whether the *Decision* of the District Collector/OIC of the Port of Limay, directing the lifting of the *Warrant of Seizure and Detention* against the subject shipment, has attained finality."

The Court may not limit itself to issues stipulated by the parties.

Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, reads as follows:

> "RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION 1. – *Rendition of judgment* – xxx
>
> **In deciding a case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.**" *(Emphasis supplied)*

Based on the said provision, the Court is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.[88]

To the mind of the Court, the issue as to whether or not the *Decision* of the District Collector/OIC of the Port of Limay has attained finality, is a vital issue, because the resolution thereof will determine the propriety of respondent COC's reversal of the said *Decision*.

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[88] *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

Hence, for an orderly disposition of the instant case, We find it necessary to resolve the issue now being raised by the Court.

The Decision of the District Collector/OIC of the Port of Limay has attained finality.

Sections 2313 and 2315 of the TCCP reads:

> "SEC. 2313. *Review by Commissioner.* – The person aggrieved by the decision or action of the Collector on 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.
>
> **If in any seizure proceedings, the Collector renders a decision adverse to the Government, <u>such decision shall be automatically reviewed by the Commissioner</u> and the records of the case elevated within five (5) days from the promulgation of the decision of the Collector. <u>The Commissioner shall render a decision of the automatic appeal within thirty (30) days from receipt of the records of the case</u>.** If the Collector's decision is reversed by the Commissioner, the decision of the Commissioner shall be final and executory. However, if the Collector's decision is affirmed, or if within thirty (30) days from receipt of the records of the case by the Commissioner no decision is rendered or the decision involves imported articles whose published value is Five million pesos (P5,000,000) or more, such decision shall be deemed automatically appealed to the Secretary of Finance and the records of the proceedings shall be elevated within five (5) days from the promulgation of the decision of the Commissioner or of

the Collector under appeal, as the case may be: *Provided, further*, That if the decision of the Commissioner or of the Collector under appeal, as the case may be, is affirmed by the Secretary, or if within thirty (30) days from receipt of the records of the proceedings by the Secretary of Finance, no decision is rendered, the decision of the Secretary of Finance, or of the Commissioner, or of the Collector under appeal, as the case may be, shall become final and executory.

In any seizure proceeding, the release of imported articles shall not be allowed unless and until a decision of the Collector has been confirmed in writing by the Commissioner of Customs." *(Emphasis and underscoring supplied)*

"SEC. 2315. *Supervisory Authority of Commissioner and Secretary of Finance in Certain Cases.* – **If any case involving the assessment of duties, the Collector renders a decision adverse to the Government, such decision shall be automatically elevated to, and reviewed by, the Commissioner**; and if the Collector's decision would be affirmed by the Commissioner, such decision shall be automatically elevated to, and finally reviewed by, the Secretary of Finance: *Provided, however*, **That <u>if within thirty (30) days from receipt of the record of the case by the Commissioner</u>** or by the Secretary of Finance, as the case may be, **<u>no decision is rendered by either of them, the decision under review shall be final and executory</u>**; *Provided, further*, That any party aggrieved by either the decision of the Commission[er] or of the Secretary of Finance may appeal to the Court of Tax Appeals within thirty (30) days from receipt of a copy of such decision. For this purpose, Republic Act numbered eleven hundred and twenty-five is hereby amended accordingly.

Except as provided in the preceding paragraph, the supervisory authority of the Secretary of Finance over the Bureau of Customs shall not extend to the administrative review of the ruling or decision of the Commissioner in matters appealed to the Court of Tax Appeals." *(Emphasis and underscoring supplied)*

Based on the foregoing provisions, it is clear, *inter alia*, that, in case of any seizure proceedings, when the concerned Collector of Customs renders a decision adverse to the government, such decision shall be automatically reviewed by respondent COC, and the records of the case elevated to the latter within five (5) days from the promulgation of the same decision of the Collector of Customs.

Furthermore, respondent COC is mandated to render a decision of the automatic appeal within thirty (30) days from receipt of the records of the case; and in case of failure of respondent COC to render said decision, the decision under review, *i.e.*, the decision of the concerned Collector of Customs, shall become final and executory. Moreover, in any event, the release of imported articles, in any seizure proceeding, shall not be allowed, unless a decision of the Collector has been confirmed in writing by respondent COC.

In this case, it is clear that the subject *Decision* of the District Collector/OIC of the Port of Limay in Seizure Identification No. 01-2009 was rendered *"sometime in July 2011"*.[89] Thus, there being no specific day of the said month when such *Decision* was issued, albeit it is established herein that the case folder was forwarded to respondent COC for review,[90] the counting of the five (5)-day period under the aforequoted provisions within which the records of the case should be elevated to respondent COC for his automatic review, can safely be reckoned, at the latest, on **July 31, 2011**. Counting five (5) days therefrom, and since it is presumed that the law has been obeyed,[91] the latest date for the elevation of said records to respondent COC is on **August 5, 2011**. Thus, from this latter date, respondent COC is mandated to render a decision on the subject automatic appeal within thirty (30) days thereafter, or **on or before September 4, 2011**.

