REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PITAO LIM ENG, in his
Capacity as Owner of
M/L "Negros Star,"
Petitioner,

- versus - C.T.A. CASE NO. 2859

THE ACTING COMMISSIONER OF
CUSTOMS,
Respondent.

X - - - - - - - - - - - - X

8/29/77

D E C I S I O N

Petitioner was and still is the owner and operator of the M/L "Negros Star," a duly licensed common carrier of goods and merchandise and authorized as such under Certificate of Philippine Registry No. 362 and Coastwise License No. 564 issued by the Philippine Coast Guard. Said vessel was licensed to, and actually,engage in coastwise trade the route of which was from Zamboanga to Sulu Islands, Tawi-Tawi and vice versa.

On October 21, 1974, a charter party contract was entered into between petitioner, as owner of said vessel, and one Hassan Hassiman, as charterer, wherein the latter leased the aforesaid vessel for a period of three (3) months at a consideration of ₱75,000.00. It was stipulated in the contract that Hassiman may put on board the vessel any goods or merchandise which are not prohibited by law and that he was allowed to operate said motor launch for his own exclusive use and benefit but only within the territorial waters of the Philippines.

The provisions of the charter party contract, pertinent to this case, are as follows:

> 1. That the term of this Charter Party Contract shall be three (3) months from and after the date hereof, renewable for a like period at the option of the parties;
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> 2. That the CHARTERER shall pay therefor to the OWNER the sum of SEVENTY FIVE THOUSAND (₱75,000.00) PESOS, Philippine Currency, in the manner as follows:
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> > THIRTY SEVEN THOUSAND FIVE HUNDRED (₱37,500.00) Pesos at the signing of this contract and the balance thereof in two (2) equal monthly installments payable within the first week of the month.
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> 3. That the CHARTERER shall operate the abovementioned Motor Launch for his own exclusive use and benefits and only within the territorial waters of the Philippines;
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> 4. That the CHARTERER may put on board the vessel any goods or merchandise whatever, except those that are prohibited by law or contraband of war; (pp. 21-23, Customs Rec.)

On January 1, 1975, 2,050 sacks of refined white sugar were loaded on the said M/L "Negros Star" in Zamboanga City purportedly destined for the Ports of Cagayan de Sulu, South Ubian, Tabawan, and Tawi-Tawi, all in the Philippines. However, instead of proceeding to its destination in said ports of Cagayan de Sulu, South Ubian, Tabawan, and Tawi-Tawi, it actually sailed with its sugar cargo and proceeded to Labuan, Sabah, Malaysia, which is outside the Philippine territorial waters and there unloaded the said sugar.

The patron of the M/L "Negros Star" at the time the 2,050 bags of refined sugar were loaded and when the vessel was purportedly destined for the ports of Cagayan de Sulu, South Ubian, Tabawan, and Tawi-Tawi was Abdul M. Bandaying. He was also the patron at the time said 2,050 bags of sugar were diverted to, and finally unloaded at, Labuan, Sabah, Malaysia. He was the patron hired by the owner of said vessel, the petitioner Pitao Lim Ang. However, it was upon the order of Hassiman to Patron Bandaying that the vessel proceeded to Labuan, Sabah, Malaysia, which arrived thereat on January 4, 1975. Said vessel did not have any government authority, particularly a military clearance, to go to Labuan, Sabah, Malaysia. When said vessel arrived at Labuan, Sabah, Malaysia, the cargo of white refined sugar was received by Yu Ling and Chung Kong. Out of 2,050 bags of sugar exported to Labuan, Sabah, 428 bags were unmanifested.

On January 7, 1975, or three days after unloading the cargo, the vessel left Sabah arriving in Zamboanga City on January 9, 1975. Almost two (2) months thereafter, or on March 6, 1975, the vessel was apprehended, seized, and detained by the Philippine Coast Guard on the grounds (1) that the vessel was allegedly used for illegal exportation of sugar to Sabah, Malaysia; (2) that by the exportation of the sugar, there was a violation of the Sugar Control Guidance promulgated by the Sugar Control Administration (Sugar Quota Administration Circular Letter No. 51, Series 1973174, dated June 18, 1974; (3) that the act of illegally exporting sugar was inimical to National Interest No. 3; (4) and that the act constituted a violation of Sections 2528 and 2530(a) of the Tariff and Customs Code.

On August 20, 1975, the vessel was temporarily released under a property bond in the amount of ₱192,280.00, but only to be again placed under the custody of the Bureau of Customs. Seizure Proceedings (S.I. No. 33-75) was instituted against the vessel by the Bureau of Customs in the Port of Zamboanga. After hearing, a decision was rendered by the Collector of Customs of the Port of Zamboanga dated July 2, 1976 holding and declaring the M/L "Negros Star" forfeited in favor of the Government.

An appeal was taken to the Commissioner of Customs who rendered a decision dated November 16, 1976 affirming that of the Customs Collector of Zamboanga. Hence, this appeal.

The only issue submitted for disposition is whether or not the M/L "Negros Star" violated Sections 2528; and whether or not it is subject to forfeiture for violation of Section 2530(a) of the

Tariff and Customs Code.

Petitioner contends that the exportation of sugar on January 1, 1975 in this case, or prior to February 21, 1975, is not penalized by Presidential Decrees Nos. 579 and 659; that there is no law which expressly prohibits the exportation of sugar to foreign countries by persons or legal entities other than the Philippine Exchange Company, Inc.; that prior to February 21, 1975, the date Presidential Decree No. 659 became effective, the exportation of sugar was not punishable or otherwise considered a crime, which would warrant the forfeiture of the M/L "Negros Star." It is further contended that the vessel is not subject to forfeiture because under the provisions of Section 2530(a) of the Tariff and Customs Code (1) only vessels used unlawfully in the importation or exportation of articles, or in conveying and/or transporting contraband or smuggled articles and (2) only when said vessels are neither duly authorized common carrier nor chartered or leased may they be forfeited in favor of the Government. Finally, it is contended that it should be Hassan Hassiman that should be punished for the exportation of sugar to Labuan, Sabah and not the owner of the vessel; that petitioner has neither knowledge nor participation in the alleged smuggling of sugar inasmuch as under the charter party the vessel was under the absolute use, possession, and control of the charterer, Hassan Hassiman; and that the vessel and the crew were also under the absolute supervision and control of Hassiman who acted as if he is the owner of the vessel for the duration of the charter party contract. Petitioner, in conclusion, prays that inasmuch as there is a doubtful application of the law on forfeiture upon the facts and circumstances of this case, petitioner offers, instead of forfeiture of the vessel, to pay the sum of ₱5,000 and in consonance with the ruling laid down in the case of Francisco D. Balmocena vs. Commissioner of Customs, C.T.A. Case No. 1585, July 31, 1966, wherein the vessel in question in that case was found involved in the smuggling of untaxed cigarettes and the owner of said vessel therein was fined ₱10,000 in lieu of forfeiture of said vessel.

As can be gleaned from his answer, respondent, however, contends that in a seizure proceeding against a vessel or aircraft for violation of Section 2530(a) of the Tariff and Customs Code, the fact that the owner has no knowledge of the offense charged is no defense for the forfeiture of said vessel and aircraft and that while admitting the M/L "Negros Star" to be a common carrier which was chartered or leased at the time the 2,050 sacks of sugar were loaded aboard said vessel and diverted to Sabah, Malaysia, he pointed out that at the time of the exportation of the sugar the M/L "Negros Star" was under the direction and control of petitioner's employees.

We agree with petitioner that the owner of the vessel in question, the M/L "Negros Star," both from the standpoint of the facts and of the law involved in this case, should be made to pay a fine, instead of the forfeiture of the vessel.

It is true that when petitioner entered into a charter party contract with Hassiman, the latter was under the obligation not to use the vessel outside territorial waters and not to load thereon prohibited articles. Under that charter party, the vessel was then placed under the operation and the exclusive use and benefits of the charterer (pp.7-73, Customs Record; see also pp. 98, 112, ibid) which is characteristic of the full and complete supervision and control an actual owner has over his vessel. The fact that the vessel was under a patron employed by the owner, petitioner Pitao Lim Eng, will not the least change that power of supervision and control placed in Hassiman during the three (3) months duration of the charter party. The deviation made in the destination of the vessel which was under the direct supervision and control of Hassiman as aforesaid and the loading thereon of the sugar was his own personal responsibility and not that of petitioner Pitao Lim Eng, and any act or acts committed by the charterer should never, in any sense, be attributable to, or adversely affect the petitioner by the forfeiture of his vessel. Moreover, the deviation made by the vessel from its intended local destination to a foreign port, or to Labuan, Sabah, Malaysia, and the unloading of the refined sugar thereat, was never known by the petitioner. The lack of knowledge of petitioner of the exportation of the sugar in question was confirmed by no less than Hassiman himself and two (2) other witnesses, Arthur Saya and Antonio Chua, and consequently, for lack of previous knowledge thereof petitioner was released from detention by the Department of National Defense. (Decision of the Acting Collector of Customs, July 2, 1976, pp. 140, 132, Customs Rec.)

Hassan Hassiman very well knew his obligations under the charter party wherein he bound himself to use the vessel only in Philippine territorial waters and not to load prohibited articles or goods.thereon, The petitioner had given specific instructions to his Patron Bandaying not to operate the vessel outside territorial waters, which fact was never contradicted by the latter. The diversion of the course of the vessel and the successful discharge of the cargo of refined sugar in Labuan, Sabah were, we think, largely on account of the full supervision and control over the vessel granted to, as can be gleaned from the very tenor of the charter party, as well as the apparently strong, irresistible and overriding moral hold and personal influence of Hassiman who was a former Vice-Mayor of Jolo, over Patron Bandeying, and the very tempting inducement or promise of the former to pay the latter P3,000 as his "tip" for undertaking the trip to Labuan, Sabah. While it cannot be doubted that there was in this case, by the consignment of refined sugar to Labuan, Sabah, Malaysia, an act of exportation by the use of the M/L "Negros Star" of qualifiedly prohibited articles (Coll. of Customs vs. Arca, 11 SCRA 529, 535; Comm. of Customs vs. CTA & Discocho, G.R. L-33471, Jan. 31, 1972) which is in violation of the policy laid down under the provisions of Presidential Decree No. 579, effective on November 12, 1974, which provided that only the Philippine Exchange Company, Inc. shall have the right to purchase sugar from local sources for exports to the United States and to other world markets under authority of the Sugar Quota Administration, the vessel in question on which said sugar cargo was loaded cannot however be forfeited because, firstly, the vessel is not less than thirty (30) tons capacity, it having a gross tonnage of 92.25 and a net tonnage of 60.86 (p. 92, Customs Rec.) [Manila Star Ferry, Inc. vs. Commissioner of Customs, et al., CTA Cases Nos. 1836, 1837, 1839, Sept. 30, 1969/ and, secondly, the vessel is admittedly an authorized common carrier. (Exhs. C, D & F, pp. 86-92, Customs Rec.) Section 2530(a) of the Tariff and Customs Code provides:

> SEC. 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 subjected to forfeiture:
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> a. Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles or in conveying and/or transporting contraband or smuggled article in commercial quantities into or from any Philippine port or place, and any vessel which, being of less than thirty tons capacity shall be used in the importation of articles into any Philippine port or place. The mere carrying or holding on board of contraband or smuggled articles in commercial quantities shall subject such vessel, vehicle, aircraft or any other craft to forfeiture; Provided, That the vessel, vehicle, aircraft or any other craft is not used as a duly authorized common carrier and as such a carrier it is not chartered or leased;

The above provision is clear that forfeiture of vessels can be declared only if said vessels are less than 30 tons capacity and not a common carrier. However, it can be gathered from the assertion of respondent that if the common carrier, as in the case at bar, is under a charter party or otherwise leased, it could then be subject to forfeiture regardless of whether the actual owner of the vessel knew of the illegal acts or not. It is his view that since the M/L "Negros Star", was, as a matter of fact, a common carrier and under a charter party and used in exportation and transportation of prohibited articles, said vessel is subject to forfeiture under the said provision of Section 2530(a) of the Tariff and Customs Code.

It seems logical to presume that the reason why there is such a proviso exempting common carriers from forfeiture is to protect the innocent owners thereof when such carriers are used as conveyances for smuggling purposes, ostensibly without their actual knowledge, and to safeguard the interest of the riding public by preventing the tonnage reduction of vessels employed in the maritime service and engaged in the transport of passengers and cargo on account of possible forfeiture. We believe that a vessel, which was a chartered common carrier, cannot be legally forfeited if there was lack of knowledge of the owner of the illegal use of his vessel. For would it not be clearly unjust if, notwithstanding that there is no evidence of the owner's participation in the illegal act or knowledge of the illegal use of his vessel, the said vessel will still be forfeited to the Government? The injustice will be much more real if the vessel that he owns, which may perhaps costs hundreds of thousands or even millions of pesos, will be forfeited due merely to the act of a commuter or passenger, or the captain or crew members of said vessel, of carrying and loading on the vessel prohibited articles for either importation or exportation purposes.

One will clearly note that from the evidence and record of this case, the owner of the vessel in question never was a privy to the illegal act of exporting the refined sugar which was loaded by the charterer, Hassiman. Moreover, it must be observed that the charter party in question is not one of "affreightment," wherein the actual owner of a vessel is responsible to, and is in control of the loading and the carriage of the goods to their places of consignment. (Reed v. U.S., 78 U.S. 591.) Under this situation, the owner can, therefore, supervise the loading of the cargo and can have the means of knowing the cargoes being loaded on his ship and can readily prevent the loading thereon of prohibited or contraband goods. It may then be presumed that the carrying on the vessel of any prohibited goods under the "affreightment" kind of a charter-party (U.S. v. HVoslef, N.Y., 35 S.Ct. 459, 460, 237 U.S. 1, 59 L. Ed. 813, cited in 6 W & P 679; Reed vs. U.S., op. cit.) is with the knowledge of the owners. And, consequently, the vessel can then be subject to forfeiture. However, like in the case at bar, where under the terms of the charter party the exclusive possession, command, and navigation of the ship is in the charterer, who is clothed with the character of ownership (Reed vs. U.S., ibid.), and who has been given the sole power and control of the voyage, or service contemplated (Aird vs. Weyenhaueuser S.S. Co., 169 F 2d 606, 611), or under the charterer's account in a contract otherwise known as "mercantile lease" (The New York, 93 F 496, 497), then any wrongful act that may be committed by the charterer, like in the exportation of illegal cargo in this case, should be the responsibility of the charterer alone. And the illegal act of exporting illegal sugar cargo should not work to the prejudice and jeopardy of the actual owner as he was placed in no position to know any commission of said wrongful act, such as the loading of illegal or contraband goods, or the use of the vessel for any other unlawful purpose. If the cargo vessel under the kind of charter party known as "mercantile lease" should be subject to forfeiture, it would indeed create a great injustice to the innocent owner. While it may be conceded that an action of forfeiture against a vessel is considered an action in rem, this does not mean that the carrier can simply be libelled, notwithstanding the lack of knowledge or the innocence of the owner of the wrongful use of his vessel. For if this will be so, then hardly anyone engaged in transportation business will take the risk by placing his ship or common carrier available for charter party, a very common business activity in the mercantile world. This will indirectly constitute a restraint on trade. We rather think that in order to justify the forfeiture of the vessel, which as a matter of principle is strongly construed against the Government (Farm Implement & Machinery Co., vs. Comm. of Customs, CTA Case No. 260, Feb. 4, 1957), the forfeiture should have a direct or an indirect relation to the actual knowledge of the owner of the illegal use of his vessel. For if he previously knew of the illegal or wrongful use of his vessel, the owner would then be an accomplice after the fact if it will be committed by another like a charterer. Stated otherwise, it would indeed be harsh, excessive and arbitrary to subject a common carrier, inherently used as a public conveyance for public transportation service, to forfeiture just because it happened to be under lease and specially in a charter party of a kind where the management, control and supervision of the vessel in question was completely in the hands of the charterer. And without the intention of being repetitious, it would, indeed, be a sorrowful state of affairs where the real owner has no means of control or of knowing the illegal acts that may be committed by the charterer with respect to the vessel until later, as what actually happened in this case, and still the vessel will be subject to forfeiture. The owner of the vessel, Pitao Lim Ang, or the petitioner herein, came to know only of the illegal act of loading and exporting the refined sugar to Labuan, Sabah only after his vessel was apprehended and the said petitioner was investigated by the Philippine Coast Guard. We do not think that it is the intention of Section 2530(a) to forfeit the common carrier, under a charter party without the knowledge of the illegal use of the vessel by the owner. Under these circumstances, the provisions of Section 2530(a) of the Tariff and Customs Code, which provides for the forfeiture of a vessel used in illegal importation and exportation of goods, even without the knowledge of the owner of the vessel, becomes, therefore, of doubtful application. In a companion provision of Section 2530(a), which is Section 2530(k), which similarly provided for the forfeiture of conveyances, drawn by beasts of burden, or propelled by steam or motive power (such as locomotive, cars, and trucks), used in the conveyance of contraband or smuggled articles, it has been held that the forfeiture of these conveyances can not, however, be effected if there was no knowledge of the commission of the unlawful act by the owner of such conveyance.(De Leon vs. Comm. of Customs, CTA 1942, Jan. 27, 1969.) Considering Section 2530(k), we are of the opinion that knowledge of the illegal act by the owner of the vessel should equally be a condition sine quanon to the application of Section 2530(a) effecting the forfeiture thereof. We take it that when the proviso in Section 2530(a) of the Tariff and Customs Code, as amended by Presidential Decree No. 34, was written into the law, it is presumed that right and justice were intended to prevail when the President of the Philippines wrote said Presidential Decree No. 34, in the exercise of an act akin to his legislative authority under Martial Law. (Art. 10, Civil Code of the Philippines.) Consequently, it would only be right and just that in order that any vessel, acquired at tremendous cost of hundreds of thousands to millions of pesos, may be subject to forfeiture, there is need to construe Section 2530(a) in the light that the vessel can be justifiably forfeited only if there is knowledge of the illegal use of the vessel by the owner.

Considering that what was agreed upon in this case is a charter party otherwise known as a "mercantile lease," the vessel in question can not be subject to forfeiture without the knowledge of the illegal use by the owner of the vessel. There was, however, a violation of the law and policy of the State when the refined sugar was carried to Labuan, Sabah on board said vessel. There was also a violation of Section 2528 by diverting the route of the common carrier in question to Labuan, Sabah, Malaysia without securing a government permit or clearance for which it is liable for a fine. But even for the sake of argument that the common carrier in question can be forfeitable under Section 2530(a) of the said Tariff and Customs Code, this Court had ruled that a fine may be imposed instead of forfeiture, and not without strong and valid reason. Therefore, in line with the holding in the case of Balmocena vs. Commissioner of Customs, CTA 585, promulgated on July 31, 1966, and for violation of Section 2528 of the Tariff and Customs Code, we hold this vessel liable for a fine of ₱5,000. Said this Court in the said case of Balmocena vs. Commissioner of Customs:

> Finally, it is argued -
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> That assuming arguendo that the vessel involved is subject to seizure, the respondent Collector of Customs committed grave abuse of discretion in imposing the penalty of forfeiture instead of a fine considering the mitigating circumstances proven by the evidence of the claimant-petitioner.
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> At first, this Court entertained serious doubt whether or not a fine may be imposed upon an offending vessel or aircraft for violation

of Section 2530 of the Tariff and Customs Code. For this reason, an order was issued on February 28, 1966, requiring both parties to submit memorandum on the question whether or not a fine may be imposed in lieu of forfeiture in cases arising under Section 2530 of said Code. Both counsel for petitioner and the office of the Solicitor General express the view that there is sufficient authority for the imposition of a fine in lieu of forfeiture, citing Sections 2312, 2532 and 2533 of the Tariff and Customs Code.

Under the old Customs Law, it was expressly provided that a fine could be imposed in lieu of forfeiture. (Sec. 1365, Adm. Code.) This discretionary power to impose a fine in lieu of forfeiture was recognized in Venancio Carreon Tong Tak v. Comm., C.T.A. No. 135, Nov. 27, 1956, aff'd. in G.R. No. L-11947, June 30, 1959, 58 O.G. 544. Notwithstanding the failure of Congress to reenact Section 1365 of the Administrative Code as part of the new Tariff and Customs Code, we agree with the Solicitor General and counsel for petitioner that such discretionary power still exists. In seizure proceedings against a vessel or aircraft for violation of Section 2530 of the Tariff and Customs Code, it is no defense that the owner or owners had no knowledge of the offense or of the attempt to commit the offense charged. It would, therefore, be patently unjust, not to say highly arbitrary, to order the seizure and forfeiture of an ocean liner or an aircraft engaged in international trade, which cost millions of pesos, for an illegal act of a member of the crew of the vessel or aircraft, or by a mere passenger, without the knowledge or consent of the owner or owners of the vessel or aircraft.

In this case, it is admitted that the owners of the vessel in question, petitioner and his wife, had no knowledge of the illegal act of a member of the crew of the vessel in surreptitiously loading and concealing the aforesaid articlesin said vessel; that petitioner, prior to the apprehension of the vessel, had issued a memorandum instructing the members of the crew of the fishing vessel not to load contraband articles in said vessel nor to engage in any activity in connection with blue seal cigarettes;

> and that the owner of said contraband articles was immediately dismissed by petitioner and was subsequently prosecuted for violation of the revenue laws. In view of these circumstances, we find that the imposition of a fine of ₱10,000.00 in lieu of forfeiture, would be an adequate penalty. In arriving at this conclusion, we have also taken into account the fact that the seizure of the vessel and its subsequent impounding by the Bureau of Customs resulted in the deterioration thereof and caused damages to petitioner in the amount of approximately ₱50,000.00, according to an estimate made by appraisers of said Bureau.

A similar holding was accordingly repeated in the case of Pascual vs. Commissioner of Customs, CTA No. 1608 promulgated on September 30, 1969, pertinent portion of which is quoted:

> The "M/B Maria Victoria-P" was declared forfeited in favor of the Government pursuant to Section 2530(a), (b) and (c) of the Tariff and Customs Code which read as follows:
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> xxx xxx xxx
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> There is no question that the vessel was used in the illegal importation of blue seal cigarettes. Consequently, the said vessel is subject to the penalty imposed by Section 2530 of the Tarfff and Customs Code. (C.F. Sharp & Co. v. Commissioner of Customs, G.R. No. L-23803, Feb. 26, 1968.) Considering, however, that petitioner, owner of the vessel, took all the necessary action to prevent the vessel from being used illegally by notifying the Philippine Navy of the disappearance of this vessel, the penalty of forfeiture appears to us excessive.

The same holding imposing fine was made in the case of Manila Star Ferry, Inc. et al. vs. Commissioner of Customs, CTA Cases Nos. 1836, 1837, 1839, promulgated on September 30, 1969. Cu

WHEREFORE, the decision of the Commissioner of Customs appealed from, ordering the forfeiture of the vessel M/L "Negros Star," is hereby modified. Petitioner is hereby ordered to pay to the Commissioner of Customs a fine of ₱5,000.00 within thirty (30) days from receipt of this decision.

Accordingly, upon payment of said fine, the respondent is hereby ordered to forthwith release the said vessel to petitioner.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, August 29, 1977.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

Amante Filler
AMANTE FILLER
Acting Presiding Judge

In the result. In seizure proceedings against a vessel or aircraft for violation of section 2530 of the Tariff and Customs Code, it is no defense that the owner had no knowledge of the offense charged. (Francisco D. Balmocena vs. Commissioner of Customs, C.T.A. Case No. 1585, July 31, 1966) At any rate, this case was submitted for decision on the basis of the pleadings, and it is alleged under paragraph 8 of the Answer, which petitioner must be understood to have admitted, that the vessel subject of this case was, at the time of the violation, under the control of petitioner's employees. However, under the Balmocena ruling, in lieu of forfeiture, fine would be an adequate penalty considering the deterioration of the vessel caused by its impounding by the Bureau of Customs.