REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

NPC ALLIANCE CORPORATION, represented by Renato B. Magadia, Vice-Chairman of the Board,	**CTA CASE NO. 7742**
	Members:
Petitioner,	**DEL ROSARIO,** *P.J. & Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
-versus-	
COMMISSIONER OF CUSTOMS, *Respondent.*	Promulgated: OCT 20 2021 2:18 pm

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed on March 28, 2008 by petitioner NPC Alliance Corporation assailing the Decision of the Commissioner of Customs which affirmed the Collector of Customs' decree of forfeiture of its shipments in the year 2007 consisting of diesel generator sets complete with accessories in favor of the government.[1]

THE PARTIES

Petitioner NPC Alliance Corporation is a corporation duly organized and existing under Philippine laws with principal place of business in Mariveles, Bataan. It is engaged primarily in the processing of ethylene, the prime ingredient in the production of polyethylene. It is a joint venture entered into between the National Petrochemical Corporation International of Iran, a government-owned corporation, and Polymax Stroke Metro Alliance of the Philippines, Incorporated, to re-commission and restart the commercial operations of the polyethylene plant in Mariveles, Bataan.[2]

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[1] CTA Docket Vol. 1, p. 1.
[2] Decision of the Commissioner of Customs, Exhibits "BB" and "R-18", CTA Docket Vol. 1, p. 70-77.

Respondent Commissioner of Customs (COC) is the chief official of the Bureau of Customs (BOC), vested by law with authority to approve, modify or reverse the action or decision of the Collector of Customs in relation to forfeiture cases.[3]

THE FACTS

In the year 2007, three (3) shipments of generator sets, transformers and accessories appear to have been consigned to herein petitioner,[4] the details of which are summarized below:

Shipment	Arrival	Bill of Lading	Invoice	Import Entry	Particulars
First	April 10, 2007	APLU 057249171	20070410-NPCA-01 and 20070410-NPCA-02	2007C1679	8x20' Container Vans stc. eight packages of generator sets and transformers
Second	April 17, 2007	16	20070417-NPCA-01 and 20070417-NPCA-02	2007C2171	10x20' Diesel Generator Sets c/w Accessories
Third	April 29, 2007	APLU 057250755	20070429-NPCA-01 & 20070429-02	2007C2170	8x20' Container Vans stc. eight packages of generator sets and transformers

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[3] Sections 601 and 2313 of Presidential Decree No. 1464 known as the Tariff and Customs Code of 1978 (TCC of 1978), as amended, provide:
SECTION 601. Chief Officials of the Bureau of Customs. — **The Bureau of Customs shall have one chief** and two assistant chiefs, **to be known respectively as the Commissioner of Customs (hereinafter known as the Commissioner)** and Deputy Commissioners of Customs, who shall each receive an annual compensation in accordance with the rates prescribed by existing law. The Commissioner and the Deputy Commissioners of Customs shall be appointed by the President of the Philippines.
xxx.
SECTION 2313. Review by Commissioner. — The person aggrieved by the decision or action of the Collector in any matter presented upon protest or by his action in any case of seizure may, within fifteen (15) days after notification in writing by the Collector of his action or decision, give written notice to the Collector and one copy furnished to the Commissioner of his desire to have the matter reviewed by 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. (Boldfacing supplied)

[4] Paragraphs 3, 4, & 5, Statement of Facts and the Case of the Petition for Review in relation to respondent's Answer, CTA Docket Vol. 1, pp. 3-5, 314.

The first shipment was subjected to an **Alert Order No. A/OC/20070420-101** issued by then COC Napoleon L. Morales *(COC Morales)* on **April 10, 2007**, directing Rico Reyes *(Reyes)*, the representative of the Office of the COC at the Port of Subic, to witness the 100% examination to be conducted by the assigned Customs Examiner on suspicion of misdeclaration/undervaluation. Pursuant thereto, Reyes submitted a **Memorandum and a Discrepancy Report** to COC Morales on April 23, 2007 with his findings that there was a **98% undervaluation** with respect to the five (5) generator sets and a **99% undervaluation** with respect to the three (3) transformers, and recommended the immediate issuance of a Warrant of Seizure and Detention **(WSD)** against the subject shipment for violation of Section 2503 of the Tariff and Customs Code of the Philippines (TCCP), as amended. On April 27, 2007, the Office of the COC, through Atty. James F. Enriquez, Chief of Staff, issued a 1st Indorsement, forwarding to the District Collector, Port of Subic, the Memorandum of Reyes for the Collector's information and appropriate action, with a notation therein that the Office of the COC concurs with the recommendation for the issuance of a WSD. Consequently, on April 29, 2007, District Collector Marietta D. Zamoranos *(Collector Zamoranos)* issued a **WSD**, under **Subic Seizure Identification No. 2007-22**, for the said shipment.[5]

Alert Order No. A/OC/20070420-102 was also issued on **April 20, 2007** by then COC Morales for the second shipment, directing Reyes to witness the 100% examination to be conducted by the assigned Customs Examiner, again, on suspicion of undervaluation/misdeclaration.[6]

On May 10, 2007, Mr. Karim Khatami, Chief Finance Officer *(Mr. Khatami)* of the petitioner, wrote a letter to the Secretary of Finance requesting that the twenty-six (26) generator sets covered by the aforementioned three (3) shipments be considered as conditionally-free importations pursuant to Sec. 105(i) of the TCCP, as amended, considering that they will be used for **"exhibition"** for seventeen (17) weeks at the Polyethylene Plant of the petitioner at Mariveles, Bataan, and will be returned to the country of origin after

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[5] Par. 3, Statement of Facts and the Case of the Petition for Review, which was admitted in respondent's Answer; CTA Docket Vol. 1, pp. 3, 314.
[6] Par. 4, Statement of Facts and the Case of the Petition for Review, which was admitted in respondent's Answer; CTA Docket Vol. 1, pp. 4 and, 314.

they have served their purpose.[7] Notably, petitioner's first shipment was included in its May 10, 2007 application despite the subsistence of the aforesaid WSD.[8]

In reply to the letter of Mr. Khatami, the Department of Finance (DOF), through Atty. Eleazar C. Cesista, Head, Revenue Express Lane, issued a **1st Indorsement dated May 10, 2007** to the COC with the opinion that the twenty-six (26) generator sets *"may be released pursuant to the provisions of Section 105(i) of the Tariff and Customs Code, as amended, upon giving of a bond in an amount equal to one and one-half (1 ½) times the ascertained duties, taxes and other charges, conditioned for the exportation thereof within two (2) months from the date of acceptance of the import entry or in default thereof, the payment of the corresponding duties, taxes and other charges due thereon, subject to CAO No. 7-72 and pertinent import laws, rules and regulations, subject further to One Hundred Percent (100%) examination by the Bureau."* On the 2nd page of the aforesaid DOF 1st Indorsement, there appears a remark: *"Original Copies of Documents required in the last paragraph have been presented and verified to be authentic."* In addition, the 2nd page thereof also contains a 2nd Indorsement from the [COC] dated May 11, 2007, with the signature of Atty. Talek J. Pablo, Chief, TED-OCOM, right below the words *"Continue processing,"* referring to the Collector of Customs, Port of Subic, the said DOF 1st Indorsement, for appropriate action.[9]

In pursuance of the Alert Order for the second shipment, Reyes submitted a Memorandum on May 15, 2007 for the COC recommending that the *7x20' Container Vans Nos. 0005240; 0005253; 0005255; 0054220; 0054270; 0054370; GEER5420; stc.* ***7 units Cummins KTA50G3 power generators set*** *with serial nos. 25271246; 25270539; 25270541; 25272253; 25272338; 25272452; 25272249; and 3x20' Container Vans Nos. SKYU2980176; SKYU2980073; SKYU2980319, stc. assorted generator parts,* **be released** to the petitioner **as these articles are covered by the 1st Indorsement** of the DOF dated 10 May 2007. Reyes also recommended that the last three enumerated articles be exported

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[7] Par. 6, Statement of Facts and the Case of the Petition for Review, which was admitted (in part) in respondent's Answer; CTA Docket Vol. 1, pp. 5 and, 314; see also Exhibits "JJ", "JJ-1", "R-13" and "R-13-a", CTA Docket Vol. 1, pp. 43-44.
[8] Par. 3, JSF, CTA Docket Vol. 1, p. 585.
[9] Par. 7, Statement of Facts and the Case of the Petition for Review, which was admitted in respondent's Answer; CTA Docket Vol. 1, pp. 5-6 and, 314; see also Exhibits "R-14", "JJ-2", CTA Docket Vol. 1, pp. 45-46.

back to Aggreko per 1st Indorsement of the DOF dated 11 July 2006 and covered by a re-export bond which will expire on 29 May 2007.[10]

Eventually, the three (3) shipments were released to petitioner.[11]

Subsequently, Collector Zamoranos issued **another WSD dated June 26, 2007**, under **Subic Seizure Identification No. 2007-22-A**, **for the first shipment** of 8x20' container vans. The 3rd and 4th WHEREAS clauses of the said WSD stated:

> "WHEREAS, pursuant to Section 2301 of the TCCP, in relation to existing jurisprudence, this Office recommended to the Commissioner of Customs the release of the subject shipments pending seizure proceedings upon posting of bond, the urgency of the release thereof having been sufficiently justified and guaranty posted;
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> WHEREAS, pending the final approval thereof, it was reported that the subject shipment was irregularly released."[12]

On July 18, 2007, Collector Zamoranos issued an **Order lifting the WSD in connection with Subic Seizure Identification No. 2007-22 and 2007-22-A**.[13] Collector Zamoranos stated that, based on available evidence presented by petitioner, there was no irregular release of the shipment and all indications reveal that the articles are being used as exhibits if only to demonstrate that the plant could run on a self-generated power to supply the electricity requirements of the petrochemical facility project, and that the articles are to be re-exported after the exhibition/demonstration pursuant to the recommendation of the DOF under 1st Indorsement dated May 10, 2007.[14]

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[10] Par. 8, Statement of Facts and the Case of the Petition for Review, which was admitted in respondent's Answer; CTA Docket Vol. 1, pp. 6 and 314.
[11] Par. 10, Statement of Facts and the Case of the Petition for Review, which was admitted in part in respondent's Answer; CTA Docket Vol. 1, pp. 7 and 315 (for the second and third shipments); Exhibits "H" to "H-6", CTA Docket Vol. 1, pp. 134 to 140 (for the first shipment).
[12] Par. 16, Statement of Facts and the Case of the Petition for Review, which was admitted in respondent's Answer, CTA Docket Vol. 1, pp. 9 & 315.
[13] Exhibit "E", CTA Docket Vol. 1, p. 168-171
[14] Exhibit "E", CTA Docket Vol. 1, p. 168-171.

On **19 July 2007**, District Collector Zamoranos wrote a letter to Mr. Karim Khatami, Chief Finance Officer of the petitioner, advising the latter to immediately pay the duties and taxes due on the generator sets, or in the alternative, to re-export the same inasmuch as the period granted to petitioner, as provided in the 1st Indorsement of the DOF dated 10 May 2007, has lapsed without the extension earlier filed being approved by DOF.[15]

On **23 July 2007**, Director Jairus D. Paguntalan of the CIIS, Manila, issued a 1st Indorsement dated 23 July 2007, relative to the 12 July 2007 Memorandum of Aris De Guzman, recommending to the District Collector of Customs, Port of Subic, the **issuance of a WSD against the whole shipment** of 19x20 container vans for violation of Section 2530 (f) and (l) (3, 4 and 5) of the TCCP, as amended.[16]

On **July 31, 2007**, District Collector Zamoranos issued a **WSD under Subic Seizure Identification No. 2007-25**, for the twenty-six (26) generator sets as **no re-exportation** of the subject shipments nor the payment of the corresponding duties and taxes thereon have been made despite the lapse of the period of the conditionally-free release of subject shipments, under Section 105(i) of the TCCP, pursuant to the 1st Indorsement of the DOF dated 10 May 2007.[17]

Also, on July 31, 2007, Undersecretary Gaudencio A. Mendoza, Jr. of the Legal and Revenue Operations Group, DOF, issued a Memorandum for the COC, stressing the following: *"(1) The shipments must be proceeded against in accordance with law. The tax privilege issued under the aforesaid 1st Indorsement dated May 10, 2007 ceases to be valid and effective* ***upon a showing that there was no "exhibition" at all*** *– which appears to be so in this case –* ***or upon a showing of any breach of any of the conditions for the grant of the privilege or upon the commission of any violation of the TCCP, as amended****. This Office cannot and will not countenance any fraud or misrepresentation on the part of the importer or any party acting on behalf of the owner/importer. Neither should the privilege under the questioned 1st Indorsement dated May 10, 2007 be allowed to be used in any manner or form as an excuse or justification for any customs violation committed. (2) The shipments*

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[15] Exhibit "WW", CTA Docket Vol. 1, p. 172-173.
[16] Par. 30, Statement of Facts and the Case of the Petition for Review, which was admitted in respondent's Answer, CTA Docket Vol. 1, pp. 13 & 316.
[17] Par. 32, Statement of Facts and the Case of the Petition for Review, which was admitted in respondent's Answer, CTA Docket Vol. 1, pp. 13 and 317.

are now under seizure and forfeiture proceedings. This being so, the case is now under the original exclusive jurisdiction of the Bureau of Customs, which must do what it has to do under the law without any interference from any office. This must be firmly exercised. This includes the determination of all questions and issues affecting the disposition of the property proceeded against in the seizure and forfeiture proceedings. This is a long-settled doctrine."[18]

On August 3, 2007, COC Morales issued a 2nd Indorsement forwarding to the District Collector, Port of Subic, for her information and appropriate action, the Memorandum dated 31 July 2007 of Undersecretary Gaudencio A. Mendoza, Jr., LROG, DOF, relative to the importation of generator sets consigned to the petitioner, inviting attention to the information that the same shipments are **now under seizure and forfeiture proceedings** falling within the original exclusive jurisdiction of the BOC, and therefore, the said shipment must be proceeded against in accordance with law without any interference from any office.[19]

On August 6, 2007, petitioner, through its counsel, wrote a Letter to Collector Zamoranos stating that it is presently estimating the taxes due on the generator sets and once a computation is finalized, it will send a representative to pay the same. It likewise requested to **hold in abeyance the seizure** of the generator sets for at least one (1) week from receipt of the said Letter.[20]

On August 8, 2007, Mr. Khatami wrote a Letter to the COC informing the latter that they are considering the possibility of posting a cash bond during the pendency of the seizure proceedings. This Letter was referred by the COC to the District Collector.[21]

In an Order dated August 24, 2007, Collector Zamoranos stated that **petitioner's request to secure the release of the shipments for its urgent and legitimate use, particularly to provide power supply for the recommissioning of their petro-chemical plant** and

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[18] Par. 33, Statement of Facts and the Case of the Petition for Review, which was admitted in respondent's Answer, CTA Docket Vol. 1, pp. 13-14, 317.
[19] Par. 34, Statement of Facts and the Case of the Petition for Review, which was admitted in respondent's Answer, CTA Docket Vol. 1, pp. 14-15, 317.
[20] Exhibit "BBB", CTA Docket Vol. 1, p. 180.
[21] Par. 36, Statement of Facts and the Case of the Petition for Review, which was admitted in respondent's Answer, CTA Docket Vol. 1, pp. 15 & 317.

to be allowed to post cash bond, may be given due course, subject to the approval of the COC with the computed cash bond.[22]

In an undated 1st Indorsement, Collector Zamoranos forwarded to COC Morales records of **S.I. No. 2007-25** and recommended the approval of **petitioner's request for the release of the shipments pending seizure proceedings** pursuant to Section 2301 of the TCCP, with cash bond of ₱50,177,565.25.[23]

Petitioner wrote another letter to Collector Zamoranos reiterating its intention to settle the duties and taxes due on the shipments subject to **SI 2007-25**, as expressed in its Manifestation and Motion to Pay the Customs Tax and Duties Due to the Diesel Generator Sets filed with the Hearing Officer on August 28, 2007, and requested for a detailed computation or breakdown of the customs tax and duties.[24]

On 10 September 2007, COC Morales issued a 2nd Indorsement to the District Collector, Port of Subic, informing the latter that they are **treating the Letter** of the petitioner dated 06 September 2007 reiterating its intention **to settle the customs duties and taxes due on the shipments subject of the seizure proceedings as a motion to withdraw its offer to post a cash bond** for the provisional release of the diesel generator sets.[25]

In a Letter dated **October 4, 2007**, Collector Zamoranos informed Mr. Khatami that they are **enforcing the WSD against the shipments and shall take physical custody** of the generators on October 8, 2007, and that the offer for the payment of duties and taxes is a matter to be threshed out during the hearing on the seizure proceedings and [the offer] has in fact been submitted to the Hearing Officer.[26]

On December 3, 2007, Collector Zamoranos rendered a Decision, the dispositive portion of which reads as follows:

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[22] Exhibit "L", CTA Docket Vol. 1, p. 184.
[23] Exhibit "N", CTA Docket Vol. 1, p. 189.
[24] Exhibit "EEE", CTA Docket Vol. 1, p. 191.
[25] Par. 46, Statement of Facts and the Case of the Petition for Review, which was admitted in respondent's Answer, CTA Docket Vol. 1, p. 17-18, 318.
[26] Exhibit "JJJ", CTA Docket Vol. 1, p. 205.

> "Wherefore, premises considered, and by virtue of the powers vested in this office, the subject shipments having violated Section 2530(f) and (l) (3, 4 & 5), TCCP, as amended, are hereby decreed FORFEITED in favor of the Government to be disposed in the manner provided for by law.
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> So ordered."[27]

On December 18, 2007, petitioner appealed the Decision of the District Collector to the COC.[28]

On February 21, 2008, COC affirmed the Decision of Collector Zamoranos, the dispositive portion of which reads as follows:

> "Wherefore, premises considered, by virtue of the authority vested in me by law, it is hereby ordered and decreed that the subject importations be FORFEITED in favor of the government for violation of Section 2530 paragraph (f) and (l-3, 4, 5) of the Tariff and Customs Code of the Philippines, as amended. Accordingly, let the subject importations be as it is hereby ordered AUCTIONED within thirty (30) days from receipt by the Claimant of a copy of this Decision.
>
> Let copies of this Order be furnished all parties and offices concerned for their information and guidance.
>
> SO ORDERED."[29]

Dissatisfied, petitioner filed on March 28, 2008 the present Petition for Review,[30] which was raffled to the Court's Second Division. Petitioner prays for the following reliefs:

(i) The subject importations be declared as conditionally-free under Section 105(i) of the TCCP, as amended;

(ii) In the alternative, an order be issued for petitioner to pay the duties and taxes when warranted;

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[27] Par. 53, Statement of Facts and the Case of the Petition for Review, which was admitted in respondent's Answer, CTA Docket Vol. 1, pp. 19-20, 318.
[28] Par. 55, Statement of Facts and Case of the Petition for Review, which was admitted in respondent's Answer, CTA Docket Vol. 1, pp. 20 & 318.
[29] Par. 56, Statement of Facts and the Case of the Petition for Review, which was admitted in respondent's Answer, CTA Docket Vol. 1, p. 19-20, 318.
[30] CTA Docket Vol. 1, p. 1.

(iii) The assailed decision of the COC dated February 21, 2008 ordering and decreeing the forfeiture in favor the government the subject importations be set aside; and,

(iv) To order the release of the subject importations to the petitioner for immediate re-exportation to Aggreko Singapore Pte. Ltd.[31]

Within the extended period,[32] respondent filed his Answer on June 18, 2008, with the following affirmative defenses:

1. Fraud attended the petitioner's importation when – (a) its import entries indicated undervaluation exceeding more than 30% of the actual value of the goods; (b) petitioner made it appear that its second shipment originated from Singapore; and (c) petitioner used the articles for a purpose other than that it stated (i.e., exhibition) in its application for tax and duty exemption under Section 105(i) of the Tariff and Customs Code;

2. Such fraud bars the release of the properties forfeited in favor of government;

3. The misrepresentation of the petitioner in its application for tax and duty exemption divested it of the right to either re-export the generators or pay the duties due thereon;

4. The prosecution has sufficiently shown probable cause for the institution of seizure proceedings and adduced substantial evidence warranting forfeiture of the subject generator sets; and,

5. Petitioner was able to present its evidence and was also afforded the opportunity to dispute the post clearance evaluation of the CIIS through its memorandum but it simply opted not to be heard on the matter.[33]

Respondent filed his Pre-Trial Brief on July 28, 2008,[34] while petitioner filed its Motion to Admit Pre-Trial Brief, with attached Pre-Trial Brief for the Petitioner on July 31, 2008.[35]

Pre-trial was conducted on August 28, 2008.[36]

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[31] CTA Docket Vol. 1, p. 65.
[32] CTA Docket Vol. 1, p. 309.
[33] CTA Docket Vol. 1, pp. 313-343.
[34] CTA Docket Vol. 1, p. 476-497.
[35] CTA Docket Vol. 1, pp. 522-528.
[36] Transcript of Stenographic Notes (TSN) dated July 31, 2008, p. 28, and TSN dated August 28, 2008.

On November 10, 2008, both parties filed their Joint Stipulation of Facts,[37] which was approved in the Resolution dated November 19, 2008.[38]

Meantime, this present case was transferred to the Court's Third Division in the Order dated January 14, 2010 pursuant to CTA Administrative Circular No. 01-2010 dated January 5, 2010, "Implementing the Fully Expanded Membership in the Court of Tax Appeals".[39] Subsequently, this case was again transferred from the Court's Third Division to the Court's Second Division per Order dated April 4, 2013, pursuant to CTA Administrative Circular No. 01-2013 dated March 26, 2013, reorganizing the three (3) divisions of the CTA.[40]

During trial, petitioner presented both testimonial and documentary evidence. It presented the following witnesses:

1. A hostile witness, Atty. Cesar T. Palaña, formerly Chief of Law Division, BOC, Port of Subic, now with the Legal Service of the BOC, Head Office;[41]

2. Ms. Rowena B. Farin,[42] petitioner's authorized representative in the BOC hearings under Seizure Identification No. 2007-02 and 2007-22-A;[43]

3. Fernando C. Lascano, petitioner's Logistic and Distribution Manager;[44]

4. Maximino T. Montenegro, Jr.; Sales Manager of Aggreko in the Philippines;[45]

5. Elena G. Pineda, petitioner's Finance Manager;[46]

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[37] CTA Docket Vol. 1, p. 585-589.
[38] CTA Docket Vol. 1, p. 605.
[39] CTA Docket Vol. 3, p. 1438
[40] CTA Docket Vol. 5, p. 2926.
[41] January 14, 2009 Minutes of Hearing, CTA Docket Vol. 2, p. 680.
[42] March 11, 2009 Minutes of Hearing, CTA Docket Vol. 2, p. 735; Affidavit, CTA Docket Vol. 2, pp. 709-710.
[43] Affidavit of Rowena B. Farin; CTA Docket Vol. 2, p. 709-710.
[44] November 16, 2009 Minutes of Hearing; CTA Docket Vol. 3, p. 1390.
[45] April 19, 2010 Minutes of Hearing, CTA Docket Vol. 3, p. 1556; Judicial Affidavit of Witness Maximino T. Montenegro, Jr., Exhibit "B", CTA Docket Vol. 3, p. 1498-1500.
[46] July 7, 2010 Minutes of Hearing, CTA Docket Vol. 3, p. 1598; Affidavit of Witness Elena G. Pineda, Exhibit "C", CTA Docket Vol. 3, p. 1558-1560.

6. Amelia Caballero, Supervising Investment Specialist-Project Evaluation & Registration Department, Board of Investments;[47]

7. Atty. Von F. Rodriguez, Manager of SBMA Legal Department;[48]

8. A hostile witness, Atty. Marietta D. Zamoranos, presently Deputy Collector for Assessment of NAIA Customs;[49]

9. Mr. Fertony G. Marcelo, Acting Records Custodian, BOC Port of Subic;[50]

10. Atty. Ireneo R. Onia, Jr., Acting Chief of the Law Division of the BOC, Port of Subic;[51]

11. Mr. Romeo C. Zabala, employed as Senior Plant Electrical Technician, Electrical Section of petitioner's Maintenance Department;[52] and,

12. Mr. Rannier A. Espino, Acting Operations Manager and Laboratory Head of petitioner's Operations Department.[53]

Petitioner offered its exhibits in its Formal Offer of Evidence filed through registered mail on April 25, 2014 and received by the Court on May 2, 2014,[54] with respondent's Comment thereon filed through registered mail on May 30, 2014 and received by the Court on June 5, 2014.[55] Petitioner's exhibits were admitted in the Court's Resolution dated July 21, 2014, except for certain exhibits which were denied admission for not being identified and for failure to comply with Section 3(b) and (c) in relation to Section 10(c) of the Judicial Affidavit Rule.[56] Petitioner filed through registered mail its Motion for Reconsideration of the Court's July 21, 2014 Resolution on August 22, 2014,[57] and the same was noted without action in the Court's Second Division's Resolution dated September 3, 2014 in

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[47] September 13, 2010 Minutes of Hearing, CTA Docket Vol. 3, p. 1767.
[48] December 8, 2010 Minutes of Hearing, CTA Docket Vol. 3, p. 1777.
[49] Minutes of Hearing dated May 30, 2011, February 15, 2012, July 10, 2013, September 18, 2013; CTA Docket Vols. 3 & 6, pp. 1794, 1875, 2999 and 3066.
[50] October 16, 2013 Minutes of Hearing, CTA Docket Vol. 6, p. 3078.
[51] November 18, 2013 Minutes of Hearing, CTA Docket Vol. 6, p. 3085; November 18, 2013 TSN, p. 6.
[52] November 18, 2013 Minutes of Hearing, CTA Docket Vol. 6, p. 3085; Judicial Affidavit of Romeo C. Zabala, Exhibit "X", CTA Docket Vol. 6, p. 3097-3102.
[53] November 18, 2013 Minutes of Hearing, CTA Docket Vol. 6, p. 3085; Judicial Affidavit of Rannier A. Espino, Exhibit "Z", CTA Docket Vol. 6, pp. 3088-3092.
[54] CTA Docket Vol. 6, pp. 3140-3172.
[55] CTA Docket Vol. 6, pp. 3183-3195.
[56] CTA Docket Vol. 6, pp. 3222-3223.
[57] CTA Docket Vol. 6, pp. 3254-3259.

view of the Resolution dated August 28, 2014 denying petitioner's Motion for Extension of Time.[58]

Thereafter, respondent presented testimonial and documentary evidence. He presented the following witnesses:

1. Aris de Guzman, Special Investigator, Investigation Division, Customs Intelligence & Investigation Service (CIIS) of BOC;[59]

2. Joel R. De Guzman; Intelligence Agent of the CIIS at the Harbor Center of the Sub Port of the Port of Manila;[60]

3. Eleazar C. Cesista, Acting Director III of DOF Revenue Office;[61]

4. Ismael L. Garcia, Customs Examiner or Customs Operations Officer (COO) III at Port of Subic;[62]

5. Leo Manuel F. Zarcal, Administrative Officer, Tax Exempt Division, BOC;[63]

6. Fertony G. Marcelo of the Compliance and Monitoring Unit, Office of the Commissioner, BOC;[64]

7. Eugenio L. Riego II, Chief of Legal and Investigation Division, Professional Regulation Commission;[65] and,

8. Marie Jane L. Edquid, Officer-In-Charge of Registration Division of PRC.[66]

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[58] CTA Docket Vol. 6, pp. 3251 & 3266.
[59] March 16, 2015 Minutes of Hearing, CTA Docket Vol. 7, p. 3585; Amended Judicial Affidavit of Aris C. De Guzman; CTA Docket Vol. 7, pp. 3476-3498, 3478.
[60] July 1, 2015 Minutes of Hearing, CTA Docket Vol. 8, p. 3744; Exhibit "34" - Judicial Affidavit of Joel R. De Guzman; CTA Docket Vol. 8, pp. 3713-3730.
[61] August 3, 2015 and September 2, 2015 Minutes of Hearing, CTA Docket Vol. 8, pp. 3819 & 3925; Exhibit "35" - Judicial Affidavit of Atty. Eleazar C. Cesista, CTA Docket Vol. 8, pp. 3820-3839.
[62] Minutes of Hearing dated January 25, 2016 and May 16, 2016, CTA Docket Vol. 8, pp. 3977 and 4082; Judicial Affidavit of Ismael L. Garcia, CTA Docket Vol. 8, p. 3941.
[63] August 8, 2016 Minutes of Hearing, CTA Docket Vol. 9, p. 4203; Judicial Affidavit of Mr. Leo Manuel F. Zarcal, Administrative Officer, Tax Exempt Division, BOC; CTA Docket Vol. 9, pp. 4236-4244.
[64] August 8, 2016 Minutes of Hearing, CTA Docket Vol. 9, p. 4203; Judicial Affidavit of Mr. Fertony G. Marcelo, Compliance and Monitoring Unit, Office of the Commissioner, BOC; CTA Docket Vol. 9, pp. 4266-4271.
[65] August 8, 2016 Minutes of Hearing, CTA Docket Vol. 9, p. 4203, Judicial Affidavit of Atty. Eugenio L. Riego II, Chief Attorney, Professional Regulation Commission, CTA Docket Vol. 9, p. 4134.

Respondent filed his Formal Offer of Exhibits on October 3, 2016.[67] Petitioner's Comment was filed through registered mail on November 14, 2016, which was received by the Court on November 24, 2016.[68] Respondent's offered exhibits were admitted in the Court's Resolution dated February 23, 2017, save for certain exhibits which were denied admission for failure to identify the exhibits and for failure to present their originals for comparison.[69] In the same Resolution, the Court granted petitioner's Motion for Leave to Present Rebuttal Evidence filed on November 2, 2016.

On April 24, 2017, petitioner presented Rannier A. Espino on rebuttal. In the same hearing, the Court ordered that the entire records of this case be forwarded to the Supreme Court, as directed, in line with the pending case docketed as G.R. No. 200489 relating to an interlocutory order in this case. The trial of this case was suspended until further order.[70]

Records disclose that G.R. No. 200489, entitled *"Republic of the Philippines, represented by the Commissioner of Customs vs. NPC Alliance Corporation",*[71] finds its root from the Court's Resolutions issued on June 3, 2010 and August 6, 2010.[72]

In the June 3, 2010 Resolution,[73] the Court denied respondent's Manifestation and Motion In Lieu of Comment filed on March 12, 2010, seeking disapproval of the Surety Bond G (16) No. 16552 issued by Philippine British Assurance Company, Inc. (PBAC) and praying to defer the release of the shipment until the approval of the new bond.[74] In the Resolution dated August 6, 2010, the Court denied respondent's Motion for Reconsideration of the June 3, 2010 Resolution and ordered respondent, in view of petitioner's compliance and filing of new surety bond on December 11, 2009, to immediately release to petitioner the subject generator sets.[75]

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[66] August 8, 2016 Minutes of Hearing, CTA Docket Vol. 9, p. 4203; TSN dated August 8, 2016, p. 20.
[67] CTA Docket Vol. 9, p. 4296.
[68] CTA Docket Vol. 9, p. 4456.
[69] CTA Docket Vol. 10, pp. 4487-4491.
[70] CTA Docket Vol. 10, p. 4531-4533.
[71] CTA Docket Vol. 4, pp. 1885-1930.
[72] CTA Docket Vol. 4, pp. 1887-1888.
[73] CTA Docket Vol. 3, pp. 1562-1568.
[74] CTA Docket Vol. 3, pp. 1471-1477.
[75] CTA Docket Vol. 3, pp. 1600-1606.

Republic of the Philippines, represented by respondent COC, questioned the aforesaid June 3, 2010 and August 6, 2010 Resolutions before the CTA *En Banc* in its Petition for Review (with application for a **T**emporary Restraining Order and/or Writ of Preliminary Injunction) filed on September 8, 2010, docketed as **CTA EB No. 679**, entitled *"Republic of the Philippines, rep. by the Commissioner of Customs vs. NPC Alliance Corporation rep. by Renato B. Magadia, Vice-Chairman of the Board"*.[76] The said Petition for Review was denied in the October 25, 2011 Decision of the CTA *En Banc*, declaring that the August 6, 2010 Resolution is only a Resolution of an incident *(i.e., surety bond compliance)*, which is not appealable because it does not finally dispose of the case on the merits, but leaves something to be done by the Court in Division.[77] The Court *En Banc* denied respondent's Motion for Reconsideration (of the Decision promulgated on October 25, 2011) filed on December 2, 2011[78] in the Resolution dated January 20, 2012 for having been filed out of time.[79]

Unfazed, the Republic of the Philippines filed a Petition for Review on Certiorari (with prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction) before the Supreme Court, docketed as G.R. No. 200489,[80] but the same was denied by the Supreme Court in the Resolution issued on August 8, 2018.[81]

Meanwhile, in an Order dated September 24, 2018, this case was transferred to this Division (First Division) pursuant to CTA Administrative Circular No. 02-2018, dated September 18, 2018, "Reorganizing the Three (3) Divisions of the Court".[82]

With Supreme Court's Entry of Judgment in G.R. No. 200489,[83] the case records of this case were forwarded back to this Court for further proceedings.[84]

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[76] Decision in CTA EB No. 679 dated October 25, 2011; CTA Docket Vol. 3, p. 1813.
[77] CTA Docket Vol. 3, pp. 1813-1830, 1828.
[78] CTA Docket Vol. 3, pp. 1831-1852.
[79] A copy of which is appended to the Petition for Review on Certiorari (with prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction); CTA Docket Vol. 4, pp. 1955-1957.
[80] CTA Docket Vol. 4, pp. 1885-1930.
[81] CTA Docket Vol. 10, pp. 4559-4567.
[82] CTA Docket Vol. 10, p. 4555.
[83] CTA Docket Vol. 10, p. 4570.
[84] October 29, 2019 Resolution in CTA EB No. 679; CTA Docket Vol. 10, p. 4573-4574.

In a Resolution dated February 3, 2020, this Court noted that, per Records Verification, petitioner has not complied with the submission of a new surety bond as provided in the Resolution dated May 6, 2015, which granted petitioner until May 23, 2015 to submit a new surety bond. Considering the lapse of time, the Court, in the same Resolution, made the following orders: (i) for the parties to manifest any developments which may impact or impede the continuation of the case; and, (ii) for petitioner to manifest its interest to submit a new surety bond, and whether it will continue with the presentation of its remaining rebuttal witnesses.[85]

Respondent failed to file his manifestation per Records Verification dated March 4, 2020,[86] while petitioner filed a Manifestation on September 17, 2020[87] stating that it will no longer present additional rebuttal witnesses and it is resting its case as there are no documentary evidence to formally offer [with the Court]; thus, the Court directed the parties to submit their respective memoranda within thirty (30) days from receipt of the Resolution dated September 24, 2020.[88]

This case was submitted for decision in the Resolution dated December 9, 2020, *sans* the parties' respective memoranda.[89]

THE ISSUES

The parties stipulated the following issues for this Court's resolution, *viz.:*

1. Whether or not fraud attended the subject importations:

    a. Whether or not petitioner undervalued its first shipment;

    b. Whether or not petitioner misrepresented its second shipment to be an inward shipment from abroad;

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[85] CTA Docket Vol. 10, pp. 4578-4579.
[86] As stated in the March 13, 2020 Resolution, CTA Docket Vol. 10, pp. 4587-4588.
[87] CTA Docket Vol. 10, pp. 4603-4604.
[88] CTA Docket Vol. 10, p. 4608.
[89] CTA Docket Vol. 10, unpaginated.

c. Whether or not petitioner violated the conditions of the DOF's May 10, 2007 indorsement which provided that the three (3) shipments shall be for purposes of "exhibition" under Section 105(i) of the Tariff and Customs Code of the Philippines, as amended;

2. Whether or not the prosecution has established substantial evidence to warrant the forfeiture of the subject importations; and,

3. Whether or not the right of the consignee, the herein petitioner, to procedural due process was violated.[90]

PARTIES' ARGUMENTS

In support of its Petition for Review, petitioner advances the following arguments:

1. COC erred in ordering and decreeing the forfeiture of the subject importations in favor of the government despite the fact that the prosecution failed to establish substantial evidence.[91]

2. Under Section 2535 of the TCCP, as amended, the burden of proof in seizure and/or forfeiture proceedings lies upon the claimant, but probable cause shall first be shown for the institution of such proceedings. According to petitioner, the prosecution should have shown first that there is probable cause by presenting in evidence the post clearance evaluation *(i.e., the Memorandum of CIIS Supervisor Aris De Guzman for the District Collector dated July 12, 2007)* since it was allegedly the basis for the issuance of the WSD; the post clearance evaluation should have been the subject of testimony of, and identified by De Guzman; the petitioner should have been given the opportunity to cross-examine De Guzman; the post clearance should have been the subject of stipulation between the parties. The assailed Decision admits that it was just made part of the records; thus, the post clearance evaluation is hearsay and inadmissible in evidence.[92]

3. Considering that the post clearance evaluation is hearsay, it follows that there was no probable cause for the institution of the seizure proceedings. Since there was no probable cause for the institution of the seizure proceedings and no other evidence was

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[90] Issues, Joint Stipulation of Facts, CTA Docket Vol. 1, p. 588.
[91] CTA Docket Vol. 1, p. 21.
[92] CTA Docket Vol. 1, pp. 21-23.

presented by the prosecution as it was declared to have waived its right to present evidence and considered to have rested its case, there was no substantial evidence to warrant the forfeiture of the subject importations in favor of the government. Without substantial evidence, the assailed Decision cannot stand on its own.[93]

4. Respondent erred in ordering and decreeing the forfeiture of the subject importations in favor of the government as petitioner's right to procedural due process was violated. It claims that there is nothing on record that would show that the hearing officer made an order that the case was already submitted for decision nor an order for the parties to submit their respective memoranda; it was legally impossible for the petitioner to refute the allegations against it as it was deprived of the opportunity to present any evidence; and, the proceedings were terminated without the petitioner even knowing that the case was already submitted for decision.[94]

5. The rules and regulations governing the issuance of warrants of seizure and detention and the conduct of seizure proceedings are prescribed in Customs Administrative Order (CAO) No. 9-93, and under Section 7 thereof, formal hearing and presentation of evidence are required and CAO No. 9-93 cannot be disregarded by the BOC since this was duly promulgated by the COC, with the approval of the Secretary of Finance, pursuant to the power of the COC to make rules and regulations to implement customs laws under Section 608 of the TCCP, as amended. There being no formal hearing and presentation of evidence, there was therefore a clear violation of petitioner's right to procedural due process.[95]

6. COC erred in ruling that petitioner did not comply with the conditions in the grant of the privilege of conditionally-free importation pursuant to Section 105(i) of the TCCP, as amended.[96]

7. The release of articles that have been granted conditionally-free importation status is dependent on the posting of a bond in an amount specified in Section 105(i) of the TCCP, as amended. The bond shall answer for the exportation of the articles upon the expiration of the period of the conditionally-free release or the payment of the corresponding duties, taxes and other charges. Upon the expiration of the period of the conditionally-free release of the articles, the consignee has two options: (1) re-export the articles; or (2) pay the corresponding duties, taxes and other charges.[97]

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[93] CTA Docket Vol. 1, pp. 23-24.
[94] CTA Docket Vol. 1, pp. 24-26.
[95] CTA Docket Vol. 1, p. 26.
[96] CTA Docket Vol. 1, p. 27.
[97] CTA Docket Vol. 1, pp. 27-28.

8. Petitioner chose not to exercise the option of re-exportation until such time that the generator sets have served their purpose. Per the Contract for Temporary Power Generation Services between petitioner and Aggreko International Projects Ltd., the "Operational Service Period" is seventeen (17) weeks and the letter of Mr. Khatami also mentioned that the generator sets will be used at the plant site for the same period of seventeen (17) weeks but the period was shortened to two (2) months per the 1st Indorsement of the DOF dated May 10, 2007. This was the reason why petitioner submitted three (3) renewal re-export bonds in view of the expiration of the first bonds. The petitioner was in effect asking for extension of the period for exportation. Petitioner argues that how could it be said that it did not comply with the conditions in the grant of the conditionally-free release of its shipments as it requested for the renewal of the re-export bonds which was denied, and its alternative request for the payment of duties and taxes was deemed denied by inaction.[98]

9. Respondent erred in ruling that fraud attended the subject importations. As discussed, there was no substantial evidence to warrant the forfeiture of the shipments, hence, fraud was not proved. The failure to prove fraud is a bar to forfeiture.[99]

10. Fraud did not attend the subject importations. The notation "All above equipments are temporary import only, to be used on a temporary basis and shall be returned to Aggreko (Singapore) Pte. Ltd upon completion of project" appears on the face of the commercial invoices. It was also established that the equipment will be used at the plant site of the petitioner only for a period of seventeen (17) weeks.[100]

11. Section 1308 of the TCCP, as amended, recognizes that an importation may not be in pursuance of a purchase or a sale, as in the case of importation in this case, but there is no provision in the TCCP stating the basis of dutiable value when the imported articles are just leased or rented. Under Section 201 of the TCCP, as amended, the basis in computing the dutiable value is the selling price. Thus, if the valuation declared in the commercial invoice is the lease or rental value, the shipment may be declared as undervalued, and it is unfair to the consignee if he were made to pay the duties and taxes based on the selling price of the imported article.[101]

12. Petitioner was advised by people from the DOF that it may avail of conditionally-free importation under Section 105(i) of the TCCP, as amended, since its importations were temporary importations, and it was informed that same equipment were also imported by the National Power Corporation (NAPOCOR) in

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[98] CTA Docket Vol. 1, pp. 27, 29-30.
[99] CTA Docket Vol. 1, p. 30.
[100] CTA Docket Vol. 1, p. 31.
[101] CTA Docket Vol. 1, p. 33.

2006 on a temporary basis and were also granted conditionally-free importation by the DOF. On the basis of the advice, petitioner wrote a letter to the DOF requesting that the three (3) shipments be considered as conditionally-free importations under Section 105(i) of the TCCP, as amended, and petitioner did this in all good faith without any intention of defrauding the government.[102]

13. The term "exhibition" is not defined in the TCCP, as amended and it is therefore susceptible to several interpretations. The ruling of the District Collector in the July 18, 2007 Order, lifting the WSD issued for the first shipment, is imprimatur that the temporary installation of the power generators at the plant site of the petitioner for testing purposes is covered by the term "exhibition".[103]

14. The subject importations are not prohibited by law and they were not effected contrary to law. Neither was there a false declaration by the petitioner concerning the importations in that the commercial invoices bear the notation that they were temporary importations. The commercial invoices are not spurious and the entry of these importations at the customhouse did not prejudice the government because they were covered by re-export bonds to answer for whatever duties, taxes and other charges.[104]

Respondent, on the other hand, states the following counter-arguments:

1. Fraud attended petitioner's importation. Petitioner committed three (3) counts of fraud relative to its shipments.

First, petitioner committed undervaluation of its first shipment as the declared values of the shipments per Import Entry No. C-1697-07 of US$22,725 and US$9,500.00, which were based on Invoice Nos. 20070410-NPCA-01 (for 5 generator sets) and 20070410-NPCA-02 (for 3 transformers), respectively, were lower by 98% for generator sets and 99% for transformers when the same were compared with their true values as reflected in the genuine commercial invoices issued by the shipper Aggreko Singapore Pte. Ltd., as reported by the Customs Officer-on-Case, Rico E. Reyes, Jr. in his Memorandum dated April 23, 2007. The May 10, 2007 Indorsement of the DOF, allowing the conditionally-free importation of shipment indicates the true aggregate value of the articles of USD1,615,000.00, thus, respondent theorizes that the petitioner attached the genuine invoices to its application for conditionally-free importation and that the

[102] CTA Docket Vol. 1, pp. 33-34.
[103] CTA Docket Vol. 1, pp. 34-35.
[104] CTA Docket Vol. 1, p. 35.

invoices attached to Import Entry C-1697-07 were false or spurious. The said 98% and 99% discrepancies exceed the 30% threshold under Section 2503 of the TCCP, as amended, and this constitute *prima facie* evidence of fraud, warranting forfeiture under Section 2530 of the TCCP, as amended.[105]

Second, petitioner filed an import entry for its second shipment of generator sets which actually originated from Mindoro. Respondent contends that the generator sets under the second shipment which were consigned to petitioner are the same generator sets released to NAPOCOR as conditionally-free importation under DOF Indorsement dated June 14, 2005 to be used for its project in San Jose, Mindoro Occidental to be re-exported after completion of the project which was extended until May 27, 2007; that before the expiry of the re-export bond posted by NAPOCOR, the same generator sets were not re-exported to Singapore but transported instead from San Jose, Mindoro to Subic, Zambales as evidenced by coastwise B/L No. 16; the second shipment is in truth a coastwise or domestic shipment of articles previously imported duty free by NAPOCOR by virtue of the June 14, 2005 Indorsement of DOF; petitioner submitted false invoices (Invoice Nos. 20070417-NPCA-01 and 20070417-02) to make it appear that the articles arrived from abroad in order that it may avail of the exemption under Section 105 of the TCCP, as amended, and thus forego payment of lawful duties on said generators previously imported by NAPOCOR; petitioner's act of submitting false invoices as well as filing a false import entry (Import Entry No. C-2171 filed by petitioner on May 17, 2007 for exactly the same generator sets covered by Import Entry C-59831-2005 filed by NAPOCOR) demonstrate a clear case of fraud and bad faith on the part of the petitioner intended for no other purpose but to unlawfully deprive government of lawful duties on the subject shipment.[106]

Petitioner was found using the three (3) shipments of generator sets for a purpose other than that which it specified in its application for conditionally-free importation; its misrepresentation constitutes a false declaration penalized by Section 2530 (f) and (l) paragraph 3.[107]

Respondent theorizes that petitioner's undervaluation of its shipments, its use of spurious invoices, the filing of a false import entry and its use of the subject generators for a purpose other than that it stated in its application for tax/duty free exemption cannot but constitute fraud or willful

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[105] CTA Docket Vol. 1, pp. 320-323.
[106] CTA Docket Vol. 1, pp. 323-327.
[107] CTA Docket Vol. 1, p. 327.

deception on its part to deprive government of its right to the lawful revenues due on its three shipments.[108]

2. Petitioner is guilty of fraud which bars the release of the properties forfeited in favor of government, citing as basis the provisions of Section 2301 of the TCCP, as amended, and Section 4, CAO No. 9-93.[109]

3. Petitioner's misrepresentation in its application for tax and duty exemption divested it of the right to either re-export the generators or pay the duties due thereon. Accordingly, to be entitled to the benefit of Section 105(i) of the TCCP, as amended, the importer must meet the conditions for the grant of the exemption, chief of which is the use of the articles for any of the purposes specified thereunder which include "display" or "exhibition"; after the goods shall have been used for any of the purposes under Section 105(i), the importer may exercise one of two options – re-export the subject articles or pay the duties due thereon; however, if the articles are used for a purpose other than that allowed by Section 105(i), the importation shall be deemed fraudulent and shall subject the goods to forfeiture. The option of re-export or payment of duties pertain only to an importer that has faithfully complied with the requirements of Section 105(i) and not to one that has violated the same in which case the goods shall be subject to forfeiture. It would certainly be absurd to reward the importer found guilty of misrepresentation by still allowing it to either re-export the articles or retain possession by paying the duties due thereon.[110]

4. The prosecution has sufficiently shown probable cause for the institution of seizure proceedings and adduced substantial evidence warranting forfeiture of the subject generator sets. Accordingly, fraud was established in this case that prompted the issuance of a WSD on July 31, 2007 against the articles, and the burden of proof was upon petitioner to show that it had not reneged on its undertaking to use the generator sets for "exhibition" in accordance with Section 105(i).

On the alleged failure to prove probable cause on the ground that petitioner was not afforded opportunity to cross examine CIIS Supervisor De Guzman and that the July 12, 2007 Memorandum of De Guzman was not formally offered in evidence, administrative proceedings are not bound by technical rules of procedures and evidence, and a quasi-judicial body can accept evidence which may not be admitted in a judicial proceedings where the rules of court on evidence are strictly observed; though the July 12, 2007 Memorandum of the CIIS was not formally presented nor offered in evidence, the same was submitted to the hearing officer and was made part of the record; the hearing officer acted in the sound exercise of his jurisdiction in admitting said document and the

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[108] CTA Docket Vol. 1, p. 328.
[109] CTA Docket Vol. 1, pp. 332-334.
[110] CTA Docket Vol. 1, pp. 334-337.

collector committed no error in considering the July 12, 2007 Memorandum in decreeing forfeiture even if said document was not formally presented and offered in evidence.[111]

5. Petitioner was able to present its evidence and was also afforded the opportunity to dispute the post clearance evaluation of the CIIS through its memorandum but it simply opted not to be heard on the matter. Petitioner's claim that it was not given opportunity to present evidence and that the hearing officer (Atty. Palaña) submitted the case for decision without giving notice thereof is false and misleading. Petitioner admitted that it presented evidence *ex parte* during the hearing on July 18, 2007 and that it presented Rowena B. Farin, its authorized representative, as its witness with her affidavit as her direct testimony and documents cited therein were marked as its evidence. It is false and misleading for petitioner to contend that it was not given notice that the case had been submitted for decision after the November 28, 2007 hearing considering that the hearing officer, as admitted by petitioner itself, instructed the parties to submit their respective memoranda, which document is usually required after presentation of evidence to summarize the respective positions of the parties. The hearing officer exercised sound discretion in requiring petitioner and the prosecution to submit memoranda instead of directing them to formally present evidence, and whatever evidence petitioner had to offer to refute the contents of the July 12, 2007 Memorandum, could have been easily cited in and attached to its memorandum; yet petitioner chose not to be heard on this matter. Petitioner cannot now be heard to complain that it was deprived of its right to due process as the essence of due process in an administrative proceeding is simply an opportunity to explain one's side or an opportunity to seek reconsideration of an action complained of. Due process is not violated where one is given the opportunity to be heard but chooses not to give his side.[112]

THE RULING OF THE COURT

Jurisdiction over the case

This Court shall first determine whether or not it has jurisdiction over the subject matter presented before it. This is because jurisdiction is conferred by law, and lack of it affects the very authority of the Court to take cognizance of and to render judgment on the

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[111] CTA Docket Vol. 1, p. 337-340.
[112] CTA Docket Vol. 1, pp. 340-342.

action.[113] Any act that it performs without jurisdiction shall be null and void, and without any binding legal effects.[114]

The cause of action of the present case is the decision of the respondent affirming the forfeiture of petitioner's (3) three shipments in favor of the government. This Court is vested with authority to review on appeal such decision of forfeiture by respondent pursuant to Section 7(a)(4)[115] of Republic Act (R.A.) No. 1125,[116] as amended by R.A. No. 9282.[117]

This Court shall proceed to determine whether the present case was filed on time. It is doctrinal that the right to appeal is not a natural right. It is also not part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal. The failure to timely perfect an appeal cannot simply be dismissed as a mere technicality, for it is jurisdictional.[118]

Under Section 11 of R.A. No. 1125, as amended by R.A. No. 9282, a party adversely affected by a decision or ruling of the COC may file an appeal with the Court of Tax Appeals (CTA) within thirty (30) days after the receipt of such decision or ruling.[119] This statutory

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[113] Commissioner of Internal Revenue vs. Mindanao I Geothermal Partnership, G.R. No. 192006, November 14, 2018.
[114] Bilag *et al.* vs. Ay-ay e*t al.,* G.R. No. 189950, April 24, 2017.
[115] Sec. 7. Jurisdiction. - The CTA shall exercise:
a. Exclusive appellate jurisdiction to review by appeal, as herein provided: xxx
4. Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs.
[116] An Act Creating the Court of Tax Appeals.
[117] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and For Other Purposes.
[118] Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation, G.R. No. 167606, August 11, 2010.
[119] SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - **Any party adversely affected by a decision, ruling** or inaction **of** the Commissioner of Internal Revenue, **the Commissioner of Customs**, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central

privilege is re-echoed in Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA).[120]

Pursuant to Section 4, Rule 8 of the RRCTA,[121] an appeal from a decision or ruling of the COC shall be taken to the Court by filing before it a petition for review as provided in Section 2, Rule 42 of the Rules of Court, *viz.:*

> Section 2. *Form and contents.* — **The petition** shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and **shall** (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) **indicate the specific material dates showing that it was filed on time**; (c) set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) **be accompanied** by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and **other material portions of the record as would support the allegations of the petition**. (Boldfacing & underscoring supplied)

Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein." *(Boldfacing supplied)*

[120] SEC. 3. *Who may appeal; period to file petition.* – (a) **A party adversely affected** by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or **by a decision or ruling of the Commissioner of Customs**, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes. (Boldfacing supplied)

[121] SEC. 4. *Where to appeal; mode of appeal.* – (a) **An appeal from** a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, **the decision or ruling of the Commissioner of Customs**, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, **shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court**. The Court in Division shall act on the appeal. (Boldfacing supplied)

The provision of the Rules of Court requires that the specific material dates shall be indicated in the Petition for Review for the purpose of showing that it was filed on time, and that the Petition for Review be accompanied, among others, of material portions of the record that would support the allegations of the petitioner.

The timeliness of an appeal is a factual issue that requires a review of the evidence presented.[122]

A meticulous perusal of the case records reveals that petitioner did not indicate in its Petition for Review the date of its receipt of the assailed Decision of the Commissioner of Customs, more so, it failed to adduce supporting evidence to show that the same was timely filed. Hence, petitioner has failed to establish the timely filing of its Petition for Review, which, as aforesaid, is a jurisdictional requirement. On this ground alone, the Petition for Review must perforce be slain at sight.

Nature of seizure and forfeiture case; degree of proof to justify the forfeiture of goods; discussion of the demerits of the case

Even if the Court would assume that the Petition for Review was filed on time, the same is devoid of merit.

It is well-settled that seizure and forfeiture proceedings under the tariff and customs laws are not criminal in nature as they do not result in the conviction of the offender nor in the imposition of the penalty provided for in the Code. Seizure proceedings are purely civil and administrative in character, the main purpose of which is to enforce the administrative fines or forfeiture incident to unlawful importation of goods or their deliberate possession.[123]

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[122] Republic of the Philippines et al. vs. Martinez et al., G.R. Nos. 224438-40, September 3, 2020.

[123] People of the Philippines vs. Court of First Instance of Rizal, Branch IX, Quezon City, et al., G.R. No. L-41686, November 17, 1980; Feeder International Line, Pte., Ltd. vs. Court of Appeals et al., G.R. No. 94262, May 31, 1991.

Proof beyond reasonable doubt is not required in order to justify the forfeiture of the goods. The degree of proof required is merely substantial evidence which means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[124]

The Court is tasked to ascertain whether the required degree of proof to sustain the forfeiture of the subject generator sets and accessories was established in this case. Equally important aspect of this case is the determination of whether procedural due process was afforded to petitioner in the administrative level as denial of procedural due process would warrant the nullification of the assailed COC Decision.[125]

The articles in the present case were decreed forfeited in favor of the government for violation of Section 2530 paragraph (f) and (l-3, 4, 5) of the TCCP, as amended, which states:

> "SECTION 2530. Property Subject to Forfeiture Under Tariff and Customs Law. — Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subject to forfeiture:
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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 were entered to be used as instruments in the importation or exportation of the former;
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> xxx xxx xxx
>
> l. Any article sought to be imported or exported:
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> xxx xxx xxx

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[124] Feeder International Line, Pte., Ltd. vs. Court of Appeals et al., G.R. No. 94262, May 31, 1991.

[125] Applying by analogy the declaration in People of the Philippines et al. vs. Calo, et al., G.R. No. 88531, June 18, 1990 citing People vs. San Diego, 26 SCRA 522 [1968] where it was declared that "if, as in the criminal case, involved in the instant special civil action, the prosecution should be denied such opportunity [to present evidence anent the motion for bail], there would be a violation of procedural due process, and the order of court granting bail should be considered void on that ground.

> (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 was entered through a customhouse to the prejudice of the government."

Respondent contends that fraud attended the importation of the petitioner, *i.e.,* the first shipment was undervalued; the second shipment was a coastwise or domestic shipment of articles previously imported duty-free by NAPOCOR but petitioner submitted false invoices to make it appear that the articles arrived from abroad in order that it may avail of the exemption under Section 105 of the TCCP, as amended, thereby foregoing payment of lawful duties on said generators; and, petitioner was found using the three (3) shipments of generator sets for a purpose other than that which it specified in its application for conditionally-free importation.

Petitioner claims that respondent erred in ordering and decreeing the forfeiture of the importations in favor of the government, arguing that (i) there was no probable cause for the institution of the seizure proceedings and there was no substantial evidence to warrant their forfeiture;[126] (ii) there was violation of procedural due process;[127] (iii) respondent erred in ruling that it did not comply with the conditions in the grant of the privilege of conditionally-free importation pursuant to Section 105(i) of the TCCP, as amended;[128] and, (iv) respondent erred in ruling that fraud attended the importations.[129]

The Court finds petitioner's contentions devoid of merit.

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[126] CTA Docket Vol. 1, pp. 21-24.
[127] CTA Docket Vol. 1, pp. 24-26.
[128] CTA Docket, p. 27.
[129] CTA Docket Vol. 1, pp. 30-31.

Existence of Probable cause

The TCCP, as amended, requires the presence of probable cause before any proceeding for seizure and/or forfeiture is instituted.[130] Section 2535 of the TCCP, as amended, is explicit in this regard,[131] *viz.:*

> "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."

Based on the afore-quoted provision, before forfeiture proceedings are instituted, the law requires the presence of probable cause. Once established, the burden of proof is shifted to the claimant.[132]

Section 2301 of the TCCP, as amended,[133] further mandates that, upon making any seizure, a warrant for the detention of the property shall be issued, viz.:

> "SECTION 2301. Warrant for Detention of Property-Cash Bond. — **Upon making any seizure, the Collector shall issue a warrant for the detention of the property**; and if the owner or importer desires to secure the release of the property for legitimate use, the Collector shall, with the approval of the Commissioner of Customs, surrender it upon the filing of a cash bond, in an amount to be fixed by him, conditioned upon the payment of the appraised value of the article and/or any fine, expenses and costs which may be adjudged in the case: *Provided,* That such importation shall not be released under any bond when there is a *prima facie* evidence of fraud in the importation of article: *Provided, further,* T**hat articles**

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[130] Commissioner of Customs vs. William Singson and Triton Shipping Corporation, G.R. No. 181007, November 21, 2016.
[131] Acting Commissioner of Customs vs. Court of Tax Appeals and Charles Andrulis, G.R. No. 62636, April 27, 1984.
[132] Commissioner of Customs vs. William Singson and Triton Shipping Corporation, G.R. No. 181007, November 21, 2016; Carrara Marble Philippines, Inc. vs. Commissioner of Customs, G.R. No. 129680, September 1, 1999.
[133] As amended by Republic Act No.7651, June 4, 1993 (An Act to Revitalize and Strengthen the Bureau of Customs, Amending for the Purpose Certain Sections of the Tariff and Customs Code of the Philippines, as Amended).

> **the importation of which is prohibited by law shall not be released under any circumstance whatsoever**: *Provided, finally,* That nothing in this section shall be construed as relieving the owner or importer from any criminal liability which may arise from any violation of law committed in connection with the importation of the article." (Boldfacing supplied)

Notwithstanding the provisions of Section 2301 of the TCCP, as amended, even if no warrant of seizure or detention had been previously issued by the Collector of Customs in connection with seizure and forfeiture proceedings, the BOC acquires exclusive jurisdiction over imported goods, for purposes of enforcement of the customs laws, from the moment the goods are actually in its possession or control.[134] The Collector of Customs when sitting in forfeiture proceedings, constitutes a tribunal upon which the law confers jurisdiction to hear and determine all questions touching the forfeiture and further disposition of the subject matter.[135]

The records of this case disclose that Collector Zamoranos of the BOC at the Port of Subic issued three (3) WSDs for the concerned shipments.

The **first WSD** was issued on April 29, 2007 for the **first shipment**, under **Subic Seizure Identification No. 2007-22.** The issuance of said WSD was triggered on account of the recommendation of Reyes, which was indorsed to Collector Zamoranos by the Office of the COC, based on the findings that there was a **98% undervaluation** with respect to the five (5) generator sets and a **99% undervaluation** with respect to the three (3) transformers.[136]

The **second WSD** dated June 26, 2007 was issued also for the **first shipment**, under **Subic Seizure Identification No. 2007-22-A**, stating that pending the final approval by the COC of the recommendation to release the shipment pending seizure proceedings upon posting of bond, it was reported that the subject shipment was irregularly released; thus, Collector Zamoranos ordered the articles seized.[137]

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[134] Republic of the Philippines vs. Court of First Instance of Manila (Br. XXII) and Mayer Steel Pipe Corporation, G.R. No. 43747, September 2, 1992.
[135] Republic of the Philippines vs. Court of First Instance of Manila (Br. XXII) and Mayer Steel Pipe Corporation, G.R. No. 43747, September 2, 1992.
[136] See footnote 5.
[137] See footnote 12.

The aforesaid WSDs were, however, lifted by District Collector Zamoranos in her **Order** issued on July 18, 2007, stating that based on available evidence presented by petitioner, there was no irregular release of the shipment and all indications reveal that the articles are being used only as exhibits to demonstrate that the plant could run on a self-generated power to supply the electricity requirements of the petrochemical facility project; and that the articles are to be re-exported after the exhibition/demonstration pursuant to the recommendation of the DOF under 1st Indorsement dated May 10, 2007.[138] Pertinent portions of the Order read as follows:

> "Due to the unpreparedness of the prosecution, the hearing was moved to July 5, 2007 but has to be postponed again to a later date because the affidavit submitted by Mr. Aris de Guzman, which has to serve as his direct testimony, includes container vans which are not subject of the case at bar.
>
> On July 18, 2007, the Government Prosecutor and his witness failed to appear and considering the serious objection of the Consignee's counsel for another postponement an Order was issued declaring the prosecution to have waived its right to present evidence and considered its case rested.
>
> Thereafter, Consignee was allowed to adduce its evidence ex-parte. It presented Ms. Rowena B. Farin as its lone witness and the following documents were marked as exhibits, to wit:
>
> xxx xxx xxx
>
> A careful assessment of **available evidence** indicates that there was **no irregular release of the subject shipment**. Moreover, **all indications reveal that the subject articles are being used as exhibits** if only to demonstrate that the plant could be run on a self-generated power to supply the electricity requirements of the petrochemical facility project to be re-exported after the exhibition/demonstration pursuant to the recommendation of the Department of Finance under 1st Indorsement dated May 10, 2007. Xxx
>
> Furthermore, the DOF recommendation (Exhibit "3") is to be given paramount consideration because the Bureau of Customs is merely an implementing agency of the Department of Finance and the action of the latter enjoys the presumption of regularity.
>
> WHEREFORE, all of the foregoing considered, and by virtue of the powers vested in this Office, it is hereby decreed that the subject Warrant of Seizure and Detention issued against the aforementioned articles are hereby LIFTED.

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[138] Exhibit "E", CTA Docket Vol. 1, p. 168-171.

So ordered."[139] (Boldfacing supplied)

District Collector Zamoranos, however, issued subsequently the **third WSD** on **July 31, 2007** for the twenty-six (26) generator sets, **under Subic Seizure Identification No. 2007-25**, on the ground that **no re-exportation** of the subject shipments nor payment of the corresponding duties and taxes thereon have been made despite the lapse of the period of the conditionally-free release[d] shipments, under Section 105(i) of the TCCP, pursuant to the 1st Indorsement of the DOF dated 10 May 2007.[140]

Based on the facts of the case, the requirement of the law that the existence of probable cause should first be shown before filing of the forfeiture proceedings had been fully met.

The reported undervaluation of the first shipment under Subic Seizure Identification No. 2007-22, and the non-re-exportation of the shipments under Subic Seizure Identification No. 2007-25 are *prima facie* evidence of violation of the TCCP. The findings by the BOC officials constitute probable cause as required by Section 2535 of the TCCP, as amended.

There being probable cause in this case, the burden of proof had been shifted to petitioner, which it failed to satisfactorily discharge.

On petitioner's contention that the post clearance evaluation is hearsay and inadmissible in evidence *(as petitioner believes that the post clearance evaluation should have been the subject of testimony of, and identified by De Guzman; the petitioner should have been given the opportunity to cross-examine De Guzman; and, the post clearance should have been the subject of stipulation between the parties)*, the same is misplaced.

Suffice it to say and as earlier emphasized, seizure proceedings are purely civil and administrative in character.[141]

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[139] Exhibit "E", CTA Docket Vol. 1, pp. 168-171.
[140] See footnote 17.
[141] People of the Philippines vs. Court of First Instance of Rizal, Branch IX, Quezon City, et al., G.R. No. L-41686, November 17, 1980; Feeder International Line, Pte., Ltd. vs. Court of Appeals et al., G.R. No. 94262, May 31, 1991.

Administrative bodies are not bound by the technical niceties of law and procedure and the rules obtaining in courts of law. Administrative tribunals exercising *quasi-judicial* powers are unfettered by the rigidity of certain procedural requirements, subject to the observance of fundamental and essential requirements of due process in justiciable cases presented before them. In administrative proceedings, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense.[142]

Though procedural rules in administrative proceedings are less stringent and often applied more liberally, administrative proceedings are not exempt from basic and fundamental procedural principles, such as the right to due process in investigations and hearings. The right to substantive and procedural due process is applicable to administrative proceedings.[143]

The essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.[144] In essence, procedural due process entails that a party is afforded a reasonable opportunity to be heard in support of his case and what is prohibited is the absolute absence of the opportunity to be heard.[145] *"To be heard"* does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.[146]

In this case, petitioner stated in its Petition for Review,[147] which fact was admitted by respondent,[148] that the July 12, 2007 Memorandum of De Guzman *(referred to as the post clearance*

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[142] Palao vs. Florentino International, Inc., G.R. No. 186967, January 18, 2017.
[143] Montoya vs. Varilla, et al., G.R. No. 180146, December 18, 2008.
[144] Montoya vs. Varilla, et al., G.R. No. 180146, December 18, 2008.
[145] In re: The Writ of Habeas Corpus for Michael Labrador Abellana (Petitioner, Detained at the New Bilibid Prisons, Muntinlupa City) vs. Paredes et al., G.R. No. 232006, July 10, 2019.
[146] Mutuc vs. Court of Appeals et al., G.R. No. 48108, September 26, 1990 citing Juanita Yap Say vs. IAC, G.R. No. 73451, March 28, 1988.
[147] Paragraph 26, Statement of Facts and the Case of the Petition for Review, CTA Docket Vol. 1, pp. 11-12.
[148] Par. 24, Answer, CTA Docket, p. 316.

evaluation)[149] was filed with the Office of the District Collector on July 12, 2007; and that said Memorandum forms part of the file of Collector Zamoranos, *viz.:*

> "In the **original records of the case on file with the District Collector, there appears a Memorandum for the District Collector dated 12 July 2007 signed by Mr. Aris De Guzman**, Supervisor, Intelligence Division, Port of Subic, informing the Collector that upon verification, **they found out that there was no exhibition** at the plant site of NPC Alliance Corporation at Batangas II, Mariveles, Bataan. De Guzman then requested the District Collector for the issuance of a WSD for the remaining 19x20 containers containing generator sets. It appears that the **said Memorandum was filed with the Office of the District Collector also on that date**." (Boldfacing supplied)

Also, petitioner expressly mentions, in its Petition for Review, that the assailed Decision states that the post clearance evaluation was made part of the records.[150]

Being part of the BOC records, the post clearance evaluation was aptly considered by the Collector of Customs and the COC as they are not bound by the technical niceties of law and procedure and the rules obtaining in courts of law.

Issue on procedural due process

Petitioner asserts that it was legally impossible to refute the allegations against it as it was deprived of the opportunity to present any evidence; there is nothing on records that would show that the hearing officer made an order that the case was already submitted for decision nor an order for the parties to submit their respective memoranda; and, the proceedings were terminated without the petitioner even knowing that the case was already submitted for decision.[151]

The Court finds petitioner's assertions bereft of merit.

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[149] Petition for Review, CTA Docket, p. 21.
[150] Arguments, Petition for Review, CTA Docket Vol. 1, p. 23.
[151] CTA Docket Vol. 1, pp. 24-26.

Petitioner was heard in the administrative level, as disclosed in its very own Petition for Review, when it filed a Motion to Lift Warrant of Seizure and Detention for the first shipment, alleging, among others, that the irregularities or illegalities that attended the importation and its release were undertaken by its broker without its knowledge or consent, *viz.:*

> "On even date, at the hearing of Subic Seizure Identification No. 2007-22, counsel for the petitioner filed a **Motion to Lift Warrant of Seizure and Detention for the first shipment** of 8 x 20' Container Vans Nos. XAAB122-4, XAAC007-0, XABD011-4, XATG044125-0, XATG045125-0, XATG046125-0, XATG047125-0, E9104, stc: Eight (8) packages of Generator Sets and Transformers, which were the subject of Subic Seizure Identification No. 2007-22, **arguing**, among others, the following: (1) Consignee was of the knowledge and belief that subject articles were imported and released in accordance with law, including the procurement of proper re-export bonds thereon; (2) **Irregularities or illegalities which attended said importation and release, if any, were undertaken by the broker without the consignee's knowledge or consent**; and (3) Upon knowing that the required re-export bond has not been secured, consignee immediately obtained the re-export bond for the importation of the subject articles in compliance with law. The prosecution was given up to June 01, 2007 to file Comment/Opposition and thereafter said motion is deemed submitted for resolution.[152] (Boldfacing supplied)

Petitioner's own Petition for Review discloses also that it was accorded opportunity to present evidence, *viz.:*

> "At the hearing on July 18, 2007, the prosecutor, Atty. Calixihan and his witness, Aris C. De Guzman, failed to appear despite notice and considering the serious objection of the consignee's counsel for another postponement, an **Order was issued declaring the prosecution to have waived its right to present evidence and considered its case rested**. Thereafter, the **petitioner was allowed to adduce evidence ex-parte**. **Ms. Rowena B. Farin, was presented as witness**, per authorization by the consignee. Her Affidavit served as her direct testimony and some documents were marked as exhibits."[153] (Boldfacing & underscoring supplied)

With respect to petitioner's contentions that there is nothing on records that would show that the hearing officer made an order that

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[152] Par. 15, Statement of Facts and the Case of the Petition for Review, CTA Docket Vol. 1, pp. 8-9.
[153] Par. 27, Statement of Facts and the Case of the Petition for Review, CTA Docket Vol. 1, p. 12.

the case was already submitted for decision nor an order for the parties to submit their respective memoranda; and, that the proceedings were terminated without the petitioner even knowing that the case was already submitted for decision, the same are likewise bereft of merit.

It is settled presumption that official duty is regularly performed.[154] Courts have a right to assume that officials have done that which the law requires them to do, in the absence of positive proof to the contrary.[155]

The law requires that in seizure cases, the Collector, after a 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.[156] To be sure, the District Collector in this case rendered the forfeiture decree, after the petitioner was heard through its pleadings and was accorded the opportunity to present its evidence before the BOC hearing officer, as disclosed in petitioner's own Petition for Review.

Clearly, the only logical conclusion, in the absence of any proof to the contrary, is that the official duties of the hearing officer and the District Collector in the forfeiture proceedings before the BOC had been regularly performed in accordance with the law.

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[154] Section 3, Rule 131 of the Rules on Evidence provides:
"Section 3. Disputable presumptions. – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence: xxx
(m) That official duty has been regularly performed[.]"

[155] Ramonito O. Acaac et al. vs. Melquiades D. Azcuna, Jr. et al., G.R. No. 187378, September 30, 2013.

[156] Section 2312 of TCCP, as amended states:
"SECTION 2312. Decision or Action of Collector in Protest and Seizure Cases. — When a protest in proper form is presented in a case where protest is required, the Collector shall issue an order for hearing within fifteen (15) days from receipt of the protest and hear the matter thus presented. Upon the termination of the hearing, the Collector shall render a decision within thirty (30) days, and if the protest is sustained, in whole or in part, he shall make the appropriate order, the entry reliquidated necessary.
In seizure cases, the Collector, after a 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."

Fraud has been established

Petitioner asserts that fraud did not attend the subject importations, claiming that (i) the commercial invoices bear the notation that they were temporary importations; and, (ii) the commercial invoices are not spurious and the entry of these importations at the customhouse did not prejudice the government because they were covered by re-export bonds to answer for whatever duties, taxes and other charges.[157]

Respondent, on the other hand, argues that fraud attended the importation of the petitioner, *i.e.,* the first shipment was undervalued *(as the declared values of the shipments per Import Entry No. C-1697-07, which were based on Invoice Nos. 20070410-NPCA-01 and 20070410-NPCA-02 are lower by 98% (for generator sets) and 99% (for transformers) when the same are compared with their true values as reflected in the genuine commercial invoices)*; the second shipment was a coastwise or domestic shipment of articles previously imported duty-free by NAPOCOR but petitioner submitted false invoices to make it appear that the articles arrived from abroad in order that it may avail of the exemption under Section 105 of the TCCP, as amended thereby foregoing payment of lawful duties on said generators; and, petitioner was found using the three (3) shipments of generator sets for a purpose other than that which it specified in its application for conditionally free importation.[158]

The Court sustains respondent's findings that fraud attended the importations.

The evidence reveals that Import Entry No. 2007C1679 for the first shipment under Bill of Lading No. APLU057249171 indicates the total customs value of **US$32,225**,[159] which is way lower that the aggregate amount appearing in Invoice Nos. 20070410-NPCA-01 and 20070410-NPCA-02 presented by petitioner before this Court reflecting the amounts of **US$1,045,000.00** and **US$9,500.00**, respectively.[160] Worst, the total customs value appearing in the said Import Entry is way much lower than the aggregate value of the first shipment amounting to **US$1,615,000.00** based on the copies of

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[157] CTA Docket Vol. 1, p. 35.
[158] CTA Docket Vol. 1, p. 320-327.
[159] Exhibit "R-3", "GG-3"; CTA Docket Vol. 1, p. 111.
[160] Exhibit "R-2" and "GG-1", "RR-2-a" and "GG-2", CTA Docket Vol. 1, pp. 109-110.

invoices presented by petitioner before the DOF. The 1st Indorsement dated 10 May 2007 clearly discloses the value of the shipments being applied by petitioner for conditionally free importations, to wit:

> "**In view of the presentation of NPC ALLIANCE CORPORATION in its herein letter dated May 10, 2007 as well the attached affidavit of Mr. Karim Khatami, Chief Finance Officer, the firm's shipment described hereunder**:
>
> > **8 x 20 Diesel Generator Sets c/w Accessories covered by BL No: APLU 057249171** "MOL Mass" **under Aggreko Singapore Pte Ltd Invoice Nos. 20070410-NPCA-01 & 20070410-NPCA-02 dated 10 April 2007 valued at US$1,615,000.00**
> >
> > 10 x 20" Diesel Generator Sets c/w Accessories BL No: 16 / Voyage No: 11 via LCT Senado under Aggreko Singapore Pte Ltd Invoice Nos. 20070417-NPCA-01 & 20070417-NPCA-02 dated 17 April 2007 valued at US$1,369,626.71
> >
> > 8 x 20 Diesel Generator Sets c/w Accessories covered by BL No: APLU 057250755 under Aggreko Singapore Pte Ltd Invoice Nos. 20070429-NPCA-01 & 20070429-NPCA-02 dated 29 April 2007 valued at US$1,470,162.47
>
> which will be used for exhibition purposes in the forthcoming ***"Exhibition"*** to be held at the PAFC Petrochemical Industrial Plant in Batangas II, Mariveles, Bataan for seventeen (17) weeks, may be released pursuant to the provisions of Section 105(i) of the Tariff and Customs Code, as amended, upon giving of a bond in an amount equal to one and one-half (1 ½) times the ascertained duties, taxes and other charges, conditioned for the exportation thereof within two (2) months from the date of acceptance of the import entry or in default thereof, the payment of the corresponding duties, taxes and other charges due thereon, subject to CAO No. 7-72 and pertinent import laws, rules and regulations, subject further to One Hundred Percent (100%) examination by the Bureau.
>
> Items which will not be re-exported are not covered by this indorsement and therefore may be released only upon payment of duties and taxes.
>
> In it is understood that **the xerox copies of the supporting documents attached hereto should tally with the original presented to the Bureau.**

By Authority of the Secretary:

ELEAZAR C. CESISTA
Head, Revenue Express Lane"[161]
(Boldfacing & underscoring supplied)

Respondent's witness, Atty. Eleazar C. Cesista, Acting Director III, Revenue Office, DOF, testified, by way of his Judicial Affidavit,[162] that the copy of one of the invoices presented by petitioner in its Petition for Review is different from the invoice which was presented by petitioner when it filed an application for duty-free importation before the DOF, *viz.*:

"Q7 In your capacity as Head of the DoF Revenue Express Lane in 2007, do you recall coming across any application of herein petitioner for tax and duty exemption?

A Yes sir.

Q8 Why do you say so?

A **Petitioner submitted on May 10, 2007 a written application for the duty free importation of three shipments of equipment consisting of twenty six (26) units of diesel generator sets with accessories**.

Q9 What was the purpose of this application for duty free importation?

A **Petitioner cited paragraph (i) Section 105 of the Tariff and Customs Code (TCCP) as amended**.

xxx

Q12 What action did you take on this application as Head of the DoF Revenue Express Lane?

A **After my office's review of the said application and supporting documents also submitted by petitioner, I, as head of the DoF Revenue Express Lane, issued an Indorsement dated May 10, 2007, allowing the conditionally free importation of petitioner's three shipments consisting of twenty six (26) units of generator sets and accessories for public exhibition under Section 105(i) of the TCCP, subject to certain conditions.**

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[161] Exhibit "R-14", "JJ-2", CTA Docket Vol. 1, pp. 45; also found on p. 3843 of CTA Docket Vol. 8.
[162] Exhibit "R-35", CTA Docket Vol. 8, pp. 3820-3839.

xxx

Q16 You mentioned that petitioner submitted supporting documents for its application for tax and duty exemption. What were these supporting documents?

A **These supporting documents submitted to our office were photocopies of the bills of lading (B/Ls) and invoices submitted by petitioner for each of its three shipments.**

Q17 What is your proof that these B/Ls and invoices which petitioner submitted as supporting documents to your office were photocopies?

A The last paragraph of the May 10, 2007 Indorsement issued by my office states that: "It is understood that the xerox copies of supporting documents attached hereto tally with the original presented to the Bureau."

Q18 What is the "Bureau" referred to by this paragraph?

A The Bureau of Customs, sir.

xxx

Q21 What was the total value for this first shipment covered by B/L No. APLU 057249171?

A **As indicated in the May 10, 2007 Indorsement, the total value of the shipment covered by B/L No. APLU 057249171 was US$1,615,000.00.**

xxx

Q22 **What is your proof that the total amount or value of this shipment was US$1,615,000.00?**

A **The corresponding invoices for this shipment which petitioner submitted in support of its application for tax and duty exemption.**

Q23 Showing you certified true copies of Aggreko Singapore Pte Ltd Invoice Nos. 20070410-NPCA-01 & 20070410-NPCA-02 dated 10 April 2007 attached to the petition and found in the record (Record, Vol. I, p. 109 and 110). What relation do they have to the documents you mentioned?

A The copy of Invoice No. 20070410-NPCA-01 on page 109 is the same as the file copy in my office but **the copy of Invoice No. 20070410-NPCA-02 is not the same as the file copy for the same invoice in my office.**

Q24 Why do you say so?

A The copy of Invoice No. 20070410-NPCA-01 in the record and my office file copy both correctly indicate the value of the articles covered by that invoice as US$1,045,000.00. However, **the copy of Invoice No. 20070410-NPCA-02 in the record incorrectly indicates the value of the articles covered by it as only US$9,500.00**.

Q25 **Why do you say that this value of US$9,500.00 is incorrect?**

A **The copy of Invoice No. 20070410-NPCA-02 in my office shows the value of the articles covered by that invoice as US$570,000.00.**

Q26 Do you have your office copy of Invoice No. 20070410-NPCA-02 with you?

A Yes, sir.

Q27 Showing you a certified true file copy of Invoice No. 20070410-NPCA-02. What relation does this have to the document you mentioned?

A **That is the same file copy of Invoice No. 20070410-NPCA-02 which I have in my office which reflects the correct value of the articles covered by it, that is US$570,000.00.**

Q28 **Why do you say that this file copy from your office shows the correct value of the articles for Invoice No. 20070410-NPCA-02?**

A **That copy of Invoice No. 20070410-NPCA-02 from my office was part of the supporting documents petitioner itself submitted for its application for tax and duty exemption.**

Q29 **Do you have any other reason for saying that your office file copy of Invoice No. 20070410-NPCA-02 reflects the true value of the articles covered by that document?**

A **Yes sir. Adding the value of US$1,045,000.00 indicated in Invoice No. 20070410-NPCA-01 found on page 109 of Vol. I of the record and US$570,000.00 reflected in my office file copy will yield a total of US$1,615,000.00 which tallies with the total amount of petitioner's first shipment as indicated in the May 10, 2007 Indorsement issued by my office.**

Your Honors, we request that the certified true file copy of Invoice No. 20070410-NPCA-02 identified by the witness be marked as our Exh. R-2-b and the amount "570,000.00" therein be marked as our Exh. R-2-b-1.

> *The certified true copy of Invoice No. 20070410-NPCA-01 has been previously been marked as Exh. R-2 and is also Exh. GG-1 for petitioner (Record, Vol. I, p. 109). We also request that the amount "1,045,000.00" therein be marked as our Exh. R-2-1.*
>
> *Meanwhile, the certified true copy of the purported Invoice No. 20070410-NPCA-02 in the record has been previously marked as Exh. R-2-a and is also Exh. GG-2 for petitioner (Record, Vol. I, p. 110). (Boldfacing & underscoring supplied)*

Respondent's witness, Ismael L. Garcia, Customs Operation Officer III of the Port of Customs, explicitly testified also by way of his Judicial Affidavit,[163] that there were misdeclaration and undervaluation in the Import Entry for the first shipment and these findings are based on the fake invoices attached to Import Entry No. C-1679 and the genuine invoices furnished to them by petitioner, *viz.*:

> "Q6 In your capacity as Customs Examiner or COOIII for the Port of Subic in 2007, do you recall coming across petitioner or its importations subject matter of this case?
>
> A Yes sir.
>
> Q7 Why do you say so?
>
> A In 2007, I together with Rico E. Reyes, the officer-on-case then, were directed to conduct an actual physical examination or inspection of petitioner's shipment of five (5) generator sets and three (3) transformers which the Bureau of Customs (BoC) alerted in an alert order for suspected misdeclaration and undervaluation.
>
> xxx
>
> Q10 Now this case involves three shipments of petitioner. Which among petitioner's three shipments did this alert cover?
>
> A **That alert order covered petitioner's first shipment**.
>
> Q11 You said Rico E. Reyes and yourself were directed to physically examine or inspect this shipment for suspected misdeclaration and undervaluation. Where was this misdeclaration or undervaluation committed?
>
> A **The misdeclaration and undervaluation was done in the import entry filed by petitioner for this particular shipment**.

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[163] Exhibit "R-50", CTA Docket Vol. 8, pp. 3941-3961.

xxx

Q15. Did you and Rico E. Reyes carry out the examination or inspection of petitioner's first shipment as directed?

A Yes sir.

Q16. What result did this examination or inspection yield?

A **Our examination or inspection disclosed that petitioner indeed misdeclared and undervalued the five (5) generator sets and three (3) transformers, respectively which made up its first shipment.**

Q17. Why do you say that petitioner misdeclared this shipment?

A **Petitioner's Import Entry No. C-1679 described these five (5) generator sets and three (3) transformers as "used" but our physical inspection showed that they were all actually brand new.**

Q18. Why do you also say that petitioner undervalued this shipment?

A **A comparison of the declared value and correct value of the five (5) generator sets showed a 98% discrepancy while a comparison of the declared value and correct volume of the three (3) transformers showed a 99% discrepancy between the said amounts.**

Q19. Did you reduce your findings into writing?

A Yes sir, I indicated my findings as to the declared value and correct value of five (5) generator sets on the dorsal portion of the master entry for Import Entry No. C-1679 while I indicated my findings as to the declared value and correct value of three (3) transformers on the dorsal portion of the rider entry for Import Entry No. C-1679.

xxx

Q23 On what did you base your findings as to the declared and true values of these five (5) generator sets and three (3) transformers?

A **I based my findings on the fake invoices attached to Import Entry No. C-1679 on one hand, and the genuine invoices for the same articles which the importer, herein petitioner, subsequently furnished me, on the other**.

Q24 I am showing you certified true copy of what appear to be invoices indicating the amounts of US$22,725.00 and

US$9,500.00. What relation do they have to the invoices you mentioned?

A **These are the fake invoices which indicate the same value of the five generator sets and three transformers reflected in the master and rider entries of Import Entry No. C-1679.**

xxx

Q25 Why do you say that *Exhs. R-43* and *R-44* are fake invoices?

A **They are fake because they reflected extremely low values even if the articles they purported to cover appeared to be brand new hi-tech equipment upon inspection encased in large twenty foot containers.**

Q26 **Now showing you this time, certified true copies of Aggreko Invoice Nos. 20070410-NPCA-01 in the amount of US$1,045,000.00 and 2007-0410-NPCA-02 in the amount of US$570,000.00 found on pages 358 and 357, respectively of Volume I of the Honorable Court'w** *(sic)* **Record. How do they relate to the invoices you mentioned?**

A **Those are certified true copies of the genuine invoices showing the correct values of petitioner's five (5) generator sets and three (3) transformers that make up its first shipment.**

xxx

Q27 Why do you say that these documents reflect the true or correct value of the said equipment?

A **Because petitioner's attorney-in-fact or authorized representative Rowena B. Farin readily gave me photocopies of the genuine invoices during the actual inspection when after viewing the equipment I told her that I was not convinced that Import Entry No. C-1679 contained their correct values.**

Q28. What made you say that she was the petitioner's authorized representative?

A During the inspection, she represented that she was petitioner's authorized representative and that she is the same person who signed Import Entry No. C-1679 as "Attorney-in-Fact" of the importer, herein petitioner.

Q29. How did you react?

A I asked her for her special power of attorney (SPA) for this purpose.

Q30 Was she able to produce the SPA you requested?

A She was not.

Q31 What proof then, if any, did she present to you that she was indeed the same person who signed Import Entry No. C-1679 as petitioner's "Attorney-in-Fact"?

A She gave me a copy of a letter dated May 21, 2007 addressed to then District Collector Zamoranos and signed by her as petitioner's "Attorney-in-Fact," claiming that she is the same person who also signed Import Entry No. C-1679 as "Attorney-in-Fact" for the importer, herein petitioner.

xxx

Q33 What did you do upon being given a copy of the May 21, 2007 letter signed by Ms. Farin?

A I compared the signature appearing in the May 21, 2007 letter and the signature appearing in the lower box designated "Import/Attorney-in-Fact" found on the frontal portion of the master entry for Import Entry No. C-1679.

Q34. And what did you notice?

A I found that the signature in the May 21, 2007 letter was identical with the signature appearing in the lower box designated "Importer/Attorney-in-Fact" I the Import Entry No. C-1679.

xxx

Q36 Why do you say so?

A Because it is the same signature as that appearing in the letter dated May 21, 2007 letter over the full name of Ms. Farin which is, "Rowena B. Farin."

xxx

Q37 **What other reason, if any, would you have for stating that *Exhs. R-45* and *R-46* are the true invoices covering petitioner's first shipment?**

A **The sum of the values in these invoices which is US$1,615,000.00 tallies with the value of the same shipment in the May 10, 2007 Indorsement of the Department of Finance (DoF) which allowed the conditionally free importation of this and two other shipments of petitioner.**" (Boldfacing supplied)

Records also disclose that petitioner did not offer any evidence to refute the issue of fake invoices and the underdeclaration made in the Import Entry. Interestingly, petitioner even stated in its Petition for Review that [o]n the 2nd page of the DOF 1st Indorsement, there appears a remark: *"Original Copies of Documents required in the last paragraph have been presented and verified to be authentic."*,[164] thereby strengthening the testimony Atty. Eleazar C. Cesista that the copy of the invoices he identified during trial were part of the supporting documents which petitioner itself submitted in its application for tax and duty exemption.

Also, petitioner, in its Formal Offer of Evidence,[165] formally offered the following documents: Invoice Nos. 20070419-NPCA and 20070419-NPCA-02 bearing the amounts of **US$1,045,000.00** and **US$9,500.00**, respectively,[166] and Import Entry No. 2007C1679 bearing a total customs value of **US$32,225**,[167] to prove, among others, the legality of the importation and that **if there were irregularities or illegalities which attended the said importation, they were undertaken without the consignee's knowledge or consent.**[168]

The aforesaid defenses of the petitioner are not valid excuses to exempt the importation from the consequences of the violation of the provisions of the TCCP. It is settled that forfeiture proceedings are proceedings *in rem* and are directed against the *res*. The pronouncement in ***Commissioner of Customs vs. Manila Star Ferry, Inc. et al.,***[169] is most enlightening, *viz.:*

> "**Forfeiture proceedings are proceedings in rem** (Commissioner of Customs v. Court of Tax Appeals, 138 SCRA 581 [1985] citing Vierneza v. Commissioner of Customs, 24 SCRA 394 [1968]) **and are directed against the res**. It is no defense that the owner of the vessel sought to be forfeited had no actual knowledge that his property was used illegally. **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** (Commissioner of Customs v. Court of Appeals, supra;

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[164] Par. 7, Statement of Facts and the Case of the Petition for Review, which was admitted in respondent's Answer; CTA Docket Vol. 1, pp. 5-6 and, 314; see also Exhibits "R-14", "JJ-2", CTA Docket Vol. 1, pp. 45-46.
[165] CTA Docket, pp. 3140-3172.
[166] Exhibits "GG-1", "GG-2", CTA Docket Vol. 1, pp. 109-110.
[167] Exhibit "GG-3"; CTA Docket Vol. 1, p. 111.
[168] CTA Docket Vol. 6, pp. 3155-3156.
[169] G.R. No. L-31776-78, October 21, 1993.

> U.S. v. Steamship "Rubi", 32 Phil. 228, 239 [1915])." (Boldfacing supplied)

Analogously applying the foregoing pronouncement, the alleged absence of knowledge or consent of petitioner on the irregularities or illegalities which attended its shipments cannot absolve such shipments from the liability of forfeiture.

Evidence on record overwhelmingly confirms that the first shipment of petitioner amounts to **US$1,615,000.00** based on the invoices presented by petitioner before the DOF and as stated in the 1st Indorsement of DOF dated May 10, 2007; and that petitioner undervalued the said first shipment in its Import Entry by using fake invoices. Section 1306 of Presidential Decree No. 1464 *(A Decree to Consolidate and Codify All the Tariff and Customs Laws of the Philippines)* requires that the Import Entry shall contain, among others, **the value of the articles as set forth in a proper invoice**,[170] which evidently was not observed in this case.

Petitioner further cites Section 1308 of the TCCP, as amended, which recognizes that while an importation may not be in pursuance of a purchase or a sale, as in this case, there is no provision in the TCCP stating the basis of dutiable value when the imported articles are just leased or rented; and, under Section 201 of the TCCP, as amended, provides the selling price as basis in computing the dutiable value. Petitioner asserts that if the valuation declared in the commercial invoice is the lease or rental value, the shipment may be declared as undervalued, and it is unfair for the consignee to pay the duties and taxes based on the selling price of the imported article.[171]

On this point, suffice it to say that the judiciary does not pass upon questions of wisdom, justice or expediency of legislation.[172] The

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[170] SECTION 1306. Forms and Contents of Import Entry. — **Import entries** shall be in the required number of copies in such form as prescribed by regulations. They shall be signed by the person making the entry of the articles, and **shall contain** the names of the importing vessel or aircraft, port of departure and date of arrival, the number and marks of packages, or the quantity, if in bulk, the nature and correct commodity description of the articles contained therein, and its **value as set forth in a proper invoice** to be presented in duplicate with the entry. (Boldfacing supplied)

[171] CTA Docket, p. 33.

[172] Lozano vs. Nograles, G.R. No. 187883, June 16, 2009.

forum to air and remedy these grievances is the legislature, not this Court.[173]

Indeed, an importation may not always be in pursuance of a purchase or a sale, albeit the purpose for which an importation is being made is irrelevant in determining the basis of dutiable value. Section 201 of the TCCP, as amended,[174] provides:

> "SEC. 201. **Basis of Dutiable Value**. — (A) **Method One. — Transaction Value.** — The dutiable value of an imported article subject to an ad valorem rate of duty shall be the **transaction value, which shall be the price actually paid or payable for the goods when sold for export to the Philippines**, adjusted by adding:
>
> (1) The following to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods:
>
> (a) Commissions and brokerage fees (except buying commissions);
>
> (b) Cost of containers;
>
> (c) The cost packing, whether for labour or materials;
>
> (d) The value, apportioned as appropriate, of the following goods and services: materials, components, parts and similar items incorporated in the imported goods; tools; dies; moulds and similar items used in the production of imported goods; materials consumed in the production of the imported goods; and engineering, development, artwork, design work and plans and sketches undertaken elsewhere than in the Philippines and necessary for the production of imported goods, where such goods and services are supplied directly or indirectly by the buyer free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods;
>
> (e) The amount of royalties and license fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods to the buyer;

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[173] Dacasin vs. Dacasin, G.R. No. 168785, February 5, 2010.
[174] TCCP, as amended by Republic Act No. 9135.

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

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

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

(5) The cost of insurance.

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

No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Section: Provided, That Method One shall not be used in determining the dutiable value of imported goods if:

(a) There are restrictions as to the disposition or use of the goods by the buyer other than restrictions which:

(i) Are imposed or required by law or by Philippine authorities;

(ii) Limit the geographical area in which the goods may be resold; or

(iii) Do not substantially affect the value of the goods.

(b) The sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;

(c) Part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions hereof; or

(d) The buyer and the seller are related to one another, and such relationship influenced the price of the goods. Such persons shall be deemed related if:

(i) They are officers or directors of one another's businesses;

(ii) They are legally recognized partners in business;

(iii) There exists an employer-employee relationship between them;

(iv) Any person directly or indirectly owns, controls or holds five percent (5%) or more of the outstanding voting stock or shares of both seller and buyer;

(v) One of them directly or indirectly controls the other;

(vi) Both of them are directly or indirectly controlled by a third person;

(vii) Together they directly or indirectly control a third person; or

(viii) They are members of the same family, including those related by affinity or consanguinity up to the fourth civil degree.

Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Act if they fall within any of the eight (8) cases above.

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

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

If the dutiable value still cannot be determined through the successive application of the two immediately preceding

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

(D) **Method Four. — Deductive Value. — The dutiable value of the imported goods under this method shall be the deductive value which shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the Philippines, in the same condition as when imported, in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons not related to the persons from whom they buy such goods, subject to deductions** for the following:

> (1) Either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in such country of imported goods of the same class or kind,
>
> (2) The usual costs of transport and insurance and associated costs incurred within the Philippines; and
>
> (3) Where appropriate, the costs and charges referred to in subsection (A) (3), (4) and (5); and
>
> (4) The customs duties and other national taxes payable in the Philippines by reason of the importation or sale of the goods.

If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued in the Philippines in the conditions as imported, the customs value shall, subject to the conditions set forth in the preceding paragraph hereof, be based on the unit price at which the imported goods or identical or similar imported goods sold in the Philippines in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of ninety (90) days after such importation.

If neither the imported goods nor identical nor similar imported goods are sold in the Philippines in the condition as in imported, then, if the importer so requests, the dutiable value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the Philippines who are not related to the persons from whom they buy such goods, subject to allowance for the value added by

such processing and deductions provided under Subsections (D)(1), (2), (3) and (4) hereof.

(E) Method Five. — Computed Value. — The dutiable value under this method shall be the computed value which shall be the sum of:

(1) The cost or value of materials and fabrication or other processing employed in producing the imported goods;
(2) The amount for profit and general expenses equal to that usually reflected in the sale of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the Philippines;
(3) The freight, insurance fees and other transportation expenses for the importation of the goods;
(4) Any assist, if its value is not included under paragraph (1) hereof; and
(5) The cost of containers and packing, if their values are not included under paragraph (1) hereof.

The Bureau of Customs shall not require or compel any person not residing in the Philippines to produce for examination, or to allow access to, any account or other record for the purpose of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the customs value may be verified in another country with the agreement of the producer and provided they will give sufficient advance notice to the government of the country in question and the latter does not object to the investigation.

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

If the importer so requests, the importer shall be informed in writing of the dutiable value determined under Method Six and the method used to determine such value.

No dutiable value shall be determined under Method Six on the basis of:

(1) The selling price in the Philippines of goods produced in the Philippines;
(2) A system that provides for the acceptance for customs purposes of the higher of two alternative values;
(3) The price of goods in the domestic market of the country of exportation;

(4) The cost of production, other than computed values, that have been determined for identical or similar goods in accordance with Method Five hereof;

(5) The price of goods for export to a country other than the Philippines;

(6) Minimum customs values; or

(7) Arbitrary or fictitious values.

If in the course of determining the dutiable value of imported goods, it becomes necessary to delay the final determination of such dutiable value, the importer shall nevertheless be able to secure the release of the imported goods upon the filing of a sufficient guarantee in the form of a surety bond, a deposit, cash or some other appropriate instrument in an amount equivalent to the imposable duties and taxes on the imported goods in question conditioned upon the payment of customs duties and taxes for which the imported goods may be liable: Provided, however, That goods, the importation of which is prohibited by law shall not be released under any circumstance whatsoever.

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

If, after receiving further information, or in the absence of a response, the customs administration still has reasonable doubts about the truth or accuracy of the declared value, it may, without prejudice to an importer's right to appeal pursuant to Article 11 of the World Trade Organization Agreement on customs valuation, be deemed that the customs value of the imported goods cannot be determined under Method One. Before taking a final decision, the Collector of Customs shall communicate to the importer, in writing if requested, his grounds for doubting the truth or accuracy of the particulars or documents produced and give the importer a reasonable opportunity to respond. When a final decision is made, the customs administration shall communicate to the importer in writing its decision and the grounds therefor." *(Boldfacing supplied)*

Evidently, regardless of the nature of importation either in pursuance of a purchase and sale, or not in pursuance of a purchase and sale, the dutiable value of the imported articles shall be based on the methods as stated in the afore-quoted provisions of the TCCP, as

amended, in successive order, namely: *(i) Method One - Transaction Value; (ii) Method Two - Transaction Value of Identical Goods; (iii) Method Three - Transaction Value of Similar Goods; (iv) Method Four - Deductive Value; (v) Method Five - Computed Value; and, (vi) Method Six - Fallback Value.*

The **Transaction Value** under Method One is the price actually paid or payable for the goods when sold for export to the Philippines. The **Transaction Value of Identical Goods** under Method Two refers to transaction value of identical goods sold for export to the Philippines and exported at or about the same time as the goods being valued, while the **Transaction Value of Similar Goods** under Method Three refers to the transaction value of similar goods sold for export to the Philippines and exported at or about the same time as the goods being valued. The **Deductible Value** under Method Four also finds its base on the unit price at which the imported goods or identical or similar imported goods are sold in the Philippines, in the same condition as when imported, in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons not related to the persons from whom they buy such goods, subject to certain deductions. The **Computed Value** under Method Five considers the sum total of the cost or value of materials and fabrication or other processing employed in producing the imported goods, the amount for profit and general expenses equal to that usually reflected in the sale of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the Philippines, the freight, insurance fees and other transportation expenses for the importation of the goods, and the cost of containers and packing. The dutiable value under the **Fallback Value** of Method Six is determined by using other reasonable means and on the basis of data available in the Philippines.

As the **Transaction Value** takes precedence over the other methods of valuation, and there being no showing or indication that the other methods would apply in this case, the dutiable value of the subject articles should be the price actually paid or payable for the goods when sold for export to the Philippines.

With respect to the second count of fraud ascribed by respondent against the petitioner *(i.e., the second shipment was a coastwise or domestic shipment of articles previously imported duty-free by NAPOCOR but petitioner submitted false invoices to make it appear that the articles arrived from abroad in order that it may avail*

of the exemption under Section 105 of the TCCP, as amended thereby foregoing payment of lawful duties on said generators), petitioner, again, in its Formal Offer of Evidence,[175] offered Bill of Lading No. 16 (Exhibit HH)[176] and the corresponding Import Entry 2007C2171 (Exhibit HH-6)[177]. Bill of Lading No. 16 shows that **load port** of the articles is **San Jose, Mindoro** and the discharge port is SRF Port, Subic, Zambales,[178] while Import Entry 2007C2171 shows **"Singapore"** as the country of origin.[179] Both documents were offered to prove, among others, the legality of the importation and that **if there were irregularities which attended the said importation, they were undertaken without the consignee's knowledge or consent**.[180]

Apparently, the information stated in Import Entry 2007C2171 with respect to the shipment's port of origin does not match with the information contained in Bill of Lading No. 16. Certainly, this is another violation of the customs law, which requires that the import entry shall contain the port of departure of the imported articles,[181] as the information contained in the import entry, with respect to the origin of the imported articles, is not reflective of the bill of lading.

Petitioner's defense that the irregularities which attended the importation were undertaken without its knowledge or consent is of no moment since, as earlier stated, the forfeiture proceedings are proceedings *in rem* and are directed against the *res*.

Finally, anent the last count of fraud ascribed by respondent to the petitioner, the Court likewise finds for respondent.

The three shipments of the petitioner which were approved as conditionally-free importation in the DOF's 1st Indorsement dated May 10, 2007, were supposedly intended for ***"exhibition"*** in its Bataan Polyethylene Plant located at the Petrochemical Complex, Batangas II, Mariveles, Bataan as clearly stated in the Affidavit of Use, executed by Karim Khatami, petitioner's Chief Finance Officer,[182]

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[175] CTA Docket Vol. 6, pp. 3156-3157.
[176] CTA Docket Vol. 1, p. 118.
[177] CTA Docket Vol. 1, p. 37.
[178] Exhibit "HH", CTA Docket Vol. 1, p. 118.
[179] Exhibit "HH-6", CTA Docket Vol. 1, p. 37.
[180] CTA Docket Vol. 6, p. 3156.
[181] Section 1306 of the TCCP.
[182] Exhibits "R-13-a"; "JJ-1", CTA Docket, p. 44.

attached to his Letter to the Secretary of DOF dated May 10, 2007, requesting approval for duty/tax-free importation of petitioner's shipments.[183] The said Affidavit of Use and DOF's 1st Indorsement dated May 10, 2007 respectively read as follows:

> *Affidavit of Use*
>
> "NPC Alliance Corporation has engaged Aggreko International Projects Limited of Singapore to provide generators & accessories for seventeen (17) weeks **for Exhibition** in our Bataan Polyethylene Plant located at the Petrochemical Complex, Batangas II, Mariveles, Bataan."[184]
>
> xxx xxx xxx
>
> *DOF's 1st Indorsement dated May 10, 2007*
>
> "**In view of the presentation of NPC ALLIANCE CORPORATION in its herein letter dated May 10, 2007 as well the attached affidavit of Mr. Karim Khatami, Chief Finance Officer, the firm's shipment described hereunder**:
>
> xxx
>
> **which will be used for exhibition purposes in the forthcoming *"Exhibition"*** to be held at the PAFC Petrochemical Industrial Plant in Batangas II, Mariveles, Bataan for seventeen (17) weeks, **may be released pursuant to the provisions of Section 105(i) of the Tariff and Customs Code**, as amended, upon giving of a bond in an amount equal to one and one-half (1 ½) times the ascertained duties, taxes and other charges, conditioned for the exportation thereof within two (2) months from the date of acceptance of the import entry or in default thereof, the payment of the corresponding duties, taxes and other charges due thereon, subject to CAO No. 7-72 and pertinent import laws, rules and regulations, subject further to One Hundred Percent (100%) examination by the Bureau.[185] *(Boldfacing & underscoring supplied)*

The supposed "exhibition" of the articles as contained in the letter application of the petitioner is the reason of the DOF's indorsement to the COC to release the articles, free of import duties, pursuant to Section 105(i) of the TCCP, as amended, which states:

> "SECTION 105. Conditionally-Free Importations. — **The following articles shall be exempt from the payment of import**

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[183] Exhibits "R-13" and "JJ".
[184] Exhibit "R-13-a" and "JJ-1", CTA Docket Vol. 1, p. 44.
[185] Exhibits "R-14" & "JJ-2", CTA Docket, pp. 45-46.

> **duties** upon compliance with the formalities prescribed in, or with, the regulations which shall be promulgated by the Commissioner of Customs with the approval of the Minister of Finance; *Provided,* That **any article** sold, bartered, hired or **used for purposes other than that they were intended for without prior payment of the duty, tax or other charges which would have been due and payable at the time of entry if the article had been entered without the benefit of this section, shall be subject to forfeiture** and the importation shall constitute a fraudulent practice against customs revenue punishable under Section Thirty-six hundred and two, as amended of this Code: *Provided, further,* That a sale pursuant to a judicial order or in liquidation of the estate of a deceased person shall not be subject to the preceding proviso, without prejudice to the payment of duties, taxes and other charges: *Provided, finally,* That the President may, upon recommendation of the Minister of Finance, suspend, disallow or completely withdraw, in whole or in part, any of the conditionally-free importation under this section:
>
> i. **Articles used exclusively** for public entertainment, and for display in public expositions, or **for exhibition** or competition for prizes, and devices for projecting pictures and parts and appurtenances thereof, **upon** identification, examination and appraisal and **the giving of a bond in an amount equal to one and one-half times the ascertained duties, taxes and other charges thereon, conditioned for exportation thereof or payment of the corresponding duties, taxes and other charges within six (6) months from the date of acceptance of the import entry**; *Provided,* That the Collector of Customs **may extend the time for exportation or payment of duties, taxes** and other charges for a term not exceeding six (6) months from the expiration of the original period; and technical and scientific films when imported by technical, cultural and scientific institutions, and not to be exhibited for profit: *Provided, further,* That if any of the said films is exhibited for profit, the proceeds therefrom shall be subject to confiscation, in addition to the penalty provided under Section Thirty-six hundred and ten as amended, of this Code[.]" *(Boldfacing supplied)*

Apropos, the DOF was correct in treating the articles consigned to petitioner as conditionally-free importation as the same was allegedly intended for "exhibition" purposes, as represented by petitioner. The condition imposed in the 1st Indorsement of the DOF

for the giving of bond by the petitioner is also in consonance with the requirement stated in Section 105(i) of the TCCP, as amended.

To be sure, even if the shipments were released to the petitioner under Section 105(i) of the TCCP, as amended, the said articles remained under the jurisdiction of the BOC which has the authority to determine all questions touching on petitioner's compliance with customs' laws, since the articles were only released conditionally subject to the fulfillment of conditions specified in DOF's 1st Indorsement dated May 10, 2007, ***i.e., to be used for "exhibition"; and, the posting of a bond conditioned for exportation of the articles within two (2) months from the date of acceptance of the import entry or in default thereof, the payment of the corresponding duties, taxes and other charges due thereon.*** It is trite that "[i]n order for an importation to be deemed terminated, the payment of the duties, taxes, fees and other charges of the item brought into the country must be in full. For as long as the importation has not been completed, the imported item remains under the jurisdiction of the BOC."[186]

Petitioner asserts that the term "exhibition" is not defined in the TCCP, as amended, and, accordingly, it is susceptible to several interpretations. Albeit petitioner did not elaborate its understanding nor offer a definition of the term "exhibition", petitioner could have in mind that the concept includes exhibition of the generator sets **for the commissioning and the start-up** of operations of its plant. The testimonies of petitioner's witnesses, Rannier A. Espino, petitioner's Acting Operations Manager and Laboratory Head under the Operations Department, and Romeo C. Zabala, then Senior Plant Electrical Technician of petitioner's Electrical Section of Maintenance Department) are revealing, *viz.:*

Judicial Affidavit of Rannier A. Espino[187]

"Q9: When you were employed in the company in May 2007, do you remember any peculiar event that occurred in the plant?

A9: Yes, sir. There were employees from Aggreko at that time and they were assembling the generator sets, which were conditionally imported for testing or exhibition purposes and were placed at the parking area of the warehouse of NPC Alliance Corporation.

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[186] Secretary of Finance vs. Oro Maura Shipping Lines, G.R. No. 156946, July 15, 2009.
[187] Exhibit "Z", CTA Docket, pp. 3088-3092.

Q10: Do you know if the said generator sets were exhibited in the plant?

A10: Yes, sir. **They were exhibited in the plant for the commissioning and the start-up of operations of the plant**. In fact, I remembered one time **in 2007** that the Bureau of Customs Officers went to the plant. They have seen and inspected the generator sets, which were running at that time. At that time, **the power supply of PENELCO is insufficient to sustain the operations of the plant, thus, the generator sets were used for the commissioning and the start-up of the plant."** (Boldfacing & underscoring supplied)

xxx xxx xxx

Judicial Affidavit of Romeo C. Zabala[188]

"Q12: Did NPC Alliance Corporation start its operations in 2005?

A12: No sir, NPC Alliance Corporation started its operation only in 2007.

Q13: Why only in 2007?

A13: Because NPCA still needed to re-commission or test all the equipment, machines, bulbs, motors, pumps, fans, blowers, among others, before it starts up its operation. Also, **it was only in 2007 that NPC Alliance Corporation entered into a Contract for Power Generation Services with Aggreko International Projects Ltd. of 24 Megawatt diesel generator sets as the power supply needed in re-commissioning or starting-up of the operations of the plant**.

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Q16: What do you mean by start-up?

A16: **The start-up means the start of the operations until it produces the end products**. The 3.1 and 3.9 Megawatt motors were started and the plant needed at least 19 Megawatts power in addition to the 5 Megawatts for the start-up. In total, **NPCA needed** at least 24 Megawatts of **power supply to operate the plant**.

Q17: You mentioned that NPCA entered a contract with Aggreko for the generator sets to be used for the commissioning/start-up of the operations. Did the two sets of diesel generator arrive in the plant?

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[188] Exhibit "X", Docket, pp. 3097-3102.

A17: Yes sir. They arrived in the plant.

Q18: What did you do, if any, when the generator sets arrived in 2007?

A18: As the Senior Plant Electrical Technician, I checked all the generator sets that arrived. **After they were installed** by the employees of Aggreko, **we assisted Aggreko in the lay-out of the electrical wires and connection of the generator sets to the plant**.

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Q24: Thereafter, what happened?

A24: After few months, the Bureau of Customs employees together with PNOC Alternative Fuels Corporation Manager and some media persons, went back to the office and through force, opened the main gate of NPCA and tried to seize the **generator sets**, which are **being used for the starting-up of the plant operations**." (Boldfacing & underscoring supplied)

Exhibition as understood by petitioner's witnesses contemplates the commissioning of the generator sets and its actual use to start-up petitioner's operation. The witness disclosed that **when the BOC employees tried to seize the generator sets, the same were already being used for the start-up of its operations**.

Although the TCCP does not state the definition of "exhibition" as succinctly put by petitioner, the Court, however, does not agree with petitioner that the term is susceptible of several interpretations. Contrary to petitioner's stance, the term "exhibition" is clear, plain and unambiguous.

One of the primary and basic rules in statutory construction is that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. *Verba legis non est recedendum* – from the words of a statute there should be no departure.[189]

Also, elementary is the principle that words should be construed in their ordinary and usual meaning. It is a well-settled principle of legal hermeneutics that words of a statute will be interpreted in their natural, plain and ordinary acceptation and

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[189] Chavez vs. Judicial and Bar Council, et al., G.R. No. 202242, July 17, 2012.

signification, unless it is evident that the legislature intended a technical or special legal meaning to those words.[190]

The term *"exhibition"* should therefore be understood in its ordinary acceptation and signification, which is *"an act or instance of exhibiting", "a public showing (as of works of art, objects of manufacture, or athletic skill)".*[191] Certainly, the concept of "exhibition" in its ordinary acceptation does not contemplate the use of the generator sets for the commissioning and the start-up of operations.

It is worth mentioning that *"customs duties"* is the name given to taxes on the importation and exportation of commodities, the tariff or tax assessed upon merchandise imported from, or exported to, a foreign country. This power of taxation being a high prerogative of sovereignty, its relinquishment is never presumed.[192] Exemption from taxation is not favored, thus, tax exemptions should be strictly construed against those claiming to be qualified thereto.[193] The declaration in *Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs is instructive*,[194] *viz.:*

> "The drive of petitioner's argument is that marketing of its gasoline product is corollary to or incidental to its industrial operations. But this contention runs smack against the familiar rules that **exemption from taxation is not favored**, and that **exemptions in tax statutes are never presumed**. Which are but statements in adherence to the ancient rule that **exemptions from taxation are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority**. Tested by this precept, **we cannot indulge in expansive construction and write into the law an exemption not therein set forth**. Rather, we go by the reasonable assumption that **where the State has granted in express terms certain exemptions, those are the exemptions to be considered, and no more**. Since the law states that, to be tax exempt, equipment and spare parts should be 'for the use of industries', **the coverage herein should not be enlarged** to include equipment and spare parts for use in dispensing gasoline at retail. In comparable factual backdrop, this Court has held that tax exemption in connection with the manufacture of asbestos roof does not extend to the installation thereof." *(Boldfacing supplied)*

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[190] Romualdez vs. The Honorable Sandiganbayan (Fifth Division) et al., G.R. No. 152259, July 29, 2004.
[191] *https://www.merriam-webster.com/dictionary/exhibition.*
[192] Nestle Philippines, Inc. (formerly Filipro, Inc.) vs. Court of Appeals et al., G.R. No. 134114, July 6, 2001.
[193] Commissioner of Customs vs. Court of Appeals et al., G.R. No. 132929, March 27, 2000.
[194] G.R. No. L-21841, October 28, 1966.

In line with the foregoing principles in taxation and the ordinary acceptation and signification of the term *"exhibition"*, this Court cannot enlarge the concept of exhibition to include the concept of the commissioning and the use of the articles for the start-up of operations. To repeat, tax exemptions are strictly construed against those claiming to be qualified thereto and liberally in favor of the taxing authority.

Thus, petitioner's use of the imported articles, which is beyond the authority set forth in the 1st Indorsement of DOF dated May 10, 2007, is a violation of the condition of its conditionally-free importation under Section 105(i) of the TCCP, as amended.

In view of the violation of customs laws due to fraud committed by petitioner and violation of the condition of conditionally-free importation, the shipments of the petitioner are subject to forfeiture pursuant to Section 2530 (f) and (l) (3)(4) of the TCCP, as amended.

CONCLUSION

In sum, the present Petition for Review must be dismissed for petitioner's failure to indicate the date of its receipt of the assailed Decision of the Commissioner of Customs. Nonetheless, even assuming that petitioner timely filed its Petition for Review, the same would suffer the same consequence as this Court finds that fraud attended the importation of this case and petitioner violated the condition of its conditionally-free importation thereby warranting the forfeiture of the shipments pursuant to Section 2530 (f) and (l) (3)(4) of the TCCP, as amended. Thus, there is no cogent reason to disturb the decision of the Commissioner of Customs affirming the forfeiture of petitioner's shipments.

WHEREFORE, premises considered, the Petition for Review of the petitioner filed on March 28, 2008 is **DENIED**, for failure to comply with Section 2, Rule 42 of the Rules of Court and for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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