Considering that the assailed *Decision* was only issued on **March 28, 2017**, or after more than six (6) years, the *Decision* of the OIC/District Collector, Port of Limay, in Seizure Identification No. 01-2009, directing the lifting of the *Warrant of Seizure and Detention* against the subject shipment, has already become final and executory.

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[89] Par. 24, respondent COC's *Decision* dated March 28, 2017, Docket – Vol. 1, p. 57; Par. 40, *Amended Pre-Trial Order* dated July 20, 2018, Docket – Vol. 3, p. 1180.
[90] Par. 25, respondent COC's *Decision* dated March 28, 2017, Docket – Vol. 1, at p. 57.
[91] Section 3(ff), Rule 131 of the Rules of Court.

Apropos, a judgment becomes *"final and executory"* by operation of law.[92] A judgment that lapses into finality becomes immutable and unalterable. It can neither be modified nor disturbed by courts in any manner even if the purpose of the modification is to correct perceived errors of fact or law. Parties cannot circumvent this principle by assailing the execution of the judgment. What cannot be done directly cannot done indirectly.[93]

Correspondingly, the *Decision* of the OIC/District Collector, Port of Limay, may no longer be modified or disturbed, even by the Court.

With the foregoing disquisitions, it is clear that the instant *Petition for Review* should be granted.

Nevertheless, the Court shall proceed to examine the bases relied upon by respondent COC in rendering the assailed *Decision* dated March 28, 2017.

There was no violation of Sections 2503 and 2530 (f), (l) 3, 4 & 5 of the TCCP; thus, the subject forfeiture is not warranted.

According to respondents, since the Import Entry Declaration No. 26672353 states that the subject shipment is aromatic hydrocarbon, it is evident that petitioner misdeclared the importation of the same.

We do not agree.

Section 2503 of the TCCP, as amended, 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 importer's description on the face of the entry would be less by ten percent (10%) than should be legally collected

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[92] *Social Security System v. Isip*, G.R. No. 165417, April 4, 2007.
[93] *Mercury Drug Corporation, et al. v. Spouses Huang, et al.*, G.R. No. 197654, August 30, 2017.

> based on the tariff classification of 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 misdeclaration 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." *(Emphasis supplied)*

The foregoing provides that: (1) any misdeclared or underdeclared imported articles/items found upon examination shall *ipso facto* be forfeited in favor of the government; and (2) 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 the TCCP.

Relative thereto, Section 2530 (f), (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:

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

l. Any article sought to be imported or exported

xxx xxx xxx

(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."

Based on paragraph (f) thereof, articles, the importation of which is contrary to law or are prohibited, or all other articles which are used, or are or were entered to be used as instruments in the importation of the former, in the opinion of the concerned Collector of Customs, are subject to forfeiture. Moreover, under paragraph (l)(3), (4) & (5) of the same provision, any article, the importation of which is effected on the strength of false declaration or affidavit, or false invoice or other documents executed by the owner, importer, exported or consignee, or through any other practice or device contrary to law by means of which, the subject article or articles was entered through a customhouse, to the prejudice of the government, shall be forfeited in favor of the latter.

Relative thereto, the Supreme Court, in *Republic of the Philippines, represented By The Commissioner of Customs v. The Court of Tax Appeals, et al.*,[94] held:

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[94] G.R. No. 139050, October 2, 2001.

> "The requisites for the forfeiture of goods under Section 2530 (f), in relation to (l) (3-5), of the Tariff and Customs Code 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.**" *(Emphasis supplied)*

In the assailed *Decision* dated March 28, 2017, respondent COC made the following rationalizations to justify the forfeiture of the subject shipment and on reversing the *Decision* of the Collector/OIC of the Port of Limay, *to wit*:

> "…After going over the records of the instant case, this Office finds probable cause to justify the seizure and forfeiture of the subject shipment, as the claimant [petitioner] UPPI has failed to sufficiently establish that that subject shipment is correctly declared as 'AROMATIC HYDROCARBON'.
>
> As correctly established by the apprehending office, **the subject importation is not aromatic hydrocarbon based on the following:**
>
> **(a) Laboratory Report No. 08-118 issued by the NSRI, and**
> **(b) U.S. Customs and Border Protection Laboratory Report which categorically stated that the samples taken from claimant's importation are 'petroleum oil'.**
>
> It is noted that the UP-NSRI Laboratory Report showed that by using the test method of Gas Chromatography/Mass Spectrometry, the claimant's importation is composed of 29.2% Total Saturated Petroleum Hydrocarbon and 0.01% polycyclic hydrocarbon. However, it is likewise noted that the 70.79% of the total composition of the sample is unaccounted for. The Report stated that the sample is composed of 29.92% saturates and 0.01% polycyclic hydrocarbon. Thus, the remaining 70.79% consists of

either: unsaturated hydrocarbon or monocyclic aromatic hydrocarbon.

