REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CORNELIO Q. CASIDO,
Petitioner,

CTA EB No. 919
(CTA Case No. 8087)

Present:
Del Rosario, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

-versus-

REPUBLIC OF THE PHILIPPINES,
and HON. RUFINO BIAZON, in his capacity
as COMMISSIONER,
Bureau of Customs,
Respondents.

Promulgated:

MAR 3 1 2014 9:00 a.m.

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D E C I S I O N

CASTAÑEDA, JR., *J.* :

Before the CTA *en banc* is the petition for review of petitioner Cornelio Q. Casido ("petitioner") filed on July 17, 2012 seeking to set aside and/or modify the February 8, 2012 Decision[1] and the June 5, 2012 Resolution[2] of the former CTA First Division (" Special 1st Division"), in so far as petitioner is concerned, and to issue an order for the immediate release of "Kanny I" Tugboat and "Kanny II" Barge from the custody of the District Collector of the Port of Tacloban in favor of petitioner Casido as the

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[1] *Rollo*, pp. 24-- 40; Penned by the then Presiding Justice Ernesto D. Acosta (compulsorily retired on December 21, 2012) and concurred in by Associate Justices Erlinda P. Uy and Esperanza R. Fabon-Victorino.
[2] *Id.*, pp. 42-47.

Charterer of the tugboat and barge in the case entitled *"Cornelio Q. Casido v. Republic of the Philippines, and Hon. Napoleon L. Morales, in his Capacity as Commissioner, Bureau of Customs"* docketed as CTA Case No. 8087.

The dispositive portion of the assailed Decision reads, as follows:

> WHEREFORE, premises considered, the present Petition is hereby DISMISSED for lack of merit. The Decision of the Commissioner of Customs dated March 12, 2010 is hereby AFFIRMED.
>
> SO ORDERED.

The dispositive portion of the assailed Resolution states:

> WHEREFORE, premises considered, petitioner's Motion for Reconsideration is DENIED for lack of merit.
>
> SO ORDERED.

THE FACTS

The facts of the case[3] are undisputed which were culled by the Special 1st Division from the Joint Stipulation of Facts[4] of the parties and as borne by the records of the case:

> Petitioner, Cornelio Q. Casido, is the claimant of "KANNY I" Tugboat and "KANNY II" Dumb Lighter being the charterer thereof. He may be served with summons, orders and notices in his address at Heritage Mining and Resources at No. 1, April Street, Congressional Village, Quezon City.
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> Respondents are the Republic of the Philippines, in whose name the seizure proceedings below was filed , and the Commissioner, Bureau of Customs, Gate 3, South Harbor, Port Area, Manila, where he can be served with summons, orders and notices.

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[3] Assailed Decision, pp. 2-8 (Citations Omitted); Division Docket, pp. 575-581.
[4] Division Docket, pp. 229-235.

Sometime in the middle part of 2007, petitioner, being the President of Heritage Resources and Mining Corporation (HRMC), a private corporation duly organized and existing under Philippine laws, which is primarily engaged in the business of mine exploration, hired and contracted the services of "KANNY I" Tugboat and "KANNY II" Dumb Lighter owned and operated by KANNY Industrial Company, Limited, an entity duly organized and existing under the laws of Hong Kong, People's Republic of China, represented by Liu Guogang.

In the Bareboat Charter Agreements both dated 11 July 2007 entered into by petitioner as the charterer, and Mr. Guogang, the "KANNY I" Tugboat and "KANNY II" Dumb Lighter were specifically hired and chartered by petitioner for his sole and exclusive use as an incident to the HRMC's mining operations in the Province of Eastern Samar, Republic of the Philippines.

Thereafter, the two (2) vessels were delivered and docked at Homonhon Island, Eastern Samar, sometime on September 6, 2007.

When the two (2) vessels, "KANNY I" Tugboat and "KANNY II" Dumb Lighter, arrived at the port of Homonhon Island, Eastern Samar, its Captain and officials, as well as petitioner, failed to/did not go to the nearest customhouse upon entry as required by Section 2530 of the Tariffs and Customs Code of the Philippines (TCCP).

On September 18, 2007, elements from the Bureau of Customs (BOC) and Philippine National Police conducted a search on the two (2) vessels docked at the Port of Homonhon Island, Eastern Samar. The search on said vessels yielded the absence of any contraband goods.

Thereafter, Collector Minda T. Llamas of the Sub-Port of Catbalogan, Samar, issued a Hold Order on the two (2) vessels for further investigation.

