REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

BARGE "CHERYL ANN," REGISTERED TO GOLD MARK SEA CARRIERS, INC.,
Petitioner,

- versus -

COMMISSIONER OF CUSTOMS AND UNDERSECRETARY OF FINANCE,
Respondents.

CTA CASE NO. 7671

Members:

BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

FEB 17 2011

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DECISION

BAUTISTA, J.:

The Petition for Review[1] seeks for the reversal of the Indorsement dated May 9, 2007 ("3rd Indorsement") issued by the Department of Finance, Undersecretary of the Legal and Revenue Operations Group, Gaudencio A. Mendoza, and the Indorsement dated May 17, 2007 ("4th Indorsement") issued by the Bureau of Customs, Commissioner Napoleon L. Morales, pursuant to the provisions of Republic Act ("RA") No. 1125, as amended by RA No. 9282 and RA No. 9503.

[1] *Records*, pp. 1-27, with Annexes.

THE PARTIES

Petitioner, Gold Mark Sea Carriers, Inc., is a private corporation engaged in the shipping business and duly organized under the Philippine laws with business address at Amber Square, Escriva Street, Ortigas Center, Pasig City.

The barge "Cheryl Ann," a non-motorized vessel, is the subject matter of the *in rem* proceedings under the Tariff and Customs Code of the Philippines,[2] ("TCCP") and is registered and operated by petitioner.

Public respondent, Undersecretary of the Legal and Revenue Operations Group of the Department of Finance, Gaudencio A. Mendoza, Jr., is a government employee impleaded in such capacity, holding office at 6th Floor, Department of Finance Building, BSP Complex, Roxas Boulevard, Manila.

Public respondent, Bureau of Customs' Commissioner Napoleon Morales is a government employee impleaded in such capacity, holding office at the Office of the Commissioner, A. C. Delgado Street, Port Area Manila.[3]

FACTS OF THE CASE

The facts, as culled from the records, are as follows:

On August 23, 2006, M/T "Jacob 1," towing barge "Cheryl Ann," containing used oil from the Republic of Palau, entered the Port of Surigao. Upon derogatory information that said tugboat/barge contained prohibited cargoes, the vessels were detained by the Philippine Coast Guard upon the request of the District Collector of the Port of Surigao.

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[2] Presidential Decree No. 1464, as amended.
[3] *Records*, at pp. 3-4; Petition for Review, pars. 7-10.

Finding the shipment of used oil without necessary permits from the concerned government agency, a Warrant of Seizure and Detention, docketed as S.I. No. 01-2006, was issued on September 4, 2006 against the barge "Cheryl Ann" and its cargo of used oil. A Supplemental Warrant of Seizure and Detention, docketed as S.I. No. 01-2006-A for the seizure of M/T "Jacob 1," was issued on September 12, 2006 for the importation, conveyance and/or transportation of unlawful materials in violation of Section 2530 of the TCCP, as amended.

Upon agreement of the parties, the case against M/T "Jacob 1" and barge "Cheryl Ann" was separated from the case against the cargo and its owner/s, docketed as S.I. No. 2006-A, to distinguish/separate the issues raised against the tugboat and barge from the shipment of used oil.

During the hearing, the government in essence presented evidence for the detention of the aforesaid vessels and cargo for failure of the claimants to present the necessary permits and clearances required in bringing such cargo of oil into the country.

The claimants, on the other hand, interposed that:

a. OSM Shipping Phils., Inc., is a legitimate private corporation and its vessel M/Tug Jacob 1 has complied with all the necessary legal requirements as a common carrier to operate towing services to any port in the Philippines for a period of ten (10) years.

b. OSM entered into a Towhire Agreement with Fuel Zone Filipinas Corporation for towing services stipulating, among others, that "the Hirer shall arrange at his own cost and provide the Tugowner all necessary licenses, authorizations and permits required."

c. For this engagement, M/T Jacob 1 is covered by a Special Permit from MARINA.

d. The cargo was destined and intended for Malaysia.

e. The anchorage of M/T Jacob 1 at the Port of Surigao was caused by the need for "emergency bunkering" as it was running low on fuel, food provisions and suffering mechanical problem.

f. OSM properly notified the Port Authorities and concerned agencies of the arrival and anchorage of Jacob 1 at the Surigao City wharf for "emergency bunkering" and requested for assistance to facilitate and expedite its Entrance and Clearance formalities.

g. M/T Jacob 1 was given proper clearance by the Immigration Officer in Surigao City, the Bureau of Quarantine and other pertinent government agencies to depart for Manila or Cebu for repairs as these cannot be done in Surigao.