To explain the significance thereof, we refer to the testimony of **the prosecution's witness Dr. Evangeline Santiago, Head Chemist, Research and Analytical Sciences Laboratory, UP-NSRI, who testified[]that <u>the sample submitted by the CIIS for laboratory analysis cannot be determined whether aromatic hydrocarbon or petroleum oil</u>. She elaborated that the UP Laboratory does not test whether the sample is Petroleum Hydrocarbon <u>but whether there exist chemicals therein which will cause environmental hazards</u>. She further confirmed that <u>the laboratory test conducted by the UP-NSRI cannot be made the basis to determine the true nature of the subject shipment or[]claimant's importation</u>.**

Further, Dr. Santiago explained that the UP-NSRI is incapable of undertaking an analysis on the total aromatic hydrocarbon content, both polycyclic and monocyclic, of the sample, to wit:

'xxx xxx xxx

ATTY. NAVARRO	**Just to confirm with your tested test, are you capable to determine the total Aromatic Hydrocarbon, the Polycyclic and Monocyclic Aromatic Hydrocarbon?**
DR. SANTIAGO	**<u>No, we cannot.</u>**'

Thus, **<u>the UP-NSRI Laboratory test could not reach a definitive conclusion on the true nature of the sample as [to] whether aromatic hydrocarbon or petroleum oil and even the Head Chemist thereof deems itself inadequate to reach such conclusion</u>.**

However, this Office takes cognizance of the evidence offered by the government prosecutor which is the Laboratory Report issued by the U.S. Customs and Border Protection Service which identified the sample as 'petroleum oil'. The

> **Laboratory Report No. SF 2008-1967 was certified by Mr. Darryl Ray Tonne, Assistant Attaché of the US Immigration and Customs Enforcement on March 12, 2009.**
>
> We do not agree with the port a *quo's* finding that the government prosecutor failed to provide the necessary proof of authenticity and reliability of the USCBP Laboratory Report. Although the said Laboratory Report was received via e-mail, Mr. Darryl Ray Tonne issued a Certification of its authenticity and confirmed the report of Mr. Neal Byington of the US Customs and Border Protection Laboratories and Scientific Services and even personally handed over the same to Mr. Johnny Martinez, OIC-CIIS/POM. The burden is now upon the claimant to prove otherwise.
>
> All told, we find cogent reason to reverse that instant undated Decision of the[]Officer-in-Charge, Port of Limay."[95] *(Emphasis and underscoring supplied)*

Based on the foregoing disquisitions, it appears that respondent COC mainly relied on the following:

(a) Laboratory Report No. 08-118 issued by the UP-NSRI, and
(b) Laboratory Report No. SF 2008-1967 issued by the US Customs Laboratory.

However, the Court finds the foregoing bases as insufficient or unconvincing to justify the forfeiture of the subject shipment.

Anent the Laboratory Report No. 08-118 issued by the UP-NSRI, while at the outset the aforequoted portions of the *Decision* invokes the same, said *Decision* likewise recognizes that *"the UP-NSRI Laboratory test could not reach a definitive conclusion on the true nature of the sample as whether aromatic hydrocarbon or petroleum oil and even the Head Chemist thereof deems itself inadequate to reach such conclusion."* Thus, respondent COC himself recognizes that the UP-NSRI did not make "*a definitive conclusion"* that the supposed sample given to the latter is *"aromatic hydrocarbon or petroleum oil"*.

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[95] Docket – Vol. 1, pp. 57 to 58.

Furthermore, the fact that the same Laboratory Report No. 08-118 was testified on by respondents' witness, Dr. Charita S. Kwan, is of no consequence. This is simply because the testimony of Dr. Evangeline C. Santiago, the former Head Chemist, which was given in the proceedings *a quo*, is more credible. Dr. Charita S. Kwan, during her cross-examination, confirmed that *"I did not participate in this analysis but I checked".*[96] She also confirmed that she *"was not involved in the analysis as an Analyst but I was involved as a Checker Supervisor".*[97] Meanwhile, it was Dr. Evangeline C. Santiago who not only *"checked"* the supposed sample, but was also an *"Analyst"* thereof. Moreover, Dr. Evangeline C. Santiago is the person who certified that the *"results as certified true only for the samples as received by the laboratory"*, as stated in Laboratory Report No. 08-118. If at all, as stated in the said Laboratory Report, Dr. Charita S. Kwan merely "*checked"* with Dr. Evangeline C. Santiago, the service or analysis done by the latter and a certain F. A. P. Rivas.