Further investigation was conducted by operatives of the Intelligence and Enforcement Group (IEG) of the BOC:

The Report dated October 31, 2007 of Bolivar E. Puno, IEG Investigator, states, among other things, "*While it appears that said vessels -Kanny I and II are not importations subject to duties and taxes nor it appears that it had any intention to unload goods by the established fact that no goods were found on board the two vessels, however, xxx,*" it also found the Captain wanting for compliance of Section 2519 and 2521, TCCP, and recommended that "*xxx a fine in such amount as shall be addressed to the sound discretion of the District Collector of Tacloban can be imposed against the Tugboat Kanny I and the Barge Kanny II.*"

Celso P. Templo, Deputy Commissioner, BOC, concurred with the recommendation of the IEG Investigator, Mr. Bolivar Puno, to impose a fine.

Then Commissioner Napoleon L. Morales forwarded to the District Collector, Port of Tacloban, the recommendation of Mr. Bolivar Puno, inviting attention to the recommendation "that a fine in such amount as shall be determined by the District Collector be imposed against such vessels pursuant to Sections 2519 and 2521 of the TCCP, as amended , for his consideration and appropriate action.

Instead of imposing a fine, Collector Minda T. Llamas, in her 3rd Indorsement dated November 12, 2007, issued a warrant of seizure and detention as Seizure Identification No. 001-2007 for alleged violations of Section 2530 (f) and (1-1) of the TCCP, as amended , by petitioner.

Hearings were then scheduled on November 22, 23, 26, 27 and 28, 2007.

During the hearings before the BOC, Port of Tacloban, Tacloban City, the Republic presented witnesses who were present during the inspection of the two (2) vessels anchored at the Port of Homonhon Island. Said witnesses uniformly testified that there were no dutiable goods, or illegal cargo found inside the vessels in question.

After the hearings were conducted, the parties were required to submit their respective position papers. The prosecution did not file their position paper. Petitioner complied and submitted his position paper. Jr

In his Decision dated April 21, 2008, Leovigildo M. Dayoja, District Collector of Tacloban, ordered the forfeiture of "KANNY I" Tugboat and "KANNY II" Dumb Lighter for violation of Section 2530 (f) and (l-1), TCCP.

Petitioner filed a Motion for Reconsideration dated May 5, 2008 of said decision.

In a Decision dated May 7, 2008, the District Collector, Port of Tacloban, denied said motion for reconsideration for lack of merit.

Petitioner filed an appeal to the Commissioner of Customs. Said appeal was docketed as Customs Case No. 05-08.

In a Decision dated October 14, 2009, the Commissioner of Customs affirmed both the Decisions dated April 21, 2008 and May 7, 2008 of the District Collector, Port of Tacloban, forfeiting the two (2) vessels.

Petitioner filed a Motion for Reconsideration dated November 25, 2009 with the Office of the Commissioner, BOC, which was also denied.

Hence, petitioner filed this Petition for Review on April 16, 2010.

On June 7, 2010, respondents, through the Office of the Solicitor General, filed their Comment, which raised the following arguments:

I. A customs official is duty-bound to seize any vessel if it is subject to forfeiture or liable for any fine imposed under tariff and customs law, rules and regulation .

II. The two (2) vessels are subject to forfeiture because they are articles imported from Hong Kong without going through a customhouse.

III. The two (2) vessels are importations subject to customs duties and taxes.

IV. Probable cause existed to warrant the seizure and detention of the vessels.

Respondents filed their Pre-trial Brief on June 29, 2010 while the petitioner filed his Pre-trial Brief on July 8, 2010.

On August 3, 2010, KANNY Industrial Company, Limited (KICL) filed a Motion for Intervention with a copy of its Intervention.

On August 5, 2010, the Joint Stipulation of Facts was filed by the parties.

In the hearing on August 5, 2010,[5] the Court ordered the parties to comment on KICL's Motion for Leave to Intervene within a period of ten (10) days. The said motion was also set for hearing on September 17, 2010.

On August 16, 2010, petitioner filed his Comments and/or Opposition to the Motion for Intervention. The respondents filed their Comment and/or Opposition (To Motion for Leave to Intervene) on August 27, 2010.

xxx xxx xxx The hearing was re-set to October 8, 2010.

In the October 8, 2010 hearing, the Court ordered the parties and the counsel for KICL to submit their respective Memoranda in support of their arguments on the Motion for Leave to Intervene within fifteen (15) days. Counsel for respondents was also ordered to transmit to the Court the Customs Records of the case within ten (10) days.

