REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SUB-SEE PHILIPPINES, INC. and NORTHERN ORIENTAL SHIPPING, LTD.,
Petitioners,

CTA EB NO. 2852
(CTA Case No. 10102)

- *versus* -

Present:

RINGPIS-LIBAN, *P.J.,*
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

HON. REY LEONARDO B. GUERRERO, in his official capacity as COMMISSIONER OF CUSTOMS and ATTY. ELVIRA CRUZ, in her capacity as DISTRICT COLLECTOR OF CUSTOMS, PORT OF CEBU,
Respondents.

Promulgated:
JAN 16 2026 10:2[illegible]

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DECISION

ANGELES, J.:

Before this Court of Tax Appeals (CTA) *En Banc* (Court *En Banc*) is a *Petition for Review*[1] filed on January 05, 2024, pursuant to Section 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended,[2] (RRCTA). Petitioners seek the reversal and setting aside of

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[1] *En Banc* (EB) Docket, pp. 1-14.

[2] Revised Rules of the Court of Tax Appeals (RRCTA), Section 4(b) provides:

SECTION 4. *Where to appeal; mode of appeal.* —

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on appeal. *(n)* the ***Decision*** dated August 10, 2023[3] (assailed Decision) and the ***Resolution*** dated December 14, 2023[4] (assailed Resolution), both promulgated by the Special First Division of this Court (Court in Division) in CTA Case No. 10102. The dispositive portions of the assailed issuances respectively read:

<u>Decision dated August 10, 2023:</u>

"**WHEREFORE**, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. Accordingly, the assailed Decisions dated October 22, 2018 and May 28, 2019 rendered by respondents District Collector and Commissioner of Customs, respectively, are **AFFIRMED**.

SO ORDERED."

<u>Resolution dated December 14, 2023:</u>

"**WHEREFORE**, in light of the foregoing considerations, petitioners' Motion for Reconsideration (To the Decision dated 10 August 2023) is **DENIED** for lack of merit.

SO ORDERED."

THE PARTIES

Petitioner Sub-see Philippines, Inc. (Sub-see), a corporation duly organized and existing under the laws of the Philippines, is the duly authorized management company of the vessel subject of the present petition, M/V Northern Queen, a foreign flag vessel registered under the laws of Tuvalu.[5]

Petitioner North Oriental Shipping, Ltd. (North Oriental), a corporation duly organized and existing under the laws of Belize, is the owner of the vessel.[6]

Respondent Hon. Rey Leonardo Guerrero is impleaded in his official capacity as Commissioner of the Bureau of Customs (BOC),

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[3] EB Docket, pp. 74-94. The Decision was penned by Associate Justice Marian Ivy F. Reyes-Fajardo, and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justice Catherine T. Manahan.

[4] *Id.* at 133-136. The Resolution was penned by Associate Justice Marian Ivy F. Reyes-Fajardo, and concurred in by Associate Justice Catherine T. Manahan. Presiding Justice Roman G. Del Rosario was on leave.

[5] *Id.* at 75.

[6] *Ibid.*

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with office address at G/F OCOM Building, 16th Street, South Harbor, Port Area, Manila.[7]

Respondent District Collector, Atty. Elvira Cruz, is impleaded in her official capacity as the District Collector of the Port of Cebu, with office address at BOC, Pier 6, Gate 2, NRA, Port of Cebu.[8]

FACTS OF THE CASE

The facts of the present case were laid down by the Court in Division in the assailed Decision, as follows:[9]

> On October 19, 2007, M/V Northern Queen arrived in the Sub-Port of Mactan.
>
> On the same date, Great Domestic Insurance Company of the Philippines (Formerly Domestic Insurance Company of the Philippines) issued Ordinary Re-export Bond No. 0185, in the amount of Three Million Five Hundred Thirty-Five Thousand Six Hundred Fifty Pesos and 50/100 (Php 3,535,650.50) effective from October 19, 2007 until April 19, 2008.
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> On November 19, 2007, Vicente T. Suazo, Jr., Administrator of the Maritime Industry Authority (MARINA), wrote Captain Jens A. Hansen, Managing Director of Sub-see Philippines, Inc., informing him that his request for temporary registration of M/V Northern Queen under Philippine flag for a period of one (1) year has been granted. It further provided that the bareboat charter authority for the vessel shall be valid until November 18, 2008.
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> On December 03, 2007, claimant Northern Oriental Shipping, Ltd., through its customs broker, Stewart Y. Marquez, filed Import Entry No. 02901 for the vessel.
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> On December 18, 2007, the Office of the Regional Director of MARINA issued a Certification recommending the release of M/V Northern Queen from customs custody.
>
> On December 21 2007, the Office of the Port Collector, Sub-port of Mactan, issued the Certificate of Approval for Conversion from Foreign Trade to Domestic Trade of M/V Northern Queen.
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> On February 17, 2008, Undersecretary Gaudencio A. Mendoza, Jr., from the Legal and Revenue Operations Group of the Department of Finance (DOF), allowed the release of said M/V Northern Queen without payment of duties and taxes upon posting of a bond in an amount equivalent to One Hundred Fifty Percent (150%) of the duties and taxes, and conditioned on the re-

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[7] *Ibid.*
[8] *Ibid.*
[9] *Id.* at 75-81; Citations omitted.

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exportation thereof or the payment of duties and taxes upon termination of the charter period.

On April 17, 2008, BF General Insurance Company Inc., issued BF Gen. Bond No. 00501-07 C(9) No. 02101 to renew the Re-Export Bond previously issued by Great Domestic Insurance Company of the Philippines, Inc. The new bond is valid until October 17, 2008.

On July 21, 2008, Atty. Ernesto D. Urbano, Collector of Customs, Sub-Port of Mactan, issued Certificate of Payment SN POC: 026-2008 for M/V Northern Queen.

On September 30, 2008, another re-export bond was again posted for M/V Northern Queen. The validity of the bond expires on April 16, 2009.

On November 18, 2008, the bareboat charter authority granted by MARINA to M/V Northern Queen expired.

On February 16, 2009, claimant Northern Oriental Shipping, Ltd. requested for the conversion of M/V Northern Queen from Local to Foreign. The request was approved on March 03, 2009.

On March 06, 2009, a Clearance of Vessel to a Foreign Port was issued for M/V Northern Queen.

On October 07, 2011, Sector Commander Captain George G. Macarubbo issued a Memorandum recommending the issuance of a WSD against M/V Northern Queen if it is not re-exported immediately or if there is no payment of customs duties and taxes considering that the bareboat charter authority had long expired.

On October 12, 2011, the BOC wrote a Demand Letter addressed to Captain Jens A. Hansen demanding the payment of Two Million Three Hundred Fifty-Five Thousand Seven Hundred Sixty-Seven Pesos (Php 2,355,767.00), representing duties and taxes, including interest as of October 12, 2011.

On November 17, 2011, Captain George G. Macarub[b]o recommended the issuance of a WSD against the vessel M/V Northern Queen considering that Captain Jens A. Hansen ignored the demand of the BOC.

On November 21, 2011, Atty. Cornelio C. Mercado, legal counsel of Captain Jens A. Hansen, wrote then-District Collector Ronnie C. Silvestre and argued that the vessel was not subject to duties and taxes as it was on laid back status and awaiting determination of its seaworthiness prior to commissioning.

On March 14, 2012, the subject WSD (with Cebu Seizure Identification Case No. 03-2012) was issued by the District Collector of the Port of Cebu, ordering the District Commander to seize M/V Northern Queen, for failure of the said vessel's owner to pay duties and taxes due upon the expiry of its bareboat charter privilege, and to take custody of the same. The WSD also ordered the strict observance of Customs Memorandum Order (CMO) No. 8-84, on making a return of service and the submission of inventory of articles seized.

PROCEEDINGS BEFORE THE DISTRICT COLLECTOR

On June 06, 2018, petitioners submitted their Position Paper, on July 09, 2018, the Government Prosecutor, Atty. Paul Romeo B. Polloso, submitted his Comment on said Position Paper. After submission of petitioners' Reply to the Prosecution's Comment on July 30, 2018, respondent District Collector rendered the assailed Decision dated October 22, 2018. The dispositive portion of which reads as follows:

> **WHEREFORE**, by virtue of the power vested in this office by law, the abovementioned Vessel subject matter of the subject case is hereby **ORDERED** and **DECREED** forfeited in favor of the government to be disposed of in the manner prescribed by law.
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> . . .
>
> **SO ORDERED.**

PROCEEDINGS BEFORE THE COMMISSIONER OF CUSTOMS

On November 12, 2018, petitioners filed their Notice of Appeal and Memorandum on Appeal.

Thereafter, respondent COC rendered the Decision dated May 28, 2019 and received by petitioner[s] on June 07, 2019, affirming the Decision of respondent District Collector, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the Decision dated 22 October 2018 of the District Collector, Port of Cebu, is hereby **AFFIRMED**. Accordingly, the MV NORTHERN QUEEN is ordered and declared **FORFEITED** in favor of the government to be disposed of in the matter provided by law.
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> . . .
>
> **SO ORDERED.**

PROCEEDINGS BEFORE THE COURT IN DIVISION

On July 04, 2019, petitioners filed their Petition for Review before the Court.

On July 01, 2020, respondents filed their Answer.

In the Resolution dated July 23, 2020, the Court referred the case for mediation to the Philippine Mediation Center – Court of Tax

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Appeals. However, in view of the Back to Court Report from the Mediation Staff Assistant, Ms. Avigail B. Sanchez, the case was returned to this Court due to *"Non-Appearance of Petitioner/s."* Thus, in its Resolution dated November 26, 2020, the Court initially set the Pre-Trial Conference on March 18, 2021.

On March 15, 2021, respondents filed their Pre-Trial Brief *via* electronic mail. On May 20, 2021, petitioners filed their Pre-Trial Brief also *via* electronic mail. Subsequently, on May 27, 2021, the Pre-Trial Conference was held *via* videoconference. During the said Conference, the Court gave the parties thirty (30) days within which to submit their Joint Stipulation of Facts and Issues (JSFI).

In the Resolution dated November 25, 2021, for failure of the parties to file their JSFI, the Court deemed the parties' right to file the same waived, and terminated the Pre-Trial. Thus, on March 18, 2022, the Pre-Trial Order was issued.

Trial ensued.

Petitioners presented their documentary and testimonial evidence. They offered the testimonies of: (1) Mr. Elmer Lauron, former crew member of M/V Northern Queen; (2) Captain Jens A. Hansen, president of petitioners; and (3) Captain Darwin S. Lacorte, former second officer of petitioners.

