

REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

EL GRECO SHIP MANNING AND
MANAGEMENT CORPORATION,
Petitioner,

C.T.A. CASE NO. 6618

Members:

CASTAÑEDA, JR., Chairman
UY, and
PALANCA-ENRIQUEZ, JJ.

-versus-

COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated:

OCT 17 2005 *Gr. Palanca*

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D E C I S I O N

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition For Review filed on March 24, 2003 by El Greco Ship Manning and Management Corporation (hereafter "petitioner") which seeks to reverse and set aside the Decision of then Customs Commissioner Antonio M. Bernardo in his 2nd Indorsement, dated January 15, 2003, which vacated and countermanded the Order of the

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District Collector of the Port of Manila in POM S.I. No. 2001-208, allowing the release of M/V "NEPTUNE BREEZE".

THE FACTS

In their "Joint Stipulation of Facts and Issues", the parties stipulated as follows:

"1. Collector Reynaldo Nicolas of Port of Manila issued an Order dated March 11, 2002 releasing MV 'Neptune Breeze' for lack of probable cause to retain the same;

2. The records of the case together with the Order dated March 11, 2002 were forwarded to the Office of the Commissioner of Customs by Collector Nicolas on March 11, 2002 for appropriate action;

3. The decision of the Commissioner of Customs was rendered on January 15, 2003, ten (10) months after the records were forwarded by Collector Nicolas."

As culled from the records, the controversy arose from the following facts:

On September 23, 2001, the vessel M/V "CRISTON", carrying a shipment of 35,000 bags of rice, arrived at the Port of Tabaco, Albay. After unloading its cargo, said vessel remained berthed alongside the wharf of the Port of Tabaco, Albay, due to lawful restrictions issued by competent authorities/agencies. 

386

Former Commissioner Titus B. Villanueva received an information from the Philippine Coast Guard that M/V "CRISTON" was not given any departure clearance or did not submit a Master's Oath of Safety Departure, prompting him to order the district collector to take the appropriate action.

Acting on said order, Deputy District Collector, Atty. Winston B. Florin, issued on even date a Warrant of Seizure and Detention (WSD) against M/V "CRISTON" and its rice cargo in S.I. No. 06-2001.

On September 26, 2001, the consignees of the seized imported rice filed an action for the release of the subject shipment with the Regional Trial Court (hereafter "RTC") of Tabaco. Acting on the petition, the RTC ordered the release of the shipment on condition that the consignees should post a bond in the amount of P31,450,000.00, which they readily posted.

On October 15, 2001, Atty. Enrico T. Turingan, Jr., Acting District Collector of Customs, Legazpi City, issued a second Warrant of Seizure and Detention No. 06-2001-A against M/V "CRISTON", as it was not allegedly included in the caption of WSD No. 06-2001. However, the

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387

seizure proceeding was held in abeyance pending resolution of the case filed with the RTC. The RTC case was dismissed on January 30, 2002.

On November 7, 2001, as the province of Albay was under Typhoon Signal No. 2 due to Typhoon "NANANG", the Officer-In-Charge of Philippine Port Authority, Port of Tabaco allowed M/V "CRISTON" to temporarily undock, proceed to anchorage and seek shelter, but thereafter to immediately return and berth alongside the wharf after the typhoon signal in the area has been lifted.

M/V "CRISTON", however, did not return to the Port of Tabaco after the typhoon had left.

On November 8, 2001, the Coast Guard District Bicol in Legazpi City then raised a general alarm on the missing M/V "CRISTON" and coordinated with the Philippine Air Force to locate the same (*Customs Records, Folder A, p. 179*).

Thereafter, the Bureau of Customs received a report from the Philippine Coast Guard that said vessel was found in Mariveles, Bataan, sporting the name M/V "NEPTUNE BREEZE" (*Customs Records, Folder A, p. 73*).

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388

For failure of the captain of M/V "NEPTUNE BREEZE" to present the clearance from the last port of call, coupled with the information that the vessel is the same M/V "CRISTON", on December 28, 2001 the Port of Manila District Collector issued a separate warrant of seizure and detention against the vessel (Seizure Identification No. 2001-208).

With the dismissal of the case by the RTC, the proceeding in Seizure Identification Nos. 06-2001 and 06-2001-A before the Port of Legazpi District Collector commenced.

In Seizure Identification No. 2001-208 before the Port of Manila, El Greco Ship Manning and Management Corporation, herein petitioner, filed a "Motion for and Complaint-In-Intervention and Motion to Quash Warrant of Seizure and Detention with Urgent Prayer for Immediate Release of Vessel M/V "NEPTUNE BREEZE".

On March 11, 2002, in Seizure Identification No. 2001-208, Atty. Reynaldo Nicolas, District Collector of the Port of Manila, issued an Order, the dispositive portion of which reads:

"WHEREFORE, pursuant to the authority vested in me by law, it is hereby ordered and decreed that the Warrant of Seizure and Detention issued thereof be QUASHED for want of factual and legal basis, and that the vessel M/V "NEPTUNE BREEZE" be RELEASED to Claimant-

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389

Intervenor after clearance with the Commissioner of Customs, proper identification and compliance with existing rules and regulations pertinent in the premises.”

On the other hand, in S.I. Nos. 06-2001 and 06-2001-A, after trial, Acting District Collector of Customs, Atty. Enrico T. Turingan, Jr., rendered a decision on June 27, 2002, the dispositive portion of which reads:

“WHEREFORE, premises considered, and by virtue of the authority vested in this Office by law, the vessel MV CRISTON (a.k.a. MV NEPTUNE BREEZE) and the 35,000 bags of smuggled rice are ordered FORFEITED as they are hereby FORFEITED in favor of the Government. In lieu of the forfeited rice, the bond issued by GREAT DOMESTIC INSURANCE COMPANY OF THE PHILIPPINES INC. in the amount of P31,450,000.00 is hereby confiscated.

Let copies of the Decision be furnished all parties/offices concerned for their information and guidance.

SO ORDERED.”

On automatic review of then Customs Commissioner Antonio Bernardo, the Order of Collector Nicolas was reversed for the following reasons:

- “1. Subject vessel MV “NEPTUNE BREEZE” and MV “CRISTON” are one and the same as shown by the vessels documents retrieved by the elements of the Philippine Coast Guard from MV “CRISTON” during the search conducted on board thereof when the same

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390

was apprehended in Tobacco, Albay, indicating therein the name of the vessel MV "NEPTUNE BREEZE", the name of the master of the vessel a certain YUSHAWU AWUDU, etc. These facts were corroborated by the footage of ABS-CBN taken on board the vessel when the same was subjected to search.

2. Hence, prior jurisdiction over the said vessel as already acquired by the Port of Legaspi when the said Port issued WSD S.I. No. 06-2001-A and therefore, the Decision of the latter Port forfeiting the subject vessel supercedes the Decision of that Port ordering its release." (*Annex P of the Petition*)

In his Comment to the present Petition For Review, respondent prayed that the petition be dismissed for lack of merit.

In lieu of presenting evidence, the parties moved that they be allowed to file their respective memoranda, within thirty (30) days. Both parties having complied thereto, the case was deemed submitted for decision on May 16, 2005.

ISSUES

As stipulated upon by the parties, the following are the issues for the consideration of this Court.

I

Is M/V "CRISTON" one and the same as M/V "NEPTUNE BREEZE"?



II

Is the forfeiture of the vessel proper?

III

Did the Order of the Bureau of Customs dated March 11, 2002, through Nicolas, releasing M/V "NEPTUNE BREEZE" long become final and executory?

THE COURT'S RULING

The petition is without merit.

First Issue:
Whether M/V "NEPTUNE
BREEZE" and M/V "CRISTON"
are one and the same vessel?

After a careful review of the evidence on record, the Court finds that M/V "CRISTON" and M/V "NEPTUNE BREEZE" are one and the same vessel for the following reasons:

First, based on the affidavit of PO3 Wenefredo N. Dacara (*Exhibit "FF"*), a member of the Philippine Coast Guard in Legazpi City, who took the stencils of the engine and generators of M/V "CRISTON" on October 10, 2001, and based also on the Crime Laboratory Report No. 033511 of the Philippine National Police (*Exhibit "II"*), M/V "CRISTON"

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292

and M/V "NEPTUNE BREEZE" bore the same serial numbers in their respective engines and generators.

Thus, in his affidavit, PO3 Dacara stated:

- "2. That the stencils taken on the main engine of said vessel revealed the following data:

		'B7W Alpha	
Tp	<u>10V23HP</u>	No <u>12006</u>	19 <u>70</u>
GSR	<u>699</u> KW	<u>950</u> HP	<u>800</u> rpm
		ALPHA-DIESEL'	

3. That the stencil taken on the generator number one (1) revealed a serial number of 346.919-058195, generator number two (2) 346.919-058593, and generator number three (3) 346.919-058194.
4. That the emergency generator located at the 02 deck near the fantail of the vessel has serial numbers 246551."

xxx xxx." (Exhibit "FF")

Similarly, the Crime Laboratory Report No. 033511 states the following findings:

"A. Main Engine:

Absence of any letter or number other than TP.7.ATM.2.6.70-STFDR.

A. Generator Nr. 1:

Absence of any letter or number other than 346-919-058195.

B. Generator Nr. 2:

Absence of any letter or number other than 346-919-058593.

C. Generator Nr. 3:

Absence of any letter or number other than 346-919-058194.

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393

D. Emergency Deck 02 Generator:

Absence of any letter or number other than 246551.”

(*Exhibit “II”*)

Second, in reply to the letter dated March 13, 2002 of Customs Commissioner Titus B. Villanueva, Administrator Oscar M. Sevilla of the Maritime Industry Authority (hereafter “MARINA”) stated that neither M/V “CRISTON” nor M/V “NEPTUNE BREEZE” is registered with MARINA. The letter reads as follows:

“Dear Commissioner Villanueva:

This refers to your letter of 13 March 2002 requesting verification whether the vessels named M/V ‘CRISTON’ or M/V ‘NEPTUNE BREEZE’ are registered with the Maritime Industry Authority (MARINA) and whether the vessels are one and the same.

We would like to inform you that a thorough check we made of the vessel inventory of both the domestic and overseas shipping fleet revealed that neither vessel is registered with MARINA. We are therefore unable to determine if the vessels are one and the same. We suggest that the particulars (engine make; gross tonnage, net tonnage, length, breadth, etc.) of the two vessels be ascertained for the purpose.

A report from our Legaspi Maritime Regional Office informed us that the M/V “CRISTON” which was loaded with 35,000 sacks of imported rice was apprehended at the Port of Tabaco City. The report also mentioned that the vessel was not registered with the Legaspi Maritime Regional Office nor any our other maritime regional offices.

We hope that we have sufficiently complied with your request.

Best regards.

Very truly yours,

(SGD.) OSCAR M. SEVILLA



Administrator" (*Annex "A", El Greco's "Comment/Opposition (To Manifestation and Motion To Set Aside Order of the Collector of Customs dated March 12, 2002" in POM S.I. No. 2001-208)*)

Third, it was further established during the seizure proceedings that:

- 1) the following documents:
 - a) Crew Manifest of M/V "CRISTON" (*Exhibit "A"*)
 - b) Oath of Masters Covering List of Officers of Coastwise Vessels (*Exhibit "B"*);
 - c) Harbour Centre Port Terminal Computation Sheet (*Exhibit "D"*);
 - d) Philippine Ports Authority O.R. No. 45676050 (*Exhibit "F"*);
 - e) Bill of Lading dated September 12, 2001 (*Exhibit "G"*); and
 - f) Coasting Manifest M/V "CRISTON" (*Exhibit "H"*)

submitted by the Captain/Master of M/V "CRISTON" were all fake and spurious;



2) the Outgoing Dispatch Report of the Philippine Coast Guard of Tabaco, Albay, shows that M/V "CRISTON" did not depart from the Port of Manila where allegedly the 35,000 bags of rice were loaded (*Exhibit "O"*);

3) no departure clearance was issued by the Philippine Coast Guard (*Exhibit "X"*); and

4) fake and spurious documents were used to make it appear that the rice was loaded at North Harbor, Manila. District Collector Edward P. De La Cuesta in his letter dated October 4, 2001 to Station Commander Jose G. Cabildo, Coast Guard Station, Manila, stated that M/V "CRISTON" has no record on file in their office regarding the subject shipment (*Exhibit "JJ"*).

Fourth, the Court also gives credence to the testimony of Customs Guard Adolfo Capistrano, assigned at the Port Operations Division, Port of Legazpi, who was present during the ocular inspection of the M/V "NEPTUNE BREEZE" and testified that the features of M/V "CRISTON" are similar to those of M/V "NEPTUNE BREEZE" as found during the ocular inspection (*TSN, February 7, 2002, p. 4; Exhibit "I-2"*).



Fifth, the Court also considers the testimony of former Coast Guard Commander Cirilo P. Ortiz that the composite team that searched M/V "CRISTON" recovered several items and documents belonging/pertaining to M/V "NEPTUNE BREEZE". This is amply corroborated by the testimony of Seth Coballes, a cameraman of the TV Station ABS-CBN, who took a video footage which would reveal that papers and documents including lifesavers found on board M/V "CRISTON" have the name M/V "NEPTUNE BREEZE" printed on them (*Exhibit "L"*).

Thus, We agree with the following findings of Acting District Collector of Customs Atty. Enrico Turingan in his decision dated June 27, 2002, in S.I. Nos. 06-2001 and 06-2001-A:

"As regards the first issue, we hold the affirmative. The evidences presented point to no other conclusion than that the MV CRISTON and the MV NEPTUNE BREEZE are one and the same vessel. Laying back now, we could see that at the time of the search on October 1, 2001, there were already clear indications that the MV CRISTON might not be what it represented itself to be. The video tape (Exh. L) would show that most of the ship documents pertained to MV NEPTUNE BREEZE, and not MV CRISTON. Certainly, the MV CRISTON could not have appeared on the registry of the Maritime Industry Authority (MARINA) because it never really existed at all. The MV CRISTON existed only for the purpose of misrepresenting the MV

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397

NEPTUNE BREEZE as a local vessel purportedly owned and operated by GLUCER SHIPPING, CO. which in reality is also non-existent, the MV NEPTUNE BREEZE being in actuality a foreign vessel with foreign registry.

“Corollarily, as to the second issue, the MV CRISTON could not have been in possession of legitimate shipping documents because what was legitimate, if ever it was, were those pertaining to the MV NEPTUNE BREEZE. If ever it had documents to show that it was MV CRISTON, these were spurious documents fabricated or forged to make it appear that it was a local vessel when in fact it was not.

“As to the third issue, we also hold the affirmative, in that, obviously the 35,000 bags of rice were smuggled into the country. Faked documents were used to make it appear that the rice was loaded at North Harbor, Manila. In fact, error of errors in the coasting manifest, the Port of Tacloban was even supposed to be the destination, yet it discharged the rice in Tabaco City. Evidences show that there was no loading of rice or calling of the vessel that occurred at North Harbor, Manila.

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And so, this is what the evidences and testimonies suggest and prove:

A foreign vessel entering the Port of Legazpi with 35,000 bags of rice on board would require an import permit from the National Food Authority and payment of duties and taxes with the Bureau of Customs. To dispense with the import permit and more importantly the payment of duties and taxes, motivated by the prospect of a substantial monetary gain, a scheme is hatched to make it appear that the rice are locally sourced and thus evade payment. And quite logically, the rice must be brought to port by a local



vessel. And so it is the hull of the vessel MV NEPTUNE BREEZE was repainted with MV CRISTON and supported with spurious documents to make it appear as a local vessel. Likewise, the rice was covered with spurious documents to show that it was loaded at North harbor, Manila. When eventually, the vessel was able to escape on November 7, 2001, it repainted its hull with its original name (MV NEPTUNE BREEZE) and resurfaced at Mariveles, Bataan where it was sighted and recaptured. Even then, it had a ready excuse. It was MV NEPTUNE BREEZE and not MV CRISTON; and that the reason why it was in Mariveles, Bataan was to load cargoes from ORICA EXPLOSIVES. But this scheme is betrayed by the evidences at hand. Note that during the search on the vessel MV CRISTON, the name of ORICA was among those found in the documents, but as it now appears, ORICA'S name was only dragged into the controversy as an unknowing party, inasmuch as there was no prior or existing contract between the owner of MV NEPTUNE BREEZE (a.k.a. MV CRISTON) and ORICA for the loading of explosives xxx

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Second Issue:
Is the Forfeiture
of the vessel proper?

The penalty of forfeiture is imposed on any vessel engaged in transporting contraband or smuggled articles under *Section 2530 of the Tariff and Customs Code of the Philippines*. Thus:

"SEC. 2530. *Property Subject to Forfeiture Under Tariff and Customs Laws.* – Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subjected to forfeiture:

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399

- 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 articles in commercial quantities into or from 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, or aircraft or any other craft is not used as duly authorized common carrier and as such a carrier it is not chartered or leased;

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- g. Unmanifested article found on any vessel or aircraft if manifest therefore is required;

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- k. Any conveyance actually being used for the transport of articles subject to forfeiture under the tariff and customs laws, with its equipage or trappings, and any vehicle similarly used, together with its equipage and appurtenances including the beast steam or other motive power drawing or propelling the same. The mere conveyance of contraband or smuggled articles by such beast vehicle shall be sufficient cause for the outright seizure and confiscation of such beast or 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 his agent in charge thereof at the time, has no knowledge of the unlawful act;

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Pursuant to the aforecited provision, the forfeiture of the vessel M/V “CRISTON”, a.k.a. M/V “NEPTUNE BREEZE”, is justified, for having been involved in the smuggling of 35,000 bags of imported rice.

Third and Last Issue:
Has the Order Dated
March 11, 2002 of
Customs Collector
Nicolas Releasing
M/V “NEPTUNE
BREEZE” become
Final and Executory?

Petitioner contends that the Order dated March 11, 2002 of the Bureau of Customs, Port of Manila, through the Collector Atty. Reynaldo Nicolas, releasing M/V “NEPTUNE BREEZE” has long been final and executory for the following reasons:

“1. The Commissioner of Customs rendered decision on January 15, 2003 or ten (10) months after the records of the case was forwarded to his office.

2. Since the Commissioner of Customs failed to render a decision within thirty (30) days from the receipt of record, the Secretary of Finance should have rendered a decision instead, by way of automatic review, within thirty days from the receipt of the records.

3. It is uncontested that the Secretary of Finance failed to exercise its automatic review powers which caused

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the application of the provision ‘..... or within thirty (30) days from receipt hereof of the records of the proceedings by the Secretary of Finance, no decision is rendered, the decision of the Secretary of Finance, or of the Commissioner, or of the Collector under appeal, as the case may be, shall become final and executory.”

On the other hand, respondent counterargues that there is nothing in the text of *Section 2313 of the Tariff and Customs Code of the Philippines* which would support petitioner’s thesis that the decision of Collector Nicolas had become final and executory. He further submits that the decision of Atty. Turingan has precedence over the decision of Collector Nicolas not only in point in time, but more importantly because it had already disposed of the controversy. Collector Nicolas cannot release what had been previously forfeited by Atty. Turingan.

Petitioner’s contention is without merit.

The 1st Indorsement of District Collector Atty. Reynaldo Nicolas, Port of Manila forwarded to the Customs Commissioner for clearance his Order dated March 11, 2002 in Seizure Identification No. 2001-208. The said 1st Indorsement reads as follows:

“1st Indorsement

Respectfully forwarded to the Commissioner of Customs (Attn.. Chief of Staff) for clearance, the hereto



attached Order of this Office in S. Idn. No. 2001-208 with Claimant-Intervenor EL GRECO SHIP MANNING & MANAGEMENT CORPORATION, decreeing that the Warrant of Seizure and Detention issued against the vessel M/V "NEPTUNE BREEZE" be QUASHED for want of factual and legal basis and that the said vessel be RELEASED to the aforementioned claimant-intervenor after proper identification and compliance with existing rules and regulations pertinent in the premises.

(SGD.)ATTY. REYNALDO S. NICOLAS
District Collector
Port of Manila"

It is clear that the Order dated March 11, 2002 of District Collector Nicolas is not yet final, as the same is still subject to the clearance and approval of the Customs Commissioner.