KICL filed its Memorandum for the Intervenor on October 27, 2010. gr

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[5] Also in the said hearing, "Considering that there are no factual issues involved, both parties submit this case for decision. However, since a Motion for Leave to Intervene was filed xxx." (Minutes of the Hearing dated August 5, 2010, Division Docket, p. 236.)

Respondents filed a Manifestation and Motion on November 15, 2010 praying that their Comment dated June 3, 2010 be adopted as their Memorandum. Said Manifestation and Motion was noted by the Court in an Order dated November 22, 2010.

On February 7, 2011, the Court promulgated a Resolution denying KICL's Motion for Intervention.

KICL filed a Motion for Partial Reconsideration on March 8, 2011. On March 16, 2011, the Court ordered the petitioner and respondents to comment on KICL's Motion for Partial Reconsideration.

On April 14, 2011, respondents filed their Comment (On Motion for Partial Reconsideration). On June 7, 2011, KICL filed its Reply To Respondent's Comment.

In a Resolution dated July 21, 2011, the Court issued a Resolution denying KICL's Motion for Partial Reconsideration.

On October 5, 2011, with the Manifestation and Motion of respondents on November 15, 2010 that they shall be adopting their Comment filed on June 3, 2010 and petitioner's failure to file its memorandum despite notice, the Court submitted the case for Decision.

However, on November 17, 2011, KICL filed a Motion to Defer Proceedings alleging its filing of an appeal over the Court's denial of its Motion for Intervention.

On December 15, 2011, the Court denied KICL's Motion to Defer Proceedings.

On February 8, 2012, the CTA Special 1st Division dismissed the petition for review for lack of merit and affirmed the Decision of the Commissioner of Customs dated March 12, 2010.

On June 5, 2012, the CTA Special 1st Division denied petitioner's motion for reconsideration for lack of merit.

On July 17, 2012, petitioner filed the instant Petition for Review *en banc*.[6]

In the August 29, 2012 Resolution,[7] the CTA *en banc* ordered respondents to file Comment on the petition for review within ten (10) days from receipt of the said resolution.

On September 26, 2012, the Court *en banc* granted respondents' "Motion for Extension of Time to File Comment". Respondents were given until October 21, 2012 to file the said Comment. [8]

On September 27, 2012, respondents filed a "Motion for Leave to Sell the Vessels Subject of the Present Petition". [9]

On October 22, 2012, respondents timely filed the "Comment".[10] The due date of filing, which is October 21, 2012, fell on a Sunday.

In the November 13, 2012 Resolution,[11] the CTA *en banc* ordered petitioner to file comment/opposition on respondents' "Motion for Leave to Sell the Vessels Subject of the Present Petition" within ten (10) days from receipt of the said resolution. The CTA *en banc* also ordered the parties to submit their Memoranda within 30 days from receipt of the said resolution.

On November 20, 2012, petitioner filed his "Comments [To the Motion for Leave to Sell the Vessels Subject of the Present Petition][12] . Finding the said Comment insufficient in number of copies, the CTA *en banc*, in a minute resolution dated November 23, 2012, ordered petitioner to submit additional seven (7) copies of his Comment within ten (10) days from notice.[13]

On January 7, 2013, the Court received Respondents' "Manifestation and Motion (In Lieu of Memorandum)" which was posted on December 19, 2012.[14]

Petitioner posted his Memorandum on January 4, 2013 and received by the Court on January 18, 2013.[15] However, the copies of the said

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[6] *Rollo*. pp. 1-23. with Annexes (*Rollo*. pp. 24- 148).
[7] *Id.*, pp. 150-151.
[8] *Id.*, p. 156.
[9] *Id.*, pp-157-164. with Annex (*Rollo*. pp. 165-168).
[10] *Id.*, pp. 169-189.
[11] *Id.*, pp. 191-193.
[12] *Id.*, pp. 195-197.
[13] *Id.*, p. 199.
[14] *Id.*, pp. 200-202.
[15] *Id.*, pp. 206- 228.

Memorandum were insufficient. On January 22, 2013, the CTA *en banc* ordered petitioner to submit additional copies of his memorandum within ten (10) days from notice.[16]

On January 22, 2013, the Court noted[17] petitioner's "Compliance" submitting additional copies of his "Comments [To the Motion for Leave to Sell the Vessels Subject of the Present Petition]. The CTA *en banc* also noted[18] respondents' manifestation stating that they be allowed to adopt their Comment dated October 19, 2012 as their Memorandum in the above-entitled case.

