REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

HAI LONG SHIPBUILDING & LIGHTERAGE, INC. as owner and operator of CARGO SHIP, LCT "YELLOW RIVER" with Official Number 00-00026867,
Petitioner,

- versus -

OFFICE OF THE COMMISSIONER (OCOM) OF THE BUREAU OF CUSTOMS (BOC), DISTRICT COLLECTOR OF PORT OF LIMAY, BUREAU OF CUSTOMS (BOC) BATAAN and OFFICE OF THE SOLICITOR GENERAL (OSG),
Respondent.

CTA CASE NO. 10622

Present:

MANAHAN, *Chairperson,*
REYES-FAJARDO, and
ANGELES, *JJ.*

Promulgated:

AUG 28 2025
4:10 pm

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DECISION

ANGELES, J.:

Before the Court is an *Amended Petition for Review*[1] filed by Hai Long Shipbuilding & Lighterage, Inc., (Petitioner) praying that the Decision (Assailed Decision) issued by Atty. William B. Balayo, Acting District Collector of Port of Limay, Bataan (Acting District Collector) in Port of Limay Seizure Identification Case No. 002-2021,[2] forfeiting its Cargo Ship, LCT Yellow River (Subject Vessel), be reversed and set aside. Petitioner likewise prays for the immediate issuance of an order releasing the Subject Vessel.[3]

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[1] Amended Petition for Review, Division Docket, p. 154 to 197.
[2] *Republic of the Philippines v. Cargo Ship, LCT "Yellow River", with Official Number 00-00026867.*
[3] Prayer, Amended Petition for Review, Division Docket, p. 184.

THE PARTIES

Petitioner is a corporation organized and existing under Philippine laws with business address at No. 1145 Narra St., Barangay 242, Zone 22, Tondo, Manila. It is engaged in the chartering of ships and vessels for coastwise trading.[4]

Respondent, Office of the Commissioner (OCOM), Bureau of Customs (BOC) is the government agency tasked with the supervision and enforcement of tariff and customs laws in the Philippines.[5] On the other hand, respondent District Collector of Port of Limay, BOC Bataan (District Collector) is the government agency tasked to enforce tariff and customs laws in the port of District of Limay, Bataan.[6]

The Office of the Solicitor General (OSG), the legal counsel of the Republic of the Philippines, is likewise impleaded as respondent herein.[7]

THE ANTECEDENT FACTS (ADMINISTRATIVE LEVEL)

On February 18, 2021, petitioner, as the owner and operator of the Subject Vessel registered as a common carrier engaged in coastwise trading, entered into a Charter Party Agreement with Accufast Logistics & Trading Corporation (Accufast).[8] As agreed upon by the parties, the Subject Vessel shall be used in the transportation of sacks of rice.

Subsequently, on February 24, 2021, on the basis of a Warrant of Seizure and Detention (WSD) issued by the District Collector, the Subject Vessel was seized.[9] Such WSD was thereafter received by the petitioner on March 2, 2021.[10]

On March 12, 2021, petitioner filed a Motion to Intervene with Motion to Release LCT Yellow River before the Office of the District Collector, Port of Limay, BOC, Bataan.[11]

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[4] Pars. 2 to 4, Admitted Facts and Stipulation of Facts, Pre-Trial Order, Division Docket, p. 866.
[5] Par. 18, Amended Petition for Review, Division Docket, p. 162.
[6] Par. 19, Amended Petition for Review, Division Docket, p. 162.
[7] Par. 20, Amended Petition for Review, Division Docket, p. 163.
[8] Pars. 3 to 4, Admitted Facts and Stipulation of Facts, Pre-Trial Order, Division Docket, p. 866.
[9] Par. 6, Admitted Facts and Stipulation of Facts, Pre-Trial Order, Division Docket, p. 866.
[10] Par. 27, Amended Petition for Review, Division Docket, p. 164.
[11] Par. 28, Amended Petition for Review, Division Docket, p. 164.

Eventually, on July 14, 2021, the Assailed Decision was issued by Atty. William B. Balayo as the Acting District Collector of the Port of Limay, Bataan, where it ruled that the Subject Vessel shall be forfeited in favor of the government for violation of Sections 1113 (a), (b), and (k) in relation to Section 117 of the Customs Modernization and Tariff Act (CMTA), among others.[12] The relevant dispositive portion[13] is reproduced as follows:

> WHEREFORE, premises considered and by virtue of the authority vested in this Office by law, it is hereby ORDERED AND DECREED that:
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> 1. There being violation of **Section 1113 (a), (b), and (k) in relation to Section 117 of the CMTA**, the subject conveyance shall be **FORFEITED** in favor of the government and the same to be disposed of in the manner prescribed by law, to wit:
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> **a. CARGO SHIP LCT YELLOW RIVER;**
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> SO ORDERED.

The Assailed Decision emphasized that the Subject Vessel was found in violation of Section 1113 (k) of the CMTA when it was utilized for the transportation of illegally imported rice and cigarettes. Section 1113 (b) was likewise violated for having on board, goods of foreign origin in excess of the amount necessary for sea stores, and without being properly entered or legally imported.[14] For such reasons, LCT Yellow River was subjected to seizure and forfeiture proceedings.

Aggrieved by the Assailed Decision, petitioner filed a Notice of Appeal and Memorandum of Appeal on August 5, 2021.[15]

Subsequently, a Resolution dated August 16, 2021 was issued by the Acting District Collector, informing petitioner that upon their receipt of the latter's Notice of Appeal and the Memorandum of Appeal, they immediately transmitted the full and complete records of the case to the Legal Service *via* LBC – and was received by the latter on August 12, 2021. Moreover, petitioner was also informed that a 2nd transmittal was made, forwarding the case to the BOC-Appellate Division likewise *via* LBC. This was received by the latter on August 16, 2021. Thus, it had thirty (30) days or until September 15, 2021 within which to act on

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[12] Par. 41, Amended Petition for Review, Division Docket, p. 165.
[13] Annex "A", Amended Petition for Review, Division Docket, p. 199.
[14] Annex "A", Amended Petition for Review, Division Docket, p. 199.
[15] Par. 45, Amended Petition for Review, Division Docket, p. 169.

the Notice of Appeal and Memorandum of Appeal. However, the period lapsed and petitioner's appeal remained unacted upon.[16] In effect, the Assailed Decision dated July 14, 2021 was deemed affirmed.[17]

THE PROCEEDINGS BEFORE THE COURT

In view of such inaction, petitioner elevated the matter before the Court of Tax Appeals (CTA) by filing a *Petition for Review* through electronic mail (e-mail)[18] and accredited courier[19] on October 11, 2021, which was received by this Court on October 22, 2021.[20]

Subsequently, on October 28, 2021, petitioner filed a *Manifestation and Motion to Release Vessel on Surety Bond*,[21] praying that it be allowed to post a surety bond for the immediate release of the Subject Vessel.[22] It also stated that as previously instructed by the CTA Judicial Records Division, it is filing an *Amended Petition for Review*[23] which indicates the value of the Subject Vessel in the prayer.

The Court then issued a *Resolution*[24] on January 5, 2022, stating that the previous *Petition for Review* and *Amended Petition for Review* are not compliant with Section 6, Rule 7 of the Revised Rules of Court for failure to indicate the witnesses intended to be presented, the summary of the latter's testimonies, and the documentary and object evidence in support of the allegations. Thus, in the same *Resolution*, the Court directed petitioner to submit the abovementioned lacking details.

In a *Resolution*[25] dated March 18, 2022, the Court noted petitioner's compliance by virtue of a *Manifestation* dated February 28, 2022, where it attached the judicial affidavits of its witnesses and with the required documentary evidence appended thereto. In the same *Resolution*, the Court ordered that summons be issued to the respondents.

On March 18, 2022, respondents filed their *Answer/Comment*[26] to the *Amended Petition for Review*. After which, respondents

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[16] Pars. 47 to 48, Amended Petition for Review, Division Docket, p. 169 to 170.
[17] Par. 49, Amended Petition for Review, Division Docket, p. 170.
[18] Division Docket, pp. 6 to 55.
[19] With LBC Tracking No. 321212263136.
[20] Division Docket, pp. 56 to 130.
[21] Division Docket, pp. 140 to 143.
[22] Prayer, Manifestation and Motion to Release Vessel on Surety Bond, Division Docket, p. 142.
[23] Amended Petition for Review, Division Docket, pp. 154 to 197.
[24] Division Docket, pp. 228 to 229.
[25] Division Docket, pp. 399 to 400.
[26] Division Docket, pp. 442 to 468.

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transmitted[27] the BOC Records on June 13, 2022. On even date, the parties were likewise ordered to appear before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) on June 27, 2022.[28]

Notably, the Court observed that the BOC Records lacked the proper pagination. Thus, counsel for respondent was ordered to withdraw the BOC Records and re-submit the same.[29] On July 6, 2022, respondent complied with the Court's Resolution and re-transmitted the BOC Records comprising of 1,382 pages in one (1) folder.[30] On July 11, 2022, the PMC-CTA filed a *No Agreement To Mediate*[31] dated July 5, 2022, maintaining that the parties came to a decision not to have their case mediated. Hence, the case proceeded to Pre-Trial.

The Pre-Trial Conference was then set and held on September 1, 2022.[32] Prior thereto, petitioner submitted its *Pre-Trial Brief*[33] on August 26, 2022; while respondent's *Pre-Trial Brief* was posted on August 23, 2022, and received by the Court on September 1, 2022.[34]

On October 3, 2022, the parties filed their *Joint Stipulation of Facts and Issues* (JSFI),[35] which was admitted and approved by the Court in its *Resolution* dated October 19, 2022,[36] thereby deeming the termination of the Pre-Trial. The issuance of the *Pre-Trial Order* dated January 20, 2023, thereafter followed.[37]

The trial proceeded for the presentation of the respective testimonial and documentary evidence of the parties.

Petitioner, offered the lone testimony of its Corporate Secretary, Mr. Hans Eldridge T. Ong Lopez.[38] The testimonies of the previously indicated witnesses, Ernesto T. Ong Lopez, the President of petitioner; and Danny S. Diaz were deemed waived in view of their absence in the hearing conducted on January 31, 2023.[39]

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[27] Division Docket, p. 709.
[28] Division Docket, pp. 718 to 719.
[29] Resolution dated June 22, 2022, Division Docket, pp. 722 to 723.
[30] Division Docket, p. 725.
[31] Division Docket, p. 730.
[32] Notice of Pre-Trial Conference, Division Docket, in between pp. 723 and 724.
[33] Division Docket, pp. 735 to 745.
[34] Division Docket, pp. 760 to 773.
[35] Division Docket, pp. 786 to 792.
[36] Division Docket, p. 819.
[37] Pre-Trial Order dated January 20, 2023, Division Docket, pp. 860 to 876.
[38] Exhibit "P-33", Division Docket, pp. 239 to 254; and Minutes of the hearing held on, and Order dated, January 31, 2023, Division Docket, pp. 877 to 880-B.
[39] Order dated January 31, 2023, Division Docket, p. 880-A.

On the other hand, counsel for respondent manifested that he will no longer present any testimonial evidence. Instead, the documentary evidence included in the JSFI will be offered.[40]

On February 15, 2023, petitioner filed its *Formal Offer of Evidence*.[41] Respondents filed their *Comment (On petitioner's Formal Offer of Evidence dated 10 February 2023)*[42] thereto on March 7, 2023. In a *Resolution*[43] dated May 26, 2023, the Court resolved petitioner's *Formal Offer* and admitted all the offered exhibits.

As to respondents, their *Formal Offer of Evidence*[44] was filed on June 8, 2023, with petitioner's *Comment/Opposition [To Respondent's Formal Offer of Evidence dated 08 June 2023]*[45] filed on June 23, 2023. In a *Resolution*[46] dated September 15, 2023, the Court admitted the offered exhibits, except for Exhibits "R-4", "R-5", "R-6", "R-7", and "R-8", for failure to submit the duly marked documents and for failure to be identified by competent witness.

Thus, respondents filed a *Motion for Partial Reconsideration (Of the Resolution dated 15 September 2023)*[47] on October 5, 2023; and on October 27, 2023, petitioner filed its *Comment/Opposition [To Respondent's Motion for Partial Reconsideration dated 04 October 2023]*[48]. In view of the Court's denial of respondents' *Motion for Partial Reconsideration* on January 18, 2024,[49] respondents filed a *Tender of Excluded Evidence*[50] on February 2, 2024. The Court noted the same in a *Minute Resolution*[51] dated February 15, 2024.

On October 20, 2023, the *Memorandum for Petitioner*[52] was filed, and on February 2, 2024, the *Memorandum*[53] of respondents was filed.

Finally, the present case was submitted for decision on March 1, 2024.[54]

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[40] Minutes of the hearing held on, and Order dated, January 31, 2023, Division Docket, p. 880-A.
[41] Division Docket, pp. 884 to 888.
[42] Division Docket, pp. 889 to 894.
[43] Division Docket, pp. 903 to 905.
[44] Division Docket, pp. 907 to 912.
[45] Division Docket, pp. 916 to 923.
[46] Division Docket, pp. 927 to 929.
[47] Division Docket, pp. 930 to 933.
[48] Division Docket, pp. 1049 to 1053.
[49] Resolution dated January 18, 2024, Division Docket, pp., 1057 to 1059.
[50] Division Docket, pp. 1060 to 1063.
[51] Division Docket, p. 1099.
[52] Division Docket, pp. 1025 to 1043.
[53] Division Docket, pp. 1066 to 1096.
[54] Minute Resolution dated March 1, 2024, Division Docket, p. 1100.

THE ISSUES[55]

As duly agreed by the parties, the following are the relevant issues for this Court's resolution:

1. **Whether petitioner erred in impleading the OSG as a party to the case;**
2. **Whether the Amended Petition should be dismissed for petitioner's failure to attach material portions of the record in support of the petition as required by Section 2, Rule 42 of the Rules of Court; and**
3. **Whether the subject vessel's forfeiture is valid.**

THE ARGUMENTS

Petitioner's arguments

Petitioner contends that the Assailed Decision causing the forfeiture of the Subject Vessel is unjust, since all conditions for the exemption from forfeiture as provided in Customs Administrative Order (CAO) No. 10-2020 has been met: a) it is a common carrier; b) the Subject Vessel has not been chartered; and that c) it has no knowledge nor participation in the unlawful act of transporting illegally imported rice and cigarettes. It mainly argues that although it knew that the cargo will be rice, it never knew that such rice were smuggled.

Respondent's counter-arguments

On the other hand, respondent argues that the OSG must be dropped as a respondent since it is the mere counsel of the BOC, and not a real party in interest in this case.

It further pointed out that petitioner failed to attach any other material portions of record relative to its case, but merely attached the Assailed Decision in its *Amended Petition for Review*.[56]

Lastly, respondent asserts that the sacks of rice and cigarettes which were found onboard the Subject Vessel were smuggled since it lacked the required documentation required prior to importation. It emphasized that petitioner admitted that the cargo was indeed smuggled but simply denied knowledge and participation thereto.

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[55] Stipulated Issues, Joint Stipulation of Facts and Issues, Division Docket, p. 787.
[56] Amended Petition for Review, with Attachments, Division Docket, pp. 154 to 226.

JURISDICTION AND TIMELINESS OF THE APPEAL

The present Petition for Review was timely filed.

At the outset, it is the CTA which has jurisdiction over the decisions of the Commissioner of Customs (COC) with regard to seizure or forfeiture cases as well as to his inactions relative thereto. The party thus affected may file its appeal within thirty (30) days from receipt of the decision, or after the lapse of the period allotted for the COC to decide, when none has been made; as clearly laid out in Republic Act 1125,[57] as amended by Republic Act 9282[58], and the Revised Rules of the Court of Tax Appeals (RRCTA):

> SECTION 7. Jurisdiction. — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided.
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> (2) **Decisions** of the **Commissioner of Customs** in cases involving liability for customs duties, fees or other money charges; **seizure**, detention or release of property affected fines, **forfeitures** or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs; and[59] *(Emphasis supplied)*
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> **RULE 4**
> **Jurisdiction of the Court**
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> SECTION 3. Cases Within the Jurisdiction of the Court in Divisions. — The Court in Divisions shall exercise:
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> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
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> (4) **Decisions of the Commissioner of Customs** in cases involving liability for customs duties, fees or other money charges, **seizure**, detention or release of property affected, fines, **forfeitures** or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;[60]

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[57] Creation of Court of Tax Appeals, Republic Act No. 1125, June 16, 1954.
[58] Expanding the Jurisdiction of the Court of Tax Appeals, Republic Act No. 9282, March 30, 2004.
[59] Creation of Court of Tax Appeals, Republic Act No. 1125, June 16, 1954.
[60] Revised Rules of the Court of Tax Appeals, A.M. No. 05-11-07-CTA, November 22, 2005.

> SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. — **Any party adversely affected by a decision**, ruling **or <u>inaction</u>** of the Commissioner of Internal Revenue, the **Commissioner of Customs**, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days** after the receipt of such decision or ruling or **after the expiration of the period fixed by law for action** as referred to in Section 7(a)(2) herein.[61] *(Emphasis and underscoring supplied)*

Furthermore, the CMTA provides that in forfeiture cases, a decision of the District Collector may be elevated to the COC. The latter is then given a specific period to decide the merits of the appeal, depending on the nature of goods. The party affected may thereafter appeal to the CTA the decision of the COC, or his inaction in case the period to decide has already lapsed, and no such decision was made. The relevant provisions are reproduced below:

> **CHAPTER 5**
> **Appeal in Protest and Forfeiture Cases**
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> SECTION 1126. Appeal to the Commissioner. — In **forfeiture cases**, the person aggrieved by the **decision of a District Collector** may, within fifteen (15) days or five (5) days in case of perishable goods, from receipt of the decision, file a **written notice of appeal**, together with the required appeal fee to the District Collector, furnishing a copy to the Commissioner. The District Collector shall immediately transmit all the records of the proceedings to the **Commissioner, who shall review and decide on the appeal within thirty (30) days from receipt of the records, or fifteen (15) days in the case of perishable goods:** Provided, That **if within thirty (30) days, no decision is rendered, the decision of the District Collector under appeal shall be deemed affirmed.** An appeal filed beyond the period herein prescribed shall be dismissed.[62] *(Emphasis supplied)*
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> **CHAPTER 9**
> **Judicial Proceedings**
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> **SECTION 1136. Review by the CTA.** — Unless otherwise provided in this Act or by any other law, **the party aggrieved by the ruling or decisions of the Commissioner may appeal to the CTA**, in the manner and within the period prescribed by law and regulations. Decisions of the Secretary of Finance when required by this Act, may likewise be appealed to the CTA.

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[61] Expanding the Jurisdiction of the Court of Tax Appeals, Republic Act No. 9282, March 30, 2004.

[62] Customs Modernization and Tariff Act (CMTA), Republic Act No. 10863, May 30, 2016.

> Unless an appeal is made to the CTA in the manner and within the period prescribed by law and regulations, the ruling or decision of the Commissioner or the Secretary of Finance shall be final and executory.[63] *(Emphasis supplied)*

In the case at hand, when herein petitioner received the Assailed Decision of the Acting District Collector via e-mail on July 27, 2021, and personally on July 29, 2021,[64] it filed a Notice of Appeal and Memorandum of Appeal on August 5, 2021. Subsequently, the Acting District Collector issued a Resolution[65] dated August 16, 2021 informing petitioner that its Notice of Appeal and Memorandum were transmitted to the Appellate Division of the Bureau of Customs, Manila on August 16, 2021. The COC then had thirty (30) days from August 16, 2021 or until September 15, 2021 within which to render a decision.

In the present case, petitioner posits that the COC did not act on its appeal. Thus, petitioner had until October 15, 2021 to raise the matter before the Court. On October 11, 2021, petitioner transmitted its *Petition for Review* via e-mail. Pursuant to CTA En Banc Resolution No. 4-2021, in view of the COVID-19 pandemic, the filing of petitions through e-mail were allowed:

> CTA EN BANC RESOLUTION NO. 4-2021[66]
> **PLEADINGS, MOTIONS AND OTHER COURT SUBMISSIONS FILED BY EMAIL**
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> WHEREAS, pursuant to SC Administrative Circular No. 45-2020, dated 18 August 2020, the Court of Appeals, Sandiganbayan, and **Court of Tax Appeals (CTA) may continue to receive petitions and pleadings electronically** in accordance with paragraph 1 thereof and process the same pursuant to their respective internal rules;
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> 2. The cut-off time for pleadings, motions, and other court submissions filed by email shall be at 4:30 p.m. which is the same cut-off time for the physical filing of pleadings, motions, and other court submissions. **Pleadings, motions, and other court submissions filed by email after the 4:30 p.m. cut-off time shall be considered as filed on the next working day;**
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[63] Customs Modernization and Tariff Act (CMTA), Republic Act No. 10863, May 30, 2016.
[64] As evidenced by the stamped receipt thereof in Annex "A", attached to the Petition for Review, Division Docket, p. 103.
[65] Annex "B", Division Docket, p. 129.
[66] Pleadings, Motions and Other Court Submissions Filed by Email, CTA En Banc Resolution No. 4-2021, February 24, 2021.

> 4. Considering that pleadings, motions, and other court submissions filed with the CTA oftentimes consist of a large number of pages including the annexes appended thereto and that each pleading, motion, and other court submission is required to be filed with the CTA, at the very least, in four (4) copies for Division cases and ten (10) copies for *En Banc cases,* ***litigants shall submit, by personal filing or licensed courier****, the required number of* ***hard copies*** *of the pleadings, motions, and other court submissions* ***within five (5) calendar days from date of filing by email;***

Considering the foregoing, records reveal that the *Petition for Review* was actually filed on October 11, 2021 at 5:15PM, beyond the cut-off time. Thus, the *Petition for Review* is considered filed within the next working day, October 12, 2021. Nevertheless, the filing of the *Petition* was timely made.

THE RULING OF THE COURT

The Petition for Review must fail.

The OSG is not a real party in interest that must be named as a respondent in this case.

The Court finds no basis for petitioner to directly include the OSG as a respondent in this case. The OSG, as the counsel for the government and its officials sued in their official capacity, represents the latter in their respective cases. Section 35, Chapter 12, Title III, Book IV, of the Administrative Code of 1987 outlines its powers and functions including, but not limited to, its duty to:

> "(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; **represent the Government and its officers in** the Supreme Court, the Court of Appeals, and **all other courts or tribunals in all civil actions** and special proceedings **in which the Government or any officer thereof in his official capacity is a party.**" *(Emphases added)*

Section 35 is likewise consistent with precedents and the established rule that it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings. Applying the same in the present case, the OSG merely represents the Commissioner of Customs and the District Collector relative to petitioner's appeal of the Assailed Decision which ordered the forfeiture of its vessel. The OSG is neither a real party in interest nor an indispensable party that must be named in an action which is fatal to the petitioner's claim for relief. It is not the party responsible for the seizure and forfeiture of the Subject Vessel upon which petitioner can seek relief from, nor can it also cause the release of the same. Likewise, it did not issue the Assailed Decision appealed from.

> SECTION 2. Parties in Interest. — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest. (2a)
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> Section 7. Compulsory joinder of indispensable parties. – Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants. (7)[67]

Furthermore, nowhere in the pleadings filed by petitioner can We find any discussion faulting or seeking relief from the OSG. It was merely mentioned as a party to the case in its *Amended Petition*. In fact, although the propriety of impleading the OSG in this case has been stipulated as an issue by the parties, it appears that the *Memorandum for Petitioner* seemed to have dropped the matter, as it no longer mentioned the OSG under the *Parties*,[68] nor did it provide for any discussion on the issue of the OSG as a respondent.

In light of the foregoing, petitioner indeed erred in impleading the OSG as a respondent in this case. It is worthy to note that the Supreme Court, explicitly stated that the OSG is not the actual party in the cases it merely represents:

> As petitioner himself pointed out, the OSG merely represents the government, its agencies and instrumentalities, and its officials and agents, and generally acts as the government's counsel in any litigation, proceeding, investigation, or matter requiring the services of a lawyer. **The OSG is not the actual party in any of the cases it handles in representation of the government.**" Therefore, respondent need not implead the OSG as a public respondent in CA-G.R. SP No. 111191.[69] *(Emphasis supplied)*

For these reasons, the OSG must be dropped as a respondent in this case.

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[67] 2019 Amendments to the 1997 Rules of Civil Procedure, A.M. No. 19-10-20-SC, October 15, 2019.
[68] Division Docket, pp. 1025 to 1026.
[69] Hilbero v. Morales, Jr., G.R. No. 198760, January 11, 2017.

Failure to attach the material portions of the record is not fatal as would cause the dismissal of the present case.

While Rule 42 of the Rules of Court provides that a petition for review must be accompanied not only by the assailed decision, but also other material portions of the record that would support the allegations, the lack of the latter is not a sufficient ground to dismiss a case before the CTA. The Revised Rules of the Court of Tax Appeals (RRCTA) merely requires that the assailed decision appealed from is appended thereto.

RULES OF COURT	REVISED RULES OF THE COURT OF TAX APPEALS[70]
RULE 42 **Petition for Review from the Regional Trial Courts to the Court of Appeals** SECTION 2. Form and Contents. — The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the specific material dates showing that it was filed on time; (c) set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) be **accompanied** by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and **other material portions of the record as would support the allegations of the petition.** *(Emphasis supplied)*	RULE 6 **Pleadings Filed With the Court** xxx SECTION 2. Petition for Review; Contents. — The petition for review shall contain allegations showing the jurisdiction of the Court, a concise statement of the complete facts and a summary statement of the issues involved in the case, as well as the reasons relied upon for the review of the challenged decision. The petition shall be verified and must contain a certification against forum shopping as provided in Section 3, Rule 46 of the Rules of Court. **A clearly legible duplicate original or certified true copy' of the decision appealed from shall be attached to the petition.** (RCTA, Rule 5, sec. 2a) *(Emphasis supplied)*

[70] Revised Rules of the Court of Tax Appeals, A.M. No. 05-11-07-CTA, November 22, 2005.

Furthermore, the RRCTA, as the special rules promulgated for the conduct of proceedings in the CTA, and as the law that specifically addresses tax court cases, provides that the Rules of Court *shall* only apply suppletorily thereto. The Rules of Court should not diminish nor enlarge that which is provided for in the RRCTA.

> **RULE 1**
> **Title and Construction**
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> SECTION 3. Applicability of the Rules of Court. — The Rules of Court in the Philippines shall apply suppletorily to these Rules. (n)
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> **RULE 7**
> *Procedure in the Court of Tax Appeals*
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> SECTION 1. *Applicability of the Rules of the Court of Appeals, Exception.* —The procedure in the Court *en banc* or in Divisions in original and in appealed cases shall be the same as those in petitions for review and appeals before the Court of Appeals pursuant to the applicable provisions of Rules 42, 43, 44 and 46 of the Rules of Court, except as otherwise provided for in these Rules. (*n*)[71]

Hence, the minimum requirement of attaching the assailed decision in petition as provided in the RRCTA is sufficient. Here, the petitioner was able to sufficiently comply with the same when it attached not only the *Assailed Decision*[72], but also the *Resolution*[73] in its initial *Petition for Review*[74] filed on October 22, 2021.

We now proceed to rule on the core issue of this case.

The forfeiture of the Subject Vessel is valid.

We find it proper to affirm the result of the Assailed Decision, forfeiting the Subject Vessel, LCT Yellow River in favor of the government.

At the outset, it is fundamental to underscore that proceedings on the matter of forfeiture are *in rem*, and is therefore directed against the *res* or a specific property (as in this case, the Subject Vessel). This means that the action centers on the involvement of the vessel in the illegal act, and finds no relevance whether or not the agent or the owner thereof has knowledge or participation, as the action is not after the

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[71] Revised Rules of the Court of Tax Appeals, A.M. No. 05-11-07-CTA, November 22, 2005.
[72] Annex "A" attached to the Petition for Review, Division Docket, pp. 103 to 127.
[73] Annex "B" attached to the Petition for Review, Division Docket, pp. 128 to 130.
[74] Division Docket, pp. 56 to 130.

personal liability of the owner, but against the vessel itself as utilized in the violation. In *Commissioner of Customs v. Court of Tax Appeals*,[75] the Supreme Court pronounced:

> **Forfeiture proceedings are in the nature of proceedings *in rem*** (Vierneza vs. Commissioner of Customs, 24 SCRA 394) and are **directed against the *res***. The fact that private respondent has allegedly no actual knowledge that M/B "Maria Victoria-P" was used illegally does not render the vessel immune from forfeiture. This is so because the **forfeiture proceedings in this case was instituted against the vessel itself.** Private respondent's defense that he has no actual knowledge that the vessel was used illegally is personal to him but cannot absolve the vessel from liability of forfeiture.
>
> Moreover, the aforequoted provision prescribes in an unequivocal term the imposition of the penalty of forfeiture in cases of unlawful importation of foreign articles regardless of whether such importation occurred with or without the knowledge of the owner of the vessel.
>
> In United States vs. Steamship "Rubi" (32 Phil. 239), this Court, in resolving the question of whether or not the innocence of the owner in the illegal importation of foreign articles can withdraw the ship from the penalty of confiscation, said:
>
>> "The vessel which commits the aggression is treated as the offender, without any reference whatsoever to the character or conduct of the owner, . . . this is done from the necessity of the case, as the only adequate means of suppressing the offense or wrong, . . . The doctrine also is familiarly applied to cases of smuggling and other misconduct under our revenue laws; and . . . embargo and non-intercourse acts, . . . The same thing applies to proceeding in rem or seizures in admiralty. . . . the acts of the master and crew, in cases of this sort, bind the interest of the owner of the ship, whether he be innocent or guilty." *(Emphasis supplied)*

In the case at hand, the seizure and the eventual forfeiture of the Subject Vessel, LCT Yellow River as provided in the Assailed Decision, was due to the fact that it was found to be loaded with smuggled rice and cigarettes.

The key provisions of the CMTA clearly provides that the *mere carrying* of smuggled goods *on board* any vehicle, may cause the outright seizure of the latter and subject the same to forfeiture, save for some exceptions. Section 1113 is instructive on the matter, *viz.:*

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[75]G.R. No. L-31733, September 20, 1985.

CHAPTER 4
Seizure and Forfeiture

> SECTION 1113. Property Subject to Seizure and Forfeiture.
>
> Property that shall be subject to seizure and forfeiture include:
>
> **(a)** Any vehicle, **vessel** or aircraft, including cargo, which shall be **used unlawfully in the importation or exportation of goods or in conveying or transporting smuggled goods in commercial quantities** into or from any Philippine port or place. The **mere carrying or holding on board of smuggled goods in commercial quantities shall subject such vehicle, vessel, aircraft, or any other craft to forfeiture**: Provided, That the vehicle, vessel, aircraft or any other craft is not used as a common carrier which has been chartered or leased for purposes of conveying or transporting persons or cargo;
>
> **(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;
>
> xxx
>
> (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[76]

Moreover, Section 1113 (a), (b), and (k) of the CMTA is actually a reiteration of its predecessor, Section 2530 (a), (b), and (k) of the Tariff and Customs Code of 1978.[77] From the foregoing provisions, it is consistent that the State aims to curtail smuggling and exercise its confiscatory powers over the vehicles or effects used in its facilitation.

Additionally, the provisions on seizure and forfeiture of the CMTA, its declaration of policy, and other relevant customs laws likewise necessitate from the police power of the state to promote the

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[76] Customs Modernization and Tariff Act (CMTA), Republic Act No. 10863, May 30, 2016.
[77] PRESIDENTIAL DECREE NO. 1464, A DECREE TO CONSOLIDATE AND CODIFY ALL THE TARIFF AND CUSTOMS LAWS OF THE PHILIPPINES, Tariff and Customs Code of 1978, June 11, 1978.

general welfare by the regulation and prevention of illegal activities such as smuggling.

> SECTION 101. Declaration of Policy. — It is hereby declared the policy of the State to **protect and enhance government revenue, institute fair and transparent customs and tariff management** that will efficiently facilitate international trade, **prevent and curtail any form of customs fraud and illegal acts**, and modernize customs and tariff administration.[78]

> **Police power** is the power of the State, primarily vested in the legislature, to promote public welfare by **restraining and regulating the use of liberty and property** — although it virtually extends to "all public needs" as it is not capable of an exact definition for being **comprehensive in order to meet all exigencies and provide enough room for an efficient and flexible response to conditions and circumstances**, thus, assuring the greatest benefits. Stated differently, it may be said to be "that **inherent and plenary power in the State which enables it to prohibit all things hurtful to the comfort, safety, and welfare of society.** Such power may be delegated to the President and administrative boards, as well as the law-making bodies of municipal corporations or local government units. Upon this power depends the security of social order, the life and health of the citizens, the comfort of an existence in a thickly populated community, the enjoyment of private and social life, and the beneficial use of property. "The maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy."[79]

Considering that smuggling is a serious offense which can drastically affect the nation's economy and security, the state indeed has a legitimate interest in suppressing the same. Hence, the outright seizure and the subjection to forfeiture of any vehicle or vessel that merely carries smuggled goods or facilitates the same is an exercise of its regulatory powers over trade and commerce.

Applying the foregoing in the present case, and as found by the Acting District Collector in his Assailed Decision,[80] there is no doubt that on February 24, 2024, the Subject Vessel was seized, among other vehicles, as it were found to be loaded with master cases of smuggled cigarettes and rice. It is likewise worthy to note that in its *Amended Petition*, petitioner does not even dispute that smuggled rice and cigarettes were indeed loaded in the Subject Vessel. It merely claims that it is exempted from forfeiture since while it had knowledge that

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[78] Customs Modernization and Tariff Act (CMTA), Republic Act No. 10863, May 30, 2016.
[79] Board of Commissioners of the Bureau of Immigration and the Jail Warden v. Wenle, G.R. No. 242957, February 28, 2023.
[80] Annex "A", Division Docket, p. 103.

rice will be loaded in the Subject Vessel, it claims that it did not know that such rice were smuggled.[81] However, petitioner fell short of its burden to establish that it has nothing to do and has no knowledge with the facilitation of such an illegal activity, as will be later discussed.

Therefore, from the clear import of the provisions of the CMTA, and in view of the State's police power to regulate trade and the use of property, the Subject Vessel was properly seized considering that smuggled rice and cigarettes were loaded and found thereon, and as likewise duly concluded by the respondent in the Assailed Decision. The only matter which petitioner seeks for the Court's determination is whether it is exempted from forfeiture.

To emphasize, the degree of proof required in forfeiture proceedings is merely substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[82] We find significance in *Feeder International Line, Pte., Ltd. v. Court of Appeals*:[83]

> Considering, therefore, that proceedings for the forfeiture of goods illegally imported are not criminal in nature since they do not result in the conviction of the wrongdoer nor in the imposition upon him of a penalty, proof beyond reasonable doubt is not required in order to justify the forfeiture of the goods. In this case, the degree of proof required is merely substantial evidence which means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Again, it is undisputed[84] that smuggled rice and cigarettes in large quantities were loaded and found in the Subject Vessel.[85] Thus, the District Collector had reason to conclude and impute to the owner the responsibility and accountability thereto.[86]

If the owner disagrees, the burden is therefore shifted to the latter to prove that forfeiture is invalid and that it was exempt. As provided in Section 1123 of the CMTA, in all proceedings for the forfeiture, the burden of proof shall be borne by the claimant. Unfortunately, petitioner, as the claimant for the release of the Subject Vessel, failed to prove the same.

We now explain.

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[81] Pars. 75 to 76, Amended Petition for Review, Division Docket, p. 178.
[82] Commissioner of Customs v. Gold Mark Sea Carriers, Inc., G.R. No. 208318, June 30, 2021.
[83] G.R. No. 94262, (31 May 1991), 274 Phil 1143-1156.
[84] Par. 8, Memorandum for Petitioner, Division Docket, p. 1027.
[85] Pars. 4, 5, 7, 11, Exhibit "R-2", Division Docket, p. 961; Assailed Decision, Division Docket, p. 115.
[86] Par. 27, Assailed Decision, Division Docket, p. 116.

The petitioner failed to sufficiently prove that it met the conditions to be exempt from forfeiture.

In the implementation of Section 1113 of the CMTA, CAO No. 010-20 was issued providing for the conditions by which a property may be exempted from forfeiture. In challenging the Assailed Decision, petitioner likewise centers the present appeal on its claim for exemption based on the conditions provided thereto. We reproduce below:

> **CUSTOMS ADMINISTRATIVE ORDER NO. 010-20**
>
> SECTION 4. General Provisions. –
>
> **4.1. Properties Subject to Seizure & Forfeiture.** Properties which are imported or exported under the following circumstances shall be subject to Seizure and Forfeiture:
>
> 4.2.3. Vehicles, **vessels** or aircrafts **used in carrying smuggled goods in Commercial Quantity shall be forfeited *except* if <u>all</u> of the following conditions are present:**
>
> a. It is a **Common Carrier**;
>
> b. It has **not** been **chartered** for purposes of conveying and transporting persons or cargo. As used in this CAO, a charter shall refer to a contract by which an entire vessel, aircraft or vehicle, or some principal part thereof, is let by the owner to another person for a specified time or use which has the effect of transferring the control on both the vessel, aircraft or vehicle and its crew to the lessee; and
>
> c. The **owner or agent at that time of Seizure has no knowledge of and participation in the unlawful act**.
>
> However, a prima facie presumption against such vehicles, vessel or aircraft shall exist under any of the following circumstances:
>
> a. If conveyance has been used for smuggling before;
>
> b. If the owner is not in the business for which the conveyance is generally used; and
>
> c. If the owner is not financially in a position to own such conveyance. *(Emphasis, italics, and underscoring supplied)*[87]

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[87] Seizure and Forfeiture Proceedings and Appeals Process, Customs Administrative Order No. 010-20, May 11, 2020.

In sum, CAO No. 010-20 provides that any vehicle, vessel, or aircraft may be exempted from forfeiture despite the finding that it was utilized to carry smuggled goods, provided that *all* the following conditions have been met: a) that it is a common carrier; b) it has not been chartered; and c) that the owner or agent did not know nor participated in the unlawful act.

In this case, while it is stipulated and admitted by the parties that the Subject Vessel is a common carrier engaged in coastwise trading, and that it has been chartered by Accufast,[88] petitioner mainly claims that the charter is only limited to the use of the vessel alone, and not of the crew of petitioner. It also claims no knowledge nor any participation in the unlawful activity.

We disagree.

The records of the case indubitably show that on February 18, 2021, herein petitioner is a common carrier which entered into a Charter Party Agreement with Accufast. The parties likewise admitted such fact in the proceedings below:

> "On 14 April and 23 April, clarificatory hearings were conducted. Claimant for the LCT Yellow River and counsel, Mr. Francis Cuisia of Accufast Logistics and his counsel appeared. It was admitted by both parties that Claimant for LCT Yellow River entered into charter agreement with Accufast Logistics thru Mr. Francis Cuisia."[89]

In *Commissioner of Customs v. Gold Mark Sea Carriers* (Gold Mark Sea),[90] the Supreme Court pronounced that when a common carrier has been chartered or leased, no matter what label it may have been designated by the parties, the mere fact that it is chartered excludes the same from claiming exemption from forfeiture:

> **To be exempt from forfeiture**, Section 2530 (a) and (k) of the TCCP **explicitly require that the vessel be a common carrier, not a chartered or leased vessel**. Here, Gold Mark's Charter Agreement with the cargo owner belies its claim that it is exempt from forfeiture under Section 2530. **The law does not distinguish the type of charter agreement. When the law does not distinguish, neither should the court. So long as the vessel is leased or chartered, it is no longer exempt from forfeiture** under Section 2530 (a) and (k).
>
> As shown here, Gold Mark's vessel was leased by the cargo owner and used to transport the undocumented cargo from Palau and actually

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[88] Joint Stipulation of Facts, Division Docket, p. 787.
[89] Assailed Decision, Division Docket, p. 107.
[90] G.R. No. 208318, June 30, 2021.

entered the Philippine port. Indubitably, it is subject to forfeiture under Section 2530 of the TCCP. As it was, Gold Mark failed to adduce other evidence to disprove its knowledge and participation in the unlawful importation of the cargo owner.

While the Court is aware that *Commissioner of Customs v. Gold Mark Sea Carriers* pertains to TCCP, it bears to reiterate as already stated before, that Section 1113 of the CMTA merely echoes the essence of what Sections 2530 provides.

Furthermore, petitioner claims that the Charter Party Agreement it entered with Accufast is not in contemplation of the "charter" that disqualifies it from exemption. According to CAO No. 010-20, the charter must have been for both the vessel and crew of the lessee – petitioner asserts that it merely leased the Subject Vessel and it does not include the crew of herein petitioner.

Again, the Gold Mark Sea Case does not distinguish the kind of charter agreement which the parties enter into – as long as it is leased or chartered, it is not exempted from forfeiture. We also emphasize that the TCCP and the present CMTA does not provide for the limitation provided in CAO No. 010-20. To illustrate:

PRESIDENTIAL DECREE NO. 1464 A DECREE TO CONSOLIDATE AND CODIFY ALL THE TARIFF AND CUSTOMS LAWS OF THE PHILIPPINES (Tariff and Customs Code of 1978, June 11, 1978)	**REPUBLIC ACT NO. 10863** AN ACT MODERNIZING THE CUSTOMS AND TARIFF ADMINISTRATION (Customs Modernization and Tariff Act (CMTA), May 30, 2016)	**CUSTOMS ADMINISTRATIVE ORDER NO. 010-20** (Seizure and Forfeiture Proceedings and Appeals Process, May 11, 2020)
SECTION 2530. Property Subject to Forfeiture Under Tariff and Customs Law. Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subject to forfeiture: a. Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles or	**SECTION 1113.** Property Subject to Seizure and Forfeiture. Property that shall be subject to seizure and forfeiture include: (a) Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of **goods** or in conveying	**4.2.3. Vehicles, vessels or aircrafts used in carrying smuggled goods in Commercial Quantity shall be forfeited <u>except</u> if all of the following conditions are present:** a. It is a Common Carrier; b. It has **not been <u>chartered</u> for purposes of conveying and transporting persons or cargo.**

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, aircraft or any other craft is not used as duly authorized common carrier and as such a carrier it is not **<u>chartered or leased</u>;**	**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 <u>chartered or leased</u> for purposes of conveying or transporting persons or cargo;**	As used in this CAO, a charter shall refer to a *contract by which an entire vessel, aircraft or vehicle, or some principal part thereof, is let by the owner to another person for a specified time or use which has the effect of transferring the control on both the vessel, aircraft or vehicle and its crew to the lessee*; and c. The owner or agent at that time of Seizure has no knowledge of and participation in the unlawful act.
b. Any vessel engaging in the coastwise trade which shall have on board any article of foreign growth, produce or manufacture in excess of the amount necessary for sea stores, without such article having been properly entered or legally imported;	(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;	
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.	(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 contraband or smuggled articles by such beast or 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	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	

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;	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 xxx	

As may be gleaned, the TCCP and CMTA merely, plainly, and generally provides that the vessel must not have been leased nor chartered, in order to be exempt from forfeiture. This was also confirmed by the Supreme Court in the Gold Mark Sea case. It is only in CAO No. 010-20, a mere implementing administrative rule, that the term "charter" was limited to a particular definition. Corollarily, this Court must emphasize that an implementing rule or issuance cannot prevail over the law it seeks to implement – *the spring cannot rise above its source.*

Therefore, the fact that petitioner as a common carrier, entered into a Charter Party Agreement with Accufast, already disqualifies it from invoking the exemption provided under Section 1113 (a) of the CMTA (as implemented by CAO No. 10-2020) as the same requires that all conditions must be present. The absence of any one of the conditions exposes the subject vessel "Yellow River" to the legal repercussions of carrying smuggled goods, including the penalty of forfeiture.

Furthermore, petitioner's contention of lack of knowledge and participation deserves scant consideration. The petitioner failed to discharge the same as it merely presented its lone witness, Mr. Hans Eldridge T. Ong, the Corporate Secretary, to simply express such denial in his judicial affidavit, to wit:

> Q77: Why did you file this Petition?
> A77: This Petition is very important to us. Hai Long's cargo vessel, LCT Yellow River, was seized by the Bureau of Customs because criminals used it to carry smuggled cargo to Orion, Bataan, without our (Hai Long) knowledge and consent. We are earnestly praying for the vessel's release because we are just victims here. We are losing income, our men have lost work, and the vessel is deteriorating. We were mistakenly involved in what the Bureau of Customs referred to as large-scale agricultural smuggling and unlawful importation. But we honestly have no involvement, knowledge, and participation in those crimes.[91]

[91] Exhibit "P-33", pp. 252 to 253.

The Court cannot truly determine the extent of the participation of the petitioner or the lack of it on the basis of the sheer and plain denial of its corporate secretary. It is not sufficient to overturn the unlawful activity which was already determined by substantial evidence. Be it noted, that while the petitioner initially intended to present its President, the presentation was deemed waived in view of his failure to attend the hearing, for the reason that an active warrant was issued against him, and that his own lawyers could not even locate him:

> ATTY. DELOS SANTOS:
>
> Your Honors, for other witnesses, for witness Ernesto T. Ong Lopez, I would like to manifest that there's an active Warrant against him and we cannot locate him, we would like to, (interrupted)
>
> JUSTICE DEL ROSARIO:
> Please speak louder, I can hardly hear you.
>
> ATTY. DELOS SANTOS:
>
> Your Honors, for other witnesses, for witness Ernesto T. Ong Lopez, we would like to manifest to the Court that he has an active warrant against him for a criminal case and we cannot locate him or haven't communicated with him.
>
> JUSTICE DEL ROSARIO:
> So, the presentation of Mr. Ernesto T. Ong[92]

To reiterate, from the tenor of the language of Section 1123 of the CMTA, the burden of proof that petitioner has no knowledge of the unlawful acts rests on the person alleging such innocence.

> Section 1123. Burden of Proof in Forfeiture Proceedings. - In all proceedings for the forfeiture of any vehicle, vessel or aircraft, or goods under this Act, the burden of proof shall be borne by the claimant."

The Court finds that the evidence and testimony offered by petitioner are self-serving, and insufficient to establish that the owners or the agents of the vessel did not have knowledge that it will be used for the commission of unlawful acts. It is weak on its own to merit the overturning of forfeiture that was already ruled upon based on substantial evidence.

Again, considering that forfeiture proceedings are *in rem*, and directed against the *res*, it is of no moment that the owner of the vessel had no knowledge of the illegal activity. The Supreme Court, in

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[92] Transcript of Stenographic Notes, p. 51.

Commissioner of Customs v. Manila Star Ferry, Inc.,[93] pronounced as follows:

> Forfeiture proceedings are proceedings ***in rem*** (Commissioner of Customs v. Court of Tax Appeals, 138 SCRA 581 [1985] citing Vierneza v. Commissioner of Customs, 24 SCRA 394 [1968]) and are **directed against the *res*. It is no defense that the owner of the vessel sought to be forfeited had no actual knowledge that his property was used illegally. The absence or lack of actual knowledge of such use is a defense personal to the owner himself which cannot in any way absolve the vessel from the liability of forfeiture** (Commissioner of Customs v. Court of Appeals, *supra*; U.S. v. Steamship "Rubi", 32 Phil. 228, 239 [1915]). *(Emphasis supplied)*

Thus, in view of the totality of the circumstances and the evidence presented to this Court, We find no reason to overturn the Assailed Decision.

WHEREFORE, premises considered, the *Amended Petition for Review* is **DENIED** for lack of merit. Consequently, the Assailed Decision dated July 14, 2021 issued by Atty. William B. Balayo, Acting District Collector of the Port of Limay, Bataan, forfeiting the Subject Vessel, LCT Yellow River in favor of the government is hereby **AFFIRMED.**

Accordingly, let the Office the Solicitor General be dropped as a respondent in this case.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo
(With due respect, see D.O.)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

[93] G.R. Nos. L-31776-78, October 21, 1993, 298 Phil 79-88.

ATTESTATION

I attest 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's Division.

CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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 Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

HAI LONG SHIPBUILDING & LIGHTERAGE, INC. as owner and operator of CARGO SHIP, LCT "YELLOW RIVER" with Official Number 00-00026867,
Petitioner,

-versus-

OFFICE OF THE COMMISSIONER (OCOM) OF THE BUREAU OF CUSTOMS (BOC), DISTRICT COLLECTOR OF PORT OF LIMAY, BUREAU OF CUSTOMS (BOC) BATAAN and OFFICE OF THE SOLICITOR GENERAL (OSG),
Respondents.

CTA Case No. 10622

Members:

MANAHAN, *Chairperson,*
REYES-FAJARDO, and
ANGELES, *JJ.*

Promulgated:

AUG 28 2025
4:10 pm

x- -x

DISSENTING OPINION

REYES-FAJARDO, ***J.*:**

My esteemed colleague Associate Justice Henry S. Angeles denied petitioner Hai Long Shipbuilding & Lighterage, Inc.'s *Amended Petition for Review* because the Charter Party Agreement between petitioner and Accufast Logistics & Trading Corporation ("Accufast") already disqualifies petitioner from invoking the exemption provided under Section 1113 (a) of the Customs Modernization and Tariff Act (CMTA), as implemented by Customs Administrative Order (CAO) No. 10-2020, *viz.*:

> Therefore, the fact that petitioner as a common carrier, entered into a Charter Party Agreement with Accufast, already disqualifies it from invoking the exemption provided under Section 1113 (a) of the CMTA (as implemented by CAO No. 10-2020) as the same requires that all conditions must be present. The absence of any one of the conditions exposes the subject vessel "Yellow River" to the legal repercussions of carrying smuggled goods, including the penalty of forfeiture.[1]

With due respect, I differ from this position.

Indeed, Section 1113(a)[2] of the CMTA[3] commands that any vessel or cargo used in illegal importation or exportation into or from the Philippines shall be subjected to forfeiture.

By way of exception, Section 1113(k)[4] of the same law provides that such forfeiture shall not be effected if it is established that: (1) the owner thereof is engaged as a common carrier and said means of conveyance is not chartered or leased, **or** (2) said owner or agent in charge thereof has no knowledge of, or participation in, the unlawful act.

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1 Page 23 of the *Ponencia*.

2 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**;

. . .

3 Republic Act No. 10863, An Act Modernizing the Customs and Tariff Administration.

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

. . .

(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.**

Basic is the rule in statutory construction that the word *"or"* is a disjunctive term signifying dissociation and independence of one thing from other things enumerated.[5] Since Section 1113(k) of the CMTA uses the word "**or**", the two (2) exemptions from forfeiture enumerated therein are then **alternative and not cumulative**.[6]

Relevantly, this Court, in the recent case of *Zita v. Honorable Commissioner of the Bureau of Customs*,[7] held that Section 1113(a), read together with subparagraph (k), reveals **two (2) exemptions** from forfeiture, *viz:*

> Moreover, scrutiny of Section 1113 (a), read together with subparagraph (k), reveals **two (2) exceptions from forfeiture**, as summarized below:
>
> 1. When the owner of the conveyance or vehicle is engaged as a common carrier that has not been chartered or leased for purposes of conveying or transporting persons or cargo; or
> 2. When the owner or agent in charge thereof at the time has no knowledge of or participation in the unlawful act.[8]

With the foregoing in mind, the *ponencia* is correct in holding that the Charter Party Agreement[9] between petitioner and Accufast disqualifies petitioner from exemption[10] from forfeiture following the Supreme Court's pronouncement in *The Commissioner of Customs, et al. v. Gold Mark Sea Carriers, Inc. ("Gold Mark Sea")*.[11] However, I differ that the same only bars the application of the **first** exemption under Section 1113(a) of the CMTA. Thus, petitioner may still claim exemption based on the second ground under Section 1113(k) of the CMTA.

Section 1114 of the CMTA "reiterates the second exception by exempting from forfeiture any vehicle, vessel, or aircraft where it is established that owner or agent in charge thereof has no knowledge

5 *PCI Leasing and Finance, Inc. v. Giraffe-X Creative Imaging, Inc.*, G.R. No. 142618, July 12, 2007, citing *Pimentel v. COMELEC*, G.R. No. 126394, April 24, 1998.
6 *Centeno v. Hon. Villalon-Pornillos, et al.*, G.R. No. 113092, September 1, 1994.
7 C.T.A. Case No. 10604, September 27, 2024. Penned by Associate Justice Henry S. Angeles; Associate Justice Catherine T. Manahan and Associate Justice Marian F. Reyes-Fajardo, concurring.
8 Emphasis supplied.
9 Exhibit "R-3", Docket – Vol. II, pp. 977 to 978.
10 Page 21 of the *Ponencia*.
11 G.R. No. 208318, June 30, 2021.

of or participation in the unlawful act,"[12] **unless** there is *prima facie* evidence that would give rise to the presumption of knowledge or participation in the unlawful act on the part of the owner or the agent in charge of the conveyance.

The same provision provided three (3) instances when knowledge or participation in the unlawful act is presumed:

> SEC. 1114. **Properties not Subject to Forfeiture in the Absence of Prima Facie Evidence. – The forfeiture of the vehicle, vessel, or aircraft shall not be effected if it is established that the owner thereof or the agent in charge of the means of conveyance used as aforesaid has no knowledge of or participation in the unlawful act:** Provided, That a **prima facie presumption** shall exist against the vehicle, vessel, or aircraft under any of the following circumstances:
>
> **(a) If the conveyance has been used for smuggling before;**
>
> **(b) If the owner is not in the business for which the conveyance is generally used; and**
>
> **(c) If the owner is not financially in a position to own such conveyance.**[13]

Petitioner here disclaims knowledge that the subject vessel was used for smuggling.[14]

In an attempt to establish a *prima facie* presumption of participation in the unlawful act, respondents insist that the subject vessel was used in smuggling before. They anchored their belief on: 1) the Order dated July 10, 2020 of the 3rd Municipal Circuit Trial Court of Botongan, Zambales, 2) petitioner's Letter dated February 12, 2021, and 3) the Order dated February 26, 2021.

Respondents' arguments fail for below reasons:

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12 *Zita v. Honorable Commissioner of the Bureau of Customs*, C.T.A. Case No. 10604, September 27, 2024. Penned by Associate Justice Henry S. Angeles; Associate Justice Catherine T. Manahan and Associate Justice Marian F. Reyes-Fajardo, concurring.

13 Emphasis supplied.

14 Exhibit "R-1", Docket – Vol. II, pp. 934 to 956, at pp. 946 to 948.

First. The documents invoked by respondents to shore up their stance were denied admission as evidence, per Resolutions dated September 15, 2023[15] and January 18, 2024.[16]

Second. Section 102(nn) of the CMTA[17] defines *smuggling* as the fraudulent act of importing any goods into the Philippines, or the act of assisting in receiving, concealing, buying, selling, disposing, or transporting such goods, with full knowledge that the same has been fraudulently imported, or the fraudulent exportation of goods. Section 102(ff) and (pp) of the same law further elaborated on the two (2) types of smuggling, as follows:

> SECTION 102. Definition of Terms. — As used in this Act:
>
> . . .
>
> (ff) Outright Smuggling refers to an act of importing goods into the country without complete customs prescribed importation documents, or without being cleared by customs or other regulatory government agencies, **for the purpose of evading payment of prescribed taxes, duties and other government charges;**
>
> . . .
>
> (pp) Technical Smuggling refers to the act of importing goods into the country by means of fraudulent, falsified or erroneous declaration of the goods to its nature, kind, quality, quantity or weight, **for the purpose of reducing or avoiding payment of prescribed taxes, duties and other charges;**[18]

What we can refract therefrom is that the essence of smuggling under the CMTA is the fraudulent importation of goods for the purpose of reducing or avoiding payment of taxes, duties, and other charges due to the government. The documents relied upon by respondents, however, do not exhibit fact of smuggling. Rather, they only collectively show that the subject vessel was caught transporting 53,000 metric tons of toxic cargo neutralized phosphogypsum and was charged for violation of RA No. 9003,[19] otherwise known as the *"Ecological Solid Waste Management Act of 2000."* The exchanges

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15 Docket - Vol. II, pp. 927 to 929.
16 *Id.* at pp. 1057 to 1059.
17 Republic Act No. 10863, May 30, 2016.
18 Emphasis supplied.
19 An Act Providing For An Ecological Solid Waste Management Program, Creating The Necessary Institutional Mechanisms And Incentives, Declaring Certain Acts Prohibited And Providing Penalties, Appropriating Funds Therefor, And For Other Purposes.

fff

between witness Ong Lopez and respondents' counsel are illuminating:[20]

AS SOLIVEN:	But, is it not a fact that Hai Long was, ah, the Yellow River was seized sometime in 2019, do you confirm this statement?
MR. ONG LOPEZ:	Yes.
AS SOLIVEN:	All right. So, in fact, the Yellow River was seized because **when it was caught transporting 53,000 metric tons of toxic cargo neutralized phosphogypsum,** correct?
MR. ONG LOPEZ:	Yes.
AS SOLIVEN:	And because of the Yellow River involvement in this incident criminal case was filed docketed as Crim. No. 5221 with the Third Municipal Circuit Trial Court, Butulan, Tabangan, correct?
MR. ONG LOPEZ:	We are not involved in that case. We are not charged.
AS SOLIVEN:	You are not charged, but the Yellow River's Captain at that time was Danny Banes, correct?
MR. ONG LOPEZ:	Yes.
AS SOLIVEN:	And the Second Mate was Clifford Calingacion, Assistant Captain?
MR. ONG LOPEZ:	Yes.
AS SOLIVEN:	And, as a result of the seizure of the vessel, Captain Bañes and Assistant Captain Calingacion were charged for **violation of Republic Act 9003 otherwise known as the "Ecological Solid Waste Management Act Of 2000,"** correct?
MR. ONG LOPEZ:	I think so.[21]

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[20] Transcript of Stenographic Notes at the hearing held on January 31, 2023, pp. 32 to 33 and 36.

[21] Emphasis supplied.

Third. Respondents' contention that the acts of the subject vessel's captain, as agent of the shipowner, bind petitioner[22] is wanting in merit. They failed to adduce evidence showing the allege acts of the subject vessel's captain. Particularly, the affiants who executed the Affidavit of Seizing/Apprehending Officers[23] were never presented as witnesses. Indeed, an affidavit is merely hearsay evidence where its affiant did not take the witness stand.[24]

On these accounts, I **SUBMIT** that respondent District Collector's Order of Forfeiture, as affirmed by respondent Commissioner of Customs, must be overturned and set aside.

Marian Ivy F. Reyes - Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

[22] Pars. 61 and 62, respondents' Memorandum, Docket - Vol. II, p. 1083.
[23] Exhibit "R-2," Docket - Vol. II, pp. 961 to 976.
[24] *Dantis v. Maghinang, Jr.*, G.R. No. 191696, April 10, 2013.