After due hearing, the District Collector of the Port of Surigao issued an Order dated December 18, 2006,[4] the dispositive portion of which reads, as follows:

> WHEREFORE, premises considered, it is hereby ordered and decreed that the assailed Supplemental [W]arrant of Seizure and Detention issued against the tugboat M/Tug "JACOB 1" and the barge "CHERYL ANN" be DISMISSED for lack of legal and factual bases and that subject vessels be RELEASED to their respective registered owners, OSM Shipping Phils., Inc., for M/T "JACOB 1" and Gold Mark Sea Carriers, Inc., for barge "CHERYL ANN," upon proper identification, compliance with existing rules and regulations and subject to final approval of the Commissioner of Customs pursuant to Section 2313 of the Tariff and Customs Code of the Philippines, as amended.

On April 13, 2007, a Disposition Form with the subject "Republic of the Philippines *v.* Motor Tugboat Jacob 1 and Barge Cheryl Ann," prepared by Atty. Vener S. Baquiran of the Appellate Division, Legal Service; signed by Atty. Balmyrson M. Valdez of the Legal Service; noted with concurrence by Atty.

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[4] *Id.*, at pp. 4-6; *Ibid.*, pars. 11-12; *Exhibit "A," Annex "E."*

Reynaldo V. Umali, Deputy Commissioner RCMG; and approved by Commissioner Napoleon L. Morales,[5] recommended as follows:

> APPROVE the Decision of the District Collector of the Port of Surigao dated December 18, 2006, ordering the DISMISSAL of the Supplemental Warrant of Seizure and Detention issued against M/Tug "Jacob 1" and the RELEASE of the subject vessel to its respective registered owner, OSM Shipping Phils., Inc., for M/T "Jacob 1" upon proper identification, compliance with existing rules and regulations.
>
> REVERSE the Decision of the District Collector, Port of Surigao ordering the Dismissal of the Supplemental Warrant of Seizure and Detention issued against subject vessel and its release to its registered owner and instead, ORDER the immediate Forfeiture of the subject vessel.
>
> If in accord, attached is the Indorsement to the Secretary of Finance for signature.

On May 9, 2007, the Department of Finance through Undersecretary Gaudencio A. Mendoza, Jr., issued the 3rd Indorsement,[6] to wit:

> Premises considered, the within Decision of the District Collector, Port of Surigao, dated December [1]8, 2006, is hereby MODIFIED as recommended by that Bureau. Accordingly, the dismissal of the Supplemental WSD against the Tugboat Jacob 1 and its release to its registered owner OSM Shipping Phils., Inc., is hereby AFFIRMED. However, with respect to the Barge Cheryl Ann, registered to Gold Mark Sea Carriers. Inc., the Decision of the District Collector, Port of Surigao, is hereby REVERSED. Accordingly, the Barge Cheryl Ann is hereby forfeited in favor of the government to be disposed of in accordance with law pursuant to R.A. 7651, subject to the usual accounting, auditing rules and regulations on the matter.

On May 17, 2007, Commissioner Napoleon L. Morales issued the 4th Indorsement,[7] to quote:

> Respectfully forwarded to the District Collector, Port of Surigao, the within case folder in Surigao S.I. No. 01-2006-A, Republic of the

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[5] *Exhibit "A," Annex "E."*
[6] *Exhibit "A," Annex "C."*
[7] *Exhibit "A," Annex "D."*

Philippines vs. Motor Tugboat Jacob 1 and Barge Cheryl Ann, inviting attention to the last paragraph of the herein preceding 3rd Indorsement dated May 9, 2007 of Undersecretary Gaudencio A. Mendoza, Jr., Legal and Revenue Operations Group, which is quoted hereunder, to wit:

xxx xxx xxx

For his information, appropriate action and implementation.

Thus, on August 13, 2007, petitioner filed the present Petition for Review.

In their Answer,[8] respondents raised the following Special and Affirmative Defenses, *viz*:

6. The admitted antecedent/factual background of the case is summarized by the Bureau of Customs (BoC) in its April 13, 2007 Disposition Form, thus:

xxx xxx xxx

6. On April 13, 2007, the appellate division of the BoC made the following observation and recommendation, thus: (*sic*)

xxx xxx xxx

7. The foregoing recommendation by the appellate division of the BoC was concurred in by the respondent BoC Commissioner.

8. On May 9, 2007, the Department of Finance issued a 3rd Indorsement which pertinently reads:

xxx xxx xxx

9. On May 17, 2007, respondent BoC Commissioner issued a 4th Indorsement which reads:

xxx xxx xxx

10. Admittedly, the instant petition is governed by the following provisions of R.A. No. 1125 and 9282 which read:

[8] *Records*, pp. 39-52.

> *"Who May [A]ppeal; Mode of Appeal; Effect of Appeal. – Any party adversely affected by a decision, ruling or inaction 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 xxx*
>
> ***Appeal shall be made by filing a petition for review*** *under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure* ***with the CTA within thirty (30) days from the receipt of the decision or ruling*** *or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon."*

(Petition, pp. 1-3; Emphasis supplied)

11. Likewise, the Tariff and Customs Code of the Philippines (TCCP) provides that a taxpayer has the remedy of appeal to the Court of Tax Appeals within (30) days from the adverse decision of the Commissioner of Customs (please see Secs. 301, 2315 and 2402 of the TCCP).

12. Said thirty (30)-day period within which to appeal is jurisdictional (***Pangasinan Transportation vs. Balquera****, 107 Phil. 975 [1960]*) and non-extendible (***Chan Kian vs. Court of Appeals****, 105 Phil. 904 [1959]*). The right to appeal is a mere statutory privilege, and not being a natural right or a part of due process, the right to appeal may be exercised only in the manner and in accordance with the rules provided therefore (***El Reyno Homes, Inc. vs. Ong****, 397 SCRA 563 [2003]*).

13. In the instant case, no less than petitioner itself stated that it received copies of the questioned Indorsements-Decision on July 12, 2007 and yet the petition was filed only on August 13, 2007, or two (2) days late. Thus:

> *"6. Through a letter from the District Collector of Customs for the Port of Surigao dated July 9, 2007* ***received by Petitioner itself on July 12, 2007****, and to the undersigned counsel only on July 27, 2007, Petitioner became cognizant of the thereto attached 3rd Indorsement dated 9 May 2007 issued by Finance Undersecretary (Legal and Revenue Operations Group) Gaudencio A. Mendoza and 4th Indorsement dated May 17, 2007 issued by Customs Commissioner Napoleon L. Morales."*

(Petition, p. 3; Underscoring supplied)

14. As borne out by the records, there is nothing to show that petitioner participated in the proceeding below nor has it been represented by a counsel, much less by the counsel on record.

15. Significantly, petitioner cannot validly invoke that "notice to counsel is notice to client" because in the administrative case, which it did not participate in, it was not represented by a counsel.

16. For all intents and purposes, petitioner's appeal to this Honorable Court should have been filed within the 30-day period from July 12, 2007 or until August 11, 2007 in order to toll its finality.

17. Unfortunately, petitioner slept on its rights and filed the instant appeal only on August 13, 2007 or two (2) days after the questioned decision and/or ruling has become final and executory.

18. Since there was no appeal timely interposed by petitioner to this Honorable Court from receipt of said final decision/ruling, the same is now executory (***Mambulao Lumber Co. vs. Republic***, *132 SCRA 1 [1984]*), and petitioner is now barred from disputing the correctness of the same (***Republic vs. Court of Appeals***, *149 SCRA 351 [1987]*). The government's right becomes absolute upon the expiration of the reglementary period to appeal (***Callanta vs. Office of the Ombudsman***, *285 SCRA 648 [1998]*).

19. The questioned ruling/decision having attained finality are no longer appealable, hence beyond the appellate jurisdiction of the Honorable Tribunal.

After several resetting of the Pre-Trial Conference, at the instance of both parties, the Court granted the oral motion of petitioner's counsel to declare respondents in default for failure of respondent's counsel to appear at the pre-trial conference.[9] The Court affirmed the said order in a Resolution dated June 4, 2009.[10] Thus, petitioner was allowed to present its evidence *ex-parte*.

[9] *Id.*, at p. 199.
[10] *Id.*, at pp. 201-202.

The evidence adduced *ex parte,* consisted of the testimony of petitioner's witness, Mr. Emmanuel Zapanta, and *Exhibits "A"* to *"E."*

On February 18, 2010, the Court considered the case submitted for decision, considering that petitioner filed its Memorandum[11] on July 21, 2009, while respondent filed their Manifestation and Motion In Lieu of Memorandum (Re: Recovery of the Missing Tanker/Barge Cheryl Ann),[12] on January 4, 2010.[13]

Hence, this Decision.

THE ISSUE

The lone issue assigned in the Petition for Review:

> WHETHER OR NOT PUBLIC RESPONDENTS ERRED IN REVERSING THE DECISION OF THE DISTRICT COLLECTOR OF CUSTOMS DISMISSING THE WARRANT OF SEIZURE AND DETENTION ISSUED AGAINST THE BARGE "CHERYL ANN."[14]

THE RULING OF THE COURT

Before discussing the merits of the case, the Court deems it necessary to first resolve the procedural issue on the timeliness of the filing of the Petition for Review.

Section 7(a)(4) of RA No. 1125, as amended by RA No. 9282 and RA No. 9503, provides:

> SEC. 7. *Jurisdiction.* - The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx

[11] *Id.*, at pp. 309-320.
[12] *Id.*, at pp. 347-354.
[13] *Id.*, at p. 358.
[14] *Id.*, at p. 6.

> (4) **Decisions of the Commissioner of Customs** in cases involving liability for customs duties, fees or other money charges, seizures, 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. (*Boldfacing supplied.*)

Corollary thereto, Section 2402 of the TCCP, as amended, provides as follows:

> SEC. 2402. *Review by Court of Tax Appeals.* — The party aggrieved by the ruling of the commissioner in any matter brought before him upon protest or by his action or ruling in any case of seizure may appeal to the Court of Tax Appeals, in the manner and within the period prescribed by law and regulations.
>
> Unless an appeal is made to the Court of Tax Appeals in the manner and within the period prescribed by laws and regulations, the action or ruling of the Commissioner shall be final and conclusive.

Accordingly, Section 11 of RA No. 1125, as amended by RA No. 9282 and RA No. 9503, states:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* - **Any party adversely affected by a decision, ruling** or inaction 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.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from the receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx (*Boldfacing supplied.*)

And, Section 3(a) of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended, provides:

RULE 8
PROCEDURE IN CIVIL CASES

xxx xxx xxx

SEC. 3. *Who may appeal; period to file petition.* –

(a) **A party adversely affected** by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or **by a decision or ruling of the Commissioner of Customs**, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may **appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. xxx (*Boldfacing supplied.*)

Pursuant to the foregoing, the party aggrieved by a decision or ruling of the Commissioner of Customs may appeal to this Court, within thirty (30) days from receipt of the said adverse decision or ruling.

Based on the records of the case, petitioner received both the 3rd Indorsement dated May 9, 2007, and the 4th Indorsement dated May 17, 2007, on July 12, 2007. Counting 30 days therefrom, petitioner had until August 11, 2007 within which to file the Petition for Review before this Court. However, the said date fell on a Saturday. Thus, pursuant to Section 1 of Rule 22 of the Revised Rules of Court,[15] the last day within which to file the Petition for Review was on August 13, 2007. With this, the Court finds that the Petition for Review was made within the prescribed period.

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[15] SECTION 1. *How to compute time.* – In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

The Court shall now evaluate the antecedents leading to the seizure and forfeiture of the tugboat M/T "Jacob 1," and the barge "Cheryl Ann," and the subsequent order for the release of the tugboat, and for the continued detention of the barge.

The Disposition Form dated April 13, 2007,[16] reads as follows:

> After a careful review of the records of this case, this Office concurs with the Decision of the District Collector ordering the dismissal of the Supplemental Warrant of Seizure and Detention issued against the M/Tug "JACOB 1" and the release of M/T "JACOB 1" to its registered owners, OSM Shipping Phils., Inc. in order. However, this Office finds the Decision ordering the dismissal of the Supplemental Warrant of Seizure and Detention issued against "CHERYL ANN" and its release to its registered owner, Gold Mark Sea Carriers, Inc., without legal and factual basis.
>
> After piercing together the facts, it is evident that the anchorage of M/T Jacob 1 was caused by the real need for "emergency bunkering" as it was running low in fuel and food provisions, and suffering from mechanical problem. It was not for the purpose of committing fraud or deceit the government [*sic*]. The act of the vessel entering and making a port call during emergency situations is a universally recognized right known as the Right of Innocent Passage.
>
> The documentary exhibits would clearly point to the conclusion that the M/T Jacob 1 was bound for Malaysia, and would have arrived thereat, were it not for the damage sustained by the M/T Jacob 1 while in transit from Palau to Malaysia, necessitating emergency repairs in the Port of Surigao, the nearest port.
>
> Moreover, OSM has also made the proper notice to the Port Authorities and concerned agencies and sought permission from them for its vessel, M/T Jacob 1, to drop anchor at the Surigao port.
>
> Furthermore, as correctly found by the District Collector of the Port of Surigaio, M/T Jacob 1 should not be forfeited since it was not established that the owner thereof has knowledge or participated in the alleged unlawful importation of used oil. Relevant hereto is Section 2531

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[16] *Exhibit "A," Annex "E."*

of the TCCP, as amended which provides for exemption on vehicle, vessel, or aircraft subject to the penalty of forfeiture; thus:

> "SEC. 2531. *Properties Not Subject to Forfeiture in 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 his agent in charge of the means of conveyance used as aforesaid has no knowledge of or participation in the unlawful act: Provided, however, That a prima facie presumption shall exist against the vessel, vehicle or aircraft under any of the following circumstances:
>
> 1. If the conveyance has been used for smuggling at least twice before;
> 2. If the owner is not in the business for which the conveyance is generally used; and
> 3. If the owner is not financially in a position to own such conveyance."

Significantly, a perusal of the records of the case show that there is no evidence adduced that the subject vessel has been used for smuggling at least twice before; that claimant OSM Phils., Inc. is a legitimate private corporation and its vessel, M/T Jacob 1, is licensed as a Common Carrier to engage in towing services; that for its engagement to tow the barge Cheryl Ann from Republic of Palau, OSM secured for its Tugboat a Special Permit from MARINA; that OSM has been operating the subject vessel in pursuit of its ordinary business for about sixteen (16) years.

More, the obligation to secure permits and clearance for the importation or exportation of the cargo does not fall on the vessel but on the owners of the cargo. Accordingly, absent intentional wrongdoing on the part of the vessel, the latter cannot be made for the failure of the cargo owners to secure the necessary permits and clearances.

Section 2530 (a) of the TCCP, as amended, on the other hand, provides:

> "Sec. 2530. *Property Subject to Forfeiture Under Tariff and Customs Laws.* - Any vessel or aircraft, cargo, article and other objects shall, under the following conditions be subjected to forfeiture:
>
> a. Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles or in conveying and/or

> transporting contraband or smuggled articles in commercial quantities into or from any Philippine port or place. The mere carrying and holding on board of contraband or smuggled articles in commercial quantities shall subject such vessel, vehicle, aircraft, or any other craft to forfeiture: Provided, **That the vessel, or aircraft or any other craft is not used as duly authorized common carrier and as such a carrier it is not chartered or leased.**" (Emphasis supplied)

Highlighted from the aforequoted provision is the said exemption on the penalty of forfeiture.

While M/T Jacob 1 was chartered by Fuel Zone Filipinas Corporation specifically to tow barge Cheryl Ann under a Towhire Agreement, the charter agreement does not ipso facto convert the vessel into a private carrier, because such agreement is in the nature of a contract of affreightment and not Bareboat or Demise charter. The distinction between these two kinds of charter parties is that in bareboat or demise, the charterer becomes the owner *pro hac vice* since the charterer mans the vessel with his own people and that the owner completely and exclusively relinquishes his possession, command and navigation thereof to the charterer. On the other hand, in the contract of affreightment, the owner of the vessel retains possession, command and navigation of the ship, the charterer or freighter merely having use of the space in the vessel in return for his payment.

Obviously, the Towhire Agreement referred to in this case is categorized as a contract of affreightment considering that the OSM mans the vessel with its own people and retains the possession, command and navigation of the ship. Thus, Section 2530 (a) will not also apply to M/T Jacob 1.

Moreover, it is noteworthy to mention that Pollution Adjudication Board of the Department of Environment and Natural Resources has finally ordered on 02 February 2007 the release of M/T Jacob 1 subject to payment of reduced fines amounting to Fifty Thousand Pesos (Php50,000.00). In this connection, attached herewith is a Certification from the aforesaid Adjudication Board that OSM has paid the said fines in compliance with its order.

Premises considered, this Office concurs with the Findings of the District Collector, Port Surigao that there is no factual or legal basis to uphold the validity of the assailed Supplemental Warrant of Seizure and

Detention issued against M/T Jacob 1 considering that the owner thereof has no knowledge of the alleged unlawful importation of used oil.

However, the same Disposition Form ordered the continued detention of barge "Cheryl Ann," holding as follows:

> With respect to barge Cheryl Ann, the Decision of the District Collector, Port of Surigao, ordering the Dismissal of the Supplemental Warrant of Seizure and Detention issued against subject vessel and its release to its registered owner is without legal and factual basis.
>
> Upon the facts of the case, contrary to the findings of the District Collector, Port of Surigao, the requirement provided under Section 2535 of the TCCP, as amended, that existence of probable cause should first be shown before filing the seizure proceedings had been fully met. When barge Cheryl Ann entered the Philippine jurisdiction and was apprehended/found to contain used oil without the necessary clearances from government agencies concerned there is *prima facie* evidence of violation of Section 2530 of the TCCP, as amended, which provides a sufficient basis for the seizure of said vessel. Probable cause having been shown, the burden of proof was upon the claimant to establish that it is not subject to seizure and forfeiture.
>
> Unfortunately, there is nothing in the record of the case which shows that barge Cheryl Ann has participated in the aforesaid seizure proceedings despite due notice. Thus, there is nothing in evidence that will rebut the probable cause and/or prima facie evidence of the imputed violation. Accordingly, the Decision of the District Collector, Port of Surigao ordering the Dismissal of the Supplemental Warrant of Seizure and Detention issued against subject vessel and its release to its registered owner should be reversed and set aside.

It can readily be deduced from the foregoing that M/T "Jacob 1," as a licensed common carrier engaged in towing services, was engaged to tow the barge "Cheryl Ann." As argued by petitioner, the barge "Cheryl Ann," a non-motorized vessel being towed only by M/T "Jacob 1," is unable to control its destination.

In the above-quoted Disposition Form, however, it approved the order for the dismissal of the Supplemental Warrant of Seizure and Detention against the tugboat, and its consequent release to its owner; while at the same time, it ordered for the immediate forfeiture of the barge.

Following the time-honored axiom that the *accessory follows the principal*, the Court does not agree.

Relevant thereto is Section 2530(a) of TCCP, as amended, which provides:

> SECTION 2530. *Property Subject to Forfeiture Under Tariff and Customs Laws.* – Any vehicle, vessel or aircraft, cargo, articles 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 in conveying and/or transporting contraband or smuggled articles in commercial quantities into or from any Philippine port or place. The mere carrying or holding on board of contraband or smuggled articles in commercial quantities shall subject such vessel, vehicle, aircraft, or any other craft to forfeiture: *Provided*, That the vessel, or aircraft or any other craft is not used as duly authorized common carrier and as such a carrier it is not chartered or leased;

The principal issue at hand is "whether or not there was an illegal importation committed, or at least an attempt thereof, which would justify the forfeiture of the barge "Cheryl Ann."

Section 1202 of the TCCP, as amended, states:

> SEC. 1202. *When Importation Begins and Deemed Terminated.* - Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unlade therein. Importation is deemed terminated upon payment of 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.