On March 12, 2013, the CTA *en banc* noted petitioner's "Compliance" submitting the additional copies of the Memorandum.[19]

On May 8, 2013, the instant case was submitted for decision.[20] However, on May 28, 2013, the Resolution dated May 8, 2013 was recalled and set aside after finding that the "Motion for Leave to Sell the Vessels Subject of the Present Petition" filed by respondents on September 27, 2012 was still pending.[21]

On July 1, 2013, the CTA *en banc* granted respondents' "Motion for Leave to Sell the Vessels Subject of the Present Petition". Respondents were ordered to place the proceeds of the sale of the subject vessels in escrow in a government-held bank and shall be disposed of in accordance with the final decision of this Court.[22]

On September 18, 2013, the case was submitted for decision.[23]

Hence, this decision.

ISSUES

Petitioner's assignment of errors/issues to be resolved:[24]

A. The Honorable Court of Tax Appeals, 1st Division ERRED when it found and declared the two (2) vessels, "KANNY I" Tugboat and "KANNY II" Dumb Lights, violated the

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[16] *Rollo*, pp. 237-238.
[17] *Id.*, pp. 237-238.
[18] *Id.*, pp. 239-240.
[19] *Id.*, pp. 245-246.
[20] *Id.*, pp. 248-249.
[21] *Id.*, pp. 251-252.
[22] *Id.*, pp. 254-260.
[23] *Id.*, pp. 262-263.
[24] *Id.*, p. 9.

provisions of section 2530 (f) and (1-1) of the Tariff and Customs Code of the Philippines;

B. The Honorable Court of Tax Appeals, 1st Division ERRED when it found and declared there was probable cause when the Collector, Bureau of Customs, Sub-Port of Catbalogan, ordered the seizure of the two (2) vessels "KANNY I" Tugboat and "KANNY II" Dumb Lighter;

C. The Honorable Court of Tax Appeals, 1st Division ERRED when it disregarded the findings of the investigation and the resultant recommendation that the two (2) vessels "KANNY I" Tugboat and "KANNY II" Dumb Lighter are liable only to an administrative fine as provided for under Sections 2519 and 2521 of the TCCP;

D. The Honorable Court of Tax Appeals, 1st Division ERRED when it sustained the Decision of the District Collector, Bureau of Customs, Port of Tacloban, that the two (2) vessels "KANNY I" Tugboat and "KANNY II" Dumb Lighter are subject to forfeiture pursuant to Section 2531 of the TCCP.

Based on the foregoing, **the issue in this case is whether or not the Special 1st Division correctly affirmed the decision of the respondent Commissioner of Customs forfeiting the subject vessels for violation of Section 2530 (f) and (1-1) of the TCCP.**

THIS COURT'S RULING

The petition is denied.

The Court *en banc*, after a careful review of the assailed Decision and Resolution as well as the records, finds that the issue and arguments raised by petitioner have already been considered by the Special 1st Division in its assailed Decision and Resolution. Be that as it may, pertinent issues need to be emphasized.

Vessel is an "article"

Petitioner argues that Section 2530 of the TCCP is not applicable because the said provision of law refers to an article and not to a vessel. Petitioner states that he is still in quandary on how a bareboat charter agreement was considered a documentary evidence to prove an intention to import the subject vessels. Petitioner believes it is erroneous to conclude and consider the vessels as imported articles.

Respondents, by counsel, argue that whether there was contraband found inside subject vessels, or whether they were used for coastwise trade or smuggling is irrelevant because the unlawful act which subject the questioned vessels to forfeiture is their surreptitious entry into the Philippines without going through a customhouse. Respondents also argue that the vessels are dutiable articles under the Heading 89.04-05 of Chapter 89 of the TCCP.

The arguments of petitioner have no merit.

This case involves the forfeiture of "Kanny I" tugboat and Kanny II" barge in favor of the government for violation of Section 2530 (f) and (1-1) of the Tariff and Customs Code of the Philippines (TCCP), as amended, which state that:

> **Section 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:
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> 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 entered to be used as instruments in the importation or the exportation of the former;
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> xxx xxx xxx
>
> 1.Any article sought to be imported or exported.
> (1)Without going through a customhouse, whether the act was consummated, frustrated or attempted;
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> xxx xxx xxx *[initials]*

Sec. 3519 of the TCCP explicitly states that, "'Articles', when used with reference to importation, includes goods, wares and merchandise and in general anything that may be made the subject of importation or exportation." In the CTA *en banc* case *Zhongshu Huang and Nga Heong Chong v. Bureau of Customs*[25], an "article" refers to a particular object or substance, a material thing or a class of things; material or tangible object.

