

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER
CUSTOMS,

OF

Petitioner,

CTA EB NO. 2698
(CTA Case No. 9551)

Present:

- versus -

DEL ROSARIO, P.L.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, Jl.

SL HARBOR BULK TERMINAL
COPRORATION,
Respondent.

Promulgated:

MAR 08 2024

3:22pm

X - - - - - X

DECISION

BACORRO-VILLENA, Jl.:

Before the Court is a Petition for Review¹ filed by petitioner Commissioner of Customs (**petitioner/COC**) pursuant to Section 3(b)²,

¹ Filed on 10 October 2022, *rollo*, pp. 8-31.

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 additional period not

Rule 8, in relation to Section 2(a)(1)³, Rule 4 of the Revised Rules of the Court of Tax Appeals⁴ (**RRCTA**). The petition assails the First Division's Decision dated 24 February 2022⁵ (**assailed Decision**) and Resolution dated 18 August 2022 (**assailed Resolution**). The dispositive portion of the assailed Decision and Resolution read, thusly:

...

WHEREFORE, in light of the foregoing, the present *Petition for Review* filed by SL Harbor Bulk Terminal Corporation is hereby **GRANTED**.

Accordingly, the January 20, 2017 Decision of the Collector of Customs, Julius B. Premediles, is **REVERSED** and **SET ASIDE**; and, the Warrant of Seizure and Detention No. 001-2016 is **RECALLED** and **LIFTED**. The order of the Court in January 23, 2018 Resolution to release to petitioner SL Harbor Bulk Terminal Corporation the 44,000 MT of imported industrial fuel oil, subject of the present case, is **DECLARED PERMANENT**. The Surety Bond (PISC Bond No. 0091951 dated January 25, 2018) issued by Pioneer Insurance and Surety Corporation in the amount of Php122,714,962.50 shall be **RELEASED AND DISCHARGED UPON FINALITY OF JUDGMENT**.

SO ORDERED.

...

WHEREFORE, respondent's *Motion for Partial Reconsideration (Re: Decision dated 24 February 2022)* is hereby **DENIED** for lack of merit.

SO ORDERED.

...



exceeding fifteen days from the expiration of the original period within which to file the petition for review.

³ SEC. 2. *Cases within the jurisdiction of the Court en banc*. – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.]

...
⁴ A.M. No. 05-11-07-CTA.

⁵ Penned by Associate Justice Catherine T. Manahan, with Presiding Justice Roman G. Del Rosario and Associate Justice Marian Ivy F. Reyes-Fajardo, concurring. Division Docket, Volume IV, pp. 2008-2022.

PARTIES OF THE CASE

Petitioner COC is vested with the authority to enforce laws, rules and regulations related to customs administration. He may be served with notices and judicial processes through his statutory counsel, the Solicitor General, who holds office at 134 Amorsolo Street, Legaspi Village, Makati City.⁶

On the other hand, respondent SL Harbor Bulk Terminal Corporation (**respondent/SLHBTC**) is a domestic corporation which is engaged in the business of trading refined petroleum products and allied services. It also operates a terminal in Limay, Bataan which includes storage tanks, storage and distribution equipment, as well as its own in-shore berthing, and off-shore mooring facilities.⁷

FACTS OF THE CASE

On 13 December 2016, Nelson A. Romero of Coastway Shipping Agency Corp. (**ship agent**) submitted a Notice of Arrival before the Bureau of Customs (**BOC**), Port of Limay, notifying the arrival on 14 December 2016 of MT Alpine Magnolia – V.60 (**MT Alpine**), owned by ST Shipping & Transport PTE Ltd. and managed by Seaworld Management and Trading Inc. It was represented that the vessel will be coming from Port Kelang, Malaysia to berth in respondent's terminal for the purpose of discharging fuel oil consigned to the latter.⁸

On 14 December 2016, vessel MT Alpine arrived at the Port of Limay, Bataan, carrying 44,000 Metric Tons (**MT**) of imported Industrial Fuel Oil (**IFO/shipment**) from Singapore.⁹ After complying with the port entry formalities, the shipment was discharged onto respondent's storage tanks L, M, and 2, until 17 December 2016.¹⁰ 

⁶ Petition for Review, *rollo*, Volume I, pp. 9-10.

⁷ Petition for Review, Division Docket, Volume I, pp. 10-11.

⁸ Paragraph 3.1, Statement of the Facts and Material Antecedent Proceedings, Petition for Review, *rollo*, Volume I, p. 10.

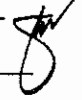
⁹ The records also show 43,980.5 MT.

¹⁰ See Resolution dated 23 January 2018, *rollo*, Volume II, p. 608.

DECISION

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A day prior to 17 December 2016, District Collector (DC) Julius B. Premediles (**Premediles**) issued Writ of Seizure and Detention (**WSD**) No. 001-2016¹¹ against respondent¹² which it received at about 10:20 p.m. of the same day.¹³ The WSD was prompted by the findings of customs officials and examiners that respondent's shipment was tainted with fraud. Particularly, they found that respondent allegedly violated Section 1113¹⁴ of the Customs Modernization and Tariff Act (**CMTA**). They observed that — 

¹¹ BOC Records, p. 73.

¹² Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume III, p. 1386; Statement of Material Dates, Petition for Review, Division Docket, Volume I, par. 1, p. 11; as admitted in petitioner's Answer, Division Docket, Volume II, p. 542.

¹³ Respondent's Memorandum, id., Volume IV, p. 1945.

¹⁴ SEC. 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;

(b) Any vessel engaging in the coastwise trade which shall have on board goods of foreign growth, produce, or manufacture in excess of the amount necessary for sea stores, without such goods having been properly entered or legally imported;

(c) Any vessel or aircraft into which shall be transferred cargo unloaded contrary to law prior to the arrival of the importing vessel or aircraft at the port of destination;

(d) Any part of the cargo, stores, or supplies of a vessel or aircraft arriving from a foreign port which is unloaded before arrival at the vessel's or aircraft's port of destination and without authority from the customs officer; but such cargo, ship, or aircraft stores and supplies shall not be forfeited if such unloading was due to accident, stress of weather, or other necessity and is subsequently approved by the District Collector;

(e) Goods which are fraudulently concealed in or removed contrary to law from any public or private warehouse, container yard, or container freight station under customs supervision;

(f) Goods, the importation or exportation of which are effected or attempted contrary to law, or any goods of prohibited importation or exportation, and all other goods which, in the opinion of the District Collector, have been used, are or were entered to be used as instruments in the importation or the exportation of the former;

(g) Unmanifested goods found on any vessel or aircraft if manifest therefor is required;

(h) Sea stores or aircraft stores adjudged by the District Collector to be excessive, when the duties and taxes assessed by the District Collector thereon are not paid or secured forthwith upon assessment of the same;

(i) Any package of imported goods which is found upon examination to contain goods not specified in the invoice or goods declaration including all other packages purportedly containing imported goods similar to those declared in the invoice or goods declaration to be the contents of the misdeclared package;

(j) Boxes, cases, trunks, envelopes, and other containers of whatever character used as receptacle or as device to conceal goods which are subject to forfeiture under this Act or which are so designed as to conceal the character of such goods;

(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

(l) Goods sought to be imported or exported:

- i. A total of 962,000 liters of fuel oil product [IFO] was discharged at SLHBTC and transferred to a Barge named "MT Malolos" supposedly bound for Navotas *per* Cargo Outturn Certificate dated 12/15/16, issued and approved by a certain EV Estanislao, Terminal Depot Manager for SLHBTC; and,
- ii. A scrutiny of the [Cargo Outturn Certificate] shows that 962,000.003 liters were sourced from MT Alpine.¹⁵

On 20 December 2016, respondent filed before the BOC Legal Service a Motion to Lift the WSD (**Motion to Lift**) and an Urgent Supplemental Manifestation and Motion to Release (**Motion to Release**).¹⁶

On 20 January 2017, DC Premediles promulgated a Decision¹⁷ denying respondent's Motion to Lift and Motion to Release.¹⁸ It also ordered the forfeiture of respondent's shipment (44,000 MT of IFO). Thereafter, on 23 January 2017, the records of the case were transmitted to petitioner.¹⁹ Meanwhile, respondent received a copy of the said Decision on 24 January 2017.²⁰

On 01 February 2017, respondent appealed DC Premediles' Decision before petitioner.²¹



-
- (1) Without going through a customs office, whether the act was consummated, frustrated, or attempted;
 - (2) Found in the baggage of a person arriving from abroad and undeclared by such person;
 - (3) Through a false declaration or affidavit executed by the owner, importer, exporter, or consignee concerning the importation of such goods;
 - (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 goods; or
 - (5) Through any other practice or device contrary to law by means of which such goods entered through a customs office to the prejudice of the government.

¹⁵ Petition for Review, Statement of the Facts and Material Antecedent Proceedings, *rollo*, p. 12.

¹⁶ JSFI, Division Docket, Volume III, p. 1386; Par. 2, Statement of Material Dates, Petition for Review, Division Docket, Volume I, p. 11; as admitted in petitioner's Answer, Division Docket, Volume II, p. 542.

¹⁷ BOC Records, pp. 48-62.

¹⁸ JSFI, Division Docket, Volume III, p. 1387.

¹⁹ Respondent's Memorandum, *id.*, Volume IV, p. 1947.

²⁰ Par. 3, Petition for Review, Statement of Material Dates, *id.*, Volume I, p. 11.

²¹ JSFI, *id.*, Volume III, p. 1387.

After the period for petitioner to decide respondent's appeal had lapsed, respondent filed the instant Petition for Review on 23 March 2017.²² It was raffled to this Court's Third Division. On 21 April 2017, respondent (as then petitioner) filed a "Motion for Special Order"²³ seeking the release of the seized IFO.

On 21 June 2017, petitioner (as then respondent) filed his Answer²⁴ with the following affirmative defenses, to wit: (1) respondent was not denied due process when petitioner did not act on its appeal and, in effect, affirmed DC Premediles' Decision dated 20 January 2017; (2) respondent was not denied due process when DC Premediles rendered his Decision; and, (3) An Alert Order (AO) is not a condition *sine qua non* to the issuance of a WSD so long as DC Premediles has determined the existence of probable cause.

On 23 January 2018, after due hearings, the Third Division granted respondent's "Motion for Special Order".²⁵ Thus, petitioner was directed to release the seized IFO subject to respondent's posting of a surety bond equivalent to one and half (1½) times the shipment's assessed amount of ₱81,809,975.00.

On 13 September 2018, petitioner filed his Pre-Trial Brief²⁶ while respondent filed its Pre-Trial Brief²⁷ on 14 September 2018. On 18 September 2018, the Pre-Trial Conference²⁸ proceeded after several settings.²⁹

On 25 September 2018, following a reorganization in the Court's different divisions, pursuant to Administrative Circular No. 02-2018 dated 18 September 2018, the case was transferred from the Third Division to the First Division.³⁰ On 16 October 2018, respondent filed a



²² Id., Volume I, pp. 10-38; Respondent's Memorandum, id., Volume IV, p. 1947.

²³ Id., Volume I, pp. 480-483.

²⁴ Id., Volume II, pp. 542-563.

²⁵ See Resolution dated 23 January 2018, pp. 700-715.

²⁶ Id., pp. 818-836.

²⁷ Id., Volume III, pp. 1142-1151.

²⁸ Notice of Pre-Trial Conference dated 16 March 2018, id., Volume II, pp. 784-785.

²⁹ See Resolutions dated 20 April 2018 and 29 June 2018, id., p. 792 and p. 800, respectively; Notice of Hearing and Order both dated 18 September 2018, id., p. 1133 and pp. 1140-1140, respectively.

³⁰ See Order dated 25 September 2018, id., Volume III, p. 1374.

“Manifestation and Submission”³¹ with attached Joint Stipulation of Facts and Issues³² (JSFI) which the Court subsequently noted.³³

On 14 January 2019³⁴, a Pre-Trial Order was issued and later amended on 12 March 2019³⁵ and 16 July 2019³⁶, respectively, upon respondent’s motions. The final Amended Pre-Trial Order was issued on 22 October 2019.³⁷

When trial ensued, respondent, as then petitioner, presented its sole witness, Norberto A. Quiñones (**Quiñones**) who testified *via* his Judicial Affidavit.³⁸ Beyond identifying respondent’s pieces of documentary evidence, Quiñones stated that respondent purchased the IFO from Glencore Singapore Pte. Ltd. He further stated that respondent had already begun processing the documents required for the IFO’s importation upon disembarking from Singapore and that it had already received previous Authority for Special Discharge from the Deputy DC, Dr. Zaldy E. Almorade (**Almorade**) on 14 December 2016. However, its release was interrupted by the issuance of the WSD, without an AO, upon the finding that it was for allegedly loading the IFO onto another vessel (MT Malolos). Quiñones declared that the finding was baseless and untrue.

Later, on 28 August 2019, respondent submitted its Formal Offer of Evidence³⁹ (FOE) with petitioner’s “Comment (To Formal Offer of Evidence)”⁴⁰ filed on 27 September 2019. In a Resolution dated 13 November 2019⁴¹, the Court admitted all of respondent’s exhibits.

On 27 February 2020⁴², petitioner, as then respondent, started to present his witnesses, namely: (1) Intelligence Officer Silvestre L.



³¹ Id., pp. 1383-1385.

³² Id., pp. 1386-1394.

³³ See Resolution dated 25 October 2018, *id.*, p. 1396.

³⁴ Id., pp. 1404-1417.

³⁵ Id., pp. 1440-1453.

³⁶ Id., pp. 1501-1512.

³⁷ Id., Volume IV, pp. 1746-1757.

³⁸ Exhibit “P-15”, *id.*, Volume III, pp. 1157-1173.

³⁹ Id., pp. 1530-1537.

⁴⁰ Id., Volume IV, pp. 1720-1733.

⁴¹ *id.*, pp. 1763-1764.

⁴² See Order dated 27 February 2020, *id.*, pp. 1791-1792.

Martinez⁴³ (**Martinez**); (2) Customs Examiner Lorecel R. Ibañez⁴⁴ (**Ibañez**); and, (3) Acting Appraiser of the Manila International Container Port Diogenes D. Florencio⁴⁵ (**Florencio**), who all testified through their respective Judicial Affidavits;

As for Martinez, he testified, among others, that he recommended the issuance of an AO against respondent SLHBTC in a Memorandum dated 15 December 2016⁴⁶ and the issuance of a WSD through another Memorandum dated 16 December 2016⁴⁷, on the basis of discrepancies in the (a) Load Port Survey Report; (b) Load Port Survey Report-Summary; (c) Notice of Arrival; (d) Inward Foreign Manifests; and, (e) Bills of Lading.

As regards Ibañez, she testified that she was a part of the team that conducted the boarding formalities on the MT Alpine. She further declared she was one of the signatories of the Memoranda of 15 December 2016 that recommended the issuance of the AO and WSD, respectively, which Martinez had also previously identified.

Lastly, Florencio testified that he took charge of the boarding formalities on the MT Alpine. He was also a signatory to the Memoranda of 15 December 2016.

On 24 September 2020, after the presentation of the witnesses, petitioner filed his FOE.⁴⁸ With respondent's Comment⁴⁹ filed on 05 October 2020, the Court proceeded to resolve the FOE. Ultimately, it admitted all of petitioner's evidence in a Resolution dated 16 October 2020.⁵⁰

On 14 January 2021, petitioner and respondent both filed their respective Memoranda.⁵¹ Thus, on 09 February 2021, the instant case was submitted for decision.⁵²

⁴³ Exhibit "R-19", id., Volume II, pp. 837-857.

⁴⁴ Exhibit "R-20", id., pp. 878-883.

⁴⁵ Exhibit "R-21", id., pp. 886-892.

⁴⁶ Exhibit "R-9", id., Volume IV, pp. 1850-1851.

⁴⁷ Exhibit "R-12", id., p. 1858.

⁴⁸ Id., pp. 1833-1841.

⁴⁹ Id., pp. 1910-1918.

⁵⁰ Id., pp. 1923-1924.

⁵¹ Petitioner's Memorandum, id., pp. 1976-2000; Respondent's Memorandum, id., 1943-1974.

⁵² See Resolution dated 09 February 2021, id., p. 2004.

On 24 February 2022, the First Division promulgated the assailed Decision.⁵³ The dispositive portions reads:

...

WHEREFORE, in light of the foregoing, the present *Petition for Review* filed by SL Harbor Bulk Terminal Corporation is hereby **GRANTED**.

Accordingly, the January 20, 2017 Decision of the Collector of Customs, Julius B. Premediles, is **REVERSED** and **SET ASIDE**; and, the Warrant of Seizure and Detention No. 001-2016 is **RECALLED** and **LIFTED**. The order of the Court in January 23, 2018 Resolution to release to [respondent] SL Harbor Bulk Terminal Corporation the 44,000 MT of imported industrial fuel oil, subject of the present case, is **DECLARED PERMANENT**. The Surety Bond (PISC Bond No. 0091951 dated January 25, 2018) issued by Pioneer Insurance and Surety Corporation in the amount of Php122,714,962.50 shall be **RELEASED AND DISCHARGED UPON FINALITY OF JUDGMENT**.