From the afore-quoted provision, the mere intent to unload is sufficient to commence an importation. Intent, being a state of mind, is rarely susceptible of direct proof, but must ordinarily be inferred from the facts, and therefore, can only be proved by unguarded expressions, conduct and circumstances generally.[17]

In the case at bench, the barge "Cheryl Ann," being a non-motorized vessel, and being towed by the tugboat "Jacob 1," entered the jurisdiction of the Philippines only because the latter was forced to enter the Port of Surigao for an emergency bunkering. As duly approved by respondent Commissioner of Customs, in a Disposition Form dated April 13, 2007, "the documentary exhibits would clearly point to the conclusion that the M/T 'Jacob 1' was bound for Malaysia, and would have arrived thereat, were it not for the damage sustained by the M/T 'Jacob 1' while in transit from Palau to Malaysia, necessitating emergency repairs in the Port of Surigao, the nearest port."[18] Thus, the consequent entry of the barge "Cheryl Ann" into the Philippine jurisdiction was only due to the emergency needs of the tugboat "Jacob 1," which principally navigates and controls the route.

Evident from the Towhire Agreement referred to in the Disposition Form, entered into by and between OSM Shipping Phils., Inc., the owner of M/T "Jacob 1," and petitioner, as the owner of the barge "Cheryl Ann," categorized as a contract of affreightment, that the owner of the tugboat mans the vessel with its own people and retains the possession, command and navigation of said the ship. The "Cheryl Ann," being a non-motorized vessel, and only towed by "Jacob 1," making the tugboat the principal and the barge a mere accessory, necessarily, has no means of controlling its route or destination.

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[17] Feeder International Line, Pte., Ltd., *v.* Court of Appeals, *et al.*, G.R. No. 94262, May 31, 1991, 197 SCRA 842.
[18] *Exhibit "A," Annex "E."*

With the above circumstances, the Court finds the element of intent on the part of the barge "Cheryl Ann" wanting.

Considering that in the Disposition Form, the aforequoted Section 2530 of the TCCP will not apply to M/T "Jacob 1" – the principal – which retains the possession, command and navigation thereto, engaged to tow the barge "Chery Ann" – the accessory – which is a non-motorized vessel, the latter should likewise be covered by the said ruling.

In addition, the Charter Agreement shows that petitioner entered into an agreement with Fuels Zone Filipinas Corporation,[19] to wit:

CHARTER AGREEMENT
(TIME CHARTER)

CHARTERER	OWNER/OPERATOR
FUELS ZONE FILIPINAS CORP. Suite 2048, Unit 33, Bldg. A SM Megamall, Edsa Mandaluyong	GOLD MARK SEA CARRIERS, INC. Unit 8, Gold Park Center 88 Meralco Ave., Pasig City

CARGO	.....	Used Oil
BARGE NAME	.....	Barge Cheryl Ann

xxx xxx xxx

As clearly stated in the Disposition Form, the obligation to secure permits and clearances for the importation or exportation of the cargo does not fall on the vessel – the barge "Cheryl Ann" – but on the owners of the cargo. Thus, in accordance with the said Disposition Form, absent any failure on the part of the vessel, the latter cannot be held liable for the failure of the cargo owners to secure the necessary permits and clearances.

[19] *Exhibit "E."*

With the Court's finding that the burden of proof in a forfeiture proceeding under Section 2535[20] of the TCCP has been duly discharged, Section 2530 of the same Code will not apply to the barge "Cheryl Ann."

In fine, absent any evidence to prove that barge "Cheryl Ann" has the intention to defraud the government, the Court finds the Petition for Review to be meritorious.

WHEREFORE, the Petition for Review is hereby **GRANTED**. Accordingly, the 3rd Indorsement dated May 9, 2007 issued by the Department of Finance, Undersecretary of the Legal and Revenue Operations Group, Gaudencio A. Mendoza, and the 4th Indorsement dated May 17, 2007 issued by the Bureau of Customs, Commissioner Napoleon L. Morales, insofar as barge "Cheryl Ann" is concerned, are hereby **REVERSED** and **SET ASIDE**. The respondent Commissioner of Customs is hereby **ORDERED** to **IMMEDIATELY RELEASE** the barge "Cheryl Ann" to petitioner.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[20] 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.

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

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's Division.

ERNESTO D. ACOSTA
Presiding Justice