We emphasize that under Heading 89.04-.05 of Chapter 89 (Ships, boats and floating structures) of the Book I on Tariff Law, vessels are classified as dutiable articles.

Based on the foregoing, vessels are articles, which may be the subject of importation, as correctly ruled by the Special 1st Division in the assailed Decision, as follows:

> Similarly, there is no merit to petitioner's aversion that the subject vessels are not articles contemplated in Section 2530 of the TCCP. **When used with reference to importation and exportation, articles include goods, merchandise and in general anything that may be made the subject of importation or exportation. Concomitantly, ships, boats and floating structures such as the subject vessels are dutiable articles under Heading 89.04-.05 of Chapter 89 of the TCCP.** There is no question that the subject vessels may be considered articles subject of importation.[26] (*Emphasis Supplied).*

Having established that vessels are dutiable articles, it is necessary to determine whether there is importation in this case.

Section 1202 of the TCCP provides when importation begins and deemed terminated which reads:

> Sec. 1202. *When Importation Begins and Deemed Terminated.*- Importation **begin**s when the carrying vessel or aircraft **enters the jurisdiction of the Philippines with intention to unlade therein**. Importation is deemed terminated upon payment of duties, taxes and other charges upon the articles, or secured to be paid, at a port of entry and the legal permit for withdrawal shall have been granted, or in case said articles are free of duties, taxes and other charges, until they have legally left the jurisdiction of the customs.

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[25] CTA EB 451 (CTA Case No.7273), March 12, 2010, with Entry of Judgment dated July 12, 2010.
[26] Assailed Decision, p. 16; Citation Omitted.

Clearly, for importation to begin, it is important that it enters the jurisdiction of the Philippines and that there must be an intention to unlade therein.

Based on the facts of the case, these vessels of foreign origin entered the jurisdiction of the Philippines for the sole and exclusive use of HRMC's mining operation as stipulated in the Bareboat Charter Agreements. It is established, therefore, that importation of the vessels have begun in this case when the seizure/forfeiture proceedings was instituted.

Considering that the vessels are imported articles, pertinent to the case is Section 1201 of the TCCP which reads:

> Section 1201. *Articles to be Imported Only Through Customhouse.* –All articles imported into the Philippines whether subject to duty or not shall be entered through a customhouse at a port of entry.

It is basic that when the law is clear there is no room for interpretation; and when the law does not distinguish we should not distinguish. It follows, therefore, that all articles imported into the Philippines are required to enter through a customhouse at a port of entry.

We reiterate the undisputed finding that the subject vessels failed/or did not go to the customhouse as required by law which was admitted by the parties in the parties' Joint Stipulation of Facts[27] as follows:

> When the two (2) **vessels**, "KANNY I" Tugboat and "KANNY II" Dumb Lighter, arrived at the port of Homonhon Island, Eastern Samar, its Captain and officials, as well as petitioner, **failed to/did not go to the nearest customhouse upon entry as required by Section 2530 of the Tariffs and Customs Code of the Philippines (TCCP**). *(Emphasis Supplied).*

Based on the foregoing, the vessels, as articles subject of the importation, failed to go through a customhouse, thus, the forfeiture of the vessels pursuant to Section 2530 (f) and (1-1) of the TCCP for failure to go through a customhouse is correct.

[27] Par. 6, Joint Stipulation of Facts, Division Docket, p.231; Assailed Decision, p. 3.

Probable cause was established

Petitioner believes that probable cause was determined when the Bureau of Customs conducted an investigation on the vessels; when the IEG team from Cebu conducted a similar investigation, and thereafter submitted its findings that there was no importation of goods and recommended the imposition of an administrative fine for the failure of the Captain of the vessels to present documents at the port of entry.

Petitioner alleges that just because the Commissioner did not overturn the decision of the Collector in issuing the seizure of the subject vessels, and not following the earlier Order to impose a fine, it does not mean the seizure order is correct, or in accord with the governing rules in determining probable cause.

Petitioner argues that the Special 1st Division ignored the findings of the IEG Investigator Bolivar E. Puno: that, there was no importation of goods or articles; that Kanny I and II are not importations; and that only the imposition of fine for the failure of the Captain to present documents to the nearest port or customhouse as required by law was recommended to the Commissioner.

The allegations of petitioner are untenable.