On April 05, 2022, petitioners filed their Formal Offer of Exhibits. Respondents then filed their Comment to Petitioners' Formal Offer of Exhibits on April 07, 2022. In the Resolution dated May 16, 2022, the Court admitted petitioners' offered exhibits, except for the following:

1. Exhibits "P-2," "P-6," "P-8," P-9," and "P-10," for failure to present the originals thereof for comparison;

2. Exhibit "P-17" for failure to present the original thereof for comparison and for failure to comply with Section 24, Rule 132 of the Revised Rules on Evidence, as amended; and

3. Exhibits "P-24," P-16," and "P-20," for failure to comply with Section 24, Rule 132 of the Revised Rules on Evidence, as amended.

In the same Resolution, the Court gave both parties thirty (30) days to file their memoranda there being no witness for respondents to present.

Petitioners then filed their Memorandum *via* electronic mail on July 04, 2022, while respondents' Memorandum was filed on July 26, 2022.

On August 10, 2022, the case was submitted for decision.

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On August 10, 2023, the Court in Division rendered the assailed Decision[10] denying the *Petition for Review* for lack of merit.

Aggrieved, petitioners filed a *Motion for Reconsideration (To the Decision dated 10 August 2023)*[11] through an accredited courier service provider and electronically on September 06, 2023. The Court in Division, however, denied the *Motion* in the assailed Resolution, finding it equally bereft of merit.

Thereafter, on January 05, 2024, petitioners caused the filing, through an accredited courier service provider, of the instant *Petition for Review*.[12]

In a Minute Resolution dated February 06, 2024,[13] this Court directed petitioners to submit a compliant Verification and Certification in accordance with Section 4, Rule 7 of the Revised Rules of Court, together with competent proof of their authority to file the *Petition*. Petitioners heeded this directive by submitting a *Manifestation and Compliance* dated March 11, 2024.[14]

However, in a Minute Resolution dated May 28, 2024,[15] the Court *En Banc* noted petitioners' mere partial compliance, and accordingly required them to submit the requisite proof of authority to file the present *Petition* within five (5) days from notice. Petitioners complied by filing another *Manifestation and Compliance*[16] on June 18, 2024.

Consequently, in a Minute Resolution dated July 01, 2024,[17] this Court noted said compliance, and directed respondents to file a Comment on the *Petition for Review* within ten (10) days from notice.

On July 22, 2024, respondents posted their *Motion for Extension of Time to File Comment*,[18] which the Court granted through a Minute Resolution dated August 15, 2024,[19] allowing respondents a period of thirty (30) days from July 22, 2024, or until August 21, 2024, within which to submit their Comment.

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[10] Division Docket – Vol. II, pp. 974-994.
[11] *Id.* at 1075-1083.
[12] EB Docket, pp. 1-17.
[13] *Id.* at 248.
[14] *Id.* at 249-251.
[15] *Id.* at 276-277.
[16] *Id.* at 278-280.
[17] *Id.* at 305.
[18] *Id.* at 306-308.
[19] *Id.* at 312.

On August 19, 2024, respondents filed their *Comment*.[20] Subsequently, petitioners filed their *Opposition to Comment to the Petition for Certiorari*[21] *via* an accredited courier service provider on September 16, 2024.

Finally, in a Minute Resolution dated November 12, 2024,[22] the Court *En Banc (1)* noted respondents' *Comment* and *Opposition to Comment to the Petition for Certiorari*; and *(2)* submitted the case for decision.

ASSIGNMENT OF ERRORS

Petitioners submit the following assignment of errors[23] for the Court *En Banc*'s resolution:

(1) Whether or not the CTA First Division gravely erred in deciding that Petitioners are liable to pay customs and taxes to the BOC; and

(2) Whether or not the CTA First Division gravely erred in deciding that the forfeiture and seizure of M/V Northern Queen was valid.

ARGUMENTS OF THE PARTIES

Petitioners' arguments

Petitioners assert that the Court in Division committed error in holding them liable for the payment of customs duties and taxes to the BOC, principally arguing that: *(1)* the Court in Division misapprehended the scope and effect of the charter issued to M/V Northern Queen; *(2)* the subsequent posting and renewals of the re-export bond merely constituted an extension of the 2007 re-export bond; and *(3)* petitioners had already departed Philippine waters prior to April 16, 2009.

In support of their *first* contention, petitioners maintain that M/V Northern Queen remains a foreign vessel, as it does not fall within the ambit of the bareboat charter authority, having failed to satisfy the requisites under the unamended provisions of P.D. No. 760. Specifically, petitioners assert that: *(1)* the 2007 charter was not effective for a period of not less than five (5) years; and *(2)* M/V Northern Queen was never engaged in coastwise trade. Petitioners

[20] *Id.* at 313-322.
[21] *Id.* at 328-333.
[22] *Id.* at 338.
[23] *Id.* at 10.

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further underscore that the vessel has no record with the MARINA of registration under the Philippine flag, nor has it been issued a Certificate of Philippine Registry.

Regarding their *second* and *third* arguments, petitioners contend that, since the re-export bond was premised on the understanding that the vessel would depart Philippine waters, its extension until April 16, 2009 remains consistent with such agreement, inasmuch as M/V Northern Queen duly left Philippine waters on March 06, 2009.

Accordingly, petitioners claim that the forfeiture and seizure of M/V Northern Queen were invalid. They further note that, upon the vessel's return to Cebu in October 2009, all applicable taxes and fees were duly paid. Moreover, the vessel was on "laid-back" status and remained entirely inactive.