Furthermore, Dr. Charita S. Kwan testified before the Court merely what *"appears"* in the said Laboratory Report,[98] and was not derived from her personal knowledge. More importantly, respondents failed to reconcile the conflicting testimonies of Dr. Evangeline C. Santiago in the proceedings below, and of Dr. Charita S. Kwan before the Court. Particularly, no convincing explanation was shown why Dr. Evangeline C. Santiago testified that the sample submitted by the CIIS for laboratory analysis cannot be determined whether it is aromatic hydrocarbon or petroleum oil, and why Dr. Charita S. Kwan has testified that the same sample is *"not aromatic hydrocarbon".*[99]

Thus, because of the said conflicting testimonies, the results stated in UP-NSRI's Laboratory Report No. 08-118 are not reliable.

Neither can the Court rely on Laboratory Report No. SF 2008-1967 issued by the US Customs Laboratory.

Just as in the case of Laboratory Report No. 08-118 issued by UP-NSRI, Laboratory Report No. SF 2008-1967 issued by the US Customs Laboratory has no clear and convincing evidence that the very samples examined by them were from the subject shipment of petitioner. Even granting that the results of the examination of what

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[96] Transcript of Stenographic Notes (TSN) during the hearing held on February 4, 2020, p. 68.
[97] TSN during the hearing held on September 9, 2020, p. 43
[98] 24Q/A, *Amended Judicial Affidavit of Charita S. Kwan*, Docket – Vol. 5, p. 2025.
[99] *Id.*

was examined by the said organizations are without flaw or irregularity, the Court cannot be sure that the said samples were taken from the subject importation of petitioner.

Simply put, since there is no clear indication that the samples examined by the said institutions were obtained from the same imported articles of petitioner, the Court cannot rely on the subject Laboratory Reports.

Moreover, it must be pointed out that the Prosecutor of the government, Atty. Danilo P. Umacob, manifested that the examined sample was taken only in one portion of the tank, and that the "[i]*nformation gathered from the Philippine Customs Laboratory is to the effect that the taking of sample should have been taken from each and every quadrant of the shore tank in order to get a full and complete analysis of the same*". With this notion, Atty. Danilo P. Umacob expressed that "*in the interest of justice and fair play, there is an urgent need for the retaking of sample from subject shore tank together with chemists assigned at the Philippine Customs Laboratory and CIIS Agents in order to finally determine the real nature and description of the same.*"[100]

Unfortunately, however, there is no indication that the retaking of the sample in the suggested manner was done.

Correspondingly, by his own admission, Atty. Danilo P. Umacob, as the Prosecutor *a quo*, was even convinced that the CIIS should have done more in obtaining the samples which they apparently brought or forwarded to UP-NSRI and US Customs Laboratory for examination.

Without clear and convincing evidence of the alleged misdeclaration by petitioner, it cannot be said that there is a misdeclaration on the part of the latter, insofar as the subject importation is concerned. Such being the case, petitioner did not violate Section 2503 of the TCCP, as amended, and thus, forfeiture in favor of the government is not warranted under the said provision.

In the same vein, the forfeiture of the subject shipment may not be justified since there is no showing that the subject shipment is a prohibited importation or is contrary to law, in accordance with

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[100] Exhibit "P-14", Docket – Vol. 4, pp. 1656 to 1657.

Section 2530(f) of the TCCP, as amended. Neither is there any showing that the subject importation was effected on the strength of false declaration or affidavit, or false invoice or other documents executed by the owner, importer, exporter or consignee, or through any other practice or device contrary to law by means of which, the subject article or articles was entered through a customhouse, to the prejudice of the government, as stated under 2530(l)(3), (4) & (5) of the TCCP, as amended. Notably, respondents failed to show that petitioner had the intention to evade the payment of the duties due, as a requisite under the said provision.[101]

In sum, the forfeiture of the subject shipment in favor of the government is not justified under Sections 2503, and 2530 (f), (l)(3), (4) & (5) of the TCCP, as amended.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the *Decision* of respondent COC dated March 28, 2017 is **REVERSED** and **SET ASIDE**.

Moreover, the *Decision* of the District Collector/OIC of the Port of Limay, directing the lifting of the *Warrant of Seizure and Detention* against the subject shipment is hereby **AFFIRMED.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[101] *Republic of the Philippines, represented by the Commissioner of Customs v. The Court of Tax Appeals, et al.*, G.R. No. 139050, October 2, 2001.

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.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

CERTIFICATION

Pursuant to Article VIII, Section 13 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