The burden of proof in seizure and forfeiture proceedings shall lie upon the claimant provided that probable cause shall first be shown for the institution of such proceedings and that seizure and/or forfeiture was made under the circumstances and in the manner described in the preceding sections of the TCCP, as stated in Section 2535 of the TCCP, as follows:

> SEC.2535. *Burden of Proof in Seizure and/or Forfeiture.*— In all proceedings taken for the seizure and/or forfeiture of any vessel, vehicle, aircraft, beast or articles under the provisions of the tariff and customs laws, the burden of proof shall lie upon the claimant: Provided, That probable cause shall be first shown for the institution of such proceedings and that seizure and/or forfeiture was made under the circumstances and in the manner described in the preceding sections of this Code.

The term "probable cause", which has been held synonymous with "reasonable cause", means less than the evidence which will justify condemnation. It implies a seizure made under circumstances which warrant suspicion *(Sanchez vs. Commissioner of Customs, BTA Case No. 185,* *November 2, 1954, citing U.S. vs. One Bag of Paradise and Choura Feathers, N.Y., 365 F. 301, 167, CCA 473; Associated Banking Corp. vs. Commissioner of Customs, et al., CTA Case No. 2448, August 6, 1976; Metropolitan Garment Corp. vs. Ramon Farolan, CTA Case No. 3959, April 16, 1986; Mayer Steel Pipe Corp. vs. Hon. Alfredo Pio de Roda, et al., CTA Case No. 2823, February 18, 1987).*[28]

The Special 1st Division found that there was probable cause to make the forfeiture of the subject vessels pursuant to Section 2530 (f) and (1-1) of the TCCP. Pertinent portions[29] of the assailed Decision provides:

> We give credence to the arguments laid by the respondents that there was indeed probable cause to make the forfeiture of the subject vessels.
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> First, the entry of the subject vessels was surreptitiously made in a seaport that is not considered a port of entry in Homonhon, an island where there is no customhouse and no customs personnel who will monitor the entry and exit of vessels.
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> Second, according to the Bareboat Charter Agreements presented by petitioner, the subject vessels were for the sole and exclusive use of the company as an incident to its mining operation. Said usage requires a permit/license from the Maritime Industry Authority (MARINA) pursuant to Republic Act (RA) No. 9295. It also requires a certification of payment from the BOC that will show payment of the duties and taxes paid thereon, in accordance with Customs Memorandum Order (CMO) No. 25-1007.[30] However, it appears from the records that petitioner sent a letter-application dated September 18, 2007 to MARINA only on October 8, 2007. The actuation of belatedly registering the subject vessels to the MARINA appears to be a mere afterthought for were it not for the apprehension by the BOC officials on September 18, 2007, petitioner would not have registered the entry of said vehicles to the proper authorities.
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> Third, based on the documents also presented by the petitioner to the BOC, the said vessels were covered only by

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[28] *Tri-Mark Ventures Trading Corporation v. Commissioner of Customs*, CTA Case No. 6575, September 18, 2007, with Entry of Judgment dated October 11, 2007.
[29] Assailed Decision , pp. 12-14; Citations Omitted.
[30] Should be CMO No. 25-2007 or CMO No. 025-07, "Clearance Requirement for Initial and Renewal of Registration of Imported Vessels Pursuant to Memorandum of Agreement (MOA) Between Maritime Industry Authority (MARINA) and Bureau of Customs."

> Provisional Certificate of Registry Nos. 15459207 and 15468507, respectively, issued by the Tuvalu Ship Registry, Republic of Tuvalu, Polynesia, for single delivery ballast voyage for a period of two months only, or from July 26, 2007 to September 26, 2007. According to the Tuvalu Ship Registry, the registration for a single delivery voyage is usually for a sale of a vessel, for scrap or demolition or transfer to a dockyard. It is notable also that the registration was limited to a period of only two (2) months despite the provision of the Bareboat Charter Agreements stating the duration of the contract to be two (2) years. Based on the foregoing, it appears, therefore, that the registration under the Tuvalu Ship Registry was really for the purpose of a sale that is to take place within a period of two (2) months from the date of registry.
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> Fourth, the subject vessels were already docked in Homonhon Island for almost twelve (12) days before the BOC was able to search subject vessels. It is quite disturbing that in those twelve (12) days, the master of said vessels failed to report to any customs authority in order to make the proper entry.

Applying the definition of the term "probable cause" in the careful scrutiny of the above-mentioned circumstances, this Court agrees that indeed probable cause was established. The said circumstances warrant suspicion to make the seizure. In effect, there is reasonable cause for the government to institute the seizure/and forfeiture proceedings.

