**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**BLACKGOLD INTEGRATED SALES & PARANAGA INTERNATIONAL,**
Petitioners,

- versus -

C.T.A. CASE NO. 5712

**DEPUTY COMMISSIONER EMMA M. ROSQUETA and the DISTRICT COLLECTOR OF CUSTOMS, PORT OF SAN FERNANDO, LA UNION,**
Respondents.

Promulgated:
SEP 22 2000

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# DECISION

The case at bar seeks the nullification of the Decision rendered by Deputy Commissioner Emma Rosqueta dated December 4, 1998 which ordered the forfeiture in favor of the Government the cargo consisting of 5,500 metric tons (110,000 bags each of 50 kilos) of raw sugar, 5,000 metric tons of which were allegedly owned by Petitioner PARANAGA INTERNATIONAL, a foreign (Indonesian) firm, and the other 500 metric tons of the same were allegedly imported by the other Petitioner, BLACKGOLD INTEGRATED SALES, a domestic entity.

As represented, Petitioner BLACKGOLD INTEGRATED SALES is a single proprietorship duly registered with the Department of Trade and Industry, with office address at 166 Divinagracia St., Lapaz, Iloilo, while Petitioner PARANAGA INTERNATIONAL is a foreign firm duly registered under Indonesian laws with address at Nirwana Sunter Asri Tahap III Block J-1 No. 18, J1. Sunter Permai Raya, Jakarta, Indonesia, represented by George T. Wong, with office address at 109 Zodiac St., Palm Village, Makati City.

On September 23, 1998, M/V "J RUBY", a vessel of Panamanian registry arrived in the Port of San Fernando, Poro Point, La Union from Sriracha, Thailand, with the subject cargo of 5,500 metric tons (MT) of raw sugar consisting of 110,000 bags each of 50 kilos.

Captain Edgardo Evangelio, the master of the said vessel, failed to present the Bill of Lading of said "cargo" to Customs Officer Lloyd Camangeg, when the latter went on board the said vessel. The former merely presented, among other documents, the manifest of all the cargo laden on board, which did not specify the consignees of the same. The manifest merely indicated "TO ORDER/NOTIFY PARTY."

Two days later, or on September 25, 1998, the Commissioner of the Economic Intelligence and Investigation Bureau (EIIB) informed the Customs Office at San Fernando, La Union that the subject importation lacked the necessary Sugar Regulatory Administration (SRA) clearance and that the carrying vessel is not listed in the SRA Schedule of Sugar Importation by Vessel/Importer which means that "J RUBY" did not have authority to transport the sugar.

On October 1, 1998, an Amended Cargo Manifest was submitted specifying that the consignee of the 500 metric tons of said cargo was BLACKGOLD INTEGRATED SALES and that the consignee of the other 5,000 metric tons of same cargo was PARANAGA INTERNATIONAL, herein Petitioners.

On October 8, 1998, Warrants of Seizure and Detention were issued by then District Collector of Customs, Antonio P. Aguilar, Port of San Fernando, La Union, against the vessel and its cargo for violation of Sections 1004, 2519, 2534 and 2530 (a) and (k), and Sections 2530 (f)(1-5) and 101(k), of the Tariff and Customs Code of the Philippines (TCCP), as amended, in relation to SRA rules and regulations.

The said seizure case was heard before the District Collector of Customs, Port of San Fernando, La Union (SFLU), docketed as Seizures Identification Nos. SFLU-01-98 and SFLU-02-98.

On November 13, 1998, Mr. Agapito Panlasiqui, Jr., Deputy Collector of Customs for Administration/Assessment (Port of SFLU), acting on behalf of the District Collector of Customs, Port of SFLU, rendered a decision on the above seizure cases, ordering the release of the subject vessel and cargo, the decretal portion of which states, to wit:

> "**WHEREFORE**, premises considered, this office hereby lifts, as they are hereby lifted, the Warrants of Seizure and Detention against the 5,500 MT Raw Sugar subject of SI No. SFLU 02-98 and the vessel MV "J RUBY" subject of SI No. SFLU 01-98. This office, however, finds the MV "J RUBY" liable for fine pursuant to Section 2519 of the Tariff and Customs Code, as amended, and hereby orders the owner/s or agent/s thereof to pay the sum of FIVE THOUSAND PESOS (P5,000.00), Philippine Currency.
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> x x x
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> **SO ORDERED**."

On December 4, 1998, Deputy Commissioner Emma M. Rosqueta, acting in behalf of the Commissioner, of the Bureau of Customs (Bureau for brevity) modified the above decision to the effect that the subject vessel be released but the subject cargo be forfeited in favor of the government, thus:

> "**WHEREFORE**, the decision of the District Collector of Customs in the above-entitled cases is modified. The 5,500 MT (100,000 bags) sugar subject of SI No. 02-98 be, as they are hereby, FORFEITED in favor of the

Government of the Republic of the Philippines, the same to be disposed of in accordance with law.

The MV "J RUBY," be as it is hereby, RELEASED to the Claimant upon proper identification and compliance with all other legal requirements, but said vessel is, however, imposed a fine of P5,000.00.

x x x

**SO ORDERED.**"

Consequently, on January 6, 1999, Petitioners filed with this Court the instant Petition for Review.

In a resolution dated March 16, 1999, the subject shipment consisting of 5,500 metric tons of sugar was ordered released by this Court to Petitioners, after the latter posted a GSIS Surety Bond in favor of the Bureau of Customs in the amount of P31,500,000.00. (see pages 254 to 255, CTA records)

On June 1, 2000, the parties submitted the case for decision *sans* the presentation of their respective evidence on the ground that the issues involved are purely legal.

In assailing the legality of the forfeiture, Petitioners principally contend that the Commissioner/Deputy Commissioner of the Bureau has no jurisdiction to review the decision of the District Collector of Customs, Port of San Fernando, La Union on the ground that the value of the subject importation is more than five million pesos (P5,000,000.00), thus the decision of the District Collector adverse to the Government is automatically appealable to the Secretary of Finance and not to the Commissioner in accordance with Section 2313 of the TCCP, as amended by RA 7651 in relation to Sections 9 & 10 of the Customs Administrative Order No. 9-93 (CAO 9-93). Petitioners concluded that the decision of Respondent Deputy Commissioner Rosqueta is null and void and can never become final and executory, and that their right to file the instant case with this Court has not yet prescribed, hence cannot be dismissed due to lack of jurisdiction.

Moreover, they alleged that since in the instant case the Secretary of Finance failed to act on the automatic appeal within thirty (30) days from receipt of the records of the case on December 7, 1998, the decision of the District Collector of Customs of San Fernando, La Union, which ordered the release of the subject vessel and cargo, became final and executory on January 6, 1999 by virtue of Section 10 of CAO 9-93, which states that "if within thirty (30) days from receipt of the records of the proceedings by the Secretary of Finance, no decision is rendered by him, Commissioner's or the Collector's decision under appeal as the case may be, shall become final and executory."

Petitioners likewise argued, that assuming, without admitting that Deputy Commissioner Rosqueta of the Bureau has jurisdiction to review the Collector's decision, her decision should be reversed on the ground that the same is arbitrary and was issued with grave abuse of discretion. They said that the portion of the decision of the Deputy Commissioner which states that "the allegation that the 5,000 MT (100,000 bags) sugar is a through shipment is untenable" and that "this Office cannot subscribe to the theory that amendment of the manifest in this case is a matter of right," are findings grounded entirely on speculations, surmises or conjectures, for reasons hereunder enumerated, thus:

(1) The government prosecutors failed to prove commission of any fraud or misrepresentation on the consignees;

(2) Fraud cannot be presumed and that the same must be proved by clear and convincing evidence;

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(3) Petitioner Paranaga did not violate any provision of the Tariff and Customs Code;

(4) Absence of SRA clearance is not one of the grounds for forfeiture under Section 2530 TCCP;

(5) RA 8178 removed the quantitative import restrictions on sugar, hence, the non-production of SRA clearance by itself does not give rise to the imposition of the penalty of forfeiture;

(6) Petitioner Blackgold had complied with all the requirements for the importation of sugar; and that

(7) Considering that the Deputy Commissioner applied Section 2531 TCCP in resolving the issue in favor of the vessel, it goes without saying that Section 2530 (a) and (k) of the same Code is not applicable under the premises and conclusively, sugar is not a contraband. x x x . Thus, not only the vessel should be released, the shipment of sugar must likewise be released for there is nothing in fact and in law which tend to support the proposition arrived at by the Deputy Commissioner of Customs.

In her Answer, Respondent prayed for the dismissal of the case on the reason that the decision sought to be nullified has become final and executory in view of the provision of Section 2313, Tariff and Customs Code (TCC), as amended by RA 7651.

Respondent argued that the contention of Petitioners, that "the Commissioner/Deputy Commissioner does not have jurisdiction to review an adverse decision of the Collector if the value of the importation is P5,000,000.00 or more as in this case allegedly because what is provided by law is that the Collector's adverse decision involving said amount is automatically appealable to the Secretary of Finance, is a misreading of the law. She said that the cited provisions of Section 2313 TCCP as amended by RA 7651 and Section 10 of CAO 9-93 speak of review by the Commissioner. Thus, she concluded that it is inconceivable that the Commissioner would be deprived of his authority to review decisions of the Collector who is his subordinate. Further, she stated that Petitioners are estopped from raising the issue of jurisdiction, as they speculated on the outcome of the case before the Commissioner and that they raised the issue of lack of jurisdiction only after they received the adverse decision.

Respondent asseverates that the allegation of Petitioners that only the 500 MT of sugar was intended for the Philippines while the 5,000 MT of sugar was to be brought to Indonesia is untenable, as it is an importation into the Philippines, which began from the moment the vessel "M/V RUBY" entered the jurisdiction of this country with the intent to unload, thus the subject 5,000 MT of sugar is not a through cargo or for foreign transhipment. Neither can the same qualify for re-exportation under Section 2103 of the TCCP.

Respondent did not agree with the allegation of Petitioners that the amendment of the manifest is a matter of right. She pointed out that the vessel arrived with the cargoes to be discharged at Poro Point, hence its manifest stated that the cargoes were destined for Poro Point. As the vessel was not proceeding to Indonesia, there was no basis in amending its manifest. Moreover, she said, that amendment to the manifest is not a matter of right because a ship's manifest is the first safeguard against smuggling and must be complete in all aspects, citing Section 1205, TCCP and the case of *Macondray and Co. vs. Commissioner of Customs, 62 SCRA 427.* Respondent also questioned the absence of a "through or transit cargo manifest" if the real intention was to tranship the cargo (Section 1004 and 1008, TCCP). Likewise, she argued that Respondent do not have to prove fraud because the burden of proof in seizure and forfeiture proceedings lies upon the claimant.

As regards the other points raised by Petitioners, Respondent counters that the 5,000 MT sugar was imported without the SRA clearance, hence imported contrary to law pursuant to Section 2530 (f) of TCCP. By subsequently making it appear that the cargo was for transhipment to Indonesia and not an importation into the Philippines, Petitioners tried to avoid seizure, avoid the filing of entry, and further avoid payment of duties and taxes, which constitute a ground for forfeiture under Section 2530(l) of the TCCP. Furthermore, she said that it appearing that the 500 MT sugar, being claimed by Petitioner BLACKGOLD INTEGRATED SALES, was used as an escort, conduit, or decoy in facilitating the illegal importation and discharge of the other 5,000 MT of sugar, and considering further that the same was not entered through a customshouse in violation of Section 2530(1) of the TCCP, the same is liable for forfeiture. Finally, she argued that the release of the vessel is not a valid argument to release also the sugar, as the grounds for the release of the vessel are grounds which cannot be made to apply on the cargoes.

The issues raised by the parties may be summarized into two, these are (1) WHETHER OR NOT THE COMMISSIONER OF CUSTOMS HAS JURISDICTION TO REVIEW THE ADVERSE DECISION OF THE COLLECTOR OF CUSTOMS CONSIDERING THAT THE AMOUNT OF THE SUBJECT IMPORTATION IS MORE THAN P5,000,000.00, and (2) WHETHER OR NOT THE SUBJECT SHIPMENT CONSISTING OF 5,500 METRIC TONS OF SUGAR IS SUBJECT TO FORFEITURE IN FAVOR OF THE GOVERNMENT FOR VIOLATION OF SECTION 2530, paragraphs (a)(f) and (l), sub-paragraphs 1 to 5, of the Tariff and Customs Code, which provides:

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

a. Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles or 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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f. Any article the importation or exportation of which is effected or attempted contrary to law, or any article of prohibited importation or exportation, and all other articles which, in the opinion of the Collector, have been used, are or were entered to be used as instruments in the importation or exportation of the former;

x x x

l. Any article sought to be imported or exported.

1. Without going through a customhouse, whether the act was consummated, frustrated or attempted;
2. By failure to mention to a customs official, articles found in the baggage or a person arriving from abroad;
3. On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;
4. On the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article; and

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5. Through any other practice or device contrary to law by means of which such articles was entered through a customhouse to the prejudice of the government."

After a circumspect study of the attending facts, the disquisition of the parties, the applicable laws, rules and regulations, the Court finds for the Respondent.

On the first issue, the Court is in total acquiescence with Respondent's argument that the contention of Petitioners, which states that the Commissioner/Deputy Commissioner does not have jurisdiction to review an adverse decision of the Collector of Customs if the value of the importation is P5,000,000.00 or more, is a misreading of the law. Section 2313 of the TCCP as amended by RA 7651, and Sections 9 & 10 of CAO 9-93, are all quoted hereunder, thus:

"**SEC. 2313**. ***Review of Commissioner***. – The person aggrieved by the decision or action of the Collector in any matter presented upon protest or by his action in any case of seizure may, within fifteen (15) days after notification in writing by the Collector of his action or decisions, file a written notice to the Collector with a copy furnished to the Commissioner of his intention to appeal the action or decision of the Collector to the Commissioner. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision: Provided, That when an appeal is filed beyond the period herein prescribed, the same shall be deemed dismissed.

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 (P5,000,000) or more,

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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, or of the Commissioner, or of the Collector under appeal, as the case may be, shall become final and executory.

In any seizure proceedings, 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 (R.A. 7651, June 04, 1993) (underscoring supplied).

SECTION 9. Automatic review by the Commissioner on action or decision of the Collector of Customs adverse to the government. – Action or decision of the Collector of Customs adverse to the government shall be automatically reviewed by the Commissioner.

The records of the case involving decision/action of the Collector of Customs, adverse to the government shall be elevated within five (5) days from the promulgation of the decision of the Collector of Customs.

From receipt of the records of the case, the Commissioner of Customs shall render a decision on the automatic review within thirty (30) days.

The decision of the Commissioner of Customs reversing the adverse decision of the Collector of Customs, on automatic review, shall be final and executory. (CAO 9-93).

SECTION 10. In case the Commissioner of Customs affirms the adverse decision of the Collector of Customs, the records of the proceedings shall be elevated to the Secretary of Finance within five (5) days from promulgation of the decision by the Commissioner of Customs.

In case the Commissioner of Customs fails to render a decision on automatic review on the adverse decision of the Collector of Customs within thirty (30) days from receipt of the records the case shall be deemed automatically appealed to the Secretary of Finance. The records of the proceedings shall be elevated by the Commissioner of Customs to the Secretary of Finance. The records of the proceedings shall be elevated by the Commissioner of Customs to the Secretary of Finance within five (5)

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> days after the lapse of thirty (30) day review period. If the adverse decision of the Collector of Customs is affirmed by the Secretary of Finance, the affirmed decision shall become final and executory.
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> If the value of the imported article under seizure is P5,000,000.00 or more, the adverse decision of the Collector of Customs shall be deemed automatically appealed to the Secretary of Finance.
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> If within thirty (30) days from receipt of the records the proceedings by the Secretary of Finance, no decision is rendered by him, the Commissioner's or the Collectors decision under appeal as the case may be, shall become final and executory. (CAO 9-93)."

All the aforequoted provisions speak of review by the Commissioner, thus, to follow the above contention of Petitioners would deprive the former of his authority to review and rectify errors committed by his subordinates. In Section 2313 TCCP, second paragraph, the word decision, in the phrase "or the decision involves imported articles whose published value is Five Million (P5,000,000.00) or more, shall be deemed automatically appealed to the Secretary of Finance x x x", refers to the decision of the Commissioner and not the Collector's decision. In other words, if the Collector's decision which is adverse to the government is reversed by the Commissioner, as in the case at bar, the decision of the latter shall not become final and executory as the same is deemed automatically appealed to the Secretary of Finance in view of the published value of the importation. 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

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P5,000,000.00 or more, in which case the same shall be subject to an automatic review by the Secretary of Finance. If the value of the importation is less than P5,000,000.00, the decision of the Commissioner shall be final and executory and shall not be subject to an automatic appeal to the Secretary of Finance. The other two instances where the Commissioner's decision shall not become final and executory are (1) when the Commissioner affirmed the decision of the Collector, and (2) when the Commissioner failed to act on the same within thirty (30) days from receipt of the records of the case. In both instances the Commissioner's decision or the Collector's decision which was not acted upon by the Commissioner shall be deemed automatically appealed to the Secretary of Finance, who must affirm the same or not act on it within the 30 day period from receipt of the records, otherwise, the decision of the Commissioner or the Collector which was not acted upon by the Commissioner shall become final or executory. The Commissioner's decision affirming the decision of the Collector adverse to the government or his inaction on the decision of the Collector cannot be final and executory, as the same shall be subject to an automatic review by the Secretary of Finance. Thus, We rule that the questioned decision of the Deputy Commissioner is not null and void for lack of jurisdiction. As stated earlier the Commissioner has the authority to review the Collector's decision adverse to the government, even if the amount of the importation is P5,000,000.00 or more.

In the case at bar, it was undisputed that the Deputy Commissioner, acting in behalf of the Commissioner, had rendered a decision reversing the decision of the Collector. Considering that it was not disputed that the value of the subject importation was more than P5,000,000.00, the decision of the Deputy Commissioner is deemed automatically appealed to the Secretary of Finance. Since it was claimed by Petitioners that the records of the case were forwarded to the Secretary of Finance on December 7, 1998 (p. 573, docket), and considering that the same was not acted upon by the latter, the decision of the Deputy Commissioner became final and executory, thirty (30) days thereafter or on January 6, 1999. From this date Petitioners have 30 days to file an appeal with this Court in accordance with Section 11 of RA 1125 (The Law Creating the Court of Tax Appeals), stated below, in relation to Section 2402 of the TCCP. Thus, since the instant Petition for Review was filed with this Court on January 6, 1999, We rule that the right of Petitioners to interpose this appeal before this Court has not yet prescribed. Evidently, the allegations of Respondent that her decision was already final and executory before the filing of the instant petition is bereft of merit as the said decision is still subject to an automatic appeal to the Secretary of Finance. Quoted hereunder is Section 11 of RA 1125:

> SEC. 11. ***Who may appeal; effect of appeal***. – Any person, association or corporation adversely affected by a decision or ruling of the Commissioner of Internal Revenue, the Collector of Customs or any provincial or city or Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.
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> No appeal taken to the Court of Tax Appeals from the decision of the Commissioner of Internal Revenue or the Collector of Customs shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: Provided, however, That when in the opinion of the Court the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court (underscoring ours).

On the second issue, it should be stressed that both parties waived their rights to present evidence and merely submitted the case for decision on the basis of the records and pleadings. As to who has the burden of proof in seizure or forfeiture proceedings is explicitly answered by Section 2535 of the TCCP, which provides that the same shall lie upon the claimant, provided that the existence of probable cause first be shown before the filing of the forfeiture proceedings. The term "probable cause", which has been held synonymous with "reasonable cause", means less than the evidence which will justify condemnation. It imports a seizure made under circumstances which warrant suspicion.

(*Sanchez vs. Commissioner of Customs, BTA Case No. 185, November 2, 1954, citing U.S. vs. One Bag of Paradise and Choura Feathers, N.Y., 365 F. 301, 167, CCA 473; Associated Banking Corp. vs. Commissioner of Customs, et. al., CTA Case No. 2448, August 6, 1976; Metropolitan Garment Corp. vs. Ramon Farolan, CTA Case No. 3959, April 16, 1986; Mayer Steel Pipe Corp. vs. Hon. Alfredo Pio de Roda, et al., CTA Case No. 2823, February 18, 1987*). Said Sec. 2535 TCCP provides, thus:

> 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 provision 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 section of this Code (emphasis ours).

After a careful study of the facts and records of the case, the Court finds that the requirement of the law that the existence of probable cause should first be shown before filing of the forfeiture proceedings, had been fully met. The fact that the master of the vessel, Captain Edgardo Evangelio failed to present the Bill of Lading of the subject cargo when Customs Officer Lloyd Camangeg demanded it; the fact that the subject cargo (5,000 MT of sugar) was unloaded in Poro Point without a "through or transit cargo manifest" and the fact that the said cargo was not entered through a Customshouse, all

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constituted *prima facie* evidence of infringement of the provisions of the Tariff and Customs Code, particularly Sections 2530, 1004, 1008, thereof, and provided sufficient basis for the seizure of the subject cargo. Moreover, Section 1202 of the TCCP provides that importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unload therein, thus:

> "**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 unload therein. Importation is deemed terminated upon 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."

It is clear from the provision of the law that mere intent to unload is sufficient to commence an importation. And "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 (*Feeder International Line, PTE., Ltd vs. Court of Appeals, et. al , GR No. 94262, May 31, 1991*). Since it is clear from the facts and records of the case that the entire shipment subject of this proceeding has been intended to be discharged in the Philippines, as in fact it was unloaded, it appears that (1) Petitioners have the intention to evade payment of customs duties and taxes and (2) that Petitioners are guilty of illegal importation warranting the penalty of forfeiture pursuant to Section 2530, paragraphs (f) and (l) of the TCCP. Probable cause having been shown, it is incumbent upon Petitioners to prove that their allegations are correct and that the Respondent's assertions were wrong. Petitioners must prove by substantial evidence that the 5,000 MT of sugar was not illegally imported by

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Petitioner PARANAGA INTERNATIONAL and that the other 500 MT of sugar was not used "as an escort, conduit or decoy in facilitating the illegal importation and discharge of the other cargo of 5,000 MT of sugar at Poro Point. Records of this case show that Petitioners failed to satisfactorily discharge the burden. No evidence whatsoever was presented by Petitioners to support their allegations. Instead Petitioners submitted this case on the basis of the pleadings and the records.

It is not amiss to mention that when an importer challenges by legal steps the correctness or the validity of the actions of the Commissioner of Customs, the question to be decided is not whether the Commissioner was wrong but whether the importer was right, the burden being on the latter to establish the correctness of his own contentions. In seizure and forfeiture proceedings, the burden of proof lies upon the claimant (see *Feeder International Line PTE., Ltd. vs. Court of Appeals, et. al., 197 SCRA 843; Commissioner of Customs vs. Star Ferry, 227 SCRA 317*). The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. No presumption can be indulged that public officials of the state who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law (see *Inter-provincial Autobus Co., Inc. vs. Collector of Internal Revenue, 19 PHIL 290*). This is true in the instant case where Respondent's special and affirmative defenses, the validity of which as shown from the records of the case, have the effect, if not controverted by adequate and competent evidence, of nullifying Petitioner's cause of action.

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**IN THE LIGHT OF ALL THE FOREGOING**, the decision of Respondent Deputy Commissioner Emma M. Rosqueta forfeiting the entire cargo of Petitioners, consisting of 5,500 MT of sugar, in favor of the government is hereby affirmed *in toto*. Accordingly, the GSIS Surety Bond in the amount of P31,500,000.00, which was posted by Petitioners for the release of the said cargo is hereby ORDERED FORFEITED in favor of the Government of the Republic of the Philippines. No costs.

**SO ORDERED.**

**AMANCIO Q. SAGA**
Associate Judge

**WE CONCUR:**

**ERNESTO D. ACOSTA**
Presiding Judge

**RAMON O. DE VEYRA**
Associate Judge

## CERTIFICATION

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

**ERNESTO D. ACOSTA**
Presiding Judge

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