SO ORDERED.

...

In reviewing the assailed Decision, the First Division found that AO should have been issued prior to the release of the WSD. According to it, the issuance of the WSD should have likewise complied with the due process requirements in the Constitution. Moreover, petitioner failed to render a decision within the allowable period to do so.

On 22 March 2022, petitioner filed a "Motion for Partial Reconsideration (Re: Decision dated 24 February 2022)"⁵⁴ (**MPR**) with respondent's Opposition⁵⁵ filed on 07 April 2022.

The First Division denied petitioner's MPR in a Resolution dated 18 August 2022.⁵⁶ Hence, the present petition.⁵⁷

In a Resolution dated 23 December 2023⁵⁸, the Court ordered respondent to comment on the instant petition within ten (10) days

⁵³ Supra at note 4; Emphasis in the original text.

⁵⁴ Division Docket, Volume IV, pp. 2023-2032.

⁵⁵ Id., pp. 2056-2062.

⁵⁶ Id., pp. 2089-2093.

⁵⁷ Supra at note 1.

⁵⁸ *Rollo*, Volume I, pp. 160-163.



from receipt thereof. Respondent filed its Comment on 30 January 2023.⁵⁹ With the filing thereof, the Court submitted the case for Decision via a Resolution dated 08 March 2023.⁶⁰

ISSUES

Petitioner submits the following issues for the Court’s consideration —

- I.
WHETHER AN ALERT ORDER IS NECESSARY BEFORE THE
ISSUANCE OF A WRIT OF SEIZURE AND DETENTION (WSD); AND,
- II.
WHETHER PROBABLE CAUSE EXISTED FOR THE ISSUANCE OF
THE SUBJECT WRIT OF SEIZURE AND DETENTION.⁶¹

ARGUMENTS

Petitioner argues that an AO is not required and is inapplicable in the case at bar. According to petitioner, respondent is charged with “loop loading” (by allegedly transferring goods without payment of proper duties and taxes). Due to the nature of the offense, an AO would not be necessary as there was nothing to process (unlike in situations where there are discrepancies between the declaration and actual goods imported).

Petitioner further maintains that it had probable cause to issue the WSD considering respondent’s violation of Section 1113 of the CMTA; particularly, of the following provisions thereof:

...
SEC. 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 

⁵⁹ Id., pp. 181-195.
⁶⁰ Id., Volume II, pp. 824-826.
⁶¹ See Petition for Review, id., Volume I, pp. 16-17.

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;
...

(f) Goods, the importation or exportation of which are effected or attempted contrary to law, or any goods of prohibited importation or exportation, and all other goods which, in the opinion of the District Collector, have been used, are or were entered to be used as instruments in the importation or the exportation of the former;
...

(I) Goods sought to be imported or exported:
...

(3) Through a false declaration or affidavit executed by the owner, importer, exporter, or consignee concerning the importation of such goods;
...

(5) Through any other practice or device contrary to law by means of which such goods entered through a customs office to the prejudice of the government.
...

On the other hand, respondent agrees with the First Division's assailed Decision that an AO is a condition precedent for the issuance of a WSD. It echoes the First Division's findings that petitioner's failure to issue the AO is a violation of respondent's right to due process thus making the shipment's seizure a forfeiture illegal.

RULING OF THE COURT *EN BANC*

After a careful review of the records, the Court *En Banc* finds no merit in the instant petition.

A review of the assailed Decision shows that the First Division found that no AO was issued prior to the issuance of the WSD against respondent and the subsequent actual seizure of its shipment. Seeing



this as a violation of respondent's right to procedural due process, the First Division struck down the WSD and ordered the release of respondent's shipment. The First Division explained:

...

... [A]n AO is a written order intended to stop the processing of the goods declaration and the authority of the Alerting Officer to conduct physical or non-intrusive inspection of the goods. After such physical inspection and a resultant discrepancy is found between the declaration and actual goods imported, the alerting officer shall recommend the issuance of a WSD then that is the only time when a WSD can be issued. **There is no indication under the said law of any exception as to the issuance of an AO.**

Respondent justified the non-issuance of the required AO by citing Customs Memorandum Order (CMO) No. 23-2016 that revoked the authority of the District Collector to issue an AO. Hence, he cannot be faulted for such non-issuance.

It should be noted that the implementing rules for the issuance of an AO and Seizure proceedings under the CMTA is codified in Customs Administrative Order (CAO) No. 10-2020, which was only promulgated by respondent on May 11, 2020 and approved by the Secretary of Finance on June 5, 2020. Said implementing rules was only registered on August 18, 2020 in the Office of the National Administrative Register, University of the Philippines.

Thus, the existing rules and regulations for the issuance of an AO at the time of the assailed WSD was CMO No. 35-2015 dated September 23, 2015. Paragraph 3.5 of said CMO No. 35-2015 provides for the authorized BOC officials to issue an AO which includes among others the District Collectors of the BOC.

On the other hand, under CMO No. 23-2016 dated September 7, 2016, except for the respondent, the authority to issue an AO given to other BOC Officials under CMO No. 35-2015 was revoked.

However, a closer look at the said CMO No. 23-2016 shall reveal that it is only the authority of said officials that was revoked and not the other provisions of CMO No. 35-2015. It only centralized the issuance of AO through BOC's Command Center (ComCen), Office of the Commissioner but retained the other provisions of CMO No. 35-2015.

Paragraph 4.1 of CMO No. 35-2015 provides that an AO may be issued through BOC's Electronic Alert System or the e2m Alert System. Thus, the BOC personnel, as the Alerting Officer, in the Port of Limay, Bataan may request for the issuance of the required AO to



stop the processing of the import declaration and the conduct of physical or nonintrusive inspection of the imported IFO. However, they boarded the subject ships authorized by the Assailed WSD and not by the required AO. Thus, respondent's personnel violated petitioner's right to due process.

...

It may be true that the existence of probable cause in the issuance of WSD had complied with the substantive due process requirement of the Constitution but its issuance failed to observe petitioner's right to procedural due process. In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, the Supreme Court nullified the action of a government agency, (i.e. BIR), for not following its own rules and regulations which constitutes a violation of taxpayer's right to procedural due process[.] ...⁶²

...

In the present petition, petitioner takes no issue about the absence of an AO against respondent before the seizure of the IFO shipment. Petitioner is insistent that an AO is not necessary in the case at bar.

Sections 1111 and 1112, Chapter 3, Title XI of the CMTA provides:

...

CHAPTER 3
ALERT ORDERS

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 nonintrusive 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 case 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.



⁶² Supra at note 5, pp. 2016-2019; Citation omitted, emphasis and italics in the original text.

Derogatory information shall indicate the violations and other necessary specifics thereof. For this purpose, the following shall not be considered derogatory information:

- (a) General allegations of undervaluation;
- (b) General allegations of misclassification without providing the appropriate tariff heading and duty of the shipment to be alerted;
- (c) General allegations of over-quantity without indicating the source of information supporting the allegation;
- (d) General allegations of misdeclaration in the entry without indicating the suspected actual contents thereof; and
- (e) General allegations of importations contrary to law without indicating the specific law or rule to be violated.

No alert order shall be issued on account of allegations of undervaluation unless said undervaluation is caused by the submission to customs of forged or spurious invoice or other commercial documents.

An alert order may be issued only after lodgement of the goods declaration and prior to the release of goods from customs custody. Under no circumstances shall, the suspension of the processing of goods declaration be allowed except through an alert order issued by an authorized customs officer.

The costs of the physical inspection shall be borne by the Bureau: *Provided*, That such cost shall be reimbursed by the owner prior to the release of the goods if the physical inspection results in the assessment of additional duties or taxes or the issuance of a warrant of seizure.

The Commissioner shall be notified of the recommendation by the alerting officer within twenty-four (24) hours from the issuance of the alert order. Alert orders shall be dated and assigned a unique reference number in series which shall be the basis for reporting to and monitoring by the Commissioner and the Secretary of Finance.

The Bureau shall create a central clearing house for alert orders and shall submit reports quarterly on the status thereof.

Sec. 1112. Alert Orders on Perishable Goods. - When the subject of the alert order are perishable goods, the Bureau shall attach to the recommendation a certificate stating that the goods are perishable.

...



Sec. 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.

...

Meanwhile, Customs Memorandum Order (CMO) No. 23-2016⁶³, the prevailing rule at the time of the subject shipment's seizure, provides that "only the Office of the Commissioner, through the Command Center (**ComCen**), created under CSO No. 45-2016, is authorized to issue [AOs]."

It will be gleaned from Section 1111 of the CMTA that an AO is issued when the COC or his authorized agent receives a derogatory information regarding possible noncompliance with the CMTA. Although CMO No. 23-2016 did not work to modify Section 1111 of the CMTA as regards the officers who may receive such derogatory information, it confines the authority to issue an AO to petitioner through the ComCen.

Thus, upon issuance of the AO, the processing of the goods declaration is suspended and the conduct of physical or nonintrusive inspection of the goods is made within forty-eight (48) hours (from issuance of such AO). **Section 1111 of the CMTA further states that no suspension of processing may be made unless an AO has been issued.** 

⁶³ Amendment of Customs Memorandum Order No. 35-2015 Regarding the Authority to Issue Alert Orders.

Thereafter, a finding must be made by the District Collector whether probable cause exists for the issuance of a WSD or for the issuance of a release order in case of the non-existence thereof. In cases where a release is ordered, the same shall be subject to a review by petitioner, and only upon his affirmation of the DC's order shall the AO be lifted.

In petitioner's version of the facts, it is alleged that upon routine boarding and inspection of the MT Alpine Magnolia, the following discrepancies were noted:

- i. MT Alpine is supposed to unload two (2) parcels of Fuel Oil. First is the 25,000 MT at the Sub-port of Tagoloan, CDO and 18,000 MT at Harbor Bulk Terminal Center Bouy Morring (CBM), in Limay, Bataan;
- ii. That the two (2) parcels of Fuel Oil will eventually be discharged at Limay, Bataan, considering that the vessel did not make a call with the Sub-port of Tagoloan, CDO;
- iii. The cargo destined for Limay, Bataan is covered with a Load Port-Summary Report (LP-SR) with Customs Registry No. SAD0001-16, whereas, the cargo bound for Tagoloan is not covered with LP-SR and no Customs Registry;
- iv. The port of loading of the cargoes is Singapore and not Port Kelang, Malaysia;
- v. Customs Registry No. SAD001-16 covers a total cargo of 43,980.5 MT of Fuel Oil covering Bill of Lading Nos. 00014103 and 00014104;
- vi. The LP-SR issued by Intertek bears the following details: (1) vessel name is "MT Green Port"; (2) Port of Loading is Port Kelang, Malaysia; (3) Port of Call/of Discharge is Harbor Bulk Terminal Corp, Limay, Bataan; (4) Cargo is 18,492.901 MT (for BL No. 100014104 only); and, 

- vii. There were inconsistencies in the information/s indicated between the LP-SR and Inward Foreign Manifest and Statistical Supplement signed by the master of the vessel, Capt. Jerry Bartolome Olores.⁶⁴

The foregoing alleged discrepancies constitute derogatory information that possible violations of the CMTA have been made. Following Section 1111 of the CMTA, an AO should have then been issued against petitioner for the perceived infractions before the suspension of the processing of respondent's shipment and eventual issuance of the WSD. In fact, petitioner's witnesses testified that they issued a Memorandum (on 15 December 2016) recommending the issuance of an AO; exactly a day after they issued another Memorandum recommending the WSD's issuance. This clearly betrays petitioner's claim that an AO was unnecessary in this case as even his agents were fully aware of this requirement.

In Martinez's testimony, he stated that AOs are issued so that alerted shipments "cannot be released until a 100% physical examination of the vessel and its cargo is conducted and that the [COC] or concerned District Collector orders its release".⁶⁵

Furthermore, We agree with the First Division that CMO No. 23-2016, which amended CMO No. 35-15, only modified the latter insofar as it designates petitioner as the sole officer with the authority to issue an AO. The rest of its provisions, however, remain untouched. CMO No. 35-15 states the function of an AO in the following wise:

...

- 3.1 An Alert Order is issued to enjoin all concerned customs personnel to be cautious and thorough in the examination of the alerted shipment and its accompanying import documents in order to verify derogatory information or suspected violation of the shipment.

...

Considering that no AO was issued against respondent, its shipment of IFO was seized without the benefit of a physical

⁶⁴ Supra at note 1; pp. 11.

⁶⁵ Supra at note 43.



examination, and prior to the verification of the derogatory information. CMO No. 13-15 states, thusly:

- ...
- 1.7 **Shipment/s can only be held through a validly issued Alert Order. Any request to hold in abeyance the entry processing of a shipment, by any official/employee, in any form is PROHIBITED.** Any official, employee or person who aides in detaining a shipment in a manner not compliant with this Order shall be subject to administrative and criminal actions.⁶⁶
- ...

From the above provision, shipments may be held only through a validly issued AO. Petitioner, however, skipped this stage and immediately issued a WSD in clear violation of its own established protocol.

Anent petitioner's argument that the present case somehow poses an exception to the general rule and thus warrants a disregard of its own procedural safeguards, the Court notes that he did not cite any legal ground in support of this position. On the contrary, the CMTA and petitioner's own rules contradict such contention. Instead, they highlight the need to issue the AO (it being essential to hold respondent's shipment and to conduct a thorough investigation as regards its alleged violations).

With the foregoing, the Court *En Banc* perforce finds the issuance of WSD against respondent to be premature considering that no prior validation of the derogatory information against it had yet been made. Procedural due process is met when one is given notice and the opportunity to be heard and explain their side.⁶⁷ The BOC as an administrative body is still bound by these basic precepts. In *Ang Tibay, represented by Toribio Teodoro, et al. v. The Court of Industrial Relations, et al.*⁶⁸, the Supreme Court held:

⁶⁶ Emphasis supplied.

⁶⁷ *Raoul C. Villalarte v. Commission on Audit*, G.R. No. 243818, 26 April 2022; Emphasis supplied.

⁶⁸ G.R. No. L-46496, 27 February 1940.

...
...The fact, however, that the Court of Industrial Relations may be said to be free from the rigidity of certain procedural requirements does not mean that it can, in justiciable cases before it, entirely ignore or disregard the fundamental and essential requirements of due Process in trials and investigations of an administrative character. ...
...

The above principle has since been reiterated and expounded in a plethora of cases, among which is *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*⁶⁹ as cited in the assailed Decision, where the Supreme Court ruled:

...
In fact, the seminal words of *Ang Tibay* manifest a desire for administrative bodies to exhaust all possible means to ensure that the decision rendered be based on the accurate appreciation of facts. The Court reminded that administrative bodies have the active duty to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. ...
...

Similarly, in assessment cases by the BIR, audit investigations and findings of deficiency taxes have been cancelled for violating a taxpayer's due process rights from reasons ranging from the irregularities in a Letter of Authority⁷⁰ (LOA), Assessment Notices⁷¹ and in the service thereof.

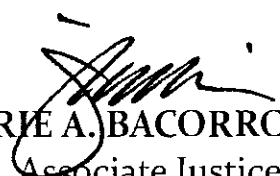
It is noted that the AO should have informed respondent of its violations and should have served as a preliminary layer for ascertaining the truth regarding said violations. Thus, the lack of AO violated not only respondent's right to be notified of its alleged violations but also deprived it of the opportunity to be heard prior to the seizure of its shipment. Since, before the WSD's issuance, the derogatory information against respondent has yet to be verified, there was also no reason for the immediate seizure of respondent's IFO. 

⁶⁹ G.R. Nos. 201398-99, 03 October 2018; Emphasis and italics in the original text.
⁷⁰ See *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, 14 May 2021.
⁷¹ See *Commissioner of Internal Revenue v. Maxicare Healthcare Corporation*, G.R. No. 261065, 10 July 2023.

Taking into account the above disquisitions, the Court *En Banc* no longer sees any needful use to discuss the remaining issue that petitioner has raised. Any subsequent finding of probable cause for the detention of respondent's shipment will not work to cure the due process violations already committed against respondent which, in effect, inescapably rendered the seizure illegal.

WHEREFORE, the foregoing premises considered, the Petition for Review filed by petitioner Commissioner of Customs on 10 October 2022 is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution dated 24 February 2022 and 18 August 2022, respectively, of the First Division in CTA Case No. 9551 entitled *SL Harbor Bulk Terminal Corporation v. Commissioner of Customs*, are **AFFIRMED**.

SO ORDERED.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

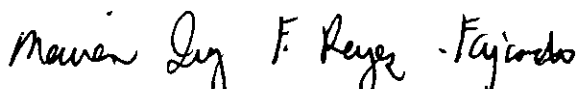

MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice

ON OFFICIAL BUSINESS

MARIA ROWENA MODESTO-SAN PEDRO

Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice

INHIBITED
HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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