As provided in Sec. 2535 of the TCCP, the burden of proof in seizure and forfeiture proceedings lies upon the claimant. However, except for the bare allegations of petitioner, no proof was presented to bolster his claim that the vessels were not importations liable to forfeiture. Thus, the findings and conclusion of the Special 1st Division is reiterated with approval:

> Unfortunately, the petitioner failed to convince Us that the subject vessels were not importation liable for forfeiture. Petitioner did not present any evidence that the customs duties and taxes for the importation of the subject vessels were paid nor an attempt of payment was made.[31]

As regards the IEG Report, we agree with the Special 1st Division that, "We cannot only rely on the report of the IEG on the imposition of fines. The IEG Report was merely recommendatory as the sole authority to

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[31] Assailed Decision, p. 15.

determine the issuance of a warrant rests solely with the collector. The weight of evidence favors the respondents in this case.[32]

It is settled jurisprudence that the Collector of Customs has exclusive jurisdiction over seizure and forfeiture proceedings.[33]

Customs laws afford the Collector of Customs sufficient latitude in determining whether or not a certain article is subject to seizure or forfeiture which may be appealable to the Commissioner and then to this Court.[34]

Upon making any seizure, the Collector shall issue a warrant for the detention of the property.[35] In seizure cases, the Collector after hearing shall in writing make a declaration of forfeiture or fix the amount of the fine or take such other action as may be proper. [36]

In this case, the Collector after hearing ordered the forfeiture of the vessels. Upon review by the Commissioner[37], the order of forfeiture was affirmed. On appeal, the Special 1st Division of the CTA found that the seizure/forfeiture proceeding is in accordance with law and supported by substantial evidence, which the Court *en banc* agrees.

It is settled that findings of fact of an administrative agency must be respected so long as they are supported by substantial evidence, but lacking support, the factual findings of the Commissioner of Customs cannot stand on their own and therefore not binding on the courts.[38] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[39]

We emphasize that "petitioner violated a provision of the TCCP, particularly Section 1201[40] when the subject vessels did not enter a customhouse at a port of entry, thus, Sections 2530 (f) and (1-1) becomes operative."[41] Having established that the order of forfeiture of the said vessels complied with the mandate of the law, there is no more need to discuss the assigned error of petitioner that the imposition of fine based on Sections 2519[42] and 2521[43] of the TCCP are the applicable laws in this case.

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[32] Assailed Decision, p. 15.
[33] *Zuno v.Cabredo*, A.M. No. RTJ-03-1779, April 30, 2003, *En Banc*, 402 SCRA 75.
[34] *El Greco Ship Mannning and Management Corp. v. Commissioner of Customs*, CTA Case No. 6618, Oct. 17, 2005.
[35] Section 2301,TCCP.
[36] Section 2312, TCCP.
[37] Section 2313, TCCP.
[38] *Transglobe International, Inc. v. Court of Appeals*, G.R. No. 126634, January 25, 1999, 302 SCRA 57.
[39] *Feeder International Line, Pte., Ltd. v. Court of Appeals*, G.R. No. 94262, May 31, 1991, 197 SCRA 842.
[40] Section 1201. *Article to be Imported Only Through Customhouse*. – All articles imported into the Philippines whether subject to duty or not shall be entered through a customhouse at a port of entry.
[41] Assailed Decision, p. 16.
[42] SEC. 2519. *Failure to Exhibit or Deposit Documents*. – When the master of a vessel or pilot in command of an aircraft engaged in foreign trade fails to exhibit to the Collector at the time of entry of his vessel or aircraft the register

The vessels are liable to forfeiture

Petitioner alleges that in applying Section 2531[44] TCCP, the two (2) vessels are not liable to forfeiture because of the fact that the owner or his agent, herein petitioner, had no knowledge of any participation in the unlawful act, there was no importation of articles, goods or articles in the vessel to the Philippines without the payment of correct and lawful duties and taxes. Petitioner mentioned that the two (2) vessels were not being imported to the Philippines to be used in coastwise trade within the Philippines. Further, petitioner alleges that there is no *prima facie* presentation that exist against the vessels because at that time and date they were held and seized, no evidence have been submitted that the vessels have been used for smuggling at least twice before, or that the owner is not in the business for which said vessels were generally used, or that the owner is not in a position to own such conveyance.

