REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF BUREAU OF CUSTOMS and DISTRICT COLLECTOR OF BATAAN, Petitioners,	**CTA EB NO. 2003** (CTA Case No. 9554)
	Present:
- versus -	**DEL ROSARIO,** ***P.J.,*** **CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** ***JJ.***
MT ALPINE MAGNOLIA, Respondent.	Promulgated: JUL 15 2020 4:13p.m.

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DECISION

BACORRO-VILLENA, J.:

Before the Court is a Petition for Review[1] filed pursuant to Rule 8, Section 3(b)[2] of the Revised Rules of the Court of Tax Appeals

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[1] Filed 15 February 2019, *Rollo*, Volume I, pp. 6-39.

[2] **SEC. 3.** *Who may appeal; period to file petition.* –

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an

(**RRCTA**), filed by the Commissioner of Bureau of Customs (**CBOC**) and the District Collector of Bataan (**petitioners**). The petition seeks the reversal of the Special First Division's Decision dated 22 October 2018[3] and its Resolution dated 07 January 2019[4] in *MT Alpine Magnolia v. Commissioner of Bureau of Customs and District Collector of Bataan*, CTA Case No. 9544, granting MT Alpine Magnolia's (**MT Alpine's/respondent's**) prior Petition for Review and denying a Motion for Reconsideration (**MR**) thereof, respectively.

FACTUAL ANTECEDENTS

Through a Voyage Charter Party, Glencore Singapore Pte Ltd. chartered respondent MT Alpine to deliver and ship fuel oil (**FO**) to the port of Limay, Bataan with SL Harbor Bulk Terminal Corporation (**SLHBTC**) as consignee.[5]

On 17 December 2016, the Bureau of Customs (**BOC**) and the Philippine Coast Guard (**PCG**) boarded respondent MT Alpine, a tanker vessel registered under the laws of Marshall Islands and served a copy of a Warrant of Seizure and Detention[6] (**WSD**) on the basis of an alleged smuggling; specifically, the loop-loading or transferring FO from MT Alpine to MT Malolos without proper payment of customs duties. The BOC also ordered the halting of the ship's discharge.[7] The ship's Master/Captain, Jerry Olares, in a Letter of Protest dated 22 December 2016[8], questioned the ship's distraint.

Seizure and forfeiture proceedings thereafter ensued. At the conclusion of the hearings, Port of Limay's District Collector of Customs (**DCC**), Julius B. Premediles (**Premediles**), issued a Decision dated 20 January 2017 denying respondent's protest.

additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

3 With Presiding Justice Roman G. Del Rosario as *ponente*; Hon. Justice Erlinda P. Uy, concurring; and Hon. Justice Cielito N. Mindaro-Grulla, inhibited; Division Docket, Volume VII, pp. 3402-3459.

4 Id., pp. 3560-3562.

5 Voyage Charter Party, Exhibit "P-1-10", id., Volume IV, pp. 1370-1432.

6 Pre-trial Order, id., Volume VI, p. 2883.

7 Id.

8 Id.

On 08 February 2017, MT Alpine appealed the denial to the CBOC. When the CBOC did not act on its appeal within the 30-day period provided by the Customs Modernization and Tariff Act[9] (**CMTA**), the DCC's decision was deemed affirmed.

PROCEEDINGS BEFORE THE SPECIAL FIRST DIVISION

On 24 March 2017, respondent filed its Petition for Review (With Urgent Motion and Prayer for the Immediate Release of MT Alpine Magnolia from Seizure and Detention[10] [Urgent Motion]) before this Court and sought relief from BOC's order of forfeiture issued against it. The case was then raffled to the Court's Special First Division.

Acting favorably on the respondent's Urgent Motion, the Court ordered MT Alpine's release on 17 August 2017.[11] Trial on the main case thereafter ensued. After trial, the Special First Division rendered its Decision dated 22 October 2018.[12] The dispositive portion of the Decision reads:

> ...
>
> **WHEREFORE**, premises considered, the Petition for Review is **GRANTED**. The Decision of the District Collector of Bataan, which was deemed affirmed by the Commissioner of Customs, ordering the forfeiture of the MT Alpine Magnolia is **REVERSED AND SET ASIDE**. Accordingly, the order of this Court in the August 4, 2017 Resolution to release MT Alpine Magnolia is **DECLARED PERMANENT**. The Surety Bond (PIIC Bon No. BD-NIL-RS-17-0000345-00-D dated 16 August 2017) issued by Pioneer Intercontinental Insurance Corporation in the amount of One Billion Pesos (Php 1,000,000,000.00) is **ORDERED RELEASED AND DISCHARGED UPON FINALITY OF JUDGMENT.**

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9 Section 1126. *Appeal to the Commissioner.* – In forfeiture cases, the person aggrieved by the decision of a District Collector may, within fifteen (15) days or five (5) days in case of perishable goods, from receipt of the decision, file a written notice of appeal, together with the required appeal fee to the District Collector, furnishing a copy to the Commissioner. The District Collector shall immediately transmit all the records of the proceedings to the Commissioner, who shall review and decide on the appeal within thirty (30) days from receipt of the records, or fifteen (15) days in the case of perishable goods: Provided, that if within thirty (30) days, no decision is rendered, the decision of the District Collector under appeal shall be deemed affirmed. An appeal filed beyond the period herein prescribed shall be dismissed.

10 Division Docket, Volume I, pp. 10-45.

11 Resolution, id., Volume VI, pp. 2455-2507.

12 Id., Supra at note 3.

Respondent's Compliance and Manifestation filed on August 1, 2018 is **NOTED.**

SO ORDERED.

...

In so ruling, the Special First Division held that respondent was a common carrier and its owner or agents were not privy to the alleged illegal loop-loading thereby warranting the release of the vessel. In support thereof, the Special First Division relied particularly on the following provisions of the CMTA[13]:

...

Section 1113. *Property Subject to Seizure and Forfeiture.* – Property that shall be subject to seizure and forfeiture include:

(a) Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of goods or in conveying or transporting smuggled goods in commercial quantities into or from any Philippine port or place. The mere carrying or holding on board of smuggled goods in commercial quantities shall subject such vehicle, vessel, aircraft, or any other craft to forfeiture: Provided, That the vehicle, vessel, aircraft or any other craft is not used as a common carrier which has been chartered or leased for purposes of conveying or transporting persons or cargo;

...

(k) Any conveyance actually used for the transport of goods subject to forfeiture under this Act, with its equipage or trappings, and any vehicle similarly used, together with its equipment and appurtenances. The mere conveyance of smuggled goods by such transport vehicle shall be sufficient cause for the outright seizure and confiscation of such transport vehicle but the forfeiture shall not be effected if it is established that the owner of the means of conveyance used as aforesaid, is engaged as common carrier and not chartered or leased, or that the agent in charge thereof at the time, has no knowledge of the unlawful act; and

...

Section 1114. *Properties not Subject to Forfeiture in, the Absence of Prima Facie Evidence.* – The **forfeiture of the vehicle, vessel, or aircraft shall not be effected if it is established that the owner thereof or the agent in charge of the means of conveyance used as aforesaid has no knowledge of or participation in the unlawful act**: Provided, that a *prima facie* presumption shall exist

[13] Supra; see Sections 1113-1114.

against the vehicle, vessel, or aircraft under any of the following circumstances:

(a) If the conveyance has been used for smuggling before;

(b) If the owner is not in the business for which the conveyance is generally used; and

(c) If the owner is not financially in a position to own such conveyance.

...

As culled from the records, petitioner's most vital pieces of evidence to prove that existence of loop-loading were a Statement of Facts[14] (**SOF**) prepared by one Chief Officer Gulliber T. Cawaling (**Cawaling**) of the MT Malolos; a Cargo Outturn Certificate[15]; and, the Coasting Manifest[16] of MT Malolos. However, the Special First Division found these pieces of evidence insufficient to prove respondent's knowledge of the offense. *First*, it gave little credence to Cawaling's testimony as he admitted in Court that Limpahan merely dictated to him the contents of his SOF. Limpahan, in turn, was not presented as a witness. *Second*, the Cargo Outturn Certificate was purely executed by SL Harbor Agents, absent any participation from respondent. *Third*, the Coasting Manifest of MT Malolos, although evincing the fact of FO loading into the MT Malolos at the port of SL Gas, Limay, Bataan, still failed to show that the same was sourced from MT Alpine.

Moreover, the Special First Division noted inconsistencies in petitioners' theory and account of the loop-loading. According to one of petitioner's witnesses, Martinez, the loop-loading could have been done through a ship-side transfer. This was in stark contrast to the DCC's testimony that, according to an intelligence report, the two vessels were two (2) kilometers apart and that the FO transfer was done through kilometer-long pipelines.

Furthermore, the Special First Division found that the WSD did not comply with the procedure laid down in the CMTA requiring an alert order prior to its issuance. Petitioners neither alleged nor proved the existence of a previous alert order nor proved therefore

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14 Exhibit "R-1", Annex "R-1-9", Division Docket, Volume IV, p. 1708.
15 Id., p. 1706.
16 Id.

constraining the Special First Division to declare the WSD void. In annulling the WSD, the Special First Division banked on Section 1111 of the CMTA, to wit:

> ...
> Sec. 1111. *Alert Orders.* - Alert orders are written orders issued by customs officers as authorized by the Commissioner on the basis of derogatory information regarding possible noncompliance with this Act. An alert order will result in the suspension of the processing of the goods declaration and the conduct of physical or non-intrusive inspection of the goods within forty-eight (48) hours from issuance of the order. Within forty-eight (48) hours or, in the case of perishable goods, within twenty-four (24) hours from inspection, the alerting officer shall recommend the continuance of processing of goods in ease of a negative finding, or issuance of a warrant of seizure and detention if a discrepancy between the declaration and actual goods is found. The Bureau's information system shall immediately reflect the imposition or lifting of an alert order.
> ...

On 09 November 2018, petitioners filed their MR on the 22 October 2018 Decision.[17] The same was denied *via* this Court's Special First Division's Resolution dated 07 January 2019.[18]

Hence, the present petition.

ISSUES

I.
WHETHER THE SPECIAL FIRST DIVISION COMMITTED AN ERROR IN CLASSIFYING MT ALPINE MAGNOLIA AS A COMMON CARRIER INSTEAD OF A PRIVATE CARRIER.

II.
WHETHER THE SPECIAL FIRST DIVISION COMMITTED AN ERROR IN NOT HOLDING THAT THE WARRANT OF SEIZURE AND DETENTION AND THE FORFEITURE ARE VALID AND PROPER, AS THEY WERE ISSUED IN FULL

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17 Id., Volume VII, pp. 3466-3481.
18 Id., Supra at note 4.

ACCORDANCE WITH LAW AND PROCEDURAL DUE PROCESS.

III.

WHETHER THE SPECIAL FIRST DIVISION COMMITTED AN ERROR IN DISREGARDING THE FACT THAT PETITIONERS FIRMLY ESTABLISHED PROBABLE CAUSE TO ISSUE THE WARRANT OF SEIZURE AND DETENTION AND THE FACTUAL BASIS TO SUBSEQUENTLY ORDER THE FORFEITURE OF MT ALPINE MAGNOLIA FOR SMUGGLING.

ARGUMENTS

In support of the above issues, petitioners now claim that a scrutiny of the Voyage Charter Party between respondent and shipper would show that respondent relinquished the vessel's full operational control to the shipper; thereby turning respondent into a private carrier. They also argue that the Special First Division erred in finding the WSD invalid on the ground that there was no prior alert order. According to petitioners, an alert order is not a prerequisite for the issuance of a WSD which is a separate and distinct power of the DCC (to issue) under Section 1117 of the CMTA that provides:

> ...
> ***Section 1117.*** *Warrant of Seizure or Order of Release.* - The District Collector shall have the authority to issue a warrant of seizure of the goods upon determination of the existence of probable cause and in case of nonexistence thereof, the issuance of order of release. In case the District Collector issued an order of release, the District Collector shall immediately transmit all the records to the Commissioner who shall automatically review within forty-eight (48) hours, or within twenty-four (24) hours in case of perishable goods. When no decision is made by the Commissioner within the prescribed period, the imported goods shall be deemed released.
>
> The lifting of the alert order shall be issued by the District Collector only upon the affirmation of the decision of the District Collector by the Commissioner, or after the lapse of the period of review by the Commissioner, whichever is earlier.
> ...

Expectedly, respondent argues the exact opposite and cannot but agree with the findings of the Special First Division.

RULING OF THE COURT *EN BANC*

After a careful review of the parties' contrasting arguments, the Court finds the petition lacking in merit.

Although petitioners present commendable points regarding the first and second issues, discussion on these matters are futile as they would not affect the outcome of the case. The fact remains that, regardless if respondent were to be considered as a private carrier and that petitioners observed proper procedure in the issuance of the WSD, petitioners still have failed to establish the existence of smuggling.

The records show that Herma Shipping's SOF recounts that FO was loaded from the MT Alpine to the MT Malolos. However, petitioners must be reminded why such document was given little evidentiary weight. As noted in the assailed Decision, Cawaling admitted in open court that, while he executed the SOF, Limpahan merely dictated to him the contents thereof. In other words, he had no personal knowledge of the circumstances contained in the SOF.

The transcript of stenographic notes (TSN) reveal that Cawaling made such an admission during his cross-examination:

> ...
> Q: Do you affirm that the contents of the Statement of Facts are true?
>
> MR. CAWALING
> A: Yes, sir.
>
> ...
> Q: Did you go on board the MT Alpine Magnolia to observe what is happening during unloading before you made the entries to the... (interrupted).
>
> MR. CAWALING
> A: No.
>
> Q: So, Mr. Witness, your Statement of Facts Annex R-4-1 and your logbook entries marked as Annex R-4-2 ,are based entirely on what a certain Mr. Limpahan told you?

MR. CAWALING
A: Yes, Sir.[19]
...

Aside from having no personal knowledge of the facts stated in his SOF, Cawaling candidly also admitted that he never boarded the MT Alpine or communicated with any of its crew during the supposed time when the alleged loop-loading took place.[20]

According to Section 36, Rule 130 of the Rules of Court, ".... a witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules." Thus, testimony regarding matters beyond the personal knowledge of the witness is purely hearsay. In *Dantis v. Maghinang, Jr.*,[21] the Supreme Court also explained hearsay evidence in the following wise:

> ...
> **Evidence is hearsay when its probative force depends on the competency and credibility of some persons other than the witness by whom it is sought to be produced.** The exclusion of hearsay evidence is anchored on three reasons: 1) absence of cross-examination; 2) absence of demeanor evidence; and 3) absence of oath.
> ...

Surely, Cawaling's admission was damning to petitioners as it effectively rendered the SOF's contents hearsay. Even if Cawaling admitted to have signed and executed the same, the absence of his personal knowledge of the circumstances therein stated defeated the precise purpose of the document as a supposed "statement of facts".

The Court does not also find error in the Special First Division's conclusion that petitioners' witnesses had conflicting theories. The records yield that DCC Premediles, on one hand, claimed that the initial intelligence report he received prior to the WSD's issuance illustrated that the loop-loading was accomplished between the MT

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19 TSN, Volume II, pp. 34-36, 11 May 2019.
20 Id.
21 G.R. No. 191696, 10 April 2013; Emphasis supplied.

Malolos and the MT Alpine through kilometer long pipes (suggesting that the two vessels were at a great distance from one another). On the other hand, Martinez insisted that the loop-loading could have been accomplished *via* a ship-side transfer suggesting that the vessels were side by side.

A perusal of the TSN[22] also reveals that DCC Premediles admitted that he did not witness the loop-loading and that there was no way that the loop-loading could have been witnessed as the fuel pipes were underwater.[23] Based on his testimony, it would appear that MT Alpine was seized based on unverified reports. The TSN hence tells clearly:

> ...
>
> [Presiding] Justice Del Rosario
> Q: Who in particular did you inquire or got that information [from]?
>
> Mr. Premediles
> A: From CIIS and the anti-smuggling enforcement group of Commissioner Faeldon, your Honors.
>
> [Presiding] Justice Del Rosario
> Q: Was there any specifics as to how it was conducted...[?]
>
> Mr. Premediles
> A: Right now, your Honors, we have no capability to inspect the underwater facilities...
>
> [Presiding] Justice Del Rosario
> Q: ...other than these reports, there was no actual validation whether your staff, your Customs personnel neither or none of them have ever seen the actual act of loop loading and none of your personnel have actually seen the facility being used for loop loading? So, you are making a conclusion based on mere report?
>
> Mr. Premediles
> A: Yes, your Honors, official reports.[24]
>
> ...

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22 On clarificatory questions asked by Presiding Justice Roman G. Del Rosario.
23 TSN, Volume II, pp. 120-163, 25 April 2017.
24 Id., pp. 121-122.

At this point, it is worthy to note that the persons who provided the information in the alleged intelligence report or any document hinting on the existence of such were not presented during trial. The Court cannot therefore find any basis to conclude that there was probable cause to justify the seizure of the MT Alpine. According to the Supreme Court:

> ...
> The determination of probable cause needs only to rest on evidence showing that more likely than not, a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. What is merely required is "probability of guilt." Its determination, too, does not call for the application of rules or standards of proof that a judgment of conviction requires after trial on the merits.[25]
> ...

Due to the conflicting testimonies of its witnesses and the unlikeliness that the facts alleged by petitioners had even taken place, this Court could only conclude that petitioners have failed to prove the existence of probable cause, even with the very lax standards provided above. Furthermore, even assuming for the sake of argument that probable cause existed to justify MT Alpine's seizure, petitioners fell short of proving that the act of loop-loading actually occurred thereby making the detention of MT Alpine unwarranted.

Additionally, petitioners' argument regarding the conclusiveness of their factual findings as administrative agencies is misplaced. As petitioners so cited, the Supreme Court in *Japson v. Civil Service Commission*[26] held:

> ...
> Factual findings made by quasi-judicial bodies and administrative agencies when supported by substantial evidence are accorded great respect and even finality by the appellate courts. This is because administrative agencies possess specialized knowledge and expertise in their respective fields. As such, their findings of fact are binding upon this Court **unless there is a showing of grave abuse of**

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[25] *Unilever Philippines, Inc. v. Michael Tan*, G.R. No. 179367, 29 January 2014.

[26] G.R. No. 189479, 12 April 2011; Emphasis supplied.

> **discretion, or where it is clearly shown that they were arrived at arbitrarily or in disregard of the evidence on record.**
>
> ...

Relying on the foregoing doctrine, the BOC's or its agents' findings are not conclusive and absolute. They may be disregarded if the evidence on record do not support them. This is true with petitioners' case. Although petitioners argue that the Special First Division overlooked or gave little credibility to the testimony of its witnesses, the Court finds the same to be for a good reason. Often cited is the judicial principle that:

> ...
>
> [W]hen the issues involve matters of credibility of witnesses, the findings of the trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth.[27]
>
> ...

WHEREFORE, the foregoing considered, the Petition for Review of petitioners Commissioner of Bureau of Customs and District Collector of Bataan filed on 15 February 2019 is **DENIED** for lack of merit. Accordingly, the Special First Division's Decision dated 22 October 2018 and Resolution dated 07 January 2019, respectively, in CTA Case No. 9554 entitled *MT Alpine Magnolia v. Commissioner of Bureau of Customs and District Collector of Bataan* are hereby **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[27] *People of the Philippines v. Roque Dayaday y Dagooc*, G.R. No. 213224, 16 January 2017; *See also*: *People of the Philippines v. Wenceslao Nelmida, et al.*, G.R. No. 184500, 11 September 2012.

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WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, please see my Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO**. *JJ.*
MT ALPINE MAGNOLIA, *Respondent.*	Promulgated: JUL 15 2020 4:13 p.m.

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CONCURRING and DISSENTING OPINION

MANAHAN, *J.*:

The *ponencia* affirmed the assailed Decision and Resolution promulgated by the Special First Division (Court in Division) promulgated on October 22, 2018 and January 7, 2019, respectively, and consequently denied the Petition for Review filed by the Commissioner of the Bureau of Customs and District Collector of Bataan with Court *En Banc.*

I concur with the conclusion that the order of forfeiture of MT Alpine Magnolia should be reversed and set aside and that the said vessel be released from customs custody but on the sole basis that it is deemed a common carrier, hence, exempt from forfeiture under Section 1113 (a) of the Customs Modernization and Tariff Act (CMTA), and we quote:

> "Section 1113. Property Subject to Seizure and Forfeiture. – Property that shall be subject to seizure and forfeiture include:
>
> (a) Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of goods or in conveying or transporting smuggled goods in commercial quantities into or from any Philippine port or place. The mere carrying or holding on board of smuggled goods in commercial quantities shall subject such vehicle, vessel, aircraft, or any other craft to forfeiture: **Provided, That the vehicle, vessel , or aircraft or any other craft is not used as a common carrier which has been chartered or leased for purposes of conveying or transporting persons persons or cargo."** (emphasis supplied)

The Court in Division in the assailed Decision dated October 22, 2018 comprehensively discussed the retention of MT Alpine Magnolia's status as a common carrier. MT Alpine Magnolia was designated as the vessel to undertake the voyage (pursuant to a voyage charter) relative to the contract entered into between ST Shipping and Transport Pte., Ltd. ("ST Shipping") and Glencore Singapore Pte. Ltd. ("Glencore) for the sale of fuel cargo. Upon analysis of the provisions of the Voyage Charter party between ST Shipping and Glencore, the Court in Division found that there is nothing in the said charter that shows relinquishment of possession, command and navigation of MT Alpine Magnolia in favor of Glencore to transform its status as a private carrier subject to forfeiture. In the case of *Planters Products, Inc. vs. Court of Appeals,*[1] the Supreme Court ruled that a common carrier shall remain as such notwithstanding the charter of the whole or part of the vessel, whether this be by a voyage or time charter, and we quote:

> "It is therefore imperative that a public carrier shall remain as such, notwithstanding the charter of the whole or portion of a vessel by one or more persons, provided the charter is limited to the ship only, as in the case of a time-charter or voyage-charter. It is only when the charter includes both the vessel and its crew, as in a bareboat or demise that a common carrier becomes private, at least insofar as the particular voyage covering the charter-party is concerned."

Having ruled as such, the vessel MT Alpine Magnolia should be released for being exempt from forfeiture under the afore-quoted provision of the CMTA.

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[1] G.R. No. 101503 dated September 15, 1993.

My conclusion thus far stops there and I express my hesitancy to further exonerate the persons involved in the alleged "loop-loading" of fuel oil based on the premise that the witness of the Commissioner of Customs (COC) and the District Collector of Bataan (petitioners herein) failed to establish the fact of loop-loading based on the testimony of Mr. Cawaling who admitted in open court that while he executed the Statement of Facts (SOF) mentioning quite categorically that fuel oil was loaded from MT Alpine Magnolia to MT Malolos, he was only dictated upon by a certain Mr. Limpahan to write down such statements. With all due respect, I humbly believe that this is not enough to dispute the findings of the District Collector of Customs in its decision dated January 20, 2017 and/or to destroy the other evidence and testimony by way of Judicial Affidavits presented by herein petitioner during the trial such as the testimonies of the District Collector of Customs, Julius B. Premediles[2], and the Chief of Staff of the District Collector, Mr. Lorecel R. Ibañez, who both mentioned a document identified as a "Cargo Outturn Certification" dated February 15, 2016 which was allegedly obtained by the Bureau of Customs (BOC), indicating that the vessel MT Malolos received 962.003 M/T of fuel oil through "loop-loading or ship to ship transfer from MT Alpine Magnolia".

Without going into the details of the evidence adduced by both parties during trial, I believe that a thorough scrutiny of the evidence of both parties is essential to support a firm conclusion that the evidence failed to establish the fact of loop-loading making the detention of MT Alpine Magnolia unwarranted.

Notwithstanding the observations above, I agree with the conclusion reached in the *En Banc* decision that MT Alpine Magnolia be released but only on the basis that the latter is still considered a common carrier and thus exempt from forfeiture under Section 1113 (a) of the CMTA.

CATHERINE T. MANAHAN
Associate Justice

[2] Exhibit "R-1".