Respondents' counter-arguments

First. Respondents, for their part, counter that the Court in Division committed no error in holding petitioners liable for the payment of customs duties and taxes arising from the importation of M/V Northern Queen. They argue that petitioners' assertion that the vessel falls outside the coverage of P.D. No. 760, as amended, is unsupported by evidence. Respondents emphasize that the records of MARINA and the BOC clearly show that petitioners were exempted from the immediate payment of customs duties and taxes solely by virtue of the temporary bareboat charter, and only upon strict compliance with the conditions attached to such privilege, which petitioners indisputably failed to satisfy.

Respondents add that, even assuming *arguendo* that petitioners had discontinued their bareboat charter application, petitioners presented no evidence to support such claim. In any event, upon withdrawal of their bareboat charter application and the corresponding temporary registration with MARINA, petitioners become immediately liable for the payment of duties and taxes arising from the importation of M/V Northern Queen.

Respondents further underscore that the Tariff and Customs Code of the Philippines (TCCP) provides no exemption for foreign vessels on the basis of a re-export bond. Indeed, the re-export bond issued for M/V Northern Queen was allowed only because of the temporary bareboat charter granted to the vessel.

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Second. Respondents likewise maintain that the Court in Division correctly upheld the validity of the forfeiture and seizure of M/V Northern Queen. They assert that petitioners' conduct—availing themselves of the privilege under P.D. No. 760, as amended, only to thereafter unilaterally abandon their application while relying solely on the renewed re-export bond—was manifestly contrary to law and good faith, amounting to a deliberate scheme to evade the payment of duties and taxes at the time of importation, to the clear prejudice of the government.

RULING OF THE COURT *EN BANC*

The *Petition for Review* is devoid of merit.

The Court En Banc has jurisdiction over the instant Petition

Before delving into the merits, the Court *En Banc* shall first determine whether it is properly vested with jurisdiction over the present *Petition*.

Section 2(a)(1), Rule 4 of the RRCTA provides in part:

> SEC. 2. *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
>
> (a) Decisions or resolutions on motion for reconsideration or new trial of the **Court in Division** in the exercise of its exclusive appellate jurisdiction over:
>
> (1) Cases arising from administrative agencies — **Bureau of Internal Revenue**, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x (Emphasis supplied)

The instant *Petition* seeks the review of the assailed Decision and Resolution of the Court in Division in CTA Case No. 10102, which denied both petitioners' *Petition for Review* and *Motion for Reconsideration (To the Decision dated 10 August 2023)* for lack of merit. Accordingly, appellate jurisdiction over the subject matter properly lies with the Court *En Banc*.

Moreover, the *Petition* was filed in accordance with Section 3(b), Rule 8 of the RRCTA, which states:

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> Sec. 3. *Who may appeal; period to file petition.* — x x x
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> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days** from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. *(Rules of Court, Rule 42, sec. 1a)* (Emphasis supplied)

The records reveal that petitioners received a copy of the assailed Resolution on December 21, 2023.[24]

The instant *Petition for Review*, having been filed on January 05, 2024, was therefore lodged within the reglementary period. Consequently, jurisdiction is properly vested in the Court *En Banc*.

Having thus settled the matter of jurisdiction, the Court now proceeds to resolve the case on its merits.

Petitioners' M/V Northern Queen enjoys the privilege of a bareboat charter authority under P.D. No. 760, as amended, and is bound by its consequences

Importation is defined as the act of bringing an article into the country from the outside. Importation is complete when the taxable, dutiable commodity is brought within the limits of the port of entry.[25]

Correlatively, Section 1202 of the TCCP prescribes when importation begins and when it is deemed terminated, thus:

> SECTION 1202. When Importation Begins and Deemed Terminated. — **Importation <u>begins</u> when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unlade therein. Importation is <u>deemed terminated</u> upon**

[24] EB Docket, p. 132.
[25] *See Jardeleza v. People*, G.R. No. 165265, February 06, 2006 [Per J. Callejo, Sr., First Division].

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> **payment of the duties, taxes and other charges due upon the articles,** or secured to be paid, at a port of entry and the legal permit for withdrawal shall have been granted, **or in case said articles are free of duties, taxes and other charges, until they have legally left the jurisdiction of the customs.** (Emphasis and underscoring supplied)

By operation of law, therefore, every act of importation gives rise to the corresponding liability for the payment of customs duties and taxes, as encapsulated in Section 100 of the TCCP, which provides:

> SECTION 100. Imported Articles Subject to Duty. — All articles when imported from any foreign country into the Philippines, shall be subject to duty upon each importation, even though previously exported from the Philippines, except as otherwise specifically provided for in this Code or in other laws.

From these provisions, it is evident that the act of importation commences when: *(1)* the carrying vessel or aircraft enters Philippine territory; and *(2)* such vessel or aircraft unlades, or exhibits the intent to unlade, the articles or goods within the Philippines.