In fact, in his Memorandum dated August 23, 2002 to the Customs Commissioner, Acting District Collector Enrico T. Turingan, Jr. referred to said Order dated March 11, 2002 of District Collector Nicolas as the "proposed decision of the Port of Manila". Said Memorandum reads as follows:

"23 August 2002

MEMORANDUM for:
The Honorable Commissioner
This Bureau

Re: MV NEPTUNE BREEZE (a.k.a. MV CRISTON)

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This refers to the offer for Redemption dated June 4, 2002 filed by EL GRECO SHIP MANNING AND MANAGEMENT CORP. for subject vessel with the Office of the District Collector, Port of Manila, a copy of which we obtained just recently. It will be recalled that the proposed decision of the Port of Manila, 'releasing the vessel', is being evaluated/reviewed by the Legal Service.

It will likewise be recalled that the Port of Legazpi has previously forfeited the vessel MV CRISTON for the attempted smuggling of 35,000 bags of rice. Evidence adduced during the seizure proceeding proved that the MV NEPTUNE BREEZE and MV CRISTON are one and same vessel.

Given the above circumstances, it is the considered view of the undersigned that if ever the subject vessel should be eventually redeemed by the claimant-Intervenor EL GRECO, the proceeds should be credited to the Port of Legazpi. Besides, forfeiture precedes redemption.

For his disposition.

(SGD.)ENRICO T. TURINGAN, JR.
Acting District Collector"

Furthermore, as aptly observed by the respondent Commissioner, the District Collector of the Port of Legazpi has already acquired prior jurisdiction over the subject vessel when he issued the Warrant of Seizure Order against the vessel M/V "CRISTON" in S.I. No. 06-2001 on September 23, 2001 (*Exhibit "Z"*). As such, Collector Nicolas cannot

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404

release what has been previously ordered forfeited by Atty. Enrico Turingan, Jr.

As the record shows, the only reason why District Collector Atty. Reynaldo Nicolas, Port of Manila, issued on December 28, 2001 a separate Warrant of Seizure and Detention against the vessel M/V "NEPTUNE BREEZE" in Seizure Identification No. 2001-208 was due to the failure of the captain of M/V "NEPTUNE BREEZE" to present the clearance from the last port of call, coupled with the information that when the M/V "CRISTON" was able to escape on November 7, 2001, M/V "CRISTON" repainted its hull with its original name M/V "NEPTUNE BREEZE" and sported the name M/V "FORTUNE BREEZE", and resurfaced at Mariveles, Bataan, where it was spotted and recaptured. It is therefore clear that the vessels, subject matter of both S.I. No. 06-2001 (before the Port of Legazpi) and S.I. No. 2001-208 (before the Port of Manila), refer to one and the same vessel M/V "CRISTON", a.k.a. M/V "FORTUNE BREEZE".

Thus, then Commissioner Antonio Bernardo in his assailed 2nd Indorsement dated January 15, 2003 correctly ruled as follows:

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405

2. Hence, prior jurisdiction over the said vessel as already acquired by the Port of Legaspi when the said Port issued WSD S.I. No. 06-2001-A and therefore, the Decision of the latter Port forfeiting the subject vessel supercedes the Decision of that Port ordering its release.” (*Annex P of the Petition*)

It is a settled rule that the findings and conclusions of the Customs Commissioner cannot be set aside unless sufficiently shown that there is no evidence on record to support them. None of which has been shown in this case.

Customs laws afford the Collector of Customs sufficient latitude in determining whether or not a certain article is subject to seizure or forfeiture which may be appealable to the Commissioner and then to this Court. In the absence of palpable mistake or grave abuse of discretion, the Court finds no reason to disturb the findings of the said administrative agency whose duties include, among others, to assess and to collect all lawful revenues, dues, fees, charges, fines and penalties accruing under the tariff and customs laws; to prevent and suppress smuggling and other frauds upon the customs; and to enforce tariff and customs laws (*Hadji Mohammad Daud vs. Collector of Customs of the Port of Zamboanga City*, 68 SCRA 157; *Auyong Hian vs. C.T.A.*, 59 SCRA 111).

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406

Finding no reversible error in the decision appealed from, the Court is left with no recourse but to dismiss the petition.

WHEREFORE, premises considered, the present Petition For Review is hereby **DISMISSED**. The Decision in the 2nd Indorsement dated January 15, 2003 of then Commissioner Antonio Bernardo is hereby **AFFIRMED**.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


ERLINDA P. UY
Associate Justice

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.


JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division

407