Respondents allege that petitioner cannot feign ignorance of the alleged unlawful act because he is purportedly the charterer of the said vessels as evidenced by the Bareboat Charter Agreements he signed as President of Heritage Resources and Mining Corporation. Respondents also reiterate that forfeiture proceedings are proceedings *in rem* and directed against the *res*; that it is no defense that the owner (or his agent) of the vessel sought to be forfeited had no actual knowledge that his property was used illegally; and that the absence or lack of actual knowledge of such use is a defense personal to the owner himself which cannot in any way absolve the vessel from the liability of forfeiture. ge

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or other paper in lieu thereof, together with the clearance and other papers granted by the customs officials to his vessel or aircraft at the last foreign port of departure, or fails to exhibit any certificate or other documents required to be then exhibited, such vessel or aircraft shall be fined in a sum not exceeding five thousand pesos.

Such vessel shall be liable for the payment of the aforesaid fine if the master, within forty eight hours, after arrival, shall fail to deliver to the proper consular officer of his nation such document as are required by law to be deposited with him, or, if after having made such deposit, the master shall fail to produce to the Collector the required evidence that the same has been effected.

[43] SEC. 2521. *Failure to Supply Requisite Manifests*.- If any vessel or aircraft enters or departs from a port of entry without submitting the proper manifests to the customs authorities, or shall enter or depart conveying unmanifested cargo other than as stated in the next proceeding section hereof, such vessel or aircraft shall be fined in a sum not less than ten thousand pesos (P10,000.00) but not exceeding thirty thousand pesos (P30,000.00).

The same fine shall be imposed upon any arriving or departing vessel or aircraft if the master or pilot in command shall fail to deliver or mail to the Commission on Audit a true copy of the manifest of the incoming or outgoing cargo, as required by law.

[44] SEC. 2531. *Properties Not Subject to Forfeiture in the Absence of Prima Facie Evidence*. The forfeiture of the vehicle, vessel, or aircraft shall not be effected if it is established that the owner thereof or his agent in charge of the means of conveyance used as aforesaid has no knowledge of or participation in the unlawful act: Provided, however, That a prima facie presumption shall exist against the vessel, vehicle or aircraft under any of the following circumstances:

1. If the conveyance has been used for smuggling at least twice before;
2. If the owner is not in the business for which the conveyance is generally used; and
3. If the owner is not financially in a position to own such conveyance.

The contentions of petitioner are unmeritorious.

We agree with respondent's argument that petitioner cannot feign ignorance of the alleged unlawful act because he is purportedly the charterer of the said vessels. It is settled that petitioner is the charterer of the vessels. "Under the demise or bareboat charter of the vessel, the charterer will generally be considered as owner for the voyage or service stipulated. The charterer mans the vessel with his own people and becomes, in effect, the owner *pro hac vice*, subject to liability to others for damages caused by negligence. To create a demise, the owner of a vessel must completely and exclusively relinquish possession, command and navigation thereof to the charterer; anything short of such a complete transfer is a contract of affreightment (time or voyage charter party) or not a charter party at all." [45]

Moreover, "[t]he absence of lack of actual knowledge of such use is a defense personal to the owner himself which cannot in any way absolve the vessel from the liability of forfeiture."[46]

As correctly pointed out by the Special 1st Division,"the forfeiture of seized goods in the Bureau of Customs is a proceeding against the goods and not against the owner. It is in the nature of a proceeding *in rem, i.e.*, directed against the *res* or imported articles and entails a determination of the legality of their importation. In this proceeding, it is, in legal contemplation, the property itself which commits the violation and is treated as the offender, *without reference whatsoever to the character or conduct of the owner*."[47]

Based on the foregoing discussions, the Court *en banc* finds no reversible error to disturb the assailed Decision and Resolution of the Special 1st Division.

WHEREFORE, premises considered, the Petition for Review *en banc* is **DENIED**. Accordingly, the assailed Decision and the Resolution promulgated on February 8, 2012 and on June 5, 2012, respectively, by the Special CTA First Division are **AFFIRMED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[45] *Puromines v. Court of Appeals*, G.R.No. 91228, March 22, 1993, 220 SCRA 281, 288.
[46] Assailed Decision, p. 16, citing *Commissioner of Customs v. Manila Star Ferry, Inc.*, GR Nos. L-31776-78, October 21, 1993.
[47] Assailed Decision, p. 10, citing *Asian Terminals, Inc. v. Ricafort*, et al, G.R. No. 166901, October 27, 2006, citing *Transglobe International, Inc. v. Court of Appeals*, G.R. No. 126634, January 25, 1999.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice