

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

**EL GRECO SHIP MANNING AND
MANAGEMENT CORPORATION,**
Petitioner,

C.T.A. EB NO. 172
(C.T.A. Case No. 6618)

Present:

-versus-

**Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.**

COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated:

MAR 14 2007 *Grappalino*

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review which seeks to reverse and set aside the (1) October 17, 2005 Decision of the Second Division of this Court ("Court in Division"), which affirmed the 2nd Indorsement



of former Customs Commissioner Antonio Bernardo dated January 15, 2003, disallowing the release of M/V "NEPTUNE BREEZE" on the finding that it was the same merchant vessel bearing the name M/V "CRISTON" which was earlier seized and forfeited by the Acting District Collector of the Sub-port of Tabaco City, Albay, and (2) the Court in Division's Resolution dated February 7, 2006 which denied petitioner's Motion for Reconsideration.

Antecedent Facts

The material antecedents of CTA Case No. 6618 are narrated by the Court in Division in this wise:

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

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

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

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

On October 15, 2001, Atty. Enrico T. Turingan, Jr., Acting District Collector of Customs, Legazpi City, issued a second Warrant of Seizure and Detention No. 06-2001-A against M/V "CRISTON", as it was not allegedly included in the caption of WSD No. 06-2001. However, the seizure proceeding was held in abeyance pending resolution of the case filed with the RTC. The RTC case was dismissed on January 30, 2002.

On November 7, 2001, as the province of Albay was under Typhoon Signal No. 2 due to Typhoon "NANANG", the Officer-In-Charge of Philippine Port Authority, Port of Tabaco allowed M/V "CRISTON" to temporarily undock, proceed to anchorage and seek shelter, but



thereafter to immediately return and berth alongside the wharf after the typhoon signal in the area has been lifted.

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

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

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

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

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

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

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

"WHEREFORE, pursuant to the authority vested in me by law, it is hereby ordered and decreed that the Warrant of Seizure and Detention issued thereof be QUASHED for want of factual and legal basis, and that the vessel M/V "NEPTUNE BREEZE" be RELEASED to Claimant-Intervenor after clearance with the Commissioner of Customs, proper identification and compliance with existing rules and regulations pertinent in the premises."

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

"WHEREFORE, premises considered, and by virtue of the authority vested in this Office by law, the vessel MV CRISTON (a.k.a. MV NEPTUNE BREEZE) and the 35,000 bags of smuggled rice are ordered FORFEITED as they are hereby FORFEITED in favor of the Government. In lieu of the forfeited rice, the bond issued by GREAT DOMESTIC



INSURANCE COMPANY OF THE PHILIPPINES INC. in the amount of P31,450,000.00 is hereby confiscated.

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

SO ORDERED."

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

'1. Subject vessel M/V "NEPTUNE BREEZE" and M/V "CRISTON" are one and the same as shown by the vessels documents retrieved by the elements of the Philippine Coast Guard from M/V "CRISTON" during the search conducted on board thereof when the same was apprehended in Tobacco, Albay, indicating therein the name of the vessel M/V "NEPTUNE BREEZE", the name of the master of the vessel a certain YUSHAWU AWUDU, etc. These facts were corroborated by the footage of ABS-CBN taken on board the vessel when the same was subjected to search.

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

On March 24, 2003, petitioner filed a Petition for Review with the Court in Division which sought to reverse and set aside the aforementioned Decision of then Customs Commissioner Antonio Bernardo in his 2nd Indorsement dated January 15, 2003. In his Comment, respondent prayed that the petition be dismissed for lack of merit.

The Ruling of the Court in Division

On October 17, 2005, the Court in Division rendered its assailed Decision and ruled that M/V "CRISTON" and M/V "NEPTUNE BREEZE" are one and the same vessel for the following reasons:

1. Based on the affidavit of PO3 Wenefredo N. Dacara, a member of the Philippine Coast Guard in Legazpi City, who took the



stencils of the engine and generators of M/V "CRISTON" on October 10, 2001, and based also on the Crime Laboratory Report No. 033511 of the Philippine National Police, M/V "CRISTON" and M/V "NEPTUNE BREEZE" bore the same serial numbers in their respective engines and generators.

2. In reply to the letter dated March 13, 2002 of Customs Commissioner Titus B. Villanueva, Administrator Oscar M. Sevilla of the Maritime Industry Authority ("MARINA") stated that neither M/V "CRISTON" nor M/V "NEPTUNE BREEZE" was registered with MARINA.

3. It was further established during the seizure proceedings that (a) the documents i.e. Crew Manifest submitted by the Captain/Master of M/V "CRISTON" were all fake; (b) the Outgoing Dispatch Report of the Philippine Coast Guard of Tabaco, Albay shows that M/V "CRISTON" did not depart from the Port of Manila where allegedly the 35,000 bags of rice were loaded; (3) no departure clearance was issued by the Philippine Coast Guard; and (4) fake and spurious documents were used to make it appear that the rice was loaded at North Harbor, Manila.

4. The Court in Division also gave credence to the testimony of Customs Guard Adolfo Capistrano, assigned at the Port Operations Division, Port of Legazpi, who was present during the ocular inspection of the M/V "NEPTUNE BREEZE" and who testified that the features of M/V "CRISTON" are similar to those of M/V "NEPTUNE BREEZE" as found during the ocular inspection.



5. The Court in Division also considered the testimony of former Coast Guard Commander Cirilo P. Ortiz that the composite team that searched M/V "CRISTON" recovered several items and documents belonging/pertaining to M/V "NEPTUNE BREEZE." The said testimony was amply corroborated by the testimony of Seth Coballes, a cameraman of the TV Station ABS-CBN, who took a video footage which revealed that papers and documents including lifesavers found on board M/V "CRISTON" have the name M/V "NEPTUNE BREEZE" printed on them.

The Court in Division also ruled that the forfeiture of the vessel M/V "CRISTON" pursuant to Section 2350 of the Tariff and Customs Code of the Philippines ("TCCP") was justified as the said vessel was found to have been involved in the smuggling of 35,000 bags of imported rice.

Lastly, the Court in Division held that the Order dated March 11, 2002 of Customs Collector Nicolas releasing M/V "NEPTUNE BREEZE" was not yet final, since the same was still subject to the clearance and approval of the Customs Commissioner. In addition, the Court in Division found that the District Collector of the Port of Legazpi had already acquired prior jurisdiction over the subject vessel when he issued the Warrant of Seizure Order on September 23, 2001. Thus, Collector Nicolas could not release what had been previously ordered forfeited.

The dispositive portion of the assailed Decision reads as follows:

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

SO ORDERED."



Undaunted, petitioner filed a Motion for Reconsideration, which the Court in Division likewise denied for lack of merit in its Resolution dated February 7, 2006.

Hence, petitioner lodged the instant petition for review with the Court *En Banc*.

The Issues

In its petition, petitioner raised the following issues:

- I. Whether or not the petitioner was denied of its right to due process when the Second Division of this Honorable Court of Tax Appeals adopted the pieces of evidence presented during the seizure and forfeiture case against the vessel M/V Criston before Atty. Enrico T. Turingan, Acting District Port Collector of Legaspi City, without prior judicial determination that M/V Criston and M/V Neptune Breeze is one and the same vessel.
- II. Whether or not M/V Neptune Breeze and M/V Criston is one and the same vessel.
- III. Whether or not the Order dated March 11, 2002 of the Bureau of Customs, Port of Manila through then Collector Atty. Reynaldo S. Nicolas releasing M/V Neptune Breeze had long been final and executory.
- IV. Whether or not M/V Neptune Breeze qualified to be the subject of forfeiture under Sec. 2530 of the Tariff and Customs Code of the Philippines."

The Ruling of the Court En Banc

The petition is devoid of merit.

We shall take up the foregoing issues in the order they are presented.

First Issue: Whether there was a violation of due process

Petitioner claims that its right to due process was violated when the Court in Division used and relied upon the Decision of Atty. Enrico Turingan Jr., the Acting District Port Collector of Legaspi City in the seizure proceedings against the vessel M/V "CRISTON" as basis in dismissing its petition, without



prior judicial determination that M/V "CRISTON" and M/V "NEPTUNE BREEZE" are one and the same vessel. Petitioner also contends that it presented sufficient evidence to prove that the vessel M/V "NEPTUNE BREEZE" is not the same vessel as M/V "CRISTON". Petitioner further avers that the seizure proceedings was against the vessel M/V "CRISTON", its cargo and its operator Glucer Shipping Company Inc. and not against the vessel M/V "NEPTUNE BREEZE" and/or its operator/agent El Greco Ship Manning and Management Inc., the petitioner in the instant case. Thus, petitioner argues that the said proceedings should not affect and should not be used against M/V "NEPTUNE BREEZE" and the petitioner.

Petitioner's arguments are bereft of merit.

We cannot give credence to petitioner's claim that it was deprived of due process on the ground that the Court in Division merely adopted the pieces of evidence presented during the seizure and forfeiture case against the vessel M/V CRISTON before Atty. Enrico T. Turingan, Acting District Port Collector of Legaspi City, without prior judicial determination that M/V CRISTON and M/V NEPTUNE BREEZE are one and the same vessel.

It must be pointed out that in the exercise of its exclusive appellate jurisdiction over the decisions of the Commissioner of Customs in cases involving seizure, detention or release of property affected,¹ the Court in Division must necessarily review and evaluate the pieces of evidence presented at the administrative level.

¹ Section 7 (a) (4) of Republic Act No. 1125 as amended by Republic Act No.9282.



It also bears stressing that the question of whether or not the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.

It is likewise an elementary rule in taxation that the factual findings of the Court of Tax Appeals, when supported by substantial evidence, will not be reversed on appeal unless it is clear that the said Court has committed gross error in the appreciation of facts.² In the instant case, We find that the assailed Decision of the Court in Division did not deviate from this rule. The District Port Collector of Legaspi, the Commissioner of Customs and the Court in Division are unanimous in concluding that M/V "CRISTON" and M/V "NEPTUNE BREEZE" are one and the same vessel. The records do appear to sustain this conclusion. Consequently, this finding can and should affect the petitioner.

Second Issue: Whether M/V "CRISTON" and M/V "NEPTUNE BREEZE" are one and same vessel

Petitioner insists that M/V "CRISTON" and M/V "NEPTUNE BREEZE" are different vessels.

A review of the records reveals that the Court in Division was correct in upholding the ruling of the Commissioner of Customs that M/V "CRISTON" and M/V "NEPTUNE BREEZE" are indeed one and the same vessel. Well-settled is the rule in our jurisdiction that the findings of fact of an administrative agency must be respected, as long as such findings are supported by substantial evidence even if such evidence might not be overwhelming or preponderant. It is not the task of an appellate court to weigh once more the evidence

² Commissioner of Internal Revenue v. Court of Appeals, Court of Tax Appeals and Young Men's Christian Association of the Philippines, Inc., 298 SCRA 83, G.R. No. 124043, October 14, 1998.



submitted before the administrative body and to substitute its own judgment for that of the administrative agency in respect of sufficiency of evidence.³

We agree with the Court in Division that the following pieces of evidence sufficiently prove that M/V "CRISTON" and M/V "NEPTUNE BREEZE" are one and the same vessel:

1. The affidavit of PO3 Wenefredo N. Dacara, a member of the Philippine Coast Guard in Legazpi City, who took the stencils of the engine and generators of M/V "CRISTON" on October 10, 2001;⁴
2. The Crime Laboratory Report No. 033511 of the Philippine National Police;⁵
3. Letter of Administrator Oscar M. Sevilla of the Maritime Industry Authority stating that neither M/V "CRISTON" nor M/V "NEPTUNE BREEZE" is registered with MARINA in reply to the letter dated March 14, 2002 of Customs Commissioner Titus B. Villanueva;⁶
4. The following documents submitted by the Captain/Master of M/V "CRISTON" during the seizure proceedings which were found by the Court in Division to be all fake and spurious:
 - a. Crew Manifest of M/V "CRISTON";⁷
 - b. Oath of Masters Covering List of Officers of Coastwise Vessels;⁸
 - c. Harbour Centre Port Terminal Computation Sheet;⁹
 - d. Philippine Ports Authority O.R. No. 45676050;¹⁰

³ Benjamin D. Ynson v. The Hon. Court of Appeals, et. al., G.R. No. 117018-19, June 17, 1996 citing *Rubenecia v. Civil Service Commission*, 244 SCRA 640 [1995].

⁴ Page 119, Customs Records.

⁵ Page 123, Customs Records.

⁶ Page 74, Customs Records.

⁷ Page 24, Customs Records.

⁸ Page 26, Customs Records.

⁹ Page 28, Customs Records.

¹⁰ Page 30 Customs Records.

- e. Bill of Lading dated September 12, 2001;¹¹ and
 - f. Coasting Manifest M/V "CRISTON".¹²
5. Outgoing Dispatch Report of the Philippine Coast Guard of Tabaco, Albay, which showed that M/V "CRISTON" did not depart from the Port of Manila where allegedly the 35,000 bags of rice were loaded;¹³
6. Certification that no departure clearance was issued by the Philippine Coast Guard;¹⁴
7. District Collector Edward P. De La Cuesta in his letter dated October 4, 2001 to Station Commander Jose G. Cabildo, Coast Guard Station, Manila, stated that M/V "CRISTON" has no record on file in their office regarding the subject shipment;¹⁵
8. The testimony of Customs Guard Adolfo Capistrano, assigned at the Port Operations Division, Port of Legazpi, who was present during the ocular inspection of the M/V "NEPTUNE BREEZE" and testified that the features of M/V "CRISTON" are similar to those of M/V "NEPTUNE BREEZE" as found during the ocular inspection;¹⁶
9. The testimony of former Coast Guard Commander Cirilo P. Ortiz that the composite team that searched M/V "CRISTON" recovered several items and documents belonging/pertaining to M/V "NEPTUNE BREEZE". This is amply corroborated by the testimony of Seth Coballes, a cameraman of the TV Station ABS-

¹¹ Page 31, Customs Records.

¹² Page 33, Customs Records.

¹³ Page 83, Customs Records.

¹⁴ Page 84, Customs Records.

¹⁵ Page 122, Customs Records.

¹⁶ Page 32, 35 to 38, Customs Records.



CBN, who took a video footage which would reveal that papers and documents including lifesavers found on board M/V "CRISTON" have the name M/V "NEPTUNE BREEZE" printed on them.

The foregoing documentary and testimonial evidence supports the following findings of Acting District Collector of Customs Atty. Enrico Turingan in his decision dated June 27, 2002, in S.I. Nos. 06-2001 and 06-2001-A:¹⁷

"As regards the first issue, we hold the affirmative. The evidences presented point to no other conclusion than that the MV CRISTON and the MV NEPTUNE BREEZE are one and the same vessel. Laying back now, we could see that at the time of the search on October 1 2001, there were already clear indications that the MV CRISTON might not be what it represented itself to be. The video tape (Exh. L) would show that most of the ship documents pertained to MV NEPTUNE BREEZE, and not MV CRISTON. Certainly, the MV CRISTON could not have appeared on the registry of the Maritime Industry Authority (MARINA) because it never really existed at all. The MV CRISTON existed only for the purpose of misrepresenting the MV NEPTUNE BREEZE as a local vessel purportedly owned and operated by GLUCER SHIPPING, CO. which in reality is also non-existent, the MV NEPTUNE BREEZE being in actuality a foreign vessel with foreign registry.

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

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

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

¹⁷ Pages 2 to 15, Customs Records.



A foreign vessel entering the Port of Legazpi with 35,000 bags of rice on board would require an import permit from the National Food Authority and payment of duties and taxes with the Bureau of Customs. To dispense with the import permit and more importantly the payment of duties and taxes, motivated by the prospect of a substantial monetary gain, a scheme is hatched to make it appear that the rice are locally sourced and thus evade payment. And quite logically, the rice must be brought to port by a local vessel. And so it is the hull of the vessel MV NEPTUNE BREEZE was repainted with MV CRISTON and supported with spurious documents to make it appear as a local vessel. Likewise, the rice was covered with spurious documents to show that it was loaded at North harbor, Manila. When eventually, the vessel was able to escape on November 7, 2001, it repainted its hull with its original name (MV NEPTUNE BREEZE) and resurfaced at Mariveles, Bataan where it was sighted and recaptured. Even then, it had a ready excuse. It was MV NEPTUNE BREEZE and not MV CRISTON; and that the reason why it was in Mariveles, Bataan was to load cargoes from ORICA EXPLOSIVES. But this scheme is betrayed by the evidences at hand. Note that during the search on the vessel MV CRISTON, the name of ORICA was among those found in the documents, but as it now appears, ORICA' S name was only dragged into the controversy as an unknowing party, inasmuch as there was no prior or existing contract between the owner of MV NEPTUNE BREEZE (a.k.a. MV CRISTON) and ORICA for the loading of explosives . . .

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Third Issue: Whether the Order of District Collector Nicolas releasing M/V "NEPTUNE BREEZE" already became final and executory

Petitioner avers that "there is no basis for the declaration of the Court in Division that the decision of the District Port Collector of Manila was forwarded to the Commissioner of Customs merely for 'clearance' as such the provision on thirty (30) days automatic review from the receipt of the records will not reckon."

Section 2313 of the Tariff and Customs Code of the Philippines ("TCCP"), as amended by R.A. 7651, in part, pertinently states that:

"If in any seizure proceedings, the Collector renders a decision adverse to the Government, such decision shall be automatically reviewed by the Commissioner and the records of the case elevated within five (5) days from the promulgation of the decision of the Collector. The Commissioner shall render a decision on the automatic appeal within thirty (30) days from receipt of the records of the case. If the Collector's decision is reversed by the Commissioner, the decision of the Commissioner shall be final and executory. However, if the Collector's



decision is affirmed, or if within thirty (30) days from receipt of the record of the case by the Commissioner no decision is rendered or the decision involves imported articles whose published value is five million pesos (5,000,000.00) or more, such decision shall be deemed automatically appealed to the Secretary of Finance and the records of the proceedings shall be elevated within five (5) days from the promulgation of the decision of the Commissioner or of the Collector under appeal, as the case may be: Provided, further, That if the decision of the Commissioner or of the Collector under appeal, as the case may be, is affirmed by the Secretary of Finance, or if within thirty (30) days from receipt of the records of the proceedings by the Secretary of Finance, no decision is rendered, the decision of the Secretary of Finance under appeal, as the case may be, shall become final and executory.

In any seizure proceeding, the release of imported articles shall not be allowed unless and until a decision of the Collector has been confirmed in writing by the Commissioner of Customs."

Section 2313 TCCP must be construed to mean that all decisions of the Collector of Customs adverse to the government, with regard to any seizure proceeding, regardless of the value of the importation, must be automatically reviewed by the Commissioner. Hence, if the Collector's decision is reversed by the Commissioner, the latter's decision shall be final and executory, except, if his (Commissioner) decision involves imported articles whose published value is P5,000,000.00 or more, in which case the same shall be subject to an automatic review by the Secretary of Finance.¹⁸

There is nothing in the provision which would support petitioner's contention that the Order of Collector Nicolas had become final and executory. What is clear from the provision is that in case the Customs Commissioner fails to decide within the prescribed period, the case is deemed automatically appealed to the Secretary of Finance.

In addition, the Court in Division correctly ruled that the said Order was not yet final, as the same was still subject to the clearance and approval of the

¹⁸ Blackgold Integrated Sales & Paranaga International v. Court of Tax Appeals, et al., CA-G.R. SP No. 63266, November 23, 2004.



We disagree.

As previously discussed, the District Port Collector of Legaspi, the Commissioner of Customs and the Court in Division are unanimous in concluding that M/V "CRISTON" and M/V "NEPTUNE BREEZE" are one and the same vessel. The records support this conclusion.

The Court in Division held that based on Section 2530 of the TCCP, the forfeiture of the vessel M/V "CRISTON", a.k.a. M/V "NEPTUNE BREEZE", is justified, for having been involved in the smuggling of 35,000 bags of imported rice.

We agree.

The penalty of forfeiture is imposed on any vessel engaged in transporting contraband or smuggled articles under Section 2530 of the TCCP, to wit:

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

- a. Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles or in conveying and/or transporting contraband or smuggled articles in commercial quantities into or from any Philippine port or place. The mere carrying or holding on board of contraband or smuggled articles in commercial quantities shall subject such vessel, vehicle, aircraft, or any other craft to forfeiture: Provided, That the vessel, or aircraft or any other craft is not used as duly authorized common carrier and as such a carrier it is not chartered or leased;

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

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- k. Any conveyance actually being used for the transport of articles subject to forfeiture under the tariff and customs laws, with its equipage or trappings, and any vehicle similarly used, together with its equipage and appurtenances including the beast steam or



other motive power drawing or propelling the same. The mere conveyance of contraband or smuggled articles by such beast vehicle shall be sufficient cause for the outright seizure and confiscation of such beast or vehicle, but the forfeiture shall not be effected if it is established that the owner of the means of conveyance used as aforesaid, is engaged as common carrier and not chartered or leased, or his agent in charge thereof at the time, has no knowledge of the unlawful act;

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It bears emphasis that seizure and forfeiture proceedings under the tariff and customs law are not criminal in nature, hence, proof beyond reasonable doubt is not required to justify forfeiture of the goods.¹⁹ The records establish that the findings of the District Port Collector of Legaspi and the Commissioner of Customs and that of the Court in Division are sustainable, being supported by substantial and convincing evidence.

The findings of the District Port Collector of Legaspi and affirmed by the Commissioner of Customs, states that the 35,000 bags of rice were found to have been imported without proper import documents. Thus, they are categorized as smuggled items. The said Collector aptly found that:

"A foreign vessel entering the Port of Legazpi with 35,000 bags of rice on board would require an import permit from the National Food Authority and payment of duties and taxes with the Bureau of Customs. To dispense with the import permit and more importantly the payment of duties and taxes, motivated by the prospect of a substantial monetary gain, a scheme is hatched to make it appear that the rice are locally sourced and thus evade payment. And quite logically, the rice must be brought to port by a local vessel. And so it is the hull of the vessel MV NEPTUNE BREEZE was repainted with MV CRISTON and supported with spurious documents to make it appear as a local vessel. Likewise, the rice was covered with spurious documents to show that it was loaded at North harbor, Manila. When eventually, the vessel was able to escape on November 7, 2001, it repainted its hull with its original name (MV NEPTUNE BREEZE) and resurfaced at Mariveles, Bataan where it was sighted and recaptured. Even then, it had a ready excuse. It was MV NEPTUNE BREEZE and not MV CRISTON; and that the reason why it was in Mariveles, Bataan was to load cargoes from ORICA EXPLOSIVES. But this scheme is betrayed by the evidences at hand. Note that during the search on the vessel MV CRISTON, the name of

¹⁹ Feeder International Line, Pte., Ltd. v. Court of Appeals, G.R. No. 94262, May 31, 1991, 197 SCRA 842.



ORICA was among those found in the documents, but as it now appears, ORICA' S name was only dragged into the controversy as an unknowing party, inasmuch as there was no prior or existing contract between the owner of MV NEPTUNE BREEZE (a.k.a. MV CRISTON) and ORICA for the loading of explosives . . ."

All told, there is no error in the disquisition of judgment rendered by the Court in Division, the same being in accord with the facts obtaining in the case and with the applicable law and jurisprudence.

WHEREFORE, the instant petition is hereby **DISMISSED**. Accordingly, the assailed Decision promulgated on October 17, 2005 and Resolution dated February 7, 2006 of the Second Division of this Court, are hereby **AFFIRMED**.

SO ORDERED.

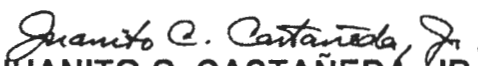


LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:



ERNESTO D. ACOSTA
Presiding Justice



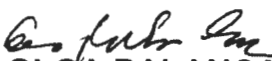
JUANITO C. CASTAÑEDA, JR.
Associate Justice



ERLINDA P. UY
Associate Justice



CAESAR A. CASANOVA
Associate Justice



OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.


ERNESTO D. ACOSTA
Presiding Justice