Ordinarily, then, the entry of a foreign-owned vessel into the country constitutes an act of importation that triggers the imposition of customs duties and taxes. Presidential Decree (P.D.) No. 760,[26] as amended, however, creates a narrow exception. It permits foreign-owned vessels to be issued a **temporary certificate of Philippine registry** under a bareboat or time charter arrangement, without treating their entry as an importation for purposes of duties and taxes, provided that the conditions prescribed therein are strictly complied with. It provides:

> SECTION 1. Any provision of law, decree, executive order, or rules and regulations to the contrary notwithstanding, **any foreign-owned vessel under time charter or lease to a Philippine national**, as the term is defined in Section 3 of Presidential Decree No. 474, **may be issued a temporary certificate of Philippine registry by the Maritime Industry Authority**: *Provided,* That the said Charter or lease **(1) has had the prior written approval of the Maritime Industry Authority, (2) shall be valid and effective for a period of not less than five years, and (3) shall be used exclusively in the coastwise trade in the Philippines:** *Provided, further,* That the operation of the vessel shall be entirely in the hands of Philippine nationals and free from any participation or interference from the alien owner, except insofar as such action shall be to directly protect his rights as owner thereof: *Provided, finally,* That the registered vessel shall be manned

[26] Temporary Registration of Foreign-Owned Vessels Under Time Charter or Lease to Philippine Nationals, July 31, 1975.

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> completely by a Filipino crew, except in the case of specialized fishing vessel. (Emphasis supplied)

In this case, the subject of importation is the vessel itself—M/V Northern Queen. There is no dispute that the requisite element of physical entry into the Philippines is present. It stands uncontroverted that the vessel entered Philippine waters and docked at the Sub-Port of Mactan, Cebu on October 19, 2007.[27] Furthermore, the findings of fact established by the Court in Division—which remain unrefuted, and are, in fact, echoed by the petitioners in the present *Petition*—confirm this conclusion. For emphasis, the following sequence of events from 2007 to 2009, preceding the issuance of the Memorandum recommending the Warrant of Seizure and Detention in 2011, remains undisputed:

Incident	Date	Court's Analysis
(1) Arrival and posting of re-export bond	October 19, 2007	Upon docking of the M/V Northern Queen at the Sub-Port of Mactan, an Ordinary Re-export Bond was immediately posted, signifying petitioners' intent to temporarily import the vessel in strict compliance with the conditions brought by the bareboat charter arrangement under P.D. No. 760, as amended, and BOC regulations governing temporary admission.
(2) MARINA's approval of temporary registration under Philippine flag	November 19, 2007	MARINA granted the vessel's application for temporary certificate of Philippine registry for a period of one (1) year, thereby formally recognizing M/V Northern Queen as a bareboat chartered vessel valid until November 18, 2008.
(3) Filing of Import Entry	December 03, 2007	The filing of Import Entry No. 02901 by Northern Oriental Shipping, Ltd., through its broker, indicates compliance with customs procedures for temporary importation, consistent with P.D. No. 760, as amended.

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[27] EB Docket, p. 3.

(4) MARINA's certification for release	December 18, 2007	MARINA issued a Certification recommending release from customs custody, further confirming administrative recognition of the vessel's bareboat charter status.
(5) Customs approval for conversion	December 21, 2007	The Port Collector of Mactan sanctioned the conversion of the vessel from foreign to domestic trade, thereby authorizing its participation in coastwise operations, a privilege expressly allowed under Section 1 of P.D. No. 760, as amended.
(6) DOF authorization for release without duties and taxes	February 17, 2008	The DOF authorized the release of M/V Northern Queen without the immediate payment of customs duties and taxes, **contingent upon the posting of a bond equivalent to one hundred fifty percent (150%) of the said duties and taxes, *<u>and</u>* subject to the condition that the vessel either be re-exported *<u>or</u>* that the corresponding duties and taxes be settled upon the termination of the charter**. This measure ensured strict adherence to the regulatory framework governing temporary importation under a bareboat charter.
(7) Successive renewals of re-export bond	April 17, 2008; September 30, 2008	The re-export bond was successively renewed on two (2) occasions, with its validity extending until April 16, 2009, demonstrating a continuous and deliberate intent to ensure strict compliance with the conditions prescribed under P.D. No. 760, as amended, and BOC regulations.
(8) Expiration of bareboat	November 18, 2008	The MARINA-issued bareboat charter authority lapsed on this

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charter authority		date, in accordance with the term of the approved temporary registration.
(9) Reconversion to foreign registry and alleged re-exportation	February 16, 2009; March 06, 2009	Following the expiration of the bareboat charter on November 18, 2008, petitioner Northern Oriental Shipping, Ltd. sought reconversion of M/V Northern Queen from local to foreign registry, and obtained clearance for its departure to a foreign port, purportedly bound for Haikou, China on March 06, 2009—one hundred eight (108) days after the expiration of the bareboat charter authority, which was the prescribed date for the vessel's re-exportation **<u>or</u>** the remittance of the corresponding duties and taxes.

Taken together, the foregoing series of actions—including MARINA's grant of temporary registration, the DOF's authorization of duty-free release subject to a posting of a re-export bond, and the successive renewals of said bond—unequivocally demonstrate petitioners' clear and continuous intent to avail themselves of the bareboat charter privilege under P.D. No. 760, as amended. At no point during the one (1)-year period of temporary Philippine registration is there any indication that petitioners withdrew, abandoned, or repudiated this privilege.

Notwithstanding these undisputed facts, petitioners insist that the subject charter cannot be considered a temporary Certificate of Philippine Registry, because it failed to meet: *(1)* the supposed five (5)-year minimum period requirement; and *(2)* the vessel's engagement in coastwise trade. Consequently, petitioners maintain that the M/V Northern Queen should continue to be considered a foreign vessel, allegedly in a "laid-back" status, pending determination of its seaworthiness prior to commissioning.

These contentions, however, are still without merit.

The petitioners narrowly rely on the original provisions of P.D. No. 760, as amended, while conspicuously ignoring the decrees that

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amended it. P.D. No. 866[28] introduced significant modifications, among them: *(1)* reducing the minimum period of validity of the charter or lease from five (5) years to one (1) year; and *(2)* removing the exclusivity of coastwise trade, allowing use in overseas trade upon MARINA's approval. It states:

> "Section 1. Any provision of law, decree, executive order, or rules and regulations to the contrary notwithstanding, **any foreign-owned vessel under** [time] **charter or lease to a Philippine national**, as the term is defined in Section 3 of Presidential Decree No. 474, **may be issued a temporary certificate of Philippine registry by the Maritime Industry Authority**: *Provided, That* the said charter or lease **(1) has the prior written approval of the Maritime Industry Authority, (2) shall be valid and effective for a period of not less than** [five] **one year, and (3) shall be used exclusively in the coastwide trade in the Philippines, UNLESS OTHERWISE PERMITTED BY THE MARITIME INDUSTRY AUTHORITY TO BE USED FOR OVERSEAS TRADE SUBJECT TO TERMS AND CONDITIONS IT MAY IMPOSE**: *Provided, further*, That the operation of the vessel shall be entirely in the hands of Philippine nationals and free from any participation or interference from the alien owner, except insofar as such action shall be to directly protect his rights as owner thereof: *Provided, finally*, That the registered vessel shall be manned completely by a Filipino crew, except in the case of specialized fishing vessel.
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> x x x" (Emphasis supplied)

Subsequently, further amendments were introduced under P.D. No. 1711,[29] which streamlined the primary requisites for the issuance of a temporary Certificate of Philippine Registry to only two (2) conditions: *(1)* the prior written approval of the MARINA; and *(2)* that the certificate shall be valid and effective for a period of not less than one (1) year. Significantly, the previous requirement mandating the vessel's employment in coastwise or offshore trade was removed, and is no longer a precondition for the issuance of a temporary Certificate of Philippine Registry. Thus:

> "Section 1. Any provision of law, decree, executive order, or rules and regulations to the contrary notwithstanding, **any foreign owned vessel under charter or lease to a Philippine national**, as the term is defined in Section 3 of Presidential Decree 474, **may be issued a temporary certificate of Philippine registry** by the Philippine Coast Guard; *Provided,* that said charter or lease, **(1) has the prior written approval of the Maritime Industry Authority; (2) shall be valid and effective for a period of not less than one year**; *Provided, further,* that the operation of the vessel shall be entirely in the hands of Philippine nationals and free

[28] January 02, 1976.
[29] August 15, 1980.

[initials]

> from any participation or interference from alien owner, except insofar as such action shall be to directly protect his rights as owner thereof, *Provided, finally*, that the registered vessel shall be manned completely by a Filipino crew except in the case of specialized vessels and subject to rules and regulations MARINA may prescribed in relation thereto." (Emphasis supplied)

Hence, petitioners' claim of non-compliance with the requisites of P.D. No. 760, as amended, is entirely without basis. The prior grant of the temporary Philippine registry for the M/V Northern Queen, valid for one (1) year, regardless of whether it was employed in coastwise operations, fully satisfies the conditions necessary for the vessel to avail itself of the bareboat charter privilege under P.D. No. 760, as amended.

Indeed, this argument was earlier raised and cited by the respondents in their *Opposition*[30] to petitioners' *Motion for Reconsideration (To the Decision dated 10 August 2023)*[31] before the Court in Division, and, notably, it remained unchallenged in the subsequent pleadings filed by the petitioners before both the Court in Division[32] and the Court *En Banc*.[33]

At this juncture, it can be concluded that the claim that the M/V Northern Queen continues to be a foreign vessel is nothing more than a bare allegation. Likewise, the assertion that the petitioners did not pursue their application for temporary Philippine registration is wholly unsupported by evidence and remains purely speculative. Moreover, the document purportedly substantiating this claim, alleging the absence of any MARINA record of registration under the Philippine flag or issuance of a Certificate of Philippine Registry, was not admitted into evidence because petitioners failed to produce the original for comparison,[34] and, as such, cannot be accorded any probative value by this Court.[35]

Similarly, the record yields no evidence whatsoever to support petitioners' theory that the vessel was in a "laid-back" status that would exempt it from the payment of duties and taxes.

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[30] Division Docket – Vol. II, pp. 1146-1149.
[31] *Id.* at 1075-1083.
[32] *Id.*, Reply to Opposition of Petitioner's Motion for Reconsideration dated 06 September 2023, pp. 1157-1162;
[33] EB Docket, Petition for Review, pp. 1-14; EB Docket, Opposition to Comment to the Petition for Certiorari, pp. 328-333.
[34] Division Docket – Vol. II, p. 853.
[35] *See Pilipinas Shell Petroleum Corp. v. Commissioner of Customs*, G.R. No. 195876, December 05, 2016 [Per J. Perez, Third Division].

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It is a basic rule of evidence that a party asserting a claim bears the burden of proving the facts on which such claim is predicated.[36] Petitioners have failed to discharge this burden.

While the TCCP recognizes conditional exemptions from duties and taxes for certain imported articles, these apply only to narrowly defined situations, none of which is present in this case.

In sum, the undisputed facts clearly establish that the petitioners voluntarily applied for, and relied upon, the bareboat charter privilege under P.D. No. 760, as amended, for their M/V Northern Queen. Nowhere in the record is there any indication that the petitioners communicated any change in this intention to the respondents. On the contrary, the uncontroverted facts, especially the successive renewals of the re-export bond, affirm their continued reliance on the privileges conferred by the charter.

Even assuming petitioners failed to actively pursue registration, this does not negate the existence or legal effect of the charter authority, nor the vessel's enjoyment of duty-free importation privileges. To now insist that the vessel does not fall under P.D. No. 760, as amended, constitutes a badge of bad faith and cannot be countenanced, as such inconsistency is clearly prejudicial to the public respondents, who relied in good faith upon the approved application and the duly renewed re-export bond supporting the charter agreement.

Accordingly, upon the expiration of the one (1)-year bareboat charter authority, and the petitioners' subsequent failure to comply with the prescribed conditions, the liability to pay the corresponding duties and taxes was properly imposed, as correctly held by the Court in Division. This matter will be further addressed in detail below.

Liability for customs duties and taxes arises upon the expiration of the bareboat charter authority and the breach of its underlying conditions

Having established the applicability of P.D. No. 760, as amended, to the petitioners, it follows that petitioners are bound by all obligations and consequences arising therefrom. The privileges

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[36] *See Commissioner of Internal Revenue v. Traders Royal Bank*, G.R. No. 167134, March 18, 2015 [Per J. Leonardo-De Castro, First Division]; Rule 131 of the Revised Rules of Court, Section 1.

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afforded under the law are expressly conditioned upon strict compliance with its terms upon the expiration of the bareboat charter, of which petitioners were fully aware: **either *(1)* the M/V Northern Queen must be re-exported; <u>or</u> *(2)* the customs duties and taxes must be paid.** Failure to satisfy either requirement necessarily renders the petitioners liable for the payment of such duties and taxes, together with any interests and penalties that may subsequently accrue.

Here, it bears reiteration that petitioners failed to controvert the fact that, following the expiration of the bareboat charter authority on **November 18, 2008**, they neither re-exported M/V Northern Queen nor remitted the corresponding customs duties and taxes. The vessel allegedly departed for Haikou, China, only on **March 06, 2009**.

In this light, and as correctly held by the Court in Division, petitioners' liability for the payment of customs duties and taxes arose immediately upon their failure to comply with either condition at the expiration of the charter, rendering the imposition thereof both proper and warranted.

The posting and subsequent renewals of the re-export bond, derived from the charter agreement, do not, by themselves, absolve petitioners of their liability for customs duties and taxes

For clarity, a re-export bond is a contract of suretyship executed between the principal obligor or debtor (the charterer or importer), and the surety company, in favor of the BOC as the obligee or creditor.[37] Its existence and function are inherently accessory to the bareboat charter authority, safeguarding the government's fiscal interest by ensuring that the privileges granted under P.D. No. 760, as amended, do not convert into a duty-free importation if the prescribed conditions are not fulfilled. In essence, the bond operates as a protective mechanism to prevent any abuse of the exemptions attendant to the bareboat charter arrangement.

In one case, the Supreme Court had occasion to elucidate the nature of a 'surety' relationship, noting:

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[37] *See Autocorp Group v. Intra Strata Assurance Corp.*, G.R. No. 166662, June 27, 2008 [Per J. Chico-Nazario, Third Division].

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> In taking these positions, the petitioners appear to misconstrue the nature of a surety relationship, particularly the fact that two types of relationships are involved, that is, the underlying principal relationship between the creditor (government) and the debtor (importer), and the accessory surety relationship whereby the surety binds itself, for a consideration paid by the debtor, to be jointly and solidarily liable to the creditor for the debtor's default. The creditor in this latter relationship accepts the surety's solidary undertaking to pay if the debtor does not pay. **Such acceptance, however, does not change in any material way the creditor's relationship with the principal debtor nor does it make the surety an active party to the principal creditor-debtor relationship.** The contract of surety simply gives rise to an obligation on the part of the surety in relation with the creditor and is a one-way relationship for the benefit of the latter.
>
> In other words, the surety does not, by reason of the surety agreement, earn the right to intervene in the principal creditor-debtor relationship; its role becomes alive only upon the debtor's default, at which time it can be directly held liable by the creditor for payment as a solidary obligor. A surety contract is made principally for the benefit of the creditor-obligee and this is ensured by the solidary nature of the sureties' undertaking.[38] (Emphasis supplied; citations omitted)

Put differently, the surety does not, by virtue of the surety agreement, acquire the right to intervene in the principal creditor-debtor relationship. Its obligation arises only upon the debtor's default, at which point it becomes directly liable to the creditor as a solidary obligor. The surety contract exists principally for the benefit of the creditor, as ensured by the solidary nature of the surety's undertaking.

It follows, therefore, that the absence or expiration of a surety bond, being merely an accessory to the principal obligation, does not affect the validity or existence of the principal contract, and this principle cannot be otherwise. The Supreme Court likewise illustrated this rule in *Insular Life Assurance Co. Ltd. v. Asset Builders Corp.*,[39] *viz.*:

> The proposal of respondent was merely validated by its bid bond, which was considered by petitioner. **The expiration of the bond on January 8, 1994, did not mean that the bid also lapsed on the same date. <u>The bond, which was an accessory, merely guaranteed the performance of the principal obligation and could not exist without the latter</u>.** The former was given for the benefit of petitioner, which could legally waive it. **The bid continued without a bond**, but still no formal

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[38] *Intra-Strata Assurance Corp. v. Republic*, G.R. No. 156571, July 09, 2008 [Per J. Brion, Second Division].
[39] G.R. No. 147410, February 05, 2004 [Per J. Panganiban, First Division].

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> acceptance was made. Again, on that basis, no contract was perfected. (Emphasis and underscoring supplied; citations omitted)

Here, the re-export bond serves only to guarantee compliance with the conditions necessary for the petitioners to enjoy the privileges of exemption from customs duties and taxes under the bareboat charter. Absent the bareboat charter authority, no accessory contract could exist. Accordingly, the contention that the renewal of the re-export bond alone justifies exemption from duties and taxes—even after the expiration of the charter—is untenable and without legal basis.

Whether the M/V Northern Queen ultimately departed for China is immaterial, as that event occurred after the expiration of the charter. The failure to re-export the vessel or remit the corresponding duties and taxes upon expiration immediately triggers the petitioners' liability to the BOC.

At this juncture, it bears emphasis that the petitioners cannot, on one hand, assert that the vessel is not covered by the bareboat charter privilege under P.D. No. 760, as amended, and, on the other hand, rely on the renewal of their re-export bond to claim exemption from customs duties and taxes. The re-export bond is merely an accessory instrument, designed solely to ensure compliance with the conditions of the bareboat charter privilege, thereby inherently acknowledging the existence and applicability of such privilege under the same law.

The Court in Division did not err in declaring the forfeiture and seizure of M/V Northern Queen valid

The Court a *quo* correctly ruled that the forfeiture and seizure of M/V Northern Queen were valid. The governing provision reads:

> SECTION 2534. *Seizure of Vessel or Aircraft for Delinquency of Owner or Officer.* — When the owner, agent, master, pilot in command or other responsible officer of any vessel or aircraft becomes liable to be fined under the tariff and customs laws on account of a delinquency in the discharge of a duty imposed upon him with reference to the said vessel or aircraft, the vessel or aircraft itself may be seized and subjected in an administrative proceeding for the satisfaction of the fine for which such person would have been liable.

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In challenging the validity of the seizure of the subject vessel, petitioners primarily contend that: *(1)* M/V Northern Queen continues to be a foreign vessel; *(2)* the corresponding underguarding fees and taxes had allegedly been duly paid upon the vessel's return to the Philippines in October 2009, as attested by the Judicial Affidavit of Captain Jens A. Hansen; *(3)* the vessel was on "laid-back" status; and *(4)* petitioners had responded to the demand letter dated October 12, 2011, issued by the respondent District Collector, through their legal counsel, Atty. Cornelio Mercado.

The *first* and *third* contentions have already been addressed above. As to the *second*, while Captain Jens A. Hansen testified that the fees and taxes were allegedly paid since October 2009, the petitioners offered no other evidence to substantiate this claim. Records, in fact, reveal that the vessel was underguarded by the BOC only in November 2011. With respect to the *fourth* argument, it is worth noting that petitioners' counsel, Atty. Cornelia C. Mercado, took thirty-six (36) days to respond to the demand letter dated October 12, 2011. Even assuming that such response proves that the demand was not ignored, the argument raised therein remains without merit, as it essentially mirrors the *third* contention, which, being unsupported by any credible proof, does not warrant event scant consideration by the Court.

Settled is the rule that forfeiture proceedings may be instituted only upon a prior showing of probable cause by the BOC. Once such probable cause is established, the evidentiary burden shifts to the claimant. Thus:

> Nonetheless, the TCC requires the presence of probable cause before any proceeding for seizure and/or forfeiture is instituted. The relevant provision governing the present case is Section 2535 which provides as follows:
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> > Sec. 2535. *Burden of Proof in Seizure and/or Forfeiture.* — In all proceedings taken for the seizure and/or forfeiture of any vessel, vehicle, aircraft, beast or articles under the provisions of the tariff and customs laws, the burden of proof shall lie upon the claimant: Provided, That probable cause shall be first shown for the institution of such proceedings and that seizure and/or forfeiture was made under the circumstances and in the manner described in the preceding sections of this Code.
>
> Based on the afore-quoted provision, **before forfeiture proceedings are instituted, the law requires the presence of <u>probable cause</u> which rests on the petitioner who ordered the forfeiture of the shipment of rice and its**

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> **carrying vessel. <u>Once established, the burden of proof is shifted to the claimant</u>.**[40] (Emphasis and underscoring supplied)

Guided by these principles, it is evident from the undisputed facts established as early as the administrative proceedings that the public respondents successfully demonstrated the existence of probable cause to warrant the initiation of the subject seizure proceedings. Consequently, the burden of proof shifted to petitioners—a burden which, as extensively discussed above, they failed to discharge.

In fine, what emerges with unmistakable clarity is that, whether reckoned *(1)* from the expiration of the bareboat charter authority and the petitioners' failure to comply with its conditions, or *(2)* from the vessel's alleged arrival from China in October 2009, the petitioners effectively evaded the payment of customs duties and taxes, to the clear prejudice of the Philippine Government. Accordingly, the seizure of M/V Northern Queen was not only proper, but fully warranted under the law.

WHEREFORE, the *Petition for Review* is **DENIED** for lack of merit. The assailed Decision dated August 10, 2023, and the assailed Resolution dated December 14, 2023, are hereby **AFFIRMED**.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

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[40] *Commissioner of Customs v. Singson*, G.R. No. 181007, November 21, 2016 [Per J. Reyes, Third Division].

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(On Leave)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice